PREHEARING CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of: )
for the GWF Tracy Combined ) 08-AFC-7
Cycle Power Plant Project )

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

TUESDAY, NOVEMBER 17, 2009
2:00 p.m.

Reported by:
John Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Karen Douglas, Chairman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT
Raoul Renaud, Hearing Officer
Devorah Eden, Advisor to Commissioner Rosenfeld
Galen Lemei, Advisor to Chairman Douglas

STAFF AND CONSULTANTS PRESENT
Kerry A. Willis, Senior Staff Counsel
Brewster Birdsall
Matthew Layton
Marie McLean
Maggie Read
Alan Solomon

APPLICANT
Michael Carroll, Attorney
Latham & Watkins
Doug Wheeler
GWF Power Systems
Jerry Salamy
CH2MILL

INTERVENORS
Annette Tuso Elissagaray
Charles Tuso

ALSO PRESENT
Jim Swaney, San Joaquin Valley Air Pollution Control District (via telephone)

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PROCEEDINGS

2:06 p.m.

HEARING OFFICER RENAUD: Good afternoon everybody. My name is Raoul Renaud. I'm the Energy Commission Hearing Advisor assigned to the Tracy, GWF Tracy Combined Cycle Power Plant Project.

And we're here today for the prehearing conference which was noticed on November 2, 2009. We've also noticed the Evidentiary Hearing to take place on November 30, 2009 in Tracy.

Before we go any further let's make introductions here. I will introduce the people up here.

To my far right is Kourtney Vaccaro who is a new hearing advisor with us and is here to learn from my mistakes (laughter).

To her left is Galen Lemei who is advisor to Chairman Karen Douglas. To my immediate right is Chairman Karen Douglas.

And to my left is Devorah Eden who is advisor to Commissioner Rosenfeld who is the Associate Member of the Committee assigned to hear this matter. Commissioner Rosenfeld cannot be present today.
Let me take introductions from the representatives of the applicant first, please.

MR. CARROLL: Good afternoon, Mike Carroll with Latham and Watkins on behalf of the applicant.

To my right is Doug Wheeler with GWF Energy, the applicant in these proceedings.

And we have with us other representatives of the applicant including from GWF, Latham and Watkins and CH2MHILL.

HEARING OFFICER RENAUD: Thank you. And for the staff.

MS. WILLIS: Good afternoon. My name is Kerry Willis, Senior Staff Counsel. And with me is Alan Solomon, Project Manager.

We also have in the audience Beverly Bastian and Marie McLean if there are any questions on cultural or visual resources.

HEARING OFFICER RENAUD: Okay, thank you very much.

This proceeding is being recorded today and it will be transcribed into a written transcript which will be available for view on the Commission website.

We also have a telephone line open which
was set forth in the notice. It's a toll free line for anybody who wants to listen in or participate. Do we have anyone on the line yet?

MS. READ: Operator?
OPERATOR: Yes.

MS. READ: We have only one person, Jim Swaney, right?
OPERATOR: Correct.
MS. READ: Okay.

HEARING OFFICER RENAUD: So who do we have on the line?

MS. READ: There's a Mr. Jim Swaney and he wants to speak on air quality when that topic comes up.

HEARING OFFICER RENAUD: All right. Jim Swaney to speak on air quality. Thank you.

MS. READ: And who is he representing?
HEARING OFFICER RENAUD: He's with the Air District as I understand. All right, good.

MS. READ: Okay. Thank you. San Joaquin Air Pollution.

HEARING OFFICER RENAUD: San Joaquin Air District.

MS. READ: Air District.

HEARING OFFICER RENAUD: Thank you. All
right, good.

The purpose of this prehearing conference is to ascertain the readiness of the parties to proceed to evidentiary hearing, roughly two weeks from today.

The Evidentiary Hearing is the time when the Committee takes formal evidence and testimony into the record and thereby creating the evidentiary record upon which the Presiding Member's Proposed Decision and the Final Commission Decision can be based.

What we want to do here today is find out from the parties whether they're ready to go on November 30th, whether there are any areas in which the staff and the applicant are not in agreement, and to find out the nature of any such disagreements and whether those would affect readiness to go on November 30th.

In preparation for this hearing we asked the parties, and that includes the staff, the applicant and any intervenors, to file prehearing conference statements.

In this case we have two intervenors. The Tusos and the Elissagarays, represented by Mr. Seligman, counsel.
And we have also Robert Sarvey.

Neither of them filed a prehearing conference statement. And I assume from that they do not intend to offer any evidence into the record or testimony and do not intend to cross examine any witnesses.

