EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:
Application for Certification
for the Lodi Energy Center
Northern California
Power Agency

Docket No. 08-AFC-10

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

THURSDAY, JANUARY 28, 2010
9:30 a.m.

ORIGINAL

Reported by:
Ramona Cota, CERT*00478
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION
11344 COLOMA ROAD, SUITE 740, GOLD RIVER, CA 95670 / (916) 362-2345
COMMITTEE MEMBERS PRESENT
Karen Douglas, Chairman and Presiding Member
Jeffrey D. Byron, Associate Member

HEARING OFFICER, ADVISORS PRESENT
Kenneth Celli, Hearing Officer
Kristy Chew, Advisor to Commissioner Byron
Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS PRESENT
RoseMary Avalos
Brewster Birdsall
Rod Jones
Melanie Moultry, Staff Counsel

PUBLIC ADVISER
Jennifer Jennings

APPLICANT
Scott Galati, Attorney
Robert Gladden, Attorney
Galati and Beck

Ed Warner
Northern California Power Agency

Jeffrey D. Adkins
Sierra Research

ALSO PRESENT
Rupi Gill, San Joaquin Valley Air Pollution Control District (SJVAPCD), (via telephone)

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PROCEEDINGS

10:00 a.m.

HEARING OFFICER CELLI: Okay, we are back on the record then. Good morning everyone, sorry for the delay. I had just finished -- actually we have no record at all, is that the case, Ramona, we have to start from the beginning?

THE REPORTER: (Nodded affirmatively.)

HEARING OFFICER CELLI: Okay. We don't have the introductions and all that.

The Committee is Chairman Douglas, Commissioner Byron. Commissioner Douglas' advisor is Galen Lemei, Commissioner Byron's advisor is Kristy Chew. I am Ken Celli, the Hearing Advisor. The staff is represented by Melanie Moultry and the project manager is Rod Jones.

Who is present for the applicant is Scott Galati and Bob Gladden, attorneys, with Ed Warner as the project manager for Lodi Energy Center.

And on the phone we have Robbie Glenn.

Are you still there?

MS. AVALOS: Rupi Gill.

HEARING OFFICER CELLI: I'm sorry, Rupi Gill. Can you type that in.
MS. AVALOS: It is typed in.

MR. GILL: Yeah, I'm here.

HEARING OFFICER CELLI: Okay, great, thank you. Thanks for hanging in there.

Now previously we had an evidentiary hearing. This evidentiary hearing was noticed on Thursday, January 7, 2010 for the limited purpose of taking in evidence on Air Quality and also for clarification of one condition in Cultural, today.

Applicant has previously marked for identification Air Quality Exhibits 1, 2, 5, 6, 10, 11, 12, 17, 18, 19, 20, 22, 25, 30, 34, 36, 41, 45, 46, 47 and 48 as relevant to Air Quality. We will need the applicant to state on the record what those exhibits are, please.

MR. GALATI: Sure. Scott Galati for NCPA.

Exhibit 1 is the Application for Certification. And the portions that are relevant to Air Quality are the Air Quality section and all the appendices.

Exhibit 2 is Table Data Response 71-1. It was cooling tower parameters that were provided to the Energy Commission in order to support the cooling tower plume modeling.
Exhibit 5 was a fogging frequency curve. This was also submitted to the Energy Commission in order for them to do their plume analysis on the cooling tower.

Exhibit 6 was NCPA's comments on the Final Determination of Compliance relevant to Air Quality.

Exhibit 10 was NCPA's comments on the staff assessment, those portions specifically related to air quality.

Exhibit 11 was San Joaquin Valley Unified Air Pollution Control District's Final Determination of Compliance.

Exhibit 12 was NCPA's withdrawal of PSD permit.

Exhibit 17 was NCPA's Lodi Energy Center BACT determination. And specifically our limit for CO with a letter that described that we were taking a lower limit from CO.

Exhibit 18 was our supplemental air quality modeling files for a Supplement D that was filed that slightly modified the project.

Exhibit 19 was also changes to the equipment in the project fence line that was related to some revisions included in Supplement
D.

Exhibit 20 were comments from EPA Region 9 on the Lodi Energy Center Preliminary Determination of Compliance.

Exhibit 22 was NCPA’s comments on the Preliminary Determination of Compliance.

Exhibit 25 is actually the Preliminary Determination of Compliance.

