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EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for) Docket No.
the Carlsbad Energy Center Project) 07-AFC-6
_____)

WAVECREST ROOM
HILTON GARDEN INN
CARLSBAD, CALIFORNIA 92008

MONDAY, FEBRUARY 1, 2010
10:40 A.M.

Reported by:
Troy Ray, CER**0369
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

Anthony Eggert, Associate Member

HEARING OFFICER and ADVISERS PRESENT

Paul Kramer, Hearing Officer

Tim Olson, Adviser

STAFF AND CONSULTANTS PRESENT

Mike Monasmith, Siting Project Manager

Richard Ratliff, Senior Staff Counsel

Neghar Vahidi

PUBLIC ADVISER

Jennifer Jennings

Jim Davis

APPLICANT

John A. McKinsey, Attorney

Brian J. Nese, Attorney

Kimberly J. Hellwig, Attorney

Stoel Rives, LLP

George L. Piantka, Project Manager

NRG West

Carlsbad Energy Center, LLC

INTERVENORS

Allan J. Thompson, Attorney

Bud Lewis, Mayor

Ronald R. Ball, City Attorney

Joe Garuba, Special Project Manager

City of Carlsbad

INTERVENORS

Allan J. Thompson, Attorney
Ronald R. Ball, Carlsbad City Attorney
South Carlsbad Coastal Redevelopment Agency

Julie Baker
Arnold Roe
Power of Vision

Kerry Siekmann
Catherine Miller
Terramar Associates

William Rostov, Attorney
Sarah Jackson
EARTHJUSTICE, Center for Biological Diversity

Rob Simpson
Environmental Consultant

ALSO PRESENT

Jim McIntosh, Director
California Independent System Operator

Steven C. McClary
MRW & Associates

Rory Cox
Pacific Environment

Tam Hunt
Community Renewable Solutions, LLC

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1 P R O C E E D I N G S

2 10:40 a.m.

3 PRESIDING MEMBER BOYD: Good morning,
4 everybody. Welcome to the California Energy
5 Commission's evidentiary hearings on the Carlsbad
6 Energy Center project.

7 I'm Jim Boyd, Commissioner and Vice
8 Chair of the Energy Commission. And I'm the
9 Presiding Siting Committee Member for this case.
10 Some of you may remember me from the site visit/
11 public hearing. It seems like a long time ago
12 when we first started this case.

13 Here at the table with me to the right
14 of the Hearing Officer is Commissioner Anthony
15 Eggert; to my right is Hearing Officer Paul
16 Kramer; to my left is my Adviser Tim Olson. A
17 couple more words on that point.

18 This case is docketed as number 07-AFC-
19 6, for those with a legal mind out there. The
20 prehearing conference and these evidentiary
21 hearings were originally noticed on the 7th of
22 December. A revised notice with just some
23 technical and communication revisions was issued
24 on the 21st. And I trust people have seen that
25 and know that we are here for up to four days.

1 And there are very definitely public
2 hearings scheduled at 6:00 p.m. tonight and
3 tomorrow night. And the days, Wednesday and
4 Thursday, are reserved in the event we have to go
5 over to them. Not that I don't look forward to
6 spending four days in Carlsbad, but if we can get
7 done sooner it would be just fine, since we have
8 the biggest caseload in the 30-something-year
9 history of the Energy Commission right now.

10 One notice. If you've seen prior
11 notices you've seen that the Siting Committee that
12 was originally scheduled quite some time ago was
13 myself and Commissioner Karen Douglas.

14 On Friday, the 22nd of January, in light
15 of the arrival of two new commissioners on the
16 Commission, we did some re-juggling of siting
17 cases in our public business meeting. And
18 Commissioner Eggert was added to this siting case.
19 And Commissioner Douglas has stepped away from
20 this siting case. Which was fairly easy to
21 accomplish since we'd only had the one public
22 meeting so far.

23 Commissioner Eggert did sit through the
24 evidentiary hearing on the -- the prehearing
25 conference, I'm sorry, on the 21st, as a guest,

1 knowing full well that the next day he was going
2 to be inheriting this case.

3 As such, I want to ask Commissioner
4 Eggert if he wants to say a couple words.

5 Secondly, I understand the Mayor would like to say
6 a few opening welcoming remarks, Mayor Lewis. And
7 then after that we'll continue with the usual
8 housekeeping of applicant's and intervenors'
9 introductions and so forth.

10 I will let our Hearing Officer, Mr.
11 Kramer, take over the hearing at that point to
12 take care of those introductions and to run the
13 rest of the hearing, as we, the Siting Committee,
14 sits and listens and takes copious notes on what
15 we hear today.

16 And as you've heard in the past,
17 decisions are made predicated on what's in the
18 record. And Commissioner Eggert and I sit up here
19 in a quasi-judicial role, almost wearing black
20 robes, so we have to bite our tongues on occasion
21 when we might be inclined to respond to something
22 we hear, so as not to seem to be prejudicing our
23 words in favor of one party or another.

24 And also as those of you who attended
25 the first hearing know, from the point of that

1 hearing to this day and all the way through this
2 case, the staff of the Energy Commission is a
3 party.

4 Therefore, in keeping with ex parte
5 communication rules, we cannot even consult with
6 our staff, other than in these public forums.
7 Makes it really tough on us, but that is about as
8 straight arrow as you can be with regard to this
9 process, the Energy Commission siting process
10 being deemed nationally as perhaps the best many
11 people have seen.

12 With that, Mayor Lewis, would you like
13 to say a few words. And thank you for the
14 sunshine. It was raining on the airplane as we
15 left Sacramento, again.

16 MAYOR LEWIS: Good morning, folks. My
17 name is Bud Lewis. I would like to welcome you to
18 the City of Carlsbad. We'd love to have you all
19 four days if you can afford it.

20 The city was founded in 1952,
21 approximately the same time the Encina plant
22 became a reality. The proposed power plant is an
23 important issue to our community and the region.
24 And I would like to thank the CEC for holding
25 these hearings at this time.

1 As you will hear, the city has taken
2 this project very seriously; has been engaged with
3 it from the very beginning. Over the next several
4 days as staff presents our analysis of the
5 proposed plant, and I encourage you to listen very
6 closely, ask questions if you have any concerns
7 about anything, then so state it.

8 There will also likely to be a number of
9 public comments, speakers from throughout our
10 region on this topic. These are the people who
11 will have to live with this project for the next
12 50 years if it is approved.

13 I've been blessed to serve the city
14 council for the last 40 years, 24 years of which
15 has been the Mayor of the City of Carlsbad.

16 This project has the ability to affect
17 our community and the region as much as any other
18 that I've seen through the 40 years that I've been
19 serving.

20 One thing I'd like to make clear to the
21 Commission is that the Carlsbad City Council and
22 the public, we do support regional infrastructure.
23 We have an airport; a wastewater treatment plant
24 that serves several cities; and a desalination
25 plant that will supply 10 percent of the region's

1 water needs.

2 We even support a replacement power
3 plant for Encina at another location, if someone
4 could show us the necessity of it.

5 So, clearly the city and the region's
6 opposition to this plant is not a issue. It's a
7 perspective of what's best for the region and our
8 community. We just believe that there are better
9 places to put a power plant than on the California
10 coastline.

11 Again, I'd like to welcome you to the
12 city. And if there's anything that you need,
13 please ask and we'll do our best to accommodate
14 you.

15 Thank you very much. And I have a
16 couple pieces of paper I'd like to pass out to
17 you, to read at your convenience.

18 PRESIDING MEMBER BOYD: That will be
19 fine. Thank you, Mayor Lewis. And we look
20 forward to spending four days with you, if you'd
21 just keep the sunshine coming; that would be
22 helpful.

23 Commissioner Eggert. I didn't give you
24 your chance, as I promised. I'll circle back.

25 ASSOCIATE MEMBER EGGERT: Thank you,

1 Commissioner Boyd. And just maybe a few brief
2 words. As the Commissioner mentioned, I am
3 recently appointed to this case as the Associate
4 Member. And looking forward to a good set of days
5 here in the hearing.

6 Over the last couple of weeks I've had
7 quite a bit of reading to do. I find that this
8 case obviously has a significant amount of
9 interest and involvement and effort by all
10 parties. And so I found it to be quite
11 fascinating bring myself up to speed on all of the
12 issues that are being considered before us here
13 this week.

14 So, with that I'd just like to say that
15 I'm, you know, I'm honored to be a part of the
16 case; I'm honored to be a part of the -- a new
17 member to the Energy Commission. And I believe
18 this work is extremely important that we get it
19 right and that we really understand all the
20 implications of our decisions.

21 So with that I'll turn it back to
22 Commissioner Boyd.

23 PRESIDING MEMBER BOYD: Thank you,
24 Commissioner. And now I think I will turn the
25 proceedings over to our Hearing Officer, Mr.

1 Kramer.

2 HEARING OFFICER KRAMER: Thank you,
3 Commissioner Boyd. Let's begin with
4 identification of the parties in this proceeding,
5 beginning with the applicant.

6 MR. MCKINSEY: Thank you, Hearing
7 Officer Kramer. My name is John McKinsey. I'm
8 counsel for the applicant in this proceeding,
9 Carlsbad Energy Center, LLC.

10 Carlsbad Energy Center, LLC, is owned by
11 NRG Energy, and I'd really like to introduce NRG
12 Energy, particularly for the Commissioners'
13 perspective. When we do power plants around the
14 region we'll often see a company coming into a
15 city and proposing a project. And the company,
16 themselves, are not really a resident. But here
17 NRG Energy is a resident of the City of Carlsbad;
18 has been for about 13, 14 years since they
19 acquired this project and they set up their
20 western offices right here in Carlsbad.

21 The NRG Energy West President, Steve
22 Hoffman, is here in the audience; and will be
23 observing these proceedings.

24 Beside me is George Piantka; he's the
25 Director of Environmental Business for NRG, and

1 also the Project Manager for this project. There
2 are other NRG Energy people that will be in the
3 audience and most of them are all members of this
4 community.

5 And I'd also like to emphasize obviously
6 over the next four days there'll be some very
7 fought-over contentious issues. But this
8 proceeding has been marked by tremendously civil
9 and professional debate. And I think you'll see
10 that all through this procedure, as well. We all
11 desire to show you what we think is the correct
12 version of the facts, and we're going to trust to
13 leave it in your hands to see that.

14 And so we really look forward to that
15 opportunity.

16 PRESIDING MEMBER BOYD: Thank you.

17 HEARING OFFICER KRAMER: Staff.

18 MR. RATLIFF: I'm Dick Ratliff, Counsel
19 for the Staff. And with me is Mike Monasmith, who
20 is the Project Manager. There are a number of
21 Energy Commission Staff who will also be here,
22 some of whom are present today. We will introduce
23 them when their time comes.

24 HEARING OFFICER KRAMER: To our audio
25 man, Mr. Ratliff is notoriously soft spoken, so

1 you might want to turn him up a little bit.

2 City of Carlsbad.

3 MR. THOMPSON: Thank you, Mr. Hearing
4 Officer. My name is Allan Thompson, Special
5 Counsel to the City for the CEC application. To
6 my right is Ron Ball, who is the City Attorney.
7 And to my left is Joe Garuba, who is a Special
8 Project Manager and has been with this case since
9 its inception.

10 We also have a number of people in the
11 audience, city employees, as well as our
12 witnesses, who will be observing.

13 HEARING OFFICER KRAMER: The Center for
14 Biological Diversity.

15 MR. ROSTOV: Good morning, Mr. Hearing
16 Officer. My name is Will Rostov. I'm Counsel for
17 the Center for Biological Diversity and with the
18 environmental nonprofit, EarthJustice. And with
19 me, to my right, is our Research Associate, Sarah
20 Jackson.

21 And one of the main reasons we're here
22 is because we believe that the additional 800,000
23 tons of emissions of greenhouse gases should
24 become significant under CEQA. And that hasn't
25 been done in this proceeding up to this point.

1 And we'll be advocating strongly for that
2 position.

3 HEARING OFFICER KRAMER: Terramar
4 Association.

5 MS. SIEKMANN: Welcome. My name is
6 Kerry Siekmann. I moved to Carlsbad October of
7 '94. And we bought a house in Terramar in '95,
8 March of '95.

9 I have training in many areas, including
10 degrees in accounting and mathematics, and have
11 been a real estate appraiser and an accountant, et
12 cetera. And currently I care for my aging mother.

13 I became involved in Encina issues
14 during the so-called energy crisis when Encina
15 went to the Air Pollution Control District for
16 variances.

17 I am very concerned for our community
18 because of the impacts that we feel will happen to
19 Terramar. But we are also, as a community, very
20 concerned about the impacts for the city, as well
21 as the region.

22 And you will see Catherine Miller join
23 me today, today or one of the days that the
24 hearings are happening. Thank you.

25 HEARING OFFICER KRAMER: Power of

1 Vision.

2 MS. BAKER: Yes, Julie Baker. I would
3 just like to welcome you all to our beautiful City
4 of Carlsbad. I've been a resident of Carlsbad
5 since 1986. I've served on the Carlsbad Parks and
6 Rec Commission, as well as the Planning
7 Commission. And have been involved on several
8 boards relating to public good since that time.

9 We're here because we're concerned about
10 the future of our city, and we want what is best
11 for our community. And we look forward to an
12 accurate testimony from all parties concerned.

13 HEARING OFFICER KRAMER: Do you have
14 someone with you?

15 MS. BAKER: Yes, oh, and I'd like to
16 introduce Dr. Roe, please.

17 HEARING OFFICER KRAMER: Thank you.

18 DR. ROE: My name is Arnold Roe. I'm a
19 retired professor of engineering. And in my youth
20 I built and operated power plants. And normally I
21 would be sitting on the other side of the table
22 helping the applicant.

23 I vented this -- because I was appalled
24 by many of the misleading statements that the
25 applicant was making to the public. And I became

1 also concerned because I felt that this was a
2 plant that should not be put here at this time, in
3 this place, and with this very poor expected
4 performance.

5 MR. THOMPSON: Mr. Kramer, if I may?

6 HEARING OFFICER KRAMER: First let me
7 get to the other parties who apparently are not
8 with us. I don't believe we have a representative
9 from CURE here, do we? Seeing nobody.

10 And also Mr. Rob Simpson?

11 MR. SPEAKER: Can you turn the volume
12 up, please, a little bit?

13 HEARING OFFICER KRAMER: Okay. Are you
14 not hearing me well now?

15 MS. SPEAKER: Right, can't hear you.

16 MR. SPEAKER: Pull the mics closer to
17 you when you speak, please.

18 HEARING OFFICER KRAMER: Okay. Sure.
19 Original;y we were told that we'd probably
20 overpower you if we did that.

21 Okay, so Mr. Simpson is also not with
22 us.

23 Mr. Thompson, I'm gathering that you
24 want to make a mini-opening statement, yourself?

25 MR. THOMPSON: Not exactly. I was

1 reminded by the City Attorney that he is also
2 Counsel to the redevelopment agency, as am I. And
3 so we wanted the record to be clear on that.
4 Thank you.

5 HEARING OFFICER KRAMER: Okay. And the
6 city and the redevelopment agency are operating
7 together as -- they're combining their efforts
8 basically in one party slot, correct?

9 MR. THOMPSON: We are coordinating, but
10 we want everybody to understand they are different
11 agencies, different entities.

12 HEARING OFFICER KRAMER: All right. And
13 I think we'll hear about that a little later
14 today.

15 MR. THOMPSON: Indeed.

16 HEARING OFFICER KRAMER: Okay. We also
17 have, for the benefit of the members of the
18 public, we have our Public Adviser at the Energy
19 Commission with us today. Her name is Jennifer
20 Jennings, and she is standing by the back door
21 there with her hand raised.

22 And her Associate is Jim Davis, who will
23 now raise his hand. And Jim is also holding up
24 our blue cards which we'll be using this evening
25 to have people identify that they wish to make a

1 public comment.

2 As a practical matter we won't have any
3 time during this morning's and then this
4 afternoon's proceedings to take public comments.
5 But for the convenience of the community,
6 especially for those of you who may not -- they're
7 probably not here, but who wouldn't want to sit
8 through what you're about to see this morning or
9 this afternoon, we did set aside specific time
10 this evening and tomorrow evening so that we
11 wouldn't be doing something else, and we'd just be
12 open for the business of taking public comment.

13 And also we welcome written comments at
14 any time. There's a Public Adviser's table in the
15 foyer, and there's a sheet that gives the address
16 of what we call our dockets unit at the Energy
17 Commission. And that is the location that you can
18 send written public comments.

19 Unfortunately, because of the way our
20 internal systems work, we're not able to accept
21 comments that are made via email. So we do need
22 to have them in writing. You could write them and
23 deliver them to me to take back to the dockets
24 unit. Or you could mail them to the address
25 that's available outside.

1 And back to the Public Adviser. Her
2 role in our process is not to advocate or give
3 legal advice about anything other than our process
4 to members of the public, but to help them
5 understand our process and how they can
6 participate.

7 So, if you have any questions about
8 that, she would be more than happy to meet you,
9 probably in the foyer would be the best place, so
10 then you don't have to use your very inside
11 voices. And she'll clue you in as to how you can
12 participate in our process, and answer any
13 questions you have about the process.

14 You could also ask me during a break if
15 you have some questions about the process. But I
16 encourage you to go to either Ms. Jennings or Mr.
17 Davis first.

18 MR. MCKINSEY: Hearing Officer Kramer,
19 if I could say one other thing. When we do break,
20 we're going to have to reconfigure the seats a
21 little bit in order to create a corridor on this
22 other exit.

23 So I just want everybody to know when we
24 do break at lunch we're going to have to move some
25 of these chairs in this area. And so we will need

1 to either, if you hanging out, move them or just
2 move materials to the row behind that or something
3 like that.

4 HEARING OFFICER KRAMER: Okay. It might
5 be good to make that announcement again right
6 before we break.

7 MR. MCKINSEY: Yeah.

8 HEARING OFFICER KRAMER: In case we have
9 some new people.

10 Okay, I just want to say a few words
11 about the meaning of evidence in this proceeding.
12 Shortly we'll be beginning to take evidence from
13 the parties in order to create the formal
14 evidentiary record, which is what the Committee
15 will base its decision upon, and decide whether or
16 not to certify this project.

17 Generally we follow the technical rules
18 of evidence that you might find in a court, but in
19 a much more relaxed way. Because we can consider
20 any relevant, noncumulative evidence -- and
21 noncumulative means not repetitive -- if it's the
22 sort of evidence upon which reasonable persons are
23 accustomed to relying on in the conduct of their
24 serious business.

25 Today the testimony offered by the

1 parties will be under oath. The oath will be
2 administered by me. Each party has the right to
3 present and cross-examine witnesses, introduce
4 exhibits and rebut evidence of the other parties.

5 At the prehearing conference we had
6 people estimate how much -- well, what evidence
7 they wanted to put in; identify their documents;
8 and also indicate whether they wanted to cross-
9 examine people.

10 So by what I just said I don't mean to
11 say that all the work we did nailing down who was
12 going to do what, when and for how long is out the
13 window. We have basically a spreadsheet that I
14 created, looks like this, that identifies the
15 various witnesses for the different topic areas.

16 I have a few extra copies if one of the
17 parties needs one. But I believe I checked with
18 everybody before we started, and I think I met all
19 of those needs.

20 We will provide opportunities for public
21 comment, first being this evening. The second
22 being tomorrow evening. If we find that we need
23 more time for public comment we may do something
24 in addition on Wednesday. We'll play it by ear
25 there. But we are definitely setting aside those

1 two windows tonight and tomorrow evening for
2 public comment.

3 The Committee decides questions of
4 relevance of the evidence. Hearsay evidence may
5 be used to supplement or explain other evidence,
6 but it's not, by itself, sufficient to support a
7 finding of the Committee.

8 We will rule on motions and objections.
9 And once a ruling has been made there will be no
10 further time for argument. We will move on. But
11 a party can assert a continuing objection, if they
12 have one, to a line of questioning, and we will
13 note that and address that in our written
14 decision.

15 The official record includes the sworn
16 testimony of the witnesses, or the reporter's
17 transcript of our hearings and the exhibits
18 received into evidence, and the briefs, pleadings,
19 orders, notices and other oral and written
20 comments that are submitted by members of the
21 public. Our decision will be based solely on the
22 record of that evidence and other documents.

23 Now, on the weekend, and again, I passed
24 out copies to those who needed it, I issued a
25 revised exhibit list in this case. To save time I

1 want everybody to be referring today to the
2 document, it's called exhibit list. And then it
3 says, January 30, 2010 version in parentheses.

4 The alternative to this is having to
5 describe each document in detail when we're
6 referring to it, and that would add a lot of time
7 and complexity and find people stumbling through
8 their papers.

9 So by virtue of our all using the same
10 document, which I will docket, we are able to
11 basically have a shorthand language. That
12 hopefully will save us a little bit of time during
13 these hearings.

14 It is likely that I'll issue a corrected
15 version later in the week, and again, I'll provide
16 copies of that and will note on the record that
17 that's now the document we're using.

18 I'll wait until we have our first panel
19 of witnesses to go through any questions the
20 parties may have about how that's going to work.

21 And I believe that's about all I need to
22 say for the moment. So, do the parties have
23 anything they wish to raise at this point in time
24 before we begin our first topic?

25 Seeing none, let's go on to the topic of

1 project description. Staff witness is Mike
2 Monasmith. As I understand it, he simply is to be
3 available for questions, but does not have any
4 direct examination, is that correct, Mr. Ratliff?

5 MR. RATLIFF: That's correct, although I
6 believe he was going to -- summarize the project
7 description. He's prepared to do so, if you want
8 him to, or we can wait and let the applicant.

9 HEARING OFFICER KRAMER: Does any party
10 wish to have Mr. Monasmith make a summary of his
11 project description? Seeing none.

12 The Power of Vision had a witness,
13 William Canepa?

14 MS. BAKER: Yes.

15 HEARING OFFICER KRAMER: Is he
16 available?

17 MS. BAKER: He will be this afternoon
18 during his section, which is --

19 HEARING OFFICER KRAMER: I'm sorry,
20 yeah. My mistake; I pulled the wrong sheet in
21 front of me.

22 Ms. Siekmann, you were going to be a
23 witness for Terramar?

24 MS. SIEKMANN: Yes, that's correct.

25 HEARING OFFICER KRAMER: Okay, would you

1 prefer to testify from where you are or --

2 MS. SIEKMANN: Is that okay? Or would
3 you prefer me to go --

4 HEARING OFFICER KRAMER: Actually why
5 don't you go up to the table.

6 MS. SIEKMANN: Okay.

7 HEARING OFFICER KRAMER: And then those
8 were the only two direct witnesses. So, Mr.
9 Monasmith is going to simply be available for
10 cross-examination, so, Ms. Siekmann, --

11 MS. SIEKMANN: Should I bring my cross,
12 as well. Or am I just giving you direct testimony
13 right now?

14 HEARING OFFICER KRAMER: Bring
15 everything; you might as well just stay there.
16 So, Ms. Siekmann, when you get back there, if you
17 would just begin your testimony.

18 MS. SIEKMANN: Okay.

19 HEARING OFFICER KRAMER: And then we
20 will have cross-examination by the city, Center
21 for Biological Diversity, Power of Vision. And,
22 Ms. Siekmann, I assume you will have questions for
23 Mr. Monasmith, since he's --

24 MS. SIEKMANN: Yes, I do.

25 HEARING OFFICER KRAMER: -- the only

1 other person there.

2 MS. SIEKMANN: Can you --

3 HEARING OFFICER KRAMER: Go ahead with
4 your direct testimony first.

5 MS. SIEKMANN: Can you hear me?

6 HEARING OFFICER KRAMER: Yes.

7 MS. SIEKMANN: Okay. Also I would like
8 to just say, before I begin, that due to the fact
9 that it looks like it's going to be so -- the
10 hearings are going to be so long, I have spent a
11 great deal of time compacting and compressing my
12 testimony.

13 But there are a few areas, including
14 this one, where I would, if I go over my minutes
15 -- not over, I would like to transfer a few
16 minutes from my testimony to cross-examination.

17 HEARING OFFICER KRAMER: Okay.

18 DIRECT TESTIMONY

19 MS. SIEKMANN: Over the past year I have
20 listened to the concerns of over 1000 people that
21 I've spoken to at different events, different
22 public events where we have spoken to and informed
23 many people about the upcoming project. These
24 people, regarding the impacts of the proposed
25 second power plant.

1 The individuals that I spoke to included
2 Terramar residents, long- and short-term Carlsbad
3 residents, north county residents, California
4 residents, and out-of-state residents visiting
5 Carlsbad.

6 Over and over again these individuals
7 voiced their concerns regarding inappropriate use
8 of scarce cultural land and incompatible land use
9 for the area. This was their number one concern.

10 Severe negative visual impacts,
11 especially when the I-5 is widened, creating
12 negative economic impacts for the tourism industry
13 and tourism employment. Many people said that
14 Carlsbad would be called the industrial center of
15 the county, when so much of our economy depends on
16 tourism. Negative economic impacts for the City
17 of Carlsbad supported by tourism tax dollars.

18 Many spoke about cumulative air
19 pollution impacts from several major sources of
20 air pollution, Encina, the project, the railroad,
21 the I-5, the I-5 expansion in an area already in
22 nonattainment for ozone and particulate matter.

23 Global negative effects people spoke of.
24 Hundreds of thousands of additional greenhouse
25 gases in the air.

1 Many spoke of the continued impingement
2 and entrainment from the CECP's proposed
3 desalination plant.

4 Some spoke of safety concerns with the
5 proposed project sitting between two major
6 transportation corridors. Many people were
7 concerned that acts of terrorism were possible, or
8 a serious accident could occur from a semi hitting
9 the plant with the widening of the I-5.

10 These were these individuals' top
11 concerns. Each one is significant by itself. And
12 together they make a strong cumulative statement.

13 So in the FSA where it says the impact
14 of CECP can be mitigated such that its impacts are
15 less than significant is disagreeable with the
16 individuals that I spoke to over this past year.

17 Thank you.

18 HEARING OFFICER KRAMER: So that's your
19 opening testimony?

20 MS. SIEKMANN: That is it.

21 HEARING OFFICER KRAMER: Okay. Well,
22 you've saved probably quite a few minutes there, I
23 would say on the order of 16 minutes. So go ahead
24 with your cross-examination, since you're up
25 there.

1 MS. SIEKMANN: Okay.

2 CROSS-EXAMINATION

3 BY MS. SIEKMANN:

4 Q First of all, on page 1-7 of the FSA you
5 discuss eliminating the daily need for millions of
6 gallons of once-through ocean water cooling, and
7 its associated fish impingement and biological
8 impacts from entrainment.

9 Since Units 1, 2 and 3 have been
10 minimally used in the last few years, please
11 explain to me how millions of gallons of water
12 have been saved from once-through cooling on a
13 daily basis.

14 MR. MONASMITH: Yeah, sure, well, staff
15 looked at a number of aspects related to the CCEP,
16 its approval and conditions that would be tied to
17 its operation, including the permanent retirement
18 of Encina's Units 1, 2 and 3.

19 Currently Units 1, 2 and 3 are permitted
20 by the Regional Water Board for approximately 220
21 million gallons of once-through seawater on a
22 daily basis. And we felt that with the retirement
23 of 1, 2 and 3, and the inability for the operator
24 to utilize that once-through cooling water, that
25 that would be a benefit in terms of existing

1 impingement and entrainment that could occur at
2 the site.

3 MS. SIEKMANN: But what actual gallons
4 are saved every day?

5 MR. MONASMITH: The --

6 MS. SIEKMANN: Since the units are only
7 used a small percentage of the time.

8 MR. MONASMITH: Right. There is
9 obviously, on a daily basis, on a weekly basis,
10 and I know that the applicant has provided
11 information into the record on the exact levels,
12 at all five Encina units.

13 What staff looks at, obviously, is what
14 is the maximum that 1, 2 and 3 could use, 220
15 million gallons. What would happen if CECP were
16 to be approved, and that would be the complete
17 elimination of all 220,000 million gallons.

18 So that's what staff looks at; the
19 factual basis that we look at in doing our
20 assessment and our analysis.

21 MS. SIEKMANN: So you're saying they
22 could use that many, but they are actually not
23 using that many? Even close to that many?

24 MR. MONASMITH: Yeah, that's right. We
25 looked at what the maximum permitted current level

1 is to the Regional Board, and what would, as the
2 result of CECP's approval, if the Commission were
3 to approve it, what would be eliminated. And that
4 would be a maximum of 220 million gallons a day.

5 MS. SIEKMANN: Though they're not using
6 even nearly that much right now?

7 MR. MONASMITH: Again, yeah, there are
8 daily fluctuations, weekly, monthly fluctuations
9 in the actual operations on 1 through 5. But what
10 we look at is what the maximum allowed permitted
11 levels are on 1, 2 and 3.

12 MS. SIEKMANN: Okay. Per the FSA, page
13 4.8-7, the construction of the proposed CECP will
14 require a maximum of 357 workers in the 19th month
15 with the fewest being 76 in the ninth month. The
16 contractors administration staff would not be
17 local workers.

18 Nowhere does it state that these
19 employees would only be hired from the local
20 employment pool. They could be hired from the
21 local employment pool and also surrounding
22 counties.

23 With the high rate of unemployment at
24 this time is it possible for workers to apply from
25 outside of the region and state for these jobs?

1 MR. MONASMITH: Certainly it's feasible.
2 When we look at the worker pool we look at the
3 benefit in terms of socioeconomics that you're
4 referring to, the benefits that would accrue to
5 the local community as the result of sales taxes
6 and local user taxes.

7 I know that one of the intervenors,
8 CURE, was particularly interested in the organized
9 labor aspect of the potential worker pool on the
10 25-month construction of CECP Units 6 and 7.

11 We currently feel that it's a benefit to
12 the city. It was one of our stated project
13 benefits and objectives, was the local hiring, the
14 local taxes, the services, the business owners,
15 the hotel owners, everyone that would benefit from
16 the construction of this facility.

17 The exact and particular makeup of the
18 worker base, itself, obviously would be flexible.
19 We would like to see as many local folks hired as
20 possible. That, obviously, as you indicated, is
21 subject to the contract, itself.

22 MS. SIEKMANN: Also the FSA states that
23 post construction, and after the retirement of the
24 Encina Units 1, 2 and 3, Encina employees will be
25 transferred from Encina to the proposed CECP,

1 adding no permanent employment to the local base.

2 Carlsbad is a tourist town. Is it true
3 that staff has not evaluated how the proposed CECP
4 could negatively affect and devalue the future of
5 our tourism industry?

6 MR. MONASMITH: We did look at that.

7 And that was obviously a chief component of you
8 and other intervenors was the potential negative
9 impact of a facility like this on tourism. We
10 obviously are sensitive to that.

11 When we looked at employment we looked
12 at the construction employment; and then we did do
13 an analysis on ongoing, long-term employment
14 associated with the operation of the CECP.

15 We felt that there was a benefit. We
16 felt our analysis is factual. And we didn't feel
17 that there would be a negative impact to the long-
18 term tourism.

19 I know the city had asked us if we could
20 do an analysis on alternative developments within
21 the site, itself. And we were obviously open to
22 hearing those from them. But in the end we made
23 an analysis about the CECP, itself, on the site,
24 and the impacts it would have on the socioeconomic
25 and economic components of the city.

1 MS. SIEKMANN: But did you make a
2 specific tourism negative impact evaluation?

3 MR. MONASMITH: We did not feel that
4 there would be a negative impact on tourism, no.

5 MS. SIEKMANN: Okay. NRG is proposing
6 to construct an oceanwater purification system for
7 the CECP. That system will create issues of
8 impingement and entrainment, isn't that true?

9 MR. MONASMITH: No, it's not true. CECP
10 -- facility, would utilize approximately 4.32
11 million gallons a day on a parasitic basis from
12 the Encina Power Station's once-through cooling,
13 which is currently available to operate up to 837
14 million gallons a day.

15 The minimum level that Encina utilizes,
16 even when there's zero operations on Units 1
17 through 5, it's approximately 3000 gallons a
18 minute or 4.32 million gallons a day.

19 So even when Encina Units 1 through 5
20 are not operational, the service pumps that
21 service Encina, at a minimum level would provide
22 4.32 million gallons, which would then go through
23 reverse osmosis, purification and resulting in a
24 net 700,000 gallons, which is what CECP would use
25 for its washdown and lifecycle, the creation of

1 steam. Which is obviously, once heated, what
2 turns the turbines and makes electrons.

3 MS. SIEKMANN: But once units 4 and 5
4 are closed down, when they use their desal unit
5 won't there be issues of impingement and
6 entrainment?

7 MR. MONASMITH: Even when 1 through 5
8 were not operational there's a minimum level of
9 3000 gallons a minute that runs through the Encina
10 site, or 4.32 million gallons a day.

11 That is sufficient to provide the CECP
12 what they need to desal to make 700,000 gallons in
13 order for their operations.

14 So there would be no new withdrawals of
15 ocean water from the lagoon; no new impingement or
16 entrainment impacts. And our analysis in biology
17 and water spoke to this fact.

18 MS. SIEKMANN: Even though 4 and 5 are
19 shut down, that will still continue?

20 MR. MONASMITH: Even with --

21 MS. SIEKMANN: For Encina?

22 MR. MONASMITH: -- without 1 through 5
23 operating, there is a minimum level of water that,
24 even with one service pump operational at the
25 Encina Station, it's a very simple process that

1 brings in water at a very minimum level, 3000
2 gallons a minute is a minimum level.

3 And at that minimum level you would
4 still have 4.32 million gallons a day, or enough
5 for CECP to pull off and to desalinate through two
6 processes of reversed osmosis and then
7 purification to net 700,000 gallons, which is what
8 you would need to run the system.

9 MS. SIEKMANN: Thank you. And I do
10 understand that, but pulling that water in does
11 create impingement and entrainment.

12 MR. MONASMITH: Which are currently
13 permitted through -- with the Encina Power Station
14 with the Regional Board. They have an existing
15 NPDES permit with the San Diego Regional Water
16 Quality Control Board which permits them to
17 utilize that water.

18 So therefore there are no new
19 withdrawals of water from the lagoon; no new net
20 uses of seawater. Therefore, no new impingement
21 or entrainment impacts.

22 MS. SIEKMANN: The F --

23 MR. RATLIFF: Commissioners, if I may, I
24 don't object to this questioning, but I did want
25 to point out that Mr. Monasmith is not the author

1 of the entire FSA. He actually did the project
2 description portion of it. And we will have
3 subsequent witnesses who are responsible for the
4 water resources section.

5 And perhaps --

6 MS. SIEKMANN: Well, it -- I'm sorry,
7 excuse me.

8 MR. RATLIFF: -- perhaps these questions
9 could be addressed also to those witnesses --

10 MS. SIEKMANN: Yeah, it's just from the
11 quote in the project description where it says,
12 eliminating the daily need for millions of gallons
13 of once-through ocean water cooling and its
14 associated fish impingement and biological impacts
15 entrainment.

16 So, I'm sorry, that's where the question
17 came from.

18 But I'll move on.

19 The FSA states Encina would be
20 transferred to the -- that Encina Staff would be
21 transferred to the proposed CECP after Encina
22 Units 1, 2 and 3 are shut down.

23 Please identify long-term employment
24 stated on page 3.3 of the FSA.

25 MR. MONASMITH: The long-term employment

1 at CECP -- essentially I think I may have talked a
2 little bit about this before. But, as proposed by
3 the applicant, once construction has occurred,
4 once those benefits, and you're talking about the
5 existing long-term operation of the Carlsbad
6 Energy Center project, it would retire Encina's 1
7 through 3.

8 And staff that are currently trained,
9 part of the NRG family living here in Carlsbad
10 would continue to then work at the CECP. That was
11 our understanding. That's what we analyzed.

12 MS. SIEKMANN: But there would be no new
13 long-term employment, is that correct?

14 MR. MONASMITH: My understanding is
15 that's right. That the existing employment of
16 folks that wouldn't lose their jobs because
17 Encina's 1, 2 and 3 are being retired. They would
18 be retained and asked to work on the new CECP, a
19 more efficient component than Encina 1, 2 and 3.

20 But still they would be able to be
21 trained and obviously different technology, 1, 2
22 and 3 are much different than CECP 6 and 7. But
23 we felt that those workers could obviously be
24 trained and could work in the new capacity.

25 MS. SIEKMANN: Certainly. I'm just

1 talking about there won't be any new employment.

2 MR. MONASMITH: That is my
3 understanding, correct.

4 MS. SIEKMANN: Okay.

5 MR. MONASMITH: And I think we may have
6 actually had a condition that was tied to more
7 existing staff than maybe the applicant had
8 originally suggested in terms of onsite staff on
9 the new CECP site.

10 So I think there actually is perhaps a
11 few more, but we're not -- in general you're
12 right.

13 MS. SIEKMANN: Thank you very much.

14 HEARING OFFICER KRAMER: Thank you. And
15 before you -- you're done, then? Before you two
16 sit down I realize that I made a mistake. And I
17 haven't sworn anyone in yet. Yeah, that was good.

18 And my laptop just went off because we
19 didn't have the power turned on.

20 But anyway, all of those of you who are
21 here today who expect to testify as witnesses,
22 could stand and raise your right hand. I'm going
23 to attempt to swear you in from memory.

24 //

25 //

1 Whereupon,

2 ALL PROSPECTIVE WITNESSES

3 were called as witnesses herein, and after first
4 having been duly sworn, were examined and
5 testified as follows:

6 MS. SIEKMANN: Should I sit down now?

7 HEARING OFFICER KRAMER: Yes, and we
8 have some additional cross-examination from other
9 parties. Let's begin then with -- or continue
10 with Power of Vision. Did you have questions for
11 Mr. Monasmith?

12 DR. ROE: Yes, we do.

13 CROSS-EXAMINATION

14 BY DR. ROE:

15 Q First I'd like to go back to the issue
16 that Kerry Siekmann of Terramar raised with Mr.
17 Monasmith concerning the use of seawater.

18 I presume this is one of the listed
19 noteworthy public benefits. I assume the public
20 benefit that is being referred to is a reduction
21 in the amount of sealife that will be spared
22 entrapment, and that numbers such as the permitted
23 amount of water that would entrap sealife is
24 really irrelevant.

25 That the relevant question is how much

1 water is being used that will entrap sealife. And
2 the historical record, the recent historical
3 record shows that the proposed units that are
4 going to be shut down, 1, 2 and 3, are only
5 operating at below 7 percent of the time right
6 now.

7 So they're not entrapping the amount
8 that they potentially could if those units were
9 ever to operate at full capacity. They haven't
10 done so for years.

11 And my question, also following up on
12 that, is has staff considered that during the
13 projected lifecycle of the CECP desalination
14 plant, is there a potential that they would
15 actually entrap more sealife than the projected
16 life entrapment from the units 1, 2 and 3 in the
17 Encina Power Plant if that were not to be shut
18 down.

19 Because that's the comparison that
20 they're making. That they shut down 1, 2 and 3,
21 and now they will replace it with the CECP.

22 So we must look at the lifecycle
23 potential for destruction of the marine habitat by
24 the two projects, not by permitted amounts of
25 water.

1 MR. MCKINSEY: Hearing Officer Kramer, I
2 think we would like to object --

3 DR. ROE: Well, I --

4 MR. MCKINSEY: -- try to just focus that
5 most of what Dr. Roe is providing really sounds
6 like testimony. And I didn't hear a question at
7 any point that Mr. Monasmith can answer.

8 DR. ROE: You're absolutely right. And
9 I'd like to --

10 MR. MCKINSEY: So that's our objection.

11 DR. ROE: -- rephrase -- I'd like to --

12 HEARING OFFICER KRAMER: Sustained.

13 DR. ROE: -- rephrase it. I did have a
14 written question. And the question was did staff
15 take into consideration into account that the use
16 of ocean water by the CECP desalination plant over
17 its projected lifecycle could exceed the projected
18 use of ocean water that would be saved in units 1,
19 2 and 3 of EPS were it not retired?

20 MR. MONASMITH: Okay, yeah, sure. Like
21 I indicated to Kerry earlier, what we do is we
22 look at the factual record in terms of permitted
23 use, and what the potential possible existing
24 permitted use is from the San Diego Regional Water
25 Quality Control Board, on their NPDES level 1, 2

1 and 3 currently can utilize on a daily basis. And
2 that's over 200 million gallons per day.

3 I acknowledge that that's at 100 percent
4 capacity. Obviously the capacity on all five
5 units fluctuates on a daily and weekly basis,
6 depending on what the needs of Cal-ISO and other
7 components on the grid, what they would need from
8 this operator.

9 But what we look at is what the
10 permitted level is. And that's 220 million
11 gallons a day that would permanently be taken off
12 the table. No longer could it ever be used under
13 any situation.

14 Second, when we looked at the desal
15 facility and the 4.32 million gallons we looked at
16 a couple things. First off, where would that come
17 from. Would that require any new uses of
18 seawater, as currently proposed by the applicant.

19 Has the applicant made the appropriate
20 and proper permits with other regulatory agencies
21 in terms of the permitted use of any of that
22 water, which they have, with the San Diego
23 Regional Water Quality Control Board, a separate
24 NPDES permit for the use of that water.

25 But more importantly what we looked at

1 was would there be any new impingement or
2 entrainment impacts as the CECP desal, and the
3 answer to that was no, there would not be.

4 Even at a minimum level, without
5 operation of any 1, 2, 3, 4, 5 at Encina, with
6 zero electrons coming out of that yard, there
7 would still be a minimum of 3000 gallons per
8 minute that would be flowing through Encina that
9 the CECP could then grab and use and desalinate
10 through a twice RO process to purify and use for
11 their industrial purposes. So it was our analysis
12 that there was zero impacts.

13 In terms of a lifecycle, I think what
14 you['re talking about there is more of a, when we
15 think of lifecycle that goes more to a GHG
16 analysis which is couched in the air quality GHG
17 section of the FSA, which we'll be talking about
18 tomorrow and Wednesday. And I really am not an
19 expert, I'm really not sworn to talk or speak to
20 that. But I can assure you that that's something,
21 a discussion that we will have.

22 But, yeah, we looked at it. We found
23 there was no new net impingement or entrainment
24 impacts.

25 DR. ROE: Mr. Monasmith, in your opinion

1 if CECP is approved, how long do you think it
2 would be in existence and produce power?

3 MR. MONASMITH: The Carlsbad Energy
4 Center Project?

5 DR. ROE: Yes.

6 MR. MONASMITH: I think as proposed the
7 lifecycle -- I guess -- using that word -- the
8 life of the facility is approximately, any
9 facility is approximately 30 years.

10 DR. ROE: And you're well aware of the
11 initiatives in the legislature and elsewhere to
12 shut down once-through cooling power plants
13 including units 4 and 5 of the Encina Power
14 Station?

15 MR. MONASMITH: Yes, which is why we
16 have included conditions of certification in our
17 biology and our water analysis, which we can talk
18 about on Thursday, when our staff witnesses are
19 sworn in to testify to those facts, that if, in
20 the future, when once-through cooling and all the
21 Encina facility were to go away, there would
22 obviously need to be discussions as to what would
23 be the appropriate track to take, just as the
24 Carlsbad seawater desalination project, Poseidon,
25 has also similar components put into their license

1 and the agreement they have with the Regional
2 Board and the Coastal Commission for the use,
3 once-through cooling is eliminated in Encina, as
4 well.

5 So we obviously will look into that.

6 DR. ROE: I won't belabor the point any
7 further because I see you nodding your heads
8 saying that we can discuss this later under water.

9 MR. RATLIFF: Yes, Dr. Roe. Your
10 questions are very important and I want them to be
11 answered, but I think they'll be better answered
12 by the Water --

13 DR. ROE: Yes.

14 MR. RATLIFF: -- Board on Thursday, and
15 by our witnesses on that day.

16 DR. ROE: I think you're right. I just
17 want them to clarify the point in the discussion
18 between the two previous speakers.

19 I have another question which was listed
20 as a noteworthy public benefit. And that is, and
21 I'll start with the question to begin with so that
22 Mr. McKinsey won't be upset.

23 How do you justify the benefit to the
24 public of this project purported meeting the need
25 for new electrical generating resources located in

1 a critical load center of the San Diego region --
2 and that's a quote from the executive summary --
3 when the California ISO 2011 to 2013 local
4 capacity technical analysis indicates that the San
5 Diego region will not be deficient in generating
6 capacity?

7 And the California Energy Commission's
8 2009 IEPR shows a drop in both peak power demand
9 and power consumption for the San Diego region.
10 And the California Energy Commission's California
11 Energy Demand 2010-2020 staff finally bought shows
12 lower peak power demand for the San Diego region
13 than their prior reports.

14 And most importantly the final arbiter
15 of need for electrical generating resources in
16 this area, namely the San Diego Gas and Electric
17 Company, has not given the applicant a contract to
18 accept power from the proposed plant.

19 MR. RATLIFF: Commissioners, again I
20 don't like to object, but this is a very good
21 question and it does need to be answered. But I
22 think there's perhaps an anxiousness to ask all
23 the questions of the very first witness.

24 And we have witnesses who are going to
25 address that, and who have filed testimony on it.

1 But they aren't Mr. Monasmith. And so this is
2 really outside of his testimony. And I would
3 prefer that those same questions be held for the
4 panel that will appear on Wednesday.

5 DR. ROE: Which panel is that?

6 MR. RATLIFF: The greenhouse gas panel
7 will discuss all these issues, and the
8 alternatives discussion that follows, as well.
9 And the --

10 DR. ROE: It's not related to greenhouse
11 gases. This is related to the need for energy
12 located in this particular center.

13 MR. RATLIFF: And that will be the focus
14 of the alternatives discussion.

15 DR. ROE: All right.

16 MR. RATLIFF: And that falls immediately
17 on the heels of the greenhouse gas --

18 DR. ROE: I'll make a note of that.

19 MR. ROSTOV: Mr. Roe?

20 DR. ROE: Yes.

21 MR. ROSTOV: I would suggest that since
22 your question is linked to the project description
23 you should be entitled to an answer if you wanted
24 it. And if there's going to be further questions
25 a couple days in the future, those can go then.

1 But he's asking questions specifically
2 about a statement in the project description.

3 MR. RATLIFF: Well, we can --

4 HEARING OFFICER KRAMER: Okay, let me --

5 MR. RATLIFF: -- project description is
6 very general. And if you want to ask all the
7 questions for everything to Mr. Monasmith, I think
8 he's quite valiant to be the utility end-fielder
9 for the entire staff.

10 But I think it would be much better to
11 actually address the witnesses who have filed
12 testimony on it.

13 HEARING OFFICER KRAMER: Let me -- was
14 that an objection, Mr. Ratliff, then?

15 MR. RATLIFF: Just a response.

16 HEARING OFFICER KRAMER: Okay, well, I
17 am wondering if the question isn't perhaps
18 motivated by a fear that Dr. Roe objects to the
19 conclusion Mr. Monasmith has drawn in his project
20 description. And feels that if he doesn't rebut
21 it right here with regard to this section, that at
22 the point in time later when it is discussed in
23 detail, you will have lost the argument already.

24 And that's not the case. Mr.
25 Monasmith's project description is a summary.

1 This really is better discussed in detail when you
2 start to talk about alternatives. Because
3 benefits of a project really are only relevant if
4 we're talking about alternatives and whether a
5 particular alternative better provides benefits or
6 provides the same level of benefit, or does not
7 provide a benefit.

8 But as far as whether the project should
9 be approved or not, the project description is, I
10 guess it's -- to use a baseball analogy, it's
11 probably infield practice as opposed to the real
12 game, itself.

13 MR. MCKINSEY: Hearing Officer Kramer, I
14 think one thing that might be confusing here is
15 Mr. Monasmith is also the author of the executive
16 summary. And I heard quotes coming from the
17 executive summary. And almost by definition that
18 gets into a lot of other disciplines.

19 And so that some of what is happening is
20 also going on for that. There's a project
21 description section that Mr. Monasmith is also the
22 author for. Thought some of these things are also
23 in the project description, but still that's
24 what's bringing in all these broad topics that are
25 really the subject of other chapters in the staff

1 assessment, in the AFC, et cetera.

2 HEARING OFFICER KRAMER: Yeah, and when
3 we get to alternatives and greenhouse gases, which
4 they're kind of cross-over issues in some ways,
5 there will be a witness here from the California
6 ISO, among others. And they operate the system.
7 And they better know what the needs are for the
8 system in San Diego and throughout the state than
9 does Mr. Monasmith.

10 I would also point out, Dr. Roe, that
11 you had indicated you needed five minutes and
12 you've doubled that at this point. So, do you
13 have one more question to wrap up?

14 DR. ROE: Well, my final question
15 actually relates to the role of the staff in this
16 procedure. I assume that their role was that of
17 an unbiased evaluator of what was presented in the
18 AFC.

19 And I was a little bit disturbed to see
20 that under noteworthy public benefits they didn't
21 indicate that there was some possible detrimental
22 factors to the public.

23 Such as the further industrialization of
24 the valuable coastal resource. And the
25 significant increase in greenhouse gases, NOx and

1 other things.

2 And it seemed to me that much of what I
3 read in the FSA was just a simple regurgitation of
4 what was in the AFC, with little unbiased
5 evaluation of the other sides of the argument.

6 HEARING OFFICER KRAMER: Well, I'm --
7 (Parties speaking simultaneously.)

8 MR. MCKINSEY: -- that is, again, not a
9 question, and sounds like testimony from a
10 witness.

11 MR. MONASMITH: I'd like to answer, if I
12 could.

13 HEARING OFFICER KRAMER: Briefly.

14 MR. MONASMITH: Dr. Roe, we do conduct
15 independent analysis in terms of engineering,
16 public health, bio, noise aspects, compliance with
17 local ordinances, regulations and standards, and
18 any significant impacts that may exist as a result
19 of this project.

20 We do receive project objectives and
21 needs that are suggested by the applicant when
22 they file their application for certification
23 and/or any amendments which occurred on this case.

24 We objectively look at those. Sometimes
25 we will add other objectives and needs that we see

1 as a result of this project. Sometimes we will
2 take them away.

3 In this case the project objectives and
4 needs in terms of a brownfield development, in
5 terms of eliminating once-through cooling, in
6 terms of providing new reliable, fast-start,
7 efficient capacity in the San Diego region, in a
8 load pocket that would need it for interim power,
9 in terms of bringing in solar. In terms of a
10 number of testimony that you'll actually hear in
11 the next four days from our staff on air quality
12 and GHG and water, land use, biology, all other
13 impacts as it relates to this site.

14 We did conduct an independent analysis
15 of those. We did not regurgitate. You've been
16 part of this process for two and a half years.
17 It's been extensive, lengthy, well-documented,
18 health debate.

19 And our staff, in their testimony in our
20 final staff assessment, I think broke new ground
21 in terms of our GHG analysis and air quality, in
22 our work with the applicant, with the city, with
23 the intervenors, with the Center for Biological
24 Diversity and others.

25 So we're proud of this testimony. We

1 stand behind it. And we're here today to defend
2 it.

3 HEARING OFFICER KRAMER: Thank you, Dr.
4 Roe. We recognize that you've had a long career
5 in the industry and you'll have the opportunity to
6 ask your questions of the people who are more
7 knowledgeable later on in these hearings.

8 The city, cross-examination?

9 MR. THOMPSON: Thank you.

10 CROSS-EXAMINATION

11 BY MR. THOMPSON:

12 Q Morning, Mr. Monasmith.

13 MR. MONASMITH: Allan.

14 MR. THOMPSON: Welcome to Carlsbad.
15 Just a couple areas. First of all, I'd like your
16 help in our understanding of what the project is,
17 the project definition. And what you are
18 recommending that this Commission approve.

19 Figure 3 in your project description, is
20 that the project that you want the Commission to
21 approve?

22 MR. MONASMITH: I'm sorry, we have
23 project figure 2 up on the board. We could
24 probably get figure 3 up, but why don't you just
25 remind me what figure 3 is.

1 MR. THOMPSON: It's a visual schematic.

2 MR. MONASMITH: Is it the plot plan?

3 Okay, yes. Yes, the plot plan, which includes the
4 general location of CECP Units 6 and 7 on the
5 existing aboveground storage tanks 6, 7 and 8 on
6 the northeastern section of the Encina Power
7 Station site.

8 It includes where the actual combustion
9 turbines would be; where the HRSGs would be. The
10 general alignment of the rim roads. Other
11 facility components that we talk about in facility
12 design and that others speak to in other sections
13 of the FSA.

14 MR. THOMPSON: Mike, I've only got 30 or
15 40 minutes, so a yes would be helpful --

16 MR. MONASMITH: Yes. Oh, yes, yes, yes.

17 MR. THOMPSON: -- actually I don't --

18 MR. MONASMITH: Right, yeah, that's --

19 MR. THOMPSON: -- know who's controlling
20 this, but if figure 3 can be put up here I think
21 that would be a big help, that schematic.

22 MR. MONASMITH: That's not it but --

23 HEARING OFFICER KRAMER: That's the
24 visual section.

25 MR. MONASMITH: Yeah, that's --

1 MR. MCKINSEY: I don't think we have it
2 ready at this point. We'll try and see if we can
3 grab it.

4 MR. MONASMITH: We can pull it up on the
5 FSA. But why don't you ask me something if you --
6 I can maybe talk to it.

7 MR. THOMPSON: Where did that figure
8 come from?

9 MR. MONASMITH: That, the CECP plot plan
10 was initially provided by the applicant in the
11 AFC. Then again it was amended. A new plot plan
12 was provided after the supplement, the project
13 enhancement and refinement, which was the
14 applicant's amendment that came in in July of
15 2008.

16 And then we had a small tweak to that
17 which actually is articulated in the worker
18 safety/fire protection section of the FSA which
19 has the more precise dimensions in terms of
20 concerns on cumulative impacts related to the I-5
21 expansion.

22 MR. THOMPSON: So, does this figure
23 reflect the I-5 expansion?

24 MR. MONASMITH: The project 3
25 description may not provide the level of detail in

1 terms of the width between a proposed I-5
2 expansion, as we understand it, from Caltrans and
3 conversations with the city.

