

COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISERS PRESENT

Garrett Shean, Hearing Officer

Raoul Renaud, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Jack Caswell, Project Manager

Dale Hunter, Black Eagle Consulting (via
telephone)

Alvin J. Greenberg, PhD

Shahab Khoshmashrab

APPLICANT

Scott Galati, Attorney
Galati and Beck

Victor Yamada
Lawrence J. Kostrzewa
Bernard M. Piazza
Edison Mission Energy

Douglas M. Davy, PhD
CH2M HILL

ALSO PRESENT

Ken Coats, South Coast Air Quality Management
District (via telephone)

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

2 3:00 p.m.

3 PRESIDING MEMBER PFANNENSTIEL: Good

4 afternoon. We are having problems with the
5 microphones and I won't speak long. I am Jackie
6 Pfannenstiel. I am the Chair of the Energy
7 Commission and the Presiding Commissioner on the
8 Walnut Creek Energy Park application. To my left
9 is Commissioner John Geesman who is the Associate
10 Member on the committee overseeing the application
11 for certification for Walnut Creek Energy Park.
12 To my right is the hearing officer for this
13 proceeding, Garrett Shean. With that with the
14 stronger voice I am going to turn it to Garrett.

15 HEARING OFFICER SHEAN: Thank you,
16 Chairman. I would like to introduce my new office
17 mate, Raoul Renaud, who is here to my right. He
18 is a new hearing officer in training. He has been
19 helping me on the cases we have got underway and
20 will be assisting me in the preparation of the
21 PMPD, all as part of ongoing training so that he
22 can one day do one of these all on his own.

23 With that we would like to have the
24 applicant introduce themselves and then we'll go
25 to the Commission staff and anyone else who is in

1 the audience that feels it's appropriate for them
2 to introduce him or herself.

3 MR. GALATI: Scott Galati for Edison
4 Mission Energy and the Walnut Creek Energy Park.

5 MR. YAMADA: Victor Yamada,
6 environmental health and safety for Edison Mission
7 Energy.

8 DR. DAVY: I'm Doug Davy, a consultant
9 to the applicant as the project manager for AFC
10 preparation.

11 MR. GALATI: We also have with us in the
12 audience should the Committee wish to ask any
13 questions of Bernie Piazza who is a project
14 engineer for the project with Edison Mission
15 Energy and Larry Kostrzewa who is, I believe --
16 I'm going to get the title wrong but he is the
17 project director, I believe, for Edison Mission
18 Energy.

19 HEARING OFFICER SHEAN: Thank you,
20 Mr. Galati. Ms. DeCarlo.

21 MS. DeCARLO: Thank you. Good eve --
22 Good afternoon, Chairman and Commissioner.

23 HEARING OFFICER SHEAN: Please don't let
24 it get into the evening (laughter).

25 MS. DeCARLO: Lisa DeCarlo, Energy

1 Commission staff counsel. To my right is Jack
2 Caswell, staff project manager for this proceeding
3 and in the audience we have various staff member
4 if they are needed to answer any questions.

5 HEARING OFFICER SHEAN: Is there anyone
6 in the audience who needs to introduce him or
7 herself? I think I'll put on another hat, which
8 is the Public Advisor. We have a gubernatorially
9 appointed Public Advisor when that person is in
10 office whose principal duty is to provide outreach
11 to the members of the public for participation in
12 our proceedings. If we have genuine members of
13 the public here who need assistance what we
14 generally like you to do if you have comments or
15 something like that is to come forward and make
16 them and that will be at the end of our meeting
17 today.

18 Apparently we need to take a brief break
19 so that the setup of the teleconferencing
20 capability can occur. That will take just a
21 couple of minutes and then we'll come right back.

22 Let me just before we do that indicate
23 what I think we intend to do is to go through this
24 pretty much as we have on the agenda. Let me just
25 indicate that will be introductions and any

1 preliminary matters that the parties may have.
2 We'll go through the topics that could be
3 submitted by declaration, we'll discuss some of
4 the changes of the air quality conditions that
5 were raised at the pre-hearing conference.

6 And then before we get into the final
7 project description I think then we're going to go
8 into the matters that were contained in the
9 memorandum that I sent out on behalf of the
10 Committee with respect to the cumulative impacts
11 analyses and questions with regard to changes or
12 potential changes in the conditions of
13 certification.

14 So for now we'll stand down for a moment
15 until we get the high sign that our
16 teleconferencing capability is up so that people
17 from the Southland can participate.

18 (Whereupon, a recess was taken off
19 the record.)

20 HEARING OFFICER SHEAN: And with that
21 and having heard the brief introduction I had as
22 to the sequence of our meeting here today are
23 there any preliminary matters that either of the
24 parties wishes to raise before we begin?

25 All right, hearing none let's just

1 launch into this. We have the staff with its FSA.
2 Generally I think the idea, and it will apply to
3 you too, Mr. Galati, is just that the staff is
4 here to offer the FSA, including not only the
5 testimony that is provided therein but the
6 witnesses' qualifications and is there objection
7 and then we'll find out what Mr. Galati has to
8 say.

9 MS. DeCARLO: Yes. Staff proffers its
10 final staff assessment to enter into evidence by
11 declaration. We also have an errata that we filed
12 on June 18, 2007 that we'd also like to enter.

13 HEARING OFFICER SHEAN: All right, as to
14 the FSA and its errata do you object to admission
15 into evidence?

16 MR. GALATI: No objection.

17 HEARING OFFICER SHEAN: All right.
18 We'll do the applicant's material and then do the
19 FDOC. All right, Mr. Galati.

20 MR. GALATI: Mr. Shean, we filed on June
21 21st a testimony package that includes the
22 declarations, qualifications, testimony, and in
23 addition in the first section of testimony a
24 project description with an exhibit list which had
25 items that we were asking to be, that are already

1 docketed. We ask that just they be moved into the
2 evidentiary record.

3 They are 1 through 21. Exhibit 22 would
4 be the testimony package and there was an e-mail
5 from Mr. Ken Coats, South Coast Air Quality
6 Management District, that supports the staff's
7 errata change as well as our proposed change to
8 some of the conditions that we'd asked to be
9 entered in the record as well. So at that time
10 I'd like 1 through 23 moved into evidence.

11 HEARING OFFICER SHEAN: All right. Well
12 generally I disfavor the use of exhibits since you
13 are essentially recounting a listing of material
14 that is already in the record and this is nothing
15 new. Let's use the narrative descriptor in the
16 future with respect to this material.

17 Ms. DeCarlo.

18 MS. DeCARLO: The staff doesn't object.

19 HEARING OFFICER SHEAN: All right. Now
20 we have the Preliminary and Final Determination of
21 Compliance. I'll just offer this. They have been
22 filed with the Commission's docket unit and relied
23 upon by the applicant and the staff. The staff
24 particularly in the preparation of the FSA. Is
25 there objection to taking my stipulation into the

1 record the preliminary and final determinations of
2 compliance by the South Coast Air Quality
3 Management District?

4 MR. GALATI: No objection.

5 MS. DeCARLO: No objection.

6 HEARING OFFICER SHEAN: All right. Now
7 you have a little bit of information for us with
8 respect to this?

9 MS. DeCARLO: Yes. While we do have a
10 final determination of compliance by the air
11 district the air district is currently
12 contemplating a potential amendment to the
13 priority rule, priority reserve rule 1309.1, which
14 is tentatively scheduled for July 13. If such an
15 amendment is adopted it is conceivable that the
16 district may amend the FDOC, at which time an
17 amendment would need to be made to the final
18 decision, if it has already been issued.

19 ASSOCIATE MEMBER GEESMAN: Has the
20 district indicated to you that it expects that it
21 will make such an amendment?

22 MS. DeCARLO: I don't know if staff has
23 recently had personal communication. We do have a
24 proposal from the air district staff on the change
25 they would like to see to the rule. As far as I

1 understand it, it's slated for a July 13 Board
2 Meeting.

