STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of: Docket No. 97-AFC-1
Application for Certification
for the High Desert Power Project

COMMITTEE CONFERENCE

California Energy Commission
1516 Ninth Street
First Floor Hearing Room A
Sacramento, California 95814

Wednesday, May 20, 1998
10:00 a.m. to 2:11 p.m.

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ROBERT A. LAURIE

Staff Present:
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MARC D. JOSEPH, Adams Broadwell & Joseph
On behalf of California Unions for Reliable Energy (CURE)

For the Public:
OSCAR HELLRICH, Mojave Desert Air Quality Management District
ALAN DE SALVIO, Mojave Desert Air Quality Management District
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COMMISSIONER SHARPLESS: Good morning, I'd like to welcome you all to the Energy Commission's Committee Conference on the High Desert Power Project. I'd like to start with introductions. To my left is Commissioner --

COMMISSIONER LAURIE: Moore.

COMMISSIONER SHARPLESS: Laurie. I'm sorry, Bob, I'm having a little problem here this morning. Commissioner Laurie. To his right is Stan Valkosky who is the Hearing Officer for this project. I am the Presiding Member, Jananne Sharpless, at least I remember my name. I'd like to go through introductions of the parties starting with the applicant and going around the table. Would you like to start, please.

MR. CARROLL: Yes. Mike Carroll with Latham and Watkins on behalf of the applicant.

MR. WOLFINGER: Rick Wolfinger, Project Manager, High Desert Power Project.

MR. THOMPSON: Allan Thompson on behalf of the applicant.

MR. BUELL: Rick Buell, Energy Commission Staff, Project Manager.

MS. HOUGH: Caryn Hough, Staff Counsel.

MR. JOSEPH: Marc Joseph on behalf of the
COMMISSIONER SHARPLESS: Thank you very much. As I said, this is one of the many Committee Conferences that we have scheduled to look at the status and progress of this project. This particular public conference was scheduled in a notice that was Dated May 4th so hopefully you all received that.

Today's conference will provide each party an opportunity to inform the Committee on the status of the High Desert case, including any potential delays; to update the Committee regarding the status of information still needed for the analysis of various topic areas; and third, discuss out-scheduling and any other matters relevant to the proceedings. We have our Public Adviser in the back of the room, Roberta Mendonca, and she has blue cards for those of you in the audience that would like to at some point in time comment on any of the topics that we will be discussing today.

In its May 4th Notice and Order the Committee specified due dates for the submission of various information and directed the parties to propose scheduling alternatives, which would include completion of the analyses for various topic areas. The Committee would prefer that the applicant, then staff, then CURE summarize their concerns in each individual topic area, then we'll have an opportunity to do a
round table discussion.

We will begin with the topic of Transmission followed in turn by Water and then other topics including the Department of Toxic Substance Control permits, the second natural gas pipeline and finally Air Quality. We have reversed somewhat from what we did the previous time. After these topical areas are discussed each party will have an opportunity to address the scheduling concerns. So unless there are any other questions by the parties here we can begin. Perhaps we can start with the applicant discussing the status of the transmission study.

**TRANSMISSION**

MR. WOLFINGER: I'd like to ask Andy Welch my Project Director, he was with Southern California Edison yesterday, to address that.

MR. WELCH: Just briefly, the draft of that report was finished and circulated internally at Edison, we're hoping to submit that to the Docket on Friday of this week. They're hoping to send that out to us -- to ship that out at the close of business on Thursday.

COMMISSIONER SHARPLESS: If my recollection serves me that was to have been out on, was it May 15th?

MR. WELCH: That was what they had targeted for but they didn't make that.

COMMISSIONER SHARPLESS: So now the draft will be
out, did you say this coming Friday?

MR. WELCH: This Friday, yes, so they're one week late.

COMMISSIONER SHARPNESS: Okay. So we have had a week slippage?

MR. WELCH: Yes.

COMMISSIONER SHARPNESS: And that means that the ISO is going to have a week less or a week more depending on how the process works.

MR. WELCH: Right. I don't know how it is going to impact them. They are roughly familiar with the study that has been done but they do not have it yet.

COMMISSIONER SHARPNESS: Okay. So you're saying that the ISO has indicated that they need two weeks, okay. So we'll keep that in mind as we talk about the schedule.

Staff, do you have any additional comments on the transmission? I think your status report said that sometime in the first part of June you anticipated, if they were on schedule, to be holding a workshop on Transmission.

MR. BUML: Yes. Staff had previously discussed with the parties a possible date for a workshop of June 9th. Based upon the delay in receiving the interconnect study we have proposed delaying that another week. It would probably be advisable to allow the ISO to complete their review. I had received an e-mail yesterday from the ISO indicating that
they still need two weeks to renew the interconnect study so that would mean their analysis would not be available until around June 6th, I believe. So it would be reasonable to delay that workshop to allow others to review what the ISO has concluded and have a productive workshop.

COMMISSIONER SHARPLESS: Fine, thank you.

MR. BUELL: One last thing I would like to iterate is that the applicant should serve the interconnect study on all the parties.

MR. WELCH: That's what we plan to do.

MR. BUELL: Okay.

COMMISSIONER SHARPLESS: Okay, fine. Right, the interconnect study that will be coming out on Friday. We can assume that perhaps all parties will be receiving it on Friday the 22nd?

MR. WELCH: Well, it will be mailed to all parties on Friday the 22nd.

COMMISSIONER SHARPLESS: Okay, fine.

MR. WELCH: And served on the Docket Office on that day.

COMMISSIONER SHARPLESS: Okay, great. And let's see. We have Mr. Joseph.

MR. JOSEPH: I have nothing further to add. We'll work with the staff to schedule a workshop one week after we had previously anticipated.
COMMISSIONER SHARPLESS: Okay, fine. Well, we knew that one would be rather quick. Moving right along we'll go to Water. Mr. Wolfinger, would you like to cover the water issue?

WATER

MR. WOLFINGER: I believe on the 15th -- And I tell you, the unfortunate part is none of us here on this side have got actually what we submitted to you on the 15th because it came out of another office and we haven't got our copies. But I do believe we answered, I believe it was the five questions on the water; is that right? We did?

MR. BUELL: Yes.

MR. WOLFINGER: We're working from our draft. Basically there was a technical memorandum showing some sensitivities of water draw-down, that will be out by the 22nd. We approved that, and in fact it went out yesterday to Diane Gilchrist who then serves it on the Commission.

The models for the well draw-down were already submitted and that was a request that was requested. The annual consumption for the simple cycle, there seems to be -- Although it's important it's a clarification. We don't use that much water on simple cycle but we've given some conflicting data and we'll have the correct data on the 22nd on that. There was a question of the storage tank in the draft water report. The consultant said we should have as a
surge a 1.4 million gallon surge tank. Our application that we originally submitted had a 2.3 million gallon tank in there and that 1.4 is included in that tank so we answered that question.

We also answered the aspect of when the supply -- I believe it was conditions for certification of -- Conditions from the water supplier so that they could be included in the certification. I have to say we're a little fuzzy on that one and the reason for that was that we're still trying to determine who actually is going to be the lead agency down there. They haven't decided if it's going to be -- we're going to get a group called the Victor Valley Economic Development Authority, if they're going to be the lead agency or if the Victor Valley Water District is going to be.

So we do agree that we do have to have the conditions and some sort of a will-serve letter or some sort of an obligation to supply water is going to be required before we construct but at this point in time we're saying 90 days prior to the Energy Commission's scheduled certification we'll have all the conditions at least lined up.

COMMISSIONER SHARPLESS: Can you go into a little bit more detail about how they're going to resolve the lead issue on water. Do you know anything more?

MR. WOLFINGER: Only in an anecdotal manner. We were up with them yesterday and I think what it is is these
various agencies have got to get together amongst themselves
and decide. That's basically what is going to happen. We're
waiting for their direction to figure out -- And I think they
are still trying to determine which one of these agencies,
whether it's Mojave Water Agency, Victor Valley Economic
Development Authority or Victor Valley Water District, who
has got scopes of work and who should be doing what. I don't
think they have decided that amongst themselves yet.

COMMISSIONER SHARPLESS: Okay. I believe I read
somewhere, I don't know whether it was in your document or
perhaps staff's document, that Victor Valley Water District
was planning on holding or having a meeting on the water
issues.

MR. WOLFINGER: Yes.

COMMISSIONER SHARPLESS: Has that occurred?

MR. WOLFINGER: We are having -- Andy went up and
talked to them. Why don't we get Andy to -- He's been
dealing with it. Andy, why don't you come up and --

MR. WELCH: We appeared at their board meeting
about two weeks ago and they asked us if we could do a
further presentation in detail of the water plan. They have
got a consultant that is looking into -- to verify the
numbers that we had submitted as part of that water plan and
they just wanted the opportunity for the board to hear the
discussion of those.
MS. SHAPIRO: When is that?

MR. WELCH: That's Tuesday.

COMMISSIONER SHARPLESS: The fact that they are having this meeting, is that any indication that they might be the lead?

MR. WELCH: No. I think that what they are is that they would be the ones that would be potentially impacted by the plan, whether they become the lead agency to supply us water or they supply it through someone else. They had the concerns. They just need to verify that we won't impact their plans.

COMMISSIONER SHARPLESS: I guess what I'm struggling with is I don't understand why there is an issue on who is going to be the lead.

MR. WOLFINGER: The Victor Valley Economic Development Authority is the organization that controls the airport area and the base area. They have the franchise to serve water, they have the service of water. The Victor Valley Water District will supply water. The intent, at least at this time, is for the Victor Valley Water District to supply groundwater when we need groundwater and that the Mojave Water Agency will supply Victor Valley Economic Development Authority with state water project water when we're taking state water project water.

The question is, though, Victor Valley Economic
Development Authority is more of just an intermediary in supplying of local transmission of water within this base and they're trying to decide if it's better for us to negotiate directly with the Victor Valley Water District to the conditions of how we're going to pay for the groundwater and simply work it directly with them or we go through Victor Valley Water District who then goes -- Victor Valley Economic Development Authority who then goes to the Victor Valley Water District and negotiates.

So the question is, do they want us to go directly to these end suppliers, Mojave Water Agency and Victor Valley Water District and negotiate directly with them, or do they want to take it. And they haven't decided politically what they want to do.

COMMISSIONER SHARPLESS: Well, what is the decision-making process and what do you think the timing is? Do they have to do this in a board meeting? Are they in charge? Do they have a time frame?

MR. WOLFINGER: We did not -- I have not determined if they -- They are all discussing it but it's simply a matter of discussing amongst the parties.

MR. WELCH: It is board decisions on the part of -- COMMISSIONER SHARPLESS: And they do understand the difficulty that this puts you in, in terms of your schedule here? In that as long as it takes them to sort through these
issues the longer your delay, the more difficult it makes it for us to process this application. So I'm just wondering if someone needs to know what the situation is to get moving on this.

MR. WOLFINGER: The water plan that we have submitted does detail where we're going to get the water, has identified exactly where the water is coming from. It talks about what the issues are. The question actually is where we negotiate. It's much more in the neighborhood of financial, what we're going to pay for it and how we're going to put it in. From the standpoint of a CEQA process and that, I believe we have submitted the information required to make a decision. It's really now a matter of contractually how much money we're going to pay for this or that. But I think the water plan in order to come to a decision has been well established by the applicant.

COMMISSIONER SHARPLESS: Well, I'm not sure that that's going to be adequate, you know.

MR. WOLFINGER: Well, it may not be but --

COMMISSIONER SHARPLESS: They're going to negotiate what they are going to allow you to have. You have submitted your proposal, right? What is the negotiation about, the price of the water or what you're going to have? How much of what you're going to have --

MR. WOLFINGER: It's more -- Probably it's like --
COMMISSIONER SHARPLESS: -- and what mitigation measures.

MR. WOLFINGER: It's things like who is going to be the lead agency that I talk to, actually, and then do I pay for the infrastructure up front and then maybe an O and M charge for them to pump water and move it or do they charge me an annual fee of capacity? Do I pay as I use the water? It's things like that that they haven't decided, you know. Is Victor Valley Water District going to be a wholesaler to VVEDA and I do this through VVEDA? Those are the questions. The fact that the pipe is in the ground and the wells are going to be where they are, that's established.

COMMISSIONER SHARPLESS: This is the way I see the problem.

MR. WOLFINGER: Okay.

COMMISSIONER SHARPLESS: The problem is that in order for us to issue a certification you have to meet all the laws, orders, ordinances, rules, regulations of all pertinent agencies. Water is a big issue in this area. The negotiations will help determine how those rules, laws, et cetera are going to be met. We know what your proposal is. We know what you would like. But we don't know where the negotiations are going to take you. That leaves a detail that is important for us to have I think at the Final Staff Assessment level, not later.
But I haven't heard from staff. I'm speaking as one Commissioner who has been trying to stay on top of this project who knows that she has to do an adjudicatory hearing, who knows that she has to make her decisions based on a record and I want the strongest record possible. Perhaps we can go to staff on the water issues. Would you like to speak on the water issues?

MR. BUETT: Yes. A couple of things. The first one is that regarding -- There seems to be a miscommunication with regard to what staff is requesting regarding the spread sheet, a copy of a spread sheet that was number two listed in our May 8th letter, on page six under Water Resources as a data requirement. At the workshop, I believe it was on April 30th, we had talked about the applicant providing a copy of, an electronic copy of the spread sheet that was actually used to do the modeling. We were looking for that to be provided in response to number two. Although the details of the modeling were presented in the March 15th not all the details, and specifically the fiscal --

MR. WOLFINGER: That was the Excel sheet that you're looking for?

MR. BUETT: Yes.

MR. WOLFINGER: Okay.

MR. WELCH: You did not receive a disk with that data request filing?
MR. BUELL: I have not seen it yet.

MR. WOLFINGER: Not with the data --

MR. WELCH: Back in March you didn't?

MR. BUELL: Not that I --

MR. WELCH: I believe we submitted a disk with that, at least we intended to.

MR. BUELL: We will check Dockets but I do not recall seeing that.

MR. WOLFINGER: We think that the spread sheets came with it.

MR. BUELL: Dockets a few times has not told me about things that have come in so there is a possibility they received it and I was unaware that we had received it.

COMMISSIONER SHARPLESS: Okay, so the only problem is we have got to track down what happened to the stuff that was sent.

MR. WELCH: Right.

COMMISSIONER SHARPLESS: Right.

MR. WOLFINGER: Let me know and we'll submit another copy of the Excel disk.

MR. BUELL: Certainly.

MR. WOLFINGER: A copy of the disk then.

MR. WELCH: The reason that we didn't submit it again is because we wanted to make clear that everything in the March 15th submittal was consistent with the work that
was done for the water plan.

