

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

William J. Keese, Chairman, Associate Member

Michael Smith, Commissioner Advisor

Stanley Valkosky, Hearing Officer

STAFF PRESENT

Roberta Mendonca, Public Adviser

Kerry Willis, Staff Counsel

Paul Richins, Project Manager

APPLICANT

Kenneth A. Abreu, Calpine

Jeffrey D. Harris, Ellison & Schneider

INTERVENORS

Dian Grueneich, Counsel, CVRP

David Marcus, Consultant to CVRP

Michael Boyd, CARE

Jeff Wade, Santa Teresa Citizens Action Group

Scott Scholz, Santa Teresa Citizens Action Group

Tim Alton, Santa Teresa Citizens Action Group

John Wiktorowicz, Rancho Santa Teresa Swim &
Racquet Club

Issa Ajlouny

ALSO PRESENT

Laura Prevetti, City of San Jose Planning Dept.

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

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, good evening. My name is Robert
4 Laurie. I am a Commissioner at the California
5 Energy Commission, assigned, along with the
6 Chairman of the Commission, Bill Keese, who will
7 be here momentarily, to hear this case and to make
8 recommendations to the full Commission.

9 The purpose of this conference -- of
10 this conference today is simply to discuss the
11 progress of the case thus far, and to assess any
12 effects of recent developments on the scheduling
13 of future events. We are interested in comment
14 relating to those matters.

15 Let me note specifically that this is
16 not an evidentiary hearing. The purpose of this
17 meeting today is not to discuss the pros nor the
18 cons of the project itself.

19 Just a note, the meeting tonight is
20 being recorded. If we have difficulties with the
21 recording because we need to change a tape, or we
22 can't hear you, we will interrupt the proceedings
23 until we have that repaired.

24 To my left is Mr. Stan Valkosky. Mr.
25 Valkosky is the Hearing Officer assigned to this

1 case, and he is staff to Commissioner Keese and
2 myself. Mr. Valkosky will be administering
3 today's hearing.

4 The Applicant is present, Staff is
5 present, and a number of Intervenors are present.
6 We will be providing an opportunity to have all
7 parties introduce themselves.

8 At this time, I would like to introduce
9 Stan Valkosky, the Hearing Officer. Mr. Valkosky.

10 HEARING OFFICER VALKOSKY: Thank you,
11 Commissioner Laurie.

12 At this time I would like the parties
13 seated around the table to introduce themselves,
14 starting with the Applicant.

15 MR. ABREU: Ken Abreu, from Calpine, the
16 Development Manager for the Metcalf Energy Center.

17 MR. HARRIS: I'm Jeff Harris. I'm
18 outside counsel to Calpine and Bechtel.

19 MR. SCHOLZ: I'm Scott Scholz, local
20 resident, an Intervenor.

21 MR. WADE: I'm Jeff Wade, Intervenor.

22 PRESIDING MEMBER LAURIE: Excuse me,
23 please. There's the small microphones. Why don't
24 you move that in between you two, so we don't have
25 to keep moving the small microphones around.

1 Okay. The small microphones are not amplifying
2 microphones, so you can't tell you're speaking
3 into it, but it is necessary that it be able to
4 pick you up, okay?

5 Sorry for the interruption.

6 MR. SCHOLZ: Scott Scholz, local
7 resident, Intervenor.

8 DR. WIKTOROWICZ: My name is Dr. John
9 Wiktorowicz, I'm a representative of Rancho Santa
10 Teresa Swim and Racquet Club, Intervenors.

11 MR. WILLIAMS: Good evening. I'm
12 Robert Williams, I'm an Intervenor. I am a
13 retired power plant engineer with over 30 years
14 experience.

15 MR. MARCUS: I'm David Marcus. I'm a
16 consultant to Intervenor CVRP.

17 MS. GRUENEICH: Dian Grueneich, with
18 Grueneich Resource Advocates, outside counsel to
19 Intervenor CVRP.

20 MR. MITCHELL: Phil Mitchell, a resident
21 of the area, and here on behalf of Santa Teresa
22 Citizens Action Group.

23 MS. WILLIS: I'm Kerry Willis, I'm Staff
24 counsel, and I represent the Staff in this
25 proceeding.

1 MR. RICHINS: My name is Paul Richins.
2 I am the Project Manager assigned to this case for
3 the California Energy Commission.

4 HEARING OFFICER VALKOSKY: And we missed
5 Mr. Wade?

6 MR. WADE: Jeff Wade, Intervenor, and a
7 member of Santa Teresa Citizens Action Group.

8 HEARING OFFICER VALKOSKY: Mr. Wade and
9 Mr. Mitchell, and I guess Mr. Scholz, you're all
10 members of the Santa Teresa Group; correct? Which
11 one will be presenting your position today?

12 MR. WADE: I'll take the leading
13 position. I'd like to have that opportunity.

14 HEARING OFFICER VALKOSKY: Okay. Thank
15 you.

16 As Commissioner Laurie stated earlier,
17 the primary purpose of today's conference is
18 procedural in nature. In other words, the
19 Committee wants to assess the status of the
20 current case development and the effects of as yet
21 future undetermined items upon the balance of this
22 case schedule.

23 In preparation for today, the Committee
24 issued an order on June 22nd, asking all parties
25 that intended to participate today to file

1 statements of position on various issues. The
2 only parties who filed were Applicant, Staff,
3 Intervenors Coyote Valley Research Park, Mr.
4 Williams, Mr. Wade on behalf of Santa Teresa
5 Citizens Action Group, and Michael Boyd,
6 representing the Californians for Renewable
7 Energy. Therefore, for the motions in that I will
8 intend to limit the opportunity to comment to
9 those responding parties.

10 At the conclusion of the business items
11 on today's conference, and as time permits, we
12 will provide an opportunity for public comment.
13 The extent of that opportunity depends on the
14 progress that we make getting through the items
15 that the Committee desires information on.

16 Is there anyone representing
17 Californians for Renewable Energy, or Mr. Boyd?

18 FROM THE AUDIENCE: He should be here at
19 a later time. He plans on being here this
20 evening.

21 MR. WADE: Excuse me, Mr. Chairman. I
22 also submitted a request to speak today. Did you
23 not receive that?

24 HEARING OFFICER VALKOSKY: I did not
25 receive that.

1 Staff, have you received anything? No.

2 MR. WADE: Yeah, my request was
3 particularly in reference to the data requests
4 that I had filed in the beginning of June. At
5 that time, at the time I requested time I had not
6 yet received a response to it.

7 HEARING OFFICER VALKOSKY: Okay. Well,
8 why don't we -- if that's what your item is, we
9 have an item for the necessity and time limits for
10 future discovery. You can address it at that
11 time.

12 MR. WADE: That's exactly what I had
13 requested.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. WADE: Thank you.

16 HEARING OFFICER VALKOSKY: All right.

17 Basically, the Committee is going to
18 take all matters discussed today under advisement,
19 and issue a written order on the various motions
20 of the scheduling items as appropriate. To
21 proceed in an orderly and, hopefully, expeditious
22 manner, we will first address the various motions,
23 discuss scheduling items enumerated in the notice,
24 and then, as I said, as time permits, receive
25 general public comment.

1 Once again, I would like to reiterate
2 that the primary purpose of tonight's conference
3 is to gather input on the procedural items, not to
4 argue over the substance of merits of the proposed
5 project. The Committee reminds all participants
6 to keep their comments focused to this purpose.

7 Ms. Mendonca.

8 PUBLIC ADVISER MENDONCA: Commissioner
9 -- Hearing Officer Valkosky and Commissioner
10 Laurie, I'm sorry I didn't step up during the
11 introduction times to introduce myself, but I
12 would like the record to reflect that the Public
13 Adviser is present this evening.

14 And for those of you who are attending
15 an Energy Commission meeting for the first time,
16 my role is rather unique. I'm here to help you
17 with your process questions, and one of the things
18 that we do to assist in having an organized
19 discussion is we request that you fill out a blue
20 card when it comes to making a public comment. I
21 will have those, you're welcome to have those from
22 me.

23 We also have a sign-in sheet on the
24 front table which, if you sign in and give us your
25 address, we can make sure that you're on our

1 future mailing list.

2 So thank you very much.

3 HEARING OFFICER VALKOSKY: Thank you,
4 Roberta.

5 CVRP, Mr. Williams, CARE, and the Santa
6 Teresa Citizens Action Group have each filed
7 motions seeking certain things. Substantively, to
8 a large extent, these filings overlap, for
9 example, where each essentially requests
10 reissuance of the Preliminary Staff Assessment.
11 Applicant and Staff have specifically responded to
12 the motion filed by CVRP.

13 In order to deal with these most
14 efficiently, the Committee has grouped them
15 according to the substance of the relief
16 requested. The Committee has reviewed the written
17 submissions, and does not believe that arguments
18 contained therein need repeating. Rather, the
19 Committee will first state its understanding of
20 the issue and provide the appropriate responding
21 parties a brief -- and I want to emphasize brief,
22 maximum of five minutes -- opportunity to respond
23 or to address any additional matters which a party
24 believes is necessary to clarify its motion.

25 Are there any questions on that?

1 Ms. Grueneich.

2 MS. GRUENEICH: Mr. Valkosky, I don't
3 know if you're going to be getting to this, but
4 for item number 4 under motions, elements of staff
5 analysis. I wonder if you could clarify -- I
6 could conceivably see it might be an item that
7 CVRP had addressed in its comments, but I'm not
8 sure who the --

9 HEARING OFFICER VALKOSKY: If you're
10 referring to your question about a need analysis,
11 that is included under those.

12 MS. GRUENEICH: That's -- okay. Thank
13 you.

14 HEARING OFFICER VALKOSKY: All right.
15 The first motion on the agenda is reissuance of
16 the PSA. This is sought in motions by CVRP, CARE,
17 Santa Teresa, and Mr. Williams.

18 As the Committee understands the issue,
19 the basic question is whether Staff should or must
20 reissue the PSA. At the outset, I'd like to
21 explain that the Committee expects that the next
22 iteration of the Staff Assessment -- and I'd
23 really prefer not to call it Preliminary or Final,
24 just Staff Assessment as is referred to in the law
25 -- the Committee expects that this iteration will

1 cover all topic areas and contain responses to all
2 written comments filed on the PSA.

3 Is that correct -- is that a correct
4 expectation, Staff?

5 MR. RICHINS: I think it is correct, but
6 I just wanted to clarify what our plans as it
7 relates to response to the PSA. We plan to
8 respond to all public agency comments, and all
9 public comments. Intervenor comments, we do not
10 plan to respond to line by line, as they have the
11 opportunity to present their case in the
12 evidentiary hearings. However, we are reviewing
13 all the Intervenor comments, and where we feel
14 appropriate, including that in our analysis.

15 HEARING OFFICER VALKOSKY: So you would
16 respond to the substance of the Intervenors'
17 comments, the major substance of the Intervenors'
18 comments?

19 MR. RICHINS: If we feel that their
20 comments are something that we feel appropriate to
21 include into our analysis, we will. But we won't
22 have a special section that says Intervenor
23 Comments.

24 HEARING OFFICER VALKOSKY: I'm not
25 asking for a special section. I'm asking for the

1 response to the comments. Thank you for that
2 clarification, Mr. Richins.

3 The other preliminary matter I'd like to
4 get out of the way is it appears to the Committee
5 that there's some confusion as to the process, and
6 again, I'm not sure the source of the confusion,
7 but I would like to reiterate that the document
8 that was published by Staff on May 15th is only a
9 Staff working document. Staff is an independent
10 party to this proceeding. The Committee, and
11 eventually the Commission, may or may not agree
12 with the results of the Staff analysis. Moreover,
13 that Staff analysis is no way binding upon the
14 Committee, or upon the other parties.

15 After the next iteration of the Staff
16 analysis is released, that will be followed by a
17 pre-hearing conference, by formal evidentiary
18 hearings, by the issuance of a written proposed
19 decision by the Committee, followed by another
20 comment period, possibly followed by a revised
21 decision issued by the Committee, followed by
22 another comment. All this before the full
23 Commission acts on this case.

24 So from the comments, I've detected
25 there seems to be a -- be a misunderstanding that

1 we are somehow farther along in the process than
2 we actually are. Although I'm sure Applicant
3 wishes that were the case, it is not.

4 Are there any questions on the process?

5 Ms. Grueneich.

6 MS. GRUENEICH: Yes. Mr. Valkosky, the
7 way that you just stated it appeared to me to be a
8 ruling on our motion, in that what we stated was
9 that the process was regardless of what we call
10 the next document from the Staff, after that,
11 there would be evidentiary hearings. And just to
12 clarify, if that is the normal process, what our
13 motion is asking for is a deviation from the
14 normal process.

15 HEARING OFFICER VALKOSKY: I -- I
16 understand. I was just explaining the normal
17 process, the way it works.

18 The motion, as I stated, to reissue the
19 PSA would insert another -- an interim iteration
20 of the Staff Assessment. The normal process is
21 Preliminary Staff Assessment, and Final Staff
22 Assessment. The motion would basically require a
23 second Preliminary Staff Assessment before getting
24 to the Final Staff Assessment.

25 Is that correct, Ms. Grueneich?

1 MS. GRUENEICH: We have termed it a
2 supplemental PSA --

3 HEARING OFFICER VALKOSKY: I -- I
4 understand, but --

5 MS. GRUENEICH: -- rather than a
6 revision of the analysis that has already been
7 done.

8 HEARING OFFICER VALKOSKY: Right. And
9 that's -- that's essentially semantic, I think.

10 Do you have anything else to clarify the
11 Committee's understanding of the motion?

12 MS. GRUENEICH: Not --

13 HEARING OFFICER VALKOSKY: You -- I'm
14 sorry, go ahead.

15 MS. GRUENEICH: Not at this time. I'm
16 sorry I interrupted.

17 HEARING OFFICER VALKOSKY: Okay. I'm
18 sorry, you didn't file any --

19 MR. AJLOUNY: No, I just wanted to make
20 a comment that when you put Preliminary Staff
21 Assessment, there's a long time to make comments,
22 and with the final coming out we don't have that
23 same long time to make comments. And that's the
24 only difference.

25 HEARING OFFICER VALKOSKY: Okay. Could

1 you identify yourself for the record, please?

2 MR. AJLOUNY: Yes. My name is Issa
3 Ajlouny.

4 HEARING OFFICER VALKOSKY: Okay. And
5 sir, I'd like to remind you right now I'm trying
6 to limit the comments to the parties that filed
7 for more responses in relationship to the
8 Committee order. I don't believe you did. So
9 we'll provide you an opportunity as time permits.
10 Okay?

11 Mr. Williams.

12 MR. WILLIAMS: Yes, sir.

13 HEARING OFFICER VALKOSKY: Do you have
14 any further clarification on the -- because you
15 also filed a motion to reissue the PSA. Do you
16 have anything to assist in our clarification?
17 Assist in clarifying the motion?

18 MR. WILLIAMS: I think at this time I
19 don't. I'd prefer to deal with my comments under
20 Item 2 of your agenda. I --

21 HEARING OFFICER VALKOSKY: Okay. That's
22 fine.

23 Mr. Wade, on behalf of Santa Teresa
24 Group.

25 MR. WADE: I have no further

1 clarifications at this time.

2 HEARING OFFICER VALKOSKY: Okay.

3 Is Mr. Boyd or a representative of CARE
4 present? Note for the record there is no
5 response.

6 Staff, do you have anything to add on
7 the reissuance of the PSA motion?

8 MS. WILLIS: Mr. Valkosky, I don't
9 believe we do. I believe that we've covered it
10 all in our written statement.

11 We just wanted to reiterate that under
12 CEQA and also through the Warren-Alquist Act, and
13 through our own regulations, we were required to
14 do a PSA, that we were following the Committee's
15 original order, and we believe that we did follow
16 that, and that we did provide an initial Staff
17 independent analysis. We did cover all topic
18 areas. We do understand that there are some --
19 there is information that's missing. We are
20 confident that that will be handled during our
21 Final Staff Assessment.

22 HEARING OFFICER VALKOSKY: Thank you.

23 Mr. Harris.

24 MR. HARRIS: Just briefly. We would
25 make ourselves first available if you have any

1 questions or clarifications on our written
2 comments.

3 HEARING OFFICER VALKOSKY: No, I don't.

4 MR. HARRIS: And then second, we have
5 had an opportunity to read the position filed by
6 Staff and believe they did a very thorough job,
7 and would associate ourselves with those remarks.

8 HEARING OFFICER VALKOSKY: Mr. Harris.

9 I'd like to note that Chairman Keese has
10 just joined us.

11 I have one question before we move off
12 this motion. Ms. Grueneich, what would be the
13 benefit of reissuing, or filing a supplemental
14 PSA, as opposed to proceeding directly to a Final
15 Staff Assessment, followed by some workshops, and
16 then an extended period for other parties to file
17 testimony? Would there any substantive difference
18 in your mind?

19 MS. GRUENEICH: Yes. In our mind that
20 probably is the heart of why have made this
21 request, that we have, in part because we were
22 concerned with the responses that perhaps we
23 hadn't been clear enough of where we felt the
24 omissions were, and why they mattered. We've
25 taken the liberty of -- and we won't interrupt

1 now, but it is available and we'll pass it out --
2 of a document which it's up on poster boards, but
3 this gives the citation to the missing analysis in
4 the PSA, and we've identified 65 areas.

5 The key, in our mind, is what happens in
6 the normal process. If this had been in the PSA,
7 what we would've had happen was that there
8 would've been public comment on the analysis that
9 had been done. I mean, these are omissions.
10 There is nothing that addresses these items in the
11 document.

12 And what that would've done is that the
13 public would have been able to have responded on
14 these areas and provided the Staff with the
15 benefit of their thoughts that perhaps this was an
16 incorrect fact, perhaps that there was another way
17 of looking at it, whatever. And this would've
18 been something the Applicant obviously could've
19 done, as well.

20 The Staff would've then taken that
21 information -- and this, to me, is the heart of
22 the process that is normally set up -- and used
23 that information in developing the FSA, which then
24 becomes essentially the Staff position in the
25 case.

1 And then we move into litigation where
2 everybody gets their lawyers, or whatever, and you
3 have what in my mind are fairly solid positions at
4 that time. There's not a lot of opportunity for
5 discussion or trying to reach agreement.

6 If I could continue. With this step
7 now, what we're going to have for the first time
8 is in the FSA really seeing what is the analysis,
9 what is the conclusion, what are the proposed
10 conditions. And from the public's viewpoint,
11 then, instead of being able to sit down and
12 discuss this with Staff and say okay, for any of
13 these areas what we're seeing to be actual facts
14 presented and the conclusion for the first time,
15 we think this is a more reasonable approach, or
16 whatever. That whole discussion is cut off
17 because we move from the FSA into filing of formal
18 Intervenor testimony, and then a formal
19 adjudication.

20 And so in my mind, the heart of what we
21 are losing through the process we're talking about
22 is from the Intervenor and public viewpoint, they
23 don't get that reactive step that we would
24 normally get when they have presented their
25 analysis in the PSA, they then look to the public,

1 they look to the Applicant, they look to
2 Intervenors, for any areas they may have missed,
3 and that then becomes the basis of what is
4 actually their position in the FSA, and therefore
5 the position in the case.

6 What we're going to have now is that the
7 Staff is going to move directly from the FSA
8 without the benefit of public input or comments on
9 these 65 areas, into what is their position in the
10 case. And we think that if --

11 HEARING OFFICER VALKOSKY: Did you --

12 MS. GRUENEICH: -- were some input, that
13 would help.

14 HEARING OFFICER VALKOSKY: Excuse me.
15 Did you not provide these asserted omissions to
16 Staff in your PSA comments?

17 MS. GRUENEICH: That's the point. We
18 have listed the omissions, but that's -- there
19 isn't, for example --

20 HEARING OFFICER VALKOSKY: No, I really
21 don't want to get into detail on it, Ms.
22 Grueneich.

23 MS. GRUENEICH: -- a MACT -- I
24 understand, but let me just -- we have noted at
25 the PSA notes MACT analysis and conclusions for

1 any of these. It's not there. So our comments
2 can be here. This issue isn't there. There isn't
3 a conclusion on it.

4 HEARING OFFICER VALKOSKY: Okay. I
5 understand.

6 MS. GRUENEICH: And so we can't
7 replicate through our comments, if there had been
8 the facts, what would be the analysis.

9 HEARING OFFICER VALKOSKY: I -- I
10 understand. Thank you for that clarification.

11 Did you have something?

12 MR. WILLIAMS: Mr. Hearing Officer.

13 HEARING OFFICER VALKOSKY: Mr. Williams.

14 MR. WILLIAMS: Could I offer one
15 additional clarifying point. In my mind, this --
16 this project is somewhat unique, because we have
17 seen a major change come along. These things only
18 happen once every five or ten years, and this is
19 the availability of a new technology for air
20 control. So there is a entire issue that surfaces
21 under best available control technology that would
22 be best to ventilate, with additional discovery,
23 and it would be best to ventilate that in the
24 course of a second PSA, rather than in evidentiary
25 hearings.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you. I just want to make sure I understand
3 everybody's position. That's really what I'm
4 trying to do now.

5 Thank you, sir.

6 Oh, I'm sorry. Mr. Boyd?

7 MR. BOYD: Yes.

8 HEARING OFFICER VALKOSKY: Representing
9 Californians for Renewable Energy. Okay. You've
10 arrived late. Basically, I've explained the
11 ground rules, that I'm trying to -- rather than
12 having everyone present their position, just state
13 the Committee's understanding of the issue and
14 have the parties respond as appropriate.

15 And I believe you walked in on the tail
16 end of the first of the motions that we're dealing
17 with, the reissuance of the PSA. Have you heard
18 Ms. Grueneich's discussion of it, and anybody
19 else's?

20 MR. BOYD: I've read through the motion,
21 and I -- basically CARE concurs with their motion.

22 I'm sorry, Michael Boyd. Okay. So,
23 yes, and I also provided some written brief on the
24 matter, as well.

25 HEARING OFFICER VALKOSKY: I understand.

1 And I say just substantively, there's a lot of
2 these motions that overlap, so I'm just trying to
3 consolidate them, deal with them at once. So,
4 okay.

5 MR. BOYD: Okay. That's fine. I
6 understand.

7 HEARING OFFICER VALKOSKY: Okay, good.
8 So you have -- you basically agree with -- you
9 agree with CVRP.

10 MR. BOYD: That's correct.

11 HEARING OFFICER VALKOSKY: Okay. Thank
12 you.

13 PRESIDING MEMBER LAURIE: Mr. Valkosky,
14 and Mr. Boyd, while I have you here. Certain
15 members of the Commission get e-mails from you,
16 unsolicited. I'd ask you to delete the
17 Commissioners and the Hearing Officer for a
18 concern that such may constitute an ex parte
19 communication.

20 MR. BOYD: Yes, I did do that once, and
21 I was notified by the Public Adviser's office that
22 I shouldn't do that anymore.

23 PRESIDING MEMBER LAURIE: Okay. That's
24 fine. Thank you.

25 HEARING OFFICER VALKOSKY: Thank you.

1 The next motion, consolidated motion we
2 have before us is the motion to terminate the AFC,
3 and this arises in filing from Santa Teresa, CARE,
4 and Mr. Williams.

5 As the Committee understands the motion,
6 and it is similar to several motions filed earlier
7 this year, basically, as we understand it, the
8 relief would be the same; that is, that the AFC be
9 terminated, but this time alleging new grounds
10 that the PSA identifies significant, as yet
11 unmitigated impacts.

