

EVIDENTIARY HEARING and 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

MONDAY, AUGUST 25, 2003
10:13 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James Boyd, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Stanley Valkosky, Hearing Officer

Michael Smith, Advisor to Presiding Member Boyd

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Legal Counsel

Bob Eller, Project Manager

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

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Randy C. Baysinger, Project Manager, Assistant
General Manager
Turlock Irrigation District

Susan Strachan, Principal
Strachan Consulting

Gary S. Rubenstein
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P R O C E E D I N G S

10:13 a.m.

PRESIDING MEMBER BOYD: Sorry for the delay while they got the PowerPoint system worked up. But it did give me a chance to go get a cup of coffee, so I appreciate the delay. Some Monday mornings are tougher than others.

Welcome to what is the first evidentiary hearing and second prehearing conference on the Walnut Energy Center. I would like to begin this by going around with introductions. I'll introduce the Committee, which consists of myself, today, apparently. I'm Jim Boyd, the Presiding Commissioner for this hearing and the Walnut Energy Center application.

The second Commissioners, Dr. Rosenfeld, is out of the country and unable to be here. And with that, I think I'll ask our Public Adviser to introduce herself. I should point out on my immediate right is Mike Smith, my Advisor, who gives me able support on cases like this.

And, of course, you'll be hearing from the Hearing Officer in just a moment. I'll let him introduce himself.

Roberta, anything you'd like to add

1 before we turn to the applicant and then the
2 staff?

3 MS. MENDONCA: Thank you very,
4 Commissioner Boyd. My only comment would be that
5 my office has received no input from the public on
6 this meeting this morning and so there's nothing
7 specific to report. Thank you very much.

8 PRESIDING MEMBER BOYD: Very good. I
9 would like to infer from that that there's no
10 controversy. Knowing better than that I'll move
11 on to --

12 (Laughter.)

13 PRESIDING MEMBER BOYD: -- to the
14 applicant.

15 MR. HARRIS: I won't be too sensitive
16 about the transition there.

17 (Laughter.)

18 MR. HARRIS: I'm Jeff Harris; I'm here
19 on behalf of the District. And we also have
20 several members of our team at the desk who I'll
21 ask to introduce themselves. And there are folks,
22 as well, in the audience who at various times will
23 come up, and I'll have them introduce themselves
24 at that time.

25 MR. BAYSINGER: Randy Baysinger,

1 Assistant General Manager for Turlock Irrigation
2 District and Project Manager for the Walnut Energy
3 Center.

4 MS. STRACHAN: I'm Susan Strachan, the
5 Environmental Project Manager for the project.

6 PRESIDING MEMBER BOYD: Good morning to
7 both of you. Staff.

8 MS. HOLMES: Caryn Holmes, Staff
9 Counsel.

10 MR. ELLER: Bob Eller, Staff Project
11 Manager.

12 PRESIDING MEMBER BOYD: Okay. Well,
13 with that I thank you. Anyone else? I guess
14 we'll move to those people as they testify.

15 All right, the Committee scheduled
16 today's events in a notice of June 26th of this
17 year. And explained in the notice we'll first
18 receive evidence in the topics listed in
19 attachment A in that notice.

20 Then we'll conduct a prehearing
21 conference discussion on the topics listed in
22 attachment B and attachment C.

23 To achieve these purposes we established
24 a schedule in the notice which provides for filing
25 of the FSA, testimony for today's hearing and

1 submission of second prehearing conference
2 statements.

3 Due to a variety of circumstances the
4 filings were delayed and the FSA issued in only
5 partial form. Nevertheless the filings relevant
6 to today's proceedings are as follows:

7 The staff's partial FSA dated August
8 8th. Applicant's prepared testimony for
9 attachment A topics dated August 20. Applicant's
10 second prehearing conference statements dated
11 August 19. And staff's second prehearing
12 conference statements also dated August 19.

13 With that I'm going to turn the conduct
14 of the hearing over to Mr. Valkosky, who is our
15 Hearing Officer, and let him take you through the
16 rest of the procedures and the rest of today's
17 hearings. Mr. Valkosky.

18 HEARING OFFICER VALKOSKY: Thank you,
19 Commissioner Boyd. Today's agenda is basically
20 divided into three parts. First we'll conduct
21 evidentiary proceedings on the topics listed on
22 attachment A.

23 Then we'll discuss matters contained in
24 the prehearing conference statements. And finally
25 we'll provide an opportunity for any relevant

1 public comment.

2 Beginning with the evidentiary
3 proceedings at this point we've got seven topics
4 to consider, only one of which, I anticipate, will
5 have presentation by a witness. I'd like to
6 proceed first with applicant's witness on project
7 description.

8 And after that presentation we'll
9 address each topic on the order contained in
10 attachment A, and entertain motions by applicant
11 and staff to move evidence, in the form of
12 declarations, into the record.

13 If there is any dispute by either party
14 in any of these topics, we may choose to not
15 receive them by declaration at this time. As we
16 proceed through the topics I'd like staff to
17 address the proposed changes by applicant to
18 conditions waste-2 and paleo-5.

19 With that, Mr. Harris, your witness.

20 MR. HARRIS: Thank you. First witness
21 is Randy Baysinger from the District. And I would
22 ask that he be sworn.

23 Whereupon,

24 RANDY BAYSINGER

25 was called as a witness herein, and after first

1 having been duly sworn, was examined and testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. HARRIS:

5 Q All right. Would you please state your
6 name for the record?

7 A Randy Baysinger.

8 Q And what's the matter of testimony are
9 you here to sponsor today?

10 A I'm here to sponsor project description.

11 Q And were the documents that you've
12 sponsored as part of your testimony previously
13 identified in your prefiled testimony?

14 A Yes.

15 Q And I understand you have some
16 corrections and clarifications to those documents,
17 is that correct?

18 A I do.

19 MR. HARRIS: Mr. Valkosky, I'm referring
20 to section 1D, as in David, of our prefiled
21 testimony, page 21. In that section entitled
22 prior filings we have a list of documents that
23 most of which are on your exhibit list; some of
24 which will need additional numbers. So this may
25 take just a second to go through the documents.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. HARRIS: The first set identified as
3 sections 1, 2, 3, 4, 5 and 6 of the AFC, that's
4 exhibit 1. The data adequacy supplement to the
5 AFC, that's exhibit 2.

6 Here's where we start getting
7 complicated. Data responses sets 1A through E;
8 2A; informal data response sets 1 through 7. Some
9 of these have numbers, some of them will need new
10 numbers. So should I just take you through those,
11 Mr. Valkosky?

12 HEARING OFFICER VALKOSKY: Please do,
13 Mr. Harris.

14 MR. HARRIS: Informal data request set
15 number 1 needs a new number assigned.

16 HEARING OFFICER VALKOSKY: Okay, I think
17 if you'd identify the title and the date, complete
18 title and the date for that document, please.

19 MR. HARRIS: We may need a second.
20 Actually, Mr. Valkosky, if I could let me move
21 down to the informal data responses sets 1 through
22 7.

23 HEARING OFFICER VALKOSKY: All right.

24 MR. HARRIS: Okay, let's go backwards
25 then. Can we have just a moment --

1 HEARING OFFICER VALKOSKY: Certainly.

2 MR. HARRIS: -- and go off the record?

3 (Off the record.)

4 MR. HARRIS: All right, we're starting
5 now on our third bullet again at section 1D, the
6 data responses sets 1A through E; set 1A is from
7 4/24/03, and we'd like a number assigned to that
8 document.

9 HEARING OFFICER VALKOSKY: I'll identify
10 that as exhibit 12.

11 MR. HARRIS: I didn't follow the arrows
12 correctly here, so.

13 HEARING OFFICER VALKOSKY: Are we set or
14 do you need some more time?

15 MR. HARRIS: No, we're set.

16 HEARING OFFICER VALKOSKY: Okay, On the
17 record.

18 MR. HARRIS: I just need to connect my
19 dots.

20 Sets 1A, let me correct that, set 1A is
21 exhibit 5. Set 1B is exhibit 6. Set 1C is
22 exhibit 7. Set 1D is exhibit 8. Set 1E is a new
23 document; it's from 6/16/03; that one would be the
24 first new number that we would be assigning.

25 HEARING OFFICER VALKOSKY: Okay, so we

1 have informal data responses set 1E.

2 MR. HARRIS: These are the formal ones.

3 HEARING OFFICER VALKOSKY: The formal
4 data responses.

5 MR. HARRIS: Data responses sets 1A
6 through 1E.

7 HEARING OFFICER VALKOSKY: And 1E is the
8 new document, correct?

9 MR. HARRIS: Right. Correct.

10 HEARING OFFICER VALKOSKY: And that's
11 dated June 16, '03?

12 MR. HARRIS: 6/16/03, yeah.

13 HEARING OFFICER VALKOSKY: Okay, that'll
14 be exhibit 12.

15 MR. HARRIS: Thank you. Sorry for the
16 confusion there, sir.

17 Data response 2A also needs a number;
18 that's dated 4/11/03.

19 HEARING OFFICER VALKOSKY: Okay, we'll
20 make that exhibit 13 for identification.

21 MR. HARRIS: Now moving to the informal
22 data responses; and again, my apologies.

23 Informal data response set 1 needs a
24 number assigned.

25 HEARING OFFICER VALKOSKY: And the date

1 on that one?

2 MR. HARRIS: Is 4/24/03.

3 HEARING OFFICER VALKOSKY: Okay, that'll
4 be 14.

5 MR. HARRIS: Okay, informal data
6 response set 2 is previously identified as exhibit
7 9. Set 3 of the informal needs a number; that is
8 dated 6/27/03.

9 HEARING OFFICER VALKOSKY: That will be
10 exhibit 15.

11 MR. HARRIS: Set 4 again needs a number;
12 that is dated 7/3/03.

13 HEARING OFFICER VALKOSKY: Sixteen.

14 MR. HARRIS: Set 5 is dated 7/8/03, and
15 that will need a number.

16 HEARING OFFICER VALKOSKY: Seventeen.

17 MR. HARRIS: Set 6 will need a number;
18 is dated 7/18/03.

19 HEARING OFFICER VALKOSKY: Mark that as
20 exhibit 18.

21 MR. HARRIS: And set 7 also needs a
22 number, dated 8/6/03.

23 HEARING OFFICER VALKOSKY: Mark that as
24 exhibit 19.

25 MR. HARRIS: The fourth bullet now is

1 the project description PowerPoint presentation
2 which is exhibit PD-1. That's part of exhibit 4.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. HARRIS: And there should be one
5 additional, PSA comments set 1 should have been
6 listed here; that's exhibit 10, as well.

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. HARRIS: So that's the addition.
9 Apologize for that rough start, Mr. Valkosky, but
10 I think we're back on track.

11 HEARING OFFICER VALKOSKY: It's Monday
12 morning, Mr. Harris.

13 MR. HARRIS: And I haven't had enough
14 coffee.

15 HEARING OFFICER VALKOSKY: We're all in
16 the same situation.

17 (Laughter.)

18 MR. HARRIS: Thank you.

19 BY MR. HARRIS:

20 Q Now, with those clarifications and
21 corrections, Mr. Baysinger, were these documents
22 prepared either by you or at your direction?

23 A Yes.

24 Q And are the facts stated therein true to
25 the best of your knowledge?

1 A Yes.

2 Q Are the opinions stated therein your
3 own?

4 A Yes.

5 Q And do you adopt this as your testimony
6 for this proceeding?

7 A I do.

8 Q Could you please review your
9 qualifications, both your educational and
10 professional qualifications, for the Committee?

11 A Certainly. Again, I'm the Assistant
12 General Manager for Turlock Irrigation District;
13 and my primary function is power plant
14 construction and operation.

15 I have a bachelors degree from
16 University of California at Davis in electrical
17 engineering. And I'm also a registered electrical
18 engineer in the State of California.

19 Q Thank you. We'd like you now to provide
20 a brief summary of your testimony. And you can do
21 it either from the chair here, or you can use the
22 dais, if you'd like, whatever you prefer.

23 A I'll use the dais so I don't nail the
24 staff with my laser.

25 (Laughter.)

1 MS. HOLMES: Thank you.

2 MR. BAYSINGER: This is the little brief
3 PowerPoint presentation on the Walnut Energy
4 Center. And this is an overview of it. This is
5 the Energy Center, itself.

6 As you can see it sits in -- this is the
7 City of Turlock's industrial area. There are
8 several grain mills here. And there's a cheese
9 company here. And back over here is a herb farm
10 where they produce herbs for your kitchen.

11 And as we'll point out later, we've
12 designed the site with aesthetics hopefully in
13 mind. We put the stacks back-to-back so that --
14 or the HRSGs back-to-back so the stacks appear
15 hopefully as one stack rather than two. The
16 object is to blend in with the tall grain silos
17 when you see it from street level. They're
18 obviously a lot skinnier than the silos.

19 Our need for the project is manyfold.
20 Our native load is growing. It's been growing
21 about 2 to 3 percent over the last several years.
22 And already this year we have exceeded our 3
23 percent growth. So the area is expanding quite
24 rapidly.

25 I have a possible 200 square mile

1 service territory expansion. When we had the
2 informational hearing we reported to you that we
3 were in the process of acquiring some territory
4 from PG&E.