4 In June of 2009 we had a site visit with
5 staff and Caltrans engineers where we actually had
6 dimensions and a site survey in order to give us
7 the absolute minimum levels with an expanded I-5
8 so we could better understand the pinch-points
9 between the CECP 6 and 7, which allowed us to then
10 put in conditions of certification into our visual
11 resources analysis for a secondary berm. As well
12 as minimum levels for an access road around the
13 CECP that would provide for emergency services
14 access.

15 So that was reflected in the worker
16 safety/fire protection appendix A. It's not best
17 reflected in the project description in terms of
18 if that's what you're talking about, the
19 cumulative impact from an I-5 expansion.

20 MR. THOMPSON: Starting with the CECP
21 and working west toward the ocean, looking at your
22 figure 2.1-1 it appears that the inner perimeter
23 road inside the pit is still there, is that
24 correct?

25 MR. MONASMITH: You're talking about the

1 lower and upper rim roads?

2 MR. THOMPSON: I'm just referring right
3 now to the lower.

4 MR. MONASMITH: Yeah. The lower rim
5 road is the -- which is articulated in worker
6 safety and fire protection, which is part of our
7 cumulative impact assessment, which, as you know,
8 was important given the number of projects
9 potentially reasonably foreseeable in this area.
10 Including the I-5 expansion, include the city's
11 sewer intercept expansion and lift station.
12 Including the double-tracking of the train track,
13 the low sand. And including the Carlsbad's
14 Seawater Desalinization Project, Poseidon Project.

15 There's a number of projects that were
16 cumulatively considered and important in terms of
17 the lower rim road or the minimum amount that
18 would be necessary, in staff's opinion, in order
19 to provide emergency access.

20 And we talk about that on Thursday when
21 Dr. Greenberg will be better prepared and able to
22 answer your questions in that regard.

23 But, yes, we did look at that on a
24 cumulative basis.

25 MR. THOMPSON: I was actually -- maybe

1 my question was better than I thought it was. I
2 was only asking really if the lower rim road is
3 still a part of the project.

4 MR. MONASMITH: Yeah, that is our
5 suggested -- as the staff's recommendation
6 testimony is a rim road around the entire project,
7 yes.

8 MR. THOMPSON: And 28, 30 feet,
9 something on that order?

10 MR. MONASMITH: Again, the specifics on
11 that are not part of the project description. Are
12 best left for staff on Thursday with Dr. Alvin
13 Greenberg can speak to that.

14 MR. THOMPSON: Actually this does lead
15 to a question on how you had your staff review the
16 project. Did one of your disciplines, worker
17 safety, come up with a project description and
18 then distribute it to the rest of the staff for
19 review?

20 MR. MONASMITH: No. What happened
21 obviously was this project came in in September of
22 2007. It was amended in July of 2008. It had
23 certain recommendations. We analyzed the project
24 on a stand-alone basis. But then, in large part,
25 because of the city's insistence, but also because

1 we needed to be cumulatively accurate and consider
2 all reasonably foreseeable actions, including the
3 I-5 expansion, the sewer intercept, the low sand,
4 the Carlsbad Seawater Desalinization Project, we
5 considered all those projects on a cumulative
6 basis.

7 And it was in that vein that a project,
8 in terms of what our conditions of certification
9 would require of the applicant, if it were to be
10 approved by the Commission and constructed, it
11 would have to be so under a certain set of
12 circumstances.

13 And that would include a minimum level
14 of access around the facility for emergency
15 services.

16 MR. THOMPSON: Next to the lower rim
17 road it appears that there's a slope, and I assume
18 it's a slope by the elevation gradations. That
19 slope looks to be about 30 feet or so, is that
20 about right?

21 MR. MONASMITH: On the western side, on
22 the southwestern side?

23 MR. THOMPSON: Actually I think it's on
24 both sides.

25 MR. MONASMITH: Yeah, there is fill that

1 initially was proposed for that area. We
2 obviously understand that there needs to be a
3 specific minimum feet or spacing around the
4 facility for purposes of emergency vehicles.

5 There is -- because we're below grade at
6 this site -- the ability for emergency vehicles to
7 access from the southern area or northern area, in
8 terms of the western side of the property as it
9 abuts the city zone right-of-way, and what their
10 plans are for expansion of their sewer lift
11 station. All of that went into our analysis.

12 And so in terms of what was initially
13 proposed and in terms of what we ultimately looked
14 at, especially on a cumulative basis, there
15 ultimately will be some give-and-take there.

16 But we have a minimum requirement that
17 will be asked of, and that our compliance staff
18 and the compliance project manager will insist on
19 before this project is allowed to operate and to
20 begin producing electricity.

21 And that includes minimum levels for
22 emergency services vehicle around the facility the
23 entire length of the facility, obviously. And so
24 what you're looking at or what you might be
25 referring to on the western side obviously may

1 have changed from what was initially provided or
2 proposed by the applicant.

3 But most important to us, and our staff,
4 is that we, in this vein especially, that we don't
5 do anything that's going to compromise staff or
6 emergency services or the Carlsbad Fire
7 Department.

8 MR. THOMPSON: All I was trying to do
9 was figure out what the project looks like. And
10 you list a number of cumulative projects that have
11 been evaluated.

12 Is there one place to go to figure out
13 if the project has been changed in any way due to
14 these cumulative projects?

15 MR. MONASMITH: Staff does suggest
16 changes as a result of cumulative impact
17 scenarios. We suggest changes as a result of --
18 in the visual resources section.

19 We suggest changes in the worker safety
20 and fire protection. There are changes to the
21 project as initially applied, and as amended.
22 Staff has that right to suggest mitigations.
23 They're couched in the conditions of
24 certification. We do have suggested changes and
25 they are within the final staff assessment.

1 HEARING OFFICER KRAMER: Mr. Thompson,
2 is your question whether those changes are
3 reflected in this exhibit?

4 MR. THOMPSON: I'm trying to figure out
5 what are those suggested changes, yes. And is
6 there a place to go to look and see what they are.

7 MR. MONASMITH: It all depends on what
8 change you're referring to. You're discussing,
9 and I understand the city's interest in this
10 because of the emergency services component and
11 the Carlsbad Fire Department, but changes in terms
12 of the rim road and the minimum level of diameter
13 for the perimeter of this facility.

14 It is constrained and we obviously need
15 to look at all the cumulative impacts and make an
16 assessment as whether or not, as a result of
17 potentially significant impacts, those impacts
18 could be mitigated.

19 Staff's conclusions were that they could
20 be. And they're couched in conditions of
21 certification. And for the issue you're talking
22 about, those are couched within the worker safety
23 and fire protection section.

24 MR. THOMPSON: Actually I wasn't talking
25 about any specific area at all. I was talking

1 about what areas we shall look at.

2 You mentioned visual. Would you go to
3 the visual representation that's attached to Mr.
4 Kanemoto's testimony?

5 MR. MONASMITH: Well, actually Mr.
6 Kanemoto will be here tomorrow and we actually
7 look forward to an opportunity to have a healthy
8 discussion on the visual resources section of the
9 FSA, which will lead into the evening's public
10 comment tomorrow afternoon.

11 MR. THOMPSON: I'm sure you look forward
12 to it, however, our fire department, our visual
13 experts and others analyzed this. And now we see
14 your testimony, and while there's no place that we
15 could find in the conditions of certification
16 requiring a wall or a berm or anything else, find
17 that they are --

18 MR. MONASMITH: They're in --

19 MR. THOMPSON: Let me finish. --
20 contained in individual's testimony. And I
21 guess --

22 MR. RATLIFF: Well, Commissioners, I am
23 going to object to this, because, you know, the
24 application in the project proposal is not the
25 proposal that includes the I-5 widening.

1 The project proposal is the one that is
2 depicted in the diagram in the testimony that Mr.
3 Monasmith produced on the project description.
4 That is the project proposal.

5 Now I think when we get into the
6 discussions about the cumulative impact, which
7 staff did analyze, of an I-5 widening, that
8 appears in other sessions such as the visual
9 analysis and the fire safety analysis, which was
10 done by other witnesses. And, again, that is
11 outside the scope of Mr. Monasmith's testimony.

12 If we want to talk about the fire safety
13 issues and the visual impact issues, why don't we
14 do it with the witnesses who actually testified as
15 to what the cumulative effect would be, and not --
16 the witnesses basically describing the project
17 that was proposed.

18 MR. THOMPSON: Mr. Ratliff, I'm more
19 than happy to discuss this with the individual
20 witnesses, but the project changes often affect
21 other areas other than the specific area of the --

22 MR. RATLIFF: What you're discussing is
23 not a project change. It's a cumulative impact of
24 a different project proposal which was considered.
25 The applicant hasn't proposed that I-5 should

1 change this project. That was analyzed as a
2 cumulative effect should it occur. But not by Mr.
3 Monasmith's testimony.

4 HEARING OFFICER KRAMER: I'll sustain
5 the objection, but, Mr. Thompson, I'm not sure if
6 you got an answer to your question about whether
7 all the changes that staff has required of the
8 applicant are reflected in this plot drawing. Is
9 that what you're trying to get to? That seems an
10 appropriate line of inquiry on the project
11 description.

12 MR. THOMPSON: That's what I --

13 HEARING OFFICER KRAMER: But the details
14 of why they drew those conclusions are best left
15 to the individual experts who, in fact, drew them.

16 So did you get that basic question
17 answered? Does this plot plan encompass all the
18 changes that were arrived at after the analysis
19 was complete?

20 MR. MCKINSEY: I think we might object
21 to some extent here, or at least try to clarify
22 here. The figure that's being asked about was not
23 prepared by Mr. Monasmith. So any answer he gives
24 is going to be his opinion about what he thinks is
25 in that diagram.

1 It was prepared by the applicant. And
2 the applicant isn't being asked questions about
3 this diagram.

4 And so I think it should be clear, you
5 know, to the extent he's answering this question,
6 he's only answering as to what he thinks it shows
7 because he didn't prepare it.

8 HEARING OFFICER KRAMER: Well, I think
9 that's the case for any witness. They're only
10 offering us their opinion, or their perception of
11 facts, in the case of facts.

12 MR. MONASMITH: It was the analysis that
13 was conducted, and I guess I jumped ahead a bit,
14 too, to get into the cumulative impact analysis
15 that occurs as part of staff's testimony, which
16 obviously accounts for several projects which have
17 not occurred. In terms of the I-5 we don't even
18 have a draft environmental impact statement.

19 We don't have a specific alignment, but
20 what we do have is letters that were from Caltrans
21 that indicated a certain impact would occur. And
22 therefore, we analyzed that accordingly.

23 And that then gets to certain conditions
24 of certification within certain technical areas,
25 including worker safety and visual speak to that.

1 So, perhaps that was my error to talk
2 more about the specific analyses as opposed to
3 just answering your question. Yes, that is the
4 project, the plot plan as proposed by the
5 applicant, actually as amended by the applicant in
6 July of 2008 in the project enhancement and
7 refinement.

8 MR. THOMPSON: Let me move on from this
9 topic although I want to warn the Committee, I may
10 be back. It appears that there's no single place
11 for the public to go to see what is being
12 constructed here.

13 And if we find that there are project
14 changes suggested by individual disciplines, I may
15 go back and just to make sure that those project
16 changes were evaluated by other disciplines.

17 Mr. Monasmith, you mentioned a number of
18 cumulative projects that the staff looked at. And
19 I'd agree with you, I think you did a very good
20 job.

21 One you did not mention is the
22 retirement of Encina Units 4 and 5. Yet that was
23 referenced in air quality, visual and I think in
24 CECP's own rebuttal testimony.

25 Do you agree that that is a cumulative

1 project and should be evaluated?

2 MR. MONASMITH: Potentially foreseeable
3 action, yes. And in relation to certain technical
4 analyses, yes, should be cumulatively considered.

5 MR. THOMPSON: Thank you.

6 MR. MONASMITH: But not uniformly.

7 MR. THOMPSON: Understand. About ready
8 to finish up here, Mike.

9 MR. MONASMITH: All right.

10 MR. THOMPSON: On page 1-9 you recommend
11 that the Commission approve the project using its
12 override authority, is that correct?

13 MR. MONASMITH: Within our executive
14 summary we felt that given the actions by the
15 Carlsbad City Council in terms of a emergency
16 moratorium that was placed on this specific parcel
17 and development, the Encina Power Station, that we
18 should discuss the Commission's override authority
19 as relates to LORS and significance.

20 However, our individual technical
21 analysis, in this case land use, did not find such
22 a non-LORS conformance or a significant impact.
23 But we did address it and brought it up in our
24 executive summary, yes.

25 MR. THOMPSON: I'm reading where it says

1 staff recommends, I assume that's you recommend,
2 as the leader of the staff?

3 MR. MONASMITH: Yes, yes, we did take
4 the opportunity to recommend as a opportunity for
5 the Commission to consider that, yes.

6 MR. THOMPSON: Let me read, if I may, a
7 quote from the final Commission decision in
8 Eastshore to see if you agree with it. On page --

9 MR. MCKINSEY: I'd like to object and
10 ask that we be provided a copy of this document,
11 which isn't currently an exhibit.

12 MR. THOMPSON: This is one sentence out
13 of a decision.

14 MR. MCKINSEY: Can we review it first?
15 I don't know what its relevance is to this
16 proceeding.

17 HEARING OFFICER KRAMER: Well, let him
18 finish the question before we rule on the
19 objection.

20 MR. THOMPSON: In that decision, in
21 other places that I'm sure you're familiar, the
22 Commission has stated that they've used the
23 override as an extraordinary measure. Done in as
24 limited a manner as possible.

25 Have you firsthand knowledge of places

1 where the Commission has stated those types of
2 arguments?

3 MR. MONASMITH: Yes, I do.

4 MR. THOMPSON: So my final question to
5 you, Mr. Monasmith, you're recommending a LORS
6 override for a fossil fuel project located in the
7 coastal zone that will probably never get built,
8 is that right?

9 MR. MONASMITH: No, that's not right.

10 MR. MCKINSEY: I'm going to object that
11 that's a really argumentative question. It
12 assumes facts that aren't in evidence, and really
13 is a bunch of opinion.

14 I think if he wants to ask him a
15 question about whether or not an override is
16 appropriate, I think he can ask that question.
17 But that had three pretty biased opinions by Mr.
18 Thompson about what he thinks is a version of the
19 facts.

20 HEARING OFFICER KRAMER: Sustained.

21 MR. MCKINSEY: Like saying he thinks the
22 project will never be built.

23 MR. THOMPSON: I would assume that we
24 can all agree that it's a fossil fuel project?

25 HEARING OFFICER KRAMER: The objection

1 was sustained, as I said earlier. We move on.

2 Try to ask it in a different way, if you need to.

3 MR. THOMPSON: That's all we have, thank
4 you.

5 HEARING OFFICER KRAMER: Okay, thank
6 you. Center for Biological Diversity, Mr. Rostov.

7 MR. ROSTOV: Thank you. I just have two
8 yes-and-no questions. So I'll keep it short.

9 Sorry. I have two yes-no questions and
10 I'll just try and keep them short.

11 CROSS-EXAMINATION

12 BY MR. ROSTOV:

13 Q Did the staff consider the use of LNG,
14 liquified natural gas, at the project as part of
15 the project description?

16 MR. RATLIFF: I object. This is outside
17 the range of this witness' testimony. It will be
18 addressed by the panel that will be before Mr.
19 Walters, and Mr. Walters intends to cross-examine
20 on Thursday.

21 HEARING OFFICER KRAMER: I think if the
22 witness feels that it's outside the scope he can
23 state that -- the scope of his expertise, that is.

24 MR. MONASMITH: We did look at LNG,
25 because of you, Will. So, yes.

1 MR. ROSTOV: Is it part of the project
2 description?

3 MR. MONASMITH: We don't specifically
4 say LNG, but inherent within that analysis was
5 looking at LNG, because of you.

6 MR. ROSTOV: Is it correct that even
7 though units 4 and 5 were built in the 1970s and
8 use once-through cooling and are less efficient
9 than the proposed power plant, they are not
10 included as far as the project description?

11 MR. MONASMITH: That's correct. And we
12 obviously looked at or considered the ongoing
13 operation of 4 and 5 within technical analyses,
14 including air quality.

15 And there is nowhere in the project
16 description that specifically stipulates that 4
17 and 5, for instance, unlike 1, 2 and 3, which
18 would be retired as a result of CECP, it is
19 limited to 1, 2 and 3, not all five Encina units.

20 MR. ROSTOV: That's all.

21 HEARING OFFICER KRAMER: Okay, thank
22 you. Any redirect?

23 MR. RATLIFF: No.

24 HEARING OFFICER KRAMER: Okay, that
25 concludes the project description topic. Mr.

1 McKinsey, before we started you asked me if it
2 would make more sense regarding the introduction
3 of evidence -- Mr. Rostov, I want to make sure you
4 hear this question -- if it would make more sense
5 to attempt to introduce all the documents at once,
6 perhaps as early as today, rather than at the end
7 of each individual topic go through the exercise
8 of identifying those specific documents that
9 relate to the topic. And, you know, one-by-one
10 basically.

11 MR. MCKINSEY: If I could elaborate, one
12 reason I wanted to save that time is you normally
13 say, you know, the following exhibits brought in
14 on this topic. But most of the exhibits are in an
15 order. For instance, applicant's exhibits are in
16 a chronological order, so if we were at the end of
17 this topic I'd be reading a long list of non, you
18 know, like exhibit 1, exhibit A, exhibit 9,
19 exhibit 15, you know.

20 I thought it would be more practical if
21 we all agreed to simply bring in all the exhibits
22 designated on the list that exists now as
23 exhibits, and save us a lot of time later having
24 to make sure we haven't missed an exhibit here or
25 there. Saves time for everybody.

1 HEARING OFFICER KRAMER: I think in
2 essence that's asking the parties to tell us if
3 you're planning to object to the introduction of
4 any particular documents.

5 I'll note that there's some overlap
6 between some of the Center for Biological
7 Diversity's documents and the staff documents.
8 And I think that was simply because the staff was
9 attempting to provide documents that the Center
10 wanted to be a part of the record. And the Center
11 had also listed them.

12 So, we probably should just have one
13 copy of those documents in the record. It just
14 doesn't make sense to have two of them.

15 And I have some additional questions
16 about a couple of the documents. So, first I
17 wanted to ask, does any party have any reluctance
18 to attempt to deal with the documents today rather
19 than periodically as we close out topics.

20 And then we will always have the opportunity
21 to take a cleanup motion at the end of the
22 proceedings. But I just wanted to hear if the
23 parties had any particular preference about that
24 strategy. I think it will save us some time and
25 frustration and constantly pulling out the exhibit

1 list and flipping through it.

2 MR. THOMPSON: We have no problem with
3 it.

4 MR. RATLIFF: We agree it would save
5 time, as well.

6 MS. SIEKMANN: I will have one exhibit
7 that will be late.

8 HEARING OFFICER KRAMER: Which one is
9 that?

10 MS. SIEKMANN: It's the greenhouse gas
11 one.

12 HEARING OFFICER KRAMER: Greenhouse gas?

13 MS. SIEKMANN: Section. For that
14 section.

15 HEARING OFFICER KRAMER: So you have
16 another exhibit that's not yet on the list?

17 MS. SIEKMANN: My witness has one
18 exhibit.

19 HEARING OFFICER KRAMER: And that wasn't
20 on the list?

21 MS. SIEKMANN: That's right.

22 HEARING OFFICER KRAMER: It's not been
23 identified?

24 MS. SIEKMANN: Right.

25 HEARING OFFICER KRAMER: Okay, well,

1 then if we're going to do something today we would
2 leave that to be discussed at a later time.

3 MR. MCKINSEY: Yeah, my proposal wasn't
4 to limit further exhibits, it was just to say
5 we've got a universe of exhibits and we don't have
6 any objections to any of them. If nobody else
7 does, we can simply bring them in and that saves
8 us that paperwork.

9 MS. SIEKMANN: Okay.

10 MR. MCKINSEY: I'm not proposing we
11 close the exhibit record by any means.

12 MS. SIEKMANN: Okay. All right.

13 MR. ROSTOV: So just to be clear, so
14 you're saying that all the exhibits on the list
15 you have no objections to it, are part of the
16 administrative record?

17 MR. MCKINSEY: Correct.

18 HEARING OFFICER KRAMER: And I believe
19 in Mr. McKinsey's case that even includes two
20 late-submitted applicant's -- not applicants,
21 exhibits from Power of Vision, which were the
22 petition, the signatures; and then also the photos
23 that are listed in the exhibit list that have not
24 been previously distributed.

25 So, Mr. McKinsey, you're not objecting

1 to those?

2 MR. MCKINSEY: Yeah, those are listed as
3 exhibits 744, 745 and we don't have any objections
4 to those being part of the record, either.

5 HEARING OFFICER KRAMER: Okay, well,
6 while you have your exhibit list out then, please
7 turn to the back page. Because Ms. Baker actually
8 numbered those exhibits slightly differently, and
9 I wanted to just give everyone the corrections
10 there.

11 What is now exhibit 744 should become
12 exhibit 738. And that works because that's the
13 number she gave it in her original opening
14 testimony. And that's what she put on the
15 document.

16 So I was attempting to use new numbers
17 to avoid overlap, but in this particular case
18 overlap with her previously filed testimony's
19 designation works just fine.

20 And then we have the same story for
21 exhibit 745, which is the photographs. Change the
22 phrase approximately 300 to 214, because that is
23 the count she gave me this morning. I've not
24 verified that, but I think it'll be close enough.
25 And the exhibit number now will become 727.

1 And then the question I have for staff,
2 I think, and maybe this is actually for you, Mr.
3 Rostov, because you may have asked for the
4 document, but exhibit 213, the document that the
5 staff gave me and identified by way of a link, is
6 actually a draft final opinion.

7 And I don't know if that was changed by
8 the CPUC at some point down the road, or if this
9 is the actual document you want to have accepted
10 into the record. I think we just need an answer
11 about that ultimately.

12 And then exhibit 219, the staff used a
13 February 2009 version of it; that is Wiser, et al,
14 tracking the sun, the installed cost of
15 photovoltaics. They refer to a February 2009
16 version.

17 But later gave me links for both a
18 February and an October version. And so I'm
19 simply wanting to know which version -- I'm
20 assuming the staff used the February version in
21 their FSA. But I'm wondering which version the
22 parties want to come into evidence.

23 And then I think we could also -- so
24 what we could entertain is a motion to accept all
25 the documents on the exhibit list, that's the

1 January 30th version, subject to correction
2 regarding exhibit 213 and exhibit 219, which we
3 can take up later as an item of business.

4 And with the corrections to the Power of
5 Vision exhibit numbers 744 becoming 738, and 745
6 becoming 727, and saying 214 photographs.

7 If that's acceptable to the parties,
8 somebody want to move --

9 MR. MCKINSEY: So applicant moves that
10 with those corrections, that these exhibits be
11 admitted into the administrative record.

12 HEARING OFFICER KRAMER: Into the
13 evidentiary record?

14 MR. MCKINSEY: Into the evidentiary
15 record.

16 HEARING OFFICER KRAMER: Is there any
17 objection from any party?

18 MR. RATLIFF: No.

19 HEARING OFFICER KRAMER: Seeing none,
20 that will be the ruling.

21 And we will return to these later.
22 Again, Ms. Siekmann will -- your exhibit will, you
23 know, is possibly subject to objection, but we
24 will consider that later.

25 Mr. Rostov.

1 MR. ROSTOV: Since we just received the
2 revised list, and we haven't rechecked it. So
3 just in case there could be a document that was
4 left off that was on the original document, we'd
5 just like to have the reservation that if there's
6 something that was inadvertently left off, that we
7 can include that --

8 HEARING OFFICER KRAMER: Well, we will
9 want you to call that out to use, and then we'll
10 have a separate motion to deal with those.

11 I would encourage all the parties to
12 review the list and make sure that their documents
13 are properly described.

14 And I believe we have a new party with
15 us. Sir, would you like to identify yourself?

16 MR. SIMPSON: Sure. Good afternoon, Rob
17 Simpson appearing.

18 HEARING OFFICER KRAMER: Okay, welcome.

19 MR. SIMPSON: Thank you.

20 HEARING OFFICER KRAMER: We have
21 finished the project description category. And
22 we're about to move on to the topic of land use.
23 As far as breaks go, I think we'll try to break
24 about 1:00. My thought about that is if we, with
25 our big group, if we don't try to go to lunch at

1 noon we're less likely to overload the local
2 restaurants, make it possible for us to get lunch
3 in an hour with less stress.

4 So, unless for some reason the
5 convenience of our schedule dictates otherwise,
6 it's our plan to break at about 1:00 p.m. every
7 day for lunch.

8 And then we will probably break around
9 5:00 for dinner. At least on the days where we
10 have public comment in the evening, which would be
11 today and tomorrow.

12 So, let us go on to the land use topic.
13 And this will be by a panel. The way we're going
14 to conduct this is to allow each party to provide
15 opening testimony from its panel of witnesses on
16 the topic. And we will provide opening testimony
17 from each of the parties. And then we will go
18 into a round-robin of cross-examination. And even
19 allow, if it's appropriate, the experts to ask
20 questions of each other, if that seems to move
21 things along.

22 So, let's constitute the land use panel
23 of the applicant, which is Mr. Rouse, is it, or
24 Rouse?

25 MR. ROUSE: Rouse.

1 HEARING OFFICER KRAMER: Rouse. If you
2 could have a seat at the table. And let's see, we
3 also had decided that we were going to try to
4 split the land use topic into two subtopics, one
5 being the redevelopment agency issues and the
6 other being the other land use issues, such as
7 conformance with the city ordinances and standards
8 and the Coastal Commission issue.

9 Mr. McKinsey did you --

10 MR. MCKINSEY: Well, I think we're
11 flexible. We can have -- however you want his
12 testimony to be divided, I can do just the
13 redevelopment portion of it as a separate -- I
14 just need to know which you'd rather do first. And
15 if you want, it might be more efficient as well, I
16 can simply have him do his testimony as one block
17 now. Or if you want to have them up now as the
18 general land use, or just as the redevelopment, I
19 can just do that.

20 HEARING OFFICER KRAMER: Well, I'm
21 trying to remember which party was advocating so
22 forcefully for the split. Was it you, Mr.
23 Ratliff?

24 MR. MCKINSEY: I believe it was the city
25 that wanted to divide them.

1 HEARING OFFICER KRAMER: Okay. Well,
2 then, let's divide it. They are somewhat related,
3 but some of the witnesses from the city are here
4 only to talk about redevelopment. And so it might
5 be more effective to split it along those lines.

6 So let's just go with his redevelopment
7 testimony. And while he's getting ready, let's
8 also bring up the other witnesses on
9 redevelopment, and that would be Ms. Vahidi.

10 MR. RATLIFF: Ms. Vahidi's testimony is
11 on land use generally. It includes the
12 redevelopment ordinances, but we never intended to
13 separate this testimony at all. If you just want
14 her to talk about the redevelopment plan, I
15 suppose she could testify on that.

16 But it would be -- I think it's just
17 going to take longer if we do it in two different
18 stages.

19 HEARING OFFICER KRAMER: Well, let's go
20 that route, though. That's the way --

21 MR. MCKINSEY: I've got it organized.
22 She can -- she doesn't have to testify --

23 HEARING OFFICER KRAMER: I'm not meaning
24 to say that everybody who gets up there has to,
25 you know, to fill in sort of dead air. If you

1 have something to add, please do so. If you do
2 not, simply be available because somebody else may
3 want to ask you a question.

4 So, Ms. Vahidi, if you could join the
5 panel. And then for the city we have Mr. Kane and
6 Ms. Fountain. And, Ms. Baker, was Ms. Nygaard,
7 was she testifying about the redevelopment issues
8 or just the other land use issues.

9 MS. BAKER: Other land use issues.

10 HEARING OFFICER KRAMER: Okay, so she
11 can wait. Ms. Siekmann, were you on the other
12 land use issues?

13 MS. SIEKMANN: Other land use issues.

14 HEARING OFFICER KRAMER: Okay. So I
15 think that constitutes our panel. Have all of you
16 been sworn in?

17 MR. SPEAKERS: Yes.

18 HEARING OFFICER KRAMER: Good. I have
19 my proper form up again, but I'll use it later.

20 Okay, Mr. McKinsey.

21 MR. MCKINSEY: So you'd like us to
22 proceed with each party just use their witness to
23 provide their direct?

24 HEARING OFFICER KRAMER: Yes. First
25 your direct examination and then we'll throw it

1 open for cross-examination.

2 MR. McKINSEY: Yeah.

3 DIRECT EXAMINATION

4 BY MR. McKINSEY:

5 Q Ron, if you could state your name and
6 just give a brief summary of your background and
7 your experience in the area that you're going to
8 be testifying about.

9 MR. ROUSE: Yes. My name is Ronald W.
10 Rouse. I'm an attorney, licensed in all courts of
11 the State of California, federal and the state.
12 I've been practicing in San Diego with Luce,
13 Forward, Hamilton and Scripps since 1973.

14 I practice exclusively in the area of
15 real estate, land use and associated environmental
16 and other development issues, which include,
17 obviously, zoning and land use issues associated
18 with development projects.

19 I don't know if that's enough, John,
20 or --

21 MR. McKINSEY: That's fine. And then I
22 just want to confirm that you've already been
23 sworn in, correct?

24 MR. ROUSE: Yes, I have been sworn in.

25 MR. McKINSEY: So the topic of testimony

1 is redevelopment, and I'd like to just ask you, is
2 there a redevelopment plan or ordinance that
3 applies to the property and to this project?

4 MR. ROUSE: Yes. The project is within
5 the boundaries of the city's south Carlsbad
6 coastal redevelopment plan area. That area
7 generally encompasses the Encina Power Plant, the
8 lagoons, hundreds of acres to the east along the
9 lagoons, to the east of Interstate-5.

10 The boundaries of the redevelopment plan
11 area then extend southerly along Carlsbad
12 Boulevard, not any wider than Carlsbad Boulevard,
13 to a area in the southwest portion of the city,
14 known as the Ponto, P-o-n-t-o, area.

15 MR. MCKINSEY: And when evaluating a
16 plan for purposes of a project, what's the
17 fundamental question or the basic questions you
18 have to ask -- for a project regarding any plan,
19 redevelopment plan?

20 MR. ROUSE: The threshold question, and
21 I think will be a theme of all my testimony
22 regarding land use, is you look at the controlling
23 plans and ordinances. First thing you do is to
24 determine whether the proposed use, in this case
25 electrical generating facilities, is an authorized

1 use within the controlling land uses and
2 ordinances, the land plans and ordinances.

3 In this case we're talking about the
4 south Carlsbad coastal redevelopment plan. And
5 what I do there is I look exactly in fact the
6 project area is within the redevelopment plan.
7 And the enumerated objectives of the redevelopment
8 plan expressly include and contemplate this
9 project.

10 I'm reading now from exhibit 407. It's
11 section 400 of the south Carlsbad redevelopment
12 plan, bullet point number 6. They are identifying
13 in the section 400 the redevelopment plan goals,
14 goals and objectives; what they're intending to
15 accomplish through the redevelopment plan.

16 Bullet point 6 says: facilitating the
17 redevelopment of the Encina Power General Facility
18 to a smaller, more efficient power generating
19 plant."

20 So one of the express purposes and goals
21 of the redevelopment plan is this very project.

22 MR. MCKINSEY: Are there any other
23 unique elements of the plan that specifically
24 apply to electric power generation uses?

25 MR. ROUSE: Yes, there is. When the

1 city amended their redevelopment plan in 2005 for
2 the Encina Power Plant area, they adopted an
3 additional provision requiring for purposes of
4 development in that area for electrical power
5 generation, for desalination facility and other
6 similar type of utility uses, they added a
7 requirement to make a finding in connection with
8 their redevelopment permit, were they asked to
9 issue a redevelopment permit, a finding of
10 extraordinary public purpose or extraordinary
11 public benefit. It's expressed throughout the
12 plan in two different ways.

13 So, yes, under their redevelopment plan
14 this area and this type of use, electrical power
15 generation, the city, in 2005, included a
16 requirement that there be a finding for their
17 permit issuance purposes of extraordinary public
18 benefit or purpose.

19 MR. MCKINSEY: Are there any -- can you
20 describe any examples of how this project provides
21 those extraordinary public benefit purposes?

22 MR. ROUSE: Yes. I think that it's
23 obvious that there are a number of extraordinary
24 and unique public benefit purposes and benefits
25 achieved through this project.

1 There's already been some testimony that
2 part of the project would result from the
3 concurrent decommissioning of the three older
4 steam generating units at the existing power
5 plant.

6 A second extraordinary or special public
7 benefit would be, through that, reduce the demand
8 for once-through ocean water cooling in connection
9 with electrical power generation at the Encina
10 Power Station facility. And obviously the new
11 project.

12 A third one would be in the very
13 replacement of the less efficient, higher
14 polluting generation units 1, 2 and 3 with a
15 modern, more efficient and less polluting units
16 based on megawatt generation capability.

17 The project would result in
18 extraordinary additional tax benefit and revenues
19 to the city, both for use in their redevelopment
20 area, as tax increment, and also associated gas
21 franchise taxes through the burning of natural gas
22 to power the units.

23 The project would be a step toward an
24 eventual potential elimination of the older
25 facility. Doesn't do it all on this step. And it

1 then becomes fully consistent with a long-term
2 identified goal of the city in its redevelopment
3 plan, not just modernizing the plant, but seeing
4 the smaller, modernized facility located in the
5 eastern portion of the plant site, between the
6 railroad tracks and Interstate-5 and in a moment
7 I'll allude to a document that establishes that.

8 And then finally, through its peaking
9 capability of the new project, it enhances the
10 region or the territory's ability to respond to
11 fluctuating energy demands which then adds a
12 further benefit of enabling renewable energy
13 sources generated elsewhere to be brought in and
14 balanced out in the demands of the electrical
15 generating system.

16 MR. MCKINSEY: To the extent that a few
17 of those public benefit purposes are in parallel
18 with or supportive of policies or goals stated in
19 the redevelopment plan, are any of those actually
20 expressed requirements that must be met or are
21 required to be met? Or are those simply policies
22 and goals?

23 MR. ROUSE: I think that the way to view
24 those is that the city has placed an additional
25 burden, if you will, with respect to those types

1 of ongoing uses in that portion of the
2 redevelopment area to make sure that they don't do
3 it without examining the additional extraordinary
4 public benefits and purposes.

5 There is no requirement those benefits
6 and purposes be exclusively for the citizens of
7 Carlsbad, as obviously the reduction of once-
8 through ocean cooling is a general environmental
9 benefit.

10 MR. MCKINSEY: That's all of our direct
11 testimony for Mr. Rouse.

12 MR. ROUSE: Actually I did have -- I
13 alluded to one reference in the city's
14 redevelopment plan program. It's the Housing and
15 Redevelopment Commission is the governing body.

16 It's their resolution number 351 that
17 was adopted in 2002, February 19, 2002, as part of
18 that work program to lock in and demonstrate to
19 you that a long-time goal that this project
20 serves.

21 I'm going to read from the attachment to
22 that Housing and Redevelopment Commission
23 resolution:

24 HEARING OFFICER KRAMER: Do you happen
25 to know if that's one of the enumerated exhibits?

1 MR. ROUSE: It is not one of the
2 enumerated, so this would be one we would have to
3 ask to add. And I apologize for that.

4 HEARING OFFICER KRAMER: Well, --

5 MR. ROUSE: And this is dealing with the
6 Encina Power Plant. And it says: The city" --
7 and this is the city's document --

8 MR. THOMPSON: Similar to the objection
9 that was made by my friend, Mr. McKinsey, we have
10 not had a chance to look and see what this is. We
11 came prepared with our witnesses and with the
12 witnesses of the other parties.

13 MR. ROUSE: This is a city Housing and
14 Redevelopment Commission resolution official
15 document that the city, in fact, generated.

16 HEARING OFFICER KRAMER: Mr. McKinsey,
17 was this mentioned in his prefiled testimony?

18 MR. MCKINSEY: I believe it is cited to
19 it. In fact, actually I think it's cited to in
20 the city's testimony, as well. It is correct it
21 is not an exhibit at this time.

22 Another one that I noted that is not an
23 exhibit is actually, I think, the redevelopment
24 plan, itself. I think those were probably
25 oversights overall. The parties are referring to

1 both of those things, but don't actually put them
2 in.

3 I don't have -- in fact, I think we can
4 bring them in as an exhibit. However,
5 acknowledging my objection to Mr. Thompson
6 earlier, I don't actually have ten copies of that
7 ready to go. And so I can't hand them around.

8 MR. THOMPSON: Far be it from me to
9 object to something that was prepared by the city
10 or its redevelopment -- or the redevelopment
11 agency. Let's go forward with this, and maybe we
12 can get copies later and make sure it gets into
13 the record.

14 MR. ROUSE: I apologize. It was
15 referenced generally in my prepared written
16 rebuttal testimony. It was an oversight on my
17 part not to produce a copy of it at that point.

18 But all I would -- there's just two
19 sentences to read.

20 HEARING OFFICER KRAMER: Go ahead.

21 MR. ROUSE: Its purpose is solely to
22 reiterate that the location of the project is the
23 preferred location for the smaller, more efficient
24 generating facility.

25 What is says is: The city and

1 redevelopment agency's objective is to work
2 towards the complete demolition of the existing
3 power plant at its current location on the
4 existing site, and provide for construction of a
5 new, physically smaller plant towards the rear of
6 the existing site."

7 "The city and agency's top preference is
8 to have the new power plant constructed within the
9 area between the railroad tracks and Interstate-5,
10 which is east of the existing plant."

11 I'm sorry, I was just trying to loop in
12 that not just the concept of a newer, more
13 efficient plant, but the precise location that the
14 CECP represents.

15 HEARING OFFICER KRAMER: Okay, to make
16 sure we're square for the record, can you again
17 describe the resolution number and its date.

18 MR. ROUSE: Yes, sir. Housing and
19 Redevelopment Commission resolution number 351,
20 adopted by the Housing and Redevelopment
21 Commission on February 19, 2002.

22 And the actual quote is from the
23 attached workplan that is adopted by virtue of
24 that resolution. Page 1 of the workplan.

25 HEARING OFFICER KRAMER: Thank you.

1 Does that conclude your testimony?

2 MR. MCKINSEY: That's concludes our
3 testimony.

4 HEARING OFFICER KRAMER: And, Mr.
5 Ratliff, did you wish to ask your witness any
6 questions?

7 MR. RATLIFF: No.

8 HEARING OFFICER KRAMER: Okay. Now it's
9 the city's turn with Ms. Fountain and Mr. Kane.

10 DIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Mr. Kane, let me go to you first.
13 Would you just very briefly summarize some of your
14 relevant experience in redevelopment agencies in
15 California?

16 MR. KANE: Yes, I am attorney-at-law and
17 have specialized in the practice of redevelopment
18 law, as well as land use and environmental law and
19 related fields since 1971. And have practiced in
20 that field, as well as land use and environmental
21 law, and related fields.

22 I have represented hundreds of
23 redevelopment agencies in the State of California.
24 I was General Counsel for the Los Angeles
25 Redevelopment Agency for some 15 years. I'm

1 currently counsel, either General Counsel or
2 Special Counsel, for approximately two dozen
3 redevelopment agencies in the State of California.

4 I have been noted as an expert in
5 redevelopment by the California Supreme Court in
6 the case of Merrick vs. Napa. I have been sworn
7 in as an expert and provided expert testimony on
8 redevelopment in superior courts of a number of
9 counties in the State of California.

10 MR. THOMPSON: Thank you. I believe
11 that you just heard Mr. Rouse describe the
12 extraordinary public purpose and extraordinary
13 public benefits that he believes the CECP brings
14 to the table. Are you familiar with those?

15 MR. KANE: I'm familiar with what he
16 listed, yes.

17 MR. THOMPSON: Do you have any comment
18 on those items?

19 MR. KANE: Yes. These benefits and
20 purposes are not extraordinary. And the subject
21 of compliance with the redevelopment plan which
22 requires extraordinary public purposes is
23 incomplete and misleading. And the so-called
24 benefits are really illusory.

25 If we could just go down the list. The

1 question of the benefit of decommissioning of
2 plants 1, 2 and 3, again is illusory and doesn't
3 begin to offer any benefit. All it does is
4 produce empty buildings and continue the
5 obsolescence, and makes no attempt to remediate
6 any of the hazardous materials which the report to
7 city council when the plan was adopted laid out.

8 Makes no attempt to provide for the
9 redevelopment of the property.

10 There was reference to complying
11 supposedly with one of the goals of the
12 redevelopment agency, which was to facilitate the
13 redevelopment of the Encina generating facility to
14 a smaller, more efficient plant.

15 That goal is far from being met here.
16 First of all, there's no proposal to redevelop
17 anything. The application is to add a new area, a
18 new generating plant, and simply decommission.

19 Well, there's no proposal, unlike the
20 requirements of the resolution 351, to demolish
21 anything. There's no proposal to remediate
22 anything. There's no proposal to redevelop
23 anything. So it's very difficult to understand
24 how facilitating the redevelopment of the
25 facility, not simply adding a new building to a

1 small portion of the overall facility site. It's
2 very hard to see how that is met.

3 In addition, the lack of commitment to
4 achieving the redevelopment goals is expressed in
5 the very words of these so-called benefits where
6 they talk about a step is taken to the potential
7 future redevelopment. Well, that's very weak and
8 very mild. It contains no commitments.

9 We don't even have a proposal of
10 redevelopment in front of us. So how it could be
11 opined that the goals and objectives of the
12 redevelopment plan are complied with, let alone
13 being an extraordinary public benefit, is very
14 difficult to understand.

15 These kinds of extraordinary benefits
16 that have been cited, which again are neither
17 benefits nor extraordinary, are a far cry from the
18 kind of cooperation, the kind of extraordinary
19 public purposes that other levels of government
20 and other utilities up and down the state have
21 provided.

22 Because the reason this is in the
23 redevelopment plan is because the state
24 redevelopment law mandates that all appropriate
25 means, including construction and development

1 guidelines, be carried out by redevelopment
2 agencies, which is a state agency. It's an
3 administrative arm of the state.

4 So when mandated to carry out the
5 redevelopment law, we're mandated to use
6 construction policies and land use policies.

7 Now, how is that done here? By the very
8 sections that have been discussed. By including
9 the goal that is not being met; by including the
10 requirement for a permit that is not being met.

11 In fact, the application doesn't even
12 tell you that they have not applied for the
13 permit. It doesn't tell you whether the permit's
14 been granted or not. It doesn't tell you whether
15 they have supplied development plans, the precise
16 development plans, which the section 600 requires.
17 It doesn't say what happened to that.

18 The other agencies at all levels of
19 government have dealt with this requirement of
20 deferring to the important public purposes of
21 redevelopment.

22 The federal government, I mean how is
23 this handled up and down the state? I think
24 that's important. The federal government, which,
25 you know, if anyone's going to argue supremacy or

1 preemption, it would be the federal government.

2 The federal government, when they
3 decommission things, for example military bases,
4 they set up meaningful, binding commitments with
5 redevelopment agencies to redevelopment and
6 remediate those sites. This is in the very
7 statutes of the redevelopment law.

8 Liberty Station in San Diego, the former
9 naval training facility, is a primary example of
10 the federal government deferring to these kinds of
11 needs for extraordinary public benefits that are
12 in the statute and mandated as a matter of
13 statewide concern.

14 State agencies, Caltrans and other
15 agencies, have routinely cooperated and deferred.
16 They don't just build their freeways where they
17 want. They don't talk about vague future
18 possibilities. They enter into meaningful,
19 binding agreements with redevelopment agencies to
20 provide for onramps, to provide for bridges, to
21 provide for coordination of how the freeways are
22 going to be improved and how the public benefits
23 of redevelopment are going to be achieved.

24 Because those benefits, the elimination
25 of blight, providing meaningful jobs, expanding

1 affordable housing are nowhere to be seen in this
2 project. We have more blight, not less, because
3 we're going to have empty buildings with no
4 commitment of remediation or demolition. And also
5 there's nothing to show for the jobs in the
6 housing. These are the kind of extraordinary
7 benefits which other agencies have provided.

8 In addition, utility companies. You
9 have the Los Angeles Department of Water and Power
10 didn't say to the L.A. Redevelopment Agency, you
11 know, where -- you're preempted and we're a
12 superior body, we can do what we want. They moved
13 an important substation in downtown Los Angeles to
14 facilitate the preservation of the historic Los
15 Angeles Central Library. And without that
16 deferral, again, to the important means of design
17 and construction standards of redevelopment
18 agencies, that project wouldn't have happened.

19 Southern California Edison in the
20 downtown San Diego cooperated, you know, they
21 didn't say, well, we're a utility and we don't
22 have to do anything. We don't care about the fact
23 that the state requires this be achievement of the
24 goals of redevelopment, in terms of land assembly.
25 Agreements were entered into in terms of

1 remediation. Agreements were entered into in
2 terms of the redevelopment of property.
3 Agreements were entered into.

4 Other levels of government. The
5 metropolitan transportations commissions up and
6 down the state have provided for joint use --

7 HEARING OFFICER KRAMER: Let me --

8 MR. KANE: Yes.

9 HEARING OFFICER KRAMER: Let me suggest
10 that you -- it's up to Mr. Thompson, but you
11 estimated ten minutes and you've used that
12 already. So, maybe you terminate your recitation
13 of examples. I suspect he may have another
14 question or two for you.

15 MR. SPEAKER: Thank you.

16 MS. SIEKMANN: Mr. Kramer, please excuse
17 me for interrupting, but I have a great deal of
18 land use time that I will not be using for
19 testimony if the city would like to use it. And
20 if that's agreeable with you and everyone else.

21 HEARING OFFICER KRAMER: Let's see, you
22 have --

23 MS. SIEKMANN: I will probably take five
24 or ten minutes.

25 HEARING OFFICER KRAMER: For your

1 testimony?

2 MS. SIEKMANN: Yes.

3 HEARING OFFICER KRAMER: And you'd
4 estimated 45.

5 MS. SIEKMANN: I will also need to
6 transfer ten minutes of that over to cross,
7 please.

8 HEARING OFFICER KRAMER: So how long are
9 you going to testify?

10 MS. SIEKMANN: What did I say?

11 HEARING OFFICER KRAMER: You said 45
12 minutes.

13 MS. SIEKMANN: Okay, so I will probably
14 testify between 10 to 12 minutes.

15 HEARING OFFICER KRAMER: Okay, we'll
16 give you 15; that frees up -- and then you wanted
17 to move 10 to cross?

18 MS. SIEKMANN: Please.

19 HEARING OFFICER KRAMER: So, that's 20
20 -- so you've freed up ultimately 20 minutes. And
21 we will discount that a little bit because we're
22 running a little late, so another 10 minutes, Mr.
23 Thompson with both witnesses.

24 MR. THOMPSON: That should be more than
25 enough; thank you very much.

1 Mr. Kane, really, two more questions.
2 California redevelopment law, would it be
3 characterized as a planning document or a permit
4 document or some combination?

5 MR. KANE: It's both. It has to be
6 both. Again, the State of California has adopted
7 statutory requirements that all appropriate means
8 be used to accomplish the goals of redevelopment:
9 the elimination of blight, the meaningful jobs and
10 so on.

11 And one of the most important
12 appropriate means is -- and this is right into the
13 statute as a mandatory requirement -- that
14 appropriate continuing land use and construction
15 policies be implemented. They must be implemented
16 by redevelopment agencies as a matter of statewide
17 concern, as a state agency, as an administrative
18 arm of the state carrying out state law.

19 And so obviously in order to do that the
20 redevelopment plan has planning mechanisms. So
21 you do ask, you know, does a particular project,
22 such as this one, conform to the goals and
23 objectives of the redevelopment plan, does it
24 comply with the redevelopment plan.

25 And there are planning requirements.

1 There are minimum requirements to the amount of --
2 for the design of buildings, the construction of
3 old buildings, public, private, utility, et
4 cetera.

5 And so you ask in the redevelopment plan
6 questions of conformity. We've talked about the
7 fact that it doesn't meet the very goal that they,
8 themselves, have cited because it doesn't provide
9 for redevelopment of a facility. It doesn't
10 eliminate blight there, it adds to the blight.
11 And so on.

12 There is also references of planning
13 matter to other goals and objectives of the
14 redevelopment plan, which are being ignored by the
15 applicant in terms of the implementing performance
16 criteria to control design; developing new
17 recreational opportunities to have an attractive
18 and pleasant environment; and to eliminate
19 environmental deficiencies, such as the hazardous
20 materials for which there's no commitment.

21 So these are goals and objectives,
22 planning goals and objectives of the redevelopment
23 plan which are being put in so that we can comply
24 with the state statute which does require that the
25 State of California accomplish by all appropriate

1 means the goals and objectives of the
2 redevelopment plan.

3 MR. THOMPSON: Finally, Mr. Kane, you've
4 spoken about state policies in the redevelopment.
5 Would you just very briefly outline what those
6 state policies are?

7 MR. KANE: Yes. The fundamental
8 policies are to eliminate blight; to combat under-
9 employment and unemployment by providing
10 meaningful, long-term jobs; to expand the supply
11 of affordable housing; and to, again, have
12 appropriate, continuing land use and construction
13 policies in place by the redevelopment agency, as
14 an administrative arm of the State of California.

15 And the agency is here before you as a
16 state agency, as an administrative arm of the
17 state, required to have these appropriate
18 continuing land use and construction policies
19 which fully apply here.

20 And it's those kinds of goals and
21 objectives and statement of state policy, State of
22 California policy which the redevelopment agency
23 must, is told by the state statutes, to carry out
24 and implement.

25 MR. THOMPSON: Thank you very much.

1 Should I move on to --

2 HEARING OFFICER KRAMER: Ms. Fountain,
3 please.

4 MR. THOMPSON: Okay. Just a couple of
5 questions.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Number one, did the CECP file an
9 application with Carlsbad Redevelopment Agency?

10 MS. FOUNTAIN: No. We did not receive a
11 redevelopment permit application.

12 MR. THOMPSON: I assume everybody here
13 knows who you are. But would you just give a
14 brief, 30-second overview of your position?

15 MS. FOUNTAIN: Sure. My name's Debbie
16 Fountain. I'm the Housing and Redevelopment
17 Director for the City of Carlsbad. I've worked
18 for the Housing and Redevelopment Office in
19 Carlsbad for close to 20 years now, 11 years as
20 the Director.

21 And my responsibility is to oversee the
22 implementation of the redevelopment plan, as the
23 staff administrative role. And I work directly
24 with the Housing and Redevelopment Commission, who
25 is the legislative body for the Carlsbad

1 Redevelopment Agency.

2 MR. THOMPSON: Thank you. As you read
3 through some of the CEC Staff testimony sometimes
4 you get the impression that staff is implying that
5 the city was against this project before they did
6 their analysis. Is that true at all with the
7 redevelopment agency?

8 MS. FOUNTAIN: I think this area and the
9 power plant has a long history. And as we've
10 already heard, it was a reason actually for
11 incorporation back in 1952. And the plant has
12 been in existence for quite awhile.

13 There's been varied policies about
14 support for power plant in the area. Goes back to
15 we had actually a plant proposed in 1990. The
16 city was opposed to that project at that time.

17 We actually formed the South Carlsbad
18 redevelopment area in response to concerns about
19 the power plant. And as Mr. Rouse said in his
20 testimony, our work plan was actually to see
21 demolition of the existing power plant and
22 replacement of that power plant by a new, much
23 smaller, more efficient plant.

24 So our goal has been consistent over the
25 years of what we would like to see on that

1 property. How we go about it has been changing
2 over time, and improving as we learn more about
3 the operations of power plants, where they need to
4 be located.

5 And I believe that we looked clearly and
6 openly at the application, but I must say that
7 what was presented was different than what our
8 initial understanding of what could be
9 accomplished with a replacement power plant.

10 Our understanding is that we could get a
11 much smaller power plant, but that also that power
12 plant could be designed such that it would blend
13 into the existing community, and would not have a
14 negative impact that would preclude future
15 redevelopment of the site.

16 We did have initial discussions that we
17 could possibly look at the site that was selected.
18 But we wanted to be a partner in that and
19 participate in the design of the project. We did
20 not have that opportunity to do that.

21 So we're in a more defensive position
22 where we have to respond to what we don't like
23 about the project rather than being able to
24 partner and say what we would have preferred in
25 the project, and where we would have liked it to

1 be located.

2 MR. THOMPSON: Do you believe that the
3 CECP represents a more efficient, smaller power
4 plant?

5 MS. FOUNTAIN: I believe that it may be
6 looked at as a smaller and more efficient plant.
7 But if you look at it from a redevelopment
8 standpoint, we now will have two power plants on
9 that site.

10 And so we've actually intensified the
11 industrial use on that site, which is inconsistent
12 with what we wanted to see happen from a
13 redevelopment standpoint.

14 MR. THOMPSON: In your efforts to
15 redevelop this site, have you met with other
16 landowners within the redevelopment area?

17 MS. FOUNTAIN: The South Carlsbad
18 redevelopment area is about 550 acres in size. It
19 has been described already. We do have a map
20 that's been made an exhibit.

21 And we've had varying discussions with
22 property owners throughout the area. On this
23 particular site, the property owner of NRG
24 previously we were dealing with a combination of
25 owners on that site. SDG&E is a player in this

1 area, as well, with property.

2 And we've had discussions with all those
3 different entities over the years, starting back
4 specifically on the redevelopment plan in 2000,
5 and prior to that when we were adopting the
6 redevelopment plan, we had negotiations,
7 discussions.

8 And so I think we've been clear on what
9 our goal is. And it's a single-purpose goal, as
10 Mr. Kane mentioned. We want to eliminate blight
11 and blighting influences in the redevelopment
12 area. An expansion of an industrial use does not
13 do that, which is why we proposed adding, in 2005,
14 the extraordinary public purpose findings so that
15 we could add to what the benefit would be in this
16 area.

17 So, there has been a number of
18 discussions over the years. And our position has
19 evolved as we've had those discussions.

