EVIDENTIARY HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:

Application for a Small Power Plant Exemption For The Modesto Irrigation District Electric Generation Station Project (MEGS)	)	Docket No. 31-SPPE-01

MODESTO IRRIGATION DISTRICT

BOARD ROOM

1231 11TH STREET

MODESTO, CALIFORNIA 95354

TUESDAY, SEPTEMBER 2, 2003

1:00 p.m.

Reported by
James A. Ramos
Contract No. 170-01-001

COMMITTEE MEMBERS PRESENT

James D. Boyd, Commissioner and Presiding Member
Robert Pernell, Commissioner and Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Stanley Valkosky, Hearing Officer
Michael Smith, Advisor to Commissioner Boyd
E.V. (Al) Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

William Westerfield, Esq., Staff Counsel
(also serving as Public Advisor)
James W. Reede, Jr., Project Manager

CEC STAFF AND WITNESSES

Steve Baker
Eric Knight
Jim Swaney, San Joaquin Valley, APCD
William Walters

APPLICANT

Joy A. Warren, Esq., Modesto Irrigation District
Steven Hill, Project Manager
Susan Strachan, Strachan Consulting
John L. Carrier, CH2MHill
Colin McRae, PB Power, Inc.
Steve DeYoung, DeYoung Engineering Consulting

APPLICANT WITNESSES

Thomas Priestley, CH2MHill
Gary Rubenstein, Sierra Research
Jerry P. Salamy, CH2MHill
Mark Bastasch, CH2MHill
Mike Kreamer, Modesto Irrigation District

INTERVENORS

Robert Sarvey, Community/Self

PUBLIC COMMENT

Pam Kaefer, Community/Self
Mercedes Lopez, Community/Self

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

2 1:00 p.m.

3 COMMISSIONER BOYD: Welcome, everybody,
4 to this first Evidentiary Hearing for the Modesto
5 Electric Generation Station, and their Application
6 for A Small Power Plant Exception.
7 Before we begin the hearing, I'm sorry
8 for being late. We were spending money in local
9 communities, so that has some salvation. It took
10 us a little longer to get here from Sacramento
11 than we'd hoped.
12 Before we begin I'd like to introduce
13 the Committee and then ask all the parties to
14 identify themselves for the record. I'm Jim Boyd,
15 Chair of the Committee here, Presiding Member of
16 this Committee, and I'm joined by Commissioner
17 Robert Pernell, who is the Associate Member of the
18 Committee.
19 And for some reason the Committee had no
20 faith that he'd be here today. He didn't get a
21 nametag, but I knew he was coming. I have a
22 nameplate, so. Anyway, our apologies to
23 Commissioner Pernell. That's P-e-r-n-e-l-l, in
24 case any of you address your mail.
25 Also with us up here, on my left, is my

1 Advisor, Mike Smith. On the right of Commissioner
2 Pernell, his Advisor Al Garcia. This is Stan
3 Valkovsky, our Hearing Officer, who will take over
4 for me in a few moments here.
5 But first, let's go through the
6 introductions. Normally at this point we
7 introduce our Public Advisor, who is not here to
8 day, so pinch-hitting for the Public Advisor
9 is --?
10 MR. WESTERFIELD: Bill Westerfield.
11 COMMISSIONER BOYD: Bill Westerfield,
12 also subbing as staff counsel today. And, I might
13 add, Mr. Westerfield is a new father, so
14 congratulations, Bill. I'm glad to see you here.
15 There was a question in our mind whether you would
16 bother with this mundane responsibility in light
17 of your new very important responsibility, but
18 glad to see you here.
19 And, moving on to staff now, I'll let
20 the staff people introduce themselves.
21 MR. WESTERFIELD: Yes, maybe I should
22 put on my other hat now. I'm Bill Westerfield,
23 counsel representing the Energy Commission staff.
24 And to my right is Dr. James Reede, the Project
25 Manager for this project.

1 COMMISSIONER BOYD: And that microphone
2 you're clutching in your hand doesn't amplify for
3 the audience, it's only for the recorder, so he
4 got you loud and clear, but -- in this small
5 facility I trust everybody heard that
6 introduction, so thank you gentlemen.
7 The Applicant, if you'd like to
8 introduce your table?
9 MS. WARREN: Yes. I'm Joy Warren,
10 counsel for the Applicant. Next to me is Steven
11 Hill, the Project Manager for the Applicant. And
12 also at the table is Susan Strachan and Steve
13 DeYoung. And we have others in the audience that
14 you'll get to meet over the course of the day.
15 COMMISSIONER BOYD: You're all very
16 familiar to me. It wasn't very long ago that we
17 were together, I think. And the Intervenor of
18 record is here at the table. Would you like to
19 introduce yourself?
20 MR. SARVEY: Robert Sarvey.
21 COMMISSIONER BOYD: Is there anyone else
22 who's going to testify today that we need to
23 identify for the record? I have no indication --
24 yes, sir?
25 MR. SWANEY: Yes, I'm Jim Swaney with

1 the San Joaquin Valley Air District.

2 COMMISSIONER BOYD: Thank you, Jim.

3 MS. WARREN: Commissioner, did you want

4 us to take time to introduce all of our witnesses

5 at this point?

6 COMMISSIONER BOYD: I -- probably that

7 would be a good idea. It would take up most of

8 the rest of the audience, so we'll know who

9 everybody is.

10 MS. WARREN: Great. In the audience we

11 have Mark Bastasch, we have Tom Priestley, and we

12 have Gary Rubenstein. And Jerry Salamy in the

13 back. Thanks, Jerry.

14 COMMISSIONER BOYD: Okay. And the rest

15 will get their opportunity if they so choose. All

16 right, the Committee's --

17 MR. WESTERFIELD: Commissioner Boyd?

18 COMMISSIONER BOYD: Sir.

19 MR. WESTERFIELD: We can also introduce

20 our witnesses as well, if you'd like, on behalf of

21 staff.

22 COMMISSIONER BOYD: That would be good,

23 thank you.

24 MR. WESTERFIELD: All right. I'll try

25 to get through it real quickly. We also have Eric

1 Knight here, who will testify in the topic area of
2 Visual Resources. We have Mr. Will Walters in the
3 area of Air Quality. Also Mr. Steve Baker will
4 testify on Noise.
5 COMMISSIONER BOYD: Mr. Garcia, you're
6 going to have to cut down that sound, it's too
7 high. Is this ten decibels, or --
8 MR. GARCIA: It's called pure tone, sir.
9 (laughter)
10 MR. WESTERFIELD: And real quickly we
11 also have Mr. Shahab Khoshmashrab -- I've never
12 been good at the last name.
13 MR. KHOSHMASHRAB: Khoshmashrab, if
14 necessary.
15 MR. WESTERFIELD: Who is available to
16 testify if necessary, in the topic area of Energy
17 Resources.
18 COMMISSIONER BOYD: Thank you. Mr.
19 Westerfield, is there any comments you'd like to
20 make wearing your Public Advisor's hat, before we
21 get under way?
22 MR. WESTERFIELD: Yes, thank you. Ms.
23 Roberta Mendonca is not able to be here today, and
24 she asked me to welcome members of the public, and
25 to thank you very much for taking time out of your

1 busy schedule to participate in the evidentiary
2 hearings.
3 To many people the CEC process is
4 technical, and perhaps even difficult to
5 penetrate. But I assure you it is an open
6 process, and one in which the Energy Commission
7 seeks and welcomes your participation. The
8 Commission welcomes your comments.
9 Indeed, the Commissioners, the decision-
10 makers here, are eager for your comments, your
11 questions, and your thoughts today.
12 And there will be two opportunities for
13 you to do that. The first opportunity will be
14 today, during the presentation of various
15 technical topic areas -- I believe there are about
16 15 or so of them.
17 And there will be testimony by the
18 parties, following which there will be the
19 opportunity for public comment on each topic area
20 before that topic area is closed.
21 So you may do it today during the topic
22 areas, or there will be an evening session
23 tonight, beginning at 6:00 p.m. I believe, where
24 members of the public may comment, ask questions,
25 etc. on any and all topic areas. Whatever seems

1 to come to mind, whenever you want to come up.
2 There are several ways to comment. The
3 first is, if you would like to make a public
4 statement or address the Committee, you can fill
5 out, I believe it is blue cards on the table
6 outside the board room.
7 Simply state your name and so forth, and
8 that you wish to make a comment. And give those
9 blue cards to me, and I will pass them on to
10 Hearing Officer Valkosky, and he will give you the
11 opportunity to speak.
12 If you would prefer not to address the
13 Committee orally, you're certainly welcome to do
14 that in writing. And so there's a separate form,
15 piece of paper where you're given the opportunity
16 to write out your comment. And again, please give
17 them to me, I will pass them on to Hearing Officer
18 Valkosky, and he will then read it.
19 And if necessary, we'll ask, perhaps a
20 witness or someone else, to respond to it. So if
21 you have any questions about the process please
22 don't hesitate to approach me during one of the
23 breaks, and I will help you in any way I can. So
24 thank you.
25 COMMISSIONER BOYD: Thank you. As I

1 started to mention, the Committee scheduled
2 today's events in a notice dated August 19th.
3 And, as explained in the notice, and elaborated on
4 by Mr. Westerfield just now, we will receive
5 evidence by declaration for the topics that were
6 listed in Attachment A of the notice, and we will
7 proceed to testimony for witnesses for the topics
8 that were listed in Attachment B of the notice.
9 The filings relevant to today's
10 proceedings are first, the staff's Final Initial
11 Study, dated August 22. Applicants prepared
12 testimony, declarations and resumes for all topics
13 dated August 27th. And the staff's Final Initial
14 Study errata, the date of August 29th.
15 Now with that I'm going to turn the
16 hearing over to Mr. Valkosky, the Hearing Officer,
17 to take us through procedures, and take us into
18 the evidentiary presentations. Mr. Valkosky.
19 HEARING OFFICER VALKOSKY: Thank you,
20 Commissioner Boyd. Today's agenda is basically
21 divided into two parts. First, as Commissioner
22 Boyd indicated, we will conduct evidentiary
23 proceedings on the topics listed on Attachments A
24 and B. And hopefully we'll finish this by 5:00
25 p.m. or so, and then we anticipate taking a dinner

1 break.

2 After that, we'll reconvene at 6:00

3 specifically to hear from members of the public,

4 as well as to complete any evidentiary

5 presentations that we may have left unfinished.

6 Unless there is objection, what I'd like to do

7 today is begin by having the witnesses present

8 their prospective testimony on project

9 description, which will include agency comments,

10 noticing, and so forth.

11 And after that we'll proceed with the 15

12 topic areas we have covered by declaration.

13 Declaration topics are listed on Attachment A. We

14 will proceed for those topics, is that I'll

15 introduce each topic, and entertain motions from

16 the Applicant and then the staff to move it's

17 respective evidence into the evidentiary record.

18 We'll see if there's any objection to

19 that. If not, we'll receive the evidence as well

20 as any public comment. And then close the record

21 on that topic.

22 Following the declarations we'll then

23 proceed with the witnesses presentations for the

24 remaining topics on Attachment B. The oral

25 presentations will follow a procedure set forth on

page two of the evidentiary hearing notice, which you've all received. Any questions on procedure? Ms. Warren, do you have questions? Mr. Sarvey? Mr. Westerfield?

Okay. Seeing none, Ms. Warren, if you could call your witness on project description.

MS. WARREN: That would be Steven Hill, the Project Manager.

HEARING OFFICER VALKOSKY: I'd like to have the witness sworn, please?

Whereupon,

STEVEN HILL

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

MS. WARREN: Can you please state and spell your name for the record?

MR. HILL: Steven Hill, spelled S-t-e-v-e-n. Hill is H-i-l-l.

MS. WARREN: Could you please state your job title?

MR. HILL: I am the Project Manager for Modesto Irrigation District on the project.

MS. WARREN: Do you have before you a copy of the general project development testimony

1 section of exhibit 25, which is Applicant's
2 prepared testimony? I believe that begins on page
3 45 of the testimony.
4 MR. HILL: I have it close by.
5 MS. WARREN: Are you familiar with that
6 testimony?
7 MR. HILL: Yes I am.
8 MS. WARREN: Was that testimony prepared
9 by you or at your direction?
10 MR. HILL: Yes it was.
11 MS. WARREN: Does that testimony contain
12 a statement of your qualifications?
13 MR. HILL: Yes it does.
14 MS. WARREN: Could you please provide a
15 brief overview of your education and experience as
16 it pertains to the subject matter?
17 MR. HILL: I hold a Bachelor's of
18 Science in Electrical Engineering, as well as a
19 Master of Science in Engineering. I'm a
20 registered Professional Engineer in the state of
21 California, and have 20-plus years of experience
22 in design engineering, project management, and
23 construction management.
24 MS. WARREN: Do you have any additions,
25 corrections, or clarifications to your final

1 testimony?

2 MR. HILL: No I do not.

3 MS. WARREN: Your testimony incorporates

4 by reference a number of exhibits. Can you please

5 go through and identify those exhibits?

6 MR. HILL: Yes I can. Exhibit 1, which

7 incorporates Sections 1, 2, 3, 4, 5, 7, and 9 of

8 the SPPE. And Appendices 1A, 1B, and 1C of said

9 SPPE. Exhibit 2 is Supplement A to the SPPE,

10 which is the supplement on zero liquid discharge.

11 Exhibit 3 is a revised figure for Supplement A.

12 Exhibit 15 is the draft initial study comments,

13 set 1. And -- I'm sorry, exhibit 27, which is

14 informal data response set 6.

15 MS. WARREN: Thank you. To the best of

16 your knowledge, are all the facts contained in

17 your testimony, including all the reference

18 documents, true and correct?

19 MR. HILL: Yes.

20 MS. WARREN: Do the opinions contained

21 in your testimony represent your best professional

22 judgment?

23 MR. HILL: Yes.

24 MS. WARREN: And do you adopt such

25 testimony as your own in this proceeding?

1 MR. HILL: Yes.
2 MS. WARREN: Can you please give us a
3 summary of your testimony on the project
4 description?
5 MR. HILL: Yes I can. Let me start by
6 saying the Modesto Irrigation District is a public
7 utility. It's governed by a board of five
8 directors, and as a part of their responsibilities
9 they manage the district affairs, and are the only
10 ones who can commit the district to anything.
11 And with that, I might mention -- I
12 believe it was July 9th of 2002 -- a board
13 resolution was approved, basically granting us the
14 authority to go build a 100 megawatt simple cycle
15 combustion turbine power plant.
16 There were a number of alternatives that
17 were presented to the board at that time. Prior
18 to that meeting, a study had been commissioned by
19 the district. We enlisted Black and Veatch to go
20 out and look at alternative technologies, as well
21 as alternative sites.
22 And we started with a 50-mile radius
23 around the city of Modesto, identified 27 sites,
24 and that was pared down to a smaller quantity. It
25 went to about 16, and then further down to 12, and

1 then reduced further down to three, at which the
2 site at Ripon was chose to be the preferred site.
3 The design currently plans on using two
4 LM 6000 air derivative sprint-type units. They're
5 configured in what's referred to as the Norway
6 package. Slightly different, but very similar to
7 the LM 6000 we use at our Woodland two generating
8 facility that was just brought online.
9 These combustion turbine generator
10 packages are equipped with selective catalytic
11 reduction units for the control of carbon
12 monoxide, as well as oxides of nitrogen and oxides
13 of sulfur, as well as some other air pollutants,
14 but those are the primary ones.
15 And the application was filed with the
16 Energy Commission on April 21st of this year. On
17 June 20th of this year a Supplement A was filed
18 that essentially included a description of a zero
19 liquid discharge system.
20 After the application was filed, and in
21 conversations with staff and the regional water
22 quality board, it was determined that our best
23 choice was not to discharge to the city of Ripon
24 sanitary plant, and so we elected to go zero
25 liquid discharge at that time and filed that

1 Supplement.

2 So the plant will contain a water

3 treatment plant, which will include a zero liquid

4 discharge system. The project also contains about

5 a quarter of a mile of transmission line. It will

6 replace an existing line that goes down the tract

7 bell (sp?) easement.

8 There is a 17 KV line that runs from

9 essentially across the street from where our

10 proposed site will be to our Stockton substation.

11 That transmission line will be replaced with a

12 double circuit 69 KV transmission line. The poles

13 will be about 20 feet taller than the existing

14 poles, and we may have to add one more. And so it

15 will tie to our existing Stockton substation

16 located about a quarter of a mile away.

17 The project will also consist of an

18 approximately quarter mile gas transmission line

19 that will run down South Stockton Avenue. We will

20 intersect the existing PG&E transmission gas line,

21 about 4th Avenue and South Stockton Boulevard.

22 And it will run to the plant.

23 We will also be providing gas

24 compressors to step up the pressure to that line

25 to about 700 psi for the turbines to run on.

1 I think that probably at this time is a
2 good summary of the project. I'll leave it at
3 that.
4 MS. WARREN: The witness would then be
5 available, if there are any questions?
6 HEARING OFFICER VALKOSKY: Mr. Hill, why
7 did you choose to build this in simple cycle
8 rather than combined cycle configuration?
9 MR. HILL: The Modesto Irrigation
10 district primarily has a peaking need. Our load
11 doubles in the summertime, and primarily for that
12 reason. I will mention, Mr. Valkosky, that the
13 board of directors did ask us to lay out the plant
14 so that it could conceivably be combined cycle at
15 a later time if that need changes.
16 HEARING OFFICER VALKOSKY: So then is it
17 fair to say that the operational profile will be
18 as a peaker primarily or exclusively?
19 MR. HILL: Primarily.
20 HEARING OFFICER VALKOSKY: Okay. What
21 portion of the year would it be running at base
22 load?
23 MR. HILL: Well, let me clarify if I
24 might. When I say primarily, normally peaker
25 plants run just a few hours a year, normally under

1 3,000 hours a year.

2 MID's load is not, we will not need to

3 run more than that to serve our load, but if the

4 state needs energy and we can provide it, and if

5 we are called upon to provide it, we will be in a

6 position to do so. And so, under those

7 circumstances, it could run more so than just as a

8 peaker to serve our own use.

9 HEARING OFFICER VALKOSKY: What would be

10 the outside maximum that it could run, the normal

11 8760 in a year?

12 MR. HILL: We are planning on permitting

13 with the air board for 8760.

14 HEARING OFFICER VALKOSKY: Okay. Will

15 any pile driving occur during project

16 construction?

17 MR. HILL: It is not anticipated that

18 there will be any pile driving.

19 HEARING OFFICER VALKOSKY: Okay, thank

20 you. Mr. Westerfield, any cross-examination?

21 MR. WESTERFIELD: No questions, Mr.

22 Valkosky.

23 HEARING OFFICER VALKOSKY: Questions,

24 Mr. Sarvey?

25 MR. SARVEY: I just have one question.

1 Why did the project not use the recycled water
2 that was adjacent to the project?
3 MR. HILL: The city of Ripon has three
4 primary water sources. They have potable water,
5 they have a non-potable well water, as well as the
6 gray water I think that you're referring to. And
7 it was definitely an option, but it's much more
8 economical to use the non-potable water than the
9 gray water.
10 And as I indicated, we are governed by a
11 board of directors who's primary responsibility is
12 to ensure the lowest rates to our customers, and
13 so it was a matter of economics.
14 MR. SARVEY: So it was basically an
15 economic decision?
16 MR. HILL: That's correct.
17 MR. SARVEY: Thank you. That's all.
18 MR. GARCIA: Mr. Hill, I would like to
19 go back to Hearing Officer Valkosky's design of
20 the plant, and your last statement that your board
21 is very interested that you ensure that you keep
22 the rates to consumers down. And my understanding
23 that there is a significant efficiency difference
24 between combined cycle and a plain old GT cycle.
25 Could you tell us percent-wise or some

1 other basis what that difference would be?
2 MR. HILL: The efficiency on this simple
3 cycle plant, using this particular type of
4 combustion turbines, is approximately 38 to 39
5 percent efficient. The combined cycle plant is
6 probably roughly 50 to 52 percent efficient, to
7 the best of my knowledge.
8 MR. GARCIA: Could you translate that in
9 terms of heat rate?
10 MR. HILL: I think I would be guessing.
11 I think on the simple cycle we're right around
12 8,000, and I don't wish to give a number on the
13 combined cycle at this time.
14 MR. GARCIA: But it sounds to me like
15 there's quite a bit of difference in efficiency
16 between one mode and the other?
17 MR. HILL: Well, 52 subtract 39 is about
18 12, 13 percent. However, there are definitely
19 tradeoffs. In a peaking plant you want to start
20 that up quickly, and with a plant like this you
21 can start it up as quickly as ten minutes to 20
22 minutes.
23 With a combined cycle it takes longer.
24 So just like when you're sitting on the airplane
25 runway, and you want to take off, you can ramp

1 that jet engine pretty quick to take off and
2 that's the goal here with the peaking plant. You
3 want to start quickly. That's the tradeoff you
4 make for efficiency.
5 MR. GARCIA: And of course there is a
6 point at which economics dictate the choice of the
7 design of the plant. Would it not where the
8 increased efficiency, certainly, would offset the
9 incremental cost of constructing the more complex
10 plant?
11 MR. HILL: Certainly this, the cost of
12 this plant we're estimating to be somewhere around
13 $79 million. If we were to combine cycle this
14 plant with a, what I'll use, a 211 configuration,
15 it would probably be about $120 to $130 million.
16 MR. GARCIA: Has MIB done an analysis to
17 try and determine what is the break point in terms
18 of operating hours, at which point it would be
19 more cost-effective to do an installation with a
20 HERSIG?
21 MR. HILL: Mr. Garcia, as I said, right
22 now our primary need is we have a peaking need.
23 And we have done some preliminary analysis. But
24 for the foreseeable future we have a peaking need.
25 And so I'll leave it at that if I can.

1 MR. GARCIA: I may have some other
2 questions later.
3 HEARING OFFICER VALKOSKY: Ms. Warren,
4 would you like to move your witness's testimony
5 and exhibits?
6 MS. WARREN: If I may, I have just one
7 further question, just to clarify the testimony.
8 HEARING OFFICER VALKOSKY: Certainly.
9 MS. WARREN: You discussed the issue of
10 gray water and referenced the economics of the
11 district's decision. Were there any other factors
12 that went into your decision on your water source
13 to use?
14 MR. HILL: Well, again that gray water
15 does not meet Title 22 conditions. And in order
16 to achieve that it's fairly extensive and
17 expensive water treatment plant to do that.
18 MS. WARREN: At that, we would like to
19 move Mr. Hill's testimony into evidence.
20 HEARING OFFICER VALKOSKY: Okay. I take
21 it you would like to move the relevant portions of
22 exhibits 1, 2, 3, 15, 25, and 27?
23 MS. WARREN: Yes, exactly. I wasn't
24 quite sure whether you wanted to do this piecemeal
25 or do it all at once?

1 HEARING OFFICER VALKOSKY: Understood.
2 My practice is typically to do it piecemeal, so
3 the record focuses on what we're talking about in
4 a given topic.
5 MS. WARREN: Okay. Thank you.
6 HEARING OFFICER VALKOSKY: Is there
7 objection to receive?
8 MR. WESTERFIELD: No objection.
9 HEARING OFFICER VALKOSKY: Okay, the
10 portions of those exhibits are admitted. Mr.
11 Westerfield?
12 MR. WESTERFIELD: I'd like to call Dr.
13 James Reede on the subject of Project Description.
14 Dr. Reede, could you please be sworn in?
15 Whereupon,
16 JAMES REEDE
17 was called as a witness herein, and after first
18 having been duly sworn, was examined and testified
19 as follows:
20 MR. WESTERFIELD: All right. Dr. Reede,
21 are you familiar with the portion of staff's final
22 initial study entitled Project Description?
23 MR. REEDE: Yes I am. I am the author
24 of that section.
25 MR. WESTERFIELD: And is that still your

1 testimony today?

2 MR. REEDE: Yes.

3 MR. WESTERFIELD: Could you please tell

4 the Committee briefly your background and

5 qualifications to offer that testimony?

6 MR. REEDE: I have a Doctorate of

7 Education in Organizational Leadership and Public

8 Management. I have a Masters Degree in Public

9 Policy and Administration. And I have a Bachelor

10 of Science degree in Organizational Behavior and

11 Industrial Management.

12 I have 30 years in the electrical

13 industry, including work in both nuclear, wind

14 farms, hydroelectric generation, and combustion

15 turbines.

16 MR. WESTERFIELD: Okay, thank you very

17 much. And could you summarize your testimony in

18 this topic area please?

19 MR. REEDE: Yes I can. In this

20 particular topic area staff independently reviewed

21 the application for power plant exemption, under

22 Article five of Siting Regulations, and determined

23 that, for the most part, the information provided

24 by the Applicant was accurate in regards to the

25 proposed power plant equipment, its water supply

1 and use, the project site and location, the
2 transmission configuration, the quantities of
3 natural gas and the balance of plan equipment
4 necessary for that, the emission controls, and the
5 construction schedule and proposed work force.
6 We consequently performed a review of
7 all the areas related to the power plant, and
8 immediately after the issuance of the final
9 initial study, questions were raised by the
10 Committee related to noise and energy resources,
11 which resulted in staff issuing an errata on
12 August the 29th that addressed energy resources,
13 noise, and some typographical errors.
14 MR. WESTERFIELD: Okay, thank you very
15 much. Insofar as your testimony of project
16 description, is it still your testimony today?
17 MR. REEDE: Yes, it's still my testimony
18 today.
19 MR. WESTERFIELD: That's all the
20 questions I have.
21 HEARING OFFICER VALKOSKY: Thank you.
22 Any questions for the witness?
23 COMMISSIONER BOYD: No questions.
24 HEARING OFFICER VALKOSKY: Has the --
25 the staff attorney can answer this too, but has

1 the Commission's SPPE process been certified by
2 resources as being exempt from the negative
3 declaration process or being the functional
4 equivalent of a negative declaration process.
5 MR. WESTERFIELD: You know, Mr.
6 Valkosky, I can't hear you actually. Could you
7 repeat that?
8 HEARING OFFICER VALKOSKY: I'm sorry,
9 Mr. Westerfield. It's covered in your testimony,
10 but has the SPPE process at the Commission, that
11 we are engaged in now, been certified by the
12 Secretary of Resources as being the functional
13 equivalent of the negative declaration process?
14 Or has it not been certified as being anything
15 especially?
16 MR. WESTERFIELD: I believe that's in
17 the project description testimony.
18 HEARING OFFICER VALKOSKY: As I say, you
19 can answer because it is a legal question. Or Dr.
20 Reede can answer.
21 MR. WESTERFIELD: You can answer that,
22 Dr. Reede.
23 MR. REEDE: In the testimony that was
24 propounded by staff attorney, that specific
25 question was addressed, in that the Energy

1 Commission can issue a negative declaration in
2 this particular case.
3 HEARING OFFICER VALKOSKY: Okay. And my
4 question is more of a procedural one. Would we be
5 using the regular CEQA procedures, or does the
6 Energy Commission have special procedures?
7 MR. WESTERFIELD: I believe we're going
8 to use the regular CEQA procedures, though of
9 course there are special power plant exemption
10 procedures according to Energy Commission
11 regulations. There are a limited number of
12 regulations that deal with that.
13 HEARING OFFICER VALKOSKY: Right. But
14 we would be using the typical negative declaration
15 procedures for noticing, is that correct?
16 MR. WESTERFIELD: Yes we would.
17 Although there are several noticing procedures.
18 There are some CEQA noticing procedures, and then
19 as I'm sure you are aware, there are also noticing
20 procedures under Energy Commission regulations.
21 HEARING OFFICER VALKOSKY: Okay. Could
22 you take us through the applicable ones?
23 MR. WESTERFIELD: Sure. As far as the
24 Energy Commission's regulations go, there is a
25 requirement under Title 20, Section 1945 for,

1 after hearings conducted such as this, that the
2 Committee shall prepare a proposed decision on the
3 application for exemption.
4 And that that proposed decision is
5 distributed to the public, the public advisor, the
6 Applicant, etc., within 21 days after publication
7 of the proposed decision. Then a hearing is held
8 by the full Commission, at which time the
9 Commission can adopt, amend, the proposed
10 decision.
11 So that is part and parcel of the Energy
12 Commission regulations. There are CEQA
13 regulations that apply that would, we believe,
14 require the Energy Commission to publish and
15 circulate a draft negative declaration, it's
16 initial study, to the state clearinghouse. So we
17 also believe that would apply.
18 There is, I guess, an order in which we
19 would recommend that that be done. And as I see
20 it, there are several different options to do
21 that. First off, following this hearing, there
22 will be a number of days for briefs potentially,
23 and etc.
24 And then at some point after the briefs
25 are in and the Committee has a chance to assess

1 how it will decide, the Committee has the option
2 to issue a proposed negative declaration, and send
3 that negative declaration to the state
4 clearinghouse, for distribution to state agencies.
5 We believe this, under the CEQA
6 regulations, this is a requirement that the Energy
7 Commission must follow. And that is to send a
8 negative declaration to the state clearinghouse.
9 Part of that negative declaration must
10 include the staff's initial study, a proposed
11 finding by the Committee of no significant impact,
12 and mitigation measures that the Committee would
13 assign to the project to ensure that it has no
14 significant impact on the environment.
15 At the same time the Committee could
16 then issue a Notice of Intent to adopt a mitigated
17 declaration under 15072 of the CEQA regulations.
18 And then this notice should include the date, time
19 and place of any hearings proposed on the negative
20 declarations, as required by Public Resources Code
21 21092.
22 Now at least ten days thereafter, this
23 is again an option that I believe the Committee
24 has -- at least ten days thereafter the Committee
25 could issue their proposed decision, commonly

1 referred to as the PMPD, and distribute that
2 according to the Section 1945 regulations.
3 Then, no later than 20 days after
4 publication or issuance of the PMPD, and at least
5 30 days after the notice and clearinghouse
6 submittal, the full Commission could hold their
7 Section 1945 hearing on the PMPD, at which time
8 the full Commission may adopt it as its final
9 decision.
10 HEARING OFFICER VALKOSKY: Okay, so what
11 you're saying is that the state clearinghouse
12 review period would be 30 days?
13 MR. WESTERFIELD: Yes it would.
14 HEARING OFFICER VALKOSKY: Okay.
15 MR. WESTERFIELD: And this is one of a
16 number of options the Committee has as far as
17 timing, to meet both the notice requirements under
18 our own regulations, the CEC, and the CEQA
19 noticing requirements for public comment.
20 This is one option. I can think of at
21 least two other options that are available to the
22 committee that I can walk through if you like.
23 HEARING OFFICER VALKOSKY: Yes, please
24 do.
25 MR. WESTERFIELD: Okay. Option number

1 two would be that the Committee can issue its
2 PMPD, it's Proposed Decision, and a Notice of
3 Intent to adopt a mitigated negative declaration,
4 which would include, again, the final initial
5 study.
6 All of these circulated according to CEC
7 regulation 1945A, and CEQA guidelines 15205, again
8 going through the state clearinghouse.
9 No later than 21 days thereafter, the
10 full Commission holds its Section 1945B hearing,
11 and receives final argument, and no less than nine
12 days thereafter, and after close of the 30-day
13 state and public comment periods, the full
14 Commission may adopt the Proposed Decision.
15 So in this fashion one option that the
16 Commission has is to essentially hold its final
17 argument and its public hearing within the 30 day
18 period of public and state comment. And then,
19 following 30 days comment period then it could, I
20 don't know, meet again, or convene somehow, and
21 adopt its final decision. So that would be option
22 number two.
23 HEARING OFFICER VALKOSKY: Okay, and
24 again, in our parlance, that would be the two
25 business meeting option, is that correct?

1 MR. WESTERFIELD: Yes, that would be a
2 two business, yes.
3 HEARING OFFICER VALKOSKY: Okay. Thank
4 you. Third one?
5 MR. WESTERFIELD: The third option would
6 be that the Committee, here, could issue a draft
7 for preliminary PMPD, or a preliminary negative
8 declaration, along with the Notice of Intent to
9 adopt a negative declaration, all circulated
10 according to CEQA guideline 15205.
11 So, in other words, it would be a
12 preliminary proposed decision, or a draft proposed
13 decision. After running of 30 days of state
14 public comment, the Committee would issue it's
15 proposed decision, which would contain the
16 negative declaration and the final initial study.
17 They would then be circulated according
18 to CEC Rule 1945A. Then, no later than 21 days
19 thereafter, according to Regulation 1945B, there
20 would be a hearing before the full Commission, and
21 at that point the full Commission may adopt the
22 PMPD.
23 I think that option speaks in terms of a
24 little more sequentially running the two periods,
25 and probably would take a bit longer to complete

1 than either the first or the second option.
2 HEARING OFFICER VALKOSKY: So that,
3 could we refer to that as the 51 day option?
4 MR. WESTERFIELD: That could be the 51
5 day option.
6 HEARING OFFICER VALKOSKY: And the first
7 one would be the 30 day option?
8 MR. WESTERFIELD: I think, yes, the
9 first one could be a 30 day option.
10 HEARING OFFICER VALKOSKY: Okay, I'm
11 done, I'm sorry I interrupted you, Mr.
12 Westerfield, please continue.
13 MR. WESTERFIELD: So I think there is
14 great flexibility that the Committee has into how
15 it tries to meet both obligations. The point is
16 to try and provide a good opportunity for public
17 comment and to meet CEQA mandate, if you will,
18 that the proposed negative declaration be
19 circulated along with the initial study to state
20 agencies for comment.
21 I think that, of the three options,
22 certainly the most expeditious one would be option
23 number one, and I think that would fully satisfy
24 the intent of the requirement of both sets of
25 regulations.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you. Mr. Reede, could you explain for the
3 Committee's benefit how our compliance unit
4 monitors or ensures compliance with a condition of
5 exemption?
6 MR. REEDE: Yes, Hearing Officer
7 Valkosky. General conditions of exemption were
8 included in the final initial study, as were
9 specific conditions of exemption for certain
10 disciplines.
11 In the general conditions of exemption
12 the Applicant will be required to report on a
13 regular basis during the construction period, and
14 then during an ongoing period for certain areas,
15 the status of various construction activities,
16 whether or not, for example, there have been
17 cultural resource finds, paleontological resource
18 finds.
19 There will also be monitors required to
20 be onsite at all times, to be basically the eyes
21 and ears of a compliance project manager from the
22 Energy Commission. There are some annual reports
23 that are required, in which the Applicant will
24 also be reporting the state of the power plant, so
25 to speak.

1 HEARING OFFICER VALKOSKY: Does the
2 Commission have the same enforcement authority in
3 terms of, for example, issuing a stop work order,
4 or levying a fine, as it would if this were an
5 Application for Certification?
6 MR. REEDE: Only in the specific areas
7 in which the Commission has retained jurisdiction.
8 And I say has retained jurisdiction, such as in
9 the Air Quality area. The city of Ripon will have
10 the primary responsibility for the permitting and
11 construction of the power plant, and they will
12 have their inspectors there available.
13 However, in certain areas, we have
14 retained jurisdiction.
15 HEARING OFFICER VALKOSKY: Right. And I
16 assume that those are the topic areas for which
17 you are proposing conditions of exemption, is that
18 a correct assumption?
19 MR. REEDE: Yes.
20 HEARING OFFICER VALKOSKY: Okay, thank
21 you.
22 COMMISSIONER PERNELL: Mr. Reede, you
23 said that the -- can you hear me?
24 MR. REEDE: Yes.
25 COMMISSIONER PERNELL: You said that the

1 project will be monitored continuously throughout
2 the construction?
3 MR. REEDE: Yes. By the city of Ripon's
4 inspectors, and by our inspectors, or cultural
5 resource specialist, or paleontological resource
6 specialists.
7 COMMISSIONER PERNELL: Okay, so I guess
8 my question was you're talking about physical
9 monitoring, or some type of known air quality
10 monitor being set up onsite?
11 MR. REEDE: Yes. There will be people
12 on site. In the example of air quality, they are
13 required to -- well, they, I mean the Applicant --
14 is required to have -- and I can give you the
15 specific term -- a air quality construction
16 mitigation manager, as an example of it.
17 And that individual shall be responsible
18 for maintaining compliance with the conditions,
19 the air quality conditions, for the entire project
20 site and many air facility constructions.
21 COMMISSIONER PERNELL: All right, so
22 that's a physical person being onsite versus a
23 monitoring device set up somewhere on the site?
24 MR. REEDE: Right. There's a warm body
25 there, sir.

1 COMMISSIONER PERNELL: Thank you. No
2 further questions.
3 MR. WESTERFIELD: If I may address the
4 Committee a little bit, to add to this.
5 HEARING OFFICER VALKOSKY: Certainly,
6 Mr. Westerfield.
7 MR. WESTERFIELD: And maybe I can
8 address this a little bit conceptually. Mr.
9 Valkosky, you asked to really distinguish this
10 from a more conventional licensing process. And
11 as we all know it's essentially an exemption
12 question before the Committee, to decide whether
13 to exempt this plant from our licensing process.
14 And should the Committee and the
15 Commission decide to do that, fundamentally this
16 project will be regulated by other public
17 agencies, other public authorities, and not by the
18 Energy Commission. And in that fashion I believe
19 it is distinguishable from the typical power plant
20 license or certification that the Commission
21 issues.
22 It is to be essentially turned over to
23 other agencies that have appropriate
24 responsibility, such as the air district, such as
25 the city of Ripon. They will shoulder the main

1 burden.

2 There are, as Dr. Reede mentioned, a few

3 conditions of exemption that staff recommended,

4 that should attach to the project that we believe

5 are necessary to ensure that there is no

6 significant impact on the environment of the

7 project as proposed, or the project as governed by

8 applicable wars, does not have a significant

9 impact on the environment.

10 We view those, if you will, as sort of

11 amendments to the project, changes to the project

12 at an initial stage, so that after they are

13 applied, then the project as mitigated, will no

14 longer have a significant impact on the

15 environment.

16 To the extent that we might recommend

17 that the Commission retain jurisdiction, typically

18 that is just during the construction phase. There

19 are some conditions of exemption that apply during

20 the construction phase, and Dr. Reade had

21 mentioned paleontological, cultural.

22 And so for example, during construction

23 or groundbreaking, or digging, if you will, there

24 is a concern that various sculpture resources

25 might be encountered, various archaeological

1 remains might be encountered. And so we want to
2 make sure that this is conducted in the fashion to
3 prevent these remains from being disturbed, and
4 thus significant impact.
5 But that's fundamentally during the
6 construction phase. Once the project is
7 constructed, for the most part, it's one in which
8 we see that the Commission no longer regulates,
9 and it is turned over to other authorities.
10 HEARING OFFICER VALKOSKY: So in other
11 words, for an area -- and again, I don't mean to
12 imply that these areas necessarily have
13 conditions, but for example noise, where there
14 could be continuing complaints. That would be
15 handled by whom?
16 MR. WESTERFIELD: That would be handled
17 by the city of Ripon.
18 HEARING OFFICER VALKOSKY: Okay. How
19 about for air quality, where you would certainly
20 have some operational monitoring. Is that
21 primarily handled by the district then?
22 MR. WESTERFIELD: Again, insofar as
23 potential air quality impacts during the
24 construction of the project, we have proposed
25 certain conditions of exemption that we would

1 monitor to see that they are followed.
2 And so, in a sense we're asking to
3 retain jurisdiction during that portion, but for
4 the operation of the project, the life of the
5 project, 20-30 years, I think we see the air
6 district as being the appropriate regional public
7 agency to regulate compliance.
8 HEARING OFFICER VALKOSKY: Okay. So
9 based on that, if staff -- again, this is a
10 hypothetical example -- would recommend more
11 stringent operational mitigation than would
12 perhaps the district, I mean, we have a conflict.
13 I mean, you know, you have an
14 assumption, I think, that staff's mitigation would
15 then apply, although in actuality what I'm hearing
16 is that we have the operational enforcement
17 jurisdiction, so that the district --
18 MR. WESTERFIELD: We certainly don't say
19 that there would be a conflict between anything
20 we'd recommend and something that the Applicant
21 would --
22 HEARING OFFICER VALKOSKY: I'm speaking
23 hypothetically.
24 MR. WESTERFIELD: Hypothetically, of
25 course. But if, for example, mitigation

1 recommended by staff were to go beyond what the
2 district might recommend, we would then recommend
3 that that additional mitigation be a part of the
4 project, if you will, and that would be a part of
5 the project that the Applicant would agree to
6 abide by.
7 And at that point in time, going
8 forward, I suppose it would be -- i can't say it
9 would be our jurisdiction to continue to monitor
10 that.
11 HEARING OFFICER VALKOSKY: I'm sorry,
12 you can't say that it would or would not be?
13 MR. WESTERFIELD: It would not be the
14 Energy Commission's jurisdiction to monitor that.
15 But I have to say I can't think of that example
16 right now, from my recommendations in the final
17 initial study, so perhaps when we reach that
18 discipline or any discipline where it seems like
19 there might be some measure that is not part of
20 the jurisdiction of another body, perhaps we can
21 address that at the time.
22 But I can't think of an example that
23 fills your hypothetical in this case.
24 HEARING OFFICER VALKOSKY: Okay, and
25 again, since it was a hypothetical, I'll let it

1 rest. Ms. Warren, first do you have any cross-
2 examination of Dr. Reed, please conduct that.
3 Second, if you'd like to give your opinion on any
4 of the matters that Mr. Westerfield has covered
5 concerning noticing, compliance, things like that,
6 please feel free.
7 MS. WARREN: Thank you. I don't have
8 any questions for Dr. Reede. You had asked us to
9 include our perspectives on the process issue as
10 part of Mr. Hill's testimony, and we did that.
11 But, commenting on Mr. Westerfield's
12 statement, again, we don't necessarily agree that
13 all the CEQA procedural regulations towards
14 adopting a negative dec would apply.
15 However, we don't disagree then with the
16 analysis that Mr. Westerfield made of how those
17 CEQA regulations could be complied with in the
18 event it was determined that they should be.
19 Applicant, of course, would promote shorter time
20 period as opposed to the longer time period
21 options.
22 I think we'd also reference the ability
23 to request the state clearinghouse shorten the 30
24 day period. We have some circumstances that we
25 pointed out in the testimony. In this case, that

1 the final initial study had been made available to
2 the public, comments had been solicited, and have
3 been addressed in the final initial study, so many
4 of the purposes -- in fact I would support that
5 the purposes of the state clearinghouse
6 circulation have been met.
7 The state agencies have had the
8 opportunity to review the project and the
9 analysis, and so that, again, if the state
10 clearinghouse processes were to be followed in
11 this case I would suggest that it would be
12 appropriate to use a shorter period and even to
13 request that state clearinghouse adhere to the 21
14 day period provided for in the Commission
15 regulations.
16 HEARING OFFICER VALKOSKY: Okay, so
17 basically, a little bit abbreviated version of Mr.
18 Westerfield's first option.
19 MS. WARREN: Right.
20 HEARING OFFICER VALKOSKY: Do you have
21 any comments on the compliance matters that we
22 were discussing with staff?
23 MS. WARREN: At this time we don't.
24 We'd like to reserve, obviously, the right to
25 review the transcript on the conclusions and

1 testimony, and if need be we can put additional
2 information into the briefing.
3 HEARING OFFICER VALKOSKY: Certainly,
4 thank you. Mr. Sarvey, any questions for Dr.
5 Reede?
6 MR. SARVEY: Yes. I have a couple
7 questions. And it's related to some of the things
8 that Ms. Warren just said, and seem to indicate
9 that all CEQA regulations would not be imposed on
10 this project, is that correct?
11 MR. REEDE: I'm not going to represent
12 what you believe Ms. Warren said.
13 MR. SARVEY: I know, but I'm -- am I
14 correct in making that assumption that we won't be
15 applying CEQA to all aspects of this project?
16 MR. REEDE: As far as I'm concerned, you
17 are not correct in making that assumption.
18 MR. SARVEY: Thank you. That troubled
19 me some, and I'm glad you cleared it up. Now the
20 other area that troubles me is my understanding is
21 there will be no CEC compliance manager on this
22 project?
23 MR. REEDE: There is a CEC compliance
24 manager on this project, her name is Ms. Ila
25 Lewis. And she is the responsible person at the

1 California Energy Commission for this project.
2 Once a decision is made to approve the exemption
3 she would then take over. No decision has been
4 made, one has been assigned, though.
5 MR. SARVEY: But there won't be a
6 traditional compliance manager in terms of, if you
7 have a problem with the project, instead of going
8 to the local authorities you go to the CEC, let's
9 say in terms of noise or air emissions or some
10 sort of malfunction in the pollution control
11 systems or something, that's not something that
12 the CEC has a compliance manager to address those
13 situations?
14 MR. REEDE: The city of Ripon will be
15 issuing the permit for construction of this power
16 plant and they are responsible for, say, noise
17 complaints. We have given them a copy of our
18 noise complaint form, and how we process it. They
19 are gearing up to handle the noise complaints.
20 As far as the air pollution control
21 equipment, it will be on the air district. During
22 construction our compliance project manager has
23 full authority. After it's licensed the air
24 district will be in charge.
25 MR. SARVEY: Thank you.

1 HEARING OFFICER VALKOSKY: Is that it,
2 Mr. Sarvey?
3 MR. SARVEY: That's it, thank you.
4 HEARING OFFICER VALKOSKY: Any redirect,
5 Mr. Westerfield?
6 MR. WESTERFIELD: Yes -- I don't know if
7 this is redirect or not. I do want to make one
8 statement to sort of add to that, James. Again,
9 fundamentally, this is an exemption of our
10 certification process.
11 So once the project as proposed, and as
12 the mitigation that we've proposed is part of the
13 project, then it is sort of fundamentally no
14 longer a CEC regulated project. Now there are
15 some areas, such as in air quality in reference to
16 construction emissions, and for cultural and that
17 sort of thing, where we are retaining some
18 jurisdiction, if you will, to make sure someone is
19 out there to watch over it during construction.
20 But at the same time, during
21 construction, the city of Ripon will also be
22 regulating many other aspects of the plant, the
23 construction of the plant. So we, if you will,
24 are recommending that the Commission only have a
25 small piece of looking over the construction, and

1 that the city and other agencies have the lion's
2 share of the responsibility even then.
3 MR. REEDE: I might also add, Hearing
4 Officer Valkosky, for Mr. Sarvey's benefit, that
5 in the area of hydrology and water quality, and
6 also in the area of biological resources, we have
7 to retain limited jurisdiction because of
8 legislative reporting requirements, such as how
9 much water they're using every year.
10 We have to file a report with the state
11 Legislature as to how much water all the power
12 plants are using in the state. So we have to
13 retain limited jurisdiction.
14 The other area, biological resources,
15 wherever there's mitigation that takes up acreage,
16 so to speak, for biological impacts, we also have
17 to report that to the state Legislature. So we
18 have to retain limited jurisdiction, so that in
19 the annual report that they submit to us, they
20 tell us how much land had to be used for
21 mitigation purposes in the San Joaquin multi-
22 species conservation plan, for example.
23 In the area of cultural resources, we
24 felt comfortable that, in their project
25 description they said they were going to get a

1 cultural resource specialist. We enhanced their
2 project proposal to ensure that there would be no
3 significant impacts to archaeological resources or
4 cultural resources.
5 So we had to include conditions of
6 exemption that builds upon what they have proposed
7 in the project, to ensure that there was a less
8 than significant impact.
9 MR. SARVEY: So is there a mechanism or
10 a process that we would use if, say the city of
11 Ripon makes a determination as far as noise and
12 impact that we feel doesn't match or concur with
13 what the CEC has laid out as a condition.
14 What's the process there? I mean,
15 there's no compliance manager, do we appeal
16 directly to the Commission. How does that work?
17 That part I don't understand.
18 MR. REEDE: In the two noise conditions
19 that we included, your appellate route, so to
20 speak, would be to the city of Ripon city council.
21 You go to their planning department, and then you
22 go right up the line.
23 MR. SARVEY: Thank you.
24 HEARING OFFICER VALKOSKY: Any further
25 discussion on this topic?

