



COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

Michael Smith, Advisor

Peter Ward, Advisor

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

William Pfanner, Project Manager

Alvin J. Greenberg, Consultant  
Risk Science Associates

APPLICANT

Jeanne Sole, Deputy City Attorney  
City and County of San Francisco

Karen Kubick, Project Manager  
San Francisco Public Utilities Commission

Emilio "Gene" Varanini, Special Counsel  
California Power Authority

Gary S. Rubenstein  
Sierra Research

INTERVENORS

Robert Sarvey

Lynne Brown  
Californians for Renewable Energy

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

2 10:00 a.m.

3 PRESIDING MEMBER BOYD: This is the  
4 prehearing conference, as I believe you all know,  
5 for the San Francisco Electric Reliability  
6 project. And before we get into that, let me  
7 introduce us up here and then turn it over to Gary  
8 Fay, our Hearing Officer, to do the heavy lifting.

9 I'm Jim Boyd, Commissioner of the CEC  
10 and the lead Commissioner on this case. On my  
11 left is my Advisor, Peter Ward, who's getting  
12 introduced to this topic today. And I'll turn it  
13 over to Commissioner Geesman to say his hellos,  
14 and then we'll go back to Gary and keep going.

15 ASSOCIATE MEMBER GEESMAN: Hello.

16 (Laughter.)

17 HEARING OFFICER FAY: Very efficient.

18 PRESIDING MEMBER BOYD: Gary, you can  
19 take care of the rest of this stuff.

20 HEARING OFFICER FAY: All right. Good  
21 morning, everybody. I'm Gary Fay. I am stepping  
22 in for Stan Valkosky today. He had a medical  
23 conflict, but will remain involved in the case.

24 What I'd like to do is ask the parties  
25 first to introduce themselves for the record. The

1 Committee's been introduced. Is the Public  
2 Adviser here, anybody from the Public Adviser's  
3 Office? Apparently not.

4 I'll just mention that we will allow  
5 time for public comment at the end of the hearing.  
6 And if anybody is from the public and would like  
7 to make a comment, if they'd just raise a hand,  
8 call that to my attention, I'll be sure they have  
9 a chance to address the Committee.

10 And for the applicant, Ms. Sole?

11 MS. SOLE: Good morning, Commissioners.  
12 This is Jeanne Sole for the City and County of San  
13 Francisco. And with me here.

14 MR. VARANINI: I'm Gene Varanini; I'm  
15 with the California Power Authority. And we have  
16 an agreement to assist the City in the prosecution  
17 of this case.

18 HEARING OFFICER FAY: Thank you.

19 PRESIDING MEMBER BOYD: I want to  
20 welcome Mr. Varanini as one who sat on this side  
21 of the table years ago, as a Commissioner.  
22 Welcome.

23 MR. VARANINI: Thank you.

24 ASSOCIATE MEMBER GEESMAN: I sat on that  
25 side of the table in many other San Francisco

1 siting cases.

2 (Laughter.)

3 MR. PFANNER: William Pfanner, Project  
4 Manager for the California Energy Commission.

5 MR. RATLIFF: Dick Ratliff, Counsel for  
6 the Energy Commission Staff.

7 HEARING OFFICER FAY: Is Mr. Sarvey  
8 here?

9 MR. BROWN: No, he isn't; not yet.

10 HEARING OFFICER FAY: Okay. And  
11 representing CARE.

12 MR. BROWN: My name is Lynne Brown; I'm  
13 a resident of Bayview Hunter's Point, and I  
14 represent CARE.

15 HEARING OFFICER FAY: Okay, thank you.  
16 The Committee scheduled today's prehearing  
17 conference in a notice dated February 24, 2006.  
18 And as explained in the notice the basic purpose  
19 of the prehearing conference -- the purposes are  
20 to assess the parties' readiness for hearings; to  
21 clarify areas of agreement or dispute; to identify  
22 witnesses and exhibits; to determine upon which  
23 areas parties desire to cross-examine witnesses  
24 from other parties; and to discuss associated  
25 procedural items.

1           The notice also specified that the  
2 period for intervening in this proceeding ends at  
3 the adjournment of today's session.

4           To achieve these purposes we required in  
5 the notice that any party desiring to participate  
6 in the conference or present or cross-examine  
7 witnesses in future evidentiary hearings file a  
8 prehearing conference statement by March 17th.

9           The statements we received were from the  
10 applicant, staff, intervenor Sarvey and intervenor  
11 CARE.

12           Today's agenda is basically divided into  
13 three parts. First, we'll discuss the matters  
14 contained in the prehearing conference statements.

15           Next, we'll discuss various options for  
16 proceeding with the case. And finally, we'll  
17 provide an opportunity for public comment.

18           This portion, a discussion of the  
19 prehearing conference statements, will be devoted  
20 to clarifying and verifying information contained  
21 in the statements. We'll also discuss the  
22 information reflected on the tentative witness  
23 list, which has been emailed and distributed to  
24 the parties. That's the larger chart.

25           And you may find it helpful to just kind

1 of keep score as we go along as to amounts of time  
2 parties are requesting and which issues they want  
3 to either introduce witnesses on, or cross-examine  
4 other witnesses.

5 We'll proceed with each party in turn.  
6 I'd like a party to provide an opening statement,  
7 if it so desires; and then answer some general  
8 questions.

9 Next what I'd like each party to do is  
10 focus on the list of topics reflected on the  
11 witness list and let me know which, if any on the  
12 list, accurately reflects the categorization of  
13 various topics, identity of witnesses, and times  
14 desired for direct and cross-examination. In  
15 other words, update your prehearing conference  
16 statements.

17 I would also like each party to indicate  
18 whether it agrees or disagrees with characterizing  
19 the first few topics as being ones which can be  
20 taken by declaration. This means that the  
21 evidence for these topics would be based on the  
22 written testimony only, and that no witnesses will  
23 be called to present oral testimony, or be  
24 subjected to cross-examination.

25 So, I think we'll get right into it and

1 begin with the applicant, if you folks are  
2 prepared. I have a few questions, and this is  
3 rather informal. We keep it that way so we can  
4 get as much done as possible.

5 First of all, has the applicant provided  
6 the additional soil studies and health risk  
7 assessment to the other parties?

8 MS. SOLE: The applicant has provided  
9 the additional results of the data, or sorry, the  
10 borings that were taken. The borings were taken,  
11 I believe, three or four weeks ago; and the lab  
12 results were circulated to the service list on  
13 Thursday.

14 HEARING OFFICER FAY: So those were  
15 provided on Thursday?

16 MS. SOLE: That's correct.

17 HEARING OFFICER FAY: And that amounts  
18 to the additional soil studies?

19 MS. SOLE: It's the additional  
20 information that we committed to make available  
21 prior to this prehearing conference. It's my  
22 understanding that with that information the staff  
23 has agreed we would be ready to proceed to  
24 evidentiary hearings.

25 HEARING OFFICER FAY: Okay.

1 MS. SOLE: That is what I believe was  
2 reported to me.

3 HEARING OFFICER FAY: And Mr. Valkosky  
4 noted a health risk assessment, as well. Was that  
5 part of the information provided?

6 MS. SOLE: That was not part of the  
7 information that's been provided.

8 HEARING OFFICER FAY: Okay. And have  
9 you gotten any reaction from the staff or other  
10 parties to your proposed changes to the conditions  
11 of certification on pages 6 through 8 of your  
12 prehearing conference statement?

13 I'm just going to turn to that and  
14 perhaps we can go right down the list.

15 MR. SARVEY: Mr. Fay, could I have a  
16 copy of the applicant's prehearing conference  
17 statement, the one they sent me is missing every  
18 even page, so --

19 HEARING OFFICER FAY: Yeah, Mr. Sarvey,  
20 for the purposes of the record we acknowledge  
21 you're here. And you'll see copies of all the  
22 prehearing conference statements to your left.

23 And we'll just go off the record for a  
24 moment. I want to provide you with some  
25 information.

1 (Off the record.)

2 HEARING OFFICER FAY: I provided Mr.  
3 Sarvey with a series of matrices that the other  
4 parties were provided. And it will just help all  
5 the parties to keep track of where we are based on  
6 the prehearing conference statements that were  
7 filed. And then hopefully we'll make some  
8 progress beyond that today.

9 My next question of the applicant is  
10 regarding the notations you made on pages 6  
11 through 8 of your prehearing conference statement,  
12 making recommended changes, I believe, to the  
13 conditions of certification. Have you received  
14 any feedback from the staff regarding that?

15 MS. SOLE: I believe that the feedback  
16 that was received was that generally it looked  
17 like issues could be resolved between the City and  
18 staff without adjudication.

19 The one area where there was some  
20 question about that was in the soil and water  
21 area. In that area I think the results of the  
22 field sampling has provided an opportunity for  
23 staff and the City to get much closer together.

24 I believe that some further discussions  
25 with staff could result in a stipulated conditions

1 of certification as to soil and water. But we  
2 have not yet had the opportunity to, you know,  
3 fully concur on conditions of certification in  
4 that topic.

5 HEARING OFFICER FAY: Okay. And have  
6 you scheduled any opportunity to do that?

7 MS. SOLE: We have not, but I would  
8 intend to do that today.

9 HEARING OFFICER FAY: Okay. So your  
10 opinion is that that can be resolved without  
11 adjudicatory hearings?

12 MS. SOLE: It's certainly my hope, and I  
13 think there's good reason to be hopeful.

14 HEARING OFFICER FAY: All right. And  
15 that reflects your reaction on each of those  
16 subject areas? And I see air quality, cultural,  
17 hazardous materials, noise and vibration, soil and  
18 water and waste management.

19 ASSOCIATE MEMBER GEESMAN: Paleontology  
20 on page 8.

21 HEARING OFFICER FAY: Paleontology, as  
22 well. Thank you.

23 MS. SOLE: I believe that's correct. We  
24 provided comments in all of these areas, and  
25 obviously if we made the comments it's because we

1 thought that it was worthy of note.

2 But the most substantive issues were in  
3 the soil and water area.

4 HEARING OFFICER FAY: All right. In  
5 your view is there any reason why the following  
6 topics could not be taken by declaration? They  
7 include the general conditions and compliance;  
8 transmission line safety and nuisance;  
9 transmission system engineering, although I see a  
10 notation that we'll need a witness for local  
11 system effects; visual; noise, assuming the staff  
12 accepts the changes in your FSA comments; worker  
13 safety and fire protection; facility design;  
14 reliability, including gas supply; and efficiency.

15 MS. SOLE: No, I believe all of those  
16 areas could be taken by declaration.

17 HEARING OFFICER FAY: Okay. Can we  
18 refer to the tentative witness list, and get your  
19 comments on times for direct and cross-examination  
20 based on what you've learned from the other  
21 prehearing conference statements filed?

22 MS. SOLE: Other than the likelihood  
23 that the issues between staff and the City will be  
24 resolved prior to evidentiary hearing, there  
25 really is no change to our comments in our

1 prehearing conference statement.

2 We have not yet seen the testimony of  
3 other parties. Their prehearing conference  
4 statements indicate the possibility of fairly  
5 extensive testimony.

6 We would obviously make every effort to  
7 keep our cross-examination as brief as necessary  
8 to, you know, test the usefulness of their  
9 testimony. So, without viewing their testimony  
10 it's difficult to state with more precision  
11 exactly what our expected times for cross-  
12 examination would be.

13 HEARING OFFICER FAY: All right. Maybe  
14 we could come back to that as this progresses  
15 today and you hear what other parties have to say.

16 Are there other changes to the tentative  
17 witness list in terms of individuals?

18 MS. SOLE: There are changes. I have  
19 some changes, I've gotten some updates in terms of  
20 availability from two of my witnesses, Ms. Anne  
21 Eng and Mr. Barry Flynn. I have a revised  
22 proposed schedule, which, of course, did not take  
23 into account the availability of the  
24 Commissioners. I was not familiar with their  
25 schedule. And a revised witness availability list.

1           The other clarification I would like to  
2           make is that our -- the witness availability list  
3           had dates on which I was not available. I will  
4           make every effort to make myself available if one  
5           of the dates that I was unavailable was otherwise  
6           convenient.

7           HEARING OFFICER FAY: Now, one of those  
8           dates, I believe, was the first date on the --

9           MS. SOLE: Right, April 27th.

10          HEARING OFFICER FAY: -- chart I passed  
11          out. So you are available that day?

12          MS. SOLE: I will make myself  
13          available --

14          HEARING OFFICER FAY: Okay.

15          MS. SOLE: -- if it's convenient for  
16          everybody --

17          HEARING OFFICER FAY: And how about your  
18          Project Manager? You had a witness who was also  
19          unavailable that day.

20          MS. SOLE: Yeah, I think Mr. Flynn was  
21          not available on that date. Let me just --

22          HEARING OFFICER FAY: Well, it looks  
23          like -- it looks like quite a few people are not  
24          available that day.

25          MS. SOLE: Yeah, okay, yeah. My Project

1       Manager is not available on that date, so that's  
2       the more important point.

3               HEARING OFFICER FAY:   Okay.  All right,  
4       so you are, but that doesn't dramatically  
5       change --

6               MS. SOLE:   That -- yeah --

7               HEARING OFFICER FAY:   -- the situation.

8               MS. SOLE:   -- that will not be a good  
9       date.

10              HEARING OFFICER FAY:   Okay.

11              MS. SOLE:   Okay, I've just been told by  
12       my Project Manager that she, too, will make  
13       herself available.

14              HEARING OFFICER FAY:   Okay, that's Ms.  
15       Kubick?

16              MS. SOLE:   Ms. Kubick, yes.

17              HEARING OFFICER FAY:   Okay.  Any other  
18       changes to the witness list, then?  Or is it all  
19       recorded on what you've prepared?

20              MS. SOLE:   Assuming that we resolve the  
21       outstanding issues with staff with regards to soil  
22       and water, then it would all be as set forth in  
23       our prehearing conference statement.

24              If the issues remain outstanding with  
25       regards to soil and water, then the City would

1 propose to put up two additional witnesses. I  
2 have their names, resumes and availabilities along  
3 with me. But I really am very confident that we  
4 will be able to work out the issues with staff.