Exhibit 29 was specific responses to Data Response Set 3. We responded to inquiries at the staff workshop and we numbered those 3 through 27. Those were related to Air Quality.

Exhibit 34 was NCPA’s Data Response Set 2. This was the -- Requests 56B through 74 were related to air quality.

Exhibit 36 was a letter regarding the AFC for the NCPA Demonstration of Compliance with District Rule 4703.

Exhibit 45 is a compliance statement.

Exhibit 46 was air quality modeling files which were docketed separately.

Exhibit 47 was an email message from Nancy Matthews from Sierra Research to Brewster Birdsall and Matt Layton, CEC staff, transmitting new CO emissions calculations that were related to

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the lower CO limit.

Exhibit 48 was an EPA Office of Enforcement and Compliance Assurance Guidance letter to Regions, dated January 25, 1995, which was submitted into the record because there was a possible discrepancy on the enforceability of particular conditions, which has now been resolved by the FDOC.

HEARING OFFICER CELLI: Also could you go back -- I'm sorry, I didn't get what 41 was.

MR. GALATI: I apologize, 41 is not on that list. Yes, I apologize. Exhibit 41 was Supplement B. This was data adequacy responses which were docketed in order to receive data adequacy and there were some questions on air quality.

HEARING OFFICER CELLI: Thank you.

Any other or new evidence that the applicant seeks to move in?

MR. GALATI: Yes. We have two new exhibits that I have distributed copies and talked to staff about. The first is -- and I would like to ask that it be identified as Exhibit 50. And it's the other document, the larger one, the Final Determination of Compliance from the air district.
And specifically in that document I would like to
point to page 84, which contains the evidence
requested in previous proceedings about the
certification of the offsets in accordance with
the Public Resources Code.

HEARING OFFICER CELLI: Page 84.

MR. GALATI: Of the Final Determination
of Compliance.

HEARING OFFICER CELLI: Oh, of the FDOC.

MR. GALATI: Yes.

HEARING OFFICER CELLI: So is this
Exhibit 50 or is this Exhibit 50?

MR. GALATI: The FDOC is Exhibit 50.

HEARING OFFICER CELLI: Thank you.

MR. GALATI: And Exhibit 51 are excerpts
from the 2008 San Joaquin Valley Air Pollution
Control District's 2008 PM2.5 Plan. This document
is referred to both in the Staff Assessment and
Errata and in applicant's testimony.

And those are the only two.

HEARING OFFICER CELLI: That's
everything for the applicant on air quality?

MR. GALATI: That is correct.

HEARING OFFICER CELLI: Staff, any
objection to the receipt of Exhibits 1, 2, 5, 6,
10, 11, 12, 17, 18, 19, 20, 22, 25, 30, 34, 36,
41, 45, 46, 47, 48, 50 or 51 into evidence?

MS. MOULTRY: There is no objection.

HEARING OFFICER CELLI: Thank you.

Those exhibits are received into evidence.

(Applicant's Exhibits 1, 2, 5, 6,
10, 11, 12, 17, 18, 19, 20, 22, 25,
30, 34, 36, 41, 45, 46, 47, 48, 50
and 51 were received into evidence.)

HEARING OFFICER CELLI: Staff, any air
quality exhibits you wish to move into evidence?

MS. MOULTRY: Yes. In addition to
Exhibits 300, 301 and 302, staff would like to add
Exhibit 303, the Addendum to the Staff Assessment,
which contains revised air quality and cultural
resources testimony.

HEARING OFFICER CELLI: Any objection by
applicant to the admission of Exhibit 303 into the
record?

MR. GALATI: No objection.

HEARING OFFICER CELLI: Exhibit 303 will
be admitted as 303.

(Staff's Exhibits 300, 301, 302 and
303 were received into evidence.)

HEARING OFFICER CELLI: Please give us a
little description of what 303 contains.

MS. MOULTRY: Yes. Staff -- air quality staff provides its testimony to reflect the San Joaquin Valley Air Pollution Control District's Final Determination of Compliance, which was just released this week.

And the cultural resources testimony reflects the results of the applicant's geo-archeological study.

HEARING OFFICER CELLI: Thank you.

Now I sent the parties my highlighted copy of Cultural earlier and I just wanted to make sure that both parties are satisfied, first the applicant, that this solves the problem that we had left open.

