

DOCKETED

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BEFORE THE CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
 Application for Certification for)
 THE PUENTE POWER PROJECT) Docket No. 15-AFC-01
 _____)

COMMITTEE PREHEARING CONFERENCE,
SCHEDULING ORDER, AND FURTHER ORDERS

OXNARD PERFORMING ARTS CENTER

800 HOBSON WAY

OXNARD, CA 93030

WEDNESDAY, FEBRUARY 1, 2017

12:00 P.M.

Reported by:
Martha Nelson

APPEARANCESCOMMISSIONERS

Janea Scott, Presiding Member

Karen Douglas, Associate Member

ADVISERS

Rhetta deMesa, Adviser to Commissioner Scott

Matthew Coldwell, Adviser to Commissioner Scott

Jennifer Nelson, Adviser to Commissioner Douglas

Le-Quyen Nguyen, Adviser to Commissioner Douglas

HEARING OFFICER

Paul Kramer, Hearing Officer

CEC STAFF

Shawn Pittard, Staff Project Manager

Kerry Willis, Assistant Chief Counsel

Michelle Chester, Attorney

PUBLIC ADVISER'S OFFICE

Alana Mathews, Public Adviser

APPLICANT

Michael J. Carroll, Esq., Latham & Watkins, LLP

George Piantka, PE, Director of Environmental Affairs, NRG Energy, Inc.

Dawn Gleiter, Director of Sustainable Development, Project Manager, NRG Energy, Inc.

APPEARANCES (Cont.)

INTERVENORS

Carmen Ramirez, Mayor Pro Tem, City of Oxnard

Matthew Smith, Environmental Defense Center

Alicia Roessler, Environmental Defense Center

Ellison Folk, Shute, Mihaly & Weinberger LLP, City of Oxnard

Robert Sarvey

Lisa Belenky, Center for Biological Diversity

Grace Chang, Fighting for Informed Environmentally Responsible Clean Energy

Shana Lazerow, California Environmental Justice Alliance

OTHERS PRESENT

Amanda Fagan, Community Planning Liaison Officer, Naval Base Ventura County

Joseph Street, California Coastal Commission

Louise Warren, California Coastal Commission

Allegra Roth, on behalf of Assemblymember Monique Limon

Mike Villegas, Air Pollution Control Officer, Air District

PUBLIC COMMENT

Ingrid Ward, Resident, City of Oxnard

Carmen Ramirez, Mayor Pro Tem, City of Oxnard

Steve Nash

Kevin Ward

Raul Lopez, CAUSE

Jay Turner

APPEARANCES (Cont.)PUBLIC COMMENT (Cont.)

Dick Jaquez

Kitty Merrill

Jonathan Horton

Charles McLaughlin

Kurt Oliver, International Union of Operating Engineer,
Local 12

Tony Skinner, Tri-County Building and Construction Trades
Council

Martin Rodriguez

Tom Cady, Oxnard Chamber of Commerce

Rafael Escobedo

Cherie Cabral, California State Building and Construction
Trades Labor Management Trusts

I N D E X

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Meeting Agenda	
1. Call to Order, Introductions	6
2. Reports from Applicant, Energy Commission Staff and Intervenors regarding their readiness for the upcoming Evidentiary Hearing, proposed testimony and witnesses; Committee Discussions with the parties about the order of subject areas, use of informal and formal procedures, and other matters in preparation for the Hearing.	12
3. Public Comment	165
4. Closed Session (if necessary)	N/A
Committee Closed Session consideration of the following item:	
Application for Certification of the Puente Power Project. Deliberation by the Committee on any matters submitted for decision by the Committee including, but not limited to, pending motions and scheduling.	
The Committee may adjourn to Closed Session in accordance with the Government Code section 11126, subdivision (c)(3), which allows a state body, including delegated committee, to hold a Closed Session to deliberate on a decision to be reached in a proceeding the state body was required by law to conduct.	
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1 P R O C E E D I N G S

2 FEBRUARY 1, 2017 12:00 p.m.

3 COMMISSIONER SCOTT: Good afternoon,
4 everyone, and welcome to the Puente Power Project
5 Prehearing Conference.6 My name is Commissioner Janea Scott. I'm
7 the Presiding Member of this proceeding.8 I'd like to introduce Commissioner Karen
9 Douglas. She's the Associate Member. She's here to
10 my left, to your right.11 Next to her is her Adviser, Jen Nelson. And
12 next to Jen Nelson is here Adviser, Le-Quyen Nguyen.13 To my immediate left is our Hearing Officer,
14 Paul Kramer.15 And then, to my right are my Advisers,
16 Rhetta deMesa and Matt Coldwell.17 So, I'd now like to ask for the parties to
18 introduce themselves, starting with the Applicant.19 MR. CARROLL: Good morning. I'm Mike
20 Carroll, with Latham & Watkins. We are outside
21 counsel to the Applicant.22 To my left is George Piantka, Director of
23 Environmental Affairs with NRG.24 And to his left is Dawn Gleiter, Director of
25 Sustainable Development and the Project Manager for

1 the Puente Project, also with NRG.

2 COMMISSIONER SCOTT: Great. I'd like to ask
3 the CEC staff to please introduce themselves.

4 MS. CHESTER: This is Michelle Chester,
5 Staff Attorney.

6 MS. WILLIS: And, good morning, my name is
7 Kerry Willis. I'm Assistant Chief Counsel for staff.
8 And also with us is Shawn Pittard, the Project
9 Manager.

10 COMMISSIONER SCOTT: Great. May I ask the
11 intervenors to introduce themselves? I'll start with
12 the City of Oxnard. Do we have anyone from the City
13 of Oxnard here, on the intervenors?

14 HEARING OFFICER KRAMER: Could you come to
15 the mic?

16 MS. WARREN: Excuse me. I can see that
17 Ellison Folk, the Attorney for the City of Oxnard is
18 on WebEx.

19 MS. RAMIREZ: That's what I wanted to say.
20 Carmen Ramirez, Mayor Pro Tem, City of Oxnard.

21 COMMISSIONER SCOTT: Terrific. So, is his
22 line unmuted? Her line, I'm sorry.

23 Please go ahead and introduce yourself, if
24 you're from the City of Oxnard, as an intervenor.

25 MS. FOLK: Hi, this Ellison Folk, from the

1 City of Oxnard. I'm with Shute, Mihaly & Weinberger.
2 I'm outside counsel.

3 COMMISSIONER SCOTT: Okay, welcome.

4 I'd like to ask the Environmental Coalition,
5 the Environmental Defense Center, and Sierra Club,
6 Intervenors, to please introduce themselves.

7 Hi. Good afternoon, this is Alicia Roessler. I'm
8 Staff Attorney, and I'm here today with Matthew
9 Smith, here on behalf of the EDC and Environmental
10 Intervenor, Sierra Club. Sorry, Sierra Club and the
11 Environmental Coalition of Ventura County.

12 COMMISSIONER SCOTT: Great. Welcome.

13 May I ask Intervenor Bob Sarvey to introduce
14 himself, please?

15 He's probably on the line.

16 COMMISSIONER SCOTT: Mr. Sarvey, if you're
17 on the line would you go ahead and speak up, please.

18 Okay, it sounds like we might not have him
19 quite yet.

20 May I ask Intervenors from the California
21 Environmental Justice Alliance to please introduce
22 themselves?

23 MS. LAZEROW: Good afternoon, Shana Lazerow.
24 I'm representing the California Environmental Justice
25 Alliance, and its member organization CAUSE, in this

1 proceeding. May of our CAUSE members have been here
2 and spoken before you before. They're struggling a
3 little bit with the midday timing, but some of them
4 are here to speak to you, as well, today.

5 COMMISSIONER SCOTT: Okay, thank you.

6 Welcome.

7 May I have the Intervenors for Center for
8 Biological Diversity to please introduce themselves?

9 MS. BELENKY: Yes, good afternoon, this is
10 Lisa Belenky with the Center for Biological
11 Diversity. And, also, Kevin Bundy is on the WebEx as
12 well.

13 COMMISSIONER SCOTT: Excellent, welcome.

14 May I also have the Intervenors from
15 Fighting For Informed Environmentally Responsible
16 Clean Energy to please introduce herself?

17 Dr. Chang are you on the -- I see your name
18 on the line here. Please go ahead and introduce
19 yourself. Okay, we will circle back.

20 Are there any others from State, or Federal,
21 or Local Government? The California Coastal
22 Commission? If so, please step up to the microphone
23 and introduce yourself.

24 MR. STREET: This is Joseph Street, with the
25 Coastal Commission. I'm on WebEx.

1 COMMISSIONER SCOTT: Great, welcome.

2 Please go ahead.

3 MR. ROTH: My name is Allegra Roth. I'm
4 here on behalf of Assemblymember Monique Limon.

5 COMMISSIONER SCOTT: Okay, welcome.

6 Any others? Oh, please go ahead.

7 MS. FAGAN: Good afternoon. I'm Amanda
8 Fagan. I'm the Community Planning Liaison Officer
9 for Naval Base Ventura County.

10 COMMISSIONER SCOTT: Okay, welcome.

11 And I'd also like to introduce to you our
12 Public Adviser, Alana Mathews, who many of you
13 probably saw on your way in the door. She's busy
14 helping some folks out. But she's right here at the
15 table, with the yellow table cloth, waving at you.

16 Okay, now that we've completed our
17 introductions, I will now turn the conduct of this
18 proceeding over to our Hearing Officer, Paul Kramer.

19 HEARING OFFICER KRAMER: Thank you. So, the
20 purpose of today's hearing is to hold a Prehearing
21 Conference. A Prehearing Conference is generally a
22 conversation between the Committee and the parties,
23 staff, the Applicant, and Intervenors to review the
24 state of the evidence, readiness for the Evidentiary
25 Hearing, the time needed for the hearing, and the

1 order of presentation of evidence. And, then, other
2 issues that are necessary to discuss for the
3 Evidentiary Hearing just currently scheduled for
4 February 7. After that, we will take public comment.

5 The Energy Commission values and encourages
6 public participation in its proceedings. The
7 participation has two parts. That's your ability to
8 speak to the Committee, but also the ability for
9 others to hear what you say and what other people
10 have to say.

11 During the Prehearing Conference and public
12 comment portions of today's meeting there is an
13 expectation that everyone present maintains standards
14 of decorum. What this means is that no person shall
15 be permitted to interrupt Committee members or other
16 speakers. No person shall engage in behavior that
17 disrupts the orderly conduct of the meeting,
18 including, but not limited to, using threatening
19 language, continuously making sounds that inhibit the
20 ability of others to participate in the meeting and
21 hear the meeting content. Or, using actions, attire,
22 props, or signage that obstructs the view of meeting
23 attendees.

24 If these behaviors occur, the Presiding
25 Member has the authority to issue a warning. If the

1 disruptions continue, the Presiding Member may order
2 the disruptive person to leave the meeting. And if
3 the person does not leave, the Presiding Member may
4 call a recess of the meeting, may clear the meeting
5 room, or may seek the assistance of security or law
6 enforcement to enforce those rules of decorum.

7 If order cannot be restored, the Presiding
8 Member may continue this meeting to another day,
9 time, and/or place.

10 To facilitate the orderly receipt of your
11 public comments, we ask that you fill out a blue
12 speaker card and return it to the Public Adviser.
13 When the Presiding Member calls your name from the
14 card, please promptly come to the microphone and then
15 promptly conclude your comments when your time, which
16 is going to be three minutes, has expired.

17 Failure to stop at the end of your allotted
18 time will also be considered behavior that disrupts
19 the orderly conduct of the meeting.

20 That's Item 1 on our agenda today. We'll
21 now move into Item 2, which is the Prehearing
22 Conference.

23 And, again, what we're going to do is the
24 Committee's going to speak with the parties, discuss
25 various issues in preparation for the hearings,

1 including determining which issues are ready to go to
2 hearings, and the order of topics. As you know,
3 we've reserved four days next week. And one of the
4 purposes will be to determine which items fit best on
5 which day, and how many days we ultimately need.

6 We have signed on to be here both Tuesday
7 and Wednesday, for sure, and we've scheduled time-
8 specific public comment periods at 5:30 on each of
9 those days.

10 On the other days, we plan to take public
11 comment after the days' discussion of evidence and
12 other business is concluded.

13 So, with that, let me open up the first of
14 the subtopics. Let me get my pages in order.

15 MS. BELENKY (SIMULTANEOUSLY WITH MR. KRAMER
16 BELOW): This is - I'm sorry to interrupt - this is
17 Lisa Belenky on the phone, and I think one of the
18 call-in users is not muted, and there's a lot of
19 noise on the line, so if there's any way to just ask
20 everyone who's on the line can mute...

21 And the first question is whether we are
22 ready to conduct Evidentiary Hearings? I think,
23 based on the Prehearing Conference Statements that we
24 received from each party, and thank you all for
25 filing those on a timely basis, it is clear that many

1 of the topics, if not all of them, are ready for
2 hearing.

3 What I gleaned from the statements was that
4 there was some concern that the Alternatives analysis
5 needs some beefing up. And there was a discussion of
6 the need for Protocol Surveys on the topic of
7 Biology.

8 Do any of the parties wish to -- and, then,
9 Mr. Sarvey has suggested that the hearings can't go
10 forward until the full Final Staff Assessment has
11 been published in Spanish.

12 So, do the parties have any comments they
13 wish to make on the question of whether we are ready
14 to go forward to hearings?

15 COMMISSIONER SCOTT: Do you want to work
16 your way through, so folks know when to --

17 HEARING OFFICER KRAMER: Oh, okay. Let's
18 begin, then -- let's start with the Applicant and
19 we'll work our way across the dais.

20 MR. CARROLL: Thank you. This is Mike
21 Carroll, for the Applicant. The Applicant believes
22 that all subject areas are complete and ready to
23 proceed to hearing, and that none of the issues
24 suggested in the Prehearing Conferences, suggested
25 otherwise, have merit or that there's any need for

1 any additional analysis to be completed before
2 proceeding to hearings.

3 HEARING OFFICER KRAMER: Okay, thank you.

4 MS. LAZEROW: Thank you. Shana Lazerow, on
5 behalf of the California Environmental Justice
6 Alliance.

7 As we stated in our Prehearing Conference
8 Statement, there are numerous subject areas that are
9 not ready to be presented at Evidentiary Hearing.
10 Part of that is that we have not had the opportunity
11 to have some back and forth with staff, discussing,
12 for example in the Environmental Justice analysis,
13 the use of the updated CalEnviroScreen tool, which
14 really changes the facts concerning the siting of
15 this proceeding.

16 There are, of course, other topics that need
17 additional attention prior to Evidentiary Hearings.

18 But as we stated in our statement, we are
19 prepared to proceed with hearings next week, if the
20 Committee views that that would be the best way to
21 use this time.

22 HEARING OFFICER KRAMER: Okay, thank you.

23 MS. ROESSLER: Hi, Alicia Roessler. Can
24 everyone hear me okay? As we stated in our
25 Prehearing Conference Statement, as well, we believe

1 that there are kind of several grounds to
2 substantiate why Biological Resources and, in turn,
3 Land Use and Alternatives are not ready to proceed to
4 Evidentiary.

5 The first of those is, as we stated before,
6 there is a lack of protocol level surveys and data.
7 We believe this is a pretty glaring and serious
8 omission in the report that affects many of the
9 conclusions in the Biological Resources Section.

10 This has been corroborated by expert
11 testimony we put forward, by Lawrence Hunt, a local
12 biologist, as well as the Department of Fish and
13 Game, and the Coastal Commission most recently filed
14 in one of our declarations, from their own ecologist.

15 To follow up on that, there's also been a
16 significant project change that's occurred post to
17 the Coastal Commission's 30413(d) report. And we
18 believe that the Coastal Commission should have an
19 opportunity, pursuant to the 2005 Memorandum of
20 Agreement between the CEC and the Coastal Commission,
21 that should trigger a supplemental report from the
22 Coastal Commission. And this is in regard to the
23 project change.

24 There also is, now, a conflict between the
25 Coastal Commission's opinions regarding the lack of

1 data and the project change they didn't even have an
2 opportunity to review, yet, that we also think should
3 trigger additional postponement of the Evidentiary
4 Hearings for Biological Resources.

5 And I think that sums it up for now.

6 HEARING OFFICER KRAMER: Thank you.

7 Staff?

8 MS. CHESTER: Michelle Chester on behalf of
9 staff. We are ready to move to hearings on all topic
10 areas, as stated in our Prehearing Conference
11 Statement.

12 We have responded to the concerns about
13 CalEnviroScreen 3.0 in our rebuttal testimony, as
14 well as some of the concerns on Bio and Alternatives.

15 HEARING OFFICER KRAMER: Thank you.

16 City of Oxnard? Ms. Folk? You seem to have
17 muted yourself.

18 MS. FOLK: Hi, can you hear me, now?

19 HEARING OFFICER KRAMER: Yes.

20 MS. FOLK: Okay. So, as the City indicated
21 in its Prehearing Conference Statement, we do not
22 believe that the discussion of Alternatives is
23 adequate for the project and, certainly, not adequate
24 to make an override finding. And, in particular, the
25 discussion of Preferred Resources as an alternative

1 to the project would benefit from additional
2 evidentiary development. As recently as yesterday,
3 new information has come out about the feasibility of
4 Preferred Alternatives, such as battery storage, and
5 the ability to procure them in a very short time
6 frame.

7 The City believes that there should be --
8 excuse me?

9 (Phone line interruption)

10 MR. SARVEY: Sarvey's the last name...

11 MS. FOLK: Excuse me? We believe there
12 should be more information developed on that issue.

13 And then, finally, as we noted on the issues
14 of sea level rise, the staff assessment relies on a
15 draft model for assessing sea level rise at the site,
16 and we believe it would be more appropriate, if they
17 are going to rely on that model, to wait until the
18 final version that has been documented is released.

19 And, finally, the FEMA maps, which are
20 critical to determining whether this project is in
21 the flood zone, are in the process of being
22 finalized, and will not be final until later in the
23 year.

24 HEARING OFFICER KRAMER: Okay, thank you.

25 Give me a moment to mute that person. Let's

1 see who it is. Okay, there we go.

2 Let's see, Mr. Sarvey, have you joined us?

3 Okay, Dr. Chang, for FFIERCE. Did you have
4 any comments on that question?

5 DR. CHANG: Yes, can you hear me?

6 HEARING OFFICER KRAMER: Go ahead.

7 DR. CHANG: Great. So, as we stated in the
8 --

9 HEARING OFFICER KRAMER: Could you speak up?

10 DR. CHANG: Yes. So, on behalf of FFIERCE,
11 as we stated in the Prehearing Conference Statement,
12 we also believe that there are several substantive
13 issues, which are areas that remain in dispute. Most
14 prominently, Environmental Justice.

15 Thus far, the Applicant and staff have
16 asserted that the project has no significant direct,
17 indirect or cumulative Environmental Justice impacts,
18 and we don't agree with that assessment, or that
19 assertion. And we believe that that certainly
20 requires further adjudication.

21 That impacts several others areas, related,
22 including Air Quality, Public Health, Socioeconomics,
23 Soil and Water, and among others.

24 And the Project Description is also faulty.
25 It has not adequately been described under CEQA

1 requirements.

2 And the Alternatives. It seems that thus
3 far there has been a failure to consider all Project
4 Alternatives that will be in keeping with or
5 consistent with all of the recent changes that have
6 been mandated by the State, by law, to consider
7 alternative energy sources and pursue them.

8 So, for all of those reasons, we believe
9 that we are not ready to proceed to Evidentiary
10 Hearing. But we also agree that if we were to
11 proceed to Evidentiary Hearing, we would be -- we
12 would be ready to try to address some of these issues
13 and questions through that process.

14 HEARING OFFICER KRAMER: Okay, thank you.

15 Center for Biological Diversity, Ms.
16 Belenky.

17 MS. BELENKY: Yes, good afternoon. Thank
18 you. We agree with much of what's already been said,
19 that Alternatives have not been fully developed, and
20 that the lack of baseline surveys and protocol level
21 surveys for various Biological Resources makes it
22 impossible to really have a full hearing on those
23 issues. We are prepared to proceed, however.

24 We're also, as we raised in our Prehearing
25 Conference Statement, quite concerned about the way

1 overriding considerations is being made into a
2 separate topic, as though there were already clear
3 metrics about what that would actually be about.
4 When, in fact, a lot of the issues haven't, yet, been
5 fully addressed, and we don't know what issues on
6 which the Committee might consider overriding.

7 So, I think that that is somewhat premature
8 and unclear in the order, and may require further
9 development before we can adequately address it at
10 hearing.

11 HEARING OFFICER KRAMER: Okay, thank you.

12 Can I try one more time for Mr. Sarvey? I
13 may have had to mute him because of noise. So, I'm
14 going to unmute call-in user number 11. And, Mr.
15 Sarvey, are you there?

16 MR. SARVEY: Yes, I am, Mr. Kramer. Thank
17 you.

18 HEARING OFFICER KRAMER: Okay. Let me first
19 ask you, so that you can participate most
20 effectively, that when you're not speaking that you
21 use *6 to mute yourself, so that I don't have to --
22 because you've been giving us some background noise
23 that we are trying to avoid.

24 MR. SARVEY: Oh, I've been muted the whole
25 time, so it's probably pretty unlikely that it was

1 me.

2 HEARING OFFICER KRAMER: WebEx said
3 otherwise. But go ahead with your comments.

4 MR. SARVEY: Okay. You want to inform me
5 exactly where we're at?

6 HEARING OFFICER KRAMER: Okay, how long ago
7 did you join us?

8 MR. SARVEY: Well, I got cut off a couple
9 times, already, so I've been off and on. But I
10 started around 10:05. But I've just been getting cut
11 off and on, on this phone, for some reason.

12 HEARING OFFICER KRAMER: Okay. We're
13 talking about whether we're ready to go forward with
14 Evidentiary Hearings.

15 MR. SARVEY: Okay, yeah. All right, well,
16 as my Prehearing Conference Statement says, I don't
17 think we're ready to go until we've provided the
18 minority, the Spanish-speaking community the
19 testimony and the information they need to
20 participate properly. There's been thousands of
21 pages that have been issued, none in Spanish. And,
22 you know, these people need an opportunity. They
23 can't know what's going on unless they can read the
24 testimony.

25 So, I believe until we've done that, we're

1 not ready. Thank you.

2 HEARING OFFICER KRAMER: Okay, thank you.

3 (Off-mic Colloquy between Hearing Officer
4 and Commissioners)

5 HEARING OFFICER KRAMER: Okay, thank you,
6 everyone. At this point, our plan is to go forward
7 with the hearings. We understand that, you know,
8 some of you have these various issues that you've
9 described about the readiness, but some of them are
10 in the nature of, you know, just disagreeing about
11 conclusions. And, of course, that's what hearings
12 are meant to resolve.

13 And I think that the extent to which your
14 concerns are maybe valid will be best fleshed out, if
15 you will, during hearings. So, we'll go forward with
16 the hearings next week.

17 If it is the case that some more homework,
18 if you will, is necessary, then we can make that
19 determination at that time. But we -- you know,
20 scheduling one of these events is a major
21 undertaking, getting the space, getting everything
22 set up. And there are many topics over which there
23 is no apparent disagreement. So, at a minimum, we
24 want to make sure that we work through those during
25 the hearings next week.

1 So, then, my next topic for Prehearing
2 Conference discussion -- yes, go ahead.

3 MS. ROESSLER: Pardon me.

4 HEARING OFFICER KRAMER: Oh, and folks, when
5 you haven't spoken for a while, it helps our court
6 reporter if you just say your name.

7 MS. ROESSLER: Sure. This is Alicia
8 Roessler, from Environmental Defense Center.

9 In regards to your conclusion on the areas
10 ready to proceed, is it possible to request the
11 opinion of the Coastal Commission in regards to what
12 their view is on whether or not they feel they need
13 to supplement their 30413(d) report?

14 HEARING OFFICER KRAMER: We can certainly
15 ask. And I believe they're going to be a participant
16 during the hearings.

17 Did you have any comments on that topic, Mr.
18 Street?

19 MR. STREET: Well, you know, I've been
20 advised by our counsel that under the MOA that we
21 have with the Energy Commission, that we would only
22 revisit our 30413(d) findings if there's a
23 significant change to the project, itself.

24 HEARING OFFICER KRAMER: Our audio folks, if
25 you could leave most of the mics open, if they're not

1 causing a problem, that would be a help.

2 MR. STREET: Could you hear me? I can speak
3 up a little, if necessary.

4 HEARING OFFICER KRAMER: No, you were fine.
5 It's just in the room, Alicia was being -- she was
6 muted, and we try to avoid the delay of having to
7 realize if she's about to speak, and I'll unmute her.
8 Unless, of course, we're getting a lot of background
9 noise. But I'll leave it to the discretion of our
10 audio folks. But the more we can leave people live,
11 when it doesn't cause a problem, the better.

12 MS. ROESSLER: Thank you, I appreciate that.

13 Mr. Street, if I may pose a question to you,
14 as well? In regards to your counsel's opinion about
15 the substantial change, which we believe is correct
16 and rightly stated in the MOA, what interests us is
17 in regards to the late September change, in the
18 project, to the outfall removal and discharge point
19 as having an impact on several sensitive species and
20 coastal resources that were not previously reviewed
21 in the 30413(d) report, however, which are clearly
22 within the purview of the Coastal Commission's
23 jurisdiction to review for any impacts to coastal
24 resources.

25 So, our question to you is, has the

1 Commission had an opportunity to review that project
2 change, in detail, in order to make a conclusion that
3 it is or is not a substantial change under the MOA?

4 MR. CARROLL: Excuse me. This is Mike
5 Carroll, on behalf of the Applicant. I'm going to
6 have to interrupt here. I'm not exactly sure what
7 that is, but it's either legal argument or it's
8 examination of somebody who's been identified as a
9 witness in this matter. So, I don't think that that
10 sort of questioning is appropriate, under the
11 circumstances.

12 MS. ROESSLER: It's a question pertaining to
13 whether or not the Evidentiary Hearings are going to
14 proceed. And it's a question within the Coastal
15 Commission's purview, which is why I was just asking
16 them. I wasn't asking for a substantive conclusion
17 on the impacts to Biological Resources. I was just
18 requesting whether or not they had an opportunity to
19 review the MOA. And whether, or not, it's in their
20 opinion that they think the Evidentiary Hearings
21 should proceed or whether or not they supplement.

22 MR. CARROLL: I think the party has made
23 their point. I think it's inappropriate to be
24 directing questions to individuals who have been
25 identified as witnesses in these proceedings.

1 HEARING OFFICER KRAMER: I was -- normally,
2 I would have prevented that question but, frankly, it
3 leads into my next topic. Which is, to what extent
4 the Coastal Commission is going to participate in our
5 proceedings.

6 And it seemed to be that she was eliciting,
7 among other things, information along those lines,
8 and a description of the legal constraints that their
9 staff might have.

10 Let me just ask it on behalf of the
11 Committee. Mr. Street, when your report was
12 prepared, was that before or after you had the
13 information about these changes to the project?

14 MR. STREET: Well, my understanding of and
15 recollection of the process was that those changes
16 were in direct response to recommendations made in
17 our report.

18 So, they, to that extent, were considered by
19 the Commission.

20 HEARING OFFICER KRAMER: And it was
21 something that you desired, apparently?

22 MR. STREET: Yes.

23 HEARING OFFICER KRAMER: Okay. Okay, let's
24 move on.

25 MR. STREET: And that's the Commission's

1 final report.