12 Is that a correct summary of the
13 substance of the motion, Mr. Williams?

14 MR. WILLIAMS: Not quite, sir. Let me
15 -- I think there are two classes of defects,
16 severe unmitigated adverse impacts, and then
17 severe impacts that might be mitigated by future
18 design changes.

19 Now, in my first submittal I prepared a
20 five-page table which listed the column of severe
21 impacts. Let me direct your attention to page
22 five. This left-hand column has impacts which
23 arguably will not be mitigated by design changes.
24 I'll give you a moment to find that material.

25 This was my filing of June 30th, and I

1 notice it was not brought to the proceeding
2 tonight, but I left two copies at your desk there.
3 Yes.

4 So, okay. Directing your attention to
5 that, and then to my summary, I didn't quite know
6 how you were going to run the meeting tonight, but
7 I have the -- I think the best argument is that --

8 MR. HARRIS: I'm sorry, which documents
9 are we looking at?

10 MR. WILLIAMS: We're looking at my June
11 30th submittal, which indicated in the first
12 paragraph that it was input to the schedule
13 conference.

14 HEARING OFFICER VALKOSKY: To his
15 comments on the PSA, I believe.

16 MR. HARRIS: PSA comments?

17 MR. WILLIAMS: Yes, PSA --

18 MR. HARRIS: So that's not in the back
19 of the room.

20 MR. WILLIAMS: That is the one that's
21 not in the back of the room. The second one is my
22 June 10th filing on these -- specifically for the
23 scheduled conference.

24 And now a third document I would direct
25 your attention to is my five minute handout for

1 this meeting. I was under the impression I might
2 have as little as five minutes to talk.

3 So it strikes me as common sense that if
4 a design change won't fix problems because the
5 defects are at the site, then we should hold a
6 hearing before we do another six months' worth of
7 work on design changes. There are numerous
8 defects at the site that relate either to the
9 aerodynamics of the hill, they relate to the noise
10 reflection from the hill, which make it arguably
11 act like an amphitheater, amplifying the noise to
12 the south. There is, of course, the whole issue
13 of local ordinances and regulations, zoning.

14 Now, we have not been able to design a
15 power plant that is as quiet and as innocuous as
16 an office building. So all of these things
17 arguably disqualify the plant at this site. And
18 we believe it would save everybody between six
19 months and a year more trouble if you either, as a
20 result of this hearing, would say yes, we see
21 these as a basis for rejection, or would schedule
22 a specific hearing of the Committee to address the
23 items that are on pages five through nine of my
24 June 30th submittal, and which I allege are
25 defects which will persist independent of design

1 changes.

2 Thank you.

3 HEARING OFFICER VALKOSKY: Thank you for
4 that clarification, Mr. Williams. I appreciate
5 it.

6 Mr. Wade, do you have anything to add to
7 this as part of Santa Teresa's motion to --
8 contained in the papers?

9 MR. WADE: We have a -- a single
10 sentence in our submittal on comments that
11 suggested that a preferred approach would be to
12 find some mechanism for cancelling the -- the
13 application, due to the -- possibly clear design
14 information and the severe unmitigated impacts.

15 We don't have anything to add to that --
16 that single sentence. We await your design.

17 HEARING OFFICER VALKOSKY: Thank you.

18 Mr. Boyd, this was contained in your
19 papers, too?

20 MR. BOYD: Yes. Unfortunately, in my --
21 in my status brief I basically stated that we
22 would have a motion from CARE. Unfortunately, I'm
23 not an attorney, so I wouldn't -- wouldn't pretend
24 to be able to know all the reasons legally why we
25 should encourage you to rescind or disapprove the

1 AFC at this point.

2 What I do know, from speaking to our
3 attorney, is that the issue, the main issue has to
4 do with the alternatives analysis and the fact
5 that the project isn't the preferred alternative.
6 And also, the fact, as I raised it earlier,
7 workshop with -- there's no longer a need basis
8 anymore. That's been abolished from the Warren-
9 Alquist Act.

10 So, but I can't pretend to know what --
11 specifically what is going to be raised, so --

12 HEARING OFFICER VALKOSKY: Are you --

13 MR. WADE: -- I concur, obviously, that
14 I feel there's a number of significant adverse
15 unmitigated impacts still present in the project,
16 and certainly that should be grounds in itself.
17 But the specific details of why I think legally
18 you should turn it down now, I can't tell you.

19 HEARING OFFICER VALKOSKY: Okay. Is
20 your attorney, in fact, going to file a motion on
21 this?

22 MR. WADE: He's working on it right now,
23 yes. He's researching --

24 HEARING OFFICER VALKOSKY: Do you know
25 when he'll --

1 MR. WADE: -- the matter.

2 HEARING OFFICER VALKOSKY: -- when he'll
3 file the motion by?

4 MR. WADE: Oh, well, he was planning on
5 doing it by today, but it's -- he basically told
6 me in order to make it a useful endeavor on his
7 part, he needs more time. I imagine that in two
8 weeks would be a conservative estimate for what
9 he's going to need.

10 HEARING OFFICER VALKOSKY: So, roughly
11 early August.

12 MR. BOYD: Yeah, early August.

13 HEARING OFFICER VALKOSKY: Okay.

14 MR. BOYD: The first week of August.

15 HEARING OFFICER VALKOSKY: Mr. Harris,
16 if such a motion is filed, I assume you'd want
17 time to respond to it?

18 MR. HARRIS: I'm not sure we'd need a
19 lot of time to respond to it, Stan, Mr. Valkosky.
20 We would probably be able to do that relatively
21 quickly. I would say ten working days, at the
22 most.

23 HEARING OFFICER VALKOSKY: Ten working
24 days response time.

25 Ms. Willis, would Staff respond to such

1 a motion?

2 MS. WILLIS: We'd take that into -- we'd
3 take that into consideration. I'm not sure that
4 we would actually file a written response.

5 HEARING OFFICER VALKOSKY: Okay. Do you
6 have any -- does Applicant have any oral responses
7 based on the statements of Mr. Williams and Mr.
8 Boyd at this time?

9 MR. HARRIS: Just a couple, and actually
10 these would probably apply as well to the previous
11 motion.

12 A couple of observations. There's been
13 discussions about so-called omissions from -- from
14 the document. In our view, really what that boils
15 down to is an attempt to accelerate the process.

16 HEARING OFFICER VALKOSKY: Mr. Harris,
17 we've passed -- we've passed reissuing the PSA.
18 Okay. Now we're on terminating the AFC. I really
19 want to keep these distinct.

20 MR. HARRIS: Okay, that's fine. Then
21 let me make just one comment, that I think there's
22 generally an effort here to characterize the
23 mitigation measures as project changes, and I
24 think that's an important distinction to draw,
25 that a lot of the documents that have been

1 submitted have been submitted specifically for the
2 purpose to provide mitigation. They don't involve
3 changes to the project. And I would just make
4 that distinction and clarification.

5 HEARING OFFICER VALKOSKY: Okay. Thank
6 you.

7 Staff have anything final on terminating
8 the AFC?

9 MS. WILLIS: Nothing further.

10 HEARING OFFICER VALKOSKY: Okay. Thank
11 you.

12 The next motion has to deal, at least in
13 the mind of the Committee, with project
14 description. And I would like to explain this a
15 little bit.

16 As the Committee sees it, the question
17 is whether the Applicant intends to use SCR or
18 SCONOx as the air abatement technology, and the
19 papers also contain a certain amount of questions
20 over the cooling technology the Applicant
21 proposes. A subsidiary related request appears in
22 Santa Teresa's filings, requesting that the
23 Applicant provide, and I'm quoting, "a single
24 defining document describing the project."

25 Mr. Williams and Mr. Wade, is that an

1 accurate representation of that part of your
2 motions? And again, my view is the project
3 description question. Mr. Williams, I think you
4 specifically raised concerns over the air
5 abatement technology and the cooling technology?

6 MR. WILLIAMS: Yes. Let me try to make
7 sure that I'm not being too quick to reply. Let
8 me give you a considered response.

9 The underlying issue is still that there
10 are two, and possibly three, interrelated design
11 issues. The -- you've characterized them as the
12 wet versus dry cooling, the best available control
13 technology, whether ammonia or SCONox is used.
14 And the third issue relates to the aerodynamic
15 effects of the Tulare Hill, whether this will
16 cause greater down-wash than the Applicant has
17 estimated, and whether the stacks on the buildings
18 there are tall enough to keep the combustion gas
19 fumes and the cooling tower plume out of the
20 office park in the turbulent wake of the hill.

21 Now, it's still my contention that we
22 need to continue in a period of discovery, and we
23 need to get -- have some forum to make these
24 changes on a timely basis. On page two of my oral
25 arguments today I've -- I've indicated a schedule

1 that to me makes engineering sense. We deal with
2 hearings or workshops, call them what you will,
3 that resolve these three issues, and following
4 that we then come forward with a definition of the
5 design, a project description, as you describe it.

6 HEARING OFFICER VALKOSKY: Okay. Thank
7 you.

8 Mr. Wade.

9 MR. WADE: Yes. We did have some --
10 some clarifications to add to your
11 characterization of our request for formal
12 definition of the project.

13 Our primary objective in all of these
14 proceedings is to ensure that the neighborhood
15 participants have reasonable access to information
16 and can make assessments of the impact on their
17 community. And we've filed a motion early on in
18 the proceedings pointing out some of the problems
19 that we encountered at that time.

20 The problems have only gotten worse, in
21 terms of understanding what it is that the project
22 actually entails. There's a huge amount of
23 documentation, it takes up a whole corner of a
24 room in one my rooms in my house. We request that
25 a compilation of the current baseline of the

1 project be put together and released to the public
2 so that we have some -- a common baseline on which
3 to base our comments.

4 HEARING OFFICER VALKOSKY: What -- what,
5 in your opinion, would constitute a common
6 baseline, as you phrase it?

7 MR. WADE: Well, there was an AFC early
8 on, and then there were supplements to the AFC,
9 and then there were data requests. What I would
10 ask is that we -- we go back to a -- the original
11 AFC and produce another document like it, which is
12 in one binding, or one set of bindings, that we
13 can all point to and talk about in a common --
14 common baseline.

15 HEARING OFFICER VALKOSKY: Okay. But,
16 and again, I -- I think we may get into some
17 trouble here, because the AFCs contain an awful
18 lot of information describing the project impact
19 and -- and other things, and things other than the
20 physical components of the project. And I guess
21 I'm not sure if you want all of that description
22 or if you're unsure as to what the core physical
23 components of the project are.

24 MR. WADE: I would like the project
25 description to contain all design

1 characterizations, a description of the location
2 of the power plant, the physical appearance of the
3 power plant, the emission levels of the power
4 plant, all those attributes that could cause some
5 impact on the -- on the neighborhood.

6 It's -- it contained, I think, a whole
7 lot of revisions and supplements. I'm not asking
8 for simply binding all the data request responses,
9 but a filtering or a recompilation of all the
10 pertinent data, because it has evolved.

11 HEARING OFFICER VALKOSKY: Okay. Now,
12 how about the project as it is described in the
13 current Preliminary Staff Assessment. I mean,
14 that -- that does have a separate distinct section
15 saying project description, and then it goes on to
16 describe the various attributes.

17 MR. WADE: Well, it didn't satisfy my --
18 my need for a -- for a description of the project.
19 I'd kind of like to see it expanded.

20 HEARING OFFICER VALKOSKY: In -- in what
21 respect didn't it -- did you find it less than
22 satisfying?

23 MR. WADE: Well, I -- I found that it
24 was a reasonable summary, but it was -- it was too
25 terse. I'd like to see something that's complete.

1 HEARING OFFICER VALKOSKY: And by
2 complete, you mean extremely detailed?

3 MR. WADE: Yes.

4 HEARING OFFICER VALKOSKY: I mean,
5 again, when I say -- when I say extremely
6 detailed, I'm referring to the level of detail
7 that was contained in an AFC, in the AFC.

8 MR. WADE: That would be -- that would
9 be my goal, right. Something about the same level
10 of detail as the AFC. Falling short of all the
11 supplemental data request responses.

12 HEARING OFFICER VALKOSKY: Okay. Thank
13 you.

14 Mr. Harris, any response?

15 MR. HARRIS: Just a couple of
16 observations. Number one, in our monthly status
17 reports, which at the end of those status reports
18 we have basically a compilation table that showed
19 -- cross reference the AFC sections with the
20 subsequent filings, and we've kept that up to
21 date, and I think that's a useful thing for us to
22 include the status reports, and actually we'll
23 file future status reports. So we're committed to
24 doing that. And I think between the AFC and that
25 document, the status report, you have a very good

1 project description.

2 I also agree that the Preliminary Staff
3 Assessment does a very good job of describing the
4 project, and -- on a going forward basis. It's a
5 good reference, and a good summary of the project
6 description. And I appreciate the fact that this
7 is a difficult and a complex issue, but I think
8 that the information is available.

9 HEARING OFFICER VALKOSKY: How much of a
10 burden would it be for Applicant to essentially
11 provide updated versions of the AFC? And by
12 updated versions, I mean current versions which
13 incorporate the various supplements that have been
14 filed.

15 MR. HARRIS: I think it would be a
16 significant burden, on the order of tens or
17 hundreds thousands of dollars in staff time.

18 HEARING OFFICER VALKOSKY: Tens or
19 hundreds. Which is it?

20 MR. HARRIS: I think hundreds, actually.
21 It has to be done on a monthly basis, for example,
22 and it can be quite expensive.

23 HEARING OFFICER VALKOSKY: And that is
24 due to what, printing costs, or --

25 MR. HARRIS: Actually, production,

1 mailing. But mostly staff time. We have to have
2 someone who can compile the information, do the
3 checking to make sure that it's all there, it's
4 all correct, and it's all accurate. And, quite
5 frankly, I'm also concerned that it would set us
6 up in a situation where someone could come back
7 later and say a document was omitted, that we
8 relied on the Applicant's characterization of the
9 project, and they essentially didn't give us a
10 proper characterization. I think that's a very
11 real legal challenge that we might face if we were
12 asked to create something that I think, you know,
13 Applicant's going to --

14 HEARING OFFICER VALKOSKY: Okay. Yeah,
15 I'm -- I'm less worried about -- about theoretical
16 legal jeopardy than -- than getting the
17 information to the people participating in this
18 process. So if you just --

19 MR. HARRIS: And that, again, is the
20 purpose of the table. If there's something that
21 we can do to make that table more accessible, or
22 more useful to the parties, we're definitely
23 willing to talk about it, we might talk about
24 that. But to become basically, you know, a
25 catalog or a clerk in -- of all the documents for

1 all the parties I think is extremely burdensome.

2 So if you have specific suggestions,
3 we're willing to sit down with Intervenors and --
4 and Staff, and figure out how to make the table on
5 the status report more useful to them.

6 HEARING OFFICER VALKOSKY: Ms. Willis,
7 do you have any observations on this?

8 MS. WILLIS: As Staff, we do agree that
9 -- and sympathize with the large volume of paper
10 that's come through. I -- I have a small office
11 as well, and I understand how much -- how much
12 paper there is.

13 We do feel that we -- that Staff has I
14 think sufficient understanding of the project, and
15 -- and have characterized that in the Preliminary
16 Staff Assessment.

17 HEARING OFFICER VALKOSKY: Okay, one
18 second, Mr. Williams.

19 How much of a -- of a burden on Staff,
20 or how useful does Staff think it would be to add
21 more description to the Staff Assessment, as
22 suggested by Mr. Wade?

23 MR. RICHINS: In our project description
24 it is very general at the beginning of the
25 document, and then within each of the technical

1 areas where there is need to describe additional
2 information, Staff has done that. But it's not
3 done in the detail, I think, that Mr. Wade is
4 looking for, and I don't believe Staff would ever
5 get to the point of detail that -- that he is
6 looking for.

7 We can provide a little bit additional
8 detailed information, but it would then become a
9 very large document, and we're trying to cut down
10 the volume of the document, rather than make it
11 larger.

12 HEARING OFFICER VALKOSKY: It is a very
13 large document.

14 MR. RICHINS: And it would become -- it
15 could become much larger.

16 HEARING OFFICER VALKOSKY: Okay, thank
17 you.

18 Mr. Williams. I'm sorry, Ms. Grueneich.

19 MS. GRUENEICH: Mr. Valkosky, something
20 occurred to me that might be sort of a compromise,
21 without requiring a great burden on the Applicant
22 or the Staff, because I think what we heard from
23 the Staff is that they feel comfortable that they
24 do understand, from the various iterations of the
25 AFC and the supplements and the data requests and

1 responses, basically what the project is, and
2 therefore feel comfortable analyzing it.

3 What I think of as Intervenors, we are
4 faced with at some point in time after the FSA
5 comes out to then sit back and prepare testimony.
6 And at that point in time, I think from the
7 Intervenors' viewpoint, that's when it's going to
8 be a bit confusing because we will have the FSA
9 that will go through and talk about the project
10 and impacts, but we'll also have a whole multitude
11 of documents from the Applicant, some of which we
12 know will have been superseded because between the
13 filing of the AFC and the FSA, the Applicant has
14 made changes or mitigations, a change in a
15 positive direction to the project, and that that
16 is resulting in additional impact.

17 So one compromise we might do, and I
18 think probably we could even defer it, I just
19 throw it out for consideration, is that in the
20 time period between the FSA and the filing of
21 Intervenor testimony, that we do ask the Applicant
22 to at least identify those portions of the
23 original AFC that have been superseded, and
24 perhaps identify the document that it is located.
25 Not to provide additional documentations, but just

1 something, I'm thinking, so that it seems to me
2 it's in everybody's interest that the testimony is
3 really based upon at that point in time what's the
4 project, and we don't get into a situation at the
5 hearing where, you know, people aren't quite sure
6 they've got the right information.

7 HEARING OFFICER VALKOSKY: Right. No, I
8 think -- I think that's a constructive suggestion.
9 Mr. Harris, clarify me if -- if I'm misstating
10 this, but isn't this also one of the purposes that
11 the charts you provide with your status report are
12 to serve?

13 MR. HARRIS: It's actually the --
14 precisely the purpose. And is that's not
15 accomplishing that purpose, we can talk about how
16 to make it better. But that's -- that's our
17 intent, Stan. Mr. Valkosky.

18 HEARING OFFICER VALKOSKY: Right. So, I
19 mean, I agree with the substance of your remarks,
20 Ms. Grueneich, that when Applicant files a
21 supplement or a project design change that
22 supersedes what was presented in the AFC, that
23 that should clearly be designated. And again,
24 that is one of the reasons the Committee is
25 requiring these updates from Applicant on its

1 status reports.

2 MS. GRUENEICH: And I guess all I'm
3 saying is I'm thinking that maybe we pick some
4 period of time where we make sure, as opposed to
5 everybody's able to interpret perhaps 15 different
6 reports --

7 HEARING OFFICER VALKOSKY: Right. No.

8 MS. GRUENEICH: -- that we're all on the
9 same wave length.

10 HEARING OFFICER VALKOSKY: Yeah,
11 basically I guess you're looking --

12 MS. GRUENEICH: We can -- we can
13 probably sit down and figure out how to do it.

14 HEARING OFFICER VALKOSKY: -- you're
15 looking at kind of a cumulative update list, I
16 guess that would be the way to put.

17 Well, I think that's a -- that's a
18 suggestion that -- that may appear for Applicant
19 the next time status reports are filed.

20 MR. WILLIAMS: May I --

21 MR. WADE: Also, I have a comment that
22 I'd like to add.

23 HEARING OFFICER VALKOSKY: Okay, Jeff.
24 Mr. Williams, first.

25 MR. WILLIAMS: My background is in

1 nuclear plant licensing, and the description that
2 we have of this plant would not cut it in a
3 nuclear plant licensing hearing. There have been
4 too many changes and too much ambiguity.

5 Now, I don't think it's an undue burden
6 on Mr. Harris, but I'll let him reply in just a
7 moment. Presumably, all the work that's gone into
8 this design will manifest itself in a similar
9 future application. So I don't think it's too
10 much at all to ask that the iterations and changes
11 that have been made in this process be distilled
12 down into a single volume that is the plant
13 description as it currently stands today.

14 And it should serve as a starting point
15 for his next Application for Certification. He
16 promises that the company is going to build many
17 more, so while it may appear to be a burden to
18 this project, it certainly will be a great
19 simplification to future projects, and it should
20 be required.

21 HEARING OFFICER VALKOSKY: Okay. Thank
22 you, Mr. Williams. Thank you for that
23 clarification. We understand your position.

24 Mr. Wade, you have something to add?

25 MR. WADE: I just wanted to offer the --

1 a little bit more of our objective here. If you
2 imagine a person in the neighborhood who's going
3 to the library to try to understand what this
4 project is, there would be no hope for that person
5 to understand it at this point.

6 I appreciate some of the suggestions
7 that have been made. I would offer another one,
8 which is that the Applicant -- and I don't want to
9 put additional burden on the Staff, I think
10 they've done a good job with the -- the PSA. I
11 think the burden of demonstrating what the project
12 is should be on the Applicant's part, and I -- no
13 offense intended, of course.

14 I think another suggestion would be to
15 provide a fairly comprehensive document somewhere
16 in the timeframe of the PSA, or the FSA, which
17 defines in total the -- the project for -- for
18 review. I don't think we need to have a document
19 upgrade every -- every month or so, I think that
20 would be overkill.

21 So that -- my guess would be one version
22 of the AFC at the time period of the DSA or the
23 FSA.

24 HEARING OFFICER VALKOSKY: Okay. Thank
25 you.

1 Mr. Boyd.

2 MR. BOYD: Well, first off, I'm
3 concerned that we're losing the focus of why it's
4 -- why we need one document that we can
5 understand. We're doing this so the general
6 public can understand the process and be involved,
7 and you can encourage the public to be involved in
8 this process. If -- if there's a bit of
9 information here and a bit of information there,
10 and a bit of information there, there's no way for
11 the public to be meaningfully involved.

12 Now, it was suggested that the PSA was a
13 example of -- maybe an example of what Jeff and
14 Bob were trying to achieve, but from my
15 perspective, you can see by the list of omissions
16 there that there's so many missing sections of
17 data that it's not comprehensive enough yet for
18 the public, let alone the Intervenors, to
19 understand the description of the project.

20 So really, I think -- I would concur and
21 go back to the original suggestion, which is that
22 we need one document that we can point to that's
23 the answer to all the questions, that identified
24 all the design criteria, and identified all the
25 impacts, and identified all the mitigation in

1 enough detail so that a member of the public can
2 understand it. And we don't have that yet. If we
3 had that, we wouldn't have these motions here
4 today.

5 That's all I have to say.

6 HEARING OFFICER VALKOSKY: Okay. Thank
7 you, Mr. Boyd.

8 PRESIDING MEMBER LAURIE: A question of
9 the motion maker. At such time as -- as a
10 singular document were to be submitted, would the
11 Intervenors then allege that the environmental
12 analysis must start anew based upon for the first
13 time, in your view, a complete project
14 description?

15 MR. BOYD: That's a loaded question.
16 How can we answer it without seeing the document?

17 MR. WILLIAMS: I -- I am not the motion
18 maker, so let me respond, Commissioner Laurie. If
19 -- if the -- I will answer the question without a
20 "if". But provided that the document faithfully
21 reflects the current plant design, then I would
22 not require a de novo environmental analysis.

23 I think what we're trying to do is
24 capture like five or six changes in some area, and
25 get to the point that is consistent with the

1 environmental analysis. So I'm not trying to use
2 that as an excuse for another turn of the screw;
3 rather, to be able to, for example, have a book, a
4 book only this thick, that when I'm getting ready
5 for evidentiary hearings I can say Table X on page
6 Y describes the air purification system, and I
7 have these questions about the capability.

