
SUSQUEHANNA RIVER BASIN COMMISSION
PUBLIC HEARING

TRANSCRIPT OF PROCEEDINGS

BEFORE: HERBERT M. SACHS, CHAIRMAN
SUSAN K. WEAVER
KENNETH P. LYNCH
COLONEL PETER W. MUELLER

DATE: DECEMBER 5, 2007, 2:30 P.M.

PLACE: FRANKLIN AND MARSHALL COLLEGE
ALUMNI SPORTS & FITNESS CENTER
929 HARRISBURG PIKE
LANCASTER, PENNSYLVANIA

APPEARANCES:

SUSQUEHANNA RIVER BASIN COMMISSION
BY: RICHARD A. CAIRO, GENERAL COUNSEL

FOR - SUSQUEHANNA RIVER BASIN COMMISSION

HELENA L. BOWES, RPR
NOTARY PUBLIC

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1 THE CHAIRMAN: The commission will now
2 convene a public hearing regarding five separate
3 matters.

4 Part 1 of this hearing will review project
5 review applications that have been submitted for
6 Commission action at this meeting.

7 Part 2 will consider enforcement matters
8 regarding three projects.

9 Part 3 will cover requests for
10 administrative hearing made on the Section 808.2 of the
11 Commission's regulations - administrative appeals.

12 Part 4 will consider extension of
13 emergency certificates issued to the City of Lock Haven
14 and the Houtzdale Municipal Authority for water
15 withdrawals.

16 Finally, part 5 will deal with the
17 proposed adoption of certain revisions to the project
18 fee schedule.

19 For all five parts of this public hearing,
20 the Chair reserves the right to limit oral statements
21 or testimony in the interest of time and to otherwise
22 control the course of this hearing. Also, with respect
23 to any public testimony, those who indicated in advance
24 that they wish to testify will be called upon first.

25 Part 1, project review. With respect to

1 the first hearing item, the members of the Commission
2 have received and reviewed copies of proposed docket
3 actions pertaining to each of the project applications
4 on the agenda for today's meeting.

5 The staff will first describe the
6 projects, and the Commission will then hear any
7 comments that the applicant or members of the public
8 may have on what action the Commission should take
9 under Section 3.10 of the Susquehanna River Basin
10 Compact, the Commission may approve, approve as
11 modified or reject proposed projects.

12 Mike, you may proceed with the dockets.

13 MR. BROWNELL: Thank you, Mr. Chairman.

14 First, I'd like to just touch briefly on
15 the project regulations themselves and some general
16 descriptions about what we're making recommendations on
17 on these project approvals.

18 The regulations that we're going to be
19 talking about today primarily are centered around the
20 groundwater and the surface water regulations, which
21 are withdrawals greater than 100,000 gallons per day,
22 and also the consumptive water use regulation, which
23 triggers on 20,000 gallons per day and has a 30-day
24 average. In all of these projects there are some
25 standard requirements, some standard conditions that

1 are attached and that are part of the review process.

2 First of all, all of the projects that are
3 before you, there were notification requirements, all
4 of these projects had to publish notification in
5 newspapers, they had to notify county and local zoning
6 officials of the project and also contiguous property
7 owners, any persons with property that touches their
8 property where the project is located.

9 The Commission staff then coordinates all
10 of our findings and recommendations with the other
11 member jurisdictions and the local officials. There
12 are also requirements for aquifer testing, for
13 groundwater withdrawals. And later on in today's
14 meeting, staff is going to be recommending some changes
15 and enhancements for aquifer testing procedures that
16 we're pretty excited about.

17 For all of the approvals that are before
18 you there are metering requirements and monitoring
19 reporting requirements, there are periodic inspections
20 that are completed by Commission staff to assure that
21 the project is operating in conformance with the
22 approval.

23 For all projects that have an impact,
24 either an environmental impact to a water resource or a
25 consumptive use withdrawal and consumptive use that

1 requires mitigation, that is included in the approvals.

2 There's also water conservation
3 procedures, and also a docket re-opener for all
4 projects that can be re-opened if, in the judgment of
5 the Commission, there's something that needs to be
6 changed down the road.

7 We have eight projects we're going to talk
8 about this afternoon. We're going to begin in the
9 upper Susquehanna with the Village of Waverly.

10 The Village of Waverly is asking for a
11 modification of their groundwater approval. They want
12 to withdraw 576,000 gallons a day from Well 4, and a
13 30-day total system withdrawal limit of 1.1 million
14 gallons per day. Village of Waverly is located in
15 Tioga County, New York.

16 Moving down to the middle Susquehanna,
17 Snow Mountain. This is a modification of surface water
18 withdrawal from 7.3 million gallons per day from the
19 Dam 5 Reservoir, and a consumptive water use of 1.6
20 million gallons per day for snowmaking in a water-based
21 amusement operation. This project has recently been
22 sold. This is coming in under the transfer of
23 ownership provision and the Commission's new
24 regulations that became effective last year. And then
25 there's also the addition of this new water park at

1 this facility.

2 Moving to the west branch, two projects:
3 The Graymont, Pleasant Gap facility and Glenn O.
4 Hawbaker, Pleasant Gap facility. This is a
5 modification of both projects and there is a transfer
6 of a groundwater withdrawal from between the projects.

7 The Hawbaker facility is transferring a
8 groundwater well to the Pleasant Gap facility, the
9 Graymont facility. And so, there's a modification of
10 both approvals in order to effectuate that transfer.

11 And finally, in the west branch, the
12 Parkwood Resources, Cherry Tree Mine. This is the
13 first underground coal mine that the Commission is in
14 the process of regulating, and this is for consumptive
15 water use, 315,000 gallons per day. There's also an
16 associated groundwater withdrawal that is covered under
17 the Memorandum of Understanding with Pennsylvania as it
18 relates to mining projects.

19 This project also did operate in
20 noncompliance with the Commission's regs, regulations
21 for a period of time, and has offered a settlement for
22 that noncompliance. And that staff is recommending
23 that the settlement be accepted and the project be
24 approved.

25 Finally, in the lower Susquehanna, three

1 more projects: Mountainview Thoroughbred Racing
2 Association. This is a modification of an existing
3 consumptive water use approval. The consumptive use
4 amount of 438,000 gallons per day is not being changed.
5 What is being changed is that this facility is
6 undergoing a change in process there where it's more
7 than just a horse racing facility. They will now have
8 a casino there to be attached to it.

9 That casino facility has evaporative
10 cooling use and also human consumption portions that
11 are also consumptive water use, and this approval needs
12 to be modified in order to allow for that activity to
13 occur. This approval does not include a groundwater
14 withdrawal request that the Commission staff is
15 anticipating, and work is ongoing with that part of the
16 project, even as we speak, and we expect to see that in
17 the future coming before the commissioners.

18 King Drive Corporation, this is a golf
19 club at Felicita. This is a modification of that
20 project. Their source of water of surface water
21 withdrawal is from Fishing Creek, 500,000 gallons per
22 day. This particular modification is to actually add
23 an off-stream storage location, a storage pond, so that
24 they can curtail their withdrawal from Fishing Creek
25 and use water that they have stored in that pond during

1 times of low flow.

2 And this was a recommendation that staff
3 had made, a requirement that staff had made, back in
4 2002. And this is the proper followthrough on that
5 condition at this point to have that storage pond in
6 the system.

7 Finally, the York Plant Holding Company,
8 consumptive water use of 575,000 gallons per day for
9 power plant operation. This project, again, is coming
10 before the Commission because of the new transfer of
11 ownership regulations approved last December and
12 effective in late February. And that project is just
13 going through its normal process to come in and get
14 that approval issued in its own name.

15 Mr. Chairman, those are the eight projects
16 staff has before you as recommendations today. We
17 respectfully request that you approve them as
18 presented.

19 THE CHAIRMAN: Thank you.

20 Do any of the commissioners have any
21 questions or comments?

22 Hearing none, we'll take testimony from
23 the floor. We have Jo Ellen Litz. Good afternoon.

24 MS. LITZ: Good afternoon, ladies and
25 gentlemen. My apologies for not being able to project

1 this morning. I have a bit of a cold.

2 My name is Jo Ellen Litz, and I'm a
3 commissioner in Lebanon County. I'm also president of
4 the Swatara Creek Watershed Association.

5 And my purpose today is I understand that
6 there's a future request coming on Project Number 6 for
7 the Thoroughbred Racing Association. And I wanted to
8 make sure that the Commission is aware that Lebanon
9 County is partial host to the facility.

10 And I brought along a PowerPoint that I
11 can give to you so that you are aware that we have
12 22-and-a-half acres in Lebanon County, and we are the
13 recipient of most of the runoff. And there is an
14 animal waste pile and a human waste processing facility
15 on the border between Dauphin and Lebanon Counties.

16 The direction of flow is towards Lebanon
17 County, it's all part of the Swatara Creek Watershed
18 Association. And we have a keen interest in following
19 this project. So we would like to leave this with you
20 and request that we be kept informed.

21 THE CHAIRMAN: Thank you very much. We
22 will keep you informed.

23 Peter Olmstead, do you wish to talk to any
24 of the docket items?

25 MR. OLMSTEAD: That was a mistake. I'm

1 sorry.

2 THE CHAIRMAN: Jaromin Kovarik, do you
3 wish to speak to a docket item?

4 MR. KOVARIK: Yes.

5 THE CHAIRMAN: Okay.

6 MR. KOVARIK: My name is Jaromin Kovarik.
7 Some of you know me as Jaromin. I apologize for my
8 accent. If I get excited sometimes my use and
9 knowledge might be probably from a different language.
10 I'm a polite person. Don't feel offended if I say
11 something you don't understand.