5 HEARING OFFICER FAY: Okay. And that's  
6 two additional witnesses if necessary?

7 MS. SOLE: Yes.

8 PRESIDING MEMBER BOYD: I'm anxiously  
9 awaiting the staff's comments on that same  
10 question, but we'll wait.

11 HEARING OFFICER FAY: Right. What are  
12 the City's plans to file additional testimony? Is  
13 it just limited to the soil and water on that, as  
14 you explained that?

15 MS. SOLE: Our thought was to provide  
16 additional testimony in the areas of interest,  
17 which essentially summarize what's already been  
18 provided, so that, you know, the whole record can  
19 be understood more succinctly; and also where the  
20 particular exhibits that would be sponsored by a  
21 particular witness are identified.

22 There will be some changes to our  
23 appendix B. Appendix B was the document that  
24 identified all of the exhibits that we were  
25 intending to introduce. Upon review there are

1 various and sundry minor changes that need to be  
2 made to recognize what was relevant, and what is  
3 no longer relevant in light of the filing of  
4 supplement A.

5 And we would propose to provide an  
6 updated appendix B, and this testimony, which  
7 summarizes certain key areas on the date, the  
8 testimony date, that the Committee establishes.

9 HEARING OFFICER FAY: Okay. So that  
10 would come in with all the other testimony. All  
11 right.

12 And does the City intend to provide a  
13 mitigation plan for PM2.5 in its testimony?

14 MS. SOLE: That was not our intent. We  
15 have provided a detailed PM10 mitigation plan.  
16 For PM2.5 there was some discussion about some  
17 conditions of certification, which the City is  
18 agreeable to. But it's pretty simple.

19 In the alternative there would be a  
20 fireplace program, or an SO2 emission reduction  
21 credit approach.

22 HEARING OFFICER FAY: And is the  
23 condition, does it contain the alternative --  
24 under fixed conditions the alternative would be  
25 automatically triggered, is that the idea?

1 MS. SOLE: The condition gives us the  
2 option of taking one of two alternatives.

3 HEARING OFFICER FAY: What condition is  
4 that?

5 MS. SOLE: Excuse me one minute.

6 (Pause.)

7 MS. SOLE: Okay, they're AQ-SC-11 and  
8 12. Eleven says the project owner shall provide  
9 an additional five tons per year of PM2.5 emission  
10 reduction credits by subsidizing the replacement  
11 or modification (blocking chimneys) of wood stoves  
12 or fireplaces.

13 And then AQ-SC-12 says in lieu of  
14 compliance with condition AQ-SC-11, project owner  
15 shall provide 45 tons per year of SOx emission  
16 reduction credits acquired in the local Hunter's  
17 Point or Potrero areas to provide an annual  
18 equivalent of 15 tons per year of PM2.5.

19 HEARING OFFICER FAY: Okay. And has  
20 that been accepted by the Air District?

21 MS. SOLE: The District has not required  
22 mitigation of PM10 or PM2.5. These conditions  
23 were based in CEQA.

24 HEARING OFFICER FAY: Okay. And is it  
25 your understanding that staff finds that

1 acceptable?

2 MS. SOLE: Staff proposed these  
3 conditions of certification in their final staff  
4 assessment --

5 HEARING OFFICER FAY: Okay.

6 MS. SOLE: -- and they're acceptable to  
7 the City.

8 HEARING OFFICER FAY: Okay. I think the  
9 last question I have, is there any other change to  
10 witness availability?

11 MS. SOLE: And as I mentioned, there are  
12 some changes to the availability of our witness  
13 Eng and Barry Flynn. And I have a revised table 3  
14 with the changes marked, which I can distribute if  
15 that would be helpful.

16 HEARING OFFICER FAY: Please.

17 (Pause.)

18 HEARING OFFICER FAY: And you said this  
19 morning that you modified this by making yourself  
20 available on 4/27, and Ms. Kubick, as well?

21 MS. SOLE: Yes.

22 HEARING OFFICER FAY: On 4/27.

23 MS. SOLE: Yes.

24 HEARING OFFICER FAY: Okay. Other than  
25 that the biggest changes are for Eng and Flynn?

1 MS. SOLE: That's correct.

2 HEARING OFFICER FAY: I see, you've got  
3 them noted with strikeout and underline.

4 All right. Well, I really jumped right  
5 into this, didn't give you a chance for any kind  
6 of opening statement. Did you want to make any  
7 statement overall, or what would you like to --

8 MS. SOLE: The one statement that I'd  
9 like to make is that we appreciate the opportunity  
10 to be here. We're very interested in getting  
11 evidentiary hearings scheduled promptly. Our  
12 concern is to have licensing complete in time for  
13 the board of supervisors to consider the project  
14 before they go on their summer break, I believe  
15 the second part of August. And we will do what we  
16 can.

17 We recognize that the availability of  
18 some of our witnesses have made scheduling  
19 difficult. But we're here in the spirit of trying  
20 to work that out so that we can move along.

21 HEARING OFFICER FAY: One thing that the  
22 Committee has explored that will help the  
23 situation is if we can hold as many topics as  
24 possible, if we can take evidence on them up in  
25 Sacramento. Because just for the logistic

1       simplicity that the Commissioners could run down,  
2       one or both Commissioners could run down, do the  
3       hearing.  It's not as big a time commitment.

4               And where they may not have a whole day  
5       available, they might have a period of time to get  
6       some of the record built.

7               Are there topics that from your  
8       perspective you think would be inappropriate to  
9       hold in Sacramento because of the local interest?

10              MS. SOLE:  From the standpoint of a  
11       community, we were hopeful that at least topics  
12       such as air quality, purpose and need,  
13       alternatives, public health, environmental justice  
14       could be held in San Francisco.

15              That assumes that the community would  
16       have an interest in participating in the  
17       evidentiary hearings.

18              HEARING OFFICER FAY:  Okay.

19              MS. SOLE:  I guess I'll leave it at  
20       that.

21              HEARING OFFICER FAY:  Sure, that's fine.  
22       Good.  Okay, well, I hope you don't mind if we  
23       come back to you from time to time as we go  
24       through this.  We'll be informal.

25              MS. SOLE:  That's what we're here for.

1                   HEARING OFFICER FAY: Anything further  
2 you want to ask?

3                   PRESIDING MEMBER BOYD: No, I'm really  
4 awaiting some staff response to this before we  
5 launch into the difficulty it's going to be  
6 getting these hearings scheduled.

7                   HEARING OFFICER FAY: Right.

8                   PRESIDING MEMBER BOYD: And the  
9 expectation, if not hope at least, that the  
10 parties can resolve a lot of these issues in  
11 advance of our having to have too many hearings.  
12 Because the estimates of time given us for  
13 Committee hearings are surprisingly extensive and  
14 difficult for Commissioner Geesman and I,  
15 collectively, to find appropriate windows in time.  
16 But we're working on it.

17                   And to the extent, as indicated, if we  
18 could do some things in Sacramento that weren't  
19 estimated to take an entire day, but maybe a half  
20 a day, it makes us more available.

21                   Last week Commissioner Geesman and I, in  
22 discussions with staff, did ask our staffs to  
23 drill deeper into our own calendars to see if we  
24 can't find some greater opportunities than we seem  
25 to show in the beginning. So we hope we get some

1 of that resolved.

2 HEARING OFFICER FAY: I'm sure the City  
3 recognizes that unavailability of witnesses and  
4 this bind on the calendar are two factors that  
5 make it difficult to meet the schedule that you  
6 have in mind, so any flexibility you have there it  
7 would probably help.

8 Let's move to the staff then.

9 ASSOCIATE MEMBER GEESMAN: Mr. Fay, I  
10 had a question on the City's expectation in terms  
11 of the calendar. You want your board of  
12 supervisors to consider the matter in the second  
13 half of August. Am I correct in assuming that  
14 that means a final decision by the Commission by  
15 that point in time, or would the Committee's  
16 recommendation be sufficient to trigger  
17 consideration by the board of supervisors?

18 As you know, there's a 30-day notice  
19 period between the Committee's decision and the  
20 full Commission taking up that Committee  
21 recommendation.

22 MS. SOLE: I believe that a final  
23 Commission decision is probably what's required.  
24 I mean the board of supervisors needs to have a  
25 CEQA determination --

1                   ASSOCIATE MEMBER GEESMAN: Okay.

2                   MS. SOLE: -- before it can act. I  
3 should also point out that before the board of  
4 supervisors considers the matter, the matter has  
5 to be presented to the Public Utilities  
6 Commission, the San Francisco Public Utilities  
7 Commission.

8                   It may be, quite frankly, that the  
9 schedule that we have is just unrealistic in terms  
10 of getting to the board of supervisors before the  
11 second part of August.

12                   If there's a slip obviously we still  
13 want to minimize that as much as possible, because  
14 every month that we lose at this end is less time  
15 that Karen has for her construction. And we are  
16 under very stern direction from the Department of  
17 Water Resources that they want this plant to be  
18 online by summer 2008.

19                   HEARING OFFICER FAY: In addition to the  
20 board of supervisors, and the San Francisco PUC,  
21 are there also clearances that you need from other  
22 City departments in terms of site access and  
23 easements, that sort of thing?

24                   MS. SOLE: No. We have to finalize the  
25 memorandum of understanding between the Port, the

1 Muni, and the San Francisco Public Utilities  
2 Commission for the site. But that could occur  
3 anytime prior to construction. And the City has  
4 been working the various and sundry processes that  
5 need to happen for that to occur.

6 In order for -- the difficulty with the  
7 board of supervisors, the board of supervisors has  
8 to act before the financing can take place. And  
9 so that's the concern with the timing there, is  
10 that the board of supervisors needs to act, and  
11 then we can go forward with bond financing. And  
12 that process takes anywhere from optimistically,  
13 you know, three months, but possibly a few more  
14 months than that.

15 HEARING OFFICER FAY: I understand. I  
16 was concerned about the things prior to the board  
17 of supervisors, but not under the Energy  
18 Commission control. And as Mr. Varanini knows,  
19 from a prior client, they're still waiting for the  
20 Port of San Francisco to act on an easement.

21 So that's why I asked about other little  
22 gatekeepers along the way. And whether you think  
23 there's any likelihood of delay or that things  
24 would be expedited.

25 MS. SOLE: Again, I mean the two things,

1 the sequence that we've been looking at are, you  
2 know, we need to get our bonds financing going so  
3 that we get the money so that we can start  
4 construction.

5 The San Francisco Public Utilities  
6 Commission -- Department has already determined  
7 that it will front some of the preconstruction  
8 activities in order not to lose so much time  
9 during the financing.

10 But nonetheless, in order for us to get  
11 started, the Public Utilities Commission has to  
12 approve the EPC contract and the project. And  
13 then the contract and the financing needs to be  
14 approved by the board of supervisors. And then we  
15 can go forward with bond financing; we can get  
16 started.

17 Karen, do you have anything?

18 MS. KUBICK: No, I would just -- is it  
19 okay to talk from here?

20 HEARING OFFICER FAY: Sure. Could you  
21 identify yourself, please.

22 MS. KUBICK: Yeah, my name's Karen  
23 Kubick. I'm the Project Manager with the San  
24 Francisco Public Utilities Commission.

25 THE REPORTER: I'm sorry, could I ask

1 her to maybe move to a microphone --

2 HEARING OFFICER FAY: Sure, I guess  
3 you'll have to come up; it's not picking up.

4 MS. KUBICK: I would just add to  
5 Jeanne's statements. We're working with the Muni  
6 and the Port to finalize the memorandum of  
7 understanding, and expect that to be moving  
8 rapidly through those two commissions.

9 We would be taking a whole project to  
10 our Commission as soon as we're through with the  
11 licensing process. And our Commission is well  
12 versed in this regard; in fact, later in the day  
13 I'm going to be walking through the schedule with  
14 the president of our Commission who's very anxious  
15 to move this along.

16 We're getting bids in on the design/  
17 build job actually mid-April, so that our  
18 Commission, the Public Utilities, is very anxious  
19 to move this along because of the relationship we  
20 have with the Department of Water Resources.

21 HEARING OFFICER FAY: Okay, thank you.  
22 All right, anything further, Ms. Sole?

23 MS. SOLE: No.

24 HEARING OFFICER FAY: Okay. Mr.  
25 Ratliff, let me ask the staff, have you received

1 the site characterization data?

2 MR. RATLIFF: We have; we've received it  
3 and our witnesses have reviewed it and reached  
4 some preliminary conclusions about it that will, I  
5 think, lead to some supplementary testimony that  
6 we hope to file by next week in the areas of soil  
7 and water resources, and waste management.

8 In all other areas we are already, I  
9 think, ready to go to hearing. We have, I  
10 believe, resolved all the issues with the  
11 applicant. The applicant's given us a list of  
12 issues with regard to the final staff assessment.  
13 And we've had a workshop on that. I think we've  
14 reached some resolution on many of those; most of  
15 them are fairly small issues.

16 And I think when we file our  
17 supplementary testimony we will file the -- not  
18 only will we be refileing our conditions of  
19 certification for waste management and soil and  
20 water resources, but we will also indicate if  
21 there are any issues which they have raised which  
22 we think are not resolved. And I don't believe  
23 there are any, frankly.

24 I think most of those are small issues  
25 that have been resolved, having to do with

1        wording.  Such things, I think one of the biggest  
2        ones is the City stated in the area of noise that  
3        they didn't want to do a 25-hour noise study.  
4        They thought that that duration of noise study was  
5        excessive.  But that is the nature of the kinds of  
6        issues that we have.

7                    I don't know what our response to that  
8        may be, but I don't think these are the kind of  
9        issues that you really want to adjudicate in our  
10       proceeding.

11                   HEARING OFFICER FAY:  So, is it within  
12       the realm of the type of thing where you could  
13       submit something on declaration with a  
14       modification along with it?  In other words, the  
15       testimony's submitted with this addendum, and  
16       there's nothing more to say?

17                   MR. RATLIFF:  That's right.  It will be  
18       a short piece of testimony with a revised set of  
19       conditions of certification for those two topic  
20       areas.  And that is only a subset of the total set  
21       of conditions of certification.  The ones which  
22       have to do with the site characterization, and  
23       with any remediation efforts which have to take  
24       place, assuming some do have to take place as a  
25       result of the site characterization study.

