

HEARING ON COMPLAINT FOR NONCOMPLIANCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Gateway Generating Station)
)
)
)
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Docket No.
00-AFC-1C

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DATE 8/05/2009

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

WEDNESDAY, AUGUST 5, 2009

10:00 a.m.

Reported by:
Deborah Baker
Contract No. 170-07-001

ORIGINAL

COMMITTEE MEMBERS PRESENT

Jeffrey D. Byron, Commissioner, Presiding Member

Karen Douglas, Chairman, Associate Member

Kenneth Celli, Hearing Officer

Kristy Chew, Advisor to Commissioner Byron

STAFF AND CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Maggie Read

Ron Yasny

APPLICANT

Scott Galati, Attorney
Galati and Beck

David Farabee, Attorney
Pillsbury Winthrop Shaw Pittman

Steve Royall
Pacific Gas and Electric Company

Gary S. Rubenstein
Sierra Research

COMPLAINANTS

Deborah N. Behles, Attorney for ACORN
Environmental Law and Justice Clinic
Golden Gate University School of Law

Lucas Williams, Graduate Fellow
Environmental Law and Justice Clinic
Golden Gate University School of Law

Erkki Kochketola
Contra Costa Branch of the Association for
Community Organizations for Reform Now (ACORN)

Rory Cox
Pacific Environment
Representative of Local Clean Energy Alliance

Robert Sarvey (via telephone)

Robert Simpson (via telephone)
Californians for Renewable Energy (CARE)

Michael Boyd (via telephone)
Californians for Renewable Energy (CARE)

ALSO PRESENT

Alexander G. Crockett (via telephone)
Bay Area Air Quality Management District

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P R O C E E D I N G S

10:40 a.m.

PRESIDING MEMBER BYRON: Good morning everyone. I'm Commissioner Jeff Byron. I'm the Presiding Member of the Siting Committee here at the California Energy Commission.

We're here this morning on a hearing on the complaint for non-compliance of the Gateway Generation Station, generating station.

And with me is the Associate Member of the Siting Committee, our Chairman, Commissioner Douglas. To my right is my advisor, Kristy Chew, and our Hearing Officer Ken Celli who I'll turn it over to shortly.

I'd just like to begin with a couple of opening remarks. It's fair to say that this Commission doesn't get very many complaints for non-compliance.

I think that speaks very highly to the performance of plant operators in this state and also to the enforcement of the Compliance Office at the Energy Commission.

However, when we do get them we take them very seriously, at least up until the point and if the complaint is unproven.

1 So it takes a lot of resources to
2 marshall these kinds of hearings and staff has
3 been very responsive to get this done quickly. We
4 want to get to the bottom of this issue as much as
5 we can today.

6 I'll turn to my Associate Member,
7 Chairman Douglas. Do you have any comments?

8 ASSOCIATE MEMBER DOUGLAS: Good morning
9 everybody. I would like to join Commissioner
10 Byron in welcoming you to the Energy Commission.
11 I do not have additional comments at this time.

12 PRESIDING MEMBER BYRON: All right.
13 Mr. Celli is our Hearing Officer. It's all yours.

14 HEARING OFFICER CELLI: Thank you. Good
15 morning everyone. A little background. Well,
16 before we begin I have to disclose that prior to
17 serving in my current capacity as a Hearing
18 Advisor I served as Senior Staff Counsel in the
19 Office of Chief Counsel here at the Energy
20 Commission.

21 I was assigned as the Compliance
22 Attorney with -- and some time in 2006 I visited
23 the Gateway Generating Station with Ron Yasny who
24 was the Compliance Project Manager, and
25 Christopher Meyer, to investigate, to the best of

1 my recollection, was an amendment having to do
2 with visual because there were some power lines
3 that were going to require trees being taken, made
4 shorter which would affect the view from the next
5 door yacht club. That's as much as I remember.
6 But I need to disclose that.

7 And also in January of 2007 I attended
8 the ground breaking ceremonies at Gateway
9 Generating Station.

10 With that in mind I have to ask the
11 parties whether there's any objection to my
12 serving as Hearing Officer today.

13 Complainants, any objection?

14 MS. BEHLES: We have no objection.

15 HEARING OFFICER CELLI: No, okay.

16 Staff?

17 MR. RATLIFF: No.

18 MR. GALATI: No.

19 HEARING OFFICER CELLI: Respondent,
20 thank you.

21 PRESIDING MEMBER BYRON: And we don't
22 object either Mr. Celli.

23 HEARING OFFICER CELLI: Thank you.

24 (Laughter).

25 HEARING OFFICER CELLI: The purpose of

1 today's conference is to conduct a hearing on
2 complaints filed pursuant to California Code of
3 Regulations Title 20, Section 1237.

4 On June 3, 2009 the Association of
5 Community Organizations for Reform Now, which we
6 will refer to from here on out as ACORN, filed a
7 complaint alleging non-compliance with the
8 Commission decision against Gateway Generating
9 Station which we will refer to as GGS from here on
10 out. Similar complaints were filed by Local Clean
11 Energy Alliance on June 29, 2009 and by CARE on
12 July 17, 2009.

13 These three complaints have been
14 consolidated by the Siting Committee who scheduled
15 today's status conference by a notice dated July
16 27, 2009.

17 The Committee will address these
18 complaints in two phases. And I want you to
19 understand this.

20 The first phase will be strictly limited
21 to the question of whether the GGS failed to
22 comply with the Final Decision of May 30, 2001 and
23 subsequent amendments adopted by the Energy
24 Commission.

25 The complainants have the burden of

1 proving non-compliance by a preponderance of the
2 evidence.

3 After hearing all of the evidence on the
4 question of non-compliance the Committee will
5 issue a decision.

6 If the Committee finds in favor of GGS
7 there will be no further hearings on the matter.

8 If the Committee finds non-compliance in
9 favor of the complainants the Committee will
10 notice a second phase hearing at a later date
11 limited to the issue of penalty.

12 After hearing all of the evidence on the
13 question of penalty the Committee will issue an
14 order setting an administrative civil penalty.

15 The procedure will be as follows, the
16 complainants will submit their proof of GGS's non-
17 compliance with the conditions of certification or
18 LORS listed in their complaints.

19 The respondent may then put on rebuttal
20 evidence followed by staff's evidence.

21 The complainants will then have the
22 right to rebut respondents and staff's evidence
23 and we will then provide an opportunity for the
24 general public comment.

25 Before we begin the hearing I want to

1 ask the parties if they were able to resolve any
2 matters or if they have any stipulations to offer?

3 MR. GALATI: No we do not.

4 HEARING OFFICER CELLI: Okay, thank you.
5 I'm going to, I'm sorry I skipped this but, the
6 introductions of the parties.

7 You've been introduced to the Committee.
8 If the complainants would please introduce
9 themselves.

10 MS. BEHLES: Good morning, my name is
11 Deborah Behles. I'm an attorney at the
12 Environmental Law and Justice Clinic at Golden
13 Gate University School of Law.

14 With me today I have Lucas Williams who
15 is a graduate fellow at our clinic.

16 We're here representing the Contra Costa
17 branch of ACORN.

18 HEARING OFFICER CELLI: Thank you.
19 Mr. Cox.

20 MR. COX: Yes, Rory Cox. I'm the
21 California Program Director at Pacific Environment
22 and we are one of over 40 organizations that are
23 in the Local Clean Energy Alliance who I am
24 representing today.

25 HEARING OFFICER CELLI: And Mr. Simpson

1 can you hear us?

2 MR. SIMPSON: Good morning, this is Rob
3 Simpson. I can hear a little bit.

4 HEARING OFFICER CELLI: Okay. And is
5 Mr. Sarvey on the line?

6 MR. SARVEY: Yeah, this is Bob Sarvey.
7 I can't hear anything from the complainant side.
8 I can hear the Commissioners from the CEC but I
9 can't hear the complainant at all.

10 PRESIDING MEMBER BYRON: All right so
11 that everyone understands about the green light
12 needs to be on.

13 The tall microphones are for the room
14 and the phone and the short microphones are for
15 recordings, the evidence recording.

16 And all you need to do is make sure your
17 green light is on and speak into the tall phone
18 and I'm pretty sure that the other microphones
19 will pick everything up.

20 HEARING OFFICER CELLI: So Mr. Cox if
21 you can turn that one towards you so you're
22 speaking directly into the microphone. And just
23 state your name again.

24 MR. COX: Sure, Rory Cox.

25 HEARING OFFICER CELLI: Was that better

1 MR. Sarvey and Mr. Simpson?

2 MR. SARVEY: Yes.

3 MR. SIMPSON: Yes.

4 HEARING OFFICER CELLI: Okay. Thank you.

5 And staff?

6 MR. RATLIFF: Dick Ratliff, Staff
7 Counsel standing in for Kevin Bell who is out of
8 the country.

9 MR. YASNY: Ron Yasny, Compliance
10 Project Manager.

11 HEARING OFFICER CELLI: Thank you.
12 Respondent and project owner.

13 MR. GALATI: Scott Galati representing
14 PG&E.

15 HEARING OFFICER CELLI: And is anyone
16 here from the Public Advisors Office today?

17 PRESIDING MEMBER BYRON: And I think it
18 would be good if the others on the phone
19 identified themselves. Will anyone else be
20 speaking that's on the phone?

21 HEARING OFFICER CELLI: Is Mr. Crockett
22 on the phone? Right now the only open line should
23 be Mr. Simpson and Mr. Sarvey. And if
24 Mr. Crockett calls in he should have an open line.

25 And the remaining people --

1 MR. BOYD: This is Mr. Boyd on the line
2 too.

3 HEARING OFFICER CELLI: Mr. Boyd?

4 MR. BOYD: I'm on the line too. I
5 requested a line.

6 HEARING OFFICER CELLI: And Mr. Boyd
7 you're with CARE?

8 MR. BOYD: Yes sir.

9 HEARING OFFICER CELLI: Okay, thank you.
10 And so he can --

11 MR. BOYD: I don't necessarily
12 anticipate saying anything but I'm here.

13 HEARING OFFICER CELLI: Well, and we're
14 glad to have you. Thank you. And so we have
15 three people on the line, Mr. Simpson, Mr. Boyd
16 and Mr. Sarvey. Mr. Crockett would have an open
17 line. And then the remaining people aren't
18 available to speak because their lines are off.
19 Correct?

20 MS. READ: She's going to open his line
21 if he calls in.

22 HEARING OFFICER CELLI: Thank you.

23 MS. READ: He has not called in yet.

24 HEARING OFFICER CELLI: Very good, thank
25 you. Okay, since ACORN was the first to file a

1 complaint and all subsequent complaints have
2 incorporated ACORN's complaint, and because ACORN
3 is represented by legal counsel, I've asked
4 Ms. Behles today to take a lead role in
5 representing the complainants which she has
6 graciously accepted. And we are grateful that you
7 did that and filed a joint pre-hearing statement.

8 I need to rule on CARE's motion. CARE
9 brought a motion under 1231 for an investigation
10 in jurisdictional determination.

11 That code section does not apply to the
12 allegations of non-compliance which is solely
13 governed by Section 1237.

14 Presumably under 1237 an investigation
15 has already been completed and jurisdiction is not
16 in dispute because the Energy Commission
17 definitely has jurisdiction over GGS.

18 So CARE's motion under 1231 is denied.
19 Also as to the request for official notice. The
20 Committee is pleased to take official notice of
21 all relevant laws, rules and regulations and facts
22 which are so universally known that they cannot
23 reasonably be the subject of dispute.

24 I have not received the EAB petition nor
25 Mr. Sarvey's comments on the PSD permit, nor the

1 EAB jurisdictional brief mentioned in CARE's
2 complaint, nor the EAB appeal 09-02, however I
3 assume those are going to be in the set of
4 documents I received this morning.

5 MS. BEHLES: Not every document.

6 Mr. Sarvey's comments are in as well as the
7 documents relevant to the appeal.

8 HEARING OFFICER CELLI: Okay. The
9 Committee -- just to be clear to the people in
10 CARE, the Committee would not take official notice
11 of such documents and the parties would have to
12 offer such documents into evidence after a proper
13 foundation and authentication.

14 So the request for official notice of
15 these documents is also denied.

16 Finally, I have prepared, I just want to
17 share this with you, I prepared for my personal
18 use a sort of a table that contains the following,
19 it says, conditions of LORS, condition or LORS on
20 the right hand side, active non-compliance,
21 evidence of non-compliance, rebuttal evidence,
22 proven, yes, no.

23 This is for my use up here. This is as
24 black and white as it could possibly be. And if
25 you want I can actually, I brought a couple of

1 extra copies up here if you wanted it, if you
2 wanted to have these, pass these out.

3 I'm giving you these because that is how
4 limited our inquiry will be today. What is the
5 condition, what is the LORS, what's the non-
6 compliance, then we move on. Because we need to
7 be efficient this morning.

8 So that's all we're getting into okay.
9 And other than that everything else would be
10 irrelevant.

11 So with that --

12 MR. RATLIFF: Commissioners if I may, I
13 would like to renew the staff's request made in
14 our pre-hearing conference statement that you,
15 before you initiate a hearing which is described
16 as an evidentiary hearing and which as an
17 evidentiary approach that you --

18 MR. SIMPSON: Sir could you speak up.

19 COMMISSIONER BYRON: You need to --

20 HEARING OFFICER CELLI: You need to
21 speak into the mic.

22 MR. RATLIFF: -- that you take some time
23 to try to scope the hearing a bit to determine, if
24 in fact, you have any issues of fact.

25 It is our belief that you do not have

1 any issues of fact. In fact if you look at the
2 documents that have been filed in this proceeding
3 they are, I mean the cases of the parties are all
4 presented in documents which are public records.

5 And I think it would probably be
6 possible to have stipulated facts quite simply
7 from those documents.

8 I think if you try to do this is an
9 evidentiary way it will be extremely awkward and
10 not very productive to try and to get to the
11 bottom of the actual issues here if there are any.

12 So I would request that before you start
13 swearing witnesses and taking testimony that you
14 actually interview the parties to try to determine
15 what is a fact of issue today and how we might
16 approach resolving any of the issues.

17 HEARING OFFICER CELLI: Okay. Well
18 since we have no stipulations as yet and we asked
19 the parties to stipulate. Did you get a copy of
20 this chart Mr. Ratliff?

21 MR. RATLIFF: I don't have anything.

22 HEARING OFFICER CELLI: Could you please
23 pass that along. And then make sure that
24 Mr. Galati gets one.

25 Mr. Yasny if you could give one to

1 Mr. Galati.

2 What you have is under the conditions or
3 LORS those conditions that were alleged in the
4 complaints as being subject, the subject of non-
5 compliance, on the page that starts AQ-6 through
6 PRC-25223, I'm sorry, 25523, would be Ms. Behles's
7 or ACORN.

8 On the back are all of the code sections
9 and conditions alleged by CARE that are subject of
10 non-compliance, okay. They're very finite.

11 And also I should mention that Mr. Cox
12 is who joined in ACORN's complaint are all
13 contained in on the ones that are AQ-6 through
14 PRC-25523.

15 All we're going to do today is find out
16 looking at the first condition AQ-6 there's an
17 allegation.

18 The complainant is going to put in
19 evidence on that allegation and then move to the
20 next allegation and put in evidence on that
21 allegation whatever that evidence would be.

22 Probably you're all going to stipulate
23 to most of the evidence because it's public record
24 and it's coming in and it's already been
25 authenticated.

1 So if we just move through this chart I
2 think we probably have about 10, 15 minutes max of
3 direct examination from the complainant.

4 I mean this is very efficient. So,
5 Mr. Galati you have a --

6 MR. GALATI: Yes, actually I don't mind
7 that approach. I think that approach would be
8 efficient. I do have an issue though.

9 And I have an issue because I have made
10 an affirmative defense that one of the items, at
11 least on your chart, is not appropriately before
12 us in this forum.

