

HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the PANOCHÉ ENERGY CENTER) 06-AFC-5

)

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

WEDNESDAY, OCTOBER 10 2007

2:05 p.m.

Reported by:
Peter Petty
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Presiding Member

James D. Boyd, Associate Member

HEARING OFFICER AND ADVISORS

Paul Kramer, Hearing Officer

Gabriel Taylor, Advisor

Peter Ward, Advisor

STAFF AND CONSULTANTS PRESENT

James Reede, Jr., Project Manager

Caryn Holmes, Senior Staff Counsel

Jared Babula, Staff Counsel

Beverly Bastian

Rick Tyler

Steve Baker

John Kessler

Richard Anderson

Shahab Khoshmashrab

Linda D. Bond

LDBond & Associates

William Walters (via teleconference)

Maggie Read, Secretary

Hearing Adviser Office

APPLICANT

John A. McKinsey, Attorney

Alan Thompson, Attorney

Stoel Rives, LLP

APPLICANT

Gary Chandler, President
Panoche Energy Center, LLC
Bullard Energy Center, LLC

Jason Moore (via teleconference)
Margaret Fitzgerald
URS Corporation

ALSO PRESENT

Errol Villegas
San Joaquin Valley Air Quality Management District

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

2 2:05 a.m.

3 PRESIDING MEMBER BYRON: Good afternoon.
4 Welcome, everyone. I'm so sorry that we're late.
5 I apologize for any inconvenience in that regard.
6 I'm convinced, however, that clock is a little bit
7 fast.

8 I'm Commissioner Byron, the Presiding
9 Member on this Panoche Energy Center application
10 for certification. And my Committee Member with
11 me here today is Commissioner Boyd. And our two
12 Advisors, to my left Gabriel Taylor, and to his
13 right Peter Ward. And I'm going to turn it over
14 to our Hearing Officer, Mr. Paul Kramer.

15 HEARING OFFICER KRAMER: Thank you,
16 Commissioner Byron. On the table outside I
17 believe all the parties have a copy of the agenda
18 I prepared for today's meeting, just as a guide to
19 make sure that we cover all the issues.

20 And I also distributed to the parties a
21 revised version of the tentative exhibit list,
22 which I believe includes everything that the
23 parties submitted between the prehearing
24 conference of last week and today. If not, I'd
25 certainly like to know about that.

1 So let's begin the hearing on the
2 Panoche Energy Center with introductions from the
3 parties, starting with the applicant, Mr.
4 McKinsey.

5 MR. McKINSEY: Thank you, Mr. Kramer; my
6 name is John McKinsey from Stoel Rives; along with
7 my co-counsel, Alan Thompson, behind me. We
8 represent the applicant, Panoche Energy Center,
9 LLC. To my right is Gary Chandler, the President
10 of Panoche Energy, LLC.

11 In the audience is one person we'll have
12 as a witness for housekeeping purposes, and that's
13 Maggie Fitzgerald, who's the Project Manager from
14 URS for this project. And either on the phone
15 now, or eventually on the phone will be a
16 geologist from URS, Jason Moore, also appearing
17 just as a witness for housekeeping purposes.

18 HEARING OFFICER KRAMER: And Mr.
19 Villegas is also on the phone. Is he your witness
20 or --

21 MR. McKINSEY: That's our Air District
22 person.

23 HEARING OFFICER KRAMER: He's with the
24 Air District?

25 MR. McKINSEY: He's not our witness,

1 he's representing the Air District, San Joaquin
2 Air District.

3 HEARING OFFICER KRAMER: Okay. Staff.

4 MR. BABULA: Hi. I'm Jared Babula,
5 Staff Counsel, Energy Commission. I have Caryn
6 Holmes, also Staff Counsel; and Dr. James Reede,
7 the Project Manger for this project.

8 HEARING OFFICER KRAMER: Okay. CURE was
9 an intervenor in this proceeding, but do we have
10 anyone present from CURE representing them today?
11 Okay, thank you.

12 For preliminary matters and
13 housekeeping, I want to ask if anybody believes
14 that I have placed one of the topics in the wrong
15 category on the agenda. For instance if one of
16 the topics to be taken together as a group
17 requires discussion, it should be moved to one of
18 the other categories? Seeing none.

19 Let's begin then with the topics to be
20 taken together as a group.

21 MR. McKINSEY: Mr. Kramer, you had
22 indicated earlier about additional exhibits. Did
23 you want to -- we have two that aren't on the
24 exhibit list.

25 HEARING OFFICER KRAMER: Oh, okay.

1 Yeah, we can get to those now. The next number
2 for the applicant, if I have it correct, would be
3 51. And what would that be?

4 MR. McKINSEY: 51 we submitted
5 yesterday, which is the relocation agreement
6 that's dated October 3rd between the applicant and
7 Farmers International. That was submitted
8 yesterday via a letter, hand-delivered, which also
9 indicates exhibit 51 was the intended number for
10 it.

11 And then we would offer our proposed
12 changes to Gen-1 that we handed out, that
13 everybody has a copy of, as exhibit 52.

14 HEARING OFFICER KRAMER: Okay.

15 MR. McKINSEY: And that's it.

16 HEARING OFFICER KRAMER: Okay.

17 (Pause.)

18 HEARING OFFICER KRAMER: Does staff have
19 any additional exhibits to offer?

20 MR. BABULA: No, we're fine.

21 HEARING OFFICER KRAMER: Okay, regarding
22 the topics that are listed to be taken together as
23 a group, that's biological resources,
24 socioeconomic resources, traffic and
25 transportation, transmission line safety and

1 nuisance, visual resources, waste management,
2 geology and paleontology, power plant efficiency,
3 power plant reliability, public health,
4 transmission system engineering, worker safety and
5 fire protection, alternatives and general
6 conditions.

7 Are the parties willing to stipulate to
8 the entry of their testimony regarding those
9 topics?

10 MR. McKINSEY: We have one witness on
11 the phone, a geologist. We originally assumed he
12 would be speaking today for purposes of water
13 resources. So we do not have a written
14 declaration for him, so I would like to have him
15 sponsor our geology portion of the AFC --

16 HEARING OFFICER KRAMER: Okay, that's
17 Mr. Moore?

18 MR. McKINSEY: -- as a witness. Yes,
19 Mr. Moore.

20 HEARING OFFICER KRAMER: Would you have
21 Mr. Moore's line activated.

22 MS. SPEAKER: His line is open.

23 HEARING OFFICER KRAMER: Go ahead and
24 question him if you'd like.

25 MR. McKINSEY: Jason Moore, this is John

1 McKinsey. Can you hear me?

2 MR. MOORE: Yes.

3 MR. McKINSEY: You are live here in the
4 evidentiary hearing for Panoche, and I want to ask
5 you a few questions to establish documents you're
6 sponsoring.

7 MR. MOORE: Yes --

8 HEARING OFFICER KRAMER: I suppose we
9 should have him sworn first.

10 Whereupon,

11 JASON MOORE

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

15 THE REPORTER: Could you please state
16 and spell your full name for the record.

17 MR. MOORE: Jason Moore, that's
18 J-a-s-o-n M-o-o-r-e.

19 MR. McKINSEY: Thank you, Jason.

20 DIRECT EXAMINATION

21 BY MR. McKINSEY:

22 Q And who are you employed by?

23 A URS Corporation.

24 Q And what's your occupation?

25 A A geologist.

1 Q Are you sponsoring any exhibits in this
2 proceeding?

3 A Yes, I sponsoring exhibit 45, which
4 contains my written testimony. That includes a
5 set of exhibits.

6 Q Thank you.

7 MR. MCKINSEY: I have no further
8 questions for him.

9 HEARING OFFICER KRAMER: Any cross-
10 examination?

11 MR. BABULA: No cross.

12 HEARING OFFICER KRAMER: Okay, with that
13 addition to the affidavits sponsoring the
14 testimony in the topic areas I previously read, do
15 the parties stipulate to enter their respective
16 evidence regarding those topics into the record in
17 this proceeding?

18 MR. MCKINSEY: Applicant does.

19 MR. BABULA: Yes.

20 HEARING OFFICER KRAMER: Okay, thank
21 you. What we will do here with regard to public
22 testimony and public comment, if there is any, is
23 to have it following each set of topics that we
24 cover. So, now at this point is there any public
25 comment regarding the topics that were taken

1 together as a group that I read the list of a few
2 minutes ago?

3 MS. HOLMES: I'm sorry, could you repeat
4 that question?

5 HEARING OFFICER KRAMER: Do we have any
6 public comments on the topics that we just took
7 into evidence.

8 It doesn't appear that we have anyone
9 from the public with us. And seeing none, we will
10 then move on to the topics for which the Committee
11 had questions.

12 Beginning with the project description.
13 And the question there was, and it also appears in
14 the executive summary, it describes on page 3-3
15 under water supply that the wells from which the
16 cooling water is to be drawn are also going to
17 serve facilities, showers, sinks, toilets, eyewash
18 stations and safety showers.

19 And I believe that was contradicted in
20 the water resources section. So I just wanted to
21 be clear in my mind what the source of water was
22 going to be for those facilities, showers, et
23 cetera.