3 ASSOCIATE MEMBER GEESMAN: No, I
4 understand that part and I am presuming that the
5 air district staff expects the rule to be adopted.
6 But assuming that the rule is adopted does the air
7 district staff expect to be filing an amended FDOC
8 with us?

9 MS. DeCARLO: I understand that it's a
10 possibility. The changes would be purely
11 procedural, they wouldn't affect the substantive
12 requirements in the current FDOC. And it
13 certainly would not affect staff's conclusion that
14 the project does not have any environmental
15 impacts.

16 ASSOCIATE MEMBER GEESMAN: Thank you.

17 MR. GALATI: Commissioner, we have not
18 heard that. The South Coast rules are such that
19 after the Energy Commission issues its decision
20 they will then process an authority to construct
21 or a permit to construct, which you may be more
22 aware of.

23 At that point in time they will show a
24 demonstration with the 1309.1 rule. I believe the
25 FDOC says you shall comply with 1309.1. There are

1 not very specific provisions in it from the old
2 amendment so we don't, we're not sure if an FDOC
3 amendment is required. We don't anticipate it
4 would change any conditions. It's the first we've
5 heard of it.

6 MS. DeCARLO: And it may be that there
7 won't be such amendment. We just wanted to make
8 sure that the Committee was aware that that's a
9 possibility.

10 HEARING OFFICER SHEAN: All right, with
11 that let's move to this matter of air quality. We
12 had set aside time for discussion of conditions
13 AQ-SC7, AQ-7 and AQ-15. Based upon the
14 testimonies that were submitted, I don't want to
15 cut anything off, but is there anything we need to
16 discuss with respect to these?

17 MR. GALATI: The only thing that I would
18 point out is that AQ-7, as staff has amended it in
19 its June 15 errata, we think is worded better than
20 ours. It essentially says the same thing, which
21 is periodic source tests every three years is the
22 requirement instead of annually. And so we asked
23 for the Committee to incorporate staff's version
24 of AQ-7. We agree with AQ-SC7 has been amended in
25 accordance with our suggestion as well.

1 HEARING OFFICER SHEAN: Okay, so we
2 understand. Page five and six then of the staff's
3 errata. If I may a note here that says, applicant
4 says use this, that's what you want us to do, use
5 that version. Is that correct, Mr. Galati?

6 MR. GALATI: That is correct.

7 HEARING OFFICER SHEAN: Okay. Anything
8 from the staff with respect to the three
9 conditions?

10 MS. DeCARLO: No, just to acknowledge
11 that I believe the applicant has withdrawn its
12 request to modify AQ-15.

13 MR. GALATI: Yes, that was in our
14 prehearing conference statement and our testimony
15 is silent on AQ-15, we withdrew that.

16 HEARING OFFICER SHEAN: Okay. Now let's
17 move to, before we get into this project
18 description, just a couple of other matters.

19 On June 22 pursuant to instructions by
20 the Committee I sent out to the parties two items
21 that were of concern to us as we were beginning to
22 look to the preparation of the PMPD and the
23 adequacy of the record to create a legally
24 sufficient PMPD.

25 One of these has to do with the

1 cumulative impacts analysis and we found that
2 there were some areas that had not expressly
3 discussed pending and reasonably foreseeable
4 future projects in the identified analyses.

5 Now given that the applicant has the --
6 and let me say, we looked first in the FSA then in
7 the AFC, and before we got into going through the
8 individual data responses decided to put out the
9 memorandum. So now with the fact that the
10 applicant has the underlying burden of proof on
11 all matters necessary to grant certification have
12 you considered this, in either yourself alone or
13 in discussions with the staff, have anything you'd
14 like to say or offer?

15 MR. GALATI: Yes. I think it might be
16 more appropriate to characterize that it appears
17 that there is a cumulative impacts analysis done
18 for every section. The real question we think is
19 what were the reasonably foreseeable projects that
20 were considered in each of the sections. I know
21 that when we prepared the AFC we had in our
22 appendices a list of 61 projects that were
23 reasonably foreseeable to meet data adequacy.

24 So if the Committee needs some
25 augmentation to the record what our proposal would

1 be is that we as the applicant would go ahead and
2 provide something supplemental, concerned about
3 convening another evidentiary hearing to have
4 placed into the record another exhibit, our
5 proposal would be as we have further discussion
6 and have some clarity of exactly what we need to
7 provide is that we would do it, offer staff an
8 opportunity to comment. And that we'd ask staff
9 to agree to a stipulation that it could come into
10 the record without formally convening an
11 additional evidentiary hearing. Those are hard to
12 schedule, take a lot of time.

13 In addition what we didn't want to do is
14 to have this issue for staff to have to do another
15 errata during a time in which it is having
16 difficulty completing a lot of the other work that
17 it is undergoing right now.

18 So what we would hope is to go through
19 and have some specific clarification. And I can
20 point to you that specifically with public health
21 there was a cumulative air quality modeling done
22 in a data request and we hope that that satisfies
23 that issue.

24 HEARING OFFICER SHEAN: Ms. DeCarlo, any
25 suggestion of having them provide some information

1 with regard to a cumulative impact analysis
2 pending in reasonably foreseeable projects and
3 submitted to you and give you an opportunity to
4 look at it? And then I guess either decide
5 whether you wanted to see an evidentiary hearing
6 or just let the matter come into the record sound
7 satisfactory to the staff?

8 MS. DeCARLO: Yes, that would be fine.
9 And just to indicate as well, we have staff
10 available in all these technical areas if the
11 Committee has questions today or wants to seek
12 clarification from the staff, they are available.

13 HEARING OFFICER SHEAN: I think from the
14 Committee perspective that sounds fine. One of
15 our principal concerns, of course, is that we had
16 expected at the conclusion of the hearing today to
17 really get the pedal to the metal on the
18 preparation of the PMPD and don't want this little
19 tangential move to basically conflict too much
20 with that schedule. So do you think you could
21 provide that information within about 30 days or
22 less?

23 MR. GALATI: I think we can. I'm trying
24 to understand, you know. I appreciate the chart,
25 trying to understand. For example, we went

1 through hazardous materials. And in hazardous
2 materials staff has said it is very unlikely that
3 during an ammonia release that there would be
4 another ammonia release or another release from
5 projects that would commingle. And that's why
6 they concluded that there was no significant
7 cumulative impact, because there weren't any
8 significant impacts from the project.

9 And so from a probability standpoint,
10 having plumes combine was even less remote than --
11 excuse me, even more remote than the probability
12 of the tank bursting to begin with. And that was
13 our approach as well during the AFC.

14 If I am understanding correctly what
15 needs to be done is that you would like us to
16 identify are there any reasonably foreseeable
17 projects that planned an ammonia tank within the
18 area so that we can point to that issue.

19 HEARING OFFICER SHEAN: I think that's
20 correct. What we see is that it was very clear
21 that the FSA in all areas did a more than adequate
22 job of analyzing the project as proposed coming
23 into the setting as it exists.

24 What was identified in the chart were
25 those areas which either did not expressly state

1 that they had taken into account pending or
2 reasonably foreseeable projects or had some other
3 issues that related to that. And what we want to
4 make sure is that our record, to the extent that
5 it is required, have some consideration of pending
6 or reasonably foreseeable projects.

7 So the example here would be not some
8 other facility that currently exists that may or
9 may not be using ammonia, and you could have a
10 combination because that's dealt with in the
11 existing setting. We're trying to ascertain,
12 given that the AFC had identified the 61 projects
13 that were either pending or reasonably
14 foreseeable.

15 Whether any of those, based upon
16 anything that was anticipated about the nature and
17 character of those, when combined with the nature
18 and character of your facility, had the potential
19 to create a cumulative impact that might, for
20 example, require a first responder to be aware
21 that, you know, these two things if combined are
22 going to test our resources. Or these two things
23 when combined make no difference.