5 Since that time the California Public
6 Utilities Commission has approved the acquisition
7 by us to the agreement of all parties. And also
8 the Bankruptcy Court has also agreed to that, as
9 well, since PG&E is in bankruptcy and the
10 creditors had to weigh in.

11 So we are set to take over that 200
12 square mile service territory which would be
13 directly to our west of our existing territory;
14 January 1 of '05 is the target date. We're in the
15 process of working the final contracts out with
16 PG&E and the separation procedures.

17 In addition to that we have several
18 long-term power contracts that are expiring
19 between 2005 and 2008, much like a lot of the
20 other public power entities in the state. One of
21 them being the Western Area Power Administration's
22 allocations are set to expire in 2005 for all
23 public agencies.

24 The TID has every intention of either
25 forming its own control area or joining another

1 control area. So in order to do that you have to
2 bring certain things to the table as a member of
3 that, which would include power ancillary
4 services. And this project would meet those needs
5 for us to become our own control area.

6 And lastly, we currently generate about
7 40 percent of our own power and purchase 60
8 percent. So we do rely on the transmission system
9 in the state, of which we do own a large piece.
10 But by putting the generation inside our service
11 territory will allow us to decrease our reliance
12 on the transmission lines and reduce congestion
13 and loading on the state system.

14 The project facts: This is a nominal
15 250 megawatt power plant built around a power
16 island of two Frame 7EA turbines and one
17 condensing steam turbine. It will have two
18 switchyards. TID currently has 230, 115 and 69 kV
19 transmission in their system. The native load is
20 served from the 115 and 69 kV systems. And we
21 will be connecting this power plant into both of
22 those for power flow reasons.

23 It will have SCR for NOx control and a
24 CO catalyst for CO control. We will have
25 continuous emission monitoring and recording

1 systems as required by regulation.

2 We are proposing to use reclaimed water
3 from the City of Turlock's Regional Wastewater
4 Treatment Plant. They will have a title 22 plant
5 up and running hopefully by May of '06 is their
6 target date. They are operating currently under a
7 cease and desist order by the Regional Water
8 Quality Control Board, so they have been ordered
9 to have that plant online by May of '06.

10 And we propose a five-cell cooling tower
11 for our steam -- steam cooling.

12 This is an aerial view with the plot
13 plan laid out. The gas turbines are on the
14 outside. And, again, the boilers are kind of
15 back-to-back so the stacks are together.

16 Then we have two switchyards out here to
17 connect the power to our system. The steam
18 turbine is in the middle. Cooling tower over
19 here. Water treatment and administrative
20 buildings in the back.

21 And on the property, as you can see from
22 the aerial photo, it's about 2000 feet from the
23 street. So we're at the back end of the property
24 away from the roadway, and back where all the
25 other industrial facilities are in the area.

1 Our linear facilities, again we have
2 about 2000 feet of 115 kV transmission line that
3 will take us out to the road. TID has existing
4 transmission in the area, so all we have to do is
5 get to the property boundary. We're not building
6 any transmission lines over land or whatever.

7 There is also a 69 kV transmission line
8 that runs along the south border of the property,
9 so 670 feet of transmission line will connect the
10 switchyard to that.

11 PG&E will be installing 3.6 miles of
12 eight-inch natural gasline to bring gas to the
13 plant. And then our recycled water supply line
14 is -- the wastewater treatment plant is 1.6 miles
15 away, so we will be putting in a 12 to 24 inch
16 line to be determined by final design.

17 And then potable water line .19 mile
18 line to get to the nearest water main at the City
19 of Turlock. Potable water is being proposed for a
20 bridge supply to get us to the point where the
21 regional wastewater treatment plant has a tertiary
22 plant online. And then after that the potable
23 water would just be used for sanitary systems and
24 fire protection.

25 This is a map of the linears. This is

1 the WEC site, itself. This is the transmission
2 line, again just goes to the border. And you can
3 barely see the other transmission line. The
4 natural gasline goes all the way down to Bradbury
5 Road, so this is about three miles or so, 3.2
6 miles, to get -- PG&E's main gasline runs along
7 Bradbury into the Town of Turlock.

8 And then here's Turlock's wastewater
9 treatment plant, so the recycle line will follow
10 this route, which is an existing transmission line
11 route that we already have easements for. And it
12 will just follow in that same easement to bring it
13 to the plant site.

14 Our environmental considerations that we
15 looked at is number one, we wanted to put the
16 project in an industrial area surrounded by other
17 industrial uses.

18 We have obtained all the air emission
19 credits that we need for the plant. NOx will be
20 limited to 2 ppm by the SCR. And CO will be
21 limited to 4 ppm by oxidation catalyst, CO
22 catalyst.

23 We will use recycled water when it's
24 available. And no wastewater gets discharged from
25 the site. We will have a ZLD system that will

1 take all our cooling tower blowdown and reduce it
2 to a salt cake that will be disposed of in a
3 landfill. Our boiler feedwater makeup comes from
4 that ZLD system.

5 In addition, not on there, but no storm
6 water gets discharged from the site, as well. We
7 have a storm water retention pond, so there will
8 be -- while we'll be bringing water in, no water
9 will leave our site.

10 The site layout, as I mentioned, it was
11 designed with visual considerations in mind,
12 placing the boilers in the arrangement that we
13 did. And we've completed all the biological
14 studies and there are no impacts to sensitive
15 biological resources.

16 And our project schedule is hopefully
17 we'll attain CEC certification in November of this
18 year. And we plan to start construction in
19 January, so between November and January we'll be
20 doing our mobilization activities and getting our
21 compliance system in place.

22 And we're looking for a commercial
23 operation date of January of '06. That's my drop-
24 dead date from our management. We're actually
25 hoping to get this online by August of '05.

1 Are there any questions?

2 MR. HARRIS: We'll make the witness
3 available for cross-examination and questions from
4 the Committee.

5 HEARING OFFICER VALKOSKY: Ms. Holmes?

6 MS. HOLMES: No questions.

7 HEARING OFFICER VALKOSKY: Questions
8 from anyone here present for Mr. Baysinger?
9 Seeing none, would you like to move the evidence,
10 Mr. Harris.

11 MR. HARRIS: Yes, I would like to first
12 move the documents into evidence, the documents we
13 previously identified.

14 HEARING OFFICER VALKOSKY: Okay. Is
15 there objection? No objection, we'll admit them.

16 MR. HARRIS: Okay.

17 HEARING OFFICER VALKOSKY: Anything
18 further?

19 MR. HARRIS: Nothing further on this
20 topic.

21 HEARING OFFICER VALKOSKY: Okay. Ms.
22 Holmes.

23 MS. HOLMES: Do you want us to do each
24 of our --

25 HEARING OFFICER VALKOSKY: Yes, let's do

1 it on a topic-by-topic basis.

2 MS. HOLMES: Staff's witness in project
3 description and project purpose is the Project
4 Manager, Mr. Bob Eller. And the FSA, which has
5 been identified as an exhibit contains the
6 declaration, as well as his testimony and r, sum, .
7 And I would like to move that those be entered
8 into evidence at this time.

9 HEARING OFFICER VALKOSKY: Is there
10 objection?

11 MR. HARRIS: No objection.

12 HEARING OFFICER VALKOSKY: Seeing none,
13 we'll admit it. And close the record on the topic
14 of project description.

15 Next, waste management. Mr. Harris.

16 MR. HARRIS: Thank you, Mr. Valkosky.
17 Our witness was Karen Parker for waste management.
18 Ms. Parker's testimony has been prefiled. And we
19 would like to have her testimony taken by
20 declaration. Let me get the list of her exhibits.

21 Can you -- is my microphone working at
22 all?

23 HEARING OFFICER VALKOSKY: It doesn't
24 sound like it, no.

25 MR. HARRIS: Doesn't sound like it.

1 (Pause.)

2 (Off-the-record microphone discussion.)

3 MR. HARRIS: Again, our witness was
4 Karen Parker. Her prefiled testimony in section
5 1D included the following documents: Section 8.13
6 of the AFC, which is previously identified as
7 exhibit 1. Appendix 8.13 to the AFC, again a
8 portion of exhibit 1.

9 Data responses set 1A, numbers 98, 99,
10 100, 101 and 102, a portion of the previously
11 identified exhibit 5.

12 Informal data responses set 2, WM-1,
13 part of exhibit 9. And the staff assessment
14 comments set 1, exhibit 10.

15 And with that I would go ahead and move
16 Ms. Parker's testimony by declaration.

17 HEARING OFFICER VALKOSKY: Is there
18 objection to receiving those documents?

19 MS. HOLMES: No objection.

20 HEARING OFFICER VALKOSKY: Seeing no
21 objection, we'll receive them on the topic of
22 waste management. Ms. Holmes?

23 MS. HOLMES: Thank you. Staff's witness
24 in the area of waste management is Ellen Townsend-
25 Hough. Her testimony and a declaration and r,sum

1 were included in the FSA, which has been
2 identified as exhibit 11.

3 And at this time I'd like to request
4 that those be moved into the record.

5 HEARING OFFICER VALKOSKY: Okay. I've
6 got a couple of clarifications. First applicant
7 had suggested a change to condition waste-2. Does
8 staff accept those changes?

9 MS. HOLMES: I believe it's just one
10 change; and, yes, staff does.

11 HEARING OFFICER VALKOSKY: Okay. One
12 change, I'll stand corrected. And second, on page
13 4.12-9 staff testimony indicates that there may be
14 circumstances under which a hazardous waste source
15 reduction and evaluation and review and plan be
16 needed.

17 I was wondering if you could explain
18 those circumstances a little bit and/or indicate
19 whether that is included within a condition of
20 certification.

21 MS. HOLMES: My understanding, I just
22 received this question about two minutes before
23 the hearing started -- my understanding is that's
24 a requirement that comes into effect depending
25 upon the amount of waste that is generated. And

1 staff does not expect that that amount of waste
2 that would trigger the requirement would occur at
3 this project.

4 Staff has not included it in a condition
5 of certification. If the amount were to be such
6 that the requirement was triggered, it is still a
7 state law requirement, and the applicant would
8 need to comply with that.

9 HEARING OFFICER VALKOSKY: Okay. Thank
10 you. With those clarifications is there objection
11 to receiving the testimony on waste management,
12 Mr. Harris?

13 MR. HARRIS: No objection.

14 HEARING OFFICER VALKOSKY: No objection,
15 we'll receive the declarations on waste management
16 and close the record on that topic.

17 The next topic worker safety and fire
18 protection.

19 MR. HARRIS: Thank you, Mr. Valkosky.
20 Our witness is Patricia Danby. Her testimony was
21 prefiled, and her prior filing, section 8.7 of the
22 AFC was identified as a portion of exhibit 1.
23 With that I would move her testimony into the
24 record by declaration.

25 HEARING OFFICER VALKOSKY: Is there

1 objection?

2 MS. HOLMES: No objection.

3 HEARING OFFICER VALKOSKY: Hearing no
4 objection we'll receive applicant's worker safety
5 testimony.

6 Ms. Holmes.

7 MS. HOLMES: Thank you. Staff's
8 witnesses in the area of worker safety and fire
9 protection were Mr. Lesh and Mr. Tyler. Their
10 testimony was included in the FSA exhibit 11,
11 along with the declaration and their r, sum, s. And
12 I would move at this point that that testimony be
13 entered into evidence.

14 HEARING OFFICER VALKOSKY: Objection,
15 Mr. Harris?

16 MR. HARRIS: No objection.

17 HEARING OFFICER VALKOSKY: No objection,
18 we'll receive that testimony by declaration.

19 Is there public comment? There is no
20 public comment. We'll close the record on the
21 topic of worker safety and fire protection.

22 Mr. Harris, power plant efficiency.

23 MR. HARRIS: Thank you, Mr. Valkosky.

24 Our witnesses were identified as Mr. Baysinger and
25 Jim McLucas. Testimony was prefiled. And in

1 addition in section 1D prior filings the first
2 three bullets are all part of exhibit 1. Section
3 1.0 of the AFC, section 2.0 in the AFC, and
4 section 10 of the AFC. Again, those three are
5 portions of exhibit 1. And then the preliminary
6 staff assessment comments set 1 is previously
7 identified as exhibit 10.

8 With that I would move that testimony by
9 declaration.

10 HEARING OFFICER VALKOSKY: Is there
11 objection?

12 MS. HOLMES: No objections.

13 HEARING OFFICER VALKOSKY: No objection,
14 we'll receive it.

15 Ms. Holmes.

16 MS. HOLMES: Thank you. Staff's
17 witnesses in the area of power plant efficiency
18 are Mr. Robinson and Mr. Baker. Their testimony
19 was included in the FSA which has been identified
20 as exhibit 11, along with their declarations and
21 r, sum, s. And I would move at this point that it
22 be entered into evidence.

