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BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the matter of,)
) Docket No. 07-AFC-06C
Carlsbad Energy Center)
Project Amendments)

CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, HEARING ROOM B
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 3, 2014

2:30 P.M.

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Karen Douglas, Commissioner and Presiding Member

Andrew McAllister, Commissioner and Associate Member

HEARING OFFICER:

Paul Kramer

CEC STAFF PRESENT:

Kerry A. Willis, Esq., Senior Staff Counsel

Mike Monasmith, Staff Project Manager

PETITIONER/APPLICANT:

John McKinsey, Esq., of Locke Lord, LLP

George Piantka, Director of Permitting, NRG

INTERVENER:

Arnold Roe, Ph.D., Power of Vision (Via WebEx)

Kerry Siekmann, Terramar Association, (Via WebEx)

Also Present

Bob Therkelsen, Consultant to City of Carlsbad, (Via WebEx)

Andrew Kingsdale, Esq. (Via WebEx)

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P R O C E E D I N G S

1
2 NOVEMBER 3, 2014

2:30 P.M.

3 HEARING OFFICER KRAMER: Okay, we're going to start,
4 now. Just so everyone knows, our court reporter service was
5 unable to get us a reporter to be here in the room with us,
6 today, but we are recording this as a WebEx file and we'll be
7 getting that file to them as an audio recording so that they
8 can transcribe it for us. And we'll always have the WebEx
9 audio recording, as well.

10 Do, I sound loud enough?

11 UNIDENTIFIED SPEAKER: Yes.

12 HEARING OFFICER KRAMER: Okay, great. Commissioner
13 Douglas, can you start us?

14 COMMISSIONER DOUGLAS: All right, well, thank you.
15 This is a status conference for the Carlsbad Energy Center
16 Amendment. So, we'll start by having the parties introduce
17 themselves.

18 Applicant, could you introduce yourself?

19 MR. MC KINSEY: I'm John McKinsey, counsel for the
20 project, for Carlsbad Energy Center, LLC --

21 HEARING OFFICER KRAMER: This is Paul. I can't hear
22 John talking.

23 COMMISSIONER DOUGLAS: Could you say that again,
24 John?

25 MR. MC KINSEY: Does this sound better?

1 HEARING OFFICER KRAMER: Yes.

2 MR. MC KINSEY: Okay, this is John McKinsey, counsel
3 for the project owner, Carlsbad Energy Center, LLC. Also
4 with me is George Piantka, representative of NRG and the
5 development manager for this project.

6 COMMISSIONER DOUGLAS: So, if you could consider
7 maybe moving your table forward a little?

8 MR. MC KINSEY: We will.

9 COMMISSIONER DOUGLAS: There you go.

10 All right, go ahead, staff.

11 MR. THERKELSEN: I can't hear the staff, either.

12 MS. WILLIS: This is Kerry Willis, Senior Staff
13 Counsel.

14 COMMISSIONER DOUGLAS: Bob, could you hear that?

15 MR. THERKELSEN: No, I couldn't hear anybody.

16 MS. WILLIS: Kerry Willis, Senior Staff Counsel,
17 representing staff and Mike Monasmith, project manager, and
18 other staff members to answer questions as needed.

19 COMMISSIONER DOUGLAS: All right, let me check for
20 the intervenors now. Is anyone here from Terramar
21 Association? On the phone, Terramar Association, Kerry
22 Siekmann?

23 What about Power of Vision?

24 DR. ROE: Yeah, Arnie Roe.

25 COMMISSIONER DOUGLAS: Great, thank you.

1 Rob Simpson, are you on the line?

2 All right, Bob Sarvey, are you on the line?

3 All right, it sounds like we've got one of our
4 intervenors.

5 What about Bob Therkelsen, City of Carlsbad, Bob
6 Therkelsen?

7 MR. THERKELSEN: Yes, Bob Therkelsen, City of
8 Carlsbad.

9 COMMISSIONER DOUGLAS: All right, thank you.

10 Let's see, do we have the Public Adviser's Office? I
11 don't see them in the room.

12 Is anyone on the phone or in the room from any other
13 state, or local, or federal agency?

14 San Diego APCD, Steven Moore, are you on the line?
15 Coastal Commission?

16 All right, I'll turn this over to the Hearing Officer
17 to get us going.

18 HEARING OFFICER KRAMER: Okay, I also see Mr.
19 Kingsdale on the list. If I recall correctly, you are
20 sometimes counsel for Mr. Simpson, is that correct?

21 MR. KINGSDALE: That's right. I'm just listening in
22 as a member of the public right now.

23 HEARING OFFICER KRAMER: I'm sorry, I didn't quite
24 catch that.

25 MR. KINGSDALE: I am sometimes, but not at the

1 moment. I'm just listening in as a member of the public.

2 HEARING OFFICER KRAMER: Okay, thank you.

3 MR. KINGSDALE: Thank you.

4 HEARING OFFICER KRAMER: Okay. Well, this is the
5 first of regular monthly meetings that the Committee has
6 scheduled. I think we told you about this at the last
7 hearing, a couple of weeks ago, that we were going to have
8 regular meetings to keep track of the progress and try to
9 iron out any scheduling difficulties along the way.

10 And the second item on the agenda was a hearing on
11 any pending motions. And while we don't have any formal
12 motions before us, the most recent filings in the last 24
13 working hours have raised a couple of issues that sound sort
14 of in the nature of motions.

15 But again, none of them were made formally, in
16 conformance with our general orders that require that the
17 caption of the document identify that there's a motion
18 involved, and that there be a request for specific relief,
19 and that the law be cited that supports the request for
20 relief.

21 But nonetheless, I think we will discuss those
22 issues, at least to some level of depth as we move on to the
23 next item on the agenda, which is the case progress and
24 schedule.

25 So, we don't have anyone from the Air District with

1 us, we can check again towards the end of the hearing, or the
2 Coastal Commission.

3 But does anybody have any reason to believe that the
4 preliminary determination of compliance has slipped beyond
5 the estimate we received previously, which was November 10th,
6 or earlier?

7 MS. WILLIS: This is Kerry Willis. We have not heard
8 anything different than November 10th, at this point.

9 HEARING OFFICER KRAMER: Okay, Mr. McKinsey's
10 indicating he's heard nothing different as well?

11 MR. MC KINSEY: That's correct. So, now I'm not sure
12 if this is coming out or not at this point. Bob Therkelsen,
13 can you hear me?

14 MR. THERKELSEN: I can.

15 MR. MC KINSEY: Okay, good. So, yes, we have not
16 heard anything different (inaudible) --

17 HEARING OFFICER KRAMER: Okay, thanks.

18 And has anybody heard anything new about the Coastal
19 Commission's level of participation?

20 MS. WILLIS: Staff has not.

21 HEARING OFFICER KRAMER: Okay, thank you.

22 So, Mr. McKinsey, you, in your status conference
23 statement, voiced concerns about the data request that Mr.
24 Simpson made. I think it was, well, last week, right within
25 an hour of the deadline, the discovery cutoff deadline.

1 And could you describe a little bit more what you're
2 seeking from the Committee?

3 MR. MC KINSEY: Yes, thank you. So, a couple of
4 issues that came up in the data request that we had concerns
5 about. And, ostensibly, what we can, of course, do is object
6 to them.

