

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for Small Power Plant Exemption) 04-SPPE-01
Riverside Energy Resource Center)

)

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

THURSDAY, DECEMBER 9, 2004

10:05 A.M.

Reported by:
James A. Ramos
Contract No. 170-04-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS

Jackalyne Pfannenstiel, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER and ADVISERS PRESENT

Gary D. Fay, Hearing Officer

Tim Tutt, Adviser

STAFF and CONSULTANTS PRESENT

James W. Reede, Jr., Project Manager

Lisa DeCarlo, Staff Counsel

William Walters
Aspen Environmental

APPLICANT

Allan J. Thompson, Attorney

Robert B. Gill, Principal Electrical Engineer
City of Riverside

Dave Tateosian, Project Manager
Power Engineers, Inc.

INTERVENORS

Marc D. Joseph, Attorney
Suma Peesapati, Attorney
Adams, Broadwell, Joseph & Cardozo
California Unions for Reliable Energy

ALSO PRESENT

Kevin Dayton
Golden Gate Chapter
Associated Builders and Contractors of California

Matt Tennis
Associated Builders and Contractors of California

I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Background and Overview	2
Response of Parties	4
Applicant	4,28
CEC Staff	10,24,28
Intervenor California Unions for Reliable Energy	15
Public Comment	31
Matt Tennis Associated Builders and Contractors of California	32
Kevin Dayton Golden Gate Chapter Associated Builders and Contractors of California	38
Response to Public Comment	41
California Unions for Reliable Energy	41
Closing Remarks	43
Adjournment	44
Reporter's Certificate	45

P R O C E E D I N G S

10:05 a.m.

HEARING OFFICER FAY: Good morning, everybody. We're on the record. This is a Committee Conference to receive comments on the Committee's proposed decision on the small power plant exemption and mitigated negative dec for the Riverside Energy Resource Center.

I'll just, to move things along, note that to my left is Presiding Commissioner Jackie Pfannenstiel; to her left is Associate Commissioner, Committee Member John Geesman; to my right is Tim Tutt.

We have Lisa DeCarlo representing the staff. And Allan Thompson for the applicant. And Marc Joseph and Suma Peesapati for CURE, the intervenor.

And are there any other parties here, or any other people here, members of the public?

MR. DAYTON: Yes, is there a public comment opportunity here?

HEARING OFFICER FAY: There will be shortly afterwards. Do you want to identify yourself?

MR. DAYTON: I'm Kevin Dayton with

1 Associated Builders and Contractors.

2 HEARING OFFICER FAY: Okay. And I see
3 Matt Tennis --

4 MR. TENNIS: Matt Tennis.

5 HEARING OFFICER FAY: -- just walked in,
6 okay. So we'll have some comment. And we did
7 receive, I'll just mention we received written
8 comments from Matt Tennis and also from Gurumantra
9 Khalsa for the Friends of Riverside Hills. And
10 these written comments will be entered in the
11 record.

12 What we'd like to do, first of all,
13 today's conference was noticed by public notice
14 issued November 15th. As I mentioned to the
15 parties previously, we want to hear from each
16 party on their reaction to the Committee's
17 decision. And we ask them not to repeat what they
18 filed in writing. They may supplement it if they
19 feel the need.

20 However, we do want to hear their
21 detailed comments and reaction to the written
22 comments filed by the other parties. And then we
23 will accommodate public comment at the end. And
24 the order that we'll proceed is to first hear from
25 the applicant entirely; and then hear from the

1 staff; and then from CURE; and then take public
2 comment.

3 And just as a reminder, the Commission
4 intends to take up the Committee's proposed
5 decision next Wednesday at the business meeting on
6 December 15th. And that begins at 10:00 a.m. And
7 it's item number 5, I believe, but the other items
8 are very brief, so it will probably occur around
9 10:15 or so.

10 Okay. Any questions before we proceed?

11 MR. THOMPSON: This is Allan Thompson.
12 Mr. Fay, we did not receive the filings or letters
13 or whatever they were from the Associated Builders
14 or the Riverside Hills. I assume that this was
15 not formal comments filed, but letters that were
16 docketed or --

17 HEARING OFFICER FAY: They apparently
18 did not serve the proof, and I got it through
19 Docket. And I'd be glad to share copies of both
20 of those with you. Mr. Tennis is here; I assume
21 he'll touch on some of the points he made. But
22 let me just pass may copies around.

23 Did you see them, Mr. Joseph?

24 MR. JOSEPH: No, I didn't.

25 HEARING OFFICER FAY: No.

1 MS. DeCARLO: Staff received the
2 comments.

3 HEARING OFFICER FAY: Staff received
4 comments because of the docket distribution. So,
5 why don't you let each of the attorneys look at
6 that.

7 MR. THOMPSON: I guess my only question
8 is whether or not there is anything in substance
9 here that we need to respond to --

10 HEARING OFFICER FAY: You do not need to
11 respond to these.

12 MR. THOMPSON: Okay.

13 HEARING OFFICER FAY: My concern is to
14 have you respond to the other parties.

15 MR. THOMPSON: Got it.

16 HEARING OFFICER FAY: Okay.

17 MR. THOMPSON: Thank you.

18 HEARING OFFICER FAY: Unless the
19 Commissioners want to say something? All right,
20 let's go ahead with the applicant.

21 MR. THOMPSON: Thank you. First of all,
22 we want to commend the Committee. We recognize
23 the other projects that you all are assigned to
24 and working very hard on. And we appreciate the
25 time and effort. We know the state's electricity

1 bill probably went up as the lights were burning
2 at night and weekends around here. And we
3 appreciate that effort.