24 Dr. Reede, would you like to address
25 that first?

1 DR. REEDE: Do you want me to swear

2 or --

3 HEARING OFFICER KRAMER: Yeah, I should
4 have had all the witnesses sworn at the beginning.

5 DR. REEDE: Because I can swear.

6 HEARING OFFICER KRAMER: So, anybody
7 who's expecting to need to testify today, if you
8 could stand and be sworn by the court reporter.

9 Whereupon,

10 ALL PROSPECTIVE WITNESSES
11 were called as witnesses herein, and were duly
12 sworn.

13 HEARING OFFICER KRAMER: We could
14 probably excuse Mr. Moore, couldn't we?

15 MR. McKINSEY: Yes, we can. We're done.

16 HEARING OFFICER KRAMER: Okay, Mr.
17 Moore, you can hang up if you'd like. Your
18 choice. Maggie, could you have his mike
19 deactivated, or his phone line. Okay, thank you.

20 Okay, Dr. Reede.

21 DR. REEDE: Hearing Officer Kramer, we
22 looked at the application for certification and as
23 stated in the application for certification those
24 wells would supply the facility showers, sinks,
25 toilets, eyewash stations and safety showers.

1 And also stated in the AFC that signs
2 would be posted to alert personnel that water
3 drawn from the wells is not for human consumption.

4 Potable water would be supplied to the
5 PEC by a bottled water service.

6 We had some unreadiness when we put it
7 into the project description because if you're
8 going to use that water for eyewash, you're
9 actually consuming it into a part of your body.
10 Not exactly similar to drinking it, but, you know,
11 it could present a problem.

12 But I would think that the applicant
13 would be better to answer this particular question
14 because we based our project description on their
15 AFC.

16 MR. McKINSEY: I concur, and we
17 discussed this. We're actually prepared to answer
18 it, and Mr. Chandler will address that.

19 MR. CHANDLER: We looked at that
20 question, as well, and talked to our engineering
21 folks today about that just to get more
22 clarification on what that process would be.

23 And regarding the eyewash, that will be
24 sterile bottled water that will be included at the
25 eyewash station. So it will not be any of the

1 processed water from the plant.

2 MR. McKINSEY: And the source of water
3 for the shower?

4 MR. CHANDLER: The source of water for
5 the showers will likely be from the processed
6 water, but it will be appropriately treated as
7 required by California regulations.

8 And Bibb, our engineering firm, is very
9 familiar with all of those regulations and is
10 making sure that that will be complied with.

11 HEARING OFFICER KRAMER: So as far as
12 you're concerned there won't be a health and
13 safety concern with that water being a source for
14 those facilities?

15 MR. CHANDLER: Absolutely not.

16 HEARING OFFICER KRAMER: Thank you.

17 DR. REEDE: Excuse me, Mr. Kramer -- I
18 mean Hearing Officer Kramer. Will the signs still
19 be posted everywhere that that water is not fit
20 for human consumption in accordance with the
21 health and safety codes?

22 MR. CHANDLER: If there is water that is
23 not fit for human consumption, signs will be
24 appropriately posted for that.

25 HEARING OFFICER KRAMER: And I don't

1 believe that was required in any particular
2 condition, was it?

3 DR. REEDE: I would have to check on
4 worker safety. Typically there's a condition
5 related to that in there, worker safety and
6 illness prevention programs.

7 HEARING OFFICER KRAMER: Okay. That was
8 my only question about the project description.

9 So now I'd like to move on to air
10 quality.

11 DR. REEDE: Hearing Officer Kramer, Mr.
12 Will Walters is supposed to be on the phone.
13 That's his testimony.

14 HEARING OFFICER KRAMER: He is on the
15 phone, so if you could activate Mr. Walters.

16 Mr. Walters, can you hear me?

17 MR. WALTERS: Yes, I can.

18 HEARING OFFICER KRAMER: And just for
19 the record, did you take the oath along with the
20 other witnesses?

21 MR. WALTERS: Yes, I did.

22 HEARING OFFICER KRAMER: Thank you.

23 EXAMINATION

24 BY HEARING OFFICER KRAMER:

25 Q If you can turn to page 4.1-48 of the

1 staff assessment.

2 A Yes, I'm there.

3 Q Okay, this is in the greenhouse gas
4 reporting section. And in the middle of the page
5 it makes a reference to this Starwood project.

6 A Yes, that references the -- it's
7 incorrect, it should be Panoche project.

8 Q So it is true if we substitute the word
9 Panoche for Starwood?

10 A Yes, the statement actually is true for
11 -- projects; it's based on (inaudible) power
12 plants. But obviously it's Panoche. As I say, it
13 should be Panoche project.

14 Q Okay. Thank you. And then I had a
15 question about condition AQ-81.

16 HEARING OFFICER KRAMER: And this may
17 also involve the Air District, so you can also
18 activate Mr. Villegas.

19 MS. READ: He is activated.

20 HEARING OFFICER KRAMER: Okay, Mr.
21 Villegas, can you hear me?

22 MS. READ: Okay, thank you. His line's
23 open.

24 HEARING OFFICER KRAMER: Mr. Villegas,
25 can you hear us?

1 MR. VILLEGAS: Yes, I can.

2 HEARING OFFICER KRAMER: Okay. I'll
3 first ask the question of Mr. Walters, but you may
4 want to chime in here.

5 Condition AQ-81 talks about a
6 demonstration of compliance. And I was wondering
7 if that was the correct term under the District's
8 rule because, of course, in the Commission
9 proceedings we use the term determination of
10 compliance.

11 MR. VILLEGAS: I think from the Energy
12 Commission's perspective we could change the text
13 of that for exact if we did leave the last four
14 lines of AQ-81 we could actually end the, for our
15 purposes, end the condition with the word District
16 on the fourth line.

17 So, I could either sponsor doing it that
18 way, or changing the word demonstration to be
19 determination two times in the last four lines.

20 HEARING OFFICER KRAMER: Okay, well,
21 you've partially answered my next question, which
22 was is it appropriate for this condition to
23 basically predetermine the process that the
24 District would use to review an amendment request.
25 And it sounds as if you're comfortable with just

1 eliminating that whole description.

2 MR. VILLEGAS: That description is from
3 the District, so they may have predetermined their
4 own process.

5 HEARING OFFICER KRAMER: Okay, but if
6 their rules change then it might require an
7 amendment to the Commission condition, which would
8 be maybe an unfortunate paper process.

9 Now, Mr. Walters, would you recommend in
10 any case, though, keeping the reference to the
11 District rule at the end of the condition?

12 MR. WALTERS: Well, it's been something
13 we've been thinking of doing on all of these.

14 HEARING OFFICER KRAMER: Okay. Thank
15 you. That was all that we had for air quality.

16 So, moving on to --

17 DR. REEDE: Excuse me, Hearing Officer
18 Kramer. We have the final determination of
19 compliance to be sponsored by the Air District
20 that needs to be taken before we move off of air
21 quality.

22 HEARING OFFICER KRAMER: You're correct.
23 We could do that at the end, or let's do that now.
24 And that raises one other issue.

25 Mr. Villegas, the Commission's statutes

1 require a certification from the Air District
2 that, and I'm quoting here, "complete emissions
3 offsets for the proposed facility have been
4 identified and will be obtained by the applicant
5 within the time required by the District's rules."

6 Is that something that you can certify
7 on behalf of the Air District?

8 MR. VILLEGAS: Yes, that's something I
9 can certify.

10 HEARING OFFICER KRAMER: Thank you.
11 And, Mr. McKinsey, did you want to question him
12 about sponsoring the final determination of
13 compliance?

14 MR. MCKINSEY: Yes. This is John
15 McKinsey; I'm the attorney for the applicant,
16 Panoche Energy Center.

17 You're already sworn in, so I'm simply
18 going to ask you, we have exhibit 13, which is the
19 final determination of compliance. It's dated
20 July 13, 2007. And I'd like to have you just
21 verify that, indeed, the determination of
22 compliance issued on July 13, 2007, is, indeed,
23 the San Joaquin Valley Air Pollution Control
24 District's determination of compliance for the
25 Panoche Energy Center project.

1 MR. VILLEGAS: Yes, I certified that,
2 the determination of compliance, here at the San
3 Joaquin Valley Air Pollution Control District,
4 final DOC.

5 MR. MCKINSEY: Thank you.

6 HEARING OFFICER KRAMER: Thank you.

7 DR. REEDE: Hearing Officer Kramer, I
8 have one last issue on page 4.1-16, two typos to
9 correct.

10 HEARING OFFICER KRAMER: Okay, let me
11 get there. Okay.

12 DR. REEDE: In the second paragraph
13 under sulfur dioxide where it says, SJVAB in the
14 first sentence and the second sentence, that
15 should be corrected to SJVAPCD, San Joaquin Valley
16 Air Pollution Control District, the acronym for
17 it.

18 HEARING OFFICER KRAMER: Okay, thank
19 you.

20 MR. WALTERS: Actually -- this is Will
21 Walters, and the designation of attainment, if
22 he's accurate, is San Joaquin Valley Air Basin.

23 MR. VILLEGAS: This is Errol Villegas,
24 and I'd have to agree with Will. I think the --

25 DR. REEDE: Okay.

1 MR. VILLEGAS: -- acronym was for San
2 Joaquin Valley Air Basin, and --

3 DR. REEDE: Okay.

4 MR. VILLEGAS: -- not necessarily the
5 Air District.

6 DR. REEDE: Okay.

7 HEARING OFFICER KRAMER: Okay, thank
8 you. Anything further on air quality?

9 MR. WALTERS: This is Will Walters. I
10 had one other issue that I was told might be
11 discussed. I just wanted to make sure that we
12 aren't missing that.

