

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification of the) Docket No. 01-AFC-6
Magnolia Power Project)
)

CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 18, 2002

10:00 a.m.

Reported by:
Scott King
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John Geesman, Commissioner and
Presiding Committee Member

Arthur H. Rosenfeld, Commissioner and
Associate Committee Member (brief appearance)

HEARING OFFICER AND PUBLIC ADVISER PRESENT

Susan Frances Gefter, Hearing Officer

Roberta Mendonca, Public Adviser

STAFF AND CONSULTANTS PRESENT

David F. Abelson, Senior Staff Counsel

James W. Reede, Jr., MPPA, Energy Facility Siting
Project Manager

Alvin Greenberg, Ph.D., REA, QEP, President
Risk Science Associates

APPLICANT AND CONSULTANTS PRESENT

Scott Galati, Esq.
Grattan and Galati

Bruce E. Blowey, Consultant
Southern California Public Power Authority
Licensing Manager and Project Director
Magnolia Power Project

Douglas L. Hahn, Senior Environmental Scientist
URS Corporation

Cindy Poire, Senior Environmental Planner
URS Corporation

Richard Morillo, Assistant District Attorney
City of Burbank

Thomas A. Umenhofer, CCM, REA, Senior Management
Consultant, Entrix

TELEPHONIC APPEARANCES

Ed Freudenburg, Magnolia Power Project/SCPPA

Tom McGuinness, Magnolia Power Project/SCPPA

William Walters, PE, Chemical Engineer

John Theodore Yee, PE, Senior Air Quality Engineer
South Coast Air Quality Management District

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P R O C E E D I N G S

10:00 a.m.

HEARING OFFICER GEFTER: Good morning.

This is the Committee's formal evidentiary hearing on SPCPA's application for the Magnolia Power Project in Burbank, California. The hearing is being conducted in Sacramento as a teleconference so that parties who cannot travel to Sacramento can participate via toll-free phone number. As we go through the introductions, we will identify those individuals who are participating by phone.

First of all, I'm Susan Gefter, hearing officer for the Committee assigned to this project. Commissioner Geesman?

PRESIDING COMMITTEE MEMBER GEESMAN: I'm John Geesman, the Presiding Commissioner, and Commissioner Rosenfeld will join us at 12:15 if we are still going then. He is conducting a hearing across the hall. And even if we are still going at 12:15, he'll only be able to briefly stick his head in the door and say hello.

HEARING OFFICER GEFTER: Mr. Galati for the applicant, would you introduce your parties for us.

APPLICANT ATTORNEY GALATI: Yes. My

1 name is Scott Galati with Grattan and Galati,
2 representing the applicant SCPPA. To my left is
3 Bruce Blowey, the project director, and I'll let
4 him introduce the rest of our team members.

5 APPLICANT PROJECT DIRECTOR BLOWEY: We
6 have with us this morning Mr. Ron Davis, who is
7 the general manager of Burbank Water and Power.
8 We have Richard Morillo, who is assistant district
9 attorney with the City of Burbank; Eldon Cotton
10 with the Magnolia Power Project and SCPPA. We
11 have Douglas Hahn and Cindy Poire from URS. And
12 Tom Umenhofer from Entrix.

13 And on the phone I have heard so far Ed
14 Freudenburg and Tom McGuinness, both with SCPPA,
15 working on the Magnolia Power Project.

16 HEARING OFFICER GEFTER: And Mr. Abelson
17 for staff.

18 SENIOR STAFF COUNSEL ABELSON: Thank
19 you, Ms. Gefter and Commissioner Geesman. My name
20 is David Abelson. I am staff counsel for this
21 siting case. To my left is the project manager,
22 James Reede. Also present today for the staff are
23 Dr. Alvin Greenberg, who is our witness on Waste,
24 Hazardous Materials, Public Health, and Worker
25 Safety Issues.

1 We anticipate that Mr. Will Walters, our
2 Air Quality witness, will be joining us at
3 approximately 11:00 o'clock. Other than that,
4 because of the nature of this case, we don't
5 anticipate other staff participating today.

6 HEARING OFFICER GEFTER: Thank you.

7 The sole intervenor in this case,
8 California Unions for Reliable Energy, known as
9 CURE, submitted a letter indicating that it did
10 not intend to participate at today's hearing. I
11 will include that letter in the official record,
12 once we have a final exhibit list. That is to
13 indicate to everyone that CURE will not be
14 participating today.

15 We will hear from the South Coast Air
16 Quality Management District at 11:00 o'clock this
17 morning. Mr. Yee, senior engineer, will be
18 calling in to testify and indicate what South
19 Coast's position is on the conditions that the
20 staff has proposed in the FSA, and to indicate
21 their findings in their FDOC.

22 Our public adviser for the Energy
23 Commission, Roberta Mendonca is here today. And
24 Roberta, do you have any comments that you would
25 like to offer?

1 PUBLIC ADVISER MENDONCA: I have no
2 comments, thank you.

3 HEARING OFFICER GEFTER: Okay. Thank
4 you, Roberta.

5 The AFC review process is a public
6 proceeding, as we have indicated throughout this
7 entire process. Members of the public may offer
8 public comment to us today after presentation of
9 evidence on all of the topics.

10 We have not heard from anybody in the
11 community that isn't --

12 PUBLIC ADVISER MENDONCA: Minton Bodey
13 has joined.

14 APPLICANT PROJECT DIRECTOR BLOWEY: Oh,
15 Minton Bodey, he is with the City of Colton.

16 HEARING OFFICER GEFTER: City of Colton,
17 thank you.

18 If anyone from the public, other than
19 members of SCPPA and members of the team for
20 applicant are calling in, we'll take public
21 comment from them at the end of our proceeding.

22 The purpose of today's hearing is to
23 receive evidence, including sworn testimony, to
24 establish the factual record necessary to reach a
25 decision on the AFC. This is a formal evidentiary

1 hearing. Witnesses will testify under oath or
2 affirmation and are subject to cross-examination.
3 The reporter will administer the oath.

4 The applicant and staff have submitted
5 sworn witness declarations for the topics that are
6 not in dispute, which appear to be every topic in
7 this case. We discussed these topics at the
8 prehearing conference on October 29th, and I
9 understand the parties have agreed to waive cross-
10 examination on all of the testimony submitted by
11 declaration.

12 The evidentiary hearing order that we
13 issued, subsequent to the prehearing conference,
14 indicates which topics have been submitted by
15 declaration and which ones will be presented by
16 live testimony. At this time we'll have Project
17 Description by live testimony, and we'll also
18 discuss Air Quality by live testimony.

19 With respect to Haz Mat and Waste, we
20 had asked staff to offer a witness to explain the
21 conditions of some of the statements in the FSA
22 with respect to those topics. We will have a
23 witness on those topics as well.

24 I distributed a tentative exhibit list,
25 which the parties now have copies of in front of

1 them. This list goes through exhibit 42, I
2 believe, which are the applicant's exhibits. I
3 understand applicant will have another exhibit
4 they would like to offer, and when we get to that
5 Mr. Galati will indicate that one. And then we'll
6 take the staff's exhibits in order after that.

7 We will follow the schedule shown in the
8 evidentiary hearing order. The topics are listed
9 in attachment A to the order. The only topic we
10 will take out of order will be Air Quality and
11 Public Health. At 11:00 a.m., as I indicated
12 earlier, Mr. Yee will be calling in from the Air
13 District to talk about Air Quality at that time.

14 Are there any questions about the format
15 of the process today?

16 Then we are ready to begin with the
17 applicant on Project Description, on the first
18 topic.

19 Mr. Galati?

20 APPLICANT ATTORNEY GALATI: If I could
21 ask for Bruce Blowey to be sworn.

22 HEARING OFFICER GEFTER: Yes. We'll ask
23 the reporter to swear the witness, please.

24 THE REPORTER: Would you raise your
25 right hand, please.

1 Whereupon,

2 BRUCE E. BLOWEY

3 Was called as a witness herein and, after first
4 being duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY APPLICANT ATTORNEY GALATI:

8 Q Mr. Blowey, could you please tell us
9 what your role is with the Magnolia Power Project.

10 A I'm a consultant for the Southern
11 California Public Power Authority, and
12 specifically assigned to manage the licensing
13 effort for the Magnolia Power Project.

14 Q And could you briefly summarize your
15 qualifications for the Committee.

16 A I have over 30 years of engineering and
17 management experience with the largest electric
18 municipal utility in the nation. For the last two
19 years --

20 (Inaudible comment by telephonic speaker.)

21 HEARING OFFICER GEFTER: We can't hear
22 you. Could you say that again, please?

23 PRESIDING COMMITTEE MEMBER GEESMAN:

24 Would you please say your name again, whoever just
25 joined?

1 MR. ROBLED0: Just an observer, Manuel
2 Robledo from SCPPA.

3 HEARING OFFICER GEFTER: Would you spell
4 that for the reporter.

5 MR. ROBLED0: R-o-b-l-e-d-o.

6 HEARING OFFICER GEFTER: Thank you.

7 All right. Mr. Blowey, please continue.

8 WITNESS BLOWEY: I've been working on
9 the Magnolia Power Project for a little over two
10 years now as a consultant.

11 BY APPLICANT ATTORNEY GALATI:

12 Q Okay, and you previously submitted
13 written testimony; is that correct?

14 A Yes.

15 Q Do you have any changes, additions, or
16 corrections to that testimony?

17 A There is one addition I would make in
18 the second-to-last paragraph where it calls for an
19 exhibit. That should be exhibit number 21, and
20 that's on page six.

21 Q Thank you. Mr. Blowey, could you please
22 briefly summarize your testimony for the
23 Committee.

24 A Yes. In terms of Project Description,
25 I'd like also to touch a little bit on the

1 ownership of the project and some of the major
2 changes that have occurred during the licensing
3 process. The Magnolia Power Project or the MPP
4 consists of a nominal 250-megawatt natural-gas
5 combined-cycle-fired plant located at the existing
6 City of Burbank power plant in Burbank,
7 California.

8 The MPP will include a model 7FA General
9 Electric combustion turbine generator, an Alston
10 dual-pressure heat-recovery steam generator, a
11 steam turbine generator, switchyard upgrades to
12 the existing 69KV-all switchyard, new on-site 69KV
13 transmission, a control and service building, wet
14 mechanical draft cooling tower storage tanks,
15 natural gas compressors, truck-mounted makeup
16 water demineralizer with off-site regeneration, a
17 zero-liquid-discharge wastewater treatment system
18 and other ancillary facilities.

19 The MPP will also include on-site
20 pipelines for natural gas supply, water supply,
21 and stormwater discharge, site access and
22 temporary off-site areas for laydown and parking
23 during construction are also included. The MPP
24 will be constructed on approximately four acres of
25 the existing 23-acre site. In terms of water

1 supply and wastewater discharge, the reclaimed
2 water from the nearby City of Burbank Water
3 Reclamation Plant will be the primary water supply
4 to the MPP. There will be no wastewater
5 discharges off site.

6 The application for certification was
7 submitted to the CEC on May 14th by the Southern
8 California Public Power Authority. I'll refer to
9 it many times as SCPPA. Due to concerns over
10 whether or not an NPDS permit, discharge permit
11 would be issued by the Los Angeles Regional Water
12 Quality Control Board, SCPPA submitted an
13 amendment to the AFC in May 2002, proposing a ZLD
14 as an option. In August 2002 SCPPA elected to
15 incorporate the ZLD into the base design of MPP
16 and drop the NPDS discharge option.

17 (Brief recess.)

18 PRESIDING COMMITTEE MEMBER GEESMAN:
19 Back on the record.

20 WITNESS BLOWEY: The owner is SCPPA.
21 SCPPA is organized pursuant to provisions
22 contained in the Joint Exercise of Powers Act.
23 Its members are municipalities in an irrigation
24 district that supply or intend to supply
25 electricity in the state of California.

1 There are a number of key project
2 agreements I'd like to note. The participants of
3 the Magnolia Power Project currently are Anaheim,
4 Burbank, Cerritos, Colton, Glendale, Pasadena, and
5 San Marcos, each of which would enter into a power
6 sales agreement with SCPPA to take the power from
7 the project. Those are taker-pay types of
8 contracts. There is a construction management and
9 operating agreement. This is an agreement between
10 SCPPA and the City of Burbank. It designates
11 Burbank as the project manager and operator of
12 MPP.

13 We have entered into an engineering
14 procurement and construction agreement with
15 Coverner (phonetic) for purchasing and
16 constructing many of the balance plant equipment.
17 The procurement of the combustion turbine, the
18 steam turbine, and HRSG and generation step-up
19 transformers are being done directly by SCPPA.

20 Now I'll identify a number of changes
21 that were necessary during the review period. The
22 final staff assessment does incorporate these
23 changes. Initially, the AFC reflected more than
24 one combustion turbine manufacturer. In December
25 2001 SCPPA selected the GE model 7FA. Also, an

1 auxiliary boiler was proposed to shorten the time
2 proposed for a cold start of the unit.

3 Due to the cost and the uncertainty of
4 the amount of time that the auxiliary boiler would
5 need to be operated while emitting pollutants, it
6 was eliminated. SCPPA initially based its design
7 upon the ability to reinject the cooling tower
8 blow-down into the reclaimed water line before
9 subsequent distribution for reuse or discharge
10 into the Burbank Western Wash.

11 With substantial delays in obtaining a
12 new or modified NPDS permit, SCPPA had to drop the
13 NPDS option in order to obtain its CEC license.
14 The use of ZLD system reduces the income stream to
15 the City of Burbank that would have allowed the
16 city to expand its reclaimed water delivery
17 system. The expansion of the reclaimed water
18 delivery system would then have allowed the City
19 of Burbank to reduce its need to deliver potable
20 water for uses that could otherwise be supplied
21 with reclaimed water.

22 Finally --

23 (Music heard telephonically.)

24 HEARING OFFICER GEFTER: Pause in the
25 record.

1 (Brief recess.)

2 HEARING OFFICER GEFTER: Back on the
3 record.

4 WITNESS BLOWEY: The one remaining item
5 of change was due to the cumulative effect of the
6 above changes that I've just mentioned and the
7 change from a six-month ASE review process to a
8 12-month review process, the schedule in-service
9 date was changed from June 2004 to May 2005.

10 That concludes my prepared testimony.

11 APPLICANT ATTORNEY GALATI: Mr. Blowey
12 is available for cross-examination. Are there
13 questions from the Committee?

14 SENIOR STAFF COUNSEL ABELSON: Staff has
15 no questions.

16 HEARING OFFICER GEFTER: I have a couple
17 of questions for clarification.

18 With respect to the construction
19 agreement between the City of Burbank and SCPPA,
20 is that in the exhibits? Is that among the
21 exhibits that the applicant is offering?

22 APPLICANT ATTORNEY GALATI: No, it is
23 not. We have a site lease agreement that is in,
24 but the construction agreement is not.

25 HEARING OFFICER GEFTER: And I have the

1 site lease agreement. That is exhibit 16,
2 correct?

3 APPLICANT ATTORNEY GALATI: Yes.

4 HEARING OFFICER GEFTER: Is the
5 construction agreement, has that been docketed?

6 APPLICANT ATTORNEY GALATI: No, it
7 hasn't --

8 WITNESS BLOWEY: I don't believe it's
9 been executed. That has not been executed.

10 HEARING OFFICER GEFTER: Okay. Is there
11 a condition in Land Use or in any of the other
12 topics that would require that construction
13 agreement to be docketed or presented prior to
14 going forward with the case?

15 APPLICANT ATTORNEY GALATI: There is
16 not.

17 HEARING OFFICER GEFTER: Okay.

18 APPLICANT ATTORNEY GALATI: I can tell
19 you that we did have some conversations about this
20 early on in the project when the six-month
21 expedited process may have required such an
22 agreement.

23 I believe there is a construction
24 milestone agreement -- excuse me, condition, and
25 I'd ask staff to help me with that one, that

1 may -- I don't believe it requires turning in the
2 agreement, I think it requires certain
3 construction time lines to be hit.

4 PROJECT MANAGER REEDE: Yes. James
5 Reede speaking.

6 Simply, we do not require a construction
7 agreement prior to certification. And if my
8 memory serves me correctly, it's not actually
9 required after certification. Once they get the
10 license, they're required to construct, and that
11 may be with any firm they choose.

12 HEARING OFFICER GEFTER: Yeah, that's
13 not my concern. What I am looking at is with
14 respect to the ownership and the operation and
15 maintenance of the project, as I understand from
16 your testimony the ownership of SCPPA, the City of
17 Burbank would be the operator, would construct and
18 operate the project.