We expect parties who wish to do those things to provide prehearing conference statements in fairness to each of the other parties so that everyone will know in advance exactly what evidence and testimony the, each party intends to offer.

The prehearing conference I did receive from the staff and the applicant were filed on time, November 12th, and they indicate agreement on all topic areas.

And that the evidence and testimony will be submitted in the form of declarations at the Evidentiary Hearing.

Mr. Carroll is that correct?

MR. CARROLL: That is correct.

HEARING OFFICER RENAUD: And Ms. Willis, is that correct?

MS. WILLIS: That is correct.

We also received comments on the Final
Staff Assessment from the applicant so at some point in time we wish to go over those. They are minor, I think relatively minor issues.

HEARING OFFICER RENAUD: Very good. And, in fact, that's the next thing we'll turn to.

On November 11, 2009 applicant through counsel submitted comments on the FSA, that's the Final Staff Assessment.

It reflects a careful reading of that rather large document. And it is quite helpful in providing a number of areas that may need correcting or clarifying.

And I -- this was docketed, by the way, on November 11th as well so it is in the public record.

I believe all of us up here at the table have a copy of that.

And I propose that we just proceed through that. And I'll just ask the parties where we stand with these issues.

All right. The first item is under the term, under the title, Executive Summary. And it references an inaccuracy with respect to water.

And let me ask, I think, first of Ms. Willis. Is the staff in agreement that that
needs to be corrected as indicated?

MS. WILLIS: Yes.

HEARING OFFICER RENAUD: All right. The second item under Executive Summary is the -- concerns the expected commercial operation date. And I believe this is telling us that that's expected to be June 2012 but there is someplace else in the FSA an indication that it's 2013. So will that be corrected to 2012?

MS. WILLIS: We have made that change, yes.

HEARING OFFICER RENAUD: Thank you, good. All right.

Let's move on to Air Quality. This indicates that on page 4.1-40 there's simply a word or, I guess, a word or the end of a sentence missing in the electronic version that's presently in the paper copy. So that can be corrected I take it.

MS. WILLIS: We'll take care of that.

HEARING OFFICER RENAUD: Thank you. All right.

Biological Resources. The comments indicate that the construction and lay down parking area should be 12.3 acres rather than 15.5
acres.

MS. WILLIS: And we're fine with that.

HEARING OFFICER RENAUD: Thank you. And also under Biological Resources GWF is pointing out that there's a reference to a natural gas stack which would be more correctly referred to as the natural gas-fired auxiliary boiler exhaust stack.

MS. WILLIS: Yes.

HEARING OFFICER RENAUD: In agreement?

MS. WILLIS: We have noted that change.

HEARING OFFICER RENAUD: Thank you.

Also under Biological in Condition Bio-9, the verification references reconductoring. And the applicant is requesting that we strike the reference to reconductoring as this work will be performed by PG&E.

MS. WILLIS: Yes, we agree with that.

HEARING OFFICER RENAUD: Very good.

Under Cultural Resources there is a comment that the reconducted segment three lines referred to as 2.5 miles long and that it should be 1.6.

MS. WILLIS: That's correct.

HEARING OFFICER RENAUD: Good. Also a comment that the proposed project did not include
any offsite linear facilities and therefore a reference in Condition CUL-6 to linear facility routes should be deleted.

MS. WILLIS: And we've agreed to delete that portion.

HEARING OFFICER RENAUD: Thank you.

Moving on. Within Cultural, another issue on Cultural 6 involves a, imposing a prescriptive monitoring approach to the project site when it has already undergone significant subsurface disturbance.

And I see you have distributed, Ms. Willis a --

MS. WILLIS: Actually that --

HEARING OFFICER RENAUD: -- oh, that's on Soil. I'm sorry.

MS. WILLIS: Right.

HEARING OFFICER RENAUD: Okay, let's forget that for now. The applicant has proposed some different language for that condition. How does the staff feel about that?

MS. WILLIS: Staff is actually not willing to accept the changes on this condition. They prefer to keep the wording as is.

HEARING OFFICER RENAUD: Mr. -- what's
your name again?

MR. CARROLL: Carroll.

HEARING OFFICER RENAUD: Mr. Carroll, thank you (laughter).

MR. CARROLL: Applicant continues to believe that the proposed level of monitoring is excessive given that this is a site that's already developed.

However in the interest of conserving resources of the Committee and keeping this process moving forward and in appreciation of all the good work that staff has done on this project we're willing to concede on this point and accept the condition as proposed.

HEARING OFFICER RENAUD: Very well, thank you. Let's move on to Public Health then. The comment is that there is a reference to one turbine generator on the project when, in fact, there are two.

