

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
Application for Certification) Docket No. 97-AFC-2
For the Sutter Power Plant Project)
_____)

EVIDENTIARY HEARING

Bonanza Inn (Best Western)
Convention Center, Room A
1001 Clark Avenue
Yuba City, California 95991

Wednesday, March 10, 1999
9:00 a.m. 1:10 p.m.

Reported and Transcribed by: Cynthia Bynum Palmer
CSR No. 3556

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A P P E A R A N C E S

Commissioners Present:

MICHAL MOORE, Presiding Member

WILLIAM KEESE

Staff Present:

GARY FAY, Chief Hearing Officer

SHAWN PITTARD, Aid to Commissioner Moore

CYNTHIA PROUL, Aid to Commissioner Keese

For the Staff of the Commission:

DICK RATLIFF, Staff Counsel

PAUL RICHINS, Project Manager

GEORGE CARPENTER, Associate Planner, Sutter County

For the Applicant:

CHRISTOPHER ELLISON, Ellison & Schneider

CAROLYN BAKER, Edson & Modisette, Consultants

CURT HILDEBRAND, Project Director

CHARLENE WARDLOW, Environmental Manager

For the Intervenors:

BRAD FOSTER

For the Curor:

KENT CORBIN

1	I N D E X	
2		Page
3	Proceedings	4
4	Preliminary Comments	
	Staff of the Commission	8
5	Applicant	12
6		
	Motion to Strike	16
7	Applicant	16
8	Decision on Motion to Strike	26
9	Crop Dusting Testimony	
	Paul Wagner	28
10		
	Recess	46
11		
	Rebuttal Crop Dusting Testimony	
12	James Sayer	51
	James Harrison	51
13		
	Examination of Rebuttal Witnesses	
14	Commissioner Moore	58
	Mr. Foster	61
15		
	Presentation by Applicant re ERCs	70
16		
	Testimony of Kent Corbin	79
17		
	Public Comments	98
18		
	Adjournment	121
19		
	Certification and Declaration of Transcriber	122
20		
21		
22		
23		
24		
25		
26		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

P R O C E E D I N G S

WEDNESDAY, MARCH 10, 1999 - YUBA CITY, CALIFORNIA,
9 A.M.

COMMISSIONER MOORE: If I can have your attention, my name is Michal Moore. I'm a commissioner with the California Energy Commission and I'm a presiding member of the Committee that is looking at this citing case. I welcome you to the proceeding.

I've got a couple of rules I have to lay down as far as the way I'm allowed to conduct the meeting, or the way I'm allowed to conduct myself as a public official, in other words, what I can respond to what I can entertain, and it's relatively narrow. Within the bounds of that narrow stuff, I'm going to allow as much latitude as I possibly can. Two things: I don't have a microphone, obvious, but we have a microphone up here. I'm going to ask people to come up and use that so everyone, including us, can hear what you're saying.

I'm going to try and ask people who speak from up here to stand and speak, a favor of you, and I ask this of my students, although they never -- they never comply with it, it's going to be easier. Can't make you do this, but it's going to be easier if you come up to the front and get closer to the front seats. It's going to be easier for you to hear me or to hear my colleagues, so with that, it looks to me as though

1 everyone, virtually everyone who is here today has been
2 here at some of the previous meetings.

3 Let me introduce the players up here so you
4 know who everyone is. As I said, I'm Michal Moore and
5 I'm joined by Commissioner Keese here who took the time
6 to wear a suit. That means he's official and I'm not.
7 He's the Chairman of our commission and the second
8 member of this committee.

9 On my left is Shawn Pittard, who is my aid,
10 and Gary Fay, who is our hearing officer, Cynthia
11 Proul, who is aid to Commissioner Keese, and our staff,
12 led by Paul Richins who is heading up the effort on our
13 behalf, and Mr. Carpenter from the City, and our
14 lawyer, Dick Ratliff. I'm sorry. Dick is --
15 (Indicating). He's not our lawyer; he's the lawyer for
16 the staff. I have to keep getting the relationships
17 exactly right.

18 Chris Ellison is here from Calpine and has his
19 team with him, and we're having this recorded by a
20 scribe who is taking down notes on this, so I would
21 appreciate it if you come up to speak, if you would
22 please fill out a blue card so that we know who is --
23 who is speaking, and Roberta Mendonka (phon.) who is
24 our advisor here in the corner, she'll make those cards
25 available to you.

26 Because of the number of people who have

1 indicated that they would like to speak today, I'm
2 going to use something that's a little more routinized
3 than what I've used in the past, and that is I'm going
4 to ask you to fill out a blue card so that I've got a
5 record of what you want to say, and I'm going to let
6 you come up and say it. We don't have a lot of
7 round-Robin -- oh, I forgot that -- and then come back
8 up again try and be organized about what you want to
9 say so that we can have it come in one shot and,
10 hopefully, it will be easier to visualize what that one
11 shot is, because the focus of today's evidentiary
12 hearing is pretty narrow.

13 Now, you know or you probably heard that we
14 allowed something that was a little extraordinary in
15 terms of a petition by the Farm Bureau to open up a
16 piece of this investigation, and can I ask a favor?
17 For those of you who might have cell phones or beepers,
18 if you'd turn them to "buzz" or something so that
19 it's -- frankly, it's not very polite to the folks
20 around you and it just makes it easier for all of us to
21 concentrate.

22 We, as I said, entertained under protest a
23 petition to come in and present new information. The
24 Committee members were worried that perhaps we didn't
25 hear enough about what had been presented at a workshop
26 regarding crop dusting and that some of that perhaps

1 through an administrative error might have not gotten
2 on the record, so we've entertained some new testimony
3 on that. We think it's important enough to have on
4 record to offer the opportunity for that to happen.

5 Second, the Applicant has modified their
6 approach to the air quality permits, and what we'd like
7 to do is to make sure that we fully understand what
8 they have in mind, that we understand what the
9 Air Quality District has in mind, what they're capable
10 of and intend to or do not intend to approve.

11 Those are the two topics today, and at the
12 risk of appearing like I'm being rude -- I'm not -- I
13 am in a jacket where I can't open the rest of the
14 hearing, so I'm going to ask you to work with me on
15 this. Those are the two topics that we can entertain
16 comments on.

17 We'll have some remarks from the Applicant who
18 would like to talk to us about what they think the
19 range of what we can hear today is. We'll entertain
20 those comments and ultimately we'll have to make a
21 decision on that, but I just want to remind you there
22 are a lot of things that we've debated over the last
23 year, including water quality, or water quantity.
24 Those are not on the table today. You've all had a
25 chance to see my proposed decision and had an
26 opportunity to comment on them. This forum is not the

1 place to comment on other things that are included in
2 that proposed decision, but the two items that I have
3 just mentioned are what are on our agenda, and I'll
4 thank you to help us stay within the confines of that.

5 Now, what I'm going to do is I'm going to turn
6 to my Hearing Officer, Gary Fay, and ask him to
7 introduce the trail of the record that has led us to
8 today. This is a somewhat unusual hearing, and I want
9 you to understand the flow of letters and petitions
10 that brought me and my colleague, Commissioner Keese,
11 to be in front of you today, and it will help frame
12 what we want to here.

13 You'll hear from me again and then I'm going
14 to call on staff and representatives for the Applicant
15 for their thoughts, Mr. Fay, and I'm going to ask them
16 to stand up. In fact, unless you tell me otherwise,
17 I'm going to ask each speaker up here to stand up so
18 you can hear what we're saying. Mr. Fay?

19 OVERVIEW/REVIEW BY HEARING OFFICER

20 MR. FAY: Thank you, Commissioner Moore. I
21 feel like I'm back in law school, having to stand.

22 As Commissioner Moore said, I'm just going to
23 briefly review the flow of decisions by the Committee.

24 Calpine notified us at the last hearing that
25 they wanted to substitute some emission reduction
26 credits they had anticipated would have been available,

1 and it turned out that such negotiation with PG & E
2 bogged down and were not available, and so this
3 hearing, which we had previously set to only take
4 comments on the revisions to the PMPD, the Presiding
5 Member's Proposed Decision, that is, the changes to the
6 proposed decision and this revision.

7 We used this opportunity to expand and take
8 evidence on Calpine's substitute emission reduction
9 credits -- some people refer to them as "ERCs" -- and
10 you'll hear that later. Then we put out a notice on
11 February 17th to that effect, that we would open things
12 up and receive that as evidence.

13 Then on February 22nd the Farm Bureau filed a
14 motion to reopen the record so that they could submit
15 some evidence on crop-dusting issues. They wanted to
16 get their own witness for that, and the Committee read
17 their request, disagreed with their legal argument,
18 stating the fact there was no legal basis for requiring
19 this to be reopened, but that the local interest in the
20 matter and the fact that the Committee had already set
21 aside this time and the time was available justified
22 granting the request in the interest of getting the
23 information on the record.

24 The Farm Bureau filed the testimony of
25 Paul Wagner. Mr. Wagner will be our witness today for
26 the Farm Bureau. It was filed on March 1st. On

1 March 3rd Calpine filed a motion to strike the
2 testimony of Paul Wagner and --

3 COMMISSIONER MOORE: Why don't you tell them
4 what "strike the testimony" means.

5 MR. FAY: Calpine argued that the testimony
6 should not be allowed on the record because of the
7 circumstances under which it was offered, that is, that
8 the Committee had previously ordered that the
9 Farm Bureau participation was limited to crop dusting
10 examination because of their request, that is, that
11 they came in the second-to-the-last day of the
12 indentured hearings and indicated they were not
13 prepared to put forward witnesses in response to
14 questions. The Committee said that they would be happy
15 to have limited intervention, that is, just
16 cross-examine witnesses, so in essence, the Committee
17 has overruled itself and allowed them leave to put on a
18 witness, and Calpine challenged that decision in their
19 motion to strike the testimony.

20 In response to that motion the Committee
21 issued an order the next day setting oral argument on
22 the question of whether the testimony should have been
23 struck.

24 In addition, I just wanted to briefly go over
25 today's schedule. I understand -- I heard this morning
26 from Mr. Ellison that Calpine would like to briefly

1 summarize their proposal of drainage. Then we want to
2 get into the argument for the motion to strike. After
3 that we will take a brief recess and consider the
4 motion and then come back and rule on it, and if the
5 motion is denied, then Paul Wagner will come on as a
6 witness and present his testimony and then be subject
7 to cross-examination. After that, we will take the
8 testimony on air quality from Calpine, hear staff's
9 analysis, and hear from Kent Corbin of the Air District
10 on the adequacy of the revisions.

11 Wastewater is listed on the agenda, and, just
12 as a housekeeping matter, three different possibilities
13 were approved for the project. Calpine was asked to
14 choose one, and they have done so and we have that in
15 writing. Then comments on the
16 Revised Presiding Member's Proposed Decision, as I
17 indicated before, are limited to the changes from the
18 last document, so this is not an opportunity to make
19 broad comments about the power plant or things like
20 that; it's an opportunity to tell the Committee where
21 you think there should be some changes or whether you
22 like or dislike revisions that have led to the
23 Presiding Member's Proposed Decision, and pursuant to
24 the Government Code, we always allow public comment at
25 the end, so with that, I think we can go ahead and
26 start.

1 COMMISSIONER MOORE: Good. Thank you.

2 Let me turn first to Mr. Richins. Do you have
3 comments that you'd like to get on the floor at this
4 time as we introduce the topic?

5 MR. RICHINS: Negative.

6 COMMISSIONER MOORE: Mr. Ellison, I'm going to
7 turn to you and ask for your opening and preliminary
8 comments about the hearing.

9 OPENING/PRELIMINARY COMMENTS

10 MR. ELLISON: Thank you, Commissioner Moore
11 and Commissioner Keese.

12 My name is Chris Ellison and I'm with Ellison
13 & Schneider. I represent Calpine in this proceeding.
14 To my left is Curt Hildebrand. He's the project
15 manager to CalPine. Next to me is Charlene Wardlow,
16 and on Mr. Hildebrand's left is Carolyn Baker of Edison
17 & Modisette, consultants.

18 Calpine would like -- for a moment this
19 morning Mr. Hildebrand is going to give you a project
20 status update and let you know of some significant
21 events that have happened not so much in the
22 Energy Commission forum, but with the County with
23 respect to the project, and we will turn to the issues
24 Mr. Fay described with respect to Mr. Wagner's
25 testimony and go forward from there. Thank you.

26 Mr. Hildebrand?

1 MR. HILDEBRAND: Thank you. Again, my name is
2 Curt Hildebrand. I'm project director with Calpine,
3 and I wanted to provide everyone this morning with a
4 brief update.

5 Calpine has been in continuing discussions
6 with members of Sutter County and the local community
7 to get a good understanding of what issues currently
8 face the local community, and as a direct result of
9 these discussions, it became clear that the most
10 pressing issues that face the local community are
11 flooding concerns, and as a direct result of those
12 discussions I mentioned, we assembled a program that we
13 introduced in late February of this year, and I'd like
14 to introduce that to you today.

15 This program was outlined in a letter from
16 Executive Vice-president Lynn Kerby,
17 Calpine Corporation, to Chairman Dennis Nelson,
18 Sutter County Board of Supervisors. I'd like to just
19 read a brief passage of this letter to introduce this
20 program into the record.

21 "Dear Supervisor Nelson: As a long-standing
22 business in Sutter County with plans for very
23 substantial additional investment there, Calpine has a
24 strong interest in the County's prosperity and its
25 ability to withstand flood and drainage threats. We
26 have previously discussed with you and other members of

1 the Board of Supervisors the significant benefits
2 Sutter County will realize from the proposed Sutter
3 Power Plant in the form of new jobs, increased tax
4 revenue, clean, reliable, low-cost electricity. In
5 this letter I outline a program developed by Calpine to
6 help address important local needs that exist in
7 Sutter County.

8 Firstly, Calpine proposes to establish a new,
9 10-year, \$2.5 million Sutter Power Plant Levee and
10 Flood Control Improvement Fund to provide financial
11 support for improving the levees and storm drainage
12 facilities in Sutter County. Calpine has previously
13 supported County efforts in these areas and clearly
14 recognizes the pressing needs which must be addressed
15 to ensure that Sutter County continues to prosper
16 safely into the next century. We further understand
17 that dedicating these funds to levee improvements and
18 flood control will likely enable the County to access
19 additional government matching funds, thereby
20 maximizing the benefits of the Calpine program to the
21 entire community."

22 Again, this program was introduced in late
23 February and we'd like to make it part of the record
24 this morning.

25 COMMISSIONER MOORE: Thank you very much.

26 Do you have a copy of that to submit,

1 Mr. Ellison?

2 MR. FAY: Thank you.

3 COMMISSIONER MOORE: I don't know. It may
4 be -- can everyone -- want to try it just sitting down?
5 Tell me if you can hear Chris.

6 MR. ELLISON: Can you hear me?

7 MR. SPEESE: If you folks will talk to the
8 people like just on a one-to-one with the folks in the
9 back seat, I'm sure the folks in the front seat can
10 hear, because I'm talking directly to you, see? Now,
11 if you'll talk directly to us --

12 COMMISSIONER MOORE: I think you have the good
13 voice. I think that's what's going on here. You've
14 got the voice I always wanted to have.

15 Chris, go ahead and try it.

16 MR. ELLISON: Can you hear me? Is that
17 better?

18 Okay. Well, I guess I'm at the disposal of
19 the Committee. Would you like me to discuss the motion
20 to strike?

21 COMMISSIONER MOORE: I'd like you to discuss
22 the motion to strike and then I'd really like it if you
23 would also talk about the wastewater plant, so maybe
24 you go just wrap 'em together? I want to condense
25 this -- well, actually go through the motion to strike
26 first. We'll start with that.

1 COMMISSIONER MOORE: Does this wireless mike
2 work that is set up for the public? Can you people
3 just go to it while you're talking into it?

4 MR. FAYE: Before we get started, one other
5 thing I forgot to mention is we have a lot of copies of
6 the Revised Presiding Member's Proposed Decision out in
7 the lobby. If you don't have one, please just get up
8 and get one. There are plenty available.

9 MOTION TO STRIKE

10 MR. ELLISON: Okay. Commissioner Moore, I'm
11 going to briefly summarize why Calpine filed the motion
12 to strike and what the arguments presented there are.

13 Calpine is not concerned about having a
14 complete record on the crop duster issue and in a
15 moment I think I'll make that abundantly clear by
16 offering to stipulate that Mr. Wagner's testimony that
17 was pre-filed on March 1st can come in as far as
18 Calpine is concerned.

19 What Calpine is concerned about, and the
20 reason that we filed the motion to strike is two
21 things: First, the implication in the Farm Bureau's
22 petition is that somehow there was a procedural
23 unfairness done to the Farm Bureau in this process.
24 Calpine disagrees adamantly with that, and let me
25 explain why that's the case.