20 MR. THOMPSON: Just two more questions.
21 The Poseidon Desalination project was recently
22 approved, and I believe are now under
23 construction. Would you give a -- and is located
24 in the same area, I believe.

25 Do you believe that the Poseidon

1 facility is consistent with the redevelopment law
2 in your and the redevelopment agency's goals and
3 objectives?

4 MS. FOUNTAIN: Initially when the desal
5 plant was proposed in this area, the redevelopment
6 agency did have some concerns. Our concerns are
7 similar to the power plant concerns.

8 We wanted to be comfortable with the
9 design that was proposed and those extraordinary
10 public purpose findings.

11 We believe, in the final design of that
12 desal plant, and with the benefits that were
13 provided, it did meet the requirements of the
14 redevelopment plan and was supported and approved
15 by the redevelopment agency as a similar process.
16 It had to submit a redevelopment permit. It had
17 to be reviewed to be found to be consistent with
18 the redevelopment plan. And that it was approved
19 as such.

20 We have -- I have added in my testimony
21 how we think, or how we approved that project in
22 its meeting those extraordinary public purpose,
23 and how we compared it against the proposed power
24 plant. And why we're finding that it has not met
25 the same test.

1 MR. THOMPSON: One last question. And I
2 was going to say I don't intend to put you on the
3 spot, but I think I will.

4 I'm going to ask you a question that
5 really goes to your personal belief, and not as
6 your position as head of the redevelopment agency,
7 because I don't know who else to ask this question
8 of.

9 Do you personally have any feelings or
10 thoughts about what this redeveloped parcel could
11 look like after a successful redevelopment?

12 MS. FOUNTAIN: I think as a
13 redevelopment agency, and as the Director of our
14 department, I have what I think are my dreams and
15 visions of what I think it could be.

16 And I would love to have a public
17 process that we could go through that. And that's
18 what we've been encouraging from the very
19 beginning, is to have a public process.

20 But I think that the dream is big. I
21 think this could provide a lot of public amenities
22 in terms of recreational opportunities; increased
23 access to the lagoons and the coast. We could
24 increase our visitor accommodations in the area.

25 But I think most importantly we could

1 substantially improve the benefits to our
2 community by having a mix of uses on the site that
3 would provide those recreational opportunities,
4 and actually increase substantially the revenue to
5 the city that could provide other services and
6 infrastructure in this area.

7 MR. THOMPSON: Truly one last question.
8 Have you, in your own mind, considered ways to
9 connect the property on the east side of highway
10 I-5 to property on the west side?

11 MS. FOUNTAIN: Initially when we created
12 the boundaries of the South Carlsbad Coastal
13 Redevelopment Area, it was intentional on the
14 properties that were included in there, because of
15 that goal, to see a master planning effort that
16 would connect all of the properties.

17 That includes the east properties that
18 are owned by San Diego Gas and Electric that are
19 east of I-5, the lagoon, the power plant property,
20 the Carlsbad Boulevard alignment, the Ponto area,
21 all those were very deliberate and why they were
22 included in this redevelopment area.

23 And those connections are extremely
24 important because we wanted to see the community
25 connections. We wanted to see the community

1 benefit. And we really think the master planning
2 effort of the whole area was ultimately what we
3 desired.

4 It, unfortunately, didn't happen that
5 way. And now we're starting to see piecemeal
6 development, which is what we were actually trying
7 not to have happen. But now we're trying to deal
8 with that the best that we can and still meet the
9 intention and the goals of the redevelopment plan.

10 MR. THOMPSON: Thank you very much.

11 Both Mr. Kane and Ms. Fountain are
12 tendered for cross-examination.

13 HEARING OFFICER KRAMER: Okay. I don't
14 see anybody who's just got five minutes budgeted.
15 I think this would be a good time to break for
16 lunch.

17 So, let's be back here at 2:00.

18 (Whereupon, at 1:00 p.m., the hearing
19 was adjourned, to reconvene at 2:00
20 p.m., at this same location.)

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AFTERNOON SESSION

2:12 p.m.

HEARING OFFICER KRAMER: Okay, we're back on the record after lunch. Sir, in the back, are you hearing us better now? Good. He says yes.

Okay, let's continue with the redevelopment panel. I'll find my place. I believe we're ready for cross-examination from -- well, let's see, why don't we start down the list from the applicant, Mr. --

MR. THOMPSON: Mr. Kramer, I have a couple of preliminary matters, if it's --

HEARING OFFICER KRAMER: Okay. Go ahead.

MR. THOMPSON: Actually one is we had a couple of requests that you ask the audience to turn off cellphones.

HEARING OFFICER KRAMER: That's right. Folks, I guess your cellphones -- I suspect some of the culprits aren't here right now, but --

(Laughter.)

HEARING OFFICER KRAMER: -- if you could at least put your cellphone on vibrate so that it doesn't ring and disturb your neighbors. I think

1 the improved sound might also make that less of an
2 issue. But, please, vibrate or turn your phone
3 ringer off.

4 Number two?

5 MR. THOMPSON: Number two, maybe a way
6 to free up a little calendar time. Mr. Monasmith,
7 in my cross, mentioned six projects that the staff
8 looked at cumulatively. And I think that Mr.
9 McKinsey would agree on those six projects.

10 If there is agreement on those, I have
11 no interest in putting Mr. Hogan on the stand, and
12 he can be excused, unless, of course, the
13 Committee or other parties have questions of him.

14 MR. MCKINSEY: And that's correct, we
15 have no objections to that.

16 HEARING OFFICER KRAMER: Okay. Does any
17 party wish to cross-examine Mr. Hogan?

18 MR. ROSTOV: I have five to ten minutes
19 of cross.

20 HEARING OFFICER KRAMER: For Mr. Hogan?

21 MR. ROSTOV: For Mr. Hogan. Just he did
22 a cumulative impacts analysis that, you know, also
23 discusses -- sorry -- he did a cumulative impacts
24 analysis that also talks about greenhouse gases.
25 And he just happened to be today on land use, so.

1 But it'll be short; I just have maybe summary
2 questions that are short.

3 HEARING OFFICER KRAMER: Okay, and he
4 was not going to be back for greenhouse gases?

5 MR. ROSTOV: I believe that's correct.

6 HEARING OFFICER KRAMER: Okay. All
7 right, well, then I -- but you're going to examine
8 him on the topic of greenhouse gases?

9 MR. ROSTOV: I was going to examine him
10 on the topic of cumulative impacts. He talked
11 about cumulative impacts in several different
12 forms. And part of his testimony had to do with
13 cumulative impacts related to greenhouse gases.
14 So.

15 MR. RATLIFF: Will, you could ask our
16 witnesses about cumulative effects of greenhouse
17 gases, if that would help. A lawyer asking a
18 lawyer about greenhouse gases --

19 MR. ROSTOV: Right, that's true. I can
20 probably ask these questions to the staff.

21 HEARING OFFICER KRAMER: Okay, so seeing
22 no other desires to cross-examine Mr. Hogan, I
23 think we can excuse him.

24 And, third, Mr. Thompson?

25 MR. THOMPSON: At some appropriate time

1 we had -- our witnesses had an occasion to look at
2 351, which is the resolution that was discussed by
3 Mr. Rouse. And I have one question on it at some
4 appropriate time.

5 HEARING OFFICER KRAMER: That'd be in
6 the nature of rebuttal, I suppose. Well,
7 actually, when you cross-examine you could follow
8 up with your own witness at that point, I think.

9 Okay, so, Mr. McKinsey.

10 MR. MCKINSEY: And actually I had one
11 item I realized that I didn't bring up this
12 morning. It was mentioned, Power of Vision
13 mentioned Mr. Canepa or Canepa will be testifying.
14 And I had asked at the prehearing conference to
15 get his educational background and experience. I
16 haven't gotten that, so I just want to, at this
17 point, if they offer him as a witness I'm going to
18 object because I haven't been able to get that.

19 I mean maybe -- patient, I could ask him
20 about his educational background and experience
21 and then go from there. Recall I was going to
22 voir dire him on his qualifications as a
23 socioeconomics witness.

24 HEARING OFFICER KRAMER: Ms. Baker,
25 correct me if I'm wrong, did we see his r, sum, at

1 some point in one of the filings?

2 MS. BAKER: Well, in a prehearing
3 conference we identified him as the developer of
4 many coastal resorts. He won't be speaking about
5 the broad topic of socioeconomics, but more
6 specifically the tourism industry here in
7 Carlsbad, and his experience developing resorts
8 here.

9 HEARING OFFICER KRAMER: Okay, but did
10 you obtain a r, sum, or some statement of his
11 qualifications from him?

12 MS. BAKER: I'm sorry, I thought that a
13 list of the properties he developed, in
14 considering he was speaking on simply the tourism
15 aspect of developing resorts in Carlsbad, that
16 that was sufficient.

17 Does it really matter if he has a
18 college -- I mean, he does. He has a masters in
19 history from UC Santa Barbara. But I don't know
20 why that is relevant above and beyond his
21 experience as a property owner and developer here
22 in Carlsbad.

23 MR. MCKINSEY: Our objection would be
24 that he's being offered as a socioeconomics
25 witness, not as a public commenter, for instance,

1 on, you know, what they think are the effects of a
2 project.

3 If he's going to testify about the
4 effects of this project on some aspect of jobs and
5 employment and tax revenue and population growth,
6 then we expect him to --

7 MS. BAKER: No, he won't be speaking
8 about those things. He will be speaking simply on
9 the matter of developing resort coastal
10 properties.

11 MR. McKINSEY: But that just doesn't
12 sound like socioeconomics to me.

13 HEARING OFFICER KRAMER: Well, okay. I
14 think the answer to your question at the moment,
15 whether or not you're going to receive a CV --

16 MR. McKINSEY: Right.

17 HEARING OFFICER KRAMER: -- from him, is
18 no. So we'll address his qualifications when we
19 get to that topic.

20 MR. McKINSEY: Thank you.

21 HEARING OFFICER KRAMER: Okay, so, then,
22 Mr. McKinsey, if you want to begin to cross-
23 examine the panel? Or would you prefer to go
24 later in order?

25 MR. McKINSEY: I'm fine going first.

1 HEARING OFFICER KRAMER: Please go
2 ahead, then.

3 CROSS-EXAMINATION

4 BY MR. MCKINSEY:

5 Q I have questions for Mr. Kane. And just
6 to kind of establish, I'd say that one of the
7 characteristics of your testimony was that you
8 criticized the merits of the public benefits that
9 was described by Mr. Rouse, correct?

10 MR. KANE: I discussed in my testimony
11 the claimed extraordinary public purposes of
12 benefits. And why they did not meet that
13 criteria.

14 MR. MCKINSEY: So, I mean it was your
15 contention that some of the public benefits cited
16 by Mr. Rouse are not adequate or don't meet the
17 purposes of the redevelopment plan requirements,
18 correct?

19 MR. KANE: Yes, that's correct.

20 MR. MCKINSEY: So one of my basic first
21 questions for you, does the redevelopment plan
22 state anywhere that public benefits can only be
23 considered if they're expressly listed in the
24 redevelopment plan?

25 MR. KANE: No, to the contrary. In

1 section 600 it indicates that this kind of land
2 use can only be developed, only be developed if
3 there's a finding that extraordinary public
4 purposes and benefits are provided.

5 And secondly, which wasn't mentioned, it
6 provides a showing of conformity with the
7 redevelopment plan be provided.

8 So it refers to both conforming with the
9 redevelopment plan and with providing
10 extraordinary benefits and public purposes.

11 As well as submitting a precise plan for
12 development. Those are the three requirements
13 that were mentioned.

14 MR. MCKINSEY: So, I mean I think I hear
15 saying correctly that the answer was no, that a
16 public benefit can be considered even if it's not
17 cited in the redevelopment plan, correct?

18 MR. KANE: Extraordinary --

19 MR. MCKINSEY: It's a yes/no question.

20 MR. KANE: Yeah, but -- well,
21 extraordinary public purposes and benefits are to
22 be considered by the Housing and Redevelopment
23 Commission under section 600.

24 MR. MCKINSEY: So I don't think that
25 answers my question. Sorry. The question is,

1 does a public benefit that will be considered
2 under the plan have to be one that's expressly
3 listed in the plan.

4 MR. KANE: No.

5 MR. MCKINSEY: Okay. Thank you. You
6 also stated during your testimony that the project
7 does not provide redevelopment of a facility, do
8 you recall that?

9 MR. KANE: Yes.

10 MR. MCKINSEY: Can you put up exhibit
11 407, page 2. This is a page from exhibit 407,
12 which is the redevelopment plan. It's the 2005
13 amendment to it. I assume you're familiar with
14 this?

15 I have a copy of it, actually, if you
16 can't quite make it out on the screen.

17 MR. KANE: I have it, too.

18 HEARING OFFICER KRAMER: So this is
19 actually the resolution number 404, is that
20 correct?

21 MR. MCKINSEY: Yes.

22 I'd like to ask you to read the third
23 cited purpose and intent of the redevelopment
24 plan.

25 MR. KANE: Are you referring to section

1 400?

2 MR. McKINSEY: Yes.

3 MR. KANE: Replanning, redesigning and
4 developing properties which are stagnant or
5 improperly utilized.

6 MR. McKINSEY: Can you put up figure 3
7 of the FSA? So, we had this on earlier. The city
8 brought this in, or asked to show this.

9 This is a figure that shows the general
10 project area and the project components. Have you
11 seen this before?

12 MR. KANE: I saw it earlier today.

13 MR. McKINSEY: Had you seen it before
14 today?

15 MR. KANE: I believe I did briefly, yes.

16 MR. McKINSEY: Did you understand that
17 this project involves the installation of
18 generating units in that top left-corner area
19 adjacent to I-5?

20 MR. KANE: I think it speaks for itself,
21 but, yes.

22 MR. McKINSEY: Okay.

23 MR. KANE: That's on one small part of
24 the site.

25 MR. McKINSEY: In your testimony I

1 believe that you made the contention that this
2 property, and I think I asked that, doesn't
3 provide the redevelopment of a facility, correct?

4 MR. KANE: Yeah, I testified that the
5 proposed project that's before the Commission does
6 not provide for the redevelopment of the facility.

7 MR. MCKINSEY: Did you understand that
8 this project involved the removal of three large
9 oil tanks that aren't serving any purpose at this
10 time, and replacing them with a generating
11 facility?

12 MR. KANE: The removal -- what I
13 understand is a decommissioning request.

14 MR. MCKINSEY: Okay.

15 MR. KANE: A decommission. I haven't
16 seen anything about removing or doing anything
17 else.

18 MR. MCKINSEY: So you did not understand
19 that this project involves the removal of three
20 large oil tanks near I-5?

21 MR. KANE: Oil tanks, yes. I thought
22 you were referring to plants 1, 2 and 3.

23 MR. MCKINSEY: No, no. The question is
24 did you understand that this project involves the
25 removal of three large oil tanks adjacent to I-5?

1 MR. KANE: Yes.

2 MR. McKINSEY: And did you understand
3 that those oil tanks no longer serve any purpose?

4 MR. KANE: I'm not an expert on that
5 particular subject. I can only go by what was in
6 the report.

7 MR. McKINSEY: So, I mean, is it your
8 contention that the replacement of three large oil
9 tanks with a new generating facility is not -- can
10 you put that page 2 of the redevelopment plan back
11 up?

12 Is it your contention that the
13 replacement of those oil tanks is not the
14 development of a property which is stagnant or
15 improperly utilized?

16 MR. KANE: My testimony had to do with
17 responding to the highlighted bullet point, number
18 6, which was put forward as one of the fundamental
19 extraordinary benefits here.

20 And my testimony was that this proposal
21 does not facilitate the redevelopment of the
22 facility because it doesn't involve any concept of
23 redevelopment at all. It's just adding, it's
24 adding a plant.

25 MR. McKINSEY: So your --

1 MR. KANE: It may removing some tanks,
2 but it's leaving in place, it's merely
3 decommissioning three plants, 1, 2 and 3. It's
4 not demolishing them; it's not providing for --

5 MR. MCKINSEY: I understand --

6 MR. KANE: -- redevelopment --

7 (Parties speaking simultaneously.)

8 MR. MCKINSEY: So you're not making any
9 opinion on whether this project meets that third
10 item that I had you read --

11 MR. KANE: Well, now that you ask me, it
12 certainly doesn't. Because in the report to
13 council that accompanied the redevelopment plan,
14 there was extensive evidence of the blight on this
15 particular parcel. None of which -- I should say
16 much of which is unaddressed by the proposal.

17 There's hazardous materials onsite,
18 which there was no proposal to remediate. That
19 was one of the indices of blight. There are
20 obsolete buildings and improvements which are
21 merely suggested to be left standing.

22 So the redevelopment report to council
23 which accompanies the redevelopment plan laid out
24 some serious blight conditions on this parcel. And
25 this proposal does not begin to remedy those

1 conditions.

2 MR. MCKINSEY: So, if I understand, your
3 testimony is focused almost entirely, but not
4 completely, on the shutdowns of units 1, 2 and 3,
5 and is not focused on the tank farm activities,
6 where the construction activities of this project
7 will occur?

8 MR. KANE: It's not just focused on the
9 decommissioning of three of the plants. It's
10 focused on the fact that there's no proposal to
11 redevelop the parcel. There's no proposal to
12 redevelop the parcel. It's only a proposal to do
13 certain things with small areas of the parcel.
14 And add yet another plant.

15 So that is not redeveloping the entire
16 facility, which is what the plan requires and
17 envisions.

18 MR. MCKINSEY: I'd like to ask you to
19 read the item number one on the purposes and
20 intents, which I think is along the lines of what
21 you're addressing.

22 MR. KANE: Yes, I've read it.

23 MR. MCKINSEY: Could you read it out
24 loud?

25 MR. KANE: Eliminating blight and

1 environmental deficiencies in the project area.

2 MR. McKINSEY: So, would you say that
3 the elimination of the once-through cooling
4 associated with those three units is not the
5 elimination of an environmental deficiency?

6 MR. KANE: It's an elimination of one of
7 the environmental deficiencies that was documented
8 on this property.

9 MR. McKINSEY: Thank you.

10 MR. KANE: It is not the elimination of
11 many of the others.

12 MR. McKINSEY: And would you say that
13 the shutdown of those three units, which are
14 inefficient boilers designed to burn oil, which
15 are now burning natural gas, is also not the
16 elimination of an environmental deficiency?

17 MR. KANE: What I'm saying is it adds to
18 it because you're left with empty improvements
19 sitting there with no redevelopment of the
20 property, no remediation of --

21 MR. McKINSEY: Well, that's not --

22 MR. KANE: -- the problem --

23 MR. McKINSEY: -- my question. I'm not
24 talking about the redevelopment question. I'm
25 asking is it or is it not the elimination of an

1 environmental deficiency which is one of the
2 stated purposes and intents of the redevelopment
3 plan?

4 MR. KANE: I don't see how -- you're
5 talking about the plants 1, 2 and 3? Or are you
6 talking about --

7 MR. McKINSEY: I'm talking about the
8 elimination of the operation of units 1, 2 and 3
9 at the --

10 MR. KANE: Yeah, no, --

11 MR. McKINSEY: -- existing facility, and
12 those associated air emissions.

13 MR. KANE: We don't see making those
14 buildings empty and unused as eliminating,
15 eliminating the environmental deficiencies.

16 MR. McKINSEY: So that doesn't eliminate
17 any environmental deficiency?

18 MR. KANE: Well, that's not what we're
19 discussing. It doesn't say eliminating any
20 environmental deficiencies.

21 MR. McKINSEY: Well, that's my question.

22 MR. KANE: It says eliminating
23 environmental deficiencies, and you've mentioned
24 one out of --

25 MR. McKINSEY: Okay, --

1 MR. KANE: -- about ten.

2 MR. McKINSEY: That's all my questions,
3 thank you.

4 HEARING OFFICER KRAMER: Before you go
5 on, Mr. McKinsey, the document you just had up on
6 the screen and you've been discussing with Mr.
7 Kane, I think I asked you a minute ago what it
8 was, and --

9 MR. McKINSEY: It's exhibit 407.

10 HEARING OFFICER KRAMER: Right, but
11 specifically -- there's several different
12 documents in that exhibit. Am I correct that it's
13 ordinance number NS-779?

14 MR. McKINSEY: I'd have to go to the
15 entire one. I only have an excerpt. Which I can
16 do just in a moment.

17 HEARING OFFICER KRAMER: That's what I'm
18 seeing in my copy. Because I identified --

19 MR. McKINSEY: It's the 2005 amendment
20 document to the redevelopment plan. There's
21 several.

22 HEARING OFFICER KRAMER: Right. And the
23 city council ordinance?

24 MR. McKINSEY: Yeah.

25 HEARING OFFICER KRAMER: Because there

1 were a couple -- there was a resolution of the
2 HDC --

3 MR. MCKINSEY: I think Mr. Rouse can
4 answer that question.

5 MR. ROUSE: -- Mr. Kramer. Yes, indeed,
6 it is the second page of ordinance NS-779, which
7 is in the enabling ordinance that, in fact,
8 adopted the redevelopment plan.

9 HEARING OFFICER KRAMER: Okay, that's --

10 MR. ROUSE: So part of the document 407.

11 HEARING OFFICER KRAMER: Thank you. I
12 just want it to be clear so that in a month or two
13 when I'm looking at this I can find it again.

14 Okay, our next cross-examiner is staff.
15 Any questions?

16 CROSS-EXAMINATION

17 BY MR. RATLIFF:

18 Q Good afternoon, Mr. Kane. When you
19 testified earlier today you gave us your
20 qualifications as an expert in the area of
21 redevelopment law. And you went on at some length
22 to describe that expertise. And I acknowledge
23 that, that you have that expertise.

24 But when you testified you weren't
25 suggesting that you had expertise as an electrical

1 engineer or someone who had familiarity with
2 electric reliability problems in the San Diego
3 area?

4 MR. KANE: I'm definitely not an
5 electrical engineer.

6 MR. RATLIFF: Thank you. And you don't
7 claim expertise as someone who is familiar with
8 actually how the power plant functions and when
9 the pumps run and how much pumping is associated
10 with units 1 through 3, do you?

11 MR. KANE: Well, I do have over 30 years
12 of experience of dealing with permitting and
13 development of utilities and generating facilities
14 because many redevelopment projects include such
15 facilities.

16 And over the years there's been
17 acquisitions, dispositions, demolition and
18 development of such facilities, many of which
19 involved transactions with redevelopment agencies.

20 So in terms of the permitting, yes, I
21 have had extensive experience.

22 MR. RATLIFF: My question --

23 MR. KANE: In terms of building --

24 MR. RATLIFF: -- wasn't about the --

25 MR. KANE: -- pipes, no, I'm not an

1 electrical engineer.

2 MR. RATLIFF: Well, my question, more
3 specifically, is you heard previously today we
4 heard questions about how much actual pumping
5 would be reduced by the CECP project of using
6 once-through cooling.

7 And my only question is do you know
8 that, the answer to that?

9 MR. KANE: I'm not testifying as an
10 expert on that subject.

11 MR. RATLIFF: Okay, thank you.

12 HEARING OFFICER KRAMER: And the city.
13 I gave you a crack already, didn't I? No, I'm
14 sorry, I did not. The city and the redevelopment
15 agency.

16 MR. THOMPSON: Before I determine if we
17 have cross, could I ask a redirect question of our
18 witness, Ms. Fountain?

19 HEARING OFFICER KRAMER: Sure.

20 MR. MCKINSEY: She hasn't been crossed.

21 HEARING OFFICER KRAMER: Was this the
22 question you --

23 MR. THOMPSON: This is the question on
24 the document that was referred to right before
25 lunch.

1 HEARING OFFICER KRAMER: You're
2 withdrawing your objection?

3 MR. McKINSEY: I don't have an
4 objection.

5 HEARING OFFICER KRAMER: Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Ms. Fountain, if you'll recall, right
9 before lunch Mr. Rouse referenced a 351 document.
10 Have you had an opportunity over the lunch break
11 to obtain and review that?

12 MS. FOUNTAIN: Yes, I did. The
13 resolution that was mentioned was a resolution of
14 the Housing and Redevelopment Commission and it
15 was related specifically to a work plan to develop
16 a land use strategy for the entire South Carlsbad
17 Coastal Redevelopment Area.

18 And it was intended to move forward
19 obtaining consultant services to do that land use
20 strategy. And it was mentioned in there that the
21 power plant, or the replacement power plant site
22 was looked at at the site where the current CECP
23 is located.

24 But I wanted to comment that this is
25 also related to an exhibit that we have included,

1 which is exhibit 408 that was related to a letter
2 where we were responding to a draft memorandum of
3 understanding with the power company to talk about
4 how we would proceed in the future with planning
5 for the site.

6 This is consistent with my comments that
7 I made earlier that our goal was really to look at
8 the site in its total, and do a master planning
9 effort.

10 And what has ended up happening is a
11 piecemeal approach to development. And so we
12 actually did not proceed with that land use
13 strategy that was noted within that resolution.
14 And we also did not proceed with the memorandum of
15 understanding that was noted in that letter 408.

16 The reason behind that was we thought we
17 had an understanding that we would move forward
18 and plan that site in the future. And what ended
19 up happening was the application was submitted
20 without really an opportunity for us to further
21 look at the design of the project and discuss that
22 location on the constraints further.

23 So we're in the position that we are
24 today to look at how we would comment on that
25 application that was submitted in response to the

1 proposal to redevelop the site.

2 HEARING OFFICER KRAMER: And then your
3 cross-examination?

4 MR. THOMPSON: Yes, I have a few
5 questions for Mr. Rouse.

6 HEARING OFFICER KRAMER: Go ahead.

7 MR. THOMPSON: I will understand if the
8 parties have questions of Ms. Fountain on this
9 particular piece of -- on 351.

10 CROSS-EXAMINATION

11 BY MR. THOMPSON:

12 Q Mr. Rouse, is the CECP facility smaller
13 than the Encina 1 through 5 building stack?

14 MR. ROUSE: Yes, the acreage is
15 approximately 23 acres for CECP. The existing
16 facility, and I could be off by 10 percent of this
17 number, is approximately 60 acres on the westerly
18 side of the tracks.

19 So in terms of the footprint of the
20 facility, it's height, bulk and scale, it is
21 smaller than the existing Encina Power Plant.

22 MR. THOMPSON: And if the CECP is built,
23 would that, in you mind, constitute a
24 redevelopment of Encina 1 through 5 into the CECP
25 smaller unit?

1 MR. ROUSE: Well, the CECP would
2 concurrently decommission units 1 through 3. And
3 it is eliminating I believe it's three oil tanks
4 and remediating the ground associated with that
5 23-acre area between the tracks and I-5.

6 So, yes, that's a redevelopment of
7 existing blighted condition being the oil storage
8 tanks.

9 MR. THOMPSON: But the building, the
10 380-foot-high stack and the 200-foot high building
11 would remain, would it not?

12 MR. ROUSE: That's correct. It's part
13 of the CECP. It does not dismantle or tear down
14 the existing Encina Power Plant. We've got too
15 many "C's" here.

16 MR. THOMPSON: Looking at your response
17 to question five, you have a list of the six
18 public benefits. Would you identify which of
19 those benefits would not be achieved if this
20 project was built three or four miles inland?

21 MR. ROUSE: Okay, --

22 MR. MCKINSEY: I do want to object a
23 little bit that Mr. Rouse has not testified on --
24 if he's able to answer it, but if he's not able to
25 answer it I'd say that, you know, you're going

1 beyond where he focused, which was not on -- it
2 sounds like almost an alternatives question, but I
3 understand your line.

4 But if he indicates that he's not able
5 to answer that question, I think that should
6 stand.

7 MR. THOMPSON: I agree.

8 MR. ROUSE: I have not evaluated any
9 inland project. It's certainly an inland, so I
10 don't know how to answer that --

11 MR. THOMPSON: Okay.

12 MR. ROUSE: -- without speculating.

13 MR. THOMPSON: All right. In your
14 response to question six, you talk about the
15 eventual redevelopment of the westerly portion of
16 the EPS. What is that? What were you referring
17 to?

18 MR. ROUSE: Well, we were dialogue-ing
19 on the South Carlsbad Coastal Redevelopment Area.
20 And what it identifies is the goal that nobody has
21 refuted in my hearing. A goal of eventually
22 eliminating the existing Encina Power Plant in
23 order to redevelop that westerly portion, westerly
24 of the tracks, for some other redevelopment,
25 whatever the vision is and whatever can be

1 approved and entitled. And then marketed and
2 economically produced.

3 MR. THOMPSON: Thank you.

4 HEARING OFFICER KRAMER: Okay. You may,
5 because it's not clear if you have an interest in
6 this part of the land use topic or not, but let me
7 turn next to the Center for Biological Diversity.
8 Any questions?

9 MR. ROSTOV: No.

10 HEARING OFFICER KRAMER: None from them.
11 Power of Vision?

12 MS. BAKER: Yes, sir, we have a few
13 questions. I'd like to ask a followup of Mr.
14 Rouse.

15 CROSS-EXAMINATION

16 BY MS. BAKER:

17 Q You mentioned the acreage of the Encina
18 Plant compared to the CECP. And yet when you look
19 at the maps of the entire property isn't it true
20 that the footprint of the CECP is larger than the
21 existing EPS site?

22 MR. ROUSE: I don't think so at all. I
23 understand the site westerly of the tracks is
24 approximately 60 acres, but --

25 MS. BAKER: No, I mean --

1 MR. ROUSE: -- the CECP -- oh, I don't
2 know what the square footage of the building is.

3 MS. BAKER: But when you look at maps
4 that have been provided, the maps show that the
5 CECP site footprint of the building is larger than
6 the EPS site?

7 MR. ROUSE: I think we're talking about
8 both area square footage on the ground. Inside
9 the building, is that what you're asking?

10 MS. BAKER: Well, what I'm talking about
11 or what I'm trying to get to --

12 MR. ROUSE: Are we talking about bulk
13 scale mass, as well, in the 380 or 400 foot
14 exhaust stack and the --

15 MS. BAKER: No. What I'm trying to get
16 to is the idea that the CECP is a smaller use,
17 when the footprint shown on the maps it is
18 actually a larger footprint on the ground than the
19 EPS.

20 MR. ROUSE: I think that realistically
21 the Encina Power Station is entire 60 acres
22 westerly of the track with the exception of what
23 now is a four- or five-acre Poseidon Desal Plant.

24 There's the intake facilities; there's
25 the return facilities. There's the

1 interconnections to the electric grid. There's
2 the command/control office buildings and other
3 things associated with it. There is no other use
4 westerly of the tracks other than the Encina Power
5 Station --

6 MS. BAKER: Right.

7 MR. ROUSE: -- and the addition of the
8 desal plant.

9 MS. BAKER: Okay, I can concede that my
10 question isn't going to be answered, but, thank
11 you.

12 Mr. Rouse, you also say in your rebuttal
13 testimony that the CECP does meet extraordinary
14 public purposes. And one of those Mr. Thompson
15 touched on would be the -- you say the CECP will
16 be a step towards potential future redevelopment
17 of the western portion of the EPS site for
18 nonpower plant purposes.

19 Has the applicant, to your knowledge,
20 put forth any development plans for that site that
21 would include public use of those lands? Any
22 commitment to the citizens of Carlsbad for the
23 future benefit to the city that would be an
24 extraordinary public purpose?

25 MR. ROUSE: Which of your questions

1 please?

2 MS. BAKER: Well, has the applicant
3 committed to any future development of that site?

4 MR. ROUSE: No, not to my knowledge.

5 MS. BAKER: Okay. Thank you. That is
6 -- oh, one other question.

7 MR. ROUSE: Excuse me, Ms. Baker. There
8 is -- no, that question is accurate --

9 MS. BAKER: Okay.

10 MR. ROUSE: -- and my response was
11 accurate.

12 MS. BAKER: And I'd like to ask Mr. Kane
13 a question, please, sir.

14 You mentioned we talked earlier about
15 blight and that being a requirement pre
16 redevelopment. Just because a new power plant is
17 new does it necessarily -- could it still be
18 considered a blighting condition even if it is
19 brand new?

20 MR. KANE: Yes. The question of blight
21 would entire to the parcel and facility.

22 MS. BAKER: Okay, thank you. That's all
23 my questions.

24 HEARING OFFICER KRAMER: Thank you.
25 Terramar.

1 MS. SIEKMANN: I have no redevelopment
2 questions.

3 HEARING OFFICER KRAMER: Okay, thank
4 you.

5 MS. SIEKMANN: No redevelopment
6 questions.

7 HEARING OFFICER KRAMER: Still that
8 wasn't picked up very well. For the future --

9 MS. SIEKMANN: He got it.

10 HEARING OFFICER KRAMER: Well, I'm
11 thinking of the people in the back of the room,
12 too.

13 MS. SIEKMANN: Oh, okay.

14 HEARING OFFICER KRAMER:

15 MS. SIEKMANN: No redevelopment
16 questions.

17 (Laughter.)

18 HEARING OFFICER KRAMER: Got it. Okay.
19 Did anybody have any followup questions to the
20 additional information that Ms. Fountain provided
21 a few minutes ago?

22 Then I have a couple questions.

23 EXAMINATION

24 BY HEARING OFFICER KRAMER:

25 Q Mr. Kane, do I understand correctly --

1 and/or Ms. Fountain -- that the redevelopment
2 agency would not consider the project to be
3 redeveloping the site unless, at the same time as
4 this new project were constructed, the old project
5 on the western portion of the site were completely
6 torn down?

7 MR. KANE: No. What I was testifying to
8 is that there needs to be a plan for the overall
9 redevelopment of the facility, not just these oil
10 tanks and this new building, leaving the rest of
11 it alone.

12 There isn't even a proposal, or as the
13 redevelopment plan requires, a precise plan
14 submitted. I wasn't just talking about the fact
15 that they're not being simultaneously demolished.

16 HEARING OFFICER KRAMER: Now, does that
17 plan have to have a proposed new use, or can it
18 simply propose that the existing facilities be
19 demolished and the land returned to a developable
20 condition?

21 MR. KANE: Well, section 600 of the
22 redevelopment plan, which was claimed to have been
23 satisfied, does require a precise plan for
24 redevelopment.

25 Now they could say in their application

1 that we don't -- we're just going to demolish
2 these building and it's just going to sit there.
3 Or, in the interim, we'll let the city use it as a
4 temporary park or we're going to landscape it for
5 open space. You know, they could have proposed
6 any of those things.

7 The redevelopment plan doesn't require
8 any particular one. But the problem is we never
9 got to see any proposal. We, being the
10 commission, never saw any proposal for
11 redevelopment.

12 HEARING OFFICER KRAMER: And is it also
13 your testimony, I think it's more in the line of a
14 legal opinion, that you believe that the
15 redevelopment agency must be offered an
16 opportunity to rule upon an application along with
17 the Energy Commission's decision?

18 In other words, that the Warren Alquist
19 Act does not remove jurisdiction over this project
20 from the redevelopment agency?

21 MR. KANE: Well, I think that whole
22 subject is going to be briefed, and I think it
23 needs to be briefed because judging by the
24 override remarks, there is a lot of
25 misunderstanding on the subject.

1 Yes, what we're saying is that the
2 redevelopment agency is an administrative arm of
3 the state. And that the state statute mandates
4 that in carrying out the purposes of redevelopment
5 that they have construction and development
6 policies that -- and they're given the duty and
7 responsibility of implementing those policies.

8 So, yes, they have to be given the
9 proposal for construction and development to
10 implement the state statute that talks about
11 construction and development policies of the
12 redevelopment agency.

13 HEARING OFFICER KRAMER: In those
14 extraordinary findings that the plan requires for
15 an energy facility, to my ears it sounds as if the
16 underlying assumption was that energy facilities
17 are, per se, of a nature that's something akin to
18 an override under CEQA, which is what those
19 findings very much sound like as the kind of
20 things you would offer as justification for an
21 override is necessary.

22 So, is the agency really saying that,
23 per se, energy facilities are of such a magnitude
24 that an override is required?

25 MR. KANE: This has nothing to do with

1 CEQA. It is not a statement of overriding
2 considerations under the California Environmental
3 Quality Act. It's a determination by the
4 redevelopment agency, the public and the community
5 of getting extraordinary public purposes and
6 benefits for any of these uses.

7 And that the purposes of a redevelopment
8 plan can be best accomplished by their making a
9 determination on that basis.

10 This has to do with implementing the
11 redevelopment plan under the state policies of
12 redevelopment, which is their duty under the state
13 statute. It's not the environmental review.

14 HEARING OFFICER KRAMER: But where would
15 I find the rationale for making that extra
16 requirement of energy facilities?

17 MR. KANE: Well, the state redevelopment
18 law requires that the redevelopment agency lay out
19 permitted land uses, and in specific terms provide
20 for a variety of different land uses and criteria
21 for buildings of various kinds.

22 So this is a kind of discretion that the
23 redevelopment agency is given to tailor the
24 general provisions of the state law to the
25 specific facts here in this particular project.

1 There's a number of energy facilities so it makes
2 sense in the tailoring of the redevelopment plan
3 to the specific facts that we have those specific
4 provisions.

5 The redevelopment law requires in 33333
6 of the Health and Safety Code specific provisions
7 for land uses. So this helps the agency comply
8 with that duty.

9 HEARING OFFICER KRAMER: But this
10 requirement is more than saying that a particular
11 use is permitted in a particular area, is it not?

12 MR. KANE: Yes. And the statute I refer
13 to requires more than that. It requires criteria
14 and limitations and controls over the land uses.

15 HEARING OFFICER KRAMER: Do you consider
16 those requirements then substantive or procedural?

17 MR. KANE: Well, it's very substantive
18 because as an administrative arm of the state the
19 redevelopment agency would make a determination of
20 whether or not there's extraordinary public
21 purposes.

22 They would review the precise plan of
23 development that was never prepared here to help
24 them make that determination. And they would
25 apply those facts to exercise of their discretion

1 to fulfill their duty under the redevelopment.

2 HEARING OFFICER KRAMER: Okay, I have no
3 further questions. Any --

4 PRESIDING MEMBER BOYD: Yeah, I have a
5 followup question to this discussion. Help me
6 understand what qualifies a piece of property
7 and/or the developer of that property to be
8 subject to this requirement vis-a-vis other pieces
9 of land.

10 Does some action have to have been taken
11 to designate a piece of land, to identify a piece
12 of land as subject to all this?

13 MR. KANE: Yes.

14 PRESIDING MEMBER BOYD: Because I must
15 confess in eight years of doing this, this is a
16 little bit novel to me.

17 MR. KANE: Yes. The redevelopment plan,
18 the redevelopment law provides that blighted areas
19 can be redeveloped through adopting redevelopment
20 projects.

21 And redevelopment projects have specific
22 boundaries that are shown and approved by the
23 planning commission and the city council. So you
24 have a specific set of boundaries for the
25 redevelopment project.

1 And the existence of blight for that
2 project area, as a whole, is assessed and goals
3 and objectives for the elimination of that blight
4 and prevention of its recurrence are adopted. And
5 so you have a redevelopment plan.

6 And the agency is vested with the duty,
7 under the redevelopment law, of carrying out that
8 plan. And vested with the duty to make sure that
9 all development just within the boundaries of that
10 redevelopment project where blight has been found,
11 is vested with the duty to make sure that all
12 development conforms to the redevelopment plan and
13 the general plan.

14 PRESIDING MEMBER BOYD: So an operating
15 business activity or what-have-you still can be
16 designated as a blighted area?

17 MR. KANE: It could be designated as a
18 part of a blighted area, yes.

19 PRESIDING MEMBER BOYD: Thank you.

20 MR. SIMPSON: Can I ask two questions?

21 HEARING OFFICER KRAMER: Mr. Simpson,
22 you did not indicate any interest in this area,
23 even during the prehearing conference. So, then
24 we were generous in allowing you, despite your not
25 having filed a prehearing conference statement, to

1 cross-examine on any topic.

2 So, as a special extension of that
3 generosity, I will allow you two questions.

4 MR. SIMPSON: Thank you, sir.

5 CROSS-EXAMINATION

6 BY MR. SIMPSON:

7 Q Towards the applicant's witness. I
8 believe you identified that the redevelopment plan
9 identified the possibility of a replacement power
10 plant there?

11 MR. ROUSE: Yes.

12 MR. SIMPSON: Did it specifically
13 identify that the plant would be a fossil fuel
14 burning plant?

15 MR. ROUSE: No, it did not talk about
16 anything other than a smaller, more efficient
17 modernization.

18 MR. SIMPSON: I see. And with the new
19 plant I understand the stacks will be shorter than
20 the old plant. If the impact on the local
21 community is higher from the shorter stacks, would
22 that be a public benefit?

23 MR. ROUSE: We were talking about Mr.
24 Kane's dialogue, should say, not to personalize
25 it, the Carlsbad redevelopment plans requirement

1 for extraordinary public benefits, that doesn't
2 focus on environmental issues, as he said. That
3 has to do with whether or not they can meet those
4 standards.

5 So it doesn't focus on what other issues
6 may be involved. It's not a cataloging of all the
7 pluses and minuses.

8 MR. SIMPSON: Thank you.

9 HEARING OFFICER KRAMER: Okay. I
10 believe that ends the -- Mr. Thompson, do you have
11 a point to make?

12 MR. THOMPSON: I would like to ask a
13 followup question following the questions from
14 yourself and the Commissioner, if I may.

15 HEARING OFFICER KRAMER: By way of
16 redirect?

17 MR. THOMPSON: By way of redirect, yes.

18 HEARING OFFICER KRAMER: Go ahead.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q I think I followed the dialogue
22 correctly where the questions were asked about the
23 role of electric generation within a redevelopment
24 area.

25 The redevelopment agency recently

1 approved of the Poseidon Desalination Plant, is
2 that correct?

3 MS. FOUNTAIN: That's correct.

4 MR. THOMPSON: An industrial facility
5 within this same redevelopment area?

6 MS. FOUNTAIN: That's correct.

7 MR. THOMPSON: Would you tell us briefly
8 what the extraordinary public purposes were in
9 that instance?

10 MS. FOUNTAIN: Sure. Actually I was
11 going to add that there was a lot of discussion
12 about it being specific to electrical generating
13 plants, but those extraordinary public purpose
14 findings are for -- there's a considerable list of
15 industrial uses, which include electrical
16 generating facilities.

17 But also as was just questioned about
18 desal plants are also included as an industrial
19 use. That would have to make those extraordinary
20 public purpose findings.

21 So it was not specific to electrical
22 generating plant, but it was more specific to
23 industrial uses. Because what we're seeing is
24 that we're basically trading one industrial use
25 for another industrial use. And we would not

1 consider that serving a redevelopment purpose.

2 It may have some redevelopment benefits, but
3 not serving that complete redevelopment purpose.

4 When we did an analysis of the desal
5 plant versus what was proposed in the energy
6 generating plant, we looked at the project sizes
7 and the scope of the two projects.

8 If you look at the desal plant what you
9 get out of that project are water reliability for
10 the City of Carlsbad. You get a guaranteed price
11 for the water. It's a reliable source for 30
12 years, with two possible 30-year extensions. You
13 get high-quality drinking water that is part of
14 that.

15 It also strengthens the economic base
16 for the project area. It has a drought-resistant,
17 as mentioned, reliable water source. New beach
18 and coastal recreational opportunities are
19 provided as part of that application, which
20 include parking area, it includes walking paths
21 and that type of thing.

22 And when we looked at this application
23 we couldn't do a similar comparison. We did get
24 the ordinary, as a benefit, that a power plant
25 would present. And we have no objection that that

1 is a good public purpose.

2 But what we were trying to find was what
3 is the next step. If we're going to allow the
4 continuation of an industrial use on that
5 property, what other public benefits come from
6 that industrial use.

7 So we did the same analysis when we
8 looked at the desal project and found out we could
9 do that. If we would have been presented some
10 other public benefit to the power plant project,
11 there may or may not have been a different outcome
12 in what we were supporting for you today.

13 MR. THOMPSON: Thank you.

14 MR. MCKINSEY: I'd like to ask a
15 question of her, because she went into a topic
16 that we hadn't really gone into at all.

17 HEARING OFFICER KRAMER: Go ahead.

18 RE-CROSS-EXAMINATION

19 BY MR. MCKINSEY:

20 Q I guess it's two questions; the one's
21 pretty straightforward. These benefits and
22 purposes that you're describing, park benches and
23 paths and things, they're all occurring on this
24 entire project site, correct?

25 MS. FOUNTAIN: Correct with the --

1 MR. MCKINSEY: And then you achieved all
2 of these things, these benefits, the extraordinary
3 public benefits, and allow the desalinization
4 project without actually requiring a redevelopment
5 plan for that site, correct?

6 MS. FOUNTAIN: The desal project was
7 specifically submitted as a redevelopment permit
8 application, like we were requesting for the power
9 plant. And we looked at the same issues that we
10 would look at for the power plant.

11 MR. MCKINSEY: But you didn't require
12 the entire site to have a redevelopment plan?

13 MS. FOUNTAIN: We did not.

14 MR. MCKINSEY: Thank you.

15 HEARING OFFICER KRAMER: Okay, I think
16 we've ended the topic of -- the subtopic of
17 redevelopment. So let me excuse Mr. Kane and Ms.
18 Fountain. But Ms. Vahidi and Mr. Rouse, you can
19 stay and be joined by Mr. Faust, Mr. Barberio and
20 Mr. Donnell, who are going to speak regarding the
21 Coastal Act issues. Ms. Hildabrand and Mr.
22 Donnell about land use consistency with the city's
23 regulations. And Ms. Siekmann and Ms. Nygaard.

24 MS. SIEKMANN: Mr. Kramer, I only have
25 cross on the Coastal Act.

1 HEARING OFFICER KRAMER: I thought -- we
2 did have you down for testimony.

3 MS. SIEKMANN: Oh. Well, I have it on
4 land use.

5 HEARING OFFICER KRAMER: Right, we're
6 doing all the other land uses. So, Coastal Act
7 and --

8 MS. SIEKMANN: Oh, you're doing -- okay,
9 all right, --

10 HEARING OFFICER KRAMER: -- other land
11 use.

12 MS. SIEKMANN: -- Okay, right.

13 HEARING OFFICER KRAMER: So anything
14 that we didn't talk about with regard to land use
15 now's --

16 MS. SIEKMANN: Okay.

17 HEARING OFFICER KRAMER: -- the time.
18 Why don't you stay at your seats since they're
19 running out of microphones up there, and places.

20 Okay, so, folks, we need to use the
21 taller microphones and get that relatively close
22 to you and share that. That one, could you move
23 it more in front of you, sir. That one you're
24 holding is just for the court reporter and you can
25 just leave that where it is. You have two of them

1 up there.

2 Okay, some of you may not have been here
3 this morning to be sworn in. Is that the case?
4 That everybody was here and was sworn in?

5 Okay, if you could stand and let me get
6 the proper language this time.
7 Whereupon,

8 PROSPECTIVE WITNESSES

9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 HEARING OFFICER KRAMER: Let's have each
13 of you identify yourself starting from my left --
14 Ms. Siekmann has been previously identified -- and
15 going to my right.

16 MS. NYGAARD: I'm Julie Ann Nygaard.

17 HEARING OFFICER KRAMER: Get closer.

18 MS. NYGAARD: Former City Council Member
19 from the City of Carlsbad.

20 MS. SPEAKER: We aren't going to be able
21 to hear you unless you speak up, please.

22 MS. NYGAARD: Okay. Try again? Is that
23 better?

24 HEARING OFFICER KRAMER: That's much
25 better.

1 MS. NYGAARD: I'm Julie Ann Nygaard.
2 I'm a former City Councilwoman for the City of
3 Carlsbad. And I'm currently serving as a Planning
4 Commissioner. And I also have spent 20 years as a
5 member of the LOSSAN Rail Corridor Board. And I
6 have been on the Water Quality Control Board.

7 MR. FAUST: My name is Ralph Faust and
8 I've spent just over 20 years as Chief Counsel to
9 the California Coastal Commission.

10 MR. BARBERIO: Gary Barberio, Community
11 and Economic Development Director for the City of
12 Carlsbad. Been with the city for the last seven
13 years.

14 MR. DONNELL: Scott Donnell, Senior
15 Planner with the City of Carlsbad. I've been
16 employed there for ten years.

17 MS. HILDABRAND: And I'm Lisa
18 Hildabrand; I'm the City Manager for the City of
19 Carlsbad. I also serve as the Secretary and the
20 Executive Director for the Carlsbad Redevelopment
21 Agency. And the Executive Manager for the
22 Carlsbad Municipal Water District.

23 HEARING OFFICER KRAMER: Okay, and, Ms.
24 Vahidi and Mr. Rouse, we've already identified
25 you.

1 Mr. McKinsey, did you have any direct
2 questions for Mr. Rouse?

3 MR. MCKINSEY: Yes, I do.

4 HEARING OFFICER KRAMER: Please go
5 ahead.

6 DIRECT EXAMINATION

7 BY MR. MCKINSEY:

8 Q Ron, I'd like to ask a general question
9 first, similar to the question I asked at the
10 beginning of the redevelopment testimony.

11 And that is that I assume there's a
12 variety of plans that apply to this site. And I'd
13 like you to just enumerate those plans and other
14 ordinances, the zoning ordinances that apply to
15 this project.

16 And ask the general question, does this
17 project comply with all these plans, zoning
18 ordinances?

19 MR. ROUSE: Let me articulate the plans
20 and ordinances, starting with, if you will, the
21 hierarchy, the general plan. Then there's the
22 South Carlsbad Coastal Redevelopment Plan that
23 we've already dialogued on.

24 There is the city zoning ordinances,
25 technically chapter 21.36. There is the specific

1 plan 144, which is another layer of zoning-like
2 regulations applicable to property.

3 And the final major plan is the Aqua
4 Hedionda Lagoon Land Use Plan. And that's a
5 certified local coastal program plan that both the
6 city adopted and the Coastal Commission certified
7 in the course of actions under the Coastal Act.

8 And, yes, the proposed project complies
9 with the designated uses for this site in all of
10 those plans and ordinances.

11 MR. MCKINSEY: Have you reviewed the
12 city's testimony, which essentially, I think, says
13 that the project does not conform with these plans
14 and ordinances?

15 MR. ROUSE: Yes, I have reviewed the
16 city's recorded direct testimony. I believe it's
17 somewhat confusing and a little bit distracting.

18 The central threshold issue is whether
19 or not the project, CECP, is an authorized use at
20 its location within the applicable plans and
21 ordinances. In my judgment, most, if not all, of
22 the city's testimony has to do with evaluating the
23 merits of the project and not addressing or
24 answering the question whether or not a electric
25 power generating facility is an authorized use at

1 the CECP site.

2 MR. MCKINSEY: So, going through those
3 really fast, the Carlsbad general plan, is the
4 project consistent with the Carlsbad general plan?
5 And why?

6 MR. ROUSE: Yes, it is consistent with
7 the Carlsbad general plan. The general plan
8 designates this entire Encina Power Station
9 location for U, which is a utility designation,
10 that expressly includes, among other utility-type
11 of uses, electrical generation. So it clearly
12 conforms to the general plan designation of U.

13 MR. MCKINSEY: And even though I think
14 this is a different topic, the project's
15 consistent with the South Carlsbad Coastal
16 Redevelopment Plan, as well, correct?

17 MR. ROUSE: Yes, that was my earlier
18 testimony that the redevelopment of the facility
19 at this site is one of the goals and objectives of
20 the South Carlsbad Coastal Redevelopment Plan.
21 Again, too many "C's".

22 MR. MCKINSEY: And so then for the
23 zoning and specific plans is the project
24 consistent with its zoning designation and the
25 applicable specific plan?

1 MR. ROUSE: Yes. As we go through
2 these, in each instance, by California law, all of
3 these plans and ordinances need to be in
4 conformity with or consistent with the general
5 plan designation, which is, recall, as U or
6 utilities.

7 The zoning ordinance, chapter 21.36,
8 it's actually in zone P-U, which represents public
9 utilities, not referencing the manner of ownership
10 of the utilities use, but the nature that it's
11 available for and benefits the public generally.

12 Chapter 21.36 expressly authorizes,
13 again, electrical generation use. It's done
14 through a combination of a statement that the
15 permitted uses are as set forth on a matrix or a
16 chart. And in that chart it expressly shows that
17 the generation of electrical energy is a permitted
18 use.

19 The specific plan 144, if I may just --
20 unless you want to ask me a question, John, but --

21 MR. McKINSEY: I asked --

22 MR. ROUSE: -- in the interests of time,
23 specific plan 144 is a little bit of an overlay as
24 it relates to this project site.

25 Specific plan 144 also covers, I'm going

1 to suggest, in the 400- to 500-acre range of
2 property, that includes most of the property it
3 covers is east of Interstate-5.

4 Historically a lot of that property east
5 of Interstate-5 was, and still is, owned by SDG&E,
6 the former plant owner/operator. And the specific
7 plan 144 was intended to look at virtually all of
8 their ownership and the lagoons and the operation
9 of the Encina Power Station.

10 And it also authorizes the consistent
11 use of electrical power generation at this very
12 location for the project.

13 The final one is the Aqua Hedionda Land
14 Use Plan. And that was created pursuant to the
15 Coastal Act. It covers largely the same property
16 as specific plan 144, but generally covers the
17 Encina Power Plant, and then hundreds of acres to
18 the east of Interstate-5, including the lagoon and
19 the upland portions on both sides, the upland land
20 on both sides of the lagoon east of Interstate-5.

21 It was certified by the California
22 Coastal Commission at its adoption. And one of
23 the regulated -- one of the uses identified for
24 this particular area of the CECP project is U, the
25 utility electrical generation use.

1 So it is -- that use is fully consistent
2 with all the applicable plans and ordinances.

3 MR. MCKINSEY: Are there any permits or
4 city approvals that currently are in existence
5 that also affect the uses of the project site?

6 MR. ROUSE: Yes, there is. But it's
7 called precise development plan. It functions as
8 a permit. And it was the permit, as the city's
9 testimony indicates, that was the vehicle for
10 approval of the desalination plant, which is a
11 privately owned utility function.

