

COMMITTEE CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification) )  
Pastoria Energy Facility(PEF)) Docket No. 05-AFC-1  
160 mW Expansion ) PMPD Comments  
by Calpine Corporation )  
\_\_\_\_\_)

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

THURSDAY, JULY 6, 2006

10:02 A.M.

Reported by:  
Peter Petty  
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James Boyd, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gefter, Hearing Officer

Peter Ward, Advisor

Kevin Kennedy, Advisor

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

James W. Reede, Jr., Project Manager

Steve Baker

Dave Ashuckian

Alvin J. Greenberg (via teleconference)  
Risk Science Associates

PUBLIC ADVISER

Nick Bartsch

REPRESENTING THE APPLICANT

Greggory Wheatland, Attorney  
Jeffery Harris, Attorney  
Ellison, Schneider and Harris, LLP

Michael A. Argentine  
Calpine Corporation

Gary S. Rubenstein  
Sierra Research

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

2 10:02 a.m.

3 PRESIDING MEMBER BOYD: Good morning,  
4 everybody. This is a Pastoria siting hearing, and  
5 this is a Committee Conference to consider  
6 comments on the PMPD for the Pastoria Expansion  
7 Project.

8 Excuse my voice, it's struggling today.  
9 I am the Committee at the present time. But  
10 joining me up here at the table are Susan Gefter,  
11 our Hearing Officer, who I'll turn this over to in  
12 a minute; Peter Ward on my left, who is my  
13 Advisor; Advisor Kevin Kennedy, who is now Advisor  
14 to our newest Commissioner. However, Kevin was  
15 the Advisor to Chairman Desmond while he was on  
16 this case. And, of course, you all know that he's  
17 no longer with the Commission. But Kevin is  
18 hanging in here as a Special Advisor to the  
19 Committee, perhaps I'll designate him for the  
20 record.

21 And Nick Bartsch, our Public Adviser, is  
22 in the back of the room to handle the significant  
23 number of public here who might have something  
24 they want to contribute to this hearing.

25 And with that I think I'll just call

1 upon the applicant, Mr. Harris, to introduce  
2 himself and provide introductions of the  
3 applicant's staff and then we'll move on to our  
4 own staff.

5 MR. HARRIS: Thank you, Commissioner.  
6 I'm Jeff Harris with the firm of Ellison,  
7 Schneider and Harris, here on behalf of the  
8 applicant. To my right is Mike Argentine, who's  
9 the Development Manager for Calpine on the  
10 project. And to my left is Mr. Gregg Wheatland,  
11 who has served as counsel on this case. And in  
12 the audience we have, as well, Gary Rubenstein,  
13 our air quality expert. And Mr. Jed Gibson, also  
14 from my office.

15 PRESIDING MEMBER BOYD: Thank you.  
16 Staff.

17 MS. WILLIS: I'm Kerry Willis, Staff  
18 Counsel. And with me is Dr. James Reede, our  
19 Project Manager. Also with us today is Steve  
20 Baker, who will be available to discuss efficiency  
21 issues. And I believe Dr. Alvin Greenberg is  
22 available on the phone for the public health  
23 issue.

24 PRESIDING MEMBER BOYD: Can we establish  
25 that Dr. Greenberg is there?

1 DR. GREENBERG: Hello. Can you hear me?

2 PRESIDING MEMBER BOYD: Yes. Is that  
3 you, Dr. Greenberg?

4 DR. GREENBERG: Yes, it is; good  
5 morning.

6 PRESIDING MEMBER BOYD: Just verifying  
7 that you're really there.

8 DR. GREENBERG: I'm on my cellphone, but  
9 it's hands-free pursuant to hopefully soon-to-be-  
10 passed legislation.

11 (Laughter.)

12 PRESIDING MEMBER BOYD: Yeah, after  
13 driving around on the 4th of July I do hope it's  
14 soon to be passed.

15 No, we don't need that on the record.  
16 Anyway, okay, any public agency representatives  
17 present? Seeing and hearing none, and not on the  
18 phone, as far as we know, San Joaquin District  
19 or -- okay.

20 With that we're going to delve into the  
21 issues. And I would say that I don't really  
22 expect this hearing to have to go very long.  
23 There's extensive submittals that I know I've read  
24 on the issues. And so we can summarize those  
25 issues and I guess we'll learn more about the

1 details of the air quality offset package that  
2 could protract this proceeding a little bit  
3 longer.

4 Excuse me -- I think I inhaled too much  
5 sulfur smoke during the 4th of July. In any  
6 event, Ms. Gefter, why don't you take over here  
7 and introduce the issues and carry on with the  
8 hearing.

9 HEARING OFFICER GEFTER: Okay, both the  
10 staff and the applicant filed comments on the  
11 PMPD. And we'll go over the nonsubstantive  
12 comments first, so that, in particular, Dr.  
13 Greenberg could be finished with his testimony.

14 So the first issue I wanted to look at  
15 was cultural resources, which was staff's  
16 comments. There were a number of comments, most  
17 of which are nonsubstantive. And I first of all  
18 wanted to ask the applicant if you had any  
19 disagreement with staff's comments on cultural?

20 MR. HARRIS: Thank you, Ms. Gefter. We  
21 have asked our experts who provided testimony in  
22 the case to take a look at those. I understood  
23 that we have until tomorrow to provide any  
24 comments on that.

25 Generally speaking it looks like -- let

1 me back up. To the extent they deal with issues  
2 that don't relate to conditions or findings, I'm  
3 sure that they're probably just typographical  
4 issues. And we will provide you with any written  
5 concerns we have on these no later than 5:00  
6 tomorrow.

7 HEARING OFFICER GEFTER: One of the  
8 questions that was raised by staff was the timing,  
9 because originally in the FSA there were a lot of  
10 dates which were timed at 25 days rather than the  
11 normal 30 days.

12 And the Committee changed it back to 30  
13 days because we were trying to develop a  
14 consistent compliance matrix. And it just seems a  
15 bit confusing to have several different timelines  
16 for different topics.

17 So, I wanted to also ask the applicant  
18 if that would be a problem to just revert back to  
19 the standard 30 days, rather than 25 as the staff  
20 has indicated.

21 MR. HARRIS: There was a reason for the  
22 request, but I think we'd be okay with the five  
23 days.

24 HEARING OFFICER GEFTER: Thanks.  
25 Anything else on cultural? Okay. Staff's

1 comments are taken as submitted, and we'll look at  
2 those. And we'll look for applicant's comments on  
3 cultural by tomorrow.

4 The next topic is public health, and the  
5 main concern there was applicant's comment on  
6 public health condition 1. And we have Dr.  
7 Greenberg on the phone to talk about the language.  
8 And we'll ask the applicant to indicate your  
9 concern regarding the language in that condition.  
10 So, Mr. Harris first; and then Dr. Greenberg.