26 The essence of fairness in any process is that

1 everybody plays by the same rules. This is a process
2 that has rules. All parties, all intervenors in this
3 process have been informed by the Committee what those
4 rules are for the presentation of testimony, and among
5 those rules are the testimony on this issue had to be
6 pre-filed and presented so that everybody could see
7 everybody else's testimony by a certain deadline.

8 There was a staff workshop held on
9 November 4th, 1998, and I emphasize it was a staff
10 workshop, it was not a workshop in front of this
11 committee, at which time I believe it was two crop
12 dusters presented some information very similar to what
13 is the -- the Farm Bureau wishes to present now to the
14 staff on these crop duster issues, and at that time, as
15 Mr. Richins has submitted documentations confirming,
16 the staff informed those crop dusters and the local
17 farmers that if they wanted this testimony considered
18 as evidence in this proceeding, that they had to
19 present it to the Committee at the hearing of
20 November 10th when this issue was coming before the
21 Committee. That information was made abundantly clear
22 to everybody, and anybody who was at that workshop
23 knows that, and the Committee was not at that workshop
24 and only knows that now as a result of the information
25 that's been filed.

26 Calpine complied with those rules and

1 presented the testimony of Mr. Jim Sayer, who is a
2 local crop duster, at that time and he testified that
3 he thought that the transmission line associated with
4 this project would not pose any unacceptable risks or
5 costs related to crop dusting, and the Farm Bureau had
6 the benefit of Mr. Sayers's pre-filed testimony ten
7 days ahead of that testimony and cross-examined him
8 quite vigorously for several pages of the transcript.

9 Despite the rules that had been set down for
10 the Committee for the deadline for filing that
11 testimony, despite the admonition of the staff at the
12 staff workshop, the Farm Bureau chose not to present
13 the testimony that could have been presented at that
14 time on crop duster issues and now proposes to reopen
15 the record very late and present this testimony now.

16 The concern that Calpine has about that is
17 that that presents a fundamentally unfair situation to
18 Calpine, that rather than having everybody presenting
19 their testimony at the same time and having the same
20 benefit of being able to look at each other's testimony
21 and prepare for cross-examination in the same way, in
22 this instance, we have the Farm Bureau wishing to
23 present testimony well after they've had the
24 opportunity to consider the testimony of Calpine's
25 witness, etc.

26 Despite all of that though, this leads to my

1 next -- and let me say one other thing about this both
2 for the benefit of the Committee and the audience.
3 This was explicitly understood by everybody when the
4 Farm Bureau asked to intervene late. This is not the
5 first time the Farm Bureau has ignored committee
6 deadline. There was a deadline for intervening in this
7 proceeding, and when the Farm Bureau missed that
8 deadline and sought to intervene late, exactly these
9 fairness issues were raised.

10 The question was raised, look, you can come
11 into this proceeding but you understand that everything
12 that's already happened before you intervened we're not
13 going to go back and revisit that, you have to take the
14 proceeding as you find it, and one of those things
15 that's already come and gone is the deadline for
16 presenting testimony on these issues, and the
17 Farm Bureau in order to intervene late said "We
18 understand that. That's fine. We have no interest in
19 presenting a witness on these questions," and the
20 Committee then said, "Okay. We will allow you to
21 intervene late in spite of our deadline, and with that
22 understanding, that you will not present a witness,"
23 and the Committee issued an order which said, and I
24 quote, "In order to prevent prejudice to other parties,
25 the Farm Bureau will be allowed to intervene but not
26 allowed to present a witness," and I emphasize that it

1 was that prejudice that the Committee was concerned
2 about and that Calpine was concerned about and that the
3 Farm Bureau acknowledged way back at the time that they
4 intervened in this proceeding, so the concern that
5 Calpine has had now is that in spite of that promise
6 and in spite of that prejudice, the Farm Bureau is
7 coming forward and saying, "We didn't understand that
8 this wasn't really testimony and want to present this
9 testimony." That fairness issue is Calpine's concern,
10 not the substance of the testimony.

11 Now, having said that, in order to move this
12 hearing along this morning, I met with a representative
13 of the Farm Bureau this morning and proposed a
14 compromise on this issue, which was that Mr. Wagner's
15 pre-filed testimony on March 1st come into the record,
16 that we would withdraw our motion to strike, and that
17 Mr. Wagner's testimony would be given the same stature,
18 evidentiary stature as Calpine's crop duster witness,
19 Mr. Sayer.

20 I regret to say the Farm Bureau representative
21 declined that proposed compromise and did so saying
22 that he wanted to expand -- and he can speak for
23 himself on this issue -- that he wanted to expand on
24 the written testimony that's been previously filed on
25 March 1st in realtime today and that, therefore, it was
26 not acceptable to him just to have this pre-filed

1 testimony come in. That adds a compounding unfairness
2 to this process.

3 In addition to the unfairness that I just
4 described, what I understand the Farm Bureau really
5 wants to do today essentially, and to be candid, I will
6 use the Farm Bureau representative's own words. He
7 wants to surprise Calpine with the testimony today,
8 knowing that we've had no opportunity to know what
9 would be said, knowing that we would have to
10 cross-examine without any time to prepare, and knowing
11 that at this very late date in the process a schedule
12 slip in order to create fairness to allow us to bring
13 rebuttal witnesses back to allow us to prepare
14 cross-examination is a great prejudice to Calpine, that
15 that schedule slip is a great prejudice to Calpine, so
16 in all candor, that's where we are as of this moment.

17 That compromise was offered by Calpine but was
18 rejected, so in light of that, I would renew our motion
19 to strike the testimony of Mr. Wagner. If the
20 Committee denies that motion and proceeds with the
21 testimony of Mr. Wagner, I would ask the Committee to
22 strictly hold the Farm Bureau to the pre-filed
23 testimony that they submitted on March 1st and that, of
24 course, was the whole purpose of requiring written
25 pre-filed testimony, to put everybody on notice of
26 exactly what was said, and to create a fair process.

1 I would remind everybody that Mr. Sayers's
2 testimony back in November and December was filed ten
3 days ahead of time, so I would ask the Committee, if
4 they do deny our motion, to hold the Farm Bureau to the
5 same rules that everybody else is held to and ask them
6 to strictly follow the testimony that was pre-filed
7 and, lastly, I would ask the Committee if -- if in
8 spite of all of these obvious fairness concerns it
9 allows Mr. Wagner to go beyond what's stated in this
10 pre-filed testimony, I would ask the Committee to allow
11 Calpine to defer this matter over until after lunch
12 this afternoon and give us at least over the lunch hour
13 to consider the testimony and prepare cross-examination
14 and allow Calpine to bring, if we choose to, a rebuttal
15 witness or two this afternoon back to address whatever
16 Mr. Wagner has to say, and the Farm Bureau can
17 cross-examine them in realtime.

18 Now, whether we will choose to do any of that
19 is a decision we will, obviously, have to make after we
20 go forward with this matter, but I want to emphasize
21 again for all of you the concern here really is just
22 basic fundamental fairness. It's not a question about
23 trying to limit the record or anything of that nature
24 and, again, I remind everybody that we've offered to
25 allow this testimony to come in even as late as it is,
26 but this issue of hearing by surprise is so

1 fundamentally unfair that Calpine does have to object.

2 COMMISSIONER MOORE: Thank you, Mr. Ellison.
3 Let me ask, Mr. Richins, do you have anything to add,
4 counsel?

5 MR. RATLIFF: I'm Dick Ratliff. I am the
6 counsel for the staff. The staff does not take a
7 position on the motion to strike either for the motion
8 to strike or against it. Having said that, I would
9 want to add that the staff is somewhat anxious about
10 the possibility that the proceeding is totally reopened
11 at this late date concerning issues such as
12 agricultural impacts or transmission on safety and
13 nuisance. The hearing record on that was made in
14 November. We've had two rounds of agricultural impact
15 testimony and it's -- it's certainly detracts from the
16 certainty of the proceeding if more testimony on those
17 issues is now going to be entered, and so, depending on
18 what is heard today, we may also want to have an
19 opportunity to present more testimony if we're going to
20 reopen all of these issues, but we're just going to
21 have to play that by ear.

22 MR. FAY: Mr. Foster, would you like to
23 respond to the motion? By the way, I'm sorry I didn't
24 mention this earlier. Would it help the Farm Bureau if
25 they had space up here at the counsel table?

26 COMMISSIONER MOORE: Maybe when I go to ask

1 questions. I think for right now, Brad, if you want to
2 come up and respond, the question on the table, the
3 only question on the table at this instant is Calpine's
4 motion to strike. We'll entertain your comments on
5 that. Following that, the Committee members will
6 caucus, take a break, we'll caucus, and we'll come back
7 and we'll tell you what we've decided to do, and so
8 with that, Mr. Foster, you are representing the
9 intervenors and if you want to respond on the motion to
10 strike --

11 MR. FOSTER: Thank you.

12 COMMISSIONER MOORE: Your name is --

13 MR. FOSTER: My name is Brad Foster. We did
14 come in as intervenors late. We were not real clear on
15 the Energy Commission procedures. I will admit that.
16 We're learning. We're trying to take advantage of
17 everything we've learned in this process.

18 A comment was made that a sworn witness's
19 testimony carries more weight than written testimony,
20 public comment. This is my understanding; I may be
21 wrong. So the reason we're petitioning is when we saw
22 that we were having the hearing on the RT and we were
23 reopening something there for the Applicant, we thought
24 maybe this would be a chance to get a complete document
25 on aerial application and safety.

26 As Mr. Ellison said, we'll have -- a word I

1 learned this week by talking to a lot of people with
2 the Air District Board is I may have overstated myself,
3 and that is when I said "surprising Calpine with our
4 witness." I met with our witness for 30 minutes
5 yesterday and we talked safety. He surprised me with a
6 couple of the comments he made, and it has nothing to
7 do with anything but the safety of powerlines, so if
8 they have professional pilots on their staff helping
9 them, this should not surprise them. I am not a
10 professional pilot. It surprised me. I might have
11 overstated myself. I'm sorry, but we just want to get
12 a complete document. Thank you.

13 COMMISSIONER MOORE: Thank you, Mr. Foster.
14 Let me just say that should we decide to reject the
15 motion to strike and entertain this testimony, the
16 testimony will have to be limited to what the
17 intervenors have sent us, that directive that they sent
18 us. We have a letter from Mr. Foster, we have
19 signatures of many, many pilots, and we have a filing
20 from Wagner Aviation, so in that context, we simply
21 wouldn't be allowed to entertain a surprise that went
22 beyond the bounds of the filing that's been made.

23 I understand what Mr. Foster just said, that
24 in fact he used the word "surprise" in a different
25 manner than I think was understood by Mr. Ellison. I
26 just heard about that comment this morning, so it's --

1 runs a little counter to what I was understanding, so
2 I'm surprised, and so with that, let me say that we
3 have a motion to strike -- or a petition to strike this
4 testimony and a defense to that and a comment by staff,
5 and with that I will tell you I'm going to call
6 time-out, ten minutes, and the Committee members are
7 going to caucus. We're going to meet back in here,
8 reconvene, we'll tell you what we've decided to do and
9 how we're going to proceed. Thank you. (Off Record).

10 DECISION ON MOTION TO STRIKE

11 COMMISSIONER MOORE: The Committee members
12 have caucused up here and we've decided to allow
13 testimony as proposed by the intervenors, and I want to
14 make clear the process that we intend to follow here
15 today.

16 The intervenors have sent us a letter petition
17 and asked that this question of whether or not crop
18 dusting will be affected by a proposed plan or not.
19 We're going to entertain comments on that. We're going
20 to entertain comments that are very narrowly proscribed
21 by the petition itself. This is not an invitation to
22 reopen any other part of the hearing. I'll simply say
23 that this process that we are about to open this
24 morning allows a fairly formalized interaction between
25 someone who will testify and then be cross-examined.
26 This is not a process that's open to a public dialogue.

1 The commissioners are here to listen to, in this case,
2 some testimony, and we will then take careful note of
3 any potential cross-examination by the Applicant should
4 they choose to do that. If they don't choose to do
5 that and if the staff does not choose to cross-examine,
6 then what will happen is that the matter will be very
7 formally and forcefully brought to us in a way that we
8 will use in preparation for the final proposed decision
9 that we issue for our colleagues at the
10 Energy Commission and ultimately for use by the County
11 in their decision, so with that, I just want to make it
12 clear that this is so that everyone doesn't have an
13 expectation that isn't real, I know a lot of you want
14 to speak on the topic, and as Mr. Fay indicated
15 earlier, there will be a portion of today open to the
16 public comment. We'll have those blue cards available
17 and we'll call on you to hear your thoughts, but it
18 won't happen in the process that I'm just about to
19 open, so what you've heard is that the intervenors
20 asked us to open this, the applicants asked us to
21 strike that and not go ahead with that. We're
22 overruling their objection, we're going to allow
23 testimony by the intervenors and then we're going to
24 allow potential cross-examination along with questions
25 from the Committee members.

26 At that point we will close that and move to

27

1 the next item, so what you're about to witness is
2 presentation of data by Mr. Foster and his
3 representative to get things on the record for us to
4 consider.

5 Mr. Foster, the floor is yours.

6 COMMISSIONER MOORE: I'm sorry. You have to
7 be sworn in.

8 MR. FAY: Will the witness please stand and be
9 sworn? Would the court reporter please swear him in?

10 PAUL WAGNER,
11 called as a witness by the Intervenors, after having
12 been duly sworn on oath, was examined and testified as
13 follows:

14 TESTIMONY OF PAUL WAGNER

15 HEARING OFFICER FAY: Please state your name
16 for the record.

17 THE WITNESS: Paul Wagner.

18 HEARING OFFICER FAY: And, Mr. Wagner, I just
19 spoke to Mr. Foster and he asked my assistance in
20 introducing your testimony into the record.

21 Did you prepare the letter addressed "To Whom
22 it May Concern" dated March 1 of a little over a page
23 signed by Paul Wagner on Wagner Aviation stationery?

24 THE WITNESS: Yes, I did.

25 HEARING OFFICER FAY: And is that true and
26 correct to the best of your knowledge?

1 THE WITNESS: Yes, it is.

2 HEARING OFFICER FAY: And if asked to testify
3 today, would your testimony be substantially the same
4 as what is contained in that letter?

5 THE WITNESS: Yes, it would be.

6 HEARING OFFICER FAY: All right. And at this
7 time, Mr. Foster, would you like to move that testimony
8 into the record?

9 MR. FOSTER: Yes, I would.

10 MR. FAY: All right. Is there objection to
11 moving the testimony into the record?

12 MR. ELLISON: Well, Calpine would restate its
13 earlier objection the Committee has already ruled on,
14 but other than that, no.

15 MR. FAY: All right. At this time I would
16 have -- I will receive into evidence the written
17 testimony of Paul Wagner dated March 1st and ask
18 Mr. Foster if he'd like to ask the witness to summarize
19 his testimony.

20 MR. FOSTER: Thank you, Mr. Fay.

21 EXAMINATION BY MR. FOSTER

22 Q Mr. Wagner, are you the owner of
23 Wagner Aviation?

24 A Yes, I am.

25 Q How many pilots do you employ throughout the
26 year?

1 A Normally two plus myself.

2 Q Are you -- in other words, you're personally
3 still flying at this time?

4 A Yes, I am.

5 Q This is a --

6 MR. ELLISON: Before this goes any further,
7 let me ask a clarifying question. My understanding is
8 that the Committee is admitting Mr. Wagner's testimony
9 as pre-filed on March 1st.

10 MR. FAY: Correct.

11 MR. ELLISON: And Mr. Fay just asked
12 Mr. Foster to have Mr. Wagner summarize that testimony
13 as I understand it, and before this goes any further, I
14 would like the Committee to make clear whether
15 Mr. Foster is allowed to have new, surprise, realtime
16 direct in the form of summary or whether the summary is
17 intended to be this testimony which is filed.

18 COMMISSIONER MOORE: I think that's a fair
19 question.

20 The committee had anticipated that the
21 testimony that we would hear today would clarify
22 whatever was in that letter but not add to it. In
23 other words, that if there was something that made
24 clear what the points that were stated the letter was,
25 that was what we were entertaining.

26 As I understood the opening of Mr. Foster's

1 remarks, he was simply laying the ground work to say
2 the qualifications of the man who wrote the letter,
3 but, frankly, neither Committee member is expecting the
4 surprise that you are just referring to. What we
5 expected was a clarification of the letter that had
6 been filed, not an embellishment.

7 MR. ELLISON: Okay.

8 COMMISSIONER MOORE: Mr. Foster?

9 MR. FOSTER: Continue?

10 COMMISSIONER MOORE: Please.

11 MR. FOSTER: I didn't do anything wrong?

12 COMMISSIONER MOORE: No. Not so far. If you
13 do, you're probably going to hear about it, so --

14 Q (By Mr. Foster) Could you describe your
15 experience as a crop duster, number of years, etc.

16 A I went to work on the ground crew in 1960 and
17 started flying in about 1972, flying ag work, and since
18 that time probably have accumulated in excess of 12,000
19 hours of ag work.