7 But the one is the identity of the party asking
8 there's been a little bit of a (inaudible) -- to do with
9 another entity that's called Helping Hands, something or
10 another, Tools that clearly isn't an intervenor. So, and if
11 you look at the two filings that were made by counsel for Mr.
12 Simpson, and then one made by Mr. Simpson, the one made by
13 Mr. Simpson seems to suggest that he's doing it on behalf of
14 Helping Hand Tools and Mr. Simpson.

15 That, along with one other aspect of the data
16 request, I thought having set apart (inaudible) -- is that by
17 a count over the weekend having over 60 data requests, half
18 of them go beyond the scope of his intervention and it is
19 pretty blatant, hazard materials, noise. It's just clearly
20 not staying within confines of the issue areas.

21 Of course, we can object and say this data request
22 goes beyond the scope of the intervention. And that is what
23 our draft document looks like.

24 But it's also, to me, a sign of a party that is not
25 following the instructions of the Committee concerning those

1 (inaudible) --

2 The third component that's the most troubling and
3 it's probably troubling to staff, as well, is that the second
4 set of -- the second version of it, filed by Mr. Simpson, has
5 three, basically, adjustments to all six --

6 DR. ROE: Hello, I can't hear what McKinsey is
7 saying.

8 HEARING OFFICER KRAMER: John, do you want to try the
9 mic that's on the stand?

10 MR. MC KINSEY: Does this work? It echoes. Can you
11 hear me, now?

12 DR. ROE: Yes, I can, thank you.

13 MR. MC KINSEY: So, in addition to the basic question
14 of who the asking party is and the scope exceedance, the
15 three modifications that Mr. Simpson made to his -- what he
16 called his lawyer's version, one of them says that these data
17 requests are not only directed at Applicant, but also staff.
18 So, it kind of turns them into a 120-day request or,
19 basically, the same 60 -- or, I guess in theory, they'd have
20 to be answered by both staff and Applicant.

21 Another one of his requests says that these aren't
22 only data requests, but they're also Public Records Act
23 requests and other, you know, non-data request aspects which
24 pretty much I don't even think we have to respond to that
25 since we're only dealing with the data request.

1 And then the third revision is almost -- I mean, it
2 asks for a bunch of kind of clarifications that, in theory,
3 apply to every data request that was in the past tense, or
4 otherwise mis -- basically, what I'm getting at is that the
5 data requests are not very intelligible when you take this
6 overlay of what Mr. Simpson added to them.

7 And so, we certainly don't want to look like we're
8 evading answering information, but we almost have to object
9 to the general nature of his aspect of it.

10 And all of this is just troubling to get on the eve
11 of the formal, official, you know, the real end of discovery.

12 And I was hoping Mr. Simpson would be here to maybe
13 explain and to perhaps, you know, speak to you about what
14 he's trying to accomplish and, I think, be held a little bit
15 held accountable for this blatant exceedance of scope, in
16 particular.

17 HEARING OFFICER KRAMER: When I was comparing the two
18 this morning, I didn't get a chance to compare them line-by-
19 line, but it appeared to me that the only change that Mr.
20 Simpson made in his clarification filing was to add,
21 basically, a preamble paragraph.

22 Is that your understanding? Or did he change some of
23 the language of the individual requests?

24 MR. MC KINSEY: So, he made three requests. The
25 preamble is what he did. But he basically said, my preamble

1 applies to all the data request.

2 HEARING OFFICER KRAMER: Right.

3 MR. MC KINSEY: So, essentially, modifies all 60 of
4 them.

5 And the third one's the most troubling one because
6 it's really general about, you know, of those 60 which ones
7 it will apply to, and how it applies.

8 And the first two just turn -- you know, greatly
9 expand the scope of the data request even further and that's
10 also troubling.

11 And again, we can object to these and probably will
12 answer them, you know, where we can. But just the overall
13 nature of this, I thought, I was worthy of bringing to the
14 Committee's attention.

15 And I was hoping that Mr. Simpson would be here, as a
16 party, as an Intervenor and party status member and to
17 discuss it.

18 HEARING OFFICER KRAMER: But then, so all the changes
19 were contained in the preamble? He didn't change the
20 language of the request at all?

21 MR. MC KINSEY: We haven't completed -- we're having
22 them looked at on a word-by-word comparison. But our general
23 look at them, they look like the same data request.

24 HEARING OFFICER KRAMER: Okay, thanks. Well, we
25 certainly appreciate you bringing it to our attention because

1 in the normal course of business, as you know, parties make
2 data requests and then the recipient either responds or
3 objects. And it's only when, then, the person who made the
4 request tries to ask the Committee to compel response that
5 we, you know, by the normal operation of section 1716 of our
6 regulations get involved.

7 So, you certainly do need to do what you need to do
8 under the regulation. I wouldn't avoid that step.

9 But am I gathering that you're also concerned about
10 time that will be taken by going back and forth as the
11 regulation normally requires?

12 MR. MC KINSEY: Correct. I mean, we generally follow
13 the normal discovery rules, right, even though there's
14 nothing that says that in the practice manual. There is no
15 real practice manual at the Energy Commission.

16 But there's certainly regulations that say you can't
17 make general objections. But in most discovery practice, you
18 know, you have to object specifically to each data request
19 and that adds time.

20 That being said, we're not still going to spend --
21 we're going to put in, I think, the amount of time we think
22 is appropriate for the data request. But there's going to be
23 an awful -- quite a few, based on what we have now, that will
24 say data request exceeds the scope of the party's
25 intervention scope.

1 And then we're going to make some general objections
2 to those opening preambles saying, you know, we really don't
3 understand how to apply this one, etc.

4 And I would say that I think -- and I'm speaking for
5 staff, which I'm sure will correct me on it as well, but it
6 concerned us a little bit in that little preamble, they very
7 quietly, suddenly became also data requests of staff. That,
8 you know, we responded to some data requests by another party
9 that we were concerned -- even though they were directed at
10 staff, they looked like they were directed at us.

11 These ones blatantly say we want these to be data
12 requests to both parties. And again, that seems a little
13 excessive, abuse of the computer. But all I have to do is
14 make one change and I've now made data request from both of
15 the parties without any real reference to the fact that data
16 requests should be directed to the party, that under the
17 criteria for applicable discovery, has the information and
18 has some duty to provide it.

19 HEARING OFFICER KRAMER: And I also note that I
20 believe the second request, the clarification was filed --
21 well, the docket stamp says at 11:04 p.m., which was after
22 the close of business. So, therefore, technically late if
23 the discovery cutoff was October 29th, which is what we said
24 in our schedule, I believe.

25 Ms. Willis, did you have anything to add?

1 MS. WILLIS: Thank you. As far as staff is
2 concerned, I mean we've gone through all of the data request.
3 We have considered the preamble to be controlling over the
4 request. As Mr. McKinsey said, most -- a large number of
5 them exceed the scope of Mr. Simpson's limited intervention.

6 The others, most -- probably most of the other data
7 requests are questions that we actually cannot answer at this
8 point in time just because we're publishing our PSA and I
9 haven't -- we haven't finished it, yet. So, that information
10 isn't necessarily readily available to us.

