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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

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STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 21, 1987

10:00 A.M.

Eileen Jennings, C.S.R.
License No. 5122

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COMMISSIONERS PRESENT

Leo T. McCarthy, Lieutenant Governor, Chairman

Jim Tucker, Commission Alternate
for Gray Davis, State Controller

LaFenus Stancell, Commission Alternate
for Jesse R. Huff, Director of Finance

STAFF PRESENT

Claire T. Dedrick, Executive Officer

James Trout, Assistant Executive Officer

Robert Hight, Chief Counsel

Lisa Beutler, Chief, Enforcement Division

Lance Kiley, Chief, Land Management and Conservation Division

Dwight Sanders, Chief, Research and Planning Division

W. M. Thompson, Chief, Extractive Development Division

Sue Breece, Commission Secretary

ALSO PRESENT

Jan Stevens, Deputy Attorney General

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P R O C E E D I N G S

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CHAIRMAN McCARTHY: The minutes of the last Commission meeting are approved without objection.

Consent calendar. Any objections to the Consent Calendar from anyone in the audience? It's Items 1 through 20, minus 15 that was taken off.

Consent Calendar is approved by the Commission.

Item 21, taken off.

Item 22.

EXECUTIVE OFFICER DEDRICK: Item 22, Mr. Chairman. This is approval of a partial sublease to Riverbank for Riverbank Holding Company's master lease for a moorage of a charter boat at their lease site on the Sacramento River.

CHAIRMAN McCARTHY: Any questions from members of the Commission?

In the audience?

All right, approved.

23.

EXECUTIVE OFFICER DEDRICK: 23 is, again, Riverbank Holding Company is the sublesor. The master lease for a passenger assemblage area for a cruise business.

CHAIRMAN McCARTHY: Any questions from the members of the Commission?

All right, approved.

1 EXECUTIVE OFFICER DEDRICK: Item 24 is approval of a
2 finding that Leases PRC 4680, 4690 and 4691 in ~~San Mateo~~
3 County are in breach of their lease.

4 CHAIRMAN McCARTHY: Any question from members of the
5 Commission?

6 Anybody in the audience on this?

7 All right, approved as recommended.

8 EXECUTIVE OFFICER DEDRICK: Item 26, Mr. Chairman --

9 CHAIRMAN McCARTHY: 26.

10 EXECUTIVE OFFICER DEDRICK: -- is approval to
11 commence lease termination proceedings against Lease PRC 5110
12 on the Sacramento River; Hugh and Carol Turner, lessees.

13 CHAIRMAN McCARTHY: Any questions by members of the
14 Commission?

15 Audience?

16 Recommendation is approved.

17 EXECUTIVE OFFICER DEDRICK: Item 27, Mr. Chairman,
18 is the item that you -- I think everybody's out of the room
19 at the moment.

20 CHAIRMAN McCARTHY: Let's pass over and when they
21 return, we'll get back to it.

22 28.

23 EXECUTIVE OFFICER DEDRICK: Item 28 is approval of a
24 lease for the Catfish Cafe, Inc. on the San Joaquin River in
25 San Joaquin County -- or Stockton Slough in San Joaquin

1 County. Sorry.

2 CHAIRMAN McCARTHY: Any questions from members of
3 the Commission?

4 From the audience?

5 All right, approved as recommended.

6 29.

7 EXECUTIVE OFFICER DEDRICK: Item 29 is an assignment
8 of 50 percent of the Rincon Oil Field leases on Leases 410,
9 429 and 1466 from Bush Oil to Tenneco Oil.

10 CHAIRMAN McCARTHY: Questions from members of the
11 Commission?

12 From the audience?

13 All right, that's approved as recommended.

14 30.

15 Item 30 is Proposed Crude Oil Sell-Offs,
16 Long Beach Harbor Department, Parcel A in Wilmington Field in
17 Los Angeles County.

18 CHAIRMAN McCARTHY: Questions from the Commission?

19 From the audience?

20 Approved as recommended.

21 31.

22 EXECUTIVE OFFICER DEDRICK: 31 is an award of a
23 Royalty Oil Sales Contract to Texaco Refining and Marketing.
24 The winning price was 71 cents.

25 CHAIRMAN McCARTHY: Questions from members of the

1 Commission or the audience?

2 Approved as recommended.

3 EXECUTIVE OFFICER DEDRICK: Item -- excuse me, sir.
4 Item 32, another award of a Royalty Oil Sales
5 Contract to Golden West Refining Company. The winning price
6 was 74.9 cents.

7 CHAIRMAN McCARTHY: Questions from members of the
8 Commission or the audience?

9 EXECUTIVE OFFICER DEDRICK: Item 33, Mr. Chairman,
10 I've just been informed that the applicant is withdrawing
11 that application and the letter is being prepared now.

12 Does that mean no action needs to be taken?

13 MR. LUDLOW: That's correct

14 EXECUTIVE OFFICER DEDRICK: So, that is then off
15 calendar.

16 CHAIRMAN McCARTHY: That item is withdrawn.
17 35.

18 EXECUTIVE OFFICER DEDRICK: 35 is a legal item, an
19 authorization to file a disclaimer in the Crown Central
20 Petroleum Corporation versus Durkee, et al. in Orange County.

21 CHAIRMAN McCARTHY: Any questions from the audience?
22 Yes, sir.

23 EXECUTIVE OFFICER DEDRICK: Staff counsel is
24 requesting that we hold this item until Mr. Eight returns.

25 CHAIRMAN McCARTHY: All right.

1 36.

2 EXECUTIVE OFFICER DEDRICK: Item 36 is a request for
3 a six-month extension by the Honorable Albert Aramburu,
4 Supervisor in Marin County on the \$100,000 Kapiloff Land Bank
5 grant for purchase of a parcel on Richardson Bay. Staff
6 recommends the six-month extension.

7 CHAIRMAN McCARTHY: All right, any questions?
8 All right, that is granted.

9 37.

10 EXECUTIVE OFFICER DEDRICK: This is a legal item.
11 Bob, would you like to pick up the legal items?

12 MR. HIGHT: 37, Mr. Chairman, is the authorization
13 to enter into a Title and Boundary Agreement with Southern
14 Pacific Corporation whereby the state would acquire title to
15 Montezuma Slough and 20 acres in exchange for clear title to
16 Santa Fe.

17 CHAIRMAN McCARTHY: How much land did we give them?

18 EXECUTIVE OFFICER DEDRICK: It was a very small
19 piece of land.

20 MR. HIGHT: No, on 37 it's around 3,900 acres.

21 CHAIRMAN McCARTHY: And we received?

22 MR. HIGHT: 25 acres in fee and 250 acres
23 approximately of public trust.

24 CHAIRMAN McCARTHY: Where's the land that we gave
25 them again? I'm looking for the descriptive information.

1 MR. HIGHT: The land that we gave them is the area
 2 excluding -- well, let me correct my statement. The land
 3 that we cleared title to Santa Fe -- did not give them -- is
 4 that area excluding Montezuma Slough on the map and there's a
 5 five-acre and a 20-acre parcel at the top and the bottom and
 6 the remainder would be clear title to --

7 CHAIRMAN McCARTHY: Have we discussed this item
 8 before?

9 EXECUTIVE OFFICER DEDRICK: No.

10 CHAIRMAN McCARTHY: Why is it a good deal?

11 MR. HIGHT: We believe that given the state of the
 12 record in this item that it's the best interest the state has
 13 and this is the only interest the state has in the parcel.

14 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, there's no
 15 urgency to deal with this matter today if you'd like more
 16 thorough information.

17 CHAIRMAN McCARTHY: There might be an understandable
 18 answer.

19 EXECUTIVE OFFICER DEDRICK: Rick is here if you'd
 20 like him to discuss the issue.

21 CHAIRMAN McCARTHY: From the state's side why is
 22 this a sensible deal?

23 EXECUTIVE OFFICER DEDRICK: Well, it gives us
 24 ownership, fee ownership, of a disputed area on the shore of
 25 Montezuma Slough and the bottom of the slough. So, we will

1 have substantial areas of public access to the slough clearly
2 in state title. That is not now the case. I mean, there is
3 very little public access to the slough on that side. It's
4 across Montezuma Slough from the main Suisun Marsh wildlife
5 area.

6 CHAIRMAN MCCARTHY: The Attorney General's Office is
7 a part of this recommendation?

8 EXECUTIVE OFFICER DEDRICK: Yes, I'm sure they are.
9 I can't remember who in the AG's Office was on that issue. I
10 know who it is, it's Dennis Eagan.

11 MR. STEVENS: It's my understanding -- I haven't
12 worked on it personally. But I generally believe there was
13 sufficient doubt to warrant clarification of title there in
14 exchange for the state.

15 I believe attorney for the applicants was in the
16 audience.

17 EXECUTIVE OFFICER DEDRICK: That's correct.
18 John Briscoe is here if you'd like to hear from Mr. Briscoe.

19 CHAIRMAN MCCARTHY: Fine.

20 MR. BRISCOE: Mr. Chairman, members of the
21 Commission, I'm John Briscoe. Does this record well if I
22 stand?

23 EXECUTIVE OFFICER DEDRICK: No, you really have to
24 sit, John. You can't be heard otherwise.

25 MR. BRISCOE: Essentially, the claim of the state,

1 Mr. Chairman, and members of the Commission is that --

2 CHAIRMAN MCCARTHY: Would you tell us who you work
3 for, please?

4 MR. BRISCOE: I'm sorry. I'm John Briscoe with the
5 law firm of Washburn & Kemp and I represent the applicant
6 here, Santa Fe Pacific Realty Corporation.

7 There is essentially, as I understand it, very
8 little by way of a state claim to what was referred to as the
9 3,000 acres. So, that creates some sort of disproportionate
10 sense if you compare that with the 25 acres that the state
11 will receive.