1 COMMISSIONER BOYD: I want to make sure
2 that all I've inferred from Mr. Westerfield's
3 discussion and Mr. Valkosky's questioning of Mr.
4 Westerfield regarding the processes to be followed
5 here, and whether or not there's been a
6 certification by the Secretary of Resources and
7 what have you visavis what I read in the
8 Applicant's petition as not agreeing with Mr.
9 Westerfields' interpretation.
10 However, I infer from Ms. Warren's
11 testimony that she is stipulating to Mr.
12 Westerfield's interpretation of process and
13 procedure and lets it go at that. Am I correct?
14 MS. WARREN: I guess it's difficult for
15 me to say that the Applicant stipulates that
16 complying with the state clearinghouse submittal
17 procedures is necessary in an SPPE process.
18 However, again, we believe that the purpose and
19 effect of the state clearinghouse procedures has
20 been complied with.
21 Our main concern with complying with the
22 process, even if it doesn't need to be complied
23 with, is simply time. And making all the time
24 periods move along. And so if there's a way to
25 work with minimizing the time delays due to the

1 state clearinghouse, we don't have any objection
2 to that process.
3 COMMISSIONER BOYD: Well, the reason I
4 raised the question, in the Applicant document it
5 clearly states the Commission's procedures that
6 have been certified by the Secretary of Resources
7 as exempt. But we've heard a discussion today
8 that they have not been so certified. So we start
9 from a premise that's diametrically opposed, and
10 we go downhill from there.
11 MS. WARREN: Yes. I think the
12 Applicant, on this specific issue of submitting
13 the documentation to the state clearinghouse is
14 not moving away from its position that it has been
15 certified by the resources as exempt.
16 However, again, our position at this
17 point is that we don't object to the filing with
18 the state clearinghouse. We would just urge that
19 we do so in as expeditious a manner as possible.
20 COMMISSIONER BOYD: Very interesting.
21 Okay, I'll pass over all the legal maneuvers and
22 manipulations. Having personally felt pretty
23 strongly -- and having worked at the Resources
24 Agency -- that the Commission hasn't been granted
25 any such exemption, I of course reacted to your

1 opening sentence.

2 But as I said in my opening question,

3 you kind of just stipulated the process anyway,

4 and that begs the question, so we'll let it go at

5 that.

6 HEARING OFFICER VALKOSKY: Anything

7 further for the witness? Any further discussion

8 on this topic? Mr. Westerfield, would you like to

9 move any portion of an exhibit?

10 MR. WESTERFIELD: Yes we would. I

11 believe that staff's final initial study is

12 tentatively marked as exhibit 22?

13 HEARING OFFICER VALKOSKY: That's

14 correct.

15 MR. WESTERFIELD: Okay, then we would

16 like to move that portion of it, entitled "Project

17 Description."

18 HEARING OFFICER VALKOSKY: Is there any

19 objection Ms. Warren?

20 MS. WARREN: No.

21 HEARING OFFICER VALKOSKY: Mr. Sarvey?

22 MR. SARVEY: No objection.

23 HEARING OFFICER VALKOSKY: Seeing no

24 objection, that portion of exhibit 22 is admitted.

25 And I'll note we just completed project

1 description, which is always one of the quicker
2 topics on the agenda. Turning from that to the
3 topics we take by declaration, I'd like to call
4 biological resources. Ms. Warren?
5 MS. WARREN: Yes. my question is how
6 would you like us to proceed? Do you want us to
7 read all or any portion of it, merely list the
8 portions of the exhibit and move the testimony, or
9 how would you like to proceed on that?
10 HEARING OFFICER VALKOSKY: Listing the
11 portions of the exhibit unless there are questions
12 from someone would suffice for my purposes.
13 MS. WARREN: Biological resources, the
14 Applicant's witness by declaration is John
15 Cleckler. His testimony begins on page 40 of
16 exhibit 25, and includes the following exhibits:
17 exhibit 1, section 8.2 of the SPPE; from exhibit
18 2, the relative portions of the SPPE Supplement A;
19 exhibit 5, data response set 1A, numbers 28 and
20 29; and exhibit 15, the draft initial study
21 comments, set 1. We move this be --
22 HEARING OFFICER VALKOSKY: Okay, is
23 there objection to this designated portion of the
24 exhibits?
25 MR. WESTERFIELD: No objection.

1 HEARING OFFICER VALKOSKY: Seeing no
2 objections, those portions are admitted. Mr.
3 Westerfield?
4 MR. WESTERFIELD: Yes. correspondingly,
5 staff would like to present the declaration of
6 Rick York in the topic area of Biological
7 Resources, and submit his testimony by
8 declaration. And offers the relevant portions of
9 exhibit 22 into the record.
10 HEARING OFFICER VALKOSKY: Any
11 objection?
12 MS. WARREN: No objection.
13 HEARING OFFICER VALKOSKY: That portion
14 of exhibit 22 is submitted. Is there a discussion
15 from anyone on the topic of biological resources?
16 Seeing none, we'll close the record on that topic.
17 Next topic, Energy Resources. Ms. Warren?
18 MS. WARREN: Yes. The Applicant's
19 witness in the area of Energy Resources was Mr.
20 Steven Hill. His testimony on this matter was
21 addressed as part of the project description, and
22 has been admitted through that section of the
23 testimony.
24 For reference, that was beginning on
25 page 45 of exhibit 25, and included the exhibit

1 portions referenced by Mr. Hill in his testimony.
2 HEARING OFFICER VALKOSKY: Thank you.
3 Is there any objection to receiving those
4 designated portions?
5 MR. WESTERFIELD: No objections.
6 HEARING OFFICER VALKOSKY: Seeing none,
7 they are admitted. Mr. Westerfield?
8 MR. WESTERFIELD: Yes. In the topic
9 area of Energy Resources staff would like to
10 submit by declaration that part of its final
11 initial study entitled energy resources, that was
12 authored by Mr. Baker and Mr. Khoshmashrab, and
13 ask that that part of our initial study be moved
14 into evidence.
15 HEARING OFFICER VALKOSKY: The latter
16 testimony, the supplemental testimony, is part of
17 exhibit 26, correct?
18 MR. WESTERFIELD: Yes, that's correct,
19 and I was about to get to that. As the Committee
20 is aware, staff filed, as part of its errata
21 filing on Thursday -- Friday, Friday --
22 supplemental testimony in the area of energy
23 resources, dealing with the question of whether
24 the proposed project, in its configuration, would
25 create a significant adverse impact upon energy

1 supplies or resources.

2 The initial conclusion, or the final

3 conclusion in our initial study was that the

4 project would not have that impact as a peaking

5 unit. What the supplemental testimony was

6 intended to do was to sort of broaden our

7 conclusions to encompass a finding that the

8 project, even if operate as a base load unit, also

9 would not create a significant adverse impact on

10 energy supplies or resources.

11 And so that was the essential

12 conclusion, the nature of the testimony submitted

13 by errata. We have not attached a declaration to

14 this supplemental testimony as part of our filing

15 on Friday, and so for that reason are willing to

16 present Mr. Khoshmashrab to testify today to this

17 supplemental testimony if the Committee so

18 desires.

19 However, we would hope that the

20 Committee would accept this testimony into

21 evidence pursuant to our errata filing, pending no

22 objection from any partner.

23 COMMISSIONER BOYD: I have no objection

24 to the testimony, but it does continue to beg the

25 question that was asked earlier about simple cycle

versus combined cycle. And I totally understand the economics, I totally understand the rather instant rampup, startup, and I totally understand that's what the Applicant has asked for.

That's fine, I don't have any problem with the description. I would just indicate that, knowing where the state is going with regard to its electrical need, I am hard-pressed to believe that, in a very short period of time, either somebody will wish that it had been done as a combined cycle plant, or will be asking to convert it to a combined cycle plant.

But I realize those are tough decisions to make in today's market at this point in time, so I'll let it go at that from my perspective. I don't know what my fellow Commissioners feel, but so be it.

COMMISSIONER PERNELL: Well, I would agree with the Presiding Member, but I do have a question as it relates to economics, and I guess that does keep coming up. Mr. Valkosky, this is for the Applicant.

In your analysis on the economic feasibility of the project, given the configuration, did you include the escalating

1 costs of natural gas?

2 MS. WARREN: Ms. Valkosky, I'm going to

3 defer to Mr. Hill on that.

4 HEARING OFFICER VALKOSKY: Please do,

5 Ms. Warren.

6 MR. HILL: When we do economic analysis

7 we look at various gas prices, so the answer to

8 your question is yes.

9 COMMISSIONER PERNELL: And given that

10 your board's recommendation was to go forward with

11 the project as is, as a essentially peaker

12 project?

13 MR. HILL: I'm sorry, Commissioner,

14 could you please restate the question? I'm not

15 sure I understood it.

16 COMMISSIONER PERNELL: Well, I'm just,

17 I'm having a -- in my preliminary analysis I'm

18 coming up with something a little bit different.

19 So my question is, given the analysis that you did

20 and presented to the board, your MID board, they

21 decided to continue along the path of the project

22 as proposed?

23 MR. HILL: That is correct. They made

24 the decision to go with the simple cycle plant.

25 COMMISSIONER PERNELL: Okay.

1 HEARING OFFICER VALKOSKY: And with
2 that, is there any objection to the receipt of
3 those portions of exhibits 22 and 26. For the
4 record, Ms. Warren?
5 MS. WARREN: No objections from the
6 Applicant.
7 HEARING OFFICER VALKOSKY: Okay. They
8 are admitted. Is there any further discussion or
9 public comment on the topic of energy resources?
10 Seeing none, we'll close the record on that topic.
11 The next topic is socioeconomics. Ms. Warren?
12 MS. WARREN: Yes, thank you.
13 Applicant's witness, by declaration, on this topic
14 is Fatima Yusef. And that testimony is at page 60
15 of exhibit 25. It references exhibit 1, section
16 8.8 of the SPPE; exhibit 2, SPPE supplement A,
17 portions of exhibit 5, data response set 1A,
18 number 55.
19 HEARING OFFICER VALKOSKY: Objections?
20 MR. WESTERFIELD: No objection.
21 HEARING OFFICER VALKOSKY: Admitted.
22 Mr. Westerfield?
23 MR. WESTERFIELD: Thank you. The staff
24 would like to submit, by declaration, its portion
25 of the final initial study on the topic area of

1 socioeconomics offered by its author Amanda
2 Stennick, and ask that that portion of exhibit 22
3 be received into evidence.
4 HEARING OFFICER VALKOSKY: Objections?
5 MS. WARREN: No objection. Admitted.
6 And discussion or public comment on the topic area
7 of socioeconomics? Close the record on that topic
8 area. Next topic area is Traffic and
9 Transportation. Applicant?
10 MS. WARREN: Yes. Applicant's witness
11 on the declaration for this topic area is Jeannie
12 Acutanza. That testimony begins at page 80 of
13 exhibit 25. it includes exhibit 1, section 8.10
14 of the SPPE, exhibit 2, SPPE supplement A portion;
15 exhibit 5, data response set 1A, numbers 65
16 through 79; and exhibit 15, the draft initial
17 study comments, set 1, those portions that pertain
18 to the traffic and transportation.
19 HEARING OFFICER VALKOSKY: Objections to
20 admission?
21 MR. WESTERFIELD: No objection.
22 HEARING OFFICER VALKOSKY: They are
23 admitted. Mr. Westerfield?
24 MR. WESTERFIELD: Staff would like to
25 offer that portion of its final portion of its

1 final initial study dealing with traffic and
2 transportation, and authored by James Adams, by
3 declaration. And ask that it be admitted into
4 evidence.
5 HEARING OFFICER VALKOSKY: Objection?
6 MS. WARREN: No objection.
7 HEARING OFFICER VALKOSKY: Admitted.
8 Any discussion or public comment on the area of
9 traffic and transportation? Seeing none, we'll
10 close the record on that topic. Transmission Line
11 Safety and Nuisance next. Ms. Warren?
12 MS. WARREN: Yes. Applicant's witness
13 on this subject area is Stephen Hill, and that
14 testimony begins on page 86 of exhibit 25, and
15 references, that is it includes my reference
16 exhibit 1, section 5 of the SPPE and Appendices
17 5A, 5B, and 5C; exhibit 5, data response set 1A,
18 number 76 through 82; exhibit 11, informal data
19 response set 2; exhibit 12, informal data response
20 set 3; and exhibit 15, the draft initial study
21 comments, set 1, those portions that pertain to
22 transmission line safety and nuisance and
23 transmission system engineering.
24 HEARING OFFICER VALKOSKY: Objections to
25 admission?

1 MR. WESTERFIELD: No objections.
2 HEARING OFFICER VALKOSKY: Seeing none,
3 those portions of the exhibit are admitted. Mr.
4 Westerfield?
5 MR. WESTERFIELD: Staff would like to
6 offer by declaration its testimony in the subject
7 of transmission line safety and nuisance. This
8 testimony is authored by Dr. Obed Odoemelam, and
9 ask that it be accepted into evidence.
10 HEARING OFFICER VALKOSKY: Objections?
11 MS. WARREN: No objection.
12 HEARING OFFICER VALKOSKY: No objection,
13 it's admitted. Mr. Westerfield, are you going to
14 include that portion of staff's exhibit 26, which
15 is an errata to exhibit 22?
16 MR. WESTERFIELD: Just a moment, please.
17 Yes, we would. In exhibit 26 there is a deletion
18 from page 15-5. We would like to make that
19 change.
20 HEARING OFFICER VALKOSKY: Okay.
21 Objection? Seeing none, that's admitted. Any
22 further discussion or public comment on the topic
23 of transmission line safety and nuisance? Seeing
24 none, we'll close the record on that topic.
25 Worker Safety, Ms. Warren?

1 MS. WARREN: Thank you. Applicant's
2 witness on this area is Patricia Danby, and that
3 testimony begins on page 96 of exhibit 25. It
4 incorporates exhibit 1, section 8.7 of the SPPE,
5 and exhibit 2, SPPE supplement A, those portions
6 that pertain to worker safety.
7 HEARING OFFICER VALKOSKY: Thank you.
8 Objection?
9 MR. WESTERFIELD: No objection.
10 HEARING OFFICER VALKOSKY: It's
11 admitted. I take it, Mr. Westerfield, your
12 witnesses name is not "no na", so it must be no
13 witnesses? Okay. Is there any public discussion
14 or public comment on the topic of worker safety?
15 Seeing none, close the record on that topic.
16 Compliance and General Conditions. Ms. Warren?
17 MS. WARREN: Thank you. Again,
18 Applicant's witness on this item is Steve Hill,
19 and that testimony was incorporated into his
20 project description testimony. That's at page 45
21 of exhibit 25, and was his previous testimony this
22 morning, so I just want to reference that.
23 HEARING OFFICER VALKOSKY: Okay, thank
24 you for clarification. No objections?
25 MR. WESTERFIELD: No objections.

1 HEARING OFFICER VALKOSKY: No
2 objections, that's admitted. Mr. Westerfield?
3 MR. WESTERFIELD: Staff would offer the
4 portion of its final initial study dealing with
5 the general conditions of exemption, which is --
6 by declaration -- which is authored by Ms. Ila
7 Lewis, and ask that it be accepted into evidence.
8 HEARING OFFICER VALKOSKY: Any
9 objection?
10 MS. WARREN: No objection.
11 HEARING OFFICER VALKOSKY: Seeing no
12 objection, it's admitted. Is there any comment on
13 or discussion of on the topic of Compliance and
14 General Conditions? Seeing none, we'll close the
15 record on that topic. Next, Cultural Resources.
16 MS. WARREN: Thank you. Applicant's
17 witness on this item is James Bard. That
18 testimony is found at page 43 of exhibit 25, and
19 incorporates exhibit 1, Section 8.3 and Appendices
20 8.3A through 8.3C of the SPPE; exhibit 2, SPPE
21 Supplement A, those portions that pertain to
22 cultural resources; exhibit 4, the confidential
23 cultural resource materials dates May 15th, 2003;
24 exhibit 5, data response set 1A, numbers 30
25 through 43; exhibit 6, data response set 1B,

1 numbers 39, 40, and 41; exhibit 9, data response
2 set 1E, number 42; and exhibit 15, draft initial
3 study comments, set 1, those portions that pertain
4 to cultural resources.
5 HEARING OFFICER VALKOSKY: Objections?
6 MR. WESTERFIELD: No objections.
7 HEARING OFFICER VALKOSKY: Seeing no
8 objections, they are admitted. Mr. Westerfield?
9 MS. WARREN: Let me just -- it's been
10 brought to my attention as I look at the testimony
11 that was submitted in exhibit 25 on page 43. I
12 just want to bring to your attention, I have
13 identified exhibit 4, the confidential cultural
14 resource materials, those were not listed in the
15 testimony as it was filed, but should be included
16 in this declaration.
17 HEARING OFFICER VALKOSKY: I noted that,
18 thank you for including exhibit 4.
19 MS. WARREN: Thank you.
20 HEARING OFFICER VALKOSKY: I'd hate to
21 have an orphan exhibit out there.
22 MR. WESTERFIELD: So actually, I have a
23 question of clarification. Are there any exhibits
24 now that Applicant is asserting should be kept
25 confidential?

1 MS. WARREN: The cultural and
2 paleontological submittals that were granted
3 confidential status would remain confidential, in
4 accordance with the regulations.
5 MR. WESTERFIELD: And again, which
6 regulation is that?
7 MS. WARREN: You know, I don't have,
8 there's a --
9 HEARING OFFICER VALKOSKY: I believe
10 they are at the 2500's, I think, in our
11 Commissions regulations are procedures for
12 designating and retaining confidential materials.
13 It's a decision that's made by the executive
14 director. And the access to those records is
15 specified. Do you have anything to add, Ms.
16 Warren?
17 MS. WARREN: Just, Mr. Westerfield, if
18 you like, I can get you those specific references
19 at the break. I have them handy, I just don't
20 want to take the time to --
21 MR. WESTERFIELD: Yes, forgive me, I
22 just didn't realize that had been done, that the
23 executive director had designated those materials
24 as confidential. Did that happen?
25 MS. WARREN: Yes, we've received

1 confirmation of that.

2 HEARING OFFICER VALKOSKY: Okay. We've

3 admitted Applicant's exhibits. Mr. Westerfield,

4 anything from staff on cultural?

5 MR. WESTERFIELD: Yes, staff would like

6 to admit, by declaration, its testimony on

7 cultural resources, part of the final initial

8 study, that's authored by Dorothy Torres, and ask

9 that it be received into evidence.

10 HEARING OFFICER VALKOSKY: Objections?

11 MS. WARREN: No objection.

12 MR. SARVEY: None.

13 HEARING OFFICER VALKOSKY: Discussion or

14 public comment on the area of Cultural Resources?

15 Seeing none, we'll close the record on that topic.

16 The next topic is Geology and Paleontology. Ms.

17 Warren?

18 MS. WARREN: Yes. We've got two

19 sections that I'd like to point out on the

20 paleontological resources. The witness is Lanny

21 Fisk, and that's at page 75 of exhibit 25. And

22 that includes exhibit 1, section 8.15 of the SPPE;

23 exhibit 2, SPPE supplement A, those portions that

24 pertain to paleontological resources; exhibit 15,

25 draft initial study comments, set 1, those

1 portions that pertain to the subject matter.
2 Also, I would like to reference the
3 testimony by Thomas Lae, starting at page 49 of
4 exhibit 25, and those incorporate the following:
5 exhibit 1, section 8.14 of the SPPE; exhibit 2,
6 SPPE supplement A, those portions that pertain to
7 the subject matter; exhibit 5, data response set
8 1A, numbers 44 through 47; and exhibit 15, draft
9 initial study comments, set 1, again those
10 portions that pertain to the subject matter.
11 HEARING OFFICER VALKOSKY: Thank you.
12 Objections?
13 MR. WESTERFIELD: No objection.
14 MR. SARVEY: No objection.
15 HEARING OFFICER VALKOSKY: They are
16 admitted. Mr. Westerfield?
17 MR. WESTERFIELD: Yes, staff would like
18 to submit its testimony in this topic area,
19 paleontological and geological testimony be
20 declaration. It's authored by Dr. Patrick
21 Pilling. And ask that it be received into
22 evidence.
23 HEARING OFFICER VALKOSKY: Objection?
24 MS. WARREN: No objection.
25 MR. SARVEY: No objection.

1 HEARING OFFICER VALKOSKY: No objection.
2 A portion of exhibit 22 is received.
3 MR. WESTERFIELD: Yes, those are the
4 portions of exhibit 22. Staff also, as part of
5 its errata, made minor changes to that testimony,
6 and I guess that's part of exhibit 26. And ask
7 that that be admitted into evidence.
8 HEARING OFFICER VALKOSKY: Okay. Any
9 Objections?
10 MR. SARVEY: No objection.
11 MS. WARREN: No objection.
12 HEARING OFFICER VALKOSKY: No
13 objections, that's admitted. Any public
14 discussion or comment on the areas of geology and
15 paleontology. Seeing none, we'll close the record
16 on those topic areas. Next is Hazardous
17 Materials. Ms. Warren?
18 MS. WARREN: Thank you. The witness on
19 this topic is Karen Parker. That testimony begins
20 on page 57 of exhibit 25, and incorporates exhibit
21 1, section 8.12 of the SPPE; exhibit 2, SPPE
22 supplement A, those portions that pertain to
23 hazardous materials; exhibit 5, data response set
24 1A, number 48; exhibit 15, draft initial study
25 comments, set 1, those portions that pertain to

1 hazardous materials; and exhibit 20, the July 29th
2 2003 letter from Steve Hill of MID to Dennis
3 Fields of the San Joaquin County Office of
4 Emergency Services, regarding submittal of
5 emergency response plan and chemical inventory.
6 HEARING OFFICER VALKOSKY: Is there
7 objection?
8 MR. WESTERFIELD: No objection.
9 MR. SARVEY: I guess there's no
10 objection.
11 MR. WESTERFIELD: Well, I guess I'm
12 wearing my Public Advisor hat for just a moment.
13 So if I could ask for just a couple of minutes?
14 HEARING OFFICER VALKOSKY: Sure. We'll
15 go off the record.
16 (Off the record.)
17 HEARING OFFICER VALKOSKY: Back on the
18 record. All right, Mr. Westerfield, I believe we
19 were looking to see if you were objecting to any
20 of Applicant's exhibits?
21 MR. WESTERFIELD: Could you repeat all
22 those? (laughter) No, sorry, no objection.
23 HEARING OFFICER VALKOSKY: Mr. Sarvey?
24 MR. SARVEY: Yes. I have one question
25 about an exhibit dated July 29th, 2003 to Mr.

1 Dennis Fields, San Joaquin County Office of
2 Emergency Services.
3 And basically, my question is does MID
4 intend to comply with emergency plans and all the
5 regulations that are normally required, or do they
6 intend to not comply with the normal regulations
7 of the CEC in terms of hazardous material plans
8 and such?
9 MS. WARREN: I'm pulling up the letter
10 as you speak. My recollection is that the letter
11 does lay out the district's, Modesto Irrigation
12 District's position on that matter. If you'll
13 bear with me just one minute while I get a copy of
14 that letter.
15 The district is not a business as
16 defined by the pertinent sections of the health
17 and safety code, and is not subject to the
18 requirement of preparing the plant. However, the
19 district has committed to make pertinent filings
20 in relation to those safety matters, as it has
21 done in the past.
22 MR. SARVEY: Is it possible to insert a
23 condition of exemption that these requirements be
24 fulfilled?
25 HEARING OFFICER VALKOSKY: Would

1 Applicant object to such a condition?
2 MS. WARREN: Applicant would object to
3 additional conditions, in that Applicant has
4 agreed that it will be filing pertinent documents.
5 The essential difference here is that, in being
6 subject to the plan, to submitting the plan, per
7 the code section reference, involves a fairly
8 hefty fee.
9 We have agreed to provide the
10 substantive information in similar formats.
11 However, without going through the formal plan
12 process.
13 HEARING OFFICER VALKOSKY: Staff have
14 any opinion on the desirability, the necessity for
15 such a condition?
16 MR. WESTERFIELD: No, we don't have any
17 comment on it. We have no position on this at the
18 moment.
19 MS. WARREN: Okay, so Ms. Warren, it's
20 primarily the matter of the fee, as I understood?
21 MS. WARREN: Right. And the statutory
22 fact that the definition of business that it
23 incorporated into the relevant code sections
24 simply does not include a public agency such as
25 MID.

HEARING OFFICER VALKOSKY: Okay, although, let me clarify this. MID will nevertheless comply with the provisions, except for the filing?

MS. WARREN: We will comply with the substance of the provisions and requirements, yes.

HEARING OFFICER VALKOSKY: Okay. Anything further, Mr. Sarvey?

MR. SARVEY: No, thank you.

HEARING OFFICER VALKOSKY: Okay, again, any objection to admission?

MR. SARVEY: No objection.

MR. WESTERFIELD: No objection.

HEARING OFFICER VALKOSKY: No objection. Those portions of the exhibit sponsored by Applicant are admitted. Mr. Westerfield?

MR. WESTERFIELD: Staff offers its testimony in the area of hazardous materials management, authored by Jeff Lesh and Rick Tyler. We offer it by declaration, and ask that it be admitted.

HEARING OFFICER VALKOSKY: Is there objection? Ms. Warren?

MS. WARREN: No objection.

HEARING OFFICER VALKOSKY: Mr. Sarvey?

1 MR. SARVEY: No objection.
2 HEARING OFFICER VALKOSKY: Before we act
3 on the admission, I've got a couple of questions.
4 i'd like to address this to staff. And it relates
5 to the earlier discussion we had with the
6 construction versus operational mitigation and
7 enforcement.
8 Now if you look at condition Haz 1 and
9 Haz 2 on page 88 of your testimony, it seems to me
10 that those can be construed as operational
11 conditions. Is that a correct understanding?
12 MR. WESTERFIELD: Haz 1 can be construed
13 that way, yes.
14 HEARING OFFICER VALKOSKY: Yes, and haz
15 2?
16 MR. WESTERFIELD: Haz 2 can also be
17 construed that way.
18 HEARING OFFICER VALKOSKY: Okay.
19 Assuming that's a correct construction, who then
20 enforces haz 1 and haz 2?
21 MR. WESTERFIELD: Well, certainly haz 2
22 is a matter of compliance with federal
23 regulations. And I'm not intimately familiar with
24 Title 40 in these particular regulations, I assume
25 there is a federal jurisdiction that enforces

1 them.

2 HEARING OFFICER VALKOSKY: So then all

3 haz 2 is saying is you shall comply with federal

4 law?

5 MR. WESTERFIELD: That's correct.

6 HEARING OFFICER VALKOSKY: Is that

7 really necessary as a condition? And again, a

8 condition -- the difficulty that I'm having,

9 frankly, is that a condition is something that the

10 Commission would enforce, okay? Now, there's a

11 lot of "conditions" that are out there that the

12 Commission does not enforce.

13 And here we have a condition saying

14 comply with federal law. Well it seems to me that

15 that goes without saying, especially if we're not

16 going to be doing any monitoring to ensure that

17 compliance.

18 MR. WESTERFIELD: You're saying that it

19 goes without saying that --

20 HEARING OFFICER VALKOSKY: That they're

21 under a duty to comply with federal law.

22 MR. WESTERFIELD: Yes.

23 HEARING OFFICER VALKOSKY: Right. Yes,

24 it does. So why are we repeating it here,

25 especially when we are not monitoring whether or

1 not they comply?

2 MR. WESTERFIELD: I stand corrected. It

3 is staff's position that staff intends to monitor

4 compliance with federal law under this topic here.

5 HEARING OFFICER VALKOSKY: Okay. Then

6 this is an instance of operational compliance and

7 enforcement, right?

8 MR. WESTERFIELD: Yes.

9 HEARING OFFICER VALKOSKY: Is the same

10 true for haz 1?

11 MR. WESTERFIELD: Yes it is.

12 HEARING OFFICER VALKOSKY: Okay, thank

13 you for that clarification. With that, that

14 portion of exhibit 22 is admitted. I'm informed

15 by Mr. Westerfield, in his dual role as Public

16 Advisor, that we have a member of the public that

17 would like to comment on a couple of topics.

18 There's two ways we can do this, and

19 certainly leave it to you, Ms. Kaefer. You can

20 comment on energy resources and compliance at this

21 point, since we've already dealt with those

22 topics, or you can wait until this evening. The

23 choice is entirely yours.

24 MS. KAEFER: I don't want to disrupt the

25 meeting, I just didn't realize -- I mean, I

1 thought I had to wait until tonight, and when you
2 asked for public comment, i filled out the blue
3 card --
4 HEARING OFFICER VALKOSKY: No, we are
5 eminently flexible, so we will accommodate you.
6 So would you prefer to go this evening? If you'd
7 like to go now that's fine too. Why don't you go
8 now?
9 MR. WESTERFIELD: Again, in my role as
10 Public Advisor, when I -- as the Public Advisor I
11 talked to Ms. Kaefer about this, and I think she
12 expressed some interest toward me of speaking to
13 at least this topic now, because she was ready to
14 speak.
15 So I think we should fully give her that
16 option, and not suggest that she should wait.
17 HEARING OFFICER VALKOSKY: That's the
18 option we're giving her, Mr. Westerfield. It's
19 totally up to Ms. Kaefer.
20 MS. KAEFER: Okay. I would like to
21 speak now.
22 HEARING OFFICER VALKOSKY: If you could
23 identify yourself for the record, and spell your
24 last name, please?
25 MS. KAEFER: My name is Pam Kaefer, it's

1 K-a-e-f-e-r. And I'm a neighbor, second closest
2 one to this project. And the first issue can
3 wait, the energy resources. But I am really
4 concerned on this compliance issue, because the
5 city of Ripon, per Tom Tripstra (sp), the city
6 attorney, has told me the city council actually
7 voted years ago to not enforce the noise element.
8 There is no code enforcement for noise
9 in the city of Ripon, period. So, short of going
10 before the city council and getting them to vote
11 again, and using this project is that, you know,
12 there really is something that needs to be
13 addressed here.
14 We're SOL. And the way that this was
15 written and added, it was my understanding -- and
16 I have to say the MID people have been wonderful,
17 they have been really informative and helpful and
18 I truly believe that our interest is their
19 interest, but this is my retirement, and in a year
20 or five years or whatever, and if those people are
21 gone, who do we go to?
22 HEARING OFFICER VALKOSKY: If what
23 you're talking about is the specific exemption for
24 noise, we're going to deal with that later.
25 MS. KAEFER: Yes, but the compliance

1 thing, because --

2 HEARING OFFICER VALKOSKY: Yes, there's

3 a definite crossover.

4 MS. KAEFER: Right. And this notice

5 here about the Ila, because I was told and in the

6 new papers that I have that were filed and what

7 you just went through on the compliance was that

8 there was specifically Ila, and I -- I don't want

9 to go through here and make you wait for my

10 time --

11 HEARING OFFICER VALKOSKY: Ila Lewis I

12 believe is the --

13 MS. KAEFER: But she was going to

14 oversee, and she would be the person, because the

15 Energy Commission would oversee if we had a

16 problem. And now that isn't what's going to

17 happen. And actually I just underlined this, it's

18 on page five -- and I don't know what this is.

19 HEARING OFFICER VALKOSKY: Page five

20 of --

21 MS. KAEFER: This newest thing I just

22 got.

23 HEARING OFFICER VALKOSKY: You're

24 talking about the errata? Mr. Westerfield, help

25 her out please.

1 MR. WESTERFIELD: Yes, this is part of
2 what staff filed on Friday.
3 HEARING OFFICER VALKOSKY: Okay, we'll
4 go off the record.
5 (Off the record.)
6 HEARING OFFICER VALKOSKY: Back on the
7 record. For the record, we're discussing now
8 staff's exhibit 26. Ms. Kaefer, please.
9 MS. KAEFER: Okay, this particular
10 paragraph says "throughout the construction and
11 operation of the project" -- which to me is beyond
12 construction -- "the project owner shall document,
13 investigate, evaluate, and attempt to resolve all
14 project related noise complaints."
15 Now, from what I just understood in that
16 compliance part, that it's only during
17 construction. And as soon as they're up and
18 running, that's no longer valid. But now we've
19 got to go to the city and not to Ila for
20 compliance. So they threw this in, but then they
21 took it back out.
22 HEARING OFFICER VALKOSKY: Well, we're
23 going to get an answer. Dr. Reade?
24 MR. REEDE: What Ms. Kaefer is referring
25 to, in noise condition one, we're asking that a

1 community survey be performed immediately after
2 operations begin to verify that there is no
3 significant adverse impact. After operations
4 began, noise two kicks in.
5 And she raises the first part of noise
6 two. However, it says, in the final sentence of
7 noise two, "the project owner or authorized agent
8 shall use the noise complaint resolution form, or
9 functionally equivalent procedure acceptable to
10 the city of Ripon, to document and respond to each
11 noise complaint."
12 Now we have given the city of Ripon the
13 noise complaint form. And in speaking with the
14 Applicant, they're willing to work with the city
15 of Ripon. The city of Ripon gave me no, well, the
16 city of Ripon did not express a desire not to
17 implement the conditions of exemption that we've
18 written.
19 It was sent to the director of planning
20 ahead of time. He agreed the city could function
21 within those, and we incorporated it into the
22 errata.
23 HEARING OFFICER VALKOSKY: Okay, then I
24 guess the question is there's a difference between
25 not indicating that you won't enforce the

1 conditions, and affirmatively indicating that you
2 will enforce the conditions. Now if I understand
3 what you've just said, you don't have the latter
4 from the city of Ripon, is that correct?
5 MR. REEDE: We have the enforcement of
6 the condition -- well, let's do condition of
7 exemption number one. We will enforce that at the
8 point of initial operation.
9 From the point of initial operations
10 through continuing operations until the closing of
11 the plant, it is the city of Ripon's
12 responsibility, as the permitting agency, to
13 enforce the LORS for that community.
14 We have attempted to assist them in
15 giving them condition with teeth, and a resolution
16 form that the Applicant agrees they can live with
17 and respond to. However, because this is an
18 exemption proceeding, we will step out of the
19 picture after the community noise survey affirms
20 that the plant is not creating a significant
21 adverse impact to the community.
22 COMMISSIONER PERNELL: I think I
23 understand the concept, and without, what I
24 understand that the resident's are concerned about
25 is how is that transition going to take place.

1 The project gets built, the Energy Commission
2 compliance person steps out, does the Ripon
3 compliance person automatically step in?
4 Is there a document somewhere that says
5 that this is going to happen? I think one of the
6 questions in my mind is the transition between the
7 two compliance entities.
8 MR. REEDE: Commissioner Pernell, I have
9 to go back to the point that we do not have
10 permitting authority for construction. The city
11 of Ripon does.
12 And in an attempt to assist the city of
13 Ripon, because they are the ruling jurisdiction,
14 so to speak, we've added Noise 2, so that there
15 would be, in lieu of their noise regulations,
16 which was all one paragraph, we put something so
17 that the resident's concerns can at least be
18 addressed and resolved.
19 Once the plant gets beyond initial
20 operation, and its shown that the plant is not
21 creating a noise impact, we step out of the
22 picture.
23 HEARING OFFICER VALKOSKY: Okay, look,
24 I'd really rather not get into the contents of the
25 specific noise conditions. I'd really like to do

1 that in the context of the noise topic. And I
2 think -- have you made your points about your
3 general compliance --
4 MS. KAEFER: I think so, yes, my point
5 is now it's good, but six months from now, if
6 something goes wrong, then what?
7 HEARING OFFICER VALKOSKY: Right. And I
8 think one of the things staff should think about
9 to address with their noise witness is
10 fundamentally what good is a condition to mitigate
11 impacts or protect against impacts, which won't be
12 enforced, because it's an operational condition.
13 MS. KAEFER: That's it.
14 HEARING OFFICER VALKOSKY: I mean,
15 that's what I think concerns everybody, and
16 frankly that's what concerns me too. Okay, but
17 again, if this is specific noise, I think we'll
18 deal with that in the noise topic.
19 MS. KAEFER: Okay. Thank you.
20 HEARING OFFICER VALKOSKY: Okay.
21 MR. WESTERFIELD: Still, in my Public
22 Advisor role -- I know it's confusing. As I
23 remember Ms. Kaefer also had a comment that she
24 was interested in making in the topic of energy --
25 MS. KAEFER: I know, we'll wait until

1 after, we'll wait until then.

2 COMMISSIONER BOYD: Sometimes the Public

3 Advisor's advice is taken, and sometimes it's not.

4 (laughter)

5 MR. WESTERFIELD: The main thing is the

6 advice is given.

7 HEARING OFFICER VALKOSKY: We were on

8 hazmat, was there any public comment or discussion

9 on that topic? Seeing none, we'll close the

10 record on hazardous materials, and move on to the

11 next topic, which is Hydrology and Water Quality.

12 Ms. Warren?

13 MS. WARREN: Yes. Applicant's witness

14 on this topic is Matt Franck. And that testimony

15 begins at page 62 of exhibit 25, and incorporates

16 the following: exhibit 1, section 8.13 of the

17 SPPE; exhibit 2, SPPE supplement A, portions that

18 pertain to water resources, hydrology and water

19 quality; exhibit 3, the revised figure 4 for

20 supplement A; exhibit five, data response set 1A,

21 numbers 57 through 67; and exhibit 15, draft

22 initial study comments set 1, those portions

23 pertaining to the topic.

24 HEARING OFFICER VALKOSKY: Is there

25 objection to admission of those exhibits?

1 MR. WESTERFIELD: No objection.
2 MR. SARVEY: No objection.
3 HEARING OFFICER VALKOSKY: Seeing no
4 objection, they're received. Mr. Westerfield?
5 MR. WESTERFIELD: The staff offers its
6 testimony in the topic area of hydrology and water
7 quality by declaration. It is authored by Mr.
8 Michael Krolak, and ask that it be received into
9 evidence.
10 HEARING OFFICER VALKOSKY: Is there
11 objection?
12 MS. WARREN: No.
13 HEARING OFFICER VALKOSKY: No objection,
14 that's admitted. Again, Mr. Westerfield, if I
15 could address your attention to condition water 1
16 on page 912? Again, to my reading this is an
17 operation condition over which the Commission
18 would retain jurisdiction. Is that a correct
19 interpretation of those conditions?
20 MR. WESTERFIELD: If you'll allow me
21 just a moment.
22 HEARING OFFICER VALKOSKY: Please.
23 MR. WESTERFIELD: Mr. Valkosky, this is
24 I think the condition that Dr. Reede was referring
25 to earlier, where the CEC has a legislative

1 mandate to collect information and report it. And
2 so, for this reason, we have recommended that the
3 Commission retain jurisdiction to make sure that
4 information is collected so we can fulfill that
5 duty.
6 HEARING OFFICER VALKOSKY: Okay. So is
7 that a yes? I mean, this is something, we would
8 retain jurisdiction, and if there is a problem we
9 would have -- not even going into what type of
10 enforcement authority -- but we would attempt to
11 ensure Applicant applied with this condition?
12 MR. WESTERFIELD: Yes.
13 HEARING OFFICER VALKOSKY: Thank you.
14 Is there any further discussion on the topic of
15 hydrology and water quality? Public comment on
16 the topic? Seeing none, we'll close the record on
17 that topic. Land Use. Ms. Warren?
18 MS. WARREN: Yes. We have two witnesses
19 to cover this topic. The first one is Katie
20 Carrasco, and that testimony begins on page 65 of
21 exhibit 25, and incorporates exhibit 1, section
22 8.4 of the SPPE; exhibit 2, SPPE supplement A,
23 portions pertaining to land use; exhibit 5, data
24 response set 1A, numbers 49, 50, and 51; and
25 exhibit 15, the draft initial study comments set

1 1, portions pertaining to land use.
2 We'd also like to put forth the
3 declaration of Stephen Long, and that testimony is
4 at page one of exhibit 25, and incorporates
5 exhibit 1, section 8.9 of the SPPE; and exhibit 2,
6 SPPE supplement A.
7 HEARING OFFICER VALKOSKY: Objection?
8 MR. WESTERFIELD: No objection.
9 MR. SARVEY: No objection.
10 HEARING OFFICER VALKOSKY: Relevant
11 portions of the exhibit are admitted. Mr.
12 Westerfield?
13 MR. WESTERFIELD: Staff admits its
14 testimony in the topic area of land use by
15 declaration. Its authored by Mr. David Flores,
16 and ask that it be received into evidence.
17 HEARING OFFICER VALKOSKY: Objection to
18 the admission of that portion of exhibit 22?
19 MS. WARREN: No objection.
20 MR. SARVEY: No objection.
21 HEARING OFFICER VALKOSKY: Seeing none,
22 that's admitted. Any public discussion or public
23 comment upon the topic of land use? Seeing none,
24 we'll close the record on that topic. Public
25 Health next. Ms. Warren?

1 MS. WARREN: Yes. Applicant's witness
2 is John Lowe. Testimony begins at page 51 of
3 exhibit 25, and incorporates exhibit 1, section
4 8.16 of the SPPE; exhibit 2, SPPE supplement A,
5 portions pertaining to public health; exhibit 5,
6 data response set 1A, numbers 52 and 53; exhibit
7 13, informal data response set 4, number AQ-2.
8 HEARING OFFICER VALKOSKY: Objections?
9 MR. WESTERFIELD: No objection.
10 MR. SARVEY: No objection.
11 HEARING OFFICER VALKOSKY: Portions of
12 those exhibits are admitted. Mr. Westerfield?
13 MR. WESTERFIELD: I'm sorry, Mr.
14 Valkosky. We actually do have an objection.
15 HEARING OFFICER VALKOSKY: You do, which
16 portion and the basis for it?
17 MR. WESTERFIELD: I would like to have
18 Dr. Reede address the portion and the basis of the
19 objection.
20 HEARING OFFICER VALKOSKY: You could,
21 yes please. Identify the exhibit.
22 MR. REEDE: I received an e-mail from
23 the staff who propounded the public health
24 section. Upon their review of the testimony by
25 the Applicant they state that cancer risk, chronic

1 and acute non-cancer hazard indices need to be
2 revised to reflect the updated health risk
3 assessment available in supplement A of June 20th
4 of the SPPE -- I believe that's June 23rd to the
5 SPPE. The figures cited in the testimony by John
6 Lowe are from the original risk assessment, not
7 from the revised risk assessment.
8 HEARING OFFICER VALKOSKY: Ms. Warren,
9 are you prepared to respond to that? We will be
10 taking a recess in a few minutes. Maybe you would
11 want to check with your witnesses then?
12 MS. WARREN: Yes, I would appreciate the
13 ability just to confer with my witness, and we'll
14 get back on that.
15 HEARING OFFICER VALKOSKY: Yes. We'll
16 hold our action on this exhibit at this time, and
17 revisit that later in the day. Doctor, would you
18 address specifically the exhibit you're referring
19 to? Is that exhibit 25?
20 MR. REEDE: Yes sir. It's exhibit 25,
21 and it's John Lowe's testimony. They use the
22 cancer risk, chronic and acute non-cancer hazard
23 indices from the original application for the
24 original SPPE application.
25 They revised those indices in the ZOD

1 supplement A. Mr. Lowe's testimony uses the ones
2 that were originally submitted in April, instead
3 of the revised ones that were submitted in June.
4 MS. WARREN: Yes, and we're just taking
5 a quick look at that and will confirm that --
6 HEARING OFFICER VALKOSKY: Right. We'll
7 deal with that after the recess. Mr. Westerfield,
8 staff portion of public health?
9 MR. WESTERFIELD: Staff would like to
10 offer its testimony by declaration in the topic
11 area of public health. It's offered by Ramesh
12 Sundareswaran, and ask that that portion of
13 exhibit 22 be admitted.
14 MS. WARREN: No objection.
15 MR. SARVEY: No objection.
16 MR. WESTERFIELD: We also have
17 additional information, additional testimony by
18 the errata. Errata staff filed Friday in the area
19 of public health. So we ask that that amendment
20 to the testimony also be admitted.
21 HEARING OFFICER VALKOSKY: Is there
22 objection, Ms. Warren?
23 MS. WARREN: None.
24 HEARING OFFICER VALKOSKY: Mr. Sarvey?
25 MR. SARVEY: None.

1 HEARING OFFICER VALKOSKY: We'll admit
2 those exhibits again. Mr. Westerfield, the
3 proposed condition of exemption, public health 1,
4 no page 12-14, appears to be once again an
5 operation condition or -- by that I mean a
6 condition by which the Commission assumes some
7 sort of continuing oversight for the enforcement
8 of that condition. Is that correct?
9 MR. WESTERFIELD: Mr. Valkosky, if you
10 again review public health 1, I think you'll see
11 that the kind of verification staff is requesting
12 is to ensure that the program that we are calling
13 for meets with our approval, meets with the CEC's
14 approval as reviewed or analyzed by the CPM. So
15 we are asking the jurisdiction to approve the
16 program.
17 Once that is done, we are not
18 recommending continuing enforcement or review.
19 HEARING OFFICER VALKOSKY: So we could
20 end up in a situation where we have an approved
21 program which may or may not be actually
22 implemented?
23 MR. WESTERFIELD: Well, it's possible,
24 but again there is a state -- I believe it's a
25 regulation -- that deals with this problem. And

there is I believe a state authority that is responsible for dealing with this kind of thing. I can't cite you the citation right now, but we can get that to you.

HEARING OFFICER VALKOSKY: Okay, that's fine, but then we go back to my question again on hazardous materials. If this is the law that they've got to comply with why are we even conditioning it?

Because I'm, you know, one of the assumptions I think that the Committee deals with is yes, there is a wide body of law out there. And Applicant is certainly expected to comply with it all. What I'm wondering is why do we seem to be calling out very specific, very discrete portions of that wide body of law if in fact we are not independently doing any monitoring?

MR. WESTERFIELD: Yes, I understand.

HEARING OFFICER VALKOSKY: Okay.

MR. WESTERFIELD: I think, in this instance, we are asking that the program be set up in a way that we feel is appropriate. Then there is law out there once the program is set up that we are not speaking to that can take over and see that the application of biocide to prevent

1 Legionella will be followed.

2 HEARING OFFICER VALKOSKY: So you're

3 saying that that law which actually covers this

4 area doesn't specify how to set up the program?

5 MR. WESTERFIELD: I'm trying to remember

6 what that law says. It's hard for me to do that

7 for the moment.

8 HEARING OFFICER VALKOSKY: Understood.

9 MR. WESTERFIELD: But the concept, we

10 have confidence that the law will be enough to

11 maintain or review this in the future. But we

12 certainly can address that concern in more detail

13 in a future brief.

14 HEARING OFFICER VALKOSKY: That will be

15 fine, I'm just raising the question at this point,

16 Mr. Westerfield. Any further discussion or public

17 comment on the area of public health? Now we're

18 going to keep this topic open pending the

19 outstanding objection to exhibit 25, which

20 hopefully will be resolved one way or the other.

21 MS. WARREN: Hearing Officer Valkosky?

22 HEARING OFFICER VALKOSKY: Yes?

23 MS. WARREN: If' you'd like, we're ready

24 to proceed now.

25 HEARING OFFICER VALKOSKY: Oh,

1 certainly.

2 MS. WARREN: We had the opportunity to

3 confer while you were asking your question.

4 HEARING OFFICER VALKOSKY: You bet, Ms.

5 Warren.

6 MS. WARREN: If it's acceptable, we

7 thought the cleanest way to address this is -- we

8 have Gary Rubenstein available, who participated

9 in comparing the health risk assessment. And if I

10 swear him in, we can get him to make the

11 corrections and go from there.

12 HEARING OFFICER VALKOSKY: Is there

13 objection to that?

14 MR. WESTERFIELD: No objection.

15 MR. SARVEY: Will he be available for

16 questions on public health and air quality as

17 well?

18 HEARING OFFICER VALKOSKY: Right now, he

19 will be available for questions on public health.

20 He will be appearing later on air quality. Right

21 now what we're dealing with, Mr. Sarvey, are the

22 specific exceptions to exhibit 25.

23 MR. SARVEY: Okay, thank you.

24 HEARING OFFICER VALKOSKY: Swear the

25 witness please.

1 Whereupon,

2 GARY RUBENSTEIN

3 was called as a witness herein, and after first

4 having been duly sworn, was examined and testified

5 as follows:

6 MS. WARREN: Thank you. Can you state

7 and spell your name for the record please?