MS. WILLIS: That's correct.

HEARING OFFICER RENAUD: I'll correct that line. Soil and Water. The first comment is referencing a numerical difference on the percent reduction of water for municipal and industrial use. It should be 60 percent rather than at 40
percent.

MS. WILLIS: And we've noted that

change.

HEARING OFFICER RENAUD: Good. And next

on Soil and Water is a request that Condition Soil

and Water-5 be deleted. And I believe this is

what you have submitted a revised condition?

MS. WILLIS: That's correct.

HEARING OFFICER RENAUD: All right. We

have that in front of us. Has the applicant

reviewed this?

MR. CARROLL: Yes we have and that

revised condition is acceptable to the applicant.

HEARING OFFICER RENAUD: Very well.

We'll substitute that into the decision -- into

the conditions for this topic, thank you.

Okay next is, under Transmission Line

Safety and Nuisance. Apparently there's a

reference to the Tesla Substation that should be

a reference to the Kasson Substation.

MS. WILLIS: And we agree with that

change.

HEARING OFFICER RENAUD: Good. Next is

on Visual Resources. There are references to

conversion of four acres of land and actually the
conversion according to applicant is 3.28.

    MS. WILLIS: Yes, 3.28 is the correct acreage.

    HEARING OFFICER RENAUD: Thank you.

Also under Visual there is apparently a reference to two 45 foot tall transmission structures when, in fact, there are six.

    MS. WILLIS: Correct.

    HEARING OFFICER RENAUD: We'll change that. And also under Visual there is a reconductoring of 2.3 miles of one line and 8.9 miles of another line. And the applicant is indicating that the 8.9 mile reconductoring will no longer be required and asks that the reference to the, to that line be removed. I think I got that right.

    Did I state it, maybe one of you can state it more accurately than I did.

    MR. CARROLL: That is correct.

    HEARING OFFICER RENAUD: All right. So as requested in this comment the change will be made?

    MS. WILLIS: That is correct.

    HEARING OFFICER RENAUD: Very good. All right. Also under Visual the applicant is
proposing a change to the Condition of Certification Vis-4 which relates to landscaping.

Some revised language is proposed. What does the staff feel about that?

MS. WILLIS: We're willing to accept the revised language. I believe that the purpose is that some of the previous plantings did not work. They weren't successful. Is that correct?

MR. SOLOMON: That's correct.

MS. WILLIS: Yeah. So we're willing to just make the changes as requested.

HEARING OFFICER RENAUD: Very well, thank you. And final comment also on Visual pertaining to Condition Visual-5G. It appears to be the same issue on referring to a natural gas stack when it really has a longer name.

MS. WILLIS: That's correct.

HEARING OFFICER RENAUD: We'll change that, all right. And are there any further comments other than what's shown in this letter?

MR. CARROLL: No, there are not.

HEARING OFFICER RENAUD: All right.

Thank you. Let's see. Okay.

The Committee, well let me ask first.

Ms. Read are there any other persons on the phone?
MS. READ: Operator, any other callers on the line? No, just Mr. Swaney.

HEARING OFFICER RENAUD: All right. And Mr. Swaney we'll get to you not too long from now. Thanks for your patience.

Okay. The Committee has reviewed the Final Staff Assessment and has a few questions. And I'll start out with a couple of them and then raise the largest topic in there.

In the Traffic Section, let's see, there it is, page 4.10-14 is referring to Operation Impacts and Mitigations on traffic in the area of the project. And it references 11 delivery truck trips per month.

I usually would see here also a reference to employee-related traffic and I don't see that. Maybe I'm overlooking it but for the completion of the record we should have in the record the amount of employee-related traffic. Perhaps Mr. Solomon can speak to that.

I found elsewhere in Socioeconomics it looks like you're going to have, there's going to be 17 employees.

Anyway I just wanted to indicate this was a question the Committee had. If the topic
needs to be supplemented, that should be done before the Evidentiary Hearing.

MS. WILLIS: We'll take note of that and perhaps issue a supplemental staff assessment if it's not readily available.

MR. SOLOMON: I don't have an answer for you right now so a supplement would address that.

HEARING OFFICER RENAUD: Good. Just so you have in mind that we need that information to make a determination as to operation and impacts of traffic.

MS. WILLIS: Okay. Thank you.

HEARING OFFICER RENAUD: All right. And the other area of question and concern the Committee had pertains to the greenhouse gas analysis.

