

1 APPEARANCES

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3 Commissioners Present:

4 DAVID A. ROHY, Presiding Member

5 MICHAL C. MOORE, Commissioner

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7 Committee Members Present:

8 SUSAN GEFTER, Hearing Officer

9 BOB ELLER, Advisor to Commissioner Rohy

10 SHAWN PITTARD, Advisor to Commissioner Moore

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12 For the Staff of the Commission:

13 Dick Ratliff, Staff Counsel

14 Lorraine White, Project Manager

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16 For the Applicant:

17 Samuel L. Wehn, Enron Capital & Trade Resources Corp.,
Project Director

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ALLAN J. THOMPSON, ESQ.

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20 For the Intervenor:

21 Michael Ramsey, City Manager, City of Antioch

22 Kate Poole, CURE

23 Doug Buchanan, Delta Energy Center

24 Paulette Lagana, CAP-IT

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P R O C E E D I N G S

MONDAY, MARCH 29, 1999

PITTSBURG, CALIFORNIA 6:10 P.M.

COMMISSIONER ROHY: Good evening and welcome to the prehearing conference for the Pittsburg District Energy Facility. I'm David Rohy, Presiding Member of this Committee. Along with me is Michal Moore, second on the committee to evaluate this project. Our advisors are Bob Eller to my right, and Shawn Pittard to Commissioner Moore's left. Our hearing officer is Susan Gefter, who will be running this hearing -- excuse me -- this conference tonight, and give us the details of that.

Susan.

MS. GEFTER: We'd like the parties to identify themselves for the record before we begin, and I'd like the applicant to state who is here representing them.

MR. THOMPSON: My name is Allan Thompson, representing Enron, and to my left is Mr. Sam Wehn of Enron. He is the Enron project manager.

MS. GEFTER: And, staff, would you introduce you representatives?

MS. WHITE: Yes. I'm Lorraine White. I'm the project manager for the California Energy Commission in this proceeding for the Pittsburg

1 District Energy Facility.

2 MR. RATLIFF: I'm Dick Ratliff, the staff
3 counsel.

4 MS. GEFTER: We'd like to hear from the
5 intervenors. If any intervenors are present, could you
6 please come up and identify yourself?

7 MS. LAGANA: My name is Paulette Lagana. I
8 represent CAP-IT, which is Community Abatement of
9 Pollution and Industrial Toxins. We're an
10 environmental education group in Pittsburg and Antioch.
11 Thank you.

12 MS. GEFTER: And your petition to intervene
13 has been granted, if you haven't received a copy
14 already.

15 MS. LAGANA: Thank you.

16 MR. RAMSEY: Mike Ramsey, the city manager
17 for the City of Antioch. Thank you.

18 MS. GEFTER: Thank you.

19 MR. BUCHANAN: I'm Doug Buchanan, and I'm
20 the development manager for the Delta Energy Center.

21 MS. POOLE: Kate Poole, California Unions
22 for Reliable Energy.

23 MS. GEFTER: Thank you.

24 Is there anybody here from PG&E?

25 Before we continue, I'd like to ask, anyone
26 who's going to speak, please give your business card or

1 write out your name for the reporter so she can spell
2 your name correctly in the record.

3 We're also during the course of the hearing
4 going to take a few breaks so that our reporter can
5 rest her fingers.

6 Next we'd like to hear from the agencies
7 that are here today, if you would identify yourselves
8 for the record. Please come forward.

9 Anyone from the Air District here today?

10 How about the Delta Diablo water facility?

11 How about Cal ISO? Okay.

12 Our public advisor is here today,
13 Roberta Mendonca, and she will be explaining the role
14 of public advisor in a little while to assist the
15 public in participating in this proceeding.

16 Then members of the public who would like to
17 speak to us today, if you would come and identify
18 yourselves for the record. I know Mr. Glynn is here.

19 MR. GLYNN: I'm Bill Glynn. I'm president
20 of New York Landing Homeowners Association and also a
21 member of the community advisory panel for the Enron
22 PDEF.

23 MS. GEFTER: Thank you.

24 Anyone else from the public who plans to
25 make comments tonight?

26 If you're not identifying yourself right

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1 now, you'd be welcome to come forward later during the
2 proceeding.

3 I'm going to give a little background on
4 this project, and then we'll go on with the conference.

5 I'm sorry. We do have one more person.

6 Would you like to come forward and identify
7 yourself for the record?

8 MR. GARCIA: Yes. John Garcia, resident of
9 Pittsburg for the last 60 years.

10 MS. GEFTER: Thank you.

11 The Pittsburg District Energy Facility filed
12 this application for certification in June of 1998.
13 The project is a 500-megawatt cogeneration facility
14 that will be built by Enron Corporation on the existing
15 industrial site owned by U.S.S. Posco in the city of
16 Pittsburg.

17 On February 25th, 1999, this Committee,
18 which consists of two Commissioners from the California
19 Energy Commission, issued a notice scheduling this
20 prehearing conference and established a second revised
21 schedule setting forth the milestone dates in this
22 matter through July 28th, 1999.

23 The schedule required all data responses and
24 the preliminary determination of compliance, or a PDOC,
25 from the Air District to be filed by February 8th. The
26 staff assessment, which was issued on March 9th, states

1 that its analysis on air quality cannot be completed
2 until the Air District's PDOC, final DOC, and a valid
3 emissions offset package are available for staff
4 review.

5 The Committee takes administrative notice
6 that the PDOC was released on March 19th and was
7 docketed at the Energy Commission on March 26th. That
8 is 45 days after the scheduled due date by the
9 commission. Today we will discuss the implications of
10 this late filing and other remaining data deficiencies
11 as they effect the 12-month AFC schedule.

12 In response to the prehearing conference
13 notice, the parties and several intervenors filed
14 statements in which they expressed concerns and
15 disputes concerning issue areas, including air quality,
16 transmission system impacts, land use, water quality,
17 traffic impacts, public health and safety, visual
18 resources, and socioeconomic impacts.

19 The purpose of today's prehearing conference
20 is to assess whether the parties are ready for
21 evidentiary hearings, and to identify areas of
22 agreement or dispute, and finally to discuss the
23 procedures that are necessary to conclude the
24 certification process.

25 In this regard, the Committee will ask the
26 parties to present their respected positions on the

1 issue areas, and that includes the intervenors and
2 members of the public, to discuss the filing dates for
3 testimony and other evidentiary documents and to plan
4 for briefing and comment periods. We also want to hear
5 from agency representatives on the status of their
6 respective reviews on the project, if any agency
7 representatives should come this evening.

8 I'm going to ask the public advisor to come
9 forward at this point. The AFC process is a public
10 proceeding in which members of the public and
11 interested organizations are encouraged to actively
12 participate and to express your views on matters
13 relative to the project. The Committee's interested in
14 hearing from all of you on any aspect of this project.

15 At this time we'll ask the public advisor to
16 explain her role in this process and to provide an
17 update on her efforts to contact Pittsburg residents
18 and other interested groups regarding this proceeding.

19 Roberta.

20 MS. MENDONCA: Yeah, I think probably when
21 you saw me out in the hall was the latest effort.

22 I'm Roberta Mendonca, the Commission's
23 public advisor. It feels odd to be addressing you and
24 really my audience is out here (indicating).

25 MS. GEFTER: You should turn and face the
26 audience.

1 MS. MENDONCA: The role of the public
2 advisor is quite unique in a public process like this.
3 It's specifically designed to be neither the staff nor
4 the Commission's decision makers. I'm here to
5 facilitate public participation in the process so I can
6 answer your questions, give you schedules, and tell you
7 the best way to get your comments before the
8 Commission. I heard Susan say, and I amplify, it is an
9 open -- a totally open public process, and your
10 comments are welcome.

11 We're coming very quickly up to a very key
12 date, March the 29th is the very last day to intervene.
13 The difference between being an intervenor and a member
14 of the audience is, everybody can comment, but
15 intervenors can -- during the more formal hearings,
16 which will be coming at the end of March and early part
17 of April, can testify and present evidence and
18 cross-examine the witnesses. So for those of you who
19 have questions about the formal hearings, I would be
20 very happy to answer those, and thank you very much.

21 MS. GEFTER: Thank you very much.

22 Are there any questions of the public
23 advisor at this point?

24 Fine. We'll proceed. The Committee
25 recognizes that the applicant is concerned about
26 meeting the 12-month schedule. We are also concerned

1 that the Committee may not have a complete record
2 available for review at the conclusion of evidentiary
3 hearings, which are now scheduled to be ended on
4 May 5th.

5 The Committee is not amenable to bifurcating
6 the proceeding. To produce a proposed decision, or
7 PMPD, in 12 months that accurately reflects the record
8 in this matter by May 5th, may result in a negative
9 recommendation by the Commission. The parties should
10 be aware of this contingency as we discuss the
11 remaining schedule.

12 To illustrate what we believe is an
13 administrative impossibility, that is, a PMPD to be
14 released on June 14th, information that is still
15 pending today should have been filed in February so
16 that at the close of hearings on May 5th the record
17 would have been complete. The hearing and decision
18 process includes several legal and procedural
19 milestones which drive the schedule. We'd like to go
20 over that this evening, and that's why we brought our
21 flip chart. We'd like to discuss how we view the rest
22 of the schedule.

23 I believe Commissioner Moore has some
24 information.

25 COMMISSIONER MOORE: What I thought I would
26 do is just -- because I kept hearing arguments that the
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1 schedule could be met, and because I'm such a bonehead
2 with numbers, I thought I would just go and walk us
3 through to see where we were, so with your indulgence,
4 I'm going to use some colored markers, and if I get off
5 track on the math, I'm sure my colleagues will stop me,
6 but as I reckon, today being the 29th of March, we're
7 well into this.

8 What I'd like to do is I'd like to work
9 backwards, and what I may do is end up pasting this on
10 the dais up there (indicating), but if we assume that
11 the applicant would like to have a target date -- can
12 everyone hear me -- our target date for release of the
13 Presiding Member's decision is June 14th. That's in
14 the schedule that Commissioner Rohy published, and it
15 is still the objective of the Committee. For all of
16 those of you who have the Committee's second revised
17 schedule that shows up near the top of the page,
18 "Proposed Decision and Notice of Conference on
19 June 14th," and that leads to a number of other steps
20 beyond that into the month of July when the full
21 Commission would act on this.

22 Now, if I understand the schedule right,
23 there are 30 to 40 days typically allowed for
24 deliberations and drafting the Presiding Member's
25 proposed decision after the replied briefs and after
26 the opening briefs and after the close of the

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1 evidentiary hearings. So let me work backwards and
2 just say nominally that should take us back into the
3 month of May, and so somewhere around May 14 or 15 we
4 end up going into the deliberative phase where the
5 Presiding Member is actually in a position to write the
6 decision, and having written one in the last couple of
7 months, I understand just how tedious it is, so I'm
8 assigning days -- instead of 40 days, 30 days. So this
9 is now a 30-day period. Working backwards it takes us
10 to May 14th.

11 If we assign back ten days for replied
12 briefs -- it got lost in the mail, the water color wash
13 jar spilled on the term paper, I couldn't get it in on
14 time, I tried my best -- takes us somewhere around
15 May 4. Those are the reply briefs.

16 If we take back another ten days into April
17 for opening briefs, then we get to about the 25th or so
18 for the opening briefs, and the close of the
19 evidentiary hearings have got to occur somewhere here,
20 prior to the 24th of May -- I'm sorry -- of April.
21 Okay. 25 April, which is roughly 27 days from now.

22 So in that time, we still have to meet all
23 of the other evidentiary processes to get us up to the
24 close of the evidentiary hearings. If we assume that
25 the evidentiary hearings themselves can take four to
26 five days of conservative time, then that brings us

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1 back down into somewhere around April -- the period of
2 April 15 to April 20 to begin all of the evidentiary
3 hearings and have all of the information needed for the
4 Presiding Member to render a decision.

5 Susan, am I off on my times?

6 MS. GEFTER: No. Exactly right.

7 COMMISSIONER MOORE: Then that should tell
8 us about how much time we've got between now, March 29,
9 and April 15 to 20, to get everything we need in the
10 docket and before us to be able to make a decision.
11 That's to stay on this time line.

12 COMMISSIONER ROHY: Michael, I don't have
13 the benefit of seeing where you went on there. On our
14 schedule we had the evidentiary hearings April 28th to
15 May 5th.

16 COMMISSIONER MOORE: Yeah, and I've backed
17 up beyond that. I can't --

18 COMMISSIONER ROHY: What you're saying is
19 it's very difficult to make it on what we have as
20 April 28th to May 5th?

21 COMMISSIONER MOORE: I don't think we can --
22 Well, April 28th -- I can't get to June 14 using the
23 April 28th date. I can get there using a May 15th --
24 or I can get there using the May -- I'm sorry -- an
25 April 20 date at the latest, but I can't get to June 14
26 as a release using the date later.

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1 So what that says to me is that the schedule
2 was optimistic by a week.

3 MS. GEFTER: And then in the alternative, we
4 still need to have the final DOC.

5 COMMISSIONER MOORE: You'll have to not use
6 acronyms.

7 MS. GEFTER: The final determination of
8 compliance, which at this point we estimate takes 60
9 days from the date of release. It was released on
10 March 19th. We didn't receive it till March 26th.
11 That's the preliminary DOC, and we need 60 days between
12 the preliminary determination of compliance to the
13 final determination of compliance, so we're looking at
14 a May 19th date for release of the final determination
15 of compliance, and then we would have to have hearings
16 on that. So that's another concern.

17 COMMISSIONER MOORE: So that means the
18 schedule's off by a month. Okay.

19 Thanks for indulging me.

20 COMMISSIONER ROHY: Thank you, Michael.

21 MS. GEFTER: The Committee schedule concerns
22 are put up as backdrop for the following discussion,
23 and the following discussion is going to be
24 presentations by the parties regarding issue areas that
25 are subject to adjudication.

26 We have 22 issue areas that were described
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1 in staff's assessment, and what I would like to do is
2 list those issue areas again on this flip chart and
3 have the parties address each area as they make their
4 presentations. We would like the parties and any
5 intervenors to address each area and identify whether
6 there are contested matters or other issues in which to
7 adjudicate with respect to each area, and we'd also
8 like you, as you present your issues, to indicate which
9 dates you will be prepared for hearing on each of those
10 areas.

11 I would like to perhaps figure out a way we
12 could get those areas listed. We'll go off the record
13 for a moment.

14 (Discussion off the record.)