13 And I heard there may be a question in
14 terms of the quarterly transfer for PM10 that's
15 allowed by the District from the first and fourth
16 quarters into the second and third quarters,
17 related to air quality table 25. And I just
18 wanted to make sure that question either has been
19 answered or doesn't need to be answered.

20 HEARING OFFICER KRAMER: I think the
21 answer's contained in one of the footnotes. It
22 was pointed out to me after I originally
23 highlighted it. I believe it'd footnote 4 that
24 says that the District allows interchange in
25 between the first and fourth quarters to the

1 second and third. Is that the point you wanted to
2 make sure we understood?

3 MR. WALTERS: Yes. Well, I just wanted
4 to answer any other questions on that topic.

5 HEARING OFFICER KRAMER: No, I think
6 that answered the question that I had. So, but,
7 thank you for remembering to make sure we
8 addressed that.

9 So, seeing nothing further on air
10 quality, we can excuse Mr. Villegas and Mr.
11 Walters if they'd like to go.

12 MR. VILLEGAS: Thank you, gentlemen.

13 MR. WALTERS: Thank you.

14 HEARING OFFICER KRAMER: Thank you for
15 appearing.

16 And the next topic is cultural
17 resources. First, a clarification, condition
18 Cultural-6. The first sentence of the condition
19 says: The project owner shall insure that the CRS,
20 alternate CRS or CRMs shall monitor
21 preconstruction site mobilization;" -- semicolon,
22 and that's an important distinction --
23 "construction ground disturbance;" semicolon,
24 "construction grading;" semicolor, "boring" -- I'm
25 sorry, it's "construction grading," comma,

1 "boring," comma, and "trenching:" semicolon, "and
2 construction full time at the project site and
3 linear facilities," comma, "and ground disturbance
4 full time at laydown areas or other ancillary
5 areas, et cetera."

6 The way -- this may seem seriously like
7 inside baseball, but the way I read this it
8 suggests that the requirement that monitoring be
9 full time is only for construction and ground
10 disturbance, and leaves open the quality or the
11 quantity of monitoring that's supposed to occur at
12 site mobilization, construction ground
13 disturbance, construction grading, boring and
14 trenching.

15 And I'm trying to understand, was there
16 meant to be a distinction, or is -- could you
17 please identify yourself, first.

18 MS. BASTIAN: I'm Beverly Bastian. I'm
19 the person who provided the testimony on cultural
20 resources for Panoche.

21 The proper punctuation here was a
22 challenge. And if you can better suggest how to
23 convey what's intended I would certainly
24 appreciate it.

25 I was working with several definitions

1 that exist in the general conditions of activities
2 which I could read to mean something having to do
3 with ground disturbance. And because construction
4 grading, boring and trenching had to have some
5 commas, I used semicolons to distinguish the other
6 parts of the series.

7 But in all of these activities the
8 intent is for full-time monitoring.

9 HEARING OFFICER KRAMER: Okay, I'll take
10 care of that when we write the condition.

11 MS. BASTIAN: Thank you.

12 HEARING OFFICER KRAMER: Then later in
13 that same paragraph you define the term discovery.
14 It's capitalized and in parentheses. And I
15 believe that's meant to define discovery as, the
16 only place I saw it used was in the beginning of
17 Cultural-7.

18 But in reading Cultural-7 the definition
19 in cultural just didn't make a lot of sense to me.

20 MS. BASTIAN: Oh, and you're asking for
21 clarification? I thought perhaps it was -- your
22 concern was that the discovery, as a definition,
23 should more properly, instead of being at the at
24 the end of that sentence, be after "no impacts to
25 undiscovered resources."

1 But let me look at Cul-7 and see if
2 that -- yeah, I think that probably corresponds to
3 your concern.

4 And I did prepare errata to move that
5 parenthetical (discovery); delete it from the end
6 of the sentence; and move it to after "to insure
7 there are no impacts to undiscovered resources."

8 Will that address your concern?

9 HEARING OFFICER KRAMER: Well, to me
10 it's still not clear. I don't have to enforce
11 this, so if it's clear to you and the applicant, I
12 don't think I need to beat the issue to death.
13 But, --

14 MR. MCKINSEY: The applicant doesn't
15 have any objections to the condition. And we'd
16 probably be comfortable if the compliance project
17 manager would interpret the conditions within the
18 constraints of how they're laid out.

19 HEARING OFFICER KRAMER: So, moving the
20 term "discovery", as she suggested, do you find
21 that to be helpful?

22 MR. MCKINSEY: Yeah.

23 HEARING OFFICER KRAMER: Okay, thank
24 you.

25 And then there's another definition of

1 the term staff at the top of -- in the same
2 condition, Cul-6, at the top of 4.3-35. But I
3 don't see that it was ever used after that point.
4 And then I'm wondering if it needs to be there, or
5 if the failure to use it is what needs to be
6 corrected.

7 MS. BASTIAN: Dr. Reede also brought
8 that to my attention, I think, conveying your
9 concern. And again, in an errata that I've
10 prepared, I simply deleted that parenthetical
11 (staff) at the end of the sentence and the end of
12 the paragraph.

13 I don't think it does appear anywhere
14 else, and therefore doesn't need a definition.

15 HEARING OFFICER KRAMER: Okay, thank
16 you. Now, turning to back to condition Cultural-
17 5, I believe this issue I'm about to mention has
18 come up in another case recently.

19 This condition requires that all workers
20 on the project site and project managers,
21 basically anybody involved with the project, needs
22 to have the worker awareness training regarding
23 cultural resource issues.

24 Yet, to some it appears that that may be
25 overkill, in that there are various types of

1 workers that will be working on this project, for
2 example painters; there may be project managers
3 that never leave the office in Fresno, if that's
4 where the main office for the project is going to
5 be, who never visit the site.

6 And the question is why would those
7 people need to be given this training. And I
8 point out that in the paleontological section
9 there the requirement is only that people who will
10 be supervising project managers and those up the
11 chain of command, as well as people who are
12 actually operating equipment, that will work in
13 the ground, receive the training.

14 So we're wondering why the cultural
15 training needs to be given so much broader -- or
16 given more broadly than the training for paleo.
17 It appearing that in both cases it's not expected
18 that any resources will be found. Or perhaps it's
19 more likely that they'll be found in the paleo
20 case, from reading the testimony.

21 That was a long-winded question, but
22 nobody objected, so go ahead and answer it.

23 (Laughter.)

24 MS. BASTIAN: Well, my answer -- I'll
25 try not to have it be long-winded, but I do want

1 to provide enough, I think, background perhaps to
2 justify that provision.

3 Under CEQA, as staff is attempting to
4 fulfill our obligation as a lead agency in these
5 projects, the most important thing is, under CEQA,
6 to identify whether or not a cultural resource is
7 significant; and then to mitigate it, if it is.

8 But that entails recognizing finding a
9 cultural resource. And in a construction
10 situation staff has two options. There are two
11 ways we may learn if there were to be a cultural
12 resources discovery.

13 And one of them is having trained
14 construction workers on the site. The other is to
15 have archeological monitors.

16 And in recent years, prior to the
17 discussion you mentioned here that has come up
18 recently, staff has usually recommended having
19 both. We have trained workers onsite for the
20 duration of the construction. And we also
21 recommend some level of archeological monitoring.

22 And that can range from no monitoring at
23 all to full-time monitoring. And we customize, is
24 kind of the way we think of it, for each project,
25 the archeological monitoring according to the

1 particulars of the project.

2 We do research. We have the known
3 history of the site. We know what the resources
4 are. We know what sort of use has gone on in
5 history and prehistory in the area. And these are
6 sort of indications to us of whether or not there
7 may be subsurface remains.

8 The things that we are concerned about
9 having the eyes on the site, that is, to see and
10 inform us then of discoveries.

11 But, at least to date, when staff has
12 recommended monitoring we have done so with the
13 understanding that there will be what we sort of
14 consider our safety net. These trained
15 construction workers who are all on the site more
16 than archaeologists are necessarily, and
17 everywhere on the site, which archaeologists can't
18 be. And are therefore, you know, kind of the base
19 troops for providing the information of
20 discoveries.

21 And because we have that confidence of
22 persons who we hope would recognize cultural
23 resources, we're comfortable recommending a
24 reduction in monitoring, or recommending no
25 monitoring at all on some projects.

1 And staff has depended on having this,
2 what I would call the universal cultural resources
3 training as a baseline, because archeological
4 sensibility and practice are very conservative.
5 We want to have the most possible eyes on the
6 ground so to speak.

7 And that means it's more likely to find
8 a cultural resource, have it be recognized if it's
9 found.

10 And up to this point, project owners did
11 not usually comment adversely on this provision.
12 And I might say not uncommonly, themselves,
13 proposed this provision for worker training.

14 We think this was probably acceptable
15 because it was not necessarily time consuming and
16 it was easily integrated with existing worker
17 training in safety and some of the other
18 environmental awareness, as you mentioned.