I don't know if Chair Douglas would like to speak to this at all; I can introduce the topic. I think the concern was triggered by staff's statement at page 4.1-97 that the Tracy Project could meet the current emission performance standard in SB 1368.

Could, sounds equivocal. And we actually need more definite testimony than, could. We would need, would, or could not.
PRESIDING MEMBER DOUGLAS: Well I'm looking to see if staff has a comment on that. If not, we will wait to hear about that in the future.

MS. WILLIS: We're going to, staff will ask Matt Layton to address that issue.

MR. LAYTON: Good afternoon. My name is Matthew Layton, L-A-Y-T-O-N. I actually made that change because we're not making a finding about 1368 in this particular document. The finding would be made at a later time.

It could if it was required to meet the standard, meet the standard. However we're not making the determination in this document. So we did use that word very carefully.

HEARING OFFICER RENAUD: Would it be possible to include a condition of certification if there isn't one already requiring that it meet that standard?

MR. LAYTON: Again, the utility actually has to make or ask that determination be made about 1368, whether or not it does meet the emission performance standard. So I'm not sure a condition would help.

HEARING OFFICER RENAUD: All right. The
applicant care to address this?

MR. CARROLL: I think we do understand

the distinction that the staff is making. We

believe that the project will meet the 1368

standard.

And if I understand staff correctly they

agree with that but their wording is based on the

fact that that is not a determination that the CEC

makes. I understand that their review is that

that's a determination that would be made by the

CPUC.

HEARING OFFICER RENAUD: I think the

concern we have then is that we can only base the

decision on the evidence in the record. And so if

all we have is, could meet, that can't form the

basis of a decision one way or another on that

question.

Will there be evidence put into the

record by somebody, if it's not already there,

that upon which a finding about this could be

based on?

MR. CARROLL: Yes.

MR. LAYTON: Well there is evidence in

the record that shows that the performance of this

particular unit is 0.474, which is well below 0.5.
One could extrapolate from that that it does, in fact, meet the standard. However, the staff is not making a recommendation, can't make a recommendation on 1368 because that's not our job at this point.

HEARING OFFICER RENAUD: All right.

MR. LAYTON: It has to be made by either the CEC when the utility comes in, if it's a Muni, or at the PUC if it's a IOU.

HEARING OFFICER RENAUD: So you're saying it would be possible for it to meet the standard. You're not saying that you don't know. You're just saying that it would be possible if operated under certain conditions.

MR. LAYTON: Correct.

HEARING OFFICER RENAUD: All right.

PRESIDING MEMBER DOUGLAS: I have a follow-up question about the efficiency of the plant. Why is it not more efficient? We've seen other combined-cycle proposals come before us with better efficiency than this proposed plant would have.

MR. BIRDSALL: I'll start with that. I'm Brewster Birdsall. I prepared the air quality and the greenhouse gas analysis with Matt Layton
as a co-author.

And to take a stab, and I think that I'd like to turn it to the applicant as well. The existing plant is made up of two older combustion turbines. And the turbines are E class turbines. They are stationary gas turbines that are in simple cycle mode right now.

The combined cycle project would be a modification of those older turbines. So the project is not starting off with a brand new set of combustion turbines.

And so just from that point of view it has a little bit of a disadvantage compared to a brand new greenfield facility.

And then as you can see from the information that we put in the greenhouse gas section, it would be able to comply with a .5 target set by the CPUC rulemaking and the emissions performance standard.

Which means, which is equivalent of combined cycle facilities. So this project does meet that target for a combined cycle. It's not the best brand new combined cycle because it's just not involving the newest combustion turbines.

Now I'm sure that GWF might have
something to add there.

HEARING OFFICER RENAUD: Yes, please go
ahead if you do, and state your name.

MR. WHEELER: Doug Wheeler with GWF. In
reviewing the FSA I think one thing that we wanted
to point out, the staff looked at what we included
in the application as the worst case, which was a
15 degree case, duct fired.

If you look at it at ISO conditions or
the average temperature case, approximately 60
degrees, the efficiency or the factor drops to
.436.

The other thing that the application
does, and which the staff correctly noted, is the
application looked at non-duct fired hours and
duct-fired hours. And on the duct-fired hour case
it's 3100 hours.

The reason that we put the application
together in that fashion was to give the counter-
party and a PPA the maximum flexibility with
respect to how the unit operates.

Do we think that it's going to operate
3100 duct-fired hours? Probably not. But it does
give the counter-party that flexibility.

When you look at the non-duct fired heat
rate, as an example, it's approximately 7800.

That's contrasted with, I think it's figure 4, in the greenhouse gas section where it's reflected at 8,056.