24 MR. GALATI: Yes. I think the first
25 part of that analysis was the only thing that was

1 going to be leaving, could add the potential at
2 all to leave the site was ammonia so they focused
3 on ammonia. Everything else if there were a spill
4 or release was on the site so that wasn't an
5 issue.

6 So what we did in the AFC is we had a
7 list of all those projects. So I am anticipating
8 what we would do is augment and say, we looked at
9 that list of projects, we didn't see anything that
10 had a chemical that could combine with the
11 ammonia, and that is why there's no cumulative
12 impacts. So that is how we would address that
13 issue.

14 And in the issue of noise and vibration,
15 this is an issue where it is difficult to identify
16 reasonably foreseeable projects and what their
17 actual noise characteristics will be. So we are
18 certainly comparing ourselves to the ambient as it
19 exists. We could use some clarification of how we
20 would conduct such a cumulative impact analysis
21 without really identifiable project pieces.

22 Most of the projects, maybe this is how
23 we get around it. Most of the projects are those
24 that are development projects, commercial
25 buildings, so we can just say we don't expect that

1 there are large tones and things like that that
2 will combine with ours.

3 The other thing I think that is
4 important to point out is none of the projects are
5 within a half-mile of the, of the site. So I'm a
6 little at a loss from a technical perspective what
7 additional information we might need to provide,
8 for example in noise and vibration.

9 HEARING OFFICER SHEAN: Okay. And God
10 knows anybody who is a true technical expert does
11 not want a mere lawyer trying to advise them. So
12 I am not really going to try to do that, other
13 than to say it sounds -- What I do know is that
14 with respect to the difference between the
15 analysis performed of the project in the existing
16 setting and something that is essentially
17 speculative about pending and future projects they
18 don't have the same degree of rigor with respect
19 to that analysis.

20 So I would expect that, for example,
21 someone who is looking at that list that you
22 provided in the AFC and has an expertise with
23 respect to noise can fairly quickly identify or
24 eliminate those projects that reasonably could not
25 have a cumulative impact, either by virtue of

1 distance or the nature of the project or some
2 other thing like that.

3 And all they have to do is state that.
4 What we're looking for is substantial evidence in
5 the record that eliminates from the list of
6 identified possible pending and reasonably
7 foreseeable projects any potential cumulative
8 impact. And I think that's what we found to some
9 degree we were looking for and couldn't find.

10 So it is not as rigorous as the analysis
11 in the existing setting and it merely relies upon
12 the best judgment given the facts that you have
13 about the list. To apply that to the list and
14 say, in or out. And if in, here is the nature of
15 what I think could be the impact and I think it's
16 either significant or insignificant. Obviously
17 none of your people think it's significant and
18 neither did the staff so I don't expect that to be
19 the result. We're just trying to get the record
20 rounded out so that we know that we have a basis
21 for making that statement.

22 MR. GALATI: Okay, I think that's
23 helpful.

24 HEARING OFFICER SHEAN: Okay. Okay,
25 minor technicality here. What we're trying to

1 make sure is that our teleconferencing people, and
2 we apparently have two of them, have the ability
3 not only to hear us but chime in if they have
4 something to say. And I don't know who they are
5 but we'll find that out.

6 Okay, so are we square with that?

7 MR. GALATI: Yes, we can provide that.

8 HEARING OFFICER SHEAN: Let's say --

9 MR. GALATI: We can docket that within
10 three days.

11 HEARING OFFICER SHEAN: Shall we say 30
12 days?

13 MR. GALATI: No, within three days.

14 HEARING OFFICER SHEAN: Three days?

15 MR. GALATI: Yes.

16 HEARING OFFICER SHEAN: Okay. We'll
17 give staff about ten days opportunity to look it
18 over to see if for any reason you feel you want to
19 have an evidentiary hearing that would arise only
20 from a dispute of fact or a dispute of a
21 professional opinion and then we'll go from there.
22 If you don't request that then we'll admit their
23 material into the record and deem the record
24 closed at that point.

25 MS. DeCARLO: That sounds fine.

1 HEARING OFFICER SHEAN: Okay.

2 Satisfactory?

3 MR. GALATI: Yes.

4 HEARING OFFICER SHEAN: Okay.

5 MR. GALATI: We implore the Committee to
6 continue working on the rest of the license while
7 we get that done.

8 HEARING OFFICER SHEAN: All right, sure.
9 I'm going to give you more than three but some,
10 some number.

11 All right, next we had inquiries with
12 respect to some of the proposed conditions of
13 certification and let's just go through these in
14 order. Ms. DeCarlo, on hazardous materials number
15 7, you have some information with respect to the
16 CHP participation and route approval?

17 MS. DeCARLO: Yes. Staff spoke with the
18 CHP and confirmed that the CHP does not permit or
19 approve specific hazardous materials routes for
20 specific vendors but rather identifies generally
21 approved roadways. Therefore the CHP does not act
22 in a permitting role in this instance.

23 And we believe that the condition can
24 remain as-is with CPM approval over the route
25 proposed by the applicant. And Dr. Alvin

1 Greenberg is available if you have any questions.

2 HEARING OFFICER SHEAN: So what we are
3 basically saying is the statement that was
4 included in the FSA about the role of the CHP on
5 route approval is not the case insofar as what we
6 are talking about in this proceeding.

7 MS. DeCARLO: Correct.

8 HEARING OFFICER SHEAN: Okay. And with
9 regard to HAZ-9 it appears based upon the proposed
10 changes that you have that we are of one mind now
11 that there needs to be one security guard present
12 24 hours a day. It needn't be the same person
13 obviously, it can be altered through shifts. But
14 not multiple guards at the same time.

15 MS. DeCARLO: Right.

16 HEARING OFFICER SHEAN: Okay, great,
17 thanks. Paleontology-4. It appears based upon
18 the sheet that I am seeing that you handed out
19 with regard to the proposed changes that the staff
20 is suggesting it is that it not be for all. The
21 WEAP program not be for all employees but be for
22 those workers who include project manager,
23 construction supervisors, foremen, general workers
24 who are involved with or operate ground disturbing
25 equipment or tools, correct?

1 MS. DeCARLO: Correct.

2 HEARING OFFICER SHEAN: Okay. And that
3 that's sufficient to cover any potential impact
4 for paleontology.

5 MS. DeCARLO: Yes.

6 HEARING OFFICER SHEAN: Okay. Then you
7 have a change to Soil and Water 6 with regard to
8 the potential changes of water supply, which
9 appear to just strike the provision from both the
10 condition and the verification.

11 MS. DeCARLO: Yes. You had noted a
12 discrepancy between a requirement that any changes
13 be approved by the CPM versus the Energy
14 Commission. So we are currently proposing that
15 the default be to the standard amendment process.

16 HEARING OFFICER SHEAN: And with respect
17 to the other part, to Soil and Water 7. Did you
18 take a look at that?

19 MS. DeCARLO: Yes.

20 HEARING OFFICER SHEAN: And is it -- I
21 didn't see it included.

22 MS. DeCARLO: You had, you had
23 identified a concern that we were already
24 requesting information in another condition of --

25 HEARING OFFICER SHEAN: I'm sorry,

1 apparently you have, I have a more updated
2 version.

3 MS. DeCARLO: Yes.

4 HEARING OFFICER SHEAN: Okay, all right.

5 MS. DeCARLO: Yes. So I made a,
6 suggesting a similar change to Soil and Water 7 as
7 was proposed in Soil and Water 6 striking
8 authorization by CPM for deviation from the 95
9 acre feet of potable water emergency use.

10 And that is the only change we are
11 proposing to this condition. You had indicated a
12 concern that we are requesting additional
13 information that's already requested in another
14 condition.

