

COMMITTEE CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                    )  
  )  
Application for                        )  
Certification for the                 ) Docket No. 98-AFC-4  
SUNRISE COGENERATION AND         )  
POWER PROJECT (SUNRISE)         )  
\_\_\_\_\_ )

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

TUESDAY, JUNE 6, 2000

10:00 A.M.

Reported by:  
Debi Baker  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal C. Moore, Presiding Member

Robert Pernell, Associate Member

STAFF PRESENT

Gary Fay, Hearing Officer

Ellen Townsend-Smith, Advisor to  
Commissioner Pernell

Caryn Holmes, Staff Counsel

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

2 10:00 a.m.

3 HEARING OFFICER FAY: This is a  
4 Committee Conference to receive comments on the  
5 Sunrise Cogeneration Power Project Presiding  
6 Member's Proposed Decision issued in May, and the  
7 conference was noted at the time the Proposed  
8 Decision, or PMPD, was issued, and it's contained  
9 in the front of the document.

10 What I'd like to do, and this is  
11 informal today, but if the parties are agreeable,  
12 I'd like to give them the opportunity, if they  
13 wish, to highlight things in their written  
14 filings, although we will certainly closely review  
15 what they filed in writing, and they need not  
16 repeat anything. But then go back and allow  
17 rebuttal, a full round of rebuttal on the various  
18 matters.

19 Any problem with that, or any  
20 suggestions to do otherwise?

21 Okay, fine. Then why don't we get  
22 started. Mr. Grattan.

23 MR. GRATTAN: Good morning. Nice to be  
24 back, nice to see all those familiar faces.

25 On behalf of the applicant, Sunrise

1 Cogeneration and Power Plant, we would like to  
2 briefly, in accordance with your direction,  
3 reprise our written comments.

4 The first thing, and we would like to  
5 repeat our salute of the Committee, Committee  
6 Advisors, and the Hearing Officer for wading  
7 through a very complex record and sifting out  
8 pieces of evidence, and coming to what we think is  
9 a pretty even-handed and justifiable conclusion.

10 One thing I want to correct in our  
11 written comments. We mentioned in socioeconomics  
12 that the project would pay \$1.81 million to  
13 education. That, in fact, is \$1.18 million to  
14 education. I might add you might want to correct  
15 some language in the PMPD on page 272, which is  
16 where we got it from.

17 All right, first, air quality,  
18 construction emissions, soot filters. The PMPD  
19 recommends soot filters as a condition of  
20 certification, AQC-2-139, and Sunrise agrees to  
21 this condition. And we'll install soot filters  
22 where feasible.

23 We do want to express that in this area  
24 of competition similar mitigation measures should  
25 be applied to similar projects irrespective of

1 whether or not a project has an intervenor.

2 In this regard, we've reviewed the staff  
3 comments. And they suggest a condition modeled on  
4 the Elk Hills FSA. We agree with the level of  
5 detail provided in that recommended staff  
6 condition.

7 We do believe that the precision  
8 provided with respect to the limitation of  
9 vehicles in the PMPD, which limits it to vehicles  
10 of over 100 horsepower and 100 hours of use --  
11 excuse me, 1000 hours of use, thank you -- that  
12 that is appropriate to be engrafted onto the staff  
13 condition.

14 And now in keeping with the spirit of a  
15 level playing field, we don't speak for Elk Hills,  
16 but we think it's probably appropriate for Elk  
17 Hills to get the condition that we end up with.

18 Next is, and this is just an adjustment  
19 of findings, it is the finding 12 on page 138,  
20 mitigation finding. Finding 12 indicates that  
21 oxidizing soot filters offset construction PM10.  
22 Actually, they're part of the mitigation for  
23 construction PM10, and we offered language in our  
24 written comments which indicates that construction  
25 PM10 emissions are mitigated by a combination of

1 the fugitive dust mitigation plan, which is Air  
2 Quality C-1, the addition of oxidizing soot  
3 filters, which is AQC-2, and the surrendering of  
4 offsets prior to construction, PM10 offsets prior  
5 to construction, and that's AQ-18.

6 We think that when taken together this  
7 treats construction emissions as you would a  
8 stationary source, i.e., you first require  
9 application of a control technology, and then you  
10 require surrendering of offsets.

11 Biology. Sort of a big one for us. We  
12 note that Sunrise will not begin construction  
13 immediately after licensing as we once thought.  
14 And we put that in our comments.

15 So, therefore we would require, or  
16 request modification of the verification for  
17 condition BIO-10 on page 211. And this would  
18 allow for the tender of the wildlife habitat  
19 conservation fund, the habitat acquisition, to  
20 begin prior to construction rather than one week  
21 after licensing.

22 Land Use. The Committee has included  
23 condition Land Use 2 on pages 261 and 262 of the  
24 PMPD to require Sunrise to fund a lighting program  
25 for the community of Derby Acres.

1           Although we don't see a direct nexus in  
2           the record between the Sunrise impacts and the  
3           need for this program, however we have expressed  
4           our desire to do something for Derby Acres, as a  
5           member of the larger community.

6           And we're willing to establish a fund,  
7           but one which considers landscaping, as well as  
8           lighting, for Derby Acres. And we'd like Derby  
9           Acres and the County to make the choices what to  
10          do with it.

11          We're also concerned that the funding be  
12          derived according to an equitable formula,  
13          particularly in this era of competition. So, we  
14          recommended changes incorporating these concerns,  
15          as well as a change in keying the fund to the  
16          commencement of construction rather than to the  
17          licensing.

18          And by the way, our formula, what we  
19          looked at as our formula for the amount derived,  
20          we looked at what LaPaloma contributed toward off-  
21          site landscaping. And that actually was \$91,000.  
22          We looked at LaPaloma's megawattage, which was  
23          1043. Then we compared that to our megawattage,  
24          which is 320, approximately a little less than a  
25          third. So we scaled the LaPaloma fund to meet

1 that megawattage -- to meet our megawattage.

2 Socioeconomics. And this is our last  
3 comment. I think in order to clarify the lack of  
4 environmental impact that the Sunrise project has,  
5 we recommend that the condition discussion on page  
6 274 cite to the transcript, cite to 11/5/99 RT-35,  
7 for the fact that a potential impact -- excuse me,  
8 potential cumulative impacts on schools will not  
9 result in any physical changes to the environment.

10 And with the Committee's leave, that  
11 concludes our comments.

12 HEARING OFFICER FAY: Let me just get a  
13 clarification on your comments on the soot filter.

14 MR. GRATTAN: Yes.

15 HEARING OFFICER FAY: Have you reviewed  
16 the staff's proposed condition?

17 MR. GRATTAN: Yes, we did.

18 HEARING OFFICER FAY: And do I  
19 understand you correctly that you agree with the  
20 staff's condition, but you think that the 100  
21 horsepower and the 1000 hour limitation should be  
22 added?

23 MR. GRATTAN: We think that, yeah, adds  
24 a bit of specificity to it.

25 HEARING OFFICER FAY: Okay. Let's move

1 to the staff.

2 MS. HOLMES: Thank you. Generally  
3 speaking, staff is pleased with the proposed  
4 decision. We did file some comments pointing out  
5 a few areas, and I'll try to just hit the  
6 highlights of those.

7 Specifically we wanted to make sure that  
8 the Committee recognizes our support for holding  
9 off on the final Commission decision until the  
10 issue with USEPA about the validity of the FDOC is  
11 resolved. That's, we believe, a very important  
12 issue.

13 We noted in our comments that USEPA has  
14 written a subsequent letter to the applicant with  
15 respect to the PSD permit raising some issues  
16 having to do with SCONOx, as well as the release  
17 of some additional MET data. We don't believe  
18 that those issues are sufficiently significant to  
19 defer a final decision, should the other issue  
20 that EPA has concerns about be resolved.

21 More minor comments that we have concern  
22 the area of cultural resources. We simply  
23 recommended that the Committee modify its decision  
24 to reflect the new language in the CEQA guidelines  
25 regarding historical resources.

1           The Committee in the High Desert Power  
2 project made the same change, and we think that it  
3 was a beneficial one.

4           We suggested that the Committee add a  
5 little bit more discussion in hazardous materials  
6 handling, public health and geological and  
7 paleontological resources, tying together the  
8 conclusions about the lack of significant impacts  
9 and the discussion in the record about the  
10 potential for impacts and mitigation measures that  
11 are available to avoid those impacts.

12           As counsel for Sunrise noted, we  
13 proposed some additional changes to condition of  
14 certification AQC-2 to reflect the Elk Hills  
15 approach to the use of oxidizing soot filters on  
16 construction equipment.

17           And to be frank, I was unaware that you  
18 were proposing to limit it to vehicles of 100  
19 horsepower or 1000 hours of use. And I don't have  
20 an immediate response to that, although I may by  
21 the time we get to the rebuttal portion of this  
22 conference.

23           HEARING OFFICER FAY: I think the  
24 recommendation actually came from CURE, if I  
25 recall, that we picked up the language from

1 something that they proposed.

2 MR. GRATTAN: I got it out of the PMPD.

3 MS. POOLE: You mean in the record, or  
4 in our comments on the PMPD.

5 HEARING OFFICER FAY: No, not in your  
6 comments, in the record when you were proposing --

7 MS. POOLE: I don't recall.

8 MS. HOLMES: We also provided some brief  
9 comments to the Committee's discussion on  
10 transmission system engineering. We noted that  
11 staff is preparing additional analyses in cases.  
12 We nonetheless believe that the analysis that we  
13 prepared in this case is sufficient to support the  
14 findings that the Committee has made on  
15 transmission system engineering.

16 And then finally we simply had some very  
17 very minor comments, I won't go over those, a  
18 number of grammatical issues and typographical  
19 errors. We also asked for some additional  
20 clarification on compliance and closure, as well  
21 as asked for clarification of a comment that the  
22 Committee made about additional analyses on local  
23 schools in the socioeconomics area.

24 So that concludes our comments on the  
25 PMPD.

1                   HEARING OFFICER FAY: All right. The  
2 compliance and closure comment, I had the  
3 impression that those are generic, is that  
4 correct, that this would be a change that staff  
5 would like to see happen in all the cases?

6                   MS. HOLMES: Well, specifically the  
7 first item that we mentioned having to do with  
8 disposal of items required to be maintained in the  
9 compliance file, it wasn't clear to us, in this  
10 particular case, whether you were suggesting that  
11 certain types of things that were normally kept  
12 could be not kept. And so that was a little  
13 unclear. That was primarily in the nature of  
14 clarification.

15                   With respect to the post-certification  
16 mailing list and notice requirements, that is  
17 something that we'd like to see addressed in all  
18 the cases. You know, some cases there's more  
19 post-certification interest by members of the  
20 public than in others.

21                   But, nonetheless, I think it probably  
22 would be a good idea to have a standard policy  
23 that we use to enable people, who would like to  
24 participate in anything that comes up post-  
25 certification, to be able to receive notices and

1 know what's going on.

2 HEARING OFFICER FAY: Is the staff able  
3 to provide a recommendation on that?

4 MS. HOLMES: We probably could.

5 HEARING OFFICER FAY: I mean, you know,  
6 spell out a process where, for instance, just as  
7 an example, that everybody on the proof of service  
8 is sent a post card to return if they still want  
9 to follow the case, something like that?

10 MS. HOLMES: We've had informal  
11 discussions about sending something to people on  
12 the service list, as well as to adjacent  
13 homeowners at the end of certification and ask  
14 people if they would like to be on some sort of a  
15 mailing list.

16 But we've never -- this is the first  
17 case where we've brought it to the Committee's  
18 attention, that I'm aware of.

19 MS. TOWNSEND-SMITH: Isn't there a  
20 standard? Just seems like I remember at a hearing  
21 that there is a standard procedure through  
22 compliance that discusses post-certification and  
23 how the public is supposed to participate.

24 MS. HOLMES: It's not very standard.  
25 Your point is well taken. It's something that the

1 compliance staff could probably institute without  
2 Committee direction.

3 But our thought was that with Committee  
4 direction we could get a uniform standard that  
5 everybody would have notice of, and be aware of,  
6 and could look to for guidance.

7 HEARING OFFICER FAY: Regardless of what  
8 this Committee decides to do, I think this is  
9 something that should be brought to the attention  
10 of the Siting Policy Committee. Even if it's  
11 something that staff thinks they can do on their  
12 own, they ought to at least inform that Committee  
13 that there's, you know, some adjustments going on.

14 MS. HOLMES: Right. And my  
15 understanding is that there may be a rulemaking at  
16 some point in the future. That's another way of  
17 dealing with the issue is through a regulation.

18 HEARING OFFICER FAY: Okay. Well, we  
19 talked about the soot filters. On the cultural  
20 resources comments, do you cite -- I looked these  
21 over quickly; unfortunately, I didn't have a lot  
22 of time to review them -- did you cite specific  
23 language that you'd like to see, either parallel  
24 High Desert or --

25 MS. HOLMES: There's language in the

1 staff assessment. Staff basically conducted the  
2 evaluation to determine whether or not the  
3 historic resources meet the criteria that are  
4 specified in the guidelines.

