

STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DEC 23 1985

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In the Matter of:) Business Meeting
) Agenda Item 8
Petition to Amend the KERN RIVER) Docket No. 82-AFC-2c
COGENERATION Application for)
Certification Decision Submitted)
by SOUTHERN CALIFORNIA EDISON)
COMPANY on October 9, 1985.)
_____)

1516 Ninth Street
First Floor Hearing Room
Sacramento, California

Wednesday, December 18, 1985

2:00 O'Clock P.M.

Reported by:

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ALSO PRESENT (CONTINUED)

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- Rick Miller, ARI
- Charlie Myers, KRCC
- Karl Luft, Texaco
- Alan Fenning, KRCC
- Craig Thompson, Deputy Attorney General

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CHAIRMAN IMBRECHT: Item 8 is Commission consideration and possible acceptance of a petition to amend the Kern River Cogeneration Application for Certification Decision submitted by Southern California Edison Company on October 9, 1985.

Commissioner Commons, do you wish to speak to this?

COMMISSIONER COMMONS: I think it's appropriate to take public testimony first.

CHAIRMAN IMBRECHT: Take public testimony first. All right.

Mr. Ward, anything from the staff on this item?

EXECUTIVE DIRECTOR WARD: General Counsel's Office may have an opening comment.

MS. HOUGH: We'd be prepared to let the applicant speak first.

CHAIRMAN IMBRECHT: All right. Fine.

Mr. Gardner.

MR. GARDNER: Thank you, Mr. Chairman. Mike Gardner representing Kern River Cogeneration Company.

I believe that Commissioner Commons has just provided the Commissioners with a suggested order. We

1 are generally in concurrence with that order. I think
2 Item 5 on the summary page still gives us some difficulty.

3 We had originally asked and still ask for
4 authority to energize the short tap line and the switch-
5 yard substation which were built to allow the cogeneration
6 facility to serve the electrical demands of Texaco's oil
7 field.

8 I think we made the majority of our arguments
9 last week. I don't need to go back through those again.
10 Mr. Chairman, you had, however, asked that we provide some
11 legal analyses on certain issues. We have done that. Copies
12 have been provided to all Commissioners' offices and the
13 staff this morning.

14 There are a set of photographs which accompany
15 that filing. The photographs are intended to show that,
16 although it can be argued we did not go through the correct
17 environmental review process, in fact we did not create
18 a significant adverse environmental impact.

19 The photographs are a series of --

20 CHAIRMAN IMBRECHT: As compared with the other
21 impacts in the area.

22 COMMISSIONER CROWLEY: Yes.

23 MR. GARDNER: Yeah. There are a series of before
24 and after photographs showing all of the areas affected
25 by the tap line and substation. The photographs are

1 annotated on the back explaining what they are.

2 I think we can summarize very easily, Mr. Chairman,
3 that in our view there is no environmental impact in your
4 authorizing the line to be energized during this interim
5 period while the Commission amends the original AFC to
6 incorporate the line and the substation within that. We
7 would ask that you do that.

8 We have provided in the brief that we have given
9 you this morning additional information on the financial
10 effects of not energizing the line. It's approximately
11 \$770,000 a month additional cost to Texaco, and the loss
12 of approximately \$55,000 a month in revenues to Kern River
13 Cogeneration Company. We believe those are both significant
14 numbers and would ask for -- for relieve on that economic
15 basis, in that there are no further environmental impacts
16 that would result in the relief being granted.

17 Certainly if during the amendment process the
18 Commission believes that impacts have occurred and mitiga-
19 tion is necessary, the applicant is fully prepared to
20 implement any reasonable mitigation.

21 A first reaction, looking at the photographs,
22 is that there may be none that is necessary or appropriate,
23 but I think that is something that would be subject to
24 hearing, and then that would be decided.

25 One point that was raised in the -- in Commissioner

1 Commons' order and his summary paragraph No. 5, that the
2 line and substation could be energized on an emergency
3 basis if PGandE were unable to serve Texaco's oil field
4 load, my understanding is that it's not a matter of an
5 automatic switch taking over and that there would be no
6 loss of electricity to the oil field.

7 Mr. Karl Luft is here with us, and I would like
8 to have him explain a little bit more about the actual
9 physical arrangements and the impact that would occur to
10 Texaco should PGandE's service fail and we were unable
11 to go forward.

12 MR. LUFT: Good afternoon. My name is Karl
13 Luft. I'm a Texaco engineer.

14 Right now the substation is currently connected.
15 However, in the switchyard we are not connected at all,
16 whatsoever, with the system itself. In the event of a
17 failure, we would have to mobilize Southern California
18 Edison Company to come in and make the initial tie. From
19 there we would have to go through a procedure of proving
20 phase rotation voltage checks to insure that the rotation
21 that goes out into the field would be consistent with what
22 we have from PGandE.

23 In that event, we're looking at between one to
24 two days of outage overall time, and that would be a tre-
25 mendous loss of production for Texaco Oil.

1 CHAIRMAN IMBRECHT: Is there any reason why that
2 work could not be done now?

3 MR. LUFT: Right now?

4 CHAIRMAN IMBRECHT: Um-hum.

5 MR. LUFT: There are implications that if we
6 do the work now, KRCC is at risk of lost generation due
7 to the configuration of the switchyard. If we are tied
8 in, we would like to close what they commonly refer to
9 as a ring bus, and that would energize the line.

10 Southern California Edison has very specific
11 requirements as far as not leaving a line energized for
12 any length of time in which relay protection has not been
13 proven. Although the line is owned by Texaco, we are try-
14 ing to cooperate fully with Southern California Edison
15 Company in their requirements.

16 CHAIRMAN IMBRECHT: I guess what I don't under-
17 stand is why you can't make those connections, and then
18 deenergize the line and continue to use PGandE in the
19 interim, but be in a position to reenergize the Texaco line
20 on a much more expeditious basis.

21 MR. LUFT: The configuration of the switchyard
22 is a ring bus.

23 CHAIRMAN IMBRECHT: Um-hum.

24 MR. LUFT: In order to deenergize that line,
25 we have to break the ring bus, and that is electrically

1 very much the same as a physical ring. If you happen to
2 break that ring bus, and we have a fault on the system
3 or a generator, it will open up the ring bus, thereby giv-
4 ing you two halves, or portions thereof, and electrically
5 isolating part of the cogeneration facility from the
6 Edison grid. We would lose generation.

