



COMMITTEE MEMBERS PRESENT

Robert Pernel, Commissioner, Presiding Member

Al Garcia, Commissioner Advisor

Garret Shean, Hearing Officer

STAFF PRESENT

Caryn Holmes, Staff Counsel

Kristy Chew, Project Manager

Grace Bos, Public Advisors Office

Philip Lowe, Consultant to Staff (via telephone)

APPLICANT

Steve Cohn, Counsel for SMUD

Jane Luckhardt, Downey/Brand SMUD

MARIA DE LOURDES JIMENEZ-PRICE, SMUD

Kevin Hudson, SMUD

John L. Carrier, CH2M HILL

INTERVENOR

Kathryn Peasha

OTHERS PRESENT

Mike Boyd, (via telephone)

RANDY YONEMURA, Local Native American People

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

10:05 a.m.

1  
2  
3           PRESIDING MEMBER PERNELL: We're on the  
4 record. Good morning. My name is Commissioner  
5 Pernel. I'm the Presiding Member of this  
6 Committee. To my right is my advisor Ed Garcia,  
7 and to my left is our Hearing Officer Mr. Shean.  
8 This is the second of two pre-hearing conferences.

9           We're doing the application for  
10 certification by SMUD to construct two 500  
11 megawatt natural gas combined cycle power plants  
12 near the Rancho Seco Power Plant Site, Nuclear  
13 Power Plant Site. This morning, first of all, let  
14 me welcome everyone. And I would like to turn  
15 this over to our Hearing Officer Mr. Shean who  
16 will have the parties introduce themselves for the  
17 record. Mr. Shean.

18           HEARING OFFICER SHEAN: Good morning.  
19 Why don't we have the applicant please introduce  
20 itself.

21           MR. COHN: Good morning. Steve Cohn,  
22 assistant general counsel preparing on behalf of  
23 SMUD, along with co-counsel Jane Luckhardt and  
24 Lourdes Jimenez-Price, also the project manager is  
25 here, Kevin Hudson and John Carrier.

1 HEARING OFFICER SHEAN: Thank you.

2 MS. HOLMES: Good morning. My name is  
3 Caryn Holmes, staff counsel. To my left is the  
4 CEC's project manager for this project, Kristy  
5 Chew.

6 HEARING OFFICER SHEAN: All right. We  
7 also have a representative here from the Public  
8 Advisor's Office, Grace Bos. If you'll just raise  
9 your hand. And seated to her left is one of our  
10 inner readers, Kathy Peasha, and Mr. Roskey.

11 MS. BOS: Mr. Roskey is not here today.

12 HEARING OFFICER SHEAN: He is not here.  
13 That's right. I understand he has a deal with his  
14 hand surgery, or some sort of surgery. So he  
15 submitted a written statement. Is there any other  
16 party who's present? All right.

17 The purpose of our meeting this morning  
18 is to go over the last little bits of housekeeping  
19 for the preparation for the evidentiary hearings  
20 that we have currently scheduled for May 12th and  
21 13th.

22 We all knew that there was a part III of  
23 the staff's final assessment, which was to deal  
24 with Biology and alternatives that has been  
25 published, and is publicly available, and

1 available on the Commission's website. Let me  
2 just indicate, I have received pre-hearing  
3 conference statements from the staff, from SMUD  
4 and from Mr. Roskey.

5 I don't think there are any other  
6 written submittals. Is that correct, to your  
7 knowledge, Ms. Bos? Okay. We have an affirmative  
8 nod there. Our intention is to go over appendix  
9 A, which is the order of testimony, which was  
10 attached to the notice of the second pre-hearing  
11 conference, essentially determine whether or not  
12 there are any changes, additions, or deletions  
13 from that list.

14 And what I think we'll do is just begin  
15 at the beginning, unless there are some opening  
16 remarks from any of the parties who are here. We  
17 will take a moment to see if there are. All  
18 right. In the absence of any remarks then why  
19 don't we begin here to go through this.

20 And we have the Biology section for the  
21 part III of the FSA, and anticipated that all  
22 parties would have either direct, in the case of  
23 the staff and applicant testimony, and cross  
24 examination from either of those two parties, and  
25 from the public parties. I'll just indicate that

1 Mr. Roskey had indicated a desire on his part to  
2 cross examine witnesses on Biology. And how about  
3 you, Ms. Peasha?

4 MS. PEASHA: Yes, please.

5 HEARING OFFICER SHEAN: All right.  
6 Maybe what we can do is, if you don't mind coming  
7 up here and sitting this close to me we'll get  
8 you --

9 MS. PEASHA: Not at all.

10 HEARING OFFICER SHEAN: And then you can  
11 do this on the record audibly. Okay. So you  
12 would be included in the list of people doing  
13 cross examination, is that correct?

14 MS. PEASHA: Yes, sir.

15 HEARING OFFICER SHEAN: And do you have  
16 any direct you want to be presenting?

17 MS. PEASHA: I will have my witness of  
18 Biology, Diane Moore.

19 HEARING OFFICER SHEAN: Okay. And she's  
20 the witness who was there at the last hearing.

21 MS. PEASHA: That's correct.

22 HEARING OFFICER SHEAN: And you  
23 understand for her to present direct testimony  
24 you'll be providing some previously prepared  
25 written testimony for the --

1 MS. PEASHA: She will have that by May  
2 8th, is that correct, sir?

3 HEARING OFFICER SHEAN: That's correct.

4 MS. PEASHA: Okay.

5 HEARING OFFICER SHEAN: Okay. Is there  
6 any other thing we need to address on Biology?  
7 All right. Moving now to Alternatives, we have  
8 the same from the Staff and Applicant, the  
9 presentation of part III of the FSA. And the  
10 Applicant has indicated a panel of witnesses for  
11 its direct testimony.

12 How about from you, Ms. Peasha, do you  
13 have anything other than cross examination on  
14 that?

15 MS. PEASHA: The Alternatives, I don't  
16 believe I will any testimony from any witnesses on  
17 those, no, sir.

18 HEARING OFFICER SHEAN: Okay. You do  
19 expect cross examination though?

20 MS. PEASHA: Yes.

21 HEARING OFFICER SHEAN: As to Mr.  
22 Roskey.

23 MS. PEASHA: Yes.

24 HEARING OFFICER SHEAN: All right. We  
25 had a bit of a carryover topic from the last

1 hearing, which was on the matter of the final  
2 determination of compliance. An issue had come up  
3 with regard to how widely it had been served. And  
4 we've reserved some time for you to cross examine  
5 representatives from the AQMD based upon what we  
6 have previously understood --

7 MS. PEASHA: Yes.

8 HEARING OFFICER SHEAN: -- at the last  
9 hearing. Is that something you wish to do?

10 MS. PEASHA: Yes.

11 HEARING OFFICER SHEAN: Okay. And how  
12 about with respect to the Staff on the deletion of  
13 the Woodstove Replacement Program as one of the  
14 conditions in there?

