

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application For Certification)
of the) Docket No.
MALBURG GENERATING STATION PROJECT) 01-AFC-25
BY CITY OF VERNON, LOS ANGELES COUNTY)
)

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

FRIDAY, MAY 2, 2003

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

James Boyd, Presiding Member

Robert Pernell, Associate Member

Susan Gefter, Hearing Officer

STAFF PRESENT

Al Garcia, Advisor

William Westerfield, Staff Counsel

Bill Pfanner, Project Manager

Stanley Valkosky, For Public Advisor

Joe Loyer, SAFS

Mike Ringer, SAFS

APPLICANT

Eric T. Fresch, Legal Counsel, City of Vernon

Ramon Z. Abueg, City of Vernon

Krishna Nand, Parsons

Samuel W. Grossman, CALPINE

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P R O C E E D I N G S

2:10 p.m.

1
2
3 PRESIDING MEMBER BOYD: Well, good
4 afternoon, everybody.

5 HEARING OFFICER GEFTER: We're on the
6 record.

7 PRESIDING MEMBER BOYD: We've got our
8 comlink set up finally if anybody wants to call
9 in. It doesn't sound like there's going to be
10 heavy traffic for this particular hearing. This
11 is a conference, Committee Conference, on the
12 Presiding Members Proposed Decision, or PMPD, for
13 the City of Vernon proposed Malburg for a
14 generating station.

15 We're conducting this event as a
16 teleconference for those who could not travel to
17 Sacramento chose, or chose not to want to travel
18 to Sacramento today. We'll ask for participants
19 on the phone to identify themselves in a few
20 minutes.

21 Let me introduce the Committee. I'm Jim
22 Boyd, Presiding Commissioner for this particular
23 citing case. And I'm joined by Robert Pernell,
24 the Associate Commissioner on this subject. We
25 have up here Al Garcia, his Advisor.

1 And all of you here know Susan Gefter
2 who's the Hearing Officer, to whom I will turn
3 this over to in just a couple of minutes.

4 This Committee issued its PMPD on April
5 11th, recommending certification for the Malburg
6 Generating. The 30 day comment period on the PMPD
7 will end on May 12th, and the full Energy
8 Commission will consider the PMPD at its business
9 meeting on May 14th.

10 With that I'm going to turn it over to
11 Ms. Gefter, the hearing officer, to one, take care
12 of the introductions of Staff, for the Applicant,
13 for the Commission, and anyone else here from
14 other agencies. And then to finish the
15 introduction, and then to proceed with the hearing
16 before I lose my voice.

17 HEARING OFFICER GEFTER: At this point
18 we'd ask the parties to identify themselves for
19 the record, beginning with the Applicant.

20 MR. FRESCH: Eric Fresch, legal counsel,
21 City of Vernon. And on my right is Krishna Nand
22 from Parsons Engineering, and Ramon Abueg, the
23 project manager for the City of Vernon, and Sam
24 Grossman, our project engineer.

25 HEARING OFFICER GEFTER: Thank you. And

1 for Staff.

2 MR. WESTERFIELD: Bill Westerfield,
3 representing the CEC Staff, and to my right is
4 Bill Pfanner, the project manager. Also in
5 attendance today is Joe Loyer and Mike Ringer, the
6 Air Quality Staff.

7 HEARING OFFICER GEFTER: Thank you. The
8 only Intervenor in this case has not participation
9 in any of the workshops or hearings, and they have
10 not made an appearance today either.

11 Does anyone know whether any of the
12 agency representatives are going to be calling in
13 from Southcoast or from the City of Vernon, or the
14 City of Huntington Park? Does any have any
15 information on that?

16 MR. FRESCH: It's our understanding the
17 District is not going to be calling in today.

18 HEARING OFFICER GEFTER: Okay. Thank
19 you.

20 MR. WESTERFIELD: Ours also.

21 HEARING OFFICER GEFTER: Thank you. And
22 today the Public Advisor is represented by Stan
23 Valkosky who is present today in the event that
24 members of the public wish to participate. And
25 he's available to speak with them if someone calls

1 in.

2 The purpose of today's Committee
3 Conference is to review the written comments filed
4 by the parties. While most of the comments
5 include minor edits and clarifications, we note
6 that comments on Transmission System Engineering
7 on Air Quality, Water Resources, and Culture
8 Resources require additional discussion.

9 And as far as we're concerned it's not
10 necessary to reiterate the edits and the
11 clarifications point by point. They speak for
12 themselves. And I assume that there's no
13 objection to correcting a typo or a word that was
14 misplaced.

15 We believe our time would be better
16 spent if we focused on the issues and concerns
17 related to the findings and conclusions, and to
18 the conditions of certification. There were a
19 couple that we had some concerns about.

20 We go into Transmission System
21 Engineering, although the comments from both
22 Applicant and Staff provide clarification of the
23 record, we would like to hear your explanations
24 for those comments as we go through the process
25 today.

1 So what we would do is begin with
2 Applicant's comments on Transmission System
3 Engineering. And then we'll ask for Staff's
4 response and your comments. And we'll do the same
5 for Air Quality. And then there's some concern
6 about a condition proposed in Water Resources.

7 And Staff had a concern about Cultural
8 Resources. And as you understand, this is an
9 informal discussion. It's not a formal hearing.
10 And the parties may ask questions and clarify
11 issues as we go forward.

