

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification)
Pastoria Energy Facility (PEF)) Docket No. 05-AFC-1
160 mW Expansion)
by Calpine Corporation)
_____)

ORIGINAL

CALIFORNIA ENERGY COMMISSION
FIRST FLOOR HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, JANUARY 17, 2006

2:02 P.M.

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

DOCKET
05-AFC-1
DATE JAN 17 2006
RECD. JAN 27 2006

COMMITTEE MEMBERS PRESENT

Joseph Desmond, Presiding Member

James Boyd, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gifter, Hearing Officer

Michael Smith, Advisor

Kevin Kennedy, Advisor

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

James W. Reede, Jr., Project Manager

Mark Hesters

William Walters (via teleconference)
Aspen Environmental

Alvin J. Greenberg
Risk Science Associates

Linda Bond

REPRESENTING THE APPLICANT

Greggory Wheatland, Attorney
Ellison, Schneider and Harris, LLP

Andrew Whittome, Director Project Development,
Project Manager
Ali Amirali
Michael A. Argentine
Barbara McBride
Calpine Corporation

Gary S. Rubenstein
Sierra Research

Jennifer L. Scholl
URS Corporation

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

2 2:02 p.m.

3 PRESIDING MEMBER DESMOND: Call this
4 meeting to order and begin by welcoming everyone
5 here today at the Pastoria 160 megawatt expansion
6 proposed by Calpine Corporation.

7 I am Joseph Desmond, Chairman; and with
8 me is Commissioner Boyd, Associate Member of this
9 Committee. Also joining us is Mike Smith. And
10 Kevin Kennedy will be down in a moment. And Susan
11 Gefter, the Hearing Officer.

12 Today we'll be taking up a number of
13 issues including air quality, water, issues
14 related to the project description, transmission
15 system engineering, efficiency and hazardous
16 materials, as well as worker safety and fire
17 protection.

18 So, at this point I'm going to turn this
19 over to the Hearing Officer, Susan.

20 HEARING OFFICER GEFTER: Before we begin
21 I'd like the parties to introduce themselves,
22 beginning with the applicant.

23 MR. WHEATLAND: Good afternoon; I'm
24 Gregg Wheatland; I'm the attorney for the
25 applicant. And sitting up here with me this

1 afternoon is Andrew Whittome, the Project
2 Development Manager. We also have other
3 representatives of Calpine. Would you like them
4 to introduce themselves at this time?

5 HEARING OFFICER GEFTER: Yes.

6 MR. ARGENTINE: My name's Michael
7 Argentine and I'm with Calpine.

8 MS. McBRIDE: I am Barbara McBride, --
9 Development Environmental, Calpine.

10 MS. SCHOLL: Jennifer Scholl; I'm the
11 AFC Project Manager Contractor to Calpine.

12 MR. RUBENSTEIN: Gary Rubenstein with
13 Sierra Research; we're air quality consultants for
14 the project.

15 MR. AMIRALI: Ali Amirali; I'm the
16 Director of Transmission Management with Calpine.

17 HEARING OFFICER GEFTER: And, staff,
18 please introduce your representatives.

19 MS. WILLIS: Thank you. I'm Kerry
20 Willis, Senior Staff Counsel. And to my right is
21 Dr. James Reede, who is our Project Manager. Also
22 with us today is Dr. Alvin Greenberg who will be
23 addressing our worker safety and hazmat issues;
24 Linda Bond, who will be discussing water; and
25 Steve Baker, who will be discussing the efficiency

1 issues. And I believe Will Walters is on the
2 phone, but I'm -- we haven't heard yet.

3 HEARING OFFICER GEFTER: At this time
4 I'd like to ask any of the parties or agency
5 representatives who are on the phone to please
6 introduce yourselves.

7 (Pause.)

8 HEARING OFFICER GEFTER: Off the record.

9 (Off the record.)

10 HEARING OFFICER GEFTER: Back on the
11 record. And Will Walters from staff is on the
12 phone. Will, if you want to say hello to us.

13 MR. WALTERS: Hello.

14 HEARING OFFICER GEFTER: Okay, so we
15 know Will is here.

16 The first issue that we're going to
17 address is air quality. But let just back up a
18 minute and indicate that the Committee has the
19 applicant's prehearing conference statement and
20 the staff's prehearing conference statement. And
21 in those documents some issues were identified.
22 And the Committee would like to focus on these
23 topics, and Chairman Desmond had mentioned them
24 earlier when we opened the prehearing conference.

25 So, I think the most efficient way to do

1 this is to go topic by topic, and try to resolve
2 the questions that the Committee has, so that we
3 can proceed with scheduling the evidentiary
4 hearing and other parts of this process.

5 So the first issue that we're going to
6 address is air quality. Understand that Will
7 Walters has to leave and is only available for the
8 next half an hour or so.

9 So, what I understand from reading the
10 prehearing conference statements is that there are
11 several items that are still pending on the topic
12 of air quality. And I'm going to ask Will to
13 address the timing of these items, if you can; and
14 if not, Mr. Rubenstein, for applicant.

15 So the first question we have is about
16 the offset package and the revised conditions, air
17 quality 44 and 45. And I did see a letter that
18 apparently was signed by Barbara McBride. So
19 Barbara McBride is also here today? Yeah.

20 I don't know whether Will or applicant
21 wants to address this letter, but since Barbara
22 signed it, I'd ask you to come forward, or Gary,
23 either one.

24 MR. RUBENSTEIN: Ms. Gefter, Gary
25 Rubenstein from Sierra Research. As we'd

1 indicated in the prehearing conference statement,
2 as the conference statement and the testimony was
3 being prepared, the USEPA and the San Joaquin Air
4 District were reaching agreement on this issue of
5 the calculation methodology for the offsets.

6 And even though the methodology that we
7 had filed is exactly the same methodology that had
8 been applied for the last five years, including
9 many projects reviewed and approved by this
10 Commission, those two agencies agreed on a change
11 in methodology with this project, the Pastoria
12 Energy Facility Expansion being the beneficiary,
13 for the first time, of the new interpretation.

14 We agreed, as a result of that, the
15 project agreed to abide by that change. And the
16 letter dated January 9th, Ms. Gefter, that you
17 were just referring to was our formal submission
18 to the agencies indicating that we agreed with the
19 new calculation methodology and providing the
20 additional requested offsets.

21 Where this issue stands now is that the
22 Air District will have to issue a revised final
23 determination of compliance which will vary only
24 in this one minor respect of changing the quantity
25 of offsets required.

1 And it's our understanding that with
2 that minor change that package will be acceptable
3 to the USEPA, as well. Once that final
4 determination of compliance revision is issued, we
5 will discuss with staff mechanically how we do
6 this, but we will file an errata to our testimony.
7 We assume that staff will file an errata to their
8 testimony for conforming amendments to the
9 proposed conditions of certification.

10 But that issue is, for all intents and
11 purposes, closed at this point.

12 HEARING OFFICER GEFTER: Okay. I
13 believe in Will Walters' testimony he indicated
14 that the USEPA's offset equivalency report would
15 be due at the end of February. My question is how
16 does this affect our proceeding.

17 MR. WALTERS: Let me answer that from
18 the staff's perspective. And I think basically
19 with the information I've gotten from Laurie
20 Danion (phonetic) in terms of how they're going to
21 review their report and the basis they're going to
22 review it, at least from staff's perspective the
23 fact that the report came in and showed
24 equivalency would mean that we wouldn't expect to
25 see any problems with it.

1 In particular, you know, the change from
2 the one-hour data ozone makes the issue much
3 simpler than it used to be in terms of showing
4 equivalency due to the different needs in terms of
5 the federal offset requirements versus what
6 they're doing at the local district level.

7 So, based on that and other
8 conversations I've had with EPA, I don't think
9 that this is an issue, and I don't think it should
10 delay the going forward with the project.

11 HEARING OFFICER GEFTER: Okay. So what
12 I understand you're telling us is that the
13 District's standards are more consistent now with
14 the USEPA's standards on ozone? Is that --

15 MR. WALTERS: No. What I'm saying is
16 the District's requirements for offsets are
17 stricter than the federal requirements, based on
18 their --

19 HEARING OFFICER GEFTER: Okay.

20 MR. WALTERS: -- specific nonattainment
21 status. And that gives them a considerable amount
22 of leeway for equivalency, much more than would
23 have been the case had the one-hour standard
24 stayed in effect.

25 And I just had some questions for EPA on

1 how they were going to look at that document in
2 terms of, you know, what plan was approved, et
3 cetera. Whether it was basically just an issue of
4 what the current nonattainment status was. And
5 getting that answered really kind of took the
6 issue away.