19 The recent PMPD on the Walnut Creek
20 project changed this idea of a baseline of trained
21 cultural resources workers. And so we now have to
22 assume maybe our safety net will not be there to
23 the extent that it had been in the past.

24 And this would possibly put us in a
25 position of needing to re-think the amount of

1 archeological monitoring. In other words, the
2 other set of eyes that we would normally
3 recommend, either in terms of duration or extent,
4 and having to look more closely at those requests
5 on the part of project owners to reduce
6 archeological monitoring.

7 So, that's one conclusion I can offer
8 and answer. And another that we feel it's better
9 for -- or we're better able to fulfill the Energy
10 Commission's CEQA duties to evaluate discovered
11 cultural resources if we're better able to
12 identify them.

13 And I want to add to that, I was not
14 aware that people in Fresno were being trained. I
15 thought the training was limited to just people
16 who were going to be working on the construction
17 site.

18 DR. REEDE: Excuse me, Hearing Officer
19 Kramer. One of the things that we hoped to avoid
20 was seeing an archeological find on the 10:00 news
21 as we did in the Cosumnes Power Plant case, where
22 they found a mastodon bone and we weren't notified
23 until the next day.

24 HEARING OFFICER KRAMER: I don't think
25 the conditions require that you be notified any

1 sooner than that, do they?

2 DR. REEDE: We had to initiate the call.

3 ASSOCIATE MEMBER BOYD: Excuse me, might
4 I ask a question here. Recognizing, one, I wasn't
5 on the Walnut Creek Committee, but number two, it
6 hasn't been finished by the Commission. So I
7 don't know how appropriate this question is.

8 But I was wondering if the condition
9 that was modified for Walnut Creek was predicated
10 at all on any preliminary assessment of the
11 probability of there being any cultural resources
12 on the site.

13 And secondly, are there any views as to,
14 you know, how probable it might be here at Panoche
15 to find something of cultural significance.

16 MS. BASTIAN: Thank you, Commissioner.
17 Yes, the cultural resources staff always tries to,
18 on the basis of research, arrive at some sense of
19 the probability. We are never able to put a
20 figure on that, per se. It is our best guess, and
21 it is a conservative one because, as Dr. Reede
22 mentioned, it's problematic scientifically and
23 problematic in terms of public relations, to find
24 things with backhoes, as opposed to having someone
25 with the skills to recognize and prevent damage to

1 some kind of potentially valuable find.

2 On Walnut Creek there were recognition
3 that considerable depth of the -- this was not my
4 project, but I have a little familiarity with
5 it -- on the project site was fill; and there was
6 not a concern for monitoring or any other kinds of
7 finds until somewhat after they'd reached a
8 certain depth.

9 On Panoche, which is my project, apart
10 from agricultural disturbance, as best I know it's
11 virgin soil. And my estimate of the likelihood of
12 finding something there is based on known sites
13 not exactly close, about two miles. But at
14 Panoche Creek, a very large known habitation site.
15 We've had satellite activity areas related to it.

16 And the fact that in prehistory the site area
17 was a marsh related to Tulare Lake. And that is
18 the sort of environment that it could be expected
19 Native Americans would have used; various kinds of
20 resources there, food and materials, both.

21 So, it seems worthwhile to be sure there
22 were eyes there to possibly see cultural resources
23 if they were discovered during excavations.

24 ASSOCIATE MEMBER BOYD: Thank you.

25 HEARING OFFICER KRAMER: I'm not sure

1 you've really answered my question, though, about
2 why the scope and the trend should be different
3 for the cultural resources and the paleontological
4 sections.

5 MS. BASTIAN: I have to say, Hearing
6 Officer Kramer, I didn't know that the
7 paleontological ones were different. I didn't
8 look into that. I know from the Walnut Creek
9 decision that both of those were limited in terms
10 of the categories of workers that would be
11 trained. And I guess I just assumed that had
12 occurred similarly on Panoche.

13 And I'm not an expert in paleontology.
14 I don't know what they consider to be
15 sensitivities, and how they would calculate this
16 likelihood or probability differently than I
17 would.

18 I'm just, perhaps, being more
19 conservative.

20 HEARING OFFICER KRAMER: Okay, thank
21 you. Did the applicant want to respond at all?

22 MR. MCKINSEY: Yes, Hearing Officer
23 Kramer. Mr. Chandler would like to offer one
24 comment.

25 MR. CHANDLER: Our understanding, Mr.

1 Kramer, was that this condition would apply to new
2 workers being workers on the site. And further
3 comment on this is contained in number 7 under
4 Cultural-5, which says the sticker that shall be
5 placed on hardhats indicating that environmental
6 training has been completed.

7 So people who aren't working on the
8 site, in other locations, or who may just be
9 coming in the office, I suppose we could stick one
10 on their forehead, perhaps, but they may not
11 likely have hardhats.

12 So I think we have the same
13 understanding generally, that it would apply to
14 workers who are actually working on the site.

15 HEARING OFFICER KRAMER: Okay, thank
16 you.

17 The next topic is hazardous materials.
18 Mr. Tyler, good afternoon.

19 MR. TYLER: Good afternoon, Hearing
20 Officer Kramer.

21 HEARING OFFICER KRAMER: The first
22 question was on page 4.15-8, the discussion of
23 natural gas. It ends by stating the proposed
24 facility will require the installation of 2400
25 linear feet of new offsite gas pipeline.

1 It doesn't say anything about the -- or
2 draw any conclusions about the safety issues
3 related to that. And I wondered if you could just
4 fill in that gap for us briefly.

5 MR. TYLER: Yes. My name, for the
6 record, is Rick Tyler. The gas pipeline, the
7 2400-foot linear gasline to the facility from the
8 PG&E gasline will be owned and operated by Pacific
9 Gas and Electric Company. And will be maintained
10 and tested by Pacific Gas and Electric Company.

11 It will be built according to Title 49;
12 and it will also comply with CPUC regulations.

13 So we're very familiar with the methods
14 used by PG&E with regard to construction, testing
15 and maintenance of natural gas pipelines.

16 So the fact that it's owned by PG&E and
17 operated by PG&E, and that it is subject to an
18 extensive existing regulatory program with regard
19 to safety, alleviated any concern that we had in
20 that regard.

21 HEARING OFFICER KRAMER: Thank you. On
22 page 4.15 --

23 MR. MCKINSEY: Hearing Officer Kramer,
24 as much as I do not want to have to correct
25 something, it's actually inaccurate that the line

1 is going to be owned by PG&E. Mr. Chandler can
2 elaborate on that.

3 MR. CHANDLER: PG&E will install the
4 connection to the transmission line, as well as
5 the meter set. And where that meter set will go
6 hasn't been precisely determined at this point.

7 But we evaluated two alternatives, one
8 being a route that runs along Panoche Road west to
9 the plant. And the other alternative being one
10 that runs south of the substation.

11 And both of those alternatives were
12 completely analyzed and I believe at this point
13 that PG&E and we have determined that the
14 alternative of running the distribution line or
15 the line to the plant along the south side of the
16 substation is the most appropriate location.

17 In which case they will install their
18 interconnection and their meter set very close to
19 their pipeline. And then that pipeline will be
20 constructed by our contractor from that point on,
21 to the plant. It's not along the road; it's not
22 where there's anything but just along the edge of
23 the pomegranate field.

24 MR. TYLER: I was basing my conclusion
25 on the facility description location provided in

1 section 3.9.4 pipelines. And my conclusion in
2 reading that section was that it would be
3 maintained and operated by PG&E.

4 MR. CHANDLER: And just in response to
5 that, initially we expected that would be the
6 case, that we would put the meter set on the west
7 side of the substation and PG&E is required to
8 construct the line to the meter set. And then we
9 would have installed the pipeline from the meter
10 set to the plant. But that is currently probably
11 not the case.

12 MR. TYLER: Who then -- Panoche Energy
13 Center would be responsible then for maintenance
14 and compliance with Title 49?

15 MR. CHANDLER: That's correct. From the
16 meter set to the plant.

17 MR. TYLER: Okay. And that wasn't
18 really discussed in the AFC, so basically that was
19 how staff made its determination. We're familiar
20 with the procedures that would be used by PG&E.
21 But we're not familiar with the procedures that
22 would be used by Panoche Energy Center.

23 HEARING OFFICER KRAMER: Will that
24 change your conclusions, then, Mr. Tyler?

25 MR. TYLER: I would want to look at this

1 again under those conditions. Clearly I'm very
2 comfortable with how PG&E operates a natural gas
3 pipeline. I would want to become comfortable with
4 that same circumstance for the Panoche Energy
5 Center. So I would want some discussion of --
6 they would still be required to meet CPUC
7 standards; they would still be required to meet
8 Title 49.

9 But how they go about doing that would
10 be of interest to me.

11 MR. CHANDLER: I would note that what
12 we're clarifying, our AFC includes a discussion of
13 gas pipeline ownership and compliance. Where it
14 left it open was the ownership portion. So our
15 application for certification, which we have on
16 the record, includes an analysis of how the gas
17 pipeline is operated. And I think where we're
18 differentiating is what portion of that gas
19 pipeline is owned by PG&E and what portion would
20 be owned by us.