11 MR. HARRIS: Thank you, Ms. Gefter. We  
12 had a chance to look at the conditions of  
13 certification obviously as part of our review.  
14 And this is one condition that actually changed  
15 from the staff assessment to the PMPD. So there  
16 has been a change in this language and we flagged  
17 that for you.

18 The substance really goes to the second  
19 of two requirements related to testing. In  
20 essence, the staff assessment and the language  
21 that we agreed to and found acceptable in the  
22 applicant's testimony in the hearing did not  
23 include the discussion about periodic cleaning  
24 being performed to remove the biofilm buildup.

25 So that's a new requirement. It's not

1 something that was in the hearing record. And I  
2 don't believe it's supported by the hearing  
3 record. And so from a strict legal basis I don't  
4 think that change should be made.

5 From a practical perspective, part of  
6 the reason we're concerned about the change is  
7 that this condition is substantially similar to  
8 ones that have been implemented already at Turlock  
9 and also at a couple other projects that we are  
10 either operating or familiar with.

11 And there are some established protocols  
12 and other materials that our compliance folks can  
13 take advantage of. And so, for consistency, we  
14 also want to see this change deleted. And we  
15 would be happy to revert to the language that was  
16 in the staff assessment.

17 HEARING OFFICER GEFTER: Thanks. Dr.  
18 Greenberg, do you have any comment on that?

19 DR. GREENBERG: I'm a little bit  
20 confused because I believe that this language was  
21 offered very early on in the proceeding during --

22 (Phone reception breaking up).

23 HEARING OFFICER GEFTER: Off the record.

24 (Off the record.)

25 HEARING OFFICER GEFTER: Mr. Harris.

1                   MR. HARRIS: Yeah, had a chance to  
2                   compare public health-1 from the PMPD to the final  
3                   staff assessment. The additions are in the  
4                   sentence that begins, under either set of  
5                   guidelines. The language is the same all the way  
6                   through the phrase, Legionnella bacteria at least  
7                   every six months.

8                   And then the FSA, the sentence stops  
9                   there. So the additions in that sentence begin  
10                  with the word, to. So, to insure, and then the  
11                  number one. Everything from that point forward is  
12                  new and was not in the FSA and was not in the  
13                  language that we agreed to stipulate to.

14                 DR. GREENBERG: Excuse me, this is Alvin  
15                 Greenberg. Sorry, looks like the call got  
16                 dropped.

17                 HEARING OFFICER GEFTER: Yes, please go  
18                 ahead.

19                 DR. GREENBERG: Okay. I believe in post  
20                 evidentiary hearing discussions, or maybe they  
21                 were pre-evidentiary hearing discussions, this  
22                 language was discussed, because we have been using  
23                 this version of public health-1 since January of  
24                 2005 in all siting cases.

25                 And I recall that we had some

1 discussions on this, I believe it was over the  
2 summer of 2005. I think Kerry Willis might be  
3 able to refresh my memory and our memories on  
4 that, as well.

5           Nevertheless, as time marches on we  
6 learn more about cooling towers and the results of  
7 tests, particularly a report that came from  
8 Australia in January of 2005, which showed that  
9 this testing for Legionnella was important,  
10 necessary, and yet also was demonstrating that  
11 certain techniques were indeed effective in  
12 removing bacteria that could lead to a Legionnella  
13 growth.

14           And we recognized that after a certain  
15 period of time this testing would no longer be  
16 necessary, hence the section in there that says  
17 just two years of twice yearly testing and you can  
18 petition the CPM to drop this requirement.

19           It's not onerous, and I believe that it  
20 is important and necessary for the protection of  
21 public health.

22           HEARING OFFICER GEFTER: Okay. In other  
23 words, Dr. Greenberg, would you say that you  
24 support the public health-1 as written in the  
25 PMPD?

1 DR. GREENBERG: That is correct.

2 HEARING OFFICER GEFTER: Okay. Mr.  
3 Harris.

4 MR. HARRIS: Well, I obviously missed  
5 out on one of my favorite activities, which is the  
6 opportunity to cross-examine Dr. Greenberg. So,  
7 this is --

8 (Laughter.)

9 MR. HARRIS: But that's the root of the  
10 issue, Ms. Gefter, that this is language that we  
11 weren't able to review. It's not in the  
12 evidentiary record. It's not supported by the  
13 evidentiary record. And on that basis, we would  
14 have some concerns.

15 And just for clarification, we are not  
16 objecting to the testing. That language was in  
17 the FSA and should stay. So, basically we'd like  
18 to see that FSA language continue as it is  
19 supported by the record.

20 HEARING OFFICER GEFTER: Okay, well, I  
21 have two issues. One is that we're trying to be  
22 as consistent and as updated as possible in terms  
23 of our compliance requirements. So, rather than  
24 reverting back to an older version of public  
25 health-1, it makes sense to go forward with the

1 more contemporary and current version.

2 And then the second issue would be that  
3 comment period ends tomorrow. However, we are  
4 probably going to continue this proceeding for a  
5 bit longer due to the air quality issue. And so I  
6 would suggest to both staff and applicant that if  
7 we're going to continue the proceeding, perhaps  
8 the expert witnesses on public health can get  
9 together with each other and come up with some  
10 language that you both can agree to. And then we  
11 can talk about that at our next meeting on this  
12 case.

13 So, would that be acceptable to the  
14 parties?

15 MR. HARRIS: Yeah, we're obviously  
16 reasonable people and we'd love to talk to Alvin.  
17 So, --

18 HEARING OFFICER GEFTER: Okay.

19 MR. HARRIS: -- we will. But I --

20 HEARING OFFICER GEFTER: Good.

21 MR. HARRIS: -- do want to continue to  
22 stand on my objections about the evidentiary  
23 record if we're unable to reach a compromise on  
24 this issue.

25 HEARING OFFICER GEFTER: All right. And

1 I would like to recommend that --

2 DR. GREENBERG: And Mr. Harris --

3 HEARING OFFICER GEFTER: Excuse me, Dr.  
4 Greenberg. I would like to recommend that the  
5 parties come up with language that is consistent  
6 with contemporary current scientific evidence on  
7 Legionnella and biocide use.

8 So, okay, Dr. Greenberg, I'm sorry.

9 DR. GREENBERG: I'm sorry for  
10 interrupting. Staff agrees with your approach,  
11 Hearing Officer Gefter. And would also like to  
12 note that Mr. Harris is a reasonable man, and I'm  
13 confident we'll be able to work things out.