7 CHAIRMAN IMBRECHT: Okay.

8 COMMISSIONER COMMONS: Well, the Committee's
9 intent following the discussion that we had last week,
10 and I should clarify it, the Committee that -- Commissioner
11 Gandara did not participate in this, so it's really myself
12 as the Presiding Member -- was if we have a facility built
13 it was my belief that, given the situation that we have
14 here, we don't want to see this facility not operating,
15 and with the testimony of PGandE that they were not going
16 to in fact turn off the power, the process that we've set
17 forth here is not a long process, and we've tried to bring
18 this to the Commission as timely as possible, but at the
19 same time there is a need on a major facility like this
20 to have some type of backup power source in the event where
21 there is not a contract with Texaco, and so that is why
22 in here that would be what I would call an emergency, is
23 if there was no electricity for the facility, and so the
24 order does -- does provide for Texaco and Southern California
25 Edison to hook up if that in fact type of emergency were

1 to occur.

2 I was concerned with the quagmire that we got
3 into, whether or not it might take longer rather than
4 shorter to attempt to wade through all of the rather dif-
5 ficult issues that you had brought forth, Mr. Chairman,
6 and go further than that on the emergency relief, rather
7 than taking the expedited proceeding that we have available
8 for ourselves, in terms of looking at this as a modified
9 AFC.

10 There could be more questions and lawsuits or
11 potential litigation and issues if we went further than
12 might be accomplished by this, recognizing at the same
13 time there are some economic -- potential economic impacts
14 on Texaco. There are also possible economic impacts on
15 PGandE, and the matter really hasn't been heard either
16 on an economic or environmental side by the Commission,
17 and so that's why this -- I would have to call it middle-of-
18 the-road order that you have before us is written the way
19 it is.

20 CHAIRMAN IMBRECHT: Let me ask you, Mr. Gardner,
21 what would be your feeling if that were modified to allow
22 you to energize on an interim basis the Texaco line, but
23 with a prohibition against dismantling the PGandE line?

24 MR. GARDNER: That would be fine. There is --
25 if there is no intent to remove the PGandE line at this

1 stage, we indicated to you last week that we would be per-
2 fectly willing to leave that line in existence until the
3 Commission made its final ruling.

4 Obviously if the Commission's final ruling is
5 counter to the overall petition, the PGandE line would
6 have to remain somewhat longer, but we would be -- be glad
7 to accept that.

8 If I might make one comment on a portion of
9 Commissioner Commons' discussion on timing, one reason
10 that we are asking you now for this interim relief is that
11 we filed the petition asking for the interim relief on
12 October 9th, and here it is the middle of December. It's
13 -- things just aren't as fast as we all might like them
14 to be sometimes.

15 Right now I don't think there are real major
16 issues in the petition, but there are issues that it will
17 take time to analyze, for testimony to be taken, a
18 committee to write a report, to bring it before the full
19 Commission.

20 We are not looking at three to six weeks, I don't
21 believe. That's -- that's just an additional reason.

22 CHAIRMAN IMBRECHT: Okay. I just have one more
23 question. These photographs you've got here, can you --
24 can somebody explain to me what these inked-in, I guess
25 pseudo transmission towers are? I -- I frankly don't

1 understand these at all, what you are trying to -- to show
2 us.

3 MR. GARDNER: Okay. I think probably Mr. Luft
4 could --

5 CHAIRMAN IMBRECHT: I've read the captions, and
6 I --

7 MR. GARDNER: -- best describe that as well.

8 COMMISSIONER CROWLEY: You don't even know who
9 TPI is, do you?

10 CHAIRMAN IMBRECHT: I think that's Texaco
11 Petroleum, Inc., but I --

12 MR. LUFT: Yes. On the back you will find --

13 CHAIRMAN IMBRECHT: Well, let's say, you know,
14 H and I, and so forth. What do those show me?

15 MR. LUFT: Okay. If it's easier I can start
16 from the top and pretty much explain what you are looking
17 at.

18 CHAIRMAN IMBRECHT: All right. Why don't you
19 just run through them real quickly, and then I'll move on.

20 MR. LUFT: Photograph A is, you are standing
21 on the approximate location of the Pole No. 6, looking
22 down on the future substation site.

23 All these photos are prior to construction.

24 CHAIRMAN IMBRECHT: I see. Okay.

25 MR. LUFT: The substation site has been graded.

1 However, no other activity has taken place since.

2 The reason that the ground is so level in that
3 field is that that was an old steam generator site. In
4 the foreground of the flat area you can see the steam
5 headers that used to connect to that steam generator site.

6 Photo B is another shot of the future substation
7 site, and location of Pole No. 7. Pole No. 7 sits just
8 to the right of the small pumping unit on the flat portion.

9 Photograph C is yet another shot of the substa-
10 tion.

11 Photograph D shows the earthwork going on for
12 the construction of the KRCC switchyard. The circled area
13 with "SCE" written above it shows the foundation for the
14 Edison tower, and next to it would be the first pole for
15 TPI, Texaco Producing, Inc.

16 CHAIRMAN IMBRECHT: And this is where that pole
17 is now.

18 MR. LUFT: Correct.

19 CHAIRMAN IMBRECHT: Okay.

20 MR. LUFT: There is -- this was taken prior to
21 any construction by TPI.

22 CHAIRMAN IMBRECHT: I see. All right. Fine.
23 You don't have to go any further. Now I understand. These
24 pictures all took place prior to the construction, and
25 you are showing us where the construction actually is.

1 I see.

2 MR. LUFT: Right.

3 CHAIRMAN IMBRECHT: All right.

4 MR. LUFT: I'm showing you --

5 CHAIRMAN IMBRECHT: Now, may I inquire what
6 this is supposed to mean to me, in terms of -- demonstra-
7 ting that there are no environmental impacts? Is that
8 what you're --

9 MR. LUFT: We're trying to show that the area
10 that we did place the poles were either surveyed by the
11 KRCC biologist, or in fact that they were on a very dis-
12 turbed portion of land that was done not in conjunction
13 with the pole line.

14 CHAIRMAN IMBRECHT: Commissioner Crowley points
15 out the kit fox here in the foreground.

16 (Laughter.)

