

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
of the Walnut Energy Center) 02-AFC-4
by Turlock Irrigation District)

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

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10:06 a.m.

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COMMITTEE MEMBERS PRESENT

Arthur Rosenfeld, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Stanley Valkosky, Hearing Officer

Michael Smith, Advisor to Presiding Member Boyd

STAFF AND CONSULTANTS PRESENT

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Bob Eller, Project Manager

PUBLIC ADVISER

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P R O C E E D I N G S

10:06 a.m.

ASSOCIATE MEMBER ROSENFELD: Good morning, ladies and gentlemen. I'm Art Rosenfeld. Jim Boyd, the Presiding Member, can't be here today, so I'm representing the Commissioner team. And in a moment I'll turn this over to Stan Valkosky.

But first, why don't we go around and introduce ourselves, probably starting with you, Mike.

MR. SMITH: My name is Mike Smith; I'm Advisor to Commissioner James Boyd.

MR. RATLIFF: This is Dick Ratliff, counsel for staff; and Bob Eller, the project manager for staff.

MR. HARRIS: I'm Jeff Harris on behalf of the applicant, and I'd like to introduce Randy Baysinger who will introduce the rest of our folks.

MR. BAYSINGER: Good morning, Randy Baysinger, project manager for the Turlock Irrigation District. To my right is Susan Strachan, who's my CEC licensing project manager. We have Gary Rubenstein, our consultant on air

1 quality. And John Carrier, our consultant on
2 environmental issues.

3 MS. MENDONCA: And I'm Roberta Mendonca,
4 the Energy Commission's Public Adviser.

5 ASSOCIATE MEMBER ROSENFELD: Thank you.
6 It seems like it's a nice intimate, fast-going
7 operation here. Stan, do you want to take over?

8 HEARING OFFICER VALKOSKY: Yes, thank
9 you, Commissioner. Ms. Mendonca, did you have a
10 report on the public outreach activities?

11 MS. MENDONCA: Yes, thank you very much.
12 The Public Adviser would like to say that first of
13 all this is the intervention deadline in the case.
14 To date we have only one intervenor.

15 But in the beginning of the case, back
16 when the application was received, we did a
17 library project outreach and we sent a copy of the
18 application for certification to the Turlock
19 Library. And at that time we included in that
20 package some information that could be made
21 available to the public; posters where to find the
22 AFC in the library; and a project description that
23 my office prepared, a one-page handout type of
24 project description.

25 We also sent 1000 bilingual English/

1 Spanish flyers to be inserted in the local
2 newspaper advertising the site visit and
3 informational hearing.

4 To date my office has had no calls or
5 contacts from the public. And I believe that CURE
6 has not been participating actively in this case.

7 Thank you very much.

8 HEARING OFFICER VALKOSKY: Thank you,
9 Ms. Mendonca.

10 For the record I'd like to note that the
11 Committee originally scheduled today's prehearing
12 conference for June 20th of this year, but then
13 rescheduled the event for today in a notice dated
14 June 3rd.

15 It was explained in the initial notice
16 the basic purposes of the prehearing conference
17 are to assess the parties' readiness for hearings;
18 clarify areas of agreement or dispute; to identify
19 witnesses and exhibits; to determine upon which
20 areas parties desire to cross-examine witnesses
21 from other parties; and to discuss associated
22 procedural items.

23 To achieve these purposes we've required
24 in the notice that any party desiring to
25 participate at this conference or present or

1 cross-examine witnesses at future evidentiary
2 hearings file a prehearing conference statement by
3 June 13th. Timely prehearing conference
4 statements were filed by applicant and staff.

5 Today's agenda is basically divided into
6 three parts. First we'll discuss matters
7 contained in the prehearing conference statements.
8 Next we'll discuss various options for proceeding
9 with this case. Finally, we'll provide an
10 opportunity for public comment.

11 Turning to the first part of the agenda
12 this portion of the conference will be basically
13 devoted to clarifying and/or verifying and
14 explaining the information contained in the
15 prehearing conference statements.

16 What the Committee has done is prepared
17 a series of outlines, outline A, B, C and D.
18 We've distributed these to the parties for
19 purposes of the present discussion. I'd like to
20 proceed with first applicant and then staff. And
21 I'd like to hear from the parties any opening
22 presentation that they may have, and then focus on
23 each outline as to whether the topics are
24 accurately categorized on the various outlines.

25 And I'd like to do this first outline A

1 with both parties, and then outline B with both
2 parties, et cetera. Any questions?

3 Mr. Harris.

4 MR. HARRIS: Good morning, Mr. Valkosky.
5 We've had a chance to look at outline A, project
6 description, waste management, worker safety and
7 fire protection, power plant efficiency and power
8 plant reliability. And we believe that those
9 areas are suitable for declaration.

10 In response to the question on project
11 description, we don't feel a need to do an oral
12 presentation on project description. But if the
13 Committee desires that we do so, we could have a
14 brief outline of the project at the opening of
15 evidentiary hearings.

16 HEARING OFFICER VALKOSKY: Okay, Mr.
17 Harris, yeah, that essentially, now I have to
18 consult with the Committee, but oftentimes in my
19 experience the Committee, at the outset of a
20 proceeding, likes to have the project orally
21 described.

22 So I take it then that you have no
23 objection to presenting a witness --

24 MR. HARRIS: We don't, no.

25 HEARING OFFICER VALKOSKY: -- should the

1 Committee so desire?

2 MR. HARRIS: No, Mr. Baysinger has been
3 doing this presentation for quite some time now,
4 and will probably do it without notes. So we'd be
5 pleased to do it if necessary, if they so desire.

6 HEARING OFFICER VALKOSKY: Okay. Thank
7 you. Mr. Eller, Mr. Ratliff, any comments on
8 outline A?

9 MR. ELLER: Outline A looks adequate to
10 staff.

11 HEARING OFFICER VALKOSKY: Okay.

12 ASSOCIATE MEMBER ROSENFELD: Bob, I
13 didn't -- just didn't hear you.

14 MR. ELLER: I said the outline A is
15 adequate for staff; it looks fine.

16 ASSOCIATE MEMBER ROSENFELD: Thank you.

17 HEARING OFFICER VALKOSKY: Okay, turning
18 your attention to outline B. These are, at least
19 in the Committee's assessment, topics which are
20 also suitable for presentation by declaration if
21 the bulleted items are clarified in the
22 declaration or revised testimony, whatever. And
23 these are very short versions of some questions
24 the Committee has.

25 With that, Mr. Harris, do you have any

1 comments on outline B?

2 MR. HARRIS: Just briefly. Going first
3 to socioeconomic, I think the issue there, as I
4 understand it, is with environmental justice. A
5 concern about the methodology. And we want to
6 understand better the decision to use, I think it
7 was census blocks as opposed to census tracts.
8 Whichever one is the finer level of detail.

