

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for) Docket No. 01-AFC-5
VALERO COGENERATION)
PROJECT)
-----)

DONA BENECIA MEETING ROOM
BENECIA PUBLIC LIBRARY
150 EAST L STREET
BENECIA, CALIFORNIA

MONDAY, AUGUST 20, 2001
10:05 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Arthur Rosenfeld, Presiding Member

Garret Shean, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Jack W. Caswell, Project Manager

Paul A. Kramer, Jr., Staff Counsel

Jim Buntin

Mike Krolak

John Kessler

Eileen Allen

Matt Layton

PUBLIC ADVISER

Roberta Mendonca

REPRESENTING THE APPLICANT

Sam Hammonds, Principal Environmental Engineer
Valero Refining Company - California

Karen J. Nardi, Attorney
McCutchen, Doyle, Brown and Enersen

Lynn McGuire
Fred Reid
Brent Eastep
URS Corporation

INTERVENORS

Brenda A. Gillarde, Principal Planner
Katherine Hammer, Planning Consultant
City of Benecia

INTERVENORS

Mark R. Wolfe, Attorney
J. Phyllis Fox, Consultant
California Unions for Reliable Energy

Dana Dean
Good Neighbor Steering Committee

ALSO PRESENT

Bob Craft

Steve Hill
Bay Area Air Quality Management District

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P R O C E E D I N G S

10:05 a.m.

HEARING OFFICER SHEAN: On the record.

PRESIDING MEMBER ROSENFELD: I have nothing to say except good morning and let's get started.

HEARING OFFICER SHEAN: Okay. Good morning, ladies and gentlemen. My name is Garret Shean; I'm a Commission Hearing Officer on the Valero application for certification.

This morning we're conducting an evidentiary hearing in this proceeding. About a week ago on the 14th we held a prehearing conference at which the principal parties to the proceeding, that is the applicant, Valero, to my left, Commission Staff here to my right, and the City of Benecia at that table, Ms. Dean representing a local homeowners and concerned citizens group, and CURE were in attendance.

We went through a list of environmental topics that you would typically find in an EIR; and determined which of those subject matters were contested among the parties and which were not.

What the purpose of this morning's hearing is, is to establish the record upon which

1 the Commission's decision is to be based. That
2 record is established through a number of means.
3 We're trying to not make it too legalistic and
4 formal, but the processes and procedures that are
5 written into the law in our regulations basically
6 require us to have either declarations or what you
7 might think of as affidavits for the uncontested
8 areas.

9 And in addition to that, for the
10 contested areas we have some experts who will
11 serve as witnesses either for Commission Staff,
12 the applicant or the City.

13 What we propose to do this morning is to
14 go through both the uncontested and contested
15 areas, and then the meeting will open up to you
16 citizens who may have a comment and wish to put it
17 on the record and have it for us so that we can
18 consider it in formulating a proposed decision,
19 which is the Committee's next step in the
20 proceeding following this particular hearing.

21 Which is to take several documents that
22 you will hear us refer to this morning: The
23 application for certification, which was prepared
24 by Valero and its consultants.

25 And in addition to that, during the

1 earlier part of the process the Commission Staff
2 had asked questions of the applicant in writing,
3 and the applicant has provided written data
4 responses.

5 The staff, from that information, both
6 the AFC and the data responses, produced what it
7 calls a staff assessment. And that document has,
8 as a result of workshops here in the community,
9 been revised. So that it reflects comments from
10 other parties, from the applicant and from other
11 citizens.

12 The Committee will take all of that,
13 plus information from other parties such as the
14 City, which prepared a determination of compliance
15 with respect to whether or not the project
16 complied with local laws and ordinances, plus the
17 Air Quality Management District, which also
18 produced a determination of compliance for the
19 project, as to whether it complied with all
20 federal, state and local rules with respect to air
21 quality and public health.

22 Combine all that down into a document
23 that will be called a proposed decision, which
24 will be available to you publicly to read and
25 comment on. Ultimately, the full Commission will

1 take the proposed decision and any modifications
2 we make to it in response to comments from you,
3 and consider the matter.

4 And if they believe that the record
5 supports certification, they will conduct a
6 business meeting in Sacramento and vote on it.
7 And of the five-member Board, a majority of three
8 or more are needed to adopt the decision.

9 So that's pretty much where we are. We
10 are going to reserve time this morning for members
11 of the public to make comments. So, just rest
12 assured your time will come, and you can either
13 make a statement or if something that you've heard
14 prompts a question, we'll try to address that, as
15 well.

16 We had an order of topics which was
17 established for the prehearing conference, and
18 based upon events that have occurred since the
19 prehearing conference, we're only making one
20 modification to the order of topics. And that is
21 we'll take the air quality matter last so that we
22 can run through the uncontested and other areas
23 first. And then we'll get to air quality.

24 We have present Roberta Mendonca over
25 here to our left. She is the Commission's Public

1 Adviser. She's an attorney, appointed by the
2 Governor in that position and she is here to
3 assist you in your participation in the
4 proceedings.

5 So, if you wish to make a public comment
6 you can either use the blue card that she's
7 showing, which if you fill it out she or someone
8 else will bring it up here and we'll make sure
9 that you have an opportunity to speak.

10 Or if in any other manner you need
11 information from her about this proceeding, or how
12 to sign up for a mailing list or an electronic
13 list server, just talk to Ms. Mendonca and she
14 will set you up.

15 So, with that, why don't we have the
16 introduction of the parties, and we'll get this
17 officially underway. And we'll begin with the
18 applicant.

19 I should just indicate these microphones
20 are for the reporter here. The purpose of having
21 the reporter here is to have our record
22 established in a written form.

23 So that if you do wish to speak you need
24 to come forward and identify yourself. We don't
25 have a PA system, but I think the room is small

1 enough that most of the people who are speaking
2 can be heard.

3 MS. NARDI: Good morning, I'm Karen
4 Nardi, the counsel for the applicant, Valero. And
5 I have with me Sam Hammonds who is a Senior
6 Environmental Engineer at the Refinery, and the
7 Project Lead on this.

8 As well, we have two consultants with us
9 who will be available at the appropriate time,
10 Lynn McGuire from URS, who is the Project Lead for
11 the Consultant that prepared the AFC. And Fred
12 Reid who did the traffic study.

13 HEARING OFFICER SHEAN: Okay, let's go
14 to the applicant -- I'm sorry, to the staff.

15 MR. KRAMER: Paul Kramer, Staff Counsel
16 for the Energy Commission. With me I have Jack
17 Caswell, the Project Manager for this project.
18 And in the audience, as needed, we have the staff
19 that prepared several sections of the staff
20 assessment.

21 HEARING OFFICER SHEAN: And the City.

22 MS. GILLARDE: Hi, good morning. I'm
23 Brenda Gillarde, Principal Planner with the City
24 of Benecia.

25 MS. HAMMER: I'm Kitty Hammer; I am a

1 Consultant to the City for this project.

2 HEARING OFFICER SHEAN: Let me also just
3 indicate so you don't have to move, Ms. Dean, we
4 have Ms. Dana Dean who is a representative of --

5 MS. DEAN: Good Neighbor Steering
6 Committee.

7 HEARING OFFICER SHEAN: -- the Good
8 Neighbor Steering Committee, which is a local
9 group of citizens here in Benecia.

10 And we also have Mark Wolfe, who is
11 representing CURE.

12 Okay. Why don't we run through
13 initially the uncontested matters, and let's do
14 that just by taking the declarations that we've
15 received from the applicant and then the staff,
16 just to establish that portion of the record.

17 Now, these are the areas, and I'll just
18 list them out, which as a result of the prehearing
19 conference were not contested by any party.

20 They are biology, visual resources,
21 socioeconomics, land use, transmission system
22 engineering, transmission line safety and
23 nuisance, efficiency, geology, facility design,
24 reliability, worker safety, cultural resources,
25 waste management, hazardous materials management

1 and our compliance section.

2 So, with that, Ms. Nardi, why don't you
3 go ahead and present your declarations, if you
4 will, please.

5 MS. NARDI: Yes, we supplied
6 declarations to the Commission from a variety of
7 the professional consultants who helped prepare
8 the information that was in the AFC, the
9 supplement to the AFC, the responses to the CEC
10 Staff data requests, the responses to the
11 intervenor data requests, and also other
12 information that the applicant has forwarded and
13 docketed with the CEC.

14 And that would include the water reuse
15 agreement that Valero has with the City of
16 Benecia; and the PG&E studies. There was an
17 interconnect study and a facility cost report.

18 We are lacking, Mr Shean, one
19 declaration from David Lawler who provided the
20 information on paleontological resources. And he
21 is apparently outside the reach of voicemail and
22 email, because we've been trying to reach him
23 since last Tuesday. I don't know if he's on a
24 dig, but we will provide that declaration as soon
25 as we're able to obtain it from him.

1 In addition we have, as I mentioned
2 earlier, Fred Reid, who did the traffic portion of
3 the AFC, and he is here in person today, as is Mr.
4 Hammonds, who was principally responsible for many
5 sections of the documentation that Valero has
6 provided.

7 So we would actually move into evidence
8 all of this information that I've referenced,
9 including the declarations.

10 HEARING OFFICER SHEAN: Okay. Just so
11 that our record can reflect it then, that would be
12 a declaration from Mr. Sam Hammonds, Lynn McGuire,
13 Fred Reid, Muller, Leach, Eastep, Morgan, another
14 Morgan, Rodkin and McGuire is what I'm showing.

15 MS. NARDI: We don't have declarations
16 from Mr. Hammonds, because he's here in person
17 today.

18 HEARING OFFICER SHEAN: Okay.

19 MS. NARDI: And from Mr Reid, who is
20 also here in person.

21 HEARING OFFICER SHEAN: All right. Is
22 there objection to admission of those
23 declarations?

24 MR. KRAMER: No.

25 HEARING OFFICER SHEAN: Hearing none,

1 they're admitted.

2 All right, that forms for the
3 applicant's side its contribution to the record on
4 those topics, and then the other live witnesses
5 will come later.

6 And the staff had a similar submission
7 of declarations. They appear at the back of the
8 staff's initial study. We'll go to Mr. Kramer and
9 take care of the staff's side of the uncontested
10 issues.

11 MR. KRAMER: We simply move those into
12 evidence, along with the staff assessment and the
13 document that is called Valero Cogeneration
14 Project, Amendments to the Staff Assessment, which
15 was docketed on August 17th.

16 HEARING OFFICER SHEAN: All right.
17 Since that list appears in the publicly issued
18 initial study, we'll just go with that list.

19 Is there objection to introduction of
20 those declarations?

21 All right, hearing none, it is admitted.

22 We'll now go to the areas, and I think
23 it's unfair to really call these contested, but
24 subject matter about which there was some
25 questions or concerns which needed to be ironed

1 out by virtue of having people actually present
2 who participated in the analysis.

3 And the first one is noise. Why don't
4 we have the staff people who prepared the noise
5 section herein. If you'll introduce yourself,
6 then we'll have you sworn in, sir.

7 MR. BUNTIN: My name is Jim Buntin, and
8 I'm a consultant to the Energy Commission.

9 B-u-n-t-i-n.

10 Whereupon,

11 JIM BUNTIN

12 was called as a witness herein, and after first
13 having been duly sworn, was examined and testified
14 as follows:

15 HEARING OFFICER SHEAN: Actually, let's
16 just do this as an economy. Anybody who is here
17 and going to testify, why don't we have you please
18 stand and we'll administer a mass oath.

19 MR. SPEAKER: Does that include just
20 comments, as well?

21 HEARING OFFICER SHEAN: If you want to
22 offer your comment under oath, that's fine. It
23 doesn't really matter.

24 Okay.

25 //

1 Whereupon,

2 ALL PROSPECTIVE WITNESSES

3 who are to be called as witnesses herein, were
4 thereupon duly sworn.

5 HEARING OFFICER SHEAN: We do that in
6 court. Works fine, cuts out a little time. All
7 right, Mr. Buntin.

8 Did you want to leave your witness here?

9 MR. KRAMER: Well, we would prefer just
10 to --

11 HEARING OFFICER SHEAN: Okay.

12 MR. KRAMER: -- stand on his testimony
13 and let others who have questions --

14 HEARING OFFICER SHEAN: Is there
15 anything from the applicant, or -- we'll just
16 rotate it this way, through the applicant, then
17 the City, then Ms. Dean, and then CURE.

18 MS. NARDI: Would you like to start with
19 us, Mr. Shean?

20 HEARING OFFICER SHEAN: If you have any
21 questions.

22 MS. NARDI: Yes, we have a couple of
23 comments on the addendum to the staff assessment
24 on --

25 HEARING OFFICER SHEAN: Sure.

1 MS. NARDI: -- the noise section. And
2 I'll let Mr. Hammonds present those comments.

3 MR. HAMMONDS: In the area of noise we
4 will be submitting formal comments and docketing
5 them before the week is over.

6 But I do notice that in proposed
7 condition Noise-1 you refer to installation of a
8 temporary silencer. And we would suggest that
9 those words say temporary silencer and/or barriers
10 be included in that language.

11 The reason being we have so far not been
12 able to identify silencers that would apply to
13 this kind of an operation. So we would like to
14 broaden the scope of equipment that we might use
15 and barriers may be the best solution. We are
16 still researching that area, though.

17 MR. BUNTIN: Can I clarify that that's
18 actually Noise-4?

19 HEARING OFFICER SHEAN: Right, I was
20 going to do that, too. Noise-4.

21 MR. HAMMONDS: Yes.

22 HEARING OFFICER SHEAN: So it's
23 temporary silencer or barriers --

24 MR. HAMMONDS: Yes.

25 HEARING OFFICER SHEAN: -- is what you

1 would like to see.

2 MR. HAMMONDS: Yes, and/or barriers.

3 HEARING OFFICER SHEAN: Okay.

4 MR. HAMMONDS: On Noise-1 the
5 verification section included reference to posting
6 of the phone number. And that was actually
7 deleted from the condition, but it didn't get
8 deleted from the verification section.

9 We request that it also be deleted from
10 the verification section.

11 HEARING OFFICER SHEAN: Okay, let me
12 just ask a question then, because I notice that
13 that's the difference that this Noise-1 includes
14 notification by mail, but deleted the posting.
15 Why did you do that?

16 MR. BUNTIN: At the request of the
17 applicant the posting would be down at the -- on
18 the refinery property and not readily visible to
19 passers-by. So they felt it wouldn't be
20 effective.

21 They requested the ability to go ahead
22 and give that phone number to all the nearest
23 residents, rather than have it posted.

24 MR. HAMMONDS: That request was docketed
25 several weeks ago.

1 HEARING OFFICER SHEAN: Okay. Let me
2 just ask, I wanted to get this -- well, let's let
3 the other parties go, from the City. Do you have
4 any questions or --

5 MS. GILLARDE: Yes, we do have some
6 extensive comments about noise.

7 HEARING OFFICER SHEAN: Okay, if you're
8 making them more in an affirmative way, we can
9 wait until you folks come up, if you like. But if
10 you have any questions of Mr. Buntin, we can just
11 give you that --

12 MS. GILLARDE: Well, I guess they're
13 questions about why certain things weren't
14 addressed. So I'm not sure if this is the
15 appropriate time --

16 HEARING OFFICER SHEAN: It is, sure.

17 MS. GILLARDE: Okay. Before I begin, I
18 do want to commend everyone who participated in
19 this process. The staff has been most cooperative
20 in trying to get us information as soon as
21 possible. And I think we've all, you know, done a
22 herculean task here, so I did want to commend the
23 CEC Staff. They've been very great to work with.

24 So, with that, regarding the noise
25 section, basically we don't concur with the

1 conclusion that temporary noise impact associated
2 with the steam blows has been mitigated to a less
3 than significant level.

4 And there's several reasons for that.
5 First of all, it appears the staff assessment has
6 incorrectly applied a noise standard in the City's
7 general plan to projected noise expected from the
8 steam blows.

9 And our general plan allows for flaring
10 and pressure relief valves, a level up to 75 dba.
11 And that was inserted into the general plan
12 specifically to accommodate the refinery's need to
13 use flares and pressure relief valves in order to
14 avoid an emergency situation.

15 This was not a noise level the City
16 considered desirable, but in order to accommodate
17 what was a necessary operation on the refinery, we
18 did concede to have that decibel level allowed as
19 a standard for those specific types of operations.

20 And there's been a connection here where
21 the staff assessment assumes that steam blows are
22 for safety. Now, I understand they are to clean
23 out the equipment, but it's not part of an ongoing
24 safety operation for the refinery.

25 So we feel that it was not correct to

1 say that 75 dba is an acceptable level of noise
2 for that particular function.

3 HEARING OFFICER SHEAN: Okay, I think
4 some clarification needs to happen here. Because
5 as I read your comments it appeared to me as if
6 the steam blow which the Commission has
7 traditionally dealt with is a construction
8 function that --

9 MS. GILLARDE: Um-hum.

10 HEARING OFFICER SHEAN: -- occurs
11 basically once in the lifetime of the facility --

12 MS. GILLARDE: Um-hum.

13 HEARING OFFICER SHEAN: -- so long as
14 it's not modified. So that before the heat
15 recovery steam generator is connected to whatever
16 equipment it's connected to, it can be, for
17 example, to a steam turbine in a combined cycle,
18 or in this case, to the rest of the refinery for
19 refining processes that require steam, but am I
20 correct that condition number 4 applies only to
21 the construction phase of the project? And that
22 that's the only time you anticipate a high
23 pressure steam blow?

24 MR. BUNTIN: That's correct.

25 HEARING OFFICER SHEAN: So that this

1 will not occur during the operation of the
2 facility.

3 MS. GILLARDE: We understand that.

4 HEARING OFFICER SHEAN: Okay.

5 MS. GILLARDE: But we still think it's a
6 significant impact, and as I go further on in my
7 comments, it appears that there may be some other
8 way to mitigate it, other than what's being
9 proposed.

10 So I'll just continue then.

11 HEARING OFFICER SHEAN: All right. If
12 you have some questions of Mr. Buntin, why don't
13 you go ahead, because he's here to do that.

14 MS. GILLARDE: Right.

15 HEARING OFFICER SHEAN: I understand if
16 you want to make sort of an affirmative case to do
17 something different, we'll get to that.

18 MS. GILLARDE: Okay. All right. This
19 actually will get to a question for Mr. Buntin.

20 In the original staff assessment there
21 were two pieces of equipment which were identified
22 that could possibly reduce the noise impacts to 50
23 dba, rather than the 80 that was projected. This
24 is to the nearest receptor.

25 In the amended staff assessment we don't

1 see that discussion. And we asked at the August
2 10th workshop for an explanation as to the
3 feasibility of utilizing this equipment, and we
4 still haven't received a response to that.

5 The City feels that to have an 80
6 decibel level experience to the nearest
7 residential receptor, even though it is associated
8 with construction and it is temporary, that it's a
9 significant deviation from what the ambient noise
10 levels are for that area. And it will be
11 extremely annoying and it's a noise level that the
12 community is not used to.

13 And so we would like an explanation of
14 what, you know, is this feasible to use this other
15 type of equipment, the quiet blow or silent steam,
16 and if so, we think that should be the recommended
17 mitigation.

18 And as we read what's being proposed
19 it's sort of if they use this, then they do this;
20 or if they use the other quieter one, then they
21 should do this. But we're still not clear on why
22 that wasn't recommended.

23 MR. BUNTIN: First of all, the amendment
24 didn't delete the discussion of the quiet blow and
25 silent steam system, so that discussion remains in

1 the entire assessment.

2 And as I recall at the workshop I think
3 we were asking the applicant to come forth with
4 some information about the suitability of that
5 process, along with the discussion of whether or
6 not he could find the appropriate silencers to
7 achieve the standard that we were then proposing.

8 So I think those are still on the table
9 for discussion.

10 The reason we didn't take a particularly
11 strong stand on that, or any stand on requiring
12 the low pressure steam blow versus the high
13 pressure in this case was simply that in judging
14 the potential noise impact we could look to two
15 places in the City of Benecia general plan that
16 said 75 dba for an intermittent noise source would
17 be an acceptable range, acceptable noise level.

18 And the first is in the general plan
19 noise standards for the hourly standards for
20 daytime where the maximum noise level is 75
21 decibels.

22 The second is in the reference for the
23 safety flares and the pressure relief valves.

24 So we had two indicators that that was
25 an acceptable noise level in the normal context

1 for the City of Benecia.

2 Now, this is construction activity, so
3 it is very short term. The Energy Commission has,
4 as a past practice, required a silencer or some
5 sort of treatment of the steam blow to get the
6 noise level down to a practical minimum. And we
7 felt that achieving 75 dba at the nearest receiver
8 would require an application of practical
9 technology to get to that.

10 And just to put that in context, 75 dba
11 is roughly the equivalent of what kind of a noise
12 level is allowed for an automobile passing by on a
13 city street at 50 feet from the receiver.

14 So, we're not talking about an
15 extraordinary noise level. As a matter of fact,
16 the actual requirements for heavy trucks and
17 motorcycles, should anybody leave the mufflers on
18 them, is 80 decibels at 50 feet. Passenger cars
19 have a tighter standard.

20 So I felt that the 75 dba standard was a
21 reasonable standard in the context of the general
22 plan. Other environmental noise sources, and then
23 the overall reaction one would have to a noise
24 source of this type during construction, which is
25 short term and intermittent.

1 So that's the reason we didn't drop the
2 requirement for the muffler; instead it's just on
3 the silent steam treatment. That's certainly up
4 to the Energy Commission, itself, to decide which
5 position they wish to take. But I felt from our
6 standpoint of reviewing environmental impact
7 potential that this approach was satisfactory.

8 MS. GILLARDE: Well, I think we have a
9 difference of opinion here, so --

10 HEARING OFFICER SHEAN: Okay, yeah, and
11 why don't we just, knowing that, --

12 MS. GILLARDE: Yeah, just --

13 HEARING OFFICER SHEAN: -- when we get
14 back to you, you guys can basically make your
15 pitch as to why you want what you want. How's
16 that? Because he's explained where --

17 MS. GILLARDE: Right, yeah.

18 HEARING OFFICER SHEAN: -- his view.

19 MS. GILLARDE: Okay. I have other --

20 HEARING OFFICER SHEAN: Questions?

21 MS. GILLARDE: Yeah.

22 HEARING OFFICER SHEAN: Sure.

23 MS. GILLARDE: Questions or issues.

24 This one has to do with the limit, there's no
25 limits established for the duration of the steam

1 blows. And there's been some differences in terms
2 of what the length of these steam blows might be.

3 I think in the original staff assessment
4 it was stated they'd be between two and three
5 minutes. In the amended staff assessment it says
6 they'd be five minutes.

7 And then in looking at a statement of
8 proposed project conditions that was provided by
9 the applicant, mentions that steam blows could be
10 up to 20 minutes in duration.

11 So there seems to be a wide variety
12 here. And we're concerned that if we have very
13 prolonged steam blows it's going to further
14 exacerbate what we consider an unacceptable noise
15 situation.

16 And we did request in our final DOC that
17 the steam blows be no longer than five minutes.
18 So, our request is that there be a five-minute
19 time limitation on the duration.

20 HEARING OFFICER SHEAN: Okay, well,
21 let's find out what Mr. Buntin knows about the
22 time duration.

23 MR. BUNTIN: What I know is anecdotal
24 from other Energy Commission Staff, and my
25 understanding is that these steam blows are

1 typically in the range of two to three minutes.

2 But I believe there was discussion that
3 they could be as long as five minutes, which is
4 why it's incorporated in the description of the
5 process.

6 I think our expectation is that it's a
7 fairly short-lived phenomenon. You got to build
8 up a lot of steam to keep it going for 20 minutes,
9 for example. I felt that was unreasonable from
10 the start.