12 Are there any questions about the agenda
13 or the process? No. Okay. All right. Is
14 Mr. Fresch ready to go forward on Transmission
15 System?

16 MR. FRESCH: The Applicant is ready and
17 would request Ramon Abueg to address that subject.

18 MR. ABUEG: In the area of Transmission
19 System Engineering our comments are really to
20 clarify what we submitted before. Because when it
21 got translated, or shortened, some of the meetings
22 of what we submitted got lost.

23 HEARING OFFICER GEFTER: I'm sorry, what
24 does that mean?

25 MR. ABUEG: Like the statement that 96

1 megawatts purchased from third party suppliers,
2 the combination 96 megawatts and what we generate
3 is not enough to support the load. The 96
4 megawatts is just a factor. It's what is being
5 produced by other generators.

6 HEARING OFFICER GEFTER: Okay.

7 MR. ABUEG: So we have a generation of
8 28 and a half megawatts. That's 26 and a half
9 megawatts that's here, plus the rest of it we
10 purchase. And that's what we want to clarify.

11 HEARING OFFICER GEFTER: Okay. And
12 that's what I understood the record to say. And
13 yet when we tried to find it in the actual
14 information submitted by both Staff and the
15 Applicant it wasn't clear to me.

16 MR. ABUEG: Okay.

17 HEARING OFFICER GEFTER: So I appreciate
18 you clearing it up.

19 MR. ABUEG: All right. And the other
20 one also, we have a consultant, Navigant
21 Consulting. They requested for the record they
22 want to go by their legal name, which is either
23 NCI or Navigant Inc.

24 HEARING OFFICER GEFTER: All right. And
25 also in your comments, you clarify what happened

1 with the System Impact Study, because it looked
2 like there was a System Impact Study filed with
3 the initial application for certification. And
4 then that was either revised or completely redone
5 by Navigant, is that what happened?

6 MR. ABUEG: That is correct. The
7 original study was done by the city. And we was
8 found inadequate we hired Navigant Consulting to
9 finish the study for us.

10 HEARING OFFICER GEFTER: And that's
11 cleared up in some of the comments that you
12 proposed.

13 MR. ABUEG: That's correct.

14 HEARING OFFICER GEFTER: Yeah. Okay.
15 All right. The other thing, too, where you have a
16 comment on the footnote, page 81, footnote eight,
17 the question I have there is, it says that the
18 System Impact Study that was prepared by Navigant
19 then went to the Cal-ISO for review.

20 MR. ABUEG: That's correct.

21 HEARING OFFICER GEFTER: Okay. Now, you
22 know, I couldn't find anything from Cal-ISO where
23 they responded or they wrote anything, you know,
24 indicating they reviewed it, or they approved it
25 or anything. Was there something in the record,

1 something like that?

2 MR. ABUEG: Yes. There was a letter
3 submitted by Cal-ISO basically stating that they
4 do not have any jurisdiction and that we have to
5 get Edison's approval.

6 HEARING OFFICER GEFTER: All right.

7 MR. ABUEG: And that they weren't going
8 to give us an approval because they don't have to.

9 HEARING OFFICER GEFTER: Is that part of
10 our record?

11 MR. ABUEG: That's correct.

12 HEARING OFFICER GEFTER: Okay. Perhaps
13 we don't need to do that right now, but you could
14 indicate where it is in the exhibit so that I can
15 cite it.

16 MR. ABUEG: Okay.

17 HEARING OFFICER GEFTER: That would be
18 helpful.

19 MR. ABUEG: We will.

20 HEARING OFFICER GEFTER: And also we
21 have said they are referring to SCE, Edison. Is
22 there something from Edison in the record that
23 indicates that Edison is in agreement with the
24 System Impact Study?

25 MR. ABUEG: Edison performed their own

1 System Impact Study, and we have submitted the
2 results. I think it was an October 10th, study.
3 That's part of the record.

4 HEARING OFFICER GEFTER: That I have.
5 So that is basically Edison's contribution to the
6 System Impact Study Review?

7 MR. ABUEG: That is correct.

8 HEARING OFFICER GEFTER: In response to
9 what Cal-ISO, having directed a city to consult
10 with Edison, and then Edison did the System Impact
11 Study?

12 MR. ABUEG: That is correct.

13 HEARING OFFICER GEFTER: All right. I
14 wanted to follow the line on how it all came
15 about. Do any of the --

16 PRESIDING MEMBER BOYD: No questions.

17 HEARING OFFICER GEFTER: Okay. Staff,
18 on Transmission System Engineering, you also
19 submitted some comments. Thank you, Mr. Boyd.
20 And I wanted to just make sure that you're in
21 agreement with the Applicant's comments and
22 there's no inconsistency in your comments.

23 MR. WESTERFIELD: We are in agreement
24 with the Applicant's comments. And I think our
25 only comment was simply in that of clarification.

1 HEARING OFFICER GEFTER: All right.
2 Good. All right. So that clears it up for me.
3 Thank you very much. Now I think we should go on
4 to Air Quality. Both Applicant and Staff have
5 indicated they want to add language to Air Quality
6 condition, let's see, it's AQCl, right:

7 And I'd like you to explain your intent,
8 because my concern here is that the condition
9 itself establishes a limit of 10UGM to the third
10 degree. And I don't know what all this --

11 PRESIDING MEMBER BOYD: Microgram.

12 HEARING OFFICER GEFTER: Microgram.
13 Commissioner Boyd can explain this to all of us.
14 All right. With that limit, it looks like the
15 Applicant proposes to add language where they can
16 change the limit if they can't meet it.

