

COMMITTEE WORKSHOP
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification for the) Docket No. 02-AFC-1
BLYTHE ENERGY PROJECT II)
(Blythe Energy, LLC))
)
PMPD Comments)
_____)

COPY

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 9TH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, DECEMBER 13, 2005

8:35 A.M.

Reported by:
Peter Petty
Contract No. 170-04-001

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Garret Shean

STAFF AND CONSULTANTS PRESENT

Lisa De Carlo, Staff Counsel

William Pfanner, Project Manager

Keith Golden

Brewster Birdsall
Aspen Environmental Group

REPRESENTING THE APPLICANT

Scott A. Galati, Attorney
Galati and Blek, LLP

Robert Looper, P.E., Project Director
Caithness Blythe II, LLC

Thomas L. Cameron, Project Manager
(via teleconference)
Caithness Blythe II, LLC

ALSO PRESENT

Alan De Salvio
Mojave Desert Air Quality Management District

Via Teleconference

Gerardo Rios
United States Environmental Protection Agency

Caroline Farrell
Center on Race, Poverty and the Environment

Robert Sarvey

ALSO PRESENT

Via Teleconference

Barbara Martin
The Holt Group

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

2 8:35 a.m.

3 PRESIDING MEMBER GEESMAN: This is a
4 Committee workshop on the proposed PMPD for the
5 Blythe Energy Project II application for
6 certification. I'm John Geesman, the Committee's
7 Presiding Member. I'm going to turn over the
8 conduct of the workshop to our Hearing Officer
9 Garret Shean.

10 HEARING OFFICER SHEAN: Good morning.
11 If we could have the parties identify themselves
12 we'll get underway shortly. Our purpose here is
13 to review some comments that were made by the
14 USEPA, also by the Center for, I guess, Race,
15 Poverty and the Environment, as well as some email
16 comments we received from Mr. Hansen.

17 So that's our purpose here this morning.
18 We're doing this in advance of a full Commission
19 business meeting that's scheduled for tomorrow.
20 We're on the calendar for that. Just to wrap up
21 any errata that the Committee is going to issue
22 before the matter is presented to the full
23 Commission.

24 So, with that, we'll go to the applicant
25 for your introductions.

1 MR. GALATI: Scott Galati representing
2 Caithness Blythe II, LLC.

3 MR. LOOPER: Robert Looper from
4 Caithness Blythe II.

5 MR. PFANNER: Bill Pfanner, Project
6 Manager with the Energy Commission.

7 MS. DeCARLO: Lisa DeCarlo, Staff
8 Counsel with the Energy Commission.

9 MR. GOLDEN: Keith Golden, CEC Air
10 Quality Staff.

11 MR. BIRDSALL: And Brewster Birdsall,
12 CEC Air Quality Staff contractor with Aspen
13 Environmental Group.

14 HEARING OFFICER SHEAN: Okay, thank you.
15 And do we have some guests, Mr. Galati, with us
16 today?

17 MR. GALATI: Yes. First I'd like to
18 make sure Tom Cameron is on the record. He is on
19 the telephone. He's with Caithness Blythe II,
20 LLC. And I believe we also have Alan De Salvio
21 with the Air District.

22 HEARING OFFICER SHEAN: All right, I was
23 going to indicate once we do the wrap with the
24 people who are here, we also have Mr. Rios from
25 the USEPA, Region IX out of San Francisco.

1 MR. RIOS: That's right.

2 HEARING OFFICER SHEAN: Thank you very
3 much.

4 All right, what we have that we're
5 looking at, and perhaps I'll just ask, is there
6 any other matter some of the parties want to bring
7 to us before we get into the comments that we've
8 received?

9 MR. GALATI: None from the applicant's
10 side.

11 HEARING OFFICER SHEAN: Okay.

12 MS. DeCARLO: None from staff.

13 HEARING OFFICER SHEAN: All right. What
14 we have here is a letter dated November 21 from
15 Mr. Rios of the EPA; and attached to it was a
16 December 26th letter of 2002 that offered comments
17 with respect to the Mojave Desert Air Quality
18 Management District's FSA and also the Committee's
19 Presiding Member's Proposed Decision related to
20 the use of road paving offsets for PM10.

21 The letter will speak for itself. And
22 what we wanted to do was determine whether or not
23 there were any changes that we needed to make to
24 either the discussion or conditions within the
25 decision with respect to the comments.

1 In the notice of today's workshop we
2 indicated that there were two potential areas we
3 wanted to work with. Number one was whether or
4 not -- and this is in the discussion in the
5 PMPD -- we should consider using what we
6 understand to be a more recent or updated
7 emissions factor for calculating the number of
8 either linear feet or miles, however it's done, of
9 road paving to serve as a PM10 offset.

10 And the second was whether or not -- and
11 that would be in condition AQC-9 -- and the second
12 was as to condition AQ-18, whether or not there
13 needed to be an acknowledgement of the approval
14 role of the EPA for interpollutant tradeoffs that
15 were enumerated in that condition.

16 So, with that, why don't we open it up
17 for some discussion among the parties who are here
18 and on the phone with respect to those two.

19 MR. GALATI: With respect to condition
20 AQC-9, I think that the specific issue is whether
21 or not the amount of feet that are listed in the
22 table on PM10 offsets associated with particular
23 roads for the Krit Indian Tribe road paving
24 credits, whether or not those are the appropriate
25 amounts. And the applicant supports whatever the

1 appropriate amounts are; I'd ask the District, at
2 a point in time, to come and clarify that.

3 I would also like to point out that the
4 ERC banking process that the District will engage
5 in will also involve public comment on whether or
6 not those are the appropriate emissions factors;
7 whether or not there are comments from the public
8 as to whether or not those are appropriate ERCs.