12 The principal interest of the state concerns
13 property on the southerly end of the portion, Mr. Chairman
14 and members of the Commission, which was patented into
15 private ownership as tidelands. It is our contention, the
16 applicant's contention, that whatever may have been the
17 original character of that property, it became upland by
18 reason of accretion. The state's contention is that the
19 property remains of the legal character tidelands subject to
20 a public trust easement.

21 I think it's fair to say that in this settlement we
22 are capitulating totally with the contentions made by your
23 staff and we're not really getting anything. I think that's
24 a fair sense. There is really no basis for a state claim
25 elsewhere.

1 The other thing that the settlement will do is
2 permanently fix the boundary line along the slough and the
3 Sacramento River and confirm the state's interest, fee
4 ownership interest in the slough.

5 So, we're clearing up a great deal of potential
6 boundary problems and confirming the claim made by the state.

7 CHAIRMAN MCCARTHY: Capitulation, huh?

8 MR. BRISCOE: I'm afraid so. I can't say that we
9 won a single point.

10 CHAIRMAN MCCARTHY: Santa Fe doesn't do that very
11 often.

12 MR. BRISCOE: Well, we're talking about property of
13 approximately \$400 an acre. So, there wasn't much point in
14 spending a lot of money on my time to quarrel about this.

15 EXECUTIVE OFFICER DEDRICK: The majority of the
16 parcel is clearly upland, as Mr. Briscoe pointed out. You
17 know the parcel, don't you? There was at one time a
18 proposal -- there was going to be a steel plant there. Once
19 there was a proposal for other industrialization in the area.

20 CHAIRMAN MCCARTHY: Did we get any comment during
21 this procedure from either BCDC or from the local government
22 officials involved?

23 EXECUTIVE OFFICER DEDRICK: Let me ask Dave Plummer
24 to come forward, who negotiated this settlement,
25 Mr. Chairman. I don't believe that the Commission has met

1 Dave before. Dave works for the Legal Division.

2 MR. PLUMMER: During this process we sent out
3 notification to BCDC, the county. We have an extensive
4 mailing list and everybody -- their main comment was that
5 it's covered under the Suisun Marsh Preservation Act and that
6 what can be done with that land is pretty well already
7 spelled out under that act and our settlement won't hurt that
8 at all and in fact will enhance that by the recognition of
9 the public trust easement over that southerly portion of the
10 parcel.

11 CHAIRMAN MCCARTHY: All right, approved as
12 authorized. Thank you.

13 Next item.

14 MR. HIGHT: Item 38, Mr. Chairman, is the
15 authorization to enter into a compromise title agreement
16 covering approximately an acre and a half of land in Marin
17 County and in return for the state's interest we would get
18 \$21,500 dollars in the Kapiloff Land Bank.

19 CHAIRMAN MCCARTHY: Questions?

20 From the audience?

21 Approved as recommended.

22 MR. HIGHT: In addition, you'll be acting as Land
23 Bank Commissioners in accepting the money.

24 CHAIRMAN MCCARTHY: All right. We vote as the Land
25 Bank accepting.

1 Next item.

2 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman, on
3 Signal Landmark, this is an authorization for your staff to
4 enter into a reimbursement agreement with Signal to allow for
5 the selection of an independent appraiser to appraise some
6 property in the '73 agreement for potential exchange which
7 would be brought back to you. This would be fully
8 reimbursable by Signal. But the idea is to hire an appraiser
9 neither of their choosing or ours, but an independent
10 appraiser.

11 CHAIRMAN MCCARTHY: Any questions?

12 All right, approved.

13 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, perhaps
14 you should return to Item 39 that we passed over when Mr.
15 Hight was absent.

16 MR. HIGHT: 29.

17 EXECUTIVE OFFICER DEDRICK: 29, I'm sorry. No, I
18 don't even mean that. I mean 35.

19 MR. HIGHT: 35, Mr. Chairman, is the authorization
20 to file a disclaimer against some potential oil interest that
21 the state might have in Orange County. The state has no
22 interest in this item and the addition that we would like to
23 add is to authorize the Executive Officer to in addition file
24 a disclaimer. The requested authorization now is to
25 authorize the Attorney General and the title company now for

1 reasons only known to title companies wants an additional
2 disclaimer from the Executive Officer.

3 CHAIRMAN MCCARTHY: Any problems?

4 All right, approved.

5 Now let's go back to 27. We have 27 and 33 left on
6 this calendar.

7 EXECUTIVE OFFICER DEDRICK: And 40. We have one
8 more item, administrative item.

9 CHAIRMAN MCCARTHY: I didn't turn that last page.
10 40.

11 EXECUTIVE OFFICER DEDRICK: Mr. Trout.

12 ASSISTANT EXECUTIVE OFFICER TROUT: Mr. Chairman, on
13 Item 40 the situation is that Shell Petroleum delivered
14 inadvertently the royalty information without the royalty
15 payment to the state. They recognized that situation and
16 hand-delivered a check to the state before the mailed notice
17 of the production formula, production calculations arrived.

18 We are recommending that you authorize the approval
19 of waiver of penalty and interest, which would be subject to
20 review by the Board of Control and appropriation of the
21 refund by the Legislature. The amount is \$27,000 penalty and
22 interest.

23 CHAIRMAN MCCARTHY: Questions from the audience?

24 The recommendation is approved.

25 EXECUTIVE OFFICER DEDRICK: Thank you,

1 Commissioners.

2 CHAIRMAN MCCARTHY: Back to 27.

3 On 27 Mr. Denny Valentine is going to give testimony
4 after the staff gives their report. Let's hear from the CEO
5 first.

6 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I'll ask
7 Mr. Dwight Sanders to present this issue, because it's
8 primarily related to his area.

9 MR. SANDERS: Mr. Chairman, this project involves
10 the construction and installation of approximately 54.8 miles
11 of transmission line from four cogeneration facilities to the
12 PG&E Tesla Substation in Alameda County.

13 The State Lands Commission has been serving as the
14 lead agency under CEQA for this project even though its
15 jurisdiction and permit or lease that you are being asked to
16 consider covers only waterways that will be crossed by the
17 transmission line.

18 The Commission has been serving as lead agency
19 because of the fact that three counties are involved and
20 there was no umbrella agency to step in and also due to the
21 fact that the Public Utilities Commission, which is a primary
22 agency of these types of facilities, exempts transmission
23 lines from their requirement of a Certificate for Public
24 Convenience and Necessity which are below 200 KV and this is
25 115 KV line.

1 One of the primary concerns that have been raised
2 with regard to this project surround the placement of poles
3 along a 1.42 mile length of Harlan Road in San Joaquin
4 County. There have been questions raised as to the safety
5 issues with regard to the placement of those poles.

6 The poles are in place now. They were in place
7 before the Commission began its environmental process and
8 they were approved by San Joaquin County before the CEQA
9 process was completed.

10 We have tried our best with in our view our limited
11 authorities to mitigate the circumstances involved in this
12 controversy. We have negotiated with PG&E a lease condition
13 which guarantees that they will abide by the decision of the
14 Public Utilities Commission, which has been petitioned by a
15 couple of individuals to consider this particular section of
16 the line.

17 PUC cannot on its own volition or as a result of an
18 appeal step into a process even though, as I indicated, they
19 have exempted from their certificate process lines of this
20 size.

21 The PUC will be hearing this appeal this Friday.
22 The mitigation that has been agreed to by PG&E will be a part
23 of its lease indicates or guarantees that whatever decision
24 is reached by PUC or by the County Board of Supervisors with
25 regard to (a) the relocation of the poles or (b) some other

1 treatment of the lines in this particular area will be
2 implemented.

3 I am sure that some will feel that this may not be
4 giving people much since the PUC has its own enforcement
5 authorities. However, the lease document is in our opinion a
6 stronger hold or a stronger handle on an applicant to
7 guarantee compliance with provisions. It is something the
8 Commission can act on immediately. Whereas the PUC process
9 could involve the administrative law decision plus subsequent
10 court action if the parties do not agree with the
11 administrative law judge.

12 CHAIRMAN MCCARTHY: Questions from the Commission?

13 COMMISSIONER STANCELL: So, basically, we have know
14 authority in terms of the pole issue? Is that what you're
15 saying.

16 MR. SANDERS: That is correct, Commissioner. We
17 have no -- the Commission does not have a direct legal
18 authority to mandate outright removal or treatment of poles.
19 We are in effect serving in two functions here. One is as
20 the CEQA lead agency which covers the broad range of
21 compliance with CEQA, which is a service to not only the
22 applicant, but also to subsequent responsible agencies; and
23 we have a more definitive and limited role as a
24 decisionmaking agency in this regard as to the lease involved
25 for the rights of way across the waterways under the

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Commission's jurisdiction.

COMMISSIONER STANCELL: So, any condition that we apply to the lease that's within our germane, you're saying that the utility has agreed to those conditions?

MR. SANDERS: That is correct, Commissioner.

CHAIRMAN MCCARTHY: Mr. Tucker.

COMMISSIONER TUCKER: The full area is 54 miles? That is the length?

MR. SANDERS: That is correct.

COMMISSIONER TUCKER: What's the area that's covered by our jurisdiction?

MR. SANDERS: It is a matter of feet rather than --

COMMISSIONER TUCKER: So, it's less than a mile? Just approximately.

EXECUTIVE OFFICER DEDRICK: The acreage is .6.

MR. HIGHT: Less than half a mile.

EXECUTIVE OFFICER DEDRICK: Eight-tenths of an acre total area.

COMMISSIONER TUCKER: So, essentially, what the staff is indicating is that when we grant a lease across this area that's less than a mile in length out of this 54-mile total, that we cannot say, okay, when you cross our property 20 miles from here, you have to do something with this line.

MR. HIGHT: As a mitigation, Mr. Tucker, that's a correct statement. We do not have that authority to do that.