12 I'd like to thank the Commission and
13 Chairman for giving me opportunity to speak. My client
14 is East Hanover Township. I would like to say a few
15 words about Mountainview Thoroughbred Racing
16 Association project as well.

17 As of today, we are aware that there are
18 some activities which, in fact, we'll probably need to
19 request for increase of allowed withdrawal. However,
20 until today, we haven't really received from the
21 applicant any contact.

22 And I would just like to stress that East
23 Hanover Township has all of the residents on
24 groundwater supply, so East Hanover Township ordinance
25 is very strict about groundwater withdrawal. And as of

1 today, it looks that applicant might not be able to
2 comply and perhaps some other way will need to be
3 legal.

4 Therefore, we would like to work very
5 closely with the Commission, be informed. And if we
6 can form some task force to make this project go
7 forward with their problems, that would be ideal.
8 Thank you very much.

9 THE CHAIRMAN: Thank you, sir.

10 Scott Gould, do you wish to speak to any
11 of the docket items?

12 Is Scott Gould here?

13 Mr. Eric Epstein -- Scott Gould, do you
14 wish to speak to any of the docket items?

15 MR. GOULD: No, thank you, unless there is
16 another comment.

17 THE CHAIRMAN: Thank you, sir.

18 Eric Epstein, do you wish to speak to any
19 of the docket items?

20 MR. EPSTEIN: Do you want me to come up
21 now?

22 THE CHAIRMAN: No, no, we want to finish
23 the docket now first.

24 Is there anyone else who wishes to make
25 any comments on any of the docket items?

1 Hearing none, we would then proceed to a
2 final vote on staff recommendations for applications on
3 the docket items. Do I have a recommendation?

4 MR. LYNCH: I move to approve the dockets
5 as recommended by staff.

6 THE CHAIRMAN: A second?

7 COLONEL MUELLER: Second.

8 THE CHAIRMAN: A motion to approve,
9 second. The docket has been approved.

10 MR. SWARTZ: We have to take a vote.

11 THE CHAIRMAN: All in favor say aye. All
12 opposed.

13 (Vote taken.)

14 THE CHAIRMAN: Unanimous vote.

15 We will now proceed to part 2, enforcement
16 actions. This is the second part of our hearing
17 regarding enforcement actions relating to Cooperstown
18 Dreams Park, Inc., Sand Springs Development Corporation
19 and BC Natural Chicken, LLC. Mike.

20 MR. BROWNELL: Thank you, Mr. Chairman.

21 The first settlement agreement I'd like to
22 recommend for your ratification is to Cooperstown
23 Dreams Park, in the town of the Hartwick, that's a town
24 in New York. This specific project is under approval
25 with the Commission and did operate in violation of

1 that approval during 2005 and 2006.

2 The amount of the settlement agreement is
3 \$8,729,000. And the settlement agreement has been
4 signed and offered and tendered by the project
5 applicant, along with a good faith payment. The staff
6 does recommend the acceptance of that offer.

7 The second settlement agreement I'll
8 recommend for your acceptance is the Sand Springs
9 Development Corporation, Sand Springs Golf Community,
10 located in Butler Township, Luzerne County,
11 Pennsylvania. This project again is a project that was
12 approved by the Commission and operated under a docket
13 in 2006, did violate approval of that docket, and has
14 offered a settlement agreement and to resolve those
15 issues in the amount of \$27,000. And, again, the
16 agreement was signed and delivered by the project
17 sponsor. And we do recommend its approval as a result
18 of the enforcement.

19 And the third project is BC Natural
20 Chicken. This project is located in Bethel Township,
21 Lebanon County, Pennsylvania. Again, this project is
22 approved, had an approval in March of 2005, did violate
23 that approval. The Commission staff has negotiated
24 with the project sponsor to resolve the violations and
25 does recommend the acceptance of the settlement offer

1 they have made.

2 I would like to just point out that in the
3 settlement offer there is a condition for stipulated
4 penalties of \$500 per day per violation for any
5 violations that would occur at this facility at any
6 time in the future.

7 Thank you, Mr. Chairman.

8 THE CHAIRMAN: Thank you.

9 Do the commissioners have any comment on
10 the three projects?

11 Hearing none -- we don't have anyone
12 signed up to speak on any -- is there anyone in the
13 audience who would wish to speak to the items? Yes.

14 MR. KOVARIK: Thank you, Mr. Chairman.

15 Just very briefly, I would like to make
16 general comment. Small townships like East Hanover
17 Township will be looking towards Commission to help
18 them enforce their own ordinances because it's in the
19 common interest of the Commission and the township to
20 preserve their water resources.

21 And I have to say, so far everybody in the
22 township is excited about the job which the Commission
23 is doing, and the staff, which very clearly was able to
24 deal with the use of water for Mountainview project and
25 between withdrawal from the groundwater aquifer.

1 And therefore, we would like to work with
2 the Commission and hope that regulatory control which
3 the Commission has, will also help township regulatory
4 control. Thank you.

5 THE CHAIRMAN: Thank you, sir.

6 Is there a motion from the commissioners
7 on those three items?

8 COLONEL MUELLER: I would make a motion to
9 accept and approve the terms and conditions of the
10 settlement agreements for the projects mentioned.

11 MS. WEAVER: Second.

12 THE CHAIRMAN: The motion is seconded.
13 We'll take a vote. All in favor say aye. All opposed.

14 (Vote taken.)

15 THE CHAIRMAN: Unanimous vote in favor.

16 MR. BROWNELL: Thank you, Mr. Chairman.

17 THE CHAIRMAN: Part 3, request for
18 administrative hearing.

19 Our third hearing topic involves a request
20 for an administrative hearing under the administrative
21 appeals section of the Commission regulations, 18
22 C.F.R. Section 808.2. Mr. Eric Joseph Epstein
23 submitted this appeal electronically on October 12,
24 2007, and then amended that submission on November
25 13th, 2007.

1 Copies of Mr. Epstein's appeal were
2 distributed to the Commission in advance of today's
3 hearing, along with copies of responses to
4 Mr. Epstein's appeal from PPL Susquehanna LLP that were
5 filed with the Commission on or about October 18 and
6 November 21, 2007.

7 The process we'll follow on this item,
8 we'll first call the Deputy Director Top Beauduy to
9 present an opening statement on Mr. Epstein's appeal.

10 Following the opening statement, we'll
11 call on Mr. Epstein to present his case to the
12 Commission, invite a response from PPL Susquehanna
13 representatives, and then we'll hear if there's any
14 other comment, and then call on Deputy Director Beauduy
15 to present the staff's reaction to the comments and the
16 request.

17 Tom.

18 MR. BEAUDUY: Thank you, Mr. Chairman.

19 As you indicated, the members have
20 received and have reviewed a significant number of
21 documents, which I would like to mention, in order to
22 provide you, as the audience, with a little bit of an
23 overview of the comments you're about to hear.

24 I'd like to step through what has
25 transpired relating to this appeal, and that begins

1 essentially with the action that the Commission took at
2 its last business meeting on September the 12th in
3 Binghamton, New York, where we convened a public
4 hearing to consider certain projects, including the
5 docket approval that it issued for the Susquehanna
6 Steam Electric Station operated by the project sponsor,
7 who is PPL Susquehanna LLC.

8 As part of the approval of that docket,
9 the commissioners approved a settlement offer that had
10 been made by PPL Susquehanna LLC, project sponsor, in
11 the amount of \$500,000 for a certain compliance matter
12 that related to a 2001 uprate at the facility.

13 It was a point of contention between the
14 Commission and the project sponsor. It was agreed to
15 by all the parties that that matter be settled. And
16 you approved that settlement offer. That settlement
17 offer is a part of docket that is the subject of
18 appeal.

19 Prior to the September 12th meeting, the
20 petitioner here, Eric Epstein, Mr. Epstein had made a
21 series of filings with the Commission which, because of
22 the nature of the rules, procedural rules for the
23 Commission, all constituted, in essence, public comment
24 being received on the application.

25 And at the time of the public hearing in

1 Binghamton, New York, we did address a number of what
2 are now referred to in all the filings as the six
3 contentions and the data requests that were part of, in
4 particular, the October 31st -- excuse me, August 31st
5 filing of Mr. Epstein.

6 The first two contentions that were made
7 and were addressed at that public hearing included
8 those related to the uprate undertaken by PPL
9 Susquehanna in 2001. Those matters were addressed at
10 the public hearing and, in fact, settled as a result of
11 your approval of the settlement offer and so, we
12 believe that those contentions were dealt with.

13 We also addressed the third contention
14 concerning regulatory coordination with the Nuclear
15 Regulatory Commission. We confirmed to you that the
16 coordination had, in fact, occurred and, in fact,
17 remains ongoing. I would also point out that the NRC
18 was represented at the Binghamton hearing.

19 With regard to the fourth contention,
20 which was regarding an evaluation of impacts of the
21 project under EPA's 316 Rule, we explained -- and
22 Commissioner Myers from Pennsylvania did confirm --
23 that the evaluation was properly being undertaken by
24 our member jurisdiction and we coordinated with the
25 Pennsylvania DEP in that regard.

1 The fifth contention concerned the
2 Pennsylvania Public Utility Commission, and that one
3 was likewise addressed. It similarly involves issues,
4 the review of certain issues by the agency of one of
5 our member jurisdictions, Pennsylvania in this case.
6 And we noted for the record that we respect the
7 jurisdiction of such agencies, coordinate with those
8 agencies so that we don't duplicate reviews and/or
9 obfuscate the jurisdictional boundaries for the
10 project.

11 We also indicated -- and the docket does
12 contain a provision in the event that someone has a
13 concern that there are governmental approvals besides
14 those of the Commission that need to be obtained for a
15 project -- that there is a condition in those dockets
16 that requires that all those necessary governmental
17 approvals be obtained.