4 First of all, with regard to applicant's
5 comments, I will not reiterate them, but would
6 like to highlight two things. One is with regard
7 to the avigation easement, we have had -- we did
8 not address it. One of the reasons is it's kind
9 of in a state of flux within the City of
10 Riverside.

11 One word that we received back from the
12 City Attorney's Office is we don't need to give
13 ourselves an easement; followed a day later by,
14 sure, we can give ourselves an easement. So,
15 given that, we did not address it.

16 I just want to point out that we will
17 follow the Commission's directive but I wanted to
18 kind of note the concern on the part of the City.

19 The second is --

20 HEARING OFFICER FAY: Let me interrupt
21 you. Is the FAA involved in that? Did they have
22 to approve --

23 MR. THOMPSON: Not the avigation
24 easement. The FAA will be involved in what I will
25 address right now, which are the lights.

1 HEARING OFFICER FAY: Okay.

2 MR. THOMPSON: My understanding is that
3 staff has a condition of certification with regard
4 to the lights on the poles that basically require
5 the airport to tell us what they would like. And
6 we're fine with that.

7 Our nervousness with the lights comes
8 from wanting to comply with what the airport wants
9 precisely. Because I suspect there may be an
10 opportunity to mislead pilots as well as lead
11 pilots, and we want to do exactly what they want.

12 So, we believe that although we put in a
13 comment to that effect, the effect of making sure
14 that the lights were in the right place, staff
15 picked it up and is going to insure that we do
16 that. And we're fine with that.

17 Third and lastly, we noted in CURE's
18 comments the request that the Committee require
19 the applicant to fence off or otherwise block
20 public access to those areas within viewing
21 distance of the site that CURE feels are within a
22 zone that could be impacted by project emissions.

23 Those would be along a road that is
24 being closed by the City. I think the correct
25 term is abandoned by the City, --

1 MR. GILL: Vacated.

2 MR. THOMPSON: -- vacated by the City,
3 at any rate. And we will agree to do that if the
4 Committee believes that that is something that you
5 would like to see.

6 HEARING OFFICER FAY: Okay. Let me
7 explore that just for a minute. I think the
8 request was, and correct me if I'm wrong, Mr.
9 Joseph, but to create some kind of exclusion along
10 the isopleths described in exhibit 27, figures 1B
11 and 2B, for the, I guess, the 50 grams per cubic
12 centimeter and for the 1 gram per cubic
13 centimeter, those two lines. Obviously the outer
14 line envelopes the inner line.

15 Is that a problem in any way? It looks
16 like an uninhabited area. And CURE was not
17 specific about what they were requesting in terms
18 of exclusion. Whether it's notice, or physical
19 exclusion, or what.

20 But I would like to explore that so we
21 have a sense of what the parties can live with.
22 Maybe I'll just ask you, Mr. Joseph, is there a
23 recommendation? Is signage sufficient?

24 MR. JOSEPH: Thank you, Mr. Fay. The
25 key, I think, is some form of restricting public

1 access. We don't think it has to be a fence. And
2 it's -- I mean my recollection of the area with
3 inside the isopleth also is that there's nothing
4 there. It's just an open field. And if the road
5 is inaccessible, then it would be difficult for
6 anyone to get to any of the other area there.

7 In particular, in the written comments
8 that we filed, we cited the approximately three-
9 week period of the heavy earthmoving. After we
10 filed our comments, of course, then we read
11 staff's comments where they focused on the three-
12 or four-day prediction of moving the topmost layer
13 of soil, which is the highest silt content layer.
14 And the time period when the impacts which exceed
15 the ambient air quality standard are derived from.

16 And so I think our request is actually
17 less than what appears in our written comments,
18 having gone back to the record and focused on that
19 particular issue.

20 And it really is, I think the way to
21 craft it would be to have the applicant agree to
22 restrict public access during the three- or four-
23 day period when the topmost soil is removed, as
24 the witness from the construction contractor
25 testified.

1 And if we're only talking a handful of
2 days, it may be that simply having a person who is
3 responsible for insuring that there's nobody
4 hanging around inside the red line will do it.

5 HEARING OFFICER FAY: Okay. I'm not
6 familiar with the site, but is it your impression,
7 asking the applicant now, that closing the road
8 would essentially close that area within the red
9 line?

10 MR. THOMPSON: There are a number of
11 things going on out there. There's the closing of
12 the road; there's storage of old vehicles --

13 MR. GILL: Yeah, used cars.

14 MR. THOMPSON: -- used cars; and there
15 are some ongoing concerns. There's a body shop, I
16 think, located there.

17 MR. GILL: I don't think they're within
18 the isopleth --

19 MR. THOMPSON: Okay. Our contemplation
20 would be that we would put up -- we would have the
21 authorities put up yellow tape restricting access,
22 public access. You know, we don't want to
23 restrict the ability of employees to go into their
24 jobs. But that would be our anticipation of this,
25 that we could do that. That's not a problem.

1 HEARING OFFICER FAY: Does that sound
2 reasonable, Mr. Joseph?

3 MR. JOSEPH: That sounds very
4 reasonable.

5 HEARING OFFICER FAY: All right. And so
6 we have the applicant's offer and intervenor's
7 acceptance of a solution here to restrict access
8 during the peak PM10 or particulate period --

9 MR. THOMPSON: Yes.

10 HEARING OFFICER FAY: -- when the
11 earthmoving is going on. Great. That's progress.
12 Anything further, Mr. Thompson?

