

DOCKETED

Docket Number:	07-AFC-06C
Project Title:	Carlsbad Energy Center - Compliance
TN #:	204131
Document Title:	Transcript of April 2, 2015 Evidentiary Hearing
Description:	N/A
Filer:	Paul Kramer
Organization:	Energy Commission Hearing Office
Submitter Role:	Committee
Submission Date:	4/10/2015 4:33:56 PM
Docketed Date:	4/10/2015

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 Kerry Siekmann, Terramar Association

13 Tamara Zakim, Sierra Club (Telephonic)

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

20 Nick Horres, San Diego Air Pollution Control District

21 Paula Forbis, Counsel for San Diego Air Pollution Control
22 District

23 Dennis Peters, California Independent System Operator

24 Jordan Pinjuv, Counsel for California Independent System
25 Operator

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

9:06 A.M.

PROCEEDINGS BEGIN AT 9:06 A.M.

(The meeting was called to order at 9:06 a.m.)

CARLSBAD, CALIFORNIA, THURSDAY, APRIL 2, 2015

MEETING BEGINS AT 9:06 A.M.

PRESIDING MEMBER DOUGLAS: Good morning,
everyone. Welcome to the second day of evidentiary
hearing on the Carlsbad Energy Center amendments.

My name is Karen Douglas. I'm the Presiding
Member of the Committee assigned to overhear this
application. And to my immediate left is our Hearing
Adviser Paul Kramer. To his left, Andrew McAllister, the
Associate Member of the committee.

To Commissioner McAllister's left is his
advisor, Pat Saxton. And to Pat Saxton's left is Eileen
Allen. She's the Technical Advisor on-site to the
Commissioners. To my right are my two advisors, Jennifer
Nelson and Le-Quyen Nguyen.

So with that, let me ask the parties to
identify themselves, beginning with the applicant.

MR. MCKINSEY: Good morning, John McKinsey with
Locke and Lord. We're counsel for the project owner,
Carlsbad Energy Center, LLC. And to my left is George
Piantka from NRG representing the project owner.

1 PRESIDING MEMBER DOUGLAS: Okay. Thank you.
2 Staff?

3 MR. RATLIFF: Good morning. I'm Dick Ratliff,
4 counsel for staff. With me is co-counsel Kerry Willis
5 and Project Managers John Hilliard to my right and Mike
6 Monasmith on my left.

7 PRESIDING MEMBER DOUGLAS: Thank you.
8 Now let's go to the Intervenors.

9 Terramar Association?

10 MS. SIEKMANN: Good morning. Kerry Siekmann,
11 Terramar.

12 PRESIDING MEMBER DOUGLAS: Good morning.
13 Power of Vision?

14 MS. BAKER: Good morning, Julie Baker.

15 PRESIDING MEMBER DOUGLAS: Thank you.
16 Intervenor Rob Simpson?

17 MR. SARVEY: Bob Sarvey.

18 PRESIDING MEMBER DOUGLAS: Bob Sarvey. I want
19 to go back. I was just going in order of intervention,
20 but it doesn't matter. Welcome.

21 Rob Simpson, are you here or on the phone?

22 Okay. Not yet.

23 What about David Zizmor? He's Rob Simpson's
24 representative. Okay.

25 Sierra Club, yesterday they were on the phone

1 and listening. I see that Tamara Zakim is on the phone
2 again this morning.

3 Good morning, Tamara.

4 MS. ZAKIM: Yes, I'm here. Good morning.

5 PRESIDING MEMBER DOUGLAS: Great. Thank you.

6 All right. City of Carlsbad?

7 MR. THOMPSON: Good morning. My name is Allan
8 Thompson, counsel -- special counsel to the City of
9 Carlsbad. To my right is Bob Therkelsen, advisor to the
10 City of Carlsbad, and in the witness hot seat is Gary
11 Barbario.

12 PRESIDING MEMBER DOUGLAS: Thank you.

13 Public Advisor, Alana Mathews. Oh, she's not
14 here today. Oh, Public Advisor, Sean. Okay. Oh, so
15 Caryn Holmes, you're sitting at the desk where Alana was?

16 MS. HOLMES: Yes. If people have questions --

17 PRESIDING MEMBER DOUGLAS: All right.

18 MS. HOLMES: -- about participating, they're
19 welcome to ask me.

20 PRESIDING MEMBER DOUGLAS: Fantastic. So Caryn
21 Holmes, who is an attorney with the Commission, is
22 sitting at the desk where Alana Mathews was yesterday
23 will help if anyone wants to hand in a blue card or has
24 questions about the process today.

25 Thank you, Caryn.

1 All right. Is anyone here from the California
2 Independent System Operator?

3 Dennis Peters is here. Welcome, Dennis.

4 Is anyone here from the San Diego Air Pollution
5 Control District?

6 Could you introduce yourselves at the
7 microphone?

8 MR. MOORE: Yeah, I'm Steven Moore, Senior
9 Engineer.

10 PRESIDING MEMBER DOUGLAS: Steven Moore, Senior
11 Engineer.

12 MR. HORRES: Nick Horres.

13 PRESIDING MEMBER DOUGLAS: And Nick Horres,
14 welcome.

15 MS. FORBIS: Oh, and Paula Forbis with the
16 County Council's office, counsel to the Air Pollution
17 Control District.

18 PRESIDING MEMBER DOUGLAS: Paula?

19 MS. FORBIS: Forbis?

20 PRESIDING MEMBER DOUGLAS: Corbis?

21 MS. FORBIS: Forbis.

22 PRESIDING MEMBER DOUGLAS: Could you go to the
23 microphone, please?

24 MS. FORBIS: Yes.

25 PRESIDING MEMBER DOUGLAS: I'm sorry. I'm

1 repeating what you're saying so it gets into the record.

2 MR. THOMPSON: The gray button.

3 PRESIDING MEMBER DOUGLAS: The gray button.

4 MS. FORBIS: Paula Forbis, counsel to the Air
5 Pollution Control District.

6 PRESIDING MEMBER DOUGLAS: Thank you.

7 All right. Is anyone here from the Coastal
8 Commission?

9 UNIDENTIFIED SPEAKER: Oh, yeah.

10 PRESIDING MEMBER DOUGLAS: Any other state,
11 local or federal government agencies represented here or
12 on the WebEx?

13 All right. Then I think we are done with
14 introductions, and I'll turn this over to the Hearing
15 Officer.

16 HEARING OFFICER KRAMER: Okay. Do we have any
17 items of housekeeping before we begin with the agenda?

18 Seeing none, let's get into the topic of land
19 use. Mr. Barbario is already seated at our panel table,
20 so Ms. Siekmann, you can, as you did yesterday, stay
21 where you are. So we need the staff witnesses, please.

22 MR. RATLIFF: Staff witnesses are --

23 MR. KNIGHT: This is Eric Knight and Mike Baron
24 from the Energy Commission on the phone. Can you hear
25 us?

1 HEARING OFFICER KRAMER: Yes, we can, thanks.

2 So we're going to have to swear you in, so if
3 you can raise your right hand, and Madame Reporter, if
4 you can use Mr. Thompson's mic and swear them in?

5 THE REPORTER: Raise your right hand. Do you
6 swear or affirm to tell the truth, the whole truth and
7 nothing but the truth?

8 WITNESSES: I do.

9 THE REPORTER: Thank you.

10 HEARING OFFICER KRAMER: Okay. And for the
11 record, please state your names and spell them one more
12 time.

13 MR. KNIGHT: Eric Knight. That's E-r-i-c,
14 K-n-i-g-h-t.

15 MR. BARON: Mike Baron, M-i-k-e, B-a-r-o-n.

16 HEARING OFFICER KRAMER: Okay. And do you guys
17 have access to the WebEx screen if we need to project
18 something for you?

19 MR. KNIGHT: Yes, we do.

20 HEARING OFFICER KRAMER: Okay. And you're
21 seeing it now? Yesterday there were some difficulties.

22 MR. KNIGHT: Yeah, we see it. It just says
23 Evidentiary Hearing Day 2.

24 HEARING OFFICER KRAMER: Okay. Thanks.

25 Mr. Ratliff, did you want to begin?

1 Let's see, I know we have no witnesses for the
2 Petitioner, so Mr. Ratliff, if you want to begin, do you
3 have any questions for your witness?

4 MR. RATLIFF: I have no direct. From the
5 prehearing conference, it is my understanding they were
6 here present only to answer questions and that the City
7 wanted to give an affirmative presentation.

8 HEARING OFFICER KRAMER: Okay. Then
9 Mr. Thompson, do you want to go forward?

10 MR. THOMPSON: Thank you, Mr. Kramer.

11 Mr. Barbario, you have been sworn. Are you the
12 same Gary Barbario that submitted a document entitled
13 "Prepared Direct Testimony of Gary Barbario" on March 14
14 of this year identified as Exhibit 101?

15 MR. BARBARIO: Yes, sir.

16 MR. THOMPSON: Do you have any corrections,
17 additions or deletions to make to that document?

18 MR. BARBARIO: The exhibit numbers, so --

19 MR. THOMPSON: Do you want me to go through the
20 exhibit numbers and you tell me what they should be?

21 MR. BARBARIO: Sure.

22 MR. THOMPSON: Exhibit 904 should be?

23 MR. BARBARIO: 2003.

24 MR. THOMPSON: 905 should be?

25 MR. BARBARIO: 2004.

1 MR. THOMPSON: 906 should be?
2 MR. BARBARIO: 2006.
3 MR. THOMPSON: It should be 2006?
4 MR. BARBARIO: Yes, 2006.
5 MR. THOMPSON: And 907? I probably didn't give
6 that to you, did I?
7 MR. BARBARIO: I don't have that one.
8 MR. THOMPSON: Oh, okay.
9 MR. BARBARIO: That one changed. I don't have
10 that number, though.
11 MR. THOMPSON: It's 105.
12 MR. BARBARIO: So 105.
13 MR. THOMPSON: And Exhibit 908?
14 MR. BARBARIO: 2005.
15 MR. THOMPSON: Thank you. If I were to ask you
16 the questions contained in this testimony, would your
17 answers today under oath be the same?
18 MR. BARBARIO: Yes, sir.
19 MR. THOMPSON: Let me turn to land use
20 regarding the City's General Plan.
21 Has that document been amended recently?
22 MR. BARBARIO: Yes, it was last amended
23 May 20th, 2014.
24 MR. THOMPSON: Would you describe the changes
25 made to the General Plan and the reasons for these

1 changes?

2 MR. BARBARIO: So, we made a number of changes
3 to our General Plan, zoning and the precise development
4 plan for the Encina site. Those are documented in
5 Exhibit 105, a table that looks like this.

6 We made those changes as a result of the
7 agreement that our City Council approved in January of
8 2014 between the City of Carlsbad and our municipal water
9 district, with NRG and SDG&E as it relates to the amended
10 CECP project.

11 So if you go back in time to the licensed CECP
12 project, a lot of things have changed with actually the
13 project description and just events and things that have
14 happened over that time frame.

15 For example, redevelopment is no longer in
16 place, so that original project, the licensed CECP was a
17 project that the City was not in support of, and we made
18 changes to our General Plan zoning and the precise
19 development plan based on that opposition.

20 This new application for the amended CECP is a
21 project that the City of Carlsbad supports, and part of
22 the agreement -- part of what council directed us to do
23 was to ensure that our land use documents were amended,
24 such that the amended CECP project which includes the new
25 peaker plant and the commitment for decommissioning and

1 demolition of EPS and agreements we have with SDG&E to
2 work towards removing the Operation Center and, long
3 term, to attempt to relocate the switch that's west of
4 the railroad tracks.

5 The changes were made to make that project
6 consistent with our land use documents, so we really went
7 back to the General Plan text and zoning text that was in
8 place prior to the licensed CECP application and our
9 opposition to that project.

10 MR. THOMPSON: Thank you.

11 A bit of housekeeping here. Do you have a copy
12 of the City of Carlsbad General Plan Land Use Element? I
13 believe that's Exhibit 2003.

14 MR. BARBARIO: Yes, sir.

15 MR. THOMPSON: There's a footnote on each page
16 of that text that states, quote, "Amended March 28,
17 2013," end quote. Is this a typo?

18 MR. BARBARIO: Yes, that is a typo. As I
19 mentioned in the previous answer, we last amended it on
20 May 20th of 2014, and that's what that footnote should
21 say. The text above and throughout the document reflects
22 the changes we made in May. The footnote was
23 inadvertently not updated.

24 MR. THOMPSON: So other than this typo, is this
25 copy current and have all of the amendments approved in

1 2014 been incorporated into this document?

2 MR. BARBARIO: Yes, sir.

3 MR. THOMPSON: Turning to the Agua Hedionda
4 Land Use Plan, which I think is Exhibit 2006, is the
5 35-foot height limit in that document?

6 MR. BARBARIO: Yes, sir.

7 MR. THOMPSON: And what is the purpose of that
8 35-foot height limit?

9 MR. BARBARIO: So the Agua Hedionda Land Use
10 Plan is a document that was prepared and processed by the
11 City, but ultimately it was adopted and certified by the
12 California Coastal Commission, so it's their document.
13 The purpose of the 35-foot height limit is really in
14 place to reduce visual impacts, preserve visual
15 resources, public view sheds, et cetera.

16 MR. THOMPSON: Is it in the power of the City
17 to issue a variance for this 35-foot height requirement?

18 MR. BARBARIO: No, it is not.

19 MR. THOMPSON: Would you please explain?

20 MR. BARBARIO: Yeah. The simple answer is no,
21 that tool's not available to us. The longer answer is
22 the land use plan is a policy document, and it's
23 ultimately the Coastal Commission's document. The
24 Coastal Act allows cities, local coastal jurisdictions to
25 assume the authority of the Coastal Commission if they're

1 able to effectively process and get approval and
2 certification of a local coastal program.

3 And a local coastal program is made up of two
4 components: A land use plan, which is a policy document
5 that generally regulates the general distribution of land
6 uses, et cetera, at a policy level; and then the
7 implementation plan, which is more akin to a regulatory
8 document which would set out the standards for
9 development, et cetera.

10 You equate that to a normal city process, the
11 land use plan is like a general plan, policy document,
12 and the implementation plan is like a zoning ordinance or
13 subdivision ordinance or a grading ordinance that has the
14 specific criteria standards, regulations for development.

15 Our coastal zone is broken up into six
16 segments: The power plant site, the CECP site and the
17 Agua Hedionda segment. That was a segment that was
18 created back in 1982. Mostly, it entails the land
19 holdings that SDG&E originally had. It includes the
20 lagoon, the power plant site west of the freeway and the
21 SDG&E lands east of the freeway that they still own, and
22 some north shore -- Agua Hedionda north shore properties
23 that are privately owned.

24 But in that segment, the City of Carlsbad only
25 has an adopted and certified land use plan. We do not

1 have an implementation plan, so we don't have the coastal
2 development permitting rights. Those still remain with
3 Coastal, and it's their document so in the land use plan,
4 there's a 35-foot height limit, but there are no
5 provisions for deviating from that, no variance
6 procedures, et cetera.

7 So the process to deviate or exceed the 35-foot
8 height limit would be to amend that plan. That would be
9 a local coastal program land use plan amendment would
10 need to be processed through the City's process, Planning
11 Commission, City Council. The City Council, if they
12 adopted that, would direct staff to commit an application
13 to the Coastal Commission for that local coastal program,
14 and then the Coastal Commission would evaluate that
15 amendment against the land use plan and the Coastal Act
16 and approve -- conditionally approve or deny that
17 application.

18 That whole process, the City process, would
19 take about a year, and the Coastal Commission process
20 would take about 18 months. There is no short answer.
21 There is no variance tool available to us. It would
22 require a local coastal program amendment.

23 MR. THOMPSON: Thank you.

24 Would the City support an override by this
25 Commission of the 35-foot height limit?

1 MR. BARBARIO: Yes, sir.

2 MR. THOMPSON: Do you want to elaborate on
3 that?

4 MR. BARBARIO: So with the amended CECP
5 project, the City believes that there's significant
6 public benefits that come from this project, primarily in
7 two areas: One is the smaller, if you will,
8 environmental and physical footprint of the new proposed
9 peaker plant located between east of the railroad tracks
10 between the railroad tracks and I-5, and the tank farm
11 pit, the smoke stack or exhaust stacks, as they're now
12 called -- I learned that yesterday -- are significantly
13 shorter than they were in the licensed CECP and the
14 actual generating structures are significantly lower, and
15 they're located in the bowl, which is about 30-foot deep.

16 The peaker plant runs less time. We only use
17 when it's needed. Also a commitment to not run it
18 between midnight and six a.m., so overall a smaller
19 footprint of the proposed plan.

20 When you jump to the west side of the railroad
21 tracks, with this application, we have a commitment, a
22 firm commitment and a time line for the decommissioning
23 and demolition of Encina Power Station. This is a very
24 visible, visual blight, structure that the City has lived
25 with for over 60 years and hosted that facility.

1 Our opposition to the previous -- to the
2 licensed CECP primarily was around the visual and
3 footprint of the plant, but also the fact that we've had
4 no commitment on EPS. On this one, we do.

5 Also with the agreement between the City and
6 SDG&E, we have an agreement to work cooperatively with
7 NRG and with SDG&E to relocate the SDG&E corporation yard
8 to a site outside or at least east of the freeway out of
9 the, you know, coastal frontage that it's on right now,
10 at Cannon and Carlsbad Boulevard or Coast Highway.

11 And then we have a long-term goal, provision to
12 work towards relocating the SDG&E switch that is on the
13 NRG site west of the railroad tracks, so basically we're
14 able to see a path towards removing west of the railroad
15 tracks all of the industrial uses and that visual blight
16 that the City has lived with for 60-plus years.

17 So based on those factors, we can support the
18 override.

19 MR. THOMPSON: In your testimony in the
20 previous CECP proceeding, Exhibit 433 in case anybody's
21 interested, you testified that that configuration of a
22 power plant did not conform to the provisions of the
23 Coastal Act. What are your conclusions for the amended
24 CECP?

25 MR. BARBARIO: We would -- I would conclude

1 that it does conform to the Coastal Act and, most
2 particularly, to the Agua Hedionda Land Use Plan. That's
3 the certified land use plan for this area.

4 MR. THOMPSON: You discussed a number of
5 benefits that the new CECP is going to be giving the
6 City. Are there any other reasons why you have changed
7 your opinion?

8 MR. BARBARIO: So when the City looks at the
9 amended CECP project, to us and actually to everybody,
10 the project is not just the new peaker plant, it's also
11 the demolition of EPS. And furthermore, for the City,
12 beyond the CEC application, it's the agreements that are
13 in place with SDG&E on the Operations Center and the
14 switch. So the idea of a total package of this project
15 for the City is the removal -- the downsize of the
16 environmental footprint of the new plant and removal --
17 and schedule for removal of the industrial uses west of
18 the railroad.

19 Now, a couple other things. So I mentioned the
20 lower stack heights and the smaller environmental
21 footprint and the removal of the visual blight and
22 industrial uses, the peaker plant that's being proposed
23 now does not -- or will not rely on ocean water for
24 cooling. Under the previous application, the City was
25 not in a position at all to guarantee or deliver

1 reclaimed or recycled water for cooling purposes to the
2 licensed CECP application. Time, several years have
3 passed. We're now underway, well underway with expanding
4 our reclaimed water facility, and we have gone on record
5 acknowledging that we will be able to provide reclaimed
6 water to the amended CECP project, so this project will
7 not rely on once-through cooling water whatsoever.

8 So that's probably the last change, other than
9 the ones I documented earlier.

10 MR. THOMPSON: Regarding the visual impact or
11 the scenic impacts, if you will, do you believe that the
12 amended CECP will have a significant individual or
13 cumulative visual impact on the environment?

14 MR. BARBARIO: I do not believe it will have a
15 significant impact from a visual standpoint individually
16 or cumulatively. The footprint of the proposed amended
17 plant is a significantly smaller stack height, structure
18 height, located in the bowl, 30 feet below ground. The
19 conditions that are being proposed for screening, and
20 coupled with the removal of the facilities -- industrial
21 type facilities, the EPS, the tanks, unused tanks and the
22 agreement with SDG&E on the Operation Center relocation
23 will remove that visual blight, a 400-foot stack,
24 200-foot building that the City has lived with for over
25 60 years.

1 MR. THOMPSON: Do you believe that ultimately
2 if this project gets built and EPS comes down, that you
3 will have greater access to the ocean and the beaches
4 which I believe is one of the key components of the
5 Coastal Act?

6 MR. BARBARIO: Yes, I do believe we'll have
7 greater public access. We've worked through conditions
8 for the coastal rail trail with this project. That was a
9 major point of contention in the licensed CECP
10 application. With this one, we are very comfortable with
11 the condition that's in place.

12 Also, the west side of the railroad tracks with
13 EPS decommissioned and demolition and relocation of the
14 SDG&E yard and hopefully the longer term removal of the
15 switch, that will free up that land for non-industrial
16 uses. So the City is underway with the General Plan
17 Amendment right -- or General Plan Update, City-wide
18 update, and we've already identified open space and
19 commercial visitor serving uses for that acreage west of
20 the railroad tracks.

21 In our current General Plan, all of the SDG&E
22 energy holdings west of the freeway are designated for
23 utility use, so just the nature of the General Plan being
24 processed, the update, we'll have more open space, more
25 visitors serving uses, more public access by nature -- by

1 the nature of that designation and future redevelopment.

2 MR. THOMPSON: Finally, Mr. Barbario, in your
3 opinion, is the amended CECP coastal dependent?

4 MR. BARBARIO: No, I do not believe that it is
5 dependent on being in the coastal zone, so the definition
6 in the Coastal Act of what is coastally dependent means
7 that use has to be at the coastline to exist at all, so
8 because the plant don't rely on ocean water for cooling,
9 it could be located somewhere else, so it's not a coastal
10 dependent use.

11 That in and of itself doesn't mean that it's --
12 all uses in the coastal zones have to be coastally
13 dependent. We have -- 37 percent of our City is the
14 coastal zone, and homes don't need to be located in the
15 coastal zone to exist. They exist outside the coastal
16 zone. Commercial, industrial, much of our business park
17 is located in the coastal zone, so it's not a coastal
18 dependent use, but that doesn't preclude it from being
19 located in the coastal zone.

20 MR. THOMPSON: Any further comments,
21 Mr. Barbario?

22 MR. BARBARIO: No, sir.

23 MR. THOMPSON: Thank you very much.

24 Mr. Barbario is tendered for cross-examination.

25 HEARING OFFICER KRAMER: Okay. Let's move then

1 to Ms. Siekmann on behalf of Terramar. You wanted to
2 question, I gather.

3 MS. SIEKMANN: Yes.

4 HEARING OFFICER KRAMER: Did you have anything
5 directly to say, or did you just want to ask questions of
6 the others?

7 MS. SIEKMANN: I'm waiting for an objection to
8 my testimony, so --

9 MR. MCKINSEY: That's why you're looking at me.
10 This was the discussion we had -- I'm smiling -- at the
11 evidentiary hearing regarding the submission of the
12 previous testimony of Mr. Barbario in the previous
13 proceeding that she was submitting as her testimony, and
14 I think we're fine. We're not going to object to that.
15 I'm not worried about that being on the record.

16 HEARING OFFICER KRAMER: Wasn't that Mr. Faust?

17 MR. MCKINSEY: Yeah, Mr. Faust.

18 MS. SIEKMANN: Okay. So then I just -- I mean,
19 I figured that everyone could read Mr. Faust's testimony.
20 I'm not going to read it aloud for you, but I do have one
21 thing to say, and I do want to just clearly state -- that
22 Terramar would like to clearly state that in the Coastal
23 Act Section 3031, it states, "A coastal dependent
24 development or use means" -- is defined in Section 30101
25 as, "any development or use which requires a site on or

1 adjacent to the sea to be able to function at all."

2 And so I just want to clearly state that
3 Terramar continues to feel that CECP and ACECP are not
4 coastally dependent. So I just wanted to state that.

5 And then I did want to ask Mr. Barbario one
6 question.

7 HEARING OFFICER KRAMER: Okay. Go ahead.

8 MS. SIEKMANN: Mr. Barbario, in your agreement
9 -- and I hope this is the right section to ask this
10 question, but in your agreement with NRG, would your
11 agreement, as it is part of the record, if there were
12 fewer units approved, would the City be okay with that?

13 MR. THOMPSON: Before you answer it, Gary, I
14 think this calls for a legal conclusion, however, I will
15 let Mr. Barbario answer to the extent that he's aware of
16 the circumstances.

17 MS. SIEKMANN: Okay.

18 HEARING OFFICER KRAMER: I understood her to be
19 asking about the City's policy position, about whether
20 they would be accepting of a plant with fewer turbines
21 and --

22 MR. THOMPSON: She's talking about the
23 agreement first and that was my only objection.

24 MS. SIEKMANN: I'm asking both ways, the City
25 and the agreement.

1 MR. BARBARIO: So the agreement is a legal
2 document and I am not here to represent the City's legal
3 position. My title is Assistant City Manager, not City
4 Attorney, and I'm reminded of that every day practically,
5 but I can tell you that the agreement sets a maximum
6 megawatt. There is no floor that's mentioned in there.

7 Would the City be opposed to lower megawatts or
8 five units, four units instead of six units? I don't
9 know why we would be opposed as long as the agreement
10 continued to move forward. The City would be okay with
11 that, I believe.

12 MS. SIEKMANN: Thank you for answering that
13 question.

14 MR. BARBARIO: And that's my opinion, of
15 course.

16 HEARING OFFICER KRAMER: Is there any
17 conversation among the parties? Staff, did you have
18 anything you wanted to ask or say in response?

19 MR. RATLIFF: Actually, I had a question which
20 I can only ask Mr. Barbario although it relates to the
21 discussions we had yesterday regarding the I-5 widening
22 project, and Mr. Barbario was not a witness on that
23 panel, but I would just like to ask him if he thinks that
24 the City will be actively involved in whatever
25 negotiations occur around the purchase of the NRG

1 properties for any future I-5 widening or any
2 condemnation proceedings which might take place if there
3 is no successful purchase of those properties, will the
4 City be at the table to discuss these things with
5 CalTrans and NRG?

6 MR. BARBARIO: So the City would be happy to be
7 at that table. You know, in order for CalTrans to
8 complete the widening, the ultimate widening, they're
9 going to need to acquire property from NRG, and so we
10 heard some testimony yesterday that CalTrans wouldn't be
11 willing to mitigation. I think that really relates to
12 they're not willing to do NRG's mitigation on their site.
13 If they're the party who is required to do the work, I do
14 believe from past experience that CalTrans would allow
15 NRG to do planting on the right-of-way that's not being
16 used for travel lanes that CalTrans will be acquiring
17 from NRG.

18 I think just the nature of the fact that
19 CalTrans has to acquire that land from NRG, NRG needs to
20 sell or go through the condemnation process with CalTrans
21 on that. That's, you know, a negotiated situation where
22 a part of the negotiation on NRG's part could be, "Hey,
23 we need to do some planting on the land that's not used
24 for lanes."

25 We have a number of examples: The interchange

1 of Cannon Road with I-5. Private developers put
2 landscaping in and maintain the landscaping in CalTrans'
3 right-Of-way and the City to the south, Encinitas, when I
4 worked there, we did the same thing at Leucadia
5 Boulevard: Enhanced landscaping in CalTrans'
6 right-of-way maintained or put in place by a private
7 developer or private party and then maintained by that
8 private party, so CalTrans is willing to enter into those
9 agreements.

10 Typically, that probably is going to require
11 the City to be a party. They like to do those deals with
12 the agency and then the agency had an agreement with the
13 private party, so our interests are aligned with that
14 whole process of getting more landscaping. To screen the
15 proposed plant would be something the City could support
16 and would be behind.

17 MR. RATLIFF: Thank you.

18 HEARING OFFICER KRAMER: Any other conversation
19 among the parties before I --

20 MR. MCKINSEY: Mr. Kramer, there is a question
21 I wanted to ask --

22 HEARING OFFICER KRAMER: Go ahead.

23 MR. MCKINSEY: -- Mr. Barbario.

24 Are you familiar with the condition at
25 certification that came up yesterday, which is Visual

1 Resources 5 that addresses the I-5 widening?

2 MR. BARBARIO: Somewhat.

3 MR. MCKINSEY: So there is a requirement in the
4 verification language that requires the City -- well,
5 actually it requires the project owner to submit the
6 plans to the City for their review and comment, and I
7 don't think we've ever really asked the question if the
8 City is fine with that role and kind of expects their
9 ability to have an equal role in commenting on these I-5
10 plans.

11 MR. BARBARIO: Yes, I'm aware of that
12 provision, and we're most definitely okay with that
13 provision.

14 MR. MCKINSEY: Thank you.

15 HEARING OFFICER KRAMER: Okay. So it sounds
16 like we --

17 MR. KNIGHT: Mr. Kramer?

18 HEARING OFFICER KRAMER: Go ahead.

19 MR. KNIGHT: This is Eric Knight on the phone
20 from the Energy Commission staff.

21 HEARING OFFICER KRAMER: Okay.

22 MR. SARVEY: I'd like to just add to the
23 discussion on the Coastal Act dependency question.

24 Terramar has stated that, you know, the amended
25 CECP is not coastal dependent, and we would agree with

1 that statement that it is not, and in a lot of ways
2 that's a good thing from a biological resources
3 standpoint.

4 I'd just like to add that the Coastal Act does
5 not prohibit non-industrial dependent or non-coastal
6 dependent industrial facilities from locating within the
7 coastal zone, and Terramar provides in their testimony an
8 excerpt from Mr. Faust's testimony that was given in the
9 previous case. He's a former Coastal Commission staff
10 counsel.

11 On page 21 of their testimony, there is an
12 excerpt that reads, quote, "industrial development is not
13 coastal dependent, cannot be approved in the coastal zone
14 unless it is mitigated, it is fully consistent with the
15 Chapter 3 policies of the Coastal Act."

16 And in the prior case, the Commission, Energy
17 Commission found the CECP to be consistent with Chapter
18 3 of the Coastal Act, and in this proceeding, staff
19 position has also -- the amended CECP is consistent with
20 Chapter 3 policies under the Coastal Act. And those
21 policies, which are probably most applicable to this
22 project address public access and recreational use,
23 marine and aquatic resources and coastal resources.

24 And I just -- my last comment that I would like
25 to make is the Coastal Commission has now weighed in on

1 this proceeding; however, they did weigh in on the recent
2 Huntington Beach Energy Project proceeding which was a
3 939-megawatt air cool facility also not coastal
4 dependent. It didn't use ocean water for cooling.

5 And the Coastal Commission's three or four 13-D
6 report under the Coastal Act did say the project to be
7 consistent with the Coastal Act. They were primarily
8 concerned with issues about environmentally sensitive
9 habitat areas, flood and tsunami and geologic hazards and
10 public access. And with certain conditions that they
11 recommended, they found the project a non-coastal
12 dependent project to be consistent with the Coastal Act.

13 That's all I would like to add.

14 HEARING OFFICER KRAMER: Okay. Thank you.

15 One hypothetical question to Mr. Barbario from
16 me. If there was a variance provision in the Coastal
17 Act, would this be the sort of variance that you would
18 recommend granting; that is, the height variance?
19 Because it seems that there are going to be very few
20 power plants that are ever going to be in all their
21 aspects under 35 feet. That's just not possible for
22 power plants, unless they're in a very big hole in the
23 ground, a very deep hole.

24 MR. BARBARIO: Hypothetical question,
25 hypothetical answer. Yes, I think that your comments are

1 well said. I mean, power plants, by their nature, have
2 some features that would exceed 35 feet in height. The
3 City has granted variances for height in the past in the
4 coastal zone even.

5 So, you know, kind of in the same general
6 neighborhood, there's a hotel and restaurant, gas station
7 complex at Palomar Airport Road and I-5 on the east side
8 of I-5, and it used to be a Pea Soup Andersons, and they
9 have an iconic feature of a windmill and that's over
10 35 feet. They required approval of that through either a
11 variance and/or a conditional use permit.

12 So in evaluating that application, the City
13 would look at, is it the lowest height that it needs to
14 be to serve the facility? Is it located in a way that
15 minimizes the height i.e. in this case in the bowl? Have
16 they --

17 They've done some design things to kind of
18 minimize the way they paired the units, so six stacks
19 kind of visually become three stacks because they're back
20 to back, two, two and two. So those are the kind of
21 things we would go through in our analysis of whether we
22 would grant a variance and/or a conditional use permit
23 for increased height.

24 HEARING OFFICER KRAMER: Thank you.

25 And this question can be both for staff and

1 you, Mr. Barbario. In our comment on the PSA, we asked
2 about whether the new facility was going to be set up to
3 be located on its own separate legally created lot, and
4 the answer we got back from staff was, if I understand it
5 correctly, in the FSA, that the City some time ago issued
6 a certificate of compliance basically saying, "We agree
7 that there is a legal lot," but the lot that was defined
8 was the whole 95-acre Encina project site.

9 And looking forward now that we know that the
10 plan is to clean up at least to ground level the west
11 side of the tracks and then transfer that land to the
12 City, it is clear that at some point there is going to
13 have to be a division of land, and we were wondering why
14 that's not being anticipated and provided for in a
15 condition on this amendment.

16 MR. MCKINSEY: Could I clarify one statement?
17 The agreement doesn't actually call for a transfer to the
18 City, it requires that western portions to be basically
19 either transferred into a redevelopment entity or made
20 available for redevelopment. So for instance, the
21 current project owner could participate in that or not,
22 so that's the actual characterization.

23 HEARING OFFICER KRAMER: Okay.

24 MR. MCKINSEY: It probably does result in some
25 future need to sever, but it doesn't actually say, for

1 instance, it would be transferred to the City.

2 HEARING OFFICER KRAMER: But you're probably
3 not going to have -- and I don't think good planning
4 would want a power plant and their tourist commercial
5 uses on the same lot. That's probably --

6 I think the first thing Mr. Barbario would say
7 if you came in with that is you got to divide this thing
8 because that's good planning.

9 MR. MCKINSEY: I'd just want to emphasize, it
10 wasn't transferred to the City.

11 HEARING OFFICER KRAMER: Okay.

12 MR. MCKINSEY: That's the key.

13 HEARING OFFICER KRAMER: So what I'm wondering
14 is would it be appropriate to have a condition that just
15 says that at some future point the site of the new power
16 plant will be one legal lot, not multiple lots or not a
17 part of a bigger parcel of land, and that the lot lines
18 must coincide to the boundaries of the project as it's
19 been approved?

20 MR. MCKINSEY: And I'd also say generally the
21 project owner's intent in this area is similar to that,
22 which is at the completion of the demolition phase to
23 establish the necessary pertinent easement rights that
24 the new facility would require in that eastern area, that
25 western area, and then accomplish some type of a

1 severance that facilitates all that.

2 So your question is a good one about, you know,
3 the City's position on that, and I think that's generally
4 how we conceive of that moving forward and resulting in
5 Energy Commission jurisdiction residing over the parts of
6 it that are permanent operational portions of the
7 project.

8 MR. THOMPSON: If I may, Mr. Kramer?

9 Mr. Barbario, did you understand the question
10 that Mr. Kramer asked, and given the fact that this is
11 somewhat speculative being in the future and there are a
12 number of parties that own land in the area, would you
13 respond to the question that Mr. Kramer asked?

14 MR. BARBARIO: Yes, I would. There are a
15 number of ways that you can accomplish the goal of having
16 the new power plant a separate legal lot and the west
17 side of the tracks on another legal lot. I think the
18 City's position would be that's something that we would
19 support but not until decommissioning and demolition --
20 aboveground demolition of EPS occurred. We want it under
21 kind of one lot and one control. That's what the
22 agreement is based on.

23 You could do, you know, a parcel map, a
24 tentative map or a lot line adjustment because NRG owns
25 more than one lot in that area, so there's vehicles to do

1 that, but I think the appropriate time would be at the
2 end.

3 HEARING OFFICER KRAMER: Okay. Well, tell me
4 this then, because normally I face this issue from the
5 other side, which is that somebody's proposing a power
6 plant on what are currently multiple lots and, you know,
7 we insist they be merged into one, so at present, is it
8 the case that the new power plant is only on a single
9 lot, it's not crossing lot lines?

10 MR. BARBARIO: That's my understanding. It's
11 one lot that includes, you know, both sides of the
12 tracks.

13 HEARING OFFICER KRAMER: Okay. Thanks.

14 MR. BARON: This is Mike Baron from staff and
15 we would confirm that as well, that the project is on one
16 lot.

17 HEARING OFFICER KRAMER: Okay. Thank you.

18 Anything else from anyone on land use?

19 DR. ROE: Yes.

20 HEARING OFFICER KRAMER: Dr. Roe?

21 DR. ROE: Good morning. The attorney for the
22 project owner raised the question about Vis 5 to
23 Mr. Barbario, and I'd like to pose another question along
24 the same lines.

25 Mr. Barbario, were you present yesterday during

1 the discussions and presentation by Mr. Kanemoto of his
2 proposal to put a retaining wall in the pinch point areas
3 so that the upper rim road could be moved westward to
4 accommodate possibly a 20-foot buffer zone?

5 MR. BARBARIO: I was present yesterday, but I
6 was not in the room for all that discussion and I did not
7 actually hear that.

8 DR. ROE: Could we put some slides up of
9 figures?

10 HEARING OFFICER KRAMER: Well, we did visual
11 yesterday, and Mr. Ratliff opened a door a little bit
12 with his question, but I think you're -- it sounds like
13 you're -- what are you trying to ask about?

14 DR. ROE: Well, I'm trying to find out whether
15 the City would be -- object to a plan where the pinch
16 points could be accommodated by building the retaining
17 walls if the power poles were moved to another side?

18 It was my understanding that the City was the
19 one who originally requested that location, and that's
20 why I'm asking Mr. Barbario.

21 HEARING OFFICER KRAMER: Okay. Do you
22 understand the question?

23 MR. BARBARIO: I think I do, but I would like
24 clarification on your last statement, Dr. Roe. Your
25 understanding that it was the City that requested that

1 location, what do you mean?

2 DR. ROE: I'll withdraw that comment.

3 MR. BARBARIO: So looking at this graphic
4 that's --

5 DR. ROE: Yes.

6 MR. BARBARIO: -- on the screen right now?

7 DR. ROE: Yes, Mr. Kanemoto suggested that they
8 could accommodate the 20-foot buffer zone by building a
9 retaining wall to move the upper rim road over to the
10 right, but it was apparent in the discussions yesterday
11 that the power poles are also located in that same
12 location.