15 MS. PEASHA: Yes. I would like to cross  
16 examine them and provide evidence.

17 HEARING OFFICER SHEAN: All right. I'll  
18 just note that the Applicant has requested the  
19 right to cross examine scheduled witnesses, and if  
20 necessary present Mr. Rubenstein as a rebuttal  
21 witness on the 13th, is that correct?

22 MR. COHN: Yes.

23 HEARING OFFICER SHEAN: Okay.

24 MR. COHN: Mr. Shean, that is the one  
25 problem we would have is if we need him as

1 rebuttal it would need to be on the 13th. We're  
2 not sure that we would need him.

3 HEARING OFFICER SHEAN: All right.

4 MS. PEASHA: And who is that, sir?

5 MR. COHN: Mr. Rubenstein.

6 MS. PEASHA: Okay.

7 HEARING OFFICER SHEAN: The gentleman  
8 who was at the last Air Quality hearing.

9 MS. PEASHA: I may have a direct witness  
10 also, Mr. Bob Sarvey, who was at the last.

11 HEARING OFFICER SHEAN: And what would  
12 he presenting this morning in regard to --

13 MS. PEASHA: To the Air Quality.

14 HEARING OFFICER SHEAN: Okay. Can you  
15 anymore specific?

16 MS. PEASHA: The use of the woodstove  
17 inserts.

18 HEARING OFFICER SHEAN: Okay. All  
19 right. Then we'll show you doing direct and cross  
20 on that issue. And you would understand that he  
21 would be submitting pre-prepared written testimony  
22 by May 8th, correct?

23 MS. PEASHA: Yes, sir.

24 HEARING OFFICER SHEAN: Okay. Then we  
25 have Mr. Roskey having sent both an early e-mail

1 to me, as well as a pre-hearing conference  
2 statement requesting an opportunity to -- and if  
3 I'm reading this correctly, do cross examination  
4 on certain conditions, as well as present direct  
5 testimony with regard to what I would conclude  
6 appears to be the health affects of fine  
7 particulate matter.

8 And I guess let's just invite any  
9 statement that the parties might have with respect  
10 to this item and request by Mr. Roskey. And  
11 anything from the Staff on this?

12 MS. HOLMES: Actually, I wanted to step  
13 back just a second on more generally on the Air  
14 Quality topic. First of all, I don't have an  
15 objection to it, but it's not clear to me what  
16 SMUD's witness is going to be rebutting, since the  
17 cross examination, that I'm aware of, is of Staff  
18 and of the District.

19 I would point out that the schedule  
20 change that SMUD has asked for doesn't work for  
21 the Energy Commission Staff. Their Air Quality  
22 witnesses are not available on the 13th. They are  
23 available on the 12th. And since they're going to  
24 be the ones, I think, that are subject to the  
25 cross examination with respect to the change in

1 the conditions of certification, it's important to  
2 us that we keep that topic on the 12th for that  
3 reason.

4 With respect to Mr. Roskey's cross  
5 examination of Staff, we're happy to have our  
6 witnesses available for conditions of  
7 certification that we changed with our filing of  
8 supplemental testimony. I would note that AQSC7  
9 was not changed. It has a new number, but it's  
10 not a new condition.

11 So that's perhaps not an appropriate  
12 topic for cross examination since it was not  
13 changed in the supplemental testimony. With  
14 respect to this direct testimony, it's not clear  
15 to me whether he's going to be filing as an expert  
16 witness or as a lay witness. So it's difficult to  
17 know how to respond to your request for comments  
18 at this time, Hearing Officer Shean.

19 But I guess that we'd like to reserve  
20 the opportunity to conduct cross examination of  
21 his direct if he is going to be testifying as an  
22 expert witness.

23 HEARING OFFICER SHEAN: Okay. Let me  
24 just understand, do you have in front of you his  
25 pre-hearing conference statement?

1 MS. HOLMES: I just got it.

2 HEARING OFFICER SHEAN: Okay. And do  
3 you see on the numbered page that deals with Air  
4 Quality matters a listing of the following  
5 conditions, and it starts at AQSC1 and it goes  
6 through AQ37?

7 MS. HOLMES: Yes.

8 HEARING OFFICER SHEAN: Okay. And am I  
9 understanding you correctly that, other than  
10 AQSC7, the listed conditions, or proposed  
11 conditions of certification, have been changed in  
12 some manner by the Staff's supplemental testimony  
13 or other agreements with the Applicant?

14 MS. HOLMES: Right. They were filed  
15 immediately prior to the hearings that were held  
16 last month. Most of the changes are quite minor.  
17 In fact, some of them are just changes to the  
18 verification, not to the condition of  
19 certification. But we said at the last hearing,  
20 and we'll repeat again here today, we're happy to  
21 make Staff available for questions on those.

22 HEARING OFFICER SHEAN: Okay. All  
23 right. I have no idea with regard to Mr. Roskey's  
24 qualifications to testify either as an expert or  
25 not. If he's a lay witness and wants to submit

1 articles, I would just say there's a foundation  
2 problem. However, I think the committee would  
3 probably handle that, given the nature of the  
4 topic matter, which is the particular matter as  
5 essentially a form of public comment, and allow  
6 the material to be submitted.

7 And whatever points it makes goes to  
8 evidence, it's already in the record, why, it  
9 could be used to supplement that. If it doesn't,  
10 why then in and of itself would not be sufficient  
11 to sustain or find it. Since we don't have it in  
12 front of us let's just --

13 MR. COHN: Mr. Shean, that's fine.  
14 We'll reserve whatever objections or cross we  
15 would have at that time.

16 HEARING OFFICER SHEAN: All right. Does  
17 that include anything on Air Quality then?

18 MR. COHN: Well, the only thing I would  
19 say in response to the concern about  
20 Mr. Rubenstein, at this point we don't know that  
21 we would need him. We're not asking to set aside  
22 a time at this point. And we're willing to  
23 proceed with Air Quality on Monday.

24 It's just if there's something comes up  
25 that was not in the record before that we need to

1 respond to we would ask leave to do that. So  
2 maybe what we could do is deal with that if and  
3 when that occurs on Monday.

4 HEARING OFFICER SHEAN: Okay. We're  
5 going to make a serious effort to knock this out  
6 on Monday. I don't think anybody wants to be  
7 there any longer than Monday. Okay. Water  
8 Resources, now, that is was what you called FSA  
9 part II, is that correct? And that was submitted.  
10 My recollection is it came in after the filing of  
11 testimony date.