18 The final contention that the application
19 be reviewed to determine any possible impact on the
20 Pennsylvania water budget developed under
21 Pennsylvania's Act 220 in the State Water Planning Act
22 was likewise addressed. In short, we confirmed that
23 the project does not conflict with any known aspects of
24 Act 220 or any potential water budget currently
25 contemplated under the act.

1 Finally, we also addressed the various
2 data requests and requests for what, in essence, were
3 legal opinions that were sought by Mr. Epstein. So
4 that decision concluded -- I mean the hearing concluded
5 with the Commission approving that docket.

6 And on October the 12th, Mr. Epstein did
7 file an administrative appeal to the docket approval
8 pursuant to 808.2 of our rules and regulations.

9 The essence of the appeal is a request for
10 a hearing on the decision of the Commission concerning
11 the docket and the approval of the settlement contained
12 therein. It also included a request for a stay of the
13 decision of the Commission, pursuant to that same rule,
14 pending final disposition of the appeal.

15 There was also -- it also included a
16 request for a public input and evidentiary hearing in
17 the Berwick, Pennsylvania area prior to the
18 Commission's scheduled business meeting here today in
19 Lancaster. It also requested the appointment of a
20 special master to oversee that public input and, quote,
21 evidentiary hearing.

22 It also included a request for certain
23 data, documents, work papers, correspondence and legal
24 opinions -- actually more specifically identified as
25 data requests 1 through 6 in the earlier filings. And

1 also a request, actually asserted as a right, to amend
2 the October 12th filing of the petition by the
3 petitioner as a result of not receiving the transcript
4 of the September 12th hearing until two days before the
5 filing deadline for the appeal.

6 The Commission utilizes an outside
7 reporting service. It received the transcript of the
8 September hearing October the 10th. We immediately
9 transferred it to Mr. Epstein. He only had two days to
10 evaluate that transcript before needing to perfect his
11 appeal on October the 12th and so, he requested the
12 right to do that or asserted the right to do that.

13 The next thing that happened was that, on
14 October 19th, a week after the receipt of the
15 amended -- or the administrative appeal, PPL
16 Susquehanna LLC, the project sponsor and party in
17 interest to this matter, filed a response to that
18 filing of Mr. Epstein asserting that neither a hearing
19 or a stay should be granted, that Mr. Epstein failed to
20 meet the standards for either a hearing or a stay, that
21 Mr. Epstein's request for a stay is procedurally
22 deficient, that he failed to demonstrate the inadequacy
23 of the record upon which the Commission based its
24 decision, that he failed to allege facts that would
25 demonstrate that an administrative review is either

1 necessary or desirable, which is a standard in our
2 regulation, that he has shown no irreparable harm or
3 injury to the public and, finally, that he has raised
4 no issues upon which he is likely to prevail on the
5 merits.

6 On October the 25th, the Commission
7 responded to Mr. Epstein and his appeal and
8 acknowledged the fact that the appeal was filed timely
9 under our regulations. And the -- also under --
10 pursuant to our regulations, the executive director has
11 the authority to make a determination on any request
12 for stay after consultation with the chair of the
13 Commission and the host commissioner for the state in
14 which the project is located.

15 After those consultations and in
16 accordance with those consultations, as part of that
17 response that SRBC provided to Mr. Epstein, the request
18 for a stay was denied.

19 The request failed to include the
20 affidavit setting forth facts upon which issuance of
21 the stay would depend and the citations of applicable
22 law, as required by the regulations. Our response also
23 indicated that the request contained nothing to support
24 a determination that he would be irreparably harmed
25 pending final disposition of the appeal, that there was

1 nothing to support a determination that he would likely
2 prevail on the merits, also nothing in the request or
3 otherwise to support a determination of the likelihood
4 of injury to the public pending final disposition of
5 the appeal.

6 He was informed that his assertion that a
7 stay would not materially adversely affect PPL if not
8 granted, he was advised that it was not relevant, even
9 if true, because it was not the appropriate standard
10 upon which to grant such a request.

11 And he was informed that the request for
12 a, quote, public input and evidentiary hearing prior to
13 today's Commission meeting was, in essence,
14 misdirected. First, the appeal requesting a hearing
15 would not be considered until today and hence his
16 request for a hearing prior to today's public hearing
17 could not be accommodated, and that was noted in the
18 response.

19 We also advised him that the regulations
20 do not provide for the appointment of a special master
21 as had been requested. And with regard to the data
22 request, we did indicate that the public record in this
23 matter continues to be open and would be made available
24 to him upon suitable arrangement with the offices of
25 the Commission, which is a reassertion of a point we've

1 made in the several pieces of correspondence that we've
2 had with Mr. Epstein over time.

3 And finally, because the transcript from
4 the Binghamton hearing was only received by him two
5 days prior to his deadline for filing the appeal, that
6 the executive director would support leave to amend his
7 appeal, provided that that amended appeal was received
8 within 30 days of his receipt of the transcript.

9 There is nothing in our Commission
10 regulations concerning amendment of appeals, and so
11 there is no precise rule about if and when petitions
12 that are filed for appeal can be amended. Nonetheless,
13 as a matter of discretion, the executive director
14 suggested that he would support such an amendment
15 within 30 days.

16 Unfortunately, that 30-day deadline was
17 November the 9th, and the amended appeal was not filed
18 until November 13th. But, however, because there are
19 no rules -- and you can refer to our counsel on this --
20 but because there are no rules specific to this point,
21 it's a matter of discretion for you to accept that
22 amended appeal.

23 Having said that, I will tell you that the
24 amended appeal is substantially similar to the original
25 appeal, it raises no new contentions, but did include a

1 declaration by which Mr. Epstein sought to cure the
2 procedural defect of his earlier filing to attempt to
3 satisfy a regulatory requirement to include an
4 affidavit setting forth facts upon which issuance of
5 the stay would depend and a citation of applicable
6 legal authority.

7 The declaration that is included in the
8 amended appeal asserts and alleges harm by asserting:

9 One, that he was prevented from learning
10 the full extent of adverse impact that might be
11 occasioned by the storage of high level radioactive
12 waste near the river.

13 Two, that he was prevented from
14 participating in the process so as to lend his
15 expertise.

16 Three, that he was deprived of the ability
17 of legally challenging the sufficiency of the
18 settlement.

19 Four, the settlement gives PPL the ability
20 to store more waste and thus increase his risk of
21 exposure to a radiation leak.

22 There are other assertions of harm in the
23 docket, but they relate to an apparent contract
24 amendment by either PPL or Exelon, both being cited in
25 paragraphs 20 and 21 of the declaration, neither of

1 which are applicable to your docket action, which
2 involves no contract amendments.

3 We acknowledged his appeal two days later.
4 And then, on the 21st of November, PPL filed a response
5 to the amended appeal and, in essence, asserted the
6 same contentions and positions for the amended appeal
7 that it had with the original appeal; and furthermore,
8 that the declaration filed along with the amended
9 appeal fails to support and substantiate the request
10 made by Mr. Epstein.

11 That leads us to this week. On Monday of
12 this week, December the 3rd, Mr. Epstein filed a reply
13 to both the SRBC and the PPL responses. He asserts --
14 or shall I say he reasserts that numerous water use and
15 water safety and interagency coordination issues remain
16 open or unresolved.

17 He asserts that the Commission needs to
18 publicly investigate Mr. Epstein's outstanding issues
19 and contentions. He asserts that the material is not
20 readily assessable to the public, which was largely
21 unaware of these proceedings; asserts that he should
22 have been included in the settlement discussions which
23 occurred between SRBC and Susquehanna -- PPL
24 Susquehanna LLC, the project sponsor.

25 And with regard to the executive

1 director's denial of his request for a stay, he asserts
2 Mr. Swartz failed to provide case law and the minutes
3 of the deliberations between himself and the
4 commissioners to justify the denial, and that he,
5 quote, appears to claim inherent and explicit authority
6 to regulate water use, close quotes, and that he
7 provided, quote, nothing other than a divine right
8 dismissal without substantive argument, close quotes.

9 In the reply he also renews his request to
10 convene a public input hearing, and his request to
11 revisit the settlement with all interested parties at
12 the table.

13 He also replies to the PPL responses by
14 asserting that certain social corporate obligations of
15 the company exist that would necessitate that an
16 attempt be made to, quote, harvest public participation
17 in the area of the project.

18 And finally, he asserts that the request
19 for a stay remains open pending a public review. He
20 advocates for an appeal, although he did not formally
21 appeal the executive director's denial of the stay.

22 That, Mr. Chairman, members of the
23 Commission, are the procedural elements leading up to
24 today's hearing. And I will be happy to address you
25 after you hear from Mr. Epstein, who is present,

1 representatives of PPL are here in the audience, and
2 anyone else that may comment on this. Thank you.

3 THE CHAIRMAN: Mr. Epstein.

4 MR. EPSTEIN: I am the aforementioned
5 Mr. Epstein. Tom, that was good, man. You should
6 write my briefs for me. Actually, you were more
7 convincing than I was.

8 For the sake of brevity and due to the bad
9 weather, what I'd like to do is enter the reply to the
10 responses I had to Susquehanna River Basin Commission
11 and PPL into the record and just take a couple minutes
12 to review or highlight some of the salient points, that
13 way I don't think I'll need more than seven or eight
14 minutes.

15 I provided a copy for all the members,
16 also a copy for the court reporter, and there should be
17 extra copies out there for anybody who wants to read
18 what should be a New York Times bestselling monograph.

19 First, I'd like to state that I'm a big
20 fan of the Susquehanna River Basin Commission. I think
21 you guys do a great job. That doesn't mean that you're
22 free from criticism, just like it doesn't mean I'm free
23 from criticism. Frankly, I believe you to be a
24 regulatory gem amongst a lot of corroded regulatory
25 entities right now. So, I wanted to get that out of

1 the way.

