

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Committee Conference On Proposed)	Docket No.
Decision On The)	01-AFC-19
Cosumnes Power Plant Project)	
_____)	

CALIFORNIA ENERGY COMMISSION

HENDRICKSON HALL

12746 IVIE ROAD

HERALD, CALIFORNIA

THURSDAY, AUGUST 28, 2003

8:22 a.m.

Reported by
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Commissioner Robert Pernell, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Garrett Shean, Hearing Officer
Al Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel
Kristy Chew, Project Manager

PUBLIC ADVISOR

Roberta Mendonca

APPLICANT

Steven Cohn, Assistant General Counsel, SMUD
Kevin Hudson, SMUD
Colin Taylor, SMUD
James Shetler, SMUD
Scott Flake, SMUD
Joseph C. Pennington, SMUD

INTERVENORS

Kathy Peasha, Community/Self
Michael Roskey, EDD
Gary Livaich, Esq.,
 Desmond, Nolan, Livaich & Cunningham
James Pellandini, Community/Self
Delores Mancebo Gregorio, Community/Self
Kristi Fong, Community/Self

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P R O C E E D I N G S

8:22 a.m.

COMMISSIONER PERNELL: We're on the record. Good morning. My name is Robert Pernell. I'm the Presiding Member on the SMUD Cosumnes Project. With me today is my Advisor, to my left, Al Garcia, and Garrett Shean. Mr. Shean is our Hearing Officer. Commissioner Rosenfeld, the second Commissioner on the Committee, was unable to attend the hearing today.

The purpose of this conference is to receive comments from the parties and the public on the Presiding Member's Proposed Decision on the Cosumnes Power Plant Project. In addition, some members of the public are here to make comments about the natural gas pipeline aspects of the proposed project.

Everyone should also note that on September 9th at 10:00, at the Energy Commission's headquarters in Sacramento, the full Commission should consider the possible adoption of the Presiding Member's Proposed Decision, with any changes that we make as a result of this conference, and any comments received by mail.

At this time I'd like the parties to

1 introduce themselves and their representatives,
2 starting with the Applicant.

3 MR. COHN: Good morning, Mr. Pernell and
4 members of the panel. My name is Steve Cohn,
5 Assistant General Counsel with SMUD. With us
6 today we have Jim Shetler, Assistant General
7 Manager, we have Colin Taylor, Project Director,
8 and Kevin Hudson, Project Manager.

9 COMMISSIONER PERNELL: Welcome. Staff?

10 MS. HOLMES: Thank you, Commissioner.
11 My name is Karen Holmes, I'm the staff counsel
12 assigned to this project. To my right is Christy
13 Chew, the Project Manager.

14 COMMISSIONER PERNELL: Good morning.
15 Welcome. Intervenors?

16 MS. PEASHA: Good morning. I'm Kathy
17 Peasha, Intervenor, on behalf of the public and
18 residents.

19 MR. ROSKEY: Good morning, I'm Mike
20 Roskey, Intervenor.

21 COMMISSIONER PERNELL: Are there any
22 public agency members in the audience representing
23 organizations? Seeing none --. The way I'd like
24 to proceed is to hear the residents concerning the
25 natural gas pipeline route. And at this time I'd

1 like to turn the hearing over to our Hearing
2 Officer, Mr. Shean.

3 MR. SHEAN: Thank you Commissioner. At
4 this point I'd like to introduce our Public
5 Advisor, Roberta Mendonca. She's the one who will
6 assist the members of the public.

7 I know she's discussed with both
8 parties, as well as the public who aren't here --
9 with respect to the pipeline alignment and route --
10 - your participation. So we'll have a few brief
11 comments, and then, for the people who have come
12 here to discuss the pipeline, we'll have you come
13 up and just discuss this matter in whatever order
14 you choose among yourselves.

15 MS. MENDONCA: Good morning. Just very
16 briefly, I'm Roberta Mendonca, the Energy
17 Commission's Public Advisor. And I believe, so
18 far, members of the public who have indicated they
19 want to make comment have sent forward a blue
20 card, and I will be available to collect other
21 blue cards should people decide, as the discussion
22 goes along, that they would like to make a
23 comment.

24 I did want to mention a little bit about
25 the Public Advisors outreach for this meeting.

1 When the notice came out we contacted members from
2 the public and the community who previously had
3 been participants in the meetings, and let them
4 know that the document that was under
5 consideration was available and my office would
6 make it possible for them to have a copy should
7 they need one.

8 So hopefully that was a facilitation for
9 today's meeting. Thank you very much.

10 COMMISSIONER PERNELL: Thank you.

11 MR. SHEAN: All right. We have two
12 cards here. And the first one I can't read quite,
13 but it's from a representative from the Pellandini
14 family, and this one is --

15 MR. LIVACH: Livaich.

16 MR. SHEAN: I'm sorry, I couldn't read
17 your name.

18 MR. LIVACH: That's okay. I'll be
19 brief. The Pellandini family and the DeLew family
20 asked if I could come and make a few comments
21 concerning the pipeline alignment, and the
22 ultimate goal, or the result which will be a
23 condemnation of a portion of their property to
24 facilitate the pipeline.

25 We've handed out a letter from

1 Representative of the Board of Supervisors
2 Nottoli, who -- basically, these are his
3 constituents.

4 As I said before, my name is Gary
5 Livaich. I'm from Desmond, Nolan, Livaich &
6 Cunningham in Sacramento. My clients don't want
7 this project, but they know it's coming, and they
8 know it's an inevitable thing. They recognize
9 that the greater public good is going to be served
10 by this project, but they don't want to pay more
11 than their fair share for the project.

12 The comments this morning, I want to
13 make clear, are not based on compensation. It's
14 based on the project as planned, and the affect it
15 will have on the property and the use of the
16 property as currently developed.

17 There's been a number of meetings and
18 discussions with the landowners and the right-of-
19 way agents that have represented the Applicant to
20 help facilitate this project. And one of these
21 concerns is the scope of the easement that is
22 required for the project.

23 On the one hand the agents have made
24 representations to the landowners -- don't worry
25 about it, we're going to put this pipeline in and

1 it's going to be below ground, you're going to be
2 able to continue your operations as you chive in
3 the past, and it's not going to have a significant
4 effect.

5 I was presented with and reviewed some
6 documents that were presented to my clients
7 concerning the nature and scope of the easement
8 required, including a legal description. And it
9 is much more burdensome as proposed than
10 represented by the right-of-way agents
11 representing the Applicant for the project.

12 There is a significant question as to
13 whether or not the easement area can be fenced or
14 cross-fenced, whether a road could be established
15 over the easement -- and I'm talking about an
16 internal farm road. Whether or not shallow,
17 rooted crops could be planted within the 35 foot
18 easement. Or whether drainage ditches for head or
19 tail water could be established.

20 Now what that means is, and my reading
21 is, that all of these things are prohibited. That
22 what your essentially doing, or that Applicant is
23 proposing to do by way of easement, is to take 35
24 feet of fee. There's a question as to whether or
25 not driveways could even be maintained under the

1 easement as defined and proposed.

2 Now, my clients have seen public right-
3 of-way available. Public right-of-way, they know
4 public right-of-way can be used for location of
5 this pipeline. The response has been, well it's
6 going to be inconvenient to do that. It's going
7 to be expensive, more costly. Maintenance is
8 going to be higher.

9 Well, I guess inconvenience, cost and
10 expense depends on your point of view, because a
11 few miles east down the road where the fish and
12 the fairy shrimp are being protected -- and, I
13 believe, a cemetery -- there's no problem with
14 putting a couple of miles of the pipeline within
15 the public right-of-way, but here, where these
16 folks are living and working, it appears not to be
17 a consideration.

18 I would also like to point out that the
19 Pellandini's are not, you know, fly by night
20 folks. I think they're on their fifth generation
21 here in Sacramento, they've been here for 128
22 years, they're pillars of the community, and
23 they're hard workers. And I think they deserve a
24 little consideration.

25 The other thing I want you to consider,

1 the context of their objections is this -- when
2 SMUD moves forward and goes to acquire this
3 property, apparently necessary or purportedly
4 necessary for the project by eminent domain.

5 A lot of us are familiar with the three
6 findings that have to be made, and one of those is
7 that the project, as proposed by the Applicant,
8 including the alignment of the pipeline, has to be
9 planned for the greatest public good and also the
10 least private harm or injury.

11 And I suggest to you folks that the
12 alignment in Arno Road, or along the Arno Road
13 right-of-way, off the shoulder, creates a heck of
14 a lot less private injury, the greater public good
15 is still maintained, and -- as we pointed out from
16 the letter from Supervisor Nottoli -- the county
17 is ready, willing and able to support and assist
18 SMUD in any way to accomplish the location of the
19 pipeline within Sacramento County public right-of-
20 way. Thank you.

21 COMMISSIONER PERNELL: Are you prepared
22 to answer questions on behalf of your client?

23 MR. LIVAICH: If I can't, my clients are
24 here.

25 COMMISSIONER PERNELL: Just so the

1 Committee can get a better understanding of what
2 you're talking about here, I have a map of the
3 proposed route, and are they in the fence that
4 sits on, that will interfere -- will the proposed
5 route interfere with any existing fences?

6 MR. LIVACH: Yes.

7 COMMISSIONER PERNELL: So there are
8 fences there?

9 MR. LIVACH: Yes. They have an ongoing
10 dairy there.

11 COMMISSIONER PERNELL: So, it's a
12 business.

13 MR. LIVACH: Yes. Well, also a home.
14 They live and work.

15 COMMISSIONER PERNELL: So there's a home
16 where the pipeline would go through their front
17 lawn?

18 MR. LIVACH: No, I'm talking about the
19 greater parcel itself. That on the parcel there's
20 a dairy operation. I'm not talking within the
21 proposed right-of-way, no.

22 COMMISSIONER PERNELL: All right. Well,
23 I want to focus on the proposed right-of-way. Is
24 there an existing fence within the proposed right-
25 of-way?

1 MR. LIVACH: I bring up Mr. Pellandini
2 to make sure that we have no problem. This is Jim
3 Pellandini.

4 MR. PELLANDINI: There is a fence where
5 the county --

6 COMMISSIONER PERSELL: Good morning and
7 welcome.

8 MR. PELLANDINI: There is a fence right
9 along the road, and there's a fence in. We plan
10 to build another barn out towards Arno Road, and
11 you're going to take a bunch of feet away from us.

12 And by the new laws on the water and
13 everything, for manure water, all the dairies are
14 going to end up having to build a new ditch to
15 contain all your runoff water for manure and
16 everything else.

17 Well, if you keep taking ground away,
18 this barn that we had planned a couple years ago,
19 we're going to have to change our whole operation,
20 how we're going to do it. Because once you do
21 this right-of-way then we're going to have to put
22 a ditch in back of it. We might lose 45 feet.

23 MR. LIVACH: But there's two fence
24 lines within the right-of-way.

25 MR. PELLANDINI: Yes. One is ours --

1 not on the whole strip. But one is right on, the
2 normal one along the road. And then there's one
3 inside, where our corrals are. But a little bit
4 further up, where they're going to go through our
5 ground, there isn't.

6 But they're coming right across into our
7 dairy, and coming up, going up Arno Road to the
8 east.

9 COMMISSIONER PERNELL: Okay, and then
10 the other question was, there was mention of a
11 road. Will the proposed line cross a road, and
12 whether that road is gravel or asphalt or cement?

13 MR. LIVACH: You have two driveways.

14 MR. PELLANDINI: We have three, four
15 driveways -- no, three driveways, because the
16 pipeline is going to stop before the fourth
17 driveway, but we have three -- we have a paintball
18 course, and two accesses into our dairy.

19 COMMISSIONER PERNELL: Are they asphalt
20 or cement roads?

21 MR. PELLANDINI: Gravel -- well, gravel
22 and dirt. And then two are gravel.

23 COMMISSIONER PERNELL: The 35 foot
24 easement -- and I think I'm right on this, but if
25 I'm not somebody correct me. That is the 35 foot,

1 and somewhere within that the pipeline goes down,
2 is that correct?

3 MR. LIVACH: Nine feet off, from what I
4 understand.

5 COMMISSIONER PERNELL: It's nine feet on
6 either side?

7 MR. PELLANDINI: First it was going to
8 be inside the fence lines by the power poles, but
9 then a few meetings we've had with SMUD, then all
10 of a sudden I found out -- I don't know if it's
11 true or not, but then last time we had
12 negotiations they were going to go nine feet in
13 from the 35 feet. So I don't know, I could be
14 wrong, but that's --

15 COMMISSIONER PERNELL: Can someone from
16 the Applicant help me? Ten feet on each side of
17 the line?

18 MR. SHEAN: Can you identify yourself
19 for the record please?

20 MR. PENNINGTON: Joe Pennington, I'm the
21 superintendent of gas pipeline access for SMUD.

22 COMMISSIONER PERNELL: Okay, Joe, bear
23 with me. I'm envisioning a right-of-way that's 35
24 feet -- an easement, I'm sorry, that's 35 feet.
25 Right?

1 MR. PENNINGTON: Okay.

2 COMMISSIONER PERNELL: Somewhere within
3 that, the pipeline is going to go down then?

4 MR. PENNINGTON: Correct.

5 COMMISSIONER PERNELL: I guess my
6 question is how many feet on either side, or does
7 that matter, or --?

8 MR. PENNINGTON: Typically, what we try
9 to do is we try to get 25 feet from the
10 construction zone to allow us spoil piles on one
11 side.

12 However, depending on above ground
13 restrictions, or obstacles or so forth, we usually
14 shorten that or expand that from one side to the
15 other. That's a typical, what we would call the
16 ideal situation for us.