1 MR. SANDERS: Under CEQA an agency is not granted
2 any greater authority under CEQA or as a result of CEQA than
3 it already possesses. So, in effect what that says is that
4 we can only mandate something for that area for which we have
5 permit jurisdiction.

6 CHAIRMAN McCARTHY: How long have we had this in our
7 possession? When did the State Lands Commission first become
8 involved in this?

9 MR. SANDERS: I can't answer that question.

10 MR. KILEY: I don't see my staff member who would
11 know.

12 CHAIRMAN McCARTHY: Can you give me an approximate
13 idea?

14 EXECUTIVE OFFICER DEDRICK: June or July is the
15 answer.

16 CHAIRMAN McCARTHY: June or July.

17 MR. SANDERS: Of this year.

18 CHAIRMAN McCARTHY: I ask, of course, because if we
19 knew this answer, we should have told the parties to the
20 issue that so that they could pursue any other remedies that
21 they wanted to pursue without being delayed unduly.

22 EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman, this
23 as a legal issue came to my attention last week and I asked
24 Mr. Hight to review it and we got the answer.

25 CHAIRMAN McCARTHY: So, we got it in July and we've

1 had it in effect --

2 EXECUTIVE OFFICER DEDRICK: Four months.

3 CHAIRMAN McCARTHY: Four months.

4 CHAIRMAN McCARTHY: Any other questions from
5 Commissioners?

6 All right, let's hear first from -- Mr. Valentine,
7 do you want to give us the benefit of your thoughts?

8 I misspoke before. There are some witnesses maybe
9 on the same side. Mr. Valentine is representing Mr. Donald
10 Foley, who is present; Mr. Charles Northbelt, is it? Mr.
11 Carl Cramer, Ms. Jennifer Machlin, Mr. Bob Fehman, Mr.
12 Robert Frees and Mr. Tim Holt.

13 MR. VALENTINE: Mr. Chairman, members of the
14 Commission, Benny Valentine, representing the Stockton Area
15 Transmission Line Group; which is a coalition of four
16 potential generators of cogeneration power.

17 Specifically, this project directly involves those
18 people; but soon to come on line is the 49 megawatt facility
19 which is owned by Air Products and Chemicals. I wouldn't be
20 so bold as to say that I represent those people whose names
21 you just listed; but they certainly are here, each
22 representing a different category and knowledge of this
23 project and available to answer any questions that might come
24 up.

25 CHAIRMAN McCARTHY: Your testimony will reflect

1 their point of view on this issue.

2 MR. VALENTINE: Yes, which is that, number one,
3 we're in concurrence with the staff's analysis and
4 conclusions. We are in agreement with the addendum which
5 they propose to attach to the negative declaration, which we
6 hope you will be able to issue today and in fact following
7 that then allow for the amendment of the permit by PG&E to
8 allow for a crossing of the San Joaquin River so that we can
9 transmit the power that we're about ready to generate.

10 I don't know -- in fact, I don't believe that I can
11 add anything to your staff's recommendations. We have
12 concurred with all of the jurisdictions thus far having been
13 involved in this project. We believe that the negative
14 declaration is in order. We are prepared to follow the
15 ultimate decisions yet to be made by the Public Utilities
16 Commission regarding the location of this line and the county
17 regarding the mitigation that they believe necessary along
18 Harlan Road, the 1.4 miles wherein there seems to be some
19 concern over safety as to the location of the poles being in
20 proximity to the roadway.

21 That's all I have at this point, but we remain
22 available should additional questions arise after further
23 testimony.

24 CHAIRMAN MCCARTHY: Questions from members of the
25 Commission?

1 All right, thank you, Mr. Valentine.

2 May I ask Mr. Brian Nessler, who is the legislative
3 assistant to Supervisor Bill Sousa of San Joaquin County.
4 Mr. Nessler.

5 MR. NESSLER: Thank you very much. Supervisor Sousa
6 has asked me to read a statement on his behalf. He was
7 unavailable to be here today.

8 "Gentlemen:

9 "Thank you very much for taking
10 the time to hear this issue before
11 your Commission. We have been
12 concerned about the placement of
13 the 115,000 volt electrical
14 transmission line along Harlan Road
15 since we were first made aware of
16 the situation. Those concerns were
17 expressed by the letter of August
18 27, 1987 in response to your
19 proposal to adopt a negative
20 declaration for this project.

21 "Rather than reiterate all the
22 points made in the letter, I would
23 just like to communicate to you my
24 main concerns: Harlan Road is a
25 heavily traveled frontage road that

1 parallels Interstate 5. The speed
2 limit is set at 55 miles an hour.
3 This route is utilized by all types
4 of vehicles. This area experiences
5 very heavy fog conditions in the
6 winter months and almost all of the
7 poles in question are within a
8 car's width of the fog line.

9 "The San Joaquin County Public
10 Works Department has recommended
11 that the power poles from Roth Road
12 to Lathrop Road be relocated to the
13 east side of Harlan Road. Numerous
14 agencies in San Joaquin County have
15 gone on record with concerns about
16 the location of the power poles in
17 this project.

18 "We ask that the negative
19 declaration in this project be
20 denied and that you require the
21 cogeneration plants and Pacific Gas
22 and Electric to complete a focused
23 environmental impact report that
24 addresses the transportation,
25 circulation, public services and

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human health and esthetic sections of this negative declaration. We believe this will give the people of the community of Lathrop the opportunity to express their concerns and provide useful information to the agencies involved in this issue.

"Thank you very much for your time and consideration of this matter."

CHAIRMAN McCARTHY: Would you like to comment specifically on what you heard our staff say a moment ago? Mr. Sanders and Commissioner Tucker commented upon that our jurisdiction -- we don't want to snarl this in some bureaucratic labyrinth, but there are laws that we have to be reasonably responsive to.

Our jurisdiction covers .8 acres, eight-tenths of an acre where the river is involved. We do not have any authority to dictate anything that would frame environmental impact issues outside of that eight-tenths of an acre. How would you propose we handle that?

MR. NESSLER: I guess I would start it out with a couple of questions. When we received the negative declaration with all the boxes checked no, we were concerned.

1 In examining the negative declaration that addresses the
2 different routes of the line, assuming that that negative
3 declaration addressed those different routes of the line, we
4 assumed -- and if we're mistaken -- we assumed that the Lands
5 Commission could address a focused EIR to those sections.

6 CHAIRMAN MCCARTHY: I think if it is our position
7 that the negative declaration is appropriate, then the
8 negative declaration must apply only to that area where we
9 have jurisdiction.

10 MR. SANDERS: Mr. Chairman, under CEQA the lead
11 agency will provide the environmental workup for its own
12 decision plus those of any responsible agency; which would
13 mean in this instance the counties involved. County of San
14 Joaquin, however, has already approved the location of those
15 poles in place.

16 CHAIRMAN MCCARTHY: You really must use a
17 microphone.

18 MR. SANDERS: The environmental documentation that
19 we have prepared is meant to serve as to meet the legal
20 requirements of CEQA for our own decisionmaking process and
21 to assist any subsequent agency which must make a decision on
22 the project.

23 In this particular portion of the line the
24 responsible agency -- i.e. the County of San Joaquin -- has
25 already granted approval for the placement of the poles and

1 they are already in place. So, unfortunately --

2 CHAIRMAN MCCARTHY: How many counties are involved?

3 MR. SANDERS: There are three counties involved.

4 CHAIRMAN MCCARTHY: Have the other two counties
5 acted?

6 MR. SANDERS: I can't answer that.

7 CHAIRMAN MCCARTHY: You have to help me out now,
8 because I'm a little bit confused. There seems to be
9 something somewhat contradictory in what we're doing here.

10 Under CEQA, as you've just explained, the lead
11 agency, regardless of what their jurisdiction is under state
12 law in this issue, is required to make the basic decision on
13 whether an environmental impact is required or a negative
14 declaration should be issued.

15 MR. SANDERS: That is correct.

16 CHAIRMAN MCCARTHY: Now, we have made a judgment
17 here that a negative declaration should be issued and
18 implicitly what we're saying is that there are no serious
19 environmental impacts.

20 MR. SANDERS: By the preparation of the negative
21 declaration.

22 CHAIRMAN MCCARTHY: Right.

23 MR. SANDERS: Yes, that is correct.

24 CHAIRMAN MCCARTHY: So, for us to take the position
25 that this is really a PUC matter -- because we only have

1 jurisdiction over eight-tenths of an acre of the river
2 section -- and at the same time make a judgment on the
3 fundamental issue of the EIR or of the negative declaration
4 seems contradictory to me.

5 MR. SANDERS: The information that we have received
6 both from the PUC and from the County have indicated to us
7 that they do not believe this to be a significant impact.

8 Those pieces of information were considered in the
9 environmental process and in our determination as to the
10 appropriate document to prepare, whether it be an
11 environmental impact report or a negative declaration. So,
12 based on that information, if you will, it supported our
13 determination.

14 CHAIRMAN McCARTHY: Coming from San Joaquin County.

15 MR. SANDERS: And from the Public Utilities
16 Commission staff. They have indicated that --

17 CHAIRMAN McCARTHY: They did a review of the
18 environmental consequences.

19 MR. SANDERS: Yes, they did. And they did a review
20 of the placement of the poles in terms of both engineering
21 and traffic safety matters.

22 CHAIRMAN McCARTHY: Commissioner Tucker.

23 COMMISSIONER TUCKER: The issue before us today, as
24 I understand it, is the approval of the lease; is that
25 correct?

26

1 MR. SANDERS: There are two actions that the
2 Commission is being asked to take. First of all, to adopt
3 the negative declaration in compliance with its meeting with
4 the Commission's responsibilities.

5 COMMISSIONER TUCKER: For the whole report.

6 MR. SANDERS: That is correct. And then secondly to
7 make a lease decision on that portion of the line that
8 crosses state property.