23 HEARING OFFICER VALKOSKY: Objection,
24 Mr. Harris?

25 MR. HARRIS: No objection.

1 HEARING OFFICER VALKOSKY: No objection,
2 we'll receive that.

3 Is there public comment from anyone on
4 the topic of efficiency? Seeing none, we'll close
5 the record on that topic.

6 Power plant reliability, Mr. Harris.

7 MR. HARRIS: Thank you. Again our
8 witnesses on reliability are Mr. Baysinger and Mr.
9 McLucas. Their testimony was prefiled in section
10 1D, reliability. The first three documents,
11 again, are part of exhibit 1, section 1.0 of the
12 AFC, section 2.0 of the AFC and section 10 of the
13 AFC. The fourth bullet is informal data responses
14 set 5; that has been given the number exhibit 17.
15 And then the preliminary staff assessment comments
16 set 1 is identified as exhibit 10.

17 With those documents I would move that
18 testimony by declaration.

19 HEARING OFFICER VALKOSKY: Is there
20 objection?

21 MS. HOLMES: No objection.

22 HEARING OFFICER VALKOSKY: Hearing no
23 objection we'll receive those enumerated
24 documents.

25 Ms. Holmes.

1 MS. HOLMES: Thank you. Staff's
2 witnesses in the area of power plant reliability
3 again are Mr. Robinson and Mr. Baker. And their
4 testimony, along with declarations and r, sum, s,
5 were included in the FSA which has been identified
6 as exhibit 11.

7 Staff requests that that evidence be
8 moved into the record at this time.

9 HEARING OFFICER VALKOSKY: Mr. Harris,
10 objection?

11 MR. HARRIS: No objection.

12 HEARING OFFICER VALKOSKY: Objection or
13 comment from anyone here present on the topic of
14 power plant reliability? Seeing none, we'll
15 receive the documents and close the record on
16 reliability.

17 Next topic, cultural resources.

18 MR. HARRIS: Thank you, Mr. Valkosky.
19 James C. Bard is our witness. His testimony was
20 prefiled and included the following documents:
21 The first two bullets are part of exhibit 1,
22 that's section 8.3 of the AFC and appendix 8.3 of
23 the AFC, and again portions of exhibit 1.

24 Data adequacy supplement to the AFC is
25 exhibit 2. The data response set 1B, numbers 35

1 to 39, 42, 43, 46 and 52 to 59 as exhibit 6. Data
2 response set 1C, numbers 40 to 41, 43, and 47 to
3 51 previously identified as exhibit 7.

4 Data response set 1D, numbers 44 and 45,
5 previously identified as exhibit 8. Cultural
6 resources management report, Walnut Energy Center,
7 Stanislaus County, California, March 10, 2003 is
8 part of data response set 1D, which is also
9 exhibit 8.

10 With those documents I would move the
11 testimony by declaration.

12 HEARING OFFICER VALKOSKY: Ms. Holmes?

13 MS. HOLMES: No objection.

14 HEARING OFFICER VALKOSKY: Hearing no
15 objection we'll receive those enumerated
16 documents.

17 Staff?

18 MS. HOLMES: Thank you. Staff's witness
19 in the area of cultural resources is Gary
20 Reinoehl. His testimony, along with a declaration
21 and r,sum,, were included in the FSA, which has
22 been identified as exhibit 11.

23 At this point I would like to move that
24 evidence into the record.

25 HEARING OFFICER VALKOSKY: Objection,

1 Mr. Harris?

2 MR. HARRIS: No objection.

3 HEARING OFFICER VALKOSKY: Public
4 comment from anyone on the topic of cultural
5 resources? Seeing no public comment we'll receive
6 the staff's exhibit 11 by declaration on the topic
7 of cultural resources and close the evidentiary
8 record on that topic.

9 The final topic by declaration for today
10 is geology and paleontology. Mr. Harris.

11 MR. HARRIS: Thank you, Mr. Valkosky.
12 Our witnesses would be Mr. Tom Lae and Lanny Fisk.
13 The testimony was prefiled. The documents
14 identified there, first bullet, section 8.16 of
15 the AFC is part of exhibit 1. The same for the
16 second bullet, appendix 8.16 is part of the AFC
17 exhibit 1.

18 There's an addition here that should
19 have been added, as well, which would have been
20 PSA comments set 1, which was identified as
21 exhibit 10.

22 There is one proposed change to a
23 condition that I need to call to the staff's and
24 the Committee's attention. It's on page 19 of our
25 prefiled testimony. We believe that there's

1 simply clarifications for some wording changes
2 there.

3 Essentially the analyst was concerned, I
4 think, and I'm looking at page 19 of our prefiled
5 testimony, at the bottom of the page -- the
6 analyst was concerned about some ambiguity in the
7 word immediately, which proves that maybe the
8 analyst should have gone to law school.

9 So the thought to try to clarify that
10 was to add notification to the project owner and
11 the CPM. So we would be notified, as well. And
12 then the immediately is further defined as within
13 24 hours of the occurrence.

14 Turning now to page 20, again some
15 language we think is clarifying. Now reads: The
16 project owner shall notify the CPM within 24
17 hours, or Monday morning in the case of a weekend,
18 of any significant paleontological finds resulting
19 in a halt of construction.

20 We apologize for not providing these
21 comments earlier, but the analyst I think
22 basically took a good look at it and thought there
23 was some ambiguity there.

24 And with those proposed changes we would
25 move this testimony, of course subject to staff's

1 ability to respond to whether they have questions
2 or concerns about the language.

3 HEARING OFFICER VALKOSKY: Ms. Holmes?

4 MS. HOLMES: Thank you. Staff has no
5 questions or concerns. Doesn't disagree with the
6 changes; and doesn't object to the introduction of
7 this testimony.

8 HEARING OFFICER VALKOSKY: Okay. Those
9 materials will be received into the record.

10 Staff.

11 MS. HOLMES: Thank you. Staff's witness
12 in the area of geology and paleontological
13 resources is Mr. Hunter. His testimony was
14 included in the FSA which has been identified as
15 exhibit 11, along with the declaration and his
16 r, sum,. And at this time I would move that that
17 testimony be entered into the record.

18 HEARING OFFICER VALKOSKY: Is there
19 objection?

20 MR. HARRIS: No objection.

21 HEARING OFFICER VALKOSKY: Objection?
22 We'll receive those materials. Is there public
23 comment on the topic of geology and paleontology?
24 Seeing none, we'll close the record.

25 MR. HARRIS: Mr. Valkosky, before you

1 close the record, could I move the entirety of
2 exhibits 3 and 4? I note on the exhibit list that
3 you've divided the staff declarations from the
4 testimony. We filed them separately. But both of
5 those documents in their entirety, I think have
6 been moved in pieces, but just to make sure I'd
7 like to move the entirety of all those documents.

8 HEARING OFFICER VALKOSKY: You're
9 correct. Is there objection?

10 MS. HOLMES: No objection.

11 HEARING OFFICER VALKOSKY: Seeing none,
12 we'll also receive exhibits 3 and 4 in their
13 entirety into the record. Thank you for that, Mr.
14 Harris.

15 MR. HARRIS: Okay, I got one right
16 today.

17 HEARING OFFICER VALKOSKY: Well, that
18 puts you two ahead of me.

19 (Laughter.)

20 HEARING OFFICER VALKOSKY: The next
21 portion -- about to conclude the evidentiary
22 portion of today's proceeding. Is there any
23 questions? There are no questions. Okay.

24 We're next going to move on to the
25 second prehearing conference portion of today's

1 proceedings as noticed. Basically what we're
2 going to do now is to clarify or verify the
3 information contained in the prehearing conference
4 statements as reflected in the discussion outlines
5 which have already been distributed.

6 Basically we've got two discussion
7 outlines, Attachment B, which deals with topics
8 which, at least to the Committee, are apparently
9 susceptible, in some cases, with clarification, to
10 submission by stipulation.

11 And Attachment C topics, which
12 apparently appear to possess a degree of
13 controversy which may, in fact, require appearance
14 of witnesses at future hearings.

15 The purposes of this discussion will
16 proceed with each party in turn. What I'd like
17 each party to do is focus on those outlines and
18 let me know if they accurately reflect the
19 categorization of the topics.

20 I realize that there's some difficulty
21 at present, since the areas of dispute, and those
22 for which we'll likely need witnesses, are still
23 somewhat uncertain pending a workshop on the 28th,
24 which I believe is this Thursday.

25 Nevertheless I'd like the parties to

1 address the topics as set forth. Ultimately
2 perhaps the best way to handle this is, as
3 applicant suggests, for the parties to submit,
4 after the workshop, their views on which topics
5 remain disputed and their time for direct and
6 cross-examination, which may appear necessary.

7 The Committee would then schedule
8 another hearing for areas to be taken by
9 declaration, as well as for one or more of the
10 disputed topics requiring witnesses. And I'd
11 include in that list topics in which legal
12 argument may be necessary.

13 When we get to land use I'd like to know
14 whether applicant objects to taking official
15 notice of documents, as suggested by staff. And
16 I'd also like to know that if we do take official
17 notice, which party is going to take the
18 responsibility of providing the Committee with
19 those documents.

20 Okay, with that, are there any
21 questions? Mr. Eller.

22 MR. ELLER: Mr. Valkosky, when we
23 received the prehearing conference statement from
24 applicant we were, I guess, surprised by a number
25 of the areas that they had questions on that were

1 not contained in our notice for the 28th workshop.
2 And staff does not believe it appropriate to take
3 up those subjects without proper notice.

4 MR. HARRIS: If I may?

5 HEARING OFFICER VALKOSKY: Okay.

6 Realize at the outset that the Committee is not in
7 a position of waiving notice requirements and
8 things like that, but --

9 MR. HARRIS: I don't --

10 HEARING OFFICER VALKOSKY: -- if you'd
11 like a statement, sure.

12 MR. HARRIS: -- and please understand I
13 would never ask you to do so.

14 HEARING OFFICER VALKOSKY: Thank you.

15 MR. HARRIS: I don't believe you would
16 have to waive any notice requirements to meet this
17 requirement.

18 First, let me say that I had no idea
19 that the notice would be limited in any way. I
20 thought we'd be talking about all the topics, and
21 so when I read it the first time that's the way I
22 read it.

23 I think that's also the fair reading of
24 what the notice says. It says essentially that
25 we're going to be talking about part one of the

1 FSA. The discussion about the specific areas is
2 really just an elaboration. Now I'm looking at
3 the notice in the second paragraph.

4 In my view it's really just an
5 elaboration of what was known from the applicant's
6 perspective. It says that the District, TID, has
7 indicated that we'd like to discuss bio, water,
8 some other areas, general conditions, air quality,
9 land use, hazardous materials.

10 I don't read that as limiting the
11 notice, as the staff does, number one. I think
12 that's an expression of what we thought were going
13 to be the issues. But I don't read that to be
14 simply those issues to be discussed.

15 Second, I think if a member of the
16 public shows up and wants to talk about an issue
17 that's not on this list of the applicant's
18 expressed interest, I know staff will talk to them
19 about it, and we'd be glad to talk to them about
20 it, as well. So, I don't read that as being
21 limited in any respect.

22 And then third I just would make my kind
23 of standing observation that I think that there is
24 no ex parte rule with the staff. I think we could
25 do this meeting without notice whatsoever. I

1 think it's better that it's noticed, but I don't
2 think it's required.

3 So I don't see any limitations
4 whatsoever on the discussion for Friday. And I
5 think that our view is that it will be a very
6 productive session and we will be down to one,
7 two, maybe three issues that would require
8 adjudication.

9 And so in the sense of helping to move
10 things along expeditiously I think it would be
11 great to be able to have some clear indication
12 that we can move forward on all those topics on
13 Friday. I don't think there's a notice problem
14 here.

15 HEARING OFFICER VALKOSKY: Okay. And
16 from the Committee's perspective, we appreciate
17 hearing your positions. But fundamentally it's a
18 matter that the two parties have to resolve. As
19 I've said the Committee is not in the position of
20 either dispensing with notice requirements or
21 telling staff what policy to implement in the
22 topics which it considers it can -- or are
23 suitable for discussion at a workshop.

24 What I would suggest you do is perhaps
25 meet after this hearing, perhaps with the Public

1 Adviser. See if you can come to a mutual
2 understanding.

3 If not, then I think it's staff's
4 prerogative basically to limit the workshops to
5 such topics as they feel suitable, that they feel
6 they've noticed it for.

7 Again, thank you for the explanation of
8 that. But, again, the Committee fortunately can
9 be neutral in this one.

10 (Laughter.)

11 PRESIDING MEMBER BOYD: Mr. Valkosky,
12 the Committee would be interested in staff's point
13 of view on the subject, though.

14 HEARING OFFICER VALKOSKY: Okay.

15 MS. HOLMES: Well, in the first place,
16 staff does believe that the regulations require
17 noticing a staff workshop. That's something that
18 staff always does. We do sometimes continue them,
19 but that's also contemplated within the
20 regulations.

21 The way the notice was drafted and the
22 way that I read it when I signed off on it, as is
23 the process for internal review, is that it was
24 limited to the area of biology, soil and water
25 resources, general conditions of certification,

1 air quality, land use and hazardous materials
2 management.

3 I did not regard the introductory
4 statement that says that staff filed an FSA as
5 indicating that the workshop would be conducted on
6 the whole of the FSA.

7 PRESIDING MEMBER BOYD: Well, then, good
8 negotiating, folks.

9 (Laughter.)

10 HEARING OFFICER VALKOSKY: Okay, with
11 that, and again maybe the way to do it is I'll
12 just go through the topics here asking for input
13 from both of the parties.

