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1 BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT

2 COMMISSION OF THE STATE OF CALIFORNIA

3

4 In the Matter of)

5 Carlsbad Energy Center Amendments) Docket No. 07-AFC-06C

6 _____)

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EVIDENTIARY HEARING

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CALIFORNIA ENERGY COMMISSION

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HILTON CARLSBAD OCEANFRONT RESORT

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1 PONTO ROAD

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CARLSBAD, CALIFORNIA

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WEDNESDAY, APRIL 1, 2015

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12:03 P.M.

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24 Reported by:

25 Mary Anne Young

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APPEARANCES

COMMISSIONERS

Karen Douglas, Presiding Member
Andrew McAllister, Associate Member

HEARING OFFICER

Paul Kramer, Hearing Officer

ADVISERS

Jennifer Nelson, Advisor to Commissioner Douglas
Le-Quyen Nguyen, Advisor to Commissioner Douglas
Pat Saxton, Advisor to Commissioner McAllister
Eileen Allen, Commissioner's Technical Advisor for Facility Siting
Susan Cochran, Hearing Advisor (Assisting Mr. Kramer)

PUBLIC ADVISORS

Alana Matthews, Public Advisor

STAFF

Dick Ratliff, Staff Counsel
Kerry Willis, Staff Counsel
Mike Monasmith, Project Manager
Jon Hilliard, Project Manager
Matt Layton

1 APPEARANCES (CONTINUED)

2

3 APPLICANT

4 John A. McKinsey, Locke Lorde, LLP

5 George Piantka, NRG Energy, Inc.

6

7 INTERVENERS

8 Julie Baker, Power of Vision

9 Arnold Roe, Power of Vision

10 Robert Sarvey

11 David Zizmor, Representing Rob Simpson (Telephonic)

12 Tamara Zakim, Sierra Club (Telephonic)

13 Kerry Siekmann, Terramar Association

14

15 AGENCIES

16 Gary Barbario, Assistant City Manager, City of Carlsbad

17 Allan Thompson, Representative of City of Carlsbad

18 Bob Therkelsen, Consultant, City of Carlsbad

19 Steve Moore, San Diego Air Pollution Control District

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

2 12:03 P.M.

3 PROCEEDINGS BEGIN AT 12:03 P.M.

4 (The meeting was called to order at 12:03 p.m.)

5 CARLSBAD, CALIFORNIA, WEDNESDAY, APRIL 1, 2015

6 MEETING BEGINS AT 12:03 P.M.

7 PRESIDING MEMBER DOUGLAS: Good afternoon,
8 everybody. Welcome to the evidentiary hearings for
9 Carlsbad Energy Center Amendments. I'm Commissioner Karen
10 Douglas, Presiding Member, assigned to this meeting. My
11 colleague, Andrew McAllister, who is to the left of the
12 hearing officer -- wave so that we can see him -- is
13 Associate Member. To my immediate left is our Hearing
14 Officer, Paul Kramer.

15 To my right is my advisor, Jennifer Nelson, and
16 to her right is my advisor Le-Quyen Nguyen. She's not
17 sitting there now. She'll be there in a moment.

18 To Commissioner McAllister's left, his advisor
19 Pat Saxton. And then on the other side of the table but
20 still with the committee -- if you could wave? -- is
21 Eileen Allen. She's the Technical Advisor on siting
22 matters to the Commissioners.

23 I'll start now and ask the parties to identify
24 themselves, beginning with the applicant.

25 MR. MCKINSEY: Good afternoon, John McKinsey

1 with Locke and Lord, counsel to the project owner,
2 Carlsbad Energy Center, LLC. Also here is George Piantka
3 from NRG, who is the project developer and representative
4 of the project.

5 PRESIDING MEMBER DOUGLAS: Thank you.

6 And Energy Commission staff?

7 MR. RATLIFF: Yes, I'm Dick Ratliff, counsel for
8 --

9 PRESIDING MEMBER DOUGLAS: Microphone.

10 MR. RATLIFF: I'm Dick Ratliff, counsel for CEC.
11 With me is Kerry Willis, who is also counsel. And we have
12 project managers Jon Hilliard and Mike Monasmith are also
13 present today.

14 PRESIDING MEMBER DOUGLAS: Great. Thank you.

15 All right. Now, I'll go to the Intervenors.
16 Terramar Association?

17 MS. BAKER: They'll be here shortly.

18 PRESIDING MEMBER DOUGLAS: So Kerry Siekmann
19 will be here shortly.

20 Power of Vision?

21 MS. BAKER: Julie Baker for Power of Vision.

22 PRESIDING MEMBER DOUGLAS: Push your mic.

23 MS. BAKER: Julie Baker for Power of Vision, and
24 next to me is Arnold Roe.

25 PRESIDING MEMBER DOUGLAS: Thank you. And

1 Intervenor Rob Simpson or David Zizmor, the unofficial
2 representative? Not yet.

3 What about Intervenor Robert Sarvey?

4 All right. Sierra Club, we have Tamara Zakim on
5 the phone.

6 Tamara, are you there? I understand that Tamara
7 is planning on listening and not participating, but we see
8 that she's on the WebEx.

9 All right. City of Carlsbad?

10 MR. THOMPSON: It's hard to see the red
11 sometimes. Good afternoon. Allan Thompson representing
12 the City of Carlsbad and soon to be next to me Bob
13 Therkelsen, consultant to the city.

14 PRESIDING MEMBER DOUGLAS: Great. Thank you.

15 All right. The Public Advisor, Alana Matthews,
16 she is here. She could -- she might be outside in the
17 hall. Alana Matthews is here.

18 Is anyone here from the California Independent
19 System Operator?

20 All right. The San Diego Air Pollution Control
21 District?

22 Is anyone here from the Coastal Commission, any
23 other state, local or federal public agency?

24 All right. So with that, I will turn this over
25 to the Hearing Officer.

1 HEARING OFFICER KRAMER: Thank you. I
2 understand that Mayor Pro Tem Blackburn wanted to say a
3 couple welcoming words, so if you could do that and come
4 up to one of the mikes there, and the gray button should
5 turn it on for you.

6 MAYOR PRO TEM BLACKBURN: Well, thank you for
7 being here and I get to represent the City Council in
8 welcoming you. I'm proud of the weather and how the city
9 looked today. I'm so sorry you're stuck inside.

10 But this is very important to us as a City
11 Council. We have worked -- and I say "we," our staff has
12 worked very tirelessly with NRG and SDG&E to try to meet
13 the region's land use and environmental and energy
14 concerns, and as a result, we've reached a very good
15 agreement. And why is this so important? Because we were
16 very opposed to it at the beginning, and we have reached
17 an agreement through -- with the City, NRG and SDG&E to an
18 agreement that I think is fair to all of us, but more
19 important, it's very fair to our residents and the people
20 who live and use our beaches.

21 This new amended project will allow for this
22 important project to go through for the energy reliability
23 which is something as a councilman I'm very concerned
24 with, but it also frees up this property that we're just a
25 40-square-mile city, and when we have this kind of acreage

1 on the beach that is taken up by a big cement power plant
2 that was built in the early '50s and is considered a
3 landmark for our city, I just would rather have that
4 landmark be beautiful open spaces along our beaches.

5 So this is one of the areas that I think will
6 just be a huge benefit not only to our community but also
7 to the region not only for the use of that property but
8 also for the clean power that the new plant will provide.

9 So with that, I just want to say thank you so
10 much for listening to this. My notes say that I should
11 thank all of you for your careful consideration of this
12 applicant -- of this application and urge you to please
13 approve this important project.

14 That is important that I read that exactly
15 because that's really what we're trying to get to. My
16 welcome is just to say thank you for being here, but most
17 importantly, thank you for your -- so much consideration
18 you're putting into this important project, so welcome to
19 Carlsbad and thanks.

20 HEARING OFFICER KRAMER: Thank you. Let's go
21 off the record for a minute.

22 (A short discussion was held)

23 HEARING OFFICER KRAMER: Let's go back on the
24 record, and I'll just note that David Zizmor was on WebEx.
25 He was probably trying to tell us he was there but he is

1 there, and also Tamara Zakim is, I think, listed.

2 MS. ZAKIM: Yes, I'm here.

3 HEARING OFFICER KRAMER: Okay. She sent me a
4 chat so for roll-keeping purposes, they are there.

5 I'll also note that Mr. Sarvey sent me an e-mail
6 the other day suggesting that he won't be here until
7 tomorrow and, in fact, he had asked that we have the
8 discussion of his motion to have the facility pay the AFC
9 fees scheduled for tomorrow, and I made that change to the
10 spreadsheet that shows all the topics and witnesses so if
11 you noticed, if you compared the one I put it out
12 yesterday with the earlier one.

13 So with that, our first item of business is to
14 ask if there are any preliminary housekeeping matters from
15 any of the parties. For instance, you've discovered you
16 have witness problems at a particular time or something
17 like that that you want to raise.

18 Also, we'll note that Kerry Siekmann arrived
19 while we were sorting out our audio problems.

20 Okay. Nothing by way of housekeeping items, as
21 I said, we're going to consider the Sarvey motion to
22 consider the AFC fee tomorrow, and I believe the issue
23 we're -- the topic area of compliance and closure is also
24 on tomorrow's agenda. I'll just verify that.

25 Yes. So at that point in time we'll take up the

1 other motion that Mr. Simpson filed, I think it was
2 earlier this week, about the extent of his participation
3 on the question of providing financial assurances for the
4 closure of the project.

5 So with that, we'll just move into our regularly
6 scheduled topic areas: The first being a combination of
7 visual resources and transmission system engineering, and
8 let's get a panel set up.

9 We have, for the applicant, Thomas Priestley.
10 If you want to come forward and sit at this table that's
11 empty right now. We have William Kanemoto and Mark
12 Hesters. Dr. Roe and Julie Baker, you can stay where you
13 are. And Ms. Siekmann, you've got a microphone in front
14 of you so no reason for you to get up and move.

15 MR. MCKINSEY: Mr. Kramer, we also, for this
16 topic, have Eric Hale and Robert Mason.

17 HEARING OFFICER KRAMER: Okay. If you have them
18 on the list, have them come up. Bring a chair if you
19 would.

20 Madame Reporter, are you in the business of
21 swearing-in witnesses or should I do it?

22 THE REPORTER: Either way.

23 HEARING OFFICER KRAMER: Okay. So why don't we
24 have everybody who is in room now who is going to testify,
25 either today or tomorrow, stand and raise your right hand

1 and the court reporter will swear you in?

2 THE REPORTER: All right. Do you swear or
3 affirm that the testimony that you shall give will be the
4 truth, the whole truth and nothing but the truth to the
5 best of your ability?

6 WITNESSES: I do.

7 THE REPORTER: Thank you.

8 HEARING OFFICER KRAMER: And if the parties can
9 help and just remind us if we bring in new people right
10 now to swear them in when they arrive when they first
11 testify, that would take care of that.

12 We're using the informal procedure that everyone
13 seemed to like and request at the prehearing conference,
14 so basically it's going to be kind of a round-table
15 discussion. I think the staff, staff counsel would like
16 to just ask some opening questions of their witnesses to
17 help them focus on -- focus them on the information I
18 think we need to hear today.

19 We don't need a summary of all the testimony.
20 What we're really interested in in these hearings is
21 talking about the areas that are in dispute, so if you've
22 said it in your written testimony and nobody's disputing
23 it, there's really no reason to go through it again today.
24 For the sake of everyone's time, we can avoid that.

25 So Mr. McKinsey, having offered that to staff,

1 did you -- do you wish to ask some preliminary questions
2 of your witnesses?

3 MR. MCKINSEY: We do wish to ask some
4 preliminary questions of Dr. Priestley.

5 HEARING OFFICER KRAMER: Okay. Why don't you go
6 ahead and then we'll follow up with staff?

7 MR. MCKINSEY: And then I also a motion that I
8 want to bring up at the beginning of this panel regarding
9 two of the exhibits proposed by Power of Vision that are
10 renderings -- purported renderings of the view of the
11 project from I-5 after the I-5 freeway widening.

12 They appear in a couple places in their
13 exhibits. They appear by themselves at Exhibit 4011 and
14 4012. They also appear at least in 4001 in a different
15 version of them, but that's a multi-page exhibit.

16 My concern, first off -- well, I don't think
17 they're admissible as evidence because in the testimony of
18 Power of Vision they note that they were prepared by
19 someone else who isn't offered as a witness, nor are the
20 credentials of that person offered.

21 And secondly, our assessment is very graphically
22 that the images don't appear to be an accurate rendering
23 of the project at all to the extent that I think even
24 allowing testimony on them for deciding whether or not
25 they should be admitted as evidence could be distracting

1 in the record. They frankly look like something like a
2 Photoshop cut-and-paste effort and not something that
3 would constitute a rendering that could be, you know,
4 supported by a professional witness that explains the
5 methodology they used, the data process they used to
6 defend, so not only do I want to move they not be admitted
7 as evidence, they shouldn't be shown during this hearing
8 because simply they're too provocative.

9 HEARING OFFICER KRAMER: Well, it would be a
10 little difficult for us to make a ruling without seeing
11 those things, so I think we're -- we feel that we can --
12 we have the self-discipline and fortitude to decide if
13 they are inaccurate or misleading renderings, so we simply
14 will not think about them further as we prepare the
15 decision, so with --

16 You said 4011 and 4012?

17 MR. MCKINSEY: Correct. But the concern I have
18 is if this was an exhibit that was prepared by a witness
19 that we had concerns about, we would basically do the
20 equivalent of voir dire on a witness to say, "How did you
21 prepare it?" We have no such person. They were submitted
22 by Power of Vision, and in their testimony they say they
23 were prepared by someone else, and there isn't a witness
24 proposed that has credentials to support that. If there
25 was, we could voir dire that witness, so that's the

1 concern I have is that, you know, the number one way to
2 tackle these is to say, "You know, we want to challenge
3 their admission and cross-examine the person who prepared
4 them on the credibility," but we have no such means of
5 doing that.

6 HEARING OFFICER KRAMER: Dr. Roe, you offered
7 these documents. Can you explain how they were prepared
8 and by whom?

9 DR. ROE: Yes. I'm the witness you're going to
10 have to cross-examine. I prepared them, but since I'm
11 old-fashioned and I'm not very familiar with how to
12 manipulate those, I had the help of a photographer by the
13 name of --

14 MS. BAKER: Dr. William Kloetzer.

15 DR. ROE: Yeah, Dr. William Kloetzer.

16 MS. BAKER: Kloetzer.

17 DR. ROE: Kloetzer. And if necessary, we can
18 bring him here. He was the guy who manipulated the
19 computer while I was sitting there and explaining where
20 the information came from and how it was derived.

21 HEARING OFFICER KRAMER: Okay. How long do you
22 think it will take to ask Dr. Roe questions?

23 MR. McKINSEY: Well, I think I'm still noting
24 that the witness -- this purported witness has said he did
25 not prepare them and he didn't have the ability to do them

1 and he had to have someone else conduct that, and so I
2 don't think -- I think the witness has already made the
3 case that they weren't qualified to prepare these and so
4 they don't have the ability to authenticate them.

5 HEARING OFFICER KRAMER: Well, another take on
6 what he said was they were prepared at his direction which
7 implies that this other person was merely helping him --

8 MR. MCKINSEY: Well --

9 HEARING OFFICER KRAMER: -- work the machine, so
10 to speak.

11 MR. MCKINSEY: I'm willing to cross-examine
12 Dr. Roe on this topic if that's --

13 DR. ROE: Okay.

14 HEARING OFFICER KRAMER: Go ahead then because
15 it sounds like this is a -- resolving this is a
16 prerequisite to getting on with the panel.

17 MR. MCKINSEY: Correct. And well, I mean, you
18 could also decide you want to rule later on their
19 admission and just -- I could do it when he testifies, I
20 could cross him then -- cross as well. I think I can do
21 it in just a minute or two. I just want to put a couple
22 of comments -- a couple of questions in the record that he
23 could answer.

24 HEARING OFFICER KRAMER: Go ahead then.

25 MR. MCKINSEY: Thank you, Dr. Kramer.

1 So you've already noted that you didn't feel you
2 were capable of operating the computer systems that were
3 used to prepare these exhibits, correct?

4 DR. ROE: That's correct.

5 MR. MCKINSEY: Can you name the programs that
6 were used to prepare them?

7 DR. ROE: No. I don't know whether it was
8 Photoshop. I think it was a somewhat more sophisticated
9 program. As I say, I'm not very competent with these new
10 computer programs, and that's why I asked Dr. Kloetzer to
11 help me with that.

12 HEARING OFFICER KRAMER: Can you --

13 DR. ROE: He was in my office when we worked on
14 this together.

15 MR. MCKINSEY: Did you provide him -- did he
16 work on your computer or did you provide him digital
17 copies of certain source copies?

18 DR. ROE: No, we worked on his computer because
19 he had all the programs on there for manipulating the
20 photographs. And what we did is we took your photograph,
21 if we can go to the previous -- yeah, there it is. And
22 what I suggested to him was that all the bushes that you
23 see there should be eradicated and that the --

24 Go back up, please. And those rather
25 overwhelming arrows which tend to draw attraction to them

1 and the logos rather than to the transmission lines and
2 the smoke stacks, that they be removed. And that the
3 border of the freeway would move over approximately
4 20 feet and that the berm, which you don't see anyhow
5 because of the trees, would not be there. So we just took
6 this photograph and eliminated the foliage.

7 MR. MCKINSEY: So how did you measure -- you
8 said you moved the freeway over 20 feet as well, this
9 eliminating footage?

10 DR. ROE: Yeah, if you go back to our version
11 --

12 MR. MCKINSEY: How did you measure that?

13 DR. ROE: Well, what we did is along the
14 perspective there are a number of guidelines for how high
15 -- what the distances are. For example, the height of the
16 car, the height of the transmission line between the
17 poles, I scaled those off and told them to just show a
18 little bit more freeway. Not accurate, admittedly, but
19 it's, I think, a good approximation. And it really
20 doesn't -- even if you don't have that widening of the
21 freeway showing, if you took off -- can we go back to the
22 -- no, the next one.

23 Yeah, if you move the barrier wall which you see
24 is a brown line, if you move that in just a smite more in,
25 it really doesn't change the views of the transmission

1 line and the line -- the actual lines. The transmission
2 line doesn't show up too well in that rendering.

3 MR. MCKINSEY: So if I understand correctly, you
4 directed all foliage to be removed and you tried to
5 approximate a location of the freeway line?

6 DR. ROE: That's right.

7 MR. MCKINSEY: And you did this on some type of
8 a graphical illustration editing software?

9 DR. ROE: That's right.

10 MR. MCKINSEY: Okay. That's fine. That's my
11 only questions. Okay. So I do think that these are not
12 admissible as evidence.

13 HEARING OFFICER KRAMER: Are you saying,
14 Mr. McKinsey, that they're not in proportion?

15 MR. MCKINSEY: They're not prepared by a
16 professional using some scientifically professionally
17 accepted methodology that allows them to be adequately
18 precise in what they're showing. They're an attempt to
19 visually illustrate something. It's more artistic than
20 scientific. It is not scientific or methodical enough to
21 meet the standards of a visual rendering that should be
22 used to evaluate the project.

23 And the very instruction simply take out all
24 foliage is not a plausible method. Instead, you have to
25 determine whether the line would be, where foliage would

1 go to, whether that is the point. This really sounds like
2 an attempt to show the project without any foliage, and
3 using software and methodologies that don't produce
4 meaningful evidence, which as a result, you know, produces
5 a view that is not representative of the project but only
6 purports to be, and so that's why we don't think they're
7 -- they shouldn't be allowed as evidence in the
8 proceeding.

9 DR. ROE: Mr. Kramer?

10 HEARING OFFICER KRAMER: Go ahead, Doctor.

11 DR. ROE: Two things. I would like to remind
12 the Commissioners that staff in their data request number
13 3 requested these particular views showing the -- what the
14 site would look like after the I-5 widening. Power of
15 Vision also requested similar renderings from the project
16 owner. In both cases the project owner refused to provide
17 such information. So this is our attempt to fill in the
18 gap just so that the Commission would have some idea. I
19 admit it may not meet the exact legal requirement of
20 submission, but I would like to quote counsel when we had,
21 at another occasion, raised the legal issue of whether
22 need was admissible. His response was, "Well, there is
23 something that is a legal needed, but there is also
24 something that is practical need and so we should consider
25 it on the practical need."

1 And so I likewise say these renderings, while
2 not perhaps 100 percent accurate or meeting the legal
3 requirements for admissible evidence, do provide some
4 information which I'm sure the Commissioners are capable
5 of evaluating on their own merits.

6 HEARING OFFICER KRAMER: Mr. McKinsey, we're
7 going to let these exhibits in recognizing your concerns
8 about the precision that's depicted here, but I have to
9 say holding up my thumb drive, which happens to be just
10 the right width, that it did appear except for the
11 complete loss of vegetation that Dr. Roe's drawing was
12 roughly in proportion to what we saw in yours.

13 And for the record, I should say that we have
14 been looking at Exhibit 4012 just so there is no
15 confusion, which is a view from the south looking towards
16 the northwest roughly as opposed to 4011, which is from
17 the north looking to the southwest, just to be clear.
18 That's about what we're mostly looking at, especially when
19 we're discussing the details.

20 So we're going to let it in and give it the
21 weight that's appropriate (inaudible) concerns, but if you
22 -- if you really believe that it's significantly wrong in
23 its proportion and you would like us to hear that
24 argument, we're just not going to assume it because it
25 wasn't prepared in a particular way and because to our

1 eyes, at least, it looks like it appears to be roughly
2 proportionate, okay?

3 MR. MCKINSEY: Well, I would say that you began
4 this with the exception of the removal of all vegetation.
5 That alone makes this not an accurate rendering. It's
6 simply an effort to show the project scrubbed clean of any
7 visual screening and any vegetation along I-5, and there
8 is no basis for that that's based on testimony of a
9 professional who says, "Indeed there will not be any
10 vegetation. Here's the reasons why there is not any."
11 And that's what makes this so grossly distorted and not
12 even closely -- remotely close to what this project is
13 going to look like, which is --

14 HEARING OFFICER KRAMER: Well, we understand
15 that.

16 MR. MCKINSEY: But it purports to be something
17 that the project looks like. It doesn't say, "This is a
18 view of the project so we moved the trees out of the way
19 so you could see what it would look like if the trees
20 weren't there." It says, "This is what the project is
21 going to look like when I-5 is widened." And that's what
22 it is purporting to be, but in the statement that was made
23 by the witness supporting it, they're saying, "That's not
24 what they did," and instead, they instructed to remove all
25 vegetation without a scientific basis for doing that.

1 HEARING OFFICER KRAMER: Well, we understand
2 that the vegetation screening and any other kind of
3 screening are going to be required, so we're not going to
4 be judging -- we're not going to be making any comparison
5 based on this. We don't know exactly how Dr. Roe has been
6 using it, but because the one benefit it certainly
7 provides is we can see the poles between the stacks. We
8 can see how they all lay out and fit together, and I'm not
9 sure how important that's going to be to the determination
10 but it's -- you know, some of the visual KOP simulations
11 you really have to work hard to figure out where the power
12 plant is because it's so screened by vegetation.

13 And I don't know. Maybe Dr. Roe's going to be
14 talking about how he would like to see the thing
15 rearranged, and a drawing like this would be, I think,
16 more reasonable for making that demonstration. We'll see.

17 MR. MCKINSEY: I understand.

18 HEARING OFFICER KRAMER: We understand your
19 point, but we don't think it requires the exclusion of
20 these documents.

21 MR. MCKINSEY: Understood.

22 HEARING OFFICER KRAMER: So with that, did you
23 want to start with your witnesses then?

24 MR. MCKINSEY: Yes.

25 HEARING OFFICER KRAMER: And Dr. Roe, eventually

1 when it is your turn, we'll get around to you and perhaps
2 you'll explain what these drawings -- what meaning we are
3 supposed to take from them.

4 MR. MCKINSEY: So I'd like to begin by asking
5 Dr. Priestley a few questions.

6 And first, Dr. Priestley, can you explain your
7 role in this project, particularly with regard to visual
8 resources?

9 DR. PRIESTLEY: Okay. Yeah, my name is Thomas
10 Priestley. I'm a Senior Environmental Planner with CH2M
11 Hill, and I am the lead for the company's visual resource
12 assessment practice, and I was involved in the evaluation
13 of the aesthetic impacts of this project from -- you know,
14 from the beginning.

15 MR. MCKINSEY: Thank you. And do you have an
16 opinion on overall what this project will have as to
17 visual impacts?

18 DR. PRIESTLEY: I do. My professional
19 assessment is that this project will not have any
20 significant visual impacts and will, in fact, bring about
21 an improvement to the visual environment in the project
22 area.

