

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Valero Cogeneration) 01-AFC-5
Plant)

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

TUESDAY, AUGUST 14, 2001

10:00 a.m.

Reported By:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Garret Shean, Hearing Officer

STAFF PRESENT

Jack Caswell, Project Manager

Paul Kramer, Staff Counsel

Eileen Allen

PUBLIC ADVISER

Roberta Mendonca, Public Adviser

APPLICANT

Karen J. Nardi
McCutchen, Doyle, Brown & Enersen, LLP

Sam Hammonds
Valero Refining Company - California

INTERVENOR

Mark R. Wolfe, CURE
Adams Broadwell, Joseph & Cardozo

Dana Dean
Good Neighbor Steering Committee

Brenda A. Gillarde
City of Benicia

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

2 HEARING OFFICER SHEAN: Good morning,
3 ladies and gentlemen. I'm Garret Shean, the
4 Hearing Officer in the Valero Application for
5 Certification proceedings.

6 This morning we're conducting a
7 Prehearing Conference. It is an informal event,
8 but we have some serious business to get through
9 before we are done. This meeting is being
10 conducted pursuant to a notice that was issued by
11 the Committee on July 31st, and as stated in the
12 notice our intention here is to assess the
13 readiness for Evidentiary Hearings, which are
14 currently scheduled for August 20th, to identify
15 areas of agreement and dispute, and to discuss
16 procedures for the Evidentiary Hearing.

17 My intention is to go through the list
18 that appears on Appendix A, and determine from the
19 parties who are either present here today or using
20 the teleconference which we have set up for the
21 convenience of those who either are not in
22 Sacramento or chose not to come to Sacramento. At
23 the end of the day we should have a good -- and it
24 won't be the end of the day -- end of the morning,
25 we will have a good idea of what is to be

1 presented and by whom.

2 I'm aware of the following
3 circumstances. Number one, that the Staff is
4 undertaking to review its Staff Assessment with
5 approximately half a dozen topics being revised to
6 reflect discussions that took place either at the
7 Staff Workshop on August 10th, or on the basis of
8 written comments that the Staff has received.
9 That will be available, I understand, this Friday.

10 Also, the Air District's preliminary
11 determination of compliance has not officially
12 been filed in the manner that starts its 30-day
13 review period under the regulations of the
14 district, but we anticipate that it will be
15 tomorrow, August 15th.

16 So we will do the best we can under
17 those circumstances. I don't believe that's going
18 to hinder us, and that everyone will have had an
19 opportunity to basically make the presentation
20 that they want to, and we'll be able to dovetail
21 those two pieces of information in at the
22 Evidentiary Hearing, in a -- in a non-disruptive
23 manner.

24 At this point what I'd like to have is
25 the parties who are present to identify

1 themselves, and then we'll get underway, and we'll
2 begin with the Applicant.

3 MS. NARDI: Karen Nardi, McCutchen,
4 Doyle, Brown and Enersen, representing Valero.
5 And I have with me today Sam Hammonds, who's a
6 Senior Environmental Manager at the Benicia
7 Refinery.

8 HEARING OFFICER SHEAN: And the Staff.

9 MR. CASWELL: Jack Caswell, Project
10 Manager for the Energy Commission, and on the
11 phone I believe Paul Kramer, the attorney on this
12 case, too.

13 MS. GILLARDE: Brenda Gillarde, City of
14 Benicia, participating as an Intervenor.

15 MS. DEAN: Dana Dean, from the Good
16 Neighbor Steering Committee, participating as an
17 Intervenor.

18 MR. WOLFE: And Mark Wolfe, for CURE.

19 HEARING OFFICER SHEAN: Okay. Are there
20 any preliminary comments that any of the parties
21 have that is information that we ought to know
22 about before we sort of get underway here?
23 Anything from anybody?

24 Okay. Why don't we just launch into it,
25 then.

1 Appendix A appears at the back of the
2 notice of today's hearing. And my intention is to
3 just go through these one at a time.

4 The first topic area is Noise. And it's
5 my understanding that this is going to be revised
6 by Staff, as far as your Staff Assessment, and
7 it's been an area of concern to the city. I guess
8 I should indicate that I'm working off several
9 additional comments. I have a -- a filing called
10 City of Benicia Comments on the CEC Staff
11 Assessment of August 2. Also, from the Applicant,
12 a proposed conditions of certification, and a memo
13 from the Applicant on conditions relating to
14 completion of construction and commencement of
15 operation.

16 I also happen to have here the
17 Preliminary Determination of Compliance for Phases
18 1 and 2, as well as the Staff Assessment.

19 So, why don't you bring us up to date on
20 Noise, Mr. Caswell, and what --

21 MR. CASWELL: Well, the Noise section,
22 Mr. Jim Buntin, a contractor for the California
23 Energy Commission, has revised his Noise section,
24 and we are currently putting that together as a
25 Staff Assessment amendment. I do not have all the

1 information at this time, as finalized by Mr.
2 Buntin, to submit to the Committee.

3 I anticipate basically having all the
4 changes for the Staff Assessment amendment ready
5 by Friday, this Friday. But Noise has changed
6 some of the basic numbers, as suggested by the --
7 the city and the Applicant, and Mr. Buntin has put
8 those all together in a amended analysis. And I,
9 like I said, I don't have that completed analysis
10 at this time.

11 HEARING OFFICER SHEAN: Okay. Do the
12 city or the Intervenors have anything on this
13 topic?

14 MS. GILLARDE: Well, I just want to
15 state for the record what our concern is. And I
16 appreciate all the work that Staff is doing to try
17 to get us an answer to our question.

18 But since this is a Prehearing
19 Conference, I would just like to have in the
20 record that we do have a concern with the noise
21 levels that will be generated by the steam blows.
22 And in the Staff Assessment, it mentioned two
23 pieces of equipment that would reduce the noise
24 levels to a level that would be coincident with
25 our standards, and also would be slightly below

1 ambient levels.

2 The way it stands now, the mitigation
3 would be to mitigate to 80 decibels, which we
4 believe is a very loud and annoying noise level.

5 So our request has been for Staff to
6 investigate the feasibility of using these two
7 systems, or maybe there's other systems out there,
8 to reduce the noise levels from these steam blows
9 to something less than 80.

10 So again, we're just -- we're waiting,
11 you know, for that assessment, and until then we
12 -- we really can't comment further whether the
13 proposed mitigation is adequate or not.

14 HEARING OFFICER SHEAN; Okay. And it's
15 the steam blows. How about the -- anything
16 related due to the construction or operation of
17 the facility? Does that --

18 MS. GILLARDE: No. Based on our review
19 of the background analysis that was done,
20 construction noise and operation noise will be
21 within acceptable levels. But it's the steam
22 blows, and we recognize that, you know, they are
23 temporary. However, they will occur two to three
24 minutes, two to three times a day, for two to
25 three weeks. So, you know, if it was like one day

1 one time, that would be a little different.

2 So it is a concern that we want to
3 express and see if we can come to come resolution.

4 HEARING OFFICER SHEAN: And if I
5 understand from your from your comments, your
6 concern goes both to noise level, as well as the
7 days of the week on which this is performed. Is
8 that correct?

9 MS. GILLARDE: Yes. We have requested
10 that the condition be amended to stipulate that it
11 would be Monday through Friday only, between the
12 hours, I think it was 8:00 to 5:00. So we're fine
13 with the hours, but we believe that it should be
14 confined to weekday, not weekend.

15 HEARING OFFICER SHEAN: Okay. Is there
16 anything from you, Ms. Dean, on this, on Noise?

17 MS. DEAN: I think my only comment would
18 be that it's -- I would also say that it's
19 difficult to come to any final understanding until
20 we see the documentation expected on Friday, so.

21 HEARING OFFICER SHEAN: Okay. Mr.
22 Wolfe? All right.

23 When we have the Staff witness present
24 on Monday, I want to go through some things. I
25 have gone through this section and I found it

1 difficult to arrive at -- and hopefully the
2 information that we will get will address this --
3 consistent numbers as to what was measured at the
4 two nearest residential receptors, whether it was
5 L98 or LAQ, and then what was the anticipated
6 sound noise levels at those two locations during
7 construction and operation, and whether or not
8 they would be consistent with -- well, if I
9 understand correctly, the ambient noise level
10 already exceeds the city's standards, so it's
11 merely a question of whether or not there will be
12 an increase greater than three dB.

13 Now, I understand the -- the bottom line
14 was that there wouldn't be, but at least for some
15 accuracy the Committee would like to have the
16 numbers that people think really are going to be
17 the appropriate numbers, and that there -- it's an
18 apples to apples comparison through the -- through
19 the data.

20 Okay. So Noise witness, present on
21 Monday.

22 Biology. Anything on that?

23 MR. CASWELL: We have no comments or
24 indication that there needs to be any changes in
25 the Biological section of our Staff Assessment.

1 HEARING OFFICER SHEAN: All right. Does
2 any party request a witness to appear on this and
3 be examined?

4 MR. CASWELL: No one has, at this time.

5 HEARING OFFICER SHEAN: Okay. All
6 right.

7 Hearing none, we'll allow -- we'll
8 declare Biology to be an uncontested area, and
9 allow it to come in on declarations from the
10 parties.

11 Now, let's go back to Noise. Whether or
12 not you want to have your Noise person there is
13 pretty much up to you. The Committee is fine with
14 your submitting your portion of this on -- on a
15 declaration. And essentially, that declaration
16 either is individualized to the topic, or you have
17 someone who could make a declaration that they
18 prepared the Application for Certification and the
19 data responses. If someone can capture all of
20 that, that'd be fine. Otherwise, we'll do it by
21 whatever topic by topic approach you want to do.

22 It's pretty much up to you. All they
23 have to do is declare that they prepared it, they
24 know its contents to be true and correct, and
25 executed it somewhere in the State of California.

1 MS. NARDI: So, to clarify. Would you
2 like written declarations next Monday so that we
3 can move the written portion of our application
4 and all the supporting materials, or --

5 HEARING OFFICER SHEAN: Sure. For --
6 for uncontested areas, where I don't ask you to
7 bring a witness, you -- you may supply the
8 Applicant's side of the record by a written
9 declaration signed by someone who has sufficient
10 professional knowledge of the topic area to say
11 that they either prepared it or know its contents,
12 and it's -- and the contents are true and correct.

13 MS. NARDI: Okay. And if we don't have
14 any further supplements to the AFC itself, and the
15 supplement to the AFC, do we need an additional
16 declaration to -- to support the information
17 that's in there?

18 In other words, we've already prepared a
19 Noise analysis. It's in the AFC itself, in the
20 supplement to the AFC, and if we have nothing
21 further beyond the Staff analysis, do we need an
22 additional declaration?

23 HEARING OFFICER SHEAN: Right. So, for
24 example, your -- if you do use a Noise person,
25 they would say they prepared the AFC and the

1 supplement, and if they were some data responses,
2 and any data responses, and they're through.
3 That's it.

4 MS. NARDI: Okay.

5 HEARING OFFICER SHEAN: So, but as to
6 Biology, there's no request to have a witness
7 appear to be questioned or provide information, so
8 the Applicant and the Staff, by declaration.

9 Water Resources.

10 MR. CASWELL: There were some extensive
11 discussions on Water Resources. I have a Staff
12 person here, Mike Krolak, who is editing or
13 amending the Staff Assessment. It is not quite
14 complete. We just received further editorial
15 corrections or comments from the City of Benicia
16 this morning, which we have not had time to review
17 or incorporate into any language for amended
18 sections of our Staff Assessment.

19 So, again, we will have Jack Kessler, as
20 well as Mike Krolak, available on the Evidentiary
21 Hearing date of the 20th. But at this time, we
22 can't make complete comments on our sections.
23 These -- these comments are mainly from the City
24 of Benicia on water use, as well as comments from
25 the Applicant.

1 HEARING OFFICER SHEAN: Okay. Why don't
2 we hear from everybody on that, then. And let's
3 just do this through -- through the parties first,
4 and see what your -- your view on this Water
5 Resource issue would be.

6 Yes, please. I'm just going to go down
7 the table every time.

8 MS. GILLARDE: Yes. Our primary concern
9 had to do with long-term water supply, and also
10 the mitigation for the implementation of a
11 recycled water plan or reducing water consumption
12 on the site.

13 Our difficulty was that the personnel
14 that were to review this section were out of town,
15 and they only got back yesterday. So they
16 reviewed this section yesterday, and then I
17 e-mailed the comments to Jack. And basically,
18 we're fine with the conclusions that were drawn in
19 the section. There -- there are some incorrect
20 numbers and figures, and our comments would
21 correct those.

22 But basically what they're saying is
23 there is available water, and there will be this
24 plan to use recycled water and/or reduce water
25 consumption at the site. And that will be

1 implemented within three years, which falls within
2 the timeframe mandated by the Good Neighbor
3 agreement.

4 So we thought we may have some concerns
5 with the timing of that mitigation as it was being
6 revised from two to three years, but upon further
7 review it says the plan will actually be in effect
8 within three years.