14 Right now, and again, just focusing on
15 whether it appears that these topics can be
16 submitted by declaration in the future.

17 First, traffic and transportation. Mr.
18 Harris?

19 MR. HARRIS: Yes, thank you. If I could
20 just take the liberty and make a quick statement
21 about the overview -- an overview statement about
22 our prehearing conference statement?

23 HEARING OFFICER VALKOSKY: Certainly.

24 MR. HARRIS: I think maybe staff was
25 taken aback a little bit by the length and the

1 detail of our statement. But let me tell you what
2 our philosophy in approaching this was. Basically
3 to be as explicit as we could about every issue in
4 as much detail as possible.

5 Please recognize that unlike the PSA
6 stage there's not an FSA comment period. So, some
7 of these issues I think are new to staff in the
8 sense that they haven't seen a written comment
9 from us. But I wanted to emphasize I think that's
10 part of the typical process here.

11 And we do continue to have high hopes
12 for a workshop or the workshops to be continued
13 later, to figure out essentially what's left to
14 litigate. I think it's going to be very little
15 left.

16 So, with that introductory comment,
17 traffic and transportation, we had two basic minor
18 word suggestions for two conditions. Trans-4
19 requires a submission of a parking plan that
20 covers operations and requires that submission to
21 be made before site mobilization.

22 It may be that in staff's mind that that
23 operation plan could be submitted later. But the
24 condition, we think, is a little unclear and
25 that's one of the issues we wanted to talk to

1 staff about in the workshop.

2 Similarly for trans-6. It calls for
3 private vehicle access easements of PVAE to be
4 filed prior to construction. The applicant
5 believes that those should be filed basically at a
6 later time. Basically I think we're in
7 substantial agreement as to those conditions, but
8 again, the language appears for the first time in
9 the final staff assessment. We haven't provided
10 written comments because we wouldn't at this
11 point, and we hope to work through those issues
12 with staff.

13 I am 99.9 percent sure that this topic
14 is suitable for declaration down the road.

15 HEARING OFFICER VALKOSKY: Thank you.
16 Staff?

17 MS. HOLMES: I think that one of the
18 reasons that we perhaps were taken aback is that
19 the language, for example on traffic and
20 transportation, appears to be a bit broader. It
21 refers to conditions of certification, it says for
22 example. And we were concerned that there were
23 other traffic and transportation issues that
24 weren't enumerated in the discussion in the
25 prehearing conference statement.

1 If that is not the case, if it's limited
2 to those two issues that the applicant has raised
3 in the prehearing conference statement I think
4 there's a good chance that the applicant is
5 correct that this may be suitable for declaration.

6 Unfortunately we were not able to
7 consult with the traffic witness this morning
8 before the hearing. But if it is as limited as
9 they indicate, then I think that there's probably
10 a good chance that it would be subject to or
11 susceptible to being received into evidence by
12 declaration.

13 HEARING OFFICER VALKOSKY: Mr. Harris,
14 is it limited to conditions trans-4 and trans-6?

15 MR. HARRIS: I believe it is. I think
16 it's just the lawyer in me holding open the
17 possibility that at the workshop, where I thought
18 this would be discussed, that there would be staff
19 might have some comments back.

20 But those are all that we know about at
21 this time. So, we'll strike, for example, if it
22 will help Ms. Holmes.

23 MS. HOLMES: That's the lawyer in me
24 responding to that.

25 (Laughter.)

1 MR. HARRIS: And we're wasting
2 everybody's time, but --

3 HEARING OFFICER VALKOSKY: If it weren't
4 for the fact I was a lawyer I'd make some snide
5 comment at this time. But I really can't.

6 (Laughter.)

7 PRESIDING MEMBER BOYD: So it must be my
8 turn.

9 (Laughter.)

10 HEARING OFFICER VALKOSKY: All right.
11 I'll mark that one down as one that we'll expect
12 to be taken by declaration. The parties, of
13 course, notify me if it doesn't actually happen.

14 Next topic transmission line safety and
15 nuisance. And I'd like to explain what some of
16 these notes on the outline mean. And this is more
17 for clarification from the Committee.

18 On page 4.11-8 staff testimony seems to
19 say that further mitigation would be established
20 from the data gathered pursuant to proposed
21 condition 4. Yet the conditions, themselves,
22 don't seem to provide for implementing any of this
23 further mitigation. Now this may just be an
24 ambiguity that can be clarified by a little
25 redraft of the testimony, something like that.

1 Next, on page 4.11-13 in condition 4
2 staff refers to various reference points A through
3 E. The point of this comment here is that if that
4 appears in a condition it basically creates an
5 ambiguity in the condition because I think the
6 reader, possibly even compliance in the future,
7 doesn't necessarily know where those reference
8 points came from, points A, B, C, D and E.

9 If they are A, B, C, D and E of an
10 appendix to the AFC then I think they should be so
11 identified. If it's from some other document I'd
12 like to be able to tie it into that document in
13 the Committee decision.

14 Okay, so with that, Mr. Harris,
15 transmission line safety and nuisance.

16 MR. HARRIS: My apologies, I was getting
17 help with that third point, but I'll go through
18 them in the order you've presented them.

19 The 4.11-8, I just read that to mean
20 that it would be dealt with through the condition.
21 I didn't read any additional mitigation
22 requirements there. So I think if we just struck
23 that sentence that would probably take care of the
24 issue from our perspective.

25 The transmission line TS-4 --

1 MS. HOLMES: I'm sorry, could you
2 repeat? If what was stricken? I'm having trouble
3 -- excuse me, I'm having trouble following because
4 the page numbers in the docketed version don't
5 appear to be the same as the ones in the Committee
6 attachment.

7 So, I'm, for example, in section 4.10
8 reading --

9 HEARING OFFICER VALKOSKY: Yeah, that
10 may happen unfortunately because there were a
11 couple different copies of part 1 of the FSA.

12 MS. HOLMES: Right. If I could just
13 find the specific references so that I could
14 understand --

15 MR. HARRIS: Yeah, I think Ms. Holmes is
16 correct. There are numbering problems between
17 website versions and --

18 HEARING OFFICER VALKOSKY: Yeah, you're
19 talking about 4.10-11 on the first one. And it's
20 the first full sentence at the top of the page
21 above the heading environmental justice. Where it
22 says, the actual field strengths and contribution
23 levels for the proposed line design would be
24 assessed from the results of the field strength
25 measurements specified in condition of

1 certification 4. Okay.

2 What that seems to infer is that
3 something after that assessment would then happen.
4 Whether it's additional mitigation, whatever it
5 is. Yet it doesn't appear that the conditions
6 necessarily require that next step, if
7 appropriate, to be taken.

8 MR. HARRIS: Caryn, maybe one of the
9 documents it's 4.10 and the other one it's 4.11,
10 so maybe that's --

11 MS. HOLMES: Right. And can you repeat
12 what your proposal was to modify Mr. Valkosky's
13 first point with respect to the sentence about the
14 condition of certification 4?

15 MR. HARRIS: What I understood the issue
16 to be is that last sentence in that paragraph
17 right above the word impacts. The one that says,
18 the need for further mitigation would be
19 established from such an assessment.

20 MS. HOLMES: I'm sorry, we're still
21 having trouble following. The need for further --

22 MR. HARRIS: Yeah, it's -- in my version
23 it's --

24 MS. HOLMES: The docketed version, where
25 is it?

1 (Laughter.)

2 MR. HARRIS: Mine is 4.11-8.

3 MS. HOLMES: Okay. So right up here.

4 Thank you. I have it. It's just the docketed
5 version that I have is 4.10-8, and I'm concerned
6 are there docketed versions out there with
7 different pagination?

8 PRESIDING MEMBER BOYD: Is this a
9 product of printing off the --

10 MR. ELLER: We have the printed version
11 and we have some of the electronic version.
12 Thinking this is probably something that happened
13 with individual printing.

14 PRESIDING MEMBER BOYD: With the
15 electronic version. Good old pagination problem.

16 MR. HARRIS: My recollection is that the
17 document on the website has two, four tens, or
18 two, four eights, or something like that.

19 MS. HOLMES: My concern is heightened by
20 the fact that some people have it down as 4.11,
21 whereas we have it as 4.10. So we're even in the
22 wrong chapter in some versions apparently.

23 The docketed version I have is 4.10 and,
24 Mr. Valkosky, you referred to 4.11.

25 HEARING OFFICER VALKOSKY: Yeah, I was,

1 I think, going off on an electronic version.

2 MS. HOLMES: Interesting.

3 PRESIDING MEMBER BOYD: Can we stipulate
4 that it's 4.10?

5 MS. HOLMES: We can, that's fine.

6 PRESIDING MEMBER BOYD: And get on with
7 it. Okay.

8 MS. HOLMES: Thank you. So, again, Mr.
9 Harris, your recommendation for dealing with the
10 reference to transmission line safety and nuisance
11 4 was to delete the sentence, the need for further
12 mitigation would be established from such an
13 assessment?

14 MR. HARRIS: Correct. And let me
15 explain why I think that would address it. I
16 think that language is surplusage. As I read the
17 actual condition 4, it basically calls for some
18 measurements to be taken and some verification at
19 various points along the way.

20 The way I read that condition is that
21 those measurements would be confirming that
22 there's not an issue here essentially. So, based
23 on that I take the language to be surplusage.

24 MS. HOLMES: Staff agrees. We don't
25 anticipate that the measurements would be such

1 that there would be a need for further mitigation.

2 HEARING OFFICER VALKOSKY: So that you
3 would be willing to revise the FSA to strike the
4 sentence that Mr. Harris --

5 MS. HOLMES: Yes.

6 HEARING OFFICER VALKOSKY: -- referred
7 to?

8 MS. HOLMES: Yes.

9 HEARING OFFICER VALKOSKY: Okay. And
10 the second point concerning some reference for
11 those points?

12 MR. HARRIS: Actually luckily Mr.
13 LaFollette was here and provided me with a copy of
14 the document. It's figure 5.5-1 from the AFC.
15 Again, 5.5-1, that figure lists the various
16 sections of the transmission interconnection there
17 are both existing sections and new sections.

18 I could provide you with more detail on
19 that, or is the reference sufficient, Mr.
20 Valkosky?

21 HEARING OFFICER VALKOSKY: No, that
22 would be sufficient. Does staff see any problem
23 with that?

24 MS. HOLMES: I believe those are the
25 points that we used, we referenced.

1 HEARING OFFICER VALKOSKY: Okay. Yeah,
2 and with that, Mr. Harris, do you have anything
3 else on this topic?

4 MR. HARRIS: I do need to point out two
5 things. On transmission line safety-1 the
6 references are made -- and this is in our prefiled
7 statement on page 2, our prehearing conference
8 statement on page 2, at the top -- it references
9 PG&E in both the text and the verification. That
10 should be replaced with TID. The District is the
11 local transmission owner. So that's item number
12 1.

13 Item number 2, we submitted on July 8th
14 of 2003 informal data response set 5. Essentially
15 what happened there, Mr. Valkosky, let me talk you
16 through it, it took me awhile to get this. The
17 District has the ability to under-hang 12 kV lines
18 underneath the transmission lines to serve. The
19 initial EMF calculations assumed that that 12 kV
20 would be under-hung. There's some cancellation
21 results from having the 12 below the 69 and the
22 115 kV.

23 It looks like currently from the
24 District's perspective that a 12 may not go in
25 right away. And so what we've done is gone back

1 in that filing and rerun the numbers. And they're
2 still insignificant. We're just trying to be
3 absolutely correct based on our current
4 understanding of what's going to happen out there.

5 So, with that second point it's really
6 just a clarification, and I believe staff has at
7 least seen the document. I don't know if they had
8 a chance to talk to Mr. McCuen about the issue.

9 But it's basically, from our
10 perspective, a non-issue based on the fact that we
11 don't think we're going to be doing the under-
12 hanging as soon as we thought we might possibly do
13 it.

14 HEARING OFFICER VALKOSKY: Ms. Holmes?

15 MS. HOLMES: Staff agrees with the
16 applicant on this item.

17 HEARING OFFICER VALKOSKY: Okay, so am I
18 correct in assuming that with the changes that
19 we've just discussed and the clarifications that
20 this topic could be taken by declaration?

21 MS. HOLMES: Yes.

22 HEARING OFFICER VALKOSKY: Okay. And,
23 of course, what the Committee would like at such
24 time as testimony is filed on this is the
25 declaration to reflect the changes.

1 That gives us two. Next one,
2 transmission system engineering. Mr. Harris.

3 MR. HARRIS: This topic appears to be
4 one that's ready to be taken by declaration. I
5 don't think the applicant had any comments
6 whatsoever on the final staff assessment.

7 MS. HOLMES: Staff agrees.

8 HEARING OFFICER VALKOSKY: Okay, I'll
9 mark that one down for future submission by
10 declaration.

11 Next topic, noise. And, again, this is
12 more for Committee clarification, but in the PSA
13 staff was recommending override of local noise
14 ordinances. And I'd certainly like any future
15 testimony to clarify their position on that at
16 this point.

17 And, secondly, there seems to me to be a
18 situation in the proposed conditions which amount
19 to staff authorizing an exceedance of the local
20 noise standard.