2 HEARING OFFICER KRAMER: Let's move on
3 because we're not taking evidence today so --

4 MS. ROESSLER: No, it's just a procedural
5 question, just because if the Evidentiary Hearings do
6 go forward, it severely limits the time and the
7 opportunity for the Commission to actually supplement
8 their report. Under the MOA, it seems that at the
9 close of Evidentiary Hearings, unless there's another
10 reopener, they can't supplement their report.

11 HEARING OFFICER KRAMER: Okay. Well, as I
12 said --

13 MS. ROESSLER: That's all I was trying to
14 ask.

15 HEARING OFFICER KRAMER: Okay. Well, you
16 can bring up your concerns about the adequacy of
17 their report during the Evidentiary Hearings.

18 So, Mr. Street, to what extent will your
19 Coastal Commission staff be able to participate in
20 our hearings? I note that the Applicant had
21 requested to cross-examine you and two other of your
22 colleagues. Will they be available for our hearings?

23 MR. STREET: Our intention is to, as per the
24 perspective under the MOA, is to introduce our report
25 at the Evidentiary Hearing, and then be available for

1 questions from -- you know, from the Energy
2 Commission.

3 My understanding is that, as we are not
4 parties, that our staff members are not -- are also
5 not witnesses. So, there's no plans for anyone,
6 other than myself, and perhaps staff counsel, Louise
7 Warren, to participate in the hearings.

8 HEARING OFFICER KRAMER: Okay, thank you.

9 And, then, we'll talk about when you're
10 available, when we get to looking at everyone's
11 schedules, in a few minutes.

12 MR. STREET: Okay.

13 MR. CARROLL: Excuse me, Mr. Kramer, may I
14 just comment? This is Mike Carroll, on behalf of the
15 Applicant. As one of the parties, perhaps the only
16 party who requested that the California Coastal
17 Commission staff who participated in the preparation
18 of the Coastal Commission's report, including the
19 Biological Resources attachment to that document, and
20 the Coastal Hazards attachment document, I'd just
21 like to say that to the extent that any of the
22 parties intend to introduce that report, or anything
23 based on that report as expert testimony, our
24 expectation is that those experts will be made
25 available for cross-examination at these hearings.

1 That is a requirement that applies to all of
2 the participants, including the Energy Commission
3 staff. Mr. Pittard isn't permitted to show up here
4 without declarations in hand, or live exhibits, and
5 introduce the FSA.

6 And, by the same token, we don't believe
7 that Mr. Street, with all due respect, can show up
8 and introduce what might be characterized, by some,
9 as expert testimony on biological resources, or sea
10 level rise, or land use without making the experts,
11 that are behind that testimony, available for cross-
12 examination.

13 So, again, depending on how that report is
14 going to be characterized and view by the Committee,
15 having Mr. Street here, alone, may be fine. But I
16 just want the record to be very clear that we will
17 have very strong objections to the introduction of
18 any of that as expert testimony, if those experts are
19 not made available for cross-examination at the
20 hearings. Thank you.

21 MR. SMITH: And, Mr. Kramer, may I just add
22 that the -- this is Matthew Smith, from the
23 Environmental Defense Center.

24 The Environmental Defense Center agrees with
25 Applicant's request to have -- to the extent that the

1 request is simply to have the three Coastal
2 Commission staff members, listed on their Prehearing
3 Conference Statement, available for examination at
4 the hearings.

5 We also believe that those individuals have
6 relevant knowledge that will be important for the
7 Commission to hear and consider. And that the
8 Commission's process would be aided by having them
9 present, personally, at the hearing, rather than
10 simply through Mr. Street.

11 HEARING OFFICER KRAMER: Okay, thank you.

12 Mr. Street --

13 MR. STREET: Mr. Kramer?

14 HEARING OFFICER KRAMER: Who is that?

15 MR. STREET: Oh, this is Joe Street.

16 HEARING OFFICER KRAMER: Go ahead.

17 MR. STREET: So, we're rapidly entering into
18 areas that I don't feel qualified to address. Can I
19 see if Ms. Warren is available to join me, here, and
20 we can discuss this either now, or at a later point
21 in the hearing, or conference?

22 HEARING OFFICER KRAMER: Yes, it's the kind
23 of discrete topic we could postpone for a little bit
24 later.

25 You said Ms. Warren. What's her first name

1 and --

2 MR. STREET: Louise Warren is my staff
3 counsel.

4 HEARING OFFICER KRAMER: I'm sorry, I talked
5 over you?

6 MR. STREET: Louise Warren is my staff
7 counsel, and she'd be better able to address these
8 procedural questions.

9 HEARING OFFICER KRAMER: Okay, Louise, it
10 was?

11 MR. STREET: Yeah. And I'd also be
12 interested to hear what the Energy Commission
13 attorneys -- what their take on this question is.

14 HEARING OFFICER KRAMER: Staff, that's your
15 turn.

16 MS. CHESTER: This is Michelle Chester, on
17 behalf of staff. We contacted the Coastal Commission
18 and we've been in touch with them. We have the
19 understanding that Mr. Street would be at, or on the
20 phone, at the hearings to introduce the report, and
21 Louise Warren would also be available, if any
22 questions arose concerning the letter she submitted
23 to the record, on November 28th, regarding one of the
24 Land Use questions.

25 Beyond that, we haven't discussed any

1 additional participation.

2 HEARING OFFICER KRAMER: Okay, thank you.

3 I have a lot of papers on my desk, but not
4 the one that tells me which topic you were involved
5 n, Mr. Street?

6 MR. STREET: Well, I was the primary author
7 of our staff recommendation to our Commission. So, I
8 was involved in all of the topics that our report
9 brought up.

10 HEARING OFFICER KRAMER: But, in part, you
11 used the work of others; is that correct?

12 MR. STREET: Yes.

13 HEARING OFFICER KRAMER: Okay.

14 MR. CARROLL: Just for clarification, the
15 two witnesses that we had identified are Ms. Engel,
16 with respect to Biological Resources. And, I
17 apologize, I'm not sure if it's Ms. or Mr. Ewing with
18 respect to Coastal Hazards.

19 HEARING OFFICER KRAMER: Thank you. It's
20 here somewhere.

21 Changing the topic, then. Mr. Street, if
22 you could see if Ms. Warren is available, that would
23 be great.

24 MR. STREET: Okay, I'll do that right now.

25 HEARING OFFICER KRAMER: Okay. Mr. Smith

1 spoke a minute ago, folks, and he was speaking in a
2 relatively soft voice.

3 I just wanted to ask those of you in the
4 back of the room, even the officers, if you were able
5 to hear him adequately? Okay, people seem -- is that
6 one no?

7 Okay, so everyone up here, get real close to
8 the mic and project, just for the sake of everyone.

9 The latest analogy I use is think of
10 yourself, you know, you've seen that picture of the
11 various sized fish, with the bigger one eating the
12 smaller one, et cetera, et cetera? Well, you're the
13 big fish and the microphone is the next smallest
14 fish, so get real close.

15 Okay, so we'll change topics, then. Last
16 week, the Navy filed -- they used the public comment
17 system and filed a letter. I believe it was to
18 staff. Commenting on their perception of the
19 potential effects of the Ormond Beach Alternative
20 Site on their operations at -- I think they call it
21 the Ventura Naval Air Station. I used to remember it
22 as Point Mugu. But, anyway, the Air Station they
23 have to the south of the Ormond Beach Alternative
24 Site.

25 I noticed that the Applicant identified that

1 as an exhibit. And the Committee is wondering if it
2 would be possible to have somebody from the Navy, who
3 is familiar with the content of that letter, to be
4 present for our Alternatives discussion? It seems a
5 bit of important information. And rather than just
6 treat it as public comment, we would like to turn it
7 into, as the Applicant is apparently intending,
8 testimony that we can rely upon in making our
9 decision.

10 So, don't know if staff has made that
11 overture, or the Applicant, or anyone else, but you
12 two are the likely candidates to have done so?

13 MS. CHESTER: There seems to be a
14 representative here from the Navy.

15 HEARING OFFICER KRAMER: Ah, excellent.

16 MS. FAGAN: No one has contacted us, yet,
17 about being available for the hearing next week. But
18 I suspect that -- I'll need to confer with my
19 leadership, but I expect we could have someone
20 available.

21 HEARING OFFICER KRAMER: Okay, could you say
22 your name for --

23 MS. FAGAN: Amanda Fagan.

24 HEARING OFFICER KRAMER: And could you spell
25 your last name for her?

1 MS. FAGAN: F, as in Frank, a-g-a-n.

2 HEARING OFFICER KRAMER: Okay. And while we
3 have you, do you have any -- if you can't -- would it
4 be you that would come?

5 MS. FAGAN: Probably me and then I'll --
6 maybe someone from our Air Operations or Operations
7 Group, the sort of technical experts on air traffic
8 control.

9 HEARING OFFICER KRAMER: Thank you. Did you
10 say e-n or i-n?

11 MS. FAGAN: A, as in apple.

12 HEARING OFFICER KRAMER: Oh, geez. Thank
13 you.

14 MS. FAGAN: Thank you.

15 MR. CARROLL: And, Mr. Kramer, if I may,
16 Mike Carroll for the Applicant. As you just heard,
17 as I was going to say, we haven't had any direct
18 communication with the Naval Base. I identified that
19 as an exhibit on ours because it didn't appear that
20 anyone else had, and I didn't want it to fall through
21 the cracks. But I concur with you that I think it
22 would be very helpful to have someone from the Naval
23 Base here, to speak directly to that issue.

24 HEARING OFFICER KRAMER: Okay. Yes, thank
25 you. We were both thinking along the same lines,

1 apparently.

2 So, Ms. Fagan, if you have to leave early,
3 please let know because we want to try to talk
4 schedule with you, along with all the other people.

5 Next is the topic of Evidentiary Objections.
6 We have the City of Oxnard's -- well, did anyone else
7 want to make comments on the Navy question? The Navy
8 letter? Let me ask that, first.

9 And those of you on the phone, you've all
10 muted yourselves. So, I'm not sure about Mr. Sarvey,
11 I'm going to unmute him. But everyone else, if you
12 want to speak, go ahead and unmute yourself and let
13 me know.

14 MR. STREET: Mr. Kramer? This is Joe Street
15 with the Coastal Commission.

16 HEARING OFFICER KRAMER: Go ahead.

17 MR. STREET: I have Louise Warren with me,
18 now, if you would like to revisit the questions that
19 came up before this current topic, whenever it is
20 convenient.

21 HEARING OFFICER KRAMER: Okay, we were about
22 to switch topics, so now's a good time.

23 So, the question, I'll try to summarize it
24 and then, if somebody thinks I didn't quite get it
25 right, please let me know.

1 But the Coastal Commission has filed a
2 report and because it is being offered or its
3 conclusions are being offered by some parties,
4 perhaps as expert testimony, out of fairness to the
5 other parties, it would be appropriate for them to be
6 able to ask questions of the makers of that report.

7 We understand Mr. Street is - was the
8 ultimate preparer, but he relied on expert opinion
9 from at least two other individuals.

10 And best case situation for us would be that
11 if all three of them could be available, during the
12 appropriate times, to answer questions about the
13 report that was filed with the Energy Commission.

14 Can you tell us, Ms. Warren, do you have any
15 additional thoughts about whether that would be
16 possible? And are there any constraints upon them,
17 as far as what they can say and, for instance, offer
18 opinions about?

19 MS. WARREN: Yeah, this is Louise Warren.
20 I'm Deputy Chief Counsel with the Coastal Commission.
21 And it's our understanding that what is submitted to
22 the Energy Commission is the Coastal Commission's
23 report. So, it is the Commission, itself, that
24 adopted the findings in the report. And if anyone
25 from our staff were to be asked a question about the

1 report, they can't opine on what the Commission was
2 considering when it adopted its staff report, or its
3 finding.

4 So, there's no purpose in having any of our
5 staff members available because they could only refer
6 any questioners to the Commission's findings. At
7 this point, it's the Commission that acted and the
8 Commission has the findings submitted to -- I keep
9 saying Commission, I mean Coastal Commission -- to
10 the Energy Commission.

11 Had parties had questions about the 30431(d)
12 report, we had a full public hearing and there was an
13 opportunity for people to participate at that point,
14 to ask questions of Joe, and of other staff members
15 about the recommendation that they made to the
16 Commission.

17 But now that the Coastal Commission has
18 adopted its findings, they're the Coastal
19 Commission's findings.

20 HEARING OFFICER KRAMER: So, in other words,
21 any expert opinions that result from the Coastal
22 Commission letter would be the opinions of some other
23 expert who was considering the information in your
24 report. Is that, in essence, what you're trying to
25 say?

1 MS. WARREN: In essence, what I'm saying is
2 that it's the Coastal Commission's findings. And,
3 so, our staff members can't opine, at this point,
4 about what the Commission, itself, was thinking.

5 HEARING OFFICER KRAMER: Okay, and we
6 couldn't get all the Coastal Commissioners together
7 to testify, probably.

8 MS. WARREN: Exactly.

9 HEARING OFFICER KRAMER: Okay. Mr. Carroll,
10 any comments about that, first, and then we'll ask
11 the others?

12 MR. CARROLL: I would simply say that my
13 earlier statement stands and that nothing that I've
14 heard alters my position on that.

15 And I note Ms. Warren wasn't on the phone,
16 and if she'd like to hear, I'm happy to repeat it.

17 I understand what she is saying but, again,
18 that may be fine, depending on how the Committee
19 views that report, and how it is treated, and the
20 weight that it is given as a piece of evidence in the
21 record. And if it is accorded appropriate weight,
22 based on the way it is presented, that's fine for us.

23 If it is accorded weight that we think is
24 inappropriate, based on the way it was presented,
25 then we would have very strong objections to that.

1 Because, of course, there was no opportunity, during
2 the Coastal Commission proceedings to cross-examine
3 those experts. And, so, that was very -- those
4 proceedings are very different in nature than these.

5 So, again, whether we have an objection to
6 the proposed plan, or not, depends on how the
7 Committee views and treats that report, assuming that
8 it gets moved into evidence.

9 MS. WARREN: This is Louise, again. I would
10 respond that I think the statute defines the weight
11 that the Coastal Commission report is to be given,
12 and that there was an opportunity to raise questions,
13 to submit letters. The Commission staff has an
14 obligation to respond to any issues raised prior to
15 the Commission hearing. So, there was an opportunity
16 to have all views considered at our hearing. And I
17 think the statute defines the 30413(d) report is to
18 be given considerable weight, and that's based on
19 legislation.

20 MS. ROESSLER: I'd like to respond, if
21 possible?

22 HEARING OFFICER KRAMER: Please, go ahead.

23 MS. ROESSLER: Also, in both the MOA and the
24 Warren-Alquist Act, as well as the Coastal Act,
25 30413(d), in regards to that Coastal Commission

1 report, there are still a couple things that have
2 happened past that report that we warrant
3 consideration. They were not considered by the
4 Commission. And I'll get to those in a second.

5 But first and foremost, in regards to the
6 conclusions in those reports, built into the Act
7 there is a process for the Coastal Commission to
8 present evidence, to actually direct and cross-
9 examine witnesses. That's in the Act, itself. So,
10 the Coastal Commission has a far more expanded role,
11 if they choose to, to actually participate in an
12 Evidentiary Hearing. Put on witnesses, and actually
13 produce additional evidence.

14 Which, in our opinion, gives some weight to
15 address, for example, a couple of things that have
16 happened since the 30413(d) report, that the
17 Commissioners did not have an opportunity to review
18 and opine on. Which is the project change, and the
19 fact that there has been a glaring omission of data
20 that the Coastal Commission ecologist, who did the
21 studies for the basis of the Commission's
22 conclusions, has now recognized that there is
23 additional data, and has had a change of opinion as
24 to the presence of ESHA on site.

25 Not to delve into the substance, but getting

1 back to the procedural, these substantive issues do
2 warrant and trigger additional review by the Coastal
3 Commission, pursuant to their own statute, and Acts,
4 and MOA.

5 MR. CARROLL: And I have to interject here
6 and object to any statements about whether or not
7 Coastal Commission staff has had a change of opinion
8 relative to what was produced in the report. I don't
9 think we've had any testimony from Coastal Commission
10 staff at this point. That's exactly what we're
11 talking about here. So, I object to that
12 characterization.

13 I will -- I was not going to mention this,
14 but as long as we're into it, I will state for the
15 record I find it very unusual, and I may even say
16 inappropriate, that a member of the staff, of a
17 sister agency, who has produced a Commission -- or
18 who participated in the preparation of a report, that
19 was approved by that Commission, and submitted to the
20 sister commission is now showing up as a, apparently,
21 expert witness on behalf of an Intervenor, who is a
22 party to those proceedings.

23 So, we reserve any objections that we have
24 to that entire situation. But as long as we're
25 getting as far into this as we are, I thought that I

1 would put that objection on the record.

2 And one more thing, just to clarify, we've
3 now had a lot of discussion and Ms. Roessler's
4 mentioned a couple of times the changes to the
5 project. I think I know what we're referring to, but
6 I just want to make sure since we're getting so deep
7 into this. Is this the removal of the existing
8 outfall and the alternations to the discharge plan
9 for the project.

10 MS. ROESSLER: Yes.

11 MR. CARROLL: Thank you.

12 MS. ROESSLER: And that is -- yes.

13 MR. CARROLL: Okay. So, that is, as -- I
14 just want to clarify. That is, as Mr. Street said,
15 one of the recommendations of the Coastal Commission
16 report that the Applicant has, in fact, implemented.

17 MS. ROESSLER: In part it's a
18 recommendation. However, I still didn't quite hear,
19 I wasn't sure, it wasn't clear from Mr. Street if the
20 Coastal Commission had actually reviewed, for
21 example, the staff date request in responses, and the
22 project change, and it's specific impacts in the
23 coastal zone.

24 MS. CHESTER: If I may, this is staff. I
25 think Louise Warren has alluded to some of the issues

1 with the letter submitted by -- or the e-mail
2 submitted by Jonna Engel, making statement from one
3 staff member, on behalf of the Commission.

4 We've had recent conversation with Ms.
5 Warren concerning the e-mail, and we do expect
6 clarification from the Coastal Commission, coming
7 soon, regarding the role of those comments, and that
8 they are not -- they were not submitted on behalf of
9 the Coastal Commission, but as an individual staff
10 member.

11 MS. ROESSLER: Right, and if we can follow
12 up on that? We did submit a declaration. And we can
13 get into the nitty-gritty whether we want to address
14 all the opinions on that.

15 However, this is a staff person who did the
16 studies, had very limited scope, and came forward to
17 fulfill her position and job, under the Coastal Act.
18 Which is, if there's new information present, she
19 felt the need to give an opinion about it because
20 it's relevant to this project. And aren't we all
21 supposed to be here, today, to do what is best for
22 the project and the environment?

23 If there's disclosure of any new impacts, or
24 new information relevant, shouldn't we be addressing
25 that? Or, are we going to argue whether or not it's

1 in the context of an e-mail and shouldn't be allowed
2 in, when we've all read the e-mail?

3 MS. WARREN: This is Louise Warren, again.
4 I think it's up to the Energy Commission and the
5 Committee what it chooses to do with new information
6 the EDC submits, and its own experts submit.

7 But it is correct that Dr. Engel cannot and
8 did not speak on behalf of the Commission when she
9 sent that e-mail. And we will be submitting a
10 clarifying letter to the record, to that effect.

11 To the extent that there is, and I'm not
12 sure whether there is new information, the Energy
13 Commission can consider what it needs to consider.
14 But we also don't think that any information, at
15 least that I'm aware of, or that there have been
16 project changes that would trigger the provisions of
17 the MOU that the Coastal Commission and the Energy
18 Commission have, to reopen the Coastal Commission's
19 30431(d) report we have. No information, now, that
20 would suggest that that's appropriate at this time.

21 HEARING OFFICER KRAMER: Okay. Well, this
22 sounds like a disagreement about the appropriateness
23 of opinions and that's exactly what hearings are for.
24 So, we'll, no doubt, be talking about this next week.

25 Let's move on, then. Thank you, Mr. Street,

1 for putting Ms. Warren on the line, that was helpful.

2 MR. SMITH: Mr. Kramer, I'm sorry, this is
3 Matthew Smith from the EDC. I apologize for
4 interrupting.

5 I just wasn't clear. Sir, is your segue to
6 your next topic there imply that there's been a
7 resolution to the question of which witnesses from
8 the CCC will be available at the hearing? I'm just
9 not sure where we stand, now.

10 HEARING OFFICER KRAMER: Well, they've told
11 us what they're willing to do. And if somebody wants
12 to attempt to convince them otherwise, that's all I'm
13 saying.

14 (Off-mic Colloquy between Hearing Officer
15 and Commissioners)

16 We'll have to live with what they can get
17 us. The Committee is not going to make an effort to
18 try to force those other two witnesses to be present
19 to answer questions, if the Commission is not willing
20 to produce them.

21 So, then, by way of segue, the next topic on
22 my list was Evidentiary Objections. We have a motion
23 to strike -- well, first of all, we are intending to
24 postpone rulings about the evidence until the normal
25 time when we would get to those, and that's during

1 the hearings when somebody offers a document into
2 evidence, and the other parties have a chance to
3 object, and state their objections.

4 Having said that, though, I see some value
5 in our beginning to at least catalogue the issues, so
6 that all of you are a little more prepared to address
7 objections.

8 We know about the Motion to Strike, that the
9 City filed last Friday, and that was to strike the
10 Applicant's Rebuttal filing.

11 And I don't know if, Mr. Carroll, if you
12 want to -- you don't have to, but if you want to
13 preview your response to that in a moment, that's
14 fine.

15 We are asking, though, if the parties are
16 anticipating any other objections to the exhibits
17 that have been identified by others, and you're
18 willing to mention that today, again it would be
19 helpful to the parties, and the Committee, to be on
20 the lookout for those, and start to think about them
21 as we go forward.

22 So, first, let me turn it over to Mr.
23 Carroll, since I slightly put him on the spot just a
24 minute ago, and then we'll go across the panel, and
25 then to the telephones.

1 MR. CARROLL: And just for clarification,
2 are you looking for our initial response to the
3 City's Motion to Strike, or are you looking for any
4 objections that we intend to make to other evidence
5 at this point, or both?

6 HEARING OFFICER KRAMER: Both. Both of
7 those.

8 MR. CARROLL: Okay. With respect to the
9 City's Motion to Strike, we did file a written
10 response to that motion, yesterday. Just very
11 briefly, and for the benefit of those who may not
12 have had an opportunity to read either the motion, or
13 our response, the City has requested that several
14 declarations, submitted with our rebuttal testimony,
15 be struck. And I put that in quotes, because I'm not
16 exactly what that means in this context. But that
17 those declarations be struck. As I understand it,
18 the argument on the basis that they should have been
19 submitted earlier, either with the opening testimony
20 or as comments on the FSA.

21 Our response to that is that we believe that
22 all of our rebuttal testimony, including the
23 declarations that are the subject of the motion, are
24 appropriately characterized as rebuttal testimony.
25 We believe that's what it is and that's why we

1 submitted it with our rebuttal testimony.

2 We believe that all of those declarations,
3 and they all go to the issue of Alternatives, that
4 they respond directly to the Final Staff Assessment
5 Analysis of the Ormond Beach and the Del Norte/Fifth
6 Street alternatives.

7 Our view is that the Final Staff Assessment
8 is the staff's opening testimony and that it is
9 appropriate for us to provide rebuttal to the FSA, in
10 rebuttal testimony.

11 In addition to that, we believe that all of
12 those declarations are directly responsive to opening
13 testimony provided by other parties, primarily the
14 City. And in our response, we go through that in
15 detail. Six of the seven declarations, submitted by
16 the City, are related to Alternatives and,
17 specifically, to the Ormond Beach Alternative, and to
18 the Del Norte/Fifth Street Alternative. And, so,
19 having devoted six of the seven pieces of testimony,
20 submitted, to alternative sites, we think it is
21 appropriate, and that the City should have expected
22 that the Applicant would provide rebuttal testimony
23 on that very issue. And all of those declarations
24 directly rebut statements that were made by the
25 parties with respect to those sites.

1 I would finally add that in some cases the
2 information that was provided is information that was
3 requested by the Committee. So, we had a conference,
4 following the issuance of the PSA. I believe it was
5 a Committee Conference in November.

6 HEARING OFFICER KRAMER: I think it's
7 September, maybe.

8 MR. CARROLL: It was -- I'm sorry, yes,
9 September 27th, 2016. In which the Committee
10 specifically asked, at page 21 to 22, beginning line
11 17, on page 21, for additional information related to
12 Cultural Resources -- or, I'm sorry, Archeological
13 Resources at the Del Norte/Fifth Street site, and for
14 additional information related to Contamination, at
15 the alternative sites.

16 Two of the declarations that we submitted go
17 to that very point. So, this is information that, as
18 I said, all of which is directly responsive to
19 opening testimony. Some of which was information
20 directly requested by the Committee. I believe the
21 request was directed to the staff, but we proceeded
22 to respond to those questions and included that in
23 the declarations.

24 And, finally, I would just say as a
25 procedural matter, since the exhibit list was not due

1 until after the submission of opening testimony and
2 rebuttal testimony, it's sort of a timing or a
3 sequencing issue that comes up here, which is that
4 had we simply identified all of that information as
5 an exhibit, as opposed to opening -- or, I'm sorry,
6 as opposed to rebuttal testimony, we wouldn't have
7 had to even disclose that it existed until we filed
8 our Prehearing Conference Statement, and our exhibit
9 list. And we probably wouldn't be having this
10 discussion.

11 And I would point out that many parties
12 identified exhibits with their exhibit list, filed
13 with the Prehearing Conference Statement, that had
14 not been previously identified, were not called out
15 in either opening testimony or rebuttal testimony,
16 including the City, which I think has 23 or so
17 exhibits that fall into that category.

18 I could have handled all of that information
19 in that way. Instead of putting it in the form of a
20 declaration in our rebuttal testimony, I could have
21 just simply identified all those exhibits. And, in
22 fact, we did identify all of those exhibits on our
23 list. And, you know, just brought them up at the
24 Evidentiary Hearing.

25 So, it would be ironic that having submitted

1 that information as rebuttal testimony, earlier in
2 the proceedings, we were somehow prohibited from
3 entering that information in the record when, if we
4 had held it back, and simply identified it as an
5 exhibit on our exhibit list, you know, subject to
6 some other objection that a party might have, that it
7 would have gone in.

8 So, for all of those reasons, substantively,
9 and I concur with Ms. Roessler that provided it
10 comes in through appropriate channels, new
11 information should get in front of the Committee, if
12 it is relevant. And we believe that this is new
13 information that is relevant, and it should get in
14 front of the Committee. And, so, substantively, we
15 think that it makes sense for the motion to be
16 denied. And, procedurally, it would result in a very
17 ironic situation where we were essentially penalized
18 for submitting information early, and in the form of
19 a declaration, as opposed to simply identifying it in
20 a long list of exhibits attached to our Prehearing
21 Conference Statement. Thank you.

22 HEARING OFFICER KRAMER: Okay. On the point
23 of timing, your exhibit list should only contain
24 documents that were filed before either the opening
25 testimony deadline or the rebuttal testimony

1 deadline. So, it couldn't be a way, because it just
2 refers back to already filed documents, to somehow
3 get something in late.

4 Having said that, I will also say that we're
5 not policing the timing of all the filings. You
6 know, people can put whatever they want on their
7 exhibit lists, subject to objection from other
8 parties. And if there are some documents that were
9 filed in the docket after the appropriate deadlines,
10 but are on exhibit lists, it will probably not be the
11 Committee that's going to get exercised about it. It
12 will be a party that believes that that's
13 inappropriate.