So we wanted to point that out. That the way the analysis was done by the staff, which is a weighted average of duct-fired and non-duct-fired hours, and then to point out that it was at a worst temperature operating case.

PRESIDING MEMBER DOUGLAS: Thank you.

I have one more question. And then I'll turn the mic back to the Hearing Officer if I don't come up with yet another question.

I'm looking at Greenhouse Gas Table 4 and there's a list of plants in the local area and their relative efficiencies. And it seems plausible looking at this list that, for the most part, the modified, the GWF Tracy plant would, most likely, displace less efficient plants.

Although there are some plants in the local area that would be more efficient. And it's not clear to me from looking at this chart how much weight we should put on thinking about the plants that are in the vicinity versus displacement more broadly in the system.
And I'm not particularly interested in precise calculations of what exactly would be displaced because I don't think that's necessary for us in our analysis. But I am interested in some more information that would enable us to interpret the significance of this table.

MR. LAYTON: Commissioner, Chairman, I think Table 8 might be more important where it talks about how this particular gas-fired unit might fit into the system.

PRESIDING MEMBER DOUGLAS: Okay.

MR. LAYTON: But I think I agree with you that identifying a particular unit wouldn't really be helpful. It's kind of the function of these units. And, again, the function varies from day to day, year to year, season to season.

So I think Table 8 might be more useful to the Committee in preparing their analysis or drawing their conclusions.

PRESIDING MEMBER DOUGLAS: Thank you.

HEARING OFFICER RENAUD: Okay. Thank you. Well I think maybe just through these questions the Committee has indicated its interest and concern in this very important topic.

And if the parties upon review of their
evidence and declarations can see any way to
increase the amount of information, bolster it,
whatever, that would be encouraged so that it will
assist the Committee in being able to make
findings that are really supported by the
evidence. And if you do that you should send
those in as quickly as you can, docket them and
exchange them with the parties and we'll get those
into the record.

Another question that came up. And I
think Mr. Swaney if you, I hope you can hear us.
This is probably something or maybe something
you'll want to weigh in on because it involves the
District.

The plant that is there now is a peaker,
operated as a peaker.

And it was licensed by this Commission
to operate for 8,000 hours a year as I understand
it, but it's been running less than 100 hours a
year.

And the staff analysis and the Final
Determination of Compliance from the District
assumed that the baseline is 8,000 hours and that
therefore the ERCs that were surrendered in 2000
are still valid, can still be used. And that's,
in fact, how this was all worked out.

I think the latest, maybe the latest view of the courts on this is that if the existing, permitted amount was reviewed and received environmental review then that would be considered the baseline.

But there have been differing views on that as well.

And I wonder first does any party wish to comment on that. And second, we should perhaps talk about whether this would be a briefing topic in connection with these hearings.

Does anybody wish to speak up, including Mr. Swaney. That or anybody else related to air quality.

Don't all speak at once.

Let me ask the lady in the back to identify herself.

MS. ELISSAGARAY: Thank you.

HEARING OFFICER RENAUD: I think I know who you are.

MS. ELISSAGARAY: Thank you.

HEARING OFFICER RENAUD: Because you phoned me.

MS. ELISSAGARAY: Yes.
HEARING OFFICER RENAUD: Are you --

MS. ELISSAGARAY: Annette Elissagaray.

HEARING OFFICER RENAUD: All right. And you are an intervenor in this case --

MS. ELISSAGARAY: Correct, I am.

HEARING OFFICER RENAUD: All right. Do you wish to address the point that we just raised?

MS. ELISSAGARAY: Regarding air quality?

HEARING OFFICER RENAUD: Yes.

MS. ELISSAGARAY: Well I would like to ask a question and make a comment at the same time.

HEARING OFFICER RENAUD: About that topic. Because if it's something else we'll get to that.

MS. ELISSAGARAY: About air quality?

HEARING OFFICER RENAUD: Yes.

MS. ELISSAGARAY: Thank you. A few months ago, it was probably last February or so when we had a meeting in Tracy, there was a comment made. I asked a question if the air quality from this plant was going to be better or worse.

And I believe that Brewster was answering the question that day. And he said, the
air quality would be worse coming off of this
plant.

And I'm sure that most of you know that
my family owns 275 plus acres adjacent to where
this plant is located. We have four custom homes
that are there. My family members live in them.
And we are concerned about our air quality.

And a comment was made that they thought
that possibly air monitoring stations would be
installed to monitor the air.

You just made a comment that the peaker
plant runs approximately 100 hours a year. I
guess we don't have too big of a problem with the
air quality that's coming out of there right now.