21 And for this I point you to noise-8
22 which sets forth the various times during which
23 construction can occur and noise limits. I assume
24 that's based on local ordinance.

25 If you go to noise-4 you'll notice

1 there's a sentence in the proposed condition which
2 says that the project owner shall conduct steam
3 blows only during the hours specified in condition
4 noise-8 unless the project manager agrees to
5 longer hours based on a demonstration by the
6 project owner that noise impacts will not cause
7 annoyance.

8 I'm wondering here if we haven't gotten
9 ourselves into the situation where the project
10 manager is essentially authorizing a violation of
11 the construction times specified under local
12 ordinance. And, in that case, you know, it could
13 be characterized as the project manager
14 authorizing an override of local ordinance.

15 Anyway, that's the clarification that
16 the Committee sees is needed there.

17 With that, Mr. Harris, on noise.

18 MR. HARRIS: I'm just quickly looking
19 through the document, please.

20 I think, Mr. Valkosky, I'm doing this
21 kind of on the fly here, but I think the noise-8
22 is limited to, as I read it, construction is going
23 to occur near residential areas. Heavy equipment
24 operation and noisy construction work related to
25 any project features that lie within 300 feet of

1 residences.

2 There may be, I think, construction that
3 does not lie within those bounds, and so perhaps
4 that's the answer.

5 HEARING OFFICER VALKOSKY: No, don't
6 misunderstand me. I'm not saying that there's not
7 an answer; I'm just saying I'm suggesting that
8 that's something that needs further clarification.
9 It can be clarified in two ways: It can be
10 clarified in writing if we take the topic by
11 declaration. It can be clarified orally by
12 witnesses' testimony. All I'm seeking is what
13 should we have. Should we have it by declaration
14 or should we have a witness appear on it? That's
15 all.

16 Anything further on this topic, Mr.
17 Harris?

18 MR. HARRIS: I guess I don't see -- I'd
19 like to hear a little bit more, Mr. Valkosky,
20 about what you think the concern is here. I don't
21 see the same issue. I apologize.

22 HEARING OFFICER VALKOSKY: Certainly.
23 In condition 8 you've got times and decibel
24 limitations for essentially making noise.

25 MR. HARRIS: Correct.

1 HEARING OFFICER VALKOSKY: What it comes
2 down to. In condition 4 you've got a reference to
3 condition 8 which says these are times and decibel
4 limitations which apply unless a compliance
5 project manager agrees to longer hours.

6 What this sets up is a situation, since
7 I assume the noise-8 limitations are based on
8 local ordinance, sets up a situation where you've
9 got the Energy Commission compliance project
10 manager potentially authorizing a violation of
11 these local ordinances. That's the problem.

12 MS. HOLMES: Can I just clarify? The
13 condition noise-4 only references the hours
14 specified in condition noise-8.

15 HEARING OFFICER VALKOSKY: Right.

16 MS. HOLMES: Not the noise levels.

17 HEARING OFFICER VALKOSKY: Right, but
18 the hours are specified in local ordinance, are
19 they not?

20 MS. HOLMES: Yes, they are.

21 HEARING OFFICER VALKOSKY: Okay.

22 MS. HOLMES: And so your concern, Mr.
23 Valkosky, is that the noise levels that are
24 authorized in noise-4 may violate the levels and
25 hours identified in noise-8?

1 HEARING OFFICER VALKOSKY: Yeah. I just
2 find it an interesting situation where a
3 compliance project manager could do that, that's
4 all.

5 MS. HOLMES: That certainly wasn't
6 staff's intention.

7 HEARING OFFICER VALKOSKY: No, I'm sure
8 it wasn't, and again, my only purpose on this, Ms.
9 Holmes, is this can most likely be clarified. But
10 what I want to know is can we clarify it by
11 declaration or should we have a witness to clarify
12 it?

13 MS. HOLMES: Your point is a good one,
14 and I believe we can clarify it by declaration.

15 HEARING OFFICER VALKOSKY: Okay.

16 MR. HARRIS: I agree. I think we can
17 clarify this. Again, I don't see a problem, I
18 guess because of noise-4 we're talking about, you
19 know, steam blows of no greater than 89 decibels
20 measured at 50 feet.

21 I would assume that the 300 feet from
22 residences and the standards in 8 mean that we
23 don't have any problems from a technical
24 perspective.

25 But I think you've raised a good point

1 and we'll sit down with our noise guys and staff
2 and --

3 HEARING OFFICER VALKOSKY: Yeah, we're
4 also talking time periods. Again, I mean I don't
5 want to get in a situation where the Commission
6 finds there's going to be no violation of local
7 LORS, for example. And then some time down the
8 road the compliance project manager says, okay,
9 let's violate it. You know, that's an untenable
10 situation.

11 PRESIDING MEMBER BOYD: As I hear it,
12 the concern is that staff may have inadvertently
13 set itself up in the position of overriding, being
14 able to override a local ordinance, which I don't
15 think, and they've said, was not their intent. We
16 don't want to have it in print if that's indeed
17 true of steam-rolling over local government
18 LORS, et cetera, et cetera, so.

19 MR. HARRIS: Again, I read noise-4 to be
20 more concerned with the high pressure steam blows,
21 and on page 12 of the FSA they do talk about the
22 quiet blow or silent blow systems. And so we will
23 get together with staff and make sure that we're
24 not --

25 HEARING OFFICER VALKOSKY: Yeah, I mean

1 believe me, if this is something that can be
2 clarified by declaration, that's all the Committee
3 is seeking. So we'll put that down as a
4 declaration topic, unless we hear differently.

5 Ms. Holmes.

6 MS. HOLMES: Before you move on, Mr.
7 Valkosky, did you want an explanation in an
8 amended declaration that staff would file on this
9 topic about the override issue, or are --

10 HEARING OFFICER VALKOSKY: I either want
11 an explanation indicating it's not an override.
12 Are we talking about this noise-4, noise-8 or the
13 other one --

14 MS. HOLMES: No, I'm sorry, I was
15 talking about the first concern that you had
16 raised regarding the fact that in the PSA staff
17 had --

18 HEARING OFFICER VALKOSKY: The answer is
19 yes, I would like that in an amended declaration.

20 MS. HOLMES: Okay.

21 HEARING OFFICER VALKOSKY: Okay.
22 Anything further on that, Ms. Holmes?

23 MS. HOLMES: No.

24 MR. HARRIS: Mr. Valkosky, one further
25 clarification. I think at the end of the day

1 we're in agreement with staff on the results here.
2 We still have some questions about staff's
3 methodologies, but that point is moot for this
4 case.

5 HEARING OFFICER VALKOSKY: No,
6 understood. And that's in your prehearing
7 conference statement, I think. I think the result
8 is what we're concerned about here.

9 MR. HARRIS: So it matters to Mr.
10 Baysinger, so.

11 HEARING OFFICER VALKOSKY: Okay, next
12 topic, public health. Mr. Harris.

13 MR. HARRIS: Yes, Mr. Rubenstein is here
14 and can answer questions. But essentially what
15 we're looking to do, this condition, in fact there
16 was a biocide workshop, I think, last week to talk
17 about that issue.

18 What we're seeking here basically, what
19 we wanted to talk to staff about is getting
20 language for public health-1 that's consistent
21 with what the staff's agreed to in other cases.

22 Essentially what we think we're asking
23 for is language that has already been agreed to by
24 staff, but it's not the same language that's in
25 the FSA. And that's what we want to work with

1 staff to clarify.

2 MS. HOLMES: I'm sorry, what topic are
3 we on?

4 MR. HARRIS: Public health.

5 MS. HOLMES: Thank you.

6 MR. HARRIS: I'd like Mr. Rubenstein
7 just to provide a little further elaboration on
8 the issue, if he could.

9 MR. RUBENSTEIN: Gary Rubenstein from
10 Sierra Research; we're air quality consultants to
11 the applicant.

12 Basically with condition public health-1
13 we were seeking a change, as Mr. Harris indicated,
14 to language that the staff had previously approved
15 in another proceeding. I think the fundamental
16 change is to delete the title of staff's guideline
17 and just generically refer to staff guidelines.
18 This particular guideline is not a formal
19 document; it's not been approved by the Commission
20 yet. And consequently we just wanted to make that
21 language more generic.

22 I don't know that that would be
23 controversial. I'm not sure if staff's had a
24 chance to look at it yet, but I would expect this
25 is an issue that could be resolved prior to

1 hearing.

2 HEARING OFFICER VALKOSKY: Okay. Staff?

3 MS. HOLMES: As long as the reference to
4 the document is clear we don't have a problem with
5 that. Is the problem the quotation marks or the
6 capital letters? I'm not quite sure what the
7 problem is.

8 MR. RUBENSTEIN: I think the language
9 that has been accepted by staff in other
10 proceedings reads: The program shall be
11 consistent with staff guidelines or the Cooling
12 Tower Institute's "best practices for control of
13 Legionella" guidelines.

14 MS. HOLMES: If it's a matter of great
15 important to TID we don't have a problem with the
16 change, and can submit an amended declaration to
17 that effect.

18 HEARING OFFICER VALKOSKY: Okay. Is
19 there anything further on this? All right, so
20 presently another topic suitable for declaration
21 apparently.

22 Okay, next we're going to biological
23 resources. And one of the questions the Committee
24 has, and it really concerns consistency with past
25 cases.

1 I notice in the FSA condition bio-12,
2 basically what it comes down to is if a federal
3 biological opinion is required the applicant will
4 have to provide it and comply with it. Things
5 like that.

6 In other cases with which I'm intimately
7 familiar, staff's position has been it could not
8 complete its analysis until after either the final
9 or the draft biological opinion.

10 There seems to be a departure from that.
11 And I'd like some explanation on that, among other
12 things. But, having said that, we'll turn to the
13 applicant's position on biological resources. Mr.
14 Harris.

15 MR. HARRIS: Would you like me to
16 address that issue first, Mr. Valkosky?

17 HEARING OFFICER VALKOSKY: Sure.

18 MR. HARRIS: First off I think that
19 we're pleased with the language, having reflected
20 the "if required." It all comes down to
21 essentially some surveys along the gasline and
22 whether there may be some fairy shrimp there.

23 I think we've done all the surveys and
24 we're waiting for some -- let me let Ms. Strachan
25 provide some more detail on the biology since it's

1 above my pay grade.

2 MS. STRACHAN: All the surveys have been
3 submitted to the Fish and Wildlife Service.
4 They've shown no indication of the existence of
5 fairy shrimp. We've conceptually received
6 approval from the Fish and Wildlife Service in
7 that they agree with that; that they're
8 comfortable with the surveys.

9 There was one last person within the
10 service that we believe needed to sign off on
11 that, but it looks like we're not going to be
12 required to submit -- to obtain a biological
13 opinion since we have no listed species impacted
14 by the project.

15 HEARING OFFICER VALKOSKY: Okay. Can
16 that be confirmed by the federal authorities?

17 MS. STRACHAN: We're in the process of
18 doing that now. Again, it was just one last
19 person.

20 HEARING OFFICER VALKOSKY: Okay, and so
21 if that were confirmed say with a letter from the
22 Fish and Wildlife Service then there would be no
23 need for this condition bio-12, right?

24 MR. HARRIS: That's correct, Mr.
25 Valkosky. And I think that again staff recognized

1 that with the if-required language at the
2 beginning. So hopefully --

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. HARRIS: -- we can get an answer for
5 you quickly enough to get this removed. But if
6 not, as written it's acceptable to us.

7 HEARING OFFICER VALKOSKY: Now, staff, I
8 just want to work through this bio-12.

9 MS. HOLMES: Staff certainly doesn't
10 have an objection to bio-12 staying in as it's
11 written. However, based on communication we've
12 had very recently with the U.S. Fish and Wildlife
13 Service it does appear that there is not going to
14 be a need for a biological opinion.

15 And so at this point we don't have a
16 problem removing the condition all together.

17 HEARING OFFICER VALKOSKY: Okay, if
18 that's confirmed I think the problem goes away.
19 So if you could get that confirmation that would
20 be fine.

21 I'm sorry, Mr. Harris, now if you could
22 continue with your other points on biology.

23 MR. HARRIS: I don't need to make some
24 of the points I was going to make, so I'm glad I
25 stopped.

1 MS. HOLMES: Quitting while you're
2 ahead.

3 MR. HARRIS: Yeah.

4 (Laughter.)

5 MR. HARRIS: Going to take back the one
6 I had, right. There is some, in our comments we
7 talk about some concerns on the language on bio-
8 10. I may need again Ms. Strachan or Mr.
9 Baysinger to weigh in a little bit on this.

10 The concern I have is in protocol number
11 2 related to the APLIC study. And I think it's
12 just a matter of the parties better understanding
13 what that avian practices guide requires. There
14 are some distinctions in there between, for
15 example, the transmission lines and distribution
16 lines. Other distinctions that we think may not
17 be applicable to this project.

18 And so what we're hoping to do in the
19 workshop setting is talk to staff about
20 specifically which provisions they think are
21 applicable to the project.

22 So we're just looking for further
23 discussion with staff. We want to make sure that
24 in compliance we don't have a problem with an
25 interpretation of what that language means. So

1 that's the purpose of the discussion at the
2 workshop.