8 Now, it's not very easy to find that
9 Table X about the air purification system.

10 PRESIDING MEMBER LAURIE: Is there a
11 question of substantiality here. That is, are
12 there some modifications to the project that might
13 be deemed substantial because they would result in
14 environmental impacts not otherwise considered
15 under the pre-modified description. Or -- or are
16 there some modifications to the project
17 description that are not so substantial because
18 any environmental -- any additional environmental
19 impacts might be de minimus, as an example.

20 MR. WILLIAMS: Well, let me just give
21 two examples. I've argued that -- in my handout
22 that's in front of you, that there need to be two
23 or three hearings, one on going from wet to dry
24 and one on the air quality, and these would indeed
25 be substantive changes because the -- well, I

1 allege that the humidity effects, that is the
2 water fall-out on the hill and the effects of that
3 water on the spotted butterfly and on the
4 groundwater, have not yet been properly dealt
5 with. And that's why I think there needs to be an
6 additional period of discovery and some design
7 changes to minimize that water fall-out.

8 So there's an example where if, indeed,
9 there is a design change, it might change the
10 environmental analysis, but it might change it in
11 a favorable way. Now, it would change it in a
12 favorable way if it had been done correctly today,
13 but since it has not included the water fall-out,
14 there needs to be some recognition of that.

15 MS. GRUENEICH: Commissioner Laurie, in
16 answer to your question. I believe that if the
17 situation where you're talking about, which is
18 there might be a project modification that comes
19 forth, I don't think it matters whether it comes
20 forth in a single filing, for example in response
21 to a data request, or comes forth for the first
22 time in kind of a complete project description
23 that -- the question at that point in time is it a
24 significant enough project change that it requires
25 -- triggers some requirement of analysis.

1 And certainly what I was thinking of,
2 and I thought I had understood what the other
3 Intervenors were talking about, is that nobody is
4 asking the Applicant to do new work in terms of --
5 or, I shouldn't say nobody, I'm sorry. That I
6 don't believe that the gist of much of this
7 request was asking the Applicant to go and do new
8 work in terms of going to another level, but at
9 least from my viewpoint it was that a certain
10 period of time, it would be good for us all to be
11 on the same page as to what is the project that
12 the Applicant is proposing, and that in the course
13 of the proceeding they have made some changes in
14 the project.

15 They would have already presented those
16 changes in the record, through -- whether it's
17 supplements to the AFC or responses to data
18 requests or comments on a document. But just that
19 it's hard to track those.

20 And so, again, I think, at least what I
21 was thinking of, it was information that had
22 already been presented in one form or another to
23 the Commission, so that in response to your first
24 question, at least from my viewpoint, it probably
25 wouldn't trigger some sort of a CEQA challenge

1 because it wasn't a change in the project at that
2 time. It was, you know, it was more just
3 procedural, let's get all the information
4 together.

5 PRESIDING MEMBER LAURIE: Let me attempt
6 to articulate the question I have in mind, and I
7 may not be successful.

8 But would you agree that -- and for the
9 purposes of this discussion, we'll talk about
10 project description as referenced in CEQA
11 guidelines. Would you agree that when a project
12 is described per CEQA guidelines, that the detail
13 of that project does not include all impacts that
14 will have to be studied for further mitigation.
15 For example, if you're describing a residential --
16 a housing project. I don't think the project
17 description talks about necessarily the height of
18 the houses that might impact shade, or -- or
19 growth of -- of fauna. But certainly, in your
20 impact analysis, it does so.

21 So my question is, is what is the
22 concern regarding the project description? Is the
23 concern that all of the impacts have not -- have
24 not as yet been adequately identified, or is it
25 the concern that the public is confused about the

1 project is, which is my understanding of what CEQA
2 talks about when they ask you to do a project
3 description.

4 So my understanding of -- of CEQA
5 guidelines, for example, does not require all
6 impacts to be identified in a project description,
7 but rather a sufficient description so that the
8 public is properly informed as to the basic nature
9 of the project.

10 And I'm trying to discern which -- which
11 comes closer to your concerns. Is it an
12 identification of the impacts, or is it confusion
13 by the public as to what the project is.

14 MR. WADE: I -- I can offer a partial
15 answer. I can speak for -- for myself and some of
16 us who have discussed it.

17 I think both problems exist for this
18 project. The primary purpose of -- of my request
19 was for the latter, which is to address the
20 confusion on the part of the public. I think that
21 -- that this project description, as other
22 intervenors suggested, would be a compendium of
23 the existing documentation, so it wouldn't --
24 wouldn't create a new -- a new entity for
25 litigation. That's not our -- that's not our

1 goal.

2 I do think, though, that the omissions
3 have to be addressed in a separate motion.

4 PRESIDING MEMBER LAURIE: Okay, that's
5 helpful. Thank you, sir.

6 HEARING OFFICER VALKOSKY: Thank you.
7 Anything else on this general -- the substance of
8 this general motion?

9 MR. HARRIS: Another clarification on
10 the status reports we put together. Month to
11 month, anything new that was added to the table
12 was underlined, so the people can go back and
13 figure out what had changed since the last monthly
14 filing. I wanted to bring that to your attention.

15 HEARING OFFICER VALKOSKY: Okay. You
16 can be sure the Committee will review the last
17 couple of status reports to form its opinion on
18 the clarity of the material.

19 Okay. The next grouping of motions, at
20 least in the Committee's mind, concerns the
21 elements of the Staff Analysis. And this has been
22 raised in the motions filed by CVRP, Santa Teresa,
23 and Mr. Williams.

24 And in this -- in this topic area, at
25 least in my reading of the motions, deals with a

1 couple of things. One, CVRP and Santa Teresa
2 mentioned the desire/clarification of the role of
3 a need analysis in this case.

4 Mr. Williams, in particular, raises
5 several issues including the top down air quality
6 analysis, analysis of the aerodynamic effects of
7 Tulare Hill, analysis of alternative cooling
8 technologies, a need for a year of air quality
9 monitoring data, a concern over the enforceability
10 of conditions of certification.

11 And I think what would assist the
12 Committee in deciding this matter is, first,
13 knowing to what extent Staff's analysis will
14 incorporate any of these items.

15 Now, before I ask Staff to explain that,
16 have I left anything out in this -- this
17 consolidated motion? I think Mr. Williams, you
18 had the most elements in yours.

19 MR. WILLIAMS: Yeah. You summarized
20 them pretty well, and I'll briefly check here to
21 make sure there's nothing left out.

22 HEARING OFFICER VALKOSKY: Okay. Ms.
23 Grueneich, the other major part of your motion, to
24 my recollection, was the role of a need analysis.
25 Is that correct?

1 MS. GRUENEICH: Right. And it was --
2 certainly I'm aware of the change in the Warren-
3 Alquist Act, so I want to be sure, you know, you
4 don't think that we've missed that. And it was in
5 the context of two ways that we could envision it
6 coming up, and we just basically, as we're
7 thinking about the case, we want to make sure
8 we're on whatever is the wavelength the Committee
9 wants us to be on.

10 But we saw that it could come up in
11 terms of an analysis of project alternatives,
12 where it may be argued that one alternative versus
13 another is more appropriate because it's needed
14 for reliability. And so it's not need per se, but
15 how it triggers into reliability.

16 And then I've also heard discussions
17 that if, as a hypothetical, we do see the City of
18 San Jose making a determination that the project
19 would not be consistent with some of their laws,
20 that there might be then triggered a need for the
21 Commission to review whether they would do a
22 statement of overriding considerations, and in
23 that instance the argument may be presented that
24 the project is needed for reliability, thereby
25 justifying overriding considerations.

1 So it's a couple of different ways I can
2 see it may come up, and we're really just looking
3 for guidance of how the Committee may feel it's
4 appropriate to deal with this issue. And it may
5 be one of first impression, I don't know.

6 HEARING OFFICER VALKOSKY: Well, it is
7 one of first impression. And I think you raise a
8 good point, though.

9 Mr. Wade, you raised the -- the need
10 issue in your papers, too. Did you have anything
11 to add to Ms. Grueneich's statement?

12 MR. WADE: I'd like to ask another
13 member of our group to speak on the subject, if
14 that's okay with you.

15 HEARING OFFICER VALKOSKY: Sure.

16 MR. WADE: This is Mr. Tim Alton.

17 HEARING OFFICER VALKOSKY: Could you
18 repeat your name, please?

19 MR. ALTON: My name is Tim Alton, A-l-t-
20 o-n.

21 The issue of -- as mentioned earlier,
22 the issue of need seems to have come up since the
23 mayor announced his opposition, and the likely --
24 the tradition of the city council vote along the
25 lines recommended by District 2, the district

1 member.

2 I attended the Silicon Valley Energy
3 Summit on June the 9th, where Commissioner --
4 Commissioner Laurie gave a short speech about the
5 CEC role. And well, one of the first things he
6 said was that he wasn't allowed to take questions
7 on that. So a generic question was asked by a
8 Calpine representative, as to what would an
9 override decision be based on. And Commissioner
10 Laurie's response to this was that -- mentioning
11 that need is no longer an issue, although need
12 would be the major issue in an override.

13 What we see in the alternatives analysis
14 is a rejection by the Staff of analyzing the no
15 project position. And obviously the no project
16 position would identify any need, right. But if
17 the no project position can't be -- then this must
18 be a need for the plant. But if no project is
19 okay, then there is no need.

20 The benefits have been identified by the
21 Applicant at various workshops, although there's
22 also, I guess, resisted answering some of the
23 questions, the request from CVRP as to whether
24 it's needed. For instance, we basically at this
25 point we have 20 pages of data submitted by CVRP,

1 about 62 pages of data submitted by the Applicant,
2 as to why this project is or isn't needed, and we
3 have no analysis of it.

4 We've had an engineer from Cal-ISO say
5 that he doesn't agree with the Applicant in the
6 last transmission workshop, but that's not
7 documented anywhere. His analysis is not in the
8 record. So --

9 PRESIDING MEMBER LAURIE: Mr. Alton, let
10 me ask a question at this point. Do you concur
11 that the issue of need is only relevant if there
12 is discussion of override criteria?

13 MR. ALTON: Yes. And I think that
14 Calpine's PR indicated that, you know, they are
15 looking into a override being required.

16 PRESIDING MEMBER LAURIE: Okay. Well, I
17 think that's understood. And I do thank you for
18 the correct quotes. I find that I am quoted most
19 correctly when I say nothing, and I think --

20 (Laughter.)

21 PRESIDING MEMBER LAURIE: -- I succeeded
22 in San Jose the other day. Thank you.

23 HEARING OFFICER VALKOSKY: Okay. Thank
24 you, Mr. Alton.

25 Mr. Boyd.

1 MR. BOYD: I raised this issue at one of
2 the workshops, and basically my -- my concern is
3 that with so many adverse impacts, unmitigated
4 adverse impacts identified in the PSA, it seems to
5 me that there is no way for you to approve any
6 environmental document without a finding of
7 overriding considerations. Unless there's some
8 mitigation that I don't know about yet.

9 But, so it's not just a matter of if the
10 city has -- the city's decision has to be
11 overridden. It's also a matter of whether you
12 need to make findings in order to approve the
13 environmental document.

14 And I -- I posed it as a question, and I
15 posed this question at the earlier workshop, and
16 that is under what statutory authority can you now
17 override on the basis of need, if it's not in the
18 Warren-Alquist Act? And my question still
19 remains.

20 HEARING OFFICER VALKOSKY: Okay. Mr.
21 Williams.

22 MR. WILLIAMS: Yes. Since I went to a
23 lot of work, I'd like to direct your attention to
24 table -- the table in my June 30th submittal, page
25 nine. Beginning on page five, this -- this is a

1 -- the same sequence of topics as is contained in
2 the PSA, in the Staff alternatives analysis. So
3 this material could be pasted in next to that
4 table, and you would have the Staff alternatives.

5 Now, at the end, on page nine, I bring
6 in two possible benefits, the transmission system
7 effects, and we could expand that to the CVRP
8 issue of system reliability, and other benefits.
9 For example, either the need for power or the
10 beneficial use of water.

11 Now, I think all of these issues should
12 be covered in the documentation, so at the time
13 there is this environmental decision on overriding
14 need, that is, is there some basis to override
15 these -- their unmitigated defects, we're not
16 suddenly inventing new arguments from old cloth.

17 Now, on page 16 of my June 30th brief, I
18 said that one of the issues that has been
19 obfuscated in the hearings and workshops to date
20 has been electrical transmission, and the reason
21 is because PG&E and the CPUC get in the act, and
22 then Cal-ISO gets in the act. Now, I actually did
23 system expansion studies myself in 1968. That was
24 a long time ago, so I don't want to pass a quiz.
25 But in my view, there is no reason why there

1 cannot be a publicly available computer model and
2 a publicly available computer database, and we get
3 rid of this smoke screen that comes from some
4 combination of Cal-ISO and other transmission
5 studies. This is dealt with on page 16 of my June
6 30th submittal.

7 Computers have come so far, Internet
8 transmission has come so far, it's impossible to
9 conceive of how you could spend a hundred thousand
10 dollars on a system study, except if you were
11 inventing all the data from whole cloth.

12 So, again, I urge that the issue of need
13 system reliability and transmission effects be
14 documented and carried in the -- both the FSA --
15 the PSA and the FSA documentation so it's there
16 staring at everybody for comment, just like other
17 issues.

18 HEARING OFFICER VALKOSKY: Thank you,
19 Mr. Williams.

20 PRESIDING MEMBER LAURIE: And, Mr.
21 Valkosky, I would just ask that in further
22 discussions, if we're going to talk about
23 overrides, I'd like there to be a recognition that
24 there are two different types of overrides that
25 we're talking about. One is the override as

1 contained in Warren-Alquist, that permits the
2 Energy Commission to license a plant
3 notwithstanding a lack of compliance with local
4 and state regulations. The other is the CEQA
5 directed override, relating to overriding
6 environmental impacts.

7 So when we talk about override, unless
8 you're talking about both, and it's relevant, I
9 would ask the parties to refer to either one or
10 the other to avoid confusion.

11 Thank you.

12 MS. GRUENEICH: Just real quickly, Mr.
13 Valkosky.

14 HEARING OFFICER VALKOSKY: Okay.

15 MS. GRUENEICH: I realize that I may not
16 have been clear why we didn't include it
17 specifically in our comments for this evening.

18 In our comments on the PSA we did note
19 areas where we believe there was additional
20 analysis required by the Staff, or that would be
21 appropriate by the Staff. I'm not certain that I
22 would at this time raise it to the level of a
23 motion, because I think it's more appropriate for
24 the Staff to be analyzing our comments and -- some
25 of which I assume they will say yes, we should

1 analyze it, and I'll accept that there may be some
2 areas they say no.

3 So I just wanted to clarify that point,
4 that there are areas in our comments that we said
5 we believe that it is an issue in the sense that
6 there is need to be Staff analysis. But in my
7 mind, it would be premature, probably, to even ask
8 for Staff for their position, much less make a
9 ruling at this time. But if you wanted to go into
10 it, we could.

11 HEARING OFFICER VALKOSKY: Right. No, I
12 think the only thing now is the Committee is
13 interested in getting Staff's reaction as to
14 whether or not the items I enumerated at the
15 beginning of this session will be included in the
16 next iteration of the Staff assessment. I'm just
17 going to refer to it that way, okay.

18 Mr. Williams, last bite at the apple.

19 MR. WILLIAMS: Thank you, sir.

20 I was so focused on the need issue that
21 there's another very important issue in my laundry
22 list of contentions, that's cited in my June 30th
23 memo as one of the reasons for a second PSA, and
24 this relates to developing conditions of
25 compliance that have teeth in them.

1 Now, I have Appendix 1 to this submittal
2 that explains how the power plant revenue is
3 400,000 to 1.4 million per day, and the fines are
4 minuscule. So I have had some experience in the
5 law, helping the vendors, and I know that their
6 force majeure, or doctrines of commercial
7 impracticality, that can be raised as a defense,
8 if I ask that the plant be shut down, for example,
9 if it violates the plume limits, the Applicant has
10 represented, for example, that the plume will only
11 be visible 20 days per year. And I believe that's
12 so incredible that I think there should be teeth
13 in the requirement. So --

14 HEARING OFFICER VALKOSKY: I understand,
15 and I believe I'd characterize that as -- as --
16 enforceability of conditions, as -- as one of the
17 elements.

18 MR. WILLIAMS: But I do believe that
19 there needs to be a hearing or a ventilation of
20 that issue, or the Applicant and the operator can
21 raise as a defense that oh, this wasn't
22 contemplated when we agreed to that. So it needs
23 to be well discussed, and it needs to be well
24 ventilated. And right now, there are too many
25 design permutations and combinations.

1 HEARING OFFICER VALKOSKY: And -- and
2 again, I would just -- and before I turn to Staff,
3 I would just like to inform you that typically, in
4 our process, when we're in hearing there are a
5 concrete set of conditions proposed before the
6 Commission. If a party thinks that condition is
7 inappropriate for whatever reason, such as it's
8 too lenient, that's the time we discuss the
9 stringency and enforceability of that condition.
10 So the process does provide for a hearing that can
11 deal with any condition on any subject area.

12 MR. WILLIAMS: Well, and just, if I may,
13 the difficulty is in evidentiary hearings
14 producing 20 or 30 of these things in writing,
15 with the lack of definition of the project as it
16 stands right now. There -- you know, I would hope
17 that there will be some major design changes that
18 make many stipulations like this unnecessary. And
19 it puts me and others to a lot of unnecessary work
20 to have to invent these, only to come in two or
21 three months from now and discover that oh, we're
22 in the process of evolving the design.

23 So, again, that's another reason for the
24 second PSA, and another reason for the process
25 that resolves the major design issues.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you.

3 Mr. Richins, Ms. Willis. To what extent
4 are the items contained in the motions of the
5 other parties going to be addressed in the FSA?

6 MR. RICHINS: If you could ask me one at
7 a time, but I'll start with -- I'll start with the
8 need discussion.

9 HEARING OFFICER VALKOSKY: No, I listed
10 them. You were supposed to write them down.

11 (Laughter.)

12 MR. RICHINS: On the issue of need, I
13 guess we would characterize that as benefits, as
14 opposed to need. And what we propose to do, and
15 we had quite a bit of discussions in our PSA
16 workshops, but what we will be doing in the Final
17 Staff Assessment is providing in our transmission
18 system engineering and possibly in our
19 alternatives analysis, a discussion of benefits.
20 And that'll be --

21 HEARING OFFICER VALKOSKY: Well --

22 MR. RICHINS: -- benefits as it relates
23 to the transmission --

24 HEARING OFFICER VALKOSKY: -- one -- one
25 section referring -- are you referring to benefits

1 as it's used in the statute? It talks about
2 consumer benefits and it talks about transmission
3 system reliability benefits, I believe.

4 MR. RICHINS: Probably more the latter.

5 HEARING OFFICER VALKOSKY: Okay. So
6 transmission system reliability benefits or
7 impacts will be addressed clearly.

8 MR. RICHINS: Both. Impacts and
9 benefits. But since we were talking about need
10 and benefits, I was just addressing the question
11 of what we will be including in our FSA.

12 Also, the California ISO will be doing
13 testimony in this case, and be providing their --
14 their -- well, providing testimony as it relates
15 to the transmission system, and associated
16 benefits.

17 So those two items will be what we would
18 propose to provide to the Committee.

19 HEARING OFFICER VALKOSKY: So the
20 Committee and all the other parties could expect
21 that that -- the transmission system -- the
22 electrical system ramifications of the project
23 will be fully addressed? I think that's --
24 instead of benefits or -- or impacts, whatever,
25 just call it ramifications.

1 Okay. You currently have no intent,
2 then, I take it, to address consumer benefits, or
3 to attempt to define consumer benefits?

4 MR. RICHINS: I think that would be very
5 difficult -- I think that would be very difficult
6 for us to do, and so we were not proposing to do
7 that.

8 HEARING OFFICER VALKOSKY: Okay. The
9 other issues, as I have it. The necessity for a
10 top down air quality analysis.

11 MR. RICHINS: It's our understanding,
12 and I verified this with the Bay Area Air Quality
13 Management District, they propose to do that
14 analysis as requested of them by EPA, and as
15 required by their rules and regulations. So we do
16 not propose to duplicate what they plan to do.

17 So their document will be incorporated
18 into our --

19 HEARING OFFICER VALKOSKY: Will Staff
20 independently review the results of the Bay Area
21 District's analysis?

22 MR. RICHINS: Yes, sir.

23 HEARING OFFICER VALKOSKY: How about the
24 need for monitoring data at the site. I believe
25 it's -- it's characterized as meteorological data,

1 although you could certainly read it as emissions
2 data, too. It's raised in Mr. -- by Mr. Williams.

3 MR. RICHINS: Well, we believe that the
4 weather data is from a location three miles away.
5 We feel that it's very good data, and we feel
6 comfortable with it. The Air District, likewise.
7 We can't -- we can't comprehend how that within a
8 three mile distance, that the weather conditions
9 would be substantially different to cause any
10 change in the modeling results.

11 HEARING OFFICER VALKOSKY: Okay. So --
12 so at this time, you would not envision
13 incorporating that into the Staff assessment,
14 gathering and incorporating any monitoring data.

15 MR. RICHINS: That's correct. And then
16 if the request was for emissions data, what --
17 what has been done is there's five monitoring
18 stations in the area, and we have looked at each
19 one of those five monitoring stations for all the
20 criteria pollutants, and have taken the worst day
21 and the worst -- and the highest emissions on any
22 particular day, so that we have a worst case for
23 at any of those five stations, and for all
24 criteria pollutants.

25 So we feel the monitoring stations data

1 is -- is adequate, and quite good.

2 HEARING OFFICER VALKOSKY: Okay. And
3 Mr. Williams' final concern about the -- the
4 teeth, as he puts it, in the conditions of
5 certification?

6 MR. RICHINS: Well, I think you answered
7 the question the way I would answer it, and that
8 is he'll have an opportunity at the evidentiary
9 hearings on each technical area. We had
10 discussions during the PSA workshops on this
11 issue, and I think it's appropriate for
12 evidentiary hearings.

13 HEARING OFFICER VALKOSKY: But the next
14 iteration of the Staff assessment will, in fact,
15 contain conditions appropriate to all topic areas?
16 I mean, that's just not the case.

17 MR. RICHINS: Right. Correct. Correct.

18 HEARING OFFICER VALKOSKY: All right.
19 Thank you.

20 Mr. Harris, any comments on this matter?

21 MR. HARRIS: Just real briefly. I think
22 the proper characterization on the -- it's not
23 needed as reliability, and I think that's the
24 terminology I'd like to employ. The need
25 assessment I see as a statewide assessment of

1 reliability, to me it tends to be more of a
2 locational benefits analysis. And so I -- I'd
3 probably use that terminology, as opposed to need.

4 HEARING OFFICER VALKOSKY: I take it
5 Applicant will eventually be submitting its own
6 independent testimony on the electrical system
7 reliability aspects of the project?

8 MR. HARRIS: We have, in our comments on
9 the PSA, yes. And those I think relate to the
10 sections on the transmission system and on
11 alternatives. And so that information is out
12 there, and available. And I'm sure it will be
13 part of our -- our evidence as we move forward
14 into evidentiary hearings.

15 HEARING OFFICER VALKOSKY: Okay. Is
16 there any other party who -- well, let me back up.

17 Is there anything -- is there anything
18 I've left out on any of these -- the motions
19 raised in the filings by the various parties?