5 So I would recommend that the Committee  
6 look to the language in the staff assessment on  
7 that.

8 HEARING OFFICER FAY: Okay. And you  
9 cite where that is?

10 MS. HOLMES: Exhibit 23, page 202 to  
11 204.

12 HEARING OFFICER FAY: The other  
13 question, and perhaps we'll hear more about this  
14 on rebuttal, does the staff have an opinion on  
15 whether the evidence of a consent decree is  
16 adequate for the Commission to take action, versus  
17 the finality of the consent decree post-comment  
18 periods, post filing by a federal court?

19 MS. HOLMES: I think what staff would  
20 like to see is something in writing from EPA  
21 saying that there is a final consent decree. I  
22 don't think that staff believes we have to wait  
23 for it to be entered into judgment.

24 HEARING OFFICER FAY: Anything further,  
25 Ms. Holmes?

1 MS. HOLMES: Nothing.

2 HEARING OFFICER FAY: Okay. Ms. Poole,  
3 CURE.

4 MS. POOLE: Thank you. I won't repeat  
5 all of our comments that we've made in writing,  
6 but let me highlight just a couple.

7 To follow up on the air quality issue  
8 which you just asked Ms. Holmes about, we don't  
9 believe that this issue with EPA and the final DOC  
10 will be resolved until EPA has a final binding  
11 settlement agreement.

12 The settlement agreement won't be final  
13 until it goes through a public comment period  
14 because EPA has the opportunity to change its mind  
15 and modify or withdraw from the settlement  
16 agreement based on those public comments.

17 So, we think that the Committee should  
18 wait for that to occur. And the settlement also  
19 won't be binding until it's entered by a district  
20 court pursuant to the Clean Air Act provisions  
21 about these types of consent decrees and  
22 settlement agreements. So we believe that should  
23 occur, as well.

24 Another issue relates to water, and DTSC  
25 has sent the Committee a letter since the hearings

1 ended which indicates that they do not find the  
2 evidence that came in during the hearings  
3 sufficient to determine whether the water source  
4 for the project and the wastewater disposal are  
5 nonhazardous.

6 And they have indicated that they want  
7 to do further sampling. So, we believe the  
8 Committee should wait for that to occur and get  
9 some determination from DTSC before proceeding to  
10 license the project.

11 A few other letters from fellow agencies  
12 have come in since the hearings which we also  
13 think affect the PMPD and the Committee's  
14 decision.

15 Those include another letter from DTSC  
16 regarding the phase two environmental site  
17 assessment, and what they believe should be done  
18 as far as soil contamination and cleanup. And  
19 some of those points that they've raised are at  
20 odds with what's in the PMPD. We've highlighted  
21 those in our comments.

22 The California Air Resources Board has  
23 also made a determination about how acrolein  
24 emissions should be determined. And if you  
25 recall, there was a long discussion about that in

1 the public health impacts section of this  
2 proceeding. And CARB's determination has an  
3 effect on that.

4 And I should also point out that we do  
5 intend to file a motion for the Committee to take  
6 official notice of those letters unless the  
7 Committee indicates to us today that it will be  
8 doing that.

9 Another issue regards the construction  
10 mitigation. We've also reviewed staff's proposed  
11 condition and our primary concern with this is  
12 less with consistency and liability as raised by  
13 staff, but more with making sure that the  
14 mitigation measures actually get implemented.

15 And so to make sure that happens, we  
16 have two suggested changes to staff's proposed  
17 changes to AQC-2.

18 The PMPD states that oxidizing soot  
19 filters should be used unless infeasible on  
20 certain pieces of equipment. Staff has changed  
21 that to say unless unsuitable for certain pieces  
22 of equipment.

23 Well, we think the PMPD got it right  
24 with infeasible. If the change is made to  
25 unsuitable, we think there's got to be some

1 definition of what that means in the condition.

2 And what we would suggest, and which  
3 we've also suggested in the Elk Hills case, is  
4 that an oxidizing soot filter should be considered  
5 suitable unless it results in a significant  
6 reduction in load, fuel use, or increase in  
7 maintenance. And significant should mean 20  
8 percent or more.

9 The second change that we would suggest  
10 is that staff has suggested that the appropriate  
11 person to make the determination of suitability is  
12 a licensed mechanical engineer. And because this  
13 type of equipment is relatively new, we're not  
14 convinced that a licensed mechanical engineer  
15 would have a lot of experience and familiarity  
16 with this type of equipment.

17 And so we would suggest that there also  
18 be somebody appointed by the vendor, such as a  
19 diesel mechanic, who might have more familiarity  
20 with this type of equipment, who would also concur  
21 in that suitability determination.

22 And I think that's all I have at this  
23 point.

24 HEARING OFFICER FAY: Have you made this  
25 recommendation in Elk Hills, as well, --

1 MS. POOLE: Yes.

2 HEARING OFFICER FAY: -- in terms of the  
3 input on who decides --

4 MS. POOLE: It's in Dr. Fox's testimony  
5 on Elk Hills.

6 HEARING OFFICER FAY: How do you  
7 envision this working? In other words, I have the  
8 impression that it's fairly cookbook in terms of  
9 installing soot filters on equipment --

10 MS. POOLE: I think that's right.

11 HEARING OFFICER FAY: -- if we use the  
12 100 hours -- or the 100 horsepower and the 1000  
13 hours, so the stuff is on there. Then if the  
14 contractor raises a question I gather staff's  
15 proposal would be that this licensed mechanical  
16 engineer would determine whether the concerns were  
17 valid and the thing should be taken off.

18 So, how would you add the additional  
19 consultation or input?

20 MS. POOLE: Well, I think staff's  
21 condition actually recommends that this licensed  
22 mechanical engineer be making the recommendation  
23 up front. And determining initially whether soot  
24 filters get employed or not.

25 And we're suggesting that that person do

1 that in consultation with somebody appointed by  
2 the vendor, or with the vendor, themselves, to  
3 make sure that they understand what type of  
4 equipment the filter can be used on.

5 HEARING OFFICER FAY: Anything further,  
6 Ms. Poole?

7 MS. POOLE: No, that's it.

8 HEARING OFFICER FAY: Okay. Mr. DeCuir  
9 for TANC.

10 MR. DeCUIR: Thank you, Mr. Fay, and  
11 Members of the Committee. Thank you for the  
12 opportunity to present comments.

13 We served and filed on behalf of the  
14 Transmission Agency of Northern California  
15 comments on June 2nd, and I don't intend to repeat  
16 them, bore you with them. Thank you.

17 MR. GRATTAN: You're a great American,  
18 Dennis.

19 HEARING OFFICER FAY: Great, thanks for  
20 your brevity.

21 (Laughter.)

22 HEARING OFFICER FAY: Okay. Well, then  
23 if nobody has any further comments I'd like to go  
24 to rebuttal.

25 MR. GRATTAN: Very good, if you'll give

1 us about 45 seconds.

2 HEARING OFFICER FAY: You can have five  
3 minutes.

4 MR. GRATTAN: We'll take Mr. DeCuir's  
5 time here.

6 HEARING OFFICER FAY: Okay.

7 PRESIDING MEMBER MOORE: We'll go off  
8 the record.

9 (Off the record.)

10 HEARING OFFICER FAY: Ms. Poole, you  
11 cited I think at least three letters, and I just  
12 want to be sure that we have those adequately  
13 identified.

14 Specifically the DTSC letters. The  
15 first one that I recall, first communication from  
16 DTSC, raising any questions about the sampling  
17 looked like an internal memo. It was not  
18 addressed to the Committee or the Commission. And  
19 it was docketed when it came in to the Commission.  
20 But it didn't specifically address -- was not  
21 addressed to the Commission. Is that the first  
22 letter?

23 MS. POOLE: There is one letter which is  
24 a memorandum between DTSC personnel. I believe  
25 that letter was sent to staff -- I'm not certain

1 about that -- and was subsequently docketed.

2 MS. HOLMES: That's correct, staff -- we  
3 received a copy of it from DTSC, and we docketed  
4 it along with a cover memo to the Committee from  
5 the project manager, summarizing what DTSC's memo  
6 said, and what our position was with respect to  
7 that.

8 HEARING OFFICER FAY: Okay. Now, --

9 MS. HOLMES: That was docketed on March  
10 29th.

11 HEARING OFFICER FAY: March 29, okay.

12 MS. HOLMES: The memo, itself, is dated  
13 March 15th.

14 HEARING OFFICER FAY: Was that one of  
15 the documents you were referring to?

16 MS. POOLE: That was one of the  
17 documents.

18 HEARING OFFICER FAY: Okay, so that was  
19 not addressed to the Commission.

20 MS. POOLE: Would you like me to  
21 identify the other documents?

22 HEARING OFFICER FAY: Yes, please. The  
23 one about the soil sample, concerns about the  
24 phase two --

25 MS. POOLE: Yes, there's another DTSC

1 letter which was a letter from Kevin Shaddy at  
2 DTSC to Marc Pryor. And that's dated April 25th.  
3 And that was also docketed on April 25th.

4 There is a third --

5 MS. HOLMES: My copy indicates it was  
6 actually docketed on the 1st.

7 MS. POOLE: Okay, I got it off the  
8 docket list, so your stamp is --

9 HEARING OFFICER FAY: Docketed when?

10 MS. HOLMES: May 1st.

11 MS. POOLE: -- accurate.

12 HEARING OFFICER FAY: May 1st. Okay.

13 And that letter raises concerns about what, the  
14 site clearing and handling of soil --

15 MS. POOLE: About soil contamination.

16 HEARING OFFICER FAY: Okay.

17 MS. POOLE: The third letter which I  
18 referred to, the letter from William Loscutoff,  
19 L-o-s-c-u-t-o-f-f, at CARB, that was directed to  
20 all air pollution control officers and executive  
21 officers in the state. That's dated April 28th.  
22 And that was docketed on May 10th.

23 HEARING OFFICER FAY: That's the one on  
24 acrolein?

25 MS. POOLE: Correct. And there was a

1 fourth letter which we referred to in our  
2 comments, which staff also referred to, which is  
3 the letter from Matt Haber at EPA to the project,  
4 Sunrise project, which is dated May 16th. And  
5 that was docketed on May 19th.

6 Yes, it's a letter from Matt Haber at  
7 EPA to Andrew Hall at the Sunrise project. The  
8 letter is dated May 16th, and it was docketed here  
9 on May 19th.

10 HEARING OFFICER FAY: And that is the  
11 one that references SCONOx?

12 MS. POOLE: SCONOx and the data  
13 problems.

14 HEARING OFFICER FAY: When I saw the  
15 letter that you attached from CARB, came in  
16 shortly after the PMPD was issued, I think, and I  
17 had the impression that the PMPD had anticipated  
18 the concern of CARB. And that therefore, you  
19 know, that was not a problem. Was there something  
20 more there?

21 MS. POOLE: Well, the PMPD states that  
22 it questions CURE's modification, or adjustment to  
23 the acrolein emission factor, because CARB hasn't  
24 acted. When CARB has acted, CARB relied on the  
25 Freeman study, which Dr. Fox relied on to make her

1 adjustment when it issued its advisory.

2 HEARING OFFICER FAY: But did they -- I  
3 didn't see in your letter that CARB determined  
4 that it is a ten-times multiplier.

5 MS. POOLE: They haven't explicitly made  
6 that determination, no.

7 HEARING OFFICER FAY: Okay. So, it  
8 sounds to me like CARB is right where the  
9 Committee was. In other words, we're concerned  
10 that acrolein does degrade, and therefore there's  
11 a question about the test results.

12 But they're not willing to quantify the  
13 degradation and assume a fixed number.

14 MS. POOLE: Well, CARB hasn't taken that  
15 step yet. I don't know whether, I mean actually I  
16 think that they are planning on doing that, but I  
17 think the significance is that they made their  
18 determination based on the study that Dr. Fox used  
19 as the basis for her adjustment.

20 HEARING OFFICER FAY: Okay. Great. If  
21 applicant's ready, we'll --

22 MR. GRATTAN: Yes, we are, and --

23 HEARING OFFICER FAY: -- go through  
24 rebuttal.

25 MR. GRATTAN: -- forgive me, this is

1 rebuttal written testimony, and it's here for the  
2 record, and I'm going to be even more tedious than  
3 usual.

4 First, these again, are our comments on  
5 CURE, staff and TANC comments on the PMPD.

6 First is the issue of the final  
7 determination of compliance and EPA's sign-off on  
8 not intending to challenge it.

9 CURE, in its comments at page 1 and 2  
10 have the Committee withhold its decision until  
11 agreement between USEPA and Texaco is made the  
12 subject of a decision in federal court.

13 This may certainly further CURE's goal  
14 of delaying the project, but it will not foster  
15 the work of this Commission.

16 The appropriate way to address what the  
17 PMPD treats as a compliance with LORS issue is to  
18 look at the EPA letter of March 31st, which is  
19 part of the record here. That letter stated, and  
20 I'm quoting, "As long as we are able to reach an  
21 agreement with Texaco on the terms of consent  
22 decree that reflects the agreement in principle,  
23 EPA does not intend to further question the  
24 District's DOC issue to Sunrise."

25 EPA's statement in its March 31st letter

1 speaks of reaching an agreement on the terms of  
2 the consent decree. I would submit that that  
3 occurs when Texaco and EPA jointly sign a  
4 document. That document is called a consent  
5 decree. It is then submitted to the court for  
6 comment.