17 And my concern is that I don't think it
18 is appropriate for us to set a limit and a
19 condition, and then also in the same condition
20 allow the Applicant to change it. So my
21 suggestion would be either to raise the limit or
22 put some language in to indicate how they could
23 comply with that particular limit.

24 And, Mr. Fresch, if you want to explain
25 to us here intent for changing the language.

1 MR. FRESCH: Thank you. The Applicant
2 would like Krishna Nand to address that particular
3 subject if I could.

4 MR. NAND: As you are aware that there
5 three pollutants for which we have to do the
6 monitoring, the M10, carbon monoxide, CO, and
7 oxides, and nitro dioxide, NO2. The ambient air
8 quality is (indiscernible), for these three
9 pollutants are quite different.

10 In terms of the magnitude for PM10 it is
11 50 microgram per cubic meter, where as for carbon
12 monoxide it is 23,000 microgram per cubic meter.
13 And what we are suggesting that we will do all
14 possible control measures, which we can do, to
15 control these emissions of these three pollutants.

16 But it possible if we find that the
17 monitor concentrations, actually that's what we
18 monitor, if they exceed ten microgram per cubic
19 meter if we have to probably look into and
20 increase this. This is stage, unless the
21 monitoring is really done.

22 We are not sure what labels we will get.
23 So we will start actually with what the condition
24 is. And we will see that all the best possible
25 control measures we can do during the construction

1 we'll do it.

2 But if we find that ten microgram is too
3 low actually, then the start times that we are
4 proposing to increase it. And at this stage we
5 really don't know how much it will be.

6 HEARING OFFICER GEFTER: All right. I
7 understand that concern. Would it be possible to
8 set different limits for each of the pollutants
9 rather than one standard for all three pollutants,
10 since you've indicated that each one has different
11 emission levels?

12 MR. ABUEG: The thing actually gives
13 some guidance in a sense that can -- we are
14 governed by the Southcoast Air Quality Management
15 District rules and regulations. And normally they
16 suggest monitoring only for PM10 basically.
17 There's an old rule 403.

18 And in the past that's what has been
19 monitored at the construction sites. And what
20 they recommend that you go and do the monitoring,
21 and the five hour average concentration, that's
22 what they say you monitor for about five hours,
23 and the standard they take as 50 microgram per
24 cubic meter.

25 That's what basically all of the their

1 projects has been done. So for PM10 that's what
2 we are hoping that's what we will probably happen,
3 50 microgram per cubic meter. And this is 50
4 microgram, incidently it happens to be the state
5 and Air Quality standard.

6 And incidently, the Southcoast Air Basin
7 is not in attainment of the state. The existing
8 concentrations do exceed 50 microgram per cubic
9 meter. That's why they have recommended this
10 construction site basically monitoring for PM10.
11 And that's probably what we will try to achieve.

12 PRESIDING MEMBER BOYD: If I may, let me
13 understand this. The current language talks about
14 the delta, or the change, of ten micrograms
15 between an upwind and downward monitoring for each
16 of the three pollutants.

17 I need to ask the Staff is that a fairly
18 standard condition for a construction operations?
19 Or is this unique to this site, this ten microgram
20 delta for all three pollutants?

21 MR. WESTERFIELD: Commissioner, actually
22 to my knowledge it is a unique standard or
23 condition to this site. It's my understanding
24 that in virtually every other project the standard
25 that is used is a 50 microgram per cubic meter,

1 delta or change.

2 PRESIDING MEMBER BOYD: Did we have some
3 unique reason for being different here?

4 MR. WESTERFIELD: To be honest I don't
5 think there is a unique reason for being different
6 here. I think somehow this limit got into the
7 condition. And I cannot point to any
8 justification for it.

9 PRESIDING MEMBER BOYD: So you're
10 agreeing with the Applicant?

11 MR. WESTERFIELD: We are agreeing with
12 the Applicant.

13 PRESIDING MEMBER BOYD: Okay.

14 HEARING OFFICER GEFTER: Okay. Well,
15 would it make sense then to raise the limit to the
16 typical limit that appears in other conditions?
17 Or would that be in violation of what the
18 Southcoast District would request?

19 MR. WESTERFIELD: I have no knowledge if
20 that would be in violation of anything the
21 Southcoast would request.

22 HEARING OFFICER GEFTER: Okay.

23 MR. WESTERFIELD: In fact, 50 I think
24 would be more in keeping with our projects and
25 would make sense here.

1 HEARING OFFICER GEFTER: Okay.

2 MR. WESTERFIELD: And a question for the
3 Applicant would be whether they feel they would
4 still require some flexibility, even if we were to
5 support a 15 microgram delta.

6 MR. NAND: As I told you, this
7 construction site is quite unique. It's a very
8 tight area. And the construction is very close to
9 the fence line. It is not a normal construction
10 site, you know. So as I told you, we will start
11 making goal of 50. That is what is recommended,
12 you know.