13 Would the City object in order to facilitate
14 the -- an adequate buffer zone -- would the City object
15 to having those power poles or the transmission line
16 either put underground or moved away from that location?

17 MR. BARBARIO: That's quite a different --
18 quite a different question than the original one. I
19 think I'm going to respond to the first one also.

20 Looking at this graphic, two things would
21 concern the City: One is the width of the rim road. It
22 needs to be wide enough to accommodate two-way traffic
23 from a public safety standpoint, which my understanding
24 is -- and I'm not the expert in that area. Chief Lopez
25 would be, is the dimension is 28 feet.

1 The other issue I see with this cross-section,
2 and we discussed this with Chief Lopez, is that retaining
3 wall which is on the slope of the pit or the bowl. And
4 the slope of the bowl is critical to, you know, a
5 firefighter or a first responder having to get out of
6 there by foot, so that retaining wall would make that
7 highly unlikely and impractical, so those are two
8 concerns. And public safety is very, very critical. Not
9 to weigh sides, but public safety has to trump visual.

10 Your second question was about the power lines
11 and their location. The location, as NRG has put in
12 their application, is on the east side of the plant
13 adjacent to I-5. That was the location of the site plan
14 and the simulations that were presented to our City
15 Council prior to their decision in January of 2014
16 reflects what the City understood at that point in time,
17 and we were comfortable with that location.

18 Moving to the west side of the power plant
19 adjacent to the railroad does pose some concerns with two
20 things: One the view, what would happen to the view from
21 Carlsbad Boulevard, Highway 101 as you look across the
22 lagoon. Those poles would be significantly more visible
23 from 101, and that's a concern to us. And then just the
24 ability for the future redevelopment of the property on
25 the west side of the tracks, having those power poles

1 closer could impact that as well, so those are two
2 considerations. But we're comfortable with their
3 location on the east side.

4 HEARING OFFICER KRAMER: Okay. Just for the
5 record, Susan, can you put that up again? It was 2001, I
6 believe.

7 I know it was 2001 we were talking about.

8 MS. COCHRAN: I know. I stopped sharing is
9 what happened.

10 HEARING OFFICER KRAMER: It was page 2 of 2001,
11 just for the record.

12 DR. ROE: Mr. Barbario, could I refresh your
13 memory of a meeting that took place --

14 HEARING OFFICER KRAMER: Dr. Roe, we're going
15 to have to stop you here. We did visual yesterday and
16 basically we have a very tight schedule today. We do not
17 want to reopen that to revisit those issues after a two
18 and some hour discussion we had yesterday.

19 So does anybody else have anything else that
20 relates to the topic of land use?

21 Okay. Seeing none, we will close the topic of
22 land use and move on to air quality. That's estimated
23 for nearly three hours so -- well, it's too early for a
24 break, so we'll be breaking somewhere in the next half
25 hour to an hour, just so you know.

1 So let's begin and get our panel up at the
2 table, and let's also go off the record for a moment to
3 talk about audio quality.

4 (A short discussion was held)

5 HEARING OFFICER KRAMER: Let's go back on the
6 record. Gentlemen, some of you probably have not been
7 sworn as witnesses, so if you would -- those of you who
8 have not been sworn please stand -- raise your right
9 hand -- you don't have to stand -- and our court reporter
10 will swear you in.

11 THE REPORTER: Raise your right hand. Do you
12 swear or affirm to tell the truth, the whole truth and
13 nothing but the truth?

14 WITNESSES: I do.

15 THE REPORTER: Thank you.

16 HEARING OFFICER KRAMER: Okay. Let's have
17 everyone introduce themselves starting with
18 Mr. Rubenstein on the end?

19 MR. RATLIFF: Mr. Kramer, I'm sorry to
20 interject, but I just wanted to let you know, we also
21 have Dennis Peters here today and his -- and he's here
22 with counsel. He agreed, on short notice, to show up to
23 corroborate those parts of the FDOC that are attributed
24 to the ISO, so I just wanted to let you know his
25 availability. I had expected that he would be able to

1 sit at the table. It looks like there may be a shortage
2 of seats, but maybe we could accommodate him to include
3 him at least to the extent in his part of the discussion
4 or his contribution to the discussion should be there.

5 HEARING OFFICER KRAMER: Okay. Mr. Peters, if
6 you could bring your chair up next to --

7 MR. VIDAVER: We're sliding over so he's got
8 some room.

9 MR. THOMPSON: You could also have my seat. I
10 can go back and eat cookies.

11 MR. THERKELSEN: David decided to --

12 MR. SARVEY: Okay. George --

13 HEARING OFFICER KRAMER: We're not on the
14 record, so hold on.

15 Okay. So were you sworn, Mr. Peters?

16 MR. PETERS: No.

17 HEARING OFFICER KRAMER: Okay. Let's go back
18 on -- we'll go back on the record then. We were
19 rearranging some furniture and checking audio issues.

20 Dennis Peters is also going to be a witness.
21 He wasn't on the list but he's here to help corroborate
22 some information, and he was not sworn, so Madame
23 Reporter, if you could swear him in?

24 THE REPORTER: Raise your right hand. Do you
25 swear or affirm to tell the truth, the whole truth and

1 nothing but the truth?

2 MR. PETERS: I do.

3 THE REPORTER: Thank you.

4 HEARING OFFICER KRAMER: Okay. And Mr. Peters
5 has his counsel here.

6 Could you identify yourself, sir, and spell
7 your name for the court reporter?

8 MR. PINJUV: Yes, I'm Jordan --

9 HEARING OFFICER KRAMER: The mic's not on.

10 MR. PINJUV: My name is Jordan Pinjuv. First
11 name is J-o-r-d-a-n. Last name is P-i-n-j-u-v, and I am
12 counsel for the ISO. And as was described before, we are
13 here for the purpose of corroborating some of the
14 information that's been provided to the San Diego Air
15 Pollution Control District and the reason for Mr. Peters
16 being here today.

17 HEARING OFFICER KRAMER: Okay. Thank you.
18 Let's then introduce the rest of the panel starting with
19 Mr. Rubenstein.

20 MR. RUBENSTEIN: My name is Gary Rubenstein of
21 Sierra Research, and I'm appearing here today on behalf
22 of the applicant, Carlsbad Energy Center.

23 MR. HORRES: Hi. My name is Nicholas Horres
24 and I'm here representing the Air Pollution Control
25 District.

1 DR. MOORE: Steven Moore with the Air Pollution
2 Control District.

3 MR. WALTERS: I'm William Walters. I'm with
4 Aspen Environmental Group. I prepared the air quality
5 testimony in the FSA including a portion of the
6 greenhouse gas emissions testimony.

7 HEARING OFFICER KRAMER: Okay. And Mr. Peters?

8 MR. PETERS: I'm Dennis Peters with the
9 California Independent System Operator.

10 HEARING OFFICER KRAMER: Thank you.

11 Mr. McKinsey, did you have any --

12 MR. SARVEY: Excuse me, Mr. Kramer.

13 HEARING OFFICER KRAMER: Sorry, Mr. Sarvey --

14 MR. SARVEY: My name is Robert Sarvey. That's
15 S-a-r-v-e-y, and I'm an Intervenor in the project. Thank
16 you.

17 HEARING OFFICER KRAMER: Okay. And also as
18 witnesses, we have Dr. Roe and Julie Baker on behalf of
19 Power of Vision, and Ms. Siekmann on behalf of Terramar.

20 Okay. Mr. McKinsey, did you have any opening
21 setup questions to get us going?

22 MR. MCKINSEY: No. We have no opening
23 testimony. Mr. Rubenstein is simply available to be part
24 of the panel to respond to questions.

25 HEARING OFFICER KRAMER: It may help us when

1 people are not speaking to turn your mics off. You also
2 may hear better because you may hear some of the sound
3 out of the speaker on the mic at that point.

4 Okay. Staff, did you have any questions?

5 MR. RATLIFF: Yes. I've requested that
6 Mr. Walters briefly summarize the more significant parts
7 of his testimony.

8 MR. WALTERS: I'll provide a brief summary of
9 staff's analysis for the limited CECP.

10 Staff's valuation included reviewing the
11 changes since the last licensed project, including LORS
12 that would be applicable to this project and not
13 applicable to the complaint cycle project, and also
14 applying current Energy Commission evaluation procedures
15 which have, to some extent, changed over the past five
16 years. We also reviewed the new design and emission
17 estimates for construction and for demolition of the
18 Encina Power Station.

19 We evaluated the impacts for the project
20 construction and the project operation which included
21 evaluating cumulative impacts of the overlapping Encina
22 Power Station operation during commissioning, and
23 performing our own modeling and evaluation of overlapping
24 demolition and operation of the new amended CECP.

25 We reviewed the determination of compliance

1 decisions, preliminary and final, and we participated in
2 helping the district evaluate back layer questions and
3 evaluation baseline year representativeness.

4 We incorporated the DOC conditions and updated
5 staff conditions based on upgraded energy mitigation
6 proposals and -- for equipment, construction equipment,
7 and as required for the new design, and requirements we
8 feel are necessary to mitigate during the Encina Power
9 Station demolition phase.

10 Our findings are that after mitigation,
11 including all of the determination and compliance
12 conditions, that project would have less than significant
13 air quality impacts.

14 HEARING OFFICER KRAMER: Thank you. You're, in
15 essence, a staff witness, Dr. Moore. Did you have
16 anything you wanted to say in the way of opening
17 comments?

18 DR. MOORE: No.

19 HEARING OFFICER KRAMER: He says no. Thank
20 you.

21 Then let's go on to Power of Vision. And if
22 you could -- if you could help everyone focus this
23 discussion by telling us the issues that are of concern
24 to you so we'll focus on those and not areas where
25 there's general agreement. That would be helpful as

1 well.

2 MS. BAKER: At this point we don't have any
3 testimony, but we reserve the right to ask questions.

4 HEARING OFFICER KRAMER: Okay. Do you want to
5 identify any particular issues?

6 MS. BAKER: Baseline hours of operations, those
7 kinds of things.

8 HEARING OFFICER KRAMER: Okay. Thank you.
9 Ms. Siekmann?

10 MS. SIEKMANN: Well, first of all, Terramar
11 would like to really thank the APCD for taking a second
12 look at the baseline, and we really appreciate the fact
13 that you let the public speak and you listened, and so
14 now what we want to do is just hear some of the changes
15 that will take place based on that, and we may have
16 questions based on that. So because the base line
17 changed, that changed my testimony.

18 Thank you very much.

19 HEARING OFFICER KRAMER: Okay. Let's see,
20 Mr. Sarvey first. And again if you can tell us what
21 you're concerned about so we focus on that and not other
22 things that you're not concerned about.

23 MR. SARVEY: Well, to be honest with you,
24 Mr. Kramer, I haven't even read the staff's addendum, so
25 -- and I also received maybe two or 3,000 pages worth of

1 stuff for public notice, so I really don't have any feel
2 for exactly what staff's testimony is, but I do have a
3 feel for what the FDOC says -- so most of any questions
4 will be directed toward Dr. Moore.

5 HEARING OFFICER KRAMER: Okay. You said public
6 notice. Did you mean Public Records Act request, that
7 you received 3,000 documents in response to --

8 MR. SARVEY: No. Just I mean, in the last week
9 there's probably been three to 5,000 pages of
10 transcripts, previous testimony, previous FSAs. I
11 haven't been able to review all of that. I've just been
12 preparing my own testimony and --

13 MR. RATLIFF: Could I clarify --

14 MR. SARVEY: -- I don't have an opinion on
15 staff right now. I'll brief that, but I do have some
16 questions for Dr. Moore.

17 HEARING OFFICER KRAMER: Okay. Well, you're
18 not going to be able to offer testimony on your briefs.
19 You understand that?

20 MR. SARVEY: Pardon me?

21 HEARING OFFICER KRAMER: You won't be able to
22 offer testimony on your briefs.

23 MR. SARVEY: Oh, yeah, no, I understand that.
24 I'll be responding to staff's testimony.

25 MR. RATLIFF: Mr. Kramer?

1 HEARING OFFICER KRAMER: Mr. Ratliff.

2 MR. RATLIFF: I think what Mr. Sarvey is
3 referring to is the recent docketing of a number of
4 documents which are related to the identification of
5 documents that were discussed at the prehearing
6 conference regarding judicial notice -- or official
7 notice that this Committee would take on documents from
8 the prior proceeding, including prior transcripts. Some
9 of those are related to air quality, certainly, but the
10 staff testimony has been available now for whatever date
11 the FSA was published on, and that was in February, so
12 there's certainly no inability here to testify.

13 We did file supplemental testimony, but it was
14 only with regard to discreet changes in the FDOC of which
15 I think the Committee is aware, so there simply is no, I
16 think, reason to suggest that there has not been staff
17 testimony available to comment on or to react to.

18 HEARING OFFICER KRAMER: Okay. Thank you.

19 So then Dr. Moore or Mr. Walters, whoever or
20 both, if you want to -- if you could for us just briefly
21 summarize the changes in the conditions that are going to
22 be applicable to the project that resulted from -- I
23 gather from the recalculation of the baseline. That
24 would be helpful.

25 Is that what you're looking for, Ms. Siekmann?

1 MS. SIEKMANN: Yes.

2 HEARING OFFICER KRAMER: She says yes.

3 DR. MOORE: The primary changes are basically
4 that the project is now subject to regional offset
5 requirements, which they have satisfied, and also NoX
6 subject to lowest achieved emission rates. Previously we
7 had been subject to BACT. Those are the big changes.

8 HEARING OFFICER KRAMER: And I apologize for
9 not having looked earlier, but at least in the recent
10 past the Commission has listed the actual offsets that
11 are going to be used, in one of the conditions is
12 certification. Have we done that again here?

13 MR. MOORE: There is a list in the appendix to
14 the FDOC.

15 MR. WALTERS: They're also listed in the table
16 in the supplement. I would have to go back and take a
17 look at the conditions in this issue.

18 HEARING OFFICER KRAMER: We used to -- and
19 maybe Mr. Ratliff and Ms. Willis can help as well. We
20 used to have a condition that just memorialized the
21 offsets that they were going to use, and said if they
22 wanted to try to substitute other offsets down the road,
23 they had to come in and get approval for that. And is
24 that a -- is that an approach that staff is recommending
25 that we no longer take? I'm just trying to get your

1 thoughts on that.

2 MS. SIEKMANN: Mr. Kramer, for those who don't
3 know what the baseline change was, could we ask Dr. Moore
4 to just explain what happened?

5 HEARING OFFICER KRAMER: Sure. Go ahead.

6 DR. MOORE: For the PDOC, we had chosen a
7 baseline of 2012 and 2013 based on the fact that we
8 thought that was representative of the five years just
9 because SONGS had been down, and so that sort of
10 established a new normal as far as the operations from
11 the plant. Based on --

12 We had numerous comments on that, and we did go
13 back and review it, and as the commentators pointed out
14 2012 was significantly higher than 2013, but power plants
15 vary and so there's lots of factors to go into why 2012
16 would be higher than 2013.

17 So we saw some additional information through
18 the CEC and ISO, you know, trying to find out if there
19 was any reason why 2012 was higher than 2013. And we had
20 a couple discussions with ISO, and the bottom line was
21 that ISO thought -- well, based on their information that
22 much of the operation on Encina in 2012 and 2013 was due
23 to the reliability needs on the grid that ISO had
24 dispatched the facility for.

25 And in 2013, there was a major change in the

1 grid in the sense that the Sunrise Power Link had become
2 operational. In addition, there was a synchronous
3 condenser that was put in in Huntington Beach in Orange
4 County, which helped with reliability, and they
5 attributed much of the change in operation to those two
6 things.

7 So in that sense, there was now another new
8 normal, which was 2013. However, our rules restrict us
9 from looking at either two contiguous years or two
10 separate years in a five-year period, and since we really
11 didn't think we could find those two years, we came up
12 with a five-year average, which is another option in our
13 rules. So, that was how the change originated.

14 HEARING OFFICER KRAMER: Okay. Thanks.

15 So back to the question of should we have a
16 specific condition --

17 MR. RATLIFF: Well, I think you do, but perhaps
18 we have to ask Mr. Walters, but if you look at AQ-4,
19 there is an express requirement for 47.94 tons of NOx and
20 with district application numbers associated with that,
21 so maybe we can ask Mr. Walters if that was an express
22 requirement for specific offsets.

23 MR. SARVEY: Mr. Kramer?

24 HEARING OFFICER KRAMER: Well, let me have
25 Mr. Walters answer that question, please.

1 MR. WALTERS: I'm going to answer that question
2 kind of in a broad sense. I think staff initially
3 started putting in conditions that were very specific in
4 terms of the ERCs based on issues that were going on with
5 certain districts and the reliability for EPA
6 consideration of whether or not ERCs were considered
7 proper. And a lot of cases were in the Central Valley
8 where we were trying to make sure that once we verified
9 that ERCs met EPA requirements that they weren't changed
10 out later.

11 So those conditions were kind of borne through
12 that issue, that problem that we were having with ERCs,
13 and also there were different types of ERCs that were
14 being proposed, that weren't strictly normal ERCs -- you
15 know, burning sensations, things like that. We wanted to
16 have those things documented out well.

17 Here in this district, it's a small bank.
18 There's not a lot of available ERCs. We don't see that
19 there's problems, and so we don't think there's going to
20 be a significant issue of changing out the ERCs that we
21 would no longer find adequate for the project.

22 That being said, if the Committee would really
23 like to have that issue, we could certainly add a staff
24 condition, essentially put a staff condition back in that
25 relates back to AQ-4 that identifies the specific ERCs.

1 I don't know if the applicant would necessarily object to
2 that. Probably not. So I think that's something at your
3 discretion you should ask us to do if you think it's
4 necessary. I think from staff's perspective, we don't
5 think it's necessary for this project.

6 HEARING OFFICER KRAMER: Let me ask you this,
7 under the current condition if the applicant decided to
8 change out an ERC, would they be required to get staff's
9 permission to do so?

10 MR. WALTERS: No. They wouldn't be required to
11 get the district's permission and, therefore, those ERCs
12 would have to be acceptable to the district.

13 HEARING OFFICER KRAMER: So the district -- you
14 would be, in effect, delegating the testing of those ERCs
15 to the district and staff is fine with that? Is that
16 what you're telling me?

17 MR. WALTERS: For this district, we don't see
18 the problems we were seeing with other districts and, in
19 fact, they were non-traditional ERCs and other things
20 going on in other projects that we felt necessitated
21 those types of conditions.

22 HEARING OFFICER KRAMER: As I recall from that
23 time, there were two different power plants and ERC
24 signed up which, of course, is an impossibility.

25 MR. MCKINSEY: Mr. Kramer, I wanted to state

1 that one of the reasons that -- I don't actually agree we
2 wouldn't have to report or acknowledge because the
3 verification in AQ-4 requires that we report how we
4 comply, and so we still have to provide the information
5 to the Energy Commission of which ERCs we are using, and
6 the condition itself sets the rules in place for what
7 requirements they have to meet.

8 And if something changed prior to surrendering
9 them, which ones we're surrendering, the Energy
10 Commission is still receiving the notice as required in
11 that condition of which ERCs we used and has the ability
12 to independently, if they wanted to, verify that they met
13 these requirements.

14 So I think we're comfortable with the condition
15 the way it is now, and I think our position would be
16 similar to staff. We don't see a need to change it to
17 try to list specific ERCs.

18 HEARING OFFICER KRAMER: Okay. Thank you.
19 We'll let you know if we want to go further.

20 MS. SIEKMANN: Mr. Kramer, I would like to make
21 a comment on that.

22 HEARING OFFICER KRAMER: Well, I think
23 Mr. Sarvey -- Mr. Sarvey, did you still have something to
24 say? You were next in line.

25 MR. SARVEY: No, thanks.

1 HEARING OFFICER KRAMER: Your mic wasn't on.

2 MR. SARVEY: No, I'm fine. Thank you.

3 HEARING OFFICER KRAMER: Ms. Siekmann?

4 MS. SIEKMANN: This is just a comment about the
5 ERCs. Just thinking about how things change and, you
6 know, project owners, NRG, could be sold, so it would --
7 you know, specifying about the ERCs would, since you said
8 there was a problem somewhere else, let's say that that
9 particular company bought NRG, then maybe there would be
10 an ERC issue, so I just want you to be as cautious as you
11 can be with clarifying about these ERCs.

12 Thank you.

13 HEARING OFFICER KRAMER: Mr. Sarvey, you were
14 just passing out, I guess, an exhibit that you're going
15 to want to have the witnesses look at?

16 MR. SARVEY: It's just a -- it will be an
17 exhibit, and it's just an e-mail between me and Dr. Moore
18 that I wanted to put in the record.

19 HEARING OFFICER KRAMER: Okay.

20 MR. SARVEY: Would you like a copy of it?

21 HEARING OFFICER KRAMER: I think we would, yes,
22 along with staff and the applicant.

23 MR. MCKINSEY: I'd like to have Mr. Rubenstein
24 comment a little on the discussion we just had.

25 HEARING OFFICER KRAMER: Sure. Go ahead.

1 MR. RUBENSTEIN: I just want to indicate on the
2 question whether the certificate number should be listed
3 here. I agree with Mr. Walters' recitation of the
4 background on this, that is exactly what was happening.
5 If you'll notice in condition AQ-4, the requirement is
6 that we surrender district class A emission reduction
7 credits. That is a term of art defined in district rules
8 and it enfolds the kind of -- includes the kind of
9 vetting process that Mr. Walters was referring to
10 earlier.

11 That's why in this particular case, I don't
12 believe it's necessary. We could not substitute some
13 kind of non-standard or non-traditional emission
14 reduction credit without getting this condition changed
15 because those kinds of non-traditional credits would not
16 be district class A ERCs.

17 HEARING OFFICER KRAMER: Thank you.

18 MS. SIEKMANN: Mr. Kramer, that was very
19 helpful for Terramar, so I can understand why they now --
20 (inaudible)

21 HEARING OFFICER KRAMER: Okay. We're not going
22 to require any condition on the lines I was asking about.
23 Thank you all for the explanation.

24 So Mr. Sarvey -- well, first of all, let me ask
25 if there are any objections to -- Mr. Sarvey has handed

1 out an e-mail from himself to Dr. Moore dated March 10 at
2 12:42 p.m. This is not in the docket, as I understand
3 it.

4 MS. COCHRAN: Paul, we're disconnected again.

5 HEARING OFFICER KRAMER: Okay. We're going to
6 go off the record.

7 (A short break was taken)

8 HEARING OFFICER KRAMER: Okay. We're back on
9 the record. We think we lost audio just for a couple
10 seconds there so I don't think our fans on WebEx -- it
11 was probably somebody monkeying with the phone lines in
12 the back closet, a problem that might we have had -- we
13 might have also caused our issues yesterday.

14 So anyway, back on air quality, Mr. Sarvey, you
15 had a document -- an e-mail that I described before --
16 just before we went off the record, so -- and I gather
17 you want to go into the issue of the baseline; is that
18 correct?

19 MR. SARVEY: I have several issues with the
20 FDOC that I'm going to go into it. It's not just that.
21 And when I said that, I didn't have very direct testimony
22 because I hadn't had staff's testimony. What I'll meant
23 was I'll be devoting my whole hour to cross-examination,
24 no direct testimony. I apologize. I wasn't very clear
25 about that.

1 HEARING OFFICER KRAMER: Okay. Yeah, I think
2 you also were not at the prehearing conference so you
3 could clarify it so --

4 MR. SARVEY: No, I was at the prehearing
5 conference.

6 HEARING OFFICER KRAMER: Okay. Well, somehow I
7 arbitrarily split it for you. Maybe you didn't correct
8 me then. Anyway, it doesn't matter.

9 Do you really think you're going to need all of
10 an hour?

11 MR. SARVEY: Probably.

12 HEARING OFFICER KRAMER: Okay. Well, let's get
13 started.

14 MR. RATLIFF: Mr. Kramer, if I may, we welcome
15 Mr. Sarvey's relevant questions to our witnesses and we
16 don't object to his cross-examination in principle. We
17 only would insist that -- and hope that the Committee
18 would be mindful of relevant questions which pertain to
19 our permit.

20 And I would also say that the Committee has
21 previously notified parties that documents will be
22 prefiled. I don't like to receive a document when the
23 panel has already been placed before us with the
24 assumption that it is either fair or reasonable to expect
25 cross-examinations to be based on new documents that are

1 handed out at the hearing, so I do object when we have no
2 context or any narrative accompanying this document. I
3 don't think it would be consistent with the instructions
4 that you have given us or with common fairness to allow
5 that.

6 MR. SARVEY: May I respond to that, Mr. Kramer?

7 HEARING OFFICER KRAMER: Please do.

8 MR. SARVEY: First of all, this e-mail was
9 directed to Dr. Moore. I intend to ask staff no
10 questions on it.

11 And the document -- I'm just going to ask a few
12 questions about it. It's not going to be a big issue.
13 We'll go through it real quickly.

14 And as far as prefiling it, like I said,
15 Dr. Moore has had this for over a month, I think. Maybe
16 not that long. And I think he can answer these questions
17 without any problems.

18 MR. RATLIFF: Dr. Moore may have had it, but I
19 have not, and Dr. Moore is appearing as a staff witness.
20 And if Dr. Moore has had it for a month, there is no
21 reason I should not have had it also.

22 MR. MCKINSEY: And the project owner should
23 note this isn't the formal cross-exam procedure, but any
24 document here that is being offered in becomes testimony
25 that all the panelist can ask questions about, and all

1 the parties have to understand the document and be ready
2 for it. I have the same concerns that Mr. Ratliff has
3 about that and about the nature of putting this out there
4 for all the parties, and the same related problem that it
5 may be the case that this is something that the Air
6 District had, but that doesn't also make it relevant in
7 this proceeding. But if it was something that a party
8 thought was relevant, then that should be something that
9 was included in their exhibits and in their testimony so
10 that the parties could be prepared for it.

11 MR. SARVEY: It doesn't have to be an exhibit.
12 I'm just going to use it for cross-examination purposes.
13 If you want to exclude it from the record, I have no
14 problem with that.

15 MR. MCKINSEY: And I'd have to say that just
16 defies the basic procedural concept that you can't
17 cross-examine about something that isn't there, it has to
18 be an exhibit and all the parties have to be prepared to
19 handle it, and we're not.

20 HEARING OFFICER KRAMER: Okay. Well, because
21 it was passed out, it is now a proposed exhibit and the
22 number is 6013. That's the next in line. And I marked
23 my copy that way. However, that doesn't deal with its
24 admissibility.

25 Mr. Sarvey, the response -- or the question you

1 need to answer is to explain to us why you could not have
2 offered this as either your original testimony, because I
3 think the deadline was March 13th, or at least by
4 March 27th for the rebuttal testimony, why you could not
5 have docketed it at that point.

6 If you can satisfactorily answer that question,
7 then perhaps it can be let in as an exhibit. If not,
8 we'll exclude it and, for all purposes, including the
9 purpose of asking questions of the witnesses.

10 MR. SARVEY: Well, mainly I didn't submit it
11 because I didn't think about it until last night, so
12 you're welcome to exclude it. It's really not that
13 important. It's just information I thought the Committee
14 could use to help make their decision. If the Committee
15 doesn't want the information, I understand.

16 HEARING OFFICER KRAMER: Well, it's not that we
17 don't want information, we just also have to abide by
18 rules so we can have a fair and efficient process, so
19 this will be -- I'll mark it in the exhibit list. Would
20 you rather have it be marked as rejected or withdrawn?

21 MR. SARVEY: Mark it as public comment,
22 Mr. Kramer.

23 HEARING OFFICER KRAMER: That's not a choice,
24 actually.

25 MR. SARVEY: It's really not that important.

1 HEARING OFFICER KRAMER: We're going to mark
2 it --

3 MR. SARVEY: I don't want to spend a lot of
4 time with it.

5 HEARING OFFICER KRAMER: -- as rejected. If
6 you wish to file it later as public comment, that's your
7 right, but you would have to file it again.

8 MR. SARVEY: Like I said, it's not that
9 important. We're wasting a lot of time on something that
10 is --

11 HEARING OFFICER KRAMER: Well, go ahead. Go
12 ahead with your questions.

13 MR. MCKINSEY: Mr. Kramer, could I ask one
14 other thing? If none of the parties have any questions
15 for our CALISO representative, I think that they may
16 appreciate the opportunity to exit the panel simply
17 because I know they have some other obligations today.

18 MR. SARVEY: I have one question for CALISO. I
19 can open up with that.

20 HEARING OFFICER KRAMER: Please do.

21 MR. SARVEY: Ready? Are you familiar with the
22 CALISO testimony of Mr. Sparks in A-14-07009 which is a
23 900-megawatt shortfall in LCR need in SDG&E's service
24 territory even with the addition of the licensed CECP
25 project?

1 MR. PETERS: Yes, I am.

2 MR. SARVEY: Okay. Thank you.

3 MR. MCKINSEY: Can I -- is this the document
4 you just referred to, is this an exhibit or something
5 that's in the record right now?

6 MR. SARVEY: It is in the record. It's --

7 MR. MCKINSEY: And actually, I'll say that
8 because you weren't here yesterday, but we've been asked
9 when we identify documents, if we can identify them by
10 the exhibit number.

11 MR. SARVEY: It's Exhibit Number 4007.

12 MR. MCKINSEY: Thank you.

13 MR. RATLIFF: And Mr. Sarvey, can you tell me
14 when that was docketed?

15 MR. RATLIFF: That's --

16 MR. SARVEY: I can give you the TN number if
17 you've like.

18 MR. RATLIFF: No, no. When was that it
19 docketed? Was it docketed yesterday?

20 MR. SARVEY: No, it was docketed a couple weeks
21 ago.

22 HEARING OFFICER KRAMER: Exhibit 4007 is the
23 proposed --

24 MR. SARVEY: Three or four weeks ago and then
25 it was a conflict with the exhibit number. It really

1 should be my exhibit because I'm the one who's going to
2 be asking questions on it and sponsoring it, but
3 Mr. Kramer allocated the exhibit and made it 4007 or
4 something like that. It should be my exhibit because I'm
5 the one that is going to be using it.

6 HEARING OFFICER KRAMER: You all share those
7 exhibits.

8 MR. SARVEY: That's fine.

9 HEARING OFFICER KRAMER: But 4007 is the
10 proposed decision of the ALJ, and you were talking about
11 the testimony of someone?

12 MR. SARVEY: Yes. In that exhibit, the
13 decision refers to CALISO's analysis that showed a
14 900-megawatt deficiency in SDG&E and LCR need even with
15 the Carlsbad Energy Project, the original license wasn't
16 in operation, and it's in there.

17 HEARING OFFICER KRAMER: Okay. Go ahead.

18 MR. SARVEY: Okay. Dr. Moore, on page 21 of
19 the FDOC --

20 HEARING OFFICER KRAMER: Oh, wait. Was that
21 your only question on the ISO?

22 MR. SARVEY: That's it. That's all the
23 questions.

24 HEARING OFFICER KRAMER: Does anyone else have
25 any questions for the ISO?

1 But Mr. Sarvey, what was the point of your
2 question?

3 MR. SARVEY: I was just confirming that -- with
4 CALISO that there was a 900-megawatt deficiency.

5 HEARING OFFICER KRAMER: Well, you actually
6 asked him if he was familiar with the testimony, not
7 whether he agreed with it or whether he agreed that there
8 was a deficiency.

9 MR. SARVEY: Do you agree with that testimony?

10 DR. MOORE: Yes. I know our testimony
11 indicated a residual shortfall of up to 900 megawatts in
12 the combined San Diego and LA Basin area by 2023 assuming
13 the 600 -- in our study, assuming the Carlsbad project
14 was in place.

15 MR. SARVEY: Thank you.

16 HEARING OFFICER KRAMER: Okay. Does any other
17 party have any questions for the ISO witness realizing
18 that now is the time, and as a courtesy to them, we will
19 excuse them if there are no more questions.

20 MR. RATLIFF: And I want to -- I hope the
21 Committee will also express their appreciation that they
22 took the trouble to come all the way down here simply to
23 then verify that they did provide this information. I
24 certainly appreciate it.

25 HEARING OFFICER KRAMER: We certainly mean to

1 do that.

2 Hearing no one, then thank you, Mr. Peters, and
3 your counsel for coming.

4 MS. SIEKMANN: Mr. Kramer, we really didn't
5 even know ISO was going to be here.

6 HEARING OFFICER KRAMER: Does that mean you
7 might have questions for them?

8 MS. SIEKMANN: No, no, I just mean we wouldn't
9 have asked -- I mean, I'm not sure who asked them to
10 come, but I apologize. We didn't even know you were
11 coming so we didn't make up any questions.

12 MR. SARVEY: I would have asked specific
13 questions too if I knew ISO was going to be here, but I
14 was kind of surprised, so he doesn't have any testimony
15 filed so I think that that was a surprise.

16 MS. SIEKMANN: Well, there was -- there was
17 something about --

18 MR. RATLIFF: I don't have -- well, I requested
19 that the ISO come and this was after discussions with the
20 Air District which went to the fact that the FDOC makes
21 attributions to the information that the ISO provided,
22 and the Air District felt like they could not, you know,
23 themselves be responsible for those attributions and
24 requested that the ISO attend. And the ISO was very
25 cooperative and generous with your time to do so, and I

1 think it is extraordinarily kind of them to show up on
2 short notice for that very discreet purpose.

3 MR. SARVEY: Mr. Ratliff, can you tell us when
4 you notified the parties CALISO was going to be here?

5 MR. RATLIFF: I'm sorry?

6 MR. SARVEY: Can you tell us when you notified
7 the parties CALISO was going to be here?

8 MR. RATLIFF: I did not.

9 MR. SARVEY: Thank you.

10 MR. RATLIFF: No.

11 HEARING OFFICER KRAMER: Well, so I still
12 haven't heard a question for them, so thank you again,
13 gentlemen --

14 MR. PINJUV: Thank you.

15 HEARING OFFICER KRAMER: -- with our gratitude.

16 Okay. Mr. Sarvey, go ahead.

17 MR. SARVEY: Okay. Dr. Moore, on page 21 of
18 the FDOC, it states that it should be noted that the
19 district fully expects the boilers and peaking turbine of
20 the EPS to be shut down and demolished but the permit
21 conditions do not require this. However, they require
22 that all of the emissions from the existing units read
23 zero tons a year once the shakedown period is over.

24 Which permit conditions require the existing
25 units to reach zero tons of NOx per year?

1 DR. MOORE: I'll have to take a look.

2 HEARING OFFICER KRAMER: Excuse me. That's
3 Exhibit 2002.

4 MR. SARVEY: Would you like me to provide the
5 exhibit numbers when I provide the question?

6 HEARING OFFICER KRAMER: My colleague, Susan
7 Cochran, has been running the projector, so to speak, and
8 I am trying to help her get it up on the screen for
9 everyone to look at.

10 MR. SARVEY: Because I will provide the exhibit
11 number and the pages.

12 HEARING OFFICER KRAMER: When you do -- when
13 you switch to another exhibit, that would be helpful.

14 MR. SARVEY: Okay. Thank you, Mr. Kramer.

15 DR. MOORE: It's Condition 46.

16 MR. SARVEY: Now, do the permit conditions
17 require the applicant to surrender the operating permits
18 for the Encina units?

19 DR. MOORE: They do not, actually.

20 MR. SARVEY: So after the shakedown period, if
21 SDG&E needs the 950-megawatts from the Encina plant for
22 local reliability, does your permit conditions allow the
23 Encina plant to operate after the 180-day shakedown
24 period or do the lights go out?

25 DR. MOORE: Not if all six turbines have been

1 in during the shakedown period, no, it would not.

2 MR. SARVEY: So your permit condition would
3 shut the project down no matter what happens? CALISO
4 says they need it, the water board says it's okay to keep
5 operating, but it would still be shut down?

6 MR. MOORE: Our permit would not allow them to
7 operate. They'd be in violation of their permit if they
8 operated.

9 MR. SARVEY: Okay. On page 9 of Exhibit 2002,
10 the FDOC discusses other BACT considerations and emission
11 limits. And according to the discussion on that page of
12 the FDOC, it eliminates combined cycle turbines primarily
13 because the turbines may need to undergo multiple stops
14 per day which decrease the life span of the turbines, and
15 the combined cycle plant would not meet those
16 requirements.

17 Now, Dr. Moore, did the applicant provide any
18 production simulation or any analysis that would lead you
19 to believe that the already licensed CECP would have to
20 start four times a day, or is that just speculation as
21 the FDOC says?

22 DR. MOORE: They did not provide any
23 information, no.

24 MR. SARVEY: Okay. The amended CECP has a
25 400-year limit on start-ups; is that correct?

1 DR. MOORE: That's correct.

2 MR. SARVEY: And do you recall how many
3 start-ups the combined cycle licensed CECP was permitted
4 for?

5 DR. MOORE: I believe it was 300.

6 MR. SARVEY: Wasn't it 1,460?

7 DR. MOORE: No. The limit in the permit is 300
8 per year, basically. I'll take that back. It's 1,440 in
9 the permit.

10 MR. SARVEY: So --

11 DR. MOORE: The emission calculations were
12 based on 300 per year --

13 MR. SARVEY: But it's allowed 1400?

14 DR. MOORE: As long as they comply with the
15 emissions --

16 MR. SARVEY: 1400 start-ups?

17 DR. MOORE: As long as they comply with the
18 emission limits in the permit, that's correct.

19 MR. SARVEY: Does the amended CECP, do they
20 have similar limits? I mean, I've only read that they
21 can only have 300 starts per turbine; is that correct?

22 DR. MOORE: They may have 400 starts per
23 turbine per year, that's correct.

24 MR. SARVEY: Okay. Thank you.

25 So if the licensed CECP has 1460 -- or you said

1 1400 starts a year compared with the amended CECP's 400
2 starts per year, what keeps the licensed CECP from
3 starting four times a day utilizing just the combustion
4 turbine and then using the steam generators when
5 appropriate to maximize efficiency?

6 DR. MOORE: Would you repeat that question?

7 MR. SARVEY: So if the licensed CECP has 1400
8 starts a year -- I believe that's the number you
9 quoted -- compared to the amended CECP's 400 starts per
10 year, what keeps the licensed CECP from starting four
11 times a day utilizing just the combustion turbine and
12 then using the steam generators when appropriate to
13 maximize efficiency?

14 DR. MOORE: That would be allowed by the
15 permit.

16 MR. SARVEY: Pardon me?

17 DR. MOORE: It would be allowed by the permit.

18 MR. SARVEY: It would be allowed by the permit.

19 Thank you.

20 Now, Dr. Moore, you remember my comments on the
21 PDOC where I pointed the district to a document in your
22 permitting record called, "California ISO Renewable
23 Integration Study in Support of the California Air
24 Resources Board"?