14 MS. FOLK: May I respond?

15 HEARING OFFICER KRAMER: Yeah, who's that?

16 MS. FOLK: Yes, this is Ellison Folk, for
17 the City of Oxnard.

18 HEARING OFFICER KRAMER: Okay, we're not
19 meaning to argue the motion today, so just so you
20 know that. But it is appropriate for you to speak a
21 few words in response to Mr. Carroll. So, go ahead.

22 MS. FOLK: Sure. And I do feel like what we
23 just heard from Mr. Carroll was argument.

24 So, the point I want to make here, so the
25 Scheduling Order was quite clear that rebuttal

1 testimony should not include testimony that could
2 have been submitted as opening testimony.

3 And it would be one thing if we were talking
4 about new information here, that's come to light
5 about the project, or the project site. But all of
6 the evidence that we identified in our Motion to
7 Strike was specifically directed at the analysis in
8 the Final Staff Assessment.

9 And all of the parties to the action who
10 were submitting evidence here in response to the
11 Final Staff Assessment, did so with their opening
12 testimony, except for NRG. And, effectively, they're
13 being allowed to game the system, without giving the
14 other parties to the matter an opportunity to respond
15 to their testimony. And that's why we have a process
16 and it's really unfair if one party doesn't play by
17 the process, and then the other parties are denied
18 the opportunity to put in rebuttal evidence in
19 response.

20 So, for example, if NRG had submitted this
21 information with its opening testimony, which is what
22 the Scheduling Order indicates should have happened,
23 then we could have done rebuttal testimony, and then
24 we would be ready for hearings.

25 But as it is, if they want to include this

1 evidence, then the hearings really should be
2 continued so that we have an opportunity to respond.

3 And, finally, I want to make the point that
4 all of the exhibits that we list in our exhibit list
5 were documents that have already been docketed with
6 the Commission.

7 HEARING OFFICER KRAMER: Okay, thank you.

8 Anyone else?

9 MS. FOLK: And may I just clarify one other
10 thing? I'm sorry. On having the representative from
11 the Navy at the hearings next week, I want to clarify
12 that all of the Intervenors will have an opportunity
13 to ask questions?

14 HEARING OFFICER KRAMER: It relates to
15 Alternatives so, presumably, you already -- let me
16 look at your list, but I think you asked for some
17 time in that regard, correct?

18 MS. FOLK: Sure.

19 HEARING OFFICER KRAMER: So, yes. A party
20 who was not interested in Alternatives before, we'll
21 have to have a conversation in their sudden interest
22 in the topic, and why they all want to participate,
23 but we're open to those requests.

24 Yeah, you have down 120 minutes for cross-
25 examination under Alternatives. So, with it being a

1 new witness, if you need a little bit more time, I
2 think we'd be flexible and accommodating on that.

3 But we still haven't talked about whether
4 you really need 120 minutes. We'll get to that in a
5 little bit.

6 MS. FOLK: Okay, fair enough.

7 MR. CARROLL: And just to be right, I didn't
8 --

9 MS. BELENKY: Yes, this is Lisa Belenky,
10 with the Center for Biological Diversity. I just
11 wanted to make a clarification. We actually did add
12 an exhibit on the same day as our Prehearing
13 Conference Statement, and that exhibit would be used
14 directly in testimony that responds to the rebuttal
15 that was provided by the Applicant. And, again, it
16 was issues that could have been provided in their
17 opening, but weren't.

18 But regardless of whether that was the right
19 time to provide them, in the past, in proceedings
20 that I've been involved in, the Committee has
21 resisted new exhibits coming in during hearing. But
22 sometimes, because of the back and forth that is
23 needed when there is this rebuttal, we're having our
24 cross-briefing, so to speak, the rebuttal, and then
25 the opening rebuttal are crossing in the air. And,

1 so, there may be a need for additional exhibits at
2 various times.

3 And in the past, the Committee has asked us
4 to put them in before the actual hearing. If you
5 would prefer that they just be brought up initially,
6 at the hearing, and then put in the record, that's
7 fine. But it is better, to me, that all of the
8 parties get to see any additional exhibits that are
9 needed, previously.

10 HEARING OFFICER KRAMER: No, what I was
11 trying to say earlier was, you know, that an exhibit
12 like that, you just described, is subject, like any
13 exhibit, proposed exhibit, to objection from the
14 other parties, and we'll consider all the factors,
15 including those that you just alluded to, in deciding
16 whether or not to sustain the objection or allow the
17 document in.

18 We are somewhat flexible, but not infinitely
19 so.

20 MR. CARROLL: And if I may, Mr. Kramer, I
21 realized that I responded to your first question, but
22 not your second. Which was whether or not Applicant
23 had any other objections to evidentiary matters that
24 it intended to make at this time. The answer is that
25 we don't have any specific intentions. But we do

1 have some questions about some of what has been
2 identified as exhibits.

3 And, for example, one of the exhibits, which
4 you've already had some fair amount of discussion
5 about, connected to Coastal Commission staff, it
6 sounds like there are going to be some changes with
7 respect to that. And, so, we may or may not have any
8 objection to that.

9 The other thing that I would say is
10 depending on how the Committee rules on the City's
11 pending motion, if it were to grant that motion, we
12 think that that would establish a standard that would
13 subject many of the other exhibits that have been
14 identified to exclusion. And, so, we, in that case,
15 would have motions that we would make with respect to
16 that either testimony or documentary evidence that we
17 think would, again, be subject to exclusion based on
18 that standard.

19 So, we don't have any current intentions to
20 file anything. But without waiving anything,
21 obviously, those are just a couple of things that we
22 may or may not end up pursuing, depending on how
23 things play out between now and the Evidentiary
24 Hearings.

25 HEARING OFFICER KRAMER: Okay, I do not

1 intend it to be your final answer.

2 So, go ahead, CEJA -- sorry, Center for
3 Environmental Justice.

4 MS. LAZEROW: CEJA. Is my mic on?

5 HEARING OFFICER KRAMER: Yeah.

6 MS. LAZEROW: Shana Lazerow, CEJA. We would
7 echo the City of Oxnard's objections. CEJA had
8 plenty more to say about the FSA, when it came time
9 for rebuttal, and did not have an opportunity,
10 specifically, to delve into the Applicant's new
11 information, that already existed, about the
12 Alternatives that were being considered.

13 We have no objections to other evidence to
14 state at this time, but next week, maybe.

15 HEARING OFFICER KRAMER: Okay, thank you.

16 Environmental Center, Environmental Defense
17 Center and Sierra Club?

18 MR. SMITH: Yeah, Matthew Smith. We also
19 join in the City of Oxnard's Motion to Strike, and we
20 echo the City of Oxnard's concerns about the use of
21 the procedural device of rebuttal testimony, in the
22 manner as it was done here.

23 Our understanding of the process of
24 submitting evidence was the same as the City of
25 Oxnard's, and we tried to adhere to that. And as the

1 City of Oxnard has explained, we don't feel that
2 Applicant's use of the process accords with the
3 rules.

4 Aside from that objection, we don't have any
5 objections to specific exhibits that we want to enter
6 on the record right now, subject to the reservation
7 to do so at the hearings.

8 HEARING OFFICER KRAMER: Okay. I've been
9 asked, because as you know, we have actually two
10 WebEx teleconferences going on for this hearing, for
11 those who can't be with us in the room. One in
12 English and one in Spanish.

13 And the people who are listening to the
14 Spanish presentation only hear the voice of the
15 interpreter, you know, which is the same voice
16 whether I'm speaking, or Mr. Smith is speaking.

17 So, for their sake, let's say our name, with
18 the possible exception of me, every time we speak, so
19 then the interpreter, A, has the time to relay your
20 name to the Spanish audience and, B, then they'll get
21 that information which will help them.

22 So, next, would be staff answering that
23 question.

24 MS. CHESTER: Michelle Chester, Staff
25 Attorney. In the case that we hear clarification

1 from the Coastal Commission regarding the role of Dr.
2 Engel's information on the Environmentally Sensitive
3 Habitat Areas, we would object to the inclusion of
4 that e-mail.

5 It was submitted as a response to Mr.
6 Trautwein, and does not include a declaration of Dr.
7 Engel, herself. We've already established that she's
8 likely not to be present for cross-examination. But,
9 again, we'll wait to hear from the Coastal
10 Commission.

11 HEARING OFFICER KRAMER: Okay, thank you for
12 that preview.

13 MR. SMITH: May I respond with a preview of
14 our response to that objection, or is this not the --

15 HEARING OFFICER KRAMER: No, I think we'll
16 end up repeating all this next week.

17 MR. SMITH: Okay.

18 HEARING OFFICER KRAMER: So, I hope you're
19 just happy to have the preview.

20 (Laughter)

21 MR. SMITH: I always love a preview.

22 HEARING OFFICER KRAMER: And you can refine
23 those thoughts before you first speak them to us.

24 So, the City of Oxnard, any other documents?
25 I think you've already spoken to your Motion to

1 Strike.

2 MS. FOLK: I think I made myself clear.

3 HEARING OFFICER KRAMER: But did you have
4 any other documents that you're willing to preview,
5 that you might have concerns about?

6 MS. FOLK: Not at this point.

7 HEARING OFFICER KRAMER: Okay, thank you.

8 Ms. Belenky, Center for Biological
9 Diversity?

10 MS. BELENKY: We don't have any initial,
11 pre-objections. We're saving that for later. Thank
12 you.

13 HEARING OFFICER KRAMER: Okay, I'm looking
14 for Mr. Sarvey here. He might have gotten
15 disconnected, again. Are you back with us under
16 another call-in number, Mr. Sarvey?

17 Okay, I hope he comes back because we do
18 have one question for him.

19 Did I miss anyone, as far as answering the
20 question about documents you might have concerns
21 about? It looks like I did not.

22 I'll just preview the question for Mr.
23 Sarvey, even though he's not here. He filed -- I
24 think, ultimately, three documents are coming in
25 under his numbers. And he's not filing any

1 testimony, as such, and he's not planning on calling
2 any witnesses. And it wasn't clear if he needed any
3 cross-examination, either.

4 So, we're wondering what point he's trying
5 to make with his documents? We want to avoid a
6 situation where somebody -- and his documents, I
7 believe, at least one was a brief to the Public
8 Utilities Commission.

9 So, we don't want to have a situation where
10 everyone has to try to figure out what he intends by
11 reading this document and, you know, trying to, in
12 their imaginations, come up with his best arguments
13 for whatever point he's trying to make. We think,
14 and would like him to explain them, and explain what
15 the Committee and the parties are supposed to take
16 from those documents.

17 So, if he comes back on the line, I will try
18 to mention that to him. Otherwise, we can ask at the
19 hearing. And we see that as just a matter of
20 fairness.

21 And it goes for all the parties. We are not
22 going to be your representatives, and so we're not
23 going to figure out what your best argument is, you
24 know, from massive documents. It's up to you to tell
25 us what we are supposed to take by way of either

1 factual evidence, or argument, from those things.

2 And if you don't, then we won't.

3 Okay, then we have another segue here, and
4 that's the question of the level of formality of our
5 hearings. In the Notice, we described what we call
6 an informal process and a formal process.

7 Formal is, you know, more or less like
8 court. One party asks the questions of their
9 witness, puts them on the stand, then the other
10 parties, in turn, go and successively ask their
11 questions. And then, we quite often have a round of
12 redirect for the person who sponsored the witness.
13 And then that, quite often, leads to recross-
14 examination questions for others.

15 And in my experience, that can take a lot of
16 time. But I'll note that to the extent that the
17 parties, in their Statements, addressed this
18 question, they seemed to favor the formal approach,
19 as opposed to the informal approach.

20 The informal approach is, basically, that
21 all the witnesses on a particular topic would sit
22 down together, as a panel, and they would answer
23 questions. Might even ask each other questions at
24 times. But what we avoid with that is somebody
25 having said some particular thing, say at 1:20, and

1 by the time we get around to one of the parties
2 cross-examining that person at, say, 1:50, they have
3 to ask several questions just to establish what the
4 person said at 1:20. And quite often, it takes three
5 or four questions for the attorney, or
6 representative, and the witness to agree what this
7 person said at 1:20.

8 As opposed to if we ask the same question of
9 the panel, and they all answer the question at the
10 same time, one after the other, we avoid some of that
11 overhead, if you will.

12 But we understand that the parties are
13 seeming to prefer the formal approach.

14 And let me pause for a moment.

15 (Off-mic Colloquy between Hearing Officer
16 and Commissioners)

17 HEARING OFFICER KRAMER: Okay, generally
18 speaking, we're going to go along with the informal
19 approach. But we wanted to -- I'm sorry, the formal.
20 Shows my prejudice, doesn't it.

21 (Laughter)

22 HEARING OFFICER KRAMER: But we wonder if
23 there are any particular topics where the informal
24 approach seems appropriate? And I'll solicit
25 comments from any of the parties who have comments.

1 And it looks like Mr. Carroll does, so we'll
2 start with him.

3 MR. CARROLL: Thank you. Mike Carroll, for
4 the Applicant.

5 I don't have a specific list, but I think
6 there are -- assuming that generally we're going to
7 proceed on the formal approach, I think there are
8 topics and I think, you know, if we put our heads
9 together, we can probably come to consensus,
10 relatively quickly, on what they are, that are not
11 controversial and that would be, you know, relatively
12 easily handled in an informal approach.

13 Overall, we defer to the Committee as to the
14 approach it takes with respect to a particular topic.

15 The only things I will mention, that I think
16 are relevant to this issue, to keep in mind, is we
17 have a lot of parties. We also have some parties
18 where a single individual may be wearing multiple
19 hats, in a sense, that they are, perhaps, the sole
20 representative of that party. And, so, they are
21 acting, in some respects, as the counsel for that
22 party, although not technically a lawyer. They may
23 also be acting as a witness for that party.

24 We also have some witnesses that have been
25 identified, with whom we have some previous

1 experience in other proceedings, where it was the
2 desire of the party to have that witness question the
3 witnesses of other parties. And I have some general
4 concerns with that, but I wouldn't make, necessarily,
5 a global objection to that.

6 My point is that, depending on how it plays
7 out, there may be a need for a little bit formality
8 just to keep straight, okay, when this person is
9 speaking, are they speaking as a witness? Is this
10 testimony under oath or is this something else?

11 So, I just wanted to -- because that was
12 something that occurred to me, as I looked through
13 the list of the parties and the witnesses that had
14 been identified. So, at points, you know, we will,
15 of course, raise the concern at any point that we
16 have it. Even if we are going on a relatively
17 informal basis, we may need to revert to a somewhat
18 more formal basis in those situations.

19 HEARING OFFICER KRAMER: No, I should
20 correct myself one more time for the record, I think
21 we're defaulting to formal, except in those cases
22 where informal appears to be appropriate.

23 And it may be that we can talk about it as
24 we go through the list, in a few minutes. But we can
25 always change if, you know, the mood strikes us as we

1 get to those topics, during the Hearings.

2 Anything else from any other parties?

3 Anyone on the telephone have a comment about
4 that? The parties, of course.

5 Okay, so formal it is, subject to informal
6 where appropriate.

7 Now, we get to the time estimates and the
8 allocation of subjects.

9 So, give me a moment to put it up on the
10 screen. I have a live version of that spread sheet
11 that I filed. Does anyone in the room need a copy of
12 that? Do you all have it?

13 Okay, for those on the phone, it's in the
14 docket. It was filed on Monday evening, I believe.

15 Okay, so let me get that spreadsheet up
16 on -- if you're on WebEx, you will see it
17 momentarily.

18 Can you get rid of the panelists screen for
19 us, here in the room? There we go.

20 Okay. So, parties help me, because I'm both
21 thinking, and talking, and also running the spread
22 sheet, so pretty busy.

23 We had a couple topics that seemed to --
24 staff was requesting, anyway, that they go on the
25 first day. I think it was -- was it Air Quality and

1 --

2 MS. CHESTER: This is Michelle Chester, with
3 staff. It's Air Quality and Public Health, followed
4 by Environmental Justice.

5 HEARING OFFICER KRAMER: Okay. And for
6 everyone's information, we are lumping -- no, that's
7 the wrong word.

8 But we are confining our Environmental
9 Justice discussion to the topic of Socioeconomics, so
10 combining that. That's the section where we normally
11 talk about the data that informs our Environmental
12 Justice discussion and conclusions. And we thought
13 it would be better to -- rather than have an
14 Environmental Justice discussion in each of the topic
15 areas, we would discuss it all in the area of
16 Socioeconomics.

17 So, any preference for which of those comes
18 first?

19 MS. CHESTER: This is Michelle Chester, with
20 staff, again. For the Air Quality and Public Health,
21 the witnesses have -- or, specifically from the Air
22 Pollution Control district, have limited
23 availability. So, we would ask that they go first,
24 on the 7th.

25 HEARING OFFICER KRAMER: Okay, so let me put

1 Air Quality first.

2 MS. BELENKY: Excuse me, this is Lisa
3 Belenky, with the Center for Biological Diversity.
4 Are you including the Greenhouse Gases piece with
5 that, as well? Because I saw that you separated it
6 out and we have the same expert for both, so we'd
7 want them to be together.

8 HEARING OFFICER KRAMER: Let's try that.
9 What we're doing right now is we're live, we're
10 putting things in various days, and then we can look
11 at the totals and see if we've made an impossible day
12 for ourselves, or if it works, and then we can adjust
13 as necessary.

14 Okay. So, I've got Greenhouse Gases, Air
15 Quality, Public Health. Those are all --

16 MS. FOLK: Hello, this is Ellison Folk, for
17 the City of Oxnard. And I did want to just bring up
18 that Todd McNamee, who is a witness on Air Traffic
19 Safety, is only available on February 7th, in the
20 afternoon. And we just learned that this morning.

21 HEARING OFFICER KRAMER: Okay, let me make a
22 quick note on his. Okay, give me the times, again?

23 MS. FOLK: He's available on February 7th,
24 after lunch.

25 HEARING OFFICER KRAMER: Lunch being noon or

1 1:00?

2 MS. FOLK: Yeah, the afternoon, sorry.

3 HEARING OFFICER KRAMER: Okay. That's going
4 to be in Traffic and Transportation, so we'll get to
5 that. But thanks for that information.

6 MS. FOLK: Yeah.

7 HEARING OFFICER KRAMER: Does anybody else,
8 while we're at it, have any other updates to the
9 status of their witnesses that we should note?

10 MS. CHESTER: This is Michelle Chester, with
11 staff. Jaquelyn Record is listed as a witness for
12 Air Quality and Public health, and she's not
13 available. We will have Gerry Bemis, instead.

14 HEARING OFFICER KRAMER: Okay, and he's
15 already in here.

16 MS. CHESTER: That's reflected in our
17 Prehearing Conference Statement.

18 HEARING OFFICER KRAMER: Okay, let me get
19 those. So, I should take her off the list, then?

20 MS. CHESTER: Yes.

21 HEARING OFFICER KRAMER: You must be getting
22 dizzy on the WebEx, with all this scrolling. But,
23 unfortunately, it can't be helped. But at least
24 we're using math here, to verify our results. So,
25 hopefully, we'll get good results.

1 Who was that, again?

2 MS. CHESTER: Jaquelyn Record.

3 HEARING OFFICER KRAMER: Okay. And I didn't
4 have her listed as your original witness. So, it's
5 CEJA, is that what it's --

6 MS. LAZEROW: CEJA. But we're fine cross-
7 examining your other witness. I think her name was
8 first, alphabetically.

9 HEARING OFFICER KRAMER: Okay.

10 MS. LAZEROW: And she was here, at the PSA
11 Workshop.

12 HEARING OFFICER KRAMER: So, I'll change
13 that to Staff AQ witnesses. Okay, thank you.

14 Any other corrections that we should make?

15 MS. LAZEROW: Shana Lazerow for CEJA. I
16 learned on Monday that CEJA's witness, Irene
17 Valencia, is only available after 5:00 on the 7th,
18 due to her own professional constraints.

19 HEARING OFFICER KRAMER: Which topic is --

20 MS. LAZEROW: Environmental Justice.

21 HEARING OFFICER KRAMER: Okay, Socio.

22 That's any day after 5:00?

23 MS. LAZEROW: She's confirmed she's
24 available on the 7th, after 5:00.

25 HEARING OFFICER KRAMER: Okay, just the 7th.

1 Well, then, that's going to crash into the public
2 comment period. How long do you anticipate she'll be
3 testifying?

4 MS. LAZEROW: I don't anticipate it will
5 be extensive. She has some testimony on
6 Environmental Justice impacts, but her declaration
7 was two pages, I believe.

8 Additionally, Strela Cervas, as I pointed
9 out in our -- as I have already pointed out, she is
10 available on the 7th, preferably in the afternoon.
11 She's not available the following days. The 8th and
12 9th she's unavailable.

13 HEARING OFFICER KRAMER: Could she go into
14 the evening as -- I mean, this 5:00 p.m. time?

15 MS. LAZEROW: I believe she's supposed to
16 be flying out of L.A. in the evening, but I don't
17 have her flight information. So, ideally, it would
18 be afternoon, not evening. But I can confirm with
19 her.

20 HEARING OFFICER KRAMER: Okay. How would
21 the ability to call in on the telephone improve their
22 availability?

23 MS. LAZEROW: For Irene, it would not.
24 She's working.

25 HEARING OFFICER KRAMER: Okay.

1 MS. LAZEROW: For Strela, I can ask her. I
2 had hoped that she would be able to come and offer
3 some of the presentation on CalEnviroScreen 3.0, that
4 she offered at the PSA Workshop, for CalEnviroScreen
5 2.0. And, so, to do that, it's much more effective
6 to have her here, in person.

7 And maybe this is not the right time to
8 raise this, but I inadvertently omitted two exhibits,
9 from my exhibit list, that she had referenced in her
10 rebuttal testimony. They're already in the record,
11 but maybe you could -- if now is not the right time,
12 flag for me the right time to raise that.

13 And please stop me, if I don't ask you about
14 it, before we conclude the Prehearing Conference.
15 But, yeah, let's put a pin in that in that for the
16 moment.

17 MS. LAZEROW: Okay.

18 MS. CHESTER: This is Michelle Chester with
19 staff. If we're going through and making
20 corrections, I would point out that Shawn Pittard is
21 listed as a witness for the Project Description.
22 Although the Project Description has him labeled or
23 has it labeled as testimony, that's actually not his
24 original testimony, but a summary from information
25 from the Applicant.

1 HEARING OFFICER KRAMER: A summary of what?

2 MS. CHESTER: Of the Project Description.

3 HEARING OFFICER KRAMER: Okay. So, was he
4 not intending on testifying, then?

5 MS. CHESTER: To the Project Description,
6 no.

7 HEARING OFFICER KRAMER: Okay.

8 MS. CHESTER: He's also listed as a witness
9 for Environmental Justice. So, that's the same
10 issue, he does not have any testimony to
11 Environmental Justice, unless we're speaking to
12 process.

13 HEARING OFFICER KRAMER: Well, he'll be
14 here, so you never know if that will come up.

15 That was actually cross-examination.

16 MS. CHESTER: Correct.

17 HEARING OFFICER KRAMER: He was listed by --

18 MS. LAZEROW: CEJA.

19 HEARING OFFICER KRAMER: CEJA, okay. I'm
20 getting close to getting that.

21 MS. LAZEROW: CEJA. So, Environmental --

22 HEARING OFFICER KRAMER: Do you need him?

23 MS. LAZEROW: Well, in light of that
24 information, if the materials that were presented in
25 the FSA were, in fact, sponsored by Applicant's

1 experts, I would reserve -- I would transfer my time.
2 I didn't reserve time with them because I wanted to
3 talk about what was in the FSA coming forward as
4 staff's opinion. If staff, who authored that, will
5 simply say, oh, no, this is what was in the
6 application, I couldn't change it, or I didn't change
7 it, or for whatever reason, then I would like to
8 transfer my few minutes over to the Applicant's
9 experts on this topic.

10 HEARING OFFICER KRAMER: So, Ms. Chester,
11 Mr. Pittard can answer questions about --

12 MS. CHESTER: To what is written in the
13 Project Description in the FSA.

14 HEARING OFFICER KRAMER: Right, okay.

15 MS. CHESTER: But, no, it is not his
16 original testimony.

17 HEARING OFFICER KRAMER: Okay. So, how
18 about if we add -- we keep Mr. Pittard for you, and
19 we add Mr. Piantka. It sounds like that will help
20 you get your questions answered. Is five minutes
21 still enough there, or do you want to raise that to
22 ten?

23 MR. LAZEROW: I might need ten with Mr.
24 Piantka.

25 HEARING OFFICER KRAMER: You don't have to

1 tell us why.

2 (Laughter)

3 MS. CHESTER: Shawn Pittard is also listed
4 under FFIERCE, for cross-examination on Environmental
5 Justice, Alternatives, and Socioeconomics. Again,
6 that is not his testimony and he's not listed as
7 authoring that testimony. Oh, I guess he's labeled
8 on it. But again, he's on process.

9 HEARING OFFICER KRAMER: Okay, so it sounds
10 like she needs him for process.

11 MS. CHESTER: And, again, Michelle Chester
12 for staff. For our Alternatives section, we're --
13 oh, for Environmental Justice, we're wondering if
14 there's specific technical sections that the parties
15 are interested in? We will bring our technical
16 experts to that panel.

17 HEARING OFFICER KRAMER: Okay, that's a
18 question to the parties. I would say, just based on
19 what I've read, Biology, Soil and Water, Traffic and
20 Transportation for the airport issues.

21 Does anyone want to throw out a couple
22 others?

23 MS. CHESTER: We already have Public Health
24 listed for Environmental Justice.

25 HEARING OFFICER KRAMER: Okay. We were

1 talking about Alternatives, though, right?

2 MS. CHESTER: Oh, well, we'll need to define
3 them for both groups, of Environmental Justice and
4 Alternatives.

5 HEARING OFFICER KRAMER: Okay. And if
6 you're not sure they're going to be needed, I'm --
7 unless some party objects, I'm assuming that some of
8 your witnesses could be on the telephone, you know,
9 for brief appearances.

10 MS. CHESTER: To clarify, you did not mean
11 that Biology was meant for Environmental Justice.
12 You were speaking to Alternatives?

13 HEARING OFFICER KRAMER: Yes.

14 MS. CHESTER: Okay.

15 HEARING OFFICER KRAMER: Okay, so --

16 MR. CARROLL: This is Mike Carroll, for
17 Applicant. Just to back up a step, I want to make
18 sure I understand the discussion that we had about
19 the Project Description.

20 So, is it the case that the Applicant is
21 being asked to sponsor the Project Description
22 section of the FSA, and to make a witness available
23 for cross-examination on that section?

24 HEARING OFFICER KRAMER: Well, we modified
25 CEJA's request -- CEJA -- to include both Mr. Pittard

1 and Mr. Piantka for cross-examination. I think that
2 was the only real request on that topic area.

3 Let's see, Applicant was asking for ten
4 minutes. Well, actually, FFIERCE wanted to speak to
5 Tim Murphy on cross-examination, as well.

6 MR. CARROLL: Yes. So, Applicant had
7 requested ten minutes of direct testimony from Mr.
8 Piantka on Project Description. What I understand
9 the Committee to be proposing, now, is that Mr.
10 Piantka would also be available -- obviously, he
11 would be available for cross-examination on his own
12 testimony, but he would also be available for cross-
13 examination on the Project Description section of the
14 Final Staff Assessment.

15 I just want to make sure he reads what he
16 needs to read before the hearing.

17 HEARING OFFICER KRAMER: I mean, it's
18 probably a good idea. He's, obviously, not the
19 author of the FSA, but somebody may have a question
20 about some statement in there.