15 MS. GEFTER: We're back on the record. What
16 we'd like to do is ask the applicant to go first. Then
17 we'll here from the staff. Then we'll hear from the
18 intervenors and the agencies, and we'll take public
19 comment. This will be a somewhat informal process. We
20 will provide time at the end of each presentation for
21 the parties to ask questions and otherwise clarify the
22 issues.

23 Before we begin, are there any questions
24 about the process?

25 MR. THOMPSON: We will get a chance to
26 respond?

1 MS. GEFTER: Yes, because the parties can
2 ask questions of each other.

3 MR. THOMPSON: Would you go over the number
4 of the entities that filed prehearing conference
5 statements, and I have a list, and I hope it's
6 complete.

7 MS. GEFTER: What we have for prehearing
8 conference statements were filed by CURE, the
9 intervenor, by the staff, by the applicant, by the City
10 of Antioch, by the Delta Energy Center, and we got
11 something from the ISO -- Cal ISO. That's the
12 Independent System Operator.

13 If the applicant is ready to begin, we'd ask
14 you to go through each item, and then when we get to
15 Number 10 ask you to start writing the rest of them
16 down.

17 I don't know if you can see from there.

18 MR. THOMPSON: Let me try.

19 Demand conformance or need. I guess I
20 should say I don't think we have any issues. We
21 certainly don't have any issues with staff, and I think
22 everything's ready.

23 The second is air quality. We have some
24 outstanding issues with the staff on -- in the -- that
25 appeared in the FSA. We want to work with the staff to
26 resolve those prior to hearings, but are prepared to go

1 to hearings on those issues if we can't resolve them.
2 We have been in conversations with the Air District,
3 and the Air District has been in conversations with
4 staff, and we're trying to find a pathway to
5 resolution. What we've been talking about is when to
6 get there and maybe procedurally if there are pathways
7 to do that.

8 I know that other parties have air quality
9 concerns as well. My understanding is that the City of
10 a Antioch may present a witness, and Calpine may
11 present a witness as well on air quality.

12 The PDOC was issued last week. We are
13 hopeful that the 30-day comment period will end, and
14 the final determination of compliance will be issued
15 shortly thereafter. The District made public it's
16 proposed conditions of certification before issuing its
17 preliminary determination, and, indeed, I think we had
18 a workshop on it. So no one should be surprised by the
19 conditions, and my understanding is that the Bay
20 Area AQMD had discussions with EPA and other interested
21 parties as well. As of today no comments have been
22 issued, but it's early.

23 I think as far as holding up hearings, we
24 ask that they go forward, to be treated like La Paloma,
25 Sutter, other projects, go forward with the hearings
26 based upon the preliminary DOC and not have to wait for

1 the final.

2 Public health. We don't have any issues
3 with staff on public health for the FSA, and I think
4 that one of the parties expressed an interest in
5 cross-examining, but as far as we are concerned, we
6 don't have any issues.

7 Transmission line safety and nuisance. The
8 same. We don't have any issues, and I don't believe
9 any of the parties have filed prehearing conference
10 statements indicating that they had cross-examination
11 for the witnesses.

12 What is it?

13 MS. GEFTER: Transmission.

14 MS. WHITE: There's haz-mat management,
15 hazardous materials management.

16 MR. THOMPSON: Hazardous materials
17 management. Again, I think we don't have any issues of
18 staff, and I don't believe anybody has asked to
19 cross-examine on that. We're ready to go.

20 Did I get down to land use?

21 MS. WHITE: Land use.

22 MR. THOMPSON: Land use. Calpine has said
23 that they have a witness in land use. We don't have
24 any issues with staff. We are awaiting the Presiding
25 Member's report so that we can start the process in the
26 City for a variance for the stacks, the herseg

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1 (phonetic) and the boilers stacks -- the two stacks.
2 When the PMPD is issued, that will serve as the
3 environmental statement for the City, and that process
4 can begin. We are going to be filing with the City the
5 variance application this coming week, I believe, or
6 this week, and that has been coordinated with the City
7 so they can take the Presiding Member's report when it
8 is issued coupled with the application and proceed
9 through that last remaining land use area.

10 MS. GEFTER: I have a question on that. How
11 long is the review period for the environmental
12 document on variance for the City of Pittsburg?

13 MR. THOMPSON: Michael, can you help me?

14 MR. WOODS: My name is Michael Woods. I'm
15 City Attorney for Pittsburg. The issue came up early
16 on regarding how we would structure the environmental
17 review process for the variance. We recognized that
18 the variance was the only permit that the City was
19 being asked to consider, and we were faced with the
20 decision of whether or not to use the City's own
21 environmental review, which would essentially be
22 complicative of the Commission's, unless we thought
23 inappropriate or use the Presiding Member's report as
24 the -- essentially as the final EIR. The review period
25 that would normally be involved would be for the review
26 of the draft of an environmental document. The City

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1 does not have a specific review period for a final
2 environmental document.

3 So I believe, as far as the City is
4 concerned, the review period will be essentially
5 tracking with the Commission's period for its
6 documentation. So by the time a Presiding Member's
7 report is issued, the City's planning commission will
8 be in a position to go ahead and take action on a
9 variance. We, of course, would have a public hearing
10 period -- public hearing notice period before that,
11 which is ten days.

12 MS. GEFTER: So in other words, comments on
13 the variance would be a ten-day period before a
14 hearing?

15 MR. WOODS: Actually, there would not be
16 a statutory period for comments on the environmental
17 document because of the uniqueness of this process.
18 The time for reviewing the functional equivalent of the
19 draft EIR would be taking place before the Commission
20 got to a decision -- before the City's planning
21 commission got to a decision on the plan variance, but
22 the City has envisioned a scheduling workshop with the
23 planning commission and the public using the staff
24 assessment and to provide for review -- a review
25 period, if you will, between that date and the date
26 that the planning commission would actually hold a

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1 final public hearing to take action. So essentially
2 you would have the period of time between the staff
3 assessment issuance, planning commission workshop on
4 that, which, I think, is anticipated for late April, if
5 I'm not mistaken, and a planning commission public
6 hearing and possible decision after the Presiding
7 Member's report was issued.

8 MS. GEFTER: Thank you.

9 MR. THOMPSON: Am I to waste management
10 here?

11 COMMISSIONER ROHY: Can I ask a question?

12 MR. THOMPSON: Yes.

13 COMMISSIONER ROHY: Is there any other
14 general plan issue on land use?

15 MR. THOMPSON: No. I think that's the only
16 issue outstanding.

17 COMMISSIONER ROHY: Thank you.

18 MR. THOMPSON: Sorry. I didn't mention
19 that.

20 COMMISSIONER ROHY: Thank you.

21 MS. WHITE: Traffic.

22 MR. THOMPSON: Traffic. My understanding in
23 traffic and transportation is that one of parties
24 expressed an interest in cross-examination, but we have
25 no outstanding issues for the staff, and I don't
26 believe there are witnesses from others. I think as

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1 far as we're concerned, that's closed.

2 MS. WHITE: Waste management.

3 MR. THOMPSON: Waste management. Same
4 story. I don't think there's any expressed interest in
5 cross-examining, and there are no outstanding issues
6 between ourselves and staff. We're ready to go.

7 MS. WHITE: Land use.

8 MR. THOMPSON: Land use. Calpine has said
9 that they want to present a witness on land use. We
10 have one outstanding -- it's not an outstanding permit,
11 but it is more of a technical issue as to whether or
12 not our structures fit into the space that they're
13 supposed to fit into, given existing pipelines of
14 Delta Diablo and others, and I know that that is being
15 worked on, yesterday, last night, and today, trying to
16 get accurate sketches of the above and below ground
17 facilities so that we can accurately place the lines.
18 I think that's the extent of that issue.

19 MS. WHITE: Noise.

20 MR. THOMPSON: Noise. I don't believe that
21 there are any issues outstanding, no requests for
22 cross-examination, and I think we came down a lot in
23 noise, as you'll all recall, and I think that's an
24 issue that's all done.

25 MS. WHITE: Visual.

26 MR. THOMPSON: Visual. Visual, we have --
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1 we are hopeful that we have settled the visual issues.
2 We had a workshop last week with staff where we
3 presented some further ideas to attempt to alleviate
4 our allied staff concerns. They are considering those,
5 and we have not heard back yet. However, if that does
6 not become resolved by the time of hearings, we're
7 ready to go to hearings, but 99.9 percent of visual is
8 done, and I don't believe any other party expressed an
9 interest in presenting a witness on that issue, and
10 that's the only issue we have.

11 MS. WHITE: Cultural resources.

12 MR. THOMPSON: No cultural issues
13 whatsoever. We agree with the staff.

14 MS. WHITE: Socioeconomics.

15 MR. THOMPSON: Socioeconomics. My
16 understanding is that there is one witness. The CURE
17 representative will present a witness. There may be
18 some cross-examination on that, but there are no
19 outstanding issues between ourselves and the staff.

20 MS. WHITE: Biology.

21 MR. THOMPSON: Biology. Biology's done. I
22 don't think anybody's expressed any interest in
23 cross-examination. No witnesses. No issues with
24 staff.

25 MS. WHITE: Soils and water.

26 MR. THOMPSON: Soils. I don't think that

1 there are any issues.

2 Water. I think there is a witness that is
3 going to be put on Calpine, comma, an economic
4 competitor, comma, but then I don't believe we have any
5 outstanding issues with staff. The only slight
6 wrinkle, I guess, if it could be called a wrinkle, is
7 that the Delta Diablo facility is awaiting a renewal of
8 its Regional Water Quality Control Board permit and has
9 been waiting and anticipates somewhere over the next
10 two years or so it will get that, but that doesn't
11 effect our tying in to Delta Diablo. That's if
12 Delta Diablo to --

13 MS. GEFTER: Is that the NDPES permit? Is
14 that the NDPES permit?

15 MR. THOMPSON: I'm seeing nods up and down
16 here.

17 MS. WHITE: For Delta Diablo?

18 MS. GEFTER: Yes, for Delta Diablo.

19 MS. WHITE: They anticipate they'll be
20 submitting their application very shortly. They don't
21 have an expectation as to when there will be a
22 determination on that, but they do anticipate they will
23 get the needed recycling permit prior to the decision
24 on the NDPES permit so that they can actually provide
25 service of Enron and Calpine.

26 MR. THOMPSON: I think what are left are the
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1 engineering --

2 MS. WHITE: Paleo.

3 MR. THOMPSON: Oh, paleo. The same as
4 cultural and biology. No issues. No desire to
5 cross-examine that we know of. No outstanding issues
6 between ourselves and staff.

7 Are we at the engineering yet? Reliability
8 efficiency --

9 MS. WHITE: Facility design, reliability
10 efficiency.

11 MR. THOMPSON: Reliability efficiency. We
12 have no issues with staff, and no parties have
13 expressed any interest in cross-examining or presenting
14 witnesses on these, but I should tell you that we -- at
15 the workshop last week, we expressed to staff the
16 desire to make the conditions of certification more
17 user friendly. The staff, for its part, welcomed that,
18 and I think I've been trading proposals or suggested
19 ways that the conditions could be made more easy to
20 follow for applicants. We would hope that those --
21 that there would be some agreement on those before we
22 go to hearings.

23 MS. GEFTER: Does this have to do with the
24 DCDO?

25 MS. WHITE: Actually, we're awaiting further
26 input from the applicant, specifically what they mean

25

1 by "user friendly." Our facility designs and
2 conditions are pretty common. They've been used in
3 many, if not all, of the previous cases. Minor
4 refinements here and there, so we're looking to have
5 further input on exactly what is meant by the comments
6 that we received last week. So we had anticipated
7 either having a follow-up teleconference, but because
8 of problems with timing we may just have to have them
9 put them in writing and send them to us by April 2nd,
10 'cause there's fewer and fewer hours in the day.

11 MR. WEHN: I think we actually put together
12 what we think would be an equitable proposal, and I
13 believe it's been faxed tomorrow -- yeah, faxed
14 tomorrow and with a meeting set for Wednesday,
15 Wednesday morning.

16 MS. WHITE: Okay. I haven't been informed
17 of a meeting on Wednesday, but I'll be available.

18 MS. GEFTER: This document that you spoke
19 about will be docketed with the Commission; is that
20 correct?

21 MR. THOMPSON: We can docket it. It's a
22 draft.

23 MR. WEHN: The idea was to float something
24 out. Here are some of our ideas. If you don't like
25 them, that's another issue, but if you like them, maybe
26 we can adopt them, docket them, and we wanted to get

1 some input.

2 COMMISSIONER ROHY: My concern was with
3 Mr. Thompson's suggestion that the Committee review
4 them before we start administrative hearings. It would
5 be nice if those were made available to us before that
6 time.

7 MR. THOMPSON: If I misspoke -- if I said
8 Committee, I meant --

9 COMMISSIONER ROHY: That was my
10 interpretation.

11 MR. THOMPSON: Sorry. I would hope that
12 they would be available to be submitted with the
13 testimony.

14 COMMISSIONER ROHY: Thank you.

15 MR. THOMPSON: And if not, maybe we can go
16 ahead and adopt what is in the staff testimony now.
17 There's no substance differences between ourselves and
18 staff. It's really how to get there.

19 COMMISSIONER ROHY: Okay. Thank you.

20 MS. GEFTER: Thank you. All right.

21 So what my notes reveal is that the
22 applicant has some concerns regarding air, but other
23 than that, we believe that all the other issues have
24 been addressed satisfactorily.

25 MR. THOMPSON: Yes, we believe so.

26 MS. GEFTER: Okay. And you mentioned there

1 were some procedural issues with the Air District.
2 Could you explain that, please?

3 MR. THOMPSON: What did I say?

4 MS. GEFTER: What did you say? My notes
5 reflect that you're in the process of conversations
6 with the Air District and staff regarding staff's
7 assessment, and that there may be some procedural
8 issues with respect to this DOC.

9 MR. THOMPSON: There are really three issues
10 that may be under one umbrella issue, and we -- and I
11 think they grow out of some staff concerns after seeing
12 the preliminary determination of compliance by the
13 District, so we are trying to determine if the District
14 got it right, and what those concerns are and how we
15 can help tie a bow around those issues.

16 COMMISSIONER ROHY: Did you address the
17 transmission system engineering alternatives?

18 MR. THOMPSON: We don't have any
19 difficulties with staff. We understand the ISO doesn't
20 have any difficulties with the proposal. We think
21 they're there.