9 At that point the District is going to
10 be making a finding based on whether they'll allow
11 ERCs to be banked and used; whether or not they
12 meet the five federal criteria. But also point
13 out that the condition, itself, requires the
14 applicant to prove, provide evidence that the
15 District has made those five criteria findings.

16 And so whether those numbers actually
17 get increased or how they're used, we think, will
18 be handled at a later date.

19 We have two proposals. One is that the
20 numbers be stricken, and just the amount of feet
21 be determined by the District. Because there is a
22 requirement that they meet 126 tons. And so that
23 is one way to handle the problem, so that we're
24 not locked into a number of feet in this
25 condition.

1 The other is to provide and say that
2 those are a floor. And that if they are increased
3 by use of a different emission factor, that the
4 condition would allow it.

5 I think the real concern here is that
6 there are a specified number of feet that may not
7 be the final outcome of the ERCs. So, I'd ask
8 maybe the District to comment on that, as well.

9 HEARING OFFICER SHEAN: All right.
10 Would you like to do that at this time?

11 MR. DE SALVIO: Thank you. Again, my
12 name's Al De Salvio, Mojave Desert AQMD. The
13 District understands and agrees with EPA's
14 comments from the standpoint that any proposed
15 offset, not just the road paving, needs to meet
16 the five criteria, real, quantifiable, permanent,
17 surplus and enforceable.

18 And the CEC Staff pointed out in the
19 past that the calculation method, which speaks to
20 quantification, which is what the applicant's
21 referring to, is a dated method. It's an
22 obsolete, could be described as an obsolete
23 equation.

24 That's because of the timing of the
25 project. When it was initially done it wasn't

1 obsolete. But since then EPA has replaced that
2 equation.

3 Certainly if you look at that equation
4 in the context of the proposed offset package,
5 it's not adequate. The calculation currently
6 would say roughly 94 tons. And the applicant's
7 requirement isn't for 126; it's actually for
8 roughly 108 tons. So they're short by a few tens
9 of tons of PM10 per year.

10 But the District feels that there are
11 adequate roads within the Krit's domain to meet
12 this requirement. We simply have to find those
13 additional roads and require the applicant to pave
14 them.

15 So my recommendation would be, from that
16 standpoint, from the quantification standpoint,
17 that CEC require that the appropriate calculation
18 be done to meet the quantification criteria. And
19 that they simply be required to provide the
20 adequate amount of credits, which I think again is
21 108 or 109 tons of PM10 offsets.

22 On a greater subject, though, EPA's
23 concern is addressing all five of those criteria.
24 And again, we concur and those criteria are in our
25 rule. And I simply would suggest that we address

1 those with an affirmative EPA approval through my
2 public comment period. We have not had the
3 proposed issuance on any road paving yet because
4 the, quite frankly because the credits do not meet
5 the real criteria. The roads have not been paved.

6 In the past the Air District has allowed
7 applicants to meet this with a commitment, an
8 enforceable commitment, in the form of a permit
9 condition that prior to commencement of
10 construction the offsets be provided, i.e., the
11 roads be paved. We go through the public comment
12 period and satisfactorily obtain EPA approval.
13 Then they move forward with their PM10 obligation
14 met.

15 So I guess the short answer is my
16 suggestion is that the AQC-9 be addressed. And
17 from the standpoint of require the correct, the
18 latest calculation protocol, and that the five
19 criteria be affirmatively shown to the EPA's
20 approval.

21 HEARING OFFICER SHEAN: So do I
22 understand fundamentally what you're talking about
23 is whereas under other circumstances you might
24 already have the road paving done at the point you
25 are considering the validity of the ERCs. That

1 under these circumstances essentially a verifiable
2 promise to provide that amount of road paving as a
3 condition is the process you would use now, with
4 the verification occurring at a later point when
5 you will conduct whatever your public process is
6 to do that?

7 MR. DE SALVIO: Partially I would agree
8 with you. My new source review process requires
9 first that any applicant provide sufficient proof
10 of offsets in the form of an offset package.
11 That's normally in response, formerly it's in
12 response to the District telling the applicant
13 that they need to provide offsets.

14 Given the nature of a power plant
15 development process, the District doesn't consider
16 it feasible that an applicant be required to pave
17 roads, for example, many years in advance of the
18 actual emissions being generated, which would be
19 even after, obviously after construction.

20 So, we have, in the past, established a
21 precedent that we accept an offset package which
22 includes adequate proof that the, in the case of
23 PM10 offsets, that the PM10 offsets will be
24 created at a certain point in time.

25 The applicant, in the case of Blythe

1 Energy II, has done that by identifying existing
2 unpaved roads; by sampling the surface conditions
3 on those roads and the surface material; and
4 performing traffic activity counts on those roads
5 sufficient to show that once those roads are
6 paved, adequate offsets will be created, adequate
7 ERCs, PM10 ERCs will be created, which could then
8 be used as offsets.

9 It's akin to the relationship that the
10 applicant has with Southern California Gas for
11 their NOx credits. They have not purchased the
12 NOx credits, but they have obtained an option
13 contract with Southern California Gas, first right
14 of refusal. They have rights to those credits
15 through some fiduciary relationship.

16 And once the funding is there, I assume
17 after the certification process, they can then
18 obtain those credits by purchasing them.

19 What I'm trying to illustrate is the
20 credits are there, or in the case of the roads
21 they're ready to be created; they simply require
22 the paving to be done.

23 The District is satisfied, once we use
24 the correct equation, of course, that sufficient
25 credits can be created. It's just a matter of

1 paving them, spending the money to pave them.

2 MR. GALATI: If I could also point out
3 that the Blythe I project obtained it's PM10
4 offsets in a similar way by paving Buck Boulevard.
5 That was done not prior to issuance of the
6 license, but at a condition that that would be
7 paved, as well. And I believe that the District
8 followed a similar process.