9 COMMISSIONER TUCKER: Do we have to do both of those
10 things?

11 MR. SANDERS: Yes. We are the CEQA -- if one wishes
12 to reach the decision mode, one must first satisfy CEQA
13 responsibilities. In order to satisfy CEQA responsibilities
14 we must either -- the Commission is being asked to adopt a
15 proposed negative declaration. If the Commission does not
16 wish to do that --

17 COMMISSIONER TUCKER: But I think what's confusing
18 and what I got from the Governor's question is that what
19 we're really looking at is we're finding we can issue a
20 negative declaration as to the impact on that eight-tenths of
21 an acre in order to lease this property or allow them to
22 cross that property over which we have jurisdiction, is that
23 correct?

24 MR. SANDERS: We are indicating by the preparation
25 of the negative declaration that in our view under CEQA the

1 entire project does not have a significant impact and on the
2 basis of that determination the Commission can then make a
3 specific --

4 COMMISSIONER TUCKER: Why would we have to find that
5 in order to make a decision as to this eight-tenths of an
6 acre? We would have to review the whole -- let's say we went
7 back to the beginning and we didn't volunteer, which we
8 should never have done, to be the lead agency. Let's say we
9 weren't the lead agency and we weren't involved and these
10 people come to us and they ask for this lease and we say
11 fine.

12 As I understand it, we would look at what's the
13 impact on the piece of property that's going to be crossed.
14 We wouldn't say what's the impact of this project someplace
15 else, is that correct?

16 MR. SANDERS: Essentially. If we were not the lead
17 agency, we would rely on the environmental documentation
18 prepared by the CEQA lead agency in making the determination
19 on our portion of the property.

20 COMMISSIONER TUCKER: On our portion of the project.

21 MR. SANDERS: That is correct.

22 COMMISSIONER TUCKER: But whatever they found as to
23 some other part of the project would not affect our decision
24 as to this eight-tenths of an acre, whether it's something
25 that's desirable or undesirable environmentally somewhere

1 else. We'd make a decision about our eight-tenths of an
2 acre, is that correct?

3 MR. SANDERS: That's correct.

4 COMMISSIONER TUCKER: And we'd impose whatever
5 conditions that you've already imposed, et cetera to make
6 sure that in our area this is a safe project, is that
7 correct?

8 MR. SANDERS: Yes, sir.

9 COMMISSIONER TUCKER: Now, why can't we go ahead and
10 do that?

11 MR. HIGHT: As lead agency for the preparation of
12 the environmental document, the Commission has to either
13 certify or choose not to certify the environmental -- the
14 negative declaration as a whole. Since we are lead agency,
15 we don't have the option of just looking -- we only have the
16 ability to control our action, but we don't have the option
17 of not looking at the entirety.

18 MR. SANDERS: That's correct.

19 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, the real
20 problem here --

21 CHAIRMAN McCARTHY: Let me tell you what my reaction
22 to this is. I've sat in this Commission for a lot of
23 hearings, a lot of issues bubble up from local government and
24 I for one and others usually on the Commission have
25 studiously avoided turning the State Lands Commission into a

1 local government planning commission.

2 This is the kind of judgment that should have been
3 made in some proper form by those people immediately
4 involved. I frankly have no compelling opinion on one side
5 or the other of this issue yet. I'm still very much open.
6 The application before us may be entirely appropriate for
7 solid public policy reasons or it may not be. So, I have no
8 defined judgment on that.

9 What bothers me a good deal is that we didn't think
10 this one through too well and figure out how to involve the
11 three local governments that should be making this decision.
12 This is their decision. If we want to have a planning
13 commission function in this kind of situation, then we ought
14 to redefine ourselves.

15 Let me ask the representative of the Supervisor a
16 question. We've been told that authorities down in San
17 Joaquin County looked at this, examined its environmental
18 impact and as I understand you, Mr. Sanders, you said --

19 MR. SANDERS: The County made --

20 CHAIRMAN MCCARTHY: First of all, which authorities
21 in San Joaquin County did this?

22 MR. SANDERS: The Public Works Department,
23 Mr. Chairman.

24 CHAIRMAN MCCARTHY: Does the San Joaquin Board of
25 Supervisors have authority over the Public Works Department?

1 MR. NESSLER: I'm here today representing Supervisor
2 Bill Sousa, not the entire board. Specifically, Supervisor
3 Bill Sousa.

4 CHAIRMAN McCARTHY: Has the Board of Supervisors
5 taken a position?

6 MR. NESSLER: Yes, they have.

7 CHAIRMAN McCARTHY: What's their recommendation?

8 MR. NESSLER: Their recommendation in the letter to
9 the PUC was that -- the initial recommendation by the Public
10 Works Department, by the Board of Supervisors is that the
11 poles be relocated. I've got that located in my notes here.
12 In a letter to the PUC they addressed that concern.

13 CHAIRMAN McCARTHY: The initial recommendation?

14 MR. NESSLER: No, the recommendation. Excuse me.
15 The recommendation of the Board of Supervisors.

16 CHAIRMAN McCARTHY: Board of Supervisors has voted
17 inconsistent with Supervisor Sousa's position that the poles
18 be relocated? Is that your testimony?

19 MR. NESSLER: Let me address the situation. I'm
20 here representing Supervisor Bill Sousa at the State Lands
21 Commission. The Board of Supervisors approved a letter as a
22 unit to the Public Utilities Commission that addresses that
23 area and asks that the poles be relocated. They voted
24 against coming before the State Lands Commission as a group,
25 but Supervisor Sousa asked me to represent him here today.

1 CHAIRMAN McCARTHY: Why did they vote against coming
2 before the State Lands Commission?

3 MR. NESSLER: You will have to ask them that
4 question, sir. I'm not aware --

5 CHAIRMAN McCARTHY: Commissioner Stancell.

6 COMMISSIONER STANCELL: I just want to make sure I
7 understand. Has the Board of Supervisors of San Joaquin
8 County taken a position on the State Lands Commission's
9 negative declaration, an official position?

10 MR. NESSLER: No, they have not.

11 COMMISSIONER STANCELL: They have not. But the
12 Public Works Board or the Public Works Department of San
13 Joaquin County has provided input and their recommendation?

14 MR. NESSLER: Their recommendation is that the poles
15 along Harlan Road be relocated. If that is not feasible,
16 they've suggested some other mitigation measures

17 COMMISSIONER STANCELL: So, is that something that
18 the Board of Supervisors will have to deal with at a future
19 time? Or what's the status of that recommendation in terms
20 of the Board of Supervisors?

21 MR. NESSLER: I'm sorry, I don't understand your
22 question.

23 COMMISSIONER STANCELL: Has the Board of Supervisors
24 accepted the recommendation of the Public Works Department?

25 MR. NESSLER: Yes, they have.

1 COMMISSIONER STANCELL: That's part of the negative
2 declaration.

3 MR. SANDERS: There's a bit of confusion that
4 perhaps I hope I can clear up here.

5 The Public Works Department evaluated the project,
6 approved the location and the installation of the poles,
7 which has subsequently occurred, with a couple of mitigation
8 measures. The poles should be reflecterized and there would
9 be a curb on the outside of the roadway to discourage cars
10 from going off the roadway into the poles.

11 Subsequent to that approval and subsequent to the
12 circulation of the negative declaration and so forth what has
13 just been related to you has transpired. In other words, the
14 County Department of Public Works has in addition to the
15 reflecterization and the curb indicated that guardrails
16 should be established at the poles, which is a measure we
17 worked out with the County and with the people involved prior
18 to a couple of meetings. That's one of the reasons the thing
19 has been put off, because of these negotiations.

20 From an overall perspective the County has evidently
21 through this testimony indicated to the PUC, which will be
22 hearing the matter on Friday, that their first choice now is
23 to have the poles relocated. If, however, that is not
24 feasible, then mitigation measures that were previously
25 approved would go into place.

1 CHAIRMAN McCARTHY: Let me see if we can get a
2 little bit of clarification.

3 Was there a public hearing process in San Joaquin
4 County before these poles were installed which gave citizens
5 in San Joaquin County an opportunity to address this issue?

6 MR. NESSLER: No, sir.

7 CHAIRMAN McCARTHY: Did the San Joaquin County Board
8 of Supervisors approve formally in a document the action of
9 the Public Works Department?

10 MR. NESSLER: Can I address the issue?

11 CHAIRMAN McCARTHY: Could I just have a yes or no to
12 that.

13 MR. NESSLER: They did not.

14 CHAIRMAN McCARTHY: You authorized your Public Works
15 Department to permit telephone poles or utility poles to be
16 installed without any formal --

17 MR. NESSLER: If I can address the issue just
18 briefly. I'll do it as quickly as possible.

19 The process that has been used in San Joaquin County
20 that was previously used up until the issue of these poles
21 came up was PG&E had franchise rights in San Joaquin County
22 and basically anywhere within the right-of-way of San Joaquin
23 County they had the right to place a pole.

24 When the issue -- when these poles were actually --
25 and our Planning Department was notified of the proposed

1 location of these poles previously. A Development plan was
2 requested. That plan was not received by the Planning
3 Department. What occurred was basically the poles were
4 laying alongside the road and our office was made aware of
5 them by some residents in the area. We asked at that time
6 before the poles were in place if it would be possible to
7 relocate the poles to the other side of the road.

8 At that point in time it's my understanding that
9 basically PG&E or the parties involved just indicated that it
10 was not financially feasible. Since that time we have always
11 taken the position that -- requested the poles be relocated.

12 CHAIRMAN McCARTHY: How many of these miles of the
13 poles are in San Joaquin County of the 54.8 miles of the
14 transmission line?

15 EXECUTIVE OFFICER DEDRICK: We could determine that,
16 but I don't believe anyone would know off the top of their
17 head.

18 CHAIRMAN McCARTHY: Mr. Nessler, would you like to
19 answer that?

20 MR. NESSLER: No, I don't. I would give a guess
21 that the majority of it is probably located in San Joaquin
22 County.