1                   And with that, I think we would be ready  
2                   to go to hearing very shortly thereafter. I think  
3                   the only concern you would have then would be to  
4                   allow the intervenors the opportunity to file any  
5                   testimony that they may choose to file on that  
6                   issue.

7                   HEARING OFFICER FAY: How soon will that  
8                   supplemental soil testimony be filed?

9                   MR. RATLIFF: Well, I don't want to  
10                  over-promise for my witnesses, but we had hoped to  
11                  file it by Friday. But I would like to have until  
12                  next week to file it.

13                  HEARING OFFICER FAY: Okay. So sometime  
14                  the week of April 10th?

15                  MR. RATLIFF: No later than the week  
16                  after this one.

17                  HEARING OFFICER FAY: Okay. And the  
18                  fact that there's no health risk assessment with  
19                  that, is that a problem for the staff?

20                  MR. RATLIFF: It is not.

21                  HEARING OFFICER FAY: Okay.

22                  MR. RATLIFF: And we've discussed this  
23                  at length with our witnesses, and they have -- Mr.  
24                  Greenberg, by the way, has been good enough to  
25                  come today, if you have further questions about

1 this very issue.

2 HEARING OFFICER FAY: Okay.

3 MR. RATLIFF: But, what they have told  
4 us is that they can identify the kinds of  
5 mitigations which would be potentially required  
6 based on the site characterization study. And  
7 they can prescribe a set of conditions that would  
8 be entirely protective of public health for that  
9 kind of remediation effort, based on the kinds of  
10 guidelines that are already in place from the  
11 agencies like Department of Toxic Substances  
12 Control and the Regional Water Board, who will  
13 also be actually making the final determination  
14 based on the health risk assessment of what, if  
15 any, remediation is to occur on the site.

16 HEARING OFFICER FAY: Okay. And you  
17 mentioned noise. I just want it cleared up. Is  
18 this something we can add to the list of topics  
19 that --

20 MR. RATLIFF: Yes.

21 HEARING OFFICER FAY: -- we could take  
22 on declaration?

23 MR. RATLIFF: I think so. And I mean  
24 unless the City thinks that they want to  
25 adjudicate whether or not they have to do a 25-

1 hour noise study, I don't think so.

2 I don't know what the answer is to that  
3 particular issue, but if we think that the City is  
4 correct on that point, we will indicate when we  
5 file the supplemental testimony, as well.

6 But I think on most other issues there  
7 has already been closure based on the workshop  
8 that we had two weeks ago.

9 HEARING OFFICER FAY: I'm just curious  
10 how this is going to get resolved. You said that  
11 it appears to be a legal requirement with no give.  
12 But then you said the City might have a reaction  
13 that would change it. I just want to know we can  
14 determine if we can get --

15 MR. RATLIFF: Well, I'm hoping the City  
16 will today say that they don't want to adjudicate  
17 that issue of whether they have to do a 25-hour  
18 study or not. I don't know if they think it's  
19 that important, but --

20 HEARING OFFICER FAY: Can you say that  
21 now, Ms. Sole?

22 MS. SOLE: I can say now that we would  
23 be -- we will resolve that issue, and if the  
24 bottomline is we need to do a 25-hour study, then  
25 that's what we'll do. We were trying to avoid

1 that to avoid the necessity of running at a time  
2 when the plants wouldn't otherwise be needed, but  
3 that is not an issue that merits evidentiary  
4 hearings.

5 HEARING OFFICER FAY: Good. Any  
6 reaction on the other proposed changes that the  
7 applicant put in pages 6 through 8 of their  
8 prehearing conference statement? There were a  
9 number of recommendations.

10 MR. RATLIFF: No. I think many of those  
11 have already been addressed. And I think these  
12 are small issues. Again, if there are changes  
13 that we need to make in particular conditions, we  
14 will either do so in what we will file at the end  
15 of this week, or we will, if they're very small  
16 changes we will make them on the stand when our  
17 witnesses testify.

18 HEARING OFFICER FAY: Okay.

19 MR. RATLIFF: I would also like to tell  
20 you that Michael Stevens is an additional witness  
21 for the area of waste management -- I'm sorry,  
22 soil and water resources. And he actually  
23 participated in the staff FSA, but we took his  
24 name off because he was -- at that time we thought  
25 he was taking a job at the Department of Toxic

1 Substances Control. And he has since decided to  
2 stay with the staff, so he will be a witness, an  
3 additional witness.

4 HEARING OFFICER FAY: And his r, sum, is  
5 in the back of the FSA?

6 MR. RATLIFF: Yes. We will put it on  
7 the additional piece of testimony that we file.

8 HEARING OFFICER FAY: Okay. But he was  
9 one of the authors of the FSA?

10 MR. RATLIFF: He was, indeed.

11 HEARING OFFICER FAY: Okay. And does  
12 staff have any plans to address Mr. Sarvey's  
13 assertions that there was no cumulative impact  
14 analysis for air quality and that there is not an  
15 adequate PM2.5 mitigation plan?

16 MR. RATLIFF: Well, there is -- I mean  
17 you can read the staff testimony and you will see  
18 that staff has addressed air quality. And it has  
19 addressed it more than in the ways that CEQA  
20 requires.

21 CEQA requires either a summary of  
22 projections analysis, which staff did. Or, in the  
23 alternative, it requires a list of projects  
24 analysis. And staff did that, as well, of the  
25 major projects.

1           I think what we saw in Mr. Sarvey's  
2           comments was that maybe that list of projects  
3           analysis is not complete. Our witness thinks that  
4           most of those projects are already in the  
5           background which includes those -- which captures  
6           the impacts of those projects because most of  
7           them, if not all of them, are already complete.

8           But even if we had no list of projects  
9           analysis, we are not required to have both of  
10          those analyses as part of the cumulative impact  
11          analysis, pursuant to the CEQA guidelines.

12          HEARING OFFICER FAY: Okay. And I  
13          didn't want to get into too much of the substance,  
14          but I did want to be sure that, you know, all the  
15          issues are engaged and the parties are ready to  
16          take these on if it is something for adjudication.

17          Now, I'd like to go through a list, the  
18          same list I went through with Ms. Sole --

19          MR. RATLIFF: Before we go any further,  
20          just in terms of I don't really have an opening  
21          statement, but one of the things that I think  
22          staff would like to emphasize is that we think  
23          that certainly we want to produce witnesses in  
24          areas that are truly contested by anyone. And  
25          we're willing to do so.

1                   But we would like the Committee to make  
2                   sure that there is actually the need for witness  
3                   testimony inasmuch as that there is an  
4                   identifiable issue of fact before we have to  
5                   produce witnesses. Because we think that those  
6                   areas, based on the workshops that we've had and  
7                   the comment that we've had, are actually quite  
8                   few. For instance, public health, air quality and  
9                   alternatives are those areas where we've had a  
10                  fair amount of public discussion and debate.

11                  But I think in most areas you don't have  
12                  that. So I would like the Committee -- I would  
13                  hope that the Committee would be certain that  
14                  there is actually the need to resolve issues,  
15                  factual issues, before we have adjudication of  
16                  those issues.

17                  HEARING OFFICER FAY: Well, and we want  
18                  your help in helping us address that. If you  
19                  think that after you hear from everybody they have  
20                  not articulated an issue in an area that they want  
21                  four hours of cross-examination or something like  
22                  that, then please bring that to our attention, or,  
23                  you know, step in and speak up. Because we don't  
24                  want to inadvertently schedule something that  
25                  really doesn't have any probative value because

1       there's nothing to adjudicate.

2                   If I can, for the two of you, just go  
3       through a list of topics and confirm. This is the  
4       same list I asked the applicant. Do you agree  
5       that at least all of these can be taken by  
6       declaration? And that is the general conditions  
7       and compliance?

8                   MR. RATLIFF: Yes, we do.

9                   HEARING OFFICER FAY: Transmission line  
10       safety and nuisance; transmission system  
11       engineering with the exception of a witness for  
12       local system effects; visual -- now visual is  
13       interesting, because I know the applicant had a  
14       panel of an air quality and aesthetic expert.  
15       But, they indicated they thought this could be  
16       taken by declaration. Is staff --

17                   MR. RATLIFF: We agree.

18                   HEARING OFFICER FAY: Okay. How about  
19       noise?

20                   MR. RATLIFF: We agree.

21                   HEARING OFFICER FAY: Also, okay.  
22       Facility design?

23                   MR. RATLIFF: Yes.

24                   HEARING OFFICER FAY: Worker safety?

25                   MR. RATLIFF: Yes.

1 HEARING OFFICER FAY: And fire  
2 protection; reliability, including gas supply; and  
3 efficiency?

4 MR. RATLIFF: Yes.

5 HEARING OFFICER FAY: Okay. And after  
6 looking at the prehearing conference statements of  
7 the other parties, do you have anything you can  
8 advise us on in terms of your anticipated need for  
9 cross-examination?

10 MR. RATLIFF: Well, any cross-  
11 examination that we do I think would probably be  
12 very brief. So for every witness that the  
13 intervenors have identified as potential  
14 witnesses, I would like to reserve at least five  
15 minutes of time for each of those witnesses, if  
16 those areas are, in fact, found to be contested.

17 HEARING OFFICER FAY: Okay.

18 ASSOCIATE MEMBER GEESMAN: Mr. Fay, can  
19 I ask what is it about the transmission local  
20 system effects that compels an evidentiary  
21 adjudication?

22 HEARING OFFICER FAY: I'm going to need  
23 the parties to help me on that, because --

24 MR. RATLIFF: Well, I'll try.

25 HEARING OFFICER FAY: Okay.

1           MR. RATLIFF:  And I don't know that it  
2           does, first of all.  But there is, I think we have  
3           heard, and we do see stated in for instance CARE's  
4           prehearing conference statement, a question --

5           ASSOCIATE MEMBER GEESMAN:  Okay,  
6           something raised by the intervenor?

7           MR. RATLIFF:  That's right.

8           ASSOCIATE MEMBER GEESMAN:  Okay.

9           MR. RATLIFF:  A question as to whether  
10          or not, in fact, the reliability project will  
11          increase San Francisco's reliability.

12          ASSOCIATE MEMBER GEESMAN:  But it's not  
13          something raised by the applicant that you think  
14          compels --

15          MR. RATLIFF:  No.  And for that we would  
16          have the ISO witness testify, along with Mr.  
17          Hesters, who we've indicated as the staff witness.

18          HEARING OFFICER FAY:  Okay, are there  
19          topics that in addition to those that I've  
20          mentioned in declaration that you think staff  
21          would not be offering a live witness for, if that  
22          can be avoided?  Or are you just going to have to  
23          wait till we hear from the intervenors?

24          MR. RATLIFF:  Well, I may be being a  
25          little bit too narrow, but I think I have

1 mentioned the issues which I believe have been  
2 ones which have provoked controversy.

3 In fairness, there may be other issues  
4 that are fairly contested by the applicants. But  
5 I think public health, air quality and  
6 alternatives are the only ones, to my knowledge,  
7 are ones where there are contested claims. And  
8 those are the ones that we would suggest require,  
9 where we would like to put on witness testimony  
10 and go through the process.

11 But we don't really think that any of  
12 the other ones require witness testimony or  
13 adjudication, or we aren't aware that they do.

14 HEARING OFFICER FAY: Public health,  
15 alternatives --

16 MR. RATLIFF: Air quality, public  
17 health, alternatives and air quality. Did I say  
18 air quality? And alternatives.

19 HEARING OFFICER FAY: And any other  
20 changes to your tentative witness list?

21 MR. RATLIFF: No. We will be sponsoring  
22 an ISO witness for local system effects if the  
23 Committee wants that testimony and finds it to be  
24 one that they're going to have witness testimony  
25 on. And we will sponsor a witness from the Air

1 District, as well; although the Air District has  
2 sometimes chosen to present their own witnesses  
3 with their own counsel. And they may do so.

4 HEARING OFFICER FAY: All right.  
5 Anything further right now?

6 MR. RATLIFF: I guess the only other  
7 thing that I would add would be that it strikes us  
8 that the biggest problem in terms of scheduling  
9 appears to be the availability of the air quality  
10 witness for the applicant.

11 It's not our role to suggest to the  
12 applicant how this should move forward, but it  
13 occurs to us that one of the things that might be  
14 considered is whether or not a substitute witness  
15 can be named by the applicant for the hearing if  
16 their principal witness is unavailable.

17 HEARING OFFICER FAY: Okay. We'll leave  
18 that to the applicant, I think.

19 All right, thanks, Mr. Ratliff.

20 Now I'd like to move to Mr. Sarvey.  
21 I've got some questions for you, Mr. Sarvey. Your  
22 prehearing conference statement indicates that you  
23 think there should be a PM2.5 mitigation plan now  
24 rather than during the compliance phase.

25 Isn't that really a topic for

1 adjudication, something that we can address during  
2 the hearings?

3 MR. SARVEY: For our analysis we need  
4 that PM2.5 mitigation plan upfront, otherwise we  
5 can't really evaluate what the applicant's going  
6 to do, and we have some disagreement with staff on  
7 condition AQ-12. And if you'd allow me to I'll  
8 just read my opening statement. I'll --

9 HEARING OFFICER FAY: Sure.

10 MR. SARVEY: -- pretty encapsulize why I  
11 think that's necessary.

12 HEARING OFFICER FAY: Okay, that's fine.

13 MR. SARVEY: The applicant, the City and  
14 County of San Francisco, here has admitted the  
15 community has been over-burdened by industrial  
16 pollution. And yet the applicant has proposed  
17 another industrial source in the community.

18 The applicant has justified this by the  
19 project's ability to shut down the Hunter's Point  
20 Power Plant and the Potrero Power Plant, and  
21 provide a community benefits program including  
22 PM2.5 mitigation.

23 Well, the Hunter's Point Power Plant  
24 will be shut down before this project's ever  
25 licensed. So this project has no ability to shut

1 down the Hunter's Point Power Plant; it's already  
2 happening. Whether this project goes forward or  
3 not, the Hunter's Point Power Plant will be shut  
4 down in June. That was a ruling passed down maybe  
5 two weeks ago here in the next chambers. So I  
6 want to make that clear.

