PREHEARING CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: Application for Certification
Docket No. 99-AFC-4
for the Moss Landing Power Project

HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, MAY 8, 2000
1:00 p.m.

Reported By:
Debi Baker
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
COMMITTEE MEMBERS PRESENT
William J. Keese, Chairman
Michal A. Moore,
Gary Fay, Hearing Officer

STAFF PRESENT
Jeffery Ogata, Staff Counsel
Richard Buell, Acting Project Manager

PUBLIC ADVISER
Roberta Mendonca

APPLICANT
Chris Ellison, Attorney
Ellison and Schneider
Mark Seedall, Duke Energy North America
Wayne J. Hoffman, Duke Energy North America
Brian Waters, Duke Energy North America

ALSO PRESENT
Mark Wolfe, CURE
David L. Mayer, Tenera Energy

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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
PRESIDING MEMBER KEESE: This is a Prehearing Conference conducted by a Committee of the California Energy Commission on the Application for Certification by Duke Energy North America for the Moss Landing Power Plant Project. Before we begin, we'd like to introduce the Committee and the participants. We'll let the parties introduce themselves.

I'm Bill Keese, Chair of this Committee. Commissioner Michal Moore joins me on the Committee. Melissa Jones is here with Commissioner Moore, and Cynthia Praul will most likely be here with me.

Our Hearing Officer is Gary Fay, and at this time I'd like to ask the parties to introduce themselves.

Mr. Ellison, would you like to introduce the Applicant's representatives?

MR. ELLISON: Thank you, Chairman Keese, and Commissioner Moore.

My name is Chris Ellison from the law firm of Ellison and Schneider, representing Duke Energy in this proceeding.

I'll say that again. And for the
benefit of the reporter, my name is Chris Ellison, Ellison and Schneider, representing Duke Energy in this proceeding.

MR. SEEDALL: Good afternoon. My name is Mark Seedall. I'm Duke's Director of Electric Modernization for the Moss Landing ground field redevelopment.

PRESIDING MEMBER KEESE: Thank you. And that's what you have for -- that's Duke?

Mr. Richins. No? Oh. Mr. Richard Buell.

MR. BUELL: My name is Rick Buell, and I'm the Acting Project Manager while Paul Richins is off climbing mountains.

PRESIDING MEMBER KEESE: I remember that now.

MR. OGATA: I'm Jeff Ogata, CEC Staff Counsel.

PRESIDING MEMBER KEESE: Okay. You're --

MR. WOLFE: I'm Mark Wolfe, with the law firm of Adams, Broadwell, Joseph and Cardozo, here on behalf of CURE.

PRESIDING MEMBER KEESE: Thank you.

And Roberta Mendonca, we're -- are we...
going to -- get a report from you later, are we?

PUBLIC ADVISER MENDONCA: Fine.

PRESIDING MEMBER KEESE: Okay.

Any agencies here?

Members of the public who wish to be introduced? It does not preclude participation later.

Thank you. I will hand this over to Mr. Fay.

HEARING OFFICER FAY: Thank you, Mr. Chairman.

Since we had no indication that any members of the public are here, I think we might save some time today by -- if Ms. Mendonca is -- is comfortable with this, by dispensing with her explanation, since everybody here is -- is represented.

PUBLIC ADVISER MENDONCA: I would make one comment for the record.

My name is Roberta Mendonca, and I'm the Public Adviser. Today is the deadline for intervention, and the Public Adviser's office has had no indication from anybody in the community of any interest in intervening in this case.

HEARING OFFICER FAY: Great. Thank you.
That's very helpful.

All right. I'd like to just read a

background statement first, before we get started.

Then I'm going to ask the parties to bring us up
to date on what they have achieved this morning in
their workshop.

On April 12th, 2000, the Committee
issued a notice scheduling this Prehearing
Conference, based on information from the
Commission staff and the Committee's revised
scheduling order issued February 24th, and
anticipated that the Air District's final
determination of compliance would be filed on or
about April 15th of this year. However, in its
Prehearing Conference statement, staff informed
the Committee that as of that time, April 28th,
the District had not provided staff with the FDOC.

To date, we have not seen that document,
which is now 23 days later than the date the
Committee's revised scheduling order called for.

In addition, staff claims in its
Prehearing Conference statement, that the -- the
draft NPDES permit, or preliminary draft, is
missing information which is critical for staff to
have in order to complete its final analysis.
Today, we'll discuss the implications of these late filings, and any other remaining data deficiencies, as they may affect the 12-month AFC schedule.

In response to the Prehearing Conference notice, the parties filed statements in which they express their concern regarding certain issues, including Air Quality, Biology, Water Quality, and Alternatives, which I understand is mainly a concern about timing and availability of information, rather than a -- a actual dispute.

The purpose of today's Prehearing Conference is to assess when the parties will be ready for Evidentiary Hearings; to identify the areas of agreement or dispute, if any; and to discuss the procedures that are necessary to conclude the certification process. In this regard, the Committee will ask the parties to present their respective positions on the issue areas, to discuss the filing dates for testimony and other evidentiary documents.

We also want to hear from agency representatives on the status of their representative reviews of this project.

The Public Adviser has spoken to you
already, and I guess what I'd like to do right now
is just informally give the Applicant and staff an
opportunity to bring the Committee up to date on
what you achieved this morning in regards to how
it might affect our schedule, in terms of getting
things filed in the record. And -- and then we
can kind of march through a laundry list of the
topic areas, just to be sure we know exactly what
is complete and ready to go, as per the
Committee's order filed on -- with testimony to be
filed on May 15th, and areas that cannot make that
deadline, and then when you can file the testimony
for them.

I believe I've informed all the parties,
but just to give you an idea as we work through
this afternoon, we have reserved Committee time
for Evidentiary Hearings on June 7th and 8th, here
at the Commission; June 15th in Moss Landing; and
July 5th and 6th in Moss Landing. These are not
scheduled by order, but it's a target and at least
might help us in our discussions today. And if
there's a problem with any of those dates, let us
know, and if we can work with them, then that's
easy because they are reserved already.

Okay. So why don't we begin. Mr.
Ellison, would you like to take the lead on this?

MR. ELLISON: Thank you, Mr. Fay.

Let me see if I can set the stage for our discussion. The Committee's current scheduling order, issued after the February 24th status conference, calls for the production of the Final Staff Assessment on May 15th for all issues, but does provide for a day for day slip in that schedule for -- potentially for water issues and air issues, and some issues that are related to those, if certain reports are not available by April 15th.

To quote from the Committee's order, it says,

"Any delay in receiving the requisite Air or Water Quality reports from outside agencies will only cause a day for day slip in filing the affected topic areas of the FSA. And regardless of the delays in receiving Air or Water Quality information, staff will file all other FSA sections on May 15th, 2000. Applicant and other parties will file their testimony on that day, as well.

The Committee anticipates that
Evidentiary Hearings will begin in early June."

So that's the order in this proceeding, as we sit here today. Let me now address the status of the reports that were referenced.

First, the Air Quality report. That report, of course, is the final determination of compliance. Duke understands that that final determination of compliance is complete, and is literally sitting on the desk waiting for signature today, and should be at the Commission, final and completely signed, this week, no later than the 12th.

We also understand, from having worked closely with the APCD and staff, that there are no issues to be adjudicated with respect to that report.