3 HEARING OFFICER VALKOSKY: Okay. Staff,
4 is this something that could most likely be
5 handled with an amended declaration?

6 MS. HOLMES: Yes, it is.

7 HEARING OFFICER VALKOSKY: Okay. So we
8 will, at this time, again anticipate no witnesses
9 necessary for that. And we will also anticipate
10 evidence from the federal authorities that a
11 biological opinion is not needed, such time as we
12 get to hearing on that.

13 Is there anything else on biology?

14 MS. STRACHAN: I guess I would like to
15 clarify in terms of the evidence, simply because
16 getting a letter from Fish and Wildlife Service, I
17 mean we could be retired by the time we could ever
18 get something like this from them.

19 So, if something like a record of
20 conversation or a call from them that the staff
21 also has would suffice, that would make us feel
22 more comfortable.

23 HEARING OFFICER VALKOSKY: Well, I'll
24 leave it up to you. Again, --

25 MS. STRACHAN: Okay.

1 HEARING OFFICER VALKOSKY: -- the
2 Committee's preference would be a formal letter,
3 of course. But do the best you can, that's all I
4 can really say.

5 MS. STRACHAN: That's fine, as long as
6 we have some flexibility that would be
7 appreciated.

8 HEARING OFFICER VALKOSKY: Yeah.

9 MS. STRACHAN: Thank you.

10 PRESIDING MEMBER BOYD: Knowing the Fish
11 and Wildlife Service as I do, I think staff
12 concurs.

13 MS. HOLMES: Um-hum.

14 (Laughter.)

15 HEARING OFFICER VALKOSKY: Okay. The
16 next topic is socioeconomic. And I guess the
17 Committee's question on this is that reviewing the
18 prehearing conference statements there seems to be
19 no detectable issues. There are, in fact, not
20 even conditions of certification proposed.

21 Yet I noticed applicant indicates it may
22 wish legal argument on staff's use of clusters.
23 And I guess my question is why do we even need to
24 go there.

25 MR. HARRIS: I guess the reason -- I

1 assume you're asking the applicant, Mr. Valkosky?

2 HEARING OFFICER VALKOSKY: I am.

3 (Laughter.)

4 MS. HOLMES: Your answer might be
5 different from mine.

6 MR. HARRIS: Yeah. I guess the reason
7 the issue got flagged to my attention is that in
8 every discipline there's a section about
9 environmental justice. And so in addition to the
10 discussion in the socio section, within each of
11 the individual disciplines there's this further
12 statement about clusters.

13 I am unfamiliar with the authority to
14 look at those low income minority populations at a
15 cluster level. I'm not familiar with that
16 terminology. I don't think it appears in the
17 executive order.

18 And I'm a little concerned that it's --
19 I'm not certain of the basis for staff dividing
20 things down in even smaller increments. There's
21 been a lot of discussion in prior siting cases
22 about census blocks versus census tracts. And
23 even those kind of distinctions are not clear to
24 me.

25 And so the concern that I have -- let me

1 back up. At the end of the day this is a non-
2 issue, I think, for the project in the sense that
3 all the impacts are going to be mitigated to a
4 level of less than significant.

5 But still, there's still this discussion
6 in every section about those clusters. And I
7 don't see in the staff's analysis an authority for
8 that level of analysis. And really I'm wanting to
9 understand better where staff is coming from on
10 that.

11 HEARING OFFICER VALKOSKY: Well, again,
12 I guess there's two observations. The first is it
13 seems to me that this could be a methodological
14 difference. Now you indicated you had a
15 methodological difference with staff in the area
16 of noise. But you really just focused on the
17 conditions at the end, so you're not going to
18 litigate that methodological difference.

19 And that's fine. You're certainly
20 entitled to take that. And I know what you're
21 saying, and it's accurate. Staff does have this
22 discussion concerning their -- anyway, you know
23 what I'm saying --

24 (Laughter.)

25 HEARING OFFICER VALKOSKY: -- in

1 socioeconomics. But, again, it doesn't seem to
2 have any impact on this case in this or any other
3 areas unless I'm missing something.

4 And I mean, you know, don't get me
5 wrong, the parties want to have legal argument on
6 this, we certainly will. If it's something that
7 can be resolved in further discussions in
8 workshops I'd encourage the parties to do that.

9 Ms. Holmes, what's staff's take on this?

10 MS. HOLMES: Staff agrees with the
11 Committee, I believe, that it's not necessary to
12 address the issue since it doesn't affect the
13 outcome or any conditions of certification.

14 Staff certainly doesn't have an
15 objection if the applicant is interested as to why
16 staff uses the smaller divisions, if you will,
17 simply to picking up the phone and asking staff
18 that. Since this is not going to be a contested
19 issue in this case.

20 If we wanted to be very very careful we
21 could wait till the case had been submitted.

22 HEARING OFFICER VALKOSKY: Mr. Harris,
23 what about that proposal?

24 PRESIDING MEMBER BOYD: Excuse me, Mr.
25 Valkosky, could I ask, Ms. Holmes, is this

1 potentially a semantics or definition issue? Or
2 is it bigger than that?

3 MS. HOLMES: No, I think it is a bigger
4 issue than that. I think there is -- the
5 testimony definitely raises the possibility of
6 using smaller areas than the six-mile radius that
7 staff typically uses to evaluate impacts.

8 So I don't think it's just a semantic
9 issue. But I do think it could be resolved by a
10 simple phone conversation.

11 HEARING OFFICER VALKOSKY: Mr. Harris?

12 MR. HARRIS: I guess we were looking
13 really for nothing more than a more detailed
14 description of the methodology. And it's
15 something we can do offline, outside the project,
16 if that's people's preference.

17 The long-term concern that I have is
18 that, you know, this is a good project site, and
19 it's a good project. And this applicant may be
20 back before you, and I want to understand
21 precisely in site selection in the future, for
22 example, how this might be affected if this
23 project were to -- excuse me, this applicant were
24 to come back with another project.

25 I just don't understand the methodology,

1 but I don't need to waste your time and the
2 Committee's time in that discussion. I know Mr.
3 Diamond is very accessible, or Dr. Diamond, excuse
4 me, is very accessible, and maybe we can have some
5 further discussion with them either at the
6 workshop or offline to deal with it.

7 HEARING OFFICER VALKOSKY: Okay, that's
8 certainly acceptable to the Committee. It's
9 acceptable to staff. And, again, I think that's
10 something that we don't have to hear argument on.
11 So I take it, then, is there any reason we cannot
12 take the topic of socioeconomics by declaration?
13 No?

14 MR. HARRIS: I think we can take it by
15 declaration.

16 MS. HOLMES: Staff agrees.

17 HEARING OFFICER VALKOSKY: Okay, fine.
18 Thank you. Okay, turning to our final set of
19 topics. There are eight contained on attachment
20 C. Do the parties want to work through these now
21 or do you want to take a five-minute recess?

22 MS. HOLMES: I'd rather try to finish
23 before lunch.

24 HEARING OFFICER VALKOSKY: Mr. Harris?

25 MR. HARRIS: We're ready to proceed.

1 HEARING OFFICER VALKOSKY: Okay, fine.
2 Let's go with alternatives. I know, Mr. Harris,
3 you listed this as one susceptible to a
4 stipulation. But it seems to me that since
5 alternatives is derived conclusions from the
6 outcomes of the other topics, that this is, you
7 know, by necessity, one that has to remain open
8 for dispute. That's the reason it appears on this
9 list.

10 Do you have any observations on the
11 topic?

12 MR. HARRIS: Well, I'm not sure I
13 understand, Mr. Valkosky. We're prepared to take
14 the testimony by declaration.

15 HEARING OFFICER VALKOSKY: Right, but
16 what I'm saying is that alternatives will have a
17 statement in it, as does this, that if staff's
18 mitigation measures are implemented this is an
19 acceptable alternative.

20 Well, I assume the converse is true.
21 That if staff's mitigation measures are not
22 implemented, and applicant is, in fact,
23 challenging some of those mitigation measures,
24 that the conclusion in alternatives may also
25 necessarily change. That's the point. That

1 understood?

2 MR. HARRIS: Yes. Let me make sure I
3 understand. If a significant impact were found
4 then the alternative section would come into play,
5 is that essentially your point, Mr. Valkosky?

6 HEARING OFFICER VALKOSKY: Essentially,
7 yeah.

8 MR. HARRIS: Okay.

9 HEARING OFFICER VALKOSKY: So that's why
10 I reserve that one. And I think that's one of the
11 things, unless all of the topics become
12 stipulated, we're likely to need a witness on.

13 MR. HARRIS: Then it's the Committee's
14 preference to keep that subject open and make it
15 last? Or --

16 HEARING OFFICER VALKOSKY: Probably,
17 yes. I generally like to have alternatives last.

18 MR. HARRIS: Okay, we have no objection
19 if that's the Committee's desire.

20 HEARING OFFICER VALKOSKY: Okay, so how
21 much time would you anticipate for direct for your
22 witness, and cross? And I realize some of this
23 we're guessing blind because we haven't had the
24 workshop and we don't know. But I do need to
25 reserve a certain amount of time.

1 MR. HARRIS: Probably about 20 minutes
2 is all for direct. And likely less. But we'll
3 use that, I guess, as a good marker for our
4 direct. And maybe the same amount for cross.

5 HEARING OFFICER VALKOSKY: Okay. Staff?

6 MR. HARRIS: I anticipate those are
7 high, Mr. Valkosky.

8 HEARING OFFICER VALKOSKY: Yeah, that's
9 fine. Just a ballpark estimate.

10 MS. HOLMES: I apologize, Mr. Valkosky,
11 but I'm not sure I understand what you're saying
12 about what the subject on cross-examination and
13 the direct testimony would be.

14 Would it be the very subjects that we
15 had already discussed in the individual topic
16 areas? For example, air quality or hazardous
17 materials or whatever it were? Would you then be
18 looking for testimony, both direct and cross-
19 examination, on how those disagreements affected
20 the alternatives conclusions?

21 HEARING OFFICER VALKOSKY: Basically.
22 Because let's take, for example, hazmat. And say
23 there's the use of anhydrous ammonia or aqueous
24 ammonia.

25 Now, staff can conclude that aqueous

1 ammonia is preferable, and it can conclude that
2 the use of anhydrous ammonia is not preferable,
3 but acceptable, or completely unacceptable.

4 That's going to influence logically the
5 alternatives conclusion.

6 MS. HOLMES: Okay.

7 HEARING OFFICER VALKOSKY: That's the
8 kind of thing I'm talking about.

9 MS. HOLMES: Okay.

10 HEARING OFFICER VALKOSKY: Okay? So,
11 and again I realize it's a rough estimate of time,
12 but what are we looking at?

13 MS. HOLMES: Fifteen and 15.

14 HEARING OFFICER VALKOSKY: Okay, thank
15 you. Anything further on alternatives? Facility
16 design, Mr. Harris.

17 MR. HARRIS: Thank you, Mr. Valkosky.
18 Yes, this section probably had the longest comment
19 in our prehearing conference statement. And let
20 me frame that issue by saying that the basic issue
21 here is that we provided, I think, really detailed
22 comments in our PSA comments on facility design.

23 And none of those suggestions were
24 incorporated into the final staff assessment. And
25 so, you know, we remain concerned about the issues

1 we raised in our PSA comments.

2 Having said that, though, this is one of
3 those topics that I think Thursday's workshop will
4 be very productive. At the end of the day I don't
5 anticipate that we're going to need to have live
6 witness testimony and litigate these issues. But
7 I won't know that until I see staff's reactions to
8 our proposed changes.

9 HEARING OFFICER VALKOSKY: Staff?

10 MS. HOLMES: Thank you. We're not,
11 unfortunately, quite as optimistic as the
12 applicant. We did review their PSA comments and
13 incorporated the ones that we felt were
14 appropriate. There are a number of others that we
15 did not feel were appropriate.

16 So it appears that if this is an issue
17 where there still remains disagreement that it may
18 not be susceptible to declaration.

19 HEARING OFFICER VALKOSKY: Understood.
20 Okay. I'd like the projected times for direct and
21 cross, then. At this point we'll mark that down.
22 Mr. Harris.

23 MR. HARRIS: Again, understanding we'll
24 know a little bit better after Friday, but I guess
25 I would say a half an hour for direct and 20

1 minutes for cross.

2 HEARING OFFICER VALKOSKY: Okay. Ms.
3 Holmes?

4 MS. HOLMES: I'd say 30 and 15.

5 HEARING OFFICER VALKOSKY: Thank you.
6 Anything further on facility design?

7 Soil and water. Mr. Harris?

8 MR. HARRIS: This is a topic that we may
9 end up being able to take by declaration,
10 surprisingly, given previous Commission cases on
11 this issue. There are a few things that we want
12 to do, and these are discussed in the first
13 paragraph of our prehearing conference statement.

14 Let me back up. Instead of focusing on
15 that language. What we're trying to solve for
16 here is essentially a possibility of a gap between
17 the commercial operation date of the Walnut
18 facility and the availability of recycled water
19 from the City of Turlock.