9 MR. DE SALVIO: That is correct.
10 Exactly the same proposed process was used for
11 Blythe I, i.e., they identified roads; they
12 performed all the tests that we require that
13 provide all the variables that go into that
14 equation. They were given an enforceable permit
15 condition that said thou shalt provide sufficient
16 offsets. The roads were paved; they surrendered
17 the credits; and they built the project.

18 So, we're confident that this process
19 will work.

20 HEARING OFFICER SHEAN: All right, thank
21 you, Mr. De Salvia. Anything from the Commission
22 Staff?

23 MS. DeCARLO: As far as the specific
24 issue of quantification of the road paving, we
25 believe that the chart should stand, an additional

1 item should be added, a placeholder for any
2 additional lengths that necessary to conform with
3 the current USEPA standard.

4 Now, with regard to the broader issue
5 of --

6 PRESIDING MEMBER GEESMAN: Let me ask
7 you, Ms. DeCarlo, should we acknowledge that the
8 numbers int he chart are based on an outdated
9 standard?

10 MS. DeCARLO: Yes, and I believe staff
11 has identified that in their FSA section.

12 PRESIDING MEMBER GEESMAN: Okay.

13 MS. DeCARLO: The concern that they
14 might be outdated and updated factors may need to
15 be used.

16 But there is a broader issue here, and
17 that's with regard to whether or not EPA approves
18 the road paving, in general. So we're concerned
19 that the condition needs to do more to reflect
20 potential subsequent EPA approval of the offsets
21 used. And staff can go into further detail on
22 that, if necessary.

23 MR. RIOS: This is Gerardo Rios of EPA
24 Region IX. I would agree with that, I think, and
25 I also agree with what Alan just said, which was

1 that conditioning of permanent or having a
2 condition that basically says that all the
3 criteria need to be met is a really good start.

4 I do think that because of the nature of
5 road paving ERCs, they are not a traditional
6 emission reduction credit that would be generated.
7 We do need to have some protocol developed to make
8 sure that we're consistent in the generation of
9 the ERCs, and to make sure that they meet all the
10 five criteria.

11 So if the CEC can put a condition in
12 that essentially says that the ERCs must have EPA
13 approval, that would probably give us a way to
14 work through the process so that the project can
15 move forward.

16 HEARING OFFICER SHEAN: Input and
17 approval, or consent by the EPA occur during the
18 District's public review process? Or do you
19 anticipate it at some other point?

20 MR. RIOS: My hope is that by the time
21 the District goes through the public process we
22 have worked through most of that. There are
23 several options, several paths that the District
24 could take in order to make that happen.

25 Alan and I have talked previously about

1 a few of those options, and I think all those
2 options are pretty viable. One of them would
3 include essentially the full demonstration of the
4 criteria potentially before the public comment
5 period so that we can work those things out.

6 Then during the public comment period we
7 could make an affirmative finding if we're all in
8 agreement about the emission reduction credits.

9 Another way to do it is for the District
10 to have a, or create a road paving rule which we,
11 between the two agencies, can work out so that any
12 ERCs that are created that meet those criteria of
13 that rule would then be approval ERCs.

14 Those are a couple of options that we
15 thought of. And I guess one thing that I would
16 add is because the Clean Air Act, under section
17 173, requires that a facility not commence
18 operation until the ERCs are provided, that we
19 make sure that somehow that requirement is also in
20 the permit.

21 HEARING OFFICER SHEAN: Mr. Rios, have
22 you looked at that condition AQC-9 in any depth?

23 MR. RIOS: -- really --

24 HEARING OFFICER SHEAN: Okay. I think
25 what the staff had offered in an attempt to

1 address what you were talking about, and among the
2 things stated in it is that the ERC list shall
3 contain evidence that the District has determined
4 that the ERCs are real, enforceable, surplus,
5 permanent and quantifiable.

6 So, does that address the essence of the
7 five requirements that you have in mind that the
8 EPA wishes to assure are -- that the ERCs are
9 subject to?

10 MR. RIOS: For the road paving ERCs, to
11 the extent, because they are nontraditional ERCs,
12 I would say that's true as long as they have our
13 written approval.

14 HEARING OFFICER SHEAN: Okay. Mr. De
15 Salvio, how does that fit in with what you have in
16 mind in terms of processing these ERCs?

17 MR. DE SALVIO: Well, certainly the
18 District will be submitting to EPA a proposed
19 issuance package for the Krit roads. Once the
20 applicant returns to me with information showing
21 me that there are adequate roads in the Krit area,
22 which I believe can be done, we will go to a
23 proposed issuance process.

24 Actually what I will do is I will repeat
25 my incomplete process in a more involved -- in a

1 more elaborate document which I will forward to
2 EPA for their review, and hopefully approval, in
3 concept, of the action.

4 The problem that I have is we aren't
5 going to be able to make the real test until the
6 roads are paved. And we're going to have to get
7 over that hurdle somehow.

8 But, Mr. Rios is asking for this in
9 advance of the public comment period, so somehow I
10 will get a package to EPA that attempts to show
11 how four of the tests will be met, and how the
12 fifth one will be met, of course, upon paving.

13 And then the I'll have the public
14 comment period. So hopefully we can get approval
15 from EPA.

16 It's for the applicant to say whether
17 they accept something that says on written
18 approval from the EPA.

19 HEARING OFFICER SHEAN: So do I
20 understand, though, that your process, would it
21 normally require the EPA's written approval, or
22 would it really require them to just not
23 disapprove it?

