

## DOCKETED

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<b>Project Title:</b>	Carlsbad Energy Center - Compliance
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BEFORE THE  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA

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

Committee Conference

CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
CHARLES R. IMBRECHT ROOM  
SACRAMENTO, CALIFORNIA

FRIDAY, MAY 1, 2015  
1:00 P.M.

Reported by:  
Peter Petty

APPEARANCES

Commissioners Present

Karen Douglas, Presiding Member

Commissioners' Advisers

Jennifer Nelson, Adviser to Commissioner Douglas  
Le-Quyen Nguyen, Adviser to Commissioner Douglas  
Charles Smith, Adviser to Commissioner McAllister  
Eileen Smith, Commissioner's Technical Adviser for  
Facility Siting

Hearing Officer

Paul Kramer

Applicant

John Kendrick, Locke Lord LLP

Commission Staff

Kerry Willis, Staff Counsel

Public Adviser

Shawn Pittard, Public Adviser's Office

Also Present (\* Via Phone)

\*Kerry Siekmann, Terramar  
\*Arnie Roe, Power of Vision  
\*Robert Sarvey  
\*Allan Thompson, City of Carlsbad

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P R O C E E D I N G S

MAY 1, 2015

1:07 P.M.

HEARING OFFICER KRAMER: Commissioner  
Douglas?

PRESIDING MEMBER DOUGLAS: All right.

Good afternoon everyone. So this is Commissioner  
Douglas. I'm the Presiding Member on this  
Committee. To our left is our Hearing Adviser  
Kramer. To my right, my Advisers, Jennifer  
Nelson and Le-Quyen Nguyen. And representing  
Commissioner McAllister's office is his Adviser  
Charles Smith. And let's see, the Public  
Adviser's Office is represented here. Hello.

And let me ask the parties to introduce  
themselves, starting with the Applicant.

MR. KENDRICK: John Kendrick of Locke  
Lord, the counsel for the Carlsbad Energy Center.

PRESIDING MEMBER DOUGLAS: Thank you.  
And Staff?

MS. WILLIS: Good afternoon. This is

1 Kerry Willis from the legal office for the staff.

2 PRESIDING MEMBER DOUGLAS: All right.

3 And we'll go to interveners in just a second.

4 Eileen Allen is here, the Commissioners'

5 Technical Adviser on Siting Matters.

6 Now Terramar Association?

7 MS. SIEKMANN: Yes. This is Kerry

8 Siekmann, Terramar.

9 PRESIDING MEMBER DOUGLAS: All right.

10 Thank you, Kerry.

11 Power of Vision?

12 DR. ROE: Yes. Arnie Roe.

13 PRESIDING MEMBER DOUGLAS: All right.

14 Welcome. Is --

15 DR. ROE: Thank you.

16 PRESIDING MEMBER DOUGLAS: Is Rob Simpson

17 or David Zizmor on the phone?

18 What about Robert Sarvey?

19 MR. SARVEY: I'm here on the phone. This

20 is Bob Sarvey.

21 PRESIDING MEMBER DOUGLAS: All right.

22 Welcome.

23 Is anyone here from Sierra Club?

24 Is anyone here from the City of Carlsbad?

25 MR. THOMPSON: This is -- Commissioners,

1 this is Allan Thompson.

2 PRESIDING MEMBER DOUGLAS: All right.

3 Welcome.

4 Anyone from the California ISO? San  
5 Diego Air Pollution Control District? Coastal  
6 Commission? Any other state, local or federal  
7 government agency or Native American tribe?

8 All right, then I will turn this over to  
9 the Hearing Officer.

10 MR. KENDRICK: Commissioner Douglas, I'd  
11 like to note that George Piantka of NRG is also  
12 on the phone. And I believe John McKinsey of  
13 Locke Lord is also on the phone.