9 Staff describes pockets of low income
10 and minority populations. And we're not familiar
11 with the methodology that allows for that sort of
12 a micro-analysis, if you will, for the
13 environmental justice issue.

14 Having said that, we're not anticipating
15 that this is going to be a large problem in the
16 case. We believe we'll get to the point where all
17 the impacts are mitigated to the level of less
18 than significant.

19 And so any differences between the
20 methodology that we would apply and that of staff
21 I think will be mooted at that point. I just
22 wanted to --

23 HEARING OFFICER VALKOSKY: Okay, but at
24 the present time if we were to proceed on our
25 first set of hearings, I take it you would want a

1 witness on socioeconomics?

2 MR. HARRIS: I'm thinking we probably
3 are not going to need one down the road. Because
4 if I understand the discrepancy here, it's pretty
5 much a legal question, not a factual one.

6 But I just wanted to flag the issue for
7 the Committee. But I don't anticipate at this
8 point that we would need to have a live witness on
9 the subject. Obviously that will depend a little
10 bit on what's in the final staff assessment.

11 But assuming we're down to the pure
12 question of law, and assuming that we find no
13 significant impacts, I think this would be one we
14 would do by declaration.

15 HEARING OFFICER VALKOSKY: Okay, fine.

16 MR. HARRIS: Do you want me to continue
17 with --

18 HEARING OFFICER VALKOSKY: Yeah, please.

19 MR. HARRIS: -- do all --

20 HEARING OFFICER VALKOSKY: Go through
21 the topics, everything on B.

22 MR. HARRIS: My understanding, and let
23 me just quickly check with Mr. Carrier --

24 (Pause.)

25 MR. HARRIS: A quick review by our crack

1 team, here. I think we're going to be able to
2 provide answers to pretty much all of these -- I
3 think all of these questions. We have PSA
4 comments, by the way, which we're filing either
5 late today or early tomorrow. Normally we would
6 be working on those this morning, but we're here
7 instead.

8 We're going to try to regroup this
9 afternoon; go through our last edits on the PSA
10 comments. I think they will address all of these
11 issue areas.

12 One I wanted to flag for you is on
13 transmission system engineering. I think the set
14 of conditions that were put into the documents
15 were conditions that were reflective of an
16 independent power producer as opposed to a
17 publicly owned local entity. And we worked with
18 staff on that. I don't see any problems coming
19 out of that.

20 But we'll need to see a revised set of
21 TSE conditions from the staff. We're working with
22 them to do that, to see a set that reflects the
23 District's status as a publicly owned entity. So
24 I flag that issue for you.

25 One other issue I want to talk about is

1 item 11, facility design, and the use of the CBO.
2 The District's in a unique position legally. They
3 are a public entity who is typically not bound by
4 local, I underscore the word local, local building
5 ordinances.

6 And I'd like Mr. Baysinger, from the
7 District, to explain a little bit about the way
8 they operate currently in these circumstances.
9 And then, I think, preview for you his interest in
10 the CBO issue. So, Randy.

11 MR. BAYSINGER: Thank you. The basic
12 issue is one of, I guess, redundant oversight.
13 What we normally provide, we are not exempt from
14 the state building code, obviously, nor are we
15 exempt from state licensing requirements.

16 And because we are exempt usually from
17 the local building codes and CBO review and plan
18 checking, and we still have to meet the codes, we
19 have an internal process that most public
20 utilities use which is very similar to a CBO. We
21 just call it a little different process.

22 But basically we have our architect/
23 engineers, which are fully certified PE engineers,
24 registered in the State of California, who design
25 the project. Their design is reviewed by a second

1 team. And then we have an independent engineer,
2 an owner's engineer, that we hire that
3 independently assesses these designs to make sure
4 they comply with all the building codes.

5 It's essentially what the CBO would do
6 anyway. And that's our way of making sure that we
7 have a check so that we can comply with the
8 building codes and have a way to demonstrate that
9 should there be any question of that.

10 So to inject another CBO requirement is
11 basically adding a third layer of plan check and
12 review that we feel is already being done. So
13 what we're proposing is to work with staff to
14 outline our process and essentially prove it's the
15 same process that a typical CBO process would
16 involve.

17 MR. HARRIS: And, Mr. Valkosky, just for
18 further clarification, currently if the District
19 brings plans to the county for plan check, -- you
20 can describe the county's reaction.

21 MR. BAYSINGER: Well, the county says,
22 thank you, but we don't want them.

23 (Laughter.)

24 MR. HARRIS: So what we're looking for
25 is a process that will parallel the existing, and

1 recognizes the District's expertise as a system
2 operator.

3 HEARING OFFICER VALKOSKY: Okay, so this
4 is basically something that can be clarified or
5 resolved by modifications to the present
6 conditions, right?

7 MR. HARRIS: Correct, and that's --
8 wanted to raise that issue. The staff, again,
9 used I think a standard set of conditions that
10 reflect an independent power producer, and so
11 they're going to work with us to take care of that
12 issue. And also to address the issues Randy just
13 raised about plan checks and what-have-you.

14 HEARING OFFICER VALKOSKY: Right, so let
15 me back up. Out of these issues on outline B,
16 socioeconomics, transmission system engineering,
17 facility design, all look amenable to resolution.
18 But also require examination of the language in
19 the FSA. Is that a correct characterization?

20 MR. HARRIS: That's -- if I could speak
21 clearly I would have said that, yes, that's the
22 proper --

23 HEARING OFFICER VALKOSKY: Okay. Thank
24 you. Anything else on that topic?

25 MR. HARRIS: Not from the applicant, no.

1 HEARING OFFICER VALKOSKY: Mr. Eller.

2 MR. ELLER: On topic B, on EJ impacts, I
3 would note that the methodology used by the staff
4 is the same methodology we've been using in
5 previous projects.

6 That said, I don't believe there will be
7 issues remaining following staff's FSA in this
8 area.

9 On the issue of CBO, I believe during
10 our discussions last week on the PSA we've come to
11 the conclusion that that will not also be a
12 problem. We will probably delegate our CBO
13 authority to the District. We'll have those
14 conditions in our FSA.

15 HEARING OFFICER VALKOSKY: Okay, so, and
16 again, just to repeat what I asked Mr. Harris, the
17 topics of socio, transmission system engineering
18 and facility design, there will probably be
19 changes in the FSA to accommodate the applicant's
20 concerns, correct?

21 MR. ELLER: There will be.

22 HEARING OFFICER VALKOSKY: Okay.

23 MR. ELLER: I believe all of these areas
24 should be suitable for declaration by the time of
25 hearing.

1 HEARING OFFICER VALKOSKY: Right, okay.
2 Anything else on outline B?

3 Okay. Mr. Harris, outline C, which are
4 the apparently disputed, or at least unresolved
5 issues. And I'd like two things. One, to clarify
6 that these issues are, in fact, correctly
7 categorized. And then indicate if, in your
8 opinion, regardless of whether or not there is a
9 dispute, whether these issues are ready to proceed
10 to hearing.