9 So essentially, we have not standing
10 concerns other than these figures and numbers be
11 corrected.

12 HEARING OFFICER SHEAN: Okay. Ms. Dean,
13 anything?

14 MS. DEAN: To be perfectly honest,
15 because of the lightning pace that all of this has
16 moved at, we haven't had an opportunity to even
17 address the original information that we have to
18 the extent that we would've liked to. And I
19 haven't seen any of the -- the material that was
20 referenced by the last two speakers, and neither
21 has anybody on the Committee.

22 So although we -- we fully support the
23 gray water concept, and the use, I don't know that
24 we'd even be ready by Monday to address the topic
25 as it stands today, or as it'll stand Friday

1 afternoon when the reports come out.

2 But to the extent that we can, several
3 people would like to speak on that matter.

4 HEARING OFFICER SHEAN: Okay. Well,
5 we'll afford them an opportunity at the -- on the
6 20th, if that's what you -- what you wish. Okay.

7 MS. DEAN: Okay. But, and again, you
8 know, I'm not really familiar with -- with all the
9 protocols for -- for each of these individual
10 hearings or workshops, but we do feel like we need
11 more time to take a look at this matter, and to
12 consider it in total.

13 HEARING OFFICER SHEAN: Okay. And I
14 guess what we want to do is make sure that you
15 have an opportunity, and people who are with your
16 group have the opportunity, if you -- if you wish
17 to discuss or make a presentation on any of the
18 items that are in this list, that you do that
19 initially on the 20th. We can then incorporate
20 what you say in a decision.

21 Now, there may be topics that are not
22 hot button items to you, in which case you can
23 pretty much either ignore them or -- or follow
24 them and determine that it's not a matter that's
25 of critical importance to you. But on the ones

1 that are of critical importance to you, those are
2 the ones that in particular we are going to afford
3 you an opportunity to speak your piece and make
4 the presentation that you want to make to the
5 Committee.

6 MS. DEAN: Okay. Just to give you a
7 general -- everybody a general sense of our
8 philosophy, since this is the first opportunity to
9 really address it. We -- we probably do have
10 concerns and issues with almost every single thing
11 on this list, but we're not interested in nit-
12 picking or obstructing the whole process. So we
13 would only be interested in addressing those two
14 or three concerns that are of very distinct
15 interest.

16 HEARING OFFICER SHEAN: Okay. And
17 that's what we want to make sure that you have the
18 opportunity to do.

19 MS. DEAN: Yeah. That's fine.

20 HEARING OFFICER SHEAN: Mr. Wolfe,
21 anything?

22 MR. WOLFE: Based on the way this topic
23 was left at Friday's workshop, we would not
24 anticipate needing to present a witness on the
25 topic. But without seeing the final version of

1 the Staff Assessment and these materials that have
2 just been referenced, I would need to at least
3 reserve the opportunity to do so, should it become
4 necessary.

5 But again, we don't anticipate that
6 being a necessity.

7 HEARING OFFICER SHEAN: Okay. Anything
8 from the Applicant on this?

9 MS. NARDI: No.

10 HEARING OFFICER SHEAN: All right. My
11 understanding, based upon reading what I've seen
12 come across my desk or in e-mail, is that the
13 project is to be allowed to be constructed and
14 commence operation using potable water supplies
15 from the city. But -- but the analysis suggests
16 that in anticipation of a combination of things,
17 reliable water supply in the periods of drought
18 and curtailment, and -- and general conformity to
19 state policy, and this, that and the other, that
20 what the Applicant and Staff and the city have all
21 agreed to is that I think it's three years out,
22 the water supply for the cogeneration project will
23 be either recycled refinery wastewater, and/or
24 some combination with City of Benicia treated
25 wastewater that will be in an amount equal to or

1 greater than the -- what by then will be
2 historical usage of the cogeneration project.

3 Is that -- is that correct?

4 MR. CASWELL: Correct. That's my
5 understanding of Staff's analysis, as it's
6 developing. Barring the information that came
7 this morning, which seems to be more, just on a
8 kind of housekeeping material as it relates to
9 accuracy on numbers and tables in that
10 information.

11 MS. NARDI: Well, the one clarification
12 to that statement is that it's not necessarily the
13 case that the water from the -- that serves the
14 cogen itself will be recycled, but that there will
15 be a plan so that the amount of water used by the
16 cogen facility is offset. In other words, the
17 recycling may come elsewhere within the refinery.
18 The refinery's going to work with the city and
19 develop a plan, but the net effect of it will be
20 to fully offset the water usage of this -- this
21 project.

22 And Mr. Hammonds has a further
23 clarification.

24 MR. HAMMONDS: And that's also reduction
25 is an option, as well as re-use.

1 HEARING OFFICER SHEAN: Okay. And
2 basically, the city's on board with this, too.

3 MS. GILLARDE: Yes. Our concern came
4 from the fact that we received a substantial
5 cutback in our -- the allocation that we received
6 for water this year. And if there's successive
7 drought years, then there could be further
8 cutbacks, and then we also then have to cut back
9 the people that, you know, we have agreements for
10 water.

11 So we just wanted to bring this to the
12 table that, you know, we could be in a drought
13 cycle and that we need to think about how we're
14 going to provide water to -- and make all of our
15 commitments.

16 HEARING OFFICER SHEAN: Okay. Simply
17 because it's part of the format that the Committee
18 is using for the preparation of the Proposed
19 Decision, I noted in the water section the
20 discussion of cumulative impacts addresses only
21 issues related to water quality, erosion, and
22 things like that.

23 My -- my reading of the Staff analysis,
24 however, suggests that when there is a discussion
25 about future development in the area, and things

1 like that, that that might address the cumulative
2 impact. But why don't you -- I'd like to have the
3 Staff witnesses appear anyway, but they ought to
4 give some thought to what they might state with
5 respect to a water resource or water supply
6 cumulative impact. Because currently there's --
7 that topic is, at least at first blush,
8 insufficiently covered.

9 MR. CASWELL: Would you like it now?

10 HEARING OFFICER SHEAN: No. The only --
11 I just want it in the record at some point. To
12 say either yes -- yes, refer to our analysis that
13 discusses future development, and the City of
14 Benicia and the City of Vallejo and other water
15 users from part of that allocation, and that's --
16 and that there would be a cumulative impact if we
17 don't do what the conditions prescribe. Or
18 something -- or something else, whatever the case
19 may be. I don't want to put words in their
20 mouths, but it's just essentially an uncovered
21 topic.

22 MR. CASWELL: Okay.

23 MS. DEAN: Could I -- could I add one
24 thing?

25 HEARING OFFICER SHEAN: Sure.

1 MS. DEAN: Just because, again, I'm not
2 exactly sure where my comments should go on some
3 of these issues. And since it appears that things
4 are getting settled here, I do think it's
5 important that we understand that many of the
6 residents of Benicia are concerned that we're in a
7 position where we've had to cut back, and even for
8 these two to three years that we're talking about,
9 we probably will be cutting back. And yet the --
10 Valero will ultimately be using more water for
11 that period.

12 So I don't know if there's something
13 that can be done to address the two to three years
14 that -- before this is all laid out, and taken
15 care of. But it's at least unpleasant for us to
16 be in that position.

17 HEARING OFFICER SHEAN: Okay. Well, I
18 would just suggest you bring that forward as a
19 comment on Monday, the 20th.

20 MS. DEAN: Okay. Thank you.

21 HEARING OFFICER SHEAN: Okay. So Staff
22 will have two -- at least one, but maybe two
23 witnesses. If the Applicant doesn't want to bring
24 a witness, you can do that on declaration.

25 MS. NARDI: That would be our intention

1 at this time.

2 HEARING OFFICER SHEAN: Okay.

3 Water Quality and Soils. Anything on
4 this from --

5 MR. CASWELL: That's basically
6 encompassed into the -- the same group is
7 addressing those issues. Water Resource as well
8 as Water Quality and Soil, or soil contamination,
9 the possibility of, these things are being
10 addressed, again, in the amended sections. We are
11 not amending the soils section of that Staff
12 Assessment at this time, but we are -- Staff is
13 having some amendments to the Water Quality issue,
14 as well as the Water Resource issue. And it is
15 incomplete at this time.

16 HEARING OFFICER SHEAN: Okay. Anything
17 from the city or other Intervenors?

18 Okay.

19 MR. WOLFE: Yeah. It's a little unclear
20 to us where the issue of soil sampling and soil
21 contamination really falls, because it's
22 referenced in both the Waste Management section
23 and the Soils and Water section of the Staff
24 Assessment.

25 We may want to talk about the scope and

1 adequacy of the sampling that's being proposed,
2 and I don't know whether that properly falls under
3 Waste or Soils and Water, but I wanted to flag it
4 now.

5 HEARING OFFICER SHEAN: Okay. It
6 probably would be Soils. My -- I think our
7 decision format will disaggregate Water Resources
8 from Water Quality and Soils.

9 MR. WOLFE: So the -- there's -- the
10 sampling program is described in the Waste
11 Management section, and it's --

12 HEARING OFFICER SHEAN: Right.
13 We're having a redundancy of our
14 tautology.

15 Okay. Then we'll take that from the
16 Applicant. Is -- is there anything from the
17 Applicant on that?

18 MS. NARDI: No.

19 HEARING OFFICER SHEAN: No. All right.
20 We will show that as uncontested, and allow the
21 parties to submit that on declarations.

22 Visual Resources.

23 MR. CASWELL: The City of Benicia
24 supplied minor comments on visual, addressing that
25 maybe we would identify the design review

1 requirements based on the city's plans. And I
2 have a Staff person looking at that section to
3 decide whether there's something they missed, or
4 there's some criteria that they could add to their
5 Staff Assessment to meet the city's request.

6 That has not been submitted to me yet by
7 our Staff.

8 HEARING OFFICER SHEAN: Okay. Is this
9 the --

10 MR. CASWELL: It's more of a
11 housekeeping --

12 HEARING OFFICER SHEAN: -- one that
13 there were some added findings?

14 MR. CASWELL: It's -- it's more of a
15 housekeeping item, to be a little more complete,
16 at this city's request.

17 MR. KRAMER: And it's in the
18 description, not the conclusion.

19 HEARING OFFICER SHEAN: Okay. Anything
20 from the Intervenors? No.

21 All right. Uncontested. On
22 declarations, then.

23 Air Quality. We don't have the issued
24 Preliminary Determination of Compliance. We have
25 an informal copy, but why don't we find out where

1 -- where we are, and what we anticipate.

2 MR. CASWELL: There were comments from
3 the city on Air Quality. Because we have not had
4 the final PDOC to compare to the comments, as well
5 as our Staff Assessment, we're kind of in a limbo
6 until, I believe tomorrow is when the Air District
7 is going to provide the PDOC and start the clock
8 on the comment period for that PDOC.

9 And until that happens, there are too
10 many issues that are up in the air for really us
11 to discuss clearly or accurately, because some
12 things that are identified here may or may not be
13 in conflict with our amended Staff Assessment, so.

14 HEARING OFFICER SHEAN: Okay.

15 MS. GILLARDE: Yes. I can only concur
16 with -- with Jack's comments, and -- until we're
17 able to review that our question about how the
18 projected emission levels were reached remains
19 unanswered, so we simply have to wait. So that --
20 that still is an outstanding concern. This was an
21 item raised in a previous data request.

22 There was a concern we also had about
23 how is it that the PMT levels were determined to
24 not be significant, and we have received
25 additional information that clarifies how that

1 conclusion was reached. And we are satisfied with
2 that response.

3 So there is one aspect of Air Quality,
4 that is the PMT emissions, that we are satisfied
5 that the conclusions were properly reached, and we
6 concur.

7 HEARING OFFICER SHEAN: Which emissions
8 are these?

9 MS. GILLARDE: PMT.

10 MR. CASWELL: PM10.

11 MS. GILLARDE: Yeah, PM10. Sorry.

12 HEARING OFFICER SHEAN: PM10. Okay.

13 Yeah, okay.

14 MS. DEAN: I would just echo what has
15 already been said. I think that it's premature
16 for us to come to any particular conclusions,
17 because we don't have the appropriate
18 documentation. I will say, however, that based on
19 what we have, we have very grave concerns about
20 the PM10.

21 Maybe, again, I don't -- I have neither
22 an informal copy of the Bay Area Air Quality
23 Management District PDOC, nor the information she
24 was just referencing. But based on what we've
25 seen in the Staff Assessment and other documents,

1 we have very distinct concerns that not only PM10,
2 but SOx and NOx emissions are not really being
3 mitigated at a local level. And although they may
4 be regionally or statewide -- on a statewide level
5 insignificant, they are not in Benicia proper.

6 However, not having the full
7 documentation, it's hard to say that for sure.
8 But -- but we do have people who would like to
9 speak on that matter, if it comes to hearing on
10 Monday.

11 HEARING OFFICER SHEAN: It will, so they
12 may. You bet.

13 Mr. Wolfe.

14 MR. WOLFE: Yes. I raised several
15 issues at the workshop last Friday. Again, the
16 way it stands now, I would say that there are
17 quite a large number of issues that run not only
18 to the sufficiency of the analysis, but to just
19 the threshold question whether the project
20 complies with federal and state LORS. Without
21 seeing the real PDOC, it's obviously impossible to
22 tell to what extent those issues will be resolved.

23 I would just make a suggestion. In the
24 past, this Commission has frequently, when faced
25 with circumstances similar to this, has bifurcated

1 hearings and has taken all of the issues that are
2 ready to go sooner, and then postponed
3 consideration of the issues that really are
4 legitimately not ready to proceed a little bit
5 later.