14 HEARING OFFICER GEFTER: Excellent,  
15 thank you very much. So that's it on public  
16 health. Ms. Willis.

17 MS. WILLIS: I just wanted to add that  
18 from our perspective the condition isn't all that  
19 different than the condition that was proposed in  
20 the FSA. So, as far as not being in the record, I  
21 would respectfully disagree with that with Mr.  
22 Harris. There is an addition of a sub (1) and a  
23 sub (2), which are the only actual differences to  
24 the condition.

25 And I did review current conditions. I

1 think it was in San Francisco case, and they're  
2 very similar to the one that's in the current  
3 PMPD. So, we're willing to work out language, but  
4 I'm not sure that it's going to change  
5 dramatically from what we originally proposed in  
6 the FSA.

7 HEARING OFFICER GEFTER: Thank you very  
8 much. Let's --

9 PRESIDING MEMBER BOYD: Well, let's hope  
10 we can all agree.

11 HEARING OFFICER GEFTER: All right.

12 PRESIDING MEMBER BOYD: Since there are  
13 so many reasonable people associated with this  
14 issue.

15 HEARING OFFICER GEFTER: Okay, we're  
16 going to move on.

17 Staff filed some comments on facility  
18 design. Again, I don't believe they were  
19 substantive comments. Perhaps it was just some  
20 language to clarify and update facility design and  
21 compliance in that area.

22 Does applicant have any disagreement  
23 with the staff's comments on facility design?

24 MR. HARRIS: The first comment appears  
25 just to be a clarification. I think that's

1       actually -- let me ask the staff -- I guess it's  
2       not the staff, let me ask the Committee, is that  
3       just intended to clarify the existing practice of  
4       having either a local official or a third party be  
5       the CBO?

6                   HEARING OFFICER GEFTER: I believe  
7       that's staff's position, yes.

8                   MR. HARRIS: Okay. Is that your  
9       position, Kerry? I'm sorry.

10                  DR. REEDE: That's current practice.

11                  MR. HARRIS: Okay, so I think that was  
12       just a clarification. The larger addition on page  
13       9 of the staff's testimony, page 47, it's beyond  
14       my liberal arts education. So, I will ask our  
15       staff to take a look at that. I don't see a  
16       substantive issue there, but I'm not an engineer  
17       and I don't play one on tv, so we'll get that  
18       answer to you again by Friday.

19                  HEARING OFFICER GEFTER: Thank you. And  
20       then the next topic was socioeconomic. Again,  
21       staff filed comments to clarify the record and  
22       just to make the section on socioeconomic  
23       consistent with the evidence. Does applicant have  
24       any disagreement with staff's comments on socio?

25                  MR. HARRIS: Well, there are at least

1 two that, again, we want our experts to check.  
2 And actually I'd like Ms. Willis, if she could, to  
3 kind of maybe explain the reasons for the  
4 additions.

5 The first one's about half-way down on  
6 page 270; it's listed as page 270, second  
7 paragraph, and it's an addition of a sentence  
8 about a census block. So, if I could ask the  
9 staff to clarify the reason for the addition.

10 DR. REEDE: In exhibit 100, which is the  
11 staff's final staff assessment, we had information  
12 regarding the minority populations in reference to  
13 environmental justice. That information was not  
14 included in the PMPD.

15 Since it's already in evidence it would  
16 be appropriate that it be included in the PMPD.

17 MR. HARRIS: Okay. Thank you for the  
18 explanation. Again, my technical training of the  
19 difference between census block and census tracts,  
20 this was making me hesitate. So I'll ask our  
21 experts to look at that and to give you an answer,  
22 again by Friday.

23 The second one would actually be the  
24 last comment by staff. And, again, it goes to the  
25 issue of a finding. I think it may even be very

1 similar language. So, I'd ask staff to maybe  
2 explain that one. It's at page 272, number 10,  
3 and it's the language on the top of page 10 of my  
4 copy of the staff's comments.

5 DR. REEDE: Again, in the FSA that  
6 information was contained. It was not transferred  
7 to the PMPD for purposes of its findings, that  
8 there would be no impact on a community determined  
9 under environmental justice standards.

10 MR. HARRIS: Okay, again, thank you for  
11 the explanation --

12 DR. REEDE: Basically the finding was  
13 incomplete. And we already had the evidence in  
14 the record. We're saying make sure it's in the  
15 PMPD, or please add it to the PMPD.

16 MR. HARRIS: Thank you. I'm not  
17 anticipating any problems on these issues. I  
18 just, again, would like to have our technical  
19 experts have a chance to tell me I'm right in that  
20 assessment. Thank you.

21 HEARING OFFICER GEFTER: Then the next  
22 topic is air quality where we have heard from the  
23 applicant that Calpine plans to revise its offset  
24 package. And that, of course, would extend the  
25 schedule in this case because the District would

1 need to revise the DOC.

2 We'd like to hear from the applicant on  
3 that topic at this point.

4 MR. HARRIS: I actually brought the  
5 expert this time. I'd ask Mr. Rubenstein to  
6 comment on this one, please.

7 MR. RUBENSTEIN: Ms. Gefter,  
8 Commissioner Boyd, I can't provide many details at  
9 this point. But as the Commissioner may be aware,  
10 Calpine recently submitted a request to amend the  
11 conditions of certification for the San Joaquin  
12 Valley Energy Center to modify the emissions  
13 offset package for that facility.

14 And in the process of preparing that  
15 amendment and in evaluating potential sales of  
16 surplus credits that Calpine owned, some  
17 opportunities became possible for optimizing the  
18 emission reduction credit packages between these  
19 two to enhance the value of that asset.

20 And in judging how to proceed we believe  
21 it best, given the status of this project, to  
22 inform the Committee at this time, recognizing  
23 that it would result in a delay in the decision.  
24 And make the amendment. Go through the public  
25 comment process again with the San Joaquin Air

1 District. And then bring back a clean package to  
2 the Committee which, hopefully in terms of  
3 physical changes to the PMPD, would be relatively  
4 minor at that point and not controversial.

5 But we just thought procedurally it  
6 would be prudent to bring it up once we became  
7 aware of it.

8 HEARING OFFICER GEFTER: And in that  
9 case, with the new offset package, the conditions  
10 AQ-44 and -45, which are found in the DOC, would  
11 be revised, correct? And also condition AQSC-7  
12 would need to be revised.

13 MR. RUBENSTEIN: That's correct. And  
14 also appendix A.

15 HEARING OFFICER GEFTER: Appendix A,  
16 yes, that --

17 MR. RUBENSTEIN: That's correct.

18 HEARING OFFICER GEFTER: -- would be,  
19 because appendix A is connected with SC-7.

20 Any other conditions that would need to  
21 be revised? If so, you would let us know?

22 MR. RUBENSTEIN: We will, but I think  
23 you've identified all those conditions that would  
24 be changed. And, again, you know, we expect the  
25 changes would be relatively minor.