17 COMMISSIONER PERNELL: Okay. You've got
18 the construction zone --

19 MR. PENNINGTON: We can swap.

20 COMMISSIONER PERNELL: We're going to
21 have to describe this for the record.

22 MR. PENNINGTON: Also, there is another
23 65 foot for the actual construction easement.

24 COMMISSIONER PERNELL: Okay. Did you
25 have something else?

1 MR. PENNINGTON: No.

2 COMMISSIONER PERNELL: The --

3 MR. SHEAN: Let me just ask, can you
4 provide a graphic description of the right-of-way
5 configuration to the record?

6 MR. PENNINGTON: Okay, yes.

7 COMMISSIONER PERNELL: We need to pass
8 it around so everybody can --. Okay, I just have
9 a couple of final questions, and maybe this is to
10 staff.

11 My understanding is that once the
12 pipeline is in and it's covered up, there can be
13 limited use by the owner, or does it take 35 feet
14 of the owner's property out of production?

15 MR. COHN: My name is Steve Cohn,
16 assistant general counsel. The issues you're
17 speaking of would be detailed in an easement, and
18 if we're not able to reach an agreement on that,
19 as the attorney for Mr. Pellandini indicated, we
20 would have to go through an eminent domain
21 proceeding.

22 Our preference would be that we
23 negotiate that, though, so that we don't need to.
24 But generally speaking, based on other
25 agricultural properties that we've gone through,

1 we would not prohibit planning of shallow crops,
2 we would not prohibit farm roads, we would not
3 prohibit driveways, we would not prohibit fencing
4 for agricultural operations.

5 So if that's how they're reading a
6 preliminary document that's been shown to them, we
7 can specify, then, as we go through negotiations
8 regarding the easement. So typically we would not
9 prohibit that type of thing. We would prohibit,
10 for example, structures on the right-of-way --

11 COMMISSIONER PERNELL: Permanent
12 structures?

13 MR. COHN: Permanent structure. We
14 would prohibit trees with roots that could grow
15 down into and pierce the pipeline, that sort of
16 thing, but not shallow crops. And Joe, I don't
17 know if you --

18 COMMISSIONER PERNELL: And the
19 negotiations that you referred to have not started
20 yet, or have they started?

21 MR. COHN: Well, they've started, as
22 you've heard -- and Mr. Shetler can go into a
23 little more detail. I think we've had --

24 COMMISSIONER PERNELL: Well, I don't
25 need to know the details of it, I just need to

1 know whether or not it's going to happen?

2 MR. COHN: Well, they have started, but
3 obviously there's still a ways to go before we can
4 reach agreement. But we would attempt to do that
5 before we'd even go to our board for a resolution
6 of necessity.

7 Because our board would ask many of the
8 same questions that you're asking before they
9 would even adopt a resolution of necessity, which
10 is a prerequisite to go to court and condemn
11 property.

12 So we will definitely sit down with them
13 further, and negotiate and be as flexible as we
14 can within the parameters of the proposed
15 decision.

16 COMMISSIONER PERNELL: Yes, sir.

17 MR. PELLANDINI: I don't speak very
18 much, but we'll start off with eminent domain.
19 The first time I ever had a meeting with Paramount
20 Partners, after about the 20th word we got eminent
21 domain thrown at us -- Paragon, I'm sorry --
22 thrown at us.

23 As far as being flexible, they haven't
24 flexed upon one thing yet. And we need to get
25 together. You always say you're going to do this.

1 We've had Don Nottoli in a lot of meetings about
2 helping the county, about having his people come
3 out and help with the pipeline.

4 We have a business there. You're
5 hurting people up the road. You're missing 32 or
6 3,300 or 4,000 feet up the road off of two people,
7 and you're going to -- if you do that there, with
8 the first guy complaining the first time you ever
9 talked to him, way before you ever talked to us.

10 There's a lot of things that could have
11 been done, a lot of things, you know. And if
12 you're going to say that you're talking to them
13 and you've been 100 percent on our side and
14 working with us, well, you need to really get
15 serious and we're going to get flexible and do
16 things the right way, they need to know too.

17 We need to get things done and do it the
18 right way, not just say that you're doing
19 everything. Every time we sent a letter to Kristy
20 Chew or my Mom or whatever, and you guys send a
21 letter back over, working with the Pellandinis,
22 that's not 100 percent true, it's not.

23 So, there are a lot of issues. We do
24 have a business there. We're going to lose 35
25 feet, we're going to lose a lot more because we

1 had to put a ditch inside that to contain our
2 manure water we're losing the barn.

3 The business has been around forever.
4 And I understand the pipeline is coming. We have
5 growth, we have no way to stop that. But there's
6 a lot of other ways -- if they go up the road and
7 miss it on a narrow spot up on the road, a
8 balancing and coning -- there's other ways to go
9 around it.

10 And the same concerns of Mr. Delew --
11 he's not here today, he's harvesting grapes. He's
12 getting a junction box. Eventually, I don't know
13 if you guys are aware of it, eventually they're
14 talking about hooking this line in someday to
15 Lodi, maybe Alta Mesa Road.

16 And that was always our goal, right from
17 the beginning, is if you're going to do this down
18 the road why don't they keep the pipeline in the
19 middle of the road or in the ditch, go up to Alta
20 Mesa Road, put the junction box by the railroad
21 track, and we're all set.

22 If they put the box into Mr. DeLew's
23 piece of property, some day they're going to have
24 to go through his property to get to Alta Mesa
25 Road. So there's a lot of concerns, I mean, a lot

1 of concerns that need to be on the table and done,
2 and done the right way.

3 Not just saying that we've been here a
4 lot of years, but we understand the growth. But
5 there's just a lot of concerns and a lot of things
6 need to be -- you know, we'll never use no natural
7 gas, we're helping everybody else by it being on
8 our ground, but we know there has to be progress,
9 but there's a lot of concerns about this.

10 MR. LIVAIK: One last comment if I
11 might, again Gary Livaich. I was pleased to hear
12 that there's been some discussion and maybe some
13 movement on the nature and scope of the easement.

14 But I would like to set the record
15 straight that the easement that was presented to
16 the Pellandini's by the right-of-way agent
17 representing the Applicant was not a preliminary
18 document.

19 It was a specifically defined easement,
20 and it was part of the negotiation with the
21 landowners, presented to them as the easement that
22 was required by the Applicant for the construction
23 of this pipeline. And it did prohibit the uses
24 that I discussed earlier.

25 It is wonderful to hear this morning

1 that now this easement would not prohibit roads,
2 shallow rooted crops, fences, cross-fences, and
3 ditches. And really that the only concern is
4 deep-rooted crops or trees, and permanent
5 structures.

6 That is a step in the right direction.

7 But it was not a preliminary document that was
8 presented. It was a formal contract and grant of
9 easement that was presented.

10 MR. SHEAN: Can I ask, how do we
11 identify your parcel on Arno Road?

12 MR. PELLANDINI: There are three little
13 pieces out there on the freeway, little piece when
14 they built the freeway, there's one little piece
15 they want to come through that are going to come
16 right into our dairy.

17 There's a dairy there, so it will be on
18 our dairy site going east all the way up until you
19 come to some trees, and then it's going to come
20 back across the road to go into the nature
21 conservative a little ways, and it's going to hit
22 the Mancebo property.

23 And if they get this deal, too, the way
24 their water runs, they got to build all new sump
25 tanks until this thing's done, they can't go

1 through to change their ditch the way it is. So
2 there's a lot of, it's not just a cut and dried
3 thing.

4 MR. SHEAN: You don't have the APN, but
5 do you have the mailing address on that property?

6 MR. PELLANDINI: 10490.

7 MR. SHEAN: Is there a sign or something
8 that says 10490, or anything?

9 MR. PELLANDINI: It's 9950 Arno Road.
10 But that's not our mailing address, that's for our
11 employees.

12 MR. SHEAN: That's one of the first
13 one's east of 99. No, I don't want that, I just
14 want for drive-by purposes --

15 MR. LIVACH: First parcel east of 99.

16 MR. SHEAN: Okay.

17 MR. PELLANDINI: And I would like -- if
18 you guys could drive by that would really be good,
19 I mean for everybody, you know. Because we have
20 to live with this the rest of our lives, and I'm
21 hoping a few more generations come out and other
22 people's kids --

23 MR. SHEAN: Is there an exit at Arno off
24 99?

25 MR. PELLANDINI: Yes.

1 MR. LIVACH: Yes, south side of Arno
2 Road.

3 MR. PELLANDINI: And one little piece on
4 the north side, when you're coming through the
5 freeway.

6 MR. COHN: Mr. Pernell, I'll give Mr.
7 Livaich my card, and be happy to sit down. He and
8 I have not yet discussed the terms of the
9 easement. These negotiations, obviously, can be a
10 little bit of a song and dance, and obviously we
11 need to get moving --

12 COMMISSIONER PERNELL: I think the
13 Committee's concern is that negotiations happen,
14 obviously have to happen. I think that SMUD has a
15 good reputation in the community, so I don't
16 envision that it would be anything that is not
17 above board.

18 And I would hope that, you know, we have
19 community residents here, they're going to be
20 affected, so obviously they're concerned.

21 MR. COHN: Right.

22 COMMISSIONER PERNELL: Is there anything
23 else? Staff, do you have any questions?

24 MS. HOLMES: No.

25 MR. LIVACH: Thanks very much.

1 COMMISSIONER PERNELL: Thank you.

2 MR. SHEAN: All right. We have Ms.
3 Gregorio.

4 MS. GREGORIO: Good morning,
5 Commissioner Pernell. My name is Delores Mancebo
6 Gregorio, and my mother is Matilda Mancebo, and
7 she's the owner of one of the farms affected by
8 the pipeline.

9 I had intended to provide a statement
10 that I had prepared on May 13th, but the
11 evidentiary hearing actually ran a little longer
12 on the 12th so I wasn't able to provide it on the
13 13th, and I originally intended to do so. So I
14 do --

15 COMMISSIONER PERNELL: I understand, and
16 that's why we're here this morning.

17 MS. GREGORIO: I know, so I do
18 appreciate that, I do appreciate today's
19 conference and hearing, so I wanted to thank you
20 for that. This letter is written on behalf of my
21 mother.

22 "Dear Energy Commission Members, my name
23 is Matilda Mancebo, I own 234 acres located on
24 Arno Road, which the Sacramento Municipal Utility
25 District has chosen to place a 35 foot easement

1 and a valve station. I've owned my farm for over
2 30 years, my husband and I worked very hard to
3 make the purchase."

4 "After my husband's death, my children
5 and I have struggled to keep it. Now I've been
6 informed by a SMUD spokesman that a natural gas
7 pipeline and a valve station will be located on my
8 property, regardless of my opinion."

9 "I'm shocked that my children and I
10 could work so hard and have a government official
11 tell me that my property rights mean nothing. My
12 daughters and I have made every attempt to
13 communicate and work with SMUD. In our first
14 meeting with a SMUD representative I was told 'you
15 can work with us, or against us.'"

16 "Unfortunately, for my family and I
17 working with SMUD has not proven productive. My
18 daughters and I have made multiple inquiries and
19 met with members of SMUD regarding the amount of
20 frontage being taken and the location of the valve
21 box. I was verbally notified that the pipeline
22 could not be changed; however, SMUD agreed to look
23 into placing the valve box at another site."

24 "Since, SMUD has written a formal
25 response regarding their efforts to relocate the

1 valve station, and have informed us that that
2 request has been denied. However, my daughters
3 and I believe we deserve answers fully detailing
4 the choices being made by SMUD, and why other
5 less-burdensome alternatives are not being
6 chosen."

7 "My questions are as follows: there are
8 three valve stations planned for the 26-mile
9 pipeline. The valve station being placed on my
10 farm will require trenches be dug around the valve
11 station to capture flood irrigation water. This
12 will become a permanent issue as long as the
13 property is farmed."

14 "Adjacent to my farm is the nature
15 conservancy property, with thousands of acres
16 which are not farmed. What is the difference
17 between my property on one side of a fence, which
18 will burden current farming practices on my farm,
19 versus placing it on the adjacent field which is
20 not farmed? I've included a photograph of the
21 adjacent field for your review."

22 "In addition to the nature conservancy
23 property is another alternative site on the north
24 side of the freeway offramp, which is not capable
25 of being farmed. My question is why has this site

1 not been designated for a valve station? I've
2 also enclosed a picture of that property."

3 "The current proposed easement will take
4 35 feet of the entire frontage of our 234 acre
5 parcel. The easement will include my irrigation
6 well, my domestic well, and a sole entrance to the
7 property. Wells requiring repair require SMUD
8 permission. Substantial repairs such as deepening
9 or digging of a new well cannot be done in or near
10 the same location because SMUD has an easement."

11 "In addition to the burdens placed on
12 repairs, I must ensure a permanent ditch is
13 created outside the easement to prevent water
14 runoff. A permanent ditch will prevent easement
15 acreage from ever being farmed again. Yet I will
16 continue to have the burden of paying taxes."

17 "To alleviate the burdens placed on my
18 farm by the location of the pipeline, my daughter
19 spoke to SMUD representatives, and requested the
20 easement be placed in the center of the road, or
21 in the county right-of-way alongside my property.
22 My daughters were told no. When asked why, we
23 were verbally told cost, and the fact it would
24 cause project delays, because of potential
25 biological concerns."

1 "It's my understanding that the pipeline
2 route has been changed to accommodate at least two
3 landowners by placing the pipeline in the county
4 right-of-way alongside their properties. I ask
5 why it is being done for some, and not for
6 others?"

7 "As a SMUD ratepayer for over 30 years,
8 I too am concerned with costs. However, I can't
9 see how delaying a project for one season, which
10 may result in a temporary increase of a few cents,
11 can be balanced against placing an easement on my
12 property, which will burden my family and I in
13 perpetuity."

14 "I ask why the pipeline currently
15 designated for my property cannot be placed in the
16 middle of the road, or even the county right-of-
17 way alongside my property. Thank you for your
18 time, and the opportunity to be heard."