Turning to the Water reports, there are essentially three reports at issue here. The first is the final 316B study, that addresses impingement and entrainment issues, among others. Second is the thermal plan study, and the third is the draft NPDES permit.

The 316B study and the thermal plan study are final, have been filed and docketed, I
believe, on the 28th is when they were docketed.

The draft NPDES permit was issued by the Water Board staff for comment on the 21st of April. Duke has submitted some comments that are in the nature of clarifications to the Water Board staff, and we expect them to respond to those comments this week.

So we expect that there will be a, if you will, a final draft of that NPDES permit this week, and we expect that it will not differ in any significant way from the draft that has been available since the 21st of April.

Based on that status, it is the Applicant's position that the day for day slip called for in the Committee order would result in a slip of really only a few days. The -- the draft permit, in our view, was substantively available on the 21st of April, rather than the 15th, and the reports that we discussed, the thermal plan and the 316B reports, were available in draft for a long time prior to their being absolutely final on the 28th of April.

So it is the Applicant's position that the information called for to proceed with hearings has been filed either on time, or very
close to on time, and we believe that this case should be able to proceed to hearings in June. Stepping back from that, however, the staff has made clear that they would like to have more time, and we did have a workshop this morning to discuss providing the staff with that additional time on -- on certain issues. And I want -- I want to address the Applicant's position with respect to that.

The position of the Applicant really is quite simple. In order to be online for the summer of 2002, this project needs to begin construction in October. In order to begin construction in October, the Applicant has to have all permits, because obviously the Applicant's Board of Directors is not going to authorize the expenditure of $500 million to proceed without all the permits, and it would not be lawful to proceed without all the permits.

The Water Board must issue a exception, a proven exception to the thermal plan, and they have intended to do that at a meeting of the Water Board scheduled for mid-September. In order for them to do that, they have -- they will rely upon the Energy Commission's environmental
documentation to comply with CEQA.

We are amenable to any schedule which results in the -- the project being able to commence construction in October. And we would oppose any schedule which does not allow the project to begin construction in October.

So the focus of our discussion with the staff this morning was to see if there was a schedule that could be worked out between us and the staff that would accommodate the staff's desire for additional time without compromising the October commencement of construction date.

And what we arrived at was a proposed schedule that would have the -- let me take the water issues up first, because those are the most important -- would have the --

HEARING OFFICER FAY: If I can interrupt you just a second. The Water Board exception would be determined when?

MR. ELLISON: The final approval of that by the Water Board was -- the schedule that we have contemplated would -- they have a meeting in mid-September.

HEARING OFFICER FAY: Mid-September.

MR. ELLISON: Now, I don't know the
exact date off the top of my head.

HEARING OFFICER FAY: And when do they or their staff need whatever it is they consider the CEQA document?

MR. ELLISON: Prior to that time. They don't need it, in my judgment, any specific number of days ahead of that. It's compliance with CEQA, they have to have a --

HEARING OFFICER FAY: Sure.

MR. ELLISON: -- environmental document that they have considered prior to making their discretionary decision on the exception to the thermal plan.

Up to this point in this proceeding, we have not had need to discuss whether any document earlier in the Energy Commission's process than the Final Decision might fill that need, so we have not had that conversation with the Water Board at this point. We may need to have that conversation with them. But I wanted you to be aware of that -- that date.

And as we discussed --

PRESIDING MEMBER KEESE: I'm sorry, that's September 16th, or were you -- September --

MR. ELLISON: The closest I can say at
the moment is mid-September. We heard this
morning that it might be the 11th to 15th. We're
not quite sure.

PRESIDING MEMBER KEESE: That's when
they're going to meet.

MR. ELLISON: Yes. But they have set up
a meeting for that time.

The --

MR. WATERS: If I may interject, I -- I
looked this morning at the draft --

HEARING OFFICER FAY: You'll have to
come forward and give your name.

MR. WATERS: Okay. Brian Waters, with
Duke Energy.

I was looking this morning at the draft
permit, and it has an expiration of September
15th, 2005. So I believe that would indicate that
their meeting is September 15th, 2000.

HEARING OFFICER FAY: Okay.

MR. WATERS: Because they're a five-year
permit.

PRESIDING MEMBER KEESE: Thank you.

MR. ELLISON: In our workshop this
morning, the proposal which the staff and the
Applicant tentatively agreed upon, subject to the
ability of the Committee to produce a decision consistent with the October construction schedule, is as follows, but I emphasize that caveat that Duke's agreement to this schedule is predicated on the assumption that the Committee can issue a decision that allows construction in October.

It would have the staff producing an FSA on May 15th for most issues, and we can talk about the exceptions in a moment. But the exceptions would be Water, Biology, Air, Land Use, and Alternatives, I believe. Several of those, for example Alternatives, are not ready to go forward simply because the Water issues are not ready to go forward. So the issues are the same.

With respect to Air, I think I've described the situation with respect to that. We expect that the staff would not be in a position to produce an FSA on May 15th on the Air issues, but in our view should be able to do that by the end of May, and that we should be able to take that up at the hearings in mid-June, a June 15th hearing.

With respect to the Water issues, the proposal was to have a Final Staff Assessment released around the 23rd of June, and to go to
hearings on those issues at the July 5th and 6th date. But again, I emphasize that Duke's willingness to agree to that schedule is predicated upon the ability of the Committee to produce a decision following those July 5th and 6th hearings that would allow construction to start in October.

HEARING OFFICER FAY: Let me just interject. The regulations require that the FSA be published at least 14 days prior to the Evidentiary Hearing. So if the FSA is divided up into segments, then the hearing could not take place sooner than 14 days after the segment was issued. Just --

MR. WATERS: Yes, I believe this morning we were under the assumption that we would be having hearings, I think, on the 5th -- 7th and 8th of July. So if you back that up, we'd have to publish the Water and Biology and Alternatives PSA -- FSA, excuse me, on the 21st of June to meet the hearing requirements.

HEARING OFFICER FAY: Okay.

MR. ELLISON: There is a -- one outstanding Land Use issue that we talked about in this morning's workshop. We are confident that we
can work this issue out, but it does involve some
further discussions with the Coastal Commission.

Based on that information, we would expect that
the staff would not produce the Land Use section
until the Air Quality FSA piece would be done, and
that that Land Use issue could be taken up on the
15th.

So to summarize, we think that the vast
majority of the issues should be ready to go to
hearing and should not be -- involve any serious
adjudication on June 7th and 8th; that Air
Quality, Land Use, and the issues -- the remaining
issues that are unrelated to the Water studies
could be taken up on June 15th, and that the Water
issues could be taken up on July 5th and 6th.

If that July 5th and 6th disposition of
the Water issues, however, does not put the
Committee in a posture to issue a decision that
allows construction by October, it would be the
Applicant's position that the staff should be able
to produce the FSA earlier.

But if it is consistent with the October
construction date, we would be willing to have the
FSA delayed until that time.

HEARING OFFICER FAY: Mr. Ellison,
October has 31 days, according to my calendar.
And are we talking about October 1, or October 31?
Because that could make a difference.

MR. ELLISON: Let me consult with my client for a moment.

(Pause.)