8 MR. RUBENSTEIN: Yes. My name is Gary

9 Rubenstein, the last name is spelled R-u-b-e-n-s-

10 t-e-i-n.

11 MS. WARREN: And could you briefly state

12 your qualifications relative to the type of

13 matters to be discussed?

14 MR. RUBENSTEIN: As noted in my direct

15 testimony on air quality, I prepared the

16 supporting air quality analyses that were used as

17 the basis for many of the analyses presented in

18 the public health section specifically, including

19 the analyses of chronic and acute hazard indices

20 and cancer risk.

21 MS. WARREN: Were you present to hear,

22 in this room a few minutes ago, staff's objection

23 to the testimony submitted by John Lowe in this

24 matter?

25 MR. RUBENSTEIN: Yes.

1 MS. WARREN: Do you have any corrections
2 or comments or clarifications that you would make
3 in response to staff's objection?
4 MR. RUBENSTEIN: Yes. In response to
5 staff's objection I reviewed Mr. Lowe's testimony,
6 and as well the health risk assessment that was
7 included in supplement A, which was also referred
8 to as the ZOD supplement, and confirmed that Mr.
9 Lowe's testimony does contain typographic errors
10 in three locations in which he did not update the
11 health risk numbers based on the analysis that was
12 submitted in June in supplement A.
13 In particular, on page 53 of exhibit 25,
14 at the second full paragraph down, the paragraph
15 that begins "the excess lifetime cancer risk" in
16 the second line of that paragraph is a number that
17 reads "0.075 times 10 to the minus sixth". That
18 number should be 0.22 times 10 to the minus sixth.
19 In the next paragraph below, the
20 paragraph begins "the chronic non-cancer hazard
21 indices." And the center line of that paragraph
22 is the number 0.0016. That number should be 0.002.
23 And in the next paragraph following, the
24 paragraph that begins "the acute non-hazard
25 indices", there is a number in the first line,

1 0.0165. That number should be 0.02.
2 With a correction of those three
3 typographic errors these numbers are now
4 consistent with the values that were present in
5 the updated health risk assessment included with
6 supplement A. None of the conclusions with
7 respect to the significance of these health risks
8 are changed because they are remain below the
9 regulatory thresholds that Mr. Lowe cited in his
10 testimony.
11 MS. WARREN: Thank you. No further
12 questions.
13 HEARING OFFICER VALKOSKY: Staff?
14 MR. WESTERFIELD: Well, with those
15 corrections, we drop our objection.
16 HEARING OFFICER VALKOSKY: Mr. Sarvey?
17 MR. SARVEY: No objection.
18 HEARING OFFICER VALKOSKY: With that, we
19 will receive that for the public health portion of
20 exhibit 25, with the corrections noted by the
21 witness. Again, are there any further public
22 comments or discussion of the topic of public
23 health?
24 Seeing none, we'll move to the next
25 topic, transmission system engineering. Ms.

1 Warren?

2 MS. WARREN: Yes. Applicant's witness

3 on this topic is again Steven Hill. And his

4 testimony on this topic was included in the

5 previous topic with transmission safety and

6 nuisance. There was at 86 of exhibit 25, and the

7 exhibits that were incorporated therein.

8 HEARING OFFICER VALKOSKY: Is there

9 objection to receipt of those portions?

10 MR. WESTERFIELD: No objection.

11 MR. SARVEY: No objection.

12 HEARING OFFICER VALKOSKY: They are

13 admitted into evidence. Mr. Westerfield.

14 MR. WESTERFIELD: Staff would like to

15 submit its testimony on transmission system

16 engineering. A declaration. This is testimony by

17 Ms. Laiping Ng and Al McCuen. We ask that these

18 portions of exhibit 22 be received into evidence.

19 HEARING OFFICER VALKOSKY: Is there

20 objection?

21 MS. WARREN: No objection.

22 MR. SARVEY: No objection.

23 HEARING OFFICER VALKOSKY: They are

24 admitted. Is there any public comment or further

25 discussion on the area of transmission system

1 engineering? Seeing none, we'll close the record
2 on that topic. And the last topic before the
3 impending recess, waste management. Ms. Warren?
4 MS. WARREN: Thank you. Applicant's
5 witness, a declaration on this item, is Karen
6 Parker. And that testimony begins on page 94 or
7 exhibit 25.
8 It incorporates the following: exhibit
9 1, section 8.12 of the SPPE; exhibit 2, SPPE
10 supplement A, portions that pertain to waste
11 management; exhibit 5, data response set 1A,
12 number 93; and exhibit 8, data response set 1D,
13 number 93; exhibit 15, the draft initial study
14 comments, set 1, portions that pertain to waste
15 management; and finally, exhibit 19, the July 17,
16 2003 e-mail from Maria Gillette from DTSC to
17 Ramesh Sundareswaran, regarding the adequacy of
18 staff clean data results from the site soils
19 testing.
20 HEARING OFFICER VALKOSKY: Thank you.
21 Is there objection?
22 MR. WESTERFIELD: No objection -- oh.
23 HEARING OFFICER VALKOSKY: Hearing no
24 objections -- you do have an objection?
25 MR. WESTERFIELD: We do have something

of an objection, which will be addressed by Dr. Reede.

MR. REEDE: In section three, summary of the Applicant's testimony, paragraph two, it characterizes the phase one environmental site assessment by the Denali Group that was performed in 2002 as not observing evidence of recognized existing environmental issues at the site, as a result of past or present land use practices.

And it also characterizes the report as not observing indicators of the use generation of storage of hazardous substances at the site, nor did the Denali Report observe evidence of release of hazardous substance at the site.

When in fact the report of 2002 did emphatically recognize and recommend additional sampling and testing of the soils for pesticides prior to any site disturbance, which was the cause of the Commission requiring them to perform a phase two analysis, which the Department of Toxics and Substance Control agreed with, because it had had prior use as an agricultural operation.

And there was a concern about pesticides. So the testimony does not characterize the information that was contained in

1 the Denali Group report, which correctly, under
2 the law, reported that there was prior pesticide
3 use, and also stated that additional phase two
4 testing needed to be performed prior to any site
5 disturbance.
6 HEARING OFFICER VALKOSKY: Ms. Warren,
7 do you have something of a response to something
8 of an objection?
9 MS. WARREN: Something of an apology for
10 overlooking the issue. The testimony does need to
11 be corrected from that perspective. As has been
12 acknowledged, the additional testing had been
13 completed, and the final results were as noted
14 earlier.
15 However, the lines, starting on line
16 two, the characterization of the Denali Report in
17 the second line, starting with that second
18 sentence, through the end of the sentence on the
19 sixth line, could be deleted.
20 HEARING OFFICER VALKOSKY: Okay, so for
21 the record you would delete at --
22 MS. WARREN: Would you like me to read
23 the portion that should be deleted?
24 HEARING OFFICER VALKOSKY: Please,
25 please.

1 MS. WARREN: Can I take just a short
2 recess to make sure I have the right deletion?
3 HEARING OFFICER VALKOSKY: Well, why
4 don't you just hold on, because we're going to be
5 taking a recess real shortly. And that will give
6 you more time.
7 Okay, so we'll hold that. We'll go to
8 staff. Do you have any evidence to offer in this,
9 Mr. Westerfield?
10 MR. WESTERFIELD: Yes. We'd like to
11 offer our portion of our final initial study, the
12 waste management section. And offer it by
13 declaration, and ask that that portion of exhibit
14 22 be admitted into evidence.
15 HEARING OFFICER VALKOSKY: Objection?
16 MS. WARREN: I have nothing of an
17 objection.
18 MR. WESTERFIELD: And there is actually
19 one other bit that we would ask to be admitted.
20 And that is part of staff's errata. It simply
21 asks that the last sentence be deleted. So we ask
22 that that also be admitted into evidence.
23 HEARING OFFICER VALKOSKY: Okay. Is
24 there objection to that, exhibit 26. Ms. Warren,
25 any objection to exhibit 26?

1 MS. WARREN: No objection.
2 MR. SARVEY: No objection.
3 HEARING OFFICER VALKOSKY: Okay. What
4 we'll do at this point is hold the record open
5 pending revision to Applicant's waste management
6 testimony. After the recess we'll resume with
7 that, and then proceed with alternatives, etc.
8 With that, we'll take a recess for 15 minutes.
9 We'll reconvene at 3:35.
10 (Off the record.)
11 HEARING OFFICER VALKOSKY: Okay. We
12 have reconvened. Ms. Warren, did you have any
13 amendments to exhibit 25 in your waste management
14 testimony?
15 MS. WARREN: Actually, I think at this
16 point I'd like to somewhat retract my somewhat of
17 an apology, and stand behind the testimony that we
18 had on page 95. By doing so, I'd like to
19 reference the actual section of the phase one site
20 assessment.
21 It's on page 17 of that exhibit
22 document, in section eight under conclusions, and
23 the statement, the testimony on page 95, is
24 virtually a quote, and I will read to you out of
25 the site assessment, as I said under page 17,

1 section conclusion.

2 "Denali did not observe evidence of

3 recognized, existing environmental issues at the

4 site as a result of past or present land use

5 practices. Denali did not observe indicators of

6 the use, generation and storage of hazardous

7 substances at the site. Denali did not observe

8 evidence of release of hazardous substances at the

9 site."

10 So, I believe, as quoted, supports the

11 language in the testimony. Furthermore, again,

12 I'd just like to point out that the testimony on

13 page 95 continues in recognition that in response

14 to the request, the California Department of Toxic

15 Substances can control -- and the California

16 Energy Commission -- the soil samples collected,

17 and the additional testing was completed, and the

18 site came back clear.

19 HEARING OFFICER VALKOSKY: Thank you.

20 Staff have any response?

21 MR. WESTERFIELD: Well, I think staff's

22 thoughts on it are that the bottom line is that we

23 don't see a significant impact to the environment

24 from any residual pesticide use.

25 HEARING OFFICER VALKOSKY: Okay, so that

1 in point of fact its more of an academic dispute
2 rather than any dispute that would have an affect
3 upon the suitability of this project for an SPPE,
4 is that a correct statement?
5 MR. WESTERFIELD: Thank you.
6 HEARING OFFICER VALKOSKY: With that,
7 we'll deny the objection and receive exhibit 25.
8 Is there any further discussion on the topic area
9 of waste management from anyone here present?
10 Seeing none, we'll close the record on that.
11 Okay, we'll move to alternatives. And
12 for this topic we only have witnesses from
13 Applicant. Ms. Warren, present your witnesses
14 please.
15 MS. WARREN: Well, you stole my thunder.
16 The witness on this topic is Steven Hill. I would
17 assume he is still under oath.
18 HEARING OFFICER VALKOSKY: That's
19 correct.
20 MS. WARREN: And you have his name for
21 the record. Do you have before you a copy of the
22 alternatives section of exhibit 25 beginning on
23 page 38?
24 MR. HILL: Yes I do.
25 MS. WARREN: And was that testimony

1 regarding alternatives prepared by or at your
2 direction?
3 MR. HILL: Yes.
4 MS. WARREN: Do you have any additions
5 or corrections or clarifications to the filed
6 testimony?
7 MR. HILL: No I do not.
8 MS. WARREN: The testimony incorporates
9 by reference some exhibits. Can you please
10 identify them?
11 MR. HILL: Yes, exhibit one, section 9
12 of the SPPE and exhibit 2, which is supplement A
13 to the SPPE.
14 MS. WARREN: To the best of your
15 knowledge are all the facts contained in that
16 testimony, including all the reference documents,
17 true and correct?
18 MR. HILL: Yes.
19 MS. WARREN: Do the opinions contained
20 in the testimony represent your best professional
21 judgment?
22 MR. HILL: Yes.
23 MS. WARREN: Do you adopt this testimony
24 in the proceeding?
25 MR. HILL: Yes.

1 MS. WARREN: Can you please summarize
2 your testimony regarding alternatives?
3 MR. HILL: Yes. As stated in my earlier
4 testimony, we looked at a number of alternative
5 sites. There were 27 in all, and it was pared
6 down to three. Ripon, or the proposed Ripon site,
7 at the corner of Doak Boulevard and South Stockton
8 Avenue turned out to be the preferred site for
9 several reasons.
10 One, it wa zoned industrial. It was in
11 close proximity to our Stockton substation, so
12 from a transmission standpoint it was terrific
13 since the transmission line would only need to be
14 about a quarter of a mile. There was good gas,
15 and by that I mean fairly high pressure gas, and
16 of sufficient quantity within a quarter of a mile.
17 And since these are going to be
18 combustion turbines that was close, that was
19 desirable. There were a number of supplies of
20 water. There was the potential to use the gray
21 water, but as it turned out the city of Ripon had
22 a source of non-potable water that was even
23 cleaner and more economical to use, so that was
24 very attractive.
25 And so, for those reasons, those are the

1 primary reasons, that turned out to be our
2 preferred site. And then as we filed supplement
3 A, since we were so close to the wastewater ponds
4 from a sewage discharge point, that also appeared
5 to be a very good reason.
6 But it turns out that would not be
7 possible. That's when we went to zero liquid
8 discharge. But even with that, this turned out to
9 be the preferred site.
10 MS. WARREN: Did you consider a no-
11 project alternative?
12 MR. HILL: A no-project alternative was
13 really not an option here, because, again the
14 board of directors had made the decision to
15 proceed with a 100 megawatt plant.
16 MS. WARREN: Did you consider any
17 configuration alternatives?
18 MR. HILL: As part of the study we
19 considered using a number of different turbines.
20 We looked at a number of different renewable type
21 technologies, but for what we needed, for a
22 peaking application, a combustion turbine was the
23 best alternative, and the most economical
24 alternative for what we were trying to achieve.
25 MS. WARREN: Did you consider any

1 alternative technologies?

2 MR. HILL: Well, as I said, we looked at

3 renewable type technologies -- solar, solar PV,

4 wind power. Looked at various kind of

5 interesting technologies, including new power and

6 also hydro, but they weren't appropriate for that

7 particular site.

8 MS. WARREN: NO further questions.

9 HEARING OFFICER VALKOSKY: Mr.

10 Westerfield, any further questions?

11 MR. WESTERFIELD: We have no questions.

12 HEARING OFFICER VALKOSKY: Mr. Hill,

13 before we get to Mr. Sarvey. You indicated, on

14 page 38 of your testimony, that the, that you

15 looked at technologies that might be available for

16 peaking load operation.

17 And then you conclude at the last

18 sentence of the last paragraph on page 38, that

19 "the conventional simple-cycle technology, using

20 natural gaseous fuel, is the best available

21 technology for a peaking plant."

22 Now, I recall you talking in project

23 description that this project would be available

24 for 8,760 hours a year is that correct?

25 MR. HILL: That is correct.

1 HEARING OFFICER VALKOSKY: Does that
2 influence at all your alternatives analysis?
3 MR. HILL: No. It is the district
4 policy that in all our power combustion turbine
5 plants that we permit them for 8760. If we were
6 going to build another power plant the chances are
7 very, very high that we would permit it for 8760.
8 HEARING OFFICER VALKOSKY: Correct. But
9 in that case isn't it true that a combined cycle
10 technology would be preferable?
11 MR. HILL: Even if we were to build
12 another peaking plant we would permit it for 8760.
13 HEARING OFFICER VALKOSKY: Right. If
14 you were to build another plant, and it was
15 permitted for 8760, isn't it then true that a
16 combined cycle technology would be a preferable
17 alternative to a simple cycle technology, that's
18 what I'm asking?
19 MR. HILL: I, if I understand you
20 correctly, whether it's simple or combined cycle,
21 we would permit it as 8760. Typically, if you
22 want to run a plant at 8760 it would be combined
23 cycle. But we permit both simple and combined
24 cycle for 8760.
25 COMMISSIONER PERNELL: Why is that?

1 8760, I mean, what did that number come from?
2 MR. HILL: Well, that's running a plant
3 basically 24 hours a day, 365 days a year.
4 COMMISSIONER PERNELL: Right, and I
5 think ---
6 MR. HILL: So that's kind of infinite
7 operational flexibility, that's why.
8 HEARING OFFICER VALKOSKY: Mr. Sarvey,
9 any questions?
10 MR. SARVEY: I was trying to elicit the
11 same answers you were in your last two questions.
12 And also in the previous questions. But I do have
13 two other questions I'd like to ask. When you
14 chose the site, did you consider your future
15 decision to convert this project to combined
16 cycle?
17 MR. HILL: Yes.
18 MR. SARVEY: And did you analyze the
19 possibility that this site is not appropriate for
20 a combined cycle plant?
21 MR. HILL: I think I'd like to maybe
22 restate that. We analyzed it for the suitability
23 for combined cycle.
24 MR. SARVEY: And you stated earlier you
25 had plans to convert this project to combined

1 cycle at a later date possibly?
2 MR. HILL: We do not have plans to
3 convert it. We laid it out -- if our board of
4 directors directs us to build a combined cycle
5 plant that we can do it in the most economical
6 fashion. But we have no plans, no design details
7 that would imply that we were going to do that at
8 this time.
9 MR. SARVEY: What I'm getting at here
10 is, if you permit a plant for 8760 and you said
11 earlier you had some intentions that you might go
12 combined cycle, there's some certain health
13 effects, noise, what-have-you that this site would
14 no longer be acceptable for that project.
15 So is there not an alternative site that
16 would perhaps be more appropriate?
17 MR. HILL: I'm sorry, Mr. Sarvey -- more
18 appropriate for a combined cycle plant?
19 MR. SARVEY: Yes.
20 MR. HILL: Again, the reasons for
21 picking this site were closeness to industrial
22 zone, closeness to transmission, closeness to gas
23 supply, closeness to water. Those are wonderful
24 reasons to build a combined cycle plant. And we
25 still think they're wonderful reasons and that's a

wonderful site for a combined cycle plant.

MR. SARVEY: Are you aware of the environmental impacts that are different between a combined cycle plant and a single cycle plant, and it's proximity to a residential community?

MR. HILL: I believe so. Did you have some specifics in mind?

MR. SARVEY: Just basically noise and air quality.

MR. HILL: We believe that the only impact to air quality might be additional emissions from a cooling tower. Certainly the combustion turbines will not be upsized. A combined cycle plant would be a two on one combined cycle plant, so the units are already there.

So adding steam turbine probably would not affect air quality except for the increase in size of our new cooling tower.

MR. SARVEY: So it would be fair to say that your selection of this site had nothing to do with any future plans to convert to combined cycle then?

MR. HILL: I would not say that it doesn't have any future plans to convert to

1 combined cycle. Again, the board gave us a
2 specific direction to be able to lay this plant
3 out so that if a decision is made at a later time
4 it could be adapted to be a combined cycle plant.
5 MR. SARVEY: Thank you.
6 HEARING OFFICER VALKOSKY: So, based on
7 that then, your conclusion was that yes, the site
8 is suitable for combined cycle, is that a correct
9 statement?
10 MR. HILL: Yes.
11 HEARING OFFICER VALKOSKY: Any redirect,
12 Ms. Warren?
13 MS. WARREN: Well, I'd just like to
14 followup and clarify for a moment. If the MID
15 were to move from the single cycle to the combined
16 cycle configuration, would you have to undertake
17 any new approvals from the Energy Commission or
18 undertake any other activity?
19 MR. HILL: It's certainly my
20 understanding that we start the process all over
21 again, because we would certainly tip the 100
22 megawatt threshold, so yes we would have to go
23 through an AFC process to do that.
24 MS. WARREN: No other questions.
25 HEARING OFFICER VALKOSKY: Mr.

1 Westerfield, recross?

2 MR. WESTERFIELD: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Sarvey?

4 MR. SARVEY: No questions.

5 HEARING OFFICER VALKOSKY: Ms. Warren,

6 are you moving your exhibit?

7 MS. WARREN: Yes.

8 HEARING OFFICER VALKOSKY: Is there any

9 objection to receipt of that portion of exhibit 25

10 dealing with alternatives?

11 MR. WESTERFIELD: No objection.

12 HEARING OFFICER VALKOSKY: Mr. Sarvey?

13 MR. SARVEY: No objection.

14 HEARING OFFICER VALKOSKY: Seeing no

15 objection, it's received. Is there any further

16 public comment please, or discussion? A speaker,

17 please approach the microphone.

18 MS. KAEFER: I just wanted to quick add

19 to that, under the conclusions under the energy

20 resources that you guys came up with was "because

21 it will consume substantial amounts of energy, the

22 MEGS, with it's proposed simple cycle, will

23 produce both peaking and baseload power in an

24 efficient manner."

25 "Staff therefore concludes MEGS will not

1 create significant adverse impacts." The way I
2 read that, though, if it had been 360 days a year
3 or 365 days a year, that that wouldn't be true. I
4 mean, am I correct in that assumption? I mean, if
5 you're going to run it 365 days a year --
6 HEARING OFFICER VALKOSKY: Dr. Reede,
7 are you prepared to respond to that? Or someone
8 else here who can.
9 MR. REEDE: I have staff that can
10 respond to it, if you want them to be sworn at
11 this time.
12 HEARING OFFICER VALKOSKY: Please.
13 MR. REEDE: I call Shahab Khoshmashrab
14 and Steve Baker to be sworn.
15 MR. WESTERFIELD: Well, I think the
16 testimony that staff submitted is just Shahab's.
17 MR. REEDE: Okay, well just Shahab then.
18 MR. WESTERFIELD: Can we get another
19 chair up here?
20 HEARING OFFICER VALKOSKY: Mr.
21 Westerfield, you're putting both witnesses on?
22 MR. WESTERFIELD: We are going to put
23 both witnesses on.
24 HEARING OFFICER VALKOSKY: Okay. Swear
25 the witnesses please.

1 Whereupon,

2 SHAHAB KHOSHMASHRAB AND STEVE BAKER

3 were called as witnesses herein, and after first

4 having been duly sworn, were examined and

5 testified as follows:

6 MR. WESTERFIELD: Mr. Valkosky, would

7 you like me to ask just a couple of preliminaries

8 just to explain why we have two witnesses?

9 HEARING OFFICER VALKOSKY: Please do Mr.

10 Westerfield.

11 MR. WESTERFIELD: Okay. First off,

12 Shahab, did you author the supplemental testimony

13 that was submitted as part of the staff's errata

14 last week on energy resources?

15 MR. KHOSHMASHRAB: Yes.

16 MR. WESTERFIELD: And is it still your

17 testimony today?

18 MR. KHOSHMASHRAB: Yes.

19 MR. WESTERFIELD: And Mr. Baker, did you

20 participate in the preparation of this testimony

21 in any way?

22 MR. BAKER: Yes, I supervised the

23 preparation of the testimony.

24 MR. WESTERFIELD: So you are familiar

25 with the testimony?

1 MR. BAKER: Yes.
2 MR. WESTERFIELD: And is it true and
3 accurate to the best of your knowledge?
4 MR. BAKER: Yes it is.
5 MR. WESTERFIELD: So that explains why
6 we have both witnesses, both are able to respond
7 to any questions.
8 HEARING OFFICER VALKOSKY: Understood.
9 Ma'am, would you like to ask the witnesses your
10 question?
11 MS. KAEFER: In the analysis of the
12 impacts, they're proposing as a peaking plant,
13 except for three months every year. And your
14 conclusion is based on that. And it says "because
15 of the simple cycle configuration, even though it
16 uses a lot more energy, but because it" -- should
17 I read it in full? You guys don't know what I'm
18 talking about, or do you?
19 What I read -- let me just read it. "As
20 proposed, the MEGS would generate its power as a
21 peaking plant, except for three months every year,
22 in which it would generate baseload power. As
23 compared to combined cycle configurations, simple
24 cycle configuration, with its short startup time
25 and fast ramping capability, is well-suited to

1 provide peaking power."

2 "However, combined cycle power plants

3 are more suitable for providing baseload power,

4 since they burn fuel more efficiently. Since the

5 MEGS will be required to provide peaking power

6 most of the time, and only be required to run on

7 baseload for a short time every year, and also

8 because the project's energy consumption is

9 insignificant compared to natural gas reserves

10 available, staff agrees with the Applicant that

11 simple cycle configuration would best meet the

12 project's objectives."

13 What I'm asking is, because that to me

14 looks like, because it's only a short cycle and

15 only three months, that that stands. But if

16 they're running 365 days a year, does that still

17 stand?

18 MR. KHOSHMASHRAB: Well, we'd have to

19 re-analyze the testimony based on the given hours,

20 the new hours.

21 MR. HILL: Could you speak up please?

22 MR. KHOSHMASHRAB: We have to reanalyze

23 the energy resources testimony. Based on the new

24 hours, we will have to reanalyze the testimony.

25 MR. BAKER: The energy resources

1 testimony, and supplemental testimony, was based
2 on our understanding of the proposed project,
3 which is run peaking most of the year, and run
4 effectively baseload for up to three months of the
5 year.
6 And given those numbers, Mr.
7 Khoshmashrab concluded, and I agree, that the
8 simple cycle is the preferable way to go.
9 If the project were proposed as a base
10 load, to run all year around as baseload, then we
11 would need to revisit it and reanalyze it. And
12 it's possible that we'd reach a different
13 conclusion. But our understanding is that's not
14 what's proposed here.
15 MS. KAEFER: But it's my understanding
16 that they're being licensed, they're going through
17 this, and you say okay, they can run 365 days
18 without having to change anything, as long as
19 they're on this simple cycle and not going the
20 other way.
21 So when they decide to do that, we go
22 back to who's going to regulate that, or what?
23 They can do whatever they want to? So there
24 wouldn't be a need for them to do an analysis if
25 it's not done now.

1 If they're licensing it for 365 days,
2 would it not be the conclusion that --
3 MR. BAKER: I understand.
4 COMMISSIONER BOYD: It's not a license,
5 it's a air quality permit, if I'm not mistaken.
6 COMMISSIONER PERNELL: Mr. Baker, the
7 analysis that was done by you and your staff,
8 under your direction, was it for the 8760 that the
9 plant is talking about running?
10 MR. BAKER: No sir, it was based for a
11 peaker plant, which may operate baseload up to
12 three months a year, which is quite a bit less
13 than 8760 hours per year.
14 COMMISSIONER PERNELL: Okay. Does that
15 then tell us that they can only run up to three
16 months a year?
17 MR. BAKER: No sir. As far as we
18 understand, the Commission is not being asked to
19 limit the operating hours of the project. We've
20 only analyzed the project that we understood was
21 being presented. If the Applicant operates it
22 differently from that, I don't know that we have
23 anything to say about it.
24 HEARING OFFICER VALKOSKY: But you do
25 know that if you're presumed operating profile

1 were exceeded for another month, somewhere between
2 one and nine months, that your analysis would need
3 supplementing, is that correct?
4 MR. BAKER: Yes sir.
5 MR. GARCIA: So I guess to follow on to
6 that question, do you have a feel as to where that
7 breaking point would occur. At which point would
8 you say? Oh, it's 3.5 or 3.87 or 4 point
9 whatever, at which point you would change your
10 conclusion that it's not a significant impact?
11 MR. KHOSHMASHRAB: No.
12 MR. GARCIA: No what?
13 MR. BAKER: We don't have a feel for
14 that. If you were to ask us to analyze 12 months
15 of baseload we could analyze that. If you were to
16 ask us to analyze six months we may or may not
17 come up with the same conclusions, five months may
18 or may not, seven months may or may not. We can't
19 tell, sir.
20 One thing that we'd look at is the
21 importance of the owner to be able to operate as a
22 peaker. When you build a combined cycle plant you
23 give away quite a bit of the flexibility a peaker
24 offers in quick load carrying, load following,
25 being able to vary your output quickly in order to

control varying loads on the system.

A district like MID, that's responsible for power control in its own system, needs peaking power capability. It's not like they're just sitting off at four corners selling bulk power to someone else who has to worry about keeping the lights on at the right voltage and frequency.

So they do need peaking capacity. Whether they have other adequate peaking capacity on their system, in order to allow them to build this project as a combined cycle, with its, you know, inherent lack of flexibility, would be something we'd look at in doing the analysis.

MR. GARCIA: Let me follow up on your answer. I think I heard you say you had not done an analysis to determine at what point your answer would change from no impact to some impact, but presumably there is a point in which it's something greater than three months but less than a year, at which point you would say "yes, there's an impact." Is that correct?

MR. BAKER: Yes, I think that's correct.

MR. GARCIA: Okay.

MS. KAEFER: Can I ask one other question? One paragraph, or sentence, says "since

1 the MEGS will be required to provide peaking power
2 most of the time, and will only be required to run
3 on baseload for a short time every year." What's
4 the required word there mean? Why are you
5 required to run on baseload for a short time every
6 year?
7 HEARING OFFICER VALKOSKY: Ma'am, are
8 you reading the staff's testimony? Okay, the
9 supplemental testimony.
10 MR. KHOSHMASHRAB: Our understanding is
11 they are required to run three months out of the
12 year.
13 MR. HILL: Again, could you speak louder
14 please.
15 MR. KHOSHMASHRAB: Our understanding
16 from the Applicant is that they will run on
17 baseload for up to three months out of the year.
18 COMMISSIONER BOYD: But the key word
19 here is required. You said required.
20 MS. KAEFER: Required by whom?
21 COMMISSIONER BOYD: Are you, or the
22 Applicant, are you required by anything to run
23 baseload any period of time at all?
24 MR. HILL: Not that I'm aware of. And I
25 don't know where those numbers are coming from.

1 So if you can show me in our application or
2 whatever where those numbers are coming from, I'd
3 appreciate it, because I'm not aware of that.
4 MR. REEDE: Excuse me, Hearing Officer
5 Valkosky? In the transcript of the informational
6 hearing, their director of load planning stated
7 that they would be required to run 70 to 90 days
8 per year to meet demand during their specific
9 canning season.
10 The canning season runs from July to
11 September, and coincides with their air
12 conditioning peak demand. And so they would be
13 required to run the peaking plant so that they
14 could alleviate that.
15 And during powerpoint presentation and
16 transcript page 37, Mr. Mayor clearly states that
17 there are some major fuel processors that process
18 tomatoes and peaches, and they operate between 70
19 and 90 days per year, usually starting in July,
20 running through August, and into September.
21 At a minor load for us it is
22 approximately 50 megawatts, and once it is
23 operational it goes around the clock. But it just
24 exists during that period.
25 COMMISSIONER BOYD: I think we have a

1 semantics problem here about the use of the word
2 "required."
3 MS. KAEFER: Well, it says to require to
4 run on baseload, not peak.
5 COMMISSIONER BOYD: Necessary to run --
6 right. Well, I can't speak for the Applicant, but
7 I'm going to interpret that the Applicant's
8 witness said that they have high demand a certain
9 time of the year, and would likely have to run
10 i.e. be required to run the plant, almost as a
11 baseload plant, during those extreme peak periods.
12 But I shouldn't be speaking for the
13 Applicant, I'm just interpreting what I just
14 heard.
15 What I understand is there's no
16 requirement that they run the plant at all, or
17 that they run it as a peaker, or that they run it
18 as partial peaker or baseload plant. They've left
19 their options open, by virtue of the air quality
20 permit, they've left their options wide open to
21 run it 24 by 365.
22 That wouldn't be very economic, but
23 they're not prohibited from doing it. I'm sure if
24 they really thought they were going to run that
25 much they would build combined cycle. It's

1 terribly uneconomic to consume the amount of gas
2 this will consume if it's going to be run around
3 the clock.
4 But they're leaving themselves options,
5 as I interpret it, to run during severe peak
6 periods, i.e. run it all the time for some period
7 of time. But you are correct in that there is no
8 A, any requirement that they run; or B, ability to
9 control the hours they do run, in this process.
10 Other than by the air quality district
11 itself, by the permit that it gives for emissions
12 purposes, or for operational purposes, I can't
13 speak for them. But that's just my conclusions to
14 what I'm hearing so far. Others can correct this
15 later if I'm wrong.
16 COMMISSIONER PERNELL: But if I could
17 add to that, just for the record, I would agree
18 that there is no regulatory requirement, certainly
19 by this Commission, and by you reading a staff
20 document I can see where it could be misconstrued
21 as a regulatory requirement.
22 Sounds like there is a need or
23 administrative requirement to keep the various
24 manufacturing plants running, so they might have
25 to do that if its their obligation to provide

1 services or electricity.

2 But I would agree with our Presiding

3 Member here, Commissioner Boyd, that there is no

4 regulatory requirement. And so the word

5 "required" being read in that document, could be

6 somewhat misconstrued.

7 HEARING OFFICER VALKOSKY: Anything

8 further, ma'am?

9 MS. KAEFER: Well, just in reading this,

10 it looked to me like three months was, the

11 efficiency and the emissions would be different if

12 they ran it for all the time.

13 HEARING OFFICER VALKOSKY: Well, I think

14 you've heard the staff witnesses state that, as

15 far as energy resources go, their analysis is the

16 plant is a peaker and up to three months a year

17 baseload. And if it exceeded three months a year

18 baseload they would have to reassess. That's, I

19 think, the answer.

20 MS. KAEFER: Then can I ask you a

21 question. And I don't know if it's you or them.

22 If you knew they were going to run 365 would you

23 want to see that? And if there were an air

24 quality issue over that -- I mean, because I

25 thought the whole purpose of this was to skip the

1 normal regulatory things, to get to a shorter,
2 quicker version.
3 HEARING OFFICER VALKOSKY: You're
4 correct on the whole purpose of it. Basically,
5 the whole purpose is for the Commission to step
6 back and not impose its regulatory authority
7 because the regulatory regime imposed by other
8 agencies will be sufficient. That is the purpose
9 of this.
10 MR. GARCIA: I have a question for, I
11 guess it's Mr. Rubinstein. This actually is in
12 the section on public health. And when you were
13 computing the risk assessment figures did you base
14 your calculation on full load operation, 8760
15 hours per year, which potentially this plant could
16 operate at, or did you base this on a lesser
17 number of operating hours?
18 MR. RUBENSTEIN: All of the analyses
19 that we performed related to public health were
20 based on a worst case assumption of 8760 hours per
21 year of full load operation.
22 HEARING OFFICER VALKOSKY: Okay.
23 Anything --
24 MR. RUBENSTEIN: I have a question for
25 staff. In conducting your analyses of energy

1 resources, what parameters do you look at?
2 MR. KHOSHMASHRAB: Well, we compare the
3 project to other technologies available. And
4 other alternatives, and other -- basically,
5 comparing the efficiency of the project to the
6 other resources, and how much resources, energy
7 resources, as far as natural gas there are to
8 basically adequately feed the project.
9 MR. RUBENSTEIN: So, as you stated in
10 your testimony, compared to all the natural gas
11 reserves available, the consumption is
12 insignificant.
13 MR. KHOSHMASHRAB: Yes.
14 MR. RUBENSTEIN: So, if I might take
15 that one step further, and this plant is now
16 operating at 8760 hours. Compared to all natural
17 gas reserves available, it's still going to be
18 insignificant?
19 MR. KHOSHMASHRAB: It's still going to
20 be insignificant, because of the vast reserves of
21 natural gas.
22 MR. BAKER: But that doesn't mean that
23 we'd reach the same conclusion.
24 MR. RUBENSTEIN: Well, that's what I'm
25 trying to understand. What else might affect your

1 judgment in this analysis?

2 MR. KHOSHMASHRAB: Well, the efficiency

3 of the simple cycle compared to the combined

4 cycle. And if you're running it 8760 hours per

5 year, then your simple cycle, as far as natural

6 gas burning efficiency, will be lower than a

7 combined cycle machine.

8 MR. BAKER: Well, you're talking about a

9 plant for combined use here. One that will be

10 peaking part of the time and running baseload part

11 of the time. You have to look at a tradeoff. You

12 have to look at the operating flexibility offered

13 by the simple cycle, versus the fuel efficiency

14 offered by the combined cycle.

15 You can't have 100 percent of both. If

16 you want one you have to give up some of the other

17 and vice versa. If the project were proposed to

18 run base load all the time, it's possible that our

19 analysis would say simple cycle is not

20 appropriate, it's a significant adverse impact on

21 energy resources.

22 We might say that. I don't know, we

23 haven't performed that analysis. But the

24 Applicant's asking for something different from

25 that. They're asking for a plant that, at least a

1 significant portion of the year is going to be
2 required to do peaking duty and load following.
3 It's difficult to overemphasize the
4 importance of having peaking and load following
5 capability on an electrical system. Without
6 sufficient load following ability your system
7 becomes very brittle. It's very fragile and
8 upsets can easily happen that can bring down the
9 whole portion of the grid.
10 You can't just have a bunch of baseload
11 plants. You have to have load following, you have
12 to have peaking. How much, that's a decision that
13 has to be made by the controlling entity, in this
14 case, I believe, MID. They know what mode they
15 have to serve, and they have to decide what
16 resources they need -- load following versus base
17 load or whatever, to meet that.
18 In this case they've presented us with a
19 project which is largely peaking and load
20 following, with a significant portion of baseload.
21 And we've looked at it and agreed with them, from
22 our point of view, that they need a peaking plant
23 in order to meet some of their needs.
24 Yes, it would be nice if they could snap
25 their fingers and turn it into a combined cycle

1 for three months of a year, and maybe some day
2 they'll run at baseload more than three months of
3 the year, we don't know that.
4 HEARING OFFICER VALKOSKY: Yes, I think
5 the tie-in for this, and I assume counsel can
6 address it in post-hearing submittals, but the
7 impact of the project on energy resources is one
8 of the two principal findings that the Commission
9 has to eventually make in deciding whether or not
10 to grant SPPE.
11 So therefore, I think the question seems
12 to be becoming, from -- if I understood staff's
13 witnesses -- there is not adverse affect on energy
14 resources as long as the plant is operated as a
15 peaker and as a baseload for no more than three
16 months a year.
17 If the plant has operated as a base load
18 for more than three months a year, well there
19 might be or there might not be an impact on energy
20 resources.
21 The fact is that the record is unclear
22 on that point right now. And again, this is
23 something -- and then you overlay that with the
24 fact that the operative permit, the air permit,
25 would apparently permit operation 24 hours a day,

1 seven days a week, 365 days a year.

2 So somehow all this has to be coalesced

3 and balanced, so that the committee, and

4 eventually the Commission, can make a finding on

5 energy resources. And I think that's why the

6 point is very important here.

7 Anyway, I submit that I don't think

8 we're going to resolve that now.

9 MR. WESTERFIELD: Mr. Valkosky, I

10 actually have a followup question to -- well, I'm

11 trying to figure out the most efficient way to

12 handle it. I know there were public comments, but

13 there were some statements by staff here that I'd

14 like to make sure we're clear on.

15 HEARING OFFICER VALKOSKY: We're just

16 trying to get it clear.

17 MR. WESTERFIELD: And essentially my

18 question is directed to either one of you. I am

19 concerned on clarifying about when this point may

20 be reached that Mr. Garcia was talking about or

21 when this balance might tip in the other

22 direction.

23 If, for example, the plant were to

24 operate in a baseload capacity for some extended

25 period of time. As I understood your testimony,

1 at one point, Mr. Baker, at some point in the 12
2 month period that line would be crossed, or that
3 balance would be tipped.
4 And I thought it was somewhat ambiguous
5 what you were talking about, or what you were
6 referring to. So could you first just clarify for
7 the record what that metaphor refers to. When you
8 were talking about that point being reached, or
9 the line being crossed, or the balance tipped.
10 MR. BAKER: I'm sorry, I really don't
11 understand your question. Be simple for me, Bill,
12 please.
13 MR. WESTERFIELD: Mr. Garcia had asked
14 you a question about, I believe it was a line
15 being crossed. And that's a metaphor. And I
16 don't know what you were really talking about when
17 you responded to him. So I'm asking you to
18 clarify that.
19 MR. BAKER: Okay. As I said a few
20 minutes ago, if you need peaking power and load
21 following power, then you build a simple cycle.
22 If you need baseload power then you build a
23 combined cycle. For a mix in between, you'd have
24 different reasons to build one or the other.
25 There's some point between the decision

1 to build a combined cycle and the clear decision
2 to build a simple cycle, where your decision would
3 flip-flop. Perhaps at seven months of the year
4 baseload and five months peaking load following
5 that would be your crossover point.
6 Perhaps at five months, perhaps at some
7 other time. One thing to keep in mind is that
8 there are economic pressures on the plant owner to
9 use the more efficient technology, as appropriate.
10 If MID thought, or thinks, or in the
11 future thinks that a combined cycle would be more
12 economic in the total picture of their system and
13 keeping the lights on and controlling the voltage
14 and the frequency and the things they have to do
15 with their power plants, then at some time they
16 might want to convert this plant to combined
17 cycle, they might want to build another combined
18 cycle plant, or buy one from someone else.
19 They might want to contract out for bulk
20 power from someone else. They have a wide range
21 of options, and the motivation for them to pick
22 the right options is money. Energy costs money,
23 whether they buy it as natural gas or whether they
24 buy it as electricity from a bulk supplier.
25 You know, whether they generate it

1 themselves or buy it already generated. So it's
2 not as though we're just saying "well, we don't
3 care, they'll do whatever they want." We can say
4 that, but we also do that knowing that they are
5 strongly motivated to do the cheapest thing which,
6 in the case of energy, is also the thing that
7 wastes the least energy.
8 If fuel were free that would not be the
9 case. But since they have to pay for that fuel
10 they're motivated to use as little of it as they
11 need to.
12 MR. WESTERFIELD: Okay, thank you, that
13 answers my question.
14 COMMISSIONER BOYD: If I might, Mr.
15 Chair, I think Mr. Baker's first answer,
16 supplemented by his second answer, are accurate
17 and good statements of what the energy world is
18 like, and I have no -- I agree with it, I have no
19 quarrel with it -- and it helps perhaps the
20 citizens in the audience understand the
21 difference, or the complexities of what power
22 plants are.
23 There's no reason for us to doubt that
24 MID intends to run the plant in any way other than
25 they asserted to staff in their application of

1 probably running at a peaker for certain period of
2 time, and then -- as I would say, due to
3 agricultural operations, there is a peak period of
4 the year where it will run constantly for awhile.
5 And that makes sense to me, too. But
6 taking the citizen's point of view on this, and
7 trying to help explain to them, I can appreciate
8 their concern that, okay, these people say it's
9 only going to be a peaker and run once in awhile,
10 and a little bit of baseload, but you know, what
11 if that's not right, and they run it all the time.
12 They have a legitimate concern. And all
13 we can do is try to explain the world as we see
14 it, and the way it should work. So that's, as Mr.
15 Valkosky said earlier, what we're struggling with
16 is how to best address that dilemma. There's
17 nothing wrong with peaker plants. The state has
18 more or less assessed it needs more peaker plants,
19 so there will be peaker plants, not just this one.
20 There's liable to be more in this state.
21 The California Power Authority is trying to build
22 three of them as I speak right now. So it is a
23 tough, difficult mix of what plants are baseload,
24 and what's peaker, and which are load following.
25 And I have no reason to think that folks

here are trying to mislead anybody. But if, you know, you're a resident next door you want some assurance that it's going to be more or less as proposed by the Applicant and as described by the Applicant, and therefore analyzed by the CEC staff.

And I think you did -- as you were supposed to do under the circumstances. So it becomes our headache up here to wrestle with the outcome of that. And try to assure the citizens that they have some recourse if it doesn't turn out this way. But I totally understand the answers, and I hope the public understands a bit more bout how complicated this is.

It's not simple, even though to run a peaker plant fulltime would be terribly uneconomic if suddenly we're faced with what we were faced with a couple of years ago, an the lights are going to go out, everybody's going to be asked to run everything that they have for awhile to keep the lights on.

So that's a dilemma that folks have to deal with. Hopefully that won't ever be the case, because they do gobble a lot of gas, and with slight exception to what the staff said about

there's plenty of gas out there. There's more gas in the world than there is oil, the trouble is it's not all here on the North American continent.

It's not easy to get to. So I for one worry about anything that uses gas in great quantities. But we do the best we can to balance the need. So thank you for your answer.

COMMISSIONER PERNELL: Can I just, for the sake of confusion, throw another variable in here. And this is something that I've been thinking about very seriously as I sit here. Because there's been a lot of comments about the economics of it, and normally you wouldn't run it because the gas is too high.

But, you know, this is a municipal utility district. And it's not regulated by the Public Utilities Commission. So when the district gets ready, if they for example had to -- and I agree with the Commissioner, I don't think that they are, but to make an argument of economics, when the board can raise the rates just by voting to raise the rates to pay for the economics, I don't think the economic question is a good argument when it comes to the muni's.

It might be a good argument for the

1 IOU's, because you have another regulatory agency
2 that's controlling the rates. So, as we -- and I
3 say that because I was a member of a muni board of
4 SMUD, I was President of the SMUD board.
5 So I got a little bit of a different
6 view of how this works as it relates to a
7 municipal utility district and how much money is
8 being spent. So that is something that I'm going
9 to have to wrestle with. I would feel more
10 comfortable knowing that they can't just run 365
11 days a year peaker power plants.
12 Whether they are going to or not, the
13 question becomes how do we know whether they're
14 going to do that. Is there going to be a
15 condition that says "once we go over this, we're
16 going to let somebody know." The other issue is
17 if they do that, where's the breaking point?
18 I think Mr. Garcia had a good question
19 that I'm not sure got answered. So there is a lot
20 of things that we've got to think about up here,
21 but I would suggest that, from our Hearing Officer
22 Mr. Valkosky, that some of this stuff get briefed
23 so we will know, because right now I'm not as
24 comfortable as I was when I came up here.
25 MR. GARCIA: I'd like to ask staff a

1 couple of questions, just so that we can round out
2 the record. And let me posit a hypothetical
3 situation here.
4 Let's say that you have a combined cycle
5 plant who's heat rate is 6,000. I know that's not
6 your heat rate, but let's just say that it's
7 6,000. And you have a simple cycle gas turbine
8 who's heat rate is 9,000.
9 Given that those two units are operating
10 the same number of hours, would it be correct to
11 say that the gas turbine would be using 50 percent
12 more fuel?
13 MR. BAKER: If they produce the same
14 electrical output, yes.
15 MS. GEORGE: Okay. So for a plant of
16 100 megawatt size, if it was operating at 8760, at
17 full capacity, that difference is not
18 insignificant, is it not?
19 MR. BAKER: We'd have to look at that.
20 Insignificant to an individual homeowner is
21 different from insignificant to a power utility,
22 is insignificant to a gas supplier who supplies
23 five western states.
24 MR. GARCIA: We're talking more than a
25 million dollars in operating costs, aren't we, on

1 an annual basis?

2 MR. BAKER: I would have to calculate a

3 number to answer that question exactly, but what

4 I'm trying to get at is it all has to be taken in

5 context. The gas consumption, the figures we're

6 talking about, to a PG&E or a Southern California

7 Edison is different from gas consumption to the

8 individual homeowner who has to pay the bill every

9 month for his own domestic consumption.

10 MR. GARCIA: Whatever that incremental

11 cost that the operator of that unit would incur

12 would be looking to passing on those costs to

13 their ratepayers?

14 MR. BAKER: Well, in the past that's

15 been true. Nowadays, I don't know.

16 MR. GARCIA: Okay.

17 HEARING OFFICER VALKOSKY: One last shot

18 at alternatives.

19 MS. WARREN: Okay. While she's walking

20 up, I just want to confirm that a lot has been

21 said about MID's operational issues and I would

22 hope that we would get a chance to respond to a

23 few of the comments that have been made here this

24 afternoon.

25 HEARING OFFICER VALKOSKY: You will, you

1 will. As soon as we're done receiving the
2 comments.
3 MS. WARREN: Okay. I just wanted to get
4 my placeholder in there.
5 MS. KAEFER: Okay, sorry. Can I address
6 Steve? Somewhere I heard it's 79 million, give or
7 take, for this plant. But if you were doing a
8 combined cycle plant it would be like 129 million.
9 Did I hear that from your or from somewhere in
10 there?
11 So we're talking about $50 million and a
12 whole lot more time if you were going the other
13 way right now?
14 MR. HILL: That's what I said earlier,
15 yes.
16 MS. KAEFER: So, at what you just said,
17 if it costs them a million bucks a year they could
18 do that for 50 years and it would still be cheaper
19 than if they had to license it as a combined cycle
20 right now?
21 MR. HILL: Correct.
22 MS. KAEFER: Okay, that's all I wanted
23 to know.
24 HEARING OFFICER VALKOSKY: Is there
25 anything from anyone else, other than Applicant?