11 So I think that the five-minute estimate
12 is probably a reasonable estimate of how long they
13 would last.

14 HEARING OFFICER SHEAN: Do you have any
15 information suggesting 20 minutes from the
16 applicant or anybody else?

17 MR. BUNTIN: No.

18 HEARING OFFICER SHEAN: Okay.

19 MS. GILLARDE: Okay. Again, on the same
20 topic of limitation, we had suggested a time limit
21 from 8:00 to 5:00, which was incorporated with a
22 caveat that it could be lengthened if determined
23 to not create additional noise problems.

24 But we also recommended that the days of
25 the week that the noise blows be limited to Monday

1 through Friday. And, again, this is to reduce the
2 impact on the adjacent residences. But that was
3 not carried forward in the amended staff
4 assessment.

5 HEARING OFFICER SHEAN: Okay, let's let
6 him address that.

7 MR. BUNTIN: I think that's an oversight
8 on my part. I had notes that indicated that was
9 going to be my proposal, so I'm sorry, I would
10 agree with that. That's normally what we --

11 MS. GILLARDE: Okay.

12 MR. BUNTIN: -- recommend unless there's
13 some extenuating circumstances.

14 MR. HAMMONDS: The applicant takes no
15 exception to that, either.

16 HEARING OFFICER SHEAN: Okay. Well, we
17 don't want to disturb people on Sunday morning.

18 MS. GILLARDE: Yeah.

19 HEARING OFFICER SHEAN: They can't hear
20 the sermon.

21 MS. GILLARDE: That's right. My next
22 comment had to do with the suggested use of
23 barriers. That concern has been addressed by the
24 applicant.

25 As I understand it, now it could be a

1 combination of silencer and barriers to be used as
2 mitigation?

3 MR. BUNTIN: I'd agree with that.

4 MS. GILLARDE: And then finally this is
5 a question I guess for Mr. Buntin. Were the noise
6 levels from the steam relief valves included in
7 the overall noise calculations that were done for
8 the cogeneration plant as a whole?

9 MR. BUNTIN: I don't believe so, not
10 specifically. That's my recollection. Usually
11 what we do with the condition of approval is, as
12 you can see on Noise-6, the second paragraph. We
13 state that those steam relief valves shall be
14 adequately treated or located to preclude noise
15 that draws legitimate complaints.

16 It's been difficult for us to get hard
17 data on steam relief valves from any applicant so
18 far. I'd like to have harder numbers, but they
19 always point out that, at least at this stage of
20 the situation, they don't know exactly where
21 they're going to be.

22 MS. GILLARDE: Um-hum.

23 MR. BUNTIN: So that's given us a
24 problem in getting hard numbers.

25 MS. GILLARDE: The steam relief valves,

1 are those like for emergency purposes, or is that
2 like part of the daily operation of the plant?

3 MR. BUNTIN: My understanding is that's
4 emergency pressure relief. It would probably fit
5 in your current definition of emergency pressure
6 relief valve.

7 MS. GILLARDE: Okay. That's fine, then.

8 MR. HAMMONDS: A few comments. The
9 emergency relief valves on boilers very rarely
10 relieve in a situation like our refinery. I think
11 these concerns probably are tied to simple cycle
12 power systems where if you trip your steam turbine
13 you need an immediate place for that steam to go.

14 We have a very vast steam system that
15 goes to a lot of different places, and we wouldn't
16 be in that situation. So we don't anticipate any
17 problem with steam relief valve noise at all.

18 MS. GILLARDE: Okay, so it's not
19 anticipated that would occur on a frequent basis?

20 MR. HAMMONDS: That's correct.

21 MS. GILLARDE: Okay. That concludes my
22 comments on noise.

23 HEARING OFFICER SHEAN: Okay. Ms. Dean,
24 do you have anything?

25 MS. DEAN: I just have one question.

1 HEARING OFFICER SHEAN: Let's try to get
2 you a mike.

3 (Off the record.)

4 HEARING OFFICER SHEAN: We'll go to Ms.
5 Dean here now.

6 MS. DEAN: Okay. First, I'd just like
7 to echo Ms. Gillarde's comments about the CEC
8 Staff. They've done really a great job of trying
9 to keep me informed and helping me with some of
10 the more cumbersome aspects of thousands of pages
11 of documents being sent. So, thank you for all
12 that. And Ms. Mendonca, wherever she is. She was
13 very helpful.

14 HEARING OFFICER SHEAN: Let me just
15 indicate, I think you got the best project manager
16 and attorney team at the Commission, so they well
17 served in that.

18 MS. DEAN: Yea, I needed it.

19 I just have one follow-up question on
20 Mr. Shean's original question regarding when these
21 steam blows will occur. It's only during the
22 construction phase. What about when this unit is
23 cycled down and then started up again? Is that --

24 MR. BUNTIN: Let's ask the applicant, if
25 we can, please.

1 MS. DEAN: Okay. Sam?

2 MR. HAMMONDS: No, we would not
3 anticipate doing this again. This is an initial
4 cleaning process primarily to take mill scale from
5 the manufacturing process off the inside of the
6 pipe.

7 The normal shutdown and restart wouldn't
8 involved anything like this.

9 MS. DEAN: So we will see it once for
10 phase one, and once for phase two?

11 MR. HAMMONDS: Actually phase one would
12 include all of the major piping and the boiler.
13 Phase two would be the boiler only. So phase two
14 will have less blowing activities than does phase
15 one.

16 MS. DEAN: Do you know how much less?

17 MR. HAMMONDS: Half.

18 MS. DEAN: That's all I have.

19 HEARING OFFICER SHEAN: Okay. Anything
20 from CURE?

21 MR. WOLFE: Nothing.

22 HEARING OFFICER SHEAN: All right, thank
23 you. All right, let me get back to the question
24 that I had in sort of preparing a draft of the
25 proposed decision on this section, to try to

1 establish what the actual information is here.

2 So why don't we start with the I guess
3 the LORS for daytime and evening and nearest
4 residential receptor.

5 MR. BUNTIN: Okay, and this would be for
6 operation or construction? Operation?

7 HEARING OFFICER SHEAN: It's for
8 operation.

9 MR. BUNTIN: Okay. Operation, I have in
10 the staff assessment on Noise table 2 a listing of
11 the general plan noise standards from the City of
12 Benecia. And those have been what we've been
13 discussing here for the last few minutes.

14 HEARING OFFICER SHEAN: Okay, why don't
15 you just tell me what they are then.

16 MR. BUNTIN: For daytime the average
17 hourly noise level that's allowed is 55 decibels.
18 And for nighttime it's 50 decibels.

19 HEARING OFFICER SHEAN: Okay.

20 MR. BUNTIN: And the maximum noise level
21 that's allowed in those time periods is, which is
22 an instantaneous maximum noise level, is 75
23 decibels for daytime, and 70 decibels for
24 nighttime.

25 HEARING OFFICER SHEAN: Okay. And in

1 terms of what had been surveyed and whether it's
2 within current standards?

3 MR. BUNTIN: Yes, the applicant provided
4 noise level measurements conducted in May of 2001
5 at two residences on Allen Way and LaCruz Avenue.
6 And there I have provided a Noise table 3 and
7 summary of the noise level data there.

8 The daytime LEQ, or the average noise
9 level -- I'm sorry, I didn't put that in there, I
10 put the nighttime LEQ, which is the more difficult
11 one to achieve.

12 At 388 Allen Way, the nighttime LEQ
13 ranged from 43 to 50 decibels; and at LaCruz
14 Avenue it ranged from 52 to 54 decibels.

15 And part of the reason that the daytime
16 noise levels weren't summarized in this table is
17 that there are a lot of different things going on
18 in the neighborhoods and the wind conditions
19 affected those daytime levels. So it's hard to
20 say that any one source may have caused those.

21 But we have a good feeling that -- not a
22 good term -- we have a good indication that the
23 nighttime noise levels are predominately caused at
24 the lower levels by the refinery and distant
25 traffic as background noise sources.

1 HEARING OFFICER SHEAN: From the
2 interstates and the bridge?

3 MR. BUNTIN: Yes.

4 HEARING OFFICER SHEAN: Okay. And your
5 estimate for what the project will add day and
6 night?

7 MR. BUNTIN: The applicant has predicted
8 a noise level of 39 decibels in the worst case for
9 two turbines operating at the nearest home, and
10 that's on Allen Way. And there the lowest
11 nighttime noise level was 42 decibels. That's
12 really the residual in the quietest hour of the
13 night.

14 So if we add those two together, the 42
15 and the 39, we get 44 decibels for both turbines.
16 So the worst case estimate is that the noise level
17 would increase by two decibels at the quietest
18 hour of the night.

19 HEARING OFFICER SHEAN: Which is also
20 within City noise standards? Don't they have a --

21 MR. BUNTIN: Right. The City has a
22 standard of significance for environmental impact
23 assessment of 3 decibel increase over ambient
24 noise levels.

25 HEARING OFFICER SHEAN: Okay. And the

1 39 getting average out to 44 was the evening?

2 MR. BUNTIN: Nighttime.

3 HEARING OFFICER SHEAN: The nighttime,
4 okay.

5 MR. BUNTIN: And in the quietest hours,
6 say 2:00 to 4:00 in the morning.

7 HEARING OFFICER SHEAN: All right. On
8 page 64 of the amended section, you have the
9 verification of the condition going to the City
10 Public Library.

11 MR. BUNTIN: Oh, right.

12 HEARING OFFICER SHEAN: And that was in
13 addition. How does --

14 MR. BUNTIN: Which section is that? I'm
15 sorry, which Noise --

16 HEARING OFFICER SHEAN: Page 64, at the
17 very top under verification. It's on the second
18 and third line of the verification.

19 MR. BUNTIN: Okay, my page numbers don't
20 match yours. I couldn't get that print this
21 morning.

22 HEARING OFFICER SHEAN: All right, let
23 me --

24 MR. BUNTIN: The reason for the notice
25 going to the Public Library was a request at the

1 last data workshop from a citizen.

2 HEARING OFFICER SHEAN: From a citizen
3 or the City?

4 MR. BUNTIN: A citizen.

5 HEARING OFFICER SHEAN: Okay. And I
6 guess you understood that just so that there would
7 be some public access to the information?

8 MR. BUNTIN: Yes, there was some
9 discussion about that, and the City agreed that
10 that would be probably the most accessible place
11 for someone to get that information.

12 HEARING OFFICER SHEAN: Okay. And your
13 condition 8 on page 64, then, is to reflect the --
14 well, I'm trying to understand that.

15 If -- all right, the construction noise
16 levels would be allowed to 55, day and evening,
17 right?

18 MR. BUNTIN: Right. And that grew out
19 of two things. One was the fact that the
20 applicant had rejected a worst case noise level of
21 52 decibels. And the second was that the City of
22 Benecia requested that we consider that a lower
23 standard. I had originally proposed 60 decibels
24 in the daytime.

25 HEARING OFFICER SHEAN: Okay, that's it

1 for me. Anything from anybody else?

2 All right, Mr. Buntin, thank you for
3 your testimony. You're excused.

4 MR. BUNTIN: Thank you.

5 HEARING OFFICER SHEAN: Are there any
6 other witnesses on this area? Do you want to put
7 somebody on to discuss this?

8 MS. GILLARDE: Ms. Hammer went to get
9 our general plan. The thing I'm questioning is
10 the 75 and 70, and I don't have our general plan
11 in front of me. So -- oh, do you? Okay.

12 (Pause.)

13 MS. GILLARDE: I'm just not clear where
14 the 75 and 70 is coming from, because --

15 HEARING OFFICER SHEAN: In a practical
16 sense how is that going to make a difference?
17 Does it change a condition or do something else?

18 MS. GILLARDE: Well, because it's being
19 stated that that's an acceptable level of noise.
20 And to my recollection our noise --

21 HEARING OFFICER SHEAN: Okay, if I
22 understand, that's a noise spike, if you will,
23 right?

24 MS. GILLARDE: Well, like I say, to my
25 recollection the only place in our general plan

1 that speaks to something above those standards,
2 which is 55 and 50, which are correctly stated, is
3 to allow a 75 peak related to flares or pressure
4 relief valves.

5 HEARING OFFICER SHEAN: Okay, well,
6 that's an operational constraint that apparently
7 the refinery has to live with currently any way,
8 right? Whatever it is --

9 MS. GILLARDE: Correct. Yeah. I just
10 didn't want there to be a mis-assumption that 75
11 and 70 were ongoing standard, or even spike.

12 HEARING OFFICER SHEAN: Okay.

13 MR. BUNTIN: Can I return to answer
14 that?

15 HEARING OFFICER SHEAN: Sure.

16 MR. BUNTIN: Actually I'm not seeing
17 that in here, either. I'm going to have to tell
18 you that it probably came from the applicant's
19 text, to identify those two numbers.

20 As a practical matter, though, when
21 you're using an LEQ standard you -- I can do the
22 math and tell you exactly how long you could run
23 at 75 decibels, but it's a very short time.
24 Because the energy of that event at 75 decibels
25 completely dominates the average noise level.

1 So you can -- let's see, it's about,
2 it's going to be in the range of one to two
3 minutes per hour, and I can figure out exactly how
4 many seconds it is, that you're allowed to be at
5 something like 75 decibels if the daytime standard
6 is 55.

7 So it's a practical maximum. But I
8 think I have to defer to the City that I don't
9 actually see that written here. And I thought I
10 had it before, but I believe I must have gotten it
11 from the applicant.

12 HEARING OFFICER SHEAN: Okay. Well, we
13 can wait for Ms. Hammer to get back, and use our
14 time by moving on to -- do you have a --

15 MR. HAMMONDS: Just a comment that the
16 applicant doesn't recall supplying that
17 information.

18 HEARING OFFICER SHEAN: All right. The
19 number that no one will --

20 MS. GILLARDE: The mystery number.

21 (Laughter.)

22 HEARING OFFICER SHEAN: -- will claim,
23 right. Okay. How about water resources. Do you
24 want to do anything on noise, or are you happy
25 with where we are?

1 MS. NARDI: We don't have anything
2 further on this.

3 HEARING OFFICER SHEAN: Okay.

4 MS. DEAN: Could I ask one question of
5 the applicant regarding noise?

6 HEARING OFFICER SHEAN: Sure.

7 MS. DEAN: I'm a little confused, I mean
8 it's a lot of material to go through, but it
9 seemed to me that there were some options to bring
10 this steam blows number down that were discussed,
11 from 75 to 55.

12 And I'm wondering why specifically those
13 are, you consider those inappropriate.

14 MR. HAMMONDS: At this point we have not
15 found technology that does that. There was the
16 suggestion that we contact somebody in southern
17 California. We got ahold of them. They gave us a
18 vendor's number. We called the vendor up. He
19 faxed us a silencer that's not suitable for steam
20 blows. So it was not usable technology.

21 We are still looking. When we find
22 something we'll be glad to share that information
23 with whoever is interested.

24 MS. DEAN: So in terms of barriers, what
25 are you imagining?

1 MR. HAMMONDS: My backup outlook is we
2 build a cinderblock wall to blow this steam into,
3 and damp that sound as much as we can.

4 MS. DEAN: And how difficult is that?

5 MR. HAMMONDS: I'm sorry?

6 MS. DEAN: How difficult is that for
7 you?

8 MR. HAMMONDS: Not difficult. We're
9 ready to do that.

10 MS. DEAN: That's it.

11 HEARING OFFICER SHEAN: Okay. Next
12 topic is water resources. Gentlemen, why don't
13 you just introduce yourselves since you have been
14 previously sworn.

15 MR. KROLAK: I'm Mike Krolak,
16 K-r-o-l-a-k. I'm Energy Commission Staff.

17 MR. KESSLER: I'm John Kessler; I'm a
18 Consultant to the Energy Commission Staff.
19 K-e-s-s-l-e-r.

20 HEARING OFFICER SHEAN: Anything from
21 the applicant on these two gentlemen?

22 MR. HAMMONDS: I would make one comment.
23 This is really in response to the City's comments
24 in this area.

25 The City did make a comment that they

1 would like to require a storm water pollution
2 prevention plan be submitted associated with the
3 construction drawings.

4 We have, in the past, and we continue to
5 note that that's not a requirement from the RWQCB;
6 however, we're more than happy to submit that, and
7 we've already prepared one for our submittal
8 package. So we're glad to do that, not a problem.

9 And the only other comment I would make,
10 and again this is oriented towards the City's FDOC
11 comments regarding water reuse or reduction.
12 We're in agreement with the City's comments, and
13 we think that your Soil and Water number 6
14 addresses the City's comments and concerns. We
15 have no problem with that approach.

16 HEARING OFFICER SHEAN: Okay. That's
17 helpful. Anything from the City?

18 MS. GILLARDE: No. We reviewed the
19 amended staff assessment, and we don't have any
20 further outstanding issues regarding water.

21 HEARING OFFICER SHEAN: All right. Ms.
22 Dean?

23 MS. DEAN: Yeah, I do have several
24 questions.

25 HEARING OFFICER SHEAN: Okay.

1 MS. DEAN: And primarily the area that I
2 wanted to talk about was condition Soil and Water
3 number 6. So, I'm not sure who --

4 HEARING OFFICER SHEAN: Well, you ask
5 the question and the right one or both of them
6 will respond.

7 MS. DEAN: Okay. First of all, just to
8 characterize it, essentially you're requiring that
9 the applicant use recycled water for use in the
10 cogen, is that correct?

11 MR. KESSLER: I believe the
12 clarification would be, Ms. Dean, is that the
13 applicant has agreed to accomplish one of two
14 scenarios. To either use recycled water in the
15 cogen, or within its refinery processes, and allow
16 an equivalent reduction as the cogen will require.
17 Or to accomplish a fresh water use reduction
18 overall within its integrated operations.

19 MS. DEAN: Maybe I should narrow my
20 question. In your original staff assessment you
21 actually required that they use recycled water, is
22 that correct?

23 MR. KESSLER: Yes.

24 MS. DEAN: Can you just briefly tell us
25 what were some of the reasons behind that, just

1 generally what made that condition necessary?

2 MR. KESSLER: Can you clarify the
3 question? I really want to be responsive to your
4 questions.

5 MS. DEAN: Sure. Generally why would it
6 be required of a power plant to use recycled
7 water? What statutory or regulatory
8 considerations?

9 MR. KESSLER: The State Constitution,
10 and also the State Water Code, and also a policy
11 by the State Water Resources Control Board all
12 regulate the use of fresh water, and suggest that
13 use for industrial purposes -- I'm paraphrasing
14 here -- when the use of fresh water for industrial
15 purposes when other sources of water supply are
16 available and can be put to beneficial use for
17 this, in this case, is considered a waste of fresh
18 water.

19 And the types of alternative water
20 supplies that the State Board policy and it's
21 mentioned is to look at reclaimed or recycled
22 water use using effluent from wastewater treatment
23 plants, looking at irrigation, looking at just a
24 number of things.

25 But the last use is if it can be avoided

1 is fresh water.

2 MS. DEAN: Do you consider, when you
3 looked at this did you, and do you generally,
4 consider sort of availability of water to the
5 water district? I want to say climate, how much
6 water is generally available to the water district
7 in your determination?

8 MR. KESSLER: Yes, that is part of the
9 consideration of the impact. And that's why we
10 went to efforts to conduct discussions with the
11 City to understand their limitations and their
12 future growth projections. And we were able to
13 very helpfully get some information that pointed
14 to not only their current demands, but some of
15 their future projections.

16 And a study that CH2MHILL has currently
17 been conducting and preparing an EIR for the City.
18 They're looking at alternative developing
19 additional water supply. And even if they secure
20 this additional water supply right, we found that
21 it will still -- they still project some
22 shortfalls in the future.

23 MS. DEAN: Okay. Originally you were
24 requiring that the applicant have their, I'm going
25 to call it greywater just because that's what I

1 know it as, greywater operation up and running in
2 two years from certification. And then you
3 changed that to three years for the supplement.
4 Why did you make that change?

5 MR. KESSLER: I personally was on
6 vacation when that discussion was conducted, so
7 I'm going to let Mr. Krolak answer that.

8 MR. KROLAK: We had a conference call
9 with the applicant and my supervisor, and we were
10 trying to come up with a scheme that was
11 beneficial to as many parties as we possibly
12 could.

13 The applicant requested another year, I
14 believe it was for flexibility, and I believe it
15 was a plant turn-around. Maybe you can expound on
16 that.

17 MR. HAMMONDS: Yeah. We have a
18 refinery-wide turnaround plan for early 2004. And
19 we initially, and still have, made a commitment to
20 the City it would be two years after startup would
21 be the latest time that we would complete that.
22 And that gets us through that first quarter
23 turnaround.

24 And we don't know if we need to go
25 through the turnaround to make whatever changes

1 get identified or not, because we don't know how
2 we're going to do this yet. But, we wanted to
3 keep that flexibility.

4 As well, since we don't know how we're
5 going to do this, we don't know what permitting
6 process we're going to have to go through for it.
7 As we know, permitting processes can take a long
8 time, and we aren't sure how that's going to fit
9 into this whole thing.

10 So that's why we proposed two years from
11 startup, which is kind of like three years from
12 certification. And that's why we asked the CEC to
13 change their two years to three years.

14 MS. DEAN: What other factors did you
15 consider when you made the change?

16 MR. KROLAK: Well, we wanted to make
17 sure that -- the applicant had mentioned that they
18 were already working on a refinery-wide plan, as
19 per the Good Neighbor agreement with the City.
20 And we wanted to make sure that we didn't rush
21 this, the plan for this, and in some way disrupt
22 what would have been an even greater scale
23 reduction of water for the refinery.

24 MS. DEAN: Um-hum. Anything else?

25 MR. KESSLER: We also considered the

1 likelihood of the City being in the position where
2 they could run short in their allotment of fresh
3 water during this three-year period.

4 And they've been able to bank water with
5 their Mojave Water District agreement, so that
6 this provides, in the event of a critically dry
7 year where their primary source of supply from the
8 State Water Project, should that be curtailed, as
9 it has been on some occasions in the past, they
10 have the Mojave water supply banking secondary
11 source to back them up, and to help meet that
12 critical shortfall.

13 In our opinion it was unlikely that
14 during the three years before Valero would
15 implement its reuse or step reduction in fresh
16 water that the City would incur any kind of
17 effects, significant effects from a shortfall in
18 fresh water supply.

19 MS. DEAN: Okay. In terms of
20 significant effect that you just mentioned, I'm
21 wondering did you, in any of this did you take
22 into consideration that we're already under a
23 voluntary alert and the citizens have already been
24 asked to cut back.

25 And additionally the City has indicated,

1 not only in public documents, but in their
2 comments, that if we have any further reduction in
3 available water, we'll move into more full scale
4 mandatory alert.

5 Did you consider that?

6 MR. KESSLER: Yes, we did, and my
7 understanding in discussions with the City is that
8 the refinery is also subject to cutbacks or
9 curtailments in its supply.

10 And also in revising this condition from
11 two to three years, we also ran it by the staff at
12 the City to get their concurrence.

13 MS. DEAN: I guess what I'm trying to
14 understand here is we're already, the residents
15 are already under a 5 percent reduction. It's not
16 a requirement, but we're asked to reduce.

17 We're asked to do things like turn the
18 water off while we're washing our hands. And I
19 believe that at one of the last workshops 5
20 percent of Benecia residents, and Benecia in
21 general water use was roughly the same amount as
22 what the cogen plant will use on a daily basis,
23 280,000 gallons, is that correct?

24 MR. HAMMONDS: Um-hum.

25 MS. DEAN: Yeah. So what I'm imagining

1 is maybe next year or the year after, if we're
2 required to do another 5 percent cut, if Valero
3 wasn't using their -- I can't use the yearly
4 figure because it just seems too big to me, I must
5 be calculating it wrong, but 280,000 gallons a
6 day, if they're using that, then that may push us
7 into mandatory reduction. Is that possible?

8 MR. KESSLER: It would be at the
9 election of the City, to the best of my
10 understanding, of their source of allotments as to
11 whether they choose to reduce, or whether they
12 choose to utilize water that is banked for
13 critical supply needs.

14 And they have been very diligent in
15 banking this water to the point where, in my
16 opinion, the likelihood over the next three years
17 of having more than one critically dry year, and
18 having to tap into that water twice, or two years
19 in a row, or twice in three years is very
20 unlikely.