19 COMMISSIONER PERNELL: Thank you. What
20 type of farm or business does she have? Is that a
21 dairy as well?

22 MS. GREGORIO: It was a dairy, it's
23 currently used for row crops, farmed as row crops,
24 so corn and sedan and --

25 COMMISSIONER PERNELL: Hay and --?

1 MS. GREGORIO: Hay, yes, clover.

2 COMMISSIONER PERNELL: And you mentioned
3 a well, you would need another, to dig a well?

4 MR. GREENBERG: Well, initially SMUD
5 hadn't even noticed it when they sent out their
6 surveyor, but when I reviewed the easement I
7 noticed -- and I went back and measured it -- it
8 would probably encompass the domestic well.

9 And actually, when they went back --
10 they sent a surveyor out a second time -- and
11 realized that it would encompass the domestic
12 well.

13 I was told that they could probably work
14 the pipeline so that they could move it to the
15 left of the domestic well, but it would still be
16 included within the easement, the right-of-way.

17 So basically, we have a domestic well,
18 we have another irrigation well that will be
19 included, and our driveway.

20 COMMISSIONER PERNELL: Okay. Questions?

21 MR. GARCIA: I actually have a question
22 for SMUD. I keep hearing the concern of the
23 property owners, and one of the questions I had in
24 my mind is why is it necessary to route this
25 through the fields as opposed to maybe locating it

1 on the county right-of-way alongside the road,
2 specifically that. Maybe not the middle for the
3 road, but there is an existing right-of-way.

4 MR. SHETLER: I don't think there's any
5 county right-of-way along the side of the road,
6 other than what they've allocated for potential
7 future road widening.

8 The issue is one of ease of access,
9 public safety -- because the closer you are to the
10 road then you're more in the road during
11 construction and for repairs -- and then the issue
12 is, over time, if the county widens the road,
13 you're now potentially impacted with the county
14 widening.

15 And we also, you know, I'd maybe just
16 comment for a minute. I too am one of the
17 representatives that met with several of the
18 owners in public, and one couple in private. We
19 are trying to look at what is the best routing
20 overall.

21 There are increased costs associated
22 with locating it in or adjacent to the road. Ease
23 of access for maintenance long-term. And one of
24 the issues that we have to address as a publicly
25 owned entity is what is the most cost-effective

1 way of doing our projects for all of our
2 ratepayers.

3 At the same time trying to make sure
4 that, where we do have impacts, we try to
5 compensate for that. And we are in negotiations
6 with the various entities to try to do that.

7 MR. GARCIA: I have two followup
8 questions. It sounds to me that it would be fair
9 to say that, you know, what you just said aside,
10 it still is technically feasible to put it
11 alongside the road?

12 MR. SHETLER: It is technically
13 feasible, and I shared that with the residents in
14 our discussion when I met with them, that it is
15 technically feasible to do that.

16 What we have to look at is what is the
17 most cost-effective way, what do normal standards
18 call for when you route pipelines, and there are
19 industry standards associated with that. And they
20 would indicate that you try to avoid going in
21 roads wherever possible.

22 MR. GARCIA: The last question that I
23 have is how deep would the pipeline be located?

24 MR. SHETLER: Our minimum requirement is
25 five foot.

1 MR. PENNINGTON: But in these type of
2 situations, agricultural areas, we go six. For
3 these kinds of concerns that we may have.

4 MR. SHEAN: I -- just a couple of
5 questions. With respect to the pipeline route,
6 they have stated there are two other parcels that
7 may have initially been designated for an easement
8 for the pipeline which are now not going to be
9 used. And it's going to be in the roadway?

10 MR. PENNINGTON: They're referring to a
11 section where the pipeline actually does get
12 located into the county right-of-way, along the
13 shoulder of the road. In that specific location,
14 as we approached it and did the analysis of it,
15 there are above-ground obstacles.

16 We had no choice in about 200 feet
17 because of trees, structures, corrals and so
18 forth, to jump into the street. At that point we
19 had a decision either to cross the street, cutting
20 asphalt, because there's no way to bore it, or
21 stay inside the county right-of-way.

22 Being a little adverse to road crossings
23 because of future potentials for impacts such as
24 utility installations, we chose to stay on the
25 south side of the road in the right-of-way. Until

1 we could jump back into the private property.

2 MR. SHEAN: And in the right-of-way
3 means what, along the edge of the roadway?

4 MR. PENNINGTON: Yes, right off the
5 shoulder of the road. Out of the asphalt.

6 MR. SHEAN: Out of the asphalt, right,
7 so that the --

8 MR. PENNINGTON: We're in basically a
9 ditch.

10 MR. SHEAN: Okay. So there's no road
11 repair that's --

12 MR. PENNINGTON: We're trying not to.

13 MR. SHEAN: -- necessitated by this, and
14 the safety issue you discussed, with respect to
15 traffic, again would be some traffic control to
16 ensure that the -- I assume the ditch-digging
17 machinery will be in the lane nearest the edge of
18 the road, and you're going to be reducing the two-
19 lane road to one lane in each direction with
20 traffic control, right?

21 MR. PENNINGTON: Correct.

22 MR. SHEAN: And then the other concern
23 you had, with respect to widening the road, would
24 apply to this section as well?

25 MR. PENNINGTON: Correct.

1 MR. SHEAN: Okay. And the linear
2 distance for this type of application is going to
3 be approximately how much?

4 MR. PENNINGTON: Out of the 26 and a
5 half miles we have about 2,800 feet.

6 COMMISSIONER PERNELL: About what?

7 MR. PENNINGTON: 2,800.

8 COMMISSIONER PERNELL: 2,800 feet.

9 MR. SHEAN: And that's along Arno Road,
10 correct?

11 MR. PENNINGTON: Correct.

12 MR. SHEAN: Can you estimate -- if, how
13 do you compare? What is the ratio between costs
14 of doing this through the private property that
15 you've currently described, including the cost of
16 easement, versus this use of the county right-of-
17 way for this 2,800 feet?

18 MR. PENNINGTON: It takes probably about
19 three times as long to do this construction in
20 this area. The process is you have to open up a
21 small amount of trench, and then plate it every
22 night. Then the next day you come and drop the
23 pipe in, backfill, and then open up the next
24 section.

25 So it actually takes about three times

1 as long to do that area. Cost-wise, I guess, you
2 know, you'd have to be sure of a lot of things --
3 in this section we're probably going to say it's
4 going to be three-quarters of a million more to be
5 in the asphalt area. Per mile.

6 MR. SHEAN: And how many miles --

7 MR. PENNINGTON: There's about five
8 miles of the whole area that would be off of Arno
9 Road and so forth.

10 MR. SHEAN: So you're suggesting if it's
11 three-quarters of a million per mile it's going to
12 be --

13 MR. PENNINGTON: That increased, yes.

14 MR. SHEAN: Times five miles?

15 MR. PENNINGTON: Times five, yes.

16 MR. GARCIA: I have a followup question.
17 What's the total estimated time for building this
18 section -- I guess it's the five mile section of
19 the line?

20 MR. PENNINGTON: Probably about four to
21 five weeks.

22 MR. GARCIA: Let me put a hole in your
23 argument, because it sounds to me, regardless
24 whether you run it through the field or through
25 the alternative method that's being suggested,

1 it's not going to impact the timeline of the land
2 construction because that is not on the critical
3 path?

4 MR. PENNINGTON: That's correct.

5 MR. GARCIA: So that argument is
6 interesting, but --

7 MR. PENNINGTON: We would -- understand
8 that there is a definite construction season,
9 between May and October for this project. And
10 that would be built into the process, to build it
11 into the street, if that was the case.

12 MR. SHETLER: I guess I would like to
13 comment your -- I wasn't trying to imply, we
14 weren't trying to imply that it would impact the
15 overall project schedule, but it does impact the
16 overall project cost. And that is certainly a
17 factor that we have to keep in consideration.

18 COMMISSIONER PERNELL: Okay. All right.
19 I have one final question, and then maybe a
20 statement. There was some mention of a well, and
21 my question is whether or not the installation of
22 the pipeline has a potential to pollute the well?

23 MR. PENNINGTON: No.

24 COMMISSIONER PERNELL: Why is that?

25 MR. PENNINGTON: Natural gas is not

1 toxic in --

2 MR. PENNINGTON: No, I'm talking about
3 when you're laying the pipe.

4 MR. PENNINGTON: In construction, we
5 will make every effort to avoid the well. That
6 being said, we will compensate them, actually we
7 will compensate in the easement agreement to move
8 the well. However, since we will be able to build
9 around that well we felt it was not necessary to
10 have them moved at this time.

11 COMMISSIONER PERNELL: When you say
12 around the well, how far around the well would you
13 be?

14 MR. PENNINGTON: Well, we have that 35
15 foot easement. We would move it as far as we
16 could to get away from the well, inside that 35
17 foot easement. So if it was dead center of it you
18 can imagine us being 15, 20 feet away.

19 COMMISSIONER PERNELL: Okay, but that
20 would be part of the consideration in talking to
21 the property owners?

22 MR. PENNINGTON: Absolutely.

23 MR. COHN: And, as Mr. Pennington
24 indicated, if there were problems with the well,
25 notwithstanding the fact we tried to avoid it and

1 not impact it, then part of the compensation would
2 be to build them a new well so that the property
3 owners would be left whole.

4 COMMISSIONER PERNELL: And my statement
5 is -- and then if anyone else has any questions or
6 other statements we can take them then -- but
7 there is a theme that's occurring with the two
8 property owners that have come before us, and that
9 is that there's some, perhaps not good faith, at
10 least initially, when they're contracted by the
11 Applicant, SMUD. That there's not a lot of good
12 faith negotiations going.

13 Now maybe that's a preliminary contact,
14 but I would like to see -- and having had some
15 experience with Mr. Cohn, he's a professional at
16 this -- I want the property owners to feel that
17 they are not being taken advantage of. That they
18 are a part of this process, part of the community,
19 and that someone is listening to their issues.

20 And I haven't heard that this morning,
21 matter of fact I've heard the opposite. So I
22 would just suggest that when your organization,
23 SMUD, makes contact with these property owners
24 it's done in a very neighborly manner, because I
25 have not heard that this morning. All right? Let

1 the record show they're shaking their heads yes.
2 is there anything else, ma'am?

3 MS. GREGORIO: I did have two other
4 comments. I don't know if everyone is aware, but
5 we actually were the last, I believe we were the
6 last property owners to be contacted. And during
7 our original phone conversation we understood that
8 our entire frontage would not be taken up.

9 But by the time that a SMUD
10 representative reached us, and after discussing it
11 with all other property owners along that right-
12 of-way, our easement encompasses the entire
13 frontage.

14 So, as opposed to sharing the burden,
15 we're basically having not only the burden of the
16 entire frontage of the property on our side, we
17 even got the valve station. And I think that,
18 honestly, that was the method by which they met
19 with each of the landowners.

20 And since we were the last ones to be
21 met, obviously when you met with them they didn't
22 want it on theirs, and basically it continued to
23 be shifted. Because after preliminary
24 conversations I understood that only two-thirds of
25 our property would be encompassed. That was one

1 comment.

2 The other comment is in regards to the
3 cost. I honestly don't know what amount of
4 frontage we have, and how that relates to the
5 three-quarters of a million dollars in cost, but
6 it's not five miles that's being requested, I
7 don't believe, to be put into the county right-of-
8 way.

9 So, I heard five miles come up as what
10 the request, it's our request for our frontage,
11 because it affects our farming practices.

12 COMMISSIONER PERNELL: I think the five
13 miles was the overall?

14 MR. SHETLER: That's correct, the
15 overall.

16 COMMISSIONER PERNELL: But your issue is
17 specifically your property?

18 MS. GREGORIO: Specifically related to
19 ours, and I understand the Pellandinis would also
20 prefer it in the frontage, and I think that's
21 great. But I don't think that encompasses a five
22 mile --.

23 MR. SHETLER: No, the indication was, we
24 were talking the full length of Arno and Valencin,
25 and that would be the five miles.

1 MR. SHEAN: Ms. Gregorio, may I ask you
2 a question. The first photograph that you're
3 showing us here is I think the fence that is the
4 dividing line between the nature conservancy
5 property and yours, is that correct?

6 MS. GREGORIO: Correct.

7 MR. SHEAN: Can I just ask SMUD, with
8 respect to the nature conservancy property, do you
9 have an easement or are you obtaining an easement
10 through there?

11 MR. SHETLER: Yes.

12 MS. GREGORIO: In regards to that photo,
13 I provided it so that I was asking what the
14 distinction was. The valve box will be placed at
15 that exact corner.

16 MR. SHEAN: And, as one looks at this
17 picture your property is on the right hand side,
18 is that correct?

19 MS. GREGORIO: Correct.

20 MR. SHEAN: And so the conservancy
21 property is the one that has the gate on it.

22 MS. GREGORIO: The gate.

23 MR. SHEAN: All right.

24 MS. GREGORIO: Yes, conservancy has the
25 gate, we removed the fence because we intended to

1 replace the entire fence. But the property has
2 been cropped, as opposed to having animals, so
3 we'll put the fence back once we have animals in
4 there again.

5 MR. SHEAN: And do we understand that
6 the footprint for the valve station is something
7 on the order of 50 foot square, is that about
8 right?

9 MR. SHETLER: 75 foot square.

10 MR. SHEAN: 75 foot square.

11 MS. GREGORIO: But because we flood
12 irrigate, we'd have to go ahead and dig another
13 trench around the valve station to ensure that
14 water stays within our property boundaries.

15 MR. SHEAN: And -- I'll just pose the
16 question, as opposed to taking the agricultural
17 property out of use, have you approached the
18 nature conservancy, and what --

19 MR. PENNINGTON: At their request, yes.

20 MR. SHEAN: And what's been their reply?

21 MR. PENNINGTON: There are vernal pools,
22 environmentally sensitive areas on that side of
23 the fence. And the nature conservancy, on their
24 definition, would not like to see any above-ground
25 structures because of esthetics and so forth.