21 But we do have a discussion of
22 compliance and requirements in the application.
23 And really, we're just talking about where we're
24 drawing the line between the two. But there is a
25 gas pipeline in the AFC and its analysis. And the

1 only difference is, you know, what the length
2 portion is that belongs to us as opposed to PG&E.

3 HEARING OFFICER KRAMER: Let me ask you,
4 Mr. Tyler, if the pipeline is going to be owned by
5 the applicant and not by PG&E, would you normally
6 have proposed additional conditions to set forth
7 the standards under which it will be constructed
8 and operated?

9 MR. TYLER: Yes, that's the case. I
10 would be looking for similar sorts of
11 documentation to what PG&E would require and
12 maintain with regard to the pipeline. And I would
13 want to see that maintained by the project owner.

14 So, in other words, I'd want to have
15 some sort of documentation at the facility for --
16 at the company that basically -- a document that
17 testing, maintenance and so on were conducted on
18 the intervals that are required.

19 HEARING OFFICER KRAMER: So is that
20 something you could describe in a condition?

21 MR. TYLER: Yes, yes, I could.

22 HEARING OFFICER KRAMER: And is the
23 applicant amenable to holding the record open
24 today for Mr. Tyler to submit a new condition of
25 certification to deal with this question?

1 MR. CHANDLER: Well, I suppose that will
2 depend on how long it takes to submit that
3 condition. We certainly have no problem complying
4 with the condition and it was our intent that we
5 would meet any requirements on any gas pipeline.
6 And I wouldn't expect we would have any dispute
7 over the condition, but we certainly wouldn't want
8 that to hold up the process.

9 HEARING OFFICER KRAMER: I don't think
10 it would. Mr. Tyler, it wouldn't take you much
11 more than a week, would it?

12 MR. TYLER: No, I don't think so.

13 HEARING OFFICER KRAMER: Okay. Dr.
14 Reede.

15 DR. REEDE: Hearing Officer Kramer, from
16 a project description perspective I have a slight
17 problem because if I look at my facility
18 description as it's shown in the AFC, and I quote,
19 "A natural gas pipeline from PG&E gasline to the
20 project will be owned by PG&E. Operation and
21 maintenance of natural gas pipeline from the
22 existing fuel gas supply lines will be performed
23 by PG&E in accordance with applicable Federal
24 Energy Regulatory Commission and U.S. Department
25 of Transportation regulations. This piping system

1 will receive periodic inspections as part of
2 PG&E's pipeline maintenance program."

3 So, you see, the project description,
4 from what I'm being told now, has changed. And so
5 they're saying that the project description that
6 they gave in the AFC is no longer accurate.

7 HEARING OFFICER KRAMER: Are you
8 suggesting, then, that you would like to write a
9 short addendum to your project description to be
10 attached to --

11 DR. REEDE: Well, they haven't given me
12 anything in writing to say what the project
13 actually is.

14 HEARING OFFICER KRAMER: And it's
15 insufficient that they've described it for you
16 today?

17 MR. MCKINSEY: We believe, and we don't
18 have it in front of us, the documents we need for
19 this, but this is actually the subject of a data
20 request for a data adequacy response. And so
21 there is already in the record a description of
22 two alternative pipeline paths and a discussion of
23 their effects.

24 And we are certain of this, that in the
25 entire AFC there's a discussion of the effects of

1 the pipeline visually, culturally,
2 paleontologically. And so this isn't a record
3 adequacy. And it may just be that the final staff
4 assessment is referring specifically to what was
5 in the AFC.

6 As we know, there's an AFC, there's data
7 adequacy, and of course, then we go through data
8 requests and data responses. And that somewhere
9 in there clarification was made on the gas
10 pipeline path and on its construction and
11 ownership. And that's in the record.

12 So I don't know that we would have to
13 modify, per se, the staff's facility design
14 portion as long as it's in the record and we have
15 from the gas person the appropriate condition that
16 they think should be applied to that pipeline.

17 HEARING OFFICER KRAMER: I think that's
18 correct. Anything else on this topic, the gas
19 pipeline?

20 Okay, two more questions for Mr. Tyler.
21 On page 4.15-13, you referred to the 2001 building
22 code. It appears that you are just reciting that
23 the applicant expressed an intention to design to
24 that.

25 DR. REEDE: Excuse me, what page?

1 HEARING OFFICER KRAMER: 4.15-13. Under
2 seismic issues, right above the site security
3 topic.

4 DR. REEDE: Right under worker safety.

5 MR. TYLER: Oh, worker safety, okay.

6 HEARING OFFICER KRAMER: Well, that's
7 hazardous materials in mine.

8 DR. REEDE: What?

9 HEARING OFFICER KRAMER: -- credit the
10 pdf of the FSA, that's what I'm looking at. Well,
11 I can maybe just read it to you.

12 "Staff notes that the proposed facility
13 will be designed and constructed to the applicable
14 standards of the 2001 California Building Code,
15 and the 1997 Uniform Building Code." And then it
16 notes the site is within seismic zone 4.

17 I just wanted to ask you if it's decided
18 to apply the 2007 building code to this project,
19 will that affect your conclusions in any way about
20 the seismic safety of this project?

21 MR. TYLER: No. I think it would
22 actually improve it. The seismic 4 requirement
23 would still be in the 2007 version; and seismic 4
24 requirement would put an importance criteria on
25 design of things like the ammonia tank with regard

1 to seismic design.

2 HEARING OFFICER KRAMER: So you consider
3 the 2007 code to be an improvement over the 2001
4 code?

5 MR. TYLER: Yes.

6 HEARING OFFICER KRAMER: And then my
7 final question for you, if you look at condition
8 Hazardous-7, the second sentence starts out,
9 "Staff believes" and I think as a normal practice
10 the Commission doesn't include testimony or policy
11 statements in the conditions. Do you have any
12 objection to deleting that sentence?

13 MR. TYLER: No.

14 DR. REEDE: No objection.

15 HEARING OFFICER KRAMER: Any comments
16 from the applicant?

17 MR. MCKINSEY: No.

18 HEARING OFFICER KRAMER: Okay, thank
19 you.

20 Commissioner Boyd has to go to the
21 airport in about a half an hour, so for his sake i
22 wanted to jump ahead to the contested issues. And
23 those are facility design, which relates to the
24 General-1 condition. And then soil and water
25 resources. And I think of those two it's more

1 important for him to hear the facility design
2 aspect, so we will go with that first.

3 DR. REEDE: Steve Baker.

4 HEARING OFFICER KRAMER: The applicant,
5 you've proposed a change to condition Gen-1, which
6 is exhibit 52. Staff, did you intend to offer any
7 counter-proposal?

8 MR. BABULA: No, this is acceptable to
9 us.

10 HEARING OFFICER KRAMER: So, if I read
11 this correctly, it is basically achieving what Mr.
12 McKinsey proposed in a letter either late last
13 week or early this week, to the effect that the
14 turbine provided by General Electric would be
15 subject to the 2001 building code, but the
16 remainder of the project would be subject to the
17 2007 code, is that correct?

18 MR. BABULA: That's correct.

19 HEARING OFFICER KRAMER: Okay. There
20 may be a couple of other conditions in the --
21 relating to this project in various subject areas
22 which refer to the 2001 building code. Is it the
23 parties' intent that all of those references
24 should be changed to 2007?

25 MR. MCKINSEY: That's fine with the

1 applicant.

2 MR. BABULA: Yes.

3 HEARING OFFICER KRAMER: Okay, that was
4 easy. Let me just make sure that I don't have a
5 question for Mr. Baker of my own.

6 PRESIDING MEMBER BYRON: If I may, a
7 quick question.

8 HEARING OFFICER KRAMER: Okay.

9 PRESIDING MEMBER BYRON: Dr. Reede, or
10 Mr. Baker, maybe you know, is this a precedent-
11 setting use of the more current codes for an
12 applicant? Or do we typically require, how can I
13 say, this current or this level of code for an
14 application at this point?

15 MR. BAKER: Typically this is a non-
16 issue, but perhaps that's because it's so seldom
17 that we change code versions.

18 Usually every three years the code is
19 adopted. But in recent times California has not
20 been adopting a new code every three years. The
21 previous one was 2001. Now it's 2007.

22 The last time we had a project that
23 caught right on the cusp like this, was the Sutter
24 Energy Center project. And that turned into a
25 rather embarrassing situation where the applicant

1 insisted that the decision specify the older
2 version of the code. And they would skinny in
3 just under the wire and submit their first designs
4 before the new code was mandatory.

5 And staff recommended against putting
6 that code version in the decision. But the
7 applicant got his way; the decision said that the
8 project would be built to the old code. And the
9 decision was handed down. The project began.

10 And at a preconstruction meeting the
11 owner stood up and said, okay, we're going to
12 build this to the old code. And his engineering
13 contractor said, no, you're not. And his turbine
14 supplier said, no, you're not; we've already
15 shifted over to the new code.

16 And so the project had to stop while the
17 owner came in for an amendment to their decision.

18 So that's the last time I remember this
19 becoming an issue. I can understand easily why
20 the applicant wants to have this sentence to the
21 condition, because they've already bought the
22 turbines from GE, and that includes a bunch of
23 paperwork from GE that says this turbine meets the
24 2001 code.

25 Now, the machine, I'm sure, will not

1 require any physical changes to meet the 2007
2 code. The changes are in the design to the
3 foundation, the fastenings that hold the machine
4 down. The machine, itself, will surely not be
5 changed at all.