7 HEARING OFFICER GEFTER: Do you have any
8 -- does anyone have any estimate as when the
9 revised FDOC would be filed?

10 MR. WALTERS: I can tell you I got a
11 letter from the District that was dated the end of
12 last week that indicated that it would only take
13 them a few days to get the FDOC out and
14 circulated.

15 And it was going to go back out for
16 public notice.

17 HEARING OFFICER GEFTER: Okay. Public
18 notice is 30 days or 45 days?

19 MR. WALTERS: Thirty days.

20 HEARING OFFICER GEFTER: Okay. And then
21 in terms of staff's errata, revised air quality
22 testimony, what's the timeline on that?

23 MR. WALTERS: I should have it out
24 within a few days of getting the FDOC so that I
25 can make sure that the language is consistent

1 between the conditions.

2 HEARING OFFICER GEFTER: Okay. And then
3 the applicant's errata would be due when?

4 MR. RUBENSTEIN: Again, within a few
5 days after the District issues the revised FDOC
6 for public comment.

7 HEARING OFFICER GEFTER: Okay. And what
8 we're looking at, the revisions would include the
9 new offset package as well as revised conditions
10 44 and 45?

11 MR. RUBENSTEIN: That's correct.

12 HEARING OFFICER GEFTER: Anything else?

13 MR. RUBENSTEIN: Not --

14 MR. WALTERS: In terms of my errata we
15 are going to make one minor change to the
16 greenhouse gas condition, staff condition AQSC-9.
17 And that's just on the reporting requirement, it's
18 just to change it from quarterly to annual only.

19 HEARING OFFICER GEFTER: I was going to
20 ask you why you're making that change.

21 MR. WALTERS: Because we don't need or
22 want the data on a quarterly basis. And that was
23 just an error.

24 HEARING OFFICER GEFTER: All right. So,
25 summarizing the timeline for all the air quality

1 information, it looks like within about, what, two
2 weeks, end of the month? For all the testimony
3 and the revised FDOC to be filed.

4 MR. RUBENSTEIN: Right, with the caveat
5 that if the FDOC is going out for public comment
6 again, the version you will get is the version
7 that is, at the same time, being circulated for
8 public comment.

9 HEARING OFFICER GEFTER: Yeah, we
10 understand that. And then would the USEPA's
11 offset equivalency report affect any of these
12 other items that we're waiting for?

13 MR. WALTERS: No, it shouldn't. And let
14 me clarify, it's not their report, it's the review
15 of the District's offset equivalency report that I
16 was waiting on to see if they had any major
17 comments on it.

18 But like I said, I was able to make a
19 determination on how they were going to review it
20 in terms of the basis that really took care of the
21 issues that I thought might be raised.

22 HEARING OFFICER GEFTER: Okay, thank
23 you. Commissioner Boyd, do you have anything?

24 ASSOCIATE MEMBER BOYD: No questions;
25 it's all settled.

1 HEARING OFFICER GEFTER: All right.
2 Okay, so at this point we're assuming that all the
3 air quality testimony and exhibits would be filed
4 by the end of January .

5 MR. RUBENSTEIN: Yes.

6 HEARING OFFICER GEFTER: Okay, thanks.
7 All right, so, Will Walters, you can leave now. I
8 know you were in a rush.

9 MR. WALTERS: All right, thank you very
10 much.

11 HEARING OFFICER GEFTER: So we don't
12 need you any more to be on the phone. The next
13 item that we wanted to look at was for water. And
14 there was apparently some confusion about
15 condition soil-and-water-6 regarding a will-serve
16 letter.

17 And I guess staff could go first, and
18 then we'll have the applicant's view on this
19 issue. Just identify yourself for the record.

20 MS. BOND: My name's Linda Bond and I'm
21 groundwater consultant to the Energy Commission.
22 We received a request from the Committee to
23 include the requirement of a will-serve letter in
24 condition soil-and-water-6. And we inserted that
25 language, a draft of that language, as requested.

1 So, I'm not sure what the confusion is
2 that -- does the Committee need the will-serve?

3 Staff included that based on the
4 Committee's request.

5 From staff's viewpoint the will-serve
6 letter was not needed because the applicant
7 proposes to put in place a facilities-sharing
8 agreement with the existing project, so that the
9 expansion project would obtain water through the
10 existing contract. So the water contract is
11 already in place.

12 So it seems to staff that a will-serve
13 wouldn't be needed. But staff has no objection to
14 including that requirement.

15 HEARING OFFICER GEFTER: Okay. I would
16 agree that I was the one who asked for the will-
17 serve letter because typically we ask for those in
18 these projects.

19 And applicant has indicated that they
20 have exhibit 13(d) which is an industrial water
21 services contract between the Wheeler Ridge Water
22 Source District and Pastoria.

23 Now, that's an existing agreement. And
24 so the question becomes whether that agreement
25 needs to be updated or expanded in any way before

1 the Pastoria Expansion Project can be approved.

2 MS. BOND: I believe that -- I need to
3 check -- I believe what is needed is verification
4 that the expansion project will be able to obtain
5 this facilities-sharing agreement with the
6 existing project. Since the contract is in place,
7 what's needed is evidence that they'll be able to
8 use that contract.

9 HEARING OFFICER GEFTER: Right, but
10 would that contract need to be changed in any way
11 to serve the Pastoria Expansion Project.

12 MS. BOND: According to the applicant's
13 estimates the existing contracts will provide
14 sufficient water to meet the needs of both the
15 existing project and the expansion project. And,
16 in fact, in reviewing the contracts, both the
17 primary and the backup contracts, staff has
18 determined that there is actually no limit on the
19 amount of water these contracts provide.

20 There are terms within both contracts
21 for providing the project with more than the 5000
22 acrefeet that the expansion project and the
23 existing project has currently anticipated that
24 they would need.

25 HEARING OFFICER GEFTER: Okay. And what

1 about a supplemental or backup water supply for
2 this project, for the expansion project.

3 MS. BOND: Both contracts for the
4 primary and the backup water supply are filed as
5 exhibits. There are some attachments missing from
6 the primary water contract, but both contracts
7 have been submitted as exhibits; and both
8 contracts provide more than -- have terms that
9 will provide more water than the two projects
10 would need.

11 HEARING OFFICER GEFTER: Okay. Is staff
12 satisfied with the information provided in those
13 two contracts?

14 MS. BOND: Actually, we need to request
15 that the applicant also submit the attachments for
16 the primary water supply contract that were
17 omitted from their earlier submittal. Their
18 earlier --

19 HEARING OFFICER GEFTER: Okay.

20 MS. WILLIS: Those would be exhibit A,
21 attachment 1 of exhibit A; and amending rules and
22 regulations for distribution of water. When we
23 went to look in the dockets office, those were not
24 attached to the full exhibits.

25 HEARING OFFICER GEFTER: Thank you.

1 And, also, Mr. Wheatland, I saw one of your
2 colleagues about to step forward and tell us about
3 the water contracts. Perhaps you could --

4 MR. WHEATLAND: I think he was coming up
5 to confirm what Ms. Bond has told you.

6 HEARING OFFICER GEFTER: All right. Ms.
7 Bond had indicated there was some concern about
8 verification that the expansion project can be
9 maybe grandfathered into a facility-sharing
10 agreement. So I wanted to ask you to address that
11 issue.

12 MR. WHEATLAND: Well, we have previously
13 indicated that we will provide the Commission with
14 the agreement prior to the commencement of
15 construction. That agreement will provide not
16 only for this contract, but for a range of other
17 service contracts that serve the existing facility
18 that they will also apply to the expansion.

19 HEARING OFFICER GEFTER: Right. And
20 then with respect to the language in condition
21 soil-and-water-6, that does mention the
22 facilities-sharing agreement.

23 MS. BOND: Correct. And I believe
24 that's sufficient.

25 HEARING OFFICER GEFTER: Well, perhaps

1 the applicant and staff can get together about
2 revising the language in condition 6 to make it
3 consistent with the information you've provided
4 today.

5 MS. BOND: I'm sorry. Are you --

6 HEARING OFFICER GEFTER: If a will-serve
7 letter isn't necessary --

8 MS. BOND: Isn't necessary.

9 HEARING OFFICER GEFTER: Right. Then
10 you can delete that section and just insure that
11 you do have the facilities-sharing agreement prior
12 to construction.

13 MS. BOND: Okay, thank you.

14 HEARING OFFICER GEFTER: Right, okay?

15 MS. BOND: Yeah.

16 HEARING OFFICER GEFTER: And we can
17 agree on that.

18 MR. WHEATLAND: Yes.

19 HEARING OFFICER GEFTER: All right,
20 thank you.

21 Then with respect to the next question,
22 I have it under the topic of project description,
23 but it really goes to the transmission system
24 engineering issue, which has to do with the need
25 for an additional transmission line for the peaker

1 project from the Pastoria substation to the Pardee
2 substation, and that's the 38-mile additional new
3 transmission line, that would apparently come
4 under PUC jurisdiction, but that the CEC looks at
5 it because it's a cumulative impact under CEQA.