1 MR. SHEAN: Well, aren't you going to be
2 going through there with your trenchdiggers
3 anyway, so vernal pools are not --?

4 MR. PENNINGTON: Yes, the valve station
5 is set back, though, another 50 feet from the
6 right-of-way alignment, so it's out of the future
7 for any potential roadway in the future. So it's
8 actually set back a ways. And so there's, back
9 beyond the pipeline alignment there's additional
10 vernal pools.

11 MR. SHEAN: Okay. So just so we get the
12 concept here. You have a 35 foot easement.

13 MR. PENNINGTON: Correct.

14 MR. SHEAN: And then is some portion of
15 the footprint of the valve station within that 35
16 foot easement?

17 MR. PENNINGTON: Actually, the valve
18 station stops, takes off after that. So there's
19 another 50 feet beyond the 35.

20 MR. SHEAN: So from the front of the --
21 let's call the front the roadside -- the front of
22 the easement to the backside of the easement, with
23 respect to the valve station, it's now at,
24 something on the order of, the backline, is 85
25 feet from the front line, is that right?

1 MR. PENNINGTON: 35 plus 50, so yes,
2 approximately yes. Understand that the design of
3 this is that, if the road was to be developed, the
4 valve station would not end up inside the roadway,
5 the road right-of-way.

6 MR. SHEAN: Oh, no, we understand that.
7 Obviously that would present a driving hazard if
8 it were that close.

9 MR. PENNINGTON: That's why its set back
10 beyond that 35 foot.

11 MR. SHEAN: Okay, and I guess the next
12 question is then, what influences the location of
13 the valve stations with respect to the distance
14 along the pipeline?

15 MR. PENNINGTON: The Department of
16 Transportation's Office of Pipeline Safety
17 mandates that, in certain classifications, valve
18 spacing be established. In a class three location
19 -- this is basically a class one, which is more
20 rural -- class three is a more residential area,
21 that's where we designed everything, eight miles.

22 So there has to be a valve station
23 located within an eight mile period. So that any
24 time you stand on the pipeline you should be able
25 to see a valve within four miles. So, yes there's

1 latitude to move it. And in a sense that's why we
2 contacted the nature conservancy, to see if they
3 were willing to accept the valve station, and what
4 concerns they may have.

5 MR. SHEAN: How about going --
6 apparently the recommendation, or at least the
7 thought both in the letter and otherwise is that
8 you head back toward 99 and do it off toward the
9 side of the highway.

10 MR. PENNINGTON: It's -- you're still
11 entering into some of the nature conservancy area,
12 so it's the same kind of situations that you run
13 into. And we asked those questions and started
14 looking at some of those locations.

15 But you're starting to run into the
16 problem into the east, because I've got to keep
17 the same distance to the other valve station. We
18 actually, on the Mancebo property we actually
19 offered them the location. It was originally
20 designed to their east side of their property, and
21 at their request we moved it to the west side of
22 their property, away from the road or the corner
23 of the, I guess it's Arno Road, the corner there.

24 So we actually did move it once already
25 for them.

1 MS. GREGORIO: Can I say something?

2 MR. SHEAN: Certainly.

3 MS. GREGORIO: Their first proposal was
4 actually to take up the corner of the corner. We
5 have a corner, our corner parcel where it's the
6 prime piece of property to build a house on,
7 because I wanted to build a house on our family
8 farm.

9 And that was the first issue that was
10 addressed, if we were going to build a house or a
11 barn or any other structures it would be on that
12 corner. And they would have -- this is the first
13 time, actually, that I'm realizing that it's a 35
14 foot right-of-way plus an additional 50 feet.

15 Because my maps all indicate 50 feet,
16 they've never indicated 85 feet. So, first of all
17 I know that they did move it, because that was our
18 main concern. We never wanted the valve station,
19 and they opted to go ahead and say you know what,
20 we can move it to this west corner of your
21 property, but we're still going to take it.

22 We offered the other, the picture I
23 believe that I have is not a nature conservancy
24 picture, it's a three-acre parcel or so owned by
25 the Pellandinis. So it wouldn't have anything to

1 do with the nature conservancy in their denial.

2 That was another alternative that I had
3 asked, along that eight mile structure. And I had
4 asked Mr. Pellandini if that was an issue, and he
5 said no, so --

6 MR. SHEAN: Well, he's here, so is that
7 correct?

8 MR. PELLANDINI: About the piece of
9 ground?

10 MR. SHEAN: Yes.

11 MR. PELLANDINI: Yes. I offered to sell
12 it to them, because it's a little three-acre
13 piece. When they built the freeway we got these
14 three pieces. So I offered them to buy it because
15 it's really going to mess us up, because when we
16 come off the overpass to get into it, because the
17 pipeline is going to come right underneath us
18 through our access out straight into our dairy
19 across Arno Road.

20 They didn't want to do it. But that's
21 really what -- they should buy that piece, because
22 the line's going to come in there, and the nature
23 conservancy, the fence line, is on the opposite,
24 right next to this little piece we're talking
25 about.

1 They could put their pumping station
2 there, buy the piece -- if they put this pipeline
3 in that little piece is not going to be worth
4 nothing, it would have such a narrow easement to
5 get in there. And the same with Mr. DeLew down
6 here.

7 This is a farming community -- you got
8 me up here again, can I just talk for one second,
9 please? At one time they were going to come down
10 Twin Cities Road, it was going to cost so much
11 money from the railroad track to get across
12 Highway 99, millions and millions of dollars, they
13 let that one go.

14 At one time they were going to go down
15 Laguna Boulevard, come all the way across, hit the
16 old traction line, which is kind of a historical
17 traction line out here now, and come across. And
18 with the historical people and how much it cost
19 through the good housing and stuff, they didn't do
20 that.

21 So basically they take our spot, where
22 we're farming, don't want to give much for it --
23 just the garter snake easement alone they're
24 paying a million three, a million and a half
25 dollars. Well, if all of us farmers leveled our

1 ground we'd make habitat for garter snakes. We
2 got nothing, which is not the issue.

3 So they're doing a lot of things back
4 for nature conservancy because it's a federal
5 deal, you can't, you're going to do what they say
6 on a lot of things, but these big boxes we're
7 talking -- we're not talking about boxes, it just
8 takes up more of the ground.

9 And one other thing I would really --
10 two other things. On the negotiations, when this
11 thing first started with the meetings with Mr.
12 Nottoli about putting this thing down the middle
13 of the road or the ditch, Mr. Nottoli -- you
14 should talk to him -- has no problem with the
15 county helping for people out there for traffic or
16 whatever.

17 They said at that time there's two
18 agencies, you guys and the other one -- I don't
19 know if its, what ever it is, that they had to go
20 through first to get into this thing -- that they
21 were already backlogged on time, and there was no
22 way the time that you guys were going to change
23 and go back to the middle of the street and the
24 ditch was going to put you guys way back behind.

25 So you guys never ever budged on that

1 issue. So there is a way that can go down the
2 middle of the road, with the county's help, or the
3 ditch. And if they're going to go down the road
4 from us and miss that 2,800 feet or 3,200 feet and
5 put it right next to the blacktop, the road does
6 not have to be widened, because it's narrow all
7 through there, when Arno hits Valencin, the
8 further you get towards Tuolumne Road, you know it
9 narrows up off the freeway you have a wider
10 approachment.

11 And we have a lot wider until you get
12 into the part where you're going into the ditch
13 into the road. So there has been a lot of
14 kickback with Mr. Nottoli about helping, or saying
15 this can go into the road. But this is a farming
16 community.

17 I just wish you'd take some time, even
18 talk to Mr. Nottoli or please come out and get a
19 bus, let's all ride out together and take this
20 project. And there is some people past Valencin
21 Road, Tuolumne Road, up over the hill going into
22 Silva's, Mr. Silva -- you guys have never got back
23 to them, and you're going into their ground.

24 So a lot of people have not been knowing
25 what's going on.

1 MR. SHEAN: Okay. Ms. Gregorio, where
2 is your property in terms of the drive-by so we
3 might be able to see it?

4 MS. GREGORIO: It's on the north side of
5 Arno. So, after you pass Pellandinis, we're his
6 neighbors across the street.

7 MR. SHEAN: Okay, on the north side, and
8 you're on the south side.

9 MR. PELLANDINI: And where they're going
10 through, where they're missing the fishery, the
11 place up the road I'm talking about, they're going
12 to put in the street and leave her. On the other
13 deal across the street there is a few trees, but
14 they're going to bore or dig trenches all over
15 this 28 miles, whatever, however many miles it is.

16 Some are going to underground drilling,
17 some's going to be dug with a trench. So they're
18 saying Mr. Silva only has 100 or 200 feet there,
19 but has a little sump, and these trees they're
20 talking about, and the rest of it is grapes, and
21 at the end of the grapes there's 20 feet, 25 feet
22 that have no grapes.

23 So you could burrow right underneath the
24 deal, it's just as easy to bore there as anywhere
25 else, and keep it on somebody's ground. But if

1 they're missing two people, that is very unfair.
2 We have to live out the rest of our lives driving
3 down that road.

4 Why are these two different than the
5 people that's been here a lot of years, different
6 families, so thank you very much.

7 COMMISSIONER PERNELL: Thank you.

8 MR. SHEAN: Are these photographs for
9 us?

10 MS. GREGORIO: Yes.

11 MR. SHEAN: All right. Thank you very
12 much.

13 COMMISSIONER PERNELL: Do you have
14 anything else now?

15 MS. GREGORIO: No, thank you.

16 COMMISSIONER PERNELL: Thank you. Does
17 anyone else want to speak on this issue? Anyone
18 in the audience? is that Kristi?

19 MR. SHEAN: Kristi Fong? Yes, ma'am.

20 MS. FONG: Good morning, Commissioner,
21 staff. My name is Kristi Fong, and I am a
22 property owner, in partnership with my brothers.
23 And the property is on Eschinger Road.

24 It is one that SMUD has been in
25 negotiations with, and is interested in two sides

1 of the property, which are approximately three
2 acres.

3 The property right now is being farmed.
4 It is prime farm land, and the cultural aspect of
5 it has been in our family since the 1800's, has
6 continually been farmed for the family.

7 The issues that have come up in regards
8 to the meeting, based on the freedom of choice
9 with the property in terms of crops grown and the
10 limits to that based on deep rooted crops or
11 housing structures.

12 The property that we own is currently
13 being farmed with short rooted crops. However we
14 have future potential with deep rooted crops, such
15 as trees. Now understanding that that's a
16 limitation --

17 COMMISSIONER PERNELL: Could you give me
18 an example of -- being a city guy -- what is say a
19 short rooted crop versus a deep rooted crop?

20 MS. FONG: Well, I'm not a farmer, I
21 also work in the city. But we do rent the
22 farmland to a farmer who currently has alfalfa. I
23 would consider that a short rooted crop. I don't
24 know all the crops that are out there that are
25 short rooted. Not having a farming background I

1 would not know that. However, we have potentially
2 a farmer interested in a deep rooted crop, such as
3 a polonia (sp) tree.

4 COMMISSIONER PERNELL: What does that
5 produce?

6 MS. FONG: That produces a type of wood
7 that can be sold for approximately \$25,000 an
8 acre. And with that limitation -- that's per
9 year. And if they're willing to pay \$25,000 per
10 acre per year then maybe we wouldn't have a
11 problem with it.

12 However, the pipeline is a problem with
13 a deep rooted crop. That's just based on what's
14 been said today, and future farming for this
15 particular site. This is a hundred acre site, and
16 the limitations are definitely a concern for the
17 future of that piece of property to be farmed.

18 The other concern that I have is the
19 future in housing for that piece of property. We
20 have been contacted by developers, have had
21 options on the table in regards to future
22 development, future housing on that site. I
23 understand that that is a problem with the
24 pipeline and structure, permanent structures.

25 That does not allow us the freedom to

1 allow our property in that pipeline area to be
2 negotiated for future housing needs. So basically
3 I see this as a continual burden that will always
4 come up, with us having to always think of it as
5 basically losing that property for any type of
6 future needs that we have.

7 You know, who's to say whose burden is
8 greater -- their's based on a monetary value now,
9 or ours as a property owner. We don't understand
10 nor agree with the reasons for travelling a
11 pipeline through a personal property when there
12 are right-of-ways available.

13 In one instance that we're aware of, we
14 are next to a property that, we understand SMUD
15 was in negotiation with the owners of Wakeman
16 Ranch, and they made an exception at that time to
17 travel through the right-of-way as opposed to
18 their property, which is included in grapes, based
19 on a financial burden for SMUD.

20 With that exception, we'd understand why
21 there's not an exception for everybody who owns
22 property. Especially, in our instance, being
23 right next to them. Another concern of ours is
24 that the way that these negotiations have taken
25 place has had an underlying statement of basically

1 submit, or deal with the wrath of eminent domain,
2 deal with the wrath of SMUD. We don't appreciate
3 that, nor do we agree with that.

4 Finally, we were not even made aware of
5 this meeting. We did not know that our voice
6 could be heard. We did not hear through the mail.
7 This meeting -- I had found out by a neighbor who
8 I had talked to about this project, who happened
9 to have been on years past on the SMUD board, and
10 was aware of this project.

11 And I came upon it through the Energy
12 Commission's website. Those are our concerns, and
13 we're thankful that you have allowed us to voice
14 those.

15 COMMISSIONER PERNELL: Well, thank you
16 for being here. We have had numerous meetings,
17 and one of the things that the Commission wants to
18 do is have meetings in the community. Most of the
19 time it's in the evening.

20 There was a request that some of the
21 property owners wanted to actually come before a
22 Commissioner, and my schedule didn't allow me to
23 do it any other time. Normally it would be in the
24 afternoon.

