

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)
Application for Certification) Docket No. 979-AFC-2
for the Sutter Power Plant Project))
_____)

PREHEARING CONFERENCE

Veterans Memorial Community Building
1425 Circle Drive
Yuba City, California 95658

Wednesday, August 19, 1998
10:00 a.m. to 3:10 p.m.

Contract No. 170-98-001

Reported by: Deborah Mayer, CSR #9654

A P P E A R A N C E S

Commissioners Present:

WILLIAM J. KEESE, Chairman

MICHAL C. MOORE, Presiding Member

Staff Present:

GARY FAY, Chief Hearing Officer

SHAWN PITTARD, Aide

CYNTHIA PRAUL, Aide

For the Staff of the Commission:

PAUL C. RICHINS, JR., Siting Project Manager

DICK RATLIFF, Senior Staff Counsel

For the Applicant:

CHRISTOPHER T. ELLISON, ESQ., Ellison & Schneider

CAROLYN A. BAKER, ESQ., Edson & Modisette

CHARLENE L. WARDLOW, Environmental Manager, Calpine

CURT HILDEBRAND, Project Director, Calpine

For the Intervenor:

ANN BROADWELL, ESQ. of Adams, Broadwell & Joseph,

for: California Unions for Reliable Energy (CURE)

Interested Agencies:

LOREEN R. McMAHON, Western Area Power Administration

GEORGE CARPENTER, Sutter County Planning Staff

For the Public:

ROBERTA MENDONCA, Public Advisor

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

2 WEDNESDAY, AUGUST 19, 1998, YUBA CITY, CA, 10:00 a.m.

3 COMMISSIONER MOORE: Welcome to the Prehearing
4 Conference on the Sutter Power Plant Project. I'd like
5 to introduce Commissioner Bill Keese, to my right, and
6 Hearing Officer Gary Fay, who is here on my immediate
7 right, who will be conducting most of the proceedings
8 today. He knows the procedures down cold. In addition,
9 we have Staff members with us, Shawn Pittard on my left,
10 who is my aide, and the aide to Commissioner Keese,
11 Cynthia Praul, who is on the far right.

12 Today, for those of you who received the
13 notice, and I assume that you received notice to be here
14 today, we're conducting what's known as a prehearing
15 conference, and in this prehearing conference we will be
16 considering matters considered to be noncontroversial,
17 relatively noncontroversial, but also opening up
18 questions about other items that will be in front of us.
19 I in fact have several questions of Staff about
20 procedures that I want to get out on the table. I'll be
21 doing that pretty early in the hearing, and we'll also
22 be taking extensive testimony from the Applicants,
23 Intervenors, and the public. We'll proceed in a pretty
24 logical way.

25 In terms of hearing people, nobody will be
26 denied a chance to speak on a topic, I assure you, and I
27 also want to ask you that when you come up and speak to
28 us that you enunciate your name very clearly for our

1 scribe who is over on the right and will be taking notes
2 on that, and you'll know better than we if you have an
3 unusual name; take the time the spell it out for us
4 because it makes it a lot easier on her and the record.

5 Those of you who are new to these hearings,
6 let me remind you that one of the rules of the game is
7 that you can't use any acronyms in these hearings
8 because you'll get called on it. So, if you've got
9 something that you really feel like you want to just
10 lapse into an acronym on, stop yourself and spell it
11 out, because frankly, we get tired of hearing the
12 acronyms tossed around, and I'm sure the public does.
13 So if you've got a term that finds its way into
14 acronym-ism, and there's probably not a logical word in
15 the English language, then stop, and spell the phrase
16 out fully. It will make it easier in the long run for
17 all of us. Let me ask Gary Fay for some comments on the
18 procedures on the topics today, and then I have some
19 questions for Staff.

20 HEARING OFFICER FAY: Okay. Thank you,
21 Commissioner Moore. The purpose for the hearing today
22 is really just housekeeping, and I hope nobody was
23 misled by the notice. This is something that we use
24 before a large set of evidentiary hearings to just get
25 together in a somewhat informal way and find out okay,
26 who's ready to go to hearings and on what topics. We've
27 got a lot of topics to cover in this case, and we want
28 to know when everybody's set to go to hearings. If we

1 schedule the hearings before people have their witnesses
2 lined up or their testimony all set to go, there's no
3 point, because they would show up and just have to tell
4 us they're not ready. So we want to make the time for
5 the evidentiary hearings as efficient for everybody as
6 possible, so I'm hoping today we can get the kind of
7 information that will tell us one, when can we start
8 these hearings, and two, when we conduct them, how much
9 time do we need to allow for certain topics.

10 Some topics are more controversial than
11 others. There's going to be witnesses probably offered
12 by several parties, perhaps all three of the parties in
13 the case, and in each case, there might be
14 cross-examination if the topic is controversial.
15 Obviously, a topic like that is going to take a lot
16 longer to get through than a topic that is not in
17 controversy, not disputed, that's merely a presentation
18 or just a summary of what was in the Applicant's
19 Application for Certification and the Staff's Final
20 Staff Assessment.

21 In those situations where the subject is not
22 in dispute, then it will really be a summary for the
23 public just so they better understand what kind of
24 analysis went into a certain subject. Perhaps workers
25 safety might be one like that, and you would at least,
26 at the very least, be exposed to experts who said
27 something like, I conducted a review of the Applicant's
28 proposal for workers' safety, and I found the following

1 things. So, at the very least, we will have some kind
2 of presentation on each topic, and at the end of that,
3 the public would have a chance to ask questions.

4 We have formal cross-examination from the
5 parties on the disputed topics, but then after that,
6 we'll allow the public a chance to ask questions. So
7 we're sort of doing two things: we're conducting
8 something that is a little bit like a civil trial, but
9 we're also conducting something that is like an informal
10 hearing. We're doing this jointly. We, at the Energy
11 Commission, always do it this way, but we're doing it
12 jointly with the people from Western, the Federal
13 Government, so that our hearings can also serve the
14 purpose of the kinds of hearings they have when they do
15 an environmental impact review under the National
16 Environmental Protection Act.

17 So, that's basically the purpose. And one of
18 the things that we're going to try to find out today is
19 the timing, not only on when people are prepared and
20 have enough information to go forward to hearings, but
21 especially regarding members of the public, which topics
22 are of particular concern to you, that you need or would
23 like to have held at night? We want to make the
24 hearings as available as possible, but we can't hold
25 them all at night. I'm sure you'll understand. So, we
26 would like to know which ones are more important for you
27 to have in the evening, and we'll try to accommodate
28 that.

1 After today, in a week-and-a-half or so, the
2 Committee will issue a hearing order, assuming we get
3 enough solid information today to set the hearings, and
4 it will schedule the dates of at least the initial set
5 of hearings, and we'll describe who the witnesses are
6 and what topics are being adjudicated and what topics
7 are merely being presented in a summary fashion, and
8 what day the hearing will occur on a certain topic, that
9 type of thing, so that people can sort of target their
10 time, and if you have a particular interest in water
11 quality, you can show up on that day and have a
12 reasonable expectation that that subject is going to be
13 heard at that time.

14 Before I get started, I'd just like to ask if
15 there are any preliminary matters. Mr. Ellison?

16 MR. ELLISON: No, we have no preliminary
17 matters.

18 HEARING OFFICER FAY: Staff? Mr. Ratliff?

19 MR. RATLIFF: No.

20 COMMISSIONER MOORE: Okay, then let me take
21 this back for a second; I'm remiss, and I should have
22 asked Commissioner Keese if he had any opening remarks
23 that he'd like to make about this.

24 COMMISSIONER KEESE: No.

25 COMMISSIONER MOORE: Before Mr. Fay gets
26 started, I have a couple of questions that I'd like to
27 get on the table from Staff and address the data
28 questions here. I'm a little chagrined as I read

1 through the documents and look at our data adequacy
2 procedures to find that there are so many unanswered
3 questions contained in the remarks here, and as a
4 consequence, I think it's only fair to pre-warn people
5 that I'll be asking my colleagues to initiate a review
6 of the procedures of data adequacy in the near future
7 because it seems to me that one of the things that could
8 happen as a result of a process like this getting
9 carried out, the way it's started is that we could find
10 ourselves taking testimony or taking updates on
11 materials right up to the last minute, which is not
12 advantageous for the Applicant and certainly not
13 advantageous for the public as a whole, represented by
14 us and by the County.

15 So, my question, I think it goes probably to
16 Mr. Ratliff to address some of these, is, at the point
17 where we have indicated that there would be a presiding
18 member's decision, which is about ten months into the
19 process, which is not very far off, and assuming that
20 the presiding member intends to issue a decision at that
21 point, has every intention of doing that, which I do,
22 what happens if the submissions are inadequate at that
23 point, just haven't been filled in; the blanks are still
24 blank? What options are available? Can we issue a
25 decision in the absence of incomplete information, or
26 can we simply say, this is--this is not good enough, or
27 I'm going to judge it on the basis of what's already on
28 the record? What are the options?

1 MR. RATLIFF: I may also want to let Mr. Fay
2 answer that question in his own way, but in the past
3 what we've done is we've completed the evidentiary
4 record before we issued any decisions, and that makes
5 logical sense. You really can't issue a decision until
6 you've got the evidence and you've had a chance to
7 consider it, and it's certainly not unprecedented for us
8 to have cases that have taken more time than was in the
9 original schedule, and that happens for a variety of
10 reasons; in this case, it's happened for a couple of
11 reasons which we'll probably discuss today, one of the
12 them being that we're trying to coordinate our schedule
13 with federal agencies who also have their procedural
14 needs, some of which have not been entirely familiar to
15 us, and so we find ourselves at a point where we aren't
16 really able to keep to the schedule, to my mind, not
17 through anyone's lapse or fault, not the Applicant's,
18 certainly. They've been forthcoming and cooperative,
19 but we're still getting information from them on some of
20 the issues that are critical to whether or not we will
21 determine whether or not we adjudicate those issues or
22 not, so we aren't entirely ready; and, I would suggest
23 that probably what you need to do is schedule the
24 hearings when you have your evidentiary record; I mean
25 schedule your decision for when you have your
26 evidentiary record complete.

27 COMMISSIONER MOORE: You can appreciate my
28 position where I find myself in the middle of a process,

1 and one of the fundamental questions remains unanswered,
2 that is, what the County land use decision is likely to
3 be in terms of amending the General Plan, and I have to
4 say I'm chagrined that I find myself in a position
5 where, what I would consider to be, a natural part of an
6 initial filing, which is left until way late in the
7 process--suppose, for instance, the County were to deny
8 a change in the General Plan; what would happen?

9 MR. RATLIFF: I can only speculate what would
10 happen. If there is no conforming change in the General
11 Plan in the zoning, then obviously the Commission cannot
12 make the findings that there is conformity with local
13 laws and ordinances.

14 COMMISSIONER MOORE: Can we override a local
15 land use decision?

16 MR. RATLIFF: You don't override the decision,
17 but you make findings of--basically, you make findings
18 which would allow the license to issue, despite the
19 nonconformity. It's basically a preemption of local
20 ordinance.

21 COMMISSIONER MOORE: Have we ever done that in
22 the past?

23 MR. RATLIFF: We did it in the Geysers 16 case
24 back in 1981, I believe, when there was an alleged
25 nonconformity with Sonoma County's General Plan zoning.

26 COMMISSIONER MOORE: I think that it's only
27 fair to say that the--we'll try and keep the hearings on
28 track, to the schedules that we adhere to, but it will

1 be pretty unusual to find me, at least as one member,
2 willing to continue stuttering, as it were, with
3 information coming in, post the point when we intend to
4 offer a decision. So, changes in plan, additions to
5 information that really should have been in earlier are
6 probably not going to help the process very much and
7 certainly won't be a help to making the decision, which
8 will be coming out here in the near future.

9 Let me turn this back to Mr. Fay, and I know
10 he's got a schedule he'd like to adhere to as far as
11 calling information up.

12 HEARING OFFICER FAY: Thank you. I'd just
13 like to add for clarification, since we do have some
14 representatives from the County here, that concept of an
15 override is not something that's done lightly by the
16 Energy Commission, and in no way is it routine, and it
17 would add a major barrier to the Applicant's processing
18 of this case, and that burden would have to be overcome
19 to convince the Commission that an override should be
20 enacted. So, there's certainly a great deference to
21 local land use concerns.

22 This is not the only area where information is
23 not available at this time for a variety of reasons, and
24 I thought what I'd do is start out by asking Ms. McMahon
25 to review for us what she told me before the hearing, in
26 terms of the time sequence between the Federal
27 Government getting a document that it considers adequate
28 to start its time frame, and noticing hearings that they

1 would consider adequate for the EIS. We're trying to
2 make our hearings be those hearings, so what I
3 understand is it would slow down our schedule. Could
4 you explain that briefly?

5 MS. McMAHON: We have statutory obligations
6 under our environmental compliance regulations. We're
7 required to notice hearings in the Federal Register for
8 two weeks, fourteen days, prior to any holding of any
9 hearings that have to do with environmental impact
10 statements. The procedures for getting the document to
11 EPA, Environmental Protection Agency, in Washington,
12 those internal procedures usually take two weeks between
13 the two agencies. Most of that time is with EPA. They
14 file, or they notice every Friday in the Federal
15 Register, and that require that federal agencies get
16 documents to them on the Wednesday or Thursday a week
17 before. So most of that time is taken up. But it also
18 will have to go through our internal signatory process;
19 so Western's anticipating it's going to be four weeks
20 from when we get a document to when we can hold a
21 hearing, and when we get the document and send it to
22 EPA, we also will have to notice in the Federal
23 Register, when those hearing dates will be.

24 HEARING OFFICER FAY: So, to translate this in
25 terms of the calendar, if Staff is able to publish an
26 FSA that the Federal Government finds is sufficiently
27 complete--

28 COMMISSIONER MOORE: A Final Staff Assessment.

1 HEARING OFFICER FAY: --a Final Staff
2 Assessment, on September 4th, is that realistic--Mr.
3 Richins is indicating yes--then it would be no sooner
4 than October 2nd before any hearings could begin; is
5 that correct?

6 MS. McMAHON: That's correct.

7 HEARING OFFICER FAY: So, we're talking about
8 at the earliest, the first full week in October, which
9 is two weeks, or week-and-a-half at least later than we
10 had anticipated on our schedule. But that is do-able;
11 is that true?

12 MS. McMAHON: Yeah.

13 HEARING OFFICER FAY: Okay. Mr. Ellison, are
14 you familiar with that wrinkle, or is it news to you as
15 well as it was to me this morning?

16 MR. ELLISON: Well, I apologize. I was
17 actually checking on an issue with my client, but the
18 four weeks that was just described by WAPA sounds
19 appropriate to us.

20 COMMISSIONER MOORE: By the Western Area Power
21 Association?

22 MR. ELLISON: By the Western Area Power
23 Association, sounds appropriate to us, and the schedule
24 through October 2nd also sounds appropriate.

25 HEARING OFFICER FAY: Okay. So, I move this
26 up to the front today because it affects other things.
27 So, rather than looking at September 23rd as the
28 beginning of hearings, can we realistically look at

1 October 5th as the beginning of hearings, and if that is
2 a problem, please let me know.

3 Now, one of the things I'd like to do today is
4 find out when parties have absolute constraints, because
5 if witnesses are not available, or counsel or
6 Commissioners are not available, then that will affect
7 our ability to schedule things, and today's the time to
8 find that out. So, as we deal with these dates, please
9 let us know.

10 I would like to, then, focus on at least for
11 the initial set of hearings, focus on October 5th
12 through 16th. We've got a holiday in there, October
13 12th, I believe, according to my calendar, and I'm sure
14 there's a business meeting in there one of those
15 Wednesdays. So, it may have to go beyond that two-week
16 period, but I'd like to focus on that and have people
17 respond as to their availability.

18 MR. RICHINS: Gary, could I make one comment?
19 During the course of the workshops we've held here on
20 the Preliminary Staff Assessment, many of the farmers
21 have come up to me and indicated that that is in their
22 prime harvest season, and I'm not sure exactly the
23 length of the season, but I had a sense that later would
24 be better than earlier, and so they may opt or request
25 that hearings be held more towards the end of October as
26 opposed to early October, and so before maybe you settle
27 into a date, maybe you might want to query the public to
28 find out if they have any preferences.

1 COMMISSIONER MOORE: Plus, as Gary indicated,
2 we're open to meeting in the evenings, and so we've got
3 some flexibility in that way, too.

4 HEARING OFFICER FAY: Ms. Mendonca, are you
5 familiar with the availability of most of the growers?
6 Do you know what the target should be?

7 MS. MENDONCA: Well, I think it would be
8 better if the individual interests made a comment,
9 because we have some fruit growers that have special
10 needs and there are some rice growers that have special
11 needs to set up their harvest, so it's not just
12 clear-cut one evening is better than another time. I
13 think that they're willing to speak up and let you know.
14 Several of them have spoken to me about it, so--

15 HEARING OFFICER FAY: Sure. Well, at this
16 point we're trying to rough out a block of time for the
17 hearings, and since it has been slipped a couple weeks
18 just by this information from Western, we may find that,
19 by the time we can do this, we have all the information,
20 including some of the air and biology and water
21 information that was anticipated coming a little late.
22 Is that correct, Mr. Richins?

23 MR. RICHINS: Well, we would not be prepared
24 to put on any information for those four areas that are
25 trailing: the water, biology, air quality, and public
26 health. Those would not be ready for several weeks
27 afterwards, so it appears that you would probably have
28 to have hearings later on in the month to accommodate

1 those--

2 HEARING OFFICER FAY: What about dates? Can
3 you give me a date?

4 MR. RICHINS: --subject areas.

5 HEARING OFFICER FAY: Give me a rough idea of
6 when you might be ready to go forward on those subject
7 areas, the trailing ones?

8 MR. RICHINS: As an example, the Preliminary
9 Determination of Compliance from the Air District, the
10 30-day comment period for that document is up August
11 30th. They have then another 30 days in which to
12 resolve issues and come up with a final determination of
13 compliance, so that would put it on September 30th. So
14 you would want that information, plus a fair amount of
15 time for review by the public prior to going to any
16 hearing.

17 So, if you assume a two-week review period and
18 assume that they keep to the schedule, then you're
19 looking at middle to latter part of October.

20 MS. WARDLOW: This is Charlene Wardlow. I'd
21 like to make a correction on the review for the
22 Preliminary Determination of Compliance. The Air
23 District had requested, in order to take--they were
24 going to take two extra weeks to complete the document,
25 and as a result of that, they would give up two weeks of
26 their 30-day review the at the end of the process to
27 keep on the time frame, so the final will be scheduled
28 to be issued September 16th on schedule.

1 HEARING OFFICER FAY: Okay, thank you. Well,
2 so, Mr. Richins, might that move it up two weeks?

3 MR. RICHINS: Yes, it might, but also we don't
4 know EPA's comments regarding the Preliminary
5 Determination of Compliance. As of yet in the High
6 Desert case, they asked for that document to be reissued
7 in another 30-day review period. We don't know what EPA
8 will say as it relates to this Preliminary Determination
9 of Compliance, and they could do the same thing for
10 different reasons and ask for the Preliminary
11 Determination of Compliance to be reissued and another
12 30 days. So it's unknown at this time.