14 PRESIDING MEMBER DOUGLAS: Great. Thank  
15 you.

16 HEARING OFFICER KRAMER: Okay. Today  
17 again is mostly for the purpose of the closed  
18 session. But we did tell you all earlier in the  
19 week that we were going to rule on the -- on a  
20 couple of motions, and they related to exhibits,  
21 both Terramar's request to have its Exhibit 3045  
22 accepted as an exhibit, and Applicant's request  
23 to have Exhibits 1032 and 1051 which were --  
24 they're all pieces that together make up the I-5  
25 Final EIR/EIS.

1           And then we'll just note again, there are  
2 some other motions pending, but those will -- we  
3 will issue decisions on those about the time that  
4 we issue the PMPD, and that's a Sarvey motion to  
5 require that an AFC fee be paid, a Simpson motion  
6 to require that the Petition to Amend be  
7 modified, and our consideration of that be  
8 delayed, and then finally a recent, a very recent  
9 Sarvey motion to strike the City's brief.

10           So with that we've received the responses  
11 to the two petitions to have their exhibits  
12 entered into the record. Does anybody -- we also  
13 said you could -- you could make comments orally  
14 today. So let me open it up. I'll go in order,  
15 though, for -- to see if anyone wants to make  
16 some oral comments today, starting with the  
17 Applicant, Mr. Kendrick.

18           MR. KENDRICK: First, project owner has  
19 no objective to Terramar's motion.

20           As far as our motion for admitting the  
21 FEIS/FEIR into the record, I'd like to point out  
22 that the record is still open at this point.  
23 Under the Regulation 1211 exhibits can be  
24 submitted at any time prior to the close of the  
25 proceeding, subject to the discretion of the

1 presiding -- presiding member. The fact that the  
2 record is still open is clear from the docketing  
3 of exhibits after the evidentiary hearing, such  
4 as Mr. Sarvey's Exhibit 6014, 6015, 6016, 6017,  
5 Staff's 2010, and now potentially Terramar's  
6 3045.

7           The standard under 211 [sic] is  
8 relevance. And I think we can all agree that  
9 this is a document that has significant relevance  
10 to this proceeding. The I-5 widening and the  
11 likelihood of Caltrans mitigation suggested as a  
12 topic for briefing by Hearing Officer Kramer,  
13 most of the parties who briefed -- who filed  
14 briefs in this matter address the issue square  
15 on. The project owner discussed it. Staff  
16 discussed it. Terramar discussed it. Power of  
17 Vision discussed. And Mr. Sarvey also discussed  
18 it.

19           Even in a proceeding where there was a  
20 closed record, which is not the case here, it was  
21 subsequently reopened after the Presiding  
22 Members' Proposed Decision. The Committee  
23 exercised its discretion because of the relevance  
24 of the evidence to the issues and proposed  
25 findings. And that was Palen Solar Project, 09-

1 AFC-07C. So relevance is really the touchstone  
2 here.

3           When we look at what this document is and  
4 how it has already worked its way into this  
5 proceeding, it's a working paper that was relied  
6 upon by Dr. Kanemoto informing his opinion.  
7 During the evidentiary hearing we had testimony  
8 as to the conclusions of the report. And various  
9 parties have already introduced portions into the  
10 record of the FEIS. For example, Power of Vision  
11 has Exhibits 4009, 4010. Dr. Kanemoto presented  
12 a slide show at the evidentiary hearing which has  
13 been designated Exhibit 2008. All of these are  
14 already in the record. The Federal Highway  
15 Administration's Record of Decision is not an  
16 exhibit, but it was docketed by Power of Vision.

17           After the evidentiary hearing when we  
18 were considering the question posed by Hearing  
19 Officer Kramer it became clear that the document  
20 in its entirety, not just little bits and pieces,  
21 maps here and there, should be entered into the  
22 hearing record. This would provide context  
23 that's missing from the previously docketed  
24 items. We believe that it's in the interest of  
25 all parties and the general public to have this

1 publicly available document prepared jointly by  
2 the Federal Highway Administration and Caltrans  
3 in the record of -- in the record for this  
4 decision.