20 Okay, I think we -- Mr. Alton.

21 MR. ALTON: Could I clarify what --

22 HEARING OFFICER VALKOSKY: The recording
23 mic, too.

24 MR. ALTON: Just a clarification on what
25 Mr. Richins spoke about, in terms of the benefits

1 of the project. Benefits are obviously different
2 to need, as anybody who's got kids knows that.
3 The -- if you're going to analyze benefits of the
4 -- or the ramifications of the project in terms of
5 benefits, then the ramifications of the no project
6 alternative need to be analyzed.

7 HEARING OFFICER VALKOSKY: Is Staff
8 going to address a no project in its -- the next
9 Staff assessment?

10 MR. RICHINS: I think we're required to
11 by law, and we will.

12 HEARING OFFICER VALKOSKY: Yes, you are.
13 And you will. Okay.

14 MR. ALTON: Thank you.

15 HEARING OFFICER VALKOSKY: Thank you.
16 There's a certain degree of comfort to the
17 Committee, as well.

18 (Laughter.)

19 HEARING OFFICER VALKOSKY: Is there
20 anything else before we move off the discussion of
21 motions. And just so you know what's coming next,
22 we'll then go back to the discussion of the
23 specific items raised in the notice. Basically
24 these are four items, because we've covered some
25 of them already. And it's on the agenda that's in

1 the back of the room.

2 The necessity of time limits for further
3 discovery; the status and effect of federal
4 consultation of the final DOC; necessary actions
5 that the City of San Jose has to take; and general
6 future scheduling of the next three or four events
7 in the process. We'll then follow that with
8 public comment.

9 So -- so that's yet to come. What I'd
10 like to do now is close out discussion of the
11 motions. If anyone has anything to say.

12 Identify yourself for the record,
13 please.

14 MR. AJLOUNY: My name is Issa Ajlouny.
15 So this is the chance I can talk about the motions
16 that were just talked about.

17 HEARING OFFICER VALKOSKY: You can talk
18 about them briefly, sir.

19 MR. AJLOUNY: Okay. Well, one of the
20 biggest concerns I have is I actually agree with
21 Bechtel and Calpine, is that when Jeff Harris
22 stated that combining documents, be afraid of that
23 because he'd be afraid that they omitted
24 something. How do you think the public feels if
25 they can't put everything in one package and feel

1 100 percent satisfied that they won't miss
2 anything. How is the general public going to feel
3 and look at these documents and feel that they can
4 see the whole thing.

5 That's exactly the point why we're all
6 trying to say it needs to be in one document, so
7 we can understand it, review it, and in the
8 hearings be able to talk to it.

9 We all know how information is very
10 important in today's environment. The override
11 issue, I didn't totally understand, but I'll -- I
12 think it was looking at the Warren-Alquist Act. I
13 do want to state that Calpine publicly has talked
14 about the override process. The -- the fact that
15 they're talking about it publicly tells us that
16 this, you know, they admit that the city pretty
17 much is not supporting them as far as the land use
18 issue.

19 And I know this is maybe a little
20 shocker here, but I will make a comment for the
21 record that the Calpine representative did tell me
22 in a private session that they plan on doing the
23 override, and he used words like we have two
24 Republicans on our side, we just need one more
25 vote and we have it made, pretty much. And if you

1 want to discuss that later, at a later time, I'd
2 be happy to do that. I'm happy to do a lie
3 detector test, whatever it takes. I just think
4 that's totally inappropriate when you're talking
5 about Democrats and Republicans.

6 The need, Lorraine White in the
7 beginning talked about need was already checked
8 off as a yes, because the Commission looks at need
9 as a yes, because of promoting competition. Now,
10 am I hearing tonight that maybe that is not true
11 anymore, or is need already checked yes, that we
12 do need the power, because --

13 HEARING OFFICER VALKOSKY: The answer is
14 need, as a term of art, as it has been used in
15 prior Commission cases up until January 1st of
16 this year, no longer exists. The concept still
17 gets tossed around. That was based on a forecast,
18 the amount of generation and other measures needed
19 to fulfill -- needed to fulfill that forecast.
20 That's been repealed by the legislature.

21 MR. AJLOUNY: Is that because everyone
22 knows that there's going to be enough power in a
23 couple of years? I mean --

24 HEARING OFFICER VALKOSKY: I --

25 MR. AJLOUNY: -- because of all the

1 power lines going in?

2 HEARING OFFICER VALKOSKY: -- I couldn't
3 possibly comment on why the legislature did what
4 it did.

5 MR. AJLOUNY: Okay. So the
6 Commissioners and the Staff, whatever, are not
7 going to look at need as far as for promoting
8 competition, they're going to look at need as
9 because of raw power only? Or not even that?
10 That's very important to us. I mean --

11 HEARING OFFICER VALKOSKY: No. I think
12 -- I think there is no limitation, to my
13 knowledge, on power plants which can be built in
14 California right now, based on the fact that you
15 might be creating too much capacity, too much
16 generating capacity. That could have been done in
17 the past. That no longer is appropriate. The
18 Commission no longer has a forecast which balances
19 state supply and demand. Okay.

20 MR. AJLOUNY: Okay. Well, is --

21 HEARING OFFICER VALKOSKY: So that has
22 been taken out of the equation. The operative
23 factors in the -- in Senate Bill 110 again, just
24 recently effective, are contained in the statute,
25 and I can discuss this with you after.

1 MR. AJLOUNY: Okay. Well, the override
2 Warren-Alquist Act, that specific override, is
3 that only done by -- what is that done by now? I
4 mean, if -- if the city is saying we're not going
5 to let you change the land use --

6 HEARING OFFICER VALKOSKY: Should such
7 an action be taken, that would be taken by the
8 full Energy Commission.

9 MR. AJLOUNY: And I guess on what basis
10 would the Commissioners -- based on what was said
11 in the --

12 HEARING OFFICER VALKOSKY: Specific
13 statutory criteria, which I can show you during
14 the break. I can refer you to the section of the
15 law that it's contained in.

16 MR. AJLOUNY: Okay. Top down from the
17 BAQ, Bay Area Quality Management District, I
18 think, but I missed a word in there somewhere.
19 From talking to a number of people, that really is
20 not going to be done by the Bay Area Quality
21 Management District. They're saying that yeah,
22 they're going to throw in, let's say, SCONOX.
23 They're going to throw it in, but they're not
24 going to push the issue, they're not going to do a
25 full evaluation of it. And I can have that

1 information sent to you somehow, whatever you want
2 to do. But that is definitely a false statement.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. AJLOUNY: Oh, by the way, the agenda
5 is totally different from what was on the Website,
6 versus what's here tonight. I thought that was
7 odd.

8 HEARING OFFICER VALKOSKY: I wasn't
9 aware that the agenda was on the Website, frankly.

10 MR. AJLOUNY: Yes. Well, in your formal
11 announcement of the meeting, it talked about what
12 you were going to be talking about.

13 HEARING OFFICER VALKOSKY: Right.

14 MR. AJLOUNY: On this second page. And
15 that, to me, in the order --

16 HEARING OFFICER VALKOSKY: That's the
17 notice, yeah.

18 MR. AJLOUNY: The notice, you actually
19 -- you --

20 HEARING OFFICER VALKOSKY: Right. And
21 those items are being discussed tonight.

22 MR. AJLOUNY: Some of them, and some are
23 being discussed tonight that are not in the
24 notice. I just wanted to point that out, that
25 maybe be a little bit more -- for the average Joe

1 -- Joe Blow, I think, that's all. You know.

2 HEARING OFFICER VALKOSKY: On the other
3 hand, when the notice was issued we didn't have as
4 many motions filed by the various parties.

5 MR. AJLOUNY: Well, that's -- that's
6 fair. I just -- I'm just letting you know my
7 perception.

8 And then one last one, an ad from
9 Metcalf, like this, has been coming across the
10 newspaper on a frequent basis. I mean, this is
11 probably around \$75,000, one page, yesterday's
12 paper. If it just costs a few thousand dollars,
13 50,000 or 100 to combining one document, I think
14 they can afford it.

15 (Applause.)

16 HEARING OFFICER VALKOSKY: All right.
17 Moving -- moving on the motions.

18 MR. BOYD: I have a question.

19 HEARING OFFICER VALKOSKY: I'm sorry.
20 Mr. Boyd.

21 MR. BOYD: On the agenda, actually this
22 issue that Mr. Ajlouny just raised about you have
23 an agenda on the Web that's not the same as the
24 agenda that we received today. My question is, is
25 the Commission subject to the Bakeley-Keane Act,

1 and don't you have to notice this ten days in
2 advance of the meeting, according to that?

3 HEARING OFFICER VALKOSKY: Well, I
4 guess.

5 MR. BOYD: And does not the Web meet the
6 -- the -- is that not part of the requirements?

7 HEARING OFFICER VALKOSKY: No, it is not
8 until next year, next July 1st.

9 MR. BOYD: Okay. So if you are putting
10 it on the Web, don't you think you should comply
11 with the requirements of the act in the meantime?

12 PRESIDING MEMBER LAURIE: We will take
13 your comments under consideration. Certainly, we
14 will work to ensure that that notice which may
15 have the broadest dissemination among the public,
16 which could be the Website, is consistent with
17 what we end up talking about.

18 MR. BOYD: Right. And the only reason I
19 raise this is, as you know, I did file a motion
20 previously on the Bakely-Keane Act, over agended
21 items at a previous status conference.

22 PRESIDING MEMBER LAURIE: I understand.
23 Thank you.

24 MR. BOYD: One last comment. The
25 numbers of people here do not let that give you a

1 perception that we don't --

2 PRESIDING MEMBER LAURIE: Sir, that's
3 irrelevant.

4 MR. BOYD: Well, I just wanted to let
5 you know we --

6 PRESIDING MEMBER LAURIE: I understand.
7 We're appreciative of the fact that the public
8 understands the nature of this meeting. I think
9 that's very positive.

10 HEARING OFFICER VALKOSKY: Okay. If we
11 could take a brief recess now, before we get to
12 the second part of the agenda.

13 MS. GRUENEICH: I just wanted to let
14 people know, because it may help during the
15 recess. We took the advantage of actually looking
16 at the schedules that the Staff and Applicant had
17 proposed, as well as some of our thoughts, and
18 prepared a document that's available in the back
19 that we think combines kind of everybody's view.
20 And so I wanted to let folks know, and maybe both
21 the Staff and the Applicant take a look at it
22 during the break.

23 But I think we may end up fairly close,
24 in terms of the parties' position on the
25 schedules.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you, Ms. Grueneich.

3 MR. HARRIS: Mr. Valkosky.

4 HEARING OFFICER VALKOSKY: Mr. Harris.

5 MR. HARRIS: Along the same lines,
6 that's fine. We did the same thing, so we'll
7 share ours with yours, review it while I look at
8 the documents.

9 HEARING OFFICER VALKOSKY: Now we'll all
10 share together, beginning at five to eight.

11 (Thereupon, a recess was taken.)

12 PRESIDING MEMBER LAURIE: Before we
13 proceed with the hearing, I would simply like to
14 note for all parties, and for the information of
15 the public. There is a procedure that the law
16 provides that deals with recusal or dismissal of a
17 member of the Commission from any hearing if one
18 seeks to allege prejudice or bias.

19 Therefore, if any party has the belief
20 that any member of this Commission cannot and will
21 not make a decision without bias, and without
22 prejudice, we strongly encourage you to follow the
23 process as contained in the law.

24 Thank you. Mr. Valkosky.

25 HEARING OFFICER VALKOSKY: Thank you,

1 Commissioner Laurie.

2 And now we're turning to the specific
3 items that are contained in both the agenda and on
4 the notice and order of June 22nd.

5 The Committee believes that the timing
6 of these items will, or have the potential --
7 excuse me -- to impact the scheduling of future
8 events of this review process. With that, the way
9 I intend to proceed is to announce the item, get
10 the input from the parties, and again, please keep
11 your comments brief and pertinent because I
12 certainly would like to provide time for general
13 public comment.

14 We basically have four items,
15 necessity/time limits for further discovery; the
16 status and effect of outstanding federal actions
17 and the release by the district of the final DOC.
18 I think these items, although they're noticed
19 separately, actually overlap, and I would prefer
20 to deal with them as one.

21 As I announced before, the timing of
22 necessary actions by the City of San Jose; and
23 then just future scheduling dealing with --
24 primarily with the release of the next iteration
25 of the Staff assessment, any workshops, and ending

1 with an approximate period for a pre-hearing
2 conference, preceded by pre-hearing conference
3 statements.

4 With that, we turn to the first topic,
5 which is the necessity and time limits for further
6 discovery. In the papers that were filed earlier
7 this month, to my recollection, the single solid
8 date is that Applicant indicated its desire for a
9 cut-off of discovery by July 31st.

10 I think the logical progression, and
11 this is what I'd like the parties to address
12 particularly, I'd like to establish a date by
13 which Applicant submits any outstanding additional
14 data that it may have, provide the parties a brief
15 but reasonable time to review that information and
16 generate any additional data requests. And,
17 again, provide the Applicant a brief but
18 reasonable time to respond to any generated data
19 requests.

20 Okay. With that, Mr. Harris, since
21 you're the one that proposed the July 31st cut-off
22 date, could you respond to Applicant's position on
23 the necessary -- necessity and time limits of any
24 further discovery?

25 MR. HARRIS: Thank you, sir. We

1 suggested a date of July 31st. We have a few
2 items that are outstanding. One of concern within
3 that timeframe is a partial load test that's going
4 to be conducted. And quite frankly, right now
5 we're having trouble conducting that test, because
6 -- can I tell them about where it's happening?
7 It's being conducted in the state of Texas, and
8 right now the state of Texas is going through a
9 power emergency, and they are reluctant to have
10 any of the units run at part load.

11 And so running a part load test has been
12 a problem for us. So that one item, I think, will
13 be an item that is likely to take us longer than
14 July 31st.

15 And having said that, as well, we would
16 be amenable to the -- accepting, with that -- with
17 that exception, the July 31st date for our
18 submissions, you know, recognizing that if -- if
19 we get requests for information from parties or
20 Staff, we'll provide that. But I think that would
21 be our final submission date, and then logically,
22 you know, thereafter, I think maybe we'd have to
23 extend that date at least two weeks to allow
24 people to respond to that.

25 So maybe we're looking at August 15th

1 for the -- for the date certain.

2 HEARING OFFICER VALKOSKY: The date
3 certain for your final submission?

4 MR. HARRIS: No. Our final submission
5 would be --

6 HEARING OFFICER VALKOSKY: What about --

7 MR. HARRIS: -- the July --

8 HEARING OFFICER VALKOSKY: -- what about
9 the partial load test?

10 MR. HARRIS: -- 31st. Absent that, that
11 document. We may not be able to conduct that --

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. HARRIS: But I thought it was clear
14 making that distinction.

15 HEARING OFFICER VALKOSKY: No, no. I
16 understand. But what would be the date for the
17 final load test? I mean, you know, Mr. Harris,
18 from the Committee's perspective we've got a
19 cascade. I mean, everybody wants Applicant to
20 submit all the information so that the other
21 parties can then review it, formulate any
22 additional data requests. You've got to respond
23 to that.

24 MR. HARRIS: Okay.

25 HEARING OFFICER VALKOSKY: All of that,

1 and please, Mr. Richins, correct me if I'm wrong,
2 but I'm assuming Staff would like all of that to
3 occur before they issue their next Staff
4 assessment. So all of these things are
5 interrelated.

6 MR. HARRIS: I understand, sir. The
7 only variable here is our inability to control the
8 weather in Texas. And we're still targeting the
9 31st for that date. But again, that is something
10 that is clearly beyond our control.

11 HEARING OFFICER VALKOSKY: I understand.
12 I'm not contesting that. But I'm just looking for
13 a timeframe. So you don't have a timeframe at
14 this time?

15 MR. HARRIS: I don't have a timeframe,
16 because of the situation in Texas.

17 HEARING OFFICER VALKOSKY: Okay.

18 Ms. Grueneich, you also raised this
19 issue. Would you like to address necessity and
20 time limits for further discovery?

21 MS. GRUENEICH: Yes. Do I need -- I
22 guess our small mics disappeared.

23 HEARING OFFICER VALKOSKY: Yeah. Please
24 -- please speak distinctly. Our reporter is
25 relying on the amplifying mics now.

1 MS. GRUENEICH: Okay, fine. In the
2 handout that we submitted, we have, just so it's
3 clear, we did put down the date if there's a
4 supplemental PSA, and then we also put down dates
5 if there's no supplemental PSA. And I'm certainly
6 not going to spend time, you know, going through
7 which of those there might be. I think that your
8 idea of just calling it an assessment.

9 In either case, if you look down on the
10 left-hand side, we tried to think of the various
11 items that would be coming up. The good news is
12 at the end of the day, I think we're within three
13 weeks of what the Applicant ends up with for a
14 decision. So hopefully there's not that much
15 dispute.

16 But we did have the proposed cut-off
17 date for discovery requests to be considerably
18 further out, all the way to October. And the
19 reason for that is not that we consider that we
20 want to have a lot of burden on everybody, but
21 rather the way that I look at it is that -- is the
22 principle that we're trying to think through is
23 that if there is new data or new analysis that's
24 bene presented, the best thing that is possible is
25 to make sure that the parties thoroughly

1 understand that before the testimony is written,
2 and before the hearings begin, so that the
3 hearings aren't spent in what my experience can be
4 a lot of wasted time, where you're essentially
5 almost doing discovery or data requests.

6 So that I know at first blush it
7 probably looks like we're very far off in thinking
8 about it, but what we tried to do was lay out
9 pretty systematically what may end up being
10 different activities that are coming up in which
11 there could be some new information and new
12 analysis, and just say okay, let's plan for that,
13 and then put it a fairly far time period off.

14 I can think of a compromise that we
15 certainly, I think, can live with, which is that,
16 for example, with the Applicant's filing coming up
17 the end of July, I'm pretty sure that we can be
18 prepared, for example, to commit that we would
19 have any discovery to the Applicant on that within
20 a couple of weeks. That I don't think it is fair
21 to people, you know, to get a document and to have
22 it just sit in people's houses or their offices
23 for two months, and then submit a data request.

24 But our concern is more as we look at
25 this, if there is, for whatever reason, some

1 additional information or additional analysis
2 coming in, again, I think it usually helps down
3 the road in the hearings to make sure people
4 understand it.

5 HEARING OFFICER VALKOSKY: Yeah, I -- I
6 certainly don't disagree with that. And from what
7 Mr. Harris said, the situation's a little more
8 complicated than I had hoped for. But what I get
9 from you is that assuming Applicant meets its end
10 of July date, that you believe you could prepare
11 data responses within roughly a couple of weeks
12 after that, on that material.

13 MS. GRUENEICH: It's -- with the one
14 caveat that my experts just informed me he's going
15 to be on a vacation, but --

16 HEARING OFFICER VALKOSKY: We'd all love
17 to be on vacation.

18 MS. GRUENEICH: I know, so I'm going to
19 tell him he has to do them fairly quickly.

20 The -- I think that that's fine. So I'm
21 correct that the only pieces of information that
22 the Applicant's going to be submitting, in
23 addition to the record from what we have this day,
24 is the documents on the 31st, and then the load
25 emission testing.

1 HEARING OFFICER VALKOSKY: That's --
2 that's my understanding. Is that a correct
3 understanding, Mr. Harris?

4 MR. HARRIS: Yeah, and obviously we need
5 to respond to whatever requests are made. And
6 we'll have to be filing responses to data
7 requests.

8 Let me point out, as well, with the one
9 -- the one document we're talking about that's
10 outstanding. That is in response to a data
11 request, and so, I mean, we're okay if that
12 doesn't make it into the record. But I don't
13 think that's what the data request -- CVRP asked
14 us for that information, and so the Texas item is
15 in response to a data request.

16 And so we -- it may take us longer to
17 get that information, but we think it's important
18 that we get it to you. And I just wanted you to
19 be clear about that's not information Applicant is
20 seeking to put in the record, but Applicant is
21 responding to that request.

22 HEARING OFFICER VALKOSKY: Fine. I
23 understand, and again, I think -- I think you
24 understand from your experience at the Commission
25 that basically, at some point, in the Commission's

1 view, discovery has to end. The project has to be
2 defined. We go forward with whatever it is we
3 have at that time. Hopefully, that's complete.
4 If not, there is a potential for considerable
5 problems down the road. And all I'm trying to do
6 is get a fix for how long completing the
7 information exchanges will take.

8 MR. HARRIS: Right. Well, you know, the
9 data responses are continuing obligations, and so
10 when the new information on this particular issue
11 becomes available, we make it available to -- to
12 the requester, and the service list.

13 HEARING OFFICER VALKOSKY: Okay. Now,
14 Ms. Grueneich said, at least in CVRP's view, a
15 couple of weeks would be sufficient to formulate
16 data requests. What's your view of a reasonable
17 time for the Applicant to respond? In general.
18 And I understand it may -- it may depend upon the
19 complexity of the data requests, but --

20 MR. HARRIS: I think that's the answer.
21 I mean, the -- a lot of it may be within 30 days.
22 If it's volumes and volumes, it may take us more
23 time to --

24 HEARING OFFICER VALKOSKY: I'm looking
25 for a general period, you know, subject to future

1 change. So you're saying 30 days?

2 MR. HARRIS: Well, no. Actually, I'm
3 not, because I thin 30 days is -- is generally the
4 timeframe. If we have trouble gathering the
5 information -- and again, this all goes to the
6 amount and the complexity of the request, I don't
7 know what that's going to be. I don't know --
8 maybe CVRP can give us an idea of what they're
9 going to be looking for in terms of amount and
10 complexity.

11 But we'll obviously, within 15 days of
12 the receipt, provide you with our view of how long
13 it will take.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. HARRIS: Not just -- not just an
16 answer of more than 30 days. We'll try to give
17 you specific dates for outstanding items.

18 So if one of them will take five weeks,
19 we'll tell you five weeks. If one of them will be
20 eight weeks, we'll try to identify it in that
21 specificity.

22 HEARING OFFICER VALKOSKY: All right.

23 Fine.

24 MS. GRUENEICH: Mr. Valkosky, then, I'd
25 like to have the same benefit as that approach.

1 HEARING OFFICER VALKOSKY: I --

2 MR. HARRIS: That's fair.

3 HEARING OFFICER VALKOSKY: -- I

4 understand. Again, I'm just trying to establish
5 the general parameters, because this will affect a
6 lot of things down the road, frankly.

7 Okay. Mr. Williams.

8 MR. WILLIAMS: Yes. I'll be very brief.

9 I'd like to direct your attention -- I have two
10 schedules in the hand-out package I left you to
11 back up my oral testimony. So I direct your
12 attention first to page two. And I assume that
13 you plan a hearing order from the status
14 conference about July 31st.

15 Now, I have proposal one, which is to
16 allow two more months of workshops, so on or about
17 -- under new item number four -- do you need
18 another copy? I notice that -- could somebody
19 pass this down to the Commissioners and to Mr.
20 Valkosky.

21 My schedule is about a month or two
22 longer than my attorney friend, and we certainly
23 appreciate the CVRP support. But from the point
24 of view of Intervenors who are not full-time
25 employees, it's going to be a more complicated

1 process to prepare written submittals for the
2 evidentiary hearings.

3 So proposal one is to have done enough
4 hearings and workshops by October 1st to decide
5 whether we're going to make the two major design
6 changes, the wet versus dry, and the SCONOx versus
7 SCR.