13 I think either before we get to that
14 piece or we can do it now I'd like to be heard on
15 that.

16 HEARING OFFICER CELLI: What I think we
17 should do is let the complainants put in their
18 evidence, put in whatever, and we will give you an
19 opportunity to object at the time that the
20 evidence comes in.

21 If, and we're going to hear I think from
22 Mr. Crockett as to what's going on with the Bay
23 Area Air Quality Management District.

24 I think the right thing to do right now
25 is let's get the evidence in and then you all

1 brief it later or we'll argue it later.

2 MR. GALATI: I'm just trying to stop the
3 first question on the PSD being an objection from
4 me. And then you're going to hear it then.

5 The issue is PSD. It makes sense to me
6 to just argue that now whether PSD and the issues
7 surrounding PSD are properly in this forum and if
8 they are then it would save me from objecting to
9 their first question.

10 HEARING OFFICER CELLI: You know what,
11 today is the complainants day. And we're going to
12 let them put on their case.

13 MR. GALATI: Whatever we --

14 HEARING OFFICER CELLI: And then when
15 they're done you get to cross examine their
16 witnesses, if any, you get to object to any
17 exhibits they have, if any, and then you can put
18 on your defense, if needed, or put on any rebuttal
19 witnesses and staff as well.

20 So that's the flow of the day.

21 So with that --

22 MR. GALATI: Sure, I'll wait until
23 they --

24 HEARING OFFICER CELLI: We're going to hear
25 it.

1 MR. GALATI: -- I'll wait until they
2 start that.

3 HEARING OFFICER CELLI: I have a feeling
4 we're going to hear it. So we'll hear it when we
5 hear it, when it comes up.

6 PRESIDING MEMBER BYRON: Good.

7 MS. BEHLES: And I have one thing to
8 note. And you'll see our witnesses have prepared
9 summary charts similar to what you've prepared
10 today.

11 We split up issues of non-compliance
12 differently than you have.

13 PRESIDING MEMBER BYRON: Yours count.

14 MS. BEHLES: Item one in our complaints
15 about the site that PG&E was in non-compliance
16 based in part on the changes to certification that
17 it asked for in this May 7, 2009 filing.

18 We've delineated those, split those up
19 and so you'll see that in our summary chart.

20 HEARING OFFICER CELLI: Thank you. And
21 that's in here?

22 MS. BEHLES: Yes.

23 HEARING OFFICER CELLI: Okay. For the
24 record I received --

25 MS. BEHLES: That would be Exhibit 20.

1 HEARING OFFICER CELLI: Okay. Just for
2 the record, I received the exhibits from the
3 complainants in a notebook. And all the parties
4 have received one as well?

5 MS. BEHLES: Yes they have.

6 HEARING OFFICER CELLI: Okay. Thank
7 you. So with that Ms. Behles let's get to AQ-6 is
8 the first one on the list.

9 MS. BEHLES: Okay. Before we begin I
10 just want to go over a couple of minutes what, a
11 brief overview of what we're going to present
12 today.

13 But due to the commonality of issues the
14 three complainants have worked together to
15 consolidate our exhibits and our presentation
16 today.

17 The evidence that we will present this
18 morning demonstrates that PG&E is in non-
19 compliance with its certifications and the
20 requirements of this Commission.

21 Under the Warren Alquist Act, the
22 Commission's regulation and the general condition
23 of PG&E's certification, companies like PG&E are
24 required to amend their certification even for
25 insignificant changes before constructing and

1 operating the facility.

2 PG&E is aware of this requirement as it
3 has amended its certification several times.

4 In this instance, however, PG&E decided
5 to construct and start operating its facility
6 while many of the changes that it is currently in
7 non-compliance with were pending.

8 PG&E withdrew those changes stating, and
9 I quote, they were no longer necessary, even
10 though months later it is now asking for the exact
11 same changes.

12 It's well stated in one of PG&E's recent
13 filings that states, there are several
14 discrepancies between the project as built, the
15 BAAQMD authority to construct and the CEC
16 licensing.

17 PG&E's decision to construct, operate
18 and seek permission later is a circumvention of
19 this Commission's authority, a violation of its
20 certification and of the law.

21 HEARING OFFICER CELLI: Ms. Behles, you
22 know what, you're going to have an opportunity to
23 argue and --

24 MS. BEHLES: Okay.

25 HEARING OFFICER CELLI: -- put it all

1 together. What I'm asking for at this time is
2 just to state, if you can just stick to the script
3 here which is --

4 MS. BEHLES: Yep, okay.

5 HEARING OFFICER CELLI: What we need to
6 know is --

7 MS. BEHLES: Yes.

8 HEARING OFFICER CELLI: -- what is the
9 condition or LORS that you're saying is in non-
10 compliance and then what is the evidence of that?
11 And put that in now so that we can --

12 MS. BEHLES: Okay.

13 HEARING OFFICER CELLI: -- and if we can
14 just tick through this list we can move
15 efficiently. And that would be, we would
16 appreciate if you could just get into that.

17 MS. BEHLES: No problem.

18 HEARING OFFICER CELLI: Okay.

19 MS. BEHLES: With that, can we call our
20 first witness?

21 HEARING OFFICER CELLI: Please.

22 MS. BEHLES: We'd like to call Mr. Erkki
23 Kocketeli.

24 HEARING OFFICER CELLI: And
25 Mr. Kocketeli if you could --

1 MR. KOCHKETOLA: Kochketola actually.

2 MS. BEHLES: Okay.

3 HEARING OFFICER CELLI: -- Kochetola?

4 MR. KOCHKETOLA: Koch-ketola.

5 HEARING OFFICER CELLI: Koch-ketola.

6 MR. KOCHKETOLA: Yeah.

7 HEARING OFFICER CELLI: I'm sorry.

8 MR. KOCHKETOLA: No problem.

9 HEARING OFFICER CELLI: If you could
10 just testify from that podium. If everyone would
11 just testify from the podium. And Debbie will you
12 swear in the witness please.

13 Whereupon,

14 ERKKI KOCHKETOLA

15 Was duly sworn.

16 MS. BEHLES: Okay and for the record I'm
17 going to give the witness a set of our exhibits.

18 DIRECT EXAMINATION

19 BY MS. BEHLES:

20 Q Could you please again state your name
21 for the record and spell your last name.

22 A My name is Erkki Kochketola. My last
23 name is spelled, K-O-C-H-K-E-T-O-L-A.

24 Q Can you start by briefly stating your
25 educational background.

1 A I studied history at Indiana University,
2 South Bend.

3 Q What kind of work do you do?

4 A At the moment I do freelance computer
5 techno support work.

6 HEARING OFFICER CELLI: Ms. Behles you
7 know what, I wonder first of all, is he being
8 offered as a witness, as an expert witness?

9 MS. BEHLES: No I'm just giving some
10 background information.

11 HEARING OFFICER CELLI: Okay, because if
12 he's not an expert then we really just want to get
13 to what is the non-compliance if we can.

14 MS. BEHLES: Okay. Can we get some
15 information on his relationship with ACORN?

16 HEARING OFFICER CELLI: You know you
17 might even get a stipulation from the parties if
18 you would offer it.

19 MR. GALATI: I'll stipulate that he's
20 qualified to testify as to what he does with
21 ACORN. I'm not going to stipulate that he's an
22 expert to determine specific non-compliance if
23 that requires a legal interpretation or a
24 technical interpretation.

25 HEARING OFFICER CELLI: Staff.

1 MR. RATLIFF: Are you wanting to
2 stipulate that this witness can testify?

3 MR. COX: I don't know what I'm
4 stipulating to actually. Certainly he's
5 testifying as far as we're concerned.

6 HEARING OFFICER CELLI: He's not an
7 expert witness.

8 MR. COX: Okay, certainly. I think you
9 should proceed.

10 HEARING OFFICER CELLI: Thank you. So,
11 what I'm trying to do Ms. Behles is --

12 MS. BEHLES: Yes.

13 HEARING OFFICER CELLI: -- I'm just
14 trying to --

15 MS. BEHLES: Yes, I understand.

16 HEARING OFFICER CELLI: -- strip this
17 thing down to the bare bones.

18 MS. BEHLES: Yes.

19 HEARING OFFICER CELLI: If we can,
20 please.

21 BY MS. BEHLES:

22 Q Can you summarize what you did to
23 prepare for today's proceedings.

24 A I've looked over the exhibits that we
25 have prepared. And we prepared a summary of the

1 specific provisions that we believe indicate that
2 PG&E is in violation.

3 And we've looked over the relevant legal
4 LORS.

5 Q Okay so the issue for today's hearing is
6 whether or not PG&E is non-compliance with its
7 certification for the Gateway Facility.

8 Based on your review of these documents
9 do you believe that PG&E is in compliance with its
10 certification?

11 A No I don't.

12 Q And what do you base that on?

13 A I base that on a number of things. Very
14 broadly, the fact that the facility that was built
15 was not the same facility as was originally
16 permitted by the Air District or certified by the
17 Commission.

18 Q What statements are you relying on make
19 that conclusion?

20 A I'm relying on a number of public
21 documents, filings by PG&E and documents produced
22 both by the Commission and by the Air District.

23 Q I believe earlier you stated you
24 prepared a summary?

25 A Yes.

1 Q Does that summarize the statements that
2 you're relying on to make that statement?

3 A Yes it does.

4 Q Do you remember those exact statements
5 without looking at the summary?

6 A No I don't.

7 Q If you could turn to Exhibit 20 in your
8 binder.

9 A Okay.

10 Q Is this the summary that you've
11 prepared?

12 HEARING OFFICER CELLI: I have as 20 the
13 Declaration of Marie Dutcher Dreyer.

14 MS. BEHLES: Yes and then his is behind
15 that.

16 HEARING OFFICER CELLI: Oh, thank you.
17 Please proceed.

18 MR. KOCHKETOLA: Okay, yes, this is the
19 summary I've prepared.

20 BY MS. BEHLES:

21 Q Okay, can we briefly walk through what's
22 contained in the summary. The first thing listed
23 in the summary is General Complaints for
24 Certification. What is that referring to?

25 A Again, it's referring to fact that the

1 facility that was originally approved is not the
2 same facility that actually got built.

3 Q And where did those statements come from
4 that are listed?

5 A They came from amendments that PG&E
6 requested from the Commission to the
7 certification.

8 HEARING OFFICER CELLI: Ms. Behles can I
9 ask a question?

10 MS. BEHLES: Uh-hum.

11 HEARING OFFICER CELLI: I'm looking at
12 the Erkki Kochketola's Declaration, did I
13 pronounce that correctly?

14 MR. KOCHKETOLA: No.

15 HEARING OFFICER CELLI: What is it?

16 MR. KOCHKETOLA: Erkki Kochketola.

17 HEARING OFFICER CELLI: Erkki, I'm
18 sorry. There's a statement of relevant, it says,
19 statements relevant to compliance. And are you
20 just going down the list and ticking these?

21 There's references to the right, General
22 Compliance with Certification there and it says,
23 document Exhibit 14. Would that be your Exhibit
24 14?

25 MS. BEHLES: Exactly.

1 HEARING OFFICER CELLI: Okay. And what
2 you're giving me here, and I hope everybody is on
3 the same page with me is a document, an exhibit
4 that specifies a statement with a date, the
5 exhibit and at what page it can be found. Is that
6 correct.

7 MS. BEHLES: That's right.

8 HEARING OFFICER CELLI: And that's his
9 testimony?

10 MS. BEHLES: That's right.

11 HEARING OFFICER CELLI: And, first of
12 all, thank you for doing that. It's important to
13 be directed to where that is.

14 I suppose that if what you want to do is
15 you want to put this declaration, and I think you
16 can offer it and we'll see if there's any
17 objection, and then we don't need him to testify
18 to what he's already got in the declaration.

19 MS. BEHLES: Okay, that's fine.

20 HEARING OFFICER CELLI: Any objections.

21 MR. GALATI: There's no objection to
22 both of these. Mr. Kochketola's and Ms. Drecher,
23 I believe.

24 MS. BEHLES: Dreyer.

25 MR. GALATI: Both of those can come into

1 evidence. I don't think that they need to tick
2 them off.

3 HEARING OFFICER CELLI: And staff.

4 MR. RATLIFF: No objection.

5 MS. BEHLES: And we'd also like to offer
6 into evidence the underlying exhibits.

7 HEARING OFFICER CELLI: Okay and the
8 exhibit would be Exhibit 14 which is what? You
9 need to lay a little foundation please.

10 MS. BEHLES: Okay. If you can, if they
11 reviewed Exhibits 1 through 15 and 23 and 24.

12 MR. GALATI: We can stipulate to Exhibit
13 14 to come into evidence.

14 MS. BEHLES: Okay.

15 HEARING OFFICER CELLI: Staff?

16 MR. GALATI: Also Exhibit 4.

17 MR. RATLIFF: To the extent that these
18 are all documents, public documents that are a
19 matter of public record we have no objections to
20 any of these exhibits.

21 MR. GALATI: Exhibit 13, 1 and 2 as
22 well.

23 MS. BEHLES: It might be easiest, can we
24 just walk through the exhibit numbers and see if
25 there's an objection?

1 HEARING OFFICER CELLI: Yeah, let's do
2 that starting with Exhibit 1.

3 MS. BEHLES: Okay. Exhibit 1, what's
4 Exhibit 1?

5 MR. KOCHKETOLA: Exhibit 1 is the Final
6 Determination of Compliance for Contra Costa Power
7 Plant Unit 8 issued by the Bay Area Quality
8 Management District on February 2, 2001.

9 HEARING OFFICER CELLI: And you move
10 that into evidence at this time.

11 MS. BEHLES: We'd like to move that into
12 evidence.

13 HEARING OFFICER CELLI: Is there any
14 objection by respondent?

15 MR. GALATI: No objection. If you could
16 give me a moment I could probably stipulate to
17 these. The reason that I did not stipulate to
18 them earlier at the beginning of this hearing is I
19 wasn't quite sure how this hearing was going to
20 run.

21 And I thought that we would be having
22 some argument about what should be heard today,
23 consistent with staff's opinion and consistent
24 with my own.

25 Since we're not doing that I think I can

1 save the Committee a lot of time if you give me 30
2 seconds.

3 HEARING OFFICER CELLI: Please, take it.
4 Staff, take 30 seconds and see if you're willing
5 to stipulate to these documents coming in.

6 MR. RATLIFF: Yes, at the risk of being
7 a major irritant I would renew a suggestion that
8 we, I think this is a difficult way to reach
9 resolution of these issues in an evidentiary
10 format.

11 And I'm wondering if there might be a
12 better way to approach this simply by, well
13 perhaps, I mean, you've provided one road map and
14 that is this list and if we could actually do this
15 list without any further interruption. At least
16 that would be one way we could make it.

17 HEARING OFFICER CELLI: The plan is this
18 is the complainants' day. And this is their
19 opportunity to put in their evidence on non-
20 compliance.

21 MR. RATLIFF: But the evidence is a
22 number of public documents. And nobody, I think,
23 disputes that these documents exist and say what
24 they say.

25 HEARING OFFICER CELLI: That's great

1 then it'll shorten everything because then if
2 everybody stipulates to these public documents
3 coming in as their evidence then they are done and
4 we have their evidence.

5 MR. RATLIFF: Yes.

6 HEARING OFFICER CELLI: And that's, the
7 plan is basically, the complainant has the burden
8 of proof. I'm going to let them meet their
9 burden, hopefully on their behalf, to put this
10 evidence in. If you don't have a problem, if the
11 respondent doesn't have a problem and it comes,
12 and we will make a decision as to whether they
13 have met their burden or not, okay.

14 But we can't do it without the evidence.
15 And this is the forum for them to do it.

16 So they have -- this is the
17 complainants' opportunity to put in their
18 evidence. That's what we're here to hear.

19 MR. RATLIFF: Yes, we, we, we, and we
20 don't object to the recognition of these documents
21 for that reason.

22 What we need is some way of connecting
23 those documents to the allegations of the
24 complaint. And --

25 HEARING OFFICER CELLI: And that's the

1 complainants' burden.