7 I would also submit that, and I don't  
8 know what EPA is going to do in terms of  
9 communicating with the Commission, but I would  
10 also submit that it would be acceptable if EPA  
11 further indicates that a copy of the consent  
12 decree -- excuse me, that EPA submit a  
13 correspondence to the staff saying that it and  
14 Texaco have reached agreement on the terms of the  
15 consent decree that reflects the agreement in  
16 principle.

17 What I don't believe is that the  
18 agreement needs to be made the subject of a  
19 federal court decree for the Commission to go  
20 forward. An extremely dangerous precedent for the  
21 Commission.

22 What it says is that evidence or perhaps  
23 even unsworn testimony stating a failure to comply  
24 with LORS, that this can only be overcome by a  
25 decision of the federal court. The Commission, as

1 we see time and time, again relies on the  
2 likelihood of subsequent federal action, not the  
3 certitude of it. For example, PSD, biological  
4 opinions.

5 The signed agreement of Texaco and EPA,  
6 coupled with EPA's pledge to not further question  
7 the DOC should demonstrate the sufficient  
8 likelihood.

9 Next, another issue of delay. Delay the  
10 decision awaiting a PSD. This is a recommendation  
11 of CURE at page 2 through 5 of its comments. CURE  
12 does so based on mischaracterizations of EPA  
13 correspondence regarding BACT and meteorological  
14 data. CURE also submits a rehash of its views on  
15 PM10 emission reduction credits.

16 None of this represents new information  
17 to the Commission. The Commission has adjudicated  
18 every single one of these issues and found CURE's  
19 positions to either be not meritorious, such as  
20 the meteorological data, or irrelevant to the  
21 Commission's role with BACT and ERCs.

22 What is clear is that the CEC has never,  
23 I guess you should never say never, but never to  
24 the knowledge of this long-in-the-tooth  
25 practitioner before the Commission, required the

1       securing of a PSD permit prior to its issuing of  
2       the license.

3               The Commission has not done so in  
4       LaPaloma, which by the way used a PM10 ERC similar  
5       in nature to that of which CURE complains. It has  
6       not done so in the Sutter project, the Delta  
7       project, the Pittsburg project, or the High Desert  
8       project.

9               The Commission should not abdicate its  
10       responsibility at the urging of a party whose  
11       purpose is to further delay a project.

12              Well operations. CURE has asserted,  
13       page 5 through 8, that the well operation impacts  
14       of the cogeneration host are significant. CURE's  
15       wrong in each of these assertions.

16              CURE indicates that a conducted modeling  
17       of the well-drilling operations for 455 wells, and  
18       this modeling indicates that the wells will  
19       violate ambient hydrogen sulfide, H<sub>2</sub>S, levels.  
20       This is only true if you believe CURE's flawed  
21       methodology of measuring ambient levels of H<sub>2</sub>S in  
22       the oilfields. The PMPD notes the testimony and  
23       criticizes the snapshot methodology and  
24       appropriate rejects it at page 132 of the PMPD.

25              CURE also states that the PMPD used the

1 wrong emissions control factor for H2S, i.e., it  
2 should not use the factor of 99.9 percent.  
3 However, the testimony of the Air Pollution  
4 Control Officer for the San Joaquin Unified Air  
5 Pollution Control District -- this testimony  
6 appears at 1/28/2000 page 185 through 188 of the  
7 revised transcript -- made it clear that the  
8 overall emissions of VOCs are controlled, in fact,  
9 in reality, to over 99.9 percent.

10 CURE further mischaracterizes the record  
11 when it attempts to cite the APCO's testimony for  
12 the proposition that only VOCs, not sulfur, are  
13 subject to the control efficiencies in the  
14 incinerator.

15 What the APCO actually said was that the  
16 control efficiencies are both for the VOC and the  
17 sulfur component. And this is in the record at  
18 1/28/2000 RT 189.

19 Third, CURE states that the impacts from  
20 the steam generators that may be displaced by the  
21 Sunrise project and the 1300 wells they might  
22 serve need to be evaluated and were not.

23 Sunrise, actually we covered this issue  
24 in our third reply brief. And to summarize, the  
25 700 new wells, analyzed. Analyzed by this

1 Commission. The 1300 existing wells, well,  
2 they're part of the baseline. The existing steam  
3 generators are part of the baseline and were  
4 already permitted.

5 The existing steam generators, if moved,  
6 and here we start to get into a little  
7 speculation, they're still part of the background  
8 and they're either permitted or subject to a new  
9 permit.

10 And finally, the 1300 possible new  
11 wells, very speculative as to when and where  
12 they're going in, and certainly if they did go in,  
13 subject to BACT and offset requirements.

14 Next, cumulative air, and these are TANC  
15 comments. TANC comments have addressed the PMPD's  
16 treatment of what TANC terms cumulative air  
17 quality impacts resulting from the transmission  
18 congestion supposedly caused by the Sunset  
19 project -- Sunrise project, excuse me, we'll throw  
20 them in, too.

21 We have not addressed TANC's comments  
22 regarding the supposed congestion, itself, because  
23 it's clearly not an environmental issue. The  
24 record is clear also that no additional condition-  
25 relieving facilities would be required. And also,

1 you know, we note the issue, if it's not an  
2 environmental issue it's beyond the Commission's  
3 jurisdiction.

4 We agree with the conclusion of the PMPD  
5 with respect to the totally speculative nature of  
6 the congestion. We further wish to point out what  
7 TANC purports to call cumulative impacts are,  
8 under the law and regulations, not cumulative  
9 impacts at all. The CEQA guidelines, 14 CCR  
10 15064(i)(3) state that: A lead agency may  
11 determine that a project's contribution to  
12 cumulative impacts is not cumulatively  
13 considerable if the project will comply with  
14 the requirements of a previously approved  
15 plan or mitigation program which provides  
16 specific requirements which will avoid or  
17 substantially lessen the problem -- project,  
18 that means the Sunrise project.

19 And the section goes on to state --  
20 quality plan, and the second one is an air quality  
21 plan.

22 Here clearly you have a project which is  
23 subject to BACT, which is required to offset all  
24 its emissions; doesn't have an impact, therefore  
25 it's not part of a cumulative impact.

1                   And the plan, state implementation plan,  
2                   the new source review rule, that requires the  
3                   application of BACT or LAER, and offsets.

4                   Subparagraph (5) of that same section  
5                   adds a little, reinforces that where it states:

6                   The mere existence of significant cumulative  
7                   impacts caused by other projects shall not  
8                   constitute substantial evidence of the  
9                   proposed project's impacts as cumulatively  
10                  considerable.

11                  Given CURE's testimony, in its best  
12                  light, that's what we possibly speculatively have  
13                  here, of some other projects causing impacts, and  
14                  this project causing none.

15                  Moving along, water and waste. And  
16                  these are addressed in the CURE comments on page 8  
17                  and 9. And Sunrise, we support the PMPD's  
18                  conclusion that the produced water used by the  
19                  applicant, and the wastewater streams resulting  
20                  from the softening of that water are not  
21                  hazardous. And that is found on page 246 of the  
22                  PMPD.

23                  These conclusions were based upon sworn  
24                  testimony in the record, and relied on -- they  
25                  relied principally on the testimony of the DTSC

1 witness, Diana Peebler, who reviewed the  
2 applicant's test data; and on the applicant's  
3 witness regarding, and I've used this word, the  
4 representativeness of the samples. The sworn  
5 testimony of Diana Peebler has never been  
6 recanted, retracted or repudiated.

7 I guess I have to address the issue of  
8 the memo. I think CURE and staff believe that the  
9 internal DTSC memo, which was procured by CURE,  
10 and addresses only the efficacy of the water  
11 softener, is more persuasive than the  
12 Commissioner's record.

13 In addition, the subject memo, in  
14 addition to its not being evidence, this memo,  
15 this purloined letter, is peripheral to the matter  
16 at hand. The matter at hand is the appropriate  
17 waste characterization of the brine regeneration  
18 stream and that of the produced water.

19 Actually the letter confirms the  
20 nonhazardous nature of the produced water by its  
21 confirmation of TCI selection of the sample point.

22 We think this is where the inquiry  
23 should end. We have solid sworn testimony versus  
24 unsworn internal memorandum, which quite frankly  
25 we don't know how to deal with.

1                   Public health.  Yes?

2                   HEARING OFFICER FAY:  Before you leave  
3                   that one, have you had a chance to look at the  
4                   staff's supplement, I guess we'll call it, to  
5                   their comments?

6                   MR. GRATTAN:  Yes, we have.

7                   HEARING OFFICER FAY:  How does that fold  
8                   into the concern about DTSC's interest in this?

9                   MR. GRATTAN:  Quite frankly we have a  
10                  problem with it.  We have several problems with  
11                  it.  Number one, it's not supported by the record.  
12                  It really does nothing to assure further analysis.  
13                  It provides basically a condition on which a  
14                  subsequent condition would occur.

15                  It seems to imply the necessity -- not  
16                  seems to, it implies the necessity for a  
17                  Commission order for further testing.  And to  
18                  further delay the project.

19                  It also provides another opportunity for  
20                  a party to attempt to open up the record.

21                  We think that honestly if the issue is  
22                  provision of an additional level of comfort to  
23                  what is uncontroverted in the record, we'd be  
24                  willing to accept a condition, in fact even to  
25                  offer a condition, which would allow the

1 Commission to proceed to decision, and which would  
2 require testing and/or at least an affirmative  
3 sign-off of DTSC that either the regeneration  
4 brine is not hazardous, or that the applicant has  
5 acquired a permit to treat and dispose. The  
6 applicant, I guess that's TCI, that's not the  
7 applicant. But the applicant would provide that.

8 And we would put the onus on the  
9 applicant to get that clearance from DTSC. But it  
10 would be done as a condition prior to operation,  
11 rather than some vague condition about answering,  
12 doing testing according to DTSC's request, a  
13 request we don't have. And a request, if it is in  
14 fact the internal memo, which of course isn't a  
15 request, which we don't quite understand.

16 So that's our proposal. We'll either  
17 convince DTSC or get a permit prior to commercial  
18 operation.

19 HEARING OFFICER FAY: Do you actually  
20 have some language to offer?

21 MR. GRATTAN: Pardon?

22 HEARING OFFICER FAY: Do you have some  
23 language to propose?

24 MR. GRATTAN: Yes, I do. And I  
25 apologize for the lateness of it, but this is also

1 a little late.

2 HEARING OFFICER FAY: So your proposal  
3 is that prior to operation DTSC will either sign  
4 off on the softener --

5 MR. GRATTAN: Regeneration.

6 HEARING OFFICER FAY: -- regeneration,  
7 or have issued a permit, if it does determine that  
8 it's hazardous, will have issued a permit?

9 MR. GRATTAN: Correct.

10 HEARING OFFICER FAY: And that the  
11 applicant would take responsibility for this.

12 If, just curious, if the condition were  
13 not in there, does DTSC, in any case, have the  
14 authority to go in and sample and determine if the  
15 wastestream from the softener is hazardous?

16 MR. GRATTAN: That's correct. My  
17 understanding is they have the authority to do  
18 this right now. And I believe they testified to  
19 it.

20 HEARING OFFICER FAY: Okay, thank you.  
21 Anything more on water?

22 MR. GRATTAN: No, that's all we have on  
23 water.

24 We move on to public health. Acrolein,  
25 appears comments at 9 and 12, point out, and this

1 has been brought up by CARB's post-hearing  
2 advisory flagging of the results from M34 testing  
3 procedure for acrolein, they flagged them as non-  
4 quantitative.

5 What I want to correct here is that what  
6 it has not done is indicate what should be used in  
7 its place. And certainly they have not  
8 recommended a factor of 10 multiplier.

9 CURE recommends revision of the PMPD  
10 based on this event. And this is our opinion, our  
11 view, our belief that this is not new information.  
12 As was discussed earlier, CURE did present  
13 extensive testimony in this area. And the PMPD  
14 did take it into account. And it required that  
15 acrolein emissions be substantially lessened  
16 through use of soot filters and use of an  
17 oxidation catalyst. And this is found at page 162  
18 and page 130, respectively, of the decision.

19 CURE comments have also focused on the  
20 potential impact to oilfield workers. As staff  
21 testimony has pointed out, and this is in exhibit  
22 73, testimony of Rick Tyler at pages 14 and 8, as  
23 staff's pointed out, even allowing for a tenfold  
24 increase in acrolein emissions, oilfield workers  
25 would not be exposed to well drilling acrolein

1 emissions in excess of NIOSH and CalOSHA  
2 standards.

3 And I'm running out of breath. We've  
4 concluded public health. At least our comments on  
5 public health.

6 And I'd like to turn the remaining  
7 areas, off-site workers, hazardous materials,  
8 worker safety and biology over to my esteemed  
9 partner, Scott Galati.

10 HEARING OFFICER FAY: I do have another  
11 question, --

12 MR. GRATTAN: Yes.

13 HEARING OFFICER FAY: -- back on air  
14 quality --

15 MR. GRATTAN: Yes.

16 HEARING OFFICER FAY: -- which you  
17 addressed. Do you have any suggestion or guidance  
18 on timing of the evidence that was discussed that  
19 would come from EPA? Either the certification  
20 that the consent decree had been entered between  
21 EPA and Texaco, or a copy of the cosigned consent  
22 decree?