11 MR. HARRIS: Okay, thank you. I guess
12 I'll do all of them, then. Compliance and general
13 conditions, we talked about the CBO issue, and so
14 that's the second one you have listed. So, no
15 need to go back to that one.

16 Com-8 is just really a desire to see a
17 standardization of security practices from the
18 Commission. And with everybody who will listen
19 I've been suggesting that there's a need for a
20 Commission-wide process to deal with security
21 issues.

22 And so we will have some specific
23 language proposed in our PSA comments for Com-8.
24 And basically in terms of background checks, what
25 we're looking for is a set of standards and

1 protocols that the Commission would set forth for
2 all Commission projects.

3 In a way this is an issue that's larger,
4 certainly is larger than this individual project.
5 And there has been, obviously, a need to deal with
6 these security issues, and we're fully supportive
7 of that. I want to stop and punctuate that.
8 There's no question whatsoever that we're, with
9 our existing facilities, implementing security.
10 And with the projects going forward we're going to
11 make sure that we have plans that make sense.

12 We do have some concerns about how the
13 background checks are implemented. I'm unclear,
14 as an attorney, what the scope of those checks
15 would be. Criminal, you know. There's a whole
16 list of potential civil liberty issues here. I'm
17 not sure what we'd do if we found something in a
18 background check.

19 And so that's why I think this is a
20 topic area that's amenable to a kind of a
21 Commission-wide proceeding. And I know that there
22 are things going on at the Commission right now to
23 deal with security issues. And so we're going to
24 suggest language that's basically that we would
25 develop plans consistent with the standards and

1 protocols developed by the Commission to address
2 these issues.

3 HEARING OFFICER VALKOSKY: Okay, so
4 basically whether or not we have a dispute on
5 compliance awaits the FSA, in other words, right?

6 MR. HARRIS: I don't even think we have
7 a dispute. I think we have an applicant making a
8 request to the Commission actually, for the
9 Commission to consider putting together standards
10 that would apply to all Commission-certified
11 projects.

12 So we will propose language that, I
13 don't think this will be one that we'll need to
14 bring witnesses in on, for example. We may have
15 to suggest language in our -- we will suggest
16 language in our PSA comments, and we'll see what
17 happens with the FSA language.

18 This is more of an issue than one to
19 flag for benefit of the Commissioner and for you,
20 Mr. Valkosky, because I think it is going to be an
21 ongoing issue. And I have been having discussions
22 with other folks in the Commission about this
23 issue. Because it definitely affects all the
24 projects. We're just looking for some
25 standardization basically.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you for that clarification.

3 MR. HARRIS: Should I move on to the
4 next topic?

5 HEARING OFFICER VALKOSKY: Yeah, please.

6 MR. HARRIS: Hazardous materials.
7 You've identified, I think, probably the only
8 outstanding issue there is the discussion that's
9 ongoing with staff related to the use of anhydrous
10 ammonia. We have, in the AFC and in the data
11 responses, I think provided information that shows
12 that this is not only in compliance with LORS, but
13 it's also safe and can be done effectively.

14 And so we will be doing one more
15 submission at staff's request. That submission
16 will be done under confidential filing. It's
17 pretty much ready to go. I'm actually not sure I
18 can send my staff down here today to file it, but
19 we received direction from the staff counsel last
20 Thursday to file that under request for
21 confidential treatment, and we'll do that this
22 week. If not today, when downtown clears out a
23 little bit, we'll email it, I think, to get it
24 down to you.

25 I think that's it for hazardous

1 materials.

2 Item 14, land use. I think you've
3 correctly identified the last outstanding issue
4 there is the conversion of agricultural land.
5 There's a long and detailed history about the
6 industrial zoning for this property. But the
7 bottomlines are this, the property is zoned
8 industrial; the project will be located next to a
9 major industrial facility, the Foster Farms
10 milling facility is there. The entire area is
11 industrial.

12 Ten years ago, more than ten years ago,
13 I guess, the city zoned this property industrial.
14 And in doing so they complied with CEQA. They had
15 an environmental impact report filed. They made
16 statements of overriding consideration regarding
17 the farmland issue. And approved the rezone.

18 Prior to that, I think 1984, when the
19 sphere of influence was -- this was at the city's
20 sphere of influence, again the industrial
21 designation was noted there.

22 So we have a process that's been in the
23 works for almost 20 years. We have an
24 environmental document that's more than ten years
25 old that says this land is industrial zoned. We

1 have a finding, a statement of overriding
2 considerations by the local government for the
3 property being converted.

4 We are talking factually here about, you
5 know, a subset of a subset of a subset. We're
6 talking about an 18-acre parcel out of a 59-acre
7 parcel out of a 2000-acre subset out of a, I
8 think, 20- or 30,000 acre set that was analyzed in
9 the environmental document.

10 So, at the end of the day we are
11 objecting to staff's requirement that we provide
12 mitigation for prime farmland loss. I think the
13 easiest and simplest way to understand the basis
14 of an objection is that if anything other than
15 this project were going in on this site,
16 industrial zoned site, they would not be required
17 to do what staff is asking here.

18 So, if you assume that instead of a
19 power plant a packing shed, for example, fruit
20 packing shed went in on this site, that would be
21 an allowed use within the industrial zone. It
22 would be a use that would not require the type of
23 mitigation that the staff is asking for here.

24 And we see no basis in CEQA for staff's
25 request to basically revisit de novo and overrule

1 the local land use decision. And so that's kind
2 of a long-winded discussion, but I think you'll
3 see clearly where our position is on that one.

4 Item 15 is noise. We have, I think, an
5 area of disagreement and an area of agreement with
6 staff currently. The good news is that at the end
7 of the day we have agreement on mitigation. There
8 are two particular locations where staff is
9 seeking, I think, a 3 dba and a 4 dba reduction.

10 We have agreed to those reductions, and
11 we'll be proposing noise attenuation and other
12 features to provide that reduction. So at the end
13 of the day we're going to get down to the levels
14 that the staff wants us to get to.

15 On the issue of LORS compliance we do
16 have a disagreement with staff on their
17 interpretation of the LORS that apply. Again,
18 this project is in the City of Turlock; and it's
19 in an area that's zoned industrial. And if you
20 apply the industrial standard in that area, we
21 meet the standard. And so we think we've got full
22 compliance with the city LORS.

23 As to the county LORS, first off I
24 question whether they're even applicable in this
25 setting. I don't think they would be applicable

1 for any other project, again the packing shed, in
2 this area. So whether the county LORS are
3 applicable or not is a threshold question in my
4 mind.