23 MR. MCKINSEY: Can you provide some
24 demonstrations of that?

25 DR. PRIESTLEY: Yeah. So just to be a little

1 bit more specific, overall the bottom line is that the
2 amended project proposed in the PTA will have a lower
3 visual profile and thus lower visual impacts than the
4 currently licensed project. And in addition, the amended
5 project entails the removal of the existing and massive
6 and highly visible Encina Generating Station, and the
7 removal of that facility will bring about a very, very
8 substantial visual improvement to the surrounding area.

9 And to make it clear what I'm talking about, I'd
10 like to take a quick look at a couple of images. If we
11 could first bring up Exhibit 1017?

12 Now, would it be possible to shrink the size of
13 this image so that we can see both of the images that are
14 on that figure?

15 So what's happening on this figure is that we
16 have two views. These are the views looking toward the
17 project site, from KOP2, which is a location by Carlsbad
18 Boulevard looking south along the boulevard and southeast
19 across the lagoon.

20 The top image, when it renders, is a simulation
21 of the project that -- as it was originally licensed, and
22 the bottom image is an image of or a simulation of the
23 proposed amended project.

24 You know, it looks like this isn't going to work
25 at this size and this is a little bit awkward, but I guess

1 if we could go back to the original size you had, we're
2 just going to have to toggle back and forth between the
3 two images. I know that's slightly annoying, but I guess
4 that's what we're going to have to do.

5 So while we're waiting for these images to
6 render, kind of an important thing for all of us to
7 remember in looking at the two images, that the licensed
8 project shown in the top image was found at the time that
9 it was licensed to have visual impacts that were less than
10 significant with mitigation.

11 Oops. That's -- that's not the right figure.

12 MS. COCHRAN: I'm trying to make it right. It's
13 not --

14 DR. PRIESTLEY: Pardon?

15 MS. COCHRAN: I'm just trying to make it right.

16 MR. MCKINSEY: You can go ahead without it,
17 Dr. Priestley.

18 DR. PRIESTLEY: Okay. Well, you know, at such
19 time -- oh, here we go. At such time as the images come
20 up, I guess the point that I'm trying to make is to
21 provide everybody with an opportunity to compare the two
22 images. And, you know, kind of the point I'm trying to
23 make is that when you take a look at these two images, the
24 licensed and what's now being proposed as the amended, one
25 of the things that you can see is that with the new

1 amended project, the stacks are a lot shorter, shrinking
2 from 139 feet with the licensed project down to 90 feet
3 with the project now proposed, and that the licensed
4 project had stacks that were 80 feet tall. The new
5 amended project won't have a HRSG so those are going to
6 disappear from the site, and the gas turbine inlets for
7 the original project were 75 feet tall, and with the
8 amended project, they would only be 45 feet tall.

9 So it's unfortunate we haven't been able to look
10 at these two images to compare them, but when you have the
11 opportunity to do so, it will just be very, very clear to
12 you that the amended project will have a much lower
13 profile than that of the licensed project and will be very
14 well integrated visually into its site, so as a
15 consequence it will have a visual impact that is lower
16 than that of the licensed project. And because the
17 licensed project was found to have less than significant
18 impacts, the amended project will clearly have less than
19 significant impacts.

20 And again, when you do a comparison of the two
21 views, you'll see that with the amended project the Encina
22 Power Plant with its 400-foot stack and 200-foot high
23 turbine enclosure is going to disappear vastly improving
24 the views from Carlsbad Boulevard, the beach and the
25 surrounding region, so it's actually going to be a rather

1 significant change.

2 And now, the other view that I was going to show
3 you is the view from KOP4, which is a view of the east
4 side of --

5 HEARING OFFICER KRAMER: Let me stop you for a
6 minute. It looks like the WebEx world lost us. I mean,
7 not -- let's go off the record.

8 (A short break was taken)

9 HEARING OFFICER KRAMER: Let's go back on the
10 record. Dr. Priestley, you were in the middle of your
11 testimony, so please continue.

12 MR. MCKINSEY: Dr. Priestley, I want to ask you,
13 are you familiar with the I-5 view claims that are being
14 raised by several of the intervenors in this proceeding?

15 DR. PRIESTLEY: I am.

16 MR. MCKINSEY: And do you have an opinion on the
17 validity of those?

18 DR. PRIESTLEY: Bottom line, my assessment is
19 that these concerns and claims are unfounded, and to see
20 what I mean, let's take a look at this view KOP4 looking
21 across the lagoon.

22 If it's possible to slide this image so that
23 we're seeing the bottom -- the bottom image?

24 Okay. This is the view looking across the
25 lagoon from the end of Hoover Street with the amended

1 project in place. And in this view, it is very clear that
2 the transmission structures are very well screened or
3 partially screened by the existing vegetation. They are
4 well integrated into the overall view and they are
5 consistent with the other visual elements of the view and
6 certainly would not have a significant impact on the
7 visual quality of this view.

8 HEARING OFFICER KRAMER: Okay. Please just for
9 the record for somebody who is just trying to piece all
10 this together by reading the transcript later, if you
11 could give the exhibit number and the page and the exhibit
12 number when you're talking about something on the screen,
13 that will help people look it up later. And we can just
14 use the PDF pages. For instance, you can see on the
15 screen this is page 2 of 2, and it looks like it's Exhibit
16 Number 1018; is that correct?

17 DR. PRIESTLEY: Yes, it is.

18 HEARING OFFICER KRAMER: Okay.

19 DR. PRIESTLEY: 1018. Okay. So if you would --
20 now, let's pull up Exhibit 1019 and let's go to the B
21 image down at the bottom of the page.

22 So this is the view from I-5 a little bit north
23 of the project site. It shows the view as you're heading
24 down I-5 with the project in place and -- with the amended
25 -- with the amended project in place. And as you can see

1 in this simulation, the power generation facilities
2 themselves are very well screened and, in fact, we are not
3 seeing the transmission facilities in this -- in this
4 view, and this is a simulation that was prepared using a
5 combination of CAD and GIS and followed very careful, very
6 rigorous procedures so we know that, you know, what we are
7 seeing is an accurate portrayal. And from north of the
8 project site as you're approaching it, you do not see the
9 transmission facilities.

10 So now, let's -- so what we can say is even as
11 you are traveling past the project site, the transmission
12 facilities will be visible to some degree, but they will
13 not be visually dominant and will have a level of impact
14 that is certainly less than significant. So to illustrate
15 that point, let's pull up Exhibit 1020.

16 Okay. 1020 is the view right at the project
17 site looking north on the northbound lanes of I-5. And
18 here you can see that the proposed transmission facilities
19 are, you know, partially screened by the trees as you're
20 moving along at 60 miles per hour. Their visibility is
21 intermittent and they certainly do not dominant the view
22 because they are in scale with some of the other features
23 in this environment.

24 And now let's turn to Exhibit 1021. And
25 similarly, so this is the view from I-5 as you are heading

1 south and as you are right next to the project site and,
2 again, the transmission facilities are well screened by
3 the vegetation. Their visibility is intermittent. They
4 are consistent with the other elements in the landscape
5 and certainly not dominant or a source of a significant
6 visual impact to these views.

7 MR. McKINSEY: Thank you.

8 And so are you also familiar with the current
9 proposed I-5 widening project?

10 DR. PRIESTLEY: I am.

11 MR. McKINSEY: And are you concerned about that
12 project impacting these views and the requirements for the
13 project to screen views?

14 DR. PRIESTLEY: I am not. I have taken a very,
15 very close look at the drawings showing what's -- what
16 CalTrans currently understands about their plans for
17 widening of the freeway. I have also taken a very close
18 look at staff's recent rebuttal testimony which did a very
19 thorough and, you know, very solid analysis of what's
20 going to happen with the widening and how it will be quite
21 feasible to maintain areas for the planting required to
22 continue the screening of the project as seen from I-5.

23 MR. McKINSEY: Thank you.

24 And one final question that relates to the
25 discussion on Exhibits 4011 and 4012. Have you evaluated

1 those and do you have an opinion on their accuracy?

2 DR. PRIESTLEY: Yeah, I have taken a close look
3 at those two exhibits and, to be honest, I find them very,
4 very problematic and troubling on many counts as I alluded
5 to a little earlier.

6 The preparation of simulations for this kind of
7 proceeding, we normally rely on a very highly systematic
8 process where we use a combination of CAD and GIS to make
9 sure that we are showing all of the elements in the right
10 place in the view and at the proper scale, and very
11 importantly that we are showing the elements that are
12 going to be in the view. So there are, you know, multiple
13 problems with these images.

14 One of them is just in terms of the technical
15 accuracy, it's very questionable because it seems to have
16 been done with the Paint program without any, you know,
17 kind of technical verification of what is being shown.
18 For example, I got out my light table and I overlaid the
19 POV simulation on top of our simulation -- this one right
20 here -- and discovered, "Oh, well, hey, in the POV
21 simulation when you overlay one over the other, it's very
22 clear that POV is showing the transmission towers as being
23 twice as thick as the ones in our simulation," so that
24 makes them appear bigger and more visually dominant than
25 they would actually be. So that's just one example of why

1 it's of great concern that there wasn't a more technical
2 process that could guarantee that what we're seeing is
3 what we're going to get.

4 But beyond that, I was really taken aback by the
5 fact that these images show these views without a single
6 stick of vegetation and I have to ask, you know, where did
7 that come from? It was certainly not based on a careful
8 evaluation, someone taking like an air photo of the site
9 showing vegetation overlaying the CalTrans plans to see,
10 "Okay. Well, what vegetation that would be on the
11 remaining site would remain? What vegetation on the
12 CalTrans site of the right-of-way would remain? What
13 areas that might have been disturbed during the widening
14 could have been revegetated?"

15 So I really feel that -- I'm trying to -- I
16 really feel that these images do us all a great disservice
17 because they make the summary assumption that all the
18 vegetation is going to be gone, and that is not at all
19 true.

20 MR. MCKINSEY: Thank you.

21 Our other two witnesses, Mr. Hale is a
22 transmission system engineer. He's available for
23 questions, and we might have some redirect for him,
24 depending on what we hear. And then Mr. Mason can
25 discuss, and either answer questions or I might ask him

1 some questions depending on what we hear, regarding the
2 I-5 widening and its effect on the project on the visual,
3 but that's all we want to kind of get out.

4 HEARING OFFICER KRAMER: Okay. Mr. -- did you
5 say Mr. Taylor? I don't know the spelling of his name.

6 MR. MCKINSEY: Eric Hale.

7 HEARING OFFICER KRAMER: Eric Hale, okay.

8 Okay. Mr. Ratliff or Ms. Willis, did you want
9 to --

10 MR. RATLIFF: Mr. Kanemoto is a staff --

11 HEARING OFFICER KRAMER: Is your mic on?

12 MR. RATLIFF: Mr. Kanemoto is a staff witness
13 and Mr. Hesters is there to answer questions of the
14 transmission line plan. And in view of the Committee's
15 directive regarding repetition, I'm afraid we may have put
16 Mr. Kanemoto at a disadvantage. He's basically prepared a
17 presentation with regards on many of the KOP simulations
18 and representations and we have to say -- and has prepared
19 a presentation.

20 We talked about whether he could radically
21 shorten it during a break and decided that we would
22 attempt to go ahead and present it. We think it's about
23 15 minutes long if the Committee will indulge us.

24 HEARING OFFICER KRAMER: Is it focused on the
25 areas in contention which seem to be the I-5 side?

1 MR. RATLIFF: Well, when you talk about the
2 areas of contention, I'm kind of at a loss because the
3 areas of contention are not entirely clear. Our position
4 is at least a nuance different from that of the applicant
5 and is also, we think, different but in ways I'm not
6 entirely certain of from POV's even though our bottom line
7 is that the cumulative effect of the I-5 widening would
8 result in a potentially significant cumulative impact
9 resulting from that project that we expect the Commission
10 would override. But I don't know where the differences
11 are exactly between the positions of the other parties
12 which makes me reluctant to say well, yes, it's exactly on
13 point to the differences because --

14 HEARING OFFICER KRAMER: Well --

15 MR. RATLIFF: -- there are subtle differences.

16 HEARING OFFICER KRAMER: But you are talking
17 about the I-5 issue and that -- that's seems to be --

18 MR. RATLIFF: Okay. That's --

19 HEARING OFFICER KRAMER: So let's go ahead and
20 let him go.

21 MR. RATLIFF: Okay. And I'll very quickly
22 direct him on some points.

23 HEARING OFFICER KRAMER: Okay. So we need to
24 have his PowerPoint loaded.

25 MR. RATLIFF: Mr. Kanemoto, were you the visual

1 witnesses -- visual resources witness in the prior
2 licensing proceeding?

3 DR. ROE: Just a point of information,
4 Mr. Kramer. When will the cross-examination of the
5 previous witness take place?

6 HEARING OFFICER KRAMER: Well, right now we're
7 just having basically the opening statements and then
8 we'll have an opportunity for the panelists to ask
9 questions of each other a little later.

10 MR. RATLIFF: Do you have that question in mind?
11 Mr. Kanemoto, were you the visual resources witness in the
12 prior licensing proceeding?

13 DR. KANEMOTO: Yes, I was.

14 MR. RATLIFF: And what were your conclusions,
15 briefly stated, for that prior licensing proceeding?

16 DR. KANEMOTO: The project had direct impacts
17 that could be mitigated to less than significant.

18 MR. RATLIFF: Please speak up a little bit and
19 directly into the microphone. You and I are both bad
20 about these things.

21 DR. KANEMOTO: Right. That the project had
22 direct impacts that could be mitigated to less than
23 significant and that the cumulative impact of the I-5
24 widening is potentially significant but could be mitigated
25 to less than significant.

1 MR. RATLIFF: And were those findings repeated
2 in the final decision?

3 DR. KANEMOTO: Yes.

4 MR. RATLIFF: And what are the new facts and
5 circumstances as presented by the amendment proposal that
6 require new visual analysis for this proceeding?

7 DR. KANEMOTO: Well, there are several. The
8 amended project has a lower profile than the licensed
9 project, as has been pointed. The transmission lines have
10 been moved from the west side to the east side making them
11 more prominent. The proposed layout was altered somewhat
12 constraining mitigation opportunities more than before.
13 CalTrans selected a preferred alternative for the I-5
14 widening in its final EIS subsequent to the previous
15 proceeding and provided a more precise delineation of its
16 proposed right-of-way. Finally, the large visual profile
17 of the EPS would be removed.

18 MR. RATLIFF: How have these changes to the
19 project affected your conclusions?

20 DR. KANEMOTO: The lower project profile reduces
21 but does not entirely eliminate visual impacts. The lower
22 profile makes the project easier to screen visually. The
23 EPS removal would be an overall visual benefit, and the
24 combined impact of the upper rim road and I-5 widening
25 would reduce the buffer zone at pinch points on the site

1 boundary potentially causing significant cumulative
2 impact. Even though this impact would be successfully
3 mitigated and staff has proposed modified conditions
4 (inaudible) which would require effective mitigation.

5 MR. RATLIFF: If it can be successfully
6 mitigated as you believe, why are we recommending -- why
7 is staff recommending that the Commission conclude it's
8 potentially significant impact with regard to the I-5
9 widening project?

10 DR. KANEMOTO: Well, staff believes that the
11 project will be successfully mitigated as both CalTrans
12 and the applicant will have separate legal obligations to
13 do so. However, the specifics of the final mitigation
14 cannot be determined at this time because they rely in
15 part on cooperation and agreements with CalTrans.

16 Now, CalTrans, while subject to CEQA and
17 required to negotiate with NRG is outside of CEC control;
18 therefore, staff has conservatively been advised to
19 identify the cumulative impact of the I-5 widening as
20 potentially significant with the CEQA finding that the
21 mitigation is at least in part within the authority of the
22 other agency, which can and should provide such
23 mitigation.

24 MR. RATLIFF: Okay. Could you please give us
25 your presentation now?

1 DR. KANEMOTO: Yes. We were asked to summarize
2 the conclusions of the FSA. I'll try to do that quickly.

3 Staff examined the amended project from eleven
4 key representatives viewpoints, or KOPs. These were the
5 same KOPs previously analyzed for the licensed project.
6 Our conclusion is that impacts from eight of these eleven
7 KOPs would be less than significant.

8 In three cases, the KOP's representative of
9 views from east of the lagoon, we concluded the amended
10 project would have potentially significant impacts. Staff
11 also concluded that these impacts with recommended
12 mitigation could be reduced to a less than significant
13 level.

14 Staff also concluded that the cumulative impacts
15 of the amended project, in combination with the I-5
16 widening, would potentially be significant in proposed
17 condition of certification Vis 5 to address this. With
18 this condition, the impact could be reduced to a less than
19 significant level.

20 Finally, staff is recommending an override
21 finding in relation to this cumulative impact which we
22 just discussed.

23 And I think if we can get --

24 In the prior slide, it was meant to illustrate
25 the fact -- just to remind the fact that the new units are

1 much lower and less prominent under the licensed project
2 and, therefore, in principal much easier to mitigate.
3 This image shows the comparative height of the two
4 projects' exhaust stacks. The amended project is in blue.

5 DR. ROE: What exhibit is that?

6 DR. KANEMOTO: This was submitted as part of the
7 rebuttal testimony and is also -- was documented as part
8 of a presentation that took place at a previous workshop.

9 Also, I think the ultimate removal of the EPA
10 Power Station would be ultimately beneficial.

11 Next slide.

12 However, staff did not conclude that the
13 introduction of the new generation units would be visually
14 neutral or would not have an adverse impact. This chart
15 summarizes the visual analysis from all key viewpoints,
16 and, as indicated in the chart, views from the three
17 representative KOPs around the lagoon to the east were
18 found with potentially significant impacts. They're
19 highlighted in the slide in blue.

20 Especially because of apparent loss of trees on
21 the CECP berm in the recent past, the new units would be
22 prominent from some areas around the lagoon and would
23 introduce a strong industrial character to the views in
24 the east. Staff believes, however, that these impacts can
25 be made less than significant with additional screening.

1 I'll note that in the chart four key viewpoints,
2 6, 6A, 7 and 7A, represented views from adjacent motorists
3 on I-5 were found to be less than significant. Staff is
4 aware there is some disagreement about that conclusion and
5 we can discuss those conditions further later.

6 The next slide, please.

7 The following sequence of simulations from the
8 petition to amend is representative of the lagoon
9 viewpoints with potentially significant impacts and is, I
10 think, instructive, although it's a little difficult to
11 see right now. But this sequence is from KOP-2 at Capri
12 Park.

13 This first image shows the licensed project but
14 actually depicts it in an unmitigated condition evidently
15 without screening of required condition Vis 2 which
16 required supplemental landscape screening to be installed
17 at the site perimeter. Gaps in the existing berm
18 screening are therefore very evident here, exposing the
19 aboveground features.

20 Next slide.

21 Oh, this image shows the amended project also
22 apparently without mitigation of condition Vis 2. The
23 aboveground features are less prominent than under the
24 licensed project, but they are still very visible and
25 prominent, introducing a very industrial character into

1 the scene from the vicinity of the lagoon.

2 Next slide.

3 And the last image shows the removal of the EPS.
4 Now, clearly this is a big improvement, however, it does
5 not negate the industrial character of the exposed
6 generation units. This is why we believe that early
7 implementation of condition Vis 2 planting of supplemental
8 perimeter landscape screens is important.

9 The following three slides refer to the issue of
10 visibility of the transmission towers on I-5, and I think
11 possibly if we could address that later in response to any
12 questions that may come up about that. We'll skip it for
13 now.

14 So of course, as under the licensed project,
15 staff identified a potentially significant cumulative
16 impact to the I-5 project. It's anticipated that the
17 proposed widening of I-5, as described in the project
18 FEIS, would require acquisition and removal of much but
19 not all of the wide existing landscape buffer within the
20 existing CECP site. This impact is addressed under
21 condition Vis 5.

22 In their opening testimony, POV stated their
23 understanding that there would not be room to accommodate
24 the requirements of condition Vis 5 between the proposed
25 widened I-5 right-of-way and the amended CECP proposed

1 upper rim road. Staff understands their concern and
2 acknowledges the highly constrained character of the
3 eastern border of the CECP site. Staff, therefore,
4 submitted the following exhibits intended to help clarify
5 this very confusing issue and clarify the understanding
6 that underlies the formulation of condition Vis 5. These
7 exhibits are meant only to demonstrate a possible range of
8 design concepts that are available to achieve mitigation
9 from strictly a visual perspective.

10 So this figure depicts the amended CECP layout
11 as proposed with a landscape buffer zone as stipulated
12 under Condition Vis 5.

13 Between the proposed widened of I-5 and the
14 amended CECP proposed upper rim road, and that's shown in
15 green.

16 Staff -- the red line is the assumed future
17 CalTrans right-of-way line.

18 As shown, you can see two pinch points as noted
19 by both Terramar and POV that are created by the proposed
20 upper rim road in the vicinity of Units 6 through 9. The
21 rim road is shown in yellow.

22 At these points the proposed rim road abuts the
23 presumed CalTrans right-of-way after I-5 widening. At
24 those pinch points, the 20-foot wide landscape buffer
25 called for in Condition Vis 5 could not be implemented on

1 the CUP side without some alteration to the project
2 layout.

3 It's also worth noting here that the future I-5
4 right-of-way is not actually depicted in the CAD files
5 provided to staff by CalTrans. The presumed right-of-way
6 line was drawn by the project applicant; however, the
7 assumed boundary, as depicted, shows a conservative worst
8 case scenario and that it extends farther into the CUP
9 site than the limited grading line shown by CalTrans in
10 their CAD plans.

11 The next slide.

12 So this figure depicts a scenario, Scenario A,
13 in which the Vis 5 buffer could be located entirely within
14 the CECP side. As depicted, this scenario would require
15 realignment of the upper rim road making way for a buffer
16 zone along the future I-5 right-of-way line. This road
17 realignment required tall retaining walls at the eastern
18 side of the subgrade bowl in which the generation unit
19 would be located, as shown in red in both the plan and
20 cross-section diagrams. Staff sees no reason why such
21 walls would be infeasible, however, in the layout shown
22 here, these walls would need to be quite tall, nearly
23 30 feet as shown in the diagram.

24 Next slide.

25 The next slide is a close up of the previous

1 cross-section.

2 Next slide.

3 This figure depicts an alternative scenario,
4 Scenario B in which the Vis 5 buffer shown in green could
5 be located entirely within the future CalTrans I-5
6 right-of-way. Under this scenario, the proposed layout of
7 the amended CECP could remain as proposed and the security
8 barrier stipulated under Condition Vis 7 would be located
9 at the right-of-way line as shown in the cross-section.

10 Next figure.

11 This figure is the CalTrans CAD drawing of the
12 preferred eight plus four buffer alternative. Staff took
13 representative sample measurements of the width of the
14 setback area between the proposed edge of paving
15 highlighted in yellow here and the proposed edge of
16 project grading shown in green. These measurements taken
17 at sample points adjacent to the proposed generation unit
18 locations range from approximately 19 to 26 feet; however,
19 the limit of grading line shown by CalTrans in this -- in
20 this slide does not extend as far into the CECP site as
21 the assumed right-of-way line shown in our other figures.
22 Thus, the width of the potential buffer area and the
23 right-of-way could be somewhat greater at least in some
24 locations if one assumes the other right-of-way line.

25 Landscape planting in the CalTrans buffer -- no,

1 in the CalTrans right-of-way requires a safety barrier
2 along the planted area such as the three to six-foot
3 barrier shown in the inset cross-section in the upper
4 right-hand corner taken from the CalTrans I-5 widening
5 project design guidelines that was a part of the FEIS, but
6 such widening is possible with a barrier under CalTrans
7 design rules.

8 Staff believes this analysis provides a strong
9 indication that the stipulated 20-foot landscape buffer
10 might be potentially accommodated entirely within the
11 proposed CalTrans right-of-way.

12 Next slide.

13 So this is a close-up of the cross-section for
14 Scenario B.

15 Next slide.

16 This figure depicts an alternative -- another
17 alternative scenario, Scenario C, in which the Vis 5
18 buffer could be located on portions of both CECP site and
19 the I-5 right-of-way. As depicted in the cross-section,
20 this scenario could incorporate a partial realignment of
21 the upper rim road in the areas of the pinch points
22 similar to Scenario A. However, by incorporating portions
23 of the widened I-5 right-of-way, the amount of road
24 realignment needed could be much less. Consequently, the
25 length and height of the required retaining wall could

1 also be much less. In addition, a further advantage of
2 this scenario would be potentially a much wider landscape
3 buffer zone than would be possible under either Scenarios
4 A or B.