6 I would note that under the proposed
7 schedule for this project, if it's licensed in
8 September, I believe the AFC presents a seven-
9 month construction schedule? I think that's
10 correct. Then that would bring it online in
11 April.

12 Historically, according to this
13 Commission's statistics, peak demand period starts
14 in July. So I don't see that there would be any
15 burden imposed on the state's ability to mitigate
16 our quote, unquote, energy crisis, for the 2002
17 peak demand period by bumping Air Quality out even
18 just a couple of weeks, to allow the parties to
19 review the PDOC, to allow the Staff to incorporate
20 that document's conclusions into its assessment,
21 perhaps conduct a workshop, and narrow down the
22 issues. Because the alternative, frankly, is next
23 Monday.

24 I think it's -- I won't be speaking
25 hyperbolically if -- if I say that it could turn

1 into quite a circus, because we just have no idea at
2 this point the number, the nature, the extent of
3 the issues that are going to be there. And, I
4 mean, we have to basically reserve the right to
5 have a witness appear on every subissue under Air
6 Quality right now.

7 So that would be my suggestion. And
8 before I stop, I just wanted to flag one issue
9 that we can maybe talk about at the end, and that
10 is the question of briefing. I notice that the
11 order setting this conference and the hearing date
12 didn't specify an opportunity to submit briefs on
13 legal issues after the close of the hearing, and
14 so I just was raising that right now. We would
15 like the opportunity to be able to do that.

16 HEARING OFFICER SHEAN: Okay. Well,
17 part of what was in the notice was discussing
18 procedures of the Evidentiary Hearing, and while
19 this is probably technically a post-hearing thing,
20 we can discuss it.

21 How about from the Applicant's
22 perspective on Air Quality, what --

23 MS. NARDI: Well, we haven't seen the
24 final PDOC issued by the air district, and we
25 appreciate that it's going to take the Staff some

1 time to read it and analyze it. But Valero has
2 explained, at the last public workshop, that if
3 the air district does revise its BACT
4 determination and require that the project meet
5 2.5 ppm NOx, that it's prepared to -- to work with
6 them to try and do that.

7 In terms of delay, it's very important
8 that this project move forward in terms of meeting
9 the construction schedule. It's actually not a
10 project that is going to provide peak power to the
11 grid as a whole, but to the refinery. So in terms
12 of construction, we're very anxious to move it.
13 But we do want everyone to have an opportunity to
14 read and understand the issues involved.

15 So we would suggest that we try and keep
16 with the schedule, if that's at all possible.

17 HEARING OFFICER SHEAN: Okay. Let me
18 ponder this a little bit more, and get back to it
19 before we're through today.

20 Okay. I guess I -- oh, here it is. How
21 about Project Alternatives, the Alternatives
22 section. Let's move on to that.

23 MR. CASWELL: I believe there was some
24 minor comment, and I've drawn a blank on who made
25 the comments. I have them down already in a

1 change. But they were basically housekeeping
2 issues. There were no significant major changes
3 to that section suggested.

4 HEARING OFFICER SHEAN: Anything from
5 the other Intervenors?

6 MS. GILLARDE: I just note that I did
7 make a comment at the workshop under the No
8 Project Alternative. There's a statement that
9 says Staff has not identified any impacts that
10 can't be mitigated to less than significant. And
11 we do disagree with that, given the noise impacts.

12 HEARING OFFICER SHEAN: Given the noise
13 impact?

14 MS. GILLARDE: The noise impacts.

15 HEARING OFFICER SHEAN: That the steam
16 blow would be a significant impact?

17 MS. GILLARDE: Yes.

18 MR. CASWELL: I believe on some
19 preliminary analysis from Jim Buntin, that he's
20 identified that some of these levels would be
21 lower than previously identified, due to the -- I
22 believe it was the direction of the steam blow, as
23 well as the pressure level that the steam blows
24 would occur. And these things will be reflected
25 in his analysis, and I apologize for not having

1 them ready for you, but it's, again, you know,
2 kind of tough.

3 And I think that will address this issue
4 when the Noise analysis is resubmitted.

5 HEARING OFFICER SHEAN: Okay. Well, at
6 least we understand what the city's view is, is
7 that as your -- based upon your current
8 information, is that the steam blow level is a
9 significant impact which is not fully mitigated.

10 MS. GILLARDE: That's correct.

11 HEARING OFFICER SHEAN: Anything else
12 from the other parties?

13 Okay. We'll allow Alternatives to go
14 uncontested on declarations.

15 Public Health.

16 MR. CASWELL: I don't believe I have
17 anything that's on Public Health at this time that
18 isn't covered in some other section, the technical
19 detail section.

20 HEARING OFFICER SHEAN: I guess, since
21 there's not been a publicly issued PDOC, your --
22 the information that Mr. Ringer used was derived
23 from the PDOC, and -- predominantly, or did he
24 conduct an independent analysis?

25 MR. CASWELL: It was the draft PDOC,

1 which was a rather loose document for -- for us to
2 work with. And, of course, information that was
3 gathered from the Applicant.

4 HEARING OFFICER SHEAN: That was
5 supplied by the Applicant, right. Which I guess
6 fundamentally was the information submitted to the
7 district. Okay.

8 MR. CASWELL: Correct.

9 HEARING OFFICER SHEAN: Anything from
10 the intervening parties?

11 MS. GILLARDE: No.

12 MS. DEAN: My only comment was -- would
13 be that we actually have not had an opportunity to
14 review this fully, so given that, I would -- I
15 guess I'd like to reserve an opportunity to have a
16 witness, if needed.

17 HEARING OFFICER SHEAN: For you to
18 present one.

19 MS. DEAN: Yeah.

20 MR. WOLFE: Yeah. Just again, to the
21 extent that Staff's analysis derives from the
22 PDOC, I'd have to reserve the right to present a
23 witness after we see the PDOC.

24 HEARING OFFICER SHEAN: Okay. Well, for
25 now, Applicant and the Staff would be on

1 declaration, and we'll reserve an opportunity for
2 other parties to make a presentation.

3 Okay. Traffic and Transportation.

4 MR. CASWELL: There were extensive
5 comments from the city on Traffic and
6 Transportation. Jim Fore was the technical Staff
7 person here at the CEC that wrote that section.
8 And Eileen Allen is, because -- because Jim is
9 going to be unavailable, I believe, until next
10 week -- until next week, Eileen --

11 MS. ALLEN: He returns on the 24th.

12 MR. CASWELL: Returning on the 24th.
13 Eileen Allen, the manager over that section, will
14 step in and make the amendments necessary to the
15 Staff Assessment, and will be available on Monday
16 to testify to those changes, and the reason for.

17 HEARING OFFICER SHEAN: All right. I'll
18 just let the city go ahead.

19 MS. GILLARDE: Yeah. Our primary
20 concerns for Traffic were, one, the lack of backup
21 data for the conclusions that were drawn regarding
22 levels of service and traffic impacts on roadways,
23 the stated lack of adequate onsite parking, and
24 cumulative traffic impacts.

25 The first issue regarding backup data to

1 substantiate the conclusions that were drawn for
2 project impacts, that need has been satisfied. We
3 did receive the backup calculations yesterday
4 morning, and our traffic engineer reviewed those,
5 and we are fine with those.

6 So the conclusions that were drawn
7 regarding project impacts, traffic impacts from
8 the project alone were satisfied with that data.

9 And the parking situation, we understand
10 that there were some incorrect numbers in the
11 Staff Assessment. Those are being revised, and
12 that section will be revised. But until Friday,
13 we won't be able to see it. So we're going to
14 reserve comment until we see the revised section.

15 And the last issue has to do with
16 cumulative traffic impacts. And we believe that
17 there should be an assessment of the cogen
18 project, the MTBE phase-out project, which
19 according to the Applicant will run concurrently,
20 and then the situation, if a turn-around occurred
21 during that timeframe.

22 And we believe that there should be an
23 analysis done of what would be the traffic impacts
24 resulting from those three projects occurring at
25 the same time.

1 HEARING OFFICER SHEAN: Is turn-around a
2 term of art for this traffic thing, and if so, can
3 you tell us what it means?

4 MS. GILLARDE: Well, maybe I'll let Sam.
5 But -- but to a layman's, as I understand it, a
6 turn-around would be a event where they would
7 require a large number of workers to come onsite
8 to do maintenance to certain facilities.

9 Maybe Sam wants to --

10 HEARING OFFICER SHEAN: Is that -- okay.
11 I -- I --

12 MR. HAMMONDS: Yes, a turn-around is a
13 period when we undergo maintenance. Sometimes
14 there's planning for it, sometimes it happens
15 rather quickly. And it can involve several
16 hundred workers at that point in time.

17 I believe we supplied some suggested
18 changes to Staff on the traffic, which would also
19 address that. So I -- it may very well be that
20 that cumulative analysis will be included.

21 MS. ALLEN: Yes.

22 MR. HAMMONDS: Staff seems to indicate
23 that they will be including that in their --

24 MS. ALLEN: Well, I'll -- I'll revise
25 the analysis, and then I'll confer with Dan

1 Schiada, of the city's Public Works staff, before
2 I come to final conclusions in the analysis.

3 Ideally, I would have time to send Dan
4 Schiada a draft. I'm concerned about being able
5 to complete all of this by Friday, in that Dan
6 Schiada of the city staff apparently has the new
7 data. I don't. So I need to get it.

8 HEARING OFFICER SHEAN: Just so I
9 understand. First of all, as I looked at the
10 Staff Assessment, the -- the number that was given
11 for the MTBE project was something on the order of
12 700 workers. Do I understand that that is not
13 correct?

14 MS. ALLEN: That's been revised to 150
15 workers, I believe.

16 MR. HAMMONDS: One hundred.

17 MS. ALLEN: One hundred.

18 MR. HAMMONDS: One hundred, peak.

19 MS. ALLEN: So that's a substantial
20 reduction associated with the MTBE project.
21 Therefore, we -- we've requested new data
22 associated with the intersections, and if -- if
23 Valero has given the new numbers to the City of
24 Benicia, as Ben indicated, that's fine. I'll get
25 them -- I'll get them this afternoon.

1 MS. GILLARDE: I just wanted to clarify
2 the numbers we received were for the project
3 impacts only. We have no numbers for what I
4 consider to be a complete cumulative analysis.

5 HEARING OFFICER SHEAN: Okay. And I'm
6 trying to understand, too, what the -- the city's
7 either general plan or other goal -- goals and
8 criteria are.

9 First of all, my understanding is that
10 for the project, is that Gates 4 and 9 are the
11 ones that are going to be used for construction
12 trucks, and deliveries at 4 and workers at 9? Is
13 that --

14 MR. HAMMONDS: Gate 4 will be delivery
15 trucks. The two parking areas are Gates 7 and 9.
16 But they're both on the south side of the
17 refinery, entering via Park and Bayshore, off of
18 Interstate 680.

19 HEARING OFFICER SHEAN: Right. And, but
20 there was access for the MTBE project through East
21 Second; is that how that's going to happen? Or --

22 MR. HAMMONDS: No, the MTBE project will
23 be in the same area, and there are two large
24 parking areas there, more than enough to handle
25 both of those projects, as well as additional

1 workers, should a turn-around occur.

2 HEARING OFFICER SHEAN: But they being
3 the parking areas you're talking about?

4 MR. HAMMONDS: The parking areas, yes.

5 HEARING OFFICER SHEAN: Because the city
6 in their comments expressed some concern about
7 parking on non-paved or gravel property.

8 MR. HAMMONDS: We aren't sure where that
9 came from. Our intent is only to use existing
10 parking areas.

11 HEARING OFFICER SHEAN: Okay.

12 MS. GILLARDE: Yeah, where that came
13 from was there was a statement in the Staff
14 Assessment that, you know, based on their
15 analysis, and, like I say, there were incorrect
16 numbers, but there was a shortfall of parking, and
17 they suggested that open space areas be used for
18 parking, and we said that would not be acceptable.

19 HEARING OFFICER SHEAN: All right. I
20 recall the statement.

21 So what -- what are the city's goals
22 with respect to the use of these second, if -- if
23 at all, either for the project or for --

24 MS. GILLARDE: Well, my understanding --

25 HEARING OFFICER SHEAN: -- for -- I

1 mean, my understanding is they're not going to be
2 used for the project.

3 MS. GILLARDE: Right.

4 HEARING OFFICER SHEAN: But for any of
5 these other related projects.

6 MS. GILLARDE: Well, again, I think
7 there was some, you know, incorrect information in
8 the Staff Assessment about where access would be
9 coming from. And we've resolved that. So in
10 terms of access for the cogen project and the MTBE
11 project, we feel that the way that it's proposed
12 by the Applicant is fine. And it honors the good
13 neighbor agreement, which is that there'll be no
14 truck access from East Second via 780. So -- so
15 we're fine with that.

16 The question we have is what are the
17 cumulative impacts if all three of these projects
18 occur in the same timeframe.

19 HEARING OFFICER SHEAN: And those would
20 likely be the access to -- off of 680 to -- off
21 the top of my head I don't remember, something
22 like Industrial, Bayshore, and -- a third one, I
23 forget.