17 MR. GARDNER: Actually that is a stuffed kit fox
18 that was borrowed from the museum and was put there to
19 see if you would spot it.

20 CHAIRMAN IMBRECHT: For the record, that was
21 obviously a facetious comment, but --

22 MR. LUFT: Photograph E --

23 CHAIRMAN IMBRECHT: Okay. Well, you know, I
24 mean -- okay. I -- you don't have to go any further. I
25 get the picture sort of now. I guess my point is I, you

1 know, I didn't want to overstate the situation last week,
2 but I also, you know, just want to reemphasize that we
3 are also talking about compliance with federal law, and
4 you can't look at these on the face of them and draw con-
5 clusions from my viewpoint about whether in fact there
6 is an impact or not, and whether in fact we have met all
7 of our legal obligations.

8 So, in any case, to move this item along, I think
9 that Commissioner Commons's proposal does make some sense,
10 and I would suggest for his consideration the modification
11 of Item 5, as I mentioned a moment ago, allows them to
12 energize the line on an interim basis, prohibit the dis-
13 mantling of the PGandE line, but otherwise go forward with
14 the modus operandi which you have outlined.

15 I believe we would have to notice the creation
16 of the committee. I don't think we can do that today,
17 as this item is before us, but --

18 COMMISSIONER COMMONS: I discussed that item
19 with Mr. Chandley --

20 CHAIRMAN IMBRECHT: All right.

21 COMMISSIONER COMMONS: -- and its my viewpoint
22 when we accept an application of this type, included within
23 it is the responsibility of selecting the committee, and
24 that those do not have to be separately noticed. We've
25 done it in the past, but -- but let me go back to the

1 substantive question. I think that's the -- that's the
2 critical --

3 CHAIRMAN IMBRECHT: Yes. Let's do the substan-
4 tive first.

5 COMMISSIONER COMMONS: If we energize the line,
6 would they be buying their power from Southern California
7 Edison or from PGandE during the interim period?

8 CHAIRMAN IMBRECHT: Well, they would obviously
9 be buying it from Edison, I presume.

10 COMMISSIONER COMMONS: Well --

11 MR. GARDNER: Neither, Mr. Chairman. Texaco
12 would then buy the power from KRCC --

13 CHAIRMAN IMBRECHT: From -- yeah. Right.

14 MR. GARDNER: -- from the cogeneration facility.
15 Edison electrically would provide backup to the oil field
16 if the cogeneration facility was unable to provide the
17 demand of the oil field.

18 That has been worked out between Edison and PGandE,
19 and in the package that we gave you last week were copies
20 of correspondence between the two utilities. PGandE had
21 no objection to that action.

22 Edison filed an advice letter with the Public
23 Utilities Commission and received -- I'm not sure "order"
24 is the proper term, but a response from the Public Utilities
25 Commission okaying PGandE's ceasing serving that load,

1 and Edison providing backup.

2 Those -- copies of those were also included in
3 the package that you received last week.

4 COMMISSIONER COMMONS: I would like just to ask
5 if PGandE has any objection to that modification.

6 CHAIRMAN IMBRECHT: I was about to do that myself.

7 MR. BAUMGARTNER: Thank you, Commissioner Commons.
8 For the record, my name is Peter Baumgartner. I'm an
9 attorney for Pacific Gas and Electric Company in San
10 Francisco.

11 We were caught a little bit by surprise last
12 -- at the last hearing on this matter. Since that time
13 I have been able to look into the background and to verify
14 or to investigate at least some of the allegations that
15 were made with respect -- and the implication that was
16 made with respect to PGandE's ability to serve the load.

17 The removal of the transformer which was alleged
18 to have occurred and which did occur was done with Texaco's
19 permission. It was not hooked into the system. It was
20 primarily there for storage, and it's been used in another
21 site, but there are backup transformers in our service
22 yard in Bakersfield available to be moved in in the event
23 that there is a failure of any of the three transformers
24 which are presently used to serve the load.

25 The transformers that are presently used to serve

1 the load are standard transformers, and there is no indica-
2 tion at all if there is anything wrong with them, or that
3 they won't last for another 20 years.

4 We feel that we are providing or are capable
5 of providing the same degree of service that we have
6 provided to this field, and that we can make any necessary
7 repairs in a relatively short period of time.

8 I guess I'm just reacting to the implications
9 of this sudden crisis which appears from some of the docu-
10 ments that have been submitted in this case by Texaco.
11 In fact, everything that has been done was done with the
12 concurrence of Texaco, and as a matter of fact prior to
13 the last meeting of this Commission Texaco and PGandE's
14 district manager had had a meeting in Bakersfield, and
15 Texaco knew very well that PGandE was capable of serving
16 that load and would continue to serve it at the A-22 rate.

17 That's the substance of my comments. It has
18 nothing to do with whether or not there is an environmen-
19 tal impact or any of t t sort, but simply what PGandE
20 is prepared to do.

21 CHAIRMAN IMBRECHT: The reliability of PGandE's
22 service you do not want impuned, I take it. I appreciate
23 that perspective.

24 Commissioner Commons?

25 COMMISSIONER COMMONS: Yes. Peter, do you have

1 any objection to the proposed modification by the Chairman
2 of the energizing of the Southern California --

3 MR. BAUMGARTNER: Well, PGandE has no intention
4 of removing the line. I don't know how that fit into it.
5 I'm not really clear exactly what the wording of the modi-
6 fication is, but we intend to maintain the -- we own the
7 easement and the right-of-way in there. We intend to con-
8 tinue to maintain that line.

9 There are other loads served by it, so it will
10 not be disconnected.

11 In terms of whether or not there is to be a shift
12 of the load and when it is to take place, I think that
13 if that's the issue, PGandE agreed to the shift of the
14 65 metawatts of the load. I don't think that the company
15 is prepared to withdraw that concurrence at this time,
16 and so all I can say is that, assuming that the modifica-
17 tion of the order is -- that's proposed would result in
18 that, I don't think we have an objection.