1                   HEARING OFFICER GEFTER: And what sort  
2 of FDOC schedule do you anticipate?

3                   MR. RUBENSTEIN: We need to both have  
4 discussions internally and then with the Air  
5 District. We anticipate being able to file  
6 revised package for offsets both with the  
7 Commission and with the District by the end of  
8 August.

9                   And as a result I would expect the  
10 determination of compliance to go out for public  
11 comment again probably two to three weeks later.  
12 The end of that comment period would then be  
13 pushed to the end of October.

14                   HEARING OFFICER GEFTER: Okay. Parties  
15 understand that with this revised offset package  
16 and the need to revise several conditions that we  
17 would have to reopen the record and take  
18 additional testimony on this topic.

19                   So, we would anticipate that once the  
20 comment period on the DOC has ended, we would have  
21 an evidentiary hearing to reopen the record on  
22 this limited testimony regarding the revised  
23 offset package.

24                   MR. RUBENSTEIN: We understand that. We  
25 would hope that we would be able to stipulate with

1 the staff so that the hearing could be very short.

2 HEARING OFFICER GEFTER: And at that  
3 hearing we could probably discuss the public  
4 health condition, as well.

5 Okay. The next topic is efficiency.  
6 And applicant has filed extensive comments on  
7 proposed condition efficiency-1, which we've seen  
8 your comments. And we've also received staff's  
9 comments, which are in agreement with the  
10 applicant's.

11 So we would hear from both applicant and  
12 staff on this topic right now. Mr. Harris.

13 MR. HARRIS: Thank you, Ms. Gefter.  
14 This is obviously the most important issue facing  
15 the Committee today, and it's obviously the most  
16 important issue from Calpine's perspective. Not  
17 to underplay at all the other important issues  
18 that we've dealt with.

19 But this one is very significant. We  
20 really feel that the PMPD, in essence, reaches  
21 outside the record and imposes a condition that  
22 will create tremendous problems for the project.

23 In the absence of any efficiency  
24 standards, as we've talked about, this condition  
25 could really make it difficult for this project to

1 be able to be built, to be financed, and also to  
2 essentially enter into a PPA, a power purchase  
3 agreement, which will be an important thing for  
4 the project to be financed and move forward.

5 The ironic thing is that I think this  
6 project is exactly the type of project that this  
7 Commission has been asking for in California. The  
8 IEPR, the Integrated Energy Policy Report, spends  
9 a lot of time talking about the need for peaking  
10 power in California. This is a peaking facility;  
11 it's located on a brownfield location. it will  
12 utilize existing fuel, water and transmission  
13 lines. It's exactly the type of arrangement that  
14 the IERP really says is important to California.

15 Now, the condition efficiency-1, as  
16 adopted by the Committee, may ultimately mean that  
17 this project is not built. And obviously, as an  
18 applicant, that's a very serious concern and a  
19 serious threat. It could prevent the project from  
20 being financed; it could prevent the project from  
21 being constructed; and it could prevent the  
22 project from being able to compete in the  
23 procurement cases that are going forward.

24 I think there's some important points  
25 that I want to make, and I'll make them briefly.

1 I know you've read the briefs. But, you know, the  
2 first one is really that we don't feel at all that  
3 this condition is supported by the record. And,  
4 in fact, to the contrary.

5 The applicant's testimony and the  
6 staff's testimony really supports the conclusion  
7 that this is an unnecessary condition; that there  
8 is no wasteful or inefficient use of gas by this  
9 facility. That's an agreement that you will find  
10 both in the staff's testimony, in the applicant's  
11 testimony, and in the PMPD, itself. And I'd just  
12 direct you to the one provision of the PMPD that  
13 actually finds correctly that the project's fuel  
14 consumption will not adversely affect existing  
15 natural gas supplies. And that additional supply  
16 capacity over the life of the project will not be  
17 needed. And that's from pages 72 and 73 of the  
18 PMPD, itself.

19 Without citation to anything in the  
20 record we end up with a condition that really will  
21 threaten the economics of the project.

22 The condition really -- and this is a  
23 significant point, is not required by any  
24 applicable LORS. As you know, one of the  
25 Commission's primary functions is to look at

1 applicable LORS and determine whether the project  
2 complies with those LORS. And in this case there  
3 is no standard that defines efficiency for simple  
4 cycle generating facilities. And that, again, is  
5 found in the PMPD. It says explicitly in footnote  
6 number 8 on page 67, no existing energy standards  
7 apply to efficiency of the PEF or other  
8 noncogeneration projects.

9           And so this is not a disputed issue.  
10 There is not a LORS applicable to the project that  
11 would require efficiency-1 to be added into this  
12 license.

13           This may very well be an appropriate  
14 subject for the Commission to investigate in a  
15 rulemaking of general applicability. I understand  
16 that there may be other issues that would cause  
17 the Commission to be concerned about these issues,  
18 but again, that's something that ought to be dealt  
19 with in a general proceeding where everyone has an  
20 opportunity to weigh in on that.

21           We also believe that this condition is  
22 not consistent with the Commission's prior  
23 decisions on efficiency issues. We talk in our  
24 brief about the issues related to the Riverside  
25 Energy Resource Center, and that condition not

1 being imposed on the Riverside project.

2 Similarly, the Henrietta Project, there  
3 is no condition like this imposed upon them for  
4 efficiency.

5 The sole instance when the Commission  
6 has held that they wanted to impose a condition on  
7 efficiency is really the Modesto Irrigation  
8 District, the MEGS project at Ripon. But I  
9 respectfully submit to you that case is  
10 substantially different on the facts, and then  
11 cannot be squared with the case before you.

12 That case involved a different set of  
13 facts. The condition in the Ripon case, as well,  
14 was a lot more, I use the word liberal, generous  
15 in terms of the operating hours and the operating  
16 conditions. Importantly the period of measurement  
17 in the Ripon case was two years, and not just six  
18 months.

19 You know, we're talking about a peaking  
20 facility here. And I think one of the important  
21 things about a peaking facility is to the extent  
22 you're going to look at the operations, you need  
23 to look at the operations over four seasons.

24 That project is designed to meet certain  
25 needs within the electrical system. And to really

1 get a fair snapshot of that picture you need to  
2 look at it at least over four seasons. And I'd  
3 submit to you over more than one year because of  
4 the variability of weather and how much that  
5 affects air conditioner load, and how that affects  
6 peak operations in California.

7           There are other differences in the Ripon  
8 case that are explained in our brief, but I think  
9 one of the ones that's most significant that I  
10 want to focus on is that in the Ripon case you  
11 were dealing with a vertically integrated  
12 monopoly, essentially. It's a utility that has  
13 its own customers; it doesn't have the PPA  
14 concerns. And it also has the ability to put  
15 together an integrated resource plan that they  
16 control, I think, largely unlike the current  
17 situation.