MR. BUELL: Okay, very good, we'll check on that.

The last item -- Actually, the last item that had to be identified is number five on staff's list regarding Water Resources. We had identified that the applicant should provide will-serve letters that contain the conditions which the various water agencies would place upon serving water for the project. And we said that that should be provided prior to certification and that we also said it would be ideally provided prior to issuing the Final Staff Assessment.

In retrospect I think staff used the wrong word when we said ideally. I think we concurred with Jan Sharpless, Commissioner Jan Sharpless' characterization of needing that prior to the FSA. That it is mandatory that we have that information so that we can include in our FSA those conditions that the agencies may want to place upon serving water for this project and additionally to have a complete understanding of the environmental impacts that would be laid out in our Final Staff Assessment. So with that correction we have no other comments on water.

COMMISSIONER LAURIE: Commissioner Sharpless, a question on one point.

COMMISSIONER SHARPLESS: Yes, Commissioner Laurie.

I got it right.

COMMISSIONER LAURIE: On that, question, Mr. Buell.
Will-serves may in fact contain conditions to service; is that right?

MR. BUELL: That is my understanding, yes.

COMMISSIONER LAURIE: And is it also your understanding that those conditions may by themselves have an environmental impact which must be analyzed?

MR. BUELL: Certain aspects, certain things that those districts may require, yes, may result in environmental consequences.

COMMISSIONER LAURIE: So is it staff's position that CEQA mandates that the conditions in a will-serve be analyzed as part of your CEQA analysis?

MR. BUELL: Yes.

COMMISSIONER LAURIE: If the applicant disagrees with that I'd be interested in knowing that, thank you.

MR. WOLFINGER: We do.

COMMISSIONER LAURIE: You do?

MR. WOLFINGER: Disagree.

COMMISSIONER LAURIE: I would be most interested in examining the issue. I think it's an important point. If it is of -- If the timing is of concern to you I'd certainly be most interested in the rationale behind your position.

MR. WOLFINGER: You want to talk about that now?

COMMISSIONER SHARPLESS: Yes, of course.

MR. WOLFINGER: Okay, okay. Our point is a will-
serve letter usually has an --

COMMISSIONER LAURIE: I'm sorry, I did not intend to take up the Committee's time at this point, unless you wanted to, Commissioner Sharpless. I just wanted to make it clear that it is clearly a legal issue and I wanted to make sure all parties had an opportunity to submit at some point argument. If you wanted to listen to it today I would be more than happy to listen to it but I certainly don't need to take the Committee's time today.

COMMISSIONER SHARPLESS: I'm going to let it stand with the applicant. If the applicant feels that it can make its argument today, please do so.

MR. WOLFINGER: Well, we made an argument basically in the response and that is that will-serve letters sometimes have very significant--in order to actually have them signed and documented--very significant financial obligations. And prior to our getting a certification deciding to go ahead we think it is an undue burden on the project to actually have a signed will-serve letter to incur those kind of obligation.

Because there is an obligation on the part of the agency also to supply in a certain period of time and they often will ask for money to be posted ahead of time, bonds, things like this. And to the extent -- And I mention it in the letter. To the extent that we are into significant, non-cancelable obligations we think it's a burden on the project.
To the extent that we can enter into agreements or other
types of things that don't have predetermined obligations
prior to us receiving a certification from the State here to
build a plant and to go on ahead then I don't have as big a
problem with it. But that was my concern.

COMMISSIONER LAURIE: Well, I --

COMMISSIONER SHARPLESS: Go ahead.

COMMISSIONER LAURIE: I'm sorry.

COMMISSIONER SHARPLESS: No, go ahead, Commissioner Laurie.

COMMISSIONER LAURIE: Every will-serve letter that I have ever seen, a thousand of them, basically say, we, the
below-signed district hereby indicate to you that we are
going to serve you water under these conditions, or, we will
assure the delivery of water under these conditions. Those
conditions may have an environmental impact attached to it,
which in my understanding needs to be analyzed as part of our
CEQA analysis. I'm not satisfied that a will-serve is a
legally binding document that binds you to do anything other
than informing you of the terms and conditions under which
you will receive a water supply. So if my understanding is
different than yours I'd be interested in knowing about it.

MR. WOLFINGER: Well, under your definition I don't
have a problem. Victor Valley Water District, when we talked
to them a year and a half ago--and I have to say the
management has changed in that period of time--was very
insistent that a will-serve letter was a legal obligation and
they required a lot of things of us. And that's what makes
me skittish in this environment. That I'm concerned that the
definition of a will-serve letter is going to require me to
get into an obligatory contract. And that's why I couched
my -- I don't -- Your kind of a will-serve letter -- But to
the extent that I have significant, non-cancelable
obligations the will-serve letters are really directed by the
water districts, not by --

COMMISSIONER LAURIE: I understand.

MR. WOLFINGER: So I'm concerned about definition
in this.

COMMISSIONER LAURIE: What is staff's definition of
a will-serve?

MS. HOUGH: I think that we are focusing on perhaps
the wrong thing, which is the title of what the letter is.
What we need to is what conditions, under what conditions is
this project going to get water. If the district can tell us
that without a will-serve letter that's fine, if they can't
tell us that unless they have got a will-serve letter then
that is what we're going to need. But we need to be able to
look at the conditions that will apply to this project
receiving water and then analyze those and make sure that our
FSA analysis is consistent with those.
COMMISSIONER LAURIE: All right.

MR. WOLFINGER: I don't have a problem with that.

COMMISSIONER SHARPLESS: Good. It would probably be well if at some point when the staff -- I know the staff has some workshops set up. If you could pursue this issue to find out precisely what kind of document we can get that has the conditions in that. And if it is something other than a will-serve letter that I think will serve the purposes. We understand about the financial obligation. Commissioner Laurie has a great deal of experience in permits and siting in a county that has very difficult water problems so I yield to his expertise in this area.

COMMISSIONER LAURIE: That experience comes despite my extremely young age.

COMMISSIONER SHARPLESS: That too. Wrong place, wrong time for Commissioner Laurie. Okay, Mr. Jacobs.

MR. JOSEPH: Thank you, Commissioner.

COMMISSIONER SHARPLESS: Mr. Joseph, sorry. Why break my record today of screwing up everybody's name.

MR. JOSEPH: Our position on this is fairly similar to the staff's position. I think we start out with the proposition that there still is no firm water supply for this project. Mr. Wolfinger said that, you know, the fact that there will be wells and pipes on the ground is established. Well, that is not established. Victor Valley Water District
is the one that can establish that, whether that will or will
not happen, and that hasn't happened yet.

Commissioner Laurie, as you pointed out, if they do
succeed in obtaining a secure supply of water, a firm supply
of water, there could well be environmental and socioeconomic
impacts with that, which the Commission has to analyze. The
Commission can't analyze the impacts of obtaining the water
supply and possible mitigation measures other than what the
water district suggests. The Commission may well decide that
there is going to be a significant impact due to the large
amount of use of fresh water in the desert and decide that
you need to look at mitigation measures such as dry cooling.
You need that information and the staff needs that
information to be able to do their assessment of impacts and
potential mitigation measures.

I think there is now general agreement that all of
the information and the security and the firmness of that
water supply is something I think we all agree on has to be
part of the analysis. But I think it's clear that whether or
not the letter is called a will-serve letter there has to be
a commitment for a firm water supply or you don't have a
solid record to proceed on. If that is widespread agreement
then I think we have an issue resolved in concept.

COMMISSIONER SHARPNESS: Thank you, okay. We're
not doing too badly today here, we're speeding right through.
HEARING OFFICER VALKOSKY: I just have two questions.

COMMISSIONER SHARPLESS: Yes, I'm sorry. Stan.

HEARING OFFICER VALKOSKY: Mr. Buell, just to clarify for my understanding. Aside from a missing disk do you agree that applicant has submitted the information that you requested concerning water?

MR. BUELL: There's the one item that will be filed on Friday.

HEARING OFFICER VALKOSKY: Right, there are two items that I believe are coming in on the 22nd.

MR. BUELL: Two items.

HEARING OFFICER VALKOSKY: But aside from those and aside from the missing disk have they satisfied your information requests?

MR. BUELL: I guess Caryn wants me to echo the need for the will-serve letters or something that is functionally equivalent to that as being one outstanding item --

HEARING OFFICER VALKOSKY: Right. I believe the understanding the Committee is proceeding on is that the conditional parts of the will-serve letter are something that have to be available for inclusion into the Final Staff Assessment.

MR. BUELL: Right.

HEARING OFFICER VALKOSKY: At least that is my
understanding of it.

MR. BUELL: As has been tradition, staff would prefer having that information submitted at least 45 days prior to issuing the FSA.

COMMISSIONER SHARPLESS: Which information is 45 days before the FSA?

MR. BUELL: The will-serve letters or the --

COMMISSIONER SHARPLESS: The equivalent.

MR. BUELL: The equivalent thereof, yes.

MS. HOUGH: The conditions.

HEARING OFFICER VALKOSKY: The conditions, yes.

COMMISSIONER SHARPLESS: Okay.

HEARING OFFICER VALKOSKY: I have one final question. Mr. Wolfinger or Mr. Welch, in your submittal you have got a sentence that I would really like explained to me. I'll quote the sentence, it is on page three. And the sentence reads:

"The project does not plan to enter into a binding agreement prior to certification if significant non-cancelable obligations are incurred by the project."

Could you explain to me what that means.

MR. WOLFINGER: That was basically the conversation I had with Commissioner Laurie here and that is, is that in a previous conversation with the Victor Valley Water District
in order for us to sign -- before them being willing to sign
a will-serve letter which they felt was a binding, a legally
binding obligation to them, they require a potentially
posting of bonds or posting of money and doing things like
that. There was a financial obligation.

And they explained to me that that's what they
require, for example, of developers who were putting in a 60
home development and they got a will-serve letter. That
builder before he got a will-serve letter had to post the
money ahead of time, had to put the money into the account of
the Victor Valley Water District before they would provide
the will-serve letter. So that was my concern, is that at
that point in time they were espousing that same thing.
Before they supplied a will-serve letter they wanted to see,
you know, $5 million or whatever the case may be. And that
was -- That was the issue.

COMMISSIONER LAURIE: Did they explain the
reasoning for that? Is it that in order to provide the will-
serve they want to specifically dedicate a specified amount
of water supply? And that having been paid for -- That
amount is not yours if not paid for and then they have a
number of will-serves out there without a specific amount set
aside. Was that their rationale?

MR. WOLFINGER: This conversation occurred about a
year ago and to tell you truth I don't remember. I remember
we discussed some of those issues and they gave their explanations but I don't remember the specifics. I do remember that they were asking for some pretty significant binding obligations and that's what I'm, you know, I'm concerned about.

COMMISSIONER LAURIE: Basically you're telling us that the district is telling you you're not going to get a will-serve unless you put your money up.

MR. WOLFINGER: Well --

COMMISSIONER LAURIE: Because only that way they know you're serious.

MR. WOLFINGER: There was--and I say was because it doesn't exist now--a group that ran that organization that have since -- There's been a reelection, the general manager is gone. I do not know and I have not -- Because this is happening I don't know what the present feeling is of both the management of the Victor Valley Water District and the Board as to whether they would enter into will-serve letters with or without this at this point in time. That's simply the way I answered this question the best I could.

COMMISSIONER LAURIE: I'm just concerned about time, Commissioner Sharpless, water is a critical issue. It's clearly required for our CEQA analysis. I'm not willing to go as far as Mr. Joseph states at this point, that CEQA requires a firm commitment of total and complete water
supply. I am not satisfied today that that's the rule, I know the issue has been raised in other instances. But that's just something that we need.

MR. WOLFINGER: Commissioner Laurie, we did supply a water supply plan that showed where the wells are going to be, what the draw-down is, the ability of the aquifer to support the pumping requirements, the corridors where the pipelines go, paleontology, cultural, botany, biology. So the physical aspects of how the water is gotten, those have been established; what hasn't been established is, in fact, who is going to do it, who is going to pay for it.

COMMISSIONER LAURIE: Pipes are pipes and water is water.

MR. WOLFINGER: And so I think that the physical aspects of the process we have established. What we haven't established is, will Victor Valley Water District own those, will VVEDA own them, will the project own them. Those are some issues --

COMMISSIONER SHARPLESS: And I think the water districts have to agree with your proposal.

MR. WOLFINGER: Absolutely, and that's the answer.

COMMISSIONER SHARPLESS: They know that you are not the only user in town. If they are looking at economic development they are looking at what uses, other uses might come in. I think this power plant is going to be very
important to the community but so are -- so are businesses
that create jobs.

MR. WOLFINGER: Recognize that the adjudication --

COMMISSIONER SHARPLESS: They need water.

MR. WOLFINGER: Yes. Recognize the adjudication
there, that every gallon of water that is used in that
valley, and has been for the last five years and will
continue, will be imported water. That in fact, as long as
there is imported water development will go on. Whether it
is used in a power plant, for a house, for a McDonald's or
whatever it is the aquifers, the underlying aquifers are
really just storage areas for water and they go up and down
with percolation ponds. That in fact, an industrial project
coming in, an expansion of the airport or whatever, it is all
predicated on imported water. That's how that entire process
up there works. It's not a matter of delaying one over the
other or saying, you can't build houses because you have a
power plant, it is all 100 percent imported water for
incremental usage.

COMMISSIONER SHARPLESS: Yes, but everybody has got
a straw in that pond and you are just one of many straws.

MR. WOLFINGER: And that's the critical issue and
that is, you know, one of the things that, you know, the
imported water.

COMMISSIONER SHARPLESS: That's what I'm saying.
I'm saying that I think the water agencies are going to have to look at imported water as well as their own water table and decide what is going to be best for their area. So, you know, it is just not a case of what is in your proposal, it is a case of where those water districts see their future in water.

MR. WOLFINGER: Right. And the water master is the Mojave Water Agency. We had considerable conversations with Mr. Rowe and they are in agreement that this is the proper type of water plan to do. So, I mean, it is not as if this is, you know, that this hasn't all been discussed and talked about down there. The idea of who takes the lead and does what is still up in the air financially, who owns the pipes and the wells. But where the water is coming from, is there sufficient water, does the Mojave Water Agency who is the water master up there, do they have the water, it's there, they believe it's -- And that's the case.

COMMISSIONER SHARPLESS: Well, we've all had to deal with water issues, were it so easy.

MR. JOSEPH: I would just point out two things: One, the water district might say, no, it is not a given yet. They might say, no. They might say, we would prefer 4,000 acre/feet a year or more than 25 percent increase in our obligations to go someplace else that is better economically for this area. So I just have to take issue with the
statements that, you know, all the pipes and wells are all established, all the physical things are all established, we're just talking about money. They're not just talking about money, they might say, no.