13 HEARING OFFICER FAY: Well, we can't
14 anticipate that one way or the other. How about the
15 biological opinions? Can you give us an estimate on
16 when we might have that information?

17 MS. McMAHON: I can speak to that. This week,
18 I spoke with--there's two biological opinions that
19 Western is awaiting. One is with National Marine
20 Fishery Service. I spoke with them on Monday. They
21 felt that that particular one would be able to be
22 finished through informal consultation and that we
23 should be able to wrap that up in the next two weeks.
24 U.S. Fish and Wildlife Service, on the other hand, has
25 felt that in light of the information that they received
26 with the temperature and water quality modeling reports
27 that they are going to need more time, so they've
28 already slipped the time that they had originally

1 indicated by letter to Western. They had indicated
2 earlier that they would have a draft biological opinion
3 to us on August 12th, and yesterday they told me that
4 they can't give me any time line at all.

5 COMMISSIONER MOORE: What kind of a hammer do
6 you have to hold them to any kind after schedule? I
7 mean, having them arbitrarily slip it, and then tell you
8 that they can't give you a time line is marginally
9 unacceptable, I'd say. In terms of the decision
10 process, what kind of hammer do we have?

11 MR. RICHINS: I think the reason they are
12 having difficulty completing their biological opinion is
13 based on information related to water quality and impact
14 on biological resources. Calpine will be doing some
15 additional modeling. The Energy Commission Staff will
16 be providing them with some information by Friday or
17 Monday of this week. Calpine has indicated to us that
18 they will then take that information and will take them
19 one to two weeks to do some additional modeling. Once
20 U.S. Fish and Wildlife Service receives that
21 information, I would think then they would be able to
22 assess that information and come up a with the draft
23 biological opinion.

24 COMMISSIONER MOORE: They don't start the
25 clock back to zero then, though? I mean, they're-

26 MS. McMAHON: Technically, they could. She
27 didn't indicate that to me, and technically, they could.

28 COMMISSIONER MOORE: Are they overworked

1 enough right now that they're likely to take those
2 default opportunities

3 MS. McMAHON: They are very overworked, and
4 there is no stick.

5 COMMISSIONER MOORE: Very diplomatic. Thank
6 you.

7 HEARING OFFICER FAY: Is there any information
8 that Calpine is expected to provide that will affect
9 this schedule?

10 MS. WARDLOW: This is Charlene Wardlow again.
11 We are trying to prepare the data to redo some of the
12 modeling based on the workshop that was held from the
13 12th last Wednesday, and we're trying to expedite that,
14 realizing that modeling does take some time, and provide
15 clearer data or information, based on the information
16 that came out of the workshop last week. I would agree
17 with the comments that once they get that information
18 they should be able to make a decision, obviously
19 realizing Loreen's comment that there is no stick to
20 wield.

21 MR. RATLIFF: We likewise are also awaiting a
22 biological opinion from the Department of Fish and Game,
23 and my query to the biologists has indicated that we
24 have no firm time line for receiving that as well, only
25 that they're considering it and they're looking at this
26 latest modeling information that is the source of a lot
27 of discussion right now between Staff and CURE and the
28 Applicant.

1 HEARING OFFICER FAY: Okay. Would this be
2 aided at all if the hearings were to begin mid-October
3 at the earliest with the possibility that we might be
4 able to schedule some of these air quality and
5 biological and water quality at the end of October? Is
6 that a possibility?

7 MR. RATLIFF: I think so. I mean, it seems to
8 me it should be. Again, we don't control the U.S. Fish
9 and Wildlife Service, nor can we guarantee that we'll
10 have a jeopardy opinion from the Department of Fish and
11 Game.

12 COMMISSIONER MOORE: Well Dick, let me just
13 put out a caution here, and that is in terms of
14 bifurcating these issues. I'm not likely to support
15 something that vulcanizes issues so much so that they
16 get taken in isolation from one another. I'd much
17 rather push it off, schedule everything at once back to
18 back, two days in a row, whatever it takes, so that the
19 interrelationships can be fully assessed because this
20 may be our test case, I don't know. We don't have an
21 NOI procedure to go through to look at alternatives, so
22 a lot of emphasis is going to be put on the cumulative
23 and alternative impact analysis in these hearings. I
24 want to be sure that all interrelationships can be drawn
25 out in a forum. So for instance, air quality and water
26 quality, while not normally linked, in fact do have some
27 cross-over, I'd be very reluctant to have to have them
28 put on separate days, let alone separate weeks. They

1 really should be considered in collaboration with one
2 another.

3 So, much more likely that we push things back
4 until we've got a comprehensive mass of information to
5 consider, and in the end, putting things off far enough
6 may inconvenience the Applicant. They'll want to put a
7 little pressure on to get all the pieces of the puzzle
8 to come together. Not a threat. It's simply an
9 observation that can't do a thorough analysis at this
10 end without having the blanks filled in.

11 We're debating some of the dates up here,
12 which is what the conversation is about. Some of the
13 most open dates that we've come up with so far, and let
14 me turn to Commissioner Keese and ask him whether these
15 might fit in his schedule or not. Is 15, 16, October to
16 initiate this, Bill, uh--

17 COMMISSIONER KEESE: October is fine.

18 COMMISSIONER MOORE: Is it? Okay. Okay,
19 good. I've always thought that myself. A good start to
20 autumn. Fifteen, sixteen October looked like some
21 likely dates. We've got a lot of other things that
22 we're holding for the Commission after that for the
23 Commissioners to begin looking at things. I would say
24 we start to push off into the first part of November
25 before we get to other open dates, at least on my
26 calendar. So let's at least preliminarily, unless I
27 hear any real opposition--obligations, no,
28 opposition--let's target 15, 16 October to try an get

1 some of our work done. And obviously, we'll be open to
2 what the residents have to say, but I'm just using these
3 as a balloon for people to shoot at, so let's try that
4 and see if we get anywhere close. If we're not, then
5 we'll start adjusting schedules and see what else we can
6 do.

7 HEARING OFFICER FAY: I believe we're going
8 to need more than the two days, even to deal with the
9 first set of issues. But, I guess we'll just focus on
10 the 15th and 16th now, and then the first week of
11 November--

12 COMMISSIONER MOORE: Um hum.

13 HEARING OFFICER FAY: --for after that. We
14 start with the Commissioner, presiding Commissioner at
15 least, because we do need that to hold hearings. Then
16 we also need some parties. Do those dates work for the
17 Applicant?

18 MR. ELLISON: Just to clarify, we're talking
19 about the 15th and 16th in the first week of November?

20 HEARING OFFICER FAY: At this point, yes.

21 MR. ELLISON: We can make that work.

22 HEARING OFFICER FAY: Okay, Staff?

23 MR. RATLIFF: Yes. Clarification--the 15th
24 and 16th, would it be your intent to start with the
25 issues that do not appear to be necessary to adjudicate?
26 Is that what you intend to do there?

27 HEARING OFFICER FAY: Yes, although it seems
28 to me, one of the matters that do need to be adjudicated

1 according to your prehearing conference statement
2 included visual, which did not have missing information
3 or trailing information. So, visual could be brought up
4 at that time. It depends how much we could get done.
5 But if we're using evenings as well, it's possible that
6 visual resources could come up at that time.

7 MR. RATLIFF: Okay. Would you indicate that
8 by a scheduling order at some point so we'll know what
9 to tell our witness--

10 HEARING OFFICER FAY: Oh, yes.

11 MR. RATLIFF: --whether we're going to go on
12 that, if we're going to do it.

13 HEARING OFFICER FAY: I want to reiterate is
14 what we're doing today is gathering information, and the
15 Committee will decide how they want to schedule the
16 hearings and send a hearing order out to everybody so
17 the parties will have plenty of information, plenty of
18 notice ahead of time on when to have their witnesses
19 available.

20 MR. RATLIFF: Okay. We're still hopeful that
21 maybe visual won't be adjudicated, but we can't say with
22 any confidence it won't be, so--

23 HEARING OFFICER FAY: Right. And the other
24 point of course, it's in the Committee's interest to
25 have as little to adjudicate as possible, and it's in
26 the parties' interest as well, because Lord knows what
27 the Committee might decide, and if you people work this
28 out among yourselves, you know that you have a good

1 chance of having that approved. Therefore, we want to
2 encourage the parties to meet in workshops and try to
3 settle these matters, and to the extent that they are
4 not settled, they will still be in dispute. There might
5 be agreement between the Staff and the Applicant but
6 perhaps not CURE; I want to make that clear that nobody
7 will be cut out, but it does simplify the process, and
8 we want to encourage the workshops to continue. So,
9 even though we may have scheduled something for hearing,
10 the Committee is still open to be informed if some sort
11 of agreement has been reached and the matter is no
12 longer in dispute. Did you have a question?

13 MS. BROADWELL: No. I just wanted to say I'm
14 Ann Broadwell. I'm here representing CURE, and those
15 dates are fine with us as well.

16 HEARING OFFICER FAY: Good. Then I think
17 we've got an idea, to the extent there is information
18 available, on when these trailing subjects might be able
19 to be heard, and it sounds like November is probably
20 workable. So, let's leave those behind. What I
21 anticipate is that there may have to be an additional
22 meeting once we find out exactly when that information
23 is in, or we may be able to handle this ex-parte if the
24 parties can inform us that they have, for instance, all
25 the air quality data they need, and that they can file
26 their testimony on a certain date. They may be able to
27 just do that in writing and the Committee could issue a
28 supplement to the hearing order and save an additional

1 meeting.

2 So, I think what I'd like to do is move ahead
3 through the topics, and just identify--

4 MS. MENDONCA: Mr. Fay? Just for my own
5 clarification, would you please reiterate what the
6 trailing subjects are?

7 HEARING OFFICER FAY: Okay the subjects right
8 now that look like they're trailing are air quality and
9 public health, which are very closely related because of
10 the public health matters that are affected by air
11 emissions, and then the other two happen, in this case,
12 to also be related--water resources and biology, because
13 of the question of waste water discharge, possibly
14 affecting biological resources, and of course also under
15 water resources would be ground water drafting and
16 drainage, and possibly alternatives to cooling towers.
17 Under biology, we have that overlap with the waste water
18 discharge and it's affect on endangered species. CURE
19 had pointed out some concerns about wetlands and whether
20 the mitigation package is adequate regarding biology.

21 So, those or the topics that right we feel now
22 are trailing because they have pieces of information
23 missing and we don't have control of when that's going
24 to come in. The Federal Government does. Excuse me
25 just a moment. What I was consulting Commissioner Moore
26 about is, in the interests of respecting the time of the
27 citizens that have taken time out of their day and are
28 not paid to be here, I think we'll now ask to hear from

1 people as to their time constraints and whether these
2 dates would work for them in terms of their planning
3 schedules and their work, and which topics they feel are
4 most important for them to attend in the evening.

5 So, I'll begin by calling people. I see a
6 familiar name here that I have to admit I didn't
7 recognize at first but now I do. It's been a while.
8 Bob Amarel, you want to come up and speak on behalf of
9 some rice growers, if I recall correctly?

10 COMMISSIONER MOORE: Bob, you want to spell
11 your last name?

12 MR. AMAREL: Bob Amarel, Jr. A-M-A-R-E-L.
13 Yeah, it has been a while.

14 HEARING OFFICER FAY: Bob and I went to
15 college together.

16 MR. AMAREL: As far as the time, I guess the
17 two most--I guess the reason I'm here is because of the
18 water and the drainage. And as far as the dates, you
19 couldn't have put a bulls eye on the wall and shot right
20 in the middle of it with the 15th and 16th of October
21 and been any more wrong for just about everybody that's
22 sitting out there. We're all rice growers. You know
23 about El Nino. We're late to begin with, so we're
24 definitely going to be busy. There's no question.

25 COMMISSIONER MOORE: Does the first week in
26 November get any better, especially if we had a night
27 meeting?

28 MR. AMAREL: Well, let me put it this way.

1 The later you go, really, the better it is. If it were
2 a normal year, I'd say November would be fine.
3 Normally, November is fine. This year, we're probably,
4 at the minimum, three weeks behind. So we're where we
5 would be completed by the first of November, we're still
6 going to be working.

7 HEARING OFFICER FAY: Okay. What we're going
8 to try to be doing is exploring which topics are of
9 particular interest to the local people. Some of these
10 things are kind of technical and tend to be more concern
11 to the Staff just cause they're in the statute; not that
12 they're not important, but they tend to be of less local
13 concern in all these cases and maybe so in this case as
14 well. If we find that there are a few subjects like
15 that, then it probably wouldn't matter to people if
16 hearings took place even during a time when you were
17 real busy?

18 MR. AMAREL: Right, and I agree with that. I
19 don't have a problem with that at all. Just when you
20 speak to the subjects of water and drainage, then I want
21 to be able to be here, or wherever it's going to be.

22 I have another question. Did I understand
23 that you folks could overrule the County? Did I
24 understand that?

25 HEARING OFFICER FAY: There is a provision
26 that requires the Energy Commission to find that the
27 proposal for a power plant is consistent with the local
28 planning ordinances. At this point in this County, it's

1 not consistent. So that's why they're talking about
2 having information available to Sutter County so they
3 can consider an amendment to the General Plan. Now, if
4 they were not--

5 MR. AMAREL: Don't--I mean, it's my
6 understanding they have to amend the General Plan or it
7 can't happen?

8 HEARING OFFICER FAY: That's right.

9 MR. AMAREL: Okay.

10 HEARING OFFICER FAY: If the County decided
11 not to amend the General Plan, then the Commission could
12 not make the finding that the proposal was consistent
13 with local zoning. But, the statute says that the
14 Commission can make an override of local--

15 MR. AMAREL: Right.

16 HEARING OFFICER FAY: --zoning in the case
17 where it can find that there is no more necessary and--

18 MR. RATLIFF: I think it's no more prudent and
19 necessary.

20 HEARING OFFICER FAY: --prudent and necessary
21 means of reaching the project objective. That's not a
22 small burden. And that's what I was referring to
23 earlier. But, um, and the Commission does not just
24 automatically do this. It has been done before, but I
25 just wanted--

26 MR. AMAREL: Yeah, because you're really
27 speaking to the local control thing and I'm beginning to
28 wonder, you know, well, wait a minute, what--

1 COMMISSIONER MOORE: Well, as Gary said, it
2 would be extraordinary--

3 MR. AMAREL: Right. I understand that.

4 COMMISSIONER MOORE: But it is still a
5 possibility.

6 MR. AMAREL: It's a possibility, sure, sure.
7 That's what I was trying--

8 HEARING OFFICER FAY: But that's just sort of
9 another level of the whole function of the Staff which
10 was to move the decision over licensing power plants up
11 to the State level. So, all these little elements that
12 we're dealing with are being decided by the Energy
13 Commission with the exception of the ones that are under
14 federal jurisdiction. In essence, that is preempted
15 local decisions on that as a matter of law. Of course,
16 the way we work is to try to be a clearing house and
17 work with the locals and have their input on it.

18 MR. AMAREL: Okay. Well, speaking directly to
19 your question, the time frame is, for at least the
20 subjects that I'm interested in, is pretty tough. The
21 later, it would be better for me, anyway.

22 HEARING OFFICER FAY: Great. Thanks. Good to
23 see you.

24 Um, anybody else like to come forward and
25 inform us on their schedule? Especially if it's
26 different from what Bob Amarel told us? Yes, sir? Just
27 to remind everybody while he's coming up, if you stand
28 up and make a comment from the audience, the court

1 reporter may not be able to hear you, and she certainly
2 doesn't know your name, so it may not get into the
3 transcript. That's why we ask people to come all the up
4 and speak into the microphone.

5 MR. AKIN: My name is Jim Akin, A-K-I-N. I
6 farm in the area. We raise rice. We have vegetables.
7 We have beans, safflower and so forth, safflower harvest
8 is getting ready to start within a week, and we'll
9 probably be busy through to the first of November and
10 possibly later, if the rice doesn't ripen. That is
11 probably I think the same thing that Mr. Amarel was
12 talking about. It's up to the weather as to when we can
13 harvest and get our crops in.

14 COMMISSIONER MOORE: Do night meetings make
15 any difference to you?

16 MR. AKIN: Night meetings would help at times,
17 but we're not working an eight-hour or a ten-hour day.
18 If the weather is good at night, we have lights on the
19 harvesters and continue as long until the dew falls. So
20 it would be a hardship on the area, as another power
21 plant here would work another hardship on the area,
22 because the area that the power plant's sited in, the
23 water comes from the wells, and time passed and extended
24 drought areas, there has salt appeared, and salt and
25 orchards don't mix. Thank you.

26 HEARING OFFICER FAY: Thank you, Mr. Akin.
27 While we always are glad to have comments at the
28 hearings, we would like to focus today on the scheduling

1 questions and availability of witnesses and that type of
2 thing because we will target these particular areas at a
3 scheduled time, and that's when your comments will be
4 the most valuable because you'd be making them at the
5 same time that the witnesses, the technical experts etc.
6 will be coming up and talking about it. So, we don't
7 want to cut anybody off, but just to respect everybody's
8 time, we do want to focus on scheduling matters today
9 rather than the substantive concerns of whether the
10 plant should go in or whether it will affect the ground
11 water, etc. I've got blue cards from a number of
12 people. I'll call your name and if you don't need to
13 address us, that's fine. David Massey? Did you want
14 to--

15 MR. MASSEY: I'll have to agree with the
16 gentlemen.

17 HEARING OFFICER FAY: Okay. Arnold White?
18 Anything further to add?

19 MR. WHITE: No.

20 HEARING OFFICER FAY: Mary Ann Woods?

21 MS. WOODS: Oh. Really, I can tell you from
22 here what I wanted to say. My name is Mary Ann Woods,
23 W-O-O-D-S. And my concern was for us to have evening
24 meetings, but I'm not so sure that I need evening
25 meetings if you're going to do this in November.

26 HEARING OFFICER FAY: All right, thank you.

27 MS. WOODS: Thank you.

28 HEARING OFFICER FAY: And that's mainly

1 because the harvest would be over by then?

2 MS. WOODS: Yeah. We have prunes and walnuts,
3 I drive the truck, and I can't be here and there, too.

4 HEARING OFFICER FAY: Yes. The Commissioner
5 was asking me, what is your primary concern? Which
6 issues in the case?

7 MS. WOODS: Our primary concerns are the
8 drainage and the underground water. We're in an area
9 where we're borderline saline, and we just have a big
10 problem with that.

11 HEARING OFFICER FAY: Okay.

12 MS. WOODS: The other problem is to have this
13 thing in our backyard, which, you know, is about a half
14 a mile from where I live, and every time the thing blows
15 a fuse in the middle of the night, we got to get up and
16 see if we're still alive or not, and it's getting kind
17 of old. Thank you.

18 HEARING OFFICER FAY: Okay, thanks. That's
19 probably a more general topic, but we'll note the
20 drainage concern, try to work that into the schedule.
21 Mike Shannon?