23 CHAIRMAN McCARTHY: I tell you, I'm really bothered
24 by this whole process. From what I understand so far there's
25 been no public hearing at the local level.

1 EXECUTIVE OFFICER DEDRICK: Until after the fact.

2 CHAIRMAN McCARTHY: Until after the fact to act upon
3 this.

4 MR. NESSLER: That's correct.

5 CHAIRMAN McCARTHY: Now we're being called upon to
6 ratify a process which didn't occur.

7 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, that's
8 correct. The problem is that power lines can be constructed
9 if they're less than 200 KV without any environmental work
10 under the general authorization of the Public Utilities
11 Commission.

12 By the time it gets to us where you have to make
13 some kind of CEQA determination before you can grant a lease
14 to cross the river, it's a fait accompli. There is nothing
15 you can do to change that. Yet you must take on the
16 responsibility which properly should have been borne for the
17 state by the Public Utilities Commission before the power
18 line was ever constructed.

19 COMMISSIONER TUCKER: We didn't have to take on
20 this. Why did we ever take this on in the first place?

21 EXECUTIVE OFFICER DEDRICK: So that we could grant a
22 lease. Because we are the only state agency that is
23 available to deal with the problem. The PUC does not have to
24 do that.

25 COMMISSIONER TUCKER: We're not available to deal

1 with the problem. This is apparent here.

2 EXECUTIVE OFFICER DEDRICK: The alternative is you
3 could not grant a lease. There was no other lead agency
4 available. It's either you cannot grant them a lease or we
5 have to be lead agency. That's the current status of the
6 situation.

7 I agree with you. I served on the Public Utilities
8 Commission for three and a half years and I protested that
9 all the years I was there.

10 CHAIRMAN McCARTHY: Who designated this Commission
11 as the lead agency?

12 MR. SANDERS: I don't know whether designation is
13 the correct word, Mr. Chairman. We undertook that task to
14 enable the Commission to consider this particular project.
15 As Ms. Dedrick has indicated, if no CEQA work were to be
16 done, this Commission could not consider the lease
17 application.

18 CHAIRMAN McCARTHY: It might be appropriate that no
19 CEQA work is to be done. What we don't have established in
20 front of us so far is that there has been a single public
21 meeting to make that determination at the local level.

22 EXECUTIVE OFFICER DEDRICK: Not before the power
23 lines were built.

24 CHAIRMAN McCARTHY: What?

25 EXECUTIVE OFFICER DEDRICK: After the power lines

1 were built and when we became lead agency, there have been
2 public meetings. But prior to the construction of the lines
3 that are contested, you are quite correct.

4 The problem is that we're the first state agency to
5 have discretionary authority. Therefore, we're automatically
6 the lead agency. It's not something you get to accept or
7 reject. The law says you gotta do it.

8 CHAIRMAN McCARTHY: I wouldn't mind being the lead
9 agency if appropriate steps had been taken in the first
10 instance.

11 EXECUTIVE OFFICER DEDRICK: I agree.

12 CHAIRMAN McCARTHY: We haven't even heard from the
13 other two counties and don't know if they have the foggiest
14 notion of what's going on.

15 MR. SANDERS: They have been circulated the
16 document. But from your perspective, that's correct.

17 CHAIRMAN McCARTHY: Okay. Thank you.

18 Let's hear from the next witness. Now, apparently
19 these are citizens that have some question about this. I
20 don't know if they have any particular order they want to go
21 in or if they've talked to each other. I have five of them.
22 Do we need to hear from all five of them or are there one or
23 two spokespersons that we can hear from? We've got Karen
24 Ojeda. Do you want to designate who? Let me tell you who
25 we've got. We've got Claude Snead. We've got Jim -- and

1 forgive me -- Genasci. We've got Judith Balderston.

2 MS. BALDERSTON: Not on this issue.

3 CHAIRMAN McCARTHY: All right, we've got Karen
4 Ojeda, Claude Snead and Lois and George Findley. Who wants
5 to testify?

6 MR. NESSLER: I think Karen is going to come up and
7 speak for herself.

8 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, while
9 they're coming up it's fair to point out that under most
10 circumstances there is no state agency that issues a permit.
11 Therefore, no hearings are ever held on power lines of less
12 than 200 KV. That is to say there is no public input at all.
13 The PUC process allows a protest to be filed and that
14 protest --

15 CHAIRMAN McCARTHY: No matter how many poles or how
16 long the transmission line.

17 EXECUTIVE OFFICER DEDRICK: If it is less than a 200
18 kilovolt line, that is correct. The protest process occurs
19 after the construction of the line. I agree.

20 CHAIRMAN McCARTHY: All right, go ahead, please.

21 MS. OJEDA: My name is Karen Ojeda and I live in
22 Lathrop. I'm a member of the Lathrop Municipal Advisory
23 Council, but I'm here speaking as an individual.

24 This item has been heard a couple of times before
25 the Board of Supervisors only in order to get it before the

1 PUC. The Board of Supervisors did agree to file a complaint
2 with the PUC or send a letter of concern.

3 The original finding by the Board of Supervisors
4 chose to come to the State Lands Commission and oppose the
5 negative declaration. Two days later they reversed their
6 decision after meetings with the cogenerators and PG&E.

7 In the draft staff report by Mr. Bill Adams, who's a
8 PUC engineer, it was his recommendation that we come to the
9 State Lands Commission and show our opposition to the
10 negative declaration due to the inaccuracies. I have a copy
11 of his report which recommends that we come to you people and
12 he's an engineer of the PUC. So, he also recognizes you as
13 the lead agency in this particular process.

14 The negative declaration before the mitigation
15 measures were added was definitely inaccurate. With the
16 mitigation measures that have been added in there, we still
17 feel that there is a safety concern. We're trading off -- it
18 may be a little bit safer, but we're still trading one issue
19 of safety for another. You throw in a guardrail
20 continuous -- considering the fog in San Joaquin County and
21 especially in our area, it's a hazard. We have school buses
22 traveling down that road. So, you create another hazard
23 without any kind of a shoulder.

24 So, what we're asking is, because you're the lead
25 agency, that a focused EIR be done based on the traffic

1 study.

2 CHAIRMAN McCARTHY: Specifically, what do you hope
3 will come out of all this? What increased safety measures do
4 you or your neighbors have in mind?

5 MS. OJEDA: The ultimate is the relocation of the
6 poles. From what I understand, your function is to approve a
7 negative declaration that's accurate. We feel even with
8 guardrailing and whatever other mitigation measures that
9 Mr. Fukushima has recommended, that it's not and it's an
10 erroneous negative declaration.

11 CHAIRMAN McCARTHY: When the Board of Supervisors in
12 San Joaquin County, if what you've just told us is an
13 accurate representation of what's happened -- and I'm not
14 denying it -- changed its mind, was that a public hearing?

15 MS. OJEDA: The meetings with PG&E and the
16 cogenerators was not. That was the County Administrator and
17 the Chief Counsel meeting with them.

18 CHAIRMAN McCARTHY: Did all of the parties to this
19 issue come before the San Joaquin Board of Supervisors and
20 discuss this matter?

21 MS. OJEDA: Yes.

22 CHAIRMAN McCARTHY: Put the facts on the table.

23 MS. OJEDA: Yes.

24 CHAIRMAN McCARTHY: That's what I'm searching for,
25 how much -- was there a public hearing on this where

1 different parties in San Joaquin County had a full
2 opportunity to make their points.

3 MS. OJEDA: All after the fact.

4 CHAIRMAN MCCARTHY: The whole thing is after the
5 fact. Apparently, that's a sin of existing state law and
6 authority given to the utilites.

7 EXECUTIVE OFFICER DEDRICK: To the Public Utilities
8 Commission.

9 CHAIRMAN MCCARTHY: Public Utilites under existing
10 law. I'm saying that apparently what happened here is that
11 the generators did what I guess has been the practice in this
12 state for some time. They can install the poles if they're
13 under this power level without any public hearing.

14 MS. OJEDA: They had unlimited franchise rights.

15 CHAIRMAN MCCARTHY: So, they haven't violated the
16 law.

17 MS. OJEDA: They did not submit the development plan
18 that was requested by the County. They never submitted that.
19 They came back with a legal opinion of their counsel that it
20 was not required. Unfortunately, the County didn't follow
21 back after with that.

22 CHAIRMAN MCCARTHY: Okay. Well, let me mention that
23 it's very difficult -- what I was probing in the first place
24 was was there a public discussion of this issue, was there a
25 fair hearing where parties had an opportunity to make their

1 voices heard and then the elected officials of that county
2 making a decision in public. I think I heard your answer to
3 be yes. Not satisfied with the answer, but at least that
4 process apparently occurred.

5 The issue then before us is do we re-interpret or
6 countermand that local judgment. Do we have some appropriate
7 planning role to remake that decision.

8 MS. OJEDA: The Board of Supervisors' determination
9 was that the poles were not safe, that they wanted the poles
10 moved. But they didn't want to hurt the cogenerators who
11 were trying to do business in their county.

12 CHAIRMAN McCARTHY: It is nice to please everybody.
13 I'm just searching -- what was the decision? What in that
14 piece of paper that was voted by the Board of Supervisors was
15 said? What was their decision? They must have said we're
16 going to do this specifically.

17 MS. OJEDA: They are writing a letter to the PUC to
18 tell them --

19 CHAIRMAN McCARTHY: I mean, what did they vote on?
20 What was the document they voted on on this issue besides the
21 letter? What did they vote on? What's in the formal minutes
22 of the public hearing conducted by the San Joaquin Board of
23 Supervisors?

24 Do you have a copy? Elucidate us. I want you to
25 know how much I enjoy what we're doing right now.

1 The Board of Supervisors' document says:

2 "It is hereby ordered that the
3 Board of Supervisors accepts and
4 authorizes the Chairman of the
5 Board to sign a memorandum of
6 understanding between the County of
7 San Joaquin and Air Products and
8 Chemicals, Inc. concerning
9 mitigation of Harlan Road
10 transmission line pole placement.