11 Some of the information Mr. Sarvey could easily
12 obtain himself by using the record in the previous
13 Carlsbad -- the original Carlsbad case.

14 As far as Mr. Sarvey's -- I'm sorry, Mr. Simpson's
15 clarification that these are also Public Record Act requests,
16 that specifically does apply to staff. And so, we are
17 looking at these questions in that manner, as well.

18 As most of us know, a Public Record Act request is
19 for a record that exists. Some of these questions, in fact
20 most of them, are actually not requests for records or
21 documents. So, we'll be looking at that in that manner.

22 But if there is a request that says please provide
23 certain documents, we will be looking at that and we have our
24 staff attorney, Jared Babula working on that part of it.

25 But as Mr. McKinsey said, we probably will be

1 objecting to most of the requests. There will be a few that
2 we can actually answer at this point in time.

3 HEARING OFFICER KRAMER: Are there any formalities
4 that are required to make a Public Records Act request beyond
5 what Mr. Simpson did?

6 MS. WILLIS: And it's very broad as to how a request
7 can be made. It can be made in many ways, it does not have
8 to be formal.

9 In general, when a request is made, our staff
10 counsel, whoever is, at the time, working on Public Record
11 Act will go back and talk to the requester to try to narrow
12 it down.

13 In the one instance, I think we figured number 53 of
14 the request was rather -- was specific enough that we could
15 go forward and check with staff to find out what
16 communications were with other governmental agencies that
17 they've had, and pull up that information.

18 In other areas we -- I don't believe we felt that
19 either they were Public Record Act requests or they were
20 specific enough for us to be able to answer that.

21 HEARING OFFICER KRAMER: Okay. But for instance,
22 when Mr. Simpson filed his last set of appeals, one of those
23 was a request for Commission rulemaking and it was determined
24 that he had to serve the Executive Director, and that was
25 required by the regulation.

1 So, until he did that, you didn't process it, staff
2 didn't.

3 Are there any technical requirements, such as that,
4 that Mr. Simpson still needs to fulfill before you're going
5 to act on the Public Records Act request or has he -- as far
6 as you know, now, has he satisfied those requirements?

7 MS. WILLIS: As we have determined, he satisfies the
8 requirements. We do not consider form over substance in most
9 cases. We actually are very open and liberal in our
10 responses to the public when they ask for documents that we
11 might have here.

12 HEARING OFFICER KRAMER: Okay. I thought I'd just
13 clarify that because this wouldn't be the first time that Mr.
14 Simpson has -- you know, has either sent something to the
15 wrong place or -- and just wanted to clarify whether he has
16 to do that.

17 Anything else? And I'm sure that if you do discover
18 that he has some additional work to do, you would let him
19 know.

20 MS. WILLIS: In fact, if I may add, also, the one
21 thing that asking as a Public Record Act request does is it
22 allows Mr. Simpson to exceed his scope of intervention. So,
23 that is something that I hope the Committee will keep in mind
24 as far as the work that staff will now have to do to comply
25 with his request, as it's actually outside of the scope as

1 well.

2 HEARING OFFICER KRAMER: But that's the nature of the
3 Public Records Act.

4 MS. WILLIS: It is.

5 HEARING OFFICER KRAMER: Okay, so Mr. McKinsey, are
6 you asking at all that we, if you will, expedite the process
7 of coming to a resolution of which of Mr. Simpson's requests
8 should be answered?

9 In other words, we could wait for the cycle of
10 Applicant files objections and then Mr. Simpson makes a
11 motion to compel, and then we hold a hearing, which could
12 take, let's see, you would have 20 days, and he has 30 days,
13 and we have to schedule a hearing. Perhaps it could be
14 coincidental with one of these events, but that would
15 probably be early January.

16 Are you asking that we get this to a resolution
17 somewhat sooner than that?

18 MR. MC KINSEY: I'm not actually asking for any
19 specific action. I think I wanted this brought up because I
20 think it's something that the Committee should have been
21 aware of, as this proceeding proceeds.

22 So, if we do actually get those motions, and as we
23 have other issues, I think it's relevant to understand the
24 parties' positions about their conduct and obligations -- so,
25 mostly I'd say I wanted this to be taken under advisement so

1 that you were aware of the issues that this was raising
2 (inaudible).

3 HEARING OFFICER KRAMER: Okay, thank you.

4 Anything from anybody? Dr. Rowe, you've been --
5 haven't said anything, yet. I don't know if you have
6 anything to say about this, but we'll give you the
7 opportunity.

8 DR. ROE: Thank you, no, I have nothing to say about
9 this issue.

10 HEARING OFFICER KRAMER: Okay. But, Dr. Rowe, you
11 did, in your filing today, raise some concerns about the
12 approach you -- well, I guess you think the Applicant is
13 taking to some of the responses to staff's data request.

14 So, would you like to speak to that for a minute or
15 two and we'll get responses, because it sounds like that
16 could be another potential point of friction that might
17 affect our schedule. And, therefore, we want to talk about
18 it today.

19 DR. ROE: Well, I think you alluded to the fact that
20 according to Title 20, section 1716, the person who is
21 supposed to weigh these objections to Applicant's refusal to
22 respond to a data request has to be the person who made the
23 data request.

24 So, my question is, actually to the staff, who
25 submitted those data requests, namely 77 to 84, is whether

1 they intend to petition the Committee to compel NRG to
2 provide the information?

3 MS. WILLIS: Staff met and has discussed this issue
4 and we do not plan on filing a motion to compel.

5 DR. ROE: Well, okay, then that puts POV in a very
6 interesting position because much of the information
7 requested by staff, in data requests 77 to 84, deals with
8 NRG's new routing of the transmission lines location to the
9 I-5 freeway, but some of the poles now down in the pit. And
10 those data requests asked for both visual views of what the
11 new configuration would look like from points on the freeway.

12 It asks for clearances of the lines and other
13 information that would enable the Committee to determine
14 whether there was a less visually harmful solution to the
15 NRG's proposed transmission line.

16 And if, in fact, staff will not raise any objections,
17 then maybe at this point we can formally petition the
18 Committee to compel the Applicant to respond to our data
19 requests, which to some extent deal with similar issues as
20 those raised by staff.

21 Now, we appreciate NRG's concession, as they called
22 it, to lower some of the poles, but not all of them. But
23 we're still concerned with a very strong visual impact that
24 may come from their latest proposal, which we just got to see
25 now, at the end of the last month. We hadn't seen it

1 formally before.

2 And we think that some of the questions raised by
3 both POV and the staff, on the visual impacts, relates to
4 whether in fact those transmission lines can be made less
5 visible from the freeway.

6 The poles and the heights of the poles that NRG is
7 proposing far exceed those of the transmission lines in
8 previously approved projects, such as the Panoche Energy
9 Center and the Otay Mesa Center, which have similar LMS-100
10 units, and which have transmission lines adjacent to the
11 units, which only have a height of approximately 58 feet, and
12 not over 100 feet, as the Applicant is proposing.

13 And so, there's also the fact that the clearances on
14 the poles that they show, show a 60-foot clearance from the
15 insulators to the ground, on the transmission line, when most
16 codes only require 20 feet, not 60 feet.