19 WITNESS BLOWEY: That's correct.

20 HEARING OFFICER GEFTER: Okay.

21 WITNESS BLOWEY: Under the provisions of
22 the SCPPA agreement.

23 HEARING OFFICER GEFTER: Right. And so
24 I was looking for something either in a condition
25 or in an exhibit that would actually explain that

1 relationship.

2 LESLIE: Excuse me, Leslie has joined.

3 HEARING OFFICER GEFTER: Say that again,
4 please.

5 LESLIE: This is Leslie calling for Eric
6 Fresch from the City of Vernon.

7 HEARING OFFICER GEFTER: Thank you.

8 APPLICANT ATTORNEY GALATI: Ms. Hearing
9 Officer, on the exhibit 16, which is the Magnolia
10 Power Project site lease and services agreement,
11 it does, I believe, spell out the role of
12 operation and leasing of the site, I believe.

13 WITNESS BLOWEY: The facilities that
14 will be available to SCPPA from Burbank. It could
15 be the obligation of Burbank to operate as project
16 manager and operator are contained in the
17 construction management and operating manual.

18 HEARING OFFICER GEFTER: Which has not
19 been executed yet.

20 WITNESS BLOWEY: That has not been
21 executed, and will probably not be executed until
22 we get a license.

23 HEARING OFFICER GEFTER: Well, if at
24 some point staff could indicate to me in either
25 the compliance section or another condition where

1 they would -- where SCPPA would need to submit
2 some kind of evidence that, in fact, Burbank is
3 going to be the operator of the project, we can --
4 you can tell me about that later on in the
5 hearing.

6 PROJECT MANAGER REEDE: Okay.

7 HEARING OFFICER GEFTER: Okay, thank
8 you. We could move on.

9 Anything else, Mr. Blowey?

10 WITNESS BLOWEY: No.

11 HEARING OFFICER GEFTER: Mr. Galati is
12 looking for exhibit 16 to show me where it says
13 that Burbank is the operator on the project.

14 APPLICANT ATTORNEY GALATI: I believe
15 that in exhibit 16, in reference to an exhibit B
16 which lists services, and I'm looking through the
17 services, it provides what services the City of
18 Burbank is going to provide to the project for
19 purposes of water service, electrical service, and
20 things of those natures, but I don't see the very
21 specific items that you were describing of how
22 they would actually operate the plant.

23 I think that is only in the construction
24 maintenance and operation agreement. But there
25 is, there should be enough in exhibit 16 to

1 establish a relationship that the City of Burbank
2 has authorized the construction and operation of
3 the Magnolia Power Project on the site and is
4 going to provide it in full to the utility
5 services.

6 HEARING OFFICER GEFTER: Okay. And what
7 I might ask is, with respect to the EPC agreement
8 that you have, is that between Burbank and the
9 contractor or is that between SCPPA and the
10 contractor?

11 WITNESS BLOWEY: That is between SCPPA
12 and the contractor.

13 APPLICANT ATTORNEY GALATI: Yes, SCPPA
14 is going to construct the project, and City of
15 Burbank is going to be maintaining and operating
16 it.

17 WITNESS BLOWEY: Well, they will be the
18 project manager also.

19 APPLICANT ATTORNEY GALATI: Okay.

20 WITNESS BLOWEY: There is a -- SCPPA
21 will form a coordinating committee, and the
22 coordinating committee is comprised of all of the
23 participants. In this case we have about seven
24 participants. They will each have a voting right
25 on the coordinating committee, and proportional to

1 their take of the project. They provide direction
2 to the project manager and operator, to Burbank.

3 HEARING OFFICER GEFTER: Okay. The
4 reason I'm asking this question is because of the
5 unique relationship between SCPPA as the project
6 owner and Burbank as the project operator, and
7 when a certification license is issued, the
8 conditions refer to the project owner. And in
9 this case that would mean SCPPA.

10 WITNESS BLOWEY: Yes.

11 HEARING OFFICER GEFTER: Okay. I just
12 want to be clear on the record that that's what
13 we're referring to.

14 WITNESS BLOWEY: Yes. That's not an
15 unusual arrangement for SCPPA.

16 HEARING OFFICER GEFTER: Thank you, all
17 right.

18 HEARING OFFICER GEFTER: If there are no
19 more questions on Project Description, we can move
20 on to the next topic, which is Alternatives.

21 APPLICANT ATTORNEY GALATI: We propose
22 to submit Alternatives by declaration.

23 HEARING OFFICER GEFTER: Okay.

24 SENIOR STAFF COUNSEL ABELSON: No
25 objection.

1 HEARING OFFICER GEFTER: Applicant has
2 submitted declaration into the record, and is
3 there an exhibit that refers to that declaration?

4 APPLICANT ATTORNEY GALATI: Yes, and I
5 apologize, Ms. Hearing Officer. Would you like me
6 to go through on Project Description for a list of
7 exhibits and move them in now, or would you like
8 them moved in at the end of the hearing?

9 HEARING OFFICER GEFTER: Now would be
10 better, because that way it would be with the
11 Project Description testimony.

12 APPLICANT ATTORNEY GALATI: Okay. Would
13 you like me to read them into the record, or can I
14 refer to either the master exhibit list and just
15 refer to them by number, or --

16 HEARING OFFICER GEFTER: Number is fine.

17 APPLICANT ATTORNEY GALATI: Okay.
18 Mr. Blowey is sponsoring portions of exhibit 1,
19 exhibit 2, exhibit 3, exhibit 13, exhibit 16, 17,
20 18, 19, 20, and 21 under -- his testimony in
21 Project Description, those are listed within the
22 testimony. And his actual testimony we are
23 proposing as exhibit 24.

24 At this time I would like to move all of
25 those into the evidentiary record.

1 HEARING OFFICER GEFTER: Any objection
2 from staff?

3 SENIOR STAFF COUNSEL ABELSON: None.

4 HEARING OFFICER GEFTER: Okay. The
5 exhibits that Mr. Galati just indicated, exhibit
6 2, 3, 13, 16, 17, 18, 19, 20, 21, and 24 relating
7 to Project Description are now received into the
8 record.

9 With respect to the portion of exhibit 1
10 that refers to Project Description, I would ask
11 the applicant to move exhibit 1 in its entirety
12 at the end of the hearing.

13 APPLICANT ATTORNEY GALATI: Absolutely.

14 HEARING OFFICER GEFTER: Okay. Now,
15 with respect to the topic of Alternatives, could
16 you then refer me to the exhibit which contains
17 the declaration.

18 APPLICANT ATTORNEY GALATI: Yes. The
19 declaration and testimony previously filed is the
20 testimony of Bruce Blowey, exhibit 25.

21 HEARING OFFICER GEFTER: Thank you.

22 APPLICANT ATTORNEY GALATI: And I would
23 like at this time to identify exhibits that are
24 identified in that exhibit 25: a portion of
25 exhibit 1, a portion of exhibit 2, and a portion

1 of exhibit 3, and I'll wait to move those into the
2 evidentiary record at the end of applicant's
3 testimony.

4 HEARING OFFICER GEFTER: Okay, and are
5 you moving exhibit 25 into the record at this
6 time?

7 APPLICANT ATTORNEY GALATI: Yes, please.

8 HEARING OFFICER GEFTER: Okay. Any
9 objection from staff?

10 SENIOR STAFF COUNSEL ABELSON: No
11 objection.

12 HEARING OFFICER GEFTER: Exhibit 25 is
13 now received into the record. And now we're done
14 with Alternatives.

15 We will move on to Facility Design.

16 APPLICANT ATTORNEY GALATI: Facility
17 Design I would like at this time to identify
18 exhibit 26, which is also the testimony of Bruce
19 Blowey, and within that testimony, included in a
20 signed declaration, are also portions of
21 exhibit 1, exhibit 2, and exhibit 3.

22 I propose that those be admitted upon
23 declaration, and would ask to move in exhibit 26
24 into the evidentiary record.

25 HEARING OFFICER GEFTER: Any objection

1 to exhibit 26?

2 SENIOR STAFF COUNSEL ABELSON: No.

3 HEARING OFFICER GEFTER: Exhibit 26 is
4 received into the record.

5 Power Plant Reliability is the next
6 topic.

7 APPLICANT ATTORNEY GALATI: I apologize,
8 Ms. Hearing Officer. Exhibit 26 includes the
9 testimony for Facility Design, Power Plant
10 Efficiency, and Reliability. I would like to move
11 all of those all in -- Well, exhibit 26 contains
12 our testimony on those as well.

13 HEARING OFFICER GEFTER: And staff has
14 no objection to that?

15 SENIOR STAFF COUNSEL ABELSON: No
16 objection.

17 HEARING OFFICER GEFTER: Okay. Exhibit
18 26 has already been received and, therefore, it
19 contains that testimony.

20 So, therefore, we will be moving on to
21 Transmission System Engineering, and it looks like
22 also your Transmission Line Safety and Nuisance
23 are also included in your proposed declaration.

24 APPLICANT ATTORNEY GALATI: Correct. So
25 exhibit 27, Transmission System Engineering and

1 Transmission Line Safety and Nuisance, the
2 testimony of Bruce Blowey with accompanying
3 declaration, we would like to move into the
4 evidentiary record at this time after identifying
5 that within exhibit 27 portions of exhibit 1 and
6 exhibit 2 are also sponsored.

7 HEARING OFFICER GEFTER: Does staff have
8 any objection to exhibit 27 being received into
9 evidence?

10 SENIOR STAFF COUNSEL ABELSON: No
11 objection.

12 HEARING OFFICER GEFTER: Okay. Exhibit
13 27 is received into the record.

14 I had questions with respect to TSE and
15 TSLN -- that is, Transmission System Engineering
16 and Transmission Line Safety and Nuisance -- for
17 staff. And at this time I would like to give
18 staff an opportunity to respond to those
19 questions.

20 We had questions with respect to the use
21 of RAS as a mitigation measure, and we had
22 received from response from Mr. Bucaneg, staff's
23 witness on that topic.

24 PROJECT MANAGER REEDE: Yes. Do you
25 need me to read those into the record, or --

1 HEARING OFFICER GEFTER: Yes. Well, are
2 you going to testify as to this information?

3 PROJECT MANAGER REEDE: I'm able to
4 testify, but I'd rather submit it in the record.

5 HEARING OFFICER GEFTER: Well, are you
6 going to submit the document as an exhibit, the
7 responses from Mr. Reede?

8 SENIOR STAFF COUNSEL ABELSON: It was
9 our understanding that you were seeking
10 clarification on it. If you deem it important for
11 purposes of a complete record to have that e-mail
12 transmittal, we would be happy to submit it into
13 the record.

14 HEARING OFFICER GEFTER: Yes. We need
15 that for the record.

16 SENIOR STAFF COUNSEL ABELSON: Do you
17 want that now or do you want it as part of staff's
18 testimony when we present?

19 HEARING OFFICER GEFTER: You can include
20 that as part of your supplemental testimony, but
21 at this time that we are in TSE I would like to
22 discuss the actual information that is presented.

23 So, Mr. Reede, if you would be sworn.

24 THE REPORTER: Would you raise your
25 right hand.

1 Whereupon,

2 JAMES W. REEDE, JR.

3 Was called as a witness herein and, after first
4 being duly sworn, was examined and testified as
5 follows:

6 HEARING OFFICER GEFTER: Thank you. And
7 what you could indicate, Mr. Reede, is that you're
8 the project manager and that Mr. Bucaneg provided
9 this information and, to the best of your
10 knowledge, these are the correct responses.

11 EXAMINATION BY COMMITTEE

12 WITNESS REEDE: Okay. I'm the energy
13 facility siting project manager assigned to
14 Magnolia Power Project, AFC-01-AFC-6. And the
15 hearing officer had sent questions to state,
16 "Please clarify the mitigation proposed in the
17 final staff assessment for Transmission System
18 Engineering at page 5.5-6 which states that a
19 maximum generation of greater than 28 megawatts, a
20 remedial scheme is necessary to mitigate the 19-
21 percent overload," etc.

22 Ms. Gefter goes on to state, "I
23 understand that Cal ISO no longer approves RAS as
24 a mitigation measure; however, the FSA states that
25 Cal ISO facilities are not impacted by the

1 Magnolia Power Project. Question number one: Is
2 there anything in writing from Cal ISO to
3 confirm?"

4 The response of staff is that, the first
5 response is that the Cal ISO no longer approves
6 RAS's mitigation, quoted Ms. Gefter, this is not a
7 true statement. RAS or SPS, Special Protection
8 System, is acceptable in some circumstances. The
9 guidelines for Remedial Action Schemes or Special
10 Protection Systems are stipulated in both planning
11 standards for the California Independent System
12 Operator and the National Electric Reliability
13 Council and the Western States Coordinating
14 Council.

15 In direct response to question one, no
16 written communication from a California
17 Independent System Operator was received to this
18 effect; however, the ISO's representative was
19 stolen during a May 23rd conference call that
20 related to this particular issue.

21 Item two --

22 SENIOR STAFF COUNSEL ABELSON: Before
23 you go on, let me ask, on behalf of staff, if that
24 provides sufficient information for what you were
25 seeking, Ms. Gefter?

1 HEARING OFFICER GEFTER: Well, I don't
2 think it goes to any major issue in this case.
3 What I was concerned about is that we didn't have
4 anything specific from Cal ISO. And that they
5 were attending a workshop still doesn't indicate
6 to me what their position is, but if staff is
7 testifying that this is the position, that that's
8 going to be in the record.

9 WITNESS BLOWEY: Yes. Basically, there
10 was a conference call to make it clear with staff
11 that the City of Burbank is not part of Cal ISO
12 control. And that the City of Burbank will have
13 to control any potential overloads versus the Cal
14 ISO.

15 HEARING OFFICER GEFTER: Okay. Well,
16 that is a very helpful clarifying statement, thank
17 you.

18 WITNESS BLOWEY: Okay. The second
19 question from Hearing Officer Gefter was, "Who
20 approves Remedial Action Scheme measures?" The
21 response of staff is that impact of facilities are
22 within the City of Burbank system. It is assumed
23 that the City of Burbank would be designing the
24 Remedial Action Scheme for their own power systems
25 and approval by the Southern California Public

1 Power Authority.

2 Question three from the hearing officer,
3 "Where does condition Transmission System
4 Engineering five deal with RAS?" And there is a
5 reference on page 5.5-9 at paragraph 2(b) of the
6 final staff assessment. The RAS specifications
7 would be in a separate section in the generator
8 special facilities agreement, which will be
9 executed between SCPPA and the City of Burbank at
10 some point in the future.

11 Question four from the hearing officer,
12 "What does verification D for Transmission System
13 Engineering number five mean by a signed letter
14 stating that the required mitigation is
15 acceptable?" The response of staff is this is to
16 very actual implementation and installation of
17 suggested mitigation measures. Acceptability is
18 based on design, construction, and operation.

19 Please note that the impact of systems
20 are in the City of Burbank system. City of
21 Burbank is part of the project proponent SCPPA.
22 Accept this or the mitigation measures would be up
23 to SCPPA and so is the City of Burbank for its
24 impacted systems.

25 HEARING OFFICER GEFTER: And I would ask

1 the applicant to indicate whether or not you agree
2 with the staff's clarifications and ask
3 Mr. Blowey -- You're still under oath -- to
4 respond.

5 BY APPLICANT ATTORNEY GALATI:

6 Q Mr. Blowey, do you agree with staff's
7 characterizations of the responses to Ms. Gefter's
8 questions?

9 A Yes.

10 HEARING OFFICER GEFTER: Thank you.

11 Mr. Abelson, later on when you offer
12 staff supplemental testimony, would you also
13 include this e-mail correspondence.

14 SENIOR STAFF COUNSEL ABELSON: I would
15 be most happy to.

16 HEARING OFFICER GEFTER: Thank you. And
17 while we have Mr. Reede under oath, also with
18 respect to the Transmission System condition, TLSN
19 number one at page 4.10-5 of the final staff
20 assessment --

21 WITNESS BLOWEY: Yes, Ms. Gefter?

22 HEARING OFFICER GEFTER: Okay. I have a
23 question regarding the verification on that
24 particular condition. It says that a letter from
25 SCPPA stating its intention to ensure compliance

1 with this requirement. I would like to see
2 something more specific in that verification, and
3 I would ask staff and applicant whether you would
4 agree to a language change in that verification
5 which would state that the design for the project
6 will comply with GO 128 or some other language to
7 that effect.

8 WITNESS BLOWEY: Perhaps I might suggest
9 the 30 days before project-related ground
10 disturbance the applicant shall submit to the
11 Commission's compliance project manager a letter
12 from SCPPA stating that its design is in
13 compliance with the requirements of CPUC GO 128,
14 General Order 128 complies --

15 HEARING OFFICER GEFTER: Okay.

16 APPLICANT ATTORNEY GALATI: I have an
17 amendment to that language that was just read into
18 the record, and let me give you the reason why, is
19 rather than project-related ground disturbance,
20 the transmission system engineering is typically
21 designed at a later date, and we would like that
22 to say 30 days before transmission-related ground
23 disturbance, transmission-line-related ground
24 disturbance, that would make it clear that the
25 project could continue to construct without having

1 that detailed design finished.

