

HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
of the Russell City Energy) 01-AFC-7
Center)
_____)

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

THURSDAY, DECEMBER 6, 2001
10:15 am.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Gary Fay, Hearing Officer

Ellen Townsend-Smith, Advisor

STAFF PRESENT

Dick Ratliff, Staff Counsel

Kae Lewis, Project Manager

APPLICANT

Gregory L. Wheatland, Attorney,
Ellison, Schneider and Harris

James R. Leahy, Development Manager
Calpine/Bechtel Joint Development

INTERVENORS

Roger Beers
East Bay Regional Park District

ALSO PRESENT

Jesus Armus, City Manager
City of Hayward

Andrea E. Grenier, Principal
Argonaut Consulting

Douglas M. Davy, Ph.D., Project Manager
Foster Wheeler Environmental Corporation

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P R O C E E D I N G S

10:15 a.m.

HEARING OFFICER FAY: Good morning; this is a hearing, a Committee conference, in the Russell City Energy Center AFC proceeding.

To my left is Presiding Member and Commission Chair William Keese. And to my right is Ellie Townsend-Smith, Advisor to Commissioner Pernell, the Second Member of this case. I'm Gary Fay, the Hearing Officer.

The purpose of the hearing today is to review milestones in the case schedule and to evaluate whether this case should still be processed under Public Resources Code 25550. Additional notices are available down at the end table. And we are on teleconference.

Mr. Armus, are you there with us?

MR. ARMUS: I am.

HEARING OFFICER FAY: Good. All right, if you wish to speak up, feel free to interrupt as needed, and we will try to allow you time to comment later on.

MR. ARMUS: Thank you very much.

HEARING OFFICER FAY: I'd like to now take appearances. Mr. Wheatland, good morning.

1 MR. WHEATLAND: Good morning, I'm Greg
2 Wheatland. I'm the attorney for the applicant.

3 MR. LEAHY: Jim Leahy; I am Calpine's
4 Development Manager for the Russell City Energy
5 Center.

6 HEARING OFFICER FAY: And the staff.

7 MR. RATLIFF: Dick Ratliff, Counsel for
8 Staff; and Kae Lewis, Project Manager.

9 HEARING OFFICER FAY: And, Mr. Beers.

10 MR. BEERS: Roger Beers, representing
11 East Bay Regional Park District, Intervenor.

12 HEARING OFFICER FAY: All right. Any
13 other parties here today? All right. Thank you.

14 I think it might be best if we could
15 begin with the scheduling questions. And if the
16 parties could bring us up to date on what has
17 transpired and consider this as much a status
18 report as anything else.

19 And I understand you had a workshop
20 recently, so there's some breaking news.

21 MR. WHEATLAND: Well, yes, I'm pleased
22 to report that we've been able to make substantial
23 progress in achieving the milestones that we
24 discussed at the last scheduling conference.

25 We've had a what I think are very

1 successful three days of workshops on the project
2 where we've had a chance to discuss each of the
3 issues that have been outlined in the staff
4 assessment.

5 At least as between the applicant and
6 the staff I believe we've reached resolution on
7 many of the subject areas.

8 We have had the --

9 MR. ARMUS: Excuse me, Mr. Fay, the
10 comments are not being heard on the call very
11 well.

12 HEARING OFFICER FAY: All right.

13 PRESIDING MEMBER KEESE: I'll tell you
14 what, I think we need this -- we need this other
15 little microphone over there. That's the one
16 that --

17 (Off-the-record discussion.)

18 PRESIDING MEMBER KEESE: Okay, let's try
19 this again.

20 MR. ARMUS: That's better.

21 HEARING OFFICER FAY: Okay.

22 MR. WHEATLAND: So we have reached, I
23 believe, substantial agreement with the staff on
24 most of the subject areas of the staff assessment.

25 Since that time of our last scheduling

1 conference, the preliminary determination of
2 compliance has been produced and published by the
3 Air Quality District. The comment period for the
4 public comment period on that will run until
5 December 20th. And the District Staff has
6 informed us that they would expect and hope to
7 issue the final determination of compliance by the
8 end of the year.

9 In addition, since the last scheduling
10 conference the applicant has been successful in
11 obtaining an option to purchase a parcel of land
12 for mitigation of the impacts to the biological
13 habitat. It's a signed and completed option
14 agreement. And so we now have, in essence, site
15 control of a parcel.

16 We have been told informally by the
17 reviewing agencies that they're very pleased with
18 the acquisition. And we will be scheduling in the
19 coming week the meetings with the agencies, U.S.
20 Fish and Wildlife Service and others, to go over
21 the draft of the biological mitigation plan. And
22 we hope that we will be able to provide that to
23 all the parties and make it public by December
24 21st.