MR. ELLISON: The current schedule that we have calls for October 1st as the commencement of construction. What Mr. Seedall just informed was that, you know, the earlier in October, the better, but that anytime in October might be workable. But once you slip past October, there's no more opportunity to meet that online date.

COMMISSIONER MOORE: I have a question for you, Mr. Ellison, and that is, I might have misunderstood, but I thought you said that you wanted to be producing energy by mid-summer of 2002. Is that correct?

MR. ELLISON: By the peak period of 2002. That's correct.

COMMISSIONER MOORE: And so that summer, even the mid -- in the mid-peak period, is 30, 40 days longer. You're being a little indefinite about that, but you're being very definite about the October date. So I'm a bit at a loss to
understand, because I don't know the construction particulars of this plant, why a critical date of October 1st, which I'm going to guess is simply impossible -- I mean, I -- rather than let other people bleed the bad news out, I don't think that -- that's doable at all, given the kind of constraints that Mr. Fay has on his end, or the ability to produce the document. I could be corrected, but I bet it isn't.

But that still doesn't help me understand how mid-summer can be a little amorphous, but an October 31st date can be so set in concrete. What's the nature of the construction activity that is so time dependent at the front end?

MR. ELLISON: Well, let -- let me -- the amorphousness is my fault, Commissioner. The Applicant's schedule calls for an online date of June 1st of 2000, in order to be available for all of the time period after that. The October 1st date is predicated on a construction schedule consistent with that. And that is a rapid construction schedule, without any slippage in it.

COMMISSIONER MOORE: All right. In other words, you're telling me that -- that that
The construction schedule is as tight as it can get, doesn't allow for any errors at that end, and it's got to commence on October X, in order to make a June 1st deadline.

MR. ELLISON: Well, I don't -- I don't want to be that extreme about it, Commissioner. As -- as I suggested, you know, if -- if, you know, I'm not suggesting that if the, you know, the construction couldn't start until October 2nd, that all is lost. I mean, there clearly are some remedies available to -- to an Applicant to try and, you know, work harder and shorten that construction schedule. And that's why I mentioned online in October.

But once --

COMMISSIONER MOORE: Well, obviously --

MR. ELLISON: -- once you shorten it by more than 30 days, the opportunity to recapture the time is pretty much lost.

COMMISSIONER MOORE: Well, I -- I'm sensitive to that. I think everyone on the dais is, and no one wants to see a power source that we might ultimately grant certification for, in any case, go just because some time deadline wasn't met.
But I still don't understand what the
construction component is that is so critical to
-- to making the deadline that's at the front end.
I -- I would simply add for the record that I -- I
spent some 12 years in and out of the permit
process in Monterey County, and working with
engineers and constructors, and I have to say
tight time deadlines, construction activities, and
getting things in under deadline in the Monterey
Peninsula is probably an oxymoron. So I'm -- I'd
be fascinated to hear how a time deadline that's
that tight is -- is achieved with some surety.
Because I'd hate to be the one that slam dunked it
at this end only to find out that it got upset
because of something foreseeable at the other end.

MR. ELLISON: Commissioner, is your
question what happens during that period of time,
and how --

COMMISSIONER MOORE: No, I -- what --
what's so time sensitive at the front end that has
to be initiated. I'm assuming some of this is
weather dependent, or seasonal -- seasonally
dependent. I --

MR. ELLISON: Well, the quick answer
from the lawyer is that it takes that long to
build a project of this size. We can present
someone here today, if you wish, that can walk you
through what has to be done during that period of
time, and why it takes that period of time, and
what sort of flexibility there is. We'd be happy
to do that, if you wish.

COMMISSIONER MOORE: Well, I -- you're
asking us to -- to bend over tremendously and be
very, very flexible in order to accommodate a
critical need. And I -- I guess you have my
curiosity aroused as to -- as to what makes that
time schedule so critical, and so doable only with
-- with that start date. So that's the nature of
my question. I'm not -- and I'm not sure that I
hear an answer to it.

MR. ELLISON: Commissioners, let me --
let me be clear about something here. From Duke's
perspective, it is not Duke that is asking the
Commission to bend over backwards. It is the
staff. And we say that because the October 1st
date has been there all along. We -- we spoke to
the Committee about that back in February.
There's nothing new about that.

We believe, and are prepared to defend,
that the information that the staff needs to do
its work is in its hands. And we believe that the
Final Staff Assessment could be accelerated from
the schedule that we agreed to with the staff this
morning.

I simply wanted you to understand that
as far as Duke is concerned, we're willing to let
the staff have more time, provided it's consistent
with that October 1st date. If it's not, if the
Committee finds that too constraining, and I can
understand why it might, then Duke's position is
that the FSA should be accelerated from what the
staff was proposing this morning. And I'm happy
to defend that position, if that's the Committee's
desire.

The point is simply this. We didn't
want to argue with the staff, or have a
disagreement with the staff, if it didn't have a
practical consequence to Duke. And so, in effect,
that's what we've done. We've agreed to something
subject to the Committee's concurrence that it
doesn't interfere with the construction schedule.
But if the Committee believes that it does, then
we do have a disagreement with the staff about its
time schedule for production of the FSA on the
Water issues.
PRESIDING MEMBER KEESE: Well, why don't
-- just a second.

(Pause.)

HEARING OFFICER FAY: Thanks. Anything
further, Mr. Ellison?

MR. ELLISON: No. I'd be happy to
answer any questions, however.

HEARING OFFICER FAY: Okay.

PRESIDING MEMBER KEESE: I was doing
dates, Mr. Ellison. Did -- I've heard other
developers suggest that they want to have their
power plant online on July 1st. Is that -- did
you -- did you state a date when you were in this
dialogue here, that I --

MR. ELLISON: June 1st was the date that
I stated.

PRESIDING MEMBER KEESE: June 1st was
the date that you're hoping for. Thank you.

HEARING OFFICER FAY: Okay. Why don't
-- before we make any further calls on this from
the Committee, or discuss it any further, move to
the staff and then to CURE, and hear your comments
on what happened in the workshop, and how it
affects the ability to file in a timely way.

MR. BUELL: Yes. Why don't I just pick
up on a few points that I heard Mr. Ellison make, and staff's observation about dates and what-not.

Staff is trying to accommodate the Applicant's need for a decision on this project. For example, I would indicate that we would have 30 days to -- after the FDOC as to -- been released, to prepare our Air Quality FSA, yet we're trying to accommodate the Applicant by having that out by the end of this month, which is approximately 12 days sooner than the --

HEARING OFFICER FAY: What date would that be?

MR. BUELL: -- previous agreement. By the end of this month we need to publish the FSA for Air Quality, also Land Use. As Chris Ellison had indicated.

The other thing is, is that although we have received copies of the draft NPDES, as Chris indicated, we expect to have a final copy, or a final draft of that, those conditions, by late this week. The actual start date, one interpretation of start dates, would be that it would -- the 30-day clock would start this Friday, and not back in -- on the 21st of April.

But I don't want to quibble about what
the actual start date is, but try to focus on
whether or not we can actually meet a schedule
that would accommodate the Applicant's need for
starting construction in October of this year, and
finishing by June of 2002.