21 MR. CARROLL: Sure.

22 HEARING OFFICER KRAMER: And, you know, he
23 will either know or not have an answer.

24 MR. CARROLL: Okay. And, again, I'm
25 necessarily objecting to that. I just wanted to make

1 sure that we understood what our witnesses were being
2 asked to be responsible for.

3 HEARING OFFICER KRAMER: Okay. Well, that's
4 good to clear that up.

5 MR. CARROLL: And at some point, if we're
6 done with what was under discussion, we do have one
7 witness change, as well.

8 HEARING OFFICER KRAMER: Let's go ahead with
9 that.

10 MR. CARROLL: On Visual Resources, we had
11 identified Mr. Qoyawayma and Ms. Kling as witnesses.
12 Upon further evaluation, our proposal is to present
13 Ms. Kling, only. Ms. Kling did the actual analysis
14 for the Visual Resources section. Mr. Qoyawayma is a
15 technician, who assisted in the preparation of the
16 visual simulations. He's not local. Ms. Kling can
17 speak to the entire section, including the visual
18 simulations, and so we're not proposing to have Mr.
19 Qoyawayma as a witness. No party had expressed an
20 interest to cross-examine him, so I assume that
21 that's okay. But I just wanted to clarify that we
22 would be presenting Ms. Kling, only, to sponsor all
23 of the Visual Resource exhibits identified in both
24 her declaration and Mr. Qoyawayma's, which I think
25 were coincident. They were both sponsoring the same

1 set of exhibits.

2 HEARING OFFICER KRAMER: Okay, does anybody
3 object to removing Mr. Qoyawayma from the list?

4 MR. CARROLL: And it relieves all of us from
5 having to pronounce that.

6 (Laughter)

7 HEARING OFFICER KRAMER: Okay, hearing none,
8 I'm back-spacing.

9 On the phone, as I haven't muted anyone, so
10 if anyone on the phone, who is a party, wishes -- you
11 know, wants to respond to questions, like I just
12 proposed, please just speak up.

13 Mr. Sarvey, are you back with us?

14 MR. SARVEY: Yes, I am.

15 HEARING OFFICER KRAMER: Give me a couple
16 more words, I'm trying to see where you are?

17 MR. SARVEY: Yes, I'm here.

18 HEARING OFFICER KRAMER: Okay. Were you
19 muted just a minute ago because I was getting some
20 background noise from your number here?

21 MR. SARVEY: No, I just unmuted when you
22 called my name. I'm going to re-mute once you're
23 done.

24 HEARING OFFICER KRAMER: Okay, please do.
25 Okay, and let me know -- I gather you got kicked off,

1 again, and you were absent, but we did have a couple
2 comments on one of your exhibits. I'm not going to
3 break into this flow we have on the scheduling, but I
4 need to repeat those for you, afterwards.

5 MR. SARVEY: Okay. Okay.

6 HEARING OFFICER KRAMER: Okay. And, Mr.
7 Carroll, I think I was doing division, or something,
8 with Ms. Kling, now. But I ended up with seven
9 minutes as the estimate. Is that enough time? I
10 think I was splitting it among a couple topics.

11 MR. CARROLL: Yes, that's enough time.

12 HEARING OFFICER KRAMER: Okay.

13 MR. CARROLL: Thank you.

14 HEARING OFFICER KRAMER: All right. So, so
15 far we have -- we've picked some topics for day one,
16 and we've only used 1.8 hours. So we --

17 MS. BELENKY: Hi, this is Lisa Belenky, with
18 the Center for Biological Diversity. We would
19 actually like to have Alternatives on day one, as
20 well, if it's possible for the other parties.

21 HEARING OFFICER KRAMER: Okay, let's take a
22 look.

23 MS. FOLK: Can I just -- this is Ellison
24 Folk, for the City of Oxnard. On that, related to
25 the Alternatives issues, I notice that you have our

1 witness, Jim Caldwell, down under Overrides. And I
2 just want to clarify that his testimony is relevant
3 to Alternatives, as well.

4 HEARING OFFICER KRAMER: Okay. To save me
5 the flipping, how much time did I give you on
6 Overrides?

7 MS. FOLK: Oh, hold on a second.

8 HEARING OFFICER KRAMER: Oh, I thought you
9 had it. We hear 60.

10 MS. FOLK: It's the last page. 1.2 hours,
11 yes.

12 HEARING OFFICER KRAMER: Do you want to
13 split that 60 minutes between Overrides and
14 Alternatives, or how much do you need for
15 Alternatives?

16 MS. FOLK: Well, we could split it. Well,
17 so we also have Ashley Golden, that you have down
18 there for -- she's also testifying on Land Use. But
19 we could -- we, honestly -- I think Mr. Caldwell's
20 testimony could all go to Alternatives. But, in
21 general, as long as our perception of Alternatives is
22 enough to encompass, you know, the issue of the
23 public convenience and necessity.

24 HEARING OFFICER KRAMER: That's really more
25 about Overrides. You know, things are going to cross

1 over a little bit, and we may even combine some
2 topics. We may find that to be more convenient.

3 So, okay, so I'll give you -- let's see, so
4 you had Ashley, what was her last name?

5 MS. FOLK: Ashley Golden.

6 HEARING OFFICER KRAMER: Bolton, okay.

7 MS. FOLK: Her testimony is not related to
8 Alternatives, but Jim Caldwell's would be.

9 HEARING OFFICER KRAMER: Okay. So, just Mr.
10 Caldwell on Alternatives, then. And 30 minutes, is
11 that enough?

12 MS. FOLK: Yes.

13 HEARING OFFICER KRAMER: Okay. And, okay, I
14 did see that now Alternatives is up to 6.5 hours.
15 So, we probably -- that's almost a day's worth.
16 Well, maybe it works. Hold on, let me put that into
17 the 1 column. I think that's definitely going to
18 fill up day one, though.

19 MR. CARROLL: Mr. Kramer, may I make a
20 suggestion relevant to what you're working on right
21 now? So, we had -- we didn't identify any witnesses
22 for Overrides, because we categorized our witnesses
23 and testimony into the categories set forth in the
24 FSA, which doesn't have a section for Overrides.

25 So, what some people are characterizing as

1 Overrides, we put into Alternatives. So, I don't
2 know if it's possible to combine Overrides and
3 Alternatives, or at least have them on the same day?
4 But I just wanted to clarify that I think, certainly,
5 some of our rebuttal testimony, I guess, would be
6 characterized by others as Overrides, because it was
7 provided in response to witnesses that are being
8 characterized as Override witnesses. But we called
9 all of that Alternatives, is my point.

10 HEARING OFFICER KRAMER: Yeah, the one topic
11 certainly flows from the other. Well, let's see, it
12 would be hard -- if we do them together, I think
13 that's all we could probably do on one day. Now,
14 maybe people can reduce some of their estimates.

15 MS. BELENKY: I'm sorry, this is Lisa
16 Belenky, with the Center for Biological Diversity. I
17 don't see how you can do Overrides without having
18 done other areas, first. Just, logically, it doesn't
19 make sense to me.

20 And, particularly, the Overrides also -- you
21 know, one of the topics would be Land Use. And if we
22 haven't done Land Use, yet, how would you discuss it
23 in a vacuum?

24 HEARING OFFICER KRAMER: Okay, but you had a
25 constraint where you could only do it on the first

1 day; correct?

2 MS. BELENKY: The Center could only do
3 Overrides, no.

4 HEARING OFFICER KRAMER: No, well,
5 Alternatives. I think, wasn't it you --

6 MS. BELENKY: We prefer to do Alternatives
7 the first day, yes.

8 HEARING OFFICER KRAMER: Okay, but could you
9 do it on the third or the fourth day, if we need four
10 days?

11 MS. BELENKY: Well, I'm hoping we don't have
12 four days. I can't be sure that my expert could come
13 two discontinuous days, so we would prefer to have it
14 on the first day, Alternatives.

15 I guess I'm not understanding why Overrides
16 and Alternatives have to go together. But,
17 certainly, Overrides shouldn't go before other
18 subject areas.

19 MS. FOLK: So, this is Ellison Folk. I
20 think the issue is that some of the sense on the
21 Override finding is that it would be driven, in part,
22 by whether or not -- the testimony on Alternatives,
23 and so there might be overlap in witnesses.

24 HEARING OFFICER KRAMER: Yeah, well --

25 MS. FOLK: Is this being driven on the fact

1 that we have to do Air Quality on the first day?
2 Because if Air Quality could be moved, then we could
3 combine it with Alternatives and Overrides on the
4 last day.

5 HEARING OFFICER KRAMER: Okay. Well, staff
6 was the party that was asking that it be done on the
7 first day.

8 MS. CHESTER: We have a representative from
9 the Air District who can speak to the schedule.

10 HEARING OFFICER KRAMER: That's right, it's
11 in part due to the representative from the Air
12 District's schedule.

13 Sorry, I don't think you're mic's on.
14 that's probably not you. Is his mic on? Try again.

15 No, is the green light on?

16 MR. VILLEGAS: Yes, it is.

17 HEARING OFFICER KRAMER: Well, I don't know
18 what else you could do there, then.

19 MR. VILLEGAS: Okay, I'll yell.

20 HEARING OFFICER KRAMER: Why don't you come
21 up here -- all right.

22 MR. VILLEGAS: This is Mike Villegas, Air
23 Pollution Control Officer. And I'm available the
24 first day. I've moved my flights back, I'm available
25 to 4:00 p.m. If there's real specific issues

1 relating to the FDOC, our Engineering Manager would
2 be available after that.

3 HEARING OFFICER KRAMER: And, Ms. Chester,
4 is that your only --

5 MS. CHESTER: No, our Air Quality Expert is
6 available only during the first day, as well,
7 preferably the morning. Oh, he's available all day,
8 but only on the first day.

9 HEARING OFFICER KRAMER: Okay. Well, I know
10 Air Quality's an important issue to the parties, but
11 so is Alternatives and Overrides. Is there a logical
12 way to split up Alternatives?

13 I mean, it's very much the interplay, you
14 know, comparing this site to that site, and this
15 alternative technology, and redesign or -- yeah,
16 redesign of the project on the proposed site. It
17 doesn't seem like that would be very easy.

18 MS. FOLK: This is Ellison Folk, again. I
19 do think that there are some differences in the
20 alternatives. For one thing, there is the issue of
21 the alternatives that were actually analyzed in the
22 FSA, and the relative merits of those. And, then,
23 the alternatives that were rejected from further
24 analysis. For example, the preferred resources, or
25 some of the alternative technologies for the Mission

1 Rock Project. So, they could be broken down that
2 way.

3 MR. CARROLL: This is Mike Carroll. I think
4 another way to break them up, which is close to that,
5 but not quite, would be alternative sites, meaning
6 physical sites, versus other alternatives,
7 alternative technologies, preferred resources. I
8 think that in terms of witness allocation, I think
9 they break pretty cleanly because we have technical
10 type experts who are focused on the physical
11 alternative sites, and we have more, well, for lack
12 of a better term, regulatory type experts who are
13 focused on alternatives to gas-fired generation. So,
14 that may be one way to break them up.

15 We're not necessarily advocating for that,
16 it's just a suggestion.

17 HEARING OFFICER KRAMER: Does any other
18 party disagree with Mr. Carroll's assessment that we
19 could -- that your witnesses would break across those
20 topics -- subtopics, rather?

21 MS. FOLK: So, this is Ellison Folk, again.
22 I think that's generally correct. I think it's
23 pretty similar to what I had just suggested.

24 I would point out that, you know, for
25 example the Mission Rock Project is an alternative

1 site that also involves some alternative
2 technologies, but it's still a gas-generation
3 facility.

4 So, but I think in terms of witnesses, it
5 would generally break down pretty cleanly.

6 (Off-mic Colloquy between Hearing Officer
7 and Commissioners)

8 HEARING OFFICER KRAMER: Okay. Yeah, okay,
9 then let's take a moment to think about which
10 witnesses would be on day one and which witnesses,
11 and this is with regard to Alternatives, and which
12 witness could come on a second take on Alternatives,
13 on one of the later days.

14 Ms. Belenky, since your -- I think your
15 witness is one of the key determiners here, and
16 that's Mr. Powers; correct?

17 MS. BELENKY: Yes.

18 HEARING OFFICER KRAMER: Okay, so which of
19 the Alternative topics does he not need to testify
20 to?

21 MS. BELENKY: Well, he would fall into the
22 category, the other category, not the site-specific
23 alternatives, but the other --

24 HEARING OFFICER KRAMER: Technologies and
25 the like?

1 MS. BELENKY: Technologies, et cetera. And,
2 I mean, he can come multiple days, if necessary, but
3 it would be preferable to have him be able to testify
4 on Monday.

5 HEARING OFFICER KRAMER: Okay. And I'm
6 gathering that Alternatives is not going to be one of
7 the topics where we are going to have informal
8 testimony. So, that will make it a little bit easier
9 to exhaust a particular witness's store of knowledge
10 and then move on to the others.

11 Okay, so, then the breakdown sounds like
12 it's alternative -- well, it is site alternatives,
13 and then the other category is technology, et cetera.
14 Does that make sense to everyone? I'm seeing people
15 nodding.

16 Okay, so then the other would come first,
17 and that would be on the first day. So, let me go
18 through here and see --

19 MS. CHESTER: I'm sorry, this is Michelle
20 Chester with staff. I do want to back up. Our
21 witnesses will be presenting it as a whole. We don't
22 have experts who have it broken down. I don't know
23 if that means that the first time Alternatives is
24 raised we do our full, direct testimony, and then
25 move forward?

1 HEARING OFFICER KRAMER: We should be able
2 to do that. Let's tote up the time here.

3 Okay, so because I have to do some spread
4 sheet wizardry that might make you all dizzy, and
5 it's time for a break, anyway, we're going to take a
6 10-minute break.

7 Ma'am, did you want to come tell me -- did
8 you want to make a statement?

9 MS. WARD: I just wanted to ask a question.

10 HEARING OFFICER KRAMER: Okay.

11 MS. WARD: Since this is a public hearing,
12 to me, it seems like this is a total abuse of the
13 public's time to spend this much time figuring out
14 your schedule as to what you'll do, as opposed to
15 getting information from the public, so the public
16 have a chance.

17 HEARING OFFICER KRAMER: Okay.

18 MS. WARD: It seems to me that you've spent
19 an awful --

20 HEARING OFFICER KRAMER: Okay, let me stop
21 you there.

22 MS. WARD: -- lot of time trying to figure
23 out your schedule.

24 HEARING OFFICER KRAMER: Well, and that's
25 just something we have to do because it's

1 complicated.

2 Could you state your name for our court
3 reporter?

4 MS. WARD: Absolutely. My name is Ingrid
5 Ward.

6 HEARING OFFICER KRAMER: Okay, thank you.

7 MS. WARD: And I'm a resident of Oxnard.

8 HEARING OFFICER KRAMER: Okay, thank you.

9 It is a fact that some of what we have to do in these
10 hearings is boring, frankly, but it has to be done.

11 (Laughter)

12 HEARING OFFICER KRAMER: But that's, for
13 instance, why, when we come to the Evidentiary
14 Hearings on Tuesday and Wednesday, we recognize that
15 some people just -- you know, they want to come and
16 they don't have to sit through this sort of thing.
17 So, that's why we said, specifically in our agendas,
18 come at 5:30 and we're going to be taking public
19 comments. Come on Tuesday at 5:30 or Wednesday at
20 5:30, and you're not going to have to sit through
21 these procedural discussions. Which will be over by
22 then, I hope.

23 But, you know, I apologize, but that we have
24 to -- we have to do things in a particular way
25 because the law, or our own rules, or just long-held

1 habit has us doing things this way.

2 Sir, we're going to take public comments
3 after we're done with all this. We're certainly not
4 neglecting you. And, hopefully, you filled out a
5 blue card, so we will call upon you when that time
6 comes.

7 I hate to predict how much longer we're
8 going to be at this. If some of you want to take a
9 longer break, because it's not something you're
10 interested in. But I would think it's going to be at
11 least a half-an-hour before public comment starts.
12 But probably not. Hopefully, not much more than
13 that. We'll see.

14 So, we're going to take a 10-minute break.

15 MR. SMITH: Mr. Kramer, I'm sorry, I hate to
16 do this but it will inform your thoughts over the
17 break.

18 I just want to note that given staff's
19 testimony that their Alternatives witnesses can't --
20 not testimony, I'm sorry, statement that their
21 Alternatives witnesses can't be easily classified
22 between the two categories we're discussing right
23 now, I just want to be clear that Mr. Vespa needs to
24 be able to be present for staff's opening testimony
25 on Alternatives, as well as the day that he can come

1 testify, himself.

2 So, I'm not quite sure what proposal you're
3 going to develop over the break, but we would just
4 like to make sure that, as far as possible, anyway,
5 that Mr. Vespa needs to be here on one day, if that's
6 possible, because he's traveling down from the Bay
7 Area.

8 COMMISSIONER DOUGLAS: Can we do Vespa and
9 Powers on one day?

10 HEARING OFFICER KRAMER: Vespa and Powers.
11 Okay, we'll look at a possibility where Mr. Vespa and
12 Mr. Powers can be on the same day.

13 And it sounds -- what I heard staff saying
14 is it would be easier for them to just present all of
15 their Alternatives testimony, probably to get things
16 started. And then, to the extent that we either run
17 out of time, or some people need to come another day,
18 we would catch them at that opportunity.

19 MR. SMITH: Okay, and our strong preference
20 would be just that Mr. Vespa could go the same day as
21 staff's Alternatives witnesses are going.

22 HEARING OFFICER KRAMER: Okay. I think what
23 may happen is that staff talks about both topics to
24 start, and everyone else is focusing on the first
25 one. But because we're -- this is a case where not

1 using the informal testimony procedure will make it
2 work a little bit better because, in theory, everyone
3 will have had everything they need to say to a
4 particular witness finished, when we're done with the
5 rounds of direct and cross-examination questions.

6 Okay, a 10-minute break. There's no clock
7 on the wall, but at roughly 2:15. And I will have --
8 I'll have two spread sheets for Alternatives -- or
9 two entries in the spread sheet for Alternatives, so
10 that we can split up the time and then see how much
11 more time we have available on day one.

12 See you in a bit.

13 (Off the record at 2:06 p.m.)

14 (On the record at 2:17 p.m.)

15 COMMISSIONER SCOTT: Hello? Terrific. Hi,
16 everyone. We're going to go ahead and get going again. So
17 please come back to your seats or back to the table if you're
18 one of the parties, and we will continue with our schedule.
19 Let me hand this back over to Paul Kramer.

20 HEARING OFFICER KRAMER: Okay. I now have two
21 separate Alternatives areas. One is Part 1. One's Part 2.
22 So let's begin, and I guess I should clarify, Part 1 is
23 everything but sites. So Mr. Carroll, which witnesses would
24 be in that category, or would it still be all of them, to be
25 -- I mean, we could just list them all to be safe, but just

1 cut down the time estimate.

2 MR. CARROLL: So it would be Mr. Theaker, Mr.
3 Beatty and Mr. Rubenstein.

4 HEARING OFFICER KRAMER: Okay. Would the time go
5 down?

6 MR. CARROLL: No, because those witnesses were
7 actually pretty focused on one area or the other. So none of
8 them were speaking to both areas. So their allocated time
9 would stay the same.

10 HEARING OFFICER KRAMER: Okay. With Winterbauer,
11 was he still there?

12 MR. CARROLL: Mr. Winterbauer -- Ms. Winterbauer
13 would be on the physical Alternative sites.

14 HEARING OFFICER KRAMER: Okay.

15 MR. CARROLL: And I would also say Mr. Rubenstein
16 is in both categories.

17 HEARING OFFICER KRAMER: Okay. So let me jump down
18 to the -- darn it. What's going on here. Okay. So then who
19 would be in the Part 2 list for you, Mr. Carroll?

20 MR. CARROLL: So the Part 2 list would be Mr.
21 Menta, Ms. Love, Mr. Hale, Mr. Hollins, Mr. Murphy, Mr.
22 Rubenstein and Ms. Winterbauer.

23 HEARING OFFICER KRAMER: Okay.

24 MR. CARROLL: And I think in an abundance of
25 caution we should have Mr. Menta also in both categories. So

1 Rubenstein and Menta would be in both categories.

2 HEARING OFFICER KRAMER: Okay. Let me first add in
3 a notation. This is what we're calling location
4 Alternatives. Okay. The same on Part 2, still 40 direct and
5 50 cross, or is that a little less now?

6 MR. CARROLL: That would be the same.

7 HEARING OFFICER KRAMER: Okay. So add Mr. Menta.

8 MR. CARROLL: Actually, I'm sorry. I mis-spoke.
9 So the cross would go down, I guess, but I don't -- not
10 having thought this through, I'm not exactly sure what the
11 allocation across the two categories would be.

12 HEARING OFFICER KRAMER: Okay. As long as you stay
13 within the total. So make it maybe 40 and 40. Would that
14 work? Actually, that's more. You have 50. So make it --

15 MR. CARROLL: I would make it --

16 HEARING OFFICER KRAMER: -- 30 each? Does that
17 work?

18 MR. CARROLL: -- the bulk of our cross is on the
19 non-physical site. So I'm sorry. What was the total I had,
20 50?

21 HEARING OFFICER KRAMER: You had 50 to start with,
22 so.

23 MR. CARROLL: Yeah. So let's move it to 30 on non-
24 physical sites, category two, and 20 on category one.

25 HEARING OFFICER KRAMER: Okay.

1 MS. CHESTER: This is Michelle for Staff. Can we
2 clarify who you'll be crossing on Alternatives?

3 MR. CARROLL: No one from the Staff.

4 MR. SMITH: So this is Matthew Smith from
5 Environmental Defense Center. Can I ask the same question
6 for the Environmental Defense Center Alternatives witness?
7 Does that time you've reserved pertain to Mr. Vespa
8 (phonetic)?

9 MS. CHESTER: Okay. Great. So -- okay. So let me
10 just say, I'm also on break from a conference call meeting.
11 So --

12 HEARING OFFICER KRAMER: Oh, my. Oh, my.

13 MS. CHESTER: I might have to go very soon, but
14 everything that you've said to me is very reassuring. And if
15 for some reason I need to go abruptly I will just try and
16 call you back again.

17 MR. CARROLL: Let's let this go for a while.

18 (Laughter)

19 HEARING OFFICER KRAMER: All right.

20 MR. CARROLL: Good job.

21 MR. SMITH: I don't think that was an answer to my
22 question.

23 HEARING OFFICER KRAMER: Okay. We're going to
24 strike that last -- just ignore that, folks. That was not
25 intended for us. Okay. Mr. Smith, I hate to make an example

1 of you, but you need to project more with your voice.

2 MR. SMITH: I'm doing my best. I keep thinking
3 this mic is closer. So the question was to the Applicants'
4 counsel. If he could just clarify whether the 30 minutes
5 he's reserved -- how much of the 30 minutes he's reserved
6 pertains to EDC's alternative witness, Matthew Vespa.

7 MR. CARROLL: All of it, because that was the only
8 witness that we had asked to cross.

9 HEARING OFFICER KRAMER: Okay. So that would be
10 Mr. Vespa, then, who is going to be on day one as he
11 requested, so.

12 MR. CARROLL: Well, you know, I'm sorry. That's
13 not accurate.

14 MR. SMITH: Okay.

15 MR. CARROLL: So I'm having to kind of reshuffle
16 the categories here. So the witnesses that we had asked to
17 cross in part -- what we were calling part -- I'm sorry.
18 Which is -- is Part 1 or Part 2 the alternative physical
19 sites?

20 HEARING OFFICER KRAMER: Part 1 is everything but
21 physical sites.

22 MR. CARROLL: Okay. So the witnesses that we had
23 asked to cross-examine in Alternatives Part 1 are Mr. Vespa,
24 from EDC, and also Mr. Powers from CBD. So the 30 minutes
25 that we've now allocated for cross on -- and I'm sorry, Mr.

1 Caldwell from the City of Oxnard.

2 So I'm going to say that the 50 minutes that the 50
3 minutes that we had originally allocated, I'm going to put 40
4 to Part 1 and split them down to 15 for Vespa, 15 for Powers
5 and 10 for Caldwell. And then we would have 20 minutes to
6 cross-examine witnesses for Part 2.

7 MR. SMITH: Okay. I'm not objecting, but I'll just
8 note that in your PHC statement you put down 10 for Vespa.
9 I'm assuming that for purposes of this scheduling conference
10 we can modify that, but that was what prompted the question
11 initially.

12 MR. CARROLL: Twelve; 10 to 15.

13 MR. SMITH: Oh, okay. Thank you. Okay.

14 HEARING OFFICER KRAMER: Okay. That's the apple
15 count. Staff, you were going to have everything in the first
16 round, even if it meant talking about subjects in the second
17 round, correct?

18 MS. CHESTER: Correct. So we'll need to add some
19 of the section experts to our panel. So we have Jeanine
20 Hinde, David Vidaver, Jonathan Fong, Carol Watson, Marylou
21 Taylor, Paul Marshall and Jon Hilliard. I would also like to
22 bring --

23 HEARING OFFICER KRAMER: Hold on a second.

24 MS. CHESTER: Oh, sure.

25 HEARING OFFICER KRAMER: The last name again, Jon?

1 MS. CHESTER: Jon Hilliard.

2 HEARING OFFICER KRAMER: Okay. Go ahead. Is the
3 20 minutes still right?

4 MS. CHESTER: Yes.

5 HEARING OFFICER KRAMER: Okay.

6 MS. CHESTER: The majority of those will be
7 available for cross.

8 HEARING OFFICER KRAMER: Oh. Well, you just need
9 to count your time and leave it to the others.

10 MS. CHESTER: So then it's still 20.

11 HEARING OFFICER KRAMER: Okay. And this is maybe a
12 good time to mention that Staff didn't give any specific time
13 estimates for cross on any topic. So while we're on this
14 one, are you expecting to need any?

15 MS. CHESTER: We are not.

16 HEARING OFFICER KRAMER: Okay.

17 MS. CHESTER: I would like to note that Matthew
18 Layton is listed on cross for the City of Oxnard for
19 Alternatives. It's not reflected on the chart, but we just
20 wanted to note that Matthew Layton did not work on
21 Alternatives.

22 HEARING OFFICER KRAMER: Okay. Ms. Folk, did you
23 hear that and does that change your need to speak to Mr.
24 Layton?

25 MS. CHESTER: Mr. Layton could speak to the

1 discussion of the clutch technology, but not to the rest of
2 the Alternatives.

3 HEARING OFFICER KRAMER: Ms. Folk, are you there?
4 Oh, I don't think anybody's muted. Hold on. Oh, she's
5 muted. No. She has her hand up. Okay. Now --

6 MS. FOLK: Yes. So I think we would still
7 potentially want to cross-examine him, and I believe the
8 clutch technology does go to the issue of Alternatives.

9 HEARING OFFICER KRAMER: So it would be specific to
10 the clutch technology.

11 MS. CHESTER: This is Michelle Chester from Staff
12 again.

13 MS. FOLK: If that's all he did work on.

14 MS. CHESTER: Okay.

15 HEARING OFFICER KRAMER: Okay. Well, I'm just
16 going to make a note here then. And by just listing Matthew
17 at this point I'm not implying that that's your only -- the
18 only witness you desire to cross, just to be clear. And I
19 don't think anybody --

20 MS. FOLK: Okay.

21 HEARING OFFICER KRAMER: -- could do 120 minutes
22 with him anyway.

23 MS. CHESTER: Michelle Chester from Staff again. I
24 just want to clarify that the witnesses that we have listed
25 for direct testimony on Alternatives are the only witnesses

1 we plan on bringing for Alternatives. So if there's any
2 other technical areas outside, we would need to know now.

