

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
of the Walnut Creek Energy Park) 05-AFC-2
by Walnut Creek Energy, LLC)
-----)

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

THURSDAY, FEBRUARY 21, 2008

10:07 A.M.

ORIGINAL

Reported by:
Peter Petty
Contract No. 170-07-001

DOCKET 05-AFC-2	
DATE	FEB 21 2008
RECD.	FEB 25 2008

COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Garret Shean, Hearing Officer

Panama Bartholomy, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Bob Worl, Siting Program Manager

Joseph M. Loyer

Steve Baker

Shahab Khoshmashrab

Eileen Allen

APPLICANT

Scott Galati, Attorney
Galati & Blek, LLP

Lawrence J. Kostrzewa
Edison Mission Energy

ALSO PRESENT

Mohsen Nasemi (via teleconference)
South Coast Air Quality Management District

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P R O C E E D I N G S

10:07 a.m.

1
2
3 PRESIDING MEMBER PFANNENSTIEL: This is
4 an evidentiary hearing on Walnut Creek Energy
5 Park. We have resumed these hearings after a
6 delay of some months. And we have previously
7 circulated the Presiding Member's Proposed
8 Decision and there have been recommended changes
9 back and forth.

10 So I should introduce myself; I'm Jackie
11 Pfannenstiel, I'm the Presiding Member of this
12 Committee. Presiding, and at the moment, only
13 Member of this Committee. To my right is Garret
14 Shean, who's the Hearing Officer; and to my left
15 is Panama Bartholomy, my Advisor in this subject.

16 Why don't I turn it to the Hearing
17 Officer to walk us through what we have to do
18 today.

19 HEARING OFFICER SHEAN: Good morning.
20 As the Chairman indicated, the Committee sent out
21 notice of this hearing, not only to have an
22 evidentiary proceeding to incorporate the addendum
23 by the South Coast Air Quality Management
24 District, but also, given the passage of time that
25 had occurred in the interim, to first of all, send

1 out the first errata so that the parties had in
2 mind the result of the Committee's deliberation
3 based upon the record that we left back in the end
4 of September, early October of 2007.

5 And, in fact, it has resulted, as we had
6 hoped, in some further discussions with respect to
7 the noise conditions.

8 What we'd like to do now is have the
9 introduction of the parties, and then we'll go
10 quickly into the receipt of the evidence that we
11 have. And then we'll have further discussions
12 about either conditions or any other matter that
13 the parties want to raise to the Committee.

14 I will indicate that the Committee has
15 scheduled for February 27th business meeting the
16 consideration and possible adoption of the AFC.
17 And I will also indicate that what we are working
18 on here today is a second errata which will bring
19 us up to date and finalize all the changes from
20 the PMPD, the document called the revisions to the
21 PMPD, the first errata and then the second errata.
22 So it'll be packaged in that way.

23 So, with that we'll go to the applicant
24 and your introductions.

25 MR. GALATI: Scott Galati representing

1 Walnut Creek Energy, which is a wholly owned
2 subsidiary of Edison Mission Energy.

3 MR. KOSTRZEWA: Larry Kostrzewa, Edison
4 Mission Energy, Managing Director of Development.

5 HEARING OFFICER SHEAN: Okay.
6 Commission Staff.

7 MS. DeCARLO: Thank you, Chairman,
8 Hearing Officer Shean; Lisa DeCarlo, Senior Staff
9 Counsel. To my right is Robert Worl, Siting
10 Program Manager. And in the audience we have air
11 quality expert Joe Loyer; and noise expert Steve
12 Baker and Shahab Khoshmashrab.

13 HEARING OFFICER SHEAN: Thank you. All
14 right, what I propose to do is to move first to
15 the South Coast Air District's addendum to their
16 final determination of compliance. We received a
17 copy of it dated January 21, 2008. So we'll use
18 for purposes of its identification that date. Is
19 there objection by either party, or let me say,
20 can we have a stipulation by the parties that the
21 addendum be received in evidence in the record?