20 As you're aware, we're going to be using
21 a bridge supply that will bridge the gap between
22 our commercial operation date, which is before the
23 projected availability of recycled water from the
24 City of Turlock's facility.

25 The concern that we have is that we

1 don't control our own destiny in terms of when
2 that Turlock facility will be available. And
3 staff's been very accommodating with us, I want to
4 make that point very clearly right now. Actually
5 that they've worked with us very well to try to
6 solve for that point.

7 But there is still a possibility that
8 for some reason beyond, you know, the City of
9 Turlock's control or some third-party litigation
10 or other third-party action, that the City's
11 facility will not be online in 2006 as it's
12 currently projected, cease and desist order
13 notwithstanding.

14 And so what we're looking for basically,
15 to be quite candid, is enough flexibility to get
16 us by the bankers. We basically have to be able
17 to show that we have, you know, a financible water
18 supply. We don't think that's going to be any
19 problem at all. We're protecting against
20 something I don't think will happen.

21 We have no reason to believe the City of
22 Turlock will not meet their 2006 date. But it's,
23 again, out of our control.

24 And so what we've offered up in
25 language, and what staff has largely accepted, and

1 again let me really emphasize that I think we're
2 very close here, is language that allows us to
3 insure folks when we go to financing that TID has
4 other sources of water available.

5 The most likely source of water, should
6 that bridge period need to be extended, would be
7 shallow groundwater. It's degraded groundwater;
8 it's not the high quality groundwater from the
9 deeper aquifer. Although the aquifer, of course,
10 is not a perfect separation. But generally
11 speaking the shallower water is poor quality.

12 The other alternatives would be to
13 continue to use the potable water supply for an
14 interim period while the recycled water project
15 comes online. Or the City of Turlock should
16 be -- the District has other water supplies
17 available.

18 So, basically what we want to talk to
19 the staff about on Friday is perhaps extending out
20 the period where we might possibly be on the
21 bridge supply.

22 As I said, staff has been extremely
23 accommodating to us. They understand the problem
24 quite well. I think they've done a very good job
25 in their first draft, the language. I want to

1 commend them on their efforts. They've been very
2 cooperative and we're just looking for a little
3 additional flexibility. But we'll see how staff
4 reacts to that on Friday -- Thursday. I keep
5 pushing this off till Friday, I apologize for
6 that. So that's the first issue we've talked
7 about in our prehearing conference statement.

8 The second one, the second larger
9 paragraph deals with soil and waters-1, -2 and -3.
10 And these really have to do more with the Regional
11 Board responsibilities. Our position is that, you
12 know, the Regional Board is the one issuing the
13 permits for industrial discharge, and for
14 construction stormwater.

15 And the language changes we've asked for
16 in the past basically to change the language such
17 that the CPM does not have review and approval
18 authority. Our position, it's a legal issue, is
19 that the approval of those plans are made by the
20 Regional Board. We don't have any problem sharing
21 those plans with the staff.

22 But this is one case where instead of
23 staff having review and approval, we think it's
24 probably best review and comment. But, again,
25 that's a legal issue. I don't think we're going

1 to need live witness testimony on that particular
2 set of issues on 1, 2 and 3.

3 And so I think we're really down to some
4 further discussions on the first topic, which
5 leads me to believe we can probably take this
6 issue by declaration hopefully.

7 HEARING OFFICER VALKOSKY: If you wanted
8 to present legal argument, how long would you
9 anticipate that taking?

10 MR. HARRIS: Well, I don't like
11 listening to me talk very long, so 20 minutes,
12 maybe.

13 HEARING OFFICER VALKOSKY: Okay. Thank
14 you. Ms. Holmes?

15 MS. HOLMES: Thank you. We're also
16 hopeful that we can reach resolution of the first
17 issue. As an aside, it would be helpful if we had
18 proposed language from the applicant before the
19 workshop. That would help us a lot.

20 With respect to the second issue, if the
21 Committee wants to hold oral argument instead of
22 having it simply addressed in the briefs, I think
23 staff would like to reserve 15 minutes.

24 HEARING OFFICER VALKOSKY: Yeah, I think
25 the Committee's inclination at the time would be

1 to have the parties present an oral argument.
2 Because that way the Committee can interact with
3 the parties and clarify things. And then you can
4 later address that.

5 Ms. Holmes, you do, at this time at
6 least, agree that legal argument would be
7 necessary on this topic?

8 MS. HOLMES: I think it is a legal
9 issue.

10 HEARING OFFICER VALKOSKY: Okay. All
11 right. So that's certainly one of the topics the
12 parties can update the Committee on. And we will
13 anticipate having legal argument for sure.

14 Next visual resources. Mr. Harris?

15 MR. HARRIS: Yes, Mr. Valkosky. Again,
16 at the end of the day I think we're pretty close
17 on this issue. There were a few conditions,
18 actually I think the few that I noticed, vis-2 and
19 vis-4, where the timing had changed between the
20 PSA and the FSA.

21 In particular, the language that talked
22 about certain actions having to be taken prior to
23 first synchronizing the turbine to the electrical
24 grid. My recollection is that in the preliminary
25 staff assessment those triggers were commercial

1 operation.

2 First synchronization is one of those
3 things like art, you know it when you see it.
4 It's the kind of thing that has to happen before
5 you can actually go commercial. But it really
6 isn't, I think, a proper trigger. It's something
7 that is -- my guess here is that staff is looking
8 for some trigger and came up with this one. And
9 they may not be opposed to the idea of discussing
10 commercial operation as an appropriate date.

11 So, that comment. As well, I believe we
12 have worked out the visible water vapor plume
13 issue with staff. Have language there which I
14 think is acceptable. So that language is
15 acceptable. I think that's vis-6.

16 And so we're really down to just some
17 further discussion about the timing issues, I
18 think, on those.

19 HEARING OFFICER VALKOSKY: Ms. Holmes.

20 MS. HOLMES: Thank you. I'd just like
21 to begin with a question of clarification. You're
22 not concerned about the timing for vis-5, are you?
23 It's just 2 and 4? Five is being provided as an
24 example of what you would like?

25 MR. HARRIS: Are you reading from my

1 statement, is that --

2 MS. HOLMES: I am reading from your
3 statement. And it references the timing. It
4 says, for example, verification for vis-5 requires
5 installation prior to commercial operation.

6 Are you providing that as an example of
7 what you would like to see for vis-2 and -4?

8 MR. HARRIS: Correct. Yes.

9 MS. HOLMES: Then I believe that it's
10 likely that this topic can be resolved.

11 HEARING OFFICER VALKOSKY: Okay, thank
12 you. Move that to the likely declaration
13 category.

14 Next, compliance and general conditions.
15 Mr. Harris.

16 MR. HARRIS: Thank you. This topic
17 ironically is one that may require some further
18 discussion. The main concern revolves around com-
19 8, what has to do with security plans. And I
20 always walk very gingerly through this topic,
21 because I wanted to say right at the outset that
22 the applicant and the staff I think share the
23 common objective of making sure the facilities are
24 secure.

25 Mr. Baysinger operates several

1 facilities and has a lot of experience with
2 dealing with those issues. And one of the
3 concerns we have at the highest global level is
4 that we believe the language now asks the staff to
5 approve a security plan that I don't think they've
6 been approving on other projects. And so there's
7 that concern.

8 There are also specific concerns with
9 com-8 related to, you know, what I've described as
10 basically civil liberties issues. There are
11 questions in my mind about that refer to hiring
12 practices. For example, require us to do
13 background checks.

14 And I'm not certain that the condition
15 is clear enough from our perspective, in fact I'd
16 say it's not clear enough from our perspective
17 about what exactly the Commission is asking us to
18 do with those security background checks.

19 And I don't know, for example, what we
20 do if we find something. I also don't know
21 whether security issues that are dealt with
22 through vendors are being pushed onto the
23 applicant's plate, which I think would be
24 incorrect.

25 And then let me say, as well, as a legal

1 issue, I do have some concerns about whether the
2 Commission has the authority to do this, and
3 whether it's preempted potentially by federal law.

4 And so what we've suggested several
5 times in several cases is basically language to
6 the effect that we would develop security plans
7 consistent with plans developed in a Commission
8 rulemaking.

9 This is an issue that's much broader
10 than just this project. It's one that affects all
11 the Commission's certified projects, and all the
12 projects in the licensing queue right now. That's
13 why we've suggested that general language in the
14 past about a Commission-wide rulemaking where
15 these issues could be vetted.

16 What we're concerned about is ending up
17 with literally a case-by-case set of security
18 plans and requirements that are going to be
19 difficult to enforce. And I am concerned about
20 the constitutional issues. And so --

21 HEARING OFFICER VALKOSKY: Has the
22 Commission been receptive to your suggestions in
23 past cases?

24 MR. HARRIS: I can't talk about cases
25 that are pending. The one that I'm aware of where

1 we made the suggestion hasn't been decided yet.

2 HEARING OFFICER VALKOSKY: Okay. Thank
3 you.

4 MR. HARRIS: So, but let me also say
5 I've had conversations generically, not about this
6 project, with staff on this issue. And I think
7 they are looking for a solution, as well, of how
8 do we do this in a compliance setting.

9 And so we're basically asking to be
10 dealt with like every other applicant.

11 HEARING OFFICER VALKOSKY: Ms. Holmes.

12 MS. HOLMES: Thank you. It's my
13 understanding that staff is requesting security
14 plans of every other applicant. It's certainly
15 true on the other cases that I have been working
16 on in recent months.

17 It seems to me that there are a couple
18 of issues here. One is whether or not we need to
19 schedule oral argument on preemption issues.
20 Today was the first time I heard preemption come
21 up as an issue. The applicant had raised
22 constitutional issues in its prehearing conference
23 statement.

24 If that's the case, staff is happy to
25 participate in oral argument. But I think it

1 would be very helpful if we had specific questions
2 that we were requested to address. Asking us to
3 address the constitutional issues associated with
4 security plans is a little broad.

5 Secondly, with regard to a rulemaking,
6 staff doesn't see this necessarily as any
7 different from any of the other plans that it
8 typically requires applicants to submit and staff
9 approves through the CPM. Such plans are commonly
10 submitted in the area of biology, cultural
11 resources, paleontological resources, air quality,
12 a number of other topic areas.

13 And we have not, in the past, found it
14 necessary or efficient to conduct a rulemaking in
15 those areas. And I see no reason why we would
16 find it differently in this situation.

17 HEARING OFFICER VALKOSKY: Okay. Looks
18 like that will be a disputed topic unless things
19 change dramatically.

20 MS. HOLMES: I think it would be helpful
21 to differentiate between the factual issues and
22 the legal argument issues.

23 HEARING OFFICER VALKOSKY: Right.

24 MS. HOLMES: I would also note that our
25 witness is going to be Dr. Greenberg, not Mr.

1 Shaw.

2 HEARING OFFICER VALKOSKY: Okay. Thank
3 you.

4 MS. HOLMES: So, I don't know what the
5 vehicle is for separating those two out.

6 HEARING OFFICER VALKOSKY: Well, I think
7 you'd have to establish -- this is off the top of
8 my head -- as a factual issue what is done in some
9 of those other instances, things like that. And
10 then transition.

11 And then I think, Mr. Harris, correct me
12 if I'm wrong, but your basic issue would be
13 whether the Commission had been superseded by
14 federal law in this?

15 MR. HARRIS: It's one concern we have.
16 We've been doing some additional analysis, for
17 example, on the chemical vulnerability assessment
18 that's referenced in the staff's FSA. We've had a
19 chance to look at that document now, and we're not
20 sure that this actually applies to these
21 facilities.

22 There's an analysis that occurs and
23 certain facilities fall out of this particular
24 document. And our initial review of that DOJ
25 statement, I think we fall out of there.

1 But let me say this, as well. Mr.
2 Wheatland is here from my office. He's been
3 dealing with this issue on another case that
4 actually has been decided. The Altamont case.
5 That may be a good model for the staff and the
6 applicant to look at the language in the Altamont
7 decision now and see whether that gets us past
8 this hurdle for this particular case. So, I'll
9 put that out there, as well.

10 HEARING OFFICER VALKOSKY: I think it
11 would be a good idea, give everyone some guidance
12 on it. Is staff familiar with the provisions?

13 MS. HOLMES: I personally am not.

14 HEARING OFFICER VALKOSKY: Okay. Mr.
15 Eller.

16 MR. ELLER: I reviewed recent cases in
17 proposed staff documents and I'm not aware of any
18 changes in com-8 in any case but SMUD. And there
19 were justifications in that case.

20 HEARING OFFICER VALKOSKY: Okay, but at
21 any rate it's something, since we do have that
22 decision last week, that everybody can look at
23 again. I think that's what Mr. Harris saying.
24 And see what happens.

25 Okay, for present purposes, though,

1 let's mark down direct, cross and legal argument
2 just to reserve the time. Caryn, how much time?
3 You've got 30 minutes for direct. How much for
4 cross and legal argument?

5 MS. HOLMES: Did I say 30?

6 HEARING OFFICER VALKOSKY: That was in
7 your prehearing conference statement.

8 MS. HOLMES: Oh, you're right, it is.
9 I'd forgotten all about that. Probably 20 minutes
10 for cross on the factual issues. And it's very
11 difficult to give an estimate for the legal
12 arguments because I'm not sure exactly what
13 they're going to be. I mean the best I can do at
14 this point is say 30 minutes.