2 I'd also like to congratulate Senator
3 Wenger. Actually, I worked with him years ago after
4 the TMI accident when he was servicing Lancaster
5 County. There was a proposed dumping of 800,000
6 gallons of radioactive water into the Susquehanna, for
7 those of us who lived in this area, that was a highly
8 contentious area issue. And Senator Wenger, Mayor
9 Morris and Congressman Walker at the time were actually
10 very helpful.

11 I'd also like to point out that my
12 grandfather was a chicken farmer, my other grandfather
13 was a junkman, so I don't know what that makes me,
14 other than to say I've been involved in water use
15 issues dating back to the TMI accident.

16 I think the SRBC is entering an area that
17 has become very contentious, and through no fault of
18 your own. I know my colleagues at the Connecticut
19 Yankee Nuclear Power Plant, the Pilgrim Nuclear Power
20 Plant, the Vermont Yankee Nuclear Power Plant, the
21 Oyster Creek Nuclear Power Plant and the Diablo Canyon
22 Nuclear Power Plant are all dealing with similar
23 issues. And some of the domains are unclear what
24 exists and who should regulate them.

25 If you just turn to page 8 of my

1 testimony, we can cut to the chase, because I did
2 outline some of the history that Mr. Beauduy went over.
3 I'd also like to thank Mr. Beauduy -- I don't think
4 Mr. Roof is in the audience -- Mr. Brownell, and
5 Mr. Swartz, for extending yourself during this period
6 because there has been a lot of filings. And I do
7 appreciate your flexibility on the administrative --
8 amended administrative appeal. Although we haven't
9 formally gotten together and been able to bond, you
10 know, perhaps we can do it at some time.

11 My -- I think I have cured the issue of
12 the affidavit, but I think Tom already clarified what
13 my position was; that was absent, I think from the
14 initial amended appeal.

15 I guess my concern has to do with the fact
16 it's very hard as a citizen to follow why some things
17 were denied. If you look at the last paragraph on
18 eight, I simply note: Mr. Epstein notes that
19 Mr. Swartz cited his own administrative authority,
20 limited consultation with two members of the
21 Commission, and a generic reference to the Code of
22 Federal Regulations as justification for the denial of
23 the stay. Neither the Basin Commission or Mr. Swartz
24 provided case law, precedent or minutes of the
25 deliberations between himself and the commissioners to

1 justify the rejection of the stay. That's just a point
2 of order for folks that follow me down this road, it
3 would be helpful to know what exactly the references
4 were.

5 If you turn to page 9, and just to
6 paraphrase, Mr. Swartz, you're absolutely right, I
7 failed to include an affidavit. I tried to cure that
8 through the amended appeal. And, again, I was -- it's
9 just confusing as a citizen when you don't offer case
10 law or precedent or specific examples of deficiencies
11 or concrete examples of, quote, unquote, duplications
12 for a citizen like myself to follow the process.

13 On page 10 -- we don't really need to go
14 through it -- is there was an argument that was
15 essentially reiterated in the administrative appeal and
16 then reiterated in the amended administrative appeal,
17 none of that argument was addressed.

18 On page 11 of my testimony today, my
19 concern that repeated omissions based on statutory
20 presumptions is not sound regulation or prudent public
21 policy. In fact, I applaud what you're doing with
22 the -- the proposed regs that you have that were
23 advertised in the DEP, on June 16th, 2007, cures a lot
24 of the issues I raised, absolutely cures a lot of the
25 issues I raised, but not in time for this particular

1 case.

2 In fact, I applaud you for a number of
3 things that are pending. For instance, requiring
4 sponsors of projects withdrawing 100,000 gallons per
5 day or more for any combination of ground and surface
6 water to request approvals of withdrawals. Common
7 sense. I think we can all support that. Codifying
8 that makes absolute sense.

9 And the recognition of pre-compact or
10 grandfathered consumptive uses or withdrawals upon a
11 change of ownership, again, makes sense. I mean I
12 strongly support this. This is part and parcel of what
13 I'm asking.

14 I think part of the settlement to
15 incorporate or reduce the duration of consumptive use
16 and withdrawal approvals from 20 to 15 years, I may be
17 wrong, but I actually think you included that in the
18 settlement.

19 Finally, I again strongly support what
20 you're proposing now to establish an administrative
21 appeal procedure for parties aggrieved by an SRBC
22 decision. Through no fault of anybody, it's a maze.
23 It is hard to navigate. I'm not ascribing blame. I'm
24 just trying to clarify the situation for people that
25 follow me so that they have some kind of guide.

1 In fact, let me just re-read it, the
2 issues that you're raising now in the regs, I raise
3 throughout my briefs. Let me quote myself -- and I
4 hate doing that. I know it sounds presumptuous. And I
5 don't have a multipersonality disorder. I think it's
6 the best way to do it.

7 This is from my amended appeal and from my
8 appeal: "Even more baffling are the regulatory moats
9 that federal and state agencies erect to protect rigid
10 and exclusive zones of interest that have been
11 established without a collaborative framework. This
12 type of regulatory behavior gives rise to undesired
13 corporate behaviors such as grandfathering, back fits,
14 unapproved uprates, passive deterioration of monitoring
15 equipment, immature and inadequate scale model testing,
16 time delays causing avoidable leaks, and waivers for
17 monitoring wells."

18 I agree with you. You said that this
19 proposed rules change -- in the proposed rules change,
20 according to the DEP -- and this is from you,
21 Mr. Swartz -- "as the demand for water continues to
22 increase for domestic supplies and economic
23 development, the Commission's goal is to manage and
24 support that growth, while we protect the environment
25 and existing water users at the same time. We believe

1 these proposed regulatory changes will enhance the
2 Commission's ability to do just that."

3 I support you. I support you. I support
4 those regs. I just wanted them adopted for this
5 particular proceeding.

6 For the issues -- and I know Mr. Beauduy
7 went over -- some of those issues that Mr. Beauduy
8 raised, and hopefully he'll acknowledge -- I
9 acknowledge that you resolved, have been cured. You
10 know, I think we started with six and we're down to
11 four. And I appreciate the efforts that have been put
12 into this.

13 I would just point out that four of the
14 issues that I raised were deemed, quote, unquote,
15 outside the scope of the NRC's relicensing and uprate
16 hearing process. Another issue remains on hold because
17 of EPA challenges, 316 A and B. It doesn't mean those
18 issues have gone away, they're just on hold. They're
19 still here and they'll always be here.

20 As far as the PUC, there has been no
21 filing before the PUC, that's what I was trying to
22 bring out on Public Utility Title 66, there hasn't been
23 a filing, so there hasn't been anywhere for me to go to
24 grieve this.

25 All I'm asking, frankly, is that the PUC,

1 the SRBC, let's get together, let's work it out, let's
2 establish the zones of district because what we have,
3 in my mind, is a regulatory shell game. Quote, what I
4 say is: "Mr. Epstein continues to seek measured and
5 coordinated oversight of the environmental and aquatic
6 impacts of SSES relicensing and uprate."

7 I never once opposed it, not before the
8 NRC, not before the DEP, and not before the SRBC. I
9 still don't oppose it. I just want the questions
10 answered. I don't think it's too much to ask.

11 As I pointed out, the NRC did not require
12 and investigate site-specific aquatic challenges or
13 relied on outdated data at the time of the September
14 12th hearing. In fact, the environmental impact
15 statement wasn't filed until -- the NRC environmental
16 impact statement wasn't filed until after the hearing.

17 "Neither PPL, the EPA, the PUC or the NRC
18 addressed health, safety and structural challenges
19 caused by micro-fouling versus macro-fouling,
20 microbiologically influenced corrosion, biofilm's
21 disease-causing bacteria such as Legionella and
22 listeria, the difficulty in eliminating established
23 biofilms, oxidizing versus nonoxidizing, chlorine
24 versus bleach, alkaline versus nonalkaline
25 environments, possible decomposition into carcinogens,

1 and the eastward migration of" -- and we all know this
2 is a reality -- "Asiatic clams, zebra mussels and other
3 mussels."

4 So not going into it, I don't think these
5 are issues that should be thrown away or not discussed.
6 All I'm asking is to have those questions addressed.

7 On page 14 of my testimony, again, I
8 revert back to the claim I've made throughout this
9 process, which is: I'm looking for a discernible
10 formula or rationale establishing -- and it says here,
11 quote: "The likelihood of injury to the public or
12 other parties." Unquote.

13 Again, the SRBC doesn't operate in an
14 adjudicatory vacuum. Just, in my opinion, should cite
15 case law, precedent and citations.

16 The same company, PPL, which is requesting
17 a surface water withdrawal modification, including a
18 voluntary commitment to check the river intake
19 structure, is the same company that has been cavalier
20 in addressing water leakage and safety-related
21 challenges at the Susquehanna steam electric station.

22 I guess what concerns me the most is the
23 SRBC presumes that the very same agency, the Nuclear
24 Regulatory Commission, and the very same company, PPL,
25 that failed to coordinate and consult with the SRBC in

1 2001 is the same agency that provides regulatory
2 omnipresence in all things radioactive and nuclear.

3 I've got to tell you, I spent Monday down
4 at Peach Bottom. If you want a lesson in regulatory
5 inertia, there's ten guards sleeping on the job, I
6 walked away from the meeting and NRC said, really not a
7 big deal. We'll get back to you. And that doesn't
8 lead to a confidence-building mechanism for the public.

9 In terms of public input, evidentiary
10 hearing, all I'm saying to you folks is -- not a
11 criticism of your agency, a criticism of how you market
12 your agency -- nobody knows this was going.