3 HEARING OFFICER KRAMER: Okay. So we've got Mr.
4 Layton. Does any party see anyone on the list that -- and
5 let me just read the names, because I think some of you are
6 just on the phone; Jeanine Hinde, Dave Vidaver, Jonathan
7 Fong, Carol Watson, Marylou Taylor, Paul Marshall or Jon
8 Hilliard and Matt Layton.

9 Anybody who's not on that list that one of the
10 parties desires to cross-examine regarding project
11 Alternatives? And that would be both of the two sub-topics.

12 MS. FOLK: And we're just talking about Staff here?

13 HEARING OFFICER KRAMER: Staff's witnesses, yes.

14 MS. FOLK: Okay.

15 HEARING OFFICER KRAMER: Okay. Hearing none, let's
16 move on, then. Wait, let's see. So that's Part 1 where
17 Staff is going to talk about both topics. So then I would
18 need to, I guess, remove those names from the second part.
19 So let's now then go to the City of Oxnard.

20 Ms. Folk, I may not have the complete list here on
21 the table, but you had James Caldwell for 30 minutes. Which
22 or both of the two parts would he be talking about?

23 MS. FOLK: Oh, he would essentially be talking
24 about Part 1. Some of his testimony may be relevant to the
25 Mission Rock Project, but not from a specific location issue

1 as much as a technology issue. So I think it would be
2 appropriate under Part 1.

3 HEARING OFFICER KRAMER: Okay. So we can remove
4 him from Part 2, then?

5 MS. FOLK: Yes.

6 HEARING OFFICER KRAMER: And then you would not
7 need any time for direct in Part 2?

8 MS. FOLK: I don't believe so, though I will say
9 some of the testimony, for example, of the airport, Todd
10 McNamee might be relevant, but I believe it could be all
11 addressed in the issue of the air safety, because some of his
12 testimony does go to safety issues related to overflights at
13 the other alternative sites.

14 HEARING OFFICER KRAMER: Okay. And he's not listed
15 here in Alternatives at all so far.

16 MS. FOLK: Well, I think we had him, the topic we
17 listed, though, under transportation --

18 HEARING OFFICER KRAMER: And that would relate --

19 MS. FOLK: -- addressed.

20 HEARING OFFICER KRAMER: -- that would relate to
21 impacts at the Oxnard Airport, but as far as the merits of
22 the site Alternatives and, you know, relative to the airports
23 near them, for instance, the navy issue, I would think that
24 would be in Alternatives.

25 MS. FOLK: Well, I think we addressed it in our

1 Prehearing Conference Statement under Alternatives, and then
2 under a description of what Mr. McNamee would testify to we
3 listed Alternative -- okay. We did specify it was about
4 transportation, but he did in his testimony discuss the
5 alternative sites, as well.

6 HEARING OFFICER KRAMER: Okay. So I should add him
7 here for -- how much time would you need on the location
8 part, then, for him?

9 MS. FOLK: Well, I think it can be part of his
10 testimony in general. I don't --

11 HEARING OFFICER KRAMER: Okay. But we're trying to
12 group things together. So we don't want to --

13 MS. FOLK: And I understand that, but he can only
14 be available in the afternoon first day and I just, I mean,
15 could bring him up and sit him down and then bring him up
16 again, but I think it would be very closely related to his
17 testimony in the first instance. But if you want, we can
18 reserve. I think I said I had 15 minutes for him all
19 together, five minutes on the Alternatives and 10 minutes.

20 HEARING OFFICER KRAMER: So it sounds like you may
21 be working your way to asking that he give his traffic and
22 transportation testimony on the first afternoon, even if
23 nobody else does. Am I guessing correctly?

24 MS. FOLK: Yeah, yes, because he told us, and I
25 just learned it this morning, that he is only available on

1 the afternoon of the 7th.

2 HEARING OFFICER KRAMER: Okay. Let me go make a
3 notation. So we're giving them five in Alternatives on
4 locations, and I'm going to go down to traffic. Okay. So
5 I'm going to mark him as number one just so the time gets
6 grabbed. Does he still need 20 minutes on the relation of
7 the project site to the airport, Oxnard Airport?

8 MS. FOLK: That would be his testimony on the
9 transportation specific issues for the project itself.

10 HEARING OFFICER KRAMER: Right.

11 MS. FOLK: I think the total amount of time we
12 would need for him is 20 minutes.

13 HEARING OFFICER KRAMER: So we can take this down
14 to 15, maybe, then?

15 MS. FOLK: You can say 10 and 10.

16 HEARING OFFICER KRAMER: Okay. We'll change that -
17 -

18 MS. FOLK: Maybe.

19 HEARING OFFICER KRAMER: -- for estimates.

20 MS. FOLK: Yeah.

21 HEARING OFFICER KRAMER: Okay. So let's get back
22 to Alternatives. Was he your only witness on Alternatives?

23 MS. FOLK: No. On Part 1 we would have Jim
24 Caldwell.

25 HEARING OFFICER KRAMER: Okay. And we do have him.

1 That's right. Okay. Thirty minutes for him?

2 MS. FOLK: So we also listed him for Overrides.

3 And so depending on how we do this, we could have him do 20
4 minutes on Alternatives and then 10 minutes on Overrides at
5 just --

6 HEARING OFFICER KRAMER: Okay. On the --

7 MS. FOLK: And I would also like to not have to
8 have him come back for a second day, but.

9 HEARING OFFICER KRAMER: Well, a telephone is an
10 option. Does that help?

11 MS. FOLK: Yeah; yeah.

12 HEARING OFFICER KRAMER: Well, we'll see. Is
13 anybody, let me just ask generally in the parties, anybody
14 inclined to be resistant to any particular witness testifying
15 by telephone?

16 MR. CARROLL: Applicant is generally resistant to
17 any witness testifying by telephone, but if there are any
18 specific circumstances that make that necessary, we're
19 certainly willing to take those into consideration on a case
20 by case basis.

21 And there are, you know, some that we would be less
22 resistant to as others. But generally speaking, we think
23 it's highly preferable for the witnesses to be here in
24 person.

25 HEARING OFFICER KRAMER: Okay. Anybody else have

1 comments about that? Anyone on the phone? Mr. Sarvey, I
2 think I had to mute you again.

3 MR. SARVEY: No, I don't have any comments on that.

4 HEARING OFFICER KRAMER: Okay. No. That was
5 somebody else I muted. Okay. Thank you. Ms. Chang, let me
6 unmute you. Can you hear us? All right. Okay. Try again,
7 Ms. Chang. Okay. She must have stepped away from, looks
8 like from her computer. Okay.

9 The City of Oxnard, you also had Ashley Golden and
10 you had a total of 60 minutes, Ms. Folk, for direct. Ms.
11 Chang, can you hear us? Okay. Now, we're going to have to
12 mute her again. Go ahead, Ms. Folk. Is that still right, 60
13 minutes?

14 MS. FOLK: Yes. I believe I had Ms. Golden on Land
15 Use and on Overrides. And again, I think the testimony
16 probably overlaps. Some of her testimony may be relevant to
17 Alternatives, actually, and this is an issue with the fact
18 that the rebuttal testimony from the Applicant was not
19 submitted, was submitted on Alternatives and the analysis in
20 the FSA.

21 So we did not get a chance to respond to it, but
22 they do make some claims about the consistency between the
23 Land Use designations and for some of the alternative sites
24 and the power plant. So I guess if they're allowed to go
25 ahead with that testimony then we would need Ms. Golden to

1 testify on, now that I think about it, on Part 2, Land Use
2 Alternatives.

3 And she was not able to do that as rebuttal
4 testimony, because we did not get that testimony in the
5 opening testimony.

6 HEARING OFFICER KRAMER: Okay. Well, I'll add her
7 to -- that would be --

8 MS. FOLK: And that would be --

9 HEARING OFFICER KRAMER: Part 2 of the --

10 MS. FOLK: And that fact --

11 HEARING OFFICER KRAMER: Okay. part 2, locations,
12 correct?

13 MS. FOLK: Yes.

14 HEARING OFFICER KRAMER: Okay. Well, you already
15 have -- well, let me check. Okay. So I'll give between her
16 and Mr. McNamee a total of, what, 20 minutes would do it?

17 MS. FOLK: Yeah, I think so.

18 HEARING OFFICER KRAMER: Okay. And then you had
19 120 minutes for cross-examination in Alternatives. How does
20 that split between the two topics, and do you still need that
21 much?

22 MS. FOLK: I probably don't need 120 minutes. I'll
23 probably say it's closer to 100.

24 HEARING OFFICER KRAMER: All right.

25 MS. FOLK: And as to the split --

1 HEARING OFFICER KRAMER: Equally split or?

2 MS. FOLK: No. I think it would be, I'm sorry,
3 about 40/20. So there would be 40 on Part 1. No, I take
4 that back. Why don't we do it equally split. I'm sorry.
5 It's hard to do it on the fly.

6 HEARING OFFICER KRAMER: I quite understand. So
7 you're saying 50 minutes and 50 minutes?

8 MS. FOLK: I said 60 minutes equally split.

9 HEARING OFFICER KRAMER: Oh, okay, 25 each. Okay.
10 That's great.

11 MS. FOLK: No. I said 60 minutes equally split.

12 HEARING OFFICER KRAMER: Sixty. Okay.

13 MS. FOLK: So 30 each.

14 HEARING OFFICER KRAMER: Okay. Well, that helps.
15 Okay. Onto the Environmental Center and the EDC and the
16 Sierra Club. Still 15 minutes for Mr. Vespa and that would
17 be on Part 1.

18 MR. SMITH: One, correct.

19 HEARING OFFICER KRAMER: And anything on Part 2?

20 MR. SMITH: No.

21 HEARING OFFICER KRAMER: Okay. You have 60 minutes
22 of cross-examination. Is that right?

23 MR. SMITH: So the question now becomes --

24 HEARING OFFICER KRAMER: Closer, closer.

25 MR. SMITH: Closer, okay. Just trying to woo you

1 with my dulcet baritone here. Can I ask the Staff if -- the
2 Staff I think mentioned earlier that some of the witnesses
3 that they're presenting on direct are going to be there,
4 simply to be available for cross, but may not be testifying
5 on direct. Is that right?

6 MS. CHESTER: Um-hum.

7 MR. SMITH: Could you scroll up a little bit so I
8 can just look at the list that they have up there now? So
9 are Ms. Watson or Mr. Hilliard going to be presenting direct
10 testimony or are they just available for cross?

11 MS. CHESTER: No. They will just be available for
12 cross, because they contributed to the Alternatives section.

13 MR. SMITH: Okay. So on the understanding that
14 they're not submitting orally anymore testimony that day, we
15 can leave cross that first day to 30 minutes.

16 HEARING OFFICER KRAMER: And the second?

17 MR. SMITH: And the second, on the second instance
18 we would still want 30 minutes on the second issue.

19 HEARING OFFICER KRAMER: Okay. So basically, an
20 even split?

21 MR. SMITH: An even split, exactly.

22 HEARING OFFICER KRAMER: Thank you.

23 MR. SMITH: Sure.

24 HEARING OFFICER KRAMER: Okay. Next, is Mr.
25 Sarvey. Hi, there.

1 MR. SARVEY: Hi, there.

2 HEARING OFFICER KRAMER: And you --

3 MR. SARVEY: Yes, I am.

4 HEARING OFFICER KRAMER: Well, actually, you had
5 listed no direct or cross. So thank you.

6 MR. SARVEY: Well, I had one cross on the Coastal
7 Commission witness. Apparently, there isn't going to be one.
8 I don't know. I also have a couple exhibits that you guys
9 discussed earlier that I don't know about, and just to
10 authenticate them I might need to cross Mr. Beatty or Mr.
11 Piantka on that. Other than that, I don't have anything.

12 HEARING OFFICER KRAMER: Would that relate to
13 Alternatives?

14 MR. SARVEY: No. I have nothing in Alternatives.
15 I only have the, like I said, the Coastal Commission witness
16 I wanted to ask a couple questions. Doesn't look like,
17 though, they're going to appear, and then authenticate my
18 exhibits. That's all I needed to talk about.

19 HEARING OFFICER KRAMER: Okay. So what topic does
20 the Coastal Commission relate to, in your mind?

21 MR. SARVEY: That would most likely be Land Use and
22 some laws issues that I detailed in my prehearing conference
23 that I believe that the entire removal of the outfall and MGS
24 1 and 2 should be not to ground level. It should be all the
25 way -- the things should be taken out of the ground

1 completely, all the foundations, everything, because they're
2 going to be a coastal hazard to the --

3 HEARING OFFICER KRAMER: Okay. Let me stop you
4 there, because we're not getting into the details of the
5 questions, just the topics.

6 MR. SARVEY: No, but you were asking me my position
7 and I'm telling you what I want to talk about.

8 HEARING OFFICER KRAMER: Okay. Land Use was all I
9 needed to hear. And then --

10 MR. SARVEY: Thank you, sir.

11 HEARING OFFICER KRAMER: -- your exhibits relate to
12 which topic?

13 MR. SARVEY: Well, the exhibits relate to sea level
14 rise and the 30-year projection of project life.

15 HEARING OFFICER KRAMER: Okay. So that's going to
16 be soil and water. So I'll come back to you when we get to
17 that on our list here.

18 MR. SARVEY: Okay. Thank you.

19 HEARING OFFICER KRAMER: Thanks.

20 MS. FOLK: Hi. This is Ellison Folk again, and I
21 just had a clarifying question on the Staff's testimony
22 regarding Alternatives. And I'm sorry to go back on this,
23 but is the idea that Staff is going to present all these
24 witnesses at once on both Parts 1 and 2?

25 MS. CHESTER: Yes. Jeanine Hinde, David Vidaver

1 and Jonathan Fong will be giving direct testimony. We will
2 also have available Carol Watson, Marylou Taylor, Paul
3 Marshall and Jon Hilliard.

4 MS. FOLK: Okay. So the reason I'm bringing this
5 up is I guess to our breakdown of cross between Parts 1 and
6 Part 2. It sounds to me like we actually would want to do --
7 we have all the Staff people on both parts, then it's hard to
8 break down the testimony between -- the cross between Parts 1
9 and Parts 2. It's almost more like testimony per, by witness
10 grouping.

11 HEARING OFFICER KRAMER: Well, because we're going
12 to be going formally you would -- for the Staff witnesses you
13 would ask your Parts 1 and 2 questions of them during the
14 Part 1 time frame.

15 MS. FOLK: During the Part 1 time frame?

16 HEARING OFFICER KRAMER: Yeah. So if you had a lot
17 of Part 2 type questions for Staff, maybe we need to move
18 some of your cross time into the Part 1 range, because you'll
19 be asking Part 1 and Part 2 questions of Staff during the
20 Part 1 discussions.

21 MS. FOLK: Okay. Right. Okay. So I want to
22 revise my estimate, then.

23 HEARING OFFICER KRAMER: Go ahead.

24 MS. FOLK: I think for, yeah, so for Part 2 I would
25 say 45 minutes.

1 FEMALE SPEAKER: Ironically, about scheduling,
2 these hearings now, every single party in the matter is
3 saying how much time they need for what.

4 MS. FOLK: And then for Part 2 I would say it's
5 actually going to be about 20 minutes.

6 HEARING OFFICER KRAMER: Okay. So you meant 45 for
7 Part 1 and then 20 for Part 2.

8 MS. FOLK: Yes. It's just five minutes more, but I
9 --

10 HEARING OFFICER KRAMER: Okay. I'm about to record
11 the rest of that.

12 MS. FOLK: Sorry about that. It's --

13 HEARING OFFICER KRAMER: That's okay. No. It's
14 good to get our expectations right, because we'll all be a
15 little bit cranky if, you know, if we underestimate and we've
16 got the public wanting to make the public comments and we
17 can't quite finish. Okay.

18 MR. CARROLL: Mike Carroll.

19 HEARING OFFICER KRAMER: Say -- you --

20 MR. CARROLL: Oh, I'm sorry. At some point I
21 wanted to circle back. Mr. Simpson [sic] mentioned a couple
22 of Applicant witnesses, but it wasn't clear to me at the end
23 whether he was indicating a desire to cross-examine them or
24 not. So I don't know if this is the appropriate time to.

25 HEARING OFFICER KRAMER: I was going to do that

1 when we get to the two categories I teased out of him.

2 MR. CARROLL: Okay.

3 HEARING OFFICER KRAMER: Which were Land Use and
4 soil and water.

5 MR. SARVEY: This is Mr. Sarvey. I just want to
6 correct. I'm not Mr. Simpson.

7 HEARING OFFICER KRAMER: My apologies, Mr. Sarvey.

8 MR. SARVEY: Thank you.

9 HEARING OFFICER KRAMER: Okay. So CEJA did not
10 have any testimony on this topic. I think we've covered --
11 well, let's see. The Center for Biological Diversity is
12 going to be Mr. Powers, and that's going to be on Part 1.
13 And I'm thinking that you have nothing in Part 2. Is that
14 correct, Ms. Belenky?

15 MS. BELENKY: I believe it is. I do want to say
16 that we would reserve the right to the extent that things
17 come up in Part 2, to ask questions during this. It's
18 impossible to know at this stage or even just reading all of
19 the testimony what might come up during testimony, and we may
20 have questions. So my understanding is that this doesn't
21 completely limit us in that circumstance.

22 HEARING OFFICER KRAMER: No. You had asked for 40
23 minutes of cross-examination. Do you want to -- it sounds
24 like you're not crystal clear about how it would break down.
25 Would it be reasonable to split it 20/20 at this point, 20

1 for --

2 MS. BELENKY: No. The majority of ours will be on
3 the Part 1. We're calling it Part 1.

4 HEARING OFFICER KRAMER: How about 30/10, then?

5 MS. BELENKY: I guess I would say 35/5.

6 HEARING OFFICER KRAMER: Okay.

7 MS. BELENKY: But I guess I'm making also a
8 procedural statement that as things come up at the hearing
9 any party has the right to ask additional questions that they
10 may not have formulated previously as the testimony is made.
11 That's always been my understanding.

12 So these are general guidelines and that's
13 certainly what we're going to try to stick to, but there may
14 be things that come up on any topic area that other parties
15 find they do need clarification or cross-examination on.

16 HEARING OFFICER KRAMER: That's generally true, but
17 there is an expectation that the surprise is reasonable. In
18 other words, not just something that you decided very late in
19 the proceeding to be interested in, but it was, you know, it
20 was clearly an issue telegraphed, or even more clearly
21 stated, in the testimony that's come before.

22 You know, we are flexible. We, you know, if --
23 what we try to avoid especially are fishing expeditions. So
24 the hearings are not the time to perform discovery or just
25 see, you know, poke around to see if there really is an issue

1 to be raised. It should be more focused. What I did was
2 gave you five for Part 2 and 35 for Part 1.

3 MS. BELENKY: Thank you.

4 HEARING OFFICER KRAMER: Okay. And FFIERCE had no
5 testimony either. So it looks like what we have now is 4.3
6 hours for Part 1 and 1.8 for Part 2. So let me take Part 2
7 off of day one, because it's going to happen at some other
8 time. And then let me scroll to the bottom and see where
9 that leaves us on day one.

10 Okay. 6.3 hours. That sounds doable. Wow. Let
11 the record reflect the shock in my voice. So let's see.
12 What we have, then, is -- that would be Public Health,
13 Greenhouse Gases, Air Quality and Part 1 of Alternatives.

14 MS. LAZEROW: Sorry. This is Shana Lazerow. Hi.
15 Is Environmental Justice Socio-Economics going on day one?

16 HEARING OFFICER KRAMER: Not so far, and given the
17 estimate there, it's looking to be more or less -- well,
18 maybe I'm wrong. Maybe I'm thinking of Alternatives, but
19 that's -- well, that's 4.3 hours. So there'd be no room to
20 fit all those on day one.

21 MS. FOLK: And this is Ellison Folk. I just want
22 to clarify that Todd McNamee will be able to testify on day
23 one. I think the total transportation time is pretty small.

24 HEARING OFFICER KRAMER: That's right. I think he
25 would have been in the total. Let me find that. I think I

1 put --

2 MS. FOLK: Yes, he was.

3 HEARING OFFICER KRAMER: -- I put a one next to his
4 name. Yeah. Okay. So he was there with his 15 minutes.

5 MS. CHANG: This is Grace Chang. I'm sorry. I
6 must have missed something, but I thought that we began the
7 conversation fore-fronting the --

8 HEARING OFFICER KRAMER: Could you please speak
9 louder?

10 MS. CHANG: Yes. My understanding was that we
11 began the conversation with your stating that we would --
12 that Environmental Justice and Socio-Economics were sort of
13 merged or grouped together, and that that was the first topic
14 on the agenda. Am I mistaken about that?

15 HEARING OFFICER KRAMER: We talked about various
16 things and never made any decision. So what you're doing is
17 raising a concern about the workability of the tentative
18 allocation that we plotted out here on the spreadsheet. We
19 have a conflict among schedules.

20 Let's see. Your witnesses are available on the
21 8th, as well, correct, on the topic of Environmental Justice
22 and Socio-Economics.

23 MS. CHANG: Within certain time constraints they
24 are available telephonically, although the preference would
25 be for the 7th, particularly because some of the witnesses

1 that I wanted to direct questions to were only available, my
2 understanding is that they are only available on the first
3 day, on the 7th.

4 HEARING OFFICER KRAMER: Okay. Well, that was two
5 witnesses from CEJA.

6 MS. CHANG: Right.

7 HEARING OFFICER KRAMER: CEJA. And what we may
8 have to do is try to have those witnesses testify on Monday
9 afternoon, because, well, their constraints are very narrow.
10 One is just that particular afternoon, and one is even more
11 constrained. It's after 5:00 p.m. that afternoon and we know
12 that we've told the public to come in at 5:30 and begin their
13 public comments.

14 MS. CHANG: Sure.

15 HEARING OFFICER KRAMER: So well, we -- let me ask
16 the other parties, other than CEJA. To what extent do you
17 want to cross-examine Strela Cervas and let's see, Irene
18 Valencia? Is anybody planning on cross-examining them?

19 MR. CARROLL: Yes. Applicant did reserve five
20 minutes for Ms. Cervas.

21 HEARING OFFICER KRAMER: Okay. So we may have, and
22 it probably makes sense to have that full group testify
23 together. So that was 40 minutes plus 40, plus five. So let
24 me mark those and see how the math goes. Okay. That brings
25 us up to maybe seven hours on day one.

1 I think especially given the constraint of the
2 evening public comment that's probably all we can take care
3 of. But Ms. Lazerow, does that take care of your concerns
4 with your witnesses?

5 MS. LAZEROW: I believe that works. I confirmed
6 during the break with Strela Cervas. She's actually
7 available all day. So she could do first thing in the
8 morning, but she does have to catch a flight out of L.A. So
9 optimally, we could get her out of here on the earlier side
10 that day, by 3:00.

11 HEARING OFFICER KRAMER: Oh, okay. So yeah. So
12 having her be in the later afternoon is suboptimal for her.

13 MS. LAZEROW: Exactly.

14 HEARING OFFICER KRAMER: Well, probably fatal if
15 she's trying to get to LAX, right. Okay. So I'm going to
16 mark her down as through midafternoon. Okay. So okay.
17 Well, that's still seven hours on that day.

18 MS. LAZEROW: Yeah. I think we showed this day.

19 HEARING OFFICER KRAMER: Okay. So then the plan
20 appears, the proposed plan, I'm going to ask, check one more
21 time to see if we've got any sort of concerns, is that the
22 CEJA witnesses on Socio-Economics and Environmental Justice
23 would go at some point on Monday, before the end of the
24 afternoon.

25 And then the rest of Socio-Economics and

1 Environmental Justice would be on another day. And then
2 there would be the Traffic and Transportation witness, Mr.
3 McNamee, in the afternoon, and the rest of Traffic and Trans
4 would go to another day.

5 And then we'd try to fully get through Public
6 Health, Greenhouse Gases and Air Quality and Alternatives
7 Part 1, which is the technology, everything but site
8 locations. Anybody seen a problem with that scheduling?
9 Ma'am, we're --

10 UNIDENTIFIED FEMALE: You keep saying -- before you
11 were saying *20:59:11 --)

12 HEARING OFFICER KRAMER: Yeah, she's right. We've
13 fallen out of the habit of -- you're talking about the people
14 speaking up here?

15 UNIDENTIFIED FEMALE: You, now.

16 HEARING OFFICER KRAMER: Oh.

17 UNIDENTIFIED FEMALE: You personally *20:59:24 --

18 HEARING OFFICER KRAMER: I don't say that I'm Paul
19 Kramer.

20 UNIDENTIFIED FEMALE: Yes. You're --

21 HEARING OFFICER KRAMER: Okay.

22 UNIDENTIFIED FEMALE: You keep saying Monday, but
23 before you were saying we were starting on Tuesday.

24 HEARING OFFICER KRAMER: Oh, did I say Monday?

25 UNIDENTIFIED FEMALE: Yes.

1 HEARING OFFICER KRAMER: Okay. No, that's a slip.
2 No. I meant Tuesday.

3 UNIDENTIFIED FEMALE: Thank you.

4 HEARING OFFICER KRAMER: Got you. Okay. We're
5 starting on Tuesday at 9:30 a.m. Okay. So does anybody have
6 any additional scheduling concerns before we kind of try to
7 lock that down and then allocate the rest of the topics? Mr.
8 Carroll.

9 MR. CARROLL: Mike Carroll, for the Applicant.
10 Just a place, the only constraint that we had with any of our
11 witnesses was Mr. Theaker's availability on the 7th. As this
12 is all shaken out he is Alternatives 1, which is now on the
13 7th.

14 We're checking with him to see if we can make that
15 work, and hopefully, we can. So I'm not suggesting any
16 changes now, but I may have to come back at some point before
17 we're finished here. So I just wanted to identify that
18 potential issue.

19 HEARING OFFICER KRAMER: Okay. Fingers crossed.
20 All right. Those are going to be on the first day until we
21 decide otherwise, which we hope not to have to do. Project
22 description. That seems like one we can come back to. It's
23 not going to take much time and try to fit it in where we
24 can.

25 I also have built into this whole system the

1 concept of a floater, topics that we just get to when, let's
2 say we finish a little early on something and we've got a few
3 minutes. That could be a floater, but we'll wait and see.
4 We've done Alternatives 1 and -- oh, we haven't picked a day
5 for Alternatives Part 2.

6 (Off the record discussion with Commissioners)

7 HEARING OFFICER KRAMER: Okay. Yeah. Commissioner
8 Scott's suggesting that we finish up with those that we
9 started the first day. So that would be Project Alternatives
10 Part 2. Let me just make that allocation. But let's, well,
11 yeah, let's try that.

12 I think I noticed that when we were speaking to Dr.
13 Chang, and Dr. Chang you need to make sure that you mute
14 yourself when you're not speaking, because a couple times it
15 was apparent that you were having a conversation with someone
16 else, and we heard it pretty clearly and I had to mute you
17 manually. But we prefer --

18 MS. CHANG: Yeah, I apologize.

19 HEARING OFFICER KRAMER: Okay. We prefer that you
20 do that yourself, because then you can just speak out.

21 MS. CHANG: Sure. Yeah. I would prefer that, as
22 well. I apologize. I didn't realize that was on.

23 HEARING OFFICER KRAMER: Okay. So first, I'm going
24 to allocate the ones that we started on, on day one, the
25 topics, and see how much time we have left. And then we need

1 to accommodate the needs of your, try to accommodate the
2 needs of your witnesses who were available on the 7th or the
3 8th.

