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

In the Matter of:)
Carlsbad Energy Center Amendments) Docket No. 07-AFC-06C
_____)

COMMITTEE STATUS CONFERENCE

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

WEDNESDAY, MARCH 18, 2015

9:30 A.M.

Reported by:
Peter Petty

APPEARANCES

COMMISSIONERS

Karen Douglas, Presiding Member

Andrew McAllister, Associate Member

HEARING OFFICER

Paul Kramer, Hearing Officer

ADVISERS

Jennifer Nelson, Advisor to Commissioner Douglas

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Eileen Allen, Advisor to Commissioner Douglas

Pat Saxton, Advisor to Commissioner McAllister

Eileen Allen, Commissioner's Technical Advisor for Facility Siting

Alana Matthews, Public Advisor

STAFF

Kerry Willis, Staff Counsel

Mike Monasmith, Project Manager

Jon Hilliard, Project Manager

Matt Layton

APPLICANT

John A. McKinsey, Locke Lorde, LLP

George Piantka, NRG Energy, Inc.

APPEARANCES (CONTINUED)

INTERVENERS

Julie Baker, Power of Vision

Arnold Roe, Power of Vision

Bob Sarvey

David Zizmor, Representing Rob Simpson

Rob Simpson

Kerry Siekmann, Terramar Association

AGENCIES

Allan Thompson, City of Carlsbad

Bob Therkelsen, Consultant, City of Carlsbad

Steve Moore, San Diego Air Pollution Control District

P R O C E E D I N G S

9:54 A.M.

PROCEEDINGS BEGIN AT 9:54 A.M.

(The meeting was called to order at 9:54 a.m.)

SACRAMENTO, CALIFORNIA, WEDNESDAY, MARCH 18, 2015

MEETING BEGINS AT 9:54 A.M.

HEARING OFFICER KRAMER: So we're on the record.

This is Paul Kramer. This is the Carlsbad Energy Center
Amendments Committee prehearing conference for March 18, 2015.

We've had some difficulties with our audio system
here, and we're working those out. One of the difficulties
requires that we reboot the system. And the Committee is
going to take advantage of that little delay to hold a closed
session for the purpose of deliberating on some of the matters
that are before it for decision, and that's pursuant to
Government Code 1126 subdivision (c)(3). We will come back at
about ten minutes after 10:00 to start the meeting. And we
may, just so you know and you're not surprised, there may be a
closed session later in -- during today's proceedings, as
well. But there are a few things that we can talk about and
perhaps reduce the length of the next closed session which
will be most likely for your convenience as parties, because
we will probably be asking you to hang around after the end of
that closed session to hear one or two decisions that may be
made.

1 So with that we'll go into closed session. And
2 we'll see everyone back here at about 10:10.

3 (Whereupon the Committee adjourned into closed session.)

4 (Off the record at 9:55 a.m.)

5 (On the record at 10:29 a.m.)

6 HEARING OFFICER KRAMER: So Commissioner McAllister
7 may want to --

8 COMMISSIONER MCALLISTER: No. Go ahead.

9 HEARING OFFICER KRAMER: -- make a -- no? He says
10 go ahead.

11 COMMISSIONER MCALLISTER: Yeah, I'm ready.

12 HEARING OFFICER KRAMER: Okay.

13 COMMISSIONER MCALLISTER: Thank you all for being
14 here. Hopefully we are ready with our technology. I will
15 just let everyone know that I have it on good authority that
16 we do have an investment plan for the audio system for this
17 room that will be wireless. And we're also fixing the AC
18 while we're at it. So hopefully we can move forward
19 expeditiously with that investment so that this problem, this
20 recurring problem doesn't happen again.

21 HEARING OFFICER KRAMER: Okay. This is Paul Kramer,
22 the Hearing Officer for the Carlsbad Energy Center Amendments
23 Committee. Welcome to our, unfortunately, delayed prehearing
24 conference. Let's try to identify everybody for the record
25 beginning with the Applicant.

1 MR. MCKINSEY: This is John McKinsey with Locke
2 Lorde. We represent the project owner Carlsbad Energy Center,
3 LLC. And also with me is George Piantka representing NRG, the
4 owner of the project owning entity and representative of the
5 project.

6 HEARING OFFICER KRAMER: And Staff?

7 MS. WILLIS: This is Kerry Willis, Staff Counsel.
8 And with me are Project Managers John Hilliard and Mike
9 Monosmith.

10 HEARING OFFICER KRAMER: Thank you. Thank you. In
11 the room with us we have representatives of the City of
12 Carlsbad.

13 MR. THOMPSON: Allan Thompson. And next to me is
14 Bob Therkelsen. We're representing the City.

15 HEARING OFFICER KRAMER: Thank you. And then
16 Interveners. Terramar Association?

17 MS. SIEKMANN: Kerry Siekmann, Terramar Association.

18 HEARING OFFICER KRAMER: Power of Vision?

19 DR. ROE: (Inaudible.)

20 HEARING OFFICER KRAMER: That was Dr. Roe; right?

21 DR. ROE: Yes.

22 HEARING OFFICER KRAMER: And did Julie Baker make it
23 back, as well? Okay.

24 Rob Simpson?

25 MR. ZIZMOR: This is David Zizmor representing Rob.

1 HEARING OFFICER KRAMER: Now in the past we had a
2 dialogue, and that was -- you described your representation as
3 unofficial. Are you -- has your status changed?

4 MR. ZIZMOR: I'm representing him as his attorney.
5 I mean, I'm not like a full-time (inaudible).

6 HEARING OFFICER KRAMER: Okay. So you, for
7 instance, don't need to be listed on the proof of service list
8 or anything like that?

9 MR. ZIZMOR: Sorry. I didn't hear that last part.

10 HEARING OFFICER KRAMER: So you're not -- you're not
11 currently on the proof of service list and you're not
12 expecting to be on there, are you?

13 MR. ZIZMOR: No. I mean, I'm getting emails about
14 everything going on in the proceeding, but I'm not officially
15 (inaudible).

16 HEARING OFFICER KRAMER: Okay. And that's fine with
17 you?

18 MR. ZIZMOR: Yes.

19 HEARING OFFICER KRAMER: Okay. Robert Sarvey? We
20 need to have a conversation with him. I hope he makes it
21 back.

22 MS. BAKER: Oh, hello. Sorry. This is Julie Baker
23 just reconnecting.

24 HEARING OFFICER KRAMER: Okay. Welcome. We are
25 still taking roll so you didn't miss anything.

1 Mr. Sarvey, are you with us? Okay.

2 What about the Sierra Club whose petition to
3 intervene was granted a week or two ago? Okay.

4 From the Public Advisor's Office we have both Alana
5 Matthews and Shawn Pittard.

6 Do we have anyone from the California ISO?

7 What about the San Diego Air Pollution Control
8 District?

9 DR. MOORE: Steven Moore, Air Quality Control
10 District. And Nick Horres is also online.

11 HEARING OFFICER KRAMER: I'm sorry. You were cut
12 off. Is that Dr. Moore?

13 DR. MOORE: Yes, it is.

14 HEARING OFFICER KRAMER: Okay. Great. Thanks
15 for -- for coming.

16 DR. MOORE: Sure.

17 HEARING OFFICER KRAMER: Anyone from the Coastal
18 Commission? Okay.

19 I'll also note that Commissioner Douglas had stepped
20 out of the room for a minute, but she's back with us.

21 COMMISSIONER MCALLISTER: So just wanted to point
22 out, too, I'm Commissioner McAllister, the Associate on
23 this -- on this case. And my Advisor Pat Saxton is with me.
24 And Commissioner Douglas and her Advisor Jennifer Nelson. And
25 Eileen Allen, an Advisor on the siting matters.

1 PRESIDING MEMBER DOUGLAS: This is Commissioner
2 Douglas. I'll just welcome everybody. Sorry for the late
3 start. And turn this over to the Hearing Officer.

4 I guess you've done introductions, of course?

5 HEARING OFFICER KRAMER: Yes. Okay.

6 So as we announced last week maybe, early last week,
7 perhaps the week before, today we are going to hear argument
8 on Mr. Simpson's motion to delay the proceedings. That's the
9 first order of business today as a pending motion.

10 I'll just note that the motion that Mr. Sarvey filed
11 this Monday regarding the payment of an application for
12 certification style fee for this amendment will be heard
13 during our evidentiary hearings in Carlsbad on April 1st,
14 probably on the 1st, not the 2nd. But -- and a memo to that
15 effect will go out either today or later this week. But given
16 that it was filed only on Monday and there is no particular
17 urgency to it, there is certainly no reason for us to speed up
18 the time for people to respond and be ready to argue it.

19 So with that, Mr. Zizmor, as Mr. Simpson's
20 representative you get to make the opening statement regarding
21 his motion, if you want to go ahead.

22 MR. ZIZMOR: Thank you. As we said in our motion
23 the two primary reasons we were asking for a delay of a few
24 weeks in this proceeding is that the final determination for
25 compliance hasn't been given to anybody in this proceeding

1 yet. We're still waiting on that. And as I'm sure you all
2 well know, the California Public Utilities Commission handed
3 down a proposed decision just about a week-and-a-half ago that
4 denied the Power Purchase Tolling Agreement to the Applicants
5 here, or to San Diego Gas and Electric anyway.

6 Based on these two key documents, we need to delay.
7 I'll start with the final determination of compliance. That
8 was promised to us by March 13th. That's what the Commission
9 told us, the day they expected to have it. It's -- it's five
10 days later now. It's March 18th and we still don't have it.
11 Even if we got it this afternoon, which I don't know that we
12 will, that's already five days lost. We need the time to
13 study it. It's an important document that has an impact on
14 this proceeding.

15 This is the same thing that happened earlier with
16 the preliminary determination of compliance where the
17 Commission said would be in our hands in early November, and
18 it didn't show up in our in boxes until a month later.

19 So there's a lot of concern that we're being rushed
20 into examining this proceeding without having all of the
21 information available to us. I don't know why there is such a
22 rush at this point, but I'll get to that in a little bit.

23 As I said, the second point is the Power Purchase
24 Tolling Agreement was not approved by the Public Utilities
25 Commission. The Commission and the project owner both opposed

1 our motion. They both said that there were opposing it
2 because the Power Purchase Tolling Agreement is not necessary
3 for the Commission to proceed in this case. That may be true,
4 but it's also true that no recent power project has been
5 constructed in the state without one. And I would point
6 everybody to the FSA, I'm just going to read from it for a
7 moment, at page -- Appendix 821-33 ((phonetic)). That's also
8 page 180 of the .pdf file. What the CEC Staff told us when we
9 asked specifically about this question, when we asked this
10 question about whether or not a project has proceeded without
11 a Power Purchase Agreement, the Staff replied:

12 "The only merchant plant developed in 2003 that has
13 been constructed without a PPA is Inland Empire, owned by
14 General Electric. They built and operate this facility for
15 purposes of demonstrating advanced jet turbine technology to
16 their potential customers beyond the typical merchant plant
17 owners' goals. Roughly 40 projects under Energy Commission
18 jurisdiction has come on line since 2003."

19 So in other words, around 40 projects have gone
20 online in the last 12 years and only one, a demonstration
21 plant, did not have a Power Purchase Agreement. So while the
22 Power Purchase Agreement may not be necessary to proceed here,
23 we also know that it is necessary for the actual project to go
24 forward. There's not going to be any shovels in the ground
25 without that agreement.

1 Moreover, according to the PUC's proposed decision
2 the site of the Carlsbad -- the Carlsbad Project could change
3 depending on the outcome of the RFO. This means the project
4 has to wait until the completion of the RFO to know whether
5 there will be any substantial changes to the existing amended
6 project. The proposed addition to visual needs to wait for
7 the RFO because the Carlsbad Project likely will not come --
8 begin construction until 2017. That's two years later than
9 the current timeline. In other words, there's a lot more time
10 available in this proceeding, and there's really no need to
11 rush.