22 COMMISSIONER ROHY: I just want to make sure
23 we covered it for everyone. Thank you.

24 MS. GEFTER: Now we'll ask staff to go over
25 the areas and give us your assessment of any issues you
26 might have.

1 MR. RATLIFF: Certainly. With your
2 indulgence, I'll try to hit the points where we think
3 you have an interest in what we have to say.

4 There are two areas where staff has conflict
5 with the applicant. One is air quality, and that's
6 been discussed, and we need some more time to take that
7 issue to workshops and discuss it with both the
8 applicant and District.

9 COMMISSIONER MOORE: How much time do you
10 need? Optimally.

11 MR. RATLIFF: I wasn't suggesting we
12 schedule more time necessarily. We have not had the
13 opportunity since the staff assessment came and out and
14 the preliminary determination of compliance was issued
15 by the District to discuss these issues with the
16 applicant, and that's what we need to do. The staff
17 believes additional conditions are needed. The
18 applicant does not, and I think there's a good chance
19 these issues will be resolved when we actually have the
20 discussions at workshop, but we haven't done that yet.
21 That has to happen before we really have an issue and
22 can adjudicate or not.

23 COMMISSIONER MOORE: How much notice do you
24 have to give for a workshop?

25 MR. RATLIFF: Ten days.

26 COMMISSIONER MOORE: And so let's say that

1 you're -- could you schedule a workshop ten days from
2 now? Would you be prepared to walk into a workshop ten
3 days from now, for instance?

4 MS. WHITE: Well, the difficulty with that
5 is we still have the comment period for the PDOC to
6 occur.

7 COMMISSIONER MOORE: And you need to wait
8 till the end of that?

9 MS. WHITE: Well, part of the problem is if
10 you have a workshop now just on the staff assessment
11 and on the differences between the PDOC and the staff
12 assessment, you may not be capturing all of the issues
13 that are further expanded upon in comments by parties
14 on the PDOC.

15 At this rate, staff's preference is to, at a
16 minimum, wait until comments have been filed on the
17 PDOC before we have a workshop so that we have all of
18 the issues on the table.

19 COMMISSIONER MOORE: All right. Let's say
20 you waited till the end of comment period on the PDOC
21 and then you scheduled a workshop, so that's ten days
22 out from the day you know those comments are complete.

23 MS. WHITE: Right.

24 COMMISSIONER MOORE: Then what target date
25 does that put you into for actually the first date you
26 can have a workshop? PDOC is complete on --

30

1 MS. GEFTER: April 19th it's released.

2 COMMISSIONER MOORE: April 19th. Then --

3 MS. GEFTER: I'm sorry. March 19, so
4 April 19 would be the 30 days.

5 COMMISSIONER MOORE: Would you be ready to
6 go April 29?

7 MS. WHITE: Well, we're certainly hoping we
8 can get a workshop in before the end of April. We're
9 hoping that if we schedule our workshop such as to be
10 able to capture as many of the comments as possible,
11 both the District attend, parties that filed comments
12 attend, and have the issues fully discussed with the
13 applicant.

14 As we mentioned in our statement here, we
15 still have the issue of the FDOC and trying to
16 understand how that may change and when you can file
17 staff's testimony. It may be that you need more than
18 one workshop just so that parties can discuss the
19 issues fully, go back on the drawing board, work on
20 some issues and come back and try to work on a
21 resolution.

22 COMMISSIONER MOORE: That looks like it puts
23 you out in the 3, 4 May range before you're finally
24 complete with workshops. How long does it take to --
25 typically to write up the results of the workshop
26 incorporated in staff's conditions?

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1 MS. WHITE: We can start incorporating them
2 right away.

3 COMMISSIONER ROHY: Please define "right
4 away."

5 MS. WHITE: The next day we can start
6 incorporating those comments into the staff's
7 supplemental testimony and working on resolutions of
8 issues. But it's -- You know, you might start working
9 on them the next day, but you may not come to
10 completion of your work for a couple of weeks.

11 COMMISSIONER MOORE: Assuming it was a week,
12 that puts you out to the 10th.

13 MS. WHITE: Tenth of May?

14 COMMISSIONER MOORE: Tenth of May. So I'm
15 just circling that date as a likely date for return of
16 that information.

17 MS. GEFTER: And of course that May 10th
18 date is beyond the close of hearings as we have
19 scheduled them.

20 MR. RATLIFF: But it's before the release of
21 the final determination of the compliance, which is
22 really going to drive the schedule, I think, of
23 necessity. We won't have the District's final
24 determination of compliance until May.

25 MS. GEFTER: Late May.

26 MR. RATLIFF: Or perhaps even June.

1 MS. WHITE: We'll note what the comments are
2 on the PDOC, and we'll be able to discuss with the
3 parties those comments, but we won't have the final
4 determination of compliance by May 10th.

5 MR. THOMPSON: You may.

6 MS. WHITE: From what I've been told, it
7 might be optimistic to expect it within six weeks of
8 the date it was filed.

9 MR. THOMPSON: I'm not sure it's
10 constructive to take the farthest out date. I mean,
11 what the District has told us is that if no comments
12 are filed they can turn it around right away. So you
13 have a 30-day comment period. April 19, no comments.
14 Bang. It comes out. They have 30 days after comments
15 are filed to get out the FPSA. So in the absolute
16 worst case -- worst of all, we're on May 18, or
17 whatever it is.

18 MS. WHITE: We do hope it comes out earlier.
19 It's just that a lot of people understand that
20 expecting it out in six weeks could be optimistic.

21 MS. GEFTER: So at this point, it's
22 guesswork as to when the final DOC would come out, and
23 the applicant is taking a very optimistic view, and
24 staff is taking a worst case view.

25 MR. THOMPSON: We're trying to take a
26 realistic view of the --

1 COMMISSIONER MOORE: Let me just point out
2 that on the -- unless I'm reading this wrong, the
3 second revised schedule has the final determination of
4 compliance on April 23rd, and Allan's remark about you
5 could slip out to May 18 in a worst case, that worst
6 case is roughly a month out, which is the conclusion
7 that I came to just on the board, is that we're lapsed
8 by a month. The month keeps coming back at me, so I'm
9 trying to understand whether or not that's a real
10 commodity or not.

11 Mr. Ratliff, it looks like you're wording to
12 set me in my place on the date. Am I wrong? It looks
13 to me like everything has slipped out about a month.

14 MR. RATLIFF: I think that's essentially
15 correct. In terms of air quality.

16 MS. WHITE: Definitely in terms of air
17 quality.

18 MR. RATLIFF: I think you're unable to
19 structure hearings.

20 COMMISSIONER MOORE: I can't speak for the
21 Chairman, of course, but my sense is that it makes it
22 more difficult -- by looking at the Sutter case, for
23 example, it makes it more difficult to come to complete
24 conclusions or to draw up any kind of conditions that
25 the applicant's going to be willing to live with, and
26 that satisfies our charter under the law, so I just

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1 point out that it makes it tough if you don't have
2 those.

3 MR. RATLIFF: It's the problem that we have
4 had in the past, I would just explain with air quality,
5 inasmuch as it tends to be an issue which complicates
6 the schedule for hearings, because it often trails,
7 sometimes at no fault to anyone, but in this case we
8 never move faster than the District moves. So we
9 foresee at least the likelihood of no final
10 determination of compliance from the District before
11 mid-May, and, therefore, probably no air quality
12 hearing for early June, and we think that's a
13 reasonable expectation. We would like to work on our
14 differences with the applicant in the meantime and try
15 to see if we can negotiate those to something that we
16 can both agree to.

17 COMMISSIONER ROHY: These would be
18 differences in the air quality area, or all areas?

19 MR. RATLIFF: In the air quality area.

20 COMMISSIONER ROHY: Thank you.

21 MS. WHITE: We are are actually working with
22 the applicant to resolve all of the areas that are
23 currently outstanding, but, in particular, air quality
24 has a lot of work yet to be done, where some of the
25 other areas, they're not as difficult to address
26 working out the minutia and coming to conclusion and

1 closure on this topic, but air quality seems to be very
2 difficult.

3 MS. GEFTER: What Mr. Ratliff just indicated
4 is that you would not expect an air quality hearing
5 until mid-June and, of course, with the schedule --

6 MR. RATLIFF: Well, I said early June.

7 MS. GEFTER: Early June.

8 MR. RATLIFF: At the earliest.

9 MS. GEFTER: At the earliest.

10 MR. RATLIFF: It really depends on how
11 quickly does its final compliance.

12 MS. GEFTER: What happens with the release
13 of the PMPD on June 14th, which is what the schedule
14 now proposes? How does that happen?

15 MR. RATLIFF: Well, I think it means if you
16 need more time to write the decision, you have to slip
17 the day. Obviously, if you hold the other hearings
18 first, you can get a lot of work on your preliminary
19 decision and advance to the final hearing. That's an
20 option that you have, but if you don't do that, then
21 you're going to be confronted with a whole bunch of
22 hearings in June, and you're going to have to write the
23 whole thing at the close of the last hearing, which is
24 a lot of work all at once.

25 I'll go on to the other issues. The other
26 issue that we have conflict with the applicant on is in

1 the area of visual resources, and we, in the staff
2 assessment, determined that to be a significant impact
3 in terms of the California Environmental Quality Act.
4 The applicant has, since that time at workshops,
5 produced a mitigation package, which makes a number of
6 measures which attempt to address the terms staff
7 raised in staff assessment. We're right now evaluating
8 whether that would mitigate less than significant, and
9 if it does, then that issue would not, in our view,
10 need to be adjudicated.

11 COMMISSIONER ROHY: Do you have any
12 anticipated time on when you might have resolution on
13 that?

14 MR. RATLIFF: I would guess in the next week
15 or two we'd be able to say.

16 COMMISSIONER ROHY: So that is a short-term
17 issue?

18 MR. RATLIFF: There are other issues that
19 staff detailed in its prehearing conference statement
20 that we do not have a conflict with any other party on,
21 to our knowledge, but which we think have aspects which
22 really prevent them from being really ready to go to
23 hearing.

24 And one such hearing -- if I could just go
25 through those quickly -- one area is land use where we
26 are still trying to determine what conditions should be

1 imposed for the linear -- the ancillary linear
2 facilities to the project, the pipeline, the gas, the
3 water line, the gas pipeline, the transmission line.
4 These facilities go largely through Pittsburg, but they
5 also go through Antioch, and at least in one occasion
6 through the County of Contra Costa's land. Those
7 counties would ordinarily have use permit authority for
8 those facilities. We want to incorporate into our
9 permit the local government requirements that local
10 governments would normally require through their
11 process, so it's taken and subsumed in our own process,
12 and we're currently working with those local
13 governments to make sure we have what we need to put
14 those in the permit requirements. That is probably the
15 biggest problem that we have with land use.

16 The other issue in that area is one that I
17 think has been discussed a little bit already, and that
18 is the issue of one area where there is a conformity
19 problem, and that is a zoning conformity issue
20 concerning the height location in the industrial zone.
21 The City will assume that height. In our view, that
22 should be resolved by the City through the process by
23 which they address this issue and this variance, and
24 that is what the City and the applicant have indicated
25 their intent to do.

26 In terms of other issues, in transportation,
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1 City of Antioch raised issues over alternatives to the
2 proposed truck route. We're looking into that issue.
3 They've also raised the issue of construction effects
4 in those sections in the City of Antioch. We want to
5 look into those issues, so those things need to be
6 resolved. These were recently made comments, but we
7 need to catch that in our analysis. If I can respond
8 to that, that has a little bit of a crossover, so that
9 area will also be addressing those issues.

10 Then the issue of transmission system
11 engineering. I really don't know what to say. The ISO
12 is in the process of inventing itself right now, and
13 we're trying to decide how that process will agree with
14 our own. Our intent right now is to incorporate
15 conditions which would capture the requirements of the
16 other agencies, such as the Independent System Operator
17 so that we could proceed with those kinds of
18 conditions, despite the fact that we won't have -- at
19 least until May -- we won't have the detailed facility
20 study, which will actually be good, 'cause I understand
21 the document -- correct me if I'm wrong -- indicates
22 what possible reinforcements might be needed of the
23 system.

24 MS. WHITE: But that is for congestion
25 management, and there is a particular technical
26 distinction between upgrades required for reliability

1 and those required for congestion management, and at
2 this point it is very possible that all of the
3 system-related impacts for congestion may be mitigated
4 by other means, not necessarily downstream upgrades,
5 and so there's a tremendous amount of uncertainty
6 associated with identifying those downstream upgrades,
7 and there is the issue of timing on when those
8 upgrades, if any, would be required. So I just refer
9 you to the Status Report Number 5 that we issued and
10 staff's recommendations there.

11 MR. RATLIFF: Staff has recommended that, on
12 the issue of the environmental analysis of downstream
13 upgrades, that it is not possible at this time to do
14 other than speculate on what those would be, and we
15 would let that analysis be performed by the licensing
16 agency when it occurs, because right now we don't know
17 what that would be, and we don't think we would be able
18 to know in the time frame of this case for the reasons
19 we set forth in our Status Paper Number 5.

20 The one other area I think where we still
21 have some work to do is the area of water resources
22 where we're trying to determine -- we understand --
23 we've been told both by Delta Diablo and the applicant
24 that the discharge from this facility will not impact
25 surface waters. We want to confirm that it has to do
26 with the concentration of constituents that are in the

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1 water after it has gone through the facility. Because
2 of evaporation, those constituents will be more
3 concentrated in the discharge, and we want to confirm
4 that greater concentration does not violate any of the
5 water quality standards. So that, I think, is a
6 short-term issue that should be resolved in the near
7 future. So I don't -- unless we find it contrary, I
8 would not expect that to be an issue on which we would
9 hear anymore about.

10 COMMISSIONER ROHY: Is that the end of your
11 comments?

12 MR. RATLIFF: That really summarizes all of
13 our comments.

14 COMMISSIONER ROHY: Thank you.

15 MS. GEFTER: Unless there are questions of
16 staff's presentation, we're going to take a break so
17 the reporter can rest.

18 Okay. Let's take a five-minute break.

19 COMMISSIONER ROHY: Okay. We'll resume at
20 15 minutes after the hour.

21 (Whereupon, a break was taken.)

22 MS. GEFTER: We're now back on the record,
23 and we're going to proceed with asking the intervenors
24 to come forward and address the issues that they
25 believe should be adjudicated.

26 We can start with the City of Antioch, if
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1 that representative is here.