19 COMMISSIONER COMMONS: Is that correct, that
20 it would result in a 65-megawatt shift? Approximately.

21 Mike, maybe you know the --

22 MR. GARDNER: Commissioner Commons, the load
23 obviously varies slightly day to day, but it's -- it's
24 in the range of 55 to 65 megawatts. I think 65 is about
25 the peak recently. Texaco's projection is that their

1 load will grow by the mid-90s to around a hundred megawatts,
2 which is --

3 CHAIRMAN IMBRECHT: I assume you wouldn't have
4 an objection if we put a stipulation no shift greater than
5 65, pending the completion of this --

6 COMMISSIONER COMMONS: I would prefer it the
7 way you had it originally and not interfere with how the
8 field operates on a few megawatts, Mr. Chairman.

9 CHAIRMAN IMBRECHT: All right.

10 COMMISSIONER COMMONS: So long as we don't have
11 a --

12 MR. GARDNER: Either way would be acceptable.

13 CHAIRMAN IMBRECHT: Either way would be --

14 MR. GARDNER: Sixty-five megawatts I believe
15 is -- is adequate --

16 CHAIRMAN IMBRECHT: Adequate.

17 MR. GARDNER: -- assuming that we get an ulti-
18 mate decision within the next several months.

19 CHAIRMAN IMBRECHT: I understand. I understand.

20 COMMISSIONER COMMONS: Mr. Chairman, so long
21 as we don't have a dispute --

22 CHAIRMAN IMBRECHT: Go ahead.

23 COMMISSIONER COMMONS: -- between our -- our
24 major utilities. My concern would be for us to take an
25 action for one utility, when we have not had hearings for

1 both utilities, and in this instance it does not appear
2 we have such a dispute, and so I would have no problem with
3 that modification.

4 CHAIRMAN IMBRECHT: Okay. Fine. Mr. Chamberlain,
5 what is your judgment about noticing the creation of a
6 committee?

7 MR. CHAMBERLAIN: About the noticing of -- of
8 this particular matter?

9 CHAIRMAN IMBRECHT: No, about the noticing of
10 a creation of a committee. Commissioner Commons is sug-
11 gesting that a committee be created today to deal with
12 the various charges that are set out in the order. I raise
13 the point that there is no indication in the notice that
14 a committee would be created today.

15 MR. CHAMBERLAIN: Yeah.

16 CHAIRMAN IMBRECHT: And I'm wondering whether
17 or not we should prudently hold this until January 8th.

18 MR. CHAMBERLAIN: I would think that would be
19 most prudent.

20 COMMISSIONER COMMONS: I think with your modifi-
21 cation, Mr. Chairman, the need to move forward today is
22 not as great as it would have been without it, also.

23 CHAIRMAN IMBRECHT: Okay. Fine. Then I'm going
24 to take that as a motion from you to adopt the order as
25 proposed. Is that correct?

1 MS. HOUGH: Excuse me, Commissioner. Staff would
2 like an opportunity to comment.

3 CHAIRMAN IMBRECHT: Pardon me.

4 EXECUTIVE DIRECTOR WARD: Yeah, I -- let me make
5 a couple of points before I have counsel's office comment.

6 I would suspect that the reason the committee
7 is going to meet is to discuss the need for interim relief,
8 and I'm quite concerned that we're adjudicating in a manner
9 here much as you would a formal AFC in front of the full
10 Commission.

11 I would much rather see these issues debated
12 by the committee, come back with a recommendation, and
13 for the applicant in this case to say that that is going
14 to cause delays that are going to be extremely unfair to
15 them, and it's going to be delays that far exceed anyone's
16 expectation I don't think is fair as well.

17 I think this can be accomplished in a timely
18 manner. We know what the issues are. I think that the
19 committee can meet, come back to the Commission with a
20 recommendation, and those issues can be debated in front
21 of the committee.

22 As far as General Counsel is concerned, I'd like
23 a comment on what potentially an interim relief would --
24 the impact relative to environmental impact would be if
25 we are making that decision now on an interim basis. Does

1 that somehow preclude us or has it precluded us from any
2 of the investigations necessary to a CEQA review?

3 MS. HOUGH: Staff's position is that the granting
4 of interim relief at this time, by itself, will not violate
5 CEQA requirements, but staff believes that before the
6 facilities are licensed permanently there needs to be a
7 complete CEQA analysis.

8 MR. GARDNER: Mr. Chairman, the applicant would
9 agree with that, and we would stipulate, if there are legal
10 questions, that you are entitled to do a normal CEQA type
11 review, including imposing mitigation that may be required.

12 CHAIRMAN IMBRECHT: I would like to phrase that
13 a little differently. Rather than entitled to, we are
14 required to.

15 MR. GARDNER: Fine.

16 CHAIRMAN IMBRECHT: Okay.

17 MR. GARDNER: Applicant does not object to your
18 doing so.

19 CHAIRMAN IMBRECHT: You don't object to us com-
20 plying with the law is what you're saying. Okay.

21 Now, then, was there anything further from the
22 staff's position on that? Did you object to the proposed
23 resolution of this matter, and do you object to the grant-
24 ing of interim relief?

25 MS. HOUGH: We still object to the granting of

1 interim relief today. We're not opposed to appointing
2 a committee to look at the issue, but we are still opposed
3 to granting interim relief today.

4 CHAIRMAN IMBRECHT: Would you state the grounds,
5 please?

6 MS. HOUGH: Yes. Basically PGandE has come in
7 here today and explained to my satisfaction that they are
8 perfectly capable of providing power to the Texaco oil
9 field. The whole basis of the petition for interim relief
10 was that PGandE was threatening to cut the power off.
11 The basis of the petition has now been removed. There
12 are no substantial grounds supporting it.

13 MR. GARDNER: Mr. Chairman, that's simply not
14 correct. There are several other grounds.

15 CHAIRMAN IMBRECHT: I thought there were two
16 grounds. I thought there was one, that jeopardy, but also
17 the grounds of economic impact.

18 MS. HOUGH: I beg your pardon. I didn't hear
19 the question.

20 CHAIRMAN IMBRECHT: Were not the grounds of
21 economic impact set out?

22 MS. HOUGH: I don't believe that the economic
23 impacts by themselves rise to the level of harm which
24 is required for granting extraordinary relief, which is
25 what interim relief is.

1 I believe that the applicant must show more.
2 This is an extraordinary measure. It's akin to equitable
3 relief in a court of law, and a substantial showing of
4 irreparable harm is required in those circumstances. We
5 believe that the Commission should apply the same standards
6 in granting interim relief.

