

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
of the GWF Tracy Peaker Project) 01-AFC-16
in San Joaquin County)
(GWF Energy LLC))
_____)

HOLIDAY INN EXPRESS HOTEL AND SUITES
3751 TRACY BOULEVARD
TRACY, CALIFORNIA

TUESDAY, JULY 2, 2002

5:34 p.m.

Reported by:
James A. Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Cheryl Tompkin, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

Cheri Davis, Project Manager

PUBLIC ADVISER

Grace Bos

APPLICANT

John P. Grattan, Attorney
Grattan and Galati

Amanda J. Monchamp, Attorney
Beveridge and Diamond

D.W. Wheeler, Vice President
GWF Power Systems Company, Inc.

David A. Stein, Senior Project Manager
Steve Leach
URS Corporation

Irwin Karp

Mark Jennings

INTERVENORS

Irene Sundberg

Ena Aguirre

Dennis C. Noble, Attorney
representing Traina and Cocores Families

INTERVENORS

Howard L. Seligman, Attorney
Seligman and Willett, Inc.
representing Tusso Family

John Bakker
City of Tracy

ALSO PRESENT

Wayne Livingston, Union Representative
International Brotherhood of Electrical Workers
Local 595

Gail Mercer
Northern California Electrical Construction
Industry

Brian Kost

Robin Sarvey

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P R O C E E D I N G S

5:34 p.m.

PRESIDING MEMBER PERNELL: Good evening.

This is the Committee Conference on the Presiding Member's Proposed Decision, known as the PMPD, for the Tracy Peaker Project.

My name is Robert Pernell; I'm the Presiding Member of this Committee. To my left is our Hearing Officer, Cheryl Tompkin.

The purpose of this Committee conference is to receive comments from the parties and members of the public on the Presiding Member's Proposed Decision for the Tracy Peaker Project.

This proceeding is being conducted in the City of Tracy to maximize the public participation.

Before we proceed any further I'd like to ask the parties to identify themselves, beginning with the applicant.

MR. GRATTAN: I'm John Grattan; I'm counsel for the applicant, GWF. And to my left is Amanda Monchamp, who is co-counsel tonight.

PRESIDING MEMBER PERNELL: And who is that?

MR. GRATTAN: To my left. Oh, I'm

1 sorry, --

2 PRESIDING MEMBER PERNELL: The names,
3 please.

4 MR. GRATTAN: I figured Dave could speak
5 up for himself.

6 MR. STEIN: I'm Dave Stein with URS,
7 Project Manager for the AFC and supporting
8 environmental analysis.

9 PRESIDING MEMBER PERNELL: Okay.

10 HEARING OFFICER TOMPKIN: How do you
11 spell the last name of your co-counsel?

12 MS. MONCHAMP: M-o-n-c-h-a-m-p.

13 HEARING OFFICER TOMPKIN: Thank you.

14 PRESIDING MEMBER PERNELL: All right.
15 Staff, Ms. Davis.

16 MS. WILLIS: Thank you. I'm Kerry
17 Willis, Staff Counsel; and to my right is Cheri
18 Davis, Project Manager.

19 PRESIDING MEMBER PERNELL: And we also
20 have a Public Adviser, raise your hand. Name for
21 the record, please.

22 MS. BOS: Grace Bos, B-o-s.

23 PRESIDING MEMBER PERNELL: And our
24 intervenors.

25 MR. BAKKER: I'm John Bakker from the

1 City of Tracy.

2 MS. SUNDBERG: Irene Sundberg.

3 MR. SELIGMAN: Howard Seligman on behalf
4 of Charles Tusso.

5 PRESIDING MEMBER PERNELL: Any other
6 intervenors?

7 MR. GRATTAN: I'd like to say on behalf
8 of the applicant Doug Wheeler is here from GWF.
9 He's in the audience, in the front seat.

10 PRESIDING MEMBER PERNELL: Mr. Wheeler.
11 Any elected officials or representatives from
12 other government agencies?

13 Seeing none, hearing none, as I
14 indicated previously the purpose of today's
15 conference is to receive comments from the
16 parties, as well as members of the public, on the
17 Presiding Member's Proposed Decision.

18 The PMPD was published on May 31st, '02,
19 and placed on the Commission's website the same
20 day. Copies were also sent out to all of the
21 parties and agencies interested in this
22 proceedings, as well as members of the public that
23 were on our mailing list.

24 Comments on the proposed decision were
25 required to be filed in the Commission by 3:00

1 p.m. yesterday, which was July 1st. The Committee
2 will take testimony and receive evidence during
3 this conference with one notable exception. As
4 indicated in the proposed decision, the
5 evidentiary record will be reopened for a limited
6 purpose of receiving the community programs and
7 benefits agreement between the applicant and the
8 City of Tracy into evidence.

9 During this conference the parties may
10 present oral comments on the proposed decision and
11 indicate the specific paragraph, sentence and/or
12 condition they believe should be edited or
13 corrected.

14 So what we're doing is asking you to use
15 the proposed decision to direct all of the parties
16 to where your comments are.

17 These comments or edit must be based on
18 the evidentiary record. We remind the parties
19 that the comments are limited to the discussions
20 of the decision.

21 We will provide time at the end of each
22 presentation for the parties to ask questions, to
23 clarify issues. The parties may also indicate if
24 they have objections to any of the proposed
25 modifications.

1 After the parties have asked their
2 questions and made their comments and/or
3 objections, the general public will be permitted
4 to offer public comment on the proposed decision.

5 That's the way we intend to proceed. Do
6 we have any questions? Questions on the
7 procedure? If not, at this point I'll turn the
8 hearing over to our Hearing Officer, Ms. Tompkin.