24 MR. DE SALVIO: Your second option is
25 what the letter of the law says.

1 HEARING OFFICER SHEAN: Okay.

2 MR. GALATI: Which is our concern, as
3 well, is it's federal attainment for PM10. And
4 while we certainly welcome EPA involvement, and
5 we've actually met with EPA since 2003 on this
6 particular issue. But we don't believe that EPA
7 should have carte blanche approval authority over
8 whether the District, in implementing its own
9 rules, could allow PM10 offsets.

10 And it was what was done in Blythe I.
11 We could understand if this was a federal
12 nonattainment area for PM10. But, we think that
13 the District's rule will make the determination of
14 whether or not it meets the criteria. We think
15 that's all the Commission should do.

16 There's no CEQA issues that need to be
17 offset additionally for. So as far as compliance
18 with LORS, this condition, as it stands, without
19 EPA approval, complies with the LORS.

20 HEARING OFFICER SHEAN: All right, we've
21 had a couple of people, apparently, chime in on
22 the line. Can we get some of the new people to
23 identify themselves, please.

24 MS. FARRELL: Caroline Farrell from the
25 Center on Race, Poverty and the Environment.

1 HEARING OFFICER SHEAN: All right, Ms.
2 Farrell, welcome.

3 MR. SARVEY: Bob Sarvey.

4 MS. MARTIN: Barbara Martin with the
5 Holt Group.

6 HEARING OFFICER SHEAN: Okay, so I'm
7 showing three new people.

8 Mr. Rios, do you have any comments with
9 respect to what Mr. De Salvio said, or anything
10 further that --

11 MR. RIOS: Yes. I guess the issue is
12 that we're in an area that, while it is designated
13 federal attainment, that rule, itself, was
14 submitted to become a federalized rule and would
15 apply to every part of the District. The actual
16 rule that we're working under does not distinguish
17 between the attainment or the nonattainment area.

18 So, on that aspect, while the area is
19 attainment, it would have to meet all the federal
20 criteria.

21 And then in the situation where we have,
22 as I mentioned earlier, nontraditional ERCs, we
23 have to, because your rules -- the traditional
24 rules for creating emission reduction credits do
25 not necessarily provide appropriate checks and

1 balances.

2 To make sure that those ERCs meet all
3 the five criteria, we need to work together to
4 make sure that we develop the right criteria and
5 we create the ERCs that meet the five federal
6 requirements.

7 And one of the critical things about
8 this is that one, you create nontraditional ERCs
9 in one area, other applicants in other parts of
10 the state will try to create ERCs based on any
11 criteria that was previously used. Which as, you
12 know, an oversight agency we have to make sure
13 that the ERCs that are created for nontraditional
14 source of ERCs meet all the five criteria. And
15 that there's some standardized way of doing so.

16 Which is the reason why we think that in
17 this case, while the rules, themselves, do not
18 explicitly say that for the creation of an ERC
19 there needs to be federal approval, we are talking
20 about ERCs that weren't necessarily within the
21 scope of the original rules that were written.

22 For example, most of the ERCs that are
23 created, traditional ERCs, extend from other
24 stationary sources that would probably need to
25 have some kind of a permit issued by the air

1 agency in order for them to be made permanent
2 emission reductions, enforceable reductions, and
3 reductions that were made from sources that were
4 surplus to any other requirement in place.

5 In the case of a nontraditional source
6 of ERCs, we typically do not have a permit that
7 needs to be issued for the source to emit air
8 pollution. In this case, a road is constructed
9 and the Air Pollution Control District does not
10 have to create -- does not have to issue a permit
11 for the road to be created and for emissions to be
12 emitted.

13 In order to quantify the emissions, EPA
14 has to -- there is a method to do that, although
15 depending on the road, -- the emission factors. I
16 think I heard somebody discussing emissions
17 factors earlier. There is a little bit of
18 consistency there.

19 The other part is because this is more
20 like an area source, some agencies have in their
21 air quality plans, plans to reduce emissions from
22 some of these area sources. They don't
23 necessarily identify which area sources they're
24 going to use.

25 So to determine whether or not, or to

1 control, so to determine which area sources are
2 being controlled and which ones aren't, to make
3 sure that we meet the surplus criteria, that
4 becomes another hurdle to be met.

5 And then finally to actually enforce the
6 road, in this case, the roads are controlled and
7 maintained for the life of the project, there
8 would need to be some kind of enforceable
9 mechanism.

10 And there simply isn't a requirement in
11 the current District rules that would basically
12 say independent of the permit that's being issued
13 here, that there's some way to enforce that the
14 roads stay paved.

15 So, all of that, those are examples of
16 why the nontraditional ERCs really do need to have
17 special attention from, at least from us, from the
18 way we see it. And some way to work through some
19 of these practical issues so that we can create
20 emission reductions that will truly benefit the
21 environment.

22 HEARING OFFICER SHEAN: All right. I
23 think we understand more fully now what the EPA's
24 concern is. And I would just bring to your
25 attention that further provisions in AQC-9,

1 because I think the staff worked pretty hard to
2 try to address at least some of the matters that
3 would be of concern to you, were that if the
4 project owner were going to request to substitute
5 or modify the road paving credits that were listed
6 in AQC-9, that our compliance project manager, in
7 consultation with the District, and I'm sure the
8 consultation would include you, could approve such
9 a change in the ERC list, provided that the
10 project remained in compliance with applicable
11 federal and state laws, and would not result in a
12 significant environmental impact.

13 So it would seem like that, as an
14 overarching portion of our condition, would begin
15 to capture, at least for assurance purposes, that
16 the EPA's concerns in this matter were being
17 addressed and were certainly, at least in the
18 frontal lobes of the people who are looking at the
19 adequacy of the ERCs that were being proposed.

20 MS. DeCARLO: And staff has written out
21 some specific language changes to the conditions
22 if the Committee would like to see that, just to
23 kind of envision what we're thinking, just as a
24 starting point.