25 Having said that, again I'm hearing that

1 the initial contact with SMUD with the property
2 owners is not a friendly one. So, that has kind
3 of been the theme all morning with the property
4 owners. And I have a commitment from the
5 Applicant that that will change.

6 So we do appreciate your being here,
7 that's why we have these meetings in the
8 community, so that we can hear from the property
9 owners in the community, the residents that are
10 concerned and/or affected by the project. So
11 thank you for being here.

12 Is there anyone else? Roberta, do we
13 have any other cards? Is that it? This issue
14 will go back to the Committee, which is myself and
15 Commissioner Rosenfeld, and be considered. Again,
16 unless something changes, we have a schedule for
17 the 9th at the full Commission.

18 However, this will be, there's been a
19 lot of testimony on this issue, and it will be
20 considered by the Committee. And if there's
21 nothing else on the pipeline, I'd like to take a
22 ten minute break, and then we'll get to the
23 Presiding Member's Proposed Decision.

24 (Off the record.)

25 COMMISSIONER PERNELL: Back on the

1 record. Mr. Shean?

2 MR. SHEAN: All right. This portion of
3 our conference, then, is to go over the comments
4 of the parties on the PMPD. Currently, all I have
5 is one filing, from the Applicant. And I think
6 what we'll do is have you go ahead.

7 It's probably not necessary to repeat in
8 detail each of the matters that you have submitted
9 in writing, but anything that you'd like to
10 comment on with respect to your filing or in
11 addition to it, why don't you go ahead and do
12 that.

13 MR. COHN: Well, Mr. Shean, Mr. Pernell
14 and Mr. Garcia, we are very supportive of the
15 decision. We have presented what I would
16 characterize as just an errata of things. In some
17 cases, you know, typos and that sort of thing. In
18 other cases, probably the only one that I would
19 say is more than just a clarification is the one
20 to Bio 12, where we suggest --

21 COMMISSIONER PERNELL: What page is
22 that?

23 MR. COHN: That's the first page of the
24 comments, where we suggest making a setback
25 requirement for the construction laydown area

1 consistent with the Army Corps of Engineers draft
2 permit, so that would be 25 rather than 100.

3 Other than that, I would say that these
4 are really just clarifications or in some cases
5 where there was an error in the way that the
6 sentence was written.

7 And then, on the adoption order, what we
8 have suggested is that you incorporate provisions
9 that were in the Palomar decision that was
10 recently adopted. And then, also a paragraph that
11 was uncontested. This is on page three at the
12 bottom.

13 The paragraph there relates to phase
14 two. This is a paragraph that was in the FSA,
15 page 1.1-7, and was uncontested. And we would
16 suggest that that be added to the adoption order.

17 And then finally, the attachments are
18 specific responses to Committee requests for
19 additional information. The first one, regarding
20 hazardous materials, that's attachment A. And
21 then attachment B is our response regarding the
22 firewater pumping system backup.

23 And we'd be happy to go through that if
24 you like, or just respond to questions.

25 MR. SHEAN: I have a question or a

1 comment with respect to the addition of the
2 language with respect to the filing of the phase
3 two. If I understand, what's being suggested here
4 is that there is a three-year cutoff, and if I
5 understand the state of the law correctly it is
6 that -- and it's based upon the use of any
7 environmental impact report that has been
8 certified by the appropriate agency -- is that's
9 usable essentially so long as it's not either
10 factually or legally stale.

11 And they don't have a specification of
12 the number of years. Under certain circumstances
13 the information that we have on this decision
14 might become stale in two years and be unusable in
15 some portion, and it might be that in four years,
16 it might not become stale until four years.

17 MR. COHN: Right.

18 MR. SHEAN: So I think that,
19 notwithstanding the fact that this appeared in the
20 FSA, that the state of the law is that, so long as
21 the findings and analysis are not rendered stale
22 by a change in the law, or change of circumstance
23 in the environment or some other thing like that,
24 that it's usable.

25 And maybe it's just a question of

1 attempting to reflect that, as opposed to the
2 specification of a certain number of years.

3 MR. COHN: That would be acceptable as
4 well. I think that we would like that there be
5 some statement in there, so that if and when we
6 get to the point where we file that we don't have
7 an argument over whether we can use the conditions
8 from -- because it's not just the information
9 itself, but also the conditions of certification
10 that, as you aware, most of them deal with the
11 entire phase one and phase two, the only exception
12 being in the areas of air quality transmission,
13 system engineering, and water resources are the
14 only three where there was specifically culled
15 out, you know, that there would be the need for
16 additional conditions.

17 So that was why we did this, just to
18 clarify that. Otherwise there might be a question
19 when we come along a year or two years from now
20 with the second phase where most of those issues
21 have already been resolved in this particular
22 decision.

23 COMMISSIONER PERNELL: So, but you put a
24 time limit on it, so that, I think -- if for some
25 reason your board delays and the time limit goes

1 off, then you have to start all the way from
2 scratch? I mean, I think that's the risk you run.

3 MR. COHN: That is the risk. Actually
4 we negotiate this with staff. We frankly would
5 have preferred a longer time period, but we
6 negotiated this with staff, and we did feel it was
7 fair that three years was a way to sort of, it was
8 a compromise about what's an amount of time that
9 this information is still accurate.

10 And of course even with the three years
11 the Commission could still open if they determined
12 that there were a change in circumstances, the law
13 changed, etc. So it reflects the state of the law
14 that Mr. Shean reflected. The three years was
15 sort of a way of agreeing in advance that the
16 Applicant was sort of waiving its rights beyond
17 three years.

18 So if we took more than three years we
19 had to acknowledge that we had to start over. So
20 we're not going to argue if you want to make that
21 longer than three years, or make that more
22 indefinite.

23 COMMISSIONER PERNELL: Would you argue
24 if we made it shorter? Let me just --

25 MR. COHN: Well, we might -- I guess, it

1 depends on how much shorter. Three years, you
2 know, it does take some time to prepare an AFC and
3 to, particularly the air quality is probably the
4 area that would take the longest for an AFC, just
5 getting the credits together.

6 COMMISSIONER PERNELL: Right. Is staff
7 comfortable with that provision?

8 MS. HOLMES: We're comfortable with the
9 provision that was found in the FSA part three,
10 which is not the language that Mr. Cohn cited in
11 his comments. There was one minor difference in
12 the FSA part three, which referred to impacts
13 associated with the use of recycled water for
14 cooling.

15 So we want to include that expressly as
16 one of the areas that would be subject, if you
17 will, to de novo review at the time of the filing
18 of the application. It's really quite common
19 sense, since we didn't look at that during this
20 phase of the proceeding. But we wanted to make
21 sure that that was explicit in any findings or
22 conclusions that the Committee reached.

23 And I want to reiterate what Mr. Cohn
24 said. We had anticipated that staff would be
25 conducting discovery when the phase two

1 application is filed to determine whether or not
2 there have been changed circumstances, or if
3 there's new information indicating the need for
4 additional review.

5 So we're comfortable with the language
6 that was found in the FSA part three, the
7 executive summary.

8 MS. PEASHA: I have a question,
9 Commissioner?

10 COMMISSIONER PERNELL: Yes?

11 MS. PEASHA: I'm Kathy Peasha,
12 Intervenor. And I wanted to know how this changed
13 from the original -- I don't have my FSA in front
14 of me, but I wanted to know what the timeline was
15 prior to this, if the application is not filed
16 within three years.

17 Correct me if I'm wrong, wasn't phase
18 two supposed to be applied for by the end of 2003?

19 MR. COHN: I think what you're referring
20 to is the decision of whether the board, SMUD's
21 board, intends to make a decision on whether to
22 proceed by the end of this year or perhaps early
23 next year. But what this talks about it,
24 irrespective of what our intent is, we have to
25 actually file an application.

1 So there's a process where our board has
2 to authorize us to move forward, and it will take
3 a long time for us to get all the material
4 together and put a lot of resources into actually
5 filing an application. So that's why there's a
6 difference between the two.

7 And let me just say, also, it wa not our
8 intent to change the language. I thought I had
9 copied it exactly, so if I didn't that was just my
10 error. The proposal would be to incorporate
11 expressly the language from the FSA, and I may
12 have mis- --

13 MS. HOLMES: Right. There's language in
14 the FSA part one that we recommend be superseded
15 by the language in the FSA part three, because of
16 the stipulation that we reached on water
17 resources.

18 MS. PEASHA: Okay. I'm not quite sure
19 of this, but is the board, are you guys going to
20 decide by 2003 if you are going to proceed with
21 things, too?

22 MR. COHN: Let me have our assistant
23 General Manager, Jim Shetler, answer that.

24 MR. SHETLER: The SMUD board is in the
25 middle of a strategic planning process. They have

1 been for about a year. And we are now at a point
2 where they're starting to refine where they're
3 going and what they want to do with SMUD, as far
4 as the view of SMUD for the long term.

5 At this stage it looks like this will be
6 finalized probably first quarter next year. So at
7 this stage we're probably looking at some time
8 next year for a decision on the SMUD on whether
9 they would or would not decide to go forward with
10 phase two.

11 MS. PEASHA: Well, I was under the
12 implication that if you did not make up this
13 decision by the end of 2003 then you were required
14 to apply again for your --

15 MR. SHETLER: To my knowledge that was
16 not imposed by the Commission.

17 COMMISSIONER PERNELL: I think Mr.
18 Cohn -- well, I would agree with what Mr. Cohn
19 said in that the board, because SMUD is a public
20 entity, the board has to make that decision, give
21 staff direction to then go forth and file.

22 For our purposes it is the filing of the
23 application, not the time that the board makes the
24 decision.

25 MS. PEASHA: Okay. Then just one other

1 question regarding the water. Are we talking
2 about using reclaimed water on the second phase,
3 is that what your --?

4 MS. HOLMES: Right. We had changed the
5 language of the agreement with respect to what the
6 scope of environmental review would be for phase
7 two, to explicitly refer to the water pipeline
8 that would be used to carry the reclaimed water to
9 the site.

10 MS. PEASHA: Which is from the Galt
11 water, is that the indication that I'm talking
12 about?

13 MS. HOLMES: That, I believe, is the
14 most likely source. The source isn't specified.

15 MR. COHN: It specifies, I believe,
16 within 15 miles.

17 MS. PEASHA: I just wanted to clarify
18 that we're on that same page. Thank you.

19 COMMISSIONER PERNELL: Okay. Mr. Shean?

20 MR. SHEAN: Anything further from SMUD?

21 MR. COHN: No, we're available to
22 respond to any additional questions on any of our
23 comments or the attachments.

24 MR. GARCIA: I have a question.

25 COMMISSIONER PERNELL: Mr. Garcia.

1 MR. GARCIA: Turning to your attachment
2 A, where you are tabulating the amounts of
3 sulfuric acid and sodium hydroxide, and you're
4 noting in there that both chemicals are used for
5 ph adjustment on the cooling towers. What is your
6 source of distilled water for deionized water for
7 your boilers?

8 MR. TAYLOR: The water treatment plant.

9 MR. GARCIA: And what technology do you
10 use for that?

11 MR. TAYLOR: This is Scott Flake, our
12 engineering manager.

13 MR. FLAKE: The demineralized water will
14 be provided by the zero liquid discharge system.
15 It will be passed through our reverse osmosis
16 system and then enter into the DI water tank,
17 where it's injected into the boiler makeup.

18 MR. GARCIA: Is the demineralizer
19 regenerated on site?

20 MR. FLAKE: No, off site.

21 MR. GARCIA: So your using a service not
22 on site to regenerate?

23 MR. FLAKE: That's correct.

24 MR. GARCIA: All right. That's it.

25 MR. SHEAN: Can we have the PG&E rep

1 identify himself for the record. I'm sorry, SMUD.

2 MR. FLAKE: I do work for Sacramento
3 Municipal Utility District. My name is Scott
4 Flake, superintendent, project development
5 engineering.

6 COMMISSIONER PERNELL: Okay. Thank you.

7 MR. SHEAN: The power of suggestion.

8 MR. ROSKEY: I have a procedural
9 question?

10 MR. SHEAN: Please identify yourself.

11 COMMISSIONER ROSENFELD: Mike Roskey,
12 Intervenor. This is about the process -- these
13 are revisions offered by SMUD to the PMPD.

14 MR. SHEAN: Yes.

15 MR. ROSKEY: Is the committee going to
16 consider them at this point and make the change in
17 the PMPD, or -- what's the procedure here that
18 you're going to follow?

19 MR. SHEAN: The procedure is we're going
20 to take comments from every party and every
21 suggestion or comment from the public, then
22 deliberate upon them and produce an errata sheet
23 for the full Commission's consideration for the
24 business Meeting of September 9th. That will be
25 sent to the parties as soon as it is completed.

1 I guess what I would indicate is that
2 that errata is not likely to contain very minor
3 typographical changes, textual changes -- we're
4 going to try and keep it focused on something that
5 would be of substance.

6 MR. ROSKEY: And the Committee will
7 decide on that here, or --?

8 MR. SHEAN: Yes, in the next couple of
9 days.

10 MR. ROSKEY: At a separate proceeding?

11 MR. SHEAN: No, not at a separate
12 proceeding. We'll deliberate it -- as we get to
13 the PMPD we'll take all of the information that
14 we've accumulated on the record, deliberate it,
15 then write it up, and make it publicly available.

16 MR. ROSKEY: Is this what's known as a
17 backroom deal?

18 MR. SHEAN: NO.

19 COMMISSIONER PERNELL: It's a Committee
20 decision, which is made up of myself and
21 Commissioner Rosenfeld. And of course my Advisor
22 and Commissioner Rosenfeld's Advisor and Mr.
23 Shean. so staff, Applicant, or Intervenor doesn't
24 participate in those deliberations.