12 MS. HOLMES: No, it came in 14 days  
13 prior to the hearing.

14 HEARING OFFICER SHEAN: Is that right?

15 MS. HOLMES: Yes. So we have a concern  
16 about that since it was timely filed.

17 MS. PEASHA: Were the additions that  
18 were made on March 12th, did they have testimony  
19 or changes on that?

20 MS. HOLMES: I don't believe that the  
21 changes on March 12th, dealt with Water Quality.

22 MS. LUCKHARDT: We did not request any  
23 changes of Staff on Water Resources.

24 HEARING OFFICER SHEAN: How about Water  
25 Resources?

1 MS. HOLMES: Water Resources, that's  
2 correct. Yeah. My understanding is that the  
3 testimony that was filed 14 days prior to the  
4 hearing was not changed.

5 HEARING OFFICER SHEAN: Okay. What did  
6 you want to cross examine on it, if you know?

7 MS. PEASHA: On Water Resources?

8 HEARING OFFICER SHEAN: Yeah.

9 MS. PEASHA: The existing Water Resource  
10 that had something happen to it during the time  
11 prior to our hearings, and after the hearings.  
12 That was not disclosed.

13 HEARING OFFICER SHEAN: Okay. You want  
14 to about the pipe repair, is that --

15 MS. PEASHA: That's correct.

16 HEARING OFFICER SHEAN: And what's the  
17 relevance of that to this?

18 MS. PEASHA: I don't know. I'm not sure  
19 if it is, only the fact that the timely manner  
20 that it was not declared. I'm questioning why and  
21 why not did we have any kind of information on the  
22 breakage of the pipe.

23 HEARING OFFICER SHEAN: Okay. Well,  
24 let's try to draw the most adverse inference from  
25 it and see whether or not it's something we

1 should be --

2 MS. PEASHA: Yeah. I'm not quite sure  
3 if it is, you know, the rights are there. But I  
4 do have a witness that I would like, a direct  
5 witness.

6 HEARING OFFICER SHEAN: Okay. But it  
7 has to be something that's going to aide us in  
8 making a decision. Otherwise, we don't need to  
9 hear it. So I guess this is what we're trying to  
10 find out.

11 MS. PEASHA: Well, it's still unburied  
12 at this point in time because of the rains that  
13 we've had in April. And I'm wondering what caused  
14 the pipe breakage, what is pretested for the  
15 pressure on it, you know, a 36-year-old pipe. It  
16 blew 120 feet out. So how much more -- or how  
17 much more of that do we know.

18 Was it because of valve changes and the  
19 water pressure, and volume going through there  
20 that caused it? I'm just curious on the fact that  
21 it broke two weeks prior to the hearings, was not  
22 worked on until after the hearings on the weekend  
23 following March 13th and 14th.

24 HEARING OFFICER SHEAN: Okay. Now, if  
25 all those things happened, where does that get us?

1 I mean it may be interesting, but it has to lead  
2 us to something in this case.

3 MS. PEASHA: I'm not sure that if SMUD,  
4 or the facility, had any wrongdoing in it, but I'm  
5 just curious on the protocol for which when  
6 something happens like that on other people on  
7 adjacent property, and to the property of SMUD's,  
8 what protocol is it for the biologist there, the  
9 Fish and Wildlife Service, if any, is needed.

10 I don't know if they need to ask for  
11 certain things before they start digging in there,  
12 and getting in there, and getting man in there.

13 HEARING OFFICER SHEAN: So you've  
14 already talked to them to a degree on this topic,  
15 have you not, is that right, either with  
16 Mr. Hudson or somebody else?

17 MR. YONEMURA: How many gallons of water  
18 came up? That would be --

19 PRESIDING MEMBER PERNELL: Okay. Hold  
20 on.

21 HEARING OFFICER SHEAN: Yeah.

22 PRESIDING MEMBER PERNELL: You've got to  
23 be --

24 HEARING OFFICER SHEAN: You're going to  
25 need to identify yourself.

1           PRESIDING MEMBER PERNELL:  -- on the  
2 record and all of that.  So you can't --

3           MR. YONEMURA:  Yeah.  My name is Randy  
4 Yonemura.  I'm a Local Native American.

5           PRESIDING MEMBER PERNELL:  Could you  
6 come up closer to a microphone please.

7           MR. YONEMURA:  My name is Randy  
8 Yonemura, and I'm with the Local Native American  
9 People of this area.  This is our indigenous land.  
10 And is the amount of water severe enough it  
11 becomes a storm water drain issue, which the state  
12 has to attend to.  Okay.

13                   And then there's also a water quality  
14 where Fish and Game and US Fish and Wildlife have  
15 to come into this.  And also where did this happen  
16 at?  Then there's the cultural issue.

17           HEARING OFFICER SHEAN:  All right.  Why  
18 don't we do this --

19           PRESIDING MEMBER PERNELL:  I think we're  
20 trying to access whether that has any bearing on  
21 the case that's before us.

22           HEARING OFFICER SHEAN:  It may have  
23 bearing on their compliance with other laws that  
24 relate to the existing facility.  Okay.  And to  
25 the extent that they intend to tap into that line

1 to provide water for this project. We clearly  
2 have jurisdiction on everything that's new.  
3 That's not something that's new.

4 MR. YONEMURA: If it's a part of this  
5 project, pipe and water --

6 PRESIDING MEMBER PERNELL: Sir, you need  
7 to come to a mike. I'm sorry.

8 HEARING OFFICER SHEAN: Yeah.

9 MR. YONEMURA: If it is part of this  
10 project, upcoming project, for any existing stuff,  
11 are you still tied in? That falls under the  
12 (indiscernible) anytime anything comes about that.  
13 And then also the NHPA. And, you know, we brought  
14 up to everybody's attention before that there's  
15 federal permitting involved in this project, you  
16 know.

17 And anytime there's federal permitting  
18 that makes that the whole project from A to B  
19 there's a 106 project, which has been ignored.  
20 They're doing it under CEQA. We don't appreciate  
21 that. You're already violating the federal laws,  
22 the NHPA laws.

23 HEARING OFFICER SHEAN: Okay. Why don't  
24 we do this, we'll afford you this opportunity, but  
25 understand --

1 MR. COHN: May I speak?

2 HEARING OFFICER SHEAN: Yeah, sure.

3 MR. COHN: I'm not sure what opportunity  
4 you're affording. The instant that Ms. Peasha is  
5 concerned about has nothing to do with this  
6 project. It has to do with an existing pipeline  
7 that serves the existing nuclear plant. And we  
8 fixed it, and we dealt with all the regulatory  
9 agencies that had something to say something to  
10 say about, which does not include the Energy  
11 Commission, because the Energy Commission has no  
12 jurisdiction over that pipeline.

13 We dealt with the Central Valley  
14 Regional Water Quality Control Board, with Army  
15 Corps. of engineers, and who else, and California  
16 Department of Fish and Game, followed all the  
17 protocols and took care of the problem. So this  
18 has absolutely nothing to do with this project  
19 before the Energy Commission, other than it's in  
20 the same vicinity.