Second, Mr. Valkosky, you asked about information requirements. I would just note that we served a set of data requests on May 8th; a substantial portion of those deal with water issues.

HEARING OFFICER VALKOSKY: And has there been any objection to those data requests?

MR. THOMPSON: The data requests while styled 139 to 151 were actually some seventy-plus separate questions and we are evaluating those now and will be -- I think we have until Tuesday because the 15 day time limit from when we received the data requests runs somewhere over this three day weekend, I think it's Saturday or Sunday. So we will be responding on Tuesday, but there's a lot of requests there.

COMMISSIONER LAURIE: Just as long as I understand the rules. Is there a procedure available to object to requests and what is that time period?

MS. HOUGH: Fifteen days.

COMMISSIONER LAURIE: Okay. Is that the 15 days you were referring to?

MR. THOMPSON: It is.

MS. HOUGH: And then the party that asks the data
requests can either come to the Committee for a Motion to Compel or drop the issue.

COMMISSIONER SHARPLESS: Okay, fine. Anything more on Water by the parties? Anybody in the audience? Okay, let's then move to topics that deal with the FAA Visual, the Department of Toxic Substance Control Permit, that grouping.

MR. WOLFINGER: I'm sorry, I'm sorry, I was conferring with my --

COMMISSIONER SHARPLESS: The grouping in your letter that deals with the FAA issues, the visual issue, the Department of Toxic Substance Control permit. Sort of everything that we have got left on the table except for the Pipeline and Air Quality and Scheduling. We'll just cover everything else.

MR. WOLFINGER: Which one do you want to start first with, Waste Treatment?

COMMISSIONER SHARPLESS: If you would like, that would be a good one.

WASTE TREATMENT

MR. WOLFINGER: We submitted a document. We don't believe that we are required to supply a -- it will be classified as a hazardous waste. I have to read my notes here, I'm sorry, here. Let me just -- That we are recycling and that we have stated that we believe that there is no
hazardous waste permit required for our proposed recycling operations, which is what we are. Because basically what this does is it takes the water out of there. We recycle the water and we come up with a solid waste. So it's not as if we're recycling --

COMMISSIONER SHARPLESS: I understand, I have read your paper. I understand that you have had meetings with the Department of Toxic Substance Control.

MR. WOLFINGER: I think we've met -- We've talked to them, we haven't met with them.

COMMISSIONER SHARPLESS: Okay, you have talked to them. And I believe that in order to resolve this issue what you need to do is apply for the exemption; is that not right? That is my understanding of how we resolve this issue. Do you have a different understanding?

MR. WOLFINGER: Just leave me a minute, let me read what I brought along.

COMMISSIONER SHARPLESS: Sure.

MR. WOLFINGER: I am not sure. Do you know, Mike? Step in here, don't be bashful.

MR. CARROLL: Let me try to answer the question. It is a little outside of my area of expertise but another lawyer in our office did step in and I was participating in the calls. I am not sure that that is the case. And let me back up, there is -- In addition to the recycling exemptions,
If you read through the analysis, there is some question about whether or not this, what we're talking about here would be a waste in the first place. And our response to the issue is sort of a tiered response.

The first question is, first of all, we don't think this is a waste and therefore we don't think it's regulated. Even if it was a waste we have some question about whether or not it would be hazardous waste. Some of the analysis that was submitted by CURE, I believe, indicated that it could exceed the toxicity limits, other analysis that we have seen indicates that it doesn't exceed the toxicity limits. But even if you assume it is a waste and it is a hazardous waste then the recycling exemptions, and there are two of them that could possibly apply, would kick in. So it's sort of a, we don't think it's this but if it is we don't think it's this, but if it is then ultimately the recycling exemptions --

Commissioner Sharpless: Well, in order for us to resolve what the legalities are would it not be best to submit that issue to the appropriate agency and have a response on the record rather than, we don't think?

Mr. Carroll: I don't believe that if an exemption applies you are required to apply for an exemption. I think perhaps if you determine based on your analysis that you qualify for the exemption, that's it, you don't need to go to the agency and say, we believe we qualify for this exemption
so we're applying for it.

COMMISSIONER SHARPNESS: I think the only way you can get an exemption is to go through the process and actually get an exemption. Otherwise you're saying, our project does not apply, period.

And I'm not saying that reading either what I got from the applicant and what I got from staff has led me to the conclusion that that issue has been resolved in a final way. I think we're still unresolved on that issue. Perhaps what I ought to do is move to staff and to the intervenor and let them set their positions on the table.

MR. BUELL: Staff has been in contact with the Department of Toxic Substance Control and we have received similar information that I think the applicant has received, that the project is likely to qualify for an exemption. We specifically asked the Department to provide us a letter to that effect and the Department was reluctant to do that to a third party, to respond to a third party's request. They have indicated that they would require a letter or a request from the Applicant in order to respond to whether or not the project actually qualifies for an exemption.

And I believe that that would be the most expeditious way to proceed in this case, is for the applicant to submit the information. Which I believe the Department already has a copy of the AFC and has CURE's letter so they
have the information, it's simply a request for them to in
writing identify that the project qualifies for the
exemption.

COMMISSIONER SHARPLESS: And what about USEPA?

MR. CARROLL: I believe the answer to that is that
the state has delegation from USEPA to administer the
hazardous waste program.

MS. HOUGH: That's correct.

MR. BUELL: That's correct. I wanted to confirm
that with my staffers and apparently --

COMMISSIONER SHARPLESS: Is that true? Because
your status report leaves the issue still open.

MR. TOOKER: My name is Chris Tooker, I'm the
supervisor of the staff person addressing this issue. Based
on discussions with her and her consultation with the USEPA
there is a possibility that there could be a question of
defining the status of the waste under USEPA. I believe that
there needs to be some consultation there as well between the
applicant and USEPA to confirm that in fact it is not a RCRA
waste and therefore wouldn't require some special treatment
or classification as I think asserted by CURE at this point.

MR. BUELL: I would also add that most recently I
have heard, as the applicant has indicated, that EPA has
defferred to the Department of Toxic Substance Control so
their determination may be all that is needed in this case.
But certainly it wouldn't hurt to touch bases with EPA. We have been unable to contact them directly, as our memorandum had indicated, prior to issuing our last status report.

MR. CARROLL: Well, I guess I would object to having to touch bases with EPA given that they don't have any jurisdiction over it. I mean, the State of California has delegation to administer the hazardous waste program in the state of California and we're perfectly happy to go back to them and -- But I have problems going to the EPA since they don't really have any authority over the program. It just doesn't seem necessary and it is an extra step for us.

MR. BUELL: Staff volunteers to make that contact.

COMMISSIONER LAURIE: I'm sorry?

MR. BUELL: The staff will make that contact with USEPA and make sure.

COMMISSIONER LAURIE: Okay, now explain to me why. Do you believe the EPA has jurisdiction?

MR. BUELL: To clarify whether or not they have jurisdiction, which it is my understanding at this point in time that they delegated that to the state, to identify whether or not they have any concerns regarding this matter.

COMMISSIONER SHARPLESS: But isn't that delegation specified somewhere? Is it specified? Can you give us a citation right now of where that delegation is specified?

MR. CARROLL: Not right now.
COMMISSIONER SHARPLESS: Or if you can't right now could you provide it to us?

MR. CARROLL: Yes.

COMMISSIONER SHARPLESS: So we can just clear the matter up.

MR. CARROLL: The other point that I wanted to make in terms of getting some written verification from the agency that the exemption applies. It is my belief that you do not need to apply for the exemption. The way the hazardous waste regulations work is if you determine based on your analysis, and of course you're operating under your own risk, if you make a mistake you're exposed. But if you determine under your own analysis that you qualify for one of the exemptions you are free to proceed.

I think that what DTSC is saying is that if we ask them to analyze and verify our own analysis they would write us a letter saying, yes, we concur with your analysis. But I think that's different from some sort of a formal application process for the exemption and I don't think that that latter process is required or necessary. Now we are happy to go and try to get the letter from them basically saying, we have looked at your analysis and yes, we concur, but I just want to make it clear that I don't think that that's required under the regulations and it is more of an informal concurrence than it is a formal application process.
COMMISSIONER SHARPLESS: Well, you may be well right, I am just going on what I saw in the staff's write-up, which explained the process, the three-tier process. It indicated that the certified/unified program agency is the Victorville Fire Department and that somehow you would need to get an exemption from them. So I have on the one hand you saying that you proceed at your own risk and on the other hand I have staff's status report that says there is a three-tier process and that you must apply for an exemption. I am just trying to find the resolution in this issue.

Staff, would you like to present your position on that issue?

MR. TOOKER: With respect to the three tiers: I reviewed this issue also with technical staff and it appears that there might be, that there is language in their rules or in their regulations which talks about a --

COMMISSIONER SHARPLESS: Who is their, their regulations?

MR. TOOKER: DTSC's.

COMMISSIONER SHARPLESS: Okay.

MR. TOOKER: Which talks about a conditional exemption and another exemption which is kind of unconditional. But it doesn't talk about an exemption, period, and it may be that the exemption --

COMMISSIONER SHARPLESS: It doesn't say anything
about an applicant can do their individual analysis and make
this determination on their own at their own risk and satisfy
all laws and ordinances that pertain to this project?

MR. TOOKER: No, it doesn't. What it implies is
that they have two, two conditional exemptions that they can
issue. But the overall, you know, exemption from the program
may be outside of that process and may be the result of an
applicant inquiring as to whether their conclusion is
consistent with the agency's. Which seems to be what the
applicant is suggesting that they would do, to write a letter
and ask them to confirm and agree with their conclusion that
in fact an exemption, that they are exempt from the process.

COMMISSIONER LAURIE: Are we talking about 939? Is
that what we're talking about?

MR. TOOKER: I'm sorry, I don't know the number.

COMMISSIONER SHARPLESS: Is that a Section, a Code?

COMMISSIONER LAURIE: Yes.

COMMISSIONER SHARPLESS: A Code reference?

COMMISSIONER LAURIE: That's the recycling section.

When we're talking about an exemption, exemption from what?

MR. CARROLL: From the requirement to obtain a
permit for the treatment of hazardous waste.

COMMISSIONER LAURIE: Okay.

COMMISSIONER SHARPLESS: Because your contention is
that the crystallizer is really a recycling process which
precludes that from being a waste in the first place. Is that your contention?

    MR. CARROLL: Well, that's one of our contentions. But remember, our other contentions are: first of all, it is not a waste; and second of all, even if it is a waste it is not hazardous. So assuming for the moment, and we are not conceding on these points, but assuming that those two points are true then yes, we are saying we would qualify for one of the recycling exemptions, one or both of the recycling exemptions.

    COMMISSIONER SHARPLESS: Maybe you can clarify for me. Mr. Buell just said, or Mr. Tooker, I can't remember which, that he had understood that you said you would be going to the Department and asking in writing whether or not you would be --

    MR. CARROLL: Well, I think we are willing.

    COMMISSIONER SHARPLESS: -- covered or not.

    MR. CARROLL: I think we are willing to do that, in fact, we already did that verbally. And I believe, at least the draft that I'm looking at has a footnote to that effect, that Norman Riley of DTSC confirmed verbally over the telephone our analysis. We are willing to try to get that confirmation in writing as well. The only caveat that I would point out is that until the system is up and running it is impossible to answer the first two or at least it's
impossible to answer the second question, which is, whether it is a hazardous waste.

COMMISSIONER SHARPLESS: How can you claim that it is and then say you have to wait until it runs to determine it?

MR. CARROLL: We don't believe that is a hazardous waste at this point.

COMMISSIONER SHARPLESS: But you won't know unless you have it in operation?

MR. CARROLL: Once it is in operation then we'll do testing to confirm that. If it turned out that it was hazardous waste then we would qualify for one of the recycling exemptions. But we won't know, we won't be able to answer the first -- the first and the second questions about, is this a waste or is it a hazardous waste until it is up and running. But I think that what we can say to the Department is we would like confirmation that assuming once the system is up and running it turns out to be a hazardous waste, would we qualify for the recycling exemptions?

COMMISSIONER SHARPLESS: Doesn't that kind of weaken your case? If I were DTSC I would have a level of discomfort on writing you a letter and saying you were, you know, your process was not a hazardous waste given that you are not really going to really know that until you have tested it in operation.
MR. CARROLL: I don't think they will write us a letter saying it is not a hazardous waste. I think they would be willing -- I mean, I don't know what they will be willing to do. We will ask them to write us a letter saying, look, we don't think this is hazardous but we would like you to confirm for us that if it turned out to be hazardous waste that we would qualify for the recycling exemption.

HEARING OFFICER VALKOSKY: And your letter will address one of the basic concerns, i.e., do you need a permit from DTSC.

MR. CARROLL: Yes, assuming we qualified for the recycling exemption.

HEARING OFFICER VALKOSKY: Right.

MR. CARROLL: We would not --

HEARING OFFICER VALKOSKY: Because that is the fundamental question, I think, that has to be answered.

MR. CARROLL: Right.

MR. JOSEPH: Perhaps I can join this discussion. I feel sort of like the person at the party that everybody is talking about and they don't know the person is there.

COMMISSIONER SHARPLESS: I'm sorry, we know you're here, I guess we just assumed we know how you feel. But go ahead, state it.

MR. JOSEPH: Perhaps you do. First, I wanted to start with the last page of the applicant's May 15th status
report which says, and this is an important admission. It says:

"It is possible that concentrations in
the brine stream heading into the crystallizer
would exceed the applicable hazardous waste
criteria."

First of all, as a procedural matter, this document was filed in the Docket Office, it was served on the parties. Then a day or two later we get a letter saying, we're withdrawing that, and it's that paragraph which is deleted from the document. We don't accept the notion that one can make an admission on the record and say, oops, I wish I hadn't said that, I'll take it back. We intend to rely on that admission if necessary.

COMMISSIONER SHARPLESS: Are you referring to the May 15th letter?

MR. JOSEPH: Yes, the very last page.

COMMISSIONER SHARPLESS: On the attachment.

MR. JOSEPH: Right.

COMMISSIONER SHARPLESS: Okay, I've got it.

MR. JOSEPH: The top paragraph in there has that statement that I just read.

COMMISSIONER SHARPLESS: Okay.

MR. JOSEPH: Second, with respect to the process. It is true that DTSC does have delegated authority over this.
But as with other delegated authority, EPA maintains a continual oversight to be sure that their delegation is being properly exercised. Commissioner Sharpless, I'm sure you're familiar with this in the air quality area.