7 CHAIRMAN IMBRECHT: I don't necessarily disagree
8 with that principle as stated, but there is -- there will
9 be an irreparable loss of -- of money to the companies,
10 and I don't see any way they would be made whole, even
11 once there is a final resolution in this matter.

12 MS. HOUGH: I agree that there is going to be
13 a loss of money, but my position is that that, in and of
14 itself, is not -- is not enough.

15 I would also like to point out that Mr. Gardner
16 I believe was talking earlier about the time pressures
17 that KRCC is facing, and he pointed out that they filed
18 their petition in September and nothing has happened. I
19 would like to point out that the agreement to supply the
20 Texaco oil field with power was executed in January of
21 1984.

22 MR. GARDNER: As the filings point out, that
23 decision was made at that time, and it was not brought
24 to the applicant's attention that they were proceeding
25 incorrectly, if you will, down the wrong regulatory path.

1 Until sometime of the summer in this year staff
2 asked questions and the applicant responded.

3 CHAIRMAN IMBRECHT: I know, Mr. Gardner. I under-
4 stand that. I -- you know, frankly, I don't think you
5 folks have a lot -- have clean hands, so to speak, in this
6 matter. I mean the license was clear on its face, and
7 I'll just say that I -- I can't qualify that position
8 from my perspective.

9 The certificate said 300 megawatts to go into
10 the Edison service territory. It did not contemplate --
11 and if we were talking a relatively small percentage of
12 this entire project's output, it would be easier for me
13 to appreciate that perspective, but when you are talking
14 in reality, an intention that is evidenced by that contract
15 that only 170 megawatts was to in fact go into the Edison
16 system, or less than 60 percent of that which was carried
17 in the certificate, it's a little difficult for me to see
18 that as a minor item.

19 It's also a little difficult for me to see how
20 the sophistication of the applicants involved here could
21 not clearly read the language that was in that certificate
22 and understand it.

23 This is a difficult position. You know, I'm
24 -- I'm torn, frankly.

25 MR. CHAMBERLAIN: Mr. Chairman, I think there

1 is one aspect that I -- I apologize Commissioner Commons.

2 COMMISSIONER COMMONS: Go ahead.

3 MR. CHAMBERLAIN: There is one thing that I think
4 the Commission doesn't really have before it, and I'm not
5 exactly sure why. I guess there was an agreement between
6 PGandE and Edison regarding this matter before it came
7 to you, but one of the things that a court would look at
8 is the balance of hardships between two different sides
9 of an issue, and I would think that if KRCC or Texaco are
10 losing \$750,000 a month, that must mean that there is some
11 revenue impact to PGandE.

12 They are -- if they are losing those revenues,
13 and they are also presumably losing some costs, what we
14 don't know is what the impact on the PGandE ratepayer is
15 from allowing the interim relief to occur, and I guess
16 that -- that's something that you could proceed without
17 knowing, but --

18 CHAIRMAN IMBRECHT: Yes, I understand. I frankly
19 -- that was an issue that occurred to me when we discussed
20 this last week. I guess the willingness of PGandE to
21 accept this change and the reflection of their earlier
22 negotiations on it suggested to me that that was something
23 they had taken into consideration; moreover, something
24 that they had contemplated for a long period of time, since
25 obviously I think that there was an expectation on their part

1 that Texaco would be served by a project which they jointly
2 own, despite the -- to be served perhaps through Edison,
3 but not in a direct fashion. It's a complicated issue.

4 Commissioner Commons.

5 COMMISSIONER COMMONS: Well, Bill just stated
6 the point that I was going to state.

7 CHAIRMAN IMBRECHT: That was the reason -- the
8 reason you were --

9 COMMISSIONER COMMONS: I'm a little --

10 CHAIRMAN IMBRECHT: -- the reason you were asking
11 Mr. Baumgartner.

12 COMMISSIONER COMMONS: Yeah.

13 CHAIRMAN IMBRECHT: I understand.

14 COMMISSIONER COMMONS: I'm pulling back and forth.
15 This is -- if there was a vote that I've ever had to make
16 on this Commission that was close, this is one where it
17 really is.

18 I'm tending toward being a little cautious on
19 our -- on that procedure, where we may be deciding things
20 without having had adequate hearings, but I really feel
21 it's necessary to have that emergency relief.

22 I want to go back one second to the question
23 that you were originally asking and find out if we didn't
24 give the economic transfer, but we did have the emergency
25 transfer, which is really I feel essential, can we do that

1 without making the economic transfer.

2 In other words, can I accomplish what I tried
3 to do in the --

4 CHAIRMAN IMBRECHT: Well, I thought we were just
5 told --

6 COMMISSIONER COMMONS: -- in the draft?

7 CHAIRMAN IMBRECHT: -- by this other gentleman
8 that there were physical technical impediments to in
9 essence completing the final hookups of the Texaco line
10 to the generation facility that would allow for any kind
11 of immediate backup.

12 At the same time, Mr. Baumgartner's testimony,
13 as our staff counsel suggested as well, tended to under-
14 cut the necessity for that emergency backup supply. I
15 mean you heard what he said, and that frankly sounded quite
16 reasonable to me as well.

17 We know that PGandE has a substantial presence
18 in the area. I presume that as a matter of prudent busi-
19 ness and reliability of their system, they do maintain
20 extra supplies of equipment, et cetera.

21 COMMISSIONER COMMONS: I'd like to request --

22 CHAIRMAN IMBRECHT: And we are talking about
23 a hypothetical. I mean we could -- you know, if we wanted
24 to get into this further, we could ask you how many outages
25 have you had and that type of thing from PGandE's service,

1 and can you really make out a case to us that there is
2 a substantial risk to your oil operations, because you
3 have a history of interrupted service, and absent that
4 I mean I have to say, you know, there's a lot of factual
5 showings here that you are asking us to take on faith.

6 MR. MYERS: This is Charlie Myers. I'm the
7 Executive Director of the Kern River Cogeneration Company.
8 I am also an employee of Texaco, and the Kern River oil
9 field has had some outages from PGandE's power.

10 CHAIRMAN IMBRECHT: This reminds me a little
11 bit, you know --

12 MR. MYERS: I --

13 CHAIRMAN IMBRECHT: Do you remember the World's
14 Series this year where the Governor of Missouri had a hat
15 with two bills on it, and kept turning it around as to
16 who he would represent?