2 SENIOR STAFF COUNSEL ABELSON: That's
3 acceptable to staff.

4 HEARING OFFICER GEFTER: Okay. That
5 would be fine. So this is condition TLSN, and the
6 amendment and revised language would state,
7 "Thirty days before transmission-line-related
8 ground disturbance, the applicant shall submit,"
9 etc., etc., "a letter from SCPPA stating" --

10 WITNESS BLOWEY: "Its design complies
11 with the requirements of CPUC General Order 128."

12 THE REPORTER: One moment, please.

13 (Thereupon, the tapes were
14 changed off the record.)

15 THE REPORTER: Please proceed.

16 HEARING OFFICER GEFTER: Mr. Galati,
17 does applicant agree with that language change?

18 APPLICANT ATTORNEY GALATI: Yes, we
19 agree for that language change for TLSN one.

20 HEARING OFFICER GEFTER: Okay, thank
21 you.

22 We can move on now to Geology and
23 Paleontological Resources. Applicant?

24 APPLICANT ATTORNEY GALATI: Applicant
25 proposes that exhibit 28, which is the testimony

1 of Douglas I. (sic) Hahn, Geological Hazards and
2 Paleontological Resources, which identifies
3 portions of exhibit one, portions of exhibit two,
4 and portions of exhibit three be received into
5 evidence on declaration, which is attached.

6 SENIOR STAFF COUNSEL ABELSON: No
7 objection.

8 HEARING OFFICER GEFTER: No objection?
9 Exhibit 28 is received into the record.
10 Cultural Resources?

11 APPLICANT ATTORNEY GALATI: The
12 applicant proposes that exhibit 29, which is the
13 testimony of Sally Salzman-Morgan on Cultural
14 Resources, which identifies a portion of exhibit
15 one, exhibit three, a portion of exhibit four, and
16 a portion of exhibit six be received into
17 evidence. And the declaration is attached.

18 HEARING OFFICER GEFTER: And that is
19 exhibit 29?

20 APPLICANT ATTORNEY GALATI: That is
21 exhibit 29.

22 HEARING OFFICER GEFTER: Okay. Is there
23 any objection to exhibit 29 being received?

24 SENIOR STAFF COUNSEL ABELSON: No
25 objection.

1 HEARING OFFICER GEFTER: Okay. Exhibit
2 29 is received into the record.

3 With respect to your references to
4 portions of exhibit four, five, and six, were
5 those the references?

6 APPLICANT ATTORNEY GALATI: If I could
7 explain, exhibit four and exhibit six are
8 responses to data requests, which were filed
9 together in a comprehensive book. These were
10 identified, just the responses relating to
11 Cultural Resources. So that is a portion of
12 exhibit four and six.

13 At the end of the proceeding I'll ask
14 for all of those exhibits, one through seven I
15 believe, to be received into evidence as portions
16 of them are sponsored by different witnesses.

17 HEARING OFFICER GEFTER: Thank you.

18 All right. Next is Hazardous Materials.

19 APPLICANT ATTORNEY GALATI: This is
20 exhibit 30, which is the testimony of Douglas I.
21 Hahn on Hazardous Materials. Within that
22 testimony, Mr. Hahn sponsors portions of exhibit
23 one, exhibit three, and exhibit six. I would ask
24 that exhibit 30 with the attached declaration be
25 moved into evidence.

1 HEARING OFFICER GEFTER: All right.
2 Before we ask staff whether there is an objection
3 to exhibit 30, in that declaration there is a
4 proposed change to condition, actually conditions
5 Haz two through Haz five.

6 APPLICANT ATTORNEY GALATI: That's
7 correct. Would you like to have Mr. Hahn explain
8 that or would it be appropriate and okay for me to
9 do that?

10 HEARING OFFICER GEFTER: It would be
11 fine for you to do that, Mr. Galati.

12 APPLICANT ATTORNEY GALATI: Thank you,
13 Ms. Hearing Officer. At the prehearing
14 conference, the verifications, it was noticed by
15 the Committee that the verifications for Haz two
16 through five may be vague in that they did not
17 specify timing of when certain plans and things
18 needed to be submitted.

19 And it was discussed at that prehearing
20 conference and the applicant has proposed that the
21 word "first" be identified, actually inserted to
22 the verifications prior to the words "receiving,
23 delivery, and receipt," respectively, for
24 Hazardous Waste two -- excuse me, Haz two through
25 Haz five, the purpose to clarify that these plans

1 would be submitted prior to any ammonia being
2 delivered on the site as opposed to each delivery.

3 HEARING OFFICER GEFTER: And does staff
4 have any objection to that language change?

5 SENIOR STAFF COUNSEL ABELSON: Staff is
6 aware of the change. Staff has no objection to
7 the change, and Mr. Greenberg, our witness, is
8 here if you have any questions of him on that
9 change.

10 HEARING OFFICER GEFTER: So is there any
11 objection to receiving exhibit 30 into the record?

12 SENIOR STAFF COUNSEL ABELSON: No, no
13 objection.

14 HEARING OFFICER GEFTER: Okay. Exhibit
15 30 is received into the record, and those proposed
16 changes to Haz two, three, four, and five will be
17 accepted into the record.

18 I wanted to ask staff, though, on
19 Hazardous Materials, there is a question on Haz
20 five, condition Haz five. The language reads,
21 "The project owner shall direct all vendors
22 delivering ammonia to use only transport
23 vehicles," etc. The question, again, is the
24 language here is somewhat vague.

25 Does this mean that there would be

1 continuous monitoring of all the vendors, or is
2 this only the first time that a vendor delivers
3 ammonia?

4 SENIOR STAFF COUNSEL ABELSON:

5 Ms. Gefter, before we respond, we can either let
6 Mr. Reede do it because he's already sworn and is
7 the project manager and is familiar with general
8 questions of that nature, or I have Dr. Greenberg
9 here and we can have him sworn in. He is the
10 witness for that topic.

11 HEARING OFFICER GEFTER: Ask

12 Mr. Greenberg to be sworn.

13 SENIOR STAFF COUNSEL ABELSON: Okay.

14 THE REPORTER: Please raise your right
15 hand.

16 Whereupon,

17 ALVIN J. GREENBERG

18 Was called as a witness herein and, after first
19 being duly sworn, was examined and testified as
20 follows:

21 THE REPORTER: Thank you.

22 EXAMINATION BY COMMITTEE

23 WITNESS GREENBERG: To answer your
24 question, ma'am, the --

25 HEARING OFFICER GEFTER: Okay.

1 Mr. Greenberg, first identify who you are with
2 respect to staff.

3 WITNESS GREENBERG: Oh, I'm sorry. I am
4 the president of Risk Science Associates and I am
5 a consultant to the California Energy Commission.
6 I prepared the Hazardous Materials Management
7 staff assessment.

8 I have 23 years in the field, experience
9 in hazardous materials management and toxicology.

10 HEARING OFFICER GEFTER: Thank you.

11 WITNESS GREENBERG: The intent here is
12 for the project owner to have direct
13 responsibility to ensure that a vendor delivering
14 aqueous ammonia uses a DOT-certified vehicle -- in
15 this case it's the MC307.

16 Initially, prior to the first delivery
17 of aqueous ammonia to the facility, the project
18 owner will have to send a letter to the vendor and
19 enter into a contract with the vendor, saying you
20 can only use this particular vehicle.

21 CEC compliance project managers will
22 routinely monitor that a project owner has
23 provided that letter. Should the project owner
24 switch vendors, they would have to reissue the
25 letter to a new vendor.

1 HEARING OFFICER GEFTER: So is that the
2 intent where the language says, "The project owner
3 shall direct all vendors"? Is there a way to make
4 this more specific?

5 WITNESS GREENBERG: Well, it is all
6 vendors who would deliver aqueous ammonia, so it's
7 not all vendors, but rather, only those vendors
8 delivering aqueous ammonia.

9 HEARING OFFICER GEFTER: That I
10 understand, but what you just suggested, that if
11 they were to change vendors, then that new vendor
12 would then have to comply with this requirement,
13 so that it is the applicant's responsibility to
14 tell all vendors, to make sure that all vendors
15 are complying with the requirements.

16 So is there a way to change the language
17 here to include that concept that you've just
18 suggested?

19 WITNESS GREENBERG: Oh, I think so. To
20 make it abundantly clear, it could be "The project
21 owner shall direct any vendor delivering aqueous
22 ammonia to the site." We could also put in an
23 extra sentence that says, "Should a vendor
24 delivering" -- "Should the project owner choose a
25 different or an alternative vendor, they need to

1 direct that vendor as well."

2 HEARING OFFICER GEFTER: That would be
3 helpful. I would suggest that, rather than
4 spending time drafting up the language at this
5 point, perhaps you could come back to us later
6 with some proposed language and then we could
7 incorporate it into the record.

8 WITNESS GREENBERG: I would be happy to.

9 HEARING OFFICER GEFTER: Thank you.

10 APPLICANT ATTORNEY GALATI: If I may
11 interrupt, I have what I consider to be a couple-
12 of-words fix that might do this. Can I propose it
13 at this time?

14 HEARING OFFICER GEFTER: Thank you.

15 APPLICANT ATTORNEY GALATI: How about,
16 "The project owner shall direct each and every
17 vendor delivering aqueous ammonia to the site,"
18 then in the verification, "at least 60 days prior
19 to first receipt of aqueous ammonia from any
20 vendor on site."

21 PUBLIC ADVISER MENDONCA: William
22 Walters is joining.

23 APPLICANT ATTORNEY GALATI: Would that
24 be clear enough such that any vendor that comes,
25 both in the verification and in the condition, so

1 again, "The project owner shall direct" -- delete
2 the word "all" and put "each and every vendor" --
3 strike the "s" on "vendors" -- and "at least 60
4 days prior to" -- We've already added the word
5 "first" here -- "receipt of aqueous ammonia," I
6 would add "from any vendor" -- Take out "on" and
7 say "to the site," "to the," and leave the
8 verification as is after that.

9 SENIOR STAFF COUNSEL ABELSON: Staff
10 concurs with that recommendation.

11 HEARING OFFICER GEFTER: All right. So
12 we have some language changes. Thank you very
13 much, Mr. Galati. Everyone is in agreement with
14 that as changed for condition Haz five. Thank
15 you.

16 Any other questions regarding any
17 conditions in Hazardous Materials?

18 APPLICANT ATTORNEY GALATI: None from
19 the applicant.

20 HEARING OFFICER GEFTER: Okay. Does
21 staff have anything further on Hazardous
22 Materials?

23 SENIOR STAFF COUNSEL ABELSON: None.

24 HEARING OFFICER GEFTER: All right,
25 thank you. We are moving on to Waste Management

1 at this time.

2 APPLICANT ATTORNEY GALATI: The
3 applicant would like to identify exhibit 31, which
4 is also the testimony of Douglas I. Hahn,
5 supported by a declaration, and within that
6 testimony Mr. Hahn sponsors portions of exhibit
7 one and portions of exhibit three, and all of
8 exhibit 11. At this time I'd like to move in to
9 evidence exhibit 31 and exhibit 11.

10 HEARING OFFICER GEFTER: Any objection
11 from staff?

12 SENIOR STAFF COUNSEL ABELSON: There is
13 none, but I do think for the record we should
14 indicate my understanding that there have been
15 some changes that the applicant made in the Waste
16 Management section relative to the final staff
17 assessment. I think it might be helpful and
18 consistent with our power approach to have those
19 summarized. Staff does not have objections to the
20 ones that were filed.

21 HEARING OFFICER GEFTER: Okay. Thank
22 you, Mr. Abelson.

23 Mr. Galati, would you summarize the
24 changes that are proposed by applicant.

25 APPLICANT ATTORNEY GALATI: Yes. The

1 changes proposed within exhibit 31, specifically
2 make the condition and verification consistent
3 with respect to what is required of the applicant
4 to verify a remedial action plan and remediation,
5 as described in the condition.

6 So the change is in the verification. A
7 new sentence is added that says, "No site
8 mobilization shall take place until the RAP has
9 been approved by DTSC and the CPM, and the site
10 remediated to the satisfaction of DTSC and the
11 CPM."

12 The sentence, "The request for site
13 clearance or no further action shall be made not
14 later than 60 days prior to any earth-moving
15 activities" is then deleted. And again, the
16 purpose of this change was to make the condition
17 and verification consistent.

18 SENIOR STAFF COUNSEL ABELSON: I think
19 one other clarification, Ms. Gefter, is I think
20 there is a need to be clear that in this
21 particular condition and verification this is all
22 with reference to Waste seven. We had formerly
23 had a reference to Waste five.

24 HEARING OFFICER GEFTER: This is a
25 verification for Waste seven; is that what you're

1 saying, Mr. Abelson?

2 APPLICANT ATTORNEY GALATI: I apologize.
3 I believe that this is Waste five on 4.12-12.

4 WITNESS GREENBERG: Let's see what
5 version we're all working off of.

6 HEARING OFFICER GEFTER: It does seem
7 to -- It revises the verification for Waste five.

8 APPLICANT ATTORNEY GALATI: Waste five?

9 SENIOR STAFF COUNSEL ABELSON: Yes.
10 Apparently we were working off of the wrong
11 version. I withdraw that comment.

12 HEARING OFFICER GEFTER: Okay. So does
13 staff have any objection to the proposed language
14 change to verification of Waste five?

15 SENIOR STAFF COUNSEL ABELSON: No.

16 HEARING OFFICER GEFTER: Okay.

17 SENIOR STAFF COUNSEL ABELSON: No
18 objection.

19 HEARING OFFICER GEFTER: We will accept
20 the language change as proposed by applicant,
21 thank you.

22 Now, with respect to staff's testimony
23 in the FSA regarding Waste, I had some questions
24 and now we have Mr. Greenberg here. Perhaps we
25 can ask him to explain the confusion with respect

1 to the ESA, phase two, which Mr. Greenberg
2 indicated in your FSA section that it was not
3 conducted according to standard ASTM procedures.
4 Whereupon,

5 ALVIN J. GREENBERG

6 Was called as a previously duly sworn witness
7 herein and was examined and testified as follows:

8 HEARING OFFICER GEFTER: And you are
9 still under oath.

10 WITNESS GREENBERG: Thank you.

11 HEARING OFFICER GEFTER: If you could
12 explain that, thank you.

13 WITNESS GREENBERG: Thank you.

14 EXAMINATION BY COMMITTEE

15 WITNESS GREENBERG: Just for the record,
16 Alvin Greenberg, and I am the author of the Waste
17 Management section of the staff assessment.

18 A limited phase two environmental
19 assessment does not comply with ASTM guidelines
20 for basically two reasons: Number one, the ASTM
21 guidelines, in my understanding, really don't
22 allow for a limited phase two assessment. It's
23 either a phase two environmental assessment or
24 it's not.

25 Second of all, if you excuse me for a

1 moment, I left a document on the chair --

2 HEARING OFFICER GEFTER: Okay. While
3 Mr. Greenberg is away from the witness table, we
4 know that Mr. Yee from the Air District is on the
5 phone, and as soon as we finish with the topic of
6 Waste Management we will move to Air Quality.

7 Mr. Yee, are you there?

8 MR. YEE: [telephonically] Yes, I'm
9 here.

10 HEARING OFFICER GEFTER: Okay. We'll be
11 with you in just a few moments, thank you.

12 Okay, Mr. Greenberg, go forward.

13 WITNESS GREENBERG: Okay. The second
14 reason is, if you look at the limited phase two
15 environmental assessment dated August 2001, and
16 you go to section five, Limitations, I'll read to
17 you from the third paragraph, quote, "Due to the
18 limited nature of the investigations conducted, it
19 was not possible to fully define the lateral and
20 vertical limits of soil impacts at the site," end
21 of quote.

22 What that tells me is that it's an
23 inadequate site characterization. However, the
24 issue because moot because the applicant and
25 myself agreed that the limited phase two

1 environmental site assessment showed that there
2 was contamination that needed remediation -- in
3 other words, cleanup.

4 So it's really not necessary to keep
5 testing and testing just to satisfy a guideline
6 for developing a phase two assessment. You can
7 stop and say we're going to go to a voluntary
8 compliance agreement, develop a remedial action
9 plan. There will be cleanup and within that
10 remedial action plan there will be more testing,
11 confirmatory testing, but the important thing is
12 to get the site cleaned up.