As a result, EPA and DTSC are consulting and will make a determination as to whether or not the brine which goes into the crystallizer and the crystallizer itself then qualifies for the recycling exemption or not. At this point I think it is too soon to say how that is going to turn out, it could go either way. I think the process that has been suggested of submitting a letter to DTSC to get a resolution is a good way to resolve the issue so that we'll know either it does or it does not qualify in DTSC's eyes with EPA's oversight.

COMMISSIONER SHARPLESS: I think that there's some unanswered questions and the only way that we're going to resolve them -- They are answered to you but there seems to be issues which you feel can be dealt with. We need to show a way to address those and resolve them in our record. And perhaps the best way is to write this letter to the Department and get some response.

MR. THOMPSON: If I may, Commissioner. It is gratifying to know that the unions believe we are infallible but in actual fact we do make mistakes. We would intend to sponsor into the record when the appropriate time comes the
correct language that reflects our views and reflects what we believe to be true and will not sponsor things that we don't believe to be true. So we will be revising the --

COMMISSIONER SHARPLESS: Okay, I appreciate that.

MR. THOMPSON: Second of all, while we have some control over what we write to DTSC we don't really have any control over whether or not DTSC will respond to us, we hope they do, or when they will respond. And this goes to a timing issue. In the staff's update the staff was recommending, as I read it, that they want us to provide documentation of the findings by DTSC by June 15th.

Keeping this in the perspective that apparently both the staff and ourselves believe that a recycling exemption is available we think that is a little harsh. We can certainly write the letter to DTSC and talk to them as soon as we can but I guess I would be surprised if we can get a letter back from DTSC in -- And to hold us to that June 15th time frame as the staff is suggesting we think is a little restrictive.

COMMISSIONER SHARPLESS: Okay, we haven't gotten to the scheduling issues yet. I appreciate what you're saying and that, again, we are dealing with multiple agencies that are all on a sort of a time frame but we're going to try to keep as much on track as we can. But I think we do need to deal with the issues to make the record as strong as
possible. It seems to me that the only way that we can really deal with this issue is to write that letter to the Department of Toxic Substance Control. Commissioner Laurie, did you want to add anything on that issue?

COMMISSIONER LAURIE: I have a question. I'm unsure as to -- I don't have a good sense as to what specific information we're requesting that we haven't received. Is it information we need for our environmental analysis? Is it approval from a state agency that has jurisdiction? Can you more carefully define for me or just define for me what is missing that we think we need.

MR. JOSEPH: Commissioner Laurie, since I opened this Pandora's box maybe I can give you a succinct answer.

COMMISSIONER LAURIE: I'd rather hear from my staff first, Mr. Joseph, thank you.

MR. BUELL: Specifically what we're looking for is identification of whether or not a permit is required for the hazardous waste. Excuse me, I'm presuming something not in evidence here at this point. For the crystallizer system.

COMMISSIONER LAURIE: Okay. If a permit is required would that be imposed as a condition on the project? Is that how that would be treated?

COMMISSIONER SHARPLESS: Yes.

MR. BUELL: Yes.

COMMISSIONER LAURIE: Okay. So we need the
information to know whether or not we have to impose this
condition on the project?

MR. BUELL: Yes.

COMMISSIONER LAURIE: Thank you.

COMMISSIONER SHARPLESS: Now, Mr. Joseph, do you
have anything to add?

MR. JOSEPH: I should know better than to have any
lack of trust in the staff's answers, that was a perfect
answer.

COMMISSIONER SHARPLESS: Okay, thank you. Anything
more that you would like to add?

MR. WOLFINGER: I would just like to say for the
purposes of the Commissioners to understand what's going on
here. What occurs in this whole thing is water in the
cooling tower ends up building up impurities in it and you
take a slip stream of that off. And first what you do is you
heat it up to drive off some of the moisture and concentrate
it in a concentrator and then it goes in closed pipes and
tanks into a crystallizer which then takes all the water out.
Our original -- So it never comes out. I mean, it never is
disposed of.

COMMISSIONER LAURIE: Yes, but at that point you're
left with stuff.

MR. WOLFINGER: You're left with a solid. And that
is never -- That is not a discussion at this point in time,
there is no discussion. We have always characterized that as
a non-hazardous, five tons a day that is going to go off.

COMMISSIONER LAURIE: And we know what that stuff
is?

MR. WOLFINGER: Yes.

COMMISSIONER LAURIE: We can define it?

MR. WOLFINGER: Right. We have postulated what it
is. You don't really know, like Mr. Carroll said, until you
actually test it, but we have postulated what we believe it
is and it's being non-hazardous, okay. But the point of it
is that we're making up as if there is a waste stream between
when you're concentrating this down through a continuous
process. And one of the fundamental questions is, is it even
a hazardous waste at all when it is on a continuous process.
And that is a federal area and that was one of the things
that was earlier -- we talked about it. We don't even
believe this is a hazardous waste because it's not a waste,
it's part of a continuous operating process. It has steps in
the process.

COMMISSIONER SHARPLESS: Then it should be a really
easy letter for the Department to write. I mean, extremely
easy for the Department to write.

MR. WOLFINGER: Well, you will not get these people
to answer that kind of a question but that is what we believe
is the real key. We believe it's a red herring. That in
fact this is part of a continuous process and doesn't even
establish itself as a waste, a hazardous waste or any waste.
It is not a waste, it is part of a continuous, operating
process. So I want to make sure you understand what is going
on.

COMMISSIONER SHARPLESS: We do.

MR. WOLFINGER: We're saying this is a solid that
comes out the back end.

COMMISSIONER SHARPLESS: I do.

MR. WOLFINGER: I'm sorry?

COMMISSIONER SHARPLESS: I do. I have read your
papers, I have read your analysis and I do. What I am trying
to do is set the record straight and address all of the
issues that are raised and put them aside.

MR. CARROLL: And we will try to follow. Let me
just say, we thought we had done that. We did the analysis
which is all any other facility would be required to do. We
backed that up by calling the agency and running it through
with them and getting verbal confirmation that yes, you have
done the analysis right. So we thought we had done that, but
we will go the next step and try to get what we have gotten
verbally in writing.

COMMISSIONER SHARPLESS: Okay. Well, we obviously
have staff who has raised some concerns about wanting --
Since the Department of Toxic Substance Control is the agency
with that expertise, if you have done the analysis and they review the analysis and they sign off on it then that is one less thing on the checklist for this Committee to deal with. And unless Staff tells me today that they absolutely have no concerns, they have read your analysis and they have no concerns, we don't even have to deal with the letter. But I don't get that out of staff.

MR. BUELL: Staff is concerned that, basically that the Department has not been willing to put their findings in writing. It is just a matter of documenting. If they aren't willing to put it in writing, why not. It seems like a -- The phraseology, it seems like a slam dunk to do so based upon what they have identified at this point but we would like to see it --

COMMISSIONER SHARPLESS: Do you feel yourselves experts in this area?

MR. BUELL: We have staff that are experts. Ellen Townsend-Smith is here that --

COMMISSIONER SHARPLESS: Could you make this analysis and that determination on your own without the Department of Toxic Substance Control?

MS. TOWNSEND-SMITH: No, we can't.

MR. BUELL: The answer I got was, no.

COMMISSIONER SHARPLESS: Okay.

MR. CARROLL: I guess I would just add that -- I
mean, it puts us in a difficult -- I mean, we have done the
analysis, we went to the agency with jurisdiction, they said,
yes, you did the analysis right, but that is not good enough.
I mean, we will try to get a letter but we can't control the
DTSC. If they say, no, I'm sorry, our practice is not to put
that kind of thing in writing, I mean. We're going to try to
get it but, you know, we feel like we're being really backed
into a corner. I mean, we have done the analysis, we have
confirmed the analysis with the agency with jurisdiction over
this. They have said yes, you did it right. It's sort of
like, when, you know. What does it take to convince, you
know, those with concerns?

COMMISSIONER SHARPLESS: Isn't DTSC a -- We're the
lead agency. Are they like a -- What is the terminology?
MS. HOUGH: A responsible agency.
COMMISSIONER SHARPLESS: A responsible agency. Are
they not a responsible agency?
MR. BUELL: Yes.
COMMISSIONER SHARPLESS: Are they not a responsible
agency? Don't they have certain requirements under CEQA?
MS. HOUGH: Yes.
COMMISSIONER SHARPLESS: Okay. Well if you --
COMMISSIONER LAURIE: Well -- I'm sorry.
COMMISSIONER SHARPLESS: Commissioner Laurie.
COMMISSIONER LAURIE: Responsible agencies are not
obligated to respond. Responsible agencies --

COMMISSIONER SHARPRESS: But if they are asked.

COMMISSIONER LAURIE: If they are asked, that's right. And so the question in my mind is, should we ask. If we need information, certainly normally it is the applicant's burden to go out and get it. But if we are looking for specific information and we need clarification I certainly don't mind asking.

A question again is, are we permitted -- and this is directed to staff. If the reasons for all these communications are to allow us to reach a determination of whether or not a permit is required as a condition to the project can the project be conditioned on obtaining a permit as may be required? Can you do that? The permit is not going to be obtained until after certification so is there anything unlawful in your view, staff, about imposing a condition requiring a permit be obtained if required?

MS. HOUGH: You have to be able to make findings about compliance with laws and that would include those laws and regulations that apply to permits. And typically the way -- In fact, there have been situations in the past where there have been federal permits that have been not been obtained prior to the Commission issuing an AFC. The last couple of siting cases that I have been involved in the Committees have been very much strongly in
favor of pulling that all into this process so that they have
a more, that they have the big picture. That they know
exactly what conditions are going to apply to the project
from each agency that is involved. So we're trying to do
that in this case based on our experience in the more recent
cases where attempts to put off -- And in those cases they
were federal permits, not other state agency permit
conditions, were met with disfavor from the Commission.

COMMISSIONER LAURIE: Well, I don't have --
Commissioner Sharpless, I don't have a problem. I don't know
that everybody likes the protocol or not but if the parties
can agree on the correct question I don't mind having us ask
another state agency the question and hopefully they would
respond. I certainly don't have a problem with that.

COMMISSIONER SHARPLESS: I think Mr. Buell said
that he would do that. Did you say that, Mr. Buell? Or did
you say you were following up on USEPA? Perhaps I jumped the
gun here.

MR. BUELL: We had made a verbal request of the
Department to put in writing their findings and the
Department was reluctant to do so, to respond to a third
party. Basically, they deal with applicants that are
responsible for their projects rather than other state
agencies and responding to state agencies. Certainly we
could attempt to do that again, make a request to the
Department in writing requesting their findings on the exemption.

COMMISSIONER SHARPLESS: So they have already told you that they would prefer to have it direct from the applicant.

MR. BUELL: A request to do so, yes.

MR. THOMPSON: We intend to make that request.

MR. CARROLL: We'll do it.

COMMISSIONER SHARPLESS: Okay. That would be very helpful, I think. Then we can put that one aside.

MR. BUELL: Yes.

COMMISSIONER SHARPLESS: Because otherwise, when you get into the adjudicatory process and issues are identified that are unresolved, you swear under testimony about the facts of the case and we look at the expertise and the background of those witnesses. I would prefer to have the state department who is responsible for this issue area to have signed off on that issue. I think it just makes for a stronger case and allows the applicant to go forward with one less issue hanging over their head. It saves money in the long run, Mr. Wolfinger.

MR. WOLFINGER: We were always willing to write the letter, our point was, we're not sure we can get an answer.

COMMISSIONER SHARPLESS: When you're going to get it, yes. We'll try to help along those lines.
MR. WOLFINGER: We may need the muscle of the Commission.

COMMISSIONER SHARPLESS: That is a sister agency, we'll see what we can do.

FAA

Okay, let us go -- I think this is a relatively easy one. Why don't we try the FAA. Can you all smile and say, job well done?

MR. WOLFINGER: I'd like to ask Andy Welch to respond to the questions on the land use and visual for the FAA. And also talk about the letter for the lights.

MR. WELCH: Okay. There's several issues from the FAA. Basically, the FAA submitted the letter on May 5th that I think was reflected in the staff's report number four dated May 8th. It indicated that all the questions that have arisen were reviewed again by that agency and that they believe -- Their phrase is that they -- No changes to the condition, that they are not changing their original, no hazard designation.

Further, there was a question raised on the visual issue about the lighting for the poles. There was a misunderstanding, I believe, on the part of the staff that dealt with the poles along El Evado Road. That since they are on the former Air Force Base that they would fall under the requirement that all lighting on airport property -- that
all electric transmission poles on airport property have
lighting on them, construction lighting.

They missed a distinction. The airport property
under the FAA is a smaller area than the entire former Air
Force Base and it basically in the area of our project goes
from along Phantom Street up toward the railroad and
therefore the El Evado portion of the poles are not on
airport property. So they were not referred to.

COMMISSIONER SHARPLESS: It sounds as though we
have dealt with that issue.

MR. BUELL: Yes.

COMMISSIONER SHARPLESS: Any other issues, staff?

MR. BUELL: Staff would just like to point out that
our Preliminary Staff Assessment that was filed last Friday
does not incorporate or reference the letter from FAA or
discuss the visual aspects of the lighting requirements. We
have a workshop scheduled on the 28th where Visual will be a
topic for discussion. We can talk in greater detail at that
time.

COMMISSIONER SHARPLESS: A topic for discussion, I
guess. It's fairly well-resolved.

MR. BUELL: Yes.

COMMISSIONER SHARPLESS: From everything I read
this is fairly well-resolved.

MR. BUELL: Yes.
COMMISSIONER SHARPLESS: Good job. Anybody else?

Mr. Joseph?

MR. JOSEPH: (Nodded).

COMMISSIONER SHARPLESS: No? Okay. Stan, is there any other issues in that broad topic area?

HEARING OFFICER VALKOSKY: Yes, that's it.

COMMISSIONER SHARPLESS: Those are they. Okay, fine. Let's go next to the Gas Pipeline.

GAS PIPELINE

MR. WOLFINGER: Do you want us to talk?

COMMISSIONER SHARPLESS: Yes.

MR. WOLFINGER: Okay.

COMMISSIONER SHARPLESS: Please.

MR. WOLFINGER: Let me just start off and then I'll ask Amy Cuellar from RMI to discuss. When we got into this project we had looked at where some existing pipelines were going north out of the project and they were owned by Southwest Gas; there is an existing pipeline on the Hillendale Road. There is also on this road that was going north, directly north from our project to intersect with two major pipelines, PG&E and Kern River Mojave lines, there was also cable along -- fiber optic cable and those type of things.