2 Thank you.

3 MR. RAMSEY: Thank you. My name is
4 Mike Ramsey, the City Manager with the City of Antioch.

5 This project is one that has certainly been
6 an education for the staff and the City of Antioch, and
7 I don't know whether we should be happy or unhappy that
8 these projects don't come along more often.

9 Back in June of last year we received the
10 first binder that literally was the thickest binder --
11 I didn't know they made binders that big. My heart
12 goes out to any of you that have to do these on a
13 regular basis.

14 We began digging through that information,
15 thinking that we would probably be up to the task of
16 analyzing that information. After all, it dealt with
17 issues that are fairly common in our city, water and
18 air and health and traffic, and so forth, and for a
19 while we were feeling pretty good about that. I must
20 say that, however, that we also were taking -- we were
21 encouraged in the fact that there was going to be a
22 preliminary staff analysis that was going to tell us
23 fairly early in the process whether or not we were even
24 near the right track, let alone on it. Later it became
25 aware that that wasn't going to happen, and we were
26 moving forward to the final staff analysis.

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1 Somewhere in between those we came to the
2 realization that we needed some help, and so in order
3 to allow us to do a better job of assessing this
4 project, we contracted with Westbrook Environmental,
5 Inc. to take a look at the project and lend some
6 expertise in helping do our review. James Westbrook,
7 one of the principals of that company, is here tonight,
8 and we are going to ask him to address the issues that
9 have been identified with their assistance so that
10 hopefully we can give you a clearer picture of where we
11 are in this. I'm sure you don't want to hear us
12 stumble through this, so we will abbreviate this by
13 having somebody who has been through this before.

14 I do want to emphasize that the information
15 that's in the report has been reviewed very thoroughly
16 by the City. It is the City's viewpoint, and while we
17 have a consultant helping us to express that, we have a
18 number of staff members here this evening to address
19 questions, comments, whatever we can provide, to help
20 you better understand what our concerns are.

21 A number of interests have been identified
22 in this preliminary information, and I want to be -- I
23 want to be very clear tonight, since I received a
24 number of phone calls from folks about this, but the
25 fact that the City of Antioch has filed intervenor
26 status, and the fact that we have identified a number

1 of interests -- some are issues and some are
2 concerns -- does not in any way mean that the City of
3 Antioch is opposed to this project. Some have
4 interpreted it that way, and that is not accurate. We
5 simply are looking for more information that we
6 currently have available to us, and that's why we have
7 raised these issues and felt that filing for intervenor
8 status was probably the very best way to allow us to do
9 that. And so I would comment for all those who might
10 be in the audience, or those that are connected with
11 the media wondering about why we're here and why we
12 raised a number of issues, please don't misinterpret
13 that, that we oppose the project. We certainly have a
14 lot of curiosities, and in terms of our responsibility
15 to our residents, we certainly need to take a close
16 look at this project.

17 Having done so, we're optimistic that the
18 interests that we have identified, the issues that we
19 have raised, can probably be addressed through meetings
20 yet to take place between ourselves and the applicant,
21 and we our hopeful we can do that and resolve most, if
22 not all, of these before this goes to the evidentiary
23 hearings. In the event that we're unsuccessful,
24 obviously we'd want to pursue that through that course,
25 but I don't think we've yet exhausted the opportunities
26 we have to examine those issues.

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1 I'd like at this time turn our time over to
2 James Westbrook, who is the consultant we used to help
3 prepare the report, and if James needs any additional
4 assistance, Joe Brandt, our public works director and
5 city engineer, is here as our project director and a
6 number of other staff who can help answer any questions
7 you or others might have.

8 COMMISSIONER MOORE: Mr. City Manager,
9 before you go down, I have a couple of questions for
10 you.

11 Does your council plan to take a position,
12 even if it's only symbolic, in the end for or against
13 this project? Will it appear on their agenda?

14 MR. RAMSEY: I suspect it will. There is a
15 public hearing on this before our council on
16 April 13th, and at that time both Enron and Calpine
17 will be making presentations to our council to help
18 them better understand the project.

19 COMMISSIONER MOORE: Do any of your council
20 members or your mayor sit on any regional bodies like
21 the Air Quality Management District?

22 MR. RAMSEY: Our mayor sits as a board
23 member of Delta Diablo Sanitation District.

24 COMMISSIONER MOORE: Who's your --

25 MR. RAMSEY: We also have council members
26 who sit on the Contra Costa County Transportation

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1 District.

2 COMMISSIONER MOORE: And who is your
3 supervisor for the district?

4 MR. RAMSEY: Joe Canciamilla is the
5 supervisor for our district.

6 MS. GEFTER: And Supervisor Canciamilla,
7 does he --

8 MR. RAMSEY: He also sits on the board for.

9 COMMISSIONER MOORE: -- sit on the air
10 quality board?

11 MR. RAMSEY: I'm not sure about the air
12 quality board. There may be someone from the county
13 that could address that.

14 COMMISSIONER MOORE: But he does not.

15 MR. RAMSEY: But he does sit on the
16 Delta Diablo board, and he is on the Contra Costa
17 County Transportation board.

18 COMMISSIONER MOORE: In a very general
19 sense, how does your council participate in regional
20 decisions? I mean, this is the reason cogs were set up
21 in the first place to try and adjudicate or really plan
22 for cross-jurisdictional boundary issues, which this
23 clearly has the potential to exhibit, and so let me ask
24 you in the most general way, how do you participate or
25 get information or affect regional decisions?

26 MR. RAMSEY: I'd have to say that depends on
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1 the issue. If it's a transportation issue, then
2 certainly we're well represented, and we participate to
3 a great extent with the Contra Costa Transportation
4 Authority and other transportation agencies. If it's a
5 water issue, then we also have representation, as I
6 said, on the Delta Diablo Sanitation District. If it's
7 an issue, for example, sharing resources, which is a
8 new one that we're beginning to get into, we have
9 formed a subregional group with representatives from
10 the County of Contra Costa and cities of Oakley,
11 Pittsburg, Antioch, Brentwood, that began delving into
12 those new areas, and there is no formal mechanism for
13 doing that.

14 COMMISSIONER MOORE: So there's no common
15 planning authority. You don't have a
16 cross-jurisdictional planning group that meets every
17 couple months to discuss jurisdictional boundary issues
18 other than through LAFCO?

19 MR. RAMSEY: No.

20 COMMISSIONER MOORE: Do any of your members
21 sit on LAFCO?

22 MR. RAMSEY: No.

23 COMMISSIONER MOORE: Right now if you had an
24 air quality issue that was really burning in your city,
25 would you typically choose to be represented at the Air
26 Quality District? Do you seek representation there or

1 make presentations there when there's something of
2 issue?

3 MR. RAMSEY: If there were an issue that we
4 were very adamant about, we probably would seek
5 representation at that board, and I'll turn to my city
6 attorney who has much more history with the city than I
7 do, but I can't recall issues like that that have come
8 up in the recent past.

9 COMMISSIONER MOORE: Before you do that let
10 me just say -- and the answer was, no.

11 MR. RAMSEY: The answer was, no.

12 COMMISSIONER MOORE: He was shaking his
13 head, no.

14 Before you do that, let's say that in the
15 process of these hearings you determine that the
16 conclusions that are drawn in the public record are not
17 to your satisfaction regarding air quality, would you
18 plan to attend and make comment or seek a decision that
19 you felt was more favorable to you at the Air Quality
20 District prior to them making a decision such as the
21 one Ms. White was referring to earlier?

22 MR. RAMSEY: Recognizing that that's a very
23 broad question to try to answer, I would have to say it
24 would depend upon the intensiveness with which we
25 disagreed with whatever those findings are. If it's
26 something that we really believe would adversely impact

1 the health and safety of our community, then, yes, we
2 would. If it's an issue that perhaps we share a
3 different point of view, that it's not one that goes to
4 that extent, I suspect we would abide by whatever the
5 decisions of this group are.

6 COMMISSIONER MOORE: Thank you.

7 MR. WESTBROOK: Thank you, Mr. Ramsey.

8 What I'd like to do is go through --

9 COMMISSIONER MOORE: Introduce yourself for
10 the record.

11 MR. WESTBROOK: Sorry. I'm James Westbrook,
12 Westbrook Environmental Consulting, working on behalf
13 of the City of Antioch.

14 I've had the opportunity to go over some in
15 depth review on the staff report and also had the
16 opportunity to look at the application for
17 certification and bring to bear some of the technical
18 expertise that I have and colleagues on my team to this
19 process.

20 What I'd like --

21 COMMISSIONER MOORE: Who are the colleagues
22 on your team?

23 MR. WESTBROOK: I'm working with two other
24 consultants. One's name is Shirley Rivera, and the
25 other's named Dorothy Rothrock.

26 COMMISSIONER MOORE: And they're specialties

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1 are?

2 MR. WESTBROOK: Their specialties are
3 working with the CEC process, air quality, utility
4 issues, power plant siting issues.

5 COMMISSIONER MOORE: And your background is?

6 MR. WESTBROOK: My background's primarily in
7 air quality as well as environmental issues. I've
8 worked on a number of CEQA cases and certainly a very
9 extensive background in modeling, air modeling, risk
10 assessment issues and so forth.

11 COMMISSIONER MOORE: Thank you.

12 MR. WESTBROOK: Okay.

13 What I'd like to do is just briefly
14 summarize, I guess, sort of the topic areas where there
15 are some issues of concerns, and those areas are
16 primarily in air quality impacts. There are some
17 issues with land use and construction that could occur
18 with the city of Antioch. There are some water quality
19 issues that are of some concern to the city of Antioch,
20 and there also are some socioeconomic issues or
21 concerns that have been raised by the City of Antioch.
22 What I can do is go through with some more detail, if
23 you'd like, on individual issues on each of those
24 areas.

25 Within the area of air quality and public
26 health, there is some crossover. One of the concerns

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1 raised by the City of Antioch, which goes to a need for
2 more analysis, is in the cumulative air quality
3 impacts. In that respect, the City of Antioch has
4 found that there needs to be more work done to
5 characterize cumulative air quality impacts in
6 Pittsburg and Antioch. Basically the need there is to
7 understand the increase -- the importance of an
8 increase in emissions for impacts within the area. You
9 need to really understand what is the current air
10 quality in the area, and so there has been a study
11 proposed by staff to address PG&E, I believe, and Delta
12 Energy facility, but the City of Antioch wants to see
13 more of a conclusion of what those resources are.

14 COMMISSIONER MOORE: Are you suggesting that
15 the baseline data is inadequate?

16 MR. WESTBROOK: Excuse me?

17 COMMISSIONER MOORE: The baseline data is
18 inadequate. Is that what you're saying?

19 MR. WESTBROOK: The City of Antioch would
20 say, yes, there needs to be more analysis in that area,
21 that the modeling study which is proposed for criteria
22 pollutants actually be extended to more sources like
23 Dow Chemical, U.S.S. Posco, because these are
24 facilities local to the power plant, and also near
25 Antioch you have a very local impact, minor quality --
26 cumulative impact.

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1 MS. WHITE: Excuse me. So you're suggesting
2 that we break down the background?

3 COMMISSIONER ROHY: Could you use the
4 microphone, please?

5 MS. WHITE: Lorraine White.

6 MR. WESTBROOK: That's correct. The fact
7 that staff has plans to add in PG&E, and Delta Energy
8 says that there are potentially local background
9 sources as well as the more distant background which
10 would be shown by monitors, that could be included in
11 the study. So there are other sources which are
12 concerned with stacks that may not be so high as to
13 allow more dispersion of air pollutants, like the Dow
14 facility. That should be included in that cumulative
15 analysis criteria.

16 MS. WHITE: Okay. The staff's current
17 proposal is to only include the incremental increase in
18 operation of the Pittsburg and Contra Costa facilities,
19 not to actually break down their entire distribution
20 from the background, but just to deal with the
21 anticipated additional capacity factor contribution to
22 increased air quality impacts.

23 MR. WESTBROOK: I understand there may be
24 some conflict on this issue. We would point to the
25 furthest issue to a later time to --

26 COMMISSIONER ROHY: We're not here to

1 adjudicate it.

2 MS. WHITE: Right.

3 MR. WESTBROOK: Right. And along with that
4 there is a consistency issue with the public health
5 aspect of this where the cumulative impacts of health
6 risk have not been looked at in the same way the
7 criteria has been looked at.

8 Also, there are some issues, as far as air
9 quality goes, with visual air quality. That would be
10 the plume visibility, or haze issues, in the area.
11 There would be some issue as to whether or not the
12 reclaimed water being used in cooling towers would be
13 properly disinfected, and the City of Antioch wants to
14 make sure that does occur and would possibly propose
15 some conditions at that time for making that happen.

16 Also, there are -- I guess, there's a
17 request for more clarification on the air quality
18 impacts due to the construction of the air facilities
19 and the pipeline construction because of the proximity
20 of residents to that pipeline. That would be dust
21 emissions, and possibly if there is soil contamination,
22 being sure that there is no soil contamination
23 especially when it comes to metals, and that soil
24 that's being turned over in those trenches, and that's
25 all discussed within the prehearing statement.

26 Again, I think most of these issues are ones
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1 which can be discussed with staff and the applicant,
2 and some resolution can be obtained on what further
3 analysis needs to be for Antioch to have a proper
4 review of these issues and come to a decision as to
5 whether there will significant impacts.

6 There's also some concern about the offsets
7 issue, the fact that the applicant has done a fairly
8 good job of looking at the local offsets and trying to
9 obtain local offsets, but some of the offsets were
10 obtained outside the area, and the interest of the City
11 of Antioch is in preserving the local air quality, so
12 there are some questions as to whether that could have
13 been and can be done better. I guess there can be more
14 local offsets obtained and more strategies brought to
15 bear in mitigating this local increase in quality by
16 decreasing other local sources of air quality.

17 In the area of construction impacts and land
18 use, which would really mean the gas pipeline area,
19 there are a couple things that were raised. During the
20 workshops we talked about, there was an intersection,
21 Somersville and Buchanan, where the ground would be
22 torn up, and there were certain impacts that would
23 concern the City of Antioch. I believe that there
24 were -- there was a resolution actually that there
25 would be some conditions possibly, some work that the
26 staff would do to make sure that those impacts would be

1 mitigated.

2 There was also concern about schedule of
3 those construction activities in that area because of
4 the retail center, and I believe that the applicant
5 responded favorably to the fact that that would not
6 interrupt any holiday activities, and so I believe at
7 this time that that is an issue which has probably been
8 resolved. We'll wait for the supplemental testimony
9 and conditions to be sure of that.