8 And then, in simple terms, if the change
9 has gone to the new technologies, the better
10 technologies, then there is a six month process
11 that gets us to an FSA and the normal hearing
12 schedule.

13 Now, let me direct your attention to the
14 last page. I argue that if you order right now
15 that we move to evidentiary hearings, then I
16 believe that we have an incredibly complicated
17 evidentiary hearing process. This is my
18 alternative 1-B. So, for example, Milestone A is
19 still a Final Staff Assessment about the date that
20 the CEC Staff suggests. Sometimes -- so for
21 argument's sake, around October 1st.

22 Now, then I list a series of milestones
23 here. And the bottom line is I believe it will
24 take people like myself through the Christmas
25 holidays to come up with the submittals for

1 evidentiary hearings. Now, that is highlighted
2 better on Attachment 1-A. And -- at any rate, as
3 you work yourself through this, what I've tried to
4 do is have this column of milestones here, X, Y
5 and Z, on Attachment A, and A, B and C on the
6 second attachment. And I used the typical periods
7 that we've seen in this project to address the
8 issues.

9 Now, the bottom line, and my plea, is
10 that please don't force us to argue through two
11 major design changes under the rubric of
12 evidentiary hearings. Let's figure out some way
13 to have these, one more round of nailing down wet
14 versus dry, and the ammonia clean-up technology
15 versus the SCONOx, before you force us into
16 evidentiary hearings, because it will tremendously
17 simplify the hearing process. We can probably
18 stipulate to a lot of things if we don't have to
19 be trying to make those two cases.

20 So for that reason, I -- I believe that
21 the schedule is best described in my Alternative
22 1-A, and I postulate that there will be a design
23 change about the first of October, and that this
24 will take then about six months to get to an FSA.

25 Now, that is just about exactly the

1 standard schedule for a project when you come in
2 with a new design. And in all honesty, that's
3 what I'm asking the Applicant to do. The public,
4 people like me, have been promised by Calpine and
5 Bechtel the best available technology. And after
6 a year of studying this thing, suddenly we
7 discover that we're not getting the best available
8 technology, and that's kind of a disappointment.
9 That's a major disappointment.

10 I'll stop for a minute.

11 HEARING OFFICER VALKOSKY: Okay. Thank
12 you, Mr. Williams. And thank you for your work on
13 the scheduling alternatives.

14 Mr. Boyd.

15 MR. BOYD: First, my question is, Mr.
16 Williams, you basically covered all four items on
17 the agenda there. You basically want us to
18 confine our comments to --

19 HEARING OFFICER VALKOSKY: Right. Yeah.

20 MR. BOYD: -- to number one; correct?

21 HEARING OFFICER VALKOSKY: Yes.
22 Necessity/time limits for further discovery.

23 MR. BOYD: Okay. My concern is
24 obviously CARE is a non-profit corporation. We're
25 -- we depend on funds contributed to us by the

1 general public. Unlike some of the other
2 Intervenors, we don't have a lot of money to -- I
3 mean, we can't even afford to have an attorney
4 here. Our attorney has to work on narrow issues,
5 because of our limited budget.

6 And the same applies to our consultants.
7 And our consultant -- our chief consultant, Dr.
8 Smallwood, prepared a estimate of what he
9 determined he felt we would need in order to
10 adequately complete the discovery we need to
11 fairly participate in the process, and that was
12 included in the status brief that I provided to
13 you. And the basic outcome of that was that we --
14 we determined that we would need at least three
15 months in order to complete our discovery.

16 Now, the -- the issue that I am
17 concerned about mostly is a biological resource
18 issue. And since the Applicants, in Section 7
19 negotiations, or consultation with the U.S. Fish
20 and Wildlife Service, it seems that's already
21 precluded the release of the final determination
22 of compliance as --

23 HEARING OFFICER VALKOSKY: We're going
24 to address that next.

25 MR. BOYD: The point I'm trying to make,

1 though, is that our biologist has contacted the
2 U.S. Fish and Wildlife Service, and there's a
3 letter that we docketed today, or last night, and
4 e-mailed to everyone. Obviously, you haven't
5 received the written yet. And basically, what
6 we're raising is the issue of the red-legged frog,
7 which is not the subject of consultation right
8 now.

9 And my review of the U.S. Fish and
10 Wildlife Service policies, if they determine that
11 that is a real issue that they were not addressing
12 in their initial consultation, they can add
13 another 60 days onto the consultation. So my
14 intention, obviously, is to make sure they address
15 the red-legged frog issue, as well. And so you
16 should take that in consideration, too.

17 If you do that, if you add the 60 days,
18 you add the existing timeline for the
19 consultation, that would give us the three months
20 we're asking for anyway. So I'm just raising that
21 as a point.

22 HEARING OFFICER VALKOSKY: Okay. Thank
23 you.

24 Mr. Wade.

25 MR. WADE: Okay. The only thing that we

1 would ask is that there's -- some of the -- some
2 of the constraints that Mr. Boyd identified
3 obviously still apply to the Citizens Action
4 Group. We don't have a vast budget for an army of
5 attorneys and experts, so we're going to rely on
6 the length of time between the final definition of
7 the -- of the project and the Final Staff
8 Assessment, until we can -- can file written
9 testimony.

10 So we would ask that there's sufficient
11 amount of time in that period for us to do what
12 work we can accomplish, and then there is
13 scheduled items for workshops to review -- review
14 the --

15 HEARING OFFICER VALKOSKY: Okay. That's
16 -- that's testimony, that's getting a little bit
17 ahead of where I want to be right now. What I'm
18 talking about now is --

19 MR. WADE: You want to talk about
20 discovery.

21 HEARING OFFICER VALKOSKY: -- discovery,
22 yeah.

23 MR. WADE: With respect to discovery, we
24 want to make sure that if -- if the design is
25 changing, we have sufficient time to assess those

1 -- those responses.

2 HEARING OFFICER VALKOSKY: Okay. What's
3 -- what's -- that's what I'm looking for. What's
4 sufficient time?

5 MR. WADE: If we were to have 15 days to
6 respond to --

7 HEARING OFFICER VALKOSKY: Okay. That's
8 --

9 MR. WADE: -- the final changes, then
10 we'd be satisfied.

11 HEARING OFFICER VALKOSKY: Great. Okay.
12 That's what I'm looking for.

13 Sir, could you -- you raised the
14 discovery issue earlier. Could you identify
15 yourself for the record, please, spell your last
16 name.

17 DR. WIKTOROWICZ: Sure. John
18 Wiktorowicz, Rancho Santa Teresa Intervenor. I
19 think the recorder --

20 HEARING OFFICER VALKOSKY: You are an
21 Intervenor?

22 DR. WIKTOROWICZ: Yes, I am an
23 Intervenor.

24 My issue with the proposed deadline for
25 further discovery is related very specifically to

1 a data request I filed earlier this month --
2 earlier last month. As of Monday, I did receive
3 the request. I haven't had time to really review
4 it carefully, except to note that none of my four
5 questions were answered in the way I requested the
6 answers. And at some point in time I would like
7 to discuss that with whomever will respond to it,
8 in terms of what specifically I asked in this data
9 request.

10 HEARING OFFICER VALKOSKY: Okay. The --
11 the way our discovery process works is that you're
12 free to discuss the sufficiency of the responses
13 with the Applicant. And that's -- that's where I
14 would suggest that you start.

15 DR. WIKTOROWICZ: Okay.

16 HEARING OFFICER VALKOSKY: If the
17 Applicant, in your view, unreasonably refuses to
18 answer -- and I phrase that unreasonably,
19 Applicant can refuse on several grounds; that it's
20 too burdensome, the information is not in his
21 control, things like that --

22 DR. WIKTOROWICZ: I understand.

23 HEARING OFFICER VALKOSKY: -- then you
24 have the option, should you choose, of filing a
25 motion to compel. At that point, it basically

1 becomes up to the Committee whether to order the
2 Applicant to grant your request or not. And
3 that's what it comes down to.

4 DR. WIKTOROWICZ: What recourse do I
5 have with respect to the Applicant stating that
6 they did file a response to my data request,
7 because I don't consider it to be a valid
8 response.

9 HEARING OFFICER VALKOSKY: Well, again,
10 I think the first thing you'd want to do is
11 discuss it with the Applicant. Our regulations
12 require that the Applicant respond to reasonable
13 requests. They don't, however, guarantee that the
14 requesting party is necessarily going to be
15 satisfied with the answers.

16 MR. ABREU: And we'd be happy to --

17 DR. WIKTOROWICZ: I'm sorry, I didn't
18 hear that.

19 HEARING OFFICER VALKOSKY: Mr. Abreu has
20 indicated that they'd be very happy to talk with
21 you directly.

22 DR. WIKTOROWICZ: Okay. Now, how does
23 this impact, though, the deadline for further
24 discovery. If -- if you -- if it stands July
25 31st, there may not be enough time.

1 HEARING OFFICER VALKOSKY: Well, July
2 31st -- and again, that's just the date that was
3 placed on the table by Applicant -- that would be
4 the date that the Applicant submits its final
5 project information. Okay.

6 DR. WIKTOROWICZ: Right.

7 HEARING OFFICER VALKOSKY: If -- and
8 again, with -- with the exception of the partial
9 load test. With to the extent that your
10 outstanding data request would fit in there, I
11 would assume that would also be submitted by the
12 31st of July.

13 DR. WIKTOROWICZ: Okay. And my -- and
14 any follow-up that I would have would still be
15 valid, would fall under --

16 HEARING OFFICER VALKOSKY: Well, then
17 that's --

18 DR. WIKTOROWICZ: -- the timeframe. So
19 then that would require another 15 days, as -- as
20 Mr. Wade has pointed out.

21 HEARING OFFICER VALKOSKY: Yeah. And
22 that's -- yeah. Very possibly. Right.

23 DR. WIKTOROWICZ: Okay. So if I were to
24 vote, I would vote for a date of around August
25 15th or later.

1 HEARING OFFICER VALKOSKY: Oh, that's --
2 just -- just trying to gage these things. That's
3 all. That's all we're trying to do.

4 Okay. And again, I think I'd definitely
5 take Applicant up on his offer to discuss the
6 responses to your data request.

7 Staff, what's your position?

8 MR. RICHINS: I believe that we have
9 pretty much completed all our discovery. There
10 are some pieces of information that are still
11 forthcoming. They've indicated they'd come in by
12 the 31st, plus the one other item, so I -- I would
13 say with one exception, and that is the
14 groundwater basin modeling information. We would
15 like the opportunity to be able to review that
16 information and have the opportunity for discovery
17 on that particular set of information. And we can
18 provide data requests, if necessary, within 15
19 days of receipt of the final modeling.

20 HEARING OFFICER VALKOSKY: Okay. And,
21 now, clarify it for me. Is the groundwater basin
22 modeling expected on July 31st, or at a later
23 date?

24 MR. RICHINS: We had expected it by the
25 14th.

1 MR. ABREU: We're planning to file the
2 groundwater modeling no later than the 31st.

3 MR. RICHINS: Okay.

4 MR. ABREU: Model.

5 HEARING OFFICER VALKOSKY: Okay. So if
6 that happens, and except for the partial load
7 data, you'd basically be set with another set of
8 responses, as necessary, by about the middle of
9 August?

10 MR. RICHINS: Correct.

11 HEARING OFFICER VALKOSKY: Okay.

12 Ms. Grueneich.

13 MS. GRUENEICH: Yes. I just wanted to
14 make sure that I was clear on two things. One is
15 that I do want to request that with regard to the
16 information that the Applicant files on July 31st,
17 we could have three weeks rather than two weeks,
18 because our technical expert will be out of the
19 state on a vacation, and we had not anticipated,
20 when we set up all of our schedules, that
21 literally those two weeks were going to matter.
22 And I don't think in the scheme of things one week
23 for discovery is going to tremendously change the
24 schedule.

25 The second thing that I did want to

1 state is that our view is that there is a need for
2 discovery that is going to be triggered by things
3 other than just the July 31st filing. And that's
4 what I wanted to make sure that I was clear about,
5 that so far we've been talking about one new piece
6 of information that is going to come in to this
7 proceeding, the Applicant's filing on the 31st, as
8 well as this load information.

9 But there is a host of other information
10 that will be coming in to this proceeding which we
11 certainly believe we need to have a right to
12 conduct discovery on. And in our schedule, we
13 itemized some of those documents. And again, I
14 think that we need to have a right to discovery.

15 Some of the items are the final
16 determination of compliance, the biological
17 opinion, the next Staff assessment, all of which,
18 in our mind, could trigger requests to the
19 Applicant or possibly even to the Staff. What we
20 are committed to do is whenever we do get a new
21 piece of information in whatever document it may
22 arise, that we will file a data request in a
23 timely manner.

24 But the one thing that I wanted to be
25 very clear on is that everybody is in agreement

1 that there will be new information and new
2 analysis coming in past July 31st, and other than
3 the Staff filing. And I think it's very important
4 that we have a right for data requests and
5 discovery on that new information and analysis.

6 HEARING OFFICER VALKOSKY: I understand
7 the primary new data would be the biological
8 opinion and the Bay Area Air Quality Management
9 District's final DOC. I mean, that's what you're
10 referring to; right?

11 MS. GRUENEICH: And also the Staff
12 assessment. That in our mind we are going to see
13 a great deal of new information that in order to
14 be prepared and to understand --

15 HEARING OFFICER VALKOSKY: Well --

16 MS. GRUENEICH: -- we do have a right to
17 do data requests.

18 HEARING OFFICER VALKOSKY: Yeah,
19 although -- although that depends. If it's a
20 Final Staff Assessment it's testimony, and then
21 you have the right to rebuttal testimony and
22 things like that. Not necessarily further
23 discovery on that testimony.

24 MS. GRUENEICH: Again, I'm asking that
25 there be some consideration given to what approach

1 will best ensure a full record and expedited
2 litigation. And, at least in my experience, when
3 there is a great deal of new information and
4 analysis that is presented for the first time,
5 allowing other parties the opportunity to do some
6 reasonable amount of data requests, as opposed to
7 precluding any opportunity for data requests and
8 requiring them to only submit evidentiary
9 testimony, usually doesn't permit the best record.

10 HEARING OFFICER VALKOSKY: I -- I don't
11 disagree with you, but would you -- would you
12 agree that workshops could serve a similar
13 purpose?

14 MS. GRUENEICH: At least in my last
15 experience, it was not useful. Where the
16 workshops are not transcribed and where you're
17 trying simultaneously to have a good discussion
18 and take notes, it's -- it's not that productive.
19 We -- we have put down some workshops, because in
20 my mind it will significantly facilitate the
21 narrowing of issues and the understanding, but
22 there is a great deal of complex technical
23 information, and I've found that sometimes the
24 best thing is just to put the request in writing,
25 as opposed to oral asking and oral response.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you. I understand your position.

3 Gentlemen, we've -- okay. Mr. Harris,
4 you're going to go last. This is -- this is it on
5 discovery. Okay.

6 First, Mr. Williams. Then Mr. Boyd,
7 then Mr. Harris.

8 MR. WILLIAMS: I got carried away in
9 wanting to explain my handout, so let me be very
10 succinct on discovery.

11 I plead for three more months of
12 discovery. I would agree with October 20th or
13 October 1st. And during that period, up to, you
14 know, the last quarter of the year, we'd try to
15 weed out these major design issues. And early in
16 October, you could have another Status Conference,
17 and you could either set the schedule very
18 definitively or we would have some major design
19 changes that would arguably lead to the second
20 PSA.

21 So I think a fair compromise on
22 discovery is to have it extend through sometime in
23 October.

24 HEARING OFFICER VALKOSKY: Okay. Thank
25 you, sir.

1 Mr. Boyd.

2 MR. BOYD: I just want to -- for the
3 biological resources. If, for example, the
4 biological opinion -- originally, the Applicant
5 was talking about the biological resource
6 mitigation implementation and monitoring plan
7 being out on the 31st, as well. If that comes
8 out, and then subsequent to that the biological
9 opinion comes out with different recommendations
10 for mitigation and monitoring, obviously at that
11 point that would change -- there would be a need
12 for discovery at that point.

13 HEARING OFFICER VALKOSKY: I think
14 you're right. That is certainly an unknown.

15 MR. BOYD: So I -- I am basically
16 advocating to be conservative and allowing enough
17 time for discovery. Or else you're -- it's going
18 to cost you later on in the process, so bite the
19 bullet now.

20 HEARING OFFICER VALKOSKY: The point's
21 understood.

22 Mr. Harris. And this will be the final
23 comment on this item.

24 MR. HARRIS: Briefly, in addition to the
25 date certain, another possibility would be to

1 allow parties to request, or petition for
2 discovery beyond that date certain upon a showing
3 of good cause, and I don't know how the regulation
4 -- I mean, I'm not sure what the language is. I
5 think it does allow the Committee some discretion
6 to allow discovery beyond that date certain. And
7 that may be a good compromise that would keep a
8 check on -- on some of the discovery requests, but
9 make sure that the important information does get
10 into the record.

11 PRESIDING MEMBER LAURIE: Thank you.
12 The Commission will certainly consider that
13 suggestion.

14 I'm going to ask Mr. Valkosky to be
15 somewhat strict when it comes to our discussion
16 for the rest of the evening. Perhaps we can all
17 drink a little caffeinated soda pop and speak a
18 little faster.

19 My main purpose is to -- we do want to
20 provide opportunity for public comment. We're
21 obligated to terminate these proceedings at ten
22 o'clock, so I'm going to ask Mr. Valkosky to look
23 for redundancy, or other deviations from our
24 needed topics.

25 HEARING OFFICER VALKOSKY: Okay. The

1 next topic, the status and effect of federal
2 actions, specifically the Section 7 consultation.
3 Under this topic I would like to include not only
4 the Section 7 consultation, but also the issuance
5 of the next DOC by the Bay Area District, and the
6 effect, to the extent known, of any EPA position
7 on this matter.

8 I'd just like to preface that with the
9 fact that I'm familiar with one of the siting
10 cases where the local air district issued what it
11 thought was a final DOC, and EPA basically
12 required the district to recall the final DOC. I
13 think, you know, if the potential for that exists
14 in this case, I'd certainly like to be aware of
15 it.

16 I'd also like to ask if there is a
17 representative from the Bay Area District here?

18 I see there isn't. Okay, I guess we'll
19 have to wing this one.

20 Staff.

21 MR. RICHINS: Okay. Starting with the
22 biological opinion. At our workshop on biological
23 resource, the PSA workshop on biological
24 resources, Cecilia Brown was in attendance. She's
25 the person that's preparing the biological

1 assessment for U.S. Fish and Wildlife Service.
2 She indicated at that time that the biological
3 assessment would be coming out on August 9th.

4 In follow-up conversations with her,
5 based on my past experience on other siting cases,
6 I pushed her a little bit as it relates to the
7 date, and she indicated that she didn't think
8 August 9th would really hold, and that it would be
9 at least two weeks longer than that. However, the
10 caveat is that our staff is working closely with
11 their staff. We have a good understanding, or by
12 the time the FSA is to be produced we'll have a
13 good understanding of the conditions of
14 certification that they would require, and we will
15 incorporate theirs into our document. And so for
16 us to produce an FSA, we do not necessarily have
17 to have a biological opinion in our hands.

18 I'll stop, and --

19 HEARING OFFICER VALKOSKY: Am I -- am I
20 correct that the red-legged frog, that Mr. Boyd
21 referred to, is not considered in the current
22 section, current --

23 MR. RICHINS: I -- they are consulting
24 on many species, and I don't know if that's in the
25 list or not, so I can't answer the question. But

1 -- yeah, I just can't answer the question.

2 HEARING OFFICER VALKOSKY: Just a
3 second, Mr. -- let me -- okay. So your best --
4 your best estimate is which, the 23rd for the
5 biological opinion, then? Okay. Rather than the
6 9th.

7 MR. RICHINS: I would say add two weeks
8 to the 9th.

9 HEARING OFFICER VALKOSKY: Okay.
10 Explain to me the interaction between the federal
11 Section 7 consultation process and EPA's oversight
12 of the determination of compliance by the
13 district.

14 MR. RICHINS: Well, it was my
15 understanding a couple of weeks ago that -- in
16 discussions with Steve Hill at the Air District,
17 as well as EPA, that EPA was going to require that
18 the Bay Area not release the final determination
19 of compliance until EPA had accepted and approved,
20 whatever that means, the biological opinion.

21 In subsequent phone calls as late as
22 today, just prior to leaving, my understanding
23 from the Bay Area Air Quality Management District
24 is that they are going to release the final
25 determination of compliance without EPA approval,

1 and they believe that's an acceptable process.
2 And the way they're addressing the matter is that
3 they will have a condition in their final DOC
4 that indicates that the PSD permit will be
5 withheld until final approval of the biological
6 opinion by EPA.

7 So that's my best understanding of the
8 nexus between EPA and the biological opinion and
9 the air permit.

10 HEARING OFFICER VALKOSKY: Okay. So the
11 release -- well, is it your understanding that the
12 Bay Area district still intends to release its DOC
13 by July 31st?

14 MR. RICHINS: Well, that's another
15 question.

16 HEARING OFFICER VALKOSKY: Okay.

17 MR. RICHINS: So as of -- as of just
18 before leaving today, it was my understanding
19 prior to that that it was going to be released on
20 the 31st of July. In talking with Dennis at the
21 air district, he indicates that because of
22 consultations with EPA on issues that they brought
23 up regarding the PDOC, and part of that discussion
24 has to do with this release, this one condition as
25 it relates to the PSD permit, as well as BACT

1 determinations, they're in discussions and
2 meetings with EPA. And also, because of workload
3 considerations there at the Bay Area, that they
4 will not have the -- be able to release the FDOC
5 until sometime in mid-August, at the earliest.
6 And the operative word is at the earliest, I
7 think.

8 So sometime in mid-August --

9 HEARING OFFICER VALKOSKY: In other
10 words, not before about August 15th.

11 MR. RICHINS: Yeah, right. Whenever
12 mid-August is, yeah.

13 (Laughter.)

14 MR. RICHINS: Well, there's a range
15 there.

16 HEARING OFFICER VALKOSKY: All right.
17 So not before August 15th.

18 MR. RICHINS: And it's kind of a fluid
19 situation. I've been monitoring it practically
20 daily, with many calls, many conversations with
21 both EPA and -- well, all the actors.

22 HEARING OFFICER VALKOSKY: Okay.
23 Thanks.

24 Mr. Harris. Would you share your wisdom
25 on these matters with the Committee.

1 MR. HARRIS: I'm glad Paul went first,
2 that's all I have to say.

3 I guess taking the issues in the same
4 order as Mr. Richins, we, in the biological
5 opinion, did hear an August 9th date at the
6 workshops. Subsequent to that, there's been
7 telephone conversations back and forth, and that
8 all relates to the scope of EPA's role for their
9 Section 7 consultation on the PSD portion of the
10 FDOC, if you followed all those acronyms.

11 And I don't have a better, clearer
12 picture than Mr. Richins just laid out for you in
13 terms of the timing. We are in conversations with
14 both the Bay Area district and with USEPA. Our
15 goal and objective is to make sure that those two
16 agencies are in agreement as to whatever course is
17 ultimately taken, because they have to be in
18 agreement. So we're trying to facilitate that.

19 We have actually proposed essentially a
20 two -- a two-step approach where the FDOC would be
21 issued before the biological opinion. As Mr.
22 Richins said, the Bay Area district was
23 considering that. It would be issued with
24 basically a notice saying that it doesn't operate
25 as the PSD permit, pending the consultation,

1 because the consultation is limited to the Section
2 7 PSD federal permit.