13 I made reference to not meeting the ASTM
14 guidelines for a very important reason, and that
15 is not to establish a precedent whereby staff
16 would accept a limited phase two as meeting the
17 guidelines. When we ask in data requests for a
18 phase one or phase two, we ask them to comply with
19 ASTM guidelines.

20 Here it's really no foul. It's a moot
21 point. It's necessary -- To answer another
22 question that I read in the transcript, it's
23 necessary to have the site cleaned up to protect
24 the workers who are going to be conducting
25 construction activities, and also the general

1 public, the off-site public, because there could
2 be migration of the contaminants from the site to
3 the off-site.

4 HEARING OFFICER GEFTER: Thank you. And
5 the phase two site assessment is exhibit 11, which
6 we have recently received into the record,
7 correct?

8 APPLICANT ATTORNEY GALATI: That's
9 correct.

10 HEARING OFFICER GEFTER: Okay, and on
11 that, it says it was docketed in August of 2002.
12 Was there an earlier docket date on that?

13 APPLICANT ATTORNEY GALATI: You know,
14 I'm probably going to ask --

15 WITNESS REEDE: Yes, there was,
16 Ms. Hearing Officer.

17 APPLICANT ATTORNEY GALATI: There was.

18 WITNESS REEDE: It was docketed as a
19 response to the data adequacy supplement. In I
20 believe it was September 4th of 2001, it was
21 docketed as part of the AFC supplement, which
22 brought them into data adequacy which was
23 confirmed December 25th of 2001.

24 HEARING OFFICER GEFTER: So it was never
25 amended, then, when it was redocketed in August of

1 2002?

2 WITNESS REEDE: No.

3 APPLICANT ATTORNEY GALATI: Yeah, it was
4 part of exhibit two, and it was redocketed.

5 HEARING OFFICER GEFTER: Okay.

6 APPLICANT ATTORNEY GALATI: And because
7 it was something that the Committee was interested
8 in, we labeled it a separate exhibit and pulled it
9 out as well.

10 HEARING OFFICER GEFTER: Thank you.

11 And Mr. Greenberg, with respect to Waste
12 five, condition Waste five, does this incorporate
13 the plan that is already in place, we understand,
14 with DTSC? At the prehearing conference staff
15 indicated that there was already communication
16 with a project manager at the DTSC, with respect
17 to the Magnolia cleanup.

18 WITNESS GREENBERG: This references that
19 issue, but my understanding and my most recent
20 communication was that the voluntary compliance
21 agreement had not been entered into yet.

22 And so what this does is it makes it a
23 requirement, a condition of certification, that
24 they enter into that voluntary compliance
25 agreement.

1 HEARING OFFICER GEFTER: Okay. All
2 right, and the time frame for this, again, I was
3 going to put this on the record, the applicant is
4 on notice that the time frame for the voluntary
5 cleanup agreement is not later than 30 days after
6 certification of this project. Applicant is aware
7 of that, yes?

8 APPLICANT ATTORNEY GALATI: Yes, we are
9 aware of that.

10 HEARING OFFICER GEFTER: Okay, thank
11 you.

12 Okay, I think we are through with the
13 topic of Waste Management at this point, and we
14 are going to take Air Quality out of order. But
15 we're going to go off line first, we're going to
16 go off the record.

17 (Brief recess.)

18 HEARING OFFICER GEFTER: Back on the
19 record.

20 All right. First, Mr. Galati, would you
21 please introduce your testimony on Air Quality.

22 APPLICANT ATTORNEY GALATI: Yes. At
23 this time the applicant would like to identify
24 exhibit 38, which is the combined testimony of
25 Joan Heredia and Tom Umenhofer. Mr. Umenhofer is

1 present if the Committee so desires any
2 questioning. But at this time, with that exhibit,
3 number 38, it identifies and sponsors portions of
4 exhibit one, two, three, four, five, six, seven;
5 all of exhibits eight, nine, ten, 14, and 23.

6 At this time I'd like to move in
7 exhibits eight, nine, ten, 14, 23, and 38 into the
8 evidentiary record.

9 HEARING OFFICER GEFTER: Any objection
10 from staff?

11 SENIOR STAFF COUNSEL ABELSON: We have
12 no objection; however, as you know, Ms. Gefter,
13 there are some clarification issues relating to
14 Air Quality that will undoubtedly follow this. To
15 the extent that they affect those exhibits, they
16 need to be modified accordingly.

17 HEARING OFFICER GEFTER: That's fine.
18 Staff would indicate its concerns when it comes to
19 your side of the table.

20 At this point we will receive exhibits
21 eight, nine, ten, 14, and 38 into the record. Did
22 I miss any, Mr. Galati?

23 APPLICANT ATTORNEY GALATI: And
24 exhibit 23.

25 HEARING OFFICER GEFTER: And exhibit 23

1 as well will be received into the record.

2 And, Mr. Galati, exhibit 23 is the
3 declaration from the applicant, from Mr. Blowey?

4 APPLICANT ATTORNEY GALATI: No.

5 HEARING OFFICER GEFTER: That's not the
6 declaration. Which is the -- Is that 38?

7 APPLICANT ATTORNEY GALATI: Yeah, I
8 think the testimony --

9 HEARING OFFICER GEFTER: Thirty-eight is
10 the declaration.

11 APPLICANT ATTORNEY GALATI: Correct.
12 The testimony and declaration of Joan Heredia and
13 Tom Umenhofer.

14 HEARING OFFICER GEFTER: Okay. And
15 attached to that declaration are copies of the ERC
16 certificates?

17 APPLICANT ATTORNEY GALATI: That is
18 correct. That is attached to the testimony and I
19 apologize, that's all part of exhibit 38. I
20 probably should have made those separate exhibits.

21 The testimony in exhibit 38 was crafted
22 to answer specific questions raised at the
23 October 29th prehearing conference. So it is, the
24 ERC certificates documenting the transfer is
25 attachment one to exhibit 38.

1 Would you like me to identify those as a
2 separate exhibit number?

3 HEARING OFFICER GEFTER: No, that's
4 fine.

5 APPLICANT ATTORNEY GALATI: Okay.

6 HEARING OFFICER GEFTER: I just wanted
7 to put that on the record that, in fact, they were
8 attached to that declaration.

9 And there are clarifications in exhibit
10 8 which are clarifying, I believe, some of the
11 conditions that we discussed, and I believe we'll
12 ask staff to go through that at this point, in
13 terms of clarifying the conditions.

14 SENIOR STAFF COUNSEL ABELSON: Are you
15 referring to the comments concerning the South
16 Coast e-mail?

17 HEARING OFFICER GEFTER: Right, and also
18 I had questions regarding the reclaimed credit
19 purchase agreements and the ERCs, and I believe
20 you had some clarifications with respect to those
21 issues in the conditions; is that --

22 WITNESS REEDE: The applicant was
23 required to identify the purchase requirements and
24 their current status, and those are the three
25 requests in exhibit 38, response requests one,

1 number two, and number three, regarding those
2 reclaimed trading credits.

3 And additionally, you had a question
4 regarding condition of certification AQC three,
5 which Mr. Walters is prepared to address for you.

6 HEARING OFFICER GEFTER: All right. And
7 before we get to that, I also noticed that, in
8 fact, the applicant has purchased ERCs from the M1
9 power station, which was the one that we had
10 previously looked at in Southgate?

11 WITNESS REEDE: Yes. The former Nuevo
12 Azalea power plant project.

13 HEARING OFFICER GEFTER: Okay, and these
14 are acceptable ERCs?

15 WITNESS REEDE: To the best of my
16 understanding, they were fairly recent and they
17 had been previously approved by South Coast Air
18 Quality Management District. And from reading the
19 applicant's response to request number two, it
20 appears that they're allowed to be transferred
21 and, in fact, Air Quality Management District has
22 issued numbers on them. So we have no problem
23 with that.

24 HEARING OFFICER GEFTER: Okay, thank
25 you.

1 And I also would indicate for the record
2 that Mr. Reede remains under oath, as does
3 Mr. Blowey, as to each time they answer a
4 question.

5 Now, with respect to Air Quality C
6 three, condition C three, staff had a witness; is
7 that correct --

8 WITNESS REEDE: Yes.

9 HEARING OFFICER GEFTER: -- that will
10 testify on this, and that witness is on the phone?

11 SENIOR STAFF COUNSEL ABELSON: Yes,
12 correct.

13 Let me just set a context, if I could,
14 briefly, before I introduce our witness. Via an
15 e-mail that is dated the 12th of November,
16 Mr. John Dang from the South Coast Air Quality
17 Management District conveyed certain comments
18 regarding the FSA and prepared testimony in this
19 matter.

20 He conveyed them officially to the
21 hearing officer, Ms. Gefter, and also to the
22 project manager, Mr. Reede. That e-mail message
23 has also been formally docketed with this
24 proceeding.

25 There were certain issues that were

1 raised, and as part of the formal statement that
2 staff filed in this matter on the 15th of
3 November, staff has addressed in various ways the
4 issues that the South Coast Air Quality District
5 raised in their e-mail. We have on the line our
6 witness for Air Quality, Mr. Will Walters, and,
7 with your permission, I would like to have him
8 sworn at this time so that he can answer questions
9 and respond further to issues you may have.

10 HEARING OFFICER GEFTER: Yes, that's
11 fine. Would you ask him to please spell his name
12 for the record.

13 SENIOR STAFF COUNSEL ABELSON: Will,
14 would you please spell your name for the record.

15 MR. WALTERS [telephonically]: Yes. My
16 name is William Walters, W-i-l-l-i-a-m
17 W-a-l-t-e-r-s.

18 HEARING OFFICER GEFTER: Okay.

19 THE REPORTER: Mr. Walters, please raise
20 your right hand.

21 Whereupon,

22 WILLIAM WALTERS

23 Was called as a witness herein and, after first
24 being duly sworn, was examined and testified as
25 follows:

1 THE REPORTER: Thank you.

2 DIRECT EXAMINATION

3 BY SENIOR STAFF COUNSEL ABELSON:

4 Q Mr. Walters, would you briefly indicate
5 what section of the FSA you're sponsoring and give
6 a 30-second description of your credentials.

7 A Yes. I'm sponsoring the Air Quality
8 section. I am a chemical engineer, also a PE in
9 the state of California. I've worked on several
10 power plant projects as well as Magnolia, and many
11 other permitting projects throughout the state of
12 California. I have about 17 years of professional
13 experience in air quality.

14 SENIOR STAFF COUNSEL ABELSON: Very
15 good.

16 Ms. Gefter, would you want to focus the
17 questions you have?

18 HEARING OFFICER GEFTER: Does staff have
19 prepared testimony from Mr. Walters?

20 SENIOR STAFF COUNSEL ABELSON: Well, our
21 prepared testimony, of course, is basically the
22 FSA as modified in the staff statement that was
23 filed on the 15th of November and particularly
24 with reference to paragraph number two that had
25 several bulleted items attached to it.

1 So that is actually our official
2 testimony at this point, and the witness is
3 available to answer any questions or
4 clarifications that you or others may have.

5 WITNESS REEDE: Ms. Gefter, one of the
6 things that you had requested from staff, the
7 first bulleted item on staff's evidentiary hearing
8 statement, and staff has agreed to change the
9 first sentence of the final staff assessment at
10 page 4.1-50 to read, "Air Quality table 24
11 correlates and incorporates all of the district-
12 proposed conditions from the revised final
13 determination of compliance to the staff-proposed
14 conditions of certification."

15 APPLICANT ATTORNEY GALATI: Ms. Gefter,
16 if I may?

17 HEARING OFFICER GEFTER: Yes,
18 Mr. Galati?

19 APPLICANT ATTORNEY GALATI: If I may,
20 can we identify these, give them exhibit numbers?

21 HEARING OFFICER GEFTER: Yes.

22 APPLICANT ATTORNEY GALATI: I think that
23 the testimony is going to revolve around two
24 pieces of paper, and I would just like to track it
25 accurately.

1 HEARING OFFICER GEFTER: Yes, we're
2 going to do that. What we have to do, though, is
3 we're going to have to give them numbers. I'm
4 going to give them numbers where the FSA is going
5 to be exhibit 45. It's out of order because I
6 have two other exhibits that come before that, so
7 the FSA would be exhibit 45, and the supplemental
8 testimony of staff, which was part of their
9 evidentiary hearing statement, would be
10 exhibit 46.

11 And then from the Air District, there
12 was an e-mail that was submitted with an attached
13 part which indicates the correct numbering for the
14 South Coast, the FDOC and the permit conditions
15 have been revised and South Coast submitted a
16 chart attached to its e-mail. And that document
17 would be exhibit 44.

18 And that was docketed on November 13th,
19 and it was indicated earlier by Mr. Reede, it's an
20 e-mail from John Dang and the Air Quality
21 District.

22 So at this point, now that we've
23 identified that documents that we're talking
24 about, we'll go back to exhibit 46, which is the
25 staff's supplemental testimony.

1 Mr. Reede, you were discussing the
2 change to Air Quality section --

3 WITNESS REEDE: Yes. The first sentence
4 at the top of the page of page 4.1-50. The
5 hearing officer had asked staff to please verify
6 that all of our conditions are correlated and
7 incorporate all of the South Coast conditions, and
8 so we changed the first sentence to comply with
9 your request, to read, "Air Quality table 24
10 correlates and incorporates all of the district-
11 proposed conditions from the revised final
12 determination of compliance to the staff-proposed
13 conditions of certification."

14 HEARING OFFICER GEFTER: Okay. Let me,
15 before we go further, with respect to the table
16 that was submitted by the Air District where the
17 numbering was changed, on table 24, page 4.1-50 of
18 the final staff assessment, the district's
19 numbering, it would be the old numbering that was
20 appearing in this table; is that correct?

21 WITNESS REEDE: Correct.

22 HEARING OFFICER GEFTER: Okay. So can
23 this, then, be -- Does the staff or the applicant
24 have any objection to correcting those references,
25 according to the table that was submitted by the

1 Air District in exhibit 44?

2 WITNESS REEDE: Ms. Gefter, in our
3 evidentiary hearing statement, bullet two refers
4 to South Coast Air Quality Management District
5 item one, staff acknowledges and incorporates the
6 South Coast Air Quality Management District new
7 numbering system by reference.

8 APPLICANT ATTORNEY GALATI: And,
9 Ms. Gefter, the applicant agrees with that
10 numbering reference attached to the part, as part
11 of exhibit 44.

12 HEARING OFFICER GEFTER: Okay, thank
13 you.

14 THE REPORTER: Excuse me, tape change.

15 (Thereupon, the tapes were
16 changed off the record.)

17 THE REPORTER: Thank you.

18 HEARING OFFICER GEFTER: Okay, and then
19 in staff's testimony regarding item two, which was
20 information submitted by the Air District, is this
21 something that your witness has testified about?

22 SENIOR STAFF COUNSEL ABELSON: Yes. I'd
23 like to ask Mr. Walters if he is familiar with
24 item two and can explain why it is that staff is
25 determined that no fix is necessary for that --

1 HEARING OFFICER GEFTER: And, again,
2 when you're referring to item two, it's item two
3 that is referred to in staff's supplemental
4 testimony, which we have identified as exhibit 46.

5 SENIOR STAFF COUNSEL ABELSON: Correct.

6 HEARING OFFICER GEFTER: Okay.

7 Mr. Walters, you may respond to
8 Mr. Abelson's question.

9 WITNESS WALTERS: Actually, as I was on
10 vacation when these were changed, I would actually
11 like to amend the staff's recommendation on that
12 particular issue.

13 After I've been able to review the
14 comment, what happened was a revision that both
15 added two conditions from the district's DOC,
16 deleted a paragraph in another condition -- This
17 is the paragraph that is being discussed in this
18 item, the third paragraph of AQ 11. That deletion
19 we missed, it wasn't in the red-line strikeout --
20 I'm not sure if it was deleted at that time or
21 deleted earlier, and we just missed that deletion.

22 So actually I think what needs to be
23 done is that particular paragraph does need to be
24 deleted. It is now included and revised in AQ one
25 and AQ two.

1 HEARING OFFICER GEFTER: Okay. I'm
2 sorry, but I did not follow you, which paragraph
3 had been deleted.

4 WITNESS WALTERS: Page 4.1-61, the third
5 paragraph from the top that begins, "Dump burned
6 fuel usage" shall be deleted.

7 HEARING OFFICER GEFTER: Okay. So this
8 paragraph is deleted.

9 WITNESS WALTERS: Yes.

10 HEARING OFFICER GEFTER: Okay, and does
11 the Air District agree with that?

12 Mr. Yee, who is on the phone from the
13 Air District, do you agree with deleting this
14 paragraph from AQ 11?

15 WITNESS REEDE: John Yee, do you agree
16 that the issue on AQ 11 is resolved with the
17 deletion of the paragraph that begins, "Dump
18 burned fuel usage shall not exceed 222 million
19 square feet"?