6 But GE will charge them thousands of
7 dollars for a new set of paperwork. And I don't
8 believe it's necessary.

9 PRESIDING MEMBER BYRON: Good answer,
10 thank you.

11 HEARING OFFICER KRAMER: So to be clear,
12 then, is it your understanding that the 2007 code
13 would apply to the foundations for the GE machine?

14 MR. BAKER: Yes, that's the intention.

15 HEARING OFFICER KRAMER: And is that the
16 applicant's understanding?

17 MR. MCKINSEY: Yes.

18 HEARING OFFICER KRAMER: Thank you.

19 Okay, soil and water resources.

20 MR. MCKINSEY: Hearing Officer Kramer,
21 while they're getting settled in, just for
22 efficiency, because we haven't actually -- I've
23 informed staff counsel of this, but applicant
24 accepts the 8 and 9 as proposed by the staff in
25 their supplemental testimony yesterday, I think

1 it's at exhibit 10 --

2 MR. BABULA: 104?

3 MR. McKINSEY: -- 104, in their
4 entirety, without any changes. So, in terms of
5 the substance of the conditions I think the
6 applicant and the staff are on the same page
7 completely.

8 PRESIDING MEMBER BYRON: That's
9 condition soil and water-8 and -9, correct?

10 MR. McKINSEY: That's correct.

11 HEARING OFFICER KRAMER: Okay. Let me
12 ask one clarifying question. I apparently forgot
13 to bring that with me, but I remember that in
14 reading it, -- I had one question about soil-and-
15 water-9.

16 MS. HOLMES: Mr. Kramer, would you like
17 to have us sponsor the exhibit before you begin to
18 ask questions on it?

19 HEARING OFFICER KRAMER: Certainly,
20 that's a good idea.

21 DIRECT EXAMINATION

22 BY MR. BABULA:

23 Q Okay, let me go ahead and just sponsor
24 this. This is exhibit 104, and we have Richard
25 Anderson here, who was one of the authors, as well

1 as John Kessler.

2 So let me just ask you quickly -- okay.
3 You two are the authors of the supplemental water-
4 8 and the new water-9?

5 MR. KESSLER: Yes.

6 MR. ANDERSON: Yes.

7 MR. BABULA: Correct, okay. And that
8 testimony is, to the best of your knowledge,
9 accurate?

10 MR. ANDERSON: Yes.

11 MR. KESSLER: Yes.

12 MR. BABULA: Okay. I'd like to submit
13 that then, exhibit 104, to the record.

14 HEARING OFFICER KRAMER: Any objections
15 from the applicant?

16 MR. McKINSEY: None.

17 HEARING OFFICER KRAMER: Okay, we will,
18 at the end of the proceeding we'll make sure that
19 we've got all the exhibits in evidence. I
20 apologize if I'm a little bit random in my
21 organization here.

22 PRESIDING MEMBER BYRON: We'll forgive
23 you, Mr. Kramer.

24 HEARING OFFICER KRAMER: My one question
25 about soil-and-water-9 was there's an underlying

1 paragraph above the verification that talks about
2 the reallocation of the funds if the Westlands
3 Water District were to discontinue the program
4 that you're envisioning that be used.

5 And it occurred to me that it might be
6 appropriate to also make that one of the now five
7 numbered paragraphs, and that becomes a provision
8 in the agreement with the Water District. Since
9 it's clearly a requirement to be placed upon them.

10 And I wanted to ask the parties if that
11 seemed appropriate, beginning with the staff.

12 MR. ANDERSON: Yes, we think so.

13 HEARING OFFICER KRAMER: Could you
14 identify yourself for --

15 MR. ANDERSON: This is Dick Anderson,
16 Richard Anderson.

17 HEARING OFFICER KRAMER: And while
18 you're at it, could I have your colleagues
19 identify themselves for the record.

20 MS. BOND: I'm Linda Bond.

21 MR. KESSLER: And I'm John Kessler.

22 HEARING OFFICER KRAMER: Your
23 supplemental testimony seems to be self
24 explanatory, so I don't have any particular
25 questions about that.

1 I did have a clarifying question or two
2 from your original testimony. On page 4.9-25,
3 you're talking about surface water quality and the
4 effect of drawing water out of the aquifer that
5 the applicant proposes to use on agricultural
6 drains in the area.

7 And I wondered if you could just explain
8 that in a little more detail, the mechanism. Your
9 conclusion seems to be that there will be a small,
10 perhaps unmeasurable, but positive effect on
11 agricultural draining.

12 And I wanted to be clear exactly how
13 that's working, so I could perhaps describe it in
14 the decision.

15 MS. BOND: Essentially the direction of
16 flow of groundwater through the aquifer is from
17 the west to the east, from the area near the
18 foothills where the project will be located,
19 toward the center of the valley, toward the San
20 Joaquin River.

21 And if some of the groundwater is pumped
22 out and consumed, it reduces the amount of flow
23 going through the aquifer.

24 And the reason why this is a net benefit
25 is given the water chemistry and the salinity of

1 the groundwater once it works its way down to the
2 San Joaquin River and the drains and the low lying
3 areas. That water has become a problem because
4 it's so highly saline.

5 So essentially you've got flow going
6 down; and if you capture some of that groundwater
7 flow, take it to the power plant and evaporate it,
8 you're reducing the amount of water that's
9 discharging out. And that discharge is the
10 problem.

11 HEARING OFFICER KRAMER: So the power
12 plant would be drawing directly from the level of
13 which the draining is occurring, or --

14 MS. BOND: No, they wouldn't. As they
15 proposed, they plan to pump from the confined
16 aquifer. But although aquifer systems are often
17 characterized as being compartmentalized, you have
18 an upper aquifer, then you have a confining layer
19 in between that prevents flow in between say the
20 upper and the lower aquifer systems.

21 And that is somehow also separate from
22 the rivers or the streams that are in the center
23 of the valley. The fact of the matter is that all
24 of these systems are hydrologically connected. A
25 confining layer only slows the movement of water

1 through the system.

2 So, when the -- if the project pumped
3 from the confined aquifer, below the Corcoran
4 Clay, it creates a vertical gradient. It actually
5 draws water down through the Corcoran Clay from
6 that semi-confined zone.

7 The water that discharges out at the
8 river or in the low lands is discharging directly
9 from that semi-confined aquifer. But if you draw
10 water out of that semi-confined aquifer up near
11 the Panoche Plant, the net effect is you end up
12 with less water discharging from the aquifer and
13 out.

14 HEARING OFFICER KRAMER: Because some of
15 that water goes to replace the water that was
16 drawn out?

17 MS. BOND: Correct, correct. It's kind
18 of a water mass balance thing.

19 HEARING OFFICER KRAMER: Do you have any
20 questions?

21 ASSOCIATE MEMBER BOYD: No,
22 unfortunately I followed all that.

23 (Laughter.)

24 ASSOCIATE MEMBER BOYD: I did spend
25 eight years in the water business, so I can

1 understand what you're talking about.

2 HEARING OFFICER KRAMER: Okay, well, do
3 the parties have any additional comments on soil
4 and water?

5 MR. McKINSEY: We do, we have one
6 housekeeping item on this topic. Originally, of
7 course, we had a slate of witnesses, and so in
8 doing so I need to have one witness sponsor some
9 of our exhibits in this topical area. And that's
10 Maggie Fitzgerald, if I can have her come up.

11 (Pause.)

12 BY MR. McKINSEY:

13 Q Maggie, you've already been sworn in,
14 correct?

15 Maggie, can you state your name and your
16 place of employment?

17 A Margaret Fitzgerald, and I work for URS
18 Corporation.

19 Q What's your role at URS on this project?

20 A I'm an Engineer and the Project Manager.

21 Q Are you sponsoring any exhibits in this
22 proceeding?

23 A Yes, I am. Exhibit 41 contains my
24 written testimony, which includes a set of
25 exhibits; and I'm also adding to that section 5.5

1 of the AFC, which is the water resources section.

2 Q Thank you.

3 MR. MCKINSEY: That's all.

4 HEARING OFFICER KRAMER: Thank you. Any
5 cross-examination?

6 MR. BABULA: No.

7 HEARING OFFICER KRAMER: Do we have any
8 public comments on the topics of facility design
9 or soil and water resources? Seeing none, we'll
10 close those topics.

11 And we will return to the list of
12 Committee-question topics under item 4. I believe
13 we now come to land use.

14 Dr. Reede, are you going to be handling
15 these questions?

16 DR. REEDE: Yes, I will.

17 HEARING OFFICER KRAMER: Okay, please
18 look to page 4.5-11. And the second paragraph
19 from the bottom describes the project as having a
20 net generating -- actually it's a quotation from a
21 letter that says the project has a net generating
22 capacity of 120 megawatts.

23 DR. REEDE: That's incorrect.

24 HEARING OFFICER KRAMER: It should be
25 400, correct?

1 DR. REEDE: Yes, that should be 400.

2 HEARING OFFICER KRAMER: Is the quote
3 from the letter otherwise accurate?

4 MR. McKINSEY: I think that is a correct
5 quote. They're stating that if they're under 50
6 megawatts -- this is a general statement of their
7 jurisdictional authority -- then it would be
8 permitted by Fresno. That's a quote from a letter
9 indicating where their jurisdictional authority
10 would apply.