7 The applicant also has no ability to  
8 limit or to shut down the Potrero Power project.  
9 So this is a big assumption that this is going to  
10 provide environmental justice to an over-burdened  
11 community that the applicant admits is over-  
12 burdened.

13 Now, the third leg of that is a  
14 community benefits program with PM2.5 mitigation.  
15 Now, we can't possibly analyze whether this  
16 project will fully mitigate its impact to the  
17 community without that. So we would like to have  
18 that in hand.

19 And, you know, for our analysis to say,  
20 yeah, this project's okay in air quality. It's  
21 hinged on that PM2.5 mitigation program. So we'd  
22 like to see it in advance of the hearings so we  
23 can do our own analysis on it, and we could  
24 present our testimony whether we believe it will  
25 mitigate it or won't mitigate it. So that's one

1 item we really really want.

2 HEARING OFFICER FAY: Okay. Now, your  
3 contention that there's been insufficient  
4 cumulative air analysis, isn't that again  
5 something that can be dealt with during  
6 adjudication?

7 MR. SARVEY: I believe it should be  
8 presented in advance, but if the Committee wishes  
9 to adjudicate it, we're certainly prepared to do  
10 so. And we're ready for that issue anytime.

11 HEARING OFFICER FAY: Okay. Now, have  
12 you received the applicant's additional  
13 information on site characterization?

14 MR. SARVEY: As of yet I have not.

15 HEARING OFFICER FAY: Did you serve all  
16 the parties with that information, Ms. Sole?

17 MS. SOLE: It's certainly my  
18 understanding that all parties were served. They  
19 were served by email and I believe hard copy. Let  
20 me confirm that with Mr. Carrier.

21 (Pause.)

22 MS. SOLE: Yes. The document was served  
23 by email and hard copy on Thursday.

24 HEARING OFFICER FAY: Okay. I don't  
25 know what to tell you. I can understand that

1 perhaps if you received it in the last couple days  
2 you haven't had a chance to look at it. My  
3 question was really whether that made any  
4 difference in your position and your readiness for  
5 hearings on hazmat and public health. But I guess  
6 you're at a disadvantage there.

7 MR. SARVEY: Well, you know, I want to  
8 see the document and it may help, but there's  
9 other issues that have been raised since that  
10 time, and that's the Department of Toxic  
11 Substances is asking for an analysis of the  
12 reclaimed water pipeline and the health effects  
13 from that. And they want a health risk analysis.  
14 That hasn't even begun.

15 So I don't see how we can be ready for  
16 any type of adjudication in that area until that's  
17 complete.

18 HEARING OFFICER FAY: And what is it  
19 you're anticipating, a health risk analysis  
20 from --

21 MR. SARVEY: The Department of Toxic  
22 Substances filed on, I believe it was the 30th --  
23 no, the 23rd, stating that the applicant needed to  
24 perform a health risk analysis and analyze the  
25 soil that will be disturbed from the reclaimed

1 water pipeline. And I don't know if the  
2 Committee's had an opportunity to see that yet,  
3 but we're kind of at a disadvantage without that  
4 in hand to be able to go forward with that area.

5 PRESIDING MEMBER BOYD: Mr. Fay, can we  
6 ascertain from staff if they're aware of this?

7 MR. RATLIFF: Well, we're discussing it  
8 right at this moment.

9 PRESIDING MEMBER BOYD: All right.

10 MR. RATLIFF: If you'd like, Mr.  
11 Greenberg seems to be --

12 HEARING OFFICER FAY: Sure, why don't  
13 you just address this directly, Dr. Greenberg.

14 DR. GREENBERG: Alvin Greenberg,  
15 consultant to the Energy Commission on waste  
16 management issues. We've reviewed the letter from  
17 DTSC; and what they're asking for is a  
18 determination of the contamination along the water  
19 pipeline that would bring secondary treated water  
20 into the plant for final treatment.

21 We've dealt with these situations in the  
22 past, and quite frankly, other offices of DTSC  
23 have not asked for this. And I've spoken with a  
24 number of individuals at DTSC.

25 What we do is we rely on the expertise

1 of the trenching and excavation crews that place  
2 these pipelines, whether they be a gas pipeline or  
3 a water pipeline. They're very adept; they're  
4 expert in protecting the workers; they backfill  
5 with the existing soil. And there are no risks to  
6 public health. The only risk would be to the  
7 workers; the workers are very well protected; they  
8 know how to do this.

9 We've dealt with pipelines as long as 35  
10 miles. This one is 1200 feet. And so what the  
11 applicant did is provide us with what we call a  
12 modified phase one environmental site assessment.  
13 Again, there is precedent for this on other  
14 projects, most recently the SMUD Cosumnes project,  
15 which a modified phase one environmental site  
16 assessment was provided for 35 miles of pipeline.  
17 Again, this is 1200 feet.

18 And I've reviewed and evaluated that, so  
19 we know what you can really expect in an urban  
20 environment in San Francisco. And the workers  
21 will, indeed, be protected.

22 So we did get that letter from DTSC.  
23 You know, DTSC gives us advice. And sometimes --  
24 well, most of the time we listen to it, but  
25 sometimes we disagree with their position. That's

1 from the Region II office. We've gotten letters  
2 agreeing with our approach from other regions of  
3 DTSC. This one didn't happen to agree.

4 HEARING OFFICER FAY: So their role in  
5 this is advisory, not regulatory?

6 DR. GREENBERG: That is correct.

7 HEARING OFFICER FAY: Okay. All right,  
8 well, it sounds like at most this is a question  
9 for adjudication; that the staff would bring up  
10 their position and you're welcome to bring up your  
11 position, as well, Mr. Sarvey.

12 MR. SARVEY: Is it possible to have a  
13 witness from DTSC on that?

14 HEARING OFFICER FAY: If you can arrange  
15 to have a witness, if that's how you want to put  
16 on your case.

17 MR. SARVEY: Thank you.

18 HEARING OFFICER FAY: And let's make  
19 clear just where you would like to raise this,  
20 under what subject area, since we're trying to  
21 focus the case and the schedule as much as  
22 possible. Is this a public health issue to you,  
23 or hazmat?

24 MR. SARVEY: I think it would be public  
25 health and soils. And water. The 1200-foot

1 pipeline has a big percentage of asbestos  
2 contained in the soil. And accordingly they would  
3 need a dust management plan from the Air District  
4 to go forward with that.

5 So that may be something the Air  
6 District would want to comment on, as well.

7 PRESIDING MEMBER BOYD: Can you explain  
8 for me the water implications of --

9 MR. SARVEY: Well, the contamination.  
10 They're going to have to dewater to do the  
11 digging. So, there could be --

12 MR. RATLIFF: This is for the pipeline?

13 MR. SARVEY: This is for the recycled  
14 water pipeline, yes.

15 MR. RATLIFF: That's new to me, but  
16 okay.

17 HEARING OFFICER FAY: How is this -- how  
18 do we normally deal with this? What subject area  
19 do we --

20 MR. RATLIFF: Well, as I understand it,  
21 that pipeline is -- I mean the applicant should be  
22 able to tell us more, but I understand that's a  
23 pipeline that's under a street, which is above  
24 another pipeline, so.

25 HEARING OFFICER FAY: I'm just trying to

1 understand the most efficient way for hearing this  
2 topic, if we have to adjudicate it. Dr.  
3 Greenberg, what does this usually come up under,  
4 hazmat?

5 DR. GREENBERG: Hearing Officer Fay,  
6 this issue would be under waste management.

7 HEARING OFFICER FAY: Okay.

8 DR. GREENBERG: And, of course, there  
9 are already proposed conditions of certification  
10 that should there be any surprises along the way  
11 the applicant has to have a registered geologist,  
12 a professional who would note that there would be  
13 some hazardous waste surprises. Everything gets  
14 stopped. Follow the recommendations of their  
15 professional.

16 We feel that we've proposed conditions  
17 of certification adequate to -- more than adequate  
18 to protect human health.

19 PRESIDING MEMBER BOYD: Maybe, Mr. Fay,  
20 I can ask the City if they have any comments on  
21 the occurrence of asbestos in the soil in this  
22 vicinity resulting from other public works that  
23 have occurred in the past. Has this ever been an  
24 issue?

25 MS. KUBICK: Karen Kubick, San Francisco

1 Public Utilities Commission. No, we don't  
2 anticipate asbestos along the pipeline area.  
3 There is some naturally occurring asbestos in some  
4 of the other areas, but, no, we're not concerned.

5 And I would echo Dr. Greenberg, I think  
6 the conditions of certification are very  
7 conservative and very typical of how we act for  
8 construction of pipelines. That area is a very  
9 big construction area; there's a lot of pipelines,  
10 a lot of work that's active out there. So I don't  
11 anticipate anything unexpected.

12 PRESIDING MEMBER BOYD: Excuse me, Mr.  
13 Fay. Mr. Sarvey, one more time. The water aspect  
14 you raise is not in the water supply,  
15 contaminating the water supply in the pipeline,  
16 but the dewatering of the trenches in the event  
17 of --

18 MR. SARVEY: Right.

19 PRESIDING MEMBER BOYD: -- construction?

20 MR. SARVEY: Right.

21 PRESIDING MEMBER BOYD: Trenching.

22 Okay.

23 HEARING OFFICER FAY: And your concern  
24 is that there would be some kind of hazardous  
25 substance in the water that would be removed?

1 MR. SARVEY: Correct.

2 HEARING OFFICER FAY: Okay. Now, I'm  
3 going to --

4 MR. RATLIFF: I would like the applicant  
5 to address that issue, because our understanding  
6 about the pipeline is that it's a pipeline under a  
7 street above an abandoned pipeline from the old  
8 regional water treatment plant.

9 So I can't imagine there's going to be  
10 any dewatering as an issue if our information is  
11 correct about that pipeline. So, I mean, if, in  
12 fact, there's going to be dewatering I think we  
13 ought to find that out right now, if it's going to  
14 be an issue we're going to adjudicate. Otherwise  
15 I'd like to put it to rest.

16 This came up for us in an examination of  
17 the possible cultural resources that are  
18 consistent with the pipeline. We examined where  
19 the pipeline was to see if it had any cultural  
20 resource value or whether it would disturb  
21 cultural resources. And in the investigation that  
22 went with that we determined that this was a  
23 pipeline which is above other areas where  
24 pipelines have been laid in the past. And that  
25 there was no indication at all that dewatering

1 would occur. And so I would just like to clarify  
2 whether or not that's the case.

3 PRESIDING MEMBER BOYD: You might  
4 consider staying there awhile.

5 (Laughter.)

6 MS. KUBICK: Okay. The pipeline is only  
7 down four feet. That's approximately the sea  
8 level, and there is a tidal influx there; there's  
9 also Islas Creek. We are above the wastewater  
10 line for part of the route. The rest of the route  
11 is not, but you're also inland then.

12 So there may be some water that we're  
13 encountering at the bottom of the trench. But  
14 this is no different than any other construction  
15 that's done out in this area commonly.

16 And there has been so much construction  
17 out there we can find out if there has been an  
18 issue with some of the muni work, you know. But  
19 nothing that we have heard of.

20 PRESIDING MEMBER BOYD: Well, I would  
21 just note in closing, as I heard, there is a  
22 contingency requirement should unexpected things  
23 be encountered. So, this certainly, I would  
24 presume, would be one something covered by a  
25 contingency in the event that it occurred. I

1       guess we're trying to track the history of whether  
2       it's likely, whether it's likely that anything  
3       like this even occurring.

4                   HEARING OFFICER FAY:  Mr. Sarvey, I'd  
5       like to go through a list of topics and just  
6       clarify whether you intend to cross-examine  
7       witnesses from the applicant and/or staff, or  
8       present your own witnesses, on any of these  
9       topics.  And if you could tell me if that's the  
10      case, how much time you need for direct and how  
11      much time you might need for cross.

12                   Transmission line safety and nuisance.  
13      It looks like the parties do not intend to  
14      adjudicate this based on their understanding.

15                   MR. SARVEY:  No, I have no intention.

16                   HEARING OFFICER FAY:  Okay.

17      Transmission system engineering.

18                   MR. SARVEY:  Not except for the local  
19      effects which the ISO witness will cover.

20                   HEARING OFFICER FAY:  Okay.

21                   MR. SARVEY:  So I would want to cross-  
22      examine the ISO witness.

23                   HEARING OFFICER FAY:  You would?

24                   MR. SARVEY:  I would want to cross-  
25      examine the ISO witness, yeah.

1 HEARING OFFICER FAY: Okay. For how  
2 long?

3 MR. SARVEY: Fifteen minutes at the  
4 most.

5 HEARING OFFICER FAY: And visual?

6 MR. SARVEY: I don't have anything under  
7 visual.

8 HEARING OFFICER FAY: How about noise?

9 MR. SARVEY: I'd like to wait until --  
10 well, my issue with noise --

11 HEARING OFFICER FAY: It seems unlikely  
12 the parties will be needing to adjudicate this.

13 MR. SARVEY: Without the 24-hour noise  
14 study it's kind of hard to say what -- and it  
15 doesn't seem like that's going to happen before  
16 the hearing, so I don't know how that'll be  
17 handled.

18 HEARING OFFICER FAY: Facility design?

19 MR. SARVEY: Only as related to  
20 efficiency, so I'm sure I can handle that in  
21 efficiency.

22 HEARING OFFICER FAY: Okay.

23 MR. SARVEY: And reliability, as well.

24 HEARING OFFICER FAY: General conditions  
25 and compliance?

1 MR. SARVEY: Nothing there.

2 HEARING OFFICER FAY: Okay. Now, you  
3 mentioned efficiency. This is as opposed to  
4 reliability; we can distinguish those two.

5 MR. SARVEY: Okay.

6 HEARING OFFICER FAY: I understand you  
7 have some cross-examination you'd like to do on  
8 reliability.

9 MR. SARVEY: Yeah, well, they were sort  
10 of related, so if efficiency needs to be a  
11 separate topic than that, that's fine, too.

12 HEARING OFFICER FAY: So you would like  
13 to cross-examine witnesses on efficiency?

14 MR. SARVEY: Yes, I would.

15 HEARING OFFICER FAY: And what issue?

16 MR. SARVEY: The project's simple cycle  
17 arrangement for simple cycle turbines. I believe  
18 this is a four-turbine project, not a three-  
19 turbine project.

