

1 BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
 OF THE STATE OF MONTANA

2

3 IN THE MATTER OF:)CASE BER 2007-07-AQ
 SOUTHERN MONTANA ELECTRIC)
4 GENERATION AND TRANSMISSION)
 COOPERATIVE - HIGHWOOD)
5 GENERATING STATION)
 AIR QUALITY PERMIT NO. 3423-00)

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 TRANSCRIPT OF PROCEEDINGS
 BOARD DELIBERATIONS

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10 Heard at the Mitchell Building
11 1520 East Sixth Avenue, Room 111
12 Helena, Montana
13 May 30, 2008
14 12:30 p.m.

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 BEFORE CHAIRMAN JOSEPH RUSSELL,
17 BOARD MEMBERS LARRY MIRES, GAYLE

18

 SKUNKCAP, BILL ROSSBACH; ROBIN SHROPSHIRE;

19

 and DON MARBLE (By telephone)

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1 WHEREUPON, the following proceedings were
2 had:

3 * * * * *

4 CHAIRMAN RUSSELL: We're now on to the
5 matter of appeals by Southern Montana Electric,
6 Citizens for Clean Energy, and the Montana
7 Environmental Information Center regarding Air
8 Quality Permit No. 3432-00 issued to SME for the
9 Highwood Generating Station, now referred to as
10 BER 2007-06 and 07 AQ. Katherine, I'm going to
11 let you get this started.

12 MS. ORR: Mr. Chairman, members of the
13 Board, you have had occasion to read a proposed
14 order of mine that was drafted based upon a review
15 of the record and the oral arguments, and also the
16 hearing that took place on April 21st, I believe;
17 and it is intended to reflect the intent of the
18 Board, but by no means is it to be in any way
19 preclusive of what the Board may want to formulate
20 as its own opinion for the wording or the
21 conclusions.

22 And there has been some discussion about
23 whether the requested relief really reflects the
24 intent of the Board. There was in the April 21st
25 hearing a set of motions made. The first motion

1 was to remand for PM2.5 analysis; the second was
2 to remand for an analysis of PM; and the third was
3 to remand again for 2.5 analysis. And at that
4 point, I wasn't sure whether the Board thought
5 that, based upon the record, that PM2.5 analysis
6 was possible without qualification, or whether
7 there needed to be a default to a PM10 analysis in
8 the case that a PM2.5 analysis wasn't possible.
9 So that's why it's drafted as it is presently.

10 If the Board believes that a PM2.5
11 analysis is possible based upon the record, then
12 this order can be altered in the scope of its
13 remand to simply require that a PM2.5 analysis be
14 done. And I have taken the liberty of going
15 through the opinion, and altering it slightly to
16 indicate first in the remand section that only a
17 PM2.5 analysis would be required, and that in
18 doing that PM2.5 analysis, the deficiencies
19 pointed out, as listed in the order for a PM10, be
20 avoided. So I have altered this slightly to
21 reflect that only a PM2.5 analysis be conducted if
22 that is the wish of the Board. And I can go
23 through those alterations.

24 CHAIRMAN RUSSELL: Because we do have an
25 order in front of us, specifically I'd like to

1 start from the back and move forward. With that
2 in mind, if you look at the order, as it states,
3 "Wherefore it is hereby ordered that Permit No. --
4 is remanded for a thorough top down BACT analysis
5 of PM2.5."

6 I would suggest that we can make a
7 motion to strike the next sentence, and then
8 strike the first three words of the next sentence,
9 and capitalize "A," and it would basically state
10 that, and then, "A top down BACT analysis
11 conforming to NSR manual will be deemed to be
12 sufficiently thorough." That would be the new
13 order.

14 And if we could get that motion, if that
15 is the desire of the Board, if we can get that
16 motion, then I think we'll go back into the
17 findings, and make sure it modifies that order,
18 and also that we modify the footer to reflect that
19 it's a 2.5 analysis that we're requiring.

20 MR. ROSSBACH: So moved.

21 CHAIRMAN RUSSELL: It's been moved by
22 Bill. Is there a second?

23 MR. MIRES: I'll second.

24 CHAIRMAN RUSSELL: It's been moved and
25 seconded. Any further discussion?

1 MR. MARBLE: I have a question. This is
2 Don. So when you say a thorough top down BACT
3 analysis of PM2.5, does that include that it's not
4 using the EPA surrogate concepts?

5 CHAIRMAN RUSSELL: Well, we're going to
6 -- I think there are members on the Board that
7 believe that a top down BACT for 2.5 can be done
8 in conformance with the NSR manual.

9 MR. MARBLE: I'm not saying that's not
10 possible. I'm just saying are they going to fall
11 back again on the surrogate idea?

12 CHAIRMAN RUSSELL: I don't believe that
13 that's what we're telling them.

14 MR. MARBLE: I hope not.

15 MR. MIRES: Can we just strike that from
16 the motion that Bill made?

17 CHAIRMAN RUSSELL: Right. The surrogate
18 -- that second sentence is the surrogate method.

19 MR. MARBLE: So your proposal was to
20 strike -- Tell me again what you wanted, Joe.

21 CHAIRMAN RUSSELL: Strike the second
22 sentence of the order.

23 MR. MARBLE: So take it out. So you
24 don't say it can't be performed, and then "either
25 case" -- what about -- "either case" is the

1 language you took out?

2 CHAIRMAN RUSSELL: Those three words,
3 take that out.

4 MR. MARBLE: "Top down BACT analysis
5 conforming --" Is there any discussion? I'd like
6 to hear some discussion on that. Is that true?
7 Does this language -- I don't know. I'm not
8 familiar with the NSR manual. Is that going to do
9 the job? Does anybody else have any opinion on
10 that?

11 CHAIRMAN RUSSELL: This is a Board
12 matter now.

13 MR. MARBLE: I realize that.

14 MR. ROSSBACH: I guess, Don, that's why
15 I made the motion the way I did. I do believe
16 that this covers what our intention is.

17 MR. MARBLE: So you agree with Joe's
18 proposal?

19 MR. ROSSBACH: Yes. I made the motion
20 to adopt it.

21 MR. MARBLE: Well, it sounds all right
22 with me.

23 CHAIRMAN RUSSELL: Anything else?
24 Gayle?

25 MR. SKUNKCAP: (Shakes head)

1 CHAIRMAN RUSSELL: All right.

2 MS. SHROPSHIRE: Can somebody read the
3 order in its entirety?

4 CHAIRMAN RUSSELL: Let me go ahead and
5 read it into the record. The last full paragraph,
6 "Wherefore it is hereby ordered that permit No.
7 3423-00 is remanded for a thorough top down BACT
8 analysis of PM2.5. A top down BACT analysis
9 conforming to the NSR manual will be deemed to be
10 sufficiently thorough." That's how the order
11 would read.