5           We don't believe that there's an unfair  
6 prejudice that presents itself here. Other  
7 parties have been aware of this document.  
8 They've even introduced portions of it in the  
9 record.

10           We tried to docket the entire thing  
11 before the briefing deadline but we ran into some  
12 problems with the e-filing system. It was  
13 incredibly difficult to get this massive  
14 document, which was already posted online in  
15 about ten different pieces in the first place,  
16 into the record. We had to keep breaking it down  
17 into smaller and smaller and smaller parts. So  
18 it took the better course of a day to get the  
19 entire thing in.

20           And you know, again, the touchstone is  
21 the relevance of the document. And I think that  
22 it's clear from what has happened in this  
23 proceeding so far, this is a relevant document.

24           HEARING OFFICER KRAMER: Okay. Thank  
25 you.

1 Staff?

2 MS. WILLIS: Thank you. Staff does not  
3 object to Terramar submitting their -- their  
4 testimony. That seems that it's perfectly fair  
5 to -- to do that.

6 We also agree with the Applicant on their  
7 submittal. It was -- it's a public document and  
8 it was referenced quite a few times during the  
9 evidentiary hearing. And it also make sense to  
10 have that -- the whole -- the whole document in  
11 the record.

12 HEARING OFFICER KRAMER: Thank you.

13 Terramar? Ms. Siekmann?

14 MS. SIEKMANN: First of all, Mr. Kramer,  
15 I just want to let you know, when each person  
16 speaks, unfortunately, the buzz gets louder and  
17 the voices are a little bit intermittent. So I  
18 thought you might want that feedback on how the  
19 system is working.

20 And then, secondly, I just want to say I  
21 appreciate that people aren't opposing my  
22 testimony being -- having an exhibit number.  
23 It's just the mere fact that I didn't know that  
24 my testimony required an exhibit number and was  
25 just -- I just didn't know, as an Intervener. I

1 put exhibit numbers on everything else, and it  
2 was just because I just didn't know. And I very  
3 much appreciate my testimony being allowed to be  
4 in -- in the record.

5 And I don't have any problem with the  
6 Applicant's motion.

7 HEARING OFFICER KRAMER: Thank you.

8 Power of Vision? Dr. Roe?

9 DR. ROE: Yes. Well, I'm wondering  
10 where -- in what limbo our testimonies exist? I  
11 was assuming that when we submitted testimony,  
12 that was part of the official record which  
13 Commissioners would consider. I didn't know we  
14 had to list that as an exhibit number.

15 So what do we do?

16 HEARING OFFICER KRAMER: Let me get back  
17 to you on that.

18 MS. SIEKMANN: Can I just interrupt? May  
19 in interrupt?

20 Because I know that, Dr. Roe, that when  
21 you originally put your testimony in you didn't  
22 have an exhibit number but your -- when you  
23 corrected it, it did have an exhibit number. So  
24 I think you're fine.

25 DR. ROE: Oh, thank you. I'm glad to

1 hear that somebody's awake on that. Thank you.

2 HEARING OFFICER KRAMER: Well, I'll have  
3 to -- this is Paul Kramer.

4 I'll have to say, half the time I catch  
5 those inadvertent mistakes. But for some reason  
6 these -- Terramar's slipped by me this time. You  
7 know, it's not formally in my job description,  
8 but occasionally I spot those things.

9 So let's now go to -- do we have anyone  
10 from Mr. Simpson's group with us yet? We didn't  
11 when we checked roll, but let me see if they've  
12 joined us.

13 Okay, hearing nothing, Mr. Sarvey?

14 MR. SARVEY: Oh, yeah. I just wanted  
15 to -- I wanted to say that I had no opposition to  
16 Terramar's document being the record. It was  
17 presented before the evidentiary hearing and I  
18 don't see an issue here.

19 And as to the Applicant, I had a hard  
20 time hearing what -- what they were trying to  
21 say. It wasn't very loud and didn't come through  
22 very well.