13 And all the possible control measures
14 we'll install, and if we find probably it's
15 exceeding too much then probably we have to think
16 about what we have to do. But probably that's a
17 good starting point.

18 HEARING OFFICER GEFTER: Well, my
19 concern is that we don't point a starting point in
20 a condition. It's a limit. And so I don't want
21 to build in flexibility in a condition of
22 certification. It either can meet the standard or
23 you can't.

24 And if there's a problem with meeting
25 the standard we need to provide some other

1 measures in order to allow you to meet the
2 standard. And it seems that, you know, going from
3 ten micrograms per cubic meter to 50 gives you a
4 lot of leeway.

5 MR. NAND: That's the PM10 actually.

6 HEARING OFFICER GEFTER: Yes.

7 MR. NAND: PM 10.

8 HEARING OFFICER GEFTER: What about Co
9 and NOx?

10 MR. NAND: Now, CO actually the standard
11 is 23,000 microgram per cubic meters. So all
12 these values they come within what we call the
13 noise of the monitoring increment. So it has to
14 be higher limit actually. And as I told you that,
15 you know, I have not really come across a project
16 where they have really gone and monitored such a
17 close to the construction site, you know.

18 It is possible that, you know, maybe
19 almost like 20 parts per million, which is the
20 standard of the carbon monoxide, you know. That
21 may be the limit. So probably we have to make a
22 recommendation, a suggestion rather, I cannot make
23 a recommendation, we will go with for the CO as
24 high as 20 parts per million.

25 PRESIDING MEMBER BOYD: Does anybody

1 what the current practice of the Southcoast
2 District is for deltas for these pollutants in a
3 typical construction site operation?

4 MR. NAND: As far as I am aware, I have
5 been involved in numerous projects in Southcoast
6 area where they have suggested only monitoring for
7 PM10. And that's why they have established the
8 limits for the PM10 because you get a lot of dust
9 actually doing the big construction projects.

10 That is the only limit I have seen in
11 Southcoast. I have not seen any document where
12 they have specified monitoring for CO and NO2
13 actually were the limits.

14 HEARING OFFICER GEFTER: Does Staff have
15 any comment so you can provide some background
16 where this condition came from? How is it in this
17 particular condition you're also monitoring on NOx
18 and CO?

19 MR. WESTERFIELD: We would actually like
20 to call Mr. Loyer right now and have him speak to
21 why these other limits and condition.

22 HEARING OFFICER GEFTER: Okay.

23 MR. LOYER: Who am I sharing the mike
24 with? The reason Staff established the ten
25 micrograms for NOx, NO2, PM10 and CO was very

1 simply that this particular project, because it is
2 a very small site, because of its particular
3 arrangement of building and meteorological
4 conditions, they were going to cause an off site
5 impact ten times the NO2 standard.

6 That's why we put on ten micrograms of
7 cubic meter limit on NO2. That is true that
8 Southcoast does on a routine basis monitor PM10
9 emissions from construction sites. But they do
10 that on a short term, and then it does then turn
11 around and apply that shorter term to the ambient
12 PM10 ambient 24-hour standard.

13 So the measure for either I think it is
14 three to six hours long. And they'll then
15 interpret that to be an insignificant or
16 significant based on whether it is greater or less
17 than 50 micrograms per cubic meter impact on that
18 24-hour standard.

19 In this particular instance, we're not
20 as concerned with the PM10 standard, although they
21 will be in violation causing the impact on PM10 if
22 they are going to cause the impacts that the
23 modeling says they will. But NO2 standard is the
24 one that we were truly concerned with.

25 Ten times the NO2 standard, ten times

1 420, that's a lot of NO2. And that to a certain
2 extent we don't believe the model. But it being
3 our only tool, we have to do something about that
4 impact. And this was our solution.

5 HEARING OFFICER GEFTER: How do you feel
6 about dividing it up so that for a NOx you've set
7 a particular limit for PM10? You said a
8 particular limit, and also for CO.

9 MR. LOYER: The reason we didn't do that
10 initially, if you have noticed this condition gets
11 a little complicated. And we wanted to simplify
12 this condition as much as possible. We believe
13 that ten micrograms is reasonable for NO2 and CO.

14 We don't think that they're going to
15 have a CO problem at all. We don't think that
16 they're really going to have a PM10 problem. But
17 if you would like to set different standards for
18 the different pollutants, we would find that
19 acceptable.

20 50 micrograms for PM10 is probably a
21 reasonable thing to do.

22 HEARING OFFICER GEFTER: Would it be
23 possible then to monitor the different pollutants
24 if you have three separate standards for each one?

25 MR. LOYER: You'd have to establish

1 three separate monitoring stations. I don't know
2 whether the Applicant would prefer that to
3 anything else. But, yeah, that is what you would
4 have to do.

5 PRESIDING MEMBER BOYD: What's so unique
6 about this project that it's going to generate so
7 much NOx?

8 MR. LOYER: Basically it's a small
9 footprint. It's a very, very small site, you
10 know, as you well remember I'm sure. And they are
11 going to be putting in a lot of equipment,
12 construction equipment, and then constructing a
13 lot of, you know, the major components of the
14 power plant.

15 So it is going to be a lot of dust, a
16 lot of diesel construction emission, diesel
17 emissions from the construction equipment in a
18 very small area. And that's really what's driving
19 the problem.