6 Is that an accurate depiction of this
7 issue or --

8 MR. WHEATLAND: Well, currently Edison
9 is undertaking a facility study that will
10 determine what specific facilities are needed to
11 serve this facility downstream from the first
12 point of interconnection.

13 One of the possible facilities that
14 might be needed, under certain assumptions, would
15 be upgrading or expansion of the existing line.
16 We don't know yet because we haven't received yet
17 a copy of the facility study, whether that will be
18 needed.

19 But what we have provided to the
20 Commission is an environmental assessment that
21 looks at the cumulative impacts of this project
22 downstream from the first point of
23 interconnection, assuming the worst case; assuming
24 that that new construction line might be built.

25 We're not saying that it will be because

1 we haven't seen the results of the study. But
2 assuming that it could be required, we've made an
3 assessment of the environmental impacts of that
4 possibility.

5 And the assessment shows that even in
6 that case there wouldn't be any significant
7 adverse impacts that couldn't be adequately
8 mitigated if the construction was necessary.

9 HEARING OFFICER GEFTER: So, to sum up,
10 this would be your worst case scenario then.

11 MR. WHEATLAND: Correct.

12 HEARING OFFICER GEFTER: Or any kind of
13 environmental impacts.

14 MR. WHEATLAND: Correct.

15 HEARING OFFICER GEFTER: Okay. And then
16 connected with that question is the transmission
17 system engineering issue, which is still pending,
18 and apparently, based on the prehearing conference
19 statements, the only issue that is still not
20 prepared for hearing.

21 And so we wanted to find out in terms of
22 the timing when the facility study from Edison is
23 likely to be filed.

24 MR. WHEATLAND: We'd be pleased to
25 provide you with that information. Ali.

1 MR. AMIRALI: Madam Hearing Officer, my
2 name is Ali Amirali; I'm the Director of
3 Transmission with Calpine.

4 A few seconds history. Calpine filed a,
5 or signed the facility study agreement for
6 Pastoria Expansion with Edison sometime in August
7 of 2005. And based on the results of those --
8 based on the terms of that agreement, Edison had
9 135 days to complete the study.

10 The facility study for the project was
11 due on January the 4th. Around end of October we
12 were informed that Edison is running behind, or
13 running late on completion of the technical
14 assessment part of the facility study.

15 And we have just been informed on
16 January the 6th that we will be receiving the
17 technical assessment part only of the study this
18 Friday, the 19th. And the full study, facility
19 study report is due sometime early April.

20 And according to the terms of the
21 agreement it was 90 days after receiving the --
22 after the completion of the technical assessment.
23 So sometime early April is when we expect to
24 receive the full facility study.

25 Once we receive the technical assessment

1 part we'll be more than happy to share that with
2 the staff and to also request Edison to provide
3 any kind of supporting technical data that they
4 can use so the staff can get started on performing
5 their own independent analysis if they desire.

6 HEARING OFFICER GEFTER: Could you
7 explain to us what the distinction is between the
8 technical assessment and then the full study that
9 you would expect in April?

10 MR. AMIRALI: I'm more than happy to,
11 ma'am. The technical assessment part basically
12 goes through the real transmission study part, the
13 basecase analysis, and it determines what are the
14 impacts going to be, and what are the potential
15 solutions for these impacts.

16 The second part of the study involves
17 taking those impacts and those potential
18 alternatives and costing them out, converting them
19 into actual projects.

20 For example, if there is a line
21 reconductoring required the technical assessment
22 will come out and say, line, for example, XYandZ
23 will need to be reconducted with a larger size
24 conductor and it will determine the size of the
25 conductor.

1 It then goes to the estimating part of
2 Edison, or their transmission agency, and they
3 will then determine what will be the cost of that
4 impact, because a component of the facility study
5 is also to provide the applicant with the cost.

6 HEARING OFFICER GEFTER: Does the cost
7 of the impact refer to the cost of the mitigation?

8 MR. AMIRALI: Yes, ma'am.

9 HEARING OFFICER GEFTER: It's the same
10 thing?

11 MR. AMIRALI: Yeah.

12 HEARING OFFICER GEFTER: Okay. Would
13 the mitigation be identified in the technical
14 report?

15 MR. AMIRALI: Yeah, it will have
16 alternatives identified.

17 HEARING OFFICER GEFTER: Okay.

18 MR. AMIRALI: At least that's what we
19 hope it would have.

20 HEARING OFFICER GEFTER: Okay. Would
21 Calpine, then in looking at the technical
22 assessment, be able to determine what the costs
23 would be in terms of your estimating what the
24 impacts are?

25 MR. AMIRALI: You know, there are

1 industry numbers out there. Each situation is
2 very unique, depends upon the terrain where it is
3 crossing, and what kind of new facilities will be
4 needed and what kind of modifications will have to
5 be involved.

6 One can only estimate, you know, on a
7 per-unit basis, once we get the number of miles of
8 line that needs to be reconductored. We can
9 estimate it, but it will be a very rough number.

10 Actually the best way to do it is to
11 wait for the full facility study report.

12 HEARING OFFICER GEFTER: Okay. I
13 understand also that Cal-ISO has to take a look at
14 the technical assessment.

15 MR. AMIRALI: Absolutely.

16 HEARING OFFICER GEFTER: Okay, and then
17 it's usually a 30-day review period for them?

18 MR. AMIRALI: They will be reviewing it,
19 yeah; it will be simultaneous review of the
20 technical assessment, while Edison estimating part
21 is going through their -- through estimating the
22 impact, the ISO will be reviewing the technical
23 assessment, as well.

24 HEARING OFFICER GEFTER: So in terms of
25 timing, technical assessment will be filed this

1 week and then another month later Cal-ISO might
2 issue their review of that assessment.

3 MR. AMIRALI: Most probably.

4 HEARING OFFICER GEFTER: So, about 30
5 days, about a month.

6 MR. AMIRALI: Um-hum, yeah.

7 HEARING OFFICER GEFTER: And then do you
8 think that with the technical assessment that will
9 provide enough information for us to go forward
10 with this project? Or do we need to wait to find
11 out what the full cost would be, because Calpine
12 might have a different view of the project's
13 liability after you receive that full cost study?

14 MR. AMIRALI: I can't speak for the
15 staff, but as far as determining the impacts are
16 concerned, that should -- staff should be able to
17 identify what the impacts are. I believe Mark
18 will probably be able to give a better
19 understanding.

20 HEARING OFFICER GEFTER: Okay, thank
21 you.

22 MR. WHEATLAND: But speaking from the
23 applicant's point of view, we believe the
24 technical assessment would be the information the
25 Commission needs to go forward, and we would be

1 prepared to go forward at that time.

2 HEARING OFFICER GEFTER: Okay.

3 MR. HESTERS: I'm Mark Hesters with the
4 staff. The only thing that we would require from
5 the applicant beyond the technical assessment was
6 if the technical assessment provides a menu of
7 mitigation alternatives for certain overloads or
8 impacts, we'd need the applicant to give us an
9 indication or pick from those menus and tell us
10 what types of mitigation they are choosing to go
11 forward with.

12 MR. AMIRALI: We'll be more than happy
13 to.

14 HEARING OFFICER GEFTER: How realistic
15 is it, though? Is it just guess work, or is it
16 actually something you can put into a condition?

17 MR. HESTERS: It's a good enough
18 indication of what the mitigation is for for our
19 documents and our analysis.

20 MR. WHEATLAND: But also typically the
21 Commission doesn't specify the exact mitigation
22 that's downstream from the first point of
23 interconnection. The Commission merely makes a
24 finding that there is feasible mitigation, but it
25 doesn't actually impose specific conditions,

1 recognizing that the actual mitigation may vary as
2 the facility study evolves.

3 HEARING OFFICER GEFTER: Just in terms
4 of the timing then for the transmission system
5 engineering topic, the soonest that any kind of
6 more complete review could be available to us
7 would be about a month from now when Cal-ISO
8 provides their report.

9 DR. REEDE: Correct.

10 MR. HESTERS: That's -- yeah.

11 HEARING OFFICER GEFTER: Yeah, about 30
12 days from the day that you get the assessment.

13 MR. HESTERS: The only thing that could
14 delay it anything more than that is if the ISO
15 looks at -- or reviews the study and says, this
16 mitigation is not acceptable, this mitigation is
17 not acceptable. And the only mitigation that are
18 left have significant, or could potentially have
19 significant impacts, or require more analysis.