17 MR. MYERS: Mine's got about three or four. I
18 just spin it sometimes, I think.

19 CHAIRMAN IMBRECHT: I think we're going to get
20 one of those for Mr. Gardner and for you, Mr. Myers, and
21 a few others, and then we can -- excuse me.

22 (Laughter.)

23 MR. MYERS: Where we have had excellent service
24 from Pacific Gas and Electric, and I certainly don't want
25 to undermine what they have done for the Kern River oil

1 field. Now, there have been times where we have had out-
2 ages usually lasting less than six to 12 hours, sometimes
3 as short as 15 or 20 minutes.

4 I would also like to point out that there was
5 always a spare transformer there, and that that spare
6 transformer is no longer sitting on that substation site,
7 and I -- I have been hearing the arguments going back and
8 forth, and I keep wondering why the Energy Commission wants
9 to allow an emergency to occur before we are allowed to
10 react to it.

11 If we are allowed to tie into the new substation
12 that Texaco has built and provide Kern River Cogeneration
13 power, with Edison as the backup, an emergency should have
14 never occurred, whereas if there were a failure on Texaco
15 then we would have to tie in under emergency situations
16 with KRCC.

17 Also, that economic hardship does exist, even
18 if you decide you want to downplay the possibility of an
19 outage occurring. That economic hardship is very real,
20 and it has been occurring since August the 18th of this
21 year.

22 MR. FINNING: If I may, Alan Finning, counsel
23 for KRCC.

24 With regard to the detriment issue, we've talked
25 about economic impacts to KRCC, and then to Texaco

1 Producing, Inc., separately.

2 I would just like to point out that, although
3 we have -- there is an issue internally within us that
4 comes to -- that comes to bear upon this, and that is also
5 that these assessments on Texaco's part of some \$770,000
6 a month differential between what it is paying to PGandE
7 and what it would otherwise receive from KRCC uses in effect
8 a measure of damages, and I am aware that we always sit
9 with this situation of a potential claim from the third
10 party to whom this qualifying facility of KRCC has con-
11 tracted to supply power, that those damages that TPI is
12 calculating here really stand at the cogenerator's door,
13 and that it may ultimately -- I'm not saying that this
14 is what would happen, but I would say that there is defi-
15 nitely a potential there, that those are --

16 CHAIRMAN IMBRECHT: That KRCC would file for
17 a loss of --

18 MR. FINNING: No, that we might find the third
19 party, TPI, making a claim against KRCC, and that while
20 these monetary items are out there and there is an alloca-
21 tion right now, as we said, as to who incurs it, an ultimate
22 resolution, if it ever came to it in lawsuits, I'm certainly
23 not going to begin to say that we think we're going to
24 get there.

25 We are hopefully going to avoid any sort of

1 situation of that type, but we could find claims being
2 made against KRCC to where KRCC -- the threat to KRCC is
3 substantially in excess of the 50,000 loss in revenue.
4 It may find itself facing a claim for the costs that
5 Texaco Producing, Inc., has incurred.

6 CHAIRMAN IMBRECHT: In terms of paying a higher
7 cost for its electricity --

8 MR. FINNING: On a -- yes, on a breach of con-
9 tract --

10 CHAIRMAN IMBRECHT: -- to Pacific Gas and Electric.

11 MR. FINNEY: Right, and that we have --

12 CHAIRMAN IMBRECHT: Despite the fact that Texaco
13 built a line --

14 MR. FINNING: Well, without getting into all
15 the arguments on the legal side back and forth --

16 CHAIRMAN IMBRECHT: Well, I mean, if you want
17 to take us to that point, I -- that's the obvious direction
18 you leave us. Texaco has built a line without securing,
19 it appears on the face of it, appropriate permis and
20 approvals, and so then we come back again to a perspective
21 about which of these parties involved are entering into
22 this entire matter and are incurring these losses without
23 having dirty hands in the process.

24 MR. FINNING: Well, my point was just to indicate
25 that there is the potential of --

1 CHAIRMAN IMBRECHT: Well, fine. That will keep
2 you and a lot of your colleagues employed, I'm sure, for
3 quite some time sorting that out.

4 Okay. Well, all this notwithstanding, I guess,
5 while I'm inclined to be cautious about it, I have to just
6 note the following things.

7 Pacific Gas and Electric is not objecting. They
8 have the obligation, it seems to me, to justify their
9 actions, vis-a-vis their ratepayers, with our sister agency,
10 the Public Utilities Commission, and I think that while
11 we have obligations to examine ratepayer impacts, I think
12 that is really the province of the PUC, et cetera, and
13 with that, I'm still personally inclined to go with the
14 proposal Commissioner Commons suggested in the line of
15 a modification.

16 COMMISSIONER CROWLEY: Say that last again?

17 CHAIRMAN IMBRECHT: I said I'm prepared to go
18 with Commissioner Commons's proposal, along with the modi-
19 fication that would allow the interim energizing of this
20 line.

21 I understand staff's objections, and I want to
22 serve notice right now that this should not signal or offer
23 any suggestion that I am happy about the manner in which
24 this matter has been handled by the applicant and the
25 various parties involved here, and frankly I think we have

1 to make it very clear that we can't tolerate this kind
2 of action in the future.

3 And I also am absolutely committed in assuring
4 that we do meet our statutory mandates and our compliance
5 necessities with federal law as well, and I am also trying
6 to look at this from a common-sense and practical stand-
7 point, and that's why that's at least my position, and
8 that is what I would be prepared to do.

9 Commissioner Commons.

10 COMMISSIONER COMMONS: I would like to ask the
11 -- our legal counsel a legal question.

12 CHAIRMAN IMBRECHT: Fine.

13 COMMISSIONER COMMONS: Do we have the legal
14 authority to grant interim relief based on the economic
15 issue?

16 MR. CHAMBERLAIN: Based on the economic issue?
17 I'm sorry.

18 CHAIRMAN IMBRECHT: Well, I think we have heard
19 testimony that the basis for the granting of the interim
20 relief would not be on the backup need, which is the way
21 I drafted the original order.

22 The Chairman is suggesting, since PGandE has
23 not objected on behalf of their ratepayers and there has
24 been that the granting of the relief would be on the
25 economic issue primarily, what I want to -- what I'm asking

1 you is do we have the legal authority as a Commission to
2 grant the interim relief on that basis.