25 One of the other issues that was

1 outstanding as of the last scheduling conference
2 was the question of PM10 mitigation. And the
3 applicant has put forward publicly a proposal for
4 mitigation of PM10 impacts.

5 We understand from the staff that they
6 would like to see additional detail in terms of
7 the implementation of our proposed mitigation
8 plan. And we would hope in the coming weeks to be
9 able to provide a very detailed plan for the
10 implementation of PM10.

11 The other issue was the issues of
12 impacts on visual resources. We had a very good
13 workshop discussion on those issues. And while we
14 haven't, I think, reached closure on those, the
15 City of Hayward presented some ideas for proposed
16 mitigation of the visual impacts.

17 The applicant is working to refine that
18 proposal. And we would hope to put forward by
19 12/21 a more detailed draft of the visual
20 mitigation plan that would help to address the
21 concerns that have been raised in the staff
22 assessment.

23 So that, in a nutshell, are the major
24 issues that I understood were outstanding from the
25 last status conference. And I'm pleased to report

1 we are making substantial progress in resolving
2 each of these issues.

3 HEARING OFFICER FAY: Okay. Mr.
4 Ratliff, do you wish to add anything to that?

5 MR. RATLIFF: Well, I think that's a
6 pretty good summary of where we are. I guess I
7 would add that the remaining issues that need to
8 be addressed that we're trying to get specificity
9 on, have to do with the specific mitigation that
10 will be required, biological mitigation,
11 particularly concerning noise impacts to the
12 nearby wildlife areas. And the way PM10 will be
13 mitigated in the local area.

14 We think we have, at this point, an
15 agreement in concept about how this mitigation
16 will occur, but we don't have the details worked
17 out. And we want to have that worked out before
18 we get to the hearings.

19 HEARING OFFICER FAY: And presumably the
20 Air District also needs that detail, is that
21 correct?

22 MR. RATLIFF: Well, the mitigation for
23 air is mitigation that the staff is requiring to
24 reduce the impact of PM10. It's not mitigation
25 that is required by the Air District. Because the

1 threshold for Air District requirements is not
2 triggered by the project.

3 So this isn't really an Air District
4 issue; it's an Energy Commission Staff issue.

5 HEARING OFFICER FAY: Presumably CEQA?

6 MR. RATLIFF: Yes.

7 HEARING OFFICER FAY: All right. And do
8 you have a revised estimate on when the addendum
9 to the staff assessment might come out?

10 MR. RATLIFF: I think I want Kae to
11 probably address that.

12 MS. LEWIS: We have talked to the
13 applicant about a projected date in late January,
14 January 25th. And the applicant has proposed that
15 date. The staff agrees as long as all the issues
16 that we just spoke about, plus a couple additional
17 ones, are resolved, and staff has all the
18 information in plenty enough time to get the
19 addendum out.

20 If we receive all the information that
21 we need by the first week in January, then we can
22 definitely meet the January 25th date.

23 HEARING OFFICER FAY: And is the
24 information that you're anticipating completely
25 covered by the information Mr. Wheatland referred

1 to as being available about December 21st? Or is
2 there additional information that you're
3 expecting?

4 MS. LEWIS: There's additional
5 information on the laydown areas.

6 HEARING OFFICER FAY: And let me just
7 bounce back to Mr. Wheatland. Do you have an
8 estimated date of when you can get that
9 information on laydown areas?

10 MR. WHEATLAND: I think we can do that
11 by the 21st, as well, along with the other --

12 HEARING OFFICER FAY: Oh, okay.

13 PRESIDING MEMBER KEESE: So, I heard the
14 21st come up with respect to the -- the 20th with
15 respect to the PDOC, the 21st on your --

16 MR. WHEATLAND: Biological --

17 PRESIDING MEMBER KEESE: -- site -- the
18 visuals. Is that -- basically you're going to
19 have everything on the 21st?