24 MS. GILLARDE; I think Park.

25 HEARING OFFICER SHEAN: Park, is it?

1 MS. GILLARDE: So like I say, we would
2 just like to see the intersection level analysis,
3 roadway impacts, and parking. And there's been a
4 lot of talk about well, you know, it's going to be
5 fine because the numbers are reduced, but we -- we
6 need to see it all written down in one place.

7 MS. ALLEN: Keeping in mind that we have
8 no data associated with the potential turn-around.

9 MR. HAMMONDS: I believe the approach
10 that was taken in the data which has been supplied
11 went ahead and showed the MTBE phase-out project
12 in addition, and then it also calculated the
13 additional loading from any other project, be it
14 turn-around or -- or whatever, that would reach
15 the significance level. And it identified at what
16 point steps would need to be taken, such as
17 staggering work hours, and the procedures involved
18 taking those steps.

19 So I -- I think though specific numbers
20 haven't been tied to additional projects, the
21 procedures in order to mitigate them have been
22 included. So from that standpoint, our outlook is
23 the cumulative aspects have been addressed. Or at
24 least information is there to address them.

25 HEARING OFFICER SHEAN: And if I

1 understand the Applicant's general approach, at
2 least in your proposed conditions, is that you
3 basically start counting, and once at the
4 entrances to the refinery you reach some number
5 that tells you that we are -- we've got congestion
6 here, we need to deal with it. That that then
7 would kick in mitigation until you get to the
8 point where it's sufficient to mitigate the
9 congestion. Is that the general idea?

10 MR. HAMMONDS: That -- that was our
11 proposal. The city, in turn, has suggested let's
12 go ahead and -- and hold regular meetings and not
13 wait for that trigger point. And we -- we have no
14 problem with that at all.

15 And, yes, we will track numbers, but
16 based on our discussions with the city, if there
17 is a problem identified we'll go ahead and begin
18 those mitigation measures. Regardless of what the
19 head count is.

20 HEARING OFFICER SHEAN: Is there any
21 point in anticipating that there would be a --
22 that whatever level of congestion that might
23 arise, if you don't necessarily define what is
24 that level that flips it over into a problem, of
25 putting certain mitigation in place just as part

1 of an anticipatory, as opposed to a reactive mode?

2 MS. GILLARDE: Well, I think our
3 position is that we feel like we're kind of
4 operating in a vacuum. There's this mitigation
5 that says this is going to address the problem,
6 but the problem hasn't been clearly defined. I
7 mean, if the city were processing this project
8 through the standard CEQA process, under the
9 cumulative analysis we would have done an analysis
10 showing what -- what the volumes would be with the
11 -- with the two projects, plus the turn-around.

12 So, you know, the -- the mitigation has
13 been identified, and it says well, this is going
14 to work, but we haven't really identified what the
15 potential problem might be to see if the
16 mitigation actually does work.

17 HEARING OFFICER SHEAN: Well, is there a
18 menu of mitigation that we don't have, that could
19 be used for the project? I mean, is there a list
20 of -- or, let me say, do you believe that the menu
21 of mitigation that's in the conditions and
22 discussed in the initial study is -- is
23 insufficient to address whatever you might
24 conceive of as the maximum traffic under this
25 cumulative traffic?

1 MS. GILLARDE: I think I'm going to need
2 to reserve comment on that until I talk with our
3 traffic engineer. And, unfortunately, he did not
4 come today, but --

5 HEARING OFFICER SHEAN: Sure.

6 MS. GILLARDE: -- he will be there on
7 the 20th. We'll go back and revisit that.

8 HEARING OFFICER SHEAN: Okay. Well, I
9 guess to some degree I'm trying to be
10 anticipatory, instead of merely reactive. Are
11 there some things that, you know, once --
12 commencement of construction, and the beginning of
13 the increase in truck deliveries and -- and worker
14 commuting, whether for the project alone or in
15 combination with the MTBE project, you say okay,
16 now we need to do the following things. We either
17 -- and I assume that there's a progression of
18 mitigation measures that one would take before you
19 really start considering some fairly radical
20 stuff.

21 MS. GILLARDE: Well, we did recommend
22 the mitigation that added, you know, the monthly
23 meetings and bi-weekly reports. Maybe we --

24 HEARING OFFICER SHEAN: So meetings are
25 satisfactory to you --

1 MS. GILLARDE: -- can refine that --

2 HEARING OFFICER SHEAN: -- as opposed to
3 something on the ground, or cones in the street,
4 or this, that, or the other? Is that -- is that
5 -- should that be the Committee's understanding?

6 MS. GILLARDE: I don't have it in front
7 of me, but yeah, it does basically lay out that
8 there, you know, there be these meetings, and we
9 would discuss strategies to deal with, you know,
10 traffic situations, and it could include the
11 following, and there was a menu.

12 HEARING OFFICER SHEAN: Okay, because we
13 -- the Committee wants the community to be
14 satisfied. If -- if this meet --

15 MS. GILLARDE: Uh-huh.

16 HEARING OFFICER SHEAN: -- and confer,
17 and then -- then implement measures from a menu is
18 sufficient for you, then that's fine with us. If
19 -- if certain --

20 MS. GILLARDE: Like I say, we were
21 expecting, I guess, that a cumulative analysis had
22 been done, and we would actually have data to then
23 determine whether that was an adequate mitigation.
24 So in the absence of that data, we would need to
25 revisit that mitigation to see if we need to tweak

1 it further.

2 And, like I say, I don't have my traffic
3 person here, so -- yeah.

4 HEARING OFFICER SHEAN: Okay. Well, why
5 don't we -- let's reserve some time for this on
6 Monday, and we can go over it and make sure that
7 -- because, I mean, while this is going to provide
8 a benefit to the city once it's in, and this,
9 that, and the other, it's also something that the
10 residents are going to have to -- and other
11 commuters are going to have to live with, and to
12 the extent that we can mitigate --

13 MS. GILLARDE: In as --

14 HEARING OFFICER SHEAN: -- that in their
15 day-to-day lives, then we ought to try to do that.

16 MS. GILLARDE: Exactly. And as I said,
17 some of these turn-arounds are planned, but then
18 some of them occur as a sudden emergency, and we
19 just don't want to be caught with a situation that
20 we haven't adequately anticipated how to deal with
21 it.

22 HEARING OFFICER SHEAN: Okay. All
23 right. So we'll see you, Ms. Allen, and some
24 other people, on Monday, on Traffic. I think it's
25 probably best, too, if we have the Applicant's

1 person on that available.

2 MS. NARDI: We'd be glad to do that.
3 And just to clarify, in addition to Mr. Hammonds,
4 who will be here Monday, we'll also have Lynn
5 McGuire, who is the project lead for URS, the
6 consultant that prepared the AFC. So she'll be
7 available, as well.

8 HEARING OFFICER SHEAN: Okay.

9 MS. ALLEN: Do you expect to have Fred
10 Reed, the traffic specialist, then?

11 MR. HAMMONDS: Do you expect it would be
12 useful? We can, if that would be a help.

13 MS. ALLEN: It would be useful.

14 MR. HAMMONDS: Okay.

15 MS. ALLEN: That way, there can be
16 direct interaction between he and the city's
17 traffic engineer. Thank you.

18 HEARING OFFICER SHEAN: This is probably
19 one of those issues that is the -- is a critical
20 issue.

21 Okay. And I'm quite sure, because
22 you're going to have something you'd like to say.

23 MS. DEAN: Actually, given all that was
24 just said, I would only say that we support the
25 city's position and their concerns, and we -- we

1 share their concerns. And it sounds like it's
2 going to have a fair amount of coverage. I guess
3 I -- I would like to have -- reserve the
4 opportunity to have one witness.

5 HEARING OFFICER SHEAN: Okay. Well, I'm
6 just -- all parties. Mr. Wolfe? Okay. All but
7 one.

8 All right. Socioeconomics. Anything on
9 that?

10 MR. CASWELL: I'm not aware of any
11 comments that were made in that area.

12 HEARING OFFICER SHEAN: Anything from
13 the city or the other parties? Okay. Let's do
14 that uncontested, on declarations.

15 Land Use.

16 MR. CASWELL: Yes, the city did have
17 comments on Land Use. Eileen Allen, the manager
18 over that section, as well as was the technical
19 person who wrote that section, is currently
20 working with I believe it's the city, to amend her
21 Staff Assessment, and it should be ready by
22 Friday, at the latest, Wednesday, at the earliest,
23 of this week. Prepared, distributed by Friday.

24 HEARING OFFICER SHEAN: I looked at the
25 comments from the city. A lot of this was

1 housekeeping stuff, in terms of whether or not the
2 Staff's document adequately identified the city's
3 policies or plans. Is there a substantive matter?

4 MS. GILLARDE: Well, I would say the
5 only substantive comment had to do with the
6 environmental checklist, which was on page 4.5-5.
7 And we just disagreed with the -- the no impact,
8 because there are certain policies that pertain to
9 maintaining, you know, air quality and traffic
10 levels, and those issues aren't resolved yet.

11 So I think that -- hopefully, that's
12 what it will come out to be, but at this point
13 those issues are still outstanding.

14 HEARING OFFICER SHEAN: Okay. Ms. Dean,
15 nothing. And Mr. Wolfe? No.

16 Okay. Why don't we take that on
17 declarations, and as uncontested.

18 Transmission System Engineering.

19 MR. CASWELL: We, as recently as Friday,
20 received the last section of the Transmission
21 System Engineering analysis from PG&E. There was
22 no new or unanticipated information in that study.
23 I spoke with Ajoy Guha, who is the technical
24 person that wrote that section, this morning. He
25 is developing some amended language based on some

1 minor housekeeping changes, and we -- we have not
2 had comments on that issue by others.

3 HEARING OFFICER SHEAN: Anything from
4 anybody else on this? So these are okay.
5 Uncontested.

6 Transmission Line Safety and Nuisance.
7 Anything on this from anybody? Okay, uncontested,
8 as well.

9 I have Efficiency and Geology sections
10 next. Anybody have anything on those?
11 Uncontested on Efficiency and Geology.

12 MR. HAMMONDS: On -- excuse me. On
13 Efficiency, we did forward some comments to Staff,
14 and I believe they're going to be revising in
15 accordance with those.

16 HEARING OFFICER SHEAN: Is that right?
17 Okay.

18 MR. HAMMONDS: Is that true, Jack?

19 MR. CASWELL: They've reviewed those,
20 and I have not heard back from the person that
21 wrote that technical section. I'm drawing a
22 blank, to be honest with you, right now.

23 MR. HAMMONDS: Okay. The gist of the
24 comment was there is in the Efficiency section
25 some assessment of efficiency performance in order

1 to preserve the option to be a qualifying
2 facility, a QF. And the Staff Assessment didn't
3 include that initially, and we requested that it
4 do include that.

5 I -- I wouldn't classify this as a
6 substantive change, just an important
7 administrative one.

8 MR. CASWELL: I'll follow up on that
9 again today. That information was, though,
10 however, passed forward.

11 HEARING OFFICER SHEAN: Was that
12 something that was otherwise filed in our docket?

13 MR. HAMMONDS: I believe that has been
14 docketed.

15 MR. CASWELL: Was this sent to me
16 separately, or as a --

17 MR. HAMMONDS: It was part of the first
18 package, last Monday.

19 MR. CASWELL: Then it's been docketed.
20 All the -- all information that I've received from
21 the Applicant, whether via e-mail, technical
22 references to changes, or in a document format,
23 have been sent and docketed, and hopefully proof
24 of service.

25 HEARING OFFICER SHEAN: Okay. I just --

1 ordinarily, I check, and even though I may skim
2 it, I don't have a gray cell that recalls this, so
3 I just -- perhaps, if this is something that you
4 want stated in the decision with respect to QF
5 eligibility -- and that's what you're talking
6 about, right?

7 MR. HAMMONDS: Yes.

8 HEARING OFFICER SHEAN: Okay. Why don't
9 you pull it out.

10 MR. HAMMONDS: This was one of the
11 items, it was probably called miscellaneous
12 comments on Staff Assessment from a week ago
13 Monday.

14 HEARING OFFICER SHEAN: Okay. Sounds
15 like it's important to you.

16 MR. CASWELL: I'll look up -- maybe I
17 overlooked having it filed.

18 HEARING OFFICER SHEAN: Why don't you
19 pull it out, and bring it -- bring it along with
20 you on Monday. And if it's longer than three
21 paragraphs, have electronic copies, please.

22 MR. CASWELL: And again, I'll -- I'll go
23 back today and look for that, make sure that my e-
24 mail list --

25 MR. HAMMONDS: The efficiency

1 calculations were included in the supplement, so I
2 -- I suspect whoever prepared it just didn't catch
3 that.

4 HEARING OFFICER SHEAN: Okay. I'm
5 sorry. So that means in the supplement you
6 submitted, but not in the Staff's section.

7 MR. HAMMONDS: That is correct.

8 HEARING OFFICER SHEAN: Okay. Then I'm
9 going to revise my suggestion. Why don't you make
10 sure you bring the package that you had, and then
11 at that point I'll probably ask them if that's
12 part of the submitted materials, that someone will
13 by declaration state that they prepared. In the
14 absence of an objection from any other party, then
15 we'll be able to use that to give you the
16 statement with regard to QF eligibility in the
17 decision.