3 Subsequent to that, then there would be
4 a biological opinion completed, and the
5 consultation completed. At that point, the Bay
6 Area district could then issue the PSD portion of
7 their permit, and that would start the -- the
8 timeframe for the appeal to the Environmental
9 Appeals Board. When that second release occurs is
10 really the subject of discussion. Is it going to
11 be, you know, immediately upon the biological
12 opinion being released, would it be maybe after
13 the final Staff assessment is out there. I know
14 that Staff in other cases has had an interest in
15 getting, for example, environmental justice
16 testimony from the Commission into the record of
17 the air district before the PSD permit is issued.

18 So as to exactly when that second
19 issuance, the issuance of the PSD portion would
20 occur, that's what's being discussed, I think at
21 high levels, at both EPA and the Bay Area
22 district. And I share Paul's frustration in being
23 able to get a final answer on that.

24 But again, our objective is to make sure
25 that all those agencies are in agreement that all

1 the legal standards are met, public participation
2 is facilitated, and, you know, we're -- we're
3 basically, I think, charting new grounds in some
4 respect, but I think we want to do so consistent,
5 including with the laws and the regulations.
6 That's why the high level of consideration.

7 HEARING OFFICER VALKOSKY: So is it fair
8 to guess at this time that of the two dates, the
9 9th and the 23rd, offered by Mr. Richins, that the
10 23rd is at least closer to reality than is the
11 9th?

12 MR. HARRIS: Well, we have an
13 interesting vacation problem, as well. Steve
14 Hill, from the Bay Area district is on vacation,
15 which may be why none of his staff is here. He'll
16 be back -- according to our intelligence on that,
17 which is a phone call, they don't publish their
18 vacations -- next week sometime. And I think
19 that'll give us much more clarity. And I --

20 HEARING OFFICER VALKOSKY: I'm sorry,
21 Mr. Williams. Please don't do that.

22 MR. WILLIAMS: Okay.

23 MR. HARRIS: Thanks. So if that
24 alignment of the planet occurs, we should have
25 both the relevant people at the Bay Area district

1 and at USEPA in their offices at the same time,
2 working, aware of the same subject matter. So I
3 hope to have more clarity on this even by next
4 Wednesday.

5 HEARING OFFICER VALKOSKY: Okay. So
6 then the second -- the second shoe to drop, you
7 don't really, I take it, disagree with Mr Richins'
8 projection that the FDOC would not come out before
9 the middle of August.

10 MR. HARRIS: It all depends on the Bay
11 Area district's position relative to EPA. If they
12 decide they can do it in two phases, like we've
13 suggested, apparently they're ready to issue that
14 document fairly quickly. They've targeted the
15 date of the 31st.

16 Having said that, if we're talking about
17 two weeks difference here, we're interested in
18 quality, not speed in that regard, so if two weeks
19 makes everything more comprehensible to everybody,
20 obviously we'll take the two weeks and get it done
21 right.

22 HEARING OFFICER VALKOSKY: Understand.
23 Final question. To your knowledge, does the
24 biological opinion consider the red-legged frog?

25 MR. HARRIS: Absolutely, yes.

1 HEARING OFFICER VALKOSKY: It does.

2 MR. HARRIS: It's part of -- our
3 biological assessment is submitted to initiate the
4 consultation process. Our biological assessment
5 included the red-legged frog, and I do believe
6 that Mr. -- excuse me, Ms. Brown of the Fish and
7 Wildlife Service talked about that at the PSA
8 workshops, if I'm not -- if I'm not mistaken. And
9 so, yes, it is in there.

10 HEARING OFFICER VALKOSKY: Okay. Thank
11 you.

12 Anything else? Ms. Grueneich.

13 MS. GRUENEICH: Yes, just real quickly.
14 The EPA letter that -- to the air district, that
15 commented on the preliminary determination of
16 compliance, also raised a matter that I don't
17 believe I recall hearing Staff or the Applicant
18 mention tonight, and my memory is, is that they
19 stated that they believe that they had
20 jurisdiction with regard to toxics issues,
21 formaldehyde emissions, and MACT. And I'm not
22 sure I heard tonight from either the Staff or the
23 Applicant to the extent that EPA's written
24 comments on that matter with the jurisdiction
25 prevails, if we have any sense of when they would

1 give their views on it.

2 Now, my view is with most of this, we'll
3 find out when we find out. It's agencies out
4 there. But I did just want to note that there may
5 be another matter on which EPA will be weighing
6 in.

7 HEARING OFFICER VALKOSKY: Well, I think
8 that's a good question. Mr. Richins, do you have
9 any response to that?

10 MR. RICHINS: No. I think it'll be
11 revealed in the final DOC.

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. RICHINS: And --

14 HEARING OFFICER VALKOSKY: You don't
15 have any knowledge over whether in fact it will be
16 contained in the DOC?

17 MR. RICHINS: No, I don't.

18 HEARING OFFICER VALKOSKY: Okay. Mr.
19 Harris, do you --

20 MR. HARRIS: I don't know whether
21 there's been a response to those comments yet. I
22 couldn't tell you whether the Bay Area district
23 responded. But our discussions with the Bay Area
24 district are that things are moving along. So I
25 assume the issue's off the table. It's been

1 solved. We haven't heard otherwise, but --

2 HEARING OFFICER VALKOSKY: Okay. But --

3 MR. HARRIS: -- but we don't know that
4 for sure.

5 HEARING OFFICER VALKOSKY: -- but you
6 don't know. And no one will know, in effect,
7 until the -- until the district releases its DOC.

8 Mr. Williams.

9 MR. WILLIAMS: Yes. There's one other
10 issue that was raised by the Audubon Society in
11 the course of the workshops. This had to do with
12 the Wellhead Protection Act. Apparently, over in
13 Niles Canyon EPA's requirements to protect certain
14 aquifers that could be deemed wellheads came into
15 interaction.

16 So my question is, first, the point of
17 information to Mr. Richins, has anybody looked
18 into the requirements of the Wellhead Protection
19 Act?

20 MR. RICHINS: We are looking into all
21 the comments that we received at the PSA workshop.
22 So to answer your question, yes.

23 MR. WILLIAMS: Okay. But we don't know
24 substantively what's required to meet that, or --

25 HEARING OFFICER VALKOSKY: Well, we

1 don't know if it's -- if anything's required to
2 meet it, first of all.

3 MR. WILLIAMS: Yes.

4 HEARING OFFICER VALKOSKY: And I think
5 we'll have to take that for now, that Staff is
6 looking into it. I don't know, I certainly can't
7 answer the question at this time.

8 Mr. Boyd.

9 MR. BOYD: Well, first off, on the issue
10 of the consultation. I went -- I called the U.S.
11 Fish and Wildlife Service. Initially, I thought
12 that Cecilia Brown was the person that I needed to
13 inform about the red-legged frog issue. And
14 subsequent to that, I was informed that she
15 wasn't. Cecilia Brown is an entomologist, and the
16 person they referred me to is a lady named Diane
17 Elam, E-l-a-m. And that's who I forwarded the
18 correspondence to.

19 I also understand that the Applicant did
20 provide information initially to -- in the -- the
21 initial consultation to Cecilia about the red-
22 legged frog, but obviously there's a difference of
23 opinion between their -- their expert consultant
24 and our expert consultant. So --

25 HEARING OFFICER VALKOSKY: Right. But,

1 I just --

2 MR. BOYD: -- so basically, what my --
3 what our consultant's providing in the new
4 information that we're providing, is the fact that
5 our consultant actually provided an inventory as a
6 contractor for the U.S. Fish and Wildlife Service
7 on the red-legged frog habitat in the San Jose
8 area. And so, you know, basically, we'll see what
9 comes out of it.

10 HEARING OFFICER VALKOSKY: Right.
11 Right. That's -- that was -- I just wanted to
12 clarify that in fact that had been included, and
13 it wasn't an additional species that had just been
14 identified.

15 MR. BOYD: Right.

16 HEARING OFFICER VALKOSKY: That was my
17 initial impression.

18 MR. BOYD: No.

19 HEARING OFFICER VALKOSKY: And -- and
20 that's fine. And I --

21 MR. BOYD: Okay. And then on the FDOC,
22 since we have both of these --

23 HEARING OFFICER VALKOSKY: Yes.

24 MR. BOYD: -- issues here. As I've
25 raised in other -- other workshops and at the

1 December Status Conference, as well. In the
2 scheduling process, it's important to me, as a
3 party, that the evidentiary hearing take place in
4 a timely enough manner so that when a PSD appeal
5 is filed with the -- with the Environmental
6 Appeals Board, the USEPA Environmental Appeals
7 Board, that it's scheduled in such a way so that
8 the evidentiary hearings take place before the
9 deadline to file the complaint, because it doesn't
10 really serve -- there's no evidence in the record
11 yet, if we file the complaint way before the
12 evidentiary hearings.

13 In other words, there hasn't been any
14 evidence created yet. So we can't include any of
15 that in the appeal. So that's why I strongly
16 encourage that when you -- I've heard that they
17 may separate the PSD portion off from the FDOC.
18 But in any case, whenever it comes out, it would
19 be very helpful for the matter of having the
20 record together, to have those evidentiary
21 hearings soon enough.

22 HEARING OFFICER VALKOSKY: Yeah, I -- I
23 understand that.

24 MR. BOYD: And I haven't changed my
25 opinion. And what -- what CARE submitted for our

1 proposed schedule included that and it -- that
2 basically we provided for 15 days between the
3 release. At that time we assumed it was just the
4 FDOC that was going to come out. And then 15 days
5 later having this.

6 Now, just as far as what I'm hearing,
7 though, is that the FDOC would come out before the
8 PSD permit would come out, is what's being
9 discussed. Is that correct?

10 HEARING OFFICER VALKOSKY: That's my
11 understanding of it, yeah.

12 MR. BOYD: Now, my question is how can
13 you -- and that's because of the Section 7
14 consultation.

15 HEARING OFFICER VALKOSKY: That's the
16 way I understand it.

17 MR. BOYD: So how can you make a final
18 determination of compliance without having all the
19 -- all the record created. How do you do that,
20 how can you make -- how can you do it without --

21 HEARING OFFICER VALKOSKY: I -- I think
22 --

23 MR. BOYD: -- having identified what the
24 mitigation is and what --

25 HEARING OFFICER VALKOSKY: -- I think at

1 this time is --

2 MR. BOYD: -- monitoring it? How can
3 you do that?

4 HEARING OFFICER VALKOSKY: -- that's the
5 discussion that EPA and the Bay Area district are
6 having.

7 MR. BOYD: Now, that's a slippery slope.
8 I mean, how come they already did the -- another
9 air district already got their FDOC tossed out
10 because of that?

11 HEARING OFFICER VALKOSKY: That's -- you
12 know, that's -- that's really between those
13 authorities. They're independent from our
14 jurisdiction.

15 MR. BOYD: Okay. And then another
16 slippery slope, which is in your jurisdiction, is
17 the FSA timing. Are you going to have the FSA
18 come out before these -- these consultations are
19 over and the EPA has their -- approved the
20 outcome? I mean, how can you -- it's the same
21 issue.

22 HEARING OFFICER VALKOSKY: Typically --
23 typically, the way the process works, and we're
24 trying to figure out what to do, is the FSA would
25 come out after the DOC is issued.

1 MR. BOYD: Correct.

2 HEARING OFFICER VALKOSKY: So that the
3 FSA would be a complete analysis based on all
4 relevant data. And that's it.

5 MR. BOYD: So -- so, but --

6 HEARING OFFICER VALKOSKY: That's the
7 way --

8 MR. BOYD: -- but I've heard talk about
9 releasing the FSA as well, before some of these
10 other issues are completed.

11 HEARING OFFICER VALKOSKY: Well, I --

12 MR. BOYD: And I would strongly
13 discourage that you don't -- discourage that
14 activity.

15 HEARING OFFICER VALKOSKY: Okay.

16 Understand.

17 Mr. Wade, anything to add?

18 MR. WADE: Well, I can only -- I can
19 only reiterate what -- comments that were made
20 previously. And since we've -- you've been asking
21 to avoid redundancy, I think I'll defer further
22 comments.

23 HEARING OFFICER VALKOSKY: Okay. Thank
24 you, sir.

25 All right. I think we've gotten enough

1 information on -- on these. We haven't gotten too
2 many solid dates, but -- oh, well.

3 Okay. Ms. Prevetti, is that -- is that
4 correct?

5 MS. PREVETTI: Yes.

6 HEARING OFFICER VALKOSKY: Yes. The
7 next topic on the agenda, the timing of any
8 necessary actions by the City of San Jose.

9 MS. PREVETTI: Yes.

10 HEARING OFFICER VALKOSKY: If you could
11 enlighten us, please.

12 MS. PREVETTI: Yes. We are awaiting the
13 release of the FSA, and that will essentially
14 start our clock. We anticipate that we will be
15 holding Planning Commission study sessions on the
16 project and the entitlements that the city needs
17 to grant for this particular project. That can
18 occur within about three weeks of the release of
19 the FSA. We will then start our Planning
20 Commission hearings. They are a recommendation
21 body to our City Council, and then the City
22 Council would need to hold its set of public
23 hearings subsequently.

24 We expect that it would take up to about
25 eight weeks to complete all of our public hearings

1 and for the City Council to make their decisions
2 on the various entitlements.

3 HEARING OFFICER VALKOSKY: Is -- is that
4 eight weeks in addition to the initial three
5 weeks, or eight weeks all together?

6 MS. PREVETTI: Total.

7 HEARING OFFICER VALKOSKY: Eight weeks
8 total. Okay.

9 Am I correct in assuming that at such a
10 time as Staff issues its PSA, they would
11 essentially send one to you hot off the press, and
12 that you would then commence the city review?

13 MS. PREVETTI: Yes.

14 HEARING OFFICER VALKOSKY: I mean, is
15 that really what we're looking at?

16 MS. PREVETTI: We're looking at the
17 arrival date of the FSA to our office.

18 HEARING OFFICER VALKOSKY: Okay.

19 MS. PREVETTI: That would start our
20 clock.

21 HEARING OFFICER VALKOSKY: So as soon as
22 Staff gets it to you.

23 Am I further correct in assuming that
24 the city would prefer that hearings not be held,
25 or at least that the record be held open on

1 certain topic areas? You mentioned that earlier
2 in one of the --

3 MS. PREVETTI: Yes. Thank you very
4 much. In fact, we would very much appreciate for
5 the record in the evidentiary hearings to reflect
6 the comments that the City Council might be
7 making, and their actions with respect to all the
8 entitlements.

9 HEARING OFFICER VALKOSKY: Yeah. And
10 then you don't need to specify those. I -- I know
11 there'll be other areas involved too, but I just
12 wanted to get the general concept.

13 Can you summarize the actions that the
14 city has -- the discretionary actions that the
15 city has on its plate, please.

16 MS. PREVETTI: Yes, certainly. First is
17 the general plan amendment, the proposal to change
18 the land use designation on our general plan from
19 campus/industrial to public/quasi-public. Second,
20 we have a zoning application, a planned
21 development zoning tailored to the site, as well
22 as an annexation. And then there will be other
23 entitlements that would also be involved in this
24 particular project.

25 We anticipate that because there are

1 other discretionary actions, such as subdivision,
2 tree removal permits, et cetera, that in order for
3 our council, which typically is not the governing
4 body on those other discretionary actions, that
5 they would do something a little bit different,
6 and that is adopt a resolution, so that way if
7 there are any specific conditions or concerns that
8 we would like the project to address, that our
9 council will have weighed in on that. And then
10 the full commission would have that body of
11 information available to it in its consideration.

12 PRESIDING MEMBER LAURIE: Can you
13 summarize the role of LAFCO in regards to this
14 project?

15 MS. PREVETTI: Yes. The project site is
16 within the city's urban service area, and the city
17 has an agreement with LAFCO that essentially four
18 projects, four proposed annexations within our
19 urban service area that we do not need to go to
20 LAFCO. That's a unique circumstance with the
21 County of Santa Clara.

22 PRESIDING MEMBER LAURIE: Thank you.

23 HEARING OFFICER VALKOSKY: Okay. Thank
24 you very much, Ms. Prevetti.

25 Are there any questions about -- I've

1 got -- I'm going with the parties that have filed
2 so far, okay.

3 Mr. Harris, anything?

4 Mr. Boyd.

5 MR. BOYD: Laurel, I noticed on the
6 general plan amendment schedule that you had
7 scheduled originally in the beginning of August or
8 the middle of August for the Planning Commission
9 to begin discussing the amendment. Is that still
10 the case, or has that been moved back because of
11 the FSA's not being released?

12 MS. PREVETTI: We do not have a set
13 schedule at this point for this project. We
14 really can't determine what our schedule will be
15 until we know when the FSA is due out. So as soon
16 as we know, then we will be working with our
17 council and commission to set those hearings and
18 study sessions.

19 MR. BOYD: So it might be a good idea to
20 take that off the Website, so that the public
21 doesn't think there's a hearing coming up when
22 it's not --

23 MS. PREVETTI: Thank you very much. We
24 will take care of that.

25 HEARING OFFICER VALKOSKY: Mr. Wade.

1 Mr. Williams.

2 MR. WILLIAMS: No comments.

3 HEARING OFFICER VALKOSKY: Ms.

4 Grueneich.

5 MS. GRUENEICH: Two comments. When I
6 reviewed the transcript from the December status
7 hearing, my recollection was that you had stated
8 that the city would need not only the FSA from the
9 Staff, but a certification of some sort. And I'm
10 wondering if you could clarify what it is that
11 will be needed, and then whoever would be
12 appropriate, whether it's the CEC Staff, or
13 perhaps Mr. Valkosky, to help us understand what
14 that process is. Because if there's another step,
15 I think we should understand it.

16 And then the second question I had is
17 that it is possible, it seems to me, that the FSA
18 as is currently being contemplated by the Staff
19 may not include the benefit of all analysis, to
20 the extent that we're talking about some of the
21 district permits not quite being out, or the EPA,
22 or Fish and Wildlife. And I'm wondering if that
23 were the case, whether the city would be --
24 anticipate that you would be proceeding with your
25 planning review, or whether you would wait until

1 essentially all analysis of the project was done.

2 MS. PREVETTI: Okay. Good questions.

3 Essentially, we are looking for the FSA
4 as our CEQA equivalent document, so it is
5 important to us that we have a complete document.
6 Our city attorney's office has been in
7 communication with the CEC Staff Counsel office,
8 and we understood that there could be some sort of
9 action by the Committee or the Commission which
10 would essentially acknowledge the FSA as --
11 certified as complete.

12 We are not doing our own CEQA review, so
13 we are relying entirely on the CEC proceedings.
14 So we are very interested in having as complete
15 information as possible.

16 If the FSA were to be released and there
17 still being data that we were essentially awaiting
18 from other agencies, I can't speak for our
19 attorneys, but I assume that that might call into
20 question whether or not the FSA could, in fact,
21 act as a CEQA equivalent final EIR.

22 HEARING OFFICER VALKOSKY: Let's go back
23 to the question of certification, because to my
24 knowledge, the Commission has no established
25 procedure to certify a Staff document. So that --

1 and I think Ms. Grueneich characterizes that
2 correctly, that would incorporate some as yet
3 undefined steps.

4 Am I to understand that the city
5 requires this type of certification, or will the
6 city just accept the document that Staff says is
7 complete, here's our FSA eventually. Which --
8 which is it?

9 MS. PREVETTI: Well, it was our
10 understanding, looking at CEQA and some other
11 regulations, that before we could take any of our
12 discretionary actions we needed a CEQA and EIR
13 equivalent document. And we couldn't use the FSA
14 unless it had been somehow blessed, or whatever
15 the right word is, so somehow the Commission had
16 considered it as being complete. But there had to
17 have been at least some kind of action that the
18 Commission itself had taken, using the FSA, that
19 would essentially enable it to be available then
20 for other agencies to use.

21 HEARING OFFICER VALKOSKY: Okay. So
22 that you need -- and I'm just using the term
23 certified as a shorthand --

24 MS. PREVETTI: Right.

25 HEARING OFFICER VALKOSKY: -- a

1 certified FSA before the city would commence its
2 process.

3 MS. PREVETTI: Uh-huh.

4 HEARING OFFICER VALKOSKY: Correct?

5 MS. PREVETTI: That's correct.

6 HEARING OFFICER VALKOSKY: Okay.

7 Ms. Willis, what's the process for
8 certifying an FSA?

9 (Laughter.)

10 PRESIDING MEMBER LAURIE: Aren't you
11 glad you came back from vacation.

12 MS. WILLIS: No, no, I'm still on
13 vacation.

14 Our original discussions with the city
15 attorney at the City of San Jose was that they
16 needed some -- something that just said this was
17 an EIR equivalent document. We obviously have not
18 worked out the procedure to do that, or have --
19 actually, since that was part of our MOU, that
20 never did get ratified.

21 HEARING OFFICER VALKOSKY: Right. I --

22 MS. WILLIS: So we never did follow
23 through on how, or what exactly their requirements
24 are, and that's something that we'll need to do.

25 My understanding is that city attorney

1 is no longer with the city. Is he -- so we will
2 need to -- we'll need to work that out.

3 HEARING OFFICER VALKOSKY: No longer
4 with the city, or on vacation?

5 MS. WILLIS: One or the other.

6 HEARING OFFICER VALKOSKY: Okay. So
7 that's -- that's an open --

8 MS. WILLIS: That was --

9 HEARING OFFICER VALKOSKY: -- that's an
10 open question at this time?

11 MS. WILLIS: That was an open question.
12 That was something that was, I would say, maybe
13 discussions that were a year ago, and were never
14 pursued after that.

15 Our understanding is that the FSA will
16 be an environmental -- an equivalent EIR, a
17 functional equivalent document, and it will be
18 complete. Otherwise, we will not be able to
19 release --

20 HEARING OFFICER VALKOSKY: Right, but --
21 but my understanding from what Ms. Prevetti said
22 is that the Commission would somehow have to
23 bless, certify, do something with this document --

24 MS. WILLIS: That --

25 HEARING OFFICER VALKOSKY: -- to

1 indicate it's complete.

2 MS. PREVETTI: That was one of the
3 scenarios that our city attorney's office had
4 identified in consultation with the counsel for
5 the CEC. Obviously, now that it is a year later,
6 we need to take another look at that and see
7 whether or not that's the appropriate venue --

8 HEARING OFFICER VALKOSKY: Okay.

9 MS. PREVETTI: -- or some other. So --

10 HEARING OFFICER VALKOSKY: So this --
11 so, let me back up then. This is an open
12 question.

13 MS. PREVETTI: It is.

14 HEARING OFFICER VALKOSKY: On both --
15 both the city's part and the Staff's part.

16 MS. WILLIS: That's correct.

17 HEARING OFFICER VALKOSKY: Thank you.

18 Mr. Williams.

19 MR. WILLIAMS: Just very briefly. I had
20 no comments until Ms. Prevetti's remarks. I think
21 this now underlines the fact that a second PSA is
22 required so that we can make a strong move toward
23 completeness, and that we not try to resolve
24 design issues during an evidentiary hearing.

25 HEARING OFFICER VALKOSKY: Okay. Thank

1 you.

2 Mr. Boyd.

3 MR. BOYD: I've been involved in -- in
4 several of these siting cases, and this is -- it
5 sounds like a slippery slope again.

6 My -- my understanding is that we have
7 30 days to file a CEQA action after the Presiding
8 Member's Decision is approved by the full
9 Commission. Isn't that correct?