20 MR. WHEATLAND: Well, the PDOC, the
21 comment period will close on the 20th --

22 PRESIDING MEMBER KEESE: 20th.

23 MR. WHEATLAND: -- so they've told us
24 they're shooting for the end of the year for the
25 issuance of the FDOC.

1 PRESIDING MEMBER KEESE: Okay, and then
2 all the information you're going to supply
3 basically is going to be there the 21st? I mean,
4 we went --

5 MR. WHEATLAND: Yes.

6 PRESIDING MEMBER KEESE: -- we went
7 through different specifics, --

8 MR. WHEATLAND: Yes.

9 PRESIDING MEMBER KEESE: -- but in
10 general you'll have everything in by the 21st?

11 MR. WHEATLAND: That's correct.

12 PRESIDING MEMBER KEESE: And that is
13 what the staff is basing this, then the 25th looks
14 like it could work.

15 HEARING OFFICER FAY: And, Mr.
16 Wheatland, --

17 MS. LEWIS: Yes.

18 HEARING OFFICER FAY: -- does that
19 everything include in your reference to the
20 biological mitigation, does that also include the
21 specific noise mitigation that staff --

22 MR. WHEATLAND: Yes. That would
23 include, the biological mitigation plan would
24 include noise mitigation for biological concerns;
25 information on raptor perching, which has been an

1 issue; and the habitat mitigation.

2 HEARING OFFICER FAY: Okay. Is the
3 raptor issue changed dramatically depending on the
4 resolution of the visual question?

5 I understand that part of the raptor
6 concern had to do with the visual presentation --

7 MR. WHEATLAND: Right.

8 HEARING OFFICER FAY: -- of the
9 screening on the plant, itself.

10 MR. WHEATLAND: The measures that we've
11 at least preliminarily proposed wouldn't be
12 affected by any change.

13 HEARING OFFICER FAY: Okay.

14 MR. WHEATLAND: It would be applicable
15 to sort of any structure.

16 Anything further then from the staff in
17 terms of scheduling concerns?

18 MR. RATLIFF: No, other than to say that
19 if the FDOC doesn't come out within the range that
20 has been estimated on the schedule, that it may
21 need to slip the rest of the schedule.

22 HEARING OFFICER FAY: Well, might that
23 be said about any of these matters of concern?
24 The PM10 mitigation, the biological mitigation, et
25 cetera? Wouldn't a delay --

1 MR. RATLIFF: Presumably, yes.

2 HEARING OFFICER FAY: -- in that
3 information also --

4 MS. LEWIS: Um-hum, yes.

5 HEARING OFFICER FAY: -- slip the
6 schedule?

7 MR. RATLIFF: Yes.

8 MR. WHEATLAND: Could I just ask for
9 clarification? The date we've been given by the
10 District is the end of the year. But they were
11 two weeks late in the PDOC.

12 If they were to be two weeks late in the
13 issuance of the FDOC, would that still give the
14 staff sufficient time to complete the assessment?
15 In other words, say if the FDOC were as late as
16 January 11th or so?

17 MR. RATLIFF: If we got it by January
18 11th I don't think it would present a problem.
19 The rule of thumb is that the staff needs about
20 two weeks after they get the FDOC. If it's after
21 that date it becomes a scheduling problem.

22 MR. WHEATLAND: Okay.

23 (Parties speaking simultaneously.)

24 MS. LEWIS: It just depends on the
25 changes between how different the FDOC is from the

1 PDOC.

2 MR. WHEATLAND: Yes.

3 PRESIDING MEMBER KEESE: Well, the good
4 news is that I've received a generic letter in
5 response to some generic comments that I've made
6 at a Commission meeting.

7 MR. LEAHY: I think we appreciate your
8 comments.

9 (Laughter.)

10 PRESIDING MEMBER KEESE: The generic
11 said we haven't been late and we won't be late.

12 HEARING OFFICER FAY: Gee, I guess --

13 PRESIDING MEMBER KEESE: Just to
14 summarize three pages.

15 (Laughter.)

16 HEARING OFFICER FAY: On the part about
17 haven't been late I guess we just misread the
18 calendar.

19 (Laughter.)

20 HEARING OFFICER FAY: All right,
21 anything further from staff at this time on the
22 schedule? Sounds like no.

23 Mr. Beers, we want to give you a chance
24 to address your concerns and how they fit into the
25 schedule.

1 MR. BEERS: Well, we've been greatly
2 concerned about receiving further information on
3 the mitigation, in particular, on impacts of
4 concern to the Park District. So I think we're
5 quite pleased that the schedule now contemplates
6 that this kind of information is going to be
7 provided essentially within the next couple of
8 weeks.

9 When we had our first workshop I had
10 discussed with Paul Richins the deadline for the
11 Park District to file written comments on the
12 staff assessment. And we had tentatively agreed
13 at that time that deadline would be December 10th,
14 which is this next Monday.

15 Since then we've had some discussions
16 with Calpine, as well as the City of Hayward, and
17 I think we would like to have an opportunity, as
18 would they, to see if we can resolve some of our
19 differences over some of these issues in the
20 remainder of December.