13 In fact, the advertising took place on, I
14 think, December 20th through December 31st. I called
15 PPL, their HR department, three of those days they were
16 closed. So if anybody read the advertisement, how
17 would you know there was input or response since nobody
18 was there to answer the phones? All I'm saying is
19 let's have an evidentiary hearing where the public vent
20 their issues.

21 The same thing with the settlement. The
22 settlement seems to be good. I don't know. This is
23 not the PUC where you have a statutory party like the
24 office of trial staff, the consumer advocate or the
25 small business advocate. It's you and the guy who

1 committed the alleged violation. Well, it would be
2 nice to have a third-party there, especially since I
3 registered my interest dating back to November of last
4 year.

5 I'm not saying that I'm not any bright
6 shining light, I'm sure PPL would agree with that. All
7 I'm saying is, when you enter into a settlement, you
8 have a party that's expressed interest, why not include
9 them and at least consult with them.

10 I guess what I'm saying when it comes to
11 the settlement -- I mean I wasn't satisfied that there
12 were stipulations associated with that, too, a prior
13 pending violation, which is -- and I think you've done
14 that before, registered these stipulations.

15 Let me conclude, and I'll go to page 17,
16 where I'm asking again for a public input hearing in
17 the affected area. Yes, I know you can't have a public
18 input hearing for everything that occurs. Withdrawing
19 66 million gallons, I think, is a substantive issue.

20 And perhaps you can create some kind of
21 criteria or tipping point due to the scale or the
22 nature of the withdraw request, that they take a public
23 input hearing. Unless everybody here is completely out
24 to lunch -- and I don't think that's the case, although
25 I know lunch is being served -- there have been extreme

1 important issues regarding the water use in that area
2 with an ethynyl plant, with coal mitigation issues. I
3 mean it just seems to me to make sense to give the
4 people of the community the ability to speak to that.

5 I've said -- and I stick with this --
6 I'm -- you know, I came back after going through this
7 process and I get a letter in the mail from Mr. Ramos,
8 and I see a quote in the newspaper stating -- and this
9 is Mr. Ramos, the spokesperson for PPL, that says:
10 We're dealing with both agencies to fulfill our social
11 compact and all regulations. We're dealing with
12 Mr. Epstein's concerns. By the way, I've never heard
13 from Mr. Ramos.

14 Let me conclude by saying it's my belief
15 that a large part of PPL's social compact is to keep
16 the public informed. On September 12th, 2007, the same
17 day that the SRBC met in Binghamton, Mr. Ramos sent a
18 letter to the community apologizing on behalf of PPL,
19 quote, unquote: The aggravation and confusion that
20 resulted from all the tests that we conducted to get
21 new sirens to meet our demanding requirements. PPL
22 fired the contractor.

23 So they have the ability to reach out to
24 the community. In fact, when there's a rate increase,
25 by law they have to get something in the mail. This is

1 not a stretch for them. PPL recently sent an
2 invitation to the area that proclaimed, quote, unquote:
3 The people of PPL Susquehanna invite you to stop by for
4 a visit to the web, and informed the public PPL intends
5 to seeks to renewal of these licenses through 2042 and
6 2044.

7 What's a couple more weeks and months
8 going to matter if we harvest more public input from
9 the people that are going to be affected by the
10 upgrade?

11 PPL did not make similar efforts to
12 apprise the community of the SRBC water application. A
13 sense of fair play and consistency warrants that PPL
14 would support Mr. Epstein's call to fulfill the
15 company's social obligation by supporting a public and
16 evidentiary hearing in the Berwick area.

17 As I said, Mr. Beauduy, paraphrase: It's
18 important to harvest from the affected areas for a
19 decision that may be in place for decades and impact
20 future generations.

21 Mr. Epstein -- that's me -- respectfully
22 requests that the Susquehanna River Basin Commission
23 hold PPL's application in abeyance until all of
24 Mr. Epstein's contentions and issues are publicly
25 received by the SRBC.

1 Final comment, I'd like to acknowledge
2 that you and Tom have extended me the invitation to go
3 in and look at some of the public information. I have
4 decidedly not done that, and I'll tell you why. I
5 didn't want to establish that precedent.

6 You know, basically in the legal cases
7 that I've been involved with, when you make discovery
8 requests, the information is supplied to you. But to
9 be frank with you, my concern was if I established that
10 precedent there may be a case down the road where
11 somebody who is either handicapped or is not ambulatory
12 would have to schuss two hours, three hours just to
13 make the trip down here.

14 So I do appreciate you extending yourself.
15 I probably should have been more explicit in telling
16 you why I didn't come in. That was the reason. And,
17 again, let me say I think you're a fabulous
18 organization and that you should hire me.

19 THE CHAIRMAN: Thank you.

20 MR. EPSTEIN: Does that mean I'm hired?
21 The New York guy is leaving. I can move to New York.

22 THE CHAIRMAN: You'll get a letter in the
23 mail.

24 MR. EPSTEIN: Yes, please put a stamp on
25 it.

1 THE CHAIRMAN: Do the commissioners have
2 any questions?

3 MR. LYNCH: I have one, I guess this is a
4 question for counsel: Since it appears that there's
5 some discretion on whether or not we accept the amended
6 appeal, do we have to formally do that for the record
7 before we make any decision on the original appeal or
8 the amended appeal?

9 MR. CAIRO: I think that probably would be
10 a good idea.

11 MR. LYNCH: Let me declare that we should
12 accept it, and that any decision we make will be based
13 on that.

14 MR. EPSTEIN: Is that Mr. Cairo?

15 MR. CAIRO: Yes.

16 MR. EPSTEIN: How are you doing? It's
17 nice to meet you in person. You're an attractive man.

18 Do you need me to sit down?

19 THE CHAIRMAN: If you have no other
20 comments, yes, you can sit down.

21 Does PPL wish to make a statement?

22 MR. BOSSERT: Yes, we do, Mr. Chairman.
23 My name is Terry Bossert, B-o-s-s-e-r-t. I'm an
24 attorney with the firm of Post and Schell. And I'm
25 here representing PPL Susquehanna LLC.

1 I'll dispense with telling you how much I
2 respect the Commission and those other issues because,
3 obviously, I do respect the Commission, but I think the
4 relevant issue before you is the request to hold an
5 administrative hearing.

6 This is not a request to hold the original
7 hearing, which, of course, you already held on
8 September the 12th, but rather there's been an
9 administrative appeal filed. And the question is:
10 Should you hold an administrative hearing? And by your
11 regulations there are three reasons for you to do that.

12 One is an adequate record is not
13 available. We believe that that standard is not
14 applicable because you made an adequate record at your
15 hearing on September the 12th. And that record
16 included many submissions by Mr. Epstein, which Mr.
17 Beauduy summarized some of them and others that were in
18 the docket.

19 The second reason is that there was a
20 determination made by the executive director or the
21 staff which requires Commission action. Well, that
22 doesn't apply either. In this case, a decision was
23 made by the Commission, not by the executive director.
24 The only decision made by the executive director here
25 was the denial of the stay after the appeal was filed,

1 and as Mr. Beauduy pointed out, that has not been
2 challenged. It has been reiterated but has not been
3 challenged.

4 And the third reason is if the Commission
5 finds that an administrative review would be necessary
6 or desirable. And we believe that that standard has
7 also not been met. And the reason that's not been met
8 is that all of the issues that have been raised, the
9 six contentions, have been addressed by the Commission.
10 Four of those six really are objections to actions or
11 alleged inactions by other regulatory agencies, the
12 NRC, DEP, the PUC.

13 And those -- to determine those, you don't
14 need a hearing. Those are legal jurisdictional issues.
15 Those are matters within the jurisdiction of some other
16 agency. And at your last hearing, Commissioner Myers
17 pointed out that they would handle the matters within
18 their jurisdiction.

19 And although it's not in the record
20 because it just recently happened, sort of to confirm
21 it, Commissioner Myers said Susquehanna PPL has, in
22 fact, received the letter from DEP asking questions
23 about 316 issues, so that matter is going forward.

24 The other two matters really relate to the
25 2001 upgrade and the settlement. And I would submit to

1 you that there's nothing here that indicates that
2 Mr. Epstein is an aggrieved party who has the ability
3 to challenge the settlement.

4 Your regulations clearly allow for you to
5 enter into settlements with project sponsors. And the
6 scope of that settlement doesn't impact Mr. Epstein.
7 It impacts the Commission. How you want to enforce
8 your regulations, what penalty you want to collect --
9 and in that case you collected, as you heard, a rather
10 substantial penalty. That matter was resolved, so it's
11 not a matter that's really subject to further review or
12 administrative hearing.

13 So, for all those reasons, there's really
14 no reason to hold another hearing. You can resolve
15 this appeal without having an administrative hearing.

16 Now, the harms that Mr. Epstein has raised
17 in his affidavit -- and I might point out to you,
18 although you already made the decision -- PPL
19 Susquehanna did not take the position that the amended
20 appeal was untimely or anything like that, we're not
21 going on procedural technicalities here. We responded
22 to it and moved forward. But the harms that he alleges
23 relate to matters, again, within the jurisdiction of
24 the Nuclear Regulatory Commission. They don't have
25 anything to do with what you're approving in terms of

1 water withdrawals and consumptive use.

2 We've heard a lot that the original notice
3 was during the holidays last year -- or two years ago,
4 I guess. Well, Commission regulations require those
5 notices to be given within ten days of the filing of
6 the application. We complied with the regulations.
7 That certainly wasn't -- that was simply the notice of
8 the filing. That wasn't the last time anybody had any
9 notice that this matter was before the Commission.
10 And, obviously, people had an opportunity to
11 participate, as Mr. Epstein did.

12 So, in conclusion, there really has not
13 been a showing of any irreparable harm by Mr. Epstein
14 that relates in any way to the jurisdiction of this
15 Commission. There hasn't been any showing that there's
16 any reason to appoint a hearing officer and hold a
17 hearing on issues which are really legal jurisdictional
18 issues, there's no real evidence to be taken on those.