20 Q Thank you.

21 Could you give us a short list of some of the
22 crops you personally have worked on or performed your
23 duties on?

24 A Oh, everything from rice, tree crops,
25 vegetable crops, safflower, grains, wheat, barley.

26 Q Could you tell us the type of applications

1 you've flown.

2 A Everything from seed and fertilizer,
3 pesticides, which includes fungicides, herbicides, weed
4 killers, and insecticides.

5 Q Are there different rules or should I say
6 application techniques that come with each of these
7 different products?

8 A There are -- yes. There are both technique --
9 techniques that are peculiar just to fertilizer. You
10 can seed and fertilizer -- and do fertilizer in higher
11 winds than you can apply pesticides legally and, plus,
12 to do a good job, you can't do herbicides and
13 insecticides in too much wind.

14 Q Do you have any immediate -- do you have any
15 experience in the immediate vicinity of the proposed
16 power plant and said lines?

17 A Yes. I've been working that area for at least
18 14 years.

19 Q Are any of the fields that you fly going to be
20 impacted by this?

21 A Yes. Several of them. Yes.

22 Q Are you familiar with the proposed
23 transmission line route to where it comes east out of
24 the plant to Township Road, it's going to parallel
25 Township Road to O'Banion, and then west on O'Banion to
26 the switching station?

1 A Yes. I understand that's what's proposed at
2 this time.

3 Q Do different obstacles, such as powerlines,
4 vary in heights and powerlines in orchards, landscaping
5 affect your job in any way?

6 A Oh, of course, they -- of course, they affect
7 how we do our job and our ability to do our job and do
8 it completely.

9 Q Could you -- for an example, where the
10 powerline is running parallel to Township Road, worst
11 case scenario, the powerline will be at the edge of the
12 field, the east side of the field paralleling the
13 canal, could you explain some of the difficulties
14 you're going to have with the placement of this?

15 MR. ELLISON: You know, I have to object at
16 this point. We really are going into information
17 that's not in the pre-filed testimony.

18 COMMISSIONER MOORE: Yeah. Let me --
19 Mr. Foster, in one, two, three -- paragraph five
20 Mr. Wagner says, "In my professional opinion the lines
21 will have an adverse impact on the agricultural
22 community and create a serious hazard to pilots in the
23 area, significantly increasing" -- I think he meant the
24 risk of an accident, and I'm assuming that that is the
25 portion of this that -- that you want to clarify.
26 Maybe you can ask Mr. Wagner to expand on what he meant

1 by the phrase "adverse impact," what exactly does that
2 mean, and I think that will stay within the bounds of
3 the letter.

4 Q (By Mr. Foster) Okay. Could you explain the
5 difference -- well, if you would say, with the
6 powerlines that are in place now out there, explain the
7 safety issue of replacing or adding a large steel
8 powerline?

9 A That's -- it would increase the -- the area
10 that we wouldn't -- in some cases would not be able to
11 effectively cover with herbicides and insecticides,
12 just because the state law and drift is possible to
13 occur if we apply the stuff from too high of altitudes.
14 We have to apply it low, and the higher the obstacle,
15 the tougher it is to get down on the crop to where it's
16 legal and to where you can do an effective job of
17 applying the material. The higher the obstacle, the
18 tougher it is to get down to the crop where you need to
19 be.

20 Q As it stands, the powerline system we have out
21 there now, if you were to accidentally fly into one of
22 the wires associated with the wooden poles paralleling
23 Township or O'Banion Road, what would -- with your
24 experience, what would you say would happen?

25 A It would take the powerlines out, break the
26 lines, and probably would not cause an aircraft

1 accident. The aircraft and the pilot would be able to
2 fly on home, and the only economic thing would be, of
3 course, the repair of the powerline.

4 Q Now, with the large steel lines replacing the
5 lines on O'Banion Road, if you were to fly into one of
6 these lines, can you tell me what you would expect to
7 happen?

8 A Definitely you'd lose -- you'd lose the
9 airplane, and probably it would be a serious enough
10 crash you'd lose the pilot also.

11 Q Do you know of pilots that have accidentally
12 flown into large powerlines?

13 A Several. Yes.

14 Q Were they killed by this incident?

15 A I know -- after thinking about this for the
16 last week, I've thought of nine cases where guys have
17 flown into powerlines, and these are people that I know
18 or knew, and three of the nine were seriously injured
19 but survived, and the other six did not survive.

20 Q Do you have personal knowledge of any pilots
21 flying into the smaller lines like we have there now?

22 A No personal knowledge of anybody -- well,
23 yeah. Everybody I can think that is in the crop
24 dusting business for very long has got a small line,
25 and I don't know of anybody that's even damaged the
26 airplane, I mean other than minor -- minor damage, but

1 they -- you always go home free.

2 Q So to sum up this part of the -- just to sum
3 this up, you fly into one of the small existing lines
4 out there, you're most likely going to fly home and
5 land the plane; if you fly into a large line, you're
6 going to crash, you have a chance you might live?

7 A That's been my experience, yeah.

8 MR. FOSTER: Am I allowed to go into the extra
9 cost in applying to the farmer on this, what it's going
10 to cost him in seed and fertilizer?

11 MR. FAY: He talks about at the bottom of page
12 the material, fertilizer, pesticides and to --

13 MR. ELLISON: Now I do have to state for the
14 record that is in my opinion a significant difference
15 between somebody filing a complete testimony and being
16 able to cross-examine on that knowing ahead of time
17 what the witness is going to say and somebody filing a
18 very short sentence as to what the bottom line is and
19 then having all of the reasons behind that in the
20 realtime as a surprise, so even though some of these
21 issues may be touched upon during direct, the fairness
22 concern that I've raised about surprise testimony is
23 very real and is happening as we speak. I don't know
24 what else I can say, but --

25 MR. FAY: Your objection is noted and the
26 Committee will take it into account in the weight given

1 to the testimony, but at this point it's overruled.

2 You may proceed. Be advised, Mr. Foster, of
3 this concern. The committee does not want to create an
4 unfairness in inquiry and we've always made sure you've
5 got the pre-filed testimony. That's the opus here.

6 Q (By Mr. Foster) With the powerlines
7 parallelling Township Road, I started asking the
8 questioner earlier to where it will be. On the edge of
9 the field, how do you control drift from neighboring
10 fields, let's say the prunes across the street, when
11 you apply the application to the rice?

12 A With -- with -- I assume we're talking about
13 insecticides, herbicides. With that we have to have
14 drift away from -- with both we have to have drift away
15 from the orchard, damage to the orchard, and/or people
16 that happen to be working with -- with the herbicides,
17 there's damage to the trees, possible damage to the
18 trees if the wind is not moving away from -- from the
19 trees, and with insecticides, there's always a chance
20 of somebody being out in the field and we can't spray
21 them, drift on them with insecticide, so the wind has
22 to be away from the surrounding crops and into our
23 field.

24 Q So with the wind away from the prunes and a
25 large powerline parallelling the field, are you going
26 to be able to effectively get the herbicides or the

1 insecticide up against or underneath the powerline if
2 you have the drift going in the opposite direction?
3 A No. It can't be done.
4 Q On seeding, you can't -- you have the same
5 problems; you have wind pushing the seed away from the
6 powerlines? I realize you can fly high over the top of
7 the powerlines. Rule of thumb, how much heavier do you
8 have to go with the seed and fertilizer to get the same
9 stand?
10 A I would say it's been our experience that we
11 try to heavy-up the seed. If we launch it above --
12 apply it above the steel towers, where they're a
13 hundred, 150 feet in the air, we'd have to increase
14 that seed and/or fertilizer, 10, 20 percent to have the
15 same stand of seed on the ground.
16 Q I'm going to move out of the rice across the
17 street to the prune orchards on Township Road. Some of
18 these lay -- there are long narrow pieces that are
19 normally -- they try to fly them east and west. With
20 these large powerlines now are you going to -- your
21 professional opinion, would you continue to do this or
22 would you have to change?
23 A With the long -- with the long -- I understand
24 what you're talking about. I -- hopefully everybody
25 else can keep up with this, but with a large powerline
26 to crawl over, to fly over, to carry a heavily loaded

1 airplane up and over a steel towered powerline, I would
2 probably just turn around and do it the short way and
3 bill the farmer for my extra time.

4 Q So you have a different rating for flying a
5 short direction to what requires your plane to turn
6 around much more often than when you can take the long
7 run?

8 A Yes, we do.

9 Q On -- along O'Banion Road Calpine has proposed
10 to raise the wire height, though there's been several
11 proposals and I don't know what the exact number is,
12 but I'm going to pick a 50-foot height to the lowest
13 point of the wire. In the open fields, we understand
14 you can fly underneath these wires without much of a
15 problem. When you place a prune orchard on the back
16 side of these wires, is it going to add a problem to
17 flying underneath them?

18 A Oh, you bet. You bet.

19 Q Will you allow your pilots to fly the plane
20 between a 14- or a 15-foot tree and a 50-foot high
21 wire?

22 A I'd probably leave it up to their discretion,
23 but probably my most experienced pilot, he would go --
24 he would -- with the right conditions, he would do it,
25 and I would do it in the right conditions. I've got a
26 less experienced guy that's working for me now that I'd

1 better not catch him trying it, because he may not make
2 it.

3 Q With the economy in farming changing all the
4 time, we notice the prunes are being planted out in the
5 rice ground and now we notice the walnuts being pushed
6 out into the rice country, walnuts reaching heights of
7 40 to 50 feet, so with these in place, you're no longer
8 going to fly under the lines if they're adjacent to
9 existing lines?

10 A Obviously that's true.

11 MR. ELLISON: Are you asking him to assume new
12 trees that aren't there now? Is that correct?

13 MR. FOSTER: Uh-huh.

14 MR. ELLISON: Okay.

15 Q (By Mr. Foster) With the design of this power
16 plant we have two corners, two 90-degree turns with
17 these transmission lines. Can you explain to us how
18 you're going to have to work these areas now?

19 A Carefully. Very carefully, and different
20 situations, different materials, different weather
21 conditions are going to dictate how we do it.

22 Q With seed and fertilizer, you can fly in a
23 windier condition?

24 A Correct.

25 Q With the placement of these lines to where you
26 cannot get the edge of the field, could it require you

1 by the weather to literally have to come back on a
2 different day for a different weather condition to
3 finish your job?

4 A You bet. It could in some -- some cases,
5 sure, it would, less wind, wind in a different
6 direction.

7 Q In your professional opinion, where would be
8 the safest place to place a power plant such as this?

9 A The plant itself?

10 Q Yes.

11 COMMISSIONER MOORE: Wait. Where would be
12 the -- to put the power plant?

13 MR. FOSTER: I'll reword that and then you can
14 yell at me.

15 COMMISSIONER MOORE: No. No. I want you to
16 to stay with -- we're talking about the wires and the
17 crop dusting. I think let's stay away from the power
18 plant itself because that's not in the testimony here,
19 so --

20 MR. FOSTER: Okay.

21 Q (By Mr. Foster) Is there anything that you
22 would like to add that I haven't touched on at this
23 point?

24 A Not at this point, no.

25 MR. FOSTER: I think that will do it. Thank
26 you.

1 COMMISSIONER MOORE: Thank you, Mr. Foster.

2 Mr. Ellison, before I turn to you, let me ask
3 if the staff has any questions on cross-examination.

4 MR. RATLIFF: We have no questions, but we
5 would compliment Mr. Foster on his testimony, his
6 direct examination.

7 COMMISSIONER MOORE: It's got to be a little
8 nerve-racking to step into that.

9 COMMISSIONER MOORE: If you will stay put, let
10 me ask, Mr. Keese, do you have questions?

11 COMMISSIONER KEESE: No.

12 COMMISSIONER MOORE: All right. I have a
13 couple of questions.

14 Mr. Ellison, do you mind if I ask a couple of
15 clarifying questions before I turn to you for
16 cross-examination?

17 MR. ELLISON: Not at all. In fact, I was
18 going to ask if we could have a short break so I could
19 talk to my client and have a moment to --

20 COMMISSIONER MOORE: Absolutely. So with your
21 indulgence, let me just ask, Mr. Wagner, one of the
22 questions that has concerned us all along is whether or
23 not that 90-degree angle makes a difference in terms of
24 safety, and so I would ask you, because I'm not sure it
25 was exactly clear in your response, but it sounded like
26 you were saying you can still spray within that

1 triangle, it's just a matter of the right day, the
2 right wind conditions. Am I understanding you
3 correctly?

4 THE WITNESS: Well, we do -- with -- we can --
5 we can fertilize it and we could seed it pretty much
6 irregardless of what the wind is doing, but with prunes
7 along there now and on the two sides there is going to
8 be a corner in there that is not going to get
9 pesticides, both herbicides and insecticides. It's not
10 going to get it, because the wind has to be away from
11 the prunes and --

12 COMMISSIONER MOORE: Okay. So there is some
13 sort of corner where you can't get --

14 THE WITNESS: And along the edge to some
15 degree, two edges to some degree.

16 COMMISSIONER MOORE: But you're facing -- with
17 that edge now, in other words, with that power line,
18 whether Calpine came in or not, you've got a --

19 THE WITNESS: Right now we've got a 30-foot
20 problem, not a hundred-foot problem.

21 COMMISSIONER MOORE: Okay. My second question
22 goes to some testimony that we had before about ability
23 to clear an obstacle, to take a hypothetical
24 hundred-foot obstacle, or 150 feet, how rapidly an
25 aircraft can drop down and begin application of
26 pesticide or seed at some -- some height. What's the

1 lateral range that an aircraft from 150 feet has to
2 move out before they're down to an application height?

3 A With seed and fertilizer you can go ahead and
4 launch it, apply it from up there if you have to, so
5 you can --

6 COMMISSIONER MOORE: So you don't even have to
7 drop down?

8 THE WITNESS: Correct. You want to. You're
9 going to drop down as soon as you can.

10 COMMISSIONER MOORE: Right.

11 THE WITNESS: I'd say that probably the
12 maximum height that we want to do any pesticide work
13 would be a maximum of ten feet. I -- you know, I've
14 never really measured that, but I would be surprised if
15 you can do it, can get down on a crop within 2-, 300
16 feet, and coming towards the powerlines, you're going
17 to start pulling up out of that field a lot closer -- a
18 lot further out than 2- or 300 feet or you may not make
19 it. Depends on how warm it is, how heavily loaded the
20 aircraft is. It's going to be further than 2- or 300
21 feet.

22 COMMISSIONER MOORE: What's the rate of climb
23 of a turbin ag Cat?

24 THE WITNESS: I don't own a Cat.

25 COMMISSIONER MOORE: What's the rate climb of
26 a piston, fully loaded?

1 THE WITNESS: Fully loaded.
2 COMMISSIONER MOORE: Can you get a thousand
3 feet a minute?
4 THE WITNESS: No.
5 COMMISSIONER MOORE: Three hundred feet a
6 minute?
7 THE WITNESS: Maybe.
8 COMMISSIONER MOORE: Okay. And that's full
9 up?
10 THE WITNESS: Yeah.
11 COMMISSIONER MOORE: Okay. That comprises my
12 set of questions for this. I'm going to honor
13 Mr. Ellison's request. We'll take -- how long would
14 you like?
15 MR. ELLISON: Ten days.
16 COMMISSIONER MOORE: They want a -- I'm sorry,
17 Mr. Foster.
18 MR. FOSTER: We're objecting with the ten
19 days.
20 COMMISSIONER MOORE: All right. We'll take a
21 few minutes. I'm going to take my cue from
22 Mr. Ellison. When he's ready, we'll reconvene.
23 MR. ELLISON: Before we break, just one
24 clarifying question that will affect my discussion
25 during the break.
26 COMMISSIONER MOORE: All right.

1 MR. ELLISON: If Calpine decides that they
2 want to a present a rebuttal witness today, do they
3 have that opportunity?

4 COMMISSIONER MOORE: They absolutely do. I
5 told you that at the front and I intend to honor that.

6 MR. ELLISON: Okay.

7 COMMISSIONER MOORE: All right. We'll take a
8 break.

9 (Recess)

10 COMMISSIONER MOORE: I'd like to ask everyone
11 to reconvene. I'm going to ask Mr. Ellison, who has an
12 opportunity to cross-examine this witness, whether he
13 wishes to do so.

14 MR. ELLISON: Thank you, Mr. Commissioner.

15 With the understanding that Calpine can
16 present rebuttal witnesses, which we propose to do
17 immediately, we will not cross-examine Mr. Wagner.

18 COMMISSIONER MOORE: With that, let me ask you
19 to bring your rebuttal witnesses up, introduce them,
20 have them sworn in.

21 Mr. Foster, you understand that you will have
22 the opportunity to cross-examine those witnesses after
23 they've presented their testimony, and the staff as
24 well? Fine.