12 MR. MARBLE: This is -- if I can ask
13 another question. We're taking out the part about
14 the thorough top down BACT analysis of PM10, too.
15 I wonder if any Board member -- I'm not so good on
16 the science of some of this, or the issues
17 involving -- Would this mean we don't need to go
18 back and look at PM10?

19 CHAIRMAN RUSSELL: I think it's been
20 stated certainly that PM2.5 is a component of
21 PM10, and if a top down -- and there is really no
22 way to exclude a bigger particle if you do a good
23 BACT analysis on 2.5. You're going to capture
24 what we used to call TSP, now PM10, and a smaller
25 particulate to .5. There is no way to exclude

1 larger particles unless we have some way of
2 cavitating the filters to only allow big particles
3 through, and I haven't heard of any of those yet.

4 MR. MARBLE: Well, thanks for the
5 answer.

6 MR. ROSSBACH: I think the answer, Don,
7 is: If you do it on 2.5, it captures all of the
8 10.

9 MR. MARBLE: Okay. Robin, what do you
10 think about that?

11 MS. SHROPSHIRE: I think it's over
12 simplifying it a little bit, but is there a reason
13 why we wouldn't do both?

14 MR. MIRES: Aren't you doing both?

15 MR. ROSSBACH: I don't understand why
16 you're not doing both.

17 MS. SHROPSHIRE: I'm just wondering if
18 this limits it.

19 MR. ROSSBACH: What would not be
20 included?

21 MS. SHROPSHIRE: Let's say, for example,
22 that there was a technology that was better for
23 PM10 and a separate one that was better for PM2.5,
24 and those two technologies would be linked. And
25 so I don't think that it does. I'm just wondering

1 if there was --

2 CHAIRMAN RUSSELL: There is the old
3 Sierra Anderson PM10 heads. Do you remember
4 those, Jeff? There used to be a way to actually
5 fall out bigger particles and only capture smaller
6 ones. But that presumes that you've got -- that
7 that's what you're trying to do, and I don't think
8 that we're trying to do that. It's just if you're
9 -- Granted they could use a totally different
10 baghouse technology. You could devise a way to
11 only capture small particulate and dump out big
12 ones, but I think we've got a problem.

13 MS. SHROPSHIRE: I know. I'm agreeing.
14 I'm not sure, whatever, if it makes it -- changes
15 it any, but I'm happy, I think.

16 CHAIRMAN RUSSELL: Any further
17 discussion? We have some more work to do. We're
18 changing an order, but we have to make sure that
19 before we take a vote, we need to change the
20 findings, before we let this go. Anything else,
21 Katherine? Are we missing anything on the order?

22 MS. ORR: I don't think so.

23 MS. SHROPSHIRE: And then would the same
24 thing be argued with the NSR manual?

25 MS. ORR: Can I add something? The NSR

1 manual has specific directives of a five step
2 process in order to systematically eliminate
3 technologies that have been identified, and that's
4 what's referred to by referencing the NSR manual.
5 And as far as the fact that no surrogate analysis
6 be conducted, I think that's clear in the
7 conclusions of law where it says that there is no
8 exception in the Clean Air Act or any promulgated
9 regulations for a BACT analysis of PM2.5 itself;
10 but the order can be even clearer in this remand
11 language that there would be no surrogate analysis
12 for PM2.5 if the Board wants it.

13 MR. MARBLE: I'd like to see that in
14 there myself.

15 MS. ORR: That's easy to draft.

16 CHAIRMAN RUSSELL: So basically the
17 second sentence would be, "A surrogate analysis
18 for PM2.5 would not be acceptable."

19 MS. ORR: Yes.

20 CHAIRMAN RUSSELL: We don't have to cite
21 PM10, we could just say, "any surrogate analysis
22 would not be acceptable."

23 MR. ROSSBACH: Do you want to amend the
24 motion? If Larry would concur, that would be
25 acceptable to me.

1 MR. MIRES: I'll concur.

2 CHAIRMAN RUSSELL: So that would be a
3 friendly amendment and has been added.

4 MS. ORR: I've drafted it.

5 CHAIRMAN RUSSELL: Are we ready at least
6 for this part?

7 MR. MARBLE: Ready.

8 CHAIRMAN RUSSELL: All those in favor,
9 signify by saying aye.

10 (Response)

11 CHAIRMAN RUSSELL: Opposed.

12 (No response)

13 CHAIRMAN RUSSELL: Motion carries
14 unanimously. Katherine, would you like to go
15 through --

16 MS. ORR: Yes, I'll be glad to and I'll
17 try to do this expeditiously.

18 MR. REICH: Mr. Chair, could Katherine
19 just read the revised language, please?

20 CHAIRMAN RUSSELL: Sure.

21 MS. ORR: Let me go ahead with that.

22 "Wherefore, it is hereby ordered that Permit No.
23 3423-00 is remanded for a thorough top down BACT
24 analysis of PM2.5. A surrogate analysis for PM2.5
25 would not be acceptable. A top down BACT analysis

1 conforming to the NSR manual will be deemed
2 sufficiently thorough."

3 MR. REICH: Thank you.

4 MR. LIVERS: Mr. Chairman, to me that
5 says then that the Board is stating beyond doubt
6 that the direct PM2.5 analysis is possible.

7 CHAIRMAN RUSSELL: That's our
8 expectation.

9 MR. LIVERS: So if it is not possible --

10 MR. MARBLE: Come back to the Board.

11 CHAIRMAN RUSSELL: Our order is that a
12 top down BACT for PM2.5 is --

13 MR. LIVERS: If the direct PM2.5
14 analysis cannot be done, then the Department will
15 have no choice but to deny the permit.

16 MR. MIRES: Can it be brought back to
17 the Board?

18 CHAIRMAN RUSSELL: I believe that if it
19 can't be done, we haven't changed anything then.

20 MR. LIVERS: So you're just remanding it
21 to the Department to have SME do a 2.5 analysis.

22 CHAIRMAN RUSSELL: (Nods head)

23 MR. LIVERS: And I guess maybe I'm
24 unclear as to what the Department is -- What if
25 they conclude it can't be done? I understand that

1 they have to proceed with the assumption that it's
2 going to be doable.

3 MR. MARBLE: This is Don. I think it
4 should then come back to the Board, and let the
5 public and the parties be allowed to be -- on what
6 basis is that true, because I can't pin the --
7 EPA, I can't imagine they're not going to be
8 coming out with something pretty quick. They've
9 been dragging their feet for so long on how to do
10 a 2.5, and just in time to get creative and do it.
11 And maybe a little raggedy, but somebody has got
12 to be the first one to do it, but I don't want to
13 just say, "Well, if we can't do it, then we'll
14 just go back to the old surrogate method." I'm a
15 Board member. I want it to come back to the
16 Board. If you think you can't do it, bring it
17 back, and we'll have a meeting. I'm sure it won't
18 take that long. Say, "It couldn't be done. Here
19 is the best we could do."