5 In fact, a possible version of Scenario C could
6 entirely avoid the need for rim road realignment and still
7 provide the stipulated 20-foot wide landscape buffer at
8 the pinch points while providing a substantially wider and
9 more flexible buffer zone in other points along the
10 highway boundary.

11 For these reasons, a version of Scenario C, that
12 is a buffer zone in portions of both the CECP site and I-5
13 right-of-way would clearly be the most effective and would
14 also be substantially less costly and disruptive than
15 Scenario A.

16 Next slide.

17 This is the cross-section diagram of Scenario
18 C.

19 Next figure.

20 Finally, I think it's worthwhile to make the
21 point that this figure was taken from the I-5 project
22 design guidelines which depicts CalTrans landscaping
23 intent along the CECP site as presented in the FEAS.

24 Now, contrary to statements provided in the POV
25 opening testimony which were based on informal

1 conversations with CalTrans staff, this figure clearly
2 shows the original intent of the I-5 project to establish
3 Category I native landscaping in the right-of-way of the
4 project along the CECP site boundary as indicated in
5 green.

6 These measures from the design guidelines, in
7 effect, represent a component of the mitigation measures
8 identified in the I-5 project final EIS and its associated
9 visual impact assessment technical report.

10 The cumulative impact of the licensed CECP
11 project in combination with the I-5 widening project, by
12 the way, was recognized as a significant cumulative visual
13 impact in the final EIS.

14 HEARING OFFICER KRAMER: Is that mitigated or
15 was it unmitigable? Is that what they said?

16 DR. KANEMOTO: Yes. Yes, they just identified
17 visual impacts in general as unmitigated, but they also
18 expressed the intent of applying all these measures to,
19 you know, achieve as much mitigation as possible.

20 HEARING OFFICER KRAMER: After the application
21 of those measures it still remained significant?

22 DR. KANEMOTO: Right. As a whole, they don't
23 identify specific impacts. They just address the topic as
24 an entirety of the length of the corridor.

25 HEARING OFFICER KRAMER: So were they referring

1 to this area, can we even tell? Because it sounds as if
2 you're saying you think it can be mitigated; it's just a
3 matter of getting all the people to do their part. Is
4 that correct?

5 DR. KANEMOTO: Yes, I do believe that it can be
6 mitigated in this location.

7 HEARING OFFICER KRAMER: Okay. Please go
8 forward.

9 DR. KANEMOTO: So just in conclusion, these
10 exhibits hopefully showed why staff believes that
11 Condition Vis 5 is, in fact, feasible; however, you know,
12 they also help illustrate both the technical and legal
13 complexity of arriving at a final specific workable plan.
14 It's because of these evident complexities that staff made
15 the recommendation for an override finding.

16 To clarify that recommendation, staff believes
17 that there's ample reasonable expectation that Condition
18 Vis 5 can be fulfilled with cooperation between the
19 project owner and CalTrans. According to staff's
20 understanding, CalTrans has a legal obligation under CEQA
21 to address significant impacts of this project which this
22 would be. The project owner will similarly have legal
23 obligations to address these impacts under Condition Vis
24 5.

25 During negotiation between the parties for the

1 right-of-way required to build the proposed I-5 project,
2 there are, as we've shown, a variety of potential physical
3 solutions that could be developed to fulfill the screening
4 requirements of the condition. However, only because the
5 final specific mitigation measure cannot be specified in
6 detail at this time, staff has been advised to recommend,
7 out of an abundance of caution, an override finding that
8 recognizes the possibility of the significant cumulative
9 impact and the responsibility of both parties to address
10 it.

11 We believe this finding would be consistent with
12 both future guideline Section 15091(a)(1) and (a)(2); that
13 is, one changes the alterations that have been required
14 for incorporating into the project which are void or less
15 than the environmental effects and, two, such changes or
16 alterations are the responsibility and jurisdiction of
17 another public agency which can and should be adopted by
18 the other agency but, again, staff believes the stipulated
19 mitigation can and will be achieved in which case
20 significant cumulative impacts could be avoided.

21 HEARING OFFICER KRAMER: So do I have it right
22 then the reason for the conservative recommendation is
23 because you're not sure whether CalTrans will actually
24 follow through and create the required mitigation?

25 MR. MCKINSEY: Well, that's correct. As I

1 understand it, the Commission has no power to compel
2 CalTrans to do anything.

3 HEARING OFFICER KRAMER: Okay. Thank you.

4 I'll note that this PowerPoint was just
5 docketed -- I see an e-mail and it is, in fact, TM Number
6 204038, so I don't know if staff wants to propose that as
7 an exhibit, and if so, that would be Number 2008.

8 MR. RATLIFF: Fine.

9 MS. SIEKMANN: Mr. Kramer, could you repeat
10 that?

11 HEARING OFFICER KRAMER: Yes. A PDF of this
12 PowerPoint presentation was docketed probably in the last
13 hour or so, and it's been approved. You'll see it in your
14 e-mail if you were to look at it. Maybe twice on your
15 case.

16 Basically, to explain the insider joke,
17 Ms. Siekmann was on the POS list with the wrong e-mail
18 address and yet she was telling me she was getting
19 e-mails, so I'm not saying it's your fault.

20 MS. SIEKMANN: It's not.

21 HEARING OFFICER KRAMER: Yeah, so she was
22 getting them through the listserv, and now through the POS
23 with the proper e-mail, which I discovered only because I
24 tried to use that e-mail to tell her there was a problem
25 with one of her filings. Now she gets two e-mails from

1 the system every time something is filed.

2 MS. SIEKMANN: That's how I know for sure.

3 HEARING OFFICER KRAMER: Okay. So let's see.
4 That's it for staff for the moment?

5 MR. RATLIFF: Yes.

6 HEARING OFFICER KRAMER: Okay. Then Dr. Roe's
7 the moving party on this issue.

8 Dr. Roe, Power of Vision, do you want to go
9 ahead and make your opening -- tell us what you think we
10 need to know about this issue.

11 And also confirm for us that your concerns are
12 really just about the I-5 area impacts and that -- or are
13 you concerned about other key observation points as well?

14 DR. ROE: I'm concerned about the observation
15 points, and it kind of stems from a point that Mr. Sarvey
16 brought up in that we are dealing with an amendment to an
17 accepted or approved project and not a new AFC.

18 And I raise that because whenever either staff
19 or POV would raise a question about points of view of the
20 project that were not in the original KOPs, the project
21 owner objected and said that, well, you know, these legal
22 ones are the KOPs that have previously been accepted. So
23 we don't have some critical views particularly of the
24 transmission line that was moved from the west side of the
25 project to the east side.

1 That has introduced, in our opinion, a
2 significant visual impact which some of the critical views
3 have not been presented in prior testimony, in prior
4 presentations or in the presentation from Dr. Priestley
5 this morning.

6 So while KOP -- while Power of Vision is aware
7 that there are other visual impacts, particularly after
8 the I-5 is widened, views of the smoke stacks, they're
9 significant too, but probably not easily remedied.
10 However, we strongly feel that the location and the height
11 of the proposed amended project's transmission line can be
12 ameliorated, and that's what we've been trying to do
13 throughout the proceedings, to point out ways that the
14 visual impact, as good as or as bad as it may be, can be
15 much better. That's our concern. That's our purpose.
16 We're trying to be helpful. We don't have the resources
17 that the project owner has to do some of the technically
18 accurate presentations, but we're trying to convey across
19 to the Commission what can be done that will make this a
20 better project, better not only for the community and its
21 citizens, but actually if they wouldn't be so stubborn, it
22 would be better for the project owner too. So that's our
23 position.

24 HEARING OFFICER KRAMER: Okay. Well now's the
25 time to tell that -- tell us.

1 DR. ROE: All right.

2 HEARING OFFICER KRAMER: So please go ahead.

3 DR. ROE: If we can go to Exhibit 4001 page 2,
4 please.

5 MS. COCHRAN: 4011?

6 DR. ROE: 4001. All right. This is a drawing.
7 Thank you.

8 MS. COCHRAN: There you go.

9 DR. ROE: Thank you. This is a cross-section
10 drawing provided by the project owner, and it shows the
11 original location of the transmission poles on the east
12 side of the project adjacent to the upper rim road, and we
13 can bifurcate here to doing a little history.

14 Well, let me divert a minute and tell a little
15 anecdote. As a professor of engineering, one of the
16 things I tried to inculcate in my engineering students is
17 don't try to invent the wheel. Great. It's good to
18 brainstorm with the ideas you have and consult with others
19 whether they're feasible or not, but before you even do
20 that, look at similar things that have been done in the
21 past. In engineering, we don't make giant leaps forward,
22 we do small incremental improvements, so look at what's
23 done before you pose something new.

24 So the first thing I did when I saw these very
25 tall transmission lines, I recalled my visit to the Otay

1 Mesa project, and I remember the transmission line that
2 goes from Otay Mesa to wherever it goes off-site, and they
3 were not 98-foot or 100-foot poles so -- in fact, there
4 may be a slide in here that has an admittedly poor review.

5 Yes, that would be Exhibit 4001, page 9.

6 Now, if you look -- I have a pointer here.
7 That's the transmission line going from the power plants.
8 Look at it in relative size to the other buildings.
9 That's the transmission line that goes off to the left and
10 that was my recollection, it was not a 98-foot pole.

11 So if I went into the Energy Commission's
12 website and looked around for other recent projects that
13 have been approved that have similar GE LM-1000 units and
14 I came across the Firebaugh or Panoche Energy Center, and
15 I think that's Exhibit 4001, page 6. Yes.

16 HEARING OFFICER KRAMER: It looks like it's
17 actually called the Panoche Project.

18 DR. ROE: Yeah, the Panoche Project. Thank you.

19 And these are very similar units to the ones
20 that are going to be installed, and they come off of the
21 transformer bank, and they go to the H frames. But
22 instead of going from the H frames to some towers, the
23 line is carried on the H frames across the length of the
24 project and then connect to a transmission line that goes
25 across country.

1 These H frames are pretty much the same as the H
2 frames that the project owner proposes. They're
3 approximately 60 feet high, not 98 feet high, and seem to
4 be a rather neat and feasible solution which, by the way,
5 we proposed in a meeting that Julie Baker and I had with
6 President West of NRG showing him that, "Look. Here's
7 something you can do and it's going to cost you less. You
8 don't have to put those big transmission towers up on the
9 berm next to the I-5 freeway."

10 So we proposed on Exhibit 4001, page 5 --
11 page -- probably 7. Yes, page 7. Can you scroll up a
12 little bit or down?

13 That's good. So we proposed -- help me move
14 this.

15 MS. BAKER: What are you trying to do?

16 DR. ROE: There it is.

17 MS. BAKER: Just hold it down.

18 DR. ROE: Please bear with me. Old age is
19 catching up.

20 There's -- yeah, that's it. We proposed turning
21 the H frames that are currently proposed. We thought we
22 would turn them 45 or 60 degrees from the transformers and
23 carry the line across in the pit where it won't be seen
24 either from the west side, either from the I-5 freeway or
25 Highway 101, and somehow or other these suggestions were

1 received by a deaf ear. Nothing was done.

2 Another solution, if we go to Exhibit 4001, page
3 5. Not as elegant, but still doable is to rotate the
4 pairs of units around the center point between the two
5 smoke stacks and put the transmission line back on the
6 west side. It doesn't have to be up on top of the -- up
7 by the rim road where it was approved in the originally
8 approved CECP. It could be down in the pit, as a matter
9 of fact, an exact mirror image of what the project owner
10 is now proposing. As I say, it's doable. It's no
11 different except for rotating the units from what they are
12 currently proposing, but probably not as elegant as
13 keeping it on the H frames.

14 So, this is where our journey has taken us, and
15 this is where we have tried to impress on the Commission
16 that, as it will be shown in cross-examination, possibly
17 in later testimony, meeting the requirements of Vis 5 are
18 very iffy, very chancey. It depends upon all sorts of
19 miracles, I think.

20 And the easiest solution is do the same thing
21 that they did with the coastal trail, prohibit it from
22 being where it can cause a problem. The simple solution
23 is do not have the transmission lines on the east side.
24 Bury it, put it on poles on the west side, put it on the H
25 frame, but simply change Vis 5. You get rid of all the

1 ambiguous language and somewhat contradictory language --
2 it somewhat contradicts the testimony we heard how that
3 transmission line problem at least can be solved.

4 I don't know whether we're going to present our
5 testimony on the height of the transmission poles at this
6 point or -- since there was no previous testimony, perhaps
7 I should go ahead on that. Mr. Kramer?

8 HEARING OFFICER KRAMER: Please do.

9 DR. ROE: Yes. Now, if you'll bring up Exhibit
10 4001, page 8.

11 MS. BAKER: It's upside down.

12 DR. ROE: Can you rotate it? There you go.

13 MS. COCHRAN: One more?

14 DR. ROE: That's good. That's good.

15 On the right hand side -- if we go up just a
16 little bit, we can see the citation there.

17 That's good. You can see that on the left is a
18 cross-section provided by the project owner showing the
19 98-foot transmission tower. In previous hearings,
20 previous meetings, we had tried to engage the project
21 owner on the ability to lower those. And in rejecting a
22 petition that POV made, the Commissioners did recommend to
23 the project owner that they look into other feasible ways
24 to reduce the visual impact of those transmission lines.

25 And as often as we tried to engage the project

1 owner at workshops and outside of the hearings -- the
2 formal proceedings, they have not responded at all, and so
3 I took the liberty of using the minimum clearance heights
4 provided by the CPUC's GO-95 to make a rendering showing
5 staying within the limits of those minimum requirements,
6 how the overall height could be reduced to 64 feet or
7 less. I've included a rather generous five-foot sag
8 allowance, though the tables I have show that will
9 probably be closer to 3.7 or 4, and still keep the poles
10 much lower if that, in my opinion, undesirable route is
11 pursued by the project owner.

12 HEARING OFFICER KRAMER: So is that it from you
13 for the moment?

14 DR. ROE: Yes.

15 HEARING OFFICER KRAMER: Okay. Ms. Siekmann of
16 Terramar, do you have anything?

17 MS. SIEKMANN: I do.

18 Hello. First of all, Terramar would like to
19 support Power of Vision in their concerns and
20 recommendations because there are some real visual
21 eye-sore conditions that could happen along the I-5 and
22 especially with the creation of the I-5 widening.

23 Would you mind bringing up my exhibits? Do you
24 want to find my exhibit numbers?

25 Okay. So beginning with Exhibit 3016, so

1 Terramar felt that --

2 MS. COCHRAN: I can't find it.

3 MS. SIEKMANN: You can't find it?

4 MS. COCHRAN: Is there a cross-reference for
5 that, Mr. Kramer?

6 MS. SIEKMANN: Yeah, I can give you a TN. Is
7 that what you need? 203820.

8 MS. COCHRAN: 203 --

9 MS. SIEKMANN: And 22 photos.

10 HEARING OFFICER KRAMER: Yeah, these are photos.
11 Maybe they're sorted differently in the directory -- if
12 you want, give me presentation rights, I can show those.

13 MS. COCHRAN: Sure.

14 MS. SIEKMANN: So in the FSA, it states on
15 visual resources 4.13-9, it talks about this "Tall tree
16 canopy is a prominent feature of the existing site." So
17 Julie Baker and I decided to take a little drive along
18 this tall tree canopy and so if --

19 Mr. Kramer, you have my permission to, like,
20 every ten seconds go forward, because these are 22 photos
21 that I took as a passenger in a car driving along the
22 freeway with the traffic, and you can easily see how many
23 huge openings that there are in this tall tree canopy
24 being a prominent feature of the existing site.

25 So yeah, just please go. There's another one.

1 See the tall tree canopy? And continue.

2 Next photo. Tall three canopy.

3 Keep going.

4 As you can see, there are huge, huge holes in
5 this tall tree canopy.

6 Please continue. And all the trees that you see
7 on our side, the I-5 side of this tall tree canopy, are
8 going to be CalTrans trees not even on the property.

9 Here's another tall tree canopy. Look at the
10 huge, huge holes that there are along the I-5, and also
11 the nice care that's been taken of this tall tree canopy.

12 And so continue on. There actually are a couple
13 of trees together. Then keep going.

14 As you can see, you're starting to see clearly
15 the Encina Power Plant because there isn't anything
16 between the I-5 and the Encina Plant because there is no
17 tall tree canopy in many places at all.

18 So thank you. We're back --

19 HEARING OFFICER KRAMER: Did we hit them all?

20 MS. SIEKMANN: No, that wasn't all. That was
21 not all.

22 HEARING OFFICER KRAMER: So for the record, we
23 went from Exhibit 3016 through 3037. Does that sound
24 right?

25 MS. SIEKMANN: Yes. But --

1 HEARING OFFICER KRAMER: Or is there another
2 starting point for another sequence?

3 MS. SIEKMANN: No, 3037, but we didn't even get
4 past the Encina.

5 MR. RATLIFF: That's what I'm not sure about.

6 MS. SIEKMANN: They all did not show.

7 HEARING OFFICER KRAMER: Okay. Let's start
8 where? Okay. We did see those.

9 MS. SIEKMANN: There. So now we're starting to
10 see Encina, and there is nothing blocking the view. There
11 is no tall tree canopy.

12 And there we go. So you can still see Encina.

13 And that is the end. There you go. You made it
14 to the end.

15 So I think that it's very important for everyone
16 to actually see what it looks like when you're driving on
17 the southbound side of the I-5 as a passenger looking to
18 the right and clearly seeing exactly what's going on
19 there.

20 So if that's what's considered a tall tree
21 canopy, what's the mitigation going to be considered?
22 Many of the trees that show on these photos also are in
23 the CalTrans right-of-way. They aren't even the project
24 owner's trees.

25 So we agree with staff recommending Vis 2 that

1 the landscaping definitely needs to be plugged because
2 there are enormously large gaps in the landscaping and
3 many places that the present landscaping is not dense
4 enough to allow screening. And we agree with staff's
5 recommendation that they should start planting at the
6 earliest possible time under Vis 2 to prepare for I-5
7 widening. But with the I-5 widening, the concerns become
8 enormous.

9 Now, before we get to the I-5 widening, because
10 I just want to talk about the condition of the plant right
11 now, there's a checklist of questions that staff has to
12 answer, and I found it very confusing because staff must
13 address different visual aspects for each key observation
14 point, so -- and I'm only talking about along the I-5
15 because that is where my greatest concern is.

16 So for a KOP, they address visual quality,
17 viewer exposure, viewer concern, overall visual
18 sensitivity, visual contrast, overall visual change, and
19 impact significance. And even though --

20 And for KOP 6-A, which is along the I-5 which I
21 would like to thank staff for adding, the visual quality
22 was moderate, the viewer exposure was moderate, the viewer
23 concern was moderately high, the overall visual
24 sensitivity was moderate, the contrast was moderate, the
25 overall visual change was moderate, but the impact

1 significance would be moderate and less than significant.

2 Personally as a resident of Terramar -- I mean,
3 a resident of Terramar, yeah, for 20 years driving by this
4 location, usually at least twice a day, sometimes more
5 often, and hundreds of thousands of people who drive past
6 here, I would say that this is absolutely more -- it's a
7 significant view. It is not less than significant, it is
8 significant, because many of us, we live in a coastal town
9 and this is an industrial view, and that is shockingly
10 different than what the rest of this town looks like.

11 So when you put a power plant right there and
12 have all this open space, it's hard for us to depend on
13 the -- depend on the Energy Commission to properly
14 mitigate this issue. We're sitting here as residents of
15 this city, and we know that we're going to have a power
16 plant stuck here. We know right now they're calling this
17 a tall tree canopy but there are huge gaps in this tall
18 tree canopy. A lot of trees are on CalTrans side, so now
19 the applicant, the project owner, is asking to not have
20 20 feet of mitigation. Now, we're finding out with the
21 I-5 widening that CalTrans has specifically said they will
22 not mitigate.

23 So we, as residents here, think, "Oh, my God.
24 They're going to put in a huge power plant. They're not
25 even going to have to mitigate 20 feet. The I-5 widening

1 is going to happen. CalTrans said they're not going to
2 mitigate." But yet there is a condition that says that
3 they should work together, and we know how well that went
4 with the California Coastal Commission being involved in
5 this project, so there's absolutely --

6 If CalTrans says they're not going to mitigate,
7 I believe that CalTrans -- I believe CalTrans when they
8 say they're not going to mitigate, so, therefore, we, as
9 residents of Carlsbad, depend on you to take care of this
10 for us. You're in charge of CEQA. You need to take care
11 of this for us, please.

12 So all of a sudden another issue comes forward,
13 an override, and it looks like there's two overrides that
14 may happen: Number one -- well, that I know of right now,
15 the override for the 35 feet, which is a LORS override,
16 the override that you possibly may make in visual because
17 of the pinching of the road for the future of the widening
18 of the I-5, so all of a sudden there's these overrides
19 bring in need.

20 So this project is too big for the site. That's
21 all there is to it. It's just too big. And so we all
22 know because need is now an issue in this project, that
23 CPUC has turned this project down preliminarily. SDG&E is
24 supposed to go out and look at a request for offers and I
25 am not the person to explain that whole thing, because I

1 am not an expert on PUC, but I know that there is a --
2 that the project owner themselves have submitted to CPUC
3 that well, they would possibly do 500 and then maybe
4 another hundred would come along, so obviously it looks
5 like they realize that they may have to downsize the
6 project because renewables may take those slots.

7 This project's too big for the site. You don't
8 have to approve 600. Need is going to be part of the
9 project, and if you put in 300 or 400, they would have
10 more space for mitigation so that we don't have this huge
11 CEQA problem along the I-5.

12 And that is my testimony, but I have many
13 questions. Thank you very much for listening.

14 HEARING OFFICER KRAMER: Thank you.

15 Now, we're to the point where we have a give and
16 take if you will, among the various witnesses and then
17 we'll have an opportunity at the end for the lawyers'
18 representatives to ask more questions, but let me just
19 throw out a few questions that you might want to cover.

20 The reason I'm doing it at this point is that if
21 we do it at the end, we wait and see if anyone covers it
22 and we throw it out and it tends to generate another round
23 of conversation, and it might be more efficient if we just
24 throw them out at the beginning and you cover them right
25 away, but you may have your own issues as well, so this is

1 not an exclusive list. I'm not offering it as that.

2 The one question was if the CalTrans activity
3 reduces the screening area to less -- the screening area
4 to less than 20 feet, can adequate screening be provided?
5 And to some extent, some of you have touched upon that
6 already, but if you want to elaborate, that would be
7 helpful.

8 Mr. Priestley, one specific question for you --
9 Dr. Priestley. When you were doing your light table
10 comparison, you said that Dr. Roe's vegetation-less poles
11 were thicker than the others, but what I was wondering was
12 were they approximately the same height as the poles in
13 the drawings that you believe are more representative?

14 And Mr. Kanemoto, you said something to the
15 effect that -- what I wrote down was the new design
16 constrains mitigation in some way. I wondered if you
17 would just briefly elaborate on what you meant on that,
18 not right now because I'm just tossing out the questions.

19 But then maybe a question more for staff and the
20 applicant's attorneys, but I'm wondering why the can and
21 should provision in CEQA were basically refined that it's
22 in the province of another agency to take care of this
23 problem, and we know that there are means available to do
24 it and that they should do it isn't enough. Why would we
25 have to override?

1 It may have something to do with a question
2 asked earlier, which is apparently nobody seems to trust
3 that CalTrans is going to follow through, but under CEQA,
4 I'm not sure that -- I think the trust is assumed in some
5 ways by the law. Maybe somebody may consider that a
6 loophole, but I just wondered if you want to comment about
7 that or maybe that's something to talk about later in
8 briefing.

9 And then what is so magic about a 20-foot width,
10 anyway? That's a general question for conversation.

11 And that's it. So let's be a little
12 bit ordered. Let's start basically with the witnesses in
13 the order that they first presented, so --

14 MR. RATLIFF: Mr. Kramer, we'd like to
15 interject. Wouldn't it make sense also to have the
16 witnesses discuss the feasibility of the mitigation that
17 Dr. Roe suggests for the relocation, the undergrounding of
18 the --

19 HEARING OFFICER KRAMER: Yes, thank you.
20 Clearly, yeah. I didn't write that down, but yeah, that
21 would have been a question. I think we'd like to hear a
22 little bit from the applicant about why Dr. Roe's plan
23 doesn't work.

24 I know that back in January, I think it was, we
25 asked you to present some materials at the workshop on the

1 PSA, and I'm not even sure those are in evidence. I
2 didn't have the time to check, but we're, you know,
3 curious. We don't want this hearing to turn out to be a
4 micro design exercise for the project, but I think he's
5 asked a question that deserves at least an answer at some
6 level.