19 And the matter of the settlement that the
20 Commission entered into with PPL Susquehanna is, again,
21 not a matter that's subject to challenge or that
22 Mr. Epstein really has any standing to challenge.

23 So, we would suggest that we're at the
24 point where we need to get moving with this project.
25 Material has been ordered, et cetera. And so,

1 therefore, we don't believe there should be either a
2 hearing and certainly not a stay. Thank you for your
3 consideration.

4 THE CHAIRMAN: Do the commissioners have
5 any questions?

6 Thank you, sir.

7 MR. EPSTEIN: Do I have the ability to
8 respond?

9 THE CHAIRMAN: First, let me see if
10 there's anyone else in the audience who would like to
11 comment on the project.

12 MR. EPSTEIN: Sure.

13 THE CHAIRMAN: Mr. Epstein, yes, you may.
14 Please keep it brief.

15 MR. EPSTEIN: Two minutes. I'll respond
16 real quickly by saying that the public hearing was held
17 109 miles away from Berwick. And if that's what the
18 standard is going to be, then I'm going to argue also
19 in an appeal that the affected areas are 109 miles away
20 from Berwick. And all the supplement in the appeal may
21 be, if Berwick and Binghamton are in the same area,
22 then so are Berwick and the shallow lands at the lower
23 Susquehanna. So that's why I was asking for clarity in
24 the public input hearing and having it in a place
25 convenient.

1 Secondly, yes, Terry is right, they
2 advertised December 20th. They didn't have to, but
3 they chose to. In my mind a sense of goodwill would
4 have waited until a more open time to be as more
5 inclusive as possible. December 20th to December 30th,
6 I challenge anybody in this room to find a more
7 inappropriate time to interview, especially when his
8 company that he represents was closed for three days.

9 Second, what I disagree with PPL -- and I
10 think you acknowledge the issues, you certainly haven't
11 addressed them -- as Terry just said, they got a letter
12 recently for 316 A and B, they just got a letter now.
13 You can't possibly have addressed an issue where you
14 were just requested to give input by the DEP after the
15 decision was made. And these are the things that
16 concern me.

17 Two quick points. Am I an aggrieved
18 party? You bet I am. This is a precedent.

19 Next month TMI is going to ask for
20 licensing. They're on the docket. They're going to
21 ask for an uprate. You're creating a precedent that
22 sure is going to impact me. I live twelve miles from
23 TMI. And this decision still impacts me.

24 And all I guess I'm saying to you is that
25 the NRC hasn't closed a lot of these issues. In fact,

1 if you look at my brief, a lot of these issues were not
2 addressed because the NRC, they said they were outside
3 the scope of an uprate and relicensing proceeding.

4 So a lot of the issues I've raised have
5 not been addressed; they've been acknowledged. And I
6 would argue to you that we still need to iron out some
7 of the remaining unresolved issues. Thanks for letting
8 me come back up.

9 THE CHAIRMAN: Thank you, sir.

10 I call upon Mr. Beauduy to summarize for
11 the staff.

12 MR. BEAUDUY: Thank you, Mr. Chairman. In
13 summary, let me offer a few points.

14 First, with respect to Mr. Epstein's
15 rebuttal, the issues like 316 remain outstanding, we
16 understand that. What we tried to identify is the fact
17 that there are other jurisdictional agencies that are
18 addressing that issue or will address that issue. It
19 is not an issue that we will address because of
20 jurisdictional consideration.

21 With respect to the public input hearing,
22 I will also indicate for the record that -- and members
23 of the public should understand -- that any time the
24 Commission has a project under consideration, we are in
25 the review process, that if there is what I'll say is

1 sufficient public interest, we convene an information
2 meeting or a public hearing for that project. We just
3 did one within the last month down in the Gettysburg
4 area. Why? Because there was considerable public
5 interest in the project.

6 A request by an individual for a hearing
7 does not constitute sufficient public interest, in our
8 view -- if they happen to represent, say they're the
9 chair of the county commission and identify the fact
10 that the county is up in arms about a project, or
11 whatever, and we can gauge that there is sufficient
12 public interest, we will go ahead with that.

13 I just want to clarify that we are -- we
14 are not blind to the issues that Mr. Epstein has
15 raised. We do convene public hearings. We do it
16 whenever there is sufficient public interest. We just
17 did not hear from any individual other than Mr. Epstein
18 in the instant matter.

19 Having said that, Mr. Chairman, would it
20 be appropriate at this time to offer the staff's
21 recommendations?

22 THE CHAIRMAN: Yes, it is.

23 MR. BEAUDUY: Thank you. The staff
24 recommends that you deny the request for an
25 administrative hearing pursuant to Section 808.2. To

1 grant it pursuant to the regulatory criteria you must
2 find that the record available to support your actions
3 was not adequate, that administrative review is
4 necessary or desirable.

5 Staff does not agree that either two of
6 those -- either of those negative findings to be
7 appropriate in the instant matter. The record upon
8 which your decision was based was more than adequate.
9 Furthermore, we do not believe an administrative
10 hearing is necessary or desirable, notwithstanding the
11 assertions of Mr. Epstein.

12 The procedures outlined in the
13 Commission's regulations concerning hearings on the
14 administrative appeal are distinctly different and
15 inconsistent with Mr. Epstein's request for a public
16 input hearing; to the extent his request is actually
17 for the latter, we ask that this be denied for that
18 reason as well.

19 As you heard from Mr. Bossert -- and it's
20 the staff's position as well -- that the request is for
21 an administrative hearing, not for a public input
22 hearing, although it was couched that way. The rules
23 do not provide for that at this stage of the process.
24 They don't preclude it, but they don't provide for it.

25 We recommend that you affirm the denial of

1 the request for a stay that was issued by Mr. Swartz.
2 Mr. Epstein has failed to satisfy any of the criteria
3 that was necessary to support his stay. He has failed
4 to demonstrate irreparable harm to himself. He can be
5 persuasive in demonstrating that he may be aggrieved.
6 But being aggrieved by your decision is not the same as
7 being harmed, let alone being irreparably harmed,
8 distinctly different legal standards.

9 Alleging that higher level of harm because
10 of an incomplete public record, as he did, even if it
11 were to be incomplete, fails to meet the test for
12 irreparable harm.

13 He has failed to demonstrate that he is
14 likely to succeed on the merits. There is nothing on
15 the record -- nor has he alleged -- that the factual or
16 scientific basis upon which your decision was based or
17 predicated was flawed or incomplete. The consumptive
18 use and water withdrawal approvals contained in your
19 decision were based on fact, analysis, science, and had
20 not been challenged in this appeal.

21 He has failed to demonstrate the
22 likelihood of injury to the public. We acknowledge his
23 concern about the risk to radioactive waste disposal,
24 but that is a matter to address -- as well as some of
25 the other issues raised about public safety -- to the

1 Nuclear Regulatory Commission. As he also indicated,
2 that matter remains open, and that doesn't mean that
3 those issues will not be addressed in the future by the
4 NRC.

5 It would be inappropriate for the SRBC to
6 engage in regulatory creep by asserting jurisdiction
7 over issues properly subject to the authority of
8 others. Coordination with other jurisdictional
9 agencies is proper and has been undertaken here.

10 We will acknowledge the concerns that
11 Mr. Epstein has about regulatory coordination, we
12 believe that they are valid, but we also believe that
13 we have undertaken them in the instant case, and we do
14 so as a matter of course.

15 His assertions that Mr. Swartz failed to
16 meet a similar burden in denying the request for a
17 stay, namely to cite the case law and the
18 justification, et cetera, is, in our view, misguided.
19 The rule is very straightforward. The person who seeks
20 the stay has the burden to demonstrate that the
21 criteria are met. It is not our burden to disprove,
22 but his to prove.

23 With regard to his assertion that the
24 settlement was not appropriate, although he has
25 modified that position in his oral position here today,

1 our position -- and one consistently reinforced by
2 courts -- is that regulatory agencies have considerable
3 enforcement discretion. You exercised that discretion
4 in an appropriate matter. There is no likelihood that
5 he would prevail on the merits of his position, and you
6 should stand by your action.

7 Also with regard to the settlement issue,
8 until you direct us otherwise, we consider settlement
9 discussions to be confidential and only involve parties
10 in interest, and opening those negotiations to any
11 third-party would have a chilling effect on the
12 resolution of compliance matters using the settlement
13 process, which is something the Commission policy urges
14 staff to employ.

15 Finally, having said that, I nonetheless
16 want to thank Mr. Epstein for his interest in the water
17 resources in the basin and for the work of the
18 Commission.

19 His concern about precedent in conceding
20 to our position that he come to review the file of the
21 record in the office and its impact on handicapped
22 people or otherwise is acknowledged. But I will tell
23 all of you that if there was a handicapped person who
24 indicated an inability to come to review the record at
25 the Commission because of that condition, the

1 Commission would go out of its way to make a special
2 accommodation.

3 Furthermore, we have invested a
4 considerable amount of resources this past year in the
5 changeover of our records to be totally electronic.
6 And within the near term, within the next year or so,
7 you won't have to come to the office to review things,
8 the record will be available electronically. And at
9 some point in time in the future, that will happen.
10 But in the meantime, we will make every accommodation
11 for anyone that is within reason to review the public
12 record.

13 Our views may differ somewhat on how the
14 Commission's regulatory process should work, and he
15 feels aggrieved by the course of your decision in the
16 instant matter, but in the end staff believes you made
17 an informed, reasoned and appropriate decision in this
18 matter, the record adequately supports your decision,
19 and you should therefore deny the request in front of
20 you.

21 He certainly retains all rights to appeal
22 to federal court to the extent he continues to be
23 aggrieved by your decision here today.

