

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Tesla Power Project) 01-AFC-21C
by PG&E)
-----)

ORIGINAL

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

MONDAY, JULY 20, 2009

9:00 a.m.

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DOCKET	
01-AFC-21C	
DATE	<u>07/20/2009</u>
RECD.	<u>08/03/2009</u>

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Commissioner, Presiding Member

Karen Douglas, Commission Chairman, Associate Member

Gary Fay, Hearing Officer

Kristy Chew, Advisor to Commissioner Byron

Diana Schwyzer, Advisor to Chairman Douglas

STAFF AND CONSULTANTS PRESENT

Kevin W. Bell, Senior Staff Counsel

Jack W. Caswell, Compliance Program Manager

APPLICANT

Scott Galati, Attorney
Galati and Beck

Andrea Grenier
Grenier and Associates, Inc.

Jerry Salamy
CH2MHill

William Manheim
Pacific Gas and Electric Company

Fong Wan
Pacific Gas and Electric Company

INTERVENORS

Robert Sarvey

Jim Swaney
San Joaquin Valley Air Pollution Control District

ALSO PRESENT

Greggory L. Wheatland
Ellison, Schneider & Harris, LLP
Independent Energy Producers

Steve Bailey
City of Tracy Public Works Department

Kenneth (via telephone)

Manuel Alvarez (via telephone)
Southern California Edison

Rob Simpson (via telephone)

Maryann Hogarth (via telephone)

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P R O C E E D I N G S

9:20 a.m.

HEARING OFFICER FAY: Good morning, this is an evidentiary hearing on the PG&E petition for an extension of the license of the Tesla Power Plant Project.

The Siting Committee of the California Energy Commission is conducting this event. To my left is the Committee Presiding Member, Commissioner Jeffrey Byron. To my right is the Associate Siting Committee Member, our Chair, Karen Douglas. To Commissioner Byron's left is his assistant, his advisor, Kristy Chew. And to Chair Douglas's right is her advisor, Diana Schwyzer. And my name is Gary Fay, I am the Hearing Officer for this event.

This was triggered as I said by PG&E's petition of April 24th of this year. Then following that the Committee on June 9th put out a notice of this hearing and a Committee order detailing a number of issues that they wished the parties to address.

The parties have filed their opening and rebuttal briefs in a number of cases, filed their testimony and we have had non-parties file

1 comments.

2 And one group filed a petition to
3 intervene. That was IEP, Independent Energy
4 Producers. That petition was denied by the
5 Committee but IEP was invited to submit questions
6 to the Hearing Officer who would then ask them.

7 We did not receive any questions
8 submitted by the deadline. However, IEP and any
9 other member of the public will be allowed to
10 comment during the comment period.

11 And the order denying IEP's petition to
12 intervene did grant them the opportunity to file
13 an amicus brief at the end of the proceeding so
14 they will be participating to that extent.

15 Any preliminary matters before we get
16 started?

17 MR. GALATI: Thank you, Scott Galati on
18 behalf of PG&E. I noticed in looking at the
19 exhibit list that I don't have two documents that
20 appeared to have been docketed and served that I
21 didn't receive a copy of.

22 And I was wondering if we could take a
23 few moments, if I could get copies of these
24 documents. I don't want to hold up the hearing.

25 HEARING OFFICER FAY: Why don't you note

1 that on the record and then we'll give you a few
2 more moments. What documents do you need?

3 MR. GALATI: Exhibit 203 and Exhibit
4 204, Robert Sarvey's rebuttal testimony filed on
5 July 13th and Robert Sarvey's rebuttal brief on
6 good cause.

7 HEARING OFFICER FAY: Okay. And
8 Mr. Sarvey did you serve those on all the parties?

9 MR. SARVEY: Yes I did.

10 HEARING OFFICER FAY: On the proof of
11 service?

12 MR. SARVEY: Yes I did.

13 HEARING OFFICER FAY: Okay. Let's take
14 a minute. We'll go off the record and be sure you
15 get these.

16 (Off the record)

17 HEARING OFFICER FAY: All right, let's
18 go back on the record. We are attempting to
19 respond to PG&E's request for copies of two of
20 Mr. Sarvey's exhibits and the staff of the
21 Commission is arranging for that.

22 Mr. Galati has indicated that he has no
23 problem with going ahead pending those copies
24 coming in.

25 So what I'd like to do at this time is

1 take formal introductions.

2 PRESIDING MEMBER BYRON: Mr. Fay before
3 you proceed if I just may briefly, I'd just like
4 to note my welcome. I heard this morning it was
5 40 years ago today that man landed on the moon and
6 this morning we're landing on Tesla (laughter).

7 I'd like to thank everybody for being
8 here early this morning. And you won't hear much
9 from me except for questions. Thank you, Mr. Fay.

10 HEARING OFFICER FAY: Okay, thank you
11 Commissioner.

12 I'd like to begin with formal
13 introductions. Mr. Galati.

14 MR. GALATI: Yes, my name is Scott
15 Galati, representing PG&E. And with me today I
16 have two panels that will be testifying.

17 The panel number one will be Andrea
18 Grenier and Jerry Salamy, both environmental
19 experts that will address several of the
20 Commission's questions regarding updating the
21 environmental analysis.

22 The next panel will be William Manheim
23 and Fong Wan from PG&E who are addressing select
24 questions in the order considering PG&E's good
25 faith effort and PG&E's request for Tesla.

1 HEARING OFFICER FAY: Thank you. And
2 for the staff?

3 MR. BELL: Kevin W. Bell, Senior Staff
4 Counsel representing staff. With me here today
5 but making copies for Mr. Galati is Compliance
6 Program Manager, Jack Caswell.

7 Mr. Caswell will be available to answer
8 any questions that the Committee may have
9 specifically as to workload that might be helpful.

10 HEARING OFFICER FAY: Thank you. And we
11 have intervenors, Mr. Sarvey.

12 MR. SARVEY: Yeah, Bob Sarvey. I was an
13 intervenor on the original Tesla Project that went
14 about three years. I was an intervenor in the PUC
15 Tesla proceeding. And I just want to thank the
16 Committee members for granting an opportunity to
17 have a hearing on good cause. And I appreciate
18 the offer, thanks.

19 HEARING OFFICER FAY: Thank you. And is
20 the San Joaquin Valley APCD representative here?

21 MR. SWANEY: Yes, good morning, I'm Jim
22 Swaney with the San Joaquin Valley Air Pollution
23 Control District, thank you.

24 HEARING OFFICER FAY: Good to see you
25 Mr. Swaney, thank you for coming.

1 And we have what we've -- even though we
2 denied the Independent Energy Producers or IEP
3 their petition to intervene, we did designate them
4 as an interested participant. Is their
5 representative here? Mr. Wheatland.

6 MR. WHEATLAND: Yes, good morning. I'm
7 Gregg Wheatland and I'm representing the
8 Independent Energy Producers here this morning.

9 Our members are merchant generators who
10 have projects that have been licensed by the
11 Commission and are pending construction, as well
12 as projects that are currently in the licensing
13 process.

14 We appreciate the opportunity the
15 Committee has provided to participate in these
16 proceedings.

17 We have not submitted any comments to
18 you today but we do appreciate the opportunity, if
19 necessary, to provide public comment or to brief
20 the issues, thank you.

21 HEARING OFFICER FAY: All right. Any
22 other members of the public that would like to
23 identify themselves at this time?

24 MR. BAILEY: Hello, I'm Steve Bailey,
25 City of Tracy. And I'd like to speak on recycled

1 water or answer questions if there's any questions
2 on recycled water availability.

3 PRESIDING MEMBER BYRON: Mr. Bailey, you
4 represent the city?

5 MR. BAILEY: Yes I do.

6 PRESIDING MEMBER BYRON: Thank you.

7 HEARING OFFICER FAY: Okay. The
8 evidentiary hearing today is a formal evidentiary
9 proceeding to receive evidence from the parties
10 and technical rules of evidence will generally be
11 followed.

12 The parties will identify their
13 witnesses and the exhibits that they intend to
14 provide or offer.

15 The exhibit list has been distributed.
16 I believe all parties have copies of it and I
17 think there are some additional copies out in the
18 entry hall.

19 The issues for discussion today were all
20 set forth in the Notice of Evidentiary Hearing and
21 Committee Order dated June 9th. And that was sent
22 to everybody of the proof of service list.

23 Rather than go through and list all the
24 Committee's concerns I'd refer you to the Order
25 and I expect the parties to address those matters.

1 And so rather than spend any additional
2 time on preliminary matters we'd like to get
3 started. Mr. Galati.

4 MR. GALATI: Thank you. If I could ask
5 first whether the Committee would be interested in
6 hearing legal argument on questions one and two
7 before we begin taking testimony or would you
8 rather me just go questions?

9 HEARING OFFICER FAY: Yes, please go
10 ahead, offer your argument.

11 MR. GALATI: Okay, I will keep it as
12 brief as I can. The first question has to deal
13 with whether or not that the Committee set forth
14 in its order, whether or not the license or
15 certificate that the Commission grants expires on
16 its own, if there is some sort of automatic
17 expiration.

18 There isn't anything in the statute, the
19 Warren-Alquist Act, that specifies that the
20 license has a life or that it does automatically
21 expire.

22 But when we go the Commission's
23 regulations there is 1720.3 of the Commission's
24 regulations which specifically says that there is
25 a five year commencement of construction deadline.

1 It says that that construction deadline
2 can be extended based on good cause, which is why
3 we are here today.

4 But nothing in that regulation also says
5 -- Thank you (handed copies of documents).
6 Nothing in that regulation also says what the
7 remedy is or what the penalty is should someone
8 fail to begin construction.

9 So we just point out to you that we
10 don't believe that there is statutory guidance on
11 point.

12 I just leave you with a couple of points
13 on that. Our contention is that you need to take
14 an actual formal revocation under 25534 of the
15 Warren Alquist Act for failure to comply with the
16 regulation.

17 The certificate, we believe, is akin to
18 granting of a right. And unless there is some
19 sort of statutory authority that we think says
20 that it has a shelf life, we think that taking of
21 that right away deserves a hearing.

22 So that is why we believe that 25534, at
23 least how the statute is written now and at least
24 how the regulation is written now, would require
25 the Commission to actually revoke the certificate.