21 But they still have the election as to
22 how they manage their system, and choose to impose
23 different levels of conservation, to the best of
24 my understanding, and choose to tap into their
25 banked water supply.

1 MS. DEAN: Is it true, and I'm
2 paraphrasing what I've read from the City, and I
3 may be simplifying it too much, but is it true
4 that it would be difficult, in the extremely rare
5 event that we did have two very dry years, or
6 three, is it true that they would not be in a
7 position to pull their resources from the bank, as
8 you say, three years in a row, two years in a row?

9 MR. KESSLER: From the level of data
10 that I had to review upon, my belief is that the
11 Mojave -- the water banked with Mojave is adequate
12 to meet any shortfalls over those next three
13 years.

14 MS. DEAN: Okay. And just to go back
15 real quickly. The reason that you made the change
16 was the applicant requested it for what appears to
17 be logistical considerations on their part?

18 MR. KRAMER: I think the question
19 misstates the testimony.

20 MS. DEAN: Okay.

21 MR. KRAMER: There's more to it than
22 that.

23 MS. DEAN: Okay. Just --

24 MR. KRAMER: Do you want them to repeat
25 the reasons?

1 MS. DEAN: Sure.

2 MR. KESSLER: The three-year
3 consideration, as Mr. Hammonds stated, takes into
4 account that existing Good Neighbor agreement,
5 where they've already committed to study their
6 opportunities and find ways to work with the City
7 and implement either water reduction or water
8 reuse strategies.

9 It takes into account the process time
10 to not only study those options of using either
11 wastewater within their refinery operations or
12 wastewater from the City of Benecia's wastewater
13 treatment plant.

14 It also takes into account the
15 environmental process to consider the effects of
16 getting those plans.

17 It also takes into account our
18 consideration, the ability for the City to meet
19 any shortfalls over the next three years, should,
20 during the time that this process is being
21 implemented.

22 MS. DEAN: That's all I have, thank you.

23 HEARING OFFICER SHEAN: All right. Just
24 a couple questions.

25 On page 66 of your amended sections,

1 Soil and Water number 3, I'm trying to understand
2 the role of the Regional Water Quality Control
3 Board and the Energy Commission's CPM with respect
4 to the review and approval of the revision to the
5 existing NPDES permit and storm water pollution
6 prevention plan.

7 In the middle of that condition it
8 states that the SWPPP for refinery operations must
9 be revised to include the project operations. And
10 will be submitted to the RWQCB for review, and the
11 Energy Commission's CPM for review and approval.

12 Is that the way this is going to go? Is
13 the Board fulfilling a federalized function in
14 revising the NPDES permit, and won't they have to
15 approve that revision, themselves?

16 MR. KROLAK: When I spoke to a
17 representative from the Board last week to modify
18 the wording for this, they indicated that they
19 will be reviewing it. They wanted to reserve the
20 right to suggest modifications if necessary. But
21 that they wouldn't be issuing an approval, you
22 know, a letter of approval.

23 HEARING OFFICER SHEAN: Even though the
24 NPDES permit is their permit, right?

25 MR. KROLAK: Yes.

1 HEARING OFFICER SHEAN: Okay.

2 MR. KRAMER: To clarify that, they have
3 told you, am I correct, that under their rules
4 there's no reason to modify the NPDES permit?

5 MR. KROLAK: Yes.

6 MR. KRAMER: So I think the answer is
7 they're not -- this falls under their threshold,
8 and it's only because we're requiring it at the
9 Commission that the change is being made. And
10 we're using their expertise to take a look at it,
11 but it's ultimately our decision, is that correct?

12 MR. KROLAK: Yes, it is. They wanted to
13 make sure that they received copies of the
14 revisions.

15 MR. KESSLER: And also their existing
16 NPDES permit that the refinery's requires for any
17 change in facilities of the filing of a revised
18 storm water pollution prevention plan with the
19 Regional Board for their acceptance.

20 And as Mr. Krolak clarified, they
21 haven't stated that there's an approval step to
22 that.

23 HEARING OFFICER SHEAN: And so I can
24 understand your Soil and Water-6, the use of the
25 words, reduction step, if I heard you in your

1 testimony, it seems as if that's a term of art.

2 Is it, or is there a way to state this
3 in lay English that covers what you have in mind?

4 MR. KESSLER: The intention of this, or
5 the spirit of the discussions with the applicant
6 and the City was to find an equivalent to avoid
7 the use of an additional 314 acrefeet a year,
8 which is the approximate estimate of the
9 cogeneration project.

10 HEARING OFFICER SHEAN: My question is
11 whether the use of the words reduction step is
12 such a term of art in the field that that has to
13 be used for the benefit of our public audience for
14 whom the proposed decision is written, --

15 MR. KESSLER: No.

16 HEARING OFFICER SHEAN: -- that that
17 particular language is required. Or at least
18 something, or in the alternative that something
19 that captures the intent of the parties is
20 sufficient?

21 MR. KESSLER: Alternative would be
22 sufficient.

23 HEARING OFFICER SHEAN: Okay. I don't
24 have anything further.

25 Anything further from these gentlemen?

1 MR. HAMMONDS: No.

2 MS. DEAN: Thank you very much.

3 MR. HAMMONDS: You asked about what
4 sounded like maybe suggesting deletion of
5 reduction step?

6 HEARING OFFICER SHEAN: No, it's not a
7 deletion. It's just a question of clarity of
8 expression. I asked them first of all whether or
9 not it is a term of art that would be -- that in
10 order to satisfy the technical people, needs to be
11 used. And my understanding is that is not the
12 case.

13 MR. KESSLER: Correct.

14 HEARING OFFICER SHEAN: And that just in
15 looking at it, whether or not reduction step is
16 sufficiently clear for public consumption. If
17 there might not be a clearer way to state it.

18 We're not intending to -- if I
19 understand this, that you will implement either a
20 water reuse or a water use reduction program. And
21 if that conveys the message adequately, I just
22 want to make sure that in making that change for
23 the purpose of clarify, I wasn't removing an
24 essential element from the technical people's
25 point of view.

1 And apparently that would not?

2 MR. KESSLER: Correct.

3 HEARING OFFICER SHEAN: Okay. That's
4 it, then. Thank you, gentlemen.

5 Now, you wanted to put a presentation --

6 MS. DEAN: I actually had some questions
7 for the applicant, and I realize that a visual
8 representation of what I wanted to talk about
9 might be appropriate.

10 HEARING OFFICER SHEAN: What's the
11 nature of it?

12 MS. DEAN: The timeline that they're
13 discussing in terms of when their various projects
14 are due.

15 HEARING OFFICER SHEAN: As it applies --

16 MS. DEAN: As it relates to their
17 request to change the original two-year timeline
18 to three years.

19 HEARING OFFICER SHEAN: Okay. Now, if I
20 understand the testimony so far correctly, their
21 testimony was that they envisioned two years from
22 the date of startup; the condition had been
23 written for date following certification. Add the
24 construction period to the two years that the
25 applicant had conceived of, you would end up at

1 the three years.

2 MS. DEAN: Well, actually the way it
3 appears in the original SA is within two years of
4 certification of the Valero Cogeneration Project,
5 the Project shall use recycled water.

6 The replacement sentence is within three
7 years of certification of the Valero Cogen Project
8 the refinery will implement a water reuse or
9 reduction, et cetera, et cetera.

10 So there's a year gap.

11 HEARING OFFICER SHEAN: I guess --

12 MS. DEAN: Okay, well, we can --

13 HEARING OFFICER SHEAN: No, no, --

14 MS. DEAN: -- we can try to do it this
15 way.

16 HEARING OFFICER SHEAN: -- yeah, let's
17 try to do it this way.

18 MS. DEAN: I just think visually it's --

19 HEARING OFFICER SHEAN: Right, if it
20 doesn't work, we'll --

21 MS. DEAN: -- a little timeline would
22 have made it --

23 HEARING OFFICER SHEAN: Yeah, if it
24 doesn't work we'll revert to the board.

25 MS. DEAN: But that's fine. Okay.

1 Mr. Hammonds, you mentioned -- well,
2 let's see if we can draw it out. My understanding
3 is that there's a few different projects that
4 you're considering as sort of barriers to moving
5 forward quickly on the wastewater reuse, is
6 that -- you mentioned, for example, the turnaround
7 in 2004.

8 MR. HAMMONDS: The turnaround in 2004
9 may be an opportunity to do what will need to be
10 done, but we're speculating at this point because
11 we don't know what needs to be done.

12 MS. DEAN: Okay.

13 MR. HAMMONDS: The study has just been
14 initiated.

15 MS. DEAN: Okay. So, I guess I want to
16 go back. You also said that you were considering
17 the Good Neighbor agreement, and it's mentioned in
18 here. And your agreement with the City to study
19 the viability of a greywater system, is that
20 right?

21 MR. HAMMONDS: Certainly, that is in the
22 Good Neighbor agreement.

23 MS. DEAN: Okay. When is that study
24 due?

25 MR. HAMMONDS: I believe it's May 16th

1 of 2002.

2 MS. DEAN: Okay, so at that point you
3 will know, is that --

4 MR. HAMMONDS: At that point the study
5 will have been completed.

6 MS. DEAN: Okay.

7 MR. HAMMONDS: When studies get
8 completed it's not always crystal clear exactly
9 what the right thing to do is, but that is a point
10 when we may very well have that decision ready to
11 be made.

12 We'll be working with the City of
13 Benecia on that process.

14 MS. DEAN: Okay. And then how far down
15 the road, let's see, May 2002 your study will be
16 complete. As originally stated in the staff
17 assessment you would have been required to have --
18 excuse me, that's roughly about the same time the
19 cogen plant will be certified, is that -- if all
20 odds being equal, is that correct?

21 MR. HAMMONDS: Certified, no. We're
22 looking for certification in September, October.

23 MS. DEAN: Oh, okay.

24 MR. HAMMONDS: Certification means
25 approval, not startup.

1 MS. DEAN: Okay, so October of '2,
2 roughly, is that right?

3 MR. HAMMONDS: Yes.

4 MS. DEAN: Okay.

5 MR. KRAMER: No, '01.

6 MR. HAMMONDS: No, no, '01.

7 MS. DEAN: '01, I'm sorry. Okay. So 18
8 months from October of '1 would have been roughly
9 April of '3? That would have been when you plan
10 would have been required? Is that wrong? I'm
11 sorry, I'm not a --

12 HEARING OFFICER SHEAN: Okay, I think --

13 MS. DEAN: This is why I wanted --

14 HEARING OFFICER SHEAN: -- if I
15 understand, if you're approximating an 18-month
16 construction timeframe, if they're approved let's
17 call it October, which is the 10th month, it would
18 be April of 2003.

19 MR. HAMMONDS: I suggest you include at
20 least 15 months for an EIR process.

21 MS. DEAN: No, what I'm discussing here
22 is the requirement in the original SA, that 18
23 months after certification you have a plan ready
24 for approval for the wastewater treatment. I can
25 find it here for you. Maybe I can't.

1 As I recall the original condition
2 required that you have a plan available for review
3 after 18 months from certification.

4 MR. HAMMONDS: I think I recall that,
5 also.

6 MS. DEAN: Okay, so that would then be
7 April of '3, is that correct, roughly?

8 MR. HAMMONDS: I think that's correct.

9 MS. DEAN: And then six months down the
10 road from that, October of '3, under the original
11 terms you would have to have the greywater system
12 in place?

13 MR. HAMMONDS: That's what that might
14 imply.

15 MS. DEAN: So what you're saying is that
16 in that period from May of 2002 when the study is
17 completed, to October of '3 is not enough time for
18 you to properly address?

19 MR. HAMMONDS: Since we don't know what
20 we will have to do, I think it's fair to consider
21 the possibility that we'll have to go through an
22 EIR process with this, not to mention NPDES permit
23 revisions for both the City and Valero.

24 That's not going to happen in that time
25 period.

1 MS. DEAN: What would you -- okay.
2 Actually, that's all I have.

3 HEARING OFFICER SHEAN: Okay. I mean I
4 assume from your questioning you'd like them to do
5 it more quickly?

6 MS. DEAN: Yes, I would.

7 HEARING OFFICER SHEAN: Okay.

8 MS. DEAN: And if I could comment on
9 that further?

10 HEARING OFFICER SHEAN: What avenues do
11 you think are available to them to move it more
12 quickly?

13 MS. DEAN: Well, --

14 HEARING OFFICER SHEAN: I mean, first of
15 all, it would be --

16 MS. DEAN: I find it --

17 HEARING OFFICER SHEAN: -- in support of
18 state policy, and so we'd like to try to do it, if
19 possible, but --

20 MS. DEAN: Honestly, it seems to me that
21 if they're already required to have a study done
22 essentially within six months of the initial
23 certification, that the 18 months to follow,
24 roughly, is enough time if they're ready to move
25 along.

1 And I don't think they've really given
2 us enough information or enough compelling reasons
3 to stretch it out further.

4 And I know that the residents of Benecia
5 have deep concerns about being put in a position
6 of having to cut back further and further on what
7 are initially conveniences, but ultimately
8 tangible necessary uses in their residence and in
9 their life.

10 All the while Valero is using more
11 water. Valero is using more water. And if they
12 truly are in a position where they cannot meet the
13 October 3 deadline, and they have to go a year
14 out, then I think there should be some kind of
15 safety net in place so that the citizens of
16 Benecia don't suffer any consequences as a result
17 of that. And I don't see that here. I see
18 predictions that it won't happen.

19 HEARING OFFICER SHEAN: Okay.

20 MS. DEAN: Thank you.

21 HEARING OFFICER SHEAN: Thank you. Why
22 don't we ask the City some questions along that
23 line.

24 First of all, do you believe that for
25 the period of three years from certification that

1 you have sufficient bank or committed water
2 supplies that in terms of actually being able to
3 have water available to the citizenry, that
4 essentially every reasonable step's been taken to
5 do that?

6 MS. GILLARDE: Well, the person that
7 could most appropriately answer that question
8 cannot be here today, and that's our utilities
9 manager.

10 And I don't feel qualified to answer
11 that question. I know we have stats; I know we
12 have the multiyear banking agreement in place.
13 You know, she has reviewed this section and other
14 than the adjustments to certain figures, has
15 concurred with the conclusions, you know, in the
16 water section of the staff assessment.

17 HEARING OFFICER SHEAN: Okay, why don't
18 we recall our staff people here for just a second.

19 If your understanding is based upon the
20 information that you have so far is that those
21 water supplies would be there, is it that they
22 will be there at a different cost to the City? Do
23 they have to pay more for utilization of the
24 banked water than they do non-banked water?

25 MR. KESSLER: My understanding is that

1 there is no additional cost for utilization of the
2 banked water. In essence, the arrangement is that
3 they bank twice as much as they can take in later
4 years, and so there is a net environmental benefit
5 to their banking, in that the groundwater aquifer
6 is being recharged at the same rate they're able
7 to bank in future years.

8 HEARING OFFICER SHEAN: So there's no
9 financial impediment to using the bank?

10 MR. KESSLER: That's my understanding.

11 HEARING OFFICER SHEAN: As far as you
12 know is there any impediment to the use of the
13 bank?

14 MR. KESSLER: No.

15 HEARING OFFICER SHEAN: Okay. Thank you
16 very much. Anything more from any other parties
17 on water?

18 With that, let's move to our next area
19 which is going to be traffic and transportation.

20 Let me just give you a brief, for the
21 audience, summary of what's happened as far as it
22 appears in the staff's revision.

23 At the prehearing conference there was
24 discussion about the cumulative effect of this
25 particular cogeneration project, the MTBE phase

1 out project, and these turnarounds, which are both
2 planned and unplanned refinery maintenance.

3 And at the time I guess there was too
4 little information about this turnaround in terms
5 of numbers of workers coming on site, the times
6 that they would be coming on site, and the issue
7 of whether or not it would cause unacceptable
8 levels of congestion.

9 The staff's attempted to address that.
10 Why don't I just ask you to briefly summarize what
11 you think you have established, based upon the
12 information you got.

13 MS. ALLEN: I'm Eileen Allen of the
14 Energy Commission Staff. My staff, James Fore, as
15 noted in the testimony, prepared the original
16 testimony. I'm representing him since he's on
17 vacation this week.

18 Subsequent to his original testimony
19 preparation we received new information from
20 Valero, primarily email, that was received on
21 August 14th and August 16th that provided new data
22 about the turnaround workforce and times of their
23 arrival and departure.

24 So, I am now coauthor of the testimony.
25 I'm Eileen Allen of the Energy Commission Staff.

1 The primary items are that Valero has
2 told us that they expect there to be a turnaround
3 workforce of no more than 148. And if there were
4 no more than 148 workers that the levels of
5 service levels at the major intersections in
6 involved would not deteriorate to levels that are
7 unacceptable to the City of Benecia, per the City
8 of Benecia's general plan.

9 And they have told us that they will
10 work with the City of Benecia to monitor the
11 number of vehicles coming to the key
12 intersections, and the number of vehicles entering
13 the Valero parking lots.

14 And if those numbers reach above a
15 certain trigger level, then they will begin to
16 implement the traffic mitigation measures that are
17 noted in the staff assessment.

18 I also received information from them
19 along the lines of a major turnaround scenario,
20 which in the revised staff assessment I've
21 referred to as a worst case scenario.

22 This could involve, at a worst case, as
23 many as 800 temporary workers coming to work on a
24 turnaround. But the key item is that only 500 of
25 them would be on the day shift.

1 Furthermore, the day shift hours, as
2 noted by Valero, would be 7:30 a.m. to 6:00 p.m.,
3 so the turnaround workers would be departing after
4 the departure of the workforce associated with the
5 cogeneration project and the concurrent MTBE phase
6 out project.

7 So, given that, I concluded after
8 reviewing the information from Valero and Valero's
9 traffic consultant, that level of service levels,
10 which is a term of art related to traffic, at the
11 key intersections would remain acceptable.

12 If the worst case turnaround occurs LOS
13 has the potential to deteriorate; however, this is
14 unlikely given the starting times and the
15 departure times, and the speculative possibility
16 of the turnaround occurring at the worst case
17 level.

18 Furthermore, I looked at the parking lot
19 capacity. When I went through the various math
20 scenarios I concluded that we were looking at a
21 maximum of 800 day shift workers. The parking lot
22 capacity associated with the lots near gates 8 and
23 9 is 850. So I concluded that there was no impact
24 on parking capacity.

25 So those are the major items that I

1 looked at. The level of service changes at the
2 key intersection and parking lot capacity. And I
3 concluded that for the level of service that there
4 would be a significant impact but that it would be
5 reduced to insignificant levels with the
6 mitigation measures as noted in the conditions of
7 certification. And that there would be no impact
8 for parking.

9 HEARING OFFICER SHEAN: Now, to some
10 degree this revised condition Trans-4, the staff
11 has been in the role of working with both the
12 applicant and the City to attempt to assure the
13 City that its interests were being taken into
14 account and that commuting traffic would not pose
15 unacceptable level of congestion.

16 Currently, for the applicant, is Trans-4
17 acceptable to you?

18 MR. HAMMONDS: Yes, it is.

19 HEARING OFFICER SHEAN: And how about
20 the City, has this finally gotten to the point
21 where this is going to do it for you? Or does it
22 need something more?

23 MS. GILLARDE: Yeah, let me explain our
24 situation. Our traffic engineer has not reviewed
25 this section. He was not available Friday at all.

1 We got this off the printer finally at 4:30 on
2 Friday.

3 He's in an all-day meeting today, so
4 like I say, unfortunately he has not been able to
5 review this.

6 My and Kitty's review of Trans-4, I
7 believe that it does reflect what we had discussed
8 before. But I do want to reserve, I guess, final
9 final comment, and I don't know exactly how that
10 might work, for our traffic engineer to actually
11 review this final version.

12 HEARING OFFICER SHEAN: Well, there'll
13 be another cut at it. I guess we have some post-
14 hearing opportunity for comments or briefs from
15 the parties. If you want to do it then, fine. If
16 that doesn't seem to work, if this appears to be
17 the condition that ought to move into the proposed
18 decision it's also subject to a public comment
19 period there.

20 And if there were some tweaks that you
21 wanted to do to it, you could let us know then.
22 Basically there don't appear to be any facts you
23 need to bring to us that would address this issue.
24 It's just a question of whether or not the way the
25 facts should be handled is adequate and complete

1 for the City's purposes.

2 MS. GILLARDE: Yes, I think it's a
3 question of are all the necessary words in there
4 that we need to have.

5 HEARING OFFICER SHEAN: Okay. Well,
6 it's the Commission's goal to address the City's
7 concerns and do the best we can. And it sounds as
8 if Valero shares that, so --

9 MS. GILLARDE: Um-hum.

10 HEARING OFFICER SHEAN: -- that may be
11 that. Ms. Dean, do you have anything?

12 MS. DEAN: I have nothing.

13 HEARING OFFICER SHEAN: Anything from
14 CURE?

15 MR. WOLFE: No.

16 HEARING OFFICER SHEAN: Thank you.

17 MS. NARDI: Mr. Shean, --

18 HEARING OFFICER SHEAN: Yes.

19 MS. NARDI: -- as a housekeeping matter,
20 we didn't provide a declaration from Mr. Reid
21 because he's here today.

22 HEARING OFFICER SHEAN: Oh, okay.

23 MS. NARDI: He's a consultant for
24 Valero. But if you'd like, instead of taking up
25 the time in this hearing, we'd be glad to provide

1 a supplemental declaration, or we can ask him to
2 sponsor --

3 HEARING OFFICER SHEAN: Sure, let's just
4 run through this, Mr. Reid, --

5 MS. ALLEN: Before Mr. Reid testifies, I
6 had three minor corrections to my amendment.

7 HEARING OFFICER SHEAN: Sure.

8 MS. ALLEN: Beginning on page 72, the
9 paragraph that has a major heading, Work Force
10 Levels for Expected and Conceivable Valero
11 Projects. In the middle of the first line the
12 word "this" should be deleted, and the words "the
13 MTBE" inserted.

14 Are you ready for me to --

15 HEARING OFFICER SHEAN: Yes, go ahead.

16 MS. ALLEN: All right. Page 75, in the
17 box headed Valero Refinery Project's Gate and
18 Parking Lot Assignments and Capacities, the lowest
19 box, existing contractor activity or reduced
20 contractor group due to turnaround. That box that
21 says gates and assigned parking lot for that
22 existing contractor group and reduced contractor
23 group due to turnaround, that box should say "all
24 gates except for; and lots at gate 8 or gate 9."

25 So that group would have the option of

1 going to either lot.

2 Finally, on page 76, the first paragraph
3 below the box, about the sixth line there's a --
4 the first word in the sixth line is "spaces".
5 Following "spaces" there should be a period and
6 all the following words in that line deleted.

7 So delete the phrase "and schedule most
8 turnaround worker arrivals after the departure of
9 the day shift." That was an error.

10 That's all I have, Mr. Shean.

11 HEARING OFFICER SHEAN: Okay. Mr. Reid.
12 Having been previously sworn, welcome.

13 Go ahead.

14 MS. NARDI: Okay. Mr. Reid, can you
15 briefly explain your educational background and
16 professional experience?

17 MR. REID: Yes; my name is Fred Reid;
18 I'm staff of URS Corporation. Educated at the
19 University of California at Berkeley; a bachelors
20 degree in engineering, a masters degree in
21 multidisciplinary engineering including
22 transportation and economics.

23 MS. NARDI: And can you identify for us
24 the information that the applicant has submitted
25 that supports your analysis, the analysis that you

1 provided in the AFC supplement and data responses?

2 MR. REID: You're referring to the
3 additional information that was provided after the
4 AFC, is that correct?

5 MS. NARDI: Or perhaps more simply just
6 explain to us what information you provided in
7 this process to Valero.

8 MR. REID: In the entire process you're
9 talking about?

10 MS. NARDI: Correct.

11 MR. REID: I provided the information
12 for the transportation traffic section for the
13 AFC, and I provided the information for a
14 supplemental request for information from the City
15 of Benecia and additional information from Valero
16 on the projects that might occur, the turnaround
17 project that might occur and would be a cumulative
18 effect, as identified by the City and Valero.