5 But even if you assume that they are
6 applicable, you're faced with a circumstance
7 where, in our view what the staff has done is
8 ignore the noise levels that are allowed in the
9 agricultural zone, county ag zone around -- the
10 city's industrial, the county's ag.

11 In an agricultural zone one of the
12 allowed uses is a farmhouse, which makes sense.
13 You know, farmers need a place to live; you have
14 to have some residential uses within that
15 agricultural zoned land in the county.

16 The fact that there are some residences
17 in that agricultural zone, though, does not
18 convert the applicable noise standard from an ag
19 noise standard to a residential noise standard.
20 At the most basic level I think that's our
21 disagreement with staff.

22 The residential standards apply in
23 residential areas, and so those are areas that are
24 single family, multifamily residentially zones
25 areas. We think it's improper for the staff to

1 apply those stricter residential standards to the
2 county ag zoned lands.

3 And so those are the bases of our
4 disagreement with the staff on LORS. And as I
5 said, at the end of the day, the good news I think
6 that we're, regardless of this disagreement on the
7 LORS issue, we're going to get to a point -- we've
8 already gotten to the point we've agreed to the
9 mitigation of the 3 and 4 dba reductions at those
10 certain locations. And that's basically taking
11 the issue off the table.

12 HEARING OFFICER VALKOSKY: Well, with
13 the exception that if it is a LORS issue and the
14 Committee, eventually the Commission, has to
15 determine whether or not an override is
16 appropriate. And this, of course, especially as
17 you are aware from the Metcalf proceeding,
18 involves meeting and consultation and the
19 determination of more prudent and feasible means
20 and all of that.

21 So, I take it from what you're saying
22 this has the potential to become somewhat of a
23 major issue in this case, is that correct?

24 MR. HARRIS: I think it's a legal issue
25 more than anything else at this point. If you're

1 going to take it and put it in, you know, the CEQA
2 override and the LORS override, I think from the
3 CEQA side of things that our agreement to reduce
4 three and four decibels, I think staff's going to
5 look at that and say, we find no significant
6 impacts under CEQA.

7 Whether staff is going to continue to
8 insist on override of those LORS is an important
9 issue, obviously, in the case. And it may be that
10 between now and the FSA through our PSA comments
11 and through our discussions with staff, that we
12 can convince staff that our interpretation of
13 those LORS is reasonable and take the issue off
14 the table. You know, in a perfect world we'd be
15 able to do that. And we might even be able to do
16 this topic by declaration. But maybe I'm being
17 overly optimistic on that.

18 HEARING OFFICER VALKOSKY: Okay. Fair
19 enough.

20 MR. HARRIS: Visual, we've commented on
21 the specificity of mitigation. I think that's
22 probably a correct statement. We have a fair
23 number of comments on the PSA. A lot of those go
24 to baseline issues, whether the existing views
25 should be, you know, low/moderate, moderate,

1 moderate/high, that whole sliding scale that the
2 staff has developed.

3 There's some disagreement, I think, on
4 those baseline issues and some disagreement on the
5 scopes of impacts, but at the end of the day it
6 looks like once we see those final conditions and
7 determine the specificity of the mitigation that
8 we may be in a position to agree on this topic,
9 with one notable exception.

10 The visible water vapor plume condition,
11 and I underline the word water when I say plume,
12 because I want people to continue to recognize it
13 is water we're talking about here. Staff has
14 asked for a condition that they described as a
15 standard condition. The issue here though is that
16 staff has not found a significant impact, and
17 nevertheless is seeking mitigation in the form of
18 a plume condition.

19 And so we're going to continue to work
20 with staff. At the end of the day we may just
21 agree to disagree. We may accept that condition,
22 assuming we can put some fine tuning into that.

23 But for whatever reason we're looking at
24 a condition, I think it's Vis-6, that was designed
25 to deal with a different project in a different

1 setting, and a different set of circumstances that
2 all those circumstances are not present here,
3 including the size of this project, the amount of
4 duct firing. A distinct difference between this
5 project and the project from which this condition
6 is patterned.

7 So, as part of our discussion with staff
8 we're going to try to figure out whether we find
9 this acceptable or not. This is an industrial
10 zoned area. There are plumes in the surrounding
11 area from other industrial activities. We believe
12 there aren't many significant impacts, and thus
13 there shouldn't be any mitigation associated with
14 that. And we will provide comments on the PSA to
15 that effect.

16 Soil and water, you've listed mitigation
17 and the use of groundwater. We had a very good
18 and productive discussion with staff during the
19 PSA workshops. I think we're all in agreement on
20 principles. The devil's always in the detail.
21 But let me explain those principles.

22 The City of Turlock is under a cease and
23 desist that requires them to have their title 22
24 facility up and running by May of 2006. The
25 project is currently scheduled to come online in

1 the fourth quarter of 2005.

2 And so assuming everything goes correct
3 with our schedule and their schedule, and things
4 line up, it will be about a six-month period where
5 we would be commercially operational before
6 recycled water is available from the City of
7 Turlock.

8 We developed a concept we called a
9 bridge supply, literally meant to bridge the gap
10 between our commercial operation date and the COD
11 date for the City of Turlock's recycled water
12 facility.

13 We've laid out that issue for staff.
14 Staff understands it. And like I said, we're in
15 substantial agreement on all major principles.

16 The concerns that we have on a going-
17 forward basis really relate to providing the
18 District with some certainty. We're concerned
19 about the potential short-run delays in the City
20 of Turlock's facility becoming available. It's
21 scheduled to come online in May of 2006, but
22 that's something we don't control. It's an issue
23 that's totally outside the District's hands.

24 And so we've had some discussion with
25 staff about providing basically a short-term fix

1 that would give us about six additional months
2 past the projected online date, so to the end of
3 2006, to have that facility come online.

4 If it doesn't come online at that time,
5 then what we are going to propose is a series of
6 milestones, I guess, although I hate that word,
7 for putting together a plan to deal with the
8 unavailability. This is all really to deal with
9 the financing of the project.

10 We have to show essentially that we have
11 a certain supply of water; that we're not going to
12 have problems down the road, assuming that the
13 City of Turlock has problems. So it's going to
14 the dark place the bankers always drive us, you
15 know. What happens if May 2006 it's not
16 available.

17 As I said, we had some very productive
18 discussions with staff on what we can do to give
19 us kind of a short-run and a mid-run, you know,
20 relief from unexpected delays for the City of
21 Turlock's facility. And ultimately I think at the
22 end of the day we're going to have to propose
23 something that says, and if worse, you know, the
24 worst case happens, you know, we'd probably come
25 back for an amendment to deal with the issue.

1 We have draft language that has been
2 through, I think, three or four iterations
3 internally with the team. It's, I think, getting
4 very close to where we want it to be. This is all
5 for soil and water condition 5, by the way.