25 MS. PEASHA: I have a question regarding

1 the adoption order. The first item in the
2 adoption order. If in fact I object to the
3 adoption order that they're putting here because
4 it clearly is the opposite of what came out in the
5 PMPD, what kind of influence does that have if
6 you're adopting that in there?

7 Where it says "the evidence of record
8 establishes that no feasible alternatives to the
9 project, as described during these proceedings,
10 exists which would reduce or eliminate any
11 significant environmental impacts of the mitigated
12 project."

13 Clearly, in your PMPD, they talk about
14 the alternatives, and one of the other project
15 sites clearly says that it has a reduction of the
16 biological resources, the mitigative part of it.
17 And has clearly better significant properties to
18 it.

19 And here it says there are no
20 alternative projects that are feasible. And
21 they're trying to adopt that into this, where in
22 the PMPD you state completely that there are
23 benefits to the alternative sites.

24 So how does that get adopted into this
25 order when clearly it's said in the alternative

1 sites that that is not true. I'll read the part
2 that I am expressing here -- and this is on the
3 Carson Ice Generation Site.

4 It says "of the proposed project and the
5 other alternative sites considered in this
6 analysis, the Carson Ice Generation Site would
7 potentially result in diffuse impacts to
8 biological resources." It's page 213 in the
9 second to the last paragraph.

10 MR. SHEAN: Well, I understand what
11 you're saying, and --

12 MS. PEASHA: So does the Commission
13 decide to adopt this order and put it into record
14 when substantially it's written here? And there
15 are several other comments that put parallels of
16 this other project proposed by the site, very
17 close and some even better.

18 In fact, it says you wouldn't even need
19 a 26 mile gas pipeline if we were to propose this
20 other site. The land, the meteorology and the
21 topography of the land is almost exactly the same.
22 There would be less blockage in the plumes, it
23 would be less significant. I mean, it goes on and
24 on and on about how much better this site could
25 be.

1 And quite frankly, it would solve a
2 problem for a lot of these property owners,
3 because we would no longer have that 26 mile gas
4 pipeline running through their properties. The
5 mitigation for all the environmental impacts would
6 be eliminated. There's 2,500 acres out there,
7 only 55 at which they want to use to expand the
8 wastewater treatment plant.

9 There's water there to use that is
10 reclaimed. There's a buffer zone between the
11 nearest homes that has great potential for no
12 significant observation of it. And they could use
13 the reclaimed water right from that wastewater
14 treatment plant. They wouldn't have to use fresh
15 water from Folsom south canal. It goes on and on,
16 it is a better project site. The only --

17 COMMISSIONER PERNELL: Ms. Peasha --

18 MS. PEASHA: The only thing they argue
19 is there's a hundred year flood plain that that's
20 where this sits. And you know what, so does that
21 wastewater treatment plant. And if you think that
22 they would put a wastewater treatment plant
23 somewhere where it would flood and it would impose
24 on to the neighboring community, there's no way
25 that they would adopt that without making sure

1 there's a buffer there.

2 Its a lot easier to shut off the
3 switches to the power plant than it is to not
4 flush toilets, and I tell you what, that would be
5 the big consideration of people that live next to
6 a wastewater treatment plant.

7 COMMISSIONER PERNELL: The adoption
8 order you're talking about is the proposed -- were
9 you reading from SMUD's document?

10 MS. PEASHA: Yes I was. It says page
11 293, adoption order, and it's on page three.

12 COMMISSIONER PERNELL: Okay. And that's
13 a recommendation, correct?

14 MR. SHEAN: Yes, that's what they're --

15 MS. PEASHA: They say that any findings
16 should be added to --

17 COMMISSIONER PERNELL: But that's what
18 they are recommending, that's not what --

19 MS. PEASHA: Well, I just want to put
20 out my point then, that if they're recommending
21 that I recommend it doesn't go in here.

22 COMMISSIONER PERNELL: So noted.

23 MS. PEASHA: Okay, I --

24 COMMISSIONER PERNELL: Okay. You had
25 me, I was a little puzzled there for a minute, but

1 -- that's fine, great job.

2 MR. ROSKEY: Could I answer her
3 comments, please?

4 MR. SHEAN: Yes, sir, Mr. Roskey.

5 MR. ROSKEY: I think significance is in
6 the eye of the beholder. Apparently in the eyes
7 of SMUD there is nothing on the record that would
8 convince them otherwise. We, on the other hand,
9 do not concur in that opinion.

10 We do believe that there is significant
11 impact at the CPPP site that could be avoided, by
12 locating in a different location, like the Carson
13 Ice site.

14 So I think that this is essentially PR
15 language that they want to put forward. It was
16 argued in their brief, and so they feel that they
17 have to stick to that. We do not feel that that's
18 a justifiable conclusion. In fact, I would say
19 it's a lie, and I would, you know, ask that the
20 Commission reject this proposed language.

21 MR. SHEAN: Anything you want to say in
22 response?

23 MR. COHN: Briefly, in response, this
24 does not contradict the passage that was read out
25 of the proposed decision. The key here is that

1 the evidence of record establishes no feasible
2 alternatives to the project, as described during
3 these proceedings, exists which would reduce or
4 eliminate any significant environmental impacts of
5 the mitigated project.

6 Now I believe that statement is
7 supported by the record, and would recommend that
8 you adopt that.

9 MR. SHEAN: May I ask you, in terms of
10 wordsmithing --

11 MR. COHN: Yes.

12 MR. SHEAN: Reading the portion that
13 says "which would reduce or eliminate any
14 significant environmental impacts of the mitigated
15 project" do you understand that to mean that after
16 the mitigation there is a net significant
17 environmental impact?

18 MR. COHN: I guess I didn't understand
19 your question.

20 MR. SHEAN: Well, let's do it this way.
21 What do you understand to be the meaning of the
22 words "any significant environmental impact?"

23 MR. COHN: In other words, after the
24 mitigation, it's our view that, after the
25 mitigation that's required as conditions of

1 certification, if you consider the project with
2 that mitigation there's no other feasible
3 alternative that would reduce or eliminate those
4 to a level of insignificance, because --

5 MR. SHEAN: Okay. I'm just trying to
6 get the meaning of the words "any significant
7 environmental impacts" and what you're -- if I
8 understand you correctly, when you talk about the
9 mitigated project, that's the project after all
10 the mitigation's been applied?

11 MR. COHN: Correct.

12 MR. SHEAN: So, under those
13 circumstances, are we looking at after the
14 mitigation has been applied "any significant
15 environmental impacts?"

16 MR. COHN: Well, I don't believe there
17 are.

18 MR. SHEAN: But that's different from
19 trying to interpret what the language means. At
20 least as I read this document, the Committee has
21 concluded that there are no net or post mitigation
22 significant environmental impacts, so --

23 MR. COHN: No, that's a good point.

24 MR. SHEAN: So this sentence doesn't
25 address anything that exists within the body of

1 the document? Is that correct?

2 MR. COHN: That's correct. And you
3 raise a very good point that may perhaps
4 distinguish this from other decisions the
5 Commission's made where this language was used.

6 MR. SHEAN: Yes, and I should point out
7 to everybody that's here, this is -- I don't
8 necessarily want to call it boilerplate, but I did
9 go back through some other Commission decisions,
10 and you can find this paragraph in there, and I
11 know why it's not there, at least in this draft.

12 MR. COHN: I accept your explanation,
13 that's fine with us.

14 MR. SHEAN: Okay, because there are
15 findings in each individual chapter, for example,
16 that specifically state -- and I'll just pull out
17 one. "Project conforms to applicable laws related
18 to" and whatever the topics were "and there are no
19 potentially significant adverse impacts."

20 MR. COHN: Yes, so basically what you're
21 saying is that, given in the end there are no
22 significant environmental impacts after
23 mitigation, this becomes unnecessary, a moot
24 point. Thank you.

25 MR. SHEAN: All right. Why don't we go

1 to the staff and get your comments on the PMPD.

2 MS. HOLMES: Thank you. What I'd like
3 to do is start by going through SMUD's proposed
4 comments, then -- although staff hasn't filed its
5 comments formally, I have just some highlights
6 that I'd like to hit that will describe what
7 you'll be seeing, hopefully in the next couple of
8 days.

9 I understand that the order after
10 comments on the 8th, given that the Committee
11 wants to issue errata, I think it probably
12 behooves staff to get their comments in before the
13 8th. So we'll do our best to get them in as
14 quickly as we can.

15 MR. SHEAN: Well, we'll trade you time
16 for length, how's that?

17 MS. HOLMES: I don't have any problems
18 keeping things short.

19 MR. SHEAN: Okay.

20 MS. HOLMES: With respect to SMUD's
21 comment on air quality condition AQ36, we believe
22 that that's what SMUD has stated is correct, but
23 we haven't heard back from the air quality staff
24 itself, so if there is any problem with it, we'll
25 note it in our comments.

1 With respect to Bio 12, this issue came
2 up during the pendency of the case. Staff still
3 believes that a 100 foot setback is approached,
4 based on our informal conversations with the Army
5 Corps Of Engineers. They have not made a final
6 decision yet, and they are considering a 100 foot
7 setback, therefore we don't think it's appropriate
8 to change it to 25.

9 We don't have any objection to SMUD's
10 comment with respect to Bio 14. We agree with
11 SMUD's proposed changes to the two geology
12 conditions, and to the hazardous materials
13 conditions, as well as to the land use conditions
14 and the noise conditions.

15 With respect to the waste management
16 conditions, there are some slight additional
17 changes in language that appeared in the PMPD that
18 did not appear in the conditions in the FSA. We
19 don't think that they are substantive, other than
20 the ones that SMUD noted. So we think that, with
21 the adoption of the SMUD proposed changes, that
22 the waste conditions would be acceptable.

23 With respect to the question about the
24 finding in the adoption order, I would just note
25 that the section of the Public Resources Code that

1 refers, that identifies the requirements
2 applicable to certified regulatory programs, which
3 is Section 21080.5, does reference a finding with
4 respect to alternatives. And I leave it to the
5 Committee to determine whether that's applicable
6 in this case or not.

7 With respect to SMUD's proposed language
8 having to do with judicial review, I would just
9 note that there was, in the last few days I
10 believe, a modification of the Figueroa versus
11 California Energy Commission decision, and staff
12 will be providing recommendations to reflect that
13 language. It may or may not be the same as to
14 what SMUD has in it's comments that it prefiled.

15 And I believe we've covered the last
16 topic on the language about the review of phase
17 two, so I won't go over that again.

18 The issues that staff plans to raise in
19 its comments on the PMPD are first of all in the
20 area of air quality. Staff is going to continue
21 to recommend the conditions of certification that
22 were identified in its FSA and argued, where
23 appropriate, in its briefs.

24 With respect to Com 8, staff has
25 proposed language changes to Com 8 that reflect

1 language that's found, was recently published in
2 the Federal Register. We believe that's something
3 that should not present a problem for the
4 Committee to incorporate into Com 8. And again
5 we'll be providing the exact draft of that
6 language when we file our comments.

7 In the soil and water resources area
8 we'll be asking that the Committee expressly
9 include a reference to the stipulation, and
10 perhaps even include a copy of the stipulation
11 itself with respect to phase two water use.

12 In the area of biological resources,
13 staff opposes the deletion of Bio 6. We believe
14 that it's not covered by the general compliance
15 condition. We think it's appropriate to have it
16 in the final decision.

17 MR. COHN: I'm sorry, I missed that
18 last --

19 MS. HOLMES: Bio 6.

20 MR. COHN: Oh, Bio 6.

21 MS. HOLMES: Lastly we would note that
22 the PMPD includes cultural resources, conditions
23 of certifications, from the FSA as it was
24 originally filed. Staff and the Applicant had
25 subsequently agreed to modifications of those, and

1 we would like to see the modifications that were
2 filed on March 12th and agreed to by SMUD included
3 in the final decision, rather than the ones that
4 were filed on the initial FSA.

5 Finally, as an informational item, I
6 wanted to note that SMUD had filed, I believe as a
7 compliance filing, electrical design information
8 that indicated that the switch yard at the SMUD
9 site was being eliminated, that there was going to
10 be another method of transmitting the power.

11 I don't know whether SMUD intends to
12 address this itself in a few minutes, but I wanted
13 to point out that staff believes that's a change
14 in the project description.

15 We've told SMUD that we think that's a
16 change in the project description, and if that
17 submittal is not withdrawn then staff would have
18 to recommend that the Committee include the new
19 project description in any decision that it
20 adopts.

21 Staff has not had a chance to analyze
22 it, staff has not had a chance to ask SMUD any
23 questions about any impacts that may be associated
24 with it. That's the sum, I believe of the staff
25 comments.

1 MR. COHN: Mr. Shean, Mr. Pernell, could
2 I respond just briefly?

3 MR. SHEAN: Yes.

4 MR. COHN: On that last point, it's
5 certainly not SMUD's intent to be changing project
6 description or any condition related to the
7 transmission. So this is a compliance issue that
8 we'll work out.

9 What she's referring to are drawings
10 that have been submitted that, even though the
11 decision hasn't yet been adopted, there are
12 certain timelines that require us to make
13 compliance submittals, and we've made I believe
14 over 50 thus far, or 75 different compliance
15 submittals, in anticipation if the decision were
16 adopted, that that would put us in compliance.

17 COMMISSIONER PERNELL: Compliance
18 submittals to whom?

19 MR. COHN: To the CEC staff, the
20 compliance staff -- the CPM, Compliance Project
21 Manager. And in this particular case, if SMUD has
22 made an error in that, we will work that out, and
23 we are not proposing any change to the project.
24 So --

25 COMMISSIONER PERNELL: I thought I heard

1 elimination of the switch yard?

2 MS. HOLMES: I have a comment on that.
3 That's what the engineers have told us, the filing
4 that was made to us shows a very different
5 electrical interconnection, if you will, than what
6 was contemplated in the FSA and in the Presiding
7 Member's Proposed Decision, in that the switch
8 yard that was immediately adjacent to the plant
9 has been eliminated.