13 MR. THOMPSON: I think that's it for us,
14 thank you.

15 HEARING OFFICER FAY: Okay. All right.
16 Ms. DeCarlo.

17 MS. DeCARLO: In response to this
18 particular issue?

19 HEARING OFFICER FAY: Well, and the
20 staff's position, in general.

21 MS. DeCARLO: We're not opposed to such
22 measures, however we would like to state that we
23 don't believe that they're mandated by the
24 potential for impacts.

25 The memo provided by CURE isn't really

1 relevant to the issue we're concerned with
2 construction impacts. I believe that memo simply
3 addresses -- I believe it's EPA's procedure
4 protocol to address operational impacts and not
5 construction impacts.

6 Also we don't believe that CEQA
7 necessitates restricting public access, because we
8 did find, both applicant and staff concluded that
9 there would be no significant impact from
10 construction of the project.

11 That being said, of course we do not
12 oppose the applicant to agreeing to such measures.

13 HEARING OFFICER FAY: Okay. Anything
14 further in your comments that you'd like to
15 highlight or react to comments of the other
16 parties?

17 MS. DeCARLO: With regard to the
18 applicant's comments we agree the applicant
19 identified previously their concern over the
20 obstruction lighting measure containing condition
21 of certification Trans-2. As it stands now, the
22 condition mandates certain measures be taken for
23 obstruction lighting.

24 If the applicant would like more
25 flexibility to discuss measures appropriate to the

1 project with the airport officer -- director, then
2 we would just suggest a simple statement be added
3 at the beginning of the condition stating if the
4 City of Riverside Airport Director determines it
5 is necessary, comma, and then following the
6 specific measures identified. And we can provide
7 that to you in writing.

8 MR. THOMPSON: Pardon me. Would there
9 be a verification that we would submit something
10 from the airport to the staff?

11 MS. DeCARLO: I believe the current
12 verification could stand. It states that at least
13 30 days prior to start of transmission line
14 mobilization the project owner shall provide
15 supporting documents on how the project plans to
16 comply with staff lighting and marking
17 requirements.

18 MR. THOMPSON: Good.

19 HEARING OFFICER FAY: So, does that make
20 any difference, adding that flexibility, or is it
21 just fine the way it is?

22 MR. THOMPSON: We would support staff's
23 phrase added to the condition of certification --

24 HEARING OFFICER FAY: Okay.

25 MR. THOMPSON: -- and the existing

1 verification works fine with us.

2 HEARING OFFICER FAY: And that's on
3 condition Trans-2?

4 MS. DeCARLO: Yes. And we had included
5 the initial requirements at the behest of the
6 airport director. So, if the airport director
7 ultimately decides that upon discussion with the
8 applicant that different measures are appropriate,
9 then that is fine with staff.

10 HEARING OFFICER FAY: Could you get us
11 that language by tomorrow?

12 MS. DeCARLO: Yes, definitely.

13 HEARING OFFICER FAY: Okay. Anything
14 else --

15 MS. DeCARLO: Just a --

16 HEARING OFFICER FAY: -- from applicant
17 or from CURE that --

18 MS. DeCARLO: -- general statement about
19 the excisions of certain discussion from the
20 proposed decision. We don't feel that it's
21 warranted if there are specific concerns with
22 errors contained in the proposed decision, then
23 definitely those errors should be corrected.

24 However, we don't feel that removing a
25 discussion that the Committee felt was relevant in

1 the first place is necessary.

2 HEARING OFFICER FAY: Anything further?

3 MS. DeCARLO: No, that's all. I can go
4 into specific reasoning behind each request by
5 CURE, if you feel it's necessary.

6 HEARING OFFICER FAY: Well, now is the
7 time and place. Let's hear what you have to say.

8 MS. DeCARLO: Okay. Well, originally
9 their first request is that the sentence
10 concerning CURE's participation in Energy
11 Commission matters be stricken.

12 While staff doesn't oppose their
13 proposed language change to CURE's members, the
14 description of CURE's membership, we do believe
15 that in an introduction section past history of
16 CURE's participation in Energy Commission
17 proceedings is relevant to provide the context for
18 which this decision has been handed down.

19 HEARING OFFICER FAY: Okay, and --

20 MS. DeCARLO: With regard --

21 HEARING OFFICER FAY: -- we talked about
22 the fenceline issue. What about the issue that
23 begins on page 6 of CURE's filing, standard for an
24 SPPE?

25 MS. DeCARLO: Right. Staff believes

1 CURE's concern, I believe, was that it muddied the
2 issue of what standard the Committee ultimately
3 relied upon. We believe that the record is
4 explicitly clear, the decision is clear that the
5 Committee applied the fair argument standard.

6 We believe that a discussion of CEQA and
7 practical implications and the purposes behind
8 CEQA is relevant to the ultimate context within
9 which this decision has been handed down.

10 HEARING OFFICER FAY: Okay, anything
11 further?

12 MS. DeCARLO: No, that's all.

13 HEARING OFFICER FAY: All right. Mr.
14 Joseph.

15 MR. JOSEPH: Thank you, Mr. Fay,
16 Commissioners. The proposed decision says that
17 CURE is an experienced and knowledgeable
18 participant. We appreciate the compliment. We
19 also hope that it's fair to say that we are not
20 naive, but instead are perhaps pragmatic and
21 creative.

22 Obviously, you know, we don't agree with
23 the conclusions of the proposed decision; and we
24 don't agree that the proposed decision correctly
25 applied the fair argument standard. And while we

1 would hope for a last minute epiphany, we aren't
2 expecting it.