12 We only ask a delay of a short amount of time until
13 after the anticipated final decision from the PUC is handed
14 down. It could come April 9th. That's their next hearing.
15 There's -- there's also the possibility it might not be until
16 the -- until the following month. I didn't want to propose
17 waiting two months. I thought that would be unreasonable, but
18 I thought waiting a couple of weeks to get the final -- to
19 hopefully get the final decision would be appropriate so we
20 can at least read that and have a better idea of how long the
21 whole project is going to be pushed back. Because we
22 certainly know that there's a significant amount of
23 uncertainty about what the size of this project is going to be
24 based on waiting for that RFO to be completed. Nobody is
25 putting any shovels in the ground on a multi-billion dollar

1 Project.

2 So with no need to rush this project the Commission
3 needs to allow all parties more time to review this still
4 pending final determination of compliance and wait for the PUC
5 to hand down their final decision, hopefully on April 9th. We
6 really would like the extra time. We're not asking for a
7 whole lot, just a couple weeks, and we think it's reasonable.

8 HEARING OFFICER KRAMER: Okay. The Applicant -- or
9 Petitioner?

10 MR. MCKINSEY: Thank you. I think almost everything
11 that the petitioner has indicated we've rebutted in our
12 written testimony, our response on this motion. But I'd like
13 to reiterate a couple of components and correct something that
14 we disagree with the accuracy of the statement.

15 It -- first, the decision that is out is the
16 proposed decision by the administrative law judge in the
17 proceeding, so it doesn't reflect a decision by the Commission
18 at this point. And there's still an ongoing process where the
19 parties participate.

20 Secondly, the -- the Power Purchase Agreement -- and
21 we disagree completely that -- that that has some governing
22 effect over the ability or the authority to construct a
23 project. It simply represents a procurement path for the
24 power from a project if it would be built. The question about
25 if or when or how it would be built is a decision that's made

1 by the holder of the permit that they get from this
2 Commission, as well as a few related permits such as the air
3 permit. And that's this process, and that's the focus of
4 this. And that's the reason why the response to a lot of the
5 discussion around the status of the Power Purchase Tolling
6 Agreement as a sewed up answer, which is it really doesn't
7 have an effect on this process. And -- and regardless, even
8 if an administrative law judge in a decision makes statements
9 that would purport to say this is when or how something would
10 be built, the fact of the matter again is that would only
11 occur if there was a Power Purchase Agreement wherein the
12 authority to build was being granted. But where there isn't
13 one, then that doesn't affect the ability of the project owner
14 to find an alternate procurement path, build it as a merchant
15 project. And despite the lack of recent history of any of
16 those things it's a simple fact that the project can be built
17 if it has an Energy Commission decision and the other required
18 environmental and land use permits.

19 On the point regarding the FDOC, I think we make our
20 point pretty clearly that the simple fact is that the FDOC
21 itself is not necessary for us to engage in evidentiary
22 hearings. And clearly we have to have the FDOC in order to
23 complete the CEQA equivalent process that the Energy
24 Commission represents. And so the FDOC being delayed can't
25 effect the outcome and delay it. And so even if we didn't get

1 an FDOC, that would not be a reason not to at least conduct
2 evidentiary hearings on all the topics that we can, and hold a
3 second evidentiary hearing if that was necessary.

4 But I'll say I'm very confident that if you ask Dr.
5 Moore on the phone right now he would tell you that the FDOC
6 truly is imminent and that we will have it, and that there
7 will be plenty of time to be reflected in rebuttal testimony
8 next week and to be included in the evidentiary hearing topics
9 in two weeks.

10 HEARING OFFICER KRAMER: Thank you. We'll -- we'll
11 get to Dr. Moore in a minute, but let's finish with the
12 parties.

13 Staff?

14 MS. WILLIS: Thank you. Staff filed their -- our
15 response to the motion in the Prehearing Conference Statement.

16 I don't really have anything to add. And we agree with Mr.
17 McKinsey that the decision that the CPUC will make in the
18 future is not -- doesn't have any bearing on our -- our
19 process at this point in time going forward. And we are also
20 waiting to hear from Dr. Moore on the FDOC, but we understand
21 that it isn't going to be -- there aren't going to be so many
22 changes that this will hold up the process much longer.

23 HEARING OFFICER KRAMER: Thank you, Interveners on
24 the phone, beginning with Terramar.

25 MS. SIEKMANN: Hi. This is (inaudible) with

1 Terramar. And I -- whether you decide to approve this motion
2 or not I think it's very important that in a (inaudible)
3 summary of the FSA it clearly states on page 1-4 that the
4 project objectives with the proposed (inaudible), we need the
5 commercial qualifications for long-term power contract
6 opportunities in Southern California. And so the CEC Staff
7 themselves are moving in this issue about the contract and the
8 written part of the (inaudible) proposed changes which is
9 required. And so clearly the long-term contract is one of the
10 absolutely required proposed changes. And I am up in the air
11 right now. So I believe that the question of whether you
12 should approve this motion should be (inaudible). Because you
13 know, I don't -- I don't care whether we address it now or
14 later. But I do think that Mr. Sarvey is incorrect in
15 requesting this -- this motion.

16 HEARING OFFICER KRAMER: You mean Mr. Simpson;
17 right? Okay.

18 Power of Vision? Am I still being heard?

19 DR. ROE: I don't have anything to say.

20 HEARING OFFICER KRAMER: Okay. Nothing to say, is
21 that what you said, Dr. Roe?

22 Well, at least we're not the technology agency.

23 PRESIDING MEMBER DOUGLAS: Pretty close.

24 HEARING OFFICER KRAMER: Okay. Can anyone hear me
25 on the phone?

1 MR. ZIZMOR: This is Mr. Zizmor. I can hear you.

2 HEARING OFFICER KRAMER: Okay. Did Dr. Roe say
3 anything that -- of substance? Because we weren't hearing
4 him.

5 MR. ZIZMOR: I couldn't -- I couldn't hear -- I
6 couldn't hear him. He's --

7 HEARING OFFICER KRAMER: Okay.

8 DR. ROE: To repeat, I was asked today on behalf of
9 Power of Vision --

10 COMMISSIONER MCALLISTER: It sounds like it may be
11 on his end.

12 HEARING OFFICER KRAMER: Yeah. Dr. Roe, maybe
13 instead of Ms. Siekmann, we need for you to speak more softly.
14 Because you -- you seem to be topping off our audio system.
15 So could you wait two seconds and then say anything you wanted
16 to say again. Don't -- don't assume that we heard any of it
17 because I'm not sure we did.

18 DR. ROE: Let me repeat. I was asking if Julie
19 Baker had anything to say on behalf of Power of Vision?

20 HEARING OFFICER KRAMER: That came in great.

21 Julie?

22 MS. BAKER: I have nothing else further to add.

23 HEARING OFFICER KRAMER: Okay. That leaves Mr.
24 Sarvey. Mr. Sarvey, did you have anything to say in response
25 to the motion?

1 MR. MCKINSEY: He wasn't on.

2 HEARING OFFICER KRAMER: Oh, you're correct. Mr.
3 Sarvey wasn't on.

4 Mr. Sarvey, have you joined us? Okay.

5 Has anyone from the Sierra Club joined us? Okay.

6 Well, with that, then let's hear from Dr. Moore
7 about the status of the PDOC.

8 DR. MOORE: We're hoping to get it out tomorrow.
9 We've been working with the Staff and they've been helping
10 getting some information from ISO that we're hoping gives us
11 some good basis for going forward with some organizations on
12 the comments we received.

13 HEARING OFFICER KRAMER: And earlier this month you
14 were not willing to give us a preview of the -- the results.
15 But I'll ask again, are there any significant changes to the
16 Conditions of Certification likely to be necessary?

17 DR. MOORE: We've made some changes -- changes in
18 response to the comments by the Applicant, and I sent a draft
19 of those to the Staff to take a look at. But there is one
20 outstanding issue that we're focusing our efforts on right
21 now, and that's the netting calculation in the baseline. And
22 that would require some changes to the conditions.

23 HEARING OFFICER KRAMER: Are they -- are they -- I
24 mean, I realize it's a judgmental -- calls for judgment and
25 it's not a particularly precise answer, but are those changes

1 significant in your view?

2 DR. MOORE: I would say they would be significant to
3 the Applicant, probably. But I do not think they would mean
4 that the project does not comply with our rules and
5 regulations, basically, or cannot be expected to comply with
6 rules and regulations.

7 HEARING OFFICER KRAMER: Okay. Thank you.

8 MR. SARVEY: And, Mr. Kramer, this is Bob Sarvey.
9 Can you hear me now?

10 HEARING OFFICER KRAMER: Oh, yeah. Yeah. You're
11 coming through more than loud enough. So if you want to --

12 MR. SARVEY: Okay.

13 HEARING OFFICER KRAMER: -- speak softly --

14 MR. SARVEY: I just wondered if you would allow me
15 to speak to Mr. Simpson's motion?

16 HEARING OFFICER KRAMER: Sure. Did you just join
17 us?

18 MR. SARVEY: No. For some reason the phone is not
19 working. Now I'm on my computer, so it's a little different.

20 HEARING OFFICER KRAMER: Yeah. Okay. You sound
21 fine, so go ahead.

22 MR. SARVEY: Okay. Well, as far as Mr. Simpson's
23 motion is concerned the -- both the Applicant and the Staff
24 have said that we're going to have the FDOC by the 13th, so
25 there's no reason to have any delays. And obviously that

1 didn't quite pan out. And I think a lot of the Interveners
2 have stated that they need this delay. And if we bifurcate
3 this and have the air quality later and have to come back,
4 some of the Interveners may not have the resources to attend
5 both hearings. That's possible.

6 The other issue is if -- if the PUC decision says
7 that they have to downsize this project we once again have to
8 go through an amendment. And unless my motion for filing a
9 new AFC filing fee is granted the ratepayers again are going
10 to be paying for an enormous amount of analysis by CEC Staff,
11 which I think is unfair to the ratepayers. And that's my
12 comments.

13 Thank you, Mr. Kramer.

14 HEARING OFFICER KRAMER: Okay. Thank you.

15 Let me ask a question of the Applicant and Staff,
16 and then maybe others will want to chime in.

17 Mr. Sarvey's assumption that if, for instance, the
18 PPA were modified to require say -- and this is purely
19 hypothetical -- four turbines, does that necessarily mean that
20 this amendment, if it were approved, this permit would require
21 further amendment?

22 Mr. McKinsey, do you want to go first?

23 MR. MCKINSEY: The -- we would -- we would -- oh,
24 there we go. We would indicate that as much as I said
25 earlier, no, it doesn't have any effect on it at all. The --

1 certainly all six turbines get built, four of them are under
2 one contract, the two others could end up under a different
3 contract. They could operate as merchant. There's -- there's
4 no -- no real association between those two, those two
5 contracts and those two events.

6 HEARING OFFICER KRAMER: For that matter, could you
7 choose to just build four and never build the other two?

8 MR. MCKINSEY: That -- that's certainly a possible
9 outcome. But that's a decision that has not been made, and
10 would only get made at some point if it became necessary. And
11 then that, you know, might require a petition to amend, it
12 probably would. But -- but most of those decisions get made
13 pretty quickly at an early stage anyway because you have to
14 make decisions on your submittals and your diagrams and
15 your -- and at that point you're building what you've
16 submitted.

17 HEARING OFFICER KRAMER: Okay. Staff, you want to
18 comment on that? And I just want to be clear, my question is
19 purely hypothetical. I know nothing of the future.

20 MR. LAYTON: This is Matt Layton now. Kerry asked
21 me to speak. I'm not really sure why.

22 If -- if they built four of the six units, I don't
23 think we'd require an amendment to not build the other two,
24 but maybe eventually. Because when Valero was -- we had it
25 licensed for two units, and eventually they didn't build --

1 they decided not to build the second unit. We did require an
2 amendment to clarify the record to show that they were not
3 going to build those other units. So if they ended up in that
4 situation I assume we would require an amendment but it
5 doesn't -- it's not required at the outset.