MR. GLADDEN: Hearing Officer Celli, yes it did.

HEARING OFFICER CELLI: This is Bob Gladden, for the record. Please go ahead.

MR. GLADDEN: Thank you for accommodating that. And as we said, there may be an addition to the Cultural evidence and this is it. By stipulation we agreed to the admission of the cultural report -- the cultural section that was done by Ms. Bastian.
And also, as a matter of housekeeping, we are docketing presently that geo-arch study and we'll refer to it as Exhibit 52, which is titled the Geo Chronological Investigations of the Proposed Lodi Energy Center Site, Lodi, California. Dated January 27, 2010.

And also with that I would like to segue into an appreciation for Mr. Jones' team with Ms. Moultry. And special appreciation to Mr. Birdsall and Ms. Bastian for being so diligent and accommodating our schedule.

HEARING OFFICER CELLI: Thank you. Do you anticipate any other exhibits or are we capping applicant's exhibits at 52?

MR. GLADDEN: Fifty-two should be it.

HEARING OFFICER CELLI: Okay, very good.

Any objection by staff to the admission of what has been identified as Exhibit 52?

MS. MOULTRY: No objection.

HEARING OFFICER CELLI: Then with that we will receive Exhibit 52.

(Applicant's Exhibit 52 was received into evidence.)

HEARING OFFICER CELLI: Can you give me the name of that document one more time?
MR. GLADDEN: Geo-chronological Investigations of the Proposed Lodi Energy Site, Lodi, California.

HEARING OFFICER CELLI: Thank you.
Is there anything further from the applicant? Yes.

MR. GLADDEN: I left out a word in that title. Proposed Lodi Energy Center Site, Lodi, California. I think I left out the word, Center.

HEARING OFFICER CELLI: Thank you.
Nothing further from applicant?

MR. GLADDEN: Not as to cultural resources.

HEARING OFFICER CELLI: Okay, as to any subject matter area?

MR. GALATI: Yes, I'm ready to put on direct testimony for air quality.

HEARING OFFICER CELLI: Thank you, please proceed.

MR. GALATI: Okay. I'd like to call Mr. Jeff Adkins and Mr. Ed Warner and have them sworn as a panel, please.

HEARING OFFICER CELLI: Ramona, would you please.

Please rise.
Whereupon,

JEFFREY ADKINS

ED WARNER

Were duly sworn.

HEARING OFFICER CELLI: The witnesses have been sworn.

MR. GALATI: Mr. Warner, you have previously been sworn. Can you please briefly describe your position with NCPA in relation to the Lodi Energy Center.

MR. WARNER: Ed Warner, I'm the project manager for Lodi Energy Center for Northern California Power Agency.

DIRECT EXAMINATION

BY MR. GALATI:

Q And Mr. Adkins, can you please introduce yourself to the Committee and describe what your role is and your position.

A My name is Jeff Adkins; I am an air quality consultant. I work for Sierra Research; I'm a senior partner there.

Q Thank you. And Mr. Adkins, did you file previously sworn testimony? We have marked it as Exhibit 49, air quality testimony. Have you filed that in this case?
Q How long have you been an air quality consultant?

A I have been a consultant for about 16 years and worked an additional six or seven years at the Bay Area Air Quality Management District.

Q Thank you. Mr. Adkins, I've just handed you what has been marked as Exhibit 50. Do you recognize that document?

A Yes I do.

Q And can you please identify it.

A It's the Final Determination of Compliance issued by the San Joaquin Valley Air Pollution Control District dated January 22, 2010.

Q Thank you, Mr. Adkins. And have you reviewed that document, Exhibit 50?

A Yes I have.

Q And do you agree with the conclusions reached by the District in that document?

A Yes I do.

Q Did you also review staff's errata, Exhibit 303, specifically the portion related to air quality?

A Yes I did.

Q Other than staff's conclusions regarding
ammonia slip do you agree with the conclusions in
that errata that the LEC will comply with all
applicable LORS?

A Yes I do.

Q I apologize, laws, ordinances,
regulations and standards.

A Yes I do.

Q Thank you. Other than staff's
conclusion regarding ammonia slip do you agree
with the conclusions in the staff's errata that
the LEC will not result in significant air quality
impacts?

A Yes I do.

Q And once again, other than condition AQ-
SC9 do you agree with the conditions of
certification proposed by the staff in that
Exhibit 303?