3 So, having reviewed the proposed
4 decision we asked ourselves, you know, what are
5 the minimum changes that are necessary to put us
6 in the position to be able to live with this
7 decision. And we identified three.

8 First, you know, with respect to the
9 description of CURE and the other labor-related
10 language, it sounds like we have unanimous
11 agreement that CURE should be described as
12 described in the petition to intervene. That's
13 not an issue of dispute.

14 The issue of dispute is the sentence
15 that says, "For cases in which an applicant has
16 not previously agreed to enter a project labor
17 agreement for construction and operation of its
18 project, CURE has taken an active and aggressive
19 role in the siting case, challenging the adequacy
20 of environmental review and potential mitigation
21 measures."

22 And we request that sentence be deleted.
23 When, where and why CURE participates was not a
24 subject of any part of the evidentiary hearing.
25 There is no evidence in the Commission's record

1 about that subject. It dips into issues that are
2 not part of the decision of whether this project
3 qualifies for a small power plant exemption or
4 not.

5 And the sentence is likely to create
6 unnecessary controversy. And it's not accurate.
7 And there is no record upon, you know, for use
8 to -- there's no basis for either making the
9 statement or correcting the statement because the
10 evidentiary hearing is closed and there's no
11 evidence at all about CURE.

12 And we strongly request that that
13 sentence be deleted. It's simply unnecessary and
14 controversial and wrong.

15 One other paragraph on a labor-related
16 issue that we've asked to be deleted is on page 4
17 of the proposed decision, which recounts the
18 comment, not testimony, but a comment of Tom
19 Evans, the Director of Riverside Public Utilities,
20 about CURE and about labor issues.

21 And again, this was not testimony. It
22 was not subject to cross-examination. I didn't
23 have an opportunity to ask him about some of the
24 statements, a couple of which appear here which
25 are not actually accurate.

1 The decision would not be harmed in the
2 slightest if this paragraph were gone because, you
3 know, any labor relations between the City and any
4 unions that are members of CURE is not part of
5 your decision about whether the fair argument
6 standard has been satisfied.

7 If you're interested I can give you some
8 more detail about the errors in here, but I would
9 simply ask that the sentence be -- the paragraph
10 be deleted as unnecessary.

11 And I would note that at least so far I
12 haven't heard any objection from the City about
13 that.

14 The second category of things we wanted
15 to address and ask to be changed, was you said --
16 first of all, the Commission has said in two prior
17 decisions, we apply the fair argument standard
18 under CEQA to determine whether to grant an SPPE.

19 And you said at the beginning of the
20 proceedings in this case that's the standard we're
21 following. And there are several pages of
22 description of the fair argument standard, which
23 we have no objection. It's a fair and accurate
24 recounting of what the fair argument standard is.

25 But then there's this third section

1 which goes in a different direction. It says that
2 small power plant exemptions present unusual
3 circumstances; that the analysis we do is the same
4 as we do in an AFC; that to deny the SPPE would be
5 just to increase paperwork without any additional
6 environmental protection.

7 And so by saying those things you raise
8 a question in the reader's mind, well, did they
9 apply the fair argument standard, or did they say
10 well, it doesn't make any difference whether we do
11 an AFC or an SPPE, so we're just going to go
12 ahead.

13 And I'm not sure that you intend to
14 change what the Commission has decided twice
15 before, that the fair argument standard applies.
16 I don't think you did, because all the rest of the
17 decision marches through issue-by-issue, applying
18 what the Committee believes is the fair argument
19 standard as applies to these facts.

20 So this section sort of sticks out as
21 raising the question for the future, well, you
22 know, is it the fair argument standard or is it
23 something different? Or do we look at how much
24 analysis the staff has done? Or, you know, do we
25 look at how much additional paperwork it would be,

1 or where we are in the proceeding? Or whether the
2 circumstances are usual or unusual?

3 All these other questions that I don't
4 think you really mean to raise for the future.
5 And so I think the decision would stand better for
6 the future without this section, and just stick
7 with the description of the fair argument
8 standard.

9 And the third issue, of course, which
10 the City has graciously agreed to is the
11 restriction of the area. I didn't know how much I
12 should really talk about how important it is that
13 you do this, rather than set off on a path that's
14 different from the rest of the regulatory world
15 out there.

16 We have agreement, and if the decision
17 will be changed, you know, I don't need to take up
18 too much time. But I think, you know, this is an
19 issue which the Commission has never directly
20 addressed before.

21 Nobody has ever raised the distinction
22 between an impact at the fenceline and an impact a
23 little distance away. And so the Commission has
24 never had to decide, well, where is it that we
25 measure. And I think with the mitigation that the

1 City has graciously agreed to do, you don't need
2 to decide that. And you don't need to delve into
3 the last 20 years of regulatory history which have
4 looked at fencelines and restricted public access.

5 I think that's a much wiser direction
6 for you to go so that in the future the Commission
7 has the full flexibility to mitigate all the
8 impacts it finds in future cases without
9 constraining future Commissions to feel like
10 they're bound by some analysis that took place
11 here, which you don't need to get to.

12 And lastly, with respect to the changes
13 requested by both the applicant and staff, of
14 course in the context of this decision we're
15 amenable to all of those with one exception. And
16 we think it's just a small oversight.

17 The applicant -- sorry, the staff asked
18 for one change; it appears on page 2 of their
19 comments. The change on pages 32 and 33 with
20 respect to the 10.4 mcg/cubic meter threshold.
21 Staff asks to insert in the paragraph the phrase,
22 "even assuming a 12-hour construction schedule."

23 And since that sentence says that all
24 parties, including CURE, testified that it would
25 be less than 10.4, we need to point out that, in

1 fact, CURE did not agree that with an eight-hour
2 schedule it would be less than 10.4.