19 MS. NARDI: So that latter was the email
20 that was referred to by CEC Staff, the August 14th
21 email that provided factual information about
22 cumulative impacts?

23 MR. REID: Correct.

24 MS. NARDI: Okay, and --

25 MR. REID: There were two, I should say,

1 two emails, the 14th, I believe, and the 16th.

2 MS. NARDI: And to the best of your
3 knowledge are all the facts contained in the
4 information you provided true and correct?

5 MR. REID: Yes.

6 MS. NARDI: And to the extent that your
7 analysis contains opinions, are those opinions
8 consistent with your own?

9 MR. REID: Yes.

10 MS. NARDI: I think that's sufficient to
11 establish the foundation for the information
12 supplied by Mr. Reid.

13 HEARING OFFICER SHEAN: Sure. All
14 right, it does. Are there any questions of Mr.
15 Reid?

16 MR. REID: If I could make one more
17 comment --

18 HEARING OFFICER SHEAN: Sure, you bet.

19 MR. REID: -- for the comfort of your
20 pending process that was suggested by the City.

21 At the time that I provided my last
22 information on this process I discussed it at
23 length. It was, I believe, Wednesday or Thursday
24 of last week, I discussed it at length with Dan
25 Schiott of the City, provided him with copies of

1 exactly the same information that the staff used
2 for its assessment.

3 So I believe that he was in complete
4 concurrence at that point. I'm just giving that
5 to you as a comment for your convenience in going
6 on.

7 HEARING OFFICER SHEAN: No, my
8 understanding was that things had been pretty well
9 ironed out through the discussions, and of course,
10 that's exactly how we like this process to work,
11 so it doesn't get too legalistically formal. And
12 we appreciate your effort on that.

13 MS. NARDI: Mr. Shean, Mr. Hammonds has
14 a couple of additional corrections that are
15 similar to the ones Ms. Allen had to the actual
16 text of the staff addendum, so if we could make
17 those at this time?

18 HEARING OFFICER SHEAN: Sure.

19 MR. HAMMONDS: This is probably more
20 along the lines of comments. There's several
21 references to the lot at gate 8, and for people
22 who are more familiar with the description, gate 8
23 is actually on Second Street. Our intent is not
24 to enter off Second Street, it is to enter off
25 Park and Bayshore. Though it does get called the

1 lot at gate 8, the entry will actually be gate 7.

2 MS. ALLEN: Okay.

3 MR. HAMMONDS: One other comment, maybe
4 I just misinterpreted your words, I thought you
5 said that the turnaround would not exceed 148.
6 That was a planning number, and obviously we have
7 analyzed a larger turnaround. So I think we all
8 understand that we had looked at a much larger
9 turnaround than that.

10 MS. ALLEN: Yes, I --

11 MR. HAMMONDS: Okay.

12 HEARING OFFICER SHEAN: Okay, we're
13 there.

14 MS. ALLEN: -- I could have called that
15 turnaround scenario A up to 148, or turnaround
16 scenario B. As it was I called it turnaround up
17 to 148 and then worst case turnaround.

18 MR. HAMMONDS: That's five.

19 MS. ALLEN: Five hundred.

20 HEARING OFFICER SHEAN: We got it.

21 MS. ALLEN: Okay. Given your last
22 statement, would you like me to amend that parking
23 lot box so it would note something about gate 7
24 instead?

25 MR. HAMMONDS: I don't feel a need for

1 that amendment, if the City doesn't.

2 MS. ALLEN: All right.

3 MR. HAMMONDS: I think we're all in
4 agreement with the bottomline condition, so.

5 MS. ALLEN: Okay, fine.

6 HEARING OFFICER SHEAN: Okay. Thank
7 you, Ms. Allen, Mr. Reid, you're excused.

8 MS. ALLEN: Did you have a --

9 MS. GILLARDE: Yeah, I did want -- I
10 have one question and then a comment on an
11 additional condition that we --

12 HEARING OFFICER SHEAN: Okay, go ahead.

13 MS. GILLARDE: We just wanted to clarify
14 how the scenario under a major turnaround
15 scenario, which would be 500 dayshift workers and
16 300 nightshift workers. If the 300 nightshift
17 workers are coming on site before all the dayshift
18 workers leave, where would they park? Because
19 then you're over your 850.

20 MR. REID: Yes, I understand that. And
21 that was actually transmitted in my email to staff
22 and to your staff, as well as the Commission.
23 There is about an hour period of overlap
24 potential. And I see no reason why the people
25 coming in can move out of the parking lots in that

1 hour at the same rate that others are leaving.

2 MS. GILLARDE: Okay, so --

3 MR. HAMMONDS: I'd also comment that the
4 normal dayshift workers would be leaving at the
5 more normal time, not the turnaround workers.

6 MS. GILLARDE: Oh, so what time then do
7 they typically leave?

8 MR. HAMMONDS: It just staggers all
9 through the afternoon at that point.

10 MS. GILLARDE: So they're are some
11 workers leaving before 6:00, some other dayshift
12 contract workers?

13 MR. HAMMONDS: Yes. And those are the
14 normal staggering approaches that we take when we
15 coordinate with the City.

16 MS. GILLARDE: Okay. Because just the
17 way we read it we could see sort of this point
18 where the lot would be full and people would be
19 coming in and out. Okay.

20 We did recommend an additional condition
21 be added to address the situation if the
22 turnaround exceeded 500 plus 300, or 800. And
23 that was documented in our final DOC, which we
24 filed Friday.

25 So, it's probably that staff may not

1 have seen that or reviewed it?

2 MS. ALLEN: That's correct.

3 MS. GILLARDE: But we would like that
4 considered and entered as a condition. And I can
5 read it out loud or --

6 MS. ALLEN: Please do.

7 HEARING OFFICER SHEAN: Well, let's --
8 do you have any further questions of them?

9 MS. GILLARDE: No, no more questions.

10 HEARING OFFICER SHEAN: Let's do that,
11 and then we'll come to you for that after we
12 excuse these witnesses. Thank you.

13 Okay, let's get to the City of Benecia's
14 suggestion on the exceedance of the worst case
15 turnaround scenario that staff has analyzed.
16 That's really what you're looking at, right?

17 MS. GILLARDE: Yes, because I, I mean
18 there is a potential for an even larger major
19 turnaround.

20 HEARING OFFICER SHEAN: Okay.

21 MS. GILLARDE: Beyond the 800. So shall
22 I just read that into the record, or --

23 HEARING OFFICER SHEAN: Let me just make
24 sure that --

25 MS. GILLARDE: It's on page 10 of our

1 final DOC. And it's item E.

2 HEARING OFFICER SHEAN: Sure, if you
3 like, and for the benefit of the members of the
4 public who are here.

5 MS. GILLARDE: If a turnaround project
6 occurs at the same time as the cogeneration
7 project construction, the following measures shall
8 be implemented to mitigate the cumulative impacts
9 on traffic and parking.

10 The total number of parking spaces
11 available for workers using gates 7 and 9 at the
12 refinery is 850. Of this total 214 spaces are
13 currently being used for normal operation and this
14 leaves 636 spaces available for the cogen project,
15 MTBE phase out, and a possible turnaround project.

16 When the number of workers required at
17 the refinery exceeds 850 the owner will either,
18 one, reduce the number of workers up to a maximum
19 of 150 at the refinery to accommodate the
20 turnaround project; or two, provide additional
21 parking at a remote location with a temporary use
22 permit from the City, and bus workers to the
23 worksites at the refinery.

24 HEARING OFFICER SHEAN: So, my
25 understanding, based upon numbers provided by the

1 applicant to the staff and the staff's testimony,
2 is the maximum number of parking spaces available
3 for construction workers at any given time is 850,
4 and this condition is to address a scenario in
5 which all parking spaces have been filled, is that
6 right?

7 MS. GILLARDE: Correct.

8 HEARING OFFICER SHEAN: Okay. Does the
9 applicant have a response to that?

10 MR. HAMMONDS: A few questions. Is this
11 really, reading the words in there I think this is
12 directed at making sure undeveloped areas don't
13 get turned into parking lots? Is that what the
14 real focus is?

15 MS. GILLARDE: No, it's not. It's to
16 address where would you put these additional
17 workers if that were required.

18 MR. HAMMONDS: Well, we do have other
19 parking --

20 MS. GILLARDE: And also what would LOS
21 levels be reduced to, because again, you know,
22 we've done some evaluation on the turnaround up to
23 800, or total workers up to 800.

24 MR. HAMMONDS: We do have several other
25 parking areas in the refinery. And we don't

1 typically have turnaround contractors parking in
2 those areas.

3 But I'm reluctant to get such a rigid
4 number established that there's no flexibility
5 around that, because there is some additional
6 parking space, not open space, but just actual
7 parking spaces, that could be utilized.

8 The conditions that are listed allow for
9 quite a few different approaches in order to
10 mitigate traffic. Not only staggered work hours,
11 but also different entries and accesses and exits.
12 There's a lot of different steps in there, and I'm
13 really reluctant to try and establish a really
14 rigid constraint like that.

15 I'm not sure why the City feels that is
16 necessary, either.

17 MS. GILLARDE: Well, like I say, our
18 concern comes from if there's a larger turnaround
19 and you have "x" capacity at those lots where they
20 typically would be entering. Where would the rest
21 of them go?

22 And also, like I say, LOS levels would
23 need to be recalculated.

24 HEARING OFFICER SHEAN: Wouldn't the LOS
25 levels be captured in current condition Trans-4,

1 so at least as far as the on-the-street
2 congestion, intersection congestion --

3 MS. GILLARDE: Well, that's true because
4 there are --

5 HEARING OFFICER SHEAN: -- you'd get a
6 crack at that --

7 MS. GILLARDE: -- going to be ongoing
8 counts. So, I suppose --

9 HEARING OFFICER SHEAN: So that part's
10 captured, right?

11 MS. GILLARDE: Yeah.

12 HEARING OFFICER SHEAN: All right, so
13 then we just have to deal with, I guess, assuring
14 adequate parking, not using off-site parking
15 that's not organized and approved, I guess. And
16 that's your objective here? Right? Nor --

17 MS. GILLARDE: It's our concern --

18 HEARING OFFICER SHEAN: -- the use of
19 currently open space or unpaved parking areas --

20 MS. GILLARDE: Correct.

21 HEARING OFFICER SHEAN: -- for parking.

22 Okay. I think we got it.

23 Do you want to respond any further to
24 that?

25 MR. HAMMONDS: Only that we're glad to

1 try and work out some words here, because we don't
2 want to have any negative impacts on the
3 community, either.

4 But we think there's probably room for a
5 lot of flexibility that wouldn't unduly constrain
6 our operation. And though we don't expect that
7 situation, things happen sometimes.

8 HEARING OFFICER SHEAN: Okay.
9 Understood. If you want to submit in your
10 comments something that might address that, that
11 would be helpful, because we understand what the
12 City's concerned about now.

13 Okay, anything further on traffic and
14 transportation?

15 MS. ALLEN: Mr. Shean, if there are no
16 further questions for me or questions from members
17 of the public on this topic, I was planning to
18 return to Sacramento.

19 HEARING OFFICER SHEAN: Yeah, well, I
20 think we're going to have a big purging of the
21 audience here momentarily, from everyone else
22 who's not in air quality or related public health
23 matters.

24 MS. HAMMER: Mr. Shean, --

25 HEARING OFFICER SHEAN: So, in fact I

1 think we're at a -- yes?

2 MS. HAMMER: We did have something to
3 bring up under land use. I realize that's not one
4 of the issues --

5 HEARING OFFICER SHEAN: That's fine.

6 MS. HAMMER: -- that you had identified
7 today, but I know that Ms. Allen has been involved
8 in that, so.

9 HEARING OFFICER SHEAN: All right, then
10 before she leaves we'd better address that. Did
11 you have questions of her? All right.

12 Well, you didn't slip away quite so
13 quickly and quietly.

14 MS. ALLEN: Yeah, you notice I gave that
15 a shot.

16 (Laughter.)

17 HEARING OFFICER SHEAN: Why don't you go
18 ahead, then, please.

19 MS. HAMMER: First of all I wanted to
20 point out that because the City has issues in
21 other areas, traffic and air quality and noise,
22 the statement in the revised staff assessment that
23 the project complies with all of the City's
24 general plan policies and zoning ordinance
25 requirements is premature. We can't come to that

1 conclusion as yet, and that was in the land use
2 section.

3 The issue that I wanted to bring up
4 relates to a construction laydown area. The
5 original AFC identified two construction laydown
6 areas, one of which is currently developed and has
7 been used for laydown and storage before. The
8 other area was not described, other than a
9 preliminary identification of its location.

10 We asked for further data on this second
11 laydown area and we received two responses from
12 the applicant which simply identified the first
13 laydown area, and did not make any mention of the
14 second one.

15 We have a concern about that second
16 laydown area because without any information on
17 where it is, what steps might be taken to develop
18 it for use, and also whether there would be any
19 long-term use of the area after it's developed for
20 this project, we're not able to determine whether
21 that second laydown area would comply with the
22 City's requirements.

23 Since we haven't gotten a response to
24 the request for more information on that second
25 area, and we also have not received any kind of a

1 definitive statement that that area will not be
2 used, we're asking for a condition of
3 certification that restricts Valero to the use of
4 existing laydown areas for this project.

5 I don't know if Eileen has any further
6 information or response to that concern.

7 MS. ALLEN: I don't have any further
8 information. That condition is acceptable to me
9 from the staff perspective. But I'd like to hear
10 from Valero.

11 MR. HAMMONDS: We don't take exception
12 to that condition.

13 MS. ALLEN: Is that suggested condition
14 contained in your April 16th --

15 MS. HAMMER: In the final DOC, --

16 MS. ALLEN: -- document?

17 MS. HAMMER: -- yes, it is.

18 MS. ALLEN: All right.

19 MS. HAMMER: Thank you.

20 HEARING OFFICER SHEAN: Okay. Is there
21 anything anybody wants to take up before we do air
22 quality. What we're contemplating is a brief
23 break. Is there a member of the public who --
24 okay, we'll --

25 MR. KRAMER: Wanted to bring back

1 Mr. Buntin on noise for a moment to clarify some
2 of the ambiguity that arose at the end of his
3 testimony.

4 HEARING OFFICER SHEAN: Okay.

5 MR. BUNTIN: Thank you. Again, I'm Jim
6 Buntin. I just wanted to add four points of
7 clarification, if I could.

8 The first is an apology actually; I did
9 pu the LMax standard in there for the hourly
10 standards of the City general plan, and that was
11 incorrect. So those references to 70 and 75
12 decibels in table NE2 are incorrect.

13 They came from an earlier draft of the
14 noise element which was ultimately not adopted.
15 And I failed to change it once I got into the
16 actual adopted text.

17 So that leaves us with the question
18 about steam blows and what standard to apply. And
19 let me just give you three other points of
20 information.

21 The first is that the noise element or
22 the general plan doesn't typically apply to
23 construction noise standards. And that would be
24 my presumption. As it turned out, we have an
25 email from Kitty Hammer of the City Staff, saying

1 that that's so.

2 So, we looked somewhere for a noise
3 standard that we could apply. We do find in the
4 general plan, though, a statement, after referring
5 to using the 75 decibel standard as being
6 acceptable for flaring and pressure relief valves
7 or safety equipment, there's a statement that
8 noise levels which are projected to exceed this
9 maximum are considered a significant environmental
10 impact. This is the City's general plan.

11 So that was my presumption was if we
12 kept it below 75 we certainly wouldn't qualify for
13 significant environmental impact under the City's
14 usual criteria.

15 The second thing is that since this is
16 construction we went to look at other references,
17 and the pertinent information there is in the
18 municipal code, which has specific restrictions
19 for construction within 500 feet of a residential
20 zone.

21 This site is obviously beyond that
22 distance, so there are no specific restrictions.
23 Those specific restrictions had to do with the
24 time of day, rather than the noise level.

25 So we're still left in kind of a limbo

1 for a specific standard. So I went back to that
2 75 decibel standard of the general plan as being
3 the minimum -- or the maximum allowed before you
4 have a significant environmental impact. So
5 that's the last bit of logic I had to support our
6 position.

7 However, if you were to apply the City
8 noise element or general plan standards strictly
9 to this as construction then you would find you
10 could only produce 75 dba for 36 seconds in any
11 hour. So if we ask what can you do for three
12 minutes, you can produce 68 decibels for three
13 minutes and still comply. Or you can produce 66
14 decibels for five minutes and still comply, as
15 long as it was daytime.

16 So that's just some information for you
17 to weigh should you consider an alternative to the
18 75 dba standard.

19 And that's all I had.

20 HEARING OFFICER SHEAN: Okay. Any
21 questions at this point?

22 All right, thank you.

23 MR. HAMMONDS: Could I ask a question?

24 HEARING OFFICER SHEAN: Sure.

25 MR. HAMMONDS: What kind of limitations

1 on this kind of a noise level are typically
2 applied to other projects?

3 MR. BUNTIN: It's most typical in my
4 experience, which is really only over the last
5 nine months or so with the Energy Commission, to
6 see steam blows restricted by requiring a muffler,
7 which would provide sound attenuation of either --
8 of 20 decibels or 30 in one application.

9 And in some cases the Energy Commission
10 has not allowed high pressure steam relief -- or
11 high pressure steam blows, typically when
12 residents are very close, or someone, you know, is
13 particularly potentially affected by the blast
14 noise.

15 HEARING OFFICER SHEAN: Yeah, I think
16 under those circumstances we're talking about
17 neighbors in terms of residential receptors --

18 MR. BUNTIN: Close neighbors.

19 HEARING OFFICER SHEAN: -- that they're
20 basically across the street or kitty-corner or
21 something like that.

22 MR. BUNTIN: That's right.

23 HEARING OFFICER SHEAN: All right,
24 thanks.

25 MR. BUNTIN: Thank you.

1 HEARING OFFICER SHEAN: Okay, is there a
2 member of the public who would like to make a
3 comment here before we take a brief break? And
4 then we'll come back and do air quality. Yes,
5 sir?

6 MR. CRAFT: if I could, please.

7 HEARING OFFICER SHEAN: If you don't
8 mind coming up to the microphone.

9 MR. CRAFT: Sure. I'm Bob Craft, a
10 resident of Benecia.

11 I have a couple comments and I'll try to
12 keep them brief. And I'd like to state at the
13 outset that I favor the building of this facility.
14 And I understand the rationale for this expedited
15 process, but, you know, and I'm sure you
16 understand, but I'll need to say it, I think, for
17 my own satisfaction, that this expedited process
18 does not give a layman time to come close to
19 understanding, or being able to evaluate the
20 process.

21 Although I'm in favor of the
22 cogeneration facility, I don't believe they should
23 be given any environmental free passes.

24 And in terms of the water usage, a lot
25 of discussion about the Mojave banking, but to my

1 knowledge that's never been used, or tried. So
2 we're talking about something that's theoretical.
3 And that water is coming out of the Mojave
4 allocation, presumably they would be just as tight
5 in a drought year as we are, so, you know, it
6 becomes a little problematic in my mind about this
7 water.

8 Now, the amount that we're talking
9 about, 102 million gallons a year or something
10 like that, you know, it's not a huge amount of
11 water in terms of the total used by the refinery
12 overall, but in a decreased allotment year like we
13 have now, it's not insignificant, either.

14 And as has been pointed out, the
15 original staff assessment called for recycled
16 water use two years after certification. The
17 revised one says three. And still, it's not clear
18 to me why that figure's been upped, except as a
19 convenience to Valero.

20 I'm not an engineer, but the literature
21 I've read indicates that there are at least three
22 other refineries in California using recycled
23 water, and other refineries elsewhere. And some
24 of these have been doing it for some time.

25 Now, as far as I know, Valero uses no

1 recycled water. And so it seems to me that
2 technology obviously exists and the science is not
3 the problem. So it's difficult for me to
4 understand why water recycling is not being
5 required from the get-go.

6 In any case, three years from
7 certification which comes to nearly four years
8 from now, you know, seems like way too long to me.
9 And I would very much like to see that timeline,
10 as a condition of the permit, compressed to a
11 significant degree.

12 My sense is from being involved in large
13 projects in the past and all, you know, engineers
14 take whatever amount of time is allotted. If
15 they're given a year and a half they'll probably
16 take it; if they're given four years, they'll meet
17 that, but barely. At least that's my sense.

18 And on the subject of noise, now you
19 know, I heard that 80 decibels is equivalent to a
20 motorcycle at 50 feet and all this stuff. And
21 I'll have to accept that as gospel, except this
22 refinery operation is extremely noisy at times
23 already. And it's not always restricted to
24 daylight hours.

25 Now, I've never complained about that

1 because the refinery was there when I moved. But
2 I am anxious to insure that there is no additional
3 noise beyond what we already have, the noise
4 level.

5 And I would like to argue to put the
6 most stringent noise controls on it that you can,
7 you know, to make sure that there's not an adverse
8 effect on the detectable noise environment, you
9 know, anywhere in the nearby community.

10 And there are some houses that are
11 pretty close to the refinery, so, in terms of -- I
12 don't know what the noise level is like at Allen
13 Way, but I know I don't live much further away
14 than Allen Way, and I can hear a heck of a lot of
15 noise sometimes, already. It's not unlike the
16 consistent hum of a jet airplane overhead.

17 And that's about all I have to say on
18 those two points, unless you've got some --

19 HEARING OFFICER SHEAN: Okay, Mr. Craft,
20 we appreciate that. And just for your factual
21 information, if this facility is certified, it
22 would probably be either let's say October of this
23 year, so that it would not be four years hence.
24 At the most, if the Commission accepts the
25 condition that's currently proposed in the staff's

1 document, it would be three years, let's say, from
2 October of 2001, and not four.

3 MR. CRAFT: But three years plus, right?

4 HEARING OFFICER SHEAN: Well, three
5 years from October, so 10-04 could be the latest.

6 But I thank you.

7 MR. CRAFT: I still would like to see
8 that compressed.

9 HEARING OFFICER SHEAN: Understood, and
10 one of your intervenors is here advocating it, as
11 well. So, we're going to consider it.

12 MR. CRAFT: Thank you.

13 HEARING OFFICER SHEAN: Anything else
14 from any other person before we take our break?

15 Let's call it a ten-minute break. It
16 will probably actually be closer to 15, and then
17 we'll get back and do air quality.

18 (Brief recess.)

19 HEARING OFFICER SHEAN: All right, we'll
20 make that official. We'd like to thank Valero for
21 having provided some refreshments, some coffee to
22 keep us going here, a little bit of sugar to get
23 our blood sugar back up, and now we're ready to
24 rip into some air quality.

25 So, with that, we have two witnesses

1 here who have been previously sworn. Why don't we
2 just have you introduce yourselves, please.

3 MR. LAYTON: I'm Matt Layton from the
4 California Energy Commission.

5 MR. HILL: I'm Steve Hill with the Bay
6 Area Air Quality Management District.

7 HEARING OFFICER SHEAN: All right, Mr.
8 Hill, let me just thank you for being here
9 representing the District. Thank you, also, for
10 your preparation of the preliminary determination
11 of compliance and having gotten that to us and
12 available for public review. The status I
13 currently understand that it's in, it is sort of
14 officially out as of last Thursday?

15 MR. HILL: Yes, that is correct.

16 HEARING OFFICER SHEAN: Okay. And can
17 you tell me what your expected public comment
18 period on that is? That was a matter of some
19 discussion.

20 MR. HILL: We have published it for 30
21 days of public comment, a full 30 days.

22 HEARING OFFICER SHEAN: Okay. All
23 right, Mr. Layton, why don't you tell us whatever
24 you want to tell us.

25 MR. LAYTON: Good morning. I'm here to

1 enter, I guess, my testimony into the record, the
2 addendum. There were some errors pointed out and
3 so I have corrected those errors regarding BACT
4 for certain pollutants.