21 MR. YONEMURA: Will this have anything  
22 to do with future expectations of how SMUD will  
23 handle these types of things? I mean if we  
24 already have the process of, you know, the CEQA.  
25 This is supposed to be a 106.

1           MR. COHN:  If you have a problem with  
2           the way we handled it we would be happy to sit  
3           down and talk to you about it.  I'm not aware that  
4           you had a concern.

5           MR. YONEMURA:  Yes, I had a concern --

6           MR. COHN:  We would be happy --

7           MR. YONEMURA:  -- at the very first  
8           meeting at SMUD.

9           MR. COHN:  -- to sit down --

10          PRESIDING MEMBER PERNELL:  Okay.  Hold  
11          it, hold it.  The issue is, and I've got to bring  
12          this back because I don't want this to go -- we  
13          spent a lot of time on this particular project.  
14          And you say you came before us and said something.  
15          And this is my first time seeing you, and I'm the  
16          Presiding Member.  So I don't -- and all of that  
17          is irrelevant.  The question is, does that have  
18          anything to do with the project before us?  What  
19          is that?

20          MR. YONEMURA:  I think it will have a  
21          bearing on the project pertaining to where the  
22          facilities are.

23          PRESIDING MEMBER PERNELL:  Okay.  Then  
24          you're going to have to prove that.  You've got to  
25          let the Committee know what that is.

1                   MR. YONEMURA: Okay. I haven't heard  
2 anything about this water pipe breaking until  
3 right now. So if I can get some facts then we can  
4 go from there.

5                   PRESIDING MEMBER PERNELL: Well, if you  
6 haven't heard anything about it until now, the  
7 Applicant has said he'll be happy to sit down with  
8 you and tell you about that, is that correct?

9                   MR. YONEMURA: I'm just answering your  
10 question.

11                  PRESIDING MEMBER PERNELL: Right. But  
12 that has nothing to do with the proceeding before  
13 us. If you need information on the breakage of  
14 the pipe, and who they contacted, and who's  
15 jurisdiction it is, then the Applicant will sit  
16 down and tell you that, at least that's what he  
17 said on the record.

18                  MR. YONEMURA: Okay.

19                  PRESIDING MEMBER PERNELL: But I don't  
20 want to mix apples and oranges here. We have a  
21 proceeding. And if it affects the proceeding that  
22 we have then we want to hear about it. If you  
23 don't know that, then you can't be on the record  
24 saying that. So find that out before we come in  
25 and start trying to interject those into this

1 proceedings.

2 We're talking about a proposed power  
3 plant, not a water breakage, whenever it happened.  
4 So I just want to be clear on the record that we  
5 need to stay with what this proceeding is about.  
6 And it is about licensing of a proposed plant.  
7 All right. So if there's some relationship there,  
8 then that's something that the Committee wants to  
9 entertain.

10 But if it's just "I just heard about  
11 this so I came down", then that's something  
12 different, because we need a record that reflects  
13 all of the interest of the proposed project.

14 MR. YONEMURA: I understand.

15 PRESIDING MEMBER PERNELL: Okay.

16 MR. YONEMURA: And we're here talking  
17 about the biological. Okay. Depending on when  
18 this water came, what was in the water, the amount  
19 of water, then it pertains to the biological.

20 PRESIDING MEMBER PERNELL: Right.

21 MR. YONEMURA: Okay.

22 PRESIDING MEMBER PERNELL: But we don't  
23 know that.

24 MR. YONEMURA: I know.

25 MS. PEASHA: Mr. Pernell, may I speak?

1           PRESIDING MEMBER PERNELL:  Yes.

2           MS. PEASHA:  I talked to Steve Redeker  
3           from Rancho Seco Power Plant, and had asked just  
4           for a time line of when and who they contacted.  
5           And he denied me that information at the time when  
6           I called him, which was the following Monday or  
7           Tuesday after the last hearing.

8           HEARING OFFICER SHEAN:  All right.  Can  
9           we take a break for a second?  Apparently we have  
10          problems for the teleconference.

11          PRESIDING MEMBER PERNELL:  Let's go off  
12          the record please.

13          (Thereupon, a short recess was  
14          held of the record.)

15          HEARING OFFICER SHEAN:  Mr. Boyd, why  
16          don't you repeat -- generally your statement that  
17          you're requesting an opportunity to review and  
18          pass along the FSA, because the reporter did not  
19          get what you said.  And I'd like it to be in your  
20          words please, Mr. Boyd.

21          MR. BOYD:  The notice on the April 18th,  
22          we put out this notices affecting pre-hearing  
23          conference.  On the 23rd, part III of the FSA was  
24          released, including Biological Resources and  
25          alternatives.  And we're specifically concerned

1 that we would like to have our expert, Dr. Sean  
2 Smallwood, have an opportunity to review part III  
3 of the final staff assessment that relates to  
4 Biological Resources.

5 We would like to have an opportunity to  
6 prepare a pre-hearing conference statement before  
7 we have the hearing on Biological Resources so  
8 that Dr. Smallwood maybe available for cross  
9 examination in that portion of the hearing  
10 process. And in order to do that that means that  
11 the schedule needs to be changed so that the  
12 Biological Resources is moved to a later time.

13 Because there's not enough time right  
14 not to do that. Because we would have had to have  
15 been able to do it today. And since the report  
16 was just released on the 23rd, there hasn't even  
17 been ten days since it's released to do that.  
18 We're basically asking for more time on the  
19 Biological Resources is what we're saying.

20 PRESIDING MEMBER PERNELL: Mr. Boyd.

21 MR. BOYD: Yes, sir.

22 PRESIDING MEMBER PERNELL: This is  
23 Commissioner Pernell. Mr. Smallwood is your  
24 witness?

25 MR. BOYD: That's correct.

1                   PRESIDING MEMBER PERNELL: And you  
2 received the information on the 23rd?

3                   MR. BOYD: No, sir. I just got the  
4 information yesterday on line.

5                   PRESIDING MEMBER PERNELL: And does  
6 Mr. Smallwood have that information?

7                   MR. BOYD: No, sir. I have not had an  
8 opportunity to present it to him.

9                   PRESIDING MEMBER PERNELL: Why is that?

10                  MS. HOLMES: Mr. Pernell, perhaps it  
11 would help if I explained that Mr. Sarvey is not a  
12 party. He's never filed a petition to intervene.

13                  PRESIDING MEMBER PERNELL: This is  
14 Mr. Boyd.

15                  MS. HOLMES: Excuse me. Mr. Boyd. I'm  
16 sorry. Has never filed a petition to intervene.  
17 He's not a party, and so he was not served.  
18 Everyone who is a party was appropriately served  
19 by Staff when the FSA was published. So it's not  
20 surprising he didn't receive a copy of it. It's  
21 because he's not a party.