1 Now granted, there is sort of a grey
2 area if an applicant has failed to start
3 construction. They are obviously in non-
4 compliance with 1720.3 and would have to somehow
5 bring themselves into compliance to be able to, I
6 think, be able to construct.

7 So I think they'd be coming here and
8 asking for, number one, a good cause determination
9 that they didn't file before the five years and,
10 two, why it should be extended which is the
11 subject of this matter.

12 But I couldn't find anything on point
13 that would say that this certificate automatically
14 expires. So that is our opinion.

15 HEARING OFFICER FAY: Mr. Galati what is
16 the status of a certificate under your approach of
17 where an applicant did not file for an extension,
18 or did not receive one and the time has lapsed,
19 it's beyond five years, but you argue the
20 certification is still in effect. What does that
21 mean if there's no ability to construct?

22 MR. GALATI: Correct, there's no ability
23 to construct under any of your certificates until
24 the compliance project manager issues you a letter
25 saying that you have complied with all conditions

1 of certification so that you may start
2 constructing.

3 So what I would say is, number one, I
4 wouldn't advise any of my clients to wait to that
5 time frame.

6 But I would say that the certificate
7 doesn't automatically expire. What you have is a
8 project with a certificate that has failed to
9 comply with the regulation and the only that they
10 can go forward would be to come the Commission and
11 say these are the reasons why we failed to ask for
12 a request for an extension earlier. And there
13 might be some very strange circumstances where you
14 might allow them leave to file a request for
15 extension of the construction deadline.

16 Clearly there's a CEQA staleness issue
17 probably. But I just couldn't find anything in
18 the law that extinguishes the right. It might
19 have the practical application that somebody can't
20 start construction, but I don't think that it
21 automatically extinguishes the certification
22 because the law doesn't say that.

23 So, a tough position to be in if you're
24 an applicant. I just didn't see any legal
25 authority to say, it is hereby expired.

1 I think there's a difference between the
2 certificate you grant and the request, excuse me,
3 the construction deadline.

4 HEARING OFFICER FAY: If the Commission
5 was faced with a project that had not begun
6 construction. It had received certification, had
7 not begun construction within five years and had
8 not applied for and received an extension during
9 that time, and then for whatever reason of this
10 delay, comes back after five years and asks the
11 Commission for leave to revive its license in some
12 way. In your argument do you envision that the
13 Commission could just say, we're not going to
14 grant your request and we are revoking your
15 certification for failure to meet conditions?

16 MR. GALATI: That's correct. You would
17 follow the process under 25534, have a hearing for
18 revocation.

19 HEARING OFFICER FAY: But your argument
20 is that absent a formal affirmative act by the
21 Commission there is no revocation after five
22 years.

23 MR. GALATI: Yes, not of the
24 certification. And again I might be parsing words
25 here but I think there is a difference between the

1 commencement of construction deadline and the
2 expiration of the certificate. And I could find
3 nothing on the expiration of the certificate.

4 For example, the Commission may decide
5 that for some reasons, like they did in 25534,
6 under some circumstances there should be a 12
7 month commencement of construction deadline. But
8 you certainly wouldn't want the certificate to
9 expire after that time frame.

10 So I think that, at least current law
11 now doesn't, I mean makes a distinction between
12 the two and I think that that's why you need to
13 revoke it.

14 HEARING OFFICER FAY: All right.

15 ASSOCIATE MEMBER DOUGLAS: Mr. Galati,
16 on what do you justify arguing that the AFC is a
17 right as opposed to a license?

18 MR. GALATI: Because it is an
19 entitlement, an authorization to begin
20 construction of that power plant subject to
21 certain conditions.

22 And because none of those conditions
23 have a term then I think that it is difficult to
24 impose a term based on a commencement of
25 construction deadline.

1 There could be other deadlines that
2 would not expunge the entitlement for the
3 certificate.

4 So I maybe spoke too, maybe too far to
5 call it a right and maybe it's more of an
6 entitlement. If you comply with all of the
7 conditions at that point you can begin
8 construction and operate that power plant for the
9 life of the power plant.

10 So I think that's important. I don't
11 think we should extinguish it without a hearing or
12 we should not extinguish it unless the Legislature
13 has said it has a life.

14 ASSOCIATE MEMBER DOUGLAS: And under
15 your argument then AFCs that are 10, 15, 25 years
16 old could be, theoretically at least, revived by
17 this Commission if an applicant came in and
18 attempted to show good cause and petitioned for,
19 what, an extension?

20 MR. GALATI: That would be the way they
21 would do it, they would petition for extension. I
22 agree that that's a very strange result. I can't
23 this Commission or any other commission granting
24 such a request without requiring a new AFC.

25 But again, I think that when you look at

1 a strict language of the law, there doesn't seem
2 to be anything that talks about the certificate
3 expiring automatically.

4 So, I think the Commission could protect
5 itself by doing the revocation hearing after five
6 years, or could wait until someone did a petition
7 to request extension. And after that time frame
8 could actually do that hearing as a revocation
9 hearing. Or, we could change the rules.

10 HEARING OFFICER FAY: Okay. Thank you.
11 Did you have further legal argument?

12 MR. GALATI: I do on the second
13 question, which is good cause. We disagree a
14 little bit with staff.

15 While we agree that the 12 month
16 deadline of 25534 is not applicable to the Tesla
17 Project because of the date it was data adequate
18 and that the financing authority has not actually
19 noticed the Commission that they intend to build
20 the project. But we don't think that all of 25534
21 is inapplicable.

22 Now I'm want to start with -- Whenever
23 you do legal research you always look for
24 something that's called mandatory authority which
25 is a case for something directly on point that

1 requires an outcome. We didn't find that. I
2 don't believe 25534 mandates a particular result.

3 So then you do what's called persuasive
4 authority. And you look for things that are
5 similar. So when we did our research for good
6 cause we looked and we found good cause for
7 discovery requests and extensions. Good cause for
8 leave to file something late.

9 But there's only one statute that fits
10 the bill of good cause request for extension of a
11 power plant and that was 25534.

12 So according to you, as what the
13 persuasive authority that the Legislature intended
14 for the Commission to apply when you are
15 identifying whether or not you should extend the
16 license.

17 We think this is the good cause
18 standard. While it is applicable to the 12 month
19 standard if that applies, excuse me, the 12 month
20 deadline if that applied, we think it's equally as
21 applicable to the five year commencement of
22 construction deadline.

23 And that standard has five different
24 points, any of which the Commission if they find,
25 should find that there is good cause.

1 So we believe that we have identified
2 two that are appropriate.

3 We also think they're consistent with
4 what you have done in the past.

5 You have looked at what are the efforts
6 that an applicant has done and are there
7 circumstances beyond their control that prohibit
8 them from achieving the deadline.

9 You'll hear in our testimony, I think
10 we've already filed it, why we believe we met
11 that.

12 There also is, did we make a good faith
13 effort to meet that construction deadline? And we
14 think we've done that.

15 We think those are the two applicable
16 standards here.

17 We think it's consistent with what you
18 did in Russell City. We think it's consistent
19 with what you did in East Altamont, which we think
20 are the two most recent cases.

21 And we think that adopting a standard in
22 25534 allows you the flexibility but still being
23 consistent with prior Commission decisions. So we
24 urge that you adopt 25534 as a good cause
25 standard.

1 HEARING OFFICER FAY: In looking at this
2 particular issue, good cause and the appropriate
3 standards, should the Committee be influenced at
4 all by major policy changes that have occurred
5 since the certification of this project?

6 For instance, AB 32, greenhouse gas
7 concerns, should that enter into this equation at
8 all?

9 MR. GALATI: No, I don't believe so and
10 here is why. I think that what the Commission has
11 established, and quite frankly, we support here
12 and I support in other projects as well, is that
13 some point in time a certificate gets to a point
14 where in order for you to go forward you ought to
15 update the environmental analysis and the LORS
16 compliance issues.

17 So I would tell you that the, you could
18 grant the certificate with the condition that you
19 did in East Altamont and, as here, to address
20 environmental issues by requiring an update, which
21 we support.

22 So in the case of AB 32, if the project
23 no longer fits or the project is not, is resulting
24 in an impact that prevents AB 32's program from
25 achieving its goal then that would be something

1 you would evaluate during the environmental
2 update.

3 Now with respect to other policy issues.
4 And I'll just be straightforward about it, policy
5 issues about utility-owned generation and other
6 things, again, we think there's a forum for that.

7 We actually believe this really should
8 be determined on were there circumstances beyond
9 PG&E's control upon which it could not meet the
10 construction deadline?

11 And did it act in a way in good faith to
12 meet that construction deadline?

13 And we think those should be the
14 standards.

15 ASSOCIATE MEMBER DOUGLAS: Mr. Galati,
16 when you think about -- when you suggest that
17 updating the environmental analysis is an
18 appropriate way of dealing with the staleness of
19 review. How comprehensive an update do you think
20 is appropriate? Do you think that the update
21 should be narrowly focussed on certain issue areas
22 or do you think it should be potentially much
23 broader than that?

24 MR. GALATI: I'm going to try to answer
25 your question with two scenarios that I foresee.

1 One, the applicant after a period of
2 five years wants to build the exact project that
3 was licensed. If that's the case then I think it
4 should be narrowly focussed to what has changed
5 from the environmental baseline. And if the
6 environmental baseline changed then you might have
7 to do the entire analysis for that particular
8 subject area.

9 So, for example, if you five years ago,
10 were in an area that had no development around you
11 and nothing was planned to be around you and
12 suddenly now that environmental baseline has
13 changed, you might need to have to update your
14 health risk assessment or something like that.
15 And again, I'm talking after five years.

16 The second area would be LORS. Is there
17 any LORS that have changed that weren't applicable
18 then but are applicable now?

19 The Commission's process does not exempt
20 ongoing compliance with LORS as they change.

21 So I'd focus on those two areas if the
22 project did not change.

23 The next scenario is the applicant is
24 going to make some sort of amendment. And I can't
25 envision a world in which the applicant would not

1 make some sort of amendment.

2 So they might have changed something,
3 the project configuration a bit, they might change
4 where an interconnection is, something like that.
5 Then in that case no only would you be updating
6 the environmental analysis to all baseline changes
7 and the LORS analysis for all of those changes.
8 But you would be re-opening the analysis on those
9 project description changes.