One of the major things that I think is
missing at this point, from staff's perspective,
in all the information that we've received from
the Applicant, and I would agree we've received
most everything that we need, but there's details
regarding compliance monitoring and also
mitigation that need to be worked out. We have
just started some of those discussions today with
the Applicant, and I think there's a lot of work
to be -- left to be done with not only the
Applicant on what appropriate monitoring and
mitigation is required, but also with the local
agencies.

And staff has proposed today, at the
workshop, a schedule for having workshops with
agencies to try to work out what those conditions
are, as well as workshops with the Applicant to
try to work out those details prior to going to
hearing. We think that that kind of a schedule
would accommodate the Committee having a clean
record at the Evidentiary Hearings, and what all
the parties agree to.

So the additional time that we're asking
for here is necessary, in staff's mind, to present
a clear and concise recommendation to the
Committee.

We believe the schedule that will call
for publishing an FSA for Biology and Water and
Alternatives by June 21st is a doable. My staff
would like to have more time, but I'm here to try
to accommodate all the parties, including the
Applicant.

HEARING OFFICER FAY: Okay. Anything
further?

MR. BUELL: No. That concludes my
remarks.

HEARING OFFICER FAY: Mr. Ogata,
anything further?

MR. OGATA: No, I think Mr. Buell has
summarized where we are quite fine.

HEARING OFFICER FAY: Mr. Wolfe, any
comments on this?

MR. WOLFE: We're essentially amenable
to any schedule that can be worked out by the
Applicant and staff that's consistent with the
regulations.

HEARING OFFICER FAY: Okay. Well, you've heard Commissioner Moore express his doubts about whether the Committee could provide a proposed decision that would allow for an October 1 date. The -- the Business Meetings in -- and this is something to keep in mind, too, if we had this time schedule -- in October are on October 11 and October 25th.

I think I would have to agree, in fact I advised the Committee that October, early October is not realistic. October 11th, even, I don't think is realistic. And part of the concern the Committee has is there's no way for the Committee to know in advance what -- what the state of the record will be on these late topics, which are often problematical, and that's why they're the last ones to be heard. That's the kind of thing that makes a topic late.

So we don't know what Water and Biology are going to entail. And it's impossible to commit to, you know, the best case scenario without having that record. I don't know what -- what position that puts the Applicant in, in terms of trying to accommodate staff.
Obviously, the Committee's spoken in its order, as Mr. Ellison reminded us, and I would have to advise the Committee to -- to stick with its order for the sake of the process, and, you know, the timeliness that we're required by statute to keep, to the extent possible.

We charge the Applicant with the responsibility of all delays outside the Commission, and we'll continue to do so. The FDOC, to the extent it's been late, is also on a day for day slip, as the order says. But beyond that, it may be a problem for staff to get everything it wants. I'm not sure quite how to resolve this for you, and what -- what it means in terms of your postures in the case.

But I can tell you that -- that an early October action by the Committee would require an early August proposed decision, which would be two or three weeks after the close of the record. And there would certainly need to be briefs on these last topics. It's just not very realistic. If you're talking about the end of October, things start to open up.

So I can't give you a firm answer, other than to advise, as I just have, of the -- of the
Committee's concerns, and how -- and what it needs to do its job. You know, I'm not sure quite how that affects the parties and how they want to proceed.

It's very difficult to give guarantees when we don't yet have a record. And, you know, one could -- could estimate based on a best case and worst case scenario, but we don't know quite what we're going to have, from this point.

I'm not sure if any of you have anything further to say on that aspect. If you do, I'd invite your comments. Otherwise, I think we'll kind of march through the topics and see -- just try to nail down exactly how much time it's likely to take.

I -- I would like to recommend to the Committee that in light of the lack of intervenors in this case, and the apparent public acquiescence, if not support for the project, that we hold most of the topics, the hearings here in Sacramento, and that the information be entered in the record on declaration, which would be expeditious, and with the caveat that if -- if anybody does show up from an agency, or a member of the public, and has questions that the project
manager or the representatives cannot answer, that
we may have to call witnesses later. But I think
we can move very quickly in those first two days
and take most of the topics.

It looks to me like then, with the
exception of Water, Biology, and Alternatives, we
could take the evidence on everything else. Is
that correct?

That -- that is the June 15th date would
-- would -- by June 15th we would've received the
evidence. Everything except Water, Biology, and
Alternatives.

MR. ELLISON: From the Applicant's
perspective, that -- that's correct, and I would
add it's also the Applicant's position that staff
should be able to produce the Water and Biology
issues in time for hearing at that time, as well.
That's where our disagreement lies.

HEARING OFFICER FAY: Mr. Buell, let's
explore that. Why -- why couldn't staff produce
Water and Biology on that time schedule? What --
what is the missing part? Your monitoring --

MR. BUELL: Primarily, yeah. I think
it's twofold. One is that staff had a different
understanding of what started the 30 day clock and what the Applicant understood, or perhaps what the Committee understood. In retrospect, I suppose that staff made an error in agreeing to say that they were ready to produce an FSA 30 days after receiving the information, the draft. Specifically, the draft NPDES permit.

Staff was looking for more traditionally what we've accepted, in terms of starting your clock for producing an analysis, and that would've been the staff report from the Regional Water Quality Control Board that provided the basis for the Board's conditions of -- contained in the NPDES permit.

Barring that, and given that we're dealing with a different item, we're trying to piece together the information that is contained in various locations, such as the 316A and B studies, and the Applicant's enhancement program, mitigation program that they've identified, which has not been docketed yet, but we expect to receive by the end of this week, that document.

We're still looking to find the final permit conditions from our draft permit conditions from the Regional Water Quality Control Board.
They had sent out earlier a set of draft conditions to the working group, which are still under review. We understand those will be finalized and filed this Friday. So from our perspective, we're looking for a 30-day clock to start given -- at the end of this week, which would give us a publishing date of June 12th, if I'm not mistaken. That would be only three days before the hearings that you're talking about in the middle of June.

So I think there's a disagreement about whether or not -- when staff actually believes the clock is started. The 21st date is -- that I talked about earlier, and Chris had also, is simply we're trying to get as much time for staff as possible to complete its analysis. One of the things that's happened on this case is our biologist, who has been following the information, has retired, and we have a new staff that have come on board, and he's trying to get up to speed and complete his analysis on this case.

Although Dick Anderson, our staff biologist, has been working with the working group on this case, he's not as familiar as our staff person, Mr. Marc Sazaki, who has since retired.
So -- so all these things are the reasons why staff is making the proposal today that it has. And our view is somewhat slightly different than that of the Applicant.

Jeff --

HEARING OFFICER FAY: Without -- without getting into the question of whether staff should manage its affairs to adjust for retirement, I'd like to explore exactly what information is at risk here, and whether or not you would have it before you when you filed your FSA on Water and Biology. And if it is the kind of thing that the record could be informed of directly from the water agency, or some -- in some other way. In other words, could you -- could you have something that staff could support as an FSA if any of this information that right now you anticipate should be in there, were -- were to not be there.

Is -- is there a way to separate some of this so that it could come into the record, but perhaps wouldn't be filed at the same time as -- as an FSA, that would meet an earlier schedule, like by the end of -- by the end of this month.

MR. BUELL: What I would -- my response to that is I don't believe so. That what is
missing at this point in staff's analysis are what it believes are appropriate mitigation measures for this project. And what staff needs to do to develop those is to work with the other agencies that are involved in this, and that would be the Department of Fish and Game, as well as the Regional Water Quality Control Board.