22                  And I would question whether or not he  
23 has the right to conduct cross examination of  
24 Staff, or of the Applicant for that matter, for  
25 that matter on Biological Resources if he's not a

1 party.

2 MR. BOYD: I'm not asking to cross  
3 examine. We're trying to offer up a witness on  
4 Biological Resources.

5 MS. HOLMES: I don't believe you can  
6 offer up a witness unless you're a party. Now, I  
7 understand that Ms. Peasha, when we talked about  
8 Biological Resources earlier this morning, said  
9 that she wanted to have the ability to conduct  
10 some cross examination, and that she had a  
11 witness, Ms. Moore, who was going to be presenting  
12 direct testimony.

13 We don't have a problem with that. We  
14 do have a problem with somebody else appearing to  
15 become a party who hasn't gone through the process  
16 that's set out in the Commission's regulations.  
17 Finally, I would point out that the FSA was filed  
18 more than the 14 days prior to hearings that are  
19 required by the regulations.

20 PRESIDING MEMBER PERNELL: All right.  
21 Mr. Boyd.

22 MR. BOYD: I don't have any --

23 PRESIDING MEMBER PERNELL: Mr. Boyd.

24 MR. BOYD: -- (inaudible) to what she  
25 said. I'm not disagreeing with her. I'm just

1 saying that I --

2 PRESIDING MEMBER PERNELL: Mr. Boyd.

3 MR. BOYD: -- thought we were working  
4 for Ms. Peasha. If that's not the case, then  
5 that's fine. I'll be happy with that.

6 PRESIDING MEMBER PERNELL: All right.

7 The Committee would take that under advisement.

8 But right now we want to move on.

9 MR. BOYD: Sure. It was a suggestion.

10 MS. PEASHA: Mr. Pernell, this is Kathy  
11 Peasha. Would it be significant for you to have  
12 testimony supplied by Dr. Smallwood by May 8th,  
13 expert testimony?

14 MR. BOYD: Certainly that would allow us  
15 enough time, but that's at the discretion of the  
16 Committee I assume.

17 MS. PEASHA: Well, the other expert  
18 witnesses that I am calling, we have until May  
19 8th, to have the expert testimony of those who we  
20 are calling as witnesses.

21 MR. BOYD: That's all been --

22 MS. PEASHA: Will that work for you?

23 MR. BOYD: That's fine.

24 HEARING OFFICER SHEAN: Okay. Why don't  
25 you work with Ms. Peasha then --

1 MS. PEASHA: Thank you.

2 HEARING OFFICER SHEAN: -- on that. All  
3 right.

4 MR. BOYD: But my understanding is that  
5 if you're going to have Dr. Smallwood as a witness  
6 is that they have to know about that today as part  
7 of this pre-hearing conference.

8 MS. PEASHA: May I make that of record  
9 that Dr. Sean Smallwood will be also an expert  
10 witness on Biological Resources?

11 HEARING OFFICER SHEAN: Okay. We have  
12 that.

13 MS. PEASHA: Okay.

14 HEARING OFFICER SHEAN: Yes.

15 MR. BOYD: That's fine. Thank you.

16 HEARING OFFICER SHEAN: Now, with  
17 respect to the Water Resources that we are on, we  
18 just need some help making the matter of the  
19 pipeline break on an existing project in which we  
20 have no jurisdiction relevant to this proceeding.  
21 Can you help us with that?

22 MS. PEASHA: I would just like the time  
23 line in which they procured knowing about it, and  
24 when they started working on it, and if they went  
25 through all the -- to all the entities needed to

1 know about it for safety matters, and for -- and  
2 to declare that when it happened and why.

3 And if they know how long it's been  
4 leaking, if there is any indication that it has  
5 been running for a long period of time, and maybe  
6 causing water to run into the storm drainage  
7 areas. We have no idea.

8 HEARING OFFICER SHEAN: Okay. Why don't  
9 you let us take this under advisement in one week.

10 MS. PEASHA: Okay.

11 HEARING OFFICER SHEAN: We'll publish  
12 the --

13 MS. PEASHA: There is another Water  
14 Resource regarding the new pipe that they want to  
15 put in from their valve station to the CPP site.  
16 In the AFC they had indicated to be a 12-inch  
17 pipe. And I have never seen where the change had  
18 been made. It is now 20-inch pipe. And I don't  
19 know where that was a crossover, and when that  
20 decision was made that they were going to use the  
21 larger diameter of pipe for their water on the new  
22 plant site.

23 MR. COHN: Mr. Shean, we've been very  
24 patient during this proceeding, but we're really  
25 crossing a line here. If their concerns,

1 Ms. Peasha or Mr. Yonemura, or anyone else, has  
2 about an existing water pipeline and the break,  
3 they should deal with us and the agencies that  
4 regulate that.

5 This proceeding is not a free-for-all  
6 where you can just bring in any issue involving  
7 SMUD, or any issue involving the general area. So  
8 we would suggest that if there are concerns about  
9 an existing regulatory issue, or a water pipeline,  
10 that those be dealt with with the appropriate  
11 regulatory authority, which is not the Energy  
12 Commission.

13 We'd be happy to work with Ms. Peasha on  
14 resolving whatever concerns she has about the way  
15 that we fixed the water pipe on the vineyard  
16 that's nearby the plant. Also, I just want to  
17 bring us back to the point that Ms. Holmes made  
18 earlier, we've already had testimony on water, and  
19 we closed the record, expect for issues that would  
20 come up as a result of the Biology section of the  
21 FSA.

22 So that should be the only thing related  
23 to water that we're dealing with, fishery type  
24 issues.

25 MS. PEASHA: Wouldn't the storm water

1 run off be part of our Biological Water Resource?

2 HEARING OFFICER SHEAN: I thought we had  
3 gotten to the point where the Committee said we  
4 were going to take this under advisement. And we  
5 do understand the comment with regard to the pipe  
6 size change. So we're going to take Water  
7 Resources under advisement and you'll find out in  
8 our order of the disposition by the Committee of  
9 that topic. Okay.

10 Now, with regard to hazardous materials  
11 and worker safety, the committee, really  
12 Mr. Garcia, the Commissioner's Advisor, had been  
13 asking questions at the last hearing with respect  
14 to worker safety, and probably most particularly  
15 as it relates fire suppression and fire handling.

16 And SMUD has indicated in its pre-  
17 hearing packet statement that representatives from  
18 the Herald Galt Fire Departments will be there, as  
19 well as the City of Sacramento Hazmat team. All  
20 right.

21 MR. GARCIA: Yes, Mr. Shean. I'd also  
22 like to ask questions of somebody at the new plant  
23 that is about fire safety and the dates, and  
24 someone on the project that is knowledgeable on  
25 the same subject for the (inaudible), as well as

1 the fire department folks.