4 Oh, Dr. Chang, I noticed you wanted to have 10
5 minutes of cross-examination on the topic of Public Health,
6 but I looked at the order granting intervention to - no, I'm
7 sorry. It was CEJA. Never mind. You were not granted
8 intervention rights in Public Health. I'm not sure why, but
9 it's --

10 MS. LAZEROW: I did not request it specifically.
11 It wasn't until the PSA that I actually understood that
12 Asthma and Air Quality Impacts would follow after that
13 category. So I would ask, I don't know, procedurally how to
14 go about it, request the right to do some cross-examination
15 specifically on asthma impacts and air pollution, which I
16 know this witness is very familiar with.

17 HEARING OFFICER KRAMER: Okay. We're not going to
18 issue an order or anything, I don't think, but orally we will
19 grant you intervention, or increase the scope of your
20 intervention to include Public health.

21 MS. LAZEROW: Thank you.

22 HEARING OFFICER KRAMER: Okay. Continuing on with
23 my allocations. Okay. So the rest of Socio-Economics I'll
24 put on day 2.

25 MS. CHESTER: This is Michelle Chester with Staff.

1 I just want to be clear that our witness, Ann Chu, is an
2 expert on asthma, but not air quality. She does the health
3 impacts related to air quality, but we have separate
4 witnesses for air quality and they will be on the panel.

5 HEARING OFFICER KRAMER: Oh, sorry. Thanks. Right
6 there, right? Got it. Okay. And then Transportation.

7 MR. SARVEY: Hello?

8 HEARING OFFICER KRAMER: We're still here. We're
9 just manipulating the spreadsheet in real time. Okay. So by
10 putting the items that we partially finished on day one onto
11 day two to get them completed we consume nearly six hours on
12 day two already. So I think we need to then -- and that
13 takes care of the --

14 MS. BELENKY: Excuse me. Can you clarify -- this
15 is Lisa Belenky. Can you clarify, I thought I heard you say
16 the hearings wouldn't start until 9:30. Is that correct?

17 HEARING OFFICER KRAMER: Yes, on all four days, if
18 we need them.

19 MS. BELENKY: I see. And then the hearing will be,
20 there won't be any substantive hearing after public content -
21 - comment period. Is that also what's being planned? I'm
22 just trying to understand what -- you know -- how many hours
23 you're allocating per day.

24 HEARING OFFICER KRAMER: Well, we don't know how
25 long public comment's going to go on those two specific days.

1 So I think it would be really risky to try to commit to cover
2 some more topics at the end of public comment. So we're not
3 planning on doing that.

4 On the other days we've just said that public
5 comment will come after all the day's topics are exhausted.
6 But out of fairness to the public, I don't think we want to
7 schedule ourselves to be done at 8:00 or 9:00 p.m., and then
8 maybe run over and tell the public, you have to wait.

9 So I think a couple times you've hinted that you
10 didn't really like the times when we've gone late into the
11 evening, and I don't think we've liked it all that much,
12 either. But so far with the work we've been able to do to
13 now, we were avoiding that. We'll have to see how it all
14 pans out.

15 I think it's possible to avoid it if we go all four
16 days, because the total is -- right now, the grand total is
17 25.4 hours, which, you know, should divide over four days
18 okay. Did I answer your question or ones you didn't ask or
19 what?

20 MS. BELENKY: Yeah. Thank you. I think you
21 answered ones I didn't ask, as well. I had thought for the
22 25 hours we could do it in three days, but that's -- I see if
23 you don't start until 9:30 in the morning that, and before
24 5:30, that certainly limits the amount of time per day.

25 MR. CARROLL: This is Mike Carroll for the --

1 MS. BELENKY: Just to clarify.

2 HEARING OFFICER KRAMER: Okay. Well, we'll see.

3 We may push on the last two days when we don't have the set
4 public comment, but let's see how the time allocates. It's
5 probably pushing it to get it in three days, three and a half
6 maybe, but we'll see. Let's continue on.

7 MR. CARROLL: On behalf of -- Mike Carroll for the
8 Applicant, and it sounds like this is -- I think we do need
9 to be cognizant of, these are going to be long, difficult
10 days. We have a lot of witnesses. We then have witnesses
11 that we need to get ready for the following day.

12 So I would discourage us from going beyond what's
13 been scheduled for public comment witnesses. Coming back
14 after public comment and starting to take more witnesses I
15 think would be very difficult to do and it would make for
16 grueling days and eliminate all of our prep time for the
17 following day.

18 HEARING OFFICER KRAMER: Okay. Thank you. All
19 right. So what else can -- remind me, folks. We've dealt
20 with the constraints of the witnesses, who could appear only
21 on the 7th or the 8th. Those who will now be those who were
22 not accommodated on the 7th are going to be here on the 8th
23 on the continuation of those particular topics.

24 I see some conflicts in, or some schedule concerns
25 in Biology. Ileene Anderson, well, she's available on the

1 8th all day and she's available on the 9th after 1:00 p.m.,
2 and that's a four-hour total right now. So that one would be
3 hard to, well, impossible to shoehorn onto day two, I think.
4 So should we tentatively mark that as day three?

5 COMMISSIONER SCOTT: Um-hum.

6 HEARING OFFICER KRAMER: Let's do that. And then
7 let's see. We're looking for, I don't know, maybe an hour or
8 less to fill out day two. See what we have. What's this
9 one -- oh, we did that. Project description. That's a half
10 an hour. That's a candidate. Let's see what else.

11 (Colloquy between Hearing Officer and Commissioners)

12 HEARING OFFICER KRAMER: Okay. How about Project
13 Description and Compliance and Closure, tentative candidates
14 for day two. Just the one witness.

15 (Colloquy between Hearing Officer and Commissioners)

16 HEARING OFFICER KRAMER: For those of you on the
17 phone, I don't know if the mic's partially picking it up, but
18 we're making some guesses here and then we're going to review
19 them with everyone. So just stand by.

20 (Colloquy between Hearing Officer and Commissioners)

21 HEARING OFFICER KRAMER: Okay. So we made some
22 allocations and then we will test the waters here. Just
23 reviewing, we'll go topic by topic as they are in the sheet.
24 When we get this done, tomorrow what I'll do is produce a new
25 version of this which will have all of the particular day's

1 topics under that day.

2 You can see the day labels are just sitting at the
3 top waiting to have topics moved below them. So Project
4 Description and Introduction, that's going to be proposed for
5 day two. Project Alternatives Part 1 is on day one. We've
6 already talked about that.

7 Alternatives Part 2 is going to conclude on day
8 two. Compliance and Closure, a little quicky, is on day two.
9 Facility Design, nobody wants anything. We'll put this in
10 the floaters' category. I just won't waste your time
11 watching me do it here.

12 Same for Power Plant Efficiency and Power Plant
13 Reliability, and Transmission System Engineering. Those
14 should take just a minute or two, to go through the
15 formalities of introducing them when we have some time. Air
16 Quality is, as we discussed earlier, on day one.

17 Greenhouse Gases are the same, and so is Public
18 Health. And we fixed this unauthorized topic note.
19 Hazardous Materials, well, it's a floater. So no worries, as
20 is Worker Safety and Fire Protection. Biology, we had on day
21 three. That's the best day for the Center for Biological
22 Diversity's witness, Ileene Anderson, and didn't seem to
23 cause any problems for anyone else.

24 MR. STREET: Mr. Kramer, this is Joe Street, with
25 the Coastal Commission.

1 HEARING OFFICER KRAMER: Go ahead.

2 MR. STREET: I was hoping you could advise us on
3 when would be the appropriate moment for us to introduce our
4 report. But also, to the extent that I would be needed for
5 Biology, Soil and Water Resources and Land Use, I'm
6 unavailable the morning of the 9th, but any other time is
7 fine.

8 HEARING OFFICER KRAMER: Okay. So for Biology, so
9 far, we're looking actually the 9th.

10 MR. STREET: Okay.

11 HEARING OFFICER KRAMER: But I guess it could be
12 the afternoon.

13 MR. STREET: Sure.

14 HEARING OFFICER KRAMER: So let's see.

15 MS. BELENKY: I'm sorry. Ms. Anderson is not
16 available in the afternoon on the 9th, only in the morning,
17 but her testimony doesn't take that much time.

18 HEARING OFFICER KRAMER: Oh, that's right. Okay.
19 Yeah. I got my days wrong. I was thinking we were talking
20 about Wednesday, but okay. So the 9th, Mr. Street, works for
21 you in the afternoon.

22 MR. STREET: Yes.

23 HEARING OFFICER KRAMER: Okay. And Mr. Carroll,
24 you wanted to cross-examine them on Bio, I guess, well, all
25 those three topics, yes.

1 MR. CARROLL: Potentially, yes.

2 MR. STREET: I can also add that I can clarify that
3 I will be available for questions. My responses will be
4 somewhat constrained to the contents of our report. So I
5 won't be able to offer opinions or much in the way of
6 interpretation, but I can answer questions.

7 MR. CARROLL: So and again, I say potentially
8 because it's not clear to me whether there are going to be
9 some changes with respect to the Coastal Commission report or
10 things that have happened since the report was issued. But
11 in light of what Mr. Street just said, I suspect that our
12 cross-examination will be relatively short, because it
13 doesn't really sound like they're going to have the witnesses
14 here who we are interested in cross-examining, who we
15 requested to cross-examine.

16 HEARING OFFICER KRAMER: Okay. And remind me of
17 the other topics that were Public Soil and Water. Is that
18 correct?

19 MR. CARROLL: Well, it's Coastal Hazards, but we've
20 generally been putting that into the Soil and Water
21 categories, so Coastal Hazards/Sea Level Rise, and then
22 Biology and Land Use are the three topics covered by the
23 Coastal Commission report.

24 HEARING OFFICER KRAMER: Okay. So Mr. Street, give
25 me the time that you're unavailable again, just so I can note

1 that for here in the chart?

2 MR. STREET: That would be the morning of Thursday
3 the 9th. So beginning at 1:00 p.m. or whenever you resume in
4 the afternoon, I assume there's a lunch break, at that point
5 I would be available.

6 HEARING OFFICER KRAMER: Okay. I put you down as
7 unavailable 2/9 a.m., and actually, that coincides with Ms.
8 Anderson's availability. So that's two reasons to have Bio
9 in the afternoon.

10 MR. SMITH: And just to be clear, I want to note,
11 this is Matthew Smith from EDC, that EDC would like to
12 reserve some time to cross-examine Mr. Street on Bio, as
13 well.

14 HEARING OFFICER KRAMER: Okay. You already have 80
15 minutes. So I'll just put Mr. Street in --

16 MR. SMITH: Well, actually, to be clear, we
17 reserved in the PHC, we requested 30 minutes actually for
18 each of the witnesses that are listed here under Staff, and
19 from the Applicant.

20 HEARING OFFICER KRAMER: So what would that total?

21 MR. SMITH: So it's 30 for Ms. Love, 30 for Ms.
22 Watson, 30 for Mr. Hilliard. Let's say we'll reserve 20 for
23 -- and that was actually also in our PHC statement, as well,
24 20 for Mr. Street.

25 HEARING OFFICER KRAMER: So that totals to 110.

1 MR. SMITH: So that's 110, correct.

2 HEARING OFFICER KRAMER: Okay.

3 MS. SMITH: Yes. Thank you.

4 HEARING OFFICER KRAMER: Okay. So Ms. Belenky, if
5 it's the afternoon of the 9th, you're okay with that. Is
6 that correct?

7 MS. BELENKY: Yes. I believe that works.

8 HEARING OFFICER KRAMER: Okay.

9 MS. BELENKY: After 1:00 p.m.

10 HEARING OFFICER KRAMER: Okay. And would Ms.
11 Anderson be testifying telephonically?

12 MS. BELENKY: Yes.

13 HEARING OFFICER KRAMER: Okay. And Mr. Carroll,
14 any specific objections, or anyone else, to her testifying
15 that way?

16 MR. CARROLL: That's not our preference, but no
17 objection.

18 HEARING OFFICER KRAMER: Okay. Thank you.

19 MR. STREET: Mr. Kramer, Joe Street, with Coastal
20 Commission. Also, my plan was to testify telephonically.

21 HEARING OFFICER KRAMER: Mr. Carroll, any others,
22 any objections?

23 MR. CARROLL: No objection.

24 HEARING OFFICER KRAMER: Okay.

25 MR. SMITH: From the Environmental Defense Center,

1 that's not our preference, but we won't insist on it if it
2 has to be that way.

3 HEARING OFFICER KRAMER: Okay. Thank you. Okay.
4 So I was reading through the list. So Bio, it looks like we
5 have surmounted any obstacles to having it on the third day,
6 the 9th. And Soil and Water, we had on the 4th day, the
7 10th. So Mr. Street, you would be available then, correct?

8 MR. STREET: Correct.

9 HEARING OFFICER KRAMER: Okay. Good. And then the
10 next topic was Cultural. We put that down on the second and
11 just have the city cross-examining Mark Hale for 15 minutes.
12 So that was a nice little filler to get in, to fill out the
13 day on the second.

14 Soil and Water is related, kind of intertwined with
15 Geological and Paleontological, and so I don't have any
16 specific hours in that category, but I think it makes sense
17 to combine the two, provide for the most efficient
18 discussion. Does anybody disagree with that approach?

19 MR. CARROLL: Applicant, not only do we not
20 disagree, I think that that makes sense, because some of the
21 Coastal Hazards issues overlap between Geology and Soil and
22 Water. So I think that combining all of those topics makes
23 perfect sense.

24 HEARING OFFICER KRAMER: Okay.

25 MS. FOLK: This is Ellison Folk for the City of

1 Oxnard. I also agree with that. I did want to clarify on
2 Mark Hale, that again, this is another piece of testimony
3 that we moved to strike. And I believe our cross would only
4 be related to Alternatives.

5 HEARING OFFICER KRAMER: Well, for budgeting
6 purposes you wouldn't need more than 15 minutes, right?

7 MS. FOLK: I don't think so.

8 HEARING OFFICER KRAMER: Okay. So we'll just leave
9 it on the books for now, and if it falls off later, all the
10 better.

11 MS. FOLK: Okay.

12 MS. ROESSLER: May I ask when it's appropriate. I
13 just have a question on the procedure.

14 HEARING OFFICER KRAMER: Go ahead.

15 MS. ROESSLER: You mentioned something earlier
16 about recross. I just wanted to make sure, with our witness
17 that we're sponsoring, and we do direct, is there any
18 opportunity after our witness has been cross-examined by
19 someone else for us to do redirect?

20 HEARING OFFICER KRAMER: Yes. Yes.

21 MS. ROESSLER: There is. So our time should
22 encompass like redirect, as well, for our own witness?

23 HEARING OFFICER KRAMER: Yeah. I think you --

24 MS. ROESSLER: Or we should reserve time?

25 HEARING OFFICER KRAMER: -- I think you're asking

1 of yourself a degree of precision that would be difficult to
2 hold anyone to. So you know, if people are drifting and not
3 getting to the point, we will provide a nudge. But you know,
4 within limits we are not going to shut off your microphone
5 when, you know, the stopwatch hits whatever your estimate
6 was.

7 MS. ROESSLER: Okay.

8 HEARING OFFICER KRAMER: But we will probably say,
9 wrap it up or can you please --

10 MS. ROESSLER: Thank you for clarifying.

11 HEARING OFFICER KRAMER: Yeah. Okay. So that
12 takes us to Waste Management, which I think is a floater,
13 yes. Land Use. We found time for that tentatively on the
14 third day, the 9th. We'll come back to your estimates in a
15 few minutes, Mr. Sarvey.

16 I don't want to lose the rhythm here of explaining
17 all the allocations. I actually, specifically, allocated
18 Noise to floaters, and Socio-Economics we have already taken
19 care of partially on day one, and then the rest of it on day
20 two.

21 Traffic and Transportation is a little bit on day
22 one, mostly on day two. Visual Resources we put on day
23 three, and Overrides, in part to honor the requests of some,
24 that this seems to make sense to talk about at the very end,
25 we have put on day four.

1 And we don't see any -- oh, wait. Mr. Carroll, the
2 city would like to cross-examine Mr. Theaker and I can't
3 recall if he would be available on the fourth day.

4 MR. CARROLL: He's not now, because he has changed
5 his plans to be available on the 7th. So I was about to let
6 you know that the 7th is fine for Alternatives, because Mr.
7 Theaker had changed his plans to be here on that day. I
8 mean, that's just --

9 HEARING OFFICER KRAMER: How about if we just --

10 MS. FOLK: I think our -- I'm sorry. This is
11 Ellison Folk, for the City of Oxnard, and I believe that our
12 questions to Mr. Theaker would be encompassed within whatever
13 we asked on Alternatives.

14 MR. CARROLL: That's what I was going to suggest,
15 that you know, we're amenable to him being cross-examined on
16 both Alternatives and Overrides.

17 HEARING OFFICER KRAMER: Okay.

18 MR. CARROLL: Which again, we lump into
19 Alternatives. And just a point of clarification. I mean, as
20 I understand it, you know, this categorization of the
21 witnesses and the testimony is a tool to help us get through
22 the hearings, and in no way, you know, restricts the
23 relevancy of any of this testimony to any particular topic.

24 And so when it comes, for example, to briefing, you
25 know, when we are briefing the Alternatives section I assume

1 that we will be free to refer to evidence, either testimony
2 or exhibits, that were introduced during the Overrides
3 portion.

4 HEARING OFFICER KRAMER: That's my preference, to
5 avoid being hyper technical about what comes in where and for
6 what purpose.

7 MR. CARROLL: Perfect. Good, because as I said,
8 you know, we really hadn't used Overrides as a category for
9 anything, either identifying cross-examination of witnesses
10 or direct testimony of witnesses, so.

11 HEARING OFFICER KRAMER: Okay. No. The separate
12 topic probably comes as much from the way that myself and my
13 colleagues organize decisions when the need to override
14 presents itself. And we generally write a separate section
15 that does all that.

16 But it is seriously intertwined with Alternatives,
17 and thinking about the two together is just as appropriate.

18 MS. FOLK: On that point, if we are going Overrides
19 on day four it is likely that we would want Jim Caldwell to
20 be able to testify by phone, if necessary.

21 HEARING OFFICER KRAMER: We will have already met
22 him in person earlier, correct?

23 MS. FOLK: Yes. And he lives in Northern
24 California. So it would be something of a burden to have him
25 come and go, you know, twice.

1 HEARING OFFICER KRAMER: I look to Mr. Carroll
2 first.

3 MR. CARROLL: I don't have any objection to that,
4 but it raises another point, which is I didn't reserve any
5 time to cross Mr. Caldwell on Overrides. I only reserved
6 time to cross him on Alternatives. And I don't know what the
7 distinction between his Alternatives testimony and his
8 Override testimony is.

9 MS. FOLK: And honestly, I think after we do the
10 Alternatives testimony we may not even need to call him.
11 It's just that the, you know, the scheduling order directed
12 us to present testimony specifically on the Override issue,
13 so -- at this hearing.

14 HEARING OFFICER KRAMER: And that's simply thinking
15 that, you know, if a case presents itself where there is
16 nothing to override then you don't even talk about those
17 issues. But again, you know, as I said a minute ago, they
18 are very intertwined.

19 MR. CARROLL: Right. And let me clarify, and maybe
20 this was a point of difference of interpretation of the
21 order. So our view is that we are presenting testimony on
22 Overrides. We just didn't put it into a separate category by
23 itself.

24 So we think we're providing testimony on Overrides
25 in just about every section and we would intend -- assuming

1 that that issue gets briefed, we would probably by citing to
2 evidence presented on just about every section.

3 HEARING OFFICER KRAMER: Okay. Yeah. Let's see.
4 So Part 2. Part 2 is on day two. Mr. Caldwell was on day
5 one, though, right? Let's see.

6 MS. FOLK: Yes. If we could, I would like to just
7 reserve 10 minutes of or 15 minutes of time on day four on
8 Overrides if we decide it's appropriate.

9 HEARING OFFICER KRAMER: Would that be for direct
10 or cross?

11 MS. FOLK: For direct.

12 HEARING OFFICER KRAMER: Okay. Well, you already
13 have -- well, let's see. You already have I think 60
14 minutes, was it? Let me get back to it.

15 MS. FOLK: Well, on direct for Alternatives --

16 HEARING OFFICER KRAMER: Yeah.

17 MS. FOLK: -- I don't think it's that long.

18 HEARING OFFICER KRAMER: Okay. So make it 10 you
19 said, or --

20 MS. FOLK: On Alternatives? No. I don't want to
21 reduce the --

22 HEARING OFFICER KRAMER: No, Overrides, Overrides.

23 MS. FOLK: Oh. So I think 15 is safer, just --

24 HEARING OFFICER KRAMER: Okay. That's down from
25 60. All right. And --

1 MR. CARROLL: And so if we -- this is Mike Carroll
2 for the Applicant. Consistent with that discussion and that
3 request, perhaps we could just reserve five minutes for
4 cross, assuming that we move forward with direct on that day,
5 as opposed to handling it all during Alternatives.

6 HEARING OFFICER KRAMER: Done. Okay. So that,
7 Overrides on day four with the possibility that Mr. Theaker
8 will be on day one, his part of it. That's the city's cross-
9 examination of him. Will that work for you, Mr. Carroll?

10 MR. CARROLL: That he would be available on day
11 one.

12 HEARING OFFICER KRAMER: Day one for cross.

13 MR. CARROLL: Yes.

14 HEARING OFFICER KRAMER: Okay.

15 MR. CARROLL: But not day four at this point,
16 correct?

17 HEARING OFFICER KRAMER: Right.

18 MR. CARROLL: Yes. That's --

19 HEARING OFFICER KRAMER: Yeah. And I marked him as
20 day one.

21 MR. CARROLL: That's fine.

22 HEARING OFFICER KRAMER: So --

23 MS. FOLK: Can I -- I'm sorry.

24 HEARING OFFICER KRAMER: Go ahead.

25 MS. FOLK: So this is Ellison Folk again. And I

1 wanted to raise one issue related to the scheduling between
2 day two and day four. So I noticed, it sounds like we're
3 going to have Socio-Economics on day two, and if the
4 witnesses in that category don't have scheduling constraints,
5 if it were possible to switch that with soil and water, which
6 is -- you have scheduled for day four right now, that would
7 be much preferable for Dr. Revell. They're about the same
8 amount of time, from looking at the schedule.

9 HEARING OFFICER KRAMER: Let's see. The issue with
10 that would be that the FFIERCE witnesses are only available
11 on the 7th or the 8th.

12 MS. FOLK: Okay. That's fine, then.

13 HEARING OFFICER KRAMER: Okay. Thank you. Okay.
14 So I think I actually made it to the bottom of the list.
15 That shows us with 7.4 hours on day one, 6.8 on two, 6.4 on
16 day three and 4.6 on day four, except I -- yeah, it even
17 totals the same.

18 What I haven't done is, let's ask if any party
19 feels a need or would like to ask to make oral arguments at
20 the conclusion of the hearings, or just wait until briefs.
21 So I'll ask it simply, does anybody want to make oral
22 arguments when we finish up with all the testimony, knowing
23 that it seems pretty clear to me that there's going to be
24 some briefing to follow.

25 Anybody? Anybody on the phone? Let me see if any

1 -- Ms. Chang, I will unmute you. Did you want to make any
2 oral -- and you got muted again. Well, she must have muted
3 herself on her computer, because I can't unmute her. So I
4 will consider that to be a conscious choice.

5 MS. CHANG: Can you hear me now?

6 HEARING OFFICER KRAMER: Yeah. Did you --

7 MS. CHANG: I think it cross-references muting and
8 unmuting.

9 HEARING OFFICER KRAMER: Okay.

10 MS. CHANG: I heard the question and I would not
11 need to make an oral argument at the end of the proceedings.

12 HEARING OFFICER KRAMER: Okay. Anyone else on the
13 phone or in the room feel the need for oral argument?

14 MR. SMITH: Can I just ask a question? Matthew
15 Smith, EDC. Is there any procedure to request oral argument
16 after the close of briefing?

17 HEARING OFFICER KRAMER: Well, you could request
18 that. It would be very unusual.

19 MR. SMITH: Okay.

20 HEARING OFFICER KRAMER: Normally, what the
21 Committee would do is take the briefs and then go prepare the
22 Presiding Members' Proposed Decision. And of course, there
23 is the comment period on that decision. So you could, you
24 know, make your points there, both in written and oral
25 comments at the conference we would have on that.

1 So I think you'd have to make a pretty good case
2 that we needed to hear from you again, after you just had two
3 shots in writing before we'd even written a draft decision.

4 MR. SMITH: That's fine. It just seems to me that
5 it might be useful after the briefing, rather than before the
6 briefing, but after the evidence, but.

7 HEARING OFFICER KRAMER: Okay. Well, you can
8 always ask. I think I've telegraphed the --

9 MR. SMITH: I understand.

10 HEARING OFFICER KRAMER: -- the slope.

11 MR. SMITH: Okay.

12 HEARING OFFICER KRAMER: Okay. So no one there.
13 We've allocated 30 minutes for some housekeeping, which is
14 probably more than enough, but that'll probably -- that would
15 encompass, I think, all the floater items, making sure we've
16 got all the exhibits admitted.

17 And then we would discuss issues to be briefed. So
18 Mr. Sarvey, I need to go back to you for a minute. Are you
19 there?

20 MR. SARVEY: Yes, I'm here.

21 HEARING OFFICER KRAMER: Okay. We need to get just
22 get, fill in a box for Land Use. You wanted to, I guess,
23 cross-examine I think you said Mr. Piantka to help introduce
24 a couple of your exhibits. Is that right, and how much time
25 do you need?

1 MR. SARVEY: Well, if NRG's willing to accept my
2 exhibits and nobody's got any objections to them, I don't
3 need to cross-examine anybody.

4 HEARING OFFICER KRAMER: Okay. On that point, let
5 me talk to you, make the point that I made, I guess while you
6 were -- had been kicked off the WebEx. You've offered some
7 exhibits, but you're not offering any testimony at all, and -
8 -

9 MR. SARVEY: No, I'm not.

10 HEARING OFFICER KRAMER: -- and we're not sure what
11 you're offer -- you know -- what the point of your offering
12 the exhibits is. We don't want to create a situation where
13 everyone is supposed to guess what they mean, and you know,
14 amass their arguments either in support or against what
15 you're proposing. So how can we go about getting you to tell
16 us what those documents mean?

17 MR. SARVEY: Well, I tried to explain it to you
18 earlier. What it is, is the first documents a fact sheet on
19 the Ellwood Project, and all it does is show that the Ellwood
20 Project began operation in 1973. The second document is a
21 NRG brief in the Ellwood proceeding, and the basic structure
22 of that, NRG's proposing to extend the life of that 41-year-
23 old project by 30 years to refurbishment, and that's why I
24 want those two exhibits in. If nobody has any objections to
25 those exhibits being in, I have no questions of anybody.

1 HEARING OFFICER KRAMER: Okay. And I think there
2 was a third, correct?

3 MR. SARVEY: That was the Coastal Commission report
4 and it looks like somebody else is sponsoring that, and no
5 Coastal Commission witnesses seem to be appearing. So I have
6 no questions of the Coastal Commission, as long as the
7 Coastal Commission report is in the record.

8 HEARING OFFICER KRAMER: Okay. So I'll give you
9 five minutes in case there's an issue with those other, the
10 Land Use exhibits, but we'll see. Thank you for explaining
11 the context. That helps us all understand why they're there
12 and what you're asking us to take by way of meaning from
13 them.