10 If the pipeline moved, even though there
11 weren't any environmental baseline changes or
12 there weren't any more biology laws, you certainly
13 have to survey that new area and evaluate the
14 impacts of moving the pipeline.

15 So that's the way I foresee it working.
16 And, you know, the Commission regulations require
17 when anybody does file an amendment that they
18 reaffirm that none of the other findings in the
19 decision need to be changed.

20 So I think you're already doing that. I
21 think it's a good thing for license extensions to
22 avoid the staleness issue, at a minimum to have
23 the condition you put in for East Altamont. I
24 think that covers you.

25 ASSOCIATE MEMBER DOUGLAS: Thank you.

1 You have also cited 25534 in suggesting that good
2 faith effort to meet the deadlines in the AFC be
3 considered as an element of the good cause
4 standard. What about a demonstration of good
5 faith efforts to actually build a power plant if
6 and when the extension is granted?

7 In other words, do you see a difference
8 between an applicant saying, we were unable
9 despite our best efforts to build this plant
10 within the deadline but we have these concrete
11 steps in mind and we believe we'll get a plant on-
12 line by a certain deadline, or we'll take these
13 steps to insure that one is constructed by the
14 deadline. As opposed to saying, we want to
15 maintain the value of the AFC in case we find that
16 we want to try to build the plant?

17 MR. GALATI: Yeah, I think on those
18 facts it's different. But what I would tell you
19 is that in comparing our project to others I think
20 that we are not a lot different from IEP.

21 And in that case is -- IEP, a member may
22 want, may very much desire to build their power
23 plant, as do we and as did we. But there's
24 several things that have to happen before that is
25 actually is going to come to fruition.

1 So I would focus less on the desire
2 going forward and more on the standard of, why did
3 you miss your deadline? That's personally what I
4 would think that I think the law requires.

5 And I think that measuring somebody's
6 intent, I promise you and have represented
7 independent energy producers before the Commission
8 as well, they fully intend to build a power plant.

9 They don't come here and get a license
10 if they don't. And they fully intend to build
11 that power plant when they ask for a license
12 extension. But there's several things that have
13 to happen including financing, getting a contract,
14 that they don't control.

15 I would submit to you that PG&E is in
16 the same position with one other caveat. And that
17 is, there are some regulatory prohibitions, at
18 least at this moment in time according to the last
19 decision, about building that power plant.

20 If those were not in place PG&E probably
21 would have got authorization to build the power
22 plant as they intended before.

23 So I'm nervous about making a rule for
24 utilities and making a rule for independent energy
25 producers based on their intent going forward.

1 I think we need to look at what is the
2 reason they missed the deadline, at least at that
3 stage. There might be some other policy forums in
4 which the intent of moving forward might be better
5 addressed.

6 HEARING OFFICER FAY: Mr. Galati since
7 you raised that limitation on the project going
8 forward that came from the CPUC, I just call your
9 attention, in fact Mr. Sarvey included it in his
10 filings, the letter to PUC president Mike Peevey
11 of -- sent August 20, 2008 by our then-Chair
12 Jacqueline Pfannenstiel arguing against granting a
13 CPC to the Tesla Project.

14 Would this Committee be inconsistent
15 with the Commission's prior instruction based on
16 the point of the letter if we were to grant your
17 petition or encourage this Commission to grant the
18 petition?

19 MR. GALATI: No, I don't believe so and
20 here's why. What you have in front of you is an
21 applicant. That's who you should see.

22 And I think that your conditions are
23 written as an applicant. The conditions are
24 written as a project owner. Projects change
25 hands.

1 There is a complete forum. You
2 participated in it. You had an influence in it
3 about whether or not PG&E could develop Tesla.
4 That's the appropriate forum.

5 I think the consistency here is, is
6 there good cause to grant an extension as opposed
7 to your vote here today will not be a vote that
8 PG&E should build and own the plant. That's not
9 what's being asked of you. And I don't think
10 you're inconsistent by allowing the certificate to
11 go forward subject to conditions.

12 And again as we have talked about, we're
13 not sure what will happen in the future. But it
14 is possible the project is not built by PG&E.

15 So that is an outcome as well of the PUC
16 proceedings that might occur.

17 HEARING OFFICER FAY: Okay, thank you.
18 All right, any further legal argument?

19 MR. GALATI: No, thank you for the
20 opportunity though.

21 HEARING OFFICER FAY: Sure.

22 MR. GALATI: I appreciate it.

23 HEARING OFFICER FAY: So if you're
24 prepared then go ahead and present your witnesses.

25 MR. GALATI: Okay, good. At this time

1 I'd like to call Andrea Grenier and Jerry Salamy
2 to testify as a panel on the environmental
3 questions.

4 Jerry do you want to sit here? Do you
5 have a microphone?

6 HEARING OFFICER FAY: The witnesses need
7 to be sworn. Will the court reporter please swear
8 them in.

9 THE REPORTER: I'm unable to. I'm not
10 certified to do so.

11 HEARING OFFICER FAY: All right. Will
12 the witnesses please stand.

13 Whereupon,

14 ANDREA GRENIER

15 JERRY SALAMY

16 Were duly sworn.

17 HEARING OFFICER FAY: Please state and
18 spell your name for the record.

19 MS. GRENIER: My name is Andrea Grenier.
20 My last name is spelled G-R-E-N-I-E-R.

21 MR. SALAMY: My name is Jerry Salamy.
22 Last name S-A-L-A-M-Y.

23 DIRECT EXAMINATION

24 MR. GALATI: If you could each take
25 turns and please describe briefly your

1 qualifications in your role on the Tesla Project.

2 MS. GRENIER: Okay. Well, I am
3 president and owner of Grenier and Associates,
4 Inc., a consulting business that has been focusing
5 on helping applicants get through the Energy
6 Commission's licensing and permitting process for
7 the last 11 years.

8 I have worked with a variety of clients
9 including municipal utilities, investor-owned
10 utilities, independent power producers and have
11 worked successfully on several projects including
12 the Peaker Power Project, the Roseville Electric
13 Energy Park, the PG&E Gateway Generating Station
14 and now the PG&E Colusa Generating Station
15 Project. I also worked on the original Russell
16 City AFC several years ago.

17 And my current clients with applications
18 before the Energy Commission include NCPA and also
19 a new client coming in the door in the next month
20 or so.

21 My career in the energy world began
22 right here at this agency believe it or not. I
23 was employee number 21 hired in 1975. I worked
24 here as an energy analyst for five years and then
25 moved on to work for Southern California Edison

1 for 10 years as their regulatory affairs liaison
2 back to the Energy Commission.

3 I came back to Sacramento in 1989,
4 worked with Navigant Consulting as their director
5 of environmental affairs for about six years and
6 then went out on my own in 1997.

7 MR. GALATI: Thank you, and Andrea, your
8 role on the Tesla Project?

9 MS. GRENIER: Yes, PG&E has had me under
10 retainer really for the last three years to help
11 them assess potential environmental issues. Due
12 diligence on really all their projects they've
13 been pursuing and Tesla has been one of them.

14 MR. GALATI: Thank you, Mr. Salamy.

15 MR. SALAMY: My name is Jerry Salamy.
16 I'm a principal project manager with CH2MHill.
17 I've been in that role for about 11 years working
18 exclusively on power projects. I have been
19 involved in licensing, I believe, seven or eight
20 projects as the project manager.

21 I've also conducted air quality analyses
22 on a number of projects in the last few years
23 including the recently issued Mariposa Project,
24 GWF Tracy Combined Cycle Conversion Project, the
25 Hanford amendment with GWF and the Henrietta

1 Amendment with GWF.

2 My role on this project has been as an
3 air quality expert.

4 MR. GALATI: And Ms. Grenier did you,
5 and Mr. Salamy, did you each file a joint
6 testimony in this proceeding?

7 MS. GRENIER: Yes we did.

8 MR. SALAMY: Yes.

9 MR. GALATI: And do you have any
10 corrections or additions to this testimony at this
11 time?

12 MS. GRENIER: I'm going to speak for
13 both Jerry and I. There are two things we'd like
14 to correct.

15 The first one is just a minor typo on
16 page 11 where we have incorrectly labeled the
17 response to question 3j as, The Response to
18 Question 3h. Minor but just wanted to make sure
19 people understand what we've done there.

20 And then additionally in our testimony
21 in response to question 3k on page 11. We
22 inadvertently omitted reference to the air quality
23 management agreement originally referenced as
24 Exhibit 22 in the CEC Final Decision for the Tesla
25 Power Project.

1 That document would need to be updated
2 as appropriate based on discussions between PG&E
3 and the San Joaquin Valley Air District should
4 PG&E decide to move forward with the project at
5 some point in the future.

6 MR. GALATI: And have you reviewed the
7 testimony from Mr. Swaney from the Air District?

8 MS. GRENIER: Yes.

9 MR. GALATI: And do you agree?

10 MS. GRENIER: Yes.

11 MR. GALATI: If the Committee so desires
12 we'd be happy to work on language in our briefs of
13 what such a condition might look like on updating
14 the air quality mitigation agreement.

15 HEARING OFFICER FAY: And we ask that
16 you do that in consultation with the Air District.
17 So --

18 MR. GALATI: Absolutely.

19 HEARING OFFICER FAY: -- it expresses
20 their input as well. That would be helpful.

21 MR. GALATI: We certainly would. I'd
22 like at this time to move the written testimony of
23 Andrea Grenier and Mr. Salamy.

24 HEARING OFFICER FAY: Is there objection
25 to receiving that portion of PG&E's Exhibit 3?

1 MR. BELL: Not on behalf of staff.

2 MR. SARVEY: No objection.

3 HEARING OFFICER FAY: Okay, I hear no
4 objection. We will enter that into the record at
5 this point.

6 (Applicant's Exhibit 3 was received
7 into evidence.)

8 MR. GALATI: For the Committee at this
9 time these witnesses are available for cross
10 examination of the parties.

11 PRESIDING MEMBER BYRON: If I may, on
12 page five response to question 3g. In the middle
13 of the paragraph it says: "Since there are
14 currently no plans to modify the project
15 description at this time." I'm curious, are the
16 witnesses aware of the application PG&E submitted
17 in 2008 to the PUC for consideration of the CPCN?