20 MS. ORR: Mr. Chairman, I think that it
21 would be very problematic to have continuing
22 jurisdiction, because you want the BACT analysis
23 to be completed so that permit construction can
24 commence.

25 CHAIRMAN RUSSELL: So if this is our

1 order, then that's what we're going to expect,
2 and --

3 MS. ORR: So what's being raised here
4 is: Do you want to have the order have sort of a
5 safety valve, where there is a default to a proper
6 PM10 analysis, or are you concluding that at this
7 moment a PM2.5 analysis is possible?

8 MR. MARBLE: This is Don. I have great
9 faith in the Department that they can do a 2.5,
10 and so I would say we don't want a default based
11 on there. If conceivably it turns out, well, we
12 can't do this, then they'll have to come back to
13 the Board and say, "We can't comply with your
14 order." I don't like the idea of giving a safety
15 valve, and then we find out it's been issued with
16 a BACT and some old surrogate method. I don't
17 think that would be in the public interest.
18 That's not what I would want to see. I'd want to
19 see --

20 Let's see what the best case, best
21 possible 2.5 top down BACT looks like, and if we
22 have to have a special meeting after the
23 Department says it just absolutely cannot be done,
24 period, let's have a special meeting or a
25 telephone meeting. But I don't want the idea of

1 saying, "Here goes the permit because we just
2 couldn't do it, so we just went back and used our
3 old one."

4 CHAIRMAN RUSSELL: Without getting too
5 far afield, the fact is that testimony was
6 provided that there are other control strategies
7 that can be employed that do not change the boiler
8 that was specified, and we made our decision based
9 on the fact that we didn't believe a thorough BACT
10 analysis was conducted. And I believe, Don, I
11 believe that you're right. I think a 2.5 BACT
12 analysis can be conducted, whether it be some
13 Cadillac, this ultra neo-modern Cadillac, or
14 Cadillac we have today in 2008, I think that
15 that's what BACT gives you. You have to take the
16 best technology that's available today, and apply
17 it.

18 And I think there is testimony in the
19 record that stated there could be other
20 technologies employed with the boiler that was
21 selected that weren't thoroughly analyzed. So I
22 think we go with the 2.5. For the record, I
23 certainly don't want to be one of the votes that
24 says that this plant doesn't get off the ground
25 this year. We've started down a course, and we

1 want to try to get this resolved. With my public
2 health and regulatory background, I think that a
3 BACT analysis could be done on 2.5.

4 MR. LIVERS: Mr. Chairman, is the Board
5 contemplating articulating some mechanism where if
6 we reach a point that -- and this would be
7 remanded -- that SME will conduct a 2.5 BACT
8 analysis, we'll review it. If this reaches a dead
9 end at any point in the process, what is likely to
10 happen is there is no other -- the default is that
11 we will then deny the permit, and most likely the
12 company would appeal, and that's how it gets back
13 in the Board's lap later. Short of specifying a
14 different mechanism, that's what would happen if
15 it is deemed that it can't be done.

16 CHAIRMAN RUSSELL: We spent a lot of
17 time with this. I want to see this thing move
18 forward. Is there anyone -- I've made my point.
19 I want to see this move forward, and a BACT on 2.5
20 can be done.

21 MR. ROSSBACH: I agree. I don't
22 understand the -- you do the best you can with the
23 information that you have, and you do the analysis
24 that you can. I'm confident that SME can get
25 enough information to be able to provide that kind

1 of analysis to the Department, and I know the
2 Department will use good faith in terms of trying
3 to decide whether it's adequate, and I can't
4 imagine that a good faith effort by SME is not
5 going to adequately answer the questions that we
6 have about the technologies that are available.

7 I don't like borrowing trouble at this
8 point, and I believe that SME can do the job. I
9 have no doubt that they can get the information
10 they need to get it done.

11 MR. MARBLE: I'm ready to vote.

12 CHAIRMAN RUSSELL: I'm ready. Do we
13 need to roll call this? All those in favor of the
14 language, signify by saying aye.

15 (Response)

16 CHAIRMAN RUSSELL: Opposed.

17 (No response)

18 CHAIRMAN RUSSELL: Motion carries.

19 MR. MARBLE: I think we should do a roll
20 call.

21 CHAIRMAN RUSSELL: Everybody voted in
22 favor.

23 MR. MARBLE: Did everybody vote? I
24 didn't hear some people.

25 CHAIRMAN RUSSELL: If there was a nay, I

1 would have done one.

2 Let's try to clean up your document,
3 unless we feel that the parties -- Do you want to
4 clean it up and give it to the parties with our
5 order, or do you think we should clean up the
6 findings?

7 MS. ORR: What I'd recommend, Mr.
8 Chairman, is that I summarize the differences that
9 would be suggested by this recent vote, and then
10 you authorize me to provide you with the draft for
11 your signature that incorporates those changes.

12 MR. ROSSBACH: So moved.

13 CHAIRMAN RUSSELL: So you want to show
14 us those changes because you have spent the time
15 looking at those.

16 MS. ORR: Right.

17 MR. ROSSBACH: She can do it and then
18 I'll move.

19 MS. ORR: Mr. Chairman, members of the
20 Board, what I've done is I've gone through the
21 findings of fact and conclusions of law, and the
22 intent of this order now is not to require a PM10
23 analysis, but it is to demonstrate the
24 deficiencies in a PM10 analysis so that those
25 deficiencies are not repeated when this PM2.5

1 analysis is conducted. If you look at Finding of
2 Fact No. 8.

3 CHAIRMAN RUSSELL: Page?

4 MS. ORR: That's your Page 13. It adds
5 the language to the end of that, "The Board makes
6 findings of fact about these deficiencies,"
7 referring to the PM10 analysis deficiencies, "for
8 the purpose of providing guidance as to what
9 deficiencies the Department should avoid in
10 conducting its PM2.5 analysis." That's at the end
11 of Finding of Fact 8. So that's sort of the
12 introductory framework for this. Tom, you're
13 looking puzzled.

14 MR. LIVERS: I'm just not in the right
15 place. I'm sorry.

16 MS. ORR: So it's the last sentence of
17 that Finding of Fact No. 8. So there are going to
18 be quite a few findings in here regarding the PM10
19 analysis, but all by way of illustration that that
20 analysis was deficient, and that those
21 deficiencies not be repeated when the PM2.5
22 analysis is conducted.

23 So then with respect to Finding of Fact
24 No. 18. Can everybody find that on Page 20? I
25 think it's better to look at the Findings of Fact

1 rather than the page numbers. Finding of Fact No.
2 18. The sentence at the beginning of the
3 paragraph is taken out, and that is the sentence
4 that says, "The permit and the permit analysis
5 lack an explanation of why the Highwood Generating
6 Station could not meet lower emission limits of
7 other facilities with lower limits on filterable
8 PM10," and then it cites the testimony of Mr.
9 Merchant.