25 MR. FAY: Before Mr. Wagner is excused, I'd
26 like to ask the staff if you wish to cross-examine

1 Mr. Wagner.

2 MR. RATLIFF: I'd like to ask a couple of
3 clarifying questions if I could.

4 COMMISSIONER MOORE: All right.

5 EXAMINATION BY MR. RATLIFF

6 Q Mr. Wagner, in the -- we held a workshop in
7 November -- am I heard? We held a workshop in November
8 where there was discussion of the practice of flying
9 fields, and at that workshop we were told that it's
10 common for fliers to fly under transmission lines in
11 certain instances. Do you fly -- if I understood you
12 correctly earlier, you said you sometimes fly under
13 transmission lines?

14 A Yes, we do.

15 Q In terms of your ability to fly under the
16 lines that we've been talking about, if you had a
17 clearance of approximately 50 feet, would you be able
18 to underfly fields that -- directly south of the
19 O'Banion -- the proposed O'Banion transmission line?

20 A There's trees there, so I don't see how we
21 have 50 feet of clearance. If I have that 50 feet,
22 I'll do it. You bet.

23 Q You're talking about the prune orchard --

24 A To the south.

25 Q -- to the south?

26 A Correct. Of O'Banion I think if I understood.

1 Q And there are rice fields further south.
2 MR. FOSTER: Further south?
3 THE WITNESS: Okay. If the wooden powerlines
4 were not there, it's doable, yes.
5 Q (By Mr. Ratliff) So you would be able to
6 under fly those lines?
7 A The wooden powerlines, yes.
8 Q If you underfly those lines, the additional
9 height -- in that case you would not be pulling up, you
10 would just be continuing at roughly the same
11 altitude --
12 A Correct.
13 Q -- beneath the lines?
14 A Okay.
15 Q In those instances would you have more
16 difficulty spraying at the appropriate heights or
17 planting seed from the appropriate heights?
18 A I -- no. I don't think it would be any more
19 difficult. There -- as long as they're there they're
20 always an obstacle, always something you have to keep
21 in mind, but it's very doable, yes. It can be done.
22 Q So really it sounds like the concern that you
23 would have about the area itself south of O'Banion
24 would be more connected with the prune orchards. Is
25 that correct?
26 A And the existing wooden pole power lines.

1 Q Now, if those wooden pole powerlines were
2 removed, were underground, you would be able to fly --
3 A It's doable, correct.
4 Q It's doable.
5 A It's doable.
6 Q With regard to the prune orchard, you're
7 saying that -- if I understood you earlier, you're
8 saying that a skilled pilot with experience might
9 underfly those lines as well?
10 A In most conditions, as long as those prune
11 trees aren't over 14 feet and the lowest sag is 50
12 feet, if I understand correctly, that's what's
13 proposed, 50 foot sag, that gives us what, 35 feet?
14 The airplane is probably 12, 13, 14 feet tall, so that
15 gives you a margin of safety, yeah, with just the
16 trees. Just the prune trees.
17 MR. RATLIFF: We have no other questions.
18 Thank you.
19 COMMISSIONER MOORE: Thank you Mr. Ratliff.
20 Mr. Ellison, you have witnesses, and I'd like
21 to ask them to come forward and be sworn.
22 MR. FAY: If I may, just one moment. The
23 curor is also a party to the case. Do you wish to
24 cross-examine this witness?
25 REPRESENTATIVE FOR CUROR: No.
26 MR. ELLISON: Okay. I take it Mr. Wagner can

1 be excused?

2 COMMISSIONER MOORE: He can. Thank you,
3 Mr. Wagner. We appreciate your testimony. You
4 probably want to step down because we're going to need
5 the --

6 MR. WAGNER: You're throwing me out; you're
7 not excusing me. I got it.

8 MR. FAY: You're free to stay or go, whichever
9 you would like.

10 MR. ELLISON: Okay. Calpine would ask
11 Mr. James Sayer, who has previously testified in this
12 issue, to be sworn and sworn and also
13 Mr. James Harrison, who has not been sworn. We would
14 propose for efficiency reasons to present these two
15 witnesses together as a panel.

16 MR. FAY: Mr. Sayer, you were previously sworn
17 and you remain under oath, and, Mr. Harrison, would you
18 please raise your hand and be sworn by the court
19 reporter.

20 JAMES HARRISON,
21 called as a witness by Calpine, after having been duly
22 sworn on oath, was examined and testified as follows:

23 JAMES SAYER,
24 called as a witness by Calpine, after having been
25 previously duly sworn on oath, was examined and
26 testified as follows:

1 EXAMINATION BY MR. ELLISON

2 Q Mr. Harrison, I'm going to direct my initial
3 questions to you since you have not previously
4 testified. Mr. Sayers's qualifications and experience
5 have already been entered into this record and in the
6 interest of time, I'm not going to ask him to repeat
7 them, but with respect to Mr. Harrison, Mr. Harrison,
8 first of all, could you state and spell your name for
9 the record?

10 MR. HARRISON: James Harrison,
11 H-a-r-r-i-s-o-n.

12 Q Mr. Harrison, --

13 COMMISSIONER MOORE: You know, I really would
14 like to ask if you own one of those phones or a beeper,
15 turn it off, please, so it -- so we don't have to ask
16 after the fact. Turn it off now. Thank you.

17 Q (By Mr. Ellison) Mr. Harrison, could you
18 summarize your experience with respect to the crop
19 dusting issues that we are talking about and, in
20 particular, your experience in the area of the proposed
21 Sutter Power Plant.

22 A Do I understand you want me to give a little
23 brief history of my flying hours and what year --

24 Q What I'd like you to do is just summarize what
25 your employment has been in the crop dusting industry,
26 what your experience has been, and to the extent you've

51

1 had specific experience in this location, to describe
2 that, and I'd also ask you to speak up so that
3 everybody can hear you.

4 A At age 15 I started loading and flagging for a
5 crop dusting operation here in Yuba City, and at age 22
6 I started flying a crop duster, in 1962, and I flew for
7 Most Crop Dusting Service and Doug Blaley (phon.)
8 Incorporated until 1981, when I started my own
9 business, and I operated my own business until 1989, at
10 which time I sold it and have since then flown
11 part-time for various operators.

12 Q Mr. Harrison, are you familiar with the
13 proposed transmission route associated with the Sutter
14 Power Plant?

15 A Yes, I am.

16 Q And you're aware of the route that's proposed
17 and the fact that associated with this line would be
18 the undergrounding of the existing transmission line
19 along O'Banion Road from O'Banion to the west -- I'm
20 sorry. From South Township to the west?

21 A Correct.

22 Q Okay. Have you had specific experience flying
23 any of the fields in that location?

24 A Yes. I used to fly for the Siller fields
25 directly on the west side of Township to O'Banion Road.

26 Q What I'd like to do is to address the next

1 questions to both Mr. Sayer and Mr. Harrison, and I'd
2 like to ask each of you to answer the question.

3 If you would agree with the answer given just
4 immediately prior to you by one another, you can just
5 say so, but I would like to get an answer from each of
6 you.

7 The first question is were both of you present
8 to hear the testimony of Mr. Wagner that was given just
9 a few minutes ago?

10 MR. SAYER: Yes.

11 MR. HARRISON: Yes.

12 Q Mr. Sayer, you have previously testified
13 regarding the safety and the ability to continue crop
14 dusting operations with the construction of the Sutter
15 Power Plant. Does anything that Mr. Wagner said change
16 your testimony in any way or change your opinion on
17 that matter?

18 MR. SAYER: No. I'd like to elaborate if I
19 could. The -- each individual has to decide how they
20 want to fly these fields, and the equipment you use
21 sometimes makes your decision different. The burying
22 of the O'Banion wooden pole line is probably one of the
23 most significant things because that allows you to fly
24 up Township Road parallel to the wires right on the
25 ground. You can slip under your transmission line.
26 The prune orchard on the south side of O'Banion sets

1 back across the south pit probably a hundred feet from
2 the road in that corner, so it allows you to come up
3 through there and proceed all the way to the plant for
4 that -- matter of fact.

5 A light airplane can come down over that
6 height of wire in about 2- to 300 feet as Paul said,
7 and if you -- if you can run your four or five passes
8 parallel to the big wire, you don't have to skip
9 anything and you don't have to break the law as far as
10 spraying over ten feet, so there are ways these things
11 can be done, but -- and that O'Banion wooden pole line
12 is probably the most significant change in the total
13 environment.

14 Q You testified earlier, if I could summarize
15 your testimony, that notwithstanding the construction
16 of this transmission line that you believe that crop
17 dusting operations could continue in the adjacent
18 fields safely. First of all, is that still your
19 opinion?

20 MR. SAYER: Yes. It would just be one more
21 thing you'd have to pay attention to, but we have,
22 obviously, a lot of that going on in our industry
23 anyway.

24 As I stated earlier, it would be an impact,
25 but it would be acceptable because we have to do that
26 as a -- as it stands.

1 Q Okay. And knowing what Mr. Wagner testified
2 to this morning, has that changed your opinion on that
3 issue?

4 MR. SAYER: No.

5 Q Mr. Harrison, could you -- let me ask you what
6 is your opinion regarding the ability of crop dusters
7 to continue to provide the services that are necessary
8 for farming to go on on those adjacent fields,
9 notwithstanding the construction of the new
10 transmission line?

11 MR. HARRISON: I see absolutely no problem.
12 You just adapt to what the obstacles are, and yesterday
13 I drove down around the field and was shown the path of
14 the powerlines and the height, and I don't see that it
15 presents any problem greater than there exists right
16 now. Because of the height at the lowest sag point in
17 the lines, you have plenty of room to maneuver under
18 the powerlines if you don't have the power or the load
19 prevents you from an abrupt pull-up to go over them.

20 Q Okay. The proposed transmission line would
21 intersect the existing western transmission lines and
22 form something close to a 90-degree angle at the switch
23 yard. Let me ask you two questions with respect to
24 that. First, is that a situation that you have
25 encountered previously -- let me just stop there. Is
26 that a situation that you've encountered previously?

1 MR. HARRISON: Yes, I have.

2 Q And Mr. Sayer?

3 MR. SAYER: Yes.

4 Q And is that a situation which would allow you
5 to continue to provide the crop duster services that
6 are necessary to continue farming operations on that
7 piece of property where that angle occurs?

8 MR. SAYER: Well, the -- I'm trying to
9 visualize it in my mind's eye because I haven't been
10 down there for awhile, but when you have several wires
11 coming together, such as where the 500 KV and the 230
12 come together, that -- that kind of area always gives
13 you kind of a boxed-in corner, but I -- I would imagine
14 you could just about take care of all of that. The
15 500 KV and the 230 are not that close together right at
16 that point. Do you recall how far they are apart?
17 If you can get -- come down through -- without actually
18 looking at it, it's hard to say if you could do all of
19 it, but if you had to leave any of it out, it would be
20 a very small amount.

21 Usually when you're dealing with a corner like
22 that, if you can't -- this is more than a right angle
23 like up at O'Banion and up on the east corner there.
24 You have wires coming from different areas, and
25 sometimes you end up with a little spot that just
26 basically has to be off limits.

1 We have a situation down further down the line
2 where the 230 and the 500 come together and they pass
3 each other, they cross actually, and that's a tough
4 corner. Nobody wants to work in there, but it can be
5 done, or part of it can be done, and the amount that is
6 left out is -- you know, it's probably minimal. I
7 couldn't give you an exact acreage, but probably three
8 to four acres, five acres where you couldn't get all of
9 your -- all of your work done basically, but other than
10 that, I can't see where it would impact it that much.

11 Q Mr. Harrison?

12 MR. HARRISON: Could I comment?

13 As far as the seeding and fertilizing, it
14 would present no hazardous result at all because you're
15 disbursing material over the top of the powerlines
16 anyway. That 500 runs through that, that last field
17 next to the levee, Mr. Krepp's (phon.) field, runs
18 through at an angle, and there's no way that you're
19 going to get underneath it and there's no reason why
20 you need to get underneath it to disburse the
21 fertilizers and the grain, rice, and most of the
22 herbicide work now is all done with ground rigs, and a
23 lot of the fertilizing is done with the ground rig.
24 The herbicide -- it's a fact. 24D, all your Phenoxy's
25 are illegal as disbursed by air. The herbicides we use
26 on rice now is Ordram and Londax which are grandular

1 type materials.

2 MR. ELLISON: That's all we have. Thank you.

3 These witnesses are available for examination.

4 COMMISSIONER MOORE: I understand. Thank you,

5 Mr. Ellison.

6 Mr. Richins? Staff? Questions on

7 cross-examination?

8 MR. RICHINS: No.

9 COMMISSIONER MOORE: Mr. Keese has none.

10 EXAMINATION BY COMMISSIONER MOORE

11 Q Let me ask here. They have no questions. I

12 have a couple of questions.

13 Let me go back to the questions I asked if --

14 in terms of a 90-degree angle that is made by the

15 wires, your testimony suggests that the triangle that's

16 left, that gets left undone -- this is in terms of

17 pesticides -- is three to four acres right at the apex

18 of that -- that triangle? Am I quoting you correctly?

19 Yes?

20 MR. SAYER: Repeat it, please? I didn't get

21 quite the --

22 Q The inside corner.

23 MR. SAYER: The inside corner on a 90-degree

24 such as the one at Township and O'Banion?

25 Q Correct. I'm asking you if what I understood

26 from you is correct, that three to four acres is

1 untouchable --

2 MR. SAYER: No.

3 Q -- by the aircraft.

4 MR. SAYER: In reference to that, we were
5 working at the other end where the substation will be,
6 and when they build a switchyard or a substation, it
7 always -- it's like putting a building there, and you
8 have the wires coming in and the wires going out and
9 sometimes the overall construction is too much, and up
10 at the O'Banion Township corner, without the wooden
11 pole line there, there is no problem going under the
12 wire and starting to spray immediately on the south
13 side of the field. You can go all the way through to
14 the present plant, because it's all open and parallel
15 to the wire.

16 Q Then again I'm trying to clarify something
17 that you said.

18 MR. SAYER: Right.

19 Q I don't understand the comment that you made
20 then about the residual three to four acres.

21 MR. SAYER: That has to do with down at the
22 switchyard, because you have several wires coming
23 together there. You're going to have the new wire, you
24 have the existing 230, you have the construction of the
25 switchyard, and you have the 500 KV at a fairly close
26 proximity. That -- that wording was in lieu -- or in

1 that particular corner only.

2 Q And does that arise because of a height
3 problem or a clearance problem with the wires, or does
4 that problem arise because of a 90-degree angle?

5 MR. SAYER: Well, it's just the general
6 construction. You have a line coming into your yard,
7 you're tapping onto another line, and it's all making a
8 corner there. There's already a piece of ground there
9 that isn't farmed, if I remember correctly. I haven't
10 been down there for months, but at the most, you should
11 be able to do that whole area around the switchyard.
12 At the most, you'd have to leave out very few acres
13 when you get out to the other end. Just a pure 90 with
14 a tall wire. You can get under the tall wire and you
15 can start spraying immediately when you get to the edge
16 of the field.

17 COMMISSIONER MOORE: All right. Thank you.

18 MR. SAYER: I hope I --

19 COMMISSIONER MOORE: I think you answered my
20 question.

21 Mr. Foster, I'm going to offer you the
22 opportunity to cross-examine the testimony.

23 MR. FOSTER: Mr. Sayer --

24 COMMISSIONER MOORE: Can we make sure that
25 Brad gets the microphone?

26 MR. FOSTER: I'll talk loud.

1 EXAMINATION BY MR. FOSTER

2 Q Mr. Sayer, have you ever hit a small power
3 wire like associated on O'Banion and wooden poles?

4 MR. SAYER: Yes, everybody in this business
5 has, more or less.

6 Can I comment on that?

7 Q If you'd like.

8 MR. SAYER: I got my first job in this
9 business because a guy hit one wire, one line. It took
10 the end struts right out of the bi-plane and he went in
11 and it was the end of his career, so those little wires
12 are very treacherous. They can put you down.
13 Sometimes you get away with going through 'em. The big
14 ones, you have enough fear to stay away from 'em.

15 Q Mr. Harrison, have you ever hit a small line?

16 MR. HARRISON: Yes.

17 Q Has it ever brought your plane down?

18 MR. HARRISON: No.

19 Q Mr. Sayer, has it ever brought your plane
20 down?

21 MR. SAYER: Very close a couple of times.

22 Q Have you ever hit a large wire?

23 MR. SAYER: No. The public workshop, a couple
24 of the pilots made a comment on the safety of these
25 wires, and I believe their comment was "Bury the wires
26 or bury one of us."