But we do have a problem, a potential
problem for the air quality that's going to be
coming out of this new proposed plant. And we do
live there. We work there every day. And I don't
believe that the air monitoring stations have been
installed on our property to monitor that air.

It's just a comment I wanted to make
today, thank you.

HEARING OFFICER RENAUD: Thank you. All
right.

Mr. Swaney, did you wish to speak on
MS. READ: They're opening his line right now.

HEARING OFFICER RENAUD: All right, thank you. We're waiting for Mr. Swaney's phone line to be opened. Just go ahead and begin when your line is open, Mr. Swaney.

MR. SWANEY: Okay, is it open now?

HEARING OFFICER RENAUD: Yes.

MR. SWANEY: Okay.

HEARING OFFICER RENAUD: Please identify yourself for the record and then proceed.

MR. SWANEY: This is Jim Swaney, S-W-A-N-E-Y. I'm a permitting manager with the San Joaquin Valley Air Pollution Control District. The main reason for me calling in today was to see how the proceedings were going, to determine if anybody from the district should be attending the evidentiary hearing.

But regarding the emission reduction credits. As outlined in the Final Determination of Compliance, any credit that was used for any potential emissions that were permitted at the time where those potential emissions still are occurring, those credits remain valid for use for
this project. And so from that standpoint we
don't feel that there is any need to have any
hearing on that issue.

HEARING OFFICER RENAUD: All right,
thank you, Mr. Swaney.

And I should add that yes, we do want to
have a representative of the district available at
the evidentiary hearing. You don't need to be
present in person but actually our regulations
require that someone be available at that hearing.
So thank you for asking.

MR. CARROLL: Yes. From the applicant's
perspective we agree that there is no need to
conduct evidentiary hearings or briefing on this
point. As was indicated, we think that the
existing law, the California Environmental Quality
Act is very clear that the baseline for purposes
of analysis is the project as permitted. Since
obviously the project did go through a CEQA
analysis when it was initially permitted we
believe that CEQA requirements have been met.

And we also would like to point out that
the air district's regulations are very specific
as to the methodology that was used to evaluate
the offset package for this project and that the offset package as proposed complies to the letter with the air district's regulations as approved into the state implementation plan.

So we believe that it is very clear based on the evidence that has been proposed to be entered into the record by the applicant, the air district and the CEC staff, that the offset package complies both with the California Environmental Quality Act and all other applicable LORS.

HEARING OFFICER RENAUD: Okay, thank you. And I trust you're confident that the evidence will show that at the hearing.

MR. CARROLL: Yes we are.

HEARING OFFICER RENAUD: All right. Any comment from the staff? Counsel or anybody else?

MR. BIRDSALL: I think what I would like to add from the staff point of view is that the setting portion of the Final Staff Assessment shows in pretty clear detail how the existing GWF plant was offset through a set of emission reduction credits that essentially lay the groundwork for the proposed project.

So from a CEQA perspective I think this
case is a little bit unique because we are essentially starting with a project that included its mitigation up front so the baseline has this condition of emission reductions surrendered.

The district analysis in the FDOC as well as my analysis goes on in its impact assessment to show and represent those original offsets as providing the framework for the mitigation for the current plant.

I'm available to answer more detailed questions but that's the, that's the basic structure here.

HEARING OFFICER RENAUD: All right, thank you very much, that was all very helpful information, we appreciate that.

Let's ask now if there are any other intervenors present, either here or on the phone?

No? Seeing none.

MS. READ: There's no one on the line.

HEARING OFFICER RENAUD: All right, thank you.

As we always do at these hearings we open the floor to public comment. I believe we'll ask Ms. -- I'm sorry if I mispronounce your name, Elissagaray.
MS. ELISSAGARAY: Very good.

HEARING OFFICER RENAUD: All right. If you have anything else you wish to tell us before we ask other members of the public to comment.

MS. ELISSAGARAY: Thank you very much.

Receiving the packet -- I was out of town and then suffered a little bit of a leg injury so I was sorry that I did not have my eyes on this packet until just a few days ago.

But as thumbing through it, and of course there's probably 300 pages to thumb through, I did realize that on Visual Resource figure 9 where it was indicating where the home that I refer to in my talks are located, the diagram is incorrect. It is showing that we have two of the Tuso residents on Lammers Road, approximately .87 miles from the plant, and it is showing two other residences quite a ways down. I'm not quite sure what those other residences are.

I do personally live about five and a half miles from the plant but I still own a home there and I rent it to tenants, and my parents' home is still right here on Lammers Road. And so I was really surprised. GWF representatives have
been to all of these homes over the years. They
are very well aware of where our family's homes
are located.

