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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
CARLSBAD ENERGY CENTER PROJECT AMENDMENTS
BEFORE THE CALIFORNIA ENERGY COMMISSION

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

CALIFORNIA ENERGY COMMISSION
ART ROSENFELD ROOM
1516 9TH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JUNE 29, 2015

9:39 A.M.

Reported by:

Peter Petty

APPEARANCES

COMMISSIONERS PRESENT:

Karen Douglas, Presiding Member

HEARING OFFICER:

Paul Kramer, California Energy Commission

ADVISORS:

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Pat Saxton, Advisor to Commissioner McAllister

CEC STAFF PRESENT:

Dick Ratliff, Staff Counsel

Kerry Willis, Staff Counsel

John Hilliard, Project Manager

Gerry Bemis

Mary Lou Taylor

Eric Knight

Andrea Koch

PETITIONER - CARLSBAD ENERGY CENTER, LLC

Jonathan Kendrick, Locke Lord, LLP

John McKinsey, Locke Lord, LLP (Via Telephone)

George Piantka, NRG Energy, Inc.

Gary Rubenstein, Sierra Research

Robert Mason, CH2M Hill, Consultant (Via Telephone)

APPEARANCES

INTERVENERS:Robert Sarvey

Robert "Bob" Sarvey (Via Telephone)

Rob Simpson

Rob Simpson (Via Telephone)

Terramar Association

Kerry Siekmann (Via Telephone)

ALSO PRESENTSusan Cochran, Hearing Adviser, Assisting with WebExCity of Carlsbad

Bob Therkelsen, Energy and Environmental Consulting

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JUNE 29, 2015

9:39 A.M.

COMMISSIONER DOUGLAS: Good morning, everybody.

We're ready to start here for -- this is the PMPD conference on the Carlsbad Energy Center Amendments.

I'm Karen Douglas. I'm the Presiding Member on this Siting Committee.

To my left is our hearing advisor, Hearing Officer Paul Kramer.

To his left we have Pat Saxton. He is an advisor to Commissioner McAllister, who is not able to attend today.

On my right, Le-Quyen Nguyen is my advisor.

And so, let's start now with introductions, starting with the Applicant.

MR. KENDRICK: Good morning. This is Jon Kendrick of Locke Lord, counsel for the project owner, Carlsbad Energy Center, LLC.

With me today is George Piantka of NRG and Gary Rubenstein of Sierra Research. On the phone we have John McKinsey, also of Locke Lord.

COMMISSIONER DOUGLAS: Great, thank you. And staff, please?

MR. RATLIFF: This is Dick Ratliff, Staff Counsel.

1 With me is Kerry Willis, Staff Counsel, also. And John
2 Hilliard is the Project Manager.

3 COMMISSIONER DOUGLAS: Thank you. Is Kerry Siekmann,
4 with Terramar Association, participating today? Kerry
5 Siekmann, Terramar?

6 What about Power of Vision, Julie Baker and Arnold
7 Roe?

8 Rob Simpson or David Zizmor?

9 MR. SIMPSON: This is Rob Simpson. Can you hear me?

10 COMMISSIONER DOUGLAS: Sure can, loud and clear.
11 Thank you.

12 MR. SIMPSON: Okay, thank you.

13 COMMISSIONER DOUGLAS: Robert Sarvey is here in the
14 room. Go ahead.

15 MR. SARVEY: Yeah, