

COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

John L. Geesman, Associate Member

HEARING OFFICER, ADVISERS PRESENT

Garret Shean, Hearing Officer

Panama Bartholomy

Raoul Renaud

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Jack Caswell, Project Manager

Joseph M. Loyer

Steve Baker

APPLICANT

Scott Galati, Attorney
Galati & Blek, LLP

Lawrence Kostrzewa
Edison Mission Energy

Kris Kjellman
Edison Mission Energy

Douglas M. Davy
CH2M HILL

ALSO PRESENT

Phillip Dudar
Cole Landowski
Carlo Cartahena
Dick Simmons
County of Los Angeles (via teleconference)

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

2 2:03 p.m.

3 PRESIDING MEMBER PFANNENSTIEL: This is
4 an evidentiary hearing on Walnut Creek Energy
5 Park. I'm Commissioner Jackie Pfannenstiel; I'm
6 the Presiding Commissioner of this proceeding. To
7 my left is Commissioner John Geesman, who is the
8 Associate Commissioner of the proceeding.

9 And to my right is the Hearing Officer,
10 Garret Shean. I'm going to hand it off to Garret
11 at this point to conduct the proceeding.

12 HEARING OFFICER SHEAN: Thank you, Madam
13 Chairman. What we'd like to do, given the dual
14 purpose of today's hearing, which is to receive
15 comments on the Presiding Member's Proposed
16 Decision and to take supplementary testimony
17 responding either to the Committee's notice of
18 this hearing, or testimony in support of parties'
19 comments.

20 I think what we've proposed today to do
21 is to essentially meld those two. We'll start
22 first with the testimony and comments of the
23 staff; and then go to the applicant's.

24 To the extent that there is no
25 disagreement on any of the testimony that's being

1 offered, perhaps we can shortcut that with merely
2 the admission of that testimony into the record,
3 without the necessity of either the direct
4 testimony or summary of the direct testimony or
5 cross-examination.

6 Although I understand the applicant as
7 requested that on the information with regard to
8 capacity factor that you have prepared and have
9 for us a brief PowerPoint presentation to go along
10 with the testimony of your witness.

11 MR. GALATI: Yes, we think it will just
12 take a few minutes to go through some of those
13 charts.

14 HEARING OFFICER SHEAN: That would be
15 good. All right, the Committee is working off of
16 three documents, if you don't count the PMPD,
17 itself. And they are staff's comments and
18 testimony, which was filed on September 10th, the
19 applicant's supplemental testimony filed on
20 September 10th, and also the applicant's comments
21 on the PMPD filed September 11th.

22 At this point why don't we have the
23 appearances who are present here, and then we'll
24 get to the people who are on the telephone. We'll
25 begin with the applicant.

1 MR. GALATI: Scott Galati representing
2 the Walnut Creek Energy Park.

3 MR. KOSTRZEWA: Larry Kostrzewa,
4 Managing Director of Development for Edison
5 Mission Energy, representing Walnut Creek.

6 HEARING OFFICER SHEAN: Thank you.
7 Commission Staff.

8 MS. DeCARLO: Lisa DeCarlo, Energy
9 Commission Staff Counsel. To my right is Jack
10 Caswell, the Project Manager for the Energy
11 Commission Staff.

12 And in the audience we have Steve Baker,
13 our noise expert; as well as Joe Loyer, our expert
14 in air quality.

15 HEARING OFFICER SHEAN: Thank you.
16 We'll now go to the people who are on the
17 telephone. And rather than necessarily step on
18 the guy who's trying to talk, why don't you
19 introduce yourself and your affiliation, please.

20 MR. DUDAR: My name is Phil Dudar; I'm
21 with the County of Los Angeles. Also with me on
22 the phone from the County of Los Angeles is Dick
23 Simmons, Field Deputy for County Supervisor
24 Michael -- Don Knabe; Mr. Cole Landowski with our
25 Public Health Department; and Carlo Cartahena with

1 our Public Health Department.

2 HEARING OFFICER SHEAN: Well, thank you
3 very much. And we appreciate your sort of
4 listening in silence, or occasionally muting so
5 that we don't hear the background noises where you
6 are. Because the way things are set up here, if
7 there are background noises where you are, we hear
8 them easily and they tend to overwhelm our
9 microphones. So, thank you, again, for your
10 courtesy with respect to that.

11 Having said that, let's go to the
12 Commission Staff. It filed on September 10th, as
13 I indicated, its combination of comments and
14 testimony. And what I think we'd like to do is
15 get the testimony out of the way first.

16 I'll just do a little of this to move
17 this along. The offered testimony on alternatives
18 from Fritz Golden is offered into the record by
19 the staff. Is there objection to its admission?

20 MR. GALATI: No objection.

21 HEARING OFFICER SHEAN: And do you want
22 to cross-examine the witness?

23 MR. GALATI: No.

24 HEARING OFFICER SHEAN: No. Next we
25 have the testimony of Joe Loyer with respect to

1 air quality offered by the Commission Staff into
2 the record.

3 We're going to discuss a little bit the
4 proposed modification of AQ-SC-8. But other than
5 that, is there objection to admission of the
6 testimony of Mr. Loyer?

7 MR. GALATI: No, there's not. We'd like
8 to question Mr. Loyer about AC-SC-8.

9 HEARING OFFICER SHEAN: All right. Mr.
10 Loyer, why don't you come forward, please. Can we
11 have the witness sworn. Or have you been
12 previously sworn in this proceeding?

13 MR. LOYER: I don't believe; I think my
14 testimony was admitted without my swearing.

15 HEARING OFFICER SHEAN: Okay.

16 Whereupon,

17 JOSEPH M. LOYER

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

21 THE REPORTER: Please state and spell
22 your name for the record.

23 MR. LOYER: Joe Loyer, J-o-e L-o-y-e-r.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. GALATI:

3 Q Mr. Loyer, just a few questions. First
4 of all, would you agree that a permit to construct
5 from the South Coast Air Quality Management
6 District must be issued prior to the breaking
7 ground or starting construction at the Walnut
8 Creek Energy Park?

9 A Yes, that is the case with South Coast.

10 Q Would you agree that the South Coast
11 would not issue a permit to construct unless they
12 determined the project was in compliance with
13 1309.1?

14 A Possibly; possibly not. I can't agree
15 with that one.

16 Q Under what circumstances would the South
17 Coast issue a permit to construct yet not be able
18 to find that the project qualifies to get priority
19 reserve credits under 1309.1?

20 A The District might accept the payment
21 for credits under 1304, priority reserve credits,
22 and 1309.1 without explicit compliance with the
23 condition (d)(12) or condition (d)(14).

24 (d)(12) requiring that the District make
25 a determination that the project is among the

1 first of 2700 megawatts of capacity requesting
2 priority reserve credits. And (d)(14) requiring
3 that the applicant have a long-term power
4 purchasing agreement with either Southern
5 California Edison, San Diego or the State of
6 California.

7 Both of these items may be waived by the
8 governing board of the South Coast. So, it may be
9 that the District would accept a payment and wait
10 for the governing board to waive these
11 requirements.

12 Q Isn't the way the rule constructed that
13 you shall either demonstrate you're in, or you
14 shall present to the APCO the waiver before you
15 get compliance with 1309.1 determined by the Air
16 Pollution Control Officer?

17 A By my reading of the rule, and this is
18 by no means the definitive method by which the
19 District will implement this rule, but by my
20 reading of the rule the District may accept a
21 payment, but the executive officer may not release
22 the credits. And that is the linchpin phrase that
23 I am somewhat wary about.

24 Q In your opinion do you think there would
25 be any way that the South Coast would allow the

1 project to begin operating without a release of
2 the priority reserve credits?

3 A Absolutely not.

4 MR. GALATI: No further questions.

5 HEARING OFFICER SHEAN: Any redirect?

6 MS. DeCARLO: No, nothing.

7 HEARING OFFICER SHEAN: All right, than
8 you, Mr. Loyer, you're excused.

9 Next for the staff's offering is the
10 testimony of William Walters on visual resources.
11 Is there objection to the admission of testimony
12 of Mr. Walters?

13 MR. GALATI: No objections; no cross-
14 examination.

15 HEARING OFFICER SHEAN: All right. That
16 takes care of the staff testimony.

17 Let's go through some of these comments
18 that the staff has. And it may take Mr. Loyer
19 coming back forward again.

20 It appears that the three comments that
21 are offered on page 12 of your document, pretty
22 straightforward. That the inclusion of PM2.5, as
23 a group with PM10, is not appropriate. And also
24 that the CO offsets, mention those as not correct.
25 And that the reclaimed trading credits are not

1 paid to the District, but paid to the holder of
2 the credit, itself.

3 So have we captured and understand the
4 nature of your comments?

5 MR. LOYER: Absolutely.

6 HEARING OFFICER SHEAN: Okay. So Mr.
7 Loyer says, absolutely.

8 All right. I think we've read and
9 understood the comments by the staff on cultural
10 resources.

11 I do have a wordsmithing question on
12 page 17 of your comments. And just for
13 clarification, it's part of condition Cul-7. In
14 the third line the grammatical construction of the
15 sentence has a series of essentially events which
16 would include preconstruction site mobilization,
17 construction ground disturbance, construction
18 creating boring, and trenching and construction.
19 Then you've got a semicolon.