10 It's not necessarily a problem, but it
11 is a change in the project description. And given
12 that we don't have a final Commission decision at
13 this point, I'm raising it to your attention
14 because of the fact that staff does not want to
15 have a Commission decision adopted that does not
16 contain an accurate description of the project.

17 MR. COHN: Okay. We're not changing the
18 project. If there's been a mistake with --

19 COMMISSIONER PERNELL: What are you
20 doing to the switch yard?

21 MR. COHN: We are not doing anything
22 different than what's required under the decision.
23 And if there are drawings in staff engineering or
24 compliance staff's opinion are a problem and don't
25 match what's in the decision, we'll change it to

1 make sure that it is in compliance.

2 So it's not our -- what you have is
3 interpretations of words in the decision about
4 what exactly is required, because you get into
5 more details with single line engineering
6 diagrams.

7 If there's a problem we will do whatever
8 is determined to be in compliance. We're not
9 proposing a change to the switch yard.

10 MS. HOLMES: I have a comment.

11 COMMISSIONER PERNELL: Hold a second,
12 hold a second. This needs to be worked out and
13 brought back to the Committee soon, very soon,
14 because we need to know that this is --

15 MR. COHN: We're not changing anything.

16 COMMISSIONER PERNELL: Well, I hear you.
17 But there's an interpretation that something is
18 being changed, so --

19 MR. COHN: Well, then we will withdraw
20 that. We would like to make --

21 COMMISSIONER PERNELL: Steve, all I'm
22 saying is we need to -- the staff and the
23 Committee need to be comfortable that when we go
24 forward and my recommendation goes to the full
25 Commission, I don't want any changes in there that

1 we don't know about.

2 MR. COHN: Absolutely.

3 COMMISSIONER PERNELL: And if you're
4 correct, then satisfy those who think there is
5 some changes. Because I would agree that it's
6 probably a misunderstanding of wordsmithing or
7 whatever, and it has to be done.

8 MR. COHN: Yes, let me just clarify.
9 The issue that she's referring to is a diagram
10 that normally wouldn't even be submitted until
11 after a decision is issued, because it refers to a
12 decision as if it's already adopted.

13 So even though the decision hasn't yet
14 been adopted, we submitted a number of very
15 detailed -- it's sort of like the building
16 department, if you will, where you get into so
17 many detailed drawings after you receive your land
18 use permit.

19 So there may be --

20 COMMISSIONER PERNELL: Well, you're not
21 helping me here, because if you're submitting
22 something different, hypothetically after you get
23 a license, that's -- that would further complicate
24 things.

25 MR. COHN: No, we are not proposing any

1 change to the project, so --

2 COMMISSIONER PERNELL: All I'm saying is
3 work it out. Satisfy what the -- it's probably a
4 misunderstanding, but I'm going to want to know
5 that before I submit to the full Commission.

6 MR. COHN: Right. okay, we'll do that.
7 And then the second thing I wanted to mention
8 is --

9 COMMISSIONER PERNELL: Ms. Peasha had a
10 question.

11 MS. PEASHA: Yes, I have a problem with
12 the fact that there is -- you're out of compliance
13 if you're doing anything like that.

14 COMMISSIONER PERNELL: He's saying he's
15 not, so we're going to find out.

16 MS. PEASHA: We just heard from -- I am
17 really appalled. I can't even get anybody over to
18 look at me now, you know. I would like to know
19 more about this.

20 MR. SHEAN: Well, let me just --
21 fortunately we've, it's already contemplated in
22 the proposed decision, which is in the adoption
23 quarter on page 293. It says that the application
24 for SMUD, as described in the decision. So that
25 limits what your project is. If at some point you

1 choose to change it, there are procedures outlined
2 in the decision to do that.

3 But right now, if this is offered to the
4 full Commission on September 9th, it will be as
5 described within the document. And it's described
6 with some particularity.

7 MR. COHN: That's correct. And if we do
8 anything that's not consistent with that, we can't
9 proceed with the project. That's the point. And
10 if anybody asserts that, there are provisions
11 available to ensure that we are in compliance.

12 If I may, on the Bio 12 decision, I
13 think Ms. Holmes raises a good point with respect
14 to the consistency with the Army Corps Of
15 Engineers. What we're talking about is a draft
16 permit and not the final. We would be satisfied
17 if the decision would reference the requirement in
18 the final 404 permit, such that either 25 or 100,
19 depending on what the 404 permit says.

20 So that would be fine with us. We just
21 want to be sure it's consistent.

22 MR. SHEAN: Ms. Holmes, what's your
23 reaction to that?

24 MS. HOLMES: My reference to the Army
25 Corps permit had to do with the fact that SMUD was

1 citing that as the reason to change 100 feet to 25
2 feet. It's my understanding that staff wants the
3 100 feet regardless, they just feel it's more
4 protective.

5 MR. SHEAN: I beg your pardon?

6 MS. HOLMES: My understanding is that
7 the biology staff wants the 100 feet regardless,
8 because they do feel it is more protective.

9 MR. SHEAN: And this is the setback from
10 the, actually for two areas that are described in
11 the biology section. One is the western swale,
12 and the other is the seasonal creek that then
13 flows into -- I think it's, I forget the name of
14 it off the top of my head --

15 MS. HOLMES: Clay Creek?

16 MR. SHEAN: Clay Creek, that's correct.
17 And my understanding is, further, that with regard
18 to that seasonal stream there are going to be
19 other mitigation measures used to attempt to
20 prevent the flow of any contaminated water into
21 that seasonal creek, but then as far as the
22 western swale is concerned, since it flows into
23 the kitchen basin and would be treated there, that
24 those additional measures do not apply to the
25 western swale. Is that generally correct?

1 MS. HOLMES: I have to say that I'm not
2 certain. Sorry. I can certainly address that in
3 our comments.

4 MR. SHEAN: Okay. Well, I suspect the
5 point is, if it's otherwise going to be mitigated,
6 irrespective of the distance, whether it was 100,
7 75, 50, or 25, what's the significance of the
8 number if the effect of the Commission's
9 mitigation is that it will be mitigated?

10 MS. HOLMES: Thank you. We'll address
11 that in our comments.

12 MR. COHN: We'd just leave that to the
13 Committee and Commission's discretion. Our main
14 point is the discrepancy between the Army Corps Of
15 Engineers and the CEC, that we'd prefer to see a
16 consistent number.

17 MR. SHEAN: Okay. Anything further then
18 from the staff? Is there anything further that
19 you want to tell us is coming?

20 MS. HOLMES: No, I think that's it.
21 Thank you.

22 MR. SHEAN: All right. Now to our
23 Intervenor. We'll just let you pick and decide
24 who wants to go first and say what?

25 MS. PEASHA: I'd like to go first, that

1 would be great. My name is Kathy Peasha,
2 Intervenor, and I am confused about the
3 recommendation of the approval of the Presiding
4 Member's Proposed Decision.

5 The fact of the matter is, after reading
6 the alternative sites in the PMPD, I cannot
7 believe that the Presiding Member's would want
8 this site that is proposed to be the number one
9 site. I know you cannot pick the site where a
10 municipality wants to put it, but you can turn it
11 down to the point where they have to turn to an
12 alternative site.

13 The more research I have done, and I've
14 gone out of my way to do it, I have talked to
15 experts in all types of fields regarding the
16 wastewater treatment and how well that would work
17 together with a power plant.

18 The 100-year flood plain that the
19 Applicant says is one of the big problems there is
20 not a huge deal on this. They have a wastewater
21 treatment plant there. And more than likely they
22 don't want a flood to occur into a wastewater
23 treatment plant that would affect the groundwater
24 and the neighborhood.

25 The fire protection is already over

1 there. There are two fire departments within a
2 mile of the Carson Ice Cogeneration Station. The
3 transmission lines are there for a 500 megawatt
4 facility. There is no reason that this site
5 should not be the first consideration for SMUD.

6 I have a real problem with the fact that
7 they want to put it out here at Rancho Seco where
8 we still don't have the facility to protect those
9 employees because the neighborhood, because we
10 live in a community where there's only a volunteer
11 fire department.

12 The response time that we were given by
13 some of the hazmat men was close but not close
14 enough to save lives, because of the response
15 times of 20 to 25 minutes, which is a stretch. We
16 are trying to mitigate the lives of people, and
17 SMUD has offered nothing in the way of fire
18 protection other than a small course for these
19 people to attend. That is not going to do it.

20 Unless they provide a truck ladder, a
21 hazmat trailer, and a fulltime firefighter with
22 hazmat training, fulltime, we are jeopardizing
23 lives out there.

24 And it's apparent that at one time there
25 were 1,600 workers out there at Rancho Seco Park,

1 they had their fire brigade. But that wasn't the
2 biggest deal, the fire part of it, because it was
3 a nuclear power plant.

4 Now that it's going to have gas-fired
5 towers, it's going to have switch yards that are
6 going to have water running through them, as
7 opposed to with the ditch part of them, and we
8 don't have a ladder here in Herald that will reach
9 those.

10 It's crazy not to give adequate
11 protection to us. The other site proposes -- it
12 has all the amenities this place has, even better,
13 because it has the protection that we need. It
14 has reclaimed water, so that our resources of
15 California, one of our greatest resources, our
16 natural clean water, will not have to be used.

17 There is no reason that this site should
18 not be taken into consideration. The fact of the
19 matter that they're going to build a gas-fired
20 power plant in the valley is bad enough.

21 I mean, I've done research and the
22 conclusions from their report, and that is the ICF
23 consulting firm that SMUD had, put in for the
24 modeling for the proposed emissions, says that the
25 maximum change resulting from a change in

1 emissions is strongly influenced by the location
2 and the particular meteorology.

3 Everything that they do in this modeling
4 is simulated. So they cannot put facts, the facts
5 that they're still going to put 600,000 pounds a
6 year of carbon monoxide into the air, 250,000
7 pounds of nitrogen oxides, 80 tons of the
8 particulate matter 10, and they get their credits
9 from all throughout five different counties, the
10 credits, the earned credits for their emissions
11 reductions.

12 It appalls me, because it doesn't change
13 the fact that they are going to be putting in a
14 huge amount of pollutant in a valley where it has
15 nowhere to go. And I did some research in the
16 Encyclopedia Britannica, and it states that the
17 valley is the worst place to put a fossil-fueled
18 power plant, where you burn and it has nowhere to
19 go.

20 It sits there, and it burns up the ozone
21 at an enormous rate. You know, they've got the
22 credits from all these counties, these credits
23 were conceived from plants and other industries
24 that have been closed down for 15 to 20 years that
25 have not been a pollutant in this area. And now

1 they want to throw it all in a 30 acre parcel, in
2 an area where it just doesn't go anywhere.

3 And eventually, on the crops it comes
4 back down. On the ground it comes back down. It
5 just does not go anywhere in a valley that doesn't
6 move the air out of here. And I think that the
7 consideration of the Carson Ice Generation Site
8 should be taken into huge consideration by the
9 Commission. Thank you.

10 COMMISSIONER PERNELL: Okay.

11 MR. SHEAN: Thank you. Mr. Roskey.

12 MR. ROSKEY: My comments are going to be
13 less inspiring, but more focused on the language.
14 I'm going to propose different changes to the
15 language and offer you some arguments for that, in
16 the Proposed Decision.

17 And I'll just go through from beginning
18 to end. Page 18, just as a way of introducing my
19 comments here, in my opinion this decision is
20 basically a whitewash. Anything that the
21 Intervenors have offered in the way of evidence
22 has been more or less discarded, ignored,
23 trivialized, and not incorporated in any way.

24 I think that all this is is a service
25 provided to SMUD, and I, you know, heartily object

1 to the nonchalance of the Commissioners in
2 arriving at this decision.

3 I think it may be consistent with
4 certain provisions of law, but I think that
5 arguments could be made, and should be made,
6 consistent with other provisions in the law -- and
7 don't ask me which ones, because I'm not a
8 lawyer -- but I, you know, in my brief experience
9 here and what I've been reading here it seems to
10 me that there are other provisions in the law that
11 could be argued, used as argument by the
12 Commissioners, and that they ought to take a
13 proactive stance in favor of the people of
14 California, who they're supposed to represent.

15 A proactive, progressive stance that
16 would require SMUD to make a, propose an energy
17 project that does not jeopardize the future of the
18 population of California, does not consume energy
19 resources that we don't have and discard them into
20 the atmosphere, and does not pollute the
21 environment, which I probably already covered.

22 I think it's reckless, I think it
23 disregards the future, I think it disregards the
24 environment in the state of California, and that's
25 my opinion of this decision.

1 Page 18, right before mitigation, I'd
2 like you to consider following the final language.
3 "Despite the possibility of error implicit in the
4 lack of scientific evidence in the record
5 concerning the effect of the difference in ammonia
6 emissions between that which would result from an
7 SCR" -- which is a catalytic something or other
8 -- "catalyst design for a five ppm, parts per
9 million ammonia slip, or a ten parts per million
10 ammonia slip on the concentration of suspended,
11 coarse, fine and ultra-fine particulates" -- are
12 you following this?

13 MR. SHEAN: I'm hoping you're going to
14 tell me you're going to submit that either in your
15 handwritten form or --

16 MR. ROSKEY: No, I can type it up for
17 you. I can read it again if you like?

18 MR. SHEAN: No, no, rather than my
19 trying to --

20 MR. ROSKEY: Okay. Well, I want to
21 start again because I think we lost train here.
22 "Despite the possibility of error implicit in the
23 lack of scientific evidence in the record
24 concerning the effect of the differences in the
25 ammonia emissions between that which would issue

1 from an SCR catalyst designed for five parts per
2 million ammonia slip, or a ten parts per million
3 ammonia slip, on the concentration of suspended,
4 coarse, fine, and ultra-fine particulates, the
5 Commission chooses to weight the cost to the
6 project owner over the possible injury to public
7 health."