Ms. Warren.

MS. WARREN: Thank you. Some of these issues we will address when we get to the air quality. Since the question has come up, what type of review in other areas has been done on the 8760, I think the other thing I would offer at this point is, there's been lots of questions on MID's resource planning.

We have available, to respond to some of those issues and maybe give you an overview of the planning process and how the configuration was arrived at, our supervisor in that area, manager in that area.

And I would offer to put Mr. Mike Kreamer, to respond to some of the comments that have been made regarding MID's resource planning, if that's acceptable?

HEARING OFFICER VALKOSKY: That would be fine. Swear the witness, please.

Whereupon,

MICHAEL KREAMER

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

MS. WARREN: Could you please state and

1 spell your name for the record?
2 MR. KREAMER: My name is Mike Kreamer,
3 last name is spelled K-r-e-a-m-e-r.
4 MS. WARREN: Can you please state your
5 job title?
6 MR. KREAMER: My title is Manager of
7 Long-term Resource Planning and Development.
8 MS. WARREN: And can you give some of
9 your background and qualifications in that area?
10 MR. KREAMER: I began my career in 1969.
11 I have almost all except the last two years in
12 operations, both at, in private IOU companies
13 within California, and the last 27 years here
14 operating the electric system. The last two years
15 in long-term planning.
16 MS. WARREN: Were you involved in MID's
17 processes in arriving at the proposed
18 configuration for the MEGS project?
19 MR. KREAMER: Yes, I was.
20 MS. WARREN: Could you describe that
21 process for us?
22 MR. KREAMER: The process that we went
23 through was a varied process. Modesto had a
24 fairly large need for long-term resources. One of
25 those was -- well, the magnitude of demand watts

1 was pretty large, and so our recommendation as we
2 went through our planning process was to look at
3 additional import capability, because we were
4 starting to get limit. Which is the process we're
5 working on now.
6 Another one was to take a look at
7 additional internal generation and additional
8 long-term purchases, which we're in the process of
9 doing. This is the internal generation piece. As
10 well as looking at renewables and demand-side
11 management techniques that might help to meet that
12 need.
13 In that process it was determined that
14 -- actually what we did was, because of some of
15 the energy utility problems over the last few
16 years, we actually made a conscious decision to
17 recommend a policy to our board, which they
18 adopted, to go to an 80/20 policy. Which was 80
19 long-term resource, 20 short.
20 And in that process we did not define,
21 however, how much of that long-term process should
22 be internal or how much should be external
23 resource. So what we did do was provided them
24 with an awful lot of information.
25 And we did a lot of studies in which we

1 were looking over the next 20 years in our long-
2 term plan, what we needed as far as internal
3 generation.
4 The recommendation was to develop about
5 100 megawatts of internal generation. And at that
6 point in time that's what we thought we needed.
7 We had not made a cycle recommendation yet, so we
8 went back and we were asked to take a look at the
9 cycle recommendations of some of the other.
10 We did come back and recommend a two
11 unit simple cycle, located somewhere within our
12 electric system, as opposed to outside, so it
13 wasn't an import to us. Which drove some of the
14 locational issues.
15 The other thing we did was to take a
16 look at the -- well, we did take that back to our
17 board. Some of you may or may not be aware that
18 we have two unit peaking project, which is early
19 80's vintage, which has limitations on those units
20 of 877 hours a year.
21 That, in the past, has been a real
22 restriction. And over the years, even in 2000
23 when we had the state problems we were forced to
24 actually make a conscientious decision on whether
25 to stop running when in fact it had a benefit to

most anybody, because it would have exceeded those hours.

We were trying to get through with the local air board. In fact, had moved forward in that direction a decision to try and expand those hours. But it was very confining.

So as we went to our board they came back, realizing that we were probably focusing more on about 50 percent operation throughout the year, most of which would be peaking and some base.

One of the things that we did do in that process, however, we evaluated the economics base several ways, because when we went to the board and made the two cycle selection, the simple cycle recommendation, they came back and said we'd like you to remove that limitation.

That limitation is very difficult. We'd like you to remove it for future use in case we end up in a position where we have to run those. Which is where the 8760 hours a year came from.

The other thing they did was, looking at that, they were very curious. And were very curious about the combined cycle versus the simple cycle economics. Obviously, combined cycle is

much more cost-effective, give or take, depending on how much you're going to run them. If you're only going to run them for a few hours a year then they really are not.

In our economic analysis, going out 20 years, we did evaluate the two. And if you want to run them out 20 years based upon our operation, for our load, and the two units, you end up with a net present value difference of maybe a million dollars.

It's not a significant number, and primarily you have the issue of trying to run. You don't have the flexibility on the machines that you do on the simple cycle.

So because of that, you know, you have a lot of must run time and a lot of baseload operation. Which means you have to make sales, so you have to make assumptions on sales. So when we went through that the economics were fairly much a push.

But one of the things that it did do for us is we did need the simple cycle for peaking purposes. We have a couple of aging peakers that we're trying to address now to extend their life.

The other thing the board did do, as

1 Steve mentioned earlier, was ask us to go ahead
2 and, at least, if nothing else, put it in a
3 physical configuration where, if we ever needed to
4 baseload, or actually combine cycles for more
5 extended operation, we could do it.
6 But the actual removal of the limitation
7 on hours was at the direction of the board, so we
8 don't get into limitations on having to supply for
9 reliability purposes, if we have to.
10 I think that's about as good a summary
11 as I can give you, so you know how we got to where
12 we were. So it was not merely an economic
13 decision between combined cycle economics and
14 simple. And not to mention the fact there are
15 other economic incentives on the combined cycle.
16 If you find yourself, depending upon,
17 you know, in the ISO realm or some other things,
18 which we're not but we could be some day, the
19 combined cycle, the fast start -- I mean simple
20 cycle, fast start, the ability to move it up and
21 down has ancillary service values that we thought
22 also add benefit which you won't get out of the
23 combined cycle.
24 MS. WARREN: So you've explained to us
25 some of the thinking behind choosing the simple

1 cycle and why the board felt it necessary to have
2 more flexible operating hours and so seek
3 permitting at the 8760 level.
4 Does that mean the district anticipates
5 that it will actually run this plant at that
6 level?
7 MR. KREAMER: I think it's not so much
8 we anticipate running at that level, it's that we
9 would like to make sure that the barriers for
10 running at that level are removed.
11 And from our perspective, we're willing
12 to pay the additional cost that it takes to permit
13 it for that to make sure that the barriers are in
14 fact removed if in fact it becomes a necessity or
15 a desirable approach to actually doing that.
16 I think, in one case --somebody
17 mentioned well, if you were in that mode you'd
18 probably do something different, if you were in
19 that mode, 8760 baseload run. And that's probably
20 true. I mean that's an evaluation we would go
21 back and make if in fact we ever found ourselves
22 in that position, running that year in and year
23 out.
24 MS. WARREN: I have no further
25 questions.

1 HEARING OFFICER VALKOSKY: Thank you.
2 Mr. Westerfield?
3 MR. WESTERFIELD: No questions.
4 HEARING OFFICER VALKOSKY: Mr. Sarvey?
5 MR. SARVEY: No, I think we've
6 thoroughly beat this topic up.
7 COMMISSIONER PERNELL: Well, I've got a
8 question. I should have took a cue from Mr.
9 Sarvey here, but --. Mr. Kreamer, thank you for
10 being here and I think your analogy of the
11 thinking of the staff and the board I think is
12 great, and it helped me understand why we're going
13 through this in terms of a simple cycle versus a
14 combined cycle.
15 You mentioned that you have two plants
16 already that are at simple cycle, 877 -- they are
17 limited to 877?
18 MR. KREAMER: Yes.
19 COMMISSIONER PERNELL: And this
20 particular plant you wanted to kind of get rid of
21 that limitation. Not necessarily saying that you
22 would have run them that long, but that you want
23 the flexibility to do so.
24 And I think one of the things we're
25 struggling with, in terms of our analysis of the

adverse impacts of doing that, is whether or not it changes -- this gets back to Mr. Garcia's question -- whether or not it changes the analysis on the impacts if it actually runs the entire 8760, and whether or not that changes --.

I mean, I understand that you have the air quality permit, so this is not in terms of air quality, but it could be in terms of fuel availability and etc. And what happens if you actually run the simple cycle -- because you have the discretion to do so -- whether or not that changes our analysis in terms of impacts.

And I don't know that you can answer the question, I'm simply making the statement as to why I'm a little concerned about this, because there is no, we don't have a finite figure that we're trying to judge the impacts on. Mr. Rubenstein has said they take the worst case scenario, which would be the 8760 in terms of air quality, and I'm not sure that our staff has done that in terms of the impacts.

MR. KREAMER: I understand. As I -- correct me if I'm wrong, but I think I heard about four questions. One is that there are four issues. One is that the air quality really is --

1 we have requested permitting for the 8760 so those
2 issues are being addressed. I think a couple of
3 others are, that we know of here, so bear with me.
4 But one was economics, one was the gas,
5 and I think I heard this gentleman say that even
6 if we run 24 hours a day, 365 days a year, it's
7 still a fairly insignificant number as far as the
8 gas goes. And of course that's --
9 COMMISSIONER PERNELL: Not in the
10 economic realm.
11 MR. KREAMER: In the economic realm
12 that's very true. However, if you're looking at
13 the economic realm of say, a simple cycle
14 operation versus a combined cycle, the combined
15 cycle is more efficient and those things, but I
16 think you have to kind of put that around the
17 other way a little bit and say, if MID were to
18 operate those units for MID in a full year around
19 baseload operation, I think there's either one or
20 two things has to happen.
21 Either we need to run that for
22 reliability reasons, and we do have an obligation
23 to provide. So we're either forced into running
24 it for reliability operations -- and if that were
25 the case we'd probably start seriously looking at

1 something that's more efficient, especially if we
2 found ourselves doing that in the year in year out
3 mode.
4 The other thing from an economic
5 standpoint is that if somebody else were either
6 providing or buying the ancillary services of the
7 energy output of that, at a price, then that is
8 actually better than what the gas and fuel costs,
9 so in fact we're benefitting our customer.
10 So it's a two-fold economic thing,
11 realizing again that the unit has ancillary value,
12 so even if the state is buying the ancillary
13 service I'm assuming that the ability for it to
14 run would be cost-effective.
15 I hope that got to some of the questions
16 you had.
17 COMMISSIONER PERNELL: Well, it tells me
18 that, you know, if its economically feasible and
19 you could sell the power, you're going to run them
20 24/7?
21 CHAIRPERSON KEESE: Well, I think
22 that's, obviously we would like to take advantage
23 of economizing the units that we have, and I think
24 everybody tends to do that, but they are, as you
25 admit about a 9,000 heat rate unit.

1 So, you know, on a normal day in day out
2 basis, unless there's something really going on, I
3 would assume that the combined cycle units of
4 other folks are going to beat it out. So, you
5 know, it's a market, I don't know where the market
6 goes. And if you have a market like we had in
7 2000 they'd probably run a lot. In today's market
8 they probably would not.
9 COMMISSIONER PERNELL: Well, we're going
10 to try and not have a market like that again.
11 MR. KREAMER: I hope that went to some
12 of the --
13 COMMISSIONER PERNELL: Yes, it did. And
14 again, Mr. Kreamer, I want to thank you for coming
15 up and explaining that.
16 MR. GARCIA: I have a couple of
17 questions for Mr. Kreamer. I think it was you
18 that was talking about some of the benefits of
19 having a simple cycle being that you'd be able to
20 ramp up relatively quickly and be able to provide
21 loaded voltage stability to your local system.
22 But I just want to make sure that I
23 don't misunderstand. These auxiliary services are
24 currently available in the market, and you don't
25 have to make a capital investment in order to

1 secure them. You can just buy them off the
2 market.
3 And the tradeoff is, should you wind up
4 running this unit as a baseload plant, then the
5 tradeoff is the incremental fuel cost, which is
6 not unsubstantial. You know, if my numbers are
7 correct, it's a pretty substantial number.
8 And it seems to me that the only place
9 that the utility can get those dollars from is
10 either from selling those services to outside the
11 system, or collecting them from its ratepayers.
12 MR. KREAMER: I'm not sure how to reply
13 to that comment. I think one thing is that folks
14 like Modesto Irrigation are self-providing
15 entities. We operate, currently we operate under
16 existing interconnection agreements. We provide,
17 we build, we make sure that we have provided all
18 the services, including ancillary services for
19 ourselves.
20 That doesn't mean that there are not
21 times when there are existing excess ancillary
22 services, and those are the ancillaries I'm
23 talking about, not just selling the full turbine.
24 Although I guess there's times of the year when
25 the full turbine could become that way.

1 But from our perspective, I think that
2 anytime we have had to provide those services
3 we're providing energy and ancillary service to
4 ourselves, because we're providing the spinning
5 reserve.
6 Since we also need those units for load we
7 get the benefit of having the ancillary services,
8 which I think, at the risk of making a statement
9 that I don't really know as completely accurate, I
10 said that I believe it probably is more cost-
11 effective for us personally than just to buy
12 something like spin.
13 I don't know if that even addressed your
14 comment, but I hope it did n some respect. I
15 think, yes, if we were going to build these just
16 for the sake of selling, that's not what we would
17 do. That's not exactly our goal, our goal is to
18 self-provide, for the most part. But I didn't
19 want to ignore the possibility that that was a
20 possibility, that adds value.
21 COMMISSIONER BOYD: No questions.
22 COMMISSIONER PERNELL: Thank you, Mr.
23 Kreamer.
24 HEARING OFFICER VALKOSKY: Okay, I think
25 this is an observation for post-hearing

1 submittals, I think one of the concerns -- if I'm
2 correct -- is that the Committee is concerned over
3 whether the analysis is sufficient to cover worst-
4 cast operations. That's defined as 8760 hours a
5 year.
6 I think one of the things the parties
7 can address in their post-hearing submittals is as
8 to which areas they believe the record is
9 incomplete, and which areas they believe that such
10 an operation would be deficient. We already know
11 energy resources would be one of the deficient
12 areas, with the depth of that analysis. There may
13 be others.
14 It's not something we really addressed
15 in the topics, but put it in your post-hearing
16 submittals for the Committee's consideration at
17 that time.
18 With that, is there anything further on
19 the topic of alternatives? Any public comment?
20 we'll close the topic of alternatives. Thank you,
21 gentlemen. Next, visual. We'll go off the
22 record.
23 (Off the record.)
24 HEARING OFFICER VALKOSKY: Back on the
25 record. The topic is visual resources. Ms.

1 Warren, your witness please.

2 MS. WARREN: Yes, we have our witness at

3 this time, ready to be sworn in.

4 Whereupon,

5 THOMAS PRIESTLY

6 was called as a witness herein, and after first

7 having been duly sworn, was examined and testified

8 as follows:

9 MS. WARREN: Can you please state and

10 spell your name for the record?

11 MR. PRIESTLEY: Yes. My name is Thomas

12 Priestly, P-r-i-e-s-t-l-e-y.

13 MS. WARREN: And if you would please,

14 state your job title?

15 MR. PRIESTLEY: I'm a Senior

16 Environmental Planner with CH2MHill. And I'm the

17 lead planner responsible for the visual resources

18 practice in the western region.

19 MS. WARREN: And are you familiar with

20 the visual resources section of exhibit 25,

21 Applicant's prepared testimony. And that would be

22 beginning on page 90?

23 MR. PRIESTLEY: Yes, I am. I'm familiar

24 with this testimony, and this testimony was

25 prepared by myself and Wendy Haden in

collaboration. And I do adopt this as my own testimony.

MS. WARREN: Does the testimony contain a statement of your qualifications?

MR. PRIESTLEY: Yes it does.

MS. WARREN: And could you please provide us a brief overview of your education experiences as it pertains to your testimony today?

MR. PRIESTLEY: Very briefly, I have an undergraduate degree in city planning. I did graduate work at UC Berkeley, where I earned a Masters in City Planning, one in landscape architecture with an emphasis on environmental planning, and a Ph.D. in Environmental Planning.

I've been a practicing professional for well over 20 years. My specialty has been evaluation of the visual land use, other qualitative impacts of major facilities, particularly electric facilities, and I have been involved in analysis of a number of power plants that have come before this Commission for review.

MS. WARREN: Do you have any additions, corrections or clarifications to the filed testimony?

MR. PRIESTLEY: No.

MS. WARREN: The testimony incorporates a number of exhibits. Can you please identify them?

MR. PRIESTLEY: Yes I can. Exhibit 1 is section 8.11 of the SPPE; exhibit 2 is supplement A, those portions pertaining to visual impacts of the ZLD system; exhibit 5 is data response set 1A, numbers 83 through 91; exhibit 10 is data response informal set 1, numbers vis 83B; exhibit 13 is data response informal set 4 at number VR1; exhibit 27 is data response informal set 6; and exhibit 15 is draft initial study comments, set 1, those comments pertaining to visual resources.

MS. WARREN: All right. Thank you. To the best of your knowledge are all the facts contained in the testimony, including the reference documents, true and correct?

MR. PRIESTLEY: Yes.

MS. WARREN: And do the opinions contained in your testimony represent your best professional judgment?

MR. PRIESTLEY: Yes.

MS. WARREN: And you have stated that you adopt this testimony in this proceeding?

MR. PRIESTLEY: I do.

MS. WARREN: Can you please give us a summary of the testimony.

MR. PRIESTLEY: Yes, very briefly, in terms of the visual setting itself. The project site is a flat, open parcel located in an industrially zoned area adjacent to existing industrial facilities at the southern edge of the city of Ripon.

The project site is now entirely vacant, and does not include any features that would be considered to be visual resources. The closest residence with an unobstructed view toward the project site are located over a quarter of a mile away, to the west of the site.

The tops of the projects' taller elements will be visible form the city of Ripon Veteran's Park, which is located toward the north of the site.

But these will be seen in the context of existing industrial development that is a very well-established part of the view in that area. So in terms of the project itself, what it will be, it's description, the project will include an 85 foot high exhaust stack, a 43 foot high

1 combustion turbine generator, and 40 foot high
2 cooling tower, and 60 foot high transmission
3 poles, that will be a rebuild of an existing
4 transmission line, that will carry power from the
5 plant to an existing substation about a quarter
6 mile to the east.
7 The exteriors of the major project
8 features will be finished with a neutral, low-
9 contrast colors. Lights of the project will be
10 shielded and directed downward, and switches will
11 be installed on the project's taller facilities,
12 so that they will be illuminated only when
13 required.
14 And the project will be landscaped to
15 meet all city landscape requirements. And this
16 landscaping will include establishment of tall,
17 fast-growing evergreen screening trees along the
18 western edge of the project site. In terms of
19 impacts, the summary is that the project will not
20 result in any significant adverse visual impacts.
21 And to reach that conclusion the
22 framework that we used was Appendix G of the state
23 CEQA guidelines. These define a significant
24 effect on the environment to mean a substantial or
25 potentially substantial adverse change in any of

1 the physical conditions in the area affected by
2 the project, including objects of historic or
3 aesthetic significance.
4 And the aesthetic section of Appendix G
5 of the guidelines lists four questions that lead
6 agencies need to address to determine whether a
7 project's visual effects are significant. These
8 questions, and our assessment of the significance
9 of the project's effects in light of them, I will
10 summarize very briefly right now.
11 The first of these questions is would
12 the project have a substantial adverse effect on a
13 scenic vista? And we concur with staff's
14 conclusion that the project's structures and
15 plumes will not result in significant visual
16 impacts under this criterion.
17 The second question is would the project
18 substantially damage scenic resources, including
19 but not limited to trees, rock outcroppings, and
20 historic buildings within a state scenic highway?
21 We concur with staff's conclusion that the
22 projects structures and plumes will not result in
23 significant visual impact under this criterion.
24 And we note that there are no state
25 designated scenic highways in the project

1 vicinity, and no project elements would be located
2 within the right-of-way of such a highway.
3 The third question is would the project
4 substantially degrade the existing visual
5 character or quality of the site and its
6 surroundings? We concur with staff's conclusions
7 that, with the mitigation measures that have been
8 built into the Applicant's design of this project
9 and the project as it has been proposed, that the
10 impacts of the project's construction and of the
11 project's facilities during their operational
12 phase will be less than significant.
13 And based on reviews of the likely
14 project related plumes, both we and staff agree
15 that the plumes associated with the operations of
16 the project's gas turbines and HERSIG's gas
17 turbines will not be of sufficient size and
18 frequency to create significant impacts on visual
19 resources.
20 And question four, would the project
21 create a new source of substantial light or glare
22 that would adverse day or nighttime views in the
23 area? Again, we concur with staff's conclusion
24 that with the mitigation measures proposed as part
25 of the project, the project would not create new

1 sources of light and glare that would adversely
2 affect day and nighttime views in the area.
3 In addition, we concur with staff that
4 the project as it has been proposed, will not
5 result in cumulative impacts visual resources.
6 And that it will be consistent with the major
7 requirements of applicable LORS, and that through
8 it's reviews the city of Ripon will ensure that
9 the details of the project's final landscape and
10 signage plans are consistent with the city's
11 requirements for minimum site landscaping,
12 screening of parking lots and storage areas, and
13 sign regulation. And that is my summary.
14 MS. WARREN: Thank you. The witness is
15 available for cross-examination.
16 HEARING OFFICER VALKOSKY: Could you
17 just quickly summarize the chief mitigation
18 measures that Applicant is proposing to use?
19 MR. PRIESTLEY: Okay. A couple. One is
20 color treatment. The Applicant has proposed to
21 treat the plant with neutral colors that would not
22 contrast with their surroundings and would not
23 cause undue glare.
24 In terms of lighting, the Applicant is
25 proposing lighting that is minimal but consistent

1 with health and safety concerns, and as I
2 indicated previously, to the extent feasible there
3 will be switches so that lights that are not
4 required can be turned off when they're not being
5 used. There will be shields so that light can be
6 directed downward so you won't have offsite light
7 trespass.
8 If you take a look at the layout of the
9 project on the site, one of the things that you'll
10 notice is that there is actually a pretty good
11 setback between most of the facilities and Doak
12 Avenue, it's pretty generous. There is sufficient
13 room on the site to accommodate the landscaping
14 that the city requires, and the Applicant will be
15 making a special point of providing a row of fast-
16 growing trees along the western edge of the site,
17 in addition to any more decorative type
18 landscaping that would to in along the front,
19 along Doak.
20 HEARING OFFICER VALKOSKY: Okay, thank
21 you. Mr. Westerfield?
22 MR. WESTERFIELD: Mr. Priestley, I just
23 have a couple of questions if I may. Can I just
24 direct you to your testimony on page 93. And
25 under the section entitled "cumulative impacts"

1 I'd ask you to look at that second paragraph.
2 And in that paragraph there is a
3 sentence that begins with "once development
4 occurs. . ." Do you see it?
5 MR. PRIESTLEY: Yes.
6 MR. WESTERFIELD: Could you read that
7 aloud for us please?
8 MR. PRIESTLEY: I'm wondering, do you
9 want me to read the whole paragraph so the
10 sentence can be understood in its context?
11 MR. WESTERFIELD: If you wish.
12 MR. PRIESTLEY: "As discussed above, in
13 an SPPE section 8.4 land use, the land adjacent to
14 and west of the project site is designated and
15 zoned for industrial and residential development
16 according to the general plan and zoning
17 ordinance."
18 "Once development occurs, that is
19 development of this land that is to the west of
20 the site, the views of the project site from the
21 KOP1 residence would be further screened, thus
22 eliminating the less-than-significant impact from
23 the project, further reducing the project
24 contribution to cumulative impacts on the
25 landscape."

1 MR. WESTERFIELD: Okay. In reaching
2 that conclusion did you analyze any specific
3 projects?
4 MR. PRIESTLEY: Yes we did. You may be
5 familiar with the simulations that have been
6 submitted as a part of the record of two projects?
7 Located to the west of the project site? And are
8 you familiar with the simulations?
9 MR. WESTERFIELD: I'm really not in a
10 position to testify, sir. If you'd like to refer
11 me to certain simulations, that's fine, but I
12 choose to ask you questions --
13 MR. PRIESTLEY: Okay, well actually
14 there are three projects that are underway to the
15 immediate west of the project site. One is an
16 expansion to the Jim Aartman Trucking operations.
17 I was out at the site this morning and it was
18 clear in fact that grading has already appeared at
19 the site.
20 That would be at the, if you can
21 imagine, the western edge of the site, but kind of
22 the northern end. Then next to that -- let me
23 refer to the map so I can be rather specific --
24 next to that is the proposed Al Waggoner project.
25 And next to that would be the Arrow Asphalt

1 project.

2 MR. WESTERFIELD: Okay. So are those

3 the total number of developments that you are

4 referring to in your sentence that begins with

5 "once development occurs?"

6 MR. PRIESTLEY: Those certainly are the

7 other projects that are in fact in the works right

8 at the moment, and provide the strongest basis for

9 that conclusion. Plans also show further

10 industrial development to the west. And then in

11 the strip right along Vera there is a planned

12 residential use.

13 I am not aware that there are projects

14 in the works at the moment for that property, but

15 we do know that these projects just west of the

16 site, in fact, are in the works at present.

17 MR. WESTERFIELD: Well, let me ask the

18 question again, because I don't think you answered

19 my question. Are those three projects the total

20 number of projects you were referring to when you

21 wrote the sentence "once development occurs?"

22 MR. PRIESTLEY: Pardon? I want to make

23 sure, I want to get this.

24 MR. WESTERFIELD: Are those three

25 projects the total number of projects you were

1 referring to when you wrote the sentence "once
2 development occurs?"
3 MR. PRIESTLEY: Yes they were.
4 MR. WESTERFIELD: Okay. Now did you
5 analyze these projects in combination with this
6 project on the views of residents to the west of
7 the main site of the trees at the Fox River Paper
8 Company?
9 MR. PRIESTLEY: We analyzed the
10 implications of these projects on the overall
11 character and quality of views from this corridor
12 along Vera Avenue. The trees at Fox River were
13 one element of that analysis, but they weren't the
14 sum total of that analysis.
15 MR. WESTERFIELD: Okay. So again my
16 question is did you analyze these projects in
17 combination with the Applicant's project, on the
18 views of residents to the west of the MEGS site?
19 MR. PRIESTLEY: Oh, yes we did. Again I
20 guess we should refer you to the simulations that
21 have been on file. There was a rather elaborate
22 analysis of this.
23 MR. WESTERFIELD: Okay, so what you're
24 saying then is the effect of all this development,
25 the cumulative impact of all this development is

1 essentially to screen the views of reference to
2 the west of the site of the trees at the Fox River
3 Paper Company? And therefore it's not a
4 cumulative impact?
5 MR. PRIESTLEY: No. What we are saying
6 is that the presence of our facility, of the
7 proposed facility and of these other projects, and
8 of the landscaping that is going to be associated
9 with those projects.
10 And we agree with staff that, with the
11 presence of screening trees along the western edge
12 of the proposed project, that the cumulative
13 impact of all of these things on this view would
14 be less than significant.
15 MR. WESTERFIELD: All right. Then if I
16 understand you, you're saying that all these
17 projects, once they're built, amount to a less
18 than significant cumulative impact, because these
19 new development projects would essentially add new
20 buildings that further screen the views of these
21 residents to the west of the MEGS project?
22 MR. PRIESTLEY: I think that there are
23 several elements, there are like two elements to
24 your question there. One has to do with the
25 impact of our project by itself, and the other has

1 to do with cumulative impacts.

2 MR. WESTERFIELD: I'm talking about

3 cumulative impact.

4 MR. PRIESTLEY: Okay.

5 MR. WESTERFIELD: And I'm asking about

6 the cumulative impact of these three new projects

7 along with the MEGS project. And the question is,

8 you know, I'm trying to understand why you think

9 it's no cumulative impact when you re apparently

10 saying its screening, it's further screening

11 certain views.

12 And I don't understand why a bunch of

13 new buildings don't amount to a cumulative impact

14 because they are blocking everybody's view?

15 MR. PRIESTLEY: Well, I don't really

16 understand why you're seeing this is as a

17 contradiction, because in fact yes, these new

18 buildings will partially screen the views toward

19 the proposed power plant project. And the

20 presence of these views cumulatively will in some

21 way change this view.

22 But whether or not the change to this

23 view is a significant impact under the criteria

24 that CEQA sets out is an entirely different

25 question. You can have screening going on in a

1 view and not have a significant impact.
2 MR. WESTERFIELD: Okay. And why under
3 CEQA, in your view, is it not a significant
4 impact?
5 MR. PRIESTLEY: Given the existing
6 character and quality of this view, we agree with
7 staff that the rating of this view is moderately
8 low. In terms of landscapes, if you look at all
9 the landscapes that are out there, and you kind of
10 rate them in comparison to each other, I mean,
11 this landscape isn't ugly by any means, but you
12 know, it's kind of a garden variety landscape.
13 It's really not all that special. And
14 you are making some modifications to it.
15 Modifications -- this landscape has not been given
16 special protection in local plans. In fact, it
17 has been designated as an area for heavy
18 industrial development. So in the whole scheme of
19 things this modification to this particular
20 landscape is not a significant visual impact.
21 MR. WESTERFIELD: Okay. So in other
22 words, you're already saying it's very industrial
23 to start with. You can say it's not very scenic
24 in quality. So adding --
25 COMMISSIONER PERNELL: Well, I'm saying

it's a landscape that is of, you know, very modest in quality. It's an area for which a decision has already been made for, the community has already decided that it wants to convert this to industrial uses. So, given the overall context of things my professional judgment is that this is a less than significant cumulative impact.

MR. WESTERFIELD: Okay, that's fine, no more questions.

HEARING OFFICER VALKOSKY: Mr. Sarvey?

MR. SARVEY: Yes. Are visual impressions subject to personal interpretation, Dr. Priestley?

MR. PRIESTLEY: Yes, they are. But at the same time, people in the landscape architecture discipline, in order to deal with these kinds of issues, a systematic procedure has been developed for evaluating which attempts to get at some kind of commonality of view in a way that, you know, works within the framework set out by CEQA to provide, you know, as clear and open an evaluation as possible.

MR. SARVEY: Calling your attention to visual resources figure 2A, it's in the final assessment.

MR. PRIESTLEY: What I have in front of me is figure 8.11-7C, is that the same as --

MR. SARVEY: It's COP 1, it's the existing view of the MEGS site, visual resources figure 2A.

MR. PRIESTLEY: Okay. I have 2A in front of me.

MR. SARVEY: Okay. Would you describe that as a garden variety view, not a very special view? Is that correct?

MR. PRIESTLEY: In the whole scheme of things, yes.

MR. SARVEY: Do you think the view depicted in visual resources figure 2 is special to the residents who have that view, unobstructed at this time?

MR. PRIESTLEY: It may be.

MR. SARVEY: Have you ever seen a power plant that you considered a significant impact to visual resources? Can you name one?

MR. PRIESTLEY: Yes I have. Or at least I have seen some proposed power plants without appropriate mitigation, that I have considered to be potentially significant in terms of their visual impacts.

1 MR. SARVEY: And did you testify to that
2 matter, that they were significant impacts to
3 visual resources?
4 MR. PRIESTLEY: Without mitigation, yes.
5 I mean, I'm on record.
6 MR. SARVEY: Okay. Would you say that
7 the project will only contribute to the current
8 and future cumulative impacts to visual resources
9 of this view?
10 MR. PRIESTLEY: Are you talking about
11 significant impacts?
12 MR. SARVEY: Yes.
13 MR. PRIESTLEY: If you're talking about
14 significant impacts, I would say no. Of course,
15 you're going to be able to see this power plant,
16 and it is going to represent some kind of a change
17 in this landscape, but whether or not it is a
18 significant impact under CEQA is really, you know,
19 a different question.
20 And my analysis is that it does not rise
21 to the level of a significant impact.
22 MR. SARVEY: Earlier you said that you
23 thought that perhaps this view in figure 2 was
24 special to the resident's to have the unobstructed
25 view. Do you still maintain that?

1 MR. PRIESTLEY: I indicated that it
2 could be.
3 MR. SARVEY: Okay. Thank you, that's
4 all.
5 HEARING OFFICER VALKOSKY: Redirect, Ms.
6 Warren?
7 MS. WARREN: I'd just like to clarify a
8 reference. You referred in your testimony to
9 simulations that had been included in the
10 exhibits?
11 MR. PRIESTLEY: Yes.
12 MS. WARREN: I'd like to represent to
13 you and see if you'd agree that the references to
14 exhibit 5, which would be a data response set 1,
15 numbers 83 through 91. Is that correct?
16 MR. PRIESTLEY: Yes that's correct.
17 MS. WARREN: Just so there's a reference
18 to where those simulations would be located.
19 HEARING OFFICER VALKOSKY: is that it?
20 MS. WARREN: Yes.
21 HEARING OFFICER VALKOSKY: Anything
22 further for Dr. Priestley?
23 MR. WESTERFIELD: Nothing further.
24 MR. SARVEY: Nothing further.
25 HEARING OFFICER VALKOSKY: With that,

are you going to move your exhibits?

MS. WARREN: Yes, I'd like to move these exhibits.

HEARING OFFICER VALKOSKY: Is there any objection?

MR. WESTERFIELD: No objection.

MR. SARVEY: No objection.

HEARING OFFICER VALKOSKY: Applicant's exhibits pertinent to visual resources are hereby admitted. Can we go off the record for a second?

(Off the record.)

HEARING OFFICER VALKOSKY: Back on the record. All right, Mr. Westerfield, proceed with your witness.

MR. WESTERFIELD: Yes, I'd like to call Eric Knight.

HEARING OFFICER VALKOSKY: Swear the witness please.

Whereupon,

ERIC KNIGHT

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

MR. WESTERFIELD: As we had mentioned off the record, we are content to submit Mr.

1 Knight's testimony that's a part of our final
2 initial study by declaration. And ask that it be
3 moved into evidence. And then tender him for
4 cross-examination by any of the other parties.
5 HEARING OFFICER VALKOSKY: Parties
6 stipulate to Mr. Knight's qualifications?
7 MR. SARVEY: Yes.
8 HEARING OFFICER VALKOSKY: Ms. Warren,
9 do you stipulate to his qualifications?
10 MS. WARREN: Yes.
11 HEARING OFFICER VALKOSKY: Okay, fine.
12 Is there any objection in admitting exhibit 22?
13 MR. SARVEY: None.
14 MS. WARREN: Not from us.
15 HEARING OFFICER VALKOSKY: Okay. We'll
16 admit exhibit 22. the witness is tendered for
17 cross-examination. Ms. Warren?
18 MS. WARREN: We have nothing.
19 HEARING OFFICER VALKOSKY: Mr. Sarvey?
20 MR. SARVEY: Yes. In your testimony
21 you've determined that the project will have a
22 significance to visual resources, is that correct,
23 without mitigation?
24 MR. KNIGHT: The project, in combination
25 with other projects that are proposed there, yes.

MR. SARVEY: Okay. Drawing your attention to figure 2F, it's a simulation of the project after five years, it's the final initial study? Is it possible that, due to heat, drought, conditions, wind, whatever circumstances, that this landscaping will not grow to the simulated height?

MR. KNIGHT: The trees that are depicted in that simulation are coast redwoods. Coast redwoods do require an ample amount of water. But in talking with our botanist at the Energy Commission, when I initially brought up coast redwoods to him, he didn't see any reason why they wouldn't grow at that location, given that they were variegated.

MR. SARVEY: If these trees don't grow at these locations, are there any condition exemptions that you've included to ensure that the screening reaches the level that you expect it to?

MR. KNIGHT: Initially there was a condition exemption that was written that had a performance measure that was in there about screening the project to a substantial degree within the shortest feasible time, and using a fast-growing evergreen species.

1 How that's achieved, with what
2 particular species, was left kind of unsaid.
3 There was discussions at the workshop that the
4 Applicant really didn't want to have to come to
5 the Energy Commission for approval of a
6 landscaping plan, and also to the city of Ripon,
7 since this is an SPPE.
8 So, instead of a condition of exemption,
9 the Applicant proposed the mitigation, proposed
10 that they will use a fast-growing evergreen
11 species to meet that performance objective, and
12 then there were discussions as well with the city
13 Planning Director at the city of Ripon that they
14 would ensure that that measure is met.
15 MR. SARVEY: But there's no Energy
16 Commission condition that will ensure that that
17 condition is met, is that correct?
18 MR. KNIGHT: No there is not.
19 MR. SARVEY: Okay, thank you. In your
20 opinion, does the landscaping depicted in figure
21 2F fully mitigate this project?
22 MR. KNIGHT: I believe it is,
23 considering the impact that I identified at that
24 location. The impact was, for these residents at
25 KFU 1, which is Vera Avenue. Right not they have

1 an unobstructed view of the grove of redwoods that
2 are growing at the Fox River Paper Company site.
3 They also have views which are to the
4 right of the photograph and then extending beyond
5 the photograph, of riparian vegetation that's
6 growing along the Stanislaus River. So there is
7 natural elements to the view, not just industrial
8 uses.
9 It was my opinion that the power plant
10 alone, it would block a portion of those redwood
11 trees. Which is a scenic, really the only notable
12 scenic quality view, but it wouldn't block those
13 trees to a substantial degree. When you start
14 adding the other projects that are reasonably
15 foreseeable in the area, and as Mr. Priestley
16 pointed out one of them has already started
17 construction, I believe that on a cumulative basis
18 that impact was significant.
19 Nearly all those trees were blocked out
20 from view of the coast redwoods. Some of those
21 projects are going to start blocking riparian
22 vegetation as well, but not this project. So,
23 because what's being blocked, the impact is view
24 blockage, blockage of the trees, which have a
25 higher visual quality than the power plant itself.

The trees now, if you go back and look -- I think it's visual resources figure 2A -- they are about as tall as these trees that are shown in 2F. So really, my goal, at least in the short term, would be to achieve a height that's comparable to what those trees are now.

So basically put trees back into that view. They're being blocked away by the power plant, they're not going to be seen within a short-term time frame of say like five years. I believe it's feasible to achieve that level of growth.

MR. SARVEY: So you feel that figure 2F, which depicts the project after five years, does fully mitigate the impacts of the power plant?

MR. KNIGHT: I believe it will. And I think, what's not shown in that figure, is those trees on the Fox River Paper Company will continue to grow. They're shown stagnant, and we didn't simulate their growth as well.

So I think essentially you get this effect where the power plant would be somewhat sandwiched between trees on the site and trees behind it. And essentially what you have now, and in the longer range term, with those trees behind

1 it continuing to grow, these trees continue to
2 grow, it will nearly screen out that entire plant.
3 Coast redwoods grow very tall. I think
4 what you'd essentially have then is what you have
5 now on that site. If you look in 2A you can see a
6 few puffs of white smoke, or steam plumes, coming
7 up from two industrial plants that are inside that
8 grove of redwoods. So to answer your question,
9 yes I believe it will.
10 MR. SARVEY: Your further depiction of
11 your 20 year landscaping, that would be 2C and 2D.
12 Are those incorrect, because they're different
13 trees there?
14 MR. KNIGHT: Yes, those were the
15 simulations that the Applicant prepared, so no,
16 those aren't depicting the proposed landscaping at
17 the site. That landscaping that's shown in those
18 pictures is actually landscaping at those future
19 project sites, which is somewhat speculative,
20 because when this was done no landscaping plans
21 were unknown to exist at the time.
22 Those are London plain trees, they're
23 deciduous trees, they're not evergreens.
24 MR. SARVEY: Okay. thank you.
25 HEARING OFFICER VALKOSKY: Any redirect?

1 Mr. Westerfield?

2 MR. WESTERFIELD: No redirect, thank

3 you.

4 HEARING OFFICER VALKOSKY: Did I hear

5 you correctly that the city of Ripon would

6 actually be enforcing the performance goals for

7 the tree screening?

8 MR. KNIGHT: Yes. The Applicant will

9 have to go before the city of Ripon to obtain a

10 major site plan permit, and in that process they

11 will be looking at landscaping requirements to

12 meet the zoning code.

13 They would also, through that process

14 they would establish mitigation monitoring report

15 plans to ensure that any mitigation measures that

16 are imposed on the project are actually met and

17 that's established in their zoning code.

18 HEARING OFFICER VALKOSKY: Okay. And

19 how can we be assured that the mitigation that

20 staff proposes as depicted in the various figures,

21 is in fact the one adopted by the city of Ripon?

22 MR. KNIGHT: Well, I suppose, the Energy

23 Commission -- there's not a condition in there

24 that we're going to get a copy of it, so I don't

25 know if we have 100 percent assurance that it will

1 happen.

2 But the discussion that took place at

3 the staff workshop, and the Applicant has modified

4 the project, they will submit landscaping plans to

5 the city of Ripon with the objective of meting the

6 performance goals.

7 And we had discussions with the planning

8 director that said that he understood what the

9 impact was, and that he was sure that they would

10 be met. And the planning director is ultimately

11 the one responsible for making sure that the

12 mitigation monitoring plan is enforced, and the

13 mitigation achieved.

14 HEARING OFFICER VALKOSKY: I'd like to

15 jump back to Applicant's witness. Dr. Priestley,

16 do you agree with the statement that staff's

17 witness just made, in that Applicant will in fact

18 be submitting landscaping plans to the city of

19 Ripon that will be consistent with the performance

20 goals in terms of visual screening?

21 MS. WARREN: Mr. Valkosky, let me offer

22 Susan Strachan to answer that issue. She has had

23 direct conversations with the people over at the

24 city, and so can address that most directly, if

25 that's acceptable?

1 Whereupon,

2 SUSAN STRACHAN

3 was called as a witness herein, and after first

4 having been duly sworn, was examined and testified

5 as follows:

6 MS. WARREN: Can you please state and

7 spell your name for the record?

8 MS. STRACHAN: My name is Susan

9 Strachan. Susan is spelled S-u-s-a-n, Strachan is

10 S-t-r-a-c-h-a-n.

11 MS. WARREN: And could you please

12 describe your position with respect to the

13 project?

14 MS. STRACHAN: I'm an independent

15 consultant to the Modesto Irrigation District,

16 serving as one of the environmental project

17 managers.

18 MS. WARREN: And have you had occasion

19 to have contact with members from the city of

20 Ripon with regard to the landscaping proposed at

21 the MEG site?

22 MS. STRACHAN: Yes, I have. I've had

23 several conversations with them.

24 MS. WARREN: Could you please relate to

25 us those conversations?

MS. STRACHAN: Conversations, as I mentioned, several of them. Most recently dealing with the staff's final initial study and the requirement that the project go through the site review process.

And it is a process through the planning commission, where Modesto Irrigation District will be required to submit a landscape plan, irrigation plan. it deals with painting, lighting, issues that are spelled out in our mitigation for the project. And they will have the opportunity to review those plans at that time.

There's also, as Mr. Knight mentioned, a mitigation program which is what the city uses and develops to ensure that the project meets the mitigation requirements that are approved during the site review permit process.

MS. WARREN: Have you had an opportunity to discuss the proposed landscaping with any members from the city?

MS. STRACHAN: I discussed with Ernie Tyhurst the tree species that were mentioned, the cicerone and the redwoods. Originally the city was not sure about the redwoods because they do take a lot of water.

1 They then recently called and said that
2 they were comfortable with the use of redwoods
3 because the project will be using non-potable
4 water and that the trees would be irrigated with
5 non-potable water. Otherwise the city does have a
6 requirement for drought-tolerant landscaping.
7 MS. WARREN: So is it your opinion that
8 the city is in concurrence with the proposed
9 landscaping as it was simulated?
10 MS. STRACHAN: That's my understanding.
11 MS. WARREN: No further questions.
12 HEARING OFFICER VALKOSKY: Is it also
13 your opinion that the landscaping submitted by
14 Applicant will comply with, will meet the
15 performance standards to which staff was
16 referring?
17 MS. STRACHAN: That's my understanding.
18 HEARING OFFICER VALKOSKY: Okay, thank
19 you. Mr. Westerfield, anything?
20 MR. WESTERFIELD: No further questions.
21 HEARING OFFICER VALKOSKY: Mr. Sarvey?
22 MR. SARVEY: Yes. This project was not
23 submitted to the Energy Commission. What would
24 the city of Ripon require as visual screening for
25 this project?

MS. STRACHAN: I can't answer that question.

MR. SARVEY: Okay. And you've spoken with the members of the planning department about the visual screening on this project?

MS. STRACHAN: I spoke specifically with Mr. Ernie Tyhurst, who's the planning director for the city.

MR. SARVEY: The planing director. Now does the planning director have the ultimate authority over this project or is it the city council that would decide what was absolutely necessary should this be challenged?

MS. STRACHAN: I don't know the answer to that.

MR. SARVEY: Have you spoken with any members of the city council regarding the screening for this project?

MS. STRACHAN: No, I have not.

MR. SARVEY: Thank you. That's all.

HEARING OFFICER VALKOSKY: Any further questions? Any redirect?

MS. WARREN: None, thank you.

HEARING OFFICER VALKOSKY: Ma'am, come on up.

1 MS. KAEFER: I just wanted to say,
2 regarding Mr. Tyhurst and the city of Ripon, and
3 I'm hoping that this -- because I have been told
4 by them when we've tried to enforce anything that
5 the only thing that they do enforce is
6 construction noise, and that it's current things
7 now, that they didn't enforce anything before.
8 So anything before now is grandfathered
9 so therefore they don't do anything. My next door
10 neighbor, who is the closest person to this plant,
11 who isn't here now, has a landscaping issue with
12 the trucking yard, which is between us and their
13 plant.
14 For the three years that I've lived
15 there, every year we've called the fire
16 department, who has had to notice the trucking
17 yard. They have noticed them -- or at least
18 they've told us that they've noticed them -- they
19 give them 14 days, and then they notice them
20 again, and then they have like 21 days, and then
21 they notice them again.
22 And they only are doing this if we
23 continue calling, and then they come out and they
24 mow these weeds that are up to here, so now
25 they're here, they're still a fire hazard. I've

1 spoken to the fire chief, because what they say is
2 that the city has nothing to do with landscaping
3 or issues, only if its a fire hazard, and then you
4 call the fire department, and they are a separate
5 entity from the city. They're completely
6 separate.
7 And from the chief's words to me is
8 basically what happens is in the notice time frame
9 that they have to give them, by the time they're
10 done noticing winter has come, and then stuff
11 starts turning green and it's no longer an issue.
12 And therefore again we get back to the city does
13 not enforce anything.
14 I hope that they will enforce this, but
15 Ernie Tyhurst is a person who does not return my
16 calls, has flat told me on noise issues that there
17 is no noise ordinance. So I don't know that
18 landscaping is going to be any different.
19 HEARING OFFICER VALKOSKY: Okay. Thank
20 you. Final question, Mr. Knight, correct me if
21 I'm wrong, but your draft initial study you had
22 several conditions of exemption to ensure
23 compliance with your visual screening criteria, is
24 that correct?
25 MR. KNIGHT: Yes, I believe there were

1 two conditions. One that was the color of project
2 structures and low glare structures, and the other
3 was the landscaping screening.
4 HEARING OFFICER VALKOSKY: Okay, and the
5 reason those were deleted in the final initial
6 study?
7 MR. KNIGHT: Being that this is an SPPE,
8 which is exempt from our process, we've been
9 trying to minimize the number of conditions. I
10 felt that if the Applicant amended their project
11 to include both a requirement for low glare, low
12 contrasting structures, as well as landscape
13 screening, then the project as proposed wouldn't
14 present a significant impact to the environment,
15 and therefore no additional mitigation proposed by
16 staff would be needed.
17 HEARING OFFICER VALKOSKY: Okay. Thank
18 you for that clarification. Anything further from
19 anyone on the topic of visual resources? Seeing
20 none -- no public comment? Nothing further, we'll
21 close the topic of visual resources. And at this
22 time I'd like to take a dinner recess. We'll take
23 a 30 minute dinner recess until 6:20.
24 (Off the record.)
25 HEARING OFFICER VALKOSKY: Back on the

record. Off the record we did discuss the order of the remaining agenda items. And by mutual agreement we will proceed with noise followed by air quality as the final topic. Ms. Warren, your witness.