9 HEARING OFFICER TOMPKIN: Thank you,
10 Commissioner Pernel. Before we proceed with the
11 comments on the PMPD, what we'll do at this point
12 is reopen the evidentiary record for the limited
13 purpose of receiving the community programs and
14 benefits agreement into evidence.

15 So, I'm going to call on Mr. Grattan at
16 this time.

17 MR. GRATTAN: Yes, we would like to move
18 in the applicant's agreement on community benefits
19 with the City of Tracy. And that should be the
20 last exhibit. It has been docketed some time ago.
21 The parties have been served with it.

22 HEARING OFFICER TOMPKIN: At this point
23 what I'll do is I'll mark the document that was
24 docketed as the community programs and benefits
25 agreement as exhibit 76 for the record.

1 MR. GRATTAN: That is acceptable; that's
2 correct.

3 HEARING OFFICER TOMPKIN: Anything
4 further?

5 MR. GRATTAN: I'd move the community
6 benefits, exhibit 76, into the record.

7 HEARING OFFICER TOMPKIN: Mr. Grattan
8 has offered, is now requesting that this benefit
9 agreement be admitted as evidence. Is there any
10 objection by any of the parties?

11 Hearing no objection, exhibit 76 will be
12 accepted and admitted in evidence. Thank you, Mr.
13 Grattan.

14 MR. GRATTAN: Thank you.

15 HEARING OFFICER TOMPKIN: At this time
16 we'll proceed with presentations by the parties.
17 We will begin with the applicant's presentation,
18 followed by the staff's presentation, and then
19 presentations by each of the intervenors. After
20 those presentations are concluded, as Commissioner
21 Pernell indicated, and any questions presented by
22 the parties addressed, we will take comments from
23 the public.

24 So, first we will turn to the applicant,
25 and I'm going to ask the applicant to generally

1 describe its comments on the PMPD. It's not
2 necessary -- I'll get to you, Mr. Grattan -- it's
3 not necessary to go through each comment.

4 However, if there's anything you would
5 like to explain in particular, this is the time to
6 do so.

7 MR. GRATTAN: Very well, thank you. Our
8 comments have been submitted and docketed. They
9 are largely textual and clarifying changes. I
10 don't think there's anything of particular note.

11 We have mentioned our wet weather plan,
12 which was inadvertently, I believe, left out of
13 the PMPD. We have also substituted some charts in
14 the air quality section with respect to the
15 offsets which should be surrendered.

16 And on page 157, first full paragraph,
17 we have attempted to describe the applicant's wet
18 weather plan. If staff has any comments or
19 corrections or clarifications on this, we'd be
20 more than willing to hear them and probably accept
21 them.

22 Next we have one minor substantive
23 difference, and that is with respect to condition
24 Land-2, page 224. The condition had read or
25 currently reads, rather, that it should be -- the

1 fees should be placed in trust in an interest-
2 bearing account for three years.

3 Actually we have reached agreement with
4 the American Farmland Trust and with the County
5 that they be held in trust for two years. And we
6 would request that change be made.

7 And finally, in the area of substance --
8 and the rest of our comments I'd be pleased to
9 discuss if anyone has any questions, but they are
10 largely done in the interest of making things more
11 precise and done in the interest of clarifying.

12 With respect to our general comments we
13 agree with the conclusions of the PMPD. We've
14 noted in our comments that there have been many
15 issues raised in the course of the five or six
16 days of evidentiary hearings which were addressed,
17 and were addressed in that process.

18 We've outlined on page 9 of our comments
19 what they were, what issues were raised by
20 intervenors, some of it not actually in testimony,
21 but in questions or in submissions which did not
22 become evidence. But they were nonetheless
23 addressed by the applicant, and also by staff. We
24 didn't point out where staff did that, but staff
25 addressed it, as well.

1 And we also pointed out the cumulative
2 impact analysis in both air quality and other
3 areas which the applicant submitted. And we
4 believe that the Commission can rely on this
5 evidence in arriving at its decision.

6 And that's all I have right now.

7 HEARING OFFICER TOMPKIN: Thank you, Mr.
8 Grattan. And at this time we'll turn to the other
9 parties and we'll ask staff if they have any
10 comments or questions with regard to this
11 presentation.

12 MS. WILLIS: Thank you. We did have two
13 comments, the first I'll go down to Land-2. We
14 did agree with Mr. Grattan that it should be two
15 and not three. And we did not catch that in our
16 comments. So we'd like to make that correction
17 now.

18 And Ms. Davis will address page 157, the
19 paragraph on biology.

20 MS. DAVIS: The paragraph on biology
21 that the applicant is suggesting for page 157 uses
22 the phrase biological assessment and says that
23 applicant's wet weather construction contingency
24 plan triggered a biological assessment for the
25 following species.

1 And that is misleading because it makes
2 it sound like there was a U.S. Fish and Wildlife
3 Service consultation involved. And staff
4 recommends that instead we substitute the word
5 intensive surveys for biological assessment.

6 And so it would read: The applicant's
7 wet weather construction contingency plan
8 triggered intensive surveys for listed California
9 tiger salamander and western spade-foot toad,
10 individuals or their habitat. So that would also
11 be new language, individuals or their habitat.

12 And then the remaining parts of the
13 paragraph would be updated to reflect the surveys.
14 So instead of saying this assessment, it would be
15 the survey effort was summarized. I think the
16 rest of the paragraph reads all right.

17 MR. GRATTAN: And that's acceptable to
18 the applicant. That's a more accurate reflection
19 of what went on.

20 HEARING OFFICER TOMPKIN: I'm sorry,
21 could I have you just read that first sentence
22 again, a little bit more slowly?

23 MS. DAVIS: Certainly. The applicant's
24 wet weather construction contingency plan
25 triggered intensive surveys for listed California

1 tiger salamander and western spade-foot toad,
2 individuals or their habitats. The survey effort
3 was summarized.