18 MS. GRENIER: I was not involved in that
19 process. I'm aware of it but not in great detail.

20 PRESIDING MEMBER BYRON: So did you have
21 an opportunity to see what the provisions of that
22 application were with regard to modifying the
23 project?

24 MS. GRENIER: Again, not well enough to
25 talk to you today.

1 MR. GALATI: Commissioner Byron, I can
2 certainly I'm saving that question and I have
3 another panel --

4 PRESIDING MEMBER BYRON: All right.

5 MR. GALATI: -- that should be able to
6 answer that question for you.

7 PRESIDING MEMBER BYRON: In the project
8 description on the same page. No changes in the
9 LORS would require, require modification of the
10 project description.

11 Wouldn't the letter that we have, and
12 forgive me I don't the evidence number for it, but
13 we have a letter from AQMD, I believe, that
14 requires some changes doesn't it?

15 MR. SALAMY: It would require changes in
16 emission rates potentially but it would not
17 require a significant change in the project
18 itself, the project description.

19 Meaning that we would still have an SCR,
20 selective catalytic reduction system. We would
21 still have an oxidation catalyst system. They
22 would just have a higher, a slightly higher
23 efficiency.

24 PRESIDING MEMBER BYRON: Okay, thank
25 you.

1 HEARING OFFICER FAY: Ms. Grenier do you
2 have a recommendation based on your experience in
3 analyzing the impact of projects under CEQA of how
4 extensive a new approach on Tesla, a new
5 application or effort to construct Tesla might be.

6 It seems that with the time that's
7 passed one could argue that it just requires an
8 entirely new AFC. Can you help us with that?

9 MS. GRENIER: I think it's going to
10 depend on the nature of any changes that are made
11 to that project description.

12 If the project goes in as originally
13 permitted I think really it's going to be the
14 issue of staleness of the CEQA analysis and the
15 need to go in and identify which of those 16
16 resource topics would need to be refreshed, if you
17 will, to make sure that they are up to date,
18 reflect any changes as Scott indicated in the
19 environmental baseline conditions, as well as
20 making sure that any changes in the LORS have been
21 reflected.

22 If the project comes in with, you know,
23 significant project changes such that the plant
24 is, you know, significantly different than what is
25 was originally proposed then yes, there is a

1 possibility that a new AFC, you know, could be
2 necessary.

3 But I don't think we can judge that
4 today. I think we need to just assume at this
5 point in time that it will go in as originally
6 approved.

7 PRESIDING MEMBER BYRON: So we should
8 assume that the application would go forward as
9 was originally proposed five years ago?

10 MS. GRENIER: I don't know any answer
11 different than that as of today.

12 PRESIDING MEMBER BYRON: Thank you.

13 HEARING OFFICER FAY: And Mr. Salamy,
14 you are in contact with the District on meeting
15 their concerns regarding even this question of
16 extension?

17 MR. SALAMY: I haven't been in direct
18 contact. Another representative from my company,
19 Mr. David Stein, has been in contact with them.

20 HEARING OFFICER FAY: Okay. But I
21 gather from what Mr. Galati has argued, the
22 details of that are not important to us at this
23 time because we don't have a proposal to go
24 forward on the project at this time. Is that your
25 understanding?

1 MR. SALAMY: That's correct.

2 HEARING OFFICER FAY: All right. Thank
3 you. Mr. Galati the Committee has no further
4 questions. Does staff have any questions of these
5 witnesses?

6 MR. BELL: Thank you. No questions at
7 this time.

8 HEARING OFFICER FAY: Okay. Mr. Sarvey,
9 questions of these witnesses?

10 MR. SARVEY: Yes, I have a couple of
11 questions.

12 CROSS EXAMINATION

13 MR. SARVEY: Did either of you
14 participate in the original Tesla proceeding here
15 at the Energy Commission?

16 MS. GRENIER: I did not.

17 MR. SALAMY: I did not either.

18 MR. SARVEY: All right. Are you aware
19 that the original PDOC application of this Tesla
20 Project was filed in early 2001 and that the FDOC
21 wasn't issued until March 27, 2003, about two
22 years later?

23 MR. SALAMY: I know that the FDOC was
24 issued in 2003. I didn't recall that the PDOC was
25 issued in 2001.

1 MR. SARVEY: The original permit never
2 received their PSD permit. How long would you
3 estimate that it would take to obtain a PSD permit
4 including appeals to the DAB in the current
5 environment?

6 MR. SALAMY: I'm not sure I'm able to
7 answer that question.

8 MR. SARVEY: In your current testimony
9 there is no mention of the greenhouse gas
10 regulations. Is there a reason for that?

11 MR. SALAMY: The update of the LORS
12 would include all applicable LORS. So to the
13 extent that AB 32 or any other greenhouse gas LORS
14 would now be, the project would be subject to, we
15 would have to update the analysis for those.

16 MR. SARVEY: Okay. In your testimony on
17 the environmental baseline on page eight you
18 mentioned that a new cumulative air quality
19 analysis may be required and you also mentioned
20 the expansion of the Tracy Peaker Plant. And I
21 just wanted to ask, Jeremy (sic) aren't you the
22 project manager of the Mariposa Project?

23 MR. SALAMY: I'm the Deputy Project
24 Manager on that project.

25 MR. SARVEY: And that is within six

1 miles of the Tesla Project. Is that correct?

2 MR. SALAMY: I believe it is within six
3 miles.

4 MR. SARVEY: And is there any reason
5 that that wasn't mentioned in your testimony? You
6 didn't mention the Tracy Peaker Plant.

7 MR. SALAMY: I believe I also mentioned
8 the Mariposa as well as one of the projects I was
9 involved in.

10 MR. SARVEY: Has either of you seen the
11 amendment filed by FDL for this project?

12 MS. GRENIER: I have not.

13 MR. SALAMY: I have not either.

14 MR. SARVEY: Okay. Well in that
15 amendment there is a PSD analysis which analyzes
16 the PM10 increment consumption. And in that
17 analysis it states that the 24 hour average PM10
18 increment consumption was 140 micrograms per cubic
19 meter in the project area and the annual average
20 PM10 increment consumption was 30 micrograms per
21 cubic meter. Is that relevant to our discussion
22 today? Do you think the baseline is changing
23 pretty rapidly?

24 MR. SALAMY: Without having reviewed
25 that amendment and the information that you're

1 discussing, Bob, I don't think I can answer that
2 question now.

3 MR. SARVEY: Well what's your
4 description of providing an amendment in a
5 piecemeal manner?

6 MR. GALATI: I'd object to that. It
7 calls for a legal conclusion.

8 HEARING OFFICER FAY: I think it's a
9 legitimate question but I'm not sure that it's
10 appropriate for this witness. Why don't we just
11 have the parties address that concern in their
12 briefs.

13 MR. SARVEY: Thank you, Mr. Fay.

14 That's all I have, thank you.

15 HEARING OFFICER FAY: Okay. Anything
16 from the Air District?

17 MR. SWANEY: Thank you. We did file
18 rebuttal testimony as the Air Quality Mitigation
19 Agreement was not included in anybody's original
20 testimony.

21 And so with the applicant now saying
22 that they agree with having that condition we have
23 no further objections and no further issues to
24 discuss here really this morning.

25 We do appreciate, Mr. Fay, your

1 suggestion to work with us on developing the
2 condition. We do appreciate that and look
3 forward to working with applicant on that
4 condition. Thank you.

5 HEARING OFFICER FAY: Thank you
6 Mr. Swaney. And I think we all have to keep in
7 mind that while there may be a benefit in reaching
8 agreement on certain matters that this is not an
9 effort to initiate construction of this project.
10 Therefore, a great many details are not before us
11 today. Go ahead Mr. Galati.

12 MR. GALATI: Mr. Fay, just one redirect.

13 HEARING OFFICER FAY: Sure.

14 REDIRECT EXAMINATION

15 BY MR. GALATI:

16 Q Mr. Salamy could you turn to page eight
17 of your testimony.

18 A Okay.

19 Q If you look under the heading, Air
20 Quality and Public Health. About six or seven
21 lines down there is a statement that starts with,
22 there may be, do you see that?

23 A Yes I do.

24 Q Could you read that sentence?

25 A "There may be other projects proposed in

1 the area that were not contemplated at the time of
2 the Tesla Cumulative Impact Assessment."

3 Q Were you referring to Mariposa and
4 others?

5 A Well possibly Mariposa and others, yes.

6 MR. GALATI: Thank you. No further
7 questions.

8 HEARING OFFICER FAY: Okay, any recross
9 on that one question?

10 MR. BELL: None.

11 MR. SARVEY: No recross.

12 HEARING OFFICER FAY: Okay. All right,
13 we have no further questions of this panel. Want
14 to go ahead with your next panel?

15 MR. GALATI: Thank you. At this time
16 I'd like to call Fong Wan and William Manheim,
17 please.

18 Whereupon,

19 WILLIAM MANHEIM

20 FONG WAN

21 Were duly sworn.

22 HEARING OFFICER FAY: Please state your
23 name and spell it for the court reporter.

24 MR. WAN: My name is Fong Wan spelled,
25 F-O-N-G, last name is Wan, W-A-N.

1 MR. MANHEIM: My name is William
2 Manheim, the last name M-A-N-H-E-I-M.

3 DIRECT EXAMINATION

4 MR. GALATI: Thank you gentlemen.
5 Could you please each independently, Mr. Wan you
6 first, please, to state, briefly state your
7 qualifications and your role in the project?

8 MR. WAN: Sure. I'm a Senior Vice
9 President overseeing the energy procurement area
10 with PG&E. My responsibilities include gas and
11 electric supply planning as well as policies,
12 market assessment, quantitative analysis, the
13 procurement activities themselves, as well as the
14 settlement of all of our contracts.

15 MR. MANHEIM: And I'm Fong's lawyer
16 (laughter). My title is Senior Director and
17 Counsel. I oversee about 20 attorneys who work on
18 electric supply and procurement, renewable
19 resource issues, electric, gas and transmission
20 siting and development.

21 I also have worked directly on the CPUC
22 application for Tesla and represent PG&E at the
23 Public Utilities Commission on electric planning
24 and supply issues.