3 MR. CHAMBERLAIN: As we discussed last time,
4 our legal authority to grant interim relief must be drawn
5 from an interpretation of the statutes, and at some point
6 we would hope to clarify those statutes substantially by
7 regulation.

8 Given that we are doing it by broad interpreta-
9 tion of the statute at this time, I have to fall back on
10 the normal procedures that a court would use in determining
11 whether or not to allow a change in the status quo, pending
12 consideration of the ultimate judgment, and as I indicated
13 -- or the ultimate decision.

14 As I indicated at the last meeting, that normally
15 the courts will consider, first of all, to what extent
16 has the applicant shown a likelihood of prevailing on the
17 merits of the issue, so that by granting interim relief
18 you are simply allowing something to occur that you are
19 likely to allow to occur after that, and, second, what
20 is the balance of hardships or balance of equities between
21 the parties involved, and that -- that's the economic issue
22 that you are looking at.

23 So, I think, yes, you have the ability to look
24 at that. I think it's one of the two things that you would
25 look at under this rubric.

1 CHAIRMAN IMBRECHT: Okay.

2 MR. GARDNER: Mr. Chairman --

3 CHAIRMAN IMBRECHT: Yes.

4 MR. GARDNER: Before you go to a vote, I think
5 there is one thing that you had indicated originally that
6 you wanted in your motion that I didn't hear in your amend-
7 ment as you --

8 CHAIRMAN IMBRECHT: Well, we haven't made a motion
9 yet. I'm --

10 MR. GARDNER: Okay. I thought it was your intent
11 originally to require that the PGAandE line stayed there
12 at least during the course of the interim relief.

13 CHAIRMAN IMBRECHT: I would require, also, your
14 ability to continue to draw from other connections, and
15 so forth.

16 MR. GARDNER: Yes. Yes, not physically remove
17 any --

18 CHAIRMAN IMBRECHT: That's correct.

19 MR. STRAND: Mr. Chairman --

20 CHAIRMAN IMBRECHT: Yes.

21 MR. STRAND: A clarification of Commissioner
22 Commons' resolution.

23 Is this for emergency use only, only in the event
24 of a power failure would they be authorized to use -- this
25 is --

1 CHAIRMAN IMBRECHT: No. I was suggesting that
2 we allow interim energizing of the line for normal pur-
3 poses, but that they not take any action which would dis-
4 connect the PGandE physical connection as well, in essence
5 to prejudge our ability to reverse that interim relief,
6 but I make that judgment, as I said, not because I'm
7 satisfied that applicant or any other parties of interest
8 here have conducted themselves in a fashion that I frankly
9 would expect of institutions of their size and sophistica-
10 tion, and I don't want to leave any signal out there for
11 any other applicant or for these parties that we are treat-
12 ing this matter lightly.

13 Nonetheless, in light of lack of objection from
14 Pacific Gas and Electric, and in consideration of what
15 is a it seems to me fairly substantial economic impact,
16 pending our review of these issues, balancing all those
17 considerations, I would be prepared to go forward as I
18 indicated.

19 In any case, that's my position, and I guess,
20 unless Commissioner Commons wants to offer that as a motion,
21 I will do so, and we'll see --

22 COMMISSIONER COMMONS: I said to you, I think,
23 Mr. Chairman, that I considered that a friendly amendment.

24 CHAIRMAN IMBRECHT: So you will offer that as
25 a motion, and I'll second it. In that case we will have

1 before us a motion to approve the order as presented, with
2 a modification of Item -- actually a modification of that
3 portion of the order which limited the connection and
4 utilization of the Texaco line solely for emergency pur-
5 poses, but, rather, allow it to be energized on an interim
6 basis pending resolution of this entire matter.

7 Mr. Chandley, do you want to be heard on this?

8 MR. CHANDLEY: Mr. Chairman, if I may, at
9 Commissioner --

10 CHAIRMAN IMBRECHT: I see your hovering presence
11 there.

12 MR. CHANDLEY At Commissioner Commons' request,
13 I drafted the order with the anticipation of a certain
14 result, and you'll find that the logic and the arguments
15 and the marshalling of evidence are all designed to lead
16 to that result.

17 I think if you put your proposed solution at
18 the end of the draft that I created, you'll find a rather
19 substantial mismatch, so I would -- if that's the direction
20 that you would like to go in, I would suggest that you
21 merely direct us to draft a different order that is con-
22 sistent --

23 CHAIRMAN IMBRECHT: Consistent with --

24 MR. CHANDLEY: -- with your ultimate decision.

25 CHAIRMAN IMBRECHT: Okay. I think that's

1 appropriate.

2 Commissioner Crowley.

3 COMMISSIONER CROWLEY: And that, of course,
4 includes the previous emphasis upon the environmental
5 studies and other appropriate inquiries.

6 CHAIRMAN IMBRECHT: Basically what I would con-
7 template the order would indicate is that at the next
8 scheduled business meeting we will notice the creation
9 of a committee to review this matter in depth. In addi-
10 tion, the order directs the staff to immediately commence
11 completion of appropriate environmental reviews required
12 for the transmission facilities related to the cogeneration
13 facility; that Texaco is designated as a successor in
14 interest to Getty and the coapplicant with KRCC and Edison;
15 that the petitioner, Texaco, shall as soon as possible --
16 I think that we perhaps ought to inquire as to what "as
17 soon as possible" means, because I -- you know. Absent
18 complete cooperation here, I'm not going to hesitate to
19 go back and change this interim relief.

20 MR. GARDNER: No, sir. We would anticipate
21 cooperating fully.

22 CHAIRMAN IMBRECHT: And expeditiously, I presume.

23 MR. GARDNER: Yes, sir. Given the Holidays,
24 we would like essentially to kick off this process after
25 the first of the year, but I think that we could be

1 prepared with any information that is necessary for a
2 hearing.

3 If you create a committee on January 8th, if
4 that committee were to immediately notice a hearing, given
5 the ten-day notice requirement, I think we could be ready
6 for that hearing, and if there were anything requested
7 for that hearing that couldn't be ready, we would have
8 a very good reason why it couldn't be.

9 A real reason.

10 (Laughter.)