4 HEARING OFFICER TOMPKIN: Thank you.
5 And you find that acceptable, Mr. Grattan?

6 MR. GRATTAN: Yes.

7 MS. WILLIS: I believe that's all we
8 have.

9 HEARING OFFICER TOMPKIN: Then at this
10 time we'll proceed with comments by the
11 intervenors. We will begin with Ms. Sundberg.
12 Mr. Bakker.

13 MR. BAKKER: Thank you. The City of
14 Tracy has already submitted its written comments.
15 And rather than engaging in a long-winded
16 recitation of those comments --

17 HEARING OFFICER TOMPKIN: Actually, let
18 me stop you. I think you misunderstood me. What
19 I'm asking for at this point is your response to
20 applicant's comments.

21 MR. BAKKER: Oh, I'm sorry.

22 HEARING OFFICER TOMPKIN: Do you have
23 any response --

24 MR. BAKKER: I did misunderstand you. I
25 don't have any comments on Mr. Grattan's comments.

1 Thank you.

2 HEARING OFFICER TOMPKIN: Okay, thank
3 you. And there was one other, Mr. Seligman, is he
4 present?

5 MR. SELIGMAN: No comments.

6 HEARING OFFICER TOMPKIN: No comments,
7 all right. Thank you.

8 Then we'll move on to the presentation
9 by staff.

10 MS. WILLIS: Thank you. The majority of
11 our comments are editorial in nature. We had a
12 few changes that we did want to call attention to
13 under air quality.

14 Some of the changes that we've made were
15 in the staff assessment supplement, and I don't
16 believe are reflected in the PMPD. So, the
17 majority of those changes we've outlined on page
18 2.

19 Turning to page -- actually AQC-4 on
20 page 3 is also a part of that staff supplement.

21 Turning to page 4, we have two
22 additional air quality conditions, AQC-5 and AQC-
23 6. And these conditions are for the initial
24 commissioning of emissions. And these, I believe
25 the applicant is in agreement that these

1 conditions are okay to be put in.

2 The Air District often puts these
3 conditions in, and for some reason in this case
4 they were not included. And so staff felt that in
5 order for compliance purposes these conditions
6 should be included. What they do is allow a
7 little bit higher emission levels during the basic
8 beginning part of the commissioning part of the
9 plant.

10 And if you see under AQC-5 our list of
11 the initial commissioning activities, basically, I
12 guess, tests that they need to run before the
13 final operation of the plant.

14 So what we've done, that way the
15 applicant doesn't have to go to the District for a
16 variance. So this basically eliminates that
17 process.

18 MR. GRATTAN: Yes, and if I may, the
19 applicant agrees with those conditions. We'd
20 like to point out for the record that these were
21 analyzed in the staff assessment. This is not new
22 information. And also that the emission levels do
23 not violate any standard.

24 MS. WILLIS: And I would like to refer,
25 if anybody has any questions on that, it was in

1 the staff analysis that was done on page 5-28 and
2 29, and the impacts were analyzed, I guess,
3 modeling impacts on 5-38 to 5-39. So they are in
4 our staff assessment.

5 Under hazardous materials we've added on
6 page 6 there was some suggested language to
7 address the possibility of an intentional act of
8 sabotage, an accidental release of hazardous
9 materials. And I believe the applicant has seen
10 this language and has agreed to it.

11 MR. GRATTAN: That is correct.

12 MS. WILLIS: Under biological resources
13 there were a few changes once again that were part
14 of the staff supplement that was not reflected in
15 the PMPD. So we've just added those back in.

16 Biological conditions 10 and 11, and I
17 think -- and the remainder, oh, the other
18 condition also was Land-2. And with the change
19 that the applicant has proposed, changing it from
20 three-year period to a two-year period, that would
21 be our proposed condition. And that was also, I
22 believe, in the staff supplement.

23 MR. GRATTAN: Yes. And with respect to
24 BIO-10 and BIO-11, these were again, as pointed
25 out in the final staff assessment, and were

1 analyzed and the subject of hearing. And the
2 applicant agrees with putting BIO-10 and BIO-11
3 back in.

4 MS. WILLIS: And those are the major
5 substantive changes that we had proposed. The
6 rest, I believe, are just more editorial type of
7 comments.

8 MR. GRATTAN: And I have to ask if I'm
9 allowed to, because I can't remember, does staff
10 agree with the comments that the applicant has
11 made?

12 MS. WILLIS: Besides the biological --

13 MR. GRATTAN: Correct, --

14 MS. WILLIS: -- paragraph changes --

15 MR. GRATTAN: -- besides the one you've
16 corrected.

17 MS. WILLIS: Yes, we did.

18 HEARING OFFICER TOMPKIN: And do you
19 have any objection to any of the changes proposed
20 by staff, Mr. Grattan?

21 MR. GRATTAN: None.

22 HEARING OFFICER TOMPKIN: Any additional
23 comments or questions?

24 MR. GRATTAN: No.

25 HEARING OFFICER TOMPKIN: All right,

1 then we'll move on to the intervenors for comments
2 on the comments or the presentation by staff.

3 MS. SUNDBERG: None at this time.

4 MR. SELIGMAN: No comments.

5 MR. BAKKER: No comments.

6 HEARING OFFICER TOMPKIN: All right,
7 thank you.

8 Then at this time we'll move forward
9 with the presentations by the respective
10 intervenors. And we'll begin, once again, with
11 Ms. Sundberg.

12 MS. SUNDBERG: I don't have any at this
13 time. I'll be making statements during public
14 comment.

15 HEARING OFFICER TOMPKIN: Thank you, Ms.
16 Sundberg. Mr. Bakker.

17 MR. BAKKER: The City of Tracy, as I
18 said before, has already submitted written
19 comments, and rather than going through them in a
20 long fashion, I'm just going to briefly make a
21 couple of comments.