18 MR. CASWELL: You know, hopefully, when
19 I submit the amended Staff sections, that will
20 have been addressed, as well. So you have backup
21 --

22 HEARING OFFICER SHEAN: Well, we'll just
23 back it up --

24 MR. CASWELL: -- right.

25 HEARING OFFICER SHEAN: -- so if it

1 isn't, we've got it.

2 Okay. But other than that, I'll show it
3 as uncontested area, in Efficiency and also in
4 Geology. Everybody agree to that?

5 All right. Facility Design. And I
6 guess the only thing I can say with respect to
7 that is I got something that came across my desk,
8 which was a revision to GEN-10, which I guess
9 appears in the Facility Design, but it's
10 fundamentally a condition which I understand now
11 reflects the current state of things, which is
12 that we are monitoring construction and operation
13 to assure that the facilities that are reviewed
14 under the governor's emergency authorities and
15 statutes that have been adopted since then, are --
16 are online. And does the Applicant have some
17 revised -- revised condition that -- on GEN-10,
18 has the Staff reacted to that? Do you know what
19 you're going to do with that?

20 MR. KRAMER: We are -- we're evaluating
21 that in-house, and we'll have a response by the
22 hearing. But we don't have a final answer today.

23 HEARING OFFICER SHEAN: Okay. Well,
24 we'll just get that on Monday, and figure out
25 where we go from there. But why don't you, if you

1 -- this is not an evidentiary matter, since it's
2 not a question of fact. But if you -- if it is
3 not resolved to your satisfaction, with the Staff
4 by Monday, why don't you just present it as based
5 upon the Commission's authority to impose
6 conditions to follow either CEQA or some other law
7 that you're asking, requesting that this be the
8 way that condition is formulated. Okay?

9 MS. NARDI: That would be fine.

10 HEARING OFFICER SHEAN: Okay. Anything
11 else on Facility Design? Then we'll show that as
12 uncontested, as well.

13 Reliability. Anything on that from any
14 party? All right, we'll show that as uncontested.

15 Worker Safety. Uncontested.

16 Cultural Resources. I guess there's a
17 minor revision of that?

18 MR. CASWELL: Yes, there were. That was
19 submitted by the city, and -- let's see. I
20 believe it was more of a minor housekeeping issue,
21 nothing major, on -- and Staff has provided me
22 with the suggested changes. I just haven't had a
23 chance to review them and -- and make comment or
24 edits, if necessary.

25 HEARING OFFICER SHEAN: Okay. It's

1 generally the addition or clarification of a city
2 LORS.

3 Okay. We'll show Cultural as
4 uncontested.

5 MR. HAMMONDS: They have --

6 HEARING OFFICER SHEAN: Yes.

7 MR. HAMMONDS: -- my sections confused
8 here, but we did make comments regarding
9 Paleontology at the workshop, and I don't know if
10 that has been fully docketed yet. I'm not sure it
11 went in this section or another.

12 HEARING OFFICER SHEAN: Okay. Why don't
13 -- we can go back to that. I -- I guess I'm
14 generally -- or we have, by practice, included
15 Paleontology as a Geology subject, whereas
16 Cultural Resources would be historical,
17 archeological, and -- I don't know, ethnographic
18 -- if I can choke that word out. All right.
19 Let's go back to your Paleontology.

20 MR. HAMMONDS: Okay. We made some
21 comments on the paleontological monitoring to make
22 it consistent with the Cultural Resources
23 monitoring. And I assume Staff is going to
24 consider that in your addendum by the end of this
25 week.

1 HEARING OFFICER SHEAN: Well, let me
2 just also ask you to highlight that to the
3 Committee, because a lot of these uncontested --
4 anticipated uncontested areas, we've already begun
5 to do some drafting, since they're pretty
6 straightforward. But if you've got something that
7 you think does a good match-up, in terms of timing
8 or documentation or something, that -- let us
9 know.

10 MS. NARDI: I think this one we want to
11 just keep open so that we can get a response from
12 the Staff on whether they accepted the change in
13 conditions to make the level of monitoring the
14 same for both the cultural and the
15 paleontological. That was the comment.

16 HEARING OFFICER SHEAN: Okay. And I
17 think it needs to be said, though, that the -- the
18 Staff's proposed conditions are only that. The
19 Committee has the ultimate -- and the Commission
20 have the ultimate authority to impose conditions
21 based upon the evidence, and has complete
22 discretion to write them as they choose, subject
23 to, obviously, to being arbitrary and capricious.
24 But we don't necessarily have to go back to the
25 Staff to get it the way the Staff wants it.

1 So if -- if you're not happy with it,
2 and you think there's a better thing -- because
3 frankly, let me tell you. The -- these need some
4 work. They have been basically confected so that
5 you are putting your power plant in to an area
6 that just had discovered the Miwok village
7 remnants there, as opposed to the middle of a
8 power plant or refinery site. So we think that
9 the Committee, at least, can sort of tell the
10 difference.

11 Okay. Waste Management. Anything
12 there? We'll show that as uncontested, as well.

13 Hazardous Materials Management. Doesn't
14 sound like that's a hot topic, either. We'll show
15 that as uncontested.

16 Let's return to this Air Quality stuff.
17 Now, do I -- is there -- I guess there are a
18 couple things. Yes.

19 MR. WOLFE: Before you go there --

20 HEARING OFFICER SHEAN: Yes, sir.

21 MR. WOLFE: -- just had a question.
22 What did -- what findings does the Committee and
23 the Commission need to make here, exactly? I --
24 I'm unclear, from the front matter, the front
25 matter of the Staff Assessment, that describes

1 Staff's, at least its take as to whether the
2 project satisfies the four month certification
3 conditions under Public Resources Code 25552. I
4 -- is the real question on the table does this
5 project meet those conditions. If so, it gets the
6 four month certificate; if not, it proceeds to the
7 12 month process? Or is it essentially the same
8 findings that are made in the 12 month process?

9 I'm a little unclear as to -- as to what
10 findings need to be made by the Commission in
11 order for the project to get certified.

12 HEARING OFFICER SHEAN: Let me give the
13 lawyers that get paid to answer this question --
14 give them a shot at it. Mr. Kramer, do you have
15 anything on that?

16 MR. KRAMER: Well, with the approach
17 we've -- we're taking, we took in the Staff
18 analysis, was that we have the normal 12 month
19 findings, and then we added some findings just to
20 address the -- the requisites -- are you hearing
21 me okay?

22 HEARING OFFICER SHEAN: Yes.

23 MR. KRAMER: Okay. We added findings to
24 address the prerequisite in 25552. We did
25 recognize that one of the prerequisites that it

1 not be a modification of a major sort, would not
2 be met, and therefore we've recommended in the --
3 a finding that -- well, a waiver of that
4 requirement, which is authorized by the governor's
5 executive order.

6 Still up in the air is whether the
7 facility is using BACT or not for PM10 and SO2.
8 The initial conclusion that was in the Air Quality
9 section was that they were not, so we also wrote
10 waiver language for those requirements.

11 When we get the final answer from the
12 Air Quality section, then we'll have to address
13 that again. But we -- there are, I believe it's
14 seven special findings to address the requirements
15 of the four month process -- those were in the
16 executive summary.

17 MR. WOLFE: So does that mean -- this is
18 Mark Wolfe -- that if the -- the Committee is
19 going to determine whether those findings can be
20 made. And if not, will it then proceed to try and
21 make a finding whether a waiver is or is not
22 appropriate?

23 MR. KRAMER: I -- I guess you're talking
24 about a two step process, and I think I -- in our
25 proposed findings, we collapsed it into one step.

1 And, you know, where the Committee's just
2 recognizing in the finding that -- that a couple
3 -- one or two or three prerequisites were not
4 made, or not met. And then it -- basically its
5 rationale for going ahead anyway.

6 Does that answer your question?

7 MR. WOLFE: Yeah. I unfortunately don't
8 have the full text of the executive order here,
9 but my understanding is that the Commission is
10 authorized to suspend these requirements under
11 25552 if it finds that requiring compliance with
12 them would prevent, hinder, or delay the prompt
13 mitigation of the effects of the energy emergency.
14 So that says to me that the Commission, in order
15 to waive the requirements, need to at least make a
16 perfunctory finding that this is required to
17 mitigate the effects of the emergency.

18 MR. KRAMER: Well, and I -- and I
19 believe I wrote language to that effect in the --
20 the first -- I think the first special finding.

21 MR. WOLFE: Right. I see that. I -- I
22 guess this is a long way of asking whether or not
23 this is a topic that the parties can submit
24 testimony on.

25 MR. KRAMER: Well, I would think so, if

1 you disagree with that conclusion.

2 MR. WOLFE: So maybe we need to add one
3 potential topic, which is --

4 HEARING OFFICER SHEAN: Maybe we do.

5 MR. WOLFE: -- crisis status.

6 HEARING OFFICER SHEAN: There aren't
7 enough quotation marks to put around that.

8 MR. WOLFE: Right. Okay, thank you.

9 MR. KRAMER: And, Mr. Shean, I don't
10 know if you mentioned compliance, but I presume
11 that's uncontested, as well.

12 HEARING OFFICER SHEAN: Yes.

13 Well, let's sort of dovetail, I guess,
14 these special findings into -- we'll just give
15 them a topic of their own.

16 This is really a matter of -- well, I
17 guess it could potentially be an evidentiary
18 matter, a question of fact. But these -- are
19 these -- well, I'd have to review this more
20 closely to see whether or not these facts are all
21 reflected in other parts of the record or there's
22 a separate fact that would need to be established
23 in order to -- excuse me, in order to make these
24 special findings, assuming that they need to be
25 made in -- by the Commission.

1 Let me just take a second here.

2 (Pause.)

3 HEARING OFFICER SHEAN: Okay. Because,
4 for example, if special finding number 3 is
5 required about contracting with a general
6 contractor, and has contracted for an adequate
7 supply of skilled labor to construct, do we have
8 any specific evidence on that? Probably we have
9 --

10 MS. NARDI: Yes. The Applicant provided
11 information on that point in the AFC and
12 supplement.

13 HEARING OFFICER SHEAN: In the AFC.
14 Okay. All right, I guess the -- the Staff has
15 referred to page 2-4 and -- and 7-3. Okay.

16 MR. KRAMER: Now I have a question. As
17 far as the evidence of the emergency goes, would
18 the Committee take judicial administrative,
19 whatever, notice of the governor's executive
20 orders, or should we supply copies of those?

21 HEARING OFFICER SHEAN: I think just a
22 list.

23 MR. KRAMER: Okay. I'll -- I'll provide
24 that. There is certainly the declaration of
25 emergency, which I think is probably key in that

1 respect.

2 MR. WOLFE: Certainly. I -- just to
3 clarify. There would be one question whether or
4 not there's an emergency, and I think the
5 governor's declaration is going to get us a great
6 distance in that direction. But there's also the
7 question whether requiring compliance with these
8 special conditions prescribed by the statute would
9 or would not prevent or hinder or delay the proper
10 mitigation of that emergency.

11 MR. KRAMER: Okay. That would be your
12 argument --

13 MR. WOLFE: Right.

14 MR. KRAMER: -- about timing?

15 MR. WOLFE: Right. That would be --
16 that would be a separate question to address.

17 MR. HAMMONDS: Which -- which finding is
18 that? I'm sorry.

19 MR. KRAMER: I believe it's the first
20 special finding.

21 MR. WOLFE: Yes. It's at the very
22 bottom of page 1-4 of the executive summary.

23 HEARING OFFICER SHEAN: All right. Why
24 -- maybe you can just tell me what -- what you
25 want to pitch as a position, and we'll find a

1 place to fit it. Is it that there is no energy
2 crisis, and that either the proceedings can take
3 longer or the -- or that this is not eligible for
4 the -- for this four month process, and where --
5 where are we going to go with --

6 MR. WOLFE: Right. Staff, at least
7 preliminarily, has concluded that technically the
8 project does not satisfy the criteria for a four
9 month license, under the statute. However,
10 because of the executive order, it may be
11 appropriate to waive certain of those requirements
12 to the extent they, quote, would prevent, hinder,
13 or delay the prompt mitigation of the emergency.
14 So it seems to me there's a question whether we
15 need to waive these requirements in order to --
16 all of them, or some of them, in order to mitigate
17 the effects of the emergency.

18 If requiring adherence to one or more of
19 the requirements would allow the project to come
20 online at the same time, but would require the
21 Applicant to spend a little more money, perhaps
22 then I don't know if it's appropriate to waive
23 that condition. I mean, I --

24 HEARING OFFICER SHEAN: And where would
25 they be spending that more money?

1 MR. WOLFE: In BACT, to -- to impose
2 more stringent air pollution controls, for
3 example. You know, it's -- it's whatever
4 requirements are triggered by the project status
5 as a major modification, which are now going to be
6 waived. I mean, I would have to go to my
7 consultant to find out what -- what some of the
8 -- the substantive applications would be. But, I
9 mean, I -- I'm sorry if I'm not being clear, but I
10 hope you see where I'm going. It's --

11 HEARING OFFICER SHEAN: Sure. No, I --
12 I know, and we're in a new area, and I guess I
13 would just throw out the idea that -- that these
14 -- the criteria for the review process are these
15 special findings, and that, you know, you go
16 through the process, you find out where you are,
17 and perhaps you come up with something that says,
18 you know, you -- you got basically six and a half
19 out of seven. Okay. But either you are really a
20 major source or BACT hasn't yet been defined for
21 refinery fuel gas.