61

1 Q What is your take on that comment?

2 MR. SAYER: Well, it would be a nice thing,
3 but theoretically I don't think the United States could
4 afford to bury its wires. I don't think that there's
5 enough capital to do all of it, and routing these wires
6 specifically around the work is better than just
7 putting 'em helter-skelter, and the biggest problem and
8 some of the accidents that Paul has been witness to and
9 I've been witness to, a lot of it's because of the way
10 the wires have been placed in the past, and it -- my
11 only -- my only interest in this whole thing is to try
12 and mitigate the problem which needs to be -- we can't
13 do without the power, so it's just a matter of trying
14 to make it as safe as possible, and that's my -- my
15 view on the whole thing.

16 MR. FOSTER: Where these wires leave the plant
17 and run east to Township Road, are you going to be able
18 to fly under these wires with the plant behind and the
19 existing plant?

20 MR. SAYER: You mean where the -- the service
21 comes out of the generating plant to Township Road?

22 Q Yes.

23 MR. SAYER: If they set this back into the --
24 say, 200 feet back into their own property, then it's
25 not a hard problem to come down over the wires into the
26 corner. If there's nothing -- Charlene, the

1 environmental officer, had stated that they have
2 planned to plant trees along there, and if they were
3 there, why, that's the way you'd have to approach it
4 anyway.

5 All these -- there's -- a lot of farmers have
6 big oak trees and Eucalyptus trees on their property,
7 and we have to deal with them all the time, and it --
8 like Jim says, we have to deal with the obstacles that
9 are presented, and we do the best we can.

10 Q You were mentioning the plant site. Are these
11 wires going to propose a drift problem onto their wild
12 land areas and habitat on that area with the pesticides
13 and herbicides that you're going to be flying?

14 COMMISSIONER MOORE: Mr. Foster, I'm not sure
15 that either one of these witnesses are qualified to
16 answer that. Let's stay with the --

17 MR. FOSTER: Well, it's an environmental
18 concern, it's a danger.

19 COMMISSIONER MOORE: I understand that you may
20 have concerns about that, but in terms of what these
21 witnesses have testified, I'm going to have to ask you
22 to stay to just what they've put on the record.

23 Q (By Mr. Foster) May I ask, are you going to
24 be able to guarantee the drift will not -- with these
25 wires in place --

26 MR. SAYER: Are you talking to me?

1 Q Yeah. Can you guarantee your drift from your
2 aircraft with these wires on that headland, that the
3 drift will not leave your said target?

4 MR. SAYER: Well, what area are you trying to
5 protect? And I'll explain how you can do that.

6 Q You're spraying the field where the
7 powerlines -- you're spraying Sillers' field.

8 MR. SAYER: This is the field just south of
9 the plant?

10 Q Maybe I'll ask Mr. Harrison because he knows
11 where Sillers' field is.

12 Can you guarantee your drift because of the
13 associated powerlines not leaving Sillers' property?

14 MR. HARRISON: Sure. Just -- just like
15 Mr. Wagner says, you have wait until ideal drift
16 conditions exist and you apply the material when the
17 ideal drift conditions exist.

18 Q Could that mean another trip out to the field,
19 another expense to the farmer?

20 MR. HARRISON: That's no additional expense to
21 the farmer. It's part of the ag business. I've made
22 as many as seven trips out to a field waiting for right
23 drift conditions.

24 MR. SAYER: Can I elaborate a little on that?

25 MR. FOSTER: No. I think I'm finished. Thank
26 you.

1 COMMISSIONER MOORE: Mr. Foster, you're
2 finished?

3 MR. FOSTER: Uh-huh.

4 COMMISSIONER MOORE: Thank you very much. Any
5 wrap-up questions, Mr. Ratliff?

6 MR. RATLIFF: Commissioner, I think that we've
7 discussed in terms of the underflying of the lines the
8 height of 50 feet would be the minimum -- or maximum
9 sag above the ground, and there was discussion of this
10 sag height at workshops with suggestion that this could
11 be engineered either by having a higher pole, or
12 alternatively, and I think was considered preferable by
13 most people, having the poles somewhat closer together.
14 Nevertheless, I'm unable to find any condition in the
15 decision which actually required some minimum sag
16 height, and I just would suggest that maybe this is
17 something that the Commission should consider
18 requiring.

19 We do have in land use a requirement that the
20 County and Calpine and the Water District would need to
21 consider how high the lines should be to allow
22 compliance of a general safety ordinance for that
23 particular stretch of the line on O'Banion Road, but I
24 wonder if we need something that is more specific to
25 make sure that the clearance is clear enough to allow
26 for safe flying -- I shouldn't say "safe," but

1 adequate.

2 COMMISSIONER MOORE: All right. We'll take
3 that under advisement. With that, I'm going to excuse
4 your witnesses, Mr. Ellison, and thank you very much.

5 Mr. Foster, I'm going to excuse you for right
6 now, and I'm going to turn to the next item on our
7 agenda.

8 Again, this is an evidentiary hearing. We
9 have the matter which caused today to come about in the
10 first place, and that is a change in the nature of the
11 air quality credits, and I'm going to ask Mr. Fay to
12 introduce that topic and then we're going to proceed
13 and bring that testimony into evidence here today along
14 with the wastewater testimony, and then we will
15 entertain public comments at the end of that -- that
16 process.

17 Mr. Fay?

18 MR. FAY: Thank you, Commissioner.

19 As I indicated earlier, Calpine requested the
20 opportunity to introduce replacement or substitute
21 emission reduction credits on the package. They served
22 this package no later than February 24th on all
23 parties, and the staff has prepared their reaction to
24 that and filed that on March 3rd I believe, so that all
25 parties have received Calpine's statement on this and
26 the staff's analysis of it.

1 We also are fortunate to have Mr. Kent Corbin
2 here today from the Air District to comment on whether
3 or not this replacement package still allows him to
4 confirm that all facts have been fully mitigated, and
5 so with that, I'd like to ask, Mr. Ellison, if you're
6 prepared to go ahead.

7 MR. ELLISON: Thank you, Mr. Fay. Just by way
8 of introduction of this issue, Calpine's original
9 offset package which was the subject of the earlier
10 hearings included various option contracts, and in a
11 couple of cases, letters of intent. One of the letters
12 of intent was for the acquisition of offsets from
13 Pacific Gas & Electric Company. The Commission's
14 statute calls upon the Commission to make a finding
15 that the Air Pollution Control officer has certified
16 that sufficient offsets are available and will be
17 obtained prior to the licensing. Staff interprets that
18 as requiring that contracts be in hand by the Applicant
19 prior to licensing, not at the hearings, but prior to
20 the final licensing decision.

21 For the record, Calpine does not agree with
22 that interpretation of the statute. We think what the
23 statute calls for is for the Air Pollution Control
24 officer's certification to occur prior to licensing.
25 That is consistent with the way the air quality rules
26 work outside the Energy Commission, which the actual

1 contracts for offsets are not required until operation
2 for them to operate, as opposed to permit to construct,
3 but putting that disagreement with staff aside, Calpine
4 has despite that disagreement stated its willingness to
5 comply with the staff's interpretation and to provide
6 those contracts prior to licensing, so to return to
7 what I said a moment ago, it was Calpine's intent to
8 satisfy that requirement at the time of the hearings
9 by, among other sources, executing a contract with
10 Pacific Gas & Electric Company, but a contract takes
11 two parties, not just one, and those negotiations
12 continue, but PG & E -- it became apparent to Calpine
13 in January that there was a significant risk, in fact a
14 likelihood those negotiations with PG & E for reasons
15 beyond Calpine's control would not conclude prior to
16 licensing, so as a result of that, that new information
17 that came in after the hearings, the status of those
18 negotiations, Calpine informed the Committee, as
19 Mr. Faye described in his comments on Calpine's
20 proposed decision, it would need to substitute some
21 different offset sources from the PG & E source, and
22 that's why we're here today, is to hear the
23 presentation of those substitute offset sources for
24 PG & E.

25 What I'd like to do is to ask Ms. Wardlow,
26 Environmental Manager for Calpine, to describe what

1 those substitute sources are and to summarize the
2 adequacy of the offset package with these substitute
3 sources in place.

4 COMMISSIONER MOORE: Excuse me. Ms. Wardlow,
5 if I could just remind you you have been sworn as a
6 witness and you remain under oath.

7 MR. ELLISON: Before Ms. Wardlow makes a
8 presentation, I would like to make one comment for the
9 record, given that we've just had this discussion this
10 morning of fairness and the issues of reopening the
11 record, and I think it's important for the Committee
12 and for everybody to understand the important
13 distinction between the reopening of the record in this
14 case for air quality purposes and the reopening that we
15 discussed this morning on crop duster issues, at least
16 understand Calpine's perspectives on that.

17 The requirement that contracts be in place for
18 the offsets as interpreted by the staff is inherently a
19 requirement that -- whose deadline occurs after the
20 hearings but prior to the licensing, so the first
21 distinction is that this issue of contracts being
22 completed and the way the staff interprets the statute
23 is -- sort of inherently creates this problem.

24 Secondly though, the information about the
25 status of the PG & E negotiations, I can assure you
26 that when Calpine presented its testimony back in --

1 late last year on the offset package, they believed in
2 all good faith that they would complete negotiations
3 with PG & E, and we have a letter of intent from PG & E
4 confirming that that was the case.

5 The information that became available in
6 January was -- became available the first time to
7 Calpine after those hearings, so the testimony that we
8 are describing today could not have been presented,
9 unlike in our opinion the crop duster testimony, the
10 testimony that we're talking about here for reasons
11 beyond Calpine's control could not have been presented
12 at the time this issue had been discussed previously in
13 the hearings and is sort of a product, if you will, of
14 the requirement that these contracts come into place
15 after the -- I'm sorry -- prior to licensing, so with
16 that explanation for the record, let me ask
17 Ms. Wardlow, who is still under oath, to describe what
18 the substitute offsets are and why the package that we
19 now have meets the offset requirements.

20 PRESENTATION BY CHARLENE WARDLOW RE ERCs

21 MS. WARDLOW: My name is Charlene Wardlow,
22 W-a-r-d-l-o-w. I'm the Environmental Manager for
23 Calpine Corporation, and I have been involved in the
24 evaluation of the emission reduction credits and the
25 liabilities for nitrogenoxide for volatile organic
26 compounds, reactive organic masses, and particulate

70

1 matter called PM10, which means that it's less than ten
2 microns.

3 The emission reduction credits that we have
4 proposed to provide from PG & E were provided from the
5 Sacramento Metropolitan Air Quality package, offsetting
6 the emissions from the project. As a result of the
7 unavailability of those in the timeframe to license the
8 project, we went back to the Feather River Air Quality
9 Management District to pursue the purchase of biofuels
10 credits from the district, so in that perspective they
11 were actually an advantage, because they didn't have
12 the distance ratio that the PG & E credits did.

13 The biofuels emission reduction credits are a
14 results of the burning that the farmers do here in the
15 County for rice, weeds, and other crops. We have added
16 to the sources to offset the project five different
17 ranches with credits that have -- credit certificates
18 that have been issued by the Feather River Air Quality
19 Management District with approval by the California Air
20 Resources Board and the U.S. Environmental Protection
21 Agency. At this time or point Calpine believes that we
22 do have adequate offsets based on the values that are
23 the actual emission reduction certificates from the
24 District. We are also now proposing to use
25 interpollutant trading of volatile organic compounds
26 for nitrogenoxides at an approved ratio of 2.1. Our

1 offsets based on the full value of the certificates is
2 actually substantially over the requirements to
3 mitigate the project in all areas using interpollutant
4 training for volatile organic compounds.

5 The distance of all the ranches is less than
6 20 miles, so there is no distance ratio besides what
7 the District requires of the 1.2 devaluation of the
8 actual certificate value, and the District also takes
9 5 percent off the top when a farmer files for the
10 actual certificate, so there actually is a net benefit
11 to the District in that if someone, for example, filed
12 for a hundred pounds, the District would take 5 percent
13 off the top before issuing the certificate, so then you
14 have 95 pounds, and then to get it to the project site
15 you have to discount it another 20 percent, so then
16 you're down to 76 percent of what the actual emissions
17 were at the -- at the farmer's location, so there
18 actually is even a better net benefit to the District.

19 Another change that is occurring is the -- a
20 rule change within the District to 10.1 that allows the
21 biofuels emission reduction credits to be evened out
22 over four quarters. Most of the burning is done in two
23 quarters of the year. This rule change, which is
24 consistent with other districts in the valley,
25 Sacramento, San Joaquin, Yolo, Solano, allows the
26 emissions to be spread out over four quarters, which

1 actually puts it more in line with our air quality
2 ambient stance in the District. This has gone out in a
3 30-day notice and will be voted on at the Feather River
4 Air Quality Board on Monday, March 15th, at the
5 District.

6 Also, as a result of the substitution of the
7 biofuels for particulate matter, we will no longer need
8 to pave roads in the county, which has been an issue
9 with some of our local neighbors who did not want roads
10 paved.

11 That's all I have.

12 COMMISSIONER MOORE: Thank you.

13 Mr. Ellison, do you have anything to add to
14 that?

15 MR. ELLISON: No.

16 COMMISSIONER MOORE: All right. With that, I
17 have some clarifying questions, but it seems to me that
18 my questions are going to be better directed to the Air
19 Quality officer, so let me then at this time open
20 cross-examination to just the statements from
21 Ms. Wardlow, understanding that there's going to be
22 other questions about how the Air Quality District
23 operates. I have some of those, Mr. Foster may have
24 those, Curor may have some of those. We will direct
25 those to the Air Quality officer when he comes up, so I
26 realize it's a little awkward, but I'll try and do it

1 this way so we don't lose track of what has already
2 been put on the record so we can focus our questions
3 more directly.

4 Mr. Richins, do you or Mr. Ratliff have
5 questions on cross-examination?

6 MR. RATLIFF: No.

7 MR. RICHINS: No.

8 COMMISSIONER MOORE: Mr. Keese, do you have
9 questions that you'd like to ask --

10 COMMISSIONER KEESE: No.

11 COMMISSIONER MOORE: -- of the intervenors?

12 Mr. Foster, do you have questions that you'd
13 like to ask?

14 MR. FOSTER: One.

15 COMMISSIONER MOORE: It's probably easier to
16 come up to the podium and ask that.

17 MR. FOSTER: We sent a letter in, now that
18 they have their contract secured and everything, about
19 the confidentiality, that the contracts be made public
20 so we'd know what we're dealing with here, and that
21 would be my only question at this point.

22 COMMISSIONER MOORE: Let me see if I
23 understand your question correctly. You're asking if
24 they will further identify other than what Ms. Wardlow
25 has just put on the record where these credits are
26 coming from?

1 MR. FOSTER: Who are they being purchased
2 from.

3 COMMISSIONER MOORE: Who are they being
4 purchased from?

5 Do you own that information or is that
6 information that only comes through the Air District?
7 Do you deal blindly with them?

8 MR. ELLISON: No. We know -- because we have
9 to execute contracts with these individuals, we know
10 who they are. We have filed for confidentiality for
11 two things basically. One is the prices which have
12 always been held confidential at the Commission of
13 those contracts which are not relevant to any question
14 that is before this commission and which I don't think
15 they need to know for any purpose, and, secondly, for
16 the actual names of the farmers which we have been
17 withheld at their request; however, the Farm Bureau
18 does have knowledge, because we've presented it in the
19 information that we've filed, of the fact that these
20 are farms within 20 miles of the project, which is all
21 you need to know for following air quality rules that
22 will allow you to apply the distance ratios under air
23 quality rules.

24 There's no other issue I'm aware of that under
25 the air quality rules would require you to know
26 anything more specific about the geographic location.

1 We have -- also, all of the public information through
2 the District is available -- the ERC certificates which
3 provide the details are all public, so the
4 confidentiality filing that we have made is the same
5 confidentiality filing by the way essentially with that
6 we made earlier on the offset package which no one
7 objected to, and these are the way these things have
8 been handled at the Commission for some time. The
9 amount of information that we've made public is more
10 than sufficient to allow the Farm Bureau or anybody
11 else, the District, staff, ARB, everybody else, to
12 determine that these offsets meet the applicable
13 requirements of the law.

14 Having said that, there is a process at the
15 Commission for determining whether their
16 confidentiality request is appropriate or not, and
17 there's an opportunity to the Farm Bureau to present a
18 contract. There is a staff attorney who will render a
19 judgment on that, and in our opinion this is not a
20 matter which is properly before this committee at this
21 time.

22 I make these comments just to make sure that
23 everybody understands what's going on, but the
24 appropriate process would be first for the staff to
25 make a judgment based on the two filings by Calpine and
26 the Farm Bureau as to whether they agree this

1 information is appropriately confidential or not, and
2 then if either Calpine or the Farm Bureau disagree with
3 that staff determination, there is an appeal procedure.