2 MR. RATLIFF: -- that's what we would
3 like to get to actually.

4 HEARING OFFICER CELLI: That's why, and
5 Ms. Behles that's why I gave you that list.
6 Because what we're going to do today is we're
7 going to put in whatever evidence we can all agree
8 on and then you can argue over those ones that you
9 can't agree on.

10 And then you need to tie it up to what
11 those violations are, where that non-compliance
12 is. And that's their case. And this shouldn't
13 take that long.

14 MS. BEHLES: And our summary chart
15 leaves out the statement that are the bases of
16 ACORN's complaints.

17 HEARING OFFICER CELLI: Good, thank you.
18 So have you had an opportunity Mr. Galati to
19 review?

20 MR. GALATI: Yes, we'll stipulate to
21 Exhibits 1 through 14 being admitted into evidence
22 and Exhibit 20. Okay, Exhibit 23 and Exhibit 24.

23 HEARING OFFICER CELLI: Thank you.

24 MR. GALATI: So I would object to any
25 evidence in Exhibit 20 or additional testimony

1 regarding the PSD permit and I object to Exhibits
2 15 through 18 on those grounds, that it is an
3 irrelevant and improper forum.

4 The same, irrelevant on question, on
5 Exhibit 19 and irrelevant on Exhibit 22. And
6 Exhibit 21 we'll address with Mr. Sarvey's
7 testimony.

8 HEARING OFFICER CELLI: So to be clear
9 you've got, you're stipulating 1 through 14, 20,
10 23 and 24.

11 MR. GALATI: Correct.

12 HEARING OFFICER CELLI: You are
13 objecting specifically to 19, 22, 21 and what
14 other one?

15 MR. GALATI: Fifteen through 18.

16 HEARING OFFICER CELLI: Fifteen through
17 18 on grounds of irrelevance and improper forum.

18 MR. GALATI: Correct.

19 HEARING OFFICER CELLI: Does that cover
20 them all?

21 MR. GALATI: Well, yeah. The one that
22 is a bit different is item number 22, it's just on
23 irrelevance.

24 HEARING OFFICER CELLI: Okay. Staff,
25 would you be willing to stipulate to any of these

1 documents?

2 MR. RATLIFF: Well, yes. We have no
3 objection to the Committee's consideration of any
4 of these documents.

5 HEARING OFFICER CELLI: Thank you. With
6 that, Ms. Behles, 1 through 14 will be received
7 into evidence.

8 (The above-referenced documents,
9 previously marked as Complainants'
10 Exhibits 1 through 14 were received
11 into evidence.)

12 HEARING OFFICER CELLI: Exhibit 20, 23
13 and 24.

14 (The above-referenced documents,
15 previously marked as Complainants'
16 Exhibits 20, 23 and 24 were
17 received into evidence.)

18 MR. SIMPSON: I'm sorry, I can't hear
19 the speaker.

20 HEARING OFFICER CELLI: I'm sorry. We
21 just admitted into evidence Exhibits 1 through 14,
22 Exhibit 20 and Exhibits 23 and 24.

23 Mr. Simpson: Thank you.

24 HEARING OFFICER CELLI: Those will be
25 received and are received into evidence.

1 So with that, you have some documents,
2 you want to put in the rest of your evidence or do
3 you want to lay a foundation?

4 MS. BEHLES: I just want to question
5 this witness on Exhibit 15.

6 HEARING OFFICER CELLI: Thank you.

7 MS. BEHLES: Could you turn to Exhibit
8 15 in the exhibit book. What is Exhibit 15?

9 MR. KOCHKETOLA: Exhibit 15 is a reply
10 by the Bay Area Air Quality Management District in
11 support of a motion to stay proceedings before the
12 Environmental Appeals Board.

13 MR. GALATI: And at this point I renew
14 my objection that this testimony is irrelevant to
15 the determination before the Commission on an
16 improper forum.

17 HEARING OFFICER CELLI: Okay. I'm not
18 going to rule on that just now. What I'm going to
19 do is allow this evidence in and we will keep that
20 objection in abeyance so that once we have the
21 evidence we can look at.

22 We'll hear the argument and then we will
23 make a ruling on it.

24 So we're going to allow it in --

25 MR. GALATI: And then if I'm correct and

1 it's the improper forum you're going to disregard
2 anything that you've heard or read --

3 HEARING OFFICER CELLI: You know --

4 MR. GALATI: -- and not let it affect
5 your decision.

6 HEARING OFFICER CELLI: The Committee
7 will have to make that determination but what I
8 can say is this, this is an administrative hearing
9 and the complainants are claiming that GGS is
10 running afoul of their permit. And they're going
11 to put on their case and we're going to hear that
12 evidence.

13 Now if there is something, and I
14 understand in reading some of these documents that
15 there may be some unresolved issues in other fora.
16 And if that's the case we may want to, we will
17 deal with that appropriately. We will see which
18 is the appropriate forum to handle that.

19 But for today we just want to get the
20 evidence in so we know what we're working with.

21 MR. GALATI: But Mr. Celli, you're
22 allowing evidence in that you may find a ruling
23 should not have been allowed in.

24 HEARING OFFICER CELLI: I am going to
25 hear the evidence and we may -- we reserve the

1 right to rule and exclude as needed.

2 But we want a complete record.

3 MR. GALATI: I understand that. But a
4 record that is irrelevant to your proceeding --
5 because if you agreed with our affirmative defense
6 and if you agreed you would agree that it's
7 irrelevant to your proceeding you wouldn't let
8 other irrelevant evidence in at this point. You
9 wouldn't let evidence in about the Humboldt
10 Project, for example, because that's irrelevant to
11 your proceeding.

12 I'm saying the very same thing. The PSD
13 issue is an improper forum before the Commission
14 today and therefore it is irrelevant just like
15 whatever might be happening at Humboldt is
16 irrelevant.

17 So to hear the evidence, to allow it in
18 and then disregard it later I think does us an
19 incredible disservice.

20 HEARING OFFICER CELLI: All right. I
21 think that we'll spend more time talking about
22 this than just letting them move on and then we'll
23 make a determination later.

24 So I'm not ruling on relevancy.

25 MR. GALATI: In effect you are ruling.

1 You are allowing the evidence to come into this
2 proceeding.

3 You are de facto saying that it's
4 important to your decision by allowing it in
5 instead of ruling on my motion right now.

6 And I understand in the interest of
7 time --

8 HEARING OFFICER CELLI: I think you're
9 because your, you know something I think your
10 motion goes to an affirmative defense. I don't
11 think it's appropriate to make this a matter of
12 admissibility.

13 MR. GALATI: Well I have because I've
14 now said it's irrelevant because it's not before
15 you and before this Commission. That this is not
16 an issue for you to decide in this complaint
17 proceeding.

18 HEARING OFFICER CELLI: Okay. And what
19 we have is a complaint that alleges certain non-
20 compliance. We're going to allow the complainants
21 to put on their case. I am going to allow you to
22 put on your rebuttal, make whatever arguments you
23 need to.

24 And we will hear the arguments and make
25 a decision. And there will be briefs on all of

1 this. But we're going to allow this in, at least
2 for now.

3 MR. RATLIFF: Commissioners we would
4 like the complainants to be able to point to
5 anything they want to that they think is pertinent
6 that has to do with the Energy Commission's
7 certificate.

8 We, while we agree that the PSD permit
9 does not approve you issue for this agency we have
10 no objection to talking about it. And we're quite
11 willing to have these documents come in and have
12 that discussion occur.

13 Our concern is that the evidentiary
14 format is creating these kinds of problems and
15 make it very difficult to even talk about these
16 issues.

17 And if we could not treat this as
18 evidence subject to objection and testimony that
19 is essentially a bunch of documents, we could
20 actually talk about what these issues are hold
21 them up to the light and actually decide if
22 there's really an issue here.

23 If, in fact, we were to determine that
24 there were issues the fact that needed to be
25 determined by cross examination and sworn

1 testimony we could then convert to that kind of
2 hearing and do it.

3 But I think if we're going to
4 continually have this kind of problem that we're
5 having right now if we try to impose an
6 evidentiary format on what is a fairly complex set
7 of facts that I think, are essentially, a matter
8 of public record but that need to be discussed I
9 think quite freely if the Committee is ever going
10 to be able to figure out what we're talking about.

11 HEARING OFFICER CELLI: What we're going
12 to do is go off the record for a moment. If I
13 could just have a quick conference with the
14 Committee.

15 (Off the record.)

16 HEARING OFFICER CELLI: Everybody,
17 places everyone. We're going to proceed with an
18 evidentiary hearing. We're going to at this time
19 the Committee has looked at these documents and
20 has ruled that they are all relevant.

21 We will be receiving 1 through 24 and we
22 will hear from the parties their objections but at
23 this time we find that they are all relevant and
24 we're going to allow 1 through 24 into the record.

25 Mr. Galati.

1 MR. GALATI: You haven't even allowed me
2 to tell you the basis for my objection and why
3 they're not relevant.

4 It's the conversation that I wanted to
5 have at the very beginning of the session.

6 HEARING OFFICER CELLI: Make your
7 objection at this time, please.

8 MR. GALATI: They are irrelevant because
9 in an evidentiary format such as this Committee
10 could make a finding of fact on the validity of
11 the PSD permit that could be inconsistent with and
12 different from the federal agency who has sole
13 jurisdiction over the PSD permit.

14 I'm not saying that the validity of
15 permit might be important to you but if this
16 Committee in this evidentiary hearing makes that
17 finding how does it reconcile with eventually EPA
18 Region Nine's finding on the same facts?

19 Those are the points. These facts are
20 not before you. I would like to talk about
21 whether the validity of the PSD is important to
22 your decision and if it is there's another way to
23 handle this rather than have this form here.

24 It's being litigated in the EAB. There
25 is another forum at the Region Nine Enforcement

1 Provision.

2 Those are the federal agencies that
3 actually make that finding. Here the Commission
4 would be interpreting federal law in a siting case
5 complaint hearing.

6 This is not the right forum for them on
7 the PSD issue. I'm not saying there isn't a right
8 forum.

9 But it clearly is not relevant to you
10 because you can have these inconsistent results.
11 And what do we do in those inconsistent results?

12 It's one of the reasons why I'm having
13 to object to everything because if you make a
14 finding here that's inconsistent with the federal
15 agency what do I do?

16 HEARING OFFICER CELLI: So your
17 objection is relevance.

18 MR. GALATI: It's relevance.

19 HEARING OFFICER CELLI: Okay. Objection
20 is noticed. Staff, objection. Oh, actually
21 didn't staff already stipulate to all of the
22 documents coming in and not --

23 MR. RATLIFF: We didn't object to the
24 documents.

25 HEARING OFFICER CELLI: Okay, no

1 objection, thank you.

2 Then all of those documents have now
3 been received into evidence. Do you have anything
4 else?

5 MS. BEHLES: Just, as, so, what, just
6 for, just to make sure we're clear for the record.

7 BY MS. BEHLES:

8 Q What is Exhibit 20, the table you
9 prepared. What does it represent?

10 A Exhibit 20 is, contains a summary of the
11 specific points in the documents that we believe
12 demonstrate that PG&E is in violation of the
13 conditions of certification.

14 Q And so this summarizes your review of
15 the publicly available documents.

16 A That's correct.

17 Q And this summarizes why you believe PG&E
18 is in non-compliance.

19 A Yes.

20 Q And is this table accurate?

21 A Yes it is.

22 Q Okay, I have no further questions for
23 this witness.

24 HEARING OFFICER CELLI: Thank you.

25 Cross, respondent.

1 MR. GALATI: Mr. Kochketola you agree
2 you're not an expert witness for purposes of
3 interpreting air quality rules. Is that correct?

4 MR. KOCHKETOLA: That's correct.

5 BY MR. GALATI:

6 Q Prior to work related to this proceeding
7 have you ever reviewed a decision of the
8 California Energy Commission?

9 A Not that I recall.

10 Q Is it safe to say you're not an expert
11 on the California Energy Commission process?

12 A I would say that's safe to say.

13 Q Did you review the December 2006
14 Petition for Amendment which is marked as our
15 Exhibit 301? I believe that it's also marked, we
16 have some, your Exhibit 14.

17 A Yes I did review that.

18 Q I apologize, I mis-spoke. Did you
19 review the original decision, Exhibit 301? I
20 think this one is also identified as your Exhibit
21 2 although I think it's labelled BAAQMD Commission
22 Decision. I think that's Energy Commission
23 Decision. Did you review Exhibit 2?

24 A Yes I did.

25 Q Do you realize that Commission decision

1 has been amended several times?

2 A I was aware that there were several
3 amendments requested.

4 Q Do you know if any were granted?

5 A The amendments that I'm aware of were
6 all withdrawn. The amendment requests that I was
7 aware of were all withdrawn by PG&E prior to the
8 Commission deciding on them.

9 Q Okay, just to be clear, was that, you're
10 saying amendments in a plural fashion. Are you
11 referring to one amendment request in January of
12 2008 that was withdrawn or are you referring to
13 several?

14 A What I'm referring to is the amendment
15 request dated January 2008 that was withdrawn and
16 February 2009.

17 Q Okay. And you're aware of no other
18 amendments that were granted?

19 A Actually there were a couple of other
20 changes, one being the Commission order declaring
21 PG&E sole owner and amendment to eliminate use of
22 river water for the cooling water source.

23 Q Okay, thank you. In your summary of
24 your testimony you state that one of your basis
25 for general compliance or general non-compliance

1 with a general compliance with certification, you
2 state Exhibit 14 you quote it, however there
3 remains several inconsistencies between the
4 facility originally permitted and the GGS as
5 constructed. Is that correct?

6 A That's correct.

7 Q Is this the sole basis for your
8 discrepancies, your, excuse me, is this your sole
9 basis for non-compliance? That statement?

10 A No.

11 Q What specifically are the items that
12 were constructed that were not licensed?

13 MS. BEHLES: Objection. I mean if he
14 wants him to go through the summary table we could
15 do that. But I thought we'd put that into
16 evidence so we wouldn't have to go through this.

17 HEARING OFFICER CELLI: Do you have at
18 the ready those, what we need to do, we need to
19 know exactly what are, what is the subject of the
20 non-compliance.

21 And I think it's a fair question of
22 cross-examine to ask, cross-examination to ask.

23 MS. BEHLES: Okay.

24 HEARING OFFICER CELLI: It would be
25 helpful, maybe, if other than, if you could

1 perhaps point us to that list so that we can speed
2 things along.

3 MS. BEHLES: Sure. The list up here is
4 in Exhibit 20.

5 HEARING OFFICER CELLI: Okay.

6 MR. GALATI: I'm trying to understand
7 what the first complaint is. In the very first
8 box it says, General Compliance with
9 Certification. And that is a basis for non-
10 compliance.

11 I'm trying to understand what that is.
12 Are you telling me that all of the reasons for
13 general non-compliance are in the boxes after
14 that?

15 For example, Definition of Commissioning
16 Period is an issue, Change to Gas Preheater is an
17 issue.

18 MS. BEHLES: Yeah, I --

19 MR. GALATI: Are those encompassed in
20 number 1?

21 MS. BEHLES: Encompassed in number 1,
22 no. I mean each issue is identified with the
23 statements that are relevant to that.

24 MR. GALATI: Okay.

25 HEARING OFFICER CELLI: Okay, as I

1 understand this since we had to put this together,
2 you have a box that says, General Compliance with
3 Certification and then to the right it says, there
4 remains several inconsistencies between the
5 facility as originally permitted and the GGS as
6 constructed with a date, a document and a page
7 number. Is that correct?

8 MS. BEHLES: Right.

9 HEARING OFFICER CELLI: And then
10 underneath that is two more such paragraphs or
11 phrases with a cite to an Exhibit 14 and a page
12 number.

13 And what that represents, if I
14 understand this correctly, is the evidence that
15 you're using to support the statement on the left
16 of General Compliance with Certification. Is that
17 correct? And then so on down the table.