20 HEARING OFFICER FAY: The proposal to be  
21 simple cycle versus a combined cycle?

22 MR. SARVEY: Right. Or cogeneration.  
23 And I believe there's a third -- a fourth turbine  
24 here that's, on the topic of accumulation that's  
25 not being dealt with by the CEC.

1                   HEARING OFFICER FAY:  Okay.  Are you  
2 going to offer witnesses on any of these topics  
3 that we want --

4                   MR. SARVEY:  Cross-examination only.

5                   HEARING OFFICER FAY:  Okay.  Now, do you  
6 intend to cross-examine witnesses on the following  
7 topics:  Waste management?

8                   MR. SARVEY:  Yes.

9                   HEARING OFFICER FAY:  And that relates  
10 to the pipeline issue?

11                   MR. SARVEY:  That relates -- waste  
12 management will mostly be some of he pipeline  
13 issue, but I also have issues with the ammonia  
14 that they're -- how they're proposing to set up  
15 their ammonia.

16                   And I'd also like to have --

17                   HEARING OFFICER FAY:  The ammonia  
18 handling?

19                   MR. SARVEY:  Ammonia handling, and  
20 particularly the storage.

21                   And I would also like to have Richard  
22 Lee from the Department of Health be provided by  
23 the applicant.

24                   HEARING OFFICER FAY:  For what purpose?

25                   MR. SARVEY:  To discuss the LORS of the

1 Department of Health for hazardous materials and  
2 risk management plans.

3 HEARING OFFICER FAY: Okay. Moving on,  
4 how about under geology or paleontology, any  
5 cross-examination?

6 MR. SARVEY: Very briefly.

7 HEARING OFFICER FAY: What witness on  
8 what topic?

9 MR. SARVEY: Staff and applicant's  
10 witness on geology. Paleontology I have nothing.

11 HEARING OFFICER FAY: What specific  
12 issue?

13 MR. SARVEY: The Bay fill that this  
14 project's being built on.

15 HEARING OFFICER FAY: What about the Bay  
16 fill?

17 MR. SARVEY: Well, there's new studies  
18 out that indicate that the Bay fill is much more  
19 likely to have liquefaction. And I want to  
20 discuss whether these experts have analyzed this  
21 project that included that in their assessment.

22 HEARING OFFICER FAY: Are you putting on  
23 a case-in-chief on that? Or do you just plan to  
24 cross --

25 MR. SARVEY: Pardon me?

1 HEARING OFFICER FAY: Will you have an  
2 affirmative case? Will you have a witness?

3 MR. SARVEY: No, I won't have a witness.

4 HEARING OFFICER FAY: Okay.

5 MR. RATLIFF: Mr. Fay, if I may, this is  
6 an example to staff of the kind of issue which is  
7 not really an issue. Our testimony says there is  
8 liquefaction and that the land is subject to  
9 liquefaction.

10 And we have provided mitigation which is  
11 the kind of mitigation that you provide in those  
12 circumstances, which are the rather rigorous  
13 building code requirements for building projects  
14 in seismic areas that are subject to  
15 liquefaction. That's the prescribed  
16 mitigation.

17 I would like to know what beyond that  
18 would be the necessity of having a witness to say  
19 those things, since it's already right there in  
20 the testimony.

21 HEARING OFFICER FAY: Well, this is your  
22 chance, Mr. Sarvey, to convince us why we should  
23 have a witness for that.

24 MR. SARVEY: Well, as I said, there's a  
25 new study that's just recently come out from the

1 U.S. Geological Service that indicates that the  
2 area, Bay fill, is much more susceptible to  
3 liquefaction than previously thought. And I think  
4 that the experts need to address that.

5 PRESIDING MEMBER BOYD: But it does kind  
6 of sound like it has been addressed. It's been  
7 recognized and there's a mitigation there for it,  
8 so.

9 MR. SARVEY: Well, I requested the  
10 author of this paper here to appear, and I haven't  
11 got a response from him yet, so let's just say  
12 that if I can get this author to appear, then  
13 we'll make it an issue. And if not, then I still  
14 would like to briefly ask that question. If they  
15 want to say they have right now, that's fine.  
16 Have they seen this study? I mean, this isn't the  
17 evidentiary hearing --

18 HEARING OFFICER FAY: If you can get the  
19 author to appear, that person would have to  
20 prepare written testimony, file it in advance, as  
21 you know.

22 MR. SARVEY: Of course.

23 HEARING OFFICER FAY: Okay. Can we move  
24 to cultural resources, anything there?

25 MR. SARVEY: Yeah, I plan to present a

1 witness in cultural resources.

2 HEARING OFFICER FAY: And is that  
3 witness listed in your prehearing conference  
4 statement?

5 MR. SARVEY: Yes, he is. Francisco  
6 DeCosta.

7 HEARING OFFICER FAY: And what is the  
8 issue?

9 MR. SARVEY: He's going to attest to the  
10 cultural resources that are near and around the  
11 site, and on the site. He's quoted in the FSA,  
12 and he believes he's wrongly quoted. So he'd like  
13 to straighten the record out on that.

14 HEARING OFFICER FAY: Anything further  
15 on cultural? He's just going to generally address  
16 the cultural resources he believes would be  
17 affected by the project?

18 MR. SARVEY: Right. We'll be submitting  
19 his testimony in advance.

20 HEARING OFFICER FAY: Okay.

21 MR. RATLIFF: Could staff inquire as to  
22 whether there is actually any issue with regard to  
23 the conditions of certification that staff has  
24 proposed with regard to cultural resources?

25 HEARING OFFICER FAY: This is the whole

1 point, of course. We can't anticipate everything  
2 that's going to be found under the ground. And so  
3 the conditions of certification are designed to  
4 address things in a competent way once they're  
5 discovered.

6 So even if there's something there the  
7 conditions may address the best way to conserve  
8 those or protect those resources. If your witness  
9 has nothing to say other than he believes things  
10 are going to be there, the conditions may fully  
11 address that, even if he's right.

12 So, what does your witness add?

13 MR. SARVEY: We'll provide additional  
14 conditions.

15 HEARING OFFICER FAY: So you've looked  
16 the FSA over and your witness believes the  
17 conditions are not adequate, is that correct?

18 MR. SARVEY: That's correct.

19 HEARING OFFICER FAY: Okay.

20 MR. RATLIFF: Mr. Fay, I don't want to  
21 bang on the same drum too often, but what I'm  
22 saying is we need to have specificity about what  
23 is inadequate about our conditions. That's what  
24 we think should be required before we adjudicate  
25 an issue. Just to say that the conditions are

1 insufficient, or that the analysis is not thorough  
2 enough, without any further specificity doesn't  
3 really tell us why we're going to hearing on an  
4 issue.

5 HEARING OFFICER FAY: Has Mr. Sarvey  
6 provided the staff with comments on their cultural  
7 conditions?

8 MR. RATLIFF: I'm not aware of any, but  
9 I can't say with assuredness that he has. Do you  
10 know, Bill?

11 MR. PFANNER: -- we've had the  
12 prehearing conference statement --

13 HEARING OFFICER FAY: Mr. Sarvey, have  
14 you sent comments?

15 MR. SARVEY: We'll provide our  
16 testimony. And if the Committee believes it's not  
17 warranted, they can toss it.

18 HEARING OFFICER FAY: Well, I think  
19 before you do that you're going to have to provide  
20 comments to the staff before you're going to be  
21 scheduled to --

22 MR. SARVEY: That would be my expert  
23 that would supply those comments. I don't have  
24 them available with me.

25 HEARING OFFICER FAY: Okay, but you

1 can't wait and file the testimony. You're going  
2 to have to first provide comments to the staff if  
3 you want to file testimony. We're not going to  
4 just schedule this unless you've made an effort to  
5 try to reach some sort of accommodation with the  
6 staff on this.

7 MR. SARVEY: Okay, well, I'll consult  
8 with my witness and have him call staff.

9 HEARING OFFICER FAY: Okay. I mean if  
10 you're not willing to get together with the staff,  
11 you may just find that you're not scheduled for  
12 hearing on that topic.

13 MR. SARVEY: Whatever the Committee  
14 determines we're ready to --

15 HEARING OFFICER FAY: Okay.

16 MR. SARVEY: We know we --

17 HEARING OFFICER FAY: The whole idea of  
18 this process is to winnow down the issues through,  
19 you know, these negotiations and workshops. Not  
20 to go to hearings. That's not the objective.

21 MR. SARVEY: Well, in that vein I'd just  
22 like to say that, you know, I've offered the  
23 applicant some proposals and nothing's happened  
24 there, so we're a little discouraged that neither  
25 side is really open to what we're saying, so

1       that's just what --

2                   HEARING OFFICER FAY:  Well, of course,  
3       there's no guarantee that all your suggestions get  
4       adopted --

5                   MR. SARVEY:  Oh, absolutely, we  
6       understand.

7                   HEARING OFFICER FAY:  -- by the other  
8       parties in the case.  But we just want all the  
9       parties to take full advantage of the process  
10      before we have to go to extended hearings.

11                  MR. SARVEY:  Well, we're willing to work  
12      with the applicant and staff and stipulate to some  
13      things, but so far it doesn't seem like it's very  
14      open, so.  But we're still willing to work.  We'd  
15      like to not adjudicate quite a few things, as  
16      well.

17                  HEARING OFFICER FAY:  Okay, consider it  
18      a directive from the Committee that you provide  
19      your comments --

20                  MR. SARVEY:  Thank you.

21                  HEARING OFFICER FAY:  -- to the staff on  
22      this cultural issue.  And if you're not able to  
23      resolve things that way, then that's a whole other  
24      matter.  But at this point it doesn't look like  
25      it's ready for hearings.

1                   Socioeconomics, including environmental  
2 justice. Well, did I fully cover your concerns  
3 about cultural resources?

4                   MR. SARVEY: Yes, I understand --

5                   HEARING OFFICER FAY: Okay, let's move  
6 to socioeconomics.

7                   MR. SARVEY: Yeah, in socioeconomics we  
8 want to cross-examine both the staff and the  
9 applicant, and we intend to provide a witness, as  
10 well.

11                   HEARING OFFICER FAY: And who is the  
12 witness?

13                   MR. SARVEY: It would also be Francisco  
14 DeCosta.

15                   MS. SOLE: Your Honor, it would be  
16 helpful to know whether that is socioeconomic  
17 excluding environmental justice, or whether it's  
18 the environmental justice issue.

19                   HEARING OFFICER FAY: Can you help?

20                   MR. SARVEY: The environmental justice  
21 issue.

22                   HEARING OFFICER FAY: Okay.

23                   MS. SOLE: Because from the applicant's  
24 perspective they're different witnesses.

25                   HEARING OFFICER FAY: Okay. And within

1 environmental justice, what specifically do you  
2 contend? What is your concern with the project?

3 MR. SARVEY: Local project impacts;  
4 cumulative impacts; City and County of San  
5 Francisco discrimination policies and the Maxwell  
6 ordinance.

7 MR. RATLIFF: Our testimony on  
8 socioeconomics is either about the economic  
9 impacts of the project, such as on employment or  
10 on business activity.

11 And secondarily it's the demographic  
12 analysis for the region around the project.

13 The impact analyses occur in each of  
14 the, you know, different impact areas.

15 So, I'm not sure that Mr. Adams is the  
16 correct witness, or the socioeconomics is perhaps  
17 the real issue in terms of what Mr. Adams'  
18 testimony goes to, unless we're talking about some  
19 issue about the demographics, which is the  
20 portion, the piece of the sort of greater topic of  
21 environmental justice is all about.

22 But the actual impact analyses which  
23 occur in each of the identified areas are really  
24 what the heart of the environmental justice is  
25 about, as to whether there is, in fact, a

1 significant impact.

2 And so if that is the issue, I suppose  
3 that that occurs in other areas, at least as far  
4 as the way the staff has divided the labor.

5 HEARING OFFICER FAY: I think that's  
6 very helpful. Obviously, the first two points you  
7 mentioned, Mr. Sarvey, your witness would have to  
8 be ready to help you as the evidence on local and  
9 cumulative impacts is presented.

10 MR. SARVEY: We'll be providing that in  
11 our air quality testimony.

12 HEARING OFFICER FAY: Okay. Now, in  
13 terms of --

14 MR. RATLIFF: So that's an air quality  
15 issue it sounds like.

16 MR. SARVEY: It's air quality, hazardous  
17 materials and environmental justice.

18 MR. RATLIFF: But areas that you've  
19 already indicated that you want to adjudicate, is  
20 that correct?

21 MR. SARVEY: Yes.

22 HEARING OFFICER FAY: Okay. But now in  
23 terms of you said City discrimination policies?

24 MR. SARVEY: Mr. DeCosta will be  
25 handling that.

1 HEARING OFFICER FAY: Okay. I don't  
2 know who the -- is your --

3 MR. RATLIFF: We have no witness on City  
4 discrimination policies.

5 HEARING OFFICER FAY: Okay. Does the  
6 City have somebody who addresses environmental  
7 justice issues and --

8 MS. SOLE: We have witnesses who address  
9 environmental justice and Maxwell ordinance.

10 HEARING OFFICER FAY: Okay.

11 MR. RATLIFF: And I think in that sense  
12 the City's testimony is different from the  
13 staff's; and I think they addressed it in a more  
14 holistic way, whereas we broke it into impact  
15 analyses for each individual area. So I think it  
16 might be different for the City than it is for the  
17 staff.

18 MR. SARVEY: Yeah, I would agree with  
19 Mr. Ratliff; we probably don't need staff's expert  
20 there. It's pretty generic testimony, just says  
21 that it's a minority community; that's about all  
22 your testimony says, so I would agree with that.

23 HEARING OFFICER FAY: Yeah, you don't  
24 have an issue there.

25 MR. SARVEY: No.

1 HEARING OFFICER FAY: That their  
2 demographics are --

3 MR. SARVEY: Everybody's agreeing with  
4 that.

5 HEARING OFFICER FAY: Okay. So you  
6 don't need a staff witness on socioeconomics?

7 MR. SARVEY: No.

8 HEARING OFFICER FAY: Anything further,  
9 then, on socioeconomics? Did you indicate the  
10 amount of time that your witness will be  
11 testifying?