21 We'd also like to be able to file
22 written comments that don't just deal with the
23 state of the record as it exists today, without
24 the information regarding mitigation, but that
25 could really deal with the mitigation that will be

1 coming in within the next couple of weeks.

2 So, what I've discussed with the
3 applicant, as well as staff, is the possibility
4 that the Park District would have until January
5 7th to file written comments. The idea there
6 being we may be able to resolve some or all of our
7 issues before that time, in which case that would
8 moot the necessity for filing comments. Or we may
9 be able to greatly narrow our issues, in which
10 case we would be filing comments only on the
11 remaining issues.

12 I've been told that staff believes that
13 would provide an adequate amount of time given
14 their January 25th date for the preparation of the
15 staff addendum in which to deal with our comments.

16 We've been previewing, in concept, those
17 comments, obviously, during the staff workshop.
18 If we do end up having to file them on all of the
19 issues we're concerned about, I mean they will be
20 quite extensive. But I, you know, I don't want to
21 predict what happens in that event. And it may
22 well be that staff would feel that some adjustment
23 in the schedule was necessary.

24 But I think we ought to proceed on the
25 premise that these negotiations we're talking

1 about have a solid chance of success. And that
2 we're hopeful that at least we will be filing
3 comments on a narrow set of issues, rather than
4 the broader set of issues.

5 HEARING OFFICER FAY: If I can interrupt
6 you there just for a second?

7 MR. BEERS: Sure.

8 HEARING OFFICER FAY: For you to file on
9 January 7th, that anticipates that you'd have
10 comments by when? Or you'd have the information
11 from the applicant on the mitigation by when? By
12 the date they described?

13 MR. BEERS: By December 21.

14 HEARING OFFICER FAY: Okay.

15 MR. BEERS: And I might just itemize so
16 we're all speaking --

17 PRESIDING MEMBER KEESE: Okay, well, --

18 MR. BEERS: I'm sorry, you had a
19 question?

20 PRESIDING MEMBER KEESE: Yes, well, my
21 question, I think itemizing will probably answer
22 my question. You had indicated there was no
23 surprises to staff because you floated all your
24 issues already.

25 MR. BEERS: Yes.

1 PRESIDING MEMBER KEESE: And I just --
2 if you're going to itemize I guess you're going to
3 answer that question, so.

4 MR. BEERS: Well, I wanted to make sure
5 we're all speaking the same language when we talk
6 about what --

7 PRESIDING MEMBER KEESE: Right.

8 MR. BEERS: -- kind of information is
9 going to be coming in in terms of the mitigation
10 information. Because that's been one of our
11 primary concerns, is that staff has identified
12 some significant impacts, but was unable to reach
13 conclusions as to whether they would be reduced to
14 levels of insignificance.

15 Without seeing the mitigation, we have
16 the same concerns. And the items I think we're
17 looking for are the sensitive species management
18 plan. That's the way it's referred to in the
19 conditions of certification, and the subsidiary
20 portions of that, which include the predator perch
21 deterrent measures and so forth.

22 Secondly, the plan for what's going to
23 be done to mitigate for the loss of habitat. I'm
24 assuming that plan largely will be, or in
25 substantial part will be devoted to what's going

1 to be done with the acreage that they've recently
2 acquired.

3 The plan for mitigating construction and
4 operation noise, and that's a serious concern to
5 the Park District with respect to its impact on
6 species that are endangered whose habitat is
7 within 500 feet of the power plant.

8 Information regarding visual impact
9 mitigation. I think what we've seen from the
10 workshops is that that's likely to be out-of-kind
11 mitigation in the sense that the impact is not
12 going to be able to be directly mitigated through
13 reorienting the power plant or major
14 transformations of the architectural screening.
15 At least that's what the applicant has
16 represented.

17 And finally, the thing that hasn't been
18 mentioned so far would be the storm water
19 management plan. And we're not saying that a
20 complete, definitive, word-for-word document has
21 to be produced within that period of time, but
22 that's an area that we're concerned about.

23 Because the increased runoff from the
24 increased permeable surfaces at the power plant
25 site will go to a detention pond, and then to a

1 marsh operated by the Park District that's a
2 habitat for the salt marsh harvest mouse, an
3 endangered species.

4 So, that's the mitigation information
5 that we're interested in. We did, in the course
6 of the workshops, present views on the respects in
7 which we thought the staff assessment was correct
8 in reaching its conclusions, and those respects in
9 which we disagreed.

10 And some of those related to the areas
11 of noise impacts on the endangered species; the
12 visual impacts, although there I think the staff
13 and Park District's views about the significance
14 of the impacts fairly well coincide.