6 The upshot from the workshop was that we
7 were going to provide staff with draft language,
8 and try to work this issue out in advance of the
9 final staff assessment.

10 One of the issues -- or one of the, I
11 guess, good news solutions here is the potential
12 use of groundwater. In this area there's some
13 unique hydrology I think that works to our
14 benefit. There's what they call a corcoran clay
15 layer between the upper aquifer, which is poor
16 quality water, and the lower aquifer, which is the
17 higher quality water.

18 Staff basically would like us to take a
19 look at the use of that shallow aquifer, either as
20 a bridge supply or an emergency supply. We think
21 that's a reasonable thing to do, and we're going
22 to go back and take a look at that potential use.

23 I think staff's bottomline, as I
24 understand it, is that we stay within that shallow
25 poorer quality aquifer and not go into the deeper

1 aquifer as we go forward.

2 There sounds like there's a lot of
3 issues here, but they're all really driven by the
4 fact that we need some certainty to move the
5 project forward, and to know that once we're
6 commercial that we can continue to operate.

7 And I want to really thank the staff for
8 being willing to think outside the box for ways to
9 draft the conditions that's going to get us there.
10 And so I'm hopeful that we're going to work this
11 issue out.

12 If that happens we may actually be down
13 to trying to present this one by declaration, as
14 well.

15 HEARING OFFICER VALKOSKY: Okay, so if I
16 may, Mr. Harris, out of the six issues,
17 essentially reservations with a compliance would
18 be some sort of, I'll call it a policy
19 clarification by the Committee to the Commission,
20 concerning the security measures, right? I mean
21 you don't have a -- okay.

22 MR. HARRIS: Yeah, that's correct.

23 HEARING OFFICER VALKOSKY: And at this
24 point, if you had to pick the ones that would
25 apparently be disputed it was essentially the land

1 use and visual? You think you can reach agreement
2 on the others, is that correct?

3 MR. HARRIS: Yeah, we think we're
4 hopeful. Land use and visual seem to be the
5 two -- but, I think that's correct. I think we're
6 going to be able to work through. You know, I am
7 concerned about the noise and the LORS compliance
8 and the whole big, you know, the override word. I
9 don't think we need to go there and I think we'll
10 be able to get past that issue.

11 But that's one that has a potential
12 to --

13 HEARING OFFICER VALKOSKY: Okay, so
14 potentially problematic, or potentially disputed,
15 I guess, if you put noise there.

16 No, that's fine for today's purposes.
17 You got anything else on outline C?

18 MR. HARRIS: I think that's it for the
19 applicant.

20 HEARING OFFICER VALKOSKY: Okay, thank
21 you. Mr. Eller.

22 MR. ELLER: I think I'll defer to
23 counsel --

24 HEARING OFFICER VALKOSKY: Mr. Ratliff.

25 MR. RATLIFF: I think we might agree

1 with many of the things the applicant has stated
2 thus far concerning the measures in outline C.

3 The one issue that I think we would add
4 to, though, is on the topic of land use, which we
5 might, although I think we may have a dispute with
6 the applicant in land use, it's not clear to me
7 that we have any factual dispute with the
8 applicant.

9 I think that there very well may be an
10 agreement in terms of the staff's testimony in the
11 PSA regarding the impacts to agriculture. I think
12 where the disagreement lies is probably a legal
13 issue regarding what CEQA requires an agency such
14 as the Energy Commission to do when land use is
15 converted to -- when agricultural land is -- prime
16 agricultural land is converted to nonagricultural
17 use, when that land has already been subject to a
18 general plan EIR.

19 And I guess I would emphasize that the
20 staff's position is not that it would choose or
21 suggest overriding a prior EIR. Rather, I think
22 what staff believes needs to be done is very
23 careful attention as to what CEQA requires when a
24 subsequent agency considers a project which is
25 consistent with a general plan which has been

1 approved, but which, itself, has impacts.

2 And our belief, which is somewhat
3 tentative in nature, is that we must, in fact,
4 consider the impact separately and require
5 mitigation if we find that it's feasible. So, I
6 think we have basically a dispute that is of a
7 legal nature, not a factual nature, regarding what
8 is actually required by CEQA in a circumstance
9 such as this.

10 So it may very well be that we can even
11 submit this testimony by affidavit, as well, or by
12 declaration as well, and just deal with the legal
13 issue. But perhaps we need to talk with the
14 applicant to see if, in fact, that's true.

15 That may also be true with the topic of
16 noise, but I'm not sure. I don't know if there is
17 any factual dispute about noise issues. I think
18 we may be -- and I guess I would ask Mr. Harris to
19 confirm that. But I don't know that we're in any
20 disagreement about the facts on noise. There may
21 be disagreement over the issue of which LORS are
22 applicable.

23 And I think Mr. Harris indicated that it
24 may or may not be an issue of any substance anyway
25 if the staff finds that there is mitigation with

1 the new proposed mitigation that the applicant
2 seems to agree to.

3 I think that second question may be, as
4 yet, unresolved. But, certainly I'm not aware of
5 there being a factual dispute about noise. And I
6 would just like to check with the applicant to see
7 if, in fact, they think there is a factual dispute
8 about noise.

9 And I don't know if Mr. Harris talked
10 about an issue that we have in terms of the
11 sequencing of the documents with the Air District.
12 Did you go into that --

13 HEARING OFFICER VALKOSKY: No, Mr.
14 Ratliff, we're just on outline C.

15 MR. HARRIS: I almost did. I didn't
16 realize there was a C and a D. But that's part of
17 D, so I --

18 MR. RATLIFF: Okay, that's D.

19 HEARING OFFICER VALKOSKY: Yeah.

20 MR. RATLIFF: We'll get to that.

21 HEARING OFFICER VALKOSKY: Okay, Mr.
22 Ratliff, do you agree there's a potential dispute
23 on visual?

24 MR. RATLIFF: Yes.

25 HEARING OFFICER VALKOSKY: Okay. And

1 the staff agreed that the soil and water concerns
2 are susceptible of resolution.

3 MR. RATLIFF: We think so.

4 HEARING OFFICER VALKOSKY: Okay, so if I
5 can sum up what you're saying, that -- okay,
6 potential legal issues on land use and noise.
7 Potential dispute in visual; and soil and water
8 and hazmat can potentially be clarified. And, of
9 course, we'll know that when we see the language
10 in the FSA. Is that pretty accurate?

11 MR. RATLIFF: Yes.

12 HEARING OFFICER VALKOSKY: Okay, thank
13 you. Anything else on outline C?

14 Okay. Outline D, the last one. Mr.
15 Harris.

16 MR. HARRIS: Thank you. I think I will
17 ask we start with air quality, item number 18.
18 I'm going to go ahead and ask Gary Rubenstein to
19 give a summary of where we are factually. He will
20 be able to address both the construction
21 mitigation issues and the PDOC issue. So, Mr.
22 Rubenstein.