23 MR. GRATTAN: One is always hesitant in  
24 these areas, but my understanding is that EPA and  
25 Texaco are very close to a signed agreement.

1 They're exchanging drafts right now.

2 HEARING OFFICER FAY: Is it envisioned  
3 within two weeks they would have something? Is  
4 that in the range of possibility?

5 MR. GRATTAN: A range of two weeks to a  
6 month.

7 COMMISSIONER PERNELL: This negotiation,  
8 this consent decree, it addresses the ordinances,  
9 regulations and standards for the project?

10 MR. GRATTAN: Yes, it addresses  
11 specifically the final determination of compliance  
12 from the Air Pollution Control District.

13 COMMISSIONER PERNELL: So that if, for  
14 instance, the applicant decides to -- if we  
15 license the project and the applicant decides to  
16 sell that license, what happens to this negotiated  
17 EPA and Texaco?

18 MR. GRATTAN: If the applicant decides  
19 to sell the license?

20 COMMISSIONER PERNELL: If we go forward  
21 and license this project without an EPA and Texaco  
22 is still negotiating, or even if they sign a  
23 document, does the transfer of the license, is  
24 that bound to the document that Texaco and EPA  
25 would be signing?

1                   MR. GRATTAN: The Texaco, which of  
2 course is -- TCI, which is a Texaco subsidiary,  
3 operates the oil fields, which this project  
4 serves. This project is Sunrise.

5                   If Texaco sold the project it would  
6 still be bound by the consent decree it signed,  
7 and would still be, if it violated that or if it  
8 went back on its terms, would be subject to  
9 enforcement actions on its oilfield operations by  
10 USEPA and the Justice Department.

11                   MR. GALATI: Commissioner Parnell, if I  
12 could add one clarification to that, too, is what  
13 EPA has questioned is a document called the  
14 certification of compliance, which says all of the  
15 facilities that you own are currently in  
16 compliance today. And the district issued the DOC  
17 based on that document.

18                   If the project were sold to somebody  
19 other than Texaco, this certification of  
20 compliance about Texaco facilities would not be an  
21 issue. The DOC would be still appropriate. This  
22 issue with EPA, with Texaco, although they would  
23 be bound, would not prohibit the DOC from being  
24 found to be valid.

25                   MR. GRATTAN: EPA's issues are with the

1 oilfield operator, not with the Sunrise project.

2 COMMISSIONER PERNELL: Right, and it  
3 sounds like -- and just bear with me here because  
4 I don't know all of the history, but it sounds  
5 like they're saying, EPA is saying that all of the  
6 conditions in the oilfields, you have to be in  
7 compliance in order for us to go forward with this  
8 other project.

9 MR. GRATTAN: That's what they're  
10 saying.

11 COMMISSIONER PERNELL: Okay, and then my  
12 question is, if that's true, and then Texaco  
13 decides to sell the license to someone else, then  
14 what EPA has bound TCI to is off the table?

15 MR. GRATTAN: I don't believe that is  
16 true. EPA has its authority under section 113 to  
17 come after Texaco if Texaco is not protected --  
18 the consent decree protects Texaco as well as  
19 commits Texaco. So EPA is fully able to come  
20 after the oilfield operator at any time.

21 COMMISSIONER PERNELL: Okay.

22 HEARING OFFICER FAY: Mr. Grattan, don't  
23 the issues involved in the negotiation involve  
24 sort of long-term things that EPA has been looking  
25 at that don't relate to the project? The project

1 was a catalyst for the timing of this, but that  
2 EPA would still be interested in these consent  
3 matters --

4 MR. GRATTAN: That is correct, --

5 HEARING OFFICER FAY: -- even without  
6 the project?

7 MR. GRATTAN: -- EPA would pursue this,  
8 my indication is the EPA is pursuing this with all  
9 the vigor, you know, all the institutional vigor  
10 it has, and that this project is another point for  
11 them to increase the negotiating pressure on the  
12 oilfield operator.

13 I also might add if the license to this  
14 project were sold, you would need Commission  
15 approval, so if there are any untoward things that  
16 would occur environmentally, I'm sure the  
17 Commission would get itself involved.

18 COMMISSIONER PERNELL: Thank you.

19 HEARING OFFICER FAY: Okay, Mr. Galati.

20 MR. GALATI: Okay. We'd like to start  
21 by addressing worker protection standards, as  
22 raised in CURE comments. First of all, by saying  
23 we support the PMPD and the staff position which  
24 cite the appropriateness of CalOSHA and NIOSH  
25 standards used to evaluate workers in the

1 oilfield. It's uncontradicted that the maximum  
2 point of impact from any emissions in this case  
3 would be in the oilfield, and not to the general  
4 public.

5 CURE raises an issue that worker  
6 protection standards don't protect workers for  
7 chemicals to which this project may expose them.  
8 And they cite ammonia in support of this.

9 It is absolutely clear there will be no  
10 emissions of ammonia from the ammonia handling  
11 system in the oilfield without a catastrophic  
12 event. And as far as a catastrophic event is  
13 concerned, the Commission looked at this. Staff  
14 and Sunrise experts agreed that the probability  
15 was so low to render the potential to be  
16 insignificant.

17 CURE offered no testimony on this point  
18 with respect to the insignificance of a  
19 catastrophic or at least that is the way you would  
20 have emissions of ammonia or oilfield workers  
21 exposed to ammonia.

22 If, however, they are talking about the  
23 ammonia that may be emitted from the stack, that  
24 was analyzed both by staff and Sunrise and found  
25 that those emissions do not create any significant

1 public health risk.

2 CURE also attempts to make the point  
3 that oilfield workers who are not employed by  
4 Texaco should not be covered under -- should be  
5 covered under the reference exposure limits, or  
6 the public health impact standards, and not worker  
7 safety standards.

8 We believe the record shows that  
9 oilfield workers, irrespective of their employer,  
10 should be covered under worker protection  
11 standards. And we would point to the testimony of  
12 Rick Tyler at 1/11/00 RT page 189 through 190 that  
13 workers should not be treated as members of the  
14 public, and I'll quote, "if they derive some  
15 benefit from the activities, or they are part of  
16 the contiguous industrial operation, or they are  
17 exposed to similar risks routinely in an  
18 industrial area, then I would treat those  
19 individuals as workers."

20 Although this is clearly the case for  
21 those oilfield workers employed by the steam host,  
22 it is equally clear for other oilfield workers who  
23 are part of the contiguous industrial area, and  
24 are routinely exposed to similar risks that might  
25 be emitted by the cogeneration plant and its

1 indirect effects.

2           The cogeneration plant emits chemicals  
3 associated with combustion, from construction  
4 equipment and from the turbine, from the burning  
5 of natural gas for the turbine. That's exactly  
6 what goes on in the oilfield for steam generators,  
7 the equipment that they use is diesel- and/or  
8 gasoline-fired. These are exactly the types of  
9 risks that those workers are exposed to routinely  
10 as part of their employment.

11           And therefore they would be covered  
12 under the worker protection standards that their  
13 employer is mandated by federal and state law to  
14 protect them to. They are given protective  
15 equipment when necessary. They are trained  
16 appropriately to accept those risks.

17           So now what we have is the last  
18 argument, which is that Sunrise somehow should be  
19 responsible for the possible exposures from well  
20 drilling to the workers who are drilling those  
21 wells. Sunrise isn't drilling any wells. The  
22 steam host is drilling wells. The steam host has  
23 been drilling wells. The steam host will continue  
24 to drill wells.

25           The other oilfield workers, unrelated to

1 the Sunrise project, would continue to drill  
2 wells. And it is incomprehensible how the Sunrise  
3 project should be required to mitigate for impacts  
4 they routinely encounter in their jobs.

5 I'd like to now move to hazardous  
6 materials. CURE has stated in its comments that  
7 the project description design conditions should  
8 be incorporated as conditions.

9 For example, they cite that in testimony  
10 and in the application for certification, Sunrise  
11 committed to having check valves for the anhydrous  
12 ammonia system secondary containment, things of  
13 that nature.

14 And that CURE wants each one of these to  
15 be a condition, or says somehow it's not  
16 enforceable. I'd point out that in accordance  
17 with the terms and conditions that the project  
18 owner must build this project in accordance with  
19 the project description and the terms and  
20 conditions of the Commission decision. That's  
21 identified at PMPD page 29.

22 Any post-certification change must  
23 comply with Commission regulations, that's at PMPD  
24 page 40.

25 The controls described by Sunrise are

1 part of the project description and are  
2 enforceable as are other design features.

3 I would point that Public Resources Code  
4 25534(a) makes it -- establishes sanctions if  
5 there are any false statements made by an  
6 applicant in any type of submission to the  
7 Commission.

8 So, if this applicant came to the  
9 Commission hearing and said we're going to install  
10 check valves, that is part of the record, doesn't  
11 need to be a condition of certification. And, if,  
12 in fact, the applicant did not install check  
13 valves, it would be subject to sanctions.

14 If the applicant decided at one point in  
15 time that maybe check valves were not needed, he  
16 could not do so unless it complied with Commission  
17 regulations and came and asked for a change.

18 Not every portion of the design feature  
19 needs to be incorporated into the conditions.

20 With respect to the DTSC letter, and I'm  
21 moving again to worker safety, but addressing the  
22 phase two ESA, the hydrocarbon impacted soils,  
23 CURE cited a recent letter from DTSC regarding the  
24 phase two ESA.

25 Contrary to CURE's assertions, safety

1 condition one, which was offered and negotiated  
2 here by the applicant, and incorporated by the  
3 Commission in its PMPD, provides all the  
4 protections requested by DTSC.

5 The only thing that CURE is able to find  
6 is that somehow, let me take you back. Safety  
7 condition one requires a health and safety officer  
8 to be on-site full time, with real time air  
9 monitoring equipment, to protect workers in the  
10 event that contaminated soils are found.

11 When those soils are found that health  
12 and safety officer is completely empowered to stop  
13 construction in that area, to move workers away,  
14 or to take whatever worker protection safety  
15 measures are necessary to protect workers.

16 There is another condition called Waste-  
17 4. If that material then needs to be removed in  
18 order to comply with hazardous waste laws, or in  
19 order to properly protect construction workers, an  
20 environmental professional is called out to the  
21 site to evaluate that and make that call.

22 We're talking about two different people  
23 here. Someone who is trained in protecting  
24 workers, and another person who is trained in how  
25 you dispose of waste. Now, they may be one

1 person, but CURE is arguing that unless it's one  
2 person it somehow doesn't work. We think two  
3 heads are better than one, in this case. And we  
4 do have a person full time on site.

5 CURE has also argued that workers who  
6 remove the hydrocarbon impacted soils are not  
7 protected by a condition of certification. The  
8 applicant testified here that it would follow the  
9 recommendations in its phase two ESA and remove  
10 three areas that were identified where there were  
11 hydrocarbon impacted soils, and that those areas  
12 would be removed prior to construction.

13 It also testified here that they would  
14 be removed in accordance with the Kern County  
15 Department of Environmental Health guidance, and  
16 that the appropriate worker safety protection  
17 standards would be followed that are currently in  
18 federal law and state law, to remove those  
19 materials in accordance with Kern County  
20 Department of Environmental Health.

21 What I'd like to point out is that this  
22 routinely goes on in the oil fields. This  
23 material is actually removed and recycled and used  
24 as road base. We're not talking about a highly  
25 deadly pesticide to which these workers who remove

1 this routinely are not aware of.

2 No additional condition of certification  
3 such as Safety-1 should apply to the removal of  
4 these materials. They won't be done by Sunrise  
5 workers.

6 CURE also seeks to extend the  
7 requirements of Safety-1 to the oil field, to the  
8 three-quarter mile radius where the steam host  
9 will be drilling wells.

10 The PMPD clearly points out that  
11 oilfield workers are routinely exposed to  
12 petroleum, itself, and the other chemicals that  
13 are associated with the petroleum.

14 Therefore, risks associated with soil  
15 that has been soaked with this same chemicals, to  
16 which oilfield workers regularly encounter, are  
17 less than their normal jobs.

18 And as was pointed out in the record and  
19 in the PMPD, that those workers are protected by  
20 the existing LORS, which are the industrial safety  
21 orders that apply to oilfield workers where  
22 encountering those risks. Safety-1 does not need  
23 to be extended to the three-quarter mile radius.

24 With respect to biology, CURE is urging  
25 that the Commission require the Sunrise project to

1 obtain a permit under the Migratory Bird Treaty  
2 Act and to show NEPA compliance.

3 The biological opinion will address  
4 those issues, will address issues specifically  
5 CURE cites related to the burrowing owl. You  
6 heard the testimony of staff witness Rick York,  
7 and you heard the testimony of the person who was,  
8 I believe Susan Jones, who was doing the  
9 biological opinion, that they had communicated  
10 throughout this process, and that the conditions  
11 of certification recommended by staff were that  
12 U.S. Fish and Wildlife Service had agreed with  
13 those conditions.

14 And nobody expects any difference  
15 between the biological opinion and what has been  
16 recommended here as conditions of certification.  
17 Again, requiring the biological opinion, a federal  
18 opinion prior to licensing, is not required.  
19 There's a high confidence that the biological  
20 opinion will reflect the Commission's conditions  
21 of certification.