MS. WARREN: Can I have my witness sworn in?

Whereupon,

MARK BASTASCH

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

MS. WARREN: Will you please state and spell your name for the record?

MR. BASTASCH: Mark Bastasch, M-a-r-k B as in boy a-s-t-a-s-c-h.

MS. WARREN: And would you please state your job title and your role with regard to the project?

MR. BASTASCH: I'm an engineer with CH2MHill, and I prepared the noise portion of the application.

MS. WARREN: And for reference do you know what page that would begin on?

MR. BASTASCH: Section 8.5.

MS. WARREN: Of the SPPE, and on the testimony I believe it's page 67 of the testimony.

MR. BASTASCH: That's correct.

MS. WARREN: Does that testimony contain a statement of your qualifications?

MR. BASTASCH: It does.

MS. WARREN: Can you please provide a brief overview of your education and experience as it pertains to your testimony today?

MR. BASTASCH: Sure. I've got a Bachelor's of Science in Environmental Engineering from Cal Poly San Luis Obispo, and a Masters from Rice University in Houston, Texas. I'm a professional Acoustical Engineer in the state of Oregon, and I've prepared numerous assessments for other projects that have been before the Commission.

MS. WARREN: Thank you. Do you have any additions, corrections, or clarifications to your filed testimony?

MR. BASTASCH: No.

MS. WARREN: Your testimony incorporates a number of exhibits. Can you please identify those for us?

MR. BASTASCH: Exhibit 1, section 8.5,

1 and Appendix 8.5B and 8.5C of the SPPE
2 application; exhibit 2 of the SPPE, supplement A;
3 exhibit 5, data response set 1A, numbers 50 and
4 51; and exhibit 15, the draft initial study
5 comments, set 1.
6 MS. WARREN: To the best of your
7 knowledge are all the facts contained in your
8 testimony, including the reference documents, true
9 and correct?
10 MR. BASTASCH: Yes.
11 MS. WARREN: And do the opinions
12 contained in your testimony represent your best
13 professional judgment?
14 MR. BASTASCH: Yes.
15 MS. WARREN: Do you adopt such testimony
16 as your testimony in this proceeding?
17 MR. BASTASCH: Yes.
18 MS. WARREN: Can you please summarize
19 your testimony for us?
20 MR. BASTASCH: Certainly. The project
21 site is located in the north corner of Doak
22 Boulevard and South Stockton Avenue, extension of
23 the city of Ripon. The general area is zoned for
24 and surrounded by industrial uses, such as the Fox
25 River Paper Company, which includes a cogeneration

1 facility; Nulaid Foods; a trucking facility; a
2 grain terminal; and the city of Ripon wastewater
3 treatment plant.
4 Sources of environmental noise in the
5 vicinity of the project site include vehicular
6 traffic on state route 99, auto and heavy truck
7 traffic on local roads, train movements on the
8 adjacent tracks -- which are adjacent to state
9 route 99 --, neighboring light and heavy
10 industrial sources mentioned above, and occasional
11 general aviation aircraft overflights.
12 Existing noise levels were measured in a
13 25-hour survey, as required by the CEC, at two
14 locations designated as A and B, which are
15 approximate to the proposed location. The
16 distances to the monitoring locations were
17 presented from the approximate center of the MEGS
18 facility.
19 The nearest sensitive receptor is
20 approximately 1,000 feet from the center of the
21 facility. Noise impacts were analyzed at the
22 closest residence north. in addition to
23 monitoring impacts at monitoring locations A and
24 B, noise impacts were analyzed at the closest
25 residence north of the project site, identified as

1 R.

2 Noise monitoring was not conducted at

3 location R because it was closer to the existing

4 noise sources than monitoring location A, and the

5 existing ambient levels would have been elevated

6 by such sources.

7 The noise survey showed that the levels

8 at A ranged from 48 to 49 decibels. The LDN

9 descriptor was approximately 58 decibels. A noise

10 model for the proposed facility was developed

11 using source input levels derived from

12 manufacturers data and field surveys of similar

13 equipment.

14 The analysis showed that the predicted

15 sound levels at all residential locations are

16 below the 65 DBA LDN threshold established by the

17 city. The predicted levels at location A were 57

18 DBA and at location R 55 DBA.

19 The project is not anticipated to have

20 audible tones. Certain sources within the plant

21 may generate the tones, but it is MID's intention

22 to anticipate the potential for audible tones in

23 the design and specifications of plant equipment,

24 and take necessary steps to prevent sources from

25 emitting the tones that might be disturbing at the

1 nearest receptors.

2 Construction noise associated with the

3 MEGS facility is expected to be typical of other

4 comparable power plants in terms of schedule,

5 equipment used, and other types of activities.

6 The noise level will vary during the construction

7 period depending on the construction phase.

8 At 1,000 feet, the approximate distance

9 to the nearest residential locations, average

10 noise levels during construction activities are

11 projected to be between 52 DBA and 63 DBA.

12 Construction activities will be

13 conducted in accordance with the city of Ripon's

14 requirements and will be of limited duration. And

15 according to the CEC's finding on numerous similar

16 projects, construction noise will not result in a

17 significant impact.

18 MS. WARREN: Have you reviewed the

19 errata to staff's testimony filed on August 29th?

20 MR. BASTASCH: I have.

21 MS. WARREN: Can you provide your

22 understanding of that errata, as it applies to

23 noise?

24 MR. BASTASCH: Certainly. The errata

25 presented monitoring data that was collected at

1 location R, and it substantiates our presumption
2 that location R would have an elevated background
3 level compared to location A, and that our
4 analysis, based on noise levels measured at A, was
5 conservative.
6 MS. WARREN: Would staff's proposed
7 conditions of exemption, in your opinion, would
8 the plant create a significant adverse noise
9 impact?
10 MR. BASTASCH: No.
11 MS. WARREN: And with staff's proposed
12 conditions of exemptions would this project comply
13 with all LORS?
14 MR. BASTASCH: Yes.
15 MS. WARREN: Do you disagree with
16 staff's conditions of exemption in this area?
17 MR. BASTASCH: No.
18 MS. WARREN: And just to clarify, your
19 response to that question was taking into
20 consideration the errata that was filed on this
21 issue?
22 MR. BASTASCH: Correct.
23 MS. WARREN: That's all my questions.
24 HEARING OFFICER VALKOSKY: Thank you. I
25 notice in your testimony you suggest a change to

1 noise 1, which staff has apparently incorporated
2 into their supplemental testimony, is that
3 correct?
4 MR. BASTASCH: Correct.
5 HEARING OFFICER VALKOSKY: Could you
6 just explain, for my own understanding, why you
7 view it preferable to extrapolate the noise level
8 rather than taking an actual measurement at a
9 given location?
10 MR. BASTASCH: Certainly. In a project
11 location such as this, where we've got numerous
12 existing noise sources, having the ability to
13 measure closer to the plant, and therefore
14 determine the actual plant noise level, and then
15 extrapolate that level out, ensures that we are
16 holding the plants to the design level, rather
17 than penalizing the plant from sources which are
18 not emanating from the plant.
19 It enables us to distinguish the plant
20 level from the other sources in the area.
21 HEARING OFFICER VALKOSKY: In your
22 experience, how accurate, plus or minus how many
23 percent, is that mathematical extraction which
24 will then ensue extrapolations?
25 MR. BASTASCH: I would say it would be

1 less than a generally noticeable difference.
2 HEARING OFFICER VALKOSKY: Okay. Do you
3 have any threshold for what level of increase
4 results in a significant impact? In other words,
5 is it five decibels, ten decibels, 15, whatever?
6 MR. BASTASCH: Staff has really set the
7 threshold in staff's interpretation of CEQA is
8 that increase of less than five decibels are
9 clearly not significant, and increases between
10 five and ten decibels may be significant. And
11 then increases of ten decibels and above would
12 most likely be significant.
13 HEARING OFFICER VALKOSKY: Do you agree
14 with that?
15 MR. BASTASCH: I think that has
16 relevance in some settings. I don't know that it
17 has relevance in all settings.
18 HEARING OFFICER VALKOSKY: Could you
19 explain that a little further please?
20 MR. BASTASCH: I think that there may be
21 projects where noise increase above ten decibels
22 would not necessarily result in a significant
23 adverse impact. And there may be -- I'll just
24 leave it at that.
25 HEARING OFFICER VALKOSKY: From your

1 experience in other projects, is the five and ten
2 decibel limits used by staff generally accepted,
3 is it a common use of those levels?
4 MR. BASTASCH: Staff used the L90
5 descriptor as the basis for those levels, which is
6 a conservative descriptor, to add the increment of
7 five or ten decibels. Five and ten decibels are
8 used -- well, ten decibels and above is used by
9 transportation agencies, but they use the LEQ
10 descriptor.
11 The federal transportation, or the
12 Federal Rail Administration will allow ten
13 decibels or greater than ten decibels in certain
14 situations based on the LDN descriptor, which is a
15 24 hour average. So the five and ten numbers are
16 out there in the literature, and in regulatory
17 guidance by other federal agencies, but they're
18 not necessarily based on the L90 descriptor.
19 And the L90 descriptor is the sound
20 level that is exceeded 90 percent of the time. So
21 it represents the quietest portion of existing
22 conditions.
23 HEARING OFFICER VALKOSKY: Okay. And
24 did you say that the L90 used by staff is in
25 effect more conservative than these other

1 regulatory --

2 MR. BASTASCH: Correct. That's what I'm

3 getting at. It's a more conservative approach.

4 HEARING OFFICER VALKOSKY: Okay. Thank

5 you. Mr. Westerfield?

6 MR. WESTERFIELD: Mr. Bastasch, just a

7 couple of questions. Could you characterize the

8 noise levels, I guess in qualitative terms, at

9 point A?

10 MR. BASTASCH: The project noise level

11 at --

12 MR. WESTERFIELD: No, I'm sorry, the

13 ambient noise level without the project at point

14 A?

15 MR. BASTASCH: Certainly. I would refer

16 to a table in the SPPE application. And that is

17 table 8.5-2. And that, the level of high 40's to

18 50 is consistent with that of a private office

19 building, or light traffic at a hundred feet.

20 MR. WESTERFIELD: Right. I wanted to

21 ask you in qualitative terms. So let me give you

22 some examples of what might be a qualitative term.

23 Is it noisy? Is it moderately noisy? Is it

24 quiet? Is is very, very noisy? Can you describe

25 the level at point A in those kinds of qualitative

terms?

MR. BASTASCH: I'd be stating my opinion, just to be clear -- and I don't think you're asking for anything else. Because noise is subjective. I would consider that moderately quiet. I wouldn't consider it extremely quiet. I'd consider it louder than quiet, but I wouldn't consider it extremely noisy.

MR. WESTERFIELD: Again, this is the ambient level at noise A, without the project. Moderately quiet.

MR. BASTASCH: Correct.

MR. WESTERFIELD: And I'm asking you to voice that opinion in your professional capacity. Is your answer the same?

MR. BASTASCH: Yes.

MR. WESTERFIELD: And could you make a similar judgment with reference to point R?

MR. BASTASCH: Point R, the staff's results were 54, and it is somewhat louder than A. But I would still put it in that realm of moderate, you can still hold a conversation without having an elevated voice.

MR. WESTERFIELD: Okay, you just called it moderate. Would you call it moderately quiet,

1 would you call it moderately loud, or are you just
2 saying it's moderate.
3 MR. BASTASCH: I would just say it's
4 moderate.
5 MR. WESTERFIELD: So if you were to --
6 all right, it's moderate. Now for point A, how
7 much of an increase -- in your professional
8 judgment -- for the increase to be a significant
9 adverse impact?
10 MR. BASTASCH: Again, using staff's
11 criteria, that would be a ten decibel increase
12 above the L90.
13 MR. WESTERFIELD: I'm not asking for
14 staff, I'm asking for your professional judgment,
15 based upon all your experience and training?
16 MR. BASTASCH: I would agree with the
17 ten decibel assessment at that location.
18 MR. WESTERFIELD: And why is that?
19 MR. BASTASCH: Because the ten decibels
20 is, the resulting level is not out of the ordinary
21 for the area, and results in the level that
22 complies with the 65 LDN requirement set out by
23 the city.
24 MR. WESTERFIELD: Okay. And the same
25 question with reference to point R. I'm sorry,

1 let me be more specific. Point R -- what kind of
2 increase would you consider to be significant, in
3 your professional judgment?
4 MR. BASTASCH: Again, I would probably
5 go with the ten decibel increase as being a
6 significant increase.
7 MR. WESTERFIELD: And why is that?
8 MR. BASTASCH: Because that would
9 represent, at that location, an approximate
10 doubling of the noise level, which is relatively
11 constant based on the monitoring provided by
12 staff.
13 MR. WESTERFIELD: And now, aren't the
14 ambient noise levels in point A and point R
15 different?
16 MR. BASTASCH: Correct.
17 MR. WESTERFIELD: And so is it your
18 judgment that the ten decibels increase represents
19 significance regardless of the difference in the
20 ambient noise levels at the two points?
21 MR. BASTASCH: No, not in all cases. In
22 these cases there is a seven decibel difference in
23 the L90. If the ambient was 20, or 30, we may
24 have a different potential threshold.
25 MR. WESTERFIELD: But considering the

1 ambient levels at point A and R here, is it your
2 judgment that a ten decibel increase at both
3 represents a significant adverse impact?
4 MR. BASTASCH: An increase above ten
5 decibels would.
6 MR. WESTERFIELD: Yes. And that's your
7 testimony, even though the ambient levels are
8 different at each point?
9 MR. BASTASCH: Correct.
10 MR. WESTERFIELD: And again why is that?
11 MR. BASTASCH: I'm not certain that I
12 understand what you're trying to get at?
13 MR. WESTERFIELD: So in your judgment
14 does it make any difference that the ambient
15 levels of the two different points are different?
16 MR. BASTASCH: They are not extremely
17 different.
18 MR. WESTERFIELD: So it's because they
19 are relatively similar, a ten decibel increase at
20 both is an appropriate significance criteria?
21 MR. BASTASCH: In my opinion.
22 MR. WESTERFIELD: Okay, that's all the
23 questions I have.
24 HEARING OFFICER VALKOSKY: If I can get
25 just a couple of points of clarifications. One,

1 we were talking about the ten decibel increase --
2 that's on the L90 descriptor?
3 MR. BASTASCH: Yes. That's what I was
4 looking at. I'm evaluating noise table 4 revised,
5 based on page three of their errata.
6 HEARING OFFICER VALKOSKY: Okay, and
7 when you talk about a ten decibel increase as a
8 criteria for determining significance, does that
9 mean one decibel through nine decibels are not
10 significant, and 11 through whatever are
11 significant. What happens when it's ten, I guess,
12 is what I'm asking?
13 MR. BASTASCH: I would say 11 and above
14 would be potentially significant. And if you were
15 at 11 -- I don't know that there's a hard and
16 fast --
17 HEARING OFFICER VALKOSKY: Well, since,
18 you know, we are tossing this around, and it shows
19 up in a lot of charts, so you're basically saying
20 a one through ten decibel increase would not meet
21 your criteria for a threshold of significance,
22 correct?
23 MR. BASTASCH: Correct.
24 HEARING OFFICER VALKOSKY: And that 11
25 and above would?

1 MR. BASTASCH: Correct.
2 HEARING OFFICER VALKOSKY: That's all I
3 wanted to clarify. Thank you. Mr. Sarvey?
4 MR. SARVEY: What is your margin of
5 error you attribute to your projected plant noise
6 levels?
7 MR. BASTASCH: Thus far, on every plant
8 we've done compliance monitoring, our model has
9 been significantly conservative, on the order of
10 three to five decibels overestimating the
11 predicted level.
12 MR. SARVEY: And have you modeled a
13 project with this configuration before?
14 MR. BASTASCH: Similar configurations.
15 MR. SARVEY: But not the exact same?
16 MR. BASTASCH: No, no project is exactly
17 the same.
18 MR. SARVEY: Okay. All right. Earlier
19 you said that noise is subjective, I mean so far
20 as one person might think it's a nuisance, and
21 others not, is that correct?
22 MR. BASTASCH: People have different
23 opinions of what is quiet and what is loud, that
24 is correct.
25 MR. SARVEY: And what margin of error do

1 you predict in your estimate of ambient conditions
2 from your monitoring?
3 MR. BASTASCH: Our monitoring was done
4 with type one precision equipment. I would
5 anticipate the error there to be plus or minus one
6 decibel.
7 MR. SARVEY: Now, measurement site A,
8 you predict that the ambient level is 47?
9 MR. BASTASCH: That's staff's
10 calculation, yes.
11 MR. SARVEY: Okay. If you have plus or
12 minus margin of error, that ambient level at site
13 A could be 46 or it could be 48, correct?
14 MR. BASTASCH: A one decibel difference
15 is not perceivable.
16 MR. SARVEY: But if, let's say, it was,
17 and your margin of error could be, let's say it
18 could be 46 to 48?
19 MR. BASTASCH: That would be, that's
20 possible.
21 MR. SARVEY: If the ambient noise level
22 at measurement site A was 46, and your projected
23 project noise was 57, that would be an 11 deviate
24 change, and didn't you earlier say that you
25 believed that would be considered significant?

1 MR. BASTASCH: I believe I stated that,
2 at 11 decibels, that's at the borderline there.
3 There was no clearcut borderline.
4 MR. SARVEY: Okay. Now would you agree
5 with this statement, "ten DBA changes
6 subjectively heard is an approximate doubling in
7 loudness."
8 MR. BASTASCH: Correct. I believe I
9 stated that.
10 MR. SARVEY: Thank you. In terms of
11 construction noise, you modeled the noise for the
12 closest residence as being 1,000 feet from the
13 project, is that correct?
14 MR. BASTASCH: Correct. That's in my
15 field testimony.
16 MR. SARVEY: Isn't it true that the
17 closest residence is 700 feet from the project?
18 MR. BASTASCH: We have a map of how we
19 determined our distances over there.
20 MR. SARVEY: So you weren't aware that
21 there were residences within 700 feet of the
22 project, is that correct?
23 MR. BASTASCH: I don't believe there are
24 residences within 700 feet of the project.
25 MR. SARVEY: Thank you. Okay, earlier

1 you said you wanted to change your noise condition
2 1 because you wanted to extrapolate from the
3 center of the plant out to the residences, and you
4 did that in order to avoid the possibility that
5 other noises could be added to that level that
6 could be attributed to your plant, correct?
7 MR. BASTASCH: That's a standard
8 condition that's been in almost every proceeding.
9 And the reason it's there is so that we can
10 isolate the plant noise level, which is what we're
11 regulating here. We're not regulating the noise
12 level of Nulaid Foods or any of the adjacent
13 industrial areas.
14 MR. SARVEY: So do you ever consider
15 cumulative noise impacts?
16 MR. BASTASCH: They have been considered
17 in the application.
18 MR. SARVEY: What necessary steps will
19 MID take to eliminate total noises from this plant
20 if they do discover them?
21 MR. BASTASCH: That might be something
22 you might want MID to address?
23 MS. WARREN: Would you give us just a
24 minute here to figure out who would be best to
25 address that question.

1 MR. BASTASCH: Okay. There's a
2 condition of exemption that requires an evaluation
3 of tunnel noise, and there are various measures
4 which can be used to address total noise, which
5 include lagging, or construction of enclosures.
6 MR. SARVEY: Have you been involved in a
7 power plant that actually did develop tonal noises
8 after it was cited?
9 MR. BASTASCH: There was one facility in
10 Oregon that had a tonal noise issue that we
11 mitigated.
12 MR. SARVEY: And what steps did you take
13 to mitigate that?
14 MR. BASTASCH: We lagged the valves and
15 the piping.
16 MR. SARVEY: Are you aware of any other
17 noise standards that the city of Ripon has, other
18 than a 65 DB limit?
19 MR. BASTASCH: In Appendix A of the
20 filed testimony you'll see a letter, or an
21 application, from the city of Ripon that
22 summarizes their ordinances with respect to this
23 project, and that's what I'm aware of.
24 MR. SARVEY: And was there any other
25 ordinances other than the 65 DBA limit? Do you

want to take a second and take a look at that?

MR. BASTASCH: Yes, the letter speaks for itself.

MR. SARVEY: Okay. Do you know if whether the city of Ripon enforces the 65 DBA limit?

MR. BASTASCH: I have no direct knowledge.

MR. SARVEY: If the resident at measurement site R is already complaining about the current noise levels, and already considers it a nuisance, would a 4 DBA increase exacerbate, make the nuisance worse?

MR. BASTASCH: I don't believe so. One of the major complaints that that resident had was with respect to the tonal characteristic of the noise being generated, and we won't have that.

MR. SARVEY: Thank you.

HEARING OFFICER VALKOSKY: Any redirect, Ms. Warren?

MS. WARREN: Yes. Give me just a moment, please. Just a couple, okay. With respect to the effect or the ability of the potential for noise increase at point R, is there any affect -- do the intervening plant noises

1 between the plant location and point R location
2 have any effect on the potential for hearing the
3 plant at point R?
4 MR. BASTASCH: Yes. They tend to mask
5 the plant.
6 MS. WARREN: Can you explain that?
7 MR. BASTASCH: Thereby you wouldn't
8 necessarily be hearing the plant noise. You'd be
9 hearing the plant noise as a component
10 potentially, if you could even distinguish the
11 plant noise from the existing noise levels there.
12 I think that's probably the best way to
13 characterize it.
14 Masking is the ability to distinguish
15 distinct noise sources, and the existence of the
16 noise sources there would tend to mask the plant
17 noise, making it less distinguishable.
18 MS. WARREN: Thank you. That was all.
19 HEARING OFFICER VALKOSKY: Redirect?
20 I'm sorry, recross?
21 MR. WESTERFIELD: No further questions.
22 MR. SARVEY: No further questions.
23 HEARING OFFICER VALKOSKY: Any
24 statements from anyone here present regarding
25 noise? Okay, Ms. Kaefer?

1 MR. WESTERFIELD: Wait -- do you want to
2 hear from the Applicant's witness before public --
3 HEARING OFFICER VALKOSKY: No, I'd like
4 to hear on what we've heard so far. We've been
5 talking specifically about a lot of residences and
6 things.
7 MS. KAEFER: Well, I have so many
8 papers, I don't know where to begin. But
9 basically, I met -- I'm sorry, I forgot your name,
10 I'm terrible with --
11 MR. BASTASCH: Mark.
12 MS. KAEFER: Mark, whom I met this
13 morning. And all of these people have been to my
14 house. And can I just ask him one question? Do
15 you think my house is loud now, when we were there
16 today? I mean, when you're using moderate or --
17 and, that it's not loud, it's moderately quiet as
18 opposed to moderately loud?
19 MR. BASTASCH: I believe I said
20 moderate.
21 MS. KAEFER: Well, you answered to his
22 number, not to my specific house, which -- we know
23 what that number is.
24 MR. BASTASCH: Right And I would say
25 you have a moderate noise level. Moderately

quiet, I believe, is what I used for location A. And you are definitely louder than location A.

MS. KAEFER: And I understand from all the various noise people that I've spoken with that a ten decibel difference is twice as loud as the existing number. The existing number right now is not acceptable. I mean, and there's a 65 number that Mr. Sarvey used.

Actually, in the municipal code for our particular area, it's 50 to 60 is what it says is acceptable. And there are several times little spikes in this, at 3:00 in the morning, and 5:00 in the morning, that these things are way above that.

I understand it's an issue with the city. But I also, the word distinguishable noise, added to what we already have -- we've had a tonal noise issue, which right now has been addressed. I went and talked to Nulaid, and they actually have gotten rid of the noise that was really really bothering us.

We went on a tour, with one of my other neighbors and I with Susan Strachan, a week ago, of the Woodland plant. There were two distinguishable tonal noises, which is the noise

1 issue that we have. Both of those, one we heard
2 from the site they first took us to -- and I don't
3 know the difference, but it was about the distance
4 of what my house is to where the proposed plant
5 is, in proportion to where their existing plant is
6 there, although they're saying it's not the same
7 because it doesn't have the things that are making
8 the noise there.
9 But my point is, there are two tonal
10 noises there, and that's what we don't want, a
11 distinguishable noise over and above this. And if
12 ten is double then four is almost half again as
13 much.
14 HEARING OFFICER VALKOSKY: And what I
15 would suggest you do is ask the Applicant what the
16 effect of their project on your perceived noise
17 levels would be. That's why we're doing it this
18 way. You can ask the same thing from staff too.
19 But right now, understand that Applicant has taken
20 measurements, as has staff.
21 I'd like to hear that explanation.
22 MR. BASTASCH: Certainly. The increase
23 in noise at your house is not predicted to be ten
24 decibels, first and foremost.
25 MS. KAEFER: Right.

1 MR. BASTASCH: So we're talking, based
2 on the measurements and evaluation by staff of an
3 increase of 4 decibels, and that's based off of
4 the L90. So we're talking about increasing the
5 quietest ten percent of the time period by 4
6 decibels. Three decibels is considered, in an
7 outside environment, a barely perceptible
8 difference.
9 We're not anticipating, nor are we
10 allowed to have, any pure tones. So what I was
11 trying to state earlier is that we anticipate the
12 plant will blend in with the existing noise, and
13 that the plant noise will not be strongly
14 distinguishable from the existing noise.
15 MS. KAEFER: Strongly distinguishable.
16 But maybe distinguishable.
17 MR. BASTASCH: I'll never say that
18 nobody will ever hear it, because somebody may
19 hear it. And I don't want to set a false
20 expectation that you're not going to hear the
21 plant. What I'm saying is that the plant is going
22 to be of a character that it's going to blend in
23 with the surrounding noises.
24 MS. KAEFER: I guess, because we've
25 really gone over all this before, the biggest

1 thing is just who is going to enforce --
2 HEARING OFFICER VALKOSKY: Yes, and
3 we'll deal with that when we get to the staff
4 issue. I think that's kind of a separate topic.
5 okay? Thank you. Ms. Lopez? And again, if you
6 could keep the comments, any question that you
7 have directed toward Applicant's witness that they
8 might answer.
9 MS. LOPEZ: Yes. I live at 658 South
10 Locust. I am the house that's going to be --
11 HEARING OFFICER VALKOSKY: Excuse me,
12 ma'am. Could you identify yourself?
13 MS. LOPEZ: My name is Mercedes Lopez.
14 And basically the question that I have is, because
15 I do live next to the trucking company, and noise
16 is subjective, but it also is ever changing
17 because of the reefers and trucks coming and
18 going. We do have very quiet times, and we have
19 very loud times.
20 And I already have a hum coming all the
21 way into my home. So what I wanted to ask is what
22 kind of noise will the plant be emitting? Would
23 it be a high pitch, would it be a hum, would it be
24 clicking, clacking?
25 MR. BASTASCH: I wouldn't characterize

it as high pitch. It's generally broadband in nature. Maybe characterized previously as more of a low roar, perhaps. I don't know how to qualitatively really state that. You did hear generally -- were you one of the people who went to Woodland?

MS. LOPEZ: No, I didn't.

MR. BASTASCH: Okay. It's hard to describe. I would anticipate that it would be somewhat similar to what you're experiencing now, but would not have any strong high-pitched tonal components.

And wouldn't be, wouldn't have any intermittent type of components that would cause a beat or some sort of varying noise level where it was going wah wah wah wah wah, or like a bad fan or something.

MS. LOPEZ: Would it be a constant noise?

MR. BASTASCH: Yes, it would be characterized as a constant noise. And constant noises are generally considered less disturbing than intermittent noises, because you --

MS. LOPEZ: I tend to disagree with that, because of the hum that is in my home at

2:00 in the morning. I still hear it. And that is one of the main points that's brought me here tonight, because that hum, being so close to me, I really don't need anything adding to it. And that is one of my main concerns.

MR. BASTASCH: I think, like I stated previously, given the four decibel increase over the L90 that we're talking about here, I don't think that this is going to be extremely discernible from the existing noise level.

MS. LOPEZ: Okay. All right, thank you.

HEARING OFFICER VALKOSKY: Does your conclusion apply during the quiet times that Ms. Lopez referred to?

MR. BASTASCH: That's right. I'm referring to what staff analyzed, which was the quiet time.

HEARING OFFICER VALKOSKY: Okay. So even the four decibel increase in the quietest time of the night should not be discernible, is that a fair characterization of your testimony?

MR. BASTASCH: Correct.

HEARING OFFICER VALKOSKY: Thank you. Anything else for Applicant's witness? Your exhibits, please.

MS. WARREN: Can I just ask a few followup questions from the issues that were raised?

HEARING OFFICER VALKOSKY: Sure.

MS. WARREN: Great. Is it anticipated that the plant would produce any audible pure tones?

MR. BASTASCH: No.

MS. WARREN: Will the potential for other audible tones be addressed by the conditions of exemption that are proposed?

MR. BASTASCH: Correct. Those have to be evaluated, and measurements have to be conducted at the residences themselves.

MS. WARREN: Are you familiar with any other projects where such similar conditions of exemptions have been used?

MR. BASTASCH: Yes. On almost every proceeding I've been involved in we've had similar --

MS. WARREN: Can you state an opinion on whether those conditions of exemption have been successful in mitigating potential noise impacts in previous projects?

MR. BASTASCH: Yes, I believe they have.

1 MS. WARREN: Are you familiar with the
2 Woodland generating station project that was
3 referred to earlier?
4 MR. BASTASCH: I am.
5 MS. WARREN: Are you familiar with the
6 conditions of exemption in that project?
7 MR. BASTASCH: I am.
8 MS. WARREN: Are they similar to the
9 ones that are proposed here?
10 MR. BASTASCH: They are.
11 MS. WARREN: Are you aware that, whether
12 or not compliance monitoring for pure tones has
13 occurred for that project?
14 MR. BASTASCH: It has.
15 MS. WARREN: And can you tell us what
16 the results of that compliance testing showed?
17 MR. BASTASCH: That there were no pure
18 tones at either of the compliance monitoring
19 points.
20 MS. WARREN: Did that compliance
21 monitoring cover any other issues with respect to
22 noise? Or was it just focused on --
23 MR. BASTASCH: The requirements in the
24 Woodland project were to evaluate the overall
25 noise level, as we are required to here, and to

1 evaluate the tonal noise level, as we are required
2 to here.
3 MS. WARREN: And in both of those areas
4 was the testing performed?
5 MR. BASTASCH: Yes. And it was
6 favorable in both results.
7 MS. WARREN: Thank you.
8 HEARING OFFICER VALKOSKY: In those
9 other cases that you referred to, having both
10 conditions of certification and conditions of
11 exemption, which agency was responsible for
12 monitoring compliance and ensuring that conditions
13 were met?
14 MR. BASTASCH: I conducted and drafted
15 two reports for that project. I submitted them to
16 the Modesto Irrigation District, who submitted
17 them to the California Energy Commission.
18 HEARING OFFICER VALKOSKY: Okay. So I
19 take it that means, as far as you know, the Energy
20 Commission was responsible for monitoring and
21 enforcement?
22 MR. BASTASCH: As far as I know that was
23 a condition of exemption, and was required as part
24 of the CEC licensing process, and I --
25 HEARING OFFICER VALKOSKY: Right. And

1 the other cases that you referred to, which I
2 assume you were talking about conditions of
3 certification in prior plants, those conditions
4 would have been enforced by which agency?
5 MR. BASTASCH: Again, my understanding
6 would have been the California Energy Commission.
7 I did not notice or conduct anything different for
8 that application as I did for other applications
9 that had gone through the AFC process.
10 HEARING OFFICER VALKOSKY: Okay. Thank
11 you. Anything further for this witness?
12 MR. SARVEY: Nothing further.
13 MR. WESTERFIELD: No.
14 HEARING OFFICER VALKOSKY: Your
15 exhibits, Ms. Warren?
16 MS. WARREN: Yes. The witness
17 identified those exhibits. It was exhibit 1,
18 section 8 and appendix 8.5 -- section 8.5 and
19 Appendix 8.5B; and 8.5C of the SPPE; it was
20 exhibit 2 SPPE, supplement A as it pertained to
21 noise; exhibit 5, data response set 1A, numbers 50
22 and 51, and exhibit 15, draft initial study
23 comments set one, as it pertained to noise issues
24 and I would move those.
25 HEARING OFFICER VALKOSKY: Is there

1 objection to the admission of those documents?
2 MR. WESTERFIELD: No objection.
3 MR. SARVEY: No objection.
4 HEARING OFFICER VALKOSKY: No objection,
5 they are admitted. Mr. Westerfield, your witness.
6 MR. WESTERFIELD: We call Mr. Steve
7 Baker to speak to noise and vibration. I believe
8 he is already sworn.
9 HEARING OFFICER VALKOSKY: That is my
10 recollection.
11 MR. WESTERFIELD: Mr. Baker, could you
12 please state your qualifications for the record in
13 the, I guess, specialty of noise?
14 MR. BAKER: At the Energy Commission
15 I've been responsible for the subject area of
16 noise for the last 11 years. Besides my technical
17 education in mechanical engineering, which gave me
18 a fairly solid background in physics, I've endured
19 a couple of training classes on noise.
20 Three days of training specifically on
21 noise plus a class on California Environmental
22 Quality Act. And I've got, as I mentioned, 11
23 years experience.
24 MR. WESTERFIELD: Approximately how many
25 Energy Commission siting cases have you prepared

1 noise testimony?

2 MR. BAKER: I've prepared the noise

3 testimony in 13 cases to date.

4 MR. WESTERFIELD: And in approximately

5 how many siting cases have you supervised

6 preparation for noise testimony?

7 MR. BAKER: 26.

8 MR. WESTERFIELD: And could you tell us,

9 please, did you prepare the noise and vibration

10 testimony that is a part of staff's final initial

11 study?

12 MR. BAKER: I did.

13 MR. WESTERFIELD: And is it correct to

14 the best of your knowledge?

15 MR. BAKER: Yes it is.

16 MR. WESTERFIELD: And did you also

17 prepare staff's supplemental testimony filed by

18 errata last week?

19 MR. BAKER: Yes I did.

20 MR. WESTERFIELD: Okay. Is it true and

21 accurate to the best of your knowledge?

22 MR. BAKER: Yes, with one correction.

23 I'd like to add a word. If you go to the

24 supplemental noise testimony, page three, in the

25 second line, after 53.6 DBA, I'd like to add the

word "nearly", so it reads "nearly twice as loud."

MR. SARVEY: Would you repeat that?

MR. WESTERFIELD: Would you like him to repeat that again?

MR. SARVEY: Okay, got it, no problem, perfect.

MR. WESTERFIELD: Okay. With that exception is your supplemental true and accurate to the best of your knowledge?

MR. BAKER: Yes.

MR. WESTERFIELD: Rather than have you go through these two testimonies separately, I'd like you, if you will, to summarize them together as your final noise testimony.

MR. BAKER: In analyzing noise staff examines noise in both construction and long-term operation of the power plant. The analysis includes a determination of whether predicted noise emissions will comply with applicable LORS, and whether predicted noise emissions will be so severe as to constitute a significant adverse impact, as defined by CEQA.

Construction noise was predicted by the Applicant in their application. The only applicable LORS is the city of Ripon municipal

1 code, which limits the hours during which
2 construction can take place. The Applicant's
3 indicated in its application that they will comply
4 with this restriction.
5 The loudness of construction noise was
6 predicted in the application at the nearest
7 sensitive receptors, those residences to the west
8 of the project site designated as monitoring
9 location A. The Applicant predicted construction
10 noise levels that would reach as high as 57 DBA at
11 this location.
12 Compared to the ambient noise level of
13 52 DBA this represents an increase of up to five
14 DBA, which would not be perceived as a significant
15 increase. In the written testimony of August 27th
16 the Applicant corrected an error in this figure.
17 The application was based on an assumed distance
18 to location A of 1,900 feet. The actual distance
19 is 1,045 feet.
20 When the calculations are corrected for
21 this distance, predicted construction noise at
22 location A becomes as high as 64 decibels.
23 Comparing this to the ambient level of 52 DBA
24 yields an increase that will be noticeable, but
25 for the limited period of those portions of

1 construction that actually produce that much
2 noise, this should be tolerable for residents.
3 Keep in mind that this noise is limited
4 to daytime only. Power plant operational noise is
5 assumed to occur at any and all times of the day
6 and night. In fact, the Applicant predicts that,
7 during the canning season, the plant may run
8 continuously for three months.
9 The only applicable LORS is the city of
10 Ripon general plan noise element, which declares
11 noise up to 60 DBA LND as normally acceptable, and
12 up to 70 DBA LND as conditionally acceptable. The
13 Applicant predicts project noise at monitoring
14 location A of 63 DBA LDN. The application even
15 includes a letter from the city of Ripon which
16 states that the city considers levels up to 65 DBA
17 acceptable.
18 For a relatively noisy neighborhood such
19 as this, 63 DBA represents an acceptable level.
20 The Applicant predicted the noise emissions from
21 the plant in its application at location A,
22 residences to the west. Residents at location A
23 may see an increase of noise levels of 10 DBA.
24 In evaluating long-term noise impacts
25 from plant operation staff has commonly assumed

that increases greater than 10 DBA present a significant adverse impact, while increased up to 10 DBA may or may not be construed as significant. In this case, due to the relatively noisy neighborhood around location A, an increase of 10 DBA should not be particularly annoying.

Staff believes such an increase would not constitute a significant adverse impact. The Applicant further predicted noise emissions from the plant at location R, a group of residences to the north of the site, slightly farther from the plant than location A. Their predicted plant noise at R is 55 DBA.

Since the Applicant did not measure the ambient noise at location R, staff commissioned a survey which was performed August 25th through 27th. And that survey showed that the ambient noise level at R is 54 DBA. This yields an increase of only 4 DBA, barely noticeable and an insignificant impact.

MR. WESTERFIELD: Okay. Mr. Baker, I believe you characterized the ambient noise at site A as relatively noisy, was I correct?

MR. BAKER: For a residential neighborhood, yes.

1 MR. WESTERFIELD: And the results, it
2 sounds like, of the recent monitoring at site R
3 indicated a higher ambient noise level, is that
4 correct?
5 MR. BAKER: Yes.
6 MR. WESTERFIELD: And how would you
7 characterize the ambient noise level at point R?
8 MR. BAKER: For a residential
9 neighborhood it's quite noisy. I've, I don't
10 believe in 11 years I've ever seen a noisier
11 ambient in a residential neighborhood.
12 MR. WESTERFIELD: And so, could you
13 explain again why the, I guess, cumulative
14 increase in noise level from plant operations is
15 not considered to be significant in your judgment?
16 MR. BAKER: Okay. At sight R,
17 residences to the west of the project site -- let
18 me repeat something Mr. Bastasch said during his
19 testimony -- when staff looks at ambient noise we
20 look at it very conservatively. Mr. Bastasch is
21 correct in saying we're fairly unique in using the
22 background noise level, the L90 noise level, as a
23 measuring yardstick.
24 The reason for this is that power plant
25 noise is fairly unique. Most noises that we hear

about vary with time. Power plant noise is especially constant and continuous. Very few noise producers put out such continuous noise as a power plant running at steady load. Because of this, when you add the power plant noise to the ambient regime, it effectively adds to the background noise level.

The background is what your ears hear all the time. When there's no dogs barking, no cars going by, no planes flying overhead, nobody dropping something and making a lot of noise, what's left is the background. And that's commonly taken in the industry as the L90.

When you add a continuous noise source to that background you get a new, higher continuous noise source. So you've effectively changed the background level. And so, because of this unique feature of power plants, staff has chosen, for many years -- even before I took over noise -- to use the background or L90 noise level as a base of measurement.

When you add the power plant noise to that you come up with a new, higher level. At site A predictions are that this level will increase as much as ten decibels. Generally, ten

1 decibels is a doubling of noise.

2 If it were extremely quiet -- we just

3 dealt with another case, the San Joaquin Valley

4 Energy Center project, in which the ambient noise

5 level at the nearby residences went down into the

6 low 20 decibel range. 24 decibels, for instance,

7 that's less than one fourth as noisy as at site A.

8 It's hold your breath quiet.

9 In a case like that, adding ten decibels

10 is unconscionable. It would be clearly

11 significant. Take a measurement around site A,

12 measuring and monitoring location A with an

13 ambient of 47 decibels, adding 10 decibels to that

14 is not necessarily significant.

15 In fact, based on the noise level there

16 and the characteristics of the neighborhood, staff

17 has concluded that a ten decibel increase would be

18 acceptable, would be an insignificant impact.

19 Another thing to keep in mind is, again

20 as Mr. Bastasch alluded to, the computer modeling

21 that predicts the noise from that not yet existent

22 power plant, is conservative. Worst case would be

23 a ten decibel increase. I don't think that will

24 happen.

25 I think it will turn out that the

1 computer modeling was, as usual, conservative, and
2 the actual increase will be something less than
3 ten decibels. And because of all this, staff
4 believes that the projected increase at location A
5 is acceptable.
6 When we go to location R, first there
7 will be less noise from the power plant. For one
8 thing, the intervening buildings mask a lot of the
9 noise from site R, whereas they're not in the way
10 of site A. So there will be less project noise
11 heard at site R.
12 And on top of that is the fact that it's
13 already quite a bit noisier at site R. Using my
14 figures, it's seven decibels noisier, which is a
15 long way towards being twice as noisy as site A.
16 So, because of the higher existing background
17 noise level at R and the lower project noise,
18 we're predicting that, at worst case, there could
19 be as much as a four decibel increase.
20 Again, with conservative computer
21 modeling and all, we can expect it to be less than
22 four decibels. And when it gets down to three,
23 you can't hear that unless you specifically sit
24 there, hold your breath, and listen for it.
25 MR. WESTERFIELD: Now, Mr. Baker in your

1 I guess original testimony, you came to the
2 conclusion that the back of the proposed project
3 at location R would not create a significant
4 adverse impact.
5 Nevertheless, you -- staff, because of
6 the absence of ambient monitoring at that point,
7 commissioned this noise survey at point R. Did
8 the results of that monitoring affect your
9 conclusion of no significant impact from the
10 plant?
11 MR. BAKER: No. As a matter of fact,
12 they buttressed the conclusion.
13 MR. WESTERFIELD: Could you explain why?
14 MR. BAKER: In the initial study
15 analysis, lacking information on the ambient
16 conditions at R I assumed that they were the same
17 as at A, that is about 47 decibels. Since we were
18 only adding the plant noise of 55 decibels to 47
19 that would be an increase of eight decibels, which
20 was even less than at location A.
21 That was the assumption. After Mrs.
22 Kaefer and others raised questions, we
23 commissioned a study and we found out that the
24 noise at location R is in fact much noisier than
25 47 decibels that one finds at A. 54 decibels is

1 quite a bit noisier.

2 So when we got those results we saw that

3 our initial assumptions in the initial study were

4 much more conservative than we thought.

5 Therefore, the conclusions in the initial study

6 are not changed at all.

7 MR. WESTERFIELD: Thank you very much.

8 Those are all the questions I have.

9 HEARING OFFICER VALKOSKY: Mr. Baker,

10 just very briefly, could you explain the basis for

11 using the ten decibel increase as a threshold of

12 significance?

13 MR. BAKER: Noise has been an area of

14 formal official study for about 33 years now. The

15 federal government, back in '69 or '70, after

16 passing the national Environmental Protection Act,

17 spent some money on studies of noise. It was

18 found from these studies that persons of normal

19 sensitivity will typically not be annoyed by

20 noises less than five decibels greater than what

21 they've been accustomed to.

22 People of normal sensitivity will often

23 be annoyed with noises that are more than ten

24 decibels greater. Between five and ten decibels

25 some people will be annoyed, and some will not.

1 This is commonly recognized in the industry.
2 Staff has used these as a criterion for quite a
3 few years, and we've been successful.
4 We've never yet found that these
5 criteria were not acceptable. Success is, it's a
6 measure of our success.
7 MR. WESTERFIELD: Are acceptable to
8 whom?
9 MR. BAKER: People hearing the noise
10 from the power plant.
11 MR. WESTERFIELD: Okay. Last question
12 that I have is who is responsible for monitoring
13 compliance and enforcing the two conditions of
14 exemption that you propose?
15 MR. BAKER: I can give my non-legal
16 opinion of what we're doing here, and after that
17 I'll have to point to my lawyer. Condition Noise
18 1 requires verification to be presented both to
19 the city of Ripon and to the Energy Commission
20 staff's compliance project manager.
21 So I assume that Commission staff will
22 have at least some say in making sure that the
23 plant, when built, is no nosier than promised.
24 As far as Condition Noise 2, which is
25 intended to deal with any noise complaints by

1 nearby folks during either the construction or the
2 operation of that plant, throughout the life of
3 the plant, the way it's written here the
4 verification involves only the city of Ripon.
5 So it's my understanding that the
6 Commission staff would not be involved in dealing
7 with noise complaints.
8 MR. WESTERFIELD: Is that a typical way
9 of handling this in your experience?
10 MR. BAKER: Well, this is the first SPPE
11 that I've dealt with where we're not treating it
12 as an AFC. In all the past SPPE's I've dealt with
13 in my 15 and two thirds years at the Commission
14 the conditions have always been the same ones that
15 we would recommend for an application for
16 certification.
17 MR. WESTERFIELD: So, in other words,
18 you would agree with Applicant's witness when he
19 stated to the effect -- I'm paraphrasing very
20 loosely -- that the Commission has always had the
21 responsibility of ensuring compliance with noise
22 levels, is that correct?
23 MR. BAKER: In my experience, yes.
24 MR. WESTERFIELD: Thank you.
25 HEARING OFFICER VALKOSKY: Cross-

1 examination?

2 MS. WARREN: None, thank you.

3 HEARING OFFICER VALKOSKY: Mr. Sarvey?

4 MR. SARVEY: Did the city of Ripon's

5 noise regulations address increases in noise to

6 residents?

7 MR. BAKER: Not that I'm aware of.

8 MR. SARVEY: Have you spoken with

9 anybody in the city of Ripon in the planning

10 department or anything, as far as enforcing these

11 noise ordinances?

12 MR. BAKER: No.

13 MR. SARVEY: Earlier you said that, in

14 your I guess it's 11 years of doing noise surveys

15 for the CEC you've never seen a noisier ambient in

16 a residential neighborhood, is that correct?

17 MR. BAKER: If memory serves, that's

18 correct.

19 MR. SARVEY: And you also said that a 10

20 DBA increase is actually nearly twice as loud --

21 you corrected that, nearly twice as loud?

22 MR. BAKER: Well, ten decibels is twice

23 as loud.

24 MR. SARVEY: Okay.

25 MR. BAKER: The, I think eight decibels

I was talking about before that was nearly twice.

MR. SARVEY: And you also said, testified that some people will be annoyed by increases of five to ten DB, is that correct?

MR. BAKER: Yes.

MR. SARVEY: Thank you, that's all I have.

HEARING OFFICER VALKOSKY: Any redirect, Mr. Westerfield?

MR. WESTERFIELD: No, we don't have any redirect, but I am informed by the project manager that he has spoken to the city of Ripon about enforcement issues with reference to noise. And so I'd just like to say that Dr. Reede is available to address that issue.

HEARING OFFICER VALKOSKY: Would you like to offer some supplemental testimony? That's what we're here for.

MR. WESTERFIELD: I think that would be a good idea.

HEARING OFFICER VALKOSKY: The witness has been sworn previously.

MR. REEDE: During the compilation of the final initial study I did have opportunity to speak with Mr. Ernie Tyhurst at the city of Ripon.

1 And it was in regards to the noise complaint form
2 that we use in all of our AFC proceedings so that
3 the Applicant can begin a noise resolution
4 process.
5 And then report the results of that
6 attempt to resolve a noise complaint to the CPM.
7 He faxed to me the city of Ripon's general plan,
8 noise element, and a copy of their noise
9 ordinance, and a copy of their complaint form. In
10 looking at the complaint form, and showing it to
11 Mr. Baker, it was wholly inadequate.
12 And I suggested to Mr. Tyhurst that we
13 had a form that, if it were used, would quickly
14 and efficiently resolve noise complaints.
15 So I e-mailed and faxed him a copy of
16 the noise 2 and the complaint resolution form.
17 And he said that that was acceptable to the city
18 and he was grateful for it.
19 In speaking with the Applicant I
20 informed them that I had sent the noise complaint
21 form and proposed noise condition of exemption to
22 the city, and that it would require the Applicant
23 to get a handheld noise monitor to go out there
24 and verify when noise complaints came in.
25 HEARING OFFICER VALKOSKY: Okay, and

again we're talking about some techniques that will be used --

MR. REEDE: To resolve noise issues.