15 HEARING OFFICER SHEAN: Let me just
16 point to you. On your page two of the changes,
17 Soil and Water 7, the bottom of the condition, the
18 paragraph that is a condition states that, to
19 report all disruptions in a reclaimed water
20 service in an annual report including the cause,
21 associated volume of potable water used and the
22 total annual use for the year and for two years
23 prior. Now the question is, why if you are
24 reporting this annually do we then require the two
25 years prior? Because that information, presumably

1 once you begin, is in the possession of the CPM
2 already.

3 MS. DeCARLO: Well I believe this is
4 only triggered if there is an actual disruption.
5 So only in the event that there's a disruption
6 would this information be included in the annual
7 compliance report.

8 HEARING OFFICER SHEAN: I am still
9 trying to understand how providing -- If that is
10 the case then that disruption is reported for that
11 year.

12 MS. DeCARLO: Right, and staff just
13 would like easy reference to what occurred in the
14 prior two years in the same document so that it
15 does not have to go back to previous annual
16 reports that may contain such information. It's
17 apparently a very, very minor provision for the
18 applicant to comply with and so we believe it
19 would help our ability to ensure compliance.

20 HEARING OFFICER SHEAN: But we're just
21 talking about who has the burden to go back into
22 the records, right? Either them or you.

23 MS. DeCARLO: Right. And we would just
24 suggest that it is a lot simpler for the applicant
25 just to provide this information in this one

1 document.

2 HEARING OFFICER SHEAN: Okay, all right.
3 Do you want to say anything?

4 MR. GALATI: I actually want to address
5 the other changes to Soil and Water 6 and 7.

6 HEARING OFFICER SHEAN: Okay.

7 MR. GALATI: If that would be okay.

8 HEARING OFFICER SHEAN: Sure.

9 MR. GALATI: Remember that this is an
10 emergency potable water supply. Both the quantity
11 and the source of supply, we liked the provision
12 that the CPM could, based on discussion and
13 information provided and staff's input, change
14 that without having to come and get docketed on a
15 formal business meeting decision. Ask you to
16 change from 95 to 96 for an emergency water
17 supply.

18 This now as it is currently changed,
19 Soil and Water 6 and 7, by striking those
20 provisions it requires a formal amendment for us
21 to change a condition that deals with an emergency
22 potable water supply.

23 The reason that we agreed to it. And we
24 didn't catch the Energy Commission, we just read
25 that as CPM, we want the CPM to have the ability

1 to change something that if we need a change, we
2 need a change right now. And to go from 95 to
3 95.2 would require us to come in and get an
4 amendment.

5 So we would ask that you leave that
6 provision in and clarify that Soil and Water 6
7 where it says Energy Commission, that we replace
8 Energy Commission with CPM.

9 With respect to the requirement of
10 providing information about two years prior, we
11 agree, we're not sure why staff needs it. But if
12 it is not very burdensome for us to go get it, it
13 is not very burdensome for them to go get it in
14 the record.

15 HEARING OFFICER SHEAN: Okay. Let's
16 move on up the list then to Noise 4. We had asked
17 about this being either/or. And apparently you're
18 going to, in contemplation of that, and is fine
19 with you.

20 MS. DeCARLO: Yes.

21 HEARING OFFICER SHEAN: Okay. I think
22 this is an appropriate time, since we're
23 discussing noise, to break in with the fact that
24 yesterday apparently the County of Los Angeles
25 Department of Public Health filed with the

1 Commission a comment letter. And let me indicate
2 that this was appropriate given the notice that we
3 had sent out asking agencies, the public and other
4 concerned parties to submit to the Commission
5 before today any comments that they had.

6 And they have basically indicated that
7 they have concerns that the noise generator from
8 the operation of the plant will exceed the LA
9 County community noise standards. They
10 acknowledge that:

11 "Although this plant is
12 in the City of Industry and
13 not under our direct authority
14 we feel obliged to act as
15 advocates for the community
16 due to these exceedances that
17 are apparent from our review
18 of the documentation and the
19 EIRs. Our review suggests
20 that community noise standards
21 may be exceeded by four
22 decibels or more. And upon
23 further review of the
24 mitigation measures suggest
25 that these mitigation measures

1 contain no assurance that
2 noise levels will be reduced
3 below our standards."

4 Based upon that letter what I did was to go back
5 and look at the provisions of the final staff
6 assessment and the earlier preliminary staff
7 assessment.

8 What is clear to me is that at the time
9 of the preliminary staff assessment the author
10 believed that the Los Angeles County noise
11 standards applied to the project notwithstanding
12 the fact that the project was located within the
13 City of Industry.

14 And that in the application of that
15 standard found that with essentially a nine dBA
16 increase in the noise level over the ambient noise
17 during nighttime hours that the project would --
18 in order to conform to LORS would have to meet a
19 noise level of I believe it was 48 dBA for that
20 nighttime hour. Or the four consecutive nighttime
21 hour average.

22 The CEQA analysis that was provided in
23 the PSA, given the fact that it had already been
24 supported by a LORS finding, essentially said, we
25 agree with the fact that the LORS says we need 48

1 dBA to assure that there are no nighttime noise
2 impacts from the project.

3 Then we get to the FSA, which states
4 that LORS does not include the LA County noise
5 standard. And then the analysis under CEQA states
6 that without making any changes in terms of the
7 nine dBA increase over ambient nighttime, four
8 hour average minimums, that that does not
9 constitute a significant average affect.

10 That is largely based upon a statement
11 that the LMS 100 is not expected -- well, is not
12 likely that it will produce the noise levels that
13 were produced from the test unit which was used as
14 the basis for the PSA analysis. And that given
15 that this was a peaking project it was not
16 expected to operate during evening hours.

17 And let me say, notwithstanding the
18 information about the LMS 100 not having the noise
19 emission levels that were used in the test, the
20 amount of noise in the analysis attributed to the
21 project was not decreased.

22 MS. DeCARLO: Correct.

23 HEARING OFFICER SHEAN: The noise in the
24 model. So I guess what we want to ask is, given
25 the LA County letter, given the differences

1 between the PSA and the FSA, where is the
2 substantiation -- let me see.

3 Where is the logic then that would
4 support moving to the much higher, the difference
5 between the PSA and the FSA is four dB. Which
6 means the difference between the increase in noise
7 from the PSA would limit the noise from 44 to 58.
8 Whereas the current condition in the FSA would
9 allow it to go from 44 ambient to 52 ambient,
10 which is an 8 dBA increase.

11 Which as a general rule -- I mean, we've
12 had cases where we have chased down three dBA in
13 cases here at the Commission so eight dBA is
14 fairly high to say no impact. Do you want to just
15 give me a discussion related to that.

16 MS. DeCARLO: Right, and I have staff
17 available. Shahab Khoshmashrab is our noise staff
18 who completed the FSA and he's available to answer
19 questions from the Committee. However, I can give
20 you my initial statement on this matter.

21 After issuing the PSA we had further
22 discussions with the applicant, received further
23 information on the likely operation of the, of the
24 project. We had further discussions with the
25 County of Los Angeles and concluded that their

1 LORS in fact did not apply to this project.

2 So based upon all the new information
3 received after issuing the PSA we determined that
4 the project was unlikely to emit, to result in a
5 nine dBA increase at the various sensitive
6 receptors. And we also determined that being a
7 peaking plant it was unlikely to operate very
8 frequently at night as well, which the nine dBA is
9 based on nighttime levels.

10 So with regard to all that information
11 we determined that the project would not result in
12 a significant impact in the area of noise. But
13 staff is available if you want to delve further
14 into that determination.

15 HEARING OFFICER SHEAN: Sure. Let's
16 swear in the witness, please.

17 Whereupon,

18 SHAHAB KHOSHMAHRAB

19 Was called as a witness herein and, having been
20 first duly sworn, was examined and testified as
21 follows:

22 MR. KHOSHMAHRAB: My name is Shahab
23 Khoshmashrab and I authored the testimony in noise
24 and vibration.

25 One thing that I found after publishing,

1 writing the PSA was that the noise that was
2 predicted at one of the monitoring locations, 48 I
3 think it was, I believe, was not the case.
4 Because the noise level prediction that I received
5 and I found in the AFC was given for one of the
6 monitoring locations and not the other one. So by
7 simple mathematical calculations I figured that, I
8 calculated that number and it came with the same
9 number basically of 48 at the other location.