15 We were concerned about a lack of
16 information to date regarding the prospect of
17 toxic emission impacts on very nearby endangered
18 species, and I'm hopeful that's an issue we'll be
19 able to address with the applicant in the course
20 of these negotiations.

21 And other respects in which the
22 endangered species might be impacted.

23 The thing we didn't deal with in the
24 workshops was the impact of the relocated radio
25 tower. And the item that hasn't been mentioned

1 here so far is that I understand there's going to
2 be a separate staff report on that issue.

3 And I don't know whether it's
4 anticipated that would be part of the addendum, or
5 whether it would come out earlier. It would be
6 preferable for it to come out earlier.

7 HEARING OFFICER FAY: Okay. What I'd
8 like to do is ask staff's reaction to some of
9 these, specifically that last one on the radio
10 tower. How is that going to be addressed?

11 MS. LEWIS: The intention right now is
12 to include it with the addendum.

13 HEARING OFFICER FAY: An analysis of the
14 environmental impacts of moving the tower?

15 MS. LEWIS: Yes.

16 HEARING OFFICER FAY: Okay. And as to
17 the other five points that Mr. Beers noted, even
18 if staff doesn't agree with the District's
19 position, is there some meeting of minds on the
20 level of analysis that's going to be done to
21 address all those? I mean do we have closure on
22 that, Mr. Ratliff?

23 MR. RATLIFF: Well, there was a great
24 deal of discussion about it. I don't know if
25 we're in complete agreement about the level of

1 analysis.

2 Some of the things, in our view, were
3 entirely justified in terms of the level of
4 analysis that has been requested. Other things I
5 don't think we could meet if we took ten more
6 years.

7 So, I think for the staff it's going to
8 be difficult to kind of parse through the issues.
9 And I guess the anxiety that I have is that when
10 we get those more detailed comments we'll have
11 only about two weeks to react to them. And we do
12 want to react to them as best we can. And we're
13 going to --

14 HEARING OFFICER FAY: Excuse me.
15 Detailed comments from the Park District?

16 MR. RATLIFF: From the Park District.
17 They're going to be giving us -- we'll have
18 probably about ten working days before we have to
19 actually submit everything through for staff
20 review.

21 As you can see, there's a fairly
22 substantial list of potential issues that are
23 being raised. And some of them have nuances that
24 are important.

25 We intend to have the staff do as much

1 work on those as we can, based on the discussions
2 we've already had at the workshops inasmuch as we
3 feel that we're capable of addressing those
4 issues.

5 And the only anxiety that I have, as I
6 say, is that we have only ten working days from
7 the time we actually receive the working comments.
8 And that may be a difficult scheduling issue for
9 the staff in terms of trying to get the supplement
10 out on the 25th.

11 I say that just as kind of a cautionary
12 note.

13 HEARING OFFICER FAY: Well, if we could
14 get just a brief characterization on each of these
15 points that Mr. Beers raised. Do you believe in
16 terms of the sensitive species management plan,
17 the predator perches, that sort of thing, that
18 staff shares the concern of the Park District and
19 will be conducting an analysis that is likely to
20 meet their needs as well as your own?

21 MR. RATLIFF: Staff is concerned about
22 the impacts of the location of the plant, two
23 areas that are inhabited by sensitive species.
24 And so although we don't think that the plant
25 represents a significant noise impact in a

1 traditional sense, as it would affect nearby
2 receptors who walk on two feet, we've basically
3 been more concerned about how it might impact
4 nesting species nearby and endangered species in
5 the marshland.

6 And so we've asked for additional
7 mitigation to reduce noise levels beyond those
8 that we would customarily reduce them from a
9 facility with regard to the local marsh.

10 We have, I think, targeted in essence a
11 performance standard for that. But we need more
12 specificity to it, and we intend to work that out
13 in cooperation with the U.S. Fish and Wildlife
14 Service, who has shared this concern with the
15 staff's biological staff.

16 We think that's going to come together,
17 and I'm optimistic about that, at least, that
18 we'll, I think -- I'm hoping Mr. Beers'
19 expectations will be met in that regard.

20 HEARING OFFICER FAY: And do we at least
21 have good communication among the various wildlife
22 agencies, the staff, the Park District on the
23 biological mitigation work?

24 MR. RATLIFF: Do we have agreement on
25 the biological mitigation --

1 HEARING OFFICER FAY: No. Do we have
2 communication? I mean are all the parties
3 represented at the workshops? Are --

4 MR. RATLIFF: Yes.

5 MR. WHEATLAND: Could I --

6 HEARING OFFICER FAY: Okay. And that --
7 okay, go ahead.

8 MR. WHEATLAND: Just on that point, the
9 applicant's intent is -- the biological mitigation
10 plan, or what Mr. Beers calls the sensitive
11 species management plan, we're talking about the
12 same document. That's a document that, of course,
13 has been submitted in literally dozens of
14 Commission proceedings.