20 WITNESS YEE: This is Mr. Yee. Yes, I
21 do agree with that statement.

22 WITNESS REEDE: Okay. So it resolves
23 the issue that was raised in John Dang's letter.

24 WITNESS YEE: That's affirmative.

25 WITNESS REEDE: Thank you.

1 SENIOR STAFF COUNSEL ABELSON: So,
2 Ms. Gefter, with your permission I'd like to
3 simply clarify, then, staff's evidentiary hearing
4 statement as follows, consistent with what we've
5 heard from both the parties.

6 With regard to the third bullet under
7 item two, which the first is SCAQMD's item two,
8 staff has determined that a fix is necessary and
9 will be prepared to discuss this further during
10 the hearing, and we've just done so.

11 HEARING OFFICER GEFTER: Which is to
12 delete this paragraph at page 4.1-61, right?

13 WITNESS REEDE: Correct.

14 HEARING OFFICER GEFTER: All right.

15 Anything else on that topic?

16 SENIOR STAFF COUNSEL ABELSON: Applicant
17 concurs with that change.

18 HEARING OFFICER GEFTER: Thank you, all
19 right.

20 With respect to the item three that the
21 Air District had commented on, does staff have any
22 comment on it?

23 WITNESS REEDE: Staff in its statement,
24 exhibit 46, agrees to change the reference in the
25 verification paragraph of final staff assessment

1 condition of certification AQ 26 to read ammonia
2 NH3 instead of VOC or volatile organic compounds."

3 HEARING OFFICER GEFTER: Okay. So you
4 agree with that change.

5 WITNESS REEDE: Yes.

6 HEARING OFFICER GEFTER: And applicant
7 accepts that?

8 APPLICANT ATTORNEY GALATI: That's
9 correct.

10 HEARING OFFICER GEFTER: Okay. So
11 that's easy enough. I have a question for Mr. Yee
12 or for staff or applicant with respect to the
13 permit limits. I understand that the permit
14 limits are 2.0 for NOx and also for CO; is that a
15 correct reading? Because I see that appearing
16 several times in the text of the FSA; is that
17 correct? It's 2.0 for CO as well?

18 WITNESS YEE: That is correct.

19 HEARING OFFICER GEFTER: Okay.

20 WITNESS YEE: It's actually 2, 2, and 2
21 for NOx, CO, and VOC.

22 HEARING OFFICER GEFTER: Right, and is
23 that a change? I mean, this is just for my
24 edification, because it used to be 6.0 on CO.

25 WITNESS YEE: No, it's not a change from

1 what we issued on the FDOC.

2 HEARING OFFICER GEFTER: Okay, all
3 right. Fine, thank you. I just wanted to make
4 sure that that was locked in, thank you.

5 And then, Mr. Yee, while we have you on
6 the phone, at the prehearing conference I asked
7 you about the reclaimed credits and whether they
8 were permanent and they were real and how often
9 they would have to be reissued. And you explained
10 to us that they would be issued every year.

11 Could you please expound on that for us
12 on the record?

13 EXAMINATION BY COMMITTEE

14 WITNESS YEE: In accordance, well, we
15 are required to, the applicant is required to have
16 enough credits prior to each year of operation.
17 And they can either purchase the offsets prior to
18 that year of operation or they can actually
19 purchase a stream of credits which would allow
20 them to operate for many years.

21 HEARING OFFICER GEFTER: Okay, and what
22 is the plan here for the Magnolia project?

23 WITNESS YEE: To my knowledge, the
24 applicant is providing -- Well, that would be a
25 better question for the applicant. They just have

1 to show compliance to us with that condition prior
2 to operation.

3 So it's either -- The requirement of the
4 rule is by year.

5 HEARING OFFICER GEFTER: Okay.

6 APPLICANT ATTORNEY GALATI: Ms. Gefter,
7 at this time I'd like to have Mr. Tom Umenhofer
8 sworn to answer that question.

9 HEARING OFFICER GEFTER: All right.

10 THE REPORTER: Please raise your right
11 hand.

12 Whereupon,

13 TOM UMENHOFER

14 Was called as a witness herein and, after first
15 being duly sworn, was examined and testified as
16 follows:

17 THE REPORTER: Thank you.

18 DIRECT EXAMINATION

19 BY APPLICANT ATTORNEY GALATI:

20 Q Mr. Umenhofer, could you please state
21 your name, spell it for the record, and give a
22 brief description of your qualifications.

23 A Okay. Tom Umenhofer. The last name is
24 spelled U-m-e-n-h-o-f-e-r. I am a principal with
25 Entrix, Incorporated. I am the Air Quality

1 advisor to SCPPA on this project. I have 28 years
2 of air quality and meteorology experience,
3 primarily in the permitting and licensing end of
4 the business.

5 Q And, Mr. Umenhofer, could you please
6 describe SCPPA's plan with respect to the hearing
7 officer's questions regarding RTCs and whether or
8 not yearly or stream would be purchased.

9 A Absolutely. And we are talking about
10 reclaimed trading credits, RTCs, and that applies
11 only to oxides of nitrogen, NOx.

12 And the plan that the Magnolia Power
13 Project has, and that plan has been executed with
14 agreements with parties is as follows, that the
15 project has purchased the first-year credits, and
16 they have entered into a forward contract for all
17 the following years of credits through the
18 reclaimed program and, in fact, into perpetuity.

19 So what has happened physically to this
20 point is that money has exchanged hands for the
21 first year of credits, and then the subsequent
22 years a forward contract has been entered into,
23 which money has not exchanged hands yet, for each
24 subsequent year -- not the next year, but all the
25 subsequent years.

1 HEARING OFFICER GEFTER: Thank you for
2 clarifying that.

3 Also, I had another question, a
4 different topic, but what I wanted to know --
5 Again, it wasn't clear in the record -- with
6 respect to the decommissioning and demolitioning
7 of Magnolia units one and two where the new
8 project will be sited, is the applicant also
9 taking offset credits for the decommissioning of
10 those two units?

11 WITNESS BLOWEY: No, they aren't, not
12 for Mag one and two.

13 HEARING OFFICER GEFTER: Okay.

14 WITNESS BLOWEY: There are some offsets
15 for Mag three and four.

16 HEARING OFFICER GEFTER: And that was my
17 next question. I understand that with respect to
18 the cooling towers of Magnolia units three and
19 four that those would be decommissioned and you
20 would take offset credits for those; is that
21 correct?

22 WITNESS BLOWEY: Just for those offsets
23 required for the new cooling tower.

24 HEARING OFFICER GEFTER: Okay. So the
25 old cooling towers are decommissioned. Will they

1 be removed as well?

2 WITNESS BLOWEY: Yes.

3 HEARING OFFICER GEFTER: And will the
4 new cooling towers also process the cooling water
5 for Magnolia units three and four?

6 WITNESS BLOWEY: The Magnolia three and
7 four will be taken out of service altogether.

8 HEARING OFFICER GEFTER: And also
9 removed from the site?

10 WITNESS BLOWEY: In due time.

11 HEARING OFFICER GEFTER: Okay. That's a
12 different project.

13 WITNESS BLOWEY: Yes.

14 HEARING OFFICER GEFTER: With respect to
15 Air Quality C three, which is what we had talked
16 about at the prehearing conference, on a diesel
17 construction equipment mitigation plan?

18 WITNESS REEDE: Will Walters?

19 WITNESS WALTERS: Yes?

20 WITNESS REEDE: We're talking about Air
21 Quality C three. Can you hear Ms. Gefter?

22 WITNESS WALTERS: Yes, I can.

23 WITNESS REEDE: Okay.

24 HEARING OFFICER GEFTER: Okay, good. I
25 had a question with respect to the intent under

1 this plan to use both filters and low-sulfur
2 diesel fuel, and in reading the proposed -- the
3 language of the proposed condition, it wasn't
4 clear that both mitigation measures were required
5 and also that there seem to be a lot of exceptions
6 possible. And I had a question with respect to
7 locking in the requirement that both filters and
8 low-sulfur diesel fuel be used during construction
9 on construction equipment.

10 Can you put this into context with
11 respect to this particular condition, AQC three?

12 WITNESS WALTERS: Yes. Well, in terms
13 of the ultra-low-sulfur diesel, essentially number
14 two of that condition identifies that low-sulfur
15 diesel will be used for all diesel construction
16 equipment.

17 HEARING OFFICER GEFTER: Okay. Could
18 you speak up just a little bit more, please?

19 WITNESS WALTERS: Sure. Item number two
20 identifies, in the required mitigation column of
21 the table under number two of that particular
22 condition, that ultra-low-sulfur diesel will be
23 used as a required mitigation for all of the
24 construction diesel equipment, regardless of size.

25 The requirement for the particulate

1 filter is based on suitability, and that is
2 necessary because some pieces of equipment may not
3 be able to take a particular filter and still
4 operate properly. And so, therefore, there is
5 that flexibility for the particulate filter part
6 of that, and also the requirement is that it only
7 goes on the larger engines, the engines over a
8 hundred horsepower.

9 HEARING OFFICER GEFTER: Say that again,
10 over one horsepower?

11 WITNESS WALTERS: One hundred brake
12 horsepower.

13 HEARING OFFICER GEFTER: All right.
14 Also, in item five of that condition, it says that
15 these measures may be terminated if several of
16 these other conditions occur. And my question is,
17 what constitutes impossibility? What constitutes
18 an incident where the applicant may not use either
19 the soot filter or the diesel fuel? How do you
20 define impossibility?

21 WITNESS WALTERS: Could you refer to the
22 specific --

23 HEARING OFFICER GEFTER: Yes. Perhaps
24 the word is excessively reducing normal
25 availability? How do you know when it's

1 excessively reducing normal availability, or
2 seriously detrimental, or reasonably expected to
3 cause a significant risk? I mean, what are you
4 looking at there?

5 WITNESS WALTERS: Well, essentially, the
6 issue is whether or not the control measures would
7 actually cause problems with the engine so they're
8 performing in a manner which would actually
9 increase emissions as opposed to decreasing them.

10 HEARING OFFICER GEFTER: All right.
11 Well, that's a very good point. So what you're
12 concerned about is that if using these mitigation
13 measures, you would actually increase emissions
14 rather than decrease emissions? Is that the point
15 at which these other exemptions come into play?

16 WITNESS WALTERS: Well, that would be
17 the point of 5.3. 5.2 obviously is more of an
18 issue of the engine itself, and whether or not the
19 engine is suitable. And basically what number
20 five is doing is it's trying to identify those
21 items under which the suitability in the tables
22 under item two is identified, where we say ULSD
23 and CDPF is suitable as determined by the CMM will
24 be used, what we're trying to do is identify those
25 items which can affect suitability in item number

1 five.

2 HEARING OFFICER GEFTER: Okay, thank
3 you. I am asking you these questions so that we
4 can have on the record a basis for accepting this
5 condition and finding that it would be a viable
6 workable condition.

7 Has staff had experience with other, in
8 other projects where these conditions have been
9 adopted and are they working?

10 WITNESS REEDE: To the best of my
11 knowledge; however, construction on most of the
12 projects has not started.

13 HEARING OFFICER GEFTER: Okay.

14 WITNESS REEDE: Or been delayed.

15 HEARING OFFICER GEFTER: So the Magnolia
16 project will be our star example of this condition
17 working; is that what you're proposing?

18 WITNESS REEDE: Well, hopefully they
19 will move fairly rapidly. We don't see a major
20 problem with them having to secure financing on
21 the open market as the private or merchant plants
22 who are having those problems.

23 HEARING OFFICER GEFTER: Mr. Yee, is
24 there any other issue that the Air District would
25 like to discuss with us today on the proposed

1 conditions in the final staff assessment or on
2 your FDOC?

3 WITNESS YEE: Thank you, Ms. Gefter.
4 The only item I had was on page 4.1-49, and I'm
5 not sure if it's really our responsibility, but we
6 did receive some comments from the public. And
7 they were, our responses to those were sent to the
8 CEC and probably should be reflected in this
9 section.

10 It says response to public agency
11 comments, there is none. We did respond to two
12 comments that did come in from public agencies.

13 SENIOR STAFF COUNSEL ABELSON: I would
14 indicate for the record, Ms. Gefter, as of today,
15 to the best of my knowledge, if there are such
16 public comments and such responses from the Air
17 District, staff has not yet seen them. We're
18 happy, certainly, to make that foundation, but I
19 don't believe we've seen them yet.

20 HEARING OFFICER GEFTER: Okay. Mr. Yee,
21 have you sent those comments to the staff?

22 WITNESS YEE: We did send these, we sent
23 these comments on September 27th, 2002. They were
24 docketed to AFC-6 on October 9th.

25 HEARING OFFICER GEFTER: All right.

1 SENIOR STAFF COUNSEL ABELSON: I
2 misunderstood. I thought you were referring to
3 something that had just come in by reference.

4 So it appears that we will need to
5 modify that section of page 4.1-49 to reflect the
6 fact that written comments concerning Air Quality
7 have been received.

8 HEARING OFFICER GEFTER: Okay. Could
9 you tell us, Mr. Yee, which agencies responded to
10 your FDOC.

11 WITNESS YEE: Yes. The two agencies
12 were Our Children's Birth Foundation, and the
13 other one was SCAG, the Southern California
14 Association of Governance.

15 HEARING OFFICER GEFTER: Okay, and were
16 any modifications or changes made as a result of
17 those comments?

18 WITNESS YEE: No, just comment, just
19 response letters were written.

20 HEARING OFFICER GEFTER: And the
21 response letters were docketed as well?

22 WITNESS YEE: Yes.

23 HEARING OFFICER GEFTER: Okay. We'll
24 ask staff to make copies for us of those
25 documents, and we'll include those in the record

1 as well. Thank you.

2 APPLICANT ATTORNEY GALATI: Could we
3 identify those as an exhibit and have Mr. Yee
4 sponsor -- We'd be prepared to accept them just as
5 an exhibit moved into the record, if that would be
6 helpful.

7 HEARING OFFICER GEFTER: Yes. Once
8 staff pulls them out of dockets for us and makes
9 copies, we can identify those as exhibits and they
10 could be sponsored by staff, on behalf of the Air
11 District.

12 Anything else, Mr. Yee, with respect to
13 your e-mail -- Actually, it was from Mr. Dang,
14 Mr. Dang's e-mail which we've identified as
15 exhibit 44, is there anything else in that e-mail
16 that you would like to bring to our attention at
17 this time?

18 WITNESS YEE: No, there is nothing
19 pertaining to the e-mail that we need to bring up
20 at this time.

21 I did want to mention one last thing
22 while you have me on the line, and I know it's not
23 in that section, but section 6-6 of the FSA still
24 mentions sludge drier in one of the paragraphs, in
25 the second paragraph.

1 HEARING OFFICER GEFTER: Section 6-6,
2 what topic is that?

3 WITNESS REEDE: Alternatives.

4 WITNESS YEE: Alternatives. On the
5 second paragraph from the top under Wastewater
6 Disposal, it still mentions sludge drier and we
7 just want to bring it to your attention because I
8 understand the sludge drier is not a proposal that
9 the applicant is still undertaking.

10 HEARING OFFICER GEFTER: That would not
11 be part of the ZLD?

12 WITNESS YEE: That's correct.

13 HEARING OFFICER GEFTER: Okay. So staff
14 is stating that -- Mr. Reede, you're saying it was
15 removed? Where is this, exactly? What paragraph?

16 WITNESS REEDE: That's what I'm looking
17 for.

18 HEARING OFFICER GEFTER: Oh, I see it.
19 It's the second paragraph under Wastewater
20 Disposal; is that right?

21 WITNESS YEE: That's correct.

22 HEARING OFFICER GEFTER: And it says
23 that "Reject rime processed through a thermal
24 crystallizer filter-pressed sludge drier"?

25 WITNESS YEE: That's correct.

1 HEARING OFFICER GEFTER: Okay. And so
2 there is no sludge drier; is that correct,
3 Mr. Blowey?

4 WITNESS BLOWEY: Yes. It's just a
5 filter press. There is not a sludge drier.

6 HEARING OFFICER GEFTER: All right.

7 WITNESS REEDE: Oh, I see it, yeah.

8 HEARING OFFICER GEFTER: Okay. Mr. Yee,
9 that language will be removed from the record. Is
10 that okay, staff?

11 WITNESS REEDE: Yes, that is agreeable.
12 The word "sludge drier" is stricken.

13 HEARING OFFICER GEFTER: All right.
14 Mr. Yee, does this have anything to do with
15 impacts on Air Quality, having a sludge drier?

16 WITNESS YEE: Yes, if the applicant was
17 still going to consider sludge drying, then the
18 applicant would have to fill out an application
19 for the sludge drier, which we would have to
20 evaluate it.