A Yes I do.

Q Regarding ammonia slip. Did the FDOC
contain a condition relating to ammonia slip?

A Yes it did.

Q And did the District agree with --
excuse me.

Did the District condition and staff's
AQ-SC9 condition regarding ammonia slip, are they
the same?

A No they are not.

Q Can you briefly describe how they are different?

A The San Joaquin Valley Air Pollution Control District has a permit condition that limits ammonia slip to ten parts per million averaged over a 24 hour period. Whereas the staff assessment recommends a ammonia slip level of 5 PPM and that's over a 24 hour period. And when that limit is exceeded then the applicant has 12 months to replace or repair the catalyst such that they can get back under 5 ppm. So it's effectively a 5 ppm ammonia slip limit.

Q Okay. Is the 5 ppm ammonia slip a district best available control technology limit?

A No it's not.

Q Is there a federal law that would require a 5 ppm ammonia slip?

A No there is not.

Q Is there a state law that would require a 5 ppm ammonia slip?

A No there is not.

Q Is there any local district rule that would require a 5 ppm ammonia slip?
A No there is not.
Q Is ammonia a precursor to the creation of particulate emissions?
A Yes it is.
Q Can you describe to us how that happens?
A It's a complex reaction that occurs in the atmosphere. It requires the presence of NOx and SOx and also VOCs. There is a complicated reaction where the NOx and SOx are converted to nitrates and sulfates and then into acid gases, nitric acid in particular. And then that reaction forms with the ammonia in the atmosphere to create ammonium nitrate and ammonium sulfate particulates.
Q In the San Joaquin Valley Air Pollution Control District area do you believe the area already has excess ammonia in the air?
A Yes I do.
Q Why do you believe that?
A It is the conclusion of the air district and numerous studies that they have done where they are evaluating both their PM10 and PM2.5 compliance. It's a -- they take numerous measurements they have done, very complicated modeling, to determine what is the best means of
controlling particulates in the San Joaquin Valley
and concluded that ammonia is surplus in that
reaction.

Q Okay. I am going to put in front of you
what has previously been identified as Exhibit 51.
Are you familiar with that document?
A Yes I am.
Q Can you briefly tell us what that
document is.
A This is a 2008 PM2.5 plan that has been
approved by the San Joaquin Valley Air Pollution
Control District and submitted to EPA as -- it is
basically their plan for coming in to compliance
with the federal PM2.5 standards.
Q And does that plan support the idea that
the area is, for lack of a better word, ammonia
rich?
A Yes it does.
Q So that means there's excess ammonia in
the air already.
A That is correct.
Q So would putting any additional ammonia
in the air cause particulate matter to form?
A It is the conclusion of both the plan
and the modeling and the air district that
additional ammonia will have no significant effect
on the formation of PM2.5 or PM10 in the
atmosphere in the San Joaquin Valley.

Q Okay. Are you familiar with the Avenal
project?

A Yes I am.

Q Okay. And are you familiar with the
Palomar project?

A Yes I am.

Q And staff cites both in their staff
assessment, to both of those projects as support
for ammonia slip of 5 PPM; is that correct?

A That is correct.

Q Do you know whether those, whether that
issue was adjudicated in those cases or did the
applicant agree?

A In neither of those cases was the
ammonia slip level adjudicated. In both cases
either the applicant or the air district proposed
a 5 PPM ammonia slip limit.

Q Are you aware of any projects where the
issue actually was adjudicated here at the Energy
Commission?

A Yes I am.

Q Can you describe the results of those
The Turlock Irrigation District Walnut Energy Center is an example where the staff proposed 5 PPM, the air district and the applicant proposed 10 PPM; and it was adjudicated and ultimately the decision was made at 10 PPM.

Similarly, East Altamont, the applicant and the air district proposed 10 PPM and staff proposed 5 PPM. It was adjudicated and ultimately 10 PPM was the result.

Other examples include the Los Esteros project and the Cosumnes project in the Sacramento Valley Air Basin.

Would it be fair to say that if the Committee ruled that this was 5 PPM that this would be the first case in which it was adjudicated, in which the Committee ruled that 10 PPM should be a 5 PPM slip?

That is correct. It would be the first time where an applicant, neither the applicant nor the air district proposed 5 PPM and 5 PPM were imposed.