18 MS. BEHLES: That's right.

19 HEARING OFFICER CELLI: Definition of
20 Commission Period et cetera.

21 MS. BEHLES: That's right.

22 MR. GALATI: And I asked Mr. Kochketola,
23 are those the statements the only basis for saying
24 that PG&E is generally not in compliance with the
25 General Compliance with Certification? And he

1 said, no.

2 So I'm asking what others?

3 HEARING OFFICER CELLI: Good. Which is
4 a fair question. So please answer the question.

5 MR. KOCHKETOLA: Evidently I mis-spoke.
6 Specifically relating to General Compliance with
7 Certification, yes. Those are these only, those
8 are the only things that we are citing to support
9 our allegation.

10 BY MR. GALATI:

11 Q Okay and those are statements made by
12 PG&E.

13 A Yes they are.

14 Q And if PG&E did not make those
15 statements would you say that there's not general
16 compliance with certification?

17 A I'm not sure I understand the question.

18 Q I'm posing a hypothetical. If those
19 statements had not been in Exhibit 14 would you
20 still be complaining that in your complaint that
21 there is no, there is a, we're not, general
22 compliance with certification we're not in
23 compliance with that?

24 MS. BEHLES: Objection, calls for
25 speculation.

1 MR. GALATI: It's a cross-examination.
2 I'm allowed to pose hypotheticals.

3 HEARING OFFICER CELLI: Actually, it,
4 you are, it's a little argumentative though.
5 If --

6 MR. GALATI: I'm sorry for the tone.
7 I'll try again. There are three statements
8 attributed in Exhibit 14. Those statements are
9 all made by PG&E.

10 I'm wondering if you would still believe
11 that there is general compliance with
12 certification, that that is still an issue if PG&E
13 had not made those statements?

14 HEARING OFFICER CELLI: You know I'm
15 going to have to ask you this Mr. Galati because
16 I'm not sure that his belief is relevant. He's
17 not an expert. He hasn't been qualified as an
18 expert.

19 Basically he's the vehicle by which they
20 brought in all of this evidence.

21 MR. GALATI: You allowed him to testify
22 by putting this into evidence.

23 HEARING OFFICER CELLI: Yes.

24 MR. GALATI: And allowed that to be the
25 basis for general non-compliance.

1 HEARING OFFICER CELLI: But you're,
2 there might be, you may have evidence, let's say,
3 that PG&E didn't make statements that are
4 attributable or attributed under this in which
5 case you'd be able to impeach this document.

6 Okay, but I don't know that it's
7 necessary to impeach this witness because it's not
8 necessarily going to get you where you want to go.

9 MR. GALATI: Mr. Celli I'll move on.

10 PRESIDING MEMBER BYRON: Mr. Galati.

11 MR. GALATI: Yes.

12 PRESIDING MEMBER BYRON: Exhibit 14
13 begins with a cover letter written by Sierra
14 Research. I'm assuming the document is from
15 Sierra Research and submitted by, submitted to the
16 California Energy Commission, submitted by PG&E.

17 MR. GALATI: Correct.

18 PRESIDING MEMBER BYRON: Okay. Thank
19 you.

20 BY MR. GALATI:

21 Q With respect to Exhibit 14 and I'm
22 moving down the list now. In Exhibit 20 the next
23 box is identified as, Definition of Commission
24 Period. You refer to a proposed change in the
25 Definition of Commissioning Period as the basis

1 for your conclusion that GGS is not operating in
2 compliance with its conditions of certification.
3 Is that correct?

4 A Could you repeat the question please.

5 Q Yeah I will. In your Exhibit 20 you
6 state that, PG&E proposed to remove requirement or
7 changed the conditioning condition. Is that
8 correct?

9 A That's correct.

10 Q Okay. It's that proposed change that is
11 the basis for you saying that PG&E is non-
12 compliance with its certification. Is that
13 correct?

14 A It's not the sole basis.

15 Q Again, I'm only talking about the issue
16 of commissioning period. What is, I withdraw
17 that. What is the basis for your allegation that
18 PG&E is not in compliance with its certification
19 with respect to the definition of commissioning
20 period?

21 A The request was that PG&E changed the
22 definition of the commissioning period and that
23 PG&E made this request before, withdrew that
24 request as no longer being necessary, GGS was
25 commissioned and now since commissioning PG&E is

1 once again requesting this change.

2 Q So it is the basis that it's being
3 requested again that is your basis for non-
4 compliance?

5 A Again, not the sole basis.

6 Q Are you referring to Conditions for
7 Certification AQ-1?

8 HEARING OFFICER CELLI: According to the
9 chart we have AQ-6 in count one claims that
10 there's an act of non-compliance, a change of
11 condition for the commission period after the
12 fact. That's what alleged in this complaint, AQ-
13 6.

14 BY MR. GALATI:

15 Q Okay, let me ask some questions. Do you
16 believe that there are any conditions of
17 certification with respect to commissioning that
18 Gateway is not complying with at the moment?

19 MS. BEHLES: Objection, hypothetical.
20 Commissioning is already over so.

21 HEARING OFFICER CELLI: The question
22 was, Mr. Kochketola whether you believe there are
23 any conditions that, and before I repeat the
24 question, Mr. Galati, the complainants are being
25 held to what they put in the complaint.

1 They've alleged, one, two, three, four
2 and in count one they have alleged three air
3 quality conditions.

4 Now I don't know whether this witness is
5 the appropriate vehicle for this but they've
6 alleged AQ-6, AQ-20 and AQ-26 as being the basis
7 for their complaint.

8 MR. GALATI: I understand that's what
9 you summarized but if you look at it, the summary
10 of their testimony Exhibit 20, it's more than
11 that.

12 And I am forced to address each and
13 every one of those because it's in the record.

14 So I want to know what non-compliance
15 are they alleging with the definition of
16 commissioning period?

17 HEARING OFFICER CELLI: Fair enough. Do
18 you understand the question Mr. Kochketola?

19 MR. GALATI: I will actually withdraw
20 that, propose some other questions to try not to
21 take this much time.

22 Do you know what the change was that was
23 requested in 2008 in the January filing 2008 with
24 respect to commissioning period? It's a
25 definitional change, is that correct?

1 HEARING OFFICER CELLI: That's a yes or
2 no question.

3 MR. KOCHKETOLA: Yes.

4 MS. BEHLES: Yes.

5 BY MR. GALATI:

6 Q The change involved eliminating
7 reference to the California Power Exchange didn't
8 it?

9 A Yes it did.

10 Q And do you know if the California Power
11 Exchange is in existence?

12 A No I don't.

13 Q Do you believe that if the project was
14 commissioned without deleting the reference to the
15 California Power Exchange that that's a violation
16 of the condition.

17 MS. BEHLES: Objection, this goes to the
18 significance of the violation not to the issue of
19 whether or not there is a violation by not
20 changing the condition for the commissioning
21 period.

22 HEARING OFFICER CELLI: Actually, the
23 question is asked is whether this witness believes
24 and --

25 MR. GALATI: Is that the basis, I'm

1 trying to understand the basis for their
2 complaint. Is the basis that deletion of the
3 Power Exchange was necessary before commissioning
4 could occur?

5 HEARING OFFICER CELLI: So ask that
6 question because if you ask what he believes I
7 don't know that that's necessarily relevant.

8 MR. GALATI: Okay. Is the basis of your
9 complaint on the definition of commissioning
10 period that deletion of the California, reference
11 to the California Power Exchange was necessary
12 before commissioning?

13 MR. KOCHKETOLA: Yes.

14 BY MR. GALATI:

15 Q What's the basis for that conclusion?

16 A The basis for that conclusion is the
17 requirement for Petition to Change the
18 Certification set forth and Title 20, Section 1769
19 of the California Code of Regulations. It
20 specifically says that a petition is required for
21 amendments and for insignificant project changes
22 and also to leap or change a condition of
23 certification.

24 Q Do you think that it was possible for
25 PG&E to comply with that condition?

1 MS. BEHLES: Objection, again this goes
2 to the significance.

3 MR. GALATI: I'll withdraw it.

4 BY MR. GALATI:

5 Q You reference Exhibits 9, 11, 13, 4 and
6 3 and several statements with respect to the
7 definition of when commissioning ends. Is that
8 correct?

9 A Repeat the question please.

10 Q Did you review Exhibit 9, 11, 13, 14 and
11 3.

12 A Yes I did.

13 Q Okay. And you rely on those to reach
14 your conclusion that GGS is not operating in
15 compliance with its conditions regarding
16 commissioning. Is that correct?

17 A No it's not.

18 Q What documents do you rely on to, as
19 your basis for saying GGS did not comply with its
20 conditions on commissioning?

21 A Exhibits 14, 6, 13 and 2.

22 Q I'm going to hand you Exhibit 14. And
23 in Exhibit 14, and I apologize, there's not page
24 numbers. But in Attachment C to Exhibit 14, do
25 you have that in front of you or do you need mine.

1 A No I have it in front of me.

2 Q Okay. In Attachment C which is
3 entitled, Proposed Revisions to Conditions to
4 Certification, Gateway Generating Station. Go to
5 the first, second, third, the fifth page. You see
6 about midway down the page, it says the word,
7 commissioning period?

8 A Yes.

9 Q You see that definition?

10 A Yes.

11 Q Could you just describe what is being
12 deleted in that commissioning period?

13 A The language, well a comma and some
14 language.

15 Q Could you read that language.

16 A And has initiated sales to the Power
17 Exchange.

18 Q Okay, could you read the full sentence
19 before that with the change.

20 A The period shall terminate when the
21 plant has completed performance testing and is
22 available for commercial operation.

23 Q Do you know when the Gateway Generating
24 Station completed all performance testing?

25 MR. RATLIFF: Commissioners if I could

1 make a point of order. This will be my last one,
2 I promise, and I'll go take a sedative afterwards.

3 (Laughter).

4 MR. RATLIFF: But you have provided us
5 with a list of which is I think a road map to get
6 to this proceeding. I consider hearing time to be
7 precious.

8 You have, I think, all of the answers in
9 the room today. But I don't think you're going to
10 hear them. And if you hear them in this format
11 you may not even recognize them.

12 What I would suggest is an alternative
13 approach to this would be that you go through the
14 list and ask the complainants to basically state
15 their case on each one of these items.

16 And then ask of the other parties, the
17 staff, PG&E, whomever else is contributing to this
18 to give their response to that point.

19 And then engage the parties directly on
20 their answers if they're unsatisfactory or if you
21 want more information.

22 I think if you take that approach you
23 might get the answers you want.

24 I think if you take this approach we
25 might spend months in hearings and never have an

1 answer.

2 HEARING OFFICER CELLI: Yes. One
3 moment. Off the record.

4 (Off the record.)

5 HEARING OFFICER CELLI: We're here
6 again. And after a Committee discussion and we
7 want to ask the parties what they think of
8 Mr. Ratliff's suggestion starting first with
9 complainants, Ms. Behles.

10 MS. BEHLES: Unfortunately because
11 there's no CARE representative here, but I'll need
12 to confer with the parties that are here and so --

13 HEARING OFFICER CELLI: I understand --

14 MS. BEHLES: But --

15 HEARING OFFICER CELLI: -- that you
16 would want to do that off-line. Do you have a
17 cell phone number of something like that?

18 MS. BEHLES: I have a home phone number.

19 HEARING OFFICER CELLI: Before you do
20 that what is your inclination as ACORN is
21 concerned?

22 MS. BEHLES: You know, if we can get in
23 the information that we're relying on and that's
24 the basis of our complaint.

25 We're relying on PG&E's statements.

1 HEARING OFFICER CELLI: Yes.

2 MS. BEHLES: And so if we can get that
3 all into the record. I think my initial
4 inclination is that we'd be fine with that because
5 it would save, especially because it would save us
6 time.

7 HEARING OFFICER CELLI: Okay, and we,
8 don't we have all those, since we received all
9 your evidence, don't we already have all of those
10 statements anyway in the record?

11 MS. BEHLES: It, it's, there are, yes, I
12 mean it should be. There were additional
13 statements, additional testimony that was going to
14 be given by Rob Simpson. So I would just need to
15 confer with him to be sure that's okay.

16 HEARING OFFICER CELLI: Okay, Mr.
17 Galati.

18 MR. GALATI: Mr. Celli I actually think
19 that's a good idea and I apologize I'm not trying
20 to waste the Commission's time.

21 What normally happens is I have written
22 testimony detailing and tying all the exhibits
23 together, exactly what they mean and exactly what
24 you're saying.

25 And what I have here leads, I have had

1 to make several suppositions. Are they saying
2 this or are they saying that statement means this.

3 And while it might seem clear to you
4 maybe looking at it in a chart, that's a nice way
5 to use it. That's all I have is the chart.

6 So I am forced to figure out the
7 underlying basis for each and every statement and
8 actually what they believe the statement means.

9 I don't know what's going to come in
10 their brief.

11 So I have an alternative proposal to you
12 as well.

13 HEARING OFFICER CELLI: Please.

14 MR. GALATI: And that would be if you
15 want to go forward in an evidentiary hearing
16 oftentimes the person with the burden of proof
17 files pre-written testimony.

18 And then the opponent files rebuttal
19 testimony.

20 What we had in this case was the way the
21 notice was written is we both filed testimony at
22 the same time.

23 I could not tell from the complainant
24 exactly what their testimony would be. So we did
25 our best.

1 Actually our testimony addressed the
2 questions the Committee posed to us.

3 So just like in other evidentiary
4 hearings there's a document and there's somebody
5 filed something in response. And then we come
6 together.

7 I could probably stipulate to a lot if I
8 knew what those were.

9 So my alternative proposal would be is
10 to continue the hearing, require the complainants
11 to file evidentiary documents, sworn testimony
12 with their witnesses qualifications and then I can
13 stipulate to so much of it.

14 We can file rebuttal testimony. You can
15 read it and decide what the issues are you want to
16 hear in an evidentiary hearing.

17 But right now I'm trying to guess what
18 these issues are.

19 HEARING OFFICER CELLI: You know one of
20 the things we have to acknowledge is that this is
21 a complaint under 1237 which is unusual around
22 here.

23 And the code section calls for fast
24 action, sort of an emergency process because
25 presumably some power plant is doing something

1 terrible like dumping oil in a river or something
2 like that, requires the complainants to bring a
3 complaint requiring the Committee to act quickly.

4 In this case and under the code section
5 staff is supposed to provide a report. We've
6 never seen a staff report in this case.

7 What we got was a pleading, a response
8 of pleading from staff counsel which we've been
9 operating as the report because we haven't gotten
10 anything else.

11 And because we got these things late,
12 and I know, and I'm not, and I want to be clear, I
13 know that Mr. Ratliff got this case a week ago, if
14 that, like Thursday, I mean, I got this case about
15 a week before he got it.

16 And we're scrambling to get this
17 together because we had, today's the last day.
18 Today is day 30 under the code.

19 So at least the Energy Commission gave
20 the complainants their, that 30 day period. I
21 mean, basically we've acted on 30 days from the
22 date of the report which we are presuming the
23 report is this pleading that we received from
24 staff.

25 MR. GALATI: Well I think that another

1 thing that I would offer to you is, the Commission
2 has an informal dispute resolution process that
3 hasn't been done in this case.

4 And the Committee could order the
5 parties to get together with the Compliance
6 Project Manager, highlight the issues, sit down,
7 talk fairly about them. But what happened is
8 there was a complaint filed.

9 And I think that's what I think that's
10 what was new for the Commission. It's not often
11 that a complaint is filed.

12 Usually there is some communication with
13 the Project Manager and I'm not denigrating ACORN
14 at all. They were following the regulations.

15 But usually there's some notice of a
16 problem that is then provided to the Compliance
17 Project Manager. And the Compliance Project
18 Manager and his boss get people together and make
19 them sit around a room. That's why you don't have
20 these hearings.