23 MR. RUBENSTEIN: Thank you, Mr. Harris.
24 Good morning. I believe there are going to be
25 potentially seven issue areas in the area of air

1 quality that we will have to address. Our written
2 comments on the PSA will specifically identify the
3 condition numbers, and so I'm going to, in my
4 presentation this morning, just stick to a higher
5 level and discuss the issue areas.

6 The first issue area has to do with the
7 estimation of construction impacts and
8 construction mitigation. It's quite possible in
9 this area that we will proceed to hearings with a
10 substantial disagreement with the staff regarding
11 construction impacts, but with an agreement
12 regarding mitigation which would then moot the
13 disagreement over impacts.

14 I've seen that occur in other
15 proceedings and that may be the case here, as
16 well. To a certain extent whether that occurs is
17 going to hinge on whether both the applicant and
18 the staff can reach agreement on construction
19 mitigation conditions that will reasonably --
20 recently proposed by the Committee in the East
21 Altamont proceeding where there was a disagreement
22 that the Committee mediated.

23 It's not clear to me, as yet, that we,
24 the applicant, are going to accept those, but I
25 believe we will. It is not at all clear to me

1 that the staff will, but that's one potential way
2 that that issue could be mooted, if you will, to
3 where we agree to disagree on the impacts, but we
4 agree on the mitigation, and present that to the
5 Committee.

6 The second subject area has to do with
7 ammonia slip. This is an issue that I know that
8 committees in other proceedings have dealt with.
9 It appears that there will be no resolution to
10 that and we will have to address that during
11 hearings.

12 The third topic area has to do with the
13 question of whether the project's required to
14 provide additional mitigation for sulfur dioxide
15 emissions. That issue was discussed quite a bit
16 at Friday's PSA workshop. And if I'm
17 understanding the staff's position correctly they
18 are looking at a new method of evaluating the need
19 for a quantity of mitigation required for this
20 pollutant that's different from what they've done
21 in other proceedings.

22 The applicant's position in this case is
23 we're looking at it in the same way that other
24 committees and the Commission have looked at this
25 same issue in other proceedings. It's my

1 understanding the staff is continuing to look at
2 that issue. And at this point I think we'll have
3 to wait for the FSA to know whether we're going to
4 have to address that issue at hearing.

5 The fourth topic area has to do with a
6 condition where the staff is proposing to have the
7 Commission independently verify the validity of
8 emission reduction credits. And as of last
9 Friday's workshop we are in complete disagreement
10 on that, and will probably be having to address
11 that during hearings.

12 A related issue, but looking at
13 different conditions, has to do with the
14 Commission's role in evaluating LORS compliance
15 after the project's built on specific technical
16 areas where the Air District very clearly has
17 responsibility and will be evaluating compliance.
18 And specifically whether there will be a duplicate
19 and parallel compliance review on exactly the same
20 requirements by two different agencies.

21 The sixth issue, which is the one that
22 Mr. Ratliff had alluded to a few minutes earlier,
23 is a timing issue. When the San Joaquin Air
24 District issued the preliminary determination of
25 compliance for this project, they included

1 emission rates for three pollutants that they
2 calculated in error. The calculation error under-
3 estimated the emissions. The emissions were
4 properly estimated in our application to the
5 District. They were properly estimated in the
6 PSA. But the preliminary determination of
7 compliance contained that error.

8 In our comments on the PDOC we informed
9 the District of that error and asked that they
10 correct it. We were informed last week that if
11 the District were to correct the error they would
12 have to reissue a 30-day notice for the
13 determination of compliance, which would obviously
14 then delay your proceeding substantially.

15 After discussions with the District, we
16 reached agreement on a parallel approach, and
17 today we sent a letter to the District asking that
18 they issue the final determination of compliance
19 as soon as possible with the error embedded in it.
20 We will be filing within the next day or two a
21 formal application to the District, which they
22 requested that we do, asking them to correct the
23 error. And they will then be going out to public
24 comment hopefully within a week or two with a
25 revised determination of compliance with the

1 objective of having a corrected final
2 determination of compliance prior to the date of
3 your hearings.

4 When we discussed this issue with the
5 staff on Friday, the staff indicated that it was
6 their intention to have the correct values
7 reflected in the final staff assessment, but with
8 a note indicating that the District was going to
9 have to confirm those numbers through the issuance
10 of a corrected determination of compliance, which
11 would occur subsequent to issuance of the FSA, but
12 before the hearings.

13 The last issue that may arise relates to
14 the substantial comments that the CEC Staff
15 submitted to the San Joaquin Air District on the
16 preliminary determination of compliance. Because
17 we are now going to be in a position where there's
18 going to be another comment period on the
19 determination of compliance, it is possible that
20 the CEC Staff will submit additional comments.
21 And that might either further delay issuance of
22 the amended determination of compliance or it
23 might identify issues that I haven't listed here
24 yet that will have to be addressed at hearings,
25 because although the applicant and the Air

1 District are in agreement, the Commission Staff
2 and the Air District are not.

3 HEARING OFFICER VALKOSKY: And some of
4 these, I take, await further treatment in the FSA,
5 which, of course, we haven't seen.

6 MR. RUBENSTEIN: That's correct.

7 HEARING OFFICER VALKOSKY: Yeah.

8 MR. RUBENSTEIN: But I think it's quite
9 likely that at least two or three of these issues
10 almost certainly are going to have to be addressed
11 at hearings.

12 HEARING OFFICER VALKOSKY: Oh,
13 understood, the ammonia slip, independent
14 verification of ERCs, and post-certification LORS
15 review, I mean those will probably definitely be
16 disputed, right?

17 MR. RUBENSTEIN: Yes, I believe so.

18 HEARING OFFICER VALKOSKY: Okay. And
19 the others, well, except the latest, because we
20 don't really know, but the other items you
21 mentioned, again at least what I took your
22 statement to be was that even though you may have
23 disagreement it may not be things that need to be
24 heard, right? That's correct, too, right?

25 MR. RUBENSTEIN: That is correct.

1 HEARING OFFICER VALKOSKY: Yeah, okay.

2 MR. RUBENSTEIN: And that specifically
3 address the construction issues.

4 HEARING OFFICER VALKOSKY: Right. Thank
5 you.

6 HEARING OFFICER VALKOSKY: I think, Mr.
7 Valkosky, the public health issues arise pretty
8 much out of those air quality issues. I don't
9 think there's any distinction there, so we've
10 covered that.

11 Just drop a footnote here and say that,
12 you know, in the past the Commission has looked at
13 bifurcating FSAs when the Air Districts, typically
14 it's Air Districts, are slow. I don't think we're
15 going to need to do that in this case, but I just
16 wanted to raise the issue because this looks like
17 the only timing issue that's outside our control
18 right now.