25 HEARING OFFICER SHEAN: If you have

1 something you'd like to raise as a comment to
2 address it, sure.

3 MR. RIOS: I heard you say that
4 overarching condition was in the event that the
5 ERCs were substituted? Is that what you said, or
6 was that for any ERCs?

7 MS. DeCARLO: There are actually two
8 locations where we have inserted EPA approval.
9 One was with the initial determination that the
10 ERC list contains evidence that the ERCs are real,
11 enforceable, surplus, permanent and quantifiable.
12 Evidence that both the District and USEPA concur
13 with that determination.

14 And then the second is where any
15 modifications to the list occurs that that
16 determination is made with the District and USEPA
17 consultation.

18 MR. RIOS: Consultation, not approval?

19 MS. DeCARLO: That can be changed.

20 MR. RIOS: I think I would vote for
21 making approval there. Again, I'm trying to make
22 sure that we all agree about how the ERCs are
23 generated, meeting all the criteria.

24 MS. DeCARLO: And that actually might be
25 accomplished in our verification section. We have

1 a specific sentence there that says a list of ERCs
2 shall include evidence that USEPA concurs with the
3 determination that the ERCs are valid.

4 So that would apply to both, the initial
5 list of ERCs and any modification, the final list.

6 MR. RIOS: Okay.

7 MR. GALATI: And once again, just to
8 reiterate, we don't believe that we should be
9 giving the authority to EPA where they don't have
10 it.

11 I would point out that issue number two
12 that EPA has raised is of specific approval of a
13 offset ratio. And in that rule, the District's
14 rules requires EPA's approval.

15 If all of the District's rules required
16 EPA to approve, then you would not have that
17 specific language on the interpollutant offset
18 ratio. We don't have it here for these particular
19 ERCs.

20 And I would just like to point out once
21 again, this is what applicants find difficult with
22 creating new real-time credits is this should be
23 looked at as favorable. We're creating new real-
24 time credits as opposed to going to a bank and
25 buying them.

1 And it's that kind of thing I think the
2 Commission ought to encourage. I think that it
3 certainly helps from a CEQA perspective. And it
4 was what was done in Blythe I.

5 So, from that perspective, having
6 another layer of review -- we also noticed, we
7 just got what staff changed, changing that this
8 needs to be approved prior to construction, that's
9 also inconsistent with the District rules.

10 They previously agreed that the 60 days
11 prior to initial startup would be an appropriate
12 time to show. And we need those kinds of times to
13 create these real-time offsets.

14 So we would ask the Commission to not
15 change AQC-9 in accordance with staff's
16 recommendations. We would agree with the addition
17 of the language that any additional road lengths
18 necessary to conform with the current version of
19 the EPA guidance document AP-42, we would agree to
20 that change.

21 MS. DeCARLO: With regard to the issue
22 of the AQMD regulations, I'm not an expert,
23 obviously, in those regulations. However, I have
24 found two instances that specifically call for EPA
25 approval with regard to the offset determination.

1 And the District is free to correct me if I'm
2 misinterpreting these provisions.

3 But one provision requires that whenever
4 any indirect or area source ERCs are used, that
5 they can be used only if they're calculated
6 pursuant to a formula which has been approved by
7 CARB and USEPA. And EPA, I believe, here is
8 claiming that no such calculation method or
9 formula has been approved for these road paving
10 offsets.

11 Additionally, in general, another rule
12 of the District says that the APCO, the air
13 pollution control officer, shall approve the use
14 of the offsets subject to the approval of CARB and
15 USEPA.

16 So I believe those two provisions
17 indicate that EPA approval is required for any
18 identification of offsets used.

19 MR. GALATI: If I could ask for some
20 clarification. The second one you quoted, Lisa,
21 was that for the interpollutant offset rule?

22 MS. DeCARLO: I don't believe so.
23 That's rule 1302(c)(3).

24 (Pause.)

25 MS. DeCARLO: It's just under the

1 general analysis for determination of emissions
2 and offsets.

3 HEARING OFFICER SHEAN: For the people
4 on the phone, if you have comments in this area,
5 we're going to come to you momentarily.

6 MR. RIOS: Okay.

7 MR. GALATI: I think I would be remiss
8 if I didn't communicate the frustration the
9 applicant feels at this point, the day before
10 we're getting our license after the PMPD comes
11 out, trying to deal with an issue like this that
12 has been around since 2003.

13 The EPA comment letter in 2002 resulted
14 in a series of meetings with the District and the
15 applicant, and we believed that this issue had
16 been resolved.

17 It's very difficult to work in this
18 scenario and resolve issues that, quite frankly,
19 we had testimony on to the contrary.

20 Staff proposed AQC-9. If they needed
21 EPA approval at that time, that was the time we
22 should have had the discussion. We could have
23 brought evidence to the Committee.

24 I would again point out that is not what
25 was required for Blythe I. And again, we're

1 creating real-time offsets in an area that badly
2 needs paved roads.

3 PRESIDING MEMBER GEESMAN: I don't think
4 anybody disagrees with you on that, Mr. Galati,
5 nor do I think anyone lacks the sense of
6 frustration. But we're trying to stay on a
7 calendar that will have your license in front of
8 the full Commission tomorrow.

9 If you think it requires more time than
10 that we can take it off calendar. But my
11 presumption has been that everyone would like to
12 see the Commission address the license tomorrow.

13 The issues raised by staff's language
14 are not sufficiently complex that I don't think we
15 can't work through this in real time this morning.

16 Now, if, in fact, you think it raises
17 more complexity or vagueness or ambiguity than you
18 feel comfortable with addressing this morning, we
19 can take the item off calendar for tomorrow. But,
20 again, my presumption is it's in everyone's
21 interest to try and get this matter resolved.