12 The desalination plant co-locate on a
13 portion of the Encina Power Station. It was also
14 a precise development plan as it relates to the
15 Encina Power Station, encompassing the entire
16 footprint, including the proposed location for the
17 CECP project.

18 MR. MCKINSEY: Are you familiar with the
19 coastal rail trail, as it's usually referred to,
20 both in its existence and its proposals through
21 the region?

22 MR. ROUSE: Yes, as it relates to the
23 power plant site, I am, yes.

24 MR. MCKINSEY: Does this project deter
25 or interfere with the building of the coastal rail

1 trail, in your opinion?

2 MR. ROUSE: No, in my opinion it does
3 not. There are -- and, in fact, it's an element
4 that -- to cooperate in the identification of an
5 easement for the coastal rail trail through the
6 Encina Power Station was a condition, an exaction,
7 if you will, that was imposed through the joint
8 desalination and power plant precise development
9 plan permit process.

10 It says, and in essence the owner agreed
11 to cooperate in identifying a mutually agreeable
12 location for the extension of the coastal rail
13 trail used through the Encina Power Plant
14 property. The express language is a mutually
15 agreeable location.

16 MR. MCKINSEY: Have you reviewed the
17 city's testimony that essentially the rail trail
18 must be located on the east side or east of the
19 tracks?

20 MR. ROUSE: Yes, and that simply is at
21 odds with the exaction they imposed, that it be in
22 a mutually agreeable location. So I believe it to
23 be incorrect that it has to be on the east side of
24 the railroad tracks.

25 There is a history to the coastal rail

1 trail, as originally envisioned, and developed
2 over the years, or at least planned on. It was
3 intended to actually go in the railroad right-of-
4 way, but the North County Transit District that
5 owns and operates that right-of-way has determined
6 they don't want pedestrian users, bicyclists,
7 riding parallel to their tracks. And so basically
8 refused to allow the coastal rail trail to be in
9 the right-of-way if it can be avoided.

10 So, perhaps when it was originally
11 envisioned that's where people kind of thought it
12 was going to go, but by the time that the precise
13 development plan came along, it was clear that
14 that was not an option or at least was not likely
15 to be an option. And therefore, that's why the
16 express language of a mutually agreeable location
17 was achieved and negotiated.

18 MR. MCKINSEY: And then finally I'd like
19 to ask you if you're familiar with the urgency
20 ordinance that the city adopted on December 1st of
21 2009? And I ask you if you are familiar with it,
22 does it have any bearing on this project?

23 MR. ROUSE: Yes, I am familiar with it.
24 We appeared and opposed the urgency ordinance that
25 was adopted on December 1, 2009. Technically was

1 both adopted and was an extension of an earlier
2 interim ordinance.

3 (Cellphone interruption.)

4 MR. THOMPSON: Mea culpa.

5 (Laughter.)

6 MR. MCKINSEY: Can I object to that
7 telephone ringing, please?

8 (Laughter.)

9 HEARING OFFICER KRAMER: As the author
10 of the request, --

11 MR. THOMPSON: So --

12 (Laughter.)

13 HEARING OFFICER KRAMER: Let us make an
14 example of Mr. Thompson, because I see we have a
15 few more people in the audience. We had a request
16 during the break that we all turn our cellphones
17 off or put them on vibrate so that they would not
18 distract us from our discussions.

19 (Laughter.)

20 MR. MCKINSEY: So, Ron, I was asking
21 about --

22 MR. ROUSE: Could you restate that
23 because actually it did put me off.

24 MR. MCKINSEY: -- I was asking you
25 about the city moratorium and --

1 MR. ROUSE: Yes.

2 MR. McKINSEY: -- whether it has any
3 applicability to this project.

4 MR. ROUSE: Right. December 1, 2009,
5 the city council adopted and extended a urgency
6 ordinance that, for their purposes and within
7 their limited jurisdiction, declared a moratorium
8 on the further processing or applications of any
9 additional or future electrical generation
10 facilities within the coastal zone of Carlsbad.

11 While there are a lot of questions as to
12 the logic of that, it was clearly in furtherance
13 of and a continuation of their opposition to CECP.

14 The legal effect of it, in my judgment,
15 is that they may be within their rights to
16 postpone, declare a moratorium and reconsider
17 their zoning for the property should somebody be
18 applying to the City of Carlsbad for a permit for,
19 in this case, an electrical generating plant. But
20 it doesn't preempt or affect the Warren Alquist
21 Act and the exclusive jurisdiction of the Energy
22 Commission.

23 Further, I think it's also evidence of
24 or recognition that the existing plans and
25 ordinances authorize the very use here. Because

1 the two elements of the urgency ordinance, one is
2 adopted a moratorium for further processing in the
3 city. The second was to direct their staff, in
4 essence, to begin a work program to look at
5 changing all of their plans and ordinances,
6 obviously with an intent to perhaps, in the
7 future, preclude from their perspective zoning or
8 other land use ordinances that expressly allow
9 electrical generation in the site.

10 So, yes, it's within their purview, in
11 my opinion, to have done it, but it doesn't affect
12 and doesn't trump the Warren Alquist Act nor the
13 role of the Energy Commission in connection with
14 siting development of electrical generation
15 projects of this nature.

16 MR. MCKINSEY: So that if I understand
17 correctly, that the moratorium does not create an
18 instance of nonconformity with ordinances that
19 would require an override?

20 MR. ROUSE: That's correct. The urgency
21 ordinance does not change a single plan, policy,
22 ordinance or regulation. In essence it says a
23 time-out on further processing of city permits and
24 Approval regarding them.

25 And it instructs them -- declares an

1 intention that they're going to look at future
2 zone changes and study those, and perhaps bring
3 them up through the process of amending their land
4 plans and ordinances.

5 So the action does not change a single
6 applicable land plan ordinance.

7 HEARING OFFICER KRAMER: I've made a
8 note already on my list of things to be briefed,
9 and I would suggest that the parties do, that this
10 will probably be something you'll want to address
11 in your briefs, whether or not you agree with Mr.
12 Rouse on that legal point.

13 MR. MCKINSEY: Thank you. I have no
14 further questions.

15 ASSOCIATE MEMBER EGGERT: Just a quick
16 clarification on the coastal rail trail, the
17 agreement for that, on the mutually agreeable
18 location. That was part of the desal agreement?

19 MR. ROUSE: No, there was, in 2006, a
20 precise development plan, which is a permit that
21 both permitted the desal plant and also brought
22 historic requirement of a precise development plan
23 permit to the energy plan, as a whole.

24 It was in that -- it's a single action,
25 it's not an agreement, it's a council action.

1 Included in there the city exacting from or
2 conditioning the desal plant and approval of the
3 precise development plan permit, with the
4 requirement that there be a mutually cooperative
5 identification for an easement somewhere on the
6 power plant property for the coastal rail trail.

7 ASSOCIATE MEMBER EGGERT: And that's an
8 agreement with the property owner of the Encina --

9 MR. ROUSE: It's an exaction from the
10 city in a city council resolution compelling the
11 property owner to cooperate in a mutually
12 acceptable location.

13 ASSOCIATE MEMBER EGGERT: Okay. I guess
14 a curiosity is what's the status of that trail?
15 Maybe that's a question for the city, but in terms
16 of finding a location, has that progressed or is
17 that still --

18 MR. ROUSE: There have been multiple
19 meetings on it. I have not attended those
20 meetings. I do know that there have been multiple
21 meetings in which alternative locations have been
22 presented.

23 ASSOCIATE MEMBER EGGERT: Okay, thanks.

24 HEARING OFFICER KRAMER: Okay, I was
25 going to wait till the whole panel testifies, but

1 I had a similar question about what the state of
2 planning is, both to the north and the south of
3 this project site. So I'll just give that as a
4 heads-up. You can think about that and I'll ask
5 that a little later.

6 Next direct witness will be staff. Mr.
7 Ratliff, did you have any questions for Ms.
8 Vahidi?

9 MR. RATLIFF: Yes, but are we not going
10 to cross-examine this witness at this time or how
11 are we going to do this?

12 HEARING OFFICER KRAMER: We're going to
13 have the direct testimony from each of the
14 witnesses and then we'll go into cross-
15 examination.

16 MR. RATLIFF: Okay.

17 DIRECT EXAMINATION

18 BY MR. RATLIFF:

19 Q Ms. Vahidi, you haven't had an
20 opportunity to discuss your qualifications. Could
21 you briefly describe what those qualifications are
22 for us?

23 MS. VAHIDI: Sure. I'm Senior Land Use
24 Technical Staff, contracted to the California
25 Energy Commission Siting Transmission Division.

1 Have been since 2001.

2 I have 17 years of experience with land
3 use and policy analysis. I've worked on over 15
4 coastal projects. I've been consultant to a
5 number of coastal cities, the City of Santa
6 Barbara, City of Santa Monica, City of Huntington
7 Beach, City of Dana Point.

8 For the cities of Santa Monica and
9 Huntington Beach I've also worked with their
10 redevelopment arms.

11 And also I was the land use task leader
12 for the Energy Commission's coastal plant study
13 where we looked at Coastal Commission Act
14 consistency issues, coastal development permit
15 issues and local coastal plan issues related to
16 all 25 of California's coastal power plants.

17 MR. RATLIFF: Have you had any
18 experience at all with redevelopment agency
19 issues?

20 MS. VAHIDI: Yes. Again, the City of
21 Huntington Beach, I've done a few projects. The
22 City of Santa Monica I've done several
23 redevelopment projects. And I was the contractor
24 for the City of L.A. CRA for a couple of years.

25 MR. RATLIFF: Could you summarize

1 briefly the conclusions of your testimony?

2 MS. VAHIDI: Sure. Generally the
3 proposed CECP is physically compatible with the
4 surrounding immediate industrial land uses at the
5 Encina Power Station.

6 It's also consistent with the city's
7 general plan and land use zoning designations,
8 which were testified to earlier.

9 Again, the public utility general plan
10 land use designation and the implementing zoning
11 designation, which is, again, public utility, both
12 of which expressly allow for power generation
13 facilities.

14 And certain city LORS documents, such as
15 the specific plan, 144-H, which is the currently
16 adopted version, and the precise development plan,
17 00-02, we came to the conclusion that they have
18 more permit-like characteristics than policy
19 guidance document characteristics.

20 But regardless, the project complies
21 with all of the various different land use LORS
22 documents. And one last item, we have recommended
23 condition of certification Land-1, which
24 specifically talks about siting of the coastal
25 rail trail. So we can speak about that later if

1 you have specific questions. It's all in my
2 written testimony.

3 MR. RATLIFF: I think the prior witness
4 discussed, in some measure, the complexity of the
5 various provisions which apply to the City of
6 Carlsbad for this particular property within the
7 City of Carlsbad.

8 Could you talk just a little bit about
9 that complexity and about how unusual it is, in
10 your view?

11 MS. VAHIDI: Yes. Again, as Mr. Rouse
12 went into detail, there are several sort of what
13 we've been calling multi-layered, nesting-doll
14 sort of plan documents that apply to the site.

15 Worth noting again is that the blueprint
16 document for the city, the city stated in their
17 testimony that the blueprint document is the
18 general plan, and that the general plan land use
19 designation is public utility, which expressly
20 allows for power generating facilities.

21 Then, you know, the implementing zoning
22 ordinance, which I won't get into since I already
23 spoke about that. Then there is the, in effect,
24 the local coastal plan for the site, which is the
25 Agua Hedionda Land Use Plan for that area. And

1 the South Carlsbad Coastal Redevelopment Plan.

2 And then, again, specific plan 144 and
3 the precise development plan which we felt had
4 very permit-like characteristics because, in
5 effect, a developer won't know what they're
6 supposed to comply with until the city tells them.

7 So they do have a set of development
8 standards, which are not unlike conditions you
9 would see in an Energy Commission decision, or a
10 permit being issued by the Energy Commission. But
11 a developer doesn't have a document in-hand that
12 they can look at and say, okay, we comply with
13 this and we don't comply with that. So they have
14 to sort of wait for the city to tell them whether
15 they do or don't comply.

16 So it's a very complex set of documents.
17 But I actually, I will say this, that SP-144 and
18 PDP, in all my years I've never seen anything like
19 them. I've never seen a specific plan document
20 like the city's SP-144 take that form before.

21 MR. RATLIFF: You conclude that it does
22 conform to the specific plan and to the PDP, as
23 well, precise development plan. But the city
24 disagrees, and can you tell us why the city
25 disagrees, as you see it?

1 MS. VAHIDI: Yes, we've had extensive
2 discussions with the city, both face-to-face and
3 in writing. Basically they purport that any time
4 something happens within that area, or you know,
5 if there's an infrastructure change, that the
6 entire specific plan and the associated PDP has to
7 be redone for the whole area. So, that's sort of
8 one aspect of it.

9 So, in effect, any developer that comes
10 in, aside from, you know, the power plant
11 developer, even if they're putting something small
12 there, they would have to -- the way we read it,
13 they would have to redo the entire document, the
14 SP and the PDP.

15 MR. RATLIFF: The city has also raised
16 questions about the compliance with the Coastal
17 Act. And in particular, to the policy objectives
18 of section 30413 of the Public Resources Code --
19 it's 30413(d).

20 Did you consider whether or not this
21 project is in conformity with those objectives?

22 MS. VAHIDI: Yes.

23 MR. RATLIFF: And what was your
24 conclusion?

25 MS. VAHIDI: That they are.

1 MR. RATLIFF: Okay. When you considered
2 the impacts that are itemized in that section of
3 the Public Resources Code, such as visual impacts
4 or biological impact issues, did you rely on the
5 respective testimonies of other staff witnesses to
6 conclude as to whether there was conformity? Or
7 did you make that up as sort of your own opinion?

8 MS. VAHIDI: No, I'm only expert in the
9 land use area, so with regards to biological,
10 visual resource issues, I defer to the expertise
11 of those staff.

12 MR. RATLIFF: And Mr. Faust, in his
13 testimony, talks about the Coastal Commission
14 report in the 1989 notice of intent for Encina,
15 for the South Bay. And the fact that the Coastal
16 Commission concluded that the 1989 project would
17 not conform.

18 Do you think Mr. Faust's testimony takes
19 into consideration the differences between the
20 project described in the NOI and the one that's
21 now been proposed, the CECP?

22 MS. VAHIDI: No. Mr. Faust's testimony
23 did not lay out the differences between the '89
24 NOI and the current CECP AFC. And if you'd like I
25 can generally speak about what those differences

1 are, but --

2 MR. RATLIFF: Please do, briefly.

3 MS. VAHIDI: Okay. Again, sort of at
4 the crux of it is the '89 project was a notice of
5 intent, whereas this is an AFC. And the reason
6 that that's important is the Coastal Commission's
7 actually come out and specifically, in 1990 and
8 subsequent to that, in correspondence to the
9 Energy Commission, has said that they don't need
10 to issue the conformity report in an AFC process.

11 Other differences are that project was
12 located at the beach. CECP is between the
13 railroad track and Interstate-5. That project, in
14 '89, included construction on the beach. This
15 project doesn't. That project in '89 has a dual-
16 fuel facility that would burn oil.

17 This project, it should be noted that it
18 is actually below grade, whereas that project was
19 not, and had visual impacts. The '89 project,
20 because of its location, and the fact that it was
21 burning oil, there would be tanker offloading, and
22 associated potential offshore spills that could
23 damage the lagoon.

24 And also impingement and entrainment due
25 to once-through cooling. And that was, at that

1 time, the impingement and entrainment issues were
2 the biggest major issue for the Coastal
3 Commission.

4 And also increased thermal plume
5 discharge as a result of that project. This
6 project again, we believe, is smaller and more
7 efficient and located between I-5 and the railroad
8 tracks, compliant with what the city had
9 requested, where they had requested the power
10 plant to be located.

11 MR. RATLIFF: Do you agree with Mr.
12 Faust's conclusion that this project creates
13 cumulative impacts to biological resources, air
14 quality and visual resources?

15 MS. VAHIDI: Well, again, I'm not going
16 to testify for other expert staff. I think the
17 opinion is not supported because it's outside of
18 Mr. Faust's expertise. And, again, ignores many
19 of the difference between the two project.

20 But I'm sure that when biology staff and
21 visual staff come up, they can speak to that, as
22 well.

23 MR. RATLIFF: Has the --

24 MS. VAHIDI: And the project does
25 cumulatively greatly reduce entrainment by the

1 retirement of units 1 through 3, do.

2 MR. RATLIFF: And has the Coastal
3 Commission indicated that entrainment and
4 impingement are the most important consideration
5 that they've had with the Energy Commission's
6 licensing cases on the coast?

7 MS. VAHIDI: Yes, absolutely.

8 MR. RATLIFF: Have you read the
9 testimony of the city's Murray regarding
10 conformity of the redevelopment plan? I guess I
11 should strike that, we've already finished that
12 topic.

13 But regarding the coastal rail trail,
14 the city's testimony claims that we did not
15 address that in the PSA. Is that a correct
16 statement?

17 MS. VAHIDI: That is not a correct
18 statement. It was addressed in the PSA on -- I
19 put it in my rebuttal testimony -- page 405-38.
20 Between the PSA and FSA there were minor tweaks to
21 it because based on discussions with Energy
22 Commission Hazard Staff, we had to insure that it
23 would be in a secure location.

24 MR. RATLIFF: So were you engaged in
25 trying to discuss with the city where that coastal

1 rail trail should be located?

2 MS. VAHIDI: Yes, initially yes, before
3 we wrote the PSA we coordinated with the city as
4 to what they would like to see in the condition.

5 MR. RATLIFF: And why can't it be
6 located in the project property, itself?

7 MS. VAHIDI: Again, I'm going to defer
8 that to Dr. Alvin Greenberg's hazard staff, but
9 there are safety and security reasons for being --
10 it needs to be west of the tracks for safety and
11 security reasons. And I'm going to let him speak
12 to the details of that when he gets to that part
13 of the testimony.

14 MR. RATLIFF: Thank you. I have no more
15 questions.

16 HEARING OFFICER KRAMER: All right, it's
17 my turn.

18 Next would be the city's cross-
19 examination.

20 CROSS-EXAMINATION

21 MR. THOMPSON: Did you mean cross or
22 direct?

23 HEARING OFFICER KRAMER: Yeah, I'm
24 sorry, you're right. I'm ahead of myself. The
25 city's direct. Mr. Thompson.

1 MR. THOMPSON: And we're doing both
2 coastal and land use, is that correct?

3 HEARING OFFICER KRAMER: And any other
4 land use sub-issue that might still be --

5 DIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q Mr. Faust, you seem to be closest to me.
8 Would you briefly describe your background at the
9 Coastal Commission and any other relevant
10 experience that you bring to the Commission?

11 MR. FAUST: I spent just over 20 years
12 as the Chief Counsel of the California Coastal
13 Commission. During that time, perhaps relevant to
14 this, I served on the National Academy of
15 Sciences' Committee that reviewed the impacts of
16 the outer continental shelf oil and gas
17 development. We spent a lot of time looking at
18 impacts, particularly socioeconomic impacts.

19 Since I left the Coastal Commission I've
20 been teaching environmental law at Humboldt State
21 University. And I am an appointee by the board of
22 supervisors to the Humboldt County Planning
23 Ivanpah Generating Station,

24 MR. THOMPSON: Thank you. Would you
25 please describe the state policies that the

1 California Coastal Commission is charged with
2 implementing?

3 MR. FAUST: Well, very briefly, the
4 primary charge is to protect and restore, to the
5 extent possible, coastal resources. Coastal
6 resources are enumerated in chapter 3 of the
7 Coastal Act.

8 But principally they would include
9 biological resources. They would include visual
10 resources. They would also include recreational
11 resources, although there is, in fact, a separate
12 policy of the Coastal Act and charge of the
13 Coastal Act to maximize public access and public
14 recreation in the coastal zone. So both of those
15 come into play.

16 Finally, the third major category of
17 work that the Coastal Commission does is to try to
18 insure that what the legislature has stated as
19 priority uses under the Coastal Act are, in fact,
20 established or maintained within the coastal zone,
21 as compared to nonpriority uses.

22 In other words, there's a hierarchy of
23 uses that is developed in the Coastal Act. One of
24 the things that the Coastal Commission looks at is
25 that hierarchy of uses when they're making a

1 coastal decision of some sort.

2 I don't know if you want an example of
3 that or not.

4 MR. THOMPSON: Sure.

5 MR. FAUST: Well, one would be whether
6 or not a project is a coastal-dependent industrial
7 use. If a project is a coastal-dependent
8 industrial use, then it is given very high
9 priority under the Coastal Act. And there are
10 special approval procedures, a special section of
11 the law that deals with what the standards are for
12 approval of such a facility.

13 MR. THOMPSON: And I believe you
14 testified that you do not believe that the CECP is
15 coastal dependent, is that correct?

16 MR. FAUST: Absolutely not.

17 MR. THOMPSON: From your experience at
18 the Coastal Commission, could you please describe
19 the temporal nature of that commission's charge,
20 their view into the future, if you will?

21 MR. FAUST: When the Coastal Commission
22 looks at projects or looks at plants, for that
23 matter, it attempts to look not only at what the
24 situation is right at the moment, but rather what
25 the situation would be over the period of time,

1 for example, the length of development, or what
2 can be expected or predicted over an extended
3 period of time.

4 To give you an example that's pertinent
5 to the present situation, it appears to me, from
6 hearing the staff testimony, that they have
7 evaluated the impacts of this project based upon
8 what they characterize as a CEQA analysis. Which
9 is to say they're comparing the impacts of the
10 project to the situation as it exists right at
11 this moment on the site.

12 The Coastal Commission wouldn't do that
13 when it is doing a similar analysis. It would
14 rather, for example, take into account that
15 there's state policy that somewhere around 2017 or
16 whenever appropriately it can be done, these
17 existing facilities are going to cease to exist.

18 And so presumably this is prime vacant
19 coastal real estate upon which one can consider
20 what the appropriate uses are. It's an unpainted
21 palette, if you please. And there would be a
22 process that the Coastal Commission would be a
23 participant in, certainly local government would
24 be perhaps the most significant participant, but
25 it would be a community dialogue within the

1 context of the preferences of the Coast Act as to
2 what would occur on that site.

3 But there would be no presumption
4 whatsoever that the existing facility would be the
5 only thing that would be looked at as a
6 comparative purpose.

7 MR. THOMPSON: To your left are two city
8 staff members who prepared the report on the
9 consistency of this project with the Coastal Act.
10 Have you looked at that report, which I think
11 makes a determination on the city's part that it
12 is inconsistent. Have you reviewed that report,
13 and do you agree with that conclusion?

14 HEARING OFFICER KRAMER: What's the
15 exhibit number on that?

16 MR. THOMPSON: Do you have it, Gary?

17 MR. BARBERIO: 420.

18 MR. THOMPSON: Thank you.

19 MR. BARBERIO: 420.

20 MR. FAUST: Should I proceed?

21 MR. THOMPSON: Yes, please.

22 MR. FAUST: I have reviewed their
23 testimony. I haven't reviewed it for purposes of
24 comparison with the uniquely city planning
25 documents or regulations or ordinances. I've only

1 reviewed it with respect to coastal impacts.

2 With respect to those coastal impacts, I
3 agree.

4 MR. THOMPSON: Finally, staff criticizes
5 your reliance, in part, upon the 1989 NOI report
6 that the Coastal Commission did on coastal
7 projects here in southern California.

8 Do you have any comments to make on that
9 criticism?

10 MR. FAUST: Well, I really disagree with
11 the testimony that was provided. Certainly the
12 project or facility that was being discussed at
13 the time when the Commission issued its report in
14 1990 is not the same as this project. There are
15 differences.

16 Just to pick a couple, there are not
17 going to be thermal impacts in the way that the
18 Coastal Commission identified in it's 1990 report.
19 There are not going to be oil spill impacts as the
20 Coastal Commission identified in its 1990 report.

21 There are some differences, but the
22 project is much more alike than it is different.
23 It's a very similar kind of project. It's on the
24 same overall site, effectively next to the
25 existing plant. And a lot of the kinds of impacts

1 that do exist from a Coastal Commission
2 perspective still exist.

3 There may be differences that one can
4 discuss with respect to, for example, visual
5 impacts. Perhaps this is not as large as the
6 proposal in 1990. But it is huge, by any
7 standards. It contains, once the existing
8 facility goes down, what I think would be the
9 tallest structures within the City of Carlsbad.

10 It's going to be a major industrial
11 facility smack dab in the middle of the viewshed
12 and in the middle of town. And I just don't see
13 how you can say that doesn't have a visual impact.

14 Again, unlike staff, from a Coastal
15 Commission perspective, we look at those impacts
16 in terms of a comparison to what will be, not just
17 what is at this moment. And certainly, what will
18 be includes the fact that the existing facility,
19 at least according to what I understand to be
20 state policy, is going to disappear sometime plus
21 or minus 2017.

22 And from that point on all the impacts
23 of this project are going to be unique to this
24 project. Those include the visual impacts; they
25 appear to include marine impacts, and so on.

1 So, while there are some differences
2 from the project that was considered in 1990, I
3 don't think that they alter in any way the
4 fundamental fact that if the Coastal Commission
5 were to look at this today, they would say this
6 project is not consistent with the Coastal Act.

7 There's one other point I think that I'd
8 like to make with respect to the 1990 report, that
9 I, at least, think is an important message, if you
10 please, for the Commission. The Coastal
11 Commission in 1990 looked at this proposal.

12 And even though there was a general
13 assumption at that time that it was a coastal-
14 dependent facility, that it required ocean water
15 in order to do cooling, even though that was the
16 case, it said this site is not appropriate for
17 this facility.

18 I think that what that indicates is a
19 general Coastal Commission philosophy, and I think
20 it's embedded in the policies, which is that for a
21 facility like this, if there's anywhere you can
22 put it outside the coastal zone, you should put it
23 there.

24 This isn't what the coastal zone was
25 designed for. The coastal zone was designed in

1 terms of industrial facilities only for those
2 which absolutely had to exist within the coastal
3 zone. Which had to be on or adjacent to the sea
4 in order to function at all. And that's a quote
5 from Public Resources Code section 30101.

6 As I understand it, this facility does
7 not need to be on or adjacent to the sea in order
8 to functional at all. Therefore it's not coastal-
9 dependent. Therefore, for the Coastal Commission
10 perspective, it should be out of the coastal zone.

11 MR. THOMPSON: Finally, Mr. Rouse, in
12 your experience with the California Coastal
13 Commission, do you believe that the Commission
14 would consider this project to be a new or a
15 replacement facility?

16 MR. ROUSE: Well, I think it's fair to
17 say that different agencies apply somewhat
18 different standards to that. Certainly from the
19 point of view of the Coastal Commission this is
20 new development.

21 It's a new factory; it's a new
22 industrial facility. It's on an area that doesn't
23 contain anything like it now. It's not a
24 demolition and reconstruction. The Coastal
25 Commission has a separate way of looking at things

1 like that. This is not that.

2 This is a new -- this is new development
3 under the Coastal Commission.

4 MR. THOMPSON: Thank you. Should I now
5 move on to Mr. Barberio?

6 HEARING OFFICER KRAMER: Yes, please.

7 MR. THOMPSON: On down the road. Thank
8 you.

9 DIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Would you please state your name for the
12 record and your place of employment?

13 MR. BARBERIO: Yes. My name is Gary
14 Barberio, and I am Community and Economic
15 Development Director for the City of Carlsbad.

16 MR. THOMPSON: And you're sponsoring an
17 exhibit which is 420, which is the report on the
18 consistency?

19 MR. BARBERIO: Yes, that's correct. I'm
20 sponsoring exhibit 420, which is the city's report
21 on conformance of the CECP with the California
22 Coastal Act.

23 As you're aware, the Coastal Commission,
24 due to time constraints and budgetary reasons
25 chose not to participate in this process. And

1 they did not prepare the report they might
2 normally do pursuant to Coast Act section
3 30413(d).

4 So in response to that and the city's
5 review of the CEC Staff's work on their approach
6 to Coastal Act conformity with the CECP, we have
7 prepared exhibit 420 for the Commission's
8 evaluation.

9 This report is based on over 30 years of
10 coastal planning experience that the City of
11 Carlsbad has had. As a coastal city, we have
12 worked for, you know, over many years with Coastal
13 Staff in the San Diego Office, and are familiar
14 with the Coastal Act and how it affects our city
15 and the coastal zone in general.

16 MR. THOMPSON: If I may, in those 30
17 years of experience with the city, how many
18 coastal applications have you personally seen and
19 helped process?

20 MR. BARBERIO: The 30 years I'm
21 referring to is the city's --

22 MR. THOMPSON: Right.

23 MR. BARBERIO: -- the City of Carlsbad's
24 experience. I have been with the City of Carlsbad
25 for about seven years now. But I have worked my

1 entire, over 24-year planning career, in coastal
2 cities in San Diego County. The City of
3 Oceanside, the City of Imperial Beach, City of
4 Encinitas and then the last seven years with the
5 City of Carlsbad.

6 The City of Carlsbad has processed over
7 700-plus coastal permits in the timeframe that
8 we've been afforded the opportunity from the
9 Coastal Commission to issue coastal development
10 permits.

11 And myself, personally, I've been
12 involved in multiple coastal programs in the City
13 of Oceanside, the City of Imperial Beach and
14 Encinitas, their first local coastal program
15 certification. And then for the last seven years
16 I have been either directly or secondarily
17 supervisory responsible for coastal development
18 permit processing in Carlsbad.

19 MR. THOMPSON: Staff has indicated that
20 they believe their analysis of Coastal Act
21 consistency is sufficient. Do you agree with
22 that?

23 MR. BARBERIO: No, I do not. The CEC
24 Staff has stated that they believe the existing
25 EPS, the Encina Power Station, is a coastal-

1 dependent use. And they have stated that the CECP
2 application is basically an expansion of the EPS.
3 And because of that it is, in fact, also a
4 coastal-dependent use.

5 You've heard extensive testimony today
6 and direct testimony from Mr. Ralph Faust that the
7 city is not of the opinion that CECP is a coastal-
8 dependent land use. And that's because it does
9 not need to be located in the coastal zone or
10 adjacent to the lagoon and ocean in order to
11 function at all.

12 So that being said, the Coastal Act
13 section 3026 states that coastal-dependent
14 industrial facilities shall be encouraged to
15 locate or expand within existing sites; shall be
16 permitted reasonable long-term growth.

17 So even if you get past the argument of
18 the cities that it's not a coastal-dependent use,
19 you know, there's been a long history of Encina
20 Power Station on this site. It was constructed
21 originally in 1953, '54. It's been expanded over
22 a number of times over those years, most recently
23 in the late 1970s with units 4 and 5 being
24 constructed.

25 So it's had a long period of time of

1 expanding on the site. And that period of time is
2 over 50 years, so you could argue that it's been
3 permitted a reasonably long-term growth period.

4 The permitting of the CECP site here
5 would extend heavy industrial uses in the coastal
6 zone at this site for at least, based on earlier
7 testimony this morning, another 30 years, perhaps
8 40, 50 years. So you're approaching, you know,
9 approximately 100 years of heavy industrial use on
10 this prime coastal site in the City of Carlsbad.
11 And I would say that's a reasonably long-term
12 growth period, even if you get past the question
13 of is it a coastal-dependent use or not.

14 MR. THOMPSON: Mr. Barberio, you
15 mentioned a letter from the California Coastal
16 Commission, and I think you said the Commission.
17 Did you mean the Commission Staff.

18 MR. BARBERIO: Commission Staff, yes,
19 that's correct.

20 MR. THOMPSON: Thank you. I believe Mr.
21 Rouse has testified that Coastal Act consistency
22 is assured because the AHLUP recognizes electric
23 power generation. Do you have any comment on
24 that?

25 MR. BARBERIO: Yes. I would disagree

1 with that. The basic premise is that the CECP is
2 consistent with the Aqua Hedionda land use plan
3 because the plan recognizes electrical power
4 generation.

5 It's kind of ironic the main land area
6 in and affected by the Aqua Hedionda Land Use Plan
7 involves the EPS site and land holdings of San
8 Diego Gas and Electric. However, the plan does
9 not contain any specific policies regarding the
10 EPS site, nor its current uses or future
11 development.

12 The plan, the Aqua Hedionda Land Use
13 Plan, designates the EPS site from a land use
14 standpoint as public utility or U. And I
15 emphasize the public utility part. And this is
16 part of the certified land use maps. That's also
17 the general plan designation. And both the Aqua
18 Hedionda Land Use Plan and the general plan state
19 that public utility allows for public and quasi-
20 public utility uses.

21 The site's also zoned PU or public
22 utility. And as stated in the zoning ordinance, I
23 believe it's chapter 2136, the intent and purpose
24 of the PU zone is to provide for certain public
25 utility and related uses.

1 It's the city's contention that the CECP
2 is a merchant plant and not a public utility, so
3 it's questionable whether it would comply with
4 either the U planned use designation of the Aqua
5 Hedionda Land Use Plan, or the city's general
6 plan, and also the public utility or PU zoning
7 designation.

8 So, if you take the position that it
9 does not comply, it's the city's position that it
10 doesn't, we believe that in order to permit this
11 facility they would need to -- and to come in
12 conformance with the Aqua Hedionda Land Use Plan,
13 they would need to do a local coastal program
14 amendment to determine whether such a non-public
15 utility use is acceptable in the U land use
16 designation and the public utility zoning
17 designation.

18 That would likely also include a
19 comprehensive update to specific plan 144 which
20 the city, itself, has positioned for over 25
21 years. And ironically the Coastal Commission,
22 California Coastal Commission Staff, in their
23 report of August 31, 1990, on the SDG&E, I believe
24 it's the NOI 1989 project, they also reached that
25 same conclusion.

1 And we believe that through the LCP
2 update and the comprehensive update to specific
3 plan 144, that's the only way to insure
4 consistency with the Coastal Act.

5 MR. THOMPSON: Finally, assuming that
6 the entire Encina parcel will be developed at some
7 point in the future, what role would you
8 anticipate for the California Coastal Commission
9 in that process?

10 MR. BARBERIO: I think Mr. Faust also
11 said this, as well, in his previous testimony.
12 But any redevelopment of the EPS site would
13 require a local coastal program amendment to
14 comprehensively update the Agua Hedionda Land Use
15 Plan.

16 And by a matter of legal right, the LCPA
17 would need to go to the California Coastal
18 Commission after local city approval. But beyond
19 that legal right of the LCPA, given this prime
20 coastal land and its location, it's highly likely
21 that the California Coastal Commission Staff would
22 want to be actively involved early on and
23 participate in the planning of the redevelopment
24 of this prime site, coastal site.

25 In addition, the City of Carlsbad would

1 insure that there was significant public outreach
2 and involvement. We would develop an outreach
3 program in order to insure that the concerns and
4 the needs and desires of the Carlsbad community
5 are taken into consideration in the redevelopment
6 of the site.

7 And throughout that kind of outreach
8 process with the Coastal Commission and the
9 community, we believe they'd all be active
10 participants and would vigorously advocate for the
11 enhancement of and restoration of this prime
12 coastal land.

13 MR. THOMPSON: Thank you. Shall I go on
14 on land use to Mr. Donnell?

15 HEARING OFFICER KRAMER: Please, finish
16 it up, all your witnesses.

17 MR. THOMPSON: Okay.

18 DIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q Would you please state your name for the
21 record and where you're employed.

22 MR. DONNELL: I'm Scott Donnell. I'm a
23 Senior Planner with the City of Carlsbad.

24 MR. THOMPSON: Have you reviewed the
25 applicant's and CEC Staff's rebuttal testimony

1 regarding land use? And if so, do you have any
2 comments?

3 MR. DONNELL: Yes, I have reviewed both
4 the rebuttal testimonies from the applicant as
5 well as CEC Staff. I would like to address a
6 couple of points.

7 First, with regards to the applicant's
8 rebuttal testimony. Had to do with the point as
9 to the applicability of the amendment to special
10 plan 144.

11 It was pointed out in the applicant's
12 rebuttal testimony that that comprehensive
13 amendment update did not apply to the EPS, the
14 Encina Power Station, at all. And actually, when
15 the city council approved the exception from
16 performing that comprehensive update in 2006, it
17 only applied to the desalination project approval,
18 as well as the precise development plan approved
19 for the Encina Power Station at that time.

20 It was, in other words, a one-time
21 exemption. It was never meant to be a blanket
22 exclusion from the specific plan update
23 requirement.

24 And secondly, I would also like to point
25 out about the precise development plant, once

1 again in the applicant's rebuttal testimony, it's
2 contended that the precise development plan is
3 simply a cataloging of existing authorized uses.
4 That's not correct.

5 The precise development instead is
6 certainly a document which catalogues existing
7 uses. But it also lays the foundation for
8 development standards to guide existing, as well
9 as any future, development that may come in terms
10 of insuring compatibility with the surroundings.

11 MR. THOMPSON: Would you please
12 summarize your testimony briefly.

13 MR. DONNELL: Yes. I would like to
14 touch on three points, the first being the general
15 plan and the compliance of the Carlsbad Energy
16 Center project with the general plan.

17 You've heard Mr. Barberio discuss the
18 compliance of this project with the land use
19 designation. It appears that CEC Staff is looking
20 purely at the project's compliance just based on
21 the utility's designation.

22 And as you know, we've raised concerns
23 about whether or not this use is a public utility,
24 as the general plan seems to call for.

25 But I think beyond land use, alone, you

1 also need to look at the other various policies of
2 our general plan. And in my land use testimony I
3 believe we point out 14 different policies from
4 the general plan, from the land use element,
5 circulation element, open space and conservation
6 element, all of which we find that this project is
7 not consistent with.

8 Beyond land use there are concerns with
9 visibility. Not only in terms of scenic views,
10 which our general plan seeks to insure, but also
11 just the appearance of the CECP, itself. We have
12 high standards in Carlsbad to insure what's built
13 here generally looks good. And the CECP does not
14 comply with those standards.

15 MR. THOMPSON: There are a number of
16 exhibits that you are sponsoring. I don't think
17 we need to go through all those, but I know Mr.
18 Barberio is sponsoring 420. Did you help Mr.
19 Barberio create that report?

20 MR. DONNELL: Yes, I did.

21 MR. THOMPSON: Okay. Mr. Donnell,
22 you've made the argument that the CECP is not in
23 conformance because it did not, but should have
24 been required to go through the city's SB-144
25 process. Why?

1 MR. DONNELL: Thank you for bringing
2 that up. That's correct. We do have a city
3 council policy which has been in place for 25
4 years, as Mr. Barberio mentioned.

5 That policy requires virtually any
6 development within the Encina special plan area to
7 perform a comprehensive update. There have been
8 just a few exceptions in the past, one of which
9 had to do with the desalination project in 2006.

10 But it is that comprehensive update
11 which looks at the entire 680-acre Encina specific
12 plan area to insure that land uses, issues such as
13 circulation, design, public access, all of those
14 things are looked at in a comprehensive fashion.

15 In a way the Encina specific plan area
16 is a donut in terms of properties and developments
17 around the Encina specific plan have grown up as
18 the city has. However, this area has remained a
19 stagnant land use, and that is why the city has
20 the comprehensive update requirement.

21 MR. THOMPSON: Let me move on to the
22 coastal rail trail a little bit. Number one, does
23 the city allow permanent trees over its major
24 sewer lines?

25 MR. DONNELL: I checked with our

1 engineering staff, those engineers who work with
2 the city's sewer system. And they confirmed that,
3 no major trees, or trees are not permitted in
4 sewer lines primarily because they interfere with
5 access should a sewer pipe ever need to be
6 accessed for maintenance.

7 MR. THOMPSON: Would you give us some
8 background from the city's perspective on the
9 coastal rail trail and its development.

10 MR. DONNELL: The coastal rail trail has
11 really been discussed since the mid-1990s. In
12 2001 the Carlsbad City Council approved both a
13 conceptual alignment for the rail trail on the
14 east side of the railroad tracks, as well as the
15 mitigated negative declaration for that alignment.

16 Since 2001 the city has broken the
17 coastal rail trail, at least in the City of
18 Carlsbad, I believe into six different segments.
19 That represents the complexity of implementing the
20 trail.

21 Some of those segments have been
22 completed, both to the north of the Energy Center
23 project, as well as to the south.

24 The alignment in the vicinity of the
25 Energy Center project was conceptually approved to

1 be on the east side of the railroad tracks.

2 MR. THOMPSON: Finally, Mr. Monasmith
3 has recommended that the Commission license the
4 CECP and exercise its override authority to do so.
5 Do you have any comment on that?

6 MR. DONNELL: I concur with Mr.
7 Monasmith in his LORS override that the land use
8 documents we have are complex. They require some
9 time to understand.

10 However, I disagree in that I believe
11 it's been made very clear by city staff, as well
12 as our counsel, at least since this project was
13 applied for, that our land use documents are quite
14 clear in the regulations that apply to this
15 project.

16 We don't think, based on the city
17 council resolutions, the Housing and Redevelopment
18 Commission resolutions that have passed, that it
19 would be possible for Energy Commission to
20 override or perform an override to license what we
21 believe is simply a merchant power plant.

22 MR. THOMPSON: Thank you. Ms.
23 Hildabrand. And let me briefly explain. We had
24 anticipated that our city manager, and the city
25 manager would be going first. And not put onto a

1 land use panel, though I'm sure she could handle
2 herself on land use issues. That wasn't really
3 what we intended.

4 DIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q Ms. Hildabrand, would you please give
7 your name and position with the city.

8 MS. HILDABRAND: Yes. My name is Lisa
9 Hildabrand. I'm the City Manager for the City of
10 Carlsbad. And as I indicated earlier, I'm also
11 the Secretary and Executive Director of the
12 Carlsbad Redevelopment Agency. And the Executive
13 Manager for the Carlsbad Municipal Water District.

14 MR. THOMPSON: Would you give the city's
15 overview of this process and the work your staff
16 has done and the activities that you've performed
17 for this application.

18 MS. HILDABRAND: Certainly, I'd be happy
19 to. I'm basically summarizing the testimony that
20 I put in in written form earlier. And I'm going
21 to be talking a little bit more about the
22 qualitative aspects rather than the quantitative
23 aspects of this project.

24 It's really about the things that you
25 can't measure, things that you can't write up into

1 rules and regulations that specifically define.
2 And those are the things that, to me, make the
3 city and this region and this state one of the
4 most desirable places in the world to be. And
5 that's the beauty of our land and our natural
6 resources, especially our coastline.

7 In northern California there's
8 magnificent mountains and there's very rugged
9 coastlines. In southern California what really
10 defines us, and what defines our lifestyle, is our
11 beaches.

12 And today you, the Commission, are in a
13 position to determine whether we continue to
14 improve and expand upon the access to our beaches,
15 or whether we restrict it for another 20, 30 or 40
16 years.

17 Our community has spent a tremendous
18 amount of time, especially over the last 25 years,
19 planning out what it wants to be. We recently
20 completed a year-long visioning project where we
21 went out into the community and asked them what
22 they'd like to see in this community over the next
23 20 or 30 years.

24 The results were a vision which has nine
25 core values and vision summary statements. These

1 statements express the protection and enhancement
2 of access to our coastline in six of those
3 statements. That's how important that is for this
4 community. Nine statements all together, and six
5 of those have the beaches and our coastline as a
6 focus in them.

7 We know that the Encina Power Plant was
8 here when the city was incorporated. And we've
9 learned to live with it because we thought we had
10 to live with it.

11 We knew that the region needed power and
12 power plants needed the ocean water for cooling.
13 And so we were ready to accept the plant. But
14 that's not true any longer. We still need power,
15 but today's power plants don't need the ocean for
16 cooling.

17 As a result we now have a once-in-a-
18 generation opportunity to free our coastline from
19 these heavy industrial uses and to open up one of
20 the most scenic spots in California for the
21 benefit of our residents, our businesses and our
22 visitors.

23 So, over today, and I know over the next
24 several days, you'll be hearing from us about a
25 lot of good technical reasons why the site under

1 discussion is not the right place for a power
2 plant.

3 And on their own they are all very good
4 reasons, and very good reasons to deny this
5 permit. But, to me, the most compelling reason is
6 the simple fact that power plants don't belong on
7 our coastline anymore. They don't need the ocean
8 water for cooling.

9 And now is the time to make that
10 concerted effort to move power plants inland, into
11 the industrial areas where they belong. And leave
12 the coastline for the enjoyment of the people.

13 So I want to make sure, too, that you
14 know that we are not opposed overall. And I think
15 you've heard this in our previous testimony, we're
16 not opposed to having a power plant in Carlsbad.
17 It's not a NIMBY issue for us.

18 The city is host to a number of regional
19 facilities. We mentioned these earlier. There's
20 an airport. We have a waste transfer site. We
21 have a sewer treatment plant. And then hopefully
22 we will have a desal plant.

23 And we know there's a need for power
24 plants, and we've suggested several sites in the
25 city where we think that you could locate one.

1 And it would be a more appropriate place for a
2 power plant. Mr. Garuba will be going through the
3 details of these later on in the hearings.

4 So, again, we just do not understand and
5 cannot see a reason to site a power plant on the
6 coast.

7 So the other part of my testimony I
8 wanted to talk about what does belong on coastal
9 property, and what our vision is for this site.

10 The decision ultimately, of course, will
11 be up to the property owners after it goes through
12 a complete public process. But what we would
13 envision, there are things and land uses that
14 enhance, such as significant coastal resource, as
15 well as meeting all of the city's policies.

16 We're looking for something that would
17 match the scale of the surrounding community and
18 take advantage of the size of the site, because it
19 is a large site.

20 We'd like to see increased public access
21 to the beaches and the lagoons. And we'd like
22 something that would take advantage of the
23 transportation corridors that are already nearby,
24 the trains, the trails and the freeway.

25 I would imagine that means we have some

1 combination of commercial, recreation and open-
2 space uses that would become natural gathering
3 places for the community and exciting
4 opportunities for arts and entertainment.

5 The total area of this site, if you
6 include the properties that are on the east side
7 as well, is over 300 acres. That's a huge piece
8 of property. And it has a lot of other uses
9 nearby that we think would complement it. The
10 flower fields and the strawberry fields; Legoland;
11 Carlsbad Outlet Center; museums and a golf course.
12 So the possibilities of what you could put on this
13 site are endless. Because of its location it has
14 the potential to be one of the great places in San
15 Diego.

16 So the decision now is in your hands.
17 And you can continue to allow the heavy industry
18 to grow in this area or you can set policies now
19 that will protect our precious coastal resources
20 for all of the generations to come.

21 And that generally summarizes my
22 testimony.

23 MR. THOMPSON: The witness is available
24 for cross.

25 HEARING OFFICER KRAMER: Okay. We have

1 Ms. Nygaard next.

2 MS. BAKER: Yes.

3 DIRECT EXAMINATION

4 BY MS. BAKER:

5 Q Ms. Nygaard, could you briefly state
6 your qualifications and why you're here today to
7 testify.

8 MS. NYGAARD: Sure, I'd be happy to tell
9 you that I have served on the Carlsbad City
10 Council for the past 14 years, as I said before.
11 And more importantly, I've served on the LOSSAN
12 Rail Corridor Board for the last 20 years. And
13 I'm currently serving as a Planning Commissioner.

14 As a council member I spent many years
15 administering the growth management plan which
16 dictates an exhaustive level of evaluation for
17 each proposed project that comes to Carlsbad.

18 Examples of those kinds of projects of
19 redevelopment south Carlsbad plan, Legoland, the
20 Four Seasons Hotel, the Sheraton Hotel and many
21 many more.

22 MS. BAKER: In your experience what is
23 your biggest concern with the proposed Carlsbad
24 Energy Center project?

25 MS. NYGAARD: Well, my biggest concern

1 is a land use issue because of the size and the
2 shape of the proposed plant. And the issue is
3 safety.

4 This project is not consistent with our
5 public safety standards. Our fire chief and his
6 staff have asked repeatedly for more information
7 and a clearer picture of this constrained site so
8 that they may clearly evaluate their ability to
9 provide adequate protection for the proposed plant
10 and the citizens of Carlsbad.

11 Now, what the fire chief is asking is
12 not any more or any less than we would ask of any
13 project that came to the City of Carlsbad.

14 It's important to remember that each
15 site is unique. CEC Staff has compared this site
16 to several other sites in California and primarily
17 the site in Escondido. I don't know if any of you
18 have been to the site in Escondido. While it is
19 similar, it's not the same.

20 The Escondido site is in an industrial
21 park, not surrounded by homes, not surrounded by a
22 coastal lagoon and beautiful beach, and not
23 between two major transportation corridors. The
24 site in Escondido is on a knoll; it's not in a
25 pit.

1 I believe that putting a 558 megawatt
2 plant on a constrained site when replacements of
3 unit 1, 2 and 3 only require 355 megawatts,
4 between two major transportation corridors is
5 really unwise.

6 Why are you increasing the megawatt
7 capacity, and therefore increasing the pollution
8 for our citizens? This project wouldn't even make
9 it out of our planning department. It does not
10 meet any of our growth management standards that
11 we have used to shape this beautiful community.

12 MS. BAKER: Ms. Nygaard, what is your
13 testimony as it relates to land use?

14 MS. NYGAARD: Carlsbad does have high
15 standards. We've created a beautiful city that's
16 both a great community to live in and a good
17 tourist destination.

18 We have 3635 hotel rooms and 822
19 vacation rentals. The revenue from these venues
20 help to pay for our beautiful parks, our excellent
21 libraries and our good city services, and our
22 wonderful city staff.

23 The proposed industrial use on one of
24 the very few lagoons in California simply does not
25 make sense, especially when the proposed plant no

1 longer requires ocean water cooling.

2 For years we've waited for the current
3 power plant to be retired. Now we face not only
4 years more of an existing power plant, but an
5 intensified land use with the construction of the
6 proposed plant, while the existing plant remains.

7 And frankly, I'm really amazed that the
8 Coastal Commission has not weighed in on this
9 power plant. In the early 1990s, as you know,
10 they did oppose putting a power plant on this
11 site. And I understand that the reason why they
12 opposed it was because of the water cooling.

13 But we don't have to water cool anymore,
14 so why are we doing this and why aren't they
15 reporting it? And furthermore, why are they
16 allowing the use of non-native plants to cover the
17 berm? I'm really concerned about their lack of
18 enthusiasm for evaluating this property, when
19 every other property that's come to Carlsbad
20 during all the years that I've been on the city
21 council have been thoroughly vetted by the Coastal
22 Commission. It's pretty surprising.

23 MS. BAKER: Ms. Nygaard, you mentioned
24 your relationship with the LOSSAN corridor. Could
25 you please discuss future plans and how they might

1 affect the CECP?

2 MS. NYGAARD: Sure. Recently the State
3 of California has received a large stimulus grant
4 from the federal government to build high-speed
5 rail. The LOSSAN rail corridor will be the feeder
6 service for high-speed rail in our corridor.

7 And as such, the money will be used to
8 double-track and grade-separate the entire
9 corridor to increase the speed and the traffic on
10 this line. Double-tracking next to the proposed
11 power plant is now out to bid for construction.
12 So, it will happen.

13 The primary access that is proposed for
14 safety for this power plant is across this rail
15 corridor. While it might be a sleepy little rail
16 corridor right now, it will not be for long. And
17 will the applicant be required to grade separate?

18 Siting of a potentially explosive plant
19 between the I-5 freeway and the LOSSAN rail
20 corridor, which is the second busiest rail
21 corridor in the United States right now, seems
22 hard to imagine. The potential for disruption
23 there is huge.

24 MS. BAKER: And do you have any closing
25 remarks?

1 MS. NYGAARD: I do. I really believe
2 safety is a question that has not been thoroughly
3 vetted. You're trying to squeeze a power plant
4 that is too large in a site that is too small.
5 Your own staff admits that it's constrained. This
6 plant belongs in an industrial zone.

7 And why are you in such a hurry to site
8 a large power plant that will last for another 30
9 to 50 years when technology is changing so fast
10 and seawater cooling is not required?

11 Take a little time. Get good answers
12 that we all can live with, and require the
13 applicant to work with the city to meet our high
14 standards. And think about if this really is the
15 best place for a power plant.

16 Thank you.

17 HEARING OFFICER KRAMER: Is that it?

18 MS. BAKER: That's it.

19 HEARING OFFICER KRAMER: Okay. Ms.
20 Siekmann.

21 DIRECT TESTIMONY

22 MS. SIEKMANN: In the FSA land use
23 section it states, on page 4.5-9, in general a
24 power plant and its related facilities may also be
25 incompatible with existing or planned land uses

1 resulting in potentially significant impacts if
2 they create unmitigated noise, dust or public
3 health or safety hazard, or nuisance; result in
4 adverse traffic or visual impacts or preclude,
5 interfere with, or duly restrict existing or
6 future uses."

7 So, I would like to quote directly from
8 the website of the Sheraton Carlsbad Resort and
9 Spa. That website is www.sheratoncarlsbad.com.

10 "The Sheraton Carlsbad Resort and Spa is
11 a refreshing Carlsbad hotel located in the
12 charming coastal community of Carlsbad in San
13 Diego north, with beautiful, contemporary,
14 mediterranean architecture, rolling lands,
15 flowering shrubs and nearby pristine beaches.

16 "The Carlsbad Hotel offers a beautiful
17 setting sure to inspire guests of every kind. The
18 hotel sits alongside the crossings at Carlsbad
19 Golf Course, Legoland, California Resort,
20 providing access to a wide variety of exciting
21 things to see and do."

22 The following quote is taken from the
23 website of the Grand Pacific Palisades Resort and
24 Hotel, www.grandpacificpalisades.com. Click on
25 the resort.

1 "Welcome to Grand Pacific Palisades
2 Resorts and Hotel. Breathtaking panoramic ocean
3 views. Huge sunsets dancing on the horizon. A
4 cool breeze drifting across the balcony. This is
5 the captivating appeal of the Grand Pacific
6 Palisades Resorts and Hotel.

7 "This stunning southern California
8 resort is located near the charming seaside
9 village of Carlsbad, California, just north of San
10 Diego and south of Anaheim, Carlsbad is vacation
11 central. Miles of sandy beaches, world class golf
12 courses, fine dining and great shopping are all
13 within minutes." Grand Pacific Palisades call
14 Carlsbad vacation central.