17 And in discussions with the City of Carlsbad Fire
18 Chief, he said he'd be very happy if he got 25 feet over the
19 driveways.

20 So, there seems to be room for improving what NRG is
21 proposing. And our data requests and I'm sure staff's data
22 requests were aimed at trying to find out information that
23 would allow an intelligent discussion on less visual
24 impactful transmission lines.

25 HEARING OFFICER KRAMER: So, can you me more specific

1 about what they're refusing to supply that you think would be
2 helpful?

3 DR. ROE: Well, in our data request we pointed out
4 that in their PTA they quoted references for the design of
5 the transmission lines, but they did not include a reference,
6 a design reference for the 230 KV line. They, instead, had a
7 reference for their 395 KV line, which presumably has much
8 larger clearance requirements than for a 280 KV line.

9 Not only that, their reference was from the 1950's or
10 60's, I believe, and the most recent references date back to
11 2013.

12 So, we're concerned that -- you know, it's hard to
13 say this, you seldom see over-design. But we think they've
14 over-designed that transmission line with consequential
15 visual impact to all of us in the area.

16 HEARING OFFICER KRAMER: So, okay, you were just
17 speaking now about your data request.

18 DR. ROE: Yes.

19 HEARING OFFICER KRAMER: But what raised your
20 concern, according to your filing, was the staff data
21 request, right?

22 DR. ROE: Yes. Well, in the staff's data request
23 they asked for clearances along the pathway of the
24 transmission line. They asked for elevation views.

25 Now, I couldn't understand why NRG, at this point,

1 says they could not provide cross-sectional views of the
2 transmission line when they were able to provide it for the
3 previous rendition, where the poles were up on top of the
4 berm. And why they can't provide it now for those, for the
5 poles that are down in the pit, is beyond me.

6 I know at the workshop we found those cross-sectional
7 drawings extremely helpful to everybody in understanding what
8 the Applicant was proposing.

9 I don't know whether that answers your question?

10 HEARING OFFICER KRAMER: So, they're refusing to
11 supply new cross-sectional drawings of the berm and the
12 towers, is that it?

13 DR. ROE: That's right. And they're refusing to
14 provide clearances along the route, as was one of the
15 requests. They're refusing to provide new visuals from the
16 freeway that the staff requested, showing the poles down in
17 the -- the new poles down in the pit, and in relation to
18 whatever screening that will be in place at the time.

19 HEARING OFFICER KRAMER: Okay, Mr. McKinsey, do you
20 want to respond?

21 MR. MC KINSEY: Yes, thank you. I'm actually still
22 not too sure how to respond to the correlation between
23 staff's data requests and the POV data requests, except I
24 think the only extent to which they do correlate is the I-5
25 widening aspect that is present in some of the data requests

1 by staff that we objected to. And it's also present in some
2 of the data requests asked by POV. But it's not thoroughly
3 on either side and they don't directly correlate.

4 But in Mr. Roe's comments I take, to some extent,
5 that a lot of the concern is related to somehow a perceived
6 widening of I-5 element to that.

7 But I don't actually agree with that over-statement
8 because if you parse the staff's data requests and why we
9 objected to them, and the POV data requests and why we
10 objected to them, you'll see that there are a lot of
11 different types of data requests and a lot of different
12 reasons why we objected to them.

13 Specifically to this discussion around design
14 components of the connections, the issue was in POV's data
15 request that they asked for very specific, detailed design
16 components as opposed to what's it generally look like?
17 What's a representative image of it?

18 So, I don't really think that we would agree with the
19 statement that we're refusing to show what things look like
20 or that we've refused.

21 And in fact, the data request that we just completed
22 responses to, that took us quite a while, that Mr. Roe
23 pointed out it's been frustrating how long he's had to wait
24 for it, is our response to 58 that the staff proposed, that
25 we just today filed the responses, which is a complete new

1 set of the renderings, using modern photos and other diagrams
2 that shows the transmission lines as we've moved them to
3 reduce their visibility in the concessions.

4 One thing that came up, that Mr. Roe hasn't yet seen,
5 even if he's gone through all of those, is we missed one
6 diagram in that response. So, we're doing a supplemental
7 response right now, actually during this thing, because we
8 forgot one rendering which is kind of the elevational cross-
9 section illustration showing the units and how the lines come
10 off the units to the first poles, and then the next ones.

11 And that also helps explain the one comment that he
12 talked about, the height-related parameters. That one of
13 these issues is that these poles connect multiple lines.
14 They're not a single line and there has to be spacing between
15 each of the sets of lines.

16 And so, the lowest set of lines is, indeed, coming in
17 around that number, maintaining a 60ish-foot height
18 clearance, and then there's spacing for the rest of it.

19 But the real issue with the data requests, for the
20 specific reasons we objected to them and, you know, they
21 weren't all about transmission. There was one asking about
22 specific areas of excavation, total cubic yards, one about
23 schedule.

24 But there were some that asked about various detail
25 design aspects of the transmission lines. And one set of

1 requests for each line, the 138 and the 230, that asked about
2 design book parameters and other assumptions being used to
3 complete detailed design engineering.

4 And, of course, that hasn't occurred yet either,
5 simply because that's what you do when you complete your
6 actual proposed building diagrams and submit them to the CBO.

7 And out of that, of course, you have to show
8 conformity to whatever code is put in place on that project,
9 specifically, as well.

10 So, I mean I do think that our objections speak for
11 themselves as to why we're objecting to them.

12 But I do think that Mr. Roe will see some of what
13 he's been looking for in what we just filed, in addition to
14 the document that we accidentally didn't include, that we're
15 getting in also today, in terms of what it's going to look
16 like.

17 But a lot of the reference to what it's going to look
18 like has two presumptions that the project owner disagrees
19 with. One is that there is any suggestion that there's a
20 potential for a significant visual impact to the project
21 resulting from proposed changes.

22 And our position, in the petition to amend, is that
23 all the changes we're proposing are improvements to a project
24 that was already determined not to have significant visual
25 impacts. And if they're not the degrading, but we're still

1 showing the visual clearance and the other information that
2 we would be required to show so that if a party disagrees
3 with that, they can certainly present testimony and their
4 positions on why they think it is a significant impact, if
5 that change is making it worse.

6 And then, secondly, the presumptions around I-5 and
7 the idea that somehow this change has triggered a need to
8 reassess the conformity with I-5. And the one position that
9 we've had is that the project is not impacting -- the change
10 is not impacting, or changing the way the project interacts
11 with any potential future I-5 widening. And that the
12 decision document that's in place, which reflected what the
13 staff recommended in its entirety, provides all the adequate
14 both mitigation, as well as the ability of the project to
15 adjust to when and how, and if I-5 is widened, straightened
16 and realigned going forward.

17 So, our position is that the I-5 aspects of this
18 haven't really presented any need for a resubmittal or
19 reanalysis of what was a really complex topic in the original
20 proceeding.

21 So, some of the presumptions in there, that POV has,
22 is that they're under a presumption or a belief that there is
23 potential significant impacts and that's driving a little bit
24 of their desire for information that is fairly burdensome and
25 challenging to produce and it takes a while. I mean, you

1 just made -- taken us a day to complete all the diagram
2 changes and rendering.