22 With respect to the NEPA compliance,  
23 you've heard a member of the BLM Staff testify  
24 here that there is an environmental assessment  
25 taking place with respect to the right-of-way

1 grant for the Sunrise transmission line. So NEPA  
2 compliance has been sufficiently shown that it  
3 will be complied with. And there's no necessity  
4 that that be performed at this time. The  
5 Commission fully analyzed the transmission line.

6 In addition, we would point out that the  
7 biological opinion is not a NEPA-triggering event.  
8 What triggers NEPA in this case is the right-of-  
9 way, and you've heard from BLM, and you've heard  
10 staff testify as to the status of the  
11 environmental assessment.

12 HEARING OFFICER FAY: Didn't they also  
13 mention a migratory bird permit or something?

14 MR. GALATI: Yes, they did. And if one  
15 is necessary that will be identified in the  
16 biological opinion.

17 HEARING OFFICER FAY: And I believe that  
18 in any of these cases if the permit cannot be  
19 issued, the federal government can hold up the  
20 project, is that correct?

21 MR. GALATI: Correct. That concludes  
22 our rebuttal.

23 HEARING OFFICER FAY: Okay. Ms. Holmes.

24 MS. HOLMES: Thank you. I'll try to go  
25 through my notes sequentially. I'm not sure how

1 tied together this is going to be.

2 First of all, with respect to the  
3 condition of certification AQC-2, staff recommends  
4 that the Committee adopt it as staff has written  
5 it, and not include the limitation with respect to  
6 the hours of use and the horsepower of the  
7 equipment.

8 With respect to the comments made by  
9 Sunrise on the condition of certification dealing  
10 with biological resources and changing the --

11 HEARING OFFICER FAY: I'm sorry, I need  
12 to interrupt you. Is there no threshold  
13 limitation in the Elk Hills language?

14 MS. HOLMES: I have not read the Elk  
15 Hills language. But the staff person who drafted  
16 this proposed condition assured me that it was  
17 consistent with Elk Hills.

18 HEARING OFFICER FAY: Okay.

19 MS. HOLMES: I don't have the decision  
20 with me.

21 MR. GRATTAN: And that's the Elk Hills  
22 FSA, not the decision?

23 MS. HOLMES: Correct. With respect to  
24 the --

25 MS. POOLE: Can I interrupt there just

1 for a second, because the AQC-2 and -- well, the  
2 equivalent of AQC-2 in Elk Hills was modified  
3 during hearings. So, what's in the FSA is not  
4 what's currently proposed by staff.

5 HEARING OFFICER FAY: And I do, if I'm  
6 recalling correctly, I do think those qualifiers  
7 came from CURE, and the implication was that it  
8 came through their experience down in -- yeah --

9 MS. POOLE: I simply don't recall.

10 HEARING OFFICER FAY: Okay.

11 MS. HOLMES: And I'll just defer to the  
12 Elk Hills discussion on that.

13 HEARING OFFICER FAY: That's fine.

14 MS. HOLMES: With respect to conditions  
15 of certification BIO-10, I believe that Sunrise  
16 had proposed that the timing of the verification  
17 be changed to 60 days prior to project  
18 construction, rather than within one week of  
19 project certification. This condition adjusts the  
20 required compensation funds to Center for Natural  
21 Lands Management. And staff does not have a  
22 problem with that change.

23 Sunrise also raised some concerns about  
24 the condition in land use having to do with the  
25 provision of funds. Staff didn't recommend that

1 condition of certification, that came from the  
2 Committee, and we have no opinion as to whether  
3 the correct amount is in the Commission decision  
4 or is in the LaPaloma decision, or is based on the  
5 ratio of megawatts or acres or anything else.

6 Moving on to CURE's comments. They  
7 raised some issues having to do with the consent  
8 decree and the appropriate time at which this  
9 Commission should act.

10 Staff believes that it is appropriate to  
11 wait till the public comment period is completed,  
12 because the purpose of the public comment period  
13 is to take comment and potentially change the  
14 terms of the consent decree based upon those  
15 comments. So we do believe it is appropriate to  
16 wait till that occurs. We don't think it's  
17 necessary that it be entered in federal court as a  
18 final judgment, however. So, we're sort of  
19 splitting the baby here.

20 HEARING OFFICER FAY: What happens if  
21 the consent decree, as a result of public comment,  
22 changes the situation and makes the FDOC again  
23 invalid in the eyes of the federal government?

24 MS. HOLMES: You mean in other words the  
25 consent decree is not sufficient to insure

1 compliance, is that the condition you're raising?

2 HEARING OFFICER FAY: Right.

3 MS. HOLMES: Then I would imagine that  
4 the FDOC is still not valid because there is no --  
5 the certification of compliance is not valid.

6 HEARING OFFICER FAY: Therefore no  
7 impact from this Commission's point of view? No  
8 impact on the environment because no project,  
9 correct?

10 MS. HOLMES: Correct.

11 HEARING OFFICER FAY: And how is that  
12 different from the biological opinion which will  
13 be, is often rendered after licensing?

14 MS. HOLMES: The difference is that with  
15 respect to the biological opinion staff has been  
16 working very closely with U.S. Fish and Wildlife  
17 Service, and we're quite confident that the  
18 biological opinion is going to look very similar  
19 to our staff proposed conditions of certification  
20 that have now been incorporated into the PMPD. We  
21 don't expect any differences.

22 We're not very familiar with this  
23 process of EPA. This is the first time it's come  
24 up in any of the cases that I'm aware of. We have  
25 no idea how the resolution works. It may well be

1 that something changes as a result of the public  
2 comment that they receive, and they go back and  
3 they wish to change the conditions upon which  
4 compliance would be based.

5 And in my understanding, based on what  
6 EPA said at our hearing is, until that process is  
7 complete the DOC is not valid.

8 HEARING OFFICER FAY: I'm just recalling  
9 so many cases when the Commission was willing to  
10 let licensing go forward, even when questions were  
11 not fully resolved by the federal government. And  
12 sometimes even intervene to try to help resolve  
13 them, like in the Sutter case.

14 So, I'm just wondering why you feel the  
15 need that the full comment period had been  
16 exhausted before the Commission could rely on that  
17 consent decree.

18 MS. HOLMES: Because it's my concern,  
19 it's staff's concern that the certification of  
20 compliance, which is a prerequisite for the  
21 Commission to make an affirmative LORS finding, is  
22 not necessarily complete.

23 In other words, the process that USEPA  
24 has to go through at this point to determine that  
25 the other facilities owned by Texaco are in

1 compliance, or on a schedule for compliance,  
2 includes a public comment period.

3 And EPA has indicated that they need to  
4 go through this process in order for the FDOC to  
5 be valid.

6 That's the same reason why, as I  
7 understood it, the PMPD said that the Commission  
8 should not proceed with a final decision until  
9 USEPA's concerns are resolved.

10 I don't want to be in a situation of  
11 saying USEPA's concerns are resolved when the  
12 public comment period and their opportunity to  
13 respond to any public comments hasn't yet been  
14 finalized, and nonetheless base a decision on that.  
15 It negates the whole purpose and rationale for  
16 having public comment.

17 HEARING OFFICER FAY: Well, what about  
18 the public comment period for the PSD permit?

19 MS. HOLMES: For which?

20 HEARING OFFICER FAY: Why is that any  
21 different?

22 MS. HOLMES: For which?

23 HEARING OFFICER FAY: The PSD permit.  
24 The PSD permit can be appealed after the  
25 Commission acts, and then there's a right of

1 review, et cetera. All those are opportunities  
2 for the public to have input that the Commission  
3 apparently didn't care enough about to hold up the  
4 case until it occurred.

5 MS. HOLMES: Again, I think that the  
6 issue that we're concerned about is that we don't  
7 know how this issue is going to be resolved with  
8 USEPA with respect to the compliance.

9 With respect to PSD, based on our  
10 consultation with EPA Staff, we do have confidence  
11 that the PSD is going to look very much like --  
12 that the PSD is not going to be inconsistent with  
13 the conditions of certification that are contained  
14 in the PMPD.

15 HEARING OFFICER FAY: Okay. All right,  
16 I've belabored that enough.

17 MS. HOLMES: With respect to the water  
18 sampling issue and the DTSC memo that we've been  
19 talking about, first of all, staff did file an  
20 errata on Friday via email. So people should have  
21 received it about an hour after they received the  
22 staff comments, in which we recommended that the  
23 Committee direct Sunrise to provide the  
24 information specified in the DTSC memo to DTSC.

25 We are aware of the fact that Sunrise is

1 very interested in having its license, and our  
2 attempt in drafting the errata, perhaps we weren't  
3 as clear as we might have been, was to have the  
4 risk of delay fall only on the applicant's failure  
5 to provide the information.

6 In other words, if the applicant fails  
7 to provide the information to DTSC, then the  
8 Commission should not proceed with an affirmative  
9 decision, assuming the other issues with USEPA are  
10 resolved.

11 If, however, the applicant provides the  
12 information and DTSC simply doesn't provide the  
13 verification that the water is nonhazardous, then  
14 we would recommend going forward with  
15 certification with a post-decision condition of  
16 certification saying that they could not begin  
17 operation of the facility unless they have a  
18 finding from DTSC that the water was nonhazardous,  
19 or that they had a permit for treatment or  
20 disposal.

21 So, I guess it's a combination of what  
22 we said in the errata, and then we've now  
23 incorporated some of the language from Mr. Grattan  
24 earlier today.

25 So, again, the intent was to make sure

1       that Sunrise provides this information now.  If  
2       they do that, their license is not held up.  If  
3       DTSC is unable to act because of resource  
4       constraints or whatever, then we would, at that  
5       point, recommend that the Commission proceed to a  
6       decision with a condition subsequent.  But we'd  
7       rather wait to see Sunrise provide the information  
8       before we have the condition.  We believe that  
9       it's appropriate that they provide it as soon as  
10      possible.

11               HEARING OFFICER FAY:  And what's the  
12      weakness in Mr. Grattan's proposal?

13               MS. HOLMES:  Just that we think it's an  
14      important issue, and that if at all possible it  
15      should be resolved prior to the Commission's  
16      decision in the interests of full disclosure.

17               We believe it's possible certainly for  
18      Texaco to obtain this information.  I think our  
19      memo said within four weeks.  We actually think  
20      that's quite generous.  We think it could be one  
21      to two weeks.

22               HEARING OFFICER FAY:  And just for our  
23      procedural edification, when we notice a hearing  
24      and we have sworn witnesses from an agency, and  
25      they say this is fine, this is okay.  And the

1 Commission considers that the highest level of  
2 evidence and we rely on it.

3 Then what's appropriate to unravel that?  
4 An interoffice memo?

5 MS. HOLMES: From the same agency. I  
6 think in this case it is. I mean you have to  
7 weigh what you have in front of you.

8 In this case what you have is  
9 information indicating that the determination that  
10 Ms. Peebler made was based on samples that may not  
11 have been representative. Now this decision or  
12 determination was made by an employee of DTSC  
13 subsequent to the hearings. Ms. Peebler  
14 presumably didn't have access to this information  
15 at the time that she testified.

16 One of the things that we wanted to get  
17 at with our proposal was to be able to avoid the  
18 necessity of reopening the record. If Sunrise  
19 provides this information or Texaco provides this  
20 information, and it turns out that the water is  
21 nonhazardous, then I don't think there is any need  
22 to do so.

23 HEARING OFFICER FAY: Has it been nailed  
24 down in writing and on the record exactly how  
25 Texaco, on behalf of Sunrise, would provide this

1 information? Because my impression is that this  
2 softening device has lots of inputs and outputs.  
3 And if you -- and the issue involves sampling the  
4 wrong spot.

5 MS. HOLMES: I do believe that Sunrise  
6 or Texaco would need to consult with DTSC to find  
7 out exactly where the correct spots are.

8 HEARING OFFICER FAY: Obviously it  
9 doesn't help the applicant if they rush out and do  
10 some tests and DTSC says, no, that's --

11 MS. HOLMES: Nobody's recommending that.

12 MR. GRATTAN: I might add at this point  
13 that we have tried, through our consultant, to  
14 talk to DTSC on this, and we have not had much  
15 success.

16 We have not had much communications.  
17 We've had a bunch of unanswered, unreturned phone  
18 calls. And I'm smiling, but the frustration level  
19 was fairly significant.

20 Scott, you've had a little bit more  
21 intimacy with that. Can you --

22 MR. GALATI: Yes, even at one point DTSC  
23 had informed the consultant that they were working  
24 with the Energy Commission Staff to basically  
25 satisfy the concerns. And we didn't know how that

1 was going to be satisfied.

2 And so what we did, understanding that  
3 the Commission Staff has repeatedly said that this  
4 is such a highly technical area, that we want to  
5 rely on what DTSC has said, we don't want to make  
6 a call in a vacuum.

7 And so what the condition we drafted  
8 attempts to do is to provide DTSC the entire  
9 flexibility it needs. For example, the letter of  
10 the 15th asks for information in three paragraphs.  
11 Those are either/or paragraphs. And unless you  
12 understand the technical complexities of the  
13 softener, these three, one of them might be  
14 appropriate for this facility if communication  
15 with DTSC, if they understand how the facility  
16 operates.