20 COMMISSIONER PERNELL: Have you or the
21 Applicant approached Southcoast with the change?

22 MR. LOYER: I believe I talked to John
23 Yee about it, and he was unconcerned about it. I
24 think that's primarily because it's not one of
25 their conditions. As far as giving them some

1 flexibility, the language in the condition says
2 that they can come back to us and suggest a
3 different level other than ten micrograms.

4 And to me that seems to be a good idea
5 in this particular instance also because we're
6 primarily concerned about the first two months of
7 operation. And in those two months, if they get
8 by that, then the odds are that they are not going
9 to ever even come close to causing a problem.

10 Because those are the two months --
11 that's the time period where most of the missions
12 are going to occur.

13 HEARING OFFICER GEFTER: And it makes
14 sense that we draft the condition to state what it
15 is you're concerned about, and indicate that the
16 first two months the limits are whatever you think
17 is reasonable. And then thereafter, the limits
18 would be ten micrograms per cubic meter.

19 And if you could just lay that out.
20 Because, in fact, the conditions from, you know,
21 particularly for Air Quality, do specify
22 particular time frames. You talk about
23 commissioning. You talk about, you know, start up
24 and shut down. And so there are lots of different
25 times when different conditions apply.

1 So it would make sense that in this case
2 you could also do that, and indicate that the
3 first two months are a greater concern and the
4 limits would be whatever you decide is a
5 reasonable limit. And thereafter, we go back to
6 the ten micrograms per cubic meter for the three
7 pollutants.

8 MR. LOYER: We could do that. My
9 preference would be to set a limit that does not
10 cause an impact no matter what the time frame is.
11 Therefore, say if we choose 50 micrograms per
12 cubic meter for PM10, that no matter what the time
13 frame that we're talking about during
14 construction, if they manage to make that limit
15 then we don't have a concern.

16 That would be my preference. But I
17 understand where you're going with this.

18 PRESIDING MEMBER BOYD: Well, if the
19 first two months is the hard time then it doesn't
20 matter from then on if it stays at 50 micrograms.
21 But 50 micrograms of CO is --

22 MR. LOYER: Almost inconsequential.

23 PRESIDING MEMBER BOYD: Yeah. It is
24 static.

25 MR. LOYER: And like you said, we don't

1 believe that they are ever going to have a problem
2 with meeting the limit on CO.

3 PRESIDING MEMBER BOYD: But why should
4 we engage in -- it bothers me to put a number in
5 that we know is not a technically sound number. I
6 mean we're about that, aren't we?

7 MR. LOYER: Remember the original
8 intent.

9 PRESIDING MEMBER BOYD: I mean that's
10 Ms. Gefter's approach of three numbers for three
11 pollutants, each of which have of different
12 magnitudes of concern would be a better approach.

13 MR. LOYER: The original attempt was to
14 establish a single number for simplicity. So we
15 established the --

16 PRESIDING MEMBER BOYD: I appreciate
17 that.

18 MR. LOYER: Right. So that's why we
19 went to that particular number. Now, establishing
20 a separate number for CO is fine, even possibly
21 dropping CO is probably okay to do so long as we
22 can establish a number of NO2 and PM10. And I
23 don't think we would have a problem with dropping
24 CO.

25 PRESIDING MEMBER BOYD: I mean with CO

1 my concern is pedestrians and what have you. And
2 you're taking other majors to run people around.

3 MR. LOYER: The control on NO2 should be
4 more than enough to protect the people from CO
5 emissions as well. That would be the logic in
6 being able to drop it I think.

7 HEARING OFFICER GEFTER: What we could
8 do is we do have some time between now and the
9 business meeting on the 14th. It would give Staff
10 and Applicant a chance to sit down and give us
11 some additional language that you could agree on.

12 My concern is more that I don't want to
13 see built into a condition flexibility or an
14 Applicant to come and say, well, we can't meet
15 that standard. We want to do it another way. I
16 want to establish the standard that everyone
17 agrees is reasonable and then everyone can
18 actually try to comply with that standard.

19 MR. WESTERFIELD: Ms. Hearing Officer,
20 may I speak to that point of the flexibility? I
21 have talked to our compliance people at the
22 Commissioner. I believe Mr. Munro is going to
23 be -- has been on our compliance contact, maybe
24 the compliance officer on this.

25 It was his conviction that flexibility

1 was needed for this kind of standard.
2 Unfortunately, he wasn't able to be here for the
3 time today to elaborate on that. But he wanted me
4 to communicate that to the Committee that they
5 needed flexibility.

6 PRESIDING MEMBER BOYD: Did he predicate
7 that on the ten microgram number or just the
8 general idea, tiny footprint, unique project?

9 MR. WESTERFIELD: It's the latter,
10 Commissioner. They wanted the flexibility because
11 of the tiny footprint. Also, I think a point that
12 Mr. Loyer has made, and I'd like to reiterate,
13 that the modeling that will verify compliance with
14 the standard has limited field experience.

15 We have limited field experience. We're
16 not sure we can control all the variables and
17 testing so that we can be confident of the test
18 results. And so we think it's not reasonable to
19 ask the applicant to meet very strict standards
20 when we're not confident about the infield
21 performance of our testing.