So we had assumed, and it turned out to be an incorrect assumption, that placing another pipe along this
road would not be a significant problem, an issue. Well, and that was the route that we discussed and had laid out in front of the staff and the Commission.

It turns out that in fact that although there are utilities along this road in the interim between--and I don't know how the cable got in there because that's new but the pipeline is like 40 years old or 30 years old--they have redesignated that area as being prime habitat for the desert tortoise. And in fact they have allocated -- Because there is a need for north/south corridors in that area of the state they have allocated other areas to be what is called utility corridors where they--this is the BLM and US Fish and Wildlife--where they would like to see utilities placed in these utility corridors recognizing that there is a need to cross the desert and prime habitat in north/south commerce.

As a result we have changed where we are building that pipeline. And I made a phone call but we have not laid out the route to put it into a map which we will try to do shortly. But basically we're going over and using an existing BLM corridor along what is called Route 395. It's about another five or six miles to go over to that corridor and go up. So we are in the process of surveying that corridor and doing that.

In addition we also felt that because we were making this change and the fact that the permitting
consultant, who we believe is a good consultant but was not familiar with the territory where we were at, that if we were going to meet a timetable of June the 15th they were not able to muster the resources nor have the background and those to accomplish the tasks that needed to be accomplished. So RMI has taken over the permitting responsibility for that and they are the ones that have permitted the other linear facilities along with the facility itself at the High Desert.

So I want to give you that preamble because there are some changes that have occurred there. And Amy is the Project Manager for that and, Amy, it is now your turn.

MS. CUELLAR: Again, I'm Amy Cuellar, I'm a consultant for the project. We intend to supply on June 15th the required 125 copies of all the engineering and environmental information for this new gas pipeline route. The information contained in that submittal will not only meet the CEC's regulations but as well as what was addressed as informational requirements in the staff's status report number four.

In the next week the project intends to file with the Bureau of Land Management the official right of way grant permits with that agency. That kind of starts off the official process with the Bureau of Land Management. We have been in consultation informally both with BLM and formally with Fish and Wildlife Service and are in the process now of
trying to get a meeting with both those agencies. We're still throwing around some tentative dates but anticipate a meeting being scheduled in the next few weeks to talk about each of those agencies' federal requirements, permitting requirements, and how best to streamline those processes.

COMMISSIONER SHARPLESS: Do I understand from what Mr. Wolfinger just said that it is now on a different project? The information that you are going to submit, is that going to be on the --

MR. WOLFINGER: A different route. The route --

COMMISSIONER SHARPLESS: It's on a different route --

MS. CUellar: Yes.

COMMISSIONER SHARPLESS: -- than the one that currently is in the application.

MR. WOLFINGER: That's correct.

COMMISSIONER SHARPLESS: So when you submit the information that has been requested by CEC staff it will be based on this new route?

MR. WOLFINGER: That's correct.

MS. CUellar: Yes.

COMMISSIONER SHARPLESS: And as I understand it this new route is within corridors that have been designated for utilities.

MS. CUellar: Yes, completely within.
COMMISSIONER SHARPLESS: Okay. That puts a different slant on the issues that you have been dealing with. I guess the other issue would be that certainly you have dealt with some of the questions of location, you have dealt with the data issues, you have dealt with starting the process under federal agencies. But is there still a need to have an MOU between us and BLM to do a joint document, Mr. Buell?

MR. BUELL: Yes, it is my understanding that if the pipeline does cross BLM land, and it is likely to do so, that we would need to enter into an MOU to iron out the details of joint environmental documentation for the project.

COMMISSIONER SHARPLESS: And when do we take that step?

MR. BUELL: We will do so as soon as we have a slightly better understanding of where the -- of what the proposal is.

COMMISSIONER SHARPLESS: So that would be when the information came in on June 15th?

MR. BUELL: I think we would like to try doing that -- meeting with those agencies prior to that.

MR. WOLFINGER: We'll supply a map, I mentioned earlier. We'll supply a map earlier. I don't have it today because the corridor is like 400 feet wide and we're not sure if we are on the right side of the corridor or the left side.
We would like to -- When we present something we'd like to have it. So I'm thinking we're looking by the end of this week to have a definitive.

MS. CUELLAR: Yes. Actually, the engineers working on this project are really out there today flagging this pipeline so our specialists can go out and continue on with their surveys.

MR. WOLFINGER: And we'll supply that information.

COMMISSIONER SHARPRESS: And are the owners of the pipelines -- You mentioned who would be the owners of this pipeline. Would those be the same owners?

MR. WOLFINGER: We're suspecting that Southwest -- Yes, our intention is Southwest Gas is going to be the owner as they are the owner of the other pipeline, we are just doing the permitting for it. And Steve Frankiewich back here from Southwest Gas, he's the Project Manager and his people are engineering it. They have a company that is engineering it and we're providing the environmental permitting for that work.

COMMISSIONER SHARPRESS: Commissioner Laurie.

COMMISSIONER LAURIE: Question, clarification as to process. You have indicated that your environmental documentation will be submitted by June 15th.

MS. CUELLAR: Yes.

COMMISSIONER LAURIE: That is good news to me but
let me ask staff. You have indicated that your understanding is you have to enter into an MOU with the feds, to do what?

MR. BUELL: To establish what needs to be included in our environmental document and in essence in our FSA in order to ensure that it is compatible with federal, I believe it's NEPA requirements.

COMMISSIONER SHARPLESS: Isn't it like a joint environmental impact?

MS. HOUGH: Yes.

MR. BUELL: Yes.

COMMISSIONER SHARPLESS: So rather than having the feds do one and us do another we combine our efforts. Ask the same questions, do the same analysis so it becomes a combined document for that stretch.

MR. BUELL: Yes.

COMMISSIONER LAURIE: Did the feds do an environmental analysis when they created this utility corridor?

MS. HOUGH: We don't know.

MR. BUELL: One thing that I wanted to point out is we --

COMMISSIONER SHARPLESS: Well, let me ask something along what Commissioner Laurie did. They do something called a Habitat Conservation Plan or, you know. Was the Habitat Conservation Plan done for that particular corridor?
MS. CUELLAR: That I don't know but I do believe we will be required to do a Habitat Conservation Plan for this project to meet Fish and Wildlife Service requirements.

COMMISSIONER SHARPLESS: Okay, because that was kind of getting to Commissioner Laurie's question. If this has already been designated as a utility corridor, assuming that the feds understood that there might be a need for utilities to pass over that land, then they must have done something to designate that corridor.

COMMISSIONER LAURIE: I would anticipate that.

COMMISSIONER SHARPLESS: And I think that's precisely why the applicant has reconsidered the location.

MR. WOLFINGER: Partly, but I think it's more of a physical designation then it is saying -- We still have all the requirements to go out and study the botany and what's there so I don't think it does anything particularly to reduce it. It's just that if you go into a prime habitat place then they don't want to do it. So they want you to put them all there but I don't think it resolves the ability for RMI's staff to go out there and still study, you know, tortoises and desert squirrels and the botany, right.

COMMISSIONER LAURIE: Have you folks -- Have you folks already done that or will you do that before June 15th?

MS. CUELLAR: We are in the process of doing that now.
COMMISSIONER LAURIE: Okay. So you believe that your submittal will basically be complete as far as you folks are concerned regarding an environmental analysis of the pipeline.

MS. CUELLAR: Yes, with the possible exception of the wildlife portion of the biological resources section. We do intend to have all the data sheets submitted by the June 15th deadline but those surveys are quite intensive and are going to take quite a long time period to complete with this long pipeline. So there is a question as to whether or not the write-up for the wildlife portion of the biology will be completed by the 15th but we will supply all the field data sheets.

COMMISSIONER SHARPLESS: Aren't there also limitations on lands like these for when you can do surveys and isn't there a survey deadline of May 31st?

MS. CUELLAR: Yes. Well, there was a survey deadline of May 31st and we have been in coordination with all the agencies on that issue. And because it has been such a wet year that survey window has been expanded. So we believe we're still in that window.

COMMISSIONER SHARPLESS: Expanded to when? Do you know how far?

MS. CUELLAR: Their estimate is mid-June. The wildlife surveys for desert tortoise and Mojave ground
squirrel, actually the window for those surveys ends at the end of June so we're still fully in that window as well. It's the botanical that has a smaller window but it's been --

COMMISSIONER SHARPLESS: I guess El Niño helped somebody.

MS. CUELLAR: Yes, it did.

COMMISSIONER SHARPLESS: Okay.

HEARING OFFICER VALKOSKY: Do you have any idea of how long the federal review process will take? Both the right-of-way process and the environmental assessment process.

MS. CUELLAR: I think staff estimated in one of their status reports possibly taking as long as 150 days to complete that process. What we're hoping is getting these meetings scheduled with both federal agencies in the next few weeks is we're going to be able to streamline that process and meet both their requirements but only supply them with a limited amount of actual documents.

HEARING OFFICER VALKOSKY: Okay. And will staff be involved in this process pursuant to an MOU, or even before the MOU just informally?

MR. BUELL: Certainly staff will be in contact with US Fish and Wildlife and Department of Fish and Game coordinating our review of what needs to be conducted in terms of surveys but also with BLM.
HEARING OFFICER VALKOSKY: So the answer is, yes.

MR. BUELL: Yes.

HEARING OFFICER VALKOSKY: Yes, okay. Will there be any landowner identification and noticing wrinkles in the new pipeline route? Part of the information requirements indicate that you have to provide a list of the landowners within I believe 500 feet of the center line.

MS. CUELLAR: Yes, all the information that we intend to supply on June 15th will be a combination of the environmental requirements as well as the engineering requirements. Part of that does include the landowner information.

HEARING OFFICER VALKOSKY: Landowner identification, okay. Then staff, I assume your position is that will require supplemental noticing of the landowners?

MR. BUELL: Yes.

HEARING OFFICER VALKOSKY: Okay. And either a workshop or an informational presentation by the Committee on the landowners affected by the new pipeline route?

MR. BUELL: That's a possibility.

HEARING OFFICER VALKOSKY: Okay. Procedurally does staff have -- What is staff's position as to the procedural mechanism for including or introducing the pipeline into this particular AFC? Is it your position that this is something that will require a separate data adequacy review and
acceptance by the Commission or is it something that the Committee will just, once the data is submitted, treat as part of the project?

MR. BUELL: It is our position that it would not require a data adequacy review. We have based our informational requirements on our data adequacy guidelines but it does not require a determination by the full Commission.

HEARING OFFICER VALKOSKY: Okay. Does it require a determination by staff?

MR. BUELL: I think --

MS. HOUGH: We'll let you know if we don't have enough information to do the analysis.

HEARING OFFICER VALKOSKY: That's exactly where I'm going, Ms. Hough. When will you let the Committee know?

MS. HOUGH: Well, after you get the information on June 15th. You're asking for a certain number of days after June 15th --

HEARING OFFICER VALKOSKY: Yes, I am.

MS. HOUGH: -- to get some sort of a status report?

HEARING OFFICER VALKOSKY: Yes. And the same will obviously go for CURE too as to whether they view the need for any additional information after we see the submittal.

(Thereupon, tape 1 was changed to tape 2.)
COMMISSIONER SHARPLESS: I just heard that she is not going to be able to get absolutely everything, all the survey data by June 15th. So we already know that the answer is going to be they won't have everything.

MS. CUELLAR: You will have the survey data sheets but we can't guarantee you will have the complete write-up at that point, no.

MR. WOLFINGER: The data will all be in.

MS. CUELLAR: But I also wanted to mention that we are in the process of preparing these documents going back to data requests that we have received both from staff and from intervenors and taking those into account when we're doing the write-ups for this gas pipeline. So there's things we had to address for other linears on the project, we are intending to address those at this point as well.

COMMISSIONER SHARPLESS: When beyond June 15th might we get the write-ups?

MS. CUELLAR: It would only be the write-up for the wildlife portion of the biological resources section and it would be prior to June 30th, July 1st. You will have the complete botany portion of that section by the 15th of June.

COMMISSIONER SHARPLESS: Right.

HEARING OFFICER VALKOSKY: So, Mr. Buell, I'm still waiting for an answer.

MR. BUELL: Okay. The question being, when could
staff provide an indication of whether or not we believe the information is complete.

HEARING OFFICER VALKOSKY: Correct.

MR. BUELL: I'm going to take a stab and say within three weeks of receiving that information. So that would be June 15th plus three weeks.

HEARING OFFICER VALKOSKY: Plus three weeks, okay.

MR. BUELL: Which would be the first week in July, I believe.

HEARING OFFICER VALKOSKY: Mr. Joseph, is that a good approximation of the time that CURE would anticipate for being able to review the information?

MR. JOSEPH: I'm willing to say three weeks is a good estimate. It's a little hard to say without seeing how much volume of information we're going to get.

HEARING OFFICER VALKOSKY: I understand that, I understand that, but for the purpose of present discussion.

MR. JOSEPH: For the purpose of present discussion three weeks seems like a reasonable estimate. I did want to address a couple of other things that have come up in the discussion along the way here. I think Ms. Cuellar said that they will need a Habitat Conservation Plan and they are hoping to shorten the 150 day estimate that staff had. I would first note that that's 150 days after the Habitat Conservation is prepared and the environmental analysis is
done. And having some experience with these HCP's it is
inconceivable that if they have to do an HCP that it won't
affect the schedule in this case. These things take a long
time.

COMMISSIONER SHARPLESS: Yes. And I think we are
going to be dealing with the realities of the schedule a
little bit later.

MR. JOSEPH: Right. I think there is one other
item which is related to this but somewhat different. We
have talked so far about the BLM and Fish and Wildlife
Service approval of this linear corridor for the new gas
pipeline. At the April 30th workshop, two days after our
last Committee Conference, the applicant stated that they had
not yet applied for permits under Section 10 of the
Endangered Species Act for any of the other linears.

Now the conversations with that may have started
since that time but the other linears also need to receive
approvals and apparently that process as of three weeks ago
had not even begun. So I think that has to be part of the
scheduling discussion because those aspects will require a
substantial amount of time from Fish and Wildlife Service.

COMMISSIONER SHARPLESS: Staff, do you have any
comment on that? I didn't see that notation in your status
report.

MR. BUELL: I'm looking at our May 15th status
report, page three, and I believe we did discuss the need for
the applicant to provide information for the 10(a)(1)(b)
permit and/or the Section 7 consultation by BLM, depending
upon exactly what regulations would apply in this case or
what agencies would assume responsibility for review of the
project, either in part or in total. So we concur that there
is a need to file information with the US Fish and Wildlife
Service and it is not just for the additional pipeline but
for other linears.

COMMISSIONER SHARPLESS: Did you calculate that
into your schedule that you outlined in your May 15th?