25 MR. GALATI: Did you both file

1 previously written testimony in this proceeding?

2 MR. WAN: Yes I did.

3 MR. MANHEIM: Yes.

4 MR. GALATI: And do either of you have
5 any changes, additions or corrections to that
6 testimony?

7 MR. WAN: I do not.

8 MR. MANHEIM: I have two additions.

9 MR. GALATI: Go ahead, Mr. Manheim.

10 MR. MANHEIM: Sure. The first is in our
11 testimony we talked about the significant efforts
12 that PG&E pursued at the Public Utilities
13 Commission to obtain authorization to proceed with
14 the Tesla Project.

15 I wanted to point out that there were
16 other further efforts that we undertook in the
17 commercial arena to advance the development of
18 that project.

19 We did significant work associated with
20 the design of the facility. And we also did a
21 significant amount of work in the vendor
22 purchasing area. In fact, we entered into supply
23 agreements for the steam turbines with GE.

24 So we had talked about the efforts in
25 the regulatory process. I just wanted to point

1 out that there were also significant efforts on
2 PG&E's behalf to actually pursue the commercial
3 development and design of the project.

4 MR. GALATI: And Mr. Manheim in response
5 to Commissioner Byron's question earlier about
6 what was proposed at that time. Do you remember
7 whether the plant project description was
8 different than the license?

9 MR. MANHEIM: There was a difference in
10 timing. In the CPUC application PG&E was
11 proposing to proceed with only one-half of the
12 project or about 560 megawatts of the project. So
13 one train of the two that had been permitted.

14 What we were proposing in the
15 application though was that the common facilities,
16 the facilities that would be needed to serve both
17 trains of the project would be sized to allow for
18 potential future development of the second train.

19 So why we were only seeking
20 authorization for the first train at the time, we
21 were reserving the potential for developing the
22 entire project down the road.

23 MR. GALATI: And Mr. Manheim, did you
24 have any other corrections or additions to your
25 testimony?

1 MR. MANHEIM: There's one other
2 addition. The question was raised by Counsel, why
3 did PG&E ask for five years as opposed to the
4 three years that East Altamont asked for, for
5 example?

6 In my testimony I described that PG&E's
7 plan is to address the potential development of
8 Tesla in the next long term plan proceeding that
9 will be filed with the Public Utilities
10 Commission.

11 And the five years allows that process
12 to play out. And if Tesla were potentially
13 selected through that process as a resource to be
14 developed we would need the full five years.

15 So I can take you briefly through the
16 timeline as to how we'd get to five years on that.

17 This is speculation on my part because
18 the PUC has not established the full schedule for
19 all of these steps. But based on our experience
20 with prior long-term plan proceedings and long
21 term RFOs my estimate is that we would submit our
22 long-term plan, next one, at the Public Utilities
23 Commission in the first quarter of 2010.

24 We would expect a decision by the CPUC
25 in the forth quarter of 2010 and that decision

1 would identify the resource need, if any, that
2 PG&E would pursue.

3 We would issue our next RFO in the first
4 quarter of 2011. So the next long-term RFO would
5 be a 2011 long-term RFO.

6 And that would really be the first
7 opportunity for utility-owned or independently-
8 owned generation to participate in an RFO for new
9 generation.

10 We'd expect that RFO would be completed
11 by the end of the year in 2011 and that we would
12 then have to apply to the Public Utilities
13 Commission for approval of the winners in the RFO.

14 And we would expect a CPUC decision
15 about midyear of 2012 on that.

16 So if Tesla were to be selected as a
17 resource to be developed we'd have a CPUC green
18 light about midyear of 2012.

19 So with a five year extension that would
20 give PG&E two years to complete the significant
21 updating of the license and any amendments that
22 would be required and start construction.

23 MR. GALATI: And do you believe that
24 that would be a similar timeline if this were an
25 independent energy producer sitting here with this

1 application?

2 MR. MANHEIM: Yes. I mean, to the
3 extent independent producers wanted to sell to
4 PG&E in conjunction with our long-term RFO they
5 would be subject to the same constraints and time
6 framework.

7 MR. GALATI: And Mr. Manheim did PG&E
8 order and then cancel turbine contracts?

9 MR. MANHEIM: Yes we did. We entered
10 into an agreement, an expedited agreement with GE
11 to purchase turbines that would have allowed the
12 Tesla Project to be on-line no later than summer
13 of 2012. And we incurred significant costs to
14 terminate those agreements when the PUC decided
15 that we should not pursue with the project as
16 proposed.

17 MR. GALATI: At this time I'd like to
18 move the testimony in of Mr. Wan and Mr. Manheim.

19 HEARING OFFICER FAY: All right. Is
20 there any objection to receiving into evidence the
21 portion of Exhibit 3 testimony of Messrs. Wan and
22 Manheim?

23 MR. BELL: No objection on behalf of
24 staff.

25 MR. SARVEY: No objection.

1 HEARING OFFICER FAY: All right. I hear
2 no objection. That will be entered in the record
3 at this point.

4 (Applicant's Exhibit 3 was received
5 into evidence.)

6 MR. GALATI: Thank you. And this panel
7 is available for cross examination.

8 HEARING OFFICER FAY: Okay. Does staff
9 have any questions?

10 MR. BELL: No questions on behalf of
11 staff.

12 HEARING OFFICER FAY: All right.
13 Mr. Sarvey do you have some questions of this
14 panel?

15 MR. SARVEY: No I don't any questions.
16 I would just like to thank Mr. Manheim and Mr. Wan
17 for coming today.

18 HEARING OFFICER FAY: Okay.

19 PRESIDING MEMBER BYRON: We can't let
20 you leave without a few questions (laughter).

21 In your testimony on page four, response
22 to question 3a, there's a statement in the middle
23 of the paragraph that says that the California
24 Independent System Operator has determined that
25 the Tesla Power Plant's proposed interconnection

1 at the Tesla substation will enhance the
2 California Independent System Operator system
3 stability and reliability. Is there a reference
4 for that statement or is that your own opinion?

5 MR. MANHEIM: We're referring to the
6 results of the interconnection study that was
7 conducted by the ISO.

8 PRESIDING MEMBER BYRON: And that study
9 is approximately five years old as well, correct?

10 MR. MANHEIM: Yes.

11 PRESIDING MEMBER BYRON: At the bottom
12 of that page, response to question 3b, it says,
13 PG&E is not aware of any harm that would result if
14 the construction deadline for the Tesla Power
15 Plant were to be extended, correct?

16 MR. WAN: Correct.

17 PRESIDING MEMBER BYRON: Have you
18 thought about, and I know I've asked these kinds
19 of questions of you before Mr. Wan, but have you
20 thought about the fact that since the Independent,
21 I'm sorry, the investor-owned utilities control
22 their own procurement process that there could be
23 potential harm to future respondents to
24 procurement requests for proposals as a result of
25 this project continuing to be active on PG&E's

1 books?

2 MR. WAN: Commissioner Byron, your
3 question is whether these independent producers
4 would be harmed.

5 And, you know, I look at our business
6 process from the perspective that we would select
7 the best project, the most economic project, the
8 most viable project from the perspective of our
9 customers.

10 And so it is that the PUC, who does
11 approve such a selection process, and we go
12 through the scrutiny of whether that was the right
13 choice, as you're aware.

14 And so I think we are conducting our
15 business from a customer's lens, what is in the
16 best interest of the customers.

17 MR. MANHEIM: If I could add, under
18 current PUC rules the utilities are not permitted
19 to submit bids into the competitive solicitation
20 process on their own.

21 And the PUC has committed to develop
22 rules for conducting a level playing field auction
23 for the next long term RFOs.

24 So that the PUC has gone on record
25 saying that they will develop those rules and will

1 allow UOG bids in conjunction with those rules in
2 the next long term RFO.

3 So I think there certainly is no harm in
4 conjunction with an extension because either, A,
5 the Commission will, the Public Utilities
6 Commission will adopt rules that will ensure a
7 level playing field, including things like an
8 independent evaluator procurement review group to
9 oversee the process, or, B, the Commission will
10 not adopt such rules, in which case utility-owned
11 generation will not be able to participate in the
12 next solicitation. So I think either way
13 independent generators are assured of a
14 competitive process.

15 PRESIDING MEMBER BYRON: Perhaps that
16 answers my last question here. I think it's my
17 last one. And that is at the top of page six,
18 well really my question relates to the response to
19 question 3c, and that is, do we have any
20 indication from the PUC that they may change their
21 existing decision to not allow PG&E to go forward
22 with Tesla?

23 And I believe that, I'll let my question
24 stand. Why don't you go ahead and answer it.

25 MR. MANHEIM: Yes, so I think I've

1 addressed part of it which is one avenue that is
2 available will be the next solicitation. And the
3 PUC has established for itself a pre-condition of
4 developing rules for a level playing field
5 solicitation process.

6 The other thing that I wanted to point
7 out is that in the interim there is the potential
8 value of Tesla as a reliability backstop.

9 In current PUC procurement rules and
10 decisions utilities are permitted to bring to the
11 Commission a utility-owned generation proposal
12 outside of the competitive process if it meets one
13 of five criteria.

14 And, for example, renewable resources
15 are exempt from that process. So the utility is
16 free to bring renewable, ownership of renewable
17 projects at any time.

18 The other primary exception would be for
19 reliability. So if we were to see a huge
20 reliability issue PG&E could conceivably file an
21 application with the Commission and propose to
22 develop Tesla to meet that need.

23 What we learned from the last
24 application though is, in order for the Commission
25 to evaluate the application we need to demonstrate

1 that it was not possible to have a competitive
2 solicitation to meet that reliability need first.

3 And the Commission denied our
4 application on the grounds that we did not
5 adequately demonstrate that a competitive
6 solicitation was available.

7 PRESIDING MEMBER BYRON: Right. And
8 those four criteria include unique opportunities
9 which I think would just about cover everything.
10 So glad to see that our colleagues at the PUC are
11 applying a little bit more discretion on that
12 criteria.

13 I don't have any other questions, thank
14 you.

15 HEARING OFFICER FAY: All right, any
16 redirect Mr. Galati?

17 MR. GALATI: None.

18 HEARING OFFICER FAY: Okay. Then we'd
19 like to thank the panel for their testimony.
20 Appreciate you coming today.

21 HEARING OFFICER FAY: Anything further
22 Mr. Galati?

23 MR. GALATI: Yes, I would like to make
24 sure that the, our petition -- I apologize for a
25 minute, let me look at the exhibit numbers.