7 So let's go with Dr. Priestley to start and then
8 Mr. Kanemoto --

9 MR. MCKINSEY: Can I say one thing, Mr. Kramer?
10 That is that I agree, and we can respond to that, but
11 there is an implicit assumption in there that we haven't
12 responded or haven't done what we felt we could do, and
13 that was the assertion of Dr. Roe, and we do disagree with
14 that.

15 And I think some of that will come out in the
16 answers, but those -- I haven't asked the witnesses to be
17 so confrontational to another witness to say, "No, that's
18 not correct." I think the project owner would disagree
19 it's more of a legal argument anyway, but even in the way
20 you asked it to us, you're kind of making the assumption
21 why haven't you done anything, and our position would be
22 that we have done quite a bit and we've scratched our
23 heads and tried to do a lot more, and that should come
24 through in our responses.

25 HEARING OFFICER KRAMER: No, I didn't mean to

1 imply that. It's just that sometimes we ask questions
2 where we know the answer is in the documents, but we also
3 know that there are people listening and members of public
4 in the room who don't want to read all that stuff, and we
5 want to try to answer some of those very -- what seem to
6 be very common questions.

7 So Dr. Priestley, you want to go ahead?

8 DR. PRIESTLEY: Okay. So as I recall, your
9 question for me was a report --

10 MR. MCKINSEY: Dr. Priestley, your microphone,
11 please.

12 DR. PRIESTLEY: Sorry. Is that better?

13 MR. MCKINSEY: There you go.

14 DR. PRIESTLEY: Yes, as I recall your question
15 for me was for a further report on the light table
16 exercise, and so when I overlaid the existing -- the
17 simulation that we had prepared on top of the POV images,
18 it was very, very clear that the towers in the POV
19 simulations had been incorrectly rendered in that they
20 were at least twice as thick as the towers that had been
21 professionally rendered.

22 In terms of the height, the height seemed to be
23 more or less the same; however, I can report that in terms
24 of the stacks, if you do a comparison of the northbound
25 view and you take a look at the stacks in the POV image in

1 terms of its relationship to the conductors and you
2 compare that to the stacks in the professionally prepared
3 simulations, you can see that the stacks in the POV image
4 appear to be taller. So again, it would appear that these
5 images tend to distort the appearance of the project
6 facilities. And then your question of what the basis was
7 for completely eliminating vegetation is really the key
8 point here.

9 HEARING OFFICER KRAMER: Okay. So when you say
10 they were taller, were they -- was it just a little bit
11 taller, a lot taller?

12 DR. PRIESTLEY: Well, I don't --

13 HEARING OFFICER KRAMER: Can you give us a
14 percentage?

15 DR. PRIESTLEY: I don't have the image right
16 here in front of me to remind myself, but if you take a
17 look at their image, the -- okay. And I guess with the
18 resolution we're getting on the screen it's a little hard
19 to tell, but their stacks, the second set of stacks, the
20 one on the right extends up almost to the second conductor
21 from the bottom. And if you look in our original
22 simulation, that second set of stacks which is actually
23 kind of mostly hidden behind the tree, but if you look
24 very closely, it tends to be closer to the bottom, the
25 bottom-most of the conductors.

1 HEARING OFFICER KRAMER: Okay. And if you had
2 any comments about anything somebody else said or
3 questions -- other questions I threw out, now is the time.

4 DR. PRIESTLEY: Yeah, there are a couple things
5 that I think we need to clarify. Ms. Siekmann from
6 Terramar made a comment -- well, showed us photos of views
7 as you're traveling down I-5, and I think we can't really
8 accept those as evidence unless we also have a map showing
9 the locations from which those photographs are taken.

10 First of all, which of those photographs were
11 actually taken when you were like next to the site and
12 looking into the site, and we need to see well, what would
13 the lines of site be through those holes in the
14 vegetation, looking toward -- toward project features.
15 That really needs to be established to be able to
16 interpret, "Well, what do these mean and what do they tell
17 us?"

18 Secondly, that particular presentation does not
19 take into account that Vis 2, Vis 3 and Vis 5 will require
20 landscaping of a site whose objective, in fact, is to fill
21 in any holes that might provide visibility to -- yeah,
22 into features on the site.

23 And additionally, there was a statement made by
24 Ms. Siekmann that the applicant is opposed to the 20-foot
25 buffer, buffer zone in Vis 5 and, in fact, now that staff

1 has modified the language regarding that 20-foot buffer,
2 the applicant has no objection to that provision of Vis
3 5. It's actually something that I want to reiterate that
4 yes, the applicant supports Vis 5 as it is now
5 constituted, and we are convinced that Vis 5, as applied,
6 is quite capable of reducing the visual impacts of the
7 project to views from I-5 to a level that is -- to a level
8 that is less than significant.

9 HEARING OFFICER KRAMER: Thank you. Anything
10 from Mr. Hale or Mr. Mason?

11 MR. HALE: And yes, sir, I'd like to address a
12 couple of Dr. Roe's visuals.

13 If we could have slide or Exhibit 4001? And I
14 believe it was page 7. I don't remember if it was 6 or 7.
15 Does someone have a laser pointer?

16 Sorry. On Panoche, I'd like to point out a
17 couple features here because this is something, Dr. Roe,
18 that we did consider.

19 Okay. It's hard to see on this screen. You may
20 not -- I apologize but you're going to have to look up
21 behind you. But there is a fence around here. This is
22 actually a substation and there's bus work -- you know,
23 exposed conductors coming off of the circuit breakers
24 requiring this entire area to be fenced.

25 And if we use this configuration for units 6, 7,

1 8 and 9, you'd have to have a similar treatment. That's
2 really quite space consuming.

3 And this is splitting hairs, but to be technical
4 about it, these are not H frame structures; they're A
5 frames. And the distinction is they have four legs
6 instead of two. You need them for the strength and the
7 conductor tensions.

8 Could we slide down to the next slide? I'll
9 show you why these are relevant comments.

10 Okay. In what you've -- in what you've shown
11 here, you have a problem. At Panoche, you're just looking
12 at 230 KV. In this site, we have two different voltages.
13 The first four connect to the 230 KV system, the last two
14 units, 10 and 11, are the 138 system. And something that
15 would not be a good design feature is to stack these
16 conductors one over the other like this. Having 230
17 conductors and 115 conductors ever come in contact or
18 flash over between them is really destructive, so what you
19 would have to do is -- if you were going to use this
20 configuration, at this point you would need to exit the
21 bowl so that you maintain separation from these two
22 structures.

23 And one of the -- the points that we have why we
24 exit the bowl as we go or try to move away from there is
25 to save space in what's, you know, a very confined layout,

1 and that's why we move them directly off to the east as we
2 have done. And we have looked at this and, you know, did
3 not use it for those reasons.

4 Let's see. Could we go to the slide, I think it
5 was 7? I may be wrong -- or 8 that showed the pole
6 heights. Yeah, if you could rotate that.

7 Okay. One of the reasons, you know, in GO-95
8 you have, as you actually portray, an 11-foot required
9 phase spacing; however, there is a situation in this
10 configuration where you come off the H frame structures at
11 the dead ends and you roll the configuration of the
12 conductors from horizontal to vertical. As you do that,
13 that's the point you -- you have kind of a pinch point if
14 you think through the geometry of that, and that's the
15 place that you end up with a phase to phase clearance
16 problem, and that's the reason of up here on this side
17 you've gone to a greater phase spacing.

18 Now, I didn't personally prepare this drawing,
19 so I can't vouch for why it's 17 feet, not 16, not 18, but
20 I assure you that that's the reason that you have a
21 greater phase spacing there.

22 Also, you mentioned that you had allowed an
23 ample sag at five feet and sir, I do disagree with you on
24 that. Particularly the long span, I believe you would be
25 more in the range of 15 feet rather than five feet, and

1 you won't know until we've -- you know, which it is until
2 you have selected the conductor, which we haven't even
3 done yet because we haven't done detailed design. But I
4 disagree with your contention that you can get it down to
5 a five-foot sag. I don't think that that really,
6 particularly for that one long span, would be feasible.

7 And in kind of closing on this, the 35-foot, if
8 you're going over flat ground, yeah, that will work;
9 however, with the topography that we're going to have in
10 the bowl, you have -- there's quite a bit -- there's quite
11 a few things that you have to pass by and get around and
12 you still have to maintain that clearance around through
13 those. So while -- as you presented here, on flat ground
14 for a tension structure, yes, that may well work, but sir,
15 those really aren't the situations that we face here.

16 DR. ROE: Can I respond to the last statement?

17 HEARING OFFICER KRAMER: Yes, please. We're
18 looking for a little back and forth, although if you agree
19 to disagree at some point, that's okay.

20 DR. ROE: Thank you for that. That was
21 interesting testimony.

22 As far as the very last point you made about the
23 frame being different, I would like to point out that both
24 the staff and POV did request sectional drawings along the
25 entire length of that transmission line so that we could

1 see the elevations at each point above the ground level;
2 however, the project owner did not provide that. I spent
3 some time taking cross-sections at each point along the
4 way, and that 35-foot clearance that we show, nowhere,
5 nowhere will violate the Geo 95, so it's an interesting
6 point.

7 And the same is true of the twist. I looked at
8 that also, and I disagree with you on that.

9 As far as the H frames or A frames, you're
10 correct on that, they could probably be H frames at
11 Panoche.

12 And when you get to units -- what is it, the
13 last two units?

14 MR. HALE: 10 and 11.

15 DR. ROE: 10 and 11, the A frames there would
16 not be 60 feet high, they would have to go up another 11
17 or 12 feet to provide the clearance between the 150 KV and
18 the 230 KV without any danger of flashing.

19 MR. HALE: We probably just have to disagree on
20 that point.

21 DR. ROE: All right.

22 HEARING OFFICER KRAMER: Mr. Mason, anything?

23 MR. MASON: I don't know that I have a lot to
24 add in terms of staff's analysis.

25 In terms of Vis 5 as the way it is set, it is

1 clear to the project owner what is required. It is clear
2 that within the right-of-way as defined by CalTrans that a
3 sufficient landscaping can be included into the project,
4 so we don't see and we agree with staff that with the
5 implementation of that COC as stated, that the impact to
6 the visual through the additional landscaping will be less
7 than significant.

8 HEARING OFFICER KRAMER: Mr. Kanemoto?

9 DR. KANEMOTO: Yes, well, you asked several
10 questions that I should probably address.

11 The first one was that I had mentioned the fact
12 that the amended project presented greater constraints
13 than license project, and those constraints that I was
14 referring to were the fact that because of the changed
15 layout and I don't -- I can't really speak to the reason
16 why the layout is the way it is. I have no idea. I was
17 just responding to it.

18 The pinch points are much tighter under the
19 amended project than under the licensed project. And
20 under the licensed project, we were looking for a buffer
21 zone that was wide enough to accommodate a huge berm, an
22 elevated berm. And the reason for that was that we needed
23 to provide extra height for the trees because tree growth
24 alone was not sufficient to screen such tall structures.
25 That would have been a problem except for the fact because

1 this project is lower, we don't need that extra height,
2 not as much, so that accounts for the fact that we're able
3 to, you know, think about using a narrower landscape
4 buffer zone.

5 And you also asked why the 20-foot width is a
6 magic number, and that's a very good question.

7 We amended Condition Vis 5 to accommodate some
8 flexibility, but our intent is not to provide license to
9 have the entire buffer reduced very much because in our
10 minds 20 feet is a somewhat minimal width to provide
11 adequate screening for such a, you know, large project.
12 And I wanted to make the point that you need not only to
13 accommodate room for planting the trunks of the trees, you
14 need to accommodate room for the canopies and so on and so
15 forth, and, you know, avoid maintenance problems and so
16 on, as well as supplemental shrub planting that is going
17 to be very important from the point of view of motorists.

18 Really, a lot of what we're seeing with
19 Terramar -- and we basically agree with a lot of the
20 points Ms. Siekmann was making -- is that from the point
21 of view of motorists, a lot of this green that needs to be
22 added under the condition could consist of shrub -- dense
23 shrub planting, lower shrub planting that will effectively
24 block a lot of those views very quickly from the point of
25 view of motorists, and that's one of our hopes. So

1 20 feet -- 20 feet just seemed like a minimal width. It's
2 much narrower than the buffer zone being called for in the
3 licensed project, and the reason we think that will work
4 is because of the lower height of the project.

5 You also asked why the override is necessary,
6 and I think I need to defer on that point to the attorney.

7 HEARING OFFICER KRAMER: Thank you. Back to
8 you, Dr. Roe.

9 DR. ROE: Is this the time for
10 cross-examinations?

11 HEARING OFFICER KRAMER: Right. You can respond
12 to the questions I threw out and you can ask your own
13 questions of the others.

14 DR. ROE: Good. Well, remind me of your
15 question.

16 MR. RATLIFF: Mr. Kramer, before you leave
17 Mr. Kanemoto, I thought I heard you ask a question about
18 explaining the ability to provide the mitigation despite
19 the pinch points. This is something he did cover in his
20 original presentation, but did you want him to talk more
21 about that or do you have a specific question that you
22 wanted him to address about that? I thought I heard that
23 question when you said you wanted further responses.

24 HEARING OFFICER KRAMER: Well, yeah, the
25 question was something along the lines of if CalTrans with

1 their activities reduces the screening area to less than
2 20 feet and we have inadequate screening they provided, I
3 think he has in various --

4 MR. RATLIFF: Okay.

5 HEARING OFFICER KRAMER: -- said yes. And he's
6 described that some of it might end up on CalTrans
7 property or in their right-of-way, and there's that whole
8 question of whether they would follow through on their
9 part, so to speak.

10 Do you want me to repeat the questions again?

11 DR. ROE: Did you ask a question of me? I don't
12 recall.

13 HEARING OFFICER KRAMER: No, I don't think I had
14 one specifically for you unless you wanted to weigh in on
15 some of the other things.

16 DR. ROE: Yeah, I'd like to have an opportunity
17 to cross-examine --

18 MS. SIEKMANN: I have some too, so go ahead.

19 DR. ROE: To cross-examine some of the
20 witnesses.

21 HEARING OFFICER KRAMER: Yes, go ahead and ask
22 your questions. Just to be clear, though, the ground
23 rules in these sort of informal proceedings are if another
24 witness thinks that they have something to add to that,
25 then they can chime in after the person you asked --

1 specifically asked the question of, gives their answer.

2 DR. ROE: Okay. Keep me on track.

3 MS. SIEKMANN: And we're considered witnesses

4 too.

5 HEARING OFFICER KRAMER: Okay.

6 DR. ROE: I'm sorry. What was the name of --

7 MR. HALE: Eric Hale.

8 DR. ROE: Eric?

9 MR. HALE: Hale, H-a-l-e.

10 DR. ROE: I'd like the Commissioners to note

11 that Mr. Hale has not responded to our suggestion for

12 Exhibit 4001, page 5, which was the plan with the units

13 flipped around 180 degrees and the poles on the west side

14 of the project. I don't know whether he wants to comment

15 on that.

16 MR. HALE: I don't have an awful lot to add on

17 that.

18 DR. ROE: Okay.

19 MR. HALE: I think the people that address

20 visuals would probably be better to address that.

21 DR. PRIESTLEY: So, yeah, if I could jump in

22 just very, very briefly here, I guess, you know, the

23 question is why put the plants in since it has been

24 established that with mitigation, the presence of the

25 transmission towers on the east side of the project site

1 can be mitigated -- can be mitigated and would not be a
2 source of significant impact, so as a consequence, there
3 is no need to go to all the trouble of flipping the power
4 plant design.

5 And in addition, what flipping the layout would
6 mean is that with the transmission towers on the west side
7 of the site, they would, in fact, be more visible from
8 KOP-1 and Carlsbad Boulevard.

9 DR. ROE: First of all, we haven't established
10 that --

11 MS. BAKER: Mitigate -- it's unclear to us that
12 mitigation has been established.

13 DR. ROE: That's what we're arguing about here
14 this afternoon.

15 If you have nothing else to add, I'd like to
16 address some questions to you, Dr. Priestley. I was very
17 pleased to read your article in the Journal of
18 Environmental Psychology where you indicate public concern
19 about the potential impacts on the quality of the
20 surrounding area. It was very enlightening.

21 But what I failed to see in your presentation in
22 all the slides you presented was any close-up views of the
23 two southern-most transmission towers that sit up outside
24 of the pit. In all the presentations, the project owner
25 has studiously avoided showing those two most prominent

1 transmission poles even though we've requested views
2 showing those poles. In none of the renderings do we get
3 a close-up view, particularly going northbound, of those
4 two poles.

5 If you bring up -- I forget the slide number
6 we've been looking at all along. I think I have it in
7 front of me. I think it's 1021.

8 It's the next one. That's looking northbound --
9 southbound. I want the northbound. That's it. You'll
10 notice --

11 MS. COCHRAN: For the record, that's 1020.

12 DR. ROE: You'll notice that we see Units 8 and
13 9 -- I can't read the ones.

14 MS. BAKER: 8 and 9.

15 DR. ROE: And we see the poles going off to the
16 left. The poles that we see there are down in the pit.
17 The transmission line continues out of the pit to the two
18 southern-most poles. Nowhere, nowhere, despite our
19 repeated requests for us, has the project owner submitted
20 any good renderings of those two poles. Those two poles
21 are the most dominant feature that a quarter of a million
22 people who drive up and down that freeway every day will
23 most likely be visually impacted by, and yet the
24 Commissioners don't have the opportunity to see the impact
25 of it.

1 If we could bring up sort of like an aerial
2 rendering of the entire project? I don't recall offhand
3 the number of that. It's one of the --

4 HEARING OFFICER KRAMER: Nor do I.

5 DR. ROE: Sorry. It's one of the project
6 owner's numerous exhibits.

7 MR. McKINSEY: I'm kind of lost on what the
8 question is myself, but do you know what figure you're
9 looking for?

10 HEARING OFFICER KRAMER: Is it a project layout?

11 DR. ROE: No. You show an artist rendering of
12 the entire project from somewhere up in the sky.

13 MR. McKINSEY: I don't think we have that as a
14 specific exhibit. We have the entire petition to amend
15 and the relevant data responses --

16 DR. ROE: Anyhow --

17 MR. McKINSEY: So it's a page within those
18 exhibits.

19 DR. ROE: Anyhow, I bring up that exhibit
20 because that's where you get an artist rendering from up
21 in the sky of where those two southern-most 98-foot poles
22 are located, but there has been no rendering from the
23 freeway, close-up from the freeway of those poles, and
24 that's the dominant visual factor that they are trying to,
25 I don't know, hide. I don't know why they don't show it.

1 Dr. Priestley talks about the visual impact on
2 the approved project -- the visual impact of the original
3 project CECP was approved and it was okay, and since the
4 new project has less visual impacts and therefore this
5 one, the amended, should be approved too.

6 He ignores the fact that the old CECP did not
7 have a transmission line on the west side of the project
8 next to the I-5. And he also mentions that it will -- if
9 we move the transmission line to the west side, then there
10 will be a worse view from KOP-1, I think you said;
11 however, he also fails to mention that the Poseidon
12 building screens most of the transmission line on that
13 side, and the remaining two poles will be adjacent to
14 SDG&E poles which are already visible there.

15 So I don't see how Dr. Priestley's testimony
16 accounts for the proper impact, the actual impact that the
17 amended CECP transmission line will have on the viewers
18 from the I-5 freeway.

19 If we can go to Mr. Kanemoto?

20 MR. MCKINSEY: Can I -- I would like the chance
21 either for Dr. Priestley to respond or somehow for this to
22 become a question, unless you want him to testify.

23 Dr. Roe has said several things that I think we could
24 respond to: One, there has been no rendering showing the
25 southern-most pole, but he is skipping the fact that

1 KOP-7A shows that pole and shows that viewpoint, but he's
2 not asking questions; he's just simply speaking, and I
3 don't know how to address that.

4 HEARING OFFICER KRAMER: He's offering his
5 opinion, I guess.

6 Mr. Priestley, go ahead and respond.

7 DR. PRIESTLEY: Yeah, if I could offer a
8 counterpoint? The bottom line, you know, I beg to differ
9 with Dr. Roe's assessment and, in particular, I am
10 offended by the suggestion that our analysis is trying to
11 hide something related to the design of the new project
12 because, first of all, we prepared a whole set of
13 simulations and views like the one you see on the screen
14 right now for KOPs 2 through 4 that show the entire
15 expanse of the east side of the project, and those --
16 those provide a basis for understanding well, what is the
17 appearance of all of the transmission structures that are
18 going to be along the east side of the project? How are
19 they going to relate to the landscaping, the existing
20 features and the environment, the other project features?
21 So those provide a very, very clear basis for
22 understanding those two particular two structures that
23 Dr. Roe was concerned about.

24 And then furthermore, as Mr. McKinsey has just
25 pointed out, our KOP-7 provided a view looking up the I-5

1 driving north at a point just beyond where you go past
2 Cannon Road. And in that view, the two poles about which
3 Dr. Roe is concerned would be readily visible.

4 And I might just indicate too as you and the
5 Commissioner are aware of this, golly, we'd like to
6 simulate and every single view, but the reality is that we
7 have to pick, you know, kind of representative views, and
8 I really feel that viewpoint 7-A does a pretty good job of
9 helping everyone to understand those poles and their
10 relationship to their setting.

11 And then in addition, something I might mention
12 is that Dr. Roe made a statement suggesting that if the
13 structures were to be located on the west side of the
14 site, they would be screened by the Poseidon facility. I
15 just want to point out that that is not entirely true
16 because, in fact, if you look at the image that is now up
17 on the -- now up on the screen, you can see that there is
18 a large area to the north of the Poseidon site.

19 MR. MCKINSEY: Just for the record, this is
20 Exhibit 1022.

21 DR. PRIESTLEY: Yeah, of the Poseidon site which
22 would permit views from, like, South Carlsbad Boulevard
23 across the lagoon into the site in which those
24 transmission structures would be visible.

25 DR. ROE: You mentioned KOP-7A, could we throw

1 that up on the screen?

2 MS. SIEKMANN: The mic.

3 DR. ROE: I think you mentioned a KOP-7A. I
4 think everybody would be interested in seeing --

5 MR. MCKINSEY: We have 7A on -- the one that he
6 mentioned was KOP-7. The original KOP-7A and B were the
7 ones we added to show a closer view from I-5. That's
8 what's been up on the screen all along. KOP-7 is the one
9 that is farther south.

10 DR. ROE: Yes, but --

11 MR. MCKINSEY: I don't know but we had a hand in
12 it.

13 DR. ROE: But Dr. Priestley mentioned KOP-7A,
14 which I don't see in anybody's report.

15 MR. MCKINSEY: No, 7A has already been on the
16 screen?

17 DR. ROE: Can you show it?

18 DR. PRIESTLEY: Yeah. So if I said 7A, I was
19 referring to KOP-7 which, again, is the view from I-5 just
20 a little bit north of Cannon Road that takes in the entire
21 site and the two poles about which you have expressed
22 concerns.

23 MR. MCKINSEY: Susan, that would be Exhibit 2000
24 at page 703. That may take you a moment to load.

25 MS. COCHRAN: Page 270 --

1 HEARING OFFICER KRAMER: Page 703.

2 MR. MCKINSEY: Page 701.

3 MS. COCHRAN: This?

4 DR. PRIESTLEY: Okay. So that's it. So the top
5 image that we're seeing here is the project as -- let's
6 see. Actually, this is the existing, and then if you
7 would go --

8 HEARING OFFICER KRAMER: If you scroll up, I
9 think it says --

10 DR. PRIESTLEY: Why don't you show us the
11 caption so we know exactly what this? No, no, the caption
12 down --

13 HEARING OFFICER KRAMER: It's actually on the
14 top. It says it's "Amended."

15 DR. PRIESTLEY: Okay. All right. Yeah. So
16 this is -- yeah, that is the amended.

17 Now, if you could kind of scroll down as best
18 you can so we can see much of the image?

19 Okay. So you can see those structures, and I
20 think that you -- based on this, I think -- you have a
21 basis for deciding for yourselves what is the degree of
22 visual prominence and dominance of those structures as
23 seen from this view as you're speeding along I-5 at 65
24 plus miles per hour.

25 DR. ROE: What is the Exhibit number on this

1 one, please?

2 MS. COCHRAN: Exhibit 2000.

3 HEARING OFFICER KRAMER: 2000.

4 MR. MASON: If I may, this is Robert Mason with
5 the project owner? The other thing to take into account
6 on the simulations that have been prepared by the project
7 owner is that we intentionally did not include the effect
8 of the landscaping that is going to be required through
9 the various Vis COCs, and so this is done in an attempt to
10 go ahead and show under the existing condition, if you
11 will, but it is important to recognize that landscaping is
12 going to here.