21 HEARING OFFICER CELLI: Well we're
22 supposed to. See what was supposed to come of
23 that would be a report.

24 A report that describes what the
25 problems are, that looks into the complaint and

1 tells the Committee exactly what happened.

2 We didn't really get that here. So
3 we're all sort of operating in the dark.

4 And this is an unfortunate circumstance
5 we find ourselves to be in and if we ever get a
6 future complaint such as this what this Committee
7 needs is an analytical report from staff that
8 explains and deals with all of the complaints as
9 brought by the complainant so that we, hopefully,
10 could have written a decision just on that report.

11 Because the code enables, the reg
12 enables the Committee to make a decision just on
13 the report itself.

14 MR. GALATI: Perhaps if the complainants
15 would waive the 30 day, 1237 action we could
16 resolve this in an amicable, informal way with a
17 date certain that if you're not informal then
18 testimony shall be filed, rebuttal testimony a
19 week later, an evidentiary hearing set and we can
20 actually go there on only the issues that remain.

21 HEARING OFFICER CELLI: And that is the
22 right of the complainants because really the
23 reason we've scrambled to get here today was to
24 honor the complaint of the complainants.

25 The code that you proceeded under really

1 is an emergency, it's an emergency complaint that
2 stops any imminent, irreparable harm that's
3 happening.

4 So far from what I've seen in the paper,
5 in the pleadings and papers is I don't know that
6 we have that sort of emergency situation.

7 But --

8 MR. SIMPSON: Excuse me, this is Rob
9 Simpson. May I speak?

10 HEARING OFFICER CELLI: If I may just
11 finish.

12 MR. SIMPSON: Sure.

13 HEARING OFFICER CELLI: What I'm saying
14 is that for the complainants this is your right to
15 proceed within the 30 days.

16 And so the Energy Commission is we've
17 done everything we can to have gotten this thing
18 here today.

19 And that's why we're having this hearing
20 today is to accommodate the complainants.

21 It's the complainants right to waive the
22 30 days. You can do that if you want.

23 I suppose Ms. Behles you're going to
24 want to get on the phone and have a conversation
25 with Mr. Simpson and have a conversation with Mr.

1 Sarvey.

2 I don't know how you would accomplish
3 that but if, what do you want to do about that?

4 MS. BEHLES: Well, I mean, I initially
5 want to say from what we understood this phase was
6 only an issue of whether or not PG&E was in
7 compliance with its conditions of certification
8 and this Commission's requirements.

9 That as we see it is not a complicated
10 inquiry. Our complaints are based on PG&E's own
11 statements. They're based on public documents.

12 I think that the idea of going into
13 testimony and rebuttal testimony would be more
14 appropriate for, hopefully, a next phase in
15 discussing the significance of the non-compliance.

16 As we see it most of the facts that we
17 rely on, the information that we rely on was
18 actually also presented in PG&E's answer to the
19 complaint and PG&E's testimony.

20 There's not a large dispute. There's
21 not a large issue of facts.

22 We think that it's as simple as that.
23 You know we're relying on PG&E's statements.
24 They're not in compliance with their conditions of
25 certification.

1 And then we'd like to discuss what would
2 be appropriate to discuss how it's significant
3 those issues are.

4 HEARING OFFICER CELLI: Okay but we're
5 obligated to hear all sides of the story.

6 MS. BEHLES: Uh-hum.

7 HEARING OFFICER CELLI: We've read your
8 documents. We've read Mr. Galati's documents.
9 We've read staff's documents. And from what I've
10 been able to glean so far and I haven't passed a
11 judgement yet, we haven't written any decision or
12 anything but it looks like you've alleged certain
13 non-compliances.

14 PG&E has what appeared to be some in
15 most cases reasonable explanations for what
16 certain misunderstandings are between the parties
17 or excuses for whatever it is that they're doing.

18 And, you know, what I'm trying, what we
19 need to find out is what the truth is in the
20 middle.

21 So that's basically why we set this
22 hearing today.

23 MS. BEHLES: Right. And we understood
24 that the explanations and excuses that you're
25 referring to would actually be the discussion of

1 the next phase.

2 HEARING OFFICER CELLI: Actually not.
3 What the intent was was to have today be only the
4 issue of what are the conditions that are alleged
5 to have been that they're in non-compliance and
6 what is the evidence for that?

7 We've taken in all of the evidence.
8 They get to put on their evidence to show that
9 they are in compliance as to this air quality
10 condition or whatever.

11 And then the Committee would be in a
12 position to decide, okay, there is or there is not
13 non-compliance.

14 If there's no, in other words if PG&E is
15 in compliance that would be the end of the
16 inquiry. Okay, if they are not in compliance then
17 we would have to have a hearing, further hearings.

18 MS. BEHLES: Right. And we understood
19 it to be that. And that we wouldn't delve into
20 the reasons why they weren't complying with
21 conditions of certifications at this phase.

22 HEARING OFFICER CELLI: But by operating
23 as a hearing, which I thought that we were
24 obligated to do under the code and under your
25 complaint, they obviously have the right to cross-

1 examine your witnesses and they get to test your
2 evidence and that could take a while.

3 So what Mr. Ratliff is proposing is some
4 sort of, kind of an ADR kind of caucusing where
5 the parties can kind of get together and see what
6 we can do to streamline things.

7 I don't know what you can do. Because
8 basically in your world view there's non-
9 compliance and theirs there's a reasonable
10 explanation for everything and in everything there
11 is no non-compliance.

12 And so it's really the ball is in your
13 court as the complainants. What you want to do
14 how you would want to proceed.

15 MR. SIMPSON: This is Rob Simpson still
16 waiting to speak.

17 HEARING OFFICER CELLI: Yes please.

18 MR. SIMPSON: I want to point out, it
19 sounded like it got categorized as we just sort of
20 broadsided you with this complaint with no advance
21 notice.

22 I've got communications with Mr. Yasny
23 dating back to May of this year in trying to
24 resolve this in the informal complaint process.
25 Finding no traction on that is why we're in a

1 hearing today. So it's not that we haven't tried
2 to resolve this without this formal hearing.

3 HEARING OFFICER CELLI: Okay.

4 MR. RATLIFF: Commissioners if I may.
5 In staff's view, although there are a number of
6 facets to the complaint that has been filed this
7 is actually if you can break it down to
8 infractions or inconsistencies with the Commission
9 permit we think it's actually pretty straight
10 forward.

11 And we're very anxious to discuss with
12 the parties, if our understanding of this is
13 correct, I think if we had been able to do this
14 prior to this hearing it might have been useful.

15 While we believe that the complainants
16 may be unaware of certain amendments which the
17 Commission approved to this license which have
18 brought, which make it conform in most aspects to
19 its current operating condition.

20 The one thing that we're aware of that
21 as we put in our pre-hearing conference statement
22 that does not conform precisely with the license
23 is the existence of a temporary fire pump which is
24 diesel-fired rather than electric-fired because
25 they couldn't get a fire marshall approval of the

1 electric heat pump which was listed under the
2 equipment in the Final Decision.

3 We think that is the only, that is the
4 only non-conformity with which we are aware.
5 We've been aware of it since October of last year
6 when both the Air District and the Energy
7 Commission staff were informed by PG&E that they
8 had built the project apparently without knowledge
9 inconsistently when the fire marshall had told
10 them they couldn't put in the electric heat pump
11 that was in the equipment list that we required.

12 There are some other aspects that we're
13 more than happy to discuss and we'd like to have
14 that dialogue or trilogue or whatever it is here.

15 (Laughter).

16 MR. RATLIFF: But we think that the
17 problem that we're having now is that this is
18 being treated in an evidentiary sense and I think
19 that process --

20 HEARING OFFICER CELLI: Which is their
21 right.

22 MR. RATLIFF: -- is getting in the way
23 of getting to the bottom of what actually is in
24 dispute, of sharing information that we think may
25 clear up some of the misconceptions the parties

1 have and might allow the Committee to fully
2 understand what the facts are that either support
3 or don't support the complaint.

4 HEARING OFFICER CELLI: What if we took
5 a recess and the parties hunkered down today, now
6 and had a discussion. What would come of that?
7 What do you think?

8 MR. RATLIFF: Well we're more than happy
9 to do that.

10 HEARING OFFICER CELLI: And what
11 resolution do you think --

12 MR. RATLIFF: I don't know that there
13 can be any resolution because I think, I think
14 there may be some very hard, there may be some
15 issues here which, for instance, the purview issue
16 is one that isn't going to be resolved through a
17 discussion I don't believe.

18 It may be that we can if, if, if, you
19 know, representatives of the three, if Ms. Behles
20 and Mr. Galati and I were to have a discussion
21 about the actual issues of what is out of
22 compliance we might be able to narrow those issues
23 considerably.

24 And then talk about those to the
25 Committee and present that. Maybe a discussion

1 like that maybe we could spend an hour and come
2 back to it and have some narrowed list of things
3 we want to talk about.

4 Again, I think an evidentiary approach,
5 I mean sometimes it's an important way to do
6 things. But I think right here it's not a very
7 constructive approach for the Committee to
8 understand these issues and how they might be
9 addressed.

10 HEARING OFFICER CELLI: And you
11 understand though because of the nature of the
12 complaint that was brought that if you go out and
13 make and have some discussion and there's a
14 breakdown then we're back where we started.

15 MR. RATLIFF: Oh yeah I understand. But
16 I would still implore the Committee to try to
17 address it as efficiently through dialogue with
18 the parties rather than through some form of
19 witness testimony because I think you're going to,
20 you're going to, you know, we'll have another,
21 we'll spend the whole day doing this --

22 HEARING OFFICER CELLI: That, well --

23 MR. RATLIFF: -- and we won't be any the
24 wiser at the end of it. And I think actually all
25 the answers are in this room and are available to

1 you if you're allowed to get to them.

2 MR. SARVEY: This is Bob Sarvey can I
3 speak for one moment please?

4 HEARING OFFICER CELLI: Please. Mr.
5 Sarvey go ahead.

6 MR. SARVEY: Yeah, my testimony and my
7 declaration are in the record and there's a form
8 if Mr. Galati would like to see them.

9 I outlined my exact issues with the
10 project and I cite the authorities.

11 And I have no problems going forward now
12 but I also have no problem with the parties
13 getting together and talking about it but
14 unfortunately I wasn't able to attend because of
15 the brief notice.

16 HEARING OFFICER CELLI: Mr. Sarvey and
17 Mr. Simpson and there's a Mr. Boyd on the line as
18 well I'm trying to, if the parties were able to
19 have a discussion here would you be able to stay
20 on the line.

21 And what I think would happen is the
22 Committee, we would absent ourselves from the
23 hearing room so that you can speak openly amongst
24 yourselves and hopefully come to a resolution.

25 Do you think that that would be

1 productive? Mr. Boyd?

2 MS. BEHLES: I think Mr. Boyd just
3 disconnected.

4 HEARING OFFICER CELLI: Mr. Simpson do
5 you think it would be productive to have
6 discussions with the parties?

7 MR. SIMPSON: No. It's okay with me
8 what the other complainants would like to do.

9 HEARING OFFICER CELLI: And Mr. Sarvey
10 do you agree?

11 MR. SARVEY: Yeah, I don't have any
12 problems with that. I'm just saying I'm ready to
13 go with my testimony so, you know, but actually
14 the way Mr. Galati had wanted to extend it so but
15 whatever the Committee decides I'm more than happy
16 to participate.

17 HEARING OFFICER CELLI: Thank you. What
18 we're going to do is go off the record for a
19 moment and I'm going to talk to the Committee.

20 (Off the record.)

21 HEARING OFFICER CELLI: Thank you
22 Mr. Ratliff and thank you all of the parties as
23 you were talking and I was looking around and I
24 was getting nods from each of the parties that
25 they were interested in having conversations and

1 discussions. So I think that, hopefully, this
2 will be productive.

3 We're going to be in recess until 1:30
4 and in the meanwhile we're going to leave the
5 phone lines open and the parties have the room.

6 And the Committee will, we will vacate
7 the premises so that, hopefully, you can come to a
8 complete resolution or as much resolution as you
9 can by 1:30 and we will resume at 1:30.

10 (Whereupon, a recess was taken
11 off the record.)

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AFTERNOON SESSION

HEARING OFFICER CELLI: This is the Gateway hearing on the complaint for non-compliance. Oh, we're back on the record in the Gateway hearing on the complaint for non-compliance and Mr. Ratliff since it was your idea that we break and have discussions let's hear your report on it.

MR. RATLIFF: Well I think we've had a useful discussion for the last, I don't know, two hours.

And I think we resolved, at least I think we've been able to narrow, I think, what it is we're talking about and what issues that we have that need to be addressed.

And I think we've also agreed on the best way in which they should be addressed which might be the most important thing.

Feel free to tell me if I'm wrong but I think we've agreed that the issues that we have before us really are not issues of fact to be determined today by testimony but that they are, in fact, issues that need to be briefed.

There are issues of compliance that I think are amenable to briefing. I don't think the

1 facts are in dispute.

2 There are issues of timing or the timing
3 of conforming changes that I don't think the facts
4 are in dispute but I think that the issues that
5 need to be addressed are essentially ones that
6 need to be addressed to briefing.

7 And then sort of an over-arching issue
8 which is a legal one, in essence, is one where
9 we've agreed to disagree, some of us but that is
10 the PSD issue and the issues that are related to
11 the PSD issue.

12 And with regards to that I think we've
13 also agreed that that's best addressed to briefing
14 as well.

15 So we propose then to do that and I
16 think there's some question of timing, the timing
17 that we would use for that.

18 HEARING OFFICER CELLI: Actually I was
19 looking at the coding end with regard to timing.
20 We are in compliance. Today was the last day but
21 we got the hearing in, start the hearing
22 essentially. We didn't have to finish it today
23 but the hearing began.

24 So that right has been preserved for the
25 complainants.

1 And so I just wanted to allay that fear
2 but go ahead and explain what you wanted to do
3 with regards to briefs.

4 MR. RATLIFF: Well, of course I would
5 like to set the briefing schedule at a time where
6 I don't have to write the brief but (laughter)
7 there is also the issue I think that Ron has
8 pointed out, Ron Yasny that we do have probably,
9 I'm not telling what the schedule is Ron but I
10 think next month we have the amendment.

11 MR. CELLI: That is August 26th.

12 MR. RATLIFF: August 26th?

13 MR. CELLI: It's going to be on the
14 August 26th Business Meeting as far as the
15 information I have and I have Jack Caswell
16 nodding.

17 MR. RATLIFF: Okay.

18 HEARING OFFICER CELLI: And what, why,
19 I'm glad you brought that up because it seems to
20 me that that is an unrelated event.

21 And if, let's just say, that everything
22 in the complaint were deemed to be absolutely true
23 I think all that that hearing does is create sort
24 of an outside boundary of time of when the non-
25 compliance, how far the non-compliance went,

1 August 26th.

2 Other than that I don't think that
3 hearing has any bearing on what we're doing in
4 here. Do you all agree?

5 MR. YASNY: Well it does address the
6 technical side of all of this. So it does allay
7 any of those questions.

8 HEARING OFFICER CELLI: Right, so in
9 other words, if there, even let's just assume,
10 that there were some areas where there was a
11 divergence of the description or something like
12 that that are going to be corrected in the next,
13 in this amendment on August 26th. I don't think
14 that has any bearing on these proceedings.

15 MR. GALATI: Mr. Celli if I could add.
16 And I agree with you except as we went through our
17 list today we added a few things to the list.

18 HEARING OFFICER CELLI: Great, thanks
19 (laughter).

20 MR. GALATI: Trust me I was trying to
21 take them off (laughter). We did take one off.
22 And some of those became more technical that are
23 clearly addressed.

24 They are concerns, not necessarily
25 complaints of non-compliance. But for example, if

1 there was a condition that specified X number of
2 emissions on a cumulative basis, would that
3 condition have to change because of the fire pump?