22 MR. SHANNON: I'd like to talk from here.
23 Basically I have the same comments as Bob Amarel. I'm
24 Mike Shannon. I farm just northwest of the plant. I'm
25 a little different than Bob. I'm a little smaller
26 operation. I do all the work myself. I have one
27 employee. I drive the harvester. So basically, I start
28 at seven in the morning and I go to ten at night. If it

1 rained the day you have a meeting scheduled, I can make
2 it. If it doesn't, I'm pretty much out of luck. But it
3 would help if we could have the meetings up here if
4 they're forced to be in late October and early November
5 before harvest is over. If the meetings can be held at
6 night here, we do have a better chance of at least
7 making part of the meeting. Now, there are other
8 circumstances. Your dryer can get plugged up, run out
9 of trucks, you can have a breakdown. So there might be
10 times we couldn't make part of the meetings. But to
11 have the meetings local during harvest time would help.
12 I know it would be more difficult for other people, but
13 for the local landowners, it would be helpful.

14 Now, I've got one question. If the Energy
15 Commission overrules the County, so I take it then
16 the Energy Commission, if they overrule the County, then
17 the use permit would be given to Calpine? Am I right so
18 far? If--because basically all we're doing, it's a use
19 permit, right? Giving them the right to put the plant
20 in? It's rezoning?

21 HEARING OFFICER FAY: That's not all we're
22 doing in this process, but that is part of the process.
23 If the Energy Commission overruled the County--I don't
24 think it would essentially; it would issue a license in
25 spite of the lack of a permit from the County. So it
26 wouldn't preempt the County's decision on granting the
27 permit. Correct me if I'm wrong, Mr. Ratliff, but I
28 think it would--notwithstanding the lack of conforming

1 land use, the land use conforming to the power plant
2 use, that the State, under those circumstance, would
3 grant a license to operate anyway. As I say, that's a
4 serious decision, and the Commission has never done it
5 lightly.

6 MR. SHANNON: Well I'm just taking it down the
7 road. No, so you would override the supervisors,
8 correct? That would override the supervisors' decision?

9 HEARING OFFICER FAY: If that happened, it
10 would.

11 MR. SHANNON: Okay. So let us say, and I have
12 some serious concerns about the water issue, and I have
13 gone to bat with Calpine in many discussions. Let us
14 say that I am right. Their models are wrong. The
15 County says no to the permit, but the State Energy
16 Commission says yes; but then the landowners, me or any
17 of the other people, are right about whether it's the
18 pollution concerns, the water source, or the drainage,
19 and we get damage to our property; is it basically just
20 our own right to have to go get our own lawyer and fight
21 Calpine, or is there going to be an overriding
22 governmental agency that's overlooked their operation
23 and come to bat for the landowners if there's damage?

24 HEARING OFFICER FAY: You've got a lot of
25 suppositions in there.

26 MR. SHANNON: I was trying to be heard.

27 HEARING OFFICER FAY: If the County doesn't
28 grant the land use change, and if the Energy Commission

1 is so persuaded that in spite of that nonconformity they
2 grant a license to Calpine, and then if Calpine goes
3 ahead and builds and damages your property, it's
4 supposition upon supposition, and I--all I can tell you,
5 there's nothing in place under the Warren-Alquist Act
6 per se that sets up a body to address this. However,
7 our process is supposed to anticipate problems and try
8 to mitigate them. So, that's what the process is for,
9 is for you to tell us and make a case for what you think
10 might go wrong, and if the Commission is persuaded, that
11 would be part of the mitigation so it wouldn't happen to
12 begin with. That's the idea.

13 COMMISSIONER MOORE: Well, just let me offer a
14 comment on that because you're following on a question I
15 asked earlier. I'm not sure whether regret putting it
16 on the table or not, but it seems to me it's good
17 information for everyone to have. Let me just say we're
18 going to be as impartial as we can in this process, but
19 as a former County Supervisor, I will tell you--and one
20 member of the Commission--that I am very sensitive to
21 land use concerns, General Plan updates. I've been
22 through several of them at the County level. The
23 likelihood of us overriding a County decision, local
24 control, the likelihood, is vanishingly small. We would
25 have to, as Mr. Fay says, we would have to be persuaded
26 in a very extraordinary way. Right now, I can't
27 conceive of an argument that would take us there. Now,
28 that's not an argument that will appear--that's not to

1 prejudice our decision. I haven't heard any evidence
2 lead me there, but I can't conceive of one that would
3 cause us to override a County land use decision, so you
4 take whatever comfort you can in that, but I think that
5 we probably got a lot of other issues that we would go
6 through before we would ever find ourselves in that
7 arena.

8 HEARING OFFICER FAY: And I'll add to that the
9 historical context of this override, having occurred
10 before, was back in the days when there were just the
11 big monopolies, the utility monopolies, and PG&E was the
12 Applicant, and they were proposing a power plant in the
13 geysers, and it had to do with getting the electricity
14 out of the geysers. It's a different situation today;
15 you've got a competitive market where lots of companies
16 are proposing power plants. So, the fact that it
17 happened then doesn't relate much to whether or not it's
18 going to happen now because it's a different
19 environment. It's not only a different location,
20 different applicant, different county, but it's an
21 entirely different utility environment.

22 MR. SHANNON: Well, as far as the meetings, I
23 know there's a lot of things you're going to have to
24 discuss, so it would be beneficial if you could plan the
25 meetings around the power wires, how those are going to
26 affect the community.

27 HEARING OFFICER FAY: Okay, you noted ground
28 water and drainage, but you also are considered about

1 the transmission lines?

2 MR. SHANNON: Yes, I am. So, if you could
3 list your meetings, you said you're going to agend-ize
4 the meetings, and you say that you're going to have a
5 lot of subjects that govern the first two days; go ahead
6 and plan those, because you know those are going to be
7 more controversial with the local landowners. If you
8 could do those in the middle of November, or whatever
9 dates you have in the middle of November would be
10 beneficial to us.

11 HEARING OFFICER FAY: Great. Understand.
12 Okay, thank you. Lewis? Oh, Bob?

13 MR. AMAREL: I'm as concerned about the power
14 waters, also. I failed to mention that, but those--this
15 just goes right by me.

16 HEARING OFFICER FAY: And I assume that this
17 main concern about the transmission lines is the affect
18 on aerial application? And other farming practices?

19 MR. AMAREL: Right.

20 HEARING OFFICER FAY: And I have a card here
21 from Lewis Boyce?

22 MR. BOYCE: Boyce, B-O-Y-C-E.

23 HEARING OFFICER FAY: Did you want to add
24 something about the schedule?

25 MR. BOYCE: I'm Lewis Boyce, and I'm a
26 concerned citizen in Sutter County. While I'm up here,
27 I'd like to cover several subjects, and then I can get
28 out of here and let everybody else do their thing. One

1 thing is, groundwater. The pollution from the power
2 plant will not pollute groundwater any more if as much
3 as agricultural spraying herbicides and insecticides,
4 which goes directly under the ground.

5 As far as the Sutter County is concerned, I
6 have a list here. This power plant, if it's built, will
7 bring in to Sutter County about two-and-a-half to two
8 and three-quarter million dollars a year in property
9 tax. You can take any other 80 acres of farm land in
10 Sutter County, and it will take about 60 years for them
11 to generate the property tax that this plant will
12 generate in one year. There's over a million dollars of
13 it goes into our local schools which need money probably
14 worse than anybody in the country. There's 4.1 million
15 that goes directly to the County. The rest of it is
16 divided up into other sectors, and jobs: for the first
17 construction in two years of construction,
18 approximately, it will employ 250, 260 men at a good
19 living wage, and then they'll have a permanent staff to
20 operate this plant at approximately 24, 25 men, and the
21 prevailing wage on that is--I'm not sure, but it's
22 higher than what it would be for the construction, I'm
23 pretty sure. And, there's nothing that Sutter County
24 needs any more right now than jobs for the people that
25 live here, and property tax for the County, because the
26 County's got to pay their bills regardless of how they
27 do it. Thank you.

28 HEARING OFFICER FAY: Thank you. Any concerns

1 about the schedule?

2 MR. BOYCE: The schedule's fine with me. I'm
3 pretty tired.

4 HEARING OFFICER FAY: Rosie Foster? Anything
5 further to add about scheduling concerns?

6 MS. FOSTER: Not really. I'm basically in
7 agreement with the locals. As long as it's local and
8 it's held in mid to late November where my husband and I
9 can both attend, right now we are in harvest, starting
10 now, and our concerns are the water, the drainage, and
11 the transmission lines also. As long as we're not
12 excluded from the hearings, we'd be okay.

13 HEARING OFFICER FAY: All right. Is it fair
14 to say that those three topics pretty much represent the
15 community interests, at least the intense ones of the
16 folks that live near the plant? Drainage, affect on
17 groundwater, and the affect that the transmission lines
18 might have? Yes, sir?

19 MR. WHITE: Could I go through this about the
20 water?

21 HEARING OFFICER FAY: Could you state your
22 name, please?

23 MR. WHITE: Arnold White. I'm a property
24 owner. And they said, okay, your well goes dry.
25 They're going to--you guys are going to get together and
26 decide what's going happen. But we're all going to be
27 dead, just like over there in the '86 flood. The
28 redress ain't worth a damn. It ain't going to work.

1 HEARING OFFICER FAY: Right, and we're going
2 to take detailed information on that kind of thing when
3 we deal with the groundwater. The topic today--the main
4 thing is just to try to schedule when we'll do it.

5 MR. WHITE: Just get it in there.

6 HEARING OFFICER FAY: Yes, you bet. And we'll
7 get all those comments in.

8 MS. FOSTER: Mr. Fay, can I ask one more
9 thing? Where will the steam plume be lumped in on the
10 discussion?

11 HEARING OFFICER FAY: Mr. Richins? The air
12 quality?

13 MR. RICHINS: It would be under visual, visual
14 resources.

15 HEARING OFFICER FAY: Visual?

16 MR. RICHINS: Visual resources.

17 HEARING OFFICER FAY: Okay.

18 MS. FOSTER: I'm a little concerned with that
19 also because of the concentrated particles, when it
20 evaporates.

21 HEARING OFFICER FAY: Okay, that part--it's a
22 little confusing.

23 MS. FOSTER: That part.

24 HEARING OFFICER FAY: That part is an air
25 quality issue--

26 MS. FOSTER: Yeah, okay.

27 HEARING OFFICER FAY: --and it is subject to a
28 license. There's some fairly particular definitions of

1 what can be released, as opposed to the subject of
2 visual resources which is more subjective. So, I think
3 the amount of stuff that's in that plume will be
4 addressed when we take up air quality. But if you just
5 don't want to look at the plume, that subject is going
6 to be one of the things we talk about in visual
7 resources.

8 MS. FOSTER: Now, after talking to some
9 friends who are rice growers, they mentioned a problem
10 with arsenic accumulating in rice, and that's grown
11 around the plant--

12 COURT REPORTER: I can't hear you.

13 MS. FOSTER: Oh, I'm sorry. After talking to
14 some local rice farmers, they mentioned a problem with
15 arsenic accumulating in rice, and so I have that concern
16 that I would like. I was just wondering where it would
17 come in to play?

18 HEARING OFFICER FAY: That is a public health
19 concern, and usually we deal with public health and air
20 quality, very close together. Usually public health
21 comes after air quality, because we talk about what kind
22 of emissions the plant will put into the air, and then
23 the public health people come in and talk about what
24 effects that level has, so, if there is any arsenic,
25 then the public health people will talk to us about
26 whether there's a risk involved in that level, if there
27 is any.

28 MS. FOSTER: Then perhaps that should be in

1 the local concerns too, then?

2 HEARING OFFICER FAY: Okay. Now, that
3 subject, just because it's air quality-related, will be
4 one of the later ones we deal with because we're waiting
5 on some information on air quality.

6 MS. FOSTER: Thank you.

7 HEARING OFFICER FAY: All right.

8 COMMISSIONER MOORE: Paul?

9 MR. RICHINS: I guess I just wanted to, based
10 on the seven workshops that Staff has held, I could run
11 through a quick list of what I've heard through the
12 meetings, some of which you've already heard, so I'll be
13 repeating real briefly, but some that didn't come up. I
14 think the major concern that I've heard over the course
15 of the workshops is anything related to water drainage
16 and flooding and anything that impacts agricultural
17 operations within the community, which would be
18 transmission lines, concern about traffic and
19 transportation, drainage and flooding. They're
20 concerned about the land use, and the conversion of ag.
21 land to another use. They're also very concerned about
22 alternatives, and that will be a heavy focus, I would
23 imagine, of their comments, and they're also concerned
24 about noise. Now, I may have missed some, but those are
25 the ones I've heard most often. Oh, and then the visual
26 aspects of the plant, both the plant, the plume, and the
27 transmission lines.

28 COMMISSIONER MOORE: All right. Mr. Richins,

1 that's not to preclude any other issues of course, and
2 that's the whole reason that we engage experts to give
3 us a detailed evaluation of some of the issues the
4 public may not be aware of, but acting in the public
5 interest, our list goes far beyond that list so we make
6 sure we don't miss anything. So I want to make sure
7 everyone understands that your list is not exclusive of
8 a lot of other concerns that we need to be aware of up
9 here.

10 HEARING OFFICER FAY: Bob?

11 MR. AMAREL: As this goes forward, is its
12 basically just one site and that's it? Is that the
13 format that's being presented here?

14 HEARING OFFICER FAY: One site has been
15 proposed.

16 MR. AMAREL: And with the exclusion of
17 anything else that may be more beneficial to society,
18 for lack after better word?

19 COMMISSIONER MOORE: That's a good questions
20 and it's one of the things the Energy Commission has the
21 capacity to do, through the NOI process, notice of
22 intention process. Since we don't have that in this
23 case, we don't have that option available to us because
24 of an earlier Commission decision. What will happen is
25 that the question of alternative sites will get
26 discussed in some depth in the process, in the staff
27 assessment process, so there will be other sites that
28 will be looked at and evaluated in some detail.

1 MR. AMAREL: There are some--there are some
2 other sites--

3 COMMISSIONER MOORE: You bet there are.

4 MR. AMAREL: --that would just evaporate about
5 80 or 90 percent of our concerns.

6 COMMISSIONER MOORE: We're aware of that and
7 the process allows us to consider those, or if they
8 don't get considered, to mark time until they do get
9 considered.

10 MR. AMAREL: One other question is the
11 concerns that these meetings that you're talking about,
12 are they all going to be here locally, or are some of
13 them going to be in Sacramento?

14 COMMISSIONER MOORE: It's our intention to
15 hold them locally.

16 HEARING OFFICER FAY: I'm glad to hear that.
17 It would make it possible for people to come, of course,
18 but then the next question is, which ones really should
19 we have at night, and as Ms. Woods say, maybe that won't
20 matter.

21 MR. BOYCE: I have one more comment. They're
22 talking about the power lines interfering with crop
23 dusting. I talked to crop dusting concerns, not
24 locally, but they're involved in the same type of work,
25 and they say that those power lines, there's no problem
26 whatsoever. Most of them are dusting with helicopters,
27 and they can get right up against the power line if they
28 wanted to.

1 HEARING OFFICER FAY: Sure. Glad to hear from
2 you, but we're going to try to blaze through today and
3 work on these scheduling things. I promise you, there
4 will be witnesses testifying on this question of whether
5 the power lines will be compatible with crop dusting and
6 that sort of thing. So this issue will come up in much
7 more detail.

8 Okay. Setting aside the four trailing issues
9 that we cited earlier then, I guess I'd like to go
10 through the issues and just confirm the amount of time
11 that people may need so we can get some idea of how to
12 block this out. And so, I think I'll just start with
13 the Applicant in each case. We'll go subject by
14 subject, and then ask the other parties what their plans
15 are in terms of cross-examination of the Applicant's
16 witness, whether or not they will offer their own
17 witness, and we will assume, in every case, that the
18 other parties will have cross-examination of some kind.
19 I think if you anticipate that it's going to be rather
20 extensive or a main part of your participation, we'd
21 like to know that, because it's one thing to ask a few
22 clarifying questions; it's another thing to have two
23 hours of cross-examination. That obviously would affect
24 our scheduling. So, we'd like to have heads up if we
25 can.

26 So, my first topic is visual, and it looks to
27 me like the transmission line is the primary focus on
28 that concern, although I gather that perhaps the plume

1 from the cooling tower may come up as part of that as
2 well. Mr. Ellison, you have how many witnesses on that?

3 MR. ELLISON: We would offer a single witness
4 at this time on visual resources, and that witness--and
5 what I'm about to say applies, I think, to almost all
6 the technical areas. What that witness will be doing is
7 sponsoring all of the information that we have docketed
8 to date on his particular subject matter, which would
9 include of course the information in the Application for
10 Certification, the date of request responses, the
11 supplements and all that sort of thing, depending upon
12 the Committee's pleasure, we can have that witness
13 summarize that information or not, and that of course
14 affects the amount of time. If the Committee feels that
15 you are familiar enough with all of that information,
16 you don't need a summary, then we would simply put the
17 witness, have them describe very briefly what
18 information that witness is sponsoring and then make
19 that witness available for cross-examination.

20 Alternatively, if the Committee prefers, we
21 can have an oral summary of the information. The
22 information is quite extensive, so it's really up to the
23 Committee, I think, to tell us how much of a summary
24 you'd like to have.

25 COMMISSIONER MOORE: Let me turn to
26 Commissioner Keese on this matter and ask for his
27 opinion on this matter. Commissioner, we obviously have
28 the file in front of us. Your pleasure, as far as the

1 level of presentation that you'd like to--

2 COMMISSIONER KEESE: I will be going through
3 all the filing before we have our hearing. However, it
4 would it seem to me that on the issues on which we're
5 going to have contentiousness, perhaps the summary is a
6 good way to start, so I would like to come back to
7 answering that question after we hear from the other
8 parties where we're going to be.

9 COMMISSIONER MOORE: Okay, I respect that, and
10 I think there's good guidance there for the Applicant.
11 I will say that one of the reasons that we're here today
12 in this hearing is that ostensibly, these are the least
13 contentious items that we have, but not visual. So, it
14 strikes me that probably in some way it's in order. So
15 let's proceed along those lines.

16 HEARING OFFICER FAY: I'd add that Staff will
17 probably be summarizing as well, and it would help the
18 Committee to see the different perspectives. It would
19 also help the public to understand what kind of analysis
20 each party put into its evaluation of the visual effects
21 of the project.

22 COMMISSIONER KEESE: I think I'd like to say
23 basically, I'd like to hear a summary, but the summary
24 should depend on the contentiousness of the issue. If
25 it's an issue that we're not going to here any
26 contentiousness on, a real brief summary, then let's
27 close the issue. If it's something we're going to have
28 ten or twenty members of the public wanting to give

1 input on, I think we should clarify the issue very
2 clearly.

3 COMMISSIONER MOORE: Sure. Well, part of
4 Chris' problem, Commissioner, is that he's not going to
5 always know where the public is going to want to contest
6 it. Areas where you do know and you know it's a clean
7 bill of health on the item, then clearly what the
8 Commissioner indicated is in order. We don't need to
9 waste everyone's time on items that are either basically
10 adjudicated or really free from controversy.

11 Let me add, too, it's clear that we'll be
12 going into the afternoon on this matter, so it's 11:30
13 now. Why don't we target at noon, we'll break for
14 lunch, we'll go for about an hour and 15 minutes, lunch
15 break, and then come back, just so everyone's got a time
16 line in mind for--you're not wondering when your blood
17 sugar's going to drop off the map on this, and we can
18 time the presentations accordingly.

19 HEARING OFFICER FAY: Okay. Based on the
20 prehearing conference statements, I'm assuming that
21 visual--at this point, that visual will be in dispute,
22 and so, with that in mind, and assuming a summary on
23 your part, can you give us an estimate of how long that
24 might take?