3 And secondly, that somehow is changed on the
4 circumstances of I-5 that require that the Commission also
5 reexamine how they were accommodating potential I-5 widening.
6 But we haven't gone beyond the original footprint of the
7 project in the changes that we're proposing in terms of being
8 closer to I-5.

9 And so, I think those underlying presumptions are a
10 little bit of what's driving that.

11 DR. ROE: May I respond to that?

12 HEARING OFFICER KRAMER: Go ahead.

13 DR. ROE: We're not making an argument that anything
14 has changed about the widening of the I-5, not at all.

15 What we're trying to point out is that there has been
16 a significant change from the previous proposal. The
17 previous proposal calls for the transmission line to be on
18 the west side of the project.

19 The Applicant has now moved that transmission line to
20 the east side of the project, which happens to put it
21 adjacent to either the old or the new I-5, and that major
22 change in the location of the transmission line is what
23 raises new visual impact issues.

24 HEARING OFFICER KRAMER: So, let me ask Mr. McKinsey,
25 then, you are providing a rendering, a visual rendering to

1 show how the new transmission lines on the I-5 side will look
2 from a view point in the vicinity of I-5?

3 MR. MC KINSEY: So that's exactly the question that I
4 kind of wanted to answer by responding to Mr. Roe's comment,
5 which is we don't disagree that we have changed the visual
6 characteristics of the project, including moving the intertie
7 connection lines for the generators to the west side.

8 But again, what we disagree with is that doing
9 anything beyond which we've completed, which is a complete
10 set of new KOPs, which we've now revised again in response to
11 concerns about some of the photography in the KOPs, as well
12 as our adjustments that reduce some of the visibility of
13 lines, and providing all the other underlying analysis is all
14 that's required to assess the visual characteristics of the
15 project and whether or not the change does or does not create
16 a significant impact.

17 But part of the disagreement here is, in a sense, an
18 idea that there should either be a new KOP, if somebody
19 driving along I-5 is looking out the left- or right-hand side
20 of their car, in that kind of brief period when they can
21 see -- and seeing it.

22 But there are KOPs that represent views to the
23 northeast and views to the southeast, and as well as all
24 around project. An extensive number of key observation
25 points were selected to represent the view shed for potential

1 of significant impact.

2 To some extent, I think there's also a disagreement
3 about whether those original KOPs were good enough.

4 And Mr. Roe's argument, that we don't agree with, is
5 that because the lines have moved to the west side, those
6 intertie lines, that that requires some new visual rendering
7 point, one, that should be a key observation point and that,
8 somehow captures a little bit more of that brief moment when
9 you can see them.

10 Whereas the general idea for people driving vehicles
11 is a little different than residences, parks and other
12 communities.

13 And secondly, that -- and again, the I-5 widening has
14 been brought up in reference to a lot of these, that there's
15 going to be changes on I-5 that also affect that visibility.

16 But that still we come back to the point that we have
17 and we've just provided revised complete visual renderings
18 and analysis of the visual characteristics of the projects
19 that are more than sufficient to establish that it will not
20 have a significant impact with these changes --

21 DR. ROE: Can't hear. Sorry, can't hear you.

22 HEARING OFFICER KRAMER: Did you hear any of that?

23 DR. ROE: I didn't hear the last minute.

24 MR. THERKELSEN: No, we couldn't hear it, Paul.

25 HEARING OFFICER KRAMER: Mr. Therkelsen, you're

1 saying you were able to hear it?

2 MR. THERKELSEN: No, I'm saying I was not able to
3 hear it, either.

4 HEARING OFFICER KRAMER: Well, give us the level, Mr.
5 McKinsey, again.

6 MR. MC KINSEY: So, can you hear me now?

7 MR. THERKELSEN: No.

8 (Multiple conversations concerning audio difficulty)

9 MR. MC KINSEY: I'll give you the Reader's Digest
10 version, I promise, but still succinct.

11 We disagree on the premise that there's a potential
12 for significant impact, but that doesn't mean that the
13 project owner's not providing all the necessary data, visual
14 renderings, and viewpoints, and key observation points that
15 the project has that allow an assessment that allows both the
16 staff, as well as other parties to present what they believe
17 is testimony and positions on the potential for a significant
18 visual impact.

19 We do agree and we understand we've moved the
20 intertie lines. And I actually misspoke earlier, so now I
21 get to correct it. I get my east and my west backwards.
22 But from the west to the east side, which makes them a little
23 more visible from that I-5.

24 But, again, that's a little different than saying
25 there is some lacking specific engineering information or

1 other data that is necessary to assess the project, to
2 determine whether or not it has a significant impact.

3 And then, secondly, there's an underlying presumption
4 that the KOP -- at least I think there's an underlying
5 presumption that the KOPs that the project has are not
6 adequate to evaluate the project's potential to have a
7 significant visual impact. But that's, I think, just Dr.
8 Roe's position and Power of Vision's position. And I don't
9 think it's reflected in the science and, certainly, not our
10 expert testimony and even the testimony in the original
11 proceeding.

12 HEARING OFFICER KRAMER: So, Dr. Roe, you haven't
13 seen the latest filing, I presume, is that correct?

14 DR. ROE: That's correct. No, I haven't seen any
15 visuals. I saw the latest filing. I didn't see any visuals.
16 Are they included? I'll pull them up if they were. Hello?

17 HEARING OFFICER KRAMER: People are caucusing, hold
18 on.

19 DR. ROE: Okay.

20 MR. MC KINSEY: Actually, what I'm hearing is the
21 visual didn't actually go in yet, either. That may be partly
22 due to their size or their lengthy, but they're completed as
23 well.

24 So, yeah, they currently haven't been docketed.

25 HEARING OFFICER KRAMER: So, were they uploaded

1 today?

2 MR. PIANTKA: Yeah, this is George Piantka, NRG.
3 When we met at the last conference, we indicated that they're
4 -- you know, it isn't yet the end of the day, so we're still
5 in the process of docketing the revised visuals.

6 What we were referring to earlier is data set three,
7 which was docketed on Friday and it was figure 74F, so data
8 request 74F. That's the cross-sectional view that shows the
9 gen tie locations, the wires connecting to it from the H
10 frames, and the capacitors, and the generation equipment as a
11 whole.

12 That's what we're going to reintroduce in a revision
13 to data set three and we're working on that right now.

14 HEARING OFFICER KRAMER: Okay, thanks.

15 So, Dr. Roe, I think at this point we just have to
16 leave it. We hope, by having these meetings, that we
17 sometimes facilitate a dialogue that helps each side
18 understand each other.

19 DR. ROE: Right, right, I appreciate that.

20 HEARING OFFICER KRAMER: But I think, ultimately, if
21 at the end of the day or the week, after you've been able to
22 review these filings, if you continue to be unhappy, you will
23 have to take the actions that are open to you, whether that's
24 a motion to compel or something else.