10 Or actually, I'm sorry. The first
11 monitoring location was given at 52 dBA. And then
12 I calculated that for the other location, which
13 was farther away from the power plant, and I came
14 up with 48. But that was basically strictly on
15 mathematical calculations.

16 And when this was brought up at the
17 workshop the applicant mentioned that at the
18 location that is farther away the power plant
19 would actually be a little louder so the power
20 plant would basically emanate about 52 also at
21 that location.

22 Which I received an e-mail on that.
23 That was based on, the reasoning there was because
24 between the power plant and the first location the
25 monitoring, the closer location, there was more

1 obstructions that would block the noise. But on
2 this side you don't have that, it is more open
3 space. Their calculations showed that it would be
4 52. That's why you see 52 in the FSA and it's a
5 little higher.

6 With regards to the, basically the nine
7 dB. The same thing that Ms. DeCarlo just
8 mentioned. When I determined the CEQA analysis
9 and what factors are considered in determining
10 what is significant one would be the duration and
11 frequency of the noise. For a peaking power plant
12 such as this I read in the AFC that it's basically
13 expected to run or operate under emergency
14 conditions or very rarely at night, late night or
15 early morning hours because of the peaking power
16 plant would run in the afternoons.

17 Also another factor that -- So that was
18 basically one reason that I changed basically from
19 the PSA to FSA that the nine dBA would not be --
20 The other thing was that I learned between the
21 time I wrote the PSA and the FSA that the numbers,
22 the projected noise values given were based on
23 test equipment. In talking with staff, talking
24 with one of the GE representatives we found out
25 that they're expecting, that GE is expecting the

1 LMS 100 to have lower noise, actual noise than the
2 ones that were predicted in the application.

3 And also between the PSA and the FSA the
4 applicable LORS changed and there were no local
5 LORS that were -- the LA County LORS did not apply
6 in this case. That's one other reason for
7 determining that an increase in noise between five
8 and ten would not be highly significant. Because
9 that's another reason or another criteria or
10 another factor for determining whether it's
11 significant or not.

12 HEARING OFFICER SHEAN: Okay, I guess
13 I'm left with this. What was the -- you say the
14 source of the information about the LMS 100 was a
15 staff member and a GE representative.

16 MR. KHOSHMAHRAB: Yes.

17 HEARING OFFICER SHEAN: If they had
18 provided you information that had convinced you in
19 your mind that the LMS project was not going to
20 make as much noise as you had previously believed
21 can you tell me why then the 52 dBA amount that's
22 called Project Noise Level did not go down then
23 from the PSA to the FSA?

24 MR. KHOSHMAHRAB: I'm not understanding
25 you.

1 HEARING OFFICER SHEAN: Okay. You
2 testified that at the time that you prepared the
3 PSA.

4 MR. KHOSHMAHRAB: Right.

5 HEARING OFFICER SHEAN: And it has a
6 number of 52 dBA being that amount of noise
7 attributable to the project.

8 MR. KHOSHMAHRAB: Forty-eight in the
9 PSA.

10 HEARING OFFICER SHEAN: I'm reading it
11 here on December 2006, page 4.6-11 of your PSA.

12 MR. KHOSHMAHRAB: Okay.

13 HEARING OFFICER SHEAN: It says:
14 "Combining the ambient noise level of 47 dBA L50
15 with a project noise level of 52 dBA."

16 MR. KHOSHMAHRAB: Those are two
17 locations.

18 HEARING OFFICER SHEAN: So I'm
19 understanding that what you're testifying to is
20 that the project itself causes 52 dBA of noise.

21 MR. KHOSHMAHRAB: Okay, the project is
22 predicted not to exceed 52 dBA at M-2. That's the
23 first monitoring location. Staff calculations
24 estimate this to be 48 at M-4.

25 HEARING OFFICER SHEAN: Okay, let's just

1 get on the same page, the same sentence. Do you
2 have page 4.6-11?

3 MR. KHOSHMAHRAB: Yes.

4 HEARING OFFICER SHEAN: See the first
5 sentence of the last paragraph? Near the end of
6 that sentence: "With project noise level of 52
7 dBA." Is that intended to mean that is your
8 calculations based upon modeling or however of
9 what the noise level emitted by the plant will be?

10 MR. KHOSHMAHRAB: This is the number
11 that was given in the AFC.

12 HEARING OFFICER SHEAN: Okay.

13 MR. KHOSHMAHRAB: The 52. Okay, now
14 the --

15 HEARING OFFICER SHEAN: So that's the
16 number in the AFC, used by you in the PSA. Later,
17 months later when you were writing the FSA you now
18 are in possession of information that has
19 convinced you that the amount of noise emitted by
20 the LMS 100 is going to be lower and therefore
21 will not create a significant impact. If we look
22 at the comparable portion of your FSA you continue
23 to use the 52 dBA as the project noise level.

24 MS. DeCARLO: If I can --

25 HEARING OFFICER SHEAN: No, let's let

1 the witness testify for the moment.

2 Can you tell me why you did not lower
3 the projected project noise level based upon the
4 new information?

5 MR. KHOSHMAHRAB: Because that is not,
6 that didn't change. It changed in the other
7 location.

8 HEARING OFFICER SHEAN: Isn't the
9 project noise the project noise, whatever
10 direction it's going to go?

11 MR. KHOSHMAHRAB: No, no. Well I was
12 provided in the AFC one number and that was at
13 M-2.

14 HEARING OFFICER SHEAN: Okay.

15 MR. KHOSHMAHRAB: Okay. I calculated
16 that projection. Using that projection I
17 calculated a number mathematically and I came up
18 with a different number, 48, at another location.
19 We're talking about M-4 here.

20 HEARING OFFICER SHEAN: Yes.

21 MR. KHOSHMAHRAB: Okay. And actually
22 that would be -- Let's see, where is M-4. Yes, 48
23 at M-4.

24 HEARING OFFICER SHEAN: Right.

25 MR. KHOSHMAHRAB: And this was based on

1 my calculation, okay.

2 HEARING OFFICER SHEAN: Okay. Now is
3 that as the result of understanding something
4 different about the equipment?

5 MR. KHOSHMAHRAB: No, no, no.

6 HEARING OFFICER SHEAN: Okay.

7 MR. KHOSHMAHRAB: After the AFC was,
8 the FSA was published the applicant said that this
9 is the new number and it's 52. So I used 52. And
10 that's at M-4, not M-2. M-2 is still the same.

11 HEARING OFFICER SHEAN: Let me just ask
12 the applicant, is your main issue on this noise
13 level the amount of money you have to spend to
14 mitigate it?

15 MR. GALATI: It's significant but, you
16 know.

17 HEARING OFFICER SHEAN: It is
18 significant?

19 MR. GALATI: It is very significant, the
20 number. And the issue from our perspective is in
21 the AFC we believed a different standard should be
22 appropriate instead of the four hours averaged
23 L90. Staff disagreed, used the four hours L90 but
24 came to the same conclusion so we did not fight
25 about how they came to the same conclusion.

1 Again, our number was based, our
2 standard that we compared to was based on what we
3 believed the more operating criteria of the
4 project, which is going to be more in the daytime.

5 And staff has in its staff assessment an
6 entire analysis under Visual Plume on the expected
7 operation of a peaking unit in Southern California
8 justifying why this project is not likely to
9 operate at nighttime, consistent with what we had
10 told them. So they are using a four hour window
11 of nighttime as the standard and then measuring
12 the project's noise at that standard.