10 On the March 4th letter, which I believe
11 staff had promised to respond to by -- is it
12 April 12th?

13 MS. WHITE: You mean the March 4th letter
14 about the --

15 MR. WESTBROOK: From the City of Antioch.

16 MS. WHITE: -- regarding the land use
17 issues --

18 MR. WESTBROOK: Right.

19 MS. WHITE: -- the pipeline primarily?

20 MS. WHITE: Yes. We had a conference call
21 today with the City on transportation. As far as we
22 know, we can respond with supplemental testimony.

23 MR. WESTBROOK: Did any of you want to
24 comment on that letter at this point? Okay.

25 Then the last issue was the need for the
26 request for there to be road repair, basically. Once

1 that construction intersection is done, to bring it
2 back to where it was before, since there has been
3 recent construction in that area, to basically bring it
4 up to that certain level.

5 The next set of issues have to do with water
6 quality, and I'm probably not the best person to talk
7 about these, being an air quality person, so what I'd
8 like to do is have -- just to summarize quickly where
9 these issues are and have Joe Brandt come up and talk a
10 little bit more about, specifically, those concerns.

11 In the area of water quality, we're talking
12 about the use of the reclaimed water in the
13 Delta Diablo plant. The two main areas, and there may
14 be some even more detail that can be provided by
15 Joe Brandt.

16 One area is, of course it's been mentioned
17 already, is concern that the effluent concentration
18 might increase and what the impact might be on the
19 aquatic life along the New York Slough, the effect of
20 water life as well as the fact that there is an
21 intake -- the city of Antioch has a water intake just
22 downstream -- downstream-upstream depending on the
23 tide -- from the area, and there's concern about
24 impact, regardless of concentrations from that water,
25 what impact that might have on the water being taken in
26 and used by the city of Antioch.

1 And also there was an issue raised by the
2 Antioch City Council as to whether there would be
3 scaling problems with the cooling towers, which would
4 lead to water not being used -- reclaimed water not
5 being used from that Delta Diablo and having to rely on
6 the potable water in the area which could also affect
7 water supply reliability.

8 I don't know if that's everything.

9 Do you want to speak more on these issues?
10 That covers it? Great.

11 Lastly, there were a couple of issues raised
12 that were concerns about socioeconomic impacts.
13 Antioch, being next to Pittsburg, does share a lot of
14 the common socioeconomic issues. That was raised in
15 staff's assessment. What the City of Antioch wants
16 more discussion on, more analysis on, is the effect of
17 the alliance agreement that is currently between the
18 City of Pittsburg and Enron, some of the tax issues
19 that might be involved in the introduction of this
20 power plant to the area, and just really more of a
21 cumulative or collective analysis of the -- looking not
22 just at the whole county maybe, but also specifically
23 Antioch, where Enron's interests -- protecting those
24 interests, take a look at those further.

25 I guess at this time, I'd invite questions
26 you might have of myself.

1 COMMISSIONER MOORE: Yeah. I have a couple.
2 Do you have any baseline socioeconomic data
3 right now? Is there a regional economic baseline that
4 you use for your own environmental analyses that affect
5 the city?

6 MR. WESTBROOK: No.

7 COMMISSIONER MOORE: Has there ever been a
8 master EIR that you're aware of that the City has
9 compiled that addressed or went over regional or
10 subregional issues?

11 MR. WESTBROOK: I'm not aware of that.

12 Are any of you aware of that?

13 COMMISSIONER MOORE: So as far as you know,
14 that kind of baseline data doesn't preexist that you
15 would be comparing this document to?

16 And so if I were to sum up the first part of
17 your comments, what I would understand is that right
18 now you don't really have criticism of the analysis.
19 What you have are a number of questions that you want
20 to make sure get answered in order to prime your
21 client, the City fathers, in this case, so that they
22 can make a reasonable decision at their hearing?

23 MR. WESTBROOK: That's correct. There is a
24 need for more analysis in many of these cases where we
25 can work together and look at these issues more
26 closely.

1 COMMISSIONER MOORE: And you can time that
2 hearing -- I guess, this is more addressed to the city
3 manager -- you'd time that hearing to follow the final
4 staff assessment or to follow -- would you wait until
5 the Presiding Member's proposed decision is out?

6 MR. RAMSEY: We would see two things
7 happening. First of all, a general informational
8 hearing that will occur on the 13th. We would ask the
9 council to reserve their final decision until you have
10 made your final determination.

11 COMMISSIONER ROHY: Are we clear, the 13th
12 of April?

13 MR. RAMSEY: I'm sorry. The 13th of April
14 will be a public hearing, which will be more of an
15 informational item to the city council.

16 COMMISSIONER MOORE: Thank you.

17 MS. GEFTER: Are there any other questions
18 for the City of Antioch?

19 All right. Let's move on to another
20 intervenor. The Delta Energy Center has filed comments
21 as well on the hearing conference.

22 Would you like to come forward?

23 MR. BUCHANAN: Thank you. My name is
24 Doug Buchanan, and I'm the Developmental Manager for
25 the Delta Energy Center. My comments are specific to
26 the staff assessment that came out on March 11th and

1 our filing last week with comments to that. Again,
2 specific to the words and motions inside the staff
3 assessment.

4 As the previous speakers have noted, we have
5 two issues. One's with air quality. The other is
6 water resources in the fact that the cumulative
7 analysis had not been performed as part of the staff
8 assessment, and those are still to be forthcoming.

9 Air issues, of course, and the cumulative
10 impacts of both projects are of interest and important
11 to us, either through actions that we may have to take
12 on our own behalf, and the same apply for water
13 resources. We are sharing the Delta Diablo effluent.
14 So we are simply wishing to go on record as indicating
15 that we would like to preserve a spot to make comments
16 and to potentially raise additional issues based on the
17 results of staff's cumulative analysis on those two
18 topics.

19 We had two additional points in our
20 preconference filing, and as was mentioned earlier, on
21 the issue of the transmission system engineering, and
22 what we perceived as incongruous, or potentially
23 conflicting statements in the FSA with regards to
24 relying on Cal ISO's determination based on a detailed
25 facility study and the fact that a detailed facility
26 study will not be complete in accordance with the

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1 schedule that's been set forth. Again, we don't know
2 that there's an issue there. We're not sure there's a
3 problem. It's what we believed to be a loose end in
4 the staff assessment, and it was addressed earlier.

5 The last item is in regards to land use, and
6 I think I'm going to -- we want to characterize this as
7 probably just an incomplete understanding, and that has
8 to do with the Eighth Street Corridor, which both
9 projects are proposing to use for undergrounding
10 transmission to reach the Pittsburg substation, and
11 given the sequence of events as to when the Delta
12 proponents met with the City and did our detailed
13 facility study, we have indicated in our filing that we
14 did not believe there to be a preferential use with
15 that issue or that corridor. We believe it is probably
16 not an issue in our regard in that the City has asked
17 us to work together on that.

18 The only other point, and I think this is a
19 protocol issue with the staff potentially, was that the
20 staff had basically deferred to the City of Pittsburg
21 in terms of addressing the issue, and we would just
22 like to see it come to closure based on conversations
23 we've had with the City in our offer to work with both
24 the PDEF and the City to make it a low impact, high
25 value outcome.

26 That's it.

1 COMMISSIONER MOORE: I have a couple of
2 questions, if I may.

3 I missed the point on the underground
4 utilities where you said you're working with the City.
5 Does that mean you're working with the City, and you've
6 got their confidence and perhaps this group doesn't?

7 MR. BUCHANAN: No. The sequence of events
8 stated in our preconference filing, the original
9 proposal by the PDEF was 150 KB overhead in lieu of the
10 Columbia tap. When we embarked upon this process in
11 September and filed our DFS on September 10th we
12 proposed undergrounding through Eighth Street Corridor.
13 That was followed by a series of meetings with both the
14 City, our prefiling informational hearing with the
15 staff in October, a commitment to the City to help them
16 with making this a greenbelt, which is what they desire
17 to do, and that occurred through November.

18 In December -- we became aware on
19 December 11th, I guess it was, with a supplemental
20 filing by PDEF that they intended to also use the
21 corridor for undergrounding, and we filed our AFC a
22 week after that. All I'm suggesting here is that we
23 look at this as an opportunity to work together to make
24 it happen.

25 COMMISSIONER MOORE: So no problems. I
26 mean, try to dig a deeper trench, a little wider

1 trench. You could probably coexist with them.

2 MR. BUCHANAN: More trees, right.

3 Absolutely. We see it as an opportunity. What our
4 issue was with the language with the staff assessment.
5 We'd like to see that be a little bit more descriptive
6 of what we believe the City and Enron, you know, the
7 PDEF, and Delta plan to do.

8 COMMISSIONER MOORE: Let me take you back to
9 your first point. You're not suggesting that we call
10 time out with this applicant in order to do a more
11 comprehensive air quality or water quality study, are
12 you?

13 MR. BUCHANAN: You called it a "time out."

14 COMMISSIONER MOORE: In order to let the
15 study demands catch up, in order to do a broader, more
16 cumulative, more comprehensive study. That's not what
17 you're suggesting, is it?

18 MR. BUCHANAN: What I'm suggesting is, I
19 believe there remains an obligation on the fact that
20 the staff of this Commission to perform the cumulative
21 analysis that will directly impact another project
22 that's in the process.

23 COMMISSIONER MOORE: And, of course, that's
24 on our minds as well. It's how to get there is the
25 difficulty.

26 Would your client be willing to participate

1 in a cumulative study up front before the demand was
2 even there, or to have a comprehensive study available
3 at such time as the filing?

4 MR. BUCHANAN: In our October 14th prefiling
5 conference we made that offer. That offer was deferred
6 by staff in that they desired to perform their own
7 cumulative analysis as opposed to having ourselves do
8 it. So we're prepared and ready to do a cumulative,
9 either directly or participate with staff, doing that.

10 COMMISSIONER MOORE: Staff sent you a letter
11 saying that?

12 MR. BUCHANAN: No, sir. That was a
13 discussion.

14 COMMISSIONER MOORE: So that was an oral
15 comment that was made to you, "We prefer to do our own
16 cumulative impact study. Thank you very much."

17 MR. BUCHANAN: I believe I'm representing it
18 correctly, yes.

19 COMMISSIONER MOORE: Thank you.

20 MR. RATLIFF: Commissioner, I'd just like to
21 add that the staff assessment does not include what I
22 would call the local cumulative impact analysis. There
23 is nothing but a placeholder statement about the
24 analysis in the publication, so I think that what the
25 comment that you're hearing from both the City of
26 Antioch and from Delta has to do with the fact that we

1 have simply not addressed that issue yet, but have
2 always intended to address it and will address it.

3 What I would describe the local cumulative
4 air quality impact analysis to be is an analysis which
5 looks at the effect of local emission sources and
6 whether those sources joined together might have a
7 local impact in a cumulative sense that one of them
8 would not have. The more local analysis that we do is
9 to look at compliance with the Air District's standards
10 and the requisite amount of offsets that are required.
11 That is a different analysis that we did, or I should
12 say as well, but both of those things have not been
13 completed at this date.

14 COMMISSIONER ROHY: Is the local cumulative
15 analysis on the way at this point?

16 MS. WHITE: Yes.

17 MR. RATLIFF: Yes.

18 COMMISSIONER ROHY: And what is the
19 anticipated completion time of that part of the
20 project?

21 MS. WHITE: We're doing what we can to meet
22 the April 12th date. It's very tight.

23 COMMISSIONER ROHY: That is your target date
24 at this time?

25 MS. WHITE: To try and get something done,
26 but it's very optimistic to have it all wrapped up by

1 then. We're attempting to do so.

2 MR. RATLIFF: We need to talk with Antioch
3 as well, because they have some concerns about the way
4 we're doing that analysis.

5 COMMISSIONER MOORE: Well, clearly, but as
6 this gentleman has just indicated -- I mean, you hate
7 being second and you hate even worse being third in a
8 situation where the cumulative impact analysis may
9 preclude you from doing something later on. You'd like
10 to be first, and in the sense of good public policy,
11 you'd like to know or have a good estimate of those
12 right up front, which is the point, at least in part.

13 Thank you.

14 MS. GEFTER: With respect to the local
15 cumulative impact analysis that staff is doing on air,
16 do you need to have the FDOC issued before you can do
17 that analysis?

18 MR. RATLIFF: I don't think so.

19 MS. WHITE: No.

20 MR. RATLIFF: Because that's not what the
21 District looks at. They're looking at the regional
22 impact, and we're looking beyond that at the local
23 impact, and that's a different thing that we do.

24 MS. GEFTER: The time line at this point
25 would be April 12th, the date for staff testimony.

26 MS. WHITE: We're trying to get information

1 on the cumulative impact analysis done by April the
2 12th. The analysis, we're still running the models and
3 things like that. It's a far more rigorous effort than
4 simply just jotting some numbers on the back of an
5 envelope.

6 MS. GEFTER: Is staff then planning to hold
7 workshops with the other intervenors on this?

8 MS. WHITE: Yes.

9 MS. GEFTER: Have they been scheduled
10 already?

11 MS. WHITE: No. Because I need to know
12 where we were. I mean, it would be unreasonable to
13 schedule a workshop without knowing everything.

14 MS. GEFTER: Will you conduct workshops
15 before April 12th?

16 MS. WHITE: No. No. They wouldn't be held
17 before April 12th. We might be able to publish the
18 information by April 12th, and subsequent to that we'd
19 have the workshops to discuss the issue, but at this
20 point in time, I'm just saying we're optimistically
21 hoping to get that information out by April 12th.

22 COMMISSIONER ROHY: Assuming that come
23 April 8th or 9th or 10th that you think you're going to
24 make the 12th, is it possible to schedule those
25 workshops, or do you have to wait until the 12th and
26 then schedule them?

1 MS. WHITE: No. We'll do it as early as
2 possible, but keeping in mind, too, we want to have an
3 opportunity to read the material and adjust it and come
4 ready to actually workshop.

5 COMMISSIONER ROHY: At least read the
6 material?

7 MS. WHITE: We'd like that.

8 COMMISSIONER ROHY: Digestion may be a
9 second issue.

10 MS. GEFTER: Are there any other questions
11 for Delta Energy Center?

12 We'll move on to our next intervenor. I was
13 going to ask CURE to please come up.

14 MS. POOLE: Thank you. My name, again, is
15 Kate Poole. Let me first say that staff has done a
16 terrific job, since the staff assessment came out of
17 holding workshops and getting the parties and the
18 public together to resolve issues, and I think you're
19 hearing many fewer issues today than you may have if
20 they hadn't done such a good job.