1 MR. BELL: Exhibit 1.

2 MR. GALATI: Thank you. Exhibit 1 be
3 moved into evidence. Thank you Kevin.

4 HEARING OFFICER FAY: Any objection to
5 receiving PG&E's petition as Exhibit 1 into the
6 record at this time?

7 MR. BELL: None on behalf of staff.

8 MR. SARVEY: No objection.

9 HEARING OFFICER FAY: I hear no
10 objections. We'll enter that at this point.

11 (Applicant's Exhibit 1 was received
12 into evidence.)

13 MR. GALATI: And lastly, I know this is
14 treated as an add-on so I don't know the correct
15 procedure. But I just thought out of an abundance
16 of caution I'd like the Commission to take
17 administrative notice of the Tesla evidentiary
18 record from the original proceedings.

19 HEARING OFFICER FAY: All right, any
20 objections?

21 MR. BELL: None.

22 MR. SARVEY: None.

23 HEARING OFFICER FAY: Part of our
24 official record. We'll take administrative notice
25 of that.

1 And did you move Exhibit 2, your initial
2 brief? I see it listed on the exhibit list. Did
3 you want to move that?

4 MR. GALATI: Yes, I'll have it as
5 evidence, thanks.

6 HEARING OFFICER FAY: Okay, any
7 objection?

8 MR. BELL: None.

9 MR. SARVEY: No objection.

10 HEARING OFFICER FAY: We'll receive
11 PG&E's initial brief in support of the extension
12 as Exhibit 2, enter it into the record at this
13 point.

14 (Applicant's Exhibit 2 was received
15 into evidence.)

16 HEARING OFFICER FAY: And Mr. Galati
17 before we leave you and turn to the staff I just
18 have a couple of questions. This is, I failed to
19 ask this when you were making your legal argument.

20 As to extension, does 1720.3 place any
21 time limit on the extensions the Commission can
22 grant?

23 MR. GALATI: Well it does say that good
24 cause could be granted if you file before the
25 construction deadline.

1 And that's why I outlined the way it
2 would have to occur would be that someone would
3 have to move first to have leave to file a
4 request.

5 So they'd have to establish under the
6 Commission's regulations good cause for being
7 late.

8 And then it was only after that good
9 cause for being late is granted that they could
10 then file a petition for extension in my opinion.

11 HEARING OFFICER FAY: All right. But
12 even a timely petition for extension, does it have
13 any limit on it?

14 MR. GALATI: No it just says, before.

15 HEARING OFFICER FAY: So the
16 Commission --

17 MR. GALATI: Before then, yeah.

18 HEARING OFFICER FAY: -- in granting an
19 extension could extend for any amount of time. Is
20 that your argument?

21 MR. GALATI: Yes, that's correct.

22 HEARING OFFICER FAY: Okay. Does the
23 staff have a reaction to that under 1720.3?

24 MR. BELL: Yes, 1720.3, without
25 rereading the entire statute, does specify that

1 the deadline for commencing construction shall be
2 five years after the effective date of the
3 decision.

4 Staff's position is that the date of
5 that decision would be, or would be inclusive of a
6 decision to extend the deadline to commence
7 construction.

8 Now along with the good cause discussion
9 this would be dependent on the facts of a
10 particular case.

11 Staff really doesn't look beyond the
12 language of the statute itself. The statute makes
13 it plain that it's five years from the date of the
14 decision.

15 HEARING OFFICER FAY: The statute may
16 say that but if the Commission grants a timely
17 request for extension then presumably the five
18 years doesn't apply any longer. Isn't that
19 correct?

20 MR. BELL: I'm sorry I misunderstood
21 your question. No, that would be correct. It
22 depends on the findings of fact made by the
23 Commission.

24 HEARING OFFICER FAY: And can you advise
25 us, is there any limit to what the Commission

1 could extend by the time period? Could they
2 extend five years? Could they say, we'll give you
3 a ten year extension? Is there any limit to what
4 a Commission could grant?

5 MR. BELL: Without having a specific
6 application in front of me with the facts set
7 forth that would justify an extension I'm not sure
8 I could answer your question.

9 HEARING OFFICER FAY: Are you aware of
10 any language in the regulation that constrains the
11 Commission in how long an extension they could
12 grant?

13 MR. BELL: I'm not, not beyond 1720.3,
14 no.

15 HEARING OFFICER FAY: Okay. All right,
16 thank you. And now we'll move to the staff. Do
17 you have any testimony to provide, any witnesses
18 to offer?

19 MR. BELL: We do. Jack Caswell who is
20 present.

21 HEARING OFFICER FAY: Okay. Mr. Caswell
22 please stand and be sworn.

23 Whereupon,

24 JACK CASWELL

25 Was duly sworn.

1 HEARING OFFICER FAY: All right. Please
2 state your name for the record and spell it.

3 MR. CASWELL: Jack Caswell, last name,
4 C-A-S-W-E-L-L.

5 DIRECT EXAMINATION

6 BY MR. BELL:

7 Q Mr. Caswell by whom are you employed and
8 in what capacity so employed?

9 A I am the Compliance Program Manager
10 employed here at the California Energy Commission.

11 Q Did you prepare previously written
12 testimony in this proceeding?

13 A I did.

14 Q Did you also prepare and attach a copy
15 of your professional qualifications and
16 experience?

17 A I did.

18 MR. BELL: At this time I would move
19 staff Exhibit 100 into evidence.

20 HEARING OFFICER FAY: Any objection?

21 MR. GALATI: No objection.

22 MR. SARVEY: No objection.

23 HEARING OFFICER FAY: All right, we'll
24 receive that into the record at this point.

25 (Staff's Exhibit 100 was received

1 into evidence.)

2 MR. BELL: Mr. Caswell did you have any
3 changes or additions to your testimony beyond what
4 was filed?

5 MR. CASWELL: I do not.

6 MR. BELL: Thank you. At this time
7 Mr. Caswell is available for questions.

8 HEARING OFFICER FAY: Mr. Galati do you
9 have any questions of staff?

10 MR. GALATI: No, I do not.

11 HEARING OFFICER FAY: Mr. Sarvey do you
12 have any?

13 MR. SARVEY: Yeah, I have a couple of
14 quick ones.

15 CROSS EXAMINATION

16 BY MR. SARVEY:

17 Q Mr. Caswell can you discuss the cost of
18 a major amendment? Let's frame it in terms of,
19 say, the Russell City amendment. What that costs
20 the Commission to process something like that.
21 How many man-hours. Just an estimate, I'm not
22 asking for anything exact. But just give me an
23 idea of how many man-hours and how much money does
24 it cost the Commission to process something like
25 that.

1 A You know I don't have a summary before
2 me of the exact hours for the Russell City. I was
3 not the Program Manager in charge of compliance at
4 the time that the Russell City amendment was
5 processed.

6 I know it's a considerable amount of
7 money and takes up a considerable amount of Energy
8 Commission resources through a wide range of
9 technical areas as well as management time. But I
10 can't give you any numbers right now.

11 Q And the reimbursement for that type of
12 review by the Energy Commission is limited to the
13 compliance fee of \$18,000, is that correct?

14 A Correct but with one exception. That
15 fee had just gone up in July to \$19,823.

16 Q Thank you. In your testimony you stated
17 that you had some informal discussions with PG&E.
18 And based on those discussions, and this may be
19 not a question you can answer, in your opinion do
20 you believe that the project description will
21 change when PG&E comes back with this amendment?

22 A Discussions at the end of 2008 with
23 Mr. Galati and a representative from PG&E as well
24 as Florida Power and Light that I think were
25 present at a meeting indicated that there would be

1 a reduction in the project size to 650 megawatts.
2 And that they understood that under those
3 circumstances should they proceed that a major
4 amendment would be required.

5 But there was no details given to us, no
6 formal filing, no formal record of that, just a
7 compliance meeting to discuss the future of the
8 Tesla Project. Mainly because we had notified
9 Florida Power and Light as well as Florida Power
10 and Light had contacted PG&E that we were
11 requesting them to come in for an update on this
12 project and possible request to extend the start
13 of construction. And how might any concerns they
14 may have or plans they may have for moving forward
15 with the project as it was licensed or an
16 amendment for this project.

17 Q So would it be fair to say that your
18 testimony is that any estimate of time to complete
19 this licensing would basically be speculation in
20 absence of a project description or proposed
21 amendment?

22 A Correct.

23 Q Okay. And how would staff's current
24 workload change the estimate of time necessary to
25 process this project?

1 A Well currently, you know, the compliance
2 unit has a number of major amendments, four of
3 them in process right now, two more anticipated
4 very soon.

5 The addition of this project, dependent
6 on the timing of that project or to move forward,
7 would be tough for -- you know, compliance has
8 processed up to 34 amendments as of June of this
9 year.

10 Some of those they are in different
11 categories. They are not all major amendments.
12 They are staff-approved project modifications that
13 don't require the full Committee but still require
14 review time and analysis by staff so that we can
15 make that determination, minor amendments which go
16 before the full Committee which we have a number
17 of those.

18 And then, again, as I said before, major
19 amendments. And I can tell you that it would, you
20 know, if they were to move forward with the
21 project as it was licensed it wouldn't take too
22 long, I don't think, if they prepared all the
23 documents, updated a transmission study, air
24 quality for both the Bay Area and the San Joaquin
25 Air Pollution Districts and the water contract for

1 the delivery and the purveyor of water is
2 licensed. But if a major amendment was come in it
3 would be at least a year and maybe longer.

4 MR. SARVEY: Thank you Mr. Caswell.
5 That's all I have.

6 PRESIDING MEMBER BYRON: Mr. Caswell, in
7 your testimony on page four, I'll just summarize
8 what I see here. The following factors that PG&E
9 presented for a finding of good cause.