15 Further, on page 4.5-17, it states: In
16 addition the ongoing use of the CECP site, while
17 predominately industrial, would not preclude the
18 public use and enjoyment of adjacent coastal
19 lands, as is currently the case with the EPS and
20 surrounding coastal land."

21 In discussing the rail trail, staff
22 identifies being inside the site and outside of
23 the site are not compatible, by stating, the
24 ongoing use of the CECP site, while predominately
25 industrial, would not preclude the public's use

1 and enjoyment of adjacent coastal land.

2 The adjacent coastal lands create public
3 enjoyment, as noted by staff. Separate from the
4 industrial CECP site, making the land uses
5 incompatible. The coastal site is not appropriate
6 for the proposed CECP.

7 Thank you.

8 HEARING OFFICER KRAMER: Thank you. Now
9 let's begin our cross-examinations with the
10 applicant, Mr. McKinsey.

11 MR. MCKINSEY: Thank you, Hearing
12 Officer Kramer. I'd like to begin with
13 Mr. Faust.

14 CROSS-EXAMINATION

15 BY MR. MCKINSEY:

16 Q First of all, just to be clear, you're
17 not contending that coastal dependency is a
18 requirement for permitting a power plant in the
19 coastal zone, correct?

20 MR. FAUST: Let me start more generally.
21 We can perhaps work --

22 MR. MCKINSEY: Well, I just -- I'd like
23 to know if you're contending it's a requirement
24 for permitting a power plant?

25 MR. FAUST: Coastal dependency is

1 required unless any proposed development,
2 including a power plant, is fully consistent with
3 chapter 3 of the Coastal Act.

4 MR. MCKINSEY: So, --

5 MR. FAUST: This is not, therefore --

6 MR. MCKINSEY: So, are you contending it
7 is or is not a requirement for a power plant?

8 MR. FAUST: It is a requirement for any
9 development, including a power plant, which is not
10 fully consistent with the policies of the Coastal
11 Act.

12 MR. MCKINSEY: Secondly, you discussed
13 the 1990 NOI. Are you contending that that 1990
14 NOI has any legal or mandatory requirements that
15 would be imposed on the permitting of a different
16 plant 20 years later?

17 MR. FAUST: I am not contending that
18 it's a legal requirement that this Energy
19 Commission follow that report, no. I'm saying
20 that it's illustrative of what the Commission
21 would think, the Coastal Commission would think
22 about a proposal in this location that has many
23 similarities to the one that they looked at at
24 that time.

25 MR. MCKINSEY: Thank you. Mr. Barberio.

1 Are you contending that the City of Carlsbad has
2 some form of authority to issue a report pursuant
3 to 30143(d) of the Public Resources Code?

4 MR. BARBERIO: No, I did not say we had
5 authority to. I said given the lack of the
6 California Coastal Commission issuing such a
7 report, the city submitted their analysis of the
8 coastal conformity of the CECP with the Coastal
9 Act.

10 MR. MCKINSEY: So, what you would say is
11 that it is the city's analysis of conformity with
12 the Coastal Act?

13 MR. BARBERIO: Yes. And that's based on
14 our 30 years of experience working with the
15 Coastal Commission and the Coastal Act.

16 MR. MCKINSEY: You also testified
17 regarding the public requirement contained within
18 several points, but particularly in the zoning
19 ordinance in the general plan, correct?

20 MR. BARBERIO: Could you be --

21 MR. MCKINSEY: Public ownership
22 requirement, correct?

23 MR. BARBERIO: That's not what I said
24 specifically. I specifically stated what the land
25 use designation and the zoning designations are

1 for the EPS site. They are, from a land use
2 designation standpoint, it's U. But U is public
3 utility.

4 And then the language in the general
5 plan says that it -- let's see -- allows for
6 public and quasi-public utility uses.

7 And then I also stated that the zoning
8 designation for the EPS site is PU, which is
9 public utility. And that the intent and purpose
10 section of the PU zone is to provide for certain
11 public utility and related uses.

12 So the public was related to the actual
13 designations land use and zoning for the site.

14 MR. MCKINSEY: So, you're not contending
15 that there is an express requirement and a
16 differentiation between public and private
17 ownership contained within the general plan, the
18 zoning ordinance anywhere, right?

19 MR. BARBERIO: Can you repeat that
20 question?

21 MR. MCKINSEY: Well, can you point to
22 someplace in the general plan, the zoning
23 ordinance, specific plan that differentiates
24 between public versus private ownership, or
25 defines those terms, public and quasi-public?

1 MR. BARBERIO: I can't point to a
2 specific section that differentiates between
3 public and private. What I did do in my testimony
4 was point to specific language in our general plan
5 and our zoning ordinance that refers to public
6 utilities.

7 And the purpose and intent of both the
8 land use designation and the zoning designations,
9 which is for, as I stated in my testimony and in
10 answering your question, to allow for public and
11 quasi-public utility uses.

12 In the case of the U land use
13 designation, and the intent and purpose of the PU
14 zone is to provide for certain public utility and
15 related uses. And that's quoted.

16 MR. MCKINSEY: Is quasi-public defined
17 anywhere in the code or the general plan?

18 MR. BARBERIO: Not that I'm aware of.

19 MR. MCKINSEY: Is public utility defined
20 in --

21 MR. DONNELL: It may --

22 MR. MCKINSEY: These are questions to
23 you. I'll move to Mr. Donnell in a moment; and
24 you'll get your chance to answer these.

25 Is public utility defined in the zoning

1 ordinance of the general plan?

2 MR. BARBERIO: A straight definition?

3 No.

4 MR. McKINSEY: And again, just to be
5 clear, you're not aware of any point in the
6 general plan or the zoning ordinance that
7 differentiates between public versus private
8 ownership, with my emphasis on the word ownership,
9 of utilities?

10 MR. BARBERIO: No, I'm not.

11 MR. McKINSEY: Thank you.

12 HEARING OFFICER KRAMER: Mr. Donnell,
13 did you want to -- sorry, Donnell -- did you want
14 to respond to that, as well.

15 MR. DONNELL: I do.

16 HEARING OFFICER KRAMER: Part of the
17 point of our panel presentation is that if one of
18 the other witnesses wants to respond to the same
19 question, we like to allow them to do it
20 immediately so that we have a clearer record of
21 the discussion.

22 MR. DONNELL: Thank you, Mr. Hearing
23 Officer. In our zoning ordinance I believe there
24 is a definition of quasi and public utility,
25 quasi-public and public utilities. There is that

1 definition.

2 And then we also provide a definition in
3 our land use element of the general plan that
4 defines public facilities. And, of course,
5 there's further description in the general plan
6 land use element about what the public utilities
7 land use designation is.

8 HEARING OFFICER KRAMER: And do you have
9 a cite to the specific question on land use
10 element?

11 MR. DONNELL: The land use element, it
12 appears on page 44. It's at the back of the
13 element there's a glossary of terms used. And the
14 definition is for public facilities.

15 And then also on page 20 of the land use
16 element, defines what public utilities land use
17 designation is.

18 I don't have a specific reference to the
19 zoning ordinance section, which defines public
20 facility and quasi-public. It's in chapter 2104,
21 I believe, the definition section.

22 HEARING OFFICER KRAMER: Go ahead. And
23 that question of what public utility or utility
24 means is of interest to the Committee. So, do any
25 of the other panelists wish to weigh in on that

1 particular topic? For instance, Ms. Vahidi?

2 MS. VAHIDI: I'm not going to speak to
3 the city's definition, but I will say this, that a
4 public utility does not need to be publicly owned.
5 Meaning transmission lines are definitely, for
6 example in the State Public Utility Code, are
7 defined as a public utility, and they are, a lot
8 of the time, owned by the three investor-owned
9 utilities in the state.

10 HEARING OFFICER KRAMER: So is it fair
11 to say you used this broader definition in your
12 analysis?

13 MS. VAHIDI: Yes. I would consider that
14 a public utility does not need to be publicly
15 owned to be defined as such.

16 MR. ROUSE: If I may offer. I think a
17 point that clarifies that this is a unique issue
18 the city is raising, only with respect to CECP.
19 The desalination plant that they approved on the
20 very same site is privately owned.

21 So for it to have been approved they
22 would have had to, by their suggested definition,
23 violate the public ownership nature of the
24 industrial facility use on the site.

25 I think it's -- I'll just leave the

1 comment there.

2 MR. THOMPSON: Mr. Kramer.

3 HEARING OFFICER KRAMER: Go ahead.

4 MR. THOMPSON: This may be an issue for
5 briefing. SDG&E, after all, is privately owned.
6 I'm not sure that a discussion here would get us
7 to the real definition of public and private
8 utilities supervised by the California Public
9 Utilities Commission, or municipal utilities,
10 which are supervised by their own city.

11 HEARING OFFICER KRAMER: No, I think it
12 will also be an issue for briefing. Mr. McKinsey,
13 go ahead with your questions.

14 MR. MCKINSEY: I had the questions
15 because your witnesses specifically suggested that
16 this did not meet the requirement of being
17 publicly owned, so. And as I noted, I just want
18 to see if they could point anywhere where it talks
19 about ownership as being an element of the meaning
20 of public utility or quasi-public --

21 HEARING OFFICER KRAMER: Okay, I think
22 Mr. --

23 (Parties speaking simultaneously.)

24 MR. MCKINSEY: -- as well.

25 HEARING OFFICER KRAMER: And he was done

1 with that line of questioning, so.

2 MR. MCKINSEY: Yeah.

3 Mr. Barberio, one more question that I
4 wanted to ask you. And that is on the Agua
5 Hedionda Land Use Plan, I think -- and this may
6 relate to the same issue, but you, I think, took
7 the position that this project's not consistent
8 with the Agua Hedionda Land Use Plan, correct?

9 MR. BARBERIO: Yes, the city has taken
10 that position.

11 MR. MCKINSEY: And I mean it's your
12 position because it is not a utility within the
13 meaning of public utility or quasi-public, that it
14 is not consistent with that plan?

15 MR. BARBERIO: That's one point, yes. I
16 think the other point I made is the Agua Hedionda
17 Land Use Plan is quite old; has not been
18 comprehensively updated. And I said that it did
19 not contain any specific policies regarding the
20 EPS site, either its current use or any future
21 use. So, you know, it's kind of lacking in
22 guidance.

23 MR. MCKINSEY: Correct me if I'm wrong,
24 but it specifically designates the site as zoned
25 U, correct?

1 MR. BARBERIO: It actually is a land use
2 plan, so it doesn't designate zoning. It
3 designates the land use designation of U, which is
4 public utility per our general plan.

5 MR. MCKINSEY: Right.

6 MR. BARBERIO: Refers to the general
7 plan.

8 MR. DONNELL: If I could answer that,
9 Mr. Hearing Officer?

10 HEARING OFFICER KRAMER: Go ahead.

11 MR. DONNELL: What Mr. Barberio said,
12 there are a few policies in the Agua Hedionda Land
13 Use Plan for which we felt the project was not
14 consistent.

15 One, for example, is policy 6.7 which
16 basically says with regards to recreational
17 opportunities in the lagoon, they shall be
18 maintained, and where feasible, expanded. There
19 was no analysis or no proposal to do that with the
20 Carlsbad Energy Center project.

21 There also is policy 1.9, building
22 height maximum is 35 feet. Once again, there was
23 no analysis to demonstrate project compliance with
24 that.

25 And then throughout the Agua Hedionda

1 Land Use Plan there is the emphasis placed on
2 maintaining views, whether they are scenic views
3 from a distance or views along the coastline.

4 Those are additional policies I'd like
5 to bring up.

6 MR. ROUSE: As long as we're open
7 discussion mic here, what I believe is a
8 fundamental disconnect, the city continues to talk
9 about issues related to their evaluation of the
10 proposed project, were they in the position of
11 issuing permits.

12 They are not addressing, in my judgment,
13 whether or not the proposed project is an allowed
14 use within the applicable land plans and
15 ordinances. I think it clearly is.

16 They're raising issues that go to, in my
17 judgment, the heart of your staff's evaluation as
18 to, if you will, the merits of the project.

19 Now, there's certainly a role for that
20 kind of comment, fair comments, to come in. But
21 it should be distinguished between their
22 evaluation of the, if you will, the merits of the
23 project as distinguished from whether it is an
24 allowed use within the applicable land plans and
25 ordinances.

1 I apologize if we're jumping in, again,
2 but I think it's an important distinction in the
3 discussion.

4 MR. MCKINSEY: I just had one more line
5 of questions. You know, let me make it to both
6 you, Mr. Barberio, and you, Mr. Donnell. It may
7 work better.

8 But specifically, Mr. Donnell, you
9 raised the city moratorium on processing permits
10 in your testimony. And I want to be -- are you
11 trying to contend that the moratorium that the
12 city adopted is intended to or is trying to have
13 an effect on the CEC's evaluation of this permit
14 application?

15 MR. DONNELL: I'm sorry, I did not raise
16 that in my testimony.

17 MR. MCKINSEY: Okay.

18 MR. DONNELL: The urgency ordinance --

19 MR. MCKINSEY: Yes.

20 MR. DONNELL: No, I did not bring that
21 up.

22 MR. MCKINSEY: Okay, great. And then
23 finally, you did bring up the discussion, I think
24 you said the city has a policy of conducting a
25 comprehensive update of specific plans and this is

1 in reference to specific plan 144.

2 Is that policy actually codified in the
3 plan, such that it is a requirement? Or is that
4 simply a policy that the city has?

5 MR. DONNELL: It's simply a city council
6 policy.

7 MR. MCKINSEY: Thank you. And those are
8 all the questions.

9 HEARING OFFICER KRAMER: Okay, thank
10 you. Next will be staff.

11 MR. RATLIFF: My first questions are for
12 Mr. Rouse. And I can hardly remember what my
13 questions were, but at the time they seemed
14 important.

15 CROSS-EXAMINATION

16 BY MR. RATLIFF:

17 Q Regarding the emergency ordinance, and
18 perhaps I could ask this of the city, as well, did
19 the city identify a CEQA exemption when it took
20 this act as a discretionary agency action?

21 MR. ROUSE: I would have to -- my
22 recollection is yes -- I would have to look back
23 and if you're going to ask me which one they
24 relied on, but my recollection is they recite a
25 CEQA exemption for it.

1 We raised issues whether that was
2 applicable or not, but nonetheless, I do recall
3 that they cited a CEQA exemption.

4 I would have to be able to pull out the
5 emergency ordinance to tell you which one.

6 MR. RATLIFF: Well, perhaps I could
7 allow anyone else on the panel who wants to --
8 from the city, perhaps you know.

9 MR. FAUST: Yes. I'm reading from
10 exhibit 404, which is the City of Carlsbad agenda
11 bill, dated 10/20/2009. And in that agenda bill
12 there's an environmental impact section.

13 And stating, statutorily exempt from
14 environmental review at this time, per section
15 15262 of the California Environmental Quality Act.
16 15262.

17 MR. ROUSE: Mr. Barberio, where is that?

18 MR. RATLIFF: That's in the ordinance or
19 the staff report --

20 MR. BARBERIO: It's in the -- I was
21 reading from page 4 of the agenda bill, staff
22 report.

23 MR. RATLIFF: That's the feasibility and
24 planning study exemption, 15262. So was this the
25 adoption of a feasibility and planning study when

1 this action was taken?

2 MR. THOMPSON: It looks like you've
3 temporarily stumped our panel. Congratulations.

4 If we can provide that information at
5 another time for the record, after --

6 MR. RATLIFF: That's fine.

7 MR. THOMPSON: Thank you.

8 MR. RATLIFF: But the question, the
9 fundamental question, I guess, was this moratorium
10 -- and I've seen this in other cities, with the
11 moratorium basically a prohibition on the city,
12 itself? In other words, the staff of the city
13 cooperating in the permitting of power facilities.

14 MR. FAUST: The CEQA section quoted, if
15 read the entire section, adoption of the proposed
16 ordinance and resolution of intention will
17 authorize staff, meaning city staff, to study and
18 gather information regarding appropriate locations
19 for thermal electric power generation facilities,
20 and locate the appropriate zoning within the city.
21 And as such, is statutorily exempt from
22 environmental review at this time per section
23 15262 of the California Environmental Quality Act.

24 So I think in answer to your second
25 question was yes.

1 MR. RATLIFF: What was my second
2 question?

3 (Laughter.)

4 MR. FAUST: Do you want me to repeat
5 what your second question was?

6 MR. RATLIFF: Yes. Yes, please. No, I
7 think the question of whether the moratorium was
8 basically self directed. And you said yes.

9 MR. FAUST: I was responding to your
10 question, was that the section related to studies,
11 et cetera, and the answer is yes.

12 MR. RATLIFF: Okay. And so the action's
13 been called a moratorium. And it's been described
14 in terms of moratorium, and that's the portion
15 that I'm curious about that I'm trying to
16 understand.

17 What is the moratorium on? I mean staff
18 can always go study things, but what is the
19 moratorium on?

20 MR. FAUST: What does it do?

21 MR. RATLIFF: Yes.

22 MR. FAUST: And, again, just reading
23 from the agenda bill, I actually was not much of a
24 participant in that process, so I do not profess
25 to be an expert in the subject.

1 On page 3 of the agenda bill, Government
2 Code section 65858 permits the city council to
3 adopt an interim ordinance prohibiting the
4 expansion or location of thermal electric power
5 generation facilities in the coastal zone, which
6 may be in conflict with a contemplated general
7 plan, specific plan or zoning proposal that the
8 city council is considering or studying or intends
9 to study within a reasonable time period.

10 So the prohibition would be on the
11 expansion or location of thermal electric power
12 generation facilities in the coastal zone.

13 MR. RATLIFF: So, that would be
14 applicable to the city, then, because obviously it
15 doesn't apply to the Energy Commission, or wasn't
16 intended to, I would assume?

17 MR. FAUST: I don't know if I'm the
18 right person to answer that question, but I
19 believe the answer is no, it was not intended to
20 apply to anybody other than the city and the city
21 actions.

22 MR. RATLIFF: Go back to Mr. Rouse, if I
23 can remember what my question was for him. Mr.
24 Rouse, how many versions are there of specific
25 plan 144, if you know?

1 MR. ROUSE: I believe it's through (i)
2 as in -- well, as of we sit today there is a
3 144(i) that was adopted in late 2009 regarding
4 expressly the desalination site plan.

5 Specific plan 144(h) is the relevant one
6 with respect to the Encina Power Station. And
7 it's the one that was in effect at the time the
8 Energy Commission application was made.

9 MR. RATLIFF: And so --

10 MR. ROUSE: So, I'm sorry for confusing,
11 but --

12 MR. RATLIFF: -- does (i) indicate it's
13 say about the tenth version of specific plan 144,
14 or the ninth?

15 MR. ROUSE: I believe.

16 MR. RATLIFF: So is it -- would it be
17 correct to understand that every time some major
18 activity has occurred within the specific plan
19 area, a new specific plan has been required each
20 time --

21 MR. ROUSE: Well, I --

22 MR. RATLIFF: -- with the exception of
23 Poseidon?

24 MR. ROUSE: No, that is not the only
25 exception. I don't -- your first question, I

1 don't believe that follows that there is a
2 comprehensive specific plan update represented by
3 any of those SB-144(b) through (i). They were all
4 done over time, and I'm not expert on what the
5 ones prior to (h).

6 But SP-144(h) was expressly allowed
7 under the 2003 resolution of the city council that
8 said that both the desal plant and the Encina
9 Power Stations planned development permit could go
10 forward with merely an amendment of the SP-144,
11 which was amendment (h), instead of a
12 comprehensive update.

13 The express language, and if you could
14 hand it back to me -- bear with me a moment
15 because there is a city exhibit, is the city
16 council resolution authorizing both the desal
17 plant and the Encina Power Station to proceed by
18 way of specific plan amendment rather than
19 comprehensive update.

20 It's city document number 416,
21 resolution 2003-208, adopted by the city council
22 on August 5, 2003. And it says, quote, "That an
23 amendment of specific plan 144 shall be processed
24 for the processing of the Carlsbad Desalination
25 Facility, and Encina Power Station, rather than a

1 comprehensive update of the entire specific plan."

2 So, that is why there is a series of, if
3 you will, amendments rather than comprehensive
4 updates.

5 MR. RATLIFF: Well, I've seen --

6 MR. ROUSE: And it's actually the other
7 reality is a comprehensive update is basically a
8 result. The city's going to look at not just the
9 power plant, but intends to look at the entire
10 specific plan area, some 400 to 500 acres,
11 unrelated to the power plant, in addition to it.

12 And so, in essence, it's the city's
13 desire, that they've expressed in terms of their
14 replanning the authorized use for the Encina Power
15 Plant property.

16 Sorry, it is complex, but that is the
17 reality.

18 MR. RATLIFF: I've seen a couple of
19 versions of that specific plan. And the versions
20 that I've seen looked very similar. Do they tend
21 to repeat the same conditions in each one?

22 MR. ROUSE: There are very few
23 conditions in each one. They tend to be merely a
24 recognition of whatever that specific activity is
25 taking place.

1 In the 2006 timeframe SP-144(h) merely
2 incorporated the precise development plan permit
3 that was issued for desalination facility. It
4 doesn't include standards; it doesn't include --
5 it didn't change the range of allowed uses for
6 either the desalination property or the entire
7 Encina Power Station.

8 It's not like a lot of elaborate
9 specific plans or master plans that forecast out
10 and put restrictions and standards and elements
11 with respect to a future development proposal.

12 MR. RATLIFF: Well, it does include
13 conditions such as no lighting that would be
14 visible that's directed away from the plant. It
15 does include conditions, as I recall, regarding
16 height and a number of other things.

17 In fact, the thing that struck me about
18 that is that those things look very much like the
19 kinds of conditions that the Energy Commission
20 puts in its own permit.

21 Is that correct? I mean, is that what
22 the specific plan tends to include?

23 MR. ROUSE: Actually I believe the
24 specific plan merely incorporates those from the
25 precise development plan permit, as distinguished

1 from independently establishing development
2 standards that, as your staff member indicated,
3 that you could go look at in advance to see what
4 the permit-specific issues would be.

5 MR. RATLIFF: And you described the
6 precise development plan as essentially a permit?

7 MR. ROUSE: Yes, I think it functions in
8 the City of Carlsbad. They have a number of
9 processes that are fundamentally permits.

10 For example, in the planned industrial
11 area of the city, which is a fairly large area,
12 where you'd expect to find the employment centers,
13 the light manufacturing, research and development,
14 corporate headquarters, office, those kinds of
15 uses, even though you have a general plan category
16 that authorizes those uses, a zone category
17 planned industrial that authorizes those uses,
18 oftentimes a specific plan or master plan that
19 authorizes those uses, the city imposes a further
20 permit issuance layering something for those uses
21 called a planned industrial permit.

22 And that's where they actually examine
23 the specific scope, design, identity of the
24 proposed hypothetically office building. And make
25 sure that, you know, it has the requisite setback,

1 imposed conditions about what kind of public
2 improvements may be needed.

3 My point is that the plan -- the precise
4 development plan permit functions like that in the
5 city's hierarchy of land use planning. It is a
6 project-specific permit as distinguished from it
7 doesn't change nor can it change the range of
8 authorized uses.

9 So it's not a plan-level document, it's
10 a permit-level document.

11 MR. RATLIFF: Okay, thank you. My next
12 question's for Mr. Faust.

13 Mr. Faust, pardon me, I have to ask you,
14 because I didn't get to ask you before. First of
15 all, I want to say I'm very -- I'm honored that
16 you're here today. I consider you the Bill
17 Chamberlain of the Coastal Commission, if you know
18 what that means. Our venerable own, recently
19 retired, general counsel.

20 Did you ever live in 38th Street in
21 Sacramento?

22 (Laughter.)

23 MR. THOMPSON: I want to object to this
24 question.

25 MR. FAUST: 648 38th Street, yes.

1 MR. RATLIFF: So we were neighbors. I
2 was told by mutual colleagues, I think, that we're
3 neighbors, and I just wanted to confirm that.

4 MR. FAUST: I moved from Sacramento to
5 the Bay Area when I took the job with the Coastal
6 Commission.

7 MR. RATLIFF: Right. And before that
8 you were with the Office of Administrative Law and
9 where --

10 MR. FAUST: My prior state experience
11 was the Office of Administrative Law. And then
12 prior to that, the Agricultural Labor Relations
13 Board.

14 MR. RATLIFF: That's right, okay, thank
15 you.

16 And one of the people who told me about
17 you was a mutual colleague, actually, a person
18 named Dorothy Dickey, who was a colleague in my
19 office, who later became your deputy director, as
20 I understand it.

21 MR. FAUST: That's correct.

22 MR. RATLIFF: And you and Dorothy
23 Dickey, Ms. Dickey, co-authored, I believe, a
24 Manaster and Selmi section, Manaster and Selmi
25 section on the Coast Act, right? The treatise

1 that is one of the leading treatises on the
2 California Coastal Act, is that correct?

3 MR. FAUST: We did co-author that, yes.

4 MR. RATLIFF: Right. One of the things
5 that was interesting to me when I looked at the
6 NOI document that the city filed in this case, was
7 that it included a letter from your Deputy General
8 Counsel Dorothy Dickey addressing the issue, well,
9 it was actually a fairly interesting analysis,
10 probably the most complete analysis I've ever seen
11 of the relative interactions of the Coastal Act
12 and the Warren Alquist Act, that is the Energy
13 Commission's Act, as well.

14 And I suppose Ms. Dickey was probably
15 uniquely qualified to do that, having worked with
16 both agencies.

17 But of interest in that particular
18 letter, which is a June 8, 1990 letter, to
19 Commissioner David Malcolm, is a conclusion that
20 she drew on the last page of the letter, that
21 under the Coastal Act the Coastal Commission is
22 obligated to provide the coastal conformity report
23 that we discussed --

24 MR. ROUSE: Excuse me, can I interrupt?
25 Are you referring to a specific exhibit?

1 MR. RATLIFF: Yes, we're referring to an
2 exhibit that the city has filed. The number was
3 just referred to momentarily, moments earlier.
4 It's the exhibit of the NOI that the city has
5 filed.

6 MR. ROUSE: No, I mean the testimony of
7 Mr. Dickey that you're referring to, is that --

8 MR. RATLIFF: It's in the exhibit that
9 the city filed concerning the Coastal Act NOI
10 conformity report.

11 MR. SPEAKER: It's 418, exhibit 418.

12 MR. RATLIFF: 418, thank you.

13 Let's see, what was my question? The
14 question is are you familiar with that letter to
15 Commissioner Malcolm.

16 MR. FAUST: I'm certain that I must have
17 seen it at the time.

18 MR. RATLIFF: You would have reviewed
19 that?

20 MR. FAUST: I haven't looked at it in
21 years. I have no memory of it.

22 MR. RATLIFF: Is it likely you would
23 have reviewed a letter such as that from your
24 deputy director to a commissioner?

25 MR. FAUST: It's likely that I would

1 have at least looked at it. I think you correctly
2 state that Ms. Dickey was uniquely situated at the
3 Coastal Commission given her prior experience at
4 the Energy Commission, to be the lead person, the
5 lead attorney on matters relating to Energy
6 Commission matters.

7 So she would have certainly developed,
8 given her senior position in the office and her
9 experience, she would have been the one who
10 developed the letter.

11 I almost certainly looked at it before
12 it went out the door, because I would have.

13 MR. RATLIFF: In that letter she
14 concludes that the report that is required by the
15 Coastal Act, that conformity report, is a creature
16 of the NOI process. And she concludes that
17 although the Coastal Commission's welcome and able
18 to act within the AFC process, it's under no
19 obligation to do so.

20 MR. FAUST: I don't recall that being
21 said in that letter. I know that that opinion is
22 held by a number of individuals.

23 MR. RATLIFF: Okay, thank you.

24 MR. FAUST: If I might add just one
25 thing on that point, it is that it does seem to me

1 that the more recent experience of the cooperative
2 workings of the Energy Commission and the Coastal
3 Commission, which is the memorandum of
4 understanding that they agreed upon a few years
5 ago, reflects a mutual recognition of the need for
6 the Coastal Commission to file such a report.

7 MR. RATLIFF: Well, since the letter was
8 written, Mr. Faust, has there been any -- has the
9 Coastal Commission adopted any regulation which
10 would interpret that particular statutory section?

11 MR. FAUST: You mean 30413?

12 MR. RATLIFF: Yes.

13 MR. FAUST: To the best of my knowledge
14 the Coastal Commission has no regulation
15 interpreting section 30413.

16 MR. RATLIFF: And has there been any
17 traditional activity with regard to that section
18 that you're aware of?

19 MR. FAUST: I'm not aware of any, no.

20 MR. RATLIFF: Okay. And you were the
21 General Counsel when the Energy Commission entered
22 into the memorandum of understanding with the
23 Energy Commission, is that correct, regarding
24 their respective roles?

25 MR. FAUST: I believe I was, yes. I

1 think that's when I was still at the Commission.

2 MR. RATLIFF: Okay. Thank you.

3 And, Mr. Donnell, I have a couple
4 questions for you, as well, if I may. This
5 question must seem enormously naive to you, but I
6 have to ask it. Why doesn't the city simply do
7 its own specific plans?

8 MR. DONNELL: I believe the city has
9 intended to do that; that was the purpose of
10 resolution 98145, and also the part of the
11 resolution that was just passed late this year to
12 go out and do that comprehensive amendment.

13 But, as in 1998, actually that began as
14 a -- it was to be a city initiated specific plan.
15 But we then entered a time within the next couple
16 of years where we sat down with Cabrillo Power, at
17 that time, to begin the negotiations for an MOU, a
18 memorandum of understanding, that would outline
19 and hopefully resolve those.

20 So, while it began as an effort to be a
21 city-initiated specific plan, we were able to work
22 with the property owner and hopefully achieve
23 that. Those conversations, that discussion, fell
24 through. The end result was never realized.

25 The council clarified, in 2002, I

1 believe, that instead of being city-initiated, it
2 would be an applicant-initiated specific plan.
3 And now with our most recent ordinance, the
4 urgency ordinance, I think we're back again to
5 realizing that the city will embark on the
6 specific plan effort.

7 So there have been attempts made over
8 the years to do just that.

9 MR. RATLIFF: Are your other specific
10 plans done by staff or are they done by
11 applicants?

12 MR. DONNELL: Generally specific plans
13 in the City of Carlsbad are applicant-initiated.

14 MR. RATLIFF: And do they concern
15 property owned by multiple property owners, or
16 only a single property owner?

17 MR. DONNELL: It can be both.

18 MR. RATLIFF: So it's common for you to
19 do this kind of thing?

20 MR. DONNELL: Yes, it's common for us
21 certainly to require an applicant or applicants to
22 prepare a specific plan.

23 MR. RATLIFF: Now, if I was a developer
24 and I wanted to develop in the City of Carlsbad,
25 and I was coming in and I looked at the general

1 plan, and I was in conformity with the general
2 plan, and I went to look at the specific plan,
3 would I find standards of general application in
4 there that let me know whether I could build my
5 project?

6 MR. DONNELL: Are you speaking of this
7 area in particular? Or --

8 MR. RATLIFF: Well, it sounds like this
9 is -- do you require all your specific plans to be
10 updated anytime anyone wants to build in an area?

11 MR. DONNELL: It depends on what the
12 specific plan says. In this particular case it's
13 clear that if someone comes in with a development
14 that's considered a major amendment to the precise
15 development plan, then the document needs to be
16 updated.

17 In other specific plans there's specific
18 language that clarifies the type of development
19 that does and does not require an amendment to the
20 specific plan.

21 MR. RATLIFF: But if I come in and I
22 say, well, it looks like I look at the specific
23 plan and I can comply with all those things, it
24 sounds like it doesn't matter, I've got to go back
25 and do -- I've got to do a new specific plan, is

1 that right?

2 MR. DONNELL: That is not true, no.

3 MR. RATLIFF: It's not true?

4 MR. DONNELL: In the cases of other
5 specific plans in the city. In the case of this
6 particular one, SP-144, yes, that can be true.

7 MR. RATLIFF: So it is true here?

8 MR. DONNELL: And we would probably need
9 to discuss further, but depending on what exactly
10 the proposal was, you know, more than likely the
11 specific plan update would be required
12 comprehensively.

13 MR. RATLIFF: Okay. Thank you. No more
14 questions.

15 HEARING OFFICER KRAMER: Okay. Mr.
16 Thompson. Actually the city had not -- no, you've
17 requested 40 minutes of cross-examination. Can
18 you estimate how long you're going to need?

19 MR. THOMPSON: I have been crossing some
20 off that -- not 40, but it always seems to take
21 longer than I anticipate. Probably 20 or 25.

22 (Volume fade.)

23 It didn't like that.

24 (Laughter.)

25 HEARING OFFICER KRAMER: I think it was

1 the indecision.

2 MR. SPEAKER: Was that his phone, again?

3 HEARING OFFICER KRAMER: Let me ask the
4 other parties. Terramar or Power of Vision or Mr.
5 Rostov? Anybody --

6 MS. SIEKMANN: Five minutes, probably.

7 HEARING OFFICER KRAMER: Mr. Rostov?

8 MR. ROSTOV: I may have five minutes,
9 too. But I was primarily going to ask Mr. Hogan,
10 so I might not have any at this point.

11 HEARING OFFICER KRAMER: Okay. Ms.
12 Siekmann, you'll get us to 5:00, so, go ahead.
13 Then we'll see where we go from there.

14 MS. SIEKMANN: Okay.

15 CROSS-EXAMINATION

16 BY MS. SIEKMANN:

17 Q On page 4.5-7, the land use section, the
18 PU zone also specifies that the issuance of any
19 building permit or entitlement cannot occur until
20 a precise development plan has been approved by
21 the City of Carlsbad for the property.

22 Does this mean that the CEC can issue
23 the license, but the City of Carlsbad controls
24 whether the plant can be built?

25 MS. VAHIDI: Say that again, I don't

1 quite understand the question.

2 MS. SIEKMANN: Does this mean that the
3 CEC can issue the license, but the City of
4 Carlsbad controls whether the plant can be built?

5 MS. VAHIDI: Does what mean? Does this
6 statement or --

7 MS. SIEKMANN: Yeah. Does your
8 statement mean that? It says the issuance of any
9 building permit or entitlement cannot occur until
10 a precise development plan has been approved by
11 the City of Carlsbad for the property. That's in
12 the FSA.

13 MS. VAHIDI: Yeah, I know, I'm looking
14 at it.

15 MS. SIEKMANN: Oh, okay.

16 MS. VAHIDI: Yes.

17 MS. SIEKMANN: So does that mean that
18 even though the CEC may issue a license, does the
19 City of Carlsbad control whether the plant can be
20 built?

21 MS. VAHIDI: No, because the Energy
22 Commission has preemptive authority over local
23 permits.

24 MS. SIEKMANN: Oh, because I just
25 wondered why it said that.

1 MS. VAHIDI: That is just -- you're
2 looking at this section, the general plan land use
3 and zoning designations. This is a siting
4 discussion that merely just, like in a normal CEQA
5 document, you would see sort of what the issues
6 are.

7 If you look at land use as table 2B,
8 that's where the analysis is done.

9 MS. SIEKMANN: So even though it says
10 that, that's not --

11 MS. VAHIDI: Well, it says that because
12 it's indirect reference to the city's general plan
13 land use and zoning designation. So other uses in
14 a PU zone would require PDP update or approval.
15 Not under a state authority for approval of a use.
16 Because we don't zone the site, the Energy
17 Commission doesn't zone the site.

18 MS. SIEKMANN: So ultimately does the
19 city -- it says, cannot occur until a precise
20 development plan has been approved --

21 MS. VAHIDI: But this is a descriptive
22 statement regarding what would happen in a PU
23 zone, irrespective of the CEC's authority. This
24 is a setting discussion.

25 MS. SIEKMANN: Okay.

1 MS. VAHIDI: Yeah.

2 MS. SIEKMANN: Okay. I see. Then on
3 page 4.512, staff discusses -- and this is
4 basically how it goes -- the EPS is a coastal-
5 dependent use per the Coastal Act since it uses
6 once-through cooling.

7 B. Coastal-dependent uses are
8 encouraged to expand within existing sites and
9 shall be permitted reasonable long-term growth
10 where consistent with this division.

11 C. EPS Units 4 and 5 are going to
12 continue to operate, so 1, 2 and 3 are shut down.

13 D. Therefore, EPS will continue to be a
14 coastal-dependent use.

15 E. The addition of CECP 6 and 7 is an
16 expansion of a coastal-dependent use consistent
17 with the provisions of the Coastal Act.

18 And then it says, F. The source of water
19 for the new CECP would be the desal plant;
20 therefore, the CECP is a coastal-dependent use.

21 And yet the page before staff states
22 that the Coastal Commission proposes to end the
23 environmentally destructive use of seawater for
24 once-through cooling.

25 Isn't it true that you represent the

1 Coastal Commission, and yet a new desal plant
2 directly goes against the Coastal Commission's
3 wishes of ending the impacts of impingement and
4 entrainment?

5 MS. VAHIDI: No, because the desal
6 plant, as Mike Monasmith explained in his
7 testimony, the desal plant is parasitic to the
8 existing water intake of the EPS.

9 MS. SIEKMANN: But if units 4 and 5 are
10 shut down --

11 MS. VAHIDI: That was my assumption, but
12 they're not going to be shut down anytime soon. I
13 mean, there is eventual, I guess at some point in
14 the future, but I don't know. That wasn't my
15 assumption.

16 MS. SIEKMANN: Isn't it true that you're
17 taking an impact that the Coastal Commission
18 clearly states they want to end as your reason to
19 extend coastal dependence to the CECP?

20 MS. VAHIDI: No. That's not true.

21 MS. SIEKMANN: Please explain.

22 MS. VAHIDI: Again, as you read, I've
23 explained it in my written testimony, the
24 reasoning. And the once-through cooling, it
25 should be noted that the only reason that the

1 applicant had to go to a desal facility is because
2 that's the only source of water they can get for
3 their site.

4 MS. SIEKMANN: Um-hum.

5 MS. VAHIDI: So.

6 MS. SIEKMANN: That doesn't really
7 answer my question.

8 MS. VAHIDI: Maybe I'm just not
9 understanding your question.

10 MS. SIEKMANN: No, that's okay. I'm
11 finished.

12 HEARING OFFICER KRAMER: Okay.

13 MR. SIMPSON: I have one question for
14 Mr. Faust.

15 HEARING OFFICER KRAMER: Well, Mr.
16 Simpson, now we're going to talk about whether
17 we're going to take any more questions. So hold
18 on to that.

19 MR. SIMPSON: Thank you.

20 HEARING OFFICER KRAMER: We're just
21 about at 5:00. And, Mr. Simpson, your one
22 question for two minutes, is that fair to say?

23 MR. SIMPSON: Yes, sir.

24 HEARING OFFICER KRAMER: Okay, Mr.
25 Thompson, did you come up with a better estimate?

1 I mean a more precise --

2 MR. THOMPSON: No, actually not much
3 better. In fact, I fear that it may be a little
4 longer than 20 minutes. And I do have two kind of
5 concluding issues with regard to our witnesses
6 that I'd like to raise.

7 HEARING OFFICER KRAMER: These would be
8 redirects?

9 MR. THOMPSON: Well, you know, we would
10 like to release our City Manager unless somebody
11 has additional questions for her, rather than
12 bring her back in the morning.

13 HEARING OFFICER KRAMER: I guess you're
14 assuming ahead --

15 (Laughter.)

16 HEARING OFFICER KRAMER: Does anybody
17 wish to ask the City Manager any questions? No,
18 okay. Seeing none, thank you for coming.

19 MR. THOMPSON: And the second is I
20 assume this panel will be on first thing in the
21 morning?

22 HEARING OFFICER KRAMER: Well, --

23 MR. RATLIFF: Can we not finish with
24 this panel today?

25 HEARING OFFICER KRAMER: Well, if we all

1 want to -- actually some of you probably could
2 skip dinner because you may not be as interested
3 in hearing all of the public comments, because you
4 can read them later in the transcript. But that
5 does not apply to the Committee. We need to be
6 here.

7 So, --

8 MR. RATLIFF: We have 30 minutes, and
9 could we not finish this panel and let them go?

10 HEARING OFFICER KRAMER: That's going to
11 put us in a -- well, what you may end up doing is
12 causing the public comment to start a little bit
13 late, which isn't -- the Public Adviser doesn't
14 like that idea. I can see from her shaking her
15 head. We're not real keen about that, either.

16 Let's see what we can do --

17 MS. BAKER: Mr. Kramer, the
18 socioeconomic, our witness is here this evening.
19 So is there any way to accommodate that, as well?

20 HEARING OFFICER KRAMER: I'm sorry, but
21 I doubt it.

22 MR. THOMPSON: Mr. Kramer, we have a
23 fair number of redirect questions asked of Mr.
24 Rouse about things that the city interprets and
25 feels like it is kind of a source.

1 So not only do I have cross, but we also
2 have some redirect, which undoubtedly will lead to
3 more. -- start early.

4 HEARING OFFICER KRAMER: Well, I guess
5 technically we could continue this hearing until
6 early in the morning, but I'm not sure. We're
7 already talking about 9:00, so really probably
8 shouldn't be much earlier than that.

9 MR. THOMPSON: Especially since you'll
10 probably go until 10:00 tonight.

11 HEARING OFFICER KRAMER: Yeah, or maybe
12 a little more, if we just have a few people to
13 finish up with.

14 (Pause.)

15 HEARING OFFICER KRAMER: Okay, here's
16 another thought. I'll get your reactions. Maybe
17 we could -- socioeconomic is purely cross-
18 examination of Ms. Baker's witness --

19 MS. BAKER: Yes, --

20 MR. McKINSEY: I think it's direct,
21 also.

22 MS. BAKER: Yes.

23 HEARING OFFICER KRAMER: Direct. And is
24 that going to take the full 20 minutes, or --

25 MS. BAKER: We could cut it down to 10.

1 HEARING OFFICER KRAMER: Okay, and
2 anticipating a little bit of a discussion of his
3 qualifications.

4 MR. MCKINSEY: You know, I think I'm
5 fine if Power of Vision is willing to concede that
6 he's not testifying as a scientific expert on
7 socioeconomic impacts, then I don't need to cross.

8 MS. BAKER: Okay.

9 HEARING OFFICER KRAMER: Okay.

10 MR. RATLIFF: Staff will waive cross,
11 too.

12 HEARING OFFICER KRAMER: Okay, why don't
13 we then -- okay, so is there anyone on the panel
14 that will have difficulty returning at 9:00
15 tomorrow morning? Okay.

16 MR. THOMPSON: Mr. Faust has a
17 destination that is difficult to reach by plane,
18 and you have an 11:00 --

19 MR. FAUST: My plane is at 11:30.

20 MR. THOMPSON: So, --

21 MR. FAUST: If it's necessary for this
22 Commission, then I will, of course, change my
23 reservation.

24 HEARING OFFICER KRAMER: Well, let me
25 ask, does any party have additional questions for

1 Mr. Faust?

2 MR. RATLIFF: No.

3 MR. SIMPSON: Just one.

4 HEARING OFFICER KRAMER: Okay, why don't
5 we let Mr. Simpson ask his question right now,
6 then. And then we will quickly go through
7 socioeconomics, and we will run to grab sustenance
8 before the evening.

9 Mr. Simpson, go ahead.

10 MR. ROUSE: Mr. Kramer, I'd like to
11 point out that Power of Vision has not had an
12 opportunity to --

13 HEARING OFFICER KRAMER: No, we're not
14 done with this. We're just continuing in the
15 morning.

16 CROSS-EXAMINATION

17 BY MR. SIMPSON:

18 Q Mr. Faust, thank you for your testimony.
19 Looking at the FSA and listening to your
20 testimony, it all sounds like we're talking about
21 the California Coastal Act.

22 Could this project also be subject to
23 the Coastal Zone Management Act, the federal act?

24 MR. FAUST: The action of the Energy
25 Commission, to the best of my knowledge, is not

1 subject to the Coastal Zone Management Act.

2 There may be other permits, such as
3 permits from the Water Board, that would be
4 subject to federal consistency jurisdiction it's
5 called. Something the Coastal Zone Management Act
6 gives to the Coastal Commission.

7 But the action of this Commission is not
8 subject to them.

9 MR. SIMPSON: So perhaps the PSD permit
10 or if this project is subject to the federal, to
11 FERC?

12 MR. FAUST: I think the Coastal
13 Commission would look at each of those
14 individually. I haven't spoken with anyone there
15 about how they would see it, and what they would
16 see in terms of what would happen in the future.

17 MR. SIMPSON: Thank you.

18 MR. FAUST: All of that's contingent, of
19 course, on what this Commission does.

20 HEARING OFFICER KRAMER: Okay, thank
21 you, land use panel. You are excused until the
22 morning. Mr. Faust is excused --

23 MR. FAUST: Do you wish me in the
24 morning?

25 HEARING OFFICER KRAMER: Nobody

1 expressed a need to ask any more questions, so you
2 may go. Thank you for coming.

3 MR. FAUST: Thank you very much. I
4 thank Mr. Ratliff for his kind comments.

5 HEARING OFFICER KRAMER: Okay.

6 MR. SPEAKER: Safe travel.

7 HEARING OFFICER KRAMER: Mr. Canepa, is
8 it? If you could come up to the taller microphone
9 there, where Mr. Faust is -- no longer. And were
10 you here to be sworn earlier?

11 MS. BAKER: No.

12 MR. CANEPA: I got here --

13 HEARING OFFICER KRAMER: Would you stand
14 and take --

15 MR. CANEPA: I got here --

16 HEARING OFFICER KRAMER: -- an oath?

17 MR. CANEPA: Oh, yeah.

18 HEARING OFFICER KRAMER: Did you? No,
19 did you before?

20 MR. CANEPA: Did I take an oath? No.

21 HEARING OFFICER KRAMER: Okay, please
22 stand then.

23 Whereupon,

24 WILLIAM CANEPA

25 was called as a witness herein, and after first

1 having been duly sworn, was examined and testified
2 as follows:

3 HEARING OFFICER KRAMER: That's an
4 affirmative?

5 MR. CANEPA: To the best of my ability,
6 yes.

7 HEARING OFFICER KRAMER: Okay, thank
8 you.

9 MS. BAKER: And I will be asking Mr.
10 Canepa the questions.

11 DIRECT EXAMINATION

12 BY MS. BAKER:

13 Q Mr. Canepa, could you please state your
14 name and occupation?

15 MR. CANEPA: Yeah. Can I move this? My
16 name is Bill Canepa. And I'm a developer and a
17 real estate investor. I came down here in 1972
18 and I've been developing numerous in-fill projects
19 between Carlsbad and Del Mar.

20 Included in those projects -- well, I
21 guess you didn't even ask me that question.

22 MS. BAKER: No, but go ahead.

23 MR. CANEPA: Yeah. Included --

24 (Off-the-record microphone
25 instructions.)

1 MR. CANEPA: I need to be closer?

2 MS. BAKER: Yes.

3 MR. CANEPA: Okay, how's that?

4 MS. BAKER: Better, thank you.

5 MR. CANEPA: You guys took me by
6 surprise. I thought I was going to be coming on
7 tomorrow. Glad I didn't go home.

8 So, anyway, as I was saying, I developed
9 a host of projects along the coast. I've done
10 these as a private individual, but also I'm the
11 Managing Partner of several limited liability
12 companies. And I'm the President of another
13 corporation.

14 Amongst the -- I'm also -- I sit on the
15 Board for the Carlsbad Tourism Business
16 Improvement District for the past four years.

17 And among the projects I've developed is
18 this hotel right here. And in that regard, and in
19 regard to my position on the CTBID, the Carlsbad
20 Tourism Board, I just want to state that my
21 opinions are my private opinions. They don't
22 reflect the opinions of Hilton Hotels. They don't
23 reflect the opinions of interstate management, who
24 operates the hotel. And they don't reflect the
25 opinions of the Carlsbad Tourism Board.

1 But they're my opinions based on 38
2 years of experience of developing along the
3 coastline.

4 MS. BAKER: In your opinion, Mr. Canepa,
5 how important is tourism to the City of Carlsbad?

6 MR. CANEPA: Well, I think tourism is
7 very important. My understanding is it, I believe
8 last year \$13 million in transient occupancy tax
9 was collected. And that's about, I think, 11
10 percent of the general fund.

11 But more importantly, tourism has a
12 tremendous impact here in Carlsbad on the
13 employment. It also has a tremendous impact on
14 the restaurants. Legoland that's here, the
15 municipal golf that's here, all the shops. And
16 it's a very important factor.

17 And if I could tell a short story. When
18 I came here I had been developing on the coast
19 since 1972, but the first time I developed a
20 project in Carlsbad was 1985.

21 And when I came here I was developing
22 the Tamarack -- which was a mixed use project.
23 And it was in the Village of Carlsbad along the
24 water. And I remember I made a presentation to
25 the Carlsbad downtown village merchants at that

1 time. And they said, well, Bill, we really like
2 this project, but why would anybody want to visit
3 Carlsbad, or stay here as a tourist.

4 Well, it's changed a lot. And it's
5 changed a lot really, I guess primarily because of
6 its location. It's between Los Angeles and San
7 Diego. It's the last area where there's a feeling
8 of -- one of the last areas, the whole north
9 county coastal area, where you still have a
10 feeling of a little bit of open space.

11 And with 15-or-so million residents
12 within 100 miles of Carlsbad, it makes for a
13 terrific location for tourists.

14 And the city has really gone out of
15 their way since 1985 to help promote tourism.
16 When I think back then, in the beachfront area,
17 for example, they developed the beachfront
18 walkway, and did public improvements along the
19 beach.

20 I remember when Legoland was
21 contemplating coming to Carlsbad, Carlsbad -- at
22 least representatives from Carlsbad traveled to
23 Denmark to compete for Legoland. And they
24 competed against three other communities in the
25 United States.

1 Carlsbad built an absolutely beautiful
2 municipal golf course. You probably won't have
3 time to get out and play, but it's a gorgeous golf
4 course. And it was in the coastal zone. And they
5 had to meet the coastal standards, even though it
6 was the City of Carlsbad, they had to meet the
7 coastal standards to build that course.

8 They've also, you know, they've created
9 a conducive environment for resort projects to
10 come in here. And it's not easy to get
11 entitlement in Carlsbad. I've been working on one
12 project that I finally received my entitlements
13 after eight years. So it's not an easy place
14 necessarily to get entitled.

15 But it's a place that really is
16 supportive of business, I believe; and it's
17 supportive of tourism.

18 Did I answer the question?

19 MS. BAKER: Yes. In your experience
20 will the proposed CECP have an effect on tourism
21 in Carlsbad?

22 MR. CANEPA: Well, I want to be fair and
23 it's hard to quantify. And, you know, I heard my
24 credentials were questioned, and I don't want to
25 try to portray myself as an economics expert. I

1 have a masters degree in history from the
2 University of California Santa Barbara. But I
3 have a lot of common sense, I think, in
4 developing.

5 And so that you understand the dynamics
6 of Carlsbad just a little bit from a developer's
7 point of view.

8 Where the plant is proposed to be
9 located is really either the gateway, if you're
10 heading from the south, which many of our visitors
11 do, people coming from San Diego. We get a lot of
12 people coming to San Diego that are interested in
13 having a vacation in Carlsbad that live in, you
14 know, inland areas.

15 And we have a lot of people from Arizona
16 that are coming. And we have people that are
17 landing at the San Diego Airport.

18 Well, those people that are driving
19 north typically up the I-5 corridor, if they're
20 heading to the Village of Carlsbad, the Agua
21 Hedionda Lagoon is really kind of the gateway to
22 the Village of Carlsbad.

23 And the Village of Carlsbad is a quaint
24 village that sprang up in probably about the
25 1890s, where the older, lot of times refurbished,

1 and, you know, that tends to be the smaller resort
2 properties. We have lots of shops and antique
3 stores and restaurants.

4 And when you come from the south the
5 power plant is kind of the gateway or the lagoon
6 is kind of the gateway. So I'm concerned about,
7 you know, what -- I think I was thinking about
8 power plants and the need to have them with
9 resorts.

10 Well, of course, if you don't have
11 power, you have to have utilities. But if you
12 were a remote island and you were going to build a
13 resort and didn't have utilities, well, of course
14 you'd need a way of generating power and
15 utilities.

16 But you wouldn't put it at the entry to
17 the resort. You'd put it someplace where it
18 wouldn't be as intrusive.

19 So if you're coming from the south and
20 you're entering the village, the power plant is
21 going to be there on your left.

22 If you're coming from the north, really
23 the newer part of Carlsbad is this area, the south
24 Carlsbad. And that's where the city put the
25 municipal golf course; that's where the Four

1 Seasons Hotel has come in; that's where the
2 Sheraton has come in; that's where our hotel has
3 come in.

4 That's where the Hilton Oceanfront
5 Resort, which is in the pre-construction stage,
6 where that's going to come in. That's where the
7 flower fields are; that's where the strawberry
8 fields are; that's where some of the larger
9 restaurants have been built.

10 And it's also where the factory outlet
11 mall is. I think maybe I already said Legoland.
12 I don't want to -- and I may have missed some
13 things. But that's really the gateway to
14 Carlsbad, to south Carlsbad.

15 And I think common sense would tell
16 somebody that a power plant is not really the way
17 you want to greet visitors. I've been asked many
18 many times over the years, I've taken a drive up
19 the coast and I've had bankers in my car. And
20 they said, what the heck is that thing. And I've,
21 you know, the power plant that's down there. I've
22 had visitors from out of town and investors. And
23 they question what that is.

24 And I say, well, you know, that's been
25 there since, you know, practically since the time

1 I was born. And it's just, you know, it's just a
2 fact of life.

3 But, you know, it's hard for me to get
4 up here, in a way, because I'm a developer. I
5 believe in business. I believe in property
6 rights. Heck, it's awkward as hell, the NRG
7 people are probably very nice people and they're
8 staying at this hotel.

9 (Laughter.)