20 I'm trying to understand whether or not
21 the parenthetical phrase and what follows,
22 including landscaping in areas where ground
23 disturbance exceeds three feet. Is it intended
24 that the portion that you suggested be added, that
25 is where ground disturbance exceeds three feet,

1 applies to essentially the grammatical series that
2 precedes it? So that the semicolon essentially is
3 not appropriate there?

4 If you don't have a response to this
5 now, you can provide it later.

6 MS. DeCARLO: Okay, yes, if I could
7 provide you with a response to that at a later
8 time, that would be great.

9 HEARING OFFICER SHEAN: All right.
10 We've looked at the geology and paleontology
11 comments, and we'll make those changes.

12 Now, in your noise and vibration
13 comments you basically have indicated that there
14 were problems with respect to a statement about
15 comparison of the Commission's L90-based
16 requirement and the County's L50-based
17 requirement.

18 And understanding that depending upon
19 what happens to the condition in its entirety, we
20 do understand the nature of that comment.

21 Okay. Sociology. We have made the
22 changes recommended there. And that takes care of
23 that.

24 Is there anything further that staff
25 would like to add that does not appear in your

1 written comments?

2 MS. DeCARLO: No, our written comments
3 encapsulate our comments on the PMPD as it stands
4 now.

5 HEARING OFFICER SHEAN: Okay. One of
6 the questions that the Committee asked in its
7 notice of the hearing was whether or not the staff
8 believed that the analysis it had provided in its
9 FSA, and which to some degree was relied upon by
10 the Committee in the preparation of the PMPD, was
11 sufficiently broad so that for the purposes of
12 CEQA any potential impacts that would occur at
13 something higher than the 3500 hours proposed
14 operation by the applicant would be covered for
15 CEQA purposes.

16 Have you considered that, and do you
17 have an answer to that. And if you have a number,
18 such as the 4000 hours of the SCAQMD rule 1309.1
19 or some other number in mind, what do you believe
20 is the upper limit of the comprehensive nature of
21 the staff's analysis in terms of a capacity
22 factor?

23 MS. DeCARLO: Well, at the Committee's
24 urging we definitely did take another look at this
25 issue, and went back and met with staff and

1 determined that their initial estimate was, in
2 fact, incorrect. It was based on a
3 misunderstanding that this was, in fact, a
4 baseload plant.

5 After discussing this with them and
6 indicating that it was, in fact, a peaking
7 facility, they revised their estimate. And we
8 included that revision in our visible plume
9 discussion where it was initially contained in our
10 FSA.

11 And I believe the new number is
12 somewhere around 17 percent of capacity factor for
13 this facility.

14 HEARING OFFICER SHEAN: Okay, I
15 understand that. I think what I'm -- the question
16 I'm asking is the SCAQMD would allow them to
17 operate under its terms if unchanged, up to 4000
18 hours.

19 MS. DeCARLO: Correct. There has been a
20 recent change to the 1309.1 which does impose a
21 4000 hour per year ceiling on the operation of
22 this facility.

23 HEARING OFFICER SHEAN: Now, if I could
24 just, for example, say it's not clear from -- I
25 mean it's clear from some of the testimony that

1 the witnesses in each technical specialty relied
2 upon the operation of this facility at 3500 hours
3 per year.

4 The question the Committee has, and that
5 we attempted to pose in the hearing notice, is
6 whether or not, for example I'll just use traffic
7 and transportation, if this facility, instead of
8 operating 3500 hours and having X number of
9 deliveries of aqueous ammonia, were to operate at
10 4000 hours, the maximum it could under the
11 District rule, and had X-plus-Y deliveries of
12 ammonia. Would they feel that that difference has
13 the potential to create a significant
14 environmental impact under CEQA?

15 MS. DeCARLO: No. No, we've fully
16 analyzed the project, and with the conditions of
17 certification proposed in the PMPD, even assuming
18 an up-to-4000-hour annual operation there would be
19 no changes necessary to staff's analysis.

20 HEARING OFFICER SHEAN: So that the
21 conditions proposed would be sufficient to capture
22 any potential impact under CEQA?

23 MS. DeCARLO: Yes, definitely.

24 HEARING OFFICER SHEAN: Okay. Let's go
25 to the --

1 MR. GALATI: Mr. Hearing Officer, --

2 HEARING OFFICER SHEAN: Yes.

3 MR. GALATI: -- if I could add something
4 there? While we are talking about 1309.1
5 theoretically allowing up to 4000 hours, we have a
6 final determination of compliance that limits the
7 hours to the credits we buy. And the amount of
8 credits we were purchasing would allow up to 3500
9 hours -- yeah, the NOx annual.

10 So, while that is possible that we could
11 operate to 4000 hours if we had to purchase
12 additional credits, we would have to come back to
13 the Energy Commission and tell them that we so
14 intended.

15 And then the Energy Commission Staff
16 would be making a decision at that point whether
17 that required an amendment or not.

18 But while there is theoretically
19 possible the upward bound for a peaking facility
20 in our zone is 4000, we are not asking to be
21 permitted at 4000.

22 HEARING OFFICER SHEAN: And I -- let's
23 just state this for the record. There is a
24 difference between the expositional purpose under
25 CEQA of the draft and final EIRs, and in our case

1 our functional equivalent documents here, versus
2 what you're actually permitting.

3 And I think we're just trying to make
4 sure that for CEQA purposes, CEQA's expositional
5 purposes, we have fully covered anything that
6 would be potentially legally possible under the
7 current regulatory regime. Okay.

8 ASSOCIATE MEMBER GEESMAN: Let me also
9 register a concern over the confusion created by
10 the electricity assessment office's mistaken
11 assumption as to what type of plant this is.

12 I understand that it's a little bit
13 unusual for a peaker to run or be projected to run
14 even as frequently as this applicant is suggesting
15 that it may be. And I also understand that the
16 design, from an engineering standpoint, is a bit
17 novel.

18 But even making those allowances, it's
19 fairly extraordinary that the electricity
20 assessment office would make such a large mistake.
21 And it's obviously been something that's been of
22 concern to the Committee. You know, a plant that
23 is projected by our staff to run as frequently as
24 65 percent of the time is a lot different, and our
25 record would be a lot different than that which we

1 have prepared for a plant that may run 35 percent
2 of the time.

3 This hasn't been the finest hour for the
4 electricity assessments office. And we rely on
5 them for a lot of things outside of our siting
6 cases, as well.

7 So I hope you'll convey back to your
8 management the degree of concern this type of
9 mistake provokes.

10 MS. DeCARLO: Yes, I will definitely
11 convey that. And I know management was concerned
12 when this issue was raised with them, as well.

13 HEARING OFFICER SHEAN: Mr. Galati, why
14 don't you have your witness sworn in, and we'll
15 get your testimony on capacity factor.

16 MR. GALATI: You bet. It's Mr. Larry
17 Kostrzewa.
18 Whereupon,

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

23 THE REPORTER: Please state and spell
24 your name for the record.

25 MR. KOSTRZEWA: Lawrence Kostrzewa; my

1 last name is spelled K-o-s-t-r-z-e-w-a.

2 I won't read you the written testimony;
3 we'll just kind of walk through the pictures.

4 HEARING OFFICER SHEAN: That would be
5 great, thank you.

6 MR. KOSTRZEWA: It's right there on the
7 right; just double-click that.

8 DIRECT TESTIMONY

9 MR. KOSTRZEWA: Okay, the figure 1 is
10 data that was pulled together from the U.S.
11 Federal Energy Information Administration. And it
12 shows capacity factors for California power
13 plants. This data set was from January to
14 September 2006, which is the most recent year
15 available. The full year isn't available yet.

16 But it does include the summer periods,
17 which if anything, would bias the numbers a little
18 bit high.

19 And it shows they range from very low to
20 the mid 70s. These are looking at gas-fired power
21 plants, by the way.

22 There's a step function there when you
23 go from combined cycle plants, which have very
24 good heat rates, down to other gas-fired plants
25 which might be the older steam electric units or

1 peaking units.

2 And highlighted in green there is our
3 guess for where the Walnut Creek plant could
4 operate, somewhere in the 20 to 40 percent range.
5 It's going to be better than the simple cycle
6 other gas-fired plants, but not likely to be as
7 high as the combined cycle plants.

8 Figure 2 takes that same data from the
9 EIA, which also includes fuel consumption, power
10 production data so you can calculate heat rates,
11 and plots the ones in southern California, plots
12 capacity factor versus heat rate.

13 And again, you can see, to the left the
14 combined cycle plants, low heat rates, higher
15 capacity factors. To the right the simple cycle
16 or steam electric units with lower capacity
17 factors and higher heat rates.

18 The red line in between shows roughly
19 where the LMS100 turbines, which we plan to use at
20 Walnut Creek, fall; and they kind of fall in no
21 man's land. There's nothing really there now, so
22 we're kind of guessing.

23 But if we do an exponential curve fit,
24 the black line there, it would fall to the bottom
25 of that 20 to 40 percent range. The green circle

1 kind of indicates 20 to 40 percent.

2 In figure 3 it's the same data with a
3 linear curve fit. The line tends to fall in
4 towards the high end of the 40 percent range. So
5 that's how we bracketed it, and only time will
6 tell.