12 MR. SARVEY: Twenty minutes. And that's  
13 probably including cross-examination.

14 HEARING OFFICER FAY: Okay.

15 MR. VARANINI: Mr. Fay.

16 HEARING OFFICER FAY: Um-hum.

17 MR. VARANINI: Is that testimony getting  
18 prefiled? Is he talking about 20 minutes of  
19 affirmative testimony? If his witness' testimony  
20 is prefiled, he doesn't need 20 minutes to present  
21 it.

22 MR. SARVEY: I didn't say I did.

23 HEARING OFFICER FAY: I think he said 20  
24 minutes total.

25 MR. VARANINI: Oh, I'm sorry.

1 HEARING OFFICER FAY: Did you --

2 MR. VARANINI: I apologize.

3 MR. SARVEY: Yes, 20 minutes total.

4 HEARING OFFICER FAY: Direct and cross-  
5 examination?

6 MR. SARVEY: That's correct, Your Honor.

7 HEARING OFFICER FAY: Okay. Anything on  
8 biological resources?

9 MR. SARVEY: I have nothing.

10 HEARING OFFICER FAY: Okay. How about  
11 traffic?

12 MR. SARVEY: Nothing.

13 HEARING OFFICER FAY: You indicated you  
14 wanted to cross-examine on local system effects.  
15 And that's --

16 MR. SARVEY: The ISO witness, please.

17 HEARING OFFICER FAY: Yes, and that's  
18 about 15 minutes you say?

19 MR. SARVEY: Yes.

20 HEARING OFFICER FAY: And land use?

21 MR. SARVEY: I have nothing in land use.

22 HEARING OFFICER FAY: Now, going back to  
23 cultural, can you give us an idea of how much time  
24 for direct, and then cross-examination?

25 MR. SARVEY: My cross-examination will

1 be limited to less than five minutes.

2 HEARING OFFICER FAY: And I guess you  
3 told us 15 minutes on direct is what you  
4 anticipate?

5 MR. SARVEY: That's correct.

6 HEARING OFFICER FAY: Okay.

7 MS. SOLE: Your Honor, so that's less  
8 than five minutes of cross-examination for whom?

9 HEARING OFFICER FAY: That was cultural.

10 MR. SARVEY: Cultural, right.

11 HEARING OFFICER FAY: Of --

12 MR. SARVEY: Cultural resources. You  
13 have applicant Davy and staff has Sebastian and  
14 Reinoehl.

15 MS. SOLE: So you'd like all three?

16 MR. SARVEY: That's up to staff what  
17 they want to provide. But I certainly would like  
18 the City's witness, please.

19 MS. SOLE: Okay.

20 HEARING OFFICER FAY: Okay, now you  
21 indicated that -- oh, first of all, is there any  
22 revision to your prehearing conference statement,  
23 that chart you had on the times for cross-  
24 examination?

25 MR. SARVEY: Just the efficiency and

1 reliability, but I already have reliability, so  
2 just efficiency would be the only modification  
3 that I would make. And I probably only need maybe  
4 10 minutes to cross-examine staff and applicant's  
5 witnesses on that.

6 HEARING OFFICER FAY: You also indicate  
7 that you wanted to cross-examine Mirant witnesses  
8 for a total of about an hour. And Mirant is not  
9 providing any witnesses in this case. Can we get  
10 a clarification on that?

11 MR. SARVEY: Well, I was hoping Mirant  
12 would be available to provide some testimony,  
13 mostly on under what the applicant terms as  
14 purpose and need. But obviously if Mirant's not  
15 offering a witness, there'll be nothing happening  
16 there.

17 HEARING OFFICER FAY: Okay.

18 MR. SARVEY: My major concern is the  
19 reliability must-run cost on the Potrero Plant. I  
20 can't seem to get that information, although we  
21 did do a data request on it.

22 HEARING OFFICER FAY: Now, you also  
23 indicate you want to cross-examine the CARE  
24 witness on EJ, but CARE has identified you as a  
25 witness on that topic. What --

1           MR. SARVEY: That should be interesting.  
2 CARE hasn't contacted me as far as presenting  
3 testimony, but I'll make myself available on any  
4 questions they want to ask.

5           HEARING OFFICER FAY: You plan to file  
6 testimony on EJ?

7           MR. SARVEY: No, I don't plan on filing  
8 any testimony other than --

9           HEARING OFFICER FAY: Well, then you  
10 won't --

11          MR. SARVEY: -- in air quality and --

12          HEARING OFFICER FAY: -- be available --

13          MR. SARVEY: -- hazardous materials and  
14 purpose and need, I have one issue.

15          HEARING OFFICER FAY: I'm sorry, I guess  
16 CARE plans to file some testimony on EJ, Mr.  
17 Brown?

18          MR. BROWN: No.

19          HEARING OFFICER FAY: You do not? Okay.  
20 So you can't --

21          MR. RATLIFF: You can't call him.

22          HEARING OFFICER FAY: -- cross-examine a  
23 witness that isn't there, Mr. Sarvey. Maybe there  
24 was just a misunderstanding.

25          That bring me to another topic. There's

1 considerable cross-over between CARE's witnesses  
2 and Sarvey witnesses and their intention. Is  
3 there any reason we can't consolidate the two  
4 parties for the purpose of the evidentiary  
5 hearings?

6 MR. SARVEY: Well, my witnesses will be  
7 Bill Powers and myself in air quality; and John  
8 Lynch and myself in hazardous materials; and  
9 Francisco DeCosta. Those are my witnesses.

10 HEARING OFFICER FAY: Okay. Is there  
11 any reason that you and CARE can't be combined as  
12 a party for the purpose of the evidentiary  
13 hearings?

14 MR. SARVEY: No. We have different  
15 issues.

16 HEARING OFFICER FAY: You disagree with  
17 their position?

18 MR. SARVEY: On some instances I do,  
19 yes.

20 HEARING OFFICER FAY: All right.

21 MR. SARVEY: I want to note for the  
22 record that I was a member of CARE, but I'm no  
23 longer a member of CARE, so.

24 HEARING OFFICER FAY: Okay. Mr. Sarvey,  
25 you have not submitted any r, sum, s for your

1 witnesses. Which of the witnesses will you  
2 attempt to qualify as experts, and which will you  
3 be offering as non-expert testimony?

4 MR. SARVEY: All the testimony that I  
5 provide will be expert testimony. I'll provide  
6 the r, sum, s when I provide the testimony if that's  
7 okay.

8 HEARING OFFICER FAY: Okay. I just --  
9 the reason I'm asking the question is because it  
10 could have a significant effect on scheduling  
11 questions, if there's going to be extensive voir  
12 dire of your witnesses.

13 So, I'd just encourage you to file as  
14 complete a r, sum, as possible, because if the  
15 other parties disagree with the expertise of one  
16 of your witnesses in a certain area, they're going  
17 to ask questions of that witness. And that's  
18 going to take some time.

19 So, you propose all your witnesses as  
20 expert witnesses --

21 MR. SARVEY: That's --

22 HEARING OFFICER FAY: -- in the subject  
23 area in which they're testifying?

24 MR. SARVEY: That's correct.

25 HEARING OFFICER FAY: Now, do you have

1 any questions regarding the exhibits that you  
2 listed in your prehearing conference statement?

3 MR. SARVEY: I do have some questions on  
4 the applicant's exhibits. And what --

5 HEARING OFFICER FAY: Well, first, let's  
6 get to yours.

7 MR. SARVEY: Okay. One question I have  
8 on my exhibits is if I enter something from  
9 another proceeding from the Energy Commission that  
10 establishes a mindset or something, is that going  
11 to just be under judicial notice, or will that  
12 actually be an exhibit? If it comes from another  
13 proceeding from the Energy Commission --

14 HEARING OFFICER FAY: You may offer it  
15 and ask the Commission to take administrative  
16 notice of it. And if it is the type of thing that  
17 the agency normally can take notice of, like our  
18 own decisions, or a final decision of the Air  
19 Board or something like that, we can recognize it  
20 as that, without commenting on whether it was, you  
21 know, correct or not, it is a final decision of  
22 the Air Board.

23 But I just want you to know that if you  
24 propose these we need hard copies of every  
25 exhibit, and you have to serve those on the other

1 parties, as well. We will not accept a reference  
2 by email to a website or anything like that. We  
3 need the actual hard copy pages.

4 Because in some cases it might be a 500-  
5 page report, and maybe you didn't intend the whole  
6 report to be an exhibit, just a portion of it.  
7 So, we need it both for clarity, so we understand  
8 what it is you're proposing; and also specificity,  
9 so we're not looking in the whole report as  
10 opposed to the part you care about.

11 MR. SARVEY: So following that, then,  
12 everything that's referenced in the FSA and the  
13 application for certification, they'll be  
14 providing those as exhibits, as well, for their  
15 footnotes and such?

16 HEARING OFFICER FAY: Well, you don't  
17 need to -- I mean you can call attention in the  
18 case to something that's already filed in the FSA.  
19 These are exhibits that you're offering. The  
20 staff is offering the FSA as its testimony.

21 MR. SARVEY: Right, but they make  
22 numerous footnotes and citations. And if the FSA  
23 is an exhibit, shouldn't the accompanying  
24 footnotes and citations be included, as well?

25 HEARING OFFICER FAY: Well, if you want

1 the Commission to take judicial notice of it,  
2 you're going to have to provide a hard copy. You  
3 know, you can cross-examine the staff on any of  
4 their sources. We're just going to need, you  
5 know, hard copies to avoid misunderstandings.

6 MR. SARVEY: Okay. Well, I've been in a  
7 lot of proceedings where that call's gone both  
8 ways, so I was just wanting to clarify that  
9 upfront.

10 HEARING OFFICER FAY: That's the way  
11 it's going this time.

12 MR. SARVEY: Okay, so the applicant and  
13 staff can just cite something, they don't have to  
14 provide it as hard copies to everybody?

15 HEARING OFFICER FAY: Well, I suppose  
16 it's subject to challenge, but if you want  
17 something offered as an exhibit, we need the hard  
18 copies.

19 MR. SARVEY: Okay, thank you.

20 HEARING OFFICER FAY: Okay. Anything  
21 further, Mr. Sarvey, before I move to CARE?

22 MR. SARVEY: Under alternatives, is it  
23 possible to have a witness from the TransBay Cable  
24 Project? There's some assertions made by staff  
25 that I'd like to question.

1                   HEARING OFFICER FAY: I have no idea.  
2 Do you have a witness in mind? I mean we can  
3 allow time.

4                   MR. SARVEY: So I would arrange the  
5 witness, then?

6                   HEARING OFFICER FAY: Well, --

7                   MR. SARVEY: Okay.

8                   HEARING OFFICER FAY: -- is that what  
9 you're proposing?

10                  MR. SARVEY: Well, I was hoping staff,  
11 like the Air District, would -- staff's going to  
12 provide the Air District, staff's going to provide  
13 ISO. So I was hoping they'd provide TransBay  
14 Cable Project, since they have the connections  
15 with them. Chances are if I call somebody from  
16 the TransBay Cable Project they're not likely to  
17 respond to favorably.

18                  HEARING OFFICER FAY: Is that part of  
19 staff's case? Nothing to do with the TransBay  
20 Cable.

21                  MR. SARVEY: Okay, I'll do so on my own,  
22 then, thank you.

23                  HEARING OFFICER FAY: Right. If you  
24 decide to do that you'll need to let us know as  
25 soon as possible and --

1 MR. SARVEY: Okay.

2 HEARING OFFICER FAY: -- have obviously  
3 prefiled written testimony.

4 Anything further, Mr. Sarvey?

5 MR. SARVEY: No, thank you.

6 HEARING OFFICER FAY: Okay. All right,  
7 we'll move to Mr. Brown then, CARE.

8 MR. BROWN: Yes. First of all I'd like  
9 to object to the hearing being in Sacramento due  
10 to the fact that the community is a low-income  
11 community. And -- is very high.

12 HEARING OFFICER FAY: And which topics  
13 did you want specifically heard in this community?

14 MR. BROWN: Well, basically the one  
15 that, I guess the one that was going to stay here  
16 was socioeconomic -- which one? Air quality,  
17 environmental justice, hazardous material. And  
18 waste management.

19 Just like the Commissioners don't have  
20 enough money to come down here, it works the same  
21 way in our community.

22 HEARING OFFICER FAY: Actually the  
23 concern they were voicing earlier wasn't that they  
24 could not afford to come down here; it was a  
25 function of the time availability, because of

1 other scheduling problems they have.

2 MR. BROWN: Okay.

3 HEARING OFFICER FAY: That's the only  
4 thing we're talking about there.

5 MR. BROWN: Okay.

6 HEARING OFFICER FAY: But I understand  
7 your point.

8 MR. BROWN: Right.

9 HEARING OFFICER FAY: And we're trying  
10 to, you know, I think if you recall we asked the  
11 City which issues they thought were important to  
12 scheduling in the community, --

13 MR. BROWN: Right.

14 HEARING OFFICER FAY: -- and they listed  
15 several. Did you have any disagreement with their  
16 list?

17 MR. BROWN: No, I didn't.

18 HEARING OFFICER FAY: Okay. Anything  
19 further, opening statement? I had some questions  
20 for you.

21 MR. BROWN: No, but one thing is the  
22 reliability project, just the name, I guess that  
23 would come under needs, the description, project  
24 introduction of description.

25 HEARING OFFICER FAY: Your issue is with

1 the name of the project?

2 MR. BROWN: Yes. Because, for one  
3 thing, where the applicant proposed to put the  
4 plant, the peakers at, the energy would go -- I  
5 mean the transmission lines would go straight into  
6 Mission and H Street substation there. And they'd  
7 had two fires there. And once the fires stopped  
8 us up, was at the substation, it knocked out the  
9 power.