13 Again, from our perspective the
14 appropriate standard of significance is what is
15 listed in CEQA as opposed to a hard number. And
16 if there are a few receptors, or if it is unlikely
17 that the project would actually emit noise during
18 those quiet hours, that is not a significant
19 impact. A one-time noise event is not a
20 significant impact.

21 I would also like to point out that
22 there is whole complaint resolution process that
23 is part of the Energy Commission staff's
24 conditions and we think that those in combination
25 is the appropriate way to ensure that there are no

1 significant noise impacts. So we agreed with
2 staff's conditions.

3 HEARING OFFICER SHEAN: Okay. Would I
4 be correct to just play this out with respect to
5 what the county has submitted that in the event
6 that you are not operating during the evening
7 hours, that would be as used by the staff's
8 analysis, and the LMS 100 is operating at less
9 than the level that was originally submitted in
10 the AFC. That under those two circumstances
11 whether you set the level as currently recommended
12 at 52 dBA or the former of 47, would make no
13 difference because you are not operating at that
14 time and you're not going to have an impact upon
15 the ambient noise level. Isn't that true just
16 axiomatically?

17 MR. GALATI: Well I think that would be
18 true if you adopted the analysis that nine dBA
19 over the four/L90 is a significant impact and that
20 you needed to reduce that to some other number.
21 And we disagree with that.

22 HEARING OFFICER SHEAN: You disagree
23 with the nine or you disagree with that that's
24 significant?

25 MR. GALATI: We disagree that measuring

1 the project, that a nine dB over the four hour L90
2 average is the appropriate threshold of
3 significance to determine whether or not there is
4 a significant impact such as 9.1 would be an
5 impact, 8.9 is not. We think there's other
6 factors to be used.

7 So to have a condition that said you
8 can't be more than 47 at night and you can't be
9 more than 52, the only possible way to comply with
10 such a condition is either to make sure you never
11 operate at night, even though there might be a
12 time when you need to, or to design the project at
13 47. And, you know, noise mitigation isn't
14 something you can turn on and turn off, you
15 incorporate it. That's, again, what we are trying
16 to avoid. And again, we're not just trying to
17 avoid it, we don't think it's warranted.

18 HEARING OFFICER SHEAN: Okay.

19 MR. GALATI: And the LA County community
20 noise standard, I don't think it's even on the
21 same page. Staff's L90 analysis is much more
22 conservative than the community noise standard set
23 forth by LA County.

24 HEARING OFFICER SHEAN: All right, I
25 think we have explored this to the extent that we

1 needed to. Thank you very much, you're excused.

2 Okay, Cultural 5. Two parts here with
3 respect to training of employees. One had to do
4 with all employees, the other had to do with the
5 timing for such training.

6 It is apparent that staff from what I
7 understand based upon your submittal here, has
8 indicated that the training could be discontinued
9 after periods of ground disturbing activities had
10 been concluded. Is that correct?

11 MS. DeCARLO: Yes.

12 HEARING OFFICER SHEAN: Okay. Now what
13 justifies the requirement that all employees on
14 site be trained?

15 MS. DeCARLO: Well several factors.
16 One, even when it is difficult to differentiate
17 between -- for cultural resources who is doing
18 ground disturbing work, who is absolutely not. So
19 there is a complexity in trying to ferret out
20 exactly who we target for this.

21 Two, it is useful to have everyone on
22 site trained so as they're walking around the
23 project site during project disturbance, ground
24 disturbance, that they're aware of what to look
25 out for in case other workers have missed a

1 potentially significant cultural artifact. Then
2 we have everyone attuned to know what to look out
3 for in case they potentially come across it. So
4 it's useful to have everyone trained during the
5 project ground disturbance time period.

6 Additionally the training isn't, isn't
7 an arduous undertaking. There's an approximately
8 five minute video. It's incorporated into other
9 training that everyone else has to undergo for all
10 the various other technical areas that require
11 training.

12 HEARING OFFICER SHEAN: Can you
13 enumerate what those are? You just dropped one of
14 them and that was in paleontology so what else,
15 what is this other --

16 MS. DeCARLO: Right. I believe there's
17 worker safety training. I'm sure --

18 UNIDENTIFIED SPEAKER IN AUDIENCE: Bio.

19 MS. DeCARLO: Bio. Several others. But
20 they are basically trained in a group to cover all
21 the training requirements that are contained in
22 the AFC. So we feel that it is not burdensome to
23 have everyone trained and it is helpful in the
24 long run.

25 HEARING OFFICER SHEAN: I guess the

1 question is, given the fact that your paleontology
2 people have just indicated that -- First of all in
3 the analysis performed in your cultural resources
4 section of the FSA there is no indication that
5 there are any surface resources based upon field
6 surveys of the site. Is that correct?

7 MS. DeCARLO: Correct.

8 HEARING OFFICER SHEAN: Okay.

9 MS. DeCARLO: And we don't know what's
10 underneath.

11 HEARING OFFICER SHEAN: So whatever
12 there is, is buried.

13 MS. DeCARLO: Yes, for now.

14 HEARING OFFICER SHEAN: And whatever
15 would be discovered is only going to be discovered
16 by virtue of the excavation or earth movement that
17 takes place at that specific location, correct?

18 MS. DeCARLO: Yes.

19 HEARING OFFICER SHEAN: And you have a
20 cultural resources specialist and a couple of
21 assistants to that guy. And then if you were
22 using the same people that are being trained under
23 paleontology you're going to have the project
24 manager, construction supervisor, foremen and
25 general workers who are involved with or operate

1 ground disturbing equipment and tools.

2 Now why do you need anybody else under
3 those circumstances to be looking for cultural
4 resources that can only be at that location and
5 can only be unearthed at that specific spot. Not
6 over at the other end of the site while you're
7 erecting some other part of the project.

8 MS. DeCARLO: Well these things can be
9 very small and can be easily missed.

10 HEARING OFFICER SHEAN: Well isn't that
11 what your cultural resource specialist is there
12 for? I mean, he is the guy that's trained and
13 you're requiring that he be on site.

14 MS. DeCARLO: Right, but these things
15 can easily be missed. I mean, you can have a lot
16 of people out there watching and they can be small
17 shards that can be missed. So it's helpful to
18 have everyone aware of what to look out for. And
19 people aren't necessarily limited to one location
20 on a site, they are often going back and forth to
21 various locations. So the various people who may
22 be principally working in one area may often cross
23 over to other areas where excavation is occurring.

24 And while an artifact might reside
25 initially in one location through the process of

1 excavation it may be distributed to another pit or
2 a rock pile elsewhere, unbeknownst to the various
3 people who were initially looking out for
4 artifacts.

5 HEARING OFFICER SHEAN: Okay.

6 MS. DeCARLO: We have had this condition
7 on all previous projects. The applicants haven't
8 complained that it has been overly burdensome so
9 we would just --

10 HEARING OFFICER SHEAN: Let's hear from
11 the applicant. Do you have anything to say on
12 this?

13 MR. GALATI: I've complained on other
14 projects actually about the training of everybody.
15 It has never resulted in a condition change and so
16 we have just agreed to the standard conditions
17 because we just didn't think it was something that
18 we wanted to bring before the Committee.

19 We can tell you that we do worry about
20 at some point in time training everybody to death
21 such that the training doesn't have effect. We
22 haven't found that yet but I think what you are
23 saying, Mr. Shean, is incredibly reasonable.

24 HEARING OFFICER SHEAN: Okay, let's go
25 on to Worker Safety number 5, Worker Safety number

1 5. And that's for the defibrillator.

2 MS. DeCARLO: Yes, and we are proposing
3 that all workers be trained in the use of a
4 defibrillator.

5 HEARING OFFICER SHEAN: And presumably
6 that will include the location of the
7 defibrillator, is that right?

8 MS. DeCARLO: Yes.

9 HEARING OFFICER SHEAN: Aren't there
10 other personnel who will be on site who have some,
11 I'll just call it first aid training. Whether you
12 want to call it medical training, but there are
13 some people on site who have some first aid
14 training.