7 Hopefully this puts to bed the question
8 of how much the plant will run. And then the
9 other slides address when. And we've looked at
10 that several different ways.

11 First, figure 4 looks at data provided
12 by the California ISO. This is actual loads in
13 southern California during a data period from
14 November 02 to October 03. So it spans a 12-month
15 period.

16 And depending on what the capacity
17 factor is, it shows how many hours during each
18 respective hour of the day the plant would run.
19 So if the plant had a 10 percent capacity factor,
20 it would run with a distribution of hours shown in
21 red. At 20 percent it would be red plus the
22 yellow. Thirty percent, add the blue. Forty
23 percent add the green.

24 Kind of makes the point here that kind
25 of no matter where in that zero to 40 percent

1 range you look, the operation of peaking plants --
2 I'm sorry, this is actually the distribution of
3 the highest load hours, which is when peaking
4 plants run -- and the distribution of highest load
5 hours are during the middle of the day.

6 Figure 5 looks at this question from
7 another standpoint. This is also provided by the
8 California ISO. Looking at the all-time -- well,
9 the previous -- I guess it's still the Cal-ISO
10 all-time peak day from July 24th of last year, in
11 the midst of a stage two emergency, and here the
12 Cal-ISO is showing the different sources of
13 electric energy during that day, and how they're
14 broken down.

15 Two notable things. The loads during
16 the middle of the night are actually 27-, 28,000
17 megawatts, even when the daytime peak was 50,000
18 megawatts. So load changes a lot over the course
19 of the day, which is really why we're developing
20 this as a peaker plant. It's those peak demands
21 that are growing and we need that flexibility.

22 But on this particular day, the peakers,
23 which they show in kind of a salmon color, I
24 guess, ran from about hour-end at 8 to about hour-
25 end of 23, even during a stage two emergency on

1 the all-time peak day.

2 Figure 6 looks at the question from
3 another standpoint. This time economically. I
4 took roughly the 1st and the 15th day of each
5 month of the year through August 15th, and looked
6 at the day-ahead power market price onpeak and
7 offpeak as quoted by -- on the Intercontinental
8 Exchange and the corresponding gas price.

9 And calculated what the operating margin
10 would be for an LMS100 plant. The margin being
11 the difference between the market electricity
12 price and our fuel plus variable O&M.

13 And in this dataset, which granted is
14 just the 1st and 15th of each month, there were
15 relatively few days when a peaker would make money
16 for an entire onpeak period. And there were no
17 days in which is made any money during an entire
18 offpeak period.

19 This isn't necessarily dispositive
20 because it doesn't give you a lot of view into
21 what a peaker would do for a part of a day, which
22 is what peakers typically do.

23 So, even when the margin for a full
24 onpeak period might be negative, for some of those
25 hours in there it might be quite positive. But it

1 does say, even if the minus-\$10 was a dividing
2 point, there'd still be no offpeak hour operation
3 at all.

4 Figure 7, which is the last one that
5 I'll show --

6 ASSOCIATE MEMBER GEESMAN: Can I back
7 you up to that last graph again?

8 MR. KOSTRZEWA: Absolutely.

9 ASSOCIATE MEMBER GEESMAN: Are you
10 making your conclusion on a peak block of 16 hours
11 a day? Or are you making 16 separate conclusions
12 for that peak period?

13 MR. KOSTRZEWA: Well, unfortunately, on
14 the California market as it stands, there is no
15 day-ahead hourly market. There's only the onpeak
16 and offpeak block market. So that's the only
17 visibility that we have.

18 The next slide looks at the hourly
19 prices. But the only hourly prices in California
20 are the real-time market. And the real-time
21 market is really just a balancing market where you
22 cover forecasting error. And so it's not really
23 indicative either.

24 So unfortunately until MRTU is put in
25 place, we won't have the visibility we need. So

1 this kind of just in general, I think, helps
2 support that offpeak operation isn't very likely.
3 But it's not particularly helpful for that.

4 So figure 7 looks at Cal-ISO real-time
5 prices. I picked a week when this question was
6 the question of the week. And highlighted in
7 green there it showed in the real-time market how
8 many hours a day an LMS100 peaker would be in the
9 money. And you can see 3, 4, 1, 1, 3, 3,
10 relatively few hours of the day.

11 And then the other thing in green there
12 was how much money Walnut Creek would make if it
13 tried to run during the offpeak period. That
14 means really how much it would lose.

15 So if we tried to run through the
16 offpeak period, depending on the day, we could
17 lose anywhere from \$60- to \$100,000 just in the
18 course of that eight-hour period. So, again, it's
19 not something we would be in the business of
20 doing.

21 PRESIDING MEMBER PFANNENSTIEL: I want
22 to make sure I understand your initial figures 2
23 and 3 where you're looking at this technology
24 relative to other gas-fired power plants.

25 It's really an intriguing way of looking

1 at this. Wouldn't have looked at it like this.
2 But, I'm assuming this is because there just isn't
3 enough experience in the real world to plot the
4 LMS100 on something like this, correct?

5 MR. KOSTRZEWA: There are no LMS100s in
6 California, nor anything with a similar heat rate.

7 PRESIDING MEMBER PFANNENSTIEL: But what
8 do you have even for, I'm sure GE has tested, has
9 designed to a specification. Is there nothing
10 from GE that would give you an indication?

11 MR. KOSTRZEWA: The capacity factor
12 would not be a mechanical limitation. The LMS100
13 is entirely capable of running 95 percent of the
14 time. It's just that it wouldn't be economical to
15 do that.

16 And so what figure 2 and figure 3 try to
17 indicate is, given the market in California, --

18 PRESIDING MEMBER PFANNENSTIEL: Show
19 what really has happened, right.

20 MR. KOSTRZEWA: -- what would economics
21 tend to dictate. The goal of the machine is to be
22 there whenever it's called on.

23 PRESIDING MEMBER PFANNENSTIEL: Yeah, I
24 guess I would have thought that there would be a
25 way to model something like that. This is sort of

1 -- it's a really intriguing way of presenting it,
2 and I get it. But as I say, I would have thought
3 that something like this could have been modeled,
4 you know, at price X. You would run it this way,
5 you know, and yet I don't -- obviously that hasn't
6 been done.

7 MR. KOSTRZEWA: We haven't done that,
8 but production cost modeling would be the way to
9 do that. And presumably that's how staff came up
10 with the 17 percent.

11 PRESIDING MEMBER PFANNENSTIEL: Okay.

12 DIRECT EXAMINATION

13 BY MR. GALATI:

14 Q Mr. Kostrzewa, was this your -- I'm
15 looking at the documents that you had read from
16 dated September 10th -- is that your supplemental
17 testimony?

18 A Yes, it is.

19 MR. GALATI: I would point the Committee
20 to an additional attachment which is a letter to
21 the South Coast Air Quality Management District,
22 dated August 27, 2007, which is attached to that,
23 entitled, documentation demonstrating compliance
24 with applicable requirements of amended 1309.1.

25 And at this time I'd ask the entire

1 testimony to be placed in the evidentiary record.

2 HEARING OFFICER SHEAN: Is there
3 objection?

4 MS. DeCARLO: No objection.

5 HEARING OFFICER SHEAN: It's admitted.

6 MR. GALATI: I have one other witness to
7 take care of the demolition issue.

8 HEARING OFFICER SHEAN: All right, let's
9 first see if the staff has any cross for this
10 witness.

11 MS. DeCARLO: No cross.

12 HEARING OFFICER SHEAN: Thank you. All
13 right, let me just indicate in the comments that
14 the applicant made, applicant stated that what had
15 been termed the existing warehouse has been
16 demolished since either we had our evidentiary
17 hearing, or at least at some point.

18 So since this is a factual matter, and
19 there is no longer an apt description to call it
20 the existing warehouse. The applicant has asked
21 us to go through the PMPD and alter that. We're
22 merely here now to support the evidentiary record
23 and indicate that the warehouse, itself, has been
24 demolished. So why don't you bring that witness
25 forward.

1 MR. GALATI: Okay, I'll ask for Kris
2 Kjellman to be sworn.

3 Whereupon,

4 KRIS KJELLMAN

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

8 THE REPORTER: Please state and spell
9 your full name for the record.

10 MR. KJELLMAN: Kristopher Kjellman; the
11 last name is spelled K-j-e-l-l-m-a-n.

12 DIRECT EXAMINATION

13 BY MR. GALATI:

14 Q Mr. Kjellman, do you have personal
15 knowledge of whether or not the warehouse at the
16 Walnut Creek Energy Park has been demolished?

17 A Yes, I do.

18 Q And has it been demolished?

19 A It has been demolished, yes.

20 MR. GALATI: No further questions.

21 HEARING OFFICER SHEAN: And, Mr.
22 Kjellman, the current status of the property,
23 then, is that it's bare ground, is that correct?

24 MR. KJELLMAN: Yes, it is bare ground
25 except for one SCE transformer that had not been

1 removed as of last week.

2 HEARING OFFICER SHEAN: Okay. Anything
3 from the staff?

4 MS. DeCARLO: No cross.

5 HEARING OFFICER SHEAN: All right, thank
6 you. We appreciate it. That's a little
7 housekeeping matter on the record, and it's done.