15 The applicant's intent is to provide
16 that same level of information that's been
17 traditionally accepted by the Commission in the
18 presentation of those plans.

19 And it's our hope and expectation that
20 it will fully satisfy the informational needs of
21 the U.S. Fish and Wildlife Service, Department of
22 Fish and Game, and the Commission Staff.

23 Whether it will satisfy the Park
24 District, in addition to that, I can't speak to
25 that. But we're at least shooting for a document

1 that will fully satisfy the informational needs of
2 the responsible federal and state agencies and the
3 Commission Staff.

4 HEARING OFFICER FAY: And when you talk
5 about the biological resource management plan,
6 would that also include the other points that Mr.
7 Beers mentioned, the habitat loss question, --

8 MR. WHEATLAND: Yes.

9 HEARING OFFICER FAY: -- the
10 construction noise, et cetera?

11 MR. WHEATLAND: Yes, it will --

12 HEARING OFFICER FAY: Okay.

13 MR. WHEATLAND: -- include each of
14 those.

15 HEARING OFFICER FAY: All right. And
16 does it address impacts from the storm water
17 management?

18 MR. WHEATLAND: Yes.

19 HEARING OFFICER FAY: Okay. Because
20 obviously it's not just the flow problem if the
21 deposition area affects a sensitive species.

22 MR. WHEATLAND: Exactly.

23 HEARING OFFICER FAY: Okay.

24 MR. BEERS: If I might add just one
25 comment on this.

1 HEARING OFFICER FAY: Yes.

2 MR. BEERS: I think the example of noise
3 is a good example. There were some respects in
4 which in the workshop the Park District pointed
5 out what we thought were deficiencies, and perhaps
6 incorrect assumptions that had been made in the
7 noise analysis so far, as it would affect nearby
8 sensitive species.

9 It may well -- what we're interested in
10 looking at fundamentally is the noise operation
11 and construction control plan. It may well be
12 that when we look at that, we decide either, as
13 it's presented, or with changes, that we can
14 negotiate, that will do the job. In which case
15 there's no reason to be doing further academic
16 studies or analysis on the issue.

17 So, I think that's the approach that
18 we've got here. We want to be very pragmatic in
19 looking at how this mitigation will be effective.
20 And hope that that will eliminate or narrow some
21 of these issues which are of great concern.

22 HEARING OFFICER FAY: Well, and it
23 occurs to me, also, since none of us can predict
24 the future, that one of the elements in the plan
25 should be sufficient flexibility so that if a

1 problem is identified, perhaps the anticipated dB
2 levels are generally acceptable but there's a
3 sudden difference between silence in reaching
4 those levels that affects the wildlife, or
5 whatever. Just using that as an example.

6 That if the District or the other
7 wildlife agencies observe the problem that the
8 plan would have the flexibility for them to go to
9 the applicant and try to address the problem.

10 And anticipating that kind of
11 flexibility, I think, would allow, probably allow
12 the project to move forward and also give the
13 regulatory agencies and the Park District the
14 comfort that if some anticipated matter came up,
15 they would have a mechanism to address it.

16 MR. BEERS: I think that's terrifically
17 important, but I want to emphasize also that we're
18 concerned that we see presented now the kind of
19 standards that the applicant is going to be
20 required to meet, which we're confident will, in
21 fact, mitigate those impacts.

22 And that's been our primary concern is
23 that much of the information regarding mitigation
24 hadn't been provided yet, and that's now going to
25 be provided on a schedule which will allow us an

1 opportunity to evaluate it and ask questions, and
2 proposed changes.

3 MR. ARMUS: Mr. Fay, --

4 HEARING OFFICER FAY: Yes.

5 MR. ARMUS: -- like to comment at the
6 appropriate time, please.

7 HEARING OFFICER FAY: Sure, you bet.

8 And, in fact, I think we've kind of exhausted the
9 parties here on that scheduling subject, so let's
10 turn to the City of Hayward and ask you for your
11 comments, Mr. Armus.

12 MR. ARMUS: Two points. One, an
13 additional remark with respect to the discussion
14 you've had thus far. Given the comment that had
15 been voiced at the various workshops, I think that
16 the different parties have a general understanding
17 of the area of concern.