10 MR. CANEPA: But, you know, there's a
11 time when you kind of, you know, just have to be
12 candid and express your opinion. I would like to
13 see that the power plant be held to the same
14 standard that any other developer would be held
15 to.

16 When I build on the coast I can build to
17 a 35-foot height limit. And the city will let you
18 exceed that for appurtenant structures. I have to
19 underground power lines. And, heck, my last
20 project that I got approved here took eight years.
21 And I'm not saying that time is an important
22 factor. I mean there shouldn't be any time that
23 you have to spend to get your project approved.

24 But I think you need to meet certain
25 standards, and this north county coastal area is

1 really a very special place. And I've seen it
2 change dramatically. I think, you know, at one
3 time it was very remote, probably nobody. Back in
4 the early 1950s I'm not sure if people were
5 thinking as much about the environment. It was a
6 very remote area.

7 And so I can remember having friends
8 that lived in eastern part of San Diego, and it
9 was like driving up to the country. They were
10 surfers, and coming up here took hours to get
11 here. It was like coming up to the country to
12 come here.

13 So I think though times have changed
14 dramatically since then. And so, you know, all
15 I'm asking, from my point of view, is that the
16 power plant be held to the same standards as
17 anybody else would be held to that was coming in
18 to develop here.

19 MS. BAKER: Thank you.

20 HEARING OFFICER KRAMER: Cross-
21 examination from Mr. Simpson. You had five
22 minutes, hopefully less.

23 MR. SIMPSON: No questions.

24 HEARING OFFICER KRAMER: Thank you.

25 Staff?

1 MR. RATLIFF: No.

2 HEARING OFFICER KRAMER: The applicant?

3 MR. McKINSEY: None.

4 HEARING OFFICER KRAMER: All right.

5 Thank you.

6 MR. CANEPA: Thank you.

7 HEARING OFFICER KRAMER: So that will
8 close the topic of socioeconomics.

9 We will be back at 6:00. I'm going to
10 actually stay here to get the public ready. The
11 Commissioners have to go out and find a bite, and
12 hopefully they won't get stuck in a traffic jam
13 coming back here.

14 Okay, but we will see everyone at 6:00.

15 (Whereupon, at 5:25 p.m., the hearing
16 was adjourned, to reconvene at 6:00
17 p.m., this same day.)

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EVENING SESSION

6:18 p.m.

HEARING OFFICER KRAMER: Good evening, everyone. This is one of the two public comments periods we've scheduled for the Carlsbad Energy Center project.

My name is Paul Kramer; I'm the Hearing Officer. I work for the California Energy Commission. And I'm working to assist our Committee of two Commissioners, Presiding Member Jim Boyd sitting to my left, and one of our newest Commissioners, Anthony Eggert sitting to my right.

They and I will be conducting the hearings. We did earlier today and we will again for the next three days probably. Commissioner Boyd's Adviser, Tim Olson, is sitting to his left.

We also have out near the exit our Public Adviser Jennifer Jennings. Could you wave. Most of you have probably seen her and spoke to her on your way in. She is available surely through this evening and tomorrow at least, and perhaps longer, for you, as members of the public, to consult with to learn more about how to participate in our Energy Commission processes.

Let me ask people in the back, are you

1 hearing us okay?

2 AUDIENCE MEMBERS: No.

3 HEARING OFFICER KRAMER: No? Okay, try
4 it now, is that better?

5 AUDIENCE MEMBERS: That's better. Yes.

6 HEARING OFFICER KRAMER: Okay, good.
7 We've had some let's call them issues with the
8 sound level back there. Likely today it'll be
9 mostly me talking and then people at the podium,
10 so it will be a little bit simpler.

11 Those of you who are sitting around the
12 table, except for the Commissioners and myself,
13 your mics were turned off to help make the audio
14 recording a little bit better. So if you need to
15 speak for some reason, you need to signal to us so
16 that we can activate your microphones.

17 Anyway, Ms. Jennings can probably entice
18 most of you to sign one of our blue cards if you
19 wanted to speak to the Committee. If you have
20 not, you can see her to get a card. Fill out your
21 name.

22 It helps us to organize things if you
23 can also indicate whether you're in favor of the
24 project or opposed or neutral. And then once you
25 have those filled out, please pass them to her and

1 she'll bring them up here to us.

2 Another thing I need to stress or at
3 least mention is the purpose of public comment.
4 We, of course, are interested in hearing your
5 comments and your concerns about the project, or
6 whether you support it. In fact, looking at the
7 cards we have people who are on both sides of that
8 question.

9 Public comment, though, it's not the
10 same as evidence that's given, sworn testimony
11 that's given by witnesses such as our hearings
12 this morning and this afternoon. By itself it
13 cannot support a finding that the Commission might
14 make. But nonetheless, we are interested in
15 receiving your comments.

16 Also, in the interests of efficiency, if
17 you get up and you agree with what somebody else
18 has said, in other words if somebody else has
19 basically said what you said, we'd appreciate it
20 if you would just indicate that. Say I agree with
21 whoever that person was, give us their name. And
22 you don't need to repeat the same arguments.
23 Repetition really isn't going to have any more
24 impact with us than just knowing from that
25 statement that you agree with somebody else.

1 And we also need to tell you that in
2 making the Commission's decision, we don't count
3 votes. If this project were favored by everybody
4 in this room, but there was evidence that
5 suggested that it should not be approved, we
6 wouldn't approve it just because all the people in
7 the room wanted to see it approved.

8 Ultimately the decision will be based on
9 the evidence that's presented to the Commission.
10 Your comments help supplement that evidence. We
11 want to make sure that all your concerns are
12 addressed, maybe not to your liking, maybe to your
13 liking, we'll have to wait and see in our
14 decision. And for that reason we are collecting
15 your comments this evening and tomorrow evening.

16 So, with that, let's begin with our
17 first public commenter which is Gary Knight from
18 the Economic Development Council.

19 And what I'm going to do is call two
20 names, so the second name I call, if that person
21 could start to walk to the podium so that they're
22 ready to begin when the speaker before them ends.
23 We would really appreciate that. Again, it will
24 help us all to perhaps finish up a little earlier.

25 PRESIDING MEMBER BOYD: Mr. Kramer,

1 don't fire that up yet. I decided I want to say a
2 couple of words. Jim Boyd, Energy Commissioner.

3 One, I want to welcome you all here. As
4 Mr. Kramer has indicated, we've been at this since
5 10:30 this morning. We'll start at 9:00 tomorrow
6 morning, and two more mornings after that, if need
7 be.

8 He pointed out that this is kind of a
9 quasi-judicial process we engage in. And
10 therefore, he's indicated how it's the record
11 that's built that helps determine. That
12 Commissioner Eggert and I kind of have to sit here
13 as almost judges and base our decision on what the
14 record develops.

15 A couple of other procedural points I
16 want you to understand just so you know how this
17 process works, and how totally in the sunshine it
18 is.

19 Since this process began we've been
20 subject to what we call the ex parte rule. That
21 is, we cannot be approached by -- we, the Siting
22 Committee Commissioners, cannot talk to the
23 applicants, any of the intervenors or our own
24 staff about the project unless it's in a public
25 forum like this.

1 So, by the same token, you can't come
2 and talk to us. Well, you can informally because
3 -- afterwards if you can catch us -- because this
4 is just public testimony.

5 But in reality we really like to try to
6 isolate ourselves from any of these influences so
7 you know that this was done totally in the
8 sunshine, so to speak. And everything that is
9 going to matter on the case has been spoken in
10 some public forum.

11 This is the way it's been for the 30-
12 plus-some-odd years of the existence of the Energy
13 Commission in all power plant siting cases. And
14 this is the way it shall be.

15 So, excuse the interruption, sir, but I
16 just decided that a lot of these faces are new
17 from this morning, and thought you might want to
18 know how your government operates. So, thank you.

19 HEARING OFFICER KRAMER: And you will be
20 followed by -- I'm sorry, Commissioner Eggert
21 wanted to say something -- but you'll be followed
22 by Matt Hall.

23 ASSOCIATE MEMBER EGGERT: Yeah, just a
24 quick comment. I guess I just want to thank
25 everybody for being here tonight. I'm Anthony

1 Eggert, Commissioner to the California Energy
2 Commission, just recently appointed.

3 And I appreciate you taking this time on
4 your off hours to come here and participate in a
5 public process. I think just by being here you're
6 demonstrating a commitment to your community. And
7 I think whether you're in favor or opposed or
8 neutral on the project, you know, we're very
9 interested in what you have to say.

10 So I look forward to this evening, and I
11 hope to learn quite a bit from it. So, thank you.

12 HEARING OFFICER KRAMER: Mr. Knight, go
13 ahead.

14 MR. KNIGHT: Thank you. Mr. Kramer,
15 Members of the Commission, Staff, my name is Gary
16 Knight. I'm the President and CEO of the San
17 Diego North Economic Development Council.

18 I'm here on behalf of my Council in
19 support of the Carlsbad Energy Center project.
20 And we urge the Energy Commission to license this
21 vital project of construction.

22 Our members throughout northern San
23 Diego County recognize the critical need for this
24 reliable and efficient source of energy. The CECP
25 will not only address those needs, but will

1 provide a cleaner, more efficient electrical
2 generating capacity to the region.

3 We see this as primarily a land use
4 issue. The San Diego North Economic Development
5 Council supports the Energy Commission Staff's
6 belief that the best location for this project
7 rests on the current site of the Encina Power
8 Station, situated with a infrastructure corridor
9 between railroad tracks, the interstate and
10 highway 5.

11 With the high concentration of other
12 industrial uses on and near this property, this
13 lower profile facility fits the area and will
14 contribute to the retirement of the older units of
15 the aging Encina Power Plant.

16 North county will be cleaner and better
17 prepared for any electrical grid reliability
18 challenge in the future with approval of this air-
19 cooled, fast-start Carlsbad Energy Center.

20 Our members and their businesses are
21 also pleased to know that should transmission
22 lines in the region be threatened by natural
23 disasters like our fires of 2003 and 2007, that we
24 have an in-basin generating plant that can meet
25 the needs and help during the times of energy

1 spike.

2 On behalf of my board of directors and
3 the members I respectfully request that the
4 California Energy Commission approve this vital
5 project.

6 Thank you.

7 HEARING OFFICER KRAMER: Thank you. Mr.
8 Hall, followed by Dr. Richard Eckfield.

9 MR. HALL: Good evening, my name is Matt
10 Hall. I'm a Councilman for the City of Carlsbad.
11 And would like to begin tonight by just welcoming
12 you here today. And our Mayor was here earlier
13 and he tried to dial in 70 degrees for you today,
14 to have a nice setting.

15 Tonight's really exciting. It's an
16 opportunity for both sides to come before you and
17 tell each of you what's in their hearts.

18 I've been a councilmember for 16 years.
19 I was a planning commissioner for ten years prior
20 to that. But more importantly, I've lived here
21 all my life. I can remember when this facility
22 was built in the early 1950s. The population of
23 Carlsbad at that moment in time was about 5- to
24 8000 people. It was on the outskirts of the city,
25 of our little village that lies here to the north.

1 At that moment in time it was the right
2 place for this facility and it was the right
3 project. It needed ocean water for cooling.
4 Today that's simply not the case. Our staff has
5 gone into great detail to talk about planning and
6 redevelopment issues about the site earlier today,
7 and I would hope that you'd look at that detail.

8 Today this is some of the most valuable
9 land between Oceanside and the Tijuana border.
10 This is one moment in time, one moment in time
11 that we have the opportunity to change the vision
12 and the focus of the future. I would hope each of
13 you would look at that.

14 In the early '90s we had a similar
15 conversation when SDG&E wanted to propose a
16 similar facility. It was turned down at that time
17 for appropriate reasons. Those reasons are
18 tenfold today.

19 So today I ask you to deny this project
20 and let us create the vision that this community
21 deserves. Thank you.

22 (Applause.)

23 HEARING OFFICER KRAMER: Okay, Dr.
24 Eckfield, followed by Keith Blackburn.

25 DR. ECKFIELD: Commissioner Eggert,

1 Commissioner Boyd, my name is Richard Eckfield.
2 For the 30 years I spent -- I spent 30 years in
3 city management, both helping city councils run
4 cities and teaching at three universities.

5 However, for the last ten years of my
6 life I built cogenerating energy plants, some
7 quite large scale, this scale, all around the
8 world.

9 From those two perspectives I'd like to
10 make two important points. The first is the
11 gentleman before Matt Hall was absolutely correct,
12 this is a land use issue. And from a city
13 management point of view, from a city planning
14 point of view, this is not the appropriate place
15 for this power plant. It doesn't need the water
16 access; it's not the appropriate place.

17 The second point, however, and I want to
18 get to it quickly, is the brochure that they
19 passed out has an incorrect item in it. It says
20 the noise impact is as loud as a jet engine.
21 Well, as Commissioners, you know that gas turbines
22 are jet engines.

23 However, when we build an energy plant
24 of this scale, we always put it in a completely
25 soundproofed building. Now why that's important

1 is because it means that you can move that plant
2 inland, adjacent to the new high school, adjacent
3 to the industrial park, any number of other places
4 other than on this valuable coast property, and
5 have it, in fact, work just fine from a noise
6 point of view, even though it is a jet engine that
7 is in the plant. It's enclosed in a building so
8 therefore it does not create a noise factor when
9 moved inland.

10 If you want an example I suggest you go
11 look at the gas turbine that powers the civic
12 center, the courts and the music center. And by
13 definition, you don't have a noisy music center --
14 a noisy gas turbine next to the music center.

15 This plant can easily be located along
16 the corridor of the right-of-way of the powerlines
17 inland.

18 Thank you for your time.

19 (Applause.)

20 HEARING OFFICER KRAMER: Okay, Mr.
21 Blackburn, followed by Nicole Pappas. And, folks,
22 if you want to make sure that your name is spelled
23 correctly in the transcript of tonight's hearing,
24 please spell it for the court reporter when you
25 come up to the mic.

1 MR. BLACKBURN: Thank you. My name is
2 Keith Blackburn, K-e-i-t-h B-l-a-c-k-b-u-r-n. I'm
3 a Councilmember for the City of Carlsbad.

4 This is a big week for us. The decision
5 before you will shape the future of our community
6 for many decades to come.

7 Over the course of these hearings you're
8 going to hear several concerns raised by the city
9 and the redevelopment agency.

10 One of these concerns, which will be
11 discussed later this week, is worker safety and
12 fire protection. The Carlsbad Fire Department has
13 spent a considerable amount of time reviewing this
14 project.

15 They have found that this particular
16 project, which is wedged between a freeway, a
17 railroad and a lagoon, presents serious concerns
18 regarding emergency access. This is a serious
19 concern and warrants the Committee's full
20 attention.

21 My career has been as 29 years as a
22 police officer before I was elected to city
23 council. And I can attest to the needs to insure
24 that these types of facilities are absolutely safe
25 for those who have to respond in times of

1 emergency.

2 And I'm not referring just to the people
3 who work at this facility, but these are our
4 emergency responders who we are going to be
5 putting into harm's way.

6 As a fellow decisionmaker, I believe
7 it's incumbent upon us to listen to the advice of
8 our first responders. We have worked hard to
9 build not only an attractive community, but also a
10 very safe one. Please don't diminish our efforts
11 by placing our emergency personnel into a
12 situation that they don't feel comfortable
13 responding to.

14 I urge you to deny the proposed power
15 plant. Thank you very much.

16 (Applause.)

17 HEARING OFFICER KRAMER: Okay, Ms.
18 Pappas, followed by Ted Owen.

19 MS. PAPPAS: Good evening. My name is
20 Nicole Pappas, N-i-c-o-l-e P-a-p-p-a-s. I'm a
21 resident of Carlsbad and I support the Carlsbad
22 Energy Center project. I'm also a trustee on the
23 Carlsbad School Board, though I'm here today as a
24 private citizen and not as a representative of the
25 school board.

1 Even so, it is my innate commitment to
2 our children's future that fuels my support for
3 this project.

4 I also work for Southern California
5 Edison and --

6 (Negative audience response.)

7 HEARING OFFICER KRAMER: Please, please,
8 people. No --

9 PRESIDING MEMBER BOYD: Let's have some
10 courtesy, please.

11 MS. PAPPAS: Thank you very much, Mr.
12 Boyd.

13 I also work for Southern California
14 Edison, and recognize the need for regional
15 answers to energy issues. In both these roles
16 I've seen that developing infrastructure is not
17 always popular. And it often engenders fierce
18 opposition.

19 Carlsbad's new high school is opposed by
20 some who say it's not needed. And some who say
21 it's needed, but we should build it somewhere
22 else.

23 And generating stations are always
24 opposed. Even though we, as a society,
25 increasingly are dependent on electricity. Isn't

1 it ironic that just yesterday's headlines were:
2 Carlsbad Power Plant Project Takes Center Stage,
3 and, The Region Electric Vehicles, the sequel.

4 Supply and demand, right there, side by
5 side, on the front page. Everything from charging
6 cellphones, lighting homes and classrooms,
7 controlling stop lights, operating rides at
8 amusement parks, manufacturing golf clubs,
9 biotechnology research, electric cars and, yes,
10 even this meeting tonight are dependent on
11 sustainable reliable generating capacity.

12 It's so easy to take the flip of a
13 switch for granted. I don't take electricity for
14 granted, and I know you don't, either. You are
15 currently reviewing not just this project, but
16 renewable energy projects that will contribute to
17 California's renewable portfolio standard.

18 Balancing regional electricity supply
19 with wind and solar requires ongoing and constant
20 adjustments because the wind doesn't always blow
21 and the sun doesn't always shine.

22 The Carlsbad Energy Center supports a
23 balanced approach to make sure that the lights
24 stay on in our homes and our business.

25 Does this plant need to be located on

1 the coast? I don't see a better option and
2 neither did your staff. Alternative sites do not
3 significantly reduce or avoid project impacts. It
4 just moves them to another location.

5 Moving to an alternative location will
6 result in added time for permitting, and will not
7 bring the needed generating capacity online by mid
8 2012, if ever, to support the balancing of our
9 renewable resource projects.

10 We need these renewable resource
11 projects, and we need the Carlsbad Energy Center.
12 It gives our children and their children a
13 cleaner, more reliable and sustainable way to make
14 sure they have electricity when they flip the
15 switch.

16 Additionally, I want you to know that I
17 do not stand alone in my support of this project.
18 When individuals agree with staff recommendations,
19 they don't necessarily show up at public hearings
20 just to say, I agree with your staff.

21 I attend public hearings because I know
22 it's important for public officials to hear all
23 the voices, even the silent ones, who think your
24 staff made the right recommendation.

25 And we look forward to your approval and

1 support of the Carlsbad Energy Center project.

2 (Applause.)

3 MS. PAPPAS: I have additional letters
4 of support I'd like to have put into the record.

5 HEARING OFFICER KRAMER: Okay, bring
6 them up here.

7 MS. PAPPAS: Thank you.

8 HEARING OFFICER KRAMER: Folks, I think
9 things will go a little more smoothly, if you
10 agree with somebody instead of applause, just
11 raise your hands. Let's try that.

12 (Laughter.)

13 HEARING OFFICER KRAMER: Well, we're
14 experimenting here. Mr. Owen followed by Deborah
15 Taylor.

16 MR. OWEN: Good evening, Commissioners.
17 My name is Ted Owen, O-w-e-n. I am the President
18 and CEO of the Carlsbad Chamber of Commerce.

19 (Negative audience response.)

20 MR. OWEN: Thank you.

21 (Laughter.)

22 MR. OWEN: For over 85 years the
23 Carlsbad Chamber has worked to promote a favorable
24 business climate for the 1700 businesses that have
25 75,000 employees in and around the City of

1 Carlsbad.

2 We pay close attention to issues in
3 Carlsbad that could impact not only on the ability
4 of local businesses to thrive, but also matters
5 that could impact the quality of life in our
6 community.

7 The Chamber has followed the discussions
8 of the community closely about the proposed more
9 efficient and cleaner-burning Carlsbad Energy
10 Center. And it's our firm belief, that the
11 project, as recommended in the detailed CEC final
12 staff assessment provides Carlsbad and the region
13 with the most logical clean energy and reliable
14 solution to our power needs.

15 We also agree with the CEC Staff that
16 the proposed site for the project is the preferred
17 option due to the neighboring industrial uses and
18 the lower environmental impacts associated with
19 this property over alternative locations.

20 In addition to the cleaner energy being
21 produced in our community, the Carlsbad Energy
22 Center would also provide a vital revenue stream
23 of \$4- to \$5 million into the city's coffers and
24 produce a number of local jobs --

25 (Negative audience response.)

1 MR. OWEN: Thank you -- during the
2 construction phase of the project.

3 The Carlsbad Chamber of Commerce
4 supports the CEC -- the Carlsbad Energy Center,
5 excuse me, and we respectfully request that the
6 California Energy Commission approve it. Thank
7 you for your time.

8 (Laughter.)

9 (Audience speaking simultaneously.)

10 HEARING OFFICER KRAMER: Okay, Deborah
11 Taylor followed by Chris Duggan.

12 MS. TAYLOR: My name is Deborah Taylor,
13 D-e-b-o-r-a-h, Taylor, T-a-y-l-o-r. And I am just
14 a concerned resident that is here before you
15 today.

16 And I didn't write anything because I
17 didn't know that I would actually get to stand up
18 and speak. However, I'll make my comment very
19 brief.

20 I believe that as we grow we will need
21 more energy. However, I believe it is an
22 opportunity of a lifetime to restore the coast to
23 the way it was meant to be; not have a power plant
24 of an eyesore interrupt the beautiful coast. And
25 this opportunity won't come this way again.

1 So a power plant is fine, just let's not
2 destroy the beautiful coast that we have. Thank
3 you.

4 (Applause.)

5 HEARING OFFICER KRAMER: Okay, half of
6 you remembered.

7 (Laughter.)

8 HEARING OFFICER KRAMER: Okay, Chris
9 Duggan from San Diego Regional Economic
10 Development Corporation. Followed by Ray Elkin.

11 MR. DUGGAN: Good evening,
12 Commissioners. Chris Duggan with San Diego
13 Regional Economic Development Corporation.

14 On July 8, 2009, the EDC Board of
15 Directors unanimously supported the Carlsbad
16 Energy Center project. They based their decision
17 on two criteria.

18 One, we need to start meeting the
19 region's energy growth needs. And, two, this
20 project must provide environmental and economic
21 benefits for San Diego.

22 As an environmental steward, not only
23 will the project insure greater reliability, but
24 it will also provide reliable, inbasin power
25 through the state-of-the-art technology using

1 clean-burning natural gas and creating fewer air
2 emissions.

3 Additionally, the 500 million regional
4 investment will provide employment opportunities
5 to the region, including more than 500 jobs of
6 induced and direct employment.

7 We believe the Carlsbad Energy Center
8 project is the beginning of the end for the aging
9 and outdated Encina Power Station on the coast.
10 We believe by locating this newer, more efficient
11 project back away from the water, tucked between
12 the railroad and I-5, this project will be
13 beneficial to the community and to the region.

14 In closing, the Carlsbad Energy Center
15 project is one that makes sense for a local and
16 regional economy now and in the future.
17 Therefore, we urge the California Energy
18 Commission to endorse this project as soon as
19 possible. Thank you.

20 (Audience hissing.)

21 PRESIDING MEMBER BOYD: Leaky hands.

22 HEARING OFFICER KRAMER: Okay, Ray
23 Elkin, followed by Patti Krebs.

24 MR. ELKIN: My name is Ray Elkin. Last
25 name is spelled E-l-k-i-n. I'm a relatively new

1 resident to Carlsbad and doubt that I would have
2 chosen Carlsbad if this kind of a project was
3 approved.

4 I fully understand that power needs are
5 a challenge throughout our country, and certainly
6 they're even a need within our region.

7 I'm not totally convinced, however, from
8 what I've read, that this type of a project is
9 absolutely essential to this immediate area. In
10 fact, it may be more beneficial to some of the
11 areas elsewhere in the region where the power
12 would be wheeled to.

13 And so my concern is that someone said
14 at the very beginning that this was a land use
15 issue. I believe it is a land use issue. And I
16 think that the land could be put to better use
17 than it is even now, but it wouldn't be a power
18 plant on it.

19 So, I would encourage that if this was a
20 money issue, which usually is what it ends up
21 being, because I've heard people saying here, even
22 at this podium, that the big concern is that it
23 would take too much time to go get another
24 location.

25 Perhaps you could consider selling the

1 property that this is on, and use the money to go
2 build a power plant in Sacramento. Then you could
3 all watch it much closer.

4 (Laughter.)

5 MR. ELKIN: So, that's all I have, thank
6 you.

7 (Applause.)

8 HEARING OFFICER KRAMER: Okay, Patti
9 Krebs -- settle down, folks -- Patti Krebs
10 followed by Mike Malloy.

11 MS. KREBS: Good evening, Commissioners.
12 My name is Patti Krebs, it's K-r-e-b-s. I'm with
13 the Industrial Environmental Association. And our
14 association represents manufacturing, technology,
15 biotech, research and development companies in
16 this region.

17 We support a balance between
18 environmental protection, public health and
19 economically sustainable growth.

20 I am here tonight to speak in favor of
21 the Energy Commission's Staff recommendation that
22 the project at the site proposed be licensed for
23 construction.

24 When you ask an industrial facility,
25 what is the top priority, they will always tell

1 you they need a cost effective and reliable source
2 of energy to maintain their operations.

3 We support this project. It will insure
4 that the area can retain core industries. The
5 proposed plant represents the very best in design
6 and environmental technologies. It will result in
7 improved efficiencies, reduced environmental
8 impacts, including the air quality emissions, by
9 replacing the older generating units.

10 The siting of any type of proposed
11 project, be it even small peaker plants, be it
12 wind, even photovoltaic projects are opposed
13 wherever they go.

14 In conclusion, this plant is very
15 important to the local energy portfolio. And NRG
16 has taken very significant steps to insure the
17 very best operation with the least impact. Thank
18 you very much.

19 HEARING OFFICER KRAMER: Thank you.
20 Mike Ball -- I'm sorry, Mike Malloy followed by
21 Mike Ball.

22 MR. MALLOY: I'm Mike Malloy,
23 M-a-l-l-o-y. And I'm a concerned citizen. And
24 I'm for the project.

25 However, I think it would have been nice

1 to have something, I mean where else would you
2 build it? Are there some proposed sites that we
3 don't know about? You know, if it's my backyard,
4 you know, I would have more to say about this.

5 But not knowing where it's going to be
6 built, I'm assuming it's going to be built
7 someplace in Oceanside or Carlsbad or someplace
8 like that, and it won't be in my backyard, other
9 than Ocean Hills area of Oceanside. And
10 consequently, you know, I'm for the project.

11 And also, what about a flight path to
12 the airport? If it was built by the airport that
13 would be a big problem, I would think. That's
14 all.

15 HEARING OFFICER KRAMER: Okay, thank
16 you. There will be a discussion of some
17 alternative sites on Wednesday when we talk about
18 project alternatives.

19 Mr. Ball, Mike Ball, followed by
20 Angelica Via -- I apologize if I -- I can't quite
21 read the rest of your last name, Viagorra? So,
22 Mr. Ball.

23 MR. BALL: Hi, my name's Mike Ball,
24 B-a-l-l. And I'm in favor of the project, where
25 it's going. Don't really have a whole lot more to

1 say about it, other than I think the people that
2 are against it being where it's at are not showing
3 the people very much courtesy, by raising their
4 hands. And I think they ought to be a little bit
5 more polite about it.

6 Thank you.

7 (Audience speaking simultaneously.)

8 HEARING OFFICER KRAMER: You probably
9 expected that.

10 (Laughter.)

11 HEARING OFFICER KRAMER: Ms. Viagorra?

12 PRESIDING MEMBER BOYD: Viagorrosa or --

13 HEARING OFFICER KRAMER: -- gorrosa --

14 okay, Mark Robinson, followed by Kenny Irish.

15 MR. ROBINSON: Thank you. My name is
16 Mark Robinson, M-a-r-k R-o-b-i-n-s-o-n. So
17 there's a lot of different reasons why I think
18 that this project shouldn't go forward where it's
19 being proposed.

20 But as a resident of the City of
21 Carlsbad and the San Diego area, my family and I
22 have been in Carlsbad for over 20 years, is the
23 quality-of-life issue.

24 As residents, if you come down to the
25 beach area on any given morning, doesn't have to

1 be a weekend, you see just countless people that
2 are there along the beaches. And it's not people
3 that just live there that are just out walking in
4 their backyards. People come from half a mile
5 away; they come from thousands of miles away.

6 And the reason is because the coastline
7 has a tremendous value in terms of quality of
8 life. It's for relaxation; it's for recreation.
9 It serves a value that's far beyond what you can
10 put an economic price tag onto.

11 And I think that in viewing this site as
12 just one more location and looking at just the
13 pure tangible economic value, I think that it
14 seriously devalues the human aspect of it and it's
15 impact on quality of life, if we were to take this
16 site and expand it into what would be a very
17 large, industrial-looking, kind of like driving up
18 along the freeway to Long Beach.

19 So I very strongly recommend against
20 going forward with this project. Thank you.

21 (Applause.)

22 HEARING OFFICER KRAMER: Okay, I might
23 have the first name wrong. The last name is
24 Irish.

25 MS. IRISH: Yes.

1 HEARING OFFICER KRAMER: Yeah, I don't
2 know how I got Kenny; I'm sorry.

3 MS. IRISH: It's Kelley Irish.

4 HEARING OFFICER KRAMER: Yeah, that
5 works.

6 (Laughter.)

7 HEARING OFFICER KRAMER: Followed by
8 first initial J. Routier, Rota -- do you know who
9 you are?

10 (Laughter.)

11 HEARING OFFICER KRAMER: Romatier, could
12 that be it?

13 MR. ROMATIER: Yes.

14 HEARING OFFICER KRAMER: Okay. Go
15 ahead, Ms. Irish.

16 MS. IRISH: I'd like to reiterate
17 something the gentleman said earlier about the
18 fact that some people are speaking about this in
19 terms of the energy that Carlsbad will get from
20 all of this. When, in fact, it's not Carlsbad
21 who's going to get it.

22 Secondly, I actually live down the
23 street from the power plant. I worked very hard,
24 spent a lot of money on a house close to the beach
25 because it was a great location. This is my home

1 that you're talking about putting this power plant
2 on, when, in fact, this could be placed in a place
3 that is not in the community so close to the
4 beach.

5 And that's it.

6 HEARING OFFICER KRAMER: Thank you.

7 (Applause.)

8 MR. THOMPSON: Mr. Kramer, we have one
9 of the citizens who was temporarily out of the
10 room when you called her name.

11 HEARING OFFICER KRAMER: Okay. What is
12 your last name?

13 MS. VILLAGRANA: Angelika Villagrana.
14 We couldn't come in because of --

15 HEARING OFFICER KRAMER: Okay, you'll be
16 next then.

17 MS. VILLAGRANA: Okay, thank you.

18 MR. ROMATIER: Yes, good evening. My
19 name is Jacques Romatier, R-o-m-a-t-i-e-r. I
20 spent 30 years of my business life in the energy
21 business. And I have been involved in
22 petrochemical plants.

23 I'm here for one reason. When this
24 project started I started and visited the plants
25 with NRG people. And I said clearly I want a fair

1 decision on fair statement.

2 The reason I'm here tonight is I have
3 heard during the testimonies and also in the past,
4 statements which were unfair, or which were, in
5 fact, wrong.

6 I just want to make sure that during
7 these testimonies that we get a few points which
8 have to be corrected.

9 The first one is I have not heard
10 anything about the technology which is going to be
11 used. And I've asked questions to some of your
12 staff to confirm that this is not a new
13 technology. In other word, what I don't want to
14 be is a guinea pig with a new technology. And so
15 far I've not received any answer on this one.

16 The second one we have been told this is
17 a peaker. It means that it's a plant which can go
18 fast to production level, and that it's a very
19 efficient plant. It's a kind of a peaker. It's
20 an hybrid.

21 But what concerns me is that the
22 efficiency given in the AFC basically it's much
23 lower that's one of competing technology. So I
24 have a question mark. When you have 7 percent
25 difference in yield, as well efficiency, that's

1 mean you are increasing the pollution throughout
2 the greenhouse from not 950,000 ton to maybe
3 90,000 ton more. So that's my point.

4 If the plant has to be built, it's one
5 thing. But we have to have a statement of the
6 fair information at our disposal to make this kind
7 of a decision.

8 Thank you.

9 HEARING OFFICER KRAMER: So, just so I
10 understand your comment, are you saying that this
11 is less efficient than a --

12 MR. ROMATIER: Yes.

13 HEARING OFFICER KRAMER: -- traditional
14 combined cycle?

15 MR. ROMATIER: That's correct. And by a
16 long way.

17 HEARING OFFICER KRAMER: Okay, thank
18 you.

19 MR. ROMATIER: Thank you.

20 (Applause.)

21 HEARING OFFICER KRAMER: Ms. -- please
22 spell your name.

23 MS. VILLAGRANA: Yes. Angelika,
24 A-n-g-e-l-i-k-a, last name Villagrana,
25 V-i-l-l-a-g-r-a-n-a. Representing the San Diego

1 Regional Chamber of Commerce. And I'm sorry we
2 were outside and there was strong enforcement. We
3 couldn't get in and hear our names.

4 I'm here representing the San Diego
5 Chamber of Commerce and we're in support of the
6 energy center.

7 We have been involved in critical policy
8 issues that have impacted and shaped San Diego for
9 at least 140 years. This week is our birthday.
10 With 3000 members and more than 400,000 employees,
11 an active board of directors, the chamber of
12 commerce does not only advocate for economic
13 growth, but it's also active on matters that are
14 critical to the region's ability to meet the
15 challenges of the future, including its
16 infrastructure needs.

17 For six months our energy and public
18 policy committees, as well as our board of
19 directors, have received detailed presentations on
20 the Carlsbad Energy Center. And we've heard from
21 both proponents and opponents before we voted on
22 the project.

23 The chamber has long been on record in
24 support of replacing aging infrastructure in the
25 region with newer, more efficient alternatives.

1 And we are confident that the Energy Center
2 project will be the first step in the eventual
3 retirement of the Encina Power Plant.

4 The proposed location of the project
5 already contains much of the existing
6 infrastructure that is necessary for power
7 generation and delivery, as well as many of the
8 other infrastructure uses onsite. Which, in our
9 opinion, makes it the optimal site for a new,
10 cleaner burning energy generation facility. And
11 we urge your support. Thank you.

12 (Applause.)

13 HEARING OFFICER KRAMER: Thank you.
14 Cheryl Davies, followed by Kathy Romatier.

15 MS. DAVIES: Good evening. Thank you so
16 much for hearing public comments. I'm Cheryl
17 Davies.

18 I have just a brief comment. I'm a new
19 resident of Carlsbad. And one of the things that
20 I was so pleased about being able to move here was
21 the beautiful coastline we have. With the
22 exception of the blight of the power plant being
23 there. But, of course, it was old and had been
24 there for a long time.

25 I was amazed to discover that a new

1 power plant was even being considered.

2 Commissioners, this will be your legacy. What the
3 coastline looks like is going to be in your hands.

4 I ask you please to oppose the power
5 plant. Let's find another location for this and
6 keep the coastline looking as beautiful as it is
7 now. Thank you.

8 (Applause.)

9 HEARING OFFICER KRAMER: Ms. Romatier.
10 Jonathan Davies, do I have it correctly? You did
11 not wish to speak?

12 MR. DAVIES: That is --

13 MS. ROMATIER: I have no comment.

14 HEARING OFFICER KRAMER: Okay, thank
15 you. I notice that both of you marked yourselves
16 as in opposition.

17 Jonas Jackson, followed by Joyce Malloy.

18 MR. JACKSON: Good evening. My name is
19 Jonas Jackson. And I'm not a Maytag repairman. I
20 work at the NRG Power Plant. And I work with a
21 bunch of people that are back there right now.
22 We're not here as paid employees; we're here as
23 concerned employees.

24 I'm proud to say I work at the power
25 plant. We provide energy for the area. And I'm

1 proud to say that when the fires were going on
2 here two years ago, I happened to be sitting in a
3 senator's office in Washington, D.C., giving a
4 report on how our power plant was running and
5 providing electricity when the lines outside of
6 the city were down, and we had to provide the
7 electricity. So we're very valuable to this area.

8 We have about 75, 80 people that work at
9 the power plant. We're talking about people who
10 have families and love their jobs and look to have
11 a future. And part of that future is in working
12 at the energy center.

13 I heard talk early about safety at the
14 power plant, and concerns about where it's
15 located. I happen to be the Safety Coordinator at
16 the plant. We're about to be recognized by the
17 State of California, CalOSHA, as a very safe power
18 plant, and receive a star status for our safety.
19 We believe in safety first, safety always.

20 You haven't seen any smoke or any fires
21 or anything going on over at the power plant.
22 Safety is a very important part of what we do over
23 there.

24 We feel that the energy center will be a
25 part of Carlsbad, and that both Carlsbad and the

1 energy center will grow, and the city will be a
2 great place to play -- to live, excuse me. I'm
3 not a professional speaker.

4 But the other thing is that, you know,
5 we talk about the blight. I don't think it's a
6 blight. It's more of a landmark. I talk to a lot
7 of people who have moved away --

8 (Negative audience response.)

9 MR. JACKSON: -- excuse me -- people who
10 have moved away from Carlsbad, and we ask them
11 what they miss about Carlsbad. That's one of the
12 things that they talk about.

13 (Laughter.)

14 (Negative audience response.)

15 MR. JACKSON: That's one of the things
16 that they remember. You might disagree with me,
17 you have your right to your opinion. But it's not
18 a blight, it's a landmark, and it's a part of what
19 goes on here.

20 So, obviously, I am for it. Thank you
21 very much.

22 (Applause.)

23 HEARING OFFICER KRAMER: Okay, Joyce
24 Malloy, followed by Dorothy Ng.

25 MS. MALLOY: First of all, I incorrectly

1 marked my card. Joyce Malloy, M-a-l-l-o-y. My
2 husband, Mike Malloy's card and Mike Ball's card
3 as opposed, and it was supposed to say approve.
4 It was an error.

5 I'm here with a small group of people.
6 We live in Ocean Hills Country Club, which is in
7 Oceanside, California, and we are a neighbor of
8 Carlsbad. Thank you. It's a beautiful place to
9 live. It is an active, over-55, retirement
10 community. We value where we live. It's a
11 wonderful place to live and it's quiet.

12 The only places that Carlsbad has said
13 that they would want to move the power plant to is
14 inland, in our backyards, where we will be hearing
15 -- well, they said we won't be hearing, but they
16 did mention at one of the other meetings that
17 because of the location, if they were to go on the
18 other side of El Camino Real, is the approach to
19 Palomar McClellan Airport. And those planes would
20 be circling, coming over our homes and creating
21 more noise for us.

22 We hear --

23 (Audience speaking simultaneously.)

24 MS. MALLOY: It's true. We saw -- I
25 went online, I saw how the approach would change.

1 You'd have a big circle around where the airport
2 is now to keep the planes -- because of the heat
3 coming up from the stacks. And it would be
4 dangerous for the planes.

5 We were told, too, by the NRG fellow, I
6 forget his name, there would be trucks and coming
7 and going throughout the night to this power
8 plant, too, which we may hear.

9 There are only two other alternatives
10 sites that they proposed, and they're in our
11 backyard. And we oppose these sites.

12 The energy center has been on the coast
13 in Carlsbad for I don't know how long. The new
14 proposal will be smaller and it will not -- the
15 stack will not be as high as the current one is,
16 which we --

17 (Negative audience response.)

18 MS. MALLOY: Yes, it is. -- which we can
19 see currently from where we live. But the tall
20 stack will be smaller.

21 But we really do oppose it in our
22 backyard. That's the only two alternative spots
23 that they have come up with. And the airplane
24 noise, more of that that we would be getting if
25 the approach had to change.

1 Thank you.

2 HEARING OFFICER KRAMER: Thank you.

3 (Applause.)

4 HEARING OFFICER KRAMER: Dorothy Ng,
5 followed by Jim Craig.

6 MS. NG: I'm Dorothy Ng, and my last
7 name is N-g. And I live 6616 East Easy Street in
8 a (inaudible) community, just next to this hotel.
9 Okay?

10 Here's the picture of the beautiful
11 Carlsbad. And you see the red, post the red
12 sticker?

13 (Laughter.)

14 MS. NG: I'm very emotional. (inaudible)
15 Okay?

16 HEARING OFFICER KRAMER: We need to get
17 you --

18 AUDIENCE SPEAKERS: The microphone.

19 HEARING OFFICER KRAMER: -- we need you
20 at the microphone so we can record you.

21 MS. NG: The chimney that I look at
22 every day. And I mop my floor and I see the black
23 particle on the Swiffers and on my socks. That's
24 a particle that I breathe in every day. Okay?
25 Don't tell me there's no impact on health.

1 (Applause.)

2 MS. NG: The second thing -- that was
3 speaking for Carlsbad residents -- so the next
4 thing I'll speak for a small business owner. I
5 string these to make jewelry and hoping to sell it
6 in Carlsbad downtown in a street faire.

7 When people come from the north they
8 pass a nuclear power plant. They drive faster
9 because of the risk.

10 (Audience speaking simultaneously.)

11 MS. NG: Okay. And then when they get
12 to Carlsbad, they see the chimney. They drive
13 faster to someplace else. Who would go to a
14 industrial area looking for (inaudible) like this?
15 Who would do that, huh?

16 Okay, I'll speak for the third. I'm a
17 California-licensed civil engineer since 1980.
18 And I work for Lawrence Livermore National Lab
19 since 1978 to 2003. My expertise is to analyze
20 the structure by computer simulation on the
21 behavior subject to earthquake ground motion.

22 And later on I participate in
23 development of the safety/risk analysis report for
24 the facilities such as nuclear power plant and the
25 facility in Nevada Test Site.

1 Now, I know you probably have received
2 the safety analysis report that covers the
3 earthquake, tsunami, wind and tornadoes, soil
4 evaluation and structural evaluation to meet with
5 UBC, California Uniform Building Code.

6 And I depend on you to make the right
7 decision, the decision of where to put the power
8 plant. You want to destroy this? Or do you want
9 to save this for us? Not just for the Carlsbad
10 residents, for everybody, for all the tourists.
11 Of course, I want to sell my jewelry, but --

12 (Laughter.)

13 MS. NG: -- but please, help me out.

14 (Applause.)

15 HEARING OFFICER KRAMER: Thank you.

16 Thank you. Jim Craig. Is he here? Don't see him
17 coming up. Jan Fretwell, is it? Followed by
18 Bruce Gibbs. And we'll check on Mr. Craig again
19 later.

20 MS. FRETWELL: My name is Jan Fretwell;
21 last name spelled F-r-e-t-w-e-l-l. I'm a resident
22 of Carlsbad. And I'm very very opposed to this
23 project.

24 I think it's a blight on our community
25 and I can't believe that anybody would want to

1 build something that looks worse than the prison
2 sites I've seen right in Carlsbad.

3 Secondly, --

4 (Applause.)

5 MS. FRETWELL: -- I am extremely puzzled
6 as to why the California Coastal Commission
7 refuses to weigh in on this project. And I can't
8 believe that they would allow it to go forward.

9 Thank you.

10 (Applause.)

11 HEARING OFFICER KRAMER: Okay, Bruce
12 Gibbs, followed by Stacey Quartarone. Go ahead.

13 MR. GIBBS: Okay, my name is Bruce
14 Gibbs, G-i-b-b-s. My wife and I are residents on
15 Shore Drive at Terramar, south of the existing
16 power plant.

17 I'm not being paid to support it and I
18 don't. We've had about, what, half a century of
19 the existing power plant which may have made sense
20 at the time it was put there, to oppose what,
21 another proposed half a century of two more power
22 plants added to it on prime coastal property.
23 With its pollution and/or noise, just doesn't make
24 any sense.

25 So we would ask you to please deny the

1 project.

2 (Applause.)

3 HEARING OFFICER KRAMER: And then we'll
4 let -- I guess it's your husband, follow you.

5 MS. QUARTARONE: Do you want him to sit
6 down?

7 (Laughter.)

8 HEARING OFFICER KRAMER: No. And
9 actually, that's even better. He's really on the
10 ball because he's up there right behind you, ready
11 to go --

12 MS. QUARTARONE: Supporting me.

13 HEARING OFFICER KRAMER: -- as soon as
14 you're done.

15 MS. QUARTARONE: Great.

16 HEARING OFFICER KRAMER: So, thank you.
17 Go ahead.

18 MS. QUARTARONE: My name is Stacey
19 Quartarone. It's spelled S-t-a-c-e-y, and my last
20 name is spelled Q-u-a-r-t-a-r-o-n-e.

21 I have been a resident of Carlsbad for
22 over 20 years. And we had two children who were
23 born in Carlsbad. And now we have lost our 16-
24 year-old son, Chase, to non-Hodgkins lymphoma. He
25 had been ill for 14 months. And now, this year,

1 there have been three other boys in the same age
2 group, 14 and 15 years old, going into their
3 puberty who now have Hodgkins lymphoma.

4 My son just died seven weeks ago and the
5 power plant, I know in my heart and soul, has had
6 a major impact on my family's and every family
7 here in both Carlsbad, Oceanside, Encinitas,
8 Lucadia, Vistal, Ocean Hills, everybody that lives
9 in this area.

10 We live on one of the highest mountains
11 right, you know, the fumes come right up. And we
12 live about two miles away from the power plant
13 above Agua Hedionda Lagoon. Everything in our
14 yard is covered in soot, our tables, our chairs.
15 The fumes are putting out pollution at a high,
16 high level.

17 And if it was your children or you lived
18 in Carlsbad and all the people opposed here, would
19 you allow this power plant to be built if you lost
20 your own child?

21 My son's lymphoma was in his lungs and
22 his chest. And I know he breathed in this air
23 quality from this power plant. All the children
24 of Carlsbad go to Tamarack Beach right in front of
25 the power plant. They played in the sand and they

1 played in the water. And it was called warm
2 waters because the water was used to cool down the
3 power plant.

4 And now more and more children, and I
5 have statistics, are getting cancer and adults.
6 Our neighborhood, in our just one street, there
7 are over ten incidents of cancer on one street.
8 The next street there are over eight incidents. A
9 doctor who has lung cancer, never smoked, ever.

10 I can name every single cancer, and it
11 is rampant in all of the area we live in north
12 Carlsbad.

13 Our children are being exposed to severe
14 toxins from this power plant and all the people
15 that live here. I know of at least eight children
16 in north Carlsbad who have died of leukemia,
17 lymphoma and heart disease. And they are within
18 three blocks a radius of our home.

19 The power plant's fumes, toxins,
20 chemicals make their way to our neighborhoods in
21 seconds. The new proposed power plant cannot be
22 built on coastal land where there are over 110,000
23 people just alone in Carlsbad.

24 This plan is insane, and our children
25 are dying and becoming sick. There is a

1 elementary school right by this lagoon near the
2 power plant, Agua Hedionda Lagoon. And there have
3 been over five teachers with cancer at one
4 elementary school right next to Agua Hedionda
5 Lagoon, Kelly Elementary, where my children went.
6 And where one of these other boys also has
7 lymphoma right now, who's going in for stem cell.

8 This lagoon is right next to the power
9 plant. And there's so many people who go to the
10 beaches and go to this lagoon. And we're all
11 being affected.

12 And it's about the environment, it's
13 about our future, it's about our lives and the
14 quality of our lives. And I want you to think,
15 would you have this built where your children
16 live. Would you allow your children? You say
17 it's a safe, and it's going to be buried. I do
18 not believe this.

19 Please reconsider. And from the bottom
20 of our hearts, change this location. Please put
21 this location in the east county where there's
22 complete open space, and there is no population,
23 so there is no, no dangerous effect on people.

24 It takes a village to make a change.
25 And I know we are a village in Carlsbad. And we

1 want to make a change.

2 (Applause.)

3 MS. QUARTARONE: And the last thing you
4 have to know is my son, Chase, so many people in
5 the community know him and know what a brave
6 soldier he was. And I told him, please, Chase,
7 let me have this cancer. I've had my life. And he
8 said, no, mom, I do not want any child or adult to
9 ever have this disease. No, mommy, I don't want
10 anyone to experience what I have experienced.

11 Thank you.

12 HEARING OFFICER KRAMER: Thank you.

13 MS. QUARTARONE: Please reconsider and
14 find a new location, please, where people will not
15 be harmed.

16 (Applause.)

17 MR. QUARTARONE: I'll decline to speak;
18 my wife has said everything.

19 HEARING OFFICER KRAMER: Sorry, I
20 couldn't hear you.

21 MR. QUARTARONE: I'll decline from
22 speaking. I believe my wife has said everything.

23 HEARING OFFICER KRAMER: Okay, thank
24 you.

25 (Applause.)

1 HEARING OFFICER KRAMER: Brian
2 Goldojarb, I apologize if I've mispronounced your
3 name. Followed by Madeline Silcox.

4 MR. GOLDOJARB: Commissioners, I support
5 the new power plant. I live in Terramar. The
6 power plant is my neighbor. The plant was there
7 when I chose to buy my home. It was acceptable to
8 me six years ago, it's acceptable today.

9 The commitment of that site to an
10 industrial purpose has protected my neighborhood,
11 one of the last of the original 1950s style surf
12 neighborhoods, from an invasion by new home
13 developers, theme parks, hotel/casinos, retail
14 parks. It's been our smoking dragon at the gates.
15 And I love that dragon.

16 I do not support the idea of passing the
17 buck to another site and the costs of adding new
18 infrastructure and damage to the environment to
19 everyone else in San Diego County, just so that
20 the Carlsbad City Council can sacrifice my unique
21 little neighborhood and our local beach so that
22 they can plunder a treasure chest of new tax
23 money.

24 Yes, this land is valuable. You've
25 heard that over and over. It's valuable, but it's

1 not going to be a park, and it's not going to be
2 green-spaced. It's going to be something big and
3 crowded, and it's going to step on the last,
4 little, beautiful beach neighborhood.

5 Thank you for --

6 HEARING OFFICER KRAMER: Before you go
7 could you pronounce and spell your name for us? I
8 want to see how close I came.

9 MR. GOLDOJARB: You weren't too bad.
10 Goldojarb, G-o-l-d-o-j-a-r-b.

11 HEARING OFFICER KRAMER: Thank you.

12 MR. GOLDOJARB: Don't cry for me,
13 Argentina.

14 (Laughter.)

15 (Applause.)

16 HEARING OFFICER KRAMER: Ms. Silcox
17 followed by Scott S-a-r-e-m, or w, I'm not sure
18 which.

19 MS. SILCOX: My name is Madeline Silcox
20 and I live on Tiburon Avenue in Carlsbad. I can
21 see the Encina Power Station smoke stack from my
22 backyard.

23 Three to four times a week my husband
24 and I walk along the beach on Carlsbad Boulevard
25 between Carlsbad Village Drive and Canon Road,

1 past the Encina Power Station, so we know what it
2 looks like up close.

3 I think all of us concerned citizens of
4 Carlsbad need to ask and get the answers to two
5 very important questions before we decide if we
6 want the Encina Power Station moved from its
7 present location.

8 The first question, where is the new
9 power station going to be built. The original
10 power station was built in 1955. So most of us
11 bought our homes knowing where the power station
12 was located, how it would impact the quality of
13 our life and the value of our homes.

14 For many, the existence of the power
15 station brought the cost of an oceanview home
16 within our budget.

17 Today, there are no Carlsbad sites for a
18 new power station that will not dramatically
19 impact many existing homes, a power station these
20 homeowners were not able to consider when they
21 bought their homes.

22 Some have suggested putting the power
23 station near El Camino and Canon Road, but that is
24 near the planned high school, and within three
25 miles of Palomar McClellan Airport. FAA rules

1 prohibit a power station within three miles of an
2 airport because of the air disturbances associated
3 with power stations.

4 From the year 2000 to 2009 Palomar
5 McClellan Airport had more incidents and
6 fatalities than San Diego Lindberg Airport and LAX
7 combined. We certainly do not want to increase
8 those numbers.

9 Some suggest we move the power station
10 out of Carlsbad. The new power station will pay
11 between \$4- and \$5 million a year in tax revenues
12 to Carlsbad, which we would then lose.

13 The second question I want answered is
14 what will go in the area if the power station is
15 moved. A luxury resort has been suggested. After
16 construction had begun -- how many of you remember
17 the construction of the last luxury resort on the
18 edge of the other lagoon in Carlsbad? After
19 construction had begun, there was a downturn in
20 the economy, a milder one than the present
21 downturn. And for years we looked at the rusting
22 shell on the edge of the beautiful lagoon.

23 If you do not remember that, maybe you
24 will remember reading last May about all the
25 problems Carlsbad Aviara Four Seasons is having in

1 court with Four Seasons management, due in part to
2 the owner's debt restructuring.

3 If one of the top ten resorts in the
4 country located in Carlsbad is having issues, do
5 you think the city will be able to find someone
6 willing to invest in building another luxury
7 resort in Carlsbad?

8 Another alternative is a new
9 subdivision. Any new development will have to be
10 extremely high density to offset the extremely
11 high price of that California coastline. High
12 density means more people, more schools to be
13 built, more traffic, more parking places, crowded
14 beaches, and again, more traffic.

15 If you --

16 HEARING OFFICER KRAMER: The red light
17 means you've gone over you three minutes, so
18 please wrap it up.

19 MR. SILCOX: Okay. If we move the power
20 station will its replacement be as good a neighbor
21 as Encina Power Plant? The Encina Power Station
22 rents their lagoon property for \$1 a year to the
23 YMCA for the childrens camp. To the future
24 desalination plant, the white sea bass fishery.
25 They cooperate with local live -- to facilitate

1 rescue training in the outflow waters. And last
2 week they sponsored ten Marines to run in the
3 Carlsbad Marathon.

4 And finally, who is going to pump sand
5 out of the lagoon to replenish our lovely sandy
6 beaches at the cost of \$2 million every two years?

7 So until I get the answer to my
8 question, I want to keep my good neighbor, the
9 Encina Power Station, right where it is.

10 (Applause.)