4 That'll be addressed in the Commission
5 decision.

6 HEARING OFFICER CELLI: On the 26th.

7 MR. GALATI: And is addressed on the
8 26th. It doesn't take out the issue. And
9 Ms. Behles correct me if I mis-characterize this.
10 Many of the non-compliance issues are ones of
11 timing. Meaning not a substantive issue about
12 what was done but should asked permission before
13 it was done.

14 So the fire pump though has overlap, not
15 only timing but does it have, let's say
16 environmental impacts that should have been
17 addressed. So there is some connection to August
18 26th.

19 HEARING OFFICER CELLI: Well then what I
20 would --

21 MR. GALATI: But I don't think it --
22 yeah.

23 HEARING OFFICER CELLI: My thought is
24 that the -- First of all I like the idea of
25 briefing. And what my suggestion was going to be

1 was, I thought about this over the break, would be
2 to go ahead and admit Mr. Galati's exhibits en
3 masse, over objection if need be, so then now I've
4 got everything in the record.

5 And then allow the parties to brief the
6 evidence. Probably September 1st. Is that too
7 soon? That's three weeks. I can go later.

8 MR. GALATI: Yeah that's --

9 MS. BEHLES: That's fine.

10 MR. GALATI: That's fine with me.

11 HEARING OFFICER CELLI: So what I was
12 thinking was September 1st would be opening briefs
13 and rebuttals would be due, say, the 15th?

14 MR. GALATI: That would be great. I did
15 want to clarify when you do have a breaking point
16 about I believe the brief needs to be broken up.

17 We have an agreement on the PSD and the
18 PSD is not appropriately in this forum. But in --

19 MR. SARVEY: I disagree. This is Bob
20 Sarvey. I disagree.

21 HEARING OFFICER CELLI: Say it again,
22 Bob, we didn't hear you. Ken Celli.

23 MR. SARVEY: This is Bob Sarvey. I
24 disagree with that. And the reason -- I'll give
25 you my reason why. Bay Area Air Quality

1 Management District is the authorized agent.

2 HEARING OFFICER CELLI: Before you
3 launch into that let me just -- I acknowledge that
4 you disagree. I didn't hear -- I am going to
5 allow Mr. Galati to finish the thought --

6 MR. SARVEY: Go ahead, Mr. Galati. I'm
7 sorry.

8 HEARING OFFICER CELLI: -- and then I
9 want to hear from you, okay?

10 MR. SARVEY: Okay.

11 HEARING OFFICER CELLI: All right, go
12 ahead.

13 MR. GALATI: And I apologize, Bob, I
14 thought you agreed. I thought what we said is, to
15 determine factually, or in our briefs here, the
16 validity of the PSD permit is outside this forum.
17 That's a federal action. The federal action when
18 it concludes, enforcement or whatever. Whatever
19 that actually is concluded, that may be
20 appropriate for you.

21 But the actual finding and conclusion of
22 that or any findings in-between we thought -- so
23 what we thought we would do is brief you on what's
24 going on. But not brief you on what our side is
25 and why we should win, or why their side is this

1 and they should win. But give you more of a
2 status of, this is the dispute and this is how we
3 believe it will be resolved and what form.

4 That is what I was agreeing to, and I
5 thought that's what we were agreeing to, as
6 opposed to briefing, do you have a valid PSD
7 permit.

8 HEARING OFFICER CELLI: Mr. Sarvey, what
9 was your disagreement with that?

10 MR. SARVEY: My disagreement is that,
11 you know, we have the Bay Area Air Quality
12 Management District who has been delegated
13 authority by the EPA to administer the PSD permit.
14 And Exhibit 15, that's the statement of the Bay
15 Area Air Quality Management District in support of
16 the motion to stay in the PSD appeal. They
17 clearly state that the project does not have a
18 valid PSD permit.

19 So I think that and the fact that it is
20 already in the record and it is undisputed in my
21 opinion and they are still arguing about it at the
22 EAB. But they are not arguing about whether
23 there's a PSD permit or not. They are arguing
24 about whether the EAB has jurisdiction. They are
25 not arguing about whether this is a valid PSD

1 permit.

2 And the only statement in that docket,
3 which we have decided to admit as an exhibit here,
4 is that there is no valid PSD permit that's coming
5 from the Bay Area Air Quality Management District.
6 It would be nice to have Mr. Crockett on the phone
7 to clarify that. But that's the fact and that's
8 Exhibit 15.

9 MR. CROCKETT: This is Mr. Crockett and
10 I am here. I apologize, I have been joining and
11 dropping off because of other commitments.

12 HEARING OFFICER CELLI: Please,
13 Mr. Crockett, you have the floor, go ahead.

14 MR. CROCKETT: Let me just clarify what
15 representation we made in the Environmental
16 Appeals Board proceeding. We have been in
17 discussions with EPA Region 9. EPA Region 9 is
18 ultimately the agency that has the authority to
19 issue the federal PSD permit. They delegate that
20 authority to us to issue the PSD permit.

21 When the question of whether the PSD
22 permit had expired or not, whether it has been
23 validly extended. When that question arose we
24 brought it to the attention of EPA Region 9 and
25 asked for their interpretation. And they gave us

1 their interpretation, which was that it was not
2 validly extended.

3 And so what we have represented in the
4 Environmental Appeals Board is that we have
5 discussed the issue with EPA Region 9 and they
6 have given us their interpretation.

7 Really we are bound to follow EPA's
8 interpretation on this question. In the
9 delegation agreement it says if any questions of
10 interpretation of PSD requirements come up that we
11 should seek guidance from Region 9 and be bound by
12 that guidance. We have done that.

13 And the interpretation we have gotten
14 from EPA Region 9 is, as Mr. Sarvey said, that the
15 PSD permit expired, was not validly extended at
16 the point of expiry. So that is what we have
17 informed the Environmental Appeals Board, is of
18 that interpretation that we got from EPA Region 9.

19 HEARING OFFICER CELLI: Okay. And now
20 tell me, procedurally, Mr. Crockett, where is this
21 going? In other words --

22 MR. CROCKETT: Where is what going?

23 HEARING OFFICER CELLI: This litigation.

24 MR. CROCKETT: Well we have filed briefs
25 that are pointing out to the Environmental Appeals

1 Board that it doesn't have jurisdiction over the
2 PSD permit at this point, for a number of reasons.

3 First of all, as the Environmental
4 Appeals Board has noted preliminarily itself, this
5 PSD permit was issued in 2001, approximately eight
6 years ago now, and an appeal at this point would
7 be untimely.

8 But second of all, we have also pointed
9 out that there is really no dispute here because
10 the Environmental Protection Agency has already
11 looked at this question and taken an
12 interpretation that says that the PSD permit had
13 expired and was not validly in effect when
14 construction recommenced.

15 And so since that issue has already been
16 determined, and there doesn't really seem to be a
17 dispute about that issue there is nothing for the
18 Environmental Appeals Board as another element of
19 EPA, there is nothing for them to adjudicate here
20 at this point since the federal agency in charge
21 of this permit has already taken the
22 interpretation and taken the position that the
23 permit had expired and is already taking
24 enforcement action.

25 HEARING OFFICER CELLI: So --

1 MR. CROCKETT: So for both of those
2 reasons we pointed out to the Environmental
3 Appeals Board that -- and the permit appeal issue,
4 the permit appeal adjudication body doesn't have
5 jurisdiction over this whole situation at this
6 point.

7 Really the place where this question is
8 going to get resolved is in the enforcement
9 context, which is a process that has already begun
10 because EPA Region 9 has already started to take
11 enforcement action over this issue.

12 HEARING OFFICER CELLI: Okay. And that
13 was really what the question I had was. Okay,
14 where are we with regard to the enforcement? And
15 when is that going to come to resolution?

16 MR. CROCKETT: Are you asking me?

17 HEARING OFFICER CELLI: Yes.

18 MR. CROCKETT: Well, I am not part of
19 the discussions over what the enforcement action
20 is going to be. EPA Region 9 is the enforcement
21 body here for violations of the PSD requirements
22 of the Clean Air Act.

23 HEARING OFFICER CELLI: Okay.

24 MR. CROCKETT: And that is what I
25 understand is the allegation that EPA has here,

1 that the facility didn't have a current, valid PSD
2 permit when it was built. And therefore, it was
3 not in compliance with the PSD requirements of the
4 Federal Clean Air Act.

5 So EPA Region 9 as I understand it -- I
6 haven't been a party to the discussions but I have
7 been talking to some of the attorneys who have
8 been party to those discussions. That EPA and
9 PG&E are in discussion about resolving this non-
10 compliance. And they are hopeful that they are
11 going to reach some sort of negotiated settlement
12 that they can all agree to without litigation as a
13 way to resolve the claims in these cases.

14 I think that really EPA Region 9 and
15 PG&E are the ones who would be appropriate to
16 speak to that since they are the ones who have
17 been involved in the enforcement action and in the
18 compliance discussion. So I'm not sure if Region
19 9 has a representative here. I think that PG&E I
20 know has representatives here. You may have
21 somebody there who can speak to the status of that
22 enforcement action.

23 MR. GALATI: And Mr. Celli, I actually
24 do have somebody who can speak to that.

25 Mr. Farabee has been working -- David Farabee with

1 Pillsbury has been working with PG&E on this
2 issue.

3 HEARING OFFICER CELLI: What we need --
4 welcome. And what we need to know is, when can
5 the Energy Commission have some sort of sense of
6 when this whole issue is going to play out over in
7 the EAB. Okay, if you can give me to that.

8 MR. FARABEE: Okay. Let me -- I'd like
9 to make a couple of points and I will answer your
10 question specifically. First is that what
11 Mr. Crockett said with regard to our view -- well
12 the view generally as to whether or not the EAB
13 has jurisdiction to determine the validity of the
14 PSD permit at that point.

15 We agree, we PG&E agree with the
16 District that that particular question does not
17 belong at the EAB but does in fact belong at EPA
18 Region 9 as an enforcement question. And
19 Mr. Crockett correctly reflected that we were, in
20 fact, having discussions along those lines with
21 the EPA.

22 We do, however, and I want to make this
23 point very clear. We disagree with the EPA as to
24 the validity of the PSD permit.

25 HEARING OFFICER CELLI: Mr. Farabee, may

1 I interrupt you? I'm sorry.

2 MR. FARABEE: Sure.

3 HEARING OFFICER CELLI: I see that the
4 Public Adviser just came in. Is there anyone here
5 who is a member of the public who wanted to make a
6 comment today? Seeing none, thank you.

7 I'm sorry for that, please continue.

8 MR. FARABEE: No problem.

9 Anyway, as I was saying, I just want to
10 be clear. We disagree with EPA, and by extension
11 the District following EPA's current stated
12 interpretation as to the validity of the PSD
13 permit. So I just want to have it clear on the
14 record there is a disagreement. We are in
15 discussions with EPA. And I don't think it is
16 appropriate to go into the details of exactly what
17 we are doing with that other than to say we are
18 trying to resolve it as expeditiously as possible.

19 With regard to the EAB proceeding. All
20 of the briefs on the jurisdictional question have
21 been submitted by all of the parties and at this
22 point it is in their court. My experience with
23 them is that they tend, at least on these kind of
24 matters, to issue an opinion fairly expeditiously.
25 It's been I think about a week roughly since the

1 last of the briefs was submitted.

2 HEARING OFFICER CELLI: But that's
3 not --

4 MR. FARABEE: I am hopeful that within
5 the next week or two the EAB issue will be
6 resolved.

7 HEARING OFFICER CELLI: Okay. But as to
8 Region 9 what is the flow?

9 MR. FARABEE: As to Region 9. Again, we
10 are trying to do it quickly as we can. We don't
11 have a time frame and we don't have a deadline for
12 resolving that other than to say it is in our
13 interest and their's to resolve it as quickly as
14 we can. We are trying to work toward that end.
15 And are having, I think, generally positive
16 discussions. I think EPA would agree that we are
17 moving forward, we just aren't quite there yet.

18 HEARING OFFICER CELLI: Is there no
19 statute of limitations on this or anything like
20 that?

21 MR. FARABEE: There is a statute of
22 limitations but the federal statute on alleged
23 clean air violations is five years. There is no
24 statutory deadline for resolving the issues. We
25 are not in that kind of a process where there is,

1 you know, any kind of specified time frame for
2 resolving things.

3 HEARING OFFICER CELLI: You know. Okay.
4 Well I appreciate that. That does shine some
5 light on the issue.

6 We were talking -- now just to recap.
7 Mr. Galati, you have said that you had reached
8 some agreement. Mr. Sarvey said he didn't agree
9 with regard to -- the validity of the PSD is what
10 is at issue.

11 And in my reading of the complaint and
12 everything, so much, that is so central to so much
13 that that issue needs to be resolved. So let's
14 just put that on a shelf for a moment.

15 Was there anything else that was
16 resolved? All of the other remaining non-PSD
17 issues in the complaint?

18 MS. BEHLES: I think for the majority, I
19 believe of the other issues, we agree that there
20 is no material issue of fact. There's a number of
21 conditions where the issue is timing. That they
22 went ahead and constructed, started operating, not
23 in compliance with a condition or later trying to
24 change it. And we agree that -- we disagree about
25 the significance and whether there is a

1 requirement to amend the certification.

2 HEARING OFFICER CELLI: And did you want
3 to brief that?

4 MS. BEHLES: And that's an issue we
5 think we can brief.

6 HEARING OFFICER CELLI: Okay.

7 MR. GALATI: Yes, we can brief that. We
8 did take AQ-38 off the list.

9 HEARING OFFICER CELLI: Okay. Thank
10 you, that's something.

11 So if I understand correctly the parties
12 wish to brief --

13 First the record should reflect that
14 Exhibits 300 through 316 -- is there a motion,
15 PG&E?

16 MR. GALATI: Yes, there's a motion.
17 Could I please move 300 through 316. Mr. Celli, I
18 do need -- we are going through our box with
19 supplemental rebuttal documents based on our
20 discussions here. I am going to try to get those
21 today as well.

22 If I am unable to identify every other
23 document on some of the issues that we talked
24 about that would be relevant to you can I have an
25 opportunity to do that later by submitting them to

1 the parties, making sure that there is no issue
2 before they come in?

3 HEARING OFFICER CELLI: Certainly. As
4 to these, 300 through 316. Is there any
5 objection?

6 MS. BEHLES: We had seen most of them
7 and we had been produced this, this document. But
8 there was a compliance agreement that was also in
9 the list of exhibits that we hadn't seen before,
10 we don't know what the foundation is. So if we
11 could get some --

12 HEARING OFFICER CELLI: That would be
13 Exhibit number 315, PG&E and BAAQMD Compliance
14 Agreement Concerning Conditions of Certification
15 29, 30 and 32?

16 MS. BEHLES: That's right. If we could
17 get some foundational information I don't think we
18 would have an objection.

19 HEARING OFFICER CELLI: Did you wish to
20 lay a foundation for Exhibit number --

21 MR. GALATI: Can I get Mr. Royall?

22 MR. ROYALL: Hello, Steve Royall.

23 HEARING OFFICER CELLI: Mr. Royall will
24 need to be sworn, Deborah, thank you.

25 //

1 Whereupon,

2 STEVE ROYALL

3 Was duly sworn.

4 HEARING OFFICER CELLI: Please state
5 your name and spell your last name for the record.

6 THE WITNESS: Steve Royall, R-O-Y-A-L-L.

7 HEARING OFFICER CELLI: Thank you,
8 Mr. Royall. And if you would Speak right into
9 that mic.

10 DIRECT EXAMINATION

11 BY MR. GALATI:

12 Q Mr. Royall, I am going to hand you
13 Exhibit 315. Are you familiar with that document?

14 A I am.

15 Q Did you help negotiate that document?

16 A I did.

17 Q And is that document what it purports to
18 be in its title?

19 A Yes it is.

20 MR. GALATI: No further questions.

21 HEARING OFFICER CELLI: Ms. Behles, any
22 cross?

23 CROSS EXAMINATION

24 MS. BEHLES: Let's see. I think he said
25 you negotiated that document. Who on behalf of

1 PG&E was involved in those discussions?

2 HEARING OFFICER CELLI: You know, before
3 we go that, we just wanted to lay a foundation.

4 MS. BEHLES: Yes.

5 HEARING OFFICER CELLI: My question is,
6 do you have any objection to the foundation that
7 was laid. Well first of all, that it was
8 authentically what it is, that he authenticated
9 the document, what is the foundation for it.