8 Continued -- "the Commission also
9 chooses to weight the cost to the project owner of
10 the wood stove retrofit program over the possible
11 benefit to the public health that will result from
12 the reduction of suspended particulate matter in
13 the ambient atmosphere."

14 I think that is implicit, even in your
15 arguments, that that's how you feel about that
16 subject. And I would like it explicitly stated.
17 You may feel that you need to reference the law in
18 that regard, but I think that this is the essence
19 of what you're saying, and I would like to offer
20 that as recommended change.

21 Okay, on page 136, this is where you
22 guys dig at me, so I want to add a little bit of
23 language here. "The Commission notes that Dr.
24 Roskey's conclusion regarding mortality is not
25 supported by the record" and so on. Just that

1 sentence.

2 Right after it I would like you to add
3 the following, "the Commission, however, notes
4 that the record does not have an adequate
5 exposition of an estimated current or projected
6 population growth in the area of the proposed
7 power plant." I think that you have omitted part
8 of my argument there.

9 You did attempt to summarize my
10 argument, but you don't say anything about
11 proposed population growth, and I would like to
12 point out to you that your -- what is the document
13 they produce called? -- the staff analysis
14 attempts to discuss population in the area, but
15 produces two different sets of figures, which are
16 conflicting, and does not discuss methodology and
17 does not make any kind of projection.

18 And if you're going to talk about
19 effects on population, it seems to me that you
20 ought to have something that discusses population
21 in a more rigorous sense than what you have there.

22 And so, essentially to conclude that
23 there is no effect on population is spurious
24 without any, you know, analysis of what the
25 population you're talking about is. So I'd like

1 that in there.

2 On page 179, I'd like to propose a
3 condition. The condition is "the Commission finds
4 that the visual impacts of the proposed plant, in
5 combination with existing visual impacts from the
6 Rancho Seco nuclear facility, are significant.
7 The project owner shall remove the existing twin
8 towers of the Rancho Seco plant."

9 I'd like to point out to you, if you
10 don't live in this area, those of us who do live
11 in this area see that thing every day. It's a
12 reminder to us of the boondoggle that SMUD engaged
13 in in previous decades, one similar to the one
14 that's going on today.

15 It's a reminder of a failed energy
16 policy. It's a reminder of significant potential
17 environmental impacts, nuclear radiation -- I
18 don't think I need to tell you is lethal -- that
19 is a reminder, there are two giant gravestones, in
20 my opinion. I would like them taken out. And I
21 would recommend to the Commission that you put
22 that in there.

23 Page 273. To support Kathy Peasha's
24 argument, I would like to propose a condition on
25 worker safety, to read as follows: "the adequate

1 fire protection would require fulltime
2 firefighter, truck and ladder combination, and
3 hazmat trailer. The project owner shall provide
4 funds to the Herald Fire Department to acquire and
5 maintain this equipment, and to hire and train
6 such firefighting personnel." I think that's only
7 reasonable.

8 Finally, in the adoption order, I have
9 the following recommendations to you. Well,
10 actually I would like to ask a question concerning
11 the adoption order. Is that appropriate?

12 MR. SHEAN: Yes.

13 MR. ROSKEY: The language that you have
14 in the adoption order. Basically what I'm reading
15 here are a series of conclusions. Why are they
16 phrased in this way? I mean, I assume this is
17 consistent from project to project, this type of
18 language?

19 MR. SHEAN: That's correct. And I think
20 they reflect the findings that are required and
21 enumerated in Public Resources Code Section 25523.

22 MR. ROSKEY: Okay. Now does that code
23 require that it be phrased in this fashion, or
24 does they --

25 MR. SHEAN: No. It doesn't specify the

1 specific wordsmithing. I think what has happened
2 over time, the current phraseology, when it is
3 appropriate, has become boilerplate, because it is
4 the clearest that has developed with usage.

5 MR. ROSKEY: Okay. In that case I would
6 like to make some recommendations.

7 MR. SHEAN: Sure.

8 MR. ROSKEY: On the second point, on
9 page 293, I would like to ask that you put the
10 phrase "the Commission believes that" in front of
11 that.

12 COMMISSIONER PERNELL: In front of
13 implementation?

14 MR. ROSKEY: In front of -- let's see.
15 In front of the second sentence.

16 MR. SHEAN: Okay. The conditions of
17 certi -- the item number two that is on page 293,
18 we believe, says "implementation of the conditions
19 contained in the accompanying text" etc. Is that
20 what you're referring to?

21 MR. ROSKEY: Yes. In number four I
22 would like to add the following phrase, "the
23 Commission concludes that", because I don't
24 believe that these are actually true. But I'd
25 like this to reflect that these are your

1 decisions, not absolute truth.

2 And number three -- I have an additional
3 question. What do you mean by area surrounding
4 the facility?

5 MR. SHEAN: Well, it's pretty much what
6 the language indicates. The area surrounding the
7 facility, with respect to what the population
8 controls are. Now, this actually refers to one of
9 the three elements of what's known as the nuclear
10 bills, something that goes way, way, way back.

11 And for a combined cycle or a natural
12 gas facility is a wholly different issue than it
13 would have been for facilities such as Rancho
14 Seco. If it had been cited under the Energy
15 Commission's authority.

16 Now, there were no nuclear facilities
17 authorized by the Commission, so in fact that
18 particular element of land use controls for those
19 types of facilities never kicked in. However,
20 with respect to this combined cycle project, what
21 we look at mostly in the land use section is
22 whether or not it's consistent with the general
23 plan and zoning ordinances.

24 MR. ROSKEY: Is this a planning term, or
25 --. What I'm trying to conceptualize is, is it a

1 six-mile radius, is it a ten-mile radius, is there
2 a radius?

3 MR. SHEAN: It's more immediate. So you
4 could have a parcel for example, as this parcel
5 is, that is zoned to accommodate this facility.
6 And you might have an adjoining parcel that would
7 allow ag or rural residential or something like
8 that. So it's not a radius in the terms that
9 you're speaking of.

10 MR. ROSKEY: Well, I would say that,
11 absent any definition other than adjoining
12 property, that this statement is essentially
13 meaningless, wouldn't you?

14 MR. SHEAN: No. I would say it's a
15 statement that takes its meaning from the entirety
16 of the decision, and that's what it indicates in
17 the introductory language to these numbered items.

18 MR. ROSKEY: Okay, thank you. I would
19 recommend that you better define what the area is
20 that you're talking about. Because in my opinion
21 this is wrong. If you consider a 12-mile radius in
22 the next 20 years, we're talking about a 72
23 percent -- at least from my own analysis -- a 72
24 percent increase in population. To me that's
25 significant.

1 I thank you for the opportunity to speak
2 with you, and I hope you will consider my
3 recommendations.

4 COMMISSIONER PERNELL: Thank you. Are
5 there any questions from the Intervenors?

6 MR. SHEAN: Yes, sir. If we have
7 nothing else from the parties, we'll now go to our
8 public.

9 MR. PELLANDINI: I just have two deals.
10 One is that we do need a little better fire
11 station or whatever it is, to help on, you know,
12 if something ever happens.

13 The second thing is, on waste or
14 whatever, we never opposed the nuclear plant the
15 first time, but we've had problems -- maybe
16 something in the water coming down. We are number
17 one of having Galt Irrigation District longer than
18 anybody, and we're the last one to get it.

19 So that's what I really do hope, on
20 management or waste we don't have a problem in the
21 water, because you guys are up on the hill and
22 everything comes this way and goes out. So that's
23 kind of a big concern of mine, too.

24 I never thought about it until sitting
25 here listening to everything. So that's it.

1 MR. SHEAN: All right. Thank you.

2 COMMISSIONER PERNELL: Is there anyone
3 else on the public comment that wants to speak to
4 the committee on the proposed project? All right,
5 Mr. Shean?

6 MR. SHEAN: Okay, I think what we need
7 to do is just a little housekeeping here. Mr.
8 Roskey, I'd recommend to you, if you can submit
9 your photocopy of your language changes in the
10 handwritten form or to the docket, which will mean
11 it gets to us.

12 Or if you choose to do so, type them out
13 and I guess that I can recommend that, if you are
14 going to end up presenting them to the full
15 Commission on the 9th.

16 As we indicated before, during the
17 opening remarks of Commissioner Parnell, there
18 will be a full meeting of the Commission on
19 September 9th to review and possibly adopt the
20 Presiding Member's Proposed Decision, with any
21 amendments that we make as a result of today's
22 meeting or any other comments submitted to us in
23 writing during the pendency of the public comment
24 period.

25 That is through September 8th. Those

1 public comments would need to be received by the
2 Commission by close of business, which is 5:00, on
3 September 8th. I would just urge that you not
4 wait until the last minute.

5 It doesn't mean it won't be considered,
6 because under the law they all have to be
7 considered, but to give it the time and attention
8 that comments deserve, the earlier the better, as
9 opposed to having to consider them overnight,
10 essentially.

11 So, with that, let me just indicate, as
12 we did before, what the Committee will do is to
13 take the material we have here so far, that which
14 we will receive from the staff, and anything
15 further we receive from you in writing, and
16 deliberate the matter and have available as early
17 as all the material allows us to put it together,
18 any changes that the Committee is going to make to
19 the Proposed Decision.

20 And that document, together with the
21 Proposed Decision itself, will be offered for
22 consideration of the full Commission on the 9th.
23 And that's pretty much where we are.

24 MS. PEASHA: I just have one question.
25 Is the decision going to be made on September 9th

1 to adopt this either way? Is the full Commission
2 voting on this?

3 MR. SHEAN: There's a potentiality for
4 that. We can't anticipate what they will actually
5 do.

6 MS. PEASHA: Okay.

7 MR. SHEAN: It is being offered for
8 their consideration and possible adoption, so the
9 answer is yes it could, or no it might not.

10 MS. PEASHA: Okay, thank you.

11 MR. ROSKEY: I have a question. If
12 comments are due on the 8th, and the Commission
13 meeting is on the 9th, how is it that we, for
14 example, or anybody in the public, is going to get
15 a copy of your recommendations ahead of the
16 meeting, so we can be prepared?

17 MR. SHEAN: There will be a copy of
18 those available at that time if we receive your
19 comments, for example -- if you have no further
20 comments, or we receive them, say, by the 6th, we
21 would be in a position to put out an errata sheet
22 and get it to you in the mail.

23 In which case you would have it in your
24 post office box prior to the meeting, as opposed
25 to --

1 MR. ROSKEY: I don't really think that
2 is true. Excuse me, I'm sorry to interrupt you,
3 but they have mailed things to me and they haven't
4 gotten to me until a week later. I think there's
5 a problem with the mail room over there.

6 MR. SHEAN: At your end here?

7 MR. ROSKEY: No, at the Commission end.
8 Because we did a little test from Roberta's
9 office. We mailed something and it didn't get to
10 me until a week later. And, you know, usually
11 what you would expect is that you get it the next
12 day.

13 MR. SHEAN: All right. Well, ordinarily
14 we would be -- let me just say we will look into
15 this situation. If it's something that can be
16 mailed by either priority mail or something like
17 that, and get you a next day receipt, we'll
18 attempt to do that for both of you.

19 MS. MENDONCA: I would be happy to
20 provide faxes or e-mail of any document --

21 MR. SHEAN: We understand from Ms.
22 Peasha that e-mailing is not a good solution --

23 MS. PEASHA: Faxing works.

24 MR. SHEAN: Faxing works. All right, we
25 will take care of it. If you submit something to

1 us, we will go on the basis of that, crank it out,
2 and get it to the parties as early as is feasible.

3 MR. ROSKEY: I just want to tell you
4 that I personally am not satisfied with that. I
5 think you're rushing this decision. I don't think
6 that you're giving the public time to prepare, and
7 I would ask that you delay the hearing. Thank
8 you.

9 MR. SHEAN: Okay. With that, unless
10 there is additional public comment, and a comment
11 from the Presiding Commissioner?

12 COMMISSIONER PERNELL: If there's
13 nothing else I want to take the opportunity, on
14 behalf of the Committee and the full Commission,
15 to thank all the participants, especially the
16 Intervenors and the general public, which --
17 sometimes these proceedings can be very
18 intimidating, but you came out and you expressed
19 your opinion.

20 And I want to thank you for that. You
21 know, given the -- I was travelling when the
22 lights went out in New York City, so this is not
23 just California. And whether this project is
24 approved or not, I think the state of California
25 and its residents can be proud of how we came

1 through back in 2000, 2001 and '02, our energy
2 crisis.

3 And that everybody got on board and did
4 what they needed to do to keep the lights on. But
5 there is an infrastructure problem in this
6 country, not just California or back east, that I
7 think someone other than this Commission need to
8 address on a higher level, maybe from the federal
9 government standpoint.

10 There is an infrastructure problem.
11 There is constant need for more energy and energy
12 resources. We as a Commission are looking at some
13 alternative energy, we have an energy plan that's
14 out now, along with some of our energy colleagues,
15 which is the PUC - the California Public Utility
16 Commission -- as well as the Power Authority.

17 So we are looking at those issues. But
18 as the future goes on and more microwaves are in
19 kitchens, we're going to need that type of energy.

20 So I just wanted to say thank you all.
21 I have an open door policy, so if there are
22 additional questions Al Garcia will take your
23 questions if you can't get to me. Either he or
24 myself are around. You're welcome to call our
25 office, and I just hope everybody have a good day.

1 We were trying to stretch this out to
2 lunch so we could get a free lunch, but that
3 didn't work. So, if there's nothing else, this
4 Committee meeting is adjourned.

5 (Thereupon, at 11:15 a.m. the meeting was
6 adjourned.)

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CERTIFICATE OF REPORTER

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

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

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

JAMES RAMOS

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