6 HEARING OFFICER KRAMER: That was probably a fairly
7 minor amendment; is that fair to say?

8 MR. LAYTON: I'll leave it to the Applicants to
9 decide if our amendment process is minor or not.

10 HEARING OFFICER KRAMER: No, I mean, the Valero
11 amendment you spoke of was -- did it -- it didn't go to a
12 committee or anything or require a Staff assessment of --

13 MR. LAYTON: I do not remember, to be honest.

14 HEARING OFFICER KRAMER: Okay. Thank you.

15 Do any of the -- do any of the other parties want to
16 respond to -- to my question?

17 MS. BAKER: I would like to briefly.

18 HEARING OFFICER KRAMER: Okay. Go ahead.

19 MS. BAKER: Well, in -- in my testimony I talked
20 about the fact that I think that the project is too big. And
21 that it should -- a superior alternative would be for you
22 to -- and in fact the -- the superior alternative will be to
23 spread those units out in full property instead of just
24 leaving the end part over. And so (inaudible) that would
25 possibly require an amendment.

1 HEARING OFFICER KRAMER: Okay. Anyone else?

2 DR. MOORE: This is Dr. Moore. The way the FDOC is
3 structured, that -- there would not be any problem with them
4 not building two of the units for example, as long as they're
5 building the same units and nothing else has changed.

6 HEARING OFFICER KRAMER: And that was Dr. Moore;
7 right?

8 MR. LAYTON: Yes.

9 HEARING OFFICER KRAMER: Mr. Layton says yes. I ask
10 because his -- the first part of his name was cut off. Okay.

11 Well, then we will take that request under
12 submission, or rather Mr. Simpson's motion under submission.

13 We have a few other order -- items of business to
14 discuss, and then we will go into closed session to discuss
15 and deliberate that. And we will come back, I suspect with an
16 oral ruling on the motion at the end of the closed session.

17 MR. ZIZMOR: This is Mr. Zizmor. Can I --

18 HEARING OFFICER KRAMER: Oh, I'm sorry, Mr. Zizmor,
19 yeah. We did --

20 MR. ZIZMOR: Yeah.

21 HEARING OFFICER KRAMER: You didn't speak up
22 earlier, but go ahead.

23 MR. ZIZMOR: Yeah. Sorry. I just want to make one
24 final statement. You know, it was noted that the PPTA doesn't
25 govern this proceeding. We never stated that it does. This

1 has all been about -- our motion is about the compressed time
2 schedule within this proceeding. And you know, Mr. McKinsey
3 noted, and then I believe the Staff noted in their opposition
4 that this a proposed decision by the PUC, not a final
5 decision. Well, that's why we proposed to delay it until
6 April 10th which would be a day after the final decision is
7 supposed to potentially come out. We want to see the final
8 decision so we can at least make an informed decision when
9 we're talking to each other at the evidentiary hearing.

10 So, you know, we're not pushing to delay this very
11 long, just enough so that we can see the final decision. You
12 know, the way the proposed decision is worded there will not
13 be as much of a rush to construct this project. As the
14 Applicant has said in the past, they've been trying to get
15 this built by the end of this year -- or started building the
16 project by the end of this year. If the proposed decision
17 holds the project won't start until much later. And the rush
18 to push through this proceeding will not be necessary because
19 we'll have an extra two years' worth of time to make all new
20 consideration and hear everything.

21 So that's -- that's why we're making this motion is
22 we're going to have a little bit more time -- we want a little
23 bit more time so we can see what -- what the actual facts are
24 about this case, and that includes what's going on at the PUC.

25 HEARING OFFICER KRAMER: Okay. Thank you. Okay.

1 Then let's turn to the -- to the time estimates. If
2 you look at the -- the spreadsheet that I put out this morning
3 you'll see a couple -- a couple portions of it are yellow
4 highlighted, and those are places where I had questions.

5 So my first question is for Ms. Siekmann. You --
6 you indicated you wanted five minutes of time, I think you
7 actually said on the subject of executive summary. But
8 that's -- that's a feature that only appears in the Staff
9 analysis. So I moved it over to the project description area
10 which is the nearest corollary I think of in the topics that
11 we deal with and that we put in the proposed decision.

12 Could you be a little more specific about what you
13 wanted to talk about there so we can decide maybe if it
14 belongs in another category? Do you --

15 MS. SIEKMANN: (Inaudible.) If it didn't fall --
16 what I just talked about in the fact that there are definitely
17 proposed changes, and that Staff themselves have brought in
18 what we'll call low capacity requirements. And so it was an
19 issue that I wanted testify on.

20 HEARING OFFICER KRAMER: So you're --

21 MS. SIEKMANN: If you are moving to another session,
22 that's -- that's okay with me (inaudible).

23 HEARING OFFICER KRAMER: What do you think it --
24 what does it relate to in your mind? Is it Overrides or
25 Alternatives?

1 MS. SIEKMANN: Yeah. I think that -- that
2 (inaudible) that can relate to the subjects it's listed in
3 (inaudible). It's required by (inaudible) in order to make a
4 change -- in order to make -- in order to do this amendment
5 you have to provide the necessity for the proposed changes.
6 And one of the proposed changes that makes this amendment
7 required is that it meets the commercial qualifications for a
8 long-term power contract.

9 So to me that is -- that absolutely is Staff stating
10 it needs more (inaudible) capacity requirement (inaudible) in
11 the project. And so any other time when we're discussing
12 this -- I guess Alternatives would be fine. This would be
13 fine in Alternatives.

14

15 HEARING OFFICER KRAMER: Okay. We'll move to -- so
16 we'll give you another five minutes in --

17 MS. SIEKMANN: (Inaudible) size of the project would
18 be too large, so --

19 HEARING OFFICER KRAMER: Okay. We'll add five
20 minutes to your time in Alternatives then. Okay. That makes
21 project description uncontested.

22 My next question is for you again, Ms. Siekmann.

23 What are your concerns about facility design? Are
24 they again about the -- the number of turbines or just about
25 the power poles or something else, the height of the poles,

1 that is?

2 MS. SIEKMANN: (Inaudible.)

3 HEARING OFFICER KRAMER: I'm sorry. You're going to
4 have to start over. And if you could speak up?

5 (Colloquy)

6 HEARING OFFICER KRAMER: Ms. Siekmann, if you could
7 say that again, and speak up? Give me a second to quit
8 talking, though, so we can press a button, because we -- we
9 couldn't make that out.

10 MS. SIEKMANN: I didn't say anything.

11 HEARING OFFICER KRAMER: Well, it's been about 30
12 seconds.

13 MS. SIEKMANN: I mean, I was looking for facility
14 design.

15 HEARING OFFICER KRAMER: You asked for five minutes
16 there, so I'm trying to figure out if that's where it belongs.

17 MS. SIEKMANN: Oh, well, I have -- I had a question
18 about field inspections. It talks about -- on page 5.1-5 they
19 talk about field inspections. And I wanted to have the
20 opportunity to ask how often the field inspections take place?

21 HEARING OFFICER KRAMER: How often the -- what kind
22 of inspector?

23 MR. LAYTON: FEMA.

24 MS. SIEKMANN: Field inspections.

25 HEARING OFFICER KRAMER: What type?

1 MR. LAYTON: Field inspections.

2 HEARING OFFICER KRAMER: Do you understand what
3 she's asking, Mr. McKinsey, if you can help us?

4 MR. MCKINSEY: She has a question about the facility
5 design section which notes that there are required field
6 inspections during the construction phase, and even in theory
7 afterwards, of the project. And she's asking how often those
8 field inspections occur. So it's -- it's really more of a
9 question than I think it is -- at least how she's enunciated
10 at this point is testimony, wanting to change something in
11 that section.

12 HEARING OFFICER KRAMER: So that sound --

13 MS. SIEKMANN: (Inaudible.) There are two things.
14 And you're absolutely right, Mr. McKinsey. That was my
15 question. And I think really what I wanted to -- to respond
16 to is that, you know, you all had talked about starting some
17 construction before the amendment was approved. And I wanted
18 to clarify there that it is -- you know, that -- that any new
19 conditions that have been created since the CECP was approved,
20 they needed to be followed if anything happens on the facility
21 design before the amendment is approved.

22 So those are my two issues.

23 HEARING OFFICER KRAMER: Okay. Well, so you wanted
24 to ask a question of Staff then? Would that be who we should
25 make sure we have?

1 MS. SIEKMANN: Yes.

2 HEARING OFFICER KRAMER: Okay.

3 MS. SIEKMANN: One (inaudible) how often the field
4 (inaudible) rebuttal testimony.

5 HEARING OFFICER KRAMER: From?

6 MS. SIEKMANN: (Inaudible.) I just want to be sure
7 that if any construction is allowed to begin it has to
8 (inaudible) with the CECP new conditions would need to be
9 followed that have occurred since that time. Most
10 specifically (inaudible) and traffic the things that would
11 affect those of us in the area.

12 HEARING OFFICER KRAMER: Right. And that point
13 relates to our discussion the last time about -- I think it
14 was Condition COM 16; was that right? That was a condition
15 where they were saying that things that start before the new
16 amendment is approved could continue to go forward without
17 having to resubmit the basic plans and those sort of
18 submittals. Is that what you just referred to? We're having
19 a really hard time hearing you.

20 MS. SIEKMANN: And I'm -- and I am really raising my
21 voice. So is that helping?

22 HEARING OFFICER KRAMER: Just now, yes.

23 MS. SIEKMANN: Okay. What I'm referring to is the
24 last meeting -- the status meeting that we had, there was a
25 discussion about beginning -- some, you know, demolition that

1 was approved in the CECP. And I wanted to testify that those
2 of us in the neighborhoods surrounding Terramar, we want to
3 make sure that if anything like that is allowed to happen that
4 the new conditions that have been -- that have been suggested
5 by Staff would be (inaudible) should be part of any
6 construction of demolition activities that would -- that would
7 start before the amendment is approved.

8 MR. MCKINSEY: Hearing Officer Kramer, I would
9 suggest that what she's talking about for her testimony would
10 fall in Compliance and Closure.

11 HEARING OFFICER KRAMER: Okay. Yeah. Yeah.

12 (Colloquy)

13 HEARING OFFICER KRAMER: It does sound as if you're
14 requesting what would best be asked of the compliance project
15 manager. Does that make sense to you, Ms. Siekmann?

16 MS. SIEKMANN: Well, but I think -- I think it's a
17 decision that the Committee is supposed to make. I thought
18 Mr. Kramer had (inaudible) the Applicant had requested to
19 start demolition on the (inaudible) tanks that had been
20 approved in the CECP.

21 HEARING OFFICER KRAMER: Okay. No. We'll -- we'll
22 go into the merits of your -- the -- you may raise your
23 question at the hearing. I'm just trying to figure out which
24 category to put it in and, secondarily, to make sure that we
25 have the right people available to address the issue so it

1 doesn't become a sticking point schedule-wise. Okay.

2 MS. SIEKMANN: Well, as long as I think -- as long
3 as I get to ask about that. Whatever section you want to put
4 it in is fine with me.

5 HEARING OFFICER KRAMER: Okay. Well, it's on my
6 radar, as well, to have a discussion about that condition that
7 Mr. McKinsey proposed. And I think the last -- at the status
8 conference earlier this month we gave him homework to think
9 about addressing a clarification of what performance
10 conditions would apply to work that went on under that
11 condition.

12 Is that right, Mr. McKinsey?

13 MR. MCKINSEY: That's correct.

14 HEARING OFFICER KRAMER: So you think you'll be
15 proposing that in your rebuttal testimony perhaps?

16 MR. MCKINSEY: Perhaps, yes.

17 HEARING OFFICER KRAMER: Okay. And -- and it's on
18 my list of things to -- to resolve. Because as you recall, I
19 identified it as perhaps a little bit vague, I think is the
20 character -- the way I characterized it when I raised the
21 issue the last time.