4 COMMISSIONER MOORE: Brad has indeed filed a
5 letter as an intervenor with the Commission, and now
6 let me just -- even though it seems a little
7 cumbersome, let me make it clear that you have two of
8 five commissioners sitting in front of you. We also
9 have an executive officer who under the law is
10 empowered to make a decision about whether or not a
11 request to keep any level of information confidential
12 is honored. The executive officer has honored that
13 request. It can be overridden but not by us, not by
14 the two of us, but by the whole commission, so even
15 though I am now as of this morning -- although I
16 haven't seen this before this morning, I am in
17 possession of Brad's letter, so I know about it.
18 Commissioner Keese knows about it. The full commission
19 does not but they will, and they will then determine
20 whether or not the Executive Officer's decision will
21 stand, so right now, Mr. Ellison is correct, this
22 committee can't take any action on this, but I -- it is
23 fair to indicate that Mr. Foster has put this letter in
24 and that the full commission will act one way or the
25 other on this letter.

26 Thank you, Mr. Foster.

1 Now, what I'm --

2 MR. FOSTER: Can I ask one more question?

3 COMMISSIONER MOORE: Yes. Of course.

4 MR. FOSTER: Does your substitute ERC package

5 require changes in the local air regulations?

6 MS. WARDLOW: Yes. As I stated, a rule change

7 to 10.1 that allows the exchange of pollutants between

8 quarters.

9 MR. FOSTER: 10.1 from --

10 THE WITNESS: The Feather River --

11 COMMISSIONER MOORE: No. 10.1. What was the

12 standard before the --

13 MS. WARDLOW: That's the number of the rule,

14 10.1.

15 COMMISSIONER MOORE: But you had a ratio.

16 THE WITNESS: Not with the rule.

17 COMMISSIONER MOORE: Okay. Sorry. Thank you.

18 Can I ask the Air Quality District officer to

19 come up and speak to us?

20 Kent, were you sworn in before?

21 THE WITNESS: No.

22 COMMISSIONER MOORE: Let me just for the

23 record ask the reporter to swear you in.

24 KENT CORBIN,

25 having been called as a witness, was duly sworn on oath

26 and testified as follows:

1 EXAMINATION BY COMMISSIONER MOORE

2 Q Can you describe for us the process that the
3 District goes through in order to entertain a rule
4 change? And then I have some questions and there may
5 be others who have questions about the nature of the
6 rule change and what it entails.

7 A Okay. When there's a proposed rule change,
8 they have to have a draft available for the public. We
9 have a 30-day public notice sent out to the California
10 Resources Board, and enclose a 30-day period consider
11 those comments. Our board has a public meeting.

12 Q The procedure is you get a request --

13 A Okay. When there's a request for a change in
14 the rule, we do a draft proposed rule, we do a 30-day
15 public notice, a notice goes in the local paper. We
16 send the proposed rule change to the California Air
17 Resources Board, and at the close of the 30-day period,
18 we -- we consider all of the comments, and it goes to
19 our board at a public hearing, and our board can either
20 approve the rule, disapprove it, or continue the public
21 hearing in case there are some other changes that are
22 desired.

23 Q Did you have such a request to change the
24 rule?

25 A Yes.

26 Q And what date was that? When did that come

1 in?

2 A Let's see. Going back about 45 days ago, so

3 about the first of -- first of February.

4 Q Sometime the last week in January --

5 A I would say sometime in January.

6 Q And who made that request to you?

7 A The request was made by Ocean Air

8 Environmental, a consulting firm.

9 Q And you took action on -- your board took

10 action on that request?

11 A What we did was post a public notice, set a

12 public hearing for March 15th. We sent it to the

13 California Air Resources Board, the draft rule, and

14 next Monday will be the 15th and our board will be

15 meeting to consider that rule at that time.

16 Q And what actions are open to your board? What

17 actions can they take?

18 A Well, again, they can either approve the rule,

19 disapprove it, they can consider comments, if there is

20 a significant change, continue the meeting to the next

21 regular board meeting.

22 Q And what actions can the California Air

23 Resources Board take once you have made a ruling at the

24 District level?

25 A The rule changes are submitted to the

26 California Air Resources Board within 30 days.

1 Generally they don't take any action, doesn't require
2 any action. If they felt that a rule we adopted was so
3 onerous or in conflict, they could hold a public
4 hearing and overrule.

5 Q So they have the capacity to overrule if they
6 choose to do it; it's discretionary?

7 A Yes.

8 Q Can you describe the nature of a bank of
9 emission reduction credits that you maintain, how
10 geographically diverse they are, what the nature of
11 them is, and how you keep track of them.

12 A The bank is something that's provided for in
13 our rules and regulations. It's required by the
14 California Health and Safety Code for districts that
15 are non-containment for the state standards. Basically
16 it covers all of Yuba and Sutter County, because that
17 is our jurisdiction. Someone that has an emission
18 reduction can apply to the District to have that
19 included in the bank. They have to put together the
20 emission reduction that's proposed, the basis has to
21 meet the criteria in our rules, which if I can remember
22 are it has to be permanent, surplus, enforceable. There
23 are about three others that I can't think of, but
24 anyway, it has to meet the criteria in the regulations,
25 and once we have completed our evaluation, depending on
26 the amount of the credit that's being considered, it

1 goes over a certain level which doesn't come to me
2 right now, we do a public notice in the paper, we send
3 copies to the California Air Resources Board and the
4 U.S. Environmental Protection Agency. They have 30
5 days to comment. At the conclusion of that period, we
6 can issue a credit.

7 Q The types of things that are included are any
8 type of what we consider a stationary source, emission
9 point that may have a permit from us, they have to show
10 that they had actual emissions for the two-year period
11 prior to the emission reduction and prior to the
12 application for the credits. We have to verify that
13 it's a real emission and it's not in excess of the
14 requirements that are in our rules. Other -- and
15 basically, as I mentioned, a stationary source. We're
16 talking perhaps of a lumber mill with boilers that shut
17 down. That can be included.

18 We can also include open burning regulation --
19 or open burning that is no longer being done, provided
20 we can make the same criteria, that it be permanent and
21 enforceable. We don't currently have provisions for
22 mobile sources, although some other districts have
23 that, and it's something we could do if we were to
24 adopt regulations, so I don't know that there's any
25 particular limit on the types of emission reductions
26 that can be put in the bank.

1 Q So right now, let's say I'm a rancher and
2 previously I've been burning off agricultural waste and
3 I come to you and I say I'm going to stop this. Can
4 you issue me a credit?

5 A We would have to --

6 Q I've been doing this for ten years. I meet
7 your two-year test, right?

8 A No, because the requirements for -- for open
9 burning are different from a stationary source.
10 There's a baseline period, 1988 to 1992. There has to
11 be a record that the source, the ag source burned
12 during that period of time, it has to show the amount,
13 the location, something that we can verify, and it also
14 depends on when you apply. If you were to apply right
15 now, the -- the amount of credit you could get would
16 only be 40 percent of the -- of the total that was
17 available during that baseline period. That is because
18 the emission reduction phase-down -- phase-down of
19 burning has reduced those -- the amount that can be
20 burned this year to 40 percent, so this year the only
21 amount you can get is 40 percent. Had you applied four
22 years ago, you could have gotten 100 percent, so it
23 depends on when you applied.

24 Q So the District is in possession of knowledge
25 of whoever had these credits, you store those in an
26 information bank of some kind, of, you know, who had

1 them, where they came from, and when someone such as
2 Calpine comes in and offers to purchase those credits,
3 they do so in the interest of expunging them for all
4 time, or some period of time? How is that working?

5 A The District, like I say, we have to verify
6 that the credits are real and actual, enforceable, based
7 on either our records or records that the source can
8 provide us. The credits, when they're verified and
9 when the certificates are issued, are entered into our
10 register, which is basically our computer system with a
11 hard copy. When someone wants to purchase those, they
12 have to deal with the person that owns them, to whom
13 the certificate is made out, and that deal is -- is a
14 market situation; we're not involved in that.

15 Q Does that run with the land? Is that deeded
16 with the land so that if they sold their property the
17 deal or the credits is attached to the deed for the
18 property, as opposed to the owner?

19 A No. The credits can be separated from the
20 land in the case of an ag burn operation so long as
21 when the land is transferred to the new owner, there is
22 a requirement that there be notice in the title that
23 credits have been granted and there are restrictions on
24 open burning on that property.

25 Q So the new owner couldn't simply start to
26 resurrect a system of open burning on property which

1 had had the credits stripped from it?

2 A No. They couldn't.

3 Q So that in turn is the guarantee that the
4 reduction in air quality emissions is actually
5 maintained over time and the District imposes a net
6 benefit by reducing the value of those credits over
7 time. In other words, you have to buy a higher volume
8 of credits than you would actually emit in order to
9 make them work?

10 A The -- the volume that you would have to have
11 would depend on several factors, depending on again for
12 rice, for example, if you applied now, you would only
13 get 40 percent versus the hundred. The other factors
14 had to do, as I mentioned earlier, with the District
15 from whether credits would be used and the 5 percent
16 that the District takes.

17 COMMISSIONER MOORE: Okay. I appreciate that.
18 Mr. Ellison, do you have any questions that you'd like
19 to ask of the Air District representative?

20 MR. ELLISON: No.

21 COMMISSIONER MOORE: Mr. Richins? Negative.
22 Commissioner Keese?

23 COMMISSIONER KEESE: No.

24 COMMISSIONER MOORE: Mr. Foster, do you have
25 questions you'd like to ask the Air Quality
26 representative?

1 EXAMINATION BY MR. FOSTER

2 Q Is this District a non-containment area or
3 not?

4 A Yes.

5 Q Would this plant meet the required offsets for
6 NOCS without interpollutant trading?

7 A I want to clarify the first statement, and
8 that is that the District is non-containment for the
9 state standard for ozone, and NOCS is a precursor to
10 ozone.

11 The second question again?

12 Q Will this proposed plant meet required offsets
13 for NOCS without interpollutant trading?

14 A As proposed by Calpine, there would be some
15 interpollutant trading required.

16 COMMISSIONER MOORE: In other words, they
17 cannot meet it without interpollutant trading, to
18 answer Mr. Foster's question?

19 THE WITNESS: That's correct.

20 Q (By Mr. Foster) At a Planning Commission
21 meeting a few months ago you stated there was enough
22 ERCs banked in our Air District for a plant this size
23 and possibly another one. Why are we having to make
24 this rule change now if that statement was correct
25 then?

26 A My recollection of what I said at the Planning

1 Commission was that there were credits in our bank and
2 there were other credits available, and the ones that I
3 referred to mainly that were available were credits
4 from agricultural operations which we had applications
5 for. They had not been processed and were not in the
6 bank.

7 Q Beings these are agricultural credits that
8 were going to be placed on the plant, these credits
9 would not be used in an agricultural manner on a
10 no-burn day, correct?

11 MR. ELLISON: I don't know if Mr. Corbin
12 understood that question. I'm not --

13 Q (By Mr. Foster) These are agricultural
14 credits and if it's a no-burn day, ag does not burn.
15 When you place these credits to a power plant, will
16 they be emitting pollution on days normally these
17 credits would not be used?

18 COMMISSIONER MOORE: I think there may be
19 another way to restate Mr. Foster's question, and I
20 would restate it as are these -- are these credits
21 averaged over an annualized basis or are they applied
22 on a daily basis in terms of the District rule?

23 THE WITNESS: The credits from agricultural
24 burning are based on defaults. There's a certain
25 percentage of the credits applied to each quarter and
26 that's -- each quarter based on historical burn records

1 for the District before the County, so to answer his
2 question, a plant that used these credits could operate
3 and emit on days when a particular agricultural
4 operation would not be allowed burning.

5 Q (By Mr. Foster) These credits that they're
6 acquiring, at what rate were they placed in the bank?

7 I mean today, if we were to burn a rice field
8 you're allowed to burn 40 percent. When these credits
9 were banked, were they banked under a hundred percent
10 usage, or what rate were they banked at?

11 A The majority of the -- of the agricultural
12 credits were banked at a hundred percent, and we had
13 two recent applications that were at the 40 percent
14 level.

15 Q So by Calpine purchasing them at a hundred
16 percent and then the 5 percent they take off of this
17 and the 20 percent for distance, they're going to be
18 getting about a 75 percent usage?

19 A I'm not sure what the usage in fact would be.

20 COMMISSIONER MOORE: Well, he's suggesting
21 that they -- they discounted the hundred percent value
22 of them by 25 percent and -- but not 60 percent. Is
23 that where you're going, Mr. Foster?

24 MR. FOSTER: Yeah.

25 THE WITNESS: I would agree with that
26 statement, with your statement.

1 Q (By Mr. Foster) But if a local rice farmer
2 wants to burn his field, he's only allowed to burn
3 40 percent?

4 THE WITNESS: That's correct. This year he
5 would only be allowed to burn 40 percent.

6 COMMISSIONER MOORE: Could a rice farmer go to
7 the bank -- if he wanted to do it, could he go to the
8 bank and buy hundred percent credits and burn a hundred
9 percent of his field?

10 THE WITNESS: No.

11 MR. FOSTER: Thank you.

12 COMMISSIONER MOORE: Does Curor have any
13 questions for the witness?

14 THE CUROR: No. Thank you.

15 COMMISSIONER MOORE: Mr. Fay has a question of
16 the witness.

17 Mr. Fay?

18 EXAMINATION BY MR. FAY

19 Q Mr. Corbin, you previously testified that the
20 Applicant had provided complete offsets for the
21 proposed facility, they had been identified and will be
22 obtained prior to licensing the project. Have you had
23 an opportunity to fully review the substitute ERC
24 package?

25 A Yes, I have.

26 Q And does that package allow you to still

1 maintain that complete emission offset rule for the
2 facility that had been presented?

3 A Yes. The -- the credits that are proposed by
4 Calpine for substitution do meet our requirements to
5 fully offset the emission increases at this time.

6 MR. FAY: Okay. Thank you.

7 COMMISSIONER MOORE: Well, then the last and
8 follow-up question to that is should your board fail to
9 take action to grant the rule change, should you fail
10 to do that, are there credits in the bank which could
11 be pursued that would satisfy the condition?

12 THE WITNESS: Yes.

13 COMMISSIONER MOORE: All right. Mr. Corbin,
14 thank you very much.

15 Can I have the microphone back up here? Thank
16 you.

17 With that, I'm going to move on, one last
18 item, on the -- excuse me. We have one last item that
19 we need to get on the record right now and in a formal
20 way, and that is concerning the wastewater area and,
21 Mr. Ellison, is this -- I need to start with you.

22 MR. ELLISON: I would ask Ms. Wardlow to
23 address the wastewater issue.

24 STATEMENT RE WASTEWATER

25 MS. WARDLOW: When Calpine initially proposed
26 the zero process water discharge, we had not had time

1 to evaluate the economics and the viability of three
2 possible options for basically evaporating the
3 processed water, so it's not discharged at this time.

4 Calpine has finished its evaluation. We have
5 chosen that there will not be an evaporation pond on
6 site. We will use an evaporator and then the solids
7 that are left over after the water is evaporated will
8 be hauled off to a licensed landfill.

9 COMMISSIONER MOORE: All right. If I can
10 summarize then, what we had before is -- and, again,
11 for public interest and the record, in a sense this is
12 housekeeping for us because we had three proposals, all
13 of which were deemed acceptable by staff, so Calpine is
14 simply advising us at this point which of the three
15 acceptable solutions that they'd pick, so I enter that
16 into the record, what your choice is, and we will duly
17 consider that as part of our decision.

18 All right. Now, so at this point what I
19 intend to do is to stop this part of the hearing.
20 We've had a very formal hearing, and I'd like to
21 entertain comments from the public. We'll now call
22 this the "Public Comment Period," and we will then --
23 I've got -- somebody has wadded up all the blue cards
24 up here. I've gotten a number of blue cards, and so
25 we'll call people up until about 12:30. We'll take a
26 short lunch break and then we'll reconvene.

1 Mr. Foster, do you have a question on this water issue?

2 MR. FOSTER: How much proposed truck traffic
3 is going to be coming with hauling this water off site?

4 MS. WARDLOW: There will be no water hauled
5 OFF SITE. All that would be hauled off is the solids
6 that are left after the water's evaporated, and I don't
7 know how much is going to be left after that.

8 COMMISSIONER MOORE: In terms of solids?

9 MS. WARDLOW: Correct.

10 COMMISSIONER MOORE: All right. That's as
11 good of an answer as I think we're going to get at this
12 moment.

13 All right. With that, I'm going to switch
14 gears slightly and indicate to you that we have had a
15 number of -- oh, right. I need to set the ground
16 rules.

17 Let me go back and say originally we issued
18 what was known as the Proposed Presiding Member's
19 Proposed Decision, PMPD. We held a hearing following
20 that in which people commented on the decision and said
21 "I like it," "I don't like it," "It's deficient here,"
22 "It's deficient there." We then issued this green
23 bound volume which is called the "Revised Presiding
24 Member's Proposed Decision."