With a 10 PPM slip in accordance with the District condition, do you believe that the Lodi Energy Center would have significant impacts?
with respect to additional particulate emissions?

A  No, I do not.

DIRECT EXAMINATION

BY MR. GALATI:

Q  I'd like to turn to you, Mr. Warner. Would NCPA incur additional costs to comply with staff's proposed AQ-SC9?

A  Yes they would.

Q  Why?

A  Operation and maintenance costs through the life of a 30 year project, a 5 PPM slip would result in approximately a one to two times increase in the change-out of the NOx catalyst because of the lower limit. And this would result into an estimated cost of public funds for 2.5 to 3 million dollars over a 30 year period for the replacement of that catalyst and also the disposal of the old catalyst.

MR. GALATI:  Actually I have no further questions.

HEARING OFFICER CELLI:  Ms. Moultry.

MS. MOULTRY:  I have no questions for these witnesses.

HEARING OFFICER CELLI:  Applicant?

MR. GALATI:  Exhibit 50 and 51 were
admitted into the record?

HEARING OFFICER CELLI: That's correct.

MR. GALATI: Okay.

HEARING OFFICER CELLI: So to be clear. Is there, is there a dispute?

MR. GALATI: Yes there is a dispute. We would prefer staff's condition AQ-SC9 be stricken and that the district's condition requiring the ammonia slip to be 10 parts per million be followed.

HEARING OFFICER CELLI: And what is the staff's position?

MS. MOULTRY: Actually our air quality staff would like to testify regarding the condition.

HEARING OFFICER CELLI: Okay. Before I do that, any other witnesses on behalf of the applicant?

MR. GALATI: That is it.

HEARING OFFICER CELLI: Okay, thank you. Staff, please call your first witness.

MS. MOULTRY: I'd like to call Brewster Birdsall.

HEARING OFFICER CELLI: Mr. Birdsall, please be sworn.
Whereupon,

BREWSTER BIRDSALL

Was duly sworn.

DIRECT EXAMINATION

BY MS. MOULTRY:

Q Good morning, Mr. Birdsall.

A Good morning.

Q Did you prepare the air quality testimony for the Lodi Energy Center staff assessment and for the addendum to the staff assessment?

A I did.

Q And is your testimony contained in the staff assessment and the addendum to the staff assessment true and complete to the best of your knowledge and belief?

A Yes it is.

Q Will you please summarize the requirements of condition of certification AQ-SC9, which is contained in your testimony.

A Yes I will. AQ-SC9 is a, is a condition of certification that is recommended by staff as a form of mitigation for what staff determines to be a potentially significant impact.

The applicant has provided a lot of...
information and some, and some parts of the
district's PM2.5 management plan that show that
the air district does not closely manage ammonia
emissions. And I think I want to make out the
distinction that the applicant's witness very
clearly agrees with the staff's testimony that
ammonia is a precursor to PM2.5. And I think
that's the important distinction here.

It is not the limiting precursor. The
limiting precursors are the nitrogen oxides and
the sulfur oxides; and then those react with the
ammonia in the air shed to precipitate the
particulate matter, essentially.

So staff's condition therefore is coming
from our staff methodology, which is spelled out
on page 23 of the staff assessment. Which says
quite simply that emissions of precursors to non-
attainment pollutants such as PM2.5, those
emissions are considered significant unless
mitigated.

And the ways that we have of mitigating
the precursors, you are all familiar with the ways
that we mitigate the nitrogen oxides and the
sulfur oxides. That's usually in the form of
offsets. And for a precursor like ammonia where
the connection is less direct we recommend a best
management practice.

And I think it's evident in cases like
Palomar and Avenal, which were maybe not
adjudicated before the Committees but hard-fought
and negotiated conditions of certification. We
have demonstrated that combined-cycle power plants
like Lodi's can capably reduce ammonia in this
best management practice kind of way.

We are not requiring offsets for ammonia
emissions like we do for nitrogen oxides and
sulfur oxides but the staff approach is to
recommend management of the facility in a way that
excessive or unnecessary ammonia does not occur.

And staff's AQ-SC9 has the 10 PPM limit
on a 24 hour basis, which is consistent with the
district's air quality condition. Meaning that
AQ-SC9 is consistent with AQ-30 and the district's
recommendation. But it goes just a little step
further to say that if 5 PPM can not be achieved
on a regular basis that the applicant should start
a 12 month process of reconditioning the catalyst.