10 One was December 2004. All the power  
11 was knocked out there. And it shut down downtown  
12 San Francisco during the Christmas shopping area  
13 north of Market, east of Market --

14 HEARING OFFICER FAY: So you're  
15 concerned about the reliability of this project?

16 MR. BROWN: Just the name, just the name  
17 of it, you know. I mean how can it be reliable --

18 HEARING OFFICER FAY: Okay, we're not  
19 going to adjudicate the name.

20 MR. BROWN: Okay, I mean I just want to  
21 say that.

22 HEARING OFFICER FAY: If you want to get  
23 into the substance of whether or not it's  
24 reliable, --

25 MR. BROWN: Yes.

1 HEARING OFFICER FAY: -- that's  
2 something that --

3 MR. BROWN: But then I -- excuse me, but  
4 then I'll have to bring my witnesses. And, you  
5 know, so.

6 HEARING OFFICER FAY: Okay, well, I'm  
7 going to ask you about all those things --

8 MR. BROWN: Right.

9 HEARING OFFICER FAY: -- as we go a  
10 little further.

11 MR. BROWN: Right, but the main thing is  
12 it wouldn't be because -- well, PG&E said -- but,  
13 anyway, that's all right.

14 HEARING OFFICER FAY: Okay. Now,  
15 whatever you filed, or CARE filed, it mentioned  
16 some motion to stay. And our search of the docket  
17 did not reveal any such motion.

18 MR. BROWN: That was --

19 HEARING OFFICER FAY: The only  
20 possibility is that something you filed on  
21 February 26th that was appended to something else,  
22 could have been that --

23 MR. BROWN: Yes. That was taken care of  
24 at the Air District took care of that.

25 HEARING OFFICER FAY: It did?

1 MR. BROWN: Yes.

2 HEARING OFFICER FAY: Okay, so you  
3 withdraw the motion?

4 MR. BROWN: Yes.

5 HEARING OFFICER FAY: Okay. Now your  
6 prehearing conference statement says that the  
7 disputed areas and the areas not ready for hearing  
8 are the same.

9 MR. BROWN: Yes.

10 HEARING OFFICER FAY: Doesn't that  
11 suggest that your concerns could be addressed  
12 during the adjudicatory process?

13 MR. BROWN: Yes.

14 HEARING OFFICER FAY: Okay. And I'm  
15 going to ask again, like I did the other parties,  
16 a list of issues. I want to know if you plan to  
17 present direct testimony, or to cross-examine  
18 witnesses. And if you plan to do that, how much  
19 time you need, okay?

20 MR. BROWN: Yeah.

21 HEARING OFFICER FAY: General conditions  
22 and compliance?

23 MR. BROWN: None.

24 HEARING OFFICER FAY: Facility design?

25 MR. BROWN: Nothing.

1 HEARING OFFICER FAY: Noise?

2 MR. BROWN: But, anyway, no.

3 HEARING OFFICER FAY: Okay. How about  
4 visual?

5 MR. BROWN: Nothing there.

6 HEARING OFFICER FAY: Transmission line  
7 safety and nuisance.

8 MR. BROWN: Nothing.

9 HEARING OFFICER FAY: Radio  
10 interference, that sort of thing. No? Okay.

11 Transmission system engineering? And I  
12 think we discussed the system effects would be  
13 included in that.

14 MR. BROWN: All right No.

15 HEARING OFFICER FAY: No? How about  
16 efficiency?

17 MR. BROWN: No.

18 HEARING OFFICER FAY: Reliability?

19 MR. BROWN: Yes.

20 HEARING OFFICER FAY: Okay. And are you  
21 presenting a witness?

22 MR. BROWN: No, get a little time with  
23 Karen or the bloc for about five minutes.

24 HEARING OFFICER FAY: Of cross-  
25 examination?

1 MR. BROWN: Yes.

2 HEARING OFFICER FAY: And what specific  
3 reliability issue?

4 MR. BROWN: Reliability going back to  
5 the fires at the substation.

6 HEARING OFFICER FAY: The substation  
7 fires?

8 MR. BROWN: Yes.

9 HEARING OFFICER FAY: Okay. So I guess  
10 the existing infrastructure and whether it's  
11 reliable --

12 MR. BROWN: Yes.

13 HEARING OFFICER FAY: -- enough to take  
14 on this project. Okay. Worker safety and fire  
15 protection.

16 MR. BROWN: No.

17 HEARING OFFICER FAY: Cultural  
18 Resources.

19 MR. BROWN: No. But I'd like to cross-  
20 examine Mr. DeCosta.

21 HEARING OFFICER FAY: For how long?

22 MR. BROWN: About five minutes.

23 MS. SOLE: Your Honor, --

24 HEARING OFFICER FAY: Um-hum.

25 MS. SOLE: -- I would just note that the

1 applicant will likely object if it's friendly  
2 cross.

3 HEARING OFFICER FAY: Okay.  
4 Socioeconomics, including environmental justice.

5 MR. BROWN: No.

6 HEARING OFFICER FAY: No?

7 MR. BROWN: No.

8 HEARING OFFICER FAY: No witness, no  
9 cross?

10 MR. BROWN: Right.

11 HEARING OFFICER FAY: Okay. And  
12 alternatives?

13 MR. BROWN: No.

14 HEARING OFFICER FAY: Okay. Now, did  
15 you indicate any witnesses?

16 MR. BROWN: No, I haven't.

17 HEARING OFFICER FAY: No witnesses,  
18 okay. Okay, anything further then, Mr. Brown?

19 MR. BROWN: No.

20 HEARING OFFICER FAY: Is there anything  
21 to be gained at this time by the Committee going  
22 off and doing something else for a few minutes and  
23 the parties discussing things like noise and some  
24 of these little bits and pieces that are left? Or  
25 is that a good use of our time today?

1           MR. RATLIFF: Well, it might be that we  
2           can discuss certain of the comments that -- the  
3           City might. We don't have technical staff here,  
4           but Bill and I can discuss with the City technical  
5           comments and see which ones are most important and  
6           which ones they can identify that were not  
7           resolved at the workshop.

8           I think most of them, in fact, were  
9           resolved in the workshop.

10          HEARING OFFICER FAY: But the reason for  
11          doing that would be if we could lock in some  
12          things that could be definitely taken by  
13          declaration, and so we could leave here knowing  
14          what those would be, and put them in a hearing  
15          order.

16          MR. RATLIFF: Well, I think you can  
17          take, I mean as far as the staff and the applicant  
18          are concerned, certainly as far as the staff's  
19          concerned, we can do everything by declaration,  
20          except the ones that are the big-ticket items that  
21          the Committee obviously wants to hear and the  
22          community is interested in like public health and  
23          air quality.

24          But I don't think -- I think it's still  
25          the City's position for not adjudicating the small

1 issues that may remain between us. So, for  
2 certain, you know, the wording of certain  
3 conditions or certain minor --

4 HEARING OFFICER FAY: Okay. Ms. Sole,  
5 is it fair to say that even if there is some  
6 disagreement on details, that you don't see that  
7 rising to requiring adjudication on some of these  
8 smaller issues?

9 MS. SOLE: I believe that's correct.  
10 Why don't you let me have just a very quick look  
11 at my comments, but I believe that that's correct.

12 HEARING OFFICER FAY: Because, of  
13 course, you know, if we don't schedule it for  
14 hearings you won't have that opportunity. And --

15 MS. SOLE: I realize that.

16 HEARING OFFICER FAY: While they're  
17 checking, Mr. Sarvey, your question?

18 MR. SARVEY: Yeah, I'd like to have five  
19 minutes with the staff and the applicant to make a  
20 proposal that could probably shorten this thing  
21 quite a bit. So, if you're willing to entertain  
22 it, and they're willing to entertain it, I'd like  
23 to talk to them.

24 HEARING OFFICER FAY: Are the parties  
25 willing to work with Mr. Sarvey?

1 MS. SOLE: Sure.

2 HEARING OFFICER FAY: Okay, I think that  
3 could be a good use of our time.

4 ASSOCIATE MEMBER GEESMAN: Mr. Fay, I'd  
5 also like, as long as they're all going to be  
6 convening together, that they give some thought to  
7 what type of briefing schedule you would envision.

8 And let me say that based on past  
9 experience the City wants the Commission's final  
10 decision to have been made by mid-August. We have  
11 a 30-day notice period for the PMPD. That pushes  
12 you back to mid-July.

13 Typically the Hearing Examiner has taken  
14 about 60 days after the receipt of briefs to  
15 prepare the PMPD. That pushes you back to mid-  
16 May. You need to tell us whether you envision  
17 concurrent briefs, or a reply brief provision.  
18 And I think that probably pushes all of us, then,  
19 to look at the early days of the proposed schedule  
20 for holding any evidentiary hearings.

21 MR. RATLIFF: Staff would propose  
22 concurrent briefs two weeks after the close of  
23 hearings.

24 HEARING OFFICER FAY: If I may, it'll be  
25 two weeks after the close of hearings before you

1 have the last brief. You won't have the last  
2 brief of the last -- I mean the last transcript of  
3 the last hearing. And if that last hearing is  
4 loaded up with controversial topics, as often the  
5 case, you're going to need that transcript.

6 So, it's just a practical fact that  
7 you've got to count on two weeks to get that last  
8 transcript.

9 MR. RATLIFF: Yeah, we were doing  
10 expedited transcripts at one point that got them  
11 faster. Is that still possible?

12 HEARING OFFICER FAY: I put in a request  
13 to get today's an expedited transcript. And I  
14 just don't know what the answer is. Whether there  
15 is a contract to do that.

16 Again, practical feature, it's not the  
17 PUC; we don't have two transcribers working  
18 simultaneously and team tag with a one-day  
19 turnaround. And that's no reflection on our  
20 transcribers or court reporters. It's just the  
21 business arrangement we made with the contractor.

22 And if it allows for expedited briefs  
23 (sic), we can ask for that. Certainly on the last  
24 day of hearing.

25 MR. RATLIFF: Transcripts, yeah.

1                   HEARING OFFICER FAY: Transcript. And  
2 for today's as well, so that we can get the  
3 hearing order out as soon as possible. But I just  
4 don't know the answer to that. Right now I would  
5 count on two weeks between the end of the final  
6 evidentiary hearing and the availability of the  
7 transcripts.

8                   ASSOCIATE MEMBER GEESMAN: And if all of  
9 that pushes a mid-August end point backwards, and  
10 suggest that the expectation that we could make  
11 this process come to an orderly conclusion by mid-  
12 August, if that proves to be infeasible after you  
13 think through these dates, let's expunge that from  
14 our collective expectations forevermore.

15                   HEARING OFFICER FAY: And the  
16 expectation of an end --

17                   ASSOCIATE MEMBER GEESMAN: Of an end  
18 that early.

19                   HEARING OFFICER FAY: Yeah.

20                   ASSOCIATE MEMBER GEESMAN: I just think  
21 that we ought to dispel any unrealistic  
22 expectations before they take on a life of their  
23 own.

24                   HEARING OFFICER FAY: That doesn't mean  
25 we say, Katie, bar the door, and just let it go

1 forever. But, there are practical requirements  
2 and legal requirements. And we're not going to  
3 fudge. We can't do anything about the practical,  
4 and we are not going to fudge on the legal  
5 requirements. The public has a right to a 30-day  
6 comment period, that sort of thing.

7 PRESIDING MEMBER BOYD: The importance  
8 of this brief break can take on a lot of  
9 significance suddenly.

10 ASSOCIATE MEMBER GEESMAN: Including  
11 lunch.

12 HEARING OFFICER FAY: Yes. How much  
13 time would you like? Mr. Sarvey mentioned five  
14 minutes. How much time would the staff like?

15 PRESIDING MEMBER BOYD: Sounds a little  
16 short to me.

17 HEARING OFFICER FAY: Yeah, sounds a  
18 little --

19 MR. RATLIFF: It sounds like we need to  
20 confer collectively, and also we need, Bill and I  
21 need to hear from San Francisco about any  
22 remaining issues that haven't been resolved.

23 MS. SOLE: I believe, from reviewing our  
24 final staff assessment comments, that the two  
25 issues where there is the potential is soil and

1 water and waste. But the other issues we either  
2 are fairly confident that we've agreed, or you  
3 know, even if we don't agree we're not going to go  
4 to evidentiary hearing based on those issues.

5 So I am confirming that it's soil and  
6 water and waste where there's the potential.

7 HEARING OFFICER FAY: Can we reconvene  
8 at 1:00 and hear what the parties have to tell us  
9 at that time?

10 PRESIDING MEMBER BOYD: That clock's an  
11 hour late, so --

12 HEARING OFFICER FAY: It's actually  
13 about six minutes to 12.

14 MS. SOLE: Okay.

15 HEARING OFFICER FAY: Daylight savings  
16 time.

17 MS. SOLE: Okay.

18 HEARING OFFICER FAY: Pacific daylight  
19 savings time.

20 Okay? We'll see the parties at 1:00  
21 Pacific daylight savings time.

22 (Whereupon, at 11:50 a.m., the hearing  
23 was adjourned, to reconvene at 1:00  
24 p.m., this same day.)

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P R O C E E D I N G S

1:05 p.m.

HEARING OFFICER FAY: Okay, we're back on the record and the parties have taken a break and discussed their minor differences and some larger differences in an effort to resolve issues.

And, Ms. Sole, I'd like the applicant to summarize in terms of the air quality, if you would, since it really falls to your party to address it.

MS. SOLE: We had some discussions with Mr. Sarvey and CARE also participated, and staff. And what we're exploring is the possibility of stipulating to the air quality and public health issues by addressing the PM2.5 program.

Mr. Sarvey would strongly prefer us to use the wood stoves alternative in the current conditions of certification. And we're going to go ahead and explore that with him and with the staff and see how much of a commitment we can make to prioritizing the wood stove program, while capping the City's financial exposure.

HEARING OFFICER FAY: Okay. Does that, in your opinion, correctly summarize the

1 discussion, Mr. Sarvey?

2 MR. SARVEY: Yes, it does. I'd be  
3 willing to stipulate in air quality and public  
4 health could we come to an agreement on that  
5 issue.

6 HEARING OFFICER FAY: Okay. How much  
7 time do you think it would take the parties to  
8 determine, to reach a stipulation?

9 MS. SOLE: I think the important thing  
10 will be to have staff's air quality witness  
11 available, as well. It's my hope that perhaps in  
12 an hour conference call we can at least hash  
13 through the issues sufficiently to know whether we  
14 can reach agreement.

15 I would certainly hope we could reach  
16 agreement. There seems to be enough flexibility  
17 on everybody's side that that should be possible.  
18 But one never knows until one actually has the  
19 discussion.