13 The other thing I wanted to bring up while I was
14 the mic again is while we can all, I suppose, try to
15 speculate, I was concerned by staff's testimony regarding
16 whether or not CalTrans would, in fact, discharge their
17 requirements under CEQA and do the mitigation that they
18 are required to do.

19 I think it's clear to me that whether it be a
20 private applicant, private owner or state agency, that I
21 think we have to take at face value that any mitigation
22 that's required by CalTrans regarding landscaping, and
23 what is required under this license and under the existing
24 license for CECP that the applicant or the project owner
25 will also ensure that those mitigations are developed and

1 implemented.

2 So I find it, I guess, questionable to make a
3 finding that there may be unmitigated impacts based upon a
4 question about whether or not CalTrans will, in fact,
5 mitigate as it's required to do through its CEQA
6 documentation.

7 HEARING OFFICER KRAMER: Okay. Anything else,
8 Ms. Baker?

9 MS. BAKER: Oh, I just have two questions, one
10 is for Mr. Priestley.

11 I noticed in your drawings that none of them
12 showed any renderings of what the project will look like
13 after I-5 widening, and the reason this comes up is
14 because CalTrans has stated and made it clear to us, Power
15 of Vision, that all the tree canopy, much of it is going
16 to be gone, so it's not so much that we're arguing whether
17 the applicant or CalTrans is going to be responsible for
18 the landscaping, we believe somebody will do it. The
19 question we have is if there is even going to be any room
20 for it, and that's what our concern is.

21 So my question is -- I just noticed in your
22 drawings that you did not take into account what the
23 project would look like after I-5 widening. Do you have
24 any comment on that?

25 DR. PRIESTLEY: So first of all, the simulations

1 that you see indicate the appearance of the project before
2 project-related mitigation landscaping, so the project
3 site is going to look like this with the addition of the
4 mandated landscaping for, say, the next 15 years, 15-plus
5 years until such time --

6 MS. BAKER: Yes.

7 DR. PRIESTLEY: -- as -- well, there are
8 varying -- I guess we've gotten various assessments of
9 when this will take place. In any case for at least the
10 next ten years, the project will look as it appears in the
11 simulations with the addition of landscaping as well. And
12 after that time the staff rebuttal testimony has, I think,
13 very, very well demonstrated that it would be quite
14 feasible to add landscaping in the areas affected by the
15 CalTrans widening and on the site itself that would
16 provide a sufficient level of screening.

17 I guess others may be able to add more to this,
18 but I question the report that somebody at CalTrans
19 indicated that the tree canopy would be removed, and it
20 may well be that quite obviously if grading is required
21 along the edge of the paved area, that sure, there may be
22 a temporary loss of some of the existing tree screening,
23 but as Mr. Kanemoto pointed out in his presentation
24 showing us drawings from the CalTrans EIR that CalTrans is
25 committed to providing native landscaping along the edge

1 of the freeway, so it is very clear that CalTrans has
2 signaled that, in fact, its plan is to relandscape any
3 disturbed areas along the edge of the freeway.

4 MS. BAKER: Well, I guess I would just add that
5 seems to be a bone or a point of contention between the
6 various parties.

7 Could I ask Mr. Kanemoto a question?

8 HEARING OFFICER KRAMER: Please go ahead.

9 MS. BAKER: Just one question and then I'm done.

10 Mr. Kanemoto, if the transmission lines were
11 undergrounded or somehow made A frame, as Dr. Roe has
12 suggested, or undergrounded, would that have a bearing on
13 your opinion on the mitigation along the I-5 corridor
14 after widening?

15 DR. KANEMOTO: Well, it would certainly reduce
16 the level of impact or the cumulative effect. We have no
17 argument about that. That's obvious.

18 MS. BAKER: That's all I wanted to know. Thank
19 you.

20 DR. ROE: Mr. Kramer, could I cross-examine
21 Mr. Kanemoto?

22 HEARING OFFICER KRAMER: We're going to point
23 where we're going to have to -- yeah, I'm just warning,
24 we're going to have to start to wrap this up. We
25 estimated two and a half hours.

1 MS. SIEKMANN: Well, we started late.

2 HEARING OFFICER KRAMER: Yes, we're approaching
3 that at this point.

4 MS. SIEKMANN: Mr. Kramer, one point. I had
5 20 minutes and I had probably taken five, and the project
6 owner has taken way more than their --

7 HEARING OFFICER KRAMER: No, I understand.

8 MS. SIEKMANN: So if you could make sure that we
9 get what we --

10 HEARING OFFICER KRAMER: Right.

11 MS. SIEKMANN: Okay. Thank you very much,
12 because we're held to the end, then we get cut off and
13 that's happened before. Thank you.

14 HEARING OFFICER KRAMER: So Dr. Roe, go ahead
15 with a few more questions.

16 DR. ROE: Mr. Kanemoto, I've told you this
17 personally and I'll repeated publicly. I admire all the
18 figures you have for this area. It certainly throws a lot
19 of light on this situation. It also -- you also propose
20 some mitigation that, as smart as I sometimes think I am,
21 I hadn't even thought of putting the retaining walls so
22 that we could move the upper rim road. I really appreciate
23 you doing that.

24 If you can bring up slide, Mr. Kanemoto's figure
25 number 3? I don't know what exhibit number that was.

1 HEARING OFFICER KRAMER: From his presentation
2 today?

3 MS. COCHRAN: From his power point?

4 MS. BAKER: Yes.

5 THE WITNESS:

6 MS. COCHRAN: Mr. Roe, did you want the visual?

7 DR. ROE: No, it's a figure. I want to look at
8 figures 3, 4, 5 and 6. These are Mr. Kanemoto's rendering
9 of the I-5 widening.

10 MS. COCHRAN: 111?

11 DR. ROE: Yes, there we go. That's one. Move
12 on to the next one.

13 MS. COCHRAN: Okay.

14 DR. ROE: There we go. Very good.
15 I thought that was ingenious putting the
16 retaining wall there so you can have a little bit of room
17 to move the upper rim road over.

18 But the question is, how much could you move it
19 over? And I'm afraid the cross-section during that is not
20 probably scaled insofar as the position of the power poles
21 is, and we'll come back to this.

22 Okay. But if you could briefly bring up our
23 Exhibit 4016?

24 MS. COCHRAN: 4016, is that what you want?

25 DR. ROE: 4016. That's it.

1 Mr. Kanemoto, this is a cross-section provided
2 by the project owner in their TN number 203313. You might
3 notice that the power pole is located in the sloping area.
4 I did some calculations, and in a previous drawing, they
5 show that the power poles were lowered 18 feet 25 to
6 30 feet, which means that the power pole is not in the
7 20-foot wide rather already constricted lower rim road.
8 And if we go back to your drawing, the previous slide, the
9 one before that -- so if I could give me an exhibit
10 number, I could refer to it properly from then on.

11 MS. COCHRAN: That's okay. It's the power.

12 HEARING OFFICER KRAMER: It's actually 2008.

13 DR. ROE: So 2008?

14 HEARING OFFICER KRAMER: Yes.

15 DR. ROE: Thank you.

16 You see, your location of the power pole is
17 outside of the sloping area so you can't have both a
18 retaining wall and a transmission pole in that shaded area
19 in the cross-section so that if you put the power pole in
20 the proper location, instead of getting another 20 feet --
21 I don't know, maybe you'll get 15 or 16, but not your full
22 20 feet. And the same is true of the following drawings
23 where you show cross-sections with the power pole in what
24 is currently the lower rim road.

25 So I don't see how -- yes, I don't see how we're

1 going to be able to -- as much as I would like to have
2 seen it, I really would have liked to have seen that that
3 very clever solution implemented. I don't see how you can
4 have both. I don't see how you can have the road moved
5 from the power pole where the project owner proposes to
6 put it.

7 DR. KANEMOTO: These -- as I said before, these
8 were only meant to kind of describe a range of conceptual
9 solutions and they're not purporting to be accurate. We
10 don't have enough information to be perfectly accurate,
11 actually. You know, that's one of the reasons why I
12 thought it was important to present what I call Scenario
13 3 which shows that, you know, the combination of both
14 properties, then those problems essentially go away, but
15 --

16 DR. ROE: So to make --

17 DR. KANEMOTO: No, I agree with what you're
18 saying.

19 DR. ROE: Well, this cuts to a fundamental point
20 that a number of people have raised that you may not be
21 able to implement a buffer zone at all. There is -- there
22 doesn't seem to be -- I would like to have seen
23 Mr. Kanemoto's solution work, but there does not seem to
24 be a place, particularly in the two pinch zones, where you
25 can provide an adequate buffer zone.

1 DR. KANEMOTO: I think if we look at the CAD
2 drawing figure in this presentation, that's probably the
3 best evidence that we have.

4 MS. COCHRAN: This one?

5 DR. ROE: No, it's further up.

6 Further down. Sorry. Keep going. Keep going.
7 There it is, the middle one.

8 DR. KANEMOTO: The next one.

9 MS. COCHRAN: This?

10 DR. KANEMOTO: Yes. If we can get a close-up of
11 that.

12 DR. ROE: Now, was that sketch in the upper
13 right-hand corner yours or CalTrans?

14 DR. KANEMOTO: No, that's a detail from the I-5
15 design guidelines.

16 DR. ROE: You'll notice that their mitigating
17 shrubbery is just about as high as the what, eight or ten
18 foot barrier? It's not the 60-foot tall screening that
19 you are proposing and the ones that would require a
20 20-foot buffer zone.

21 DR. KANEMOTO: Right. No, these are just --
22 this is a somewhat related conceptual cross-section that
23 was provided but it's actually addressing a different
24 subject. They're talking about sound walls and so on.
25 But I think the important point I wanted to make in this

1 figure here is that we took the measurements between these
2 two lines, the orange line and the green line, and that is
3 how CalTrans is representing their setback that they
4 require from the paved area, so we're making the
5 assumption that their right-of-way zone needs to be at
6 least as wide as that area because they're saying they
7 need that for grading.

8 So that's the area within which a buffer zone
9 could, you know, theoretically exist if you had the
10 concrete barrier at the edge of the paving as they're
11 showing in that picture. And since the measurements --
12 you know, these are just sample measurements and I'm sure
13 they're flexible, but they range in this case from 19 to
14 26 feet that that's essentially, you know, enough room to
15 accommodate, according to my understanding, the called for
16 --

17 DR. ROE: Well, would you agree that the
18 cross-section clearly shows that they don't have the
19 20-foot?

20 DR. KANEMOTO: Oh, no, that cross-section is
21 just a conceptual diagram that they're providing for, you
22 know, types of solutions under certain situations. It's
23 not -- it doesn't refer to this site.

24 DR. ROE: Mr. Kanemoto, you properly feel that
25 to have an adequate canopy we need to have at least

1 20 feet?

2 DR. KANEMOTO: That's correct.

3 DR. ROE: And that was the wording in Vis 5 a
4 couple of weeks ago. Now I look at a new rendering of Vis
5 5 and it gets me -- all of the sudden, we see things if
6 you look on page 108 of staff's rebuttal, they cross out
7 the statement, "at a minimum of 20-foot wide or greater,"
8 and instead, a couple of lines down, they put in the
9 statement that, "wherever feasible," which of course
10 really now indicates that they have some concerns whether
11 it's going to be feasible or not. And if it's not
12 feasible, again they're acknowledging that it may not be
13 feasible, then whatever exceptions we throw downstream to
14 the CPM ten years from now and say, "Well, okay. You guys
15 go ahead. You can do that." No, this is the place where
16 the buck should stop. It's here that the Commissioners
17 should say, "No, there's a strong likelihood that you
18 cannot mitigate properly as originally proposed in your
19 Vis 5," and now all suddenly we get these ambiguous terms
20 thrown in. We object and we appeal to the Commissioners
21 to also reject the wording -- the current wording in Vis
22 5.

23 DR. KANEMOTO: Given the information that we
24 came up with subsequent to that change with these diagrams
25 and these measurements, I personally won't have any

1 objection to restoring it to the previous, because I think
2 that we've established that exceptions shouldn't be
3 needed.

4 DR. PRIESTLEY: Mr. Kramer, if I could speak
5 briefly?

6 HEARING OFFICER KRAMER: All right. Go ahead,
7 Dr. Priestley.

8 DR. PRIESTLEY: Yeah, very briefly here I wanted
9 to indicate that I do not agree at all with Dr. Roe's
10 assessment or logic in this case.

11 I think that Mr. Kanemoto's analysis
12 demonstrates very clearly that in most areas along the I-5
13 right-of-way there are -- there is between space that
14 would be available on the I-5 right-of-way that would not
15 be developed by the widening, and space that would be
16 available on the project site, there would be sufficient
17 room, as we can see here, anywhere from -- what you see
18 here is just space on the CalTrans right-of-way. In
19 addition to that, in most areas, there would also be some
20 room on the project site that would permit the presence of
21 a pretty generous landscape screening buffer.

22 So what Dr. Roe is doing is focusing on these
23 couple of pinch points and suggesting that because of
24 those pinch points the whole thing is shot, there is no
25 way that adequate screening can be provided.

1 Well, I beg to differ. You know, given my
2 training in environmental design and environmental design
3 analysis, I mean, it's very, very clear to me -- yeah,
4 sure, you might have these gaps, these areas where you'll
5 have less than 20 feet to put in landscaping, but there
6 are other things that you can do in terms of, for example,
7 putting in some screening walls in those locations.

8 And what Dr. Roe's assessment isn't doing is it
9 isn't providing an understanding -- well, as you are
10 driving down I-5, what is the role of those pinch points
11 in your whole experience and in terms of the overall
12 visibility of the project? So basically they might
13 provide -- the pinch points might provide you an
14 opportunity for a glance into the project site but, again,
15 there are other kinds of things that can be done that
16 don't require as much space that could provide, at least
17 for the person, you know, sitting in their car and looking
18 at the site, it would provide some kind of reasonable
19 level of screening.

20 So, you know, bottom line, just because at the
21 pinch points it may not be feasible to maintain the
22 20 feet, that's not the end of the world. There are ways
23 that overall adequate screening of the project site for
24 people traveling down I-5 can be maintained.

25 HEARING OFFICER KRAMER: Okay. Dr. Roe, are --

1 DR. ROE: One last comment.

2 HEARING OFFICER KRAMER: Okay.

3 DR. ROE: In earlier versions of Vis 5, the
4 statement was made that if visual screening was not going
5 to be adequately provided after the I-5 widening, they
6 don't rule out the fact that the transmission lines should
7 be undergrounded. I don't see why we should have to wait
8 to face that contingency and the expense and the
9 interruption to traffic, the views there when at this
10 point the Commission could rule that the transmission line
11 should not be along the eastern boundaries of the I-5. In
12 fact, we did make a motion to that effect in writing to
13 the Commission in an earlier statement.

14 HEARING OFFICER KRAMER: Okay. Thank you.

15 Ms. Siekmann?

16 MS. SIEKMANN: First of all, I would like to
17 respond to a couple things that Dr. Priestley said.

18 Dr. Priestley did say that the applicant --
19 let's see, that the applicant didn't object to the -- to
20 the 20, Vis 5, and I mean, where I got that from was his
21 testimony where he -- and I quote -- says, "I propose that
22 Vis 5 be revised to remove the reference to the arbitrary
23 20-foot buffer zone." So I just want to clarify that I
24 said that because that's what was in his testimony.

25 And secondly, as far as the KOPs go and as far

1 as my pictures go, they are -- I looked up how the KOPs
2 are clarified, and like KOP says, view from southbound I-5
3 at Agua Hedionda Lagoon, and I clarified my pictures just
4 as clearly as that particular explanation, so I believe
5 that they're perfectly normal accessible pictures and that
6 the rotation was very clear and so that they could be kept
7 in the record as very good information on what it really
8 looks like driving down the I-5, because we've never had
9 that information in the record before in the past eight
10 years. Now, actually, you can see what it looks like
11 driving down the I-5 looking at the project.

12 So I did want to -- I did want to ask
13 Dr. Priestley one question. At the beginning you stated
14 that you felt there was no significant visual impacts to
15 the project with the I-5 widening.

16 I wanted to know if that includes -- your
17 opinion includes the fact that you expect CalTrans to
18 mitigate?

19 DR. PRIESTLEY: Okay. Yeah, there are -- there
20 are a number of things here and I will answer your
21 question, but if I can, I'd like to comment on the first
22 things that you said in terms of the -- in terms of
23 20 feet. Yes, it is true, in my original written
24 testimony, you did get that right, we did object, but then
25 in all that --

1 MS. SIEKMANN: But there is nothing --

2 DR. PRIESTLEY: -- that language has been
3 modified and is now -- now it's a practical with the
4 modification. It's practical and acceptable so we are --
5 I'm no longer objecting to the 20 feet, so like, you know,
6 you did not make that up. You know, you did not dream
7 that. It's just that the message hadn't gotten through
8 that, okay, with the change of language, we're quite okay.

9 Okay. And then in terms of the location of the
10 viewpoints, you might notice that we have been submitting
11 maps that show the location of every KOP, so it may well
12 be that on the KOP figure we, you know, state what the
13 location is but that's also key to a map, so we -- so the
14 viewer knows exactly where it was taken. So if you wanted
15 to, you could get your ruler and draw a line between the
16 viewpoint and the plant so that you can really begin to
17 understand what the relationship is between the viewpoint
18 and the site.

19 And then in terms of the significance of the
20 impact of the project, with the widening of I-5, our
21 assessment that the impact would be less than significant
22 is based on the assumption that, yes, there is landscaping
23 on the site that can be retained and that yes, the
24 applicant and the CEC will be able to work collaboratively
25 with CalTrans to ensure that, as they are required to,

1 that they will provide the landscaping on their
2 right-of-way that will contribute to the overall screening
3 of the project site.

4 MS. SIEKMANN: So -- can you hear me? Am I --
5 okay. So yes? The answer to my question is yes, you did
6 include CalTrans mitigation as part of your answer?

7 DR. PRIESTLEY: Let's see, we are -- we are
8 assuming implementation of Vis 5 I guess is my answer.

9 MS. SIEKMANN: It says, "where feasible."

10 DR. PRIESTLEY: You know, it would be good if
11 you could read me the part where it says "less feasible,"
12 so I understand the context.

13 MR. MCKINSEY: The staff level testimony --

14 DR. ROE: Yeah. It says, "wherever feasible,
15 the landscape buffer shall maintain a minimum 20-foot
16 width where infeasible exceptions shall be approved by the
17 CPM."

18 MS. SIEKMANN: So there you go. Can you answer
19 that?

20 DR. PRIESTLEY: Okay. And that is, you know,
21 it's -- that's very reasonable.

22 MS. SIEKMANN: Now, did you --

23 DR. PRIESTLEY: But that's -- and you might --
24 you might note that's kind of -- that's a reference to the
25 20-foot buffer.

1 MS. SIEKMANN: Now, is that keeping -- are you
2 keeping in mind that this area is protected by the Coastal
3 Act when you say that?

4 MR. MCKINSEY: I don't know that you're asking a
5 question of the correct witness for that.

6 MS. SIEKMANN: Well, I think the Coastal Act --
7 the visual protections in the Coastal Act is pretty
8 critical when you're talking about visual.

9 MR. MCKINSEY: But your question is just is this
10 location protected by the Coastal Act? That's, first,
11 kind of a legal question. It's also a land use question.

12 MS. SIEKMANN: No, that's not what I asked,
13 Mr. McKinsey.

14 MR. MCKINSEY: Well, I don't think this is a
15 question to this witness correctly.

16 MS. SIEKMANN: Well, let me -- to make you
17 happy, I will reword the question.

18 In the Coastal Act, it says, "The scenic and
19 visual qualities of coastal act areas shall be considered
20 and protected as a resource of public importance." And
21 when you said it's not the end of the world that -- where
22 the pinch points are that you're not going to have enough
23 of an indication -- enough mitigation, how does that
24 follow with the visual restrictions that are placed on
25 this area by the Coastal Act as I just read to you?

1 DR. PRIESTLEY: Okay. Well, visual restrictions
2 of the Coastal Act aside, my reference that it's not the
3 end of the world had to do with the fact that if you
4 evaluate the whole series of views as you are traveling
5 down I-5 and you look at all the places where you have
6 20-plus feet of landscaping and then you have these areas
7 that might be a little bit smaller, again, from an
8 environmental design point of view that there are things
9 that one could do to ensure that you have adequate
10 screening in those locations and that these are kind of
11 smaller areas in a larger area along the edge of the
12 project which are more fully landscaped, the effect of
13 these pinch points were, you know, maybe you have some
14 kind of alternative screening, you know, again it's not
15 going to be the end of the world, so that's where that
16 particular comment came from.

17 MS. SIEKMANN: Mr. Priestley, do you live around
18 here?

19 DR. PRIESTLEY: Well, let's say I do live in
20 Southern California.

21 MS. SIEKMANN: But not near here? So --

22 DR. PRIESTLEY: No, I do not.

23 MS. SIEKMANN: Okay. We do. Thank you very
24 much.

25 HEARING OFFICER KRAMER: Are you done? Is that

1 it?

2 MS. SIEKMANN: Well, I did have those
3 transmission -- that if it -- you combined the two?

4 HEARING OFFICER KRAMER: Right. How long will
5 that be because we're at --

6 MS. SIEKMANN: Like one minute.

7 HEARING OFFICER KRAMER: And then we'll take a
8 break. Hopefully we can close out visual while doing
9 that.

10 MS. SIEKMANN: Well, one thing was a correction.
11 It was Exhibit 3003, transmission for the hearing, page
12 5.5-9. They just needed to correct it to Units 5 instead
13 of 4.

14 MR. HESTERS: Can I answer that?

15 All right. This is Mark Hesters, staff. It's
16 actually correct the way it's written. It refers to the
17 original studies that were done for the combined cycle
18 plant. And in those studies, the only units that were
19 retired were Units 1 through 4. The subsequent studies
20 basically said the original study still applied in the new
21 project.

22 Is that -- am I clear?

23 The first -- that sentence refers to the
24 original studies done for the combined cycle project, the
25 approved project. And in those studies, the ISO, the

1 original proposal only retired Units 1 through 4, so
2 that's all those studies did.

3 MS. SIEKMANN: Units 1 through 4? Units 1
4 through 4?

5 MR. HESTERS: In the original.

6 MS. SIEKMANN: In the original, you mean the
7 CECF?

8 MR. HESTERS: Yes.

9 MS. SIEKMANN: They were going to close down 1
10 through 3.

11 MR. HESTERS: They weren't going to shut down 5.
12 5 was going to still be operating.

13 MS. SIEKMANN: 4 and 5 were going to be.

14 MR. HESTERS: I think it's just 5. Is it?

15 MS. SIEKMANN: 4 and 5. They were going to shut
16 down 1 through 3.

17 MR. HESTERS: Okay. So I'm sorry --

18 MS. SIEKMANN: So I guess the correction needs
19 to be 1 through 3.

20 MR. HESTERS: 1 through 3 should be it.

21 MS. SIEKMANN: Okay. Okay.

22 MR. HESTERS: Sorry. I misread that.

23 MS. SIEKMANN: Okay. So that's -- there's that,
24 and then my other question was on Exhibit 3003, page
25 5.5-4, it talked about -- let's see.

1 MR. HESTERS: I can help you. It really had to
2 do with the generator and --

3 MS. SIEKMANN: It says, "Covered by steel frame
4 with accessible auxiliaries." Does that mean that the
5 units are going to be covered?

6 MR. HESTERS: It just had to do with the
7 enclosure for the generator, generating units.

8 MS. SIEKMANN: But I mean since I don't really
9 know what it looks like, that's what I guess I would like
10 to know, what it means by "covered by steel frame."

11 MR. HESTERS: It just means there is a steel
12 frame enclosure.

13 MS. SIEKMANN: Around the whole unit?

14 MR. HESTERS: Just the generator, each generator
15 unit --

16 MS. SIEKMANN: The generator --

17 MR. HESTERS: Each CTG.

18 MS. SIEKMANN: Okay.

19 MR. HESTERS: That's all.

20 MS. SIEKMANN: Okay. Thank you. That's it.

21 HEARING OFFICER KRAMER: Okay. I think we've --
22 we feel like we've heard everything we need to decide
23 this, so unless anybody wants to make a strong case for
24 going further, we're going to -- not seeing anyone, we're
25 going to close out these two topics, visual and

1 transmission system engineering. And at the end of
2 tomorrow, we can get to admitting or not admitting all of
3 the exhibits that we have right now. So let's take a
4 let's take a 10-minute break. By my watch, let's be back
5 here about 3:31.

6 (A short break was taken)

7 HEARING OFFICER KRAMER: Back on the record. We
8 have our noise panel. I understand the applicant's
9 witness is not with us.