So AQ-SC9 is not a firm hard and fast 5
PPM limit but rather a starting point for when the
facility goes over 5 PPM regularly that it will
begin its catalyst replacement process.

The applicant said that replacing the catalyst creates unnecessary hazardous waste; I am not certain of that because it is not my expertise. But the project description does say that the catalyst is recycled, not disposed of. Or it is recycled and partially disposed of, depending on how spent the catalyst is.

Q  So, Mr. Birdsall, your condition is designed to allow the applicant flexibility to comply?

A  Well yes, it is designed to allow flexibility. And I don't think that it is a hard and fast bright line limit of 5 PPM like some other power plants have agreed to. It is essentially a starting point for when the catalyst replacement should occur.

Q  And once again, the replacement can occur within a 12 month period?

A  Right. The condition AQ-SC9 allows this 12 month period for replacing or reconditioning of the catalyst. And I think that that flexibility is warranted because, like I say, ammonia is, it's a precursor, therefore it falls under our purview of seeking mitigation. But it is not the limiting
precursor here in the Central Valley as all parties agree.

Q Why have you requested a condition that differs from the air district's requirement?

A Well, I think that comes down to the question of how our significant thresholds are set. And I guess one question to the air district would be, if that ammonia is not a concern, or if ammonia can be emitted without restraint, then why would there be a 10 PPM limit in the permit to begin with.

I won't go there because it is not in the direction of my argument. My argument is that our thresholds of significance and our methodology for CEQA impacts is to reduce or offset all precursor pollutants, period.

Q Do you believe that compliance with the condition of AQ-SC9 is feasible?

A Yes, I think compliance with AQ-SC9 is feasible. The 24 hour rolling average gives the power plant a lot of flexibility on how it operates throughout the day. It could have higher emissions of ammonia for short times, especially during rapid start-up. Even though that this is a facility that would be capable of relatively rapid
start-ups a 24 hour averaging period gives the power plant quite a bit of flexibility on managing its ammonia emissions.

MS. MOULTRY: Thank you. I have no further questions.

HEARING OFFICER CELLI: Cross?

MR. GALATI: Thank you.

CROSS EXAMINATION

BY MR. GALATI:

Q Mr. Birdsall, did you perform any calculation or modeling to quantify the amount of particulates that would be formed by the additional ammonia slip?

A No, I did not.

Q Are you familiar with -- did you review the Final Determination of Compliance response to comments?

A Yes I have. And I think where you're going with this --

Q Well, I'd appreciate if you let me get there.

A Excuse me.

Q If you look at Appendix K page xii.

A I don't have that in front of me at the moment.
Q I have a copy.

A Appendix K page xii.

Q At the top of the page. Isn't it true that the district actually responded by saying a high ammonia slip from the turbine will not lead to increased PM10 formation in the atmosphere?

A As I say the district, and I think all parties here, are in agreement that ammonia is abundant in the Central Valley, when speaking on broad terms, and this is spelled out in the district's plan.

Now the district's plan does provide some nuances that in winter time it's more -- ammonia is more of an urban problem and that generally throughout the year the ammonia is more concentrated in the Bakersfield area. But I think we all agree that the air district does not manage ammonia emissions and does not seek for controlling or setting best available control technology standards for ammonia. This position that I have is more of CEQA significance.

Q I agree, I understand that they are not managing it. But this actually is in direct contradiction to your testimony. This says that it won't form. Your issue with CEQA impacts is
that there is additional particulate emissions that form. Not how to manage it but that there are some that form. And you believe from the CEQA perspective that any formation is an impact that needs to be mitigated. That's correct, right?

A Our significant threshold is very simple and it is that precursor pollutants -- and I think we all agree that ammonia is a precursor pollutant. Precursor pollutants shall be mitigated. And when we say mitigation in CEQA we look for the feasible control technologies or we look for offsets or we look for other approaches. But that's the framework that I'm coming from.

Q But the impact is what the precursor actually causes. So if the precursor is emitted and no particulate is created, how can you say that there is an impact from the emission of the precursor?

A We're talking about managing precursor pollutants. Now if this was some other hazardous air pollutant like benzene or formaldehyde, I don't call that a precursor to particulate matter formation so I don't look for best management practices. That's handled under -- those kinds of pollutants are handled under public health as we
all know. I think this pollutant falls into the
in-between area where it is a precursor so it
shows up in my air quality section.