18 If, in the course of the next two weeks,
19 while this mitigation plan is being put together,
20 there is meaningful dialogue I suspect there will
21 be an opportunity to address those issues of the
22 mitigation plan, along the lines of what has been
23 commented on by the District.

24 So, I'm optimistic that that timeframe
25 would allow those issues to be addressed. And

1 therefore, the District can feel comfortable that
2 the mitigation plan speaks to their concerns.

3 With respect to the comments about
4 possibly expanding a comment period to January
5 7th, I would like clarification if that would mean
6 that if that new date is adopted the date of
7 December 10th, which had been formerly agreed to,
8 would then be substituted by the new date of
9 January 7th, so that nay comments we may have on
10 the supplemental attachment would fall within that
11 same timeframe? Is that the intent here?

12 HEARING OFFICER FAY: I'm not sure what
13 the earlier date referred to.

14 MR. ARMUS: Mr. Beers made a comment
15 that in the course of the workshops, actually at
16 the first workshop it was agreed that any comments
17 on the supplemental -- on the staff assessment
18 would be required to be submitted by close of
19 business next Monday.

20 And today he offered that he would like
21 that extended to January 7th. If that's the case
22 I would assume that that applies to anybody who
23 has comments on the staff assessment.

24 HEARING OFFICER FAY: Yes, I think
25 that's a reasonable assumption, and only fair.

1 And I'm sure the staff would agree that they would
2 take into account, to the extent they can, the
3 City's concerns expressed at that time.

4 PRESIDING MEMBER KEESE: I would say the
5 parameter here being that no surprises.

6 MR. ARMUS: I agree.

7 PRESIDING MEMBER KEESE: Have we covered
8 the list?

9 MR. ARMUS: From the City's point of
10 view, generally yes.

11 PRESIDING MEMBER KEESE: Okay.

12 HEARING OFFICER FAY: Yes, and also
13 obviously we would expect none of the parties to
14 be raising new matters concerning the first part
15 of the staff assessment, since we want to keep
16 moving forward and not, you know, rehash ground
17 previously covered.

18 I think with that understanding that's a
19 reasonable comment period.

20 MR. ARMUS: The other comment I wanted
21 to offer is the City is supportive of moving
22 forward in as timely a way as is possible and can
23 be done. We think there's some good information
24 that's already been available, and I think the
25 workshops indicated that while there's some good

1 concepts, that obviously, as we know in our
2 business, the details that make the difference.
3 And if we can provide that over the next few weeks
4 I think that will probably put most issues to
5 rest.

6 HEARING OFFICER FAY: Okay. And, Mr.
7 Armus, let me just ask, have you felt that you've
8 been kept adequately informed of the way the
9 process has been moving, especially by the
10 Commission Staff and the applicant?

11 MR. ARMUS: Yes. We're very
12 appreciative of the communication that's been
13 received from the various parties. And have also
14 found the workshops helpful in terms of the City
15 better understanding the concerns of the District.
16 So that's been helpful, as well.

17 HEARING OFFICER FAY: Good. Thank you.
18 Anything further, then?

19 MR. ARMUS: Not from the City.

20 HEARING OFFICER FAY: Okay. And, Mr.
21 Beers, let me also ask you, have you been
22 receiving timely information?

23 MR. BEERS: Since we've become an
24 intervenor in the matter, we have. And I think
25 the Park District really appreciates the way in

1 which the proceeding provides a focal point for
2 its participation.

3 HEARING OFFICER FAY: Right. I think
4 the crisis in the mails, the U.S. mails, as well
5 as some other factors, just with workload, it's
6 sometimes been a problem. So I just wanted to be
7 sure that it's working at least in this case.

8 Let me turn to the staff, then, on the
9 question of the six-month process, staff changed
10 its position. When we last met you had withdrawn
11 your petition to remove the case from the six-
12 month process. Does that remain the same?

13 MR. RATLIFF: Yes.

14 HEARING OFFICER FAY: Mr. Wheatland, do
15 you have any recommendation for us?

16 MR. WHEATLAND: Well, we'd certainly
17 like to stay within the procedural framework of
18 the six-month process for the reasons I described
19 to you previously.

20 We also feel there's a very important
21 psychological benefit from participating in that
22 process. It keeps this case as a priority, and it
23 helps to reach a timely resolution of what we
24 think is a really excellent project in many ways.

25 And, also, frankly we're prepared to

1 speak to this today. We're very concerned about
2 having a timely decision as soon as possible so we
3 can begin construction. And we're still shooting
4 for coming online by the summer of 2004.

5 And in order to accomplish that goal we
6 need to have a timely resolution of this case.
7 So, we have a strong interest in staying within
8 the framework of the six-month process.