10 HEARING OFFICER VALKOSKY: No.

11 MR. BOYD: Isn't that when the CEQA --
12 CEQA -- the -- or --

13 HEARING OFFICER VALKOSKY: No, it is
14 not, sir. After -- after the Commission adopts a
15 decision, a final decision --

16 MR. BOYD: The final decision.

17 HEARING OFFICER VALKOSKY: -- there is a
18 30 day reconsideration period, okay.

19 MR. BOYD: Okay.

20 HEARING OFFICER VALKOSKY: Which you
21 have to file for administrative reconsideration.
22 Okay.

23 MR. BOYD: Right. Like someone did in
24 Delta.

25 HEARING OFFICER VALKOSKY: Yeah. The

1 Commission then has 30 days to react to that.
2 After the end of the exhaustion -- the term of our
3 exhaustion of your administrative remedies, there
4 is then a 30 day period in which you may proceed a
5 court appeal.

6 MR. BOYD: On the CEQA grounds.

7 HEARING OFFICER VALKOSKY: Yes.

8 MR. BOYD: Okay. So --

9 HEARING OFFICER VALKOSKY: On Warren-
10 Alquist grounds, you know.

11 MR. BOYD: -- really, the FSA isn't a
12 CEQA equivalent -- no one's saying that, and I've
13 never heard before anyone say that the FSA was a
14 CEQA equivalent, say, to a final EIR. And it
15 seems like that's what the city is asking for, is
16 a certified final EIR.

17 HEARING OFFICER VALKOSKY: I don't see
18 how you could do that. I think the city is
19 treating that as the equivalent for their
20 purposes.

21 MR. BOYD: Okay. Now the other question
22 I have is also in the Delta case, we had a
23 variance issue. I don't know if you remember
24 this. But they had a variance for the stack
25 height. And the city couldn't actually vote on

1 it, so they did -- referred it back to the
2 Planning Commission, and then it was like a
3 conceptual approval type thing.

4 HEARING OFFICER VALKOSKY: I'm not --

5 MR. BOYD: Could you do that also in
6 this type of situation?

7 HEARING OFFICER VALKOSKY: I'm -- I
8 can't respond to that.

9 MR. BOYD: I mean, I'm just -- I'm just
10 wondering if --

11 HEARING OFFICER VALKOSKY: You're --
12 you're getting beyond --

13 MR. BOYD: I'm trying to figure out what
14 you guys are trying to do here, you know.

15 HEARING OFFICER VALKOSKY: As are we.

16 Okay.

17 (Laughter.)

18 HEARING OFFICER VALKOSKY: I know.

19 Again, I was going the order of the people that
20 have filed in response to the Committee order.

21 You stated you filed, but nobody received it.

22 Okay. Now, if you've got something to add,
23 please.

24 DR. WIKTOROWICZ: Actually, I just have
25 a point of clarification for Ms. Prevetti.

1 HEARING OFFICER VALKOSKY: Okay.

2 DR. WIKTOROWICZ: It's my understanding
3 that the city council normally reviews rezoning
4 requests in November. Is that -- is your --

5 MS. PREVETTI: Let me clarify --

6 DR. WIKTOROWICZ: Sure.

7 MS. PREVETTI: -- it's the general plan
8 amendments that they consider in the November
9 timeframe.

10 DR. WIKTOROWICZ: I see. So in other
11 words, the actual rezoning request will be tied,
12 as you said, to the FSA, and then followed by five
13 weeks, consecutive weeks of public hearings by the
14 city council?

15 MS. PREVETTI: What we would do is
16 initially hold a study session with our planning
17 commission, so that they can come up to speed with
18 all of the issues. And then they would conduct
19 public hearings, at which time they would make a
20 recommendation to the city council regarding the
21 general plan, and then annexation zoning. And
22 subsequent to that, the city council would convene
23 its public hearings on those very same
24 entitlements.

25 Given the nature of this project, we

1 anticipate that it will not necessarily coincide
2 with our typical general plan annual review. It
3 may need to be held at another time.

4 DR. WIKTOROWICZ: Okay. Thank you.

5 HEARING OFFICER VALKOSKY: Okay.

6 MR. AJLOUNY: May I suggest, knowing
7 that the city needs the FSA for their EIR, that
8 maybe the CEC Staff could come out with a FSA and
9 then come out with an addendum, or a supplement to
10 the FSA, maybe by the first FSA the city can start
11 their process and, you know, relieve us as, you
12 know, the stress that's going on in this
13 community, in the financial stress. It might -- I
14 know it sounds like a curve ball, but instead of
15 doing a PSA and then a supplement PSA, and then an
16 FSA, do -- the PSA came out, let's do the FSA, and
17 then do a supplement to the FSA. And maybe with
18 agreement, the first FSA could be -- start the
19 clock for the city so we can all get over this.

20 A suggestion.

21 HEARING OFFICER VALKOSKY: Is that
22 something that would be within the realm of
23 possibility for the city and the Staff?

24 MS. PREVETTI: I'm not really sure what
25 the subsequent or supplemental FSA would

1 accomplish. If we don't have a complete FSA, I'm
2 not really sure what actions the city council
3 could take.

4 MR. AJLOUNY: If they -- if they blessed
5 it -- I'm just saying the first FSA, and the
6 Commission blessed it or gave that certification,
7 hey, this is pretty much it, but we have -- like
8 Moss Landing, we have the FSA but we have five
9 issues, you know. But they say this is going to
10 be your FSA.

11 I, you know, dealing with the planning
12 and dealing with the city, I feel very
13 comfortable, and I know I'm speaking out, you
14 know, in your department, but you've got to be
15 feeling pretty comfortable with that document.
16 And we would -- maybe let's say five items out
17 there, that you can at least start your planning
18 process and talk to it.

19 HEARING OFFICER VALKOSKY: Ms. Willis.

20 MS. WILLIS: When we originally talked
21 with the city, as I said, over a year ago, the
22 feeling was is that they wanted a complete
23 document. And I think that was something that
24 they needed to have all the information to make
25 their decision. I'm not sure that having

1 supplemental information out there to come in
2 later would -- would be appropriate, if they're
3 asking for complete information.

4 MR. AJLOUNY: That was last year. That
5 was --

6 MS. WILLIS: Right.

7 MR. AJLOUNY: -- things have changed.
8 Publicly, the city council has come out --

9 HEARING OFFICER VALKOSKY: Well, let's
10 -- yeah, rather than try to decide it here, I
11 think -- will the city and the Staff, since you're
12 going to have continuing discussions on this
13 certification question, at least raise the
14 possibility that's discussed? I think that's the
15 best we can do at this point. Thank you.

16 Okay, with that, and because the
17 Committee still intends to have time for general
18 public comment, we're going to turn to the last
19 item on the agenda, which is future scheduling.

20 We've had various parties submit
21 schedules, including at the -- at the recess, and
22 since -- and since I feel we may as well go with
23 the most recent schedules we've just had -- we
24 have just had submitted, I'll turn to Applicant
25 and CVRP.

1 MR. HARRIS: Okay. I can be very brief.
2 We have a single page, it's called proposed
3 schedule of Applicant and CEC Staff. This is not
4 new information.

5 Basically, what I wanted to do for
6 myself was to put on a single page the comparison
7 between the schedule we've proposed and the two
8 schedules, which I called Schedule Number 1 and
9 Schedule Number 2, by the Staff.

10 The difference between 1 and 2, as I
11 understand it, is that 2 anticipates a slip based
12 upon the biological opinion issues that we went
13 round and round with a minute ago. So, and really
14 the whole point in illustrating that is to have
15 folks look at the -- I guess it's the second and
16 third column, the Applicant's proposed schedule,
17 and the Staff's proposed schedule Number 1, and
18 just point out that those dates are very close.
19 And so I think we must be heading in the right
20 direction.

21 And I'd be glad to answer any questions
22 about that. But really, just wanted to put
23 everything side by side.

24 HEARING OFFICER VALKOSKY: Thank you,
25 Mr. Harris.

1 Ms. Grueneich, if you could make a brief
2 summary of your -- major points of your schedule.

3 MS. GRUENEICH: I know, I'll be very
4 brief. I'm not going to go through it in detail.
5 But to the extent that this evening we've
6 identified dates, in fact we have tracked them
7 fairly well. What we've tried to do, as I said,
8 is put in our understanding of when some of these
9 other permits or analyses may be available.

10 We have requested that there be FSA
11 workshops, because we think that with the amount
12 of new information that comes in with the FSA, if
13 there is not a supplemental PSA that is issued,
14 that it would make sense from all parties to have
15 the opportunity to make sure that they understand
16 the analysis in the workshops, and that it would,
17 in fact, facilitate the final decision date in
18 this issue.

19 We've talked about discovery and why
20 we've listed that.

21 We have put down, following through on
22 the second page, a specific day for Intervenor
23 testimony, and I think that we are in agreement
24 that the Applicant's filing had proposed basically
25 a certain amount of time, and we've tried to carry

1 it through. But just in terms of this, we're
2 setting up the schedules, some of the key
3 principles we have is that we really do have
4 adequate time to prepare Intervenor testimony.

5 It is our understanding from tonight
6 that the Applicant is not filing any testimony per
7 se for the hearings, but will rely upon the
8 information that it has submitted to date. If it
9 was, in fact, going to file testimony, and
10 especially if it presented any analysis that had
11 not been presented to date, nor analyzed in the
12 FSA, we think it's essential that their testimony
13 be filed first, and that Intervenors then have
14 time to respond to that.

15 HEARING OFFICER VALKOSKY: Yeah. I -- I
16 don't even want to get into -- to testimony at
17 this time.

18 MS. GRUENEICH: That's fine.

19 HEARING OFFICER VALKOSKY: Because that
20 would be something that would be discussed at a
21 pre-hearing conference.

22 MS. GRUENEICH: I'm all done, then.

23 HEARING OFFICER VALKOSKY: Okay, great.
24 We're not there yet. Just a minute, Mr. Williams.

25 One of the -- one of the difficulties,

1 frankly, that I think the Committee is having, is
2 that everyone wants a complete Staff assessment.
3 I don't think there's any disagreement on that.
4 Staff, at least in its filing, said we need 30 to
5 40 days to complete a Staff assessment. And
6 again, preliminary or final is really irrelevant,
7 it's just complete a Staff assessment, after the
8 FDOC is issued.

9 Now, what I've heard today, we don't
10 know when the FDOC is -- is going to be issued for
11 sure, and we don't even know what the impact of
12 the biological opinion or EPA's action, or any of
13 that will -- will have. So, I mean, I'm having a
14 very difficult time trying to -- trying to
15 formulate the scheduling of the next two or three
16 or four elements of this proceeding, let along the
17 pre-hearing conference and all of that stuff way
18 down the road.

19 I'd really like the parties, if you
20 could, just, you know, give me some guidance,
21 enlightenment, something on my immediate concern.
22 Please, Mr. Harris.

23 MR. HARRIS: Thank you, Mr. Valkosky.

24 One thing I was glad about as I drove up
25 here today is I realized we didn't have to have a

1 chalkboard to do the rest of the schedule for the
2 proceeding tonight, because we would've never
3 gotten there.

4 I think you are in a quandary right now.
5 It's impossible for you to -- to -- and the
6 Committee tonight to decide on these scheduling
7 issues, especially with the uncertainty related to
8 the Bay Area district, and the -- and the USEPA.
9 I think that what you're going to need to move
10 forward is some kind of indication from those
11 agencies as to where they're headed. That ought
12 to be in writing, and it ought to be filed, served
13 on all the parties, and it ought to happen in the
14 next seven to ten days, assuming I'm understanding
15 the vacation schedules of the various agencies.

16 HEARING OFFICER VALKOSKY: Thank you,
17 Mr. Harris.

18 Mr. Boyd. Again, brief comments.

19 MR. BOYD: Very brief. I presented --
20 basically, ST Action presented its schedule, and
21 -- and CARE pretty much concurred with it, except
22 for the exception was that we would like to see
23 that the evidentiary hearings be scheduled 15 days
24 after --

25 HEARING OFFICER VALKOSKY: Yeah, I -- I

1 don't even want to get that far.

2 MR. BOYD: So basically, all I'm saying
3 is we -- we would -- reiterating, the schedule we
4 provided you would give us another additional
5 three months of discovery time, which would
6 fulfill our request for that, and it would also
7 allow for the evidentiary hearings to occur when
8 -- when we were recommending in regards to the
9 FDOC.

10 HEARING OFFICER VALKOSKY: Thank you,
11 Mr. Boyd.

12 Mr. Wade, anything?

13 MR. WADE: Well, the only thing I would
14 suggest, since everyone seems to be so concerned
15 with having a final -- a complete document, a
16 schedule could be proposed that would be a worst
17 case schedule, and we could begin to work to that.

18 And I think we would be satisfied with a
19 schedule that involves, or bounds all the possible
20 contingencies of agencies providing complete
21 information.

22 HEARING OFFICER VALKOSKY: Okay, thanks.

23 Mr. Williams.

24 MR. WILLIAMS: Yes. Again, I think the
25 greatest simplification is to look at my -- page 2

1 of my handout, the alternative 1-A, and basically
2 it gets to October 1st as a date either for an
3 FSA, but basically what it does is it gets to
4 another schedule conference, in another Status
5 Conference the first week in October. With the
6 Bay Area Air Quality Management District coming
7 out, say, the last few weeks in -- in August,
8 adding five weeks to that gets you to October 1st.

9 So it seems to me that the future is
10 pretty murky after October 1st. We don't know
11 whether a BACT determination will be made in the
12 SEP doc, we don't know a lot of these water
13 quality and wildlife issues. So basically, the
14 first three months of what I propose, between now
15 and, say, October 1st, we should try to schedule
16 either workshops or hearings. And the distinction
17 I would make between a workshop and a hearing is
18 have a workshop, but take some notes so that --
19 have a court recorder there, so that we get some
20 resolution on BACT and on the water issues.

21 There are a whole bunch of second level
22 issues in the water monitoring. For example, will
23 the hydrologic model be validated with pump tests.

24 HEARING OFFICER VALKOSKY: Right, yeah.
25 Just try to keep on the --

1 MR. WILLIAMS: Yeah. So --

2 HEARING OFFICER VALKOSKY: -- schedule.

3 MR. WILLIAMS: -- so bottom line is we
4 should punt to another schedule conference, and it
5 should be scheduled October 1st, and at that time
6 we would then be able to move with more surety.

7 HEARING OFFICER VALKOSKY: Okay, thank
8 you.

9 Ms. Grueneich.

10 MS. GRUENEICH: Yes. I agree with Mr.
11 Harris that until we know more from the air
12 district, EPA, and the U.S. Fish and Wildlife
13 Service, I don't believe that we can set any
14 schedule that really makes any sense. And it may
15 feel like we're all accomplishing something by
16 setting a schedule, but it really won't do
17 anything. And so I think that we're going to have
18 to wait and see either when they give some
19 statement as to when they anticipate their
20 actions, or they actually take those actions.

21 And that when we -- that happens,
22 probably the best thing is maybe we could ask the
23 Staff to then send notice as to when they would
24 anticipate the FSA coming out. I would assume it
25 would be fairly soon thereafter, and then maybe

1 set a scheduling conference.

2 But I -- I do agree with Mr. Harris that
3 absent really more definition from those agencies,
4 we're all at a loss in setting a schedule.

5 HEARING OFFICER VALKOSKY: Thank you.

6 Staff.

7 MR. RICHINS: Well, from a Staff
8 standpoint, I think it is important to set a
9 schedule, because we have been dealing with this
10 matter for a very long time. We have many cases
11 within the Energy Commission right now, and if we
12 did have a goal, a target to shoot for, I think it
13 would help me rally the Staff around to finishing
14 their Final Staff Assessment.

15 So what I would propose is that based on
16 the information that I've received from the air
17 district today, and that was a final DOC coming
18 out sometime in the middle of August, thereabouts,
19 that we set a schedule that would call for the FSA
20 to come out 30 to 40 days after that date, with
21 the caveat that if the final DOC is later, that
22 there is a day-to-day slippage in the schedule as
23 it relates to the release of the Final Staff
24 Assessment.

25 HEARING OFFICER VALKOSKY: Okay. Thank

1 you, Mr. Richins.

2 Okay, are there -- before we open it up
3 to general public comment, I'm happy to announce
4 we do have about 35 minutes for that. Is there
5 anything else on the substantive matters that we
6 just covered?

7 MR. AJLOUNY: One quick comment. I just
8 ask that you don't misinterpret my suggestion of
9 changing the names to protect the innocent of FSA,
10 PSA. But -- and bypass the amount of time we need
11 for discovery. I was just trying to expedite one
12 side while we still have time for discovery.

13 HEARING OFFICER VALKOSKY: Thank you.

14 All right. Members of the public.
15 Again, I'd appreciate keeping your comments brief.
16 We'll try to get through everyone. And in no
17 particular order, Steven Nelson.

18 If you could just approach. There's a
19 microphone up here, identify yourself for the
20 record, and spell your last name.

21 MR. NELSON: Steven Nelson, N-e-l-s-o-n.

22 Ms. Prevetti, you talked about the FSA
23 being an EIR. Is that considered draft or a final
24 EIR?

25 MS. PREVETTI: Our City Council can't

1 take actions on discretionary permits, or
2 discretionary actions until they have essentially
3 a final EIR. So we would be looking conceptually,
4 now, as the FSA, as that EIR equivalent, that
5 final EIR equivalent.

6 MR. NELSON: Okay, thank you.

7 Mr. Valkosky, you said at the last
8 Status Conference on the record that there is no
9 document in the CEC's process that could be
10 considered an EIR. You said --

11 HEARING OFFICER VALKOSKY: There is --
12 there is no document designated specifically under
13 the statute or our regulations.

14 MR. NELSON: You -- and I believe you
15 said it was the process that was in a CEQA
16 equivalent.

17 HEARING OFFICER VALKOSKY: In my view it
18 is the overall process.

19 MR. NELSON: So that's where I see an
20 extreme disconnect between what is needed by the
21 city and what is provided by the CEC. And I think
22 this argues for some sort of, let's just say a
23 supplemental PSA, because the concern here is that
24 if the FSA is issued, we have a number of
25 unresolved topics that that'll be the first time

1 the public will have the opportunity to see the
2 independent Staff analysis of those topics. And
3 so if that document is immediately e-mailed to the
4 City of San Jose, there is, in a sense, no public
5 comment on those issues.

6 And so my concern is just that we need,
7 in a sense, workshops so that the public can
8 comment on these issues, and have a Staff
9 response, because the way it'll work now is that
10 FSA will go to the city. The city cannot respond
11 to public comments during their hearings. There
12 are no transmission experts on the city staff,
13 there are no air quality experts.

14 I just think that we need to really
15 address the city's needs in this process.

16 HEARING OFFICER VALKOSKY: Okay. And
17 just by way of clarification, because I think we
18 covered it before. Staff did indicate that they
19 will be responding to comments on the existing
20 PSA.

21 MR. NELSON: But -- but do --

22 HEARING OFFICER VALKOSKY: Whether
23 that's in the form of -- again, I'm just calling
24 it a Staff assessment.

25 MR. NELSON: But -- I'm trying to be

1 brief, but do you acknowledge that there are
2 unresolved issues that the -- that the public
3 cannot comment on at this time?

4 HEARING OFFICER VALKOSKY: I -- I can't
5 respond to that.

6 MR. NELSON: Okay. But, I mean, I think
7 it's obvious that there are. And so if the public
8 never has a chance to comment on these issues in a
9 workshop setting, it does us no good for the
10 city's EIR document.

11 So I would strongly argue that we need
12 at least some sort of workshop environment so that
13 the public can comment on the first time that they
14 see the independent Staff analysis of many
15 unresolved issues.

16 HEARING OFFICER VALKOSKY: Okay. I --
17 your position's understood. Thank you.

18 MR. NELSON: Thank you.

19 HEARING OFFICER VALKOSKY: Susanna Wong.

20 MS. WONG: I'm Susanna Wong. I'm a
21 local resident, and a concerned citizen.

22 During the past few months I have taken
23 some time to review the application, including the
24 PDOC, the PSA, as well as look at some of the
25 general articles. I have the following comments

1 in relation to the process that I have find so
2 far.

3 Number one, I think the -- the
4 application has not defined the design, as well as
5 the operating conditions clearly. And changes
6 have been made throughout the whole process, even
7 at the PSA and in the -- and in the workshops, to
8 the point that it is very difficult for the
9 public, a member like me, who only just needs
10 some, you know, affordable time to do the review.
11 And I'm interested because I am concerned of my
12 health, as well as the negative impacts this
13 project can have on me.

14 And number two, I think the application
15 has an absence of the basis, not only are the
16 conditions keep changing so that I cannot evaluate
17 whether certain assessment is valid or not, and
18 whether I can voice those position to the argument
19 on the assessment. Because there has been no
20 basis in many of these statements that have been
21 made in the application, for me to assess whether
22 the assessment is valid or not. And, in fact, I
23 have found things that I would classify as
24 misleading, I would classify as a flawed analysis
25 in this application.

1 And so the difficulties that I think you
2 have mentioned about, you know, you find
3 difficulty because of all -- the absence of some
4 of these results and analysis, and I think we've
5 heard some of these arguments again at this
6 meeting. You know, the first time you said
7 everything but the partial load, and then all of a
8 sudden then come, you know, the groundwater
9 monitoring also. And then come another batch of
10 things being the biological responses.

11 And I feel, as a member of the public,
12 who has limited time to review it, I feel it very
13 difficult to assess because all these things are
14 -- keep changing. It's very difficult for me to
15 -- to have. And in addition, to the scheduling
16 changes that have taken place, I cannot plan
17 adequately to address all these issues.

18 The Applicant just now has also mention
19 about the fact that he -- they wanted to have the
20 discovery beyond certain date to be kept on the
21 record. And on my side, I would like to request
22 that the responses that the Applicants be made to
23 be also kept on the record, in case the responses
24 that we are getting are no more than waving the
25 hands.

1 And so, as a result, I think -- I hope
2 the Commission will consider that these impacts
3 will affect us, the members of the public, who
4 will be, you know, affected by the Applicant's
5 proposal, and give us enough opportunities for us
6 to understand not only the process, but the
7 reasoning behind it, any of the decisions, and --
8 and would be able for us to voice our concerns
9 adequately. And -- and I would like to -- perhaps
10 I feel a certain kind of document for the basis of
11 decisions would be very helpful.

12 And I think this -- this document that I
13 perceive as the basis of decisions should include
14 relevant designs and operating -- operation
15 statuses, in which the Applicant, any of the
16 mitigation efforts that the Applicant are willing
17 to take or not willing to take, what the results
18 that they have in support of the application, the
19 basis for these results, as well as the issues
20 that maybe the Committee or the CEC Staff have
21 considered, what their positions are, and what the
22 explanations for their positions are.

23 It would also be very helpful if there
24 could be certain details that could be written up
25 in terms of having a glossary so that the general

1 public can have a deeper understanding of the --
2 the issues involved, and maybe certain things can
3 go into the appendix in support of a certain
4 statement. And if something like that can be set
5 up, then I think it will help us to review that.

6 HEARING OFFICER VALKOSKY: Okay. Thank
7 you, ma'am. I would note, typically we do have a
8 glossary in the back of the documents. Was there
9 not one in this one? There was a glossary.

10 MS. WONG: Well, but the thing is, I
11 don't -- I do not believe that it is adequate.
12 And, for example, I think there are some of the
13 analysis that are made in which it just called for
14 certain other documents, in which as a member of
15 the public, I do not know where to get them. And
16 there are so many of these different places that
17 it would, you know, take me a long time just to
18 find out where those documents are.