10 MR. MCKINSEY: That's correct. We don't plan
11 any noise testimony.

12 And while we're on the record, it's been
13 observed that we didn't actually include the petition to
14 remove as an exhibit, we included a petition to amend.
15 The petition to remove is TN 202267, and so it would be
16 our next exhibit number, which I think is 1030.

17 HEARING OFFICER KRAMER: What's the number
18 again?

19 MR. MCKINSEY: 202267.

20 HEARING OFFICER KRAMER: I already put 2008 in
21 the database so I'll get this one done this evening.

22 So just as a point for everyone, if you want to
23 generate the latest list, go to the website and click on
24 the link and there you have it. The one that was passed
25 out today was printed this morning, so it's already out of

1 date by at least two items.

2 So our Noise Panel: From staff, we have Joseph
3 Hughes, Ed Brady, Shahab Khoshmashrab, Ms. Siekmann from
4 Terramar; for the city, Gary Barbario.

5 MR. BARBARIO: Close enough.

6 HEARING OFFICER KRAMER: Thanks. Okay. So were
7 all of you sworn earlier?

8 Okay. Madame Court Reporter, if you could swear
9 them in?

10 THE REPORTER: All right. Do you swear or
11 affirm that the testimony that you shall give will be the
12 truth, the whole truth and nothing but the truth to the
13 best of your ability?

14 WITNESSES: I do.

15 THE REPORTER: Thank you.

16 HEARING OFFICER KRAMER: Madame Reporter, do you
17 need any spellings or do you have them?

18 THE REPORTER: If I could get a sheet from you
19 later, that would be great.

20 HEARING OFFICER KRAMER: All right. Then let's
21 begin. Ms. Willis?

22 MS. WILLIS: Thank you.

23 I just wanted to go through the panel very
24 quickly and ask each one to state their name for the
25 record.

1 MR. HUGHES: Joseph Hughes.

2 MR. KHOSHMAHRAB: Shahab Khoshmashrab.

3 MR. BRADY: Edward Brady.

4 MS. WILLIS: Thank you.

5 And to each of my witnesses, is a statement of
6 your qualifications attached to your testimony?

7 MR. HUGHES: Yes.

8 MS. WILLIS: I know --

9 MR. KHOSHMAHRAB: Yes.

10 MR. BRADY: Yes, it was.

11 MS. WILLIS: Thank you.

12 And you did you prepare or assist in preparing
13 the testimony entitled "Noise and Vibration" in the final
14 staff assessment and rebuttal testimony?

15 MR. HUGHES: Yes.

16 MR. KHOSHMAHRAB: Yes.

17 MR. BRADY: Yes.

18 MS. WILLIS: Thank you.

19 And I now turn to Mr. Hughes.

20 Mr. Hughes, did staff make a determination that
21 the project would create a significant environmental
22 impact?

23 MR. HUGHES: No. Wait. What did you say, would
24 create?

25 MS. WILLIS: Did you make -- did staff make a

1 determination whether --

2 MR. HUGHES: Yeah, we determined that with the
3 implementation of the condition of certification and the
4 proposed changes to some of the existing conditions that
5 the project would not create any significant impacts.

6 MS. WILLIS: Thank you.

7 And did staff make a determination that the
8 project was in compliance with all laws, ordinances,
9 regulations and standards pertaining to noise and
10 vibration?

11 MR. HUGHES: We did.

12 MS. WILLIS: Now, I'm going to refer to --
13 mostly to your rebuttal testimony. In their testimony,
14 petitioner commented about the condition of certification
15 Noise 6. Could you please summarize this issue?

16 MR. HUGHES: Yes, the petitioner proposed
17 removing the definition of the project-related noise
18 complaint and also suggested changing the phrase "as
19 verified by the CPM" to "as determined by the CPM"
20 pursuant to Noise 2.

21 MS. WILLIS: And did staff agree with the
22 changes?

23 MR. HUGHES: We did agree with those changes.
24 There was already a definition of noise in construction
25 work in Noise 6 that refers to one of the draws from the

1 noise complaint, and then Noise 2 kind of highlights the
2 resolution process for a noise complaint, and so we
3 thought it would be somewhat -- we agreed that it was
4 unnecessary to redefine project-related Noise Complaint in
5 Noise 6. It's somewhat redundant, so we made that change
6 and it showed in our rebuttal testimony.

7 MS. WILLIS: Thank you.

8 Now, Intervenor Terramar also commented on the
9 noise section. Can you please -- there were several
10 comments. Could you please state the first comment?

11 MR. HUGHES: Yeah. But the first comment, I
12 believe Terramar requested to be informed by staff or the
13 appropriate official when noise mitigation measures were
14 developed for the construction contractor for the
15 demolition of the Encina Power Station.

16 MS. WILLIS: And what was staff's response?

17 MR. HUGHES: Our response, we didn't necessarily
18 agree with making that a requirement because due to the
19 variability of construction activities and the
20 circumstances surrounding those activities, there needs to
21 be some level of flexibility and the mitigation measures
22 that are implemented for demolition, and so the project
23 owner had identified several mitigation measures in
24 response to some of our data requests pertaining to the
25 demolition.

1 The obligation to mitigate those noise impacts
2 would, you know, be left to them and to implement whatever
3 mediation measures or a combination of mitigation measures
4 they see fit taking into consideration the various
5 circumstances when they're performing those activities, so
6 we note that the mitigation is there -- having them adhere
7 to and submit to a precise plan isn't a requirement at
8 this time.

9 MS. WILLIS: Thank you.

10 And can you please summarize the next comment?

11 MR. HUGHES: I believe the second comment was
12 Terramar requested to be notified for the residents within
13 a one mile radius of dates and times for pile driving
14 activity.

15 MS. WILLIS: And what was staff's response?

16 MR. HUGHES: Staff agreed with that request and
17 had proposed additional language in our rebuttal testimony
18 that would include a requirement for specifically
19 highlighting dates, durations and times that those
20 activities would occur.

21 MS. WILLIS: And Terramar also made a comment
22 regarding continued balancing for the life of the project
23 to be added to condition certification Noise 4. Can you
24 explain the comment and staff's response?

25 MR. HUGHES: Yeah, I believe they requested that

1 they wanted continued equipment balancing for the life of
2 the project to be added to avoid tonal noise and
3 vibrations in later years, and staff did not agree to this
4 request because I mean balancing equipment is an industry
5 standard, it's not something that we would generally
6 implement as a noise issue. If the equipment wasn't
7 properly balanced, there could be equipment breakdowns and
8 inefficient operation, so it's in the facility owner's
9 best interest to maintain properly balanced equipment.

10 If noise and tonal vibration ever -- or
11 vibration and tonal noise ever became an issue in the
12 future, it would be resolved with Noise 2.

13 MS. WILLIS: Thank you.

14 Is there anything else you would like to add?

15 MR. HUGHES: No, there's not.

16 MS. WILLIS: Thank you.

17 HEARING OFFICER KRAMER: Okay. Ms. Siekmann?

18 MS. SIEKMANN: Could you -- could you give me
19 your name again, please? I'm sorry.

20 MR. HUGHES: Joseph Hughes.

21 MS. SIEKMANN: Hughes?

22 MR. HUGHES: Yes.

23 MS. SIEKMANN: Okay. Thank you.

24 So I appreciate the notification that Terramar
25 will get an e-mail of all those within a one-mile radius

1 on the pile driving because I think that will be very
2 helpful to keep people from constantly -- if they know
3 it's coming, they'll prepare for it, so thank you very
4 much.

5 So on the first request that we made about that
6 plan, you know, and you said the flexibility, so if
7 something else really noisy is coming along, then we won't
8 get any notification; is that correct?

9 MR. HUGHES: I don't know what you mean by "if
10 something else really noisy is coming along."

11 MS. SIEKMANN: Well, I mean, because I have no
12 -- I'm not very versed in the particular, you know,
13 construction of a new power plant. I'm not sure which
14 parts -- I do know pile driving would be very noisy. I
15 don't know other parts that might be extremely noisy.

16 MR. HUGHES: For the more sensitive noise
17 activities, for example, like pile driving or concrete
18 pours at night, we try to condition those separately and
19 try to --

20 MS. SIEKMANN: Okay.

21 MR. HUGHES: -- mitigate and require additional
22 constraints on those activities, and then for the general
23 construction and demolition activities, the facility
24 owners highlighted the few different available mitigation
25 measures that they might be able to implement at those

1 times. If, for whatever reason, those remediation
2 measures are not proving effective, then resolution would
3 need to be achieved through Noise 2.

4 MS. SIEKMANN: Okay. And when you changed --
5 let's see.

6 MR. THOMPSON: Mr. Kramer, this appears to be
7 cross-examination. Maybe it would be more appropriate
8 after we --

9 MS. SIEKMANN: Oh, yeah.

10 MR. THOMPSON: -- introduce --

11 MS. SIEKMANN: That's fine.

12 MR. THOMPSON: -- our witness?

13 MS. SIEKMANN: That's really -- I just had
14 questions.

15 MR. THOMPSON: Okay. Mr. Kramer?

16 HEARING OFFICER KRAMER: Okay. Sure.

17 Mr. Barba --

18 MR. THOMPSON: B-a-r-b-a-r-i-o.

19 Mr. Barbario, you have been sworn; is that
20 correct?

21 MR. BARBARIO: That's correct.

22 MR. THOMPSON: And you have the direct testimony
23 of three city witnesses in front of you, one of which is
24 yourself identified as Exhibit 101?

25 MR. BARBARIO: Yes, I do.

1 MR. THOMPSON: And in question and answer 11, in
2 that testimony, that is the only one that relates to
3 noise; is that correct?

4 MR. BARBARIO: That's correct.

5 MR. THOMPSON: And in addition to affirming that
6 the city believes that this project will conform to all
7 city laws, ordinances and regulations, that is the sum and
8 substance of this question and answer; is that correct?

9 MR. BARBARIO: Correct.

10 MR. THOMPSON: Thank you very much.

11 HEARING OFFICER KRAMER: Ms. Siekmann, continue.

12 MS. SIEKMANN: Okay. Thank you.

13 So when we asked for precise noise mitigation
14 measures as developed by the construction contractor,
15 taking down of that 400-foot stack is I believe -- I don't
16 know for sure, but I believe that's going to be fairly
17 noisy; is that correct?

18 MR. HUGHES: It's somewhat subjective. I don't
19 know what "fairly noisy" is. We --

20 MS. SIEKMANN: Well, for the people who live
21 across the street --

22 MR. HUGHES: -- for the people that -- the
23 nearest residents of 400 feet --

24 MS. SIEKMANN: Yes.

25 MR. HUGHES: -- I believe our staff assessment

1 identified what we projected the noise impacts to be at
2 each of those receptors.

3 MS. SIEKMANN: And that's really who I'm
4 thinking of, I'm thinking of the people on Tierra Del Oro
5 who live across the street from the site, and when you,
6 you know, you knock down the 400-foot stack, even though I
7 know that -- I mean, I really appreciate the way they're
8 taking a look it down so there won't be so much dust, but
9 those people, I would guess, will be quite upset when that
10 happens, and if they kind of knew how long it was going to
11 last, I think that would really -- the more information
12 you have, the less complaints you get. So that was kind
13 of, you know, my thought was that, you know, if those --
14 if those around could be informed how long that demolition
15 is going to take, when it's going to start, when it's
16 going to end, that might make a big difference, so that
17 was our suggestion and I wish you would take that under
18 advisement.

19 MR. HUGHES: Okay.

20 MS. SIEKMANN: Okay. Thank you. And then --

21 HEARING OFFICER KRAMER: Can we just follow that
22 up? Could you look up what the noise impacts are going to
23 be?

24 MR. HUGHES: Yeah, I think Receptor 4 was
25 projecting to be 10 dBA and it was somewhat conservative.

1 We tried to take from the nearest construction activity,
2 which would be the southwest corner of the power plant --
3 or the Encina Power Station housing to the nearest
4 residential receptor, and we got a little conservative
5 number, rather than taking from the center of the Encina
6 building and then just calculating from that. We tried to
7 be as conservative as possible, and so we got 10 dBA for
8 that receptor and it was potentially lower for the other
9 receptors. I can't be exact.

10 HEARING OFFICER KRAMER: 10 dBA on top of what
11 kind of base background level?

12 MR. KHOSHMAHRAB: 62, daytime Leq average.

13 HEARING OFFICER KRAMER: What was the number?

14 MR. KHOSHMAHRAB: Which is 62. It's the
15 daytime --

16 HEARING OFFICER KRAMER: And what's the limit
17 for noise in the city's noise?

18 MR. HUGHES: For construction, there is not one.

19 HEARING OFFICER KRAMER: Okay. Just the general
20 limit in the zone?

21 MR. HUGHES: So 45 for routine operation.

22 HEARING OFFICER KRAMER: That's their limit,
23 Mr. Khoshmashrab?

24 MR. KHOSHMAHRAB: We did not have a
25 construction noise dBA limit. It's hours of construction

1 only.

2 HEARING OFFICER KRAMER: Okay. But no, I'm just
3 saying for any other -- for, say, an operational activity,
4 what would -- does the city have targets?

5 MR. BARBARIO: No, we don't, not for operations
6 or construction.

7 MR. KHOSHMAHRAB: The city actually has a
8 CME-CNEL 60 decibel for long-term which we believe is --
9 could apply to operations at the plant, and that 60 CNEL
10 on an average equals 53 dBAs.

11 HEARING OFFICER KRAMER: Okay. Got you.

12 MR. KHOSHMAHRAB: And that's why we have a
13 Noise 4 for operational performance. The magic number is
14 53 that they should not exceed.

15 HEARING OFFICER KRAMER: And they wouldn't be --
16 with this construction work --

17 MR. KHOSHMAHRAB: That doesn't apply to
18 construction work.

19 HEARING OFFICER KRAMER: No, I understand. I'm
20 trying to prepare this, so this would be above that
21 receptor?

22 MR. KHOSHMAHRAB: Well --

23 MR. BARBARIO: If I could be clear on the city
24 standard, Hearing Officer Kramer. Our noise ordinance
25 relates to putting in a new use next to a noise generator

1 and having to mitigate -- like putting housing near I-5,
2 the housing would have to mitigate the noise that's --
3 mitigate to a level of the standard in a way that would
4 reduce the noise generated from I-5 into the interior of
5 the house or to the backyard, for example. That's how our
6 noise ordinance is. It's not an operation of that use,
7 it's locating a use near a noise generating source. So we
8 really don't have a noise operation or construction
9 standard other than for construction demolition, there's
10 hours of operation.

11 HEARING OFFICER KRAMER: Okay. Thank you.

12 Did you finish answering? You were on to your
13 next question, weren't you?

14 MS. SIEKMANN: I just have one more.

15 HEARING OFFICER KRAMER: Go ahead.

16 MS. SIEKMANN: So with your changes on Noise 6,
17 I'm just not clear on how -- if someone makes a complaint
18 how it's going to work, so if you could clarify that for
19 me?

20 MR. KHOSHMAHRAB: Usually when a noise
21 complaint is made, let's say you are the one complaining
22 about this. You contact this project owner and they will
23 pretty much take what you have to say. They look at --
24 based on the complaint, they will find the source of that
25 complaint and then mitigate that noise within several

1 days. There is a form that's attached to the -- this is a
2 form that is available for you to fill out and -- I'm
3 sorry. Basically it's filled out by the project owner and
4 it's -- within that, there is the source of the noise and
5 whether they believe that it's from the project or not,
6 and the resolution of that. And then there is a place for
7 signature from you that would show that you're satisfied
8 with that.

9 And so this has been our protocol. It's the
10 process that we have used for years, and it has worked
11 well, and I believe it's going to work for you too.

12 MS. SIEKMANN: And how is the compliance manager
13 involved in that? Is he involved, not involved? How does
14 that work?

15 MR. KHOSHMAHRAB: The compliance manager from
16 our side?

17 MS. SIEKMANN: Yes.

18 MR. KHOSHMAHRAB: Once the complaint form is
19 filed, it has to go to the CPM, and the CPM will bring it
20 to us, the staff. And if we see that everything has been
21 resolved and there's a signature, then we're good.

22 MS. SIEKMANN: Okay.

23 MR. KHOSHMAHRAB: If there is no signature, we
24 have duties about it. We pick up, make a call and talk to
25 the project and get more information, and if we need to,

1 we'll contact you and try to resolve it.

2 MS. SIEKMANN: Thank you. I guess -- that's
3 very helpful. Thank you very much. That's all my
4 questions.

5 HEARING OFFICER KRAMER: Okay. I'm not sure I
6 even need to ask, but do any of the witnesses have
7 anything to say to or among themselves?

8 Nobody's speaking up, so I think we can close
9 out the topic of noise. Thank you.

10 The next two items have just five minutes each
11 for Terramar and Ms. Siekmann, so if you want to just
12 combine them, they are power plant efficiency and power
13 plant reliability. If you just want to get to both of
14 them at the same time?

15 Mr. Khoshmashrab, I see that you and Mr. Brady
16 are still up there, so are you serving as witnesses on
17 these topics?

18 MR. KHOSHMAHRAB: Yes.

19 MR. BRADY: Yes.

20 MS. WILLIS: These witness will just be
21 available if there are any questions.

22 HEARING OFFICER KRAMER: Thanks for making them
23 available.

24 MS. SIEKMANN: Okay. I'm going to start with
25 power plant reliability because -- because I can't find

1 power plant efficiency. Oh, wait. Yes, I did. It's
2 right here. Okay.

3 So I just would like to make a statement.

4 HEARING OFFICER KRAMER: Go ahead.

5 MS. SIEKMANN: So Terramar would like to contend
6 that the alternative of 400 megawatts is an improved
7 threshold for determining significance of energy
8 resources. 400 megawatts could reduce wasteful
9 inefficient and unnecessary consumption of energy, and
10 this is supported by the decision -- the preliminary
11 decision of the CPUC to deny SDG&E's tolling agreement
12 with the project owner in that if renewables are found,
13 then to support these 200 megawatts or more, then there
14 would not be a wasteful, inefficient and unnecessary
15 consumption of energy.

16 So there's no information from the CPUC -- and I
17 bring that in because need is part of this project in that
18 there are overrides that need to be made. So there's no
19 information from the CPUC that requires the full 600 to be
20 from fast start simple cycle units using fossil fuels. In
21 fact, the CPUC has denied the tolling agreement offered to
22 NRG for 600 megawatts, and the CPUC stated that the 600
23 megawatts could be from any source including renewable.

24 So continuing -- there are certain parts of my
25 testimony I'm keeping and other parts I hope that you've

1 read already.

2 So there is nothing in the FSA that states a
3 requirement of 600 megawatts of fast start capacity is
4 required. In fact, the CPUC staff footnotes -- their
5 footnotes state that the CPUC said the generation could be
6 as little as 300 megawatts from any source, so -- and I
7 quote page 5.3.4, power plant efficiency from the FSA.

8 So one question I did want to ask on this is how
9 often -- as staff, how often do you, from your experience,
10 think that 600 megawatts would offer -- operate at full
11 capacity?

12 MR. BRADY: I wouldn't have an opinion about how
13 many hours --

14 HEARING OFFICER KRAMER: Your mic isn't on.

15 MR. BRADY: Am I on?

16 MR. THOMPSON: Yes.

17 MR. BRADY: I don't have an opinion about how
18 many hours the system will operate. That is up to the --
19 between the applicant and the ISO.

20 MS. SIEKMANN: Okay.

21 MR. BRADY: I just looked at the incremental
22 efficiencies of 1, 2, 3 through 6 units operating and
23 found that incrementally the efficiencies, if you're
24 running five units or running three units is the same as
25 if you were running six.

1 MS. SIEKMANN: Okay.

2 MR. KHOSHMAHRAB: These machines are
3 independent of one another, so whether you have 1, 3 or 6,
4 each turbine will generate and is able to generate up to
5 full load efficiency, so this actually provides some sort
6 of flexibility for the power plant as you can --

7 MS. SIEKMANN: But if you -- I'm sorry for
8 interrupting. Please continue. I'm sorry.

9 MR. KHOSHMAHRAB: Oh, that's okay. I was
10 making the point that, you know, you would have the
11 opportunity to run or operate that power plant at or near
12 full load efficiency at 100 megawatt increments, so --

13 MS. SIEKMANN: But if you ran three of the six,
14 you would use less fuel than if you ran six of the six for
15 the same amount of time? If you ran six of the six for an
16 hour versus three of the six for an hour, you would use
17 more fuel running the six; is that correct?

18 MR. KHOSHMAHRAB: True. Yeah.

19 MS. SIEKMANN: Okay. Thank you. So.

20 That concludes power plant efficiency.

21 So power plant reliability, I just had a comment
22 to say that the ACECP is not a base load plant and not
23 designed to provide base load, and we would like to point
24 out that ACECP is not designed for grid reliability for
25 any length of time -- for a long length of time. For a

1 short length of time, yes, but for a long length of time,
2 this would not be your choice; isn't that correct?

3 MR. BRADY: For a long length of time, the
4 selection of the equipment is what determines the capacity
5 factor or the load that it's designed to provide to the
6 grid. In this case, the applicant has determined that six
7 simple cycle units are the appropriate ones for this --
8 for this project.

9 Just as in the approved CECP provided, you know,
10 selected two combine cycle units because they felt it was
11 the most appropriate at that time. I don't have an
12 opinion on the decision that they made, just the propriety
13 that the reliability and the efficiencies meet competitive
14 standards in the industry.

15 MS. SIEKMANN: But now, the need -- because of
16 the overrides, need becomes an issue, and I didn't see
17 anything in the FSA that explained that need for 600
18 megawatts at this location.

19 MR. KHOSHMAHRAB: Power plant reliability, the
20 purpose of this section really is to have a good
21 understanding about the power plant's reliability while it
22 operates.

23 MS. SIEKMANN: Okay.

24 MR. KHOSHMAHRAB: So one of the things that we
25 need to look at and evaluate when we analyze power plants

1 for the purpose of power plant reliability is whether the
2 power plant has a reasonable procedure for maintenance so
3 equipment doesn't break down, whether it can withstand
4 natural hazards, for example, earthquake or flood, and
5 whether a water supply is available and whether natural
6 gas is available. The need for that power plant is really
7 outside of the scope of the power plant reliability
8 section.

9 MS. SIEKMANN: So even though need is an issue,
10 it's not part of the section? Is that what you're telling
11 me?

12 MR. KHOSHMAHRAB: I am not -- I can't tell you
13 if need is an issue or not because that's not part of the
14 power plant reliability section.

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

16 MR. KHOSHMAHRAB: You're welcome.

17 HEARING OFFICER KRAMER: Okay. That closes out
18 reliability. If these two witnesses want to argue or
19 question each other, they can take it back to the office.

20 MR. BRADY: He's driving so --

21 MR. KHOSHMAHRAB: I am? You are.

22 HEARING OFFICER KRAMER: Thank you.

23 Okay. On to the traffic and transportation.
24 For the Petitioner, Robert Mason. Staff has David Flores
25 and Andrea Koch. And again Ms. Siekmann for Terramar.

1 Do you want to set it up at all, Mr. McKinsey?

2 MR. MCKINSEY: Sure.

3 HEARING OFFICER KRAMER: First, Mr. Flores, were
4 you here to be sworn?

5 MS. WILLIS: Yes, he was.

6 HEARING OFFICER KRAMER: Okay. I imagine Mr.
7 Mason was as well.

8 MR. MASON: Yes.

9 HEARING OFFICER KRAMER: I'm sorry. Are we
10 waiting on Andrea?

11 MS. WILLIS: No.

12 HEARING OFFICER KRAMER: Okay. Go ahead,
13 Mr. McKinsey.

14 MR. MCKINSEY: Thank you.

15 In our testimony, we had noted concerns with
16 transportation 1 and Mr. Mason is testifying about his
17 response to the staff's rebuttal testimony about modified
18 transportation 1, and that's what I'm discussing here, and
19 we have -- at this point, the project owner doesn't have
20 any issue with any of the proposed conditions as in the
21 staff's rebuttal testimony.

22 We recognize one of the parties has concerns
23 about transportation 1 and that's why we presented
24 Mr. Mason and I just have a couple questions for him.

25 And so let me begin, Mr. Mason. Are you

1 familiar with the issues raised by some of the parties
2 regarding the use of the Cannon Road exit or gate for
3 eastbound traffic crossing the railroad crossing towards
4 I-5?

5 MR. MASON: Yes, I am.

6 MR. McKINSEY: Have you personally observed and
7 inspected that intersection?

8 MR. MASON: Yes, I have.

9 MR. McKINSEY: So my basic question is, do you
10 have an opinion on the ability for trucks to safely exit
11 the Cannon Road gate going east?