22 So, you know, we don't know if we can
23 make these findings. But -- but what we do know
24 is we've done all the review under CEQA. We have
25 found that, after we've taken care of the steam

1 blows, that there are no significant adverse
2 environmental or community impacts, and that if we
3 were in this position at day 359 in a 12 month
4 proceeding, we'd -- we'd act to certify.

5 So here we are, at day 159, or whatever
6 it might be, of what had started as a four month
7 proceeding, and we -- we've addressed all this
8 stuff. Shouldn't we just certify anyway? Is that
9 -- I mean, I don't know. I'm just tossing out --

10 MR. WOLFE: That's the question. That's
11 the question. Maybe -- maybe a solution would be
12 to specify that this question could be addressed
13 in the post-hearing briefs.

14 HEARING OFFICER SHEAN: Okay. And I
15 guess what I -- to the extent that a -- a failure
16 or a shortcoming for compliance would be that
17 there is an actual issue in the proceeding that
18 hasn't been addressed to -- to the point where
19 we're complying either with BACT, or we are
20 leaving a significant impact out there not fully
21 mitigated, I guess from my perspective I'd rather
22 address the -- the issue inside the case, because
23 if it's potentially capable of either being
24 mitigated or met, let's just do that.

25 So, let me -- let me go back here to

1 this Air Quality, because that seems to be the --
2 the kernel of the issue, at least from CURE's
3 perspective. And is that a fair statement?

4 MR. WOLFE: Yeah, that's correct.

5 HEARING OFFICER SHEAN: Okay. And --
6 because I guess having read this draft Preliminary
7 Determination of Compliance, is -- is the issue
8 that we're going to focus on, or potentially, is
9 the question of the BACT for NOx with refinery
10 fuel gas, and what that level should be, either
11 initially in the Determination of Compliance, or
12 what it may ultimately become?

13 MR. WOLFE: That's certainly one of
14 them. It was reported at the workshop that the
15 air district was going to come out with a PDOC
16 that altered the limit that you're looking at, and
17 modifying it downward to 2.5. If that's the case,
18 then, you know, there's certainly a decent chance
19 that that issue would no longer be of concern of
20 us.

21 But that's only BACT for one pollutant,
22 NOx. We saw, and as we brought up at the
23 workshop, there's SOx offset issues, there's PM10
24 issues, there's failure of cumulative --

25 HEARING OFFICER SHEAN: Okay. I can't

1 write that fast. The -- the SOx is an offset
2 issue?

3 MR. WOLFE: Right. The legitimacy of
4 the offset package for SO2 is an issue. The
5 validity of the analysis for netting out of PSD is
6 an issue. Construction emissions mitigation
7 adequacy is an issue. I unfortunately don't have
8 my trusty consultant, Dr. Fox, with me to recite
9 the litany. But it -- it extends beyond BACT,
10 suffice to say.

11 HEARING OFFICER SHEAN: So, let me -- if
12 we get to the point where the district -- well,
13 first of all, I do understand that there is an
14 issue on BACT for NOx, with the secondary fuel.
15 And I guess my further understanding of that is,
16 is that the least that is represented here on the
17 -- in the Preliminary or draft PDOC, is they came
18 out with 4.4, based upon the manufacturer's data
19 on -- on this, but that they are considering going
20 down to 2.5, which would be bad for natural gas,
21 which -- which is a fuel that has different
22 characteristics than -- and I think which are
23 acknowledged in the analysis.

24 Now, some have suggested that -- that
25 2.5 is just not achievable. It's -- it's a nice

1 thing to dream about, but not realistic as the
2 ultimate BACT for refinery fuel gas.

3 Now, I -- to some degree, I have a
4 problem with the Commission trying to basically
5 tell everybody okay, 2.5 is what it's going to be,
6 folks, even if we fundamentally know that's not
7 realistic. I don't think that's -- that's not our
8 job, it's not doing it appropriately.

9 What the ultimate number is, I don't
10 know. Whether 4.4, as GE represents is what BACT
11 is going to be, or it'll come out 3-5, or 3-7, or
12 something like that. Probably only experience
13 with this particular unit operating as best as it
14 can, tweaked to whatever extent it can be, is --
15 is going to define BACT, at least for the
16 district.

17 MR. WOLFE; Well, see, I think you're
18 raising a LORS issue, which is very interesting,
19 and one that we discussed on Friday, which is the
20 Clean Air Act requires a BACT analysis, which
21 actually requires the district to go through the
22 steps to determine whether 2.5 is or is not
23 feasible. The document you're looking at says we
24 think it's 4.4, because the manufacturer told us
25 that.

1 Now, we would present evidence, if this
2 remained the same, that that does not satisfy
3 federal Clean Air Act requirements for a BACT
4 analysis. Now, the way we left it Friday, we're
5 hoping that the air district, when it comes out
6 with something tomorrow, actually does some
7 analysis to demonstrate whether or not 2.5 is
8 feasible, and then, again, without seeing that, we
9 don't know whether that's going to be an issue.

10 But I think what you're describing is a
11 LORS issue. I mean, certainly, no one, district
12 or Commission, can simply just impose 2.5 and call
13 it BACT, without doing an analysis of whether it
14 actually is BACT.

15 HEARING OFFICER SHEAN: And how about
16 the SOx. Can you talk to me a little bit about
17 that?

18 MR. WOLFE: What were talking about the
19 other day, Condition AQ-2, which is on page 4.1-
20 26, appears cut and paste from the document you're
21 looking at, the draft -- draft PDOC.

22 HEARING OFFICER SHEAN: Yes. Right.

23 MR. WOLFE: There's a question of what
24 those sources are, and the contaminant group all
25 we see are some coded numbers. We don't know what

1 those are. Under district rules, not to mention
2 federal Clean Air Act rules, all of these offsets
3 have to be real, quantifiable, permanent, and
4 enforceable. And we see no indication that they
5 are. They might be, but we see no indication that
6 the are.

7 And the big issue we flagged, because it
8 looks like about a third of the SOx offsets are
9 proposed to come from the MTBE ships, basically
10 the -- the ships that are transporting the MTBE
11 that -- now MTBE is being phased out. So
12 presumably the rationale here is there's going to
13 be fewer ships pulling into this dock as a result
14 of the phase-out project than there were before,
15 and we're going to get 9.5 tons per year of SOx
16 offsets, as a result.

17 But, you know, we obviously need to know
18 how are you going to enforce it, how many ships,
19 what type of engines do the ships run on, what are
20 their SOx emissions exactly. And maybe this
21 information is out there, I'm not saying it's not.
22 But it's not referenced or described in this
23 document, or in the PDOC that you're looking at.
24 And in order for it to be valid, we believe, under
25 the Clean Air Act and Bay Area Air Quality

1 Management District rules, it has to present that.

2 I mean, and under CEQA, frankly, I mean,
3 as -- as a mitigation measure, you have to have a
4 thorough vetting of the feasibility of mitigation
5 measures. And we just do not have that here.

6 HEARING OFFICER SHEAN: Okay. So, let
7 me -- other than the MTBE ships, the -- under
8 source, if I understand the way the district works
9 correctly, the -- the S38, S39, 41, blah, blah,
10 blah, those are all essentially permit numbers of
11 the district. And they -- they apply to the --
12 certain pieces of equipment, right, and whose
13 certificates are going to be pulled --

14 MR. WOLFE: Where does it say that?

15 HEARING OFFICER SHEAN: Well --

16 MR. WOLFE: We see that they're going to
17 surrender their certificates for the --

18 HEARING OFFICER SHEAN: -- is that -- is
19 that what you're talking, that somewhere it just
20 needs to say that's what's going to happen? I'm
21 trying to --

22 MR. WOLFE: That would help. That would
23 --

24 HEARING OFFICER SHEAN: -- ascertain
25 what it is you want with respect to these that

1 will, in -- at least in your mind, validate the --
2 the offset and make it enforceable.

3 MR. WOLFE: If they were to surrender
4 permits that allowed them to emit 31.973 tons per
5 year of SO₂, or SO_x, at the refinery site, I think
6 we would be happy. But that's -- that's not what
7 I'm seeing is proposed here.

8 The -- we were -- we were talking, on
9 Friday, about the -- what the definition of
10 curtail means. And we said well, there's the
11 dictionary definition, but what's the regulatory
12 significance of curtailing. Typically, you get
13 offsets by surrendering either permits, or you
14 acquire certificates. And it's ambiguous here
15 whether either or both of those are occurring, and
16 in what -- to what extent. And as a result, I
17 think that there's a serious enforceability
18 problem.

19 I mean, there needs to be some form of
20 documentation that these reductions are federally
21 enforceable. And I just, again, we don't see it.

22 HEARING OFFICER SHEAN: Okay.

23 MR. WOLFE: And -- and again, Garret, it
24 may show up tomorrow.

25 HEARING OFFICER SHEAN: Okay. Well,

1 because my -- my -- for some reason, I had a -- I
2 mean, first of all, I found this very difficult to
3 go through, but it's -- was another condition that
4 dealt with the confirmation that the offsets
5 described in both 2, and I think 48, at least per
6 the Staff, were going to happen -- and I'm not
7 going to be able to find it while I'm just
8 thumbing through this here right now.

9 Okay. And can I just ask you to give me
10 a little lowdown here on PM10 on this PSD, so I
11 have a complete idea of what it is you want to
12 address.

13 MR. WOLFE: I may have to respectfully
14 beg leave from giving you a detailed response to
15 that. I -- I'm not equipped with the --

16 HEARING OFFICER SHEAN: Okay.

17 MR. WOLFE: -- technical background. I
18 would need to -- to talk to my consultant.

19 HEARING OFFICER SHEAN: But the PSD
20 apparently would be that they're not eligible for
21 no PSD analysis. Is that --

22 MR. WOLFE: Yeah. Again, that's -- I'm
23 flagging that. I would have to -- to sit down
24 with -- with Dr. Fox to go over the numbers. And
25 again, this could be something that is -- is

1 addressed in the real PDOC that comes out
2 tomorrow.

3 I apologize for not having that. I'm --
4 HEARING OFFICER SHEAN: No, that's okay.
5 I'm, you know, we want to address the issues that
6 people have, and I guess the problem, I mean, the
7 district has put us in a bit of a spot here, in
8 terms of our timing. And it's -- or we've put
9 ourselves in a spot. I'm not trying to be
10 pointing the finger anywhere. It is what it is.
11 And is Dr. Fox going to be with us on Monday?

12 MR. WOLFE: Yes.

13 HEARING OFFICER SHEAN: Okay. So --

14 MR. WOLFE: Unless the air section gets
15 bumped to a later date. I don't think she would
16 appear.

17 HEARING OFFICER SHEAN: Well, for right
18 now it's not going to be, but -- because I think
19 this is what -- given, as you described, the
20 potential -- and the Staff has described it, the
21 potentiality that some of the revisions to the
22 district's and the actual, now, on the -- on the
23 street, hopefully, by tomorrow, Determination of
24 Compliance, will address the matters that you're
25 concerned with, both the analysis on -- on NOx

1 BACT, and the SOx offsets. And since I don't know
2 what they are with respect to PM10 and PSD, we'll
3 -- we'll find out, you know.

4 Perhaps we can just let this thing ride
5 into Monday, and ask that Dr. Fox be there. If
6 after she's looked at it she has some questions or
7 something that's capable of being addressed
8 sufficiently on Monday, I think we ought to
9 attempt to do that.

10 We don't -- the Committee, at least, has
11 no good reason to just extend the process until we
12 know that there is a good reason to extend the
13 process. And that may arise on Monday, and it may
14 not. We'll just see. So I think that's -- that's
15 what we would propose to do.

16 Are we going to have a district
17 representative available on Monday?

18 MR. CASWELL: I will request one, and
19 have done so previously, but I got -- I really
20 didn't get a clear response from the air district
21 one way or the other.

22 HEARING OFFICER SHEAN: Well, I would
23 just urge you to -- and I know you will -- take
24 this up to our great leaders and ask them to make
25 a phone call to assure that somebody is there.

1 Okay. Any comments on this from the
2 Applicant?

3 MS. NARDI: Well, just -- just several.
4 With respect to the various Air Quality issues, it
5 was very helpful that we outline what the specific
6 concerns are, to the extent that CURE has them.
7 And we'll be prepared to discuss those on Monday,
8 and I think we'll all be better prepared to
9 discuss them after we have the air district's PDOC
10 in hand.

11 As far as the special findings, I agree
12 with Mr. Kramer, the attorney for the Energy
13 Commission, that the Commission -- that the
14 special findings that the Commission made are
15 appropriate in this case. And they hinge mainly
16 on whether there is an energy crisis in
17 California. He's going to bring the governor's
18 executive orders on that point.

19 If there are any specific facts that
20 CURE wants to contest, I would -- I would ask that
21 they be presented Monday at the Evidentiary
22 Hearing, so we don't go through the Evidentiary
23 Hearing and then have an oh, I forgot, we meant to
24 challenge some fact. I think it would be useful
25 for all parties involved that to the extent that

1 there are questions of fact or evidence that you
2 think make the special findings improper, that we
3 have an opportunity to discuss those on Monday.