HEARING OFFICER VALKOSKY: Well, in talking about the techniques, there's a difference between using certain techniques and actually employing some form of enforcement to make sure that the results of those techniques are complied with. That's what I think the residents are more concerned about, frankly.

COMMISSIONER BOYD: I would agree the form can facilitate the resolution of complaint, but we have mixed bag on whether the city of Ripon will actually do anything with a new form or not. So that remains a little unclear to me. I'll reserve comment until the end of the night.

MR. REEDE: Okay.

HEARING OFFICER VALKOSKY: Mr. Westerfield, anything else?

MR. WESTERFIELD: No.

HEARING OFFICER VALKOSKY: Questions, Ms. Warren?

MS. WARREN: I don't have any questions of Dr. Reede. However, again, Susan has been in contact with the city of Ripon and indicates she

1 has some additional insight into this issue, if
2 you would be open to having her share that?
3 HEARING OFFICER VALKOSKY: Absolutely.
4 Ms. Strachan?
5 MS. STRACHAN: Just briefly, in my
6 conversation with Mr. Tyhurst, one thing that he
7 did state about the other projects for which Ms.
8 Kaefer had issues with is that he said that the
9 city doesn't have an existing enforcement code
10 that allows them to go to existing facilities and
11 deal with noise.
12 That what they're limited to is a police
13 officer going to the facility, and it's up to that
14 police officer's discretion to determine whether
15 or not a particular noise source is a nuisance. I
16 think that might be part of the frustration that
17 Pam's been experiencing.
18 I know that, with regard to the city
19 having the compliance responsibility through the
20 noise complaint process that he looked very
21 favorable to that, because it did give him a
22 handle to do noise enforcement on an existing
23 facility.
24 The noise standards that he cites that
25 we have to adhere to for the city of Ripon are new

1 facilities and again doesn't give him that hook
2 that he needs to go into an existing facility. So
3 he was looking forward to the opportunity to have
4 that authority.
5 HEARING OFFICER VALKOSKY: Okay, so then
6 I take it he'll be able to do something more than
7 send out the policeman to tell the neighbors to
8 turn the radio down?
9 MS. STRACHAN: Exactly. In our case.
10 And they've been trying the city through the years
11 to try and get some kind of enforcement code
12 going, but it hasn't happened yet.
13 COMMISSIONER PERNELL: But they have it
14 on new facilities?
15 MS. STRACHAN: They have it on this
16 facility, and they haven't -- if you're siting a
17 facility, if someone were to site a facility just
18 like we are, they have the noise element to adhere
19 to that specifies certain noise levels that the
20 facility must comply with.
21 But their problem has been existing
22 facilities, such as the one near South Locust,
23 where he says he doesn't have that enforcement
24 authority to go in there and tell them that they
25 need to lower, that they're making too much noise

basically.

COMMISSIONER PERNELL: Do you have a copy of it?

MS. STRACHAN: Of what, I'm sorry.

COMMISSIONER PERNELL: Of the city of Ripon's noise ordinance for new facilities?

MS. STRACHAN: Not with me. In our offices we have the noise element part of the general plan.

COMMISSIONER PERNELL: Could you get a copy to the Committee?

MS. STRACHAN: Sure.

COMMISSIONER PERNELL: Thank you.

MR. REEDE: Excuse me, Hearing Officer Valkosky, but my recollection of the noise element of the general plan -- and Mr. Baker can correct me if I'm wrong -- when we read it it said that no sound shall go beyond the boundary lines of the property. The one that I read, it had one paragraph, and it had no noise measurement.

HEARING OFFICER VALKOSKY: I take it, Mr. Baker, you didn't agree with that?

MR. REEDE: She has a copy of it.

MR. BAKER: Mr. Valkosky, my memory is very good, but it's also very slow.

1 MR. REEDE: Uh, continue on, I'll find
2 it.
3 MS. STRACHAN: Commissioner Pernell, if
4 I could just add, in terms of the specific noise
5 requirements that the city has that pertain to the
6 project, those are summarized in the letter from
7 the city of Ripon regarding our compliance with
8 the project that's in our Appendix to our SPPE
9 application.
10 COMMISSIONER PERNELL: So we have it?
11 MS. STRACHAN: You have what we've cited
12 as the applicable, or the city has cited, and it's
13 in our, it's included in our LORS section of the
14 application.
15 HEARING OFFICER VALKOSKY: An appendix
16 to exhibit 1, in other words? Exhibit 1's your
17 SPPE application?
18 MS. STRACHAN: Yes, and it's 8.5, and if
19 you give me a second I can give you the citation.
20 Appendix 8.5A to the SPPE application. And it's
21 the city of Ripon's letter, and they specify what
22 sections of their code are applicable to the
23 project.
24 HEARING OFFICER VALKOSKY: Thank you,
25 Ms. Strachan, I appreciate that. Anything else?

1 Would staff like a recess to sort this out?

2 MR. REEDE: No, we're fine.

3 MR. WESTERFIELD: No, that's all we

4 have.

5 HEARING OFFICER VALKOSKY: Ms. Warren,

6 anything else on this topic?

7 MS. WARREN: No, other than we want to

8 make sure, since this appendix has come up a

9 couple times now at various points, that it was

10 not specifically culled out in Mr. Bastasch's

11 testimony as an exhibit to that testimony. So I

12 would like to, if possible, make sure that that is

13 specifically included as an exhibit in this

14 proceeding.

15 HEARING OFFICER VALKOSKY: It is --

16 well, we have a reference to it as an appendix to

17 exhibit 1. That's my understanding, Ms. Strachan?

18 MS. WARREN: That is correct.

19 HEARING OFFICER VALKOSKY: Okay.

20 MS. WARREN: Yes, it will be.

21 HEARING OFFICER VALKOSKY: Yes, so that

22 is included in exhibit 1.

23 MS. WARREN: Thank you for the

24 clarification, nothing further from us.

25 HEARING OFFICER VALKOSKY: Mr. Sarvey,

anything further on noise?

MR. SARVEY: Nothing further, thank you.

HEARING OFFICER VALKOSKY: Okay, Ms. Kaefer and Ms. Lopez, if you have any questions -- and please if you can direct them to staff, to what staff's presentation has been thus far, I would appreciate that. Okay?

MS. KAEFER: As to the city of Ripon's noise element, because they have specifically told me -- and I hope I'm not repeating, because I've talked to so many people individually that I don't want to make sure that everybody knows.

As far as Susan talking to Mr. Tyhurst and telling, being told that you can call the police, that that's the only option? I called the police, you were there, you know the tonal noise that there was was outrageous.

The police came to my front porch, which is actually on the other side of my house from where most of the noise is. Two police came, he was actually the training officer and a new officer, and they stood on my front porch.

And I said "do you hear that noise?" And they said "yes." And I said "is it acceptable?" And they said "well, no, but the

1 city of Ripon does not have a noise ordinance, and
2 therefore there is nothing that we can do about
3 it." They will not go anywhere.
4 He showed me a copy of the, it was
5 called the quick code, that he had in his car.
6 And he went back to his office and he called me
7 from the office and told me that there were
8 absolutely no codes, that the only thing that the
9 police will do in the city of Ripon if there's a
10 noise issue, is if it's a retaliatory statement or
11 hollering -- if somebody goes by and yells at you
12 or makes an obscene gesture with their hand that
13 would cause you to make a retaliatory action to
14 them, then they would intervene.
15 And I said "so if at midnight somebody's
16 playing their stereo out there, and I can't sleep,
17 I can't do anything about that?" And he said
18 "yes, you can make a citizen's arrest, and then
19 you can call us, and we will come and enforce the
20 citizen's arrest. But we will not go to this
21 person's house."
22 So you can see we've really got our
23 hands tied here. The city attorney told me -- on
24 the telephone that same day when I called and
25 asked about the city council and names and numbers

and okay, how can I find out how we're going to enforce this stuff -- they told me specifically that the city council voted to not enforce the noise ordinance because the city already has enough fingers in the pie, and that the residents don't want the city to be telling them what to do.

And so therefore they do not have an enforcement code to the noise element. Simple as that. And he said if you want to change it, you need to go before the city council and, you know, make a little motion, and then they can vote on it again. But they have specifically voted to not enforce a noise element.

I have a problem with that. We all have a problem with that, as far as anybody enforcing this, if you guys don't enforce this.

MR. BAKER: Yes, it's my understanding that the officer is correct, that the city of Ripon does not have a noise ordinance. It has a general plan noise element, but general plan noise elements only pertain to new development, in this case the power plant. They have no authority over existing noise sources.

MS. KAEFER: And the way that I hear it, they don't even over new development. The only

1 thing they told me about new development was the
2 landscaping, because we complained about this fire
3 hazard. That they can enforce that. But
4 everything else in the city is grandfathered in,
5 and so you're just SOL.
6 MR. BAKER: The noise element LORS that
7 we're referring to here is the 60 or 65 or 70
8 decibels, depending on who you listen to, that the
9 plant must meet. And, you know, our analysis
10 shows that the plant will in fact comply with that
11 LORS. But that has nothing to do with noise from
12 existing sources. I'm sorry, but --
13 MS. KAEFER: And you said that they told
14 you 65, and there is specifically in there it says
15 50 or 60 for our particular, in the municipal code
16 there?
17 MR. BAKER: From 50 to 60 decibels, for
18 single family residence, is considered always
19 acceptable. The letter from the city of Ripon,
20 which is in the Applicant's application Appendix
21 8.5A says 65 decibels. If you look further in the
22 actual noise element table it shows a
23 conditionally acceptable up to 70 decibels.
24 MS. KAEFER: Right, but it specifically
25 spells out different things, and in ours it says

1 50 to 60 for residential with mobile homes, single
2 family residents, which we are. So the 50 to 60
3 is what's in there that I read.
4 MR. BAKER: There's also the difference
5 between always acceptable and conditionally
6 acceptable. And let me find the right page --
7 MS. KAEFER: And we're still under that.
8 You know, I have to say that I like your
9 testimony, that at least you acknowledge that 55
10 is loud.
11 MR. BAKER: Yes. I've been at
12 residential neighborhoods in the middle of busy
13 cities, such as San Francisco, and I don't recall
14 seeing any figures greater than this.
15 MS. KAEFER: Okay, and we're talking
16 about 3:00 in the morning, it's still 55.
17 MR. BAKER: One feature of your
18 neighborhood is that it's noisier at night than it
19 is in the daytime. i think part of that may be
20 due to transportation noise, you know, trucks on
21 the freeway.
22 Plus truck loading and unloading in the
23 nighttime hours. That's when most of commerce
24 moves, during the night. Sites near freeways
25 typically hear more noise at night when the trucks

are running.

MS. KAEFER: We actually don't hear freeway noise, or the trains that were cited in the city. What we hear is the noise which is right where you guys are going.

MR. BAKER: But they're not there yet. And when they are, according to our calculations and estimations, the project will not be significantly noisier than it is at your location. If we're wrong, there's a noise complaint process here to try to deal with it.

MS. KAEFER: If we can find who to take it to.

HEARING OFFICER VALKOSKY: Mr. Baker, do you have any opinion as to the validity of the citizen's arrest?

(laughter)

MS. KAEFER: I have to say something else. This is my retirement home. I need to live in Ripon, and I don't want to make a bunch of enemies of higher up people either, you know?

HEARING OFFICER VALKOSKY: Ms. Kaefer, do you mind if I repeat a suggestion I made to you a little while ago?

MS. KAEFER: No.

1 HEARING OFFICER VALKOSKY: I think you
2 should run for Mayor.
3 (laughter)
4 Ms. Lopez, do you have anything?
5 MS. LOPEZ: Well, I just want to mention
6 the fact that we do live near the trucking
7 company. And when I did call the city and police
8 they did tell me that all they could do was
9 probably go and ask them to turn it down, or to
10 move the trucks a little further away.
11 We do live near the community center,
12 which also holds weddings and family reunions.
13 And sometimes, even inside my house with the doors
14 and windows closed I could hear the music. And I
15 have called the police, and they told me that they
16 were basically just going to go ask to turn it
17 down.
18 I have asked diverse people, and there
19 is no enforcement in the city of Ripon. I have
20 gotten the same runaround that Ms. Kaefer has also
21 gotten, and it worries me that at 3:00 in the
22 morning something might go wrong at the plant, and
23 who do we call to make sure it stops.
24 We want to make sure that, basically,
25 somebody is there that we can call and talk to and

go see and make sure that the noise is dealt with accordingly.

HEARING OFFICER VALKOSKY: Okay. Thank you. The point's understood. Anything further on the topic of noise? Seeing nothing, we'll close the record on that topic. Which leaves us with the sole topic on air quality. Is there anybody here that would like to offer general public comment that does not pertain to air quality?

Okay, fine. At this point I'd like to take a five minute recess, and pick up on air quality when we return.

(Off the record.)

HEARING OFFICER VALKOSKY: On the record, please.

MS. WARREN: You've been sworn in? Witness has been sworn in, and remains under oath. Mr. Rubenstein, I know previously you gave a brief overview of some of your qualifications. Can you expand on that and provide your educational experience as it applies to the air quality topics you're going to testify to today?

MR. RUBENSTEIN: Given the lateness of the hour I will expand briefly. I have a Bachelor of Science degree in Engineering from CalTech. I

1 have approximately 30 years worth of professional
2 experience in the field. I have testified in a
3 large number of Energy Commission citing cases,
4 which are listed in my prefiled written testimony.
5 MR. WESTERFIELD: I'm sorry, can I
6 interrupt a moment? Staff never did move it's
7 exhibits into evidence under noise.
8 HEARING OFFICER VALKOSKY: I'm sorry.
9 I'll take the blame for that oversight. IF we
10 could pause for just a second, Ms. Warren?
11 MS. WARREN: Certainly.
12 MR. WESTERFIELD: Well, staff moves into
13 evidence both the appropriate sections of exhibit
14 22, with reference to noise, and the supplemental
15 testimony of Mr. Baker that's a part of exhibit
16 26.
17 MS. WARREN: Is there objection, Ms.
18 Warren?
19 MS. WARREN: No objection.
20 HEARING OFFICER VALKOSKY: Mr. Sarvey?
21 MR. SARVEY: No objection.
22 HEARING OFFICER VALKOSKY: Those
23 exhibits are received, and again thank you for
24 calling it to my attention.
25 MR. WESTERFIELD: Thank you. And sorry,

Mr. Rubenstein.

HEARING OFFICER VALKOSKY: Continue Ms. Warren.

MS. WARREN: Certainly. And just to clarify, your testimony is set forth, your pre-file testimony is set forth in exhibit 25 under the air quality section, starting on page 4, is that correct?

MR. RUBENSTEIN: That's correct.

MS. WARREN: And was this testimony prepared by you or at your direction?

MR. RUBENSTEIN: Yes it was.

MS. WARREN: Do you have any additions, corrections or clarifications to that pre-file testimony?

MR. RUBENSTEIN: Yes, I have two minor corrections to make. The first is located on page 11 of my pre-file testimony. In the second full paragraph, the second to the last line, there's the phrase "the proposed 2 ppm NOX emission limit." That should more correctly read "2.5 ppm NOX emission limit."

All the analyses that I prepared and all the staff analyses are prepared with the correct number, that's a simple typographic error. And

1 the second correction is on page 22 of my
2 testimony, which is a listing of prior filings.
3 If you go down in the first main group,
4 the second from the bottom says "data responses
5 set 7", that should more correctly say "informal
6 data responses set 7."
7 MS. WARREN: Your testimony does
8 incorporate a number of exhibits. It's been the
9 practice so far today to identify and read in each
10 of those exhibits. Because there are quite a
11 number of them, and they are listed as an
12 attachment to that portion of the testimony, would
13 you like me to go ahead and read them all in, or
14 just fill in the numbers where they were missing
15 in the attachment?
16 HEARING OFFICER VALKOSKY: Just fill in
17 the numbers, we've got the attachment very nicely
18 laid out.
19 MS. WARREN: Okay. Then I'll ask Mr.
20 Rubenstein to please, instead of reading your
21 entire list, can you just identify those exhibits
22 that were not assigned numbers prior to today, and
23 provide those numbers, just so we all have that
24 for the record?
25 MR. RUBENSTEIN: Yes. The one that I

1 just referenced, data responses set 7, is exhibit
2 28. Continuing down, the letter dated April 23rd
3 is exhibit 29; the letter dated April 24th is
4 exhibit 30, 3-0; the letter dated May 13th, from
5 Sierra Research, is exhibit 31; the letter dated
6 June 12th from MID is exhibit 32; the letter dated
7 May 14th from the San Joaquin Valley APCD is
8 exhibit 33; the letter dated July 30th from the
9 San Joaquin Valley APCD is exhibit 34; the
10 document entitled "environmental review doc
11 guidelines" is exhibit 35; and the document
12 entitled "guide for assessing and mitigating air
13 quality impacts" is exhibit 36.
14 MS. WARREN: Thank you. To the best of
15 your knowledge are all the facts contained in your
16 testimony, including the reference documents, true
17 and correct?
18 COMMISSIONER ROSENFELD: Yes they are.
19 MS. WARREN: Do the opinions contained
20 in the testimony represent your best professional
21 judgment?
22 MR. RUBENSTEIN: Yes they do.
23 MS. WARREN: And do you adopt this
24 testimony as your testimony in this proceeding?
25 MR. RUBENSTEIN: Yes.

1 MS. WARREN: Could you please
2 summarize --
3 HEARING OFFICER VALKOSKY: Just one
4 second, Ms. Warren, before we get to that. I
5 don't have copies of exhibits 35 or 36, and I
6 frankly don't know about the other parties.
7 MS. WARREN: You are, as we speak, being
8 handed copies. And I believe we had made copies
9 available.
10 HEARING OFFICER VALKOSKY: Fine. Does
11 staff have copies of exhibits 35 and 36? I see a
12 negative sign. Mr. Sarvey, how about you?
13 MR. SARVEY: No, sir, I do not.
14 MS. WARREN: Those are websites, and we
15 also have floppy discs with them on it that we can
16 provide. Both are available by website listed in
17 the testimony.
18 HEARING OFFICER VALKOSKY: Okay,
19 continue. Staff, and Mr. Sarvey, do the disc
20 copies suffice for your purposes?
21 MR. WESTERFIELD: I'm sorry, I didn't --
22 HEARING OFFICER VALKOSKY: Or, what I'm
23 asking is, do you want a paper copy?
24 MR. WESTERFIELD: We would like a paper
25 copy.

1 HEARING OFFICER VALKOSKY: Mr. Sarvey?
2 MR. SARVEY: Yes, I would too, please.
3 MS. WARREN: Is is sufficient to forward
4 that to you tomorrow, or should we take a recess
5 to put the photocopy machines into business
6 tonight?
7 MR. WESTERFIELD: Are you going to use
8 this tonight?
9 MS. WARREN: Not significantly. It
10 depends on what questions are asked.
11 HEARING OFFICER VALKOSKY: Why don't we
12 see how much it's used, and if we have calls for
13 objections on it, you can object if it's used
14 excessively, in your opinion? Okay?
15 MR. WESTERFIELD: Of course.
16 HEARING OFFICER VALKOSKY: Mr. Sarvey,
17 is that acceptable?
18 MR. SARVEY: Sure, why not.
19 HEARING OFFICER VALKOSKY: All right.
20 Proceed.
21 MS. WARREN: Mr. Valkosky, we are going
22 to go up and try to produce some copies as we
23 speak. Again, on direct testimony it's not
24 referred to directly, it's only going to be
25 included as a reference item.

1 You know, my somewhat weasely response
2 to Mr. Westerfield's question was that I cannot of
3 course anticipate what questions may come about
4 this. But for the direct it should not arise, and
5 in the meantime, while we're going through the
6 direct, we'll be attempting to print out copies.
7 HEARING OFFICER VALKOSKY: Okay. Thank
8 you for that clarification, Ms. Warren. As I say,
9 we will hold to the end the admission of the
10 document at this time. And on behalf of the
11 parties I do appreciate your making paper copies
12 available at this time.
13 MS. WARREN: I think I was at the point
14 of asking Mr. Rubenstein if he would adopt such
15 testimony as has been referenced from exhibit 25
16 as your testimony in this proceeding?
17 MR. RUBENSTEIN: Yes I do.
18 MS. WARREN: And could you please
19 summarize your testimony?
20 MR. RUBENSTEIN: Yes. I reviewed the
21 air quality impacts of the proposed MEGS project,
22 and confirmed that the project would comply with
23 al applicable laws, ordinances, regulations and
24 standards, and with the mitigation proposed by the
25 Applicant would not result in any significant

1 unmitigated air quality impacts.

2 With respect to LORS, there are three

3 basic requirements that the project has to comply

4 with. The first is the San Joaquin Valley Air

5 District's requirement for best available control

6 technology.

7 The project will be equipped with

8 selective catalytic reduction and oxidation

9 catalyst systems, and will meet the emission

10 limits that we expect the San Joaquin Air District

11 will require as best available control technology.

12 In addition, an air quality impact

13 analysis prepared for the project shows that the

14 project will comply with all the applicable

15 requirements related to those impacts.

16 And finally, the project will provide

17 emission offsets in the quantities and F types

18 required by the San Joaquin Air District.

19 Consequently, all the air district's requirements

20 will be satisfied.

21 In addition to looking at compliance by

22 the project with LORS, we looked at the air

23 quality impacts in the context of the California

24 Environmental Air Quality Act. That review

25 included looking at those impacts from two

1 perspectives, both local and regional air quality
2 impacts.
3 Our analysis of the local air quality
4 impacts included three components. The first is
5 best available control technology, because the
6 best way to ensure that a project's localized
7 impacts are minimized is to ensure that it uses
8 the best technology available. As discussed
9 above, this project will.
10 Second is the performance of an air
11 quality impact analysis. That analysis was
12 performed using extremely conservative
13 assumptions. Those assumptions included operation
14 of the plant. Both units, for 8760 hours per year
15 at full load.
16 It also included looking at worst case
17 meteorological conditions, and it included worst-
18 case background air quality conditions, even if it
19 was not physically possible for all three of those
20 to occur at the same time.
21 The results of that analysis indicated
22 that the project, by itself, would not create any
23 violations of any state or federal air quality
24 standards.
25 The third element of our local analysis

1 was a screening level health risk assessment.
2 That health risk assessment showed that, as a
3 worst-case, using the same extremely conservative
4 assumptions, the project would not result in any
5 significant health risk at any location under any
6 weather conditions.
7 As a result, our conclusion was that the
8 project would result in no significant localized
9 air quality impacts.
10 In addition, we took a look at the
11 project's contribution to regional air quality.
12 That analysis also included three components. The
13 first, once again, is the use of best available
14 control technology, because the best way to
15 minimize the project's contribution to existing
16 air pollution levels is to ensure that it uses the
17 best technology available, and as I indicated
18 earlier this project does do that.
19 The second was a cumulative air quality
20 impact analysis, and two different forms of that
21 analysis were prepared for the project. The first
22 was an analysis that takes the maximum project air
23 quality impacts and adds them to the worst-case
24 existing background levels.
25 That analysis showed that, with two

1 exceptions, the project will not cause or
2 contribute to violations of any state or federal
3 air quality standards, even including background
4 concentrations, which represent the contributions
5 from other air quality sources in the area.
6 The two exceptions were that the project
7 will contribute to a small degree to existing
8 violations of the state and federal air quality
9 standards for PM-10 and for ozone. Those
10 conclusions are not unique, most projects
11 constructed in California contribute to existing
12 violations of standards for those two pollutants.
13 In order to mitigate the project's
14 contribution to those regional impacts for those
15 pollutants, the project is required by the air
16 district to provide emissions offsets. In
17 addition, we've performed an analysis using
18 criteria that the staff has developed for
19 evaluating the adequacy of mitigation under CEQA.
20 Both of those analyses show that the
21 offsets that are being provided will be sufficient
22 to mitigate the project's cumulative impacts to
23 regional air quality. As a result, with that
24 mitigation, I believe the project will not result
25 in any significant regional air quality impacts

1 that are left unmitigated.

2 There are two principle issues at

3 dispute with the staff with respect to air

4 quality. Those issues relate to mitigation

5 conditions for construction activities related to

6 fugitive dust, and mitigation conditions related

7 to requirements for soot filters on construction

8 equipment.

9 There are some other suggested changes

10 that I have proposed to the staff's proposed

11 conditions of exemption that are lesser in nature,

12 and given the lateness of the hour I'll rely on my

13 written testimony for that.

14 With respect to construction fugitive

15 dust, the issue is discussed in detail in my pre-

16 file written testimony. In short, though, my

17 opinion is that there is no justification for most

18 of the staff's requirements related to

19 construction fugitive dust.

20 I believe, based on a detailed review

21 and a comparison of the staff's proposed

22 conditions with the requirements of San Joaquin

23 Air Districts Regulation 8, that Regulation 8 is

24 adequate to ensure that dust impacts during

25 construction are mitigated. I base that judgment,

as I said, on a detailed comparison, line by line, item by item, that's included in my written testimony.

There are two additional mitigation conditions that I propose in addition to compliance with Regulation 8 that I believe would strengthen them.

Those are also detailed in my testimony, and they include keeping the requirement that's in condition AQC1, with respect to having an onsite air quality construction mitigation manager, and the requirement that I believe is in AQC2, with respect to preparation of construction mitigation plan.

I believe those two requirements are important additions to San Joaquin District Regulation 8. My testimony in this proceeding is consistent with an analysis that our firm prepared for the San Joaquin Air District that is included in the current PM-10 air quality plan that was adopted by the district earlier this year.

And recommended additional enforcement capabilities and in particular additional planning requirements to strengthen Regulation 8. And the air district has adopted those recommendations.

1 So again, as a matter of consistency, I believe it
2 would be appropriate, since the air district has
3 not yet amended the rules, to have the same
4 requirements here.
5 What I've just discussed is identified
6 in my testimony as alternative 1, which is a set
7 of conditions that begins on page 25 of my written
8 testimony. In addition to alternative 1 in my
9 written testimony, I've proposed two further
10 alternatives for the Committee to consider in the
11 event that you believe conditions redundant with
12 those contained in Regulation 8 are in fact
13 necessary for this project.
14 Alternative 2, as I discuss in my
15 testimony, is simply a restatement of the
16 requirements that were imposed on the recently
17 constructed Woodland generating station unit 2.
18 In that particular case, because that
19 project was constructed by the same Applicant in
20 fairly recent time, without any problems that I'm
21 aware of related to construction fugitive dust
22 impacts, I believe that those conditions should be
23 adequate for this project as well, if the
24 Committee believes that something in addition to
25 Regulation 8 is required.

1 Finally, as alternative 3 in my
2 testimony, which begins at page 34, I have
3 presented a markup of the staff's testimony to
4 make the proposed dust mitigation conditions
5 consistent with those that have been accepted by
6 staff or by the Commission in previous siting
7 cases.
8 However, as I said, my primary
9 recommendation is that I don't believe these dust
10 conditions are necessary, that I believe that
11 Regulation 8 is sufficient with the addition of
12 conditions AQC1 and 2 relating to the construction
13 mitigation manager, and the requirement to prepare
14 a dust mitigation plan.
15 The second principle issue that we
16 have with the staff's final initial study is
17 related to the use of soot filters. The issue in
18 this particular case is quite simple. The
19 Applicant did not assume the use of soot filters
20 on any construction equipment in its analyses.
21 The analyses prepared by both the
22 Applicant and the staff show that diesel exhausts,
23 particulate emissions from construction equipment
24 do not present any significant health risk.
25 Consequently, no additional mitigation for this

1 source is required.

2 Consequently I believe the only

3 conditions that should be required regarding

4 exhaust emissions from construction equipment are

5 conditions that would enforce the two key

6 assumptions that were made in our analysis.

7 And those two key assumptions are the

8 use of 1996 and later certified engines for

9 construction equipment to the extent available,

10 and a requirement to use ultra-low sulfur diesel

11 fuel for all constructions activities.

12 Those are the only two assumptions we

13 used. The impacts analysis showed there were no

14 significant impacts. consequently I believe that

15 no additional mitigation is necessary.

16 And that concludes my discussion of the

17 two issues that are at dispute between the

18 Applicant and the staff.

19 In addition I'd like to comment on one

20 issue that was raised by Mr. Sarvey, which has to

21 do with the appropriate level of ammonia slip from

22 these units. In this case there is no

23 disagreement between the Applicant, the staff, and

24 the staff of the air district. All three of those

25 entities believe that 10 PPM ammonia slip level is

appropriate for this project.

The Energy Commission has approved a 10 PPM slip level for many projects in the San Joaquin Valley, most recently and specifically for the Tracy Peaker Project.

I make specific note of the San Joaquin Valley because in my opinion the appropriate level of ammonia slip is dependent not on the technical feasibility of achieving lower levels, but rather on the demonstrateD air quality needs in the area where the project is being proposed.

For that reason, for example I have not opposed the imposition of a five PPM slip level in the south coast air basin, because there has been a demonstrated need for additional control over ammonia emissions in that air basis. There has not been such demonstrated need in the San Joaquin Valley air basin, and for that reason I believe it's not necessary here as well.

Once again, I believe that it's important for there to be some linkage between mitigation that's proposed, a significant impact, and benefits that would be achieved by that mitigation. With respect to further reductions in ammonia emissions in the plant I don't think that

1 linkage has been established anywhere in the
2 record for this proceeding.
3 In conclusion, I believe that the
4 project will not result in any significant,
5 unmitigated localized air quality impacts. I
6 believe the project will not result in any
7 significant, unmitigated regional air quality
8 impacts.
9 I believe that the project demonstrated
10 that it will comply with all applicable laws,
11 ordinances, regulations and standards. I believe
12 that, with the mitigation measures proposed by the
13 Applicant, that the project will not result in any
14 significant unmitigated air quality impacts
15 related to construction, either construction of
16 fugitive dust or construction exhaust emissions.
17 And I believe that the ammonia slip
18 level of ten parts per million expected to be
19 imposed by the San Joaquin Air district is
20 appropriate for this project type and location.
21 And that concludes my summary of my direct
22 testimony.
23 MS. WARREN: A few followup questions on
24 that. Are you aware of MID's intended operation
25 of this MEGS as a peaking plant?

1 MR. RUBENSTEIN: Yes I am.
2 MS. WARREN: And you understand that MID
3 is seeking to license the plant for 8760 hours, as
4 has been spoken of earlier?
5 MR. RUBENSTEIN: Yes.
6 MS. WARREN: Can you explain this
7 please?
8 MR. RUBENSTEIN: Yes. When we were
9 first approached by MID regarding this project,
10 one of the first questions we asked, because this
11 was going to be a peaker project, was how much
12 flexibility MID was going to want to seek from the
13 air district in its air permit, because the air
14 district permit, in my experience, is generally
15 one of the more substantial constraints on the
16 project's operating flexibility.
17 At that time what we heard was the same
18 information that was presented at the
19 informational hearing, which, in nominal terms,
20 indicated that the plant would be running pretty
21 much 24 hours a day in the peak summer season due
22 to both the high air conditioning loads and the
23 high loads from the canning operations within the
24 irrigation district.
25 And that for the rest of the year the

1 plant would operate in the more traditional
2 peaking mode of coming up during the day and being
3 shut down during the night.
4 When we took a look at that, and in
5 particular how that related to the requirements of
6 the local air district, and also took into account
7 some of the uncertainties involved, it became
8 quite clear to us that the only way to ensure the
9 plant would have the necessary operating
10 flexibility would be to license it for 8760 hour
11 per year.
12 Our reasoning was as follows. First,
13 just taking a look at the nominal operating cycle
14 that was presented to us, it would be
15 approximately 90 days, three months, at 24 hours a
16 day, which would be a little less than 2,200 hours
17 per year.
18 For the balance of the year, nine
19 months, we assumed roughly ten hours of day of
20 peaking operation, which would be another 2,700
21 hours per year, for a total of 4,900 hours per
22 year out of 8760. So already we're talking about
23 a plant that for a nominal operating cycle would
24 be running roughly half the time, or a little bit
25 more.

1 Next came the fact that, in the San
2 Joaquin Air District, best available control
3 technologies are established based on daily
4 emissions. So that would not really be a factor,
5 whether the plant was operated just 4,000 hours or
6 8,000 hours, the best available control technology
7 requirements would be exactly the same.
8 And while the trigger for emission
9 offsets is based on annual emissions, the quantity
10 of offsets required is based on maximum emissions
11 during the calendar quarter. Consequently, if we
12 proposed anything less than 8760 hours per year,
13 we would have to allocate those hours to specific
14 calendar quarters.
15 And while the nominal summer months of
16 July, August and September conveniently fall
17 within the third calendar quarter, if the canning
18 season starts a few weeks early, or if there's a
19 heat wave in May or June, some of that increased
20 operation may actually occur during the second
21 calendar quarter.
22 If the canning season runs late in a
23 particular year, or if there's a late summer heat
24 wave, then some of those around the clock
25 operations could trail into the fourth calendar

1 quarter. Consequently we would have to deal with
2 increased levels of operations in some years in
3 three of the four calendar quarters.
4 And in the first calendar quarter, if
5 for example MID's Woodland Two unit needed to be
6 shut down for an extended outage for, say, a
7 month, it's quite possible that these units would
8 be called on to operate in the first calendar
9 quarter.
10 As a result, it's possible to
11 hypothesize that during each of the four calendar
12 quarters there would be some circumstances under
13 which these units would be called on to operate
14 fulltime. And even if those circumstances only
15 occur once or twice in 30 years, if we license the
16 plant for less than 8760 hours per year with the
17 air district we're going to deny MID that
18 flexibility.
19 And that was the reason why we had
20 recommended, even based on this nominal 50 percent
21 annual capacity factor, that we license the plant
22 for full operation year-round, because year to
23 year variation doesn't allow us to predict which
24 calendar quarters might have increased operation
25 in some years versus others.

1 MS. WARREN: is this licensing
2 consistent with the way other plants have been
3 licensed?
4 MR. RUBENSTEIN: Some units that are
5 peaking units have been licensed with operations
6 limited to the equivalent of 4,000 hours per year.
7 Other units, for example the Tracy Peaker Project
8 was licensed as a peaker project, with an
9 allowance of up to 8,000 hours per year of
10 operation, essentially the same as what's being
11 proposed for this project.
12 So in a very recent case, exactly the
13 same issue was addressed, and the project was
14 licensed and approved as a peaker at 8,000 hours
15 per year.
16 MS. WARREN: Changing the direction a
17 little at this point, I want to reference you to
18 staff's testimony on page 3-29 of the final
19 initial study. Staff discusses the 2003 PM-10
20 plan adopted by the San Joaquin Valley Air
21 Pollution Control district in May of 2003. Have
22 you reviewed this plan?
23 MR. RUBENSTEIN: I have reviewed the
24 executive summary, and I have reviewed portions of
25 the plan related to several issues relevant to

1 this project.

2 MS. WARREN: Are you aware of whether or

3 not the plan discussed issues of construction

4 dust?

5 MR. RUBENSTEIN: Yes it did.

6 MS. WARREN: How about soot filters?

7 MR. RUBENSTEIN: Yes it did.

8 MS. WARREN: And ammonia?

9 MR. RUBENSTEIN: Yes it did.

10 MS. WARREN: Can you please describe to

11 us what the plan concluded about each of these

12 topics?

13 MR. RUBENSTEIN: Yes. With respect to

14 construction dust, the plan relied extensively on

15 the requirements of Regulation 8. It indicated

16 that, as a result of best available control

17 measure analysis, which was prepared by Sierra

18 Research for the San Joaquin Valley Air District,

19 that the air district intended to strengthen

20 Regulation 8 in several areas.

21 The most significant of which, in my

22 opinion, is the increased requirements for the

23 preparation of dust control plans for more

24 sources, and a commitment to increased

25 enforcement.

1 MS. WARREN: Soot filters?
2 MR. RUBENSTEIN: With respect to soot
3 filters, the plan referred specifically to the
4 federal and state air pollution control programs
5 and emission standards for diesel construction
6 equipment, and did not make any mention whatsoever
7 of requirements for the retrofit of soot filters
8 to existing equipment, except in the context of a
9 regulatory program and a risk management program
10 currently underway by the California Air Resources
11 Board.
12 MS. WARREN: And can you describe your
13 understanding of the plan's approach regarding
14 ammonia?
15 MR. RUBENSTEIN: Yes. The issue of
16 ammonia was discussed in a fair bit of detail in
17 the plan. And in order to understand whether
18 further control of ammonia was required in the San
19 Joaquin Valley Air Basin, as part of the planning
20 effort the California Air Resources Board
21 performed a sensitivity study, in which they
22 assumed that ammonia emissions from all sources
23 within the San Joaquin Valley, which are primarily
24 agricultural sources.
25 But it assumed that ammonia emissions

1 from all sources would be reduced by 50 percent,
2 5-0 percent. That sensitivity analysis indicated
3 that, even with a 50 percent reduction in ammonia
4 emissions, there would be only a slight reduction
5 in projected ambient PM-10 levels.
6 That slight reduction occurred in the
7 area south of Bakersfield and in the Tehachapi
8 Mountains, and consequently the plan concluded
9 that, because of uncertainty even over the
10 validity of those results, that no additional
11 reductions in ammonia emissions, or no reductions
12 in ammonia emissions period, were necessary from
13 any sources and again the majority of ammonia
14 sources in the San Joaquin Valley are related to
15 agricultural operations.
16 MS. WARREN: Can you tell us what the
17 current status of that 2003 PM-10 plan is?
18 MR. RUBENSTEIN: Yes. That plan was
19 approved by the California Air Resources Board in
20 June of this year, and is at EPA, awaiting
21 approval from that agency.
22 MS. WARREN: Thank you. Let me now
23 refer you to staff's testimony on page 3-32 of the
24 final initial study. There's a reference that
25 staff makes to potential exemptions from

1 Regulation 8. That staff is concerned would
2 nullify compliance with the requirements of the
3 Reg 8 rules.
4 Are you aware of any exemptions
5 applicable to the Applicant in this matter that
6 would permit Applicant to avoid compliance with
7 Reg 8?
8 MR. RUBENSTEIN: No. The only exemption
9 that I found in reviewing Reg 8 was the exemption
10 from the requirement to prepare a dust mitigation
11 plan. That's why I recommended keeping that
12 condition in the Commission's proposed conditions
13 of exemption.
14 I did not see any other exemptions that
15 the project's construction activities would comply
16 with, so I don't really understand the basis for
17 the staff's statement at all.
18 MS. WARREN: Thank you. That's all the
19 questions we have for now.
20 HEARING OFFICER VALKOSKY: Thank you,
21 Ms. Warren.
22 COMMISSIONER BOYD: Mr. Rubenstein, with
23 regard to your explanation of soot filters, you
24 made reference to an ARB program, pre-retrofit of
25 offroad construction. I'm not familiar with that.

1 Can you tell me a little bit more about that?
2 I've been away from it for awhile.
3 MR. RUBENSTEIN: The Air Resources Board
4 has, for the last several years, been very
5 studiously and carefully looking at soot filter
6 retrofit programs for a broad range of equipment,
7 ranging from on-highway motor vehicles, urban
8 vehicles such as garbage trucks and buses,
9 refrigeration units on long-haul vehicles, and
10 construction equipment.
11 Those activities are being performed
12 within the backdrop of that agency's very long
13 memory of what can happen if a retrofit program on
14 an emission control programs doesn't work out as
15 planned. And as a result the board has been very,
16 very cautious in pursuing these different
17 measures.
18 I believe actually that the measures for
19 construction equipment are probably the furthest
20 behind of any of them. I believe the ones that
21 are further ahead in ARB's review are programs
22 related to urban vehicles such as buses and
23 garbage trucks.
24 And there has been a lot of activity
25 with respect to refrigeration units on trucks.

1 Again, because of the location of many
2 distribution centers in urban areas.
3 So that program is very generally
4 underway, but they have no active programs at this
5 point to require the retrofit of soot filters to
6 construction equipment.
7 COMMISSIONER BOYD: Okay. That was the
8 pat that I wasn't sure I was up to speed on or
9 not. Having just recently sat through a whole day
10 of alternatives to diesels at the ARB I didn't
11 remember hearing -- I heard a lot about technology
12 and retrofitting soot filters and various
13 vehicles.
14 But I did not pick up much in offroad.
15 But, realizing I don't live with this every day
16 anymore, I just wanted to be updated. Thank you.
17 HEARING OFFICER VALKOSKY: Mr.
18 Rubinstein, are air pollutant offsets being used
19 for this project?
20 MR. RUBENSTEIN: Yes they are.
21 HEARING OFFICER VALKOSKY: What are the
22 pollutants, and what is the ratio that is being
23 used?
24 MR. RUBENSTEIN: For this project we
25 propose to use reductions in emissions of sulfur

1 dioxide to provide offsets for increase in
2 emissions of PM-10. We had provided an analysis
3 to the San Joaquin Air district, which recommended
4 an interpollutant ratio of one to one.
5 And that analysis is included amongst
6 the prior filings that I've listed in my
7 testimony.
8 It's my understanding, although I
9 haven't seen this in writing, that the San Joaquin
10 Air District has concluded that the appropriate
11 ratio should be 1.2 to one instead of 1.0 to one,
12 and with that qualification it's my understanding
13 that they will be approving that interpollutant
14 trade.
15 HEARING OFFICER VALKOSKY: At the 1.2 to
16 one ratio, does Applicant currently possess
17 sufficient PRC's?
18 MR. RUBENSTEIN: Yes it does. We have
19 not provided that demonstration in the record of
20 this proceeding because that ratio has not been
21 formally established. But we have done the
22 calculations and the answer is yes.
23 HEARING OFFICER VALKOSKY: Okay. I'd
24 like to direct your attention to alternative three
25 of your testimony, your various conditions. It's

on pages 34 to 37. I just want to make sure I'm understanding this correctly.

I understand your objections to the various measures that staff has proposed, but am I also to understand that, with the corrections reflected here in alternative three, these conditions would be acceptable to Applicant?

MR. RUBENSTEIN: Yes they would be.

HEARING OFFICER VALKOSKY: I take it the correction to AQC3 is solely for clarity, to define sufficiently wet -- is that the purpose of it?

MR. RUBENSTEIN: I believe so, I'm not sure that's the staff's position.

HEARING OFFICER VALKOSKY: Right. I'm asking for your understanding.

MR. RUBENSTEIN: Yes. It is to clarify what the meaning of what sufficiently wet is.

HEARING OFFICER VALKOSKY: And for -- well, the condition appearing on page 36, the defining not available and not practical is to reflect the language that was included in East Altamount, after some difficulty I believe, is that correct?

MR. RUBENSTEIN: That's correct.

1 HEARING OFFICER VALKOSKY: Okay. Now
2 directing you to the last paragraph on page 36, to
3 my reading -- and I'm not expressing a preference
4 for either version -- but it seems to me that the
5 material which is struck out is essentially the
6 same in meaning as that which you propose adding.
7 Is that your understanding? Is it just
8 for clarity, or are you somehow changing some
9 meaning?
10 MR. RUBENSTEIN: No, I don't believe
11 ther's a substantive difference between Applicant
12 and staff. When I read staff's proposed language,
13 and in particular the language that was struck
14 out, I could not see the clear statement to that.
15 If compliance with a requirement of staff
16 precluded compliance with requirement of the
17 district, that the district rule would govern.
18 HEARING OFFICER VALKOSKY: Right. So
19 you're suggested change is basically for clarity,
20 in your view?
21 MR. RUBENSTEIN: Yes.
22 HEARING OFFICER VALKOSKY: Finally, in
23 understanding your position on staff's mitigation,
24 is it your opinion that the implementation of
25 staff's mitigation would increase the air quality

1 impacts of the project?

2 MR. RUBENSTEIN: No, because even if the

3 staff's proposals are less stringent than the

4 district's, as may be the case in some aspects,

5 the district's requirements will govern. And

6 consequently the more stringent requirements will

7 be satisfied.

8 HEARING OFFICER VALKOSKY: Okay. Thank

9 you. Mr. Westerfield.

10 MR. WESTERFIELD: Thank you. I just

11 have a few questions, Mr. Rubenstein. Why don't

12 we turn to page 12 of your testimony.

13 And at the bottom of the page, where you

14 cite to the district's guidance, and specifically

15 I"m referring to, I guess the last two sentences,

16 beginning with table 6-3 pertaining to the

17 enhanced and additional control measures, and then

18 to the following sentence. Do you see that?

19 MR. RUBENSTEIN: Yes.

20 MR. WESTERFIELD: It seems to refer or

21 say that the district will recommend enhanced and

22 additional measures when project conditions

23 warrant, such as the potential for impacting

24 sensitive preceptors and so forth. What is the

25 standard that the district uses to find that

1 additional measures are warranted?
2 In other words, how do you know when
3 those additional measures are going to be
4 implemented?
5 MR. RUBENSTEIN: I believe that would
6 probably be better directed to the district, but I
7 expect it would be when the district provides
8 comments on an EIR, since that's the purpose of
9 this document is guidance to various agencies
10 regarding the air quality impacts of projects.
11 MR. WESTERFIELD: If I understand your
12 testimony I think your general position is that
13 Regulation 8 is sufficient to mitigate any PM-10
14 impacts created by construction, and that the
15 additional mitigation proposed by staff is not
16 necessary, is that correct?
17 MR. RUBENSTEIN: Yes.
18 MR. WESTERFIELD: So how does staff know
19 that this application of Regulation 8 is going to
20 be done, how do we know when it's going to be
21 used?
22 MR. RUBENSTEIN: How do you know when
23 Regulation 8 is going to be used?
24 MR. WESTERFIELD: Well, how do we know
25 that the district is going to recommend enhanced

1 and additional measures when project conditions
2 warrant. What's the trigger?
3 MR. RUBENSTEIN: I'm sorry, I'm a little
4 bit confused. One is how do we know when
5 Regulation 8 is going to be used, and the --
6 MR. WESTERFIELD: No, that's not my
7 question.
8 MR. RUBENSTEIN: Okay, perhaps you could
9 repeat the question for me?
10 MR. WESTERFIELD: How do we know when
11 the district will recommend these enhanced and
12 additional measures when project conditions
13 warrant?
14 MR. RUBENSTEIN: As I said, when I
15 answered the question earlier, I think that you
16 would first be best off to ask that question of
17 the district, but I believe that you will know
18 when the district recommends that in response to
19 an EIR or negative declaration that's proposed by
20 another lead agency.
21 MR. WESTERFIELD: Well, I appreciate
22 that, and maybe I'll get a chance to ask the
23 district that question, but right now I'd like to
24 ask you that question?
25 MR. RUBENSTEIN: I just answered it.

1 MR. WESTERFIELD: And what is your
2 answer again, for the record?
3 MR. RUBENSTEIN: You will know when the
4 district submits comments on a proposed EIR or
5 negative declaration for a project.
6 MR. WESTERFIELD: All right. So that is
7 the assurance that you are giving staff, that the
8 district will recommend additional measures to
9 control PM-10.
10 MR. RUBENSTEIN: No, I did not say that.
11 MR. WESTERFIELD: Well, let's start
12 again.
13 HEARING OFFICER VALKOSKY: Okay, let's
14 make this the last time. Go ahead.
15 MR. WESTERFIELD: I'm trying to get a
16 responsive answer.
17 HEARING OFFICER VALKOSKY: I understand.
18 MR. WESTERFIELD: It's your testimony
19 here that, in certain instances the district will
20 recommend enhanced control measures when project
21 conditions warrant. Isn't that true, isn't that
22 what you say?
23 MR. RUBENSTEIN: I don't say that
24 independently. I just quote the district's
25 document.