3 Camille Sears testified on page 2 of her
4 testimony that the corrected modeling
5 concentration would be 10.49 with the house
6 located in the right spot. So it would not be
7 accurate to represent that there was unanimous
8 agreement on that.

9 PRESIDING MEMBER PFANNENSTIEL: I'm
10 sorry, Mr. Joseph, what was the number you said
11 that --

12 MR. JOSEPH: 10.49.

13 PRESIDING MEMBER PFANNENSTIEL: 10.49,
14 thank you.

15 MR. JOSEPH: So, slightly above the
16 standard rather than slightly below.

17 PRESIDING MEMBER PFANNENSTIEL: I
18 understand.

19 MR. JOSEPH: The way the proposed
20 decision deals with this is disclaiming the need
21 to follow the 10.4 standard, which gets you where
22 you need to be accurately.

23 HEARING OFFICER FAY: So, your
24 recommendation is just to delete that clause that
25 says, "even assuming at 12-hour construction

1 schedule"?

2 MR. JOSEPH: And actually, to make it
3 really clear, since you've got the "all parties,
4 including CURE" you said at the end of the
5 sentence "will be less than 10.4 mcg/cubic meter
6 at all receptors for an eight-hour construction
7 schedule." That all parties do agree to.

8 And, if I could just mention one other
9 item for your consideration. Someone who reads
10 this decision without the context in which it was
11 made would perhaps come to the conclusion that
12 CURE's witnesses were utterly unqualified and
13 incompetent.

14 And I don't think the Committee believes
15 that. I don't think any of the parties believe
16 that. And we wouldn't mind if the proposed
17 decision said something about the qualifications
18 of CURE's witnesses, while, you know, perhaps
19 saying that their testimony did not satisfy the
20 legal standard, I would hate to see some
21 conclusion about their qualifications or their
22 competence be the result of this decision.

23 With that, I thank you --

24 HEARING OFFICER FAY: I think it
25 stipulates that they were accepted as experts if I

1 recall correctly. So, if not, that's certainly
2 not a problem, since --

3 MR. JOSEPH: Perhaps it's in there, but
4 I didn't -- I don't remember seeing that.
5 Certainly we'll stipulate it on the record.

6 And with that I want to thank the
7 Committee and the Hearing Officer for spending the
8 time and hearing us out, and giving us a fair
9 hearing.

10 HEARING OFFICER FAY: Okay, thank you.
11 And thank you for that clarification on the staff
12 comment. So that covers all your reaction to the
13 other parties?

14 MR. JOSEPH: Yes.

15 HEARING OFFICER FAY: Is there any
16 followup from either staff or the applicant
17 regarding CURE's comments?

18 MS. DeCARLO: Just a small comment on
19 CURE's suggested changes. While we agree that
20 that was a little oversight on our part, there's a
21 concern with adding the eight-hour qualifier to
22 the sentence because the 10.23 mcg number was
23 actually staff's calculation based on the 12-hour
24 schedule.

25 So we don't have a problem eliminating

1 the clause that we suggested be included.

2 However, we would be concerned with adding the
3 eight-hour qualifier to that sentence because it
4 wouldn't apply to the 10.23 figure.

5 HEARING OFFICER FAY: Okay. Why don't
6 you and Mr. Joseph speak after the Committee
7 conference for a few moments and come up with a
8 mutual recommendation for modifying that.

9 MS. DeCARLO: Yes, we can do that.

10 HEARING OFFICER FAY: Because it sounds
11 like there's not a fundamental disagreement.

12 MS. DeCARLO: No.

13 HEARING OFFICER FAY: We just want to be
14 sure we're characterizing correctly.

15 MS. DeCARLO: Right.

16 MR. JOSEPH: Could I just take a stab at
17 tossing out the answer here and maybe we'll be
18 done?

19 If you simply say, rather than will be
20 10.23, will be less than 10.4, you cover all the
21 parties' estimates.

22 MS. DeCARLO: Yeah, sure.

23 HEARING OFFICER FAY: Okay.

24 MS. DeCARLO: I leave this to my expert
25 to comment on.

1 MR. WALTERS: If we get rid of the
2 clause you want to get rid of what I would also
3 suggest is where it says 10.4 at all receptors
4 even at dog kennel, period, get rid of the rest of
5 that sentence after dog kennel.

6 And then on the following sentence
7 towards the end of the first line where it says,
8 "and is only" I would say "and is less than"
9 rather than only, since the eight-hours results
10 were less than the -- you know, quite a bit less
11 than 2.5. They were more like 1.6 or 1.7, if I
12 remember.

13 So we just put in --

14 MR. JOSEPH: That's sounds fine.

15 HEARING OFFICER FAY: All right. You're
16 going to have to march us through there. So how
17 would it read, based on your suggestion?

18 MR. WALTERS: You want to start from the
19 beginning of the paragraph?

20 HEARING OFFICER FAY: Yes, please.

21 MR. WALTERS: Okay.

22 HEARING OFFICER FAY: "With regard".

23 MR. WALTERS: "With regard to the
24 concentration, all parties, including CURE,
25 testified that the 24-hour concentrations will be

1 less than 10.4 mcg/cubic meter at all receptors,
2 even at the dog kennel."

3 MR. JOSEPH: I thought we were going to
4 include that all receptors for an eight-hour
5 construction schedule, even at the dog kennel.