8 All right, the applicant's filing with
9 respect to its comments on the PMPD picks up where
10 the supplemental testimony left off, and we'll get
11 to the noise issue in just a moment. But let's go
12 through now some of what you have.

13 As I just indicated, on your page 1 you
14 discuss the fact that this is no longer an
15 existing warehouse. Also suggest that the LMS100
16 will not operate down to 10 megawatts, so that
17 that should be described as 50 as a minimum; and
18 we've made those changes.

19 In air quality the question I have goes
20 to this page 25, whether the Walnut Creek Energy
21 project is subject to a PSD review, and you
22 indicate here that it is not. Correct?

23 MR. GALATI: That is correct, it is not.

24 HEARING OFFICER SHEAN: And is staff
25 satisfied that that is a correct statement?

1 MS. DeCARLO: Yes.

2 HEARING OFFICER SHEAN: All right. That
3 change has been made, as well.

4 You request changes to AQ-SC-7, stating
5 that in the interim here between our evidentiary
6 hearing and today that the South Coast has been
7 determined to be in attainment for federal carbon
8 monoxide, and that therefore any statement
9 indicating that a redesignation was pending should
10 be modified to reflect that it is designed in
11 attainment, correct?

12 MR. GALATI: That's correct.

13 HEARING OFFICER SHEAN: Okay. And staff
14 concurs that that redesignation has occurred?

15 MS. DeCARLO: Yes.

16 HEARING OFFICER SHEAN: Okay. Condition
17 AQ-SC-9 refers to onsite transformers and suggests
18 the language be changed to circuit breakers; is
19 that correct?

20 Okay. Staff's indicated that that is
21 correct and the change has been made.

22 We've gone ahead and made all the
23 essentially minor substantive changes on page 2.
24 And we get to noise. And I'm going to just allow
25 you a little bit of time to make your

1 presentation. But, for the record, what the
2 applicant is suggesting is that either if the
3 Committee doesn't fully believe that there is no
4 significant likelihood of operation during the
5 night-time hours, or, I guess out of an abundance
6 of caution, we choose to somehow assure that there
7 is potential mitigation for residences who may be
8 affected by project noise in the event of night-
9 time operation have suggested this new noise-7
10 condition of certification.

11 So, if you want --

12 MR. GALATI: Yes, thank you very much.
13 Basically I think we made a presentation here and
14 we believe that we're not going to be operating at
15 night-time. We cannot sit here and tell you that
16 we would never ever, under any circumstances,
17 during an emergency, operate at the night-time;
18 nor would we want a condition of certification
19 limiting such night-time operation if it were
20 absolutely necessary or rare.

21 But the issue that we find ourselves in
22 with noise is the Energy Commission has
23 traditionally upheld a sort of threshold of
24 significance of, if you're 5 db increase or below,
25 that's deemed to be not bothersome to people. And

1 therefore, not a significant impact.

2 If you're greater than 10 db, that is
3 deemed to be a significant impact, bothersome to
4 people, and therefore a significant impact.

5 And there's always been a grey area in
6 when you're between 5 and 10 db of an increase.
7 And what we're asking you to do is to consider
8 that if there ever was a case in which you had
9 something greater than 5 db, it would be the case
10 when it rarely operates.

11 Now, I need to take a step back because
12 when you determine what the lowest -- what do you
13 measure against, what is ambient, staff, and I
14 think the Commission, has adopted a four-hour
15 average of the quietest hours at night. And, in
16 fact, they've taken what is called the L-90
17 measurement, which is the quietest six minutes or
18 10 percent of those four hours. And they've
19 determined that to be the baseline.

20 And so 5 db over that, from our
21 perspective, would be 49. The Commission, I think
22 in the -- the Committee, in its PMPD, set that as
23 the baseline for the project to operate all the
24 time at that, because of those four quietest
25 hours.

1 Since we think it's so rare that we're
2 going to operate, we don't believe we need a
3 condition like that. That's why we believed and
4 supported the staff assessment which allowed us
5 52. Because it's so rare that we would be
6 operating during a time in which we would create a
7 greater than a 5 db, that that was, by its very
8 nature, temporary, short-term, and therefore, not
9 significant.

10 In responding to the Commission's PMPD
11 we tried to cleverly craft the suspenders approach
12 should you not agree that there was no impact
13 here, as we do. And that suspenders would be if
14 there was a complaint when we were operating
15 during those quietest hours, and we were greater
16 than 5 db over the background, in this case which
17 would be 49, that we would mitigate one of two
18 ways.

19 One, we would either take an operating
20 restriction at that point, or change the operation
21 of the plant. For example, maybe only four
22 turbines would be available during those four
23 quietest hours instead of all five.

24 Or, we would do mitigation at the
25 complainant's residence, subject to their

1 permission, to reduce, once again, the effects of
2 the noise during those quietest hours, which would
3 be interior insulation, things of that nature.

4 And, again, we think we'll never have to
5 do that. We also think that it's not a
6 significant impact, but we throw that out to you
7 if you needed the suspenders approach.

8 We notice that staff has further reduced
9 that number to 48. We don't support that. And,
10 again, this was trying to be accommodating to what
11 we believed the Committee was wanting, was out of
12 an abundance of caution. But, again, everything
13 we know about this plant, everything we know about
14 our permit would be that we would not be operating
15 during those quietest times.

16 ASSOCIATE MEMBER GEESMAN: Mr. Galati, I
17 wanted to make certain that I clearly understood
18 what you meant when you said you don't expect to
19 be operating at night, and I think, being more
20 precise, to focus on on those quietest hours. You
21 presented material to us a few minutes ago that
22 suggested there were situations where you would
23 expect to operate between hours 8 and hours 24.

24 I take it those four quietest hours are
25 likely to be hours 1 through 7?

1 MR. GALATI: Yes, those four quietest
2 hours. And that is what I mean when I talk about
3 when we would be operating. It's very unlikely,
4 if ever, rare, probably not possible at all, that
5 we'll be operating after midnight and before
6 midnight and 7.

7 ASSOCIATE MEMBER GEESMAN: Thank you.

8 MR. GALATI: That's why we have
9 structured the condition to be applicable during
10 that lowest time.

11 HEARING OFFICER SHEAN: And just to try
12 to understand that, how would you deal or how
13 would you expect the Commission to deal with, for
14 example, a one-time operation based upon some
15 emergency event or critical electricity demand
16 that had you running into the evening, but not
17 necessarily the four quietest hours, precipitating
18 some complaints? How would you see us
19 implementing this condition?

20 MR. GALATI: I don't think that it would
21 be applicable, should the complaint occur when we
22 were not operating during the four quietest hours.

23 And, again, when you look at the other
24 hours and you start averaging the other hours, 52
25 becomes acceptable under the 5 db change.

1 And it's when you average the ambient at
2 M4 throughout the day and that portion of the
3 night that we might operate, we don't have greater
4 than a 5 db increase. It's only those four
5 quietest hours when you take the load that L90 of
6 them that you get such a low ambient that that
7 creates a 5 db problem.

8 HEARING OFFICER SHEAN: And since you
9 mentioned location M4, can you explain the
10 applicant's reasoning in choosing the one location
11 as opposed to M4 and M2.

12 MR. GALATI: Because M2, the projected
13 noise is not greater than 5 db, even in the night-
14 time hours.

15 HEARING OFFICER SHEAN: Okay. And then
16 let me just pose one more hypothetical. In the
17 event that there was a single event that included
18 the operation in the four quietest hours and
19 precipitated noise complaints, how would -- would
20 your expectation that the way the Commission
21 should handle that would be that the single event
22 is sufficient to cause the implementation of
23 either the offsite mitigation to the residences,
24 or in the reduction in operation of the facility?

25 MR. GALATI: As I envision it working,

1 under the noise complaint process of noise-2, the
2 Commission would be informed; the CPM would
3 conduct an investigation to do two things.

4 Number one, is the complaint legitimate,
5 i.e., was the person there, were they actually
6 present to receive the noise. And, in addition,
7 were we operating during the time of the
8 complaint.

9 Once that is all verified, we can also,
10 at that point, talk about what load we were
11 operating. And how, even with one complaint, you
12 know, we understood that we would be taking a risk
13 of either doing onsite mitigation with one
14 complaint, or operating the plant in such a way,
15 for example let's say we were in full load during
16 those times. Maybe at that point in time,
17 because it is an impact, that we would be then
18 reducing and saying we'll operate four turbines;
19 or we won't operate at full load. It could be
20 something of that nature.

21 Also, you have to understand that
22 sometimes the noise complaints aren't just because
23 you're operating, it's because there's something a
24 little out of whack; there's something needs to be
25 fixed. Noise-2 already covers those sorts of

1 scenarios where there's a fan that's spinning a
2 little bit louder or something of that nature.
3 And these complaints oftentimes lead to a fixing
4 of something that was maybe causing a tone or
5 something like that.

6 But if the noise was coming from not
7 pure tones, but just how loud the plant was, then
8 that would be our risk at that point. Either
9 satisfy that complainant with mitigation that
10 doesn't interrupt their sleep; or not operate the
11 plant like that again.