25 What is open for discussion today under the
26 rules is that there's a -- the difference between the

1 original decision and the proposed -- and the revised
2 decision is what's open to comment on today, so I'm
3 going to ask that you direct your comments to that and,
4 you know what? It might be helpful for everyone if I
5 just asked Mr. Fay to outline where the changes took
6 place, what we heard and what we republished as part of
7 the revised decision, so let me just ask him to take a
8 couple of minutes and point out what changed, and then
9 I'd like to entertain your comments on that, and I'll
10 tell you what. Then at the end I'll open the -- the
11 range so that you're not constrained that way, and you
12 can talk to me about other options that you'd like to
13 bring to our attention.

14 MR. FAY: Thank you, Commissioner. I wasn't
15 quite prepared to nail that in a concise manner.

16 What I'd like everybody to recognize, first of
17 all, what we're talking about is this document. It's
18 the Revised Presiding Member's Proposed Decision, and
19 all the changes have been shown in strike-out and
20 underline format, so if you look through and see
21 something lined out, that's been eliminated, and if it
22 is highlighted or shaded, then it's been added. If any
23 of them are minor editing changes, and for the most
24 part these are changes that the staff and Applicant had
25 submitted on the record and recommended, and they were
26 ones that the Committee -- well, obviously, if they're

1 included, the Committee agreed with those changes.

2 What I'd also like to note is that there were
3 a couple of things inadvertently omitted.
4 Sutter County had offered a couple of conditions which
5 were agreed to by all parties and were reflected in the
6 record but they wanted a little more explicit language.
7 Those conditions which they had filed originally I
8 believe -- well, they repeated their filing March 10th.
9 The original one was February 9th. Those conditions
10 will be included, and it was just an inadvertent
11 oversight. No disagreement on that.

12 In addition, we do want to note the comments
13 received by people. Time was tight and meeting our
14 schedule and the turn-around, and so if you had
15 submitted comments and you didn't see any reference to
16 them, that didn't mean we didn't review them. The
17 Committee saw all the comments submitted and we will
18 try to acknowledge those in an amendment sheet that
19 will go to the Commission.

20 In addition, the amendment sheet will include
21 reference to the Air Quality changes proposed today and
22 reference to the additional testimony which we heard
23 today regarding crop dusting and any action that the
24 Committee chooses to take in light of that testimony
25 regarding the crop dusting, so at this time I'd like to
26 entertain any comments on -- just on the changes in the

1 revised from the original Presiding Member's Proposed
2 Decision.

3 If your comments really have to do with the
4 project as a whole and that type of thing, or some
5 topic other than those specific changes, please hold
6 off, because we are going to have a general comment
7 period and we've got the blue cards up here and we're
8 going to call on people. Mr. Burke?

9 MR. BURKE: Excuse me. I'm just asking a
10 question. My name is Jerome Burke. I'm a local
11 citizen.

12 Are what we discussed here today part of the
13 revised? Our comments that you're asking for now in
14 the Revised PMPD are what's been discussed today, is
15 that open to these comments? Are --

16 MR. FAY: Right now, at this precise moment, I
17 only want comments on the changes that occurred in this
18 document.

19 MR. BURKE: I haven't had an opportunity to
20 read all of that.

21 MR. FAY: If it's not underlined or struck
22 out, then --

23 MR. BURKE: There will be a comment period
24 later on today?

25 MR. FAY: So we're just asking for comments on
26 the changes that occurred in this document, and as soon

1 as we conclude that, then we will go to the blue cards
2 and take people's comments, their general comments that
3 we always take at the end of the hearing, so any
4 specific comments on the revised draft? The revised
5 draft was sent out about ten days ago on the proof of
6 service and we did bring copies which are available
7 here.

8 If you do have some comments regarding the
9 changes that occurred in this, and you haven't already
10 made those comments, you're welcome to send them in.
11 They will be considered before the Commission acts on
12 this decision.

13 The proposed -- the Revised Presiding Members
14 Proposed Decision and the Committee of the proposed
15 amendments that I mentioned, that would cover today's
16 activities, the air quality things, the crop dusting
17 and the omitted matter. All of that together will come
18 up before the Energy Commission on March 17th. That's
19 a week from today, and at that time the Commission will
20 be asked to make a decision on every aspect about this
21 project except the question of whether it complies with
22 local land use and whether it can be licensed and
23 certified, so if you want to make a comment about
24 environmental factors, you should come to the
25 Energy Commission next Wednesday, because if the
26 Commission takes the Sutter project up again at a later

1 time, either two weeks later or a month later or
2 whatever after your Board of Supervisors rules, the
3 Energy Commission will be focused narrowly on the
4 question of what did Sutter County decide, and they
5 will not be entertaining comments on visual impact, for
6 instance, or crop dusting or other things.

7 March 17th is the day to address the full
8 Energy Commission on those things, and I want it to be
9 very clear so that someone isn't mistaken and not come
10 next Wednesday and then come later and hope to bring up
11 some of these matters. The reason is the Commission
12 will be narrowing things so much is that for your Board
13 of Supervisors the Commission is going to adopt all of
14 the environmental, engineering need based analysis. If
15 they do adopt it, then the Committee has proposed, and
16 that would be the basis or one of the bases for the
17 Board to make its decision. They're going to use this
18 environmental impact report; therefore, it's not final
19 if the Commission later entertains other things about
20 the environmental analysis. I hope that's clear.
21 That's the reason -- the only thing that will be taken
22 on March 17th and not at any subsequent hearing.

23 With that, I saw no indication that anybody
24 wanted to comment on the changes in regard to the
25 preceding proposed revision. Like I say, if do you
26 think of something later, please send us a note.

1 I'll turn it back to the Commissioner to
2 entertain public comment.

3 COMMISSIONER MOORE: Okay. We're turning to
4 the last phase of what we intended to accomplish today,
5 which is to get your public comments, and you can
6 include in that a process that we've understand, the
7 documents that we've issued, or the testimony that you
8 have heard today, the questions that you've heard
9 today.

10 So with that, Mr. Burke, you asked to speak to
11 us and I'd love to hear from you. Let me put the
12 microphone back down to that level.

13 PUBLIC COMMENT SECTION

14 MR. BURKE: It's nice to see a lot of old
15 acquaintances here, or maybe it's not so old. I don't
16 know. I had just a couple of comments on today's
17 proceeding.

18 The first one was in regard to the Committee's
19 comments concerning our need to keep our comments and
20 everyone's here focused on the business of the day.
21 i.e., the crop dusting, the ERC substitute package, and
22 the drainage decision by Calpine, and, yet, I note that
23 the first thing out of the Calpine's side was public
24 relations, and I -- that's my words -- attempt by -- to
25 influence the public by noting their quite generous
26 offer of flood control and having that entered into the

1 record, and I would -- were -- had I had the capacity,
2 I would have objected to that simply because it's not
3 -- or was not part of today's business.

4 The other comment I would make is on
5 Mr. Ellison's comments, and I believe this is a quote,
6 the essence of fairness in any process is the adherence
7 of all parties to the rules and, yet, Calpine in order
8 to have this site cited will need major changes in
9 local air quality rules and also land use rules within
10 Sutter County, so I find that -- well, quite frankly,
11 my hat's off to him for having that much gall.

12 That's not a personal attack, Chris. You're
13 doing your job. Then I would -- I think finally thank
14 the Committee for having us here and for exploring the
15 issues that it has. Thank you.

16 COMMISSIONER MOORE: Thank you, Mr. Burke. Do
17 you want to leave the microphone right there, and, you
18 know, I think to just not let these things sit on the
19 table, I think Mr. Burke raised a good point. The
20 responsibility for having that initial comment by
21 Calpine on the record at the time that it did, the
22 responsibility was mine and I think I made an error in
23 that that kind of comment should have been presented at
24 this time in the hearing in the same way that any other
25 information is presented by a citizen. That's my fault
26 and I take responsibility for that and I apologize. I

1 think it's reasonable for you to call me on that. I do
2 apologize.

3 Marilyn Kinyon?

4 MS. KINYON: Yes. Good afternoon.

5 My name is Marilyn Kinyon. I'm part of the
6 Detling Ranch, and I have a question for the
7 commissioners. What is the real reason, and could
8 you -- what are real reasons for not putting the
9 transmission lines underground?

10 COMMISSIONER MOORE: She's asking what is the
11 real reason for not putting the transmission lines
12 underground, and I will in a little bit of self defense
13 refer back to our record where we heard a fair amount
14 of testimony on the costs and feasibility of that.

15 At this point, what we have suggested is that
16 certain portions in order to mitigate the impact be
17 placed underground. We went as far as we could given
18 the information that was presented on the record as far
19 as what we thought we could justify, so the long
20 answer -- the short answer to that, excuse me, is that
21 we relied on the testimony of the people that came
22 before us, and to the extent that it looked like it was
23 economically and physically feasible, we required it
24 and where we felt that stopped, we didn't require it,
25 so that's -- that's why we did what we did, and what we
26 did in terms of underground is actually called out in

100

1 the green report and Harry's looking it right now.

2 Before we leave today I will point to the --

3 MS. KINYON: Does that apply to the --

4 (inaudible)

5 COMMISSIONER MOORE: She asked whether that
6 was because of flooding mainly, and one of the
7 things -- we took flooding into account, along with a
8 number of other factors, including the necessity to
9 have transfer boxes so many thousand feet, given the
10 length of the wire and the reliability that was implied
11 by having a junction, several junctions within each one
12 of those boxes, so we tried to include a number of
13 different factors in that -- that did involve flooding
14 as well, but not primarily because of flooding, no.

15 MS. Kinyon: So it's mainly cost then?

16 COMMISSIONER MOORE: I would say that the
17 principle factor that was presented to us was a cost
18 feasibility factor.

19 MR. ELLISON: Commissioner, could I comment?

20 COMMISSIONER MOORE: Certainly.

21 MR. ELLISON: There is a lot of testimony on
22 this issue in the record and we spent a lot of time
23 talking about it, but let me give you what I think is a
24 simple answer, which is that the distribution line on
25 O'Banion from South Township west on O'Banion will be
26 underground. The transmission voltage lines will not

1 be, and the simple -- there have been a number of
2 reasons, but probably the two simplest ones to
3 understand are one, even when you go underground, there
4 are these above-ground structures, so that the idea of
5 it just disappears underground would not be the case.

6 There would be these major above-ground
7 structures frequently along the route, but more
8 importantly, the main reason is a safety issue that
9 the -- because of the high water table in that area,
10 putting very high voltage electric wire -- water and
11 electricity don't get along well. Putting high voltage
12 electric wire with a high water table, in addition to
13 being extraordinarily expensive, it's mainly an issue
14 of safety.

15 MS. KINYON: I have a docket report in Canada.
16 This has to do with it is done all the time, and we
17 have flooded areas all over the world.

18 COMMISSIONER MOORE: Why don't you tell us the
19 nature of -- tell us the reference.

20 She's just handed me a letter that is taken I
21 believe off the Internet. Am I seeing that correctly?

22 MS. KINYON: That's correct.

23 COMMISSIONER MOORE: "Underground Transmission
24 Cables Are A Vital Part of Any Transmission System."
25 It appears to be about eight pages long and, yes,
26 ma'am, we will enter it and make sure that everyone

1 sees it.

2 MS. KINYON: Okay. Thank you very much.

3 COMMISSIONER MOORE: Karen Detling?

4 MS. DETLING: Good afternoon. First, I want
5 to thank you for reopening the hearing on the pilot
6 safety and crop dusting problems. My comments will not
7 agree with some of the pilots.

8 First of all, a question I'd like to ask is
9 does the FAA have anything to do with the crop dusting
10 industry, and I think, secondly, would they allow a
11 plane to fly at a ten-foot level under powerlines over
12 a County road that would possibly have traffic? These
13 are two questions that I have no idea on.

14 There -- every field has its own problems.
15 Some fields are resistant. You can't fly it like some.
16 Some fields you can probably do ground rig, but some
17 fields -- we had two companies last year come in and
18 try to do some ground work for us in a rice field.
19 They got stuck, they pulled out, they wouldn't come in,
20 so there are a lot of -- everybody has their individual
21 problems with -- the crop dusters were not all crop
22 dusters.

23 We also have a water table where it's against
24 the canal. You can't fly this Flurodan, which they're
25 doing now which we are going to have to substitute
26 something for shortly, but in some ways we have kind of

1 a unique problem, and I'm sure some of the other
2 farmers do too, so flying is not specific to a general
3 type of thing. We can't -- there's a lot of things.
4 Some farmers could do that; other farmers cannot do
5 that.

6 Another question I'd like to ask is on the
7 debris, the rice burning. For the last few years we've
8 paid our fees to burn; we've never be able to burn. I
9 mean we've never had a day where they said "You can
10 burn," I don't care if you finish early in the year,
11 you're still 4- or 500 on the list. We continue to pay
12 our fees. Now all of a sudden these credits from other
13 farmers are going to go on -- these people can use
14 these credits or whatever you're calling them all year
15 long and we can't -- we've never -- we don't get to
16 burn. I mean they say you can burn, we pay our fees,
17 okay, you're 400 on the list. You keep calling,
18 calling, calling, and then the day it starts to rain
19 they call up and say, "Hey, you can burn today." I
20 mean what can you burn on the rice when it's wet?

21 COMMISSIONER MOORE: Do you get your money
22 back?

23 THE WITNESS: No, we don't get our money back.

24 So what I'd like to know is is it going to
25 make it even harder to be able to burn rice because all
26 of these credits are going to other parts, or are we

1 going to -- is it going to -- what I want to know is is
2 it going to impact the rice burning even more than it
3 has so far? So --

4 COMMISSIONER MOORE: I'm going to --

5 MS. DETLING: Those are my comments.

6 COMMISSIONER MOORE: I understand your comment
7 is you think it will impact the rice burning more than
8 it has?

9 MS. DETLING: Right. We're already having
10 problems getting it burned now, 40, 50 whatever it was,
11 it's still the problem. You pay your fees, you pay so
12 much an acre to burn, plus your app fee, and then you
13 keep calling and you never get to burn.

14 COMMISSIONER MOORE: A question for
15 you, Madam Detling, have you made any of these comments
16 known to the Air District when they have been --

17 MS. DETLING: No. They don't know OF any rule
18 change they've made in the past except for the
19 reduction, but as far as how you burn, where you burn,
20 you are at the Mercy of whoever lets you burn on a burn
21 day, but anyway there's only certain days you can burn
22 and there aren't too many of them, and when you do,
23 it's only a hundred acres here, a hundred acres there,
24 so you end up burning -- you try to get it underground,
25 your ground becomes diseased, the weeds keep coming,
26 your chemicals don't work. It's just a round-Robin, so

1 that's all I wanted to say.

2 COMMISSIONER MOORE: Thank you.

3 Chuck?

4 MR. COOK: Good afternoon.

5 I'm -- my name is Chuck Cook and I'm in
6 support of the Calpine project. I think that they've
7 met -- they've gone way out of the way to address
8 everybody's problems. We all have to live together and
9 work together in the community.

10 I'm a life resident of Yuba, Sutter County,
11 and I've had to travel out of the town for ten years to
12 find employment. My family came over the Donner Summit
13 and farmed, and during the depression they had to sell
14 land to survive, so we have to do together what we have
15 to do to survive, and that's all I have to say. Thank
16 you.

17 COMMISSIONER MOORE: Thank you, Mr. Cook.

18 Mike Buck? Good afternoon.

19 MR. BUCK: Good afternoon. My name is
20 Mike Buck. I'm an operator for the Gridley tool
21 facility for Calpine that's behind Sunsweet Growers
22 over here as an operator.

23 I'd like to say that when you brought up the
24 rice burning everybody kind of jumped around the room
25 that just because we're running a plant you're somehow
26 making it evil to burn a rice field. Me, personally, I

1 have strict standards that I have to follow every day.
2 I have a limit on NOCS of 4.2 -- excuse me -- 6.1. I'm
3 sorry, and if I exceed that, not only will I lose my
4 job, if I make it a habit I will be given three days
5 off, my bosses will be in trouble, our certificate from
6 the Feather River, they can be yanked. I mean the
7 business could be shut down, so it's not something that
8 we don't pay attention to and we don't address every
9 day, every -- every 15 minutes. Every minute it
10 updates. We have a -- we have a monitor. Everything
11 is paid very close attention to, so when people say
12 that we can't burn today but they can run, I've lived
13 in Gridley -- I know everybody knows where that is --
14 my entire life, and personally when it's time to burn
15 the rice, I've never had a problem with it. It's just
16 something that I know it happens every fall. I grew up
17 in it, okay? But what -- the benefit I -- I don't see
18 a benefit from it, where okay, everybody is burning
19 their rice today for this week or this time of year,
20 what is the end result. What is the community getting
21 out of this? What -- what benefit is it to the
22 community? I know the rice farmers have some benefit
23 from it. You know, I'm not a rice farmer, so I don't
24 know exactly what it does, but I know you benefit from
25 it, but what we're -- we're generating electricity,
26 something every single person in this room uses every

107

1 day of their life. Wer're not building some giant
2 chemical plant somewhere that is, you know, going to
3 wipe us all out and explode or something. Everyone in
4 this room uses electricity and everybody knows that
5 we're growing and growing and growing.