23 But I just wanted to reiterate what I  
24 said in my opposition to their I-5 document being  
25 in the record. I mean, they're claiming that

1 they decided that it needed to be part of the --  
2 part of the record, but they didn't decide that  
3 until the day the briefs were due. They didn't  
4 get the document in the record until after briefs  
5 were due. Part of it was in but most of it  
6 wasn't. And the Applicant basically used -- used  
7 the I-5 document as testimony in their brief,  
8 basically.

9           So I mean, if that's going to happen I  
10 think we should be able to -- if you're going to  
11 allow that document in you should give us all an  
12 opportunity to brief on the I-5 document and  
13 review it, because I certainly didn't review it.  
14 And to me it was a surprise.

15           And I heard him mention something about  
16 exhibits, heard he said that he mentioned my  
17 exhibits. But I offered my exhibits at the  
18 evidentiary hearing. I had copies in my hand.  
19 Anybody was welcome to take a look at them.

20           This is a totally different situation.  
21 This is three weeks after the close of the  
22 evidentiary hearing. And tried to present  
23 documents at the evidentiary hearing that -- one  
24 was an email between myself and Dr. Moore. And  
25 there was another document related to some long-

1 term procurement issues. Both those documents  
2 weren't allowed into the record, even though I  
3 presented them and had copies for everybody right  
4 at the hearing.

5           So I think it would be prejudicial to  
6 accept the I-5 widening document into the record  
7 at this point.

8           HEARING OFFICER KRAMER: Okay. Thank  
9 you.

10           Sierra Club, have you joined us?

11           Okay, did either of the proponents of the  
12 motions want any last word?

13           Mr. Kendrick?

14           MR. KENDRICK: Yeah. Again, I would like  
15 to reiterate the relevant standard. The standard  
16 is relevance. And I think that this is a highly  
17 relevant document. I think it focuses on an  
18 issue that -- and I think it will help inform the  
19 Commission in their decision.

20           I guess I'd like to point out that the  
21 situational difference here between the exhibit  
22 that Sarvey -- Mr. Sarvey, I apologize, was  
23 talking about at the evidentiary hearing, which  
24 was 6013, he was presenting that to a witness to  
25 elicit basically cross-examination, and nobody

1 had previously ever heard of this document. It  
2 wasn't publicly available. It was a private  
3 email between Mr. Sarvey and Mr. Moore -- or Dr.  
4 Moore. He indicted repeatedly that it wasn't  
5 important to be able to ask questions about this.  
6 He said, "Let's just move on, let's just move on,  
7 it's not important."

8 I think that there is a significant  
9 difference between a document that is being  
10 proposed and nobody has ever seen it before, and  
11 the person who's presenting it is saying it's not  
12 important, versus a document that everybody is  
13 aware of, that everybody knows exists, is  
14 publicly available, and can inform the  
15 Committee -- the Committee's decision. Thank  
16 you.

17 HEARING OFFICER KRAMER: Thank you.

18 Ms. Siekmann, did you want a final word  
19 on yours?

20 MS. SIEKMANN: Well, I just appreciate  
21 that no one has a problem with it. So -- and  
22 next time I know that -- hopefully there is no  
23 next time, but that I have to give my testimony  
24 an exhibit number.

25 And it would be great if it were in like,

1 you know -- and I appreciate all the help I've  
2 gotten from the Public Adviser's Office. And you  
3 know, when the put together all the information  
4 to help interveners, that that would be one thing  
5 that they would include.

6 HEARING OFFICER KRAMER: Okay. I think a  
7 note is being scribbled.

8 MS. SIEKMANN: I appreciate it.

9 HEARING OFFICER KRAMER: Okay. Well,  
10 that -- that deals with the motions for today.

11 Hold on a second.

12 Okay, so we're going to take this under  
13 submission. Our plan is to decide these two  
14 motions today, though. So -- and we're going to  
15 do it similar to last time. We're not sure when  
16 the closed session will end but we don't want to  
17 force people to hang around and, you know, be  
18 stuck with a telephone to their ear. So we're  
19 going to pick a time. So we're going to say  
20 after we go into closed session you can come back  
21 here to WebEx or to the room and -- at 4:15 and  
22 we'll announce the decisions that we have on  
23 those motions.