25 MR. ELLISON: Just for our--not including our
26 cross-examination of anybody else's witnesses, and
27 mindful of what the Committee's direction is, just being
28 on summary, visual, I anticipate, is an issue of some

1 controversy, and we also have some disagreements
2 currently with the Staff on this issue, and taking all
3 that into account, I would expect that our witness would
4 want to have 45 minutes or an hour to go through that
5 issue. That may be a little more than we need, but in
6 the interests of being conservative, that's probably
7 appropriate summary.

8 HEARING OFFICER FAY: Would this involve
9 audio-visual features as well?

10 MR. ELLISON: Yes. There are renderings of
11 the plant, that sort of thing.

12 HEARING OFFICER FAY: And you'll take care of
13 arranging for that?

14 MR. ELLISON: We will.

15 HEARING OFFICER FAY: Okay. All right. Let
16 me ask the Staff if they have an estimate for us?

17 MR. RATLIFF: I would think that the Staff's
18 summary, assuming this is going to be adjudicated and it
19 is still in controversy, that it would take an hour as
20 well, or at least anywhere from 30 minutes to an hour
21 for the Staff to put on their case.

22 HEARING OFFICER FAY: Okay. And does CURE
23 have a witness on this subject?

24 MS. BROADWELL: No. CURE does not have a
25 witness on this.

26 HEARING OFFICER FAY: Okay, and all the
27 parties, can you--is there an exceptional degree of
28 cross-examination on this subject you anticipate, and if

1 so, let us know? Okay, fine.

2 MR. ELLISON: Mr. Fay, we probably would--as
3 things currently stand, we're hoping this all resolves
4 itself, but as things currently stand, based on the PSA,
5 we anticipate we would have some substantial
6 cross-examination for the Staff's witness on this issue.

7 HEARING OFFICER FAY: Okay. All right. Then,
8 how about land use? Basically, the transmission line
9 question, and the General Plan amendment, would
10 you--now, whether or not this is to be adjudicated, I
11 see that all three parties have indicated that they have
12 a concern at least on the transmission line. One
13 consideration, working off what Commissioner Moore said,
14 even if the matter is not in contention, as I'm assuming
15 visual is, there is a benefit for the public at least to
16 hear a summary. What we have done in some cases is, at
17 the Applicant's discretion, allowed them to simply
18 sponsor all their documents into evidence and leave it
19 up to the Staff to bring somebody who would summarize
20 for the public's benefit on the nature of the subject
21 and what kind of analysis was done. We certainly don't
22 want to preclude the Applicant from doing that if they
23 wish to, but it's a judgment call in the interests of
24 time. The main reason for having any summary at all in
25 a situation where a matter is not in dispute, is really
26 just to inform the public of what kind of analysis has
27 been conducted, really as a courtesy, and to help the
28 Commission, too, appreciate. And they have the people

1 in front of them; they can ask questions if they wish
2 to.

3 COMMISSIONER MOORE: Let me just add, this is
4 a critical area, and CURE has written a short piece on
5 this. I'd like to ask them if they would elaborate on
6 what they've submitted so we'd get a greater sense of
7 what those concerns are, and I'm very curious as to what
8 the County's response on following-up on the letter
9 addressed to me was earlier in the week. I want to
10 understand not only the timing but the breadth of the
11 issues that are going to be in front of us here.

12 MS. BROADWELL: The issues that we are
13 concerned about, as we expressed in our statement, are
14 really the two issues: one is the dividing of the site,
15 the jurisdiction between the Energy Commission and the
16 County. That's been the subject of a lot of
17 conversation. I don't know what the resolution of that
18 will be. I think the County's still working on it. So
19 we don't actually have a position on that yet, but that
20 was a concern. The other concern was this question of
21 whether the new standards for changing land use from
22 agricultural to another use, whether those will apply to
23 the site. The County's letter, I'm not sure if it
24 clarified that or not. We're still looking at that
25 issue, whether those criteria issues applied to the
26 site. It seemed to us when we read the resolution that
27 they did apply to the site. The County is apparently
28 taking the position that they don't, and we'd like to

1 have more discussion with the County on that before
2 we're sure how that will work out.

3 HEARING OFFICER FAY: Are you planning on
4 presenting a witness?

5 MS. BROADWELL: No. I think what we would
6 have is either legal arguments and some
7 cross-examination, but not a factual-type witness, no.

8 HEARING OFFICER FAY: Extensive
9 cross-examination? Can you answer?

10 MS. BROADWELL: It sort of depends how this
11 works out. I hope not, but I think it's a possibility,
12 depending on what position the County ends up taking.

13 HEARING OFFICER FAY: Okay. Mr. Ellison, how
14 long do you think your witness would take?

15 MR. ELLISON: I think in this case, we would
16 have just a very brief summary. I think the issues
17 relative to land use are primarily legal ones and issues
18 of discretion of the County, on the change in the
19 current land use designation, so I don't think there are
20 a lot of factual controversies. So I would anticipate
21 there will be a brief summary from our witness, much
22 briefer than the one I described for visual.

23 HEARING OFFICER FAY: Like fifteen minutes?

24 MR. ELLISON: That's correct.

25 HEARING OFFICER FAY: Okay. Mr. Ratliff?

26 MR. RATLIFF: We agree with that. The issues
27 are primary legal and not political. And they don't--I
28 think a summary of the land use issue--our witness

1 should take no more than 15 minutes.

2 COMMISSIONER MOORE: Question for you, Mr.
3 Ratliff: Maybe I missed it, but I don't recall seeing a
4 document come past me that detailed this issue of the
5 division of land use, division of parcels. I'm aware of
6 it, but I don't know that I've seen anything formal that
7 delineates what was actually proposed, what the
8 jurisdictional question was referred to by CURE really
9 is, and what was referred to in the filing. Can you
10 describe that for me?

11 MR. RATLIFF: You're talking about the issue
12 that CURE raised a moment ago?

13 COMMISSIONER MOORE: Yes.

14 MR. RATLIFF: If I'm not addressing your
15 question, you can straighten me out. I think what CURE
16 is referring to is the issue of the existing power
17 plant, and the County's current and presumably
18 continuing control of that power plant, which our
19 license is not intended to supersede. Our license will
20 control this power plant and its related facilities, and
21 we would have continuing jurisdiction, post-licensing.
22 By "we," I mean the Energy Commission, would continue to
23 be the agency responsible for making sure that all
24 mitigation measures were enforced and to deal with any
25 compliance issues that arose out of that.

26 The County expressed to us after the
27 Preliminary Staff Assessment was issued, desired to
28 separate out their jurisdiction over the Green Leaf

1 facility and over any land use issues on other portions
2 of the parcel that were unrelated to our facility, our
3 power plant and it's related facility. So, we have
4 passed language back and forth with the County and the
5 Applicant to try to basically define that in a way
6 that's acceptable to everyone, and I think we have--my
7 impression is that we've agreed on something. We gave
8 the County a draft, we gave the Applicant a draft and
9 they've both come back to us and said, "That works."
10 So, that's where we are on that.

11 COMMISSIONER MOORE: Am I wrong? Have we seen
12 a copy of that?

13 MR. RATLIFF: No. I don't think so.

14 COMMISSIONER MOORE: Would we normally be in
15 receipt, or would we not normally be in receipt of that?

16 MR. RATLIFF: What it becomes and what it is,
17 is a condition, and the Final Staff Assessment. It
18 wasn't in the Preliminary Staff Assessment because the
19 issue was only raised after the publication of the
20 Preliminary Staff Assessment. What we're talking about
21 is additional language in the condition that will appear
22 in the Final Staff Assessment. So, of course, you will
23 see it; you just haven't seen it yet.

24 COMMISSIONER MOORE: So, even though we know
25 about it, we can't know about it, at least officially,
26 until it appears in the Final Staff Assessment?

27 MR. RATLIFF: We've talked about it at
28 workshop, and there's no secrecy to it.

1 COMMISSIONER MOORE: I've always maintained
2 there's no secrecy. I'm just saying, In terms of the
3 process, when we're first likely to be officially
4 notified that this is an issue, and here's the proposed
5 resolution of it, is in the Final Staff Assessment?

6 MR. RATLIFF: That's correct.

7 MR. ELLISON: Commissioner Moore, if I might
8 comment very briefly, and I believe the County and Staff
9 agree with this, but if not, please speak up. But in
10 our discussions of this issue, from the Applicant's
11 perspective at least, we have looked at this as being
12 not really an issue but rather a sense of describing
13 existing law. The law is what it is. The County's
14 jurisdiction is what it is, and the Energy Commission is
15 what it is, and none of us can change that. We have
16 simply been striving to find language to include in the
17 decision that we all agree correctly describes what the
18 law is. And we've been working toward that end I think
19 pretty effectively.

20 COMMISSIONER MOORE: I appreciate that, but I
21 hope you can appreciate, too, that the tenor of some of
22 the comments might lead the Committee members to think
23 that there was an issue here as opposed to simply, the
24 law is what it is, and that there was a gray area that
25 was being adjudicated somehow?

26 MR. ELLISON: No, and in fact, the reason that
27 I wanted to say what I just said is make clear, in case
28 you were concerned about it, that we are not purporting

1 to go off and change anybody's jurisdiction. We're just
2 trying to describe it.

3 COMMISSIONER MOORE: Thank you.

4 HEARING OFFICER FAY: And I'll point out, too,
5 the Committee is not bound by any agreements that the
6 parties reach. They may find it persuasive or not, but
7 it's up to the Committee to sort out the facts
8 independently, and even if all three parties were to
9 reach agreement, that doesn't bind the Committee. Okay,
10 so, it sounds like this is a reasonably brief
11 presentation on land use, at least as compared to
12 visual.

13 The next one I have in order was facility
14 design, and Calpine noted a question on that. Could you
15 describe that? It was information still outstanding
16 or--

17 MR. ELLISON: There are two issues, one of
18 which I believe we worked as between the Staff, and one
19 of which is still outstanding. The one that we--I
20 believe had worked out as between the Staff and the
21 County is which uniform building code would apply to
22 this project. And again, this is an issue of just
23 trying to make sure that we all understand what the law
24 is; again, we're not trying to change that, but there's
25 been some confusion as between the application of the
26 California Building Code versus the changes to the
27 Uniform Building Code that I won't take any more time at
28 this point to describe, but that question, that legal

1 issue of which of those codes applies was one that
2 befuddled all of us for a while, and I think we finally
3 all figured it out, hopefully.

4 That leaves a remaining issue, which is
5 staffing. PSA has proposed a number of conditions, and
6 we are still working with the Staff to understand what
7 the basis for all of them is to insure, at least in our
8 minds, that we understand which ones are simply
9 restatements of Building Code requirements, and which
10 ones might be based on some other authority.

11 HEARING OFFICER FAY: Do you anticipate this
12 will be resolved through the workshops?

13 MR. ELLISON: We're hopeful that it will be.

14 HEARING OFFICER FAY: Staff, do you concur
15 with that?

16 MR. RATLIFF: Yes. Unfortunately, we don't
17 have any more workshops, as Paul just pointed out, but I
18 think--this isn't something that we thought was going to
19 be necessary or very useful to adjudicate, so we're
20 hoping we'll get it all put away on time. As I
21 understand it, what Calpine has been interested in is
22 understanding the origin of some of the Staff conditions
23 to determine whether they were existing law or whether
24 they were industry standards, or whether they were
25 something Staff dreamed up on their own, and I think
26 we're trying to explain all these things so they will
27 understand where these things originated that were
28 conditioning them, putting into the Staff Proposed

1 Conditions.

2 COMMISSIONER MOORE: Since we're moving
3 everything back, though, you'd have the opportunity to
4 have another workshop, pursuant to what Mr. Fay was just
5 saying. So, if it looked as though it needed further
6 resolution, you could arrange to have that? How much
7 time do we need for a notice on a workshop?

8 MR. RATLIFF: Ten days, and you're right, and
9 that's one of the useful things about this, putting the
10 hearings back, is it will allow us more time to try to
11 get these things nailed down so they aren't hanging out
12 there by the time we go to hearing.

13 HEARING OFFICER FAY: You're saying it
14 wouldn't be helpful to adjudicate because there are no
15 factual issues involved? It sounds like there were some
16 questions of fact?

17 MR. RATLIFF: Well, not that I know of. I
18 don't think so. I think the Staff's--my impression is,
19 the Staff's conditions are all either existing law or
20 industry standards. I suppose it's possible that if
21 they're not existing law but are industry standards,
22 there may be some question as to whether they're
23 appropriate, and then either we'll agree with them that
24 they are or aren't appropriate, and if we can't agree,
25 then perhaps we would have to adjudicate those things,
26 but I would hope not. We haven't typically adjudicated
27 those things.

28 HEARING OFFICER FAY: Can we assume Staff will

1 take the initiative in setting up some sort of process--

2 MR. RATLIFF: Yes.

3 HEARING OFFICER FAY: --that this will
4 continue to be worked on either in workshops or--

5 MR. RATLIFF: We intend to try to work through
6 written communication.

7 HEARING OFFICER FAY: Okay. Then--oh, I'm
8 sorry. I wanted to go back. I meant to ask George
9 Carpenter, on behalf of the County, regarding the land
10 use question. Do you envision taking time to ask a lot
11 of questions of the witnesses on this question, or are
12 there really any facts that you need to develop on the
13 record?

14 MR. CARPENTER: I'm George Carpenter from
15 Sutter County. At this time, I believe that we'll be
16 able to work out all the land use issues and the Final
17 Staff Assessment, but until we do that, I just don't
18 know that for sure.

19 HEARING OFFICER FAY: Now, if the County is
20 going to present something, would you be the
21 representative for the County to do so, or would you
22 simply submit it through the Staff if the County had
23 adopted a resolution or any change?

24 MR. CARPENTER: I don't know how to answer
25 that because I'm not familiar enough with the protocol
26 for the process.

27 COMMISSIONER MOORE: You present things as
28 they were worked out. Do we not have a political

1 decision that is yet to be made by the supervisors that
2 might not be the subject of a workshop agreement between
3 parties? In other words, you could work something out
4 as far as language goes for the existing zoning
5 ordinance or the existing General Plan designation, but
6 that in fact, in October, according to the letter that I
7 got from Mr. Hall, that could be overturned or made moot
8 by the supervisors in an upcoming decision?

9 MR. CARPENTER: That's correct. When I say
10 "worked out," I'd say worked out at the staff level to
11 the satisfaction of the County Planning Staff and other
12 applicable technical staff. Of course, anything that we
13 do or say could be overruled by the Planning Commission.

14 COMMISSIONER MOORE: I understand. I'm just
15 trying to get the time sequence on the table here, and
16 that's in anticipation, or in advance of any decision
17 that the County Board of Supervisors might make, which
18 would have us potentially coming back here and
19 revisiting the issue.

20 MR. CARPENTER: And which issue is that, the
21 land use issue?

22 COMMISSIONER MOORE: Yes?

23 MR. CARPENTER: Right. And I'm assuming
24 you're contemplating the possibility that the Planning
25 Commissioner's supervisors would reject the proposal, in
26 which case we wouldn't have the conformity with land use
27 and then have to be looking at alternatives for how the
28 process could continue without those approvals?

1 COMMISSIONER MOORE: I read that as a
2 possibility. It's at least on the scope of possible
3 alternatives here.

4 MR. CARPENTER: I think the angle that the
5 Final Staff Assessment was looking at is that if the
6 General Plan amendment and zoning change were approved
7 by the County, then the project would conform. If it
8 doesn't, then it does not conform, and I think we're
9 looking at a condition of certification requiring
10 something like that, I mean, as a recommendation.

11 HEARING OFFICER FAY: And I take it that you
12 and the Staff have worked out a protocol for--that
13 you're both comfortable with, for the County to make its
14 preliminary decision and the Commission to rely on that,
15 and then the County to adopt its final position? Is
16 that correct? Is it that type of sequence?

17 MR. CARPENTER: That's correct. The letter
18 that I addressed to Commissioner Moore earlier in the
19 week acknowledged the fact that some of the technical
20 aspects of the Final Staff Assessment were not going to
21 be done when we set up the original schedule, so we set
22 deadlines in there of times that we needed to have that
23 material to be able to begin the Local Planning
24 Commission Board of Supervisors hearing processes.

25 HEARING OFFICER FAY: And if you recognize
26 anything in our scheduling today that creates additional
27 problems or effects on that schedule that you have with
28 the County, please let us know.

1 MR. CARPENTER: And I'll have to evaluate
2 that, based upon the outcome of today's discussions and
3 then reevaluate it and look and see if that moves any of
4 the scheduling around, and then I will report back.

5 HEARING OFFICER FAY: Okay. All right. I
6 believe we covered facility design, hazardous materials,
7 and I assume if it's all right, Ms. Broadwell, to just
8 let you speak up when you plan to have extensive
9 cross-examination. I won't necessarily be asking you in
10 each case.

11 Okay, hazardous materials? I see here that
12 CURE has listed concerns in a number of areas: ammonia,
13 chlorine, hydrochloric acid. Does Calpine--can you give
14 me an estimate of how long your witness might summarize,
15 or what you plan to do in that case?

16 MR. ELLISON: We don't view this as being a
17 particularly controversial issue based on the workshops
18 we've had so far. I emphasized as we did in our
19 prehearing conference statement that we're sort of in
20 the position of waiting to see what positions the other
21 parties are going to take to know for sure where the
22 controversies lie. But we've had a lot of workshops,
23 we've had a lot of discussions, and based on that, we
24 don't see this one as being particularly controversial.
25 In saying that, I'm separating this, of course, from
26 water quality and some of the other issues in dealing,
27 just as the Commission does, with hazardous materials
28 handling. So, we would expect this one would be similar

1 perhaps to land use, a brief summary from our witness,
2 and not a great deal of examination.

3 HEARING OFFICER FAY: And you say that, having
4 reviewed CURE's prehearing conference statement?

5 MR. ELLISON: That's correct. But I defer to
6 Ms. Broadwell about the amount of time she wants with
7 our witness, but in terms of an affirmative presentation
8 at this time, it's notwithstanding CURE's prehearing
9 conference statement. Even with that, it's difficult
10 for us to know yet what CURE's position is going to be
11 on these issues, and I obviously don't want to preclude
12 the possibility as we learn more about--as we see CURE's
13 testimony that we might want to address with our witness
14 some of the issues that they raise, but not having seen
15 their testimony and having seen only their prehearing
16 conference statement, my sense is that this issue, up to
17 this point, anyway, has not be controversial.

18 HEARING OFFICER FAY: Staff, how long would
19 your presentation be?

20 MR. RATLIFF: I think probably a 15-minute
21 summary of the Staff testimony. We don't see this as an
22 issue that's in controversy, but it could be, if CURE
23 put on a witness.

24 HEARING OFFICER FAY: Ms. Broadwell, you're
25 affirmative, your witness, and an estimate on your
26 cross-examination?

27 MS. BROADWELL: First, I'd like to make clear
28 we're not sure that we'll be presenting a witness. The

1 issue here is--in one of the workshops, there was
2 discussion by the County about whether they had worked
3 out an agreement with CURE and whether they had adequate
4 measures to be able to respond to an accident at the
5 plant, that the Fire Department and Calpine are still
6 working on that whole issue. If that gets resolved,
7 then we may not have a presentation. But the issue from
8 CURE's point of view is, though, the possibility of an
9 accident with anhydrous ammonia is the issue here, and
10 if there isn't a resolution such that there could be an
11 adequate response to that, then CURE would want to put
12 on a witness, and I think that witness would take about
13 half an hour. It would be the factual presentation
14 about the effects of an accident and what's required to
15 respond to that.