6 MR. WALTERS: Okay, that would be fine.

7 MR. JOSEPH: Did you get that, Mr. Fay?

8 HEARING OFFICER FAY: So, after 10.4,
9 it's for an eight-hour construction period.

10 MR. JOSEPH: Yes.

11 HEARING OFFICER FAY: Okay.

12 MR. WALTERS: And then you delete the
13 rest of the sentence after kennel. And start it
14 with the next sentence, "The concentration level
15 drops rapidly with distance and is less than 2.5
16 mcg/cubic meter."

17 So the only change there is delete
18 "only" and replace it with "less than".

19 HEARING OFFICER FAY: Okay, and then it
20 continues on.

21 MR. WALTERS: Right.

22 HEARING OFFICER FAY: All right. Good.
23 Thank you.

24 MS. DeCARLO: And we can provide those
25 in writing with our other change --

1 HEARING OFFICER FAY: That would be
2 helpful.

3 MS. DeCARLO: -- if you'd like.

4 HEARING OFFICER FAY: Yeah, just so we
5 have a complete closure on that. Good. That's
6 constructive.

7 Okay, anything further, Mr. Thompson?

8 MR. THOMPSON: Thank you, Mr. Fay. CURE
9 brought up the inclusion of the comments from Mr.
10 Evans of the City. We don't feel terribly
11 strongly about that. And I guess we'd go on
12 record as not objecting to CURE's request on that
13 one.

14 HEARING OFFICER FAY: Okay, good. So,
15 anything further from the parties, then, before we
16 move to public comment?

17 MS. DeCARLO: One minor issue from
18 staff. The applicant pointed out that staff had
19 mistakenly made a statement in our testimony with
20 regard to the NOx daily emissions of 134.9 pounds
21 per day.

22 Upon seeing this identified concern,
23 staff went back to their calculations and actually
24 to the applicant's modeling and did determine that
25 it was, indeed, based on an eight-hour day.

1 So, I do have staff here if the
2 Committee would like something formal on the
3 record from staff. However, we do believe that
4 staff's testimony is clear that regardless of what
5 the ultimate number was, that it remained a less
6 than significant impact because of a number of
7 factors, including the temporariness of the
8 emissions.

9 HEARING OFFICER FAY: Well, I think it
10 would be helpful if, briefly, Mr. Walters could
11 just, by way of clarification, it's not testimony,
12 but just make it clear to us why this doesn't
13 change the significant/nonsignificant question.

14 MR. WALTERS: First, it has to do with
15 the significance criteria that we were using
16 versus the significance criteria that CURE was
17 saying they thought should be used.

18 And we were not using 100 pound per day
19 as the significance criteria. We were using our
20 modeling results as the significance criteria.
21 And, you know, our experience in knowing how ozone
22 impacts would occur; and also the fact of where
23 the emissions were. Some of them are offsite,
24 some are onsite. And the fact that these
25 emissions are only going to occur in this level

1 for about three weeks during that initial site
2 preparation phase. And the emissions would then
3 be under 100 pounds for most of the rest, if not
4 all of the rest of the construction period.

5 And factoring all of those things in,
6 you know, we determined that there wasn't a
7 significant impact. There were no NO2 violations
8 from the construction. And we didn't feel there
9 would be a significant ozone impact, you know,
10 from just 134 pounds.

11 HEARING OFFICER FAY: So, even though
12 you were mistaken in assuming that it was for a
13 12-hour day, when you apply it --

14 MR. WALTERS: Right, the 100 pound --

15 HEARING OFFICER FAY: -- for an eight-
16 hour day it didn't change it.

17 MR. WALTERS: The 100 pounds was never
18 part of our criteria. It's kind of in the same
19 issue as the operating issue of 550 pounds for CO.
20 You know, there's really no impact that would
21 occur if the facility was over 550 pounds. Most
22 of the emissions are lower than the ambient air
23 quality standard coming out of the stack, so how
24 would you possibly have an impact from it, just
25 because there's a certain weight quantity. It's

1 more related to is there a concentration and an
2 impact, a substantial increase, you know, any of
3 the five significance criteria that are the
4 checklist that we evaluate based on.

5 We don't just look at a specific
6 emission number to make that call, but we go
7 beyond that.

8 HEARING OFFICER FAY: Okay, thank you.
9 Anything further from the parties, then?

10 We'll move to public comment. All
11 right, Ms. DeCarlo, could you make a mike
12 available to the members of the public that are
13 here --

14 MS. DeCARLO: Oh, definitely.

15 HEARING OFFICER FAY: -- so we can be
16 sure to get them on the record. And why don't
17 we -- did you both have comments to make or --

18 MR. TENNIS: I'll let you guys make the
19 call. Kevin Dayton from our Golden Gate Chapter
20 has had a lot of experience on project labor
21 agreements, specifically. And there are some
22 comments made by CURE in their written reaction to
23 the proposed decision that, you know, he'd like to
24 talk about if the Committee is interested.

25 Otherwise, --

1 HEARING OFFICER FAY: Sure, you're
2 welcome to make public comment. We have Mr.
3 Tennis' comments in writing. We don't need them
4 again unless you had something further to add.

5 But --

6 MR. TENNIS: I have additional remarks,
7 yeah.

8 HEARING OFFICER FAY: Oh, you do? Okay.

9 MR. TENNIS: Thank you. My name is Matt
10 Tennis, and it's spelled just like the game,
11 T-e-n-n-i-s. I'm the Legislative Director for the
12 Associated Builders and Contractors of California.
13 My organization represents approximately 1400
14 predominately nonunion commercial and industrial
15 contractors throughout the state.