24 But in the meantime, before we go into  
25 closed session we should get to the public

1 comment portion of our agenda. So I'll ask if  
2 anyone in the room or on the telephone wishes to  
3 make a public comment to the Committee today?

4 MR. SARVEY: I'd like to make a public  
5 comment, Mr. Kramer, if I could. This is Bob  
6 Sarvey.

7 HEARING OFFICER KRAMER: Okay. Is  
8 everyone unmuted? Okay.

9 Go ahead, Mr. Sarvey.

10 MR. SARVEY: Yeah. I just wanted to  
11 thank the Commission. I understand that the  
12 Executive Director presented testimony to the  
13 Senate Committee on Energy recommending that  
14 anyone that files an amendment pay a \$5,000 fee,  
15 plus reimburse the Energy Commission's expenses.  
16 And I'm very grateful that the Commission  
17 listened to my issue there. And I appreciate  
18 that, and I just wanted to say thank you.

19 PRESIDING MEMBER DOUGLAS: Mr. Sarvey,  
20 this is Commissioner Douglas. I just wanted to  
21 say that obviously we were working on this for  
22 some time and were not able to share it, in large  
23 part because we need to make sure that we have  
24 support and approval to move forward with these  
25 kinds of ledger proposals. And we were able to

1 get that support. And we appreciate you bringing  
2 the issue forward.

3 MR. SARVEY: Thank you, Commissioner  
4 Douglas.

5 HEARING OFFICER KRAMER: Mr. Sarvey, let  
6 me ask you this --

7 MR. SARVEY: Uh-huh.

8 HEARING OFFICER KRAMER: -- does this --  
9 this news mean that we -- you could withdraw your  
10 motion, or do you still want a ruling on it?

11 MR. SARVEY: Well, unless I know that  
12 the -- the fee is going to be required of this  
13 Applicant, I would want to keep my motion in  
14 there. I mean, if the Commission is already  
15 going to apply this to this Applicant and make  
16 them pay the fee the I have -- I would withdraw  
17 my motion. But I don't think we have that  
18 determination at this point.

19 HEARING OFFICER KRAMER: Okay.

20 MR. SARVEY: Or if we do then I --  
21 then -- if in fact you are going to do it the  
22 motion is moot, so --

23 HEARING OFFICER KRAMER: Okay. I don't  
24 think I can tell you that, so we will keep it on  
25 the table then.

1 MR. SARVEY: Thank you, Mr. Kramer.

2 HEARING OFFICER KRAMER: Okay. Anyone  
3 else wishing to make a public comment?

4 Okay, seeing none, we're going to adjourn  
5 to a closed session pursuant to --

6 MS. SIEKMANN: Mr. Kramer, are you going  
7 to docket the decision on the motions too?

8 HEARING OFFICER KRAMER: Yeah. Some of  
9 them are kind of intertwined with comments. And  
10 so I think -- I think what will happen is it may  
11 be that the -- the discussion of the merits of  
12 the principle will be in the PMPD. And we'll  
13 have orders that may, you know, explain what the  
14 decision was, and then refer to the PMPD for some  
15 of the rationale. We haven't fully worked that  
16 out yet. But ultimately there will be, yes,  
17 docketed orders, probably --

18 MS. SIEKMANN: Well, the reason I ask is  
19 because I just wondered if my, you know,  
20 testimony was going to be included and whether,  
21 you know --

22 HEARING OFFICER KRAMER: Well --

23 MS. SIEKMANN: -- if I can't get back at  
24 4:15.

25 HEARING OFFICER KRAMER: Okay. I thought

1 you speaking of Mr. Sarvey's motion. If you're  
2 speaking of your motion --

3 MS. SIEKMANN: I apologize. Yes,  
4 specifically my motion.

5 HEARING OFFICER KRAMER: The motion on  
6 the exhibit, we will probably just issue an oral  
7 order today, and then make the appropriate  
8 changes on the exhibit list. I don't think  
9 there's a reason to have, you know, a couple  
10 pages of boilerplate just to say an exhibit was  
11 accepted or not. So you'll find out --

12 MS. SIEKMANN: Okay.

13 HEARING OFFICER KRAMER: You'll be able  
14 to come back at 4:15, I presume?

15 MS. SIEKMANN: Well, that's what -- I  
16 didn't know I was going to have to come back at  
17 4:15. So I mean, hopefully I can come back.