9 HEARING OFFICER FAY: All right. Mr.
10 Beers, do you have any comments on that matter?

11 MR. BEERS: No, I think we've made clear
12 that we're far less interested in what label is
13 put on it than that we get the right information,
14 we have an opportunity to comment, and there is a
15 procedure for dealing with that.

16 I do want to make sure that if we end up
17 in a situation in which we have to file written
18 comments on January 7th because we haven't been
19 able to resolve some or all of the issues, that
20 nobody treats what we have to say as being a
21 surprise.

22 I've attempted to lay that out sort of
23 conceptually in the workshops. But I don't want
24 anybody to feel like we've sandbagged them or
25 anything of that sort.

1 So if the Committee feels at this point
2 that it needs further amplification, more
3 specifically of some of the itemized issues that
4 we're concerned about under the general areas of
5 toxic emission impacts or noise or visual quality
6 or biological impacts and so forth, I'd be
7 prepared to do that. Recognizing that it's not
8 the Park District's final set of comments.

9 I haven't done that so far because I
10 feel like conceptually we did brief you on those
11 issues before in the workshops.

12 HEARING OFFICER FAY: Frankly, my
13 biggest concern is that the applicant understands
14 where your concerns are focused, so that while
15 they're working on this response, they can
16 anticipate a way to target your concerns.

17 And I think that would make it less
18 likely that there'd be surprise.

19 We'd hate to see the Park District say,
20 well, nobody even addressed in any way this
21 particular area that we're concerned about.
22 Because I think everybody has a heads-up now on
23 what your areas are and --

24 MR. BEERS: And, believe me, we don't
25 think we'd get anywhere in trying to resolve

1 issues unless we were very specific with the
2 applicant in terms of going through our concerns.

3 So we really will make sure that
4 happens.

5 HEARING OFFICER FAY: Mr. Wheatland, do
6 you need any more specificity in terms of the
7 applicant's preparation on these plans to address
8 the Park District's concerns?

9 MR. WHEATLAND: No. We feel we have a
10 clear picture of where the Park District is coming
11 from, and so we don't need further specificity at
12 this time.

13 HEARING OFFICER FAY: Good, okay. Well,
14 I think we can anticipate a logical process where
15 we winnow these issues down. And it sounds like
16 even with the slippage that has occurred, we're at
17 least making progress.

18 (Off-the-record discussion.)

19 HEARING OFFICER FAY: Commissioner Keese
20 and I are discussing the Committee's revised
21 schedule that was in the notice for this hearing.
22 And I think, as we've heard today, we'd anticipate
23 changes on this starting with today's, following
24 today's date the next event anticipated the final
25 DOC, which we've been told would more likely be

1 December 31st.

2 And then I think we'll just pass on the
3 next status report and stretch that out further in
4 time so that it can take into account things that
5 have occurred by the end of the year.

6 And the staff addendum is anticipated,
7 you said January 25th. And then we'll have an
8 incremental extension on the anticipated
9 prehearing conference statements and prehearing
10 conference.

11 Will the parties need any more guidance
12 on the tentative schedule?

13 MR. BEERS: Do you want to include, as
14 has not been specifically included before, the
15 deadline for written comments on the staff
16 assessment, which would be January 7th?

17 MR. WHEATLAND: The only suggestion I
18 would make is that if you're going to include a
19 deadline for the submission of written comments,
20 that you would at least request the parties to
21 indicate to the staff if they do not intend to
22 file comments, so that the staff would not be
23 waiting for comments that might not be needed.

24 HEARING OFFICER FAY: I think that's
25 reasonable.

1 (Off-the-record discussion.)

2 HEARING OFFICER FAY: Well, I think you
3 can anticipate a status report following the end
4 of the year, just so we can get a lock on what has
5 progressed. But, we will adjust the schedule.
6 Basically as you've heard today, it seems like
7 there's general agreement on that. And then move
8 forward in the case.

9 Any last comments? From the applicant?

10 MR. WHEATLAND: No.

11 HEARING OFFICER FAY: Staff?

12 MR. RATLIFF: (Negative indication.)

13 HEARING OFFICER FAY: Park District?

14 MR. BEERS: No.

15 HEARING OFFICER FAY: Mr. Armus,
16 anything further?

17 MR. ARMUS: No, thank you very much.

18 HEARING OFFICER FAY: Okay. I thank you
19 all for coming. We're adjourned.

20 PRESIDING MEMBER KEESE: Thank you.

21 (Whereupon, at 11:00 a.m., the hearing
22 was concluded.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of December, 2001.

VALORIE PHILLIPS

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