12 MR. MASON: Yes. Based upon my evaluation of
13 the site, trucks can safely use the Cannon gate to turn
14 left onto Cannon Road. And through that, the way that
15 staff has revised Trans 1, the plan shall include safety
16 considerations to avoid blockage of the railroad tracks by
17 large trucks turning left out of the SDG&E Cannon gate
18 onto Cannon.

19 What I observed personally, and I did go out,
20 like I said, to observe the roadway and the intersections,
21 I also measured from the Cannon gate the distance to the
22 rail crossing. And for those of you who don't know, with
23 rail crossings, there is a painted line on the street
24 where all vehicles are to stop prior to the railroad
25 tracks.

1 The distance from the Cannon gate going east
2 from that is the center line. There's 80 feet from Cannon
3 gate to that painted rail crossing line. That 80 feet --
4 if you take into account that the maximum length of a
5 truck is 65 feet, so that it is sufficient room for the
6 trucks to come out of the Cannon gate, make a left, get
7 into one of the two lanes and be able to clear that lane
8 and stop at that 80-foot mark where the rail crossing is.

9 MR. MCKINSEY: And then how will condition of
10 certification transportation 1 and the required traffic
11 control plan that it requires, as proposed by the CEC
12 staff in their rebuttal testimony, ensure safe use of the
13 Cannon Road gate?

14 MR. MASON: Well, through that -- through the
15 plan, what comes out of that through the plan that the
16 drivers of these vehicles shall be briefed and trained on
17 the procedures for using Cannon gate. And as part of
18 that, the city will review that construction
19 transportation plan and comment on that traffic control
20 plan, and the CEC compliance manager is required to review
21 and approve that plan as well.

22 MR. MCKINSEY: Thank you. That's it.

23 HEARING OFFICER KRAMER: Mr. Flores, do you have
24 anything?

25 MS. WILLIS: I'll ask him just a few questions.

1 Did you prepare or supervise in preparation of
2 your testimony and rebuttal what's entitled traffic and
3 transportation?

4 MR. FLORES: Yes, I did.

5 MS. WILLIS: And are you sponsoring that
6 testimony today?

7 MR. FLORES: Yes, I am.

8 MS. WILLIS: And as we've just heard, Terramar
9 raised some concerns during the PSA workshops about large
10 trucks leaving the site. In staff's rebuttal testimony,
11 staff changed a trans 1 condition for certification.
12 Could you please describe the change and explain the
13 rationale?

14 MR. FLORES: First of all, as indicated in the
15 PSA, staff have identified exiting SDG&E project site gate
16 and going onto Cannon Road. We received an e-mail from
17 Terramar dated 3/23 with an exhibit from a Jessica Jones
18 indicating a situation that occurred during the
19 construction of the Poseidon project where the trucks that
20 were exiting -- one of them actually -- a multi-wheeled
21 vehicle, a large-axel truck, ended up on the tracks due to
22 lights, traffic signal lights that were at Avenida
23 Encinas. And so with that, we were concerned and we -- as
24 part of our FSA, Final Staff Assessment, we identified an
25 alternative route.

1 When the FSA was published, this is when the
2 applicant or the project owner indicated that we should
3 not be restricting them to use that road, but instead do a
4 study and determine whether or not we could actually
5 utilize Cannon Road. Staff agreed by not restricting the
6 applicant in a sense the traffic control plan, which will
7 be in place and would identify areas of concern, whether
8 we require a flagman to be there or identify certain
9 situations where we could restrict to certain time frames
10 where heavy trucks come in through that -- through Cannon
11 Road.

12 So with the traffic control plan in place, we
13 can identify those restrictions and also, as was reflected
14 by the project owner's representative, we would be working
15 with the City of San Diego, also with CalTrans in
16 identifying any issues that we might have on any of the
17 roadways that would be identified in the traffic control
18 plan. And I believe based upon that, that we can mitigate
19 this, and there shouldn't be a problem with utilizing
20 Cannon Road.

21 HEARING OFFICER KRAMER: So that I'm clear here,
22 the potential problem is that a truck exits through the
23 gate, makes a left and then it comes upon -- it goes over
24 the tracks and then comes upon a light?

25 MR. FLORES: That's correct.

1 HEARING OFFICER KRAMER: So if they can't get up
2 close to the light, it might be hanging out over the
3 tracks?

4 MR. FLORES: That's what occurred during this
5 time frame for this one project, that's correct. It
6 should be also noted that during this time, the center
7 lane of the roadway was under construction with a large
8 pipeline that was being installed by Poseidon, so it
9 limited the amount of traffic during that time frame.

10 I took a drive out there before coming to the
11 hearing and, of course, everything is cleaned up in the
12 roadway. The level of service seems to be just ideal
13 during that time frame that I was there, so -- so with the
14 construction activities now ceased and the roadway is back
15 to normal, I believe through the traffic control plan we
16 can address those -- any issues that might occur.

17 MR. MASON: It's also important to note that
18 staff also in seeing their testimony had also discussed
19 this topic with the City of Carlsbad. The City of
20 Carlsbad -- I believe it was the traffic department or
21 traffic engineering department determined that there was
22 no need to have a restriction from using that gate.

23 HEARING OFFICER KRAMER: Okay. Thank you.

24 MR. THOMPSON: Mr. Kramer, we have someone here
25 who can speak to the city's process, you know, in this

1 regard if anyone would care to hear.

2 MS. SIEKMANN: I would.

3 HEARING OFFICER KRAMER: Okay. Ms. Siekmann, I
4 guess, would like to ask questions of this person, who so
5 who would that be?

6 MR. THOMPSON: That would be Gary Barbario.

7 HEARING OFFICER KRAMER: Already sworn?

8 MR. THOMPSON: Already sworn.

9 HEARING OFFICER KRAMER: Have a seat. Anything
10 else, Ms. Willis?

11 MS. WILLIS: Nothing.

12 HEARING OFFICER KRAMER: So let's move on to Ms.
13 Siekmann.

14 MR. THOMPSON: Sorry, Gary.

15 MS. SIEKMANN: I'm not sure who to ask first.

16 Mr. Mason, could you tell me why -- is it
17 possible for a truck from the project to travel on Avenida
18 Encinas to the light? Is that --

19 MR. MASON: There are really --

20 MS. SIEKMANN: I thought that was possible.

21 MR. MASON: There are really two phase we're
22 talking about here.

23 MS. SIEKMANN: Okay.

24 MR. MASON: For the construction of -- I mean,
25 it's CECP. For that portion that is east of the railroad

1 tracks, the exit and entrance will be through Avenida
2 Encinas, so we will not be going over out through Cannon.
3 There are various reasons for that. One, the Avenida
4 Encinas gate is there; second is it also then avoids
5 crossing the internal rail crossing as well, so that is
6 something that the project owner can't commit to and,
7 quite frankly, it makes all the sense in the world for the
8 construction of CECF east of the railroad tracks.

9 MS. SIEKMANN: Okay. And you said there were
10 two portions?

11 MR. MASON: And the second portion is there is
12 some work for the interconnection into the substation that
13 is west of the railroad tracks, so that from the
14 construction side -- the entrance and exit again would be
15 Cannon. There would be no reason to take them in through
16 Encina and then over the internal railroad crossing, and
17 then the other component which will generate the larger
18 number of trucks that will go out Cannon will be the
19 demolition of EPS.

20 MS. SIEKMANN: Okay. Thank you for explaining
21 that to me. I appreciate it.

22 MR. MASON: You're welcome.

23 MS. SIEKMANN: So hearing that, I actually am
24 the person who observed the semi sitting on the railroad
25 tracks with the train coming, and there's going to be a

1 lot of construction going on and there's going to be a lot
2 of trucks, especially during the demolition. And there is
3 another exit available where there is a light, Avenida
4 Encinas, and that was the condition at first and it was a
5 very, very good condition because I would probably not be
6 here today if it were not for that, and there would be a
7 huge train crash.

8 Being that there is an exit, it just makes
9 perfect sense to me that that exit be used. I would like
10 to express that that particular situation happened during
11 morning traffic. There is a lot of traffic in the morning
12 that you would not see, you know, at a different time of
13 the day. There is also a lot of traffic at the end of the
14 day. And in the summer, there is a ton of traffic, and a
15 lot of traffic of people who are not used to this area, so
16 I just want to make that really clear.

17 I'm very -- I mean, it's great that you have
18 this program set up, but you only need one mistake. With
19 Avenida Encinas, you don't have any mistakes as far as the
20 railroad tracks go, so I truly believe that it's -- that
21 it's -- to save the liability for the project owner, for
22 the truck driver, for the CEC, the City of Carlsbad, that
23 it's so easy to change that condition that Avenida Encinas
24 where there is a light be used.

25 As you said, there's -- as Mr. Mason said,

1 there's 80 feet from the Cannon Road exit to the railroad
2 tracks. With traffic in the morning, with traffic from
3 the coast and the five o'clock traffic, guys are in a
4 hurry. They want to get across. They can't tell whether
5 there's one car, two cars, whether they're going to make
6 it, whether the end of their truck -- and I'm only talking
7 about semis. Whether the end of their truck is going to
8 make it, so --

9 And I think that it's clarified in trans 1 that
10 we're only talking about large trucks. We're not talking
11 about regular trucks. So trucks that are going to be
12 carrying a lot of demo, I mean, that -- they're big trucks
13 with a lot of stuff, and they weigh a lot, and they make a
14 lot of noise, and so it's -- the safety -- the safety
15 issue is, in my opinion, enormous so I suggest and I plead
16 please change it back. Don't allow those large
17 construction vehicles, the large vehicles to use the SD&GE
18 exit.

19 And Poseidon felt this way. In fact, they
20 didn't even allow their trucks any more to use that exit.
21 They just said, "Go to Palomar. Avoid the railroad
22 tracks." And I'm not saying -- I'm saying just use
23 Avenida Encinas. You have another exit. You have another
24 exit. Just have those semis just travel right over the
25 I-5, use your -- use your flagmen inside to get them

1 across the tracks and get them to Avenida Encinas so there
2 is a light so they can safely turn left. If they're
3 turning right, it's not an issue. If they're turning in,
4 it's not an issue. Only if they're exiting and going east
5 to go across the I-5.

6 Thank you very much.

7 HEARING OFFICER KRAMER: Okay.

8 MR. MCKINSEY: I'd like to ask Mr. Mason a
9 redirect question or at least to respond to something. It
10 provides more information and it is even more useful.

11 Mr. Mason, can you explain, I think, a little
12 more what it means to have the demo trucks, the trucks
13 moving demolished material, from the area west of the
14 track, what it would mean for them to use the Avenida
15 Encinas and whether that, by magically using Avenida
16 Encinas, that eliminates concerns about rail crossings?

17 MR. MASON: It does not. I mean, there is the
18 internal rail crossing that to move from the west side of
19 the Encina Power Station to reach Avenida Encinas you have
20 to cross the internal line or rail crossing. That rail
21 crossing has some limitations in terms of some grading,
22 some slope that limits ability for certain vehicles to go.
23 So we really do feel given that, to have one traffic
24 control point in terms of the exit and out of the Cannon
25 gate carrying demolition west of the railroad tracks is

1 the best solution.

2 One clarification, and it's minor, the actual
3 distance -- and again, I just, for the record I mention
4 that it's from Cannon Road to the painted line on Cannon,
5 from the Cannon gate. It's 65 feet then per vehicle code
6 from that white line that's on the line, then there is
7 another -- I believe it's -- I have it here.

8 MR. MCKINSEY: Mr. Mason, I think you misspoke.
9 You meant 80 for the distance --

10 MR. MASON: Yeah, 80 feet from the stop line and
11 then it's another 21 feet to the actual rail line. That
12 stop line is 21 feet short of the rail line, which is per
13 vehicle code. So in effect, you have, you know, 100 feet,
14 if you will, to the rail line.

15 MS. SIEKMANN: Mr. Mason, one other question
16 based on -- Terramar would have no problem if you had a
17 flagman all the time during demolition when you're taking
18 people out there. If you had a flagman all the time, then
19 we wouldn't have any problem with you using Avenida
20 Encinas, if you had a flagman all the time.

21 MR. MASON: You mean using Cannon?

22 MS. SIEKMANN: Correct.

23 MR. MASON: You said Avenida Encinas. You meant
24 --

25 MS. SIEKMANN: I meant, yeah, if the -- I would

1 not have a problem at all as long as there was someone
2 there who could guide them, that wouldn't be an issue at
3 all, so --

4 MR. MASON: We'll take that under advisement.

5 MS. SIEKMANN: Okay. Great, thank you.

6 HEARING OFFICER KRAMER: Okay. I think that
7 closes out traffic and transportation. Thank you,
8 gentlemen.

9 Questions?

10 MR. MCKINSEY: No.

11 HEARING OFFICER KRAMER: I think he was offered
12 just to answer questions. He doesn't seem --

13 Okay. Worker safety and fire protection. Is
14 Mr. Mason for the --

15 MR. MCKINSEY: The project owner doesn't have
16 any testimony or revisions in the rebuttal testimony
17 regarding safety conditions satisfy --

18 HEARING OFFICER KRAMER: Well, there may be a
19 question, though, Mr. Mason, so you may still want to
20 defend your honor. And then Ms. Siekmann for Terramar.
21 And Mr. Lopez from the City of Carlsbad.

22 So were you sworn as a witness earlier?

23 MR. LOPEZ: I have not, no. Good afternoon, no,
24 I have not been sworn.

25 HEARING OFFICER KRAMER: Okay. Madame Court

1 Reporter, please?

2 THE REPORTER: Raise your right hand, please.

3 Do you swear or affirm that the testimony that
4 you shall give will be the truth, the whole truth and
5 nothing but the truth to the best of your ability?

6 MR. LOPEZ: I do.

7 THE REPORTER: Thank you.

8 MR. THOMPSON: Mr. Lopez, do you have Exhibit
9 1001 in front of you? That contains the testimony --
10 prepared testimony of three city witnesses, and one of
11 those the is you; is that correct?

12 MR. LOPEZ: Yes, sir.

13 MR. THOMPSON: Would you please state your name
14 and place of employment?

15 MR. LOPEZ: My name Mike Lopez. Place of
16 employment is Carlsbad Fire Department.

17 MR. THOMPSON: Did you submit prepared testimony
18 on March 11 of this proceeding now identified as Exhibit
19 101?

20 MR. LOPEZ: Yes.

21 MR. THOMPSON: Do you have any corrections,
22 additions or deletions to that material?

23 MR. LOPEZ: No, sir.

24 MR. THOMPSON: Do you adopt this testimony as
25 your own, and would your answers today under oath be the

1 same?

2 MR. LOPEZ: Yes, sir.

3 MR. THOMPSON: Would you please briefly
4 summarize your testimony?

5 MR. LOPEZ: My testimony is that we worked with
6 CECP and the Carlsbad Fire Department to provide fire
7 protection. And obviously for the service requirements, I
8 have approved the water supply, the safety protection as
9 far as adequate personnel and obviously the equipment and,
10 as I stated earlier, water supply and the rim road slopes
11 and access roads.

12 MR. THOMPSON: In conclusion, is the Carlsbad
13 Fire Department and the City of Carlsbad comfortable
14 serving the amended CECP?

15 MR. LOPEZ: Yes, sir.

16 MR. THOMPSON: Thank you very much.

17 HEARING OFFICER KRAMER: Ms. Siekmann?

18 MS. SIEKMANN: I just had one comment to make,
19 and it doesn't have anything to do with fire protection.
20 It just has to do with along the I-5 because of the issues
21 that we talked about earlier with the visual mitigation,
22 there are pinched areas, and we just want to make sure and
23 ask the Committee to make sure that it is thoroughly --
24 that safety mitigation is taken into account in those
25 spots too.

1 Thank you.

2 HEARING OFFICER KRAMER: Okay. Yes, I have one
3 question here.

4 Mr. McKinsey, do you have a page number for the
5 worker safety conditions?

6 MR. MCKINSEY: It begins on page 149 of rebuttal
7 testimony.

8 MS. COCHRAN: Yes.

9 MR. MCKINSEY: Correct, 149.

10 HEARING OFFICER KRAMER: If we could turn to
11 worker safety 6, it begins and says, "The project owner
12 shall ensure that the below grade site fire lanes and
13 access points and ramps," paren, "with no more than a
14 10 percent grade is constructed so at least two access
15 points," et cetera, et cetera.

16 I'm assuming that the reference to the 10
17 percent grade is to ensure that none of these ramps have a
18 grade that is greater than 10 percent. Would that be
19 correct or -- so what I'm getting at is I don't think this
20 parenthetical statement is in the proper place in the
21 condition if it is to have regulatory effect.

22 MR. MASON: I can answer that. The intent is
23 for the ramps to have no greater a slope than 10 percent.

24 HEARING OFFICER KRAMER: Okay. So I'll take
25 care of moving this to a place where it has regulatory

1 effect, and you guys can check and see if I did that
2 correctly. Because as it is now, it seems to exclude
3 ramps greater than 10 percent from the other requirements
4 of the condition. I'm pretty sure that is not what was
5 intended.

6 MR. MASON: No, that's correct. The intent was
7 to have the max grade. It would be no more than 10
8 percent.

9 HEARING OFFICER KRAMER: Okay. Thanks for
10 clarifying that. Do you guys want to go at it? I guess
11 that closes out fire --

12 MR. LOPEZ: As long as my fire engines have
13 their departure and arrival, I don't have any skid marks
14 on my engines as far as slopes.

15 HEARING OFFICER KRAMER: Skid marks or scrapes?

16 MR. LOPEZ: You should see some of the skid
17 marks on the bottom of those rigs.

18 HEARING OFFICER KRAMER: I see. Just trying to
19 slow down. Gotcha.

20 Okay. I think we can close worker safety and
21 fire protection then. Thank you, gentlemen.

22 MR. MASON: Thank you.

23 HEARING OFFICER KRAMER: So that really -- that
24 leaves us with public comment on the committed schedule,
25 but we also have floaters that we have in the schedule

1 that start on page 4 of the witness worksheet, so I'm
2 wondering which of those we can deal with today.

3 The last two, which are about housekeeping and
4 discussing issues to be briefed, those have to wait until
5 the end, obviously, but -- as does oral argument, but we
6 have two topics, the conditions of certification where
7 Ms. Siekmann was the only one asking for time, and then
8 overrides, where we have staff witnesses and Ms.
9 Siekmann, so I suspect we're not ready for overrides
10 because those witnesses are coming tomorrow.

11 MS. WILLIS: That's correct.

12 MR. MCKINSEY: The compliance conditions, I
13 think, includes our witness on COM 16, which was a request
14 by the Committee that we propose in our rebuttal
15 testimony, some changes to COM 16 that address this
16 discussion around how things apply and we have that
17 witness here.

18 HEARING OFFICER KRAMER: Okay. So we can do
19 that today, do you think?

20 MR. MCKINSEY: Yes.

21 HEARING OFFICER KRAMER: Staff, do you agree?

22 Anyone else have a problem?

23 Okay. So let's move to conditions of
24 certification then from the floater list.

25 And let's see, Susan, if you can bring up -- let

1 me find it.

2 MS. COCHRAN: Is it in the FSA or the rebuttal
3 testimony?

4 HEARING OFFICER KRAMER: It's going to be the
5 applicant's rebuttal testimony, which I think is 1029.

6 MS. COCHRAN: You're at COM 16?

7 HEARING OFFICER KRAMER: Yeah, I don't think
8 it's a long document, but it probably is -- if I recall
9 correctly, it was right at the end. So if you can set out
10 the actual language --

11 You went too far. There we go.

12 MS. COCHRAN: That's all of it?

13 UNIDENTIFIED SPEAKER: That's the short version.

14 HEARING OFFICER KRAMER: So there's more? Is
15 this just an excerpt of --

16 MR. MCKINSEY: Are you on ours?

17 HEARING OFFICER KRAMER: Yours. Did you just
18 change this to a couple paragraphs? So do we need to look
19 at the one --

20 MR. MCKINSEY: Well, this is it.

21 HEARING OFFICER KRAMER: This is the whole
22 thing?

23 MR. MCKINSEY: This is the version that the
24 project owner proposed and the strike-through and
25 underline shows changes to the previous version, which was

1 what we had submitted that was in the staff's testimony,
2 and this was in our rebuttal testimony in response to the
3 request by the Committee at the evidentiary hearing
4 conference to try to clerical Com-16, but this is the
5 entire thing.

6 MS. COCHRAN: So this is Exhibit 1029?

7 MR. MCKINSEY: So this is Exhibit 1029.

8 So I would like to add Mr. Seipel to explain how
9 -- what we're trying to accomplish here, what this does.

10 HEARING OFFICER KRAMER: Okay. First, could you
11 identify yourself? And I don't think you've been sworn in
12 yet either.

13 MR. SEIPEL: Yeah, I was sworn in earlier. I
14 raised my hand.

15 HEARING OFFICER KRAMER: Okay. I don't have
16 your name in my spreadsheet list.

17 MR. SEIPEL: It's Christopher Seipel.

18 HEARING OFFICER KRAMER: Christopher spelled?

19 MR. SEIPEL: C-h-r-i-s-t-o-p-h-e-r.

20 HEARING OFFICER KRAMER: And last name?

21 MR. SEIPEL: S-e-i-p-e-l.

22 HEARING OFFICER KRAMER: Seipel. Thank you.
23 Madame Court Reporter? No, you were sworn. Go ahead and
24 explain.

25 MR. SEIPEL: Okay. As I think you can see from

1 the screen up there, there are three changes made. One
2 was to make --

3 MS. COCHRAN: Sorry.

4 MR. SEIPEL: To make the condition more specific
5 to apply to demolition of tanks 5, 6 and 7. It also goes
6 on to clarify that it would apply to conditions for 5, 6,
7 7 demolition activities that if a condition was
8 authorized, it would not have to be reauthorized, and an
9 example of that would be HAZ 7, the site security plan.
10 If there was a change made, making it applicable to tank
11 demolition which we already have underway.

12 The last change, we conceded that for ongoing
13 compliance activities, we would comply with those if there
14 was a change made in the license. An example of that
15 would be Noise 6 where the end of work shift hours would
16 change from sunset to six PM. We would comply with the
17 six PM finish of work time.

18 HEARING OFFICER KRAMER: So in both -- to be
19 clear, in both of those examples you gave, the new
20 requirement would apply --

21 MR. SEIPEL: The new --

22 HEARING OFFICER KRAMER: -- or were you saying
23 it would not for HAZ 7?

24 MR. SEIPEL: The new requirement would apply but
25 specifically the second change in the condition out there,

1 we would not have to ask for a reauthorization to start an
2 activity because it's already started.

3 HEARING OFFICER KRAMER: Right, because you
4 would just comply with the new ground rules about
5 performing the activity?

6 MR. SEIPEL: That's correct.

7 HEARING OFFICER KRAMER: Okay. Ms. Siekmann?

8 MS. SIEKMANN: How about traffic, would you be
9 using the SDG&E site to exit with any of the demolition
10 from this activity?

11 MR. SEIPEL: As it pertains for tank 5, 6 and 7,
12 no, the exit -- the exit and entrance is the Avenida
13 Encinas gate.

14 MS. SIEKMANN: 100 percent, anything?

15 MR. SEIPEL: Everything for 5, 6, 7.

16 MS. SIEKMANN: Okay. Thank you.

17 HEARING OFFICER KRAMER: Is that all you have on
18 this topic, Ms. Siekmann?

19 MS. SIEKMANN: Yes, it is.

20 HEARING OFFICER KRAMER: Okay. Good. So
21 anything else, Mr. McKinsey?

22 MR. MCKINSEY: No.

23 MS. SIEKMANN: Oh, I'm sorry. Sorry. Noise was
24 the other thing.

25 HEARING OFFICER KRAMER: Noise.

1 MS. SIEKMANN: I think you said noise, right?

2 MR. SEIPEL: Yes.

3 MS. SIEKMANN: All of the new noise conditions
4 will be --

5 MR. SEIPEL: That I can think of off the top of
6 my head, yes.

7 MS. SIEKMANN: Thank you. Excuse me.

8 HEARING OFFICER KRAMER: Okay. So we close out
9 conditions of certification. Thank you, all.

10 MR. SEIPEL: Thank you.

11 THE WITNESS: Well, because we can't do
12 overrides today --

13 MS. SIEKMANN: Well, conditions of
14 certification, I had two others.

15 HEARING OFFICER KRAMER: Oh, okay. Okay. Then
16 please let's raise those now.

17 MS. SIEKMANN: So on Compliance Condition 10, it
18 says that it wouldn't be reported to the CPM for 10
19 days, but I think maybe when we were discussing noise
20 complaints, the reason that -- I mean, I don't even know
21 who to ask this of.