11 DR. REEDE: You're talking about the
12 last sentence in the second paragraph from the
13 bottom?

14 HEARING OFFICER KRAMER: Yes. And the
15 same discrepancy is in the first sentence of the
16 next paragraph.

17 DR. REEDE: Yes, that is correct.

18 MR. McKINSEY: Okay, I apologize; I was
19 looking at the first sentence of the second-to-
20 last paragraph.

21 HEARING OFFICER KRAMER: Okay. And then
22 on page 4.5-14 in the first full paragraph there's
23 a statement that there will be no net loss of
24 agricultural land as a result of the Panoche and
25 the Starwood Midway projects.

1 And I was wondering what was meant by no
2 net loss there, because we know that from other
3 testimony that 12-plus acres of pomegranates are
4 going to go out of production.

5 Can you explain what was meant by that,
6 Dr. Reede?

7 DR. REEDE: Yes. They're required to
8 mitigate for taking this farmland out of
9 production. And as such, are purchasing land to
10 be set aside.

11 HEARING OFFICER KRAMER: So then it
12 means that the loss of the land is being
13 mitigated?

14 DR. REEDE: Yes.

15 HEARING OFFICER KRAMER: Okay, thank
16 you. Now, finally, just for the record I believe
17 that at the prehearing conference you stated that
18 in condition Land-1 in the verification the 120-
19 day time limit was meant to be 30 days, is that
20 correct?

21 DR. REEDE: Yes, that is correct.

22 HEARING OFFICER KRAMER: Okay, that
23 finishes up land.

24 DR. REEDE: Okay.

25 HEARING OFFICER KRAMER: So our final

1 topic is noise and vibration.

2 Could you state your name for the court
3 reporter.

4 MR. KHOSHMAHRAB: Shahab Khoshmashrab.

5 HEARING OFFICER KRAMER: And spell it
6 for him.

7 MR. KHOSHMAHRAB: S-h-a-h-a-b, the last
8 name is K-h-o-s-h-m-a-s-h-r-a-b.

9 HEARING OFFICER KRAMER: In most of the
10 noise sections that I've been familiar with the
11 noise levels are described in terms of L90 levels
12 rather than L50, as they've been described in this
13 analysis for this case.

14 And I wondered if you could explain why
15 L50 was chosen in this case.

16 MR. KHOSHMAHRAB: L50 was chosen for
17 compliance with the local LORS. And then in the
18 CEQA section of the same testimony we have used
19 L90, which is the standard practice of the Energy
20 Commission.

21 HEARING OFFICER KRAMER: Okay, thank
22 you. On page 4.6-8, at the bottom, there's a
23 discussion of the relocation of nearby residents
24 at the property at location ML-2. And I wanted to
25 clarify, in order for this project to be compliant

1 and to not have significant noise impacts, is it
2 necessary that that residence be relocated?

3 MR. KHOSHMAHRAB: Yes, yes. Page 4.6-
4 12, the first full paragraph.

5 HEARING OFFICER KRAMER: Okay, so that
6 property needs to be relocated?

7 MR. KHOSHMAHRAB: Yes, because the
8 noise will be 13 db above the LORS limit of 45.

9 HEARING OFFICER KRAMER: And that's the
10 property that's referred to in --

11 MR. KHOSHMAHRAB: ML-2.

12 HEARING OFFICER KRAMER: And it's
13 referred to in one of the conditions -- condition
14 Noise-5, correct?

15 MR. KHOSHMAHRAB: Right.

16 HEARING OFFICER KRAMER: Now, as I
17 recall from the site visit there's another set of
18 residences close to the project, is that correct?

19 MR. KHOSHMAHRAB: Yes. It's not as
20 close as this one, but it's the -- are you
21 referring to the multiplex?

22 HEARING OFFICER KRAMER: I think so,
23 yes.

24 MR. KHOSHMAHRAB: Okay.

25 HEARING OFFICER KRAMER: Does that

1 residence need to be relocated in order to satisfy
2 LORS and CEQA?

3 MR. KHOSHMAHRAB: Yes.

4 HEARING OFFICER KRAMER: But the
5 condition Noise-5 doesn't refer to it, correct?

6 MR. KHOSHMAHRAB: No, Noise-4 does.

7 HEARING OFFICER KRAMER: So my question
8 for the parties, I think I alluded to this at the
9 prehearing conference, as I understand it, this
10 project is relying on the Starwood project to
11 complete that other location -- that other
12 relocation, rather. Is that your understanding?

13 MR. KHOSHMAHRAB: Yes. Yes.

14 HEARING OFFICER KRAMER: And my question
15 is if Starwood, for some reason, doesn't go
16 forward, and therefore presumably doesn't meet its
17 obligation to relocate that residence, how is that
18 going to be achieved?

19 MR. KHOSHMAHRAB: The compliance with
20 the noise standards?

21 HEARING OFFICER KRAMER: Yes.

22 MR. KHOSHMAHRAB: Okay. In Noise-4, if
23 the residents living in -- I'm just reading the
24 text of Noise-4, "If the residents living in the
25 five-plex are not relocated, the project design

1 implementation shall include appropriate noise
2 mitigations to insure that the operation during
3 the four quietest consecutive hours of the night
4 will not cause" -- sorry, I'm reading ahead --
5 "will not cause noise levels due to plant
6 operation plus ambient during the four quietest
7 consecutive hours of the nighttime to exceed an
8 average of 45 dba L-50 measured near monitoring
9 location ML-1."

10 So there will be -- the project owner
11 will be required to implement mitigation measures
12 at that residence.

13 HEARING OFFICER KRAMER: Those will be
14 changes to the structure of the residence, itself?

15 MR. KHOSHMAHRAB: Well, usually what we
16 have suggested in other projects, if I may read
17 from SMUD/Cosumnes Commission decision.

18 "Acoustical improvements could include, for
19 example, acoustically rated windows; upgrade
20 hollow-core exterior doors with solid-core doors;
21 provide additional sound insulation in walls and
22 around penetrations and cracks.

23 It could include installation of air
24 conditioning systems if not already present. So
25 there isn't going to be a major structural change.

1 HEARING OFFICER KRAMER: Is that allowed
2 in this case, though? It looks, reading the last
3 part of the first paragraph of Noise-4, it talks
4 about measuring noise levels near the monitoring
5 station ML-3. Could that be inside the structure,
6 or would that have to be outside?

7 MR. KHOSHMAHRAB: It will be an
8 outside. These are exterior noise levels that
9 need to comply.

10 HEARING OFFICER KRAMER: So then the
11 applicant would have to basically quiet the power
12 plant?

13 MR. KHOSHMAHRAB: I'm sorry?

14 HEARING OFFICER KRAMER: The applicant
15 would have to quiet the power plant, itself, in
16 order to be able to meet that standard, wouldn't
17 they? If you're measuring outside, windows
18 wouldn't help.

19 MR. KHOSHMAHRAB: Right. That's true.

20 HEARING OFFICER KRAMER: Does the
21 applicant understand that?

22 MR. MCKINSEY: Yeah. You know, the
23 condition doesn't specify, but we had understood
24 that achieving compliance would require that we
25 modify the plant, itself.

1 HEARING OFFICER KRAMER: So in that case
2 you might relocate them, yourselves. It might be
3 more --

4 MR. MCKINSEY: Exactly.

5 HEARING OFFICER KRAMER: That's all I
6 had on noise, thank you.

7 MR. MCKINSEY: Hearing Officer Kramer,
8 I'm not sure if it's -- we had provided exhibit
9 52, which is the relocation agreement between
10 Farmers International, and that's for the Noise-5
11 referred one ML2, so it's in the record. I don't
12 know if we need to -- did we sponsor it? I don't
13 think we did.

14 HEARING OFFICER KRAMER: If the parties
15 are going to stipulate to the entry of all these
16 exhibits, I don't think you need to formally
17 authenticate it.

18 MR. BABULA: That's fine.

19 HEARING OFFICER KRAMER: We'll get to
20 that in a second. Let me check my list to make
21 sure I've covered all -- before closing this topic
22 do we have any public comments on the project
23 description, air quality, cultural resources,
24 hazardous materials, land use, noise and
25 vibration? Is there anyone on the telephone at

1 this point?

2 (Pause.)

3 HEARING OFFICER KRAMER: No one is
4 online?

5 MR. SPEAKER: No one.

6 HEARING OFFICER KRAMER: Okay, thank
7 you.

8 PRESIDING MEMBER BYRON: Bon voyage,
9 Commissioner Boyd.

10 HEARING OFFICER KRAMER: I may have
11 overlooked it, but just a general question for the
12 parties. Do we have the final determination from
13 Cal-ISO on the interconnection?

14 MR. MCKINSEY: Yes, we do. It is
15 exhibit -- we just looked at it before this -- we
16 do. I just don't know where it is.

17 DR. REEDE: It's exhibit 47.

18 MR. MCKINSEY: The June 15, 2007
19 interconnection facilities restudy report, exhibit
20 47.

21 HEARING OFFICER KRAMER: Thank you. And
22 then finally I looked and couldn't determine the
23 status of the USEPA injection well permit.

24 DR. REEDE: We have not received a copy
25 of that injection permit yet. The Commission has

1 not received a copy of that injection permit at
2 this point.