22 So, Ms. Siekmann, let's move your five minutes of
23 Facility Design to Conditions of Certification, if that's okay
24 with you.

25 MS. SIEKMANN: Okay.

1 HEARING OFFICER KRAMER: Okay. I gather that was
2 okay. I'm going to take that as an okay.

3 MS. SIEKMANN: Yes, that's fine.

4 HEARING OFFICER KRAMER: Okay. Thanks.

5 MS. SIEKMANN: Terramar (inaudible). Yes, that's
6 fine.

7 HEARING OFFICER KRAMER: Okay. My next question was
8 Petitioner, you -- you had five minutes on Transmission System
9 Engineering. And was that about something other than the pole
10 heights?

11 MR. MCKINSEY: It's -- it is directly related to the
12 Visual Resources aspect, but it's the -- it's the design from
13 the -- essentially from the generators and their transformers,
14 the design of the transmission lines reaching the two
15 substations. And that's all focused on the -- the intent to
16 provide a little bit of oral testimony related to Dr. Roe's
17 topical area, which all relates to the visibility of those
18 lines. So it's both pole height, but also pole location comes
19 into a play a little bit as well.

20 HEARING OFFICER KRAMER: Which affects the heights
21 presumably. So they're -- they're -- it sounds like they're
22 interconnect, aren't they, in another part?

23 MR. MCKINSEY: They are interconnected. And --
24 but -- but sometimes you could lose a pole without jamming --
25 it's one thing to move it down into the bowl, but what if you

1 could move it to some other location that had the same grade
2 so it would make it less visible, for instance. But it's that
3 very topic of that design area. So it's really about the
4 special design of those lines, not the -- the engineering --
5 well, the Transmission System Engineering is the topic because
6 it involves the limitations and the requirements for the
7 design of those lines.

8 HEARING OFFICER KRAMER: But the -- the whole
9 argument, again, in favor of changing the design is based on
10 visual.

11 MR. MCKINSEY: Yeah.

12 HEARING OFFICER KRAMER: So how about if we move all
13 that to Visual and just -- well, at least we'll -- we'll
14 consider them together perhaps.

15 MR. MCKINSEY: Yeah. We really felt that Visual and
16 Transmission System Engineering, at least just that just piece
17 of Transmission System Engineering should be folded
18 individually. It would be easier.

19 HEARING OFFICER KRAMER: Now, Ms. Siekmann, you
20 wanted one minute in Transmission System Engineering. Was
21 that about the -- where the poles are and how high they are or
22 something --

23 MS. SIEKMANN: I'll -- that was about -- let's see.
24 There was a correction that needed to be made.

25 HEARING OFFICER KRAMER: Okay. So you just have a

1 comment on that?

2 MS. SIEKMANN: There's a correction that needs to be
3 made on -- it's I-90 (phonetic).

4 HEARING OFFICER KRAMER: Okay. Let me stop you
5 there. So it sounds like we could --

6 MS. SIEKMANN: It talks about impeding units. And
7 this report (inaudible) Units 1 through 5.

8 HEARING OFFICER KRAMER: Okay. Well, we can easily
9 wrap that into a combined Visual and TSE discussion. So
10 that's what we'll do.

11 MS. SIEKMANN: Okay. Thanks.

12 HEARING OFFICER KRAMER: Okay.

13 MS. SIEKMANN: Oh, also -- also (inaudible) about
14 (inaudible), and that absolutely could go individual.

15 HEARING OFFICER KRAMER: Okay. We didn't exactly
16 hear what the details were, but you said it could go --

17 MS. SIEKMANN: Yeah. It could -- it could --

18 HEARING OFFICER KRAMER: Don't worry about it.
19 We're -- we're good.

20 MS. SIEKMANN: (Inaudible.) Okay.

21 HEARING OFFICER KRAMER: Okay. The combined with
22 Visual part was all I needed to hear.

23 And then finally -- well, I think finally, but, Ms.
24 Siekmann, you wanted ten minutes on Conditions of
25 Certification. Was -- was that different than -- were those

1 different conditions than those that would be discussed by
2 implication, along with the various topics that you've already
3 identified testimony for?

4 MS. SIEKMANN: Yes.

5 HEARING OFFICER KRAMER: It was? Okay. All right.
6 We'll leave that.

7 MS. SIEKMANN: Yeah. Okay. Well, they could move
8 each category (inaudible).

9 HEARING OFFICER KRAMER: Okay. Yeah, understand
10 that when we talk about a category we'll want to talk about
11 the conditions too. The fact that the Conditions are in a
12 separate section is really just an organizational device. But
13 when we talk about Air Quality we'll talk about air quality
14 conditions, Visual, etcetera.

15 MS. SIEKMANN: Okay.

16 HEARING OFFICER KRAMER: Mister --

17 MS. SIEKMANN: (Inaudible.) That time would just be
18 (inaudible).

19 HEARING OFFICER KRAMER: Okay. Mr. Sarvey, still
20 there on your computer?

21 MR. SARVEY: Yeah. Can you hear me?

22 HEARING OFFICER KRAMER: Yeah. You're doing well.

23 MR. SARVEY: Okay. I'm here.

24 HEARING OFFICER KRAMER: You just -- you have three
25 topics. And you just gave us 60 minutes. You didn't split it

1 up between direct testimony and cross examination. So I
2 arbitrarily split it half and half. Is that -- is that going
3 to work for you? And could you also --

4 MR. SARVEY: Well --

5 HEARING OFFICER KRAMER: -- briefly explain why
6 you've asked for 60 minutes? It's more than anyone else has.

7 MR. SARVEY: Well, what I do want to say is I
8 haven't seen anybody that wanted to cross examine me on
9 anything. And as I told you at the last status conference, if
10 that's the case I will not have any questions for anyone.

11 HEARING OFFICER KRAMER: Okay.

12 MR. SARVEY: So, I mean, if Staff and Applicant
13 don't have any questions for me, I don't have any questions
14 for them. I'm willing to stand on what the record is. And
15 you can, you know, you can eliminate all that back and forth
16 if you like.

17 HEARING OFFICER KRAMER: Well, I guess that's not up
18 to me.

19 But, Ms. Willis, did you want to say something?

20 MS. WILLIS: Yes. I just wanted to ask for
21 clarification because my understanding is Mr. Sarvey filed
22 testimony only in Compliance and Closure, which was outside
23 the scope of -- of the order for his participation. But I
24 haven't seen any testimony in Air Quality or GHG or
25 Alternatives. So we don't have any questions at this point

1 because I don't believe we've seen any testimony.

2 HEARING OFFICER KRAMER: Okay. He did -- when we
3 did the exhibit list he did partially identify some exhibits.
4 But, yeah, that's another aspect that I wanted to go over with
5 Mr. Sarvey.

6 You did file the testimony about the question of
7 closure funding.

8 MR. SARVEY: Uh-huh.

9 HEARING OFFICER KRAMER: And -- but frankly, it
10 looked more like comment. There wasn't anything in there that
11 struck -- stuck out for me as expert testimony. It was -- and
12 because you're not admitted in that -- to that subject area,
13 before we argue it would you be amendable to the Committee
14 taking that in as comment?

15 MR. SARVEY: I don't have any issues. I do believe
16 it is testimony. You know, the Committee is going to do what
17 they're going to do. I'm not going to make a fuss out of it
18 either way. But I do have rebuttal testimony in both
19 Alternatives and GHG Emission, possibly Air Quality. I still
20 haven't seen the FDOC. So I don't have an issue. If that's
21 what the Committee wants to rule I'm not going to make a big
22 deal of it.

23 HEARING OFFICER KRAMER: Okay. We'll take it in as
24 comment then.

25 And as far as your -- Mr. McKinsey, if you want to

1 go first on that point?

2 MR. MCKINSEY: I was going to come back to the
3 original topic, I think you wanted Staff and the project owner
4 to respond to it, and that is that we certainly have no intent
5 of cross examining or questioning Mr. Sarvey at the
6 evidentiary hearing.

7 HEARING OFFICER KRAMER: Based on what he's filed to
8 date?

9 MR. MCKINSEY: We won't.

10 HEARING OFFICER KRAMER: Regardless?

11 MR. MCKINSEY: Yeah.

12 HEARING OFFICER KRAMER: Okay.

13 MR. MCKINSEY: You know, if there's something in the
14 rebuttal testimony we have an issue with, that might push us
15 to provide some live direct testimony. But we're not going to
16 cross examine him. We have no need to cross examine him or --
17 or address, you know, him. And that, I think, was part of --
18 that was part of that, you know --

19 HEARING OFFICER KRAMER: Okay.

20 MR. MCKINSEY: -- give and take that he was
21 suggesting.

22 HEARING OFFICER KRAMER: Thank you.

23 MR. SARVEY: That's sort of why I recommended that
24 we have a prehearing conference after the rebuttal testimony
25 is due, Mr. Kramer, but obviously that didn't happen.

1 HEARING OFFICER KRAMER: Okay. Mr. Sarvey, as far
2 as your exhibit list goes --

3 MR. SARVEY: Uh-huh.

4 HEARING OFFICER KRAMER: -- it's missing a column
5 which is the column where the TN numbers correspond to the
6 exhibit numbers would normally be. So is --

7 MR. SARVEY: Okay. I'll provide that to you by the
8 close of business.

9 HEARING OFFICER KRAMER: Today?

10 MR. SARVEY: Today, yes.

11 HEARING OFFICER KRAMER: Okay. Just please file it
12 in the docket so everyone can see it. I did fill out --

13 MR. SARVEY: I will. Thank you.

14 HEARING OFFICER KRAMER: I did fill in one of those.
15 I think it was for the document we just decided was going to
16 be a comment. But I didn't want to do all that work for you
17 when we had requested that you do it. So, okay, so thank you.

18 MR. SARVEY: Will do.

19 HEARING OFFICER KRAMER: And, Mr. Zizmor, I did not
20 see any exhibit list from Mr. Simpson. I believe that's
21 because he doesn't have any. But could you confirm that for
22 me?

23 MR. ZIZMOR: Yeah. I can confirm that we don't have
24 any exhibits.

25 HEARING OFFICER KRAMER: Okay. Thank you. Okay.

1 Ms. Siekmann, are you there?

2 MS. SIEKMANN: Yes. Yes.

3 HEARING OFFICER KRAMER: Okay. You are offering
4 transcript testimony -- of testimony for Mr. Faust from the
5 previous Carlsbad proceeding regarding the Coastal Act --
6 Coastal Act interpretations. We want to tell you that to the
7 extent you're trying to offer that as anything more than legal
8 argument about how to interpret the statutes, you need to make
9 him available to us in case the parties -- well, let me ask
10 first.

11 Do -- do any of the parties wish to ask any
12 questions of Mr. Faust? I suppose if you don't have any
13 questions for him we may be able to eliminate it. But our
14 plan was to say he needs to be made available to answer --
15 answer questions about his testimony regarding this new
16 proceeding. To refresh your recollection, basically she read
17 the transcript of his testimony in AFC proceeding where he --
18 he offered opinions to the effect that the project was
19 inconsistent in some ways with the Coastal Act.

20 So if you want to have him be available to answer
21 questions about that, we think that might be a reasonable
22 request and we're willing to entertain that.

23 Ms. Willis?

24 MS. WILLIS: Indeed. As far as Land Use we're
25 actually asking -- I wanted to ask Ms. Siekmann what exactly

1 her -- she has one minute listed. At this point we believe
2 that the issues really are about compliance with the Coastal
3 Act. And she's brought up the issue of coastal dependency,
4 which would be legal arguments that we would be happy to brief
5 if the Committee wishes. But at this point I don't -- I don't
6 really see any reason for us or a necessity to bring our Staff
7 down for that issue. But I just want to throw that out for
8 the Committee's consideration. We do not have any cross
9 examination planned for that.

10 HEARING OFFICER KRAMER: Did you hear that question,
11 Ms. Siekmann? Could you, in essence, could you be more
12 specific about the areas you want to cover in your testimony
13 on Land Use?