12 HEARING OFFICER SHEAN: All right. Does
13 staff have any questions or comments with respect
14 to this?

15 MS. DeCARLO: We have comments on the
16 proposal. We haven't had much time to review
17 this, so these are just initial comments on the
18 potential problems that come up as a result of
19 this condition. And we would request, if the
20 Committee is seriously considering incorporating
21 this into the PMPD, that we be given some more
22 time to file written comments on this.

23 We fully support the condition of
24 certification as proposed in the PMPD noise-4. We
25 don't believe any further changes are warranted at

1 this point.

2 There are considerable problems with
3 noise. It appears to be taken from what was
4 proposed and incorporated in the SMUD
5 certification. However, the issues surrounding
6 the two projects are completely different.

7 SMUD, I believe there were only a
8 handful of potential residences affected. Here,
9 we have no idea. There's nothing in the record
10 that indicates, I believe, how many households
11 this would actually impact. How many residences
12 would have to be amenable to having their homes
13 retrofitted, or have some sort of mitigation take
14 place inside their homes. We have no indication
15 who, if any of them, would want such a potentially
16 intrusive approach to the noise issue.

17 The condition has a lot of vague terms.
18 And there's a few, from this brief reading,
19 potentially problematic provisions. One, all it
20 requires ultimately, even if there were mitigation
21 taking place in individuals' residences, it just
22 requires that the noise attributable to the
23 project be reduced by 3 dba at that residence.

24 There's no assurance that it will
25 actually be reduced to the 49, or what we would

1 suggest, 48, dba requirement.

2 It's my understanding that a 3 dba
3 reduction is imperceptible. So ultimately would
4 there be a mitigation of the noise impact.

5 Additionally it requires somehow us to
6 go back in time and determine at that point in
7 time that their complaint -- that generated the
8 complaint was there an exceedance. Well, that's
9 impossible. We can only determine exceedances
10 from this point forward. We can't go back in
11 time.

12 So, those are my initial concerns.
13 Also, another big item, is there's a one-year
14 statute of limitations for this. Complaints are
15 only allowed up for the first year of operation.
16 The applicant can't guarantee that they won't
17 operate at night now. I don't think they can
18 guarantee that their operational profile will
19 change in five, ten years for this anticipated 20-
20 year life of the project.

21 What happens if people move in the
22 meantime? Do the new owners have to be notified
23 of a potential noise issue? It just raises a lot
24 of issues that are very complicated to implement,
25 even if the condition were better worded.

1 So, those are my initial comments. I
2 don't know if Steve Baker would like to address
3 any of the technical issues identified by the
4 applicant. Do you want -- okay.

5 If the Committee has any technical
6 questions, Steve Baker will be happy to respond to
7 them.

8 HEARING OFFICER SHEAN: Don't think so
9 at the moment.

10 MS. DeCARLO: Okay.

11 ASSOCIATE MEMBER GEESMAN: Garret, I'm
12 not certain I'd characterize this as a technical
13 question or a literary question. It seems to me
14 that the staff had previously agreed with the
15 applicant to a 52 dba level. And the PMPD,
16 operating on the analysis in the FSA, derived from
17 the now-acknowledged mistakes of the electricity
18 assessment office, went on at some length.

19 And I'd refer you to page 123 of the
20 PMPD about the assumed operating levels. And
21 particularly quoting from the PMPD at 123: An
22 estimated seasonal capacity factor of 78 percent
23 from May to October." And then the sentence below
24 that: An evaluation of normal daily load profiles
25 from the 2005 SCE load data then suggests normal

1 daily operating hours of 6:00 a.m. through 1:00
2 a.m. from May through October."

3 On the basis of that evaluation the PMPD
4 cranked down the level to 49. Now you're coming
5 in and saying, well, you'd really prefer 48 to 49.
6 But earlier you acknowledge that the electricity
7 assessments offices had been in error in assuming
8 how frequently the plant would operate.

9 What's your rationale for going below
10 52?

11 MS. DeCARLO: Well, the PMPD identifies
12 a 5 dba difference as the threshold of
13 significance here. So we're mainly jumping off
14 that's what the Committee identifies. An increase
15 over 5 dba.

16 I don't know if it references
17 specifically the fact that that's solely dependent
18 upon the operating profile. But that's what we
19 were identified. If the Committee feels that the
20 5 dba increase is significant, then we believe the
21 condition of certification should mitigate impacts
22 below that significance level. And we don't
23 believe that the noise-7 does that. I don't know
24 that it's any better than just having staff's old
25 condition of certification.

1 On the point of 49 versus 48, the 48
2 number is the correct number for the 5 dba
3 differential that we assumed that we got from the
4 Committee's determination. So that's the correct
5 math-wise, and I don't know the specifics. Steve
6 Baker can speak to that. But it would be 48 if we
7 were going with just a strict 5 dba increase.

8 PRESIDING MEMBER PFANNENSTIEL: I have a
9 different question. Mr. Galati, on your
10 alternatives of your noise-7, who would make that
11 determination?

12 MR. GALATI: The CPM and the -- whether
13 or not we do installation?

14 PRESIDING MEMBER PFANNENSTIEL: Yes.

15 MR. GALATI: Or whether or not --

16 PRESIDING MEMBER PFANNENSTIEL: The
17 alternative ways of approaching that.

18 MR. GALATI: First of all, it would be
19 whether or not the complainant, et al, it's at
20 their permission.

21 PRESIDING MEMBER PFANNENSTIEL: Well,
22 that was going to be my question. Do you go to
23 the complainant first and offer to do the retrofit
24 in the home? Or does the applicant decide to
25 operate differently -- does the project owner

1 decide to operate differently and reduce it that
2 way? Is it entirely up to you? Do you --

3 MR. GALATI: I'm sure that --

4 PRESIDING MEMBER PFANNENSTIEL: How do
5 you --

6 MR. GALATI: -- since I've asked for the
7 CPM's approval, in my understanding is we probably
8 would bring a proposal to the CPM. And so that's
9 the plan that needs to be prepared for the CPM and
10 submitted to them on how we intend to do it.

11 And from that perspective, if we needed
12 some language that the CPM specifically approves
13 that plan, that's fine, if that was left out.

14 But I do want to address that there's no
15 one-year limit that I see in this. If there was
16 one, and it's a holdover, we'll take it out. It
17 wasn't our intention.

18 Second of all, the 3 dba was the
19 different between 52 and 49. And so if 49 was
20 what we were trying to get to, we said we'll get a
21 3 db difference.

22 And the real issue here is for the
23 really minor chance that we might operate, and
24 that it actually would interfere and cause an
25 impact, not just a number, but an impact, we

1 wouldn't have spent tens of millions of dollars
2 now versus taking the risk. Because we believe,
3 once again, 52 doesn't cause a significant impact
4 and we're not going to be operating then.

5 ASSOCIATE MEMBER GEESMAN: Tens of
6 millions?

7 MR. GALATI: Yes.

8 ASSOCIATE MEMBER GEESMAN: Could you
9 explain?

10 MR. GALATI: We're already doing a
11 significant amount of noise mitigation. And so my
12 understanding is that there we're talking about
13 expensive sound walls, enclosures, quite a bit
14 beyond what we're already doing, which is stack
15 silencers, certain enclosures, certain insulation
16 which we're already doing.

17 And that is becoming extremely
18 expensive.

19 ASSOCIATE MEMBER GEESMAN: Thank you.

20 HEARING OFFICER SHEAN: Folks from L.A.
21 County had written a letter back in June when we
22 were conducting the evidentiary hearings. And the
23 PMPD refers to that. And since you're on the
24 phone, we'd like to invite any comments from any
25 of the appropriate departments within L.A. County,

1 if you'd like --

2 MR. DUDAR: Thank you, Commissioners. I
3 would like to make a very brief statement. My
4 name is Phil Dudar and I'm with the County of Los
5 Angeles.

6 First, let me express my thanks to the
7 Commission Staff for (inaudible) with a thorough
8 review and sound recommendations, the proposal.

9 The County, based on the facts that are
10 presented in the document, and in our research the
11 type of plant being proposed in the Walnut Creek
12 have become concerned with the noise level that
13 it's going to generate, and with the vibration
14 level.

15 So be, for you guys, on the same page
16 here as me, the plant is in the City of Industry.
17 However, the County is looking at the residences
18 in the adjoining unincorporated area,
19 unincorporated community. And that's who we are
20 advocating for.

21 So, based on our analysis here, and the
22 reviews on the facts, we do believe that certain
23 or appropriate mitigation is necessary in this
24 case to minimize the noise impacts to the
25 residents in the area.

1 We believe that retrofitting
2 neighborhood homes with suppression windows and
3 air conditioners, what-have-you, is appropriate
4 and wanted in this case.

5 However, we will go along with the
6 staff's recommendation because we also felt that
7 it was reasonable, we do accept it.

8 Since we commented on the document we
9 have not heard back from the applicant with any
10 proposals. No one has communicated with the
11 County on what they believe is an appropriate
12 mitigation measure.

13 We strongly disagree with the sole
14 concept that, let us build it and whenever we get
15 a complaint then we will deal with it. Because
16 that's like saying, you know, let those guys fight
17 city hall when something comes up. And we all
18 know it is going to be a very uphill battle to
19 mitigate a single resident, let alone an entire
20 neighborhood.