25 DR. MOORE: I do.

1 MR. SARVEY: And that document provided the
2 CALISO simulation of how a combined cycle project would
3 be dispatched in the absence of the OTC units in the
4 SDG&E service territory. Did you read that portion of
5 that?

6 DR. MOORE: I did.

7 MR. SARVEY: And do you recall how many
8 starts -- combined starts the project was expected to
9 make in the CALISO combustion simulation?

10 DR. MOORE: Not off the top of my head, no.

11 MR. SARVEY: Do you have any number at all?

12 DR. MOORE: It was a few, as I recall.

13 MR. SARVEY: If I provided you with the
14 document so we could verify that number?

15 MR. MCKINSEY: Is this document in the record?

16 MR. SARVEY: It's in the record, yeah.

17 MR. MCKINSEY: Can we get an exhibit number?

18 MR. SARVEY: Exhibit number --

19 DR. MOORE: I've actually got a copy of it
20 here, so --

21 MR. SARVEY: Okay.

22 MR. MCKINSEY: But I don't have a copy of it.

23 Again, all of the parties have the ability to respond to
24 all questions.

25 HEARING OFFICER KRAMER: Sure.

1 MR. MCKINSEY: And if you --

2 MR. SARVEY: You're welcome to a copy. It was
3 docketed -- it was docketed a long time ago.

4 MR. MCKINSEY: So -- but --

5 HEARING OFFICER KRAMER: Is it identified as an
6 exhibit?

7 MR. MCKINSEY: Is it an exhibit in the
8 proceeding?

9 MR. SARVEY: Yes, it is an exhibit.

10 MR. MCKINSEY: And what is the exhibit number?

11 MR. SARVEY: I'll provide it for you happily.
12 It has an exhibit number in these things, but I'll
13 provide it for you.

14 HEARING OFFICER KRAMER: Perhaps 6009?

15 MR. SARVEY: That's it.

16 DR. MOORE: Number 19 is the number in the
17 table.

18 MR. SARVEY: Thank you, Dr. Moore.

19 HEARING OFFICER KRAMER: Could you tell us
20 which page that came from?

21 DR. MOORE: Yes, it's on page 13. It's
22 Table 5. I guess I'd point out that table is based on
23 having SONGS online.

24 MR. SARVEY: That is correct.

25 DR. MOORE: They did not do an analysis with

1 SONGS offline and the once-through cooling plant
2 shut-down -- the number of start-ups are basically -- you
3 know, one thing to note is that that is not a combined
4 cycle such as the licensed CECP is.

5 MR. SARVEY: That's observant. Now, if the
6 SONGS project was online, would you anticipate that the
7 combined cycle would have even less starts?

8 DR. MOORE: This is SONGS online here. This is
9 the SONGS statement.

10 MR. SARVEY: I understand, right, but this is a
11 hypothetical.

12 DR. MOORE: You know, I would not anticipate
13 the licensed CECP would have this few a starts. I would
14 think it would have a lot more starts, actually.

15 MR. SARVEY: And what would you anticipate?

16 DR. MOORE: Well, basically El Segundo had
17 about 160 starts last year or so.

18 MR. SARVEY: Was there any days when they
19 started up more than once?

20 DR. MOORE: I don't know.

21 MR. SARVEY: Thank you.

22 The FDOC states on page 6 -- that's Exhibit
23 2002 -- the manufacturer estimates the turbines can reach
24 100 percent load within ten minutes; however, because of
25 the oxidation catalyst and the SCR catalyst, have a

1 minimum temperature values below which they are not
2 effective at controlling emissions is estimated it would
3 take up to 25 minutes after start-up for the emissions of
4 the turbine to meet compliance.

5 What is the minimum load this project can
6 operate and still meet its emission limits?

7 DR. MOORE: I would say it's probably a
8 50 percent level.

9 MR. SARVEY: 50 percent. So it could hold a
10 50 percent load and meet its emission limits?

11 DR. MOORE: It could.

12 MR. SARVEY: If it held at 25 percent, do you
13 think it would meet its emission limits?

14 DR. MOORE: Possibly.

15 MR. SARVEY: What is the minimum load threshold
16 for a shutdown to be initiated on the LMS 100 turbines
17 for the licensed CECP -- I mean, excuse me, for the
18 amended CECP?

19 DR. MOORE: For which CECP, the CECP? Which
20 one?

21 MR. SARVEY: The amended, I apologize.

22 DR. MOORE: There is no threshold for it
23 shutting down, basically. It's just 13 minutes to
24 shutdown -- from the time it has shut down essentially.

25 MR. SARVEY: Do you have any idea what the heat

1 rate would at the 25 percent load for the ACECP?

2 DR. MOORE: We could look it up, but I don't
3 have it off the top of my head, no.

4 MR. SARVEY: Does 13,000 sound reasonable?

5 DR. MOORE: I'll defer to the applicant on that
6 one.

7 MR. MCKINSEY: I'm going to ask a question
8 here. I get the feeling that Mr. Sarvey is asking
9 questions that he really has a number or a page he could
10 point at. And I'm not sure if you're asking questions
11 because your trying to get him to acknowledge something
12 that is already in writing or if he's asking questions to
13 build, you know, towards something. But I just -- I
14 don't get the feeling this is a really productive use of
15 time.

16 I think some of the questions relate, I think,
17 to things that are appropriate, but he's asking a
18 question to say, you know, is this number on this page
19 19? Yes, it's 19, well --

20 MR. SARVEY: Strike that question.

21 MR. MCKINSEY: Well, no, it's a series of
22 questions and I'm just concerned that I don't understand
23 kind of where we're going. Like I can see you're asking
24 some topic area that's relevant, but the way you're
25 approaching the witness, it just seems like it's -- it's

1 not really accomplishing anything.

2 MR. SARVEY: That's because you asked me to
3 approach the witness from your people's testimony. I'm
4 supporting it -- I'm going towards the FDOC and asking
5 questions on his understanding of what he was thinking
6 when he did these things. That's what these questions
7 are about.

8 MR. MCKINSEY: I'll just say, Mr. Kramer, I
9 don't think he's asking him what he was thinking, he's
10 asking him what's this number, what's that number, and a
11 lot of these numbers are in the documents, so I don't
12 think that that's providing any information that isn't
13 already testimony, I think like --

14 MR. SARVEY: So you prefer I just brief it
15 rather than get it out in the open, and put the issue
16 right out there?

17 MR. MCKINSEY: Yeah.

18 HEARING OFFICER KRAMER: Mr. Sarvey?

19 MR. SARVEY: Okay. I can do that.

20 HEARING OFFICER KRAMER: Mr. Sarvey, hold on.
21 We were getting over -- we're patient people, but we're
22 also in control of the time of a lot of people here so
23 that's why we want to make good use of it.

24 We had one question. In the last couple of --
25 the last few questions, you mentioned steam turbines but

1 what were you talking about? Were you talking about the
2 HRSGs on the current approved project? Because there are
3 no steam turbines on the amended project.

4 MR. SARVEY: I was asking the question. We
5 were talking about the licensed CECP at that time.

6 HEARING OFFICER KRAMER: Okay. I think at this
7 point we need an offer or proof from you, which is where
8 you explain the point you're trying to make so that we
9 can decide if it's relevant and we should continue
10 allowing you to make that point.

11 MR. SARVEY: Well, the -- I'll go ahead and put
12 it out there. The applicant's stating that this project
13 can park at 25 megawatts and that's within the minimum
14 operating load. And now I'm testifying. All the permits
15 that I've ever seen with an LMS 100, the minimum load is
16 50 megawatts, not 25, so I think the applicant is
17 exaggerating the flexibility of this project, and that's
18 where I'm going.

19 HEARING OFFICER KRAMER: Okay. And what's the
20 -- what's the flexibility related to?

21 MR. SARVEY: So are you --

22 HEARING OFFICER KRAMER: If --

23 MR. SARVEY: -- when you start talking about
24 integrating renewable services -- integration of
25 renewables and ancillary services? It's important what

1 the minimum load is. It's important because it helps
2 define the flexibility of the operation of the project,
3 and we'll be getting there later, but right now I'm just
4 asking questions of Dr. Moore what his thinking process
5 was when he issued the FDOC.

6 HEARING OFFICER KRAMER: Well, I didn't hear a
7 lot of that thinking. You were simply asking him to
8 confirm numbers.

9 MR. SARVEY: Well, like I said, strike that
10 question. It's no problem.

11 HEARING OFFICER KRAMER: Well, it wasn't the
12 first one.

13 MR. MCKINSEY: I think the biggest objection I
14 have here is that this is supposed to be an informal
15 panel of questions that all the witnesses can answer and
16 discuss and ask questions of each other, and that's the
17 difference between having the more formal
18 cross-examination process, which is what Mr. Sarvey is
19 engaging in, where you try to pin a witness down by admit
20 this number, admit this number, admit this number, admit
21 this number, okay. All those things add up differently.
22 And I got you.

23 I get the point you just read, okay? Maybe
24 that's a relevant question, but the purpose of informal
25 testimony is to say, "Here's my question. Can you

1 comment or defend it?" And all the witnesses can respond
2 to it. It's a much more effective use of time then --
3 and that's why, I think, the committee chose this
4 informal proceeding but this is not informal. This is a
5 formal cross-examination of a witness which isn't in
6 accordance with the instructions of the hearing order.
7 That's my objection.

8 MR. SARVEY: I don't believe that any question
9 I asked up until that last one, that any of these folks
10 on this panel would have any idea what was in Dr. Moore's
11 mind when he issued that FDOC. Now, that last one, Gary
12 can answer that very easily. If you would like to, you
13 can. I know where it's at. I probably have a copy.

14 HEARING OFFICER KRAMER: This discussion would
15 be more effective if you asked the panel, "Can you defend
16 your position that these machines can operate at
17 25 percent?" And --

18 MR. SARVEY: Well, maybe they need to answer
19 that.

20 MR. RATLIFF: Commissioners, though, I mean,
21 the point --

22 MR. MCKINSEY: Your mic.

23 MR. RATLIFF: The point that I think is being
24 made by Mr. McKinsey is that -- I mean, we could -- one
25 of the things, I think, informal hearings are supposed to

1 depart from is the very thing that we're seeing here,
2 which is kind of the PUC's hours and hours of
3 cross-examination on obscure points that presumably lead
4 somewhere but may not, and rather than much more than the
5 informal style of give-and-take of a conversation
6 directed by the committee from the panelists --

7 And certainly, you know, Mr. Sarvey should be
8 welcome to participate in that and to ask questions, but
9 this is not an informal hearing. I mean, we need to be
10 very clear about that. To have him basically ask
11 Mr. Moore 500 questions, the relevance of which none of
12 us really can grasp.

13 HEARING OFFICER KRAMER: Okay. You're agreeing
14 with Mr. McKinsey, it sounds like.

15 And so Mr. Sarvey, can you get to your points
16 in the informal way that we've described in various ways?

17 MR. SARVEY: I believe that if everybody quits
18 interrupting me, this will go a whole lot quicker. I
19 think we've wasted more time arguing about my questions
20 than my questions have been answered. My questions have
21 been bang, and he's answered them. If somebody else on
22 the panel wants to answer them, I have no problem.

23 HEARING OFFICER KRAMER: Okay. Well --

24 MR. SARVEY: How they would know what Dr. Moore
25 was thinking when he went to the FDOC? Those are my

1 questions.

2 MR. MCKINSEY: I would --

3 HEARING OFFICER KRAMER: No, no.

4 COMMISSIONER McALLISTER: Can we just move it
5 along? I guess it seems to me that there is a technical
6 question here about how low an LMS can idle and still
7 maintain the emissions profile that the FDOC says, and
8 can we just answer that question?

9 MR. SARVEY: I think Dr. Moore has already
10 answered it, so I'm ready to move on.

11 MR. MCKINSEY: Well, first, I think all the
12 panelists should answer that question, and I don't think
13 it has been asked.

14 MR. MCKINSEY: The scenario --

15 COMMISSIONER McALLISTER: Heat up the catalytic
16 and then ramp it -- ramp it back down. I don't know what
17 the answer is, but I'd like to get it from the experts
18 that we have on the panel.

19 DR. MOORE: I guess I gave my opinion at
20 50 percent load. I'm sure they can comply at that load.
21 Whether they can comply at a lower load or not is kind of
22 irrelevant to our permitting, basically, as long as they
23 comply with conditions. And they would have to comply
24 with our conditions, and so it would be up to them if
25 they can decide that they can run at a lower load and

1 still comply with the BACT limit and (inaudible)

2 HEARING OFFICER KRAMER: Mr. Rubenstein?

3 MR. RUBENSTEIN: In Exhibit 1000, which is the
4 petition to amend Table 5.1-B, like in boy, hyphen one,
5 which on my PDF is page 551 of the document, there is a
6 table and that table shows the performance data that we
7 submitted for the LMS gas turbines for this project.
8 Those performance data showed that the project turbines
9 would comply with the proposed permit limits at
10 25 percent load, and that was the basis of our
11 application.

12 If I might also, I had some comments on some of
13 the other responses and questions of Dr. Moore that did
14 not relate to his thought process when there is an
15 appropriate time for me to get into those.

16 HEARING OFFICER KRAMER: Well, they're as fresh
17 in our memories as they will be, so go ahead now.

18 MR. RUBENSTEIN: The first question, again,
19 that did not go to Dr. Moore's thought process was
20 whether the gas turbines for the licensed CECP could be
21 started up and operated without the steam units thereby
22 operating as a simple cycle.

23 Dr. Moore responded that there was nothing in
24 the permit that would prohibit that, and while I think
25 that's correct literally, as a practical matter, it is

1 not. First of all, the licensed CECP turbines could not
2 start in simple cycle because there is no bypass stack.
3 The bypass stack would have to be present in order to
4 enable the gases to avoid going through the heat recovery
5 steam generator because if you're going through the heat
6 recovery steam generator, you will be generating steam
7 and you got to do something about that, so it will get
8 into combine cycle very quickly.

9 Second of all, I believe that we could not be
10 able to do that if even if there was a bypass stack under
11 the current permit for the licensed CECP because the
12 emission controls are located inside the heat recovery
13 steam generator. And so if there was a bypass stack to
14 avoid or preclude the use of the HRSG, the gas turbines
15 would violate the permit conditions.

16 The second question that, again, didn't go to
17 Dr. Moore's thought process had to do with the allowable
18 start-ups for the licensed CECP project. And Dr. Moore
19 responded I believe from memory that the number was 1460,
20 and that's correct, but that's not the number of
21 start-ups.

22 That was for the number of start-up periods,
23 which is a term of art in the permit for the licensed
24 CECP, and that's essentially equivalent to the number of
25 hours in start-up operation for each turbine, so it's not

1 the same as the 300 per year limit or the 400 per year
2 limit or whatever it is for the proposed amendment.

3 MR. SARVEY: Thank you, Mr. Rubenstein.

4 HEARING OFFICER KRAMER: Thank you.

5 Mr. Sarvey, continue.

6 MR. SARVEY: You just mentioned,
7 Mr. Rubenstein, that 1460 was the number of hours allowed
8 for the start-up. Can you define or can you do a quick
9 calculation of how many start-ups that would be, even
10 with a maximum amount of the start-up would be?

11 MR. RUBENSTEIN: I believe what I said was that
12 if in permits it's identified as the number of start-up
13 in periods, it's a fairly technical definition of a
14 start-up period. How many start-ups that represents
15 depends on the mix of cold and hot and warm starts, and
16 no, as I sit here, I can't do the math and give you a
17 single number.

18 MR. SARVEY: Thank you.

19 Anybody can answer this question if they want.
20 The FDOC contains considerable revisions to the PDOC,
21 including a major source determination, a determination
22 in calculation that offsets are needed, an alternatives
23 analysis, compliance certification and also applies to
24 the project.

25 Does the district have a procedure or some

1 requirements to reissue the PDOC when an initial permit
2 is so thoroughly modified?

3 DR. MOORE: I'm not sure what you mean by issue
4 a PDOC. We provide the PDOC as part of our Compliance
5 Rule 2025. It's basically our recommendations, our
6 preliminary recommendations to the CEC, and a final
7 determination compliance is our final determination that
8 complies with our rules and regulations, and has also
9 recommended permit conditions to the CEC. And so the
10 answer to your question, no, there is no formal procedure
11 to reissue, in quotes, a PDOC and make changes to it.

12 MR. SARVEY: Thank you.

13 DR. MOORE: The FDOC is essentially that.

14 MR. SARVEY: Thank you. Anybody else want to
15 chime in on that?

16 Okay. The FDOC contains an alternatives
17 analysis which is conducted pursuant to Section 20.3.E-2.

18 When the district conducted that alternatives analysis
19 review, did the district conclude that the benefits of
20 the proposed source outweighed the environmental and
21 socio costs imposed as a result of the location or
22 construction as required by Rule 20.3.E-2?

23 DR. MOORE: We rely basically on the CEC for
24 that analysis in this case since they already do an
25 alternatives analysis for the project.

1 MR. SARVEY: And did the CEC provide
2 information that the benefits of the proposed source
3 outweighed the environmental and social costs?

4 MR. MCKINSEY: I think the question is being
5 asked about what somebody else did, and I think the
6 witness would only answer if he was aware of it.

7 MR. SARVEY: Anybody can answer. That's the
8 format you guys wanted.

9 MR. MCKINSEY: I think it's no answer.

10 MR. SARVEY: Next question. On page 20 of the
11 FDOC --

12 MR. RUBENSTEIN: If I might, some of these
13 questions actually require some amount of research, so if
14 you actually want an answer to that question, you could
15 perhaps give us some time to, for example, find the rule
16 language that you're referring to because it sounds like
17 you're quoting from a rule so that we could provide a
18 meaningful answer. If the purpose of this is to see who
19 can respond in 30 seconds, then I think you're going to
20 get more silence.

21 MR. SARVEY: You have all the time you need,
22 Mr. Rubenstein. I'll move on to the next question while
23 you do your research.

24 HEARING OFFICER KRAMER: Well, we don't think
25 we need that one researched. It's -- ultimately, the

1 decision is the Commission's whether -- balancing the
2 benefits and any impacts on the project.

3 MR. SARVEY: The FDOC on page 20 talks about
4 minimum online commitment, and it explains that in 2012
5 the high emissions from the Encina Project were related
6 to the minimum online commitment requirement which CALISO
7 has on the plant. And as you said earlier, the Sunrise
8 Power Link and the condensers have eliminated that issue.

9 Why don't you consider 2012 an outlier and pick
10 two other years for your baseline to determine the
11 emissions increase?

12 DR. MOORE: As we note, there is a lot of
13 variability and, you know, the -- basically reliability
14 requirements of ISO are one of those variabilities. And
15 it really wasn't an outlier statistically basically
16 looking at the variation from year to year, so -- and it
17 was responding basically to the condition of the grid at
18 that time, so we don't think it's an outlier.

19 MR. SARVEY: Thank you, Dr. Moore. That's all
20 I have.

21 HEARING OFFICER KRAMER: Okay. Any other
22 intervenors have any questions?

23 Any of the other parties or the witnesses have
24 issues to discuss with each other?

25 Okay. Mr. McKinsey, am I correct in assuming

1 that the applicant is in agreement with the most recently
2 revised conditions?

3 MR. MCKINSEY: That's correct. The errata that
4 has been submitted is a true-up of the FDOC and the air
5 quality conditions, and we're in agreement with those.

6 HEARING OFFICER KRAMER: Do you mean staff's
7 rebuttal testimony?

8 MR. MCKINSEY: Yeah, staff's rebuttal and then
9 the rebuttal errata that is basically correcting, I think
10 it was yesterday some final type -- some of them were
11 typographical, but really minor differences in some of
12 the numbers so that it was correct.

13 And one of the requirements is that we need the
14 two to be true-up so that provides the Committee the
15 correct exact language of the air quality conditions that
16 they match the FDOC.

17 HEARING OFFICER KRAMER: Either I'm having a
18 moment or something, but I'm not quite sure which
19 document you're referring to.

20 MR. RATLIFF: Could we let Mr. Walters speak to
21 this? I think he has something to say about the trued-up
22 version.

23 MR. WALTERS: Yeah, and I think the applicant
24 probably has some further follow-up too, but what I want
25 to note is that staff agrees with all of the minor

1 revisions -- all minor but one, actually, where we did
2 not change the DOC limit from 1.5 to 2.0 ppm in weather
3 conditions or DOC conditions, and there are other --
4 about 10 or 12 very minor issues.

5 And we also found two additional ones that
6 we're going to provide to the Committee in a subsequent
7 errata document from us. Again, very minor, as you said,
8 truing up and/or in our case getting consistent
9 nomenclature because there are a couple of cases where we
10 change district nomenclature.

11 For example, we don't use the term "applicant,"
12 we use the term "project owner," so we have "applicant"
13 in one place. We're going to change that. We found a
14 typo that has "in the, in the" again, so we're going to
15 delete the second one or the first one, it doesn't
16 matter.

17 But we do disagree with one of the issues of
18 the applicant, which is the true-up issue, but it changes
19 the meaning of the sentence. They're removing an "at"
20 and without the "at," that doesn't make sense, so we're
21 going to provide that information.

22 And we're also going to make available a clean
23 version of the conditions because we doubt anybody at
24 this point could clean it up without making errors, and
25 so we have done all that work already.

1 MR. MCKINSEY: Let me --

2 HEARING OFFICER KRAMER: Let me stop everyone
3 for a moment.

4 MR. MCKINSEY: It's TN number 204036, which we
5 filed yesterday as an errata. We haven't actually
6 provided it as an exhibit in this proceeding.

7 HEARING OFFICER KRAMER: Okay.

8 MR. MCKINSEY: And that -- your question
9 triggered my note that that corrects these minor changes
10 that Mr. Walters is talking about in the changes in the
11 staff's proposed air quality conditions to true them up
12 to the FDOC. It's just basically more minor differences
13 in the language so that's TN Number 204036 which would
14 logically be the next exhibit number.

15 HEARING OFFICER KRAMER: One more time, 204?

16 MR. MCKINSEY: 036.

17 HEARING OFFICER KRAMER: Okay. So by my
18 calculation, that's Exhibit 1031.

19 MR. MCKINSEY: So then I think Mr. Walters was
20 noting they have something else to tweak from there, and
21 I think it would be useful to hear if -- from our
22 witness, Mr. Rubenstein, if there are any issues with
23 that adjustment.

24 HEARING OFFICER KRAMER: Okay. Let me get it
25 up on the screen.

1 Susan, can I be presenter?

2 MS. COCHRAN: Yes.

3 HEARING OFFICER KRAMER: I'm not exactly sure.

4 MS. COCHRAN: I'm sorry. I'm in the wrong one.

5 HEARING OFFICER KRAMER: It's partially my
6 fault.

7 Okay. I'm ready.

8 MS. COCHRAN: Okay.

9 HEARING OFFICER KRAMER: So Mr. Walters, what's
10 -- I gather you agree with almost all of this, but
11 there's one point of disagreement; is that fair?

12 MR. WALTERS: Correct.

13 HEARING OFFICER KRAMER: So what's the point of
14 disagreement?

15 MR. WALTERS: It's on AQ-84 in the body of the
16 condition, not the verification.

17 HEARING OFFICER KRAMER: Am I at the right
18 spot?

19 MR. WALTERS: You have to go down a little bit
20 more. The other direction.

21 HEARING OFFICER KRAMER: There's 84. I'm not
22 sure there is a verification on here. It's --

23 MR. RUBENSTEIN: It's not the verification,
24 it's the belief -- it's in the bottom, the text right at
25 the bottom of the screen. It's the third line in

1 Condition AQ-84.

2 HEARING OFFICER KRAMER: Okay.

3 MR. WALTERS: It's very hard to see at that
4 size. They're deleting the word "at," which is
5 consistent with how it is in the FDOC. Unfortunately,
6 you need the "at" there for it to make any sense.

7 HEARING OFFICER KRAMER: Let me make that
8 bigger. There you go. Sorry.

9 So you disagree with the deletion of the word
10 "at"?

11 MR. WALTERS: Yes. We believe the district
12 will make that as an administrative change and condition.

13 DR. MOORE: And the district concurs that the
14 "at" was a typo on the FDOC, so it should be there.

15 MR. RUBENSTEIN: And the project owner agrees
16 with both the district and the commission staff.

17 HEARING OFFICER KRAMER: So then when we're all
18 done, it will say, "This report shall include at a
19 minimum"?

20 MR. WALTERS: Correct.

21 HEARING OFFICER KRAMER: Okay. I'm glad we
22 spotted that because it's better to be clear it up today
23 rather than when we're back in our cubicles trying to
24 figure that out.

25 Now, we still have the additional filing that

1 is going to come in, I guess, after the hearings from
2 staff, right?

3 MR. RUBENSTEIN: If I might, Mr. Kramer? With
4 respect to those, while we haven't seen them, I believe,
5 based on Mr. Walter's description that the project owner
6 will not have any objection to those, those are truly
7 just correcting typographic errors.

8 HEARING OFFICER KRAMER: Okay. So let's first
9 give that a number. That's going to be two thousand
10 and -- let's see, Ms. Willis had something she was going
11 to be adding later, which was 2009, correct?

12 MS. WILLIS: That was correct. We were going
13 to add the resume and declaration of David Flores --

14 HEARING OFFICER KRAMER: Okay.

15 MS. WILLIS: -- as 2009.

16 HEARING OFFICER KRAMER: So we'll make this new
17 one 2010 and to be determined, and that will be staff Air
18 Quality -- what are you calling it, errata or something
19 like that?

20 MR. WALTERS: Conditions errata.

21 HEARING OFFICER KRAMER: Okay.

22 MR. WALTERS: As noted, we can also provide the
23 Committee a clean version of conditions that have all of
24 the double underlined and underlined and strike-out and
25 double strike-out removed so that you can make sense of

1 the conditions and use them in the PMPD much quicker than
2 if you had to make all of those edits yourself.

3 HEARING OFFICER KRAMER: Okay.

4 MR. WALTERS: So we can unveil that.

5 HEARING OFFICER KRAMER: Yeah, that sound like
6 as good thing. Okay. So --

7 MS. SIEKMANN: Mr. Kramer, can I ask a question
8 on AQ-28?

9 HEARING OFFICER KRAMER: Sure.

10 MS. SIEKMANN: Okay. So Mr. Walters, they
11 changed the 1.5 to two, and staff is good with that
12 number?

13 MR. WALTERS: Yes. In fact, that, I believe,
14 was an error in the PSA that I should have corrected in
15 the FSA, and we just missed it.

16 MS. SIEKMANN: Okay. Thank you. Since it was
17 a number, I just wanted to make sure of that, because I
18 don't, you know, know-how to do those calculations.

19 MR. WALTERS: Right. It was just -- it was an
20 error that had to deal with the very quick nature of
21 dealing with the PDOC to the PSA, and I had some drafts.
22 We had drafts that we were getting from the district, but
23 to be able to turn the documents around as quick as we
24 could, and one of those drafts did have a 1.5. They
25 corrected it. I didn't see the correction in time to get

1 it into the PSA and then inadvertently didn't get it into
2 the FSA.

3 MS. SIEKMANN: Thank you.

4 HEARING OFFICER KRAMER: Okay. So as far as
5 the staff's 2010, it's going to be filed later. What
6 we'll do is staff can file it and we'll let the
7 parties -- you know, if they have any responses to that,
8 then they can file those as well. I think that's only
9 fair. So if you can respond to that within three
10 business days after it's filed, that would be great.

11 MR. SARVEY: Mr. Kramer, a follow-up question,
12 do we wait on that?

13 HEARING OFFICER KRAMER: Okay. Which part so I
14 can --

15 MR. SARVEY: On AQ-28.

16 HEARING OFFICER KRAMER: Go ahead.

17 MR. SARVEY: Dr. Moore, for your determination
18 that the VOC levels should be 2PPM you compared the
19 emissions of existing projects including Escondido
20 Center, El Cajon and Orange Grove, and is it true that
21 all those projects utilize LM 6,000 turbines? And anyone
22 can answer that question.

23 DR. MOORE: That's true. We also looked at
24 other facilities also those using LMS 100s.

25 MR. SARVEY: Thank you.

1 HEARING OFFICER KRAMER: Okay. Susan, can you
2 take back control? I don't want to share my screen any
3 more.

4 MS. COCHRAN: I think you have to.

5 HEARING OFFICER KRAMER: You gave me
6 everything?

7 MS. COCHRAN: I gave you it.

8 HEARING OFFICER KRAMER: No, you're still the
9 host.

10 MS. COCHRAN: But you have the presenter.

11 HEARING OFFICER KRAMER: Okay. Here you go.

12 MS. COCHRAN: Thank you.

13 HEARING OFFICER KRAMER: I just want to check
14 my notes and make sure I've got all my air quality issues
15 because it sounds like everybody else has finished
16 theirs.

17 MR. SARVEY: I have one more question.

18 HEARING OFFICER KRAMER: Okay. Go ahead,
19 Mr. Sarvey.

20 MR. SARVEY: Okay. Rule 20.3.E.1, it's a
21 compliance certification, and the district determined in
22 the PDOC that a compliance certification was not required
23 due to the project not requiring LAER or offsets. Now
24 the district requires a compliance certification.

25 Does the district actually verify the

1 applicant's compliance certification as accurate, or does
2 the district just take the applicant's word for it that
3 all sources owned and operated by the applicant are in
4 compliance?

5 DR. MOORE: We basically believe they responded
6 truthfully, so the answer is we did not call all air
7 districts to see if they were in compliance with all
8 their rules and regulations.

9 MR. SARVEY: So what happens if the district
10 supplied information after the issuance of the FDOC that
11 showed that all the applicant's sources aren't in
12 compliance because the PDOC comment period has been -- is
13 no longer there, so how does the district deal with that?

14 DR. MOORE: I don't know of any -- I don't know
15 of any such information being supplied by other
16 districts, basically, so I'm not sure what we would do in
17 that situation. I mean, they have the right of
18 certification. They have done that at the time they
19 provided it. We knew it was accurate.

20 MR. SARVEY: So we would probably have to
21 address that to the hearing board, correct?

22 MR. MOORE: That they were not in compliance?

23 MR. SARVEY: Uh-huh.

24 DR. MOORE: You know, I think literally they
25 satisfied the requirement. It requires them to provide

1 that certification when we issue the -- or when we
2 propose the FDOC -- "propose" is a bad word, but when we
3 sent the FD -- submit the FDOC to the CEC basically.

4 MR. SARVEY: Thanks, Dr. Moore. Thank you for
5 all the information you provided me. I really appreciate
6 it.

7 HEARING OFFICER KRAMER: Okay. I discovered
8 that I had no more questions.

9 Anyone? No others from the Committee?

10 So is there any reason why we should not close
11 down the topic of air quality?

12 PRESIDING MEMBER DOUGLAS: Did you want to
13 inquire of people on the phone?

14 MR. SARVEY: Yeah, David Zizmor may have some
15 questions.

16 HEARING OFFICER KRAMER: Oh, well, he's free to
17 speak up. Mr. Zizmor, can you hear us? He's not muted.

18 MR. ZIZMOR: I can hear you. Actually, you
19 know, I e-mailed you about this last night. My questions
20 really were greenhouse gas --

21 HEARING OFFICER KRAMER: Okay. Good.

22 MR. ZIZMOR: -- related, so I was going to wait
23 until then to ask my questions. I thought you had
24 received that.

25 HEARING OFFICER KRAMER: No, I did, but I was

1 asked here in the room to just check on it, so I did.

2 MR. ZIZMOR: Oh, no, no, I heard that. No, my
3 questions are more on greenhouse gas, so I'm going to
4 reserve my comments until then.

5 HEARING OFFICER KRAMER: Okay. Well,
6 hearing -- nobody on WebEx is muted except of their own
7 accord, so they were free to speak up and they haven't,
8 so we will then close the topic of air quality and move
9 on to greenhouse gases.

10 Okay. So let me check my list. And let's
11 get -- Mr. Walters will be joined by Mr. Vidaver on
12 behalf of staff. Mr. Rubenstein. We've got --
13 Mr. McKinsey, are you offering him on greenhouse gases?

14 MR. MCKINSEY: We are, but again no direct
15 testimony, just available for questions.

16 HEARING OFFICER KRAMER: Okay.

17 HEARING OFFICER KRAMER: Ms. Siekmann and
18 Mr. Sarvey.

19 So Mr. Vidaver, you're the only new entrant.
20 Were you sworn?

21 He indicates he was.

22 Okay. Mr. Ratliff, do you want to get started?

23 MR. RATLIFF: I have no direct questions for
24 Mr. Vidaver or for Mr. Walters. I think they're here to
25 answer questions and engage in whatever dialogue the

1 other parties desire and to answer Committee questions.

2 HEARING OFFICER KRAMER: Okay. Fine. Thank
3 you.

4 Ms. Siekmann, did you -- oh, actually, I'm
5 sorry. You're listed as a witness, but did you want to
6 participate at all?

7 MS. SIEKMANN: I would like to be able to ask
8 questions if something comes up. Thank you.

9 HEARING OFFICER KRAMER: Okay. But are there
10 any particular issues you want to make sure --

11 MS. SIEKMANN: No, I have no particular issues.

12 HEARING OFFICER KRAMER: Okay. So then
13 Mr. Sarvey, I guess it's back to you.

14 MR. SARVEY: Questions, is that what we're at?

15 HEARING OFFICER KRAMER: Right. If you could
16 tell us what your issues are, that will help us both
17 appreciate your -- we'll have a context to your --

18 MR. SARVEY: Sure.

19 HEARING OFFICER KRAMER: -- questions, and also
20 we'll be able to judge their relevance.

21 MR. SARVEY: The FSA communicates that the
22 project will be slated to operate around six percent, and
23 this project is essentially replacing energy and
24 ancillary services from the SONGS project. And since
25 this project is only operating at six percent, it is my

1 opinion that it cannot meet the needs of the grid in
2 terms of providing regulation and, most particularly,
3 energy. It cannot replace the energy provided by SONGS.

4 So that's what my questions are going to be
5 directed to, and I'm going to try to elicit some
6 responses, and that's what I'm talking about for the
7 majority of it. When I get to another section, I'll let
8 you think where I'm going.

9 HEARING OFFICER KRAMER: And this relates to
10 greenhouse gases in what way?

11 MR. SARVEY: Relates to greenhouse gases?

12 HEARING OFFICER KRAMER: Right, because we're
13 on the topic of greenhouse gases.

14 MR. SARVEY: Because the flexibility of this
15 project is supposed to, number one, support renewable
16 integration, and it's supposed to provide ancillary
17 services to prevent less efficient projects from running,
18 and that's related to greenhouse gases.

19 HEARING OFFICER KRAMER: So are you saying it's
20 not going to do enough to solve our greenhouse gas
21 problem or what?

22 MR. SARVEY: I'm saying a couple things. I'm
23 saying, one, it doesn't have the flexibility to allow it
24 to run as economic dispatch; number two, it cannot
25 provide the energy that we lost from the SONGS project

1 because, number one, SONGS operated at about 86 percent,
2 80, 86 percent, sometimes 70, and produced millions of
3 megawatts, and this project is not capable of doing that
4 because it's limited to 2700 hours, and it also will have
5 the effective capacity of six percent because it's a
6 peaker, and I believe that the licensed CECP is a much
7 better project for replacing the SONGS, providing the
8 ancillaries service and the energy that's needed to
9 replace SONGS, and that's my position.

10 HEARING OFFICER KRAMER: Okay. Go ahead.

11 MR. SARVEY: And that's outside of what my
12 testimony talks about, the fact that there's storage and
13 renewable resources, and demand response that are
14 available now that can replace this project and lower the
15 greenhouse gas emissions from the project. I mean, this
16 project could be limited to three turbines, two turbines,
17 four turbines, and right now the applicant's proposing to
18 go with five turbines instead of six so I think the
19 project description has changed. I think that's an issue
20 that we need to delve into.

21 HEARING OFFICER KRAMER: Okay. Well, you have
22 touched on one of the issues I think that's of interest
23 to the committee, and that's understanding both for our
24 sake and for the sake of all the people who are
25 listening, why if -- I guess answering Mr. Sarvey's

1 question, why do we need more gas-fired generation at
2 this point in time? Why is it, if it's the case, that
3 the renewable resources and storage are or are not ready
4 to step in and allow us to say that it's time to have --
5 that we don't need more gas-fired generation.

6 It's a question I think that has been on many
7 lips. Yeah, it's partially alternative. Yeah, actually,
8 you're right, I'm stepping ahead. We will talk about
9 that.

10 MR. SARVEY: I think you could probably combine
11 GHG and alternatives --

12 HEARING OFFICER KRAMER: Well --

13 MR. SARVEY: -- they're so interrelated that --

14 COMMISSIONER McALLISTER: Are you the -- is
15 your fundamental question how much this plan will
16 actually run at six percent?

17 MR. SARVEY: It's not so much how much this
18 plan will run -- and I'm pretty much giving away my
19 questions here. This plan has to be online to provide
20 energy. It has to be online to provide bar. It has to
21 be online to provide most of the ancillary services, like
22 regulation down. This project can't provide regulation
23 down unless it's online, but it's only online for 2700
24 hours and staff is predicting a six percent capacity
25 factor, so I don't see that this project can provide the

1 ancillaries services that San Diego Gas and Electric
2 needs.

3 COMMISSIONER McALLISTER: I'd like to get the
4 panel's response to each of those issues, because
5 regulation on various types of energy are very different
6 issues and will have likely different issues, and I'd
7 like to hear what the panel has to say.

8 HEARING OFFICER KRAMER: You caught me kind of
9 stepping ahead to an alternatives type question, so does
10 anybody object to --

11 MR. RATLIFF: Well, I just want to note that
12 the greenhouse gas testimony really has the purpose of
13 establishing why the facility would not result in any
14 increase in greenhouse gases. That was its purpose --
15 certainly if the Committee wants to get its questions
16 answered now in advance of the alternatives testimony,
17 then we can go into it now, but we may be revisiting it a
18 second time in the afternoon when we do get to those
19 issues.

20 HEARING OFFICER KRAMER: Well, that sounds like
21 an argument to combine them then.

22 MR. RATLIFF: Well, we don't have the
23 alternative witnesses here now. We have only one.

24 HEARING OFFICER KRAMER: But all right, then --

25 MR. RATLIFF: I guess the question is do you

1 want to go into it now or do you -- I mean, we can have
2 Mr. Vidaver and Walters, any of the panelists answer this
3 now. These are -- some of these questions are questions
4 that these witnesses can answer, certainly. I'm just
5 saying it goes beyond the actual purpose of the testimony
6 for greenhouse gases.