25 We can't pretend to resolve this today --

1 DR. ROE: No, we understand that.

2 HEARING OFFICER KRAMER: -- because it's not even
3 formally presented to us.

4 DR. ROE: I understand that.

5 HEARING OFFICER KRAMER: Okay.

6 DR. ROE: I have two other comments that may be
7 helpful.

8 HEARING OFFICER KRAMER: Regarding the schedule?

9 DR. ROE: No, regarding the information supplied by
10 the Applicant.

11 HEARING OFFICER KRAMER: Okay, could you speak up
12 just a little bit?

13 DR. ROE: Yes, in the Applicant's current status
14 report, they show some new drawings, namely DR24-1-RI and
15 DR24-2-RI and DR24-3-RI.

16 MR. MC KINSEY: Dr. Roe, this is John McKinsey. You
17 said our status report, but you actually mean our filing on
18 Friday, correct?

19 DR. ROE: That's correct. Yes, that's correct.

20 Which show transmission line cross-sections. I
21 noticed that there were no dimensions on those cross-
22 sections. There had dimension arrows but no dimensions. Is
23 there any reason the dimensions were left off?

24 MR. MC KINSEY: I don't have an answer today, but
25 I'll find out the answer to that.

1 DR. ROE: Okay, and I had another question. There
2 was no response to staff's data request number 75, asking for
3 clearances. I wish you would look into that, too.

4 And one other -- go ahead.

5 HEARING OFFICER KRAMER: No, I was just going to tell
6 you that they're thinking.

7 DR. ROE: Oh, okay. And while they're thinking, Mr.
8 Kramer, I would like to raise the question of the smoke
9 stacks that the Applicant shows. I believe he has a 70 or
10 72-foot smoke stack.

11 And when I was looking at the Panoche Energy Center
12 and the Otay Mesa Center, I noticed their smoke stacks are a
13 hundred feet high. And I was just wondering where the
14 information would be found justifying the lower smoke stacks?
15 Particularly, since this is also 23 to 25 feet below the
16 normal surface of the ground there.

17 MR. MC KINSEY: Dr. Roe, this is John McKinsey. Can
18 you hear me?

19 DR. ROE: I can, thank you.

20 MR. MC KINSEY: I can tell you that the answer on
21 stack height is driven by the Clean Air Act and California's
22 rules, and basically the modeling, which is driven by meeting
23 the ambient air quality standards on the ground and some of
24 the other aspects of determining what the discharge stream
25 will do as it interacts in the air with objects on the

1 ground, and the terrain features.

2 So, there is no specific stack height in California,
3 anyway, for any given unit that automatically applies to a
4 unit at a different location, that it's entirely driven by
5 public health and air quality modeling and requirements.

6 And so, the heights here were those that met the
7 requirements for ambient air quality standards and the other
8 components of public health and air quality.

9 DR. ROE: Would you be kind enough to enlighten me,
10 if not now, perhaps in an e-mail, where the air quality
11 calculations are that justify this height?

12 MR. MC KINSEY: Well, there are a lot of them.
13 They're in the air quality section of the petition to amend,
14 and in a really big, actually several appendices, the air
15 permit application, which is either an appendices or filed
16 separately. And then, either another appendices, which is
17 all the underlying data which fills up, you know, 700 pages.

18 And, you know, these are really advanced computer
19 models. And so, I can't even point to a single page.

20 But in the petition to amend you'll find a summary of
21 the description of the modeling and compliance with ambient
22 air quality standards.

23 You'll also find references in there, in places, to
24 the meteorological data that was used and the performance
25 criteria. But frequently you'll have to go into the

1 appendices and into the much more technical details to find
2 most of that information.

3 MR. ROE: Well, good, I love technical details.

4 MR. MC KINSEY: I know you do.

5 MR. ROE: I had guessed that you be able to achieve
6 less than a hundred-foot stack because of the critical way in
7 which the stacks were placed to one another. And I thought
8 this was one of the contributing factors.

9 But the thought occurred to me that, hum, that would
10 only work if both units were operating simultaneously and
11 probably at full load.

12 MR. MC KINSEY: I'm not the technical expert in this
13 area, but I do know that I never heard that that was the idea
14 behind locating them that way.

15 I know we liked the fact that putting them closer
16 together seemed to make the view corridors wider in between
17 them, but it's also partly driven by configuration.

18 But I don't think there was ever -- that I ever heard
19 that there was an intentional decision to locate them for air
20 quality emission reasons.

21 But again, this would be a great question to bring up
22 when you had, you know, the type of testimony and information
23 being -- you know, when you had an air quality witness who
24 was answering questions.

25 HEARING OFFICER KRAMER: Or perhaps at a workshop.

1 So, Dr. Roe, anything else?

2 DR. ROE: No, I only have a procedural question. Are
3 transcripts of these hearings, monthly hearings, being sent
4 to us?

5 HEARING OFFICER KRAMER: Well, they're filed in the
6 docket and you get an e-mail saying that it's up there.

7 DR. ROE: It is docketed?

8 HEARING OFFICER KRAMER: Yes, they will be. We have
9 not been paying for expedited turnarounds on these things,
10 because we don't feel that we need them right away. But I
11 think we're probably due pretty soon for the transcript of
12 the last hearing.

13 And this one might take a little longer because
14 they're going to have to transcript the tape, you know, which
15 is, as you know, of perhaps questionable quality.

16 But, yes, they should all be found in the docket.

17 DR. ROE: Thank you very much, I appreciate it.

18 HEARING OFFICER KRAMER: Okay, so I think that seems
19 to be all the issues that were relating to the schedule.

20 Ms. Willis, did you have something?

21 MS. WILLIS: We just had a few questions for guidance
22 from the Committee, if I may?

23 HEARING OFFICER KRAMER: Sure.

24 MS. WILLIS: The first is depending on when the PDOC
25 is issued, and we're assuming November 10th at this

1 particular time but if, perhaps, it's later would the
2 Committee prefer us to bifurcate the PSA or to publish all in
3 one document?

4 HEARING OFFICER KRAMER: Bifurcate.

5 MS. WILLIS: Okay. The second question is -- well,
6 actually, both questions are in regard to conditions of
7 certification. There's a little bit of confusion from staff
8 on how to address the conditions.

9 And our understanding is that any of the conditions
10 from the previous -- just in the current decision that would
11 be changed, deleted or added we would do that in an
12 underline, strikeout type, but we would not address any of
13 the conditions that are not impacted by the project change.
14 And we're just asking for clarification.

15 And the other option would be we would go back
16 through and rewrite conditions, any of the other conditions
17 as might see fit.

18 (Pause)

19 HEARING OFFICER KRAMER: So, a relatively new
20 innovation that the committees are using that Huntington
21 Beach may be the first example of, is when we have a final
22 decision, certainly, we're putting all the conditions in a
23 single appendix. It makes it easier for everyone. It's
24 easier to apply the formatting.

25 Also, we know that when cases go to compliance

1 somebody has to drag all those things into one place, anyway,
2 so why not start with them all being in an appendix.

3 So, if you wanted to do that in the PSA, to put them
4 all in one appendix, all the different sections, that would
5 be great.

6 And show the deviations or the changes from the
7 previously-approved conditions by underline/strikeout. So, I
8 guess that means you would put in all the conditions, whether
9 you think they need to be changed or not, but show the
10 changes in underline/strikeout.