That's an evolutionary process, and it's time that needs to conduct the analysis. If push were to come to shove, we'd have to prepare an analysis that -- or bite the bullet when that time came, and decide whether we have enough information to recommend approval or not to recommend approval of the project.

HEARING OFFICER FAY: Mr. Ogata, anything further?

MR. OGATA: I'm sorry, I guess my thought is, on that, maybe a little different than Mr. Buell's. Maybe we could separate that. But as you're aware, our process really requires us to coordinate with the other agencies, and to make sure that, to the extent feasible, all the disagreements are worked out. So that we don't have to take these subjects to Evidentiary Hearings and basically, you know, if everybody's
in agreement as to what the problem is, what the
mitigation is, how it's going to be monitored,
then it really will save a lot of time at the end.

So, I mean, my analogy is driving --
driving in rush hour. If you get on the freeway
when everybody else is driving, you're going to
get jammed at the end. If you wait ten or fifteen
minutes, oftentimes you avoid the rush hour
altogether.

So we're really looking at a situation
where if we spend an extra week or two
coordinating with the other agencies, discovering
what their -- their thoughts are about all of
this, we could presumably save time by not having
to adjudicate all these issues. Even if we were
to separate this stuff out and let the agencies
file their thoughts and comments separately from
the staff's FSA, if there is an issue that comes
up, then we're all going to be in this room having
Evidentiary Hearings about that instead of maybe
trying to work it out at a workshop. In which
case, you could probably do it by declaration.

So I think there is a huge difference in
terms of process here, as to how -- which way --
which road we want to go down.
I appreciate Mr. Ellison's comment that, you know, they're only agreeable to the schedule if they can meet their schedule. I don't -- certainly, if I was sitting in -- I'd say the same thing.

I guess I have a question for the Committee. You know, having heard what you said about schedule, I guess I -- I still have a question. I mean, is there no scenario that you can envision under which you could meet the schedule that staff and the Applicant have worked out? I mean, you're obviously concerned about there's no guarantees, and certainly we cannot guarantee, sitting here today, that there's not going to be a disagreement. But if there's a scenario in which there were no disagreements, is it still unlikely that the schedule could be achieved?

HEARING OFFICER FAY: Well, I think -- I think you've answered your question, that the uncertainties are pretty large, and so, as I said before, I don't see how the Committee can give an estimate of how to foreshorten this without knowing what's involved.

But I wanted to correct you. I think,
in fact, the difference we're talking about is --
is probably three weeks, if -- if we were
otherwise able to, as per Mr. Ellison's request,
finish receiving evidence in the middle of June,
as opposed to July 5th and 6th, that'd be a three
week difference. And move things up accordingly.

Now, I think -- I appreciate what you're
saying, and it's very constructive to have these
things fully resolved before they're brought to
the Committee. But that is what committees are
appointed for, and I -- I guess I would advise the
Committee to be reluctant to risk the schedule at
the expense of the Applicant, just to avoid having
to make a decision. It's one way of saying maybe
it's just fine to have the staff and the Applicant
come in, and the water agency come in to a hearing
with different positions.

It's something that the Committee may --
may have to sort out. Certainly it's not optimal.
But it may be preferable to -- to absolutely
having a three week slip in the schedule.

MR. OGATA: Well, there is one other --
yeah, I understand what you're saying. There is
one other circumstance about this case that is
unusual from other cases. Generally speaking, the
PSAs that we put out reflect some analysis and reflect on the issues that are reoccurring. In this case, in the Water and Biology area, the PSA did not reflect any of that stuff. In fact, this FSA will be like a PSA, because of the status of the information that was available at the time.

So, I mean, that's another problem that staff is juggling with here, you know, not only are we kind of behind the eight-ball here in time because of how this information has come to us and how we're trying to work with the Applicant and trying to get this out, but all that time would've been available to us to start working with the agencies to, as we went along, to resolve these issues.

So, yeah, the Committee is there to resolve issues. But it seems to me it also is not efficient to have you resolve issues in which the parties themselves, with a little bit of extra time, could take care of those things. Land Use is an example. I mean, we have an outstanding issue about coastal access. I think it will be resolved. But if you needed to hear that today, we'd have to litigate that today, and maybe not achieve an optimum solution in which, you know,
two weeks from now I think we are going to have an optimum solution.

So I can appreciate what you're saying. I think you need to also take a look at the fact that this case is not proceeding along the same kind of process as we have used in other cases. So, you know, I'm not -- I'm not always going to sit here and take the Applicant's side on schedule, I think, but I think in this case it -- it is worthwhile to consider whether or not, given the fact that if we're going to be able to resolve, you know, three-fourths of the issues, technical areas early, that there's going to be one or two technical issues that we're going to need a little more work on, but I -- I really can't sit here and think that we're going to be in disagreement about it, why the Committee couldn't say under those optimal circumstances it's somewhat likely, better -- chances are better than not that there'll be a schedule that we can agree to.

And certainly if something changes, and yeah, I'll -- everything's off the table at that point, I think, you know, that's fine with me. I don't think Mr. Ellison necessarily will agree
with that, but -- but at least that would give us
a basis to work from. Because if we're going to
have to go through this today and argue about the
start date over -- over staff's schedule, to be
frank, I'm not sure that's a good use of this
Committee's time, you know, if we're going to be
quibbling over -- over a few days here and there,
I think.

And it seems to me if we're more focused
on the outcome and seeing how we can all work
together on it, I think we'll be -- have a much
better project and process that will make everyone
happy.

I don't think us quibbling about when
the start date for when staff's analysis is going
to come out, and you have to handle that today, as
I said, I see that to be really a small thing in
the overall scope.

But -- but that's -- that's what we're
going to have to do if we can't agree that there's
some schedule that's likely to happen, that --
that we can -- that we're all happy with.

HEARING OFFICER FAY: Well, it affects
the ultimate date, obviously, because the longer
that the evidence is delayed coming in, and
because of the -- the time limits, like being
issued 14 days prior to the Evidentiary Hearings,
and then the time it takes the Committee to turn
around a Proposed Decision based on the record,
and then the time the Proposed Decision has to be
out for comment, all these things add up. And
some of them have no give at all, and some have --
have more flexibility.

But I tried to convey that it's not
completely elastic.

PRESIDING MEMBER KEESE: Mr. Fay, let me
-- in order to understand this. The three weeks
we're talking about here basically would double
the time that we have to turn around the product,
because under the expedited timeframe we're
looking at two or three weeks for us to turn
around the product. And if we add the three
weeks, then we get six weeks.

It -- it's hard for me -- it's going to
be hard, it's hard, in the most ideal situation,
to turn something around in two or three weeks.
And I think you're -- you're being generous in
saying that we can make it in six.

Unfortunately, with that -- we just --
there's no way schedule-wise that we can slip that
date of the 15th. If it slips -- I mean, if we
don't do it on the 15th, the first we can do it is
the 5th of July.

HEARING OFFICER FAY: I'd like to
explore something you said, Mr. Ogata, about a
different procedure in this case. What exactly is
the difference in this case?