18           The applicant in this case cannot  
19 unilaterally dispatch the facility. We actually  
20 suggested that the Committee exclude from the  
21 condition those time periods where this facility  
22 would be on AGC, automatic generation control,  
23 where the ISO or some other entity was actually  
24 controlling the operation of that facility. And  
25 that wasn't reflected at all in the condition.

1           So we don't believe there's any  
2           evidence, or certainly don't believe there's  
3           substantial evidence in the record to support the  
4           imposition of this condition on this project.

5           The most important thing is that we  
6           really think efficiency-1 will render this project  
7           to be infeasible. Merchant power plants require  
8           financing; the financing, in turn, requires power  
9           purchase agreements, PPAs, in this case.

10           If this condition were adopted it would  
11           seriously threaten our ability to obtain a PPA.  
12           And ironically, I think, you know, the Commission  
13           has recently, I think, done a very good thing,  
14           took a very positive step and put together a  
15           series of workshops on the financing of projects.  
16           And I commend you for holding those hearings. I  
17           think that's an important thing to go forward.

18           And I think one of the things that  
19           really concerns us about the condition is that it  
20           will very much limit our ability to finance the  
21           project.

22           One of the things we're concerned about  
23           in the financing is that really does translate  
24           into uncertainty. And that uncertainty is going  
25           to translate into either inability to build the

1 project, or at a higher cost. Those higher costs  
2 and that greater uncertainty have absolutely no  
3 electric reliability benefit, and they have no  
4 environmental benefit. And so they end up just  
5 being a cost that weigh down the project in a way  
6 that's to no benefit electrically, or in terms of  
7 the environment.

8 Under the PUC's procurement rules, and  
9 that's where this project would be bidding,  
10 really, as one of the utilities' procurement,  
11 those long-term contracts are awarded on a  
12 competitive solicitation basis. And the utilities  
13 will always seek the greatest flexibility for  
14 those projects. They look for broad discretion  
15 for startups and shutdowns. And those  
16 specifications are spelled out, you know, really  
17 clearly in the recent PG&E RFO which is cited in  
18 our brief.

19 The final concern I think we have is  
20 that, you know, as a matter of public policy, what  
21 efficiency-1 would do would really impair the  
22 reliability of California's electrical system.  
23 And what I mean by that is that this condition  
24 imposes limitations on facilities like this, you  
25 know, brownfield project using existing

1 infrastructure during the times when it may be  
2 needed the most, which would be during the peak  
3 demands or during system emergencies.

4 The system is set up to dispatch the  
5 most efficient units where we have electric system  
6 reliability. So, you know, given a choice between  
7 a more efficient combined cycle and a simple  
8 cycle, the combined cycle facility is going to be  
9 dispatched first based on operating costs. And  
10 there's really no dispute about that.

11 We submit that to the extent that a  
12 facility is being dispatched at a high level,  
13 that's not a problem with the facility, it's a  
14 problem with the system that there's a reliability  
15 issue there, there's a need for that energy. You  
16 have gone through the bid stacks to the point  
17 where the combined cycles have been dispatched,  
18 and you're now looking at basically keeping the  
19 lights on.

20 So, we think under such dire electrical  
21 system conditions the last thing you want to do is  
22 really restrict the operation of a facility which  
23 was intended to really meet the purposes of the  
24 IEPR, which is to provide that peak load that can  
25 be available.

1           So, you know, in all, we believe the  
2           condition is outside the record; we believe it's  
3           not supported by the record at all. It's not  
4           required by any applicable LORS. It's not  
5           consistent with the conditions that have been  
6           imposed on similarly situated facilities, or  
7           conditions that haven't been imposed on similar  
8           facilities.

9           We're concerned that it will render the  
10          project to be infeasible. We'd be unable to  
11          finance it; unable to get a PPA. And it creates  
12          some uncertainty without any attendant  
13          environmental or system reliability benefits. And  
14          it may result in a peaker not being available  
15          precisely when the electrical system needs it.

16          So, sorry for the long summation there,  
17          but this is obviously the central issue in the  
18          case for us; and one that will determine whether  
19          this project goes forward or not. So, thank you.

20                 HEARING OFFICER GEFTER: Thank you. Ms.  
21          Willis.

22                 MS. WILLIS: Thank you. As applicant  
23          stated, we also agree that the condition is not  
24          supported by the record. In fact, we went through  
25          the record just to kind of, you know, find out

1 what was supported, and it's clear that our staff  
2 testimony and applicant's testimony indicated that  
3 there would not be any adverse significant  
4 impacts, direct, indirect or cumulative, to fuel  
5 supplies from this project.

6 We also have provided additional  
7 technical testimony -- well, not testimony, but  
8 reiterating testimony that we did file in previous  
9 in the FSA and in the supplemental testimony, that  
10 we would be happy to review. I have both Mr. Dave  
11 Ashuckian and Steve Baker here.

12 Once again, we don't believe it's  
13 supported by the record. We agree with  
14 applicants. Our staff has reviewed applicant's  
15 comments and we are in full agreement with those,  
16 as well.

17 So, I guess in conclusion we  
18 respectfully ask that this condition be removed  
19 from the PMPD.

20 And if there's any questions we have  
21 both Mr. Baker and Mr. Ashuckian here to answer  
22 them.

23 HEARING OFFICER GEFTER: Thank you.

24 PRESIDING MEMBER BOYD: Does staff agree  
25 that we have perhaps a chronic market design

1 problem here to challenge, rather than perhaps the  
2 role of the single peaker?

3 MR. ASHUCKIAN: I would tend to agree  
4 with what has been stated by both the applicant  
5 and our staff's position that, in fact, the system  
6 does need peakers. The IEPR has identified the  
7 fact that the system is getting more peaky based  
8 on the migration of housing in warmer climates.

9 This is located in the south of Path 15,  
10 which has been identified as one of the most  
11 critical areas within the state. There are also a  
12 number of aging plants in that region. And if  
13 those plants, you know, tend to retire without  
14 warning, the peakers will be needed in order to  
15 meet the expected load requirements. And  
16 certainly we wouldn't want anything to preclude  
17 additional peakers from coming in.

18 So, with that, I think we would tend to  
19 agree that the value of these peakers is there.

20 PRESIDING MEMBER BOYD: All right.

21 HEARING OFFICER GEFTER: Looking at the  
22 horizon for power plant applications coming into  
23 this agency, it looks like many of them are  
24 calling themselves peakers, but we're seeing  
25 peakers as large as 500 megawatts.

1                   Do you anticipate that most of the  
2                   applications we're going to see in the next few  
3                   years to be calling themselves peakers?