22 So I think that's a reason for
23 flexibility. And then finally, I'd like to also
24 mention that, if I may, this is a very good
25 project. This is a cooperative Applicant. They

1 have followed the process in good faith.

2 I think they have earned our trust. And
3 I believe they -- and any decision implementing
4 flexibility will be made with Staff's approval,
5 not something that the Applicant does
6 unilaterally. It will be our joint decision. And
7 so I believe they followed this project in good
8 faith.

9 We trust them to do what's best in the
10 environment going forward. We will be there as
11 monitors of the process. And I think given our
12 vigilance during construction and their good
13 faith, we think some discretion placed in Staff is
14 appropriate for this condition.

15 HEARING OFFICER GEFTER: We're going to
16 go off the record a moment.

17 (Off the record.)

18 PRESIDING MEMBER BOYD: I have the
19 utmost faith in the Staff. I'm very swayed by the
20 arguments. I'm not a lawyer, but a little
21 concerned with the precedent with regard to other
22 people and other projects, etcetera.

23 What I prefer is that the Staff and the
24 Applicant, in the intervening time, just try to
25 come up with a reasonable number, threshold

1 number, and got on with it. This is a strange
2 situation. Half the grey hair in my hair is the
3 product of depending upon, or relying upon, or
4 waiting for models to give me the right answers to
5 questions in the Air Quality business.

6 So I appreciate the earlier comments
7 about, you know -- I mean they are a tool, but
8 they don't tell you. Don't rely on them or you'll
9 turn grey too. So hopefully you folks can work
10 out a reasonable approach.

11 MR. WESTERFIELD: Thank you,
12 Commissioner.

13 PRESIDING MEMBER BOYD: Yeah.

14 MR. WESTERFIELD: I think if it's any
15 comfort to the Committee, this site is very small
16 and, should the Committee choose, it could accept
17 a condition or write a condition that is unique to
18 this case.

19 PRESIDING MEMBER BOYD: Right.

20 MR. WESTERFIELD: And make it clear that
21 it is not precedential for future citing cases.

22 PRESIDING MEMBER BOYD: Yeah. I agree
23 100 percent with your comments that this has been
24 a cooperative, non-hostile, willing, open
25 Applicant. And I'm sure both can reach a

1 reasonable accommodation.

2 MR. WESTERFIELD: Thank you,
3 Commissioner.

4 HEARING OFFICER GEFTER: Thank you.

5 MR. NAND: Can I make a quick comment?
6 We should also keep in mind that nobody actually
7 lives in that (indiscernible) absolutely
8 industrial, you know. Any residence is quite far.
9 So even if it's not very nice, so people don't
10 really come for a walk.

11 HEARING OFFICER GEFTER: All right. In
12 terms of when you can get this to the Committee,
13 if you can file this with us by next Tuesday for
14 the business. That is May 6th.

15 MR. WESTERFIELD: Yes.

16 HEARING OFFICER GEFTER: And that way we
17 could get ready for our business meeting on the
18 14th.

19 MR. WESTERFIELD: That's fine.

20 HEARING OFFICER GEFTER: All right. And
21 anything else on Air Quality from either the
22 Applicant or the Staff, any other comments that
23 you would like to bring to our attention?

24 MR. FRESCH: Not on Air Quality.

25 HEARING OFFICER GEFTER: Okay. We'll go

1 onto other topics. Does Staff have anything else
2 on Air Quality?

3 MR. WESTERFIELD: No, we've nothing to
4 add other than to note that it's our understanding
5 that the record in Air Quality is still open. And
6 I'm not sure that we really need it to be open in
7 order to reach language on this final condition.
8 So we would be happy to close the record on Air
9 Quality.

10 PRESIDING MEMBER BOYD: I'd defer to the
11 lawyers.

12 HEARING OFFICER GEFTER: Yeah. Again,
13 the record will closed upon receipt of the final
14 language for this condition. And so May 6th we'll
15 close the record on Air Quality.

16 MR. WESTERFIELD: Thank you.

17 HEARING OFFICER GEFTER: I have one
18 question, and I think this was the Applicant had
19 put a comment on compliance. On project manager
20 they were changing it from Christopher Meyer to
21 Steve Munro. Is it necessary to actually name the
22 project manager in the compliance section?

23 MR. FRESCH: We just noted Steve Munro
24 because that's the gentleman who told us he was.
25 And Christopher Meyer was put in by --

1 MR. PFANNER: He was initially --

2 MR. FRESCH: Yeah. But I mean we didn't
3 name these people. We just wanted to make the --

4 HEARING OFFICER GEFTER: All right. I
5 don't think it's necessary to name the compliance
6 monitor because it may change.

7 MR. FRESCH: Okay.

8 HEARING OFFICER GEFTER: You never know.
9 All right. Okay. Commissioner Boyd has to leave
10 at this point, but Commissioner Pernell will
11 remain for the rest of the meeting.

12 The Applicant had some comments on water
13 resources in terms of that condition where we were
14 asking -- we were requiring the city to make the
15 upgrades to the -- what was it, to the pipeline?
16 The Applicant had an explanation for that
17 particular concern.

18 MR. NAND: Yeah. For the reclaimed
19 water there are three portions of the project that
20 the (indiscernible) has to do. But only two of
21 those improvements are really required to meet the
22 project needs. The third part, which are the
23 reducing stations, those are not necessary to meet
24 our needs.