16 HEARING OFFICER FAY: So, your position is not
17 necessarily that it should be aqueous ammonia. Your
18 focus is on if it is anhydrous ammonia, what response
19 would be appropriate?

20 MS. BROADWELL: Exactly. CURE feels that
21 aqueous ammonia is a better choice, but that's not the
22 issue that we would be addressing.

23 HEARING OFFICER FAY: Okay.

24 MS. BROADWELL: It would be how to respond to
25 an accident with anhydrous ammonia.

26 HEARING OFFICER FAY: And you said about half
27 an hour?

28 MS. BROADWELL: Half an hour.

1 HEARING OFFICER FAY: Okay.

2 MR. RATLIFF: Coming from memory, I think the
3 Staff's proposed condition was essentially that Calpine
4 had to work out the emergency response requirements,
5 that they had to provide those requirements to the
6 satisfaction of the County Fire Department. So,
7 we've--we've expected that that would be solved, and
8 it's our understanding that they are in the process of
9 deciding exactly what equipment they would need to do
10 that, so we expected it would be resolved, based on
11 that.

12 HEARING OFFICER FAY: And in the time frame
13 we've been talking about, do you anticipate that it will
14 be resolved before we go to hearing?

15 MR. ELLISON: Yes, we certainly do. I should
16 say that, at least as between Calpine and the County, we
17 believe we've already resolved the substantive questions
18 of what additional resources the County needs, how they
19 should respond if there were an accident, all those
20 sorts of things. The only issue, to our knowledge, that
21 remains outstanding with the County is, all that will be
22 funded with the substantial property tax revenues that
23 the project will generate, but those property tax
24 revenues do not occur until the project goes forward,
25 and so we've been looking for a mechanism to pre-fund
26 these things so that they are in place ahead of the
27 property tax revenues. And so the funding mechanism,
28 pre-property tax funding mechanism, is the issue that

1 we're still working on with the County, and we very much
2 anticipate that we'll be able to work that out.

3 HEARING OFFICER FAY: Okay. And does that
4 address your concerns, if they are able to reach
5 agreement with the County, or are CURE's concerns
6 different than those of the County?

7 MS. BROADWELL: I think we would want to see
8 what the agreement was that was reached, but if an
9 agreement can be reached, that would be fine. Although
10 from the workshop, my understanding was it was
11 still--there were still issues of the type of equipment
12 that would be purchased and what kind of response would
13 be necessary, not just a funding issue, but I'm not
14 privy to all the discussions, so if the whole thing can
15 be resolved, that would be fine, but we'd want to see
16 the agreement.

17 HEARING OFFICER FAY: Okay. Then,
18 transmission line engineering; I see that CURE had as
19 least a question about that, some information that
20 hasn't come in?

21 MS. BROADWELL: I hate to be so vague on this,
22 but there was a study that came out that we gave to our
23 expert who was reviewing it when I wrote this. I
24 believe the issue's been resolved, but I would want to
25 double-check with him.

26 HEARING OFFICER FAY: Okay, so as far as you
27 know--

28 MS. BROADWELL: It's resolved, but kind of

1 just reserve the opportunity to get back to you on that
2 and double-check, but I think it has been resolved.

3 HEARING OFFICER FAY: In topics like this, if
4 there is no real controversy, I assume we'll have
5 perhaps a 15-minute summary from each side, and in some
6 cases that may even cover the time needed for a few
7 questions. If your impression is other than that,
8 please let me know so that we can schedule properly.

9 Okay, worker safety fire protection? Same
10 thing?

11 MR. ELLISON: Same thing.

12 HEARING OFFICER FAY: Nothing? Okay. How
13 about transmission line safety and nuisance?

14 MR. ELLISON: To the extent that this issue
15 involves the question of aerial application around
16 transmission lines and the feasibility of crop dusting
17 and neighborhood transmission lines, and it's not clear
18 to me, frankly, whether we're going to deal with that as
19 a land use issue or transmission safety issue, or
20 exactly where that's going to fall, but that clearly is
21 a matter of public concern, and we expect that we will
22 be offering some substantial testimony on that.

23 As to other transmission safety issues, we
24 don't see those issues as being particularly
25 controversial.

26 HEARING OFFICER FAY: How do Staff anticipate
27 addressing that issue of the aerial application and the
28 effect of transmission lines on it?

1 MR. RATLIFF: I anticipated that we
2 would--that we would address it under land use, and the
3 impacts to agriculture under land use, because that's
4 really what we're talking about.

5 HEARING OFFICER FAY: Okay, and so
6 transmission line safety and nuisance, just to help the
7 public, is pretty much limited to static, preventing
8 static shock, that type of thing?

9 MR. RATLIFF: Right, or EMF health hazard
10 issues that might arise. But there has been one other
11 issue that arose in our most recent workshop that was
12 discussed that was raised by the Applicant, and we
13 haven't had time to discuss it further, and that was the
14 potential of an alternative--that came under the issue
15 of alternatives. One of the alternatives being
16 considered was one, which was very near to existing
17 transmission lines, and the issue that arose was whether
18 or not that would create the danger of arcing, what I
19 understand to be called arcing, of electricity from the
20 existing power lines to the stack of the project at that
21 alternative location, and we are right now trying to
22 find--that would normally be addressed under that topic,
23 and we're trying to figure out if we have the expertise
24 to address that issue, and we are hoping also that the
25 Applicant might be addressing it further.

26 HEARING OFFICER FAY: Well, perhaps we'll do
27 this after lunch.

28 COMMISSIONER MOORE: Are you addressing that

1 further?

2 MR. ELLISON: We were thinking of that as
3 being an alternatives issue since it involves an
4 alternative site, but we're still reviewing that,
5 frankly; it depends on a better understanding of exactly
6 how the Staff--what the Staff alternative is exactly.
7 We've had some discussions with the Staff about exactly
8 which parcel of property is involved, and pending that,
9 I think we just have to reserve the possibility that we
10 want to get into that issue, I think, is where it
11 belongs.

12 COMMISSIONER MOORE: Does that mean the
13 question's unclear, or you're clear on the question that
14 Staff is asking, but you're just not sure what section
15 of the report the answer would go in?

16 MR. ELLISON: No, the question itself is
17 something we're still reviewing. The Staff, in its
18 Preliminary Staff Assessment, identified one alternative
19 site, and we had some confusion about exactly,
20 precisely, where they were envisioning this power plant
21 would go at that alternative site, and depending on the
22 outcome of that, this arcing issue may or may not be one
23 we would want to raise. It's something that's come up
24 only since the release of the PSA and the Staff's
25 presentation of that alternative, and it's one of
26 several issues, with respect to that alternative site,
27 that we had raised with the Staff at the workshop last
28 week.

1 COMMISSIONER MOORE: Well, then, let me turn
2 back to Mr. Richins for a second and ask, as I
3 understood what Dick Ratliff was just saying, there's a
4 technical issue involved here as to whether or not there
5 is the possibility for an arc to cross over from an
6 intertie wire to a stack. That's one question. Second
7 question is, would an alternative site location mitigate
8 or change that? So I heard two embedded questions in
9 that. Am I correct?

10 MR. RATLIFF: it's a little bit different.
11 The issue arose under the topic of alternatives, and it
12 arose because Staff proposed an alternative site for
13 analysis, which is very--which is adjacent to PG&E's 500
14 kV lines. And in their comments on Staff's Alternative
15 Analysis, the Applicant made the point that this created
16 the danger of arcing from the PG&E 500 kV lines to the
17 stack by way of ionized particles coming out the stack,
18 and we're trying to look at this issue for the first
19 time. We don't know. We aren't sure we have the right
20 personnel to actually examine it, but it seemed like a
21 plausible issue, plausible concern, and it normally
22 would fall under the rubric of transmission line safety
23 nuisance. The expert that we have testifying on that
24 does not have the qualifications to address that.

25 MR. ELLISON: Just to be crystal clear, this
26 is not an issue at Calpine's proposed site; it's an
27 issue at one of the alternative sites.

28 COMMISSIONER MOORE: I understand, and I think

1 that Mr. Ratliff just made that clear. I don't know
2 whether Gary's got any other questions.

3 HEARING OFFICER FAY: Well, I want to finish
4 up on land use just before we break. If we are dealing
5 with the effect of transmission lines on aerial
6 applications, that sort of thing, I think that would
7 change your estimate, the land use. So, can you give me
8 an advise time?

9 MR. ELLISON: It would. If we're deeming that
10 issue to be a land use issue, then we would likely have
11 two witnesses instead of one on land use, and we would
12 expect that--I'm estimating, but I would expect that the
13 one witness would be as described earlier, a fairly
14 brief summary of the land use issues, and the other
15 witness would be devoted to this issue of crop dusting
16 and the impact of transmission lines on crop dusting,
17 and that second witness is probably half an hour of
18 affirmative presentation. I don't think the testimony
19 needs to be lengthy, but it would be involving a second
20 witness.

21 The third possibility is, we may want to have
22 some discussion with Western on this issue as well, and
23 I don't know whether Western wants to address it or not,
24 but that's a possibility.

25 HEARING OFFICER FAY: Does Western plan on
26 presenting any witnesses on transmission line
27 engineering or transmission line safety and nuisance, or
28 the land use aspects?

1 MS. McMAHON: On the transmission questions,
2 we can make witnesses available if Staff or Calpine
3 determine a need, but just for ourselves, we weren't
4 planning on it.

5 HEARING OFFICER FAY: You weren't planning on
6 it? So I assume it's up to the parties then if they
7 want to call one of the Western experts as a witness,
8 but we would like to know if that changes your plans
9 just in terms of scheduling the hearing order for
10 the--so we can set it up as accurately as possible?

11 MR. ELLISON: Again, I find myself in this
12 position on many issues, but again, an awful lot
13 of--other than the case in chief that we've presented
14 long ago, a lot of our testimony at this point is
15 reactive, and until we see the Final Staff Assessment in
16 it's final version and the testimony of other parties,
17 or at least until after it becomes clearer what the
18 issues are, it's a little hard for us to say exactly.

19 COMMISSIONER MOORE: Let me ask Staff with a
20 procedural question, then, with regard to the Western
21 Area representative's last statement that witnesses
22 could be made available. Let's say that Staff and the
23 Applicant come to an agreement that they're not
24 interested in having those witnesses available, but the
25 Committee would like them available. Then what
26 procedure would be followed, or is there an avenue for
27 the Committee to say we'd like to hear further about
28 this issue and therefore, we request that Western supply

1 witnesses to address this?

2 MR. RATLIFF: Well, when it comes to Staff,
3 you simply direct us to provide a witness, and of course
4 we always do, but with regard to Western, I think we'd
5 have to--

6 COMMISSIONER MOORE: Well, we'd have to ask
7 them.

8 MR. RATLIFF: --ask them.

9 COMMISSIONER MOORE: Clearly, you suggested
10 that they could be made available. This may be an
11 issue. No matter what, I guess what I'm trying to
12 suggest as subtly as I can is that this is a big enough
13 deal that the Committee might in fact request through
14 the Staff that such witnesses be available.

15 MS. McMAHON: And that's fine. We have
16 several that are up to speed on this project and
17 everybody here has met Mort (phonetic) previously, and
18 he's pretty well-known in the industry, and he's
19 available, and in fact planning on him; it's just that
20 it isn't something that we would choose. I mean, we
21 don't--

22 COMMISSIONER MOORE: You have to be asked?

23 MS. McMAHON: Yes.

24 HEARING OFFICER FAY: Gary? Now, how about
25 the Staff? Will you have a witness on crop dusting or
26 the effect of the transmission line on ag. practices?

27 MR. RATLIFF: Yes. That would be our land use
28 witness.

1 HEARING OFFICER FAY: Your original land use
2 witness?

3 MR. RATLIFF: Yes.

4 HEARING OFFICER FAY: So that would be
5 contained within the 15-minute summary?

6 MR. RATLIFF: That was what we intended.

7 HEARING OFFICER FAY: Okay. All right.

8 COMMISSIONER MOORE: Okay, logical break
9 point. It's 12:10; let's be back here at 1:20, and
10 we'll kick off probably then. Thank you.

11 (A lunch recess was taken.)

12 COMMISSIONER MOORE: Let me just say for the
13 record that Commissioner Keese and Cynthia Praul have
14 left to go back to the Commission and will not return
15 this afternoon. With that, I'm going to turn back to
16 Gary Fay, and we'll continue going down the list of
17 items, trying to get a sense of how much time will be
18 needed for each one of these in the hearings, and I
19 should say that I'll be making time available not only
20 on the 15th and 16th of October, which may turn out to
21 be used, if at all, for administrative items, and in the
22 first week, first and second weeks of November, for
23 evidentiary hearings, assuming that the record is
24 complete enough to hold them at that point. So, those
25 are the target dates at this writing. I don't know that
26 Commissioner Keese will necessarily be present for
27 those, but as presiding member, I will be. We won't
28 convene at a meeting that I'm not present at.

1 Let me return to Mr. Fay and ask him to
2 continue with his line and get some answers to those.

3 HEARING OFFICER FAY: Thank you, Commissioner
4 Moore. I had conversations with Mr. Ellison and Ms.
5 Broadwell during the break, and their feeling was that
6 there was really no usefulness at all in addressing
7 prehearing conference questions regarding the four
8 subjects that were training because it's so speculative
9 as to where we will be on that, how many of the subparts
10 of each topic area would be adjudicated, if any, because
11 we're waiting for information from other agencies that
12 could have a large effect on parties' positions. So, I
13 think my recommendation is that we just let that go as
14 time goes by, and get a better fix on when that
15 information will be available. I'll ask the parties to
16 put their heads together and submit a recommendation to
17 the Committee on when they think they'll be ready to go
18 to hearings and how long they'll need for their
19 witnesses. Is that acceptable?

20 COMMISSIONER MOORE: Sure.

21 HEARING OFFICER FAY: All right. Let's move
22 on, then. There was one other question that I spoke
23 with Mr. Ratliff about at the break, and that was the
24 subject of alternatives. It occurred to me that
25 alternatives covers a number of areas, and when we have
26 these witnesses before us at certain times to deal with
27 those areas, but not necessarily when the subject of
28 alternatives comes up. Dick was saying it may only

1 involve I think about five areas, really?

2 MR. RATLIFF: If you have to recall the
3 witnesses for the areas that seem to be important, I
4 would think it would be no more than five or six at the
5 most.

6 HEARING OFFICER FAY: It's easier for the
7 Committee to deal with alternatives at one time because
8 the transcript is more compact, and we tend to deal with
9 it that way in the decision, but I want to be sensitive
10 to the parties' needs to have their witnesses available
11 and that sort of thing.

12 COMMISSIONER MOORE: Actually, I think in that
13 context that probably the most convenient thing for me
14 will be that on--especially on the trailing issues--to
15 make sure that I have at least two and potentially three
16 days, and just continue straight through, and do it
17 back-to-back-to-back so that I get all those issues on
18 the record at once. So I'd much rather do that than
19 have a block of weeks or days go by and then recall
20 somebody.

21 MR. RATLIFF: Okay.

22 COMMISSIONER MOORE: I'm not likely to try--

23 HEARING OFFICER FAY: They're not necessarily
24 inconsistent. For instance, the way I see the two
25 possibilities is, a witness gives their main testimony
26 and then says, as to alternatives in my area, etc., and
27 then they testify on that. The other approach would be
28 to finish those subject areas and then say now, what do

1 you think is the topic of alternatives, and each party
2 presents its case. Do you have a preference?

3 MR. ELLISON: Two thoughts on the subject of
4 alternatives, the first being, the question you focus on
5 right now I think depends a great deal on whether the
6 issue is one in which there are disputes being
7 adjudicated or not. If there are disputes being
8 adjudicated, my recommendation to you would be to bring
9 the key witnesses back and have a focused alternatives
10 panel or discussion of some kind. If they are not
11 issues being adjudicated, then I think it does make
12 sense to just have each witness as they appear on their
13 basic subject and deal with it that way.

14 The second point is, with respect to the
15 no-project alternative, we've been looking for an
16 appropriate place to house the issues of the benefits of
17 the project, which are significant, and we which don't
18 necessarily fall into a nice cubby hole, other than the
19 no-project alternative. The benefits are the things
20 that will not happen to the no-project alternative. So,
21 it's our intention to try and present summaries of the
22 benefits of the project as part of the no-project
23 alternative discussion, and I wanted you to be aware of
24 that.

25 COMMISSIONER MOORE: I appreciate that,
26 although I would suggest that there's certainly a role
27 for an expression of potential benefits in the project
28 as the proposed alternative. In other words, both of

1 these are socio-economic types of impacts, especially
2 when they're viewed as positive, although, of course,
3 the counter to that will be that there's negative
4 externalities as well. But it seems to me that it won't
5 simply--we'd be remiss, I think, if we produced a
6 document that had those only in the no-project
7 alternative. They occurred in the project as proposed
8 as well. I wasn't presuming you were suggesting they
9 would only be in one place, but just to suggest for the
10 record that they belong in both places.

11 MR. ELLISON: And we agree with that. I
12 should have been a little more precise. I was referring
13 to some issues about project benefits that don't
14 logically fall into one of the other categories, and
15 there are some that we could present most effectively, I
16 think, as part of the no-project alternative. It's
17 really a semantic issue. You could call a witness an
18 alternatives witness or benefits witness, or
19 socio-economics witness; the testimony is the same
20 regardless.

21 HEARING OFFICER FAY: Okay. The Committee
22 will take that under advisement and that may be a call
23 we have to make before it's clear whether alternatives
24 are really engaged as an issue, but I know Commissioner
25 Moore has some feelings on that and we'll reflect the
26 answer in the hearing order.

27 Let me move to waste management then. Any you
28 think particularly interesting there?

1 MR. ELLISON: Not from our perspective, no.

2 HEARING OFFICER FAY: Okay, Staff?

3 MR. RATLIFF: No.

4 HEARING OFFICER FAY: Now, that is
5 differentiated from waste water disposal, and this is
6 the management of wastes developed at the plant, and
7 construction. All right. CURE?

8 MR. ELLISON: No.

9 MR. RICHINS: So, just a clarifying question.
10 This is a good example where no one really needs to talk
11 about it and it has not come up as an issue that the
12 public is interested in. I guess my question would be,
13 do you want an overview of the position from the parties
14 as it relates to an issue such as this?

15 COMMISSIONER MOORE: I think where the topics
16 are called out, it would be wise to do that. I think as
17 Mr. Ellison indicated earlier, on items where there
18 really is no controversy, it's simply a restatement of
19 the issue and conclusions that are reached, it would be
20 desire able to have that on record. We don't need to
21 have an extensive discussion on it, but I think we
22 should call it out and at least let the public know that
23 we considered the issue, came to a conclusion about it,
24 and then move on. It falls into his category of lesser
25 attention, if you will.