7 COMMISSIONER McALLISTER: So the greenhouse gas
8 question, I think, is -- you know, personally I'd like to
9 dispatch this -- pardon the pun -- greenhouse gas issues
10 as quickly as we can and as efficiently as we can, and I
11 think we have relevant questions on the table, which is
12 how does this operate and what the -- and how it relates
13 to -- how that operational profile relates to the overall
14 grid. And we have Mr. Vidaver here, we have some other
15 panelists who can opine on this, and I'd like to get
16 their answers, and the nuances being what kind of
17 services this plan is likely to provide if it gets built.

18 HEARING OFFICER KRAMER: Okay. So let's split
19 it up then. Let's -- Mr. Sarvey, to the extent you're
20 talking about issues that are really in the alternatives
21 subject, let's hold those off until the next segment
22 because we do have some missing witnesses, and you're
23 also on the alternative subject so we're not preventing
24 you from asking the questions. Let's focus on the
25 greenhouse gas emissions of this project and how it fits

1 into the system.

2 Now, maybe your question about how often it's
3 going to operate is still -- it goes to the displacement
4 theory that staff has certainly, but let's talk about
5 those issues as opposed to comparing this project to
6 renewables or storage or --

7 MR. SARVEY: I would --

8 HEARING OFFICER KRAMER: -- other alternatives.

9 MR. SARVEY: I would welcome the Committee
10 asking their questions, and I mean, that's what we're
11 here for so you guys can find out the information.

12 HEARING OFFICER KRAMER: Go ahead. Go ahead.

13 MR. SARVEY: I don't have any issues -- I don't
14 need to ask questions. You guys can ask the questions.

15 HEARING OFFICER KRAMER: Well, do you have a
16 concern about the displacement theory, staff did --

17 MR. SARVEY: Yes, I do.

18 HEARING OFFICER KRAMER: Okay.

19 MR. SARVEY: I have quite a few concerns about
20 those.

21 HEARING OFFICER KRAMER: So why don't you tell
22 us about those?

23 MR. SARVEY: Well, when you start talking about
24 displacing certain projects because of their economic
25 dispatch, you have to be looking at the projects'

1 operating restrictions in the Power Purchase Agreement.
2 And some of these Power Purchase Agreements say the
3 minimum run time is two hours. Some of them say the
4 minimum time between starts is two hours, four hours.
5 And that's the only way you can really tell whether
6 you're going to have economic dispatch or not.

7 If the start-up cost is \$10,000, obviously
8 you're not going to run that project for 30 minutes, so,
9 you know, without looking at the Power Purchase
10 Agreement, I think the conversation is really limited.
11 And, you know, I was hoping at some point that the CEC
12 would sign a confidentiality agreement, look at some of
13 this information and -- look at this PPTA so they could
14 understand actually how it was going to operate under the
15 Power Purchase Agreement conditions, but we can't do that
16 because nobody here really has ever really seen it except
17 perhaps Carlsbad, and I'm sure they're not going to want
18 to reveal what their operating conditions are. I'm
19 certainly not going to say anything because I have signed
20 a non-disclosure agreement, so I'm definitely not going
21 to say anything about that, but that's an issue to me,
22 you know.

23 HEARING OFFICER KRAMER: So do you have
24 questions for the panel?

25 MR. SARVEY: Yeah, I have some questions,

1 unfortunately, they crossover between air quality
2 alternatives and greenhouse gas. I don't know how to ask
3 them, to be honest with you.

4 HEARING OFFICER KRAMER: Well --

5 MR. SARVEY: They're all interrelated.

6 HEARING OFFICER KRAMER: Mr. Vidaver wants to
7 say something.

8 MR. VIDAVER: If I might just -- perhaps it's
9 best if I offer a summary of staff's conclusions and that
10 will elicit questions from everyone in this room

11 HEARING OFFICER KRAMER: Yeah, let's give it a
12 shot.

13 MR. VIDAVER: Let's see if I can find my
14 opening statement.

15 The reliable operation of the electricity
16 system requires the supply of and demand for electricity
17 balance at all moments in time. While losses incurred
18 during the transmission and distribution of electricity
19 and the potential for storing electricity complicate this
20 equation a bit, they don't altar the fact that generation
21 by a new addition to the system displaces generation by
22 an existing resource or resources.

23 In choosing from among two or 20 power plants
24 to meet electricity demand and the need for ancillary
25 services, at any moment in time the determining factor is

1 cost. This is true whether the portfolio manager is a
2 merchant generator, a utility or the grid operator. And
3 that cost is almost entirely fuel cost. The fuel cost of
4 solar, wind, geothermal, hydroelectric and nuclear
5 facilities per unit of output is zero or nearly so,
6 resulting in their dispatch whenever fuel is available.

7 Natural gas-fired generators such as the
8 amended CECP or licensed CECP thus do not displace output
9 for these resources but from other natural gas-fired
10 generators. And they do so whenever they combust less
11 natural gas and thus produce less GHG emissions than the
12 alternatives.

13 This is true regardless of whether the service
14 being provided by the generator, whether it be reducing
15 needed energy at least cost or as an unwanted by-product
16 in the course of serving reliability requirements, such
17 as providing operating reserves or meeting minimum online
18 capacity requirements arising from transmission
19 constraints.

20 To the extent that the amended CECP displaces
21 output from existing peaking generators in the San Diego
22 area, it will displace resources that produce as much as
23 50 percent more GHG emissions per megawatt hours.

24 The GHG emission reducing impact of
25 incrementally turning over the gas fleet can be seen from

1 the changes that have occurred in the past ten plus years
2 due in part to demand growth, but also as a result of the
3 divestiture of coal-fired generation from California's
4 portfolio, the loss of SONGS and the ongoing drought.
5 Natural gas-fired generation in 2013 was three percent
6 higher than in 2001, yet California's generators
7 combusted less eight -- 18 percent less natural gas in
8 producing these megawatts.

9 If one excludes industrial co-generators from
10 this total and considers solely conventional gas-fired
11 generation, the improvement in thermal efficiency and
12 corresponding reduction in GHG emissions is 24 percent.

13 That concludes what's on this paper. Just in a
14 nutshell, the reduction in GHG emissions arising from the
15 operation of either of the projects is independent of how
16 often that project runs. It's independent of the
17 conditions in any PPA that the project might have, and
18 the relative change in GHG emissions, if we operate one
19 project versus operating another, can't be determined.
20 That would depend on the resources it displaces.

21 If we build a combined cycle, we are going to
22 displace existing combined cycles here in San Diego or
23 somewhere else, and if they are only marginally more
24 efficient than the proposed project, the reduction in GHG
25 emissions is going to be small.

1 If we build a set of LMS 100s and they displace
2 peaking units in San Diego that are far less efficient,
3 is the resulting change in the greenhouse gas
4 emissions -- a reduction in greenhouse gas emissions is
5 going to be larger. So that's it, my comments.

6 HEARING OFFICER KRAMER: Ms. Siekmann?

7 MS. SIEKMANN: Mr. Vidaver, I'd like to ask you
8 a question based on what you just said.

9 So because there are going to be overrides in
10 this project, so all of a sudden the need issue comes in.
11 So the need issue brings in the PUC decision that turned
12 this project -- preliminary decision that turned this
13 project down because SDG&E needs to go out and possibly
14 get renewables to replace some of this.

15 So wouldn't you say -- I mean, what would you
16 say, so if renewables were bought in in place of part of
17 this 600 megawatts, wouldn't there be less GHGs from the
18 renewables than from the fossil fuel megawatts?

19 So basically if this were a smaller project,
20 say, this was 400 megawatts and then the other 200 was
21 renewables, wouldn't that be less GHGs?

22 MR. VIDAVER: Yes.

23 MS. SIEKMANN: Thank you.

24 HEARING OFFICER KRAMER: Okay. Mr. Sarvey, did
25 you have any questions about that?

1 MR. SARVEY: Well, I think I pretty much told
2 the Committee what all my questions were. I'm expecting
3 the Committee to take it from there, so --

4 HEARING OFFICER KRAMER: Oh, well --

5 MR. SARVEY: -- I don't think I need to waste
6 any time asking any questions.

7 HEARING OFFICER KRAMER: We cannot be your
8 representative.

9 MR. SARVEY: No, no, I'm not asking you to be.
10 He's got questions, the Commissioner. He's indicating he
11 has questions about it. I'd like to listen to the
12 conversation and I don't want to waste a bunch of time
13 asking questions that everybody is going to sit around
14 and object to and waste hearing time.

15 HEARING OFFICER KRAMER: I was just trying to
16 accelerate the conversation that looked like was going to
17 happen, so I'm not going to ask my own questions. I
18 would like the Intervenors' questions answered as
19 expeditiously as possible.

20 MR. RATLIFF: I would like Mr. Vidaver to
21 address the issue raised by Mr. Sarvey earlier about
22 whether we need to know what is in the PPAs to verify the
23 principles that he just enunciated, first of all.

24 And second of all, I would hope that Mr. Sarvey
25 does ask his questions now because we do have at this

1 moment the witnesses, at least on greenhouse gas, that he
2 can ask of those questions of, and I encourage him to do
3 so.

4 HEARING OFFICER KRAMER: Mr. Vidaver, could you
5 answer Mr. Ratliff's question?

6 MR. VIDAVER: What was his question? I think
7 there was --

8 HEARING OFFICER KRAMER: Here --

9 MR. VIDAVER: I think the question at hand is
10 likely how would the impact of either project on
11 greenhouse gas emissions be affected by conditions in a
12 Power Purchase Agreement that that project might have.

13 The only time the power -- the only time the
14 agreement would affect the operation of the project is
15 when it became less economic to dispatch the project
16 because of the conditions attached to the agreement.
17 Mr. Sarvey said, "What if it has to stay on for two or
18 three hours?"

19 Well, whoever is dispatching the project,
20 whether it be utility or the California ISO, would say,
21 "Well, that's a constraint, that all it can really do is
22 increase the cost of dispatching a project. Let me see
23 if it's now more costlier to dispatch a project than some
24 alternative." If the answer is no, the project will
25 simply be dispatched as if there was no PPA and they'll

1 have the associated incremental reduction in greenhouse
2 gases emissions.

3 If the answer is yes, there is now an
4 alternative that is cheaper, the project won't be
5 dispatched at all. It's as if the project isn't even
6 there, and the change in greenhouse gas emissions during
7 that point in time is zero.

8 So while a PPA that imposed operating
9 constraints on the entity dispatching the project could
10 reduce -- it would reduce the impact of the project on
11 greenhouse gas emissions in the nutshell. I hope that's
12 clear.

13 HEARING OFFICER KRAMER: To put it slightly
14 differently, knowing -- does knowing the terms of a PPA
15 affect your analysis of the greenhouse gas effects of a
16 project?

17 MR. VIDAVER: No. At an extreme, the PPA would
18 be so onerous in terms of the cost that it poses upon the
19 person dispatching it, the project has to run for 12
20 hours. Well, I don't need it for 12 hours, so I'm not
21 going to choose it. Under those circumstances, the
22 project might as well never have been built, but in those
23 moments where the project remains in spite of any
24 constraints imposed by the PPA, the cheapest alternative
25 for the provision of energy and ancillary services, it

1 will be dispatched in lieu of a more expensive project to
2 provide those services, and you'll get an incremental
3 reduction in greenhouse gas emissions.

4 HEARING OFFICER KRAMER: So when it runs, it's
5 going to help?

6 MR. VIDAVER: When it runs, it's going to help.
7 When it doesn't, there is no impact. And all the PPA can
8 do is be so onerous that it reduces how frequently you
9 run it.

10 HEARING OFFICER KRAMER: Okay. Thank you.
11 Mr. Sarvey, did -- I think we're done, so --

12 MR. SARVEY: I'll hold all my questions to
13 alternatives. Thank you, Mr. Kramer.

14 HEARING OFFICER KRAMER: Okay.

15 MR. RATLIFF: I would like to ask a question
16 then.

17 HEARING OFFICER KRAMER: Go ahead.

18 MR. RATLIFF: Mr. Vidaver, Mr. Sarvey has filed
19 testimony on greenhouse gas in the proceeding, have you
20 read that testimony?

21 MR. VIDAVER: Yes, I have.

22 MR. RATLIFF: Does anything in that testimony
23 affect your conclusions?

24 MR. VIDAVER: No.

25 MR. RATLIFF: Without asking for anything

1 lengthy, can you provide perhaps just a little more
2 elaboration on that point?

3 MR. VIDAVER: Mr. Sarvey made several comments
4 that go far more towards alternatives. There was a
5 comment to the effect that compared to the licensed CECP,
6 the amended CECP will definitely increase the system heat
7 rate, and I would disagree with that statement that, as I
8 stated, perhaps a bit too verbosely earlier, the impact
9 of the licensed project on fuel combustion and greenhouse
10 gas emissions compared to the impact of the amended
11 project is indeterminate. We need to know what each of
12 those resources would displace and how the relative
13 efficiency -- what the relative efficiency between the
14 resource being added to the system and the resource it's
15 displacing are.

16 MR. RATLIFF: Thank you.

17 One further point. I mean, the comparison that
18 he suggested is between the licensed project and the
19 amended project. Would it be safe to conclude that
20 either of those projects will have the same result in
21 terms of reducing greenhouse gas emissions for the
22 principles that you've already spoken to?

23 MR. VIDAVER: Yeah. If one of them has a
24 greater impact on greenhouse gas, those will have a
25 positive impact on greenhouse gas emissions. If one of

1 them as a greater impact than the other, we wouldn't know
2 which one without some pretty sophisticated computer
3 simulation of the system operation. And there are many
4 people that argue even with that simulation we don't
5 learn very much.

6 MR. RATLIFF: Thank you.

7 HEARING OFFICER KRAMER: Mr. Zizmor, did you
8 have anything to ask or say?

9 MR. ZIZMOR: I have questions for Mr. Walters.

10 HEARING OFFICER KRAMER: Please go ahead.

11 MR. ZIZMOR: So I wanted to ask him questions
12 about the federal new source performance standards, NSPS
13 for short.

14 MR. WALTERS: Go ahead.

15 MR. ZIZMOR: It's a little hard to hear on the
16 phone. I wasn't sure if I heard Mr. Walters.

17 MR. WALTERS: Yes. I said go ahead.

18 MR. ZIZMOR: Oh, okay. Thanks.

19 So you are familiar with the proposed NSPS
20 regulations, right? And I would note that these
21 regulations were submitted -- I think they're listed as
22 Exhibit 500.

23 So in the FSA, did you respond to Mr. Simpson's
24 comments about the NSPS regulations?

25 MR. WALTERS: Let me take a look. If there was

1 a specific comment, I would have.

2 MR. RATLIFF: Maybe you could read --

3 MR. ZIZMOR: The response is on pages AQ-1-36
4 and 37.

5 MR. RATLIFF: Please ask the question. What do
6 you want to know?

7 MR. ZIZMOR: Oh, sure. I just want to ask you
8 about the threshold levels for the NSPS regulations as
9 they might apply to the Carlsbad project, and maybe a few
10 hypotheticals based on those.

11 So based on the proposed NSPS -- based on the
12 proposed NSPS standards, am I correct in saying that
13 Carlsbad would qualify as a large natural gas-fired
14 stationary combustion turbine?

15 MR. WALTERS: I believe you're correct. You're
16 using very explicit terminology. I don't have the
17 regulation in front of me.

18 MR. ZIZMOR: Well, there's a cut off of
19 850 million BTUs per hour below which the combustion
20 turbine would qualify as small and above which would
21 qualify as large.

22 MR. WALTERS: Okay. Yes.

23 MR. ZIZMOR: And that's, I believe, no more
24 than 900 BTUs -- 900 -- anyway, so do you know offhand
25 what the CO2 emissions limit for a large plant of -- a

1 large turbine of that sort is?

2 MR. WALTERS: The emission limit is dependent
3 on whether or not the capacity factor is above
4 33 percent. There is no emission limit for projects that
5 would have a low capacity factor. In fact, the
6 regulation was designed to allow peaking power projects
7 to exist knowing that such projects are necessary, so --

8 And similar to my response, in the FSA it's
9 very important to realize that that performance standard
10 is really meant for combined cycle units that are going
11 to operate for a long period of time because the much
12 smaller amount of --

13 MR. ZIZMOR: Well, the standard -- I understand
14 that, but the NSPS standards do allow for regulation of
15 single combustion turbines. It's not just limited to
16 combine cycle.

17 MR. RATLIFF: Could we have the rest of the
18 Committee address that issue as to whether or not the
19 standards are, in fact, applicable to a peaker facility
20 that is less than 33 percent capacity factor?

21 MR. RUBENSTEIN: Mr. Kramer, if I may?

22 First of all, Mr. Zizmor, I just wanted to
23 clarify which resource performance standards we're
24 talking about.

25 MR. ZIZMOR: The proposed ones. Like I said, I

1 submitted those under Exhibit 500, those are the proposed
2 ones that are still under consideration in draft form.

3 MR. RUBENSTEIN: Is that TN number 203926?

4 MR. ZIZMOR: Yes.

5 MR. RUBENSTEIN: Okay. Now I understand.

6 That new source -- that particular new source
7 performance standard, and I ask my question because EPA
8 actually released three proposed new source performance
9 standards to control greenhouse gas emissions from power
10 plants in 2014.

11 And the answer to Mr. Zizmor's questions would
12 differ depending on which rule-making we're talking
13 about. This particular rule-making, the one that was
14 submitted as Exhibit 500, actually establishes
15 requirements for states. It does not establish
16 requirements for individual power plants or groups of
17 power plants; it establishes requirements for states.

18 And subsequently, I actually didn't find the
19 reference to 850 million BTUs in here because this is a
20 programmatic rule-making, establishing goals for states,
21 and there's no way to tell at this point what the state
22 of California would require that would be applicable to
23 this particular plant.

24 MR. ZIZMOR: Well, in either case, Mr. Walters
25 did list a lot of these requirements in his -- in the

1 FSA. I can go off of those numbers to the same extent
2 that I've been going off the federal register that I
3 listed -- talked about.

4 MR. RUBENSTEIN: Well, again -- again, this is
5 Gary Rubenstein. If you're talking about this specific
6 rule-making, you know, I think some of the panel members
7 at least would be able to and happy to answer your
8 questions, but again this particular rule-making applies
9 to states. It does not impose requirements on individual
10 power plants or projects such as this.

11 MR. RATLIFF: Well, Mr. Rubenstein, I believe
12 it does apply to states, but it applies to the power
13 plants within states collectively, but it also makes
14 exceptions for certain kinds of facilities, I believe,
15 and that's the question I want answered.

16 Are facilities 33 percent or less capacity
17 subject to this state land requirement?

18 MR. RUBENSTEIN: I believe the answer to that
19 question is no, they are not, and the citation would be
20 to -- let's see, in Exhibit 500, it would be page 34954
21 where I believe that proposed rule is.

22 But again, the reason why I'm hesitating about
23 reaching conclusions about this rule is there are so many
24 alternatives that states have to comply with this
25 programmatic requirement that even though there is an

1 exemption in EPA's guidance, if you will, to the states
2 as to how to develop their plans with this exemption, a
3 state could have a much different exemption and much
4 different threshold level and a much different approach
5 to how they comply.

6 MR. RATLIFF: I agree with all that, and the
7 frustration of being a lawyer is you want to answer the
8 question yourself, but I would -- those who are curious,
9 please select the rule and see if power plants are
10 included among the facilities that states must include in
11 the plan for meeting greenhouse gas emissions.

12 HEARING OFFICER KRAMER: Do you happen to have
13 a cite to where that would be? Because I have it up on
14 my screen.

15 MR. RATLIFF: No, it's a fairly lengthy rule.

16 MR. RUBENSTEIN: I believe the language that
17 he --

18 MR. ZIZMOR: Have you looked at --

19 MR. RUBENSTEIN: -- is talking about is at page
20 34954.

21 MR. RATLIFF: Which is --

22 MR. RUBENSTEIN: In my PDF, it's page 127.

23 HEARING OFFICER KRAMER: Oh, that's -- hold on.

24 MS. COCHRAN: You're the presenter now, Paul.

25 HEARING OFFICER KRAMER: So scrolling, give me

1 the place again.

2 MR. RUBENSTEIN: It's PDF page 127. You got
3 that?

4 HEARING OFFICER KRAMER: I've got that.

5 MR. RUBENSTEIN: Look at Section 60.5795. It
6 starts at the bottom of the first column and continues at
7 the top of the second column. And I apologize. I have
8 not looked at this ruling in a while, but I believe this
9 is the provision that Mr. Ratliff was referring to.

10 MR. RATLIFF: Commissioners, my point was this,
11 I don't think this rule is applicable to peakers, and I
12 didn't want to -- if it is not applicable to peakers, I
13 didn't see that it would be particularly useful to spend
14 a whole lot of time talking about it, but certainly
15 Mr. Rubenstein is correct that it calls for state plans,
16 rather than for specific power plant performance
17 standards.

18 MR. SARVEY: I'm going to object there.

19 Mr. Ratliff is testifying.

20 MR. RATLIFF: I'm testifying about a proposed
21 rule, which is --

22 MR. SARVEY: No, you were testifying that
23 Mr. Rubenstein was correct, and you were testifying to
24 some of your other opinions, and that's not appropriate.
25 You're the counsel, not the witness.

1 MR. RATLIFF: You're right but you're not
2 entirely right, and that is that as a lawyer, I can
3 actually give opinions about the law, and this is a
4 proposed law.

5 MR. SARVEY: That wasn't the law.

6 HEARING OFFICER KRAMER: We'll accept it as an
7 opinion about the proposed law.

8 Okay. Mr. Zizmor?

9 MR. ZIZMOR: I would add, it doesn't say
10 anything precluding peakers. I mean, it does go to
11 efforts to allow peakers to operate despite the rule, but
12 it also has conditions that would apply to peakers where
13 they meet certain threshold requirements, which is what I
14 believe Mr. Walters wrote about in the FSA in the first
15 place -- as the first place I cited to in the FAS
16 previously.

17 HEARING OFFICER KRAMER: Okay. So where are
18 you going with this? What's the point you're trying to
19 make?

20 MR. ZIZMOR: Oh, I just have concerns, number
21 one, because this is draft -- a draft rule that there's a
22 possibility that it could change going forward, so I just
23 have some questions about that, and I'm concerned that
24 even though it comes in at slightly under the electric
25 output rating that's listed in rules that the CO2

1 emissions levels are actually above what the rules allow.

2 HEARING OFFICER KRAMER: And what point would
3 the Committee take from that?

4 MR. ZIZMOR: I think it's very relevant that,
5 you know, if you're looking at a set of rules that are in
6 the draft stages and will be approved before the power
7 plant is constructed, that there's at least information
8 and a discussion about how the power plant will yield
9 with these regulations if it turns out that they end up
10 applying to the power plant.

11 HEARING OFFICER KRAMER: Okay. But what do you
12 want the Committee to do then? Do you want a condition?
13 Do you want us to just wait until this is all sorted out
14 or what?

15 MR. ZIZMOR: Well, you know, given how this
16 proceeding has gone, I don't think it's likely you would
17 wait until the draft regulation to become final. And to
18 be honest, I don't think any of us know when that is, so
19 I don't think it would be appropriate to ask for that,
20 but I think it's something that should be under
21 consideration when dealing with this power plant
22 licensing, and maybe a condition is appropriate that
23 would consider mitigation measures in the event that
24 these regulations are passed and they do end up applying.

25 HEARING OFFICER KRAMER: Well, generally

1 speaking, changes in air quality laws apply to both
2 existing and new projects that are built, and maybe
3 Dr. Moore wants to comment on this.

4 So if that's the case, then this law, these
5 regulations, depending on how they finally take form,
6 will apply and the project will have to deal with it.
7 What we're here today --

8 MR. ZIZMOR: I just --

9 HEARING OFFICER KRAMER: Go ahead.

10 MR. ZIZMOR: I would just add that, you know,
11 dealing with those issues now is advance, or at least
12 attempting to deal with them now, is being proactive is
13 probably preferable, at least to waiting, you know, five
14 months, ten months, a year down the road.

15 HEARING OFFICER KRAMER: Well, if they're in
16 such a state that we can, with any degree of certainty,
17 determine what they might be and somebody can propose a
18 solution, yes, but I think the burden --

19 MR. ZIZMOR: I understand there is -- there's
20 always difficulty when we're talking about rules that are
21 in the draft stage, but these are rules that, at least as
22 far as I understand it, are supposed to be decided upon
23 at some point this year, finalized at some upon later
24 this year. So I mean, we're not talking far in the
25 future, I think we're talking near future, and it might

1 even be before, you know, a shovel is ever put in the
2 ground for this project.

3 HEARING OFFICER KRAMER: Okay. Then come back
4 to my earlier question, what is it that you propose
5 should be done to deal with this rule?

6 MR. ZIZMOR: Like I said, I would just like to
7 ask a few questions and then, you know, I think a
8 condition might be appropriate in terms of asking for
9 some mitigation to reduce the greenhouse impact of this
10 project.

11 MS. SIEKMANN: Mr. Kramer, I found the
12 definition of affected sources so --

13 HEARING OFFICER KRAMER: Where?

14 MS. SIEKMANN: I went back -- I did a find for
15 simple, and that's how you can find it. It's on -- at
16 the heading, it's on page 34854 at the top of the page.
17 It says that 34854, Federal Register, Volume 79, blah,
18 blah.

19 HEARING OFFICER KRAMER: Any chance you can see
20 the PDF page number?

21 MS. SIEKMANN: No, because I have my -- see, I
22 don't have my iPad.

23 HEARING OFFICER KRAMER: Okay.

24 MS. SIEKMANN: I can see that. Anyway, it's on
25 first column, see "Affected Sources," and it gives a

1 definition of the affected sources. So if you can do a
2 find, just a, you know --

3 MR. RUBENSTEIN: Mr. Kramer, I believe she's
4 referring to PDF page 27.

5 MS. SIEKMANN: Thank you.

6 And on the top of the second column, it says,
7 "in either simple cycle or combined cycle configuration
8 that," and it gives one, two, three, four.

9 HEARING OFFICER KRAMER: Okay. I'm on the
10 page, so where are we?

11 MR. ZIZMOR: It's right at the top of the
12 second column.

13 HEARING OFFICER KRAMER: Mr. Walters or anyone
14 else on the panel?

15 MR. RUBENSTEIN: That is actually -- first of
16 all, just to clarify what you're looking at is the
17 preamble to the rule language. What I was discussing
18 earlier in my references to that other page, which I have
19 forgotten is the actual rule language, they say the same
20 thing and it does not apply to turbines that sell less
21 than 219,000 megawatt hours in a year, and the 2700 hour
22 whatever limitation we have for this project is intended
23 to keep the facility below that level, and I believe
24 Mr. Zizmor conceded that.

25 HEARING OFFICER KRAMER: Okay. So that's --

1 MR. ZIZMOR: Oh, yes, in the FSA, it's Table 3.
2 It's listed as the -- exceeding that quite substantially.

3 HEARING OFFICER KRAMER: Okay. So Mr. Zizmor,
4 this then would appear to be the case that these are not
5 going to apply to this project. Do you disagree?

6 MR. ZIZMOR: Like I said, this is a draft and I
7 had some questions surrounding that and I know that
8 Mr. Walters stated in the FSA that he didn't feel they
9 applied, but I have some -- I still would like to ask a
10 few questions just based on some potential changes in the
11 rule.

12 MR. RUBENSTEIN: Mr. Kramer, if I can clarify
13 my comments? That's a two-pronged exemption, and I
14 believe this facility complies with the second
15 requirement -- second prong, which is less than
16 33 percent of its output.

17 MR. WALTERS: Which is what I said not -- in
18 the first place. Its capacity factor is less than one
19 third --

20 MR. ZIZMOR: I was not -- I was not unaware --
21 I was not unaware of that. I'm fully informed on that
22 subject, and I had some questions surrounding that. I
23 was really in the process of kind of setting up just a
24 few hypothetical questions related to that.

25 HEARING OFFICER KRAMER: So how long is this

1 going to take?

2 MR. ZIZMOR: It really would have been over by
3 now. It's not intended to take very long.

4 HEARING OFFICER KRAMER: Go ahead and be very
5 expeditious, please.

6 MR. ZIZMOR: Okay. Thank you.

7 So I think we're in agreement that there is a
8 33 percent -- a 30 -- a one-third electric output
9 requirement that makes a project subject or not subject
10 to the rules, correct?

11 MR. WALTERS: Correct.

12 MR. ZIZMOR: And that the Carlsbad project was
13 rated as a 30.8 percent potential electric output?

14 MR. WALTERS: That's the absolute maximum
15 permit. I wouldn't expect it to get anywhere near there.
16 Probably 10, 15 percent on a really, really heavy year
17 based on other projects and rather critical review of key
18 data that's been available for the last ten years.

19 MR. ZIZMOR: Can I ask then why is it rated at
20 30.8 percent if it's not intended to approach that
21 amount?

22 MR. WALTERS: Almost every permit is rated to a
23 higher level than they typically are going to operate.
24 Combined cycles generally permit to 100 percent. They
25 operate typically in the 60s or 70s, and we've had simple

1 cycles that were permitted to 87, 60 where they knew they
2 weren't going to operate there and they have to take the
3 burden of offset or, rather, requirements to get that
4 limit, but that's what they wanted, and really, it's an
5 applicant -- to some degree, it's an applicant decision
6 and a permitting decision on what they decide to take.

7 The reality of what they're going to actually
8 generate is more dictated on what the system needs are,
9 and you can have a fairly good idea of what that is by
10 reviewing, like I said, the Keifer data and both -- both
11 regionally and for similar types of projects and similar
12 types of hearings.

13 MR. ZIZMOR: Well, I would note that the
14 regulation itself doesn't say the actual output, it just
15 rates it as -- it lists it as a potential as the
16 qualifier. But I would also -- I guess my other
17 question -- I think you might have answered this, but
18 who chooses that 30.8 --

19 MR. MCKINSEY: Hold on to -- this is John
20 McKinsey, and I just think there are other witnesses that
21 want to respond to that question or comment first,
22 Mr. Zizmormor.

23 MR. ZIZMOR: Sure.

24 MR. RUBENSTEIN: I believe, Mr. Zizmor, you
25 said that the actual amount of electricity delivered

1 doesn't matter, that it's based on the potential, if I
2 understood you correctly?

3 MR. ZIZMOR: I'm saying that as far as the
4 regulation is written, it says potential electric at the
5 outset.

6 MR. RUBENSTEIN: I believe the full phrase is
7 it sells the greater of one-third of its potential
8 electric output, and so it is based on actual operation.
9 It's not based upon the potential.

10 MR. ZIZMOR: Well, at this stage of the game, I
11 don't think we have an actual number to go on, so the
12 30.8 percent would be the number that would be submitted;
13 isn't that true?

14 I mean, we have -- there hasn't been any
15 operation of the Carlsbad Power Plant. It's not built
16 yet, so 30.8 percent would be a number.

17 MR. RUBENSTEIN: It says if you had no rule
18 that requires the state to adopt a plan and there is no
19 state plan, and so it's hard for me to say what we would
20 be submitting or what we would be evaluating at this
21 time.

22 HEARING OFFICER KRAMER: Mr. Zizmor, the
23 purpose of hearings is to elicit facts. This discussion
24 is very much drifting into an argument about how to apply
25 a proposed regulation to facts, so can we -- do you have

1 facts that you need to elicit?

2 MR. ZIZMOR: I can finish up. I have a couple
3 other questions.

4 HEARING OFFICER KRAMER: Okay. Go ahead.

5 MR. ZIZMOR: I'm going to move on. I had a
6 couple more questions for Mr. Walters about just -- these
7 are very brief questions I just wanted to confirm about
8 some of the CEQA discussion that occurred in the
9 greenhouse gas section.

10 I just wanted to -- Mr. Vidaver, I take it
11 you're familiar with the CPUC'd Track 4 decision in the
12 long-term procurement planning proceeding?

13 MR. VIDAVER: Yes.

14 MR. ZIZMOR: That's Exhibit 6006. I believe
15 Mr. Sarvey submitted it.

16 So San Diego Gas & Electric was approved to
17 procure between 500 and 800 megawatts in that decision.
18 Would you say the Carlsbad project intended to be part of
19 that 500 to 800 megawatt procurement?

20 MR. VIDAVER: Yes.

21 MR. ZIZMOR: And how would you characterize the
22 reason for the approval of San Diego's -- we'll just call
23 it 600-megawatt -- as well as the amount of Southern
24 California Edison.

25 MR. VIDAVER: I'd ask that you clarify the

1 question. Are we talking about the --

2 MR. ZIZMOR: Why --

3 MR. VIDAVER: Are you asking about --

4 MR. ZIZMOR: Why does --

5 MR. VIDAVER: Pardon me. Let me finish. Are
6 you asking about the amount of capacity at San Diego Gas
7 & Electric total amount of capacity, 500 or 800 megawatts
8 that San Diego is allowed to -- authorized to procure, or
9 are you asking me why in some sense Carlsbad is among the
10 resources that it hopes to procure?

11 MR. ZIZMOR: I guess I'm asking why -- what is
12 your understanding as to why the PUC approved the 600
13 meg -- the 500 to 800 megawatts in the first place? What
14 the reasoning why they needed to approve the 500 to 800?

15 MR. VIDAVER: The 500, 800 megawatts were
16 intended to provide for local and Southern California
17 reliability given the loss of the San Onofre Nuclear
18 Station.

19 MR. ZIZMOR: Okay. And do you know why SONGS
20 was initially shut down in 2012?

21 MR. VIDAVER: It no longer worked well.

22 MR. ZIZMOR: Okay.

23 MR. VIDAVER: That's the extent of my technical
24 understanding about it.

25 MR. ZIZMOR: Would you characterize the

1 shutdown of SONGS as planned or unplanned?

2 MR. VIDAVER: If it was planned, it was planned
3 very poorly.

4 MR. ZIZMOR: But is it -- I take it you mean
5 unplanned?

6 MR. VIDAVER: Yes, sir. I'm sorry. I don't
7 mean to be flip. Well, I do, but --

8 MR. ZIZMOR: Finally, would you say it is true
9 that the PUC authorizes procurement of energy resources
10 meeting capacity requirements? Is that their
11 responsibility?

12 MR. VIDAVER: I'm sorry. Can you repeat the
13 question?

14 MR. ZIZMOR: Is the PUC responsible for
15 authorizing procurement of energy resources to meet
16 capacity requirements?

17 MR. VIDAVER: The CPUC is responsible to
18 authorize the procurement of resources to provide both
19 capacity and energy.

20 MR. ZIZMOR: Okay. Thank you very much. Those
21 are my questions. I'm sorry if I was interrupting. I
22 think there is a slight delay on the phone call. My
23 apologies for that.

24 HEARING OFFICER KRAMER: Thank you.

25 Okay. I think we've run out of questions and

1 discussion points for GHG. Am I wrong?

2 Does anyone have anything additional before we
3 close it down?

4 Seeing none then, we will thank the panel and
5 move into our next topic -- let me ask staff.

6 Are your other alternatives witnesses present
7 now?

8 MR. SARVEY: Yes.

9 HEARING OFFICER KRAMER: They are here, okay.
10 So let's get that panel seated for alternatives.

11 We'll close down greenhouse gases and get our
12 alternatives panel seated.

13 Okay. Let's go off the record to talk about
14 scheduling.

15 (A lunch break was taken)

16 PRESIDING MEMBER DOUGLAS: Welcome back.
17 Thanks for reconvening so promptly for us to get started
18 on alternatives.

19 Let's see. So we were going to have the
20 parties just briefly, as Mr. Sarvey did it on some
21 earlier items, just -- especially if you've got questions
22 on alternatives, you know, high level, what are you going
23 at, do we have direct or --

24 MR. RATLIFF: We do have direct.

25 HEARING OFFICER KRAMER: Okay. First, we have

1 a couple new witnesses here who need to be sworn in, so
2 if you would take the oath from our court reporter?

3 THE REPORTER: All right. Raise your right
4 hand. Do you swear or affirm to tell the truth, the
5 whole truth and nothing but the truth?

6 WITNESSES: Yes.

7 THE REPORTER: Thank you.

8 HEARING OFFICER KRAMER: Okay. Then if you
9 could introduce yourselves? Again, and Mr. Rubenstein,
10 you've already been introduced. Mr. Walters, the
11 gentlemen to Mr. Walters' right?

12 MR. KERR: I'm Steven Kerr.

13 MS. HINDE: Janine Hinde.

14 HEARING OFFICER KRAMER: Okay. And Mr. Vidaver
15 is there enjoying his lunch. And then we also have
16 Mr. Sarvey and Ms. Siekmann.

17 So Mr. Ratliff, did you want to get us started
18 with a brief summary of the testimony?

19 MR. RATLIFF: Yes, I'll have some questions for
20 Mr. Kerr and Mr. Vidaver.

21 Mr. Kerr, were you the person was the principal
22 preparer of the FSA section on alternatives for staff?

23 MR. KERR: Yes, with contributions from
24 Ms. Hinde and Mr. Vidaver.

25 MR. RATLIFF: And could you describe their

1 contributions briefly to the alternatives section?

2 MR. KERR: Yes. Ms. Hinde prepared the
3 analysis of preferred resources that was in the
4 preliminary staff assessment. And in response to
5 comments on the PSA from the committee, Mr. Vidaver
6 augmented the analysis to include details on the
7 services we that provided by preferred resources, the
8 status of development of those resources, and statewide
9 energy resource planning purposes and reliability.

10 Also in response to the Committee's comments on
11 the PSA, Ms. Hinde contributed to revising the project
12 objectives to clarify their meaning and remove wording
13 that could be interpreted as limiting the scope of the
14 alternatives analysis.

15 MR. RATLIFF: Thank you.

16 Could you briefly summarize the high points of
17 the alternatives testimony for us?

18 MR. KERR: Yes, I'll try and be quite brief.
19 For the preferred resources section of the alternatives
20 analysis, the CECP alternatives analysis for the amended
21 CECP notes that dispatchable natural gas-fired generation
22 is currently necessary for system reliability and
23 facilitates the integration of renewable resources by
24 providing such services as ramping, voltage support,
25 local capacity, spinning reserves and rapid dispatch in

1 the event of emergencies.

2 Preferred resources provide some of these
3 services reducing the need for natural gas-fired
4 generation, and some day they may be able to all but
5 eliminate it, but those resources cannot currently
6 provide these services in the quantities which they may
7 be needed over the next coming decade.

8 The state's loading order recognizes the need
9 for efficient clean natural gas-fired generation in a
10 high renewable load GHG system. The licensing and the
11 operation of the amended CECP will not crowd out
12 preferred resources. The CPUC directed SDG&E to procure
13 all cost-affected preferred resources that can be brought
14 online in time to meet the requirements set forth in its
15 procurement decision.

16 These resources will be provided long-term
17 contracts and be developed. The amended CECP will not
18 receive a long-term contract as long as there are
19 cost-effective preferred resources that serve as feasible
20 alternatives.

21 Then the remaining alternatives considered were
22 alternative sites and technologies and a reduced capacity
23 alternative, along with the no project alternative.

24 For alternative sites, I provided a review of
25 the five off site alternatives that were considered in

1 the licensed CECP proceeding, and noticed that the
2 previous -- noted the that previous decision concluded
3 that no site alternative was capable of meeting most of
4 the project objectives, and the environmental analysis of
5 each off-site alternative concluded that impacts of the
6 sites would be greater than those of the CECP, and also
7 reference CEC and Coastal Commission documents that
8 encourage expansion and the reuse of existing power plant
9 sites, like the EPS to protect undeveloped coastal areas.

10 For alternative technologies, we know that the
11 Commission previously determined that geothermal, solar,
12 wind and biomass technologies didn't meet the project
13 objectives of meeting the expanding need for newly
14 efficient, reliable and dispatchable resources in the
15 San Diego region to back up intermittent renewable
16 resources, and also how retrofitting and maintaining the
17 existing EPS units would not meet the project objectives.

18 For the reduced capacity alternative, staff
19 considered an alternative of four units instead of six,
20 but found that the smaller projects would not avoid or
21 substantially reduce significant environmental impacts,
22 specifically in the area of visual resources where
23 reduced capacity alternative would somewhat reduce
24 potential cumulative visual impacts but would not lessen
25 the impacts to a level such that a recommendation for a

1 finding of a potential, significant, cumulative
2 environmental effect related to the I-5 expansion could
3 be eliminated.

4 And for the no project alternative, since this
5 is an amendment and not a new AFC proceeding, two no
6 project scenarios were considered; the first being where
7 the licensed CECP is built and the second where the
8 current conditions of the EPS site continue with no new
9 construction.

10 And I discussed how key changes in the amended
11 CECP that would potentially reduce impacts over the no
12 project alternatives would not occur under the no project
13 scenarios.

14 So in conclusion, after analyzing this regional
15 -- reasonable range of alternatives, we didn't identify a
16 potentially feasible alternative that would be
17 environmentally superior to the amended CECP. Each of
18 the alternatives were eliminated from further
19 consideration due to a failure to meet the project
20 objectives and feasibility and/or inability to avoid
21 significant environmental impacts.

22 MR. RATLIFF: Does the staff at FSA discuss the
23 benefits of the amended project compared to the current
24 licensed project?

25 MR. KERR: Yes. Several benefits are listed on

1 page 4.2-22 of the alternative.

2 MR. RATLIFF: Could you just very quickly try
3 to summarize those? There are about five or six
4 different --

5 MR. KERR: There are eight.

6 MR. RATLIFF: Eight.

7 MR. KERR: The first one is the addition of the
8 shutdown and decommissioning of a EPS facility, and
9 elimination of once-through cooling, and all the other
10 support structures for the EPS facility, including the
11 400-foot stack that would -- the amenities would be a lot
12 better from a shutdown of San Onofre, an advantage that
13 would be lost by the no project alternative.

14 Redesigning the CECP to a simple cycle
15 combustion gas turbine power plant, they would be able to
16 better serve the region's electrical needs with flexible
17 fast generating technology and more fully integrate
18 renewables, reduced visibility of the new units and
19 exhaust stacks which would be lower in height and profile
20 than the licensed CECP, and improve site access and
21 mobility for fire suppression that would satisfy the
22 city's fire department, support from the City of Carlsbad
23 which makes the use of recycled water much more feasible
24 and likely, and improve conformity to local land use LORS
25 eliminating most of the overrides that were in the

1 previous decision, and elimination of OTC -- I think I
2 mentioned that, and coordination of the project as a
3 larger settlement agreement with the City of Carlsbad and
4 SDG&E that would benefit the environment open space and
5 coastal access for residents and visitors alike.

6 MR. RATLIFF: Are those findings in your
7 testimony similar to the findings supported override for
8 the originally licensed project?

9 MR. KERR: Yeah. I think they're -- that the
10 amended project is -- these benefits that I just listed
11 are along the same intent and spirit of the override
12 findings that were previously made and the benefits that
13 were listed for the licensed project, and that the
14 benefits listed in the override findings for the licensed
15 project are still applicable with the amended project, so
16 it's just kind of more benefits than on top of what was
17 originally approved.

18 MR. RATLIFF: For the Committee's advantage,
19 the -- those findings are found in the final decision at
20 page 9-10, the findings of the benefits of override for
21 the originally licensed proceeding.

22 Thank you, Mr. Kerr.

23 Mr. Vidaver, are you familiar with the proposed
24 CPUC decision recently published with regard to PPA for
25 the amended CECP project? I think they've been referred

1 to earlier today.

2 MR. VIDAVER: Yes. Yes, I have.

3 MR. RATLIFF: Does that proposed decision
4 change any of the conclusions in your testimony in the
5 alternatives analysis for the FSA?

6 MR. VIDAVER: No, it does not.

7 MR. RATLIFF: Is the need for this project
8 being litigated in a different form of the PUC?

9 MR. VIDAVER: The need for additional capacity
10 in the San Diego area was determined in the CPUC biannual
11 procurement proceeding, a need for 500 to 800 megawatts
12 by 2018 was identified, and San Diego was required to
13 procure at least 200 megawatts of that for -- from
14 preferred resources.

15 The San Diego Gas and Electric came back with a
16 proposed contract with the CECP, and the proposed
17 decision has required that San Diego resubmit the
18 contract possibly at a lower capacity should its recently
19 concluded RFO indicate more than 200 megawatts of
20 preferred resources -- cost-effective preferred resources
21 be available in a timely fashion.

22 MR. RATLIFF: Okay. Thank you. I have no more
23 questions.

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

1 MR. MCKINSEY: No.

2 HEARING OFFICER KRAMER: Power of Vision, any
3 questions at this time?

4 DR. ROE: Mr. Kerr, could you repeat the
5 statement you made in regard to the alternative of a
6 smaller number of units in regard to the visual aspects?

7 You don't have to look it up. Just tell me as
8 you recall verbally what you think you said.

9 MR. KERR: That the visual resources analyst
10 noted in the section, and also in ours, that a reduced
11 capacity alternative would still result in a power plant
12 being there, and even if there's less unit, it would
13 reduce the impact of the site somewhat, but it wouldn't
14 get rid of the need for the override for the potential
15 cumulative visual impact that results from the CalTrans
16 I-5 expansion.

17 DR. ROE: When preparing that statement, did
18 you explore the fact that if, in fact, let's say there
19 were only four units built in the original footprint of
20 the approved CECP, that there would not be the need for
21 two transmission poles outside of the pit standing next
22 to the I-5 freeway; in other words, they could be
23 eliminated and improve the visual impact if indeed there
24 was a small power plant?

25 MR. KERR: Yes, that's noted in the FSA that

1 potentially one or two of the poles could be eliminated
2 with a smaller --

3 DR. ROE: And that would improve the visual
4 impact then?

5 MR. KERR: Yes, but it wouldn't eliminate the
6 need for finding of significant.

7 DR. ROE: Thank you.

8 HEARING OFFICER KRAMER: So following up on
9 that, the visual impact -- how much of it is related to
10 the poles versus the perceived difficulty in providing
11 adequate screening?

12 Do you understand my question?

13 MR. KERR: Not quite.

14 HEARING OFFICER KRAMER: I mean, as I
15 understand the visual impact, it was a concern that
16 CalTrans wouldn't allow adequate screening to be provided
17 on their portion of the edge of the roadway, and I didn't
18 understand it to be related to the power poles, their
19 existence.

20 MR. KERR: Right. Visual resources analysts
21 didn't find a significant impact of the project itself,
22 but concluded that even when combined with the future I-5
23 widening that it could be effectively mitigated by
24 vegetation and screening provided by either CalTrans or
25 NRG. But since CalTrans is another agency, we can't

1 condition them to make the future mitigation for their
2 project, so that's why the override or significant
3 cumulative effect is being noted.

4 HEARING OFFICER KRAMER: It sounds like, am I
5 correct, you were presuming that just reducing the number
6 of turbines from six to four would not solve that
7 problem?

8 MR. KERR: Correct.

9 HEARING OFFICER KRAMER: Thank you.
10 Is that all from Power of Vision?

11 MS. BAKER: Mr. Kerr, just one quick question.
12 Given the load order for San Diego County and the recent
13 PUC decision, are there other areas, locations within
14 San Diego that could fulfill that need rather than here
15 in Carlsbad, other plants in other locations, other
16 locations that could host plants?

17 Is there something -- I guess what I'm trying
18 to say is, is there something specific to Carlsbad that
19 makes it necessary to have the plant here in Carlsbad, or
20 could that maybe fulfilled with other locations in
21 San Diego County, or maybe that's a better question for
22 Mr. Vidaver?

23 MR. VIDAVER: It's my understanding that due to
24 recent transmission upgrades in the San Diego area, that
25 there is no need for generation capacity specifically at

1 Encina.

2 MS. BAKER: Thank you.

3 HEARING OFFICER KRAMER: Ms. Siekmann,
4 Terramar?

5 MS. SIEKMANN: So I have testimony and then I
6 have questions.

7 HEARING OFFICER KRAMER: Give us your testimony
8 first.

9 MS. SIEKMANN: I'd love to.

10 So first of all, I would like to say that this
11 is a much better project than the original CECP, and I
12 want to make that very clear. It is a much better
13 project. They're going to take down Encina and that's
14 huge. We're very happy about that.

15 There's going to be less emissions, it's going
16 to be a smaller height, but it's too large to properly
17 mitigate the visual blight and safety concerns that we
18 have on those pinched areas with the I-5 widening.

19 So the site is too small to accommodate the
20 project and the transmission lines in the pit, so by
21 locating the transmission lines outside of the pit and
22 along the I-5, it creates severe visual blight. The site
23 is too small to accommodate needed visual mitigation once
24 the I-5 widening occurs.

25 So with the I-5 widening, the project creates

1 significant visual blight which has been discussed and
2 agreed upon, and the site's just not large enough to
3 accommodate six units, so the project owner is required
4 to protect the site with a berm or similar protection as
5 has been discussed. With the I-5 widening, the current
6 berm protection is going to be lost in certain locations,
7 and there isn't enough room to create a new berm.

8 Now, a 35-foot wall is -- I mean, I appreciate
9 the safety concerns with the 30-foot wall, but honestly
10 visually when you're driving on the I-5 a 30-foot wall
11 does not fit coastal -- the coastal beauty of our area.

12 This also -- with the loss of the berm, we have
13 safety concerns along the I-5, just like -- even safety
14 concerns, there's terrorist concerns, and then just
15 people erratically driving.

16 So we would like to suggest that you consider a
17 400-megawatt alternative or smaller for this project. It
18 could mitigate many of the serious concerns we have in
19 visual and safety. We're aware that staff did consider
20 400 megawatts, and we very much appreciate that you --
21 that you made that try, but we never suggested
22 eliminating Units 10 and 11.

23 What -- we suggest the elimination of two
24 units, but when you do that, keep the size of the
25 project, the full 30 acres, don't just cut off 10 and 11

1 and leave that part of the site out of the equation.
2 Keep that there so you can adjust the four units in the
3 full 30-acre site, so that lets the project owner
4 reconfigure to allow for those two pitch sites and to get
5 the poles inside the pit.

6 So we feel that that would be -- that a
7 superior alternative could be created that way, and also
8 we would like to once again dispute staff's suggestion
9 that mitigation be done by CalTrans when a I-5 widening
10 occurs because with CEQA, this -- the I-5 widening is a
11 future project and we know it's a future project, and so
12 it's the responsibility of the project owner to mitigate
13 based on that future project.

14 So I really feel that Carlsbad residents need
15 an answer, and I brought this up in visual. We need an
16 answer. We need to know that mitigation is going to
17 occur. We need to know that it's going to be the project
18 owner's responsibility, and if CalTrans is willing to
19 work with them, that's awesome, but I think it's the
20 project owner's responsibility to mitigate and if
21 CalTrans will work with them, great, but if you do this
22 400-megawatt alternative, then that issue could actually
23 go away.

24 So let's see. I told you about -- let's see.
25 So we really, really disagree with staff's statement that

1 a reduced capacity alternative would not avoid or
2 substantially lessen the impacts to a level that staff
3 could eliminate the recommendation for a finding of
4 potential significant cumulative environmental effect --
5 anyway, I was just quoting them.

6 But basically what I'm trying to say is please
7 try again, try again with four, but try again with four
8 in a different -- with a full 30 acres, and moving them
9 so that you can eliminate the override for visual, and
10 now that the PUC has turned the contract down --
11 preliminarily turned the contract down, I mean, this need
12 for this hurried timing has all of a sudden gone away
13 because if PUC comes back with a final decision saying
14 that this contract -- that they have to go -- that SDG&E
15 has to go back out and do an RFO, well, all of a sudden
16 there is a lot more time.

17 Encina is probably going to have to run a
18 couple more years if that happens because ISO is going to
19 need that for a back-up, and then a good decision could
20 be made on spreading out these units instead of trying to
21 jam six -- clearly six units jammed in there just doesn't
22 work.

23 So if you do four units or less, I'm just
24 trying to be -- believe it or not, I'm trying to be
25 helpful with four units because I'd really prefer

1 three -- well, actually I would prefer none but, you
2 know, I understand the need to compromise and so Terramar
3 understands that need. You need capacity, but all of a
4 sudden because of the visual blight and the override for
5 Agua Hedionda, you've got to bring need in here. You
6 bring need in.

7 And how are you going to prove it when PUC
8 turns down the contract? I mean, they're the ones that
9 originally said 500 to 800 is needed. Now they're the
10 ones that turned the -- turned this down. So they
11 understand the timing, so clearly they've willing to wait
12 until you -- it can be done right to see if -- because
13 they said renewables could fulfill the full 800. And all
14 of a sudden SDG&E comes out with 600 fossil fuel. Maybe
15 there can be a compromise there too.

16 So what Terramar is asking is take another
17 look. Take another look at a 400 alternative. You can
18 -- you can get rid of your overrides except for the
19 35-foot height. You could still fulfill your needed
20 capacity, and everyone would be -- the NRG would get a
21 project. They may not be happy it's a smaller project.
22 We're happy because we don't have the visual blight.
23 You're able to take care of the need issue.

24 So looking at a 400 alternative in a full
25 30-acre site with a different set-up, everybody could win

1 a little and lose a little.

2 Also, I want to state that if that happens,
3 that we're asking that the air pollution issues, you
4 know, everything from air quality wouldn't change per
5 unit. Per unit, everything would stay the same. That
6 would be our preference.

7 So thank you for listening.

8 HEARING OFFICER KRAMER: Okay. Thank you.

9 Mr. Sarvey, did you have any testimony as such
10 or did you simply want to ask questions?

11 MR. SARVEY: No, I'd like to provide a little
12 guidance if I could, please. The committee asked the
13 staff what were the barriers to providing additional
14 preferred resources and storage to the system, and my
15 opinion is that --

16 HEARING OFFICER KRAMER: Could you get a little
17 closer to your mic or get it more in front of you?

18 MR. SARVEY: Rock star? That was the last
19 terminology.

20 So the barriers to having additional preferred
21 resources starts with the utilities' reluctance to follow
22 the loading order. The money is provided for the
23 preferred resources. They are not constructed. Then as
24 we can see today even with evidence of preferred
25 resources and storage are available to satisfy LCR needs

1 in SDG&E's service territory. CEC staff still says
2 preferred resources are not available. So that's
3 compounded by the fact that the CEC essentially has
4 judicial immunity, so their decisions cannot be
5 challenged when they accept staff's representation.

6 So when the CEC or the CPUC rules against a
7 specific power plant in favor of preferred resources,
8 they're lobbied by the governor or the unions or the
9 Chamber of Commerce.

10 For example, since Carlsbad Energy proposed its
11 500-megawatt alternative configuration on March 20th,
12 letters have poured into CPUC President Michael Picker
13 from the City of Carlsbad, Encina, Escondido -- not
14 Encina, Escondido, Oceanside, San Marcos, Orange County
15 Business Council, the Poseidon Project and San Diego
16 North: They've all sent letters saying, "Oh, we oppose
17 the 500-megawatt alternative configuration that NRG is
18 proposing," and there's a lot of pressure put on the
19 Commissioners, and I understand --

20 HEARING OFFICER KRAMER: Could you --

21 MS. SIEKMANN: Are you talking about the PUC?

22 MR. SARVEY: That too, as well as the CEC.

23 HEARING OFFICER KRAMER: Now, did you say they
24 are opposing it or --

25 MR. SARVEY: They are supporting the five --

1 and I'll provide those letters for the record later when
2 we discuss my motion to require a new AFC to be filed.

3 And you know, there's already evidence in this
4 proceeding in the form of Exhibit 6005 and the proposed
5 the decision of ALJ Yacknin that preferred resources
6 appear to be available to replace some of all of the
7 needs of the Carlsbad Energy Center, and yet we're all
8 sitting here denying that fact.

9 And I feel sorry for NRG because originally
10 2007, they proposed the right project to replace SONGS,
11 and now because SDG&E doesn't want to give them a
12 contract for that project, they're forced to come in here
13 and pretty much reverse everything they said in 2007 and
14 say that these LMS 100 units are superior to the combined
15 cycle fast start CECP that's already licensed. And I
16 really feel sorry about that. They shouldn't have to be
17 in here spending their time and their money to do that,
18 because the combined cycle CECP is the proper project
19 that has the flexibility that's needed.

20 It's being denied that they have to start four
21 times a day, or this and that. There's no evidence
22 that's going to happen or it would happen. It's all
23 speculation. There's honestly not one shred of evidence
24 this project would have to start four times a day, that
25 it would have to have everything online in ten minutes.

1 They can put 300 lines -- 300 megawatts online in ten
2 minutes. This new 500-megawatt proposed configuration
3 can put 500.

4 Does the system need 500 megawatts in ten
5 minutes? My understanding is that CALISO has various
6 levels of renewable integration that they needed, and
7 it's all immediately ten minutes. It actually is
8 measured over three hours.

9 So that's my opinion and that's my initial
10 testimony.

11 HEARING OFFICER KRAMER: Okay. That's everyone
12 with their opening comments.

13 Okay. Now, we're going to go to round two,
14 which is having the parties discuss among yourselves in
15 the form of questions or statements any points you feel
16 you need to make to inform us. You've already talked
17 about whether preferred resources are ready basically to
18 take on the job and whether we need any more gas-fired
19 generation at this point.

20 But I think Mr. Sarvey, you said you had some
21 questions for people, right?

22 MR. SARVEY: Yes, I do.

23 HEARING OFFICER KRAMER: So we know there are
24 some from him and maybe some others, so let me start the
25 round again with Mr. McKinsey.

1 MR. MCKINSEY: I had one redirect question that
2 I wanted to ask and I could ask it directly. I could
3 cross-examine Mr. Sarvey on it, but I think the point
4 that I want to get at is there's been statements the last
5 couple days that the project has changed design; that
6 it's 500 or 400 being proposed by the project owner, so
7 what I want to do is -- I could ask the question because
8 I don't want to turn it into cross, but the question I
9 would ask Mr. Sarvey is where is there a statement by a
10 project owner -- by the project owner that the project
11 design has been changed?

12 What's he's referring to are comments. I can
13 tell you what my points is. They're comments made by the
14 project owner in the PUC propose a change in the
15 procurement and not in the project. They're very clear
16 that the contract, as an alternative, could result in a
17 procurement of a smaller number of megawatts, but that
18 does not change the project design. And I think that's
19 what you're thinking of, is that comment letter when
20 you're saying that the project owner has changed project
21 design and is proposing to build a smaller project.

22 Is that correct, is my question?

23 MR. SARVEY: Yes. At the CPUC, they are
24 proposing to build a smaller project of 500 megawatts,
25 and that way they'll see if there is more preferred

1 resources that are going to come out --

2 MR. MCKINSEY: So when --

3 MR. SARVEY: When I say the project design,
4 it's floating up and down. We don't really know if there
5 is a reduced capacity alternative. It could be 400. We
6 may get 300 megawatts for preferred resources more than
7 what's expected. It may be a 300 megawatts project. I'm
8 thinking the project design is really not stable any
9 more.

10 MR. MCKINSEY: So my question is, can you point
11 at any specific language of the project owner that say
12 they're proposing to build a smaller project?

13 MR. SARVEY: I would point to 6008 and then I
14 would put Exhibit --

15 MR. MCKINSEY: You can read it out loud if you
16 want.

17 MR. SARVEY: What's that?

18 MR. MCKINSEY: You can read it out loud if you
19 want or I can tell you it doesn't say that. It says
20 reduce the procurement under this proceeding. It does
21 not talk about build or construct.

22 MR. SARVEY: That's an alternate proposal in my
23 mind.

24 MR. MCKINSEY: Oh, that's what I want to get
25 clear, that you're referring to that statement where they

1 proposed to have it be a smaller procurement.

2 MR. SARVEY: I'm also referring to San Diego
3 Gas and Electric's comments that they would be willing to
4 take a 500-megawatt project, and they don't have any
5 issues with that. And then there's about six or seven
6 letters from all these agencies --

7 I mean, Carlsbad Energy is working pretty hard
8 to get this 500-megawatt alternative on the map. They've
9 got the City of Carlsbad, they've got civic organizations
10 saying, "Oh, that 500 megawatts is a great idea." To me,
11 yeah, this thing has morphed into 500 megawatt. That's
12 why I --

13 HEARING OFFICER KRAMER: Let me stop you here.

14 MR. MCKINSEY: It's really important, it really
15 is. Can you point me at a specific use of the word you
16 want to build less or construct less by the project
17 owner?

18 MR. SARVEY: I can't point to anything but the
19 proposed 500 megawatts instead of 600 as an alternative.
20 That's all I'm referring to.

21 MR. MCKINSEY: And you're referring to the
22 comment letter?

23 HEARING OFFICER KRAMER: Who is "they"?

24 MR. SARVEY: I'm referring to the comment
25 letter NRG, Carlsbad Energy, same thing.

1 HEARING OFFICER KRAMER: Okay. I think the
2 Committee understands --

3 MR. SARVEY: Okay.

4 HEARING OFFICER KRAMER: -- that there is a
5 difference between what might be contracted for and the
6 ultimate capacity that the project proponent wants to
7 have the ability to construct.

8 MR. MCKINSEY: Correct. I just wanted to make
9 that really clear. Because this is coming in, right, and
10 if we didn't -- at least get it on the record that the
11 position of the project owner is very different than
12 that. We don't agree or concur or concede that we're
13 proposing to build anything less than the proposed
14 project.

15 HEARING OFFICER KRAMER: You just may not have
16 contracts for all of the units.

17 MR. MCKINSEY: We might have contracts for
18 none. Either way, we're not changing this desire to
19 permit our 600-megawatt project.

20 HEARING OFFICER KRAMER: Okay. Well, I think
21 that point, we get.

22 MR. SARVEY: Yeah.

23 HEARING OFFICER KRAMER: Mr. Thompson?

24 MR. THOMPSON: There we go. Thank you.

25 I just want to point out for the record to the

1 extent that Mr. Sarvey has characterized letters from the
2 City of Carlsbad to the Public Utilities Commission, it
3 is our opinion that he mischaracterized them, and I would
4 suggest that anybody not rely on Mr. Sarvey's
5 interpretation but to go to the letters themselves.

6 HEARING OFFICER KRAMER: And those letters are
7 not currently in the record, but Mr. Sarvey, are you
8 saying you were going to offer them later?

9 MR. SARVEY: Yes.

10 HEARING OFFICER KRAMER: Your mic wasn't on.

11 MR. SARVEY: I'll be providing them later, yes.

12 HEARING OFFICER KRAMER: Okay. We'll talk
13 about that later then.

14 MR. RATLIFF: Commissioners, in a similar vein,
15 I would urge the Committee, if you have not done so, to
16 read the proposed decision by ALJ Yacknin because I fear
17 it's been -- things have been attributed to it which are
18 simply incorrect, and the decision speaks for itself, and
19 I'll leave it at that.

20 COMMISSIONER McALLISTER: I want to just
21 caution all of us not to get involved (inaudible) on that
22 point. That's a different agency. It's a proposed
23 decision. It's by an ALJ, and so it actually doesn't
24 change the facts that we are operating under now in the
25 near term here. And if and when there's advances --

1 there's advances or a final decision or alternative,
2 whatever, ends up in that process, which is not this
3 process, then maybe that does change the factual
4 landscape, but we are not there right now.

5 MS. SIEKMANN: May I ask a question about that?
6 The override, that does bring a need issue in, correct?

7 PRESIDING MEMBER DOUGLAS: So I think that we
8 need to -- we need to be careful about that statement.
9 You've made a number of statements to that effect, and
10 I've been thinking about stepping in on some of them.

11 It makes need a factor that we would look at
12 that could be relevant, but it doesn't mean that we need
13 to either relitigate issues that are being dealt with at
14 the Public Utilities Commission or that we need to make a
15 powerful proof of need in some particular way.

16 It means that it's a factor that we would
17 consider, and I want to encourage all of the parties to
18 take maybe three steps back from trying in front of us to
19 relitigate issues that are happening before the CPUC.
20 It's helpful for us to understand the landscape. We've
21 got that in our record. We don't need to be reading
22 letters frankly written by anybody to the CPUC about
23 stuff that they're doing. That's kind of beyond what we
24 really need to do.

25 MS. SIEKMANN: But I took a look at the -- I

1 forget what you call it -- the PMPD or the final and, you
2 know, that was changed -- because of the overrides, need
3 was in there a lot, and so I assumed that that would be
4 the case here too because --

5 COMMISSIONER McALLISTER: We're also -- I also
6 just want to point out that this discussion in this
7 context of the override does not resolve in a normative
8 statement from the Energy Commission to the PUC that we
9 would believe that they ought to --

10 MS. SIEKMANN: Oh, no.

11 COMMISSIONER McALLISTER: -- do anything about
12 this plant.

13 MS. SIEKMANN: No, I understand that, and I
14 don't believe that I've even said that the PUC should
15 look at this at all. I don't believe I've ever said that
16 because that never even crossed my mind. But because
17 there are overrides, this Committee -- all of a sudden
18 the rules change, and it's not that they change, but the
19 need is incorporated into the rules because of the
20 overrides.

21 MR. RATLIFF: Commissioner --

22 MS. SIEKMANN: At least that's how all the
23 hearings went before.

24 MR. RATLIFF: Commissioner, the rules require
25 for overrides for LORS overrides that the Committee under

1 Section 525 of the public resources code make a finding
2 of public convenience and necessity. In this case, the
3 amendment offers that public convenience and necessity as
4 that term has been interpreted, and it's been interpreted
5 by the Supreme Court many times in cases that had to do
6 with the Public Utilities Commission, which is a very
7 broad standard.

8 Secondarily, it requires if we do on override,
9 as staff has suggested, may be required -- and I think
10 Mr. Kramer made an interesting point yesterday that I
11 don't know the answer to. Maybe it isn't required. An
12 override for the potential impact which could be
13 addressed by CalTrans if it assumes its legal duty to do
14 so.

15 If you have to make that override, it's that
16 the amendment offers benefits that the current project
17 does not offer. Those have been detailed, I think, in
18 the staff testimony.

19 Staff didn't offer any testimony called need
20 testimony. We realize that that is within the purview of
21 another agency, and we think it would be unfortunate and
22 inefficient and unproductive for us to try to make the
23 very same determination that will be made at the PUC.
24 That will be worked out in that forum, so we believe the
25 findings that need to be made are made without regard to

1 that, that they are made with regard to the elements the
2 staff has focused on in its alternative testimony.

3 COMMISSIONER McALLISTER: So I've got -- just
4 to remind everybody, we are in the alternatives section,
5 and so I appreciate staff's updating and revising of the
6 assessment to be more clear about what's strictly
7 necessary in the project definition and also treating in
8 at least in a little more depth the alternatives
9 discussion.

10 You know, I take particular interest in the
11 alternative discussion because I think more and more
12 we're going to see that preferred resources are a topic
13 of discussion, and as they evolve, they probably will be
14 able to offer a structured way more services that the
15 grid needs, and so you talk about those issues. I guess
16 --

17 So does anybody have -- so to the extent we
18 have some additional testimony here and we have a panel
19 of experts and we have the applicant and we have staff,
20 does anybody have any points they want to make about the
21 alternatives in a response to new testimony or something
22 they want to get on the table here to help define this
23 discussion more?

24 HEARING OFFICER KRAMER: It looks like
25 Mr. Sarvey for one.

1 Anyone else?

2 Mr. Vidaver.

3 Anyone else?

4 Okay. Mr. Vidaver first and then we'll get
5 Mr. Sarvey's question.

6 Okay. Let's switch. Mr. Sarvey and then --

7 MR. VIDAVER: I appreciate that.

8 HEARING OFFICER KRAMER: -- at Mr. Vidaver's
9 invitation.

10 PRESIDING MEMBER DOUGLAS: Basically, I'm
11 actually just trying to provide another comment to you on
12 preferred resources, a barrier to preferred resources.
13 And part of it is an insistence by the CEC not to
14 participate in the CPUC, so we don't have full
15 information. We're trying to figure things out blindly
16 with information that you guys gave us three years ago,
17 and we need your help, and we need you guys to intervene,
18 and we need you to give your input.

19 And I think that will resolve a lot of the
20 barriers to renewable energy coming online, and that's
21 just a policy. It's got nothing to do with this
22 proceeding, but I just wanted to make that statement.
23 Thank you.

24 MR. VIDAVER: Just to respond to that last
25 statement, if CEC staff were more intimately involved in

1 CPUC discussions regarding the responses to San Diego's
2 RFO, I'm not -- first of all, it would be -- all we would
3 be involved in confidential discussions that we couldn't
4 share with the public anyway.

5 Secondly, in offering our own -- even if we
6 were allowed to offer our own interpretation of the
7 robust nature of the responses that San Diego received,
8 we would sort of be usurping CPUC -- that's for the CPUC
9 to determine, and it would be perhaps imprudent, if not
10 disturbing to them if we offer our own second
11 interpretation of what San Diego got. We don't know what
12 they got because, as Mr. Sarvey points out, we're not
13 intimately involved in that proceeding, but even if we
14 were, I'm not sure we would be able to contribute a whole
15 lot to this conversation.

16 COMMISSIONER McALLISTER: Is there anything
17 you'd like to add about, say, specific preferred
18 resources, demand response efficiency, more storage that
19 leads you to believe that, you know, maybe while they
20 show promise, they are not a one-for-one substitute.

21 MR. VIDAVER: Sure. I think the first thing I
22 would like to do is agree with Mr. Sarvey that if you
23 look at the CPUC's proposed decision, they hold out the
24 possibility that capacity at Carlsbad would not be
25 necessary -- procurement of capacity at Carlsbad would

1 not be necessary to meet the requirements set forth in
2 the track four decision.

3 We can sit here and conjecture about the
4 likelihood of them -- San Diego being told to procure
5 more than 200 megawatts. The numbers in the trade press
6 are -- as we all know, another 100 and Carlsbad would be
7 offered a 500-megawatt contract, et cetera. I don't
8 think any of the discussion here, as Mr. Ratliff points
9 out, is dependent on what that final number is. My
10 opinion.

11 But we have to remember, I think, that the
12 contract with Carlsbad has an immediate need for the
13 project to satisfy a very specific requirement is
14 separate from the broader need for gas-fired generation
15 in the system. Commissioner McAllister asked earlier at
16 issue here is to what extent does the system need
17 gas-fired generation going forward independent of its
18 need to satisfy this particular procurement
19 authorization.

20 The loading order, after all, does include
21 clean efficient gas-fired generation to meet need --
22 reliability needs that can't be satisfied with preferred
23 resources, so I think we need to look at both what
24 gas-fired generation provides that preferred resources
25 cannot, what is the likelihood that preferred resources

1 will be able to provide those services over time, and
2 what is the likelihood that we will have enough of those
3 preferred resources to completely displace the need for
4 new gas-fired generation.

5 Well, while it remains possible that there will
6 be no need for gas-fired generation to satisfy
7 San Diego's procurement authorization, it should be
8 pointed out that Southern California Edison was required
9 to procure 1,000 megawatts of gas-fired generation to
10 replace retiring OTC plants and San Onofre, and actually
11 chose to offer contracts for, I believe, 1400 megawatts
12 of gas-fired capacity.

13 We can be very heartened by the fact that they
14 did receive such a robust response from people willing to
15 provide storage. I think it was 260 megawatts. But it
16 must be remembered that we -- not having it, not being
17 privy to the relative costs of those -- don't know
18 whether that 260 megawatts, part of a requirement imposed
19 on the utility is, I believe Mr. Sarvey in testimony
20 recently, rebuttal testimony recently submitted,
21 described Edison's RFO as a head to head competition
22 between gas and preferred resources. It was anything
23 but. There was a 500 megawatt carve-out for preferred
24 resources. The fact that Edison crawled over that
25 threshold and procured additional gas when given the

1 option might indicate what the relative cost of those
2 resources are.

3 So the gas-fired generation, as we all know,
4 provides a whole slew of services, voltage support for
5 ramping services, various ancillary services, and
6 different preferred resources can contribute to the
7 provision of some of those.

8 Energy storage, as Mr. Sarvey points out, is a
9 very good resource for providing a -- resource for
10 providing a lot of those services and, in fact, solving
11 some of the problems that variable generation creates. I
12 think -- and he very well may be right that it will
13 ultimately prove to supplant the need for Carlsbad to
14 meet that very specific procurement authorization.

15 I think it is stretching it to say that we have
16 reached the point that storage is able to completely
17 replace gas-fired generation, let's say, across Southern
18 California. I would suspect that the response to the
19 Edison RFO is not sufficient that the CPUC is ready to
20 remove gas-fired generation from a loading order.

21 The need for storage, for example, to resolve a
22 regeneration problem is such that ISO and in procurement
23 and research adequacy proceeding related analysis has
24 said, "We're going to have 6,000 megawatts of
25 overgeneration even if we don't increase preferred

1 resources above the levels we expect in 2024." If we go
2 to higher RPS, if we go to distribute at a very, very
3 high DG system, we could see overgeneration approaching
4 13, 14,000 megawatts.

5 But I don't think anybody is convinced that
6 we're going to have that much storage. It's
7 1325 megawatts they target to be online by 2024. They've
8 had a very good start, but --

9 COMMISSIONER McALLISTER: I appreciate what --
10 I think what you're doing is highlighting some -- it's a
11 very interesting discussion. You're highlighting the
12 facts for our policy issues that are being dealt with in
13 realtime, and those are very interesting, and I'm sure
14 we're all, you know, enthralled by -- you know, to see --
15 we are all on the edge of our seats to see where the
16 market place goes, and then also a lot of this is in
17 PUC's future decision-making realm, so --

18 But I want to pull it back to this particular,
19 you know, issue, this particular, you know, enterprise
20 that we're involved in here, and I want to just redirect
21 a little bit and ask the applicant, do you have anything
22 to say about this alternative that we've heard from two
23 intervenors with respect to downsizing the plant and what
24 that would mean for the plant profile other than just on
25 the merits and all else equal or all else wouldn't be

1 equal?

2 MR. MCKINSEY: And I do. The project owner
3 simply has at this point not made any decisions to
4 downsize the project, and that's kind of the reason that
5 I was asking those questions because the project remains
6 a 600-megawatt project.

7 This discussion came up at the prehearing
8 conference and, you know, there was some discussion,
9 "Could you build it in phases within an existing
10 decision?" But it remains the case that the project
11 owner has had no contemplation of reducing the plans to
12 construct the six units in the 600-megawatt project.

13 And in the other proceedings, this particular
14 procurement proceeding before -- that involves San Diego
15 Gas and Electric, PPTA, they filed comments that
16 suggested an alternative procurement, and only a
17 procurement. And it was very careful not to suggest that
18 they're saying, "We only want to build that much."

19 COMMISSIONER McALLISTER: So you're suggesting
20 or implying that you would then -- that the owner -- if
21 that were the case and we ended up, you know, with --
22 landscape ended up that way, that another off-taker or
23 anybody could step in and --

24 MR. MCKINSEY: Or even a merchant operation for
25 that. I mean, anything would be possible.

1 COMMISSIONER McALLISTER: So I also want just
2 to -- so thank you. And I also want to -- and you can
3 answer this question or not, but I think implicit in this
4 conversation is would anything else critical of interest
5 to, say, the Intervenors or the City have to change in
6 the case that the project size was downsized?

7 MR. MCKINSEY: I don't know if I understood the
8 question completely.

9 COMMISSIONER McALLISTER: Would the profile of
10 the agreement with the City still hold?

11 MR. MCKINSEY: Yeah. Yeah. And I think the
12 City made that comment and we don't disagree with that,
13 should we end up changing -- you know, the agreement
14 doesn't say, "Thou shalt built the full 600," it says --
15 it has some parameters and some scope. It says up to 600
16 and it has some other assumptions.

17 But a good example of where there's some limits
18 is the design does plan for the transmission poles on the
19 east side. And that's something that the City
20 particularly, as they noted, felt was the better
21 location, right? But certainly if something changed and
22 the project was smaller, that wouldn't be in conflict
23 with the agreement provided that, you know, everyone
24 still wanted to go forward on it, but it doesn't require
25 six units. If the project became smaller, it would not

1 require a change if the agreement per se.

2 Does that help?

3 MR. VIDAVER: Yeah, I think that's good.

4 MR. SARVEY: Could I --

5 PRESIDING MEMBER DOUGLAS: Let's just -- you
6 may in a moment, but Commissioner McAllister has a hard
7 stop at two, so do you have any other questions, or is
8 there anything that is related that -- well, we'll get
9 back to the transmission poles that I know you want to
10 ask about Dr. Roe, and if I was wrong about what you're
11 asking about, I apologize.

12 Mr. Sarvey?

13 MR. SARVEY: Yeah. I'd just like to add one
14 more thing to what Mr. --

15 COMMISSIONER McALLISTER: Can I just follow-up
16 on that?

17 MR. SARVEY: Sure.

18 COMMISSIONER McALLISTER: So I guess really I
19 was referring less to the location of the transmission
20 poles than to the inclusion of the demo.