4                   MR. ASHUCKIAN: I personally can't  
5                   respond to that, not being familiar with the  
6                   siting plans. I do know that as a matter of fact  
7                   as early as yesterday we have presented a revised  
8                   outlook based on the Energy Commission's new  
9                   demand forecast. And that outlook indicates that  
10                  there will be a need of about 400 megawatts of  
11                  peaking capacity in the event of adverse  
12                  conditions as soon as next year.

13                  So, in fact, there is a value and a need  
14                  for a significant number of peakers. And that's  
15                  assuming no additional plants retire.

16                  HEARING OFFICER GEFTER: So you're  
17                  saying that an additional 400 megawatts of peaking  
18                  capacity is needed over the next year?

19                  MR. ASHUCKIAN: In south of Path 26 in  
20                  order --

21                  HEARING OFFICER GEFTER: South --

22                  MR. ASHUCKIAN: -- in the event of  
23                  adverse conditions, of simultaneous adverse  
24                  conditions.

25                  HEARING OFFICER GEFTER: And at this

1 point we have two proposed peakers by Edison, each  
2 of them 500 megawatts. So would that fit that  
3 need?

4 MR. ASHUCKIAN: That would help fulfill  
5 that need.

6 HEARING OFFICER GEFTER: Mr. Baker.

7 MR. BAKER: We currently have before us  
8 several fresh applications for certification with  
9 over 1300 megawatts of peaking capacity, and well  
10 over 1000 megawatts of combined cycle baseload  
11 capacity involved. We're just beginning to work  
12 on these applications now. You'll see them coming  
13 down the pike soon.

14 HEARING OFFICER GEFTER: And, Mr. Baker,  
15 what's the difference between the applications for  
16 the peakers and the applications for the combined  
17 cycles in terms of how you define peaker and  
18 combined cycle?

19 MR. BAKER: Well, the peakers that we're  
20 talking about are all the new General Electric  
21 LMS100 machines. They're simple cycle, gas  
22 turbine generators. They exhibit all the  
23 flexibility aspects of a typical peaker, a quick  
24 startup, quick ramping ability.

25 The LMS100 is even more efficient than

1 the previous machines we've dealt with, for  
2 instance, the LM6000s. And even greater benefit,  
3 it's part-load efficiency is greater than the  
4 previously employed machines.

5 So, the LMS100 will, in fact, provide us  
6 with a new in-between sort of power plant, in  
7 between the peaker and the combined cycle. It'll  
8 offer more of the efficiency, like the combined  
9 cycle, but more of the flexibility of the simple  
10 cycle.

11 The baseload plants that are currently  
12 coming before us are all typical combined cycle  
13 plants, large gas turbines, heat recovery steam  
14 generators, large steam turbines. They operate  
15 rather efficiently when they're at full load,  
16 steady state. But, you know, they take a long  
17 time to start up, a long time to shut down, and  
18 they're not very efficient at anything other than  
19 full load.

20 HEARING OFFICER GEFTER: And how does  
21 the General Electric 7FA simple cycle, which the  
22 Pastoria project intends to build, compare with  
23 the LM100s that you're describing?

24 MR. BAKER: The efficiency of the 7FA is  
25 similar to that of the LM6000. And it's not as

1 great as the LMS100. But the LMS100 is only now  
2 becoming available on the market. Whereas, you  
3 know, this project has been in the works for  
4 awhile.

5 The first LMS100 was just turned  
6 commercial within the last few weeks in South  
7 Dakota. And General Electric is now, just now  
8 making plans to start manufacturing them en masse.

9 HEARING OFFICER GEFTER: Mr. Harris,  
10 does Calpine already have the turbine, the General  
11 Electric 7FA? Have you already purchased it, or  
12 they have an option on it?

13 MR. HARRIS: I believe we do have access  
14 to that turbine. I wanted to make a point,  
15 though, one way -- a peaker is not a peaker is not  
16 a peaker. There are differences. And everything  
17 is being called peaker these days because that's  
18 the place where the money goes with the PPAs, I  
19 think, frankly. To the Commissioner's point about  
20 the market structure.

21 There is a significant difference,  
22 though, I think, in this facility. This is a  
23 technology that has proven to be able to be  
24 converted to combined cycle. This is a very  
25 typical arrangement or a frame unit to be

1 converted to combined cycle.

2 My understanding of the LMS100 is that  
3 because the exhaust temperatures are lower, it may  
4 be difficult to convert those facilities to  
5 combined cycle. And so, you know, looking for a  
6 principal distinction between this unit and an  
7 LMS100 unit.

8 I think one thing the Commission might  
9 consider is the ability to convert those  
10 facilities to combined cycle. This one is readily  
11 converted. There are combined cycles all over  
12 California operating now in this configuration.  
13 And it's not clear to me that that's going to be  
14 the case with some of these other quote-unquote  
15 peakers.

16 HEARING OFFICER GEFTER: So which one  
17 would you define as a peaker, the LMS100 or the  
18 General Electric 7FA?

19 MR. HARRIS: Well, they can both serve a  
20 peaking need.

21 HEARING OFFICER GEFTER: Yes, but you  
22 just made a distinction that the General Electric  
23 can be converted to combined cycle, whereas the  
24 LMS100s probably cannot. So, what's your point?

25 (Laughter.)

1           MR. HARRIS: My point is that in terms  
2 of policy, one of the things that the Commission  
3 did in all the remedial proposals here, the  
4 Commission's condition, the staff's proposed  
5 condition, and the applicant's condition, all of  
6 those had the same remedial action, which was the  
7 conversion of those projects to combined cycle.

8           My point is that with this technology  
9 you have that option. You may not have that  
10 option with all the turbines that are on the  
11 market today.

12           HEARING OFFICER GEFTER: But you're  
13 arguing in your comments that you don't want to be  
14 required to convert it to combined cycle because  
15 it would basically undermine the purpose of the  
16 project. And the condition indicates that would  
17 be one of the remedies if the project is running  
18 24/7.

19           MR. HARRIS: Let me let Mike Argentine,  
20 who's in charge of commercial issues for the  
21 project, answer the question for you, please.

22           MR. ARGENTINE: It's true that this  
23 project could be converted to combined cycle down  
24 the road, but the fact is you would never do it  
25 unless the market dictated it.

1           In our testimony and in our brief what  
2           we point out is that we need to be able to finance  
3           the project as a peaker, which is what we're  
4           proposing. If we have a condition that requires  
5           us to convert to combined cycle without the market  
6           forces pushing us in that direction, we will not  
7           be able to finance the project; hence we will not  
8           be able to get a PPA for the project; and hence we  
9           will not be able to build the project.