11 "It is further ordered the Board
12 authorized the Chairman to sign the
13 letter which will be sent to the
14 Public Utilities Commission
15 expressing the strong concerns and
16 objections of the County of San
17 Joaquin regarding the current
18 placement of power poles along
19 Harlan Road and urging the power
20 poles be moved."

21 I don't know where that leaves us.

22 MR. VALENTINE: Mr. Chairman, if I may.

23 Denny Valentine.

24 The memorandum of understanding that was directed --
25 that the Public Works Department was directed to enter into

1 to assure that the mitigation necessary in the event that the
2 power poles were not ultimately moved as a result of the
3 authority yet to be exercised by the Public Utilities
4 Commission was entered into and that has since been expanded
5 on in concept in response to the investigations of your
6 staff, of the staff of the State Lands Commission.

7 They in fact, as a process of issuing -- or
8 recommending the negative declaration be issued sent out
9 questionnaires and inquiries to all known interested parties,
10 who include all the public agencies involved, for comments
11 and response.

12 Subsequent to that and in fact as a result of that
13 they received both from the Public Utilities Commission
14 staff, who investigated the location of those poles and
15 identified the accident frequency that has occurred along
16 this stretch of roadway, and the Public Works Department
17 report as to mitigation, which includes curbs,
18 reflecterization and in certain instances guardrails as well,
19 that now is attached as a condition hopefully of the permit
20 you will issue.

21 I don't believe that it's fair to characterize an
22 absolute absence of public input. Also, the County had
23 issued the encroachment permits necessary to PG&E to
24 ultimately put those poles where they are.

25 The public agencies to the extent that they were

1 authorized have been involved. Hearings have occurred. Thus
2 far everybody has done what they've been told to do and are
3 in fact prepared to do additionally what is being recommended
4 as a condition of the issuance of this permit to further
5 provide whatever mitigation that anybody can imagine
6 necessary along this stretch of road.

7 There is -- as it relates to the focused EIR that's
8 been suggested, I really don't believe that there's any more
9 information that can be generated other than what has already
10 been attested to by traffic engineers, by Public Utilities
11 Commission staff, by everybody who's looked at it. You can
12 only do what's being recommended.

13 CHAIRMAN McCARTHY: Is the letter that was sent to
14 the PUC from the San Joaquin County Board of Supervisors
15 somewhat detailed in what it requested in terms of mitigating
16 factors to try to address safety concerns on Harlan Road?

17 MS. QJEDA: I haven't read the letter. Wait a
18 second.

19 Brian, have you read the letter?

20 MR. NESSLER: There is a more detailed report that
21 the Commission has. You had a copy of that.

22 CHAIRMAN McCARTHY: We have read that letter that
23 the San Joaquin County Board of -- our staff has read the
24 letter that the San Joaquin County -- to the PUC from the
25 Board?

1 EXECUTIVE OFFICER DEDRICK: I'm trying to ascertain
2 that, Mr. Chairman.

3 Has staff reviewed that letter?

4 MR. SANDERS: We do not have that in our possession.
5 The only thing that we do have in our possession is that
6 which was attached to that, which has the following:

7 "It is the recommendation of the
8 Public Works Department that PG&E's
9 poles may be located according to
10 the following minimum standards of
11 horizontal clearance."

12 Then it gives three mitigations that have been
13 mentioned here. The outside of the declared roadway recovery
14 area the poles should be at least six feet and so forth and
15 so on, six inch concrete curb and then the guardrail
16 provision.

17 EXECUTIVE OFFICER DEDRICK: What's that?

18 MR. SANDERS: This is a document from the San
19 Joaquin County Department of Public Works that I've been told
20 was attached to the letter that has been just given to you.
21 We have not seen that letter from the Board of Supervisors.

22 EXECUTIVE OFFICER DEDRICK: Our input, because of
23 the structure of the process, is limited to begin with to
24 commenting on the neg dec. Staff recognizing very early in
25 the game that this is a whipsaw operation and that our

1 situation here is almost impossible attempted to negotiate a
2 satisfactory physical solution to the existing physical
3 problem.

4 That is the reason for the recommendations that are
5 before you. Those were negotiated in an effort to resolve
6 the problems that these people are discussing. They were
7 negotiated with the proper local authorities and with the
8 citizens, who did not accept them as sufficient to satisfy
9 their concerns.

10 I really don't know what else we could have done,
11 Mr. Chairman.

12 CHAIRMAN MCCARTHY: Did they incorporate any changes
13 that the Public Works Department had recommended to the San
14 Joaquin Board of Supervisors?

15 EXECUTIVE OFFICER DEDRICK: They go beyond those
16 recommendations as a matter of fact. Our recommendations
17 include guardrails, which the Public Works Department did not
18 feel was necessary.

19 MR. SANDERS: Until now.

20 EXECUTIVE OFFICER DEDRICK: Which they now feel are
21 necessary. But during the negotiations they did not.

22 It's been an exceedingly difficult project for the
23 staff to handle. There have been a lot of changes in
24 position of the negotiators. As you know, we have very
25 little authority here.

1 CHAIRMAN MCCARTHY: Comments from the two
2 Commissioners?

3 Commissioner Tucker.

4 COMMISSIONER TUCKER: The proposed mitigation which
5 has been distributed to anyone who has this public document
6 indicates the requirement of placement of guardrailing or
7 other measures deemed appropriate by the PUC and the San
8 Joaquin County Board of Supervisors, which may include
9 relocation of power poles along Harlan Road, et cetera.

10 Is that -- are you telling -- are the people who are
11 here who are opposed to this telling us that they don't have
12 confidence in the San Joaquin County Board of Supervisors to
13 impose this? Because as I read this, what we would be doing
14 is saying, look, if the local official's public as
15 represented by their Board of Supervisors feel that this
16 ought to be moved, then it has to be moved.

17 I mean, we're trying to avoid making that decision
18 that ought to be made at the local level and indicating that
19 the Board of Supervisors ought to make that decision.

20 MS. OJEDA: The Board of Supervisors cannot force
21 them to move the poles.

22 COMMISSIONER TUCKER: But this is a measure that if
23 they don't comply with it, then, as I understand it, our
24 approval is not effective. In other words, we're saying our
25 approval is not effective unless this mitigation measure is

1 complied with, is that correct?

2 MR. SANDERS: Yes, sir, that's correct.

3 COMMISSIONER TUCKER: So, if the Board of
4 Supervisors says to move it --

5 MR. SANDERS: Or the PUC.

6 COMMISSIONER TUCKER: Or the PUC and they don't move
7 it, then the matter is not approved pursuant to what we're
8 adopting here.

9 MR. NESSLER: That would be a different mitigation
10 measure than we had understood previously.

11 COMMISSIONER TUCKER: Well, it's right here.

12 MR. NESSLER: Previously it had been indicated that
13 that mitigation measure said -- indicated that the --

14 COMMISSIONER TUCKER: Why don't you read this. I
15 don't care what it was previously. Let's talk about what it
16 is now. This is what staff is proposing to us that we adopt.

17 MR. NESSLER: Okay, the end of that sentence, "The
18 placement of guardrailing and/or any other measures deemed
19 appropriate by the California Public Utilities Commission
20 and/or the San Joaquin County Board of Supervisors which may
21 include the relocation of the power poles along Harlan Road
22 from the west side to the east side if so required by the
23 CPUC". That doesn't indicate that the San Joaquin County
24 Board of Supervisors would have that authority.

25 COMMISSIONER TUCKER: Can we take out that "if so

1 required by the PUC"?

2 EXECUTIVE OFFICER DEDRICK: What would be the
3 significance of doing that?

4 MR. SANDERS: The operative agency in this
5 particular instance is the CPUC. The San Joaquin County
6 Board of Supervisors as indicated here may take a position
7 and may encourage the CPUC to take a specific action. But
8 they in and of themselves as at least represented here do not
9 have the wherewithal to have them move poles.

10 COMMISSIONER TUCKER: I understand that. But if
11 we're making our approval contingent on the Board of
12 Supervisors agreeing that that's where they ought to be
13 located, the question is can we do that?

14 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I think
15 that what we're discussing here is a proposal that if the
16 State Lands Commission doesn't have the authority to require
17 the poles be moved, then the State Lands Commission requiring
18 the poles to be moved if San Joaquin County requires them,
19 which also doesn't have the authority, I don't think that
20 gets you anywhere.

21 CHAIRMAN McCARTHY: The difference is that we're
22 looking at a Board of Supervisors' resolution which itself is
23 contradictory.

24 EXECUTIVE OFFICER DEDRICK: Well, that is certainly
25 true.

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CHAIRMAN MCCARTHY: The first paragraph "The Board is authorizing the Chairman of the Board to sign a memorandum of understanding between the County and Air Products ..." and the second paragraph we read a mea culpa expressing the strong concerns and objection of the County regarding the current placement of power poles.

How about just a clean position? Supervisor Carter, it says here, made the motion. How about simply a position of we're against the poles and we want them removed if that's what the Board of Supervisors are saying, or we want mitigation factors and we understand the poles are going to stay. Instead of this.

I think what Commissioner Tucker is trying to suggest is maybe it would be appropriate for the elected officials who were elected at the local level to make a decision.

Do you have any comment on that, Mr. Nessler? Because this resolution is two decisions.

MR. NESSLER: I can speak for Supervisor Sousa and his position. You know his position. I just related to you his position. I don't think he did take two positions as you indicated.

CHAIRMAN MCCARTHY: I didn't say Supervisor Sousa. I don't even know who voted on this thing, but Supervisor Carter and Supervisor Willhite were the movers of the motion.

1 I'm just looking at the document. I was on the board of
2 supervisors, I have an idea how decisions are made.

3 All we're suggesting is this is a decision that
4 should have been made. Now, whatever your decision is, we're
5 not inclined to contradict.