21 MR. MCKINSEY: No. The demo is a very specific
22 requirement that is part of the (inaudible). I mean,
23 excuse me the agreement between San Diego Gas and
24 Electric and the City and the project owner, so that has
25 to stay to be --

1 COMMISSIONER McALLISTER: So there is not --
2 there is no threshold like project size that that would
3 then become untenable?

4 MR. McKINSEY: Correct. It has obligations of
5 the parties and there is no release to not have to demo
6 should you build less.

7 MR. SARVEY: I just wanted to add to what
8 Mr. Vidaver was saying. He was talking about them
9 procuring more natural gas than they were allowed to, but
10 actually in the RFO SCE limited in front of the meter
11 stores to 100 megawatts, and there was substantially more
12 bid into that and they refused because they put that
13 limit -- so there's other limits being put on by the
14 utilities themselves, so that's a barrier to that.

15 MS. SIEKMANN: I need a clarification if that's
16 possible right now.

17 HEARING OFFICER KRAMER: Go ahead.

18 MS. SIEKMANN: But I don't want -- I know you
19 have limited time.

20 COMMISSIONER McALLISTER: Go ahead.

21 MS. SIEKMANN: So I'm confused. When we went
22 through all the CECP when overrides came into it, need
23 was an issue. Need became an issue. And it's all over
24 the proposed PMPD.

25 So then the City Attorney turned in their

1 testimony, and in their testimony, it said that due to
2 the height limit of the -- of the Agua Hedionda area that
3 there would be an override. And so that's where I
4 assumed that need came into the issue because that's what
5 happened before.

6 And so that of course brought in the PUC
7 decision and the PUC is the one who specifically says
8 what the -- you know, they put out the tracks, track 1,
9 track, 2, track 3, track 4, but then they're also the one
10 that approve the contracts, and they have a preliminary
11 denial of this contract and then -- I'm not -- I mean,
12 when we go to brief, are we allowed to bring that into
13 it?

14 I'm very, very confused now because in -- even
15 in the project objectives for the ACECP, it talks about
16 specifically one of the project objectives is to meet
17 commercial qualifications for long-term power contract
18 opportunities in Southern California, and so are we --

19 If we brief, are we allowed to bring need into
20 the issue to bring if what the PUC is talking about
21 before -- I mean, because everyone was talking about how
22 this is needed for renewables and great reliability, but
23 we can't talk -- I'm just confused.

24 PRESIDING MEMBER DOUGLAS: So one way you could
25 think about this is that this has the potential to be

1 needed for renewables or greater reliability or energy,
2 and Mr. Ratliff articulated the finding of public
3 convenience of necessity that the Commission would need
4 to make. And so there is a high level relevance, but
5 that does not extend, in at least my view, to
6 relitigating specific issues that are in the CPUC's court
7 to determine. We are primarily here to do the
8 environmental review.

9 MS. SIEKMANN: But --

10 PRESIDING MEMBER DOUGLAS: So you would not be
11 precluded from raising issues of need in your brief, just
12 as we have not precluded people from --

13 MS. SIEKMANN: Okay.

14 PRESIDING MEMBER DOUGLAS: -- raising issues of
15 need in this hearing. If we thought it was totally
16 irrelevant, we would have all saved ourselves most of the
17 last hour, and we probably could have saved ourselves
18 some of this last hour.

19 MS. SIEKMANN: But when we're talking about a
20 project that has visual mitigation that can't be
21 mitigated and need, you know, need is now part of it,
22 that can be brought up, right? Because a smaller project
23 --

24 PRESIDING MEMBER DOUGLAS: You can bring that
25 up.

1 MS. SIEKMANN: Okay. Thank you.

2 MR. RATLIFF: I would just add that when we
3 went through the long proceeding -- licensing proceeding
4 before, we also had no PPA and there was much speculation
5 about whether there would be one. We're still,
6 unfortunately, at that point with this proceeding.

7 COMMISSIONER McALLISTER: Yeah, so I mean, I
8 just think we need to make sure we have the right
9 boundaries around this discussion. A lot of this is
10 interesting but not directly relevant to this particular
11 decision and, you know, an approval -- you know, a denial
12 certainly is one thing, an approval is not a normative
13 statement that the plant ought to be built.

14 The ultimate decider of that is over there at
15 the PUC in their forum. So the supply curve for
16 possibilities in terms of what the supply resources are
17 going to be available to within that decision are broader
18 than what the actual built environment is going to end up
19 looking like.

20 So I just -- we often tread sort of outside of
21 the boundaries for discussion, because it's interesting
22 and it's relevant and we're all -- you know, we're all
23 attuned to the bigger issues but, you know, I think this
24 is a more constrained discussion.

25 MS. SIEKMANN: But the only reason is we're

1 looking at alternatives, and since we have this visual
2 mitigation and since --

3 HEARING OFFICER KRAMER: Okay. I think
4 Mr. Sarvey, did you finish yours?

5 MR. SARVEY: Yes.

6 HEARING OFFICER KRAMER: Okay. Dr. Roe then?

7 DR. ROE: I just wanted a clarification from
8 Mr. McKinsey. When Commissioner McAllister asked you how
9 changes -- possible changes in the size of the power
10 plant would affect the agreement with the City to remove
11 the EPS, you mentioned something about the location of
12 the transmission line. I wasn't sure what you meant by
13 that. Could you repeat that statement --

14 MR. MCKINSEY: Yeah.

15 DR. ROE: -- so I can comment on it?

16 MR. MCKINSEY: I interpreted the question from
17 Commissioner McAllister about if -- if things within the
18 project design changed and he -- in other words, if, for
19 instance, it became smaller and that all allowed the
20 units to be laid out differently, et cetera, would that
21 create a problem that the -- that would nullify or not be
22 in compliance with the agreement?

23 And so that's why I then said as examples
24 because that's something I know that you would like, and
25 so that's why I was trying to make it clear that's not

1 something -- you couldn't just move the poles to the
2 other side. Yeah, could you move them if you've got more
3 room in the bowl? Sure. You could drop them down in.

4 There are some things that would not be an
5 issue but there would be some -- and again, this is, you
6 know, my opinion as a lawyer looking at that agreement
7 too, so it's much as -- you know, the City's opinion on
8 what the agreement looks like.

9 Any time you're talking about a complex
10 agreement, the parties are going to have a lot of
11 interpretations of it, and you really have to look at the
12 agreement, so certainly that's what I think, and I think
13 the project owner, you know, is comfortable with me
14 saying that that would be our position and I think the
15 City would agree as well.

16 DR. ROE: So can I interpret? I'm not a
17 lawyer. Can I interpret that as your legal opinion that
18 if, indeed, the transmission power poles were moved away
19 from the east side, that would not affect the agreement
20 with the City to remove the EPS?

21 MR. MCKINSEY: Well, that's going farther than
22 what I said. What I -- it is. I mean, again, this isn't
23 -- this is -- I'm articulating what would be the project
24 owner's interpretation of the agreement, not necessarily
25 my legal opinion on anything.

1 And the project owner's interpretation of the
2 agreement and understanding with what they think the
3 other parties expect, particularly the City, is that the
4 poles would not be on the west side because that makes
5 them more visible to future redevelopment west of the
6 railroad tracks -- more visible from 101. But I wasn't
7 saying it wouldn't be possible that the poles could drop
8 down and move away farther should other design changes
9 occur. Those things might be comparable, so I wouldn't
10 go that far.

11 DR. ROE: Thank you.

12 HEARING OFFICER KRAMER: Okay. I may have lost
13 track, so let me just ask then. Does anybody else have
14 any alternative issues to discuss at this point? Any
15 points to make?

16 Mr. Sarvey?

17 MR. SARVEY: I just had some questions, but I
18 don't know if we're at that point or not.

19 HEARING OFFICER KRAMER: No, go ahead with your
20 questions. That's all -- it's questions and comments at
21 this point.

22 MR. SARVEY: Okay.

23 HEARING OFFICER KRAMER: And everyone else,
24 remember, if even if he directs it at one of you, if you
25 have something relevant to say, you can speak after that

1 person finishes.

2 MR. SARVEY: So a comment was made by staff
3 that the amended CECP eliminates most of the LORS
4 compliance supplies issues, and I just wanted to ask a
5 question.

6 Isn't it true that most, if not all the LORS
7 compliance issues, are resolved by the City of Carlsbad?
8 They've changed their laws, ordinances and regulations in
9 order to allow for the construction of the ACECP.

10 MR. MCKINSEY: I may -- you may be asking that
11 to the wrong panel, because this is a land use question.

12 MR. SARVEY: No, this gentleman right here said
13 that.

14 MR. MCKINSEY: I know, but even -- I'm trying
15 to note that --

16 MR. SARVEY: Yeah, I understand.

17 MR. MCKINSEY: -- the only person you have
18 there that brought that up was the alternative summary
19 and that was, to some extent, based on their land use
20 person's findings first.

21 MR. SARVEY: Well, it's actually in their
22 testimony as well.

23 HEARING OFFICER KRAMER: Okay. If that was an
24 objection, it's overruled. I think Mr. Kerr can explain
25 his statement.

1 MR. KERR: Sure. My statement was that in the
2 previous set of override findings that were done for the
3 licensed project, there was, I think, seven LORS
4 overrides and there was one remaining of just the 35-foot
5 high limit in the Agua Hedionda plan?

6 MR. SARVEY: And now that the City's laws have
7 changed to accommodate the ACECP, how have many of those
8 laws been changed so the original licensed CECP would
9 comply now?

10 MR. KERR: I didn't write the land use section,
11 so I would possibly defer to the City.

12 MR. SARVEY: It's an outstanding question and
13 thank you.

14 MR. MCKINSEY: That was my points and I'll say
15 it again that was really a land use question and it went
16 to the heart of our earlier topic of land use.

17 MR. SARVEY: I wasn't allowed to participate.

18 MR. MCKINSEY: Well, that's relevant also.

19 HEARING OFFICER KRAMER: Well, there is some
20 relevance in it.

21 MR. SARVEY: I would have been happy to ask it
22 then.

23 HEARING OFFICER KRAMER: There is some
24 relevance to alternatives but Mr. Kerr answered to the
25 extent of his knowledge, so we have to leave it at that.

1 MR. SARVEY: So according to the FSA, it says
2 the need for flexible generation and CALISO balancing
3 authority was addressed in CPUC proceeding 2012 LTPP, and
4 the PUC found there was no need to authorize new flexible
5 capacity in the 2012 proceeding as a sufficient amount
6 was available through 2020.

7 Do you have any idea what the CPUC decision
8 D-1406450 found the flexible capacity needs for 2015,
9 anybody?

10 MR. VIDAVER: I'm not sure exactly which
11 decision you're referring to, but I know that the CPUC
12 has found no incremental need for flexible capacity for
13 2015.

14 MR. SARVEY: I don't intend to put this in as
15 an exhibit. I just wanted to give Mr. Vidaver an idea of
16 what decision I'm talking about and exactly what I was
17 referring to.

18 MR. VIDAVER: Well --

19 HEARING OFFICER KRAMER: Okay. Hold on. No,
20 we can't work that way, because there are people who are
21 going to look at the record later, maybe it might be a
22 court. It might be staff. Who knows? And they need to
23 be able to see what he was looking at when he answers
24 your question.

25 MR. SARVEY: Well, I have copies if you'd like

1 me to hand them out but --

2 HEARING OFFICER KRAMER: Is that exhibit --

3 MR. SARVEY: -- I was trying not to do that.

4 HEARING OFFICER KRAMER: But it doesn't solve
5 the problem.

6 MR. SARVEY: Well, he has the knowledge so.

7 MR. VIDAVER: If it matters, I didn't look at
8 it. I just -- I looked at the cover sheet and it just
9 says CPUC decision in a procurement proceeding, which I
10 knew he was referring to, and I'm not sure -- I think
11 he's saying -- referring to the 2012 procurement decision
12 and/or he may be referring to the 2014 decision. I'm
13 just answering the question, has the CPUC found that
14 there is a need for flexible capacity in the ISO control
15 area in 2015, and the answer is it has found there is no
16 need for that capacity.

17 HEARING OFFICER KRAMER: And I gather he's
18 trying to -- well, I'm not sure.

19 MR. SARVEY: Well, I'll go ahead and just
20 testify. In that proceeding, the PUC found that the
21 largest flexible capacity need was in December 2015, and
22 that was in 11,212 megawatts. That's the largest
23 flexible capacity. It's a system need. It's not a local
24 need. It's throughout the entire system.

25 Would you agree with that?

1 MR. VIDAVER: Yes.

2 MR. SARVEY: Okay. Now, later on, it was
3 determined that in another -- in a CALISO study that the
4 system had 32,180 megawatts of flexible capacity at the
5 current time, so they had three times as much flexible
6 capacity now as they need.

7 So what I'm trying to say is there's a lot of
8 arguments here that we need this flexible -- we need a
9 600-megawatt peaker plant to provide this instant
10 flexible capacity. What I'm saying is it's not needed
11 and the combined cycle is a superior product, because
12 it's not going to have to start four times. It's not
13 going to have to, you know, go through all these
14 gyrations. They're going to start it up, like they do
15 all combine cycles. And if they do need 300 megawatts at
16 once, it's there. And that's all I'm saying, the
17 combined cycle is a superior product and should be the
18 environmental, should be the preferred alternative.
19 That's where I'm going with that.

20 HEARING OFFICER KRAMER: Okay.

21 MR. SARVEY: So we can skip all those questions
22 and you can go back and go to the rest of it.

23 HEARING OFFICER KRAMER: Yeah. So does anyone
24 want to comment about the relative merits of combine
25 cycle versus simple cycle in this area?

1 I realize we don't have the utility here and if
2 we asked them in, they would probably be reluctant to say
3 anything but --

4 MR. WALTERS: I was wondering if I could make
5 one comment? This is Will Walters.

6 One thing that we all recognize is when you say
7 32,000 megawatts of flexible capacity, you don't indicate
8 the age or relevant efficiency of that capacity whereas
9 this project, you know, is essentially the most efficient
10 type of simple cycle, and one thing that has been
11 discussed today, and I probably should have brought it up
12 earlier, is, you know, there is a need for fleet
13 modernization, whether that's us driving our cars and
14 getting new cars with lower emissions or bringing in new
15 power plants with lower emissions, we can't hold on to
16 the old ones forever. And we may not need as many total
17 megawatts, but we still need to retire, so that's another
18 consideration.

19 And if you take a look, for example, at
20 greenhouse gas Table number 4. You know, all of those
21 are less efficient, and it would be really nice to retire
22 some of the really bad or low efficiency ones.

23 It's just something else to consider when you
24 were putting in power plants. Yeah, we've got a lot of
25 megawatts available, not necessarily great megawatts in

1 terms of efficiency.

2 HEARING OFFICER KRAMER: And if it's less
3 efficient, that means more money for the ratepayers?

4 MR. WALTERS: Well, it means higher rates, you
5 know, higher impacts, other --

6 HEARING OFFICER KRAMER: And more cost for the
7 generation probably? Mr. Vidaver might --

8 MR. VIDAVER: Let's get careful when we go to
9 our costs.

10 MR. WALTERS: If you want to talk about --

11 MR. VIDAVER: Well, there is no cost to
12 ratepayers in the absence of a Power Purchase Agreement
13 with a utility. It's just simply the applicant's capital
14 at risk. It has no impact on the ratepayers whatsoever.

15 The notion that yes, we have plenty of flexible
16 capacity in 2015 if the CECP was being built in
17 anticipation of meeting flexible capacity requirements in
18 2015, it's a little late to the party. We're going to be
19 retiring a lot of capacity over the next ten years. The
20 relevant need for flexible capacity is in 2023, 2025.

21 Admittedly, those studies have not been done,
22 but the numbers show that there will be a greater need
23 for flexible capacity and a substantial amount of
24 retirement in the interim, whether or not on balance,
25 we're going to be short and need capacity has yet to be

1 determined.

2 HEARING OFFICER KRAMER: Are you in agreement
3 with Mr. Walters' point about the need for modernization?

4 MR. VIDAVER: I think it is just sort of common
5 sense. We have a lot of aging power plants that are
6 relatively inefficient and ultimately they're going to
7 collapse, and we better have a substitute for them,
8 whether or not -- so yes.

9 HEARING OFFICER KRAMER: Okay.

10 MR. VIDAVER: It's not a technical observation.

11 HEARING OFFICER KRAMER: Not everything has to
12 be technical.

13 MR. VIDAVER: One other thing I'd like to note
14 is the notion that combined cycle is a plant that is
15 needed, first of all, if that were the case, I think the
16 CPUC would have worked towards a -- indicated that it
17 wanted a contract or procurement of combined cycle
18 capacity.

19 If my recollection of the original decision
20 authorizing procurement said, "Negotiate with the -- talk
21 to the ISO and see what they need," and when the issue
22 was raised in the -- I believe it was in response to the
23 Track 4 decision, by CARE, who said that combined cycle
24 is a much better power plant, the CPUC ruled, No, you can
25 throw a blanket over those. We don't need to have

1 precise numbers to determine to the fourth decimal place
2 which of these is going to be better. They're -- they're
3 as different as they are in their position in the
4 dispatch queue. We're not going to reject a contract
5 with the amended project because it's the wrong
6 technology, they said that's just simply not true.

7 MR. SARVEY: Actually, what the decision said
8 is it was up to the CEC to decide what the
9 environmentally superior alternative was, and I can point
10 out that in briefing. It's part of -- it's an exhibit in
11 this thing, and we don't have to argue about that.

12 And I do agree with both of them: The plants
13 do need to be modernized, but my point was right now
14 we've got three times as much flexible capacity as we
15 need so that's -- that was my only point. I wasn't
16 trying to make any other point, so that's all with have
17 of my questions.

18 MR. VIDAVER: Hearing Officer Kramer, if I may
19 make one last statement?

20 HEARING OFFICER KRAMER: Please.

21 MR. VIDAVER: To clarify your concern about the
22 impact of the relationship between efficiency and system
23 cost? We have power plants that are expensive to built
24 and cheap to operate because we plan on running them all
25 the time, and we have power plants that are really cheap

1 to build that are horribly inefficient, and they're
2 expensive to operate because they only operate them ten
3 hours a year.

4 Depending on what your demand profile looks
5 like, the least cost system for ratepayers has a mixture
6 of both of these. So we cannot say that we need to build
7 an efficient plant is cheaper, because if we build
8 something like a combined cycle and then we run it at six
9 percent capacity factor of a peaker, we have basically
10 spent a whole lot of money on a plant that we've never
11 used, so there really is no relationship between a
12 plant's efficiency and its impact on system cost.

13 HEARING OFFICER KRAMER: So it would it be a
14 reasonable assumption to say that SDG&E struck that
15 balance when they decided they wanted to contract for
16 simple cycle generation.

17 MR. VIDAVER: One would assume that San Diego
18 Gas and Electric would want a portfolio that it can
19 dispatch to meet energy demand at least cost. Certainly
20 the CPUC wants that, I assume. San Diego's no different,
21 the ISO. That's where this displacement theory comes
22 from. People want to minimize costs.

23 HEARING OFFICER KRAMER: Okay. Were you done,
24 Mr. Sarvey?

25 MR. SARVEY: No, I wasn't done.

1 HEARING OFFICER KRAMER: Okay. Well, let's
2 finish with you first.

3 Dr. Roe, let Mr. Sarvey finish.

4 DR. ROE: Sure.

5 MR. SARVEY: First of all, you know, I want to
6 agree that, you know, all we're looking at as far as
7 dispatch is the variable cost of the plant. We're not
8 looking at the capital cost of the plant, and the capital
9 cost of this plant is \$2.6 billion, so while you may
10 dispatch that plant because it's variably less cheaper,
11 it's very expensive per megawatt. And I addressed that
12 in my testimony. I don't need to talk about it any
13 further.

14 But what I do want to talk about is the
15 flexibility of the combined cycle as opposed to the
16 flexibility of the simple cycle plant, and I'd like to
17 ask a couple questions and see if the panel has some
18 opinions on that.

19 So is anyone familiar with how the CALISO
20 measures flexible capacity from a resource?

21 MR. VIDAVER: Yes.

22 MR. SARVEY: And can you describe that for the
23 record?

24 MR. VIDAVER: It uses such operating
25 characteristics as start-up time, ramp range, it's the

1 range for minimum to maximum output, and ramp rate,
2 megawatts per minute that the plant can change its output
3 level.

4 MR. SARVEY: And it's kind of measured over 180
5 minutes; is that correct? When they gauge the
6 flexibility of a plant, it's over 100 --

7 MR. VIDAVER: I suspect that's a very -- I
8 don't know the answer to that. I suspect that's an
9 very -- an overly sympathetic statement.

10 MR. SARVEY: I would agree that's how they
11 measure it.

12 HEARING OFFICER KRAMER: Could you angle the
13 microphone a little more directly at you?

14 MR. SARVEY: So my next question was, did you
15 calculate the flexibility of the ACECP to the CECP but
16 obviously you didn't so I'll let it go.

17 In your testimony you discuss various ancillary
18 services that the ACE -- ACECP will provide?

19 MR. VIDAVER: Can provide, yes.

20 MR. SARVEY: And one of those is system
21 inertia?

22 MR. VIDAVER: Yes.

23 MR. SARVEY: And isn't it true that the project
24 has to be online to provide system inertia?

25 MR. VIDAVER: Yes.

1 MR. SARVEY: And another service that seems to
2 be becoming more and more critical is the ability to
3 adjust downward, the downward ramp; would you agree with
4 that?

5 MR. VIDAVER: It's -- what do I want to say?

6 MR. SARVEY: Probably --

7 MR. VIDAVER: Actually, I think the -- the
8 upward ramp probably -- yes, the downward ramp is
9 significant, yes.

10 MR. SARVEY: And so in order to provide a
11 downward ramp, the ACECP would have to be online to do
12 that, wouldn't it?

13 MR. VIDAVER: Yes.

14 MR. SARVEY: And can you explain to the
15 Committee what VAR support is?

16 MR. VIDAVER: No, I'm not an engineer.

17 MR. SARVEY: Do you know that -- whether the
18 Carlsbad project would have to be online to provide VAR
19 support?

20 MR. VIDAVER: I suspect it would, yes.

21 MR. SARVEY: Okay. In the future, electrical
22 vehicle charge is likely to become another strain on the
23 grid. And according to most experts, that charging will
24 occur in off-peak hours overnight.

25 Will the ACECP be able to provide the energy

1 for the over-night charging function between midnight and
2 six a.m.?

3 MR. VIDAVER: If charging requirements need to
4 be met during -- overnight, the answer is no.

5 MR. SARVEY: Would a less efficient resource
6 run if it's available and the ACECP can't run between
7 midnight and six?

8 MR. VIDAVER: Less efficient. It's very
9 unlikely because the ACECP is likely -- the LMS 100 is
10 not likely to be efficient enough to run between the
11 hours of twelve and six in the morning. The demand is
12 sufficiently low that you would be running far more
13 efficient base type resources.

14 MR. SARVEY: I guess I would just add that
15 there is nothing in the permit that would prohibit them
16 from running in those hours.

17 MR. WALTERS: But we do have a staff condition
18 that related to the applicant's statement that they would
19 not generally run between midnight and six except during
20 emergencies.

21 HEARING OFFICER KRAMER: Right. It's not an
22 air permit requirement, but it's required for other
23 reasons.

24 MR. SARVEY: And then FSA on page AQ-1-24
25 states that the ACECP could change output at 50 megawatts

1 per minute. It would have to be online to have that kind
2 of variability; is that correct?

3 MR. VIDAVER: Yes.

4 MR. SARVEY: They couldn't do it on a zero to
5 60 basis?

6 MR. VIDAVER: Obviously if the resource is
7 changing online, yes.

8 MR. SARVEY: So basically if the project is
9 offline, the maximum megawatt that could be produced
10 would be the 100 megawatts over ten minutes, right? So
11 it would be ten megawatts a minute?

12 MR. VIDAVER: If the project is offline and you
13 turned it on?

14 MR. SARVEY: No, no. If it was offline and
15 then you needed it for whatever you needed it for, it
16 couldn't -- it couldn't ramp at 50 megawatts a minute, 10
17 megawatts a minute would be the most; is that correct.

18 MR. VIDAVER: I would defer to the applicant to
19 answer that question. It sounds intuitively correct to
20 me, but you're throwing numbers out there that -- yes, if
21 it takes 10 minutes to get -- go from zero to 100, during
22 that 10-minute period when it first started up, it would
23 only ramp up at 10 minutes per megawatts, yes, I think
24 that's what you're asking for.

25 MR. SARVEY: Okay. That's it, thank you,

1 Mr. Kramer.

2 HEARING OFFICER KRAMER: Is it correct to
3 assume the ramping is linear?

4 MR. VIDAVER: I'm not qualified to answer that
5 question.

6 HEARING OFFICER KRAMER: So maybe, maybe you
7 get a greater increase towards the end of the start-up --
8 or earlier, we just don't know?

9 MR. VIDAVER: It sounds plausible to me, but
10 I'm not qualified to answer that question.

11 HEARING OFFICER KRAMER: Okay. Dr. Roe?

12 DR. ROE: Mr. Kramer, you made a comment
13 earlier in which you were trying to infer whether SDG&E
14 chose a single cycle configuration versus the combined
15 cycle for some reason or other, and I wanted to caution
16 you not to try and second-guess SDG&E's motives for going
17 to this proposal for the single cycle plant, primarily
18 because we were at a meeting with SDG&E where the vice
19 president of SDG&E elaborated on what he reported were
20 their reasons for that proposal and then nothing like
21 what you were inferring. And so SDG&E has many reasons,
22 some of which they talk about, and some of which they
23 don't.

24 HEARING OFFICER KRAMER: Okay.

25 DR. ROE: I just wanted to make that comment.

1 HEARING OFFICER KRAMER: Okay. Point taken.

2 DR. ROE: Now, the other comment I wanted to
3 make was on Mr. Sarvey's statement about preferring the
4 combined cycle over the simple cycle, and I'm aware of
5 the potentially better heat rates that you get from
6 combined cycle, I also would like to point out that one
7 of the drawbacks, we're all trying to avoid of the
8 combined cycle, was the much worse impact it had on the
9 visual aspects of the project, and that I believe POV,
10 for that reason, would prefer the amended proposal rather
11 than the --

12 HEARING OFFICER KRAMER: Thank you. Anything
13 else from anyone?

14 MR. MCKINSEY: Yes.

15 HEARING OFFICER KRAMER: Mr. McKinsey.

16 MR. MCKINSEY: I had a question for Mr. Sarvey.

17 You've had a number a couple time of
18 \$2.6 billion capital costs. I've got on the screen
19 Exhibit 200, it's the staff FSA. And in the
20 socioeconomics, that chart right there shows the total
21 capital costs as 650 to 850 million.

22 And I just want to know where you're getting
23 the 2.6 billion because that's the accurate description.

24 MR. SARVEY: The \$2.6 billion is the capital
25 cost of the Power Purchase Tolling Agreement. It's

1 derived from an insert that SDG&E put in their bills to
2 describe the rate impact from approving this project, and
3 that's where the \$2.6 billion comes from.

4 MR. MCKINSEY: Thank you.

5 HEARING OFFICER KRAMER: So you're talking
6 about two different costs then?

7 MR. MCKINSEY: Yeah. I mean, I could call and
8 explain I just wanted him to say where he's getting it
9 from because that's not the capital cost number.

10 HEARING OFFICER KRAMER: All right. Anything
11 else?

12 Okay. Let's close out alternatives then.

13 Thank you, panel, and move on to compliance and
14 closure.

15 Now, we did conditions yesterday and --

16 MS. SIEKMANN: (Inaudible) We did Compliance
17 11, 14 and 16. And we couldn't do conditions, I thought,
18 because the right people weren't here. And then there is
19 a compliance and closure, but like you have me down for
20 20 minutes, but I only had like 10 minutes for compliance
21 and 10 minutes for conditions.

22 HEARING OFFICER KRAMER: Okay. Well, let me
23 explain --

24 MS. SIEKMANN: I don't need those 20 minutes at
25 all.

1 HEARING OFFICER KRAMER: Well, I think we did
2 conditions. That's good -- you don't need all that time.
3 Well, we did conditions yesterday. That's one of the
4 floater topics, but we specifically held off until today.

5 Where did Mr. Sarvey would go?

6 MR. MCKINSEY: Hearing Officer Kramer, I also
7 kind of agree and I think staff agrees that we did
8 compliance yesterday and we completed any of our
9 testimony on this topic about compliance conditions.

10 HEARING OFFICER KRAMER: Okay. Well, do you
11 also recall me saying, though, that we were going to
12 consider Mr. Sarvey's -- or rather, the question of the
13 bonding or financial assurances for remediation of the
14 site after its useful life ended, and that was going to
15 be considered today?

16 MR. MCKINSEY: Well, my only understanding of
17 that is it was a proposed compliance condition. The
18 motion was overruled, and then the Committee ordered --
19 you had given the parties, other than Simpson and Sarvey
20 an opportunity if they wanted to have testimony on the
21 topic, I assumed that we did.

22 HEARING OFFICER KRAMER: We didn't ask for that
23 testimony, specifically.

24 MR. MCKINSEY: No, but we have --

25 MS. SIEKMANN: No, it's for today, but the

1 compliance issues that we had were taken care of.

2 HEARING OFFICER KRAMER: Okay.

3 MS. SIEKMANN: But there still is -- yeah.

4 HEARING OFFICER KRAMER: Okay. Well, we need
5 -- we need Mr. Sarvey here.

6 MR. MCKINSEY: Well, I don't -- and I would
7 disagree to some extent because the 10 minutes of
8 possible testimony on compliance and closure was offered
9 to parties other than Sarvey and Simpson.

10 HEARING OFFICER KRAMER: Right, but it's our
11 intention, although we're not going to allow them to
12 introduce evidence, so let's get Mr. Sarvey seated and we
13 can go through it.

14 Okay. So Mr. Sarvey, we're coming to the
15 portion where we discuss your issue about financial
16 assurances for the remediation of the site after the
17 project's useful life expires. And as you recall, you
18 made a motion and we denied it, and we said it would be
19 treated as a public comment.

20 And we also said we wanted to -- basically we
21 wanted the assistance of the parties fleshing out this
22 issue so they could respond to public comment.

23 So for the parties who were Intervenors who
24 could participate on the topic, we added 10 minutes to
25 their time in this compliance and closure category in

1 case they wanted to offer us factual evidence to help us
2 in that -- preparing that response, but also recognize
3 that there probably isn't a lot of factual evidence here.
4 This is really more about policy and what's the right
5 thing to do and perhaps what the Commission is legally
6 empowered to do.

7 So we'd like you to be here to hear any
8 testimony that might be offered to the parties -- or by
9 the other parties, and then we are also going to deal
10 right now with the motion that Mr. Simpson filed which
11 was to ask that you and Mr. Simpson be allowed to
12 introduce testimony.

13 We're going to deny that, because you were not
14 admitted to that subject area. You never really frankly
15 asked to be admitted. This is an issue that was first
16 raised as you know, in the original proceeding. I
17 believe although I didn't look it up, Mr. Simpson made a
18 similar comment early in this proceeding, perhaps as
19 early as near the informational hearing, so you knew
20 about it in February when the parties were invited to ask
21 to expand the scope of the participation. You could have
22 asked then and you didn't.

23 But we're not going to completely shut you out.
24 Recognizing that you could always make public comments on
25 this topic, what we would like you to do is hear whatever

1 evidence might be offered and then after that before we
2 close the topic, we will allow you to make public
3 comments.

4 MR. SARVEY: May I respond?

5 HEARING OFFICER KRAMER: Sure.

6 MR. SARVEY: First of all, the very first
7 status hearing that I participated in, I indicated to you
8 and the Commissioners that that was one of my major
9 issues. And then I also, when I appealed your denial of
10 my full participation to the full Commission, I raised
11 that issue, and I don't really want to provide public
12 comment. I've already provided expert testimony and I
13 believe it should be accepted.

14 HEARING OFFICER KRAMER: Well --

15 MR. SARVEY: And I didn't have an issue with it
16 at the time when you said it was public comment, but I do
17 now. And I think that, you know, the other parties have
18 an opportunity to either disqualify, impeach or whatever,
19 but as you said, this is not an area where -- this is
20 more of a policy area, and I'm going to detail exactly
21 where I told you I wanted to participate in this topic
22 when I appeal this to the full Commission, but I'm not
23 going to provide any public comment here because public
24 comment on this is basically going to be irrelevant.
25 I'll provide my comment when I appeal this to the full

1 Commission to deny my motion.

2 Thank you.

3 HEARING OFFICER KRAMER: Well, let the record
4 note you were offered an opportunity to provide that
5 public comment.

6 I think it will be informative if you can at
7 some point explain to us, not necessarily today, but what
8 exactly about your statements on the policy matter
9 constitutes expert testimony.

10 MR. SARVEY: Would you like that now?

11 HEARING OFFICER KRAMER: How long would it
12 take?

13 MR. SARVEY: Probably not a whole lot of time,
14 but that's -- I'll probably just wait until the full
15 Commission wants to hear what I have to say. And
16 hopefully they will agree with me, and not you, but
17 that's the process and I appreciate it.

18 HEARING OFFICER KRAMER: Okay.

19 MR. SARVEY: I appreciate the process. Thank
20 you.

21 HEARING OFFICER KRAMER: So does any party have
22 any testimony to offer that would inform this question
23 about whether the Commission should require some sort of
24 provision of funding or bonding, if you will, to
25 provide -- pay the cost of eventually remediating the

1 site when it is no longer needed as a power plant?

2 MR. MCKINSEY: Hearing Officer Kramer, the
3 project owner can simply tell you that their position is
4 that they fully support the mechanism and the scheme
5 that is in place and the compliance conditions now, which
6 provides for a different means of doing that than prior
7 funding.

8 I'm sorry. Are we off the record? I notice
9 you were --

10 I'll actually say it again, if you want. But
11 the project owner supports the staff's position and their
12 compliance conditions that provide a mechanism for
13 ensuring that the project and its closure and retirement
14 are planned for, and so we have no desire or wish to
15 change from what's proposed in the staff and we're in
16 concurrence with that.

17 HEARING OFFICER KRAMER: Okay. Hold on. Give
18 us a second.

19 Okay. We were -- let me first note that
20 Commissioner McAllister had to leave, so it's
21 Commissioner Douglas and I are remaining representing the
22 Committee here.

23 And we just took a moment or two to discuss
24 what we just heard, and I think we'll just go forward on
25 the --

1 Mr. Sarvey has left.

2 Oh, there he is way in the back. Okay.

3 PRESIDING MEMBER DOUGLAS: Are there any
4 comments on this issue?

5 HEARING OFFICER KRAMER: So then do we have any
6 comments on this issue from any of the other parties?
7 We're not -- I don't think we're adverse to hearing a
8 little bit of policy argument at this point.

9 DR. ROE: Can I address the issue of the AFC?
10 I'm not precluded from talking about that, am I?

11 MR. MCKINSEY: You mean the motion for the AFC?

12 HEARING OFFICER KRAMER: No, we're not talking
13 about the motion for the AFC yet. That's going to be in
14 a few minutes.

15 DR. ROE: Can we comment on that motion?

16 HEARING OFFICER KRAMER: Well, let me get to
17 it, but we're still talking about Mr. Sarvey's request
18 that the applicant set aside --

19 DR. ROE: Yes.

20 HEARING OFFICER KRAMER: Okay. That's not the
21 AFC fee, though. He's asking that the applicant put
22 aside -- I think it was \$10 million every year in the
23 fund so that when the project is done and it's closed,
24 then there would be money to pay for removing everything
25 and cleaning up the site.

1 MR. ZIZMOR: Excuse me, Mr. Kramer, this is
2 David Zizmor.

3 HEARING OFFICER KRAMER: Go ahead.

4 MR. ZIZMOR: I know you offered public comment
5 to Mr. Sarvey. We would also like Mr. Simpson would also
6 like to make public comment, if possible, on the policy
7 implications here. We submitted notice of that earlier
8 this week.

9 HEARING OFFICER KRAMER: Right. And we
10 meant -- if I wasn't clear, I went to include both you
11 and Mr. Sarvey in the offer to make public comments.

12 We want to have you make those after everyone
13 else has said their piece at the end of this discussion,
14 so if you can hold on for a couple minutes.

15 MR. ZIZMOR: Okay.

16 HEARING OFFICER KRAMER: Ms. Baker, did you
17 have something?

18 MS. BAKER: Oh, just a clarification question.

19 I understand there are provisions already in
20 the documents about closure, but what -- what
21 accommodations are made if the company is no longer in
22 business in 30 or 40 years when the plant is retiring and
23 closed?

24 HEARING OFFICER KRAMER: Well, that's in the
25 close conditions.

1 MS. BAKER: Is that -- okay.

2 HEARING OFFICER KRAMER: There's provisions for
3 what they call planned and unplanned although it might be
4 a different phrase.

5 MR. McKINSEY: I would say as project owner
6 that the conditions have some other components that
7 require notice of planned or unplanned closure, and we
8 had a discussion on an aspect of that yesterday, so if
9 the project owner was to suddenly cease operation, for
10 instance, there's a mechanism also immediately to figure
11 out in the Energy Commission to try and decide how to
12 deal with that situation.

13 And so in summary, it's not like the Energy
14 Commission jurisdiction would just end over the project.
15 They have a jurisdiction over the project, and this has
16 never arisen, I know, where a project owner has ceased to
17 operate. There have been some geothermal projects that
18 had some issues that were basically closed in a procedure
19 where the geothermal operator was going bankrupt back in
20 the '80s, I think that was.

21 So there's mechanisms in the compliance
22 conditions for the (inaudible) to be informed of that and
23 then take action as they see need to preserve. Some
24 cases, you know, try to preserve the operation of the
25 project, not necessarily just let it go away and things

1 like that and they had that authority.

2 So that be would be our response in trying to
3 explain those conditions and how they work.

4 HEARING OFFICER KRAMER: Does that answer your
5 question?

6 MS. BAKER: Yes, sort of. Not really but --

7 MR. THOMPSON: Well, I have --

8 HEARING OFFICER KRAMER: Mr. Thompson?

9 MR. THOMPSON: Thank you. I guess my feeling,
10 and I haven't conferred with the City on this, would be
11 that the magnitude of the dollars is sufficient, but I
12 guess I would prefer that this be taken up in kind of
13 getting input from the Commission as a whole rather than
14 injecting this at a very late stage of a singular
15 proceeding that has an economic framework, at least as
16 far as the part that the City is playing in this, that
17 has already been established, and I hate to disrupt that.

18 Thank you.

19 HEARING OFFICER KRAMER: Okay. Is there
20 anything else?

21 I guess not. So Mr. Sarvey, you're going to
22 wait until later to make your comments? Is that still
23 your approach?

24 MR. SARVEY: Well, I think you already have
25 taken my testimony as public comment, and the only other

1 thing I would want to say is I think it's pretty unusual
2 for a party to make a motion and for other parties to be
3 allowed to present testimony and discuss it without the
4 party that made the motion allowed to participate in the
5 evidentiary hearing. I think there's probably something
6 in the Administrative Procedures Act that that violates,
7 but I'm going to appeal this to the full Commission and
8 then I'll go from there.

9 Thank you, Mr. Kramer.

10 HEARING OFFICER KRAMER: Okay. Well, you can
11 look at the order and it explains the Committee's
12 rationale, which included a concern about circumventing
13 the limits upon your participation by being able to just
14 file a motion.

15 Mr. Zizmor, your turn.

16 MR. ZIZMOR: Thanks.

17 Just as far as policy considerations are
18 concerned, you know, we only need to look at this
19 particular proceeding to see why the policy is necessary
20 because NRG is cleaning up the Encina mess before they
21 start building this new power plant.

22 It seems only logical that if you make the
23 mess, then you should pay to clean it up, or you should
24 just clean up after yourself. I use that same logic with
25 my four-year-old. I think it is just as applicable here.

1 We also can just look up the road at the San
2 Onofre Nuclear Plant that's going to cost billions and
3 billions of dollars to clean up and it might take 20
4 years to do so. Not to say that nuclear plants are the
5 equivalent of an a natural gas plant, but -- in terms of
6 the clean-up, but as far as remediation is concerned, if
7 there had been a fund for remediation of the San Onofre
8 cite, it might be in better shape in terms of the
9 timeframe it would take to clean it up.

10 The same would go here. It would make sense
11 that if a plant was going to be in operation for decades,
12 that there be some sort of mechanism to fund the clean-up
13 of sites, so that whoever takes over that site in the
14 future isn't burdened with a tremendous monetary issue in
15 terms of being able to use the site. If it's so
16 expensive to clean it up that it becomes unusable, that
17 doesn't do anyone any good.

18 We can see that looking across landscape of the
19 state where there are abandoned power plants that nobody
20 is willing to clean up because it's simply too expensive.
21 So as a policy consideration to clean up our own
22 environment, to clean up our cities, to clean up our
23 countrysides where some of these power plants exist, it
24 would only make sense to find some way to fund their
25 clean-up down the road, and I think that the mechanism

1 proposed by Mr. Sarvey is a good one.

2 HEARING OFFICER KRAMER: Okay. Thank you.

3 As everybody suggested earlier, we thought we
4 were all done with compliance before I started this, so I
5 guess we are done then.

6 MS. SIEKMANN: I do -- one thing occurred to
7 me. What Mr. Thompson said about the Commission should
8 take this up as a whole as an idea, I think it's a very
9 good one, so I support his idea in this general idea.

10 MR. RATLIFF: I wasn't sure that was
11 Mr. Thompson's proposal, but whether it was or not, we
12 would just offer, you know, a perspective which is that
13 in all the years that I've worked at the Energy
14 Commission, problems that have arisen with closed plants
15 have always been renewable facilities, either biomass
16 facilities in rural areas or solar plants, some of
17 which Mr. Thompson licensed back when Luz was Bright
18 Source's parent, and in areas where land prices were low
19 and land use was not readily turned over, areas in the
20 coastal zone and urban areas have never been an issue, as
21 far as I'm aware of, at least in terms of closure and
22 replacement with new and higher uses.

23 MR. MCKINSEY: Morro Bay.

24 PRESIDING MEMBER DOUGLAS: So I'm just going to
25 comment briefly on this. You know, in the last decision,

1 as I think Mr. Sarvey has pointed out, we did say that
2 this was something that would make sense to look at in
3 the IEPR or something like that, and the City's comments
4 that, you know, it's really a broader issue than one
5 plant; that it's a policy issue is, I think, right on.

6 And I also think that Mr. Ratliff is bringing
7 up a really important distinction. You know, the Energy
8 Commission, as we have started dealing with more
9 renewable energy facilities in greenfield and in some
10 cases, you know, really pretty initially undisturbed
11 areas, has moved towards your requiring closure bonds and
12 restoration of -- requirements to a greater degree than
13 we typically have in some of these, you know, essentially
14 --

15 To me, this is almost the other extreme. This
16 is a repower situation where you've got a project
17 proponent coming in and agreeing to tackle the demolition
18 of an existing facility into a few facility, so there is
19 a real policy question about whether it makes sense to
20 tag onto that the cost of demolishing the new facility as
21 well, which might, you know, make it even less likely
22 that some of these old facilities get redeveloped in an
23 area where land prices are very high, and the potential
24 value of land uses typically can justify people coming in
25 and making new use of a site.

1 So I think that this might be the place for me
2 to express just that general view. I think this is a big
3 issue. It's a fairly complex one, and I actually don't
4 see this as the type of case that makes the strongest
5 case for this kind of requirement.

6 I think there are other cases where the Energy
7 Commission has taken the step of saying, you know, "If
8 you go in here, we're going to require you to, you know,
9 demolish that tower at the end of this -- of the useful
10 life of the facility." And that's a -- You know, they've
11 already got a big tower to demolish in this instance, so
12 those are some opinions.

13 I will, however, take under advisement the
14 suggestion that we take something like this up with the
15 full Commission. We didn't do it the first time around,
16 but it is -- but on the other hand, we did change some
17 things in our practice in this area, at least for some of
18 the renewable facilities.

19 MR. MCKINSEY: Hearing Officer Kramer, I wanted
20 to make one note. I think it would be important to
21 understand that Morro Bay, San Onofre, South Bay, those
22 are all not Energy Commission licenses.

23 And what Mr. Ratliff was getting at is, you
24 know, projects the Energy Commission has taken on
25 actually have a very different history than the

1 pre-Energy Commission life in Morro Bay and San Onofre
2 and all those were projects that are outside the Energy
3 Commission's role, and that almost makes the case, to
4 some extent, but it's worth noting.

5 PRESIDING MEMBER DOUGLAS: Yeah, that's
6 correct, and that's another factor.

7 MS. SIEKMANN: And I would like to say, I
8 wasn't talking about this project, I was -- okay. You
9 get it?

10 PRESIDING MEMBER DOUGLAS: Mr. Sarvey, anything
11 else you'd like to say on the basis of this discussion?
12 And I should offer that to Mr. Zizmor as well because I
13 might have said something that would prompt some
14 additional comments or argument.

15 I mean, really, this is about policy. This is
16 not about evidence, so I'd like to hear what you have to
17 say.

18 MR. SARVEY: Well, all I would really say is
19 the Energy Commission has only been around what, 30
20 years?

21 HEARING OFFICER KRAMER: 40.

22 MR. SARVEY: So most of those are still
23 operating, so I don't think you've had a test of whether
24 we're going to be tearing down any energy-approved
25 plants, so I think that statement is pretty irrelevant.

1 And we could just look at this proceeding here.
2 The City of Carlsbad, they wouldn't support this plant if
3 they wouldn't tear the Encina plant down. They didn't
4 support the other plant. And they're sitting right here
5 if they want to say something different, but, you know,
6 we talked --

7 Well, it was talked about extensively in the
8 original license about tearing the Encina plant down. I
9 think now is the time to act. This is the proceeding to
10 do it in, and that's why I'm going to appeal it to the
11 full Commission.

12 I do agree with most of you about this is a
13 policy decision, but I think the full Commission needs to
14 weigh in, but I think it could be a condition for
15 proceeding, and maybe the full Commission will agree with
16 me. I hope so.

17 HEARING OFFICER KRAMER: Okay. So Mr. Zizmor,
18 did you have anything?

19 MR. ZIZMOR: No, I have nothing further to add.

20 HEARING OFFICER KRAMER: Okay. Thank you.

21 All right. Let's move on to -- well, for the
22 record, if it wasn't clear, Mr. Simpson's motion to allow
23 -- no, it was Mr. Simpson's motion to allow both he and
24 Mr. Sarvey to present testimony on this topic we just
25 concluded is denied. We'll let the transcript reflect

1 that, and I don't think we're going to issue any written
2 order. It's denied however, with the provisions that we
3 offered them to be able to make public comment
4 immediately at the -- or towards the end of that
5 discussion.

6 So let's now move on to Mr. Sarvey's motion to
7 require the filing of a new AFC. It's really -- if
8 somebody wants to offer testimony, if there is any to be
9 offered, factually, that's fine. It's not clear to me
10 that we need that. The project owner filed a separate
11 response to that.

12 Mr. Sarvey, if you want to go ahead, and we'll
13 probably have a couple questions for you and we'll also
14 hear from the other parties.

15 MR. SARVEY: Thank you, Mr. Kramer.

16 First before I start this, I want to say that I
17 like NRG. I think they're a very environmentally
18 responsible company, and I understand that they have a
19 licensed plant and I can't see any reason other than
20 SDG&E making them certify a single cycle plant, why they
21 would go through the expense, they've already proved that
22 a combined cycle plant is superior and, you know, I don't
23 want to punish them, but I also think that the ratepayers
24 are being punished, and I'll get into that right now.

25 So if you take a look at Exhibit 6012, it shows

1 that in 2007, Carlsbad Energy paid an AFC filing fee of
2 \$281,903. This particular proceeding, they didn't pay
3 any AFC filing fee. They've only been paying the
4 compliance fee, which they have to pay anyway because of
5 the original plant that they're still processing through
6 compliance.

7 Now, Exhibit 2011 shows CEC for the original
8 2007 proceeding spent \$528,852 on consultant fees alone.
9 That's just not consultant fees. That doesn't include
10 staff time, Commission time, travel expenses, hotels. If
11 you look at this proceeding today, we've got two project
12 managers, we've got two lawyers, we've had a room full of
13 experts. That's pretty expensive stuff.

14 HEARING OFFICER KRAMER: Mr. Sarvey, just to
15 correct the record, I think you might have your exhibit
16 numbers transposed because 6012 is the spreadsheet
17 showing the consultant expenses.

18 MR. SARVEY: Thank you for that, Mr. Kramer.

19 HEARING OFFICER KRAMER: And what was the other
20 one?

21 MR. SARVEY: There is 6012 and 6011.

22 HEARING OFFICER KRAMER: Okay. So 6011 is
23 probably the receipt for the original filing fee.

24 MR. SARVEY: So like I said, I like NRG. I
25 think they're a pretty responsible company, but I'm not

1 into corporate welfare, and NRG is a billion dollar
2 company. They can afford to pay this expense. And the
3 ratepayers, quite frankly, the state of California is
4 still strapped.

5 So I filed this motion on March 16th, and then
6 on March 25th, 2015, Carlsbad Energy provided comments on
7 the proposed decision of ALJ Yacknin which we discussed
8 earlier. On page 2 of the comments, they are proposing
9 an alternative project of 500 megawatts -- and we can
10 argue about whether it's proposing or not. It doesn't
11 matter.

12 So in the opening comments of SDG&E, which is
13 Exhibit 6010, SDG&E states with respect to NRG's
14 alternative proposal in its March 20th opening comments,
15 SDG&E is not opposed to the reduction in size of the
16 project from 600 to 500. So the situation is the project
17 developer and the utility writes a check proposing to
18 change the project description, so --

19 And as I said earlier, the fifth turbine
20 proposal already has a life of its own. I'll give
21 Carlsbad Energy credit, they got letters from all over
22 the state supporting an alternative five turbine
23 configuration.

24 And I'm going to enter those into the record.
25 And Poseidon has sent a letter in supporting it. Orange

1 County Business Council, San Diego North, 78 Corridor,
2 which is Escondido, Carlsbad, Oceanside, San Marcos and
3 Vista: All these organizations support the five turbine
4 configuration.

5 So what I see coming here is another amendment.
6 Are we going to do this again? Are we going to provide
7 an AFC filing fee to cover the millions of dollars that
8 ratepayers have spent to get this plant certified? And I
9 don't think it's fair to ratepayers. Once again, it's
10 probably another policy decision, but I just think it's
11 ridiculous.

12 And I have no offense to NRG. I mean, if they
13 were required to pay it, and I know they would pay it,
14 but why should they? They didn't want this plant. They
15 wanted the original one. That's what they originally
16 proposed, and it was a good plan.

17 So thank you. That's all I have to say.

18 HEARING OFFICER KRAMER: Thank you.

19 Mr. McKinsey, do you have anything you want to
20 say?

21 MR. MCKINSEY: No. No, I think our position
22 was articulated in our response.

23 HEARING OFFICER KRAMER: Staff?

24 MR. RATLIFF: In essence, we oppose the motion
25 because if anything -- if for no other reason, it's

1 simply untimely to initiate an AFC proceeding now simply
2 to hit a reset and start over, and we can't do that. It
3 made no sense to have wasted -- and we're trying to avoid
4 wasted resources. We're going to waste all the resources
5 people have poured into this proceeding to do it again.

6 So for that reason alone, we're opposed -- and
7 I might also mention, just for context, the expenses that
8 are pointed to presumably accurately by Mr. Sarvey, this
9 was a five-year proceeding, and it was heavily contested,
10 and it coincided with the ARRA cases, the very huge
11 onslaught of solar cases that we had, so we had to rely
12 more on consultants than we normally would, and we had to
13 put up a whole lot more energy into that licensing
14 proceeding than we would normally do because of its
15 contested nature, highly contested nature.

16 And because, you know, at one point the City
17 basically told the applicant that they had to redesign
18 the project to not get reclaimed water from the City,
19 which introduced a new element of delay and difficulty.
20 So I mean, there were reasons for those costs which were
21 high, I think extraordinarily high for that kind of
22 proceeding, but that's more offered for context. The
23 real point here is that if this kind of matter is to be
24 considered, it has to be considered at the outset.

25 HEARING OFFICER KRAMER: Mr. Sarvey, were you

1 asking at the proceeding to start over or just that they
2 pay the money?

3 MR. SARVEY: I recommended that they just pay
4 the money.

5 HEARING OFFICER KRAMER: Okay. So I --

6 MR. SARVEY: I have no intent of sending them
7 back to base one. The applicant suggested that that's
8 not possible and he may be right, but I just think that,
9 you know, ratepayers ought to be reimbursed because I
10 don't believe ratepayers should pay millions of dollars
11 certifying a plant for a billion dollar company. And I'd
12 like to know what the CEC spent on the eight months that
13 we just had certifying this plant and how much actual
14 money was spent on the original, but I couldn't -- I
15 tried to get that information but the CEC says they don't
16 keep project specific totals on what they spend on their
17 own staff, expenses and such, so I couldn't get that
18 information, otherwise I would have provided it.

19 HEARING OFFICER KRAMER: Okay.

20 MS. SIEKMANN: Mr. Kramer, may I say something?

21 HEARING OFFICER KRAMER: Yeah, go ahead and
22 then Power of Vision.

23 MS. SIEKMANN: Oh, I'm sorry.

24 HEARING OFFICER KRAMER: You can go first.

25 MS. SIEKMANN: I just want to say that I don't

1 agree with you, Mr. Sarvey. I think that the CEC
2 provides a very, very important independent opinion.
3 They spent a lot of time and effort to make sure that the
4 rules are followed. It's something that just has to
5 happen. And believe me, in the long run they're saving
6 ratepayers money by doing what they do, by the experts
7 that they choose, by the time and care that they put into
8 all of this. And if you -- I mean, otherwise who else
9 would be doing this? So I'm afraid that I must disagree
10 with you, completely.

11 MR. SARVEY: I believe you're welcome to
12 disagree with me. All I'm saying is let the ratepayers
13 get reimbursed. I'm not saying that CEC shouldn't do
14 their job. I appreciate what they do.

15 HEARING OFFICER KRAMER: Okay. Power of
16 Vision, if you have anything?

17 MS. BAKER: I don't have anything.

18 DR. ROE: I think Mr. Sarvey's idea has a lot
19 of merit. It's unfortunate that the motion to deny an
20 amendment and to, rather, seek an AFC was not made at the
21 beginning of the proceedings when the project owner first
22 proposed an amendment. I would have liked to have seen
23 an AFC at that time because we have been struggling here
24 with some visual aspects, like designated KOPs from the
25 old thing when there were really significant and major

1 changes that were made when the applicant moved the power
2 transmission line from the west side to the east side,
3 and we had no legal presumably to contest that because we
4 were told, "Well, that's what has been approved and we're
5 just doing an amendment."

6 So I'm sorry to see that we didn't request an
7 AFC earlier. Needless to say, I sympathize with
8 Mr. Sarvey's notion that the ratepayers should not be
9 asked to bear the burden of what I think should have been
10 an AFC, and if there is some way that the Commission can
11 mandate at this late stage that the applicant pay the
12 fees that he would have had to pay, I would be in favor
13 of that.

14 HEARING OFFICER KRAMER: Okay. Thank you.
15 Mr. Zizmor?

16 MR. ZIZMOR: Yeah. We submitted a response in
17 support of Mr. Sarvey and we still support Mr. Sarvey
18 here. We think just in terms of the notion of fairness,
19 that it just makes common sense that the ratepayers
20 shouldn't be burdened with this cost. It's not their
21 decision to build this power plant; it is the actions of
22 out -- of different power plant companies, NRG, in this
23 case. It's their decision to build this. Their desire
24 to build this. They should cover the costs, especially
25 if they are able to.

1 And furthermore, I think in terms of just the
2 procedure here at the Commission, I think it also strikes
3 a note of a little bit of fairness. You know, as an
4 Intervenor here and the other Intervenor here, we're not
5 all blessed with the resources of a company like NRG or
6 any of the other companies that tend to build these power
7 plant. You know, we're doing this out of our own pocket
8 essentially. You know, look at the list of Intervenors
9 here, and it's not necessarily even the most highly
10 funded group here, no offense to anybody. That includes
11 us as well.

12 MS. BAKER: None taken.

13 MR. ZIZMOR: But I would just say that if
14 they're paying their own way, we're paying ours, and
15 there is certainly no compensation system set up here at
16 the CEC like there is at the PUC.

17 So, you know, at least that would level the
18 field a tiny, tiny bit in terms of, you know, everybody
19 paying their own way to a certain extent and, again, you
20 know, the ratepayers shouldn't be burdened with this. We
21 fully agree with that as far as Mr. Sarvey has expressed
22 it.

23 And, you know, if it doesn't come to pass in
24 this proceeding, we think, as discussed at the site
25 remediation discussion earlier, this is something that

1 probably should be brought up at the policy level issue
2 in the future by the full Commission.

3 HEARING OFFICER KRAMER: Okay. Thank you.

4 I have one question for -- well, for everyone
5 basically that Mr. Sarvey might be the most likely
6 candidate to answer it.

7 If we were to take such a step, what's the
8 basis for our legal authority to require the applicant to
9 pay the AFC fees for this amendment?

10 MR. SARVEY: I think we're probably looking
11 more at a policy issue than a legal issue, but I don't
12 think you may or may not have legal basis. I'm not a
13 lawyer, so I'm not going to advance any principles here,
14 but I'm going to try to be a lawyer later.

15 But I believe it's more of a policy issue, and
16 if this thing comes -- if they come up with more
17 preferred resources and NRG has to come back with a
18 500-megawatt project, are we going to again classify that
19 as an amendment? And are we going to again have the
20 ratepayers pay for that proceeding as well?

21 So once again, I think it's a policy issue. I
22 don't see why there are legal arguments because the law
23 doesn't really address it.

24 HEARING OFFICER KRAMER: Does staff have any
25 comment on the legal authority aspect?

1 MR. RATLIFF: We think there would be no basis
2 for such charges -- or at least I'm aware of none, so
3 that, in my view, is a problem.

4 HEARING OFFICER KRAMER: Okay. Thank you.
5 Okay. So hold on a second.

6 PRESIDING MEMBER DOUGLAS: So we're going to
7 take the motion under submission. Commissioner
8 McAllister is not here, and when we have an opportunity
9 at the next hearing to have a deliberation, we can
10 deliberate on this.

11 I will, as I did on the former issue, share
12 some of my views just for the sake of transparency and
13 not keeping people guessing, at least in terms of my
14 views on some things.

15 I think it's very important that the Energy
16 Commission, you know, have and continue to have a culture
17 of thoroughly reviewing the issues that a power plant
18 proposal presents and conducting that review, you know,
19 without going off the deep end, but also without skimping
20 on necessary costs to bring in experts or to do what
21 needs to be done to understand, you know, what in some
22 cases have been very new, very novel, very challenging
23 issues.

24 So, you know, I certainly am not -- and
25 sometimes when proceedings are complex and controversial

1 or when there are changes that triggers new review and
2 it's a cost that needs to be borne, and just in order to
3 provide the service Energy Commission provides.

4 On the other hand, I will say that I think
5 Mr. Sarvey is raising as a policy matter, an interesting
6 matter and one that I have thought about before, which is
7 the extent to which a fee structure where there is a
8 compliance fee that is generally in place for basic
9 compliance work, you know, basic monitoring and potential
10 minor amendments is sufficient to cover a major event.

11 Now, that comment is a policy comment that in
12 -- you know, in no way indicates my interest in suddenly
13 changing the rules of the game today for this case, but I
14 think he raises a policy point that merits some further
15 discussion in a different forum.

16 So that's all I'll say on that, and we'll take
17 the issue under submission.

18 MR. SARVEY: Can I make one more statement?

19 HEARING OFFICER KRAMER: Mr. Sarvey.

20 MR. SARVEY: I'll note that the City of
21 Carlsbad and every municipality that I've ever
22 encountered, when a developer comes to them with a
23 project, the very first thing that happens, they sign a
24 reimbursement agreement for expenses. I'm sure the City
25 of Carlsbad doesn't have anybody come in that doesn't

1 sign that agreement and say, "Okay. We spent this staff
2 time. We want to be reimbursed for it."

3 I don't know what the legal justification for
4 that is, but there must be one. Maybe there isn't, I
5 don't know. But I would request or recommend that maybe
6 we look in that area and perhaps we could come up with
7 some legal justification for it, but you won't find any
8 municipality in this entire state that doesn't have you
9 execute a reimbursement agreement the moment you walk
10 through the door with a project. And if the City of
11 Carlsbad disagrees with me, I would like to hear it, but
12 somehow I think it's true. Maybe I'm wrong.

13 HEARING OFFICER KRAMER: Okay. Thank you.

14 Dr. Roe?

15 DR. ROE: Yes. I agree with Commissioner
16 Douglas that there is a serious policy issue here because
17 there it certainly disturbed me all along. What is the
18 policy in determining whether something qualifies as an
19 amendment or requires a new AFC? And also at the early
20 stages when an amendment is authored, do -- does the
21 public Intervenors or anybody else have the opportunity
22 to challenge that amendment as not being appropriate and
23 should be an AFC?

24 So that may be some of the things that your
25 policy group will take under consideration.

1 PRESIDING MEMBER DOUGLAS: That may be all. My
2 comment was really about the fee structure, which is what
3 Mr. Sarvey raised. There are opportunities for the
4 public to raise or challenge the question of whether
5 something is a properly considered an amendment.

6 HEARING OFFICER KRAMER: Okay.

7 MR. THOMPSON: Mr. Kramer, I have a 30-second
8 housekeeping item and then I've got to get someone to the
9 airport or they're going to have a very unhappy home life
10 in Oregon.

11 HEARING OFFICER KRAMER: Okay.

12 MR. THOMPSON: What I would like to do is
13 introduce and ask for the admission of Exhibit 101 for
14 the following changes: From the testimony of Kirsten
15 Planka, Exhibits -- I would like the exhibit numbers to
16 be changed as per the page that you distributed earlier.

17 HEARING OFFICER KRAMER: I don't know that
18 that's really necessary because we're going to have the
19 conversion sheet in the decision, so people will be able
20 to apply that.

21 MR. THOMPSON: Then I move for the admission of
22 101.

23 HEARING OFFICER KRAMER: Okay. Well, that was
24 going to be something we took official notice of.

25 Since you're not a party, you can't introduce

1 exhibits, but does anybody object to us taking judicial
2 notice of this exhibit?

3 Shouldn't it be 101 through 105 for that party?

4 MR. THOMPSON: Well, 101 is the testimony that
5 contains the other ones.

6 HEARING OFFICER KRAMER: Well, but they've been
7 separately numbered.

8 MR. THOMPSON: Okay. 101 to 105. Could you
9 take official notice?

10 HEARING OFFICER KRAMER: Does anyone object to
11 us taking official notice of those documents?

12 MS. WILLIS: No objection.

13 HEARING OFFICER KRAMER: All right. So we've
14 got 101 to 105. There is a remote possibility -- well,
15 you'll still be here right, Mr. Thompson?

16 MR. THOMPSON: No, I'm driving.

17 HEARING OFFICER KRAMER: You're driving. Okay.
18 Well, some of your exhibits were offered by -- or other
19 people also offered them, so if for some reason their
20 offering should fail, some of what you've provided might
21 not make it in, but I would suspect that's a relatively
22 remote possibility.

23 MR. THOMPSON: And we are indifferent as to the
24 numbering.

25 PRESIDING MEMBER DOUGLAS: Thank you for being

1 here.

2 MR. SARVEY: When do we move our exhibits,
3 Mr. Kramer?

4 HEARING OFFICER KRAMER: That's later.

5 MR. SARVEY: Okay.

6 PRESIDING MEMBER DOUGLAS: We're just handling
7 him because he's driving all the way to Oregon and back.

8 MR. THOMPSON: No, no. That, I don't want.

9 HEARING OFFICER KRAMER: Okay. So we've closed
10 out Mr. Sarvey's motion and taken it under submission.
11 We still have overrides.

12 Okay. So I think the last topic is overrides.
13 It looks like the staff -- did you have more on the
14 conditions?

15 MS. SIEKMANN: Yes.

16 HEARING OFFICER KRAMER: Well, let's get to
17 that next after overrides.

18 So on overrides, it looks like the staff
19 witnesses left, but I wondered if we need them at all.

20 Ms. Siekmann?

21 MS. SIEKMANN: Yes.

22 MR. RATLIFF: I'm sorry. I missed that.

23 HEARING OFFICER KRAMER: On overrides, let me
24 ask Ms. Siekmann, did you have questions for the staff
25 witnesses?

1 MS. SIEKMANN: I believe we covered that.

2 HEARING OFFICER KRAMER: Okay.

3 MS. SIEKMANN: So thank you.

4 HEARING OFFICER KRAMER: So did you have
5 anything else to offer by way of testimony?

6 MS. SIEKMANN: No.

7 HEARING OFFICER KRAMER: Does anybody have
8 anything on overrides?

9 MR. MCKINSEY: No. I agree. We kind of
10 covered it as we went during this proceeding, to the
11 extent we've had comments or discussions of it.

12 HEARING OFFICER KRAMER: Yeah. We certainly
13 chipped away at it but I just wanted to make sure we
14 formally include anything else we need.

15 So anyone on the telephone have anything about
16 overrides?

17 Nobody in the room. Okay. So we can check off
18 overrides as well.

19 And I think we are -- the remaining subjects on
20 page 5 of the topic spreadsheet are soil and water,
21 facility design, project description.

22 MS. SIEKMANN: Excuse me, Mr. Kramer, we still
23 have conditions.

24 HEARING OFFICER KRAMER: You're right.

25 MS. SIEKMANN: Sorry.

1 HEARING OFFICER KRAMER: Let me finish that
2 list and then we'll get back to conditions.

3 So soil and water resources, facility design,
4 project description, transmission line safety and
5 nuisance, public health, hazardous materials, biological
6 resources, cultural resources, socioeconomics, geology --
7 geological and paleontological and waste management. We
8 had nobody wanting to testify or cross-examine anyone, so
9 we will take those -- we will close those topics as well.

10 That just leaves us with, I think Ms. Siekmann
11 had some issues in the area of the conditions, so go
12 ahead.

13 MS. SIEKMANN: So my first is -- so Condition
14 AQ-SC-11 was eliminated, had been eliminated, so the FDOC
15 baseline was changed, and so I assume that the -- I
16 assume the project owner needs to check with the EPA on
17 PSD again, so that condition should be back in.

18 MS. COCHRAN: I'm sorry. The number again?

19 MS. SIEKMANN: AQ-SC-11. It says that they're
20 supposed to -- the project owner is supposed to provide
21 proof of US EPSPA's approval of PSD or certification that
22 one is not required.

23 HEARING OFFICER KRAMER: With the struck-out
24 portion, Susan, below the new SC-11.

25 MR. MCKINSEY: The project owner's position is

1 that now there is no concern over PSD applying. That is
2 appropriately removed.

3 MS. SIEKMANN: What?

4 HEARING OFFICER KRAMER: And why is there no
5 concern?

6 MR. MCKINSEY: The project will not trigger
7 PSD. That's in the testimony in the air quality section
8 and the testimony of the project owner.

9 MS. SIEKMANN: But my understanding was that
10 you still had -- my understanding from Dr. Moore, when I
11 had a discussion with him unfortunately not on the record
12 but he's gone, is that you guys still had to -- because
13 of the change of the baseline, you still had to contact
14 EPSPA to make sure that you don't have PSD still.

15 MR. MCKINSEY: Then, again, that's not the
16 case. The project doesn't trigger PSD and that's why
17 it's removed.

18 MS. SIEKMANN: Well --

19 MR. MCKINSEY: I mean --

20 MS. SIEKMANN: -- I would like --

21 MR. MCKINSEY: -- this is an air quality topic.
22 I still have an air quality person here. If you want to
23 hear from our quality expert, everyone else has left,
24 because -- and we covered air quality, and this is a
25 little more than a condition question, but --

1 MS. SIEKMANN: Yeah, it's all about the
2 condition.

3 MR. MCKINSEY: But again, the testimony is
4 pretty clear from the staff and the project owner, and
5 the project does not trigger PSD. It does not exceed any
6 of the thresholds of the requirement.

7 MS. SIEKMANN: But my understanding -- my
8 understanding is that once -- I mean, because the
9 baseline has changed that you have to contact EPA again.

10 MR. MCKINSEY: No, that's not correct.

11 MS. SIEKMANN: You're absolutely positive? I
12 mean you're the expert.

13 MR. MCKINSEY: Well, again, I'm an attorney,
14 and if you want the experts, it's the air quality panel.
15 It's not --

16 MS. SIEKMANN: Well, is that something that
17 staff can ask about?

18 MR. MCKINSEY: I can provide our expert. He's
19 here if you do you want to hear from our air quality
20 expert.

21 MS. SIEKMANN: But, you know, I agree that he's
22 definitely an air quality expert, but he's yours. I
23 would kind of like it from somebody independent.

24 HEARING OFFICER KRAMER: Well, we also have a
25 staff supervising engineer here --

1 MR. MCKINSEY: Yeah.

2 HEARING OFFICER KRAMER: So were you sworn in,
3 Mr. Layton?

4 MR. LAYTON: I was not sworn in, Mr. Kramer.
5 Sworn at, not sworn in.

6 MR. RATLIFF: The staff issue is the PSD permit
7 is a separate permit. It is the responsibility of EPA.
8 If the air district says it's not required and the status
9 is it's not required. We feel like there is no further
10 duty.

11 MS. SIEKMANN: Then why did you have the
12 condition to start with?

13 MR. RATLIFF: I actually don't know. I think
14 that -- I don't know, but we don't have it now.

15 MS. SIEKMANN: That's true.

16 HEARING OFFICER KRAMER: Do you have anything
17 to add?

18 MS. SIEKMANN: Do you normally have it?

19 MR. RATLIFF: I am not sure I can answer that,
20 but we could ask Mr. Layton. I mean, he --

21 MS. SIEKMANN: Okay.

22 MR. RATLIFF: -- perhaps could give us --
23 enlighten us further.

24 MS. SIEKMANN: Thank you.

25 HEARING OFFICER KRAMER: First, he must take an

1 oath.

2 THE REPORTER: Do you swear or affirm to tell
3 the truth, the whole truth and nothing but the truth?

4 MR. LAYTON: I do.

5 THE REPORTER: Thank you.

6 MR. LAYTON: I agree with Mr. McKinsey that PSD
7 is not required for this project. This was part of the
8 original decision, this was not part of the PSA for this
9 amendment. It's the license, and at the time it was a
10 greenhouse gas issue. PSD was going to be required
11 because it was a greenhouse gas threshold. There is no
12 longer a PSD requirement for greenhouse gases, so there
13 is not a PSD required for this.

14 And the petitioner and the district have gone
15 to great lengths to make sure the emissions are below the
16 threshold. This project does not require that for
17 greenhouse gas or criteria pollutants.

18 HEARING OFFICER KRAMER: Okay. Could I say
19 your name for the transcript and the board and spell it?

20 MR. LAYTON: And spell it? Matthew Layton,
21 M-a-t-t-h-e-w, L-a-y-t-o-n.

22 MS. SIEKMANN: Now, see, that's what I needed
23 to hear. Thank you very much.

24 HEARING OFFICER KRAMER: Okay. What's your
25 next?

1 MS. SIEKMANN: Okay. And then this was --
2 unfortunately, it's a question for Dr. Moore.

3 So then the next one is condition of
4 certification AQ-79. It's the verification. It's about
5 reporting, and the project owner shall provide the CPM
6 district records demonstrating compliance with this
7 condition as part of the monthly Commission status
8 report.

9 And my question to staff is, is that available
10 to us to see on the compliance document?

11 MR. MCKINSEY: Did you say 79?

12 MS. SIEKMANN: I did.

13 MR. MCKINSEY: I think that's different than
14 what the errata 79 is because they changed numbers,
15 right?

16 MS. SIEKMANN: Oh, could it be AQ-8?

17 MR. MCKINSEY: No, because they changed about
18 four.

19 MS. SIEKMANN: It's from conditions of
20 certification of page 7-40.

21 MS. BAKER: Are you looking at --

22 MR. MCKINSEY: The errata changed --

23 MS. SIEKMANN: From the FSA.

24 MR. MCKINSEY: But the errata changed the
25 numbers on a bunch of air quality --

1 MS. SIEKMANN: Oh, I see.

2 MS. WILLIS: I'm so sorry.

3 MR. MCKINSEY: It's 83.

4 MS. SIEKMANN: And basically my question is I
5 just wants to know if these compliance report, these
6 monthly compliance reports will be available to us on the
7 compliance docket? That's all. That's my question.
8 It's 83. Thank you.

9 So is it?

10 MR. RATLIFF: Mr. Monasmith tells me that we
11 don't typically publish these reports, that they are
12 available if you request them.

13 MS. SIEKMANN: Oh, we need to request them like
14 how?

15 MR. RATLIFF: Yeah.

16 MS. SIEKMANN: How?

17 MR. RATLIFF: By simply asking.

18 MS. SIEKMANN: Call by phone? So each month
19 call by phone?

20 MR. RATLIFF: Yeah, phone or e-mail, messenger
21 pidgeon. I don't know. It doesn't matter. You can ask
22 for it any way you want and we'll provide it.

23 MS. SIEKMANN: Okay. Then I just wanted to let
24 you know, in Noise 8, in Noise 8 that it says "pipe
25 driving," instead of "pile driving."

1 MR. RATLIFF: We may have important pipes in
2 our --

3 MR. MCKINSEY: Oh, the title of the condition
4 is "pipe driving."

5 MR. RATLIFF: I don't know if this has been
6 caught in the --

7 MR. MCKINSEY: I'm looking at the errata. It
8 says "pipe."

9 MR. RATLIFF: We'll change it.

10 MS. SIEKMANN: I just thought you might want to
11 know.

12 And then I was going to suggest that Noise
13 Conditions 8 and 9 include the beginning and ending dates
14 of pile driving and concrete pouring in your
15 notifications to the public and the city.

16 MR. MCKINSEY: Well, the conditions say you
17 have to give notice prior, 10 days prior, and I think
18 there's always an issue about saying an end date if you
19 don't know exactly precisely. You know, you might have
20 an initial schedule by if -- I mean, so in the language
21 right now, it says the times and duration of this
22 activity on Noise 8, and then on 9, it says -- 8 says
23 times and duration.

24 MS. WILLIS: Actually, that was in response to
25 your comments --

1 MS. SIEKMANN: Oh, good. Thank you.

2 MS. WILLIS: -- at the workshop. We added the
3 duration, so that --

4 MS. SIEKMANN: So that's been taken care?

5 MS. WILLIS: Yes.

6 MS. SIEKMANN: Thank you very much. Okay. And
7 then let's see.

8 MR. MCKINSEY: There's a problem on 9. Okay.
9 I think the word "verification" is missing. The issue is
10 the word "verification" doesn't appear in that condition
11 any more. I think it goes either -- I think it goes at
12 the end of that paragraph where it says, "at least 10
13 days prior to concrete pouring activities that are
14 anticipated to extend." You have to submit a statement
15 to the CPM. I think that's the beginning, but the
16 "verification" word is missing.

17 HEARING OFFICER KRAMER: There's still not a
18 date component to that. Is that important? It just says
19 the time and the number of nights, but not like the other
20 one where you knew the first --

21 MS. WILLIS: I think we assume that the number
22 of nights would -- is the duration.

23 HEARING OFFICER KRAMER: But you don't say what
24 the first day is.

25 MR. MCKINSEY: Mr. Kramer, the notification is

1 the last -- the two paragraphs down below on the page is
2 the notification of the residents paragraph.

3 HEARING OFFICER KRAMER: Can you scroll, Susan?

4 MR. LAYTON: Mr. Kramer, this is Matt Layton
5 again. We were trying to address the concerns of
6 Ms. Siekmann, but we thought it would cause a lot more
7 problems if we had a specific start date and a specific
8 end date because construction is variable. We were
9 trying to arrive at some solution, so providing a
10 duration -- again, probably an attempted duration of the
11 number of days.

12 MS. SIEKMANN: And that's very helpful. It's
13 very helpful for people to know it's going to happen but
14 like how long is it going to take about?

15 MR. LAYTON: About --

16 MS. SIEKMANN: Yeah.

17 MR. LAYTON: We didn't have a start and stop
18 date because -- and certainly, we thought there would be
19 no problems, but we did say -- suggest when it might
20 start and how long it might last.

21 MS. SIEKMANN: That's great.

22 MR. LAYTON: It was intentionally vague.

23 MS. SIEKMANN: That's -- yes, but it gives you
24 a start date and it gives you about how long it's going
25 to last, and that makes a big difference, like is it

1 going to go for a month? Is it going to go for two
2 months? Is it going to be a week? It makes a big
3 difference.