MR. OGATA: Well, it's not a different
procedure. It's just there's a -- what happened
-- what happened in this case is different than
what we usually do in other cases. As I said, the
PSA normally is staff's first assessment of all
the issues --

HEARING OFFICER FAY: Oh, I see.
MR. OGATA: -- in areas. In this case,
in Water and Biology, there was really no PSA.

HEARING OFFICER FAY: Right. But my
understanding is there's no legal requirement for
anything other than the staff assessment. So that
--

MR. OGATA: That -- that's true.

HEARING OFFICER FAY: -- it doesn't have
to be broken down into a preliminary and a final
staff assessment.

MR. OGATA: That's true, and I'm not
saying that that's the way it needs to be. But
I'm saying in terms of how we coordinate with
other state agencies, and with other local
agencies, about issues, there really wasn't --
there weren't any issues to discuss because we
didn't know what they were. This is really the
first time where we have an opportunity to do that
coordination with those issues.

And certainly the working group that's
been going on has been doing -- taking care of a
lot of that. There's no question about that, and
I'm not going to dispute that. But nevertheless,
there still are some, you know, Fish and Game
still needs to be consulted about certain things,
and, you know, these are all things that --
they're minor details, but they have to be done.

Things like the monitoring is not a
minor detail. That really hasn't been addressed
in -- in any of the information that we have
today. And so that's -- that's an important area.
I mean, we're required by law to come up with a
monitoring plan. We have to ensure that all --
all the conditions are met. We haven't had a
chance to do that.

HEARING OFFICER FAY: And are you sure
that -- that having two more weeks, instead of
filing May 15th, filing at the end of May, or, I'm
sorry -- what was your filing date for the Water
and Biology?

MR. BUELL: We were suggesting Water and
Biology, I believe, on --

HEARING OFFICER FAY: June 21st.

MR. BUELL: Right.

HEARING OFFICER FAY: Yeah, okay. Are
you -- I mean, how can you be confident that these
large uncertainties can be resolved in that amount
of time? If there's been little communication
with the water agency, or at least that they have
not seen your preliminary take on that case.

MR. BUELL: Oh, I think it's a
mischaracterization that there's been little
communication between the agencies. There has
been communication between the agencies. They've
been party to the working group, and because of
that communication I think that we're a long way
along in the process.

But we need time to review the
information that we've been provided, and also
work with those agencies to work out the details
of mitigation that staff may think is appropriate,
that may not have already been identified.

MR. ELLISON: Mr. Fay, if I can offer

just a couple of comments.

Three things. First, I would urge the
Committee to keep in mind that there is a wealth
of information available about the impacts on this
project, precisely because we're talking about the
site of an operating project. I mean, I -- I have
been before this Committee, in fact, on green
field projects where the only information on these
issues was computer modeling.

What we have in this case is not less
information than the Commission has dealt with in
the past, but far more information, because we
have the actual impacts of the existing Moss
Landing Power Plant, as measured over 50 years.

The second thing I would urge the
Committee to keep in mind is that what we've been
waiting for is the last month of 12 months of
data. And that data has been coming in month by
month, and going before a technical review
committee that involves the water agencies, Fish
and Game, the Energy Commission, Coastal
Commission. And we have been saying for months
that a great deal of work could be done based upon
the information where we had nine months, ten
months, eleven months worth of data, because the
likelihood that the last month's worth of data was
not going to change these conclusions very much.

And one of the frustrations of the
Applicant is -- is the -- is the perspective that
we can't begin thinking about these issues until
we have that last "i" dotted and "t" crossed on --
on the data.

What you see now before you is all 12
months' worth of data, all written up and
complete. But there has been many, many meetings
to discuss these issues with the technical group,
and a lot of interagency coordination.

The last point that I want to make is
this. When we discussed with the staff this
morning what their need for additional time --
what drove their need for additional time, staff
indicated their desire to work with the other
agencies and to work with the Applicant on these
issues. And we fully support that. We -- we
certainly want to resolve as many issues before we
reach the Committee as possible, consistent with
the schedule.

But for -- just to give you a flavor of

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the discussion we had this morning, the staff
indicated that they want to hold a workshop with
the agencies, without the Applicant, to discuss
these issues, and then hold a second one with the
Applicant, later. In our view, one easy way to
save time in this process is just to have the one
workshop and include the Applicant in the first
one.

So it's -- it's issues like that that
are stretching out the schedule. And we're
perfectly amenable to doing that if it doesn't
impact the start of construction. But when --
when issues like that begin to impact the
construction date for this project, then we have a
problem. And that's where we are.

(Pause.)

HEARING OFFICER FAY: We're trying to
explore a little give on everybody's part. Ms.
Praul brought up the possibility that if -- and
correct me if I'm not doing this accurately --
that if the staff's -- I understand they feel they
need a 30 day period for analyzing some of this
information. If -- if that started this Friday
and was trimmed a bit so that the data was
provided on -- in their assessment on June 6th,
the Committee can be available for an Evidentiary
Hearing on June 20th.

That would move up by more than two
weeks the final date, and would give the Committee
a lot more flexibility in -- in meeting the
Applicant's request to have a -- a Proposed
Decision in early August, or at least in August.

Is that -- is that something that staff
could consider?

(Pause.)

MR. OGATA: May we have a minute. We're
going to talk to people that are directly affected
by this decision.

HEARING OFFICER FAY: Let's take a
little recess for -- what do you need, 15 minutes?
Okay, a 15 minute recess.
(Thereupon, a recess was taken.)

PRESIDING MEMBER KEESE: Let me just say
what is on the table, and what we're talking about
is we will have the hearings on the 7th and 8th.
We would have a hearing in the -- down there on
the 15th, and then we'll finish it up on the 20th.

That's -- that was what's out on the
table.

HEARING OFFICER FAY: And -- and I
believe --

PRESIDING MEMBER KEESE: Which would mean that the staff would -- we'd have the report on the 6th of June.

MR. BUELL: I understand that that's what -- is that the Committee's order, or are they asking for the staff's opinion?

PRESIDING MEMBER KEESE: We're asking for your opinion, first.

(Laughter.)

MR. BUELL: Then I will -- then I will give you my opinion.

Staff feels that we lost nearly a week here, and what was the previous agreement, we had, I thought, understood that the Committee's order was it was to be 30 days after receiving the draft final, or I've forgotten the exact language of the order, draft permit, NPDES permit. And as I understand it, we're not going to receive that until this Friday, or thereabouts. Perhaps we'll receive it tomorrow, and that will make my argument moot.

But it seems as though we've lost a few days here that are critical. It seems like every hour is critical to staff.
I wanted to point out a couple of things that we haven't really made clear previously, is -- is that the information that we have been waiting for thus far in the case has been normally information that we would have required for data adequacy. In this case, we accepted the -- this application with the presumption that we'd get this information in a timely manner for staff to prepare its analysis.

We're now in the, well, the eleventh hour of this process, and staff is being asked to prepare an analysis that normally would've taken us six months to prepare.

So with that understanding, you know, we're trying to accommodate both the Committee and the Applicant, and we would like to abide by the agreement that we had previously made, which was the 30 days after receiving the final draft permit, NPDES permit.

Jeff, is there something I left out?

HEARING OFFICER FAY: Mr. Ellison.