22 MR. LOOPER: I think we can get it
23 resolved, but Mr. Rios' concerns are -- as
24 concerned as I was before coming here about the
25 words EPA approval, I'm even more concerned after

1 hearing his testimony.

2 And that's because he is continuing to
3 go back to the nontraditional ERC. As an
4 applicant, and where we're headed on this, it's
5 one thing to talk about the compliance aspects,
6 and the five steps that we have to go through. A
7 nd we're more than willing to do those.

8 It's another thing to every time -- what
9 I hear in his words are, we don't like road paving
10 for PM10. And leaving EPA approval open on such a
11 fundamental concept of the use of road paving for
12 PM10 is what I'm hearing in his testimony right
13 now.

14 And although he brings it back to the
15 five steps, and we have to make ultra sure,
16 because we're EPA, and we're in a better position
17 apparently than the District is, to make certain
18 that you are complying and doing all the things
19 necessary that EPA outlined to generate those PM10
20 credits.

21 What I really hear is, in fact, an
22 opener for EPA to disapprove the use of road
23 paving credits, which is fundamental to our
24 license going forward, and the project going
25 forward in a timely fashion.

1 That's what I hear. That's more
2 disturbing than where I thought we were coming
3 into this meeting. So, I'm okay to work and get
4 some language that allows, you know, the District
5 to consult with EPA like we have in the past. But
6 we had approval from EPA in 2003. No doubt about
7 that. We had approval on this issue.

8 And here we are the day before the
9 license, they've reopened it up. And if it's the
10 road paving credits that they're taking a shot at,
11 I have a real problem with that. If it's
12 something different, then we should work through
13 the language and we should make certain that, you
14 know, that we're going to comply and we're going
15 to do the things that we said we're going to do.
16 And I don't think the District has a problem with
17 that. That's my fundamental concerns is what I
18 hear right here.

19 MR. RIOS: May I say something?

20 HEARING OFFICER SHEAN: Yes, sir.

21 MR. RIOS: I guess, you know, first, I
22 don't want you to walk away from this thinking
23 that we don't like road paving ERCs. I think
24 making, you know, PM reductions for the benefit of
25 the environment is a very good thing.

1 We have an example of where we've
2 actually worked this out, which is in Maricopa
3 County, in Arizona, where we actually essentially
4 went through this process and the facility
5 obtained road paving ERCs for their project. So,
6 it's not something that we wouldn't be able to
7 work out. And I just want to make sure that you
8 understand that.

9 On the other hand, at this point I don't
10 see anything, you know, and I guess we could argue
11 about it back and forth, in the District rule that
12 explicitly says that you can create ERCs from an
13 area source as long as you meet the five criteria.

14 And my concern there is, you know, let's
15 make sure that here in the State of California we
16 do set up the right criteria and so that everybody
17 can use the same criteria.

18 I am also concerned that, I guess you
19 are saying that we have approved the ERCs in the
20 past. And I don't believe that we had. Our
21 December 2002 letter kind of raises the issue, and
22 we reiterated the issue again because we did not
23 see that issue getting resolved.

24 And we have been very clear with the
25 CAPCOA permitting agencies about making sure that

1 if we're creating nontraditional ERCs that we have
2 the correct protocols in place to make sure that
3 we're consistent across the board. And so that it
4 provides fairness for everybody across the state.

5 So, you know, what I'm trying to do here
6 is actually figure out a way for you to have your
7 license, I guess, presented to the Board tomorrow,
8 and for us to have a way to move forward so that
9 we can actually work through these issues. And I
10 can still have the consistency that needs to
11 happen.

12 And I guess the last thing that I want
13 to say is, you know, we did not review Blythe I
14 for the ERCs that were provided in terms of for
15 PM10. And, you know, just because we didn't
16 actually comment on it does not mean that we
17 actually reviewed it and approved it. So there
18 was no actual approval from our part on Blythe I.

19 So, you know, it occurred on Blythe I;
20 our mistake that we didn't look at it. But
21 because we made a mistake in not looking at those
22 doesn't mean that we need to allow the Blythe II
23 to move forward without approval.

24 HEARING OFFICER SHEAN: All right, I
25 think we understand the nature of the EPA's

1 interest particularly in having, you know, some
2 assurance that -- and that's not merely some
3 assurance, but assurance that your five
4 requirements are met. And that, in your oversight
5 role, that consistency is important to you so that
6 not only with this project, but as others might
7 arise, that there's consistent application of a
8 federal requirements as you see them, in your
9 oversight role.

10 Why don't we go now to see if there's
11 anyone else who's on the phone who wants to
12 address these issues. So, if you do, go ahead and
13 chime in.

14 MR. SARVEY: This is Bob Sarvey.

15 HEARING OFFICER SHEAN: Go ahead.

16 MR. SARVEY: I believe that Mr. Rios
17 here is actually being consistent, I think. In
18 that appeals last license it was the Tesla
19 project. They also tried to use road paving
20 credits and they were limited to 15 percent. And
21 AP emissions factors were used.

22 Somewhere FPL and the Commission has
23 forgotten this precedent or lesson that we learned
24 in Tesla. And I was a little surprised to see
25 that it wasn't applied.

1 And as far as this project being ready
2 to go to the full Commission, obviously it's not.
3 Thank you.

4 HEARING OFFICER SHEAN: Thank you. All
5 right, I think we've got our arms around the issue
6 as it relates to this.

7 MS. DeCARLO: if I could just respond to
8 the concern over --

9 HEARING OFFICER SHEAN: Sure.

10 MS. DeCARLO: -- the change in the
11 timing of the verification, quickly. We simply
12 changed that in order to insure that it was
13 consistent with AQ-18, the District's rules, which
14 require that ERCs be submitted prior to
15 construction.

16 HEARING OFFICER SHEAN: All right. Why
17 don't we go into our discussion with respect to
18 AQ-18 and the interpollutant tradeoff issue. Mr.
19 Galati.