2 MR. COHN: So in addition to the ammonia  
3 spill issue, which was the main one, we understood  
4 you wanted to ask about, we shall be prepared to  
5 talk about fire.

6 MR. GARCIA: That's correct. I think we  
7 talked about ammonia spill at the last -- we were  
8 basically concerned of the fire safety and  
9 emergency response.

10 HEARING OFFICER SHEAN: I think the  
11 focus of this is fire safety, not ammonia spills.

12 MR. COHN: But not to exclude it.

13 HEARING OFFICER SHEAN: Yeah, not to  
14 exclude it.

15 MR. COHN: Just emergency response.

16 MS. PEASHA: I thought it had to do with  
17 the reaction time for our community as far as  
18 hazardous spills were --

19 MR. COHN: That's part of the concern.

20 HEARING OFFICER SHEAN: Yes.

21 MR. COHN: Sure.

22 HEARING OFFICER SHEAN: Okay.

23 MS. HOLMES: Mr. Shean, can I ask  
24 whether or not you need a Staff witness on that  
25 topic?

1 MR. GARCIA: Staff will have somebody  
2 there. I don't plan on any questions of Staff  
3 unless it comes up.

4 MS. HOLMES: Do we need to have a person  
5 there?

6 MR. GARCIA: Yes.

7 MS. HOLMES: It's a consultant from the  
8 Bay Area. That's why I'm asking. So we need some  
9 planning time.

10 MR. GARCIA: I don't think that's  
11 necessary.

12 HEARING OFFICER SHEAN: No.

13 MS. HOLMES: Thank you.

14 HEARING OFFICER SHEAN: Okay. Traffic  
15 and transportation, the Committee wants to  
16 continue exploring this topic, particularly as it  
17 deals with possible roadway signage with regard to  
18 the presence of school children, and the school  
19 buses stopping on the highway, as well probably as  
20 Clay East Road. So I see that both the Applicant  
21 and the Staff are going to make people available  
22 for that.

23 MS. HOLMES: Yes.

24 HEARING OFFICER SHEAN: On land use, I  
25 guess it came up and it was a matter that was

1 reported publicly and Ms. Peasha, when were trying  
2 to handle some of this scheduling and stuff by  
3 telephone, had called me and asked about this use  
4 of SMUD property for Homeland Security Training.  
5 But is this a matter you want to still pursue?

6 MS. PEASHA: In fact, for the future  
7 land use with regard to the completion of the  
8 property -- the completion of the plant, excuse  
9 me. And the acknowledgement of any developers  
10 that SMUD may know about that, that would use  
11 their rights of way to access Clay East Road.

12 HEARING OFFICER SHEAN: Okay. I guess  
13 first of all, the relevance of any information  
14 about this potential use only goes to potential  
15 accumulative impacts, whether they be land use,  
16 trapper trans station or anything that's related  
17 to that. And so it's important for the record,  
18 having at least gotten a prima facia statement in  
19 the public setting that there maybe this activity,  
20 is to know whether or not that activity at present  
21 is speculative, tentative, planned or what.

22 And I think that's all we really want to  
23 get to with regard to this Homeland Security  
24 Training. Now, can you inform us on, Mr. Cohn, on  
25 that?

1           MR. COHN: Yes. I can tell you where  
2           the article that was printed in the Galt Herald  
3           was fairly accurate as to describing a proposal  
4           that the number of agencies, city, fire and  
5           police, the county, sheriff, Metro Fire, a number  
6           of other agencies, informed the joint powers  
7           authority to expand the McClellan Emergency  
8           Response Training Center.

9           And part of the concept would be to  
10          expand it with certain facilities down at Rancho  
11          Seco as well, and perhaps use the decommission  
12          nuclear plant as a training site. This project  
13          would be about 60 million dollars or more, has no  
14          funding. There is no pending application. It's  
15          really just an idea, a very good one I might add.

16          But an idea that is not something that  
17          could even be analyzed from a perspective because  
18          there would be no project to analyze. You'd have  
19          no idea what kind of traffic there would be, or  
20          any other that, because the project has not been  
21          defined. So it would fall under the speculative  
22          category under Laurel Heights. And I don't think  
23          is the proper subject of this hearing.

24          But we would be happy to provide, as we  
25          indicated, Witness Jim Shetler, if the Committee

1 desires, just to describe the state of this  
2 project so that you know where it is and so on,  
3 can base the judgment on cumulative facts based on  
4 that.

5 PRESIDING MEMBER PERNELL: If it has  
6 nothing to do with the proceeding this Committee  
7 is not -- this Committee really doesn't want to  
8 hear anything other than what has to do with these  
9 proceedings.

10 MR. COHN: Let me clarify then. This  
11 has nothing to do with this proceeding. It's  
12 totally independent, whether it's built or not  
13 ever would have nothing to do with whether or not  
14 our projects are ever built. And we can certainly  
15 provide, if you want, for the docket, some  
16 materials about the project. I would agree with  
17 the Commissioner that it's not relevant to this  
18 proceeding.

19 PRESIDING MEMBER PERNELL: Maybe you can  
20 provide something to Ms. Peasha.

21 MS. PEASHA: I was at the meeting. The  
22 only concern I have is that Mr. Colin Taylor also  
23 informed me that this Homeland Security would also  
24 affect the south side of Clay East Road if in fact  
25 they go through with it. That property that they

1 propose to use for a lay down area was to be  
2 revegitated and put back pretty much the way it  
3 was.

4 That's the concern there, is that  
5 Mr. Taylor informed me that it may also affect  
6 that area. I am concerned are we going to have  
7 the revegitation and then have the Homeland  
8 Security, you know, build something on it? That's  
9 my concern there.

10 PRESIDING MEMBER PERNELL: Right. And I  
11 understand that. But, again, let me just state  
12 that it has nothing to do with this project. It  
13 has something to do with Homeland Security.  
14 Mr. Cohn has indicated that he would get you all  
15 the necessary information. And if you have  
16 questions on that you might want to go through the  
17 SMUD board when they meet and question some of  
18 those directors who are making those decisions.

19 HEARING OFFICER SHEAN: If you want to  
20 contemporaneously follow that with the docket that  
21 would all right too.

22 MR. COHN: We won't provide a witness in  
23 that area.

24 HEARING OFFICER SHEAN: All right.

25 Let's see, among other matters here, and I noticed

1 in the SMUD pre-hearing conference statement is  
2 about the underground storage tanks. And we had  
3 some testimony at the last hearing about that.  
4 And then we had what I understood to be the draft  
5 proposed conditions with regard to that. And I  
6 guess I'm just not sure if we're on the same page  
7 here.

8 I thought that what we had agreed to was  
9 there was going to be some procedure undertaken to  
10 determine whether or not it was possible to locate  
11 anything.