10 They might sell the site. It would
11 enable, essentially, future development.

12 Customers might benefit from having this
13 continue.

14 Customers might be protected if
15 additional projects were unable to deliver power.

16 And the Commission has spent an
17 extensive amount of time and resources.

18 And then the next paragraph says that
19 the staff has indicated that this is sufficient
20 showing of good cause.

21 So my question is, what wouldn't be a
22 good showing, a showing of good cause? It seems
23 pretty generalized to me.

24 MR. CASWELL: And it was intended to be
25 generalized and the reason being that I don't have

1 a lot of facts that staff would, based on previous
2 recommendations for projects that are similar to
3 this and in that general area, East Altamont being
4 one of the projects, Russell City another of the
5 projects that we had made recommendations on,
6 where there were discussions about problems about
7 moving forward and then unspecific timelines or
8 inspecific timelines that identified their ability
9 to develop the projects.

10 Basically staff has made recommendations
11 to extend the start of construction licenses based
12 on the fact that there were so much time and
13 energy, public resources here at the Energy
14 Commission spent on developing these licenses and
15 making recommendations throughout the hearings
16 that we would not like to see the licenses expire
17 and those efforts kind of gone by the wayside.

18 It's a concern to staff that we put this
19 energy and this effort out and that we want to
20 keep these projects alive, if at all feasible
21 without having to go revisit this and to add a
22 complete new workload to the project staff.

23 And that's really the basis of my rather
24 vague responses in your --

25 PRESIDING MEMBER BYRON: Fair enough.

1 Because my next question would be, what
2 substantiation did you ask for from PG&E for the
3 other reasons that they stated. But I think
4 you've answered it appropriately.

5 So let me ask you as well, how long do
6 you think the Commission should continue to extend
7 the start of the construction with this kind of
8 showing of good cause?

9 MR. CASWELL: You know I hadn't thought
10 a lot about the exact timeframe. Again, we have
11 quite a few things going on here. And priorities
12 being what they are I'm shifting my limited
13 capacities and resources to these things that are
14 new and need to be addressed for the first time.
15 And again, things that are real and in-house for
16 amendments.

17 But I would think anywhere from three to
18 five years. But again, you know, some
19 contingencies I would think would be imposed on
20 these extensions.

21 And the possibility of a complete AFC if
22 they come back with a different project other than
23 the 1120 megawatts and the wastewater resources
24 and the air quality conditions and the
25 transmission. I mean there's so much that I don't

1 know at this date. It's been five years since
2 that license was issued.

3 I haven't really spent a lot of time
4 until last year as I came back over to compliance
5 to take a look at this and make some
6 recommendations to both Florida Power and Light
7 and PG&E to get in here as quickly as possible to
8 discuss the extension of a license. There were
9 several meetings to discuss this.

10 And, you know, this wasn't filed until
11 34 days prior to the expiration of that five year
12 timeframe. And again with all this workload, 34
13 days, working days, for staff is a rather short
14 timeframe to turn around and really analyze or
15 discuss or look into it in any great detail to
16 make a recommendation to the Committee.

17 So, you know, I would not make a
18 recommendation from staff on an exact extension
19 limitation other than maybe some conditions,
20 whatever that extension is, that imposes some
21 actions on those people that the projects that are
22 asking for these extensions.

23 PRESIDING MEMBER BYRON: Thank you
24 Mr. Caswell.

25 HEARING OFFICER FAY: Mr. Caswell, and

1 maybe you've covered this in your prior answer,
2 but what does your division see as the
3 Commission's role in ensuring or facilitating that
4 certified projects can be built?

5 MR. CASWELL: Well once I, you know, I
6 can I'll speak, are you, do you want me to speak
7 from the compliance perspective or the entire --

8 HEARING OFFICER FAY: Well, yes, let's
9 limit it to the compliance perspective.

10 MR. CASWELL: Okay. Well what we do is
11 we contact developers that haven't proceeded with
12 their projects and ask for meetings to discuss
13 plans for those projects. And provide them with
14 direction that would help them move forward and in
15 a timely fashion to develop those resources.

16 We have discussions about whether they
17 intend to amend the original license. And if they
18 do, what that would entail and what impacts that
19 may require to the developer as well as to the
20 staff and its ability to review these amendments
21 and make recommendations on strategies whether to
22 move in a two-part series where they make come in
23 ask for an extension with a plan to amend or
24 provide an extension and an amendment at the same
25 time.

1 And, you know, as soon as I came into
2 the compliance unit in April of 2008 I did a
3 survey of projects that were about to, licenses
4 were getting close to expiring within the next
5 year, and we did set up meetings with any project
6 that had those.

7 So these are the efforts we make to
8 move, help developers move forward with their
9 projects if at all possible and provide, providing
10 these strategies to move on.

11 HEARING OFFICER FAY: Thank you.
12 Nothing further. Do you have any redirect
13 Mr. Bell?

14 MR. BELL: No redirect, thank you.

15 HEARING OFFICER FAY: Okay. All right,
16 thank you Mr. Caswell for your testimony.

17 And did staff wish to move that at this
18 time?

19 MR. BELL: I believe I already did.

20 HEARING OFFICER FAY: Did you, all
21 right, my mistake. That has been received into
22 evidence.

23 Okay, next we're going to move to the
24 testimony of Bob Sarvey. Mr. Sarvey please stand
25 and be sworn.

1 Whereupon,

2 ROBERT SARVEY

3 Was duly sworn.

4 HEARING OFFICER FAY: All right. Please
5 be seated. State your name and spell it.

6 DIRECT EXAMINATION

7 MR. SARVEY: My name is Robert Sarvey.

8 And as I mentioned before I had fully participated
9 as an intervenor in the original Tesla licensing
10 with Mr. Caswell and Mr. Galati.

11 I intervened in the CPUC proceeding
12 where PG&E was asking for authorization to build
13 the Tesla Power Project and I fully participated
14 in that.

15 As you can see from my r, sum, I've been
16 in very many projects with both the CPUC and the
17 Energy Commission.

18 And with that I have one correction to
19 my testimony if you'd like to have that now.

20 HEARING OFFICER FAY: Why don't you
21 make, please make the correction now.

22 MR. SARVEY: The one correction to my
23 testimony is on page seven at the bottom, the
24 third line from the bottom. I stated that the
25 annual compliance fee was \$18,000. And

1 Mr. Caswell has corrected that for me, it's
2 \$19,800, I believe.

3 HEARING OFFICER FAY: Thank you. And if
4 you'd like to at this time move your various
5 exhibits?

6 MR. SARVEY: Yeah, I would like to move
7 Exhibits 200 through 204.

8 HEARING OFFICER FAY: Okay, Mr. Sarvey
9 has moved Exhibits 200 through 204. Is there
10 objection to receiving those into the record?

11 MR. GALATI: No objection.

12 MR. BELL: None on behalf of staff.

13 HEARING OFFICER FAY: All right, then
14 we'll receive those into the record at this point
15 as read.

16 (Intervenor's Exhibits 200 through
17 204 were received into evidence.)

18 HEARING OFFICER FAY: Did you have
19 anything further, Mr. Sarvey, in summary?

20 MR. SARVEY: No.

21 HEARING OFFICER FAY: Okay. Are you
22 then available for cross examination?

23 MR. SARVEY: I'm available for
24 questioning.

25 HEARING OFFICER FAY: Okay. PG&E?

1 MR. GALATI: No questions.

2 HEARING OFFICER FAY: Staff?

3 MR. BELL: None on behalf of staff.

4 HEARING OFFICER FAY: Okay.

5 PRESIDING MEMBER BYRON: Mr. Sarvey
6 thank you for being here. I was intrigued by your
7 testimony on page five. PG&E as opposed to other
8 power producers' efforts to construct a project
9 creating unique circumstances. And I was
10 wondering if you'd elaborate on the example that
11 you cited there.

12 MR. SARVEY: With the City and County of
13 San Francisco?

14 PRESIDING MEMBER BYRON: Yes, please.

15 MR. SARVEY: And one of the exhibits is
16 the City and County of San Francisco's load test
17 in the original Tesla proceeding at the PUC.

18 And the City and County of San Francisco
19 has alleged that PG&E actively opposed them at the
20 Board of Supervisors, organized citizens groups to
21 prevent them from building their San Francisco
22 Electrical Reliability Project and also their
23 project at the airport.

24 And they provided, unfortunately they
25 didn't include in their protest on the Internet,

1 but they provided examples of the literature that
2 was given to the Board of Supervisors and to
3 various community groups.

4 And the full reading will give you a
5 little more elaboration on it and I can answer any
6 questions about it if you have more.

7 PRESIDING COMMISSIONER BYRON: No.

8 MR. SARVEY: Thank you.

9 HEARING OFFICER FAY: Okay. Mr. Sarvey
10 I don't think we have any further questions so
11 thank you for coming today and providing us with
12 your testimony.

13 MR. SARVEY: Thank you very much.

14 HEARING OFFICER FAY: And am I correct,
15 the Air District does not have any testimony to
16 offer?

17 MR. SWANEY: With the amendment to the
18 applicant's testimony we do not have any testimony
19 to offer, that's correct.

20 HEARING OFFICER FAY: Okay. Thank you
21 very much.

22 At this time I would like to begin
23 receiving public comment. And I'll begin with the
24 people who are here. If any of them would come
25 forward and indicate they'd like to make public

1 comment.

2 MR. BAILEY: Steve Bailey, City of
3 Tracy, Public Works Department. The City of Tracy
4 has recycled water available for this project.

5 We think it would be a good use of the
6 recycled water and we would like -- if the project
7 is constructed we would like to be able to use the
8 infrastructure for our distribution of the
9 recycled water within the community.

10 So I'd just like to add that. Thank
11 you.

12 HEARING OFFICER FAY: And before you
13 step down I just wanted to be sure we've covered
14 that. Are there any negotiations going on right
15 now with the applicant, with PG&E in terms of
16 using recycled water for the project.

17 MR. BAILEY: Not currently. We have a
18 draft agreement prepared. We're kind of waiting
19 to see, get closer to construction so our
20 agreement reflects what's actually to be built.

21 HEARING OFFICER FAY: Okay. All right,
22 well thank you for clarifying the City's position.

23 MR. GALATI: If I could also clarify for
24 the Commission, the Decision does require the use
25 of that recycled water.