20 DR. REEDE: One of the things that if
21 the Cal-ISO says which mitigation alternatives are
22 acceptable, it may require spring surveys or
23 additional biological analysis. And so we have to
24 keep that in mind once we do get those mitigation
25 alternatives from the cal-ISO.

1 HEARING OFFICER GEFTER: Okay. One of
2 the questions I had in terms of the mitigation
3 alternatives, you know, before -- the applicant
4 has done this worst case scenario environmental
5 assessment of this additional transmission line to
6 the Pardee substation. What other impacts are
7 anticipated that might be found by Edison?

8 MR. HESTERS: I haven't looked at it
9 that recently. So, I can't say for certain.
10 Sorry.

11 HEARING OFFICER GEFTER: Okay, but are
12 the parties talking about in terms of impacts an
13 additional transmission line or just congestion on
14 the existing transmission lines? I mean what's
15 the range of issues?

16 MR. HESTERS: Worst case would be an
17 additional transmission line. Most likely case --
18 not most likely, but rather than a new
19 transmission line, usually a reconductoring option
20 is available, which is just replacing an existing
21 line.

22 So worst case is more likely to be
23 reconductoring than it is to be a new line. The
24 problem is there's a lot of uncertainty in this
25 area. There's several CPCNs related to the

1 Tehachapi upgrades that all have to do -- all
2 impact this transmission system in the area that
3 this project interconnects to.

4 HEARING OFFICER GEFTER: And then is
5 this -- I know we talked about this at the
6 informational hearing, the concern that Edison has
7 canceled its procurement proceeding at the CPUC
8 for this year, and whether that is going to impact
9 on the ultimate viability of this project. Mr.
10 Wheatland.

11 MR. WHEATLAND: That will have no
12 bearing on the applicant's desire to go forward
13 with the licensing of this project.

14 HEARING OFFICER GEFTER: And then the
15 next question which is connected with this, the
16 next issue would be efficiency, then. Because in
17 terms of transmission system, at this point we
18 just are anticipating that Edison will file
19 technical assessment as promised and will go
20 forward with that schedule.

21 So the next question that connects with
22 that is the efficiency issue. And we had quite a
23 bit of testimony filed by the applicant in the
24 prehearing conference statement and the testimony
25 connected with that. And staff also filed some

1 testimony on that topic, as well.

2 So we have questions regarding the
3 number of hours that this proposed peaker would be
4 operating, and how staff is using its proposed
5 condition efficiency-1 in connection with that
6 question.

7 So perhaps we'll start with staff and
8 ask you to talk about your proposed condition,
9 efficiency-1.

10 MR. BAKER: Steve Baker, mechanical
11 engineer. I do not recommend an efficiency
12 condition of certification for this project, as I
13 stated in the final staff assessment. But I was
14 directed by management to provide a sample
15 condition.

16 What I did was I assumed that the
17 combined cycle equivalent project would operate
18 full time, 8760 hours per year. Then I multiplied
19 that by the ratio of efficiency of the peaker to
20 the fuel efficiency of the combined cycle;
21 multiplied that by the number of hours -- by the
22 number of megawatts that the project puts out.

23 And I came out with a projected, a
24 proposed limit of operating hours which would be
25 900,000 megawatt hours per year.

1 This would effectively limit this
2 project to burning no more than the same amount of
3 fuel as would an equal sized combined cycle plant,
4 if the combined cycle were operated a full year.

5 HEARING OFFICER GEFTER: So this, what
6 the FSA says is that the 900,000 megawatt hours is
7 the equivalent of 5600 hours of baseload
8 operation?

9 MR. BAKER: I believe that's the number.

10 HEARING OFFICER GEFTER: Yeah, it was in
11 the FSA, so I thought that would be consistent.

12 MR. BAKER: Yes, 5600 hours.

13 HEARING OFFICER GEFTER: Okay. In a
14 previous case, which was the Modesto Irrigation
15 District and the Ripon project, the Commission
16 adopted a mitigated negative declaration condition
17 energy resources-1 where the project was limited
18 to 5000 hours per year.

19 What's the difference between the
20 thinking on the Ripon project for a peaker and the
21 thinking on this project? For staff.

22 MR. BAKER: Well, on Ripon staff did not
23 propose an efficiency condition. And, in fact, it
24 was only at the last moments of the final hearing
25 that the applicant proposed such a condition. And

1 it was subsequently accepted by the Committee.

2 Staff again does not recommend such a
3 condition. We don't believe it's necessary. But
4 we were directed to offer a sample condition in
5 case the Committee wanted one. That's the reason
6 it's here.

7 Ripon, I believe, if it's limited to
8 5000 hours, and if I'm not mistaken, that's under
9 air quality. As I recall, the efficiency
10 condition on Ripon that was adopted didn't
11 effectively limit it to any less operating hours -
12 - any fewer operating hours than would the air
13 quality restriction.

14 HEARING OFFICER GEFTER: It may have
15 been keyed to the air quality restriction, but
16 under the SPPE it was an energy resources
17 condition.

18 MR. BAKER: Yes, I realize that.

19 HEARING OFFICER GEFTER: And that was,
20 of course, one of our concerns was the connection
21 with the air quality conditions for running this
22 project more than the 5600 hours that you propose
23 in your condition.

24 MR. BAKER: Well, again, I'm not --

25 HEARING OFFICER GEFTER: The

1 implications for air quality. Yeah, I mean that's

2 --

3 MR. BAKER: -- again, I'm not proposing
4 the 5600 hours. I'm only suggesting it.

5 HEARING OFFICER GEFTER: Okay. The
6 applicant is proposing a condition which would
7 allow it to run 24/7.

8 MR. BAKER: Yes.

9 HEARING OFFICER GEFTER: And what is
10 staff's position on that condition?

11 MR. BAKER: I don't believe that
12 condition is necessary, either. I believe that
13 the air quality condition is the only one
14 necessary to reasonably limit the operation of a
15 peaker.

16 As I've explained in the supplemental
17 testimony filed for this venue I don't believe a
18 peaker should be limited any more than absolutely
19 necessary because the reason they're there is to
20 cover in emergencies and during surprises and
21 exigencies. And any limitations on the peaker
22 beyond what the air quality districts impose would
23 tend to make the project less feasible, perhaps
24 even impossible to finance.

25 We need peakers. If we're not willing

1 to spend money on energy storage then we need to
2 spend it on peakers. And limiting a peaker to the
3 point where it can't be financed and built, I
4 believe, is -- well, I don't recommend it.

5 HEARING OFFICER GEFTER: Okay. It
6 sounds like staff's view is consistent with what
7 the applicant has presented in their proposed
8 testimony, as well. Is that an accurate
9 statement, Mr. Wheatland?

10 MR. WHEATLAND: Yes, it is.

11 HEARING OFFICER GEFTER: Mr. Whittome?
12 Okay. Let's go off the record for a minute.

13 (Off the record.)

14 ASSOCIATE MEMBER BOYD: I guess having
15 lived and agonized through Ripon, personally, I
16 wonder why there was an agreement on that project
17 that shouldn't be more or less held for this
18 project now. That's not your project, I agree; so
19 you didn't agree to that.

20 But in that particular case the debate
21 was over efficiency. And there was an agreement
22 to impose an hour ceiling. And I guess this
23 Committee's going to struggle with, that precedent
24 having been established, why there'd be any
25 difference here.

1 MR. WHEATLAND: Well, perhaps --

2 ASSOCIATE MEMBER BOYD: In spite of
3 staff's advice.

4 MR. WHEATLAND: Well, Mr. Rubenstein's
5 here. He can perhaps shed some light on the air
6 quality issues. But one, I think, important
7 aspect of the Modesto Ripon facility is they were
8 planning to operate and dispatch that facility to
9 meet their own system needs.

10 The facility that we're talking about
11 for Pastoria is a merchant facility. It's going
12 to operate under a power purchase agreement where
13 we're not going to have control over the operation
14 of the peaker facility. That will be determined
15 by the entity that is purchasing the power.

16 What I mean to say is Modesto has a lot
17 more control over the day-to-day operation of
18 their facility and can make those kinds of
19 decisions. We will not be in a position to do so.

20 ASSOCIATE MEMBER BOYD: Okay, we can
21 hear from Mr. Rubenstein if you'd like.

22 MR. RUBENSTEIN: Sorry, Mr. Boyd. I was
23 trying to bring up the Ripon decision.

24 ASSOCIATE MEMBER BOYD: You got
25 everything in that machine.

1 MR. RUBENSTEIN: It's a lot lighter than
2 carrying all that paper, let me tell you.

3 (Laughter.)