21 In this case we believe that mitigation
22 should be upfront. It should be on a proactive
23 basis, not reactive. And it should be on
24 neighborhood-wide basis, not on individual
25 residents as they complain and make noise. And

1 that's regardless of the hours of operation.

2 There is an impact to that community now
3 and it should be mitigated.

4 That's really all I have to say. We ask
5 the Commission to approve the project with the
6 mitigation that is articulated by staff.

7 The people that have reviewed the
8 project, Mr. Cole Landowski, is available to
9 answer any technical questions if you so choose.

10 HEARING OFFICER SHEAN: Thank you, Mr.
11 Dudar. Let me just ask you the question, since
12 you indicated that the County has formed its view
13 or concluded that there is the potential for
14 significant impact to these neighboring
15 unincorporated communities.

16 Are you coming to that conclusion based
17 upon any information that is not currently
18 available to the Commission in its record?

19 MR. DUDAR: I'm going to defer this
20 question to Mr. Landowski because I know he did
21 some research, if I may.

22 HEARING OFFICER SHEAN: Okay.

23 MR. DUDAR: Cole, can you answer that
24 question, please.

25 MR. LANDOWSKI: Yes. We have, Carlo

1 Cartahena, have done some review and as a similar
2 facility was built in Canada, and some noise --
3 one of the questions I have is how much of -- is
4 this plant going to impact that community.

5 I mean, it's been mentioned that a lot
6 of mitigation -- mitigating measures are being
7 taken. But is it going to be over what? Over the
8 ambient 5?

9 MR. GALATI: The way that the mitigation
10 as we proposed it will be, will work, is that it
11 will be no greater than 5 db, as measured over the
12 average L90, except the rare occasion of operating
13 at night. And then upon a complaint the project
14 will either stop operating at that level, or will
15 incorporate mitigation such that there is no
16 perceptible 5 db increase, no more than a 5 db
17 increase.

18 And, again, unlike the County standards,
19 which is an L50, the ambient has been determined
20 here quite a bit lower because the Energy
21 Commission uses the L90, which is the quiet six
22 minutes of an hour.

23 MR. LANDOWSKI: And the estimate of the
24 amount of noise being put out, is that from
25 modeling or looking at similar facilities?

1 MR. GALATI: It's been based on
2 guarantees provided by the manufacturer, and then
3 fed into a very complex model. And we do have a
4 condition that limits the noise to 52. And this
5 noise-7 will be a condition on top of that one for
6 that rare instance. That was our proposal.

7 MR. LANDOWSKI: -- and the proposal --
8 as enforced only in the quietest four hours of the
9 evening, is that what you're saying, also?

10 MR. GALATI: Yes. Since the lowest L90
11 averaged possible is during those four quietest
12 hours, that is where we run into a 5 decibel,
13 possibly more than 5 decibel, problem.

14 And so we addressed the additional
15 mitigation. And, again, we are doing significant
16 mitigation to be down to 52. The additional
17 mitigation would kick in in the event that we are
18 operating during that time and it does create a
19 nuisance resolving into a complaint.

20 And here at the Commission they have a
21 very successful noise complaint resolution
22 process. It's not like fighting city hall.

23 MR. LANDOWSKI: But we're a little
24 concerned with Carlo's research is that the level
25 of increase is being under-estimated. Carlo, why

1 don't you explain why.

2 MR. CARTAHENA: Yeah, my name is Carlo
3 Cartahena, with the L.A. County Department of
4 Public Health.

5 And I did a quick review of the proposed
6 project. And I did go and search for similar
7 projects somewhere else. And I found a project in
8 Canada which is called the Clover Bar gas turbine
9 project, which is in Calgary, I believe it's in
10 Calgary, Canada.

11 MR. GALATI: Was that an LMS100 GE
12 turbine?

13 MR. CARTAHENA: Yes.

14 MR. GALATI: I don't believe that there
15 is an LMS100 --

16 MR. CARTAHENA: They use two LMS100
17 units.

18 MR. GALATI: What's that?

19 MR. CARTAHENA: LMS100 in this project
20 in -- is proposing five of those.

21 MR. GALATI: So it's not built, correct?

22 MR. CARTAHENA: The one in Canada --

23 MR. LANDOWSKI: Is built.

24 MR. CARTAHENA: -- is built. I believe
25 it's been built. And the -- consultants involved,

1 it's the HFP -- Consultants Corporation.

2 Now, they're optimal noise control
3 strategy is enclosure of both LMS100 units because
4 of the noise impact to the community.

5 MR. GALATI: We have enclosures and
6 stack silencers and additional insulation. And in
7 fact, I believe we're purchasing one of the most
8 restricted GE packages for restricting.

9 And, again, our modeling and our noise
10 are based on GE's guaranteed numbers and sound
11 power levels that they provided, which were fed
12 into a -- model, and that's the numbers that we
13 actually have in an enforceable condition. Which
14 is 52 under noise-4, and then the noise-7 in the
15 event of a complaint.

16 MR. CARTAHENA: Now, the Canadian plant
17 is in the actual operation. They're -- actual
18 measurements taken, rather than modeling. I don't
19 know, Carlo, did you --

20 MR. CARTAHENA: I think the one I
21 suggest the Commission is to look into this
22 similar project and see what their experience is,
23 and what possible problems they encounter, you
24 know, in mitigating the anticipated noise problems
25 that these units are going to create in the

1 community.

2 Now, the other question we have is the
3 significance of the 9 dba. I believe that's a
4 really significant level that is being extended
5 the ambient noise level.

6 HEARING OFFICER SHEAN: We're just
7 trying to take your comments. We're not here for
8 at least the Committee purposes to answer
9 questions. If you have concern about anything in
10 the document, or about the testimony that's been
11 offered, this is your opportunity to state that.

12 MR. LANDOWSKI: Well, one more thing, it
13 looks like there's going to be a 9 dba above
14 ambient impact on communities when this plant is
15 operating.

16 MR. CARTAHENA: And that is significant.

17 MR. LANDOWSKI: And that is significant.
18 In other words, we're not sure if you're saying
19 that it's only going to be a 5 dba difference, and
20 that's only going to occur during the quietest
21 four hours of the evening. We're not quite sure
22 on that.

23 HEARING OFFICER SHEAN: All right.
24 Well, the document says what it says. And in the
25 analysis I recall that as part of the PMPD

1 analysis we had indicated that if it had operated
2 overnight and into the four quietest hours, that
3 the mathematics came up with a 9 dba difference.

4 But I got to tell you that one of the
5 things that has happened, and Commissioner Geesman
6 has alluded to this, and I'm going to get back to
7 it, is that now the testimony in the record that
8 supported the conclusion that there would be
9 operation potentially into the overnight hours,
10 and that that operation wasn't going to be a
11 merely isolated incident, but might occur with
12 some frequency, staff has withdrawn that
13 testimony. Or at least acknowledged that it was
14 in error.

15 So, gentlemen, if you have anything
16 further to say, because if not I have a couple of
17 questions for the Commission Staff.

18 MR. LANDOWSKI: One more thing I want to
19 mention is I'm concerned, I don't know if the
20 representative of the Supervisor (inaudible),
21 complaint is during the four quietest hours in the
22 evening, but at some other time they have no
23 ability to complain. And I wonder if that
24 concern --

25 HEARING OFFICER SHEAN: There's no

1 limitation upon their ability to complain. There
2 is a noise complaint process that's available
3 through construction and operation, and operation
4 at anytime of the day, or if it occurs in the
5 evening.

6 And so there is that process available.
7 What is being discussed here by the applicant is
8 in addition to the standard complaint process,
9 there is a complaint process that would allow a
10 remedy for the complainant that might go as far as
11 retrofitting their home with some sound-dampening
12 measures so that the impact to them, if it were
13 significant, would no longer be significant.

14 Okay. Let me -- I want to follow up
15 here now with the staff, because of what
16 Commissioner Geesman asked you.

17 We've looked at the Committee's
18 discussion with respect to this, and what we saw
19 in the staff's discussion in the FSA that there
20 were two grounds for your determining that a 52
21 dba noise level was not significant.

22 The first was there was hearsay
23 information that the LMS100 was going to operate
24 more quietly than the test data indicated. And
25 secondly, that the incidence of night-time

1 operation would be rare.

2 The testimony that the staff has now
3 come back with not only goes from 65 percent
4 capacity factor, it takes it down as low as an
5 average of 17, which is far far different. And
6 the testimony from the applicant here is that its
7 operation, if it was going to occur into night-
8 time hours, let alone the four quietest, is
9 extremely rare.

10 Now, essentially a significant leg in
11 the Committee's discussion with respect to the
12 support for a condition of 49 dba has been knocked
13 out from under us. So the question now to the
14 staff is what would support us doing a condition
15 at either 48 or 49 dba.

16 MS. DeCARLO: Well, it doesn't seem that
17 the Committee's completely comfortable going back
18 to the 52. I mean, you're obviously entertaining
19 this noise 7. So it seems to me that the
20 Committee does want some form of mitigation to
21 occur, if, in fact, it does operate at night and
22 affect someone.

23 I mean this noise-7 doesn't require that
24 there be any certain level of operation at those
25 night-time hours. It just requires that it have

1 operated once, and that there we a noise complaint
2 during those four hours.