So I think my comment is, in looking at
this figure briefly, realizing it had a gross
error, I'm wondering what else is grossly in error
in this packet. I'm not one to accuse people of
trying to mislead. I certainly am not one of
those people. But we own four homes here on this
property that is adjacent to this land that is
adjacent to the GWF property. And I take -- I am
very offended that they grossly represented our
homes. So I hope that that can be corrected.

HEARING OFFICER RENAUD: May I address
that first and then we can move on?

MS. ELISSAGARAY: Yes, thank you.

HEARING OFFICER RENAUD: All right,
thank you. Let me ask staff if the figure, Visual
Resources Figure 9 is different than it was in the
PSA? I don't know if there is someone here who
can answer that. I would be surprised if it is
different.

MS. WILLIS: The staff is asking Marie
McLean, who drafted the Visual Resource section,
to address that issue.
MS. McLEAN: It's the same figure.

HEARING OFFICER RENAUD: Please identify yourself.

MS. McLEAN: My name is Marie McLean and I did the visual analysis for Tracy. And it's the same figure that was in the PSA.

HEARING OFFICER RENAUD: All right, okay. Well, Ms. Elissagaray, I have to point out that, I have to point out that you did submit comments on the Preliminary Staff Assessment; they are shown in the FSA at page 4.12-20. And I don't see that you mentioned a problem with that figure. Perhaps you did but I don't see that you did.

MS. ELISSAGARAY: Well I'm sorry if I didn't. But I'm certainly aware of it now and they are incorrect.

HEARING OFFICER RENAUD: All right. What is incorrect about it specifically? I'm looking at it now so you can tell us.

MS. ELISSAGARAY: The Tuso residence that shows 3.77 miles from the plant.

HEARING OFFICER RENAUD: Yes.

MS. ELISSAGARAY: I am not quite sure what that is or whose home that is. And the one that is Elissagaray residence 5.8 miles, if that's
my house, I'll say that it is. That those are not
the homes that I refer to when I talk about the
da four custom homes along Lammers Road. Those
addresses are 27369 South Lammers, 27237 South
Lammers, 27249 South Lammers and 27210 South
Lammers. Those are the four homes that we own
along Lammers Road. They are all within this .87
to .86 miles from the plant.

HEARING OFFICER RENAUD: Now that same
page of the Visual Resources section of the FSA
says the Tuso properties located on South Lammers
Road were taken into account in Key Observation
Point-1. Are those the homes to which you are
referring?

MS. ELISSAGARAY: I'm sorry?

HEARING OFFICER RENAUD: Well, we have
photographs in the analysis that are taken from
what are called key observation points, KOPs.

MS. ELISSAGARAY: Okay.

HEARING OFFICER RENAUD: And according
to this, Tuso properties located on South Lammers
Road were taken into account in the photographs
from KOP-1. Are those the home that you are
talking about? That's my question. I'm just
trying to clarify.
MS. ELISSAGARAY: Well, I'm looking at this visual right here and I'm not quite sure where the house at 3.77 miles, I don't know whose home that is that they're referring to, I don't know. I don't know of any Tuso that lives there. It certainly isn't my brothers or myself.

HEARING OFFICER RENAUD: Perhaps the staff witness can help us out here. I don't mean to put you on the spot but could you -- you're just hearing this for the first time. This is the sort of thing we would like to see in prehearing conference statements so that everybody can be ready. You can see how it makes it kind of awkward when we aren't able to have had advance warning.

MS. ELISSAGARAY: Yes, thank you.

HEARING OFFICER RENAUD: All right.

MS. McLEAN: I'd have to check upstairs to see actually where I got the address. I know we made phone calls and actually did research to determine the addresses of the home. But as you point out, if her concern is that her houses are located in the area that we indicated closest to the power plant, we did then, as you point out, take her houses into consideration when we did the
analysis.

HEARING OFFICER RENAUD: All right, thank you. Just one point of clarification, Ms. Elissagaray. Could you -- if you're looking at this map.

MS. ELISSAGARAY: Yes sir.

HEARING OFFICER RENAUD: Do you see KOP-1 near the top?

MS. ELISSAGARAY: Yes.

HEARING OFFICER RENAUD: Are any of the homes you're talking about near there?

MS. ELISSAGARAY: No, not KOP-1.

HEARING OFFICER RENAUD: What are they near to on this map? Give us a landmark.

MS. ELISSAGARAY: Well they are kind of in-between KOP-1 and KOP-2.