16 And first of all I'd like to thank both
17 Commissioners Geesman and Pfannenstiel for the
18 effort that you both made to bring increased
19 honesty and openness to the CEC review process
20 through your proposed decision.

21 And I want to say a few words, break
22 away from my prepared remarks, about the nature
23 and the purpose of a regulatory agency. A lot of
24 what goes on in a regulatory agency like the
25 Energy Commission, and far be it from me to teach

1 you or really anyone in this room just exactly
2 what is supposed to go on here, because I don't
3 have the depth of Mr. Joseph's experience here at
4 the CEC, or most of the rest of you, but every
5 regulatory agency has a human component. That is
6 eyes and ears and a brain that's capable of
7 drawing general conclusions, making observations,
8 saying what people want to say and what they feel.

9 And at the Energy Commission the primary
10 people who occupy that station are, of course, the
11 Commissioners. And through this proposed decision
12 they've done an excellent job drawing attention to
13 some things that aren't necessarily traditional as
14 far as the Energy Commission's approach to these
15 licensing proceedings. It's been over the last
16 several years.

17 And I want to just thank the
18 Commissioners for doing what they have and saying
19 what they have.

20 In your review of objections by CURE
21 you've not only strove to insure that the
22 environmental soundness of the Riverside plant
23 receive a fair hearing. But you also, through the
24 paragraph in contention by CURE, have sought to
25 shed light on other important aspects of what we

1 believe is a truly groundbreaking proceeding, this
2 Riverside SPPE proceeding.

3 I know that this power plant will be
4 small as far as plants go in California, but
5 there's things about this project, things that you
6 reference in your proposed decision, that set
7 Riverside apart from other applications.

8 It's no secret to anyone who closely
9 monitors the goings-on at the Energy Commission,
10 and has been closely following this proceeding,
11 that the City of Riverside did not agree to a
12 project labor agreement for the construction of
13 this power plant.

14 Industry participants also understand
15 that this decision by the City was a bold one.
16 And nobody has denied that the intervention by
17 CURE has, indeed, delayed the project from what it
18 would otherwise be.

19 I don't know how many conversations I've
20 had with developers and people close to this
21 process who have told me that in order to build a
22 power plant in California you just have to
23 negotiate a PLA with CURE or they'll trying to
24 jeopardize it by adding time and cost through the
25 Energy Commission licensing process.

1 I've also been informed that lenders
2 have become privy to this modus operandi and that
3 developers have even had pressure from Wall
4 Street, of all places, to sign PLAs with unions to
5 avoid environmental holdups at the Energy
6 Commission.

7 In this proposed decision you've told
8 that story. And for that my Association and many
9 other people, people who can't be as outspoken as
10 I can, are very grateful. Other grateful folks,
11 like developers, can't often afford to be this
12 outspoken because they are accountable to
13 shareholders. And in the environment that has
14 taken shape at the Energy Commission over the
15 years, these people oftentimes don't think they
16 can afford to tell the situation like it is
17 because of the retribution that may result.

18 But through this proposed decision
19 you're trying to change that climate of hostility.
20 You are among only a handful of people who can
21 change the climate. And you do this by saying
22 what needs to be said.

23 What needs to be said, and it deserves
24 to be said over and over, is simply that
25 California Unions for Reliable Energy challenges

1 applications for power plants when the developer
2 has not agreed to an exclusive project labor
3 agreement, guaranteeing that all the work
4 associated with the project goes to unions.

5 This is not a big revelation. Detailed
6 observations to this effect have been made by the
7 media, by public officials on both the state and
8 local levels, and by the Associated Builders and
9 Contractors.

10 Contrary to the comments of CURE and
11 remarks of Mr. Joseph today, these observations
12 have absolutely been docketed in this proceeding
13 through out input to this case. And in other
14 cases that are going on simultaneously. You can
15 read them on the Energy Commission's webpage, and
16 on the document page for this proceeding.

17 While our testimony does not carry the
18 weight of other formal parties, given the fact
19 that we're a public participant and not a formal
20 intervenor, evidence that we and others have
21 provided in this case offers more than enough
22 basis for Commission members to make the simple
23 observations that they have with respect to CURE's
24 interest in project labor agreements, as are
25 outlined in the paragraph in contention.

1 As the Energy Commissioners, you can say
2 what you want, and you can say what you feel that
3 you need to say. CURE is saying that the truth
4 should not be told in this case, and that the real
5 story should not be told.

6 But that language needs to stay in this
7 decision if we are going to work together to make
8 California's energy world a better place.

9 CURE has argued against the validity of
10 the paragraph. But the proposed replacement
11 paragraph, which they made in their written
12 comments, states that for many years, and I'm
13 quoting, "CURE has been an experienced and
14 knowledgeable intervenor in power plant siting
15 cases at the Energy Commission."

16 That statement is less validity than the
17 present paragraph that is in there right now,
18 based on the record in this proceeding. And as
19 far as ABC is concerned, that cannot be used as a
20 replacement paragraph.

21 Regarding the idea that the statement is
22 untrue, and this could provide substance for a
23 future proceeding, I would challenge Mr. Joseph or
24 anyone to find a proceeding where CURE has been as
25 aggressive as they have with Riverside in this

1 case where there was a project labor agreement on
2 the project. Absolutely do not exist.

3 Everybody knows that CURE only
4 intervenes when there is no PLA. Those opinions
5 are docketed in this case, and there is no reason
6 why Commissioners cannot make that observation in
7 this decision if they want to.

8 For these reasons, and for the common
9 good of California taxpayers, ratepayers and the
10 many people who depend on this process to operate
11 fairly, Associated Builders and Contractors
12 implores you to say what you have said regarding
13 the labor issues in this proceeding.