22 HEARING OFFICER KRAMER: Why don't you pause for
23 a minute so we can get it up on the screen?

24 MS. SIEKMANN: Oh, okay.

25 HEARING OFFICER KRAMER: It would probably help

1 us.

2 MR. MCKINSEY: Which condition?

3 MS. SIEKMANN: It's Compliance 11.

4 MR. MCKINSEY: I thought you said 10.

5 MS. SIEKMANN: Page 6-12.

6 HEARING OFFICER KRAMER: And we're looking at
7 the newest compilation of the conditions.

8 MS. SIEKMANN: Okay.

9 MS. COCHRAN: 2000.

10 HEARING OFFICER KRAMER: No, that's not the
11 newest one. That would be 2001.

12 I'm not seeing 10 days in there.

13 MR. MCKINSEY: It's down on the fourth, the
14 fourth paragraph. In the fourth paragraph, it notes the
15 project owner has to supply copies --

16 HEARING OFFICER KRAMER: Oh, I see.

17 MR. MCKINSEY: And is it -- your concern is that
18 there a different shorter deadline providing for noise?

19 MS. SIEKMANN: No, that's not my question. My
20 question is -- it was like ten days before a project owner
21 has to send a complaint to the compliance manager. To me,
22 that was -- until I had an explanation today of what goes
23 on with the project owner addressing the issue immediately
24 and taking care of it before it goes to the compliance
25 manager, it gives them ten days to handle it. I thought

1 they had ten days before it was even handled, and I
2 thought if you have a noise issue and it doesn't get to
3 the compliance manager for ten days, I mean, the whole
4 thing is going to be done before they see it.

5 But from the noise discussion, my understanding
6 is now that the project owner fills out the form and
7 addresses it immediately and has a chance to get it
8 resolved by the ten days.

9 MR. MCKINSEY: In fact, I would note --

10 MS. SIEKMANN: Is that correct?

11 MR. MCKINSEY: Noise 2 has a tighter time frame.

12 MS. SIEKMANN: Okay.

13 MR. MCKINSEY: Noise 2 requires the submission
14 of the noise complaint resolution form to be in within
15 five days.

16 MS. SIEKMANN: Okay.

17 MR. MCKINSEY: So the form that --

18 MS. SIEKMANN: Okay.

19 MR. MCKINSEY: -- we were referring to, that's a
20 different form that has a tighter time line for most --

21 MS. SIEKMANN: But it gets addressed
22 immediately?

23 MR. MCKINSEY: And both of them have a similar
24 within 12 or 24 hours noise --

25 MS. SIEKMANN: Okay.

1 MR. McKINSEY: -- and in Com-11, they have to
2 take action.

3 MS. SIEKMANN: I just -- I saw this and thought,
4 "Oh, my gosh, that's way too long," but now I understand
5 what that means, so I don't have an issue with it.

6 HEARING OFFICER KRAMER: Well, do we need to
7 modify this? It says unless a shorter --

8 MS. SIEKMANN: Yes.

9 HEARING OFFICER KRAMER: -- reporting period is
10 required --

11 MS. SIEKMANN: That's a good idea.

12 MR. McKINSEY: Well, Noise 2 doesn't require
13 filing of the complaint, it requires a filing of the noise
14 complaint resolution form for this very specific document
15 for noise complaints. I don't know that they're really
16 not in tune with each other. Noise 2 requires basically
17 you have to move faster and do something slightly
18 different for noise complaints for Noise 2 whereas this
19 just kind of covers generally all complaints. It mentions
20 the word "noise," but you will have satisfied it by
21 satisfying Noise 2 because you filed a noise complaint
22 resolution form within five days. And this is the same --
23 I mean, this has been in the Commission for a long time
24 and it's worked very effectively.

25 HEARING OFFICER KRAMER: Is staff worried about

1 any -- somebody trying to get extra days because they went
2 to this section?

3 MS. WILLIS: Are you asking extra days for noise
4 complaints because we just said noise complaints --

5 HEARING OFFICER KRAMER: You don't see any sort
6 of fatal conflict between this statement of ten days and
7 the --

8 MS. WILLIS: Well, like I said, we've been using
9 this for quite some time and I don't believe it's caused a
10 problem in the past.

11 HEARING OFFICER KRAMER: Okay. Ms. Siekmann
12 said she was happy with it.

13 MS. SIEKMANN: And then there's Number 14,
14 Compliance 14. And that's about notifying of two weeks
15 prior to non-operation or no later than two weeks after
16 the start of unplanned non-operation, and two weeks after
17 -- if you're in a neighborhood where you've got
18 construction going on for five years, it would be nicer to
19 know more than -- sooner than two weeks after they stopped
20 doing things so that if you had something you wanted to
21 plan, you could plan it.

22 MR. McKINSEY: I think the actual sentence in
23 the end of that first paragraph says, "one week." It's
24 the last sentence of the --

25 MS. SIEKMANN: What I'm looking at says every

1 two weeks, but --

2 MR. MCKINSEY: Well, the two weeks is for
3 planned. Two weeks prior for planned, and it's one week
4 after for unplanned.

5 MS. SIEKMANN: Oh, see, it says, "For no later
6 than two weeks after the start of unplanned non-operation,
7 the project owner shall notify CPM."

8 MR. MASON: This is Robert Mason.

9 MS. SIEKMANN: One week would be better.

10 MR. MASON: There's a clarification here. This
11 is talking about when the plant is operational. This
12 isn't about construction. This is operations.

13 MS. SIEKMANN: Oh, operational? Okay.

14 MR. MASON: Yeah, that's why it's called
15 non-operational, so it's --

16 MS. SIEKMANN: Okay.

17 MR. MASON: -- non-operation of the plant
18 itself.

19 MS. SIEKMANN: Okay.

20 MR. MCKINSEY: This is -- that -- the actual
21 condition. You're reading something that is different.

22 MS. SIEKMANN: Well, this is from the FSA.

23 MR. MCKINSEY: I know, but the actual condition
24 says -- it's the -- it's the first paragraph.

25 MS. SIEKMANN: But this is a compliance

1 condition.

2 MR. MCKINSEY: But that's the summary of the
3 condition, it's not condition. And I think it's in error,
4 actually. The actual condition that is up there reads in
5 the first paragraph, for planned non-operation you have to
6 give the notice two weeks prior, and for unplanned
7 non-operation it's no later than one week after.

8 MS. SIEKMANN: Then there is a mistake in the
9 FSA.

10 MR. MCKINSEY: Yeah, that summary right there of
11 what they're saying, the condition is different than the
12 actual condition.

13 HEARING OFFICER KRAMER: What page is that?

14 MS. SIEKMANN: So this came from the Compliance
15 Conditions, page 6-12 of the FSA -- of the FSA.

16 HEARING OFFICER KRAMER: Is that it for you?

17 MS. SIEKMANN: Yes.

18 HEARING OFFICER KRAMER: All right.

19 MR. MASON: Just for the record, in terms of the
20 FSA supplements and FSA -- FSA supplementals and
21 supplemental and rebuttal, the same Com-14 or Com-14 is on
22 page 163. I suppose it would probably make sense to
23 confirm that those two are the same or they should be.

24 HEARING OFFICER KRAMER: Well, we're going by
25 the rebuttal compilation.

1 MR. MASON: Okay. Then that would be on
2 page 163.

3 HEARING OFFICER KRAMER: That's what is on the
4 screen, I think.

5 MR. MASON: Okay. Very good.

6 HEARING OFFICER KRAMER: Okay. Well, we can't
7 do overrides.

8 On page 5, the other page 5 of the witness
9 worksheet, the last page, we have a list of eleven topic
10 areas that had no requests for anything, so does any party
11 want to raise any issues with regard to those topics
12 beginning with soil and water and resources and ending
13 with waste management?

14 MS. SIEKMANN: Just one thing I would want to
15 point out, and that is override, if overrides are made
16 which it look like they need to be, is there anything in
17 these sections that need to be further clarified because
18 need needs to be shown?

19 HEARING OFFICER KRAMER: I don't think any of
20 these sections were proposing to find any significant
21 impacts, so they would not be the subject of overrides.

22 MS. SIEKMANN: Okay. I just wanted to point
23 that out.

24 HEARING OFFICER KRAMER: Okay. We appreciate
25 that, but the balancing occurs in kind of a combination of

1 the overrides and the alternative discussion, which are
2 definitely on later for tomorrow.

3 So that's -- I think that's all we can do today
4 except to come back at six for public comment, and since
5 we have exhausted our work for today, we won't be trying
6 to do any -- fit anything in after public comment either,
7 I don't think, so we can all get dinner. So let's adjourn
8 until six p.m. this evening for the public comment
9 portion.

10 Thank you, all.

11 (A break was taken)

12 PRESIDING MEMBER DOUGLAS: Hello. For those of
13 you who have just come for public comment, I'm Karen
14 Douglas, the Commissioner of the Energy Commission and the
15 Presiding Member of the Committee that's reviewing this
16 proposal. To my left is our Hearing Officer Paul Kramer.
17 To his left is Commissioner McAllister. He's an Associate
18 Member of the Committee.

19 I'll just introduce the Committee for those of
20 you who have just come. I see some new faces.

21 To Commissioner McAllister's left is his advisor
22 Pat Saxton. And then Eileen Allen is the Technical
23 Advisor on the side to the Commissioners. And on my
24 right, my advisors, Jennifer Nelson, and Le-Quyen Nguyen.

25 We've got a number of parties here, the

1 applicant, the project owner; the staff, the Energy
2 Commission staff. We've got a number of Intervenors in
3 the room and the City of Carlsbad, which is not a formal
4 Intervenor but has been very active in the proceedings.
5 Power of Vision and Terramar are in the room and then
6 other Intervenors who will be here tomorrow.

7 So I'm just going to read names off of the
8 comment cards. If you haven't filled out a card yet but
9 you think you would like to speak, just give it to the
10 public advisor and she will bring the card up here and
11 we'll put it in the stack.

12 After we get through the comments in the room,
13 we will go to people participating by phone and WebEx and
14 get their comments. There is a three-minute length of
15 comments or limit on comments. Given that there are not
16 too many people in the room, we'll be a little flexible if
17 you need a little longer to wrap up your thoughts, but
18 three minutes is typically enough to get through what you
19 really want to say. And if you need a little bit more,
20 just tell us and we'll probably be able to accommodate it,
21 given that we don't have that many cards.

22 So I'm going to start by asking Ted Owen,
23 Carlsbad Chamber of Commerce, to come forward.

24 MR. OWEN: Good evening, Commissioners and
25 staff, thank you very much for --

1 HEARING OFFICER KRAMER: Can you press the gray
2 button?

3 MR. OWEN: Is that good?

4 HEARING OFFICER KRAMER: There you go.

5 MR. OWEN: No, but if you push it, I guess --
6 oh, I see the green light. I'm sorry. I did write my
7 remarks so I would be within my three minutes --

8 PRESIDING MEMBER DOUGLAS: Great.

9 MR. OWEN: -- so I will not --

10 My name is Ted Owen. I am the President and CEO
11 of the Carlsbad Chamber of Commerce, and on behalf of the
12 Chamber, I would like to, once again, express our strong
13 support for the amended Carlsbad Energy Center Project.

14 For close to 90 years, the Carlsbad Chamber of
15 Commerce has worked in a favorable business climate for
16 our 1600 business members and more than 75,000 employees
17 in and around the City of Carlsbad. This is why we pay
18 close attention to issues in Carlsbad that could impact
19 not only the ability of local businesses to thrive, but
20 also matters that could impact the quality of life in our
21 community.

22 A reliable power supply is a basic need for
23 health, safety and economic well-being. We remain
24 concerned about the reliability of our power supply given
25 the closure of the San Onofre Nuclear Generating Station,

1 the retirement of the Encina Power Station in 2017 and the
2 vulnerability of our transmission system to wildfires.
3 You may recall that wildfires burned nearly 30,000 acres
4 in and around Carlsbad in May of 2014.

5 The Carlsbad Chamber is a supporter of this
6 project that you licensed in 2012, and we feel the amended
7 project before you offers numerous benefits over the
8 previous project. The state of the art project will
9 likely run less than the project previously licensed and
10 will help integrate a growing supply of wind and solar
11 power. It will not run at all during overnight except in
12 an emergency. The amended Carlsbad Energy Center has a
13 lower visual profile, better air quality, and will consume
14 less water than the project you previously licensed.

15 We are very pleased that NRG, SDG&E and the City
16 of Carlsbad have reached an agreement whereby the Encina
17 Power Station will be demolished by a date certain, and
18 the SDG&E Service Center relocated from the site. These
19 actions mean that nearly 60 acres of oceanview property
20 could be ready for non-industrial redevelopment early next
21 decade. I will say that the citizens and the business
22 community are excited about the possibilities for that
23 site.

24 In addition to the cleaner energy being produced
25 in our community, the Carlsbad Energy Center would also

1 provide millions of dollars in local tax revenue annually,
2 generate hundreds of jobs creating -- hundreds of jobs
3 during construction, and the Carlsbad Energy Center is a
4 project that makes sense for our local economy.

5 Carlsbad has hosted the Encina Power Station
6 ever since the city's founding over 60 years ago. While
7 some communities may support regional infrastructure as
8 long as it isn't in their backyard, Carlsbad continued to
9 lead by hosting the next generation of power and water
10 projects, and we do this without sacrificing the quality
11 of life we enjoy in Carlsbad, which for most of us is the
12 reason we chose to live and do business here.

13 It is our firm belief that this revised project
14 will provide Carlsbad and the region with the most logical
15 and reliable solution to our power needs. Sorry.

16 In closing, I would like to thank you all for
17 the work over the years as you evaluate this important
18 project, and thank you very much for allowing me the
19 opportunity to speak one more time.

20 PRESIDING MEMBER DOUGLAS: All right. Well,
21 thank you for being here.

22 MR. OWEN: You're welcome. Thank you.

23 PRESIDING MEMBER DOUGLAS: The next speaker will
24 be Christine Bevilacqua and followed by Michael Bells so
25 that you're ready.

1 MS. BEVILACQUA: Hi, thank you. I'm a Carlsbad
2 resident. I have master's degree in Urban Sustainability,
3 and I'm a mother.

4 I'm here to talk about the San Diego County
5 Water Authority's project for 500 megawatts of
6 hydroelectric power at the San Vicente Dam, which is in
7 Lakeside, technically in the city of San Diego.

8 I spoke with Kelly Rogers today at the County
9 Water Authority. They have done their feasibility studies
10 and they have come back positive. They're moving forward,
11 so starting next fiscal year meaning July, they will be
12 looking for potential partners and business model
13 arrangements for this 500 megawatts of power. They have
14 not entered into any agreements yet. They're totally open
15 and would love to be able to serve the county.

16 They're currently conducting reservoir modeling
17 and preparing their preliminary application with the
18 Federal Energy Regulation Commission for July. According
19 to Ms. Rogers, this project will increase grid reliability
20 as their increased storage capacity can accommodate both
21 peak and off-peak needs. So if you're not familiar with
22 this project, I encourage you to go to the San Diego
23 County Water Authority website under board memos. On
24 February 12th, there was a presentation given that gives
25 much more detail.

1 So as a resident and a mother, I oppose the
2 plan. I feel like it's the last ditch efforts in the
3 fossil fuel industry, and the residents of Carlsbad have
4 said over and over again that sustainability is a priority
5 and I don't believe that it adds to the quality of life or
6 sustainability here in Carlsbad.

7 Thank you.

8 COMMISSIONER McALLISTER: Just a clarifying
9 question. Are you talking about the pump storage proposal
10 or is it a hydro, just hydro generation? I believe it's a
11 pump storage project, if it's the one I'm thinking of.

12 MS. BEVILACQUA: I was told it's going to create
13 500 megawatts of hydroelectric power and they have
14 increased their storage capacity so that they can increase
15 rate reliability and it also keeps rates stable.

16 COMMISSIONER McALLISTER: Okay. The San Vicente
17 Reservoir, right?

18 MS. BEVILACQUA: Yes.

19 COMMISSIONER McALLISTER: Thank you.

20 PRESIDING MEMBER DOUGLAS: Thank you.

21 Michael Bell followed by Laura Keany.

22 MR. BELL: Hi. My name is Michael Bell, and I
23 have -- since the very first Earth Day, I always wanted to
24 get into pollution control. It's just something that
25 really just caught my heart, and what I did as a career, I

1 was basically -- I built power plants and -- power plants
2 and oil refineries and also a large part of it was in
3 pollution control.

4 So back in the early '70s there was no pollution
5 control, so I've seen it from the start of the infancy of
6 pollution control. And what I've seen today, I just
7 finished a job -- I'm retired now, but I just finished a
8 job at NRG up at El Segundo, the efficiency of that unit
9 is 99.9 -- 8.8 or .9 depending on how it's running that
10 day. And basically out of the stack, they're basically
11 getting water. And that's what you're seeing; you're
12 seeing the steam come up and water.

13 So from what I've seen in my career from zero,
14 basically you're seeing everything come out of that. Back
15 then, it was called a smoke stack, and now it's called
16 exhaust, so it's incredible.

17 And I wanted to say as somebody that's been in
18 the trade and been a local resident for 25 years, my kids
19 still live here in the local area, my grandkids, I think
20 this plan would be awesome to do, and I'm more than -- I
21 see a lot of jobs, local jobs, up to 400, 500 jobs being
22 for the local community, which is great, but also the
23 cleanness. Like I said, I had work with the NRG under
24 them through the contractor that I worked for, and that
25 job that what I've seen in NRG, they care about not only

1 the environment, they care about the neighbors, and they
2 care about basically what is going on in their area, so
3 I'm -- I can't say enough for NRG.

4 Sempra SDG&E, they've done such great work far
5 ahead of the nation in being able to do off of -- for
6 thermal power. They've also done solar and wind power, so
7 they're way ahead of the curve too.

8 So with those two, you know, entities, I think
9 this is a win win win for the environment and for the
10 community. Thank you.

11 PRESIDING MEMBER DOUGLAS: Thank you for being
12 here.

13 The public advisor is going to read the next two
14 public comments.

15 MS. MATHEWS: Okay. The first is on behalf of
16 Laura Keany. Her concerns are that she'd like to have the
17 noise minimized and exhaust pollution down-sized to
18 30 megawatts, construction and tear-down needs to be
19 considerate of neighboring houses.

20 There's also a comment on behalf of Jan Berry.
21 "The power plant is too big. Make it smaller. 300
22 megawatts. The noise and traffic is causing problems that
23 need to be minimized."

24 PRESIDING MEMBER DOUGLAS: Thank you very much.
25 If you've just arrived, if you'd like to make a

1 public comment, please fill out a blue card and give it to
2 the public advisor. She'll bring it to us.

3 Paul Thompson is the next name I have followed
4 by Phil Rogul.

5 MR. THOMPSON: Hi, my name is Paul Thompson. I
6 too am a resident of Carlsbad, and I'm here interestingly
7 very supportive of the Carlsbad Chamber, very supportive
8 of SDG&E and Semptra. I have great relationships with all
9 of those organizations, and I am supportive of so much of
10 what they do regionally.

11 I'm here to speak against this particular
12 project, however, as a citizen of Carlsbad, as a father,
13 as a grandfather, as a promoter of sustainability in our
14 region, and would ask that all of you take a serious
15 second look at the wisdom of this decision given the rapid
16 rate of technological advancements in the development of
17 alternative energy sources and the lack of need to site
18 facilities such as this along the coastal zone.

19 And again, I'm not looking -- I'm not saying
20 this from a NIMBY perspective. I think there are areas
21 apart from large population locations where a facility
22 could be created if one was needed, and I think the
23 question as to whether one is truly needed is -- has not
24 yet been fully vetted or fully answered.

25 As to the issue of the creation of jobs, I like,

1 everybody here, is supportive of the creation of jobs, and
2 I don't think that a decline of this project would suggest
3 that alternative options in that -- in that location
4 couldn't also provide a range of jobs. I just think we
5 haven't had the opportunity given the nature of this
6 particular project to really vet and look at some of the
7 more creative options that are legitimately there that
8 could provide jobs for the citizens of the North County
9 region.

10 I'm very concerned about, as well, the pollution
11 that this particular facility would provide -- would
12 create. In all due respect to the previous speakers, I'm
13 deeply and gravely concerned about that impact as well as
14 the pollution involved in the building and related
15 elements that will go into the creation of that particular
16 facility.

17 I would like to commend this body for coming
18 back at -- at this question, encouraging the
19 decision-makers to look at alternative and cleaner
20 technologies. If indeed one is forced to be built there,
21 we would encourage you to find the cleanest possible
22 technology and look at the quantity of megawatts that are
23 required in that -- in that location.

24 It's a beautiful area, and the site that has
25 been selected for this facility will be blighted

1 profoundly regardless of the reduction in size in
2 comparison to its present facility, and I think it would
3 be a travesty for those that travel along that corridor
4 and live in Carlsbad to have to address and be faced for
5 the next 30 plus years with that particular facility.

6 Thank you very much.

7 PRESIDING MEMBER DOUGLAS: Thank you for being
8 here.

9 Phil Rogul is the last card that I have, so if
10 there is anyone else in the room that would like to make
11 about comment, please let the public advisor know,
12 otherwise we will go to WebEx.

13 MR. ROGUL: Thank you, Commissioners. I stand
14 before you today on behalf of this Sierra Club, Sierra
15 Club of San Diego which counts 12,000 plus members inside
16 of the San Diego and Imperial Counties.

17 If I may please bring to your attention the
18 California Public Utility Commissioner's own
19 administrative law judge who recently, very recently,
20 issued the proposed decision rejecting this \$2.6 billion
21 gas-powered natural gas plant.

22 Why? Scientific and mathematical modeling
23 proves for one thing that it's not needed. We have the
24 scientific understanding of what the future energy demands
25 are. We have the independent system operators from

1 regional areas, including the adjacent states, and we have
2 existing proposals, including but not limited to the very
3 excellent San Vicente proposed hydropower megawatts, the
4 number of which I don't recall.

5 We have many alternatives. This is dirty fossil
6 fuel. Notwithstanding the gentleman who pointed out the
7 incredible level of technology, my background is
8 mechanical engineering and I confirm the technology is
9 incredible. The fracking that's required to produce the
10 natural gas causes tremendous release of methane.

11 I have readily available, as we all do, from the
12 orbitting space shuttle -- space station, sorry,
13 incredible images of North and South Dakota flaring off
14 gazillions of tons of methane energy not all of which is
15 being burned; much of which is being emitted into the
16 atmosphere. This is a tragedy for our global warming
17 efforts.

18 The Sierra Club has no ulterior motive. Our
19 motive is only to this push towards renewable energy so as
20 to forestall at this late hour the terrible tragedy of
21 global warming.

22 When I hear comments preceding me towards the
23 business and we support the aspects of jobs, please let's
24 keep it in the frame of reference of reality. We know --
25 we, the scientific community of which I'm a part, know the

1 alarm bells are ringing.

2 We have the technology. We do not need this
3 plant. Please let our public policy be powered by science
4 and mathematical modeling, not the business industry of
5 our most incredibly powerful utilities including San Diego
6 Gas and Electric, some of whose officers I am friends
7 with. I know they have an extraordinary amount of
8 political power and an extraordinary amount of power with
9 the Public Utility Commission, but very few
10 representatives are able to leverage the truth.

11 I am here to represent our very excellent Sierra
12 Club and plead that the best possible scientific and
13 mathematical modeling -- it's all science -- is applied
14 and not the business community's interests. We do not
15 need another dirty fossil fuel power plant.

16 Thank you very much.

17 PRESIDING MEMBER DOUGLAS: Thank you.

18 All right. I think that's it for speakers in
19 the room. Do you want to take us through --

20 All right. So we have unmuted the WebEx. If
21 you would like to make a public comment and you're
22 participating by WebEx, please speak up.

23 All right. Do we have a separate phone?

24 All right. Well, it sounds like there are no
25 public comments on the WebEx, so we will conclude this

1 proceeding for tonight. We will see you all at -- what
2 time tomorrow?

3 See you all at nine a.m. tomorrow or maybe not
4 everybody here, but we will reconvene at nine a.m.
5 tomorrow, and if you would like to come, you're welcome to
6 see us.

7 Did someone try to speak? Oh, that was my
8 feedback. All right. Thank you.

9 (Whereupon, at 6:26 p.m., the proceedings were
10 adjourned.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

I, Mary Anne Young, a Certified Shorthand Reporter No 12799 in the State of California, duly empowered to administer oaths, certify:

That said proceedings took place before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed under my direction and supervision, and I hereby certify that the foregoing proceedings are a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my hand on this 4th day of April, 2015.

MARY ANNE YOUNG

Certified Shorthand Reporter No. 12799