1 MR. WESTERFIELD: And how is staff to
2 know under what conditions the district will
3 implement those enhanced and additional control
4 measures. What is the standard that triggers
5 those additional control measures?
6 MR. RUBENSTEIN: I don't know, but as I
7 say on the following page of my testimony, I
8 believe that those enhanced control measures are
9 already going to be performed as part of the
10 project's compliance with Regulation 8.
11 MR. WESTERFIELD: You repeatedly mention
12 that Regulation 8 has a 20 percent visible dust
13 emission requirement, is that right?
14 MR. RUBENSTEIN: Yes.
15 MR. WESTERFIELD: What measures exist in
16 Regulation 8 for monitoring dust emissions to
17 ensure that that requirement is met?
18 MR. RUBENSTEIN: There are three aspects
19 to this. The first is in rule 8011, section 6.2,
20 recordkeeping requirements, which requires that an
21 owner or operator subject to the requirements of
22 Regulation 8 must maintain documents of all
23 inspections and observations to verify compliance
24 on all days that control measures are issued.
25 Second is appendix A, 008011, which

1 specifically identifies the methods to be used for
2 determining the opacity of dust.
3 And then the third requirement is, I
4 believe, in rule 8021, section 6.23, which is the
5 requirement for preparation of a dust control
6 plant which, because of the small size of this
7 project, would not be triggered for this project,
8 which is why I had recommended retaining
9 conditions AQC1 and AQC2 as a substitute.
10 MR. WESTERFIELD: Okay. so it sounds
11 like three is not applicable to this project
12 because of size?
13 MR. RUBENSTEIN: That's correct.
14 MR. WESTERFIELD: And one is a record-
15 keeping requirement.
16 MR. RUBENSTEIN: Yes.
17 MR. WESTERFIELD: And so two is a method
18 for determining opacity?
19 MR. RUBENSTEIN: Yes.
20 MR. WESTERFIELD: Okay. So is there, as
21 part of this regulation, a monitoring requirement
22 by the district to ensure that the 20 percent
23 opacity limit is not exceeded, which I assume
24 would be part of appendix A to rule 8011?
25 MR. RUBENSTEIN: No, I believe that's in

rule 8011, section 6.2, under the record-keeping requirements. Because you're required to maintain sufficient records to demonstrate compliance, and that includes records of observations that you've made.

MR. WESTERFIELD: Okay. So tell me again, is there a requirement to monitor compliance with the 20 percent capacity requirement?

MR. RUBENSTEIN: I'm struggling, because I thought I've answered this question twice before. I believe the provisions are in rule 8011, section 6.2.

MR. WESTERFIELD: 6.2. And what are those requirements for the monitoring opacity?

MR. RUBENSTEIN: That a person subject to the rule must maintain records, and any other supporting documents, to demonstrate compliance with the requirements of the rules on those days that a control measure is implemented.

MR. WESTERFIELD: Is that it? Is that all of it?

MR. RUBENSTEIN: Yes, it's a lot more than what's in the staff's conditions.

THE WITNESS: All right. That's great.

1 That's all I have.

2 HEARING OFFICER VALKOSKY: Mr. Sarvey?

3 MR. SARVEY: You stated earlier that you

4 had reviewed the San Joaquin Valley Control

5 District PM-10 attainment plan that's been

6 proffered recently and approved by CARB. I want

7 to read to you, on page ES14, and I'd like to know

8 if you'd read this portion of the document.

9 It says "no ammonia controls are

10 proposed for immediate implementation in the PM-10

11 plan. However, the district is committed to

12 pursuing an expeditious ammonia control strategy

13 in light of the uncertainly regarding ammonia

14 emission controls to achieve attainment -- and I

15 emphasize uncertainty -- the PM-10 plan includes a

16 strategy to further assess and develop any needed

17 control for ammonia sources."

18 Did you read that, Mr. Rubenstein?

19 MR. RUBENSTEIN: Yes I did. I read

20 several other things in there. Would it be

21 possible for you to share a copy of that document

22 with us?

23 MR. SARVEY: I've only got this, you're

24 welcome to look at it.

25 HEARING OFFICER VALKOSKY: Do you want

it now, Mr. Rubenstein?

MR. RUBENSTEIN: Only if he's going to ask me any more questions about it.

HEARING OFFICER VALKOSKY: Okay. Mr. Sarvey, are you going to?

MR. SARVEY: That was the only question that I had on that document. I just wondered if he'd read that. He made a statement that ammonia wasn't an important precursor, and if you reduced ammonia by such-and-such, and I was just trying to see if he understands the other side of the coin on that. Thank you.

Okay. Now how much do you know about ammonia concentrations as an asthma trigger? Is that a field that you're familiar with?

MR. RUBENSTEIN: No it's not.

MR. SARVEY: So you wouldn't know at what level additional ammonia in an ammonia-rich area could possibly trigger asthma?

MR. RUBENSTEIN: No.

MR. SARVEY: Is a five ppm ammonia slip level feasible for this project?

MR. RUBENSTEIN: I'm not sure that it is over an extended period of time.

MR. SARVEY: If this project were in an

ammonia limited area, earlier you said you would recommend a five ppm ammonia slip. Are you revising that statement?

MR. RUBENSTEIN: No. If this project were located in an area where BACT for ammonia was five parts per millon I'm not sure I'd recommend this combustion turbine technology.

To the best of my recollection the projects in the south coast air basin that use LM6000 gas turbines with water injection in simple cycle are having a great deal of difficulty meeting a five ppm slip level on a consistent basis.

MR. SARVEY: Have you performed any tests or modeling to confirm that the project area is ammonia rich?

MR. RUBENSTEIN: I'm hesitating because I don't think I've done that in the context of this project. I have done that in the context of other projects, looking at this general area.

MR. SARVEY: So you're not certain. Is it possible that the ammonia could be transported to a region that is not ammonia-rich?

MR. RUBENSTEIN: In theory, yes. But in the case of this project I don't believe so,

1 particularly given the analysis that's contained
2 in the San Joaquin Valley's PM-10 plan.
3 MR. SARVEY: Is the Applicant providing
4 offsets for SO2 emissions?
5 MR. RUBENSTEIN: The Applicant is
6 mitigating its SO2 emissions, yes.
7 MR. SARVEY: In your testimony on page 7
8 you indicate that there's been only one exceedance
9 of the federal ozone standard in Modesto since
10 1998.
11 MR. RUBENSTEIN: Yes, I see that
12 statement.
13 MR. SARVEY: Are you aware that, during
14 that same time period, there has been 16 to 13
15 exceedances of the federal 8 hour ozone standard,
16 in Modesto?
17 MR. RUBENSTEIN: I did not look at that
18 statistic, that would not surprise me.
19 MR. SARVEY: Okay. Would you agree that
20 the project's ozone impacts are regional in
21 nature?
22 MR. RUBENSTEIN: Yes I would.
23 MR. SARVEY: So since the projects ozone
24 impacts are regional in nature, shouldn't we be
25 looking at ozone exceedances in San Joaquin

1 Valley, not Modesto?

2 MR. RUBENSTEIN: The Commission's

3 practice, and I believe Mr. Sarvey your own

4 testimony in other proceedings, has encouraged the

5 use of air quality levels as close to a project

6 site as possible to characterize the existing air

7 quality, and what we've done in this case is

8 consistent with past practice by the Commission.

9 MR. SARVEY: So you would agree that

10 it's real important to look at ozone exceedances

11 in San Joaquin Valley as well as Modesto then?

12 MR. RUBENSTEIN: Our analysis does that,

13 because if one were to evaluate whether offsets

14 were required based just on the readings in

15 Modesto one might reach a different conclusion.

16 But in fact offsets are required because

17 the entire San Joaquin Valley air basin is non-

18 attainment for ozone with respect to both state

19 and federal standards. Consequently, whether we

20 look, as you say, at ozone levels in other parts

21 of the basin is not relevant, because we have

22 mitigated those impacts on a regional basis.

23 MR. SARVEY: So, are you aware that San

24 Joaquin Valley has had the most exceedances of the

25 state one hour standard, and the most exceedances

of the federal 8 hour standard for 2001 and 2002?

MR. RUBENSTEIN: I'm sorry, Bob, I haven't memorized those pages out of the CARB almanac, but I'm sure you're going to show them to me.

MR. SARVEY: You're right, I am. Okay. Did you know there were 125 violations of the national 8 hour ozone standard in the San Joaquin Valley, the highest in ten years, the highest number of violations in ten years?

MR. RUBENSTEIN: I'm sorry, could you repeat that again?

MR. SARVEY: Did you know that there were 125 violations of the national 8 hour ozone standard in San Joaquin Valley, the highest number of exceedances in ten years?

MR. RUBENSTEIN: No, I'd have to say I didn't know that until you just handed this chart to me.

MR. SARVEY: Okay. In both Stockton and Merced, violations of the state PM-10 standard are the highest they have been in the last eight years. Were you aware of that?

MR. RUBENSTEIN: We're switching now from ozone to PM-10?

1 MR. SARVEY: Yes sir.
2 MR. RUBENSTEIN: I don't see that you've
3 handed me a PM-10 history for ten years. Am I
4 missing something?
5 MR. SARVEY: Last eight years. This is
6 your exhibits from your letter of August 6th to
7 the pollution control district, your
8 interpollutant offset, that's your exhibit.
9 Exhibit 21, page 18.
10 MR. RUBENSTEIN: Okay, I was hung up on
11 the 10 year issue. Can you repeat your statement
12 again?
13 MR. SARVEY: Sorry, Gary.
14 MR. RUBENSTEIN: That's all right.
15 MR. SARVEY: Were you aware that in the
16 last eight years that they've had the highest
17 number of exceedances for state PM-10 violations
18 in both Stockton, Hazelton, and Modesto as well,
19 although Modesto is only six years. That's all
20 the recorded information we have.
21 MR. RUBENSTEIN: The number of
22 exceedances?
23 MR. SARVEY: The highest number of
24 exceedances. It went from 18 in 1995 to 60 at
25 Stockton. In Modesto it went from 12 in 1996 to

1 78 in 2002.

2 MR. RUBENSTEIN: And the third Stockton,

3 or the other Stockton station actually had its

4 peak in 2000, but yes, I see those statistics.

5 They are all in our August 6th letter to the air

6 district.

7 MR. SARVEY: Now, considering the

8 increases in violations that I've shown you in the

9 last few statements, and in the handout that I've

10 given you, would you agree that it's important

11 that we use the most stringent control measures

12 possible for this project?

13 MR. RUBENSTEIN: I think there are two

14 aspects to that. One is should we use the best

15 available control technology for PM-10, and I

16 think the answer is yes, and I believe we do.

17 And the second is should we be

18 mitigating the project's contribution to ambient

19 PM-10 levels, and the answer is yes, and I believe

20 we do.

21 MR. SARVEY: Ozone as well. You earlier

22 mentioned the Tracy peaker plant was recently

23 certified for 8,000 hours of operation. And I'm

24 sure you're aware that the Applicant in that

25 project, due to community response and a little

1 prodding from Commissioner Pernell, has reduced
2 his operating hours to 6,000, and that most of the
3 public thought that was an unreasonable amount of
4 hours for a peaker to operate.
5 Does this Applicant intend to do the
6 same?
7 MR. RUBENSTEIN: No, and actually I'm
8 looking right at the condition that was imposed on
9 that project and it specifically indicates that
10 condition that they look at reducing their hours
11 was not required to mitigate a significant impact
12 under CEQA.
13 MR. SARVEY: It's part of our community
14 benefits agreement. So looking at your
15 interpollutant offset ratio for this project, from
16 your August 6th letter, which would be exhibit 21
17 I believe, you have this table labeled SO2 to PM-
18 10 interpollutant offset ratio analysis. Isn't
19 that correct?
20 MR. RUBENSTEIN: Yes.
21 MR. SARVEY: Okay, now when you analyze
22 the sulfate you use SO4 instead of SO2. Should
23 this table be more correctly labeled SO4 to PM-10
24 interpollutant offset ratio?
25 MR. RUBENSTEIN: No. We correctly moved

1 between SO2 and SO4 depending on whether we're
2 talking about emissions or air quality
3 measurements. So we've properly counted for the
4 condition in molecular waste.
5 MR. SARVEY: So you've taken care of the
6 molecular waste?
7 MR. RUBENSTEIN: Yes.
8 MR. SARVEY: Very good. Why is the
9 interpollutant ratio so different in this project,
10 1997-1998, when your same firm did the
11 interpollutant ratio in the peaker analysis for
12 the Tracy peaker and it was 2.1 for both years.
13 Where's the difference, as far as
14 arriving at those numbers?
15 MR. RUBENSTEIN: The fundamental
16 difference is that in the analyses that were done
17 not only for the Tracy Peaker Project, but for I
18 believe five previous projects where we have done
19 this analysis, we only had available to us
20 chemical mass balance and emissions inventory data
21 that dated from 1994.
22 In the most recent analysis we were able
23 to take advantage of refined chemical mass balance
24 analyses that were done to support the new PM-10
25 air quality plan.

1 And it is, the updates in the emissions
2 inventory and the update in the chemical mass
3 balance modeling analyses that represent the bulk
4 of the difference. Methodology is exactly the
5 same for the two sets of analyses.
6 MR. SARVEY: Do the costs of SO2 offsets
7 influence your decision to use SO2 rather than PM-
8 10 ERC's?
9 MR. RUBENSTEIN: I suspect that the
10 relative cost influenced MID's decision, but that
11 was their decision, not ours.
12 MR. SARVEY: In your testimony you state
13 that, on page 20, "with the implementation of the
14 above mitigation measures, and in combination with
15 the proposed conditions of exemption contained in
16 the final study, the project will comply with all
17 applicable federal, state and local LORS."
18 What assurances can you give to the
19 public, and to the Committee, that this project
20 will meet its permit conditions?
21 MR. RUBENSTEIN: You missed a phrase.
22 The proposed conditions of exemption as amended
23 herein.
24 The assurance is the same assurance that
25 any Applicant provides, which is that they're

1 going to be subject to stringent monitoring
2 requirements by the local air district, and
3 stringent reporting requirements. And that there
4 is substantial penalties for non-compliance.
5 MR. SARVEY: And if the project does not
6 meet it's conditions of exemption, will you still
7 have the same testimony that this project will not
8 harm the environment or the public in any way?
9 MR. RUBENSTEIN: If the project does not
10 comply with its conditions of exemption then I
11 can't make any statements regarding public health.
12 MR. SARVEY: Okay. Were you not the air
13 quality expect in the Delta Energy Center
14 proceedings?
15 MR. RUBENSTEIN: Yes I was.
16 MR. SARVEY: And are you aware that that
17 project has 47 violations of its permit conditions
18 in the last two years?
19 MR. RUBENSTEIN: I --
20 MS. WARREN: At this point I may want to
21 question the relevance of a line of questioning
22 about a project that hasn't been shown to bear
23 relationship, other than it had the same expert.
24 HEARING OFFICER VALKOSKY: I think that
25 Mr. Sarvey -- correct me if I'm wrong -- is trying

1 to establish the necessity for enforcing the
2 conditions to protect public health, is that
3 correct?
4 MR. SARVEY: Yes it is.
5 HEARING OFFICER VALKOSKY: Okay. Would
6 you agree that's a correct statement, Mr.
7 Rubenstein, that in order to protect public health
8 adequately and preserve air quality, a certified
9 or exempted plant must in fact meet the conditions
10 imposed upon it by the Energy Commission and the
11 district?
12 MR. RUBENSTEIN: Yes. I agree with that
13 statement.
14 HEARING OFFICER VALKOSKY: Okay.
15 MR. SARVEY: Air emissions from a
16 combined cycle project per megawatt are a lot less
17 than they are per megawatt with a single cycle
18 facility. Considering that this project will be
19 licensed for 8760 hours, from an air quality
20 perspective, would you recommend to the Applicant
21 to use a combined cycle project configuration?
22 MR. RUBENSTEIN: The annual emissions
23 from a combined cycle configuration from this
24 plant would likely be no different than higher
25 that the annual emissions from a simple cycle

1 plant.

2 And I make that statement for two

3 reasons. First, the mass emission rates in pounds

4 per hour are not likely to be any different for a

5 combined cycle plant as opposed to a simple cycle

6 plant. And second, a combined cycle plant would in

7 fact likely operate more hours per year than a

8 simple cycle plant.

9 So the permitted emission levels would,

10 in my opinion be essentially the same, and the

11 actual emissions from a combined cycle plant would

12 likely be greater because of increased frequency

13 of operation.

14 MR. SARVEY: Do your construction

15 conditions you propose include all the feasible

16 conditions that are proposed in the San Joaquin

17 Valley Pollution Control District PM-10 plan?

18 MR. RUBENSTEIN: I'm not certain that

19 they do, because I did not do a detailed line by

20 line comparison with the San Joaquin District's

21 PM-10 plan.

22 MR. SARVEY: Would you agree that, in

23 order for the district to meet its PM-10

24 projections, it's important for all projects to

25 comply with the newly promulgated regulations?

1 MR. RUBENSTEIN: That's a different
2 question than the one you just asked me, right?
3 MR. SARVEY: Yes.
4 MR. RUBENSTEIN: Okay. Yes, I agree
5 it's important for the project to comply with its
6 promulgated, the air district's promulgated
7 regulations to help the air district meet the PM-
8 10 air quality standard.
9 MR. SARVEY: Thank you, Gary.
10 HEARING OFFICER VALKOSKY: Redirect, Ms.
11 Warren?
12 MS. WARREN: None from us.
13 MR. WESTERFIELD: No redirect from us
14 either.
15 HEARING OFFICER VALKOSKY: It's very
16 late, gentlemen.
17 MR. GARCIA: Yes, Mr. Rubenstein, I have
18 a couple of questions here. I know this isn't
19 your exhibit, but they're quoting your data in the
20 staff's FIS they're quoting your testimony that
21 the projected NOX emissions for this project are
22 88,990 pounds of NOX on an annual basis.
23 Does that number seem familiar or
24 reasonably close?
25 MR. RUBENSTEIN: Yes.

1 MR. GARCIA: Okay. And what was the
2 basis for that calculation. Were you assuming
3 full load 8760 or some other capacity factor?
4 MR. RUBENSTEIN: You can find the answer
5 to that question in supplement A, which is exhibit
6 2, at page 8.1-26. And at that page we show the
7 total NOX emissions from the plant at 45.3 tons
8 per year, so a little over 90,000 pounds per year.
9 And immediately above that it indicates
10 that, based on a worst-case assumption of full
11 load operation for 8,395 hours per year plus 365
12 hours per year of startups, which represents an
13 even higher emission rate than base load
14 operation. So it's basically 8760.
15 MR. GARCIA: Okay. So that's the worst
16 case. And this is for simple cycle operation,
17 correct?
18 MR. RUBENSTEIN: That's correct, for two
19 turbines, simple cycle operation.
20 MR. GARCIA: Now in a hypothetical case,
21 where you have the same output but we're changing
22 the type of cycle to a combined cycle, and it has
23 the characteristics we talked about earlier, in
24 stead of having the 9,000 BTU per kilowatt hour
25 heat rate it's got a 6,000 BTU per kilowatt hour

rate, would we expect the emissions to be higher or lower?

MR. RUBENSTEIN: It depends on how you're achieving that. If you were to take MID's proposal for this project, which is two LM6000 turbines, and add a combined cycle component to those turbines --

MR. GARCIA: No, we're going to normalize it to the same amount of kilowatt hours.

MR. RUBENSTEIN: Okay. If you're doing that, and if you could hypothetically find turbines and design them to do that, and all of your other assumptions hold true, then at this number of megawatt hours there would be less fuel consumption and correspondingly lower emissions associated with producing the same amount of electricity -- I'm hesitating because I'm trying to make sure that that's true for all pollutants, and I believe they are.

MR. GARCIA: We're making this simple, we're just looking at NOX.

MR. RUBENSTEIN: Yes, with respect to NOX I believe that would be true.

MR. GARCIA: To paraphrase what I think you said, everything else being equal, the amount

of NOX in proportion to the amount of fuel that's consumed?

MR. RUBENSTEIN: That's correct.

MR. GARCIA: Okay. And I guess if we're just looking at, in terms of mitigating the emissions from this hypothetical plant, one argument would be that well, what's the difference, you know, we're mitigating it through ERC's.

But another argument would be that mitigation, current mitigation is better than mitigation that, or inert, which is mitigation that occurred a long time ago and maybe in a different location. Does that kind of describe it?

MR. RUBENSTEIN: Maybe I could restate what I think you're trying to say differently. Reducing emissions is always better than mitigating emissions. And I agree with that.

MR. GARCIA: So then it would, putting those two thoughts together then, would it not be better to have a -- ignoring all the other niceties of having the benefits of having load following and so on and so forth -- wouldn't it be better to have combined cycle rather than simple

cycle, at least from the point of view of minimizing air emissions?

MR. RUBENSTEIN: If there were no other factors involved, such as a need for quick response, quick startup times, or load following capabilities, if all of those issues were gone, then yes it would be preferable from an air emissions perspective to have a combined cycle plant as opposed to a simple cycle plant.

MR. GARCIA: All right. That's all the questions. Thank you very much.

HEARING OFFICER VALKOSKY: Any further questions for the witness? Exhibits, Ms. Warren?

MS. WARREN: Yes. We'd like to move the exhibits listed in attachment to the filed testimony.

HEARING OFFICER VALKOSKY: Is there objection?

MR. WESTERFIELD: No objection.

MR. SARVEY: No objection.

HEARING OFFICER VALKOSKY: Does your lack of objections extend to exhibits 35 and 36?

MR. WESTERFIELD: We have no objection.

HEARING OFFICER VALKOSKY: Okay, Mr. Sarvey? Any objections to Applicant's exhibits,

1 and this includes exhibits 35 and 36, the
2 environmental review guidelines and the guide for
3 assessing and mitigating air quality effects?
4 MR. SARVEY: No objection.
5 HEARING OFFICER VALKOSKY: Okay, those
6 exhibits are admitted. Mr. Westerfield?
7 MR. WESTERFIELD: Well, we'd like to
8 call Mr. Will Walters to testify on air quality
9 please, last but not least.
10 HEARING OFFICER VALKOSKY: Swear the
11 witness please.
12 Whereupon,
13 WILLIAM WALTERS
14 was called as a witness herein, and after first
15 having been duly sworn, was examined and testified
16 as follows:
17 MR. WESTERFIELD: Mr. Walters, thanks
18 for your patience today. Would you please tell us
19 what you're involvement is with reference to
20 preparation of staff's air quality testimony?
21 MR. WALTERS: Yes. I prepared and --
22 HEARING OFFICER VALKOSKY: Excuse me.
23 Would you state your name?
24 MR. WALTERS: Yes, my name is William
25 Walters. I prepared and oversaw Lisa Blewett (sp)

1 preparing other sections of the air quality
2 analysis for the MID MEGS project.
3 MR. WESTERFIELD: And is that testimony
4 accurate to your knowledge?
5 MR. WALTERS: It is with one errata that
6 I'd like to put forth now.
7 MR. WESTERFIELD: Please do.
8 MR. WALTERS: On page 3-54, in making
9 some changes to AQC4 that we agreed to in our
10 workshop, I omitted one of the changes that we'd
11 agreed to, and I'd like to get that one word back
12 in. And that is on the second to last line of the
13 condition itself, where it should say "any visible
14 dust plume". So add the word "dust" between
15 visible and plume.
16 MR. WESTERFIELD: Okay. And with that,
17 could you please briefly describe your
18 qualifications for the Committee in the area of
19 air quality?
20 MR. WALTERS: Yes. I have a BS in
21 Chemical Engineering. I'm a Registered
22 Professional Engineer in chemical engineering in
23 the state of California. I've worked on
24 approximately, or am working on approximately a
25 dozen siting cases in air quality. And I have

about 17 years of experience in air quality research and analysis.

MR. WESTERFIELD: Okay, thank you. And could you please summarize briefly your testimony that you submitted as part of the final initial study?

MR. WALTERS: Yes. In our analysis we go through various steps to assess the project. One of the first steps is to identify the setting. The main component of that is identifying the ambient air quality that the project is in the area of, in this case in the San Joaquin Valley air basin.

The important components of that are the fact that the air basin is in non-attainment for federal and state standards for PM-10 and ozone, and is in fact a severe PM-10 non-attainment area, and a serious, or excuse me, a serious PM-10 non-attainment area and a severe ozone non-attainment area.

Other parts of analyzing the setting are based on a review of the maps and determination of local receptors wind patterns, etc., which in this case, being on the east side of the valley, you have a general up valley down valley flow,

1 predominately down valley most of the year. That
2 predominance becomes slightly up valley in the
3 winter.
4 Then we identify the likely emissions
5 and impacts for the project. First I'll discuss
6 construction. In this particular project we did a
7 lot of review, a lot of data requests, and the
8 Applicant and staff worked very hard to come up
9 with an agreeable revised construction estimate
10 and modeling procedure, which we used in this case
11 and another.
12 And for those modeling procedures there
13 are specific assumptions that are tied into those
14 procedures, which essentially become part and
15 parcel the conditions of certification, to make
16 sure that the analysis that we have matches the
17 level of mitigation that's actually employed at
18 the site.
19 And in reviewing the construction there
20 are a few important characteristics for this
21 particular site that we were looking at. That
22 being the residential receptors being very close
23 to the site, the closest is about 700 feet. There
24 are several others that are in and around 1,000
25 feet. They are all in the predominate winter wind

1 direction to the north to northwest.
2 There's also a school that's not
3 particularly far in the same general direction.
4 Certain assumptions in the modeling that we
5 reviewed are that the dust control efficiency
6 assumed an 89 percent control efficiency on the
7 worst day, and a 92 percent efficiency on an
8 annual average -- which is a very high level of
9 dust control -- and is one of the reasons that
10 staff has the conditions that it does have, so
11 that the analysis reflects, or the mitigation
12 reflects the analysis and the findings of the
13 analysis.
14 The other assumptions that I would like
15 to point out are the fact that all of the offroad
16 diesel equipment between 50 horsepower and up, all
17 of them were assumed to meet tier one standards.
18 While the Applicant indicated that they met tier
19 one standards where they could find such engines,
20 they made no provision for any percentage of those
21 engines not actually being tier one in their
22 analysis. They assumed 100 percent in the
23 emission analysis.
24 Another factor that I would like to
25 identify is the fact that with these revised

1 admission estimates, which were considerably lower
2 than previous estimates for similar projects, such
3 as WGS2, in terms of their basis for the emission
4 factors, which have been updated and which is one
5 of the reasons why they're lower. And the
6 different equipment fleet assumptions that the
7 Applicant has made.
8 Even with that, the maximum 24 hour
9 impact at the maximum exposed residence was over
10 20 microgram per cubic meter, with all of the
11 assumptions, 90 percent controls, and its use of
12 tier one equipment.
13 Another factor with the modeling
14 analysis that we used in determining our
15 conditions of certification were the fact that the
16 modeling assumed a nine hour day for the
17 construction schedule, and did not make any other
18 assumptions in terms of more hours per day that
19 may or would happen in a worst cast day.
20 In terms of the significance findings
21 that we had, we made a determination that with all
22 of these factors, and all of these factors and
23 mitigation being complied with, that we made a
24 finding that there would be no potential
25 significant impact.

1 One thing I would like to identify for
2 this project which is somewhat different than an
3 AFC, as we talked about many hours ago -- this
4 being an SPPE we're talking about a negative dec,
5 or in essence a mitigated neg, and the standard of
6 proof is a little bit higher for significant
7 impact in order to qualify for mitigated neg dec.
8 So in my assessment I have to be very
9 certain that there's no potential for significant
10 impact. And that is another reason why the
11 conditions are as they are.
12 And the conditions of exemption that we
13 did find for construction are AQC 1 through AQC5.
14 I believe at this point, in practicality, the only
15 issues we have are two issues in AQC3, which I
16 will go into a little more detail later.
17 I think there's another issue of
18 terminology in one paragraph, and actually if we
19 could probably sit down for five minutes we could
20 get an agreement on it. Although at this point I
21 have some reservations on how it was rewritten by
22 the Applicant.
23 For operation we took a look at the
24 project design, the proposed mitigation, the
25 modeling results, redid some of the modeling to

1 identify if the modeling was done correctly -- we
2 found no specific problems with the modeling. We
3 identified the control technology and made
4 determination that these technologies were assumed
5 they would meetback.
6 Another issue I'd like to identify to
7 the Committee is that we're a little bit ahead of
8 the district right now. We don't have any
9 official documentation from the district as can be
10 the case in SPPE, and it's different than the AFC,
11 where we do wait for the preliminary DOC and the
12 FDOC.
13 So we are, to some extent, judging what
14 we believe the district will do in terms of
15 findings for BACT and offset requirements. In
16 terms of offsets the Applicant has agreed to
17 staff's condition that they will fully offset all
18 non-attainment pollutants and their precursors, at
19 a minimum one to one ratio, including the minimum
20 offset ratio of 1.2 to one for the SO2 to PM-10.
21 Therefore, they had mitigated on the one
22 to one for the 8760 schedule for all pollutants
23 except for NOX, which has a slightly different
24 basis for its determination of maximum.
25 At least a one to one, in fact I believe

it's exactly one to one for VOC and it will be exactly a one to one for SO2. And using the 1.2 to one in a pollutant offset ratio it will also be a one to one for PM-10.

The district requirements actually require slightly more than a one to one based on their distance ratio for NOX, so they are exceeding our baseline or minimum CEQA mitigation requirements for NOX on the project.

In determination of the interpollutant offset ratio we had provided at least a couple of communications, phone calls with the district, with some issues and ideas on the interpollutant offset ratio. And we were satisfied with the district's final calculations and agree with the 1.2 to one determination that they've made in this case.

And the condition of certification that has been agreed to by ourselves and the staff on the offsets, and additional offsets, or at least certificates that will have to be identified by the Applicant to cover our requirements that are in addition to the district, are in our condition AQC6, with a schedule for compliance in providing us the information for the additional ERC's. And

again, that condition has been agreed to between staff and Applicant.

MR. WESTERFIELD: So it sounds like, that's a bit of a rundown. Can we maybe now focus on perhaps any remaining disagreements or issues between us and what the Applicant has proposed?

MR. WALTERS: There's one serious issue, I guess, that we need to go over. Regardless of the alternative one, two, or three that the Applicant has proposed to change the conditions, it's tying in the fugitive dust mitigation requirements to the 20 percent opacity.

Each one of them would do that, whether it's tying directly to the district requirements or tying to our AQC4 the AQC sub-A condition. Once you put those two together you're basically saying that the mitigation only has been applied to the 20 percent opacity.

AQC4 is, does not have the same intent as AQC3. AQC4 is meant for extreme events, for nuisance conditions. Or at least that is my interpretation or reason for putting it in this analysis. Whereas AQC3 is our condition in order to ensure that there will be no potential for a significant impact due to the PM-10 fugitive dust

1 emissions, and equipment tailpipe emissions of PM-
2 10.
3 In getting into the specifics of why 20
4 percent opacity is a problem, or tying to the
5 district rules is a problem, I guess I first would
6 like to go through the district rules and some of
7 the, I guess, we could call them exemptions.
8 Some of them are applicability
9 thresholds, some of them are alternative measures
10 towards compliance. All of them would weaken the
11 requirements that we have on our conditions.
12 The first one of those is the -- and
13 perhaps the most important one -- there's, in
14 condition 8011 there is the allowance for the
15 fugitive PM-10 management plan as an alternative
16 to compliance with rule 8061 and 8071. They're at
17 least the substandard requirements.
18 This fugitive PM-10 management plan only
19 requires a 50 percent control efficiency for the
20 dust mitigation, and I'd like to point out again
21 that staff's analysis has assumed on a worst case
22 day an 89 percent, and on the annual average a 92
23 percent control efficiency, which would create a
24 rather large disconnect between the enforced level
25 of mitigation and the mitigation that we're

1 assuming in order to come up with our finding of
2 no significant impact.
3 The next that I'd like to point out is
4 for rule 8051. The rule is only applicable if you
5 actually have three acres or more of disturbed
6 surface area, so any smaller areas of disturbed
7 surface area would not be subject to the rule, or
8 even 20 percent opacity restriction requirements,
9 so no mitigation would be required at all.
10 So there could be ways to get around the
11 requirements of doing anything on the disturbed
12 areas and maintain compliance with Regulation 8
13 rules, just by keeping the disturbed area down to
14 a fairly small size at an y given time.
15 Also the rule provides a definition of
16 what is called a stabilized area. And once you've
17 turned something into a stabilized area it no
18 longer is what is considered disturbed, and that
19 would be another way to reduce the acreage at any
20 given time so that the requirements of that rule
21 would not be in effect.
22 Two other applicability thresholds which
23 are essentially the same, in rule 8061 and 8071,
24 are that any road segment or any unpaved vehicle
25 equipment traffic area that does not experience 75

1 trips in a day does not require any mitigation,
2 nor does it fall within the 20 percent opacity
3 restriction requirements.
4 There are a few other exemptions, or
5 ways of getting around rule requirements. One
6 would be the definition of bulk materials does not
7 include any material that has less than a five
8 percent silt loading content.
9 So if it were to be found that the silt
10 loading in a particular area of the site was 4.9
11 percent, again no requirements from the bulk
12 materials rule would be applicable, and no
13 mitigation would be required under district rules.
14 So those are some of the reasons why we
15 don't feel that strict compliance with the
16 district rules would be adequate to control the
17 site, or to be able to enforce the requirement of
18 mitigation on the site.
19 Another issue with the district
20 Regulation 8 rules is that there is no tie-in with
21 these rules to any specific location, any specific
22 receptor, or any specific impact from a project.
23 So, unlike other rules that are being developed
24 that actually identify a microgram per cubic meter
25 standard that would be identified as a

1 significance criteria, here it's more basically if
2 you meet 20 percent opacity they assume that you
3 won't have a significant impact.
4 Next I guess I would like to discuss 20
5 percent opacity and what it really means. I think
6 anybody who's done any source testing -- and
7 there's various literature out there that can
8 indicate what 20 percent opacity means in terms of
9 initial concentrations.
10 It does depend on the material and the
11 size and distribution of the material, but in
12 general you could say an initial 20 percent
13 opacity would be equivalent to somewhere around
14 40,000 to 200,000 micrograms per cubic meter, and
15 you can see that having very many of those types
16 of plumes in a project site could mean extremely
17 high impacts offsite.
18 And in fact the modeling analysis, the
19 way it was done and approved, based on the 90
20 percent control, the maximum equivalent
21 concentration that could be described on the
22 modeling, based on the lowest wind speed through
23 the volume source that was modeled, would be
24 approximately 8,000 micrograms per cubic meter,
25 which factors lower than a 20 percent opacity

1 would be expected to be.

2 So basically, in summary, we had to live

3 with the 20 percent opacity as an overall guiding

4 control requirement. I could not make a finding

5 that there would be no significant impact from the

6 construction of the facility.

7 MR. WESTERFIELD: Mr. Walters, are there

8 any other particulars of our recommended mediation

9 in AQC3 you'd like to touch upon?

10 MR. WALTERS: The other contentious

11 issue is the definitions in AQC3-O. Realizing

12 that that was not put into a decision before was

13 not staff's recommendation at that time, and is

14 not staff's recommendation at this time to add

15 that language, which we consider to be overly

16 prescriptive.

17 And certainly we don't define every term

18 that we have in all of our conditions, nd we would

19 assume a reasonableness of not available and any

20 other specific term could be made when evaluating

21 the plan and during the construction of the

22 equipment. And the other term being not

23 practical.

24 And the other issue in AQC-O is that the

25 Applicant would like to change the horsepower

1 requirement from a 50 horsepower to a 100
2 horsepower. Again, staff's problem with that is
3 inconsistent with the analysis that was performed.
4 As I mentioned earlier the Applicant
5 assumed tier one equipment for all equipment above
6 50 horsepower in their analysis, and so staff
7 would like to keep the mitigation consistent with
8 the assumed mitigation that was used in the
9 impact, in the emissions and impact analysis used
10 by the Applicant.
11 To address, I guess -- I'm going to
12 actually go back and address the other option
13 provided by the Applicant, which is the use of the
14 old WGS2 condition in the place of our AQC3 that
15 we have now.
16 Basically, staff has undergone, over the
17 last couple of years, a lot of review of this
18 particular condition, and has updated it both to
19 be more technically accurate in its description
20 and to add what it considers all of the feasible
21 emission controls that would be required in order
22 to mitigate the PM-10 emissions from construction
23 projects.
24 We do allow a certain amount of latitude
25 in certain projects on a case-by-case basis for

these, and again it would depend on the site, the ambient air quality of the area, the receptors and the wind directions, and the other regulatory background of those particular projects.

But for this particular project staff agreed to several of the requested changes to AQC3 by the Applicant. But again, does not agree to the changes that they are now proposing in AQC3A and AQC3O.

MR. WESTERFIELD: Mr. Walters, would you like to address certain comments by Mr. Sarvey with reference to PM-10 precursor ammonia emissions?

MR. WALTERS: Mr. Sarvey's comments regarding ammonia took the basic form that he believes additional PM-10 precursor mitigation should be applied to deal with the ammonia's impact to secondary PM-10 formation.

I guess you could say that staff's position on that would be -- actually there's several items that could be identified. Number one, the ammonia in and of itself is creating a greater good of eliminating several hundred tons -- or at least 200 tons -- of NOX, while there is the potential for the creation of 58 tons of

1 ammonia.

2 As has been testified to throughout the

3 day, the likelihood of the actual operating

4 schedule being 8760 is very low, and not likely to

5 happen, due to economic and other reasons. Even

6 if it were, as previously testified, they fully

7 mitigated their operating emissions for all their

8 other criteria pollutants and precursors to non-

9 attainment pollutants to a one to one.

10 So in general we would consider that the

11 project is not only fully mitigated but probably

12 over-mitigated, based on the fact of its likely

13 schedule of operation. But, that being said,

14 since we are going to permit, or the district is

15 going to permit to 8760, we certainly wouldn't

16 lower our expectation of ERC's, but we could say

17 that those ERC's, to some extent, would be

18 expected to help with the ammonia issue.

19 Also, to mirror what I believe the

20 Applicant has said for ammonia, there -- the

21 available information isn't particularly good in

22 creating an exact number on what a new project,

23 and its ammonia emissions, would do to secondary

24 PM-10. Also, there is no like emission

25 reduction -- ERC's -- available. We cannot get an

1 ammonia for an ammonia ERC.

2 And without a decent level of science

3 there's no way of knowing what an appropriate PM-

4 10 to ammonia offset ratio would be. But

5 irregardless, since we are attacking the issue

6 really from the other side of the salt formation,

7 from the ammonium sulfate and sulfite, and

8 ammonium nitrate, by requiring emission offsets

9 for those pollutants we feel that we have taken

10 care of the secondary PM-10 potential impacts due

11 to requiring at least a one to one for those

12 particular pollutants.

13 MR. WESTERFIELD: Thank you very much.

14 That's all the questions we have.

15 HEARING OFFICER VALKOSKY: Mr. Walters,

16 if we could go back here to condition three, as

17 contained in alternative three on page 36 of

18 Applicant's testimony -- and basically this is a

19 portion of Mr. Rubenstein's testimony where he

20 indicates the changes they are proposing to

21 subsection O -- are you there? Fine.

22 You indicated I believe agreement to

23 subsection 3 with the change to 100 horsepower

24 from 50 horsepower?

25 MR. WALTERS: Correct. In --

1 HEARING OFFICER VALKOSKY: Okay, just
2 one second. Mr. Rubenstein, did I recollect
3 correctly that your reason for the change is
4 because you had not used the 50 horsepower figure
5 in your assumptions?
6 MR. RUBENSTEIN: That's correct, the 50
7 horsepower figure is used twice in that paragraph,
8 Mr. Valkosky. We did not object to the first
9 change, because I agree with Mr. Walters that that
10 is consistent with our assumption. I disagree in
11 the second usage, which relates to soot filters,
12 because I believe that's not consistent with our
13 assumptions.
14 HEARING OFFICER VALKOSKY: Mr. Walters,
15 you indicated that you believe that was correct
16 with his assumptions?
17 MR. WALTERS: I believe that, if tier
18 one equipment cannot be found, that since the
19 particulate is the main constituent we're trying
20 to control for construction, if we cannot find
21 tier one equipment that it's appropriate to add
22 the potential for additional mitigation, if that
23 mitigation is both available and practical.
24 HEARING OFFICER VALKOSKY: Okay, but
25 that's a second issue. The first issue is the

1 change from 50 to 100, which you said you believe
2 was consistent with the assumptions.
3 Mr. Rubenstein said he believed it was not
4 consistent with the assumptions. Which is it?
5 Is 50 or 100 horsepower consistent with
6 the assumptions in the second instance in that
7 paragraph?
8 MR. WALTERS: It is consistent that, if
9 you cannot have a tier one piece of equipment, in
10 order to meet the emission numbers that are
11 proposed by the Applicant, that you would need
12 additional controls.
13 HEARING OFFICER VALKOSKY: Okay. Going
14 to the condition suggested by the Applicant
15 concerning availability and practicality, I
16 understand staff's position is that it is not
17 recommending the inclusion of this language. Does
18 staff concede, however, that this language was
19 specifically included by the Commission in the
20 recent East Altamont case?
21 MR. WALTERS: To tell you the truth, I
22 don't know if I have or haven't seen it in the
23 case. I have been told it was included.
24 HEARING OFFICER VALKOSKY: Okay, in
25 other words you objected to it then and you would

1 continue to object to it now.

2 MR. WALTERS: I believe staff objected

3 to it, and continued to object to it in this case

4 and in others.

5 HEARING OFFICER VALKOSKY: Okay. Next,

6 going to the final paragraph, I asked Mr.

7 Rubenstein -- and again, except for editorial

8 clarity -- if in fact the part that Applicant

9 suggests to strike out is substantively the same

10 as the material it would add.

11 I believe Mr. Rubenstein's response was

12 essentially yes, substantively there is no

13 changes, merely an editorial preference. Do you

14 have a similar or different view?

15 MR. WALTERS: It is very close to just

16 being an editorial change. My problem with the

17 way its written right now, and its broad

18 conclusion of district requirements without

19 pinning those requirements down a little bit, is

20 the fact that some of the district requirements

21 are the allowance of exemptions that we're

22 specifically trying not to allow in this

23 particular case.

24 Like not having to do controls if you

25 have less than 75 trips on a --

1 HEARING OFFICER VALKOSKY: Okay, well do
2 you have a proposal on how to narrow Applicant's
3 proposed language?
4 MR. WALTERS: Uh --
5 HEARING OFFICER VALKOSKY: If you don't
6 have it right now, maybe it's something you'd want
7 the attorney to include in his post-hearing
8 submission. Or if you have it now, that's fine.
9 MR. RUBENSTEIN: Mr. Valkosky?
10 HEARING OFFICER VALKOSKY: Yes, Mr.
11 Rubenstein.
12 MR. RUBENSTEIN: If I could just
13 suggest, I really don't think we need to take the
14 Committee's time with this. I believe that
15 Applicant can work with staff and we can provide a
16 joint recommendation to you in the brief, if
17 that's acceptable to staff?
18 HEARING OFFICER VALKOSKY: That's
19 perfectly acceptable. Thank you.
20 COMMISSIONER BOYD: Mr. Valkosky, an
21 observation here. While the parties are willing
22 to work things out, I find staff's presentation to
23 be a fairly significant condemnation of the San
24 Joaquin Valley District rule Reg 8, basically
25 saying it's not protective of the public's health.

1 And I'm wondering what the district's
2 going to say about that later if they're going to
3 testify. In any event, it's just kind of a
4 comment here, an observation.
5 HEARING OFFICER VALKOSKY: We have a
6 representative of the district?
7 VOICE: Yes. I didn't think it was my
8 turn.
9 HEARING OFFICER VALKOSKY: Not yet. But
10 you're willing to talk, correct?
11 VOICE: Yes.
12 MR. SARVEY: Mr. Valkosky, can I insert
13 something here?
14 HEARING OFFICER VALKOSKY: Mr. Sarvey,
15 yes.
16 MR. SARVEY: I think the district's
17 fully aware that their Regulation 8 needs a little
18 work, and that's contained in the draft PM-10
19 plan. And I've got copies here that I think would
20 help for guidance with the Committee, and also the
21 parties here.
22 And it would be nice to docket it as an
23 exhibit, because it shows that the district does
24 recognize shortcomings in the plan and is
25 addressing them.

1 HEARING OFFICER VALKOSKY: Okay. When
2 we get to the district's presentation it would be
3 great if you would hand those out.
4 MR. SARVEY: Thank you.
5 HEARING OFFICER VALKOSKY: Okay, Mr.
6 Walters. I understood from Mr. Rubenstein's
7 testimony that the interpollutant offset ratio of
8 SOX, or -- excuse me, SO2 for PM-10, would be 1.2
9 to one. Now does that comport with your
10 understanding?
11 MR. WALTERS: That comports with my
12 understanding, through my discussions with the
13 district, yes.
14 HEARING OFFICER VALKOSKY: Okay. So
15 that -- and again I'm trying to put into
16 perspective some of the statements in your
17 testimony, specifically page 3-43, fifth line
18 down, where it says "staff at this time cannot
19 determine if the Applicant's proposed SO2 for PM-
20 10 interpollutant offset ratio is justified, and
21 therefore cannot determine if this offset proposal
22 is adequate to satisfy the CEQA mitigation
23 requirements." Is that still a true statement?
24 MR. WALTERS: No, and to tell you the
25 truth I thought that was struck in my last go-

1 around.

2 HEARING OFFICER VALKOSKY: Okay, I take

3 it you'd like to strike it now?

4 MR. WALTERS: Let me make sure, and I

5 can tell you exactly what should be struck. Yes,

6 it would just be that full sentence.

7 HEARING OFFICER VALKOSKY: Okay. Next

8 I'd like for you to go to page 3-51, first

9 paragraph under conclusions. The second sentence

10 starts, "therefore the Applicant does not have

11 enough SO2 ERC's to fully offset the project's PM-

12 10 and SO2 emissions at a minimum one to one

13 ratio. The Applicant needs to obtain additional

14 PM-10 and/or SO2 ERC's" etc. Is that still a

15 correct statement?

16 MR. WALTERS: That is a correct

17 statement. The difference between -- I'd like to

18 clarify the statement, or the answer to the

19 question I think that you had for Mr. Rubenstein

20 and this statement. Mr. Rubenstein's answer,

21 basically, was that they had or were showing

22 enough to meet district requirements for their SO2

23 and PM-10.

24 But our CEQA requirements are requiring

25 a little bit more in the way of PM-10/SO2 credits

1 to fully offset at a one to one ratio both of
2 those pollutants.
3 HEARING OFFICER VALKOSKY: I don't know
4 what you mean by a little bit more, and again
5 please correct me if I'm wrong. I was under the
6 impression that SO2 for PM-10, on an
7 interpollutant basis, was being offset at a ratio
8 of 1.2 to one. Is that an incorrect
9 understanding?
10 MR. WALTERS: No, that's a correct
11 understanding. Let me try to get to the root of
12 the issue. The difference between the district's
13 offset requirements and our CEQA standard that we
14 apply to projects. Our CEQA standard is that we
15 apply a one to one ratio, starting from the first
16 pound of emissions on, for all non-attainment
17 pollutants and their precursors to be mitigated.
18 And its traditionally done in the form
19 of ERC's. The district, on the other hand, has an
20 offset threshold for PM-10 and SO2 and for this
21 project the district does not require any SO2
22 offsets and will require fewer PM-10 offsets than
23 what would be the equivalent to our one on one.
24 Because the first 29,200 pounds of the
25 project do not require offsets under the district

1 regulations.

2 HEARING OFFICER VALKOSKY: Mr.

3 Rubenstein, do you agree with that?

4 MR. RUBENSTEIN: As far as his statement

5 went. Just to clarify things, when I answered

6 your question earlier, Mr. Valkosky, I intended to

7 indicate that we had sufficient SO2 offsets to

8 satisfy both the district and the Commission's

9 staff requirements, not just the district's

10 requirements.

11 But we have not formally identified

12 those holdings to the staff, because we haven't

13 seen the district's final determination yet.

14 HEARING OFFICER VALKOSKY: Okay, and the

15 time you identify those holdings to the staff will

16 be as provided for in condition AQC6?