4 MR. RUBENSTEIN: The limit for Ripon was
5 expressed as 760,000 megawatt hours per year for
6 two consecutive years. And I believe, and I do
7 need to check that and I will before I leave
8 today, but I believe that was based on 8000 hours
9 of operation.

10 HEARING OFFICER GEFTER: Well, I have a
11 copy of -- and that may be the air quality section
12 that you're looking at? Is that the air quality
13 permit you're looking at?

14 MR. RUBENSTEIN: No, I'm looking at
15 condition energy resources-1.

16 HEARING OFFICER GEFTER: Okay. Well, a
17 copy I have says 5000 hours per year. I'm not
18 sure which copy you --

19 MR. RUBENSTEIN: I believe, Ms. Gefter,
20 that you're looking at a draft; the final version
21 was literally negotiated at the hearing when the
22 Commission made its decision.

23 HEARING OFFICER GEFTER: Okay. Um-hum.

24 MR. RUBENSTEIN: And the version I'm
25 looking at is what I just pulled off the website.

1 And I believe it was revised. May want to ask
2 staff to confirm that.

3 But my recollection is that there was a
4 discussion of the 5000-hour-per-year provision;
5 that it was replaced with 760,000 megawatt hours,
6 which was calculated as those units running at
7 full load for 8000 hours per year, as an
8 indication of an extreme situation which if that
9 was exceeded in more than two years would warrant
10 resubmission.

11 The difference between the condition
12 that was adopted in the Ripon case and that which
13 we've proposed today is not in the hours of
14 calculation -- the hours of operation that's used
15 as the basis of the calculation. That was the
16 same.

17 Rather it related to the additional
18 conditions reflecting the fact that this is being
19 proposed as a plant that would respond to the
20 needs of a certain utility. Whereas in Ripon it
21 was actually the utility that was proposing the
22 plant.

23 And as the staff has indicated, and as
24 Mr. Whittome can discuss in more detail, the
25 issues here really relate to the marketability of

1 the plant's services. You know, the two major
2 public utilities in California, or probably the
3 only utilities in California have issued requests
4 for power.

5 In one case they discussed a limitation
6 on the number of hours per year of peaking
7 operation or peaking support they wanted. In the
8 other case they didn't express any limit
9 whatsoever.

10 If this project is constrained with the
11 limitation of the equivalent of 4000 or 5000 hours
12 per year of operation, no matter how practical
13 that might be, and how realistic that might be,
14 that could very well preclude this project from
15 being bid, and it would lose competitive position
16 against other projects that are similarly
17 designed, but which don't have that restriction.

18 That's really what we're getting to
19 here. And that's also fundamentally, I think, the
20 distinction between the Modesto Irrigation
21 District project and this project.

22 ASSOCIATE MEMBER BOYD: Okay, thank you.
23 My mind is open on this question. I just like to
24 have it debated. I keep thinking about the use of
25 that diminishing resource called natural gas in

1 the most efficient manner. But I also am
2 cognizant of that other resource everybody likes
3 to have on a 24-by-7 basis called electricity.
4 So, thank you.

5 HEARING OFFICER GEFTER: So, I wanted to
6 ask you whether Calpine would be willing to accept
7 a condition that talked about reportability. In
8 other words, reporting the number of hours that
9 the project is operating on a regular basis so we
10 could monitor whether or not it's running 24/7 or
11 a lower number of hours.

12 MR. RUBENSTEIN: There are already
13 provisions in the air quality conditions and
14 verification that would require that. We have no
15 concern about reporting that in some other format
16 if you choose to see that.

17 HEARING OFFICER GEFTER: Um-hum, right.
18 And that's what I was thinking about in terms of
19 your testimony on the topic of efficiency, also
20 went into the issue of air quality. And I
21 wondered if you could address that just for a
22 minute regarding the air quality requirement; that
23 you argued that because the project will be
24 licensed at a much higher level than you will
25 actually be running the project.

1 MR. RUBENSTEIN: Right, the --

2 HEARING OFFICER GEFTER: That the air
3 quality won't be impacted even if the project were
4 running 24/7.

5 MR. RUBENSTEIN: Right. Under the rules
6 of the San Joaquin Air District we have to
7 calculate our worst case emissions on a calendar
8 quarter basis. And so even if we were to somehow
9 restrict operation of the unit to not more than
10 3000 hours per year, if we wanted to offer the
11 flexibility to a customer to be able to run those
12 3000 hours in any calendar quarter, then under the
13 Air District's rules we have to essentially enable
14 operation 2100 hours per year in each calendar
15 quarter -- 2100 hours in each calendar quarter and
16 we'd get to 8760 hours in any event.

17 As a result, even though I think we all
18 agree that it is extremely unlikely that a plant
19 like this would run for 8000 hours a year, we've
20 had to provide mitigation as if it did for air
21 quality purposes.

22 HEARING OFFICER GEFTER: That was the
23 issue that I wanted you to address.

24 ASSOCIATE MEMBER BOYD: I do recall some
25 differences. Some of the arguments we got in

1 Ripon were "just because."

2 HEARING OFFICER GEFTER: So when you
3 design the mitigation to meet the Air District's
4 rules you design mitigation as if the project were
5 going to run the 8760 hours per year?

6 MR. RUBENSTEIN: That's correct.

7 HEARING OFFICER GEFTER: And is that
8 because it's connected with the existing combined
9 cycle project?

10 MR. RUBENSTEIN: No.

11 HEARING OFFICER GEFTER: How are you
12 interacting -- how will the permits interrelate
13 from the Air District for both projects?

14 MR. RUBENSTEIN: The answer to the first
15 question is no. This issue does not arise because
16 it's at a facility that's already in existence.
17 This would be the case if this peaking unit were
18 proposed at a totally separate site.

19 HEARING OFFICER GEFTER: Okay.

20 MR. RUBENSTEIN: With respect to the
21 conditions, the San Joaquin Air District issues
22 separate permits for each piece of equipment. And
23 restates conditions in each permit where there are
24 overlapping requirements.

25 In the case of this facility we will

1 have emission limits that apply just to this unit.
2 I believe there are also emission limits that
3 apply to the facility as a whole, which will also
4 be included in the permit for this piece of
5 equipment.

6 HEARING OFFICER GEFTER: You know, that
7 would be really helpful to have that testimony;
8 perhaps at the evidentiary hearing you could put
9 that on the record just to make it clear.

10 MR. RUBENSTEIN: We can do that. I
11 thought I had it in our prepared testimony, but
12 we'll clarify that.

13 HEARING OFFICER GEFTER: If you have it
14 somewhere just tell me where it is so that I could
15 look at it, you know, if it's already been
16 submitted.

17 MR. RUBENSTEIN: Okay.

18 HEARING OFFICER GEFTER: That would be
19 helpful. Thank you.

20 ASSOCIATE MEMBER BOYD: Thank you, Gary.

21 HEARING OFFICER GEFTER: Okay, thanks,
22 Mr. Baker, from staff.

23 We're going to move on to the next
24 subject, which is the topic of hazardous
25 materials. And applicant wanted to revise the

1 proposed condition hazmat-7. And perhaps we'll
2 start with staff and ask you why you propose the
3 language that the applicant is objecting to. And
4 perhaps we can work it out.

5 DR. GREENBERG: Hearing Officer Gefter,
6 I'm Alvin Greenberg, consultant to the Energy
7 Commission on haz materials, infrastructure
8 security and various other issues.

9 I'm pleased to let you know that we have
10 worked things out. Staff, instead of requiring
11 the perimeter breach detection that the applicant
12 is objecting to, that we now feel comfortable with
13 going with a very strong recommendation that they
14 install perimeter breach detection, but
15 withdrawing our wording in haz-7 to require
16 perimeter breach detection.

17 There were six reasons why we wanted to
18 require perimeter breach detection. And unless
19 you want to know all six, I'll just say there are
20 six.

21 But there are two major reasons why,
22 after lengthy discussions with management, both
23 management and myself are comfortable with this
24 just being a requirement.

25 The first reason why we're comfortable

1 with it being a requirement is the applicant has
2 made an effort to reach out to local law
3 enforcement and discuss this matter. And we
4 certainly support that.

5 Now, I was not privy to those
6 conversations; I don't know exactly what was said.
7 And so I don't want to give too much credence to
8 the opinions of those local law enforcement
9 because, I, of course, have had separate
10 conversations with FBI agents in California who
11 give me advice to the opposite.

12 But we're not trying to fight about
13 that, just the fact that they've established
14 communication, they've gotten their opinion is
15 something that we encourage.

16 Also the applicant has made a cogent
17 argument that due to the remote location of this
18 facility, that we can feel comfortable in making
19 this a strong recommendation rather than a
20 requirement.