14 MR. SARVEY: Okay. Thank you.

15 HEARING OFFICER KRAMER: And then I guess I'm going
16 to put you down for -- or Levy down for nothing with regard
17 to Soil and Water, which is I think where the Coastal
18 Commission comes in for you, because somebody else took care
19 of your exhibit and you didn't ask for any particular time.

20 MR. SARVEY: Right. No. I don't need anything
21 from the Coastal Commission as long as that exhibit's in
22 there. They're not bringing any witnesses, there's no
23 questions to be asked. So I'm fine with the way it's running
24 right now. Thank you.

25 HEARING OFFICER KRAMER: Okay. Well, you do

1 understand they will be bringing, they will have a witness
2 the gentleman who prepared the report, but probably it's --

3 MR. SARVEY: Right.

4 HEARING OFFICER KRAMER: -- not the biologist who
5 was offering the raw materials for that report.

6 MR. SARVEY: Well, the real reason was is I've been
7 in a couple of proceedings lately where the Coastal
8 Commission report was never even entered as an exhibit, which
9 is why I wanted to sponsor it. If someone else is sponsoring
10 it, I have no issues with it and I have no questions for the
11 Coastal Commission.

12 HEARING OFFICER KRAMER: Okay. Thank you.

13 MR. SARVEY: Thank you.

14 MR. STREET: Mr. Kramer, Joe Street, with the
15 Coastal Commission.

16 HEARING OFFICER KRAMER: Go ahead, Mr. Street.

17 MR. STREET: I just wanted to clarify whether there
18 were any anticipated questions for us in the Land Use
19 category.

20 HEARING OFFICER KRAMER: Mr. Carroll.

21 MR. STREET: It wasn't clear to me at what time of
22 day on Thursday the 9th that was likely to happen.

23 HEARING OFFICER KRAMER: Do you think you'll have
24 any questions for him?

25 MR. STREET: Because if it's in the morning and I

1 can't be there, it's possible that Louise Warren might be
2 able to appear.

3 MR. CARROLL: So I do want to retain our
4 reservation of questions on the topic, excuse me, of Land Use
5 for the Coastal Commission witnesses, but I'm amenable to
6 doing that on the day that they're going to be there to enter
7 their report, if that's okay with the Committee and the other
8 parties.

9 HEARING OFFICER KRAMER: Okay. Well, so far we've
10 got I think Soil and Water on the third, is that it, and
11 fourth. Okay. So and he's available that day. And then we
12 had, we were going to put the other topic, which I guess
13 would have been Biological, to the afternoon of the third to
14 make it possible for him to be there for that, the third day.

15 MR. CARROLL: So if it's acceptable to the
16 Committee and the other parties, if I -- you know -- I don't
17 see any need to have Mr. Street be here on three separate
18 days. And again, as long as the information goes into the
19 record I don't ultimately think it matters which day it went
20 in.

21 So I'd be happy to ask my Land Use questions of him
22 on either of the other two days that he's planning to be here
23 for either Biology or Soil and Water.

24 HEARING OFFICER KRAMER: Okay. Yeah, we have Land
25 Use on the third day, as well. So that should work out.

1 MR. CARROLL: Meaning I should --

2 MS. FOLK: And this is Ellison Folk again.

3 HEARING OFFICER KRAMER: Go ahead.

4 MS. FOLK: I'm sorry. You can finish.

5 MR. CARROLL: No. I just wanted to clarify that --

6 MS. FOLK: Thank you.

7 MR. CARROLL: -- should work out, meaning that to
8 the extent that I have Land Use questions for Mr. Street, I
9 should be prepared to ask them on one of the two days that
10 he's here, whether or not that's a day we're handling Land
11 Use.

12 HEARING OFFICER KRAMER: Yeah. Well, I think the
13 two days he needs to be here are the third and fourth days,
14 yes.

15 MR. CARROLL: Okay. And I -- before I cede the mic
16 here, and I'm sorry this didn't occur to me earlier, but I
17 don't -- at least I don't think, perhaps you have reserved
18 time on the first day to handle procedural issues. So we
19 have seven and a half hours of substantive topics scheduled
20 for that day, and a hard stop at 5:30 for public comment, so.

21 HEARING OFFICER KRAMER: You're right. I do not.
22 I mean, are you thinking about the evidentiary motions?

23 MR. CARROLL: Unless they're withdrawn between now
24 and then.

25 HEARING OFFICER KRAMER: Okay. Let me ask. Is it

1 -- so you feel, apparently, it's necessary to resolve that
2 motion to determine what can be -- or what, if any, limits
3 there would be on the scope of testimony that follows it.

4 MR. CARROLL: I don't. I believe that's the
5 position of the city, however.

6 HEARING OFFICER KRAMER: Ms. Folk.

7 MS. FOLK: Yes. So our motion to strike as to I
8 think it's all Part 2 Alternatives testimony that was
9 submitted by the Applicant as rebuttal testimony, I think it
10 would help to have that resolved before day two, which is
11 when I think we're planning to have that testimony.

12 HEARING OFFICER KRAMER: Okay. So time budget for
13 that, what do you think, 20 minutes?

14 MS. FOLK: Sure.

15 MR. CARROLL: I think that's fine. Just, I don't
16 think it matters to what you're proposing in terms of
17 scheduling. But just to be clear, I think the testimony that
18 is the subject of the motion covers Parts 1 and 2 of
19 Alternatives, and also Biological Resources. But I think
20 handling that the morning of the second day would be fine.

21 MS. FOLK: I just -- I'm sorry.

22 HEARING OFFICER KRAMER: Well, Part 1 would have
23 occurred, though, already.

24 MR. CARROLL: Well, let me -- I mean, one way to
25 handle this to avoid disrupting the schedule on the first day

1 entirely is to proceed as planned, in the event -- I mean, it
2 is a motion to strike, which technically, is to strike
3 evidence that's already been entered into the record.

4 That's why I said I wasn't really sure what a motion to
5 strike meant in this context. And one way to handle it would
6 be to proceed as scheduled so that we don't have to
7 completely disrupt the schedule. If the Committee ultimately
8 grants the city's motion, then they could strike any
9 testimony that had been entered that was the subject of the
10 motion as granted.

11 HEARING OFFICER KRAMER: Yeah. I think in this
12 context "strike" means do not accept it as evidence. But
13 it's, of course, going to remain in the electronic docket.

14 MR. CARROLL: I don't know what --

15 HEARING OFFICER KRAMER: Well, that's the way we
16 see it.

17 MR. CARROLL: That's up to the city to explain what
18 "strike" means.

19 HEARING OFFICER KRAMER: Well, that's the way we
20 look at it, you know. We have the evidentiary record, which
21 is basically what's on the exhibit list, but we also have the
22 docket that's, you know, been collecting electronic paper for
23 a couple years now, and that's broader in scope than the
24 evidence.

25 But we never remove a document unless it's, for

1 instance, it had confidential information that was
2 inadvertently disclosed. We might make that no longer
3 publicly available, but we don't strike all record of it, and
4 you know, as if it never came in.

5 And I think, I mean, I'm not a litigator, but in
6 court it's not the existence of the document that disappears.
7 It's just that nobody considered it when they're making a
8 decision, and we would be taking a similar approach.

9 MR. CARROLL: Right.

10 MS. FOLK: But that is the city's position, is that
11 it should not be considered as evidence and can't be used to
12 support in whatever decision the Committee comes to. And if
13 it is to be relied on, then we should have an opportunity to
14 submit rebuttal evidence.

15 HEARING OFFICER KRAMER: Okay. So you're saying
16 you might have less to say if you knew that it was not going
17 to be in evidence.

18 MS. FOLK: Yes.

19 HEARING OFFICER KRAMER: Okay. Well, we're already
20 at 7.4 hours on day one.

21 (Colloquy between Hearing Officer and Commissioners)

22 HEARING OFFICER KRAMER: Okay. Well, all right.
23 We will plan on addressing the motion at the start on
24 Tuesday, and we'll have to play it by ear as to how much, you
25 know, we may have to move from Tuesday onto Wednesday. But

1 we won't wait until the end when, you know, people are
2 unavailable on Tuesday and we have no way to rectify that.

3 If we look like we have to perform some kind of
4 triage we'll do it early in the afternoon. And so therefore,
5 the people that can be available on Tuesday or Wednesday,
6 rather, may have to come back if we have to carry over one of
7 those items.

8 But we'll take into account as best we can the
9 schedules of those who, you know, will have a hard time
10 coming back on Wednesday. So again, in the interest of time
11 I will put that in later. Okay. I think seems to me that
12 we've performed our allocations.

13 MR. CARROLL: Mr. Kramer, sorry to interrupt. Mike
14 Carroll for that. Could you just scroll to Socio EJ, please?

15 HEARING OFFICER KRAMER: Yes, except it's the other
16 way. There we go. There you go. The total is 4.3, and
17 that's on day two with a little bit on day one.

18 MR. CARROLL: Sorry. I want to make -- could you
19 just scroll down a bit to Applicant cross?

20 HEARING OFFICER KRAMER: You had 15. And I put
21 that on day one because it related to in part, although not
22 entirely, to Ms. Cervas and Valencia.

23 MR. CARROLL: Yes.

24 HEARING OFFICER KRAMER: Is that it?

25 MR. CARROLL: So we had identified three witnesses

1 that we categorized as Environmental Justice. One was Ms.
2 Cervas, but then we'd also requested 10 minutes for Pellow
3 and Taruc, the FFIERCE witnesses, and I just want to make
4 sure that those are captured here. And I guess they're not,
5 because I see Pellow.

6 HEARING OFFICER KRAMER: Yeah, let me fix that.
7 Again, you have to watch the spreadsheet sausage being made.

8 MR. CARROLL: So we had requested a total of 25
9 minutes for those three witnesses, Cervas, Pellow and Taruc.

10 HEARING OFFICER KRAMER: Okay. So then, so on day
11 one it would be Cervas, and how many minutes for Cervas?

12 MR. CARROLL: We had asked for five for Cervas and
13 10 for each of Pellow and Taruc. But you want to put 25 for
14 all three.

15 HEARING OFFICER KRAMER: And okay. So this would
16 be 20 --

17 MR. CARROLL: Five.

18 HEARING OFFICER KRAMER: -- 25, total or five --

19 MR. CARROLL: Total, 25 total.

20 HEARING OFFICER KRAMER: Yeah, okay. That's got
21 five up there and then --

22 MR. CARROLL: Oh, I'm sorry. Yeah. So yes, 20 for
23 -- yes. Thank you.

24 HEARING OFFICER KRAMER: Okay. And then that,
25 because they're going to be on day two, that would be on day

1 two and there you go. Does that look right?

2 MS. LAZEROW: Sorry. Shana Lazerow, for CEJA. I
3 didn't see a change up there, but since Mr. Pittard is only
4 being presented for procedural EJ issues under the Socio-
5 Economic/Environmental Justice issue, I was hoping that CEJA
6 could tack on five minutes to Rubenstein. We hadn't reserved
7 any time for him.

8 HEARING OFFICER KRAMER: So okay. Instead of 60,
9 you want 65?

10 MS. LAZEROW: Yes, please. Let's see how that
11 goes. All right. So I don't think that changed the times
12 much. We're still looking at, here we go, 7.3 plus another
13 .3 for the ruling on the motion. And --

14 MS. CHANG: Excuse me. This is Grace Chang. I
15 just noticed that, and I noticed before, that my witnesses,
16 David Pellow and Mari Rose Taruc, are both listed as being
17 available telephonically. And actually, what I had entered
18 in my prehearing conference statement was that depending on
19 how things were scheduled, they would be available either in
20 person or telephonically. So I'm just still waiting for the
21 final outcome of at what, you know, what window is being
22 scheduled for the witnesses under that issue.

23 HEARING OFFICER KRAMER: Okay. Well, this way they
24 have the flexibility either way.

25 MS. CHANG: Right. I just wanted to make sure that

1 that wasn't precluding their coming in, in person.

2 HEARING OFFICER KRAMER: Nope. Nope. It's not an
3 order.

4 MS. CHANG: Awesome. Okay.

5 HEARING OFFICER KRAMER: It's an accommodation.

6 MS. CHANG: Okay. Great. Thanks.

7 HEARING OFFICER KRAMER: And Mr. Carroll.

8 MR. CARROLL: Mr. Mike Carroll, for the Applicant.
9 Stepping back, I believe that Mr. Sarvey had indicated that
10 if Applicant had no objection to the entry of his two
11 exhibits that he would have no need for either direct or
12 cross-examination.

13 We've now reviewed those two exhibits. We have no
14 objection to the entry of those into the record.

15 HEARING OFFICER KRAMER: Okay. And that was Soil
16 and -- no, I gave him five in Land Use. So I will take that
17 back. Okay. Thank you. Thank you for looking into that.
18 All right. I will -- are we talked out about this now?
19 Okay. Thank you.

20 What's going to happen is I will rearrange this and
21 get it out to everyone tomorrow. You know, I'll file it in
22 the docket and you'll receive it via the usual sources. If
23 you think that I've just really messed it up somehow, please
24 just file a simple memo to that effect, and but hopefully, I
25 don't. We'll see.

1 And thank you for that effort. The next item is
2 briefing schedule. Consensus of the parties seem to be that
3 most of you at least spoke to recommend something on the
4 order of 30 days after the hearing transcripts the opening
5 briefs would be due, and then reply briefs would be due 14
6 days later.

7 Does anyone want to argue against that at this
8 point? Okay. I'm seeing nothing here in the room. Anyone
9 on the telephone? Okay. So the way that'll work is I'll put
10 out a memo after the transcripts are filed, just being super
11 clear that the deadlines are, you know, this date and that
12 date.

13 But if I'm a few days late doing that don't expect
14 the deadlines to run from when I get around to putting out
15 the memo. Don't expect the deadlines to run from when I get
16 around to putting out the memo. They'll run from when the
17 final of the four hearing transcripts is filed in the docket.

18 My job is just to put a point on it and eliminate
19 any doubt in your minds about what the deadline is. And then
20 as far as the rest of the schedule goes, probably in that
21 memo we'll have a new schedule. But the basic outlines of
22 what would happen after the briefs are filed is, as soon as
23 possible thereafter the Committee will put out the presiding
24 members' proposed decision.

25 The parties and the public will have 30 days to

1 comment on that. We will have a public comment hearing as
2 near to the end of that 30 days period as our schedules allow
3 us to do, because we recognize that people are more prepared
4 to discuss their concerns and things like minor proposed
5 changes to the conditions if we give them more time to
6 prepare for that.

7 And then after that the Committee will review the
8 comments and then the proposed decision will go onto the full
9 Energy Commission for final consideration. Of course, if
10 it's determined that there's a -- that some of the issues
11 aren't quite finished, and that's something we will only know
12 after we've had the hearings, then there might be, you know,
13 there might be some homework that's assigned and it may be
14 that we have to have further hearings after that work is
15 done.

16 But of course, all of that will be reflected in
17 electronic documents that are available in the docket of this
18 case. And then finally, on the question of issues to be
19 briefed, in the interest of time I was thinking about asking
20 the parties just to summarize today what they think we might
21 want to brief, but this has run longer than I think we were
22 hoping.

23 So perhaps at the conclusion of the evidentiary
24 hearings when we're talking about briefs, I know the
25 Committee quite possibly will have some specific issues that

1 it wants the parties to address in briefs. And then the
2 parties will always be free to address other issues that they
3 believe need to be briefed.

4 But you know, until we go through the hearings we
5 won't know specifically what that is. And again, to save a
6 little bit of time today, because I know we want to hear from
7 the public, I will skip that step. So is there anything else
8 the parties want to raise before we open up public comment?

9 MS. LAZEROW: Just quickly, how you would like CEJA
10 to proceed with the two exhibits that it neglected to
11 identify.

12 HEARING OFFICER KRAMER: Are they already filed in
13 the docket?

14 MS. LAZEROW: They are.

15 HEARING OFFICER KRAMER: If you would file an
16 amended exhibit list, then everyone will see that and then
17 that'll help them prepared to react to it during the hearings
18 when it is time for you to propose that those exhibits be
19 accepted.

20 MS. LAZEROW: Thank you.

21 HEARING OFFICER KRAMER: And they're not something
22 that somebody else has already identified, are they?

23 MS. LAZEROW: No.

24 HEARING OFFICER KRAMER: Okay. I hope the parties
25 saw the chart that I created that shows where -- Mr. Sarvey

1 alluded to it -- where a couple of you wanted the same
2 document to be an exhibit. Had to give the number to someone
3 because our system doesn't allow two or more documents on one
4 document.

5 And so I created a chart that shows you, for
6 instance, if you're reading somebody's testimony and they
7 talk about Exhibit 1,010 and you go to the exhibit list on
8 the website and you can't find 1,010, you go to this chart
9 and you'll find out that maybe it was 2003.

10 Then, so then you go looking for 2003. So it's
11 meant to help you clear that up. We don't want to make
12 people rewrite their testimony, but we want to make it
13 possible for you to find what they were referring to. So
14 that's how we handle that.

15 With the exhibit list, I think everything's in
16 there. It's entirely possible that a couple -- there might
17 have been some mistaken assignments. So I encourage the
18 parties to check at least their own exhibits and see that we
19 got things right.

20 That's something we can adjust on the fly. And the
21 way you get to that if you don't know is you go to the
22 website and there's a link for the exhibit list. So you just
23 click on that and you get a version that's generated fresh
24 from the latest data that's in our electronic database.

25 So with that, anything else before we go to public

1 comment? Anyone on the phone? Okay. Members of the public
2 and other interested persons may speak up to three minutes on
3 a matter appearing on this Agenda. I remind everyone, many
4 of you have probably already filled out the blue cards that
5 the public adviser has.

6 We'll be calling on people with blue cards first.
7 You're not required to fill out a blue card. You don't even
8 have to tell us your name, if you don't want to, but it helps
9 us organize the public comment, and we could go off the
10 record -- well, hold on. Do you want to take a break before?
11 Okay.

12 We have a habit of forgetting that our court
13 reporters are human being, among others, and she's probably
14 not the only one. And I don't mean to call her out, but
15 we're going to take no more than 10 minutes, please. Let's
16 come back in 10 minutes break, and then we're going to start
17 with public comment.

18 But those of you who want to fill out a blue card,
19 this would be a good time to see the public adviser and do
20 that. And then on the telephone we will be taking comments
21 from the WebEx meetings after we finish with the people here
22 in the room. So we'll see you back here in 10 minutes.
23 Thank you.

24 (Off the Record from 4:16 p.m.)

25 (On the record at 4:24 p.m.)

1 COMMISSIONER SCOTT: Okay, we're ready for public
2 comment now. Come on into the room. Please find your seats.

3 We're going to start with the Mayor Pro Tem, Carmen
4 Ramirez, and she'll be followed by Steve Nash.

5 You're good? Okay. Now we're good. Thank you.

6 MAYOR PRO TEM RAMIREZ: Thank you. Carmen Ramirez,
7 here as Mayor Pro Tem for the City of Oxnard.

8 As you know, our city and the City Council has
9 opposed this project. And, so once again, we're here. We
10 thank you for being here to conduct the people's business in
11 the public eye of our community. And we thank the public for
12 staying strong and continuing to come out.

13 We're concerned as the Energy Commission staff have
14 never consulted with the city about ways to make the project
15 consistent with the city's land use policies. Instead, we've
16 been told by Staff and by NRG that the project could not be
17 modified and we have to take the project as proposed. This
18 makes a mockery of the word "consultation."

19 NRG has known since before it even submitted a bid
20 for the project that the city's land use and the wishes of
21 the people did not support construction of another power
22 plant on its coast. While the NRG could ignore the city's
23 land use, we don't believe that the Energy Commission can.
24 This project is not necessary and it should not be approved.

25 This past Monday, Edison and Tesla Motors revealed

1 the world's largest energy storage facilities. Quoting from
2 the paper, "This was unprecedented fast action," Michael
3 Picker stated. This innovation taking place occurs faster
4 than we can regulate."

5 This -- apparently the purpose is to replace
6 natural gas peaker plants which contribute to pollution. The
7 state operates under a mandate to produce 50 percent of its
8 electricity from clean energy sources, solar/wind by 2030,
9 and to reduce greenhouse gases emissions to 80 percent below
10 1990 levels by 2050. This is where the jobs are. Innovation
11 cannot be stopped, no matter what people say at the highest
12 levels.

13 A cleaner, safer, healthier, less-polluting energy
14 source is on the way. Please give Oxnard a chance to benefit
15 from it. Don't be expedient. Listen to the scientists and
16 the people with vision. Don't ask Oxnard to sacrifice its
17 beaches ever again. Environmental justice must be addressed.
18 The solution is in our hands, in your hands. Change is
19 difficult, but we must.

20 Last night I watched a program on building the
21 underground subway in Boston. That took leadership, courage.
22 There were setbacks. But think about it, what they
23 accomplished and what they had done had not -- would not have
24 if they hadn't done that.

25 I have the two articles, one from *Bloomberg*, one

1 from the *L.A. Times*, I'd like to submit. And again, thank
2 you for being here. We know it's tedious but that's the law.
3 And we appreciate the service to the people and the future of
4 our state. Thank you.

5 COMMISSIONER SCOTT: Thank you. Would you please
6 hand your documents to the Public Adviser? She'll make sure
7 that they get into the record for us.

8 I have Steve Nash, followed by Kevin Ward.

9 MR. NASH: Thank you, Commissioner. Steve Nash,
10 resident of Oxnard, and a proud resident at that. And I want
11 to thank Mayor Pro Tem for all of her wonderful words that
12 expressed so eloquently what most of us feel.

13 I'm a little bit hesitant to take this path because
14 I stand before you, obviously, as White male of privilege.
15 And, you know, what do I know of racism? But I've studied
16 these documents. I know what the facts are. I know what the
17 alternative facts are. You know, I have to ask myself, why
18 is this being -- why is this burden being placed on Oxnard?
19 There are many other locations to place this power plant.
20 Why put it in Oxnard?

21 Well, I know and many of our community members,
22 they also know why it's being placed in Oxnard and not being
23 placed in Malibu, not being placed in Carpinteria, not being
24 placed in Montecito, not being placed in Santa Barbara, we
25 know. It's because Oxnard is a predominantly low-income

1 Hispanic Community. Then perhaps, because we are unable to
2 contribute to the decision makers in the coin of the realm if
3 you will, which is coin, money, that we don't get a fair
4 shake in this process.

5 And regardless of your decision, we will know why
6 the decision was made, if the decision is made to approve the
7 power plant. And I won't be based on science, we've given
8 you the science.

9 And, you know, I am -- and like I say, I am
10 reluctant to claim racism. But if you look, you know, look
11 at this room, it's -- you know, the fact that this meeting
12 was held at noon on a workday in a working-class community,
13 that, to me, that shouts racism. And maybe it's tiresome to
14 hear.

15 You know, I hate, like I said, I hate to go down
16 that path because I want our nation, I want our community to
17 be free of, you know, the -- I want us to be free of having
18 to, you know, always think the most negative aspect of how
19 decision -- of how the process of decision making, how it
20 come about and how it -- and how these decisions are made.
21 They should be -- they should be based on the -- they should
22 be based on facts. They should be based on the will of the
23 local community. And really, anything else is kind of
24 irrelevant.

25 So I just wanted to say that. And I hope that you,

1 you know, deny the applicant's request to build this power
2 plant at this specific locations. There are alternatives
3 that don't impact our community in quite the same way.

4 So thank you for your time, and good luck.

5 COMMISSIONER SCOTT: Thank you.

6 I have Kevin Ward, followed by Raul Lopez.

7 MR. WARD: Hi. Good afternoon. My name is Kevin
8 Ward. I'm a resident of Oxnard.

9 And dovetailing on what this gentleman has just
10 said, the last meeting before was successfully shut down
11 with, I think, good cause. The only thing that was revealed
12 was that the initial report indicated that a certain segment
13 of that migrant population was ignored in the fact that they
14 work in the field surrounding this. So there is definitely
15 something to be said for that on many accounts.

16 I'd just like to raise some concerns I have about
17 this unnecessary fossil fuel development.

18 The National Oceanic -- NOAA concluded in its
19 annual Arctic Climate Report that the arctic is unraveling.
20 Record-breaking heat in the north has clearly pushed the
21 region into uncharted territory. Temperatures at the North
22 Pole have spiked to near melting point, 50 degrees Fahrenheit
23 above normal, despite being the darkest time of the year with
24 literally no sunlight. And that the amount of polar ice the
25 size of two Alaskas has vanished, but it's not surprising

1 given that parts of the arctic were 36 Fahrenheit above
2 normal on some days last November.

3 Antarctica saw equally shocking developments as
4 NASA photography revealed a 300-foot wide rift of the Larsen
5 B Ice Shelf which will send an iceberg the size of Delaware
6 into the Southern Ocean.

7 Research shows the Great Barrier Reef in Australia
8 hammered by a coral bleaching event not long ago is not
9 likely to survive if an ocean warming continues. By the year
10 2050, coral reefs may be afflicted by bleaching-level thermal
11 stress every year, the result of this coral reef death.

12 Locally, a recent study posted by science from UC
13 Davis and U.S. Forest Service show that forests are failing
14 to regrow after climate change-driven wildfires that are now
15 larger, hotter and more frequent cross the country.

16 Locally, as defense against climate change, the
17 Nature Conservancy has partnered with the Naval Base of
18 Ventura County to fight the effects of climate change on the
19 military installation, several miles down here. There's
20 beach erosion and park erosion several miles the other way,
21 okay? And the power plant is in the middle. Okay.

22 Recently we've had the challenge of living with the
23 Refugio oil spill, the painfully slow effort to contain
24 Porter Ranch carbon monoxide and, of course, a phenomenal
25 drought, broken by a welcome but probably insufficient rain,

1 okay?

2 I think we must further -- refuse further
3 encroachment of fossil fuels by NRG upon our pristine
4 shoreline and our productive, incredible valley of fruits and
5 vegetables. If the U.S. Department of Defense as defined
6 climate change as a major threat to America's national
7 security, we much do what we can to divest from fossil fuel
8 extraction and stop encouraging it. There is no time left to
9 allow more fossil fuel development and no greater urgency
10 because Exxon is now our State Department.

11 (Applause.)

12 COMMISSIONER SCOTT: Thank you.

13 May I have Raul Lopez, please, followed by Jay
14 Turner?

15 MR. LOPEZ: Good afternoon everybody. My name is
16 Raul Lopez. I'm here representing CAUSE, the Central Coast
17 Alliance United for a Sustainable Economy. I think some of
18 you may remember me from our last meeting here. I felt it
19 was very productive.

20 In front of you, you'll see a couple of signs. Two
21 of them say, "Why always Oxnard?" And then there's another
22 one with an infographic that shows you that Oxnard has
23 neighborhoods that are in the 90th percentile for asthma.
24 That means more people in Oxnard have asthma than the entire
25 State of California.

1 Now I was born and raised here in Oxnard, and I
2 plan on raising my three children here. And as long as I've
3 been alive I've been watching the people of Oxnard get
4 stepped on, taken advantage of, get used for corporate profit
5 from the fields to the environment. The word "environmental
6 justice" needs to be heard.

7 The people also need to be heard. You started this
8 meeting today by starting with decorum and respect. And
9 although our shutting down of our meeting last time, it
10 wasn't intended to disrespect any of you guys. It was fully
11 intended to get you guys to hear, and obviously you heard us
12 because you tried to get a change of venue and you were
13 denied. And then when you were denied, you put this meeting
14 in the middle of the day, in the middle of a working week.
15 Okay.