3 HEARING OFFICER SHEAN: Well, you're
4 anticipating my next question, then, which is
5 under CEQA the impact must be significant. We
6 pass some threshold where there's an impact, it's
7 noticeable, it's adverse, but it's not significant
8 yet. And then we're going to get to this tipping
9 point where it becomes significant.

10 And I guess the question is, as we
11 consider what the applicant has offered, is one
12 instance the difference between not significantly
13 adverse and significant.

14 MS. DeCARLO: And I don't know that we
15 have testimony to that effect. I mean I don't
16 think we've really delved into how many times does
17 it take for an impact to be significant or not.

18 The PMPD, in my brief reading of it,
19 seemed to indicate that a 5 dba change was enough
20 in and of itself to be a significant impact. I
21 could have mis-read that.

22 I think our main concern at this point
23 is that noise-7 is so unworkable that it really
24 does not add anything in terms of mitigation. It
25 presents a huge problem for our compliance staff

1 to try and enforce this.

2 We've had experience in the SMUD project
3 with a similar condition, better worded than this.
4 And that was difficult.

5 So if the Committee is entertaining a
6 condition, something in between this 52 --
7 straight 52 requirement or straight 48 dba
8 requirement, then staff would suggest that noise-
9 7, as it's written now, is not the approach.

10 And perhaps if we were given a little
11 bit more time we could comment further on the
12 potential problems and potentially, with working,
13 perhaps, with L.A. County, try to come up with
14 something that might satisfy this quest for
15 something in the middle.

16 If I could just respond to one other
17 thing. I did misspeak. There is no one-year
18 limitation on the condition as proposed by the
19 applicant. However, their verification process
20 does pretty much insert a limitation.

21 As it currently stands, there's only a
22 one-time notification to people that this option
23 is available, this mitigation option. It only
24 goes to property owners, not necessarily people
25 who actually reside in rental properties. And it

1 only goes to those within 1500 feet of the noise,
2 the WCEP boundary.

3 And staff's not satisfied that that
4 encompasses the entirety of those who could
5 potentially be affected by a night-time noise
6 increase in those quietest hours.

7 So, we do have a lot of concerns with
8 the condition, as written. We haven't had a
9 substantial amount of time to really look further
10 into it, except for those obvious problems that
11 we've identified today. And we would like at
12 least the opportunity to try and potentially craft
13 something a little bit more workable.

14 HEARING OFFICER SHEAN: Okay, we'll see
15 about that. Can you address my question on the
16 tipping point and --

17 MR. GALATI: Yes. We think that that,
18 even a few times, is not a tipping point. We made
19 that case in the AFC. We thought we made that
20 case with staff. We had an agreement with staff
21 on the FSA that this project was very unlikely to
22 operate during those four quietest hours, so those
23 four quiet hours shouldn't be what drives the
24 ambient down. 52, and going back to what the FSA
25 said, after they had a year to consider the

1 matter, they came up with a straight 52.

2 Now a 49 belt-and-suspenders approach is
3 unacceptable to them. We would much more prefer
4 noise-4. And we believe the record supports it.
5 To go back to 52, it's rarely operating plant. We
6 don't need noise-7. If the Committee wants a
7 suspenders approach, that's why we threw it out
8 there. We certainly don't want it any more
9 restrictive than it is.

10 We selected a 1500-foot radius because
11 that was where the projection problem was. We'd
12 be more than happy to send out the notice a little
13 bit longer.

14 Once, again, we believe 52 is not an
15 impact, because if there is any time operating
16 during those really low ambient hours, it's so
17 extremely rare, not enough to be significant.

18 HEARING OFFICER SHEAN: All right.
19 Anything further from L.A. County on this subject?

20 MR. CARTAHENA: On the -- yeah, unless
21 the question is on the tone of noises, though.
22 How are you -- are you going to have those tone of
23 noises? Because there's no specific mitigation
24 measures being suggested or recommended on the
25 report.

1 MR. GALATI: There is a 25-hour noise
2 survey in which tonal noises are identified. And
3 there is a noise complaint resolution process
4 which, if there are -- in fact, there's a
5 prohibition on pure tonal noises. And I believe
6 that that is what the Commission has done in the
7 past, and would continue to do. And maybe Mr.
8 Baker could talk about whether that's been
9 successful.

10 But I believe that tonal noises are not
11 only addressed in the preliminary staff
12 assessment, the final staff assessment, the
13 application for certification, but they end up in
14 the culmination of the noise-2 complaint report
15 resolution process. And I'm not sure which other
16 condition, but I think maybe N-4.

17 HEARING OFFICER SHEAN: It's in noise-4
18 (c).

19 MR. GALATI: Yes.

20 HEARING OFFICER SHEAN: Okay.

21 MR. CARTAHENA: We --

22 HEARING OFFICER SHEAN: So, it's there.

23 MR. CARTAHENA: -- a minus 5 db on the
24 tonal noises that we have in our code in L.A.
25 County. And, you know, the Committee should

1 really look into that as an -- you know, maybe use
2 that as a optimum code, as a restriction on tonal
3 noises.

4 HEARING OFFICER SHEAN: All right, we'll
5 consider that. That's why this comment period
6 exists, and that's why you're talking to us.
7 We'll look at it.

8 MR. GALATI: And I would just like to,
9 in response to that last part, is I think we have
10 previously submitted comments on the applicable
11 and whether or not the County noise ordinance is
12 applicable LORS in this case.

13 HEARING OFFICER SHEAN: All right, we're
14 going to --

15 ASSOCIATE MEMBER GEESMAN: Does the
16 staff disagree with the applicant on that last
17 question?

18 MS. DeCARLO: No, we do not believe that
19 the County LORS ordinance applies to this project.

20 MR. LANDOWSKI: I just wanted to ask
21 again in that zone we're talking about, when this
22 plant's in full operation, what are the kind of
23 ballparks of which are going to be over the
24 ambient, how much decibels over the ambient are
25 you going to be?

1 HEARING OFFICER SHEAN: Well, there's a
2 complete discussion of that for both daytime and
3 essentially evening in the PMPD, itself. So,
4 rather than repeat what we've published and has
5 been out for almost a month, I'll just refer you
6 to that.

7 MR. SIMMONS: This is Dick Simmons
8 speaking. Would there be a possibility to have a
9 community meeting at the Glenelder Elementary
10 School with the impacted residences within the
11 1500-foot radius as depicted in your study here,
12 to basically lay -- to have those folks basically
13 have a clear understanding of what is coming down
14 the pike?

15 I know that proper notification has been
16 made, but at any of the public meetings that we've
17 had in the City of Industry, residents in the City
18 of LaPuente, which is directly north of this
19 location, nor residents south of, near Gale
20 Avenue, my community is Rowland Heights, or in
21 Hacienda Heights, the participation has been
22 almost nil.

23 I would like to do some continuing
24 outreach before the Commission makes a
25 determination on this project, to make sure that

1 our public, our community is well aware. Is that
2 possible.

3 HEARING OFFICER SHEAN: Well, certainly
4 your outreach is possible. I think, as you have
5 stated, we, at the commencement of the project,
6 mailed out notification to a wide swath of
7 homeowners in the area. Plus we conducted our
8 initial hearings down there. There was newspaper
9 notification.

10 And as you essentially correctly
11 characterize, there was no community involvement,
12 or let me say, very limited community involvement
13 at the time of the informational hearing. And
14 that has petered out to basically nothing over the
15 span of the proceeding.

16 So, obviously we have no problem with
17 any outreach effort that you wish to make on your
18 own. I think we have done what we do, and we have
19 done it well in terms of attempting to get the
20 public involved.

21 And we're now at the 11th hour of this
22 proceeding. And most of this discussion with
23 regard to noise is a highly technical matter that
24 relates to what are the anticipated impacts of the
25 project, as well as what is the likely frequency

1 of operation, based again on technical data
2 related to historical information available from
3 the Cal-ISO. Which addresses the operations of
4 facilities that essentially are somewhat like
5 this. But they're not identical.

6 So, anyway, that's what I think the
7 feeling of the Commission is, that you do have an
8 opportunity to conduct further outreach. There
9 will be another public hearing on this matter.
10 And we will have the same setup so that
11 teleconferencing would be available to anyone --

12 MR. SIMMONS: So, you're -- so the
13 applicant would not entertain making a
14 presentation in Glenelder if I could set something
15 up for my community?

16 HEARING OFFICER SHEAN: Well, that would
17 be between you and the applicant. But, as far as
18 the Commission is concerned, --

19 MR. SIMMONS: Okay.

20 HEARING OFFICER SHEAN: -- that's a
21 different matter.

22 MR. SIMMONS: Okay, this -- okay.

23 MR. GALATI: We can tell you that there
24 were representatives from Glenelder at the first
25 hearing. We also did an extensive public outreach

1 both before we filed the application with the
2 Energy Commission, and during the application with
3 the Energy Commission. And we found very little
4 community interest. So,, --

5 MR. SIMMONS: The distribution list of
6 your notifications really doesn't really indicate
7 any wide outreach. And I know you do mailings on
8 notifications and stuff, and sometimes -- you
9 know, I have trouble with my postal service out
10 here as far as getting delivery of notifications
11 that we make. And it's kind of strange that
12 nobody from the Glenelder -- Glenelder Elementary
13 School area has voiced any concerns about this.