22 The City of Tracy continues to believe
23 that there's inadequate support in the record to
24 support a finding that conforms with County LORS.
25 We laid that out in our brief, our post-hearing

1 brief, and also in our comments on the PMPD.

2 We also continue to believe that the
3 Commission is required to find that the project
4 conforms with the City's general plan, and the
5 South Schulte specific plan. We believe that this
6 project does not conform with those two plans, and
7 therefore should be denied.

8 Thanks.

9 HEARING OFFICER TOMPKIN: Thank you, Mr.
10 Bakker. Does the applicant have any comments on
11 Mr. Bakker's comments, either in a written form
12 previously submitted or a statement here today?

13 MR. GRATTAN: I'll try to be as brief as
14 Mr. Bakker. Congratulations, Mr. Bakker. The
15 applicant believes that the record supports the
16 conclusions in the PMPD. This issue was briefed
17 extensively in answer to Commissioner Laurie's
18 request. And we believe that the City of Tracy
19 does not have jurisdiction. And since it does not
20 have jurisdiction it's LORS are not controlling.

21 HEARING OFFICER TOMPKIN: Any comment by
22 staff?

23 MS. WILLIS: Thank you. I believe our
24 position is reflected in our briefs, as well. And
25 we feel that it was appropriately reflected in the

1 PMPD.

2 HEARING OFFICER TOMPKIN: Thank you.

3 And from either of the other two intervenors, any
4 comments? All right, they're indicating no by
5 shaking their head.

6 So we will move on then to presentations
7 by Mr. Seligman.

8 MR. SELIGMAN: Also briefly. I think
9 I'll be shorter than the City of Tracy's attorney.
10 On behalf of Charles Tusso I just want to make
11 specific reference to the written comments dated
12 June 13, 2002, that were filed with the
13 Commission. Those continue to be the position of
14 Mr. Tusso.

15 HEARING OFFICER TOMPKIN: Thank you, Mr.
16 Seligman. Do any of the parties wish to comment
17 with respect to the written comments that were
18 previously filed?

19 MR. GRATTAN: Again, this issue was
20 briefed extensively. Applicant continues to
21 believe that the LORS of the County were complied
22 with and that the Commission need not make the
23 specific and ultimate findings of fact in order
24 for the LORS to be complied with.

25 HEARING OFFICER TOMPKIN: Any other

1 comments? Staff?

2 MS. WILLIS: No, thank you.

3 HEARING OFFICER TOMPKIN: Mr. Bakker or
4 Ms. Sundberg.

5 MR. BAKKER: No.

6 MS. SUNDBERG: No.

7 HEARING OFFICER TOMPKIN: All right.

8 We're moving quite quickly.

9 (Pause.)

10 HEARING OFFICER TOMPKIN: All right,
11 well, if there's no further presentation or
12 comments by the parties at this time, I guess we
13 will move forward with public comment.

14 Ms. Sundberg, is this going to be in the
15 nature of public comment?

16 MS. SUNDBERG: It's in the nature of
17 public comment. I have two issues. I'd like to
18 read both of them. One is from Susan Sarvey, who
19 is not able to attend tonight. And one is for
20 myself.

21 HEARING OFFICER TOMPKIN: Okay. And so
22 you want to be the first speaker. I'm going to
23 ask you then to step to the podium and we'll
24 proceed with public comment.

25 MS. SUNDBERG: CEC Commissioners, these

1 are my comments on the GWF Tracy Peaker Plant's
2 PMPD. On June 18, 2002, there was a 1028 acre
3 fire on Tracy's side of the Altamont Pass. It
4 spread quickly to Interstate 580, closing it for
5 over an hour during heavy commute time.

6 A total of 45 departments responded to
7 the scene. Statements in The Tracy Press on June
8 19th stated: It was rough terrain. It took
9 awhile to get enough resources. Captain John
10 Shephard described the combination of fire, wind
11 and terrain. We went to hell. Luckhardt said the
12 fire jumped several dirt roads and railroad
13 tracks, thwarting early containment efforts. We
14 did not want it to jump the freeway and burn
15 towards Tracy, said Captain Bramell.

16 As usual, the first ones to arrive on
17 the scene are our two companies and the Department
18 of Forestry. Tracy is always the first to respond
19 to their units to a fire on the hillside, even
20 though those fires may not be our responsibility.
21 They are Alameda County's responsibility.

22 I have lived here for 19 years, long
23 enough to know that the fires in the past have
24 jumped I-580 and burned towards town. When you
25 place the Tracy Peaker Plant between the City and

1 the freeway, with no additional fire protection,
2 what are you thinking? Who protects the residents
3 in the County, Redbridge and Tracy, when our
4 trucks are on the Altamont Pass protecting Alameda
5 County for 30 percent of the time? What a mess
6 this makes.

7 We repeatedly told you the biomass plant
8 17-alarm fire in previous years, and we also told
9 you that, you know, we didn't want to add this to
10 the fire. Or is this the white elephant under the
11 table that everyone is ignoring?

12 I want to tell a little story right now
13 about me being in the wrong room at the right
14 place at the right time. In May I was in a
15 planning convention in Sacramento. As so happens,
16 the layout on the agenda had been changed from the
17 original room to another. So the room and the
18 breakout session I wanted to attend had been
19 moved. But I decided to stay in the original room
20 when I realized that the speaker was a part of the
21 Sacramento in-the-know crowd, which might be
22 advantageous to the City of Tracy at some point in
23 time.

24 The subject matter was something that I
25 knew that we had been left out of. But, as

1 curiosity has it, I wanted to know why.

2 Well, as the session proceeded someone
3 other than myself asked the speaker what type of
4 energy was going to be used on this project. The
5 speaker replied electric. Well, that set off a
6 chain of events in the room that if I hadn't been
7 there I wouldn't have believed it.