11 HEARING OFFICER KRAMER: Thank you. For
12 those of you coming up, the lights on the chair in
13 the front of the podium, when it goes to yellow
14 you have one minute left. And then to red, that
15 means you've used up your three minutes. So if
16 you could please help everyone by honoring that.

17 Mr. Sarem, is it?

18 MR. SAREM: Sarem.

19 HEARING OFFICER KRAMER: Sarem.

20 Followed by Chuck Collins. Go ahead, sir.

21 MR. SAREM: Good evening, Commissioners.
22 My name is Scott Sarem, S-a-r-e-m. I'm a resident
23 of Carlsbad and I'm also the CEO of a company
24 named Everyday Energy. What Everyday Energy does
25 is we design and install photovoltaic grid type

1 systems.

2 So, as somebody new in this energy
3 business, I started looking at the power plant;
4 kind of went down to the City of Carlsbad. And
5 the question I had was is this power plant really
6 necessary. And I think that's probably the
7 question I'm hoping you guys are asking, as well.

8 The reason I ask that question is
9 because we've been following closely what's going
10 on in California and in other states, as well as
11 the federal initiatives on renewable energy.

12 And as you know, in California, the
13 state passed Assembly Bill 811 last year that
14 authorized property assessed clean energy
15 financing. That's going to allow the residents of
16 Carlsbad and many of the other cities around here
17 to put solar systems on their homes, solar
18 electric systems on their homes, and finance it
19 through their property taxes. So it makes it
20 affordable.

21 So a huge barrier to entry to getting
22 self-sustaining energy on people's homes has
23 passed in California, and we're about probably
24 four months away from it really starting to hit.

25 So I believe this is a watershed moment

1 in California and across the country. Our State
2 Legislature, our federal government, our local
3 governments are trying to encourage residents to
4 get into, you know, to install their own renewable
5 energy systems.

6 So I think what you guys need to do is
7 see if AB-811 is going to work. Let's see what's
8 going to happen. We have so much going on in our
9 federal government, in our state government and
10 our local government to promote solar energy and
11 other renewable energies and energy efficiencies,
12 it's about to start. It's going to start June
13 1st.

14 Our business, we've gone and talked to
15 folks to be able to put them on these photovoltaic
16 systems. We tell them about the Pace programs.
17 We have yet to have a customer tell us they're not
18 interested, and make a reservation with SDG&E to
19 be able to get their rebates so that then we can
20 put them in line for a Pace program loan come
21 June.

22 So, I would ask the Commission to hold
23 off on any action on this power plant, and support
24 the City of Carlsbad. Don't encumber the city
25 with a power plant it doesn't want until you can

1 evaluate whether it's really needed.

2 And if you look at a country like
3 Germany, Germany, I believe, about five years ago
4 institute a solar campaign very similar to what's
5 going on in our country today.

6 Right now, in California, less than --
7 you probably have better percentages than I do --
8 but less than 1 percent of our population has any
9 solar energy on their homes. In Germany they had
10 the same situation about five years ago. Now
11 there's 30 percent.

12 In California we have twice as much
13 sunlight as they do in Germany. And if we have
14 that type of adoption here in California, or here
15 in Carlsbad, or in the surrounding cities, it
16 won't be necessary here.

17 So I urge you to please support the City
18 of Carlsbad, and let's give all of these
19 initiatives that are going on to promote solar
20 energy a chance to work. And not encumber the
21 city for 50 years of blight unnecessarily.

22 Thank you.

23 (Applause.)

24 HEARING OFFICER KRAMER: Thank you.

25 Chuck Collins was next, followed by John O'Brien.

1 If both of you could make your way to the front.

2 And Sheila Harrington-Smith, your card
3 says not to speak, but then it also says your
4 remarks are short and to the point.

5 (Laughter.)

6 MS. HARRINGTON-SMITH: No, I wanted to
7 speak.

8 HEARING OFFICER KRAMER: You do want to
9 speak, okay. I was a bit confused by that. Okay.
10 You'll be third, then.

11 Mr. Collins, are you here? Apparently
12 not.

13 MS. SPEAKER: -- outside.

14 HEARING OFFICER KRAMER: Okay, well, --

15 MS. SPEAKER: And can't get in.

16 HEARING OFFICER KRAMER: We'll come back
17 to them then. The Public Adviser will let me
18 know. I'm assuming, though, that somebody who's
19 outside when they're called can come in. And it
20 looks like we have a couple empty seats, as well.

21 John O'Brien, then, are you here?

22 MR. O'BRIEN: Right here.

23 HEARING OFFICER KRAMER: Please come
24 forward. And then Ms. Smith, you'll be following
25 him.

1 MR. O'BRIEN: My name is John O'Brien,
2 O--B-r-i-e-n. And I am opposed to this power
3 plant, I think primarily because I can't see any
4 reason for it. And I agree with all the
5 statements that were made against it.

6 Thank you.

7 HEARING OFFICER KRAMER: Thank you. Ms.
8 Smith. Followed by Thomas Wachter.

9 (Applause.)

10 MS. HARRINGTON-SMITH: I am Sheila
11 Harrington-Smith, S-h-e-i-l-a, H-a-r-r-i-n-g-t-o-n
12 hyphen Smith. And I've been a resident of
13 Carlsbad for 13 years.

14 I mostly wanted to say that in those 13
15 years I've found that we, our community is not a
16 NIMBY state. We are not a "not in my backyard"
17 state. We've had housing put in for people who
18 had really low incomes and nobody protested and
19 marched in front of it.

20 We've had schools put in that maybe
21 somebody didn't want, but nobody protested.
22 Everybody went along with it. And so it's not
23 that this is a just whim that all of a sudden
24 people are getting upset about.

25 I think if you go to the beach at our

1 beach anytime during the summer, the other thing
2 Carlsbad residents do is they give up their beach
3 in the summer so that the tourists can come and
4 use the beach. And then they go back again as
5 soon as the weather gets a little cooler. And
6 it's just something we just kind of live with.

7 I don't understand at this point --
8 first of all, I didn't understand why the Chamber
9 of Commerce decided to go along with this. And
10 then when the young man talked about \$4 million or
11 whatever it was, now I understand.

12 But there's got to be a place, whether
13 it's in the beginning of the Marine Base, whether
14 it's where they plant all those tomatoes along the
15 Marine Base, whether it's in east county in the
16 desert, there's got to be another place that's not
17 affected as much as Carlsbad is.

18 Our whole economic structure is from
19 tourism. And if you put something like that, a
20 plant like that up, that's going to really affect.
21 And so for that reason I ask that you really
22 consider another place to construct this.

23 I understand that things change and we
24 have a lot more people here. But I still think of
25 all the little towns, this is a sweet little town.

1 We have our own police department, they're awfully
2 good, people are nice. And of all the towns in
3 San Diego, there's got to be another town that you
4 can -- another place --

5 (Laughter.)

6 MS. HARRINGTON-SMITH: -- another place
7 where there's no people, where you can find to
8 erect your plant. And I would appreciate that.

9 (Applause.)

10 HEARING OFFICER KRAMER: Okay, Mr.
11 Wachter, followed by Ron Cozad.

12 MR. WACHTER: That was pronounced
13 correctly, W-a-c-h-t-e-r. Thank you for that.
14 I'm speaking regarding this, which we all got in
15 the mail recently. And I represent myself, of
16 course, and my wife, two of our children who have
17 made their families here, as well, and our
18 grandchildren subsequent to that.

19 And I am a practicing pharmacist since
20 1966 when we moved here. And I also represent a
21 number of patients with COPD and other pulmonary
22 conditions, and certainly the Quartarones and
23 other people that I know of in the community, such
24 as that.

25 I also represent, to a certain degree,

1 many members of the medical community who I've
2 discussed this with over the months.

3 Here we go. Upon reading the City of
4 Carlsbad power plant update of January 2010, I
5 noticed a number of negative points concerning the
6 construction of a new, much larger power plant.

7 Number one, a tenfold increase in air
8 pollution despite the newer green technology such
9 a plant would offer.

10 Second, an aesthetic condemnation of our
11 coastline, a detriment to our citizens and
12 tourism.

13 Thirdly, concerns over the city's
14 ability to provide adequate fire protection at
15 this location.

16 Since the existing power plant was
17 completed in 1954, citizens of Carlsbad have
18 benefitted from our symbiotic relationship with
19 SDG&E. The population of Carlsbad, at that early
20 date, was approximately 7500. As rapid growth in
21 the area demanded more schools and city services,
22 the power plant provided a portion of the local
23 tax base necessary to bring about some of these
24 services.

25 At the time this was justified.

1 However, we no longer require this tax base, and
2 have since paid the high price of inhaling the
3 unhealthy fumes.

4 Now, 56 years later, our Carlsbad
5 population has increased 14 times over the 1954
6 census to its present 105,000. We are now a
7 build-out city of 46 square miles. Surrounding
8 communities have experienced this growth
9 phenomenon.

10 I am stating this to the members of the
11 California Energy Commission to emphasize the
12 gravity of a situation we, as citizens, find
13 ourselves in.

14 Since there is no contractual agreement
15 to receive local services from a new power plant,
16 placing such plant at the present Carlsbad coastal
17 location will produce no positive results for our
18 communities.

19 Furthermore, the electric needs of San
20 Diego County, in the future, will be more than met
21 by the incoming Sunrise Power Link. If the
22 debated plant is to be built, we strongly urge the
23 Commission to locate it in a more sparsely
24 populated inland area, where acreage is more
25 reasonably priced.

1 Even if the cost of relocation
2 supersedes that of the present existing
3 infrastructure, you will still have done the right
4 and noble thing. Protecting the huge population
5 of north San Diego County from future air
6 pollution will save untold billions of dollars in
7 health-related issues.

8 The City of Carlsbad has made one
9 concession to the Energy Commission by suggesting
10 you consider another plant location within the
11 city limits, as an alternative.

12 The city suggested a spot in its
13 industrial area east of El Camino Real, north of
14 Palomar Airport Road. There are at least three
15 reasons we, the citizens of Carlsbad, who live in,
16 work, eat, sleep and breathe the air of this
17 community disagree with the city government on
18 this alternative.

19 First, our industrial section was
20 designed some years ago to accommodate light and
21 nonpolluting industry, which we have successfully
22 adhered to.

23 Second, if the new power plant were
24 placed in said location our communities would
25 still be subjected to its subsequent pollution and

1 health issues.

2 Thirdly, depending on its exact setting
3 in this alternate location, there is no guarantee
4 the stacks would not be a traffic hazard to
5 incoming flights at Palomar Airport.

6 In summary, I respectfully urge member
7 of the California Energy Commission to hear and
8 respond to the requests of the citizens of
9 Carlsbad above even that of our city government.
10 We do not desire a new power plant at the present
11 or any alternative location within the confines of
12 our city.

13 Please consider a less populated inland
14 location if you have determine that --

15 HEARING OFFICER KRAMER: You're over
16 four minutes now.

17 MR. WACHTER: -- a new plant must be
18 built.

19 HEARING OFFICER KRAMER: Please wrap it
20 up.

21 MR. WACHTER: I'm done.

22 (Applause.)

23 HEARING OFFICER KRAMER: To the new
24 photographer who joined us, you can sit up in this
25 corner if that's better for you.

1 Mr. Cozad, followed by Patricia Bower.

2 MR. COZAD: Good evening. My name is
3 Ron Cozad. I'm Regional Vice President of the
4 California Pilots Association. Thank you for
5 holding these important hearings tonight.

6 We have worked together with the Energy
7 Commission and Caltrans to address issues relating
8 to a recent increase in potential siting of such
9 power plants near airport in California.

10 And we do have some concern about an
11 alternative site that was being considered. I
12 think it'll come up on Wednesday's agenda. That
13 was suggested, I believe, or supported by the City
14 of Carlsbad.

15 In any event, this site -- there were
16 two at least at one time -- were close to the
17 airport and underneath final arrival.

18 One of the issues that has often been
19 discussed is really what type of a danger is to be
20 expected from a power plant like this close to an
21 airport. We have concerns about the vertical
22 velocity of the gases emanating from the stacks.
23 We've had concerns about this in Hayward and in
24 Temecula where it was proposed and rejected. We
25 have those here if this alternative site is being

1 thought about seriously, as well.

2 I do have some comments and a report
3 from the NTSB about a 1989 helicopter crash in
4 Bakersfield, California, that occurred when a
5 helicopter flew into a plume of an operating
6 plant. And one of the conclusions of the NTSB was
7 that the invisible nature of the plume, the clear
8 gases cannot be seen when a plant is operating.

9 And in this instance if we have, say, a
10 peaker plant and it's operating only sometimes,
11 it'll be very difficult for pilots arriving to
12 know and to plan, and to really see if there is a
13 hazard.

14 The vertical movement of the air is a
15 definite problem with light aircraft. And so we
16 would ask that when it comes time to consider
17 alternative sites, that any site within say three
18 miles of this airport be rejected out of concern
19 for arriving and departing flights from the
20 airport.

21 May I offer these comments for
22 consideration?

23 HEARING OFFICER KRAMER: Certainly.
24 Before you come up, let me ask you, then your
25 concerns are about the alternative sites, not

1 about the Encina site, is that what I understand?

2 MR. COZAD: That's correct. We're
3 neutral on the Encina site.

4 HEARING OFFICER KRAMER: Okay, thank
5 you. Bring those up to me; we'll take those.

6 Okay, Patricia Bower, followed by Taylor
7 Knox.

8 MS. BOWER: Good evening. Welcome to
9 the CEC, Mr. Monasmith, all of the people that
10 have worked extremely hard on this project. I
11 know that when you see things separately put
12 together everybody's done, the biologists that
13 wrote the reports, the chemists. There's been a
14 great deal of work.

15 I'm in distinct opposition to this
16 project that is feckless in many respects. One of
17 the greatest problems that we've heard of from
18 some very heartbroken parents here tonight. I am
19 a volunteer at Kelly Elementary. This is right on
20 the lagoon where the proposed plant is going to be
21 built.

22 I don't have the exact numbers, please
23 forgive me for that. But I think a child starting
24 Kelly Elementary in first grade, by the time that
25 they get out of fifth grade, will be exposed to

1 over 100 tons of carbon monoxide.

2 I heard the doctor speak of the COPD.
3 There's 400 kids at that school that are going to
4 be distinctly impacted, from an educational
5 standpoint, by exposure to the carbon monoxide.
6 It's never ending. They are right there on the
7 lagoon.

8 There's approximately 3000 people on the
9 lagoon that will be affected. Number one, by the
10 siting, which I'm opposed to because it intersects
11 the railroad tracks, 5 and 1. The major
12 transportation corridors to California. They
13 separate Camp Pendleton to San Diego. It is the
14 transportation corridor.

15 Mr. Garuba spoke very diligently. He
16 does have the information of the five accidents
17 with cars going over the side to the exact point
18 of the proposes power plant. Should it be a
19 tanker that goes over and crashes into the power
20 plant, it will completely eradicate the
21 transportation corridor of all of California. It
22 will cause quite a problem.

23 And the residents will be -- the hazmat
24 situation is really bad. You've heard from some
25 professionals that know that the safety effect of

1 any kind, any kind of a chemical -- we have a real
2 problem with Adams Street, single lane,
3 transportation. The fire trucks won't fit down
4 the road.

5 This project, the siting of this project
6 is nightmarish in its scope. And you cannot
7 mitigate that. There were 167 fires started by
8 SDG&E -- this is the Tribune. And so the
9 gentleman that spoke about how great the power
10 plant's there, because they got to pump the water.
11 Well, the water was started by the transmission
12 lines that you guys are using to put the energy
13 out there.

14 It is a total insane energy policy
15 because we're low on water here in California. We
16 had a earthquake this morning. We've got some
17 natural things, some real serious problems in San
18 Diego that we are not addressing here.

19 And, you know, you can't just shut the
20 power off in different locations. We're ripe for
21 what the gentleman said about solar. We are the
22 one county that really not needs some different
23 approaches toward energy.

24 The siting of this plant is a
25 catastrophe waiting to happen. And I encourage

1 you to look for a different site to help save our
2 children and the health of the people. This is
3 too dense a population to put this in.

4 And I know you've worked very hard on
5 it; and thanks so much for listening to me. And I
6 appreciate it so very much.

7 (Applause.)

8 HEARING OFFICER KRAMER: Thank you.

9 MR, KNOX: Hi, my name's Taylor Knox and
10 I've been a resident of this town for 27 years. I
11 have a unique job where I make my living by being
12 in the ocean. I'm a professional surfer. Proud
13 to say that I've grown up here since seventh
14 grade.

15 So I do spend pretty much every single
16 day of my life in the ocean. And I have since the
17 eighth grade here. I feel like, you know, when
18 they say that Carlsbad's a village by the sea, it
19 really reflects that in the town and the people,
20 except for this, you know, huge eyesore, smoke
21 stack, energy -- that we have here.

22 It's a little -- I have two children.
23 And after listening to a lady earlier that came up
24 here and said that she had, you know, has soot on
25 her house, her backyard, and that her son, you

1 know, passed away from cancer. I don't know how
2 you can ignore that. That is a fact. That's
3 something you can go over and put a white glove
4 on, take a sample of.

5 You can't -- it's a little obnoxious to
6 think that you can build a smoke stack, a couple
7 different new ones, and there's not going to be
8 anything harmful to the public or the people that
9 live here.

10 And I'm truly opposed to this. I feel
11 like my son and daughter that are in the ocean
12 pretty much every weekend in Carlsbad, and the
13 fact that I've surfed in front of your power plant
14 for the last 20 years, I don't know what I will
15 receive in health terms in the future. But I do
16 not want my son and daughter to receive the same.

17 So, I oppose it.

18 (Applause.)

19 HEARING OFFICER KRAMER: Okay, Robert
20 Wohl, followed by William Kloetzer. Mr. Wohl?

21 MR. WOHL: I'm not going to add too much
22 more to what has been said here, other than to
23 mention that I am a resident over at Ocean Point,
24 just across the way. We have a wonderful view of
25 the present power plant, and we'll have an even

1 better one of the new one.

2 I'm opposed to the new one. I was a
3 former State Park Superintendent in charge of
4 Torrey Pines State Reserve, in charge of Carlsbad
5 State Beach and South Carlsbad State Beach.

6 I know that the State of California,
7 which is adjudicating this decision, has spent
8 millions and millions of dollars from La Costa all
9 the way up to nearly Carlsbad Village Drive on the
10 beaches of Carlsbad. The viewscape there is very
11 essential to why the state park system chose this
12 area as one of the highest natural values left and
13 remaining in the California State.

14 Thus, California State Parks, your other
15 state agency, felt that this area was very
16 special. Yes, we came into the area -- State
17 Parks came into the area in the '60s, and the
18 power plant was already here.

19 But one of the elements that was a
20 factor was that we knew that eventually that power
21 plant was going to be dismantled and removed.
22 Now, suddenly it's kind of a shell game to just
23 move everything over a few feet and start again.

24 This is not a fair play. Carlsbad has
25 paid for its energy creation far more than any

1 other place. I was at Torrey Pines State Reserve.
2 We purchased, the State of California spend
3 several million dollars to purchase the old SDG&E
4 plant that had been planned for that area, for
5 that lagoon, back in the '50s, and was no longer
6 viable in this present day.

7 Putting a power plant next to lagoons
8 and estuaries and wetlands in San Diego County,
9 which has the last six remaining ones here, is an
10 abomination in terms of making land use
11 development decisions.

12 (Applause.)

13 MR. WOHL: We have already spent \$80
14 million to \$120 million down at the San Dieguito
15 Lagoon. We have spent another comparable amount
16 of money at the Baticuitos Lagoon. What are we
17 doing here at the Agua Hedionda Lagoon that is not
18 in line with what is happening elsewhere around
19 us?

20 Thank you.

21 (Applause.)

22 HEARING OFFICER KRAMER: Folks, thank
23 you, those of you who are continuing to raise your
24 hands instead of clap.

25 (Laughter.)

1 HEARING OFFICER KRAMER: The half of
2 you. And speakers, --

3 MR. KLOETZER: My name is William
4 Kloetzer --

5 HEARING OFFICER KRAMER: Please wait a
6 minute.

7 Speakers, let's not pause for applause
8 in the middle of our talks, please, or raised
9 hands. And if we can use the raised hands instead
10 of the applause, I think it will save us a few
11 precious seconds that will begin to add up as we
12 get into the evening.

13 So, Mr. Kloetzer, you're followed by
14 David Chadwick. Go ahead, sir.

15 MR. KLOETZER: Good evening. My name is
16 William Kloetzer. I live here with my family.
17 We've been here for over 20 years.

18 I am opposed to building this power
19 plant on our coastline. I have two objections.
20 One, it's really ugly. It doesn't fit
21 aesthetically in with our otherwise beautiful
22 coastline.

23 Second, it's going to be noisier. It's
24 going to be a lot noisier. It's going to be
25 louder for a longer period of time.

1 What's that going to do? Well, it's
2 going to lower property values and it's going to
3 negatively impact businesses, small business,
4 particularly tourism-related. I mean, come on,
5 what families are going to say, let's go see those
6 two power plants in Carlsbad.

7 (Laughter.)

8 MR. KLOETZER: Do we need or want
9 another fossil-fuel-driven power plant on our
10 coastline? You know, 60 years ago it made great
11 sense. It was state-of-the-art, SDG&E brought
12 state-of-the-art technology in; built that water-
13 cooled power plant because it had to be on the
14 coast and it served the state well for many years.
15 And NRG has been a very good community citizen.

16 But now let's look at it. Do we need
17 another one today? Can't we do better than
18 building another power plant on our coastline? I
19 think we can.

20 One other aspect is we used to have a
21 leadership position in education, and technology
22 and science. We've lost that. One we tried to
23 restore some of that original leadership, come up
24 with a better plan for powering California, you
25 know. To power California without industrializing

1 our coastline.

2 I would like my kids to look back 20 to
3 50 years from now and say, you know, they made a
4 good decision. It was good for California and we
5 did a really good job on this.

6 So, I thank you for your consideration.

7 (Applause.)

8 HEARING OFFICER KRAMER: Thank you.

9 David Chadwick, followed by Dr. James Selover.

10 MR. CHADWICK: Good evening, gentlemen.

11 HEARING OFFICER KRAMER: Go ahead.

12 MR. CHADWICK: My name's David Chadwick,
13 C-h-a-d-w-i-c-k. I've been a resident of
14 Carlsbad, California for 26 years. I live
15 approximately 2500 feet from where the proposed
16 north stack will be.

17 I, along with many of my neighbors,
18 strongly disagree with staff that the visual
19 impact will be minimal. Today we have an earth
20 berm and mature trees that block our view of a
21 large majority of the power plant.

22 As indicated in the proposal the berm
23 would be approximately 30 feet tall and all of the
24 natural obstruction would be removed.

25 The second thing we disagreed with is

1 the noise. We also very very strongly disagree
2 that the noise will be a minimal impact. We've
3 researched on the CEC's website and other
4 documentation to try and find where an assessment
5 has been done to the east. There is none.
6 Because of a standard that allows a waiver of
7 assessment where a home is not within 500 feet of
8 the project.

9 I'm a radio frequency engineer by trade.
10 I have 30 years in the business. And I can tell
11 you that the propagation and the reflective
12 pattern of sound waves is quite different over
13 water as opposed to land.

14 I have approximately 40 residents that
15 live in my area that will attest to that because
16 they live with it on a daily basis.

17 I would suggest that the Commission
18 require impact studies to be done to the east on
19 both noise and visual impact to at least get a
20 baseline of data so we know where that noise level
21 is right now.

22 The staff assessment, there's
23 approximately a 3 db increase in noise that may be
24 expected. This may be minor, but this also may be
25 major depending on what the noise level is right

1 now. I submit that the Commission does not have
2 enough information to properly evaluate that
3 issue.

4 Being 2500 feet from the proposed north
5 stack, I have grave concerns regarding the health
6 of the neighborhood and the emissions that come
7 out of that stack. I ask that the Commission
8 reconsider or consider relocating this project to
9 another area that's less habitable and off of our
10 coastline.

11 Thank you.

12 HEARING OFFICER KRAMER: Thank you.

13 (Applause.)

14 HEARING OFFICER KRAMER: Dr. Selover,
15 followed by Steve Westland. Dr. Selover? Mr.
16 Westland, then. Followed by Sheila Yeane.

17 MR. WESTLAND: Good evening, ladies and
18 gentlemen. My name is Steve Westland,
19 W-e-s-t-l-a-n-d. I've lived in Carlsbad for 25
20 years.

21 And after hearing the testimony of these
22 folks back here about their children, I would say
23 you shouldn't be putting up any power plant here
24 or inland. It doesn't make any difference where
25 it is. If there's any chance that kids are going

1 to get cancer, why would you put up a power plant?

2 Let's go someplace --

3 (Applause.)

4 MR. WESTLAND: -- else here. Number
5 two, I think there's so much solar coming online
6 and windmills coming online, I don't see where
7 these guys are going to -- who they're going to
8 sell the power to. I don't think SDG is lining up
9 to buy this power.

10 It's not like Poseidon, lined up the
11 water districts to buy water. I don't think this
12 power plant is needed because I don't think you're
13 going to need it for quite a long time.

14 But I'd like the Commission to guarantee
15 the health of all these people out here if it's
16 going to put out pollutant that's going to give
17 people cancer.

18 Anyway, thank you very much.

19 (Applause.)

20 HEARING OFFICER KRAMER: Ms. Yeaney.
21 Okay, she's coming forward. She'll be followed by
22 Lowell McConngel -- McConngil. Or is it
23 McGunngil? Anyway, hopefully --

24 MS. YEANEY: Yes, my name is Sheila
25 Yeaney. It's Y-e-a-n-e-y. And I'm a relatively

1 new resident of Carlsbad, been here about five
2 years. Owned my house a little longer than that.

3 But I live west of the 5, but east of
4 the railroad tracks, probably about two blocks to
5 the north. And I honestly, after looking at that
6 stack, it's just like a blight on the coastline.
7 And I can't get to the coastline, but man, I'm up
8 there all the time with my scooter.

9 But I want you to know how can you do
10 this, how can you do this? You know, I hate to
11 use it, but it's, you know, we are supposed to be
12 custodians of our planet. And to take something
13 that is given to us, that beautiful, beautiful
14 view and the beautiful place we are, to do this to
15 us is so wrong.

16 I agree with everybody about, you know,
17 pollution, noise, smoke stacks, all of that. But
18 it's more than anything to me, it's that beautiful
19 vista of this coastline. And to just have done
20 this to it, if you could do it anyplace else,
21 let's find a place, please.

22 Anyway, thank you.

23 HEARING OFFICER KRAMER: Thank you. Mr.
24 McConngel and he'll be followed by Christine
25 Gaeta.

1 MR. McCONNELL: Good evening. It's
2 Lowell McConnell. M-c-C-o-n-n-e-l-l. I've been a
3 resident of Carlsbad for 13 years now. I'm also a
4 construction boilermaker. We build power plants.

5 I'm in favor of this power plant going
6 in. And I agree with pretty much everybody that's
7 been up here that said they're in favor of it.

8 I won't waste any more time. Thank you.

9 HEARING OFFICER KRAMER: Thank you. Ms.
10 Gaeta, followed by Marcos Mendez.

11 MS. GAETA: Good evening. My name is
12 Christine Gaeta, G-a-e-t-a. I'm here to oppose
13 this power plant that is being considered at the
14 moment for all the reasons that have been
15 mentioned tonight, as well as one that wasn't
16 mentioned, and that's just the beautiful natural
17 wildlife that we have.

18 We have the most beautiful bird species
19 around that they make, and all the lagoons will be
20 affected by this horrible thing that's going on.

21 I just want to say that I fully oppose,
22 and I really pray that you will consider placing
23 it somewhere else. I mean there are many many
24 places. If you drive out towards even the
25 Lancaster area, just desert. There's plenty of

1 open, wild spaces that you can use, besides a
2 populated area of people that love the coast, love
3 the beaches, appreciate so much the beauty that
4 we're surrounded with.

5 And for you to consider anything other
6 than what to put this thing is really just truly
7 the worst thing you could ever do. It's being
8 heartless, actually, to the people that really
9 care about our children, our animals, our wildlife
10 and the beauty of the coast that we've been so
11 blessed with.

12 And it's really a wonderful thing that
13 we love and we appreciate, and want to protect it.
14 So, thank you very much. I pray that you will do
15 that.

16 HEARING OFFICER KRAMER: Thank you.

17 (Applause.)

18 HEARING OFFICER KRAMER: Mr. Melendez,
19 I'm sorry, Mr. Mendez, followed by Nancy Pisacane.

20 MR. MENDEZ: Pisacane.

21 HEARING OFFICER KRAMER: Pisacane.

22 MR. MENDEZ: Yeah.

23 HEARING OFFICER KRAMER: Thank you.

24 MR. MENDEZ: Hi. My name is Marcos
25 Mendez, M-e-n-d-e-z. My proposal, I would like to

1 submit a blood sample, an MRI scan and an x-ray to
2 establish a baseline for my health in the event
3 that I should get a lung disease or a blood
4 disease and die from it. I would keep a copy of
5 the results with the NRG, with your Commission,
6 and with my family lawyer.

7 And should I die from a lung disease or
8 a blood disease, then the two of them follow, two
9 of them can duke it out at \$400 to \$600 an hour.

10 I can't speak for anyone else in the
11 neighborhood, but I, like Kelley Irish, live less
12 than half a mile from the proposed site. Our home
13 is constantly covered in black soot. I breathe
14 this stuff every single day. Granted, it's a
15 beautiful place to live, but I'd rather not
16 breathe this stuff.

17 As a matter of interest, in Arizona last
18 year, we were going through the desert to get back
19 on 8, and we passed a plant identical to the one
20 that's in the photographs, or in the drawings
21 that's in the brochure that you've mailed out to
22 all the residents.

23 This plant was situated about 20 miles
24 from Tucson, and there's no one around it.
25 Jackrabbits, coyotes, couple of rattlesnakes, but

1 you can hear a high-pitched whine. And we were
2 five miles from the plant. And I do know that it
3 was identical to those drawings.

4 On a strictly need basis I would have to
5 be against the plant. I think there's enough
6 solar, enough wind and some other technologies
7 coming onboard that would negate the necessity of
8 having to build the plant.

9 So, I stand firmly opposed to it. Thank
10 you.

11 HEARING OFFICER KRAMER: Thank you.

12 Nancy Pisacane --

13 MS. PISACANE: Yes, my name is Nancy
14 Pisacane. My last name is spelled
15 P-i-s-a-c-a-n-e.

16 HEARING OFFICER KRAMER: Okay, before
17 you state, let me --

18 MS. PISACANE: Sure.

19 HEARING OFFICER KRAMER: -- let me start
20 Diane, I don't know if it's Kohler or Kahler-
21 Richards. Start her preparation to follow you.
22 Go ahead, please.

23 MS. PISACANE: Thank you. Thank you for
24 giving us the opportunity to speak tonight. I've
25 lived in the Terramar community for twenty-two-

1 and-a-half years, now. I live basically four
2 houses from Canon Road. So the power plant people
3 say is in their backyard, it's in my front yard
4 and my side yard.

5 And when I bought my home in Terramar I
6 understood, as many of our neighbors did, that at
7 some point some time in the future, as technology
8 got better, as things changed, eventually the
9 existing power plant would go away.

10 So when we, relatively recently, learned
11 that there was discussions about a new power
12 plant with technology that, as I understand it,
13 from the marketing materials that have been
14 provided, isn't dramatically different or better
15 than what we've been living with, myself for over
16 20 years, but many of our neighbors obviously for
17 closer to 50, that this became a concern.

18 I am opposed to this new plant. I don't
19 believe that any power plant, no matter how
20 efficient it is, needs to be built in the coastal
21 community, whether it's Carlsbad, right in my
22 yard, or it's in Oceanside or any other of the
23 coastal communities.

24 And I think that addresses a lot of the
25 things that people have also expressed a concern

1 about. Why in the world is the Coastal Commission
2 not screaming and shouting about any type of a
3 power plant possibly being built in a coastal
4 community.

5 I think there's better choices
6 available. And one of the things that I find
7 wonderful about living in Carlsbad is that we've
8 all experienced wonderful change. Our community
9 has grown tremendously over the years, mostly for
10 the better.

11 But I believe, as a resident of the
12 community, that building any type of a power
13 plant, especially in a coastal community, is not
14 something that's for the betterment of Carlsbad.
15 Thank you very much for your time.

16 (Applause.)

17 HEARING OFFICER KRAMER: Thank you. Ms.
18 Kahler-Richards --

19 MS. KAHLER-RICHARDS: Okay. My name is
20 Diane Kahler, K-a-h-l-e-r, Richards.

21 HEARING OFFICER KRAMER: Okay, thank
22 you. You'll be followed by Tom Siekmann. Please
23 go ahead.

24 MS. KAHLER-RICHARDS: I have a very
25 different reason this evening. I'm approaching

1 you and urging you to approve the power plant and
2 its siting on this lagoon.

3 I moved here 22 years ago to Bristol
4 Cove, where I still reside today. I'm an avid
5 kayaker and canoeist. And I quickly realized that
6 the reason that this lagoon exists is because of
7 the stewardship of the power plant.

8 And that over 1000 acres of dedicated
9 land, plus the bottom of the lagoon, is open space
10 for the betterment of our community, and for those
11 people who are fortunate to live on it.

12 And for that reason I urge you to
13 approve it. Thank you very much.

14 HEARING OFFICER KRAMER: Thank you. Mr.
15 Siekmann, followed by Ronald Cozad. That sounds
16 like a duplicate, or is he a relative of --
17 anyway, Mr. Cozad, assuming you're not testifying
18 a second time.

19 Go ahead, sir.

20 MR. SIEKMANN: Okay, thank you, Mr.
21 Kramer, Mr. Boyd, Mr. Eggert, I appreciate the
22 Commission giving us the opportunity to speak.

23 I'm a 16-year resident of Carlsbad.
24 Again, my name is Tom Siekmann. I agree with all
25 the comments earlier about the land use. I'm here

1 against the project.

2 The project made sense 55, 56 years ago,
3 based on the technology that was available and the
4 need for power, and that the site was away from
5 most of the residential areas.

6 Obviously things have changed. And do
7 we really need another power plant? Do we need
8 another fossil-fuel power plant, I think is a
9 better question.

10 I have heard, and you probably covered
11 it in the morning sessions, but I've heard that
12 SDG&E is not at a point where it needs another
13 power plant. And, in fact, I've heard that it
14 does not even plan on having a contract with the
15 Encina Power Plant to use their energy.

16 Regarding the issues of the health of
17 our children in the neighborhood and as we've
18 heard the moms speak, let's use this time to go
19 for alternative fuels. The technology is growing.
20 We've got the ability, and the Commission has the
21 ability, rather than saying hey, let's put another
22 thing up there with the technology of 55 years
23 ago, let's put it in there again. Let's go to
24 alternative fuels so that we can save our
25 children.

1 Putting berms up and trees up might
2 block the vision, might block the sound, but are
3 we really that interested in doing that when the
4 emissions might be harming people. I think that's
5 the ultimately the higher level that we should be
6 working at.

7 And finally, I did see in yesterday's
8 paper that the Carlsbad Chamber of Commerce is in
9 favor of this. I wonder how many people in this
10 room, other than Ted Owen, who addressed us
11 earlier, he's the President of the chamber, how
12 many of us really know who's all on their board.
13 And I understand that Encina, the power operator,
14 does have a seat on the Board of Directors of the
15 Carlsbad Chamber of Commerce.

16 Thank you.

17 (Laughter.)

18 HEARING OFFICER KRAMER: Okay, Mr. Cozad
19 had testified earlier, so David Johnson, did I
20 call you yet? Lord help me if I should knock over
21 this stack of cards.

22 (Laughter.)

23 HEARING OFFICER KRAMER: And then you'll
24 be followed by Ray, I think it's Faulsticil or
25 Faulstich, perhaps.

1 MR. JOHNSON: Hello, my name is David
2 Johnson and I live in Carlsbad.

3 The first thing I have to ask is if
4 there were not a power plant there, who in their
5 right mind would even consider putting a power
6 plant on the coast in this community.

7 And I ask everybody to clap, don't raise
8 your hands, just for me. You can boo, too, that's
9 okay.

10 Okay, so one of the questions I have is,
11 is this the best and highest use of the land. I
12 mean, really. You know, I was driving up the
13 coast and it seems like the correct place to put
14 something like this is inland from where San
15 Onofre is, or Camp Pendleton, far away from
16 everyone.

17 So, you know, I look at the plant there
18 and I see it right on the edge of the unstable
19 cliffs and now you're going to move it in so it's
20 next to the railroad, which also goes along the
21 cliffs, which is kind of unstable if you go out
22 far enough to the coast.

23 So, you know, I hear some people come
24 here and say they are for the plant, they're on
25 the Chamber of Commerce, or the Employment

1 Development Department, or they work at the power
2 plant.

3 There's a great book by a guy named
4 Charlie Monger called, "Incentive-Caused Bias."
5 And if you read that book you'll see that people
6 that have an interest in things usually are for
7 it, and people, you know, that don't, have a
8 clearer view of what's going on.

9 So, let's see -- you know, it's a little
10 concerning that the Coastal Commission is not
11 here. Are they here? And they're not voicing any
12 opinions. I'm a little concerned that the people
13 up here are going to take that as a vote of yes.
14 And I take it as a question. What is going on?
15 Is there some kind of conflict of interest going
16 on? Because who in the right mind would be for a
17 power plant on the coast?

18 Now, my daughters go to Pacific Rim
19 Elementary. And the principal there was telling
20 me that he believes that there's something about
21 the City of Carlsbad that's causing the kids to
22 get cancer. He lost his own daughter. And I had
23 no idea what it was.

24 I called SDG&E, because apparently
25 there's a big power grid under the school. But

1 now when I hear this poor lady's story about her
2 son, I'm wondering if that is the cause.

3 Just ask yourself, if you had a child
4 living near this power plant, that you lost your
5 son or daughter, what decision would you make.

6 Really, the right thing to do for this
7 kind of plant is to put it in a safe place, far
8 away. In the future there's a big need for heat
9 and sun. It should be far inland. I was
10 originally thinking toward Vista or that way. But
11 it really needs to be like inland from Camp
12 Pendleton. It needs to be in a very hot place
13 where there's a good cheap land, room for
14 expansion and solar panels.

15 I'm out of time. Thank you.

16 HEARING OFFICER KRAMER: Thank you.

17 (Applause.)

18 HEARING OFFICER KRAMER: Okay, Mr.

19 Faulstich or -- are you here? Okay. Let me call
20 a couple people one more time who didn't respond
21 before. Dr. James Selover. Jim Craig. And Chuck
22 Collins. If any of you are here, please let me
23 know. I guess not.

24 MS. SIEKMANN: Some people waited
25 outside for a long, long time, and finally they

1 had to go home because it's so cold out there.

2 So.

3 HEARING OFFICER KRAMER: I understand.

4 You know, we can only go as fast as three minutes
5 allows us.

6 MS. SIEKMANN: But I just wanted to let
7 you know why they might not be here.

8 HEARING OFFICER KRAMER: Okay. We have
9 their cards, and their comments, to the extent
10 they put them on them.

11 Mr. Faulstich was not there either.

12 Next would be then Chris Neumeyer, followed by
13 Glen Bernard. Okay. All right, it does look like
14 I have more cards than we have people in the room
15 at this point.

16 Rock Swanson, are you here? John Davis.

17 Please come to the podium, sir. Donald Kent.

18 Carl Harmon. Okay, go ahead, sir.

19 MR. DAVIS: Ladies and gentlemen of the
20 Commission. My name is John Davis. I own and
21 operate the Carlsbad AquaFarm. We're located in
22 the Agua Hedionda Lagoon right next to the power
23 plant. In fact, you might even say the power
24 plant is in my backyard.

25 For the last 20 years we've been growing

1 oysters, mussels, abalone, you name it, all kinds
2 of marine animals. And what you should know is
3 that during this time there has never been a
4 pollution event attributable to the power plant
5 that has ever injured or endangered any of my
6 marine animals.

7 I'd also like to let you know that the
8 power plant has been an outstanding neighbor.
9 They've been cooperative and supportive the entire
10 time I've been there. They always go the extra
11 mile. And that's what I wanted you to hear.

12 I'm not a resident, so I won't put a
13 position in on the new plant. Thank you.

14 HEARING OFFICER KRAMER: Thank you. Bob
15 Garrett. Okay. Who was waving in back? Did I
16 call you a minute ago?

17 PRESIDING MEMBER BOYD: Way in the back.

18 HEARING OFFICER KRAMER: Okay.

19 MR. KENT: It's Donald Kent, K-e-n-t. I
20 need some help here. I'm having trouble with the
21 logic of everything I'm hearing here.

22 I received an email from a woman by the
23 name of Julie Baker, who apparently is a principal
24 in an organization called Power of Vision. And
25 she's obviously supporting Carlsbad's opposition

1 to the proposed power plant. And her reasons, I'd
2 like to read the reasons she gives.

3 I'm assuming they're reasonably
4 accurate. One, there'll be a ten times increase
5 in air pollution. Two, the noise impact will be
6 as loud as a jet engine. Three, there'll be a
7 decrease in property values. Four, there are
8 safety concerns involving the Interstate-5
9 expansion. And, of course, there'll be
10 industrialization of coastal lands.

11 And finally, something that was not
12 mentioned here, but was mentioned here with a
13 great deal of emotion, there's also remote
14 possibility of various forms of cancer caused by
15 this plant.

16 I was told that the land that would be
17 available, if this plant were not built here in
18 Carlsbad, it would be possibly built someplace
19 east of El Camino Real and north of Palomar
20 Airport.

21 Now, here's where the logic comes in.
22 Why would we move a plant that has possibly all
23 these problems, and then move them into another
24 area where it would affect thousands or tens of
25 thousands of other residents who live just east of

1 this area?

2 And as I listened to the comments -- I
3 was going to suggest, by the way, that the
4 proposed power plant stay where it's suggested.
5 But as I listened to the comments of the people
6 who live in Carlsbad, I realized this plant
7 doesn't belong in Carlsbad, and it doesn't belong
8 east of Carlsbad.

9 (Applause.)

10 MR. KENT: It really belongs in a
11 location where it will have minimal effect. I
12 don't know what the location is, possibly the Anza
13 Borrego Desert or something like that, where it
14 will affect virtually no human being.

15 And if that's the -- and if we can't do
16 that, then we should consider alternative forms of
17 energy that will have less effect on people than
18 what we're suggesting here.

19 Thank you.

20 (Applause.)

21 HEARING OFFICER KRAMER: Thank you. Bob
22 Garrett, followed by Ramona Finnila.

23 DR. GARRETT: It's like the Academy
24 Awards with this light here going. My name's Bob
25 Garrett. I'm a Professor of Biology at a local

1 college. My doctoral thesis was on aquatic
2 ecology.

3 And years ago we built these power
4 plants in the east. And we looked at the
5 effluents, what was coming up those chimneys. And
6 they weren't so bad. And they weren't bad until
7 they mingled with moisture in the atmosphere and
8 we created acid rain, which destroyed thousands
9 and thousands of acres of aquatic habitat and
10 riparian habitat.

11 So, we're going to build a power plant
12 in a maritime environment, about 50 years from the
13 ocean, which has the heaviest amount of moisture
14 in any area, I would guess, in California.

15 And clean energy, clean natural gas? You
16 can't fool me. Any hydrocarbon that's going to
17 move those kind of turbines, you're going to have
18 effluent that comes out that's dangerous. Even
19 carbon dioxide. Carbon dioxide, by itself, I mean
20 we produce it in our body as a product, a waste
21 product of cellular respiration.

22 But if you take carbon dioxide and you
23 blow it through a straw into a glass of water
24 that's pH 7, the pH of that water will drop.
25 You'll create carbonic acid, a mild acid.

1 I looked at the environmental report. I
2 saw that sulfur dioxide is one of them. Not much
3 of a problem. But sulfur dioxide, in combination
4 with water and a few other steps, creates sulfuric
5 acid.

6 So it just, to me, why would you put
7 something that has the potential, when these
8 chemicals combine with water right on the ocean,
9 where the dew point -- anybody who lives here, I
10 live on the lagoon, foggy nights.

11 Anyway, look at it, I made it before the
12 yellow light. Thank you. I got to go; my kid has
13 to get to sleep.

14 (Applause.)

15 HEARING OFFICER KRAMER: Just barely,
16 that's a good job. Okay, Ramona Finnila, followed
17 by Gary Morris. Are you here?

18 MS. FINNILA: My name is Ramona Finnila,
19 F-i-n-n-i-l-a. I'm a resident of Carlsbad for
20 over 35 years. I live over by the Agua Hedionda
21 Lagoon. I have worn many hats during these 35
22 years, and it is for a specific purpose that I
23 would like to mention just a few of them.

24 First and foremost, I own my own
25 consulting company and NRG is one of my clients.

1 I was a city councilwoman here in Carlsbad for 12
2 years and have much experience with capital
3 projects.

4 During this time I have chaired and been
5 a member of SANDAG, which is our regional
6 government. During the regional tenure when I was
7 there, I sat on an energy power pool and created
8 an energy power pool that supplied energy for fire
9 districts, school districts and municipalities.

10 I also chaired SANDAG's energy
11 committee. This sought to look at an energy
12 supply and reliance from a regional perspective.
13 Now this committee has morphed into the San Diego
14 Regional Energy Office.

15 I have long been interested in assuring
16 a regional energy supply so that we may have
17 energy security.

18 Since the '50s the city has had the
19 regional power plant and has enjoyed millions of
20 dollars in revenues that has been generated and
21 added to our quality of life.

22 Our city also hosts, and efficiently
23 hosts, other regional amenities that are near the
24 ocean. These amenities have been and are, at
25 time, problematic. And at times, controversial.

1 The water reclamation plant, two
2 railroad stations, the sewage treatment plant, the
3 future desal plant and the airport have all
4 created citizen concerns from one time or another.

5 The airport, you should know, now has an
6 approved airport land use compatibility plan that
7 must be referred to should you start to look at
8 alternative sites.

9 Now, all of these public necessities
10 were and are topics of public interest and
11 disagreement, as is this project. The current
12 application to build a second, more efficient
13 plant is noted within the city's stated South
14 Carlsbad Redevelopment Project. And it was
15 resolution 351. And it was approved in February
16 of 2002.

17 Also, the time when I sat on the
18 Carlsbad City Council, we made a concerted effort
19 to buy this power plant. We did not succeed, but
20 we did want to buy this plant.

21 So as I'm standing here tonight I'm
22 wondering perhaps, with some speculation, it would
23 have been interesting to see if the city, had they
24 bought the plant, would be here with an
25 application to build a smaller, more efficient

1 plant.

2 The retiring of aging boiler units and
3 their once-through cooling systems, the reduction
4 of greenhouse gas emissions by installing new
5 generators that are 30 percent more fuel
6 efficient, and the lesser use of water are
7 significant environmental reasons to support this
8 project.

9 The new plant would also sit in a
10 brownfield. And as you all know, it is more
11 preferable to use brownfields in land use than it
12 is to create new brownfields.

13 The city, should the decision come down
14 to build a new smaller plant, would have the
15 ability at a later date to decide the land use
16 under the old plant.

17 We all know new energy sources must come
18 online in 2010 to 2012 to meet the growing demand
19 for energy. It is an enviable state to be in when
20 a city can own its own water and power sources
21 within its own boundaries.

22 I support NRG's application, and I
23 suppose the FSA ruling and discussion on the air
24 pollution board. Thank you.

25 HEARING OFFICER KRAMER: Thank you.

1 (Applause.)

2 HEARING OFFICER KRAMER: Gary Morris,
3 are you here? Guess not. Randall Benson. Okay.
4 And followed by Don Estes, are you here? Shirley
5 Merkow or Merkew? Okay, Mr. Benson, go ahead.

6 MR. BENSON: Got all your announcements
7 done?

8 HEARING OFFICER KRAMER: I ran out of
9 names for the moment.

10 MR. BENSON: Okay.

11 HEARING OFFICER KRAMER: But not for the
12 night.

13 MR. BENSON: Well, thank you for hosting
14 this and having an open discussion here. My
15 name's Randall Benson, B-e-n-s-o-n. I've been a
16 resident in San Diego County since the Navy
17 brought me here in 1975.

18 I nowadays work for NRG's competitor up
19 the road. And so in some respects -- yes,
20 whatever.

21 But the reality is that San Diego County
22 has three main generation units. We've got
23 something like 88 total units. I pulled this off
24 the system operator website. And most of them are
25 small little things. There's South Bay, there's

1 Encina, there's San Onofre. That makes up
2 approximately 83 percent of the generation in this
3 county.

4 Everybody's talking about let's go get
5 some more power lines, bring in the power from
6 somewhere else. Lo and behold, you guys, we've
7 almost all lived through grid instabilities that
8 occur. I was in the control room many times when
9 that's happened. Power goes down. Guess who gets
10 cut off. San Diego County. San Diego County gets
11 left as their own little island.

12 So the importance of maintaining grid
13 stability, especially where my wife and my kids
14 live, is important. So I support this power
15 plant. And I appreciate what San Diego Gas and
16 Electric and then NRG have done to make that a
17 better and better power plant all the way along.

18 Initially, everybody might remember that
19 there used to be oil tankers pulling up once a
20 month pumping oil into the tank. And the ship
21 goes off. And you go, where did that come from,
22 and where did it go.

23 I finally figured that one out. Now it
24 runs on natural gas. So, same gas that we burn in
25 our kitchens to heat, it burns in there.

1 Now we're going to even a more efficient
2 plant, to my understanding, a bi-cycle plant
3 typically is somewhere in the area of 55 percent
4 efficient versus a traditional steam generation
5 power plant which is about 33 percent. So we're
6 improving every step of the way as we replace this
7 infrastructure that our parents built for us. And
8 it's our responsibility to build infrastructure to
9 replace what gets worn out.

10 I mean if we're pulling out
11 infrastructure because it's ugly, are we taking
12 out the freeways? We know the power lines aren't
13 going because I still want lights on my house.
14 And even when I run around and get a solar unit on
15 top of my house, it's not working tonight. It's
16 only working during the day. I need San Diego Gas
17 and Electric and NRG to provide the power.

18 Thank you very much, and look forward to
19 your Commission. If you need these reports you're
20 more than welcome to them.

21 HEARING OFFICER KRAMER: Thank you.
22 Next will be Jonnie Johnson, followed by Eileen
23 Miller.

24 PRESIDING MEMBER BOYD: Keep going.

25 HEARING OFFICER KRAMER: Bill Doscher,

1 followed by Christina Rosenthal.

2 MR. DOSCHER: My name is Bill Doscher,
3 D-o-s-c-h-e-r. I represent 42 homeowners who live
4 on the Agua Hedionda Lagoon. The name of the
5 community is called Bayshore at Agua Hedionda.
6 We're just on the easterly edge of the lagoon,
7 adjacent to the power plant.

8 My questions, and I've written some one-
9 word ideas in sitting here tonight, and I'm happy
10 to say that no one's seemed to have addressed
11 these issues.

12 The first one at the top of the page is
13 economics. We live in a very dire economic time.
14 And then next to it I said objective criteria.
15 Are we, in fact, building a new plant with the
16 economics that it is projected to cost. I heard a
17 figure two years ago of \$300 million; now it's up
18 to \$500 million. Correct me if I'm wrong.

19 And that the capacity of this plant will
20 be at optimum 8 to 15 percent. That was another
21 number that left me kind of wondering, is this
22 cost effective.

23 In the State of California, as with
24 across the nation, energy consumption is
25 diminishing somewhat. A lot of people are of the

1 opinion that it's rising. Well, and in fact,
2 besides wind and solar, people are using more
3 efficient consumption of energy. Just in
4 fluorescent bulbs alone, it's been said that we
5 reduce, everybody gets the fluorescent bulbs, the
6 energy consumption in California can reduce
7 markedly.

8 The green energy that's increasing and
9 fossil fuel costs are rising. And the present
10 plant remains for an indefinite amount of time
11 even if this new plant is built. That's even more
12 puzzling. It's a puzzling paradox.

13 And I think it's financially
14 incredulous. And it does not compute as a viable
15 solution. Needless to say, you have my
16 understanding, that I don't think it serves the
17 best interests of California, Carlsbad or anyone
18 interested in the most beautiful coastline in the
19 United States.

20 Thank you.

21 (Applause.)

22 HEARING OFFICER KRAMER: Thank you.

23 MS. SPEAKER: May I approach -- hand in
24 these pictures. Remind me to give it to you guys.
25 You can have these.

1 HEARING OFFICER KRAMER: Oh, okay.

2 Which gentleman was that?

3 MS. SPEAKER: -- he just stepped out
4 (inaudible).

5 HEARING OFFICER KRAMER: Okay.

6 MS. ROSENTHAL: Hello, I'm Christina
7 Rosenthal and I am a resident of Carlsbad. I live
8 probably within one mile.

9 I sat in on the hearings that were last
10 year at the other hotel, and I was thankfully
11 invited. And I was free and I attended. And I
12 listened to all of the experts.

13 And there was some really interesting
14 people. And one fellow was the expert about the
15 air quality. And I spoke with him, and he said,
16 without a doubt, a lot more pollution is going to
17 go into the air. Even though the plant will be
18 more efficient for what it produces, it's still
19 going to pollute a lot more.

20 And that's my primary reason for
21 opposing the plant. I can live with the buildings
22 and, you know, all of that. It's the pollution
23 that's the problem.

24 If the plants could be built where there
25 was no more pollution than there is right now, I

1 could probably go for it. But as it is, I have to
2 oppose it.

3 So, thank you. And --

4 HEARING OFFICER KRAMER: Thank you.

5 MS. ROSENTHAL: -- I hope the
6 Commissioners who have the final say on this, and
7 they have a lot of power, consider this. Because
8 this is just a neighborhood filled with children.
9 There are so many schools. It's mostly families
10 with children in this community. And think about
11 them when you make your decision. Thank you.