Q Didn't the district say here in their
response that even lowering the ammonia emission
will not reduce particulate formation.

A I can let you read from the response, and the response --

HEARING OFFICER CELLI: Excuse me. What
page are you reading from, Mr. Galati?

MR. GALATI: I'm actually reading from
what is called Appendix K, page xii.

HEARING OFFICER CELLI: Thank you.

MR. GALATI: The top of the page.

MR. BIRDSALL: It's in the record that
the district has a position on how it approaches
ammonia and it says -- it says what it says in the
record.

The important thing from my point of
view is that I am operating in a different
framework and managing the ammonia emissions from
the power plant is feasible. So I believe it
should be and I recommend that such management be
included as a condition of certification.

BY MR. GALATI:

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Q Okay. I just, I'm trying to understand here whether you believe there is a significant impact under CEQA or whether you believe it should be managed because it can be managed?
A I believe that this is a significant impact under CEQA.
Q And I don't understand how that can be unless you believe differently than the district that actually particulates will be formed.
A Particulates will be formed from any ammonia in the Central Valley and the plant would emit ammonia. I am not going to pretend that I can quantify this because it is complex. It is a seasonal and location-specific issue.
The staff approach, however, and this is consistent with our approach on cases for many, many months now and years, that we would seek mitigation of precursor pollutants.
Q Further on page Appendix K page xii. The district describes in the next paragraph generally why they believe a higher ammonia slip will make it easier to obtain the lower NOx emissions. Would you agree with that?
A I'm reading through the district's response right now. And the conclusion is simply
that the district accepts a 10 PPM ammonia slip as an important trade-off. And it's true, ammonia is used to reduce the nitrogen oxide.

I think that our experience with licensing other combined cycle power plants shows that it is possible to achieve the aggressive NOx limits and achieve a 5 PPM ammonia limit, especially when the 5 PPM is measured on a 24 hour basis. It provides a lot of flexibility throughout the day for the plant to fine tune its injection rate.

Q Let's go to a different area. And just, again, just to be clear, just for argument let's assume there are particulate formation. The applicant is providing offsets for particulate matter, aren't they?

A Yes. We are, we are requiring and the air district is requiring offset of direct particulate matter emission. That means the particulate matter that comes right out of the stack.

Q Right. And the district for its own rule purposes, not for CEQA, requires a distance ratio whereby the offsets are increased based on the distance from the plant, correct?
A Right. I think that the quantity of offsets is appropriate given the distance to the,
the distance to the original reduction and the requirements in the district rules. And that's
all spelled out separately in AQ-SC7. That's our mitigation for direct criteria pollutant
emissions. AQ-SC7 and AQ-SC9 go together though because ammonia, we believe, should be managed as well as the direct criteria pollutants.

Q In other cases you have allowed CEQA mitigation for, let's say, cooling tower PM10 emissions, to be provided because of the excess offset with the distance ratio taken into account. That's correct, right?

A That would be for direct particulate matter. That line of thinking would not apply here because we are not quantifying the ambient particulate matter that occurs out of the reaction.

Q Okay. That was my question. Why would not the excess emissions offsets due to the distance ratio not be counted towards mitigation in this matter, from something that you can't quantify and the district says won't happen?

A They very well may be useful in avoiding
this kind of an impact. But rather than go
further and further into that realm where we
haven't and the district hasn't quantified what
kind of offsets would be appropriate, we simply
look for a best management practice.

And I think that, I think that we are
not all that far apart. I mean, clearly the
district by setting a 10 PPM limit, the district
agrees that ammonia can be managed and there is a
basis to not simply allow ammonia to go unchecked.

Q Well there is a 10 PPM slip limit.
Okay. Thank you, Mr. Birdsall.
A Thanks.

HEARING OFFICER CELLI: Redirect?
MS. MOULTRY: No. No redirect.
HEARING OFFICER CELLI: Thank you,
Mr. Birdsall.

Anything further from staff?
MS. MOULTRY: No.
HEARING OFFICER CELLI: We want to hear
from the San Joaquin Air Pollution Control
District. Are there any other witnesses by the
applicant or on redirect?
MR. GALATI: No witnesses, no additional
testimony from the applicant.
HEARING OFFICER CELLI: I wonder if we could now hear from Rupi Gill. Can you hear me?