14 MR. GALATI: Well, there were some that
15 participated. And I think when you see that the
16 Energy Commission analysis addresses whether or
17 not there's any impacts to those particular
18 communities in all 23 technical areas, I think
19 that you can clearly see why there is not
20 outreach.

21 But, again, this is Scott Galati, on
22 behalf of the applicant, and we're not responsible
23 for a notification list. But we did do our own
24 public outreach.

25 And I would ask at this time, Mr. Shean,

1 just out of an abundance of caution, because I
2 don't know the real legal requirement here, but
3 I'd like to make sure that the Public Adviser's
4 Office report, which they prepare both for the
5 site visit and other onsite, their outreach
6 efforts are included in this record.

7 MR. SIMMONS: Okay.

8 HEARING OFFICER SHEAN: I believe they
9 are --

10 MR. SIMMONS: Maybe somebody could, if
11 they could forward that, some information to me,
12 so that I can assure the Supervisor that
13 sufficient notice has gone out to our residents?
14 I'd appreciate that.

15 HEARING OFFICER SHEAN: And this is Mr.
16 Simmons talking?

17 MR. SIMMONS: Dick Simmons, yes.

18 HEARING OFFICER SHEAN: Okay. Yes, sir,
19 we'll do that.

20 MR. SIMMONS: Okay, thank you.

21 HEARING OFFICER SHEAN: All right.
22 Let's move off of noise at this moment now to some
23 of the rest of the applicant's comments on the
24 PMPD. And then we come up on alternatives.

25 And I guess there -- also this

1 discussion is any reference to SCE is incorrect
2 and it should be EME.

3 MR. GALATI: As you could imagine, we're
4 very sensitive to that.

5 HEARING OFFICER SHEAN: Okay. And I'm
6 not sure, your page 224 reference with regard to
7 Etawanda, it merely states that they are two
8 separate entities. Is there an actual error in
9 that paragraph number 8 that you want us to
10 change? Or are you just restating the fact that
11 they're separate entities? I couldn't determine
12 whether that's -- given that the Etawanda site is
13 not a live alternative.

14 MR. GALATI: It looks like it's saying
15 it would be demolished before the applicant took
16 control. Is that what you mean? Or it is
17 demolished before SCE takes control to build the
18 peaker, or whatever they're doing there.

19 HEARING OFFICER SHEAN: Okay. Well,
20 we'll try to figure that out and maybe it's one of
21 those things that's affected by the already
22 demolished warehouse.

23 Now, how about the transmission systems
24 engineering conditions. You want clarification so
25 that it's clear that it's the owner's transmission

1 facilities. By that I assume you mean the project
2 owner's, right?

3 MR. GALATI: Yes, that's what we want
4 is --

5 HEARING OFFICER SHEAN: Okay. Now, if I
6 understand correctly, a term of art that's out
7 there in the electricity community is transmission
8 owner, is that correct?

9 MR. GALATI: Yes.

10 HEARING OFFICER SHEAN: I just want to
11 make sure that owner is the correct word, and
12 perhaps you could let us do the wordsmithing on
13 this, and we'll get it so it's fairly clear that
14 we're referring to the project owner and its
15 transmission facilities.

16 MR. GALATI: Yes.

17 HEARING OFFICER SHEAN: Okay.

18 MR. GALATI: Mr. Shean.

19 HEARING OFFICER SHEAN: Yes.

20 MR. GALATI: One alternative would be to
21 just use WCE or applicant-owner or something like
22 that. That language would be helpful.

23 HEARING OFFICER SHEAN: Okay. What I
24 want to do is indicate that we are going to do two
25 things essentially with respect to the material we

1 have here.

2 First of all, we're going to deliberate
3 the whole matter with regard to capacity factor
4 changes, noise changes and such in response to the
5 comments.

6 Then there are a lot of what I would
7 call very small, minor, either typographical or
8 diction or other type changes which rather than
9 put in an errata, I just want to indicate for the
10 record, what we're making. And they will appear
11 in the final copy of the Commission's decision.

12 And those minor changes, with regard to
13 the staff's filing, include AQ-SC-8; and then all
14 of your air quality comments on page 12, 1, 2 and
15 3; the paleo comments on page 18, 1 and 2; the
16 socio comment on page 20, which is 1 and 2.

17 Then with respect to the applicant's,
18 all your project description changes with regard
19 to the existing warehouse. Also that 50 megawatt
20 being the lowest generating level for the project.
21 All of the air quality changes; the
22 socioeconomics; the public health; the water
23 resources; the alternatives that we just
24 mentioned; and lastly, the transmission system
25 engineering changes.

1 We expect to have a document out called
2 Revision to the Presiding Member's Proposed
3 Decision on or before September 25th, that will
4 address all the matters that we've heard today.
5 That would put us in the position to have the full
6 Commission consider whether or not to adopt the
7 Committee's Revised -- or the revisions to, and
8 the Presiding Member's Proposed Decision, at its
9 regularly scheduled business meeting on October
10 10.

11 Of course, there will be separate
12 notification of all of this.

13 MS. DeCARLO: Can we have leave to file
14 comments on the noise-7 proposal?

15 HEARING OFFICER SHEAN: Yes. And if you
16 do -- and you may file something, given that we
17 have now ten days plus or so, and I think you
18 should do it within ten days -- it's to address
19 the question of whether or not a single event,
20 with respect to the use of noise-7, whether or not
21 a single event is sufficient to go from a status
22 of no significant potential environmental impact,
23 to its being significant.

24 And if one may not be sufficient for
25 significance, what is?

1 Because these are questions the
2 Committee is going to be asking itself, and has to
3 weigh and grapple.

4 And then if you can reach a number, for
5 example, that is significant, then what do you do?
6 do you what's in the offered noise-7, or you do
7 something else.

8 Are there any other comments from any of
9 the parties who are present, or from people who
10 are in the audience?

11 All right, with respect to the telephone
12 people, is there anything further you'd like to
13 say before we close the meeting?

14 MR. CARTAHENA: This is -- Public
15 Health, again, L.A. County.

16 HEARING OFFICER SHEAN: Yes.

17 MR. CARTAHENA: To assure compliance,
18 has the Committee included penalty assessment for
19 noise exceedances?

20 HEARING OFFICER SHEAN: There are no
21 financial penalties included in any of the
22 conditions, if that's your question.

23 MR. CARTAHENA: Okay, the second
24 question is who's going to -- is there going to be
25 an independent agency investigate noise

1 complaints?

2 HEARING OFFICER SHEAN: The California
3 Energy Commission has sole responsibility over the
4 monitoring of the operation of the facilities it
5 licenses, so there will be no other agency
6 responsible for monitoring compliance with
7 conditions that are part of this certification.
8 So I think the answer to your question would be
9 no.

10 ASSOCIATE MEMBER GEESMAN: Or yes, if
11 you consider the California Energy Commission an
12 independent agency. You know, we do have a
13 compliance process; it's articulated in
14 considerable detail in the decision.

15 MR. CARTAHENA: Thank you.

16 ASSOCIATE MEMBER GEESMAN: I guess the
17 question I would have, Garret, is whether we have
18 procedurally the ability to invite a joint
19 proposal on noise-7. Because I'm wary of the
20 staff perhaps misinterpreting or selectively
21 reading the PMPD.

22 My personal opinion is that the PMPD's
23 recommended 49 was based on the assumption that it
24 was correcting some mistakes in arithmetic between
25 the noise staff and the electricity assessments

1 office.

2 The electricity assessments office,
3 having either withdrawn their testimony, or
4 acknowledged that it was in error, means that
5 there was not an arithmetic deficiency for us to
6 correct.

7 So I think it's probably ill advised to
8 seize upon that 49 or change it to 48. To me the
9 question is whether you think the applicant is
10 well grounded in suggesting a belt-and-suspenders
11 approach. You've indicated that you don't think
12 his particular belt-and-suspenders is workable.

13 I think the choice to you is to either
14 get together and work out a workable belt-and-
15 suspenders, or simply say, no, it's not worth the
16 trouble. But that's only my personal impression
17 of what was intended to be conveyed in the PMPD.

18 MS. DeCARLO: And I don't know to what
19 extent we're constrained by our various
20 regulations from doing that without a public
21 meeting --

22 ASSOCIATE MEMBER GEESMAN: Yeah.

23 MS. DeCARLO: -- that would require the
24 end-day noticing provision.

25 ASSOCIATE MEMBER GEESMAN: So I suspect

1 that it would be unwise for us to invite such a
2 joint proposal, but I certainly hope that your
3 thinking starts to be impelled in at least a
4 somewhat parallel fashion.

5 MS. DeCARLO: Thank you for that
6 direction.

7 HEARING OFFICER SHEAN: Or that if you
8 do communicate with each other substantively on
9 the matter, you make sure you have a paper trail
10 that indicates what those communications are. And
11 we do know that the notice of conversation or
12 similar type things do do that for purposes of the
13 Energy Commission's record.

14 All right, I believe there's nothing
15 further for us with respect to this meeting. We
16 want to thank everyone who has participated. We
17 want to thank our friends from Los Angeles County
18 for giving us a call.

19 This meeting is adjourned.

20 (Whereupon, at 3:30 p.m., the hearing
21 was adjourned.)

22 --o0o--

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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of September, 2007.

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