8 The first question was where is it
9 coming from. That opened the next can of worms.
10 The next speaker tells the story of whom he had
11 dinner with the night before. It just so happens
12 that the dinner was with Governor Gray Davis, and
13 the head of the CEC. One can only believe that
14 that's William Keese.

15 As the story continues he tells about
16 the group having dinner. And that all the new
17 power plants will be built, even if the state, and
18 that means you and me as taxpayers, have to bail
19 Calpine and others out.

20 The speaker continued to say, you know,
21 if this is what the Governor wants, it will
22 happen. Well, needless to say, red flags were all
23 over the place for me. I knew then and there that
24 the TPP was a done deal. And if it hadn't been
25 before, it was now.

1 I'm appalled that the Commission has
2 encouraged us in the community to participate in
3 what should be a democratic and fair process, but
4 is not. But yet you have ignored everything the
5 public has presented.

6 If this were the stockmarket we could
7 compare this to insider trading. But it isn't.
8 This is the State of California Energy Commission
9 being run as a dictatorship rather than a
10 democracy. If it looks like and reads like a done
11 deal, then it most likely is a done deal.

12 Both the City and County have told you
13 no. The citizens of the City have told you no.
14 If you were my children I'd be asking you what
15 part of no do you not understand.

16 Relocate this plant out of the way of
17 future residential development. You have a moral
18 and ethical obligation to do it as morally,
19 ethically and lawfully right for our community.

20 Did you do your homework? You may just
21 be pretending to listen and care, when in all
22 actuality you're covering yourselves so that you
23 have a paycheck next Friday instead of a pink
24 slip.

25 This has everything to do with the

1 quality of life that we, as a community, aspire
2 to. As a community we have given you expert
3 testimony and evidence in all areas that would
4 have given you a reason to deny GWF's application.

5 In biology, land use, air quality, these
6 issues against locating and siting the plant were
7 overwhelming. The TPP should not be sited in
8 Tracy. The type of evidence we have presented to
9 you should have stopped the project in its tracks.

10 Your own Dr. Greenberg stated to Mrs.
11 Sarvey in the hallway of this very building that
12 it has been proven that PM10 and PM2.5 both
13 exacerbate asthma. It was clearly stated by the
14 County that there was a violation of LORS. You
15 don't have to be a biologist if you walk by the
16 site and see the white-tail kite and the northern
17 harrier living there, and watch them fly.

18 Have any of you ever been to the site
19 and walked that site? Or have you just sat on
20 your behinds behind your desk, wherever those
21 desks may be for the day, waiting for others to do
22 your job?

23 Yes, I'm angry. Because of the process
24 that was a done deal from the start. Not only
25 have you wasted my valuable time and others', but

1 the tax dollars to the state, the County and the
2 City. You may not put my family's health and
3 quality of life in jeopardy and not expect us to
4 take some type of action against you.

5 Now, our only recourse is to see you in
6 court. May you have sweet dreams about our
7 children, as they suck fumes in 100-degree weather
8 and play ball at a proposed park site that is
9 currently the old antenna farm, nestled between
10 the biomass plant and GWF's TPP.

11 And let's remember today was a save-the-
12 air day.

13 Thank you.

14 May I go ahead with Mrs. Sarvey's?

15 HEARING OFFICER TOMPKIN: So, just for
16 the record, to clarify, that was your statement?

17 MS. SUNDBERG: That is my statement.

18 HEARING OFFICER TOMPKIN: All right.

19 You may proceed with Mrs. Sarvey's.

20 MS. SUNDBERG: Thank you. CEC
21 Commissioners and Staff. I am sorry I cannot be
22 here. My mom's in the final stages of
23 interstitial lung disease. So I am with members
24 of my extended family on a farewell final
25 vacation.

1 I was truly disappointed when I read
2 your ruling. I was under the impression that you
3 were going to site in your ruling what gave you
4 the right, the legal right, to ignore my City, my
5 County and CEQA laws. Instead you just told me I
6 get a power plant with no legal justification.

7 Since we met last it has come to light
8 that the fire truck for GWF and the biomass plant,
9 Chuck Tusso, Redbridge and myself, is responding to
10 Alameda County fires for 30 percent of the
11 response calls. This means all of us have no fire
12 coverage at these times.

13 As I'm writing this letter a 1000-acre
14 fire in Alameda County is burning across the
15 freeway from my house. My truck is up there on
16 the hill. Just a few years ago we had a 17-alarm
17 fire at the biomass plant. What happens when the
18 fire jumps the freeway? I have seen this happen
19 since I have lived here.

20 So I feel the CEC must immediately take
21 over the antenna farm and build a CEC fire station
22 for the CEC's three power plants, Tesla, East
23 Altamont and the GWF Peaker Plant.

24 Why the antenna farm, you ask. Because
25 my Mayor and the Tracy City Council have voted to

1 build the minority (sic) of our children's
2 ballfields at the antenna farm in the bullseye of
3 the pollution of your three plants. They did this
4 because you did no cumulative air studies. And
5 your health experts said there are no serious
6 health effects from breathing these fumes.

7 Soon the medical journals can write
8 about the health consequences of our children
9 sucking your power plant pollution while running
10 in the heat.

11 This also brings up another safety issue
12 that was not discussed. The aqueous ammonia
13 delivery truck will now have to deal with hundreds
14 of cars looking for parking at the right
15 ballfield. Can you imagine the horror of the
16 truck having an accident with kids and ammonia
17 plumes floating over the ballfields?

18 The CEC refusal to take a leadership
19 role in resolving the serious issues for the
20 citizens of Tracy and refusal to cite case law
21 that gives them the right to put us at such a
22 great risk is deeply troubling to me, given that
23 you have the knowledge and the staff to do the job
24 right. For example, you might want to read
25 Commissioner Laurie's comments in the Metcalf

1 ruling.