21 We don't anticipate seeking adjudication in
22 any area. We did raise the same scheduling concern
23 about air quality that you're hearing from several
24 parties, and we do anticipate sponsoring a witness in
25 socioeconomics, although I don't think that that
26 testimony will be at odds with applicant or staff.

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1 That's all I have.

2 COMMISSIONER MOORE: Kate, do you know who
3 that witness will be?

4 MS. POOLE: We think it will be Greg Feere,
5 who's the CEO of the Contra Costa Building and
6 Construction Trades Council.

7 MS. GEFTER: And the comments that CURE had
8 filed previously regarding the Cal ISO's determination
9 regarding transmission system reliability and
10 congestion, are you then withdrawing those comments?

11 MS. POOLE: Oh, no. Our comments stand.
12 The confusion is between transmission system
13 reliability versus congestion impacts and the upgrades
14 required as a result of both of those impacts.

15 We had understood from the ISO's letter -- I
16 believe it's dated March 4th -- that the reliability
17 impacts of this project would overload 17 different
18 facilities. At a workshop that was held recently, it
19 became clear that those 17 facilities were actually
20 being impacted by congestion impacts, and that there
21 are no reliability impacts from this project according
22 to the ISO. So we were concerned that the reliability
23 impacts be addressed now, and there aren't any
24 reliability impacts to address now.

25 Congestion, we think is different in this
26 case because of the ISO's outstanding decisions that

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1 need to be made on how they're going to mitigate
2 congestion impacts.

3 MS. GEFTER: Are there any other questions
4 for CURE?

5 COMMISSIONER ROHY: Thank you.

6 MS. GEFTER: Thank you.

7 And then we also have Paulette Lagana from
8 CAP-IT.

9 Please come forward. Thank you.

10 MS. LAGANA: Members of the CEC, staff,
11 Enron, and the general public, my name is
12 Paulette Lagana. I represent CAP-IT, which is
13 Community Abatement of Pollution and Industrial Toxins.
14 We're an environmental education organization here in
15 the city of Pittsburg and Antioch and unincorporated
16 Bay Point. I'm also a seven-year resident of
17 Pittsburg.

18 We do intend to cross-examine. We do not
19 anticipate witnesses at this time. I can agree with
20 much of the comment that has gone before me in terms of
21 more analysis is needed, especially in the area of air
22 and air quality. It is disappointing that the
23 Air Board did not choose to represent itself the other
24 day at the informational hearing, nor tonight, as the
25 Air Board has a vital role in this project and the
26 projects that are about to come on board, not just of

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1 the PDEF, but also, of course, Calpine.

2 It is particularly disappointing because of
3 the fact that the analysis that was taken by the PDEF
4 and was mentioned in the staff analysis, was based on
5 two air monitoring stations, one in Bethel Island,
6 which has both a toxin and a criteria pollution stats,
7 as well as Pittsburg, which has simply criteria
8 pollutant stats. The reason there wasn't any in
9 Antioch is because the Antioch air monitoring station,
10 according to the Air Board, went under water and had to
11 be moved to Bethel Island. Well, if you are aware of
12 where you are presently, the air monitoring station in
13 Pittsburg is downwind of us. It's in West Tenth
14 Street. The Bethel Island one, of course, is -- I'm
15 not sure if they did the exact mileage -- but I'd say
16 ten miles east of this, and to say that based on these
17 two air monitoring stations, you're going to tell me
18 what the appropriate impact on air pollution might be
19 by the emissions of these two new projects, does not
20 make sense. The issue with the position of the air
21 monitoring stations upon which these stats were based
22 cannot give you an accurate picture of what the effects
23 will be.

24 (Brief interruption.)

25 COMMISSIONER ROHY: Please continue.

26 MS. LAGANA: Therefore, I believe that the

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1 baseline study is definitely inadequate.

2 Also, the offsets -- I agree with the City
3 of Antioch. The offsets are gotten outside of the
4 area. Now, Bay Area Quality talks of it as the source
5 area. That means all nine counties. They consider the
6 source area where they can -- where power plants can
7 buy credits, emission reduction credits from anyplace
8 in these nine counties. Nice for them. However, I
9 live here, and we all live here. Residents of
10 Pittsburg live here in the affected area. If they can
11 buy these credits in Oakland or San Jose or anywhere
12 else, it's the effect here, so I think the baseline
13 study is inadequate on two fronts. One is that the
14 monitoring stations, and secondly is that the residents
15 get the full impact.

16 The second area I'd like to discuss is the
17 transmission line. We did -- CAP-IT did write a letter
18 to both -- to the PDEF, the Enron representatives and
19 Calpine as well as the City of Pittsburg, and we did
20 ask regarding the transmission line was that the
21 construction be done at the same time. It is going to
22 be down a residential area on Eighth Street, and it
23 would be a hardship for people to not have that
24 construction done at the same time. I believe they
25 have come to a verbal agreement about that, although I
26 have not seen it in writing, so I don't want to make an

1 assumption, but I understand verbally that that
2 agreement may have been met.

3 Enron is choosing to underground the
4 transmission line down Eighth Street to the tank field.
5 They originally were going to only go to Montezuma, but
6 we had requested that they go further, and they did
7 comply with that. Although it is not all the way to
8 the transmission station at PG&E, which Calpine is
9 doing. We would have preferred it the whole way, and
10 we just wanted to state that it's important for that
11 area because of the fact that Eighth Street, on the
12 north side, towards PG&E now is preparing for a housing
13 project, and so that transmission -- if there was a
14 transmission tower, it would have been affecting the
15 possible socioeconomic impact.

16 Our other concern for the transmission line
17 is that dust may be produced during construction,
18 because it is close to houses. I mean, houses are
19 right there on the street, and so we do have a concern
20 about that.

21 Regarding traffic. We understand through
22 the staff analysis that until the bypass road is
23 readied, Loveridge and Harbor will be one of the ways
24 that truck traffic will be directed, and, again, this
25 may cause -- certainly will cause noise and congestion,
26 and if traffic stops, air pollution increases, so we

1 have concern there.

2 Noise. Regarding the bypass road and the
3 central addition community, I have been asked by those
4 in the central addition to say that they are concerned
5 about noise during construction and, of course,
6 operation through the central addition, as well as air
7 pollution from the truck traffic that will go through
8 their neighborhood, and so the impact of that bypass
9 road on their community is something they have concerns
10 with.

11 And finally, water. The cumulative impact
12 to the Delta is of concern to us and especially the use
13 of effluent water and its cleanliness before it gets to
14 the aquatic life in the Delta.

15 And those are my comments.

16 MS. GEFTER: Thank you.

17 Does anyone have questions? Does staff or
18 the applicant have any questions or comments?

19 Well, I'm sure these issues will be
20 discussed during evidentiary hearings, if not before.

21 MS. LAGANA: Thank you.

22 MS. GEFTER: We don't have any other
23 intervenors. Do we have agency representatives who
24 haven't spoken at this point?

25 We'd like to hear from the public. I know
26 Mr. Glynn is here. Would you like to come forward now?

1 MR. GLYNN: Members of the Commission,
2 staff, and applicant, the reason I'd like to come
3 forward and speak on this issue tonight is I think that
4 there's a couple of things that need to be said with
5 regard to the --

6 COMMISSIONER MOORE: You need to identify
7 yourself for the record.

8 MR. GLYNN: Yes. I'm Bill Glynn. I'm
9 president of the homeowners association, New York
10 Landing. I'm also a member of the Community Advisory
11 Panel for the PDEF, and I'm also a member of the
12 Community Advisory Panel for Dow Chemical Company,
13 which would be involved with the BDEC project.

14 First of all, I'd like to commend both of
15 them for the spirit of cooperation as it comes to the
16 Eighth Street issue, because I think that's going to be
17 a significant impact on the neighborhood, and by them
18 jointly working together for a common purpose with
19 regard to burial of the cable, for whatever distance it
20 turns out to be, I think that's to everybody's benefit.

21 I do want to make a comment on the
22 cumulative effect of the air pollution and emissions,
23 because if you look at this particular basin, starting
24 at General Chemical over on the western side and moving
25 in the direction of Agar clean over to the PG&E plant
26 located over in the Antioch side, there's a significant

1 amount of plants or manufacturing entities that produce
2 emissions. To my knowledge, there is no definitive
3 baseline study of the cumulative effect of those air
4 quality situations that is in existence right now. If
5 it was, it would be based on either a monitoring
6 station in Concord, the previous monitoring station in
7 Antioch, or the one that's located on Tenth Street in
8 Pittsburg, and none of those produce the kind of data
9 that one needs to determine where are we right now.

10 And I also want to point out that we have a
11 significant problem right down the street here with
12 Diablo Services which brings coke on board ship, and
13 that's both a water pollution issue and an air
14 contamination issue that goes on all year round.

15 So I really am interested in that, and as a
16 matter of fact, I went and approached
17 Supervisor DiSonea (phonetic) last August and raised
18 that issue, since he serves on the BAAQMD board, and he
19 referred to me to one of the other people in the board,
20 and they sent me a letter back saying that they would
21 be interested in establishing a monitoring station for
22 particulate emissions somewhere on Posco property, or
23 in Dow, or over on Loveridge Road area in order to
24 ascertain exactly where we are right now, but somebody
25 would have to pay for it, either the City of Pittsburg,
26 or Dow Chemical, or the applicant, or whomever it might

1 be. So they are in favor of that type of study being
2 undertaken.

3 Since then we've had several issues come up
4 by way of air quality. One is the strapping plant over
5 in Bay Point with lead emissions. We've had some
6 issues with PG&E and some of their emergency blow downs
7 since we're deregulated, and they're letting off steam
8 and emissions all night long, and that's a noise
9 pollution item, but I do want to congratulate both of
10 the applicants, both the DEC and the PDEF for taking
11 the time and the trouble to work together as much as
12 possible to mitigate the impact. I think that's
13 important that they cooperate because it is of concern
14 to both the citizens of Pittsburg and the citizens of
15 Antioch, and I understand the position of Antioch
16 because of the fact that they are on the downwind leg.
17 I think it's also important that since PDEF is going
18 first, the City of Antioch has rightly filed for
19 intervenor status. I hope that they're equally as
20 curious when it comes time to file as an intervenor for
21 the Calpine project, because there is a cumulative
22 effect between the two, and I don't know if, in fact,
23 they have done that yet, but I would strongly recommend
24 that they do.

25 I'm also concerned about the water quality
26 issues, and we've discussed that in the last few days

1 in some of the workshops. I'm not comfortable with the
2 concentration of the water after it's been evaporated
3 by going through the evaporator process as determined
4 in either one of these projects on how it's then put
5 into the river in a concentrated form because of the
6 loss of water and the concentration of the chemicals.
7 In the case of the PDEF I specifically asked the
8 question, if it was returned to the plant, and the
9 answer was, yes, and in the case of the DEC, was it
10 going to be returned to the plant for reprocessing
11 before release. Not exactly. It's going to the out
12 fall area, which means it's mixed with whatever they're
13 releasing then and therefore it's still in the
14 concentrated form. So that issue hasn't been resolved.

15 All in all I'm quite comfortable with the
16 whole project. I really would strongly favor that PDEF
17 bury the cable all the way from the Harbor,
18 Eighth Street end clean over to the PG&E yard. It's
19 scheduled to be partially aboveground on the western
20 side right now, and I don't know exactly what the
21 long-term plans for the PG&E plant might be. If you
22 look at the internet, even some of your own situations
23 indicate there is some experimentation going on at the
24 Potrero plant, and since Southern Utilities is working
25 on PG&E, and they have just hired the PG&E manager to
26 work over here, there may very well be some fairly

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1 quick retrofits or some kind of modification of PG&E,
2 which would then end up possibly with those towers
3 being in the middle of no man's land. So I have some
4 concern about that cable being buried all the way.
5 Maybe we'd be doing something less if we put the money
6 into burying the cable.

7 That's my comment. I want to thank
8 everybody involved 'cause I think you're all doing an
9 excellent job. Thank you.

10 MS. GEFTER: Thank you very much. I also
11 understand that Mr. John Garcia is here and would like
12 to make a comment.

13 MR. GARCIA: John Garcia, 33 Berry Drive. I
14 have concerns on that truck bypass route and the
15 construction route. When you said it was going to go
16 down Loveridge, to where? On 14th Street and then to
17 Harbor, or down California to Harbor?

18 MS. GEFTER: The applicant could answer
19 that. Where is your truck route?

20 MR. WEHN: Come off of Route 4. Go down
21 Loveridge. Go east on the Pittsburg-Antioch Highway.
22 Turn right by the ballfield and go around to Harbor.

23 MR. GARCIA: Then -- Is what he's saying
24 then, during the construction that road will be built
25 already?

26 MR. WEHN: Two months after ground breaking

1 it will be finished and all construction traffic will
2 come across that road.

3 MR. GARCIA: This neighborhood is an old
4 neighborhood that's been here for years, and it's just
5 coming up now where new families are moving in with
6 children, and we're on the verge of destroying that
7 neighborhood by putting that truck bypass in. It's
8 going to impact all those homes on the east side
9 because there's going to be no more than 60 -- you
10 might correct this, Sam -- but I think when you took me
11 out on that tour the other day, it was going to be
12 about 60 to 70 feet from the backyards of some of these
13 people. What's going to happen -- and there's
14 mornings, if you're out this way, and the traffic
15 coming from Antioch to Pittsburg, it's backed up all
16 the way into Antioch, all the way into Pittsburg.
17 What's going to happen, these people are going to start
18 using that bypass and zigzagging all through that
19 neighborhood, and I've been told that we're going to
20 use at least 100, maybe 600 trucks when this bypass is
21 done, the power plant's done and they start hauling the
22 coke in at night, during the day, and during the
23 afternoons. What's going to happen, if you're on
24 Highway 4 coming east in the evening, you're backed up
25 all the way to the BART station, so you know that the
26 trucks are not going to go down the freeway. They're

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1 going to go into -- which I call West Pittsburg,
2 because I've been here all my life -- they'll go down
3 West Pittsburg to Tenth Street, then to Harbor to get
4 in there.