4 MR. WOLFE: No, we -- that's -- that's
5 fine. That was -- my question was going to under
6 which quote, unquote, topic that would occur
7 under, and I guess there may -- I'm still not
8 really sure whether we're going to have --

9 HEARING OFFICER SHEAN: We have a new
10 topic.

11 MR. WOLFE: We do have a new topic.

12 HEARING OFFICER SHEAN: We have a new
13 topic --

14 MR. WOLFE: Okay.

15 HEARING OFFICER SHEAN: -- and it's
16 called Special Findings.

17 MR. WOLFE: Special Findings. Okay.
18 Yes.

19 HEARING OFFICER SHEAN: And do you know
20 now, at this point, which, from among -- let's for
21 the moment be guided by Staff's executive summary
22 and the seven that are listed there, which one or
23 ones in particular you want to address to the
24 Committee.

25 MR. WOLFE: Well, again, overlaying, or

1 underlying, whichever, is the question whether
2 waiving the findings, assuming that the Committee
3 agrees with the Staff that the project does not
4 satisfy the statutory requirement is necessary to
5 -- to mitigate the effects of the emergency. So
6 that -- that's something that permeates all of the
7 Special Findings.

8 In terms of specific findings and
9 whether or not they're complied with --

10 HEARING OFFICER SHEAN: So the -- the
11 issue here is whether or not a waiver is necessary
12 to address the energy crisis.

13 MR. WOLFE: Right. Right. If -- if --
14 let's just say hypothetically that there was no
15 Executive Order D2601, and the Staff said oh,
16 sorry, you don't qualify for the four month but
17 you do qualify for the 12 month, which, by the
18 way, we can expedite and maybe give you a license
19 in six months or eight months. If this project
20 came online after an eight month or a six month
21 AFC, would there be a significant delay in
22 mitigation -- mitigating California's energy
23 crisis.

24 And I think that's a question that this
25 Committee should ask itself, assuming that some --

1 one or more special findings cannot be made. Do
2 you see what I'm saying?

3 HEARING OFFICER SHEAN: Uh-huh.

4 MR. WOLFE: Okay.

5 MR. KRAMER: I would point out that the
6 only special finding that involves any sort of
7 suspension of the requirements of that section is
8 Number 1.

9 MR. WOLFE: Right, which is a big one.

10 HEARING OFFICER SHEAN: Okay. So Number
11 1 is the one we're going to be talking about on
12 Monday. Is that essentially it? So that --

13 MR. HAMMONDS: I would comment that if
14 there is talk of moving this into an eight or a
15 twelve month process, that would be quite
16 disturbing to the Applicant.

17 I'd also comment that there were
18 suggestions or week for week delays on the front
19 might mean week for week delays on startup, and
20 that's not true, either, because work needs to be
21 done before the rains get here. So a short delay
22 on the front could very well lead to a rather long
23 delay on the back.

24 MR. WOLFE: I can appreciate that,
25 though, you know, an Applicant who arranges a

1 construction schedule before obtaining a permit
2 does so at -- at its own risk, I would say.

3 I would add Special Finding 6, which is
4 -- no, I'm sorry, it's Special Finding 2.

5 MS. NARDI: May I ask what page that --

6 MR. WOLFE: Oh, on page 1-5 of the
7 executive summary. Special Finding 2 is just the
8 catch-all, it seems, no significant unmitigated
9 impacts on the environment for the electrical
10 system. Special Finding 4, which requires
11 compliance with all applicable LORS.

12 And I thought there was a separate one
13 about offsets, but I guess I was -- oh, no,
14 Special Finding 7, offsets.

15 HEARING OFFICER SHEAN: Okay. What
16 we'll anticipate, then, is that you -- you will be
17 able to tell us when we get to that point on
18 Monday either that what you -- that you want to
19 make a factual presentation, or that you want to
20 argue that facts that are required for the finding
21 either aren't in the record to support the
22 finding, or an argument -- or you want an argument
23 that irrespective of -- of a factual matter, that
24 based upon what facts there are in the record,
25 they are not either in compliance with the

1 findings or entitled to the waiver. Right?

2 MR. WOLFE: Correct.

3 HEARING OFFICER SHEAN: Okay.

4 MR. WOLFE: That's correct. Thanks.

5 HEARING OFFICER SHEAN: I think we got
6 it. Okay.

7 MS. DEAN: Mr. Shean.

8 HEARING OFFICER SHEAN: Yes.

9 MS. DEAN: We would like to present a
10 witness on that matter.

11 HEARING OFFICER SHEAN: Okay.

12 MR. KRAMER: And from the Staff, we'll
13 -- we may have a witness to --

14 HEARING OFFICER SHEAN: Sure. Okay.

15 All right. Now, before I sort of go
16 through and recap this, is there anything anybody
17 wants to address or something they want to --

18 MR. WOLFE: Just the briefing schedule.
19 We can -- if you want to talk about it after the
20 hearing itself, that's fine, too. I was just
21 flagging it again.

22 HEARING OFFICER SHEAN: Well, is there a
23 reason to do that, as opposed to doing it at the
24 hearing and having everybody speak their piece,
25 and then the Committee will come out with whatever

1 would come out of that, and then we -- and then
2 we'll give you a shot at that?

3 MR. WOLFE: It seems to me even in the
4 Huntington Beach case, which was expedited to a
5 much greater extent than this one, there was an
6 opportunity for the parties to submit comments
7 after the close of the evidentiary record, simply
8 to -- to argue whether the facts --

9 HEARING OFFICER SHEAN: Sure. Okay, I
10 -- and I have no -- no problem with that. I was
11 just tossing out a potential alternative.

12 Why don't we figure that -- how much
13 time do you think you want on --

14 MR. WOLFE: What's --

15 HEARING OFFICER SHEAN: -- are we on the
16 order of --

17 MR. WOLFE: The PMPD is supposed to come
18 out --

19 HEARING OFFICER SHEAN: -- oh, I don't
20 know --

21 MR. WOLFE: -- how long after the
22 hearing?

23 HEARING OFFICER SHEAN: Pardon me?

24 MR. WOLFE: How long after the hearing
25 is the PMPD supposed to come out?

1 MR. CASWELL: I think the current
2 schedule calls for it around September 4th, if I'm
3 not mistaken.

4 MS. NARDI: That's the hearing --

5 MR. CASWELL: Is that the hearing on the
6 PMPD.

7 MR. KRAMER: It was actually on August
8 27, according to what I'm looking at.

9 MR. CASWELL: The 27th, excuse me.

10 MR. WOLFE: The 27th. How about the
11 Thursday, a week from Thursday, so that would be
12 the 21st, 22nd, 23rd --

13 HEARING OFFICER SHEAN: The 27th is --

14 MS. GILLARDE: It's a Monday.

15 HEARING OFFICER SHEAN: Okay. Let me
16 just say I -- I -- first of all, depending upon
17 how contested this gets, all bets are off on the
18 27th, okay? The Committee will just come out with
19 a decision as quickly as we can.

20 Let me just indicate I know that Mr.
21 Caswell will talk to you on Friday about potential
22 schedules beyond that. The Commission has three
23 Business Meetings scheduled, that I'm aware of,
24 that are scheduled in September, one on the 5th, a
25 special one on the 9th, for hearing the Metcalf

1 proceeding, and another one on the 19th.

2 I'm a little leery -- even assuming that
3 there were no contest, that we're going to come
4 out with a PDOC on the 15th and it was subject to,
5 at least by district rules, unless somehow waived,
6 modified, or something, a 30 day public comment
7 period. Now, is it your -- do you have an
8 understanding that it is or can be shorter than
9 that?

10 MS. NARDI: Yes. We understand that the
11 air district may shorten that time to 14 days.

12 HEARING OFFICER SHEAN: Okay. And on --
13 and on what basis would they do that? I guess
14 that's the --

15 MR. CASWELL: That was information
16 provided to me when I got an update on when they
17 planned on providing us with a PDOC, because they
18 had missed two previously scheduled dates. I
19 asked how that affected their notification period
20 and if there was a possibility of shortening their
21 comment period on that PDOC, and when I got a call
22 back from Steve Hill, the supervisor over that
23 section, he indicated that he would provide that
24 PDOC on the 15th and that they would have an
25 intent to have a comment period shortened to 14

1 days, and with the possibility of extending it ten
2 additional days, but was not clear on exactly the
3 criteria for the extension.

4 I will have more conversations with --

5 HEARING OFFICER SHEAN: Okay. Now, do
6 we -- this is just sort of them saying well, we
7 could do this. Do we have a -- an indication on
8 what the basis for which they say they're going to
9 do this? Is this -- does this sort of bootstrap
10 itself onto the executive orders of the governor?
11 Is that --

12 MR. CASWELL: I have no more evidence
13 about them actually doing that 14 day notification
14 period than I do that they'll get this document to
15 me tomorrow.

16 HEARING OFFICER SHEAN: Now --

17 MR. CASWELL: That's -- that's the third
18 try.

19 HEARING OFFICER SHEAN: Okay. Let me --
20 let me just say this. If I understood correctly,
21 this thing was accepted as data adequate on June
22 16th. So that the four months would be October
23 6th, or thereabouts.

24 Now, we're ahead of schedule. And it's
25 nice to be there. I -- if the PDOC either doesn't

1 come out at that point, or it comes out tomorrow,
2 and they want to have a 14 day comment period, but
3 CURE wants to make comments to them saying sorry,
4 you missed on BACT, you missed on SOx offsets, you
5 missed on this, that, and the other, and, by the
6 way, your regs say 30 days, you just cooked up 14,
7 anything you attempt to -- if you attempt to close
8 the books on your DOC in 14, you've got a legal
9 problem. Okay. Hypothetically, that might
10 happen.

11 The Committee, at least, is probably,
12 out of an abundance of caution, going to not want
13 to take a final vote in less than 30 days from the
14 date of the issuance of the PDOC, simply because
15 that gives us coverage for an assurance that we
16 have not acted before the close of the comment
17 period in which the PDOC might be revised. I
18 think that's good insurance for everybody.

19 So I think we need to anticipate that
20 that's probably the way we're going to handle it,
21 unless there's an extremely compelling reason to
22 do differently. And if you think there is one,
23 why don't you present it to the Committee, and the
24 Commissioner will be there on Monday.

25 But that, at first blush, just seems to

1 make a little bit of sense. Particularly given
2 that no one's seen this PDOC.

3 So, let me just recap this, then, as to
4 what my expectations with regard to what we're
5 going to have witnesses on is to be. And that
6 would be Noise, from the Staff; Water Resources,
7 from the Staff. Air Quality, basically is
8 everybody. Traffic and Transportation, all
9 parties. And Special Findings. Is anybody's
10 expectation different than that?

11 MR. WOLFE: Just that we may, as -- as I
12 said earlier, want somebody up there to address
13 the soil sampling. And I -- I assumed that was
14 under Water Resources, and you -- I only heard you
15 say that Staff would be presenting a witness.
16 That's undecided, from our standpoint, but just
17 wanted to reserve it.

18 HEARING OFFICER SHEAN: Okay. So a
19 Staff person on soil sampling and remediation, and
20 you're talking about excavation of potentially
21 contaminated soils; right?

22 MR. WOLFE: That's correct.

23 HEARING OFFICER SHEAN: Okay.

24 MS. DEAN: Mr. Shean.

25 HEARING OFFICER SHEAN: Yes.

1 MS. DEAN: Although I don't anticipate
2 any real problem, we were not able to review
3 Public Health, so I did want to reserve a -- a
4 spot there.

5 HEARING OFFICER SHEAN: Okay. I beg
6 your pardon. I am showing that open for you. I
7 just had not used this highlighter. Okay.

8 All right.

9 MR. CASWELL: Waste Management may be
10 part of that soils issue, because they did -- and
11 a crossover.

12 HEARING OFFICER SHEAN: Well, I'm more
13 interested in the topic than which section it's
14 in. Yeah, I -- because I think in the -- my
15 recollection, in the format the Committee will be
16 using, soil contamination is a Waste issue, since
17 it's a disposal problem, not a soil erosion and
18 that kind of thing.

19 Is that -- it might be a point upon
20 which professionals can argue, but at least that's
21 where I anticipate putting it. But that doesn't
22 really matter. It's the topic.

23 Okay. Is there anything further that we
24 need to discuss?

25 MS. GILLARDE: I just wanted to say that

1 on Noise, the city may want to comment, depending
2 on the outcome of the Staff Assessment.

3 HEARING OFFICER SHEAN: Yes. Do you
4 think it's more than a comment, that you want to
5 present a witness?

6 MS. GILLARDE: Probably not.

7 HEARING OFFICER SHEAN: Okay.

8 MS. GILLARDE: Okay.

9 HEARING OFFICER SHEAN: Because, let me
10 just indicate, after we've taken all the witnesses
11 we're going to let everybody make whatever
12 comments they want to make, which is a non-
13 evidentiary type of presentation, but you can say
14 -- you get to speak your piece.