10 "And for an adequate explanation of
11 other permit technologies and permit limits, see
12 DEQ/SME Exhibit 12," and then, "The Board finds
13 that lower PM10 emissions have been permitted
14 elsewhere, and the justification provided in the
15 permit analysis for addressing and then dismissing
16 the lower BACT levels established in other
17 facilities is inadequate."

18 That gets taken out, and the reason is
19 there are no other permitted facilities that have
20 been permitted under PM2.5. So whereas in a
21 general analysis, BACT analysis, it's important to
22 compare to the technologies of other permitted
23 sources, you cannot do that here because there
24 aren't other permitted sources that have been
25 permitted for a direct PM2.5 emission. So that

1 sentence goes out. The rest of the paragraph
2 stays in.

3 MR. MARBLE: Where is that deletion at?

4 MS. ORR: The deletion -- There are
5 actually two deletions. The only remaining
6 sentence in Paragraph 18 says -- and it's right in
7 the middle of the paragraph -- "The explanation of
8 the Department that it didn't have to analyze LAER
9 because this is a non-attainment area is
10 misplaced." That is the only section in the
11 paragraph that remains, because the rest of the
12 paragraph refers to a comparison to other
13 facilities that have been permitted under PM10.
14 Is that clear?

15 MR. MARBLE: That's the only part of
16 Paragraph 18 is the one sentence that you just
17 read?

18 MS. ORR: That's the only part that
19 remains.

20 Then go to Finding of Fact 25, and the
21 same applies, the same reasoning applies to
22 Paragraphs 25 through 29. Those paragraphs have
23 to do with analysis of limits from other
24 comparable facilities. Those would go out. Are
25 there any questions about that?

1 MS. DILLEN: Mr. Chairman, members of
2 the Board, this is Abigail Dillen. I wonder if I
3 might be heard for just one moment.

4 CHAIRMAN RUSSELL: Sure.

5 MS. DILLEN: I just would point out that
6 I think that Ms. Orr's approach giving guidance as
7 to what portions of the PM10 analysis should not
8 be carried forward into the PM2.5 analysis is a
9 wise one; but in that regard, I would point out
10 that condensibles are basically the same for PM10
11 and PM2.5. So to the extent that there were
12 concerns about lower permitted condensible limits
13 across the country, those would still apply in a
14 PM2.5 analysis, and I would just raise that
15 concern with the Board before they agree to delete
16 that guidance from the opinion.

17 CHAIRMAN RUSSELL: Equal time. David,
18 do you need anything?

19 MR. RUSOFF: I don't have any comment.

20 CHAIRMAN RUSSELL: Ken.

21 MR. REICH: I do have a bit of a concern
22 because it seems to me that what Ms. Orr is
23 properly doing is indicating that this Board is
24 remanding specifically for PM2.5, and she's giving
25 guidance on PM2.5; and since there are no PM2.5

1 limits anywhere in the country, including for
2 condensibles, I don't think it's appropriate to
3 refer to condensible numbers generally. We are
4 being required to do a top down BACT analysis for
5 PM2.5, and we'll have to use whatever resources
6 and information we can get. But looking at
7 condensible numbers and PM10 permits I don't think
8 is an appropriate analogy.

9 CHAIRMAN RUSSELL: That was your point.

10 MS. DILLEN: This is Abigail. I just
11 would point out, too, that one of the claims that
12 Petitioners made is that the analysis of
13 condensibles for PM10 was a problem, and because
14 the analysis of condensibles is going to be, I
15 think, very, very similar, if not virtually the
16 same, for condensibles of PM10 versus PM2.5, I
17 think either appropriately included findings of
18 the Board.

19 MS. ORR: Mr. Chairman. There is, for
20 everyone's reference, there is reference in this
21 order to the fact that there was quite a lot of
22 testimony from most of the witnesses that PM2.5
23 condensibles and PM10 condensibles are the same,
24 so that point is acknowledged in this order; but
25 the comparability to other facilities and their

1 permitted levels I don't think is analogous
2 anymore.

3 MR. ROSSBACH: I'm comfortable with
4 Katherine's explanation.

5 CHAIRMAN RUSSELL: I've got a motion to
6 accept Katherine's deletions.

7 MR. ROSSBACH: Yes.

8 CHAIRMAN RUSSELL: Is there a second?

9 MR. REICH: Mr. Chair, excuse me if I
10 might. Katherine, were you finished with your
11 deletions?

12 MS. ORR: Not quite.

13 CHAIRMAN RUSSELL: Just 25 through 29,
14 so we get this off the table.

15 MR. ROSSBACH: So moved.

16 CHAIRMAN RUSSELL: Is there a second?

17 MR. MIRES: Second.

18 CHAIRMAN RUSSELL: Further discussion?

19 (No response)

20 CHAIRMAN RUSSELL: Hearing none, all
21 those in favor, signify by saying aye.

22 (Response)

23 CHAIRMAN RUSSELL: Opposed.

24 (No response)

25 CHAIRMAN RUSSELL: 25 through 29 are

1 out.

2 MS. SHROPSHIRE: Can we slow down just a
3 little bit here? I thought that was just 25. If
4 you look at 25, it talks about filterable
5 emissions, and --

6 CHAIRMAN RUSSELL: I think the point was
7 that any comparison to a PM10 limit in another
8 plant is not appropriate if we're only looking at
9 a PM2.5 BACT analysis. I think that's the point.

10 MS. SHROPSHIRE: And I just want to be
11 clear that the condensibles have been included in
12 the PM10, and that limits on condensibles will
13 still be looked at.

14 CHAIRMAN RUSSELL: Well, you can't do a
15 PM2.5 BACT analysis without looking at the
16 condensibles. That's what we've -- a thorough top
17 down BACT analysis for 2.5 has to look at
18 condensibles.

19 MS. SHROPSHIRE: So No. 26 says, "With
20 respect to condensible particulate, many
21 comparable facilities have been permitted with
22 lower limits for components of total condensible
23 emissions," and then it lists them. And we're
24 taking that out?

25 MR. ROSSBACH: Yes.

1 CHAIRMAN RUSSELL: With respect to PM10,
2 we are, but there is also record that says
3 condensibles for PM10 and PM2.5 are the same. So
4 I'm not sure that -- we're not changing the
5 record.

6 MS. SHROPSHIRE: No. 26 doesn't refer to
7 PM10.

8 CHAIRMAN RUSSELL: It does, because
9 those are the limits. There are no PM2.5 limits
10 in any of these permits.

11 MS. ORR: It may not be obvious to the
12 Board, but the first section of the findings of
13 fact addresses PM10, and then the second section
14 part of the findings of fact addresses PM2.5.
15 Those start at about Finding of Fact 32, I
16 believe. So that's the way it's organized.