11 And that also in Huntington Beach there was a bit of
12 an effort made, or staff was asked to try to improve the
13 conditions based on --

14 MS. WILLIS: I think that's the question that we're
15 asking.

16 HEARING OFFICER KRAMER: We're open to that, but
17 we're not -- so, we will provide more guidance down the road.
18 So, it might be at the point of the PSA for improvements, you
19 know, further improvements could be made.

20 MS. WILLIS: So, the second part of the question
21 actually was about the appendix that would contain the
22 conditions of certification. We have various thoughts on
23 that issue, as well.

24 But my understanding is it would be published -- the
25 conditions would be published as part of the section and then

1 in the appendix, as well. So that for readability, and that
2 staff would be sponsoring one section, which would include
3 their analysis and the conditions, and then we would have,
4 basically, a cut and paste section of all of the conditions.

5 HEARING OFFICER KRAMER: Okay.

6 MS. WILLIS: Does that sound reasonable?

7 HEARING OFFICER KRAMER: It does raise a sort of
8 aversion control or, you know, making sure the two are in
9 sync.

10 MS. WILLIS: Well, we would need to do that, the
11 appendix at the very end to make sure that we have all the
12 changes.

13 HEARING OFFICER KRAMER: Yeah, because as far as
14 staff sponsoring testimony, I think everyone would understand
15 that their portion of the appendix would be theirs. Here's
16 another option. If you want, you could just -- you could
17 make it your homework to get the appendix put together at the
18 time of the FSA.

19 MS. WILLIS: Okay, for the FSA, but not for the PSA?

20 HEARING OFFICER KRAMER: Right, if that works easier.

21 MS. WILLIS: I think that would work better.

22 And then we have one final comment. The cultural
23 issues that we were addressing with the Applicant, we did
24 meet via teleconference with the Application on October 30th,
25 and some of the issues were resolved.

1 But we're down to the point where we've narrowed down
2 the request to do testing on two different sites, which is
3 for archeological and for historical resources.

4 And we've met with the Applicant, I believe today, to
5 discuss access. Applicant is not willing to do the testing,
6 but we're willing to hire Aspen contractors to go in and do
7 the testing. So, we're trying to get approval for access to
8 the site.

9 HEARING OFFICER KRAMER: Is that going to be an
10 issue, Mr. McKinsey, do you know?

11 MR. MC KINSEY: Well, I wasn't in the meeting today,
12 so I don't know everything that came up today. But I got a
13 kind of a summary of the conversation.

14 And this is a little different than the version I
15 heard and it's a little different than the discussion we had
16 last week.

17 But underlying all of this is, I think to some
18 degree, a difference of opinion about whether there is a
19 potentially significant archeological site present in the
20 tank and kind of northwest area west of the railroad tracks.

21 And so, I think, you know, and I kind of explained
22 this last week, that to the extent that it's something we can
23 accommodate that doesn't, you know, have time-related issues,
24 process-related issues which in our mind, right now, is
25 thinking about the staff concluding their analysis, we can

1 give in in a lot of ways.

2 Another issue we have with this is that right now
3 Poseiden is using still quite a bit of that area. It's a
4 construction zone for the desalinization plant.

5 And so you have an operating power plant there, you
6 have a desalinization construction and so to get, you know,
7 all the right approvals, for instance, to grant some third
8 party -- and again, this is the first I'd heard of a third-
9 party idea. But just having nothing to do with the -- or
10 maybe it still has something to do with the staff's desire to
11 have this, but that could be problematic.

12 And our biggest concern about all of this is, both on
13 the cost, as well as how long it really might take to get
14 where you're actually conducting the studies could impact the
15 project for something that we don't believe is necessary to
16 complete the analysis of the project.

17 I don't think we're opposed to one way or another as
18 to, you know, providing the types of data at some point. And
19 it may make sense to -- it might really make sense to do it
20 post-decision, for instance. But we don't think it's a
21 necessary component to ensure that the project will not have
22 a significant adverse impact that's not correctly mitigated.

23 And our general position is that the conditions of
24 certification in the project now, really -- in fact, if you
25 look at their underlying basis for why they're there, there's

1 really nothing that's been raised that requires their
2 adjustment for what they provide, which is monitoring, and
3 when something is found the appropriate reaction, mitigation,
4 preservation, et cetera response, if a resource is found.

5 And so, but again, if there is a way to accommodate
6 this that doesn't create a cost burden and doesn't create a
7 risk on schedule of the project, we would concede. But
8 there's a lot of complications with that, understanding why
9 the staff needs to do it.

10 And if they need to do it in order to assess the
11 project, then we have to disagree with that need because that
12 risks the assessment schedule.

13 If they need it or want it, then that's something we
14 might be able to provide, but it wouldn't drive the schedule.

15 But again, I think we remain cooperative and we want
16 to find a way to provide the data. I don't think there's
17 any -- you know, we certainly aren't trying to hide anything
18 or have any issues about, you know, learning all of these
19 things.

20 I think we have a question about how that fits into
21 the petition to amend approval process.

22 HEARING OFFICER KRAMER: Okay, so nothing the
23 Committee can really give much guidance on today.

24 MS. WILLIS: And just for clarification, staff does
25 not intend on holding up the schedule for this, but we do

1 believe the information is needed. And we would probably --
2 it could appear as part of the FSA or part of the PSA.

3 HEARING OFFICER KRAMER: Okay, thank you.

4 We wanted to ask, generally, if you had any concerns
5 about the schedule we published last week that basically gets
6 to a decision at the full Energy Commission in June of 2015?

7 This time, we'll start with Dr. Roe. Did you have
8 any comments about the schedule?

9 DR. ROE: No.

10 HEARING OFFICER KRAMER: Staff?

11 MS. WILLIS: None at this time. We're planning on
12 publishing on the 15th, as listed.

13 HEARING OFFICER KRAMER: That would be great.

14 Mr. McKinsey?

15 MR. MC KINSEY: No.

16 HEARING OFFICER KRAMER: Well, we see that Ms.
17 Siekmann has joined us, is that right?

18 MS. SIEKMANN: Yes, I apologize.

19 HEARING OFFICER KRAMER: Okay, now you're unmuted, so
20 start over if you had been talking.

21 MS. SIEKMANN: Well, I said -- I've been trying to
22 (inaudible) for the last (inaudible) minutes. -- I've been
23 here listening, but I just didn't talk.

24 HEARING OFFICER KRAMER: Okay. Well, you sound like
25 you're underwater to us. So, did you have any issues to

1 raise today?

2 MS. SIEKMANN: This is -- I took you off
3 speakerphone.

4 COMMISSIONER DOUGLAS: Much better.

5 HEARING OFFICER KRAMER: Yes, thank you. Those
6 things are evil.

7 MS. SIEKMANN: Yes, they are.

8 HEARING OFFICER KRAMER: So, did you have any issues
9 to raise with us?

10 MS. SIEKMANN: Yeah, when the visuals were being
11 discussed, I really wanted to bring up the fact that things
12 have changed significantly in this view for going along the
13 side, because so many of those trees that were there before
14 are gone.

15 And as you drive along 5, you can see thoroughly
16 inside there. You can see clearly inside there. So, even
17 though maybe the view situation was discussed for the CECP,
18 it has changed significantly since that time because there's
19 so many trees gone.