21 HEARING OFFICER GEFTER: Okay. So,
22 Mr. Blowey, is that why the sludge drier was
23 removed, and so therefore you won't have the air
24 impacts?

25 WITNESS BLOWEY: Correct.

1 HEARING OFFICER GEFTER: Thank you, all
2 right.

3 Anything else, Mr. Yee?

4 WITNESS YEE: That's it, thank you.

5 HEARING OFFICER GEFTER: Well, thank you
6 very much. We are going to go on to Public
7 Health, so if you could stick around for just
8 another minute or two --

9 APPLICANT ATTORNEY GALATI: Ms. Gefter,
10 may I ask a few questions of Mr. Walters? There
11 were some things that were said in response to
12 your questions I would like to clarify.

13 HEARING OFFICER GEFTER: Thank you.
14 Mr. Galati would like to cross-examine staff's
15 witness.

16 CROSS-EXAMINATION

17 BY APPLICANT ATTORNEY GALATI:

18 Q Mr. Walters?

19 A Yes, sir?

20 Q With respect to, you were speaking about
21 AQC 3, and specifically item five in the condition
22 with Ms. Gefter?

23 A Right.

24 Q And I wanted to clarify, is one of the
25 purposes of number five to ensure that the

1 mitigation measure is also feasible?

2 A Yes. It is as feasible that it would
3 cause damage or would actually cause an increase,
4 and it would --

5 HEARING OFFICER GEFTER: Mr. Walters,
6 could you please speak up.

7 WITNESS WALTERS: Yes. My answer to
8 that question is yes, that particular item is
9 there to help identify feasibility for use of the
10 items in number two of the condition. And also
11 allow staff some rationale for assessing that
12 feasibility of that item.

13 BY APPLICANT ATTORNEY GALATI:

14 Q Okay. So earlier you mentioned that if
15 something, if an exemption under number five was
16 not granted, it could possibly result in higher
17 impacts -- excuse me, higher air quality emissions
18 from that equipment?

19 A It's possible, if the equipment is not
20 suited to the particular filter. If, for example,
21 the pressure drop were to be excessive, it's
22 possible. I'm not saying that it would happen or
23 that it's even likely, but it's just one of the
24 items that we are identifying as potential to
25 evaluate whether or not the required mitigation is

1 feasible or suitable.

2 APPLICANT ATTORNEY GALATI: Okay. I
3 just wanted that clarification. Thank you,
4 Mr. Walters.

5 HEARING OFFICER GEFTER: Okay. Any
6 other questions?

7 APPLICANT ATTORNEY GALATI: None from
8 me, thank you.

9 HEARING OFFICER GEFTER: Okay. Does
10 staff have anything else?

11 SENIOR STAFF COUNSEL ABELSON: No.

12 HEARING OFFICER GEFTER: All right.

13 So, with that, we're going to move on
14 from Air Quality. With respect to staff's
15 supplemental testimony regarding Air Quality,
16 which we have identified as exhibit 46, do you
17 want to move that into the record?

18 SENIOR STAFF COUNSEL ABELSON: Yes, that
19 would be fine.

20 HEARING OFFICER GEFTER: Okay. Is there
21 any objection to 46 being admitted?

22 APPLICANT ATTORNEY GALATI: No
23 objection.

24 HEARING OFFICER GEFTER: Okay. Exhibit
25 46, which is staff's supplemental testimony and

1 evidentiary hearing statement, is received in the
2 record.

3 With respect to exhibit 44, which was
4 identified as the e-mail from Mr. John Dang from
5 the South Coast Air District, is there any
6 objection to admitting that document into the
7 record?

8 APPLICANT ATTORNEY GALATI: No
9 objection.

10 SENIOR STAFF COUNSEL ABELSON: No
11 objection.

12 HEARING OFFICER GEFTER: Okay. So
13 exhibit 44 is now received into the record.

14 While we're on that, with respect to the
15 FSA which I've identified as 45, we would ask
16 staff to move that at the end of the proceeding.
17 Thank you.

18 We're going to go on to Public Health,
19 because we still have Mr. Yee on the line, and ask
20 the applicant to go forward on that topic.

21 APPLICANT ATTORNEY GALATI: Thank you.
22 The applicant identifies exhibit 39, which is the
23 testimony of John Kohler on Public Health, and
24 within exhibit 39 Mr. Kohler identifies that he is
25 sponsoring a portion of exhibit one, a portion of

1 exhibit two, and a portion of exhibit three.

2 His declaration is attached and I would
3 move exhibit 39 into the evidentiary record at
4 this time.

5 HEARING OFFICER GEFTER: Okay. I would
6 note in exhibit 29 in your, the declaration to
7 Mr. Kohler, he had responded to a question that we
8 had regarding the ambient lifetime cancer risk.
9 And it seems that Mr. Kohler is deferring to
10 staff's findings in the FSA on that question.

11 APPLICANT ATTORNEY GALATI: Yes, and I
12 will expand upon that answer. I think that at the
13 prehearing conference, the applicant was asked a
14 question as to why staff used a particular number.
15 We couldn't find where we gave them that number,
16 so we wanted staff to respond as to why that
17 number.

18 We do agree with the conclusions and
19 recommendations of that section, so we don't have
20 an opinion, really, one way or the other.

21 HEARING OFFICER GEFTER: Thank you.
22 Well, we have Mr. Greenberg here, and we'll ask
23 him to explain that when we get to staff's
24 presentation.

25 At this time, is there any objection to

1 exhibit 39 being received into the record?

2 SENIOR STAFF COUNSEL ABELSON: No
3 objection, but, as you just indicated, we have
4 Dr. Greenberg here, and if you would like to get
5 further clarification from him on this point, we
6 would be happy to offer him at this time.

7 HEARING OFFICER GEFTER: Thank you,
8 okay. Exhibit 39 is received into the record.

9 Staff, would you like to present your
10 witness.

11 DIRECT EXAMINATION

12 BY SENIOR STAFF COUNSEL ABELSON:

13 Q Dr. Greenberg, could you please state
14 your relationship to the information in question.

15 A My name is Alvin Greenberg and I am the
16 author of the staff assessment section on Public
17 Health.

18 Q And at this time can you provide any
19 additional clarification that may be helpful to
20 the committee or to Ms. Gefter on this issue?

21 WITNESS GREENBERG: Hearing Officer
22 Gefter, I believe you're asking the basis of the
23 background, cancer as the ambient risk in the
24 area. That number came as an average of a range
25 published by studies conducted by the South Coast

1 Air Quality Management District. That range was
2 really from about 1,120, a risk that is a 1,120 in
3 a million to about 1,740 in a million.

4 And it was based on ten monitoring sites
5 within the South Coast Air Quality Management
6 District. That doesn't mean to say that that is
7 the precise background risk for the particular
8 area around the Magnolia Power Plant. Rather, it
9 is the, 1,400 in a million is the average of the
10 high and the low value for the entire LA area,
11 greater Los Angeles area, the South Coast Air
12 Quality Management District air basin.

13 It's due mostly to vehicular exhaust.
14 And that's due mostly to particulate matter coming
15 from diesel emissions.

16 HEARING OFFICER GEFTER: And in the
17 section of the FSA where you discuss this risk,
18 it's under the Cumulative Impacts section, where
19 you also indicate that the maximum cancer risk for
20 the new proposed facility is 1.07 in a million,
21 which is the point of maximum impact, I expect.

22 WITNESS GREENBERG: That is correct. It
23 is at the point of maximum impact, which is 1.8
24 kilometers northwest of the proposed facility.

25 At any other location it would be less,

1 and actually considerably less than that value.

2 HEARING OFFICER GEFTER: Okay, and in
3 the Public Health table three, which is in the FSA
4 at page 4.7-14, this table is basically your
5 summary of the findings in which you were looking
6 at the significant levels of the emissions?

7 WITNESS GREENBERG: Correct.

8 HEARING OFFICER GEFTER: And where you
9 have individual cancer risk, you're using the
10 point of maximum impact and comparing it with ten,
11 ten incidents out of a million. And I want to
12 also ask where you got that standard from.

13 WITNESS GREENBERG: Oh, I would be happy
14 to explain that. If I may refer you to page 4.7-
15 3, and then further on into 4.7-4 of the staff
16 assessment, I discuss the basis of the significant
17 criteria for both acute and chronic non-cancer
18 health effects as well as for cancer risk.

19 And if I can amplify or further explain,
20 very briefly, basically, staff uses the value of
21 ten in one million based on two criteria: one,
22 the Proposition 65 definition of no significant
23 risk, which is ten in one million. And number
24 two, the level of significant risk of ten in one
25 million that all the air districts around the

1 state of California use for significance.

2 If it's between -- If it's lower than
3 ten in one million but greater than one in one
4 million, a stationary source must include best
5 available control technology for emitting toxins.
6 This facility has that. It would be deemed, then,
7 an insignificant risk by the South Coast Air
8 Quality Management District pursuant to their own
9 rules.

10 HEARING OFFICER GEFTER: Okay. I
11 appreciate that explanation. We often see that in
12 other FSAs, that explanation, and I appreciate
13 your amplifying the record to include that
14 information for this case as well.

15 Mr. Yee, are you still on the phone?

16 WITNESS YEE: Yes, Haering Officer
17 Gefter?

18 HEARING OFFICER GEFTER: Yes. Do you
19 agree with what Mr. Greenberg just explained
20 regarding the cancer risk with respect to this
21 project?

22 WITNESS YEE: Yes, I do.

23 HEARING OFFICER GEFTER: Also, in your
24 section on Public Health, Mr. Greenberg, you also
25 talk about using the low-sulfur diesel fuel and

1 the soot filters. And you're finding that the use
2 of those two mitigation measures will
3 significantly reduce health impacts during the
4 construction phase, so how does your testimony
5 coincide with the testimony of Mr. Walters, with
6 respect to that particular Air Quality condition
7 three? I guess it's C three.

8 WITNESS GREENBERG: Yes. It directly
9 references the Air Quality staff recommendation of
10 the use of ultra-low-sulfur diesel fuel, and the
11 installation of soot filters. I notice that on my
12 copy of the FSA on page 4.7-9, the third
13 paragraph, it says the word "or," and I think
14 that's a typo. It should be the word "and."

15 Do you have that on your --

16 HEARING OFFICER GEFTER: Yes, and that
17 should say "and"?

18 WITNESS GREENBERG: Yes, that should
19 definitely be an "and." I just happened to catch
20 that.

21 HEARING OFFICER GEFTER: Okay.

22 WITNESS GREENBERG: And it is that Air
23 Quality proposed condition of certification that
24 will reduce public health impacts as a result of
25 construction diesel equipment emissions.

1 Both of them serve to decrease diesel
2 particulates, and that's a cause of -- a very
3 significant contributor to risk to public health.

4 HEARING OFFICER GEFTER: Thank you.

5 Does applicant have any cross-
6 examination of the witness?

7 APPLICANT ATTORNEY GALATI: Yes.

8 CROSS-EXAMINATION

9 BY APPLICANT ATTORNEY GALATI:

10 Q Dr. Greenberg, with respect to that
11 section five, which provides exemptions or times
12 at which the applicant could but would not need to
13 have, for example, an oxidizing soot filter, do
14 you believe from your experience that that would
15 occur frequently as it is written?

16 What I mean by that, and let me -- I
17 knew I'd ask you a question that nobody would
18 understand. Try again.

19 With respect to, in AQC three there is a
20 section five which allows times in which the
21 applicant can remove, for example, the oxidizing
22 soot filters? Is that your understanding?

23 A Yes.

24 Q Do you believe that, from your
25 experience, that that would occur frequently?

1 A No, not at all. In fact, my experience
2 is just the opposite of that. And we have
3 conducted actual monitoring of the efficacy of
4 this type of mitigation at another power plant
5 site being constructed. And there was minimal
6 downtime -- In fact, I don't believe that there
7 was, at least I wasn't made aware that there was
8 any time that that provision had to be
9 implemented.

10 Q Okay. Do you believe, with the
11 exemptions in AQC three, section five, that that
12 may affect your opinion in your Public Health
13 section as to the significance of health impacts
14 from construction equipment?

15 A No. It wouldn't affect it, unless we're
16 talking here about a massive failure of every
17 single piece of equipment at the exact same time,
18 no, it's not going to affect them.

19 APPLICANT ATTORNEY GALATI: No further
20 questions.

21 HEARING OFFICER GEFTER: All right. I
22 did have one more question, and I'll ask
23 Mr. Greenberg but I think that probably staff
24 could answer it.

25 This was with respect to the

1 construction schedule. In your testimony in the
2 FSA on page 4.7-8, you indicate that demolition of
3 existing Magnolia units one and two will take four
4 to six months, and then construction would take
5 about 23 months.

6 So you were looking at about a two-and-
7 a-half-year period of construction in your
8 analysis; is that correct or am I --

9 WITNESS GREENBERG: That's correct.

10 HEARING OFFICER GEFTER: Okay, and I
11 understand the applicant has a different time
12 frame, so perhaps Mr. Blowey could explain to us
13 your plan.

14 WITNESS BLOWEY: We're expecting
15 construction to begin mid this year, June,
16 providing we have a license by the end of January.
17 And concluding by the end of May of 2005.

18 HEARING OFFICER GEFTER: You're looking
19 at more like a two-year process.

20 WITNESS BLOWEY: Correct.

21 HEARING OFFICER GEFTER: Are you
22 planning to demolish units one and two and, at the
23 same time, begin construction on the new project?

24 WITNESS BLOWEY: To the extent we're
25 able, we're going to be removing parts of units

1 one and two prior to start of construction, try to
2 provide a little more flexibility during the
3 construction period.

4 The City of Burbank is actually removing
5 some of the facilities earlier than the start of
6 actual construction and site demolition.

7 HEARING OFFICER GEFTER: But all this
8 would occur after a license is issued by the
9 Energy Commission.

10 WITNESS BLOWEY: The City of Burbank has
11 already done some removal of equipment that was
12 originally intended to be done as part of the
13 project. But they're certainly in a position of
14 removing pieces of equipment that are no longer of
15 use to them in their way, and there is some
16 remediation involved in that process too.

17 HEARING OFFICER GEFTER: And that's part
18 of the decommissioning of the existing units.

19 WITNESS BLOWEY: Yes.

20 HEARING OFFICER GEFTER: It's a separate
21 process.

22 WITNESS BLOWEY: Yes. That's part of
23 the decommissioning of all four of those units.

24 HEARING OFFICER GEFTER: Okay.

25 Mr. Greenberg, under a two-year

1 construction period rather than a two-and-a-half-
2 year construction period, would that to some
3 extent improve your view of the public health
4 impacts?

5 WITNESS GREENBERG: It certainly would
6 make it a little bit better. I've already found
7 that the risks during the construction period
8 would be insignificant.

9 Typically we look even at a longer
10 period when we're assessing the health risk -- in
11 other words, what we call exposure duration is
12 longer -- and whether it's two years or two and a
13 half years or one and three-quarters years is not
14 significant in impacting on my assessment.
15 Because I'm already looking at a longer period of
16 time.

17 HEARING OFFICER GEFTER: Okay.

18 THE REPORTER: Excuse me, tape change.

19 (Thereupon, the tapes were
20 changed off the record.)

21 THE REPORTER: Thank you.

22 HEARING OFFICER GEFTER: Okay.

23 Mr. Galati, do you have any recross of the
24 witness?

25 APPLICANT ATTORNEY GALATI: No, I don't,

1 thank you.

2 HEARING OFFICER GEFTER: Okay. Staff,
3 do you have anything else?

4 SENIOR STAFF COUNSEL ABELSON: No, we
5 don't, Ms. Gefter, but may I request with the
6 Committee's approval that we take, since
7 Mr. Greenberg is here, he has one other topic
8 which he is the sponsor of which, Worker Safety,
9 and perhaps we could take that issue next, without
10 objection from --

11 HEARING OFFICER GEFTER: We could do
12 that.

13 First I would thank Mr. Yee from the Air
14 District and Mr. Dang for calling in today, and at
15 this point you're welcome to leave.

16 WITNESS REEDE: And the same with
17 Mr. Walters, with your permission?

18 HEARING OFFICER GEFTER: And
19 Mr. Walters, I think are we finished with your
20 witness as well?

21 WITNESS REEDE: Yes.

22 HEARING OFFICER GEFTER: And Mr. Walters
23 too. Thank you very much.

24 WITNESS YEE: Thank you. This is
25 Mr. Yee and we will be signing off.

1 HEARING OFFICER GEFTER: Thank you.

2 WITNESS REEDE: Will Walters, are you
3 signing off now?

4 HEARING OFFICER GEFTER: Okay. Off the
5 record, please.

6 (Brief recess.)