MR. ELLISON: We think the Committee's proposal is a good one. In terms of -- of the staff's concerns just expressed, I would point out a couple of things.
One, as I mentioned earlier, the --
well, let's take the worst -- the worst case is,
you know, we believe that the -- the -- that the
so-called final draft permit comes in this week on
the last day of the week. That's the 12th. What
we're talking about here is shortening the 30 days
that they -- that our agreement with the staff
called for by six days, from June 12th to June
6th. That's the worst case.

I would then point out that mitigating
that is the fact that the staff has had since
April 21st a draft of the final draft permit,
which, as far as we know, the only comments that
have been made on it, the only changes anybody's
asking for are changes that Duke has asked for,
and they are minor clarifications. Duke's
position is that the 30 days could have and should
have started on April 21st, based on that
information being available.

So I think it's a perfectly reasonable
schedule that the Committee has proposed, and one
that meets the important public objective of
having this project online for the summer of 2002.

Actually, let me add one other thing,
just -- Mr. Buell mentioned that these were data
adequacy requirements that had somehow been waived for this project. I want to make clear that Duke takes exception to that, does not agree with that. I don't think any data adequacy requirements were waived for this project. And in fact, for -- for most projects that the Energy Commission sees, the level of information that we're talking about here would be absolutely impossible at any time, and is certainly not a data adequacy requirement.

So to suggest that other projects have been held to this standard and that somehow Duke was -- was let off the hook on data adequacy is simply not, in my opinion, true at all.

HEARING OFFICER FAY: Okay. Any further response, then, on the Committee's proposal? I think we've heard from both parties, and understand their concern.

PRESIDING MEMBER KEESE: There's merit on both sides. I hear -- I hear the argument. It's sort of cutting the baby in half here to -- to decide whether it's April 21st or it's this Friday, but the Committee has deliberated here and I will suggest that I think that we should just order that we'll have the schedule of hearings on the 7th and 8th, hearing on the 15th, and the...
hearing on the 20th, and staff to have the report
by June 6th. With the concurrence of Commissioner
Moore. And certainly hope that the document shows
up by this Friday.

Mr. Fay.

HEARING OFFICER FAY: Okay. Thank you.
You have the Committee's order on that.
So those are the hearing dates and the filing
dates.

And I will talk to the parties
informally. We don't need to take time on the
record to do this, but I'd just like them to think
about the need, if any, to hold the Evidentiary
Hearings on Biology and Water down in Moss
Landing. If it is -- if it is not essential, both
from -- because of, for instance, lack of public
interest in those details, and if the agencies
which may comment are state level and located
here, as opposed to regional and located down
there, those are the kinds of factors I'd like to
know about. But it would give the Committee more
available time.

Commissioner Keese is the only one
available for that day on the 20th. The following
day he has to be in Burney for an Evidentiary
Hearing on the Three Mountain case. So more hours of hearing time would be available if we could hold the hearing here, but we don't want to give short shrift to the public and the agencies down there if these issues are important to them, and if they might wish to come in and comment. That's our concern.

Another factor would be if the parties feel very comfortable that these matters can be put into evidence without much dispute or cross examination, then, again, it would be easy to hold the hearing down in Moss Landing, because of the -- the shorter time for the hearing. But reality is it takes time to get down there and back, and the Chairman has more hours available if the -- if the hearing is here. So I'll talk to the parties later as to the location. But you have the time.

What I'd like to do is just go down the list, just take a few minutes, sort of a -- a checklist. I'd like the parties to interrupt me. Mr. Buell and Mr. Ellison, when I get to a topic that has any kind of wrinkle at all at this time, other than -- than -- that you know right now you could submit the written testimony on May 15th, with a declaration, and that it's undisputed. If
that is not the case, I'd like just to get the
details of what is missing and what the timing is.

MR. ELLISON: Mr. Fay, before we start
that can I ask a clarifying question?

HEARING OFFICER FAY: Sure.

MR. ELLISON: One of the ways that we've
attempted to expedite this process is to have the
Applicant's testimony due at the same as the FSA.
But the Committee order calls for all the
Applicant's testimony to be due on the 15th.
I would request, since it won't, I don't
think, affect the schedule and might actually
promote settlement of issues, if we could file our
testimony on the same day that the corresponding
FSA section is due. So, for example, we won't
file our Water testimony on Monday, but rather
would work with the staff to resolve these
remaining issues and then file together with them
on the 6th.

Does that make sense?

HEARING OFFICER FAY; Yeah, it makes a
lot of sense. And in fact, the only reason to
have moved forward the Applicant's filing was to
make it coincident with the staff's, so that staff
was not at a disadvantage getting something a week
later, after they had filed. But I think it's appropriate that we just link the testimony in each of the subjects to come in on the same day.

Okay. Project description, and I understand need conformance would be disposed of with just a statement by staff counsel.

Public Health, is that complete?

MR. BUELL: I believe we have no disputes on Public Health.

HEARING OFFICER FAY: Okay. And so the fact that there's some questions about Air Quality would not hold up Public Health; right?

MR. BUELL: Not at this time.

HEARING OFFICER FAY: Okay. But I think your -- your statement listed it as incomplete, but we can -- we can count on that coming in on the 15th.

MR. BUELL: We are prepared to publish it on the 15th, and --

HEARING OFFICER FAY: Okay.

MR. BUELL: -- I believe there will be no issues between the staff and Applicant.

HEARING OFFICER FAY: Okay.

MR. BUELL: On that topic.

HEARING OFFICER FAY: Worker Safety and

MR. BUll: Right. And I believe we had agreed to publish that on May 30th. Is that right? With Air.

MR. ELLISON: That's -- that's fine. That's acceptable to us.

HEARING OFFICER FAY: May 30th?

MR. ELLISON: There is one remaining issue that we want to work with the staff and the Coastal Commission.

HEARING OFFICER FAY: Can you just briefly tell us what that is?

MR. ELLISON; It's -- it's the -- one upper stack has a provision for the provision of coastal access, and we've made a proposal of different ways of providing that access. But we haven't reached final agreement with the Coastal Commission on that, so we need to continue to talk to them.

HEARING OFFICER FAY: So it's just the Coastal Commission that you need to reach closure with?
MR. ELLISON: Well, and the staff.

HEARING OFFICER FAY: And the staff.

Okay. Is the staff going to mainly defer to the Coastal Commission?

MR. OGATA: I wouldn't say we're going to mainly defer, but certainly they have a lot of input into this process. But we have some concerns, as well.

HEARING OFFICER FAY: Traffic and Transportation.

MR. BUELL: Traffic and Transportation, staff has -- has made changes in its conditions for certification to -- since the issuance of the PSA, and those have not been reviewed by the Applicant. There's a possibility that we may have some minor -- I'm hoping to be minor disagreements between the parties.

HEARING OFFICER FAY: Okay. But you're ready to file that on the 15th?

MR. BUELL: We're ready to file.

HEARING OFFICER FAY: Okay. And does that involve like bicycle lanes, or the easement in front?

MR. BUELL: Our conditions of certification deal with a number of issues,
including those, I believe.

HEARING OFFICER FAY: Okay. Anything from your point of view, Mr. Ellison?

MR. ELLISON: No, other than -- and I would say this about any of these issues, where there, you know, where we think there are no issues. Obviously, if we get surprises in the FSA we'll have to work with the staff on those, or -- or adjudicate them in the hearings. But we don't -- we don't anticipate that happening, and we don't know of any disagreements now.