20 MR. GALATI: Our concern with EPA's
21 letter is a concern of specifically what would
22 they require in order to prove an offset ratio.
23 They are clear that there's no modeling protocol
24 that has been approved.

25 It basically boils down to two issues.

1 With respect to the PM10, we're offsetting PM10,
2 substituting PM10 for SOx. SOx, the reason that
3 we're doing that is SOx has the ability to turn
4 into PM10. And we are offsetting one molecule of
5 PM10 for a proposed molecule of PM10, if you will.
6 We think that it is conservative in nature.

7 And so any sort of modeling may not be
8 required, we hope. We hope that qualitatively the
9 EPA could see that relationship.

10 And there was a meeting, I believe, in
11 2003 with members of EPA and the District
12 discussing that very point.

13 The second is, in my understanding, is
14 that the modeling, when dealing with NOx for VOC,
15 is in other projects, has been very much driven by
16 the distance between the offsets and the
17 emissions.

18 And in this case we have the actual
19 emissions being generated less than two miles from
20 the actual offsets. We were hoping that, since
21 they're both ozone precursors, that a one-to-one
22 ratio would make sense from a qualitative
23 standpoint on that, as opposed to a lengthy
24 modeling process.

25 Again, our concern is that I know what

1 Mr. Rios said, that there's no letter out there
2 saying that you've approved it, but it is pretty
3 common practice for EPA not to write an approval
4 letter, but just to be absent in a comment.

5 So, they wrote their comment in 2002.
6 Met with the District. The FDOC comes out, and
7 the District believes that they've issued an FDOC
8 that EPA was comfortable with. And it isn't until
9 November 23rd that we find out that that's not a
10 problem.

11 So I don't know what the answer is to
12 AQ-18. But would like to at least let the
13 Commission know from what perspective we were
14 coming.

15 HEARING OFFICER SHEAN: Okay. Staff?

16 MS. DeCARLO: I would just say that in
17 this case, particularly, it's clear that USEPA
18 approval is required. And staff has modified AQ-
19 18 to accommodate USEPA approval.

20 HEARING OFFICER SHEAN: Anybody else?

21 MR. RIOS: I concur with the CEC.

22 HEARING OFFICER SHEAN: Who's speaking?

23 MR. DE SALVIO: The District's position
24 is as it was, which is certainly the rule requires
25 EPA approval. It's not clear to the District who

1 is required, what analysis, what technical
2 analysis needs to be done to show the proposed
3 ratio is adequate to the EPA's satisfaction,
4 beyond what's already in the FDOC.

5 This is the third project. In fact, on
6 both these issues, PM10 ERCs for road paving and
7 for interpollutant offset ratios, this is the
8 third power plant that's been proposed, two of
9 which have been built in the Mojave Desert AQMD.

10 They've all used interpollutant offsets.
11 They've all used road paving offsets. EPA has not
12 objected in writing on the first project, and did
13 not comment on the second project.

14 So, again, it's not clear to the
15 District what the applicant needs to do to justify
16 these credits beyond what's already been
17 presented.

18 This project is a modification of Blythe
19 I. Blythe I was offset with VOC for NOx. This
20 project, because of an absence and lack of VOC
21 credits, is being offset NOx for VOC.

22 It was shown, and is shown in the FDOC
23 that this project is being adequately offset based
24 on the available tools. So the District's
25 position is I'm not sure what method needs to be

1 shown. What is it that needs to be done to show
2 that this is technically justified?

3 HEARING OFFICER SHEAN: All right.

4 MR. RIOS: My modelers aren't here to
5 help with our response, but what I can give you is
6 that in every interpollutant trade it's
7 essentially a case-by-case determination. And
8 so -- and over time we've learned a little bit
9 more about how to estimate what the appropriate
10 ratio should be.

11 Unfortunately, it is based on not just
12 air district, but actually on the location within
13 the air district, in many cases, depending on the
14 kind of trade, the chemistry that evolves from
15 that area.

16 So we do need to work on a case-by-case
17 basis. And the way that we've done it where we
18 have worked with a facility to determine what the
19 appropriate ratio is where an air pollution
20 control agency is to get our heads together and
21 work through the modeling and figure out what the
22 appropriate protocol is for that particular
23 situation.

24 I know it's not a very neat and clean
25 solution, but that is the reason why the language

1 in the District rule ended up there for EPA
2 approval, because we understood at the time that
3 there just really wasn't a specific protocol that
4 you could apply everywhere to arrive at a
5 conclusion.

6 HEARING OFFICER SHEAN: All right. Is
7 there anybody on the phone -- let me first ask,
8 did somebody just come on, and if you did, would
9 you please identify yourself.

10 All right, then maybe somebody left.

11 Anybody on the phone want to comment on
12 this? All right --

13 MR. CAMERON: This is Tom Cameron with
14 Caithness. I know Bob Looper has already
15 expressed the applicant's concern about what's
16 going on here at the last moment.

17 I'd also like to express similar
18 concerns. I was at the meeting with EPA and with
19 the District where we talked about all of the
20 comments that EPA had. And Alan De Salvio was
21 pretty clear that he did not want to issue a
22 permit, a final determination until, you know, we
23 had all the issues resolved.

24 And we left the meeting with all the
25 issues resolved. And Alan then subsequently

1 issued his DOC.

2 So, you know, we have a concern that
3 this is just continuing. And by the way, EPA had
4 their counsel there at the same time.