20 HEARING OFFICER FAY: Sure. Well,  
21 allowing a little generosity for time and  
22 schedules, can you give me a time when you could  
23 communicate with Mr. Valkosky about the status of  
24 this? Just by sending him an email and copying  
25 the parties.

1 MS. SOLE: I can give people a status by  
2 next Monday.

3 HEARING OFFICER FAY: Okay.

4 MS. SOLE: We would hope to have this  
5 conversation this week.

6 HEARING OFFICER FAY: Okay. Monday,  
7 noon?

8 MS. SOLE: Sure. At worst I'll have to  
9 say that we weren't able to have the discussion  
10 yet, but it's certainly my hope that I have better  
11 news than that.

12 HEARING OFFICER FAY: Okay. And, you  
13 know, -- won't be on vacation next week or this  
14 week or something? Okay, good. So that's a  
15 possibility. Okay, April 10th.

16 And, Mr. Ratliff, you concur in that  
17 characterization?

18 MR. RATLIFF: Yes.

19 HEARING OFFICER FAY: And in addition  
20 you said with the possible exception of soil and  
21 water and what else?

22 MR. RATLIFF: Waste management, soil and  
23 water resources, I think, with the possible  
24 exception of those two areas, after discussing it  
25 with the City during the recess, we're certain

1 that there are no areas that require adjudication.

2 HEARING OFFICER FAY: And you still have  
3 some potential to reach agreement on those?

4 MR. RATLIFF: Yes. And we don't expect  
5 those to become issues, either. But they haven't  
6 seen our final conditions of certification until  
7 we file them hopefully later this week.

8 HEARING OFFICER FAY: So they'll be  
9 filed -- these are the ones we're waiting --

10 MR. RATLIFF: The supplemental testimony  
11 on --

12 HEARING OFFICER FAY: Yes.

13 MR. RATLIFF: -- those two areas that  
14 we'll file, I think, no later than in the next ten  
15 days. I think perhaps we should just say we will  
16 file it no later than by the end of next week.  
17 And try to get it filed earlier than that if we  
18 can.

19 HEARING OFFICER FAY: Okay. And when  
20 will the applicant file its testimony? Can you  
21 file it as a bloc?

22 MS. SOLE: We had proposed in our  
23 prehearing conference statement that testimony for  
24 any supplemental testimony and intervenor  
25 testimony be filed by the 14th, I believe. And we

1 certainly would abide by that schedule.

2 HEARING OFFICER FAY: Help me, what page  
3 was that on?

4 MS. SOLE: That's the last date of next  
5 week, so that's Friday, April 14th.

6 HEARING OFFICER FAY: Just your  
7 schedule, though, of all those dates. Oh, here  
8 they are. Page 13.

9 MS. SOLE: Oh, I'm sorry, it's on page  
10 13.

11 HEARING OFFICER FAY: Is that realistic  
12 in light of what Mr. Ratliff said? I mean, --

13 MS. SOLE: Yes.

14 HEARING OFFICER FAY: -- you could be  
15 waiting for his testimony. That's basically the  
16 same date that he gave. Of course, you could  
17 communicate by phone. That's a very effective way  
18 of getting in touch with each other.

19 MR. RATLIFF: I'm very tempted to say  
20 that we'll file the testimony by the end of this  
21 week, because I think we can. It's a very -- what  
22 we have in mind is a very short piece of testimony  
23 with about two or three rewritten conditions of  
24 certification in two areas. One in waste  
25 management and one in soil and water.

1                   And conceptually, we think it's in  
2                   agreement with the applicant's approach to Title  
3                   22(a) which is the Mayer ordinance, San  
4                   Francisco's Mayer ordinance, for remediation of  
5                   toxic -- basically it's a site characterization  
6                   and certification of whatever mitigation is  
7                   necessary to protect the environment and public  
8                   health.

9                   We think that we'll be able to file that  
10                  very quickly, and with conditions in those two  
11                  areas. And those conditions will lay out the  
12                  range of any mediation measures that might be  
13                  expected to occur if any are, in fact, required by  
14                  DTSC and the Regional Board. And the range of  
15                  mitigation, or the appropriate mitigation that  
16                  would go for each of those measures. So that  
17                  there would be a clear suite of measures that  
18                  would cover any health or environmental issues  
19                  that would be attendant to any remediation effort,  
20                  such as removing soil from the site.

21                  HEARING OFFICER FAY: Okay. Mr. Sarvey,  
22                  your issues of concern are contingent on a couple  
23                  of these agreements. How soon after knowing the  
24                  answer on those could you file your testimony?

25                  MR. SARVEY: I imagine about ten days,

1 10 to 14 days.

2 HEARING OFFICER FAY: Can we make it a  
3 week?

4 MR. SARVEY: I'm thinking I could have  
5 my testimony in by April 20th, if that's  
6 acceptable to the other parties.

7 HEARING OFFICER FAY: Well, I think  
8 we'll be looking at something like seven days  
9 after the staff files. I know that jams you a  
10 little bit more than you wanted, but that still  
11 slips beyond the schedule that the applicant  
12 wanted. And we want to have some hearing days  
13 available; that pretty much eliminates April 27th,  
14 anyway. Perhaps not.

15 MR. RATLIFF: Does it eliminate April  
16 20th, did you say?

17 HEARING OFFICER FAY: April 27th I  
18 believe is the first hearing date available. I'd  
19 like to be able to make use of that.

20 MR. RATLIFF: We noticed in the schedule  
21 for the applicant's air quality witness he's  
22 available April 20th. I don't know if that's too  
23 soon, or it conflicts with the Committee's own  
24 schedules. But, it occurred to us that maybe we  
25 could move forward off of the dates that have been

1 considered thus far to try to find a date where we  
2 actually could have the witness in attendance.

3 HEARING OFFICER FAY: We can do that,  
4 but we have to check with the Commissioners'  
5 calendars. I don't know -- we don't have  
6 Commissioner Geesman here. I don't know if  
7 Commissioner Boyd has access to that right now.

8 PRESIDING MEMBER BOYD: I'm looking.

9 HEARING OFFICER FAY: The matrix I gave  
10 you were the six dates that the Commissioners'  
11 Offices released. Now that doesn't mean that  
12 there aren't other dates available, especially if  
13 we go to Sacramento on some issues.

14 MS. SOLE: Yeah, that's --

15 HEARING OFFICER FAY: But I'm trying to  
16 preserve for Mr. Valkosky that the maximum  
17 flexibility to use the earliest possible dates.  
18 And that's why I'm pushing to get this testimony  
19 filed earlier.

20 If your submittal comes in no later than  
21 next Monday, I'm thinking, just thinking out loud  
22 here, that maybe we can get the applicant and  
23 intervenors to file testimony on the 17th.

24 PRESIDING MEMBER BOYD: I'm not  
25 available on the 20th.

1 HEARING OFFICER FAY: Well, the 20th  
2 wouldn't -- I don't see how the 20th is available.  
3 We wouldn't have prefiled testimony. But the 27th  
4 could be available if the testimony comes in on  
5 the 17th.

6 MS. SOLE: Mr. Rubenstein is out of the  
7 country.

8 HEARING OFFICER FAY: I understand, but  
9 there are a number of issues that we --

10 MS. SOLE: Yes.

11 HEARING OFFICER FAY: -- could start  
12 dealing with. Ms. Kubick said that she would be  
13 available, and she covers a lot of --

14 MS. KUBICK: Yes.

15 PRESIDING MEMBER BOYD: You already have  
16 my -- the 27th is clear.

17 HEARING OFFICER FAY: April 27th, yeah.  
18 Any strenuous objection to that? It sounds like  
19 the case is moving in a positive direction, so if  
20 the parties meet the potential they've raised,  
21 then I think it's not unrealistic.

22 So, we'll hear from the staff either  
23 this Friday or maybe Monday at the latest. And  
24 that would --

25 MR. RATLIFF: Our goal is to get the

1 testimony filed Friday. If not, we'll file it  
2 Monday.

3 HEARING OFFICER FAY: Right. And as  
4 long as it comes in by Monday, then the other  
5 parties would be expected to file on the 17th.

6 And that's just Mr. Sarvey, because CARE  
7 is not filing testimony. Am I correct, Mr. Brown?

8 MR. BROWN: Yes. Yes, we're not.

9 HEARING OFFICER FAY: Okay. And, Ms.  
10 Sole, is there any other give on any of your  
11 people on dates? On any of Mr. Rubenstein's  
12 dates? He's here, maybe he can help us.

13 You know, obviously the concern is  
14 because air quality, public health, alternatives  
15 and EJ are all, you're listed under those. And  
16 those are all controversial topics that we're  
17 going to have --

18 MR. RUBENSTEIN: I understand. Which  
19 dates, though, in particular --

20 HEARING OFFICER FAY: Did you get a copy  
21 of this matrix?

22 MR. RUBENSTEIN: No -- thank you.

23 HEARING OFFICER FAY: Well, yeah, I mean  
24 given what we know right now, I'd like to address  
25 the dates on the matrix just because we know those

1 are Commissioner-available dates. We may be able  
2 to free up some more, but we know we have these.

3 And if any of those have any give on  
4 your schedule, that would help.

5 MR. RUBENSTEIN: Yeah, May 22nd and May  
6 31st.

7 HEARING OFFICER FAY: Are available?

8 MR. RUBENSTEIN: I can fly back from  
9 where I'm going to be for hearing on those two  
10 days.

11 HEARING OFFICER FAY: Okay, appreciate  
12 that. Does it matter if it's here or in  
13 Sacramento?

14 MR. RUBENSTEIN: It does not.

15 HEARING OFFICER FAY: Okay. Any other  
16 witnesses you can pull out of the --

17 MS. SOLE: Well, one thing that I could  
18 suggest is that on alternatives, Mr. Rubenstein  
19 sponsored testimony regarding some alternatives  
20 for air pollution control. But, the rest of the  
21 discussion was not testimony that he sponsored.

22 So, it might be possible to go forward  
23 with most of the alternatives testimony on a date  
24 that he's not available, and just cover the issue  
25 of alternative air pollution control devices on

1 the dates that he's available.

2 HEARING OFFICER FAY: Thank you.

3 MR. RATLIFF: Mr. Fay, I'm looking, but  
4 I believe that our witness, our air quality  
5 witness was the witness who addressed the SCONOX  
6 issue, which I think is the air quality  
7 alternatives issue that Ms. Sole referred to.

8 Okay, well, maybe it's under hazmat  
9 then.

10 DR. GREENBERG: It's under hazmat and  
11 air quality.

12 HEARING OFFICER FAY: Is that because of  
13 the ammonia?

14 DR. GREENBERG: Yes. So SCONOX is in  
15 both sections, hazmat and air quality.

16 MR. RUBENSTEIN: Mr. Fay, that issue is  
17 so narrow in terms of it being just one particular  
18 technology that I think if the parties can agree  
19 that it would be covered on the same day --

20 HEARING OFFICER FAY: Yeah.

21 MR. RUBENSTEIN: -- that we deal with  
22 air quality and public health issues --

23 HEARING OFFICER FAY: Mr. Sarvey, do you  
24 have any problem with that particular alternative  
25 being dealt with under air quality, since it

1 really is tied to the air quality equipment?

2 MR. SARVEY: I have no problem at all.

3 HEARING OFFICER FAY: Okay. I mean it  
4 would be covered just as well, but perhaps in an  
5 even better context because it is related to our  
6 emission control. Okay.

7 And who would that be? Are your people  
8 available?

9 MR. RATLIFF: Well, the two witnesses  
10 would be Alvin and Tuan.

11 HEARING OFFICER FAY: Um-hum.

12 MR. RATLIFF: Tuan Ngo.

13 HEARING OFFICER FAY: Okay.

14 MR. RATLIFF: So I think they're  
15 available, yes. My understanding is they're  
16 available for those dates.

17 HEARING OFFICER FAY: And how can we  
18 characterize that? Just the ammonia-related  
19 issues of air quality. To the extent some parties  
20 consider that alternatives, that would be covered  
21 under air quality. That's what we're agreed upon?

22 MR. RUBENSTEIN: Um-hum.

23 HEARING OFFICER FAY: Okay. Any other  
24 suggestions on how we might streamline things?

25 MS. SOLE: Perhaps a question. To the

1 extent that there are areas that no intervenor has  
2 indicated an interest in cross-examining  
3 witnesses, would the Committee, itself, want to  
4 have the panel available to make a presentation  
5 and be available for --

6 HEARING OFFICER FAY: That will probably  
7 depend on the Committee thinking it over. But  
8 there's a good chance that the order would say  
9 something like witnesses need not be brought, but  
10 the party sponsoring the testimony is at risk.  
11 That if questions arise from the Committee that go  
12 beyond the expertise of the Project Manager and  
13 the Staff Attorney, then, you know, you'd have to  
14 agree to bring somebody back.

15 But it rarely happens. I mean usually  
16 unless we call out the witnesses in the hearing  
17 order, the level of questioning is going to be,  
18 you know, not anything that the Project Manager  
19 couldn't handle.

20 So I think you can count on the hearing  
21 order. If it says that you'll be able to submit  
22 something on declaration, you won't need to bring  
23 the witness.

24 MS. SOLE: Okay.

25 HEARING OFFICER FAY: And this is to

1       everybody:  If you have some questions about the  
2       hearing order, you can call Mr. Valkosky and seek  
3       a clarification.  He's not going to change  
4       anything, because it is what it says, but he, you  
5       know, if you don't understand it, I'm sure he'd be  
6       glad to clarify.

7                    Any other comments, then, before we  
8       adjourn?

9                    I want to thank the parties for being  
10       very constructive today.  And I think we'll save a  
11       lot of all of our time having invested this extra  
12       time today.

13                   Commissioner, do you want --

14                   PRESIDING MEMBER BOYD:  No, I was just  
15       going to say I agree, thank you for taking that  
16       recess.

17                   HEARING OFFICER FAY:  And making good  
18       use of the time.  Okay, thanks a lot.  We are  
19       adjourned.

20                   (Whereupon, at 1:20 p.m., the prehearing  
21       conference was adjourned.)

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## CERTIFICATE OF REPORTER

I, SEAN WILLARD, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing 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 7th day of April, 2006.

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