17 MS. SHROPSHIRE: All right. I think
18 we're in agreement. I just wanted to make sure
19 that permit levels at plants that are for
20 condensibles may be looked at.

21 CHAIRMAN RUSSELL: I think that -- Is
22 there not a finding that -- or the record
23 clearly --

24 MS. ORR: I can very easily draft
25 something that says that.

1 CHAIRMAN RUSSELL: Just as a finding?

2 MS. ORR: Yes.

3 CHAIRMAN RUSSELL: Just a finding that
4 says, "PM10 condensibles are --"

5 MS. ORR: "-- shall be considered."
6 "Permitted PM10 condensibles shall be considered
7 in the PM2.5 analysis;" is that right? Is that
8 how you would like it to be?

9 MS. SHROPSHIRE: Just that we've used
10 condensibles and PM2.5 synonymously or
11 interchangeably, and that's why when I'm looking
12 at 26 --

13 CHAIRMAN RUSSELL: I disagree, because a
14 PM2.5 has a specific condensible amount and
15 filterable amount.

16 MS. SHROPSHIRE: Correct.

17 CHAIRMAN RUSSELL: So we're not
18 considering those two alike. We're considering
19 the PM10 condensibles the same as the PM2.5
20 condensibles, not the PM10 condensibles are the
21 same as the PM2.5.

22 MS. SHROPSHIRE: Correct.

23 CHAIRMAN RUSSELL: So basically what
24 you're going to add is a finding that basically
25 states, "Condensibles of PM10 are the same as

1 condensibles of PM2.5."

2 MS. ORR: And there are findings to that
3 effect in here already.

4 CHAIRMAN RUSSELL: So do we need to add
5 them?

6 MS. SHROPSHIRE: That's why I was just
7 concerned with taking out 26, because -- I don't
8 know if that makes a difference or not, but I just
9 wanted to be clear on that.

10 MS. ORR: So I could say, as I have
11 drafted here, "Permitted PM10 condensible levels
12 or limitations shall be considered in a PM2.5 BACT
13 analysis."

14 MS. SHROPSHIRE: Could be.

15 MS. ORR: Could be. "May be considered"
16 or something. Okay.

17 Then if you go to Finding of Fact 66.
18 The last sentence in that finding of fact did
19 allow for -- It says at the last sentence that,
20 "The Department would at least initiate a PM2.5
21 analysis to determine how or if PM2.5 emissions
22 could be reduced." That's not correct anymore.
23 They're not going to at least initiate the PM2.5
24 analysis.

25 So that sentence would now read,

1 starting with "this," "This, coupled with the fact
2 that manufacturers can provide PM2.5 emissions
3 data if asked, and with Mr. Merchant's statement
4 that he had the correct emissions data, he would
5 have imposed a PM2.5 BACT analysis, indicate that
6 there was no impediment to the Department
7 conducting a PM2.5 analysis to determine how or if
8 PM2.5 emissions could be reduced." So it's
9 basically taking out "at least" and "initiating,"
10 and substituting the language "conducting."

11 MR. MARBLE: I move we adopt that.

12 MR. ROSSBACH: Second.

13 CHAIRMAN RUSSELL: Is there any further
14 discussion?

15 (No response)

16 CHAIRMAN RUSSELL: All those in favor,
17 signify by saying aye.

18 (Response)

19 MS. ORR: Then I think we're on now the
20 conclusions of law, and that it's Conclusion of
21 Law No. 20. It's the same issue of looking at
22 similar plants. This is language regarding what
23 the Department shall look at.

24 And if you look at basically the middle
25 of Conclusion of Law 20, in the long list of

1 evaluation criteria, it says between commas, "By
2 failing to evaluate applications of similar plants
3 being similarly permitted, for example, the
4 Deserit plant application, DEQ/SME Exhibits 11
5 through 13, and by failing to fully evaluate and
6 compare the relative control efficiencies of
7 permitted technologies and lower limits of other
8 permitted facilities, and ruling out why these
9 lower limits may not be implemented." That
10 language really doesn't apply anymore. So that
11 language that I just read would go out.

12 MS. SHROPSHIRE: Even if it's permitted
13 condensibles?

14 MS. ORR: Well, I think this is a
15 conclusions of law about what's appropriate to
16 consider, and I think we already have a finding of
17 fact that says what they do have to consider in
18 the affirmative, so --

19 CHAIRMAN RUSSELL: Do I have a motion
20 the strike the language in Conclusion No. 20?

21 MR. MIRES: So moved.

22 CHAIRMAN RUSSELL: It's moved by Larry.
23 Is there a second?

24 MS. SHROPSHIRE: Second.

25 CHAIRMAN RUSSELL: It's been seconded by

1 Robin. Any further discussion?

2 (No response)

3 CHAIRMAN RUSSELL: All those in favor,
4 signify by saying aye.

5 (Response)

6 CHAIRMAN RUSSELL: Opposed.

7 (No response)

8 CHAIRMAN RUSSELL: No opposition.

9 MR. REICH: Mr. Chair, if I could just
10 clarify. Was it the phrase that began, "By
11 failing to evaluate applications of similar
12 plants," and then ended, "ruling out why these
13 lower limits may not be limited"? Is that what
14 was struck?

15 CHAIRMAN RUSSELL: That's correct.

16 MS. ORR: In Conclusion of Law No. 21,
17 the first sentence doesn't apply anymore. That
18 reads specifically, "As the result of the failure
19 to implement the top down BACT analysis for PM10,
20 the permit identifies only control efficiencies
21 for total filterable PM as opposed to filterable
22 PM10." That doesn't apply anymore.

23 MR. MARBLE: I move we strike.

24 CHAIRMAN RUSSELL: It's been moved by
25 Don. Is there a second?

1 MS. SHROPSHIRE: Second.

2 CHAIRMAN RUSSELL: It's been seconded by
3 Robin. Further discussion?

4 (No response)

5 CHAIRMAN RUSSELL: All those in favor,
6 signify by saying aye.

7 (Response)

8 CHAIRMAN RUSSELL: Any opposed?

9 (No response)

10 MS. ORR: Then the next sentence, "The
11 record does not contain any discussion of possible
12 implementation of LAER emission limits for
13 filterable PM10, or condensible PM10, or limits of
14 facilities listed in the RBLC with lower limits,
15 or the relative feasibility or infeasibility of
16 using technology associated with those limits as
17 BACT." The same argument applies here. I think
18 that's now obsolete as a conclusion of law.

19 CHAIRMAN RUSSELL: Do we have any other
20 changes on 21?

21 MS. ORR: No, that's it.

22 CHAIRMAN RUSSELL: So we are striking
23 the next sentence, correct? We're going to strike
24 that sentence. Do I have a motion to strike?