14 MS. SIEKMANN: I just wanted to -- oh, well, as far
15 as Mr. Faust goes I -- I mean, that is a piece of -- of
16 evidence that I believe should be in the record as part of our
17 testimony. Of course, I cannot afford to have him as a
18 witness. But I don't understand why there isn't a document
19 out there with this information in it, just like any
20 (inaudible) that you might seek information about. This is
21 testimony by Mr. Faust. The (inaudible). It's a document
22 that I am submitting as testimony. I -- he is not my witness.
23 He was the City's witness and it was part of my testimony. So
24 I don't understand why -- I mean, if someone takes information
25 from someplace like a book or whatever, you can submit that.

1 HEARING OFFICER KRAMER: You can but --

2 MS. SIEKMANN: I don't -- I just wanted -- I mean,
3 you know, I've been absolutely -- I absolutely believe in my
4 heart of hearts of that this project is not coastally
5 dependent. I know I can't do anything about it. But I just
6 feel strongly that I need to state it.

7 HEARING OFFICER KRAMER: Well, you're certainly --
8 you're certainly able to state your opinion. You can offer
9 Mr. Faust's testimony as legal argument. But -- but it's not
10 the case that you can just submit a book and we have to accept
11 that as some kind of expert testimony, because that's not fair
12 to the other parties because they have nobody that they can
13 ask questions about to, you know, to see if the opinion that
14 is expressed in a book is -- is properly formed, if it was
15 made on the correct assumptions, etcetera, etcetera. But it
16 may be the case that nobody is interested in talking to Mr.
17 Faust, and that -- and that may solve your problem.

18 So Mr. McKinsey is about to speak.

19 MR. MCKINSEY: Well, no, it's not that easy. For
20 the reasons you articulated the project owner would object to
21 this as being admitted as evidence unless the -- the expert
22 witness was available. Part of the problem is that that --
23 that one piece has been extracted in a vacuum in that that
24 wasn't the only written testimony on that proceeding on that
25 subject matter, and that all of the various witnesses on that

1 topic were also extensively cross examined and part of a
2 panel. And so that's why we would have some concern if that
3 was brought in as evidence because it would essentially be the
4 unopposed evidence in the record, very unlike how it appears
5 in the previous record. But we don't think that the right
6 answer is to therefore extract all of that, because we're not
7 trying to bring in that as evidence.

8 And I think the correct approach is if a party
9 wishes to sponsor testimony then they have to the
10 appropriately qualified expert who is sponsoring it and then
11 can be made available, and that's not happening here. So we
12 would be or will be, and we can even do it now if you want,
13 object to its admission as evidence. And, of course, the
14 appropriate way to do that is to put up an expert who we could
15 then say, okay, we want to see that person's qualifications
16 and perhaps cross examine them on that discussion.

17 HEARING OFFICER KRAMER: Is the application of the
18 law such as the Coastal Act to facts, which I think are
19 relatively simple in this case, even subject to expert
20 testimony?

21 MR. MCKINSEY: So in the previous proceeding that's
22 much of where we struggled in this topic area is we had expert
23 witnesses, and we also had legal briefing on this topic. And
24 we -- we partly objected to this testimony at the time in that
25 it was making legal argument that wasn't testimony. But

1 that's part of why we couldn't let it come in unopposed
2 because it's not -- a lot of it is not factual but it's an
3 opinion by an expert interpreting something. And whether
4 that's a legal expert interpreting the law or some type of
5 land use development person interpreting some other written
6 word, it's -- it is definitely an opinion by an expert that we
7 don't think qualifies as being supportable by the existing
8 witness that that party has, Ms. Siekmann.

9 And so I think we could object to it a lot of other
10 ways, but I think that's the easiest way.

11 HEARING OFFICER KRAMER: Okay. Well, does anyone
12 else need to comment on that, any other parties? Okay. Thank
13 you.

14 Ms. Siekmann, I guess you have a preview of an
15 objection that you may face on that exhibit then.

16 MS. SIEKMANN: Well, what's this -- this objection
17 and what do I need to do?

18 HEARING OFFICER KRAMER: Well, I mean, we're not
19 ruling on it at this time so I can't guarantee, but one -- one
20 way to avoid that might be to have Mr. Faust be there.

21 MS. SIEKMANN: Well, that's not going to be
22 possible. What else can we do?

23 HEARING OFFICER KRAMER: Well, you can -- you can
24 certainly use his arguments in your own brief.

25 MS. SIEKMANN: Okay. But I thought you guys said

1 there weren't going to be briefs.

2 HEARING OFFICER KRAMER: Well, if we're not going to
3 talk about coastal dependency much at the hearings, and it
4 sounds like we're not, and it may be appropriate not to speak
5 much at the hearings because it is really all legal argument,
6 it is starting to look as if we are going to need briefing on
7 this topic. Okay.

8 Commissioner Douglas -- Commissioner Douglas agrees.
9 So add it to your list, as I just have subjects to be briefed,
10 Coastal Dependency --

11 MS. SIEKMANN: Okay.

12 HEARING OFFICER KRAMER: -- and figure that will be
13 one of them. That's number one right now. Perhaps there will
14 be others.

15 MS. SIEKMANN: Okay. So what -- what I can do is --
16 well, how do I remove that from my (inaudible)?

17 HEARING OFFICER KRAMER: Oh, don't worry about it.
18 But --

19 MS. SIEKMANN: Because, I mean, as you know, if the
20 project owner hears that testimony then I can move it to my
21 legal brief?

22 HEARING OFFICER KRAMER: Right. What we'll do is
23 basically if he objects and the Committee sustains the
24 objection, then we will just mark it as not admitted in the
25 record.

1 MS. SIEKMANN: Well --

2 HEARING OFFICER KRAMER: But -- but it should
3 stay -- it should stay in the docket because historians or
4 reviewing courts or whomever need to see what we were talking
5 about today.

6 MS. SIEKMANN: Okay.

7 HEARING OFFICER KRAMER: So it will still be in the
8 docket.

9 MS. SIEKMANN: Okay.

10 HEARING OFFICER KRAMER: But I have --

11 MS. SIEKMANN: Well, I mean, will I have any action
12 to take?

13 HEARING OFFICER KRAMER: No, we haven't taken action
14 today. But it looks like you've gotten a preview of where
15 things might be going on this one.

16 MS. SIEKMANN: So it could go into a brief -- into
17 the brief?

18 HEARING OFFICER KRAMER: Yes.

19 MS. SIEKMANN: Okay. Thank you very much.

20 MS. WILLIS: And, Mr. Kramer, before we leave Land
21 Use is it possible for us to see our live witnesses for that
22 topic?

23 HEARING OFFICER KRAMER: I lost my chart. Who were
24 they? Well, in case something comes up could they get called
25 by telephone?

1 MS. WILLIS: I think Mr. Knight would be available
2 on the 2nd of --

3 HEARING OFFICER KRAMER: Okay. Now the City wanted
4 to -- to testify, as well. So Mr. Thompson or Mr. Therkelsen,
5 was that simply to repeat and amplify on what you've already
6 filed?

7 MR. THOMPSON: In part. Also in part we haven't --
8 we haven't seen any rebuttal testimony. It's possible that
9 there may be some additional direct. But I suspect that ten
10 minutes is probably overstating what we would need. But what
11 I did not want to do is put no time and then, you know, mess
12 up the hearing by asking for a little bit of time.

13 HEARING OFFICER KRAMER: Okay. And the Committee
14 has a very -- one very minor question of the City about --
15 I'll just tell you what it is, but you'll answer it on the
16 record. And the General Plan Land Use section you gave us, it
17 obviously was amended in 2014 because it refers to the
18 agreement between the City and NRG. But the footer of the
19 document has it last amended in 2013. And so we just wanted
20 to clarify for the record in case somebody is reviewing this
21 that that's some kind of typographic error, if that's the
22 case.

23 MR. THOMPSON: I suspect that is the case, and we
24 will clarify that within our ten minutes.

25 HEARING OFFICER KRAMER: Okay. Yeah. If we can't

1 get that in ten minutes we probably should be doing other
2 things.

3 So -- but I think -- does anybody object to the
4 Staff's Land Use witnesses being just available on call,
5 depending on what happens with Land Use? We do still have the
6 rebuttal period and whatever that might generate.

7 Interveners on the phone, any objections?

8 MS. SIEKMANN: Terramar has no objections.

9 HEARING OFFICER KRAMER: No objections from
10 Terramar, I heard. I will take it from the silence of the
11 rest that they have none.

12 Mr. McKinsey?

13 DR. ROE: No.

14 HEARING OFFICER KRAMER: Who was that? Dr. Roe, you
15 have no objection?

16 DR. ROE: Will William Kanemoto be available at the
17 hearings?

18 MS. WILLIS: Yes, he will be. That would be in
19 Visual.

20 HEARING OFFICER KRAMER: Yes. I was just
21 speaking -- I was just speaking about Land Use. But he'll be
22 there for Visual.

23 And for the transcript, he was asking about William
24 Kanemoto, which may not have come through on the audio.

25 Okay, so there's your answer if you want to call

1 him.

2 DR. ROE: (Inaudible) two minutes in two areas?
3 Would it be okay if I have two minutes in two areas?

4 HEARING OFFICER KRAMER: Okay. That's Dr. Roe for
5 the transcript.

6 Which two areas?

7 DR. ROE: Alternatives and Visual.

8 HEARING OFFICER KRAMER: Okay. You're breaking up.
9 Project something? And we did get Visual.

10 DR. ROE: Yes. When the project owner mentioned
11 that they would have some expert witnesses, I noticed we don't
12 have any time for cross examination. And I'd like to have
13 some time for cross examination in Visual.

14 HEARING OFFICER KRAMER: Okay. But you also said
15 project something or other, but I couldn't hear the something
16 or other part.

17 COMMISSIONER MCALLISTER: Alternatives.

18 HEARING OFFICER KRAMER: Was it Alternatives?

19 DR. ROE: Yes.

20 HEARING OFFICER KRAMER: Okay. So what do you want,
21 five minutes in Alternatives and five in Visual or --

22 DR. ROE: That's fine.

23 HEARING OFFICER KRAMER: Okay. So be it.

24 MS. WILLIS: Mr. Kramer?

25 HEARING OFFICER KRAMER: Go ahead, Ms. Willis.

1 MS. WILLIS: Since we're on Alternatives, I'd
2 actually like to reduce our time. So the 30 minutes for
3 Alternatives, I believe we can probably cover that in about 10
4 minutes. And we would like to request that the -- that the
5 parties who are going to be discussing cross or --

6 HEARING OFFICER KRAMER: Okay. So that was ten
7 minutes for everything?

8 MS. WILLIS: For the panel. And then -- but we want
9 to make sure that we would not be adding any discussion on
10 Need which seems to be a big part of the filings.

11 HEARING OFFICER KRAMER: Yeah, it's quite possible
12 the Committee is going to have some questions about that topic
13 area. So if -- it probably -- of course, we don't put our
14 time down on here. But it's likely to end up being longer
15 than -- than we suspect.

16 MS. WILLIS: Well, the time was for our direct.
17 That was why I said we don't --

18 HEARING OFFICER KRAMER: Okay.

19 MS. WILLIS: -- we don't personally -- unless --
20 unless the Committee has some questions they would like to ask
21 in advance that we could prepare for.

22 HEARING OFFICER KRAMER: Well, so far we don't have
23 anything new beyond what we -- what we said in the comments on
24 the PSA. Okay. So ten for direct.

25 And then you -- you had something else that I didn't

1 quite catch.

2 MS. WILLIS: Well, just the discussion on Need.
3 Much of the (inaudible) we're focusing on the need of the
4 project. We want to make sure that we're not spending our
5 time focused on that -- that issue under Alternatives. And
6 it's not into our purview of the -- of the Energy Commission
7 under the PUC.

8 HEARING OFFICER KRAMER: No, I think you should be
9 prepared for it to come up because Need, well, you know, Need
10 doesn't normally get involved in our cases. If we have to
11 override then Need does become one of the factors justifying
12 an override or not. So I wouldn't -- I wouldn't assume we can
13 avoid that discussion at this point.