25 But those are more important to them in

1 order to extend the services after the MGS has
2 been constructed. And they may delay that.
3 They're trying to meet that to meet our needs and
4 to have some schedule. But they won't guarantee
5 that those will be done, because they're not
6 necessary for our project.

7 HEARING OFFICER GEFTER: It's not
8 necessary for you project. Well, that was not
9 clear from the record. And that's probably why
10 that condition was included. So your request is
11 to remove that condition?

12 MR. NAND: That is correct. The
13 clarification we provided show that they have to
14 do certain things in order so that the other
15 customers are not affected by a project. Those
16 will be done, but not the major reducing station
17 that we have showed on our application.

18 HEARING OFFICER GEFTER: I'm sorry, I
19 don't follow that.

20 MR. NAND: No, the major component of a
21 reducing station may not be completed by the time
22 we go to a commercial operation date on this
23 project.

24 HEARING OFFICER GEFTER: But that is not
25 necessary for your project?

1 MR. NAND: But that's not necessary.

2 HEARING OFFICER GEFTER: All right.

3 That's what I got confused when you said it wasn't
4 going to be completed. All right. So is Staff in
5 agreement with the Applicant's request on this?

6 MR. FRESCH: Yes.

7 HEARING OFFICER GEFTER: Welcome to the
8 Staff. All right. They're in agreement with it.
9 The reason it was in there basically is because
10 the record wasn't clear. It said that the city is
11 going to do this. It didn't say when, and it
12 didn't say how it was connected to the project.

13 So your clarification at this point will
14 be accepted into the record.

15 MR. NAND: Thank you.

16 HEARING OFFICER GEFTER: And then the
17 file topic of concern was cultural resources, and
18 Staff had some concerns about the cultural
19 resources section. So I'm going to turn to Staff
20 now for your explanation.

21 MR. WESTERFIELD: Thank you very much.
22 Actually, if I may I'd like to say a big never
23 mind to our comments. When we read the PMPD it
24 was our understanding that the city had not
25 undertaken the effort to create a historic

1 district and to propose one.

2 That was just not our recollection of
3 things. And there was some confusion actually in
4 trying to get to the bottom of it all. As it
5 turns out, indeed the report from the Parson's
6 Company did identify the historic district.

7 The language of the PMPD is correct in
8 that respect. The only I guess inaccuracy, if you
9 will, is that our understanding is the city has
10 not proposed a historic district. I'm not sure
11 they have decided whether to do that or not.

12 And so our suggested edits to that
13 section I think would still be appropriate that,
14 although station A may be eligible for inclusion,
15 it is not currently a proposed district. So I
16 guess that is something the city is still
17 considering whether it's a proposed district.

18 And that's the only real comment we
19 would like to leave with the Committee after this
20 all this is done.

21 HEARING OFFICER GEFTER: All right. So
22 in terms of the actual language of the PMPD, where
23 would you -- would you include where it says page
24 204, third paragraph.

25 MR. WESTERFIELD: Yes.

1 HEARING OFFICER GEFTER: Okay. and then
2 you have a quote. And then you explain that
3 station A may be eligible for inclusion, but it's
4 not currently proposed district. You would like
5 to see that language in the final decision?

6 MR. WESTERFIELD: That's fine. I think
7 it would be just as accurate to say instead of the
8 proposed district, the potential district.

9 HEARING OFFICER GEFTER: Is that a more
10 accurate term?

11 MR. WESTERFIELD: I think so.

12 HEARING OFFICER GEFTER: All right. So
13 basically we could just say although the area
14 surrounding station A may be eligible for
15 inclusion, it is not currently a potential
16 district, period.

17 MR. WESTERFIELD: Well, it is not
18 currently a proposed district. I think if we got
19 back to the original language of the proposed
20 decision --

21 HEARING OFFICER GEFTER: Yeah.

22 MR. WESTERFIELD: -- and simply there's
23 the third sentence I believe that begins with "the
24 proposed district."

25 HEARING OFFICER GEFTER: It says

1 "proposed district consists of historic pre-World
2 War II industrial core", etcetera, etcetera.

3 MR. WESTERFIELD: So we would just --

4 HEARING OFFICER GEFTER: According to --
5 it just says according to Staff the new facility
6 -- I don't really see where this fits actually.

7 MR. WESTERFIELD: Well, I think it would
8 probably be best to borrow a language in our
9 comments would just be ignored for the moment.

10 HEARING OFFICER GEFTER: That seems to
11 make sense at this point because it doesn't really
12 fit in here.

13 MR. WESTERFIELD: You're right.

14 HEARING OFFICER GEFTER: And perhaps
15 this discussion in the PMPD actually states what
16 the record has given us, you know, reflects the
17 record.

18 MR. WESTERFIELD: I agree with you.

19 HEARING OFFICER GEFTER: Yeah. So I
20 think we can just leave it alone at this point.
21 In terms of the conditions, it doesn't impact the
22 conditions.

23 MR. WESTERFIELD: No. I would agree
24 with you, Ms. Hearing Officer, except instead of
25 using the proposed district we might suggest

1 changing that to the potential district.

2 HEARING OFFICER GEFTER: You mentioned
3 that earlier. I'm trying to find where that word
4 "potential" would replace "proposed", is that in
5 that paragraph?