2 So my only recourse now is to go to
3 court and have this explained to me. My family is
4 too precious to take your word for it, so I'll see
5 you in court.

6 Commissioner Pernell, you ignored the
7 City of Tracy and the San Joaquin County, so you
8 can now rightfully claim that you have been part
9 of a done deal. I hope you can sleep at night.
10 Thank you. Signed Susan Sarvey, June 18, 2002.

11 Thank you.

12 PRESIDING MEMBER PERNELL: Thank you.

13 HEARING OFFICER TOMPKIN: All right.

14 Our next speaker will be Brian Kost.

15 MR. KOST: I have to apologize. I
16 haven't been here to all the meetings, and it's
17 something that's of great interest to me.

18 I live downwind of the proposed site.
19 But I also think that I have some insight to some
20 other things that maybe this Committee has not
21 considered, and possibly GWF.

22 I used to be a power plant engineer and
23 I design power plants for General Electric
24 Industrial Power Systems. And some of the things
25 that I've seen in this plant are things that

1 should have been investigated from the start.
2 Things like dry lo-NOx. Aside from the fact that
3 I don't want it in my backyard, but if that's your
4 intent there's many other options that are
5 available.

6 You, in part, wanted this site here
7 because of the proximity to water, the proximity
8 to the major infrastructure as far as electrical
9 transmission. But there are many other places
10 around here, and I know for a fact what NIMBY is.
11 I mean, we ran into this all the time.

12 But I think there are many other
13 locations that could very well be used. Aside
14 from the fact that we have lousy air quality
15 around here and exacerbating it, that alone, there
16 are many other ways of getting around this hurdle.

17 There are technologies out there right
18 now supported by the federal government, and
19 they're in hot fire tests and all the stuff, with
20 zero emission and extremely high efficiency. And
21 you know what that heat rate does to your
22 bottomline. The better the heat rate, the better
23 your efficiency, the better your profits.

24 You can get up to 60 percent efficiency
25 with very cheap technology that is on the market

1 today. And it's produced right here in
2 Sacramento.

3 There are many sites that are available
4 very close. This technology does not need any
5 water. It has proximity to high pressure gaslines
6 and has a substation there that's abandoned. It's
7 ready to use at anytime. And I think that you
8 should consider investigating, talking to CES,
9 Clean Energy Systems, and get it out of Tracy.

10 You have totally ignored the public
11 here. You've ignored our representatives from
12 government. And I think you need to look at other
13 options. Tracy is not the place for your power
14 plant.

15 Thank you.

16 PRESIDING MEMBER PERNELL: Thank you.

17 HEARING OFFICER TOMPKIN: Thank you.

18 Our next speaker will be Wayne Livingston.

19 MR. LIVINGSTON: My name's Wayne
20 Livingston. I'm a resident of Manteca,
21 California. I represent the Electricians Union,
22 IBEW, Local 595. And also work with International
23 IBEW, which has utility workers living here in the
24 Tracy area.

25 And we'd like to recommend that the

1 proposed decision be adopted from the panel.

2 That's all I have, thank you.

3 PRESIDING MEMBER PERNELL: Thank you.

4 HEARING OFFICER TOMPKIN: Thank you.

5 Our next speaker will be Gail Mercer.

6 MS. MERCER: Good evening, my name's
7 Gail Mercer. And I'm with the Northern California
8 Electrical Construction Industry. We represent
9 NECA, about 130 contractors in the IBEW, about
10 4500 workers in northern California area.

11 And I want to thank the members of the
12 Commission for their time and energy spent here on
13 the Tracy Peaker Project. Many times, and I'm
14 sure some people feel disenfranchised as I heard
15 tonight, but this decision-making process often
16 goes on in our government where we have no input.
17 And these hearings and the easily accessible
18 information on the web has restored my faith in
19 the application process.

20 Not everyone will be happy, but at least
21 everyone has been heard. The Commission's come to
22 Tracy on numerous occasions. On November 28,
23 2001, an informational hearing and a tour of the
24 proposed site was held. There were two public
25 workshops held, the first was November 20, 2001;

1 the second January 9, 2002. Evidentiary hearings
2 were then held which covered a period of six days
3 in March, 2002.

4 All of these hearings were held here in
5 Tracy. None of them were in Sacramento. It was
6 held for the convenience of the citizens of the
7 City of Tracy.

8 Many members of the community have been
9 heard. Changes have been made because of the
10 public input. And I believe that the City of
11 Tracy has a better project due to that input.

12 We have to balance the growing needs of
13 California with the necessity of having
14 environmentally sensitive designs and mitigation
15 of other pollution sources.

16 I did notice when I was here at the
17 other meetings, that there were people running
18 their car engines outside, talking to people,
19 leaving their car running. Children right
20 downwind from them.

21 And I think if we're really concerned
22 about our air pollution we need to take it to a
23 personal level as well as an upper level. And I
24 think there are things that we can all do to make
25 our air better.

1 So again, I want to thank you for your
2 effort to balance the growing energy needs in
3 California, and in general, and the concerns of
4 the City of Tracy.

5 Thank you.

6 PRESIDING MEMBER PERNELL: Thank you.

7 HEARING OFFICER TOMPKIN: Thank you.

8 That was our last blue card. I don't know if
9 there are any other members of the public who
10 wanted to make an additional statement with
11 respect to the proposed decision. If so, I'd ask
12 you to come forward at this time and state your
13 name and make your comment.

14 MS. SARVEY: Hello, my name is Robin
15 Sarvey.

16 HEARING OFFICER TOMPKIN: Could you
17 spell your last name?

18 MS. SARVEY: S-a-r-v-e-y. I am Bob
19 Sarvey's sister. Bob was not able to be here
20 today. He didn't give anything for me to speak
21 for him, but I know he submitted his written
22 comments.