19 Biological resources. The statement
20 here is that we're waiting some survey results.
21 Actually I think I'm going to have Susan Strachan
22 give you a quick summary, because the survey
23 results are in but there is one dry season issue
24 that we need to address. So, Susan, can you
25 address that?

1 MS. STRACHAN: Sure. We submitted the
2 survey results last week for special status
3 species for wetlands which show that there were no
4 special status species in terms of state-listed
5 species, and there are no jurisdictional wetlands
6 associated with the project site or any of the
7 linears.

8 The only thing we're waiting for is that
9 our biologists are doing dry season surveys for
10 fairy shrimp. There's two locations along the gas
11 pipeline route right together that have ponded
12 water in the wet season. So now they're taking
13 soil samples. We're having a specialist determine
14 whether or not the eggs of the fairy shrimp are
15 within the soil samples.

16 If they're not, then we'll go to Fish
17 and Wildlife Service for confirmation that we do
18 not have any fairy shrimp associated with the
19 project. If there are eggs then we'd have to go
20 to Fish and Wildlife Service for a programmatic
21 biological opinion for fairy shrimp. Fish and
22 Wildlife Service for fairy shrimp is supposed to
23 be somewhat of an expedited process, if you can
24 use that word with Fish and Wildlife Service,
25 where it's not supposed to take typically the 135

1 days that it normally does for a biological
2 opinion.

3 But we're keeping our fingers crossed
4 that there's no shrimp there, and that the Fish
5 and Wildlife Service will concur with that
6 determination. And we'll know that next month.

7 MR. HARRIS: And I'd just note, too,
8 that in addition to having the high hope that it's
9 going to work out the way that Susan described it,
10 that in the past the Commission has been able to
11 certify projects without having the biological
12 opinion in hand.

13 I know it's a preference to have that
14 biological opinion in hand, but I think in this
15 case we're not likely to have one. And even if we
16 are, we're going to be very easily slipped into a
17 programmatic situation that is very common in the
18 Valley; and I think one that we can probably put
19 together a proposal that would meet the Service's
20 needs rather quickly.

21 And so it's not like we found a new
22 species or anything like that. So I'm comfortable
23 with where we're proceeding on that whole issue.
24 And I don't expect it will have an impact on the
25 schedule at all, regardless of the outcome of that

1 July information.

2 Moving on to cultural resources, your
3 status notes further evaluation of impacts needed.
4 Again, a very good discussion at the PSA workshop
5 on this issue. There are three buildings that are
6 along the gasline route that Mr. Reinoehl was
7 interested in.

8 And we have received back an email to
9 Mr. Baysinger from PG&E that explains that the gas
10 pipeline will be constructed in such a way that it
11 will be away from those three buildings of
12 interest.

13 So I think with that information, which
14 we're going to put into our PSA comments, we'll
15 take this issue off the table and this one may
16 actually be suitable for declaration at that
17 point. There's always wordsmithing on the, I
18 wanted to say hundreds of cultural conditions, but
19 the number of cultural conditions that are there.

20 So that kind of thing could probably be
21 dealt with in declaration, as well. I'm not
22 anticipating we're going to need to have testimony
23 on that now that we've been able to get that last
24 bit of information to staff.

25 Alternatives, I think you've correctly

1 characterized it, depends upon the other areas.
2 And this one may also be suitable for declaration,
3 depending on what the results are in the FSA.

4 HEARING OFFICER VALKOSKY: Okay, so, Mr.
5 Harris, real quick, is that after the FSA it's
6 your position that we can go to hearings on all
7 these topics, then, right?

8 MR. HARRIS: I think that, yeah, we're
9 ready to proceed to hearing on all these topics.

10 HEARING OFFICER VALKOSKY: Okay, thank
11 you.

12 MR. HARRIS: And we might even be able
13 to do declaration on a few of them.

14 HEARING OFFICER VALKOSKY: Right.
15 Understood. Mr. Eller or Mr. Ratliff.

16 MR. RATLIFF: Well, I think Mr.
17 Rubenstein did a good job of summarizing the air
18 quality issues. And those are the main ones on
19 outline D that we think are going to be,
20 potentially need to be adjudicated.

21 We think some of those probably will
22 work out, but right now we would be reluctant to
23 say that all of them will. We think some of them
24 may not.

25 Biological resources, the cultural

1 resources and the alternatives topics we think
2 will probably go away.

3 HEARING OFFICER VALKOSKY: Okay. So you
4 see basically there's nothing here that would
5 delay hearings? None of these topics? I mean we
6 may have dispute, but we could nevertheless
7 proceed, is that correct?

8 MR. RATLIFF: Well, I think it sounds
9 like with cultural resources we pretty much
10 already are getting the information now that
11 that's not going to be an issue, because the
12 buildings that may have had some cultural value
13 are not going to be affected. So it sounds like
14 we can probably pretty much tell you right now
15 that that's not an issue.

16 And there is no further information
17 beyond the confirmation of what we just heard,
18 which, for all I know, we actually have.

19 With biological resources obviously we
20 have to wait for the U.S. Fish and Wildlife
21 Service to bless some kind of fairy shrimp
22 determination that hasn't been made yet. So I
23 don't -- we never know what the timing is when
24 we're dealing with the federal government. So
25 that may or may not be ready by the time the

1 hearings are here.

2 HEARING OFFICER VALKOSKY: And how about
3 the option of proceeding without the final
4 biological opinion?

5 MR. RATLIFF: I don't know how you
6 resolve that. I don't know that issue -- I say I
7 don't know, I really truly don't know how you
8 resolve that issue without the final biological
9 opinion.

10 HEARING OFFICER VALKOSKY: No, I just,
11 you know, Mr. Harris --

12 MR. RATLIFF: Maybe you can, but I'm not
13 sure that you --

14 HEARING OFFICER VALKOSKY: No. Okay.
15 So, out of the five issues, I'll phrase it this
16 way, in staff's opinion the only one that could
17 delay conclusion of the hearings would be
18 biological resources?

19 MR. RATLIFF: Right.

20 HEARING OFFICER VALKOSKY: Okay. Any
21 further clarification anyone wants to add to the
22 categorization of the topics? Or any questions?

23 Okay, next, various options for
24 proceeding with the case. At this time I'd like
25 the parties to address a couple of things. One,

1 when we could expect the FSA.

2 Two, whether the FSA should be filed as
3 a single inclusive document, or in parts,
4 obviously called bifurcation a lot.

5 Third, whether anyone thinks it's a good
6 idea to conduct a second prehearing conference
7 after the filing of the FSA in order to better
8 determine the remaining dispute, need for
9 witnesses, time required for direct and cross.

10 In that, I would add that possibly that
11 could follow an evidentiary hearing or hearings on
12 some of the topics. In other words, we'd have
13 staged hearings, do certain hearings; have a
14 second prehearing conference, and get ready for
15 whatever topics are left.