17 MR. RUBENSTEIN: That is correct.

18 HEARING OFFICER VALKOSKY: Thank you for

19 that clarification. Mr. Walters, is it your

20 intent that the proposed conditions of exemption

21 be included in the district's authority to

22 construct, or how exactly will these be enforced?

23 MR. WALTERS: It's my understanding that

24 these conditions of exemption, certainly AQC 1

25 through AQC6, would be enforced strictly through

1 the CEC and the CPM, since all of this would be
2 done during the construction period before -- they
3 should all be taken care of before first fire up
4 of a turbine.
5 HEARING OFFICER VALKOSKY: Okay. So the
6 district would not, per se, enter into the
7 enforcement of any of these?
8 MR. WALTERS: No. Although the district
9 certainly would have the right to enforce its
10 Regulation 8 rules.
11 HEARING OFFICER VALKOSKY: Of course.
12 You mentioned that the closest resident, I believe
13 you said 700 feet from the project?
14 MR. WALTERS: That's my understanding.
15 The closest resident to -- close to direct north,
16 a little north/northwest.
17 HEARING OFFICER VALKOSKY: Okay, and I
18 take it that's significant because that's a
19 sensitive receptor that should be affected by the
20 pollution, by the emissions rather?
21 MR. WALTERS: Yes. It's a sensitive
22 receptor that is obviously very close to the
23 construction site.
24 HEARING OFFICER VALKOSKY: Okay. I'd
25 just like to point out, I believe in noise it was

determined that the receptor was about 1,000 feet from the project. I don't know if that makes a difference in your analysis?

MR. WALTERS: Well, I think what I heard was that Mr. Sarvey was questioning whether or not in fact it was 700, and I'm not sure that the answer --

MS. KAEFER: The difference is because the noise issue was from the center of the site, and now we're talking best, which is at the line. The center of the site is considerably farther in from the property line to the nearest receptor.

HEARING OFFICER VALKOSKY: Did you get any of that at all?

MR. WALTERS: Mr. Valkosky, would you like me to paraphrase?

HEARING OFFICER VALKOSKY: Yes, please do.

MR. WALTERS: Okay, I'm paraphrasing, from Pam Kaefer. Her understanding is that the 700 feet would be from the site boundary where the construction activities will go up to, as opposed to the center of the site, or I guess the noise center of the site, which might be more like a thousand feet to that same residence.

1 HEARING OFFICER VALKOSKY: Okay, then I
2 assume that the statement on page 348 that "the
3 closest substantive receptor is located over one-
4 half mile from the proposed site" needs amending.
5 MR. RUBENSTEIN: Mr. Valkosky?
6 HEARING OFFICER VALKOSKY: Yes.
7 MR. RUBENSTEIN: I know you don't want
8 to debate this late at night, but I'm concerned
9 that the record's getting a little confused. The
10 term "sensitive receptor" is a term of art. The
11 nearest residence is not a sensitive receptor.
12 The term is used to refer to day care centers,
13 hospitals, things like that.
14 HEARING OFFICER VALKOSKY: Okay, so a
15 sensitive receptor -- thank you for that
16 clarification -- is not --
17 MR. RUBENSTEIN: Right. In the context
18 being used there, if it was either a school or
19 community center, it was the closest.
20 HEARING OFFICER VALKOSKY: Okay, thank
21 you for that clarification. Finally, you
22 indicated that these conditions could possibly
23 change from the time the final initial study was
24 issued.
25 That statement I believe is on page 351

1 of your testimony, "as conditions presentable may
2 be revised prior to the evidentiary hearing to
3 address any comments received on this final
4 initial study." Has this happened?
5 MR. WALTERS: It has happened in the
6 essence that the Applicant identified a correction
7 to AQC4 that I should have provided in the first
8 place.
9 HEARING OFFICER VALKOSKY: Okay, but
10 nothing in response to members of the public or
11 anything else?
12 MR. WALTERS: No, I don't believe the
13 conditions were changed due to any comments from
14 the public.
15 HEARING OFFICER VALKOSKY: Okay, thank
16 you. Ms. Warren?
17 MS. WARREN: Yes, I just have a few
18 questions. You stated in your testimony, as I
19 recall, that 20 percent of pat due for dust is
20 equivalent to approximately 40,000 micrograms or
21 more.
22 Can you identify for us, also in your
23 testimony, where the support for that statement
24 is?
25 MR. WALTERS: There were several

1 referents that I used, I only actually brought one
2 with me. But it's from a permit from north coast,
3 and it dealt with I believe it's wood particles
4 that identified 20 percent opacity. Basically a
5 chart of opacity versus grain loading, and
6 identifies to be .09.
7 Another reference that I found was in an
8 identification of opacity found for a boiler which
9 has a different kind of, type of particle, that
10 would generally provide higher opacity at lower
11 weight, and that was equivalent to .02.
12 MS. WARREN: Again, I think it would be
13 very helpful to us if you could just point out to
14 us where in your testimony those references are
15 made, so we can look at them more closely?
16 MR. WALTERS: I don't think it was
17 specifically culled out in my testimony.
18 HEARING OFFICER VALKOSKY: Not in your
19 written testimony?
20 MR. WALTERS: Not in my written
21 testimony.
22 MS. WARREN: How does the 20 microgram
23 impact you referenced for construction impacts
24 compare with other projects that you've analyzed?
25 MR. WALTERS: That's a hard comparison

to make, for several reasons. Number one, a lot of the other projects had a lot more of what I considered conservatism in the analysis. A lot of times the modeling was done in a much more conservative way than it was done in this case.

The emission and emission profiles were much higher for equivalent construction projects. So the numbers may have been a little larger in some cases to the nearest receptor, in some cases they were lower because the nearest receptor wasn't as close to this project.

I certainly can't give you any specific numbers because I don't have any of those analyses in front of me.

MS. WARREN: What is the size of the disturbed area you analyzed for this project?

MR. WALTERS: The size of the disturbed area, as identified by the Applicant, was I believe about 12.8 acres, or 12.25, somewhere in that range.

MS. WARREN: Does a stabilized area, as it's defined in the district rules, result in significant dust levels?

MR. WALTERS: A stabilized area has the same essential 20 percent opacity limitation in

its inherent definition. I believe the district assumes a stabilized area will be considerably lower in general emission parameters than a non-stabilized area.

But under extremely high wind events, etc., you could have relatively high numbers as it's defined by the district, up to 20 percent opacity, because how stabilized is defined by the district rules.

MS. WARREN: Does your analysis for this project assume silt loading of 75 percent -- greater than five percent, I'm sorry?

MR. WALTERS: Yes, the silt loading which was agreed to was, I believe, somewhere around 8.5 percent. And that's an assumption based on the soil type that's in the project area.

But that doesn't mean that silt loading in a particular area or after, you know, going down a little deeper in the scraping site they wouldn't find a lower silt loading content.

MS. WARREN: And if the silt loading were lower, the emissions would be lower, is that correct?

MR. WALTERS: Actually, without control, these emissions could be considerably higher. As

the equation goes, essentially if we assume no watering at all versus the 15 percent watering that's assumed in some of the equations, versus a silt loading of 8.5 and a silt loading of, let's say, you know, high 4's, the emissions would actually increase by 3.5 times.

I actually did the calculation a little earlier today in preparation for such a question.

MS. WARREN: Let me just ask one last question. Did your analysis of the project assume more than 75 trips per day?

MR. WALTERS: For the worst case day it assumed more than 75 trips per day. But that wasn't necessarily the case for the entire construction area.

MS. WARREN: I believe that's all I have.

HEARING OFFICER VALKOSKY: Mr. Sarvey?

MR. SARVEY: Mr. Walters, looking at the construction isopleth that you've just been handed and developed by the Applicant, and taking into consideration the proximity of residents to the project, is it your professional opinion that the most stringent construction mitigation measures be employed to protect the public health?

1 MR. WALTERS: I believe my testimony
2 speaks to that aggressively, but yes I believe
3 that all feasible construciton measures should
4 be --
5 MR. SARVEY: Okay, and in your --
6 MS. WARREN: Excuse me, there was a
7 document that was passed out that we didn't --
8 and could you identify it from our exhibit.
9 HEARING OFFICER VALKOSKY: Okay, and the
10 reference for that document is --
11 MR. SARVEY: It was in the -- I knew
12 you'd know it, Gary.
13 HEARING OFFICER VALKOSKY: Do we have a
14 copy of that document for the Committee, by any
15 chance?
16 MR. SARVEY: Yes, there's several copies
17 there -- thank you.
18 MR. RUBENSTEIN: For the record, Mr.
19 Valkosky, what he handed out is a single page out
20 of exhibit 13. And it's a page that's marked page
21 number five, appendix 8.1, F as in Frank, within
22 that exhibit. And it's a chart entitled "MID
23 Ripon construction 24 hour PM-10, big volume."
24 HEARING OFFICER VALKOSKY: Thank you.
25 MR. SARVEY: Mr. Walters, in your

1 opinion does the poor air quality in the San
2 Joaquin Valley require that all impacts from this
3 facility be mitigated to the fullest extent
4 possible?
5 MR. WALTERS: I believe that the
6 emissions be non-criteria pollutants and their
7 precursors should be mitigated to that extent.
8 MR. SARVEY: Is it possible that the SRC
9 controls for this project could malfunction?
10 MR. WALTERS: It's possible that pretty
11 much anything could malfunction.
12 MR. SARVEY: Were you aware that the
13 Tracy peaker plant, on July 18th, which is
14 operated only 160 hours, has already had a
15 malfunction of its SCR and exceeded its permit
16 conditions by 100 percent?
17 MR. WALTERS: No, I was not aware of
18 that.
19 MR. SARVEY: In order for the Applicant
20 to use an SO2 to PM-10 interpollutant offset,
21 doesn't the Applicant have to demonstrate that he
22 cannot obtain PM-10 credits in the region?
23 MR. WALTERS: To tell you the truth, I
24 don't know if the district rules require that.
25 And I think that question is probably more

1 appropriate to Mr. Swaney.

2 MR. SARVEY: Okay. Thanks. Earlier, in

3 the initial study on page 3.4, your testimony

4 states that section 4.143 requires the Applicant

5 of a proposed new major source demonstrate to the

6 satisfaction of the district that all major

7 stationary sources subject to emission limitations

8 that are owned or operated by the Applicant or any

9 other -- excuse me, strike that. I'm sorry.

10 In your testimony earlier, you said that

11 the Applicant would be allowed to use any emission

12 reduction credits that resulted from the shutdown

13 of a major stationary source, is that correct, in

14 the district regulations?

15 MR. WALTERS: The district regulations

16 identify that, but I believe that's for new major

17 stationary sources.

18 MR. SARVEY: Okay, so it doesn't apply

19 here?

20 MR. WALTERS: No.

21 MR. SARVEY: Okay. On page 50 of your

22 testimony -- and that would be in the final study,

23 3-50, you reject SCONOX as not technically

24 feasible for this project, and you accept the San

25 Joaquin Valley Unified Air Pollution control

1 District BACT determination for this project.
2 If SCONOX were technically feasible,
3 wouldn't it accomplish a lower NOX emission limit
4 than 2.5 ppm and completely eliminate any ammonia
5 slip which has the unknown potential for formation
6 of secondary PM-10?
7 MR. WALTERS: You know, to tell you the
8 truth, I'm not sure if it could go les than 2.5 in
9 this particular setting. It might be able to go
10 less than 2.5. To answer your second question,
11 ammonia is not used in SCONOX, so --
12 MR. SARVEY: Okay. Considering the poor
13 quality in the San Joaquin Valley, wouldn't SCONOX
14 be environmentally preferable if it were
15 technically feasible?
16 MR. WALTERS: Well, you know, I guess
17 the question is if it's technically feasible, and
18 obviously, you know, the answer is that nobody has
19 found it to be technically feasible for this type
20 of turbine. There are other technologies out
21 there too that show promise, but haven't been
22 found to be technically feasible.
23 So I guess the answer is any technology
24 that would not have ammonia and would result in
25 lower NOX would certainly be advantageous if they

1 weren't cost prohibitive.

2 MR. SARVEY: Are you aware that the San

3 Joaquin Valley Air Pollution Control District does

4 consider SCONOX technically feasible? And as

5 proof I could offer this documentation from the

6 wellhead project that used the exact same

7 turbines.

8 MR. WALTERS: I'm not aware of that

9 document. I haven't seen it before.

10 MS. WARREN: I didn't --

11 HEARING OFFICER VALKOSKY: Are you --

12 Ms. Warren?

13 MS. WARREN: I'm sorry, I didn't want to

14 interrupt. I was probably going to do the same

15 thing as you do, is ask for an identification for

16 the document and also --

17 HEARING OFFICER VALKOSKY: Precisely

18 what I was going to do.

19 MS. WARREN: -- and also a copy was

20 being passed out. The other comment I'd like to

21 make is if we're going to have reference to the

22 document we'd like to have access to the entire

23 document, as opposed to excerpts. It's very hard

24 to interpret without the entire document.

25 HEARING OFFICER VALKOSKY: Understood.

1 Do you have the entire document, Mr. Sarvey?
2 MR. SARVEY: Yes, I do have the entire
3 document. It's "Notice of Preliminary Decision,
4 authority to construct, project number N1010453,"
5 the wellhead power project.
6 HEARING OFFICER VALKOSKY: Could you
7 provide a copy to the other parties?
8 MR. SARVEY: I could provide one copy,
9 Mr. Valkosky, I apologize. Perhaps we could get
10 copies?
11 HEARING OFFICER VALKOSKY: How many do
12 we need? Seven would be a good number.
13 MR. SARVEY: That's all the questions I
14 have, thank you. I'd like to submit that as an
15 exhibit as well.
16 HEARING OFFICER VALKOSKY: Well it's,
17 we'll give you a chance later. Let's let the
18 parties look at it first. Any redirect, Mr.
19 Westerfield?
20 MR. WESTERFIELD: No redirect.
21 COMMISSIONER PERNELL: I have a couple
22 of questions.
23 HEARING OFFICER VALKOSKY: Yes, go
24 ahead.
25 COMMISSIONER PERNELL: Mr. Walters, I

1 guess one of the things this Committee has been
2 concerned about is compliance and enforcement. Do
3 the Commission have compliance on all of the air
4 mitigation, or who has compliance in your opinion?
5 MR. WALTERS: Well, compliance, at least
6 for the fugitive dust requirements, is a somewhat
7 twofold. It's the compliance will be through the
8 Commission and the CPM, but the arm out on the
9 site will actually be the AQCMM that's identified
10 in the first conditions the onsite person who will
11 be making sure that the fugitive dust compliance
12 is being done on a daily basis.
13 So compliance really, for this
14 particular item, will have not only an onsite
15 presence throughout construction, but will have
16 the CPM who will then receive reports to ensure
17 compliance will occur during construction.
18 The other condition, that is not
19 strictly construction, which is the ERC's, the
20 requirements for that gain will be through the
21 CEC, and all of the compliance requirements have
22 to occur before operation.
23 COMMISSIONER PERNELL: Right. So who
24 does the CPM report to?
25 MR. WALTERS: The Commission.

1 COMMISSIONER PERNELL: Okay, so help me
2 understand here for a minute. You said that
3 there's two different compliance--
4 MR. WALTERS: Well, what I'm saying is
5 that, in this case, we require there to be an
6 onsite compliance manager, who will act --
7 COMMISSIONER PERNELL: Well, wait a
8 minute. Excuse me, let me -- the onsite
9 compliance manager, is that a CEC staff person, or
10 who is it?
11 MR. WALTERS: No, that's a person who
12 will be designated by the project owner.
13 COMMISSIONER PERNELL: By the Applicant.
14 MR. WALTERS: Right. But that person
15 will be responsible to get the information to the
16 CPM and will be responsible for the day-to-day
17 compliance.
18 COMMISSIONER PERNELL: All right. And
19 that has to do with the construction dust, PM-10,
20 that's on the site during construction?
21 MR. WALTERS: Construction dust and the
22 various tailpipe requirements of meeting tier one
23 and/or the soot filters if practical and are
24 available.
25 COMMISSIONER PERNELL: Right, the soot

filters on the construction equipment.

MR. WALTERS: Right.

COMMISSIONER PERNELL: And then the offsets, who does the compliance on the offsets. They just buy them from the district?

MR. WALTERS: Well, the Applicant is required to identify -- at this point they've identified most of the ERC's that are required. The remaining ERC's or the amounts of ERC's that are required or identified in the condition.

The Applicant has a certain amount of time from the time of the decision and/or worst case a time before the initiation of construction to provide the CPM with the rest of, or the identification of the rest of the ERC's. So that will all occur before construction is initiated.

COMMISSIONER PERNELL: Right. And, actually I think this question has been answered but are the offsets local or regional? Maybe this is for the Applicant.

MR. RUBENSTEIN: Well the -- do you have another question, and I can get your answer in a minute?

COMMISSIONER PERNELL: I'm sorry, what did you say?

1 MR. RUBENSTEIN: Do you have another
2 question, and I can get that answer in a minute.
3 COMMISSIONER PERNELL: Well, my final
4 statement, I guess, is that it seems to me that
5 there is some disagreement between staff and the
6 Applicant on mitigation.
7 And I would just encourage that, before
8 this project comes before prime time, which is the
9 full Commission, that that stuff get worked out
10 And if it can't it can't, you know, but I would
11 hate to have it come before the full Commission
12 with this much disagreement. That's more of a
13 statement.
14 HEARING OFFICER VALKOSKY: while Mr.
15 Rubenstein is researching his answer, Mr. Walters,
16 if you could just go -- and again I want to direct
17 you to alternative 3 of the conditions, pages 34
18 to 37 of Mr. Rubenstein's testimony.
19 Just indicate briefly, whether in your
20 opinion, were we to include the clarifications
21 suggested by Applicant, that inclusion would in
22 fact create an adverse impact? And we'll start
23 with page 34 of the AQC3A. With the inclusion
24 of --
25 MR. WALTERS: With the inclusion of

1 tying in the mitigation requirements to 20 percent
2 opacity requirements of AQC4, yes, we would have a
3 finding of potential significant impact.
4 HEARING OFFICER VALKOSKY: Okay. Thank
5 you. Okay, the next change is on page 36. The
6 first change is in 03, the 50 to 100 horsepower.
7 Same question. Would changing 50 to 100 somehow
8 result in the creation of an adverse environmental
9 impact?
10 MR. WALTERS: That one would be harder
11 to determine, I'd probably have to reanalyze.
12 Assuming that all the equipment under 100
13 horsepower were not tier one. And I haven't done
14 that analysis.
15 HEARING OFFICER VALKOSKY: Okay. So
16 that may or may not. How about the inclusion of
17 the other language, which speaks to availability
18 or practicality?
19 MR. WALTERS: No, I don't think I could
20 say that would change specifically the findings.
21 HEARING OFFICER VALKOSKY: Okay, and how
22 about the -- well, the final paragraph I'll leave
23 alone, because I think we indicated we'll look for
24 a stipulate version of that. Did that buy you
25 sufficient time, Mr. Rubenstein?

1 MR. RUBENSTEIN: Yes, Mr. Valkosky, it
2 did.
3 HEARING OFFICER VALKOSKY: Okay.
4 MR. RUBENSTEIN: Commissioner Pernell,
5 the answer to your question is that the offsets
6 for this project are regional, they range in
7 distance form Stockton to Hanford. So they're
8 pretty much throughout the valley.
9 I don't believe, though, that there's
10 any disagreement between Applicant and staff on
11 that issue for this project.
12 COMMISSIONER PERNELL: I'm sorry, I
13 didn't --
14 MR. RUBENSTEIN: I said I don't believe
15 there's any disagreement between Applicant and
16 staff on that issue for this project.
17 COMMISSIONER PERNELL: No, I understand,
18 I just want to be sure that the, who has
19 compliance jurisdiction, and exactly what -- well,
20 maybe not exactly, but a range of where the
21 offsets are coming from.
22 MR. RUBENSTEIN: Yes, the actual
23 specific locations are identified in the final
24 initial study, and they are located in tables that
25 are present on pages --

1 COMMISSIONER PERNELL: Yes, I think we
2 have it.
3 HEARING OFFICER VALKOSKY: Okay.
4 Anything else for Mr. Walters? Seeing nothing,
5 thank you. And I guess the remaining area is the
6 document tendered by Mr. Sarvey. I'm sorry, did
7 you have any redirect?
8 MR. WESTERFIELD: No, we don't have any
9 redirect, but we would like to submit the
10 testimony into evidence.
11 HEARING OFFICER VALKOSKY: Is there
12 objection?
13 MR. WESTERFIELD: This would be relevant
14 portions of exhibit 22.
15 HEARING OFFICER VALKOSKY: Is there
16 objection?
17 MS. WARREN: No objection.
18 MR. SARVEY: No objection.
19 HEARING OFFICER VALKOSKY: The portion
20 of exhibit 22 is admitted. Now, turning to the --
21 did we get copies of the document tendered by Mr.
22 Sarvey?
23 MS. WARREN: It's still copying, as we
24 speak.
25 HEARING OFFICER VALKOSKY: Oh, okay.

1 Realizing the parties need at least a few minutes
2 to look at it. Mr. Sarvey, since we may have to
3 take a brief recess to look at this, at your
4 prehearing conference statement you indicated the
5 desire to submit a couple of lists, and we
6 reserved those as exhibits, I believe, 23 and 24
7 on the exhibit list.
8 MR. SARVEY: I'm not going to submit
9 them. The staff has satisfied all my questions
10 with their final study, and I'm satisfied those
11 exhibits aren't necessary.
12 HEARING OFFICER VALKOSKY: Okay, so the
13 materials designated as your exhibits 23 and 24
14 are essentially withdrawn.
15 MR. SARVEY: Yes, thank you.
16 HEARING OFFICER VALKOSKY: Okay. We can
17 take five minutes and give everybody a chance to
18 examine the document. Will that be a sufficient
19 time?
20 MR. RUBENSTEIN: We're done.
21 HEARING OFFICER VALKOSKY: Oh, okay.
22 Staff, are you done?
23 MR. WESTERFIELD: We're not done.
24 HEARING OFFICER VALKOSKY: Okay, take
25 the five minutes then.

1 (Off the record.)

2 HEARING OFFICER VALKOSKY: Okay, we're

3 back on the record now. Mr. Sarvey has tendered a

4 document from the San Joaquin Valley District

5 dated July 20th, 2001. And it's regarding a

6 notice of preliminary decision, authority to

7 construct, on project number N01010453. Ms.

8 Warren?

9 MS. WARREN: Yes. Applicant would

10 object to this document. First and foremost is

11 that it's just a notice of preliminary decision,

12 not a final. So I don't think it would be

13 appropriate to enter it as evidence.

14 Secondly, I do think, I don't know that

15 appropriate foundation has been laid for the

16 document either.

17 And I guess the third point that I'd

18 like to make is that we've had trouble identifying

19 exactly where, from the full document that was

20 passed out, the excerpt can be located.

21 HEARING OFFICER VALKOSKY: Okay, Mr.

22 Sarvey, where is the excerpt located? Is that

23 correct, Mr. Sarvey, that it's appendix A?

24 MR. SARVEY: Let's see --

25 HEARING OFFICER VALKOSKY: The concern

1 from Ms. Warren is that you referenced an excerpt.
2 We now have copies of the document and she's
3 trying to locate the excerpt. Mr. Garcia has
4 indicated it's appendix --
5 MR. SARVEY: First page of appendix A.
6 HEARING OFFICER VALKOSKY: Okay.
7 MS. WARREN: That resolves a third of my
8 three issues.
9 HEARING OFFICER VALKOSKY: Okay, the
10 other two issues still remain, I take it. Mr.
11 Westerfield?
12 MR. WESTERFIELD: Staff doesn't have any
13 reason to question that it is what it purports to
14 be. I think it's generally relevant to the issue,
15 and it's information that the Committee may wish
16 to weigh, so we have no objection.
17 HEARING OFFICER VALKOSKY: Okay. I
18 would like, I understand we're going to hear from
19 the district on this. I'd like the district to
20 update us on this document if at all possible. So
21 provisionally I'll take it as exhibit 37. And Mr.
22 Swaney, if he could also include that in his
23 presentation I would appreciate it.
24 Anything else from either staff or
25 Applicant or Mr. Sarvey at this point?

1 MR. SARVEY: No sir.
2 HEARING OFFICER VALKOSKY: Mr.
3 Westerfield, do you have anything else on this
4 point?
5 MR. WESTERFIELD: No.
6 HEARING OFFICER VALKOSKY: Ms. Warren,
7 do you have anything further on air quality?
8 MS. WARREN: No.
9 HEARING OFFICER VALKOSKY: Mr. Sarvey?
10 MR. SARVEY: No.
11 HEARING OFFICER VALKOSKY: Okay. sir,
12 if you could introduce yourself, and spell your
13 name for the record please?
14 MR. SWANEY: Sure. I'm Jim Swaney,
15 that's S-w-a-n-e-y. I'm the Permit Services
16 Manager with the San Joaquin Valley Air Pollution
17 Control District.
18 First, as you asked, let me give you an
19 update on the document that Mr. Sarvey handed
20 out --
21 HEARING OFFICER VALKOSKY: Are you going
22 to offer testimony or comment?
23 MR. SWANEY: You probably should swear
24 me in, just in case.
25 HEARING OFFICER VALKOSKY: All right,

fine.

Whereupon,

JAMES SWANEY

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

MR. SWANEY: Okay, on the document that Mr. Sarvey just handed out, which was a preliminary decision for the proposed wellhead electric power plant located in Tracy. Off the top of my head I cannot remember if we issued a final decision on that or not.

I do know that the project never went forward. The Applicant decided not to build the plant. It was one of many plants that were proposed in 2001, as a result of the Governor asking people to come forward with power plants. And many of those did not go through with the proceedings.

HEARING OFFICER VALKOSKY: Could you indicate, either in your -- well, I'd prefer your own submittal within the next two weeks or so, whether or not this project got a final decision, a final determination?

MR. SWANEY: Sure.

1 HEARING OFFICER VALKOSKY: Thank you.
2 Continue.
3 MR. SWANEY: To give the Commission an
4 update on where we are at with our analysis on
5 this project, we have a draft preliminary decision
6 that should be going out, hopefully by Thursday,
7 if not then early next week. We're in the final
8 stages of our internal review.
9 There have been a couple of points made
10 tonight that I wanted to address. One is the
11 interpollutant offset ratio. Verbally, to both
12 Mr. Walters and to Mr. Rubenstein, I have
13 confirmed that we have settled on a 1.2 to one
14 offset ratio for SOX for PM-10. The basis for
15 that will be in our preliminary decision.
16 Beyond that, I'm not sure what else to
17 offer up as testimony, but I am available to
18 answer questions.
19 HEARING OFFICER VALKOSKY: To what
20 extent do you view the imposition of the
21 conditions being debated between the parties,
22 specifically conditions one through six, as
23 necessary to achieve compliance with district
24 rules?
25 MR. SWANEY: To be perfectly honest, I

1 have not read all the various proposed conditions.
2 I do know that, since we are going to be issuing
3 an authority to construct on this project, and so
4 all compliance with our regulations will fall to
5 us. We will enforce our Regulation 8 rules, as we
6 would with any other construction activities,
7 regardless of what the conditions turn out to be.
8 COMMISSIONER PERNELL: When you say
9 you'll enforce your regulations, what does that
10 mean? Is there penalties involved, you shut them
11 down?
12 MR. SWANEY: If they are not in
13 compliance with an applicable requirement, the
14 firs thing that we would do is issue a notice of
15 violation. They would need to come back in to
16 compliance. We would negotiate a settlement for
17 that NOV. For sources that end up really not
18 paying attention to us we can petition our hearing
19 board for an order of abatement. That doesn't
20 happen very often, though.
21 COMMISSIONER PERNELL: Has it ever
22 happened?
23 MR. SWANEY: Yes. That was the case
24 with a company that was creating a public nuisance
25 due to odors. That they were not able to cease

1 the odors, basically.

2 COMMISSIONER PERNELL: So the board then

3 gives the order to fine or something else -- once

4 you issue a notice, and if they're still out of

5 compliance, then what happens?

6 MR. SWANEY: Well, if we issue a notice

7 of violation and they do not come back in to

8 compliance, they do have an option of petitioning

9 our hearing board for a variance from our rules.

10 If that was granted there would be conditions on

11 the length of the variance and what they would

12 have to do.

13 The variance would only be granted if

14 there was cause why they could not come back into

15 compliance. Otherwise, if they continue out of

16 compliance each day can be viewed as a separate

17 violation. Typically for a construction activity

18 of this sort, that's not an ongoing thing, I don't

19 see us going towards an order of abatement, simply

20 because of the time frames involved.

21 It's a lengthy proceeding to get to the

22 order of abatement.

23 HEARING OFFICER VALKOSKY: When do you

24 anticipate the district will issue its ATC?

25 MR. SWANEY: Assuming that the

1 preliminary decision goes out on Thursday, the
2 newspaper notice probably would not happen until
3 Monday, it would be at least 30 days after that
4 day.
5 HEARING OFFICER VALKOSKY: And that 30
6 days would be a comment period?
7 MR. SWANEY: A 30 day public comment
8 period, as required by our rules.
9 HEARING OFFICER VALKOSKY: Is it your
10 opinion that compliance with Regulation 8 would
11 sufficiently, would constitute sufficient
12 mitigation to reduce PM-10 impacts to a level
13 considered less than significant?
14 MR. SWANEY: While that is the purpose
15 of Regulation 8, to minimize the fugitive dust
16 emissions, since we have not done a CEQA analysis
17 on the construction impacts I don't know if I'm
18 prepared to say that it fully satisfies CEQA
19 mitigation.
20 HEARING OFFICER VALKOSKY: Okay. Did
21 you hear the discussion earlier about certain at
22 least hypothetical exemptions to Regulation 8?
23 MR. SWANEY: Yes.
24 HEARING OFFICER VALKOSKY: In your
25 opinion, would any of that apply to the project,

1 any of the exemptions?
2 MR. SWANEY: I am not an expert in
3 Regulation 8, that falls to our compliance
4 division. I have a feeling that, because of the
5 size of the project, they probably will not enjoin
6 any of the exemptions, but I suppose it's
7 possible.
8 HEARING OFFICER VALKOSKY: Possible but
9 not probable, is that a fair way to look at it?
10 MR. SWANEY: That would be my statement,
11 yes.
12 HEARING OFFICER VALKOSKY: Ms. Warren,
13 do you have any questions for Mr. Swaney? Just
14 real quick, while they're thinking, Mr. Swaney.
15 Would imposition of any of the measures proposed
16 by staff in conditions one through six be contrary
17 to or frustrate compliance with any district
18 rules?
19 MR. SWANEY: Based on my limited
20 knowledge of those conditions, since I've only
21 briefly glanced at them, I didn't see anything
22 that immediately jumped out at me regarding that.
23 HEARING OFFICER VALKOSKY: Okay, thank
24 you. Ms. Warren, do you have anything?
25 MS. WARREN: Yes, just one question.

1 And that would be, do you believe that Regulation
2 8 is being designed to prevent nuisance, is not
3 designed to protect the public health?
4 MR. SWANEY: No, it is designed to
5 protect public health, as are all of the rules of
6 the district.
7 COMMISSIONER BOYD: Yes, I've got a
8 question. Back to the document that Mr. Sarvey
9 submitted that was the basis of discussion. I
10 interpreted the whole intent of that was to
11 counter the staff's comment that SCONOX was not
12 technologically feasible.
13 And I think he put this in as a possible
14 indication that the district had found it as
15 technologically feasible. When you respond to the
16 questions that were just here earlier, would you
17 indicate also in your submittal whether or not the
18 district feels that SCONOX is technologically
19 feasible for --
20 MR. SWANEY: I can address that right
21 now, if you like.
22 COMMISSIONER BOYD: I would like.
23 MR. SWANEY: When we are doing a best
24 available control technology evaluation, we know
25 that SCONOX is a technology that's out there. We

1 have an option of whether or not we say it's
2 technologically feasible, and then determine if
3 it's cost-effective in any given situation.
4 Or we can make a finding that it's not
5 technologically feasible. Instead of making that
6 finding that it's not technologically feasible,
7 which I think is a case that can be made -- and
8 I'm not going to disagree with the staff on that
9 -- what the district has done is say that it's
10 technologically feasible, so that we're not in a
11 position of saying that it can't be done.
12 But showing that it is not cost-
13 effective for projects based on the cost involved
14 in getting the reductions from SCONOX. And in
15 numerous cases we have done just that. We've done
16 the cost-effectiveness analysis. We've done that
17 for this proceeding also, so that will be in our
18 preliminary decision, and found SCONOX to not be
19 cost-effective, and therefore not required.
20 Now, like I say, one more think about
21 the SCONOX technology. While it is true that they
22 have no ammonia emissions, you do have to do some
23 onsite regeneration, which requires the generation
24 of hydrogen gas. So there are some other
25 potential environmental effects from it that seem

1 to never be brought up in these proceedings.
2 But I did want to menton that there are
3 other things that have to be looked at when
4 dealing with SCONOX.
5 COMMISSIONER BOYD: Of course we're
6 looking for hydrogen these days. And one other
7 comment I would make, based on the not so tongue-
8 in-cheek comments I made earlier about whether Reg
9 8 is or is not protective of the public health.
10 And I'm glad that it was clarified a moment ago
11 that Reg 8 is not just a nuisance regulation, it
12 is intended to protect the public health.
13 This whole debate tonight is just an
14 indication to me of a dilemma I think that the air
15 quality community is going to have to wrestle with
16 here pretty soon, as to, in dealing with power
17 plant siting cases and what-have-you, because this
18 is getting very laborious sitting through some of
19 these hearings and having extreme disagreement
20 over what does and doesn't protect the public
21 health.
22 And I think we just need to take a
23 message back to your district that if the valley
24 is going to be the site of more power plants,
25 sooner rather than later we need to wrestle with

1 these air quality issues and differences of
2 opinion, and hopefully resolve them, and not have
3 to have such protracted discussions as this.
4 But that's just kind of notice to
5 everybody here that this issue has to be dealt
6 with and doesn't really reflect on this particular
7 hearing at the moment. It's something on the
8 horizon that's beginning, or has been concerning
9 me for quite some time.
10 But, you know, when we imply that you're
11 not being protective with the public health, I
12 would not take that too lightly if I was sitting
13 in the audience. So there is a dilemma here.
14 HEARING OFFICER VALKOSKY: Mr.
15 Westerfield -- I'm sorry, Ms. Warren?
16 MS. WARREN: No questions.
17 HEARING OFFICER VALKOSKY: Mr.
18 Westerfield?
19 MR. WESTERFIELD: No questions.
20 HEARING OFFICER VALKOSKY: Mr. Sarvey?
21 MR. SARVEY: Yes, I just had one
22 question. Mr. Swaney, in order for the applicant
23 to qualify for an interpollutant offset ratio,
24 does the Applicant have to demonstrate that
25 there's no other PM-10 offsets available in order

to substitute SO2 for PM-10?

MR. SWANEY: No. Our district rules specifically allow interpollutant offsets.

MR. SARVEY: Thank you.

HEARING OFFICER VALKOSKY: Anything else?

COMMISSIONER BOYD: I would comment that we scheduled this hearing to start this afternoon and to run into evening to accommodate the public. And I think after 6:00 we lost audience, we didn't gain audience. I'm going to be hard pressed to try this again in the near future, and start earlier in the day, and so on and so forth.

So I appreciate the patience that everybody's had, and I hope everybody stays awake as they drive home tonight.

HEARING OFFICER VALKOSKY: Is there anything further on the topic of air quality? Ms. Kaefer, please come on up.

MS. KAEFER: I apologize for my neighbors that aren't here.

COMMISSIONER BOYD: I do believe it was your idea.

MS. KAEFER: I know. And I said if nobody shows up I'm going to look bad. And I said

"no, it's okay." I have, my number one issue -- actually, Mr. Walters, I really like all of his ideas for the more stringent dust requirements. He's on my side I think.

I need to take exception to Mr. Rubinstein's clarification on the distance that the residents are not sensitive receptors, that a hospital or a school or whatever is. I'm a real sensitive receptor, extremely. And dust is probably the next issue, next to noise, because of my location.

And somebody asked me earlier -- and I'm PK on the chart -- but I don't know where it says that we're not sensitive receptors, but in the -- let me find it here -- in the draft initial study, on page 11-3, under the city of Ripon municipal code, the bottom sentence there says "the project site is not adjacent to residential uses, therefore construction noise is only of concern in the city of Ripon."

Which is discernible -- actually this is a noise issue, but we go back to noise or we go back to this. We are certainly -- we may not be adjacent but we're still real close enough that we are absolutely affected by this.

And I want to say -- if you can see on the chart where the ballfield is -- we have two things that would happen when they have softball games. They take a tractor and they run little circles around, and those are really little areas in there.

And everybody in the neighborhood has to close all their doors and windows, and we have one neighbor who is asthmatic, and can't breathe just from that little bit of dust. And that's just a little bitty ballfield. And now we're talking about a great big space that I understand you're saying is a small space as compared to what the regs are.

But it's a really big space as there's construction going on for months, as I understand it, it's going to take this time frame, I'm going to get dust. I hope I'm not. But if I am is that something that I can address with air quality, because what I'm hearing here, and I'm seeing three alternatives, and I don't know that -- did we really pick one tonight?

I see all these lines drawn through, and I see and hear different things about which one we're going to use and parts of it, and nowhere is

1 the public involved in your estimations and what
2 we're looking at for regulations. And I guess
3 there's a couple of questions to each of you, I
4 don't know.
5 MR. WALTERS: I'm trying to discern what
6 the question was exactly, but I guess from staff's
7 point of view we have one proposal, the Applicant
8 has three. You know, we consider our one proposal
9 really only different from theirs in two aspects.
10 One being what we consider to be a very
11 important aspect, and we do think it is necessary
12 not to make the change that they are requiring,
13 specifically due to the local residents in the
14 area.
15 MS. KAEFER: So you are going to take
16 into consideration that we are residents, not
17 just --
18 MR. WALTERS: Well, I think staff has.
19 When we identified the maximum concentration at 20
20 micrograms, that was not -- what we call a
21 sensitive receptor -- as it was defined for that
22 purpose later in the document. It was at the
23 maximum residential receptor.
24 MR. RUBENSTEIN: Did you want me to jump
25 in as well?

1 MS. KAEFER: Sure.

2 MR. RUBENSTEIN: A couple of things.

3 First of all, I certainly didn't mean to suggest

4 that nearby neighbors, such as yourself, are not

5 sensitive. The term sensitive receptor is just a

6 legal term, and the discussion at the time was

7 getting a little confused.

8 Second of all, I want to assure you

9 that, no matter which alternative the Committee

10 picks, the dust will be very efficiently

11 controlled, and if you have any concerns you can

12 contact either the Energy Commission staff

13 compliance manager, or the air district.

14 Either one will be able to help you

15 about any concerns about dust during construction.

16 Any of those alternatives.

17 MS. KAEFER: How will we know who to

18 contact and how? Are you going to have little

19 forms out, because we already know the city is

20 useless for giving us anything. So can we get

21 them from you, or who would we get them from?

22 MS. WARREN: My response to your

23 comments is in my final initial study I provided

24 the phone number to Ila Lewis, who is the

25 compliance project manager, and the phone number

for the district for complaints, the specific complaint number they have on their website. So either of those phone numbers will get you directly to who you need to talk to.

MS. KAEFER: And then lastly -- I know everybody wants to get out of here -- do I have to go back and sit down, or can I do, because it's kind of, it's back to the noise issue, but because of the paragraph that I just read --?

HEARING OFFICER VALKOSKY: Why don't you just stay right there. You don't have any comments on air quality, we'll close out air quality, and then we'll just take your general public comments.

Are there any more comments on air quality? Seeing none, we'll close the record on that topic and just call for general public comment. Ms. Kaefer?

MS. KAEFER: Back to that same paragraph, on the draft initial study, where it says "the project site is not adjacent to residential uses, therefore construction noise is only a concern in the city of Ripon for natural gas pipeline."

The noise, as we all know, is really a

1 big issue to us. And what this says then, on the
2 errata, "local LORS do not set a limit on the
3 magnitude of construction noise, but merely limit
4 the hours of the day during which noisy
5 construction work may appear."
6 So from seven to seven, as I read this,
7 they can make any amount of noise they want to
8 make, and we can't say a word, because that's what
9 it says here.
10 HEARING OFFICER VALKOSKY: I think
11 that's what that is saying, is, if that happens it
12 complies with the local ordinance.
13 MS. KAEFER: Well, it says that there
14 isn't a local ordinance with the magnitude of the
15 noise.
16 HEARING OFFICER VALKOSKY: Right. The
17 local ordinance controls only the time during
18 which that noise happens.
19 MS. KAEFER: So do we have no one to say
20 anything about the amount of noise coming from
21 construction?
22 HEARING OFFICER VALKOSKY: I don't know
23 the answer right now based on staff's proposed
24 conditions.
25 COMMISSIONER PERNELL: If I might

1 suggest, there is typical construction noise that
2 is common around building, whether it's a power
3 plant or an apartment complex. So there's going
4 to be some noise.
5 Normally, because of the health and
6 safety of workers on construction sites, they try
7 to limit the noise as well, and even have earplugs
8 in some instances where you're driving piles.
9 But I wouldn't anticipate that there's
10 going to be an extraordinary amount of
11 construction noise that is not typical of the type
12 of construction that's going to be going on.
13 One of the, I think what our Hearing
14 Officer is saying, Mr. Valkosky, is that there are
15 certain times a day that construction activity can
16 take place.
17 For example, if you are downtown you
18 can't start real early, or if you're adjacent to a
19 neighborhood you can't start real early in the
20 morning or go late at night where you're waking up
21 people and causing them some discomfort in terms
22 of their private time.
23 So there is a -- I wouldn't worry so
24 much about how much construction noise there's
25 going to be. I think limiting it to daylight

1 hours and regular time when people are either up
2 gone to work or moving around is, or at least has
3 been in the past, sufficient for, to address some
4 of the concerns of the neighborhood.
5 So that one I wouldn't worry too much
6 about. So with the dust and the compliance I
7 think we have, you have a handle on in terms of
8 who to call, and certainly I would recommend you
9 do that if it gets to be a health problem.
10 MS. KAEFER: I remember -- and I don't
11 know at what point it was, there was some
12 discussion over the number of hours you're allowed
13 for construction, and they had put a limitation
14 and then you guys asked for something, and I never
15 heard the final outcome. Are you allowed from
16 seven to seven, is that right?
17 MR. RUBENSTEIN: Yes.
18 MS. KAEFER: So it's just following the
19 LORS thing?
20 MR. RUBENSTEIN: Right.
21 COMMISSIONER PERNELL: And that's pretty
22 typical.
23 MS. KAEFER: Okay. I have one more
24 thing, and I have to find it. There was something
25 you just changed from 50 to 100 -- who knows what

1 I was talking about?

2 HEARING OFFICER VALKOSKY: Horsepower.

3 MS. KAEFER: The horsepower on the

4 motor, and --

5 COMMISSIONER BOYD: Nothing got changed.

6 There was a couple of proposals that they're still

7 debating.

8 MS. KAEFER: Okay, well on the little

9 scratch from 50 to 100, does that make a noise

10 difference?

11 MR. WALTERS: No. Separate issue.

12 MS. KAEFER: Okay, that's it. Thank

13 you.

14 HEARING OFFICER VALKOSKY: Thank you.

15 Any other comment from anyone present? Okay, the

16 final issue, at least that I have, is the briefing

17 period. We're going to try for an expedited

18 transcript on this case, which would probably get

19 us the hard copy in the middle of next week.

20 Assuming that it's available by the

21 10th, what I would propose to do is have parties

22 file briefs on the 26th. Does that create any

23 problems for anybody?

24 MS. WARREN: We'll make it work.

25 HEARING OFFICER VALKOSKY: Mr.

1 Westerfield?

2 MR. WESTERFIELD: Yes, I think as far as

3 we're concerned that's a little fast. We had

4 originally called for 21 days, three weeks, and

5 obviously that's a little over two weeks. So

6 I--

7 HEARING OFFICER VALKOSKY: That's 16

8 days. Okay, how about the end of the month. Ms.

9 Warren?

10 MS. WARREN: That obviously would work

11 with schedules on our end a little bit better.

12 But we would make either work.

13 HEARING OFFICER VALKOSKY: Okay, but you

14 would prefer the 30th? Okay. That gives us a

15 little flexibility and availability to transcript

16 too. Mr. Westerfield?

17 MR. WESTERFIELD: Well, I think, again,

18 if the transcripts don't come out --

19 HEARING OFFICER VALKOSKY: I'm assuming

20 the transcript is out on the 10th or 11th. It's

21 one of the things -- that's the assumption.

22 MR. WESTERFIELD: I think we would like

23 at least three weeks to prepare these briefs after

24 the transcripts come out. That's our request.

25 HEARING OFFICER VALKOSKY: Mr. Sarvey,

1 you might as well weigh in on this too.

2 MR. SARVEY: Well, I've got a 60 hour a

3 week job, and TESLA coming up and a couple other

4 things, so I'd like as long as possible. But I'll

5 comply with whatever orders are issued by the

6 Committee.

7 HEARING OFFICER VALKOSKY: Okay. What

8 I'm going to do, I think the Committee will

9 reserve decision on that. We'll check tomorrow as

10 to when the transcript is likely to be available.

11 The Committee will then issue a briefing order.

12 COMMISSIONER BOYD: I want to make a

13 couple of observations here. This is an atypical

14 process, not a typical process, and I'm not quite

15 sure what's appropriate and what's not

16 appropriate.

17 This seems like an ordinary power plant

18 siting case, except I know it's not, it's an

19 application for an exemption. Therefore, there

20 are differences. And knowing what the criteria is

21 to grant that I'm a little troubled to hear, over

22 a couple of things I've heard tonight, about

23 enforceability, or who's going to enforce things.

24 Both with regard to noise, the visual,

25 the landscaping discussion -- there's probably

1 others. There's an awful lot of consternation
2 about what the city, upon whom some responsibility
3 falls, is willing to do and is capable to do, and
4 I'm worried about that, and I'm suggesting that
5 people think about that a little bit.
6 And if the city of Ripon is interested
7 in this facility, maybe it would behoove them to
8 send a signal in some form, even a resolution or
9 something, that they would enforce the
10 responsibilities that will end up with them as a
11 result of what's going on in this process.
12 Because without that, it leaves us with
13 a dilemma, I think. Anyway, that's just a
14 personal observation.
15 HEARING OFFICER VALKOSKY: Anything
16 else?
17 COMMISSIONER BOYD: I have nothing else.
18 HEARING OFFICER VALKOSKY: With that,
19 I've --
20 MS. WARREN: Mr. Valkosky, just before
21 we close everything down, the evening has dragged
22 on. I must confess that I have somewhat lost
23 assurance in my own mind that I have moved into
24 evidence all of our exhibits as we've gone along,
25 and would like to close the loop on that issue, if

1 that's acceptable.

2 My understanding is that, as we've gone

3 through, we've covered exhibits one through 21,

4 exhibit 25 and exhibits 27 through 36. And if

5 we've missed any of those I would like to move

6 them in. They've all been referenced in the

7 testimony that has been given here today.

8 HEARING OFFICER VALKOSKY: Is there any

9 objection Mr. Westerfield?

10 MR. WESTERFIELD: No objection.

11 HEARING OFFICER VALKOSKY: Mr. Sarvey?

12 MR. SARVEY: No objection.

13 HEARING OFFICER VALKOSKY: The blanket

14 motion is granted.

15 MS. WARREN: Thank you. And then, I've

16 been asked to please remind everybody to turn your

17 badges in. If you'd like to give them to Mr. Hill

18 there, or just set them on the table, we will take

19 care of them from there for you. Thank you all.

20 HEARING OFFICER VALKOSKY: Thank you.

21 And with --

22 COMMISSIONER BOYD: And those of us who

23 got in here without a badge, can we get out?

24 HEARING OFFICER VALKOSKY: Thank you for

25 your attendance.

1 (Thereupon, at 11:26 p.m., the hearing adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of September, 2003.