MR. BUELL: I believe that we had identified that
as a -- that the applicant needed to provide it by June 15th.
The information to the agencies that was required for those
permits and consultations. We did not require the applicant
to actually have provided those agencies analysis at that
point in time but to actually provide the information to the
federal agencies.

COMMISSIONER SHARPLESS: And when in your schedule
did you calculate the analysis being included in our process?

MR. BUELL: I believe the footnote on page three
indicates that it -- the last sentence. Footnote number two
indicates that it could be as much as 150 days for that
process. That would place it very late in staff's schedule
for this project. Post-hearings, perhaps.
This goes again to the issue, I think, that Caryn Hough raised earlier about there being a desire of past committees to have some indication that federal agencies are likely to make affirmative findings on projects. There is no specific regulation requiring that that happen but it's a matter of the Committee's preference on when or what level of information they need from those agencies that the project would likely be approved. Obviously, if those agencies were to deny the permit then the project couldn't be constructed. Caryn, do you have something you want to add?

MS. HOUGH: Just that in addition if the federal agencies were to impose permit requirements that the Energy Commission didn't impose they would still be required of the project, which would make our permit and the federal permits inconsistent, which is something that we would recommend that you avoid.

COMMISSIONER SHARPLESS: I thought that we were required to look at all the applicable federal, state and local and somehow this is like --

MS. HOUGH: You are required to do so and to make findings about whether or not the applicant is going to be able to comply with them. What has happened in past siting cases with federal permits is that the application process is started and the Committee has gone ahead and held hearings and taken evidence that the process has started and that
everything is going well. And they use that, the Commission uses that as a basis for a conclusion that the project is likely to comply.

You typically have a good sense of what conditions may or may not apply at the time that you write your final decision. It gets back to that question of, do you have evidence in the record that indicates to you that a project is likely to be able to comply and if so under what conditions.

COMMISSIONER SHARPLESS: Well, have these been projects that have been dealing with the Endangered Species Act?

MS. HOUGH: The specific permits that I'm aware of are water permits and PSD permits, which now, of course, are largely delegated back to the state and to the individual districts. Mr. Valkosky may be able to provide you with more --

COMMISSIONER SHARPLESS: I think that is a whole different story than the Endangered Species Act myself because the Endangered Species Act, as we know, is one of those issues that can be very contentious.

MS. HOUGH: That's correct, it can be, and that's why we encourage --

HEARING OFFICER VALKOSKY: Typically it would also, if an endangered species is involved, have in the record at
the time of our evidentiary hearings a biological opinion if appropriate from the California Department of Fish and Game. I cannot recall a case where you have had issues other than the PSD permit and the final permit from the regional water quality control board outstanding at the time of certification and also at the time of hearings.

COMMISSIONER SHARPLESS: And as you say, Prevention of Significant Deterioration permits are something that are generally delegated back, especially in California if you are in any district that is non-attainment.

MS. HOUGH: Right. I'm referring back to cases that happened a number of years ago before there was as much delegation as there has been.

COMMISSIONER SHARPLESS: But I think it leaves altogether the wrong impression if we hold out the possibility that we could go forward on a project without resolving these issues.

MS. HOUGH: We would prefer to if -- Again, it is the same sort of issue that we talked about, letters of intent and letters to serve. We want to have confidence that the agencies that are involved are going to issue the permit and we want to have confidence that we know what the conditions are because they will have an effect on staff's assessment of environmental impacts.

MR. JOSEPH: For the Committee's benefit, in the
other pending siting case, the Sutter Power Project Case, all of this Endangered Species Act and coordination with the federal agency was done at the beginning. So the plan is that the Commission's documents will be the draft and final environmental impact statements for the case and the projected schedule is that there will be a biological opinion which is included right up front. It's because the process, all the process was started at the beginning and done in a coordinated fashion, coordinated and consistent fashion.

COMMISSIONER SHARPLESS: That's nice to know but we are what we are and we're going to deal with what we can deal with. I think it's just that we have got to be very clear with everybody in this room what the expectation is. I don't want to leave sort of the wrong expectation that we might be considering that we could possibly permit or certify this project if there were still those issues hanging fire with respect to crossing BLM territory.

MR. THOMPSON: I would submit, Madam Commissioner, that we are really too early to make any kind of decision on that and I would urge that we have some months to determine if we have issues or not have issues and to see if BLM --

COMMISSIONER SHARPLESS: You know, I'm not sure that we have months. If you look at the way the schedule is mapped out the more time that we spend waiting to resolve issues the more time that -- We are not discussing the
schedule yet but we can't help, but. The more time that it means we have to push the schedule back. And that's really what it means.

MR. THOMPSON: I don't believe we're waiting.
COMMISSIONER SHARPLESS: Pardon me?

MR. THOMPSON: I don't believe we're waiting on these issues, I think we are going forward on the issues. All I'm suggesting is that it is hard to sit here in May and for us to tell you what we are going to put into the record in August, September or October or how federal agencies will react later this year.

COMMISSIONER SHARPLESS: Yes, but we have to build the record in order to put together the FSA. Well, staff has to build the record.

MR. THOMPSON: Staff.

COMMISSIONER SHARPLESS: Staff has to build the record. This is highly unusual to have these many status conferences but the Commission is really attempting to provide as much assistance to this applicant as we possibly can. But in order that we can make sure that when the application goes to adjudication and finally to the Commission that we have a strong record that we can make a decision we are making extreme efforts here to try to facilitate the process.

And I appreciate what you're saying, Mr. Thompson,
but time is wasting here and I'm real concerned about it. We
already have a preliminary draft, a first draft staff
assessment, we will have a second one, we will have a final
one. And we want to -- You know, we would like it as
complete as we can at the time we do that for our
adjudication process. And if we're talking about maintaining
the one year clock on this project we have already passed by
significant deadlines. So scheduling is something we have
later on in the agenda but it seems like every time we talk
about an item we get back into it.

MR. THOMPSON: I would like to point out that the
record in front of you consists not only of what the staff
puts in but what other parties, including the applicant put
in. The time to put in testimony is not now or June or July,
it is August. To pin everything on the Staff Analysis puts
us in a difficult position, especially when the requirements
keep growing, as we may point out later. So I would just
point out that all of the testimony --

COMMISSIONER SHARPLESS: I don't think the
requirements have grown.

MR. THOMPSON: Indeed they are.

COMMISSIONER SHARPLESS: Because the new pipeline
proposal that came in came in well after this project was
deemed complete.

MR. THOMPSON: That is true.
COMMISSIONER SHARPLESS: Right. You know, I think that the information requirements that we are asking for are not growing, what the problem is is trying to get closure on the issue and the continued questions of trying to get that information so we can do a proper analysis.

MR. THOMPSON: I was not talking about Biology when I made that statement. If we get into Air Quality I can point out where I think the requirements have grown. But what I really wanted to say is that when you as the Commissioners assigned to this case and Judge Valkosky take the evidence it is going to be from all of the parties and it is going to be the best evidence we have at the time.

COMMISSIONER SHARPLESS: Don't you think it's within the applicant's best interest to make sure that when we start that adjudication process that the analysis is as complete as possible and not try to build the case entirely through the adjudication process?

MR. THOMPSON: Yes, and I believe --

COMMISSIONER SHARPLESS: Don't you think that is in the best interest of the applicant?

MR. THOMPSON: Yes.

COMMISSIONER SHARPLESS: Okay.

MR. THOMPSON: Absolutely.

COMMISSIONER SHARPLESS: Then we're agreed on that.

MR. THOMPSON: I'm pleased.
COMMISSIONER SHARPRESS: Okay. Okay, Stan. And then I think I'm going to break at about 12 o'clock. We'll come back, we'll do Air Quality, we'll do Scheduling, and hopefully we'll be out of here within an hour and a half after that. Okay.

HEARING OFFICER VALKOSKY: Just a couple of real quick qualifying questions. Mr. Buell, when are you going to start negotiating with the federal authorities for an MOU? Could I have a date, an approximate date?

MR. BUELL: I don't have that planned in my schedule so I -- As soon as possible. We have workshops scheduled next week, it makes it difficult to plan such meetings. We have two days committed to being in Victorville.

HEARING OFFICER VALKOSKY: So within a week or ten days? I mean, you know, I'm looking at a very short-term type of thing?

MR. BUELL: Certainly within the first week of June.

HEARING OFFICER VALKOSKY: Okay. How long would you anticipate that process will take before you could achieve an MOU?

MR. BUELL: Two to three --

HEARING OFFICER VALKOSKY: Obviously you have got models available.
MR. BUELL: Probably two to three weeks.

HEARING OFFICER VALKOSKY: Okay. So we're looking
at an MOU somewhere around late June, approximately?

MR. BUELL: That would be my guess.

HEARING OFFICER VALKOSKY: Okay, thank you.

Ms. Cuellar, I just want to confirm my understanding. You
indicated that you are filing the right-of-way application
with BLM next week.

MS. CUELLAR: Within the week, within a week, yes.

HEARING OFFICER VALKOSKY: Okay, all right, within
a week. When are you filing the application for the Section
7 and/or 10 permits for the other linear facilities?

MS. CUELLAR: Well, it's our intent -- As I said,
we're trying to get meetings scheduled with Fish and Wildlife
Service and the Bureau of Land Management and it is our
intent to try and move this along as one project and not
separate out the gas pipeline from the other linears.

HEARING OFFICER VALKOSKY: Okay, so --

MS. CUELLAR: So it could all be permitted under
one.

HEARING OFFICER VALKOSKY: Right. So we're looking
at an approximate date mid-June? Is that the time frame
we're looking at? I'm just trying to get a handle on this.

MS. CUELLAR: I would say probably end of June.

We're continuing to work on our draft of our Habitat
Conservation Plan. Until this meeting occurs with BLM and Fish and Wildlife Service there has been no official determinations yet as to whether or not we will be required under the Endangered Species Act to comply with Section 7 or Section 10.

HEARING OFFICER VALKOSKY: Right, okay.
MS. CUELLAR: So that's the importance of trying to get both these agencies together.

HEARING OFFICER VALKOSKY: Right, so --
MS. CUELLAR: It proved a little difficult.
HEARING OFFICER VALKOSKY: So actually we won't know that for approximately a month; is that --
MS. CUELLAR: I would say a couple of weeks.
HEARING OFFICER VALKOSKY: Okay.
MS. CUELLAR: We're still throwing around some tentative dates and people are trying to -- the agencies are trying to clear their calendars. So there has been no official determination made by either one of those federal agencies.

HEARING OFFICER VALKOSKY: Okay, thank you.
COMMISSIONER SHARPLESS: Is that it, Mr. Valkosky?
HEARING OFFICER VALKOSKY: I think so.
COMMISSIONER SHARPLESS: Are there any other -- Are there any other issues on the pipeline that we need to bring up? Why don't we take a lunch break. We will be back here.
MR. JOSEPH: I was just going to ask for your indulgence to make that 1:15 if that is possible.

COMMISSIONER SHARPRESS: Okay, let's see. That will shorten your testimony?

MR. JOSEPH: By 15 minutes.

COMMISSIONER SHARPRESS: Yes, okay fine, 1:15.

Thanks a lot.

(Thereupon, the luncheon recess was taken off the record.)
COMMISSIONER SHARPLESS: Okay. We're back, we're going to start, my colleague will be joining us shortly. As I indicated I think we have about two items left. We will start on Air Quality this afternoon.

MR. CARROLL: Commissioner, I did have one follow-up item from this morning. I have the cite that you requested on the delegation of the toxics program.

COMMISSIONER SHARPLESS: Good.

MR. CARROLL: It was delegated -- It appeared in the Federal Register on July 23rd of 1992 and the cite is 57 Federal Register 3-2-7-2-6 and it became effective on August 1st of 1992. That was the final authorization. There were some interim and partial authorizations prior to that but that was the final.

COMMISSIONER SHARPLESS: Fine, thank you very much, helpful. Okay, Air Quality. Is that you, Mr. Wolfinger?

AIR QUALITY

MR. WOLFINGER: Yes, it is.

COMMISSIONER SHARPLESS: Okay.

MR. WOLFINGER: Let's see. I did write a letter. Let's see, going through Air Quality. I did get a letter from Rick Buell saying what he would like to see in the letters of intent and I have instructed Mike to set us up some standard letters of intent and option agreements and
agreements, which we did. I notified -- Let's see, if this was -- Let's see. I notified Stan on, I believe it was May the 6th or 7th that we would have our letters of intent by June 15th. So we have already started that process.

To give you an update, we have issued about five of those letters of intent. I have met with four of the parties personally and we are in the negotiations for those as we speak. We have about two more letters to send off or three more letters to send off and some more negotiations to do. So that is proceeding.

We provided turbine data a day late on May the 12th and the data was not complete. We were missing basically two pieces of information, the start-up data on the Siemens machines, although we had the full load data, and the start-up data on the Westinghouse/GE updated, if they were giving us any update, and we did not -- have not received that and we're still in attempts to get that. But we did provide the data, all the baseload data for all the machines, 100 percent load data, and start-up data for Westinghouse, GE and ABB.

COMMISSIONER SHARPLESS: Thank you for that.

MR. WOLFINGER: The start-up data is not guaranteed, it should be noted that it never is guaranteed by the manufacturers. They don't guarantee start-up data, so just as a point of reference on this. Let's see.

We also notified you that the Mojave Desert Air
Quality Management District was in the process of going through the banking applications and that was progressing. And I guess rather than speaking for them we have representatives from there and I would suggest that we ask them to give you the update at least. We did put something in our thing but I think it's probably appropriate to ask them for the update as to where they stand on that aspect. And I think that is all the issues on -- Yes. The PDOC has been issued on the 15th and I believe copies are available outside and they have also been --

COMMISSIONER SHARPLESS: It arrived.

MR. WOLFINGER: Pardon me?

COMMISSIONER SHARPLESS: This morning from Dockets.

MR. WOLFINGER: Right. And we also in that interim too we have -- When it became available to us where the SCR vendors were looking at guaranteeing lower numbers we met with -- And I think we -- I don't think we brought this up with you because I think it was since then, I think we brought it up down in Victorville. I think we mentioned to Rick Buell that we had been talking with the SCR vendors, specifically Inglehart and Mitsubishi, looking at what kind of guarantees, what aspects they could do. And in the interim period we have reduced the full load guaranteed emission point from a 4.0 ppm for NO$_x$ down to a 3.0 ppm for NO$_x$ and so notified the Mojave Desert Air Quality Management
District who has incorporated that into their PDOC that they have submitted.

COMMISSIONER SHARPLESS: Okay, yes, I think you did hit the points that we asked you to respond to in the Order. I will just note that we did receive these and I see the docket date is the 19th. I just received my copy this morning so I have not had a chance to look through this.