16 Again, I come from a people that have been
17 struggling our entire lives. But I feel that now the
18 generation of kids and children that grew up and were birthed
19 by these strong working families that kept their head down
20 and let themselves be trampled on, well, now we're all of
21 age. And we're going to be standing up and you're going to
22 be hearing a lot from us. I'm one of them. And I'll be here
23 every single time, I can guarantee you that.

24 So please, when you talk about decorum and respect,
25 remember that you're coming into our city. So I wouldn't go

1 to any one of your guys' houses or cities that have three
2 power plants in them and a 90th percentile for asthma, and
3 then still tell you, hey, just come, give us your comment,
4 three minutes, and then after all those comments, I didn't
5 even listen to you, and I still did it anyway. I wouldn't do
6 that to you guys, any of you guys.

7 So this isn't personal to any one of you. This is
8 me just being the guy that loves his city and loves his
9 children and has been watching the people in this city get
10 taken advantage of for far, far, far too long. And I'm here
11 to tell you that we're not going to stop. We're going to be
12 here. Even if you approve the plant, guess who's going to be
13 over there, standing in front of the bulldozers? I'll
14 probably be one of them, too.

15 So don't think that just because there's a low
16 turnout today because you put it in the middle of the day of
17 a working week that people aren't going to show up. You guys
18 have been doing this for two years.

19 So the last meeting was not about disrespect, so
20 don't take it personally. We just wanted to be heard. And
21 by the actions taken afterwards of trying to change the venue
22 to Sacramento, it's obvious that you did hear us. So please
23 listen to the house that you come into.

24 Thank you.

25 (Applause.)

1 COMMISSIONER SCOTT: Thank you.

2 I have Jay Turner, followed by Dick Jaquez.

3 MR. TURNER: Hello. My name is Jay Turner, and I'm
4 a proud resident of Oxnard for the last 34 years. I'm also a
5 proud operating engineer and have been for the last 18 years.

6 I would like to express my support for the Puente
7 Power Plant because too many of my fellow tradesmen get up
8 early every morning and drive an hour or two hours into Los
9 Angeles just for work. Ventura County rarely has sustainable
10 jobs for tradesmen.

11 I have traveled the state and southern Nevada
12 building substations, solar fields, wind farms, and power
13 plants similar to this project. So many of these projects
14 are in the middle of nowhere, which means that you have to
15 live away from your family in order to have a job.

16 To actually have a project of this magnitude in our
17 own backyard is significant for us as a community and as a
18 tradesman. The revenue that this project would produce is
19 important to this city and could help us fund other projects,
20 such as the wastewater facility.

21 I am all for new technologies, such as wind and
22 solar, but I don't want our hillsides littered with
23 windmills, as they are in the Mojave Desert and the Tehachapi
24 Mounts. I also don't want our farmlands taken away by
25 thousands of acres of solar powers. The Puente Power Plant

1 is a good opportunity for local jobs that will -- and will
2 help remove the old steam power plants that my grandfather
3 helped build.

4 I thank you for allowing me to speak on this
5 important issue. Thank you.

6 COMMISSIONER SCOTT: Thank you.

7 I have Dick Jaquez, followed by Kitty Merrill.

8 (Applause.)

9 MR. JAQUEZ: For the record, my last name is
10 Jaquez.

11 COMMISSIONER SCOTT: Oh, Jaquez. I'm sorry.

12 MR. JAQUEZ: That's all right. I get it all the
13 time. Good afternoon. My name is Dick Jaquez. And I was
14 privileged, but I don't have any money. I wouldn't say that,
15 but I'm saying I was privileged because I had a great mom and
16 dad. And they worked in those fields we're talking about.
17 And they told me -- or they just -- they couldn't pay for
18 everything, but they said you've got to get an education of
19 my own, and I did.

20 I was born and raised here 74 years ago. The fact
21 is the Puente project we're talking about now was put up when
22 I was a sophomore in high school. We called it the Oxnard
23 Hotel because a lot of lights, and there wasn't many people.

24 But I was a teacher/coach for 31.22 years here in
25 the high school district. And I was an elected board member

1 for 12 years. My job professionally for over 40 years was to
2 advocate for the students in this area, and I did that with
3 pride.

4 I heard about this Puente project and I heard about
5 all the things that they were going to do to our students.
6 I'm not involved in it but I still have the same pride. And
7 I was wondering, what is this program going to do to our kids
8 and our community, health-wise and otherwise?

9 But I believe everybody that's here right now, and
10 the last time I didn't get to speak, I thought my rights were
11 stepped on, but I didn't get to speak, but I'd like to
12 commend everybody that's stay here two hours later than we
13 thought to be able to talk to you. So we're all here. It
14 doesn't matter what side we're talking about here, we want to
15 improve Oxnard.

16 So I read the report. And from the report I read
17 that the report, things were mitigated, NRG was compliant.
18 Okay, go there. Now I go, this is no good, and so forth and
19 so on. Now, as you know, the way the day is today, can you
20 believe anybody is saying anything that's correct?

21 So I read the report again and I heard the
22 challenges that are here. The pollution rate they talk about
23 apparently is going to go from -- oh, I'm running out of time
24 -- it's going to go from 1,800 to 262. The social issue,
25 that "Why Oxnard?" A good question, I looked it up. There's

1 19 other sites on our coast that are the same type of thing.
2 Look them up.

3 Also, I heard about that 92 percent. I didn't know
4 about that. If that's true -- if that is true, then can you
5 imagine the people that approved all that stuff that's out
6 there, the feds, the state, city and everybody else?
7 Somebody approved this stuff and they're hurting our people.
8 So if that's true, that's going to cause somebody some
9 trouble, I think.

10 Last thing, though, and then I'll get out of here,
11 this project, I think, should be approved because of what I
12 just said, one. Number two, this project is going to bring
13 us \$8 million a year in property tax and sales tax. And I
14 know our Mayor Pro Tem knows that we need the money, and
15 that's for 20 years. And if we have a good project, and the
16 92 percent, if that's correct, is taken care of, and we're
17 talking about \$80 million, and as we all know if you live
18 here, because our services are very, very slow, et cetera, we
19 need the money. And if the product -- I mean, if the project
20 is mitigated, I don't see why we can't approve it.

21 Thank you.

22 COMMISSIONER SCOTT: Thank you.

23 I have Kitty Merrill, followed by Gordon Clint.

24 MS. MERRILL: Good afternoon. It's good to be
25 here. A little later than I thought it would be, but it's

1 good to be here.

2 It's been a tumultuous 12 days in the nation. I've
3 been feeling really proud to be a Californian. I'm always
4 proud to be an Oxnarder. I've been living here for more than
5 30 years. But I'm not proud of where we're going with the
6 Puente Power Plant. You know, it got its name that it's a
7 bridge, but it's starting to look like a bridge to nowhere.
8 We're hearing about the technical breakthroughs. We're
9 seeing progress in, you know, the falling price of solar and
10 other renewable energies. I want our tradesmen to be
11 building that. I want to see our jobs and our taxes being --
12 coming to us from renewables, because that is where the
13 future is.

14 And as we've been seeing, climate change is
15 becoming more and more erratic. The La Nina year turned out
16 to be our big rain year. Climate change is going to make
17 predictions that building anything on the coast is safe more
18 -- harder and harder to validate.

19 I urge you to consider the long run, the big
20 picture. I've been teaching at Oxnard College for many
21 years. And the last few hours, you've been working on all
22 the little details of making this plan and of staging your
23 hearing. But just in the same way, my students, if they get
24 lost in the details they can lose track of the big picture.
25 And the big picture is having a place to live that we can be

1 healthy in, that we can be strong in. The big picture is
2 having California as a place that is environmentally
3 responsible and looking toward the future.

4 I urge you to think of the big picture. Don't be
5 the big fish chewing on the next littlest fish down the line.
6 Keep Oxnard a healthy community.

7 Thank you.

8 (Applause.)

9 COMMISSIONER SCOTT: Thank you.

10 I have Gordon Clint, followed by Peter Hadley. Is
11 Gordon here? Okay.

12 I have -- is Peter Hadley here? Peter Hadley,
13 followed by Mike de Martino.

14 Okay, let's see. Just double checking. Gordon
15 Clint, Peter Hadley, or Mike de Martino? Okay.

16 I have next, Tomas Rebecchi. Where is everybody?
17 Tomas? Okay.

18 Michael Stubblefield. Is Michael still here?

19 I have Kendall Lynch, and she said she might be a
20 little shy. Please don't be shy. We're happy to hear from
21 you.

22 We're also happy to hear from folks in writing.
23 And as you know, we'll be back next week, as well.

24 Jonathan Horton? And he'll be followed by Charles
25 McLaughlin.

1 MR. HORTON: Good afternoon. I am a resident of
2 Ventura, with family that lives in Oxnard that I'm
3 representing today.

4 The 2020s are not a time when should be building
5 new fossil fuel plans. But the goals established under SB
6 350, that half of the state's electricity generation be
7 renewable, this project is clearly on the wrong side of the
8 future. The energy sector, and renewables in particular, are
9 developing rapidly. The Tesla-built Mira Loma storage site
10 referenced earlier that came online this week is indicative
11 of the kind of alternative projects that are possible, that
12 Oxnard deserves and that we would welcome. After generations
13 as an industrial sacrifice zone, Oxnard deserves to be on the
14 cutting edge of our energy future.

15 The only people in favor of this plant are those
16 who would benefit directly financially. We would welcome
17 development and construction opportunities, but not the cost
18 of our health and well-being. This project is not in the
19 long-term interests of our community, our region, our state,
20 or our world. It serves NRG but not us.

21 The community opposes this plant. Our city, state
22 and national representatives oppose this plant. We will
23 resist the building of this plant and we will win.

24 Thank you.

25 (Applause.)

1 COMMISSIONER SCOTT: Thank you.

2 I have Charles McLaughlin, and he's followed by
3 Manuel Herrera.

4 MR. MCLAUGHLIN: Energy Commission, thank you very
5 much for the opportunity. I'm a long-term Oxnard resident
6 and small business owner.

7 In brief, I believe, if I'm correct, NRG will have
8 -- basically have right now three power plants. When they're
9 finished there will be two. That's a 33 percent reduction in
10 power plants. And what that also does, it reduces -- it's
11 got to reduce the atmospheric pollution, plus it will reduce
12 this supposed visual pollution that everybody looks at.

13 And on that issue, after it's all done or during
14 when it's done is the taxes generated by NRG. The business
15 community, the labor force, it could be a financial windfall.
16 In three or four years you could see the city back on its
17 economic feet and looking around and wondering how it did it,
18 and it was one company, NRG, one project that did this.

19 And then I looked at his environmental justice,
20 which I'm not legal but I don't really understand too much
21 about it. So I read in Part 1, and I could read it right to
22 you,

23 "A determination of whether there may be a significant
24 adverse impact on the population of minority persons or
25 persons below the poverty level caused by the proposed

1 project alone or in combination with other existing and
2 planned projects in the area. California defines EQ --
3 EJ," excuse me, "as the fair treatment of people of all
4 races and cultures."

5 Now NRG is bringing reliable energy. They're not
6 bringing a casino. They're not bringing a marijuana plant or
7 anything else. If you look at the definition of adverse,
8 it's actually preventing success or welfare. How can you
9 think that you're presenting welfare when all you're doing is
10 giving consistent energy to people, regardless of their race
11 or their culture? It just doesn't make sense, but I'm sure
12 some legal beagle would say environmental. It's helping
13 everyone in this room, the lights, the speaker. The 200,000
14 people living in Oxnard will benefit from this project.

15 Thank you.

16 COMMISSIONER SCOTT: Thank you.

17 I have Charles McLaughlin.

18 (Applause.)

19 COMMISSIONER SCOTT: Wait a minute. That was just
20 you, right, Mr. McLaughlin? That's right. Okay.

21 So I have Kurt Oliver, followed by Manuel Herrera.

22 MR. OLIVER: Good afternoon, Energy Commission. I
23 am Kurt Oliver, a business representative for the
24 International Union of Operating Engineers, Local 12.

25 Our journeymen and journeywomen and apprentices

1 will take this opportunity to voice our full support of the
2 Puente Power Project. There is an already identified need
3 for this project to support the region's energy needs going
4 forward. Our highly skilled members are ready, willing and
5 able to join forces with our affiliated crafts to see this
6 project become a reality. Not only would this project
7 generate revenue through property and sales taxes, but would
8 also provide good paying jobs right here in Oxnard.

9 We are currently in a transitional period, not only
10 in California but across the nation, when it comes to
11 renewable clean energy. International Union of Operating
12 Engineers, Local 12,a and its members continue to build green
13 projects throughout Southern California and southern Nevada.
14 Solar farms and wind turbines are projects that provide a
15 good wage and benefits so that our members can support their
16 families.

17 This Puente Power Project is one such project. It
18 is designed to be fast start, flexible and an efficient
19 plant, thus providing the local area with a reliable source
20 of energy going into the future. It would solve the
21 identified need for energy and green the grid at the same
22 time.

23 Again, our members stand in full support of this
24 project. Thank you for your time, and go Patriots.

25 COMMISSIONER SCOTT: Thank you.

1 I have Manuel Herrera, and followed by Tony
2 Skinner. Is -- he left? Okay.

3 Again, just as a reminder, we have lots of
4 opportunities to present to us with comments in writing. And
5 we'll be back next week, as well.

6 I have Tony Skinner then, followed by Martin A.
7 Rodriguez.

8 MR. SKINNER: Good afternoon. My name is Tony
9 Skinner and I'm the Executive Secretary Treasury of the Tri-
10 County Building and Construction Trades Council. And I'm
11 here to show our support for the Puente Power Plant.

12 I represent thousands of union construction men and
13 women in Ventura, Santa Barbara and San Luis Obispo Counties.
14 This 262 megawatt plant will be an efficient, fast-starting
15 energy efficiency power plant that will complement the
16 renewable energy and give us a stable and reliable supply of
17 energy.

18 This plant, which is covered under a project labor
19 agreement, will be built by the most highly trained, skilled
20 and safe workforce anywhere. It will also provide training
21 for all of our state-approved apprenticeship programs which
22 will ensure a skilled workforce for decades to come.

23 The construction industry in Ventura County has
24 never recovered from the 2008 crash. And the latest figures
25 show that we are still 6,000 jobs down from our peak before

1 the crash. This will be a boom to our industry, as well as
2 businesses in the county, as it will be built with local
3 labor.

4 I strongly urge the Commission to approve this
5 project and I thank you for your time.

6 COMMISSIONER SCOTT: Thank you.

7 (Applause.)

8 COMMISSIONER SCOTT: I have Martin A. Rodriguez,
9 followed by Elizabeth White.

10 MR. RODRIGUEZ: Good afternoon. You know, there's
11 a lot of talk about these renewables. And we are building
12 these projects at this time. We have over 3,000 megawatts of
13 renewable energy being produced right now in the deserts,
14 everywhere else. It is being made right now. That's what
15 building tradesmen do. It will not be able to fill the need
16 that's projected in this area. That's why we have to have
17 this project to fill that bridge. There is a real need for
18 this bridge that is the powerhouse.

19 It's a common sense move. This is a microsystem
20 with a little loop that goes up through Santa Barbara-Gaviota
21 area. We are struggling. And even if for some chance we
22 were able to increase the capacity at Carrizo Springs
23 (phonetic) into the power grid here, it wouldn't be enough
24 because it's almost at capacity with transmission. You only
25 have about 200 megawatts left in those transmission lines.

1 So it's a common sense move.

2 We don't have 20 years to wait for the next new
3 mousetrap to be built for storage, nor do we have the time
4 that it's going to take to put these things in place, go to
5 the planning commission, go through the permit process when
6 what we have is ready to go, and we need it.

7 You know, you can look at the faces of these
8 building tradesmen we represent, and there is no racial
9 injustice here, simple deal. We cover them all.

10 Thank you.

11 COMMISSIONER SCOTT: Thank you.

12 (Applause.)

13 COMMISSIONER SCOTT: I have Elizabeth White,
14 followed by Tom Cady. Is Elizabeth White here? Okay.

15 I have Tom Cady next, followed by Rafael Escobedo.

16 MR. CADY: Good afternoon. My name is Tom Cady.
17 I'm a 45-year resident of Oxnard and retired Assistant Police
18 Chief from the police department here. And I'm also on the
19 Board of Directors of the Chamber of Commerce, and wanted to
20 speak to the fact that we are in support of this project.

21 Actually, I live about two miles away from the
22 project up on Gonzalez Road. So it's not like it's -- I
23 mean, it's in my neighborhood. I'd understand when you're
24 addressing a regional need, there's always going to be people
25 to say, not in my backyard. But that's your responsibility,

1 to meet that regional need.

2 I do appreciate you being here today, especially
3 after the last meeting when the meeting was disrupted. I
4 think it was too bad that your staff wasn't even able to
5 complete presenting or updates. I mean, when people shut
6 down a meeting before you even present the information, I
7 think that's very troubling. The fact that they also don't
8 allow other people to get up and address them is troubling,
9 as well. And I don't think -- and although people chanted,
10 "This is democracy," that is not.

11 I think there's -- people cannot have, I guess what
12 we're calling today, alternative facts. When people continue
13 to say there's going to be four power plants here, you know
14 that's not true, they know that's not true, but they're
15 telling these young people, hey, there's going -- we're
16 sticking a fourth power plant here, when as part of this
17 project that power plant goes away and a new one takes its
18 place.

19 From a public safety perspective, I want to speak
20 to the fact that you need reliable local energy. Somebody
21 we're going to have a major earthquake. We live in
22 California. We know that. And if that takes down the
23 transmission grid, the ability to have energy in this area is
24 going to be critical. I know what it's like when you're out
25 patrolling in a city that's lost a significant -- you know,

1 power. Even during the daytime when all the lights are
2 turned to four-way stops, it's a challenge to get through.
3 At night, people are frightened.

4 And we don't have to guess about this. You can
5 look at what happened in New Orleans after Katrina. The
6 people who suffered the most, frankly, were the people who
7 were the least able economically to do something, to, you
8 know, move out of the area. They were the ones who suffered
9 the most when infrastructure went down.

10 And when we have days without power, people will
11 suffer. And the fact that we have energy here I think will
12 be critical to the needs of this community.

13 Economically this will provide tax revenue. And
14 that tax revenue, certainly, I'm sure Mayor Pro Tem will --
15 she can't commit to where that money will go, but I will say
16 that public safety generally does get a priority in our city.
17 And ability to address that would be enhanced by the revenue
18 that comes from this plant.

19 And just briefly, if I could say in terms of
20 economic justice, I don't know exactly when the Mandalay
21 Plant was built, but I do know that that neighborhood right
22 there in the area adjacent to it, the zip code, I think the
23 income there is about \$50,000 a year more than other areas in
24 the city in other zip codes, and it's been that way for
25 years. Back when I first joined the department, Sonny and

1 Cher had a beach house just probably a mile down the road.
2 So it's not as if this is put any place where it's a poor
3 area. It wasn't that way at the time it was built then. It
4 isn't that way now.

5 So I would suggest, particularly from an economic
6 and a public safety standpoint, that the Commission support
7 this project. And I appreciate your time.

8 COMMISSIONER SCOTT: Thank you.

9 (Applause.)

10 COMMISSIONER SCOTT: I have -- and this is my last
11 blue card. So if there are other folks who wanted to make a
12 remark and didn't get a blue card in, now would be a great
13 time to do so.

14 Rafael U. Escobedo please.

15 MR. ESCOBEDO: Good evening, California Energy
16 Commission and everyone attending this workshop. My name is
17 Rafael Urino Escobedo. I'm a long-time resident of Ventura
18 County and a homeowner in Oxnard. I'm a plumber from
19 Plumbers and Steamfitters Local Union 484 in Ventura. I'm
20 here on behalf of all my brothers and sisters, plumbers,
21 pipefitters, welders and apprentices, who make up our
22 organization of highly skilled craftsman in our organization
23 throughout the USA and Canada.

24 This power plant is going to create good paying
25 jobs for our building trades, plumbers, pipefitters, welders,

1 electricians, seal workers and cement masons. For example,
2 our members are going to spend their hard-earned money here
3 locally. They are going to pay their mortgages, rents,
4 autos, and goods and services. In return, this is going to
5 stimulate Oxnard's economy and move us forward to a more
6 prosperous economy, not to mention this project is going to
7 give us the electricity we need to power our homes,
8 businesses and cell phones. For instance, Oxnard's
9 population has grown. Also, more businesses are being
10 created. We need this power plant to power these buildings.

11 Studies have shown there is no significant
12 environmental impacts with the construction and operation of
13 La Puente Power Plant. There's power plants all throughout
14 the United States. You know, this is not the first one
15 that's being built.

16 This power plant is essential to Oxnard's growth
17 and prosperity. I urge you to support this project and to
18 start construction without any delays.

19 Thank you on behalf of Plumbers and Steamfitters
20 Local Union 484 and myself, Rafael Urino Escobedo. Thank you
21 once again.

22 COMMISSIONER SCOTT: Thank you.

23 (Applause.)

24 COMMISSIONER SCOTT: I did receive one more clue
25 card. That is from Cherie Cabral. Please come on up.

1 And as a reminder, if you're here and would like to
2 speak, please do submit a blue card. We want to hear from
3 you.

4 MS. CABRAL: Well, I will officially say good
5 evening because it's across the five o'clock hour. My name
6 is Cherie Cabral. I represent the California State Building
7 and Construction Trades Labor Management Trusts. And I
8 debated whether or not to speak, but I did want to take a
9 couple of minutes just to say a few things.

10 And I wanted to start with the simple fact that the
11 democratic process that guarantees us all access through
12 things like the public comment process is all about the right
13 to express our opinions and our feelings in a respectful
14 manner across the aisle and through differences of opinion.
15 And it doesn't work unless everybody is afforded the
16 opportunity to be heard. And it also doesn't necessarily
17 guarantee an outcome. So I think we should all be respectful
18 as we speak, regardless of the differences of opinion.
19 Otherwise, our process doesn't really work. And so I thank
20 you all for bringing attention to that earlier.

21 The gentleman from CAUSE earlier referenced strong
22 working families. And I respect everybody that falls into
23 that category. And I also want to remind everybody that
24 those strong working families come in a whole lot of
25 different shapes and forms. And for us in the building

1 trades, they're represented by men and women like you see in
2 the back, back here, that have taken time. They started work
3 at 6:30 this morning, 7:00 on the jobsite, worked all day
4 long, and they're here at the end of the day to support this
5 project.

6 The men and women of the building and construction
7 trades that are going to build this project, they live here.
8 They have children that go to the schools here. Their kids
9 play in the local soccer leagues. The play in the local
10 little leagues. They play at the park. They go to the
11 movies. This project will afford them the opportunity, not
12 only to live here but to work here. So when we talk about
13 climate change and carbon reduction emissions, that means
14 eliminating commuting. It means taking traffic off of the
15 road.

16 But it also most importantly means increasing
17 people's quality of life. The time that you have at the end
18 of the day to spend with your kids, your wife, your husband,
19 your family, your parents, your grandkids, to take somebody
20 to the doctor that maybe you otherwise wouldn't have to do
21 because you're sitting in an hour-and-a-half worth of L.A.
22 traffic each way. That adds three hours to people's days.

23 And I also think that one of the things that we
24 forget about is that part of the big picture when you talk
25 about things is the ability to meet people's basic needs.

1 Basic needs are met through infrastructure. They're met
2 through the building of roads, transportation infrastructure,
3 the power infrastructure.

4 And, right, all those things are not necessarily
5 above the fold sexy, like the newest, greatest Tesla thing,
6 but they are essential to our daily lives. They are what
7 power the lights in here, that turn the heaters on to keep us
8 warm, that allow us to cook our food, that connect us to the
9 internet and give our kids the ability to have their alarm
10 clock set and to have a safe, clean environment to learn in
11 because they have all the necessary technological tools that
12 we expect them to have these days. And, yes, as the
13 technology improves, we will build those new, latest,
14 greatest, wonderful things that are the above the fold, sexy
15 technologies.

16 But in the meantime, we still have to make it
17 through our daily lives. And this project gives this area
18 the capacity to have the reliable power that was determined
19 by CAISO that was needed. And so we are here in support of
20 that project. And I firmly hope that each and every one of
21 you, and that Staff, and that the Commissioners at some point
22 will not only support this community but the reliable
23 infrastructure and the men and women that will build it.

24 So have a nice evening.

25 COMMISSIONER SCOTT: Thank you.

1 (Applause.)

2 COMMISSIONER SCOTT: I don't have any more blue
3 cards. Has everyone who is in the room who wanted to make a
4 public comment had the chance to make a public comment?
5 Okay.

6 Seeing none, we will turn to our WebEx and take
7 comment from there. Let me see, who do I look at to see
8 whether we have comment on the WebEx?

9 HEARING OFFICER KRAMER: Me.

10 COMMISSIONER SCOTT: Oh. Paul.

11 HEARING OFFICER KRAMER: So everyone is un-muted
12 now, so you can just ask them.

13 COMMISSIONER SCOTT: Okay. Everyone on the WebEx
14 is now un-muted. If you would like to make a public comment,
15 would you please go ahead and speak up. If we get a few
16 together, we'll try to pick you one by one. So you are un-
17 muted if you are on the WebEx or the phone. So if you'd like
18 to make a public comment, please do so. Okay, so on the
19 phone, WebEx, going once, going twice? Okay.

20 I will note that there are people on the WebEx but
21 no one is raising their hand, no one is speaking up. So we
22 will take that to mean that no one there would like to make a
23 public comment.

24 And with that, I'll turn the hearing back over to
25 Hearing Officer Kramer.

1 HEARING OFFICER KRAMER: Okay. There is our
2 Spanish WebEx meeting.

3 COMMISSIONER SCOTT: Oh, I'm sorry.

4 HEARING OFFICER KRAMER: So I'm just going to ask -
5 -

6 COMMISSIONER SCOTT: Is there anyone on the Spanish
7 WebEx?

8 HEARING OFFICER KRAMER: I checked with Kristy
9 Chew, who was running the control panel on that a little
10 earlier, and she said that aside from two people from the
11 Public Adviser's Office, nobody had signed onto that meeting.

12 Kristy, with the -- can you tell me, it's still
13 zero? Okay.

14 So there's no reason to ask for public comments
15 from those who are not there.

16 COMMISSIONER SCOTT: Okay. Thanks for the
17 reminder.

18 HEARING OFFICER KRAMER: Okay. So with that, do
19 either of you want to make any closing comments?

20 COMMISSIONER SCOTT: Go ahead.

21 COMMISSIONER DOUGLAS: You know, I just wanted to
22 say, and Commissioner Scott said this earlier, but you know,
23 sometimes sitting here through the hours it takes us to run a
24 prehearing conference can feel like watching paint dry or
25 worse. And so I really appreciate the staying power of those

1 of you who made it through to public comment time.

2 We're looking forward to coming back next week.

3 And, of course, we'll have set public comment time starting
4 at 5:30 on Tuesday and Wednesday, as well as public comment
5 at the end of the proceedings on Thursday and Friday. So I'm
6 sure we'll see a lot of people next week. And we'll hear
7 from a lot of folks next week, as well.

8 But we appreciate everyone's participation today.
9 And we'll look forward to coming back. Thank you.

10 COMMISSIONER SCOTT: Thank you.

11 You want to adjourn us?

12 HEARING OFFICER KRAMER: Okay. Then with that, we
13 are adjourned. Thank you all and see you next week.

14 (The prehearing conference adjourned at 5:11 p.m.)

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CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of February, 2017.

A handwritten signature in cursive script that reads "Martha L. Nelson". The signature is written in dark ink and is centered on the page.

MARTHA L. NELSON, CERT**367

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT**367

February 3, 2017