12 MR. COHN: Correct. And we've agreed to  
13 that. And I don't know if the final language is  
14 agreed to, but I know we've presented some  
15 language to Staff, and I think they are looking at  
16 that, may have already developed some language.  
17 So, yes, in concept we agree. And we're probably,  
18 in the next few days, have language that would  
19 incorporate that.

20 We didn't know whether the committee was  
21 satisfied with the stay of the record. We don't  
22 necessarily feel there's a need to put additional  
23 evidence in the record. But if there was any  
24 confusion left on the record we'd be happy to  
25 clear that up as to some of the sites that were

1 identified during the hearing.

2 But if the condition that we're willing  
3 to agree to, where we would do the testing, is  
4 sufficient to resolve the issue then I don't  
5 believe any further evidence is required.

6 HEARING OFFICER SHEAN: Based upon the  
7 state of the evidence that was produced at the  
8 last hearing, it appeared that the condition as  
9 conceived would be sufficient to reduce any  
10 potential impacts to less than significant.

11 MR. COHN: Great. Then we won't provide  
12 records.

13 MS. PEASHA: Other than page ten of this  
14 report that was not included that's where we kind  
15 of came into head on that. But that was going to  
16 be provided to the Commissioner. I was under that  
17 impression.

18 HEARING OFFICER SHEAN: If you're  
19 talking about the page, I recall some discussion  
20 about a page that was basically not complete.

21 MS. PEASHA: Right.

22 HEARING OFFICER SHEAN: It was a table  
23 or something like that that --

24 MS. PEASHA: And it was ordered by  
25 CH2MHILL, but it stopped at page nine, which shows

1       only a corner section where CPP is actually going  
2       to be located.  So page ten, I mean because there  
3       was some contamination there, page ten either  
4       shows more, you know, grid lines.  And that's why  
5       I thought it would be -- I thought it was  
6       important to look at that at least, given to the  
7       Commission so that they could take it under  
8       consideration.

9               HEARING OFFICER SHEAN:  I think what we  
10       try to do is create the condition, the remedy,  
11       that would include that and any other condition  
12       that might be found.

13              MS. PEASHA:  Okay.

14              HEARING OFFICER SHEAN:  So that it  
15       actually over arches the potential that you were  
16       talking about coming out of page ten.

17              MS. PEASHA:  Okay.

18              PRESIDING MEMBER PERNELL:  And,  
19       Mr. Cohn, are you saying that by the 12 you and  
20       Staff would have some language worked out?

21              MR. COHN:  Absolutely.

22              MS. PEASHA:  We'd actually hoped to have  
23       it by today, but we've had some illnesses among  
24       staff and haven't been able to get it out.  We're  
25       hoping that we can file it next week.

1           PRESIDING MEMBER PERNELL: Okay. So the  
2 Committee will have that --

3           MR. COHN: In advance.

4           PRESIDING MEMBER PERNELL: -- in advance  
5 of the hearing.

6           HEARING OFFICER SHEAN: All right. Is  
7 there any other matter that we need to --

8           MS. PEASHA: Well, the other matter I  
9 have is just the declaration of other deals and  
10 offers made to other property owners that are  
11 going to be affected by the power plant. I'm  
12 concerned that they're digging a well for this  
13 trailer, and we have no written or declaration,  
14 you know, what kind of deal was made there. And  
15 it was made between SMUD and the property owner.

16           Yet when we talk about hiding or  
17 blocking the view for the new towers and the power  
18 plant we're all put in writing as to when it's  
19 going to happen, when SMUD will be responsible for  
20 it. Yet without any declaration on the new well  
21 that they put in for the trailer that they're  
22 moving, it's nowhere declared in any of the --  
23 that SMUD has provided for the Intervenors and for  
24 Staff, and for the Commission.

25           MR. COHN: May I speak to this?

1 HEARING OFFICER SHEAN: Sure.

2 MR. COHN: For the record, I believe  
3 what Ms. Peasha is referring to is the trailer on  
4 the Rets' property, which is a condition in noise.  
5 We agree the property would be relocated so that  
6 this trailer would not be within the, I forget the  
7 decimal level.

8 MS. PEASHA: Right.

9 MR. COHN: But the level that would be  
10 deemed to be a problem under the county ordinance.  
11 So we agree to do that. And as a result, what we  
12 did was negotiate with the property owner and the  
13 occupant of the trailer and got them out of there.  
14 And that's something we can do on our own. It's  
15 not construction towards the project. We just  
16 have an agreement now for this trailer to be  
17 relocated. And that's whether or not we get a  
18 license.

19 So if we don't get a license we pay to  
20 have this guy move his trailer. So I don't see  
21 what the relevance of this is, and certainly not  
22 the relevance of how much we paid this fellow to  
23 move his trailer.

24 MS. PEASHA: It certainly is though if  
25 this is a consumed loaned use of (indiscernible),

1 we're paying tens, maybe thousands of dollars to  
2 put a well in. And that may not had been suitable  
3 to even be put in. And I believe that should have  
4 been declared.

5 HEARING OFFICER SHEAN: All right. Let  
6 the Committee take that one under --

7 MS. PEASHA: Thank you.

8 HEARING OFFICER SHEAN: -- advisement as  
9 we are doing with the Water Resources. And we'll  
10 let you know when we come out with our order. Is  
11 there anything else that we need to consider here  
12 before we wrap this up?

13 MS. HOLMES: I have two items.

14 HEARING OFFICER SHEAN: Okay.

15 MS. HOLMES: One is a request, first of  
16 all, the request would be to specifically identify  
17 whether a Staff witness will be needed with  
18 respect to the water issue when you get done  
19 considering what the scope of the water hearings  
20 will be.

21 HEARING OFFICER SHEAN: Okay.

22 MS. HOLMES: The second issue is that I  
23 wanted to report that there have been some  
24 developments with US Fish and Wildlife Service.  
25 Apparently after accepting the Biological

1 assessment as completed, it turns out that there  
2 may be some additional difficulties.

3 Staff is trying to work with US Fish and  
4 Wildlife Service and with SMUD so that there are  
5 none. But we did feel that we needed to let you  
6 know that there have been some additional problems  
7 that have cropped up that we hope can be resolved.  
8 They do have the potential to affect ultimately  
9 the schedule.

10 HEARING OFFICER SHEAN: Okay. And I  
11 have on my notes ask to have included in this a  
12 discussion of the status of the federal permits,  
13 federal review and permits. So anyway, the Staff  
14 is directed to contact any of the appropriate  
15 federal agencies to ask them what's going on.

16 MS. HOLMES: That's what we've been  
17 doing.

18 HEARING OFFICER SHEAN: Okay. And  
19 report that back to us. And I guess one of the  
20 things we're most interested in is the, in terms  
21 of the preparation of the PMPD, is what's their  
22 anticipated schedule, and what's their anticipated  
23 action time as it might relate to the Commissions  
24 action on a decision. Okay. Anything else from  
25 you?