17 And so what we tried to do is, by  
18 insuring that we would have to provide a letter  
19 from DTSC saying we've taken a look at it, in  
20 whatever form. This is not a formal request for  
21 this information. What this is is an internal  
22 memorandum saying, if you wanted me to do a  
23 particular type of analysis, which by the way we  
24 think is unrelated to waste characterization, I  
25 would need to have kind of this stuff.

1                   But it's not a request, I understand  
2                   your system, go sample here, do this many samples.  
3                   And so what we thought we would give DTSC the  
4                   entire flexibility. If we provided this  
5                   information now, I cannot see how we would not  
6                   get, from our friends over at the other end of the  
7                   table, a request to open up the record to evaluate  
8                   all that information. When we think none of it is  
9                   necessary.

10                   And if DTSC comes in and tells us what  
11                   we need to do, we certainly can do that. This is  
12                   no different than any other LORS condition that  
13                   says you must comply with LORS this way. And the  
14                   Commission is protected because this project will  
15                   not use that water, will not unless it has a  
16                   hazardous waste treatment or disposal permit for  
17                   the brine, or it's determined to be nonhazardous.

18                   It seems like it protects everybody here  
19                   with allowing DTSC to be the one in charge.

20                   MR. GRATTAN: And in the meantime, DTSC  
21                   has its own, if it's concerned about that system,  
22                   it has its own independent authority.

23                   HEARING OFFICER FAY: One concern that I  
24                   have is not to catch an applicant up against the  
25                   resource limitations of another agency. I mean I

1 think we have an indication that DTSC has limited  
2 resources.

3 They sent a witness once, and then after  
4 that, I mean if their concern was extreme they  
5 certainly didn't choose a very effective way to  
6 communicate it.

7 They didn't send somebody back saying we  
8 need to reopen the record. We need to counteract  
9 what this first witness said. They allowed an  
10 internal memo to drift into the Energy Commission.

11 Frankly, it's not very impressive that  
12 they made this a high priority. And it may be  
13 that it is important to them, and they don't have  
14 the resources.

15 But what Mr. Galati just said gives them  
16 a lot of time. If they take the sample as staff  
17 recommends, and again after thorough review and  
18 perhaps a little lobbying from, you know, other  
19 intervenors, they decide no, this didn't quite  
20 nail the testing we need. Then it's back again.

21 And maybe it would be better just to  
22 leave the flexibility where DTSC gets to decide  
23 the whole situation. We understand the machine  
24 now. We want you sample here, here and here, or  
25 we're going to sample in these spots.

1                   And then produce the results, which  
2                   would determine whether the project can go  
3                   forward.

4                   MS. HOLMES: Well, I think this is a  
5                   little bit different than a typical LORS condition  
6                   for the reason that DTSC's memo has raised some  
7                   concerns about whether or not there's a potential  
8                   for some hazardous water production as a result of  
9                   this project.

10                  Typically we don't have conditions of  
11                  certification when we don't know whether or not  
12                  there's a potential for a significant impact or  
13                  not. We like to nail that down during the  
14                  licensing process.

15                  Nonetheless, we are acutely aware of the  
16                  difficulty in getting DTSC to respond to requests  
17                  for assistance. I do think they have serious  
18                  resource constraints.

19                  And that's why what our attempt was to  
20                  not have DTSC's failure to respond hold up the  
21                  applicant's license. But to require that the  
22                  applicant provide some information, affirmative  
23                  evidence that it's trying to resolve this issue,  
24                  that it has provided information to DTSC, that it  
25                  has requested assistance in resolving it prior to

1 a Commission decision on the project.

2 HEARING OFFICER FAY: Just playing with  
3 this idea, is it better to have that kind of  
4 requirement that convinces the staff that the  
5 applicant is making its best efforts in doing  
6 stuff than to actually have DTSC finally determine  
7 this stuff is not hazardous. Or if it is, this  
8 applicant has to have a permit.

9 MS. HOLMES: No, we're talking about  
10 doing both. We're talking about requiring that  
11 Texaco provide the information to DTSC, or at  
12 least attempt to find out what information DTSC  
13 needs to resolve this issue prior to a Commission  
14 license.

15 If DTSC hasn't acted by the time of a  
16 Commission decision, there would be a condition  
17 subsequent which would look something like what  
18 Sunrise proposed this morning and said that they  
19 can't use the softened produced water unless they  
20 have received a determination from DTSC that it's  
21 not a hazardous waste, or they have a treatment or  
22 disposal permit.

23 MR. GALATI: If I could add one bit of  
24 technical clarification to that letter of the  
25 15th. It did make one thing eminently clear --

1 MR. GRATTAN: Memo.

2 MR. GALATI: The memo. This did make  
3 one thing eminently clear, and that was the inlet  
4 which, just to refresh your memory, the water  
5 comes in, goes to a softener, then comes out.  
6 That's what Sunrise uses.

7 The inlet and outlet were appropriately  
8 sampled. The letter says that. Appropriate  
9 locations.

10 The only thing is the regeneration brine  
11 which goes to Valley Waste. We drafted a  
12 condition -- the softened produced water is  
13 nonhazardous, has not been questioned. The  
14 regeneration brine is the only thing that, without  
15 understanding the technical, how it operates, may  
16 lead someone to a conclusion that it may not be a  
17 representative sample.

18 We've drafted a condition that deals  
19 with the regeneration brine. The softened  
20 produced water is nonhazardous.

21 HEARING OFFICER FAY: And, Ms. Holmes,  
22 do you have a suggestion, if the Committee were to  
23 agree with staff's recommendation, then what type  
24 of evidence would be offered in front of the  
25 Commission prior to licensing?

1                   I mean obviously if DTSC sent a letter  
2                   saying we got this sample and it's exactly right,  
3                   that's not a problem. But, based on our  
4                   experience, I could see silence at the other end.  
5                   And then what does the applicant do?

6                   MS. HOLMES: Well, that's precisely why  
7                   I want to have the event that allows the  
8                   Commission to go forward to be the provision of  
9                   data to DTSC.

10                  HEARING OFFICER FAY: You mean just  
11                  evidence that the applicant has taken it and  
12                  submitted it?

13                  MS. HOLMES: Correct, and requested  
14                  resolution, yes. And then if DTSC fails to act in  
15                  a timely manner there would be a condition of  
16                  certification, I think we would want more  
17                  specificity than what Sunrise has proposed, but  
18                  along the lines of the draft condition you saw  
19                  this morning.

20                  MR. GRATTAN: What this is, if I can, is  
21                  using the Commission's process and the threat of  
22                  halting the Commission's decision to require an  
23                  applicant to get a sample from a third party in  
24                  response to a request that hasn't been made yet.

25                  This is not a good place for the

1 Commission to go. We'd be pleased to give a  
2 status report to the Commission by the time it  
3 issues its final decision, a status report as to  
4 the communications and sampling, if any is done,  
5 with DTSC.

6 But not yet another precertification  
7 condition on the processing of an application be  
8 imposed on the sampling.

9 HEARING OFFICER FAY: Okay, any  
10 questions on that particular issue? All right.

11 MS. HOLMES: Moving on, with respect to  
12 CURE's comments about the DTSC letter on the phase  
13 two ESA, we agree with Sunrise. We had thought  
14 actually that our conditions of certification  
15 incorporated the concerns that DTSC has raised.

16 However, if the Committee is not  
17 comfortable with that, we do not have a problem  
18 with incorporating the DTSC recommendation  
19 specifically into conditions of certification.

20 We were under the impression that they  
21 were included in the general language of the  
22 conditions.

23 Moving on to the question of the  
24 acrolein emissions, after the -- since we're  
25 dealing with unsworn testimony, after CURE

1 provided a copy of the Air Resources Board  
2 advisory to us, staff spoke with some staff people  
3 at the Air Resources Board who worked on this  
4 issue. And asked, for purposes of future cases,  
5 what staff should be doing with this, and how to  
6 respond to the advisory.

7 The person staff spoke to said there is  
8 no factor that you should multiply by to reach a  
9 result. It's not appropriate.

10 There is considerable variation in the  
11 data that he has about the amount of degradation,  
12 and therefore he does not recommend multiplying by  
13 any specific factor. This is consistent, I think,  
14 with what Sunrise was saying earlier.

15 I think what this does is it turns the  
16 acrolein question, or the acrolein analysis into a  
17 qualitative analysis, as opposed to a quantitative  
18 analysis. That's, in fact, what ARB has  
19 recommended that we do.

20 In doing that we'd point out that there  
21 already is evidence in the record that the acute  
22 toxicity for acrolein, the REL level, is based on  
23 mild adverse effects. And the extrapolation, as I  
24 recollect from the evidence in the record, was a  
25 factor of 60 to reach the result that they

1 reached.

2           So, that would certainly be something  
3 that the Committee would want to consider in  
4 making, in having a qualitative discussion of the  
5 acrolein issue.

6           With respect to CURE's comments on the  
7 soot filters and AQC-2, and the discussion about  
8 the difference between infeasible and unsuitable,  
9 I don't see significant differences between their  
10 proposed language and our language except that we  
11 do like having a language in there about risk to  
12 the public. That's in there.

13           Also, we don't think it's necessary to  
14 have someone appointed by the vendor to evaluate  
15 the suitability of the soot filters.

16           And I think that concludes the rebuttal.

17           HEARING OFFICER FAY: But, given that, I  
18 have to admit I thought Ms. Poole had a point,  
19 that this is a new technology, and just because  
20 someone has a license from the State of  
21 California, doesn't mean that they're familiar  
22 with that particular aspect of mechanical  
23 engineering.

24           Is there a way that we could prefer or  
25 somehow indicate that familiarity with the

1 technology is important criteria. If we want this  
2 person to be making the call, it seems like they  
3 should both be a qualified engineer and someone  
4 familiar with --

5 MS. HOLMES: Perhaps the language of the  
6 condition reflects the bias of the engineer who  
7 wrote it towards the ability of other engineers to  
8 understand these issues.

9 I have not considered that issue and I  
10 don't know. It is possible that -- I think what  
11 you're concerned about is both independence and  
12 technical familiarity.

13 HEARING OFFICER FAY: Yeah, --

14 MS. HOLMES: And off the top of my  
15 head --

16 HEARING OFFICER FAY: -- the applicant's  
17 concerned about advice from a vendor who has their  
18 own economic interest. But obviously, if we get  
19 an independent third party, that third party has  
20 to be able to make an informed judgment.

21 MS. HOLMES: Right. Off the top of  
22 my -- it sounds like a good idea, but off the top  
23 of my head I don't have proposed language.

24 HEARING OFFICER FAY: And that's it?

25 MS. HOLMES: That's it.

1                   HEARING OFFICER FAY: Okay. You're not  
2 going to like this, but the Committee wants to  
3 take a lunch break at this time. And so we're  
4 going to break for an hour and 15 minutes, and  
5 that will get us back here at five after one.

6                   Mr. DeCuir has a very brief comment as  
7 we pack up.

8                   MR. DeCUIR: Yes. I was just going to  
9 ask if any intervenor, or the applicant, a party,  
10 or any Member of the Committee had any questions  
11 that went to the issues that TANC is interested  
12 in, transmission system engineering.

13                   And if not, I wouldn't return in the  
14 afternoon.

15                   HEARING OFFICER FAY: Well, you've heard  
16 the applicant's reaction.

17                   MR. DeCUIR: I've heard the applicant's.  
18 We disagree.

19                   HEARING OFFICER FAY: Staff didn't say  
20 anything about it.

21                   MS. HOLMES: Staff agrees with the  
22 applicant.

23                   HEARING OFFICER FAY: Okay. And CURE  
24 hasn't weighed in on that.

25                   MS. POOLE: We have no issues.

1                   MR. DeCUIR: All right, well, thank you  
2 very much. Have a good lunch.

3                   HEARING OFFICER FAY: Sounds like you're  
4 out. Okay.

5                   (Whereupon, at 12:00 noon, the  
6 conference was adjourned, to reconvene  
7 at 1:05 p.m., this same day.)

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AFTERNOON SESSION

1:05 p.m.

HEARING OFFICER FAY: All right, we'll ask Ms. Poole if she's got some rebuttal.

MS. POOLE: Thank you, I do.

Let me start by addressing some of the air quality issues. One of the issues that you raised, Mr. Fay, was how is this different, how is what EPA is doing here to resolve the problems with the final DOC different from the biological opinion and other federal agency decisions.

And I think the difference here is that nothing prevents this project from going forward and beginning construction in this case, except the Energy Commission license. Because the Energy Commission gets the final sign-off on the DOC, whereas in some of those other situations the project can't begin construction until it has its federal biological opinion and its NEPA documents and some other permits.

I also just wanted to point out something in EPA's May 16th letter -- I'm sorry, not their May 16th letter -- their earlier letter, Mr. Grattan read a portion of this letter about reaching an agreement on the terms of a consent

1 decree.

2 EPA goes on in that letter to say that,  
3 quote, "Any final binding settlement is subject to  
4 approval by the appropriate officials in EPA and  
5 the U.S. Department of Justice, as well as to  
6 public notice and comment before entry by a  
7 federal district court." So it's clear that EPA  
8 sees that all of these steps have to be gone  
9 through before the settlement is final and binding  
10 and enforceable.