7 HEARING OFFICER GEFTER: Back on the
8 record.

9 Mr. Galati?

10 APPLICANT ATTORNEY GALATI: At this
11 time, the applicant would like to identify exhibit
12 41, which is the testimony of Douglas I. Hahn,
13 Worker Safety and Fire Protection, and within that
14 exhibit Mr. Hahn sponsors portions of exhibit one
15 and portions of exhibit three.

16 At this time we'd like to move into the
17 evidentiary record exhibit 41 in its entirety.

18 HEARING OFFICER GEFTER: Any objection
19 to exhibit 41 being received into the record?

20 SENIOR STAFF COUNSEL ABELSON: Staff has
21 no objection.

22 HEARING OFFICER GEFTER: Exhibit 41 is
23 received into the record.

24 Staff, do you have testimony on Worker
25 Safety?

1 SENIOR STAFF COUNSEL ABELSON: We have
2 nothing beyond what's in the FSA and to supplement
3 the applicant file.

4 HEARING OFFICER GEFTER: Okay, and
5 Mr. Greenberg is still present, and I have a
6 question on Worker Safety, very quick.

7 EXAMINATION BY COMMITTEE

8 HEARING OFFICER GEFTER: This refers
9 back to our discussion on use of low-sulfur diesel
10 fuel and filters during the construction phase.
11 Is that also part of your evaluation on Worker
12 Safety in the FSA?

13 WITNESS GREENBERG: Well, it certainly
14 will protect the workers as well as the off-site
15 public.

16 HEARING OFFICER GEFTER: Okay.

17 WITNESS GREENBERG: As you may probably
18 be aware, there are differing standards for worker
19 health and safety as opposed to public health and
20 safety. And this, of course, will ensure, you
21 know, the use of these particulate filters as well
22 as low-sulfur fuel will ensure that all the Cal
23 OSHA regulations will be strictly adhered to when
24 it comes to airborne contaminants that might come
25 from the diesel equipment.

1 HEARING OFFICER GEFTER: Thank you. And
2 so you submit your testimony on the written
3 portion of the FSA and Worker Safety.

4 WITNESS GREENBERG: Yes, I do.

5 HEARING OFFICER GEFTER: All right,
6 thank you.

7 Any cross-examination?

8 APPLICANT ATTORNEY GALATI: None.

9 HEARING OFFICER GEFTER: Thank you. The
10 topic of Worker Safety is submitted, and we will
11 go off the record.

12 (Brief recess.)

13 HEARING OFFICER GEFTER: We are
14 proceeding now with the topic of Traffic and
15 Transportation.

16 Mr. Galati?

17 APPLICANT ATTORNEY GALATI: The
18 applicant would identify exhibit 32, testimony of
19 Douglas Smith, for Traffic Control and
20 Transportation. And within exhibit 32, Mr. Smith
21 identifies portions of exhibit one, two, three,
22 four, and six that he is sponsoring related to
23 Traffic and Transportation.

24 If I could summarize an agreement that
25 staff and the applicant discussed at the

1 prehearing conference which is identified in
2 exhibit 32 on page two, there is a request to
3 change the verification of condition of
4 certification Trans five. The request is to
5 delete "start of site mobilization" and replace it
6 with "first use of the rail line."

7 This condition deals with having the
8 right and an agreement to use the rail line for
9 use during construction, and the verification
10 originally required that that agreement be prior
11 to start of site mobilization. And the applicant
12 has proposed in exhibit 32 that that can change
13 to, that that agreement be required prior to the
14 first use of the rail line.

15 HEARING OFFICER GEFTER: Okay. Does
16 staff have any objection to the language change?

17 SENIOR STAFF COUNSEL ABELSON: Staff is
18 familiar with the change and it is acceptable.

19 HEARING OFFICER GEFTER: Okay.

20 APPLICANT ATTORNEY GALATI: Move exhibit
21 32 into the record.

22 HEARING OFFICER GEFTER: Okay. Exhibit
23 32 is received into the record.

24 At this point we'd like to take a little
25 break, and Commissioner Art Rosenfeld has joined

1 us. Commissioner Rosenfeld is the associate
2 member of our Committee, and we'd like to
3 introduce him to the parties, and the parties to
4 him. And this is Commissioner Rosenfeld.

5 ASSOCIATE COMMITTEE MEMBER ROSENFELD: I
6 just want to apologize for not being here, but I'm
7 double-booked today because there is a lighting
8 hearing for Title 24 going on in hearing room A
9 and this is hearing room B, but I wanted to come
10 in and at least say hello, so hello.

11 (Laughter.)

12 HEARING OFFICER GEFTER: Thank you, and
13 this is Mr. Galati for the applicant.

14 ASSOCIATE COMMITTEE MEMBER ROSENFELD:
15 We've met.

16 HEARING OFFICER GEFTER: And you've met.

17 APPLICANT ATTORNEY GALATI: Commissioner
18 Rosenfeld, this is Bruce Blowey, the project
19 manager.

20 ASSOCIATE COMMITTEE MEMBER ROSENFELD:
21 Hi.

22 HEARING OFFICER GEFTER: And then you
23 know staff.

24 ASSOCIATE COMMITTEE MEMBER ROSENFELD: I
25 do.

1 HEARING OFFICER GEFTER: You know our
2 staff, okay. And we are almost through with the
3 hearing, in fact.

4 ASSOCIATE COMMITTEE MEMBER ROSENFELD:
5 So I timed it perfectly.

6 HEARING OFFICER GEFTER: Very excellent
7 timing, and now if you have any questions of any
8 of the parties at this point?

9 ASSOCIATE COMMITTEE MEMBER ROSENFELD:
10 See you later.

11 HEARING OFFICER GEFTER: All right.
12 Thank you very much.

13 SENIOR STAFF COUNSEL ABELSON:
14 Ms. Gefter, before we proceed, I did have one
15 small housekeeping matter. Could you indicate
16 what exhibit 43 is at this point.

17 HEARING OFFICER GEFTER: Yes. I have
18 exhibit 43 is going to be a previous letter from
19 the City of Burbank regarding the CUP issue, and
20 it's a Land Use issue, and when we get to the Land
21 Use topic we will actually identify and discuss
22 exhibit 43.

23 SENIOR STAFF COUNSEL ABELSON: Thank
24 you.

25 HEARING OFFICER GEFTER: And on Traffic

1 and Transportation, which is where we are now, we
2 have just received exhibit 32. We have an
3 amendment to the condition of Trans five, and I
4 have a question for the applicant on the use of
5 the rail line, which is what Trans five is
6 referring to. I understand that equipment will be
7 delivered by rail; is that the plan?

8 WITNESS BLOWEY: Some equipment will be
9 rail, some will be by truck.

10 HEARING OFFICER GEFTER: Okay, and at
11 the laydown area, which is -- the laydown area is
12 going to be located next to the rail line; is that
13 right?

14 WITNESS BLOWEY: Yes.

15 HEARING OFFICER GEFTER: Okay. This is
16 just so I understand the plan here.

17 When equipment is delivered by rail to
18 the laydown, how does it move from the laydown
19 area over to your site?

20 WITNESS BLOWEY: By truck.

21 HEARING OFFICER GEFTER: And is there a
22 traffic plan for that?

23 WITNESS BLOWEY: Yes.

24 APPLICANT ATTORNEY GALATI: There is a
25 requirement for a traffic plan, I believe, in

1 Trans three, I think it is.

2 HEARING OFFICER GEFTER: Okay. Well,
3 Trans three seems to be about parking.

4 WITNESS BLOWEY: Parking and staging.

5 APPLICANT ATTORNEY GALATI: It's Trans
6 four, excuse me.

7 WITNESS BLOWEY: Trans four.

8 APPLICANT ATTORNEY GALATI: It's a
9 construction traffic control plan implementation
10 program.

11 HEARING OFFICER GEFTER: Okay.

12 APPLICANT ATTORNEY GALATI: It involves
13 not only parking and construction access for
14 construction workers coming to the site, but
15 moving heavy equipment and building materials.

16 HEARING OFFICER GEFTER: Okay, good.
17 Thank you.

18 Are there any other questions on
19 Transportation, Traffic and Transportation?

20 Okay. That topic is submitted. We will
21 move on to Visual Resources.

22 APPLICANT ATTORNEY GALATI: At this time
23 the applicant would identify exhibit 33, the
24 testimony of Cindy Poire, on Visual Resources,
25 with her accompanying declaration. And within

1 that testimony, she also sponsors exhibit one --
2 excuse me, a portion of exhibits one, two, three,
3 four, and five. I would move exhibit 33 into the
4 evidentiary record at this time.

5 HEARING OFFICER GEFTER: Okay. Any
6 objections to exhibit 33?

7 SENIOR STAFF COUNSEL ABELSON: No
8 objections.

9 HEARING OFFICER GEFTER: Okay. Exhibit
10 33 is received.

11 Are there any questions on Visual
12 Resources from either party?

13 Okay. We're going to move on, then, to
14 Compliance, and that's --

15 WITNESS REEDE: May I suggest we move
16 Compliance a little bit so that I can get staff
17 back down here.

18 HEARING OFFICER GEFTER: All right.

19 WITNESS REEDE: And actually, if we
20 could take Compliance and Closure last.

21 HEARING OFFICER GEFTER: Yes, we can do
22 that.

23 WITNESS REEDE: Because they're
24 upstairs.

25 HEARING OFFICER GEFTER: All right.

1 Staff's witness is not in the room at this time on
2 Compliance. We'll take Compliance last, and we'll
3 move on to Land Use.

4 And Commissioner Rosenfeld is leaving
5 this time. Thank you for being here.

6 WITNESS REEDE: Oh, I apologize, I
7 didn't see you sitting there.

8 Alvin Greenberg is sitting there and
9 he's going to be sponsoring the security issue on
10 Compliance and Closure.

11 SENIOR STAFF COUNSEL ABELSON: So we can
12 proceed with Compliance.

13 HEARING OFFICER GEFTER: So you can
14 proceed with Compliance?

15 SENIOR STAFF COUNSEL ABELSON: Yes.
16 Yes, we can.

17 HEARING OFFICER GEFTER: Okay. Staff's
18 witness is here on Compliance, so we will go
19 forward on the topic of Compliance.

20 APPLICANT ATTORNEY GALATI: At this time
21 the applicant would like to identify exhibit 34,
22 which is the testimony of Bruce Blowey, and apply
23 it to Facility Closure. I'd also like to take
24 this time to correct something that I've been
25 saying wrong the entire hearing.

1 My good friend, Douglas I. Hahn, it's
2 actually Douglas L. Hahn, and I've been
3 identifying him wrong. So I would like to correct
4 that so that I don't owe him anything and it's in
5 the transcript.

6 Exhibit 34, though, is testimony of
7 Bruce Blowey on Compliance and Facility Closure,
8 and within that exhibit 34 is the attached
9 declaration. Mr. Blowey sponsors a portion of
10 exhibit one, exhibit four, and exhibit five. I
11 would like to move exhibit 34 into the evidentiary
12 record at this time.

13 HEARING OFFICER GEFTER: Is there any
14 objection to exhibit 34?

15 WITNESS REEDE: No objection.

16 HEARING OFFICER GEFTER: Staff has no
17 objection. Exhibit 34 is received into the
18 record.

19 Staff, do you have a witness on this?

20 WITNESS REEDE: Yes, Hearing Officer
21 Gefter. We have Dr. Alvin Greenberg of CEC staff.
22 And after the FSA was published, additional
23 security concerns arose, and it necessitated the
24 need to potentially add to our security plan for
25 the project, to the construction and operation

1 security plan outlined as Com nine, and I'll have
2 him address that.

3 HEARING OFFICER GEFTER: Thank you.
4 Whereupon,

5 ALVIN J. GREENBERG
6 Was called as a previously duly sworn witness
7 herein and was examined and testified as follows:

8 HEARING OFFICER GEFTER: Mr. Greenberg,
9 you are still under oath.

10 DIRECT TESTIMONY

11 WITNESS GREENBERG: Thank you. I have
12 been working with CEC Compliance staff in
13 developing site security plans for power plants
14 certified by the Energy Commission. And I did not
15 write this particular one for this site, but it is
16 word-for-word consistent with those that I have
17 written for other sites.

18 I can speak to the issue of the need and
19 the basis for the particulars of the operation
20 security plan as outlined in general condition of
21 certification Com nine.

22 HEARING OFFICER GEFTER: Okay. Could
23 you give us a page number in the FSA?

24 WITNESS REEDE: 7-10. Well, it begins
25 at the bottom of 7-9, and the bulk of it is on 7-

1 10.

2 Ms. Gefter?

3 HEARING OFFICER GEFTER: Yes?

4 WITNESS REEDE: In the interest of time,
5 Dr. Greenberg has stated that this is the correct
6 condition and that no modification will be
7 necessary, so that unless there are questions
8 related to security, the FSA stands as declared by
9 our compliance project manager who sponsored the
10 testimony.

11 HEARING OFFICER GEFTER: Is the
12 applicant in agreement with this security plan
13 contained in the Compliance conditions?

14 APPLICANT ATTORNEY GALATI: Yes.

15 HEARING OFFICER GEFTER: Okay, fine.
16 Thank you.

17 Does staff have any modifications of any
18 other portions of the Compliance plan?

19 WITNESS REEDE: No.

20 HEARING OFFICER GEFTER: Okay. The
21 Compliance plan is submitted, and we will go on to
22 the next topic, which is Land Use.

23 APPLICANT ATTORNEY GALATI: At this time
24 I'd like to call our witness, Cindy Poire.

25 HEARING OFFICER GEFTER: And before you

1 begin with Ms. Poire, there was a letter from the
2 City of Burbank dated October 22nd, and we are
3 identifying that letter as exhibit 43. And once
4 you have the witness testify, she could explain to
5 us what the letter is about.

6 THE REPORTER: Ms. Poire, could you
7 please --

8 WITNESS REEDE: Excuse me, but there was
9 a subsequent letter that was received.

10 HEARING OFFICER GEFTER: Yes, there is a
11 subsequent letter that is attached to Ms. Poire's
12 testimony; is that correct?

13 APPLICANT ATTORNEY GALATI: Right.

14 HEARING OFFICER GEFTER: Okay.

15 APPLICANT ATTORNEY GALATI: Yeah, if I
16 could provide some clarification, we identified as
17 exhibit 22 the latest letter from the City of
18 Burbank, and we neglected to identify an earlier
19 letter from the City of Burbank which has now been
20 identified as exhibit 43.

21 At this time, so that I could go forward
22 with our witness, could we have the witness sworn,
23 please.

24 HEARING OFFICER GEFTER: Please swear
25 the witness.

1 THE REPORTER: Please raise your right
2 hand.

3 Whereupon,

4 CINDY POIRE

5 Was called as a witness herein and, after first
6 being duly sworn, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY APPLICANT ATTORNEY GALATI:

10 Q Ms. Poire, could you please state your
11 name and spell it for the record.

12 A My name is Cindy Poire, C-i-n-d-y
13 P-o-i-r-e.

14 Q Would you briefly summarize your
15 qualifications and your role in the project.

16 A I've been with URS for two years as
17 senior environmental planner. I have 15 years of
18 experience in land use and environmental
19 compliance and project management, and I wrote the
20 section on Land Use. I was task leader, and I'm
21 also the assistant project manager.

22 HEARING OFFICER GEFTER: Ms. Poire,
23 could you speak up, please, because we can't hear
24 you over here and the people on the phone probably
25 can't hear you.

1 WITNESS POIRE: I'm sorry, okay.

2 DIRECT EXAMINATION

3 BY APPLICANT ATTORNEY GALATI:

4 Q Ms. Poire, you had conversations with
5 the City of Burbank Planning Department?

6 A Yes.

7 Q Regarding conditional use permit
8 requirements for the facility and laydown area?

9 A Yes.

10 Q And you received exhibit 22 on
11 November 7th, a letter from the City of Burbank?

12 A Yes.

13 Q And could you briefly summarize what
14 that letter says?

15 A Exhibit 22 is a letter from the
16 Community Development Department of the City of
17 Burbank that goes through and identifies the
18 findings and the determination stated in the final
19 staff assessment, that that determination could be
20 made by the City of Burbank if indeed the City of
21 Burbank had the authority to issue those
22 conditional use permits.

23 In addition, the letter also identified
24 that the final staff assessment conditions
25 satisfied the planning division's requirements

1 with Land Use requirements with those conditional
2 use permits.

3 Q Ms. Poire, there was what you've
4 previously heard was marked exhibit 43. This was
5 also a letter from the City of Burbank. Are you
6 familiar with that letter?