5 So, we believe all the issues have been
6 resolved. I'm only saying this because I was at
7 the meeting.

8 HEARING OFFICER SHEAN: All right.

9 Thank you.

10 Let's move to our third item, which is
11 in AQC-10. And this has to do with ammonia slip.
12 And based upon the comments from the Center on
13 Race, Poverty and the Environment, the Committee
14 has looked again at the language in that
15 condition, particularly the use of the words
16 consistently remaining below 5 ppm, in terms of
17 whether or not that does or does not establish a
18 standard or requirement which is sufficiently
19 clear that it could be applied.

20 I think what we are considering is that
21 it does not. In the absence of some definition
22 that either links it to a number of -- what
23 consistently means. Does that mean it continues
24 to be below 5 ppm for one out of the next five
25 operating days, one out of the next 10 or 20 or

1 whatever. And maybe it's not even measured by
2 days. So that it's probably better to take that
3 out since it doesn't give us a standard with a
4 standard.

5 MR. GALATI: Just to clarify the record
6 I wanted to provide a little bit of background.
7 This condition is a compromise. This condition is
8 a compromise between staff, which proposed 5 ppm,
9 and which the applicant proposed 10 ppm, to avoid
10 going through the similar battle like on Blythe I
11 and others, in which there is no BACT requirement
12 for 5 ppm. So the real driver was the ability for
13 ammonia to create secondary PM10.

14 There's a big issue on whether it's an
15 ammonia-rich environment. And rather than go
16 through that scenario, the applicant and the staff
17 compromised to below what the District had said
18 would be appropriate, which is a 10 ppm slip.

19 What this requirement does, and I think
20 staff's been very good in helping to craft it, it
21 provides a replacement scenario that takes place
22 far below a 10 ppm hard limit. And that is that
23 if there is a 5 ppm over a 24-hour average period,
24 if that is achieved and it's not a false-positive
25 test, then the applicant needs to go through a

1 replacement scenario.

2 So, what that ends up achieving is the
3 applicant does replace the catalyst or regenerate
4 the catalyst more frequently, which is what staff
5 wanted to accomplish and what the applicant has
6 agreed.

7 We believe the best way to resolve any
8 definitional process is just take out the word
9 consistently. And then what it will say, the
10 ammonia slip is remaining below 5 ppm averaged
11 over 24 hours.

12 And so if we're not showing that it's
13 remaining below that average over a 24-hour
14 period, that is the criteria upon which we have to
15 get into a generating -- I think that's what
16 everybody intended, and what everybody agreed to.
17 I'm not sure why consistently wasn't caught. I
18 think we all knew what it meant when we wrote it.
19 I think it's not necessary.

20 PRESIDING MEMBER GEESMAN: What's
21 staff's reaction?

22 MS. DeCARLO: Yeah, we just wanted to
23 make sure that the condition enabled us enough
24 flexibility to determine these issues on a case-
25 by-case basis, taking into account the various

1 factors involved with running the power plant.

2 We believe that the elimination of
3 consistently below doesn't change the condition
4 substantively. We had actually proposed a more
5 extensive rescission, but we're fine with just the
6 few words that the applicant identified.

7 PRESIDING MEMBER GEESMAN: The applicant
8 just identified one word. So I want to be clear,
9 the two of you agree, then, with the applicant's
10 suggestion --

11 MS. DeCARLO: Consistently, yes.

12 PRESIDING MEMBER GEESMAN: -- that we
13 just strike consistently?

14 MS. DeCARLO: That's fine with staff,
15 yes.

16 HEARING OFFICER SHEAN: Ms. Farrell, do
17 you have comments on this?

18 MS. FARRELL: No. The real comment was
19 clarification to make sure that consistently
20 wasn't used to sort of delay any required action.

21 HEARING OFFICER SHEAN: All right. The
22 only other matter we have that came in by way of
23 comment was from Mr. Hansen, who has been a
24 frequent participant in our public hearings in
25 Blythe. He's the Executive Director of the Small

1 Business Development Center. And had asked for
2 essentially a local hiring and local purchasing
3 condition that had been in the BEP-I decision.
4 And did not appear in the PMPD. And is requesting
5 that it be included.

6 MR. GALATI: The applicant has no
7 objection. It's what we're going to be doing
8 anyway. We've already committed to a retraining
9 program and others. And the applicant intends to
10 build this project with the same success that
11 Blythe I encountered with local hiring.

12 HEARING OFFICER SHEAN: Staff?

13 MS. DeCARLO: Staff has no objection to
14 the inclusion of the condition as written in
15 Blythe I.

16 HEARING OFFICER SHEAN: Any discussion
17 on this matter from anyone on the phone?

18 All right.

19 Is there any other matter that needs to
20 be brought before the Committee before we
21 essentially author an errata and make that
22 available?

23 Mr. Rios, are you still there?

24 MR. RIOS: Yes.

25 HEARING OFFICER SHEAN: If you would

1 like to receive a copy of the errata via email,
2 perhaps, and I'm not necessarily suggesting you do
3 it in this public setting, you can inform a member
4 of the Commission Staff of your email address, and
5 they will pass that along to me. And we will make
6 sure that you receive a copy of whatever it is
7 that we're going to be putting out sometime this
8 afternoon.

9 MR. RIOS: Okay. Will do.

10 PRESIDING MEMBER GEESMAN: In order to
11 help people in preparing their comments for the
12 Commission's hearing tomorrow, I want to indicate
13 it's my intent to include in the PMPD the staff
14 recommendation AQC-9; the applicant's
15 recommendation on the AQC-10, which the staff has
16 concurred with; the staff's recommendation on AQ-
17 18; and the joint recommendation on Socio-3.

18 HEARING OFFICER SHEAN: All right, with
19 that we thank you all very much for your earlier-
20 than-usual participation. We will see you
21 tomorrow.

22 MS. DeCARLO: Thank you.

23 HEARING OFFICER SHEAN: Thank you.

24 (Whereupon, at 9:33 a.m., the Committee
25 workshop was adjourned.)

CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of December, 2005.

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