14 MS. WILLIS: Okay. And could you be more specific
15 about did you want us to address or provide during the --
16 during our testimony? Because we did not allow any time for
17 that.

18 HEARING OFFICER KRAMER: Yeah, we probably should
19 put you down. I mean, it's -- it's kind of a crossover,
20 Overrides and Alternatives in this case, so -- well, and
21 generally they cross over. So it's on page 5 of the -- the
22 printout. I didn't have a category for Overrides.

23 So they'll be the same witnesses as Alternatives?

24 MS. WILLIS: I don't know that for a fact. I know
25 Land Use was one of the areas that we were discussing

1 Override, not necessarily in Alternatives.

2 HEARING OFFICER KRAMER: Yeah. I think it would be
3 about the -- the benefits and not so much the details of the
4 Land Use need for the Override but about the other factors
5 that go into the Override calculation.

6 MS. WILLIS: Okay.

7 HEARING OFFICER KRAMER: So what you can do is in
8 your rebuttal testimony you can give us the names of the -- if
9 they're different than the Alternatives.

10 MS. WILLIS: Okay. Thank you.

11 HEARING OFFICER KRAMER: And how many minutes did we
12 say, ten maybe?

13 MS. WILLIS: Ten should be fine.

14 HEARING OFFICER KRAMER: Okay. Thank you.

15 Mr. McKinsey, does that cause you to want to add
16 some?

17 MR. MCKINSEY: I don't -- we do not believe so. We
18 didn't offer up any witnesses in this topical area. And --
19 and I -- the only witness I see testifying in Overrides before
20 you just added Staff was Ms. Siekmann. And I don't think we
21 have any general concerns with having it be the resultant live
22 testimony in this topical area.

23 HEARING OFFICER KRAMER: Well, Mr. Thompson -- Mr.
24 Thompson and Therkelsen, just a heads-up, we may ask the City
25 a couple of questions about why a variance is so impossible,

1 according to them. And our questions may extend to what goes
2 on in the City in zones that are beyond the Agua Hedionda land
3 use area. So we're looking to see if there are examples of
4 height variances in other parts of the City.

5 MR. THOMPSON: Yes. I think that we can have Mr.
6 Barbario under -- who is scheduled under the Land Use area to
7 address those here.

8 HEARING OFFICER KRAMER: Okay. Thank you.

9 MR. THOMPSON: We're probably now up to seven
10 minutes of our ten.

11 HEARING OFFICER KRAMER: Okay. When I went through
12 entering the exhibit numbers in the docket for your -- your
13 various exhibits there were some cases, I think three of four
14 of you identified the Final Staff Assessment, for instance, as
15 exhibits. And as I mentioned some time ago, we can only give
16 one person the exhibit. So that one was an easy tie break
17 because Staff wrote it and I think it ought to be their
18 exhibit.

19 So -- but what I'm doing is creating a table that
20 we'll be able to use which will show that when you, Applicant,
21 or Terramar or whomever proposed an exhibit we will have the
22 exhibit you proposed, but it will also show the exhibit number
23 that was actually given to that document. So what it means is
24 you don't have to revise your testimony because -- because you
25 can get the exhibit that -- with your number. People can just

1 use this chart to track it down later if they ever have to do
2 such a thing. And I'll be putting that out in the next -- I
3 think by the end of the week.

4 So you can see right now from the exhibit list, you
5 know, you can guess at which ones you didn't get if you
6 compare it to your own. But you'll have this chart down the
7 road. And it, like the exhibit list, will be a somewhat
8 living document. We'll probably attach it to the final
9 decision. And that will sort of seal it in .pdf concrete, so
10 to speak. But it may change over time as people propose
11 exhibits and things happen to them.

12 I can't ask them today because they're not here, but
13 we note that the Sierra Club did not file a Prehearing
14 Conference Statement. So we are kind of wondering what
15 they're going to be doing at the hearing. You know, the
16 normal sanction for that is you don't get to present evidence
17 or cross examine witnesses. But we'll just note that we noted
18 that they didn't file anything. If we missed it, please call
19 it to our attention at your earliest convenience.

20 Then finally I think we have the question of the
21 City's testimony. Right now I guess it's in air quotes.
22 There were several of their exhibits, I believe it's
23 everything that they had been suggesting the exhibits except
24 for the -- the two City letters on the topic of water supply
25 assessment that were adopted by other parties, I think maybe

1 primarily or exclusively the Staff. So we have the -- the
2 Committee is reluctant to have a nonparty have exhibits in one
3 of our proceedings. But we have -- in the past we've
4 discussed this topic and we've encouraged the City to work
5 with the -- either the Applicant or the Staff. It sounds like
6 the Staff has, either for their own reasons or maybe in the
7 spirit of cooperation, has provided us with many of their
8 documents as exhibits.

9 But we have their -- their testimony and those two
10 letters. And we're wondering if one of the parties' logical
11 choice, being either the Applicant -- or petitioner or the
12 Staff, is going to sponsor those into the record as exhibits?
13 We understand the City is going to have their witnesses there
14 to answer questions about them, so I don't think authenticity
15 or failure to be able to cross examine them is going to be an
16 issue. It's just more of the mechanics of how we do it.

17 So any thoughts about that? And then the last --
18 the two parties I identified and -- or, first, Mr. Thompson
19 would like to speak.

20 MR. THOMPSON: Yes. Our reading of the statute, and
21 probably more specifically the Commission's Rules of Practice
22 and Procedure often, a number of times, includes municipal
23 agencies, municipal entities in the same way that the Coastal
24 Zone and the Coastal Commission, Air Pollution Control
25 Districts are referenced. I think it is my experience that

1 documents from those agencies can be admitted into the record
2 and sponsored by those agencies without having those agencies
3 thumbing their fingers. And we would ask the same type of
4 consideration.

5 If you look at the exhibits that we have proposed,
6 that are proposed without numbers because we didn't get
7 numbers, these are documents that were prepared the City. It
8 seems logical to me to have the General Plan Amendment, for
9 example, sponsored by the City because they're the creating
10 agency. And I thoroughly understand that you can run this
11 hearing any way you want, but that would be kind of our
12 position.

13 As a side note, our three -- we asked for two
14 letters on the WSA and -- and the will-serve letter in the
15 area of water, so there were three in that area.

16 HEARING OFFICER KRAMER: Staff or Applicant?

17 MS. WILLIS: Yes. This is Kerry Willis. In my
18 experience I've never -- we've never sponsored the local
19 jurisdictions documents. They just come into the record.
20 We're more than happy to, you know, without laying any
21 foundation for them, sponsor the documents as we would the
22 FDOC.

23 HEARING OFFICER KRAMER: Anything from you, Mr.
24 McKinsey?

25 MR. MCKINSEY: And I think the project owner is

1 amendable to any resolution that -- that both the City and the
2 Committee is satisfied with.

3 HEARING OFFICER KRAMER: So -- so, Ms. Willis, then
4 you are going to offer the exhibits as Staff Exhibits in your
5 numbering range?

6 MS. WILLIS: That's fine as long as it's -- we're
7 not going to be testifying to them as to their authenticity.

8 HEARING OFFICER KRAMER: No. We would expect the
9 City folks to be there, as they have offered, to be able to
10 provide that.

11 MS. WILLIS: Sure, that's fine.

12 HEARING OFFICER KRAMER: Okay. Thank you. And --

13 MR. THOMPSON: Excuse me, Mr. Kramer. The -- the
14 testimony that we submitted, is -- is that also going to be
15 sponsored by the Staff?

16 HEARING OFFICER KRAMER: I was presuming that was
17 in -- that's -- in essence, it's a City report.

18 MR. THOMPSON: The testimony?

19 HEARING OFFICER KRAMER: Yeah.

20 MR. THOMPSON: Okay. Okay.

21 HEARING OFFICER KRAMER: All right, here's plan B,
22 that we will take those in as Committee Exhibits, that is
23 those that the Staff didn't independently cite for their own
24 reasons. So that will be the three water-related documents
25 and the City's testimony. We'll probably put those in the 0

1 to 1,000 range, along with the, for instance, the previous
2 decision in this case.

3 Are you -- does that sound okay for you?

4 And then I'll be doing the same with the documents
5 that have been offered or suggested for official notice.

6 And, Mr. Zizmor, Mr. Simpson suggested two such
7 documents, one of which is the ALJ's PUC decision, and that's
8 already -- that's been identified by several people, so we
9 don't have to worry about that one.

10 But you also gave just a link to, I believe it was
11 an EPA guidance document. And we need to be able to get that
12 into the docket in this case. We don't -- we don't just have
13 naked links be formal documents in our proceedings because
14 links break over time; people reorganize their websites and
15 you can't find them. So what we do is if it's already a .pdf
16 available at that link we download it so we have our own copy,
17 you know, a snapshot in time, if you will.

18 So we need for you to -- to take the step of getting
19 that docketed on behalf of Mr. Simpson, to do the legwork, if
20 you will. Are you able to do that for us?

21 MR. ZIZMOR: Yes. So you just want me -- how do you
22 want it?

23 HEARING OFFICER KRAMER: I don't recall if it's --
24 if it's just an HTML page or if it's a .pdf. If it's --

25 MR. ZIZMOR: I think the link is probably HTML, but

1 there's a .pdf.

2 HEARING OFFICER KRAMER: So maybe it's -- maybe
3 there's a link to the .pdf. I mean, we want the actual
4 document.

5 MR. ZIZMOR: Okay.

6 HEARING OFFICER KRAMER: If you have to print the
7 webpage through .pdf, so be it. But I don't think the feds
8 work that way. They probably create .pdfs. So get that into
9 our docket. And then -- then I can work with it and give it
10 one of those numbers I just referred to. And, you know,
11 whether it ultimately stays in there, having been officially
12 noticed, will be another question. But that's something we'll
13 resolve at the hearing. The first step is to get it in there.

14 MR. ZIZMOR: So should I -- so just go and file it
15 like I would the other several documents?

16 HEARING OFFICER KRAMER: Yes. You might in the
17 description just make a note that, you know, this is -- has
18 been suggested for official notice, or something like that,
19 just so people know what it is.

20 MR. ZIZMOR: Okay. Thank you.

21 HEARING OFFICER KRAMER: Okay. And then Staff
22 suggested a bunch of documents from the original proceeding,
23 and I'll work with them to -- to get those up, as well.

24 (Colloquy Between Hearing Officer and Committee
25 Members)

1 HEARING OFFICER KRAMER: Okay. And before I forget,
2 which is my tendency, do we have any other business in
3 preparation for the hearings that we need to discuss?

4 MS. WILLIS: Mr. Kramer, will you be issuing an
5 agenda as far as the dates people will be testifying?

6 HEARING OFFICER KRAMER: Oh, actually that -- that
7 does raise a good question. Why don't -- we're about to head
8 off into closed session. And the parties may want to do a
9 little bit more thinking about it. So we'll -- let's discuss
10 any constraints you have about witness availability when we
11 come back from closed session. We want you to be back because
12 we're going to deliver the ruling on the motion to delay. But
13 assuming that at least some of these topics are going to go
14 forward on April 1st and 2nd, if we -- we should pick the
15 order so you can plan a little bit better. And then once we
16 get all that worked out I will issue a new version of the
17 spreadsheet which will have the topics in order, perhaps with
18 approximate start times.

19 You'll also notice on there I budgeted 120 minutes
20 for public comment. And that was really meant to be the
21 evening period that starts at, I think 6:00, maybe it was
22 5:30. I don't have the notice in front of me on the April
23 1st.

24 So any other issues?

25 DR. ROE: Mr. Kramer, Arnie Roe.

1 HEARING OFFICER KRAMER: Go ahead.

2 DR. ROE: I just received this email from Julie
3 Baker saying that you have not been able to hear anything that
4 she has to say. Could you please try to get in touch with her
5 and see if she has anything to add?