7 A Yes.

8 Q And can you briefly summarize what that
9 letter says.

10 A Briefly stated, that letter was a review
11 of the final staff assessment conditions contained
12 in the Land Use section, and that those conditions
13 also satisfied the City of Burbank Community
14 Development Department's requirements for issuance
15 of a conditional use permit.

16 Q Is it your opinion that the project
17 complies with all applicable laws, ordinances,
18 regulations, and standards within the City of
19 Burbank?

20 A Yes.

21 APPLICANT ATTORNEY GALATI: I have no
22 further questions of Ms. Poire and I would like to
23 identify her testimony as exhibit 35, which
24 sponsors portions of exhibit one, three, six, all
25 of exhibit 22, and modified by her oral testimony,

1 exhibit 43.

2 So at this time I would like exhibits
3 35, 22, and 43 moved into the evidentiary record.

4 HEARING OFFICER GEFTER: Does staff have
5 objection?

6 SENIOR STAFF COUNSEL ABELSON: No
7 objection.

8 HEARING OFFICER GEFTER: Okay.
9 Exhibits 22, 35, and 43 are received into the
10 record.

11 And, as Ms. Poire has explained, I had a
12 concern about the city's review of the conditions
13 that staff proposes with respect to the CUPs or
14 the potential CUPs. And the letters which we have
15 now accepted into the record, exhibits 22 and 43,
16 have presented the city's view on whether or not
17 the conditions would comply with the staff's CUP
18 requirements.

19 Do you have any understanding of what
20 the process will be?

21 WITNESS POIRE: Yes. We will submit
22 plans for the design review committee, although
23 the City of Burbank Community Development
24 Department has already reviewed those plans.

25 Those plans are acceptable as they are, but once

1 we get more detail they will go back through the
2 design review committee.

3 HEARING OFFICER GEFTER: Okay. Does
4 staff have any questions of the witness?

5 SENIOR STAFF COUNSEL ABELSON: No
6 questions.

7 HEARING OFFICER GEFTER: The topic of
8 Land Use is submitted. Thank you, Ms. Poire.

9 The next topic is Biological Resources.

10 APPLICANT ATTORNEY GALATI: Biological
11 Resources, applicant's testimony is exhibit 36,
12 testimony of Anne M. Wells on Biological
13 Resources. Within that exhibit, Ms. Wells
14 identifies that she is sponsoring portions of
15 exhibits one, three, and four. That testimony has
16 the declaration attached, and we would like to
17 move in exhibit 36 into the evidentiary record.

18 HEARING OFFICER GEFTER: Okay. Any
19 objection to exhibit 36?

20 SENIOR STAFF COUNSEL ABELSON: No
21 objection.

22 HEARING OFFICER GEFTER: Okay. Exhibit
23 36 is received into the record.

24 Any questions on Biological Resources?

25 Okay. The topic of Biological Resources

1 is submitted.

2 The next topic is Soil and Water
3 Resources.

4 APPLICANT ATTORNEY GALATI: The
5 applicant is presenting testimony in the form of
6 testimony of Robert Collacot in Soil and Water
7 Resources as exhibit 37. Within that exhibit
8 Mr. Collacot identifies portions of exhibit one,
9 exhibit two, exhibit three, exhibit four, exhibit
10 five, exhibit six, and portions of exhibit seven.

11 I think there is no dispute on Soil and
12 Water, and this testimony is accompanied by a
13 declaration. I would like to move exhibit 37 into
14 the evidentiary record.

15 HEARING OFFICER GEFTER: Any objection
16 to exhibit 37?

17 SENIOR STAFF COUNSEL ABELSON: No
18 objections.

19 HEARING OFFICER GEFTER: All right.
20 Exhibit 37 is received into the record.

21 I had one clarifying question on Soil
22 and Water, and that is with respect to the use of
23 reclaimed water as a primary source for cooling
24 water and other process.

25 There is some discussion about the

1 possibility of using potable water as a backup.

2 Is there -- Could you amplify that for me, please,
3 for the record.

4 WITNESS BLOWEY: The source of reclaimed
5 water comes from the Burbank Water Reclamation
6 Plant. There are occasions where it has a problem
7 where there is a shutdown. They may have periods
8 of shutdown at the Water Reclamation Plant.

9 There is an on-site reservoir that will
10 be used to mitigate the effects of shutdown when
11 Reclaimed Water may not be available; however,
12 should that unavailability extend beyond the
13 capability of the on-site reservoir, there are
14 several other sources that we would intend to use.
15 There are on-site wells that can be used, there is
16 the rest of the domestic water system in the City
17 of Burbank that can be used.

18 Both of those systems can produce
19 potable water, so they would be a backup in the
20 event of unavailability of reclaimed water over an
21 extended period of time.

22 HEARING OFFICER GEFTER: All right.
23 Also, in the AFC there is information about
24 storage tanks being constructed as part of the
25 project to store reclaimed water. How does that

1 fit into the process?

2 WITNESS BLOWEY: There is an existing
3 underground reservoir that used to be used for
4 fuel oil storage. It has been decommissioned and
5 cleaned, and that is going to be converted into an
6 on-site storage tank for the reclaimed water.

7 HEARING OFFICER GEFTER: And is there
8 also a cooling water storage tank that you will
9 construct?

10 WITNESS BLOWEY: There is a cooling
11 tower blowdown storage tank so that should there
12 be a problem with the ZLD system processing that
13 cooling tower blowdown, there is a capability of
14 storing some of that cooling tower blowdown while
15 the system was repaired.

16 HEARING OFFICER GEFTER: Okay, thank
17 you.

18 Any questions, staff?

19 SENIOR STAFF COUNSEL ABELSON: Not at
20 this time.

21 HEARING OFFICER GEFTER: Okay. The
22 topic of Soil and Water is submitted.

23 The next topic is Socioeconomics.

24 APPLICANT ATTORNEY GALATI: The
25 applicant would like to identify exhibit 40, which

1 is also the testimony of Cindy Poire. It is
2 accompanied by a declaration, and within that
3 exhibit Ms. Poire identifies portions of exhibit
4 one, exhibit two, exhibit three, and exhibit four
5 that she is sponsoring. I would like to move
6 exhibit 40 into the evidentiary record at this
7 time.

8 HEARING OFFICER GEFTER: Okay. Any
9 objection to exhibit 40?

10 SENIOR STAFF COUNSEL ABELSON: No
11 objection.

12 HEARING OFFICER GEFTER: Exhibit 40 is
13 received into the record.

14 Are there any questions on
15 Socioeconomics?

16 SENIOR STAFF COUNSEL ABELSON: No
17 questions at this time.

18 HEARING OFFICER GEFTER: Okay. The
19 topic of Socioeconomics is submitted.

20 The next topic is Noise.

21 APPLICANT ATTORNEY GALATI: The
22 applicant has prefiled testimony. I'd like to
23 identify Douglas L. Hahn, exhibit 42, testimony.
24 Within exhibit 42, Mr. Hahn identifies that he is
25 sponsoring portions of exhibits one, two, three,

1 four, and five.

2 In response to questions at the
3 prehearing conference on October 29th, the
4 applicant has proposed through Mr. Hahn's
5 testimony a modification to Noise five, both to
6 the language of Noise five and the verification.

7 To answer the question, then, and
8 address how a use would be converted from
9 residential use to a use consistent with
10 industrial zoning of the area, the Noise five
11 language was added to the condition that says,
12 "Specifically through agreement or City land use
13 enforcement action to ensure that no persons are
14 using the property as residences, to clarify what
15 'convert' means."

16 In addition, the verification was
17 modified to indicate what evidence must be
18 presented to the compliance project manager, and
19 this evidence may consist of a letter from the
20 City of Burbank. Specifically what was added to
21 that verification was that that letter address
22 that the residences are no longer being used as
23 residences, and indicating that land use
24 enforcement action has been taken to discontinue
25 the residential use.

1 That is one form of the evidence. The
2 other form of the evidence may include either
3 agreements with the landowners for those parcels
4 which removed the residential use or copies of the
5 title showing the project owner or City of Burbank
6 as the new owner of those parcels.

7 The idea here is that they were not
8 conforming uses and that the non-conforming use be
9 discontinued prior to operation.

10 HEARING OFFICER GEFTER: Does staff have
11 any objection to the proposed language change to
12 Noise five?

13 SENIOR STAFF COUNSEL ABELSON: We have
14 no objection, and in addition I'd like to request
15 a conforming change to exhibit 46 to reflect that.
16 Exhibit 46 is staff's evidentiary statement.

17 In paragraph number one, it's numbered
18 as number one, we indicated that there were a
19 number of changes the applicant had made in their
20 November 12th filing that we were aware of and
21 agreed with. Inadvertently we omitted the topic
22 of noise.

23 I would suggest that we place on the
24 last line after the word "management," comma,
25 insert the word "noise and waste management."

1 HEARING OFFICER GEFTER: Thank you for
2 that, Mr. Abelson, all right.

3 So we are clear on condition Noise five,
4 and any comments or questions on Noise?

5 SENIOR STAFF COUNSEL ABELSON: None at
6 this time.

7 APPLICANT ATTORNEY GALATI: I'd like to
8 move exhibit 42 into the evidentiary record.

9 HEARING OFFICER GEFTER: Exhibit 42, is
10 there objection to exhibit 42, Mr. Abelson?

11 SENIOR STAFF COUNSEL ABELSON: I'm
12 sorry?

13 HEARING OFFICER GEFTER: Any objection
14 to exhibit 42 being received?

15 SENIOR STAFF COUNSEL ABELSON: No, no
16 objection.

17 HEARING OFFICER GEFTER: Exhibit 42 is
18 received into the record, and the topic of Noise
19 is submitted.

20 And that concludes all of the topics.

21 We have some housekeeping issues.

22 Let's go off the record for a minute.

23 (Brief recess.)

24 HEARING OFFICER GEFTER: Back on the
25 record.

1 At this point staff would like to offer
2 exhibits into the record.

3 SENIOR STAFF COUNSEL ABELSON: Thank
4 you, Ms. Gefter. We have several exhibits that
5 have been referenced previously during the course
6 of the hearing today that we would like to
7 formally move into the record at this time.

8 The first of those is the final staff
9 assessment docketed on October the 3rd, 2002, and
10 I believe you've indicated a part now that that
11 would take the exhibit number 45. Staff would
12 like to tender that into the record at this time.

13 HEARING OFFICER GEFTER: Any objection
14 to exhibit 45?

15 APPLICANT ATTORNEY GALATI: No
16 objection.

17 HEARING OFFICER GEFTER: Okay. Exhibit
18 45, which is the final staff assessment is
19 received into the record.

20 SENIOR STAFF COUNSEL ABELSON: In
21 addition, staff would like to into the evidentiary
22 record a document entitled staff's evidentiary
23 hearing statement regarding supplemental staff
24 testimony and responses to applicant's testimony.
25 That document was docketed on November the 15th,

1 and you have indicated, Ms. Gefter, in an earlier
2 part of this hearing, that that would receive
3 exhibit number 46.

4 HEARING OFFICER GEFTER: Any objection
5 to exhibit 46?

6 APPLICANT ATTORNEY GALATI: No
7 objection.

8 HEARING OFFICER GEFTER: Exhibit 46 is
9 received into the record.

10 SENIOR STAFF COUNSEL ABELSON: The next
11 item is a document that is a one-page hard copy of
12 an e-mail from staff member Dmitrio Bucaneg,
13 B-u-c-a-n-e-g, to Mr. James Reede, the project
14 manager. The date of the e-mail is 11/08/02, and
15 what the e-mail addresses is a series of questions
16 that Hearing Officer Gefter had asked of staff and
17 these are the responses to those.

18 This was docketed on November the 13th,
19 and you've indicated in earlier proceedings that
20 it should receive exhibit number 47.

21 HEARING OFFICER GEFTER: Any objection
22 to exhibit 47?

23 APPLICANT ATTORNEY GALATI: None.

24 HEARING OFFICER GEFTER: Okay.
25 Exhibit 47 is received into the record.

1 SENIOR STAFF COUNSEL ABELSON: Finally,
2 to round out the record today, during the
3 discussion of Air Quality, there was an indication
4 that the South Coast Air Quality Management
5 District had both received public comments and
6 replied to those sometime in September.

7 That material was apparently submitted
8 to the dockets, the precise date of which we're
9 not sure of but it was referenced by Mr. Yee
10 during his discussion today. We will retrieve
11 that set of public comments and the South Coast
12 Air Quality Management District's reply to them,
13 and we would like to sponsor them as exhibit 48
14 per your earlier direction.

15 HEARING OFFICER GEFTER: Thank you, and
16 does applicant stipulate to receipt of exhibit 48
17 after we have retrieved them from dockets?

18 APPLICANT ATTORNEY GALATI: Yes, we do.

19 HEARING OFFICER GEFTER: Okay.
20 Exhibit 48 will be received into the record.

21 The applicant has several exhibits
22 pending as well. Do you want to identify those
23 for us.

24 APPLICANT ATTORNEY GALATI: First we
25 want to identify exhibits one through seven, of

1 which portions have been sponsored individually by
2 different exhibits already moved into the record.
3 At this time I'd like to ask that exhibits one,
4 two, three, four, five, six, and seven be moved
5 into the evidentiary record.

6 HEARING OFFICER GEFTER: Any objection
7 to those exhibits being received?

8 SENIOR STAFF COUNSEL ABELSON: No
9 objection.

10 HEARING OFFICER GEFTER: All right.
11 Exhibits one, two, three, four, five, six, and
12 seven are received into the record.

13 APPLICANT ATTORNEY GALATI: In addition,
14 there are two exhibits that applicant wishes to
15 sponsor that I'm going to ask Mr. Blowey to
16 describe. One is identified as exhibit 12.

17 WITNESS BLOWEY: Exhibit 12 is the Los
18 Angeles County's sewer and stormwater management
19 plan, and it was docketed on November 5th, 2001.

20 APPLICANT ATTORNEY GALATI: And there is
21 also exhibit 15.

22 WITNESS BLOWEY: This is a memo from the
23 California Air Resources Board regarding review of
24 the air quality impact analysis of the project.
25 It was docketed on June 11th, 2002.

1 APPLICANT ATTORNEY GALATI: We would ask
2 that exhibit 12 and exhibit 15 be moved into the
3 evidentiary record.

4 HEARING OFFICER GEFTER: Okay.
5 Mr. Blowey, you said that the exhibit 12 was
6 docketed on what date, because I think we have
7 it --

8 WITNESS BLOWEY: November 5th, 2001.

9 HEARING OFFICER GEFTER: 2001, all
10 right. We had it written wrong on our tentative
11 list, okay.

12 With that correct, November 5th, 2001
13 docket of exhibit 12, is there any objection to
14 exhibits 12 and 15 being received?

15 SENIOR STAFF COUNSEL ABELSON: No
16 objection.

17 HEARING OFFICER GEFTER: Okay. Exhibits
18 12 and 15 are received into the record.

19 With that, it looks like we have
20 completed our evidentiary hearing. Are there any
21 questions from either party at this time?

22 APPLICANT ATTORNEY GALATI: None from
23 the applicant.

24 HEARING OFFICER GEFTER: Staff?

25 WITNESS REEDE: None.

1 HEARING OFFICER GEFTER: Okay. For
2 those who are on the phone, do you have any public
3 comment or any questions for us before we close
4 the hearing? Anybody on the phone?

5 WITNESS REEDE: Is anyone on the phone
6 still?

7 HEARING OFFICER GEFTER: We have no
8 response from anybody on the phone. We would
9 assume, then, that there are no public comments at
10 this time.

11 In terms of the remaining schedule for
12 this case, as we agreed at the prehearing
13 conference, the applicant's opening brief is due
14 November 22nd. Do you have any request to amend
15 that date, or do you want to stick with that
16 November 22nd date?

17 APPLICANT ATTORNEY GALATI: We would
18 like to get a January license date, so we will get
19 our brief done by November 22nd.

20 HEARING OFFICER GEFTER: And staff's
21 reply brief would be due December 3rd?

22 SENIOR STAFF COUNSEL ABELSON: Right.

23 HEARING OFFICER GEFTER: Okay. Any
24 further questions on the schedule? All right.

25 Commissioner Geesman, any comments?

1 PRESIDING COMMITTEE MEMBER GEESMAN: I
2 just congratulate both the applicant and staff on
3 a job well done. We will try and do our part and
4 give you a timely proposed decision.

5 WITNESS REEDE: Thank you.

6 APPLICANT ATTORNEY GALATI: Thank you.

7 HEARING OFFICER GEFTER: With that, the
8 record is now closed and the hearing is adjourned.
9 Off the record.

10 (Thereupon, the hearing was
11 adjourned at 12:55 p.m.)

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CERTIFICATE OF REPORTER

I, SCOTT KING, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission public evidentiary hearing; that
it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of November, 2002.