23 I just want to say for myself on the
24 record that I was extremely disappointed that the
25 decision was to approve the plant. I really don't

1 understand the purpose of this meeting because the
2 decision appears to have been made, and even after
3 all the information that was presented against it.

4 I hope that these comments that people
5 make today may have some input, but it appears to
6 me the decision is made. I don't mean to be
7 offensive, but I kind of find this to be an
8 insult, having this meeting, because I don't think
9 that anything's going to change from this.

10 But you're doing your job, you're doing
11 what you have to do. All I want to say in closing
12 is that it won't be the last time you'll be
13 hearing from the citizens of Tracy.

14 Thank you.

15 PRESIDING MEMBER PERNELL: Thank you.

16 HEARING OFFICER TOMPKIN: Anyone else?

17 All right, if there are no further questions or
18 comments, I'll turn this proceeding back over to
19 Commissioner Pernell for some final words.

20 MR. GRATTAN: Excuse me. I'm sorry. I
21 have one final thing that I'd like, before we
22 close here.

23 First, I want to acknowledge that
24 Intervenor Sarvey, while he's not here, he has
25 submitted extensive comments. And I'd like to

1 briefly comment on those comments. And I'll be
2 through as quickly as possible.

3 Mr. Sarvey, Intervenor Bob Sarvey,
4 submitted extensive, 28 pages of comments
5 addressing first the process. And these issues
6 have been addressed before the record. And I will
7 say for the record that this, we are into the
8 eighth month of this project being processed at
9 the Energy Commission since it was data adequate.

10 Also efficiency, this was dealt with in
11 the hearing record. Air quality also addressed.
12 Public health also addressed in the hearing
13 record, the issues that were brought up by
14 Intervenor Bob Sarvey.

15 Also fire protection, and those issues
16 were addressed in the hearing record. Hazardous
17 materials, again addressed in the hearing record.
18 Water resources, also addressed in the hearing
19 record. Visual, addressed in the hearing record.
20 Land use, as well, discussed and debated in the
21 hearing record.

22 Mr. Sarvey also has a previous
23 submission in which he raised biological issues
24 that were raised in a submission from Dr.
25 Smallwood, Dr. Sean Smallwood. We got a

1 subsequent letter from Dr. Smallwood saying that
2 even though these weren't admitted into evidence,
3 that CEQA demanded a response to these.

4 Without agreeing or disagreeing legally
5 with that supposition, the points raised were
6 fairly limited. We have two biologists here who,
7 in the nature of a CEQA response, unsworn
8 statement, can perhaps respond to these. And I
9 would offer that to the Committee. I think we
10 could address this issue in about five or ten
11 minutes.

12 HEARING OFFICER TOMPKIN: Just a moment.
13 We'll go off the record.

14 (Off the record.)

15 HEARING OFFICER TOMPKIN: Mr. Grattan,
16 if I understand you correctly, you're requesting
17 the right or opportunity to call someone as a
18 witness --

19 MR. GRATTAN: No, absolutely not.

20 HEARING OFFICER TOMPKIN: Okay, well,
21 clarify that for me, please.

22 MR. GRATTAN: We have unsworn comments
23 here which Intervenor Sarvey says are required to
24 be responded to under CEQA. So we would like to
25 respond to those in the nature of public comment,

1 not with sworn testimony.

2 HEARING OFFICER TOMPKIN: We can't
3 prevent public comment. But understand we're not
4 reopening the record or accepting --

5 MR. GRATTAN: No.

6 HEARING OFFICER TOMPKIN: -- any kind of
7 evidence or, you know, we can't disclose anyone
8 who wants to make a comment on what's been
9 submitted. And we'll permit that. But
10 understand, this is not something that -- the
11 Commission is not going to, you know, allow
12 testimony or anything of that nature.

13 MR. GRATTAN: That's the last thing I
14 want to do, --

15 HEARING OFFICER TOMPKIN: Okay, well, I
16 just want to --

17 MR. GRATTAN: -- is reopen this record.

18 HEARING OFFICER TOMPKIN: -- just want
19 everyone to be on the same page here, you know.
20 If you have someone, or if you want to offer
21 public comment, we'll permit the public comment.
22 But that's all it is. All right.

23 MR. GRATTAN: Thank you. Would Dr.
24 Jennings and Mr. Leach -- is it Dr. Leach -- come
25 up quickly.

1 You heard the Hearing Officer and you
2 saw the expression on the Chair's face, so let's
3 make this very quickly.

4 Have you read --

5 HEARING OFFICER TOMPKIN: Let me stop
6 you.

7 MR. GRATTAN: Yes.

8 HEARING OFFICER TOMPKIN: We're going to
9 ask them to identify themselves for the record and
10 spell their names.

11 DR. JENNINGS: I'm Dr. Mark R. Jennings,
12 and the last name is spelled J-e-n-n-i-n-g-s.

13 MR. LEACH: Do you want us both to
14 identify ourselves at this point?

15 HEARING OFFICER TOMPKIN: I can't hear
16 you.

17 MR. LEACH: Do you want both of us to
18 identify ourselves --

19 HEARING OFFICER TOMPKIN: Yes, please.

20 MR. LEACH: Steve Leach; I'm a biologist
21 with URS. The last name is spelled L-e-a-c-h.

22 HEARING OFFICER TOMPKIN: Thank you.
23 You may make your comments.

24 MR. GRATTAN: Would you make your
25 comments on what you read with respect to Dr.

1 Smallwood's testimony. And I won't ask you any
2 individual questions, just raise the issues and
3 make your comments.

4 DR. JENNINGS: I read through the
5 printed information that was submitted by Dr.
6 Smallwood. And I do not find any biological
7 issues with regards to amphibians and reptiles.