6 MR. WESTERFIELD: Yes. The sentence
7 that says "the proposed district consist of the
8 historic."

9 HEARING OFFICER GEFTER: Great. Got it.
10 So you'd have it say potential. That's fine.
11 Yeah. Okay. I didn't know where you wanted to
12 stick that word in. All right. Great. Okay.
13 Mr. Fresch, does your --

14 MR. FRESCH: I hope I got that right.

15 HEARING OFFICER GEFTER: --
16 representative want to add something to the
17 discussion on cultural resources?

18 MR. FRESCH: No, no, not on this
19 technical end. He'd like to talk about something
20 else.

21 HEARING OFFICER GEFTER: Something else.
22 All right. Well, I think if we're finished with
23 cultural resources you may go forward. What topic
24 do you want to talk about?

25 MR. FRESCH: Ms. Hearing Officer, Sam

1 Grossman our project engineer wants to talk about
2 a clarification that has to do with our project
3 labor agreement. It concerns construction. And
4 the language says operations. And we haven't
5 negotiated that yet.

6 MR. GROSSMAN: We don't intend to do
7 that. We do have a project labor agreement in
8 place with the building trades for the project,
9 but we won't be negotiating an operations contract
10 until further down in the project at this point.

11 So as a condition of certification for
12 us to move forward in construction I think is a
13 little early in the process for us.

14 HEARING OFFICER GEFTER: All right.
15 Okay. Could you tell us what page you're looking
16 at?

17 MR. FRESCH: It's page six, first
18 paragraph, last sentence.

19 HEARING OFFICER GEFTER: All right.
20 that's in the introduction. We don't have a
21 condition on that.

22 MR. GROSSMAN: No.

23 COMMISSIONER PERNELL: It's a matter of
24 information to the Committee?

25 MR. GROSSMAN: Yes.

1 HEARING OFFICER GEFTER: Yeah. Right.
2 And I'll just cross out operation. Yeah. And
3 actually, do you or -- I understood that they
4 already had the project labor agreement for --

5 MR. GROSSMAN: Yes.

6 HEARING OFFICER GEFTER: --
7 construction. So where it says they provided
8 confirmation that the building trades will
9 complete, it probably is more accurate to say has
10 completed.

11 MR. GROSSMAN: Yes. We actually had
12 submitted to the CPM the PLA.

13 HEARING OFFICER GEFTER: So I'll just
14 change the language there.

15 COMMISSIONER PERNELL: Yeah.

16 HEARING OFFICER GEFTER: And is the
17 agreement with the State Building Trades, is that
18 actual name of the group that the agreement is
19 with, or is there a more specific name?

20 MR. GROSSMAN: There is a more specific
21 name.

22 COMMISSIONER PERNELL: It's California
23 State Building and Construction Trades.

24 MR. GROSSMAN: Yes.

25 HEARING OFFICER GEFTER: Okay.

1 MR. GROSSMAN: Thank you.

2 HEARING OFFICER GEFTER: California
3 State Building and Construction Trades. All
4 right. So the accurate statement here is that you
5 have completed a project labor agreement for
6 construction.

7 MR. GROSSMAN: That's correct.

8 HEARING OFFICER GEFTER: All right.
9 That's fine. And I think we probably need to
10 clear it up also in the associate economic section
11 of the PMPD because I think we also said the same
12 thing in there. We'll check the language and make
13 sure it reflects the accurate information.

14 Anything else, Mr. Fresch?

15 MR. FRESCH: Not at this time. There's
16 nothing else. Thank you, Ms. Hearing Officer.

17 HEARING OFFICER GEFTER: So basically
18 the other comments that were submitted, like we
19 said earlier, edits or clarifications, and we can
20 incorporate them in an errata. And that would be
21 our next step that the Committee will prepare of
22 the errata.

23 That will be presented to the full
24 Commission along with the PMPD on May 14th. And
25 then the Commission will vote on whether to adopt

1 the PMPD along with the errata. And if the
2 Commission adopts the recommendations of the
3 Committee, which is to certify, then the date of
4 the adoption becomes the date when, you know, you
5 have your final decision, which would be May 14th.

6 Okay. Given that there are no other
7 parties, and CURE has not participated, I mean it
8 would very unlikely that anyone would file a
9 motion for reconsideration at this point. So
10 you'll have your decision on May 14th.

11 Okay. Anything else?

12 COMMISSIONER PERNELL: Is there anything
13 else, any other parties would want to say?

14 MR. FRESCH: I think they're close, but
15 they'll file it Tuesday.

16 HEARING OFFICER GEFTER: Very good.
17 Okay. So on May 6th, we'll expect the revised
18 condition AQC1, AQSC1.

19 MR. FRESCH: AQC1.

20 HEARING OFFICER GEFTER: AQC1. All
21 right. Some of the other ones were different.
22 Sorry. We'll be accurate, AQC1. And after that
23 the record will be closed and we will see you on
24 May 14th.

25 MR. FRESCH: Thank you, Ms. Hearing

1 Officer. Thank you, Commissioner.

2 HEARING OFFICER GEFTER: Okay. The
3 conference is adjourned.

4 MR. WESTERFIELD: Thank you very much.

5 (Thereupon, at 3:05 p.m., the Committee
6 Conference was adjourned.)

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 2003.

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