MR. BUELL: Again, staff has made some changes to its conditions of certification that the Applicant may or may not take exception to, but until they see the draft they won't be able to make that determination.

HEARING OFFICER FAY: This in TSE?

MR. BUELL: This is in TSE.

HEARING OFFICER FAY: Okay. How do you
characterize that, since I assume there's little redesign involved at an existing site.

MR. BUELL: I believe it's primarily a change in the way that we're presenting some of the conditions. Previously, some of the items were in Facility Design, in terms of specifying how review of the design would take place, and now they're being placed in Transmission Line System Engineering. And so that change is minor, but it might be --

HEARING OFFICER FAY: So it has to do with --

MR. BUELL: -- highlighted.

HEARING OFFICER FAY: -- review. Not a direct requirement of a design change.

MR. BUELL: That's correct.

HEARING OFFICER FAY: And Compliance, I assume no -- nothing there.

Okay. Now --

MR. BUELL: Before I -- you went off quickly on Worker Safety and Fire Protection, and let me take an opportunity to identify that we're changing one of the conditions of certification dealing with the purchase of a fire truck. And -- although I think we're very close to reaching
agreement with the Applicant on what the nature of
that language should be. And again, there may be
some minor dispute there about how to phrase the
condition.

MR. ELLISON: I would mention one issue
related to alternatives. We do have a -- a legal
issue, not a factual issue, between ourselves and
the staff, which is that the -- our view of the
Warren-Alquist Act is that the act specifically
says you do not need to do a review of alternative
sites for a modification of an existing facility,
based on the fact that there's only one facility
that you can modify and there is no alternative
site that has the facility there, except for the
location of the facility itself.

Staff's taken the position that -- that
it is prudent, even though they don't believe it's
necessarily legally required -- I don't want to
put words in your mouth, Jeff, if I
mischaracterize it please correct me -- but even
though they believe it's not legally required, has
taken the view that it's prudent to go ahead and
do an alternative site analysis. And they have
done -- done one in the PSA, and I understand will
do one in the FSA.
Our disagreement with the staff is not
with their conclusion or with any of the facts,
it's not an issue for cross examination or
adjudication. But we may want to file a brief
before the Committee and ask for a ruling on the
issue of whether the Warren-Alquist Act requires
that analysis or not.

HEARING OFFICER FAY: Okay.

All right. Air Quality, you expect the
FDOC to come in by Friday?

MR. BUELL: That's the latest that I've
heard, yes.

HEARING OFFICER FAY: Okay. And will
that -- is your expectation that there'll be few
-- few changes there, and you'll be able to file
on that on the 15th?

MR. BUELL: It's my expectation that our
staff will be able to incorporate the conditions
of -- in the FDOC into our FSA by the end of this
month, June -- May 30th, or 31st, depending upon
the Committee's pleasure.

I don't see any major issues in that
area at this point in time, but I could be
mistaken.

HEARING OFFICER FAY: Okay. Anything
further on alternatives, Mr. Buell, from your perspective? Is that pretty --

MR. BUELL: No.

HEARING OFFICER FAY: -- pretty much just a legal --

MR. OGATA: Right. We're just waiting to see the outcome of Water and Biology, but the section is prepared, just awaiting the outcome of any --

HEARING OFFICER FAY: All right.

MR. OGATA: -- of a significant impact analysis.

HEARING OFFICER FAY: And I think we've got -- we've had a pretty thorough discussion on Biological Resources and Water Resources. So based on the Committee order, the staff and Applicant will file their testimony on that on June 6th, and we'll hold the hearing on that, plus alternatives, I guess, as it affects those areas, on June 20th, as well.

I'm assuming Air Quality would be on held on June 15th.

Just as a recap, then. The testimony to be filed -- I'm working backwards now -- on June 6th, is Biology, Soil -- I mean, Soil and Water,
and Alternatives. And to be filed on May 30th --

Mr. Buell, what -- what are our topics?

MR. BUELL: I believe we talked about

Air Quality and Land Use.

HEARING OFFICER FAY: Land Use. Just

those two? Okay.

And so the -- and those would be heard

on June 15th. And then everything else would be

filed on May 15th.

Anything to add to this? Any questions?

MR. OGATA: Not in respect to any of

this, but I just wanted to give you kind of an

interesting side note about the compliance matters

in this case.

Commissioner Moore actually raised it,
brought it to my attention -- reminded me of it.
The County of Monterey does not currently have a

chief building official, and they have declined to

be our delegate in this matter if this case goes
to licensing. And so our staff is now in the

process of determining how we are going to carry

out the compliance monitoring for this project

without a local CBO.

It appears that we will be -- that Duke

will be assisting us in identifying prospective
companies that will become the Commission's
delegate in overseeing all the plan checks and
inspections. And we're still going to have to
work out how the County of Monterey gets that
information, if they're interested in getting that
information. Apparently they're just now not in a
position to deal with this.

So that's -- that's an interesting side
note for the Commission. We'll be actually
overseeing the construction of a power plant,
apparently.

HEARING OFFICER FAY: But my impression
is that in terms of time criticality, that that
has more to do with from the date -- if the
Commission is to approve this application, it's
from that date on, rather than anything between
now and that date.

MR. OGATA: Well, that's correct, except
for the fact that because of our -- our conditions
do require lead time approvals for a number of
things, and as you've heard several times today,
they would like to start construction October 1st,
Commission staff and the delegate may be
responsible for starting to review -- not approve,
but starting to review a number of designs and
things like that, in the event that the project becomes certified by the Commission, at which point then I suppose we could actually approve all the designs.

HEARING OFFICER FAY: Are you aware of the Commission doing this ever before, using a hired consultant?

MR. OGATA: I -- well, hired consultants are typically used, but typically the Commission is not the -- the overseer of the consultant. It typically is the local building official.

HEARING OFFICER FAY: Okay. Is this something the Committee needs to be concerned about, in terms of the staff's ability to deal with the issue?

MR. OGATA: I sure hope not.

(Laughter.)

HEARING OFFICER FAY: Okay.

MR. OGATA: I just wanted to bring it to your attention, because it is very unusual, and because we are going through some issues about, you know, public notice, things like that, because a number of these things are being done in the siting, during the siting phase. Again, it's not unusual for Applicants to want to do some advance
work with us, because of the lead times and
things, but -- but this is really different
because of the situation we're in.

HEARING OFFICER FAY: Well, obviously
the Applicant has an incentive to try to make this
go smoothly, and I'm sure is going to help staff
on that. Knows that the staff isn't going to be
able to send half a dozen people from the Siting
Division down there with hard hats to take a look
at things.

MR. OGATA: No. They're going to be
very cooperative. They've just, you know, we're
all in a new area here, so we've been struggling
through it.

HEARING OFFICER FAY: Right. A busy
time.

Okay. Any further comments then, before
we adjourn? I think you have -- you have the
Committee's order. We will get out something in
writing, but you have it officially, and you can
rely on it.

Thank you all. We're adjourned.

(Thereupon, the Prehearing Conference
was adjourned at 2:50 p.m.)
CERTIFICATE OF REPORTER

I, DEBI BAKER, 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 of said Prehearing Conference, nor in any way interested in the outcome of said Prehearing Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2000.

DEBI BAKER

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