6 MR. NESSLER: It's my understanding that -- I don't
7 have that right in front of me. But the indication on there
8 is that the Board of Supervisors requested that the poles be
9 relocated.

10 CHAIRMAN MCCARTHY: No, no, I'm sorry. I would have
11 to give the most generous liberal interpretation of this
12 language to come to that conclusion. The second paragraph is
13 that: "The Board authorizes the Chairman of the Board to
14 sign a letter which will be sent to the Public Utilities
15 Commission expressing the strong concerns and objections to
16 the County regarding the current placement of power poles and
17 urging that the power poles be removed." Well, okay.

18 See, the first paragraph is contradictory to that
19 when you authorize going forward with the signing of the
20 memorandum of understanding. The PUC is going to read this
21 and they're going to say, wait a minute, you're taking two
22 different positions here.

23 Would you concede that much?

24 MR. NESSLER: Yes. It's my understanding that --
25 and if I can try and enlighten it a little bit. It's my

1 understanding --

2 CHAIRMAN MCCARTHY: If we received from the Board of
3 Supervisors either paragraph, our task would be easy. We
4 make decisions all the time, but your Board heard your
5 citizens on this issue and the applicants. They should have
6 passed one paragraph making a decision.

7 Where are we on this thing besides irritated?

8 MR. VALENTINE: Mr. Chairman, if I could.

9 CHAIRMAN MCCARTHY: Mr. Valentine.

10 MR. VALENTINE: With regard to the letter. While it
11 does appear on its surface and in this context to be somewhat
12 convoluted, I believe in fact it recognizes the Board of
13 Supervisors' understanding of who had jurisdiction and
14 authority as it relates to the issue of movement of the
15 poles.

16 Therefore, as it relates to their jurisdiction,
17 which is to establish mitigating features if those poles are
18 to remain where they are, they directed that that occur and
19 simultaneous to that they also recognize that the Public
20 Utilities Commission was going to have a hearing on the
21 location of those poles the 23rd of this month, this coming
22 Friday. So, as it relates to that process and that hearing
23 yet to occur, they also directed that that hearing be advised
24 of their position as it relates to the jurisdiction of that
25 Commission.

1 CHAIRMAN McCARTHY: Mr. Valentine, I admire that
2 supple explanation. We understand the process. If this
3 Board of Supervisors wanted these poles removed, they should
4 have taken a clean, strong position to that effect. Then if
5 they lost that at the PUC, they could have come in with the
6 memorandum of understanding.

7 MR. VALENTINE: That's fine.

8 CHAIRMAN McCARTHY: Commissioner Tucker, do you have
9 any suggestions to get us out of this?

10 COMMISSIONER TUCKER: It seems to me that we should
11 adopt the staff recommendation, delete the words ~~that~~ so
12 required by the CPUC" and give the County Board of
13 Supervisors the opportunity and the responsibility where I
14 think it appropriately lies to express an unequivocal opinion
15 as to where these poles ought to lie.

16 I don't see that we can make a decision like that
17 regarding something that's obviously important to and impacts
18 a group of people that we really don't have any contact with.

19 It seems to me that if that happens, the result
20 would be the Board of Supervisors either says to impose
21 mitigation, remove the poles or they say that everything's
22 fine as it is; in which case the project goes forward.
23 Otherwise if this mitigation measure isn't met, then it seems
24 to me the result is we don't end up adopting the negative
25 declaration and we take it from there.

1 CHAIRMAN MCCARTHY: I hope everybody in the audience
2 understands what we're painfully going through here. If we
3 don't clarify the level of decisionmaking responsibility,
4 this Commission would be flooded with similar matters coming
5 before it up from local government without a hearing process
6 and without a clear decision having been made.

7 Yes, sir.

8 MR. FEHLMAN: Mr. Chairman, I'm Bob Fehlman, project
9 manager for Pacific Gas and Electric and on this particular
10 project.

11 PG&E would not agree to deleting "if so required by
12 the CPUC" for the reason that's already been stated here more
13 than once that the County does not have the jurisdiction on
14 the placement of the pole lines. We have a franchise
15 agreement with them. We have stated we are more than willing
16 to comply with the jurisdictional body's decision. That
17 being the PUC. And we would request that that language be
18 left in. Thank you.

19 COMMISSIONER TUCKER: Would you disagree that the
20 Commission could refuse to adopt the negative declaration?

21 MR. FEHLMAN: I don't disagree with that. That's
22 the Commission's decision.

23 COMMISSIONER TUCKER: That would be your preference
24 for us to refuse to adopt the negative declaration?

25 MR. FEHLMAN: Our preference would be that the

13
1 negative declaration be adopted, but only if the language "if
2 so required by the CPUC" is inserted. Because they are the
3 jurisdictional body and this case will be presented before
4 them on Friday of this week.

5 All of these issues will be heard by expert
6 witnesses in some detail. We have already agreed, obviously,
7 that we will comply with the CPUC ruling, whatever that might
8 be, including relocating the poles if that's their decision
9 as a jurisdictional body.

10 But to lay that decision by act of this Commission
11 on San Joaquin County or any other county when that has not
12 been the practice or the precedent in the State of California
13 I think would not be acceptable to our company.

14 CHAIRMAN McCARTHY: Mr. Stevens.

15 MR. STEVENS: Mr. Chairman, if I may suggest. The
16 negative declaration must be an accurate description of the
17 environmental effects and mitigation measures must be a
18 description and nothing more of what has been undertaken by
19 the applicant.

20 So, to that extent I think the gentleman from PG&E
21 is right. The Commission cannot confer jurisdiction on the
22 Supervisors that they don't have by amending the terms of the
23 mitigation. I think that the CPUC must have the
24 responsibility for location of those poles. We can't impose
25 a condition by means of a negative dec. You can reject the

1 negative dec and order an environmental impact report. But
2 we could not impose this additional --

3 CHAIRMAN MCCARTHY: I don't think Commissioner
4 Tucker was suggesting that we were going to convey
5 jurisdiction on the San Joaquin Board of Supervisors. I
6 think what he was trying to achieve here was having that
7 Board of Supervisors which had to act on this in a public
8 hearing make a clear decision on what they wanted.

9 MR. STEVENS: Unfortunately, the mitigation measure
10 is not a mitigation measure if it's not accepted by the
11 applicant as being one of the terms of which it will comply.
12 I think the applicant has said that it would not comply with
13 the condition that the Supervisors must decide where those
14 poles should be.

15 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, your
16 authority really lies in your lease document. It seems to
17 me -- and Bob and I have been just talking about this -- that
18 you could make that supervisory discretion a condition of
19 the lease and handle -- because I believe -- I'm sure
20 Mr. Stevens is correct that you can't do things like that
21 with the mitigation. But you can certainly do it in your
22 lease document.

23 COMMISSIONER STANCELL: Is that the same as
24 conveying the authority that rests with the PUC to the Board
25 of Supervisors?

1 EXECUTIVE OFFICER DEDRICK: I think that issue
2 remains open. I mean, the PUC has the authority that has
3 withstood an awful lot of legal challenge. It might not
4 withstand a legal challenge in this case.

5 COMMISSIONER STANCELL: But even if we --

6 EXECUTIVE OFFICER DEDRICK: San Joaquin does not
7 have the authority. That is true.

8 COMMISSIONER STANCELL: So, if we adopted the
9 recommendation to drop that sentence or phrase which the
10 gentleman finds objectionable, given the jurisdiction that is
11 clearly established it's a moot point. Because PUC will
12 certainly step in any way.

13 EXECUTIVE OFFICER DEDRICK: But the lease would not
14 be operational unless that condition were satisfied. If that
15 is the desire of the Commission is for the San Joaquin
16 Supervisors to take a firm position, you could -- the lease
17 would not be operable if you added that condition until they
18 did so.

19 COMMISSIONER STANCELL: Until they take a firm
20 position.

21 EXECUTIVE OFFICER DEDRICK: And then if their firm
22 position is undergrounding the lines, then the lease is not
23 operable until the PUC requires --

24 COMMISSIONER STANCELL: Authorizes it.

25 EXECUTIVE OFFICER DEDRICK: You would then have a

1 stalenate on the issue, I assume.

2 COMMISSIONER STANCELL: So, we in effect would be
3 placing the operation of our permit in the hands of PUC.

4 EXECUTIVE OFFICER DEDRICK: Yes, but you regularly
5 do that with any lease. For example, any lease along the
6 coast is, as all our leases are, subject to other
7 jurisdictions.

8 COMMISSIONER STANCELL: Just want to make sure I
9 understood.

10 CHAIRMAN McCARTHY: What is the language you're
11 suggesting to achieve what you just suggested?

12 EXECUTIVE OFFICER DEDRICK: Well, leaving the
13 language in the mitigation as the attorneys have said it
14 should stay and putting in the lease a condition that met
15 your requirements in regard to the San Joaquin County Board
16 of Supervisors. That would accomplish what you said you
17 wanted to accomplish, I think.

18 Bob, I'm sure, can devise whatever needs to be done.

19 CHAIRMAN McCARTHY: The Commission is prepared to
20 act on this unless someone has some new testimony to add at
21 this moment that is startlingly different.

22 Yes, sir.

23 MR. FINDLEY: I would like to speak, sir.

24 CHAIRMAN McCARTHY: Go ahead.

25 MR. FINDLEY: I'm George and this is my wife Lois.

1 Findley.

2 Now, we brought the PUC action and we were not
3 notified by the County when they were going to have meetings.
4 The PG&E --

5 CHAIRMAN MCCARTHY: Notified by whom?

6 MR. FINDLEY: We were not notified by anybody in the
7 County when they were going to have meetings. We run down a
8 lot of this stuff, went to the Public Works Department and a
9 lot of places, got nowhere until we found out there were the
10 papers and we forced them to give us a paper. A lot of it
11 was incomplete.