21 Now, we do want to note that this remote
22 location may not be so remote in the coming years.
23 And by the time they get around to building the
24 expansion, we may want to revisit the issue
25 because of the both industrial, as well as

1 commercial, development in the I-5 corridor in the
2 Grapevine area.

3 But also just as important, there has
4 been talk from Homeland Security Secretary Michael
5 Chertoff, and before that Homeland Security
6 Secretary Tom Ridge, with their disappointment of
7 the voluntary compliance with guidelines in the
8 industries that use and store hazardous materials.
9 The chemical industry, the power industry and
10 certainly the refining industry.

11 And they've both made statements that
12 there might be regulations coming down from the
13 Department of Homeland Security on this matter.
14 So certainly if that happens in the next year or
15 two, it becomes a LORS matter and Calpine will
16 have to comply.

17 HEARING OFFICER GEFTER: So when you
18 suggest that staff would remove the requirement
19 and just strongly recommend, does that mean that
20 you're willing to delete the language from the
21 condition?

22 DR. GREENBERG: Yes.

23 HEARING OFFICER GEFTER: Okay.

24 DR. GREENBERG: We would agree with
25 Calpine's proposal. They're accepting the rest of

1 haz-7 on infrastructure security, but deleting the
2 requirement there. We do want to go on record as
3 strongly encouraging them to have perimeter breach
4 detection.

5 HEARING OFFICER GEFTER: Where would you
6 be on the record strongly encouraging them? Would
7 that be at the evidentiary hearing? Or that's
8 just today here? Because this is not part of the
9 record. I mean it's part of the record, but it's
10 not evidence.

11 MS. WILLIS: We're providing this
12 information to you today. If you'd like us to,
13 you know, go on the record at the evidentiary
14 hearing that would be fine, as well.

15 HEARING OFFICER GEFTER: If staff wants
16 to do that at the evidentiary hearing that could
17 be then incorporated into the PMPD.

18 DR. GREENBERG: Right. I didn't want to
19 belabor the issue because we do have our reasons;
20 we've conducted our own economic analysis. We
21 feel that the cost for the older system, as
22 included in Calpine's written testimony, were
23 accurate. But there are newer systems out there
24 that are anywhere between a tenth and a fifth, or
25 between a fifth and a tenth as much as their

1 \$500,000 figure.

2 The costs are reasonable. The second
3 generation perimeter breach detectors are even
4 better than the passive infrared. These are
5 active infrared, and you actually get a picture in
6 real time that can be recorded of what made the
7 disturbance in the infrared beam. And you can
8 tell right away whether it's a deer on, you know,
9 the outside of the fence, or it's an intruder on
10 the inside of the fence just by looking at the
11 outline.

12 But, --

13 HEARING OFFICER GEFTER: Well, if you
14 wanted to supplement your testimony on hazmat and
15 indicate some of your concerns and some of the
16 reasons why you think this is important, you know,
17 then we could have that offered into the
18 evidentiary record.

19 DR. GREENBERG: That would be very good,
20 thank you.

21 HEARING OFFICER GEFTER: And that'll be
22 part -- okay, thank you. Anything from the
23 applicant on hazmat?

24 MR. WHEATLAND: No.

25 HEARING OFFICER GEFTER: And we had

1 another question regarding worker safety and fire
2 protection. And that is with respect to the
3 status of mitigation from the original Pastoria
4 decision related to the fire department, Kern
5 County Fire Department.

6 DR. GREENBERG: Hearing Officer Gefter,
7 this has been, of course, a back-and-forth issue,
8 and it has been confusing. But staff truly
9 believes that the mitigation for the expansion is
10 what should be addressed in this hearing.

11 And the applicant has voluntarily agreed
12 to the mitigation that I recommended and that the
13 fire department stated it needed, which was the
14 ammonia detectors.

15 When it comes then to the previous
16 mitigation, staff is treating that as a compliance
17 issue and is still working with the parties.

18 HEARING OFFICER GEFTER: Okay. And I
19 understand that is the case as you discussed at
20 the informational hearing. The question is why is
21 it taking so long for the parties to reach
22 agreement, and why can't that be resolved before
23 we even go forward with this project.

24 Mr. Wheatland could address that, or
25 somebody from Calpine's representatives.

1 MR. WHEATLAND: First of all, I'd like
2 to say that we agree completely with the staff,
3 that with respect to the issue of fire safety.
4 Because we are talking about an application for
5 the expansion, we believe the record should be
6 restricted to the expansion issues.

7 And we also agree completely with the
8 staff's proposed recommendation for fire safety
9 mitigation in this proceeding.

10 Having said that, Mr. Argentine is here
11 and can give you some background on the status of
12 the compliance issue that applies to the original
13 facility.

14 HEARING OFFICER GEFTER: Right. And,
15 again, you know, we recognize that it's a
16 compliance issue for the first project. However,
17 you're dealing with the same fire department, and
18 you're going to need several documents from them
19 with respect to the expansion project.

20 So in terms of good relations, I thought
21 we might want to discuss what the hang-up is.

22 MR. ARGENTINE: Once again, my name is
23 Mike Argentine; I'm with Calpine. And I will give
24 you a little background as to what's happening
25 with the mitigation that was required in the

1 original Pastoria Energy Facility project.

2 On June 30, 2001, we executed a letter
3 agreement with the fire department that outlined
4 the terms of a mitigation agreement. Those terms
5 in that letter were to be placed into a formal
6 agreement to take to the board of supervisors for
7 approval. That was never done by the fire
8 department through reasons that were beyond our
9 control.

10 So, in that agreement, it provided that
11 we pay a certain sum -- or in that letter
12 agreement it provided that we pay a certain sum
13 for mitigation purposes. And that sum was to be
14 used for the construction of both a helipad and
15 then a hangar for a helicopter.

16 We actually tried paying that sum to the
17 Kern County Fire Department, and because there was
18 no formal agreement that had been approved by the
19 board of supervisors, they returned the payment to
20 us.

21 Subsequently to that time they came back
22 to us and asked for significant more money; and
23 we've basically said that it's -- the original
24 amount was \$250,000, not to exceed \$400,000. Any
25 amount above \$250,000 would return to us in the

1 form of reduced property taxes.

2 The new amount was in the area of about
3 \$2 million. And we just felt that that was not
4 fair.

5 (Laughter.)

6 MR. ARGENTINE: And so we're continuing
7 to work with the fire department. It's important
8 for us to come to some kind of agreement with
9 those folks, but we felt we had an agreement to
10 begin with. And through no cause of our own, they
11 failed to take the agreement to the board of
12 supervisors for approval.

13 HEARING OFFICER GEFTER: And so where
14 are you now?

15 MR. ARGENTINE: We're waiting for their
16 response. We're still negotiating with them.
17 We're waiting for a response from them to, you
18 know, the original proposal. Because, you know,
19 we believe that we should be -- we believe that we
20 had an agreement at some point, and they should
21 stand behind the agreement. And, you know, we're
22 willing to do the same.

23 HEARING OFFICER GEFTER: How does it
24 look for some of the, like the business plan and
25 all the, you know, the risk assessment plans and

1 all the different plans that the fire department
2 has to review and approve under hazmat and several
3 other worker safety, fire protection, you know,
4 where does that stand in terms of the expansion
5 project if you're hung up on the mitigation issue
6 right now for the previous plant? How are you
7 going to work with the fire department on those
8 documents?

9 MR. ARGENTINE: Is the question for --
10 we can't --

11 HEARING OFFICER GEFTER: Well, I'm
12 looking at Dr. Greenberg and he may have some
13 answers, so, I don't know. Both of you, either
14 one of you can answer.

15 MR. ARGENTINE: Well, let me tell you
16 that, you know, we continue to work with the fire
17 department staff when it comes to actually
18 reviewing plans, business plans, reviewing the
19 fire protection systems at the plant, the fire
20 department has been excellent to work with. We've
21 had no -- there's been no issues with that.

22 DR. GREENBERG: And I can vouch for that
23 in my discussions with Deputy Chief Scott. It
24 certainly hasn't held up any of their review for
25 the existing project, you know, for the existing

1 facility. And I don't anticipate, he has never
2 indicated at all that he would use this hold-
3 hostage their fire assessment and permitting.

4 PRESIDING MEMBER DESMOND: Just a quick
5 question for the applicant. The original
6 agreement of \$250,000 was between Calpine and the
7 fire department, is that correct?

8 MR. ARGENTINE: Correct.

9 PRESIDING MEMBER DESMOND: And the
10 demand for the \$2 million, does that come from the
11 board of supervisors or also from the fire
12 department?