8 MR. LEACH: This is Steve Leach. I've
9 reviewed Sean Smallwood's submittals regarding the
10 avian species, white-tail kite, and I do not find
11 anything in the evidence that he's presented that
12 would change any of the impact conclusions that
13 were presented in the original AFC, or for the
14 conclusions presented in any of the documents
15 subsequent to that.

16 MR. GRATTAN: That wasn't so bad.

17 HEARING OFFICER TOMPKIN: Okay, thank
18 you.

19 PRESIDING MEMBER PERNELL: I would ask
20 that you guys fill out a speaker's card and submit
21 it up here for the record under public comment.

22 HEARING OFFICER TOMPKIN: Thank you,
23 gentlemen.

24 If there's nothing further then I'll
25 turn this meeting back --

1 MS. AGUIRRE: I would like to, since you
2 allow other people to speak, and now that I, you
3 know, I've decided --

4 HEARING OFFICER TOMPKIN: I'm going to
5 ask you, ma'am, to step to the mike and identify
6 yourself.

7 MS. AGUIRRE: My name is Ena Aguirre. I
8 live at 937 West Street, Tracy, California.

9 HEARING OFFICER TOMPKIN: Could you
10 please spell your name for us?

11 MS. AGUIRRE: It's A-g-u-i-r-r-e, last
12 name.

13 HEARING OFFICER TOMPKIN: And your first
14 name?

15 MS. AGUIRRE: My first name is E-n-a.

16 HEARING OFFICER TOMPKIN: Thank you,
17 ma'am.

18 MS. AGUIRRE: I just would like to take
19 this opportunity to thank the residents of Tracy
20 for doing a magnificent job of trying to get our
21 point of view across to an agency that doesn't
22 listen to residents, doesn't listen to, you know,
23 people that are directly affected by their
24 decisions.

25 And I think it's important for the

1 record to show that the residents of Tracy, how to
2 teach themselves how to deal with the Commission;
3 how to put testimony together; how to, you know,
4 try to become intervenors.

5 You know, there was a large learning
6 time that had to take, and to me the essential
7 fact is that the Commission processes are for the
8 benefit of the company, whoever the company may
9 be, simply because they usually get a one-, two-
10 or three-month lag time where they have meetings
11 with you until the City finds out, the residents
12 find out what's going on.

13 So, I realize that it has been hard for
14 the CEC Staff and the Commission and everybody
15 else, but you know, you are continuing, you're
16 going to continue to make decisions about our
17 illnesses that we are suffering from. It looks
18 like you're getting ready to approve two more
19 plants, the Tesla Plant sends 75 percent of their
20 pollution to us in Tracy. And it looks like, you
21 know, the California Energy Commission is getting
22 ready to approve that.

23 And there is still another plant, the
24 East Altamont Plant, that looks like that that
25 might be also be coming on board.

1 And, you know, I just felt that it was
2 important that at least for the record to show
3 that the residents of Tracy who are not used to
4 doing this kind of organizing around an issue of
5 pollution and health, were able to do a
6 magnificent job.

7 Thank you very much.

8 PRESIDING MEMBER PERNELL: Thank you.

9 HEARING OFFICER TOMPKIN: Thank you.

10 Commissioner Pernel.

11 PRESIDING MEMBER PERNELL: Thank you,
12 Ms. Tompkin. This concludes our conference. The
13 Committee will submit the proposed decision to the
14 full Commission for consideration on July 17th
15 business meeting. It starts at 10:00 in the
16 morning.

17 We will include a list of the
18 clarifications and the errata based on today's
19 discussion, as well as any additional written
20 comments received by July 1 of '02, which was the
21 filing deadline.

22 I want to just take this opportunity to
23 thank the citizens of Tracy. And I know that the
24 reason we wanted to -- this Committee wanted to
25 come here, and we've been here at every meeting,

1 is because of the interest that you showed.

2 And you might leave here feeling like
3 you didn't do any good, but I will tell you, you
4 did. You allowed us to focus on this application
5 more broadly. You had meetings with the
6 applicant, Mr. Wheeler there, and I understand you
7 kind of took him to task.

8 So, it's a process. And it's a learning
9 process. But the record is what we have to make
10 our decision on. And I got to tell you that the
11 citizens of Tracy, and I've presided over a number
12 of these now, were as energetic, serious as any
13 community that I've visited.

14 So, you're to be congratulated. So,
15 first I want to thank the citizens of Tracy; I
16 want to thank the intervenors. Again, you had to
17 come up to speed. And it's not easy standing in
18 front of a podium talking to people. And you did
19 that. Mr. Sarvey, his wife and sister.

20 And the applicant for listening to the
21 citizens of Tracy and sitting down with them
22 coming up with the agreement that was allowed into
23 the record.

24 So I think all of that is positive
25 movement by the applicant, by the City of Tracy,

1 by its elected officials who are represented here.
2 And some people get up and say this is a done
3 deal. But the final decision is not until the
4 17th.

5 We will go back again with the comments
6 and clarifications that were discussed here,
7 present those to the full Commission.

8 I also want to, on behalf of
9 Commissioner Laurie, who was the Second Member on
10 this case, he's no longer with the Commission as
11 of last Friday. He went and got a real job.

12 (Laughter.)

13 PRESIDING MEMBER PERNELL: Making a lot
14 of money. But he did want to -- I talked to him
15 on the phone and he did want me to express his
16 thanks and gratitude, and so I'm doing that now.

17 Are there any other business or comments
18 to come before the Committee before we adjourn?

19 Seeing none, hearing none, this
20 Committee is adjourned. Thank you all again.

21 (Whereupon, at 6:37 p.m., the conference
22 was adjourned.)

23 --o0o--

24

25

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of July, 2002.

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