11 COMMISSIONER COMMONS: You were doing great.

12 CHAIRMAN IMBRECHT: Three whole weeks to figure
13 it out.

14 CHAIRMAN IMBRECHT: The best minds of Edison
15 and Texaco working late hours.

16 All right. Well, I think that we can handle
17 this on -- I would leave it as "as soon as possible," et
18 cetera, but I just would note for you as well this is going
19 to have an impact upon our work plans here at the Commission,
20 our staffing requirements, and so forth, because we cer-
21 tainly didn't contemplate this other item, and we are going
22 to have to reconcile that, I understand, Mr. Ward.

23 And then finally, as I indicated, the statements
24 relative to utilization of the law in the pending resolu-
25 tion of this matter.

1 Now, then, the other thing I wanted to stress,
2 Mr. Chandley, in drafting this order, that you grounded
3 both principally upon the economic hardship arguments,
4 which I think are the only ones that have been shown here
5 in any substantial fashion.

6 I frankly am not convinced that the record does
7 demonstrate a need for emergency response to the possible
8 outage of Pacific Gas and Electric, and I frankly don't
9 think that the integrity of their service ability should
10 be impuned in any sense by suggesting that is the reason
11 for taking this action.

12 Okay. That's the direction to staff, and the
13 motion that's before us. Does anyone else wish to be heard
14 on this item?

15 MR. PEREZ: I have a question, Chairman Imbrecht.

16 CHAIRMAN IMBRECHT: Sure.

17 MR. PEREZ: Is the economic hardship basis also
18 being identified by the Commission as an adequate legal
19 basis for post-certification modifications to a power plant
20 license? And this is a question of first impression, but
21 it's the first time I've seen the Commission exercise
22 authority to grant interim relief with respect to an
23 existing certification license, and so it will follow in
24 my mind when advising the public and interested members
25 of the public that the question will immediately revise

1 in terms of what is the Commission's statutory authority
2 for granting the interim relief.

3 I understand the factual basis, but I would like
4 an identificaiton of the statutory basis.

5 COMMISSIONER COMMONS: May I respond to that,
6 Mr. Chairman? Or attempt to?

7 CHAIRMAN IMBRECHT: Certainly. Commissioner
8 Commons, you'll get a shot, as well as myself.

9 COMMISSIONER COMMONS: Okay. I believe that
10 Mr. Chamberlain responded to your question earlier in saying
11 that we have not yet drafted regulations in this area from
12 the Siting and Compliance Monitoring Committee, and it's
13 an area that the Committee would look at.

14 Since we do not have a regulation on this, we
15 have to go to general statute law, and the Commission is
16 acting within the response that the General Counsel gave
17 us as to what our authority is in this area, and it's an
18 area that we will have to come back at at some subsequent
19 date in terms of what the regulatory policy of this
20 Commission ought to be for granting interim relief.

21 I also believe that the Chairman has said, in
22 terms of the context of this motion, that this is not a
23 precedent, this is an application to the particular project
24 here before us, and that's it.

25 CHAIRMAN IMBRECHT: I think I'll accept that.

1 All right. Any other Commissioners wish to be
2 heard?

3 Is there objection to the unanimous roll call?

4 Hearing none, "Aye's" four, "No's" none. The
5 motion is adopted, and the staff will prepare the order
6 and it will be executed as soon as possible.

7 I want to just caution you, though, you should
8 take no action until that order has actually been executed.

9 MR. GARDNER: Thank you, Mr. Chairman.

10 CHAIRMAN IMBRECHT: All right. Thank you.

11 Lorri, would you note that we want a committee
12 created to deal with this matter noticed on the next agenda,
13 please.

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1 (Further remarks on Agenda Item 8.)

2 CHAIRMAN IMBRECHT: I am also going to suggest, and I
3 actually perhaps should reiterate this with Mr. Perez pre-
4 sent, but with respect to going back to him, I would ask
5 that this be communicated to the parties of interest in
6 the Kern River Cogeneration issue that we just arrived
7 at, but I would like to ask you, Mr. Chamberlain, if you
8 would examine Section 25534 of our statute, subsection
9 (c), which regards violations of our certificate, and report
10 to us on the options and remedies which we have available,
11 including any sanctions or penalties which might be avail-
12 able to the Commission to enclose, including temporary
13 suspensions, et cetera, in order to impose economic penal-
14 ties.

15 I only indicate that, not in terms of suggesting
16 any conclusion, but I just think it is important for us
17 to be fully aware of what options we do have available to
18 us, and I think also to some degree a clear signal once
19 again that we do not take any of these matters lightly.

20 The integrity of the entire certification process
21 of the Commission could from some perspectives be called
22 into question relative to this issue, and I think we need
23 to make sure that doesn't occur.

24 COMMISSIONER COMMONS: Excuse me, Mr. Chairman.

25 CHAIRMAN IMBRECHT: Commissioner Commons.

1 COMMISSIONER COMMONS: I do believe if it's a
2 compliance monitoring issue, it would be appropriately
3 assigned back to that Committee with the request to the
4 General Counsel to do that for the Committee and report
5 back to the Commission.

6 CHAIRMAN IMBRECHT: I'm making a request as a
7 member of the Commission on General Counsel to provide
8 us with an opinion, and ultimately I think the Committee
9 that will be formed will be the one that will consider
10 that, but I frankly wanted to make that request, as you
11 occasionally do on the record, because I want to also send
12 some clear signals to the people that are involved in this
13 issue.

14 And that is me speaking as an individual, making
15 that request as an individual member of the Commission.
16 Okay?

17 COMMISSIONER COMMONS: Okay. That -- I had not
18 understood it initially as an individual.

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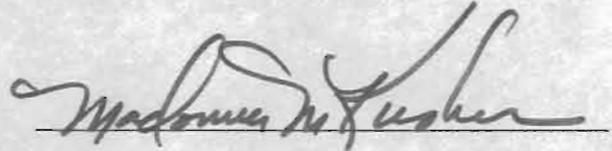
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REPORTER'S CERTIFICATE

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3 THIS IS TO CERTIFY that I, Madonna M. Kushen,
4 Reporter, have duly reported the foregoing proceedings
5 which were held and taken in Sacramento, California,
6 on Wednesday, the 18th day of December 1985, and that the
7 foregoing pages constitute a true, complete and accurate
8 transcription of the aforementioned proceedings.

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

12
13 

14 Madonna M. Kushen, Reporter
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