25 MR. ROSSBACH: So moved.

1 CHAIRMAN RUSSELL: Bill's motion. Is
2 there a second?

3 MR. MARBLE: Second.

4 CHAIRMAN RUSSELL: Seconded by Don.
5 Questions?

6 (No response)

7 CHAIRMAN RUSSELL: None. All those in
8 favor, signify by saying aye.

9 (Response)

10 CHAIRMAN RUSSELL: Opposed.

11 (No response)

12 MS. ORR: Then finally the Conclusion of
13 Law 23. That first sentence is taken out.

14 CHAIRMAN RUSSELL: "The record shows
15 that there are higher efficiency control
16 technologies --"

17 MS. ORR: The whole thing goes out, and
18 then I have substitute language.

19 CHAIRMAN RUSSELL: What would that be?

20 MS. ORR: That is, "The findings of fact
21 and conclusions of law concerning PM10 are
22 addressed in this order to show the deficiencies
23 in the PM10 BACT analysis. Although the Board is
24 not requiring a PM10 BACT analysis on remand, but
25 solely a PM2.5 BACT analysis, the Department must

1 take steps to avoid the deficiencies identified in
2 the PM10 analysis when doing the PM2.5 analysis."

3 CHAIRMAN RUSSELL: That's procedural.

4 MS. ORR: Right.

5 CHAIRMAN RUSSELL: We probably ought to
6 slow down, because I know, Ken, you're trying to
7 capture this language, are you not?

8 MR. REICH: I'm trying, but I'm not a
9 stenographer.

10 CHAIRMAN RUSSELL: So we'll go slower.

11 MS. ORR: This is basically summarizing
12 the point that we're trying to effect in the
13 remand language itself. This is an explanation of
14 that. And it is that, "The findings of fact and
15 conclusions of law concerning PM10 are addressed
16 in this order to show the deficiencies in the PM10
17 BACT analysis. Although the Board is not
18 requiring a PM10 BACT analysis on remand, but
19 solely a PM2.5 BACT analysis, the Department must
20 take steps to avoid the deficiencies identified in
21 the PM10 analysis when doing a PM2.5 analysis."

22 MR. REICH: Ms. Orr, unfortunately I
23 think you talk as fast as I do. I couldn't get
24 that again. I apologize. I suppose you could
25 just email it around. But I can't take it down

1 that fast.

2 MS. ORR: Basically it just makes the
3 point that the deficiencies about PM10 analysis in
4 the findings of fact and conclusions of law shall
5 be avoided when doing the PM2.5 analysis.

6 MR. REICH: Are you going to send around
7 another draft to the parties as well as to the
8 Board?

9 MS. ORR: Well, it will be a signed
10 draft. I can sure read it again, Ken, if that's
11 what you would like.

12 MR. REICH: I don't want to take up the
13 Board's time unnecessarily. Perhaps if somebody
14 got it, they could email it to me, or perhaps you
15 could just email that particular sentence, and to
16 Abigail and David as well.

17 MS. ORR: Will do.

18 CHAIRMAN RUSSELL: I would entertain a
19 motion to strike the first sentence, and replace
20 it with the language that Katherine has read.

21 MR. ROSSBACH: So moved.

22 CHAIRMAN RUSSELL: Is there a second?

23 MR. MIRES: Second.

24 CHAIRMAN RUSSELL: Seconded by Larry.

25 All those in favor, signify by saying aye.

1 (Response)

2 CHAIRMAN RUSSELL: Opposed.

3 (No response)

4 MR. REICH: Ms. Orr, if I might ask a
5 question. Were you keeping in the second sentence
6 in Paragraph 23?

7 MS. ORR: No.

8 CHAIRMAN RUSSELL: Basically you're
9 substituting the whole 23.

10 MS. ORR: Right.

11 CHAIRMAN RUSSELL: So all of the
12 language in the current 23 is gone, and
13 substituted language.

14 MR. REICH: Thank you.

15 CHAIRMAN RUSSELL: Actually we started
16 taking up nested motions on Item 25, so Katherine,
17 let's make sure we -- Can we move on what were --
18 do you have those items just by findings number?

19 MS. ORR: Finding of Fact 8, and that
20 was basically to add that sentence to the effect
21 of what I just read. "The Board makes findings of
22 fact about these deficiencies for the purposes of
23 providing guidance as to what deficiencies the
24 Department should avoid."

25 CHAIRMAN RUSSELL: Do I have a motion to

1 amend Finding 8?

2 MR. ROSSBACH: So moved.

3 CHAIRMAN RUSSELL: It's been moved by

4 Bill. Is there a second?

5 MS. SHROPSHIRE: Second.

6 CHAIRMAN RUSSELL: Seconded by Robin.

7 All those in favor, signify by saying aye.

8 (Response)

9 CHAIRMAN RUSSELL: Opposed.

10 (No response)

11 MS. ORR: Then Finding of Fact 18, it's

12 only the language in the middle that remains,

13 which says, "The explanation of the Department

14 that it didn't have to analyze LAER because this

15 is not a non-attainment area is misplaced."

16 CHAIRMAN RUSSELL: So do I have a motion

17 to modify Finding No. 18 to reflect that?

18 MR. MIRES: So moved.

19 CHAIRMAN RUSSELL: Is there a second?

20 MR. ROSSBACH: Second.

21 CHAIRMAN RUSSELL: Seconded by Bill.

22 All those in favor, signify by saying aye.

23 (Response)

24 CHAIRMAN RUSSELL: We actually have

25 covered the rest of them by motion.

1 MS. ORR: Yes.

2 MR. ROSSBACH: I move that we approve
3 and authorize the signature by the Chairman of the
4 Findings of Fact, Conclusions of Law, and Order as
5 amended previously.

6 CHAIRMAN RUSSELL: Is there a second
7 then?

8 MR. MARBLE: Second.

9 CHAIRMAN RUSSELL: It's been seconded by
10 Don. Discussion.

11 MR. REICH: Mr. Chair, will you be
12 giving the parties a chance to comment, as you
13 indicated? Maybe you didn't indicate, but as we
14 requested, I guess. I just have several very
15 short comments, and I emphasize they will be
16 short.

17 CHAIRMAN RUSSELL: And do you believe
18 you need to make those comments before the Board
19 takes action?

20 MR. REICH: I do.

21 CHAIRMAN RUSSELL: Ken, that really
22 concerns me.

23 MR. REICH: Well, Mr. Chair, members of
24 the Board, Mr. Rossbach indicated, and I think
25 there seemed to be a concurrence by the Board,

1 that if we had any significant comments we wanted
2 to make on this proposed order, we'd be entitled
3 to do that, and --

4 CHAIRMAN RUSSELL: You know, I think
5 that I really want to see this move along, and I
6 think the Board fairly unanimously decided to make
7 these changes; and quite frankly, I know via the
8 parties that you requested this change, and there
9 may be more. But if there is something you just
10 can't live with, I guess I'd rather see you
11 formally file an exception than to -- basically
12 what I would presume to be -- to try to persuade
13 the Board to do something different than they've
14 set in motion.