10           HEARING OFFICER GEFTER: Okay.

11           DR. KENNEDY: Mr. Harris, you made the  
12           point that in the conditions that you had proposed  
13           addressing this issue that you would exclude any  
14           hours that the project was dispatched by,  
15           essentially by other parties.

16           And my basic understanding of how this  
17           currently is working is that if you had a power  
18           purchase agreement, most likely it would be  
19           dispatched by the utility that you had that  
20           agreement with.

21           But even if you were offering in the  
22           day-ahead or hour-ahead market for the ISO, under  
23           those circumstances it would be dispatched by the  
24           ISO.

25           Are there actually any circumstances in

1       which the project would be dispatched by the owner  
2       of the facility, as opposed to by the ISO or the  
3       utilities?

4               MR. HARRIS:  I'm told only for exporting  
5       power, but we don't normally export power, so.

6               DR. KENNEDY:  Okay.

7               MR. HARRIS:  The reason, if I can  
8       respond to it, the reason we raised the issue and  
9       the condition that we had proposed, -- that I no  
10      longer want you to implement, by the way, okay --  
11      was that there will be times potentially during  
12      system emergency if Diablo kicks off, for example,  
13      you know, everything around is going to be told to  
14      run.  And that's clearly part of what we were  
15      contemplating in there.

16              DR. KENNEDY:  And I would add that I  
17      found both your comments and staff's comments to  
18      be extremely useful.  And one of the things that  
19      certainly was in my mind because we were kicking  
20      around what might go into the PMPD in this  
21      direction is that it would be extremely unusual  
22      circumstances in which this project would be  
23      operating at very high capacity factors.

24              And therefore, any condition that kicked  
25      it to a hearing before the Commission would be

1 something that would, you know, if Diablo had  
2 kicked off and that was the reason that it was  
3 operating, that would be relatively  
4 straightforward to explain to the Commission.

5 But your point in the comments about how  
6 that would be viewed in terms of regulatory  
7 uncertainty by the financing community, I thought  
8 was an extremely useful point, and I think it's  
9 something we will take into consideration as we  
10 further discuss this issue.

11 PRESIDING MEMBER BOYD: Well, I find  
12 this whole discussion intriguing. I tend to agree  
13 with what Kevin just said. But as a result of a  
14 couple of comments I've heard here in the last few  
15 moments, as the Chair of the Natural Gas  
16 Committee, and with my fellow Commissioner,  
17 Commissioner Byron, sitting in the audience, it  
18 does raise a question for me, for the staff,  
19 outside of this siting case, to want a better  
20 understanding of the natural gas demand  
21 ramifications of all these new requests to build,  
22 quote, peakers, unquote, with their different  
23 kinds of turbines, with their different kinds of  
24 efficiency, and with their different kinds of  
25 apparently ability to ever be converted to simple

1 cycle, would be something that I think that  
2 Committee will probably ask the electricity and  
3 natural gas offices to take a look at for us.

4 But, as I say, that's not part of the  
5 issue being discussed right here with regard to  
6 this efficiency measure, as it is the overriding  
7 concern of this Commission for efficiency and the  
8 use of that more scarce natural resource,  
9 diminishing natural resource called natural gas.

10 In any event, I think you've made some  
11 good points, as Mr. Kennedy said, and we'll  
12 certainly take this under consideration.

13 HEARING OFFICER GEFTER: And I just have  
14 one other question regarding the online date for  
15 the Pastoria expansion. The record indicates that  
16 Calpine anticipates an online date of 2011, which  
17 is five years from now, or maybe longer.

18 The question is you're arguing that this  
19 project is responding to the IEPR, the current  
20 IEPR, which talks about the need for peaky power.  
21 Staff indicated that several projects are coming  
22 in as applications for peakers to meet that  
23 peaking power concern.

24 Five years or more from now we really  
25 can't anticipate what the market will be

1 requiring. And the concern for financing, as  
2 Commissioner Boyd has indicated, you know, is a  
3 concern in the big picture. But in terms of this  
4 project, down the line five years or more, really  
5 where is this project going to be?

6 MR. HARRIS: You want --

7 HEARING OFFICER GEFTER: How is it going  
8 to fit into the long-term need for peaking?

9 MR. HARRIS: Well, let me elaborate on  
10 my prior answer, too, about, you know, the benefit  
11 of being able to convert the project. I think  
12 what I was trying to get at there is I think you  
13 can see an evolution in the electrical grid where  
14 a facility initially is put on the ground as a  
15 peaker to meet that peak demand.

16 When the load grows or when the  
17 population growth requires additional baseload  
18 energy, then you have the ability to convert that  
19 facility. And so I guess I see that natural  
20 progression.

21 You lose that with a facility that  
22 doesn't have the ability to be converted to a  
23 combined cycle.

24 And so I think one of the virtues of  
25 this project configuration and this turbine is the

1 ability to have that kind of evolution where you  
2 put down a peaker when it's needed in a facility.  
3 And then when load growth determines that you need  
4 more baseload, you convert it. That, I think, is  
5 one of the good things about the project.

6 In terms of where we're going to be five  
7 years from now, I sit here today astonished about  
8 where we were five years ago, so one thing I can  
9 say with absolute certainty is that during that  
10 five-year period one thing we will need to be able  
11 to respond to those RFPs in a timely manner,  
12 because a lot of these things are short lead  
13 times, they're one or two years out, we're going  
14 to have to have a license to be able to do that.

15 Having a license and the ability to  
16 construct is the reason to get the certification.  
17 So, over that five-year period if Edison or  
18 somebody else comes along and says, we need power  
19 in 24 months, we've got an 18-month construction  
20 schedule and a license, we'll be able to respond  
21 to that need.

22 And if you can get us a contract we'll  
23 start building tomorrow.

24 HEARING OFFICER GEFTER: Well, since the  
25 applicant has brought up the economic situation

1 and the concern for financing, there's an elephant  
2 in the room which is the current bankruptcy  
3 proceeding for the Calpine Corporation, and  
4 whether or not this particular project, both the  
5 combined cycle Pastoria and the proposed simple  
6 cycle unit are going to be on the market between  
7 now and 2011.

8 MR. HARRIS: Well, let me address the  
9 elephant. A couple of thoughts. Number one, you  
10 know, the company is in bankruptcy but it has not  
11 been dissolved and disbanded. So we continue to  
12 have a fiduciary asset, even as a company outside  
13 of bankruptcy has a fiduciary obligation to  
14 maximize the corporate assets. So I would put  
15 that before you.

16 I can also guarantee that in California  
17 that if I can walk into a bank with a PPA and an  
18 Energy Commission license, they're going to throw  
19 money at me. It can happen.

20 There are also equity partners out there  
21 who are looking, ironically enough, to invest in  
22 California, although some people make that akin to  
23 investing in China. It's risky, they don't  
24 understand the language, or what's going on over  
25 here.