12 HEARING OFFICER KRAMER: Thank you. Jim
13 Smith, followed by Terry Simokat. I'm sorry?

14 AUDIENCE SPEAKER: (inaudible).

15 HEARING OFFICER KRAMER: No, no, this is
16 clearly different than your spelling.
17 S-i-m-o-k-a-t.

18 AUDIENCE SPEAKER: Okay.

19 MR. SMITH: Good evening, and welcome to
20 our beautiful community. I've been a resident of
21 Carlsbad since 1978. We came here from New
22 England where most cities were planned and built
23 out about 100 years ago. As a matter of fact, to
24 build a new home today, you'd have to tear down
25 the old one.

1 Carlsbad really impressed us with its 28
2 square miles of space and open space. I was
3 fortunate to serve as a planning commissioner for
4 a few years which gave me an opportunity to really
5 know much more about our city and how it was
6 developing.

7 We have also been blessed with good
8 leadership from council and mayor who cared about
9 how our city should be built out.

10 About 25 years ago they worked with a
11 panel of responsible citizens to put together a
12 master plan which still exists today. And we now
13 have almost 120,000 residents living in one of
14 America's finest communities. And we want to keep
15 it that way. And that's why we're all here this
16 evening.

17 I do not feel that a new power plant on
18 a location close to the ocean on highway is
19 appropriate for continued economic growth of our
20 city. There are other locations in our industrial
21 area, or maybe another city.

22 We certainly have no assurance that
23 Carlsbad will receive electric power from this new
24 plant. We also have no assurance that the old
25 plant will be torn down in the foreseeable future

1 to make room for appropriate beach resort
2 property.

3 There are many other reasons which
4 should be addressed, including safety, air
5 pollution and visual blight. For these many
6 reasons we do implore the California Energy
7 Commission to deny approval of the new power plant
8 proposed by NRG West.

9 And I appreciate your patience and thank
10 you for coming.

11 HEARING OFFICER KRAMER: Thank you.
12 Terry Simokat, are you here? Frank Ritter. Dr.
13 Pamela Yochem. Sandy Rogerson.

14 DR. YOICHEM: Good evening. My name is
15 Dr. Pamela Yochem, Y-o-c-h-e-m. And I'm the
16 Executive Vice President at the Hubbs Sea World
17 Research Institute.

18 On property owned by NRG our institute
19 constructed and now operates the nation's largest
20 marine fisheries replenishment hatchery. This
21 hatchery, operated in partnership with the
22 California Department of Fish and Game is capable
23 of spawning, hatching, rearing and releasing
24 millions of juvenile fish to replenish wildstocks
25 depleted because of habitat loss and intensive

1 fishing pressure.

2 We depend upon the Agua Hedionda Lagoon
3 as a source of clean seawater for our fish. Since
4 it's acquisition of Agua Hedionda Lagoon and its
5 surrounding properties, including our hatchery
6 site, we've found NRG to be an outstanding steward
7 of the lagoon's valuable natural resources.

8 When the invasive marine weed Caulerpa
9 was introduced into the lagoon, NRG immediately
10 stepped up and took the action required to insure
11 eradication of this dangerous plant. This plant
12 has caused serious damage around the world by
13 overgrowing native species.

14 As a nonprofit conservation research
15 organization we maintain the highest respect for
16 marine and coastal environments and the habitats
17 they provide to marine organisms.

18 Our scientists evaluate the conservation
19 challenges facing marine fish, birds, mammals and
20 reptiles, including those resulting from the
21 impacts of human activities. We seek science-
22 based solutions that promote sustainable use of
23 natural resources for future generations of both
24 humans and animals.

25 In our experience, NRG shares this

1 philosophy as evidenced by a strong support of the
2 efforts of the Agua Hedionda Lagoon Foundation to
3 promote the wise use of the lagoon.

4 We find NRG to be a sincere and
5 responsible corporate member of the north county
6 coastal community, and like the previous owner of
7 the Encina Power Station, SDG&E, a good landlord
8 and neighbor.

9 NRG has worked hard to insure that the
10 land and water areas under its direct influence
11 have remained a valuable resource for recreation
12 and commercial uses, as well as for conservation
13 of our coastal environment.

14 Thank you.

15 HEARING OFFICER KRAMER: Thank you. Can
16 I ask the Public Adviser to come in and report if
17 we still have people outside in the foyer.

18 PRESIDING MEMBER BOYD: Sure shouldn't
19 be with all these seats.

20 HEARING OFFICER KRAMER: Okay. Thank
21 you. We may be at the point where it would be
22 more efficient for me to ask those of you in the
23 audience who want to speak to just -- to come up,
24 rather than calling the names. So, sir, do you
25 want to be the first, after Ms. Rogerson.

1 MS. ROGERSON: Rogerson. Yeah, Sandy
2 Rogerson, R-o-g-e-r-s-o-n. I've lived in Carlsbad
3 approximately ten years, and I strongly disapprove
4 this second power plant. There's no guarantee
5 they're going to tear down the other one, in my
6 lifetime, anyway.

7 And I just agree wholeheartedly with the
8 City of Carmel and Councilman Hall. Thank you.

9 HEARING OFFICER KRAMER: Thank you.
10 Gentleman there, and please spell your name for me
11 so I can pull your card out.

12 MR. CHRISTIANSEN: My name is Don
13 Christiansen, C-h-r-i-s-t-i-a-n-s-e-n.

14 HEARING OFFICER KRAMER: You were next
15 anyway.

16 MR. CHRISTIANSEN: Good timing.

17 (Laughter.)

18 MR. CHRISTIANSEN: Well, as I'm sure
19 Commissioners and staff know what's happening in
20 our backyard is actually a piece of a much larger
21 puzzle. And one of the significant players in
22 that puzzle is our local investor-owned utility
23 monopoly, San Diego Gas and Electric.

24 Now, this got my attention about a year
25 ago and I asked a question, what will it take to

1 decommission the existing power plant. And one of
2 the things I was told was, well, the completion of
3 the Sunrise Power Link.

4 Now the way my logic works I had a
5 really really tough time getting that linkage
6 down, and I still do. I don't think that's right.
7 I've asked a number of people and I've received
8 varying questions.

9 Why would a \$3 billion extension cord be
10 a condition for removal of the existing power
11 plant? I would like -- I'd appreciate any
12 response to that question.

13 A previous speaker talked about
14 implementing AB-811 through the property-assessed,
15 clean-energy bond program. I'm sure a lot of
16 people are not aware of this, so I'd like to take
17 a bit of my time to explain that any property
18 owner that actually pays property taxes, once this
19 is implemented, will be able to amortize the cost
20 of renewable energy projects over 20 years, and
21 place that on their property tax bills, without
22 increasing the assessed value of their property.
23 And since it's on their property tax, it will also
24 be tax deductible.

25 In my opinion this is a big deal and

1 this is going to drive the renewable energy market
2 in the counties and the cities that have approved
3 implementing this AB-811 legislation through the
4 Pace program.

5 San Diego County got behind it in
6 December. Up and down the coast every community I
7 know of, except Solano Beach, has gotten behind
8 it. Those communities that haven't, I would
9 suggest they educate themselves and encourage
10 their local council members to get behind it.

11 Short story, if that existing power
12 plant comes down I think we people in Carlsbad and
13 San Diego County, which by the side is about the
14 same size of the State of Connecticut, 4000 square
15 miles, I think we would have plenty of room to
16 develop our own renewable energy resources without
17 spending \$3 billion for an extension cord to bring
18 in renewable energy from Imperial County.

19 Thank you for your time.

20 HEARING OFFICER KRAMER: Thank you.

21 MR. SIMPSON: Can I do my comments from
22 here, or would you like me to get a mic?

23 HEARING OFFICER KRAMER: Well, because
24 you're a party, Mr. Simpson, I have your card near
25 the end with the -- you're not the only party

1 that's asked to make public comments, and we
2 wanted to accommodate the members of the public
3 first.

4 MR. SIMPSON: -- have to get in line
5 (inaudible).

6 MR. SPEAKER: I can't hear him --

7 HEARING OFFICER KRAMER: Okay. Just for
8 the record, Mr. Simpson, I guess, wants to
9 accelerate his place in line.

10 MR. SIMPSON: Well, I put my card in
11 earlier. My card was put at the bottom of the
12 stack.

13 HEARING OFFICER KRAMER: Okay, well, if
14 you want, you can get in line. I was, as a
15 courtesy to the public who's not going to be here
16 throughout the process, I prioritized your card
17 along with the other parties at the bottom of the
18 stack so that we could accommodate the members of
19 the public. I hope they appreciate that.

20 Go ahead and sit up there if you find
21 that unacceptable to you.

22 Sir, go ahead. Please give me your name
23 and the spelling.

24 MR. THORNTON: My name is Archie
25 Thornton, T-h-o-r-n-t-o-n, a Carlsbad resident.

1 I'm a former, long-time Managing Director of one
2 of the world's largest global advertising
3 agencies. I've worked and handled directly the
4 largest global food manufacturer and one of the
5 world's largest oil companies and refiners. And
6 American Express, among others. So you'd probably
7 say I'm a friend of business. It's been my
8 career.

9 And I was astounded as I sat here and
10 listened to the people that came up in favor of
11 this facility. It was astounding. They either
12 didn't live in Carlsbad, one; or, two, were
13 directly beneficiaries of NRG. They were either a
14 consultant, a potential boilermaker, a safety
15 engineer. My goodness, you know, economic
16 council, and the Chamber of Commerce of Carlsbad.

17 As the President of the Chamber of
18 Commerce went by me I asked him a question. Very
19 simple. How much did NRG contribute to the
20 chamber this year. And you know what he told me?
21 More than me. My god, is that scary?

22 Now, all those people in favor of this
23 plant talked passionately about the economic
24 impact to Carlsbad. Well, let me tell you
25 something. The world's largest industry is travel

1 and tourism. And in the last 15 years this
2 beautiful little village has transformed itself
3 into a tourism mecca.

4 We have a world class public golf
5 course; we are the world center of the golf
6 industry. We have a wonderful attraction. We
7 have attractive hotels. Some lady disparaged the
8 Aviara. My goodness, what a treasure that is.

9 LaCosta, we are building hotels. We are
10 attracting new restaurants. The Agua Mall is a
11 major regional retail center.

12 We should do everything we can to
13 beautify and encourage tourism to this location.
14 And one of them is not putting Torrance in the
15 middle of Carlsbad.

16 (Applause.)

17 HEARING OFFICER KRAMER: Thank you. The
18 lady in the red jacket.

19 MS. ESCOBEDO: Thank you. My name is
20 Ofelia Escobedo. And I live at 1611 James Drive
21 in the City of Carlsbad. My family has been in
22 Carlsbad since 1943, my parents having established
23 a business in downtown, or our village area. My
24 sisters and I now own and operate the business
25 named Lola's.

1 I'm surprised at all these comments that
2 we are hearing here tonight. And it's been a
3 long, long night, and I know that all of us are
4 tired. I'm tired. I wish I was home.

5 Anyway, our family has experienced the
6 growth of Carlsbad from 2500 people to over
7 100,000. And the power plant, as we knew it, was
8 a source of revenue for the city, as well as
9 having created many jobs during construction. Of
10 course, this was many years ago.

11 I understand progress and I understand
12 land values, but I also understand the need for
13 power, energy, water. The plant is in a desirable
14 location, but how are we going to sustain our
15 quality of life if power and water are not
16 available?

17 The plant could be moved to a different
18 location, but it will always be "not in my
19 backyard". And why should it be moved? The
20 owners have done everything that is required of
21 them. And with all due respect to our city mayor
22 and our council people who have really done a
23 tremendous job with the growth of our city, I need
24 and I feel I have to oppose them on this.

25 A new updated facility with the up-to-

1 date technology will be more appealing to me than
2 the construction of more condos, more hotels, more
3 shopping centers.

4 The decision for this is now up to all
5 of you. Do we want more power, more water, more
6 energy? Or do we want more people?

7 Thank you for hearing me, and I support
8 this project -- my family and I support this
9 project wholeheartedly. Thank you.

10 HEARING OFFICER KRAMER: Thank you. The
11 gentleman on my left.

12 MR. OZOLINS: My name is Ivars Ozolins.
13 I-v-a-r-s O-z-o-l-i-n-s. Imagine that you have
14 the opportunity to build a new energy generation
15 plant. Imagine that you had a blank slate to
16 build with.

17 You'd do your due diligence; you'd scour
18 our entire state and you'd measure all of the
19 potential sites against some evaluation criteria.
20 Everything from impact on the economy, tourism;
21 impact on the environment; impact on the
22 population in terms of health, in terms of the
23 aesthetics of the location. Protection against
24 security threats. Access by public safety
25 officers to those threats. The emissions, the

1 cost of this.

2 Now, all of that would be considered in
3 the analysis. Now, even accepting the fact that
4 the technology, itself, a fossil-fueled generating
5 plant in a land that receives already 320 days
6 plus of sunshine every year. So if we even took
7 out solar as a competitor, you'd have to
8 understand that given all of that analysis it is
9 extraordinarily difficult to imagine that the
10 single logical place in not just San Diego County,
11 but in the entire state, would have to be next to
12 a major freeway, at the edge of a lagoon, on the
13 edge of the Pacific Ocean, next to one of the most
14 beautiful cities, one of the largest cities in the
15 State of California.

16 Rational logic would indicate that this
17 is not a sensible choice. And for that reason I
18 oppose this plant. While I'm a homeowner, I live
19 over 7.2 miles from this location. I personally
20 won't be impacted by the aesthetics, by the
21 emissions, by anything. So it's not for me. It's
22 for the greater good of Carlsbad and for San Diego
23 County.

24 And so for that reason I urge you
25 respectfully to say no to going further on this

1 plant. Thank you for your time. It's been a long
2 day. I appreciate your time and presence. Thank
3 you.

4 (Applause.)

5 HEARING OFFICER KRAMER: Thank you.

6 Sir, and anyone else in the audience who wants to
7 make a comment, if you could start to make your
8 way to the front row, that's where people will be
9 lining up to follow this gentleman.

10 MR. MILLER: Yeah, hello, everyone. My
11 name is Perry Miller, P-e-r-r-y, Miller like the
12 beer. Thank you for your time.

13 I, for one, would like to say that I
14 look at that power plant currently as it's a
15 monument to American success. I see it as nothing
16 less. That's our technology that took us many
17 years to get to that point. And so I really have
18 no problem with it.

19 We've discussed the aesthetics of the
20 plant, how it can be hidden from view. We've
21 discussed environmental concerns, pollution
22 control, property values, et cetera.

23 Some of these issues are important,
24 while, in my opinion, some of them are not quite
25 so much as important as the others.

1 But the proposal that we're talking
2 about today eventually does deal with the teardown
3 of the existing facility. And what I have not
4 heard addressed with any great concern is the fact
5 that that facility currently produces about 1000
6 megawatts of power.

7 Now the facility that we're talking
8 about replacing it with is just under 600. Now if
9 my simple mathematics are correct, that's a 400
10 megawatt reduction that I'm going to have to end
11 up paying for, along with everybody else behind
12 me, as a taxpayer, as a resident of this county.

13 Now, I, for one, don't see any logic in
14 diminishing our local electrical production.
15 That, to me, it goes against any advancements that
16 we can do. We're currently in an economic
17 downturn, and eventually we will come out of this.
18 But part of that involves production.

19 And part of that productivity includes
20 services and so on and so forth, but we need the
21 power. We've needed this power for over ten
22 years. And now for us to look at a reduction in
23 power as to be a wise and logical thing, I don't
24 see the sense in that.

25 I also think in building for the future

1 it basically means that we need to gain the
2 megawatts. We don't need to decrease.

3 Now for us to expect a facility out in
4 the middle of the desert, and run an extension
5 cord, as other people have referred to it, to
6 bring that power out here, well, we've been a
7 witness to this many times before. When the lines
8 drop, we're done.

9 And I, for one, think the infrastructure
10 should remain inside the county, should remain in
11 populated areas. We used to have many power
12 plants in this county that have been, over the
13 years, dismantled. There were local neighborhood
14 facilities; run on natural gas; run on variations.

15 But through time somebody has decided
16 that, gee, we don't need the power. Well, my
17 children run their computers about 24 hours a day.
18 A lot of things have glowing lights in my house.
19 We need that power. We need it today. We need it
20 tomorrow.

21 And my biggest concern is with the
22 implementation of this new facility you're going
23 to reduce us by at least 400 megawatts. Plus,
24 we're putting in the water desal place right next
25 door. How many megawatts is that going to eat up?

1 So we can end up at the end of the day
2 with a less desirable environment than what we
3 currently have. And I, for one, am against that.
4 I think that is so detrimental to this county.
5 We're at the end of the United Airlines. We have
6 the water going, we have Mexico going, we have a
7 Marine Corps Base in the desert. We have nothing.
8 We can easily be forgotten, and I, for one, am not
9 going to stand here and be forgotten. I want my
10 electricity.

11 And I would like this Board here, this
12 panel here to consider what I'm suggesting. At
13 the end of the day we're going to be out of
14 electricity because of the way this plant is going
15 to finalize. I don't want that.

16 I want my children's children to have
17 plenty of electricity. We need to be building for
18 50 years down the road. We don't need to be
19 looking at tomorrow, next month, next year. We
20 need to be looking at 50 years down the road.

21 That plant has served us well for 50
22 years and I believe we need a new facility,
23 perhaps, that goes to 1500 megawatts that could
24 serve us for the next 50 years. And that's what
25 my proposal is. I think we're short-sighted on

1 this. And thank you for your time.

2 HEARING OFFICER KRAMER: Thank you.

3 Next, Mr. Simpson.

4 MR. SIMPSON: Thank you. My name's Rob
5 Simpson. I'm an intervenor in this proceeding. I
6 got up about 4:00 this morning, traveled half way
7 across the state to participate in this proceeding
8 today.

9 PRESIDING MEMBER BOYD: You're not
10 alone.

11 (Laughter.)

12 MR. SIMPSON: You got paid, though,
13 right?

14 PRESIDING MEMBER BOYD: Not past 5:00.

15 MR. SIMPSON: I'm not really here to
16 speak to the Commissioners. You hear enough of me
17 in the daytime, I'm sure. I'm here to speak to
18 who's left in the room.

19 Ordinarily these plants are sited in
20 poor, minority communities that don't understand
21 the health risks involved with these facilities.

22 It sounds like from some of the
23 proponents that some of the community here also
24 doesn't understand the health risks.

25 Where these plants are sited there are

1 higher cancer rates, there are higher asthma rates
2 in children, there are higher respiratory failure
3 rates in seniors.

4 And there's a fallacy here that we need
5 this facility. We need electricity. We don't
6 need another 1970s-style, fossil-fuel burning
7 plant. We need renewable energy that keeps the
8 value of this energy production in the community.
9 Doesn't send it up some pipeline or up some wire
10 to some other country or some other place.

11 This facility will increase emissions.
12 The stacks now, they're high stacks. There's a
13 reason they put high smoke stacks on these things.
14 Because the farther up in the air it goes the less
15 it hurts the community.

16 They put the shorter smoke stacks in
17 with this new facility that's higher emissions
18 than the old facility, and the impact will be
19 greater in your community.

20 The cancer-causing emissions that this
21 plant will put out are formaldehyde, acrolein --
22 lost my place here -- if I could have spoke from
23 my seat there -- ammonia, benzene, ethyl benzene,
24 hexane, naphthalene, propylene, propylene oxide,
25 xylene and 800,000 tons of greenhouse gas a year.

1 Now what the greenhouse gases do is they
2 create a dome in the community that keeps the
3 other pollutants in. So, the pollutants, with an
4 additional 800,000 tons of greenhouse gases
5 holding these pollutants into your community,
6 you're going to have a higher -- you're going to
7 have the higher health impacts.

8 The reasons for moving from these
9 antiquated facilities is the global warming
10 effects of this emission. They talk about the
11 jobs. This is about money. They can make more
12 money by burning fossil fuels than by producing
13 renewable energy, because renewable energy is so
14 much more labor-intensive to produce. Which means
15 more jobs. Renewable energy typically creates ten
16 times the number of jobs than a fossil-fuel-fired
17 plant would create.

18 We have the opportunity to make that
19 step from this current archaic facility to a value
20 for this community that creates jobs, reduces
21 public health effects of the existing plant,
22 reduces global warming.

23 And when -- the state needs so much
24 electricity. When we overbuild with these fossil-
25 fuel-fired plants there's no need to build

1 renewable energy anymore. So these plants prevent
2 renewable energy from being produced.

3 I see my time is up.

4 HEARING OFFICER KRAMER: Thank you.

5 (Applause.)

6 MR. SIMPSON: Thank you.

7 HEARING OFFICER KRAMER: Okay, sir, in
8 the front row. And do we have anybody else who
9 wishes to comment this evening? If you could
10 start to come to the front.

11 MR. HARMON: Hi. I, too, was here this
12 morning and this afternoon. Carl Harmon, you have
13 a card for me there somewhere.

14 HEARING OFFICER KRAMER: Could you
15 please spell your name, though?

16 MR. HARMON: Carl, C-a-r-l H-a-r-m-o-n.
17 I was number 10 at one time, but somehow the deck
18 got shuffled. But that doesn't matter.

19 HEARING OFFICER KRAMER: It probably got
20 dropped on the floor a couple times.

21 MR. HARMON: That's okay. A lot of
22 things get dropped on the floor. As long as you
23 don't land on your head, it'll be okay.

24 First of all, I wanted to express my
25 appreciation for your being here. And I

1 appreciate your position. It is most difficult.

2 I realize that Carlsbad has, to some
3 extent, because of our desalination plant, our
4 proposed desalination plant, will need some energy
5 production at that point, so that the heat from
6 that can be used in a cogeneration way to produce
7 our water.

8 But I would suggest, if we could, to
9 modify this thing so that we build a plant no
10 larger than we have, only to modern standards.
11 Put out no more pollution than we already have.

12 I must ask, does it make sense at this
13 time when we don't know what is coming down the
14 pike as far as how we're going to have to deal
15 with carbon dioxide, cap-and-trade, you know, it's
16 coming. Or something like that is coming. Does
17 it make sense to build a large, fossil-fuel plant
18 here?

19 Also the federal government has taken a
20 sharp turn. There's now 18 billion, that's with a
21 "b", on the table for loans for atomic plants.
22 Now, we don't want to go through all of this and
23 find out that we are obsolete, you know. That we
24 can't sell the electricity.

25 The other thing I would urge you to do

1 is to remove from this site whatever Caltrans --
2 the highway department, needs in order to build
3 their expansion. It would be very very very bad
4 if one agency of the state put another agency of
5 the state in a position where they had to spend
6 many extra millions of dollars to redesign a site
7 and maybe put up walls instead of berm. Because
8 the site is extremely tight.

9 In summary I'd just urge you to maybe go
10 to one small plant, to cogeneration, to make it
11 low. A few years ago I was in the City of
12 Vancouver. They had a sewage treatment plant on
13 the waterfront that you could not even see,
14 because it was designed low. Eighty-five feet may
15 not be necessary for this building.

16 Now, there's one other thing that
17 disturbs me greatly, and that is apparently there
18 is no provision for architectural review in your
19 Commission. You just either approve or
20 disapprove? And this leaves the community without
21 any protection as to what this thing will look
22 like. At what point is it too tall? At what
23 point is it too large? Is it when it's 200 feet
24 tall and 1000 yards wide? Is that when it's too
25 big?

1 So, anyway, thank you so much, and good
2 luck.

3 HEARING OFFICER KRAMER: Thank you.
4 Next, ma'am.

5 MS. MCKINNEY: Hi, I'm Paula McKinney,
6 M-c-K-i-n-n-e-y. And I've lived in Carlsbad for
7 17 years. I'm from northern California. I was a
8 northern California snob and we were the people
9 who always hoped an earthquake came and the
10 southern half of the state would fall into the
11 ocean.

12 But now I live here, and I was so
13 amazed --

14 (Laughter.)

15 MS. MCKINNEY: -- so amazed to find this
16 gem of a city called Carlsbad. I mean to me it
17 was just like L.A. is this big, sprawling
18 nightmare that was all over the state. And I was
19 just so impressed with this community.

20 And this community is not a community
21 where like if you live in Sacramento, you may live
22 in an outskirts of Sacramento, and then just go to
23 work in the city. And then you go back home.

24 People in Carlsbad live, work, play,
25 raise their families, everything takes place here.

1 This isn't a commuter-type place. So, we're not
2 being asked to just put up with it while we're at
3 work. Or, you know, that type of a attitude.

4 And I don't want to see it become Long
5 Beach or Torrance, as someone had mentioned. Some
6 of these other cities that have, you know, the oil
7 derricks and this and that and the other thing.

8 We're at a point where we can make, you
9 know, a choice of what direction we want our city
10 to go in. And, you know, right now we were
11 talking about all of the cons, you know, very
12 serious concerns, you know, as far as health, as
13 far as safety, as far as traffic and so on and so
14 forth.

15 And I haven't heard too many pros. I've
16 heard, you know, the biologists come up and talk
17 about the great stewardship of the current plant,
18 and that's true. But that has nothing to do with
19 this plant.

20 And when we're comparing, you know,
21 whether the marine ecology is doing well compared
22 to how the humans in the area are doing well, you
23 know, what's the tradeoff? It's, you know, we're
24 interested in the health and the safety and the
25 well being of the people in this community.

1 And we want to keep our community, I
2 don't know, I would say as a beacon for other
3 cities to follow. We don't want to become a
4 Houston; we don't want to become a Los Angeles.

5 And this is really just about the money.
6 And this particular piece of property -- if this
7 company can get their investment back, there are
8 other places to have it. Down the road somewhere
9 in the state they want to put it, fine.

10 And, of course, the other argument is
11 well, where are they going to put it, if they
12 can't put it here. But, you know, where there's a
13 will there's a way. And if you really want to
14 find an alternative place for this plant, they'll
15 find it. Nobody's trying right now because they
16 don't want to find one. If they find an
17 alternative then their argument becomes that much
18 weaker.

19 So, I would just like to see us stay
20 with the plan that we have now. I mean our
21 chambers and our city council's done a great job
22 in master planning our community. But I don't
23 think this was very well thought out, and I think
24 dollars got in the way of everything else.

25 That's it, thank you very much.

1 HEARING OFFICER KRAMER: Thank you. So,
2 how does one go about canceling a curse?

3 (Laughter.)

4 HEARING OFFICER KRAMER: Sir.

5 MR. MARKS: Good evening; my name is
6 Robin Marks, M-a-r-k-s. I'm an 18-year resident
7 of Carlsbad. And I'm also originally from
8 northern California, by the way. I want to thank
9 you for listening and hosting this public forum.

10 I also have been in private sector
11 business for most of my career. I'm a director of
12 global business for a local company in the medical
13 device area.

14 I happen to go to Germany a lot, and one
15 of the comments that struck me earlier was about
16 the adoption of solar in Germany, as an example,
17 as opposed to our region, which is striking to me.
18 Every time I go there and other places where there
19 have been, there's been investment made in
20 conservation and alternative technologies.

21 I just want to make a couple of points,
22 I think, just to underscore the opinion by local
23 residents that the existing power plant, when it
24 was built in the '50s, was an appropriate decision
25 for that point in time. But in the 21st century

1 we respectfully disagree with the decision or the
2 idea of putting a power plant in this particular
3 location.

4 My family and I -- my wife and I
5 recently partook in a volunteer program here in
6 Carlsbad. There are a lot of residents from
7 different areas of Carlsbad in our neighborhood,
8 which is in the village.

9 One of the ideas, one of the (inaudible)
10 of that program was to envision what we, as
11 residents of Carlsbad, wanted for this community.
12 Not next year, you know, 10, 15 years down the
13 line.

14 In a pretty unanimous consensus, it was
15 actually published in the newsletter as a followup
16 to that, was that the group was -- you know, there
17 were a lot of different ideas, but the idea of
18 making Carlsbad become a model for sustainable and
19 healthy living. Promoting more walking areas in
20 addition to attracting sustainable businesses,
21 that sort of thing, including some alternative
22 technologies, was a theme.

23 So, the point here I'd like to make is
24 that we -- the current plant, build a second power
25 plant along the coastline, in my opinion, I think

1 in a lot of Carlsbad residents' opinion, is not
2 fitting with our vision of the decades to come.

3 We also, you know, we're one of the
4 families in Carlsbad that's taken the step to do
5 everything we can to conserve. And we've also
6 installed solar water heating and solar electric.
7 So, yeah, we're definitely believers in that.

8 But I guess the main point is, having
9 spent most of my career in the private sector, but
10 also looking at what some government investments
11 can do in the direction of conservation and
12 innovative next-generation technologies, I believe
13 that that's a wiser direction for us to look than
14 putting in this existing technology.

15 Again, I thank you for your time and the
16 input, I hope, was helpful.

17 HEARING OFFICER KRAMER: If you search
18 the Energy Commission's website I think you'll see
19 a lot of those kinds of programs that you're
20 talking about.

21 Name, on the end?

22 MS. SIEKMANN: Siekmann.

23 HEARING OFFICER KRAMER: Okay. Oh, the
24 lady, she was raising her hand as I requested.

25 (Parties speaking simultaneously.)

1 HEARING OFFICER KRAMER: Right. I
2 forgot that you were following my instructions.

3 PRESIDING MEMBER BOYD: She's been doing
4 it right all night, now you give her a hard time.

5 (Laughter.)

6 MS. BUSBY: My name is Francine Busby,
7 F-r-a-n-c-i-n-e B-u-s-b-y. I don't live in
8 Carlsbad. I live in Cardiff, a few miles down the
9 street. I've served on a school board; I'm
10 serving on a school board again.

11 And as far as I'm concerned one dead
12 child is one too many. Any kind of excuse that
13 one makes to consider putting something in there
14 knowing that there's a possibility that children,
15 not to mention adults and seniors, are going to be
16 impacted, not just being ill, but dying, I suggest
17 that you gentlemen have a very serious decision to
18 make.

19 I'm also a citizen of the State of
20 California. And while many things in Sacramento
21 are broken, one of the things we have done is be a
22 leader, a leader in emissions controls, a leader
23 in smog reduction, from when I grew up here. And
24 we're moving in that direction. We've set some
25 very high standards.

1 You're on the Energy Commission, and my
2 guess is it's your job to figure out the best way
3 to provide energy in the state.

4 The leadership in our federal
5 government, thank god, recently, leadership in our
6 state is telling us reducing emissions is the way
7 to go. And also they're providing billions and
8 billions of dollars for renewable clean energy.

9 At UCSD recently they did -- we brought
10 \$163 million, 27 percent of the stimulus dollars
11 for energy has come to this region in San Diego,
12 because San Diego understands that is our future.

13 It is possible, the technology exists.
14 And we don't have to even think about Germany. We
15 don't have to think about it that far away. Many
16 of you know a man here named Peter Norby. He's
17 really a wonderful leader in our community, both
18 in Encinitas and in Carlsbad, where he's the
19 Chairman of DEMA, the downtown business
20 associations.

21 And he's often featured in the paper
22 because he's made his home 100 percent energy
23 sustainable. He not only creates enough energy
24 for his home, but he plugs in his electric car. I
25 saw him two days ago, and he said, anybody anytime

1 can come to my home or talk to me about how I've
2 done this. He lives in Carlsbad, near that
3 lagoon.

4 So if you gentlemen are making decisions
5 about the best future of California, we don't have
6 to go to Germany. We can go to Carlsbad and we
7 can see that if an energy company truly has the
8 best interests of consumers and citizens in mind,
9 they would be encouraging the tax incentives.

10 They'd be encouraging the legislation in
11 California to be able to amortize that investment
12 on their taxes. They'd be encouraging progressive
13 means for citizens to implement this. For cities
14 to put it on their roofs. To make those carport
15 tops, the trees that they're putting in.

16 So I have to say that you are in charge
17 of a very important decision here. I don't think
18 we need a big power plant. I think maybe some
19 peaker plants may be required. But certainly I
20 would suggest that your direction should be the
21 one that we've set in our federal government, our
22 state government, and what these citizens here
23 tonight are asking you to do.

24 Thank you.

25 (Applause.)

1 HEARING OFFICER KRAMER: Thank you. Ms.
2 Siekmann.

3 MS. SIEKMANN: I'm Kerry Siekmann, and
4 you already have the spelling of my name. I'm a
5 private citizen who's dedicated time learning
6 about this project every day in the past 18
7 months. Not because NRG writes my paycheck, not
8 because NRG donates to my organization, not
9 because NRG is on my board of directors, and not
10 because NRG controls my lease. Not because NRG
11 spends money at my business.

12 I'm here because I love Carlsbad. I
13 love my neighbors. I love San Diego and the
14 coastline.

15 I'm opposed to this project for all the
16 reasons that people stated earlier, as well as
17 some others.

18 I have a background in accounting.
19 Controlling costs is a passion of mine. As we all
20 know, the I-5 widening is going to happen. Number
21 one, so if this plant is licensed, when the I-5
22 widening happens, the current berm and trees will
23 have to be removed. A new berm will have to be
24 built.

25 The applicant says that because the

1 plant would be built first, that Caltrans should
2 be responsible for all or most of the tab on the
3 new berm.

4 Number two, if the plant is approved
5 there'll be continued delays and costs associated
6 with moving the coastal rail trail, another
7 possible cost to taxpayers.

8 And number three, there'll be lost
9 economic benefit from tourism, which in turn means
10 lost tax revenue.

11 So everyone who is here please call
12 everyone you know to come tomorrow night and give
13 your comments, because this is the last time
14 you're going to have a chance to say anything
15 about this project.

16 Thank you.

17 (Applause.)

18 MS. BAKER: Hello. I'm Julie Baker,
19 B-a-k-e-r. I'm also an intervenor in this
20 proceeding, and I would like to thank all the
21 Commissioners and staff for coming. I know you
22 traveled early today, and I appreciate that you're
23 here and you're listening to all the people here
24 in Carlsbad that have some very serious concerns
25 about the project.

1 I'd also like to thank all the people in
2 Carlsbad, both pro and con, that came out tonight
3 to give their views.

4 One thing that we talked a lot about
5 tonight was alternatives, putting the plant
6 somewhere else, out in the desert, another part of
7 Carlsbad. And I think what's very interesting
8 that's been overlooked a little bit today is there
9 is no contract for the output of this power with
10 our local power provider, SDG&E. So I think our
11 time talking about alternatives and putting it
12 somewhere else excites people when it doesn't need
13 to be built at all.

14 It's very clear from SDG&E's portfolio,
15 you look on your website, they're not considering
16 this plant at all in their future plans. It
17 doesn't need to be built here, it doesn't need to
18 be built in the industrial part of Carlsbad, it
19 doesn't need to be built out in the desert for
20 this foreseeable future.

21 So, thank you very much. I appreciate
22 your time and we'll look forward to being back
23 here tomorrow.

24 (Applause.)

25 HEARING OFFICER KRAMER: Any others?

1 Sir, come forward.

2 MR. CHAPMAN: My name is Wayne Chapman,
3 C-h-a-p-m-a-n. And I just oppose this on the
4 basis of everything that the people that have
5 spoken against it tonight have said.

6 I can't understand how you can possibly
7 consider this project. I've watched your faces as
8 the people speak. And I wonder if you've ever
9 spent any time in this community. If you've ever
10 walked the streets or the beaches. If you ever
11 had a meal at the Grand Deli. If you've ever just
12 taken a stroll around this town.

13 This is a unique place. We voted in a
14 plan in '84, '86, a master plan. One of the few
15 cities, if not the first city, in the country to
16 do that. And we've stuck with that plan.

17 I live about 2600 feet away from the
18 plant, due east, across the lagoon. I look down
19 on it. And it's a little south of me, actually,
20 but I get this pollution all the time on my
21 veranda overlooking the ocean. I mean it's just a
22 -- it's black stuff all the time.

23 I just can't understand how you can
24 consider putting a larger plant in than the one
25 that already exists. When we moved here we knew,

1 we figured the plant was going to be torn down
2 eventually, with technology, with improvements,
3 with whatever there is that we can do to reduce
4 pollution.

5 And certainly with the death of one
6 child, as Christine said, I mean that is enough.
7 And I can't imagine how you can -- how you, up in
8 Sacramento, can sit and vote on something that's
9 going to affect this wonderful, unique, gorgeous
10 little spot in southern California.

11 I urge you to seriously consider what
12 you're doing and the responsibility that you have
13 for the future of this community.

14 Thank you.

15 (Applause.)

16 HEARING OFFICER KRAMER: Thank you. Any
17 others in the audience? We're, for those of you
18 who came in late, we're not using blue cards at
19 this point because I have more of them than there
20 are of you. It's more efficient to just have you
21 come up. Ma'am.

22 MS. DOBBS: Hi. I was on the blue
23 cards. My name is Lydia Dobbs, D-o-b-b-s. And
24 I'm a new resident to Carlsbad. And I came here
25 because of its beauty and charm. And I was

1 compelled by it.

2 I am a tri-athlete, a surfer, a nature
3 lover, and I'm passionate about beauty, and I'm
4 passionate about living in beauty.

5 And putting another power plant in does
6 not seem like, from what all I've learned, I've
7 been here tonight, there are no compelling reasons
8 to put it in, other than someone's profit. And
9 that seems severely short-sighted, when we have
10 one of the most valuable resources in the country.

11 We have people coming from all over the
12 world to see our coastline. And bringing with
13 them their riches to share with our community.

14 So I would strongly urge you all to
15 please reconsider this plant. Obviously I oppose
16 it. Thank you.

17 HEARING OFFICER KRAMER: Thank you.

18 (Applause.)

19 HEARING OFFICER KRAMER: Okay, next.

20 Anyone else? Okay, again, those of you who want
21 to speak if you could come and sit in the front
22 row there. Then we'll be a little more efficient,
23 which saves your time as much as it saves ours.

24 Go ahead, ma'am.

25 MS. HOLLANDER: My name is Susan

1 Hollander. My tie to Carlsbad is a long one. My
2 parents bought a home two blocks south of the
3 power plant on Carlsbad Boulevard in 1970. So
4 we've had a 40-year relationship with Carlsbad and
5 the power plant.

6 I need to ask a favor, though. I was
7 one of those people who wasn't allowed in because
8 it was so crowded. Could the members of the
9 actual Commission, as opposed to intervenors,
10 please identify themselves to me so I know to whom
11 I'm speaking? Thank you.

12 First of all, I'm going to bite my
13 tongue here and not say how silly I find comments
14 I overheard earlier about Carlsbad residents
15 thinking the power plant is a landmark, that we
16 would miss it if we left. That it's had no
17 environmental impact.

18 I'm not addressing those things. I'm
19 assuming you're intelligent enough to know that
20 that just can't be. It's not. I defy anybody to
21 find a Carlsbad resident that would confirm that.

22 I'm also speaking because I've had
23 neighbors come up here and talk about it being a
24 smoking dragon protecting our neighborhood. And
25 how it's beneficial by keeping other people out.

1 I can't condone that opinion. I've had
2 40 years of experience in Carlsbad. When I was
3 nine years old, myself and my little playmates
4 were sent on petition-gathering exercises on the
5 weekend by my parents. My father was the founder
6 of -- one of the cofounders of the Terramar
7 Neighborhood Association.

8 We were able to gather signatures and
9 stop the LaCosta development. LaCosta wanted to
10 develop the bluffs just south of the power plant,
11 which was owned by the Ecky Family at the time,
12 instead of the state yet.

13 That plan was stopped because it was a
14 blight. It would impact the coast, the
15 environment. At that time in a smaller town there
16 were health interests that came up. It was
17 eventually turned down by the city council.

18 Subsequent to that, over the 40 years
19 that my family's been affiliated and I've been
20 affiliated with Carlsbad, on more than one further
21 occasion, including some very recent ones,
22 projects that would have an impact similar to this
23 power plant have been turned down for myriad
24 reasons. Including environmental impact; change
25 in traffic; impact on health; blight on the

1 landscape. The entire litany of reasons that have
2 been presented here this evening.

3 So one of my fundamental questions to
4 the Energy Commission is, aside from the fact of
5 the issue of where is the Coastal Commission in
6 this, why would this project, which clearly has no
7 valid basis, given all the alternative forms of
8 energy that can be used instead of an antiquated
9 power plant technology, would this be allowed to
10 go through, when other projects that had less
11 negative impact were always turned down.

12 There seems to me to be a little
13 cognizant dissonance here. And I wonder whether a
14 discussion can be started as to what were the
15 precedents for turning down projects before, and
16 how they can be applied here. And what is the
17 process for applying them here.

18 It makes no sense on many levels, but it
19 also doesn't make sense that this would be
20 allowed, where in the past things that had even
21 less impact on a negative basis, were turned down.
22 That's just my question. I realize it's something
23 that hasn't been addressed yet, and so I wanted to
24 raise it, rather than repeating other points
25 brought up, which I support.

1 I am against the power plant expansion.

2 Thank you.

3 HEARING OFFICER KRAMER: Thank you.

4 MS. HOLLANDER: Oh, and as background, I
5 have a Wharton MBA. I worked in Germany for five
6 years for McKenzie. I have a background in Europe
7 on wind turbine energy. And in my profession it's
8 my job to look very critically, not emotionally,
9 at questions and ask what is the key issue here.

10 And to me the key issue is not whether
11 the power plant should be built here, or here, or
12 here, but whether we really should be spending
13 money on a power plant. We have other alternative
14 sources that are better.

15 I just wanted to add that so you know my
16 background. Thank you.

17 HEARING OFFICER KRAMER: You might be
18 interested in the greenhouse gas and alternatives
19 discussion on Wednesday then.

20 MS. HOLLANDER: Is there a way for a
21 public member to attend and listen?

22 HEARING OFFICER KRAMER: Oh, public's
23 invited, certainly.

24 MS. HOLLANDER: Oh, I had only heard
25 from the materials I received, they indicated that

1 they were open to the public hearing this evening
2 and tomorrow evening. They didn't mention
3 Wednesday. Perhaps that might be something that
4 could be disseminated throughout the community for
5 interested people.

6 HEARING OFFICER KRAMER: Well, I think
7 we've had a bit of a problem that some people not
8 affiliated with the Energy Commission, have, on
9 their own, taken it upon themselves to publicize
10 these events.

11 We give out formal notices. We have our
12 Public Adviser's Office do some outreach. But we
13 can't be responsible for --

14 MS. HOLLANDER: Misinformation.

15 HEARING OFFICER KRAMER: -- the
16 implications that are perhaps not accurate. But
17 the public is always welcome at our hearings. We
18 will not be taking public comment, unless we need
19 to, in the evening on Wednesday.

20 And if you don't want to sit through the
21 whole thing, I would just recommend to you that
22 when the transcripts come out in about two weeks
23 after the hearings end, you might want to just --
24 that's available on our website. It won't cost
25 you a penny. And you might want to just read that

1 for your information.

2 You sound like the kind of person who
3 might be especially interested in those details,
4 so I just offer you that.

5 MS. HOLLANDER: I would be. I would be.
6 Actually, if I'm at liberty to make an additional
7 comments, --

8 HEARING OFFICER KRAMER: Well, you
9 have --

10 MS. HOLLANDER: I've been very
11 fascinated to hear all the comments tonight.
12 There's a lot more information going on in these
13 rooms than is going on outside these rooms.

14 So I will take you up on your invitation
15 and try to come on Wednesday.

16 HEARING OFFICER KRAMER: It's
17 complicated. The report the staff produced was on
18 the order of, I confuse my cases, but I think
19 probably 800 pages, is that about right? So, it's
20 not the kind of thing we can just, you know, give
21 to everyone --

22 MS. HOLLANDER: Right.

23 HEARING OFFICER KRAMER: -- and they
24 probably don't want to take it home anyway. And
25 we do worry about killing trees.

1 But go to our website. The Public
2 Adviser can give you the address. And you'll find
3 a wealth of information there that I think will
4 interest you, and probably many of the other
5 people in the audience.

6 MS. HOLLANDER: Okay. Well, thank you
7 very much for your time and your attention.

8 HEARING OFFICER KRAMER: Okay, next
9 person. Have we exhausted you? Okay. I just
10 need to note there were a few people that gave
11 cards and did not want to speak.

12 One card forgot to put their name on it,
13 but it says they'd like more research done on the
14 effects of the construction of the plant on the
15 neighborhood.

16 Thomas Bwarie, B-w-a-r-i-e, says if you
17 need a power plant put it somewhere else.

18 Stephanie O'Brien, she's checked that
19 she's in opposition, but with no more comment than
20 that.

21 Pat Dalsin, D-a-l-s-i-n, is opposed. It
22 appears to be the visual impacts of the project.

23 Melanie Murnane, M-u-r-n-a-n-e, is
24 opposed to locating the project on the coast,
25 which she says was never the proper spot for the

1 project.

2 Christopher Renane, I believe, doesn't
3 like the location, as well.

4 And Mattie, M-a-t-t-i-e, Murnane doesn't
5 want the power plant near her beaches.

6 And we also have an email that I'm not
7 going to read, but it's from A. Raysbergen, and I
8 will treat that as if it's a written comment. And
9 that will be docketed and become part of the
10 record of comments on the case.

11 We have some people that probably, a
12 stack of, I don't know, 20, 25 cards, people who
13 probably had to leave before we could call upon
14 them. I will hold onto those for tomorrow. And
15 if they come in again we'll give them first
16 priority.

17 So, I believe that will conclude our
18 business for this evening. Do either of the
19 Commissioners wish to make any comments?

20 PRESIDING MEMBER BOYD: Well, just I'd
21 like the people here to recognize how difficult it
22 is for a Commissioner to sit here and not say very
23 much, because things you might say could be taken
24 by one side or the other in this case, as
25 prejudicial comments, even if you're just trying

1 to pass on information. But for you folks who
2 stayed to the bitter end, I think you deserve a
3 few comments.

4 Number one, I really am impressed and
5 appreciate the fact that you did come in such
6 great numbers; that you care, obviously you care
7 passionately about your community.

8 I want you to know, as an eight-year
9 Commissioner who's been all over this state
10 dealing with I don't know how many power plant
11 cases, you are not alone. There are lots of
12 people throughout the state who have the same
13 strong feelings about their community that you do.

14 And this has nothing to do with the case
15 before you. But when you say put it somewhere
16 else, there are things and people and every
17 somewhere else in this state who feel just the
18 same way.

19 I would love for you to go with me to
20 the many desert communities where they want to put
21 these giant renewable energy solar plants, and
22 find out how emotional people are about the flora
23 and the fauna.

24 Or if you could have been with us two
25 weeks ago in Sacramento. We did four days to

1 match these days. We did it in Sacramento, for a
2 desert power plant, because there was nothing, nor
3 even a community. But we had four days of many
4 many people debating over the issues that are
5 related to siting a solar facility in the desert.

6 So it is not simple in this state to
7 deal with everyone's needs. And so we try to do
8 what we do to balance.

9 Secondly, a commercial for your state,
10 so you can have a little more pride in your state,
11 perhaps. I do encourage you to go on the Energy
12 Commission's website anytime you're just curious
13 about energy in California.

14 The gentleman who just left a minute
15 ago, I was just dying to have this opportunity but
16 he left, who has all the glowing red lights
17 throughout his house and he wants more energy, we
18 want him to turn all those red lights off when
19 he's not using them.

20 In the past 25 years the State of
21 California's per capita use, and you can imagine
22 how California has grown in 25 years, per capita
23 use of electricity is flat. The rest of the
24 United States has gone up 50 percent. So all this
25 efficiency and conservation that you want was born

1 in California.

2 And we have a plan in this state that's
3 been in place for several years, ever since the
4 electricity crisis. And we have a loading order,
5 a priority order in it. Job one is efficiency and
6 demand response. That is, you don't build power
7 plants, you do efficiency. And California has
8 been the leader in the building and appliance
9 efficiency and everything else like that.

10 So, we're battered and beaten by people
11 who don't want us to make your televisions more
12 efficient. That was a recent battle. And some of
13 them take us to court and we tend to win most of
14 those. But it's not easy.

15 But you can be proud of what your state
16 has done, and what this agency -- I've only been
17 there eight years, but it's been around for over
18 30 years, has done for the State of California.

19 Job two is renewables and distributed
20 generation, like CHP, combined heat and power
21 applications.

22 And job three, if we have to do it, is
23 the most efficient fossil fuel generation you
24 could do. But that's the third pecking order.
25 But there is a need to consider it once in awhile.

1 Again, it's not your plan. We have to judge that
2 on its merits and the record.

3 But the sun doesn't shine all the time.
4 The wind doesn't blow all the time. And there has
5 to be a balance between some forms of generation.
6 But you can all help preclude doing some of those
7 things if you just promote efficiency. Those
8 compact fluorescent lights, to be followed in a
9 few years with LEDs, light-emitting diodes, that
10 are so much even more efficient than compact
11 fluorescent lights.

12 And appliances that don't consume as
13 much electricity. And turning off the vampires
14 that sit there and suck electricity all day and
15 all night when you're not using them, that glow
16 and are instant on. Put a plug strip on it. Turn
17 the plug strip off. It comes on in a few minutes.
18 You can wait.

19 You do all those kinds of things and
20 more Californians do that, and we'll never have to
21 get to priority three ever again, because you'll
22 take care of it by priorities one and two.

23 But there aren't enough rooftops and
24 there's not enough sunshine, nor enough wind to do
25 it all. There will be a balance. We have

1 hydropower, we have some nuclear.

2 There'll be a huge debate about nuclear
3 long after I'm gone. We have a law in the state
4 that says no nuclear plants until the federal
5 government solves the waste problem. The Energy
6 Commission is precluded from approving them.
7 Well, all we can keep saying in our studies is
8 they haven't solved the waste problem.

9 So, anyway, I just wanted you to have a
10 little background, a little climate there. There
11 are good things going on. We aren't quite totally
12 heartless. And you can be proud of your state in
13 what it's done. It is a technology pusher and
14 leader.

15 The 33 percent renewables, you know,
16 nobody can match that. People in Germany have a
17 lot of solar. The German government paid a
18 fortune for that, and the ratepayers paid for it.

19 People in Spain have a lot of solar, and
20 the Spanish government has accrued a \$15 billion
21 debt that they don't know what to do with.

22 We have a \$21 billion debt in this state
23 that we don't know what to do with.

24 So, it's all -- there's a balance there,
25 and we all have to work together to solve it. So,

1 a little -- I mean I would love to do more
2 seminars on energy if we weren't so busy having
3 these kinds of hearings, where it's tough for
4 Commissioner Eggert or I or any of our compatriots
5 to talk to you like this most of the time, because
6 we may sound like we're for or against the project
7 in question. We just sit here and soak up all
8 your feelings and all your thoughts.

9 Anyway, enough said. I'm probably
10 delirious from getting up at 4:00 a.m. with the
11 others.

12 (Laughter.)

13 (Applause.)

14 HEARING OFFICER KRAMER: Commissioner.

15 ASSOCIATE MEMBER EGGERT: So that I
16 don't know if I have much more to add to that,
17 Commissioner. Those were, I think, very wise
18 words from somebody who's been in this much longer
19 than I have.

20 I would just say, just to maybe
21 reiterate, you know, my thanks to you for the
22 participation in this hearing. And I do think
23 along the lines of what my fellow Commissioner
24 here was saying.

25 The solution to a lot of our challenges

1 in energy is an informed populace. So I think by
2 you being here today, by you participating in this
3 process, understanding the issues, understanding
4 the options that exist to us to save energy, you
5 know, you are going to help us reach our goals for
6 the environmental goals for the state, the
7 greenhouse gas goals for the state.

8 I would also just say even maybe a
9 little bit more politically, you know, this is
10 something that is going to require an informed
11 populace to sustain the political will so that we
12 can achieve our environmental goals in the state.

13 So, again, just I thank you for your
14 participation, and look forward to the rest of
15 this hearing.

16 PRESIDING MEMBER BOYD: One last
17 comment. You're dealing with two Commissioners
18 who've spent years in the air quality business.
19 Commissioner Eggert comes to us fresh from the Air
20 Resources Board. I spent 20 years of my life
21 there. So, we know some of the issues and
22 concerns you have.

23 And you can be proud of your state in
24 the air quality area, as well. The most stringent
25 requirements in the world. We're still trying to

1 tackle protecting the public's health, so I hope
2 you all work hard at that.

3 HEARING OFFICER KRAMER: Okay, and along
4 those lines, those of you who are concerned about
5 air quality and public health, once we finish up
6 with our land use discussion that we didn't quite
7 finish this afternoon, and tomorrow morning we'll
8 be tackling those two topics.

9 And I've put on my list of questions to
10 go over with those witnesses some of the questions
11 that you've raised. So you could either come
12 tomorrow and watch that, or if you want to sort of
13 fast-forward through it, you could wait for the
14 transcript to come out in a couple weeks and
15 download that from the website.

16 And then those of you who are interested
17 in greenhouse gases and the topic of project
18 alternatives, which is where we will talk about,
19 in both cases probably, about some of the issues
20 you raised about location of the project. Whether
21 it should be located somewhere else.

22 And then also the question about whether
23 the electrical distribution system requires new
24 plants of this sort. And whether or not it can
25 survive only on new renewable projects, as some

1 people have proposed. That'll be discussed in
2 those areas.

3 And if you're interested in the question
4 about whether there's adequate access for worker
5 safety and fire protection, or about the project's
6 use of hazardous materials, or its effect on the
7 water, the cooling system, and also its effect on
8 biology and noise issues, or traffic issues.
9 Those will be covered on Thursday.

10 So that's just a preview. I have a
11 couple copies of the spreadsheet that shows all
12 those and probably in more detail than you want,
13 if somebody wants to take that just as a reminder.

14 But with that, we will see the parties
15 and any of the public who wishes to join us here
16 tomorrow at 9:00 a.m.

17 Thank you. We're adjourned.

18 (Whereupon, at 9:45 p.m., the hearing
19 was adjourned, to reconvene at 9:00
20 a.m., Tuesday, February 2, 2010, at this
21 same location.)

22 --oOo--

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CERTIFICATE OF REPORTER

I, TROY A. RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2010.

TROY A. RAY,

AAERT CER**00369

CERTIFICATE OF TRANSCRIBER

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.

February 21, 2010

Margo D. Hewitt,

AAERT CET**00480