15 MR. REICH: No, I'm not going to attempt
16 that, Mr. Chair, members of the Board. I just had
17 -- There is one specific issue with respect to
18 this order that has nothing to do with PM2.5 that
19 gives me some concern, and I think as long as the
20 order is going to be redrafted, there could be
21 some additional language added to it. That's the
22 analysis of CO2, which I think was very sketchy,
23 particularly compared to the analysis of PM2.5.
24 And I am concerned about your record on appeal
25 with that fairly very summary analysis of CO2.

1 That was one of my concerns. The other concern
2 was --

3 CHAIRMAN RUSSELL: Ken, just based on
4 that, we basically moved to dismiss that.

5 MR. REICH: I understand, but in the
6 event there is an appeal, I would just like the
7 record to be clear, and I think that Mr.
8 Rossbach's summary of the reasons for the ruling
9 were very clear, but they're not reflected in the
10 proposed order.

11 CHAIRMAN RUSSELL: Do we have a record
12 of that?

13 MS. ORR: He's referring to the record
14 in --

15 MR. REICH: I believe that was the
16 January 11th, 2008.

17 CHAIRMAN RUSSELL: Ken, would you just
18 like those comments to be reflected in this order?

19 MR. REICH: I think they should be, or
20 comments as detailed as those, because that at
21 least gives, I think, a more clear and more
22 specific record on that issue.

23 CHAIRMAN RUSSELL: Can we put them in
24 verbatim?

25 MS. ORR: You could make a motion that

1 his testimony, Bill's testimony should be verbatim
2 included in here as to CO2.

3 CHAIRMAN RUSSELL: But they just can't
4 be cited?

5 MS. ORR: And you can cite that portion
6 as well.

7 CHAIRMAN RUSSELL: Why don't we just
8 cite it as a finding in the --

9 MS. ORR: You can say it's based upon
10 the testimony, and reference that part in the
11 record.

12 CHAIRMAN RUSSELL: Let's do that. Bill,
13 are you okay with that?

14 MR. ROSSBACH: No. That doesn't seem
15 like the appropriate way to --

16 CHAIRMAN RUSSELL: They're not trying to
17 use you for an appeal issue.

18 MR. ROSSBACH: The Board can do what
19 they want to do, but I don't know whether that's
20 an appropriate --

21 MR. MARBLE: I don't think it's
22 appropriate.

23 MR. ROSSBACH: I don't think it's
24 appropriate.

25 MR. MARBLE: It's part of the record,

1 and in our order. I don't think it's necessary.

2 Just vote on this order.

3 CHAIRMAN RUSSELL: Ken, I'm going to
4 take it up as a motion. Does anyone have a desire
5 to include Bill's record verbatim? I'll take a
6 motion.

7 (No response)

8 CHAIRMAN RUSSELL: I don't believe the
9 Board wants to put that in, Ken.

10 MR. REICH: The other issue I had, and I
11 don't think this should be controversial, is this
12 order should properly refer to a PM2.5 analysis of
13 the CFB boiler, because that is what all of the
14 parties asked for, and that was what the testimony
15 at the hearing was all about. That's in all of
16 the post hearing briefings by the parties. I
17 don't believe there is a controversy about that,
18 but it would certainly -- we need that clarity so
19 that we know exactly what we're looking at when we
20 go back.

21 CHAIRMAN RUSSELL: Understood. We'll
22 just add that to our order, right after analysis
23 of the PM2.5 of the CFB boiler.

24 MR. ROSSBACH: So moved.

25 CHAIRMAN RUSSELL: It's been moved. Is

1 there a second?

2 MR. MIRES: Second.

3 CHAIRMAN RUSSELL: It's been seconded.

4 All those in favor, signify by saying aye.

5 MR. MARBLE: I have a discussion.

6 CHAIRMAN RUSSELL: Discussion, Don.

7 MR. MARBLE: So conceivably I think
8 that's fine, but if the Department finally says
9 and the company says, "We can't do a 2.5," then
10 what happens? Do they have to look at something
11 else, or would it be just -- this is going to be
12 final that CFB is what it is, and we're not
13 looking at anything else?

14 CHAIRMAN RUSSELL: I think we've pretty
15 much walked into this with the fact that we
16 weren't looking at a different boiler technology.

17 MR. MARBLE: Just asking.

18 CHAIRMAN RUSSELL: I think it's a good
19 clarification, and I think it's a very good
20 clarification on your party's part, Ken. All
21 those in favor, signify by saying aye.

22 (Response)

23 CHAIRMAN RUSSELL: Opposed.

24 (No response)

25 CHAIRMAN RUSSELL: Motion carries

1 unanimously. Ken?

2 MR. REICH: Yes.

3 CHAIRMAN RUSSELL: Are you done?

4 MR. REICH: Those the principal items I
5 had. I just want to be heard to say that I
6 thought Katherine did an extensive job of putting
7 together the order. We do think unfortunately
8 that a number of the findings are not consistent
9 with the evidence, and we disagree with them. We
10 understand that you're not re-reviewing it.

11 And the final comment is -- and again,
12 just for the record, we don't agree with the final
13 vote that there were violations of law, because as
14 we read Katherine's ruling, there has to be a
15 violation of rule or law, and there is no finding
16 of violation of rule or law in any of the
17 evidence, and four of the seven members of your
18 Board found earlier that there was no violation,
19 so we don't think you should have made this
20 ruling. And again, it's for the record, because I
21 understand you're not likely to reconsider, but I
22 wanted to make that for the record.

23 CHAIRMAN RUSSELL: I'm guessing the
24 Department would have liked to have made that a
25 part of their record, too.

1 MS. DILLEN: Mr. Chair, members of the
2 Board, this is Abigail Dillen. You just said
3 something, Mr. Chair, a few moments back, and I
4 just want to clarify it for the record. You said
5 that you had made these changes, as I think you
6 have just been going through with Ms. Orr, at the
7 request of some of the parties, and I just want
8 the record to reflect that if that's the case, I
9 was not aware of those discussions, and I think
10 that sounds like a disturbing development in the
11 process if that's the case.

12 CHAIRMAN RUSSELL: Well, that would be
13 fine for you to make that comment. I think that
14 the issue was that our decision last time we met
15 was specific to PM2.5; and however that gets to
16 me, it was brought up through our attorney that
17 that was a question, and we moved from that point.

18 MS. DILLEN: I just want to clarify.
19 Have there been ex parte communications between
20 other parties and yourself that I'm unaware of?