20 So, we have a completely different view issue going
21 on. It has nothing to do with the I-5 widening. It has
22 nothing to do with changing -- I mean, I know we have a
23 different power plant, but the view has changed significantly
24 for those of us who live here.

25 HEARING OFFICER KRAMER: Okay.

1 MS. SIEKMANN: And I have been trying to get that
2 across, but have been denied by the Applicant.

3 HEARING OFFICER KRAMER: Okay, well if -- ultimately,
4 you can, of course, litigate that during the hearings.

5 COMMISSIONER MC ALLISTER: Can I ask a question?

6 MS. SIEKMANN: But we were discussing that and so you
7 asked if anything had changed. Well, that's what has changed
8 and that wasn't brought up so --

9 COMMISSIONER MC ALLISTER: I guess -- this is
10 Commissioner McAllister. I'm wondering if the -- well, I'll
11 actually ask Applicant.

12 So, it sounds like there's new information that's
13 been submitted that may or may not satisfy informational
14 needs in terms of visual of the various folks, Intervenors
15 who want it.

16 Does your visual -- do your new submittals take into
17 account the changes in vegetation, et cetera, and provide
18 that actualized, updated view of the visuals?

19 MR. MC KINSEY: So the answer is yes, that the new
20 renderings show current photos of what it currently looks
21 like.

22 But one of the other components to understand is that
23 there's actually a landscaping condition as part of the
24 visual conditions of certification that staff imposed on the
25 project.

1 And so, the answer to the visibility of the project
2 is that there has to be planting and screening done that --
3 in other words, the fact that there are trees missing at this
4 very minute, which I think came up in the staff workshop, it
5 may not have come up in a Committee thing before.

6 But there were some dead trees and diseased trees
7 that were removed in the early part of this year on the
8 hillside. And so, the areas you can see through right now
9 and that --

10 COMMISSIONER MC ALLISTER: And that's next to the
11 freeway and the site --

12 MR. MC KINSEY: Yes, and north of the site, as well.
13 And so, but that doesn't actually mean that that's what the
14 project will look like. That's simply what it looks like
15 right now.

16 And we're using those as the basis for visual
17 rendering because even with that it satisfies the visual
18 criteria, but staff still imposed a condition of
19 certification that requires a landscaping plan be completed
20 prior to the start of construction, at least it's triggered
21 over certain (inaudible) events. And landscaping, that
22 actually drives what it will be screened.

23 And so, part of the disconnect between our position
24 and what Terramar has sought as information has been, I
25 think, a disagreement on the premise and an understanding of

1 the difference between what it looks like right now versus
2 what it's required to look like when it's completed.

3 And that component hasn't changed one iota. The fact
4 that a few trees have died in the interim year, doesn't mean
5 that the project still doesn't have to have a complete visual
6 screening around it.

7 MS. SIEKMANN: May I just respond?

8 HEARING OFFICER KRAMER: Yes. But understand that
9 we're not litigating --

10 MS. SIEKMANN: I just want to say, though, that when
11 we had the CECP, when we went through all of those hearings,
12 those trees were considered a very important part of the
13 screening. So, of course, Terramar, seeing that they're
14 gone, wanted to make sure that that was taken into account.

15 Even though -- it was taken into account. Even
16 though it's not the I-5 or, you know, it doesn't have
17 anything to do with the old power plant versus the new power
18 plant, it has to do with a change in how the view looks now,
19 as opposed to what it looked like before.

20 HEARING OFFICER KRAMER: Okay. Well, keep track of
21 that and --

22 MS. SIEKMANN: As you're driving -- as you're driving
23 along the I-5.

24 DR. ROE: Can I make a point?

25 HEARING OFFICER KRAMER: Dr. Roe.

1 DR. ROE: Yeah, I think in conjunction with what Ms.
2 Siekmann just said, the visual remedies that were imposed in
3 the CECP had in mind to screen two tall power units, which
4 are no longer going to be there.

5 Now, we have a totally different concern. It's not
6 the screening of the old power plants, with the old visual
7 restrictions apply to, we're now concerned about how this
8 screening is going to affect the transmission line, or the
9 transmission tie line that runs along, adjacent to the
10 freeway.

11 HEARING OFFICER KRAMER: Okay, we understand that.
12 But the time to really discuss that in detail is in the
13 future, I think, after staff has made its analysis and you've
14 had an opportunity to talk to them at workshops about that,
15 and not today.

16 DR. ROE: That brings me to a question about the
17 Committee's schedule. I see one workshop scheduled for the
18 middle of January, a workshop, and you mentioned that
19 testimony can be presented at a hearing. And the first
20 hearing I see listed is the evidentiary hearing in March, the
21 latter part of March.

22 Is there any other hearing prior to March?

23 HEARING OFFICER KRAMER: No, not a hearing before the
24 Committee. Otherwise, you're just talking and providing
25 comments to staff along the way, as they go from their

1 preliminary to their final staff assessment.

2 DR. ROE: Okay, thank you very much.

3 HEARING OFFICER KRAMER: Okay, thank you.

4 Okay, so with that, Ms. Siekmann, did you have any
5 comments about the schedule that was published last week?

6 MS. SIEKMANN: I don't have any problem with the
7 schedule. The schedule's fine for me, thank you.

8 HEARING OFFICER KRAMER: Okay, thank you. So, I
9 think that's all we have.

10 I'm sorry?

11 MR. THERKELSEN: Excuse me, this is Bob Therkelsen,
12 representing the City of Carlsbad. The City really wants to
13 express its appreciation to the Committee for taking the
14 City's concerns into account in establishing a schedule that
15 has specific milestones and targets for all of us to work
16 toward. Thank you.

17 HEARING OFFICER KRAMER: Thank you.

18 So, now we'll move on to the public comment portion.
19 So, if we can unmute it? We have nobody but staff and the
20 Applicant in the room here.

21 Does anyone on the telephone wish to make a public
22 comment?

23 Going once? Okay, nobody. Thank you.

24 Hold on a second.

25 Okay, so we are going to go into a closed session,

1 now. And that is in accordance with Government Code Section
2 11126(c)(3), which allows a State body, including a delegated
3 committee, such as this, to hold a closed session to
4 deliberate on the decision to be reached in a proceeding a
5 State body is required by law to conduct.

6 We do not anticipate making any decisions which will
7 be announced. But I will leave the WebEx open and when the
8 closed session is concluded, I will come back down simply to
9 note that for the record.

10 COMMISSIONER MC ALLISTER: Any additional public
11 comment?

12 HEARING OFFICER KRAMER: No. And the time for public
13 comment has closed.

14 So, thank you all for attending and we look forward
15 to seeing you in a little more than a month to see how we're
16 doing. Hopefully, we will have a PSOC and word that draft
17 sections are being given their final polish for publication
18 in mid-December.

19 Thank you all and we're adjourned to a closed
20 session. We'll be back in a little bit.

21 (Off the record for a closed session.)

22 (The Committee returned from closed session and
23 adjourned the meeting at approximately 4:15 p.m.)

24


25

TRANSCRIBER'S CERTIFICATE

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 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 2nd day of December, 2014.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520