3 MR. CHANDLER: If I could comment on
4 that, Mr. Kramer. We continually have discussions
5 with Region IX EPA. They've assured us, as they
6 have Dr. Reede, on a number of occasions that
7 there are no issues with the permit. But we have
8 not see it at this point.

9 The last communication we had from them
10 is that the permit would be issued in October,
11 which is we're in October now, so we expect it
12 anytime.

13 DR. REEDE: I'll contact EPA tomorrow
14 morning. And do you want to leave an exhibit
15 number open for it?

16 HEARING OFFICER KRAMER: If staff is --

17 DR. REEDE: Or do you want to leave the
18 record open for it?

19 HEARING OFFICER KRAMER: If it comes in.
20 I gather that staff is not concerned that it will
21 reveal anything new that will cause you to change
22 your conclusions, is that correct?

23 DR. REEDE: We don't anticipate
24 anything, but I would not want to abrogate our
25 ability to review it and comment on it if

1 something does come up.

2 HEARING OFFICER KRAMER: But you're not
3 expecting any issues to arise?

4 DR. REEDE: No, we're not expecting any
5 issues to arise.

6 HEARING OFFICER KRAMER: I would say if
7 it comes in in the next week or so, -- well, you
8 can always docket it. And let us know if you do
9 find that it raises some sort of complication.

10 DR. REEDE: Okay. And then we can
11 comment during the PMPD comment period.

12 HEARING OFFICER KRAMER: Correct.

13 I think I see this as something on the
14 order of a biological opinion where you are pretty
15 certain that you know what the contents are going
16 to be. You just don't have the final document at
17 this point.

18 DR. REEDE: That's a fair portrait.

19 HEARING OFFICER KRAMER: Okay, I think
20 that answers all of the outstanding questions that
21 the Committee had.

22 Now, let's deal with the nitty-gritty
23 details that obviously aren't at the front of my
24 brain. The exhibits, for one.

25 If the parties are comfortable we would

1 entertain a motion from each party to introduce
2 those of the exhibits which have requested be
3 received into evidence, at this time, starting
4 with the applicant.

5 MR. McKINSEY: You're referring, I
6 guess, to our own exhibits. And we would indeed
7 move that all our exhibits, exhibit 1 through 52,
8 be received as evidence.

9 HEARING OFFICER KRAMER: Any objection
10 from staff?

11 MR. BABULA: No, that's fine.

12 HEARING OFFICER KRAMER: And staff, do
13 you wish to introduce all or some of your
14 evidence?

15 MR. BABULA: I'd like to introduce
16 exhibit 104; exhibit 103 is no longer relevant.
17 And exhibit 101 and 102 regarding building codes
18 is also no longer relevant, given that agreement
19 on Gen-1 now.

20 HEARING OFFICER KRAMER: Would it be
21 fair to describe those as withdrawn?

22 MR. BABULA: Correct.

23 HEARING OFFICER KRAMER: Okay, so motion
24 to enter exhibits 100 and 104. Any objection from
25 the applicant?

1 MR. MCKINSEY: None.

2 HEARING OFFICER KRAMER: Okay, so
3 exhibits 1 to 52, and 100 and 104 will be received
4 into evidence today.

5 That brings us to closing arguments and
6 comments. Does either party wish to make those,
7 starting with the applicant?

8 MR. MCKINSEY: Yeah, Mr. Chandler would
9 like to make a few comments.

10 MR. CHANDLER: Mr. Kramer, Commissioner
11 Byron, I just want to state that we appreciate the
12 promptness and the attentiveness of the Committee
13 in pushing this forward. And also from the staff
14 in terms of getting their final staff assessment
15 out on a timely basis.

16 As you're probably aware, we're dealing
17 with these new contracts with PG&E and it's posed
18 a lot of pressure on all of us to get through this
19 process so we can get the projects constructed on
20 time.

21 And if I may just go through a very
22 brief history on that. We executed our power
23 purchase and sale agreement with PG&E in March of
24 2006. And that requires us to provide power to
25 them on August 1, 2009.

1 Because of that we moved forward with
2 General Electric, with the LMS100 machines. And
3 there's a very long lead time on those machines.
4 We placed that order with GE in August of 2006.
5 So that's part of the reason we had this issue
6 over which building code was applicable.

7 The situation we're now under, which I
8 think everyone is familiar with, is that we have
9 entered into an EPC contract, a turnkey fixed
10 price contract with Kiewit Industrial Company. We
11 did that on July 2nd of this year. And gave them
12 a limited notice to proceed on the procurement of
13 certain long-lead items, as well as engineering
14 and design of the project. And that's all moving
15 forward.

16 We are required, under that EPC
17 contract, to give a full notice to proceed to
18 Kiewit on February 1st of 2008. And we would hope
19 to have a financial closing prior to giving them a
20 full notice to proceed.

21 There's a couple of things that happen
22 at that point. If we don't give them full notice
23 to proceed on February 1st, then we're into a
24 period where there's a day-for-day delay on
25 completion of the project. And their guaranteed

1 delivery date is the same as the delivery date
2 under the power purchase agreement with PG&E.

3 The second thing that occurs is that we
4 have to pay them an increased price beginning on
5 February 1st of \$52,500 a day. Now, that gets us
6 out through February 15th. Then on February 16th
7 basically everything goes away under that
8 contract.

9 And, of course, when we put this
10 contract together we didn't know, you know,
11 precisely what the schedule was. We hoped to be
12 through financial closing within that timeframe.
13 And we still hope that that's the case. And we
14 appreciate that the Committee and Commission is
15 pushing this project forward for approval on a
16 timely basis.

17 And we certainly would hope that we
18 wouldn't get out beyond that timeframe because we
19 would sort of be in never-never land. And you may
20 have heard from other parties recently how
21 difficult it is to find EPC contractors and get
22 guaranteed fixed pricing. It's extremely
23 difficult for any party to do that right now.

24 So, that's kind of the status of where
25 we are. In addition to that we do owe GE a

1 substantial sum of money on February 1st, about
2 \$50 million. And we would prefer that that comes
3 out of the lender's pockets and not our own.

4 But I just wanted to state that for the
5 record so that it's clear the time schedule that
6 we're working on, and we hope that things will
7 continue to move forward as they have the last
8 month or so.

9 HEARING OFFICER KRAMER: I'm not
10 familiar with the acronym EPC.

11 MR. CHANDLER: EPC is engineering,
12 procurement and construction contract. And in our
13 case it's a turnkey fixed price contract where
14 Kiewit is the guarantor of all of the performance
15 and operating guarantees. And they also wrap the
16 GE contract, as well.

17 HEARING OFFICER KRAMER: Staff, any
18 comments?

19 MR. BABULA: No comments. But we'll
20 accept any praise that --

21 (Laughter.)

22 MR. BABULA: -- the project proponents
23 give staff. Thanks.

24 HEARING OFFICER KRAMER: Okay, --

25 PRESIDING MEMBER BYRON: How about the

1 delay payments, would you like those come in your
2 direction, as well?

3 (Laughter.)

4 MR. BABULA: \$50 million is fine.

5 HEARING OFFICER KRAMER: Okay, the next
6 item was to determine whether additional hearings
7 or briefings are required. I don't believe there
8 are any unless somebody wants to argue to the
9 contrary.

10 We do need, however, to keep the record
11 open so that Mr. Tyler can submit his condition to
12 address the gas pipeline construction. I would
13 propose that he submit that to the parties by no
14 later than next Wednesday, the parties and the
15 Committee, that is.

16 And then the applicant can file any
17 comments it wants to make on it no later than
18 Friday of next week. Is that acceptable?

19 MR. MCKINSEY: That is.

20 DR. REEDE: Hearing Officer Kramer,
21 there's a slight glitch. That project description
22 will need supplemental testimony because we have
23 not characterized the project accurately under
24 CEQA because of this change. So not only are we
25 keeping the record open for hazardous material,

1 but the project description actually has to fit
2 the project.

3 HEARING OFFICER KRAMER: Well, I think
4 at this point it's the Committee's job to describe
5 the project in the decision. And if we somehow
6 forget to make that correction I'm sure somebody
7 will remind us in their comments on the PMPD. So
8 we'll relieve you of that burden.

9 Any other business to come before the
10 Committee? Seeing none, -- Commissioner Byron.

11 PRESIDING MEMBER BYRON: I'd just like
12 to compliment both applicant and staff the way
13 that you've worked together on this. Particularly
14 our staff, many of which have left. Dr. Reede, if
15 you'd please communicate to them, as Presiding
16 Member, I very much appreciate the efforts that
17 have gone into working out these various issues.

18 It does make the Presiding Member's job
19 a little bit easier, and a lot easier. And
20 Hearing Officer Kramer and I did talk about the
21 schedule. And we will work towards the published
22 completion schedule for the PMPD being issued
23 November 14th. Correct?

24 HEARING OFFICER KRAMER: Let's hope,
25 yes.

1 PRESIDING MEMBER BYRON: Yes. So,
2 again, thank you. And thank you for being here in
3 Sacramento today, as well.

4 HEARING OFFICER KRAMER: We are
5 adjourned. Thank you.

6 (Whereupon, at 3:41 p.m., the hearing
7 was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October, 2007.

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