22 MR. GALATI: Yes.

23 MS. DeCARLO: Yes.

24 HEARING OFFICER SHEAN: All right.
25 We'll move now to the filings by the parties, and

1 I'm basically working off of the following:

2 We have a February 11th-dated staff's
3 comments on the revised Presiding Member's
4 Proposed Decision. And it contains the
5 supplemental testimony by Joe Loyer on air
6 quality, as well as supplemental testimony on
7 noise. And let me indicate we received by email
8 yesterday, and in person today, from Staff's
9 Counsel Ms. DeCarlo, a modification of their
10 recommended changes to noise-4.

11 The next item is from the applicant, its
12 comments on the first errata which contains
13 suggested changes to condition noise-7. And a
14 discussion about staff's proposed changes to
15 noise-4.

16 Lastly, we have, from the staff, an
17 errata to their errata with regard to condition
18 AQ-7. For some reason I already had this change,
19 had incorporated it. So we're fine on that.

20 So, with that, why don't we go to the
21 staff and we'll ask you to bring Mr. Loyer up and
22 offer his testimony here for the record, which has
23 the effect so we can cut this kind of short, of
24 amending conditions AQ-3 and AQ-7, and adding
25 conditions AQ-17, -18 and -19.

1 MS. DeCARLO: We also provided a
2 declaration with the testimony, so we can either
3 do live introduction of the testimony into
4 evidence, or I think it can be handled by
5 declaration, as well, --

6 HEARING OFFICER SHEAN: Well, why don't
7 I --

8 MS. DeCARLO: -- whatever your
9 preference is.

10 HEARING OFFICER SHEAN: Mr. Loyer,
11 you've been previously sworn, so you understand
12 you're under oath, okay?

13 MR. LOYER: Yes, sir.
14 Whereupon,

15 JOSEPH LOYER
16 was recalled as a witness herein, and having been
17 previously duly sworn, was examined and testified
18 further as follows:

19 EXAMINATION

20 HEARING OFFICER SHEAN: You prepared the
21 document called air quality supplemental
22 testimony, which is approximately -- is nine pages
23 and included changes to AQ-3, AQ-7 and the
24 addition of AQ-17, -18 and -19, is that correct?

25 MR. LOYER: That is correct.

1 HEARING OFFICER SHEAN: Okay. And does
2 this represent, in staff's judgment, the
3 appropriate modifications to staff's testimony to
4 reflect the addendum by the South Coast Air
5 Quality Management District?

6 MR. LOYER: If I may, in addition to the
7 errata we submitted to correct AQ-7 to the
8 language that all parties did agree to, yes, it
9 does.

10 HEARING OFFICER SHEAN: All right. Do
11 you have any further direct of your witness?

12 MS. DeCARLO: No.

13 HEARING OFFICER SHEAN: Do you have any
14 cross of the witness?

15 MR. GALATI: No.

16 HEARING OFFICER SHEAN: Mr. Loyer, thank
17 you very much; we appreciate it.

18 MR. LOYER: Thank you.

19 HEARING OFFICER SHEAN: You're excused.

20 MS. DeCARLO: I'm sorry, Eileen Allen
21 was interested in knowing if there's anyone on the
22 phone we need to be concerned about.

23 HEARING OFFICER SHEAN: All right.
24 We've opened the phone line teleconferencing
25 capability this morning. Is there anyone on the

1 phone at this time? I hadn't heard --

2 MR. NASEMI: Yes, this Mohsen Nasemi,
3 and a number of my staff here from South Coast Air
4 Quality Management District.

5 HEARING OFFICER SHEAN: Mr. Nasemi,
6 welcome. We have -- I don't know if you heard
7 this -- taken into our record the addendum to the
8 FDOC which you presented to us, as well now as the
9 staff's addition and changes to the conditions
10 that appear in their FSA testimony, and also in
11 the Presiding Member's Proposed Decision; which,
12 in the staff's opinion -- and I will take it,
13 given that there were no questions from the
14 applicant -- also in the applicant's opinion
15 appropriately reflects the changes to the FDOC
16 that were made in the addendum and reflect the
17 District's adoption of rule 1309.1.

18 Do you have any comments that you'd like
19 to make on behalf of the District?

20 MR. NASEMI: Thank you, Mr. Shean, and
21 good morning other staff members.

22 I just want to give you an update on the
23 status of the Walnut Creek project. As indicated
24 in our addendum to the previously issued
25 determination of compliance, we have gone through

1 public notice for this project, and opened it to
2 public comments and EPA comments according to the
3 requirements of our Title 5 program.