6 HEARING OFFICER KRAMER: Get touched by what means,
7 do you think? Get in touch by what means?

8 DR. ROE: Asking her if she has anything to say.

9 HEARING OFFICER KRAMER: Okay. Well, Julie Baker,
10 can you hear us?

11 Is she chatting with you at all?

12 Do you think she's on the computer?

13 MS. SIEKMANN: Yes. She's on her computer and her
14 phone.

15 HEARING OFFICER KRAMER: Okay. Well, Julie Baker,
16 if you can hear us send a chat to me. I'm on there with my
17 real name.

18 And do you have any idea what she wanted to say, Dr.
19 Roe?

20 (Colloquy Between Hearing Officer and Committee
21 Members)

22 HEARING OFFICER KRAMER: Tell you what I'll do, Dr.
23 Roe, she did send me a message at 11:09 at my email. I will
24 reply back to her and have her summarize whatever her concerns
25 are while we're in closed session, and then I can -- I can

1 read that email when we return. Does that work for you?

2 DR. ROE: Okay.

3 HEARING OFFICER KRAMER: Okay. So with that, any
4 other issues regarding the hearing?

5 MS. SIEKMANN: Mr. Kramer, when we come back do we
6 come in through the same meeting number?

7 HEARING OFFICER KRAMER: Can you say that one more
8 time?

9 MS. SIEKMANN: Yes. When we come back, when you
10 give us a time to return, do we come back to the same meeting
11 number, event number?

12 HEARING OFFICER KRAMER: Yes.

13 MS. SIEKMANN: Okay.

14 HEARING OFFICER KRAMER: We'll be leaving the lines
15 open. Okay.

16 MS. SIEKMANN: Oh, you'll leave the lines open? Oh.

17 HEARING OFFICER KRAMER: Operators are standing by.
18 Okay.

19 Do we have anyone from the public in the room here
20 that wants to make a public comment?

21 Do we have anyone on the telephone who would like to
22 make a public comment?

23 MR. SIMPSON: (Inaudible.)

24 HEARING OFFICER KRAMER: If you are trying to speak
25 you were very muffled, so say it again.

1 MR. SIMPSON: Hello. Can you hear me?

2 HEARING OFFICER KRAMER: We can. Go ahead. Please
3 give us your name and the spelling for our Court Reporter.

4 MR. SIMPSON: Rob Simpson.

5 HEARING OFFICER KRAMER: Did you say Rob Simpson?

6 MR. SIMPSON: Are you able to hear me?

7 HEARING OFFICER KRAMER: We are. Go ahead with your
8 comment.

9 MR. SIMPSON: Okay. Thank you. I'd like to make a
10 motion to intervene on behalf of Helping Hands Tools.

11 HEARING OFFICER KRAMER: Okay. First of all, who
12 are you?

13 MR. SIMPSON: Rob Simpson.

14 MR. MCKINSEY: It's Rob Simpson.

15 HEARING OFFICER KRAMER: Okay. Mr. McKinsey
16 believes it's Rob Simpson.

17 Mr. Simpson, you are already admitted in this
18 proceeding as an individual.

19 MR. SIMPSON: Yes.

20 HEARING OFFICER KRAMER: And what would the purpose
21 and benefit to both yourself and to the Commission, the
22 public, and other parties be by admitting you in another
23 capacity?

24 MR. SIMPSON: Well, we (inaudible) members of the
25 San Diego area that would love to have greater participation

1 on this, which you've allowed me to have.

2 HEARING OFFICER KRAMER: Okay. Well, you failed to
3 file a written motion. It is filed well after the deadline
4 for filing one. There's no showing of good cause for a late
5 filing. And as far -- if your -- your purported goal is to
6 expand the scope of your participation in this matter I will
7 note that you failed to make that request when all the parties
8 were invited to do so, I believe, at the February status
9 conference. So your motion is denied.

10 MR. SIMPSON: I'm sorry, I thought the deadline for
11 filing a motion -- filing a motion was the prehearing
12 conference.

13 HEARING OFFICER KRAMER: I'd have to look the rule
14 up. In any event, it is not in writing, and you failed to --
15 you failed to provide good cause. You failed to justify it,
16 basically.

17 MR. SIMPSON: (Inaudible.)

18 HEARING OFFICER KRAMER: Okay. Mr. Simpson, we
19 apologize that our audio system is sub sub-optimal today. But
20 we just can't make out what you just said.

21 MR. SIMPSON: Well, Helping Hands Tools is a
22 nonprofit organization with members in the San Diego area who
23 would like to be represented in this proceeding. And the goal
24 of our organization is to preserve the community, protect the
25 environment.

1 HEARING OFFICER KRAMER: Okay. Well, petitions to
2 intervene should be in writing. They need to contain the
3 information that's required by, I believe it's section 1207 of
4 our regulations. This is neither. So we -- we're not going
5 to issue anything in writing denying your motion. We are
6 simply going to let the transcript reflect that it is denied.
7 You still have all the rights to participate that are granted
8 to you as an individual. And you or any other organization
9 can make public comments.

10 So are you asking to make a public comment at this
11 point or are you -- do you have any other thoughts to share
12 with us?

13 MR. SIMPSON: (Inaudible.)

14 HEARING OFFICER KRAMER: There will be a transcript
15 of this. It's going to be a really interesting read due to
16 all the audio problems but -- and I'm sure the word inaudible
17 is going to appear more than once.

18 MR. SIMPSON: Well, you just denied the motion, but
19 you told me that you won't issue anything in writing that says
20 you denied the motion. So will you be striking that from the
21 record, or how does that work?

22 HEARING OFFICER KRAMER: No, no. I said the
23 transcript is going to reflect that we denied it.

24 MR. SIMPSON: (Inaudible.)

25 HEARING OFFICER KRAMER: Did you hear that?

1 Sorry, we missed that. Okay.

2 Hearing no other public comment, the Committee is
3 going to go back into closed session pursuant to Government
4 Code section 11127(c)(3) which allows a state body, including
5 a delegated committee, to hold a closed session to deliberate
6 on a decision to be reached in a proceeding the state body was
7 required to by law to conduct.

8 We will be coming back from closed session and we
9 will have -- unlike most of them, we will have an announcement
10 of the decision. And we will discuss a little bit further the
11 order of events on April 1st and 2nd for the evidentiary
12 hearings, or at least a portion of them.

13 (Colloquy Between the Hearing Officer and Committee
14 Members)

15 HEARING OFFICER KRAMER: Okay. So we're going to
16 allow you to -- to plan and have a little bit of time for
17 lunch. So we will be back here on the air and in the room at
18 12:45. And we will leave the WebEx open until then so that
19 you don't have to hang up and call back unless you want to.
20 Thank you.

21 (Off the record at 12:07 p.m.)

22 (On the record at 12:56 p.m.)

23 HEARING OFFICER KRAMER: I report out from the
24 Committee closed session. And this time we actually have a
25 report.

1 We are going to wait to issue a formal notice or
2 order, depending on what's appropriate, until after we see if
3 the FDOC is able to be filed tomorrow afternoon by close of
4 business.

5 Mr. Monosmith or Staff, if it is filed right before
6 close of business, please let me know so I can make sure that
7 Dockets gets it out. Well, you can let them know directly.
8 But I want to make sure it gets approved so it's distributed
9 tomorrow. And if it is filed by tomorrow close of business
10 what we're going to do is we're going to keep the hearings on
11 all topics on April 1st and 2nd, but we will extend the time
12 for filing of Air Quality and other rebuttal testimony from
13 the current March 24 until 3:00 p.m., and again that's to
14 allow dockets to redistribute so people don't lose the
15 weekend, 3:00 p.m. on Friday, March 27th.

16 So that will allow some additional time for people
17 to look at the FDOC and file their new testimony that is,
18 perhaps, inspired by seeing it, and then, of course, all their
19 other rebuttal testimony. So they're getting a break on the
20 other rebuttal testimony which has nothing to do with the
21 FDOC.

22 If for some reason the FDOC is not able to be filed
23 by tomorrow close of business, then we will bifurcate Air
24 Quality, but just Air Quality, not Greenhouse Gases because we
25 don't see a relationship between the FDOC and Greenhouse

1 Gases, to be heard at a later time. We will keep the hearings
2 on April 1st and 2nd for all other topics, including
3 Greenhouse Gases. And we'll allow people, if they desire, to
4 submit their testimony in Air Quality starting on April 1st
5 and 2nd. And one of the reasons why they might want to get
6 started is we're planning on having the subsequent hearing on
7 Air Quality up here in Sacramento. And so people in the
8 community might want to, you know, at least get their initial
9 evidence into the record while we're down there in Carlsbad,
10 and we're going to offer them that convenience.

11 The date we're holding for a bifurcated hearing, if
12 it's necessary, and in any event we're planning to have as a
13 Committee status conference for the purpose of deliberating on
14 the proposed decision is April 17th. That's a Friday. We
15 have reserved Hearing Room A. Do I hear applause? So it will
16 be easier to hear us if you're using WebEx. But that will be
17 here in Sacramento.

18 And I've already said it twice and I'll say it a
19 third time, Greenhouse Gases will not be bifurcated no matter
20 what happens to the FDOC.

21 Questions?

22 MS. WILLIS: Just a clarification. So nothing is
23 due March 24th at this point?

24 HEARING OFFICER KRAMER: No. If we -- if the FDOC
25 doesn't make it by tomorrow then I don't see any reason to

1 keep the -- not to keep the March 24 deadline for all the
2 other topics that we're going to hear on April 1st.

3 MS. WILLIS: Okay. So -- so all of the topics
4 except Air Quality, and then Air Quality would be March 27th?
5 I thought -- I thought --

6 HEARING OFFICER KRAMER: No. It's --

7 MS. WILLIS: -- we were extending the deadline for
8 all.

9 HEARING OFFICER KRAMER: We would only extend if the
10 FDOC is filed, or we would extend. I mean, that's our
11 preferred alternative, that the FDOC is filed tomorrow. So
12 we're just saying that we're not going to have two separate
13 deadlines for rebuttal testimony, the 24th for all topics
14 except Air Quality and --

15 MS. WILLIS: So everything is extended to the 27th?

16 HEARING OFFICER KRAMER: If the FDOC comes in. If
17 it doesn't, then Air Quality is going to be at some future
18 time. But we'll go back to the -- to the time tables we had
19 built in for all the other topics, which was March 24, which
20 gives parties a little more time to consider that testimony
21 before they have to deal with it on April 1st.

22 MS. WILLIS: And that -- and that should be if we do
23 not receive anything by tomorrow?

24 HEARING OFFICER KRAMER: Right. We'll have
25 something out on Friday which, you know, makes all this clear,

1 depending on what happened on Thursday.

2 MS. WILLIS: Okay.

3 MS. SIEKMANN: So, Mr. Kramer, Kerry from Terramar.
4 So basically we don't know yet what rebuttal testimony will be
5 to on all the other subjects other than Air Quality until
6 after Friday? So rebuttal testimony may be the 24th or it may
7 be the 27th?

8 HEARING OFFICER KRAMER: Right. But it's something
9 you should have been --

10 MS. SIEKMANN: Thank you.

11 HEARING OFFICER KRAMER: -- preparing for already
12 anyway.

13 MS. SIEKMANN: No, I -- and I understand that. But
14 what I'm saying is I just don't want to miss a deadline.

15 HEARING OFFICER KRAMER: Okay. Well, assume the
16 24th, unless you hear otherwise. That would be one way --

17 MS. SIEKMANN: Okay.

18 HEARING OFFICER KRAMER: -- to do it.

19 MS. SIEKMANN: All right. Okay. That's great.
20 Thank you.

21 HEARING OFFICER KRAMER: And if you want to -- if
22 you want to show your -- your colleagues and your frenemies,
23 whatever you're calling them, the courtesy of giving them a
24 few more days to review your rebuttal testimony, I'm sure
25 they'd appreciate that too. And maybe they'll show you the

1 same courtesy as well.