5 In the mornings they're not going to go down
6 there because they're not going to go on the old
7 Antioch Highway to catch the bypass. They will, again,
8 get off in West Pittsburg and go down West Pittsburg to
9 Tenth Street to Harbor Street, and what you're doing to
10 a neighborhood there by putting that bypass road in,
11 and I know the City has stated that this should be part
12 of their mitigation, that they want Enron to put in
13 there. I think the mitigation should be that Enron put
14 in a park that's supposed to be going in there at
15 \$1.3 million, which the City does not have the money
16 for. That money would be better spent if that
17 \$1.3 million would be put into a park for that
18 community so the residents and the younger couples that
19 are moving into that area have someplace for their
20 children to play, because this is the neighborhood
21 that's going to be impacted the most. Not only
22 pollution from the factories is there, but by the
23 trucks.

24 And I live off of Buchanan Road. My
25 backyard's on Buchanan Road, and when those diesel
26 trucks come down there, you have to close your patio

1 doors because that diesel comes right into your house.
2 The smoke comes right into your house, and that's
3 what's going to happen in that neighborhood also, and I
4 have a great concern for that because you're going to
5 destroy a very nice neighborhood. If you're ever out
6 there, look at it. It's a very quality neighborhood,
7 and we're on the verge of losing that neighborhood, and
8 by putting that bypass in, that's what's going to
9 happen to that neighborhood, and I would ask you to
10 eliminate that bypass. We don't really need it. That
11 money could be spent elsewhere. The park, for one
12 thing. There's many things that that money could be
13 done in this city of Pittsburgh. We could mitigate some
14 of the pollution by putting some of the extra
15 \$2.7 million toward the bypass from Buchanan Road and
16 put that money into that fund. Instead they
17 borrowed -- the City has borrowed \$2 million from the
18 bypass money that should go above Buchanan Road to put
19 into the flood control for this so that Highway 4 --
20 the old Highway 4 would not flood in the winter. Now
21 what happens if it does flood? I mean this bypass is
22 just a waste of money, and it's going to impact a
23 neighborhood and maybe kill the neighborhood.

24 MS. GEFTER: Let me ask staff whether staff,
25 during the staff assessment workshops was the truck
26 bypass road discussed?

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1 MS. WHITE: We did not discuss it in the
2 staff assessment. It was brought up as a result of
3 comments we received from that assessment in workshops
4 last week. Staff is now looking into that. There was
5 also a comment about analyzing a different batch of
6 alternatives to the truck bypass road. We're looking
7 into that. At this point, we're attempting to get that
8 work done by April 12th, but depending upon the scope
9 of alternatives, we would also be looking at the --
10 staff is endeavoring to get it done by April 12th.

11 MR. GARCIA: The neighborhood is just
12 becoming aware of this bypass. When they spoke about a
13 bypass when Enron first came into the community, we
14 assumed it was going to be the bypass from
15 Loveridge Road, down Third Street, through Posco
16 property, and we know that Posco doesn't want this, but
17 this is the logical place for that bypass road to go,
18 in an industrial area.

19 COMMISSIONER MOORE: If there was one,
20 that's where you'd put it?

21 MR. GARCIA: Exactly, but I don't think that
22 Posco would allow you to do that, but this was what in
23 the old days, we went down Third Street to get to --
24 the old steel mill went down the back of Third Street
25 all the way to Loveridge Road and then over to Antioch,
26 and that was a truck route, and since then Posco has

1 brought coils in from overseas, and they use that
2 roadway. Of course it's their property now, but they
3 use that roadway to haul their coils back and forth to
4 the plant, and I'm sure there'd have to be an overpass
5 put in there to accommodate the roadway there. It
6 would cost probably millions of dollars to do so.

7 But I think not to -- Enron is probably a
8 good project. The only objection I have to it, and the
9 people I'm talking to, and we don't have much time,
10 because some people are talking about they'd like to
11 petition the California Energy Commission about this.
12 The bypass is not needed, and I'm here this evening to
13 speak against it.

14 MS. GEFTER: Has Mr. Martinez -- or
15 Garcia -- I'm sorry -- come to staff workshops to
16 discuss this?

17 MR. GARCIA: If I may, I'd like to answer
18 that. Enron has sent out, and I see Kathy's going to
19 the show results of a survey they sent out, and there's
20 a lot of apathy in this community about what's going to
21 happen and what's not going to, because we've had
22 redevelopment going on for probably 40 years, and we
23 still haven't done anything with the downtown area.
24 I'm also on that committee, and they sent out 800
25 surveys, and I believe they got 40 back. I don't want
26 to lie about it. I think there was two opposed, and

1 maybe -- I'm not sure, 28 for, but five percent is all
2 they got back, and as we talked to different people in
3 the neighborhoods, we're starting to find out. A lot
4 of those people I've known personally all my life, and
5 as we get them on board here and tell them what's going
6 to happen, and they believe that they're going to get a
7 park, and they're all for the park. Now, they'll
8 probably accept the roadway if they have the park, but
9 I don't see the park cutting down the roadway unless
10 they get a grant -- the City gets a grant from
11 somewhere or -- I don't know where the money would come
12 from.

13 Thank you for your time.

14 MS. GEFTER: Thank you very much.

15 Applicant, do you have a comment?

16 MR. THOMPSON: I'm hesitant to start down
17 the list. My understanding of the truck bypass is that
18 it has been very high on the City's wish list for many,
19 many years. Mr. Jeff Kolin I believe will submit
20 testimony and testify, and I can let him talk about the
21 history of the truck bypass. We were asked by the City
22 to consider this in order to get truck traffic out of
23 the downtown area, and we did this at no insubstantial
24 expense to the project without real project benefits.
25 So we are talking, of course, to the people on the
26 committee and other citizens, but the best reading we

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1 have from the City officials is that it's still a good
2 part of the project.

3 COMMISSIONER MOORE: Thank you,
4 Mr. Thompson.

5 Is it fair to say that you're indifferent to
6 the solution, I mean, excluding a real magnitude change
7 in the cost, but as far as you're concerned, you need a
8 route to get in and out, and whatever is the preferred
9 route for the City, assuming it didn't cost measurably
10 more than any other route is the one that you're going
11 to be happy with? You don't have a preference here?

12 MR. THOMPSON: Well, actually, given the
13 discussion that started this meeting, we have a very
14 strong preference not to change anything because it
15 would undoubtedly mean substantial changes and maybe
16 project debts, so, yes, we now have a --

17 COMMISSIONER MOORE: Vested interest --

18 MR. THOMPSON: -- vested interest.

19 COMMISSIONER MOORE: -- in the route
20 proposed?

21 MR. THOMPSON: Yes, sir.

22 COMMISSIONER MOORE: Ms. White, will there
23 be a section in the report, then, can we anticipate,
24 that discusses the pros and cons of various alignments
25 and gives us some historical prospective in which to
26 see this?

1 MS. WHITE: Well, some of the staff
2 assessment touches on what has previously been done
3 related to the environmental analysis on the truck
4 bypass road, but there will be supplemental testimony
5 to try and respond to the comments we've been receiving
6 lately, and going back to your previous comment about
7 has the public brought this issue up, we have had
8 representatives from the central addition come to our
9 workshops, and as things have been more solidified over
10 time and the project has been refined, the comments
11 have been far more constructive to us in terms of the
12 issues that they are most concerned with. The truck
13 bypass road in particular has come to light most
14 recently since the staff's assessment was published.
15 As a concern, they request that we look at different
16 alternatives that were considered in the past,
17 particularly because of Posco's vested interest. The
18 Third Street -- Harbor to Third Street, Loveridge
19 connection has been raised. Staff is looking at that,
20 so there will be supplemental testimony to that effect
21 that will augment what we have already published.

22 COMMISSIONER MOORE: Let me try again.

23 Will there be an analysis of the
24 alternatives in the report when we see them? In other
25 words, one of the things that Mr. Thompson is worried
26 about is that we're on his nickle at the front end here

1 in terms of time. Once the discussion is in front of
2 us, it's the Committee's time, and if there's an
3 alternative -- if you took for assumption that he
4 really might be indifferent to any solution that costs
5 the same, as long as it didn't impinge on his time,
6 then if we have all the alternatives in front of us
7 when it's our time, not working against his clock, we
8 can make a judgment as to which would be the best
9 route, the best alternative, the one with the least
10 number of environmental hazards, et cetera, and at that
11 point discussion may have already been taking place at
12 the City Council, for instance.

13 MS. WHITE: Well, there is one alternative
14 that we are currently looking at, which was not
15 previously discussed in the EIR done on the truck
16 bypass road. I believe it's in '91, '92. So we will
17 recap the previous environmental documentation, but
18 we're going to add an additional discussion relating to
19 the new alternative which is not covered in that
20 document.

21 COMMISSIONER MOORE: Do we know when the
22 previous right of way was banned for Posco?

23 MS. WHITE: On the Third Street? I can't
24 tell you right now.

25 COMMISSIONER MOORE: Can we get an answer to
26 that to know when? When they came in -- the City would

1 have had to abandon that original right of way. Can we
2 just get a fix on when that happened?

3 MS. GEFTER: Does the City of Pittsburg have
4 an answer to that question?

5 UNIDENTIFIED SPEAKER: It's so long ago that
6 none of this --

7 COMMISSIONER MOORE: Right. I'm just trying
8 to -- if it's that long ago, within the decade that it
9 happened. I'm just curious as to when that happened.

10 UNIDENTIFIED SPEAKER: It's at least 40 for
11 50 years ago.

12 MS. MASON: At least 35 years ago.

13 COMMISSIONER MOORE: Okay. Thank you.

14 COMMISSIONER ROHY: A long, long time ago.

15 MS. GEFTER: Do we have any other members of
16 the public that would like to address the Committee at
17 this point? Anyone else like to come forward?

18 Yes, sir.

19 MR. WOODS: Thank you. Michael Woods, City
20 Attorney for the City of Pittsburg again.

21 Just in summing up, I wanted to indicate
22 that the city manager just arrived here this evening.
23 He was at a city council planning commission joint
24 meeting. Otherwise he would have been in attendance,
25 and he would probably be saying the things I'm about to
26 say, so I hope that if I say anything he wouldn't want

1 me to say, he will indicate that to us as I speak.

2 I think the City would like to thank the
3 Commission and staff for the work that has been done on
4 this project to date. The City has been very involved
5 in the project from early on, and the fact that we are
6 not an intervenor should not be taken as an indication
7 of the City's lack of interest in the project.
8 Certainly the contrary would be true.

9 We have had extensive discussions with
10 representatives of the proposed project and members of
11 your staff and believe that an excellent job has been
12 done thus far in this process, and we appreciate all
13 the opportunity for public input that the Commission
14 has provided, both through workshops and through your
15 entire process, and we realize that will continue. The
16 City will continue to monitor the project, will
17 continue to provide comment as it sees appropriate.

18 Your staff have received a letter from the
19 City's planning division regarding conditions of
20 approval and findings that the City would find
21 appropriate for the conditional use permit process if
22 that permit were something that the City was issuing.
23 Those comments were intended to be constructive and to
24 provide information to your staff on what kinds of
25 things the City would be looking for inclusion in the
26 permit conditions approval in order to address the

1 types of things that the City itself would be opposing
2 if it were the discretionary land use authority on the
3 project.

4 In terms of the Eighth Street access issue,
5 I just want to mention briefly, we have had extensive
6 discussions with PDEF representatives over the
7 Eighth Street access issue, the rights of way that
8 might be necessary to accommodate the underground
9 transmission line. There have been some brief
10 discussions, I believe, with the Delta project, and we
11 certainly would encourage those discussions to
12 continue. I think that the City shares some of the
13 concerns that you heard this evening that construction
14 impacts be timed and coordinated so that that
15 neighborhood is not impacted in an undue manner more
16 than once, and we think that that can be accomplished.
17 However, we would also suggest that it would be
18 appropriate to delay the PDEF project, simply because
19 it was first out of the gate, in order to allow time
20 for another project to be anticipated. We would hope
21 that the Delta project would be sensitive to that
22 timetable and provide cooperation toward addressing
23 that concern.

24 In terms of the truck bypass, certainly
25 we're curious of some very strongly held views
26 concerning the bypass route. I would indicate for the

1 record that the City has had a long -- long standing
2 support at a policy level for the truck bypass. In
3 1993 the City Council adopted a final environmental
4 impact report for the truck bypass route that is
5 substantially similar to the one the City requested be
6 included in this project, and that the full EIR process
7 was completed by the the City back in that '91, '92,
8 '93 time time.

9 The City has also consistently requested of
10 applicant for discretionary land use approvals in that
11 vicinity to commit to anticipating an assessment
12 district to be formed at an appropriate time to help
13 pay for the cost of constructing the bypass. So I
14 simply wanted you to have a bit of information on the
15 history of why that is a portion of what was included
16 in the AFC, and certainly we recognize that the
17 Commission will hear more from members of the
18 community, as you did this evening, on this particular
19 issue and the City can provide additional comment on
20 that as well.

21 Thank you very much.

22 COMMISSIONER MOORE: Before you leave the
23 podium, what's the balance in that assessment district
24 account?

25 MR. WOODS: The assessment district has not
26 been formed.

1 COMMISSIONER MOORE: Not been formed?

2 MR. WOODS: No.

3 COMMISSIONER MOORE: It's only the intention
4 to form?

5 MR. WOODS: That's correct. We have imposed
6 conditions of approval on different projects over the
7 last few years requiring different projects to
8 participate in the eventual formation of an assessment
9 district. We were not able to identify a particular
10 dollar amount or particular date on those individual
11 conditions of approval because it wasn't known exactly
12 what the spread of the assessment burden would be. We
13 didn't know how many projects would be able to
14 participate in it or exactly when enough projects would
15 come on line to be able to fund the completion of the
16 bypass.

17 COMMISSIONER MOORE: So every one of those
18 projects that's occurred, let's say over the last
19 decade, has got a condition of approval that's
20 currently unsatisfied, but that's binding? You can go
21 back to them and say, "Okay. I'm here, and it's time
22 to join up"?

23 MR. WOODS: Yes, sir. The language and the
24 different conditions of approval varies from one
25 project to the next. Over time those conditions have
26 been developed. However, as an example, going back

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1 many years to the Marine Terminal project, the City
2 incorporated a requirement for the truck bypass route
3 as a condition of the conditional use permit approval,
4 and as a mitigation measure in certifying the final
5 EIR, if a sufficient number of truck trips was
6 generated by the project. There have been similar
7 requirements, I believe in the Pittsburg Marine
8 Terminal Use Permit, although I can't cite you a
9 specific condition where the intent was the same, to
10 restrict truck traffic until the bypass was
11 constructed, but we have, I believe, a deferred
12 approval agreement with U.S.S. Posco that relates to
13 some of the improvements that would also be included in
14 the assessment district, and we anticipate that Diablo
15 Services, Pittsburg Marine Terminal, U.S.S. Posco, the
16 PDEF project -- I believe those are the major ones that
17 I can recall off the top of my head -- would all be
18 involved in participating in one way or the other.