5 Also I've incorporated the final numbers
6 from the preliminary DOC that was published last
7 Thursday.

8 There are a couple other issues that are
9 outstanding that we would like to work on during
10 the comment period with the District. One is some
11 excursion language, perhaps, for the NOx number.
12 The PDOC went from 4.4 down to 2.5 ppm over three
13 hours for the NOx number.

14 We're --

15 HEARING OFFICER SHEAN: Well, we're
16 going to discuss that today.

17 MR. LAYTON: Okay, well, we've entered
18 into some discussions with the District and
19 they're very preliminary, but we would like to
20 insure that the facility, as permitted, can
21 actually operate safely and stay within that
22 permit limit. So we're looking for some excursion
23 language that we've used before, both EPA and the
24 District has used before on some of these newer
25 power plants at these really low NOx numbers.

1 Also we need to add a condition on the
2 total dissolved solids for the cooling tower.
3 There was some discussions about what the number
4 was. The AFC referred to 600 ppm TDS as the upper
5 limit for the cooling tower water.

6 Discussions with the applicant indicated
7 that the 1080 would be the correct number.
8 However, we do not have a condition limiting that,
9 so we need to enter that condition into our
10 analysis. We'll try to do that over the 30-day
11 comment period.

12 HEARING OFFICER SHEAN: Okay, let me,
13 just as a housekeeping matter, because I had
14 what's called draft preliminary determination of
15 compliance, which came essentially in two packets.
16 And I'm looking at your revision.

17 It appears the attempt has been to use
18 the, I think there were something on the order of
19 45 to 50 conditions in each of those phase one and
20 two. And you --

21 MR. LAYTON: There were 37 in each.

22 HEARING OFFICER SHEAN: And you've
23 incorporated, or have combined them --

24 MR. LAYTON: The District combined the
25 conditions into 42 conditions in the final

1 preliminary DOC. So I went back and got rid of 37
2 conditions, added a few more. So we do have a
3 slimmer document, hopefully, that is more precise.
4 Because the 74 conditions were rather lengthy.

5 HEARING OFFICER SHEAN: Why don't we ask
6 a round of questions and leave for the moment the
7 issue here of the NOx BACT for refinery fuel gas.

8 And the issue that the Committee is
9 going to want to address at that point is with the
10 revision downward to 2.5, is the question of
11 whether or not that is actually feasible.

12 In the information we had in the draft
13 PDOC, apparently based upon manufacturer data, the
14 number of the 4.4 was the one that was used.

15 I think the Committee, and ultimately
16 the Commission, is disinclined to put in a number
17 that we may know from the beginning is not
18 achievable. It's one thing to put a process into
19 play that will allow you to get to the number that
20 is actually achievable, but probably not a good
21 idea to select a number that from the beginning we
22 have little confidence that we can actually
23 achieve.

24 But that's something I would like to
25 address after we've taken care of other air

1 quality issues.

2 So, with that, I guess if there are any
3 questions, comments from the applicant's side,
4 let's start with that.

5 MS. NARDI: We have a number of
6 comments, both on the addendum to the staff
7 assessment, and on the preliminary determination
8 of compliance. And we could present those point-
9 by-point, or give you the highlights and put them
10 in writing. It's your preference.

11 HEARING OFFICER SHEAN: Sure, probably
12 the highlights now are good.

13 MS. NARDI: I'll turn this over to Mr.
14 Hammonds then.

15 MR. HAMMONDS: Just a quick question
16 about this new condition about the TDS and the
17 cooling tower.

18 Are you visualizing an annual limit on
19 that? Or -- this is the first I've heard of this
20 comment.

21 MR. LAYTON: I apologize this is the
22 first you've heard of it. But, on other projects
23 we put a TDS, the exact monitoring period I'm not
24 sure I remember correctly, so we'd be happy to
25 work that out.

1 I would also like to discuss it with you
2 in light of this recycled water coming from
3 Benecia, because that would bump up your TDS.

4 I think we can accommodate higher TDS
5 levels, we just need to then take a look at the
6 PM10 that comes out of that.

7 It would be a requirement; we would have
8 to monitor it; and it would have to be measured at
9 some point in time. And annual basis may not be
10 frequent enough to maintain the PM10 levels to the
11 number that we mitigate to.

12 MR. HAMMONDS: Do you plan to make a
13 proposal, or should we just have a discussion at
14 some point?

15 MR. LAYTON: Whatever you prefer.

16 MR. HAMMONDS: Okay.

17 MR. LAYTON: I think it's a pretty
18 innocuous condition. I don't think members of the
19 public will be too concerned. Obviously the PM10
20 number will reflect whatever the TDS number is.

21 MR. HAMMONDS: Okay. Air quality, and
22 I'm only going to hit on the highlights. I have
23 quite a few comments that are going to be
24 housekeeping in nature, and things that I don't
25 think are going to be any complication at your

1 end. And I'll be sure and docket that by the end
2 of this week.

3 But I will go ahead and touch base on
4 the initial ones.

5 HEARING OFFICER SHEAN: Let me ask, Mr.
6 Hammonds, if you have something that addresses a
7 specific condition, whether housekeeping or
8 substantive, that appears in here, I'd ask you to
9 address it this morning, or this afternoon now.

10 MR. HAMMONDS: I've probably got 30 or
11 more.

12 HEARING OFFICER SHEAN: Thirty of more?

13 MR. HAMMONDS: Yeah.

14 HEARING OFFICER SHEAN: Okay, I'll take
15 it in writing then.

16 (Laughter.)

17 MR. HAMMONDS: Okay. We'll hit the
18 highlights.

19 HEARING OFFICER SHEAN: All right.

20 MR. HAMMONDS: There's a requirement,
21 this would be on the District -- this is going to
22 be difficult because you didn't have the AQ
23 numbers in the addendum, it didn't come out from
24 the printer, I guess. So I'll probably be
25 referring to the actual PDOC --

1 MR. LAYTON: The numbers should be
2 consistent.

3 MR. HAMMONDS: I'm sure they will be.
4 On page 8 there's a limitation described, 51 ppm,
5 on the TRS, which is a current condition that we
6 have on an annual basis, and the Air District has
7 stated that this needs to go to a monthly basis.

8 A) I don't understand the reason for
9 that. And, B) we could not comply with that. We
10 go through periods of time when we do go for
11 months; it's weather related; it's also
12 operational related because we have tower fouling
13 at times.

14 So we object to that change, though we
15 would certainly accept the annual basis, as we
16 have currently.

17 On page 19, the boiler shutdown credits
18 for SOx have not been reflected in the curtailment
19 group. There will need to be a mechanism for
20 doing that. I would suggest just listing them as
21 line items in there.

22 MR. HILL: In my conversation with Doug
23 Hall for the District, those were going to be
24 added in later because they weren't banked yet.
25 It was an accounting issue. That's what I

1 understood. I had tried to identify that in my
2 staff assessment, that these were out there, they
3 were available to the applicant, and they would
4 probably be used to increase the bubble, so to
5 speak.

6 MR. HAMMONDS: Yes, you suggested doing
7 them as ERCs, which would be one approach.
8 However, as we pointed out, we may not be in a
9 position to construct phase two, yet that third
10 boiler, we would like to have inside the bubble.
11 Though it will be in the cold shutdown mode at
12 that point.

13 MR. HILL: For your information, Sam, we
14 are revisiting where we are currently reviewing
15 this issue, and we may not be able to do this
16 small bubble. We may actually have to expand the
17 bubble to include more refinery sources.

18 So this is an area -- we will construct
19 a condition that protects the offset requirements,
20 but it may not be this one. Probably won't be
21 this one.

22 MR. HAMMONDS: We'll be eager to hear
23 what your thoughts are.

24 (Laughter.)

25 MR. HAMMONDS: At this late minute.

1 MR. LAYTON: Will that information be
2 available?

3 MR. HILL: As soon as we've had a chance
4 to review it; it will certainly be in the FDOC.

5 MR. LAYTON: Okay.

6 MR. HAMMONDS: On page 25 there are
7 references to acid rain requirements, and we would
8 note that those only come into effect with the
9 second machine. The first machine does not
10 trigger acid rain requirements.

11 MR. HILL: It is our understanding that
12 the acid rain requirements kick in when you
13 receive your permit.

14 MR. HAMMONDS: For the second machine.

15 MR. HILL: We're going to issue them all
16 together. Both -- it's the authority to construct
17 that triggers the acid rain requirements under
18 federal law.

19 MR. HAMMONDS: There are two authorities
20 to construct that have been requested from the Air
21 District. The second one would be for the second
22 machine.

23 MR. HILL: Right, but the CEC -- the
24 process for permitting these is such that we issue
25 the authority to construct when the CEC has

1 certified the equipment.

2 When the CEC certifies the equipment we
3 issue the authority to construct. That triggers,
4 under federal law, the requirements for that unit,
5 whether or not you ever plan to build it.

6 MR. HAMMONDS: We will need to discuss
7 the second machine issue on that, then.

8 MR. HILL: Okay.

9 HEARING OFFICER SHEAN: It sounds as if
10 you're going to use their public comment period
11 extensively.

12 MR. HAMMONDS: We do have comments.

13 HEARING OFFICER SHEAN: Well, and that's
14 how the process works, though.

15 MR. HAMMONDS: You've also listed, and
16 this would be on page 33, there's a 500-hour
17 allowance for the commissioning period. There are
18 also daily emission allowances. These are not
19 adequate. I'm not sure where these numbers came
20 from, but we will prepare and provide a basis for
21 those numbers.

22 You've also indicated that these numbers
23 have to be included in the annual mass limit
24 during the commissioning period. That's not going
25 to be a realistic approach, either.

1 I'd point out that the NOx reductions,
2 alone, with the SCR operating are approaching 95
3 percent. So if during the commissioning period we
4 operate for one day, then that deletes 20 days
5 worth of operation that we would be allowed.

6 So we're going to want to address that,
7 also.

8 The other topic that's already been
9 brought up regarding the ability to comply with
10 the 2.5, we are going to want to discuss that and
11 whether that's in the terms of an excursion
12 allowance or averaging periods or something.

13 Our biggest concern is the ability to
14 reliably achieve that level on a consistent basis.

15 Also we note that, as has been
16 mentioned, all the conditions were combined for
17 both pieces of equipment. And to the extent that
18 we don't build the second one, it's going to have
19 to get broken out again. So we would suggest that
20 we separate them again.

21 I believe that covers the highlights.

22 MS. NARDI: There's one additional
23 comment we wanted to make. We wanted to actually
24 comment on the comment period, if we may.

25 HEARING OFFICER SHEAN: Okay.

1 MS. NARDI: And we understand that the
2 Air District has put this matter out for a 30-day
3 public review period, and as everyone
4 acknowledges, that's going to make it very
5 difficult, very tight for us to actually receive
6 final approval from the CEC and begin
7 construction, given the constraints of building
8 during the rainy season.

9 And so our review of the regulation that
10 was cited in the preliminary determination of
11 compliance suggests that the 30-day review period
12 that was cited doesn't apply to this project.

13 So the question we have is whether the
14 Air District could not expedite the review of this
15 matter so that we could hopefully reach a final
16 approval from the CEC and the Air District prior
17 to the now anticipated early October date.

18 MR. HILL: Does the Commission want a
19 response?

20 HEARING OFFICER SHEAN: I'm sorry,
21 you're asking whether they can do -- they would
22 shorten their comment period so that the
23 Commission could act before --

24 MR. HAMMONDS: Before October.

25 HEARING OFFICER SHEAN: -- October, what

1 is it, October --

2 MS. NARDI: 3rd, I think, was the date.

3 HEARING OFFICER SHEAN: -- October 3rd?

4 So that would be either the -- well, there are two
5 scheduled business meetings, one on the 19th and
6 another one on the 12th, which is the specially
7 set Metcalf one.

8 (Laughter.)

9 MR. HILL: There will be plenty of time
10 at that one.

11 HEARING OFFICER SHEAN: You know,
12 perhaps the scheduling issue we can discuss when
13 we get to the end here, when we're going to have a
14 discussion about briefs and so on like that.

15 And I guess the only other thing to do
16 is if -- well, let's do that.

17 MS. NARDI: We can defer that
18 discussion.

19 HEARING OFFICER SHEAN: Okay. Because
20 it may be that other things will be discussed on
21 this topic that impact that.

22 Okay, how about the City on air quality.

23 MS. HAMMER: The City has a question.
24 We also have a comment statement. Do you want us
25 to do both?

1 HEARING OFFICER SHEAN: Sure. Start
2 with the question, though.

3 MS. HAMMER: Okay, the question is we
4 received the Air District's PDOC the afternoon of
5 the 16th like everyone else, I think. The
6 appendices, the technical appendices were not
7 attached. And we're wondering how and when we can
8 obtain these.

9 MR. HILL: We can send them to you
10 overnight when I get back to the office.

11 MS. HAMMER: Great, thank you very much.

12 MS. DEAN: Would you send them to all
13 parties?

14 MR. HILL: Yes.

15 HEARING OFFICER SHEAN: Sure.

16 MS. HAMMER: Okay, the City originally
17 raised a number of concerns regarding air quality.
18 Most of those have been answered through the
19 process to this point, through Valero's data
20 responses primarily.

21 But Valero did defer the questions
22 regarding emissions calculations to the PDOC from
23 the Air District, which has now been released.
24 And so we have that, as of last Thursday
25 afternoon, without the technical appendices.

1 We're still unable to resolve that issue until we
2 get the full document and our technical expert has
3 had time to look at it.

4 He has looked at the PDOC insofar as
5 he's been able to review it in the tight
6 timeframe. He's identified a number of what
7 appear to be errors and inconsistencies in the
8 discussion in the PDOC, particularly the
9 discussion of conditions.

10 And he has also noted that there are no
11 conditions at all apparently that speak to the
12 enforcement of emission limits for NOx and for CO.

13 So we have some reservations still about
14 the air quality issue, which we are not going to
15 be able to fully deal with until we get the
16 complete document.

17 So I simply want to say that we will be
18 filing comments which hopefully will be able to
19 resolve these issues for us after we get the
20 technical appendices, and after our expert has had
21 time to take a more thorough look at these issues.

22 HEARING OFFICER SHEAN: Okay. Does that
23 wrap it for the City for now?

24 MS. HAMMER: Yes.

25 HEARING OFFICER SHEAN: Okay. Ms. Dean,

1 do you have questions or comments?

2 MS. DEAN: Actually, could I --

3 HEARING OFFICER SHEAN: Defer?

4 MS. DEAN: -- defer to CURE, and then if
5 they don't -- I think they might articulate it
6 more professionally.

7 HEARING OFFICER SHEAN: All right. And
8 we're going to need to give you a place to sit.
9 Can they borrow one of your chairs? Are we going
10 to need two? Okay.

11 (Pause.)

12 MR. WOLFE: Good morning, Mark Wolfe
13 here with CURE, and with me is Dr. Fox. A couple
14 of quick observations, followed by some questions
15 for the applicant and a couple questions for the
16 staff. And I'm very much hoping that my voice
17 remains audible.

18 First, we, too, received the PDOC
19 Thursday afternoon without the appendices. You
20 know, we'd be grateful to get the appendices as
21 soon as possible.

22 We also received responses to our second
23 set of data requests Friday afternoon, and we
24 thank the applicant for getting those to us at the
25 appropriate time.

1 With all that said, we obviously -- I
2 hope it's obvious -- have not had sufficient time
3 to prepare direct testimony on any air quality
4 issue relating to the PDOC because of the short
5 timeframe, and we will follow the applicant's lead
6 and submit our comments to the Air District within
7 the public comment period. And that will be the
8 forum for these issues presumably to be vetted and
9 considered.

10 With that said, the colloquy that I just
11 listened to certainly felt like a workshop, as
12 opposed to a hearing. The parties raising issues,
13 agreeing to submit written comments, agreeing to
14 have discussions later on. I would just observe
15 that the characteristic of that exchange flags in
16 my mind that it is probably going to be likely to
17 have a hearing on air quality, at a minimum, after
18 all the parties have submitted their comments on
19 the PDOC. Preferably after the FDOC, itself, is
20 issued. But I would just flag that as something
21 that we would consider appropriate in light of
22 what's taking place right now.

23 And I'm not saying this, you know,
24 because I feel we should have a hearing for the
25 sake of having a hearing, but clearly what this is

1 is not a hearing. It's a workshop.

2 Okay. I would ask that in light of our
3 not presenting lengthy direct testimony from Dr.
4 Fox that we be indulged to ask several questions.
5 Thank you.

6 First for the applicant. It might
7 actually be appropriate to have the person who
8 prepared the responses to our data requests up
9 there at the microphone.

10 HEARING OFFICER SHEAN: Okay, and I'll
11 just observe that given the fact that the District
12 has to at least go through the process of a public
13 review period, plus a revision to the preliminary
14 determination of compliance, that that process is
15 the one that the Commission will have to await.

16 And so that your asking questions of the
17 applicant in this essentially have to take that
18 into account so that whatever you're attempting to
19 elicit isn't really more appropriate for that
20 other forum.

21 But we'll give you some latitude.

22 MR. WOLFE: It's information that so far
23 has not been presented.

24 HEARING OFFICER SHEAN: Okay.

25 MR. WOLFE: Okay. And I will be as

1 quick as I can.

2 Thank you, good morning. In response to
3 our data request 123, I don't know if you have it
4 in front of you but I'll read it to you.

5 You stated that the Sprint system would
6 be used on the turbine?

7 MS. MCGUIRE: That's correct.

8 MR. WOLFE: Is it the enhanced Sprint
9 system in which water is injected into both the
10 low pressure and high pressure --

11 HEARING OFFICER SHEAN: I'm sorry, why
12 don't we have you identify yourself for the
13 record, please.

14 MS. MCGUIRE: Yeah, Lynn McGuire with
15 URS.

16 MR. WOLFE: Okay, do you know if it's
17 the enhanced Sprint system where water is injected
18 into both the low pressure and high pressure
19 compressors? Or whether it's the basic Sprint
20 system where water is injected between the two
21 compressors?

22 MS. MCGUIRE: I don't know.

23 MR. WOLFE: You don't know. Okay. Will
24 the MTBE phase out project remove butanes from the
25 gasoline blend stock?

1 MS. MCGUIRE: My understanding is that
2 it will.

3 MR. WOLFE: Do you know about how much?

4 MS. MCGUIRE: No.

5 MR. WOLFE: Do you know what will happen
6 to the butanes that are removed? Whether they'll
7 be shipped off-site, sold?

8 MS. MCGUIRE: My understanding is that
9 there are a number of things that could happen to
10 them. And, you know, anybody's guess as to
11 exactly where they'll end up.

12 MR. WOLFE: Will they be blended into
13 the refinery fuel gas system that will be used to
14 power this project?

15 MS. MCGUIRE: That's one possibility.

16 MR. WOLFE: Okay. A few questions about
17 offsets. In response to our request 126 where we
18 asked for a copy of the permits to operate the
19 boilers and the hot oil heater, and an explanation
20 as to how they would be modified to generate the
21 SOx offsets, you responded that the permits for
22 those sources would not be modified.

23 I was wondering if you could explain
24 briefly how the applicant proposes actually to
25 reduce SOx emissions from these sources?

1 MR. HAMMONDS: The permit condition, as
2 written, identifies the baseline emissions from
3 those sources. And it notes that with the
4 addition of the new sources to that group, the
5 permitted emission level will not be increased.
6 And that's the way there is no increase.

7 MR. WOLFE: But I'm asking how the
8 current sources will be curtailed. I guess I'm
9 asking for a definition of what curtailment means
10 for each of these sources.

11 For example, will you be reducing the
12 firing rate on any of the sources?

13 MR. HAMMONDS: Yes.

14 MR. WOLFE: Will you be reducing
15 operating hours?

16 MR. HAMMONDS: Very possibly, yes.

17 MR. WOLFE: Will you be reducing the
18 fuel sulfur content?

19 MR. HAMMONDS: We always minimize sulfur
20 fuel content, and that is one way for reducing,
21 yes.

22 MR. WOLFE: And might you switch to
23 natural gas as the fuel for these sources?

24 MR. HAMMONDS: The natural gas is a
25 process that can be put into fuel gas. The only

1 mechanism for putting natural gas directly to any
2 of the sources is for the proposed project going
3 to the power generation equipment.

4 So, would we put natural gas directly to
5 any of those sources, the answer is no, we do not
6 have plans nor facilities to do that.

7 MR. WOLFE: Thank you. The next
8 question I would invite the District to chime in,
9 if it wants.

10 If you could explain how the SOx offsets
11 for the boiler and the heater are federally
12 enforceable?

13 MR. HILL: I'm not sure, you're talking
14 about the ones in the curtailment unit?

15 MR. WOLFE: Correct.

16 MR. HILL: Those conditions are
17 federally enforceable.

18 MR. WOLFE: How? Just narratively to a
19 layperson --

20 MR. HILL: They'll be in the title 5
21 permit; they're in an existing authority to
22 construct. That makes them, by definition,
23 federally enforceable.

24 MR. WOLFE: But they said they're not
25 modifying the permits or surrendering them.

1 MR. HILL: They're in another authority
2 to construct, an existing authority to construct
3 that covered those sources. They are already
4 federally enforceable.

5 MR. WOLFE: But the reductions, how are
6 the reductions that they're saying they're going
7 to accomplish --

8 MR. HILL: The emissions --

9 MR. WOLFE: What is the consequence, for
10 example, if they don't do it?

11 MR. HILL: They'll be in violation of a
12 federally enforceable permit condition. They will
13 be in violation of this permit condition. And
14 they will be in violation of the underlying -- the
15 other permit condition that's already on them
16 limiting the SOx emissions from those units.

17 If they exceed those limits they will be
18 in violation of a federally enforceable permit
19 condition.

20 MR. WOLFE: Forgive me if I'm not
21 catching it, but there's an existing federally
22 enforceable permit with existing limits that is
23 not being changed.

24 MR. HILL: That is correct.

25 MR. WOLFE: And they're just saying we

1 will reduce them, keeping the permit levels --

2 MR. HILL: No, no --

3 MR. WOLFE: -- higher --

4 MR. HILL: -- you're right, you don't --

5 I think it's not clear what's going on here. What
6 is going on here is they have, when they first
7 obtained these permits they received through-put
8 limits and emission limits for these sources.

9 And they obtained those limits by
10 providing emission reductions. All right, so they
11 fully offset those levels.

12 What they are doing now is using some of
13 that allowance, and they're sharing with this
14 source. So that cumulatively, all together, the
15 emissions remain below those federally enforceable
16 levels.

17 MR. WOLFE: Okay. I'm still not sure I
18 get it, but we'll address it in comments if
19 necessary. Thank you.

20 Can you explain how they will be -- how
21 they're permanent, which is another requirement
22 for offsets under federal regulations?

23 MR. HILL: The emission reductions are
24 permanent in that they have occurred historically.
25 The emission reductions that generated these

1 original offsets are historical. The equipment
2 has gone down.

3 These emission levels are memorialized
4 in the permit, and these emission levels will
5 continue into the future. That's how they're
6 permanent.

7 MR. WOLFE: So this historic emission
8 levels documented and submitted to you?

9 MR. HILL: Yes, they're in -- if you go
10 back to the original permit conditions that
11 created these sources, that will identify the
12 source of the emission reductions that funded
13 those allowable levels. And that's where that
14 documentation exists.

15 MR. WOLFE: And there's a reporting
16 requirement that they submit -- I mean I'm just
17 trying to ascertain what records are kept that
18 document the historic reductions.

19 MR. HILL: Well, for most of them, I'm
20 not sure what the origin of these is. I'd have to
21 go back and take a look at them.

22 But most of the credits that are
23 currently existing in our database, in our bank,
24 are from shutdowns, which means the equipment was
25 permanently shut down.

1 And if that's where these came from,
2 then that's permanent. If where they came from
3 was Valero then Exxon's reduction in the sulfur
4 levels in their fuel gas, then there's a permit
5 condition to which Mr. Hammonds referred earlier,
6 that limits the sulfur levels refinery-wide in
7 their fuel gas.