24 Thank you, Mr. Chairman, members. I'll be
25 happy to answer any questions you may have.

1 THE CHAIRMAN: Any questions from the
2 Commission?

3 MR. CAIRO: I too, would like to thank
4 Mr. Epstein for his interest in the work of the
5 Commission and his overall efforts on behalf of the
6 public interest. I think that's good.

7 I have made an independent analysis of the
8 filings that Mr. Epstein made in the case before the
9 Commission today, and I find myself in agreement with
10 the recommendations that staff has made with regard to
11 the disposition of his appeal. And I guess I have to
12 say I associate myself with the remarks of Mr. Bossert
13 as well in terms of how the matter should be disposed
14 of.

15 I have a tendency to want to cut to the
16 chase on this matter. And Mr. Epstein's appeal is
17 under Section 808.2 of the Commission's regulations.
18 And, really, the only relief that's available under
19 that section is the granting of an administrative
20 hearing.

21 And the only reasons for granting such a
22 hearing in the case would be a finding by the
23 Commission that an adequate record with regard to the
24 action and the decision was not available or that the
25 Commission has found that an administrative review is

1 necessary or desirable.

2 I believe the record is complete in this
3 matter. I believe it's complete in two respects from
4 the standpoint that the Commission staff made it
5 complete on the information they provided to the
6 Commission on how the application should have been
7 handled.

8 And I also think it's complete from the
9 standpoint of the information that was provided by
10 Mr. Epstein. His objections were given adequate review
11 before the Commission on September 12th in Binghamton,
12 all of his various submissions that he filed were
13 forwarded to the Commission members in advance of the
14 hearing, and Mr. Epstein was afforded the opportunity
15 to examine the records, as has been noted, and to
16 attend the meeting in Binghamton, to speak to the
17 Commission, although he declined to do so.

18 And although he did not appear at that
19 meeting, his various submissions were nevertheless
20 included in the record. And the deputy director
21 presented Mr. Epstein's points and then responded to
22 them one-by-one for the record, including all those
23 contentions that were mentioned.

24 The Commission accepted the deputy
25 director's responses as evidence in the record at that

1 hearing. And so it's my opinion that the record of
2 this decision from September 12th is, therefore, quite
3 complete and is in no need of any supplement, which an
4 administrative hearing would obviously be all about.

5 As far as any other reasons for granting
6 another hearing, I just don't see any. I think
7 Mr. Epstein had raised a number of procedural
8 questions, but I really don't see that the Commission
9 did anything that was procedurally inappropriate with
10 regard to the PPL application.

11 Notice was given as it was supposed to be
12 given. All other notifications were made by the
13 applicant that were required. And though we were not
14 formally required to do so, the Commission gave notice
15 in the Federal Register on August 23rd, 2007, in the
16 Pennsylvania Bulletin on September 1st, 2007 to
17 consider that application on September 12.

18 The staff conducted a review of the
19 application to ensure that the criteria for approval
20 under the SRBC project review regulations were met by
21 the applicant, and appropriate conditions were added to
22 the proposed docket approval.

23 And I want to point out to Mr. Epstein
24 that the Commission will maintain continuing oversight
25 over this project. If any future problems come to

1 light, the Commission has the ability to reopen the
2 docket approval and to issue additional orders. So we
3 do have continuing oversight. It's not like we're
4 going to approve it and then walk away from it.

5 As far as the location, his objections to
6 the location, I don't think we did anything out of the
7 ordinary with regard to this project. We handled it as
8 we would any other project. And as Mr. Beauduy has
9 pointed out, we do have the discretion to hold a public
10 information meeting or a hearing, but we can only do
11 that in the case where there's been a manifest amount
12 of public interest that's been demonstrated that would
13 cause us to do that. So we handled this pretty much
14 just like we would handle any application.

15 As far as the penalty, Mr. Epstein had
16 stated in reference to the settlement that a settlement
17 does not supplant a civil penalty. I do not agree with
18 that. I think that a settlement can certainly supplant
19 a civil penalty. And I think we had every right and we
20 have a discretion at the Commission to settle these
21 matters -- in fact, we have a policy that directs us to
22 do so, that actually states a preference for settlement
23 instead of an imposition of a civil penalty.

24 Coordination is something else that he
25 raised. He indicated that he didn't think that we

1 coordinated enough with the NRC. I think we did,
2 indeed, coordinate with the NRC on the issues that we
3 were supposed to coordinate with them on, that being
4 the issues that pertained to our jurisdiction and our
5 authority over that water withdrawal and that
6 consumptive use, and I think we did that adequately.

7 But the SRBC has neither the legal
8 authority nor the expertise to deal with on-site safety
9 specific issues that Mr. Epstein had mentioned. That's
10 really the sphere of the NRC. And our compact
11 indicates that it is the policy of the member
12 jurisdictions to preserve and utilize the functions,
13 powers and duties of the existing agencies of
14 government to the extent consistent with the compact.

15 And the federal reservations to the
16 compact also make it clear that nothing in the compact
17 shall supercede, impair, affect, compel or prevent the
18 exercise of any powers, rights, functions, or the
19 jurisdiction of the Nuclear Regulatory Commission,
20 formerly known as the Atomic Energy Commission. And I
21 don't think Mr. Epstein has offered any legal authority
22 to show why the SRBC should do otherwise.

23 I think the same applies to his argument
24 that we should somehow be -- we should have coordinated
25 with the PUC on this matter. Again, if our authority

1 crosses with another agency, we certainly coordinate
2 with them. But I don't think this is a situation where
3 our authority did cross with the PUC that would cause
4 us to have a reason to be in contact with them or to be
5 coordinating with them on this particular issue.

6 I did mention the continuing oversight
7 that we will exercise.

8 And as far as the standard for a stay, I'm
9 in agreement with Mr. Beauduy that he really did not
10 meet that standard. That's a very difficult standard
11 to meet, the showing of irreparable harm. And I don't
12 think there's anything that has been demonstrated that
13 would cause us to want to issue any kind of stay in
14 this matter.

15 So, with that, Mr. Chairman, I'll conclude
16 my remarks.

17 THE CHAIRMAN: Thank you.

18 Just points to clarify, what is the role
19 of the Commission? What are the decisions that they
20 have to make at this point in time?

21 MR. CAIRO: With respect to what we have
22 to do now?

23 THE CHAIRMAN: Yes.

24 MR. CAIRO: The Commission would make a
25 decision here as to whether it would either grant or

1 deny the requests essentially for an administrative
2 hearing under Section 808.2 of the Commission's
3 regulations.

4 THE CHAIRMAN: That's the sole issue of
5 what they have to deal with at this point?

6 MR. CAIRO: Yes.

7 THE CHAIRMAN: That's the sole issue of
8 what they have to resolve at this point?

9 MR. CAIRO: Yes.

10 THE CHAIRMAN: Is there any further
11 comment of the commissioners?

12 MR. LYNCH: I would just like to say that
13 this Commission -- the commissioners have spent a lot
14 of time reviewing the PPL application, Mr. Epstein's
15 comments and thoughts. We've looked at both
16 substantive and procedural claims made by Mr. Epstein.

17 We spent a lot of time before our
18 September 12th meeting in Binghamton reviewing the
19 issues. We spent a lot of time at that meeting itself.
20 And certainly, since that meeting, the commissioners
21 have undertaken a lot of review of the issues raised.
22 I also want to recognize staff, and I think we saw
23 today the efforts and time that they've put into this
24 matter.

25 And I would recommend, based on the

1 staff's recommendations and counsel's thoughts, that we
2 move to deny the request for administrative hearing
3 made by Mr. Epstein in his amended appeal. I'll just
4 note that the amended administrative appeal to the
5 Commission is dated November 13th, 2007.

6 And the motion should also affirm the
7 October 25th, 2007 decision of the executive director
8 to deny the request of the petitioner for a stay to the
9 Commission's September 12th, 2007 action regarding PPL
10 Susquehanna LLC.

11 THE CHAIRMAN: Do I have a second?

12 MS. WEAVER: I second it.

13 THE CHAIRMAN: The motion is seconded.

14 Is there any further discussion?

15 COLONEL MUELLER: As the alternate federal
16 representative, I just would like to emphasize as a
17 federal entity, understanding the very significant
18 importance of authority and jurisdiction, and the fact
19 that I think it is very important from the federal
20 perspective that we are very careful in looking at
21 jurisdictions that fall within different federal
22 agencies.

23 And based on the discussion we've had
24 here, I concur with what Alternate Commissioner Lynch
25 has identified.

1 THE CHAIRMAN: Thank you.

2 Any further questions?

3 All in favor of the motion say aye. All
4 opposed.

5 (Vote taken.)

6 THE CHAIRMAN: Hearing none, the motion is
7 passed.

8 We have two more items still under the
9 hearing record. We'll now move for consideration of
10 extension of emergency water withdrawal certificate for
11 the City of Lock Haven and the Houtzdale Municipal
12 Authority. Both of these entities were issued
13 emergency certificates on November 28th, 2007 by
14 Executive Director Paul Swartz so that they can meet
15 emergency water shortage conditions in their service
16 areas. Mike Brownell.

17 MR. BROWNELL: Thank you, Mr. Chairman.

18 First, I'd like to discuss the City of
19 Lock Haven request. The City of Lock Haven made a
20 request September 23rd, 2007, that we issue an
21 emergency certificate for a withdrawal from the west
22 branch of the Susquehanna River in the amount of
23 three million gallons per day. This was a temporary
24 withdrawal request. And the emergency existed because
25 of the low water level in their reservoirs.

1 They have two reservoirs. And one of the
2 reservoirs was actually in a state of repair. And
3 because of the low water level and the repair
4 conditions, the reservoir was essentially unavailable
5 to them as the drought in the late fall began to
6 intensify.