15 HEARING OFFICER VALKOSKY: That's fair,
16 that's understood. Mr. Harris, same thing,
17 direct, cross and legal argument?

18 MR. HARRIS: Well, I think 30 for direct
19 and 30 for cross; and probably 30 for the legal
20 argument right now.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you. I realize these are all very rough
23 estimates, but it's the best we can do today.
24 Anything further on this? Okay.

25 Hazardous materials. Mr. Harris.

1 MR. HARRIS: This is --

2 HEARING OFFICER VALKOSKY: I realize,
3 and I know this will be very difficult because, as
4 I understand it, the FSA on this won't come out
5 till Friday, is that correct?

6 MS. HOLMES: That's correct.

7 HEARING OFFICER VALKOSKY: So maybe we
8 just better put down guesstimates for witness
9 time, assuming that it's going to be a disputed
10 topic.

11 MR. HARRIS: First I'm glad to hear
12 about Friday, that's good. I wasn't aware of
13 that. I'd say 30 and 30, good estimates.

14 HEARING OFFICER VALKOSKY: Fine.

15 MS. HOLMES: I think Mr. Harris has made
16 an excellent suggestion, 30 and 30.

17 HEARING OFFICER VALKOSKY: The Committee
18 loves agreement and unanimity like that.

19 Okay, before -- I'd like to reserve air
20 quality to the last. Land use. Staff seems to
21 suggest that this was legal argument; applicant's
22 prehearing conference statement suggested that it
23 may wish to have witnesses.

24 Mr. Harris, what's the status?

25 MR. HARRIS: I think we're still up in

1 the air. While I don't disagree that some of the
2 factual issues can be dealt with, disposed of, I'm
3 not confident that we have the full factual record
4 before us. I think there's a very good case to
5 support our position.

6 And frankly, I do not understand the
7 staff's legal arguments fully. This land, a
8 portion, is basically 61 acre -- 59 acres -- 69
9 acres -- portion of 1000 acres that was added to
10 the City quite some time ago. We have a 1992
11 environmental document and a 2002 document
12 updating that '92 document, that all have made
13 concessions for this property to be used in this
14 way. It's industrial zoned.

15 And we may want to have someone from the
16 local government come in and provide more than
17 just a narrative about their vision for this area.

18 HEARING OFFICER VALKOSKY: That's fine,
19 that's certainly your right. I'm just trying to
20 determine how much time we're going to be taking
21 on that. So what would be your direct and cross
22 and legal argument times?

23 MR. HARRIS: I was thinking 30 and 30
24 for direct and the cross. But I need the caveat
25 that I'll say that I'll probably have two

1 witnesses if we do this subject, at least two
2 witnesses. Our witness, and perhaps a witness
3 panel from the applicant, plus a local government
4 representative. So that would be essentially an
5 hour of direct and an hour of cross.

6 HEARING OFFICER VALKOSKY: Okay. And
7 legal argument?

8 MR. HARRIS: I think this one's probably
9 closer to half an hour, frankly. I would like to
10 understand a little more about the staff's
11 position on the legal issues.

12 I frankly don't see a full discussion of
13 that in the FSA. I know that that's typical. You
14 wouldn't typically see a full discussion. Let me
15 back up -- I'm not faulting the staff for not
16 putting -- writing their brief as part of the FSA.
17 You shouldn't do that, Caryn, please.

18 But my point is I'm not sure I fully
19 understand the legal arguments for this issue.
20 And so we may need to spend some time developing
21 those. And it may be something where we want to
22 prefile opening sub-briefs on this issue so we can
23 at least understand the topics before we argue
24 them orally.

25 HEARING OFFICER VALKOSKY: Ms. Holmes.

1 MS. HOLMES: Thank you. Staff does not
2 have a concern about somebody from the City
3 presenting a summary of what they did during their
4 general plan process. But I'm completely at a
5 loss to understand what we could have, what kinds
6 of factual issues could be discussed for two hours
7 through direct or cross.

8 I guess my point here is that staff
9 believes very strongly that it's inappropriate to
10 have legal argument as direct examination, as
11 testimony by a land use witness. And we would
12 strongly encourage the Committee to limit
13 testimony to questions of a factual nature.

14 We're unaware of any questions of a
15 factual nature. However, if there's going to be
16 testimony that the Committee is looking for on
17 this topic, staff will provide it. We don't, as I
18 said, understand quite the scope of what the
19 factual issues would be.

20 We have had indication from the
21 Department of Conservation that they may be able
22 to provide a witness for us if one is needed on
23 this issue.

24 In terms of reserving time, I guess --
25 unless I see that there are factual -- I'd like to

1 reserve time, but I don't believe I'm going to
2 need it unless I see something very different in
3 the applicant's testimony.

4 I would reserve 30 minutes each for
5 direct and cross, but I would like to reserve an
6 hour for the legal argument.

7 HEARING OFFICER VALKOSKY: Yeah, Mr.
8 Harris, I'm not putting words in your mouth, but I
9 assume that the factual testimony would be as Ms.
10 Holmes suggests, just basically explaining what
11 has happened through various local actions that
12 have taken place on this.

13 MR. HARRIS: I think that's generally
14 correct. But please keep in mind that there's 20
15 years of planning that's gone on here, too. You
16 know, general plan in '92, and again in 2000. I
17 can bring you the language from the general plan.

18 But part of understanding that context
19 is knowing the thought process for the planning
20 folks.

21 HEARING OFFICER VALKOSKY: No, no, I
22 agree. But that's going toward a factual end.
23 It's not necessarily a legal implication of what's
24 happened. It's the process that the locals went
25 through to end up wherever it is they're at.

1 That's correct, right?

2 MR. HARRIS: Correct. This may be a
3 topic actually where we can truncate it severely
4 through a stipulation with staff --

5 MS. HOLMES: I was going to say, staff
6 has no disagreements on any factual issues that
7 we're aware of. We're happy to stipulate what the
8 general plan says, what the process was used to
9 develop it, what the resolutions say adopting the
10 general plan and adopting the environmental
11 documents that were prepared both for the original
12 general plan and for the recent review.

13 MR. HARRIS: And we'll be willing to
14 take staff's testimony by declaration if they'd
15 like, so.

16 (Laughter.)

17 MR. HARRIS: You're not supposed to
18 laugh that hard, Caryn.

19 MS. HOLMES: Nice try, Jeff.

20 HEARING OFFICER VALKOSKY: Well, at this
21 point and pending further clarification by the
22 parties, I think the Committee will just take the
23 times indicated and await further discussions.

24 The other aspect of this, Mr. Harris, is
25 that staff suggested in their prehearing

1 conference statement that certain documents are
2 susceptible for official notice. Do you have any
3 objection to that?

4 MR. HARRIS: I don't, although I'm not
5 sure I know the complete universe of those
6 documents. We ought to sit down and talk with --

7 HEARING OFFICER VALKOSKY: Those would,
8 and I would say they would have to be specifically
9 identified and a copy submitted to the Committee.

10 MS. HOLMES: I have a list of the
11 documents that I've reviewed that I believe would
12 be appropriate for judicial notice. Since this
13 topic is identified for the workshop, I suggest
14 that we try to refine that list at that time.

15 HEARING OFFICER VALKOSKY: Okay. And a
16 question that I'm concerned about, who submits the
17 documents to the Committee? Who's going to take
18 that responsibility?

19 MS. HOLMES: Staff will make sure that
20 you get a copy of the documents that we reference.

21 HEARING OFFICER VALKOSKY: Thank you,
22 appreciate that.

23 MR. HARRIS: We're willing to help, too.

24 HEARING OFFICER VALKOSKY: Small
25 concern, but very necessary.

1 MS. HOLMES: Thank you, Jeff.

2 HEARING OFFICER VALKOSKY: All right.

3 Final topic, air quality. Mr. Harris.

4 MR. HARRIS: Thank you, Mr. Valkosky. I
5 think I will actually ask Mr. Rubenstein to come
6 to the podium and talk about some of the specific
7 details here. But you can see this is one topic
8 where we're likely to require live witness
9 testimony. So, Mr. Rubenstein.

10 MR. RUBENSTEIN: Thank you, Mr. Harris.
11 We expect that there will be four issues that will
12 be discussed during the hearings with respect to
13 air quality. Those four issues are the
14 construction dust-related mitigation conditions
15 that are included in condition AQC-3.

16 A second area would be the soot filter
17 condition that is paragraph O in condition AQC-3.

18 The third issue will be the ammonia slip
19 issue raised by staff's proposed condition AQC-6.

20 And then the fourth and last issue would
21 be the additional requirements regarding the ERC
22 certificates raised in condition AQC-8.

23 I think we still haven't completed our
24 line-by-line review of the FSA, but I don't
25 anticipate that that would result in anything

1 other than perhaps suggested typographical
2 corrections. I don't see any other issues coming
3 up.

4 In terms of status I'm pleased to report
5 that the modified determination of compliance was
6 issued by the San Joaquin District on August 19th.
7 And if it hasn't been done so already, we will be
8 docketing that shortly.

9 HEARING OFFICER VALKOSKY: Does that
10 complete your --

11 MR. RUBENSTEIN: Yes.

12 MR. HARRIS: Yes.

13 HEARING OFFICER VALKOSKY: Thank you.

14 Ms. Holmes?

15 MS. HOLMES: Thank you. First of all on
16 a minor note, staff already has docketed the
17 modified DOC, so Mr. Rubenstein doesn't need to
18 take on that responsibility.

19 We do agree that those are the four
20 areas that are likely to be contested in the area
21 of air quality. I think we'd like to reserve an
22 hour each for direct and for cross.

23 HEARING OFFICER VALKOSKY: Mr. Harris,
24 how much time?

25 MR. HARRIS: I think direct probably 30

1 minutes. On cross I'm going to say an hour,
2 although I hope not to use that entire time.

3 HEARING OFFICER VALKOSKY: Okay, thank
4 you. Thank you, Mr. Rubenstein.

5 As I have it, please correct me if I'm
6 wrong, it looks like we'll need witnesses on
7 alternatives, facility design, compliance,
8 hazardous materials, air quality and land use.
9 Does that comport with everybody else's list?

10 I see affirmative head nodding going on,
11 so --

12 MR. HARRIS: Yes.

13 MS. HOLMES: Yes.

14 HEARING OFFICER VALKOSKY: All right,
15 fine. What I'd like the parties to do, and again
16 I know the hazmat section isn't out and we have a
17 workshop pending -- the workshop is Thursday, is
18 that correct?

19 MS. HOLMES: Notwithstanding Mr. Harris'
20 statements.

21 (Laughter.)

22 HEARING OFFICER VALKOSKY: All right.
23 I'd like the parties to update the Committee on
24 what's happened after the workshop. I realize
25 this is Labor Day weekend. Can the parties update

1 the Committee by next Wednesday or next Thursday?

2 Is that enough time?

3 MS. HOLMES: Yes, I think that's
4 sufficient.

5 HEARING OFFICER VALKOSKY: So next --

6 MS. HOLMES: Let's say a week after the
7 workshop.

8 HEARING OFFICER VALKOSKY: Yeah, so that
9 would be the --

10 MR. HARRIS: Yeah, next --

11 MS. HOLMES: The 4th.

12 MR. HARRIS: The Thursday.

13 HEARING OFFICER VALKOSKY: The following
14 Thursday, --

15 MR. HARRIS: The following Thursday.

16 HEARING OFFICER VALKOSKY: -- whatever
17 date that is, yeah. Mr. Eller, does your calendar
18 have a specific date?

19 MR. ELLER: The following Wednesday
20 would be September the 3rd.

21 MS. HOLMES: We're suggesting Thursday.

22 HEARING OFFICER VALKOSKY: Okay, well,
23 we'll -- yeah.

24 (Laughter.)

25 HEARING OFFICER VALKOSKY: Right, okay.

1 If the parties could update the Committee on the
2 status of the workshop discussion, as well as any
3 radical changes to what we've discussed here today
4 by September the 4th, the Committee will take that
5 under consideration in scheduling the next event
6 in this proceeding.

7 MS. HOLMES: I would anticipate that we
8 could file this jointly, even if there's no
9 resolution on certain issues, --

10 HEARING OFFICER VALKOSKY: If you could
11 file it jointly that --

12 MS. HOLMES: -- with just a joint
13 filing.

14 HEARING OFFICER VALKOSKY: -- that would
15 be excellent, sure.

16 MR. HARRIS: Okay, good. Preferably.

17 HEARING OFFICER VALKOSKY: If you've got
18 a specific disagreement on something, that's fine.
19 You can identify it. Great.

20 Okay, any further questions on this?

21 Any comment from any members of the public?

22 PRESIDING MEMBER BOYD: I have no
23 comments; I'm just looking forward to lots of
24 resolutions this coming Thursday.

25 HEARING OFFICER VALKOSKY: Okay.

1 MS. HOLMES: Understood.

2 HEARING OFFICER VALKOSKY: With that,
3 thank you for your attendance and participation.
4 We're adjourned.

5 (Whereupon at 12:17 p.m., the
6 proceedings were 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 Hearing and 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 hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of September, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345