15 MS. DeCARLO: Yes, correct. However
16 it's important with a defibrillator that for
17 instances of cardiac arrest that the defibrillator
18 be used as soon as possible. Therefore it's
19 useful to have everyone trained so that the first
20 person on site in the area where the cardiac
21 arrest occurs can use the defibrillator right away
22 rather than waiting for some designated person who
23 may be elsewhere on the site to be alerted to the
24 instance and make their way to the area.

25 HEARING OFFICER SHEAN: Okay. So I

1 assume that since usually a heart attack is not
2 going to occur at the location of the
3 defibrillator you have your patient or victim
4 here, some notification and then getting the
5 defibrillator and then getting back to that
6 person, right? Is that what you're contemplating?

7 MS. DeCARLO: Yes.

8 HEARING OFFICER SHEAN: Okay.

9 MS. DeCARLO: I am being informed that
10 the defibrillators are placed in the control rooms
11 customarily.

12 HEARING OFFICER SHEAN: Okay. And is
13 that behind, is that a sometimes locked door? I
14 mean, is this thing going to be locked away?

15 MR. GREENBERG: Mr. Shean, Alvin
16 Greenberg, speaking.

17 HEARING OFFICER SHEAN: Sure.

18 MR. GREENBERG: I am filling in for Rick
19 Tyler. However, I was the author of this
20 particular condition of certification a couple of
21 years ago. The defibrillators are usually in a
22 control room. They are not behind any locked door
23 other than the locked access to the control room.

24 HEARING OFFICER SHEAN: Let me say, most
25 of -- Let's talk about construction here, that's

1 one of the things of interest to me.

2 MR. GREENBERG: It would be in the
3 construction office. There's usually a trailer
4 and it would be in there. And it would be often
5 close to but not 100 percent of the time near the
6 first aid kits.

7 HEARING OFFICER SHEAN: Okay. It seems
8 to me there are a couple of things that either can
9 be added to this so that we're assured it's
10 effective. First of all, I think it's a great
11 idea. As a person who has come from a family that
12 has heart attacks I think it's a great idea.
13 Every institution like we should have it, okay.
14 It's to have signage that indicates where this
15 thing is so as people come in and out.

16 And then some specific people that would
17 be, that would include your security guards and
18 shift foremen. And if there is some person who is
19 designated by virtue of one of the worker safety
20 plans to be, you know, the medical or first aid
21 guy, that he obviously will know about how to use
22 that. So perhaps we want to consider at least an
23 emphasis in here.

24 The fact that all are trained, you know.
25 These are, if I understand correctly, basically

1 self-instructing machines. You push a button and
2 they start talking to you and tell you what to do.

3 MR. GREENBERG: True sir but not that
4 simple.

5 HEARING OFFICER SHEAN: Okay.

6 MR. GREENBERG: And there does need to
7 be training. I think we were focusing more on
8 power plant operations as opposed to during the
9 construction phase. In operations as you note
10 that sometime there can be a skeletal crew of only
11 two or three individuals and we certainly would
12 want all of them trained.

13 HEARING OFFICER SHEAN: Okay, well then
14 let's discuss the construction because you've got
15 480 employees there at peak time. Do all of them,
16 do we need to train all of them or should we focus
17 on some particular people that can be first
18 responders?

19 MR. GREENBERG: I think, Mr. Shean, what
20 you're bringing up is the difference between a
21 specification standard and a performance standard.
22 And sometimes when we provide a performance
23 standard here where there is a plan that we ask
24 them to prepare and it comes to the CPM and we
25 review it and approve it, that it does leave out

1 those particular specifics of many people. But we
2 will look at their plan and decide yes, that seems
3 to be an adequate number.

4 If you're looking for something a little
5 bit more than that we could also go via the
6 manufacturer's recommendations. They do have
7 recommendations as to how many people should be
8 trained. We decided to go with, you know,
9 everybody at least during operations and during
10 construction we could certainly make that
11 determination as they submit their plan to us.

12 HEARING OFFICER SHEAN: Okay. I just
13 want us to say what we mean, okay. So if we, we
14 might contemplate doing a little word-smithing on
15 this so it reflects I think what you feel is, and
16 I agree, during operation if you've only got a
17 couple -- if you've got two people you want one
18 person to know how to work the machine because the
19 other guy is on the floor. And with construction
20 you've got 400-and-some people. I'm not sure that
21 that makes sense to try to get every one of them
22 trained. So let's --

23 We'll work with this. If the staff has
24 a recommendation you want to submit to us while
25 we're in the authoring phase that would be great.

1 Anything from you, Mr. Galati?

2 MR. GALATI: Yes. I think an
3 appropriate change might be to say to Worker
4 Safety 5 that for construction that employees are
5 trained in accordance to the construction
6 operation plan provided by, I believe it's Worker
7 Safety 1. The Construction Injury and Illness
8 Prevention Program. To make sure that that
9 addresses the training.

10 HEARING OFFICER SHEAN: Okay. That
11 might be a good idea, we'll look at that. Cool.

12 All right, now we're getting to the part
13 that I'm prepared to enjoy, which is some of this
14 engineering stuff. Are there any other comments
15 about the conditions or anything before we go to
16 the project description?

17 MR. GALATI: Again for project
18 description we had provided some supplemental
19 information in our filing. It is in the first
20 section of our testimony package. And we have
21 Mr. Bernie Piazza and Victor Yamada here to answer
22 any of the questions that the Committee might
23 have.

24 HEARING OFFICER SHEAN: All right. Let
25 me just note as we were getting into the

1 preparation phases of the PMPD I noted that this
2 LMS 100, first of all, represents the first time
3 that I believe the Commission has had before it at
4 this stage of proceeding this particular
5 technology. It appears that it's unique, it's
6 advanced. It contains not only efficiencies
7 related to fuel use as well as added power
8 generation but also features that are different
9 from what we have had in other peaking facilities,
10 for example. Most notably as far as people who
11 will be looking at the project is secondary
12 variable bleed valve stack and so on like that.

13 So it seemed appropriate since the
14 discussions of the project description itself were
15 hitting the top is to try to get some more
16 information from you with respect to this
17 particular technology. So thank you. Ready to
18 go.

19 MR. GALATI: Okay. I thought I
20 addressed most of that in our written material.

21 HEARING OFFICER SHEAN: Okay.

22 MR. GALATI: If you want us to go ahead
23 and go through it we can or I can just answer your
24 questions.

25 HEARING OFFICER SHEAN: Let me just, I

1 do have a specific question. In looking at the
2 application of this technology, I think it was
3 initially at the Groton Generating Station in
4 Groton, South Dakota, it appeared that these
5 variable bleed valve stacks were at a height
6 comparable to the top of the evaporative inlet
7 structure. These as you describe them will be
8 about -- is it about 50 feet high, is that
9 correct?

10 MR. PIAZZA: Yes.

11 MR. GALATI: Go ahead and get Mr. Piazza
12 sworn.

13 HEARING OFFICER SHEAN: Sure.

14 Whereupon,

15 BERNARD PIAZZA

16 Was called as a witness herein and, having been
17 first duly sworn, was examined and testified as
18 follows:

19 HEARING OFFICER SHEAN: So estimated 50
20 feet, is that right?

21 MR. PIAZZA: Fifty feet, that's correct.

22 HEARING OFFICER SHEAN: That compares to
23 your combustion exhaust stack at what height?

24 MR. PIAZZA: About 90 feet.

25 HEARING OFFICER SHEAN: Okay. It may

1 actually be that that's different from what I
2 thought we were going to get because for some
3 reason the number 68 feet sticks out in my head
4 with regard to what the original description of
5 the stack height of the variable bleed valve.
6 Could that be correct? I'll just go with your 50.
7 So 50 is what you're proposing, is that right?