MR. WOLFINGER: What was the 19th?

COMMISSIONER SHARPLESS: When we received the PDOC.

MR. WOLFINGER: Oh, the PDOC, that's right.

COMMISSIONER SHARPLESS: When we received the PDOC.

MR. WOLFINGER: Oh, I'm sorry, right.

COMMISSIONER SHARPLESS: So I haven't had a chance to really look at this and see what is in it. Oscar, would you like to come up and talk a little bit about perhaps where you are in your process, when you think you might get your FDOC about the emission reduction credit issue.

MR. HELLRICH: Well, the PDOC has a 30 day comment period.

COMMISSIONER SHARPLESS: Right.

MR. HELLRICH: And we have stated that we intend to have the final DOC issued on or about the 19th of July. If your schedule calls for the 18th of July we can possibly do that for you. I have brought Alan De Salvio from the District who is working the ERC issue. If you care to have
COMMISSIONER SHARPLESS: Okay, but just one last point on the DOC and that is that you're expecting your board to deliberate on it by the 19th and send it to us or is that the date that has been set up for board deliberation or what?

MR. HELLRICH: No, there is no board deliberation on a DOC.

COMMISSIONER SHARPLESS: No board deliberation on the DOC. Do you have a workshop or a hearing process involved in this?

MR. HELLRICH: If there are significant comments we will call for one, yes.

COMMISSIONER SHARPLESS: Okay. So until you see what comments you get you have not yet set up a hearing.

MR. HELLRICH: That's correct.

COMMISSIONER SHARPLESS: Okay. Thank you, Oscar, thank you for coming. And the gentleman who was going to come forward and talk about emission reduction credits?

MR. DE SALVIO: Alan De Salvio with the Mojave Desert AQMD. We have to date received 11 applications for emission reduction credits. We have acted on one and that one is mentioned with the proposed letters of intent. That's about all I can really say at this point. We are proceeding with the remaining applications.

COMMISSIONER SHARPLESS: I think that the applicant
in their letter indicated that the air district had informed
them that they were working on applications for banked ERC's
and expected to process these for release by the end of May.
Was that a conversation with you and is that the processing
of all 11? What does that statement mean to you?

MR. DE SALVIO: That means that we expect to
indicate to those remaining 10 ERC applicants whether or not
their applications are complete or incomplete, by the end of
this month.

COMMISSIONER SHARPLESS: And then what is your
process after that?

MR. DE SALVIO: Then we have an extensive, possibly
very extensive in some cases, analysis process. It depends
on the nature of the application.

COMMISSIONER SHARPLESS: And that would be internal
analysis?

MR. DE SALVIO: Yes. Which culminates in the --

COMMISSIONER SHARPLESS: Would you be doing all 11
applications at the same time in the analysis or are you
staging them or how does that work?

MR. DE SALVIO: They are being -- They are being
dealt with sequentially.

COMMISSIONER SHARPLESS: Sequentially. So when you
say it is a long process, when do you think your process
might generate enough ERC's for this project?
MR. DE SALVIO: That's -- Well, we had issued --

Just to give you an example, one of the applications comes
from Mitsubishi Cement, that's one of the facilities in
question, and we issued to them prior to this date a letter
of incompleteness regarding their application. So I really
can't answer your question because we need to get a response
to that letter from Mitsubishi before we can even proceed
with the analysis. It's difficult to say. I feel that I
just really can't answer that. It shouldn't take too long
once we get enough information, I would say 30 to 60 days in
the case of Mitsubishi Cement. On the remaining applications
we have yet to even get to the completeness stage so I really
can't answer that.

COMMISSIONER SHARPLESS: Are there any other
agencies involved in your analysis besides yourself?

MR. DE SALVIO: No, we are the agency that makes,
that reaches the local decision; however, in the case of
Mitsubishi and I think every other proposed letter of intent
in this group, or application it's called, each action will
require notification of both ARB and EPA. And of course
we're required to address those comments as we would any
other public comments. So the possibility exists for some
further gyrations prior to filing a decision.

COMMISSIONER SHARPLESS: Well, can you give me an
idea then. Once you do your analysis and you find the
application is complete is that it for your agency and then
you notify the Air Board and USEPA and give them a comment
period?

MR. DE SALVIO: Yes, there is a -- Once we find an
application complete we are required by our rules to begin a
30 day notice period which also involves noticing ARB and EPA
depending on the nature of the application. And in the case
of the critical facilities for this project it's the size of
the application, and so of course for these four facilities
it will be large enough to notify those agencies. So there
will be a 30 day comment period. At the end of that period
we have the ability based on comments to then issue the
credits, the performance certificate. So it could be as
short as 30 days from the moment that we find the application
complete that credits would be available, that's the absolute
minimum.

COMMISSIONER SHARPLESS: Okay. Well, that presents
somewhat of a dilemma here for the applicants and us. I
appreciate you coming up. Are there any questions of this
gentleman? Mr. Joseph.

MR. JOSEPH: If I understand it your process is you
send out a letter of incompleteness, the applicant responds
with the information that you requested, you then do the
analysis that you said could be extensive or very extensive.
Then you issue a proposed ERC determination including a
revised permit for the facility for a 30 day comment period.

MR. DE SALVIO: The permit chain would be required prior to the issuance and I would say in most cases.

MR. JOSEPH: And then you evaluate whatever comments you get and make a final decision?

MR. DE SALVIO: Right.

COMMISSIONER SHARPLESS: Staff?

MR. BUELL: I have just one question. If the minimum time is 30 days, the maximum time assuming a complete application, could we guess at that?

MR. DE SALVIO: No, because --

MR. BUELL: Okay.

MR. DE SALVIO: But of course any extensions as far as agreements are, an understanding on both parties, are from AQMD and the applicant. But, you know, in the case of some of these applications there's some issues that need to be resolved. I mean, we're going to make every effort we can to look at them promptly.

MR. BUELL: Okay, thank you.

MR. JOSEPH: One other question.

COMMISSIONER SHARPLESS: Mr. Joseph.

MR. JOSEPH: Do you remember when you sent the incompleteness application to Mitsubishi?

MR. DE SALVIO: The letter of incompleteness was this week. I think we acted on a Public Records Act prior to
its being sent, we'll provide a copy to you.

MR. JOSEPH: Thank you.

COMMISSIONER SHARPRESS: Yes, Stan.

HEARING OFFICER VALKOSKY: What's your level of confidence that you will have decided whether or not the applications are complete by the end of this month?

MR. DE SALVIO: Any particular applications you are --

HEARING OFFICER VALKOSKY: No, I mean just the ten outstanding applications. Are you sure that by the end of this month you will have decided whether or not those applications are complete?

MR. DE SALVIO: We will have determined -- This is just to clarify an issue. We will have determined by the end of the month whether -- which ones are complete and which ones are incomplete and have notified the applicants accordingly detailing what additional information we need. Yes, we're confident of that.

HEARING OFFICER VALKOSKY: Okay.

MS. SHAPIRO: But then let's say you found five of them complete. Then you do analyses for some period that we haven't estimated yet.

MR. DE SALVIO: I believe -- Oscar may be able to help me. I think it's a 30 day period we're required to -- I think we have at least -- We are required by our rules no
more than 30 days later to then either issue or notify the applicant that we need further information to complete the analysis.

MS. SHAPIRO: And then do you go out for the 30 days comment after that or does that include --

MR. DE SALVIO: The 30 day public comment period is triggered by our finding of completeness and proposed issuance of the ERC's.

MS. SHAPIRO: Okay. Okay.

MR. DE SALVIO: All of which -- That action basically requires all the blanks to be filled prior to that.

MS. SHAPIRO: Thank you.

COMMISSIONER SHARPLESS: How long have you had your banking rule?

MR. DE SALVIO: Since '94, approximately.

COMMISSIONER SHARPLESS: And how many applications have you had to the bank? Are these the first 11?

MR. DE SALVIO: These are the -- We have had 11 applications, basically, beginning with the adoption of that rule. None have been acted on except for one just recently.

COMMISSIONER SHARPLESS: So since 1994 these are the only 11 applications that you have gotten for the bank?

MR. DE SALVIO: Correct.

COMMISSIONER SHARPLESS: And when did they come in?

I'm just curious.
MR. DE SALVIO: Since '94 they have been scattered. I believe we can provide this information to the CEC, certainly in definitive terms. We received a large group in June of 1996.

COMMISSIONER SHARPLESS: Okay.

MR. DE SALVIO: There was an application deadline for certain actions in '96.

COMMISSIONER SHARPLESS: Okay. Well, I want to thank you for coming up this way and giving us that information. It helps us know what our expectations might be in scheduling. I certainly would hope that the process moves as expeditiously as possible. I think you know why.

MR. DE SALVIO: We agree.

COMMISSIONER SHARPLESS: Okay, thank you. Staff, what do you have to say about Air Quality today?

MR. BUELL: Well, first I would like to say that staff went and checked on the water modeling data that we had identified earlier as being missing and stand corrected, the information was provided on March 31st. I believe that's the right date. So for the record I clarify that point.

COMMISSIONER SHARPLESS: Good.

MR. BUELL: Regarding the information that Mr. Wolfinger provided earlier. We are in concurrence. There is data that is still outstanding on the Siemens turbine and also on the Westinghouse 501-G.
The other bit of information that staff would point out as being missing at this point is the applicant had provided a revised Air Quality Impact Analysis as part of the submittal on May 12th that identified impacts from the project. What was missing with that submittal was the input and output files that would be necessary for staff to understand the modeling analysis that was conducted. If that would be provided we could conclude that that information is complete.

COMMISSIONER SHARPLESS: Okay.

MR. WOLFINGER: Is this for the one -- I'm sorry. Is this for the one -- Is this for this one hour NOx and the one hour and eight hour CO impact analysis? Is that -- Is that the files you're looking for?

MR. BUELL: Yes, yes.

MR. WOLFINGER: Okay.

COMMISSIONER SHARPLESS: Maybe I can ask staff. Staff, are you going to cover the PDOC? What are your next steps with the PDOC? Wait until the final DOC comes?

MR. BUELL: Staff suggested and I believe staff will be working on preparing comments on the Preliminary Determination of Compliance and submitting them within the 30 day comment period that the District has identified. We'll be doing that by June 19th. I think that's the date the District requested comments back.
COMMISSIONER SHARPLESS: And what are you looking for, in terms of, what kinds of issues would you be commenting on? What our CEQA requirements would require of us in our analysis?

MR. BUELL: That and trying to gain a better understanding of what the basis was for the district's conclusions about compliance with LORS so that we understand that fully.

COMMISSIONER SHARPLESS: Okay, great. ERC's. Do you have any comments on the ERC's?

MR. BUELL: Not at this time. Nothing new to add.

COMMISSIONER SHARPLESS: Okay. I have a question of you, though. Did you in your schedule calculate in the amount of time that it might take to process these applications?

MR. BUELL: Our schedule --

COMMISSIONER SHARPLESS: In your status report. I can't remember. I think it was your May 15th report where you have a schedule.

MS. SHAPIRO: Yes, it is the May 15th report.

MR. BUELL: What that schedule identifies is that the applicant needs to provide the letters of intent for those emission offsets by June 15th as the applicant had indicated. As far as the time it would take to actually bank those ERC's, staff had not included that in our schedule as a
mandatory or a performance date that needed to be met by any
party.

COMMISSIONER SHARPRESS: Okay. Is there anything
else you would like to say regarding the ERC's and the
scheduling, Mr. Wolfinger?

MR. WOLFINGER: No.

COMMISSIONER SHARPRESS: Done the best you can.

Okay, Mr. Joseph.

MR. JOSEPH: Thank you, Commissioner. With respect
to ERC's, I feel like I'm sort of sounding like a broken
record, but I realize that phrase may become increasingly
dated. You know, we still have nothing but promises of
future performance. And we have an expectation that we'll
g et letters of intent two months after the Commission's four
month grace period. Whether it will or will not happen by
that date, I don't know. I think the key for the Commission
in responding to that is to adopt the staff's proposal of a
performance-based schedule so that if it happens then things
move forward and if not then there are consequences to the
failure to meet the obligation to keep the dates.

I think it will be important to see what the air
district does with the ERC applications. To see whether and
under what circumstances ERC's are actually banked and
whether the letters of intent are letters of intent for ERC's
that will truly exist. We're going to have to be able to
analyze whether those ERC's will be mitigation for the project and what the secondary impacts will be.

With respect to the preliminary DOC: I have not yet seen it, I assume it is sitting in my in-basket back in my office. But given the likely controversy over the contents we agree with the staff that it is important to have the final DOC before the FSA.

I also would note that with the applicant's change from a 4 ppm NO\textsubscript{x} level to a 3 ppm NO\textsubscript{x} level for steady-state operations it would be my assumption that that will require increased use of ammonia. That greater volumes of ammonia will be required to make that take place. So that will trigger changes to the information on the amount of ammonia transport and perhaps ammonia storage. So it would seem to me that those are pieces of information which need to be updated if the hypothesis is correct that using SCR to get lower emissions requires greater amounts of ammonia.

COMMISSIONER SHARPLESS: Would you care to comment on your comment about EPA's review of the prevention of significant deterioration application? You had something in your letters that said you were not aware of any development regarding EPA's review. Have you any more current information since you wrote that?

MR. JOSEPH: No, since I wrote that I have not heard anything else. So far it has been marginally, at least
COMMISSIONER SHARPLESS: Can I ask staff? Staff, are you dealing with that issue? USEPA's prevention of significant deterioration application.

MR. BUELL: We have been in contact with EPA. And Mr. Tuan, do you have anything that you would like to add about the status of that? This is Tuan Ngo of our staff.

MR. TUAN: We met with the EPA staff about two weeks ago and we asked them about the status of the PSD application. The answer from the EPA staff was they still working on it. Nothing substantial in terms of working on the application since the day they have been deemed complete.

COMMISSIONER SHARPLESS: And what is our position on meeting USEPA's determination on PSD?

MR. BUELL: I think one point is that earlier we had talked about PSD being delegated to local districts. In this case PSD applications have not been delegated to the Mojave District so we actually need an action by USEPA on this project. In many cases we have deferred the actual PSD, obtaining a PSD permit until after certification.

COMMISSIONER SHARPLESS: But in those cases you said it was because of the delegation issue.

MR. BUELL: No, those cases were actually prior to there being delegation. It was the normal practice that EPA would issue a permit post our certification process.
COMMISSIONER SHARPLESS: And what is the rationale that we use to allow it to be submitted after the certification process?