10 MS. BEHLES: And I just wanted some
11 information on who signed the document.

12 HEARING OFFICER CELLI: Okay.

13 THE WITNESS: John Muring signed. John
14 is our senior director of new project
15 construction.

16 BY MS. BEHLES:

17 Q Okay. And for BAAQMD?

18 A It looks like Jack Broadbent signed.

19 Q Okay. Were all the signatures done at a
20 particular time that you witnessed?

21 A The signatures are dated on 11/25 of
22 '08.

23 Q Okay. So you don't have any information
24 beyond the document?

25 A I don't.

1 MR. GALATI: Are you concerned because
2 the copy that I made is not signed by Jack
3 Broadbent?

4 MS. BEHLES: That's one concern.

5 MR. GALATI: Okay. If you had just said
6 that, I actually have the copy with the one that's
7 signed. But in putting these exhibits together
8 this is the one that showed up. So I would be
9 more than happy to withdraw this 315 and submit
10 separately 315 with Mr. Broadbent's signature.
11 Will that solve any foundation problems?

12 MS. BEHLES: That does solve the
13 foundational problems.

14 HEARING OFFICER CELLI: So there would
15 be no objection at this time?

16 MS. BEHLES: Yeah. I mean,
17 unfortunately there is nobody here from the Air
18 District to confirm.

19 HEARING OFFICER CELLI: Okay. With that
20 we are going to receive into evidence Respondent's
21 Exhibits 300 through 316.

22 (The above-referenced documents,
23 previously marked as Respondent's
24 Exhibits 300 through 316 were
25 received into evidence.)

1 HEARING OFFICER CELLI: Thank you,
2 unless you have any further questions of your
3 witness?

4 MR. GALATI: No further questions.

5 HEARING OFFICER CELLI: You're
6 dismissed.

7 Now, Mr. Galati, you need to take a look
8 and see what other exhibits you wanted to put in
9 and have you given the Complainants and staff an
10 opportunity to look at those?

11 MR. GALATI: I certainly will. But
12 Mr. Celli, some of those were raised in issues in
13 our discussions outside the Committee's presence.

14 HEARING OFFICER CELLI: Okay.

15 MR. GALATI: So that's why I don't have
16 all of them with me. One had to do with the
17 validity of ERC's that were, that were issued and
18 surrendered in 2001. I didn't know that was an
19 issue on the validity. There are some documents
20 that show that.

21 Some had to do with some timing. And I
22 just know that we have documents out there, I'm
23 just not as sure that I have them all with me. I
24 have a consultant working right now on it but I am
25 not sure I can get everything in. But having

1 heard it for the first time, and considering it
2 is an evidentiary hearing, I would like an
3 opportunity to be able to submit those later. I
4 certainly can do so by Monday of next week.

5 HEARING OFFICER CELLI: That's what I
6 was wondering. I'm wondering if there is a way
7 that perhaps we can have an exchange of these
8 documents. How many documents are we talking
9 about?

10 MR. GALATI: I really don't know. I
11 don't think it's tens.

12 MS. BEHLES: And I would like the chance
13 then to talk to CARE. Because it sounds like some
14 of their documents were perhaps left out. And if
15 we could talk, talk over the conditions that we
16 are going to brief, the issues that we are going
17 to brief, and any additional exhibits and get that
18 to you as a joint filing.

19 HEARING OFFICER CELLI: That's what I
20 was going to suggest. Is that if there could be a
21 submission of documents, these after-filed
22 documents between the parties. The parties would
23 have an opportunity to object in writing to
24 whatever. We could take those objections and rule
25 on them at the same time as we are reading the

1 briefs.

2 MR. GALATI: I would, I would suggest
3 that we exchange documents by close of business
4 Monday and by Wednesday we file objections if
5 there are any. Or a stipulation. And I'll be
6 more than happy to take a pen and write the
7 stipulation.

8 HEARING OFFICER CELLI: I'll tell you
9 what, I'll give you until Friday, which would take
10 us to --

11 PRESIDING MEMBER BYRON: A furlough
12 Friday.

13 HEARING OFFICER CELLI: A furlough
14 Friday. Is it a furlough Friday? Sorry about
15 that folks.

16 MR. BOYD: This is Mr. Boyd for CARE. I
17 am going to be in meetings all day tomorrow. It
18 would be better for me if it was Monday.

19 HEARING OFFICER CELLI: That's fine.
20 Actually what we are talking about Mr. Boyd is
21 when this document exchange would have to take
22 place.

23 MR. BOYD: Okay.

24 HEARING OFFICER CELLI: So this is not
25 about any appearances.

1 Now today is the 5th. You were
2 suggesting the 10th. Friday would be the 14th.
3 So these documents should be exchanged by Thursday
4 the 13th of August. That goes for all parties.
5 So the Complainant may have some additional
6 documents they want to serve on everyone else as
7 does the Respondent. If the Respondent serves
8 those documents, if you serve those documents by
9 the 13th, you receive those on the 13th, we'll
10 give you until August 20th to lodge your
11 objections, okay. That gives you plenty of time
12 to read them and determine if there are any
13 objections. Okay.

14 The briefs. After this week there are
15 three weeks left in August. The briefs. I'm
16 looking at September 10th, which is a Thursday,
17 because it's probably going to be a furlough
18 Friday again. So if we said that the initial
19 briefs are due on September 10 then I would give
20 you to September 24, 9/24 for rebuttal.

21 What those briefs need to contain, at
22 least from the point of view of the Complainants
23 is we need to know -- we already have a record. I
24 thought I did a good job, I was quite proud of
25 myself for putting this thing together where I

1 thought we cataloged pretty well what the
2 conditions are that are an issue.

3 This is all we need to know. What is
4 the condition and what is the non-compliance.
5 That is what we need to have made completely
6 clear.

7 MS. BEHLES: Yes.

8 HEARING OFFICER CELLI: Okay. Once they
9 have done that then what we need to hear from PG&E
10 is, they are claiming this is not in compliance,
11 here is why we are in compliance, you think.

12 MR. GALATI: That's why it makes sense.
13 When you said the initial and rebuttal briefs, I'm
14 assuming that once I get that brief I can brief
15 you.

16 HEARING OFFICER CELLI: Right.

17 MR. GALATI: But I can't brief you
18 before I get that.

19 HEARING OFFICER CELLI: Right.

20 MR. GALATI: So their initial brief is
21 due the 10th, my rebuttal brief is due the 24th,
22 is that correct?

23 HEARING OFFICER CELLI: That's correct.
24 And that is running sort of parallel because you
25 are also submitting additional documents, your

1 rebuttal documents that are going to be due on the
2 10th.

3 MR. GALATI: That's correct. And I
4 don't mind that, I know the issues now. But the
5 Complainants aren't getting a rebuttal on the 24th
6 after I submit a rebuttal brief? I get the
7 rebuttal brief after the complainants have proved
8 their case, correct? They submit a brief on the
9 10th, I submit a brief on the 24th.

10 HEARING OFFICER CELLI: Well that is
11 actually, that does change things. Let's get
12 clear on that. On September 10th was the initial
13 brief and then the September 24th is the rebuttal.

14 MR. GALATI: Correct.

15 HEARING OFFICER CELLI: Okay, that's
16 correct.

17 MR. GALATI: Okay.

18 HEARING OFFICER CELLI: And staff, are
19 you going to file a brief?

20 MR. RATLIFF: I assume so but I -- I'm
21 just hoping it's not I who has to file it.

22 (Laughter.)

23 HEARING OFFICER CELLI: You know, does
24 staff really have a dog in this fight is the
25 question, I don't really know.

1 MR. RATLIFF: Well, I think we have a
2 very strong interest. My expectation is that we
3 would brief these issues.

4 HEARING OFFICER CELLI: Okay.

5 MR. GALATI: And it makes sense to me
6 for staff to have rebuttal as well and for the
7 following reason. Once the plaintiff lays out
8 their argument the staff can agree or disagree.

9 HEARING OFFICER CELLI: Okay.

10 PRESIDING MEMBER BYRON: And the
11 Committee is certainly interested in hearing from
12 the staff.

13 HEARING OFFICER CELLI: So if that's the
14 case then let's go with October 1st for staff's
15 brief. Which is you get the benefit of everybody
16 else's brief. And then essentially staff is
17 coming in as sort of this objective third party to
18 come in and kind of weigh in. Is that fair to
19 everyone?

20 MS. BEHLES: If there is any new
21 information in rebuttal can we reserve the right
22 for a reply?

23 HEARING OFFICER CELLI: Yes, I think
24 that's fair because the complainants have the
25 burden of proof. And so I think that October 1st

1 would be a good day for the plaintiffs to reply as
2 well. So this thing is going out quite a distance
3 from -- what's today, August 5th. We're into
4 October 1st.

5 But at least we got your hearing started
6 on time. We got to get your evidence in. And we
7 had, I hope, a productive session with all of the
8 parties talking to each other about the issues. I
9 think we're good there.

10 Is there anything else that we need to
11 handle, Ms. Behles?

12 MS. BEHLES: Not that I am aware of.

13 MR. BOYD: I have one question.

14 HEARING OFFICER CELLI: And who is
15 speaking?

16 MR. BOYD: Mr. Boyd from CARE.

17 HEARING OFFICER CELLI: Please.

18 MR. BOYD: Assuming all this stuff is
19 going to happen the way you planned. Does this
20 mean that PG&E can keep operating the plant?

21 HEARING OFFICER CELLI: Yes.

22 MR. BOYD: And that essentially the
23 Energy Commission has no responsibility to make
24 them stop operating it.

25 HEARING OFFICER CELLI: No.

1 MR. BOYD: Unless they can demonstrate
2 compliance with all the conditions that they
3 approved it under?

4 HEARING OFFICER CELLI: No. What we are
5 saying is that at this time there is going to be
6 -- we haven't taken in all of the evidence yet.
7 So the Committee can't really rule until it gets
8 all of the evidence and hears everybody's
9 position. Do you understand that?

10 MR. BOYD: Yes, no, I understand that.

11 HEARING OFFICER CELLI: Okay.

12 MR. BOYD: But my question is, so say,
13 you know, from our perspective, this case, and
14 this is scenarios, we win, PG&E loses. They are
15 found to, you know, be in violation of the
16 conditions. What is the penalty? Can they be
17 fined for this?

18 HEARING OFFICER CELLI: Yes, they can be
19 fined.

20 MR. BOYD: How much is the fine?

21 HEARING OFFICER CELLI: Well the code
22 calls for -- let me -- I'll actually read it for
23 you because I happen to have it here. Bear with
24 me.

25 MR. BOYD: I'm here.

1 HEARING OFFICER CELLI: Okay, 25534.

2 Okay.

3 "Commission may
4 administratively impose a civil
5 penalty for violation of paragraph
6 1 or 2 which is non-compliant. Any
7 civil penalty shall be imposed in
8 accordance with Section 25534.1,
9 may not exceed \$75,000 per
10 violation, except that the civil
11 penalty may be increased by an
12 amount not to exceed \$1,500 per day
13 for each day in which the violation
14 occurs or persists. But the total
15 of the per day penalties may not
16 exceed \$50,000."

17 MR. BOYD: Okay.

18 HEARING OFFICER CELLI: That's 25534 of
19 the Public Resources ---

20 MR. BOYD: So essentially they could get
21 \$50,000 plus the \$75,000 fine. Is that what you
22 are saying?

23 HEARING OFFICER CELLI: That's how I
24 read it, yes.

25 MR. BOYD: Okay. Just so you know, it

1 is my understanding that Energy Policy Act 2005
2 has set a level -- includes provisions now that
3 assess a \$1 million per day fine if we can show
4 they didn't have their PSD permit and were
5 operating. I'm wondering what impact that would
6 have on your ability to assess fines.

7 You guys, can you -- in other words what
8 I am asking is, if I can prove they are in non-
9 compliance with the federal regulations can you
10 still them assess them a state fine for that too?

11 HEARING OFFICER CELLI: We can only
12 assess according to the law and according to the
13 Public Resources Code as I just read it to you.
14 So we can't increase it, you know.

15 MR. BOYD: Okay.

16 HEARING OFFICER CELLI: But what -- I
17 don't really want to get into a discussion of what
18 the consequences are because we haven't gotten --
19 that's the cart before the horse. You really
20 haven't gotten there yet.

21 MR. BOYD: I just want the applicant,
22 PG&E, to know the risk they are taking by
23 continuing to operate that facility. So that
24 there won't be a question in the future when we
25 bring it up in a different venue that they didn't

1 know about that.

2 HEARING OFFICER CELLI: Thank you.

3 MR. GALATI: Mike, I appreciate that.

4 And you have my number any time you want to call
5 me.

6 HEARING OFFICER CELLI: That was
7 Mr. Galati.

8 MR. BOYD: Okay.

9 MR. SARVEY: I have one more issue.
10 This is Bob Sarvey.

11 HEARING OFFICER CELLI: Please, go
12 ahead.

13 MR. SARVEY: Previously Mr. Galati
14 discussed that there wa a stipulation we weren't
15 going to talk about the PSD permit. We got a
16 representation from the Bay Area Air Quality
17 Management District representing the EPA and their
18 opinion that the PSD permit is no longer valid.
19 So I just wanted to know where does that put us in
20 terms of briefing on that issue?

21 HEARING OFFICER CELLI: My understanding
22 is the parties are going to brief that issue.

23 MR. SARVEY: Okay, thank you.

24 HEARING OFFICER CELLI: Correct? Do I
25 have that right? I have got nodding heads from

1 all of the parties.

2 MS. BEHLES: Correct.

3 MR. GALATI: And again, I want to
4 understand what that is. Bob, we had a long
5 discussion here where we said that the enforcement
6 process for EPA should run its course. That
7 enforcement process should be binding on the
8 Commission.

9 MR. SARVEY: I don't think that we're --
10 and you heard Alexander Crockett say the
11 enforcement process is not going to be whether
12 there's going to be a valid PSD or not. That's
13 already been determined by the EPA and the Bay
14 Area Air Quality Management District.

15 That's not what the enforcement is all
16 about. The enforcement is about who has
17 jurisdiction at this point to punish PG&E for
18 operating without the valid PSD permit.

19 MR. GALATI: Not really. Just to be
20 clear, the EAB doesn't have jurisdiction to do an
21 enforcement proceeding. And therefore that
22 enforcement proceeding which has to make a finding
23 of the validity of the PSD is not the proper
24 forum. The proper forum is US EPA under its
25 enforcement provisions, which PG&E and US EPA are

1 already having conversations.

2 I thought that we stipulated that when
3 that proceeding was done, not the EAB proceeding
4 but when that proceeding was done. If there is
5 non-compliance and there is enforcement action,
6 obviously we have to come back to the Energy
7 Commission and tell them about it.

8 MR. SARVEY: No, I didn't stipulate to
9 that. In fact, now that I have heard what
10 Mr. Crockett has to say, that the only party that
11 doesn't believe PG&E doesn't have a valid PSD
12 permit is PG&E, who is not a regulatory agency, I
13 believe that is settled. So I think we can
14 proceed from there. I don't see any reason to
15 wait for the EPA to agree.

16 MR. GALATI: I can understand that
17 considering the million dollar penalty that you
18 just cited.

19 MR. SARVEY: I'm not interested in
20 million dollar penalties. That was Mr. Boyd, this
21 is Bob Sarvey. What I am interested in is having
22 PG&E comply with their requirements under the
23 Clean Air Act. I believe that that's part of the
24 Commission's Decision. That's why I don't really
25 see that we're quibbling over a lot of conditions

1 and stuff. The major thing is PG&E doesn't have a
2 valid PSD permit so they are in violation of the
3 Commission's Decision.