8 And that is monitored continuously or
9 very frequently.

10 MR. WOLFE: Thank you. Could you
11 briefly describe the small bubble concept that you
12 referred to a few minutes ago, just how that
13 works --

14 MR. HILL: Well, you were actually
15 driving in that direction with your questions,
16 which has to do with the fact that it is one
17 plausible approach for complying with this bubble
18 would be to fire these units on natural gas. And
19 move the fuel gas, displace it into other units,
20 which would not reduce the refinery sulfur
21 emissions. And therefore, there would be an
22 increase in sulfur emissions which we hadn't
23 captured.

24 We need to deal with that potential in
25 this permit condition. The permit condition does

1 not adequately protect against that displacement
2 of fuel.

3 MR. WOLFE: Okay, thank you. The
4 applicant provided a list of MTBE ships in
5 response to our data request; it's a table, or
6 rather an attachment.

7 I just have a couple questions about
8 that. You know what I'm referring to?

9 First of all, the emissions factors that
10 were used to calculate these emissions apparently
11 were derived from a document from the District
12 called summary of analysis Chevron lube oil
13 project, is that correct? Application number
14 27797.

15 MR. HAMMONDS: I believe that's a
16 footnote on there. We use a calculation method
17 approved by the Air District, and I don't recall
18 the details of that.

19 MS. MCGUIRE: My understanding is that
20 that is a reference document that is used
21 frequently for calculating ship emissions.

22 MR. WOLFE: Is that a document that we
23 could get a copy of? Did you rely on it when you
24 prepared this table?

25 MS. MCGUIRE: Yeah, that was the

1 emission factors from that document were relied
2 upon to produce the estimates in that table.

3 MR. WOLFE: Would you mind faxing us a
4 copy say by Friday?

5 MS. MCGUIRE: I think we --

6 MR. WOLFE: Or if you have one here we
7 can copy it after the hearing.

8 MR. HAMMONDS: We've been preparing that
9 table for about the last nine years. I don't know
10 if I have a copy of that document or not.

11 MS. MCGUIRE: I don't know if I do,
12 either. It's possible that we have it and can do
13 that on a quick turnaround. We'll take a look and
14 see.

15 MR. HAMMONDS: I didn't prepare those
16 tables just for you. We have been submitting
17 those to the Air District for about the last nine
18 years.

19 MR. WOLFE: Okay, well, we can
20 communicate offline perhaps by email.

21 Do you know what the sulfur content of
22 the fuel that each of these ships runs on?

23 MR. HAMMONDS: I don't recall the
24 details of how those factors were developed, but
25 the Air District was involved, and they concurred

1 with the calculation methodology. And beyond that
2 I don't know a lot of details on it.

3 MR. WOLFE: Do you know what the
4 starting point for the calculations emissions was,
5 whether it was, for example, the Golden Gate or
6 the Farallons, or dockside, or --

7 MS. McGUIRE: There's been a lot of
8 controversy over that, you know. And I think that
9 the Air District's position on that issue has kind
10 of developed over the last, you know, few years,
11 as to what was used for those calculations, I'd
12 have to go back and check. And what the Air
13 District was accepting with respect to those
14 calculations.

15 MR. WOLFE: So you don't know right now?

16 MS. McGUIRE: No.

17 MR. WOLFE: Okay. So these emissions
18 were originally offset, correct?

19 MS. McGUIRE: Yes.

20 MR. HAMMONDS: Correct.

21 MR. WOLFE: Do you know how? Were they
22 ERCs from the bank, or was it a curtailment of a
23 facility?

24 MR. HAMMONDS: If I remember correctly
25 ERCs were supplied to cover that as part of the

1 Clean Fuels Project that was implemented in 1995,
2 '96.

3 MR. WOLFE: Thank you. Is Valero
4 required to report the shipping activities as a
5 requirement for any authority to construct or any
6 other air permit that it has?

7 MR. HAMMONDS: The shipping data in
8 those tables is required for us to report, and we
9 do, yes. There are permit conditions that require
10 us to do that.

11 MR. WOLFE: Beyond that, any duty to
12 report shipping activities to another agency or --

13 MR. HAMMONDS: I don't know. The Coast
14 Guard probably has some involvement with shipping
15 activities. I don't know.

16 MS. McGUIRE: That specific information,
17 most likely not.

18 MR. WOLFE: Does Valero have the ability
19 or the authority to dictate to the shipper what
20 fuel is used in the ship that delivers the MTBE?

21 MR. HAMMONDS: I'm not sure. But we do
22 have the authority to not allow ships to come to
23 our dock.

24 MR. WOLFE: So how do you know that the
25 SOx emission reduction calculations in the table

1 are representative, if you don't know what --

2 MR. HAMMONDS: The calculation
3 methodology was developed in conjunction with the
4 Air District and they agreed with that calculation
5 methodology. And they require us to use that
6 methodology, so we do that.

7 MR. WOLFE: Now, is that something the
8 Air District could speak to?

9 MR. HILL: As I believe was made clear
10 earlier, that those emission levels were, when we
11 issued the permit for that shipping activity, we
12 based our estimates of the emissions from those
13 ships on methodology that we've been talking
14 about.

15 And Valero was required to provide
16 offsets for that amount. So, that activity has
17 been fully offset. And to the extent that they
18 reduce or curtail or eliminate that activity, the
19 offsets that they provided from whatever source
20 become available for the purpose to which they're
21 placing them.

22 MR. WOLFE: Okay. Thank you. Last
23 question on this topic. Do all the ships go into
24 the same dock? The MTBE ships?

25 MR. HAMMONDS: Do you mean like -- we

1 only have one dock at the refinery.

2 MR. WOLFE: But it's to the facility?
3 They don't go to the Port of Oakland and transfer
4 to a truck? It all goes to --

5 MR. HAMMONDS: The report you see refers
6 to ships that come to our dock.

7 MR. WOLFE: Do any other ships carrying
8 MTBE deliver the additive to any other dock?

9 MR. HAMMONDS: Do any other ships
10 deliver the additive to any other dock?

11 MR. WOLFE: Do any --

12 MR. HAMMONDS: I suspect so, but I can't
13 testify to that.

14 MR. WOLFE: But I mean do any of the
15 ships that Valero intends to claim credit for
16 deliver the fuel to any other dock besides the
17 facility at the refinery?

18 MR. HAMMONDS: I do not know what
19 they're going to do. We don't control those
20 ships.

21 MR. WOLFE: No, currently, or prior to
22 the phase-out. I mean all I'm asking is whether
23 all of the MTBE deliveries are to the Valero dock,
24 or whether Valero obtains MTBE or historically
25 obtained MTBE from ships that deliver the

1 substance elsewhere?

2 MR. HAMMONDS: I don't know the answer
3 to that.

4 MR. WOLFE: Okay. Getting closer, thank
5 everyone for their patience.

6 The netting analysis that you did in
7 response to CURE data request 33, to support the
8 conclusion that you're netting out of PSD review.
9 It appeared to us that you didn't include
10 contemporaneous, quote-unquote, emissions
11 reductions or increases prior to project
12 construction.

13 And the definition of a net emissions
14 increase under the federal PSD regs is to be
15 creditable as any increase or decrease in the
16 preceding five years.

17 Is it true that you didn't include any
18 emissions or decreases from the preceding five
19 years in the analysis?

20 MR. HAMMONDS: I think the actual
21 official PSD analysis was conducted by the Air
22 District. We provided data on emissions, and
23 offsetting reductions.

24 MR. WOLFE: I would then direct the
25 question to the District.

1 MR. HILL: I don't have an answer for
2 that question. I'd have to take a look at the
3 analysis in more detail to determine whether or
4 not the other activity at the refinery has
5 contributed a cumulative increase that has not
6 been offset.

7 MR. WOLFE: Thank you. Moving to the
8 question of PM10 emissions. You're proposing a
9 PM10 emission rate of 1.55 pounds per hour per
10 turbine. And to cap annual PM10 emissions at 13.6
11 tons per year, does that sound correct?

12 MS. McGUIRE: 1.55 pounds per hour,
13 that's correct.

14 MR. WOLFE: Okay.

15 MS. McGUIRE: Per turbine.

16 MR. WOLFE: Per turbine, right, exactly.
17 Now, this was based on two source tests, we
18 understand, that were performed on the Carson
19 Cogen and Elk Grove's, correct?

20 MS. McGUIRE: That's right.

21 MR. WOLFE: Based on the information we
22 have, the firing rate at the Carson Cogen is
23 significantly lower than the firing rate at these
24 turbines. Our data shows 519.9 mmBtu per hour at
25 Carson versus 725 mmBtu per hour here.

1 We also show that at the Carson Cogen
2 they're burning natural gas with a small amount of
3 digester gas versus refinery fuel gas, which is
4 going to be burned here.

5 That that turbine is an LM6000PA,
6 whereas this one is an LM6000PC-E-Spring, and that
7 the Carson turbine injects 15,000 pounds per hour
8 of water, whereas this one injects twice that,
9 30,000 pounds per hour of water, which is going to
10 contribute significantly more to PM10 emissions.

11 So we're curious why you believe Carson
12 Cogen source tests are representative of the PM10
13 emissions from this project.

14 MS. McGUIRE: Well, believe it or not,
15 it's probably the most similar application of
16 LM6000 turbine roughly the same size, whatnot.
17 Noted that certainly there are differences in the
18 fuel type that are being burned in these two
19 different applications. And all that's
20 recognized.

21 But it's probably the most similar
22 application that we could find for comparison
23 purposes.

24 MR. WOLFE: Did you look at source tests
25 for any other LM6000 turbines that are out there?

1 MS. MCGUIRE: Yeah, I believe we did.

2 MR. WOLFE: Which ones?

3 MR. HAMMONDS: Our primary source was
4 the CARB book that those test results came from.

5 MR. WOLFE: Do you know what the vendor-
6 recommended PM10 emission rate is for this
7 project's LM6000? The turbines and the duct
8 burners.

9 MR. HAMMONDS: I don't remember the
10 number, but I do know that General Electric has
11 generally been accused of over-stating the numbers
12 by the Air District, in fact. So we thought
13 actual test data was probably the best indication.
14 So that's what we proposed.

15 MR. WOLFE: Okay. Moving to the health
16 risk assessment, is the appropriate witness for
17 the applicant here, the person who performed the
18 health risk assessment? Was that you, Lynn?

19 MS. MCGUIRE: Yes, that person is here.

20 MR. WOLFE: Okay. In estimating toxic
21 emissions you used an emission factor for quote
22 "natural gas/refinery gas" from CARB's air toxic
23 emission factor database, is that right?

24 MS. MCGUIRE: That's correct.

25 MR. WOLFE: Can you explain what natural

1 gas/refinery gas means in this context?

2 MS. MCGUIRE: What I'd like to do is
3 have one more person join us in answering these
4 questions.

5 MR. WOLFE: Okay.

6 MS. MCGUIRE: That would be Brent
7 Eastep.

8 MR. EASTEP: I am Brent Eastep with URS.

9 MR. WOLFE: Hi, thank you. Did you hear
10 the question?

11 MR. EASTEP: Yeah. When I estimated the
12 emissions for the toxics, using the CARB database,
13 there's a number of fuels that you could choose
14 from. And they have a fuel natural gas, just
15 plain old natural gas; and then they have natural
16 gas/refinery fuel gas. And there might be some
17 other ones, too, but that was the closest in the
18 database that came just -- they didn't have one
19 that was just plain old refinery fuel gas.

20 MR. WOLFE: So they did not have one?

21 MR. EASTEP: Right.

22 MR. WOLFE: In the database specifically
23 refinery fuel gas?

24 MR. EASTEP: Right, that was the only
25 one I could find that hit that.

1 MR. WOLFE: Okay. If there had been
2 one, refinery fuel gas, would you have relied upon
3 it?

4 MR. EASTEP: Yeah.

5 MR. WOLFE: Okay. Do you know if
6 natural gas/refinery gas is an average?

7 MR. EASTEP: I'm not sure. You can't
8 get any details on the website into that.

9 MR. WOLFE: Okay, and just to clarify,
10 natural gas for this project is the backup fuel,
11 with refinery fuel gas as the primary fuel?

12 MR. EASTEP: (Affirmative head nod.)

13 MR. WOLFE: Okay, thank you. And that
14 was a yes?

15 MS. MCGUIRE: Yes.

16 MR. HAMMONDS: Yes.

17 MR. WOLFE: Thank you. To estimate
18 hexavalent chromium emissions you used a source
19 test for a hot oil heater, is that correct?

20 MR. EASTEP: That's right --

21 MS. MCGUIRE: That's true.

22 MR. EASTEP: -- a hot oil furnace.

23 MR. WOLFE: Okay. And the amount of
24 hexavalent chromium that forms during combustion
25 is a factor of the oxygen content in the

1 combustion zone, is that right?

2 MS. McGUIRE: We don't know that to be
3 true necessarily.

4 MR. WOLFE: Would you agree that when,
5 for example, NOx concentrations are reported for
6 heaters, they usually report it at a 3 percent
7 oxygen level?

8 MS. McGUIRE: That's correct.

9 MR. WOLFE: Would you agree that when
10 NOx concentrations are reported for turbines
11 they're usually reported at a 15 percent oxygen
12 level?

13 MS. McGUIRE: That's correct.

14 MR. WOLFE: And the same for boilers, 3
15 percent?

16 MS. McGUIRE: That's correct; those
17 would be -- those values would be corrected to
18 those --

19 MR. WOLFE: Okay.

20 MS. McGUIRE: -- levels. It doesn't
21 necessarily speak to exactly how the equipment
22 would be operated.

23 MR. WOLFE: Um-hum. But given the same
24 amount of total chromium, isn't it reasonable to
25 assume that the amount of hexavalent chromium in

1 the exhaust gas from a turbine is going to be
2 substantially more than from the exhaust gas from
3 a heater, because you have five times more oxygen
4 present?

5 MS. McGUIRE: We don't know that to be
6 true necessarily.

7 MR. WOLFE: Do you know if hexavalent
8 chromium was ever used in the existing refinery
9 cooling towers that are directly south of the
10 project site?

11 We know that in other refinery
12 applications in the past that was a common
13 practice.

14 MS. McGUIRE: Chromium-based materials
15 we do know were.

16 MR. WOLFE: Were.

17 MS. McGUIRE: Whether it was hexavalent
18 chromium or not, we don't know.

19 MR. WOLFE: Do you know when that was
20 discontinued, that practice?

21 MS. McGUIRE: Trying to remember the
22 date, but it was early 1990s.

23 MR. WOLFE: Early '90s, okay, thank you.
24 I think that's probably my last question for the
25 applicant.

1 A couple for the staff on construction
2 emissions mitigation. Mr. Layton, in previous
3 siting cases the staff has recommended using
4 oxidizing soot filters on all construction
5 equipment greater than 100 horsepower, where
6 feasible.

7 Here staff's recommending those same
8 soot filters only on uncertified equipment with
9 engines built prior to '96. And we're curious why
10 the staff has changed this condition for this
11 project.

12 MR. LAYTON: Staff is trying to make, or
13 arrive at conditions that are workable. The Air
14 Resources Board has worked with us and Districts
15 have worked with us on these conditions, these
16 construction equipment conditions. And also
17 applicants have worked with us on these
18 conditions.

19 In some instances they are not very
20 workable. The previous versions were not very
21 workable, and therefore didn't arrive at the
22 mitigation we wanted, which is we'd like to get
23 soot filters out there, or oxidizing soot filters
24 out there and actually used.

25 There is also a tampering law that ARB

1 has on post-96 equipment. The ARB, and also
2 owners, are reluctant to put an oxidizing soot
3 filter on a post-96 piece of equipment and violate
4 that tampering law.

5 This current version is our latest
6 effort in trying to arrive at a set of conditions
7 that mitigate the construction impacts, actually
8 allow some of the construction equipment to use
9 those mitigations, and have a workable set of
10 conditions.

11 MR. WOLFE: So have the conditions in
12 these earlier projects, have they been amended --

13 MR. LAYTON: No.

14 MR. WOLFE: -- in post-certification?

15 MR. LAYTON: Well, actually on one of
16 them they were, yes. Otay Mesa.

17 MR. WOLFE: In Otay Mesa they were.

18 That's all we have, thank you very much.
19 Thank you for your time.

20 HEARING OFFICER SHEAN: Thank you. Ms.
21 Dean, do you have questions or comments?

22 MS. DEAN: Actually I have a comment on
23 the timeframe of the Air District's public comment
24 period. I don't know if we were going to bring
25 that up?

1 HEARING OFFICER SHEAN: Well, since the
2 applicant's made one, why don't you make yours.

3 MS. DEAN: Okay. I think given that the
4 material is already out and been introduced to the
5 public with the understanding that they have 30
6 days to comment, it would be wholly inappropriate
7 to change that at this point.

8 Also, so even if under the, I don't
9 recall if it was a regulation or whatever was
10 discussed, the Air District determined that they
11 would cut back on the timeframe, I would ask that
12 the Commission wait the allotted period.

13 I would also ask that the clock not
14 start ticking until all the material is in. So,
15 since we don't have the technical attachments, and
16 some of the conditions seem to be missing, as were
17 discussed by the other parties, it would seem
18 appropriate to let it -- I guess we're going to
19 get that documentation today, so -- but,
20 regardless, I would ask that it at least go to 30
21 days from the 16th.

22 And then my only other real question is
23 kind of a basic one, just from a layperson's
24 perspective. I'm a little bit confused regarding
25 all the various kinds of offsets, and I'm more

1 than a little bit confused, I'm completely
2 confused, as was everyone that I spoke to.

3 But just from a basic conceptual model,
4 however you want to say it, my question is in
5 terms of all of the offsets that we've discussed
6 for criteria contaminants, do they all come from
7 the refinery proper? Can the standards that
8 you've set be met by some exchange in the
9 refinery?

10 And I know you've mentioned the small
11 bubble and the larger bubble. Does that
12 address --

13 MR. HILL: I'm not sure what your
14 question is. But maybe I can answer it. All of
15 the emission reductions that have been proposed
16 for this project, all of the offsets, originate at
17 the facility.

18 So that any emission reduction, any
19 emissions that are decreasing are happening on
20 site. Any emissions that have historical emission
21 reductions that are part of this calculus happened
22 at the refinery.

23 So there are no offsite offsets proposed
24 to mitigate this project, is that --

25 MS. DEAN: Okay, I -- oh, I'm sorry.

1 MR. HILL: -- accurate in your
2 understanding?

3 MS. NARDI: I was just going to confirm
4 that the offsets that will be used for this
5 project, for the cogen project, are local.
6 Benecia. They come from the refinery and its
7 associated facilities like the dock.

8 MR. HILL: Yes, okay, thank you.

9 MS. DEAN: Okay. The reason that I'm
10 asking that is I recall somewhere in the mounds of
11 documentation, and it may have been in your
12 original proposed conditions, there was some
13 discussion of the purchase of credits. And I'm
14 wondering how that works, and what happened.

15 MR. HILL: I think maybe I can address
16 that. The emission reductions have gone down a
17 certain extent because of the revised best
18 available control technology requirements. So
19 that's a part of it.

20 Is there anything else you want to know?

21 MR. HAMMONDS: Probably what you're
22 recalling is with regard to SOx offsets.

23 MS. DEAN: Um-hum.

24 MR. HAMMONDS: And our first choice was
25 to purchase external offsets. The Bay Area is in

1 attainment for SOx; it's not considered a critical
2 pollutant here.

3 And for us, the most efficient and
4 effective way for this project was to obtain
5 external offsets.

6 However, they aren't available. We were
7 unable to find some. And we've had to go and look
8 at creating the curtailment group; it's a
9 burdensome approach; it will require substantial
10 effort on our part. But we think we have to do
11 that.

12 So that's probably what you recall.

13 MS. DEAN: That's actually been deleted
14 from that --

15 MR. HAMMONDS: That's correct.

16 MS. DEAN: Okay.

17 HEARING OFFICER SHEAN: Thank you.

18 Anything else on air quality from any of the
19 parties?

20 Thank you, gentlemen, you're excused.
21 And thank you for coming.

22 I had only one other thing on my list,
23 which was an item introduced by CURE at the
24 prehearing conference. It was a discussion of the
25 special findings. And perhaps we can discuss that

1 a little bit, and then we'll get to the overall
2 question of what we're going to do about
3 schedules, the PDOC comment period, the FDOC, et
4 cetera.

5 MR. SPEAKER: Garret, excuse me. What
6 about the BACT discussion for the turbines --

7 HEARING OFFICER SHEAN: Well, do you
8 want to get into that? Okay.

9 MR. SPEAKER: Very briefly.

10 HEARING OFFICER SHEAN: All right, I
11 think just for the Committee's purposes I've
12 expressed it, that -- is there anybody here who
13 thinks on refinery fuel gas you can achieve 2.5
14 ppm?

15 Okay, why don't you come up and tell us
16 how you guys arrived at that, the shift.

17 MR. HILL: Let me just take a brief step
18 back to tell you how we got to the 4.4, which was
19 to apply standard control technology to the
20 expected outlet concentration of the turbines,
21 which was 44 ppm, a 90 percent reduction. That's
22 fairly standard SCR technology.

23 And what we had originally proposed to
24 do and what we discussed with the applicant
25 through most of the review process was

1 demonstrating that the control technology that
2 they applied was capable of achieving the 2.5 ppm
3 that is now standard for natural gas, when firing
4 natural gas.

5 And then whatever they were able to
6 achieve when firing the higher Btu content
7 refinery gas, that was going to be what we
8 determined to be best available control
9 technology.

10 In the course of our final rounds of
11 internal review one of our internal managers
12 commented on the draft document, that he wanted to
13 see the cost effectiveness of applying a 95
14 percent control SCR, which is an available control
15 technology, to bring the concentration down into
16 the range that's achievable using natural gas.

17 We did that cost effectiveness analysis.
18 The technology is out there to do this additional
19 reduction. And bring the concentrations down into
20 the realm of what's achievable using natural gas.

21 The question of whether that level is
22 achievable a hundred percent of the time, that is
23 a legitimate area of discussion. And as staff has
24 indicated, we need to explore whether or not there
25 is an excursion, we need to address that concern

1 by excursion language.

2 But the control technology to come from
3 90 percent reduction to 95 percent reduction is --
4 it's achievable, it's using SCR, it's a standard
5 approach. The reason why we don't use it now is
6 because it costs about twice as much, or half
7 again as much, somewhere in that range, as the 90
8 percent catalyst.

9 And there's some additional operating
10 costs that are incurred when you do that. Our
11 estimate of the cost effectiveness is that it's
12 well within the realm of what we consider to be
13 cost effective. We consider it to be technically
14 feasible. And the incremental cost of going from
15 4.4 to 2.5 is about \$25,000 a ton. The overall
16 cost is somewhere in the range of \$6000 to \$7000 a
17 ton of NOx reduction.

18 So we believe that it's technically
19 feasible. We believe that it's cost effective.
20 And that's why we've made that determination as
21 our best available control technology
22 determination for this application.

23 HEARING OFFICER SHEAN: Just to make
24 sure that I have a proper understanding, let me
25 regurgitate some of this to you.

1 That in the draft PDOC that we saw the
2 concept at that point was you bring the machinery
3 up to its optimal operation under natural gas, and
4 at that point you should be making the 2.5 ppm on
5 natural gas.

6 Then you would have switched fuels, and
7 based upon operating the machinery essentially in
8 that optimized natural gas condition, now with a
9 different fuel, you would have expected the NOx
10 emissions with the refinery fuel gas to be on the
11 order of 4.4.

12 Where we are now then is that having
13 started the machinery and optimized it on natural
14 gas, you would, because of the availability of an
15 incrementally better SCR technology, you
16 essentially run it differently on this refinery
17 fuel gas in a manner that you would expect to
18 bring the NOx emissions down closer to or at 2.5?

19 MR. HILL: There are two possible
20 technical approaches to addressing this issue.
21 And both involve some redesign on the part of the
22 applicant.