1                   But with a license and the ability to  
2                   secure a PPA this project absolutely can be built.  
3                   And it would be a positive asset for the  
4                   corporation.

5                   Let me let Mike add.

6                   MR. ARGENTINE: Yeah, I just wanted to  
7                   say that we are in bankruptcy, but we're in  
8                   chapter 11, which means we're restructuring our  
9                   business. So we're not liquidating assets. I  
10                  mean our long-term plans are to continue to  
11                  operate plants in California.

12                  So this project really meets what we  
13                  plan to do, you know, years down the road,  
14                  assuming we come out of bankruptcy as we expect to  
15                  do.

16                  So, at this point there's really no  
17                  plan, there are no plans to start liquidating  
18                  assets.

19                  DR. KENNEDY: Just to clarify and make  
20                  explicit, Mr. Harris, the point that I think you  
21                  were making, though in the record there's  
22                  discussion of an anticipated online date of 2011,  
23                  if, for example, Calpine were to get a PPA  
24                  agreement for this project that was signed, you  
25                  know, in early 2007, what I'm hearing is that

1 Calpine would immediately turn around and, you  
2 know, start construction as soon as possible and  
3 anticipate being online well before 2011?

4 MR. ARGENTINE: That's right. Exactly  
5 as Jeff said, you know, if you get us a PPA right  
6 now we're ready to start construction.

7 HEARING OFFICER GEFTER: Would that take  
8 into account that the other projects that are in  
9 the queue for the Edison service area that would  
10 be doing a lot of the remedial work that would  
11 then take care of the need for this project to  
12 meet Cal-ISO's requirements for, you know, to  
13 remedy the congestion in the lines?

14 MR. ARGENTINE: Really what we'd be  
15 responding to is an RFP from Edison, rather than  
16 responding to what Cal-ISO needs. I mean, so if  
17 Edison says they need a project, they issue an RFP  
18 for additional peaking capacity, we would respond  
19 to that by offering this project to them, for  
20 example.

21 So it's not necessarily a Cal-ISO need;  
22 it's more a Southern California Edison or a local  
23 utility need that we would be responding to.

24 HEARING OFFICER GEFTER: Right, but Cal-  
25 ISO has to approve the interconnection.

1 MR. ARGENTINE: Correct.

2 HEARING OFFICER GEFTER: And so any  
3 congestion on the lines would then have to be  
4 remedied by this project rather than the ones  
5 ahead in the queue.

6 MR. ARGENTINE: Yeah, we have a queue  
7 position for this project. And we also have a  
8 system impact study for this project.

9 MR. HARRIS: And one thing we could  
10 definitely do is make Edison interconnect us for,  
11 you know, for a gate 88 nondiscriminatory basis.  
12 So that we can do ourselves. You want to help  
13 with the other stuff, we're happy to have that  
14 help, too.

15 HEARING OFFICER GEFTER: Thank you.

16 PRESIDING MEMBER BOYD: I just thank Mr.  
17 Harris for introducing a new criteria to my  
18 lexicon, convertibility.

19 HEARING OFFICER GEFTER: All right. The  
20 next issue we need to address is scheduling.  
21 According to Mr. Rubenstein the DOC comment period  
22 probably would end somewhere at the end of  
23 October, is that what you -- that's what you think  
24 will happen at this point?

25 MR. RUBENSTEIN: That's correct, Ms.

1 Gefter.

2 HEARING OFFICER GEFTER: Okay. So what  
3 we would need then is the applicant to come back  
4 and indicate to us a schedule for when we would  
5 reopen the proceeding and take evidence on the  
6 revised offset package.

7 So we will just, at this point the  
8 proceeding will pend. We will just wait until we  
9 hear back from you in terms of when you are ready  
10 to reopen the record and submit the additional  
11 evidence on air quality.

12 And we would also hear any additional  
13 testimony, if necessary, on the public health  
14 condition, or just, you know, if the parties can  
15 agree, you just submit that to us.

16 So, at this point we are just going to  
17 pend till we hear back from you. And the PMPD  
18 will not be revised at this point until we have  
19 additional evidence. Mr. Harris.

20 MR. HARRIS: If I could suggest, it  
21 would be possible for us to proceed. I think the  
22 remainder of the PMPD issues, these two we've  
23 talked about today, public health and efficiency,  
24 are going to be dealt with hopefully fairly  
25 quickly.

1           I anticipate that the air quality stuff  
2 will be very pro forma; as pro forma as it can be,  
3 you know, consistent with federal and state law  
4 noticing requirements that the San Joaquin  
5 District has to go through.

6           I am not anticipating at all that we're  
7 going to need to have to take evidence on the ERC  
8 issue. And the reason that I say that is that  
9 there's no dispute whatsoever in terms of the  
10 amount of mitigation in the ERCs that will be  
11 surrendered.

12           There's a, you know, hard number in the  
13 document now as to how many NOx credits have to be  
14 surrendered. The only issue there is the  
15 certificate numbers. And so you can never say  
16 never, but I'm not anticipating that there will be  
17 a need for any live witness testimony or any  
18 cross-examination.

19           I'd like Ms. Willis to -- maybe she  
20 feels differently, but that's where we are.

21           MS. WILLIS: Well, obviously we'll have  
22 to wait and see what's filed, and then have our  
23 air staff analyze, you know, the new filing. And  
24 at that point in time then you can determine  
25 whether or not we need to move ahead with any

1 witnesses.

2 HEARING OFFICER GEFTER: Thank you.

3 Well, in any event, Mr. Harris, whether or not we  
4 have live witnesses, we're going to have to have  
5 at least a short evidentiary hearing to accept the  
6 additional evidence on the new offset package.

7 MR. HARRIS: Okay, then maybe we can  
8 schedule that --

9 HEARING OFFICER GEFTER: So, it may be a  
10 five-minute hearing, but we still will need to  
11 reopen the record. And so we are planning to have  
12 another hearing before the revised PMPD is issued.

13 MR. HARRIS: Okay. That's fine. I was  
14 going to suggest maybe we could do it at the end  
15 of a business meeting or something, because it  
16 will hopefully be very short, so.

17 HEARING OFFICER GEFTER: It would still  
18 be a Committee hearing, though.

19 MR. HARRIS: Correct, yes. A separate  
20 meeting. You close one and open the other. Now  
21 I'm micro-managing your business; I apologize.  
22 I'm going to shut up.

23 HEARING OFFICER GEFTER: We'll let you  
24 know.

25 All right, at this point then hearing no

1 other comments on the PMPD, the Committee  
2 Conference is closed. Thank you.

3 (Whereupon, at 11:01 a.m., the Committee  
4 Conference was closed.)

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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 Committee 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 outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of July, 2006.

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