4 HEARING OFFICER CELLI: And that's a
5 decision that we need to make. So when we receive
6 all of the briefs, now that we have received most
7 of the evidence. And we will receive more
8 evidence next week. We'll be able to be, we'll be
9 in a better position to make these kinds of
10 decisions.

11 MR. RATLIFF: But this issue is a legal
12 argument, it's not really an evidentiary --

13 HEARING OFFICER CELLI: That's correct.
14 And you are going to brief that and we will read
15 the briefs.

16 MR. RATLIFF: And the issue is really
17 not, I think for this Commission to make but for
18 EPA to make. And that will occur --

19 HEARING OFFICER CELLI: That may very
20 well be true and that is going to be argued in
21 your briefs.

22 MR. GALATI: Well, and again, I thought
23 -- I want to clarify this issue, Mr. Celli,
24 because I don't want to have another fight at a
25 later date.

1 HEARING OFFICER CELLI: Okay.

2 MR. GALATI: But do the other parties
3 agree with me that briefing factually the validity
4 of the PSD permit is not part of this proceeding?
5 Giving an update on what is going on in the PSD
6 proceeding and briefing how we think it affects
7 the Energy Commission proceeding, that would be
8 appropriate.

9 But briefing and putting in documents
10 and deciding. Because I don't want to get into a
11 dispute with EPA right now and their
12 interpretation, which we disagree with, because we
13 are having productive conversations.

14 HEARING OFFICER CELLI: Okay.

15 MR. GALATI: To comply with the Clean
16 Air Act means to comply with the enforcement
17 provisions of that act as well.

18 HEARING OFFICER CELLI: Okay.

19 MR. GALATI: Which we are doing. And at
20 the end of that, that is our position. I thought
21 we had agreed amongst the parties. I was wrong
22 about Mr. Sarvey so I inquire about the other
23 parties if they also agree.

24 HEARING OFFICER CELLI: Ms. Behles,
25 let's hear from you.

1 MS. BEHLES: We do think that the PSD
2 issue does affect this Commission's decision and
3 we are prepared to brief it. We'll work with CARE
4 and the other complainants to file our brief. The
5 extent of how that affects the Commission
6 decision, the complainants will have internal
7 discussions and submit a brief on that issue.

8 HEARING OFFICER CELLI: Thank you, which
9 is all we are asking for. Is there anything --

10 MR. SIMPSON: And my contention -- this
11 is Rob Simpson.

12 HEARING OFFICER CELLI: Okay.

13 MR. SIMPSON: Is that if we are going to
14 stipulate that there is no PSD permit we should be
15 briefing, is their Commission certification valid
16 without a PSD permit.

17 MR. GALATI: I want to be absolutely
18 clear that PG&E is in no way shape or form
19 stipulating there is no valid PSD permit.

20 HEARING OFFICER CELLI: So --

21 MR. BOYD: Okay, then we have to go back
22 in dispute.

23 HEARING OFFICER CELLI: So who was that,
24 Mr. Simpson?

25 MR. BOYD: That was Mr. Boyd.

1 MR. SIMPSON: Yes, this is Rob Simpson.

2 HEARING OFFICER CELLI: I'm sorry. It's
3 a lot better when you are here, I know who is
4 talking. But for all of the parties, really, I
5 want to make sure that you all understand what we
6 are going to be briefing.

7 Now my understanding is that Ms. Behles
8 is the lead for the complainants.

9 MS. BEHLES: And I can, I can represent
10 that we will only file one brief but I'll work
11 with the other complainants and try to consolidate
12 our arguments, yes.

13 MR. BOYD: We have to consolidate our
14 brief. And I think we are in line on all our
15 issues. And I think that we can identify issues
16 that are unique to one of the parties.

17 HEARING OFFICER CELLI: Who is speaking?

18 MR. BOYD: Mike Boyd again with CARE.

19 HEARING OFFICER CELLI: Thank you.

20 MR. RATLIFF: I thought that
21 consolidation meant that there would be
22 essentially one voice and one brief. I think it
23 should mean that if it doesn't.

24 MS. BEHLES: Yes, I mean, we'll do the
25 best we can but there are three parties. We were

1 able to do it for the presentation today. And I
2 agree with Mike Boyd that there is a commonality
3 of issues so we will work to file one brief.

4 PRESIDING MEMBER BYRON: Thank you.

5 MS. BEHLES: But I can't, I can't
6 represent that without talking to everybody and
7 working through the issues.

8 HEARING OFFICER CELLI: Understood. But
9 we do greatly appreciate the cooperation that has
10 already been shown by the complainants. I see
11 Mr. Cox is here. And I just want to say thank you
12 for that, I think you have done a fabulous job.
13 So this has been productive. Without anything
14 further then I am going to hand it over to
15 Commissioner Byron to adjourn.

16 MR. GALATI: I have one clarifying
17 question. And I apologize, Commissioner Byron,
18 but legal questions are important to pose them
19 correctly.

20 HEARING OFFICER CELLI: Okay.

21 MR. GALATI: We are to brief what is the
22 impact of a PSD permit, should it be invalid, on
23 the Commission Decision. Not, we should not brief
24 factually or legally whether or not this
25 particular PSD permit is valid.

1 MR. SARVEY: I would object to that.

2 HEARING OFFICER CELLI: Let me --

3 MR. SIMPSON: That is not my
4 understanding. This is Rob --

5 MR. GALATI: You do not have evidence in
6 the record from us of why we think our PSD is
7 valid. I have not put any of that evidence in the
8 record, nor did I intend to, because I didn't
9 think it was properly before this forum.

10 MS. BEHLES: But you also have time to
11 put evidence in the record.

12 MR. GALATI: But I want to be able to
13 cross examine and have a true evidentiary hearing
14 on the validity of the PSD permit. I thought we
15 all agreed that it was the EPA's enforcement
16 division that would eventually, through the
17 enforcement procedures, make the determination on
18 valid or no valid.

19 MR. BOYD: We never agreed to that for
20 CARE and I don't think Mr. Sarvey or Mr. Simpson
21 agreed to that either. I can't speak for either.

22 MR. SIMPSON: I think we have already --
23 this is Rob Simpson. I think we have already
24 answered that we haven't agreed to that.

25 MR. GALATI: Okay.

1 MR. RATLIFF: But it is not really a
2 matter of whether parties agree to it, it is
3 whether the Commission basically says, that's the
4 way it is going to be.

5 MR. BOYD: In fact.

6 HEARING OFFICER CELLI: What we are
7 going to do is this. We are going to -- the
8 parties can brief their positions. Each party can
9 brief their position on this issue. The parties
10 have already put in evidence. I know that the
11 complainants put in evidence of their position
12 with regard to the validity of the PSD.

13 PG&E an put in whatever evidence it
14 wants to put in. But the point is that when the
15 decision, what the Committee is going to do with
16 regard to the decision. I mean, I can't say
17 whether the Committee is going to deal with that,
18 the PSD issue.

19 It may give great deference to the other
20 agencies, which is typically what the Energy
21 Commission does. There is no point in having two
22 adjudications of the same thing going on in
23 parallel at the same time. But I don't want to
24 preclude the parties from being able to make
25 whatever arguments they wish to make. These are

1 briefs at this point.

2 MR. GALATI: Yes, it's just that, for
3 example, Mr. Crockett told his opinion of what
4 happened. It wasn't sworn testimony. I didn't
5 cross examine it. Nor did I bring contrary
6 witnesses. And that's why we agreed to tell you
7 what was the substance of the dispute, not to have
8 the dispute resolved.

9 MR. RATLIFF: When Mr. Crockett spoke he
10 was speaking for the Air District, not intending
11 to represent himself as being the enforcement
12 division of EPA. I mean, there are lawyers at EPA
13 who are dealing with this issue now, Mr. Crockett
14 is not one of them. I don't think he represented
15 himself as being one of them. This issue will be
16 determined by EPA's enforcement unit.

17 MR. SARVEY: Mr. Crockett did say that
18 they don't have a valid PSD permit and the EPA
19 agrees with it.

20 MR. GALATI: That's right, Mr. Crockett
21 said that.

22 MR. CROCKETT: And I want to clarify
23 what my testimony was.

24 HEARING OFFICER CELLI: Who is speaking,
25 please? Before you speak I need the people on the

1 phone to identify themselves.

2 MR. CROCKETT: This is Mr. Crockett. I
3 would like to clarify what my earlier testimony,
4 what my earlier statements were.

5 HEARING OFFICER CELLI: Thank you.

6 MR. CROCKETT: The question was asked of
7 me about how agencies were interpreting the
8 validity of the federal PSD permit and I relayed
9 what my understanding of EPA's interpretation is.
10 The Bay Area Air Quality Management District is
11 not the one that interprets these things when
12 there is a close call, we tee it up to EPA Region
13 9. EPA's permits, EPA's program. They are the
14 ones who make the call on questions like this.

15 We did tee the issue up to them and we
16 got interpretation from them. And what I
17 represented was my understanding of what EPA
18 Region 9's interpretation is regarding the
19 validity of the permit. So I was really relaying
20 what EPA's position is, you know.

21 If there is any question about what
22 EPA's position is I think that they would be the
23 ones to speak to it most directly. But I do have
24 information from EPA about what they believe about
25 this permit and we put that into the record,

1 relaying what EPA's position is in the
2 Environmental Appeals Board appeal as well.

3 I just want to clarify that that was
4 what my statement was, was relaying EPA's
5 interpretation regarding the permit.

6 HEARING OFFICER CELLI: Thank you. Now,
7 the parties are going to brief -- the complainants
8 are going to tell the committee what the non-
9 compliances are, what the evidence is that
10 supports it and why they believe that there is
11 non-compliance. That is what the complainant is
12 going to give us, okay.

13 Mr. Galati, your people are going to
14 say, these allegations aren't true because we say
15 it is not so and here is our evidence to the
16 contrary. That is what we need to say so that we
17 can weigh the evidence and make an appropriate
18 decision.

19 I think it's up to the parties to
20 determine what evidence supports whatever their
21 contention is.

22 MR. GALATI: Can we agree that
23 Mr. Crockett's testimony is not evidence?

24 HEARING OFFICER CELLI: I don't even
25 think he was sworn in so we will treat that as

1 agency public comment. It's useful.

2 PRESIDING MEMBER BYRON: He was not
3 sworn in.

4 HEARING OFFICER CELLI: Right. So is
5 there any question about that? Any problem with
6 our request of what should be in the briefs?

7 MR. SARVEY: Let's swear him in and get
8 it, Commissioner Byron.

9 HEARING OFFICER CELLI: I'm sorry, who
10 is speaking?

11 MR. SARVEY: This is Bob Sarvey, I'm
12 sorry.

13 HEARING OFFICER CELLI: And Mr. Sarvey,
14 what was your comment?

15 MR. SARVEY: Why don't we just swear
16 Mr. Crockett in and get his response on the record
17 for the factual.

18 HEARING OFFICER CELLI: Well, you know
19 something, I am not sure that it is of much help t
20 this point.

21 MR. SARVEY: Okay.

22 HEARING OFFICER CELLI: What --

23 MR. CROCKETT: This is Mr. Crockett. If
24 you want to know what EPA's opinion is about this
25 permit I'd suggest that you swear in someone from

1 EPA to speak to the issue.

2 HEARING OFFICER CELLI: Exactly. And
3 again, not parties.

4 MR. RATLIFF: Or wait for them to tell
5 us.

6 HEARING OFFICER CELLI: Yes.

7 MR. BOYD: This is Mr. Boyd. By saying
8 that it is public comment essentially are you
9 reducing its weight and you don't give it any
10 consideration at all in the decision? If it needs
11 to be sworn for you to give it any consideration
12 in our Final Decision then I would object to it
13 not being sworn. He has already made the
14 statement. It will be simple enough to swear him
15 in and just say --

16 HEARING OFFICER CELLI: Mr. Boyd,
17 Mr. Boyd, can you hear me?

18 MR. BOYD: Yes sir.

19 HEARING OFFICER CELLI: Thank you, Ken
20 Celli here. I got your objection. It's comment.
21 Comment is always addressed and considered in a
22 decision.

23 MR. BOYD: Okay, thank you.

24 HEARING OFFICER CELLI: Thank you.

25 Anything further from any --

1 MR. SIMPSON: This is Rob Simpson.

2 HEARING OFFICER CELLI: Mr. Simpson, go
3 ahead.

4 MR. SIMPSON: Thank you. I would like
5 to have the witness from the Air District sworn
6 in. I would like to know the Bay Area Air Quality
7 Management District's position on the permitting
8 of this facility.

9 HEARING OFFICER CELLI: Okay.

10 MR. RATLIFF: Could I remind the
11 Committee that the issue of the -- first of all
12 the issue of purview is a legal issue of whether
13 this issue is properly before the Energy
14 Commission in the first place.

15 But secondarily, the issue to determine
16 whether or not there is actually a PSD permit will
17 be determined by a different agency, by different
18 people. It is not really something we need to
19 argue about --

20 HEARING OFFICER CELLI: That's right.

21 MR. RATLIFF: -- in terms of evidence as
22 if it is an issue of fact.

23 HEARING OFFICER CELLI: Well, the
24 parties are free to bring it into their briefs if
25 they wish. And the parties are free to deal with

1 it the way they need to in their briefs, okay.
2 That's what we are asking for. There are
3 allegations, we need to hear all sides' responses
4 to the allegations. And then the Committee will
5 be able to make a decision, okay. We are not
6 going to litigate any further today.

7 MR. RATLIFF: I just want the
8 distinction between a legal conclusion and an
9 evidentiary issue. I mean, we are arguing --

10 MR. SIMPSON: Rob Simpson here.

11 HEARING OFFICER CELLI: Understood.

12 So --

13 MR. SIMPSON: Hello, this is Rob
14 Simpson.

15 HEARING OFFICER CELLI: Yes. This is
16 your last comment, Mr. Simpson, because we are
17 about to adjourn.

18 MR. SIMPSON: Thank you. My questions
19 to the District aren't limited to the PSD permit,
20 which yes, may be a question of the EPA. I think
21 we have permitting questions of the state level
22 permits that need to be answered for these
23 proceedings from the Air District. Do they have a
24 valid permit to construct?

25 HEARING OFFICER CELLI: You know

1 something, the Air District isn't a party to this
2 right now. It was nice to have some comment, they
3 shed some light on some of the issues.

4 But what we need from you is for you to
5 get with Ms. Behles, all of the complainants to
6 get with Ms. Behles. Organize your arguments and
7 your evidence, submit your briefs, and the
8 Committee will be able to hopefully come to a good
9 decision based on what everybody gives us.

10 PRESIDING MEMBER BYRON: We will come to
11 a good decision.

12 (Laughter.)

13 HEARING OFFICER CELLI: That's right.
14 So with that I am going to give it to Commissioner
15 Byron to adjourn.

16 PRESIDING MEMBER BYRON: Mr. Crockett,
17 thank you for being on the phone and for the
18 information you provided. I hope that we haven't
19 scared you away from future Commission hearings
20 and workshops.

21 I would like to thank all the parties
22 for being here today and for the information you
23 have provided.

24 Mr. Celli, thank you for your efforts to
25 try and resolve this issue today in an evidentiary

1 hearing. Clearly that was a lot of work and we
2 appreciate everyone's flexibility in trying to
3 resolve as many issues as we could.

4 We are very interested in moving forward
5 with the complainants' action here and I think the
6 schedule that we have got is pretty aggressive.
7 I'd ask you to all please adhere to that schedule
8 and Chairman Douglas and I will be able to make
9 our decision as a committee here.

10 So with that, please go have lunch, we
11 are adjourned.

12 HEARING OFFICER CELLI: Thank you.

13 (Whereupon, at 2:35 p.m., the
14 Evidentiary Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, DEBORAH BAKER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed 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 the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of August, 2009.



DEBORAH BAKER

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



JOHN COTA

August 19, 2009