12 Then we went to French Camp and LMAC meetings and
13 Manteca and told them what was going down. They didn't know
14 what was going down.

15 PG&E says in one of their testimonies by Don Foley
16 that they informed all jurisdictions. They informed none.
17 We weren't informed of any of these Supervisors' meetings.
18 We just happened to hear about one, which they declared that
19 the poles should be moved.

20 Then the other meeting we weren't informed of
21 Willhite and the other supervisor with PG&E. I think that
22 one of the people from the jurisdictions should have been
23 there.

24 The only permit that I understand that PG&E has is
25 an encroachment permit that they got. They applied for it on

1 the 24th of June and they started stuffing the poles in the
2 ground. But they didn't get the permit. They just applied
3 for it. They didn't get the permit until July the 10th and
4 the poles were already in the ground, most of them.

5 I don't like this. I don't like to be treated this
6 way. I don't think citizens ought to be treated this way.

7 CHAIRMAN MCCARTHY: Permit from the Public Works
8 Department?

9 MR. FINDLEY: Yes, an encroachment permit and it was
10 incomplete. I went in there the other day, I heard there was
11 52 pages. We got about four pages. I asked them for the
12 other pages and they didn't know what they were or where they
13 were at.

14 The whole thing has been on a clandestine operation
15 with PG&E right from the start. We started this way back in
16 February. We wrote a letter to the PUC, which they received
17 on April the 3rd, a five-page letter, and then we -- there
18 was nothing apparently done about it. So, we went down there
19 in June to find out what was being done about it and then we
20 filed a formal complaint. We made out 17 copies. That's a
21 result of this PUC hearing.

22 They just started stuffing poles in the ground when
23 they found out we were doing that. Then I had aerial
24 photographs taken before the poles were in and after the
25 poles were put in.

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CHAIRMAN MCCARTHY: Thank you, Mr. Findley.

MR. FINDLEY: My wife might want to speak on this matter.

MS. FINDLEY: I have prepared testimony. I will read just a certain part here.

Would you please turn to page 2 of Attachment A of your negative declaration?

EXECUTIVE OFFICER DEDRICK: Just a moment, Commissioners. We'll identify the page for you.

MR. HIGHT: 257, I believe.

EXECUTIVE OFFICER DEDRICK: Project description.

MS. FINDLEY: Page 2 under Stockton Segment where it states -- line six where it states:

"The line jogs east one block to Harlan Road at this point and continues south in a franchise position along Harlan Road until just south of Louise Avenue where the line turns east to connect the cogeneration plant at the Libby Owens Ford Plant."

There is certain information left out of this paragraph. I would hate to think deliberately, but our feeling is that it was in order to not show a significant impact.

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1 The information omitted is the franchise position
2 alluded to is county road franchise and it follows and lies
3 between Harlan Road and Interstate 5 freeway. This could
4 have been and should have been installed along the east side
5 of Harlan Road where there is an already in-use utility
6 franchise distribution line just for that maybe two miles of
7 dangerous pole line.

8 This impacts traffic safety in that area on both
9 Harlan Road and Interstate 5 as accident reports could show
10 you and wasn't even considered because information was
11 apparently not provided. The attached map doesn't provide
12 enough detail to even suggest where Interstate 5 is.

13 Therefore, we suggest that -- my husband, my family
14 and most of the members in the Lathrop and French Camp
15 areas -- that the mitigation measure submitted to this
16 negative Declaration does not correct the significant impact
17 of safety, but circumvents safety guidelines and regulations
18 to have implemented for the public's protection.

19 We would ask this Commission to deny a Negative
20 Declaration 419 and call for a full and complete
21 environmental impact report. Thank you.

22 CHAIRMAN MCCARTHY: Thank you very much.

23 MR. FINDLEY: I might add again, sir, that the
24 utility easement or franchise on the east side of Harlan Road
25 is about 20 feet wide. The one on the west side of

1 Harlan Road is about on the average eight and a half feet
 2 from a fog line to the six foot chain link steel fence. This
 3 is a 115,000 volt line hanging above between these two
 4 highways above a chain link fence. A serious accident could
 5 bring those wires out inside of that fence and you would have
 6 an electrical grid that somebody could get into and it would
 7 either cause a bad fire or catastrophe. I don't think you
 8 want that.

9 If an environmental impact had been imposed on F&E
 10 to start with, we wouldn't be discussing this here today.
 11 Thank you, sir.

12 CHAIRMAN MCCARTHY: Thank you both for your
 13 testimony.

14 I think the Commission is ready to make a decision.
 15 Let me reiterate that on the safety issues and the other
 16 matters, we're really not in a position this far from the
 17 scene to make a judgment on each of these things; but the San
 18 Joaquin County Board of Supervisors is and I think we have
 19 some hesitancy in the absence of some clear decisions moving
 20 forward with this.

21 So, we want the staff to repeat the recommendation
 22 about amending the lease terms.

23 EXECUTIVE OFFICER DEDRICK: If it is the
 24 Commission's -- Jan has devised some language.

25 MR. STEVENS: It's my understanding that the

1 Commission would approve the lease subject to the condition
 2 that should the CPUC or the Board of Supervisors of San
 3 Joaquin County require guardrailing and other measures deemed
 4 appropriate including relocation of the power poles along
 5 Harlan Road from the west side to the east side shall be a
 6 condition of that lease, is that correct?

7 COMMISSIONER TUCKER: Correct.

8 MR. STEVENS: If the supervisors then took no action
 9 or the CPUC took no action, then the lease would proceed and
 10 PG&E would be permitted to complete construction.

11 CHAIRMAN MCCARTHY: Have the supervisors in their
 12 action at any point made a judgment that with such guardrails
 13 that this area is going to be safe for public use?

14 EXECUTIVE OFFICER DEDRICK: Let me ask Dwight
 15 Sanders that. I believe that that has not occurred. It has
 16 occurred at a staff level, not at the Board of Supervisors
 17 level.

18 MR. SANDERS: That is correct, Mr. Chairman. The
 19 Department of Public Works has indicated that guardrailing is
 20 a feature that they would encourage if the poles are not
 21 moved and they have indicated that the recommendations are
 22 based on the criteria set by the American Association of
 23 State Highway Officials in Geometric Design Guide and so
 24 forth and so on and guidelines recommended in a highway
 25 design manual published by Caltrans.

1 So, they have made that determination; the
2 Department.

3 CHAIRMAN McCARTHY: By putting the phrase in there
4 "and other appropriate safety measures."

5 EXECUTIVE OFFICER DEDRICK: All right.

6 CHAIRMAN McCARTHY: Now, that's an amendment to the
7 lease.

8 EXECUTIVE OFFICER DEDRICK: That's the
9 understanding.

10 CHAIRMAN McCARTHY: Terms of the lease.

11 EXECUTIVE OFFICER DEDRICK: So, your action would be
12 then to adopt or to certify the neg dec as submitted and the
13 lease as amended. And adopt and approve the lease as
14 amended.

15 CHAIRMAN McCARTHY: That's correct.

16 Commissioner Tucker.

17 COMMISSIONER TUCKER: I just want to make clear
18 here. First of all, I don't think any of the Commissioners
19 have any animus towards PG&E or its project or whatever.
20 We're really not passing judgment on that at all. I think if
21 we were dealing with the issue of the lease itself, my guess
22 is all the Commissioners would say fine.

23 The issue here is that local people, if they have a
24 complaint about this, we are trying to make clear that the
25 burden is on them to go to their local representatives. If

1 those local representatives say this thing has to be moved,
2 then that is a condition of the lease. If you don't get them
3 to take that action, then the lease goes forward.

4 So, the responsibility-it seems to me is where it
5 ought to be on the local elected officials and the citizens
6 of this area that are affected to come to some decision on
7 this.

8 CHAIRMAN MCCARTHY: Commissioner Stancell.

9 COMMISSIONER STANCELL: Mr. Chairman, I'd just like
10 to express that I'm a little dismayed that the process had to
11 take on the course that it has. I wish there was some way or
12 some assurance that could be provided that the State Lands
13 Commission wouldn't find itself in the position that we found
14 ourselves today where we almost have to verify or ratify an
15 after-the-fact action of another agency's jurisdiction.

16 I was just wondering if there was something that we
17 could instruct the staff to pursue in terms of having us to
18 be placed in this kind of a situation again.

19 EXECUTIVE OFFICER DEDRICK: There are a lot of
20 statutory restrictions on the Commission's actions and one of
21 them is that the question of -- when an application is
22 received, for example, in the instance --

23 CHAIRMAN MCCARTHY: Let's vote and then we will talk
24 about this after.

25 EXECUTIVE OFFICER DEDRICK: Fine.

1 CHAIRMAN McCARTHY: This one has been beat to death.
2 Any other staff comment?

3 EXECUTIVE OFFICER DEDRICK: No.

4 CHAIRMAN McCARTHY: Ready for a motion.

5 COMMISSIONER TUCKER: I move it.

6 CHAIRMAN McCARTHY: Commissioner Tucker moves.

7 COMMISSIONER STANCELL: Second.

8 CHAIRMAN McCARTHY: Commissioner Stancell seconds.
9 The Commission votes unanimously for the amended
10 lease.

11 Item 33.

12 EXECUTIVE OFFICER DEDRICK: Item 33 is off calendar,
13 Mr. Chairman, and I believe that's the end of the meeting.

14 CHAIRMAN McCARTHY: We have taken a vote count?

15 EXECUTIVE OFFICER DEDRICK: Yes. The applicant has
16 withdrawn.

17 CHAIRMAN McCARTHY: That's the end of the Commission
18 meeting.

19 EXECUTIVE OFFICER DEDRICK: Thank you.

20 (Thereupon the meeting of the State Lands
21 Commission was adjourned at 11:35 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EILEEN JENNINGS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing meeting was reported in shorthand by me, Eileen Jennings, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of November, 1987.


EILEEN JENNINGS
Certified Shorthand Reporter
License No. 5122