11 As far as the PSD permit goes, the  
12 Commission does not typically, as I understand it,  
13 require that the PSD permit be finalized before it  
14 reaches a licensing decision. However, I think  
15 this case is a little bit different.

16 Anybody who has been involved in these  
17 recent projects is aware that EPA has made it very  
18 clear that they're considering modifying BACT  
19 levels for this and similar projects, based  
20 primarily upon the SCONOX technology.

21 And given this uncertain state of  
22 affairs and the fact that BACT levels may be in  
23 flux, and the other issues that have been raised  
24 by EPA about the data, we do think that the Energy  
25 Commission should wait in this case, and see what

1 the PSD permit looks like. Because it could have  
2 a significant impact on many different aspects of  
3 the project.

4 I've seen Mr. Grattan raise the issue of  
5 the PM10 offsets, which we addressed in our  
6 comments. The Energy Commission record reflects  
7 that EPA does not believe that those offsets  
8 comply with federal law. And there hasn't been  
9 any evidence offered that the concerns that EPA  
10 had on those offsets have been resolved. So we  
11 think that that's still unresolved questions, and  
12 those offsets don't comply with LORS.

13 Let me turn to water. I find it  
14 astounding that the applicant has sat here today  
15 with a straight face and said that CURE is raising  
16 this issue as a delaying tactic.

17 As the Committee well knows, we have  
18 been trying to resolve the issue of whether the  
19 project's water source and wastewater are  
20 hazardous for a year, and we've repeatedly been  
21 stonewalled. And DTSC is finally turning its  
22 attention to this. And the applicant, I believe,  
23 has many more of the cards than it's acknowledging  
24 that it holds, and it can resolve this issue. And  
25 it hasn't done so for a year, so far. And the

1 Commission should wait until DTSC decides one way  
2 or the other whether the project's feedwater and  
3 wastewater are hazardous.

4 It's not quite as simple as the  
5 applicant makes it out, that if it turns out these  
6 water sources are hazardous, they just simply get  
7 a permit. There are other impacts that could be  
8 involved.

9 For example, if the feedwater is  
10 hazardous, that could have impacts on toxic  
11 emissions from the project which haven't been  
12 considered.

13 So, again, that's why we think this is a  
14 different question than some of the other LORS  
15 questions where the Commission just defers to  
16 another agency to satisfy its own issues  
17 independent of the Energy Commission's process.

18 On the off-site worker impacts issue, I  
19 believe Mr. Galati said that it's absolutely clear  
20 that there will be no ammonia emissions associated  
21 with this project without a catastrophic event.

22 Well, as I read the paper this morning  
23 while drinking my coffee, there was a story about  
24 an anhydrous ammonia tanker spill on I-5 near  
25 Fresno yesterday. These accidents occur. And the

1 relevant point is that the workers in the oil  
2 field aren't protected from ammonia or anhydrous  
3 ammonia because there's no other sources of it in  
4 the oil field, as evidenced in the record. And so  
5 OSHA and NIOSH and other standards don't protect  
6 those workers from those exposures.

7 As far as hazardous materials go, if the  
8 applicant is committed to installing the  
9 requirements that it said it would install, like  
10 check valves and I think there are some other  
11 alarm systems, then there's no reason not to  
12 require those as a condition of certification.

13 They have argued that they're  
14 enforceable under the project description section.  
15 Well, I think that's questionable. And the  
16 Commission should make it very clear that those  
17 are enforceable requirements by laying them out in  
18 a condition of certification.

19 With regard to the question about the  
20 appropriate person to monitor for worker safety  
21 issues, and the concerns that DTSC has raised  
22 about a person needing both familiarity with  
23 worker health and safety, and remediation issues,  
24 whether that's one person or two people doesn't  
25 really matter.

1           But the point is that if it's two  
2 people, both people have to be on site during all  
3 earth-moving activities. That's what DTSC  
4 recommends. And that's not currently required in  
5 the conditions of certification.

6           As for biology, there's no dispute that  
7 the project has to have a permit under the  
8 Migratory Bird Treaty Act. If that's covered in  
9 the biological opinion, that's great. But that  
10 doesn't change the fact that it is required, and  
11 the Energy Commission should insure that it's  
12 obtained prior to construction beginning.

13           I think that's all I have to address  
14 unless there's some questions from the Committee.

15           PRESIDING MEMBER MOORE: I don't have  
16 any questions at this point. Commissioner  
17 Pernell, do you have any?

18           COMMISSIONER PERNELL: No.

19           PRESIDING MEMBER MOORE: Well, let's  
20 make sure that everyone's satisfied with the  
21 information that's going around here.

22           Let me just start, then, back at the  
23 beginning with Mr. Grattan coming up with a more  
24 scientific method of approving the -- or  
25 suggesting of parks and lighting district fund

1 than we might have had in the report. And using a  
2 proportional ratio of money to trying to address  
3 the need.

4 Novel, and I appreciate it. Keep in  
5 mind that the objective here was to try and  
6 benefit the community, and to try and do something  
7 that is constructive and allows the community to  
8 feel better about the future, if you will. And  
9 you are a long-term player in that community,  
10 should this plant succeed. I mean clearly this  
11 will be there longer than many of the structures  
12 that currently exist.

13 So, we struggle with trying to make sure  
14 that something good comes about without trying to  
15 penalize anyone.

16 Frankly, as I look at the amount of  
17 money that is pledged, I'm not sure that it will  
18 be sufficient to accomplish something that's  
19 meaningful. I don't know that the number that we  
20 originally suggested was more relevant, because  
21 frankly, we didn't go out and do the field  
22 research to establish it.

23 But, I guess I would put this back to  
24 you. Is there anything more flexible that we  
25 could put in in terms of language that would not

1 be penalizing, but would still accomplish the  
2 goal, which was pretty transparent, to make the  
3 community a little more attractive and safer,  
4 given the new construction and new activity that  
5 would take place?

6 MR. GRATTAN: First, Commissioner, would  
7 it be acceptable to the Committee that the range  
8 of options not be limited to lighting?

9 PRESIDING MEMBER MOORE: Oh, no, in fact  
10 if my remarks weren't clear, then I was really  
11 applauding what you did. I thought that that  
12 was --

13 MR. GRATTAN: Yeah, okay.

14 PRESIDING MEMBER MOORE: -- novel, and  
15 the right thing, to expand it out that way. Yes.  
16 In fact, if I have any regrets in this, it is  
17 simply that the County wasn't more creative in  
18 terms of this. I would think that they would want  
19 to be more responsive to their constituents. So  
20 that surprised me. So, yes, I thought that was a  
21 good step.

22 MR. GRATTAN: And your remaining  
23 question was with flexibility with --

24 PRESIDING MEMBER MOORE: How can we  
25 allow or institute some flexibility in this so

1 that the outcome is favorable, but we don't  
2 unfairly penalize the applicant, should this go  
3 ahead, in terms of money?

4 I'm not trying to institute a bidding  
5 war. That's not my intent.

6 MR. GRATTAN: We could live with a  
7 condition that would allow us to come up with a  
8 plan, jointly agreed upon by the County, and maybe  
9 not put a -- let us, you know, let us roll up our  
10 sleeves and work out a good plan and negotiate it  
11 out. We could remove the ceiling from there as  
12 long as we get some flexibility, you know.

13 PRESIDING MEMBER MOORE: Okay, well,  
14 we'll take that under advisement, but that sounds  
15 to me like a --

16 MR. GRATTAN: Okay, and we'd also --

17 PRESIDING MEMBER MOORE: -- a pretty --

18 MR. GRATTAN: -- if there is an existing  
19 organization there, we'd love -- we haven't found  
20 one, honestly.

21 PRESIDING MEMBER MOORE: Well, I was  
22 going to suggest that we get a second power plug  
23 in the little meeting hall.

24 (Laughter.)

25 PRESIDING MEMBER MOORE: Trying to run

1 the entire public hearing off of one power socket  
2 was a little troubling.

3           So I don't know that there really is an  
4 organization there, but, counselor, you  
5 understand, this is a poor community. And while  
6 you're going to be potentially injecting a  
7 tremendous amount of money in the community, it  
8 may not all trickle down to the folks who are  
9 already there. And it seems to me we need to take  
10 them into account as much as we can, within the  
11 limits that we can. Thank you.

12           I have an additional question, and  
13 perhaps it goes to Ms. Poole, I'm not sure. And  
14 that is in terms of the acrolein, it was mentioned  
15 earlier in this proceeding today, that there were  
16 rulings on this from CARB. And it seemed to  
17 suggest that there was an alternative out there,  
18 or some other surrogate for it. And I wasn't  
19 really clear, and I probably should have asked my  
20 question at that point.

21           And obviously we had extensive testimony  
22 on that one topic. But is there some other ruling  
23 that you wanted us to be aware of?

24           MS. POOLE: Only the CARB letter, which  
25 we cited earlier, which came in post-hearings.

1                   PRESIDING MEMBER MOORE: Oh, that's the  
2                   stuff that we weren't sure was docketed.

3                   MS. POOLE: That's the official -- that  
4                   was docketed, yeah. And that letter confirms that  
5                   the current emission factor does not accurately  
6                   quantify acrolein emissions.

7                   We have also been talking to CARB about  
8                   this, and understand that they're in the process  
9                   of deciding what to do next, short of going  
10                  through a complete adjustment of the emission  
11                  factor in the CATEF database, what they will  
12                  recommend people do in the meantime. And we  
13                  understand that they're still working on that.

14                  PRESIDING MEMBER MOORE: Okay. With  
15                  that, perhaps, and since we didn't have any other  
16                  Committee questions, let me just -- as Mr. Fay  
17                  indicated when we started this, this is an  
18                  informal proceeding, and we want to make sure that  
19                  everyone's concerns are at least on the table so  
20                  we're aware of them.

21                  So why don't we just go once more around  
22                  the table and ask if there are questions about  
23                  anything you've heard today and/or materials that  
24                  are in the PMPD.

25                  I should state that it is our intention

1 to issue a revised PMPD, as opposed to one with  
2 errata. So, literally when you see this again it  
3 will be out with a tasteful new cover, better  
4 colors, --

5 (Laughter.)

6 PRESIDING MEMBER MOORE: And so we're  
7 really open to the whole range of comments about  
8 that. We don't want to artificially restrict  
9 this.

10 HEARING OFFICER FAY: Before they do  
11 that, I'd just like to include in the request, the  
12 applicant asked sometime earlier what the deadline  
13 sequence was from this point on until the  
14 Commission acts. I believe I informed them that  
15 there is not a lock-step process.

16 So, if you have an opinion about when  
17 the remaining material, especially evidence of a  
18 consent decree, et cetera, should be entered into  
19 the record, in terms of the publication of the  
20 revised PMPD, we'd like to hear your views on  
21 that.

22 That specific point I'd like addressed.

23 MR. GRATTAN: What we would request when  
24 the communication from EPA come in, that you take  
25 official notice of it. That you need not convene

1 an evidentiary hearing on it.

2 And the revised PMPD, I think we've told  
3 you that we expect a signed document between two  
4 and four weeks -- excuse me just a second.

5 (Pause.)

6 MR. GRATTAN: So, you know, from our  
7 perspective I would figure the Commission would  
8 have a month for us to come up with that document.

9 HEARING OFFICER FAY: Before the revised  
10 PMPD comes out?

11 MR. GRATTAN: Yes, we'd like to get it  
12 in before the revised PMPD.

13 MR. GALATI: We think it would be  
14 simpler than to have a revised PMPD issued with  
15 the same recommendation about a consent decree,  
16 and then try to take evidence or handle it at a  
17 Commission, full Commission meeting. It would be  
18 simpler if the revised PMPD came after.

19 PRESIDING MEMBER MOORE: Incorporated it  
20 is what you're saying?

21 MR. GALATI: Yeah.

22 PRESIDING MEMBER MOORE: Yes.

23 HEARING OFFICER FAY: Yeah. Right.

24 Well, in all these areas the closer the document  
25 that the Commission considers is to the final

1 action, the simpler it is for the public, for the  
2 Commission.

3 MR. GRATTAN: We're all for that; --

4 HEARING OFFICER FAY: Especially on a  
5 big question.

6 MR. GRATTAN: -- and for the applicant.

7 HEARING OFFICER FAY: Yes, and  
8 especially on a big question like acceptability or  
9 not. Obviously, if the trigger is the consent  
10 decree, its existence, then you want to have that  
11 established in writing in the revised decision  
12 rather than revised decision characterize the way  
13 the PMPD is, and more loose ends brought in.

14 MR. GALATI: We'd be willing to give you  
15 a status report, let's say, in the next couple of  
16 weeks to let you know what the progress is.

17 HEARING OFFICER FAY: It also helps us  
18 because, as you know, there's a lot of other cases  
19 going on.

20 MR. GRATTAN: Yes.

21 HEARING OFFICER FAY: If we drop  
22 everything to get this revision out, then somebody  
23 else suffers. And if it's not necessary, we'd  
24 rather not do that.

25 COMMISSIONER PERNELL: I have a, I think

1       it's on this issue, more of a clarification  
2       question for staff. You mentioned the public  
3       comment, or the publisher comment on, I guess, the  
4       consent decree. How does that fit into the  
5       timetable in the midst in terms of what we're  
6       talking about?