HEARING OFFICER RENAUD: All right. Are they where it says, Tuso residence and there are two orange dots?

MS. ELISSAGARAY: Correct. There's two homes there and then there are also two more homes right there.

HEARING OFFICER RENAUD: In the same -- so instead of two dots we should have four, basically.
MS. ELISSAGARAY: Four dots there.

HEARING OFFICER RENAUD: All right.

MS. ELISSAGARAY: Correct.

HEARING OFFICER RENAUD: But the

distances are correct roughly?

MS. ELISSAGARAY: Yes, I believe so.

HEARING OFFICER RENAUD: Okay, thank you.

MS. ELISSAGARAY: Yes, thank you. And also the map, it just shows the dots of the homes but it doesn't show the property that we own. Thank you.

HEARING OFFICER RENAUD: Thank you. Did you wish to comment on any other areas in the Final Staff Analysis?

MS. ELISSAGARAY: Just that the property is adjacent and it's 276-plus acres adjacent to this power plant.

HEARING OFFICER RENAUD: All right, thank you.

MS. ELISSAGARAY: Thank you.

HEARING OFFICER RENAUD: All right. All right, we'll take comment from members of the public at this point. If you wish to speak simply feel free to come up to the

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microphone, state your name and who you represent
and go ahead.

No one? All right.

One more time I'll check for people on
the phone.

MS. READ: No.

HEARING OFFICER RENAUD: No one, all
right. Okay.

Well, is there any further comment or
question on behalf of the Committee?

No? All right.

The Committee will take everything that
was said today into account. We'll issue a
evidentiary hearing order which will provide final
instructions for preparing for the evidentiary
hearing. We will assume that November 30 is still
when it will take place, as noticed, in Tracy.

MS. WILLIS: Will you also include the
staff you would like to have present at the
hearing or do you have an idea now so that we can
make sure their schedules are open for that?

HEARING OFFICER RENAUD: Well as
indicated, we always need a representative of the
air district. I would say that your air quality
staff and possibly visual would be good just based
on the questions that have been asked today. I
can't anticipate anyone else but I'll leave that
to your discretion. Having people available on
the phone is always useful in case something comes
up we can at least reach them by telephone.

MS. WILLIS: Okay, thank you.

HEARING OFFICER RENAUD: All right. Any
closing remarks?

MR. CARROLL: Commissioner Renaud, I
don't know if it was your intention to talk about
the tentative exhibit list at all.

I did want to point out that in
applicant's exhibits, which were submitted today,
there are three additional exhibits, 96, 97 and
98, that were not identified in the prehearing
conference statement and therefore are not
reflected on your tentative exhibit list.

And obviously there may be additional
exhibits added. But I just wanted to point out
that there are three additional exhibits that were
submitted to you that do not appear on the
tentative list.

HEARING OFFICER RENAUD: So you're
talking about my exhibit list.

MR. CARROLL: Correct.
HEARING OFFICER RENAUD: Okay. We'll correct that. But thank you for pointing that out, that these were added since we prepared that.

I have nothing but compliments and admiration for your exhibit lists. They are, as usual, very nicely organized and very helpful to the Committee in preparing for the hearings and in preparing a decision. Thank you.

MR. CARROLL: Thank you.

HEARING OFFICER RENAUD: Hearing nothing further we'll adjourn.

I see a hand in the back, all right.

MR. TUSO: Good afternoon, I'm Charles Tuso, I'm Annette's brother. We're part of the Tuso Family Intervenors here on this.

My comment is that I invite all of you who are making the decision on our property out there and this project to come and view our perspective from our side of the fence, from our homes. To see what we have to visually see every day. You know, I think you'll get a whole different perspective.

We were out at the plant back last October, whenever it was when they had the first meeting, and, you know, we were behind the fence.
there and you look out and all you see was the
fence.

But from our house we see this big
monster in the background. I think it would give
you a whole different perspective of what we're up
against out there and we invite you to come out
and take a look from that angle.

So, you know, when we're over here in
Sacramento, 70-some miles away from the project,
it's kind of an abstract thing to be talking
about. But from over there it's the real deal.
We're over there living with this thing every day.

And, you know, you folks are making the
decision for us over there. Anyhow, we think
it's, you know, it's something that we have to
live with and I think it's real important to our
family. So we invite you to come out and take a
look.

HEARING OFFICER RENAUD: All right,
thank you for your comments.

Any other, any other comments? All
right, we are in adjournment then, thank you.

(Whereupon, at 2:55 p.m., the Prehearing
Conference was adjourned.)

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CERTIFICATE OF REPORTER/TRANSCRIBER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November, 2009.

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