1           PRESIDING MEMBER PERNELL: I have one  
2 question. The information that you're talking  
3 about, do you think you would have that by May  
4 12th?

5           MS. HOLMES: We're hopeful that we'll  
6 be able to have a more complete report for you by  
7 May 12th. Whether or not the issues will be  
8 resolved by May 12th, is a more difficult  
9 questions.

10          PRESIDING MEMBER PERNELL: Okay. And I  
11 would assume that the applicant is involved in  
12 this to get whatever information that US Fish and  
13 Wildlife needs?

14          MS. LUCKHARDT: We are in the process of  
15 trying to schedule a meeting with US Fish and  
16 Wildlife to find out what has changed and to hear  
17 directly from them so that we can understand if  
18 there is a change, if that change has been  
19 approved all the way up the chain, or whether to  
20 staff level concern and how to resolve it.

21                 We hope to have a meeting with them this  
22 week. It hasn't been confirmed, but we're working  
23 on that, to resolve whatever issue it is that they  
24 have.

25          PRESIDING MEMBER PERNELL: Okay. It is

1 the Committee's intention to have at least these  
2 hearings completed by the 12th or 13th. So the  
3 13th is kind of a spill over day. Hopefully  
4 everybody will be prepared, the staff for the  
5 hearings, the set of hearings, that are scheduled.  
6 If there's some problem with that please contact  
7 Mr. Shean to let us know as soon as possible.

8 HEARING OFFICER SHEAN: Okay. And,  
9 let's see, one other housekeeping matter. With  
10 three parts of an FSA and, perhaps waiting in the  
11 wings, the fourth part, I need a road map either  
12 from the Staff, or the Applicant, or both to try  
13 to work through all the changes topic by topic and  
14 condition by condition.

15 So I'll just state for the record, I've  
16 communicated with the project manager about trying  
17 to collect for me a pretty much finalized set of  
18 the Staff's proposed conditions, you know, in  
19 electronic format.

20 And at least you should be aware that,  
21 you know, there's a series of needles in a series  
22 of haystacks that need either I take a lot of time  
23 trying to find them or I ask you guys to kind of  
24 give me a road map topic by topic to ensure that  
25 if there are multiple filings or sources of

1 information there's a road map that will get me  
2 from point, to point to point so that I'm not  
3 spending a lot of time hunting, and not knowing  
4 what I'm even hunting for. So that would be  
5 helpful.

6 MS. LUCKHARDT: So then I gather from  
7 that that you would like to have from us,  
8 especially in the area of Air Quality, a summary  
9 of the changes that we have requested to Staff's  
10 conditions. I gather the things that we've agreed  
11 to would be summarized in Staff's stuff, and we  
12 would be preparing only the changes that we have  
13 requested that have not been accepted by staff so  
14 that you would have a clean copy of everything  
15 that Staff has proposed, and that jointly we've  
16 accepted.

17 And then we would provide the changes  
18 that we have requested in one document to those  
19 conditions.

20 HEARING OFFICER SHEAN: Yes. I guess  
21 what is occurring to me as I'm asking the question  
22 is that you have, if it's important, you have you  
23 AFC filing, answers to data requests, and the  
24 FDOC, and the (indiscernible) of Mr. Rubenstein,  
25 and then any suggested changes to the conditions.

1 If I've got to go through that --

2 MS. LUCKHARDT: You want the final.

3 That's what I was saying, we can prepare a final  
4 for you of what changes still apply, what changes  
5 we're still asking for to Staff's conditions based  
6 upon all of those things that have happened.

7 HEARING OFFICER SHEAN: Right. And I'm  
8 asking for the road map. From that position, take  
9 me back through everything that you think is a  
10 relevant piece of the record to support it.

11 MS. LUCKHARDT: Okay.

12 HEARING OFFICER SHEAN: Okay.

13 MR. COHN: And do you want the --

14 HEARING OFFICER SHEAN: I don't need  
15 that immediately. And it may be that this -- I  
16 just want you to start thinking about it so that  
17 you understand the needs of the committee in terms  
18 of going through this for what was sort of the  
19 largely uncontested proceeding. This has got a  
20 lot of stuff that's being contested. So anyhow,  
21 that's something that we're going to need to  
22 ensure that we've crossed all the T's and dotted  
23 all the I's in terms of --

24 And I think what will probably happen is  
25 at the conclusion of the hearing we'll try to come

1 up with, depending upon the circumstance that  
2 we're in, discussion about what's to follow like  
3 briefs and other things like that. Okay.  
4 Anything else we need to know?

5 MS. PEASHA: With consideration that  
6 you're taking on land use, traffic, Water  
7 Resources, traffic and transportation, and land  
8 use, can I keep the right to call and have  
9 testimony after I get the information from SMUD  
10 regarding their pipe break on the adjacent  
11 property to have testimony and a witness, if in  
12 fact after I get that information it need be?

13 HEARING OFFICER SHEAN: The question of  
14 relevance is one of the things we're going to  
15 be --

16 PRESIDING MEMBER PERNELL: Right.

17 HEARING OFFICER SHEAN: -- deliberating  
18 as a Committee. And you'll see from the order  
19 whatever that's going to be. It's something we  
20 just have to discuss and ultimately dispose of in  
21 a new order, which is what we're going to do here  
22 fairly quickly so everyone understands. I mean I  
23 think you have a fairly clear concept of what's in  
24 and what's under submission, and when things are  
25 due since you know that May 8th, is a critical

1 date for you.

2 Mr. Roskey has asked the same question.

3 I think everybody know. All right. Anything more  
4 we need to --

5 MS. PEASHA: I just would --

6 HEARING OFFICER SHEAN: Yes.

7 MS. PEASHA: Do I have all the document  
8 notification that -- is there anyone that I'm not  
9 aware of that I have not been sent, Staff and  
10 Applicant? Do you know of any that I may not be  
11 aware of other than the fact of --

12 MS. HOLMES: You've been served with  
13 everything that we've filed.

14 MS. PEASHA: Okay.

15 MR. COHN: And same here, including the  
16 FDOC that we held over hearings for.

17 MS. PEASHA: Well, that I --

18 MR. COHN: We have not withheld any  
19 document.

20 HEARING OFFICER SHEAN: She's not  
21 suggesting that you do. I think she was just  
22 asking the same sweeping question. All right. If  
23 there is nothing further then, we will conclude  
24 our hearing and inform you we will get a hearing  
25 order, a new notice, as promptly as possible.

1 Thank you very much.

2 PRESIDING MEMBER PERNELL: Thank you.

3 HEARING OFFICER SHEAN: Thank you.

4 (Thereupon, the Status Conference

5 was concluded at 11:10 a.m.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed in typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Status Conference, or in any way interested in the outcome of said Status Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of May, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345