26 HEARING OFFICER FAY: An example of how that
27 might be handled, for instance, it may be scheduled from
28 one of those early days of mid-October, anticipating not

1 a great deal of local interest, but a Staff witness
2 would be available to summarize the analysis that they
3 did, and it would be up to Calpine whether to have a
4 witness or have your project manager speak on behalf,
5 having supervised the testimony. By the way, in the
6 past, at least in my case, I've found it acceptable if a
7 project manager, once qualified, or you had a
8 broad-based expert qualified in a number of those areas
9 to sponsor as having supervised the work, when we pretty
10 much know there's not going to be detailed
11 cross-examination. If someone asks the question, it's
12 going to be pretty general, like what's this topic
13 about, that type of thing. So, I guess I'll leave that
14 up to you, but it could make things a lot more
15 convenient if there was somebody who's going to be with
16 you anyway to handle that on those kinds of things.

17 MR. ELLISON: I appreciate that. If the
18 Committee is comfortable with that, we may do that in
19 certain limited areas.

20 COMMISSIONER MOORE: No problem. You'll
21 qualify your witnesses in any case.

22 COMMISSIONER MOORE: We'll have their resume
23 and we'll have a statement of what their overall
24 qualifications are.

25 HEARING OFFICER FAY: And in those situations,
26 the testimony would be accompanied with an affidavit.
27 But I think in terms of the personal introduction, the
28 testimony, someone who supervised the work would be

1 fine. These are--I want to stress, these are limited
2 areas where it's clear that there's not much local
3 interest or professional interest from the other
4 parties.

5 Okay, I think this is a little more
6 interesting, traffic and transportation, I believe, has
7 been a little higher level of interest here? Mr.
8 Ellison, what do you anticipate here?

9 MR. ELLISON: We have two witnesses that we've
10 identified with respect to traffic issues, and this is
11 an issue that has elicited some public concern, so I
12 think we would want to do more than just a very, very
13 brief summary. I think we want to do a walk-through of
14 the testimony. So, I would anticipate that the two
15 witnesses together would probably need 45 minutes or an
16 hour, probably 45 minutes is better.

17 HEARING OFFICER FAY: Okay. Do you anticipate
18 having some sort of visual or maps to help any public
19 attending understand what the flow is and also help the
20 Committee?

21 MR. ELLISON: Our experience has been that the
22 public, at least who have been attending workshops,
23 knows the roads quite well, and we could just refer to
24 them by name, but if the Committee would find it
25 helpful, we'd be happy to provide that kind of visual
26 aid.

27 COMMISSIONER MOORE: I think it might help.

28 HEARING OFFICER FAY: We can be as sensitive

1 to the concerns as they are. It's easier to understand
2 it when we can visualize it.

3 COMMISSIONER MOORE: Actually, you know,
4 Chris, what might help, if you are able to maybe just
5 digitize a map like that. We're going to try and move
6 to a GIS system for all the Commissioners that we can
7 use. We have a number of cited cases, as you know, that
8 are coming up, and trying to put this in a context, if
9 you could give it to us as a DBF file for arc info,
10 something like that, where we just got a digital scan of
11 the major components, it would sure make our life easier
12 for posting into the file for each one of the
13 Commissioners. If it turns out that's a problem, let me
14 know. But if you can do it easily, we'd love to have
15 it. It would make our life easier. Otherwise, just an
16 overhead or something we can have up.

17 HEARING OFFICER FAY: How about the Staff?

18 MR. RATLIFF: We have one witness, and we
19 would expect him to summarize his testimony. We don't
20 anticipate it would be adjudicated.

21 HEARING OFFICER FAY: Fifteen minutes?

22 MR. RATLIFF: Yes.

23 HEARING OFFICER FAY: And no extensive
24 cross-examination?

25 MR. RATLIFF: Right.

26 MS. BROADWELL: No witnesses.

27 HEARING OFFICER FAY: How about noise? Will
28 there be noise?

1 MR. ELLISON: Noise? My noise would be the
2 same as for traffic. We have two witnesses. I think
3 the amount of time for the affirmative presentation
4 would be about the same time.

5 COMMISSIONER MOORE: Have you drawn CNEL lines
6 around the plant? Have you had a decimeter out there to
7 look at it? You have? Okay, so there is such a map
8 available?

9 MR. ELLISON: (Nods head.)

10 HEARING OFFICER FAY: What do Staff
11 anticipate?

12 MR. RATLIFF: We have one witness. Again, the
13 summary should be 15 minutes, at the most.

14 HEARING OFFICER FAY: Okay.

15 MS. BROADWELL: No witnesses, just short
16 cross-examination.

17 HEARING OFFICER FAY: Okay.

18 HEARING OFFICER FAY: Cultural resources?

19 MR. ELLISON: We have one witness on cultural
20 resources. We do not see this as a controversial
21 issue--15 minutes.

22 HEARING OFFICER FAY: Staff?

23 MR. RATLIFF: Yes, the same, one witness,
24 probably 15 minutes.

25 MS. BROADWELL: No witnesses.

26 HEARING OFFICER FAY: How about socio-economic
27 resources?

28 MR. ELLISON: We have one witness on those

1 issues. We believe there is no controversy regarding
2 them, and so we anticipate again 15 minutes. The only
3 reason for my hesitation is that the funding issue for
4 the County that we spoke of is--might logically fall
5 into that area, and we're still working that out, but we
6 will have that done by that time.

7 HEARING OFFICER FAY: Is that just limited to
8 HAZMAT responses or any emergency responses?

9 MR. RICHINS: Fire, emergency?

10 COMMISSIONER MOORE: So it comes under the
11 category of public services, and you're broadly
12 proposing some sort of sinking fund that you've
13 established so money can be withdrawn and credited
14 against you or against--I believe the example you used
15 earlier was P-tax, property tax, so you do it as a
16 credit against that or credit against the tax increment?

17 MR. ELLISON: Something of that nature.

18 COMMISSIONER MOORE: Lot of precedent for
19 that, so that's pretty straight-forward stuff.

20 HEARING OFFICER FAY: Staff?

21 MR. RATLIFF: We'll have one witness, no more
22 than 15 minutes.

23 HEARING OFFICER FAY: Okay.

24 MS. BROADWELL: No witnesses.

25 HEARING OFFICER FAY: Okay.

26 HEARING OFFICER FAY: Is it safe to assume
27 that paleontological resources will be no more than 15
28 minutes?

1 MR. ELLISON: That's correct.

2 MR. RATLIFF: Yes.

3 HEARING OFFICER FAY: Power plant reliability?

4 MR. ELLISON: We view that as a 15-minute
5 issue as well.

6 HEARING OFFICER FAY: Staff?

7 COMMISSIONER MOORE: I might just note on that
8 issue, you had a comment earlier from the public about
9 what happens when the fuses blow, I don't know what
10 happens if there's a catastrophic or noncatastrophic
11 failure at the plant, but you might want to address that
12 question in your remarks. Does the plant go down
13 periodically? Are there upsets? The upset break-down
14 rule for air quality standards--is there a comparable
15 event? So you might want to address that.

16 MR. ELLISON: The issue that we're aware
17 of--the plants are highly reliable, and we're not aware
18 of any reliability issues with respect to the plants. I
19 believe the issue that you may be thinking of is a noise
20 issue that's related not to reliability of the plant,
21 but rather if there's an upset on the grid that requires
22 the plant to trip in some way. Sometimes if there's a
23 trip because of an operational issue as well, but
24 oftentimes for some reason, if the plant has to trip for
25 grid management reasons, there's a noise associated with
26 that.

27 COMMISSIONER MOORE: Could you help us and
28 address that in your remarks when it comes up just so

1 the Committee's aware of what that is?

2 MR. ELLISON: We will be addressing that in
3 the noise discussion, and we'll certainly been
4 addressing the reliability of the plant in the
5 reliability discussion, but I think, at least from our
6 neighbors, what they expressed, is about the noise, not
7 about reliability.

8 MS. BROADWELL: No witnesses.

9 HEARING OFFICER FAY: Power plant efficiency,
10 same thing?

11 MR. ELLISON: Same thing.

12 HEARING OFFICER FAY: Staff?

13 MR. RATLIFF: Yes; we'll have one witness on
14 each, and it should be no more than ten minutes.

15 HEARING OFFICER FAY: CURE?

16 MS. BROADWELL: No witnesses.

17 HEARING OFFICER FAY: Alternatives--we spoke a
18 little bit about that. Are you able to give us an
19 overall estimate? If it is handled in a block, how long
20 that might be?

21 MR. ELLISON: Well, as I mentioned, we have
22 two sets of issues from our perspective at present, one
23 being the project benefits testimony on the no-project
24 alternative, and the second issue being, if we are still
25 in disagreement with the Staff about whether there is a
26 preferable site, the relative merits of the sites. With
27 respect to the first issue, we would anticipate, at
28 present, although I have to say this is an area where

1 it's more fluid than some of the prior ones we've been
2 discussing, but we would anticipate probably two
3 witnesses, and we would probably want to have an hour to
4 an hour-and-a-half for that, and with respect to the
5 relative merit of the sites, I would agree with Mr.
6 Ratliff, I think there are probably four or five
7 technical areas that are going to drive that issue, so
8 depending on whether you wanted to take it as a panel or
9 sequential witnesses, I think you can assume relatively
10 brief testimony from that number of witnesses.

11 COMMISSIONER MOORE: Mr. Ellison, you bring up
12 an interesting question, and let me ask this in the
13 context of other cited cases that we might participate
14 in as well--what do you consider the range, geographic
15 range of responsibility, when you think about
16 alternative sites? In your mind, if a Commissioner is
17 saying, well, is that the right place for it, and the
18 end of that question is, wouldn't it be better, or
19 wouldn't it be just as feasible in "X" location or "Y"
20 location? What do you think the geographic bounds of
21 that question ought to be, in your mind, for your
22 clients? How far afield do you visualize the geographic
23 alternative question to be allowed?

24 MR. ELLISON: I think it depends--first of
25 all, it's a very complicated question, and I'm going to
26 give an oversimplified answer to it, and I'm going to be
27 shooting from the hip, but I think it depends greatly on
28 the identified purpose of the project that you're

1 talking about. For example, in this case, one of the
2 important benefits of this project is voltage support
3 for the local region, and because of that, alternatives
4 to this project I think would have to be located
5 relatively proximate to this area in order to provide
6 that same voltage support benefit. For a project that
7 was not providing voltage support benefit, I think we
8 could perhaps look further away. Clearly, I think one
9 thing that is crystal-clear is that the surge certainly
10 ends at the California border because of the reach of
11 the jurisdictional issues. But historically, I think
12 the Commission and the Staff can address this better
13 than I can, and Mr. Fay is certainly an authority on
14 this issue as well, but I think historically, the
15 Commission has tended to look in the general region of
16 the proposed site, and by "general region," I mean maybe
17 a hundred miles or so, something like that.

18 HEARING OFFICER FAY: And particularly that
19 limitation that Mr. Ellison mentioned in terms of the
20 objective, keep it within that.

21 All right. How about the Staff? What do you
22 envision if alternatives are dealt with as a block?

23 MR. RATLIFF: In terms of time?

24 HEARING OFFICER FAY: Yes?

25 MR. RATLIFF: Well, we have one principal
26 witness for alternatives, and his--to some degree, this
27 may depend on whether or not this is an adjudicated
28 issue. I think that's been pointed out. I don't know

1 that it will be, but in any case, I would think he would
2 take at least 30 minutes to entirely describe what he
3 did and what he found at the different sites that he
4 considered, and there probably will be some discussion
5 of non-locational alternatives as well, although I would
6 expect that to be brief, but I would say overall, 30 to
7 40 minutes.

8 HEARING OFFICER FAY: Do you envision that
9 that witness would present information from a number of
10 disciplines that he gathered from his college?

11 MR. RATLIFF: Yes, in a collective an general
12 way, and if need be, we have those people. Again, I
13 would say there are about five topic areas that could
14 address those things if they're needed.

15 HEARING OFFICER FAY: Okay.

16 MR. RATLIFF: We're not averse to doing it--I
17 think Mr. Ellison suggested that if we have--if
18 alternatives is not going to be adjudicated that it
19 could be addressed by each of these witnesses when they
20 testified on their own area, and that would be
21 acceptable to us as well. But I don't know if CURE or
22 anyone else might want to do it differently or to have
23 cross-examination that might make that different.

24 HEARING OFFICER FAY: Any preferences?

25 MS. BROADWELL: I think any procedures is fine
26 with CURE. In terms of alternatives, it will depend
27 again on what remains in controversy, whether we bring
28 witnesses or just cross-examine people. I think I

1 mentioned that the main issues for CURE are air quality,
2 water and biology, all of which remain unresolved, so
3 it's hard for me to estimate. I think we will probably
4 cross-examine and bring our spring witnesses.

5 HEARING OFFICER FAY: I'm sorry, you would
6 cross-examine and?

7 MS. BROADWELL: And bring our spring witnesses
8 if the issues remain unresolved that we're concerned
9 about.

10 HEARING OFFICER FAY: How many witnesses do
11 you imagine bringing?

12 MS. BROADWELL: Just guessing at this point, I
13 would say two could probably cover the topic areas that
14 we're concerned about.

15 HEARING OFFICER FAY: Okay. Thirty minutes?
16 Something like that?

17 MS. BROADWELL: Sounds reasonable.

18 HEARING OFFICER FAY: Facility closure? I'm
19 not aware of any controversy in that.

20 MR. ELLISON: Neither are we. We think that's
21 a 15-minute issue.

22 HEARING OFFICER FAY: Okay, so there's pretty
23 general agreement on what the process would be, steps to
24 be taken?

25 MR. ELLISON: (Nods head.)

26 HEARING OFFICER FAY: CURE? No problem?

27 MS. BROADWELL: Same.

28 HEARING OFFICER FAY: And how about compliance

1 monitoring? Is there anything really to address there
2 at all?

3 MR. ELLISON: No.

4 HEARING OFFICER FAY: Does Staff--

5 MR. RATLIFF: These would be very brief
6 presentations.

7 HEARING OFFICER FAY: I think it would be nice
8 to have somebody, perhaps Mr. Richins, just to make
9 clear to anybody in attendance how the Commission does
10 that sort of thing, just, you know, information
11 function.

12 MR. RATLIFF: Now you're talking about
13 compliance and monitoring?

14 HEARING OFFICER FAY: Yes, how the system
15 works, so they know that if the project is licensed what
16 the long-term involvement of the Commission would be.
17 It's not a matter that needs to be adjudicated.

18 MR. ELLISON: Actually Mr. Fay, if I could
19 support that statement, I don't think there are any
20 issues with respect to compliance monitoring, but there
21 have been a number of questions about how the Commission
22 follows up on enforcing it's conditions and that sort of
23 thing. I think it would be helpful for the public to
24 have somebody from the Staff be prepared to address
25 that.

26 COMMISSIONER MOORE: It may also be important
27 to talk about how it gets funded in the future. There
28 may be alternatives that we want to explore in a similar

1 vein to what's happening with the County and their
2 services. It may be that we won't have a continuing
3 public fund of this available to us in the future, and
4 we should evaluate what the options would be if we
5 don't. Right now, even this process is being funded as
6 though rate payers were on the hook for it when in fact
7 we have a private party merchant plant that's in front
8 of us. We're using an old paradigm to analyze a new
9 problem, and I think it's only fair to discuss what some
10 of the alternatives would be if that paradigm were to
11 change, and it may. The question I'll be asking, so I
12 think it's only fair to raise that now so you don't get
13 surprised by it.

14 Mr. Fay is suggesting that we ought not to use
15 a cited case as a precedent for this because we're
16 talking about Commission policy, but it seems to me that
17 many, many public agencies are moving to examine other
18 funding sources and whether--compliance monitoring is
19 still within the law. We're required to do that, and
20 yet, we may not have a funding source that backs it up
21 in the future, so it's--it is a very broad-based policy
22 question, one that the Commission will be addressing,
23 but it seems to me that how compliance monitoring is
24 undertaken and maintained over the long-term is a viable
25 question for the Staff assessment to consider.

26 HEARING OFFICER FAY: Okay, I'd like to touch
27 on some procedures. If there's any questions about
28 these, please interrupt, raise your hand, and ask them,

1 but these are the kinds of things that I think we will
2 likely include in the hearing order or need to clarify
3 one way or the other. Testimony would be filed at least
4 ten days prior to the hearing. Attached as testimony
5 would be the qualifications of the witness or the
6 reference to the record if the qualifications have
7 already been filed, and the reference should be very
8 specific so that anybody could find it, particularly me.

9 We've talked about evening hearings, and we
10 will deal with that in the hearing order. If the
11 testimony, if what you are relying on as
12 testimony, particularly in the Applicant's case, has
13 already been filed, complete reference to where it is in
14 the record, and where all of its parts may be found so
15 that the transcript or whatever writings you file
16 reflect a very clear path back to that so we can
17 retrieve that as we write the decision.

18 Is there a preference on the biology/waste
19 water discharge issue where that is best raised? It
20 seems to me that ultimately it's really a biology issue,
21 and I just wondered what the parties feel? I mean,
22 presumably, we'll talk about it under one subject area,
23 and I'd just like to have your thinking on that.

24 MR. RATLIFF: Well, at the workshops, the
25 issue has been carried I think by the water expert--the
26 water experts thus far, with the biologists following in
27 an interested way. I think that's correct.

28 HEARING OFFICER FAY: Has that worked?

1 MR. ELLISON: It has worked. There have
2 been--to some degree, you have to separate the issues
3 and at the same time, have the witnesses probably in
4 these different subject areas back-to-back, but the
5 issues about what are the constituents of the element
6 and in what concentrations do they appear, that sort of
7 thing, or water quality concerns, and then the issues of
8 what are the impacts of those concentrations on the
9 biological resources are a biological issue. And
10 witnesses with different sets of expertise and
11 backgrounds are required to address that combined set of
12 issues. Our recommendation would be that we continue to
13 treat the biology issues as biology issues and water
14 quality issues as water quality issues, but that we have
15 those in sequence together appropriately so that those
16 members of the public that are interested in the whole
17 chain of issues leading to impacts on biology can come
18 at one time and hear all of that. But they really do
19 require multiple witnesses with disciplines. It
20 wouldn't be appropriate, I think, to try and stuff it
21 all into one subject matter which crosses over.

22 HEARING OFFICER FAY: So, if they were
23 back-to-back with the potential of somebody referring
24 back to a previous witness, the question, that sort of
25 thing?

26 MR. ELLISON: That makes sense.

27 HEARING OFFICER FAY: That way we'd have the
28 maximum access to the experts.

1 HEARING OFFICER FAY: Okay. Any problem
2 there?

3 MR. RATLIFF: No. I just might mention
4 there's also the possible crossover into public health
5 as well because it has the potential impact to drinking
6 water as well, in terms of total dissolved solids.

7 MR. ELLISON: Mr. Fay, If I may, I'd like to
8 go back to the filing date for testimony questions?

9 HEARING OFFICER FAY: Um hum?

10 MR. ELLISON: One, I have a question of
11 clarification, and secondly, of potential concern. The
12 clarification question, you mentioned ten days before
13 hearings--I assume by that you mean all testimony ten
14 days before the first hearing as opposed to ten days
15 before that day on which that subject might come up?

16 HEARING OFFICER FAY: I left it vague that way
17 because originally we were visualizing hearings sort of
18 spread out over time, and that may still be the case.
19 Do you have a preference?