7               MS. HOLMES: I believe, but I'm not  
8       certain, there's a 30-day public comment  
9       period -- excuse me, 60 days according to the  
10      applicant, --

11             MR. GRATTAN: If --

12             MS. HOLMES: Go ahead.

13             MR. GRATTAN: Here's how we understand  
14      it to work, which is why we're recommending  
15      strongly against the condition that a final  
16      judicial decree be entered into the record as a  
17      condition of licensing.

18             And it is a 60-day public comment  
19      period. And then the federal judge goes off and  
20      writes his decision. That federal judge, whoever  
21      he or she may be, may be a quick decision-writer  
22      and it may be a high priority, or that federal  
23      judge may not be a quick decision-writer and this  
24      may be a low priority.

25             So, Commissioner Pernell, we're talking,

1 based at least upon some recent experience, six  
2 months from the date there's a signed agreement.  
3 And we haven't got a signed agreement yet.

4 MS. POOLE: May I clarify something  
5 here?

6 COMMISSIONER PERNELL: Just one of --  
7 excuse me a moment -- one of my concerns is that  
8 it doesn't appear that the Commission is not being  
9 sensitive to the public, if there's a public  
10 comment period. And I'm not suggesting that  
11 everything just go on hold, but certainly it has  
12 to be something that allows the public to have  
13 comment. And that at some point that the public  
14 feels that that comment is at least worthwhile.

15 In other words, if we approve this  
16 without public comment, then there's no need for  
17 public comment. And I don't know how the public  
18 reacts to that, especially those folks that are  
19 around the project site.

20 MR. GRATTAN: Commissioner, this  
21 is --

22 COMMISSIONER PERNELL: Now, maybe I'm  
23 not understanding how the process works, --

24 MR. GRATTAN: This is what we've had, a  
25 public process here, on the Sunrise project. And

1       this has been going on for about a year and a  
2       half.

3                   COMMISSIONER PERNELL:  That's longer  
4       than I've been here, so that's why I'm asking  
5       these questions.

6                   MR. GRATTAN:  And what we're talking  
7       about is a subsidiary process whereby the  
8       Commission can become convinced that the federal  
9       government is not going to object to LORS  
10      compliance.

11                   And this has nothing to do with the  
12      cogeneration project before you.  It has to do  
13      with the oilfield operations it serves, and their  
14      existing operations.

15                   COMMISSIONER PERNELL:  Well, let me just  
16      understand.  Is that your concern?  I mean you  
17      raised the public comment period.

18                   MS. HOLMES:  Right, we're concerned  
19      about several things.  One is that it does appear  
20      to be cutting off the reason for public comment if  
21      you issue a final decision before the public  
22      comment period is over.

23                   Secondly, the DOC is required as part of  
24      the Commission's license, a valid DOC.  And we're  
25      concerned that there are maybe questions raised

1 about the validity of that DOC if the process  
2 hasn't gone through both the review within EPA,  
3 which has to happen, and the Department of  
4 Justice, and the public comment period before the  
5 Commission issues its decision.

6 We share Sunrise's concern about the  
7 length of time which it can take to have a final  
8 decree entered into judgment, and that's why we  
9 were proposing to, in essence, as I said before,  
10 split the time in half, and say we want the  
11 process to be complete, we want the comments from  
12 the agencies that are required by law to comment,  
13 and we want the public comment period to be  
14 complete.

15 Once that happens I think we'll have a  
16 reasonable certainty that that DOC in this  
17 decision is valid.

18 COMMISSIONER PERNELL: So, what's the  
19 timing on that? I'm not talking about the judge  
20 writing its opinion. You're saying the process  
21 completed, is the opinion of the --

22 MS. HOLMES: Right, I believe -- I was  
23 under the impression it was 30 days. They have  
24 informed me that it's, in fact, 60 days after they  
25 reach an agreement.

1                   MR. GALATI: Commissioner Pernell, if I  
2                   could just walk you through the process a little  
3                   bit more clear.

4                   The terms of the consent decree, first  
5                   of all, the public comment period we're talking  
6                   about here is on the terms of the consent decree.  
7                   The terms of the consent decree deal with whether  
8                   or not the oilfield operator, at some time ago,  
9                   should have vapor recovery on their wells in the  
10                  Kern River Oilfield some 40 miles away from the  
11                  project.

12                  The second part has to do with tanks in  
13                  the Midway Sunset field that are also some  
14                  distance from the project. Neither one of those  
15                  are associated in any way with the Sunrise  
16                  project. The wells that we've discussed here,  
17                  which the public has had comment period, the new  
18                  and existing wells, have been evaluated and the  
19                  public has had an opportunity to comment, as well  
20                  as will have another opportunity to continue to  
21                  comment on the revised PMPD if they so choose.

22                  The reason, because Sunrise is  
23                  associated, affiliated with Texaco, the DOC had to  
24                  show certification of compliance. Right now  
25                  what's happening is members of TCI and TPI, which

1 operate in the oil field, are working out the  
2 terms of how do they solve this issue of being in  
3 compliance or not being in compliance.

4 That then goes up the chain of the  
5 Department of Justice and up the chain of EPA for  
6 final approval on what the agreement is.

7 The March 31st letter that they sent to  
8 the Commission, since EPA was the one who raised  
9 these comments, we ought to let EPA be the one to  
10 determine whether they should be disregarded.

11 And by EPA committing to this consent  
12 decree, if CURE or anyone else were to comment on  
13 that consent decree, EPA considers those comments.  
14 If they find those comments to be substantial,  
15 they have the authority to request that additional  
16 things be done.

17 What I'm trying to get at here is if  
18 anything happens to the consent decree it likely  
19 will require more work on the part of TCI. In  
20 order to be in compliance, TCI, you have to do A,  
21 B and C. If public comment says you have to do D,  
22 too, if EPA agrees you have to do D, then fine,  
23 Texaco has to do D.

24 The question here is EPA says A, B and C  
25 are good enough. They're the ones who questioned

1 the DOC. They ought to be the ones to say A, B  
2 and C are good enough.

3 And what we're proposing is just that.

4 COMMISSIONER PERNELL: All right, let me  
5 ask you a question, a more simplified version of  
6 where my concerns are.

7 And that is the public comment period  
8 that we're talking about, does it directly affect  
9 the project that's before us?

10 MR. GALATI: No. It does not directly  
11 affect the project. It is not comment on the  
12 project. And if the judge were to approve  
13 something other than the consent decree entered  
14 into, if EPA --

15 MR. GRATTAN: Just to say, it will not  
16 change one single certification of compliance, one  
17 single condition of compliance, of which there are  
18 40-odd in air quality.

19 MS. POOLE: Commissioner, it does affect  
20 the project, which is why it's an issue here  
21 before us. It affects the project because in  
22 order to get a valid air permit, the Clean Air Act  
23 says all other Texaco subsidiaries and affiliates  
24 in the state can't be violating their other clean  
25 air permits.

1                   What's going on here is that EPA found  
2                   that Texaco was violating its clean air permits.  
3                   They're trying to resolve those issues now. Until  
4                   those are resolved this project doesn't have a  
5                   valid air permit.

6                   So, the question is at what point do  
7                   those issues become finally resolved. And it's  
8                   laid out, plain as day, in section 113 of the  
9                   Clean Air Act. It says that EPA will come to an  
10                  agreement with Texaco on these issues. Before  
11                  that's submitted to a court and before it's final,  
12                  it's got to go out for public comment. Because  
13                  the public might raise some things that EPA didn't  
14                  think about.

15                  Only then, after those public comments  
16                  are considered, does EPA finally approve the  
17                  consent decree. Then it goes to a court.

18                  And the way these things work is that  
19                  EPA files a complaint and the consent decree on  
20                  the same day with the federal court, and the judge  
21                  doesn't have to go through a trial or write an  
22                  opinion. All the judge does is stamp the things  
23                  entered.

24                  So, that part of it doesn't take a long  
25                  time.

1                   COMMISSIONER PERNELL: All right, I  
2                   don't want to belabor this. I just, for the  
3                   record my concern is that we don't want, and I  
4                   don't think anyone up here wants the public not to  
5                   have its say on this project and any other  
6                   project.

7                   And to the extent that that's not  
8                   happening, but it sounds like that in terms of the  
9                   project that there's been public comment on the  
10                  project. But this is public comment on the  
11                  consent decree that EPA and Texaco have.

12                  MS. POOLE: But it does directly affect  
13                  this project because until those issues are fully  
14                  resolved, this project doesn't have a valid air  
15                  quality permit.

16                  PRESIDING MEMBER MOORE: We'll take five  
17                  minutes and be back on the record at ten till.

18                  (Brief recess.)

19                  PRESIDING MEMBER MOORE: We've been off  
20                  the record to have a caucus up here and discuss  
21                  some of the testimony that we've been hearing.

22                  So, let me return back to the questions  
23                  that were coming up about our procedure. So, Mr.  
24                  Grattan, were you still --

25                  MR. GRATTAN: Was I still --

1                   PRESIDING MEMBER MOORE:  -- asking  
2                   questions about --

3                   MR. GRATTAN:  Yes.  I believe the last  
4                   statement that I made was that this final consent  
5                   decree is, irrespective of what it says, is not  
6                   going to change a single condition of  
7                   certification in the proposed license.

8                   I also have to remind you, at the risk  
9                   of being tedious, what EPA -- we're in this, we're  
10                  all discussing this because USEPA entered our  
11                  process, this process back in January.  And what  
12                  EPA says in their March 31st communication, and I  
13                  acknowledge, counselor, that they said consent  
14                  decree does not become final until after  
15                  circulation and entrance of a judicial decree, but  
16                  what they said was since that evidentiary hearing,  
17                  back in January, Texaco provided additional  
18                  information to EPA.  Had several meetings with EPA  
19                  permitting and enforcement staff.

20                  As a result of these meetings EPA and  
21                  Texaco have reached an agreement in principle,  
22                  resolving various matters concerning Texaco's  
23                  Midway Sunset and Kern River Oil Fields.

24                  This agreement in principle addresses  
25                  the concerns that we expressed to the CEC in our

1 January 11th letter and at the January 13th  
2 meeting.

3 As long as we are able to reach an  
4 agreement with Texaco on the terms of the consent  
5 decree, on the terms of this consent decree,  
6 reflects this agreement in principle.

7 EPA does not intend to further question  
8 the district's DOC issued to Sunrise. That is how  
9 EPA proposes to resolve the LORS question,  
10 compliance with LORS. Reaching an agreement on  
11 the terms of the consent decree.

12 I submit that this Commission ought not  
13 to be more strict in this case than the federal  
14 agency which is raising the LORS issue.

15 PRESIDING MEMBER MOORE: Ms. Holmes, any  
16 other questions or clarifications that you'd like  
17 to get on the floor here?

18 MS. HOLMES: Not at this time, no.

19 PRESIDING MEMBER MOORE: Ms. Poole?

20 MS. POOLE: Nothing further.

21 MR. GRATTAN: I have something. I would  
22 submit again we are up against potentially a six-  
23 to seven-month process. And counsel for CURE has  
24 raised the issue that the Energy Commission is at  
25 risk because this project could begin construction

1 without the public participation in the consent  
2 decree.

3 We would agree to a condition in the  
4 final decision that we would not begin  
5 construction until there was actually a judicial  
6 decree, a consent decree in hand, and, you know,  
7 brought before the Commission.

8 That should take care of the public  
9 participation issue. And that should also take  
10 care of any idea that the Commission and the  
11 Commission's permit might be at risk.

12 PRESIDING MEMBER MOORE: All right.  
13 Well, barring any other comments, I'll assure you  
14 that we're taking everything we've heard into  
15 account closely. And we're going to embark on  
16 preparing the revised PMPD.

17 And we'll take official notice of any  
18 communication from EPA when it comes. Publish  
19 that. Notify every one of the parties.

20 HEARING OFFICER FAY: I just want to be  
21 sure that I understand your last statement. And  
22 that is that if the process could move forward at  
23 the CEC, applicant would agree to a condition that  
24 would prohibit the start of construction until the  
25 consent decree was made final, in other words

1 after the comment period and was filed by federal  
2 court?

3 MR. GRATTAN: That's correct. If we  
4 could proceed to an affirmative decision of the  
5 full Commission with this condition in it.

6 PRESIDING MEMBER MOORE: That's your  
7 preference is what you're saying?

8 MR. GRATTAN: That is what we are  
9 offering.

10 HEARING OFFICER FAY: In other words, no  
11 construction --

12 MR. GRATTAN: Our preference would be an  
13 unconditional decision based upon a communication,  
14 but this is --

15 HEARING OFFICER FAY: -- without this.

16 PRESIDING MEMBER MOORE: Understood.

17 HEARING OFFICER FAY: Thanks.

18 PRESIDING MEMBER MOORE: All right.

19 MR. GRATTAN: Thank you.

20 PRESIDING MEMBER MOORE: With that, any  
21 other points to raise? Housekeeping?

22 Okay, we're adjourned.

23 MR. GRATTAN: Thank you very much.

24 (Whereupon, at 2:00 p.m., the conference  
25 was adjourned.)

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of June, 2000.

DEBI BAKER

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