6 I mean really I don't want to take up too much
7 of your time, but I just think it's way too much
8 arguing going on with these -- in these meetings and
9 it's something we need that everyone uses. Just try to
10 find a way to work it out, and I personally -- I've
11 already reaped the rewards that Calpine offers. Me and
12 my family have a very nice life and there's a lot of
13 people around here that can have that same life with a
14 company that's allowed to expand and come into local
15 communities, and the proof's in the pudding, and I'd
16 just like you to know that, that burning rice fields is
17 not -- comparing a rice field burn day to an operation
18 of a power plant, especially a state-of-the-art
19 facility, there is no comparison, and don't for a
20 minute think that that's equal ground, because it's
21 not.

22 COMMISSIONER MOORE: Thank you, Mr. Buck.

23 Harold SPEESE?

24 MR. SPEESE: Yes. Thank you very much. I'm
25 Harold SPEESE. I live at 397 Neal Drive and I breathe
26 the air that's around here and I also use the power.

1 Okay. I think that -- I've got not too many
2 comments, but I think overall, the -- the project is
3 probably kind of short-sighted for the future. I'm
4 saying -- I've traveled from here to the East coast and
5 back several times over several years and I've noticed
6 a change in the areas as I've gone through the state.

7 Now, if you take this plant and it's going
8 to -- and if it's going to be approved it's going to be
9 like putting a Cadillac out in your front yard and,
10 gee, don't you think there's a garage to put it in,
11 that a location for that garage in this area? It's not
12 that we don't want to have the power plant here. We
13 want the power plant and the garage to the place that's
14 already in an industrial tract. It's already in our
15 planning. Our children have got to, and our future
16 planners a hundred years from now are going to have to
17 work around this power plant that's in our area. If
18 you set it in our backyard, then there is nothing
19 that's going to happen around that power plant that
20 will diminish its impact. Nothing. I want you to
21 think real serious about that.

22 Salt Lake City, for example, is -- it has the
23 lake west of town, that's absolutely true, and it can't
24 expand much further west, but good God, three of those
25 smoke stacks and those industrial areas right next to
26 that lake and they're pushing -- and they're pushing

1 their population out there right now, and what I'm
2 really saying is I think you ought to consider that
3 when you -- when you approve a Cadillac, put the garage
4 where it belongs so you don't have to -- so our future
5 a hundred years now won't have to worry about that.
6 They will say, "Gee, they really planned great."

7 I would also say about the crop duster issue,
8 you know, I'm not a pilot but I've been in aviation and
9 the aircraft business for years and years, and I know
10 that there's risk takers and there are folks that fly
11 cautiously and I know there's insurance folks and there
12 are folks who take liability serious, and if I had a
13 crop dusting business and I hired a pilot to fly under
14 a dadgum powerline, I'd say "Wow." I really would. It
15 just doesn't make sense to me to put somebody's life at
16 risk to fly under a power line. I don't care how high
17 or low it is, and I don't belong to the FAA. That's
18 one of the things that ought to be thought about.

19 Let's talk about the smog if I can. I
20 understand farmers in our area have been hounded to
21 death about returning rice crop, and about the smog,
22 and I've commuted from Sacramento to this area from
23 over 12 and a half years and there were days that
24 absolutely -- that it was smoke from Sacramento clear
25 to Yuba City and on to Gridley. I mean it was
26 terrible, and I called my Congressman one time and he

1 said, "I put an electronic air filter in my house so I
2 could stand it" and I'm asking all of us folks who
3 don't like that kind of smoke, put pressure on, and
4 they said okay, guys, let's cut down smoking on --
5 smoke-producing elements of this rice industry, so they
6 did. They cranked the dadgum people up and says okay,
7 you folks, you can grow the rice, we're going to eat
8 it, but you can't burn it. Now they're saying well,
9 gee whiz, you can buy the dadgum credits back again.

10 Now, the -- in my opinion, if I sell smoke
11 credit to a bank, then I do it and I have do it the way
12 I understand it in a deappreciated form, I mean as it
13 goes. I understand, and maybe I'm kind of you know,
14 off the wall, but my question is do the folks who buy
15 these things have to also depreciate 'em every year to
16 where they're coming down to zero, all of a sudden one
17 day it's going to come down to zero, or are we just
18 going to leave it open right like it is today, approve
19 today. My -- my thing is if we're going to eliminate
20 the farmers' smoke problem and our folks who breathe,
21 the folks are -- our folks who breathe the smoke and
22 don't like it, and we're already leaning on those folks
23 to take care of the smoke problem and they are, and
24 that's to eliminate down to zero, not livable, but down
25 to zero, then let's just make everybody else that buys
26 the damn things do the same thing, eliminate it to

1 zero. That's what I'd like to see, and I would like to
2 take the time to say thank you for letting us have the
3 opportunity to speak. This is great.

4 COMMISSIONER MOORE: Thank you very much.
5 Thank you, Mr. SPEESE.

6 Now, the last blue card that I have for
7 someone who wanted to speak, and that's the reason I'm
8 just going to go straight through, is from
9 Mr. Scandalis, and I'm assuming that in fact I have the
10 expression of everyone who wanted to speak in the
11 public comment period today, and that will then be the
12 break.

13 MR. SCANDALIS: Gregory Scandalis from
14 Yuba City, and I'm going to be brief and focus in on
15 one of the issues of today, and I'm not a crop duster,
16 but to indicate that I have experience, I have over
17 3,000 hours flying time in the military in both
18 fixed-wing and rotary aircraft and have experience in
19 ground-hugging, low-level missions, and I can
20 appreciate Mr. Wagner's concern about the powerlines,
21 but I asked him, and his total experience is in fixed
22 wing, not propeller aircraft.

23 The thing that I -- I've noticed in the past
24 hearings and here is there are two ways to aerial
25 spray, fixed wing or helicopter, rotary aircraft, and
26 logically some of the hazards, obstructions of 106 feet

1 of these powerlines, obstructions to flight are not a
2 hazard to a helicopter, so there are alternatives to
3 give better coverage, not miss corners of fields, and
4 to minimize spray drift by the use of helicopters, and
5 I think this should be considered in a decision that
6 these powerlines are a hazard to areal spraying because
7 they're a minimum hazard to helicopters. Thank you for
8 your time.

9 COMMISSIONER MOORE: Thank you very much.

10 All right. Steve Armstrong, you've indicated
11 that you'd like to speak to us.

12 MR. ARMSTRONG: Good afternoon. I am a field
13 supervisor for a crop dusting company known as Growers
14 Air Service, and some of the items that were said
15 during the testimony I have to clarify, I believe.

16 Herbicide applications done in close proximity
17 to wires is a very tricky situation nowadays with all
18 of the environmental concerns that we have to deal
19 with, and there's a lot of folks out there, both in the
20 County and the State, that are monitoring all of our
21 applications. They monitor not only our applications
22 but the water after we leave the application site, and
23 most of you are well aware of the levels that were in
24 the Sacramento River sometime back and how the industry
25 has improved our techniques and water control in
26 mitigating this situation.

1 It is true that we are unable to use some of
2 the spray herbicides such as the phenoxy's for
3 controlling weeds in rice fields today, but who's to
4 say that next year -- these chemical companies are
5 constantly trying to register products that we can use
6 on rice fields to control some of these rice pests,
7 weeds that we cannot control without having the use of
8 the phenoxy's. There are some people that have grounds
9 that are unable to use ground rigs because of the soil
10 types. Ground rigs just do not work in alkaline type
11 soils. The ground rigs cannot go through the ground to
12 make an application, so these folks are unable to have
13 an application if they're encumbered by obstacles such
14 as wires, trees, other aerial hazards.

15 Now, I'm not saying that these wires will pose
16 a problem in all fields in all cases, but for those
17 people that have these types of soil conditions, and
18 there are many of them in the area of these powerlines,
19 it does pose a problem for these people to get an
20 application done in a proper fashion and in a timely
21 fashion. Many of the products that are on the market
22 today are very, very highly refined materials that are
23 very time-sensitive in their application. That means
24 we have a very small window in which to apply these
25 products. Thusly, if you have obstacles such as
26 powerlines that mean that you have to have a certain

1 wind direction with a -- I have to back up a little
2 bit.

3 With powerlines and susceptible crops you need
4 specific wind directions to keep the product off of
5 susceptible crop. It makes it very difficult to get
6 this job done to start with, and then when you have to
7 have the exact wind direction or atmospheric condition,
8 because many products are unable to be applied in
9 temperatures in excess of 80 degrees, what I'm saying
10 is we have a very small window to apply products on
11 certain locations and on certain crops. Any additional
12 hazard causes more of a problem for not only the
13 operator of the ground but the people that are trying
14 to service the operator as well.

15 COMMISSIONER MOORE: Thank you. All right.
16 I'm going to take two more speakers and then we're
17 going to wrap this up.

18 Wilma LaPearl?

19 MS. LaPEARL:: I've just noticed in your
20 revised report on page 11 at the top of that page --

21 COMMISSIONER MOORE: Yes, ma'am.

22 MS. LaPEARL: Well, there are the words
23 crossed out about -- well, first there's the switchyard
24 at the plant and then it says a new switching station
25 at the south side of O'Banion Road and the Sutter
26 Bypass and that's crossed out, and then again on

1 page --

2 COMMISSIONER MOORE: No.

3 MR. FAY: It's highlighted. It's added.

4 MS. LaPEARL: Oh. It was added.

5 MR. FAY: The deleted things have a line
6 through it. If it's shaded, that means it's
7 additional.

8 MS. LaPEARL: I certainly misinterpreted that.
9 Then it's definite that it's going to be on our
10 property, the switching station.

11 COMMISSIONER MOORE: Where it's proposed.

12 MS. LaPEARL: Where it's proposed.

13 One other thing I wanted to say about these
14 credits from not burning your rice stuff, it's a law
15 that was passed and I'm not an expert on it, but I do
16 know that within a very few years, rice farmers aren't
17 going to be allowed to burn any stubble. It was
18 decreased gradually over a period of years, and it
19 makes it more expensive for us to plow under the
20 stubble than it was to burn it, but we've complied with
21 that. Our family hasn't sold our credits, which we
22 could do, because we wanted to improve the air quality
23 in Sutter County. I think most farmers want all their
24 neighbors to have clean air, and now we find out for
25 our extra expense of not burning, this pollution is
26 going to be put back into the air by a company that's

116

1 only going to hire 25 permanent employees, and I hope
2 Sutter County realizes that there are many other
3 industries that hire -- that are far more employee
4 intensive and that could come to the County and we
5 could still have cleaner air, so I hope that
6 Sutter County realizes that in the long run it is
7 making a mistake. Sacramento will get the energy and
8 we will have the pollution.

9 COMMISSIONER MOORE: Thank you, Ms. LaPearl.
10 Jenny Bittner is our last speaker.

11 MS. BITTNER: I'm one one of the landowners
12 that will be affected by those transformer lines that
13 are going to be put on O'Banion Road, and I want to
14 speak to this issue of the helicopter because it keeps
15 coming up from supervisors and other people. I don't
16 know where this is coming from.

17 We certainly don't feel that we can farm our
18 rice with a helicopter, so we called the -- one of the
19 helicopter companies from the town of Biggs and, lo and
20 behold, they are not set up and they do not fly over
21 rice, so I don't know where this is coming from, that a
22 helicopter can get in there and do that, and the other
23 issue is, why should it be our expense, the farmers'
24 expense to, you know, have to go to these other
25 extremes when we can do our field with our crop dusters
26 and our pilots -- I know you had some pilots speaking,

117

1 but our pilots are telling us that it is a safety
2 issue, they won't fly our front field, which is 140
3 acres of land, and this will limit our capacity to
4 farm. We're already impacted by transmission lines
5 that run along the Sutter Bypass, and it is a safety
6 issue.

7 We've already had one pilot injured on the
8 property who became in a vegetative state and later
9 died, and my grandfather, my two uncles, great uncles
10 pulled him out of his plane, so we are concerned about
11 the fairness of safety for our pilots, and we talk
12 about this late intervention. The issue that we care
13 about the most was not decided back in August when all
14 the stuff was supposed to be filed. The issue we care
15 about the most, which is the transmission lines, were
16 routed down a different way. All of a sudden they're
17 coming down O'Banion Road, and we are not notified.

18 There was a letter I found on the Internet on
19 Monday dated October 22nd, '98, and it was supposed to
20 go to all the landowners that would be impacted on
21 O'Banion Road about these transmission lines. Well, we
22 never got it, so we were on a mailing list about the
23 project and all of a sudden we stopped getting the
24 mailings. We didn't find out about the meetings in
25 November when we were -- we would have wanted to speak
26 up, because we are the landowners that are impacted by

1 these transmission lines, so talk about fairness.
2 First of all, we weren't notified. Second of all, we
3 didn't know about the meetings November 14th,
4 November 10th, and we just want the right decision for
5 the safety of our pilots.

6 We've owned this land and operated it in rice
7 since the 1930s. We feel we have an air easement. How
8 can someone come in and just all of a sudden eminent
9 domain when we want to farm it in rice? We can't farm
10 it in anything else. The ground rigging stuff we've
11 tried, and as Karen said, it can't be done because of
12 other problems, so please consider the safety for our
13 crop duster pilots. Thank you.

14 COMMISSIONER MOORE: Thank you very much.

15 With that I'm going to close this hearing off,
16 and let me restate what is going to happen.

17 We will entertain your comments on the revised
18 decision. Please mail them to us or use -- you can
19 file stuff with us via our e-mail, so we will accept
20 that as well. Please let us know your thoughts.

21 The full Energy Commission will consider the
22 document minus the land use question that has been
23 deferred over to Sutter County on March 17th, so the
24 certification of the power plant is not an issue on the
25 17th, but the Presiding Member's Proposed Decision
26 minus the land use is, so we will consider that, and

1 then you are all aware that there will be a proceeding
2 where many of these land use questions that -- such as
3 the ones Jenny just raised will be addressed at the
4 Board of Supervisors, your County representatives,
5 prior to us taking any final action on certification.

6 Thank you very much for coming. I appreciate
7 your time.

8 UNIDENTIFIED AUDIENCE MEMBER: Commissioner, I
9 have one question. Why is it that you're waiting --
10 why not have the County make their decision? I mean
11 why are we going to back and forth all the time? I
12 mean that's obviously the crux of this whole thing.

13 COMMISSIONER MOORE: Well, the answer for that
14 is that the process as it evolved left a gap of the
15 land use decision by the County, and as the rules work
16 right now, the ones that are in place, when they filed
17 their application, the land use question was not
18 resolved and it only, as you're a well aware of, became
19 apparent officially in the hearings, so once the clock
20 started we needed to pursue our process as fully as we
21 could, identifying what didn't work, couldn't be
22 answered, and that was the land use question, and so
23 now in an awkward -- and I admit to it being awkward
24 procedure -- I'm stuck -- the best I can do is to
25 identify this as a whole and not proceed until that
26 whole is solved.

1 UNIDENTIFIED AUDIENCE MEMBER: I guess my
2 question is why are we just not proceeding until this
3 question is solved?

4 COMMISSIONER MOORE: Because the County won't
5 take action until they have a completed document from
6 us, so until they have the environmental document from
7 us, they weren't going to take action, and until they
8 take action, I can't complete my recommendation to the
9 Commission.

10 UNIDENTIFIED AUDIENCE MEMBER: But everything
11 is done. Basically they have all the information they
12 need to make a decision in your document.

13 COMMISSIONER MOORE: When this document is
14 conditionally certified, when some document --

15 UNIDENTIFIED AUDIENCE MEMBER: Okay.

16 COMMISSIONER MOORE: -- is conditionally
17 certified by the Commission, the County has agreed they
18 will take action.

19 UNIDENTIFIED AUDIENCE MEMBER: And there's
20 some procedure that makes you go ahead and render your
21 decision, state decision, before the County is going to
22 make their decision, even though it is a major part of
23 this whole thing?

24 COMMISSIONER MOORE: Under this current
25 filing the answer is yes, and I -- I am bound by the
26 current regulations. Yes. I'm stuck.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

(Whereupon the proceedings concluded)

CERTIFICATE OF TRANSCRIPT

I, Cynthia Bynum Palmer, as Certified
Shorthand Reporter and Official Transcriber, hereby
certify that the attached proceedings before
Chief Hearing Officer Fay, California Energy
Commission,

In the Matter of:)
)
Application for Certification) Docket No. 97-AFC-2
for the Sutter Power Plant Project)
_____)

were held as herein appears and that this is the
original transcript thereof and that the statements
that appear in this transcript were transcribed by me
to the best of my ability.

I further certify that this transcript is a
true, complete, and accurate record of the proceeding.

Cynthia Bynum Palmer, CSR
March 26, 1999
Northern California Court Reporters
(916) 485-4949