14 Thank you very much.

15 HEARING OFFICER FAY: Thank you. Please
16 state your name and spell it.

17 MR. DAYTON: Yes. Kevin Dayton, last
18 name is spelled D-a-y-t-o-n. I'm the Vice
19 President of Government Affairs for the Golden
20 Gate Chapter of Associated Builders and
21 Contractors.

22 I have eight years of experience with
23 the Golden Gate Chapter of fighting project labor
24 agreements throughout northern California.

25 I want to thank the Committee for

1 acknowledging in its proposed decision that the
2 activities of the intervenor California Unions for
3 Reliable Energy are related to the decisions of
4 developers to build power plants under a project
5 labor agreement signed with member unions in CURE.

6 If you consider the larger context in
7 which intervenors operate, especially in this case
8 where an intervenor made many claims that
9 Commissioners and staff identified as clearly
10 erroneous, not based on fact, or inaccurate.

11 In the case of the Riverside Energy
12 Resource Center you have the responsibility to
13 inform the public in your decision about the
14 relationship between project labor agreements and
15 CURE's challenges to this power plant.

16 Only through this public exposure can
17 policymakers conserve legislation that will
18 reflect the will of the people concerning the
19 relevance of project labor agreements to the power
20 plant licensing process.

21 CURE argues that the statement is
22 incorrect in your proposed decision, that project
23 labor agreements, quote, "provide that all work
24 performed will be done by union laborers" unquote.
25 Let me cite provisions from the project labor

1 agreement for the Roseville Energy Park, approved
2 under duress by the Roseville City Council on July
3 21, 2004.

4 The PLA includes the following
5 conditions regarding all construction craft
6 employees up to general foremen. Section 6.2 of
7 the project labor agreement states that employees,
8 quote, "shall be or shall become or remain members
9 in good standing of the appropriate union as a
10 condition of employment" unquote.

11 Provision 6.3 of the project labor
12 agreement states, quote, "Contractors agree to be
13 bound by the hiring practices of the respective
14 unions, including the hiring of apprentices, and
15 to utilize their registration facilities and
16 referral systems" unquote.

17 The suggestion by CURE in its response
18 that laborers are not union under these conditions
19 is absurd.

20 I encourage you to keep the language as
21 it is in your proposed decision and let the public
22 know the truth about what's going on here with
23 interventions on power plants.

24 Thank you.

25 HEARING OFFICER FAY: Thank you. Any

1 other public comments? Okay.

2 MR. JOSEPH: Mr. Fay, I have to ask for
3 an opportunity to respond.

4 HEARING OFFICER FAY: Well, that's up to
5 the Committee. This is just public comment, as
6 you know.

7 MR. JOSEPH: I know, but it will be very
8 brief. And there's been a direct attack on CURE.
9 And I would like to just make a couple of
10 comments.

11 HEARING OFFICER FAY: All right.

12 MR. JOSEPH: First, you know, I think
13 the testimony of the -- the comments of the last
14 two speakers demonstrates exactly why this is
15 territory the Energy Commission should not begin
16 to tread.

17 You know, you have no evidence in your
18 record; there was no opportunity for me to cross-
19 examine either of these two witnesses. I would
20 love to.

21 Neither of them bothered to inform you
22 that, in fact, this will be a union-operated
23 project. That the people who operate this project
24 will be represented by the IBEW Local 47. IBEW
25 Local 47 is a member of CURE.

1 When quoting from the project labor
2 agreement, the speaker carefully omitted the
3 provisions which allowed nonunion contractors to
4 participate and allow those contractors to bring
5 their own employees, their own nonunion employees
6 to work on the job.

7 Those are just two examples of why this
8 is someplace that is not appropriate for the
9 Energy Commission to go, either in this decision
10 or elsewhere.

11 This is obviously a very contentious
12 public dispute, but it's not relevant to whether
13 this project qualifies for an SPPE.

14 The statements about CURE's motivations
15 and, you know, the record are not here. I would
16 love to, at some point, lay out the numerous
17 environmental benefits that CURE's participation
18 has brought to power plants in California.

19 I won't take up your time now reciting
20 them, but there's a long list of environmental
21 benefits that have been a direct result of CURE
22 participation, ranging everything from what is now
23 the accepted BACT emission rate for NOx to water
24 use to the use of oxidation catalysts, all of
25 which were first championed by CURE. And would

1 not have happened had we not participated.

2 We reiterate and stand by our request to
3 keep out of your decision here a little dabbling
4 in a dispute which has nothing to do with the
5 merits or demerits of this project qualifying for
6 an SPPE.

7 Thank you.

8 HEARING OFFICER FAY: Okay. All right,
9 I think we've heard from everybody on the details
10 of suggested corrections.

11 Certainly heard some of the policy
12 arguments on deleting or leaving in some of the
13 language regarding CURE's motivation.

14 Anything from the Commissioners before
15 we close? Okay.

16 All right, then we will -- yes, Mr.
17 Thompson.

18 MR. THOMPSON: Just one final thing.
19 While Mr. Joseph asked for an epiphany, and this
20 is certainly the season to make that request, we
21 applaud the Committee again on the decision. And
22 we all want to express our appreciation for the
23 hard work.

24 HEARING OFFICER FAY: Okay, great.

25 Well, we wish you all safe travels. Enjoy the

1 holiday. And we hope to see you on Wednesday.

2 We're adjourned.

3 (Whereupon, at 11:04 a.m., the Committee
4 Conference was adjourned.)

5 --o0o--

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 Committee Conference; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of December, 2004.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345