19 COMMISSIONER MOORE: In the end you'd create
20 the moral equivalent of a Mello Roos district of some
21 kind, and --

22 MR. WOODS: Probably we would use a
23 Mello Roos district.

24 COMMISSIONER MOORE: -- and then create a
25 proportional allocation and assess on that basis?

26 MR. WOODS: Exactly.

1 COMMISSIONER MOORE: Issue the bonds and
2 construct right away using those funds. Would that
3 assessment extend to the neighborhood at all?

4 MR. WOODS: No, it would not.

5 COMMISSIONER MOORE: So you purposely
6 excluded them from any burden as far as a future
7 Mello Roos you would use?

8 MR. WOODS: Precisely.

9 COMMISSIONER MOORE: Thank you.

10 MS. GEFTER: What is the likelihood that the
11 City would be working with or meeting with the
12 residents of that area that would be impacted by the
13 truck bypass route?

14 MR. WOODS: I know that there have been
15 discussions between the members of the community and
16 the City staff on that issue. I know there was a
17 meeting today between one concerned planning
18 commissioner and the city manager. There was a tour
19 undertaken of the site. I believe the project has
20 actually staked the proposed route of the bypass so
21 that it's available for members of the public to see
22 where it would go, and to get more information on it,
23 and certainly the staff, and I know that the applicant,
24 are willing to meet with individual members of the
25 public to discuss that further.

26 If anybody else has information on any

1 structured workshops or scheduled meetings, feel free
2 to provide that. I'm not aware of those, I'm afraid.

3 MS. GEFTER: Thank you very much.

4 MR. WOODS: You're welcome. Thank you.

5 MS. GEFTER: Do we have anymore comments
6 from members of the public?

7 MR. WEHN: Could I just add that, yes, we've
8 had a number of sessions with the public such that
9 specifically talking about the truck bypass route and
10 offering comments, answering questions and those kind
11 of things, and we did a survey to determine the
12 interest level in the central division -- excuse me
13 central addition.

14 MR. WOODS: And the City would certainly
15 request that the applicant continue to be available to
16 meet with members of the public to discuss this
17 important issue.

18 One last comment I did want to add is that
19 our council adopted a resolution, I believe late last
20 year, concerning the scheduling for this process, and I
21 think the council would want me to reiterate the City's
22 support for maintaining the existing schedule if that
23 can conceivably be done. The City is interested in
24 that process of moving at the pace that was previously
25 scheduled, if that is at all possible.

26 COMMISSIONER MOORE: Counsel, are your city
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1 councilman elected by district?

2 MR. WOODS: No, sir. They're elected at
3 large.

4 MS. GEFTER: Thank you very much.

5 We're going to take a short recess and
6 take -- We're going to continue for another few minutes
7 and then take a recess, and what we'd like to hear
8 about right now is we'd like to hear from applicant
9 regarding the schedule.

10 If you have any comments, this is your time.

11 MR. THOMPSON: I only have a few minutes?

12 Because my handwriting isn't as good as the
13 Commissioner's, I typed something up. This is -- I
14 only have 20 copies or so, but it is a schedule that I
15 would propose.

16 This takes the schedule that appears in the
17 second revised schedule order and makes some additions.
18 The additions are in bold.

19 You'll note that the first one is on the
20 Bay Area Air Quality Management District FDOC. I've
21 taken the date out to the last -- a few days after the
22 last possible date of May 23. Then I've added a couple
23 items. I've added one date of evidentiary hearings at
24 the end of May, May 26, and an oral argument on any
25 issues that may be discussed at that date. Then I
26 added the word "hearings" down on July 7.

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1 Just to clarify that even well along in the
2 process, it is possible and indeed has been done, and
3 further it's been done in a case that I was in, that
4 you can raise and resolve issues at a late date.

5 In support of this schedule, I'd like to
6 make a couple points.

7 Number one, we've made the point before that
8 in order to start the City's consideration of our
9 variance we need a PMPD. We need a Presiding Member's
10 report so that a delay in the PMPD causes a delay in
11 what we need from the City.

12 Let me give a little history of why we are
13 in this air quality delayed mode.

14 I think one of the reasons is that the
15 process -- here we are eight months in a 12-month
16 process, and the Bay Area AQMD PDOC just came out. Not
17 unusual, but we revised our showing to the District,
18 which I think set them back because we needed some
19 additional modeling that needed to be reviewed. And
20 why was that additional modeling needed? Additional
21 modeling was needed because we listened to members of
22 the community. We rotated the plant. We lowered the
23 stacks. We lowered our emission levels, and because of
24 that, we had to remodel. So when we remodeled, I think
25 we everyone used a different screen model because of
26 something or other, we submitted it back and, of

1 course, the District and the staff had to, again, look
2 at that. In retrospect, and if we had a one-month
3 delay in schedule, I think my reaction to citizen
4 remarks would have been different. I think it's unfair
5 to listen to citizens and government agencies
6 relatively early in the process and then get penalized
7 on a time schedule because of that.

8 Leaving the history aside, what is it we can
9 do? I would suggest that we consider the schedule
10 that's in front of us. If this is unacceptable, and I
11 would urge acceptance, because other projects that are
12 going through the process right now have hearings
13 scheduled in April. The La Paloma project has hearings
14 scheduled in April. The preliminary determine of
15 compliance came out, I think last Friday. Sounds very
16 similar. The Sutter case went through. The PDOC and
17 the hearings were right close to each other. So in one
18 sense I'm urging that we not be singled out, but if
19 that cannot be done, we want to keep the schedule at
20 all costs. So what are the options available? I guess
21 an option available is to do the best you can and send
22 it to the full Commission with no recommendation, which
23 would be our preference. We would even prefer that you
24 send it up there with whatever recommendation you can
25 make the day when you feel you have to submit it, and
26 if that recommendation is to the full Commission that

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1 we don't have enough information to license this plant,
2 so be it. The schedule is extraordinarily important to
3 us, and we will work however hard we can work to get
4 testimony in, to address issues, to do whatever we can.

5 We feel it's unfair to not be consistent
6 with other projects that are going through the process
7 and have us delay because of the PDOC just coming out.

8 Thank you.

9 COMMISSIONER MOORE: Mr. Thompson, I have a
10 question for you. It goes to your last statement where
11 you indicated that you would prefer to have this
12 Committee send recommendations up to our colleagues
13 with no conclusion drawn from them. I am not the
14 Presiding Member of this Committee, and I certainly
15 cannot speak for him, but in my last case, I think I
16 made it clear that if I didn't have enough information
17 to make a recommendation, I would not leave that blank,
18 but, in fact, I would issue a recommendation to deny,
19 and I'm wondering how your schedule fits with that. I
20 mean, that seems like pretty dire, but it is one of the
21 options that's opened to the Presiding Member should he
22 decide to take it, and it seems to me that you put
23 everyone in a bit of a difficult situation, the City,
24 the applicant, your client. Would it not be better
25 under those circumstances, and I don't presume to know
26 your operations. It's not really my business to know

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1 the internal machinations of your client's business,
2 but would it not seem a bit draconium to suggest to us
3 to simply go ahead when a month, or 20 days, whatever
4 the number is, would get enough information from the
5 Committee to make a reasoned and fairly traditional
6 type decision, as opposed to the potential for a
7 decision to deny, which I'm sure you'd admit, carries a
8 fair amount of weight and is difficult to recover from
9 at the full Commission?

10 MR. THOMPSON: I've done it before,
11 Mr. Commissioner. Actually, I'd take the
12 recommendation to deny, and I'll tell you why.

13 The one thing that the applicant has going
14 for it in this process is that piece of the code,
15 California law that says one-year decision, and I have
16 been in cases where you lose the one year and you don't
17 lose a week or a month. You lose control over the
18 schedule. It is extremely easy to slip, slip, slip
19 after that. We have commitments out to vendors. We
20 have numerous other commitments that we just can't
21 afford that kind of slippage.

22 The second is, and I'm going to be real
23 frank here, I believe that the full Commission when
24 faced with a decision, whatever, will look at
25 deregulation in the state of California and will think
26 long and hard about denying a case that will bring a

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1 project, will bring the benefits of deregulation to the
2 citizens of California, because we wish to go forward
3 before all the air information was in before this stage
4 of the process. Now, we have all of April, all of May,
5 all of June, and all of July, and I know that our
6 information is going to get in. We're going to get a
7 final DOC, hopefully come to resolution with the staff,
8 or at least hammer it out in front of you. Those
9 issues are going to be resolved.

10 I guess to answer your question, yeah, we'll
11 take that.

12 COMMISSIONER MOORE: I think you did answer
13 my question. Thank you.

14 MS. GEFTER: Then you anticipate, unless you
15 receive a negative recommendation from the PMPD that
16 went to the full Commission and the full Commission
17 adopt that recommendation, would you then file a motion
18 for reconsideration and take those 30 days to add new
19 information to the record? Is that your anticipation?

20 MR. THOMPSON: Yeah, I think I probably
21 would. If the Commission's going to deny a case like
22 this, I mean, yeah, we'd probably take it everywhere we
23 could.

24 MS. GEFTER: All right. So what's the
25 difference between that and adding another 20 days or
26 30 days to the time period to get a positive

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1 recommendation at the end of the process and then have
2 a positive recommendation?

3 MR. THOMPSON: Number one, I think we're
4 going to have a positive recommendation at the end of
5 the process. I'm hopeful that you'll look at the
6 schedule and you'll allow the air information to come
7 in, and if you come to a date where you have to start
8 writing and you don't want to amend it later when
9 information comes in, or you come to a date when you
10 have to send something up to the full Committee, so be
11 it. Tack on any tag line you want as far as your
12 recommendation.

13 I'm banking on the fact that when this case
14 comes before the Commission everything is going to be
15 resolved. Everything is going to be fine. This is a
16 plant that should get built, and it should get built on
17 time.

18 MS. GEFTER: We're going to a five-minute
19 break and reconvene, say, ten minutes to 9:00.

20 (Whereupon, a break was taken.)

21 MS. GEFTER: Back on the record.

22 MR. WEHN: May I say something, please?

23 MS. GEFTER: Certainly. Go ahead.

24 MR. WEHN: This is a carryover from before
25 we just took a break.

26 I'd like to speak on behalf of the

1 applicant, and I just talked to the staff, and I want
2 the Committee to understand, we, as an applicant, are
3 prepared to muster whatever forces it takes to resolve
4 every one of these issues. We're prepared to work 15
5 hours a day. You make the notifications of public
6 hearings, we'll be here, and we will solve these
7 issues. This is an extremely important schedule to us.
8 We'll get to the resolution. I don't see anything
9 here, quite frankly, that cannot be solved. I've
10 listened to everyone tonight. If they can't be
11 resolved, then there's probably no project here, but I
12 don't see any of those real killers on the horizon. I
13 haven't heard anything tonight that would cause that to
14 take place.

15 I plead with this Committee to keep moving
16 forward, and this applicant will do whatever it takes
17 to make it happen.

18 Thank you.

19 MS. GEFTER: Thank you.

20 Any other comments before we conclude?

21 Okay.

22 The Committee wants to address the issue of
23 the schedule. This has been the theme the entire
24 evening. What the Committee intends to do at this
25 point is to issue a proposed -- a Presiding Member's
26 proposed decision on June 14, which is the date that we

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1 have scheduled in our second revised schedule. We are
2 going to conduct evidentiary hearings on the dates that
3 were set forth. The dates will be on April 28th, and
4 that will be in the afternoon in Sacramento. There's a
5 business meeting in the morning. The reason we're
6 going to conduct that particular hearing in the
7 afternoon in Sacramento is because it will be on
8 uncontested issues such as need and other issues which
9 no one has indicated to us that they have any concerns
10 with.

11 The next hearing dates will be April 29th
12 and 30th. Those will be conducted in Pittsburg.

13 The next hearing dates will be May 3rd and
14 4th. Those will be in Pittsburg as well.

15 We're going to hold May 5th as a possible
16 date in Pittsburg if we don't conclude our hearings on
17 all the issues but air. Air quality, we will not
18 schedule the date for that hearing at this point. We
19 will hopefully conduct that hearing in late May.

20 As I indicated before, the Presiding
21 Member's proposed decision, the PMPD, will be issued on
22 June 14th. That means that there is about 45 days
23 between June 14th and July 28th. In that time, as our
24 regulations provide, there will be time for comment
25 period of 30 days. Then there will be the possibility
26 of issuing a revised PMPD. Now, in that process, if

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1 the PMPD that is issued on June 14th is incomplete, if
2 there is a negative recommendation, if there are a lot
3 of comments that would require us to conduct additional
4 hearings and then issue a revised PMPD in that case,
5 that cannot be done in 15 days. There is a regulatory
6 requirement of a 15-day review period for a revised
7 PMPD before you get to the business meeting. So I
8 wanted to alert all the parties that if we don't have a
9 complete record by June 14th, and you believe you wish
10 to reopen the record to allow the Committee to consider
11 additional evidence, we would have to go to the revised
12 PMPD process, and that requires at least 15 days
13 review. Plus if we have hearings on that, on those
14 issues, we would then have to have a 10-day notice for
15 that. Again, we're alerting you to that problem at
16 this point in time.

17 An order scheduling evidentiary hearings
18 will be forthcoming from the Committee in the next few
19 days and will reflect what we discussed here tonight.

20 Are there any other questions at this point?

21 MR. THOMPSON: Thank you very much. We
22 appreciate this. We appreciate the work you've done,
23 and if I hadn't said it before, I really appreciate the
24 staff. The staff has worked very, very hard, and the
25 members of the community. The involvement of the PPAC
26 has been very helpful, and we appreciate the members of

1 the community and the City for their help in making
2 this a better project to get.

3 Thank you very much.

4 MS. GEFTER: Thank you.

5 Any other comments? The meeting is now
6 adjourned.

7 (Whereupon, the proceedings concluded at
8 9:00 P.M.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SOLANO)

I, JANENE R. BIGGS, a Certified Shorthand Reporter, licensed by the state of California and empowered to administer oaths and affirmations pursuant to Section 2093 (b) of the Code of Civil Procedure, do hereby certify:

That the proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on April 6, 1999.

Janene R. Biggs
Certified Shorthand Reporter No. 11307