15 MR. WOLFE: Written testimony? Do we
16 bring --

17 HEARING OFFICER SHEAN: No.

18 MR. WOLFE: -- it with us, or --

19 HEARING OFFICER SHEAN: No, just show up
20 at the hearing.

21 MR. WOLFE: So there is no written
22 testimony.

23 HEARING OFFICER SHEAN: No written
24 testimony.

25 MR. WOLFE: So that -- that aspect of

1 the order is stricken. Because I think the order
2 says written testimony is due the 20th, or written
3 comments are due the 20th.

4 HEARING OFFICER SHEAN: Okay. Stand by.

5 I think what it says here is that --
6 okay. If you have a document or testimony that
7 you want us to consider and potentially
8 incorporate for the benefit of the Committee in
9 the preparation of the document, we ask you to
10 have it prepared in an electronic submission form,
11 so that as soon as we walk out the door on the
12 20th, assuming that the proceedings is in the
13 position to close the record and move forward, on
14 any given topic that we're -- we have that, so we
15 don't have to basically either scan it or retype
16 it all. So it's for the convenience of the
17 Committee.

18 MR. WOLFE: And any exhibits,
19 presumably, we'd mark as --

20 HEARING OFFICER SHEAN: Same sort of
21 thing.

22 MR. WOLFE: -- the normal way. Okay.

23 MS. DEAN: Mr. Shean.

24 HEARING OFFICER SHEAN: Yes.

25 MS. DEAN: Me again. I'm a little

1 concerned about the electronic submission. I'm
2 wondering if we can -- it's a little cumbersome
3 for us, frankly.

4 HEARING OFFICER SHEAN: Well, if you
5 have a -- this is --

6 MS. DEAN: We're struggling with a
7 couple of bubble jets and a -- you guys are way
8 ahead of us in --

9 HEARING OFFICER SHEAN: Okay.

10 MS. DEAN: -- in terms of technology.

11 PUBLIC ADVISER MENDONCA: Mr. Shean,
12 Roberta Mendonca, the Public Adviser. Perhaps if
13 the documents could be brought in hard copy, we
14 could arrange to scan them, and then get them to
15 you in that way.

16 HEARING OFFICER SHEAN: Okay. So are
17 these going to be typewritten, then, do you think?
18 Is that how you're going to --

19 MS. DEAN: Yes. That's what I'm
20 anticipating.

21 HEARING OFFICER SHEAN: Oh, okay.
22 They're -- they're not going to be generated on a
23 computer.

24 MS. DEAN: Well, you mean -- I mean, I
25 can put them on disk, if that's --

1 HEARING OFFICER SHEAN: That's fine.

2 MS. DEAN: Oh, that's -- okay. I'm
3 sorry. I was confused regarding the protocols on
4 some of the --

5 HEARING OFFICER SHEAN: Yeah. No, all
6 -- all we're asking is that for the convenience of
7 the Committee, if -- if there is something that
8 you would like to -- you know, when we come out
9 with our document and it says Presiding Member's
10 Proposed Decision, and you'd like those words from
11 your witness embodied in this document because
12 they are so good, you help us out by submitting it
13 to us in an electronic format so we don't have to
14 retype them. And that's all that --

15 MS. DEAN: Oh, I understand completely.

16 HEARING OFFICER SHEAN: -- all that has
17 to do with. It's a convenience of the Committee
18 matter.

19 MS. DEAN: Okay. I think we can -- we
20 can do that. We're still grasping with the 21st
21 Century, starting in 2001, versus 2000.

22 HEARING OFFICER SHEAN: Okay.

23 MS. DEAN: Absolutely.

24 HEARING OFFICER SHEAN: Great.

25 MS. NARDI: I have two other logistics

1 questions.

2 HEARING OFFICER SHEAN: Sure.

3 MS. NARDI: The first is we've
4 identified which groups are going to speak and
5 present on which topic. But if we actually have a
6 list of witnesses, if the various parties know who
7 they're going to bring or present as witnesses,
8 that would be very helpful to prepare for the
9 Monday hearing.

10 HEARING OFFICER SHEAN: All right. Do
11 you have other than Dr. Fox?

12 MR. WOLFE: I mean, I can -- Dr. Fox
13 will be there. After we look at the PDOC, you
14 know, believe it or not, Dr. Fox's expertise in
15 air quality isn't quite encyclopedic. So there
16 may be the need to track down another expert at
17 the last minute. I -- I don't know at this point.
18 Certainly, Dr. Fox will be there to testify on --

19 HEARING OFFICER SHEAN: All right. Why
20 don't we do this. Let's ask the parties to, by
21 the close of business on Friday, exchange with
22 each other lists of potential witnesses and the
23 subject on which they'll testify. Now, these are
24 people who are going to get up and be sworn, okay,
25 so Ms. Dean, if some of your people aren't going

1 to be doing that, and they just want to say hey,
2 you know, this is my feeling about this traffic
3 thing, and they're not going to be sworn to
4 testify, you don't need to include them.

5 MS. DEAN: Okay. Thank you.

6 MS. NARDI: The other question I have I
7 had is about the order of presentation. I know
8 that your regulations suggest that that be worked
9 out. And I thought that this order of
10 presentation that we had today was effective,
11 starting with Staff, Intervenors, and finishing up
12 with Applicant, to answer questions.

13 HEARING OFFICER SHEAN: And --

14 MS. NARDI: Issue by issue.

15 HEARING OFFICER SHEAN: --

16 fundamentally, the format that we used in
17 Huntington Beach, and I think it was effective
18 because it's -- it essentially puts, if you will,
19 one side together, and then the Applicant, or it
20 puts the Staff on another side and the Applicant,
21 it's -- it's satisfactory to me, and I think what
22 we'll do is just run this down subject matter by
23 subject matter.

24 I know in some other proceedings they do
25 it all Applicant stuff, all Staff stuff, and then

1 all Intervenors. That's confusing for the record.

2 MR. WOLFE: As long as we're very clear
3 who has the burden of proof.

4 HEARING OFFICER SHEAN: Oh, we're always
5 very clear on who has the burden of proof.

6 MR. WOLFE: Okay. Sometimes, as is
7 normal in -- in legal and quasi-legal proceedings,
8 the party with the burden of proof opens.

9 HEARING OFFICER SHEAN: Yes.

10 MR. WOLFE: And that's the way I've seen
11 it in every proceeding here, I think, so.

12 HEARING OFFICER SHEAN: Right. We have
13 no problem with that, but I think that'll be the
14 -- the general order, so that we can align the
15 apparent similar testimonies in one group, and
16 then go to the -- the either/other group, or other
17 party.

18 MS. NARDI: And then the third question
19 I had is just the logistics on the Staff
20 Assessment. Is that going to be e-mailed, and if
21 there's figures or anything that's not readily
22 transmittable electronically, are there going to
23 be FedExed this Saturday, or how are we going to
24 do that?

25 MR. CASWELL: Well, I'll tell you my

1 intent, and it's to have this document, this
2 amended Staff Assessment section complete early
3 Friday. And I can electronically, I will proof of
4 service it, docket it, proof of service it,
5 electronically send it to everyone, ask that it be
6 posted on the Web page, and have hard copies
7 FedExed to the proof of service list. And then
8 that's about the best I can do.

9 Mainly, I could break it up into two
10 pieces. This is kind of evolving because of this
11 -- we haven't done a lot of these, and I could
12 break it up into pieces and -- and at the close
13 of, say, Wednesday, send you what I have, and then
14 send a second set as they come in. But that makes
15 it a little more difficult, two pieces of
16 documentation mailed out twice. I would like to
17 wait and say by Friday noon, I will send out all
18 the pieces as a complete Staff Assessment
19 document.

20 HEARING OFFICER SHEAN: Well, if you
21 were to do it in -- in pieces, how would that --
22 how would the subject matters divvy up? Is -- the
23 Air Quality would be one of the last ones, is that
24 right?

25 MR. CASWELL: Well, I -- no, I have

1 about five sections I don't have in today, and I'm
2 having trouble getting answers on when I'm going
3 to get those. So I am currently working on
4 answers. I have, I believe, four or five sections
5 in right now. But then there was indications made
6 to me this morning that they needed to edit those
7 amendments that they provided me before I
8 distribute them.

9 I'm meeting with my management, I have
10 this morning, trying to impress upon Staff that I
11 need those sections, and I don't need a version of
12 them, I need the section.

13 So that's why I'm trying to wait until
14 Friday, so that I can do this housekeeping on
15 these documents. It'll be as complete as it
16 possibly can in one, in its entirety, with
17 actually a summary assigned to that document which
18 makes it, if you're looking for a particular
19 section and -- and the audience isn't always as
20 technical as, say, CURE is, or -- or the
21 Applicant, the public, they can look down there,
22 see a summary section, refer to that, and what
23 page it's on, and get to it right away, and
24 compare it to what the original comments were.

25 HEARING OFFICER SHEAN: Do you have the

1 capability of receiving -- either going on the Web
2 to get the document or receiving this?

3 MS. DEAN: I do. The problem really
4 becomes printing all the material out and
5 distributing it to my members. It's a 320 page
6 document, printed out, it's a little --

7 MR. CASWELL: That won't be the case.
8 This will be about, I don't know, a 25 page
9 document, maybe.

10 MS. DEAN: Really?

11 MR. CASWELL: It'll be smaller --
12 remember, these are only -- these --

13 MS. DEAN: Okay. We can --

14 MR. CASWELL: -- this is what a edit
15 would look like --

16 MS. DEAN: Okay.

17 MR. CASWELL: -- say, for --

18 MS. DEAN: Oh, I see.

19 MR. CASWELL: -- a section in Soil and
20 Water. There's some introductory discussion of
21 what this is and how to -- and a summary.

22 MS. DEAN: Yeah, I think it's under 50
23 pages, we're okay.

24 MR. CASWELL: I do have her e-mail
25 address.

1 MS. DEAN: Well, beyond that, I would --
2 I would actually ask that rather than have it
3 FedExed on Saturday, that we have it couriered on
4 Friday.

5 MR. CASWELL: I'll --

6 MS. DEAN: For a three day over the
7 weekend, that's a big chunk of time.

8 MR. CASWELL: Well, it would be -- yeah,
9 I -- you know, I don't know how the --

10 MS. DEAN: Under 50 pages, I don't see
11 there's a problem.

12 MR. CASWELL: -- we have -- I don't know
13 that we -- a courier, I don't know that we have
14 done that --

15 MS. DEAN: They're in the yellow pages.

16 MR. CASWELL: -- before.

17 MS. DEAN: They're in the yellow pages.

18 MR. CASWELL: I'm not familiar with
19 that.

20 MS. DEAN; Yeah. It can be done.

21 MR. WOLFE: FedEx Saturday delivery, as
22 a supplement to electronic delivery, is fine. But
23 I hope there's nothing that is only going to be
24 delivered by FedEx Saturday delivery, and no other
25 --

1 MR. CASWELL: No, I would be sending out
2 the electronic version via e-mail and the Web page
3 for, you know --

4 MR. WOLFE: Okay.

5 HEARING OFFICER SHEAN: Well, I think,
6 given that it's a combination of a business day,
7 but it's the day just prior to the weekend, and
8 since Mr. Richins is here, he can put the feet to
9 the fire of the people who are submitting stuff to
10 you, let's have your electronic service occur
11 prior to -- at 2:00 o'clock on Friday, or prior to
12 that, to give these people a chance to make copies
13 or print copies, or print duplicates of the files,
14 and redistribute them on a business day, and that
15 the Web get its version up by 3:00 o'clock.

16 Okay. I'm not going to be here on
17 Friday to shepherd that through, but I know -- I
18 know if anybody can do it, Jack, you can do it.

19 MR. CASWELL: I'll push.

20 HEARING OFFICER SHEAN: Okay. Is that
21 going to be satisfactory?

22 MS. NARDI: Yes, thank you. Very
23 helpful.

24 HEARING OFFICER SHEAN: Okay. And to
25 you, Ms. Dean, does that --

1 MS. DEAN: Yeah, that's fine.

2 HEARING OFFICER SHEAN: -- sound like
3 it's going to work?

4 MS. DEAN: That's fine.

5 HEARING OFFICER SHEAN: Okay. And I
6 don't believe there's a need for a FedEx on a
7 Saturday delivery. Let's just bring down some
8 additional copies with us on Monday, so that
9 they're there for the members of the public who'd
10 like to take a look at what we've done.

11 MR. CASWELL: All right.

12 HEARING OFFICER SHEAN: Okay. No point
13 in just using up taxpayer money.

14 Okay. Is there anything more we need to
15 address before we call it a day?

16 Ms. Mendonca, do you have any thoughts
17 or ideas of anything we could do to aid the public
18 participation at this particular point?

19 PUBLIC ADVISER MENDONCA: Thank you for
20 asking. At this point, no, I don't. But again,
21 if you need assistance with the electronic
22 documents for the record, if the public brings
23 something in writing, perhaps we can try our
24 scanning and see if that gets that to you.

25 HEARING OFFICER SHEAN: Thanks.

1 Okay. If there is nothing further, then
2 thank you all. We will see you on Monday. It's
3 not bright and early, but it's 10:00 o'clock, at
4 the Benicia Library.

5 Thank you very much.

6 (Thereupon, the Prehearing
7 Conference was concluded
8 at 12:16 p.m.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of August, 2001.

VALORIE PHILLIPS

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