20 MR. ELLISON: Assuming that we have the
21 hearings grouped the way that Commissioner Moore
22 described them as being all together, essentially, I
23 would prefer to have them ten days before the first
24 hearing. Once we're in the hearings, we don't have a
25 lot of time to be preparing for the next day, and I
26 would prefer to see testimony coming in perhaps 15 days
27 before the first day, if you were assuming--I think with
28 weekends and that sort of thing, you're really talking

1 about--if you only have ten days, you may only be
2 talking about a few days to look at it.

3 HEARING OFFICER FAY: Do you have a problem
4 with that?

5 MS. BROADWELL: No, that's fine unless somehow
6 we get started with just the noncontroversial issues,
7 and the controversial ones are much later, I don't think
8 that would work. But if they're all grouped--

9 COMMISSIONER MOORE: I think it's not turning
10 out that way.

11 MS. BROADWELL: Okay. Then I don't have a
12 problem.

13 HEARING OFFICER FAY: If for some reason it
14 does, if for some reason we use two days in October,
15 then I assume if it's possible to take the subjects up
16 at that time that are less interesting to the local
17 people, then we would probably just say 15 days before
18 the first day's hearing then, and then a separate filing
19 date for the next group. Would that work for you?

20 MR. ELLISON: That's in fact what I had in
21 mind, if we actually use those two days in October.

22 HEARING OFFICER FAY: Subject to the
23 Commissioner's concern about integrating all these--sort
24 of having a Gestalt view of it, the advantage would be
25 that the attorneys can spread out the load, and we can
26 get some of the hearing time taken care of on less
27 controversial things if we can cover quite a few of the
28 topics, just because there's less cross-examination.

1 I'm just reviewing some notes here to be sure
2 we've covered everything. I spoke to George about the
3 Community Hall, and obviously the dates we discussed are
4 off the table and I'll have to get back to you about
5 that, and you still have your Staff workshop scheduled
6 for August 30th on the preliminary determination and
7 compliance?

8 MR. RICHINS: We haven't come up with a
9 particular date, but we'll be holding something very
10 soon after the 30-day response period is over and the
11 Preliminary Determination of Compliance, so during the
12 first week in September, I would imagine.

13 HEARING OFFICER FAY: Okay, first week of
14 September.

15 MR. RICHINS: And it may not be limited to air
16 quality. It may talk about some of these other matters
17 that we've discussed today that are loose ends that
18 we'll try to tie up.

19 COMMISSIONER MOORE: Okay. What I'd like to
20 do, that's all Mr. Fay has for his items in terms of
21 trying to get us on the road to a path. What I'd like
22 to do is engage in a little bit of an informal
23 discussion about timing for a second so I have a clearer
24 picture of where we're all going and what the process is
25 likely to yield, and I think what I'd like to do is
26 start by directing my comments to Mr. Ellison and his
27 team and pose the hypothetical to you of what happens if
28 we start to significantly blow past the deadlines that

1 were set, that have been set up to protect the
2 Applicant, the one-year deadline.

3 When I started this process, you'll all
4 recall, I was very enthusiastic that we were going to
5 stay exactly on the timeline, we'd be done clearly
6 within a year, and I was very confident. Staff, I think
7 would say at least privately, that it was because I'd
8 never had a cited case of my own before and so I didn't
9 understand all the bumps in the road. And clearly, they
10 would be proved right at this point. I didn't.

11 But let me suggest that, given what has been
12 presented today and what's been coming up in the record,
13 certainly, if I looked at CURE's letter and I looked at
14 the Applicant's letter for the filing today, I would
15 be--say to myself, as I am, that we can't make,
16 potentially can't make, the year deadline. In fact,
17 there may be some significant delays, not because
18 anyone's been malicious or purposely dragging their
19 feet, because things aren't happening in the sequence
20 that we wanted.

21 What's the Applicant likely to feel as we move
22 towards this? I'd like to have a decision out on time.
23 I'd like to make my commitments, but I don't want to
24 upset the process. How flexible is the Applicant going
25 to be through this process, given that we're eroding
26 what we had in mind?

27 MR. ELLISON: Commissioner, at one level,
28 that's a question that I would have to take back to

1 Calpine's management and talk to them about, but I can
2 tell you today that I know they would be very concerned
3 about a slip in the schedule. They've worked very hard,
4 not only relative to other permitting processes, but I
5 think I can tell you very hard relative to other
6 applicants to get a great deal of information into this
7 process as fast as they possibly could. I know in some
8 significant circumstances they have consciously made the
9 decision not to object to data requests, for example,
10 but to provide information precisely because they did
11 not want this process to be delayed. And because of
12 that, while we understand the concerns about the
13 schedule, which I think are primarily driven by Federal
14 Government deadlines and some of the things we talked
15 about this morning, we nonetheless think there is still
16 a viable opportunity to make the deadline and we hope
17 that people would continue to strive to do that.

18 COMMISSIONER MOORE: You can understand
19 that--and I have a list in my office where I went
20 through and ticked off things that were complete. I
21 made a little sign to myself about how likely they were
22 to be complete in "X" period of time, and the fact is
23 that I come up with a number of unknowns that were
24 significant enough to cause me some concern. I don't
25 have any control over the Federal Government or their
26 responses. It doesn't seem like I have much control
27 over some of the State agencies as well, which should be
28 in the process. But I'm not sure where to put the

1 pressure on. I'm not sure where the weakest link is in
2 order to keep this on line. I'm not assuming that
3 there's any kind of automatic request for an extension.
4 I guess this is really just my way of letting everyone
5 know that I'm proceeding basically with the same time
6 line that I had in mind, and not intending to have it
7 drag out, but I intend to have a decision out at the
8 earliest possible time that I can.

9 So, if there are places where this is lagging
10 and it's going to affect the schedule, I need to know it
11 I guess early-on, and I need to know the Applicant's
12 intentions as early as I can in order to keep the
13 process moving. It seems to me there are so many pieces
14 out of whack right now that it's a worry to me and maybe
15 I'm the only one that's worried about it. Maybe this is
16 me just being sort of untoward to the process, but
17 believe me, it's got my attention and I'm not sure how
18 to fix it at this point; I don't know where to lean to
19 get it fixed, but when there's so many pieces undone and
20 I don't have a map that shows me how they'll get
21 accomplished, I start to worry.

22 HEARING OFFICER FAY: I'd like to interject
23 that this case is really one of first impression in
24 terms of the degree of integrating with the Federal
25 Government, and it's not surprising that that has some
26 growing pains in working out two different schedules,
27 and we can't, as you said, we can't control our own
28 State agencies, and there's certainly no way to control

1 the Federal Government's schedule.

2 The other point that I wanted to make though
3 is that there are other, as you know, other projects at
4 the Commission now that are not doing as well in
5 timeline as this case, so it's kind of a relative
6 question, but this Applicant has been forthcoming with
7 information. I think that's helped them move along to
8 the extent that they have.

9 COMMISSIONER MOORE: Well, I can't obviously
10 answer for any other presiding member and the way they
11 run their hearings. That's a whole different deal. But
12 I can say that there are things, and let me just make
13 sure everyone's aware, that cause me some concern. The
14 first is the County's response. I am bound, I think
15 procedurally and morally, to await the County's
16 thoughtful decision about what they're going to do with
17 their plans. I think that it certainly has the
18 potential to change the way that we're doing business
19 here, and I need to hear from them at the shortest
20 possible time. Well now, to keep the Applicant in the
21 cue, that means that the County has to get enough
22 information to make a decision in a timely fashion and
23 then get it on their schedule for General Plan
24 review--not a non-trivial task at this point.

25 Second point is with regard to the Federal
26 Government. I ask myself the question: what if I have
27 a circumstance arise where I simply don't have the data
28 from the Federal Government in a timely fashion? Do I

1 proceed apace and get ready to issue a decision with
2 that piece of data missing? What would the Applicant
3 say to that, or do you automatically come back in and
4 ask me for an extension because you wanted to make the
5 record complete, make sure that I had everything in
6 order, or would you accept the decision absent that,
7 knowing that we in good faith tried to generate it?
8 That's a question that I need to ask, especially since I
9 don't seem to control that process at all and because
10 we'll be in parallel with the Federal Government.
11 They're going to have to make a finding as well.

12 And Loreen, I don't know how much pressure I
13 can bring. I know your colleagues are busy. I'm aware
14 of that. I don't know what takes precedent?

15 MS. McMAHON: Well, that's the Fish and
16 Wildlife Service. That's not our agency.

17 COMMISSIONER MOORE: I understand, but I'm
18 simply saying--

19 MS. McMAHON: And--

20 COMMISSIONER MOORE: --Federal Government.

21 MS. McMAHON: Okay, and that part of the
22 process for national environmental policy at compliance,
23 usually it can come after our decision, because what
24 that is for our process is our mitigation measures as an
25 agreement between the two federal agencies, so that
26 doesn't impact our decision to do a project, unless we
27 can determine throughout the process that there's
28 significant issues that we don't want to tackle.

1 So, it's a little bit of a different bend for
2 us. In terms of Calpine, I also might add that most of
3 the biological work was done by their biologist, whom
4 they trust. Their biologist helped us prepare our
5 biological assessment. The process is that we present a
6 biological assessment to Fish and Wildlife Service and
7 they present a draft biological opinion that either
8 agrees or adds to what our conclusions are, so we're
9 basically in the middle of it. We have a good idea
10 where we are. There shouldn't be that much difference,
11 unless of course the most additional evidence that came
12 from the most recent modeling affects it.

13 So we have a good idea where we are with that.
14 It's not finalized by any means, and because they don't
15 communicate, we don't know exactly what they're
16 thinking.

17 COMMISSIONER MOORE: Well, I think you
18 underlined my point because I trust that you do have a
19 good idea of where they are, and in a sense it's
20 revealing itself day by day; you'll be closer to
21 knowledge of it. But let's say that we go through the
22 evidentiary hearings and it still hasn't fully revealed
23 itself. We really don't have anything on the record
24 other than a good feeling about where they are, and
25 that's not likely to take us very far if there were ever
26 a court case, for instance, on this matter. Our record
27 would be not defensible in that case.

28 So clearly, I was thinking of what I know on

1 this, but frankly, I don't know whether I'll be able to,
2 in good faith, continue the process under the kind of
3 deadlines that we've set, potentially upsetting the
4 Applicant, if I don't have assurances that the
5 information I need is going to be forthcoming, and at
6 some point, I'm going to be faced with the possibility
7 of simply unwillingly blowing past the deadline.

8 Now, there's another issue--I said there were
9 three: the third one is the issue of the transmission
10 line location, access to the plant. I know this has
11 changed at least once. At some point, I need to have
12 some sort of final estimate of where it's going in order
13 to imagine the breadth of the impacts. So, we need to
14 settle down on a location and have that finalized.

15 MR. ELLISON: Commissioner, Calpine has
16 settled on a location long ago, and filed a supplement
17 that describes exactly where the transmission line would
18 go. The only change that's been made in the
19 transmission line route was what I would consider to be
20 a virtue of this process in response to public comment,
21 specifically comments both from our neighbors as well as
22 from PG&E, Pacific Gas & Electric Company, and from
23 Western about the viability of our initial proposal, but
24 the supplement that we filed, and I have to be reminded
25 of the date, I believe in May, lays out precisely the
26 proposal as to where the line would go. There is
27 one--at the very end of our proposal, there is an option
28 that we left in, but it's only the last short distance

1 to arrive at exactly the same point. The point of
2 interconnection is precisely located at the route in
3 South Township; it's precisely located. So from our
4 perspective, there is not any uncertainty as to the
5 transmission route, and we do not anticipate
6 any--there's no discussion, at least that we're aware
7 of, of any changes to that.

8 COMMISSIONER MOORE: I apologize. I was under
9 the impression it was still fluid, and perhaps what I
10 was thinking of is the matter of the last piece of it,
11 although I'm not aware of the magnitude of that, but the
12 option that you referred to, lineal distance for the
13 option?

14 MR. HILDEBRAND: I believe the last
15 mile-and-a-half of the proposed route would either be
16 cross-country through an existing, producing
17 agricultural field, or following the dirt road, existing
18 dirt road. Those are the two alternatives.

19 COMMISSIONER MOORE: Well I'm not--I'm not
20 sure I would consider that kind of an option, but--

21 MR. CARPENTER: May I ask a question here,
22 Commissioner Moore?

23 COMMISSIONER MOORE: Yes?

24 MR. CARPENTER: I shared the same question
25 that you did; the transmission line route in my mind is
26 not necessarily set. Mr. Ellison used the word
27 "precisely," and I don't know that that's accurate. I
28 know there's been some discussion running the

1 transmission line down along the west side of Township
2 Road, and apparently there's going to be an acquisition
3 of a hundred to a hundred and twenty-foot right-of-way
4 for that line, but it's not solid in my mind where,
5 within that right-of-way, where that line would go, and
6 with respect to the extension, water extension, the
7 district's right-of-way is adjacent to Township Road
8 where the line would go in proximity to that, so I'm not
9 sure I'm convinced that that supplement defined it to
10 the extent that it needs to be.

11 COMMISSIONER MOORE: Well, let me turn back to
12 Mr. Ellison now on that question. When would you
13 imagine, time-wise, that you would fix on a route for
14 the last mile-and-a-half?

15 MR. ELLISON: Well, we're doing the final
16 engineering right now, but let me say something else
17 first and come back to something if I may. When I used
18 the word "precisely," I intend to do refer to the
19 location at the point of interconnection at the end of
20 the line.

21 COMMISSIONER MOORE: Gotcha.

22 MR. ELLISON: Okay? There are two issues that
23 I believe I've heard, one being the last
24 mile-and-a-half. These are--the proposal that we
25 submitted essentially has an option, as Mr. Hildebrand
26 just described a moment ago for essentially two parallel
27 choices, either running along the edge of a parcel or
28 running down a road in the middle of it, and that's

1 something that, in terms of the impacts, the big issues
2 like aerial application, those kinds of things, we don't
3 see that as being significant. I think the
4 Commission--the testimony on those issues would be the
5 same regardless.

6 The other issue I've heard about is exact
7 location within the right-of-way that we've talked
8 about, and for the--typically, in the cases that I'm
9 familiar with, that's something that actually isn't
10 resolved until even post-licensing. The actual location
11 of the towers is something you actually want to leave
12 some flexibility in, in order to allow--address a very
13 specific, extremely--locational hazard concerns. But
14 the basic route, in the vernacular that I'm familiar
15 with, at the Energy Commission, the route of the
16 transmission line has been, at least from our
17 perspective, fixed and clear in terms of where the
18 right-of-way would be. If there is an issue that you
19 need to make a finding on, that is dependent upon
20 something that we have not yet made clear, I don't know
21 what that finding is.

22 COMMISSIONER MOORE: Um hum. Okay, well, I
23 think my original question is still on the table then.
24 When would you anticipate that you would make a decision
25 regarding the final fix, whether you're in--we'll
26 describe it as "A" or "B," "A" being within the road
27 right-of-way somewhere, and the other being
28 cross-country route, call it "B." When would you be

1 likely to pick between those? The reason for my
2 question, I think, is pretty transparent, and that is
3 the cumulative impacts that would be involved would
4 vary, depending on whether you went through someone's
5 farm, down a road. So, the issue will impact other
6 pieces of the potential--other pieces of the Staff
7 analysis, depending on which one you choose.

8 So, since we're time-sensitive here, I'm
9 trying to understand when you might make your final
10 pick?

11 MR. ELLISON: Let me make one quick comment to
12 that, and then I'll ask Mr. Hildebrand if he has a
13 comment on it. My quick comment is, one of the reasons
14 that Calpine left those two alternatives open was to
15 allow flexibility to work with a particular landowner
16 involved in that, and also because, you know, the
17 distance of the line is the same under either
18 alternative. The type of land is basically the same.
19 We didn't see this as being a choice. We saw this as
20 being a choice that had more--that involved more the
21 particular local landowner involved than is affecting
22 the basic analysis that the Energy Commission might need
23 to do. Having said that, Mr. Hildebrand's been
24 following this issue certainly more than I have, and I
25 would like to invite his comments.

26 COMMISSIONER MOORE: Sure. The timing
27 question?

28 MR. HILDEBRAND: I would like to turn it

1 around a little, Commissioner, if I may, and to try and
2 understand more from you what your desires are for that
3 timing. Again, we--

4 COMMISSIONER MOORE: Friday.

5 MR. HILDEBRAND: Friday? Next Friday? This
6 Friday?

7 COMMISSIONER MOORE: I'm trying to make
8 it--again, just so everything's clear here, I've
9 got--it's like a very big simultaneous equation. I have
10 a lot of forces at work. I'm trying to make sure that
11 the Applicant gets every consideration that's due to
12 them. I want to make sure that all the time deadlines
13 that can be dealt with are dealt with. I've got a year
14 deadline that's imposed. I can't really go past that
15 without a request from you. As I approach that year's
16 deadline or as I approach the point of my decision, you
17 can understand that I'm likely to begin moving towards
18 issuing an opinion of some kind. If it looks like I'm
19 simply not going to have the record closed, I'm going to
20 be feeling myself pushed to well, all right, I'll go
21 ahead and make the decision. Don't want to do it that
22 way, but there's every possibility that I might feel
23 pressured to do that.

24 Simultaneously, I need to make sure that
25 information gets to the Staff in time to do the analysis
26 they need to do. So, the question of which route you
27 pick is important because the sooner they know that, the
28 sooner they can finalize a lot of things that are tied

1 to each other. An alternative analysis, which as I've
2 said, is a very important point in my decision process,
3 won't be complete without that kind of knowledge. So,
4 the sooner the better.

5 MR. HILDEBRAND: We have not really--we
6 weren't aware of the urgency in the Committee's minds
7 for that decision. Given your comments, we will
8 definitely pursue further discussions with Western and
9 other U.S. parties and move towards making that
10 recommendation and final decision.

11 COMMISSIONER MOORE: Okay, well, I think
12 that's a fair thing. I think that the Committee as it
13 were has not been--has not been as demonstrative as we
14 could have been about cleaning up deadlines and things,
15 so if there's a sense that's kind of brewing that the
16 presiding member is getting a little impatient with all
17 the data gaps, and likely to be putting pressure on,
18 that's probably a real correct assumption. You're
19 probably hearing that one right.

20 Anyway, so, I still don't have the answer,
21 though. Sooner? A couple a weeks? I mean, how fast
22 are your engineering guys going to make--I'm not trying
23 pre-stage something where I blow a deal with a landowner
24 or something, but what's a likely time that you'd be
25 coming back with something?

26 MR. ELLISON: Can I make a quick comment? I
27 just want you to understand what our perspective on this
28 issue was until just this moment.

1 COMMISSIONER MOORE: Okay?

2 MR. ELLISON: Our perspective on this issue
3 was that we could--that you would have and already have
4 enough information for the Staff, for example, to
5 analyze either of these alternatives, and that in the
6 hearing you would--

7 COMMISSIONER MOORE: I would consider either
8 of them simultaneously?

9 MR. ELLISON: --you would consider either of
10 them, and they are so similar with respect to most of
11 the issues that you want to resolve that in fact it
12 doesn't add significantly, I don't think, to the
13 regulatory burden of reviewing them. It's not as though
14 we had one route going north and one going south. So,
15 our intention was not to withhold information, but
16 rather quite the opposite, to give people a choice and
17 to say look, from our perspective, the issues here are
18 more questions, not so much of engineering questions,
19 and please correct me if I'm wrong here, but it's not so
20 much that Calpine has an engineering issue it has to
21 resolve, but rather that from an engineering
22 perspective, we are indifferent, and the issue is much
23 more one of local concern and wanting to leave that
24 option open and have the Commission--our preference
25 would be to have the Commission look at both of these,
26 perhaps issue a license that allows either of them,
27 depending upon what's best for the particular landowners
28 involved.