13 MR. ARGENTINE: It's from the fire
14 department.

15 PRESIDING MEMBER DESMOND: It is. Okay,
16 thank you.

17 HEARING OFFICER GEFTER: All right.

18 DR. REEDE: Chairman Desmond, I might
19 add that the entire executive staff of the fire
20 department has changed in the interim from the
21 chiefs all the way down to the deputy chiefs and
22 assistant chiefs. They've had a turnover of
23 approximately 16 individuals that were fairly high
24 ranking in the fire department over the past four
25 years.

1 PRESIDING MEMBER DESMOND: Thank you.

2 MR. ARGENTINE: Thank you.

3 HEARING OFFICER GEFTER: Thank you. So,
4 at this point is there -- let's go off the record.

5 (Off the record.)

6 HEARING OFFICER GEFTER: At this point
7 are there any other issues or questions or
8 concerns that either applicant or staff would like
9 to discuss right now?

10 MR. WHEATLAND: We have nothing further.

11 HEARING OFFICER GEFTER: Staff?

12 MS. WILLIS: I don't believe we
13 addressed the one soil-and-water condition. Is it
14 -- 4.

15 HEARING OFFICER GEFTER: Oh, all right,
16 let's go back to water.

17 MS. BOND: Hearing Officer Gefter, we
18 wanted to discuss, mention the remaining
19 disagreement that the applicant and staff have
20 regarding soil-and-water-4. The disagreement is
21 regarding monitoring, reporting and limiting water
22 use.

23 And the applicant discusses this in
24 their testimony that they submitted for the
25 prehearing conference. And this has been an

1 ongoing issue.

2 We're prepared to go on to the hearings
3 to discuss it. But we just wanted to mention it
4 before we closed up today.

5 HEARING OFFICER GEFTER: What I have
6 from the applicant is a proposed condition in
7 which they say that the water use for the project
8 shall be State Water Project water obtained from
9 the Wheeler Ridge Water Storage District.

10 And what does staff want, what language
11 does staff want to see there?

12 MS. BOND: The original condition
13 proposed.

14 HEARING OFFICER GEFTER: That's in the
15 FSA?

16 MS. BOND: Correct.

17 HEARING OFFICER GEFTER: And what is the
18 dispute?

19 MS. BOND: The dispute is that the staff
20 believes -- the staff can't recommend that the
21 project be licensed with no limit on the amount of
22 fresh water that will be used.

23 The applicant -- well, the staff
24 originally recommended in the preliminary staff
25 assessment that water use for the existing project

1 and the expansion be monitored and reported as a
2 combined amount, because this is clearly the
3 simplest approach for tracking water use.

4 But the applicant had objected to the
5 water use limit that we had proposed. And so for
6 the FSA we restricted the requirement for
7 monitoring, reporting and the limit to just the
8 amount of water that the expansion would use.

9 The applicant has now objected to both
10 the limit, as well as the monitoring and the
11 reporting.

12 Now, staff doesn't have any problem with
13 reverting back to requiring in the condition that
14 the amount of water being used be monitored and
15 reported as the combined amount. But staff
16 believes that in order to insure that the project
17 uses water as proposed, and that the project
18 implements the water conservation processes, that
19 it described in the AFC, that a water use limit
20 needs to be imposed.

21 ASSOCIATE MEMBER BOYD: Madam Chair, I
22 had noted this in reading the applicant's
23 response. And we didn't reference it earlier when
24 we talked about water. But I presumed the
25 applicant, at the end of today, would have

1 broached it. So I was a little surprised it
2 didn't. I'm glad you brought it up.

3 I am kind of anxious to hear from the
4 applicant elaborating on what they had provided in
5 their written. And, as you indicated, they had
6 provided some alternative language for this item.

7 MR. WHEATLAND: Well, I'll ask Mr.
8 Argentine to come up while I introduce this item.
9 The applicant is agreeing to provide a meter that
10 will meter the water usage for the combined
11 facility, that is the original Pastoria facility
12 and the expansion facility. And we're perfectly
13 agreeable to providing that information on a
14 reporting basis to the Commission.

15 The existing facility will use up to
16 5000 acrefeet of water per year. The expanded
17 facility will provide approximately -- will
18 consume approximately 55 acrefeet of water per
19 year.

20 And for that reason the applicant
21 objects to setting a limit only on the consumption
22 of the expanded facility at 55 acrefeet. That is
23 simply not a significant increase in water
24 consumption for the project. It's not a
25 significant environmental impact.

1 And we don't believe that there's any
2 basis in the record to show that even a one
3 acrefoot increase above that limit should trigger
4 review and possible shutdown of the facility.

5 And similarly we don't see any need to
6 put a separate meter that would meter just the
7 consumption for that 55 acrefeet. We believe that
8 the meter that would operate for the combined
9 facility should be adequate.

10 HEARING OFFICER GEFTER: So, it's 5000
11 acrefeet for the existing facility.

12 MR. WHEATLAND: Correct.

13 HEARING OFFICER GEFTER: And 55 acrefeet
14 for the new project.

15 MR. WHEATLAND: Correct.

16 HEARING OFFICER GEFTER: And applicant
17 is proposing a combined reporting process.

18 MR. WHEATLAND: And we agree with that.

19 HEARING OFFICER GEFTER: And staff
20 doesn't object to that, or do you?

21 MS. BOND: I need a clarification here.
22 In the AFC the applicant states that the existing
23 project and the proposed project combined would
24 use less than 5000 acrefeet at full plant load.

25 MR. WHEATLAND: Right, the estimate is

1 in the range of -- Mr. Argentine can come up, but
2 the estimate is in the range of 4000 to 5000
3 acrefeet per year.

4 MS. BOND: Right, and you had stated
5 just a minute ago that the existing project would
6 use 5000 acrefeet.

7 MR. ARGENTINE: In actuality what we've
8 seen is the existing project uses around 4000
9 acrefeet per year. The 5000 acrefeet was the
10 limitation in the original permit condition from
11 the Energy Commission.

12 And it's also a limitation that's in the
13 water contract. So, you know, we can use no more
14 than 5000 acrefeet per year, period.

15 HEARING OFFICER GEFTER: And that's for
16 the existing project?

17 MR. ARGENTINE: That would be for both
18 projects.

19 HEARING OFFICER GEFTER: For both
20 projects. So, the 55 acrefeet is just an
21 estimate, --

22 MR. ARGENTINE: Yes.

23 HEARING OFFICER GEFTER: -- a maximum
24 estimate of how much water this project will use.

25 MR. ARGENTINE: Yes. The new project,

1 the estimate of water usage for the new project is
2 55 acrefeet.

3 ASSOCIATE MEMBER BOYD: And you're
4 agreeing to stay within the limit originally
5 established for both projects?

6 MR. ARGENTINE: That's correct.

7 ASSOCIATE MEMBER BOYD: The way I hear
8 you.

9 HEARING OFFICER GEFTER: Of 5000.

10 MS. WILLIS: I think that's the problem.
11 There is no limit established for the original
12 project. And that's why we're proposing --
13 originally proposed a limit for the whole, you
14 know, the existing and the expansion.

15 And I think that's ultimately what we
16 would like to see is that, because as Ms. Bond
17 explained earlier, in the contracts there really
18 isn't a limit. They can go back and get as much
19 water.

20 So, if we're using the contract limit as
21 our, you know, as our limit, it really is not, you
22 know, it's more fiction than fact.

23 ASSOCIATE MEMBER BOYD: So you're saying
24 there is no 5000 acrefoot limit --

25 MS. WILLIS: That's correct, that's

1 correct.

2 ASSOCIATE MEMBER BOYD: -- in the
3 original, so it's a difference of opinion here?

4 MR. ARGENTINE: Yes, --

5 MS. BOND: Well, both the -- I have both
6 contracts here and I can read to your, or cite the
7 sections in both the primary water contract and
8 the backup water contract where it states that if
9 the project wishes to have more than 5000 acrefeet
10 per year delivered, there are terms and conditions
11 for making that request.

12 The primary water contract states that
13 if the project needs more than 5000 acrefeet the
14 water supply agency will provide that if it's
15 available. And the backup water contract has
16 provisions for increasing water deliveries over
17 the 5000 acrefeet in 1000-acrefoot-per-year
18 increments with no upper limit.

19 So, I'd be glad to provide, you know,
20 the quotes or the pages or whatever you need. But
21 that is the problem, no limit --

22 HEARING OFFICER GEFTER: Have the
23 parties had a workshop on this question?

24 MS. WILLIS: I was just going to suggest
25 that we'd be more than willing to have a publicly

1 noticed workshop on this. We have not at this
2 point.

3 HEARING OFFICER GEFTER: I think that
4 would be very efficient rather than, you know,
5 discussing it with the Commissioners. Perhaps the
6 parties could sit down with each other and work
7 out some language.

8 Because it raises a concern with me,
9 again, for soil-and-water-6 where I had asked for
10 the will-serve letters, and the applicant is
11 saying it's not necessary, that we could rely on
12 these contracts. But then it seems like the
13 contracts as not as specific as they might be,
14 especially with the upper limit.

15 And then when I was asking about a
16 supplemental water contract, if supplemental
17 backup water is needed, you're also indicating
18 that the contract for backup water is also unclear
19 and there's no upper limit.

20 So, it seems to me that the parties need
21 to sit down and talk about it and put some
22 language together that everyone can agree with,
23 and be comfortable with. So, I would strongly
24 urge the parties to have a workshop on this
25 question.

1 MR. WHEATLAND: We're always happy to
2 talk with the staff.

3 HEARING OFFICER GEFTER: Thank you.
4 Thank you. And then we should do that before we
5 move on to evidentiary hearings, as well, so maybe
6 this could be resolved rather than to dispute it
7 and litigate it at the hearing.

8 MR. WHEATLAND: Thanks.

9 MR. ARGENTINE: Thank you.

10 HEARING OFFICER GEFTER: And, again,
11 with guidance for the workshop is that the
12 applicant has agreed that 5000 acrefeet would be
13 the limit for both the existing project and the
14 expansion project, together, combined limit.
15 That's what I understood Mr. Argentine to say.

16 DR. REEDE: Well, Hearing Officer
17 Gefter, if they agree that their upper limit is
18 5000 acrefeet per year, why don't we just put the
19 limit is 5000 acrefeet and --

20 HEARING OFFICER GEFTER: It makes
21 sense --

22 DR. REEDE: -- eliminate the need for
23 the workshop.

24 HEARING OFFICER GEFTER: That would be
25 great if the parties could agree to that and you

1 could rewrite the condition --

2 ASSOCIATE MEMBER BOYD: Save lawyers
3 arguing with each other over what the contract
4 says.

5 HEARING OFFICER GEFTER: Right.

6 MR. WHEATLAND: Well, we'd much rather
7 argue, but I think this one is -- we could agree
8 to that.

9 HEARING OFFICER GEFTER: They could
10 agree to that, all right.

11 ASSOCIATE MEMBER BOYD: I'm worried
12 about Calpine's expenses at this point in time,
13 so let's just agree and get on with it.

14 HEARING OFFICER GEFTER: Okay. So the
15 language can be drafted among the staff and
16 applicant, and you could bring us the language.
17 And I'd like to see that reflected in both soil-
18 and-water-4 and -6.

19 MS. WILLIS: I was just reminded also
20 that this 5000-acre feet limit would have to apply
21 to both the original and the expansion projects.

22 ASSOCIATE MEMBER BOYD: Right, --

23 HEARING OFFICER GEFTER: That's
24 exactly --

25 ASSOCIATE MEMBER BOYD: -- it could do

1 that in this context --

2 HEARING OFFICER GEFTER: That's right.

3 Yeah, you can do --

4 MR. WHEATLAND: Well, I think you can do
5 it with the applicant's consent. We would agree
6 to --

7 ASSOCIATE MEMBER BOYD: Okay, it's a
8 deal.

9 HEARING OFFICER GEFTER: Okay, that
10 sounds good.

11 DR. REEDE: So there's no need for a
12 workshop because they've agreed to it.

13 HEARING OFFICER GEFTER: No need for a
14 workshop if the parties can agree on the language
15 and put together a redrafted condition soil-and-
16 water-4 and soil-and-water-6 consistent with this
17 agreement.

18 MS. BOND: Thank you very much. I
19 appreciate it.

20 HEARING OFFICER GEFTER: Thank you, that
21 would be great.

22 Okay, so the next issue we need to
23 discuss is the schedule for the rest of the
24 proceeding.

25 And we are still pending a couple of

1 things. The air quality revised FDOC and revised
2 testimony from applicant and staff.

3 And then we're pending the transmission
4 system engineering documents.

5 It looks like if everything goes
6 according to plan that the transmission system
7 engineering documents would be available by mid
8 February. You're looking for Cal-ISO's report.

9 DR. REEDE: Right, before we can
10 complete our --

11 HEARING OFFICER GEFTER: And with --
12 before staff can complete --

13 DR. REEDE: -- actual document.

14 HEARING OFFICER GEFTER: Right. So, I
15 think, given that we're dealing with several
16 agencies, not just the Energy Commission, but
17 several other agencies, that we probably need to
18 build some leeway into the schedule.

19 So I'm going to propose that we look at
20 evidentiary hearing sometime in March. And I
21 wanted to ask the parties what you think about
22 that date. I don't have a particular date, but
23 I'm just thinking that we need to build some
24 wiggle room into the schedule.

25 MS. WILLIS: That timeframe sounds

1 reasonable considering that we would need to wait
2 about 30 days once we get the facility studies,
3 technical assessment.

4 HEARING OFFICER GEFTER: Does that
5 seem --

6 MR. WHEATLAND: Yeah, that sounds good
7 to us. We'd have a preference for the first week
8 of March, and we'd suggest by trying to keep to a
9 fairly tight schedule to provide some incentive to
10 both Edison and the ISO to submit their
11 information in a timely manner.

12 HEARING OFFICER GEFTER: Okay, well,
13 again, we're going to have to check our
14 Commissioners' schedules. We could have the
15 hearing here again in Sacramento, considering that
16 there are no intervenors. Today was the last day
17 for anybody to file a petition to intervene, and
18 no one has. So we don't have intervenors.

19 The air district representatives, the
20 water agency representatives can all call in by
21 teleconference to an evidentiary hearing. So it
22 wouldn't be necessary for them to travel here.

23 And even any of applicant's witnesses
24 are welcome to call in rather than attend the
25 hearing in person, if that would save time and,

1 you know, be more efficient. We'll just schedule
2 another teleconference phone number for that.

3 I wanted to talk to you about the
4 uncontested issues and how to proceed, how we're
5 going to submit them into the record.

6 Rather than spending, you know, a lot of
7 time where each subject is offered into the record
8 and then I ask if there's any objection from the
9 other party, seems to me that if the parties could
10 stipulate in writing that the following topics are
11 submitted as filed, we could just move along very
12 quickly. And we could limit the time that it
13 takes to finish the evidentiary hearing.

14 So I'm just proposing that to counsel
15 for both parties. And I think we can do that
16 because we have the declarations already from the
17 witnesses for the uncontested issues.

18 The issues that at this point it looks
19 to me that we're going to need testimony on would
20 be the air quality; probably water, just to finish
21 that up; transmission system engineering
22 efficiency. And I think those are the ones that I
23 am -- hazmat, just to clear up that condition.

24 And then I always like to have testimony
25 on project description because it gives us an

1 opportunity to ask any questions about the project
2 that any Committee Member has. And it sets the
3 tone for the hearing. So, we'll have testimony on
4 project description.

5 Any other topic that either party can
6 think of at this point that we could have live
7 testimony --

8 DR. REEDE: Hearing Officer Gefter, --

9 HEARING OFFICER GEFTER: Yes.

10 DR. REEDE: -- you had mentioned
11 transmission system engineering efficiency.

12 HEARING OFFICER GEFTER: Um-hum.

13 DR. REEDE: Was there still some
14 unreadiness on the efficiency issue?

15 HEARING OFFICER GEFTER: Yes, I think
16 that the Commissioners may have questions for your
17 witnesses again. They have to think about what we
18 heard today, and we may have to ask additional
19 questions.

20 DR. REEDE: Okay, we'll have the witness
21 available.

22 HEARING OFFICER GEFTER: Thank you. Any
23 other topic that you think we might need testimony
24 on? You could let me know, too, between now and
25 end of the month.

1 MR. WHEATLAND: We have testimony on the
2 subject of facility design, which we intended to
3 cover project description. Please let us know if
4 that's sufficient for a project description
5 witness. If it's not, we would be pleased to
6 supplement it.

7 HEARING OFFICER GEFTER: Okay, I'll
8 check that, as well. And I'll be in touch with
9 the parties, and you be in touch with me if there
10 are any other topics that you want to present a
11 live witness on.

12 MR. WHEATLAND: And then would you like
13 the staff counsel and I to prepare a proposed
14 joint stipulation with respect to the remainder of
15 the exhibits?

16 HEARING OFFICER GEFTER: Yes.

17 MR. WHEATLAND: Okay.

18 HEARING OFFICER GEFTER: Thank you.

19 Hearing no further questions, the prehearing
20 conference is adjourned. Thank you.

21 MR. WHEATLAND: Thank you.

22 (Whereupon, at 3:24 p.m., the prehearing
23 conference was adjourned.)

24 --o0o--

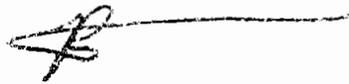
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CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of January, 2006.



PETER PETTY