18 HEARING OFFICER KRAMER: Okay. And if  
19 some of you aren't here what I can do is put out  
20 one of my now regular memos just explaining what  
21 we did for information purposes.

22 MS. SIEKMANN: That would be -- that  
23 would be so helpful --

24 HEARING OFFICER KRAMER: Okay.

25 MS. SIEKMANN: -- if you don't mind.

1 DR. ROE: Yes, I would appreciate that  
2 too.

3 HEARING OFFICER KRAMER: Okay. That's --  
4 that's a lot easier to write and, you know --

5 MS. SIEKMANN: Oh, my gosh, that would --  
6 that would be so helpful. Thank you. Because I  
7 had no idea that, you know, we would need to come  
8 back at 4:15. I am so sorry.

9 HEARING OFFICER KRAMER: No, that's okay.  
10 All right.

11 Okay, so then I think we can go into  
12 closed session pursuant to Government Code  
13 11126(c)(3) which allows a state body to hold a  
14 closed session to deliberate on a decision to be  
15 reached in a proceeding before us.

16 And again, we'll come back at 4:15 to  
17 announce the end of the closed session, and also  
18 decisions that -- any decisions that were made in  
19 that closed session.

20 So we will leave WebEx open but muted, so  
21 you won't be able to hear anything in the room  
22 here.

23 And we'll see some of you back at 4:15.  
24 Thank you.

25 (Whereupon, the Committee convened a closed

1 session from 1:28 p.m., until 4:19 p.m.)

2 HEARING OFFICER KRAMER: We're back on  
3 the record in the Carlsbad Committee Conference.  
4 Commissioner Douglas is here with me. So is  
5 Kerry Willis from Staff Counsel. And Shawn  
6 Pittard from the Public Adviser's Office.

7 So the Committee met in closed session.  
8 We set a time specific to come back and report to  
9 you, but I can tell you we ended at about 2:30.  
10 And the Committee has the following  
11 announcements.

12 Terramar Association's motion to have  
13 Exhibit 3045 admitted into evidence is granted  
14 because no party objects. The document was  
15 timely docketed. It was clearly intended to be  
16 testimony and inadvertently omitted from  
17 Terramar's exhibit list.

18 Carlsbad Energy Center's motion to have  
19 Exhibits 1032 through 1051, that's Caltrans  
20 FEIR/FEIS for the I-5 Widening, admitted into  
21 evidence is also granted. Although docketed at  
22 the end of the briefing period, the EIR/EIS has  
23 been publicly available for at least a year and  
24 it was mentioned in the testimony of several  
25 parties, including Staff who cited it as a

1 reference in Exhibit 2000 at page 4.13-49. The  
2 FEIR -- or EIR/EIS is clearly relevant to a  
3 visual resources issue before us.

4           No further written orders will be issued  
5 regarding the above motions. And finally, the  
6 evidentiary record is now closed.

7           So I've got the memo drafted that I'll be  
8 docketing. Hopefully it will go out this  
9 afternoon to those who are not with us on the  
10 telephone right now.

11           And with that, our conference is  
12 adjourned. Thank you.

13 (Whereupon, the meeting was adjourned at 4:21  
14 p.m.)

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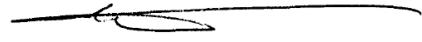
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**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, 2015.

---

PETER PETTY  
CER\*\*D-493  
Notary Public

CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



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MARTHA L. NELSON, CERT\*\*367

May 19, 2015