19 HEARING OFFICER VALKOSKY: Okay. I
20 understand.

21 MS. WONG: So -- so I don't think that
22 has been, in fact, enough details for us to be
23 able to get a hand on.

24 HEARING OFFICER VALKOSKY: Okay. Thank
25 you.

1 Marshall Adams. And I'd like to --
2 we've got about enough time for a maximum of two
3 minutes apiece. That's all the time we've got.

4 MR. ADAMS: One will do it.

5 Marshall Adams, A-d-a-m-s. I'm a local
6 citizen.

7 There are days in San Jose when I look
8 across this valley, I cannot see the mountains due
9 to the smog. Now, the State of California is
10 considering adding an industry which will cause
11 major air pollution to this area. On a very, very
12 basic human level, I wonder how the state, through
13 its representatives, can look anyone in the eyes
14 and claim the air quality is going to be okay.

15 HEARING OFFICER VALKOSKY: Okay. Thank
16 you, sir.

17 (Applause.)

18 HEARING OFFICER VALKOSKY: Robert
19 Zafran.

20 MR. ZAFRAN: Good evening. I'm Bob
21 Zafran, Z-a-f-r-a-n.

22 I'm a resident of the Blossom Valley,
23 living three miles north of the MEC site. I have
24 recently retired from 30 years of teaching science
25 and technology in our county, and have taught

1 energy education topics throughout that period. I
2 am also a U.S. Navy trained power plant operating
3 officer.

4 It is obvious to anyone with half a
5 brain that our valley badly needs additional
6 electrical energy resources. Given existing
7 demand growth rates for our area, we will need at
8 least 100 megawatts of power for our locale alone,
9 even when the proposed MEC plant goes online three
10 years from now. In other words, the 600 megawatts
11 proposed for MEC will be consumed before the plant
12 connects to the western grid.

13 Everyone here benefits from the
14 electrical energy we now enjoy. So I propose the
15 following. Let's pass around a sign-up sheet and
16 volunteer for our house, our business, our school,
17 our church, our air conditioned fitness center, to
18 have a brown-out. So we'll volunteer to sign up
19 for brown-outs when our power demands exceed the
20 supply. I'm sure each of you can volunteer for
21 these no energy days.

22 How would you answer if I asked you to
23 volunteer for an energy brown-out? Maybe not in
24 my backyard?

25 In the back of the room there are two

1 boxes, one labeled dirty erasers, one labeled
2 clean erasers. Notice they are adjacent to each
3 other. In fact, touching each other. The dust
4 from the dirty erasers, which in fact qualifies
5 for PM10 regulations because of its particle size,
6 can easily spill over to the clean eraser box,
7 sort of like the generation site electrical energy
8 spills over to those of us consuming that energy.
9 They are side by side.

10 We all need MEC, and it needs to go in
11 our back yard. It'll be the cleanest fossil fuel
12 power plant possible.

13 So, again, if I pass around the list,
14 volunteer to have your lights turned off for a few
15 hours when the energy gets too low. Thank you.

16 (Applause.)

17 HEARING OFFICER VALKOSKY: Thank you,
18 sir.

19 Sue Malloy.

20 MS. MALLOY: Good evening. My name is
21 Sue Malloy, M-a-l-l-o-y. I'm a community
22 resident. I live approximately three miles north
23 of the proposed site.

24 I also am a nurse, and I've been a nurse
25 for 30 years. I teach nursing, and I have my

1 doctorate degree. In addition, I am also a
2 healthcare volunteer for the disaster relief
3 operation for American Red Cross.

4 As a person with a fairly significant
5 science background, I, too, have problems
6 following the record of what has happened, and I
7 would echo Mr. Wade's petition for having comments
8 be in one place and updated in one -- at one
9 period of time, so that the laypeople -- and I
10 consider myself one of the laypeople -- in this
11 community can follow what's happening. Because
12 I've had a lot of trouble following it, and I
13 think I have a pretty significant background to do
14 that.

15 Thank you.

16 HEARING OFFICER VALKOSKY: Thank you,
17 ma'am.

18 (Applause.)

19 HEARING OFFICER VALKOSKY: Kathy -- I'm
20 sorry, I just can't read the last name. C-h-a --
21 am I getting -- okay.

22 MS. CHAVEZ-NAPOLI: I'll take it. If
23 it's not me, that's okay. My name is Kathy --

24 HEARING OFFICER VALKOSKY: My eyes are
25 very tired, and --

1 MS. CHAVEZ-NAPOLI: Well, just imagine
2 us.

3 HEARING OFFICER VALKOSKY: Yeah.

4 MS. CHAVEZ-NAPOLI: My name is Kathy
5 Chavez-Napoli, C-h-a-v-e-z, and the last name,
6 Napoli, N-a-p-o-l-i. And I just have a few
7 comments about the process for the city and the
8 timeline. And my concern is that the MOU has not
9 been ratified, and it's been a year, so I'm very
10 concerned about the fact that that year has
11 elapsed and that hasn't been pursued.

12 If we do have this agreement of this EIR
13 that will be the equivalent for this FSA, then why
14 isn't that clarified for the public so that we
15 know what will be accepted. That's a real concern
16 of mine.

17 I have another concern in that when
18 there are major pieces of information that are not
19 in there with the FDOC and the Bay Area Quality
20 Board and the biological resources information,
21 that why are we moving forward on it. I would
22 remind you that in San Jose, when you -- most
23 people, who are just average people who make these
24 applications, would not even be able to come this
25 far without having complete information. So I'd

1 be very concerned that there's some kind of
2 discrimination there, where the average person
3 asking for any kind of a project like this
4 wouldn't even be here in this process.

5 If you don't have all the information,
6 you can't even talk to the Planning Commission,
7 you can't even submit your applications until
8 they're complete. If they are not complete, they
9 are rejected. So I would have that concern.

10 The other concern that I have is that I
11 know that Laurel used the word typically, that in
12 November, that that is when you review the general
13 plan amendments. So when you say typically, who
14 does that apply to? How many people does that
15 apply to, and why would this, if you miss these
16 deadlines of November hearings, why would we even
17 be considering it if you miss that deadline of
18 November.

19 Again, that brings up the issue of
20 discrimination to other businesses, other
21 applicants that have to follow certain guidelines,
22 certain timelines, and why aren't the citizens
23 being treated equally with these other projects,
24 small businesses, other kinds of projects. If you
25 miss those typical deadlines, why aren't they

1 being followed?

2 Those are concerns that I have that I
3 hope will be answered. Thank you.

4 (Applause.)

5 HEARING OFFICER VALKOSKY: Okay. Neil
6 Struthers.

7 MR. STRUTHERS: Hello. My name is Neil
8 Struthers. I just want to share with you
9 something I read in the paper the other day, that
10 they're towing a barge from Texas through the Gulf
11 of Mexico, through the Panama Canal, up the coast
12 to California, under the Golden Gate, into the
13 bay. And on this barge is a huge -- I don't know
14 how many megawatts, maybe -- how many? One
15 hundred megawatts, fired by, I believe, oil. I
16 could be wrong. Gas. Something that is not
17 regulated to the degree that this power plant will
18 be regulated.

19 I also want to bring to your attention
20 that I'm well aware of the railcars, and maybe
21 most of you in this room probably are, too, that
22 are used during brown-outs or during peak hours.
23 What I'm talking about is two major gross
24 polluters, or more, that are having to be shipped
25 to the Bay Area to address this power need.

1 Now, I think we're all in agreement that
2 the issue is not whether we need a power plant.
3 The issue is where do we put it, and when do we
4 put it there. Now, I'm not going to talk about
5 where, because everyone is predisposed on that
6 particular topic here, and we all have our opinion
7 on that, and I would be foolish to go there. And
8 we're not here for that, anyway. What we're here
9 for is when.

10 And I believe that we need to follow
11 this process. To protract this process out, I
12 believe is ludicrous. I think I speak for
13 everyone here that we've all been to a lot of
14 these meetings, and we've got better things to do
15 than regurgitate the same viewpoints and topics
16 night after night. I would rather be somewhere
17 else, and I'm sure most of you here would be, too.

18 I'd ask you to move forward with this
19 process. The only reason I can see that this
20 process is being protracted out is for strategic
21 and political reasons. Now, I understand those,
22 but I don't believe that the CEC, that the purpose
23 of the CEC is not to get involved in that. They
24 are to be neutral, and they are to evaluate the
25 project. They are not to be a pawn in how this

1 whole political game is played out.

2 So I urge you to continue with this
3 process. It's well thought out. There's a
4 blueprint here that we need to follow, and I think
5 detracting and deviating from that is a mistake.
6 So I urge you to continue on this path that we're
7 going, and let's -- let's get the Final Staff
8 Assessment, and then let's make the decision then,
9 or let the City Council make their decision. But
10 let's not deviate from that.

11 I -- I see what's going on, and I don't
12 agree with it.

13 (Applause.)

14 HEARING OFFICER VALKOSKY: Thank you,
15 sir.

16 Mr. Abdur'Rahdem.

17 MR. ABDUR'RAHDEM: Good evening. My
18 name is Yahaa Abdur'Rahdem. Complete last is A-b-
19 d-u-r-apostrophe-R-a-h-d-e-m.

20 I'd like to thank you for the
21 opportunity to address this body. I live and work
22 in San Jose. I support the project, and I think
23 we have a definite need for this power plant. I
24 believe that the CEC permitting process works very
25 well, and I would like to see this project stay on

1 schedule with a minimum of delays.

2 Thank you very much.

3 HEARING OFFICER VALKOSKY: Thank you,
4 sir.

5 (Applause.)

6 HEARING OFFICER VALKOSKY: Mr. Alton,
7 you spoke before. Do you have anything to add?

8 MR. ALTON: I'd just like to -- PG&E
9 already has a list of people who are willing to
10 take brown-outs, and you get cut-rate electricity
11 for it.

12 HEARING OFFICER VALKOSKY: Mr. Trumbull.

13 MR. TRUMBULL: Thank you. My name is
14 Terry Trumbull. I'm a member of the Environmental
15 Studies faculty at San Jose State University.

16 I'm urging you to schedule hearing as
17 soon as possible. All of us are familiar with the
18 brown-outs and any energy shortages we have,
19 probably deservingly. But the best example I can
20 think of that is as a County Planning Commissioner
21 I was hosting a regional growth conference about a
22 month ago to figure out how to cope with the
23 exponential growth in jobs that we have in this
24 area. We lost power for the three hour
25 conference.

1 One of the dilemmas that we have, and I
2 say this as environmental health chair of the
3 local American Lung Association chapters, business
4 is not going to put up with brown-outs. Instead,
5 because the Bay Area Air Quality Management
6 District does not regulate them, we are getting
7 emergency diesel generators typically being run
8 about a day a week. There's an application for
9 one in Palo Alto. They're running it one day a
10 week on the theory that they need to keep it up
11 and maintain it. Another company is proposing 12
12 two megawatt backup power generators.

13 Stupendous amounts of pollution are
14 being generated because we're not getting power
15 online. Bay Area Air Quality District has
16 promised that they're going to try to resolve this
17 problem sometime, but the net effect is that
18 industry is adding them like crazy. Thirty alone
19 in the City of Milpitas.

20 We need the power. And this is why the
21 Energy Commission was created. Twenty-five years
22 ago I worked with Senator Alquist to create the
23 Energy Commission. We're desperately short on
24 getting power online. Nobody wants it in their
25 backyard. That's what the Energy Commission was

1 created for.

2 So I urge you to move this forward as
3 fast as you can. And hopefully you've got a copy
4 of my written remarks. Thank you.

5 HEARING OFFICER VALKOSKY: Thank you,
6 sir.

7 (Applause.)

8 HEARING OFFICER VALKOSKY; Mr. Murphy.

9 MR. MURPHY: Yes. My name is Mike
10 Murphy, M-u-r-p-j-y. I'm an Intervenor. I have a
11 comment about being an Intervenor tonight.

12 I'm wondering what restrictions -- I did
13 not receive a copy of the order, I did not respond
14 to it. I was on vacation, so I'm not
15 participating at the front table tonight. I want
16 to know what restrictions are on us for
17 participating in evidentiary hearings. Do we need
18 to do some kind of a special mailing to everybody
19 that would want to participate?

20 HEARING OFFICER VALKOSKY: No, the
21 restrictions, and check -- make sure we have your
22 current address on the proof of service list --

23 MR. MURPHY: You do. You do.

24 HEARING OFFICER VALKOSKY: Then you
25 should've received the notice. I have no

1 explanation why you didn't.

2 MR. MURPHY: I was on vacation.

3 HEARING OFFICER VALKOSKY: Yeah, okay.

4 Okay. Basically, the way it works is the
5 Committee, as they did tonight, will require
6 parties that want to participate to pre-file their
7 written comments so that the other parties are
8 prepared. That was the parties you saw before you
9 tonight, the participation was essentially limited
10 to those parties.

11 MR. MURPHY: I understand that.

12 HEARING OFFICER VALKOSKY: If you -- if
13 you file, you can participate.

14 MR. MURPHY: The same for evidentiary
15 hearings, you're saying.

16 HEARING OFFICER VALKOSKY: Certainly.

17 Well, but at the evidentiary hearing, you will be
18 seated at the table. You are permitted to ask
19 questions, you're permitted to cross examine.
20 It's a question of the submittal of evidence. I
21 would anticipate, with this many Intervenors,
22 we're going to need some kind of organizational
23 structure, so we're going to ask people in advance
24 what their intentions are.

25 MR. MURPHY: Sure. Sounds good.

1 I have a separate question. Well, of
2 the Applicant, actually. I understand that
3 Calpine is an up and coming outfit, and I'm
4 wondering if Texas and California are the only two
5 states you operate power plants.

6 MR. ABREU: No. We operate I think in
7 like 20 different states now.

8 MR. MURPHY: Okay. So I'm just
9 wondering why that load test can't be done
10 somewhere else sooner.

11 MR. ABREU: The -- the gas turbine
12 that's similar to the type that we have here is
13 the one in Texas at our Pasadena plant, near
14 Houston. So it's the closest to model what we
15 would be putting here.

16 MR. MURPHY: Okay. Thank you.

17 And the last question for the
18 Commission, I've heard a rumor, so you probably
19 can't give a definitive answer. But if the
20 Governor of California declared a state of
21 emergency in regards to power plants and their
22 siting process, would that negate everything we've
23 been doing, or would the ones that are in the
24 works continue under the old rules, or --

25 (Laughter.)

1 MR. MURPHY: It's never happened before;
2 correct? That's never happened before. So
3 marshal law would just take effect.

4 CHAIRMAN KEESE: I'm sure the press
5 reports are accurate, that says the governor has
6 been requested to declare an emergency condition
7 statewide to allow the siting of power plants in a
8 much more liberal manner.

9 The -- that request has been made to the
10 governor. I'm sure the -- the State of California
11 has continued to support environmentally sound
12 projects. I would certainly anticipate that
13 whatever process was adopted, if the governor
14 chose to, that it would be environmentally solid.

15 MR. MURPHY: And would involve the
16 Energy Commission.

17 CHAIRMAN KEESE: I would think it would
18 involve them.

19 MR. MURPHY: Okay. Good, good. We'll
20 know who we're dealing with, then.

21 PRESIDING MEMBER LAURIE: Just for your
22 information, no, no, no, no, no, no, no, no, no,
23 no. For your information, and we're not going to
24 get into it other than there's a specific
25 reference in the Warren-Alquist Act to

1 emergencies. Read it. That's the law. That's
2 the process that will be followed.

3 MR. MURPHY: Okay. I've got one.
4 Thanks.

5 HEARING OFFICER VALKOSKY: Omar Chatty?

6 MR. CHATTY: Hi. I live two blocks away
7 from here, and I'll just give you a quick comment.

8 This is the first meeting I've been able
9 to attend, because I work up in Palo Alto. And we
10 suffered, you know, the brown-outs, too. You
11 won't find a stronger infrastructure advocate than
12 myself. My bumper -- my rear bumper says that all
13 over it. And I love the Rebuild California
14 Website, and I'm a strong supporter of highways
15 and BART, and electrical power. We've seen this
16 coming for 20 years, ever since the Albacore
17 Alliance was fighting the Diablo Canyon, which --
18 against.

19 But what I want to see in this thing is
20 I don't want to -- if people want a cesspool in
21 their neighborhood, then build it on their house.
22 That's okay with me. Not a problem. But there is
23 a right place to put things, and we're not
24 Houston, Texas anymore, like that. We do have
25 zoning. And what I'm concerned about -- excuse

1 me, let me catch my breath -- is that there will
2 be alternatives studied on where to site this,
3 maybe up Metcalf Road. I'm sure you guys have
4 talked about those kind of options. But the way
5 the air is trapped in that valley is very, very
6 bad for this region.

7 So I hope you'll consider alternatives.
8 But the bottom line I'm looking for on the
9 environmental documents when they come out is -- I
10 don't know why I'm out of breath, but --

11 FROM THE AUDIENCE: It's the air
12 quality.

13 MR. CHATTY: Yeah, right.

14 (Laughter.)

15 MR. CHATTY: Is I think the public, it's
16 about time the public starts to know the downside
17 cost of the environmental movements, the open
18 space stuff, where butterflies are apparently more
19 important than the human condition, and that these
20 kind of issues are happening all over because
21 we're drawing green lines now, where it's forcing
22 development of this kind to be among humans,
23 instead of around where it can be dispersed in
24 wide open territories, where a few people can use
25 open land and most of us can't, or won't.

1 And we have all this nice stuff, which
2 I'm all for, but the Marie Antoinettes of the
3 modern day, instead of saying let them eat cake
4 when they don't have bread, are saying let them
5 see land instead of use it. And that's not okay.
6 And I hope that this is symbolic of that kind of
7 issue.

8 But what we should not be doing is
9 putting it where it is. I really don't believe
10 that. I supported Highway 85, I fought for it, I
11 went to City Council meetings night after night.
12 I support the widening of 101. But there's a
13 right way to build freeways now, and there's a
14 right way to put power plants. I don't think this
15 is the right place for it.

16 I understand all the needs. If you can
17 put it up the hill, it's still near the gas lines,
18 et cetera. Please consider those options, but
19 also expose the downside of the economic -- of the
20 environmental movement, and what it's doing. We
21 have to have balance.

22 HEARING OFFICER VALKOSKY: Thank you,
23 sir.

24 (Applause.)

25 HEARING OFFICER VALKOSKY: Ms. Mendonca,

1 I understand you have a statement.

2 PUBLIC ADVISER MENDONCA: Thank you.

3 Actually, the Public Adviser has received two
4 comments. One came from a gentleman who asked to
5 be here but is traveling someplace like China, and
6 -- Mr. Holden, Phil Holden. I will docket this
7 document. He is concerned about the environmental
8 impacts, and has three specific items that he will
9 raise in his document, and that can become a part
10 of your record for this evening.

11 The other letter was handed to me this
12 evening by a woman, Helen Serenka, S-e-r-e-n-k-a,
13 and she is a neighbor in support of the project,
14 and believes that the MEC Center is needed to --
15 to be a welcome addition to the local power grid.

16 So I will docket both of those
17 documents.

18 HEARING OFFICER VALKOSKY: Thank you.
19 Appreciate that.

20 With that, we have four and a half
21 minutes left. Is there anyone else who wishes to
22 -- Mr. Boyd, you had ample opportunity. You --
23 you've spoken already.

24 Ma'am, identify yourself for the record,
25 please.

1 MS. BLAUM: My name is Graciela Blaum.
2 I am a resident in South San Jose.

3 And I have only one -- it's not even a
4 question, it's a comment that I hope that Calpine
5 will hire an independent tester when you make the
6 test in Texas. And I will leave it at -- like
7 this.

8 MR. MALECH: I don't need a microphone.

9 HEARING OFFICER VALKOSKY: Sir, you
10 really do, so our reporter can record the things.

11 MR. MALECH: Okay, I'll stand back so I
12 don't blow you away. Okay. I'm just a little
13 farm boy, I'm not used to coming to town.

14 My name is Rob Malech, and I'm part of
15 the Malech Ranch. It's right in -- yes, ma'am.

16 My name is Rob Malech, M-a-l-e-c-h. And
17 I hate microphones like I hate power plants.

18 We've been in the valley a long time.
19 We've seen a lot of things come and go. And this
20 is one thing that the family is totally against,
21 not only for what it's going to do for the air,
22 but what it's going to do for our area. And I
23 just -- I want to thank you guys for what you've
24 done. It's the most professional meeting I've
25 been to. It's been nice that everybody can just

1 get along and get the facts out, and do all that.

2 But we do need to disclose all the
3 facts, and the fact that I think when people come
4 up here, they ought to say who they work for,
5 whose payroll they're on, because we had one that
6 come up here that's on the Calpine payroll and did
7 not disclose that. And I'll tell you right now,
8 I'm not on their payroll. But I think that
9 anybody that has anything to do with it should
10 disclose that.

11 And I do thank you for all you've done
12 for this meeting.

13 HEARING OFFICER VALKOSKY: Thank you,
14 sir.

15 (Applause.)

16 MR. SAVAGE: My name is Bryan Savage.
17 I'm a local resident here. And I'm not employed
18 by Calpine. As of four o'clock today I was
19 employed by IBM, but, who knows.

20 (Laughter.)

21 MR. SAVAGE: I'd like to thank the
22 Commission. This has been an excellent lesson in
23 civics. I am not opposed to the power plant being
24 located in the Metcalf area. I don't know if
25 that's the best place, I'm not a professional. It

1 isn't for me to decide.

2 The thing I'm concerned about, and the
3 reason I'm here is because I've got a five-year
4 old grandson, and the life cycle of a power plant
5 is a heck of a lot longer than I'm going to be
6 around, and he will have to live with it for about
7 maybe 60 or 70 years. And I'd like everybody to
8 keep that in mind.

9 Thank you.

10 HEARING OFFICER VALKOSKY: Thank you,
11 sir.

12 (Applause.)

13 HEARING OFFICER VALKOSKY: Well, we're
14 --

15 CHAIRMAN KEESE: Before the Chairman of
16 this Committee makes a final comment, I'd just
17 like to say I -- all right, we'll try it -- there,
18 we've got it.

19 I'd just say I -- I really appreciate
20 the nature of this hearing, also. We do quite a
21 few of these around the state nowadays, and this
22 was a really informative presentation by all the
23 parties. And sometimes the rhetoric and the
24 actions get in the way of the communication to us.

25 Commissioner Laurie and I have to go

1 back to the Commission of five and make a
2 recommendation, and he'll put his name on it. And
3 we need the information, we need the input. I
4 think we've received it tonight on all the aspects
5 we took up tonight.

6 Now, we're still in the preliminary
7 phases of this. You know, we're -- we're going to
8 start getting testimony one of these days, but
9 we're getting there.

10 Commissioner Laurie.

11 PRESIDING MEMBER LAURIE: Thank you,
12 Chairman Keese.

13 I would simply also note that any
14 appreciation of the manner in which the Commission
15 proceeded with today's hearing was simply a
16 reflection of the courteous and professional
17 manner in which both the public and all parties
18 conducted their responsibilities tonight. And we
19 would hope, and frankly we expect -- strike that.
20 We would hope that we can see these kinds of
21 proceedings in the future.

22 That's all I have. Thank you very much.

23 The meeting is adjourned.

24 HEARING OFFICER VALKOSKY: Thank you.

25 Thank you all for your attendance and

1 participation.

2 (Thereupon, the Status Conference

3 was concluded at 10:00 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of July, 2000.

VALORIE PHILLIPS

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