1 HEARING OFFICER FAY: And did IEP want
2 to make any comment? Mr. Wheatland, anything?

3 MR. WHEATLAND: I'll make the trek up
4 here to say that we have no comments to make at
5 this point and thank you.

6 HEARING OFFICER FAY: Okay. Thanks for
7 clarifying that.

8 All right, I have some people on the
9 line and I'll ask now. Elizabeth McCarthy did you
10 have any public comment?

11 Ms. McCarthy are you there? Can you
12 hear me? Okay I guess she's left us.

13 And then we have somebody identified as
14 Kenneth. Do you wish to make any comment?
15 Kenneth do you have any public comment?

16 KENNETH: No I don't.

17 HEARING OFFICER FAY: Okay, thank you.

18 Just going down the list now. We have
19 our friend Manual Alvarez.

20 MR. ALVAREZ: No I don't have any
21 comments.

22 HEARING OFFICER FAY: Okay, thank you
23 Manuel.

24 We also have Maryann Hogarth. Any
25 public comment?

1 I guess not, we don't hear any.

2 And Rob Simpson is on the line.

3 Mr. Simpson do you have any comment you'd like to
4 make?

5 MR. SIMPSON: Good morning, yes I do
6 thank you.

7 HEARING OFFICER FAY: Okay, why don't
8 you go ahead.

9 MR. SIMPSON: I would like to take this
10 opportunity, I appreciate the opportunity to
11 participate.

12 I see in the Order that PG&E entered
13 into an agreement to acquire the project on July
14 17th of '08. It seems to me that it was at that
15 time that PG&E should have been requesting
16 permission for the ownership change and extension.

17 And I feel that the public is
18 effectively precluded from participation when the
19 event occurs before the opportunity for
20 participation.

21 Instead PG&E waited nearly a year until
22 the prior owner's certification was about to
23 expire at the request of the ownership change and
24 extension in a three page document.

25 Now I see the briefing schedule. That

1 there was an opportunity for briefing by June
2 29th. And the governmental agencies and members
3 of the public are also welcomed to submit written
4 comments according to the schedule described. But
5 I saw nothing on the website that indicated that
6 PG&E had filed any legal brief or testimony.

7 So I don't see anything in the docket
8 log or in the proceeding information for this case
9 that shows that there's unique files. I feel like
10 I'm precluded from responding to whatever has been
11 filed if it's not posted on the website somewhere.

12 HEARING OFFICER FAY: Mr. Simpson let me
13 ask. Having been frustrated in your examination
14 of the website did you pursue that any further?
15 Did you contact the Public Adviser to try to get
16 documents or call the hearing office or any of the
17 parties in the case to try to get documents?

18 MR. SIMPSON: Well I found staff's
19 comments and testimony on the website so my
20 understanding was that is what was filed.

21 So, no I wasn't aware until this morning
22 that there was testimony filed by PG&E or legal
23 briefs filed. My understanding was the only
24 person that had filed was staff. So I can respond
25 to staff's testimony a little bit but I don't have

1 PG&E's testimony to respond to.

2 And, no, I didn't know that there was
3 something that I should have been asking for that
4 wasn't there.

5 HEARING OFFICER FAY: Okay. Well, did
6 you hear today's discussion from the beginning?

7 MR. SIMPSON: I did.

8 HEARING OFFICER FAY: Okay.

9 MR. SIMPSON: Yes I did.

10 HEARING OFFICER FAY: So you're aware
11 that testimony was submitted by PG&E and by the
12 staff and by Mr. Sarvey. So I would recommend
13 that you contact the Public Adviser's office and
14 try to get copies of all that. I'm sure they can
15 make it available to you in a very timely way so
16 that when you do file your comments before the
17 Committee, and later the Commission reaches a
18 decision, you will have the complete background of
19 all the filed documents.

20 MR. SIMPSON: Oh good, thank you. And
21 so I will have an opportunity to submit comments
22 after I receive those documents?

23 HEARING OFFICER FAY: Well if you do so
24 in a timely way based on the Committee's schedule
25 for issuing a decision.

1 And you will certainly be able to
2 comment on the Committee's Proposed Decision
3 before the Commission considers the matter.

4 MR. SIMPSON: Oh good, thank you. I'd
5 like to make a couple of comments on what I see
6 the staff wrote, if I may.

7 I noticed it says revocation is
8 otherwise authorized under Public Resources Code
9 25534 for any significant failure to comply with
10 the terms or conditions of the approval of the
11 application. And then it goes on that none of the
12 events have occurred to warrant the Energy
13 Commission holding a hearing to consider revoking
14 PG&E's certification.

15 I would argue that there are events that
16 have occurred that would warrant the Commission
17 holding a hearing to consider revoking PG&E's
18 certification.

19 And then there's, I think what the
20 Commission asked was, is there good cause for an
21 extension? And staff seemed to parse that a bit
22 that they tried to define good cause and then they
23 define an extension but I think the question is a
24 whole.

25 That when you start dissecting it, they

1 claim, the staff claims that good cause is not
2 defined. I disagree and contend that good cause
3 is codified in 1769 of the Warren-Alquist Act.

4 Staff claims that good cause appears to
5 be a flexible concept. I contend that there must
6 be some minimum threshold requirements which
7 within the rule of law for the decision-making
8 process would lead to the determination of good
9 cause.

10 And some of those are identified in
11 1769, which it appears that a number of the
12 extensions have been completed consistent with
13 1769 because it has these basic findings that the
14 project would remain in compliance with all
15 applicable laws. That the change would be
16 beneficial to the public. That the public had an
17 opportunity for participation, things like that.

18 You know, and I look at the rest of the
19 questions that the Commission asked staff and the
20 theme seems to be that there's, at least in what I
21 read, they don't have the information to make a
22 decision. Repeatedly that's the answer to your
23 questions. Staff does not have enough
24 information. Staff has no knowledge.

25 Staff anticipates large changes in the

1 project. Staff has no detailed information.

2 So I think when you asked those
3 questions you were looking for that basis for good
4 cause and at least in staff's response I'm not
5 seeing it.

6 I'm not seeing the opportunity for the
7 public participation but I see that the intervenor
8 was rejected because they didn't intervene on the
9 original proceeding. So, you know, I see some
10 process issues.

11 I don't really see what's to be
12 extended. It seems clear enough that they don't
13 intend to follow through with what's been
14 originally licensed. So, what is it they're
15 trying to retain with this extension?

16 And one of my concerns is when cap and
17 trade comes through does this create a basis where
18 PG&E can just take advantage of the cap and trade
19 program for a project, to get credits for a
20 project that's not currently viable. So are we
21 just manipulating the cap and trade market or is
22 there a real project here? Because I'm not seeing
23 anything that's applying to a real project.

24 So I think until I get a chance to
25 review PG&E's briefs and such those are my

1 concerns for today. And I do appreciate the
2 opportunity to share them.

3 HEARING OFFICER FAY: Okay, thank you
4 Mr. Simpson. Does anybody else wish to make a
5 public comment? Let's go off the record a moment.

6 (Off the record)

7 HEARING OFFICER FAY: Okay, I'd like to
8 address the callers that have not yet commented.
9 And if you would identify yourself and then make
10 your comment. Please somebody jump in and
11 identify themselves.

12 MS. HOGARTH: Can you hear me?

13 HEARING OFFICER FAY: Yes we can, go
14 ahead.

15 MS. HOGARTH: I'm Maryann Hogarth and
16 I'm just a reporter with California Energy
17 Markets. So I'm just listening in.

18 HEARING OFFICER FAY: Okay. Anybody
19 else? All right, we have opened the line to
20 everybody and we're not hearing any requests. The
21 last chance if you want to make public comment.

22 All right, I hear no requests for public
23 comment so I guess we have heard from everybody.

24 I would just like to note the remaining
25 schedule. Mr. Simpson raised some questions about

1 opportunity to comment.

2 The parties in the case are directed to
3 file post-hearing briefs by close of business on
4 August 3, 2009.

5 The Committee anticipates getting out a
6 decision near the end of August so that the full
7 Commission can consider this matter during
8 September at one of the business meetings.

9 People will, of course, be able to
10 comment on the Proposed Decision and be able to
11 comment in front of the Commission when the matter
12 is scheduled.

13 The notice of this event scheduled full
14 Commission consideration for the September 9th
15 business meeting. And unless there is further
16 notice that will be when this will come up.

17 PRESIDING MEMBER BYRON: Mr. Fay do you
18 recall when the duration of the 90 day extension
19 that we granted expires?

20 HEARING OFFICER FAY: I do not
21 specifically but I'm thinking that maybe
22 Mr. Galati might have an idea of when that is.

23 MR. GALATI: It was granted June 3rd so,
24 July, August, September. But if you agree with me
25 in the first oral argument, is that you don't need

1 to extend it because you would need to revoke the
2 license.

3 But if you wanted to make absolutely
4 certain that I was wrong you could extend the
5 license now until the business meeting on the 9th.

6 HEARING OFFICER FAY: When you say June
7 3rd, was that when the matter was considered by
8 the Commission?

9 MR. GALATI: Correct.

10 HEARING OFFICER FAY: I believe the
11 Order out of the Commission actually set the
12 decision date as, extended it until September 15th
13 I'm informed by the Commissioner.

14 MR. GALATI: Okay, great, I couldn't
15 find it.

16 HEARING OFFICER FAY: So that was
17 contemplated that we could deal with this matter
18 at the September 9th business meeting.

19 MR. GALATI: Again, it would be easier
20 if you just agreed with me earlier. (laughter)

21 HEARING OFFICER FAY: Yes, I imagine you
22 would feel that way. Are there any other
23 questions before I let our Committee have the last
24 word? All right.

25 PRESIDING MEMBER BYRON: Well again I'd

1 like to thank you all for being here this morning.
2 I appreciate all your time and effort that went
3 into your testimonies.

4 The Committee will certainly consider it
5 all and responses today.

6 It is our intent that we will move
7 forward with a recommendation for a full Committee
8 -- full Commission by that September 9th deadline.
9 Thank you for being here.

10 HEARING OFFICER FAY: Thank you all for
11 coming. And we will have a very limited follow-up
12 direction. We'll send it out to the parties by e-
13 mail regarding items we want to be sure to have
14 covered in the briefs. Thank you. We are
15 adjourned.

16 (Whereupon, at 10:45 a.m., the
17 Evidentiary Hearing was
18 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 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 3rd day of August, 2009.



JOHN COTA