4 And actually yesterday was the close of
5 comment period for the public, which is a 30-day
6 comment period.

7 And the EPA has a 45-day review period,
8 but we have spoken to the EPA Staff and in a
9 nutshell the only comments we received during the
10 public comment period was actually from the
11 applicant regarding condition AQ-19. That they
12 wanted that condition to be removed.

13 After further discussion inhouse and
14 reviewing of the rule language, rule 1309.1, we
15 have decided that the applicant's request can be
16 granted. So we are actually going to ask the CEC
17 Staff and Commissioner to also not include AQ-19
18 as part of the certification.

19 Then as far as other comments, like I
20 said, yesterday was the close of comment period.
21 And we didn't get anything. But I can't guarantee
22 100 percent that somebody didn't send us a letter
23 and it's still either somewhere in this building
24 or in the mail and we'll get it in the next couple
25 of days.

1 But the EPA has informed us that they
2 have a few comments that they will be providing us
3 in writing within the next day or two, I would
4 say, that would be probably tomorrow, since today
5 is Thursday.

6 And we have verbally discussed EPA's
7 comments. We don't believe any of them are
8 substantial comments.

9 But what I would like to suggest is we
10 understand that there is a hearing scheduled for
11 the 27th for the full certification of this
12 project. That we, as indicated in our addendum to
13 the determination of compliance, we would like to
14 submit to the CEC sort of a final determination of
15 compliance which incorporates any comments that we
16 receive during the public comment period.

17 And we would attempt to do that either
18 early next week, or I would certainly -- I'm
19 planning to be at the February 27th meeting. If
20 we didn't get the EPA comments in time I will just
21 bring our final determination of compliance with
22 me to that meeting.

23 But like I said, the conditions or the
24 comments that we had verbally talked to EPA this
25 morning seemed to be not significant enough to

1 cause any changes in the decision. We may have to
2 make some minor adjustments to some of the
3 conditions, though, because of EPA comments.

4 HEARING OFFICER SHEAN: All right. Mr.
5 Galati.

6 MR. GALATI: I would point out that the
7 Energy Commission has a standard condition now
8 that air quality staff has incorporated when there
9 are minor tweaks to conditions that take place,
10 which is not uncommon to happen between an FDOC
11 and then eventually the permit to construct.
12 Minor things that change -- that don't change, I
13 think, any of the substantive findings.

14 And so I would urge the Commission to go
15 ahead and go forth on the 27th even if it does not
16 receive these minor changes, because there is a
17 process built in through compliance that if
18 there's any changes to the air quality permit
19 conditions, both construction or operating, that
20 the District provides, there is a procedure to
21 make those.

22 We often do them. They're clean-up
23 amendments and they're handled administratively
24 through the Commission's adoption of that
25 condition.

1 I think that what Mr. Nasemi has said
2 doesn't expect anything significant or
3 substantial. And I would point out that the
4 additional comments, this revision provided I
5 think only two conditions that were additional
6 since the last FDOC.

7 So, I think the Commission can be
8 assured that there's not something substantive
9 that would change its findings. And we would urge
10 us to go forward on the 27th.

11 HEARING OFFICER SHEAN: All right, and,
12 of course, Mr. Nasemi's comments did not suggest
13 anything different from that.

14 Okay. Mr. Loyer?

15 MR. LOYER: I would just like to tell
16 Mr. Galati that I agree with his position. I
17 think the administrative amendment procedures that
18 we've incorporated into our compliance phase are
19 capable of handling these kinds of minor
20 amendments.

21 That said, until we actually see what
22 the changes are, we can't make the determination
23 of whether or not they are minor amendments. And
24 so just be prepared that they may be pushed into a
25 more formal amendment process if that should need

1 to occur.

2 HEARING OFFICER SHEAN: And, Mr. Loyer,
3 from your perspective as the staff professional on
4 air quality, is the staff prepared to accede to
5 Mr. Nasemi's suggestion that AQ-19 be deleted?

6 MR. LOYER: That's why we put it last.

7 HEARING OFFICER SHEAN: Okay. So I'll
8 take that as a yes.

9 MR. LOYER: Yes, sir.

10 MS. DeCARLO: If I could just follow up
11 on that really quickly.

12 And, Mr. Loyer, with the removal of AQ-
13 19, does that alter your conclusion at all that
14 the project will comply with all laws, ordinances,
15 regulations and standards, and will not create a
16 significant impact on the environment?

17 MR. LOYER: No, it does not.

18 HEARING OFFICER SHEAN: All right. With
19 that, Mr. Nasemi, we look forward to seeing you on
20 Wednesday. And I think the Committee was mindful
21 of the timeframes for the comments that would have
22 been submitted to the District as a result of its
23 notice.

24 I think what we had understood from
25 reading -- understanding that there were two

1 comment periods, one essentially the District's,
2 the other the EPA's, that the EPA requirements
3 were that the District be given notice within the
4 first 15 days of a request for a hearing. And
5 then thereafter there was a 30-day opportunity to
6 do that.

7 So I assume that there was, under the
8 EPA rules, which you implement, no request for
9 such a hearing, is that correct, Mr. Nasemi?

10 MR. NASEMI: Yes, actually that's
11 correct, Mr. Shean. We did not receive any
12 official or unofficial requests for a public
13 hearing during the first 15 days according to
14 Title 5.

15 So the EPA comment period is 45 days
16 because they historically wanted to see what kind
17 of comments we received during the public comment
18 period before they submit their comments.

19 And in cases where there are no public
20 comments, then with maybe some requests from
21 applicant or us, they can submit their final
22 comments earlier than 45 days. And that's what
23 EPA has told us that they will do in the next
24 couple of days.

25 Mr. Shean, if I can make one

1 clarification to Mr. Galati's statement. Although
2 there has been only two -- we deleted AQ-19 --
3 there has been only two additional conditions
4 added to the conditions of certification, I want
5 to assure Commissioner Pfannenstiel and others
6 that the delay in approval of this project was
7 absolutely necessary because we have not evaluated
8 the project compliance with the new requirements
9 in 1309.1.

10 And the reason there aren't any more
11 conditions on the certification is because the
12 applicant has to make a number of demonstrations
13 that they meet those requirements of 1309.1 before
14 we could qualify them to act as priority reserve.
15 And that included anywhere from additional
16 modeling risk assessment, emissions verification.

17 And we went back and forth quite a bit
18 with the applicant to actually finalize the
19 conditions related to adjustments, so that they
20 can be assured that they meet the new emissions
21 standard.

22 So even though there's only two
23 conditions, I want to assure you that there was a
24 lot of work that went into giving you the addendum
25 as a result of the new requirements of 1309.1.

1 HEARING OFFICER SHEAN: All right, Mr.
2 Nasemi. I think we did understand the amount of
3 work that the District put, and, of course, the
4 applicant was right there with you. And by no
5 means would we assume that only because there are
6 two additional conditions that that was reflective
7 of this being a minor undertaking. We understand
8 it was a very major undertaking and took a lot of
9 work on --

10 MR. GALATI: Mr. Nasemi, I wanted to
11 make sure that I add to that, as well. My
12 comments regarding only two conditions have to do
13 with assuring the Commission, under their rules,
14 when there are changes to lots of conditions it
15 requires a more significant amendment.

16 And so if the comments to EPA don't
17 change conditions, it's a lot easier for us to do
18 the minor amendment that I was advocating for, but
19 had in no way, shape or form, meant a comment that
20 the District didn't do its job under 1309.1, which
21 took some time.

22 HEARING OFFICER SHEAN: All right, are
23 we prepared to sign off here on air quality, then?
24 At least from the people who are present here?

25 MS. DeCARLO: The staff's testimony has

1 been entered into the record?

2 HEARING OFFICER SHEAN: Yes.

3 All right, Mr. Nasemi, we thank you for
4 calling in. We're going to switch over to noise
5 now, and look forward to seeing you on Wednesday.

6 MR. NASEMI: Thank you. Have a nice
7 day.

8 HEARING OFFICER SHEAN: You, too.

9 All right, we have supplemental
10 testimony from the staff on noise. So, if you
11 want to bring your witnesses up.

12 MS. DeCARLO: Sure. Our noise experts
13 are Shahab Khoshmashrab and Steve Baker. And
14 Steve Baker may need to be sworn in.

15 HEARING OFFICER SHEAN: Have you not
16 been previously sworn?

17 MR. BAKER: I don't recall if I've
18 testified in person on this --

19 MS. DeCARLO: I believe there was just
20 Shahab at the last evidentiary hearing.

21 HEARING OFFICER SHEAN: All right.

22 Whereupon,

23 STEVE BAKER
24 was called as a witness herein, and after first
25 having been duly sworn, was examined and testified

1 as follows:

2 THE REPORTER: Please state and spell
3 your full name for the record.

4 MR. BAKER: My name is Steve Baker,
5 B-a-k-e-r.
6 Whereupon,

7 SHAHAB KHOSHMAHRAB
8 was recalled as a witness herein, and having been
9 previously duly sworn, was examined and testified
10 further as follows:

11 EXAMINATION

12 HEARING OFFICER SHEAN: All right,
13 gentlemen, you prepared the supplemental testimony
14 on noise which represents pages 10, 11 and 12 of
15 the February 11th staff filing?

16 MR. KHOSHMAHRAB: Yes.

17 HEARING OFFICER SHEAN: And the
18 amendment to the noise-4 that has been presented
19 today by Ms. DeCarlo?

20 MR. KHOSHMAHRAB: Yes.

21 HEARING OFFICER SHEAN: All right. Is
22 there objection to its admission into testimony?

23 MR. GALATI: No.

24 HEARING OFFICER SHEAN: All right. We
25 have your explanation in front of us, so why don't

1 you give us briefly your explanation as to what
2 you had in mind with this most recently modified -
3 - and I guess the question that I have is some
4 explanation why -- my understanding is in most
5 every noise-4 condition we've ever had in the
6 recent past at the Commission we have required the
7 project owner to conduct these 25-hour community
8 noise surveys unless the facility reaches the
9 sustained output of 90 percent of its rated
10 capacity.

11 And I see by the change that you
12 proposed here that we're going off of that and on
13 to something else. So why don't you explain,
14 first of all, why you want the 5432 turbine
15 measuring and the 25 hours, the dropping of the
16 25-hour community noise survey.

17 MS. DeCARLO: Well, I can jump in, not
18 on the technical aspect, but just on the necessity
19 to have some modification of noise-4.

20 In noise-7, as you recall, we were
21 directed to, if there is a noise complaint that's
22 unresolved between the applicant and the
23 complainant, we're directed to determine, after
24 the fact, whether there was indeed an exceedance
25 of the 49 dba level at some time in the past.

1 And currently we have no information, or
2 we would have no information pursuant to the 25-
3 hour community noise survey, no information to
4 make such a determination.

5 So the attempt to measure the varying
6 levels of operation is an attempt to get
7 information that we could then use once we receive
8 a complaint, to make a determination as to whether
9 there was an exceedance. And staff can go into
10 the particulars.

11 MR. BAKER: To expand on that, the way
12 noise-7 is written it would require the use of a
13 time machine. Once a complaint comes in, we'd
14 have to then move back in time to the instant when
15 the complaint was filed and measure the noise from
16 the power plant. That's obviously impossible
17 given current technology.

18 What we've proposed in the latest
19 version of noise-4 is noise measurements of the
20 power plant at different output levels, in the
21 can, ready to look at. If a complaint comes in,
22 we look back at the control room log to see how
23 many machines were operating; look at the results
24 from the noise survey; and we can tell how much
25 noise was coming from the power plant at that

1 time.

2 If that is an exceedance then we know we
3 have a problem. If it's not an exceedance we know
4 that the power plant was not causing a problem.

5 MS. DeCARLO: The only alternative to
6 that would be to attempt to, once we receive a
7 complaint, to try to replicate the operation of
8 the plant after the fact. And that can have
9 identified potential dispatch concerns with being
10 able to operate a specific level at a particular
11 point in time if they're not specifically
12 dispatched.

13 So we believe having this information
14 beforehand would make it a lot simpler to obtain a
15 determination of exceedance.

16 MR. BAKER: And then to address your
17 question regarding the 25 hours, condition noise-4
18 is written to set a limit on the noise just from
19 the power plant. It does not limit the noise
20 combined from the power plant and the ambient.

21 So, because of that, since we're only
22 requiring a measurement of the power plant noise,
23 itself, in noise-4, that can be taken into
24 account. It does not have to be taken throughout
25 a 25-hour period. Anytime the plant is operating

1 the noise from it can be measured.

2 So it's not necessary for the
3 measurements in noise-4 to be taken over a 25-hour
4 period.

5 HEARING OFFICER SHEAN: The question
6 that then raises is if that can be done, my
7 recollection, or at least experience, in past
8 cases is that the noise levels can be extrapolated
9 from the data both up and down, if you will.

10 And why is it that conducting these
11 multiple tests is preferable to a mathematical
12 extrapolation if your initial test is of all five
13 units running at close to full capacity?

14 MR. BAKER: As Edison has argued, and we
15 agree, the plant is not always going to be
16 operating at full load. There are five separate
17 machines here and there will be times when all
18 five will be dispatched, times when only four,
19 three, two or one will be dispatched.

20 As you turn off machines the plant gets
21 quieter. Okay, the plant, with all five machines
22 operating, should not cause any noise problems
23 during the daytime when the ambient is high.

24 At night, when the ambient drops down
25 low, the noise from all five machines operating

1 could cause a problem. But Edison has pointed
2 out, and we agree, that the likelihood of all five
3 machines operating in the nighttime is not very
4 high.

5 So, what they're saying is that they
6 should be given credit for the fact that the plant
7 is likely to be quieter at night than during the
8 day. And we agree. But unless we measure the
9 plant at different levels with different numbers
10 of machines operating, we don't know what that
11 noise level is at night.

12 If all five are operating, we'll know
13 that, using the survey methodology that you're
14 familiar with from other projects. But if they
15 want to take credit for a quieter plant at night,
16 then we need to measure the noise from that
17 quieter plant, from that plant with fewer machines
18 operating.

19 HEARING OFFICER SHEAN: All right. And
20 so I would come back to the question that doesn't
21 that leave us with almost an infinite number of
22 samplings because you'd want five machines at
23 let's say 90 percent or 80 percent or 70
24 percent --

25 MR. BAKER: No, not at all. The noise

1 level from this power plant will vary very little
2 depending on the actual electrical load on the
3 plant.

4 What will mostly control the noise level
5 from the plant is the number of machines
6 operating. An LMS100, whether it's operating at
7 100 percent load or 50 percent load or anywhere in
8 between is going to put out about the same amount
9 of noise.

10 You've got airflow through the machine;
11 you have inlet noise; you have exhaust noise.
12 That'll vary a little bit with load, but not a
13 lot.

14 You've got the noise from the turbine
15 enclosure vent fan; that's not going to vary at
16 all. You've got the inter-cooler cooling system;
17 you've got pumps that are going to be pumping, in
18 this case, water. Those are going to be running
19 all the time the gas turbine is running. There'll
20 be no change there. You're going to have your
21 evaporative cooling tower running.

22 If the plant were operating for any
23 length of time at less than full load it wouldn't
24 make sense to keep all five machines running at
25 partial load. You'd start shutting them down and

1 run the remaining machines at full load. Okay.

2 If you did that, if you shut down gas
3 turbines, then you can shut off cooling tower
4 cells and reduce the noise from the cooling tower
5 a little bit. But, if you're keeping all the
6 machines running you're going to have the cooling
7 tower running.

8 Say that they're offering spinning
9 reserve; they have all five machines operating at
10 half-throttle, ready to pick up another 250
11 megawatts on a moment's notice. They're going to
12 need the cooling tower running in order to be able
13 to take care of the inter-cooler load should they
14 be dispatched immediately.

15 So the noise from the power plant is not
16 going to vary as the loads on the individual
17 machines changes. It's only going to vary when
18 they can shut off gas turbines. That's what we
19 want to measure with noise-4. We want to know how
20 much noise that power plant produces when all five
21 are running, 4,3,2. That's why this is different
22 from other cases that you're familiar with.

23 PRESIDING MEMBER PFANNENSTIEL: And I
24 just want to --

25 HEARING OFFICER SHEAN: I beg your

1 pardon.

2 PRESIDING MEMBER PFANNENSTIEL: I take
3 it it's not linear, 1 to 2 to 3 to 4, to 5?

4 MR. BAKER: It should be calculable, but
5 noise is not an exact. There's as much art as
6 science in it. So, it's a good idea to recommend
7 measuring these four measurements.

8 Now, the measurements don't all have to
9 be taken at once. They can be taken at various
10 times when it's convenient for the owner to
11 dispatch the plant at different levels. We have
12 suggested a 60-day period during which, in that
13 hour, at each of these output levels, two
14 machines, 3, 4 and 5 will be enough to take the
15 measurements necessary.

16 It's possible that if they measured it
17 with two machines and say five machines, that they
18 could then interpolate the other readings in
19 between. We're not recommending that, but it does
20 seem possible.

21 MR. GALATI: I would point out that with
22 the changes our concern was that we would be doing
23 an infinite number of tests and also running in
24 the nighttime. It's very possible this plant
25 wouldn't ever operate in the nighttime, and that

1 during the testing would be the one and only time
2 we got a complaint.

3 So the fact that staff has let us have
4 the flexibility to provide them the data, we think
5 we can work with noise-4 as it is written. And
6 that if that helps staff, we still believe that
7 under noise-7 we may propose an operating
8 restriction that isn't just the number of
9 turbines. It might be certain loading. And
10 rather than get into a debate about whether that
11 affects noise, significant, we're pretty close to
12 the margin, a little help is better than not being
13 able to operate.

14 So, we think that we're find with noise-
15 4 as it is written. If that helps staff determine
16 compliance at a later date, we withdraw our
17 objections to noise-4 and agree to their
18 modifications. We think if that's helpful, we
19 will. Yes, the most recent one that we saw today.

20 HEARING OFFICER SHEAN: Okay. With that
21 then let's go to the discussion of noise-7. The
22 applicant has suggested two changes. One is the
23 specification of the four hours of quiet,
24 consecutive nighttime hours to be the hours of
25 0100 to 0500.

1 And also some provision that essentially
2 the exemption from the nighttime operation account
3 for the avoidance of, as well as the operation
4 during, a Cal-ISO-declared electrical emergency.

5 So, do you have -- I'd just only
6 indicate, you know, prior to the meeting I guess
7 you were discussing with the staff counsel some
8 potential changes to that. Do you have anything
9 yet that has been worked out?

10 MR. GALATI: Yes, I think that we do.
11 One of the things that staff requested was that
12 Cal-ISO be the one that actually determined that
13 we are operating to avoid an emergency. And so I
14 believe that the language that was requested is at
15 the end of the sentence where electrical energy,
16 that we would -- excuse me, electrical emergency,
17 that we would add the phrase "as determined by
18 Cal-ISO."

19 And that would apply both during the
20 emergency, which is easy to determine whether Cal-
21 ISO has declared an emergency; and then it would
22 also provide staff, I think, the surety that Cal-
23 ISO is asking for the dispatch to be done to avoid
24 an emergency.

25 So we had some discussions about how

1 would we prove the latter, which is how do you
2 prove Cal-ISO wants you to be able to operate to
3 avoid an emergency.

4 And one of the things we would propose,
5 and we haven't got an agreement on the specific
6 language, but in the verification of this
7 condition, to add that we would use the Cal-ISO's
8 website where they declare certain restrictions
9 such as something we call a no-touch day. And
10 there are several warnings and alerts. And that
11 that would be the proof that we were dispatched to
12 avoid an emergency.

13 HEARING OFFICER SHEAN: Do you have
14 anything on this, Ms. DeCarlo?

15 MS. DeCARLO: Yes. We agree with the
16 proposed changes to the condition, itself,
17 identifying that such determination of avoidance
18 or emergency be made by Cal-ISO.

19 While we would prefer an actual letter
20 or statement from the Cal-ISO that such dispatch
21 is necessary for the avoidance, we do not object
22 to the identification of a no-touch day as being
23 suitable verification for the avoidance
24 determination.

25 MR. GALATI: So what I propose to the

1 Committee is, haven't been able to work out the
2 language, is maybe in the verification just some
3 acknowledgement that proof of Cal-ISO declaration
4 of avoidance of an emergency, or operation during
5 an emergency, shall be by going to the Cal-ISO
6 website and showing the following were declared.

7 HEARING OFFICER SHEAN: I did some
8 research on this in anticipation of the hearing.
9 First of all, I think the Committee felt that the
10 applicant's general view of avoidance was
11 appropriate to somehow incorporate; and there was
12 just a question of how that could happen in some
13 way to verify that you were being requested to
14 maintain yourself available for dispatch, as
15 opposed to just this was the way the market was
16 operating and you were on and it would be
17 impossible to tell if that were -- if you were
18 responding to an emergency or not. And while we
19 had sort of come up with a different idea, this
20 sounds acceptable, as well.

21 And I noticed in that research that the
22 ISO has, if you will, boilerplate notices with
23 regard to the various stages, as well as sort of
24 let me call them pre-stages, where they would
25 identify by service territory, by date and time,

1 the time of initiation and time of conclusion.
2 And the reason for the declaration of any
3 emergency or the call-up of any dispatch.

4 That that notice, if it's what you're
5 referring to as the means by which you verify the
6 fact that you were online or prepared to operate
7 would be sufficient.

8 MR. GALATI: Yes, we're going to make
9 the verification specific to those notices.

10 HEARING OFFICER SHEAN: Okay, what's --

11 MR. GALATI: We think the easiest way
12 for staff to check is on the website.

13 HEARING OFFICER SHEAN: Or are you going
14 to provide them with a printout of the website?

15 MS. DeCARLO: Yeah, I would prefer that
16 the applicant provide us with something versus us
17 having to go and investigate on our own.

18 MR. GALATI: We'll certainly do that;
19 that's fair.

20 HEARING OFFICER SHEAN: All right,
21 because that information could disappear off the
22 screen from day to day.

23 MR. GALATI: Yeah, that's fair.

24 MR. KOSTRZEWA: We'll want to make a
25 copy of it for our own records anyway.

1 HEARING OFFICER SHEAN: Right. If you
2 make a printout of it then that seems appropriate.
3 Okay.

4 Wait a minute, this is all too easy.
5 Something is wrong.

6 (Laughter.)

7 HEARING OFFICER SHEAN: All right.

8 MR. GALATI: Well, I would point out
9 that our job is to make it easy for the Committee,
10 but it wasn't easy for us.

11 (Laughter.)

12 PRESIDING MEMBER PFANNENSTIEL: But the
13 Committee appreciates that.

14 HEARING OFFICER SHEAN: Right. All
15 right, is there any other matter that the
16 Committee needs to hear from the parties about
17 before we adjourn here and prepare to go into the
18 full Commission hearing?

19 MS. DeCARLO: Not that I'm aware of.

20 HEARING OFFICER SHEAN: And you're fine
21 with --

22 MR. GALATI: No.

23 HEARING OFFICER SHEAN: -- that 0100 to
24 0500?

25 MS. DeCARLO: Yes, as well as that we're

1 moving the stage two of specification for Cal-ISO
2 emergencies.

3 HEARING OFFICER SHEAN: Right. But the
4 addition of the language "as determined by Cal-
5 ISO" and the verification by a printout from the
6 website of a notice of whatever the notice is
7 about?

8 MS. DeCARLO: Of the no-touch day, yes.

9 MR. GALATI: Right. And we'll provide
10 that verification language; we'll docket it today.

11 HEARING OFFICER SHEAN: All right.
12 Because what, in anticipation of the Commission
13 meeting on Wednesday, I think what we want to have
14 for the Commission Members is essentially a full
15 layout of how we've gotten from the PMPD through
16 the revisions, through the first errata, and
17 here's the draft of the second errata.

18 It's virtually complete but for the
19 language that you're talking about here. So, the
20 sooner we get it, the better.

21 And with that we will see you at 10:00
22 on Wednesday morning, February 27th. And thank
23 you very much.

24 (Whereupon, at 10:45 a.m., the hearing
25 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 Hearing; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of February, 2008.



PETER PETTY