21 CHAIRMAN RUSSELL: I don't believe so.

22 MS. DILLEN: From our perspective -- And
23 of course, I should begin by saying that we feel
24 that Ms. Orr's order is very thorough, and
25 careful, and we agree with it. However, we did

1 have a claim that involved PM10 condensibles, and
2 had the parties been debating whether the
3 conclusions of fact and law that addressed our
4 claims in that regard should be kept in the
5 opinion, I think we would have had something to
6 say about that; and if there were communications
7 among the parties that I'm not aware of, I do feel
8 blind sided by these developments, and I feel
9 compelled to say that.

10 CHAIRMAN RUSSELL: You're on the record.

11 MS. DILLEN: Okay.

12 MR. ROSSBACH: But there were no -- as
13 far as I know, there were no such ex parte
14 communications. I think the record needs to be
15 very clear. There were no such ex parte
16 communications.

17 CHAIRMAN RUSSELL: As I stated, I don't
18 believe there were. There was an email that did
19 not state anything specifically that came from
20 SME, and that is the only information I had other
21 than my discussions with our Board attorney.

22 MS. DILLEN: Thank you for the
23 clarification, Mr. Chair.

24 CHAIRMAN RUSSELL: Anything else?

25 (No response)

1 CHAIRMAN RUSSELL: I think we have an
2 order amended.

3 MR. ROSSBACH: We didn't vote on the
4 ultimate order.

5 CHAIRMAN RUSSELL: We have all of our
6 nested motions to clarify --

7 MR. ROSSBACH: No, we didn't. I don't
8 think we voted on the additional language that Mr.
9 Reich asked for CFB.

10 CHAIRMAN RUSSELL: We have a motion, we
11 have an over arching motion to accept the order as
12 amended, and we had a second, I believe by Larry.

13 MR. MIRES: Second.

14 CHAIRMAN RUSSELL: All those in favor,
15 signify by saying aye.

16 (Response)

17 CHAIRMAN RUSSELL: Opposed.

18 (No response)

19 MR. MARBLE: Question. When you said
20 that, you mean the findings of fact, conclusions,
21 orders, the whole shebang?

22 CHAIRMAN RUSSELL: Yes.

23 MR. MARBLE: I'd like to say that as I
24 read this order that Katherine prepared, the draft
25 that I saw, I thought she did a very good job, and

1 is to be complimented on taking all that testimony,
2 and it was an extensive record and everything, and
3 putting it together in a way that really reflected
4 the Board's -- as I understood it, the Board's
5 instructions. So I think she deserves some
6 accolades for that.

7 MR. ROSSBACH: Second.

8 CHAIRMAN RUSSELL: Thank you, Katherine.

9 MS. ORR: Thank you.

10 CHAIRMAN RUSSELL: And attorneys were
11 paid by the pound, which I'm certain they are.
12 You've earned your keep.

13 So we are done with this item, and we've
14 covered the last few, and we've also talked to
15 general public comment.

16 With all that said, I do have one issue.
17 And I think Kris is going to -- I have a conflict
18 with the September meeting date, and I may request
19 to see if we can move that to the first Friday in
20 October.

21 MS. BREWER: It's currently set for
22 September 26th, and looking to move it to October
23 3rd.

24 CHAIRMAN RUSSELL: A week later. I
25 don't know if that has any problems with any of

1 the rulemaking that we have going on. Generally a
2 week doesn't. If it does, then we'll get right
3 back with the Board on trying to get that. So if
4 you can check your calendars, and Kris, you'll
5 just email around and --

6 MR. MARBLE: What was that final date
7 again?

8 CHAIRMAN RUSSELL: October 3rd.

9 MR. MARBLE: Which is a Friday. Okay.

10 MR. LIVERS: Mr. Chairman, members of
11 the Board, maybe also just a quick briefing, that
12 the Environmental Quality Council has expressed
13 interest in the Board's actions on this issue.
14 Katherine and I appeared before the Agency
15 Oversight Subcommittee a few weeks ago, and at the
16 committee's request gave a brief presentation of
17 the Board's preliminary decision, and the
18 Department's perspective, and there will be a
19 follow-up. Since it was prior to the actual
20 action before seeing the order and actual vote of
21 the Board, the subcommittee has requested a return
22 to convene a special meeting on June 10th, and
23 Chairman Russell will be there to discuss this
24 action at that time.

25 The EQC doesn't have a role in a Board

1 contested case. In a rulemaking, they do serve as
2 the rule review body for -- it serves as the rule
3 review entity for BER rulemaking, but they don't
4 have particular standing or authority in this
5 case, but they do have an interest in -- there is
6 discussion that they may at least weigh in after
7 the fact with some correspondence to the Board.

8 CHAIRMAN RUSSELL: Thanks.

9 MR. MARBLE: I have a question. Who
10 represented the Board at the meeting?

11 MR. LIVERS: Katherine was there.

12 CHAIRMAN RUSSELL: I was asked -- I have
13 been there to kind of recap some of the things
14 we've done over the last few years, which I think
15 satisfied the Environmental Quality Council at
16 that point; and I've heard from interested parties
17 outside of this that it did seem to satisfy them.
18 I certainly wouldn't put words in their mouth.
19 But I was asked, and I was not available, and it
20 was -- I talked to Tom, and I thought at that
21 point that Katherine would be the best to
22 represent us, basically because they were asking
23 somewhat about our proceedings.

24 MR. MARBLE: I totally agree with that.
25 I just wanted to clarify that Katherine

1 represented the Board.

2 CHAIRMAN RUSSELL: Anything else?

3 MR. MIRES: That date is June 10th?

4 CHAIRMAN RUSSELL: June 10th.

5 MR. LIVERS: And it's in the afternoon,
6 I believe.

7 MS. BREWER: It's at 1:30.

8 CHAIRMAN RUSSELL: I will entertain a
9 motion to adjourn.

10 MR. MARBLE: So moved.

11 CHAIRMAN RUSSELL: It's moved by Don.
12 Is there a second?

13 MR. SKUNKCAP: Second.

14 CHAIRMAN RUSSELL: All those in favor,
15 signify by saying aye.

16 (Response)

17 CHAIRMAN RUSSELL: We are adjourned.

18 (The proceedings were concluded
19 at 1:30 p.m.)

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C E R T I F I C A T E

STATE OF MONTANA)

: SS.

COUNTY OF LEWIS & CLARK)

I, LAURIE CRUTCHER, RPR, Court Reporter,
Notary Public in and for the County of Lewis &
Clark, State of Montana, do hereby certify:

That the proceedings were taken before me at
the time and place herein named; that the
proceedings were reported by me in shorthand and
transcribed using computer-aided transcription,
and that the foregoing - [] - pages contain a
true record of the proceedings to the best of my
ability.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal
this day of , 2008.

LAURIE CRUTCHER, RPR
Court Reporter - Notary Public
My commission expires
March 9, 2012.