2 MS. SIEKMANN: Okay. Okay. Thank you.

3 HEARING OFFICER KRAMER: Okay. So any more
4 questions about that? Okay.

5 Then let's -- let's talk about the order of the
6 topics. On the assumption that Air Quality is going to be
7 heard on the 1st and 2nd, we have -- the one constraint I know
8 about so far is that Staff's Land Use witness is only
9 available on April 2nd, so -- and he would be by telephone.
10 So we could start the day, perhaps, with Land Use on April
11 2nd.

12 We're -- one of the things we're trying to keep in
13 mind here is -- is maybe cut some of the, you know, the state
14 is, trying to be as efficient as we can with the taxpayer
15 dollars. And if we can make it possible that some Staff can
16 make it a day trip, we're trying to see if that can be done.
17 You know, it's not an overreaching goal that trumps everything
18 else. But, you know, when we can achieve that it's a win.

19 So if we started with Land Use on the 2nd, a couple
20 of topics that seemed amendable to a day trip were Visual and
21 Noise.

22 MR. MCKINSEY: Can I have a little -- I have a
23 question related -- how about now? There we go.

24 The day trip, are you saying that if a witness could
25 be there first thing in the morning that makes it a day trip,

1 or the day before, on the 1st, makes it a day trip because we
2 don't start until noon? I'm confused on that.

3 HEARING OFFICER KRAMER: Well, what I'm thinking
4 of -- no, day trip is easier if it's on -- on the first day.

5 MR. MCKINSEY: Right.

6 HEARING OFFICER KRAMER: But if we -- we make it say
7 ten o'clock, they could probably make a day trip out of it.

8 MR. MCKINSEY: Right.

9 HEARING OFFICER KRAMER: Not nine o'clock. Yeah.

10 So the big ones are -- the big bites, if you will,
11 are Alternatives which is projected for 2 hours, Air Quality
12 which is at 2.8.

13 MR. MCKINSEY: I had on my item to bring up is I
14 think we may have agreed that Mr. Sarvey's time, we would not
15 be questioning him and he would not be presenting, and that
16 eliminates an hour on that one and a couple of other hours.

17 HEARING OFFICER KRAMER: Except he had the caveat
18 that the FDOC may provoke his need to testify or ask
19 questions. So I don't think we can count him as -- as zero at
20 this point.

21 So -- so Visual and Noise, that would be about three
22 hours' worth.

23 MS. WILLIS: And, Mr. Kramer, I'd like to reduce our
24 time for Noise.

25 HEARING OFFICER KRAMER: Okay. From 30 to --

1 MS. WILLIS: Well, we'd only need ten minutes on
2 direct. And I don't anticipate any cross at this point.

3 HEARING OFFICER KRAMER: Okay. We'll keep it ten
4 for you there on cross.

5 MS. WILLIS: Okay.

6 HEARING OFFICER KRAMER: Okay. So that brings that
7 down to about .8 hours, I guess. Okay. So about three hours
8 for Visual and Noise. We had -- TSE was another -- yeah,
9 that's about a three-hour block. So what if -- and that --
10 that encompasses the -- the pole height and the other Visual
11 issues. What if we started with Visual and Noise -- or rather
12 Visual, TSE, then Noise. I'd better start writing this down.

13 MS. ALLEN: This is April 1st?

14 HEARING OFFICER KRAMER: Right, April 1st, so we
15 start at noon. Visual -- you know, we'll no doubt have some
16 housekeeping. We're trying to get there early so we can, you
17 know, make sure all the AV stuff is running like, you know,
18 butter, ready to go right at noon.

19 So Visual -- Visual and TSE together, then Noise.
20 That's about three hours. Mr. Mason is going to be there for
21 the duration; right? He's not really a concern?

22 MR. MCKINSEY: That's correct.

23 HEARING OFFICER KRAMER: Okay. Maybe Worker Safety,
24 Fire Protection.

25 MS. WILLIS: Mr. Kramer, can I ask a question?

1 HEARING OFFICER KRAMER: Sure.

2 MS. WILLIS: At this point in time we have not
3 planned on having any witnesses for Facility Design,
4 Efficiency, Reliability. Are you -- are we going to be
5 required to have Staff witnesses? If so, we probably should
6 attach them to the Noise block because --

7 HEARING OFFICER KRAMER: Oh, okay. Well, you might
8 be able -- I would think you could have people just phone in
9 for that if there are questions.

10 MS. WILLIS: Well, our Noise witnesses are --
11 actually probably would -- would be able to cover those
12 topics.

13 HEARING OFFICER KRAMER: Well, that's --

14 MS. WILLIS: That's what I'm saying is --

15 HEARING OFFICER KRAMER: Okay. There you go then.
16 Okay. So Facility Design. And, okay, well, we -- okay, we
17 moved that to the C of C. So actually, Facility Design is
18 uncontested at this point.

19 What was the other one?

20 MS. WILLIS: I believe it was Efficiency and
21 Reliability, they are the other two. And (inaudible) Terramar
22 had -- I believe they're providing testimony.

23 HEARING OFFICER KRAMER: Okay. Same witness too?
24 Okay. So let's go Visual, TSE, Noise, Efficiency and
25 Reliability. And then --

1 MR. THOMPSON: Did you have Worker Safety in there?

2 HEARING OFFICER KRAMER: Sorry?

3 MR. THOMPSON: Did you have Worker Safety in there
4 as well?

5 HEARING OFFICER KRAMER: And then we can do Worker
6 Safety, Fire Protection. Okay. So that's -- that will --
7 that will take us up to dinner, and then public comment in the
8 evening. And it leaves the rest for the next day.

9 Let's start with Land Use. And then Air Quality,
10 GHG, and then Alternatives. And the others we'll fit in where
11 we can.

12 Does that seem to make sense to everyone?

13 Mr. Therkelsen, you're looking concerned or --

14 MR. THERKELSEN: Yeah. You're looking at me.

15 HEARING OFFICER KRAMER: Now you're smiling. Okay.

16 Good.

17 MS. ALLEN: (Inaudible.)

18 HEARING OFFICER KRAMER: Yeah. All the little ones
19 don't have much. You know, we'll fit them in. We may find if
20 we finish a little early on Monday morning -- sorry, Wednesday
21 afternoon, we'll just deal with a couple. Because you'll have
22 the project managers with you, Ms. Willis?

23 MS. WILLIS: It would depend on the questions.

24 HEARING OFFICER KRAMER: Right.

25 MS. WILLIS: However, I mean, at this point we don't

1 plan on having a Traffic witness available. And if we do need
2 one I would actually need to have the traffic analysis.

3 HEARING OFFICER KRAMER: Okay. Well, then maybe we
4 run into a question where have to put a pin in it and you get
5 them on the phone in an hour or two.

6 MS. WILLIS: Okay.

7 HEARING OFFICER KRAMER: We'll see.

8 MS. WILLIS: Thank you.

9 MS. SIEKMANN: Yeah, because -- Mr. Kramer, Terry
10 with Terramar. I definitely have a Traffic issue.

11 HEARING OFFICER KRAMER: Did you have somebody
12 specific you wanted to be there to address your question to?

13 MS. SIEKMANN: I don't know who it would be. But I
14 just know that I'm going to have rebuttal testimony on the
15 SDTD site exits.

16 COMMISSIONER MCALLISTER: SDTD site exit.

17 MS. SIEKMANN: -- for (inaudible).

18 HEARING OFFICER KRAMER: Thanks. So -- so that's up
19 to the other parties.

20 MS. SIEKMANN: That is --

21 HEARING OFFICER KRAMER: It would be up to the other
22 parties to decide if they needed to have somebody available to
23 respond to what you say to that; correct?

24 MS. SIEKMANN: Well, yeah, that's right. And, I
25 mean, I don't have a problem with what Staff has said. But I

1 think there will probably be a discussion on the conditions.
2 I think the project owner wants to change the condition and I
3 want it kept the way it is. I like the way that Staff has
4 conditioned it.

5 HEARING OFFICER KRAMER: Okay. I think Staff can
6 then take their cues from that.

7 MS. SIEKMANN: Okay. Great.

8 HEARING OFFICER KRAMER: Okay. Any other thoughts
9 about the schedule?

10 MR. THOMPSON: Yeah. We -- I just noticed that on
11 Water, some of the Water, there's only five minutes for our
12 witness and there's no cross. It's okay with us if you want
13 to take his testimony (inaudible) or just take the docket in
14 and do away with that topic.

15 MS. SIEKMANN: Mr. Kramer?

16 HEARING OFFICER KRAMER: Go ahead.

17 MS. SIEKMANN: This is Kerry -- Kerry from Terramar.
18 I believe we have had testimony about -- well, no. You know
19 what, I think I deleted it when I saw the new conditions. No,
20 I take it all back.

21 HEARING OFFICER KRAMER: Okay. So Water is not one
22 of your issues anymore?

23 MS. SIEKMANN: No.

24 HEARING OFFICER KRAMER: Okay. Yeah, we can -- so
25 nobody is planning on objecting to what the City has said in

1 their written testimony, or wanting to cross examine them?

2 Okay.

3 We'll -- we'll take your five minutes off then.

4 Thank you, Mr. Thompson. Okay.

5 And there are, no doubt, going to be other minor
6 tweaks along the way. If you -- if you have something major
7 that you need to bring up, you know, we can't guarantee that
8 we can always go along with it because, you know, one of the
9 purposes of today's meeting was to try to nail things down.
10 But, you know, file some kind of request or explanation of
11 your concern and the docket and let the other parties respond
12 to it. And we'll be able to more efficiently discuss it if
13 we've seen it ahead of time, rather than if you just bring it
14 up at the start of the hearings. So I think we'd all
15 appreciate it if you see something coming that you need --
16 you're going to want to raise with us, if you gives us a
17 heads-up, and the best way is something that's filed in the
18 docket so everyone can see it.

19 I think that covers it.

20 PRESIDING MEMBER DOUGLAS: Yeah.

21 HEARING OFFICER KRAMER: So one more time, is there
22 anything else we need to discuss?

23 MS. SIEKMANN: Well, Mr. Kramer, this is Kerry
24 Siekmann from Terramar again. You said you had a question
25 about my pictures.

1 HEARING OFFICER KRAMER: No. No, I simply hadn't
2 had the time to put the exhibit numbers on them in the --

3 MS. SIEKMANN: Oh, okay. Okay. Yeah.

4 HEARING OFFICER KRAMER: So you'll probably see that
5 by sometime tomorrow when you -- you refresh --

6 MS. SIEKMANN: Okay.

7 HEARING OFFICER KRAMER: -- your exhibit list.

8 MS. SIEKMANN: Okay.

9 HEARING OFFICER KRAMER: Okay. I did reach out to
10 Julie Baker via email. And she just said she gave up and
11 ended the call. So she didn't -- she didn't give me anything
12 by way of concerns to relay or address. Again, we apologize.
13 We're certainly not going to use this room for any -- you
14 know, for the Air Quality hearing if we have to bifurcate and
15 have it here. And I'm starting to be reluctant to use it for
16 anything, but hopefully it will improve. There is -- as
17 Commissioner McAllister said, there -- there is work in
18 progress to try to make the audio in this room better. It,
19 you know, in part it's slowed down because the room is always
20 busy, so it's hard to work on it.

21 So with that we are -- did you want to say
22 something?

23 PRESIDING MEMBER DOUGLAS: No.

24 HEARING OFFICER KRAMER: Okay. We will be adjourned
25 then. If you have any issues with the exhibits or the e-

1 filing system, call me or send me a message so we can smooth
2 those out. And we will see you in Carlsbad on the 1st.

3 (The Meeting of the California Energy Commission

4 Amendments Committee adjourned at 1:16 p.m.)

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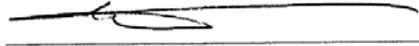
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REPORTER'S CERTIFICATE

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 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 23rd day of March, 2015.



PETER PETTY
CER**D-493
Notary Public

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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

March 23, 2015