16 And finally, the intervals that we need
17 for whatever the parties would prefer for filing
18 testimony.

19 With that, Mr. Harris.

20 MR. HARRIS: In terms of the final staff
21 assessment I think staff has a little better view
22 of that, but we think with our comments that are
23 going to be filed either late today or tomorrow
24 that we'll provide basically all the information
25 with the exceptions noted, of course, related to

1 error in biology.

2 And so for the vast majority of those
3 topics I think we'll be ready to have an FSA
4 within a very short, I'd like to say weeks not
5 months. Applicant would say two weeks, but I'm
6 sure that would make staff choke a little bit.

7 (Laughter.)

8 MR. HARRIS: But it should be weeks, not
9 months, on most of those subjects.

10 In terms of whether it should be issued
11 in parts or not, I think that we don't have enough
12 information to make a recommendation to you on
13 that today. I think it's something that is very
14 much appropriate to keep in mind. That will
15 depend on the outcome of the Air District process
16 and the biological survey process. I think those
17 topics might be ones that we may want to have a
18 second FSA issued, or second half of an FSA.

19 The alternative to that, of course,
20 staff has, in the past, used an errata to their
21 FSA when they've got new information. And those
22 have varied from grammatical changes to entirely
23 new conditions.

24 And so I think there are some vehicles
25 for getting the latest information into

1 everybody's hands, and whether that's a, you know,
2 two-part FSA or a detailed errata that reflects
3 the most current information, I think either one
4 of those options is viable.

5 But I again think we need to -- can't
6 make a recommendation today on which one we should
7 take.

8 In terms of a second prehearing
9 conference I think that's probably a good idea.
10 And I think your idea of you doing that as part of
11 whether you call it a staged hearing, would make
12 sense. So in other words we would schedule on the
13 same day a second prehearing conference and a
14 hearing of the issues we're going to do by
15 declaration. Kind of get those out of the way.

16 So, that, to me, would make sense.

17 i can't imagine we're going to have a
18 lot of topics we're going to have to take live
19 witness testimony on. It would probably be good
20 to have some idea of prehearing conference
21 statements on the issues that the folks think
22 they're going to file, and whether that's done,
23 you know, as part of that second phase of hearing
24 or separately, we don't have a strong feeling.
25 Either way is fine with us.

1 Intervals for scheduling the filing of
2 testimony. I think staff would insist that our
3 testimony follow their FSA by weeks, not months.

4 (Laughter.)

5 MR. HARRIS: And so we'll look for some
6 parity there. We actually will be able to
7 probably shave a little bit of time off of our
8 testimony preparation based on the fact that we
9 think most of these topics will go by declaration.

10 So CH2 and our technical experts can
11 begin drafting testimony on those noncontroverted
12 areas maybe even tomorrow, but shortly after the
13 release of the FSA.

14 So, you know, again a matter of weeks
15 probably after the release of the FSA for us to
16 have our testimony filed.

17 HEARING OFFICER VALKOSKY: So we're
18 talking three weeks? Would that likely be
19 sufficient?

20 MR. HARRIS: I think that probably at
21 the outside, yeah.

22 HEARING OFFICER VALKOSKY: Okay, so
23 somewhere between two and three weeks?

24 MR. HARRIS: Yeah.

25 HEARING OFFICER VALKOSKY: All right.

1 MR. HARRIS: I think that's correct.

2 HEARING OFFICER VALKOSKY: Okay.

3 Anything else, Mr. Harris, anything else you want
4 to bring up on this?

5 MR. HARRIS: I think that's it for us.

6 HEARING OFFICER VALKOSKY: Thank you.

7 Mr. Eller.

8 MR. ELLER: On the first item on the
9 subject of filing of the FSA, staff expects to
10 file the FSA at the end of July.

11 HEARING OFFICER VALKOSKY: Okay, so the
12 31st, would that --

13 MR. ELLER: 30, 31st is --

14 HEARING OFFICER VALKOSKY: Okay, then
15 that's a nominal date.

16 MR. ELLER: -- issues, yes.

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. ELLER: Whether we file a single or
19 several documents, we always prefer to file a
20 single document. In this case I think the only
21 question I have we have not heard of a date for
22 the final FDOC revised, but since we have the
23 right numbers now I believe we can proceed and
24 have a single document at the end of July --

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. ELLER: -- covering air quality and
2 all the other issues.

3 HEARING OFFICER VALKOSKY: Makes it
4 simpler.

5 MR. ELLER: As far as the second
6 prehearing conference, after the FSA I believe
7 that your suggestion for having that, along with
8 an evidentiary hearing probably covering
9 noncontroversial issues, might be a good idea, so
10 we can lay the land for the remaining issues.

11 As far as intervals for filing, I'll
12 defer to legal for that one.

13 MR. RATLIFF: I'm not sure what the
14 issue is, but we will file.

15 (Laughter.)

16 MR. ELLER: I could have said that.

17 (Laughter.)

18 HEARING OFFICER VALKOSKY: It's not
19 really an issue, it's just an informational lead.
20 Two to three weeks adequate time to prepare any
21 responsive testimony that you may want to file?

22 MR. RATLIFF: Yes.

23 HEARING OFFICER VALKOSKY: Okay. Mr.
24 Eller, I take it the FSA will include the r, sum, s
25 for the staff witnesses?

1 MR. ELLER: Yes, sir, they most
2 certainly will.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. HARRIS: Mr. Valkosky, the
5 responsive testimony, is that --

6 HEARING OFFICER VALKOSKY: I said it,
7 you know, it may be, I don't know at this point.
8 That's all, I'm not suggesting anything, Mr.
9 Harris, at all. Okay.

10 MR. HARRIS: Thank you.

11 HEARING OFFICER VALKOSKY: Anything else
12 anyone wants to bring to the Committee's
13 attention?

14 All right, I think the parties can look
15 forward within the next week or so to the
16 Committee issuing, my opinion it'll be its first
17 hearing order scheduling the first set of
18 evidentiary hearings and a second prehearing
19 conference. Because I think we need that.

20 Mr. Harris, do you have any difficulties
21 with the staff's intention to file a complete FSA
22 by July 31st?

23 MR. HARRIS: No.

24 HEARING OFFICER VALKOSKY: No, so that's
25 fine --

1 MR. HARRIS: We're very pleased.

2 HEARING OFFICER VALKOSKY: -- that's
3 fine. Okay. Good.

4 Anything else anyone wants to bring to
5 our attention?

6 With that the Committee thanks you for
7 your attendance and participation. We're
8 adjourned.

9 (Whereupon, at 11:12 a.m., the
10 prehearing conference was adjourned.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing 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 prehearing conference, nor in any way interested in outcome of said prehearing conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345