MR. BUELL: I think it was Caryn who had indicated earlier we had reached a conclusion based upon all the discussions with EPA and our understanding of the issues that a project presented that it was likely -- a project was likely to comply with PSD requirements. And we made that finding or staff made that finding and recommendation to the Committee and their decision on the project was based upon that understanding, that the project was likely to comply.

COMMISSIONER SHARPLESS: And is that based on what the district might do in order to meet its requirements? BACT and threshold and emission reduction credits, do those two things tie together?

MR. BUELL: That's a separate item. That would be under new source review rules. PSD was the increment consumption and the application of federal BACT requirements.

MS. HOUGH: Typically what's happened is that the EPA has given us indication, I think in many instances in writing, that they expect that the project will comply. But there may be a significant period of time before they actually issue the piece of paper that says, this is a PSD permit.

COMMISSIONER SHARPLESS: Caryn, can they do that
before the Final Staff Assessment?

MS. HOUGH: I don't know what their schedule is for completing PSD permits.

COMMISSIONER SHARPLESS: Do we know what their schedule is?

MR. TUAN: They won't be -- The final approval from the PSD permit won't be finished until sometime probably March 1999.

COMMISSIONER SHARPLESS: No, but we are not talking about the final permit, we're talking about an indication.

MR. TUAN: From what they -- From discussion with EPA staff the only thing what they want to do was to comment on the DOC and incorporate all their comments into the DOC, into the preliminary DOC. So that by the time they go into the PSD application they don't have that much a problem.

COMMISSIONER SHARPLESS: Okay. So during the -- We can assume that the comments that USEPA makes on the PDOC --

MR. TUAN: Yes.

COMMISSIONER SHARPLESS: -- will reflect where they are going, even to the extent of the PSD.

MS. HOUGH: I think it's if USEPA makes comments on the PDOC and the District incorporates the comments and recommendations.

COMMISSIONER SHARPLESS: Right, right.

MS. HOUGH: Right.
COMMISSIONER SHARPLESS: Okay.

MR. CARROLL: That is, by the way, consistent. We also have met with Region 9 to talk about this issue and that's very consistent with what we were told. That they intend to minimize their own resource consumption and rely on the PDOC process. And assuming that that is all completed and in place then it would pave the way for them to issue the PSD permit.

COMMISSIONER SHARPLESS: Okay. Any other questions on Air Quality? Okay. I think we sort of know where we stand on that issue.

SCHEDULE

Mr. Valkosky, that now brings us down to the section on the agenda where we were going to review the schedule. Would you like to help the Committee, lead through the schedule discussion, please.

MR. JOSEPH: You're giving him the fun part, right?

COMMISSIONER SHARPLESS: Well, It's kind of interesting because when you all look at what is required I have noticed that even our own wonderful staff leaves the Committee less and less time to render its own final decision. So we have a Committee perspective that hasn't necessarily been reflected by the discussion and Stan is in a fairly good position to know what that means to us.

MR. THOMPSON: And he's leaving.
COMMISSIONER SHARPRESS: He ain't no dummy.

HEARING OFFICER VALKOSKY: In examining the various elements of the schedule and the scheduling proposals that have been contained in the parties' filings the Committee has attempted to work out a schedule, one with an expected due date of December 2nd which is the 12 month date, and then the various alternatives. Fundamentally, the Committee has concluded that based on a lot of the factors that are outstanding and a lot of the steps which you have to take before it can achieve a date that frankly it is unclear how we get to a decision date from here, especially a December 2nd decision date.

The document that I have just handed out, the High Desert Schedule, lists approximately 30 steps which from the Committee's perspective are necessary. The dates reflected are based on the most recent filings of the parties. You will notice that there's only a half-dozen or so dates that are filled in, the rest of the dates are intentionally left blank. The elements reflected on the left hand side of the paper in many cases contain either required intervals or typical intervals that are applicable to each of the elements.

This schedule, this document is not intended to be all-inclusive. You will notice, for example, things that typically happen like staff workshops are not included in it.
There is a number of elements which were discussed today which may be lacking because we weren't really aware of it when these were -- when this document was devised.

What I would like the parties to do--I'm not suggesting we do it now, I think it would probably be done better in an informal discussion--is basically fill in the blanks. You have got the elements here. If you take exception to any of the elements I think you should indicate that. If there are other elements that in your view based on discussions today should be added, feel free to add them.

What the Committee is interested in at this point is getting input from the parties at a detailed level using this High Desert Schedule Draft as a work sheet so that the Committee can then evaluate the input of the parties and come out with a schedule, at least through the FSA, in the near future. Are there any questions on this?

COMMISSIONER SHARPLESS: I think the one thing that you may have left out, Stan, was in combination with the issue about a continuation workshop tomorrow. We were thinking that this might be a good time for the parties to get together. Okay. What Stan is saying is that the applicant has thought about perhaps trying to move that up to today. I was going with what staff was suggesting, that there be a continuation for tomorrow of a workshop nature where parties get together and try to, as Stan said, fill in
the blanks.

What we're really trying to do here is be realistic. I emphasize, realistic. And what we hope this will do is to point toward an issue that we brought up at our last conference and still is under consideration. And that is a performance-based schedule where dates are established and if dates are missed then there is a slippage based on dates missed. I don't know how else we work this given where we are today with the schedule.

We want to give the parties adequate time to talk about this; we want to give the parties adequate time to think about what the schedule means to their participation. And as a Committee we want to make sure that unlike the staff's schedule, the Committee gets adequate time as well to write its Decision draft, Mr. Buell. So that has to be taken into consideration as well.

So I would like to open it up right now and have people sort of react to the idea that this be discussed. Actually I'm encouraging and suggesting that it be discussed. But when it is discussed, whether it is tomorrow or whether it is today or when it is, is really up to those of you who are sitting around this table.

MR. THOMPSON: Given your comment to Mr. Buell I'm glad I didn't show you my schedule.

COMMISSIONER SHARPLESS: What did you give us,
seven days or something?

MR. THOMPSON: Well, we basically thought we would write it for you. No, there wasn't much time there. We appreciate this effort and will take this and work with it, we would like to discuss it tomorrow.

When we mentioned a continuing workshop this afternoon it was under the understanding that Marc Sazaki may be available in Biology. Since we have Amy Cuellar here it may be a good time to adjourn this format and get with staff and tell them what we're doing, show them the maps we have, et cetera, et cetera, et cetera.

But we will take this schedule and we appreciate the effort that Stan Valkosky has done here and we will be prepared to talk about it tomorrow morning.

MR. BUELL: Staff is willing to talk about it this afternoon if the applicant is willing to talk about it this afternoon. I don't think all afternoon would be taken up with our discussions with Marc Sazaki so that's another option.

COMMISSIONER SHARPLESS: Was it not your suggestion, Mr. Buell, that there be a continuation until tomorrow? Are you changing your view now?

MR. BUELL: I guess staff had requested or identified -- had requested a continuation until tomorrow simply because I wasn't sure how long this hearing was going
to last today. And if the opportunity presented to have the
discussions today then certainly I think we ought to take
that opportunity. All the parties are here. It might save
others other important meetings that they have to go to.
Caryn Hough just informed me she wasn't going to be here
tomorrow morning.

COMMISSIONER SHARPLESS: Okay.

MR. JOSEPH: That's certainly my preference as one
of the out-of-towners. I think it's one thing we share in
common is to see if we can get as much done today as
possible.

COMMISSIONER SHARPLESS: Fine.

MR. JOSEPH: Possibly avoid a trip back tomorrow.

COMMISSIONER SHARPLESS: That's fine with me. It's
really just a suggestion. I know that staff -- I thought
staff had more that they wanted to talk about in a
continuation meeting than just the schedule but it may have
been this Biology issue. I know that you have workshops
scheduled for next week in Victorville, I know that. There's
like three solid days, one with the Victor Valley Water
District and then two with the staff on the preliminary DOC
and perhaps some other issues. I wasn't quite sure what they
all cover, although I signed the Order to do so.

MR. WOLFINGER: I would like to just say that I
would like to have the meeting go into tomorrow, I have got a
lot of things to discuss. I mean, one of the things I have been very frustrated in this process is that I haven't been allowed to call meetings and talk to people. I mean, I have asked a number of times. It seems though as I as the applicant don't matter. I mean, I'm the one that asks for them, I asked Stan, and I'm the one that wants the time.

COMMISSIONER SHARPLESS: Okay.

MR. WOLFINGER: I would like to just say, I would like to have the time. Although maybe other people don't want to take the time I specifically asked for the time and I would like to take it.

COMMISSIONER SHARPLESS: Well, I think that staff in their status report said that they would be happy to offer that time to the applicant.

MR. WOLFINGER: Good.

COMMISSIONER SHARPLESS: We are talking about a continuation in a different format.

MR. WOLFINGER: Yes. Great.

COMMISSIONER SHARPLESS: It's a workshop format as opposed to a Committee Conference to work out some of these issues that I think you all want to do.

MR. WOLFINGER: Thank you.

COMMISSIONER SHARPLESS: It's not that your letter has been ignored, we received your letter, but there are quite a few workshops that have been set up. At this point
it looks as though if there are more conferences that will be needed we need to know what they would be about before we agree to have something like every two weeks. So I will leave it up to the parties. If you want to continue after we adjourn this meeting today, that's fine with us, is it not?

Do I need to sign something, Stan, as usual, to paste it on the door?

HEARING OFFICER VALKOSKY: As usual, you're correct. You can sign a Notice of Continuation for tomorrow. The Notice will read 9 a.m. to 4 a.m. (sic), Office Building 8, Room 217, 714 P Street.

COMMISSIONER SHARPLESS: What is that?

MR. THOMPSON: I won't be here until 4 a.m.

MS. HOUGH: Is there a problem with continuing it this afternoon then tomorrow if we need to go on to tomorrow?

COMMISSIONER SHARPLESS: No, I have just given you the option. I will --

HEARING OFFICER VALKOSKY: There is no problem.

MS. HOUGH: It seems like it was presented as an either/or.

COMMISSIONER SHARPLESS: No, I am going to sign the notice, we'll paste it on the door.

MS. HOUGH: Okay.

COMMISSIONER SHARPLESS: If you guys don't need it we'll just put a Cancel across it. This is just a
contingency plan for you all and allow you whatever time you need.

I guess the next issue then, Stan, would be, once the parties talk about the schedule and fill in the blanks and talk about the reality of when things can be done and what needs to be done this would come back to the Committee for the Committee to consider. The Committee might want to do its own input into this proposal. Once we see your reality we'll look at our reality. We will come out with a Committee Order on the schedule; is that right?

HEARING OFFICER VALKOSKY: That's correct.

COMMISSIONER SHARPLESS: That would be within two weeks or so?

HEARING OFFICER VALKOSKY: I think it will be quicker than that if we get timely response from the parties. And I would suggest, is there any difficulty in setting a report-back date on Tuesday the 26th? Is that too short of a time frame?

MR. JOSEPH: I would inquire as to what form you want the report-back in. There is a possibility we will all agree on the schedule but there is a possibility we won't.

HEARING OFFICER VALKOSKY: I don't anticipate that you will all agree on every element of the schedule. If you agree, fine, fine. What I am interested in is each party's reaction to the list of items and that is really it. To the
extent that they agree, again, that's fine. To the extent
there is elements that you want to add or subtract, that's
fine too. What I want is your response to the document that
I handed you.

COMMISSIONER SHARPLESS: Although I would encourage
that they try to work on agreement.

HEARING OFFICER VALKOSKY: I definitely encourage,
yes. Definitely encourage agreement, but again, it is not a
condition of it. So really, that's it. Can you get back to
the Committee by Tuesday, the 26th is that?

MR. WOLFINGER: We can as the applicant.

HEARING OFFICER VALKOSKY: Mr. Buell?

MR. BUELL: I have some questions I would like to
ask the Committee about guidance on what criteria they are
looking for in the schedule. I see no reason why we can't
meet that date.

HEARING OFFICER VALKOSKY: Okay, what are your
questions?

MR. BUELL: Are you directing the parties to come
up with a schedule that has a decision by December 2nd of
this year?

HEARING OFFICER VALKOSKY: No. Not necessarily,
let me put it that way.

MR. BUELL: How strongly does the Committee feel
about the issuance of a complete PSA?
HEARING OFFICER VALKOSKY: That's one of the items I think that is subject to discussion among the parties.

MR. BUELL: Okay. How much time does the Committee want to prepare a Presiding Member's Report?

HEARING OFFICER VALKOSKY: If you'll notice it says, in a contested case, such as we anticipate this to be with multiple adjudicated issues, 60 days would be typical. That's guidance.

MR. BUELL: Okay, thank you.

HEARING OFFICER VALKOSKY: Obviously, if it's 55 days that is negotiable, if it's 20 days you are out of the ballpark. Okay?

MR. BUELL: Okay.

COMMISSIONER SHARPLESS: And if you're expecting us to write it on Christmas, forget it, it ain't going to happen.

MR. BUELL: And the schedule that you want only goes through the FSA?

HEARING OFFICER VALKOSKY: No, no, I want it through the balance of the proceeding. I mentioned FSA because at the present time the Committee would desire to issue a Scheduling Order that could go through the issuance of the FSA. Again, that's subject to change, I want to emphasize that. But that would be the next major document. Anything else? Mr. Joseph.
MR. JOSEPH: Noting that Monday is Memorial Day, Tuesday would be fine so long as you accept a fax filing. Because otherwise it means sending it out by Friday.

HEARING OFFICER VALKOSKY: Fax filing is fine.

MR. JOSEPH: Thank you.

HEARING OFFICER VALKOSKY: That would be followed up with a hard copy to the Docket --

MR. JOSEPH: Correct.

HEARING OFFICER VALKOSKY: Yes, that's no problem.

COMMISSIONER SHARPLESS: Any other questions?

Okay. Commissioner Laurie, for the good of the company shall we adjourn?

COMMISSIONER LAURIE: Good idea.

COMMISSIONER SHARPLESS: Any other issues that we need to cover? We talked about schedule continuation. Okay. Well, we will adjourn the Committee Conference and you may carry on. I thank you again.

MR. THOMPSON: Thank you.

(Thereupon the meeting was concluded at 2:11 p.m.)

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CERTIFICATE OF TRANSCRIPT

I, Ramona Cota, as the Official Transcriber, hereby certify that the attached proceedings before Chief Hearing Officer Valkosky, California Energy Commission,

In the Matter of: ) Docket No. 97-AFC-1
Application for Certification )
for the High Desert Power Project )

were held as herein appears and that this is the original transcript thereof and that the statements that appear in this transcript were transcribed by me to the best of my ability.

I further certify that this transcript is a true, complete, and accurate record of the proceeding.

Ramona Cota
May 30, 1998
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