7 The request of September 23rd was granted
8 on September 28th. Commission procedures make that
9 certificate, after it is granted, terminate at this
10 Commission meeting, today, December 5th. That was
11 indicated in the certificate that went out to Lock
12 Haven.

13 Lock Haven has made a subsequent request
14 to extend that certificate for an additional 90 days.
15 And that is the request that is before us today as to
16 whether or not to extend that further into the future.

17 Furthermore, the Pennsylvania Department
18 of Environmental Protection also issued an emergency
19 approval for that project, that approval was issued
20 with a 120-day time limit, which will make it due
21 January 24th, 2008. So we do expect a request likewise
22 to extend that approval as well.

23 Staff is recommending that the Commission
24 extend this emergency certificate with the caveat that
25 they allow the executive director to further identify

1 that there may be additional orders or issues that are
2 addressed with the extension of the emergency
3 certificate for the City of Lock Haven.

4 THE CHAIRMAN: Is there public comment on
5 this item?

6 MR. SWARTZ: I'd just like to draw to the
7 commissioners' attention two resolutions that we have
8 prepared in response to the requests from the City of
9 Lock Haven and the Houtzdale Municipal Authority to
10 extend their emergency certificates, and they are
11 Resolution Number 2007-05 and 2007-06.

12 And I'd just like to read the resolve
13 portion of the resolution: "The emergency certificate
14 issued by the executive director on September the 28th,
15 2007 is hereby extended to March 13th, 2008.

16 Number 2: All the conditions and
17 limitations set forth of the said emergency certificate
18 shall remain in full force and effect, and the
19 executive director is hereby authorized to impose any
20 other conditions that he deems necessary or
21 appropriate.

22 And number 3, the resolution shall be
23 effective immediately."

24 So, I'll respectfully request the
25 commissioners to favorably consider those resolutions.

1 THE CHAIRMAN: Any discussion from the
2 commissioners?

3 MR. LYNCH: Resolution number 2007-05 and
4 06, I'll move.

5 THE CHAIRMAN: Any second?

6 COLONEL MUELLER: I'll second.

7 THE CHAIRMAN: The motion has been moved
8 and seconded. All in favor say aye. All opposed.

9 (Vote taken.)

10 THE CHAIRMAN: The motion is passed.

11 MR. BROWNELL: Thank you, Mr. Chairman.

12 The next emergency certificate for
13 consideration is the Houtzdale Municipal Authority.
14 Houtzdale Municipal Authority applied to the Commission
15 on September 24th, made a request --

16 MR. SWARTZ: I guess we acted prematurely
17 on the second resolution.

18 MR. BROWNELL: A little bit, yes. Would
19 you like me to continue?

20 THE CHAIRMAN: Yes, please.

21 MR. BROWNELL: They made an application to
22 the Commission on September 24th, requesting that an
23 emergency certificate be granted. The emergency
24 certificate, the relief that they were looking for was
25 contained in their Commission approval. And what they

1 needed was to operate two groundwater wells, Well TH4,
2 at the same time they operated Well TH10.

3 The executive director, in consultation
4 with the chair, did grant that emergency certificate on
5 September 28th, 2007. And once again, due to the
6 Commission's regulations and the way these things are
7 approved, that approval does end today, December 5th,
8 2007.

9 Houtzdale Municipal Authority did request
10 an extension, that extension request was made November
11 26th. And they, again, are looking for a 90-day
12 extension of those conditions.

13 And staff would -- although the wells
14 aren't permanently in use in this matter, the potential
15 does exist for them to be used again as the groundwater
16 conditions -- hopefully, the groundwater conditions
17 will improve -- at this point, there is no guarantee
18 that is going to happen.

19 And the staff does recommend -- as we did
20 with Lock Haven -- that this be approved with the
21 appropriate conditions.

22 THE CHAIRMAN: Comments from
23 commissioners?

24 COLONEL MUELLER: Mr. Chairman, I'd like
25 to clarify, then, the earlier statement. My

1 understanding was you provided two resolutions for the
2 first condition for Lock Haven but you had two
3 different options; is that correct?

4 MR. SWARTZ: It would be the identical
5 language for both of these resolutions.

6 COLONEL MUELLER: As amended with the
7 addition you had for --

8 MR. SWARTZ: Correct.

9 COLONEL MUELLER: Okay.

10 MR. SWARTZ: If you'd like me to read it
11 again, I can, but it would be the same language for
12 resolution 2007-07, for Houtzdale, as you just approved
13 for Lock Haven.

14 COLONEL MUELLER: But Houtzdale, I
15 believe, was 2007-06.

16 MR. SWARTZ: Correct.

17 COLONEL MUELLER: So we would amend both
18 2007-05 and 06 to the new language?

19 MR. SWARTZ: Right.

20 THE CHAIRMAN: Do I hear a motion on the
21 resolution?

22 MR. LYNCH: So moved.

23 THE CHAIRMAN: Is there a second?

24 COLONEL MUELLER: Second.

25 THE CHAIRMAN: All in favor say aye. All

1 opposed.

2 (Vote taken.)

3 THE CHAIRMAN: The motion is passed.

4 MR. BROWNELL: Thank you, Mr. Chairman.

5 THE CHAIRMAN: We now move to the final
6 item of the public hearing, part 5. We'll now proceed
7 with the fifth and final part regarding the adoption of
8 revisions to the SRBC project fee schedule.

9 In March 2005, the Commission adopted
10 revisions to its project fee schedule. It had been
11 since 1991 that any changes have been made in the fee
12 schedule and, as a result, inflation had eroded the
13 percentage of review costs that are recovered by the
14 fees down to 23 percent.

15 Therefore, the Commission decided that, in
16 order to keep the fee schedule current and meet the
17 goal of recovering about half the costs of review, the
18 schedule's categorical fees should be increased by 10
19 percent each year for five consecutive years and a
20 Consumer Price Index adjustment should be made
21 annually. The first of the categorical fee adjustments
22 was implemented on January 1st, 2007.

23 I will now call on Commission Counsel Rich
24 Cairo to highlight exactly where the proposed
25 adjustments and revisions appear in the project fee

1 schedule.

2 MR. CAIRO: Thank you, Mr. Chairman.

3 Commissioners, I'll present for your
4 consideration a revised project fee schedule to be
5 effective January 1st of 2008 and to run through
6 December 31st, 2008, along with a resolution to adopt
7 that revised fee schedule.

8 The 20-day notices for this part of the
9 public hearing, which are required by the compact, were
10 published as follows:

11 They were published in Binghamton, New
12 York on November 15th, 2007; in Elmira, New York on
13 November 15th, 2007; in Williamsport, Pennsylvania on
14 November 14th, 2007; in Wilkes-Barre, Pennsylvania on
15 November 14th, 2007; in Harrisburg, Pennsylvania on
16 November 15th, 2007; in York, Pennsylvania on November
17 14th, 2007; here in Lancaster, Pennsylvania on November
18 15th, 2007; and in Elkton, Cecil County, Maryland on
19 November 15th, 2007.

20 In March of 2005, when you adopted the
21 project fee schedule for the first time in its present
22 form, you instructed that, for five consecutive years
23 beginning in December of 2006, the fee schedule should
24 be adjusted to increase the level of fees by 10 percent
25 each year. This adjustment should occur after a

1 Consumer Price Index adjustment was first made. Those
2 adjustments have been included in the proposed fee
3 schedule for 2008 that's now before you.

4 In other changes that affect payments, a
5 new fee category has been added to cover withdrawals of
6 water less than 100,000 gallons per day. Such
7 withdrawals must be approved when they involve a
8 consumptive use that is subject to approval. And we
9 didn't really have a category for that, within the
10 schedule before that. So we need to add it.

11 In the current schedule, the Commission
12 allows installment payments of fees exceeding \$6,000.
13 The staff is now proposing that level be raised to
14 \$10,000 in recognition of the affects of inflation.

15 Finally, experience with the fee schedule
16 over the last year and a half has led staff to
17 recommend a few other modifications to the schedule to
18 improve its clarity:

19 Item number 6 in the schedule, it will
20 clarify that groundwater withdrawal fees are based on a
21 maximum 30-day average while all other fees are based
22 on peak day use.

23 Item number 7 reiterates the consequences
24 of not submitting a project fee, but it also clarifies
25 the fact that if you erroneously submit an excessive

1 fee, you will receive a refund. Some project sponsors
2 were deliberately sending deficient fees in for fear
3 that the Commission would not refund any excess fees
4 paid in error. So we wanted to reassure them on that
5 point with that clarification.

6 Item 8 instructs project sponsors who have
7 projects that involve more than one category of fee to
8 submit an itemized list of fees with their payments.

9 That covers the changes, Mr. Chairman.
10 And the staff respectfully requests that, after hearing
11 any testimony that may be given here at this hearing,
12 that the Commission adopt the resolution approving the
13 proposed fee schedule for calendar year 2008.

14 THE CHAIRMAN: Thank you, Mr. Cairo.

15 Do the commissioners have any questions
16 for Mr. Cairo?

17 Hearing none, is there anyone in the
18 audience who wishes to make a comment?

19 Hearing none, I'll ask for a motion to
20 approve this action.

21 MR. SWARTZ: Resolution Number 2007-07.

22 MS. WEAVER: Mr. Chairman, I make the
23 motion.

24 THE CHAIRMAN: A motion has been made. Do
25 I have a second?

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MR. LYNCH: Second.

THE CHAIRMAN: All in favor say aye. All
opposed.

(Vote taken.)

THE CHAIRMAN: The motion is approved.
This concludes the public hearing part of
the meeting.

(The public hearing was concluded at
4:03 p.m.)

1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this copy is a correct transcript of same.

5
6
7
8 Helena L. Bowes, RPR
9 Notary Public