23 One involves increasing the size of the
24 tail end control system, which is what we costed
25 out. The other approach is to look at what's

1 contributing to the creation of NOx in the
2 turbine, and aiming to lower that.

3 They've used selected water injection
4 technology to reduce the natural gas exhaust level
5 to about 25 ppm, or the refinery gas to 44. There
6 are other approaches that they could take that
7 could conceivably reduce the inline concentration
8 of the control device.

9 We're not specifying how it's achieved.
10 We're only specifying that based on our cost
11 analysis of one potential control technology that
12 this 2.5 ppm is achievable and is achievable
13 economically.

14 HEARING OFFICER SHEAN: Okay, so this
15 then is basically up to them, as the operator,
16 whether it's a little more back-end or a little
17 more front-end, but you have, based upon your
18 review, concluded that that level is achievable,
19 whatever the mix of front-end and back-end?

20 MR. HILL: Right. And one conceivable
21 approach that they could take is to control their
22 fuel, as well, which is not what we wanted to
23 happen, but it's also possible to blend to a lower
24 Btu content in the fuel.

25 That's not what they proposed.

1 HEARING OFFICER SHEAN: Right, and we
2 have to get rid of this gas by some means anyway,
3 right? So if it's used for a useful purpose,
4 that's a benefit.

5 MR. HILL: That's correct.

6 HEARING OFFICER SHEAN: Both to the
7 District public health and presumably society at
8 large. Okay. I got the concept.

9 Do you have anything to add, Mr. Layton?

10 MR. LAYTON: Well, I don't disagree with
11 the District's cost effectiveness cost analysis.
12 One thing that is not brought into their equation,
13 though, is with the larger back-end, which is what
14 they costed out, they don't necessarily take into
15 consideration the performance penalty.

16 Turbines are very sensitive to back
17 pressure and inlet pressure, as well. Therefore,
18 there is going to be a site performance penalty
19 with a larger back-end. It's not added into the
20 cost equation, because it will be a penalty for
21 Valero.

22 But staff would agree that technically
23 95 percent control is feasible; however, we are
24 concerned that because this is a refinery, upsets
25 do occur, feedstocks do change, there can be

1 changes in the Btu content, perhaps sudden
2 changes. That can cause a spike in NOx that the
3 system can't necessarily handle, and so there will
4 end up being violations.

5 And we would prefer that a project that
6 we certify doesn't end up in the news all the time
7 as being a problem. If we can anticipate that and
8 can provide some mitigation and language, we would
9 prefer that.

10 HEARING OFFICER SHEAN: Okay.

11 MR. LAYTON: So we'll try to work with
12 the applicant and the District to come up with
13 something that ends up being beneficial for all
14 parties.

15 HEARING OFFICER SHEAN: Can I ask you,
16 is the back-end technology more ammonia, or is
17 something --

18 MR. HILL: It's a slight amount more
19 ammonia. You're going from 44 ppm to 2.5, instead
20 of 44 to 4.4. So there's that incremental 5
21 percent additional ammonia.

22 HEARING OFFICER SHEAN: Okay, but that's
23 how you do it, you just shove in more ammonia into
24 the --

25 MR. HILL: Well, no, also you make the

1 catalyst bed longer, substantially longer.

2 HEARING OFFICER SHEAN: All right. To
3 accommodate the greater volume in flow of ammonia,
4 right? Okay. I mean I'm just trying to get the
5 idea. Yes, sir.

6 MR. HAMMONDS: This seems to invite
7 applicant's comments at this point.

8 HEARING OFFICER SHEAN: Oh, you bet.
9 (Laughter.)

10 MR. HAMMONDS: I think we do have some
11 levels of agreement that 2.5 is achievable. I
12 think we would disagree that it's economically
13 viable. But nevertheless, if that's what's
14 required, then that's what we can meet by spending
15 more money.

16 However, at the same time the excursion
17 question is a very valid one, and we do have wide
18 variations in our fuel quality from time to time.

19 So we are willing to go down this 2.5
20 road if we can address the variability issues.

21 HEARING OFFICER SHEAN: Let me just ask
22 you this, since this seems to be something that --
23 am I correct that this is something you would
24 anticipate dealing with in your review period on
25 the PDOC?

1 And ultimately, if there were a dispute
2 between the District Staff and the applicant, is
3 this a matter that the Board of the District would
4 take under consideration? Or how is the ultimate
5 determination of this handled?

6 MR. HILL: Two things. One is that in
7 the normal course of events we would have resolved
8 this in discussions with the applicant once we had
9 made this determination.

10 Because of the stringencies of your
11 process we've had to bring this discussion out
12 into the public process. Normally we would have
13 resolved it before we issued our PDOC.

14 The decision-making process here is the
15 Air Pollution Control Officer, as the executive
16 officer of the staff, makes the determination.
17 And the avenue of appeal is through the hearing
18 board. And the standard of review is clear error
19 on the part of the Air Pollution Control Officer's
20 determination.

21 So, that's the process that we go
22 through.

23 HEARING OFFICER SHEAN: Anything from
24 any other party on this discussion?

25 MR. WOLFE: A very brief comment from

1 Dr. Fox.

2 DR. FOX: I wanted to make a few
3 comments on the NOx stack level. I'd like to say
4 I agree with what Steve Hill said. And we support
5 the 2.5 ppm. In my experience it is definitely
6 feasible.

7 The use of refinery fuel gas is quite
8 similar to using distillate. And on the east
9 coast most turbines are permitted with distillate
10 as a backup fuel. And most of the recent permits
11 in New England, New England being Connecticut and
12 Massachusetts, primarily, are being permitted as
13 dual fuel plants with distillate as a backup and
14 the NOx BACT levels are between 2 and 2.5 ppm.

15 I recently saw one as low as 1.5 ppm
16 achieved with SCR at ammonia slip levels between 2
17 and 5.

18 So, it's definitely considered to be
19 achievable by other agencies.

20 Another comment I'd like to make with
21 respect to the variability. There are a number of
22 industrial processes that commonly use SCR that
23 are far more variable than the composition of
24 refinery fuel gas.

25 And two examples that I am familiar

1 with, because I have worked on them, are steel
2 mill pickling lines and reheat furnaces in steel
3 mills, both of which have used SCR. And they're
4 highly variable, far more variable than here. And
5 there are design approaches that can be used in
6 the design of an SCR system to accommodate
7 variability.

8 You, for example, could couple a
9 measurement of temperature, which is what controls
10 the NOx levels, with the ammonia injection system,
11 and increase the ammonia injection when the spike
12 comes down.

13 Another technique that's commonly used
14 for addressing variability is building residence
15 time in the system.

16 That's pretty much all I wanted to say.

17 HEARING OFFICER SHEAN: Okay. Anything
18 from the staff here? Okay.

19 Thank you, again.

20 All right, why don't we go to this
21 special findings discussion, and then we'll come
22 back to overall schedule, briefing, et cetera.

23 MS. NARDI: And, Mr. Shean, we have one
24 more comment, perhaps ahead of the special
25 findings.

1 HEARING OFFICER SHEAN: Sure.

2 MS. NARDI: It has to do with the lead
3 time on the variety of plans --

4 HEARING OFFICER SHEAN: Okay.

5 MS. NARDI: -- that Valero's required to
6 submit to the compliance officer. And maybe I'll
7 let Mr. Hammonds explain the practicalities in our
8 specific request.

9 MR. HAMMONDS: The conditions of
10 certification include quite a few different
11 requirements for a submittal X days prior to such-
12 and-such an event. Those vary anywhere from seven
13 days up to 45 days, I think, on some of them.

14 In order to get an expedited schedule of
15 construction we asked about three weeks ago that a
16 general statement be made that if the CPM and CBO
17 are agreeable to a shorter period of time, then
18 that would be allowed.

19 I see that wasn't addressed in the
20 addendum. I don't know if there's a reason it
21 wasn't, or is this something that can be done?

22 HEARING OFFICER SHEAN: Stand by because
23 this is, at least as to verification of time,
24 something that I had language that had been
25 changed. It's going to take me a second to find

1 this.

2 MR. HAMMONDS: Maybe it's in there and I
3 missed it.

4 HEARING OFFICER SHEAN: It was added to
5 the compliance portion. Let me attempt to find
6 it. If you have the staff's assessment it's on
7 page 7-4 under the heading compliance
8 verification.

9 And I have it highlighted here because
10 it's evident to me that it does not contain
11 language that in my last case, in order to address
12 that issue, was added. And which it is my
13 intention to add here.

14 But basically this sentence captures it,
15 and will capture it more specifically, that the
16 verification procedures including lead times for
17 submissions may be modified by the CPM without the
18 consent of the full Commission.

19 So you can anticipate that that will say
20 that. And therefore, the CPM has that authority.

21 MR. HAMMONDS: Good, thank you.

22 HEARING OFFICER SHEAN: Now do I
23 understand the CBO will or won't be the City? I
24 understand it won't be. Someone is going to be
25 hired to act as the CBO?

1 MR. HAMMONDS: It's my understanding --

2 MS. GILLARDE: Yes, the City is --

3 HEARING OFFICER SHEAN: I'm sorry, can
4 you --

5 MS. GILLARDE: Brenda Gillarde, City of
6 Benecia, Principal Planner.

7 We have designated a chief building
8 official, Harvey Higgs, and he will be the
9 designated person for this project from the City.

10 And we are also retaining the services
11 of an outside consultant to assist in the review
12 of all the plans.

13 HEARING OFFICER SHEAN: Okay. Anyway,
14 we intend that there be flexibility.

15 MR. HAMMONDS: Good.

16 HEARING OFFICER SHEAN: Okay, let's look
17 at these special findings now.

18 MR. KRAMER: In that regard at the
19 conference call I promised to bring copies of the
20 relevant Governor's executive orders.

21 Speaking for the record, proclamation of
22 the Governor which declared the electricity energy
23 state of emergency was dated January 17, 2001.
24 Followed by Governor's executive order number D-
25 26-01, and D-28-01.

1 And I've stapled them all together as a
2 group. We would offer these into evidence.

3 HEARING OFFICER SHEAN: Okay, why don't
4 we just take notice of them, since they've been
5 identified and are an official document of the
6 State of California.

7 MR. KRAMER: I have a few more copies if
8 somebody needs one.

9 HEARING OFFICER SHEAN: Okay, now,
10 there's an issue that, from the Committee
11 perspective, we'd like to discuss. I don't want
12 anybody to go apoplectic on this, so let me just
13 get to the end of the sentence here.

14 Reading Public Resources Code section
15 25552, it provides for the four-month process for
16 a simple cycle thermal power plant constructed by
17 a certain amount of time, and with a limitation on
18 the duration of the permit, at which point the
19 project owner is to review whether or not it is to
20 be converted either to a combined cycle or a
21 cogeneration facility.

22 We'd like to just address and hear from
23 the parties whether or not that provision in 25552
24 actually applies to the project that is currently
25 before us.

1 And let me say I pose the question not
2 with the idea that we can't move forward in an
3 expedited manner and that this would necessarily
4 mean this case that looks as if it can be handled
5 in an expedited process would therefore ipso facto
6 have to go to either six or 12 months. So we're
7 not saying that.

8 But just the question of whether or not
9 it's appropriate to apply the provisions of 25552
10 to this project. And we'll start it -- I don't
11 know if you want to start, fine. Or we can go to
12 another party.

13 MS. NARDI: I'd be glad to, or
14 perhaps -- I was going to support what Mr. Kramer
15 wrote in the special findings. So, I'd be glad to
16 go after him, if he'd like to start.

17 HEARING OFFICER SHEAN: Okay, why don't
18 we start with the staff, since at least from the
19 staff assessment perspective, it is that the
20 provisions of the code do apply.

21 MR. KRAMER: Perhaps I need to waive one
22 of the requirements, as is allowed under the
23 Governor's executive order.

24 This is a - at its heart this is a
25 simple cycle power plant, a turbine. We believe

1 it meets the requirements because it is going to
2 immediately or almost immediately convert to a
3 cogeneration plant.

4 In the special findings, I don't think I
5 need to go through them all again, but we have
6 pointed to evidence that we believe allows each of
7 those findings.

8 And the statute is written in such a way
9 that it doesn't really describe explicit findings
10 that you have to make. We've had to interpolate
11 them from the language of the statute.

12 So what I did in the special findings
13 was pulled out the essential elements that need to
14 be found in order for this to be approved under
15 that section, under the process, the four-month
16 process that's provided there.

17 And with the possible exception, and you
18 could perhaps argue it both ways, but the only
19 point of possible departure from the section is
20 this question of whether this is a modification to
21 a major facility.

22 And for the sake of prudence, most
23 conservative practice, we have treated the power
24 plant, which would, if it were standing alone in
25 the middle of the field, it would not be a major

1 source. But it's in the middle of a refinery,
2 which is a major source. And we've treated it --
3 frankly, I haven't even asked the Air District,
4 and I guess they're not here to ask anymore, what
5 their thought would be.

6 But we've assumed, and the air staff
7 report says that this is a modification of a major
8 source. Admittedly it's a minor modification.
9 Because this is very much a tail on the dog of the
10 refinery, both in terms of water use and
11 everything else.

12 But it is connected to the refinery, and
13 it's burning byproducts from the refinery process.
14 It's producing steam to be used in the refinery.
15 Electricity to run the machinery and the equipment
16 in the refinery.

17 So I think the conservative approach is
18 to say yes, it's part of the refinery. The whole
19 thing, if you look at it, it's a major source.

20 Now, without the energy emergency
21 declared by the Governor in executive order 26,
22 that potentially would be -- that could be a road-
23 block for the processing under that statute.

24 However, the Governor, in his executive
25 order, has said that to the extent necessary the

1 Commission can relax the restrictions of that
2 section. And the staff is proposing, in this
3 case, that the Commission relax the requirement
4 that it not be a modification to a major source in
5 order to proceed. And we've provided findings to
6 that effect.

7 In the original staff assessment we also
8 thought that BACT was not being applied for PM10
9 and SO2, I believe those were the pollutants.
10 However, it turned out that was -- we made an
11 error in reading the PDOC, or the draft PDOC that
12 we had at the time, and we've since corrected the
13 finding to remove that issue, because it's no
14 longer an issue. We believe that BACT is now
15 being applied to those pollutants.

16 So that's the essence of our position.

17 HEARING OFFICER SHEAN: Okay.

18 MS. NARDI: Are you ready for us, Mr.
19 Shean?

20 HEARING OFFICER SHEAN: Yes.

21 MS. NARDI: Okay. Valero would like to
22 support what's in the staff analysis, and add some
23 additional information.

24 We do believe and find that this project
25 can properly proceed as a four-month project under

1 25552 of the Public Resources Code. And I'll
2 briefly just go through the findings that have to
3 be made, and why we believe that they're proper.

4 As Mr. Kramer points out, the one
5 possible reason that the Commission might need to
6 waive a statutory requirement is that this project
7 can be viewed as a minor modification to a major
8 source if you consider the entire refinery to be
9 the major source.

10 And so, of course, this project is
11 fundamentally a modification to the refinery. And
12 we can ponder whether the Legislature intended to
13 say a major modification to a major source, but,
14 in fact, the words talk about modification.

15 Nonetheless, as Mr. Kramer points out,
16 the executive order issued by the Governor, it's
17 number 26, provides that the Commission has
18 authority to suspend those restrictions to the
19 extent that they would prevent or hinder or delay
20 the effects of the energy emergency. And Mr.
21 Kramer has offered you the various executive
22 orders as evidence that there is an energy crisis.

23 But this is not simply a matter of just
24 adding 51 megawatts to the grid, and I think there
25 was perhaps a suggestion at the last hearing that

1 maybe 51 megawatts wasn't critical to the
2 California energy crisis.

3 But this is a critical 51 megawatts
4 because it's very important that the refinery have
5 a reliable source of energy so that it can stay in
6 operation.

7 As has been pointed out before, you
8 can't turn a refinery off and on like you can the
9 engine of a car. If the refinery goes down it can
10 take days or longer to restart.

11 And we had a situation earlier in the
12 year where there was some suggestion that we might
13 not have been able to have enough fuel over at the
14 San Francisco and Oakland Airports to meet the
15 necessary supply of jet fuel.

16 So it is critical that the refinery
17 remain in operation, and the purpose of this
18 project is to not simply add 51 megawatts to the
19 grid, but to take this refinery off the grid, so
20 it is a critical 51 megawatts.

21 The second finding that we'd have to
22 make under the statute is that the project will
23 not have a significant adverse effect on the
24 environment as a result of its construction or
25 operation. And we believe that that's fully

1 supported by all the information in the staff
2 assessment, the amended staff assessment, and the
3 information that the applicant's provided.

4 The third requirement is that we have a
5 contract with the general contractor to complete
6 the work, and we've provided evidence of that in
7 our submittal.

8 The fourth requirement is that we assure
9 the protection of public health and safety, and I
10 think that's been well analyzed and considered in
11 the staff assessment and the amended staff
12 assessment.

13 The fifth requirement is to comply with
14 applicable laws and regulations, the LORS. And,
15 of course, that's one of the fundamentals of your
16 process, and we intend to make sure that that's
17 met.

18 The sixth requirement is that we be on
19 line by December 31, 2002, and that is our working
20 deadline, as we've all explained. And if we
21 decide to proceed with phase two, that will also
22 be the deadline for phase two.

23 The seventh requirement is that we be
24 converted to a cogen, and in effect, as Mr. Kramer
25 points out, that requirement is met because we are

1 a cogen from inception.

2 And finally there's a requirement that
3 all the emissions be completely offset and we've
4 explained why there is a complete offset of all
5 the emissions from this project. And so that
6 requirement is also met.

7 So, with those understandings, we
8 believe that there is ample evidence for the
9 Commission to proceed and process this as a four-
10 month application.

11 HEARING OFFICER SHEAN: Okay.

12 MR. WOLFE: Could you repeat what
13 question I'm being asked to brief. It sounds like
14 the Committee's concerned that --

15 HEARING OFFICER SHEAN: Well, the
16 Committee is -- well, we read the plain language
17 of the statute --

18 MR. WOLFE: Right, right, right.

19 HEARING OFFICER SHEAN: -- which says a
20 simple cycle project. And we've just heard the
21 staff say that the heart of this project is a
22 simple cycle; and the applicant has just said that
23 this project is cogeneration.

24 MR. WOLFE: But what would the
25 consequence be of a finding that 25552 did not

1 apply?

2 HEARING OFFICER SHEAN: I think
3 potentially there are a couple. One would be that
4 whatever the duration of the public comment period
5 on the proposed decision, it would not be less
6 than 30 days. That may not have a real-world
7 effect. And we need to discuss this further on
8 the schedule matter related to the PDOC and the
9 FDOC, and such as that.

10 The next effect would be that there
11 would not have to be special findings, and a
12 waiver of special findings, and both evidence and
13 logic and argument to support that. Just not
14 necessary.

15 The other would be that the license for
16 the facility would not be restricted so that at
17 three years it had to make a choice of choosing
18 between combined cycle and cogen because it
19 already is cogen.

20 So, there's the, quote, practical
21 effect, which is the application of the comment
22 period which may have no practical impact.

23 MR. WOLFE: Okay, yeah, my own
24 observation here is that 25552, we were up there
25 at the Legislature when the bill, I can't remember

1 if it was AB-28 or which one it was, but it was
2 clearly intended for peakers. I mean that was why
3 that section was enacted.

4 Ultimately we don't see a significant
5 issue, considering that the Committee licensed
6 Huntington Beach in 60 days. And that was
7 actually a 12-month process. And so if the 12-
8 month process can be shrunk to 60 days in order to
9 address the energy crisis, then certainly, you
10 know, even if this technically didn't qualify for
11 four-month, it could still be licensed along this
12 timeframe.

13 I guess I'm not understanding what the
14 actual issue is.

15 The reason I brought all this up in the
16 prehearing conference, and wanted it addressed
17 here, is D-26-01 authorizes the Commission to
18 suspend whatever requirements to the extent that
19 they would prevent, hinder or delay the prompt
20 mitigation of the effects of this emergency.

21 If we assume that 25552 does apply, but
22 for the executive order, those criteria would have
23 to be satisfied. And accepting that the Governor
24 has declared an emergency, and the Commission, I
25 think, properly can take official notice of that.

1 It does not need to make separate findings to show
2 that there is an emergency, which might be
3 difficult to make.

4 Anyway, what I wanted to hear from the
5 staff, and perhaps the applicant, is how the
6 prompt mitigation of the emergency would be
7 delayed or hindered if, for example, we had a 30-
8 day comment period on the PDOC, or a five-month
9 process, as opposed to strict adherence to the
10 four-month.

11 And that's really -- I was just wanting
12 to hear an explanation of how, if this project
13 doesn't come on line by date X, Californians are
14 going to suffer. And that if we waited another
15 four weeks, even, you know, there would be an
16 impact on the crisis.

17 HEARING OFFICER SHEAN: Okay.

18 MR. KRAMER: -- think there's a witness
19 on that point?

20 MS. NARDI: Yeah. I'd like to ask Mr.
21 Hammonds to discuss that point. As he explained
22 last time, it's not one-for-one, that losing a
23 month in the process doesn't necessarily you just
24 lose a month at the back end, because we're trying
25 very hard to get the proper authorizations to

1 construct this unit one in advance of the rainy
2 season, and none of us can know when it's going to
3 start raining this year.

4 So I'll let Mr. Hammonds explain in more
5 detail why it's critical that we expedite the
6 processing of the application so that we can begin
7 the construction this fall in order to be online
8 next spring.

9 MR. WOLFE: Okay, but before Mr.
10 Hammonds speaks, just to avoid unnecessary
11 testimony, I mean the question is not how it's
12 going to benefit Valero. And what you were saying
13 earlier about, you know, what happens when power
14 is shut off to a refinery and the consequences of
15 that. I understand those are significant.

16 But the intent of this executive order
17 was to mitigate the energy supply crisis for the
18 people of California. So if Mr. Hammonds could
19 direct his testimony to that question, not
20 scheduling or -- it's like what happens if these
21 megawatts don't come online.

22 MS. NARDI: All right, we can answer
23 that second question.

24 I tried to give a thumbnail sketch of
25 that, but let me ask Mr. Hammonds, who's more

1 knowledgeable about the refinery, to explain why
2 it's not a question merely of protecting Valero's
3 interests, but why we believe that it's a critical
4 51 megawatts to people in the Bay Area generally.

5 MR. WOLFE: Okay, thanks.

6 PRESIDING MEMBER ROSENFELD: Could I
7 just ask you, you say come online in the spring.
8 I thought we were talking about the fall of 2002.

9 MS. NARDI: I'm sorry, correct.

10 MR. KRAMER: I thought we were talking
11 about the spring.

12 PRESIDING MEMBER ROSENFELD: Let's get
13 it straight.

14 MR. HAMMONDS: The first unit we're
15 targeting for a March/April startup.

16 PRESIDING MEMBER ROSENFELD: Oh, you
17 are?

18 MR. HAMMONDS: Yes.

19 PRESIDING MEMBER ROSENFELD: Oh, good,
20 I'm sorry, then I learned something.

21 MR. HAMMONDS: Now that will not be
22 successful if we are not able to begin the
23 earthwork before the rains get here, though. And
24 it's not a one-for-one delay. When the rains get
25 here, it becomes a real problem.

1 As far as importance to the State of
2 California, I bring no great wisdom to this issue.
3 We've certainly got many of our leaders telling us
4 this is important, the sooner the better.

5 Last year we had our largest power
6 crises during the January/February/March
7 timeframe, not the summer. So targeting just for
8 having things up for the summer is not necessarily
9 a good idea.

10 We had problems with power this last
11 year that almost ran to a jet fuel run-out at San
12 Francisco, and gasoline run-outs in San Jose
13 because of power-related issues.

14 Fortunately, the refinery did not have a
15 power-related issue, but if that were to occur
16 then we could foresee lots of difficult problems
17 on the supply side in California.