MR. GILL: Yes sir.

HEARING OFFICER CELLI: We would love to hear your comments on the testimony that you have just heard.

MR. GILL: I think I'm in -- whatever we issued in the FDOC, it's pretty final.

And on the ammonia issues, the district believes that 10 PPM is the limit. That is considering that for us NOx is very important.

HEARING OFFICER CELLI: Any other comments in general about the Lodi Energy Center, Mr. Gill?

MR. GILL: No comments.

HEARING OFFICER CELLI: Well thank you very much for calling in.

Is there anything further from the applicant?

MR. GALATI: I would just propose that even though we had a bit of a dispute here I don't believe that there needs to be briefs. If the Committee would like to hear a 30 second synopsis as a close I would be more than happy to do so.

HEARING OFFICER CELLI: Please proceed.
MR. GALATI: The question is not whether
the applicant can -- The question is not whether
the applicant can do something but really the
relevant question is whether they must.

And there is a discrepancy here between
whether there is an impact or not an impact. I
propose to you that there is not an impact for
what you see here.

In addition the district doesn't believe
that this needs to be managed. The primary reason
for a higher ammonia slip is a very low NOx limit.

And in addition we believe that some of
the excess emission offsets could be counted
towards mitigation.

So again I'd just ask you to keep in
mind that this is a public project. Two and a
half million dollars is two and a half million
dollars. And if there is no reason to do it we
shouldn't. Staff has the burden to prove that a
condition is necessary; I think that they have not
done so.

HEARING OFFICER CELLI: Thank you.

And staff, please reply.

MS. MOULTRY: I do not have anything to
add to Mr. Birdsall's testimony.
HEARING OFFICER CELLI: At this time this is argument and we would like to hear from staff as to their justifications for a 5 PPM limit.

MS. MOULTRY: I believe that Mr. Birdsall provided his justifications. He believes that regulation of PPM is required. The air district also obviously believes that regulation is required, otherwise it wouldn't require a limit at all.

HEARING OFFICER CELLI: Anything further?

MS. MOULTRY: No.

HEARING OFFICER CELLI: Thank you. At this time, unless the parties instruct me otherwise, I would open it up for public comment. I see that the Public Adviser is here today. Welcome.

MS. JENNINGS: Thank you.

HEARING OFFICER CELLI: Do we have any public who are present here today?

MS. JENNINGS: We have no blue cards.

HEARING OFFICER CELLI: Okay, so there are no members of the public who are present who wish to make a comment.
And for the record, I was just speaking with the Public Adviser.

Now I am going to go to the telephone to see if there is anyone on the telephone who would like to make a, any members of the public on the telephone who would like to make a public comment at this time.

(No response.)

HEARING OFFICER CELLI: Hearing none I am going to hand the hearing back to Chairman Douglas to adjourn.

PRESIDING MEMBER DOUGLAS: Thank you, everybody. This has been a helpful and productive step in the process. Thanks to staff and the applicant for moving this along. We set a fairly aggressive time line, we are on that time line, and the Committee notes and appreciates that very much. With that we are adjourned.

MR. GALATI: Thank you.

MR. JONES: Excuse me, Hearing Officer Celli. We should address the cultural resources.

HEARING OFFICER CELLI: Thank you.

Let's go back on the record.

We are still on the record. Ramona, we are still on the record.
MR. JONES: For the record, the conditions in cultural resources that have been provided by staff, if they are adhered to by the applicant, will not provide any adverse impact on that particular discipline.

HEARING OFFICER CELLI: I'm sorry, is your mic on? I'm having a hard time hearing you.

MR. JONES: There are no significant impacts in cultural resources based on the proposed conditions of certification if adhered to by the applicant.

MR. GLADDEN: That is acceptable.

HEARING OFFICER CELLI: And that is acceptable to you, Mr. Gladden?

MR. GLADDEN: Yes it is.

HEARING OFFICER CELLI: Thank you. Anything further?

MR. JONES: Thank you.

MR. GLADDEN: That's it.

HEARING OFFICER CELLI: Okay. Then we are adjourned at this time.

(Whereupon, at 10:40 a.m. the Evidentiary Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; 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 hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of February, 2010.

RAMONA COTA, CERT*00478

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11344 COLOMA ROAD, SUITE 740, GOLD RIVER, CA 95670 / (916) 362-2345