1 But if you want--if you believe it's
2 important, to the Staff or anybody else, that Calpine
3 pick one and eliminate that choice, we can do that, and
4 I think we can probably do it pretty quickly.

5 COMMISSIONER MOORE: Well, you have me at
6 somewhat of a disadvantage. For instance, I don't know
7 whether the proposed routing that would cross a private
8 landholding might be hostile or not. You are in
9 possession of that knowledge; I'm not. And if it were
10 hostile, for instance, and the license was dependent on
11 Commission or public bodies using E.D., eminent domain,
12 to condemn the land, that's a different issue than we've
13 got a potential easement that we're going to purchase
14 from XYZ landowner, and as soon as we execute it, we're
15 done, versus going down a public right-of-way or
16 acquiring the right-of-way in a public domain down an
17 existing road. They're two different events. And
18 taking land in a productive agricultural zone presents
19 different kinds of problems. My sense is that even on
20 lineal distance, the same--the analysis is probably
21 going to have two fundamentally different components to
22 it.

23 Now, if in response to your statement, when we
24 see the document come forward, we have two fully
25 fleshed-out analyses of each alternative, I suppose
26 that's fine. It just seemed to me that it was probably
27 easier for everyone if there was a decision made. I can
28 live with the option if they're both explored fully.

1 But as it's presented to me today, I don't see them as
2 being the same. It seems to me they've got different
3 edges to them.

4 MR. HILDEBRAND: Well, again, Calpine clearly
5 sees pros and cons in each of the routes and, not
6 wanting to make that decision at this point was just as
7 Chris--

8 COMMISSIONER MOORE: You have a friendly
9 landowner in this case? Cooperative land owner?

10 MR. HILDEBRAND: I would characterize them all
11 as pretty similar.

12 COMMISSIONER MOORE: So, in each case we don't
13 have an instance where the public agency is envisioned
14 to be using some sort of condemnation proceeding in
15 order to acquire right-of-way?

16 MR. ELLISON: Well, Commissioner, I think the
17 fair statement on this is we don't know yet. Our
18 intention is we certainly don't want to go that route.
19 Our intention is to negotiate easements with everybody,
20 but in fact at one point, we decided that it would be
21 best for this process to try and get that issue resolved
22 earlier rather than later, but for institutional
23 reasons, outside of Calpine, we learned that we could
24 not do that and it had to wait until after this
25 proceeding is over. But that's one of the reasons, for
26 example, for trying to preserve some flexibility in this
27 route at the end where the flexibility makes sense.

28 COMMISSIONER MOORE: I'm not trying to take

1 your flexibility away, but it seems to me that the
2 analysis would be incomplete, the analysis that I would
3 want to consider in terms of making my own
4 recommendations. I would consider the analysis to be
5 incomplete if I didn't have information on future public
6 involvement spelled out for me, and the impacts of that
7 in the analysis that came forward. So, if there were
8 hopeful negotiations going on with the landowner but
9 they were incomplete, that's probably not good enough
10 for the process, at least not mine. If I'm going to
11 sign onto something, I want to know what the extent of
12 future public involvement is going to be, commitment of
13 public dollars, commitment of public resources. I want
14 to know what the roles are, so that would stand out as a
15 fairly incomplete piece of the puzzle for me.

16 MR. ELLISON: Well, in that case Commissioner,
17 let me be more informative. When I refer to
18 institutional concerns, I was trying to shorthand
19 something. We have discussed with Western, who may well
20 own this line.

21 COMMISSIONER MOORE: In the end? Not today,
22 but in the end?

23 MR. ELLISON: That's correct. This issue,
24 about the timing of easement negotiations, and they have
25 informed us that they're very strong in policy, and
26 preference is to not begin those negotiations until the
27 licensing procedure is over. And so, Loreen, you can
28 address this probably more fully than I can, but based

1 on that opinion, we have deferred to Western on that
2 matter.

3 COMMISSIONER MOORE: Well, Loreen, that's an
4 interesting question. Does Western--have they used E.D.
5 in the past to acquire their easements?

6 MS. McMAHON: Yes.

7 COMMISSIONER MOORE: And they would be
8 prepared to use that in a case like this if they had to?

9 MS. McMAHON: We haven't come to any, any
10 agreements with Calpine.

11 COMMISSIONER MOORE: No, I understand there's
12 no agreement; I'm just asking theoretically?

13 MS. McMAHON: Theoretically, there's a lot of
14 factors. I'm not a lands person; I can't really answer
15 that. What I can answer is, when Western negotiates for
16 land easements, our regulations require that our agency
17 has made the decision before we proceed to acquire the
18 land, to go ahead with the project. Our decision comes
19 out at the end in our record of decision, so our hands
20 are tied legally until we make the decision in the
21 record of decision.

22 COMMISSIONER MOORE: Understood, and I
23 understand the process. I think that what this at least
24 points to is that when we develop the alternatives
25 analysis, and this clearly counts as part of the
26 alternatives, it is the tail after pretty long dog, and
27 we should make sure that all of these factors are
28 included in the analysis, the what-if. In the sense,

1 it's a set of binary trees that keep going, well, if
2 that, then that, well, and then if that. So there's a
3 lot of iterations on this, and I want to make sure. Can
4 you hang on just a moment? I want to make sure that
5 they're covered in the analysis because--using eminent
6 domain not only is one of the most long, drawn out
7 processes that I've ever been involved in, but it's--if
8 there are alternatives to it, they are certainly
9 preferable, I think from a public policy standpoint.
10 So, to me, it's the kind of thing used use as a last
11 resort, and that means that I'd like to see the
12 alternatives and the options explored as fully as
13 possible.

14 MS. McMAHON: And I might interject, excuse
15 me, Western also believes that, and Western, in
16 addition, if Western acquires a line, anywhere, we have
17 to maintain relations with those landowners.

18 COMMISSIONER MOORE: Of course, and what I was
19 leading to when I asked Mr. Ellison the question about
20 friendly versus not-friendly relations with the
21 landowner is to make sure that when this comes up, it's
22 not a question that comes up--I guess I'm just signaling
23 so that everyone understands how this member plays the
24 game--I won't react very well to a string that's left
25 untied. We'll get to that landowner later, we'll deal
26 with this later. I want it fleshed out when it comes to
27 me. I want to know what the options are; I want to know
28 who owns the land, where it's going in Option A. I want

1 to know who's in Option B. I'm sure the Staff does,
2 too. They want to know as much information as they
3 possibly can in order to make an informed decision. You
4 can't ask them to evaluate something they don't know all
5 the parameters to.

6 So, I'm just trying to make sure--we're all on
7 record, that I want especially my Staff to be armed with
8 the most detailed information and most up-to-date stuff
9 that we can get.

10 MR. RATLIFF: Commissioner, we inquired to
11 that earlier, for that reason. We wanted to know what
12 status the negotiations would be in for the final
13 transmission alignment. What we understand the
14 situation to be is that that's unknowable because
15 Calpine has been told that they cannot negotiate--

16 COMMISSIONER MOORE: Right, and that's--

17 MR. RATLIFF: --until the decision is in,
18 which is your final decision, proposed decision, is
19 issued.

20 COMMISSIONER MOORE: Nasty catch-22.

21 MR. RATLIFF: So they're caught in a position
22 where they can't negotiate, and nothing is going to
23 happen on that score until we're done.

24 COMMISSIONER MOORE: That's clear, and Mr.
25 Ellison is making that clear, and I understand the
26 pandemonium that it creates, but I guess to me it means
27 that in a sense, as long as they preserve an option like
28 that, it means you got to go down both roads and

1 consider them both fully as if they were equally viable
2 in order to make sure that we, in effect, whatever
3 decision we make, has the broadest range of information
4 available to us that we can't--I did not understand
5 before I came today that Mr. Ellison and his clients
6 couldn't make that decision today. I did not understand
7 that Western was frankly in control of how the easement
8 would go. I still don't know, and I guess I won't,
9 until the hearings go on, whether it's a potentially
10 hostile deal with a landowner or not. But it seems to
11 me those are relevant pieces of the puzzle as we go
12 through this, and I'm asking you, telling you some of
13 the things that will go through my decision process. I
14 think it's only fair to let you know what kinds of
15 questions I'll be asking of the process. Paul?

16 MR. RICHINS: From Staff's standpoint, we have
17 analyzed both, and what we're doing is, we're taking a
18 look--there's not substantial difference between the two
19 routes, so we're looking at the worst case and providing
20 an analysis on that, and the fork in the road, so to
21 speak is on the--it's the same property owner, and so
22 it's all--it's all the same land. So, the issue of
23 ownership is the same in both cases.

24 COMMISSIONER MOORE: Thank you. I appreciate
25 that. Yes, ma'am? You wanted to ask a question?

26 MS. WOODS: I've got this darn head cold and I
27 can't hear everything that's said, but from what I
28 gathered, you're asking about the landlord's feelings?

1 COMMISSIONER MOORE: Actually ma'am, what I'm
2 asking are a serious of process questions.

3 THE WITNESS: There's not one landlord out
4 there that's willing to give these people one inch of
5 ground to traverse their property. Not one.

6 COMMISSIONER MOORE: Okay, well that probably
7 makes life pretty interesting for the Applicant's
8 future.

9 MS. WOODS: You got Silvers, you've got Damon
10 and Damon, you've got us, you got the Amarels, you got
11 thousands of acres that they have to go through, and
12 there's not one that's willing to give them an inch of
13 land.

14 COMMISSIONER MOORE: It's either a deadened or
15 it's a sellers market. I don't know. Yes, sir?

16 MR. MASSEY: I was just going to tell you that
17 it's definitely hostile. I'm a landowner in the area,
18 and I do not know what neighbor who would give up their
19 property for this transmission line. You'll have to
20 take it through condemnation.

21 COMMISSIONER MOORE: Okay, thank you for the
22 advice. We never set out to have an easy process here,
23 but we are trying to have a fair process to make sure
24 everybody gets heard and considered in this, including
25 the Commissioners, and to make sure we make the best
26 decision that we can.

27 Okay, so you understand my line of
28 questioning, and I'm trying to make sure that what

1 happens here is that everyone is aware that the
2 alternatives section of this report is going to be more
3 important than perhaps it has been in the past, because
4 therein is going to lie a lot of the factual data that
5 we'll rely on for our decision, and I guess my last
6 question would go to Dick Ratliff and to Loreen, and
7 that is, can you describe for me the procedural
8 relationship that we need to follow as we--and maybe I
9 should be turning to Mr. Fay as well, as we go through
10 this process, to integrate the cooperative role that the
11 Federal Government and State Government play in this?
12 Loreen, do you have a cross-examination role as well as
13 we in this?

14 MS. McMAHON: No. Typically, there are public
15 meetings for us. Typically what we do is, we redefine
16 the project, redefine the issues, and accept public
17 comment on a formal basis. Usually we don't have
18 debates and we do not have testimony and
19 cross-examination. So, I was planning to just make
20 myself available and probably speak at the beginning of
21 each meeting to reiterate our process and Western's
22 availability for our comment and our participation to
23 draw a line so that the public would understand the
24 differences.

25 COMMISSIONER MOORE: Okay. Dick you want to
26 add anything?

27 MR. RATLIFF: Yes, consistent with that, I
28 think I might say at the outset that we try to draw out

1 a process that identified the equivalent Energy
2 Commission documents in our proceeding that would serve
3 the purposes of Western for their decision-making
4 process, because their agency is obviously going through
5 a parallel decision-making process. Normally their
6 process is much less elaborate than ours, and I think
7 that's what Loreen was alluding to. They don't have
8 this formal process as ours nor as drawn-out a process,
9 nor one that involves as much, I think, typically as
10 much public involvement.

11 I think that, as I understand it, Western is
12 essentially a decision-maker here in their own process,
13 and they're using our process to provide that
14 information and that ability to make their decision.
15 Normally, they would not serve as witnesses in our
16 proceeding, but apparently Loreen has suggested that
17 they may be willing to if we request it. They would be
18 willing to provide help on that score, and that might be
19 useful.

20 COMMISSIONER MOORE: Paul, were you leaning
21 forward to say something? Okay. Let me--do you have
22 some stuff to add here?

23 HEARING OFFICER FAY: I will just add that I
24 will be coordinating with Loreen before we issue the
25 hearing order to be sure the dates that we set up work
26 for their requirements.

27 COMMISSIONER MOORE: And the County's. Okay,
28 with that, let me turn back to the Applicant for a

1 second and say, we've gone through a process here to try
2 to identify--there's a broad range of issues, how much
3 time we're going to need to address them, and you've
4 also heard my concern about the fact that this ball of
5 string is unraveling, more than a little bit, in terms
6 of timing. Do you have questions or remarks that you
7 want to make me aware of as presiding member on the
8 timing issues, how you think the process is going? I
9 want to make sure that we're linked as far as concerns
10 and process goes, so this is as good a time as we get to
11 have everything without ex-parte contacts on the record?

12 MR. ELLISON: Well, I do have one question and
13 one comment, and I want to see if any of my team have
14 any. The question relates to this issue of the fork in
15 the road in our proposal on transmission. Based on the
16 discussion that I've heard, I think I've heard that
17 you're comfortable, as long as everybody analyzes both
18 of them in the way the Staff described with our
19 preserving that choice and going into hearings with both
20 of those alternatives, but I want to be clear that
21 that's the case, because if you need Calpine to pick
22 one, we can certainly do that. Our preference, I think,
23 would be to preserve the choice.

24 COMMISSIONER MOORE: No, I'm okay with
25 preserving the choice. My personal preference, which
26 simply doesn't count, would be to have had you picked
27 and have the line laid out, but I have no problem with
28 preserving your own options as long as we fully evaluate

1 both of them to the same degree in the document. I'm
2 comfortable and I'm fine with that.

3 MR. ELLISON: My comment is based on my
4 familiarity with the Energy Commission process which
5 goes back, I'm sorry to say, about twenty years, sorry
6 to say in the sense of revealing my age. And I would
7 just say, in my experience, every one of these cases is
8 different, first of all, and the world is always
9 changing around us, so it would be wrong for me to say
10 that there is anything essentially as a typical energy
11 siting case. But having said that, in my view, the
12 messiness that you're seeing in terms of these
13 relationships and in terms of these issues is within the
14 range of normal for these cases. I don't think that
15 there's anything--there's certainly a set of issues that
16 we've been working on, resolving issues in an iterative
17 process throughout this year with a considerable degree
18 of success so far, I think. The issues that remain on
19 the table as unresolved are a small subset of the issues
20 that we started with, and we're optimistic that by the
21 time hearings roll around that it will be an even
22 smaller subset. Certainly the relationship with the
23 Federal Government is a bit of a test case here, but the
24 sense that you start out the process with perfect
25 information and that nothing changes through the
26 analysis process is I think a myth, and one of the
27 reasons I think it's a myth, importantly, is that you
28 want the process to involve potential changes in the

1 project in response to public comment, and that's
2 certainly what happened with the transmission route
3 here, for example. I think it would be a mistake, and
4 I'm addressing more a policy issue for the Commission
5 more than anything in this case, but I think it would be
6 a mistake for the Commission to try to lock in a process
7 that didn't allow for some of that messiness to occur,
8 because that messiness, in fact, is the way that a lot
9 of problems are resolved with the people most affected,
10 and we certainly haven't reached agreement on all the
11 issues with all the parties. There's certain, as you've
12 seen, continued opposition to the project, but we've
13 been working very hard to resolve these issues, and we
14 intend to continue to do that, and I don't see anything
15 about what's going on in this case as being alarming,
16 from my perspective, what that's worth.

17 COMMISSIONER MOORE: Okay. I appreciate those
18 comments, but you understand my discomfort with
19 proceeding in a way that what might presume what the
20 County's going to do with their General Plan, and so
21 I've had misgivings about that all along. I'm
22 proceeding--in a sense, I guess, if we were in class,
23 we'd say that we have a reservation price that we've
24 established for the Applicant's position, and we're
25 going to go ahead and fund that and make sure that
26 they're covered if the other issue clicks in their
27 favor, but if it's not, then it's a different ball game,
28 so therein my reluctance to expend resources on your

1 side or on our side or the public's side in the absence
2 of such a definitive event.

3 MR. ELLISON: It's always a problem in all of
4 these cases. You've got chicken-and-egg situations all
5 over the place. It's normal. It doesn't make it any
6 easier, but it's normal.

7 COMMISSIONER MOORE: No, and that's a policy
8 question that my colleagues are going to have to answer
9 about the data adequacy and what it really means when
10 you use that term. Does it mean that you've got that
11 piece of the puzzle locked out already? We're going to
12 have to take that up pretty soon. We've got too many of
13 these cases coming to avoid that. Other team members of
14 your team want to opine on this issue? Negative? Thank
15 you. Ann? No? Staff? Any comments? Rich?

16 MR. RATLIFF: No.

17 COMMISSIONER MOORE: All right. We'll issue a
18 document soon about the timing, and the next hearing
19 dates, and they will be here. I'm sure that we'll try
20 and include at least one evening session in that, so if
21 we go for the early dates in October, probably the lead
22 day will include an evening meeting. It may be short.
23 It may be that no one will come, but I want to at least
24 open up the opportunity for people to come if they
25 choose to, for at least one evening date, especially
26 when we have a block of days, two or three days, that
27 we're considering things, so plan for evening time as
28 well.

1 HEARING OFFICER FAY: I'd just like to, before
2 we close, remind you that we did take public comment
3 early for the convenience of the people who came from
4 the public, and I'd just like to offer again, if
5 somebody has not had a chance to address the Committee
6 and feels that they want to today, we want to give them
7 the chance at this time. Does anybody need to do that?

8 COMMISSIONER MOORE: Anybody have a burning
9 issue that they want to make sure we know about?

10 MS. FOSTER: On the evening meetings, I'm not
11 sure if you have these meetings in November that we
12 would need an evening.

13 COMMISSIONER MOORE: I don't know either. All
14 I want to do is, I don't want to preclude the option,
15 because there may be people for whom only an evening
16 will work. You know, if I'm going to be here anyway,
17 there's no reason not to continue into the evening. I'm
18 sorry that I tagged Staff with that same thing, but
19 they're all pretty dedicated public servants, so that's
20 why we're here. So, I will try and make that option
21 available.

22 MS. FOSTER: I think the reason we requested
23 in the first place when we were first under the
24 impression this would be September, October, and then go
25 all the way.

26 COMMISSIONER MOORE: Um hum. Well, the
27 alternative was to come out to someone's ranch and work
28 and have the hearing at the same time.

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MS. WOODS: Hey, I'll take you up on that.

COMMISSIONER MOORE: I only know how to drive
the truck and not the tractor, so--

MS. FOSTER: You can learn.

COMMISSIONER MOORE: Thank you all for coming.
We appreciate your help.

HEARING OFFICER FAY: We are adjourned.

(Time noted at 3:10 p.m.)

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