18 I'm not sure any more detail is really
19 appropriate than that, but it's not just a
20 question of Valero's interests, it's also a
21 question of the interests of the people of
22 California.

23 HEARING OFFICER SHEAN: Let me ask a
24 question sort of related to the schedule, because
25 when you asked about the submission dates and

1 flexibility in that, as far as you know you either
2 have all of the submissions that you would need to
3 commence site mobilization, grading and
4 construction, or if not, when do you think they'd
5 be ready?

6 MR. HAMMONDS: Last count we saw 27
7 submittal requirements, and the construction team
8 tells me that this week they're expecting to have
9 all those.

10 HEARING OFFICER SHEAN: Okay, so they're
11 ready for submission this week?

12 MR. HAMMONDS: That's correct.

13 HEARING OFFICER SHEAN: Now, if under a
14 nominal four-month schedule you were to have been
15 certified, or were to be certified, if I'm correct
16 here, the first business meeting immediately prior
17 to the four months would be October 3rd, and the
18 first following would be October 14th -- sorry,
19 17th.

20 Did your construction schedule
21 contemplate or rely upon some other certification
22 date?

23 MR. HAMMONDS: Yes, we had initial
24 schedule which I believe the Commission adopted at
25 the time of data adequacy, if I'm not mistaken,

1 that used a September 12th date. And we have been
2 planning our construction accordingly.

3 MR. KRAMER: I don't think it was
4 formally adopted, but there have been schedules,
5 you know, that circulate among the staff, and
6 early September was one, I think it's --

7 MR. HAMMONDS: Is that the 10th,
8 September 10th, I think.

9 MR. KRAMER: -- the most recent target
10 date I've seen.

11 MR. HAMMONDS: Yeah, I think the
12 published one was September 10th. It's probably
13 still on the website.

14 MR. CASWELL: Jack Caswell, Project
15 Manager. I submitted a proposed schedule to the
16 Committee in the issue identification report that
17 drafted a September 10th as a targeted date for
18 the decision. That was a Monday. Regular
19 business meetings are on Wednesdays. So that
20 could have been moved to the 12th date.

21 No other schedule was provided or
22 suggested. And so we have been operating on that
23 proposed schedule that was submitted in the issue
24 identification report.

25 HEARING OFFICER SHEAN: And I'm just

1 trying to find out now the nature of the
2 activities that you want to commence before -- and
3 is it a commence before, or complete before, the
4 rainy season? Can you help me out with that? How
5 far along do you have to get, are we talking to
6 poured foundations or grading, compaction and so
7 on and so on?

8 MR. HAMMONDS: If we're looking at an
9 early October decision, like the 3rd, for the full
10 AFC approval, then I think the only advance work
11 that we would need to do is to commence grading
12 and installation of retaining wall on the site.

13 If we had a September 10 or 12th date we
14 would start by the 15th to do grading and
15 retaining wall installation.

16 HEARING OFFICER SHEAN: So that is the
17 critical activity, in your view, that is time-
18 affected and rain-affected?

19 MR. HAMMONDS: Yes, that's correct.

20 HEARING OFFICER SHEAN: Okay.

21 MR. HAMMONDS: Now, that's step one.
22 The next steps that are rain-affected also is
23 digging the hole for the foundation and pouring
24 concrete.

25 HEARING OFFICER SHEAN: And if you had

1 started on September 15th, what did you
2 contemplate the date for that for? I assumed you
3 were talking about the turbine pedestal and
4 similar things.

5 MR. HAMMONDS: And all those
6 foundations. I don't know the date for that.

7 HEARING OFFICER SHEAN: Do you think it
8 would have been prior to either October 3rd or
9 October 17th?

10 MR. HAMMONDS: No.

11 HEARING OFFICER SHEAN: Okay. I want to
12 sort of shift into this next part of the
13 discussion because it's very germane to this. Is
14 how we're going to handle the current status of
15 the PDOC and the FDOC.

16 Because whether you assume that the
17 District's schedule is changed or not, first of
18 all it sounded to me as if there are a significant
19 number of conditions that the applicant wants
20 changed. And through the open and public process
21 of the District it's how you will achieve that.

22 And they will issue -- let me put it
23 this way, if you're successful at that they'll
24 issue a final DOC that has those conditions
25 written the way you want. And that would occur

1 either, if you could persuade them to 14 days, or
2 30 days. But there are going to be other
3 participants, either CURE, and/or the staff,
4 and/or the public.

5 How, if it were to take more than 30
6 days from last Thursday, would you see the
7 Commission attempting to accommodate your desires
8 for an early as possible decision and the
9 processes to get a final DOC that represents both
10 what you want and something that the Commission
11 can act on?

12 Or if you want to think about this a
13 little bit.

14 MS. NARDI: Well, let me try and answer
15 that.

16 HEARING OFFICER SHEAN: Okay.

17 MS. NARDI: I think that if the Air
18 District would expedite its public comment, the
19 PDOC, to 14 days, then we could try to move
20 through the schedule that Mr. Caswell laid out.

21 And assuming, as you say, Mr. Shean,
22 that we can resolve and get language for all these
23 conditions, but assuming that with good efforts on
24 everyone's part that we work hard and move through
25 a 14-day comment period, we would like to attempt

1 to say to the schedule that was originally laid
2 out, which contemplated September 12th, 10 or
3 12th, as a final CEC hearing date for the whole
4 application.

5 So what I'm saying is if we could get
6 the Air District to go back to a 14-day review
7 period, which we don't see they have any
8 impediment to in their regulations, that would
9 allow you to move and keep with the schedule that
10 Mr. Caswell originally laid out.

11 HEARING OFFICER SHEAN: Now, ordinarily
12 in past cases where it appeared that the
13 preliminary determination of compliance and the
14 final determination of compliance were essentially
15 going to be the same or not varied in any
16 significant substantive way, the Committees have
17 gone ahead, and on the basis of the preliminary
18 determination of compliance, issued a proposed
19 decision.

20 Now, the Commission's proposed decisions
21 are at least subject to some minimal amount of
22 comment period, and if required to be revised, an
23 additional comment period.

24 So the Committee is kind of in a tough
25 spot here, and we want to hear from the parties on

1 this. We could, I guess, either wait to issue the
2 proposed decision until after a final and resolved
3 determination of compliance on air quality is out.

4 Or we go ahead with a proposed decision
5 that we know won't be revised, but to capture
6 comments on all other issues, and then deal with
7 it.

8 But, if we do that, the Air Board
9 process, in and of itself, has a public element
10 which could require them to resolve disputes among
11 parties. And ours does, too.

12 I'm quite sure that CURE, and maybe the
13 others, would at least approach us with the idea
14 that if we are going -- whether we cannot rely on
15 a revised final determination of compliance that
16 is not subject to potentially an adjudicatory
17 process within the Commission's processes.

18 So, this is a very tough nut to crack.
19 And I don't think there's any obvious easy
20 solution. But we're open to ideas. And yours
21 essentially is try to move them as quickly -- the
22 District as quickly as possible, and --

23 MS. NARDI: Correct. And then see, and
24 I hate to offer up your time not knowing whether
25 it's available, but if we don't make the week of

1 September 10th, perhaps the week following.
2 Because from Valero's perspective, if the hearing
3 could be scheduled sometime between the originally
4 anticipated September 10th and October 3rd, that
5 would still help them in terms of trying to get
6 this construction under way, if there were
7 latitude by the CEC to do that.

8 MS. DEAN: I -- yeah, I actually have
9 several comments.

10 HEARING OFFICER SHEAN: Sure.

11 MS. DEAN: To start, back to the 25552
12 issue, I'm actually glad to hear you say that,
13 because when I first cracked open the book and
14 read it I thought I had the wrong one. And I kept
15 looking and looking.

16 So, I would agree with anyone who would
17 indicate that they thought that it wasn't
18 appropriate.

19 But beyond that, even if, as Mr. Wolfe
20 indicated, we take that for granted, one of the
21 things that's been promised all along is that in
22 the expedited process the public would not suffer
23 as a result of all these major moves forward,
24 inundation with information and everything else.

25 And, Mr. Shean, you even said in the

1 July 12th hearing, more than once, -- excuse me,
2 workshop -- more than once, that if more time was
3 needed that we would use more time. And that's
4 why when we first saw that we were expanding out
5 from the September 10th deadline, I didn't
6 consider it anything unusual, because you'd
7 promised that that's exactly what would happen if
8 it was appropriate.

9 Given that the Air District's timeframe
10 is still roughly 30 days out, it seems really
11 impossible for anybody to properly comment. Well,
12 to comment to them in the 30-day period, then get
13 a response and a determination from them, and then
14 come back to you within a matter of days, or
15 however it's going to happen, it just doesn't play
16 out in anything that could be considered a
17 reasonable fashion for even someone who's being
18 paid to do it, much less somebody from the public.

19 So, I think that's unfair to ask us to
20 shorten the timeframe to before October 3rd, I
21 really do.

22 But I have actually a question for the
23 applicant. And it seems that this all hinges on
24 when the rain starts. Because if the rain starts
25 later, you're okay.

1 So I guess my question is did you look
2 at when the rains start in Benecia.

3 MR. HAMMONDS: The construction people
4 have looked at that. It varies, as you know.

5 MS. DEAN: But when's the earliest it
6 starts?

7 MR. HAMMONDS: If we have an incredibly
8 dry fall and early winter then it's not going to
9 be a problem.

10 MS. DEAN: Right, but when's the
11 earliest it starts? I mean you're telling us this
12 is it, this is a drop-dead problem for you.
13 Everything hinges on the rain.

14 And so I want to know, what specifically
15 do you know about the rain and when's it going to
16 start?

17 MR. HAMMONDS: I don't know anything
18 about it --

19 (Laughter.)

20 MR. HAMMONDS: I don't know anything
21 that you don't know about the rain and when it's
22 going to start.

23 MS. DEAN: Is that true? So you don't
24 know any more than it could start at the end of
25 November, or it could start at the end of January?

1 MR. HAMMONDS: Of course I don't know
2 any better than that.

3 MS. DEAN: Did you do any kind of
4 tracking of what's happened in the last 10 to 15
5 years in this area?

6 MR. HAMMONDS: We have looked
7 historically. We have not looked in detail, no.

8 MS. DEAN: So although this was really
9 really significant to you, you didn't look into it
10 in detail?

11 MR. HAMMONDS: Getting work done before
12 the rain starts is very important to us, yes.
13 Looking at it in detail, it's very clear that
14 looking at historic records is only setting up
15 percentages of likelihood. Anything can happen
16 this year. We know that. We want to get it done
17 before the rain starts, whenever they start.

18 And I don't think I called this a drop-
19 dead deal.

20 HEARING OFFICER SHEAN: Okay.

21 MR. WOLFE: One quick question I think
22 maybe for the court reporter, which is when will
23 the transcript of today's hearing be available on
24 the website?

25 THE REPORTER: We have delivery, I

1 believe, 10 to 12 days to the CEC. The CEC is
2 responsible for posting that to the website.

3 MR. WOLFE: I would like the Committee
4 to consider that, as well, because obviously the
5 transcript of these proceedings is going to be
6 important to any comments that are made, certainly
7 on the PDOC.

8 And then I would just observe that the
9 Commission, in the past at least, I think, has
10 determined that it must independently be itself,
11 satisfied, that the FDOC that issues from whatever
12 Air District is legally adequate.

13 And there's at least one case in the
14 past where the Air District issued a document that
15 it called a valid FDOC, that the Commission
16 independently determined was not valid, and had to
17 be corrected.

18 And so I would just raise that and ask
19 that the Committee consider it as it decides what
20 is the appropriate comment period for this.

21 HEARING OFFICER SHEAN: Okay. Well,
22 we're just going to have to take the matter under
23 submission. I think it's very clear that the
24 Public Resources Code and Commission regulations
25 do not provide for the commencement of

1 construction prior to certification.

2 I do know that among the issues that
3 were discussed about the potential for
4 contaminated soils and things like that require
5 the evaluation of soils; and perhaps maybe between
6 Valero and the City you can determine whether or
7 not there needs to be more digging to find out
8 whether that matter's been fully dealt with.

9 And if you have to move a little more
10 ground to satisfy everyone, you know, prior to
11 certification that any potential contaminated
12 soils have been found, how extensive that would
13 be.

14 Okay, we'll just have to deal with this
15 and let the Committee ponder it as we prepare our
16 decision. And let me indicate for the Committee's
17 part, we have taken extraordinary steps to have,
18 at least, the first draft of this virtually ready.

19 We knew there would be some changes in
20 key areas like air quality, noise, traffic and
21 transportation and a few others, and were prepared
22 to make them.

23 But I think everyone's been pulling on
24 this oar pretty hard, and trying to move pretty
25 fast.

1 All right.

2 MS. GILLARDE: Yes, Brenda Gillarde,
3 City of Benecia. I did want to offer a comment
4 about the review of the air quality information.

5 You know, we're already four days into a
6 two-week, if we did the two-week thing. We still
7 don't have the appendices. Our technical
8 consultant, you know, won't be getting those until
9 Wednesday. That leaves, you know, two or three
10 days to review that, to turn out comments, and
11 then get them back to the City so that we can
12 review them, and then make some statement.

13 So we really feel that there's not
14 adequate time to really fully evaluate our
15 concerns that we identified in our preliminary
16 review.

17 So, we're not real supportive of the 14-
18 day, or the shortened review period.

19 And then my question is, when the final
20 DOC from the Air District comes out, what kind of
21 timeframe is there to review that? If we're
22 continuing to shorten everything?

23 HEARING OFFICER SHEAN: Well, that's
24 among the things we're taking into account.

25 MS. GILLARDE: Regarding the grading, I

1 know that there has been some discussion with our
2 public works department about reviewing grading
3 plans ahead of time, so at least the plans are
4 approved.

5 So we are doing our best to facilitate
6 that process. I didn't know if the grading was
7 going to be split off and allowed to proceed. I
8 guess that's still a question.

9 But, like I say, as far as I know we're
10 reviewing the plans, the grading plans,
11 themselves, inhouse, to try and expedite that
12 process.

13 HEARING OFFICER SHEAN: Okay. All
14 right. Let's talk about what we want to do from
15 here on out that doesn't relate to air quality.

16 Do any of the parties want to submit
17 additional materials to the Committee for its
18 consideration in the preparation of the proposed
19 decision on any non-air quality issues?

20 MS. DEAN: I actually would like to
21 submit additional comments on the water resources
22 issue.

23 HEARING OFFICER SHEAN: Okay, does that
24 require --

25 MS. DEAN: In written form.

1 HEARING OFFICER SHEAN: -- does that
2 require your having a transcript of this
3 proceeding?

4 MS. DEAN: It would be most helpful,
5 yeah.

6 MR. WOLFE: We don't intend to submit --

7 HEARING OFFICER SHEAN: Okay.

8 MR. WOLFE: -- on the topic of the air
9 quality, but a transcript would be very helpful
10 for us to do that --

11 HEARING OFFICER SHEAN: Well, I'm trying
12 to figure out the timeframe, because we had
13 discussed briefs by, I think it was the 27th. Now
14 the best we can do for an expedited transcript
15 appears to be on the order of four or five days.
16 But the reporting service has to check this. Even
17 if it's a week, that now is the 27th.

18 MR. WOLFE: I'm not sure what we would
19 brief to the Commission prior to the expiration of
20 the PDOC comment period, and perhaps arguably even
21 the written response from the Air District in the
22 form of an FDOC.

23 HEARING OFFICER SHEAN: Right, no, I
24 mean it appears to me that the principal issue is
25 air quality. How about from the City's

1 perspective, do you anticipate --

2 MS. GILLARDE: The only thing that we
3 would submit would be we did have some minor
4 correction housekeeping things which I did not
5 bring up today, so we'll just submit those in
6 writing.

7 And also our final conclusions about the
8 traffic section, because our traffic engineer has
9 not reviewed that section.

10 HEARING OFFICER SHEAN: Sure. Well,
11 what the Committee's mostly interested in, I would
12 think, is not small housekeeping matters, but are
13 there changes being proposed in the conditions or
14 additional conditions. Now, we are aware of
15 yours.

16 MS. GILLARDE: Our one, yes, additional
17 traffic condition.

18 MR. WOLFE: What are the results of --

19 HEARING OFFICER SHEAN: Well, you had a
20 laydown condition and a traffic condition.

21 MS. GILLARDE: Um-hum.

22 HEARING OFFICER SHEAN: Right?

23 MS. GILLARDE: Correct.

24 MR. WOLFE: Sorry. When are the results
25 of the soil study going to be made available?

1 MS. McGUIRE: That study is currently
2 under preparation. We, to date, do not have all
3 analyses yet back from the laboratories, but
4 expect that to -- the final analyses to be in on
5 Wednesday. We're looking at sometime mid next
6 week for a draft of the report and the analyses
7 results to be available, and would be submitting a
8 final report and docketing that shortly after that
9 point.

10 MR. WOLFE: So like a week from this
11 Friday?

12 MS. McGUIRE: That would be probably the
13 earliest that I could see it being docketed.

14 MR. WOLFE: Would the draft version be
15 circulated?

16 MS. McGUIRE: I guess that depends.

17 MR. WOLFE: I'm not surprised.

18 (Laughter.)

19 MR. WOLFE: Okay, I would flag that, as
20 well. It obviously would be good to see the
21 results of the soil sampling study before
22 committing to briefing that issue or not.

23 HEARING OFFICER SHEAN: Okay.

24 MR. CASWELL: Mr. Shean.

25 HEARING OFFICER SHEAN: Yes.

1 MR. CASWELL: Jack Caswell, Project
2 Manager. If the City, CURE, Dena and the
3 applicant have further comments that they would
4 like to see reflected or passed on to the
5 Committee, if you could submit those to me in a
6 Word format, emailed, I'll make sure they're
7 docketed, proof of serviced, and get to the
8 Committee for further comment.

9 HEARING OFFICER SHEAN: Yeah, I was
10 going to say, so far everyone seems to be pretty
11 well dialed into our method of filing and serving
12 electronically. Why don't we just indicate that
13 for non-air quality issues, since we couldn't do
14 anything with the air quality comments anyway,
15 August 27th. And then we'll just pretty much have
16 a placeholder in a preliminary Presiding Member's
17 Proposed Decision on the air quality.

18 MR. WOLFE: And perhaps soil sample, as
19 well.

20 HEARING OFFICER SHEAN: Okay. And
21 knowing that those may -- I mean one of them
22 clearly will be changed. And the other one may be
23 changed.

24 And then we'll also get your comments on
25 water.

1 MS. DEAN: Okay. So we're going to get
2 the transcript on roughly the --

3 HEARING OFFICER SHEAN: Well, we're
4 going to get it out as quickly as we can. But I
5 understand, I mean you've already indicated the
6 nature of your comment on water, which is --

7 MS. DEAN: Right.

8 HEARING OFFICER SHEAN: -- to do it in
9 less than the three years that's in the condition.

10 MS. DEAN: Right. But actually, taking
11 everything into consideration I do see a couple of
12 possible proposed conditions based on what they've
13 said.

14 So it would be nice if I could recall
15 exactly what they said, so --

16 HEARING OFFICER SHEAN: Sure.

17 MS. DEAN: It would be tough to get that
18 out on the 27th if I've just got the transcript.
19 Maybe we could get it by the 25th.

20 HEARING OFFICER SHEAN: Okay. Anything
21 more to present to the Committee from the parties?

22 MS. NARDI: Well, we had a comment on
23 general condition 10 if you're ready for that
24 comment?

25 HEARING OFFICER SHEAN: Sure.

1 MS. NARDI: General condition 10 is a
2 condition, and I'm on page 55 of the addendum to
3 the staff assessment. It's a condition that talks
4 about what happens if we don't build phase two.
5 And it properly reflects that the applicant is
6 still considering whether to build phase two.

7 And it says that if we don't build phase
8 two we waive -- we forfeit the certification, and
9 Valero entirely understands that that's the
10 consequence.

11 The only language remaining in this
12 condition that's problematic for us is the
13 statement that the Energy Commission will conduct
14 a hearing to determine the cause of any delay.
15 That is to say if we're not meeting the December
16 31, 2002 date, and consider what sanctions are
17 appropriate.

18 And in researching the law, and the
19 statutes, the regulations and the Governor's
20 orders, we don't find any reference to sanctions.
21 We understand that if we don't build phase two we
22 forfeit the right to build phase two if we don't
23 meet the deadline.

24 But we'd like to have a common
25 understanding with the Energy Commission that

1 there's no sanctions in the commonsense term, like
2 a penalty or a fine that would be paid if we don't
3 build phase two.

4 So we'd either like that language
5 deleted, or we'd like to have a common
6 understanding that the only sanction that would be
7 imposed if we don't build phase two by the
8 December 31, 2002 deadline, is that we lose the
9 AFC, we forfeit the AFC.

10 MR. KRAMER: Staff would be willing --
11 we can have some further discussions, and if we
12 concur on an alternative formulation we could
13 submit that in our comments somewhere down the
14 road.

15 It was a little bit difficult to get a
16 final answer on this one, as I was on vacation all
17 last week. I did some work via email, but -- so
18 we'll continue to consider those comments and
19 respond. Can't say what the response will be at
20 this point.

21 HEARING OFFICER SHEAN: Well, I'm
22 intrigued by the idea that it's satisfactory to
23 waive certain portions of 25552 and the findings
24 you have to make there. But if you can't make the
25 timeframe, which is a specific date, and I guess

1 it's either 11:59:59 plus a second on the 31st of
2 December 2002, but if this facility would
3 otherwise be needed to address this energy crisis,
4 that you wouldn't waive that, too.

5 Why stick them with forfeiting their
6 license?

7 MS. NARDI: May I address that, Mr.
8 Shean?

9 HEARING OFFICER SHEAN: Sure.

10 MS. NARDI: I probably poorly summarized
11 this condition. Because it does allow -- it gives
12 the Energy Commission broad discretion to hold a
13 hearing and consider whether there was good cause
14 for the delay.

15 And it implies, without saying directly,
16 but clearly implies that the Energy Commission
17 would have authority to make an appropriate
18 determination if they wanted to give an extension.

19 What it does say to the applicant is
20 that if we decide to not build phase two, we don't
21 have what you would ordinarily have, which is I
22 think five years to hold onto your AFC, I think
23 ordinarily they're good for five years, we simply
24 forfeit it.

25 So I think that it does give, in my

1 view, the Energy Commission discretion to hold
2 that good cause hearing if there's a matter simply
3 of a delay and to make an appropriate
4 determination.

5 But it also gives the applicant the
6 right to say we've decided not to build phase two,
7 you don't need to hold the hearing, and we would
8 forfeit the application -- or the certification.

9 HEARING OFFICER SHEAN: All right.
10 Anything further from any other party?

11 MS. DEAN: I actually had one thing
12 under --

13 HEARING OFFICER SHEAN: Sure.

14 MS. DEAN: -- compliance. I can't find
15 it now that I'm looking for it, but I realized
16 that there was a request, and it seemed to have
17 been satisfied, that the annual report that
18 Valero's required to submit, made available to the
19 Benecia Library.

20 And I saw that there were also monthly
21 reports, and I didn't see any specific indication
22 that that was going to be made available to the
23 public.

24 So, I think just as a general request, I
25 would ask that essentially any and all information

1 that's -- reports that are generated be made
2 available to the public in reasonable form.

3 HEARING OFFICER SHEAN: We'll give that
4 some consideration and talk to our compliance
5 people.

6 MS. DEAN: Thank you.

7 HEARING OFFICER SHEAN: Okay, is there a
8 member of the public who wishes to speak before we
9 conclude our meeting here? We have a couple of
10 blue cards.

11 Is Dr. Swenson here? All right, I guess
12 he submitted some material here in writing to us.

13 Anybody else who would like to use this
14 opportunity to speak?

15 All right, we will conclude our
16 evidentiary hearing. We're adjourned until any
17 further hearing, which will be publicly noticed.
18 Thank you for your attendance. We're done.

19 (Whereupon, at 2:25 p.m., the hearing
20 was concluded.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of August, 2001.

JAMES RAMOS

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