8 MR. PIAZZA: Well it is what it is.

9 HEARING OFFICER SHEAN: Okay.

10 MR. PIAZZA: When I checked last week it
11 was 50.

12 HEARING OFFICER SHEAN: Let me just
13 indicate to you that I figured the quickest place
14 to go was visual resources on page 4.12-3. It
15 says:

16 "The most visible
17 components of the power plant
18 include five 90-foot tall
19 exhaust stacks, five 68-foot
20 tall compressor bleed air
21 vents with five 47-foot tall
22 inlet air filters."

23 So if what I looked at out at Groton was about
24 correct then your testimony here would be about
25 correct, 50-foot compressor bleed air vents

1 approximately the same height for your inlet
2 structures and 90-feet for your exhaust stack.

3 MR. PIAZZA: Did you say 60?

4 HEARING OFFICER SHEAN: Sixty-eight, 68
5 is what this says.

6 MR. PIAZZA: Yeah, I mean, when that was
7 prepared that was what, almost two years ago.
8 That was about two years ago that we prepared
9 that. When I checked last week it was 50.

10 HEARING OFFICER SHEAN: Okay.

11 MR. PIAZZA: Maybe I need to double-
12 check.

13 HEARING OFFICER SHEAN: Well let me
14 indicate, their visual analysis is based upon 68
15 feet. So whatever the effect we're going to
16 describe in the PMPD would be that there is
17 actually a lesser impact, okay. So let's --

18 If you need to reverify that number
19 given what we've just discussed please do that but
20 for now we'll go with 50 feet unless advised
21 differently.

22 MR. GALATI: When we move on to other
23 issues Mr. Piazza might be able to do that with a
24 phone call right now.

25 HEARING OFFICER SHEAN: Okay. I don't

1 know what else we've got after this so let's wait.

2 MR. GALATI: Okay.

3 HEARING OFFICER SHEAN: And later is
4 fine. If you want to you can put it in the
5 package you submit subsequently.

6 MR. GALATI: I will.

7 HEARING OFFICER SHEAN: And I think in
8 your testimony you have also covered the areas
9 that I thought were appropriate with respect to
10 this particular technology was available in
11 different configurations. A dry cooling. And
12 you've stated the reasons for choosing the wet
13 cooling, which of course requires the use of
14 cooling towers and so on like that.

15 So insofar as I'm concerned the
16 questions that I have had with respect to this
17 technology have been answered by what you have if
18 you'll just confirm the height of the stack.
19 Because that will clearly reduce one of potential
20 visual impacts. Which is one of the new elements
21 of this technology. Which if it is still at the
22 height of the inlet structure is probably not a
23 big deal. Okay?

24 MR. GALATI: We'll do that.

25 HEARING OFFICER SHEAN: Are there any

1 questions from the staff?

2 MS. DeCARLO: No.

3 HEARING OFFICER SHEAN: Anything from
4 the Committee?

5 PRESIDING MEMBER PFANNENSTIEL: Yes.

6 Let's see if this is working. It is.

7 I just want to understand. This gets
8 way back to the early stages of this discussion.
9 This is a 500 megawatt project and it's
10 characterized continually as a 500 megawatt
11 peaking project. Which of course seems somewhat
12 incongruous because one thinks of peaking projects
13 generally as being somewhat smaller than that.
14 And you say here that you are using a simple-cycle
15 technology because it has a faster start ramp than
16 a combined-cycle.

17 Does it have something to do with the
18 length, the number of hours a year you expect this
19 to operate or is it simply the question of the
20 best technology and therefore you, as you describe
21 it here, are able to add together five simple-
22 cycle turbines to get this relatively large peaker
23 plant?

24 MR. GALATI: Commissioner, I'd like to
25 have Mr. Kostrzewa sworn in because he is more apt

1 to answer that question for you.

2 PRESIDING MEMBER PFANNENSTIEL: Fine.

3 MR. GALATI: Thanks.

4 Whereupon,

5 LAWRENCE KOSTRZEWA

6 Was called as a witness herein and, having been
7 first duly sworn, was examined and testified as
8 follows:

9 MR. KOSTRZEWA: That's an interesting
10 question. There is a tendency to think that
11 peaking means small. Peaking really refers to the
12 amount of time it operates. A peaking plant runs
13 at electrical system peaks. And the California
14 electric system is very short on peaking capacity
15 by hundreds if not thousands of megawatts. As
16 evidenced by the request for offers that Southern
17 California Edison issued which was seeking well
18 over 1,000 megawatts peaking capacity.

19 So there is a big need. And as we
20 integrate more and more intermittent resources
21 like wind and solar into the California grid we
22 will need to have almost a companion amount of
23 peaking capacity to cover the time when those
24 intermittent resources aren't available. So to
25 meet the state's renewable performance goals,

1 renewable portfolio goals, you'll be seeing large
2 amounts of peaking capacity necessary in order to
3 achieve that.

4 So why did we choose 500 megawatts?
5 Economy of scale. We have the opportunity to use
6 the LMS 100 turbine, which is about twice as big
7 as what's previously been available. It's more
8 efficient, it is very flexible. It fits the
9 purpose. But when you're looking at staffing a
10 power plant to have people, you really have to
11 have people there all the time as the conditions
12 of certification require. If all of those people
13 are there watching one little 50 megawatt turbine
14 or 46 megawatt turbine it is not terribly
15 efficient. So there is economy of scale, which is
16 what drove us to this site and to that size.

17 PRESIDING MEMBER PFANNENSTIEL: Thank
18 you.

19 HEARING OFFICER SHEAN: With respect to
20 this LMS 100. And the only thing I want to do is,
21 the testimony you submitted included some
22 information that clearly was taken off the General
23 Electric website but didn't include any graphics.
24 So for the purpose of the preparation of the PMPD
25 is there objection by either the applicant or the

1 staff if the Committee uses some of the graphics
2 showing either the configuration and the use of
3 the inner cooler or the internal designs of the
4 combustion turbine and things like that as part of
5 the description of the project?

6 MR. GALATI: We don't have a problem if
7 GE doesn't.

8 HEARING OFFICER SHEAN: Yes, assuming
9 there are no copyright issues.

10 MS. DeCARLO: No objection from staff.

11 HEARING OFFICER SHEAN: Okay. And do we
12 have a GE person here?

13 MR. GALATI: No.

14 HEARING OFFICER SHEAN: Okay. We'll
15 attempt to discern that. All right. Now are
16 there people who are on the phone that wish to
17 identify themselves for the record?

18 MR. COATS: Yes. Ken Coats, Air Quality
19 Management District.

20 HEARING OFFICER SHEAN: Mr. Coats,
21 welcome aboard.

22 MR. COATS: Thank you.

23 HEARING OFFICER SHEAN: Anybody else?

24 MR. HUNTER: Dale Hunter with Black
25 Eagle Consulting representing staff on geology and

1 paleontology.

2 HEARING OFFICER SHEAN: All right, thank
3 you. Are there any members of the public who are
4 here who would like an opportunity to speak and
5 make comment on the project?

6 All right, there are apparently none.

7 Is there anything further from either
8 the applicant or staff before we conclude today,
9 understanding we are going to leave the record
10 open for the material you are going to submit with
11 the opportunity that you have to call for further
12 evidentiary hearing?

13 MR. GALATI: Nothing on behalf of the
14 applicant.

15 MS. DeCARLO: Nothing from staff.

16 HEARING OFFICER SHEAN: All right, with
17 that we are adjourned with the evidentiary record
18 open. We'll expect to see a submittal. I think
19 what we'll do is provide you 15 days and
20 thereafter give you 10 days. And we'll get an
21 order out on that pretty quickly. All right,
22 thank you very much for your participation.

23 (Whereupon, at 4:21 p.m., the
24 Evidentiary Hearing was adjourned.)

25 --o0o--

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2007.

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