4 HEARING OFFICER KRAMER: It actually doesn't
5 give a precise start date.

6 MR. LAYTON: We don't -- we didn't want to give
7 a precise start date.

8 HEARING OFFICER KRAMER: I'm just thinking that
9 perhaps Ms. Siekmann is assuming that you are.

10 MS. SIEKMANN: Yes. So we still are.

11 MS. WILLIS: Well, there is a 10-day
12 notification, so they're notifying them that they are
13 going to be starting a so the point.

14 HEARING OFFICER KRAMER: Well, at least 10
15 days, but they won't know that.

16 MS. WILLIS: The exact date.

17 HEARING OFFICER KRAMER: When they get the
18 notice, they won't know that you were required to give it
19 10 days.

20 MS. WILLIS: It depends on what the -- I'm not
21 sure what you're saying, but I'm assuming that's what the
22 notice is.

23 HEARING OFFICER KRAMER: Right, but it says you
24 gave the notice at least 10 days, but you might give it
25 20 days in advance.

1 MS. WILLIS: I'm sorry. I missed that.

2 HEARING OFFICER KRAMER: All it says is you
3 gave the notice 10 days in advance, but 20 days is at
4 least 10 days in advance. And what I'm saying is the
5 person receiving this notice, if it doesn't on the face
6 of it say we're starting approximately such and such a
7 date, they don't know. They're not going to remember the
8 condition and do the math. So I'm only pointing it out
9 because it seemed important to Ms. Siekmann that --

10 MS. WILLIS: Yeah. It's important to know.

11 HEARING OFFICER KRAMER: -- she have a start
12 date, like you did in Noise 8.

13 MR. MCKINSEY: We don't haven't an issue with
14 having to say this is the expected start date in the
15 notice.

16 HEARING OFFICER KRAMER: All right. We'll work
17 on it and draft it soon.

18 MR. MCKINSEY: That might be something better
19 for the Committee to take, you know, as part of the
20 decision since it's -- you know, but we have no issue
21 with some language there.

22 HEARING OFFICER KRAMER: Okay.

23 MR. MCKINSEY: And so another housekeeping item
24 that was called to my attention is the light Noise 8 and
25 9, the visual conditions in the errata lost or

1 verifications too some of them, so that's -- you know,
2 they were there in the earlier version, I think, but --

3 HEARING OFFICER KRAMER: So we could probably
4 piece it together by looking at the earlier version.

5 MR. MCKINSEY: Yeah. The word "verification"
6 is missing in some of that.

7 HEARING OFFICER KRAMER: Do you have more,
8 Ms. Siekmann?

9 MS. SIEKMANN: Yeah, just one more, but what's
10 the exhibit number that has the corrected conditions?

11 HEARING OFFICER KRAMER: It's 2001.

12 MS. SIEKMANN: Okay. Thank you.

13 HEARING OFFICER KRAMER: That's the latest
14 version.

15 MS. SIEKMANN: Because see, I put this all
16 together before that so --

17 Then my last one is about Vis 5, and honestly,
18 I have a real concern with CalTrans being in that
19 condition being responsible for mitigation because
20 they've already said they won't.

21 MS. BAKER: That's not really what they said.

22 MS. SIEKMANN: Yes, that is what they said
23 because if you look at --

24 HEARING OFFICER KRAMER: Ms. Baker, do you want
25 to clarify what you understand CalTrans to have said?

1 MS. BAKER: What I've understood CalTrans to
2 say is that CalTrans will mitigate on CalTrans property.
3 CalTrans will not mitigate on somebody else's property.

4 HEARING OFFICER KRAMER: I don't know. If they
5 take more of it, then they will have more to mitigate.

6 MS. BAKER: Well, yeah, but that's what I have
7 understood them to say, that they have no intention of
8 mitigating on someone else's property.

9 MS. SIEKMANN: Also in the staff document, that
10 was docketed, the conversation with CalTrans. It
11 specifically said that CalTrans said they will not
12 mitigate.

13 MR. RATLIFF: CalTrans' official position, I
14 would think, is set forth in the EIR/EIS and there they
15 commit to a mitigation effort.

16 But just so you understand where we're coming
17 from is we want the most mitigation Carlsbad can get for
18 the impact. And we know there's going to be some
19 horse-trading and bargaining when -- even when the
20 project goes through.

21 MS. SIEKMANN: But at the end of the day,
22 somebody has to be responsible.

23 MR. RATLIFF: Right, and the only --

24 MS. SIEKMANN: And this doesn't clarify who
25 is?

1 MR. RATLIFF: Well, but the only thing that the
2 condition attempts to control is the party that we do
3 have control over and that is the applicant. And we have
4 put the responsibility on the applicant which gives the
5 applicant, we believe, the ability to say, "CalTrans,
6 there is a legal constraint here. We have a permit and
7 this is a condition of our permit, and we cannot, you
8 know, break this permit without consequences."

9 And that, I think, will set the situation up
10 where in the whole shake-out, which I expect will include
11 City's involvement and the Coastal Commission's
12 involvement and CalTrans' involvement, I think that there
13 will be a very likely opportunity for successful
14 mitigation, at least maximum mitigation of the effort of
15 this widening project. That's what we hope to see as a
16 result. You're right, we don't control CalTrans, but we
17 do think that there's an optimal chance for a good
18 outcome for mitigation with their cooperation.

19 MS. SIEKMANN: Well, I believe that you can
20 appreciate our position. Here we are no Coastal
21 Commission. Coastal Commission wouldn't come in. Now
22 CalTrans, this conversation what you guys put in there
23 and we see it in the condition and we're like --

24 MR. MCKINSEY: Can I?

25 MS. SIEKMANN: -- please.

1 MR. MCKINSEY: I don't think we agree that this
2 condition does anything other than tell the project owner
3 they have to -- and the difference and there is the first
4 paragraph of that condition specifies that the project
5 owner has to maintain. And that first paragraph is the
6 mandate on the project owner for maintaining the
7 screening and the visual aesthetics.

8 The second paragraph says that they have to
9 come up with the plan that they submit, and that includes
10 cooperation of CalTrans, but this condition makes it a
11 complete obligation of the project owner to preserve the
12 mitigation and the screening, and so I don't know if we
13 agree that this condition is somehow attempting to impose
14 upon CalTrans any obligation because everybody's correct,
15 they can't and, you know, it would have no effect if the
16 Coastal Commission said, "CalTrans, you will do this."
17 And project owner understands this as their obligation
18 and thus it's their obligation, to the extent they can,
19 to work with CalTrans to provide that.

20 And so that's -- you know, we don't have the
21 same position that it's saying it's CalTrans' problem,
22 it's the project owner's problem in our view of this
23 condition.

24 MR. RATLIFF: But the Coastal Commission -- as
25 we were sitting here, Mike, my project manager, is

1 showing me a report which I haven't read from the Coastal
2 Commission on the I-5 widening, and I can't -- like I
3 said, I can't tell you the contents, but we will docket
4 it to make sure that it's available to all the parties to
5 see what the Coastal Commission is saying about the I-5
6 widening project. And I suspect the Coastal Commission
7 will be very interested and may be involved in final
8 alignment for the project as well.

9 MS. BAKER: I also wanted to weigh in on
10 Vis 5. You've heard us talk about the transmission lines
11 ad nauseam, and Power of Vision would request that the
12 Commission take a serious look at some of the
13 alternatives, which is the H frames, A frames or even
14 undergrounding the power lines or moving them to the east
15 side. That would help mitigate some of what's going to
16 happen when the I-5 is widened which is, you know,
17 10 years down the road.

18 I think there are some things that we can do
19 now in anticipation of what's going to be happening when
20 the I-5 is widened.

21 Another thing that might alleviate some of our
22 concerns too is, is it -- and perhaps this is not
23 possible, but to suggest that in consultation with the
24 City of Carlsbad -- I think you heard Mr. Barbario say
25 earlier today that they would be happy to be a part of

1 any mitigation once the I-5 is widened.

2 And it would give the citizens of Carlsbad some
3 level of comfort to know that we had a local person who
4 is keeping an eye out for us as opposed to state agencies
5 that are a long time away. You all will be gone.
6 CalTrans, once they come through and do their work,
7 they're gone, but the City of Carlsbad is beholden to the
8 citizens in the community, and it might alleviate some of
9 our concerns if the City were consulted in terms of the
10 mitigation of Vis 5.

11 PRESIDING MEMBER DOUGLAS: Well, just briefly,
12 the Energy Commission will have an ongoing compliance
13 role in ensuring the conditions of -- in a license over
14 time, but I understand your point.

15 MS. BAKER: Yeah, but I don't have your phone
16 number, Commission Douglas, but I have the mayor's phone
17 number, so I mean, that's the big difference. That's
18 what it means to us here in this community.

19 HEARING OFFICER KRAMER: Well, you should make
20 sure you get the compliance project manager's phone
21 number, though.

22 MR. MCKINSEY: Can we note the condition --
23 and, you know, this is really a topic --

24 MS. BAKER: We did talk about.

25 MR. MCKINSEY: -- we disagreed and agreed on

1 some portions, and some of what you're getting at, I
2 think we have disagreed on the fee thing. I think that's
3 appropriate because you're saying we ought to consider
4 that, but we don't -- we're not afraid of shying away
5 from the fact that the City of Carlsbad should have a
6 role in here.

7 And we noted that it does require that the City
8 of Carlsbad gets to comment on this plan. And like most
9 of these things, there's a lot of precedent -- the
10 Commission pays close attention to that and their
11 comments and role, and so the project owner is not going
12 to want to submit a plan that doesn't work, and so
13 because they have to get comments from the City of
14 Carlsbad, they are going to be involved and that's what
15 we indicated.

16 We read this again to say that we're going to
17 have to involve the City of Carlsbad in that process, and
18 we're going to want to and that -- because the condition
19 is requiring that it go to the City of Carlsbad for
20 review and comments.

21 MS. BAKER: Okay. But it doesn't say that in
22 the condition.

23 MR. MCKINSEY: In the verification line, it
24 does.

25 MS. BAKER: Oh, it does? Okay.

1 MR. MCKINSEY: Yes. It says, "The project
2 owner" --

3 MS. BAKER: My mistake.

4 MR. MCKINSEY: -- "shall submit a draft of the
5 cumulative impact mitigation plan to the City of Carlsbad
6 for review and comment."

7 MS. BAKER: My mistake.

8 DR. ROE: Could I add something on that? We
9 heard some very interesting testimony from staff on how
10 they could possibly implement the buffer zone by
11 providing a retaining wall moving the upper rim road at
12 the pinch points. That testimony has come out since the
13 last revision that staff proposed for Vis 5.

14 Is there any way that we can incorporate those
15 suggestions into Vis 5?

16 HEARING OFFICER KRAMER: I think that will have
17 to be for the Committee to decide because that's
18 definitely a change to the -- in some ways to the design
19 of the project, and the Committee has to decide if they
20 want to require that before it would be appropriate to
21 think about adding something.

22 MR. MCKINSEY: Well, I can tell you the project
23 owner's position on that would be we would not want that,
24 and we prefer a condition specified that it has to be
25 accomplished, and the more you put in the condition on

1 how it shall be done would constrain it, but again I
2 think that was part of the discussion yesterday as
3 well.

4 MR. RATLIFF: Yeah, and the examples, what
5 Mr. Kanemoto called the scenarios, were really more of an
6 effort to show that there are different approaches that
7 could be used and, which ultimately, you know, the
8 success of them will depend on the outcome of what we
9 think will be a negotiation in the end with multiple
10 parties involved over how this is best mitigated when
11 it's built.

12 And also it will depend on the final alignment
13 that CalTrans, you know, final design of their widening
14 project, so we don't think that it would be useful to try
15 to guess that outcome by trying to focus on one
16 particular scenario that was more of an illustrative
17 nature.

18 DR. ROE: My response to that is that in the
19 original Vis 5 you did make suggestions about if certain
20 effective screening could not be achieved and you don't
21 rule out the project owners having to underground the
22 cable, and that was a point of view that the CPM could
23 consider when he was evaluating the final agreements that
24 may or may not be reached.

25 And in a similar fashion, since Vis 5 calls for

1 the CPM to call the final shots on what's going to go in
2 there, it seems that it would be nice, appropriate that
3 the CPM receive some guidance from the Commission as to
4 what might be some of the potential solutions so that it
5 doesn't get lost and overlooked at at the time that the
6 CPM is burdened with this decision.

7 MR. RATLIFF: It's my understanding that's the
8 intent, is that the width be maintained at least to be
9 20 feet wide for screening vegetation, but to try to
10 allow flexibility in something like an informal variance
11 process that could be justified if that should be
12 infeasible with final design, with final agreements on
13 how the screening is going to be accomplished.

14 HEARING OFFICER KRAMER: Okay. Well, we'll
15 take all that under consideration.

16 That was it for you, Ms. Siekmann?

17 MS. SIEKMANN: Yes.

18 HEARING OFFICER KRAMER: She says yes.

19 We're going to take a 10-minute break, and part
20 of the purpose is that our court reporter has a
21 commitment so we have a substitute that we are going to
22 bring into our system, and when we come back in about
23 10 minutes, we'll finish up what we have to do.

24 Thank you.

25 (Whereupon, at 3:47 p.m., a break was taken.)

1 MR. KRAMER: We'll go back on the record.

2 Let me find my place. All we have is closing
3 oral argument and then some housekeeping items, exhibits,
4 and then what's going to be briefed, so -- and then public
5 comment again, of course.

6 Ms. Matthews, do you have time constraints?
7 Would it be better for you to do those now?

8 Okay. Our public advisor is going to come up to
9 the mic. And last she told me, she had six public
10 comments to read.

11 And then do we have any members of the public in
12 the audience who want to make a public comment? By a show
13 of hands, none.

14 Do we have anyone on the telephone who wishes to
15 make a public comment?

16 Okay. Ms. Matthews, go ahead.

17 MS. MATTHEWS: The first comment is -- and most
18 of these are from members of the public who were here
19 yesterday, came a little bit late, and they could not be
20 here today.

21 So the first is on behalf of Jonnie Johnson, who
22 is part of Terramar. Her remarks are, "This plant is
23 old-school thinking. Noise and air pollution. California
24 State goal is to achieve alternate fuel."

25 Rob Coury, from Terramar, "I'm concerned about

1 traffic, serious crossing Cannon, too big. Please look at
2 better alternative."

3 Richard and Mary James, also members of
4 Terramar, "Alternative energy sources must eventually
5 prevail. Let's look to the future."

6 William Kloetzer -- and I will provide the names
7 of all these, as well as spellings."

8 His concerns are, "I'm strongly opposed to a
9 fossil-fuel-driven power plant on our valuable coastal
10 habitat."

11 Deborah Kloetzer, "I am strongly opposed to the
12 proposed power plant in Carlsbad."

13 Norma Bwarie, "Coastal Commission could, within
14 a two-and-a-half-year period, change 35-foot height limit.
15 With urban development, visual obstruction could occur.
16 The nonindustrial development will provide more traffic.
17 The calm and quiet of our residential area has been
18 protected by that large power plant and industrial use.

19 "More traffic includes trucks, cars, bicycles,
20 pedestrians and pets. With this comes exhaust, trash,
21 noise and congestion. Traffic signals, entrances and
22 exits, crowd movement all negatively affect local and
23 immediate proximity residences. What for 60 years was a
24 highly-desired, isolated, quiet community will become an
25 area clouded by activity and pollution."

1 MR. KRAMER: Thank you. So that's going to --
2 and I'll ask one more time, does anyone here or on the
3 phone wish to make a public comment?

4 Hearing none, public comment is closed for the
5 day.

6 So next is closing oral arguments. Power of
7 Vision, Terramar and Mr. Sarvey each wanted five minutes.
8 So let's start with Power of Vision.

9 MS. BAKER: Well, I would just like to say that
10 over the last eight years, since we've been working on
11 these two power plants, you all have become very familiar
12 to us. I thank you for your time and your interest in
13 helping the citizens of the City of Carlsbad to preserve
14 what, I hope you've come to realize, is very precious to
15 us, our natural resource, the beach, our quality of life.

16 And I won't belabor the Vis 5 any longer. I
17 think we've beat that topic absolutely to death, so I
18 won't take any more of your time for that other than to
19 thank you for your time.

20 DR. ROE: I'd like to put in my two sense, too.
21 We've been together, as Julie said, almost eight years
22 now, and, in particular, I want to thank the commissioners
23 and Mr. Kramer for their forbearance in putting up with my
24 many procedural gaffs and my old-fashion ways.

25 When we started this, I was a young man of 82

1 who could climb over fences to look at what was going on
2 in the proposed places. I'm now in my 90th year, I don't
3 think I'll be around to see some of the changes that are
4 going to take place after the I-5 widening takes place.
5 But my children and my grandchildren will be here, and I
6 do hope that the commissioners give serious thought to the
7 best way we can preserve our lovely coastal area. Thank
8 you.

9 MR. KRAMER: Thank you.

10 And Mr. Sarvey?

11 MR. SARVEY: I don't recall requesting five
12 minutes for closing arguments, but if you're going to give
13 me the opportunity, I'll just make a couple statements. I
14 think there's plenty of evidence in this record to
15 demonstrate that the reduced-capacity alternative and,
16 also, the original combined-cycle project are better
17 alternatives than the amended CCP.

18 And something that I didn't make clear at the
19 beginning, and when I was asking questions about whether
20 the air permit allows the Encina project to operate for
21 reliability, and if it is the case that there was a
22 reliability issue, and you need the Encina plant, I think
23 you're in trouble. I think you have a reliable issue you
24 need to address in your decision.

25 There's a lot of policy decisions that we

1 discussed today, and one thing that was mentioned was
2 posting compliance reports online. I think that's an
3 important policy that the Commission needs to do so these
4 people here don't have to go fishing and call Mr. Douglas
5 every 30 days or send him an e-mail asking for the monthly
6 compliance report. So I would strongly encourage you to
7 do that. It's an easy process. Just like we file
8 anything, it would be easy to do, and it should be done.

9 I look forward to further policy discussions on
10 the two issues, retiring the new plant when it's reached
11 the end of its useful life, with some money set aside to
12 do that. And it was mentioned I said 10 million dollars.
13 It's actually three million dollars that I had mentioned.
14 I just want to thank everybody, including the applicant.
15 I feel sorry for the applicant that they've been put in
16 this position. I don't want to see them punished, but at
17 the same time, these are important policy considerations
18 with the license amendment payment and to set aside for
19 demolishing this project when it reaches the end of its
20 useful life, and I think it's something that needs to be
21 addressed. And I think it will take all five
22 commissioners to address it.

23 I prefer not to see it referred to the IEPR like
24 it was last time because it just got lost in the rush.
25 Hopefully, we can focus on those issues and,

1 unfortunately, it may be NRG that's the first victim of
2 those. But I feel sorry for them. They put a good effort
3 into certifying this plant in 2007, and probably if they
4 would have agreed to demolish the whole Encina plant then,
5 they probably could have had Carlsbad agree with them, and
6 they probably could be building that thing right now.

7 But we'll see whether that plant is needed or
8 not when the CPUC makes their decision.

9 Thank you very much, everybody.

10 MR. KRAMER: Thank you. So let's talk about
11 housekeeping.

12 I'm sorry, Ms. Siekmann.

13 MS. BAKER: How could you forget Kerry?

14 MR. KRAMER: For some reason, I think it was --
15 Mr. Baker and Mr. Roe both spoke, and they've been
16 together so -- but go ahead.

17 MS. SIEKMANN: Okay. Thank you.

18 Well, here we are once again. And I really do
19 want to -- I really, really want to thank staff. I cannot
20 believe how much they've listened to us this time. Maybe
21 it's because an intervener, so it's not quite -- I don't
22 know, but I really thank you for listening to the requests
23 that we've made that have been reasonable, and you have
24 absolutely gone out of your way to look at. Sometimes,
25 yes. Sometimes, no. But I really do appreciate what you

1 have done.

2 And I am so glad to see that Encina is going to
3 be torn down. That's just so good for our city. As
4 everyone knows, I don't believe this project is
5 coastally-dependent, but sometimes we have to compromise,
6 and I think if this project were a little smaller so there
7 wouldn't be such visual mitigation that's going on. And I
8 just think -- you know, I really appreciate everyone
9 listening. Hopefully you'll consider that. We'll see
10 what happens.

11 But I thank you, Commissioner Douglas and Mr.
12 Kramer. He does a lot of stuff in the background with
13 keeping all the little exhibits. And he gives us a lot of
14 leniency when we make errors, and I want to say thank you
15 for that, too.

16 So I look forward to whatever comes next via
17 briefing or whatever. Thank you.

18 MR. KRAMER: Okay. Let's talk about exhibits
19 first. Does anybody need a copy of the exhibit list?

20 MS. BAKER: Is that the new one, or is that the
21 one from yesterday?

22 MR. KRAMER: It's from yesterday, but it will
23 help you follow along.

24 MS. SIEKMANN: I also would like to thank the
25 public adviser's office for all of their hard work. Thank

1 you.

2 MR. KRAMER: Okay. So if you -- there's a
3 couple of items that are not on this exhibit list because
4 I didn't bring a printer on the plane, but it gives you
5 the bulk of them. So let's work from the beginning.
6 We've already taken official notice of numbers 101 through
7 105. And then staff asked us to take official notice of
8 several documents. There's some gaps in here because not
9 all of them were actually docketed, so I couldn't assign
10 them to exhibit numbers. So I don't know if Mr. Ratliff
11 -- are there missing documents important enough that you
12 want to try to fix that over the next few days?

13 MR. RATLIFF: We'll look into it. The list that
14 I drew up was based on the exhibit numbers of the last
15 proceeding, asking that they be entered into the record
16 for this proceeding, just to provide the Committee of a
17 more -- broader range of information that they could rely
18 on, including the transcripts.

19 MR. KRAMER: You had actually asked that we take
20 official notice of them.

21 MR. RATLIFF: Yes.

22 MR. KRAMER: Does anybody -- and you described
23 them in your filing as, I think, Exhibits 200 through 217
24 from the original case -- something like that.

25 Is any party going to object if, once he docketes

1 them, I give them -- basically, with this system, I can
2 give them the same exhibit numbers they had in the
3 original case, which is what I've done.

4 Does anybody object to the Committee taking
5 official notice of those?

6 Okay. So we'll take care of that when they come
7 in. I probably won't get to it until next week in the
8 system. So if you pull up the exhibit list, you won't see
9 them on there for awhile.

10 Let's see. Staff also added the exhibit that
11 was originally 433 to their list for official notice, and
12 that was the testimony of the City of Carlsbad.

13 I think, Mr. Monasmith, you found that was
14 identical to something that somebody else offered? Is
15 that correct?

16 MR. RATLIFF: I believe Terramar had filed the
17 City testimony as an exhibit.

18 MR. KRAMER: We can just withdraw -- we'll call
19 it withdrawn on Exhibit 233. And then you also asked the
20 transcripts of the four days of evidentiary hearing in
21 2010 be in the record, that's 251 through 254 on this
22 exhibit list. Anybody object to those, if we take
23 official notice of those?

24 Okay. Those are in. Then we get to the
25 exhibits that you introduced for this time around. The

1 applicant had Exhibits 1,000 through, now, 1031 -- 1030
2 and 1031 being added since this list was printed. There
3 are a couple gaps in there, which you can see -- and I
4 believe it was just the one gap, 1003, and I think that's
5 because they were offering the final staff assessment at
6 that place, and it seemed more appropriate to give credit
7 to staff since they wrote it so --

8 MR. SARVEY: What is 1030 and 1031? I wasn't
9 here yesterday.

10 MR. KRAMER: 1030 was mentioned yesterday. It's
11 the petition to remove, one of the two amendment
12 petitions. Then just forgot it.

13 MR. SARVEY: Okay.

14 MR. KRAMER: And 1031 today is -- I don't recall
15 what it was, but the TN number was 204036. I think it was
16 that air quality errata. I think you were here when we
17 talked about that.

18 MR. SARVEY: So it's all available --

19 MR. KRAMER: Yeah. Again, it may take me a
20 little while to make it click-able, but I'll see if I can
21 do it sooner than next week, so you all can use the
22 exhibit list. Once I do, it will be a click-able link
23 just like the other items on here.

24 So are there any objections to any of the
25 applicant's exhibits?

1 MR. SARVEY: No objections.

2 MR. KRAMER: Okay. Those are all in.

3 Then we have, from the staff, Exhibits 2000
4 through 2010. 2010 is -- that's that staff Air Quality
5 Conditions errata and cleaned-up conditions document.
6 That's not yet in the docket. I just want to note that.
7 They're going to be filing that -- I don't know, maybe,
8 tomorrow or on Monday, somewhere in that range.

9 Does anybody object to that or any of the other
10 staff documents on this list?

11 Seeing none, hearing none from the telephone,
12 those are all in.

13 And then from Terramar, we have 3000 through
14 3044 on the list. There are some gaps in there, but you
15 can see that on the exhibit list. Any objections to any
16 of those documents?

17 Seeing none, those are in -- hearing none.

18 From Power of Vision, we have 4000 through 4019.
19 Again, with a couple of gaps because they overlap somebody
20 else. Mr. McKinsey, you had originally, yesterday,
21 expressed some reservations about 4011 and 4012. Do you
22 continue to have those concerns?

23 MR. MCKINSEY: I think you ruled on those
24 objections. Although -- no, not being admitted as
25 exhibits. There's a difference between exhibits and

1 testimony, so no.

2 MR. KRAMER: And we indicated we understood your
3 concerns about the way they were prepared.

4 Mr. Simpson had no exhibits. Mr. Sarvey has
5 6001 through 6013. I'll note that we previously rejected
6 6013. And right now, that's just a printed copy, so I'll
7 take my copy and get it scanned.

8 Although, Mr. Sarvey, we normally would expect
9 you to do this.

10 MS. SIEKMANN: Mr. Kramer, is that the e-mail?

11 MR. KRAMER: Right, that he passed out this
12 morning. I still need to get it into the system so future
13 generations can see what we rejected. I'm really into
14 completeness.

15 MS. BAKER: Closing the circle.

16 MR. KRAMER: Right.

17 Does anybody have any objections to 6001 through
18 6012.

19 Seeing and hearing none, those are in. That's
20 it for exhibits.

21 Ms. Willis, I think you told me earlier today,
22 you told me there was -- maybe I should be clear on the
23 added exhibits from staff, for the record.

24 2008 was from yesterday, and that was the visual
25 slide from Mr. Kanemoto. 2009 was David Flores'

1 declaration and resume, and then we mentioned the 2010 is
2 yet to be filed, the air quality errata.

3 MS. WILLIS: That would be correct.

4 MR. KRAMER: Okay. So I presume that, but I'll
5 ask again. Did anybody have any objections to the new
6 ones I didn't specifically describe until now, 2008 and
7 2009?

8 Hearing none, those are in. That's it for
9 exhibits.

10 Does anybody think I missed something or they
11 missed something?

12 MS. SIEKMANN: I had a 3045.

13 MR. KRAMER: What was that?

14 MS. SIEKMANN: I had an exhibit 3045 with TN
15 203986. It's Exhibit 3045.

16 MR. KRAMER: What was it?

17 MS. SIEKMANN: It's NRG's submission to the CPUC
18 on the proposed submission.

19 MR. KRAMER: Does anybody object to that coming
20 in? It's possible --

21 MR. MCKINSEY: I'm not sure it wasn't in
22 already. We didn't provide it.

23 Mr. Sarvey, you didn't, did you?

24 MR. KRAMER: Okay. Well, how about we do it
25 this way in the interest of time: If no one objects to

1 it, I'll check for duplicates.

2 MR. SARVEY: It's in there. It's exhibit --

3 MS. SIEKMANN: What number?

4 MR. MCKINSEY: It's 6008, already.

5 MS. SIEKMANN: I'll just call it 6008.

6 MR. KRAMER: So you have no 3045 then.

7 MS. SIEKMANN: Okay.

8 MR. SARVEY: Mr. Kramer, I promised you guys
9 some letters on when I did my -- when I did the motion.
10 How do you want those submitted? These were letters
11 supporting the five-turbine figuration.

12 MR. KRAMER: Let's go to 6014. I'll just call
13 it, for my notes, letters of support for five-turbine
14 contract or five-turbine PPA.

15 Do you have electronic copies of those?

16 MR. SARVEY: Yeah.

17 MR. KRAMER: Could you just put them all in one
18 PDF file?

19 MR. SARVEY: I'll do my best.

20 MR. KRAMER: Does anybody have objections to
21 those letters being entered into the record? Okay.

22 If you have to do them individually, I'll number
23 them individually, but I'd rather just one.

24 MR. SARVEY: I'll try to put them together.

25 DR. ROE: I have a similar question. We haven't

1 had an opportunity to submit, in writing, rewording that
2 we would suggest for Vis. 5. Can we submit that as one of
3 our exhibits tomorrow?

4 MR. KRAMER: Or you could just put it in your
5 brief.

6 DR. ROE: All right.

7 MR. KRAMER: If you're willing to submit it
8 tomorrow, why don't you just file it as a suggestion, then
9 that will let the other parties comment on it in their
10 briefs.

11 DR. ROE: Okay. I have another question.
12 Everybody here might be interested to know that we -- as
13 of 3:17 this afternoon, we finally heard from the Coastal
14 Commission. As a matter of fact, the California Energy
15 Commission posted a new -- docketed a new communication.
16 That's TN No. 204049.

17 MR. KRAMER: I think that's their report on the
18 I-5 widening.

19 DR. ROE: Yes. Is that anywhere in the
20 exhibits?

21 MR. RATLIFF: No, we just discovered it today
22 and we wanted to put it in the record for everyone to look
23 at. We haven't even read it yet, but it's about the I-5
24 widening and the Coastal Commission's interest --

25 DR. ROE: Is that an exhibit?

1 MR. RATLIFF: No. We just docketed it for
2 informational purposes --

3 DR. ROE: You docketed. Okay.

4 MR. RATLIFF: Yes, because it's relevant to I-5
5 widening and the Coastal Commission's interest in the I-5
6 widening. And I think it has to do with mitigation for
7 the I-5 widening.

8 DR. ROE: Thank you for the clarification.

9 MR. RATLIFF: If we discovered it before the
10 hearings, we certainly would have made it an exhibit. Of
11 course, at the end of the day, it seemed like kind of a
12 late time to put it in. It's really up to the Committee
13 if they want to make it an exhibit. We don't mind other
14 people using it any way they want to. We would like to do
15 the say we just discovered it.

16 MR. KRAMER: Well, I'm presuming there are no
17 objections from my left side of the room, but I'll ask
18 Mr. Mckinsey, do you object to that coming in as an
19 exhibit?

20 MR. MCKINSEY: I'm trying to understand, it's
21 from June of last year, so it's not a new document. I'm
22 worried there's not other documents out there like it.
23 For instance -- I haven't seen it either, so I have no
24 idea what it says or -- I don't know how -- you know, it
25 could be an exhibit, but the question is whether it's

1 evidence that the Committee should consider. I don't
2 think I have a problem of it being an exhibit, but I don't
3 think it's been presented as evidence in the proceeding.
4 That's all.

5 MR. KRAMER: I think we, generally, intend that
6 the exhibit set be confined to things that are evidence.

7 MR. MCKINSEY: That's my point. I don't know
8 what it says and doesn't say, and I don't know that it's
9 even the latest word from them, and there's not two or
10 three of those, what portion of I-5 it deals with. We
11 don't know anything about it.

12 MR. KRAMER: Okay.

13 MR. RATLIFF: These are all good points.

14 MR. KRAMER: That's why Mr. Ratliff wasn't
15 offering it as an exhibit. I think, under the
16 circumstances, because nobody has had a chance to read it
17 and prepared to discuss it, it really can't be evidence at
18 this point.

19 So I think that's all for exhibit list. Then we
20 have the question of issues to be briefed and the briefing
21 schedule. We had previously identified coastal dependency
22 at the prehearing conference, I believe, as an issue, that
23 we welcome the parties' briefs about.

24 Let's just take a pause here. I want to talk to
25 Commissioner Douglas for just a second and we'll be back.

1 So the three issues we've identified are coastal
2 dependency, post-closure demolition and financial
3 assurances, the subject of Mr. Sarvey's motion today, and,
4 also, in the area of visual resources, whether the issue
5 with the uncertainty of what CalTrans will do by way of
6 mitigation requires us to find a potential significant
7 impact and override or whether there are some legal
8 theories that suggest to the contrary.

9 But do any of the parties wish to propose
10 additional issues that should be the subject of briefs?

11 MS. SIEKMANN: Would alternatives be something
12 that we could brief on?

13 MR. KRAMER: To be clear, you can brief whatever
14 you want. I'm just calling out things that the
15 Committee's interested in.

16 MS. SIEKMANN: Okay. Thank you.

17 MR. KRAMER: We're open to suggestions of things
18 you think we should be interested in. Because then other
19 people will know perhaps they want to pay more attention
20 to that than they otherwise would. But I'm not hearing
21 anything.

22 MR. SARVEY: I sure do think alternatives is
23 something that should be briefed. It's probably the
24 meaning of this whole project.

25 MR. KRAMER: Are you thinking in terms of legal

1 argument or --

2 MR. SARVEY: Legal and factual.

3 MR. KRAMER: Okay. Sure. You're welcome to do
4 that. We're not seeing as much need as you do, but that
5 should not stop you from making your case.

6 DR. ROE: Mr. Kramer?

7 MR. KRAMER: Go ahead.

8 DR. ROE: Will you give us an inkling of when
9 these briefs are due?

10 MR. KRAMER: Are you sure you don't want me to
11 write it for you?

12 DR. ROE: I would appreciate that.

13 MR. KRAMER: I actually have another job, sorry.

14 DR. ROE: I don't remember seeing that in the
15 Commission's schedule.

16 MR. KRAMER: No, we have to pick a date. If
17 that's what you're after, that's the next step.

18 Transcripts are supposed to be available,
19 probably, by Wednesday. They get to me a little earlier,
20 but I have to review them and fix them up a little bit.
21 Let's say the transcripts are available next Wednesday;
22 that would be the 8th. So we'll set a briefing deadline.
23 We're only going to have one round of briefs, not opening
24 and closing briefs. We'll make it 3 o'clock, just to
25 allow time to make sure dockets unit can approve them so

1 they can get out to everyone else on Friday the 17th of
2 April.

3 And if the date of the transcript availability
4 slips a little bit, that doesn't mean that the deadline is
5 extended. Assume that it's April 17th unless the
6 Committee or me, on the behalf of the Committee, tells you
7 otherwise. I'm going to make my best efforts to turn
8 those transcripts around very quickly, and we have asked
9 for a quick turnaround from the reporting service, as
10 well.

11 Mr. Sarvey?

12 MR. SARVEY: I kind of would like to ask for
13 more time. We were trying to get this project online so
14 we could close down Encina. That doesn't seem like it's
15 going to be a possibility anymore, so I would appreciate
16 having at least three or four weeks to brief this. It's
17 pretty complicated. And there's been thousands of pages
18 of documents issued for public notice that I haven't even
19 reviewed, so I'd like at least three or four weeks.

20 MR. RATLIFF: The staff opposes any extended
21 briefing period, and we don't think that the issues are
22 new and novel. For the most part, the thousands of pages
23 that are being entered are -- some of the documents filed
24 most recently concerning the litigation going on in the
25 PUC are documents filed in the prior proceeding. They're

1 not documents that re newly filed for the first time in
2 any proceeding that has to do with Carlsbad.

3 MR. MCKINSEY: The owner has the exact same
4 position. We're not aware of any change. Again, the
5 project owner's position regarding the project hasn't
6 changed and moving forward expeditiously to complete the
7 approval of this petition to amend and begin the
8 construction, which then leads to the removal of the
9 Encina Power Station.

10 MR. KRAMER: Anyone else want to comment on that
11 request?

12 MR. SARVEY: I would just like to follow up
13 that, like I said, we don't really have this rush to get
14 online because Encina isn't retiring anymore, it's kind of
15 been postponed. So there's 2000 pages of transcripts I
16 haven't seen that was docketed that weren't available
17 anywhere, and there's lots of documents that have been --
18 that aren't online that have been filed for official
19 notice, and I need time to at least review those.

20 So I think it's kind of unreasonable in three
21 weeks. They've got two lawyers over there, and
22 Mr. Mckinsey, I'm sure, has some help in his office. But
23 there's no help in my office, so I'd like a little more
24 time if I could.

25 DR. ROE: I would, too. I still haven't done my

1 taxes.

2 MS. BAKER: Power of Vision would appreciate an
3 extra week. As Mr. Sarvey said, we don't have staff.
4 It's us that does this so an extra week would be helpful.

5 MR. KRAMER: Okay. We can extend the deadline
6 to April 22nd.

7 MS. SIEKMANN: Mr. Kramer, you were saying no
8 reply briefs? This is it?

9 MR. KRAMER: Right. One shot. Don't save your
10 best stuff for later.

11 MS. SIEKMANN: Okay. Good to know.

12 DR. ROE: Mr. Kramer, do you anticipate you'll
13 be sending us an updated Commission schedule?

14 MR. KRAMER: I'll send out an e-mail, but we
15 probably won't revise the schedule. But the e-mail will
16 have the new dates. I'll also describe the topics for
17 anybody -- Mr. Zizmor is no longer on the call, so for his
18 sake.

19 I think that's everything we had to do today. I
20 want to thank you all for cooperating, and trying to work
21 with the schedule, and having a good discussion of what
22 really matters to us and getting to the point. And I will
23 tell you we will at least -- our current plan is to
24 schedule a Committee conference on April 17th, but that's
25 primarily for the purpose of having a closed session so

1 two committee members can meet and go over drafts and
2 issues I'm working on as their advisor and scrivener for
3 the preparation of the Presiding Member's Proposed
4 Decision.

5 So we will have a public comment portion on that
6 agenda. I don't know if we've had one of those before in
7 this case, but it's pretty much -- please don't fly up to
8 Sacramento for it.

9 MS. BAKER: Don't rearrange your schedule to
10 call in?

11 MR. KRAMER: Right. You'll be wasting your
12 time. And if that date changes, you'll get a notice
13 whatever the final date is. That's our target date right
14 now.

15 MS. SIEKMANN: Are you fairly sure that if we
16 don't show up, it won't make a difference?

17 MR. KRAMER: If it would, we would tell you.

18 With that, I -- did you want to...

19 MS. DOUGLAS: I just wanted to briefly say, on
20 my behalf and also Commissioner McAllister's, we
21 appreciate everyone's focus, attention today and your
22 participation in the case. You know, it's been really
23 interesting for me in the time that I've been on it, and
24 also for Commissioner McAllister to come in on this. I
25 appreciate the hard work put in by everybody. So thank

1 you.

2 (Whereupon, at 4:38 p.m., the proceedings were
3 adjourned.)

4 --o0o--

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

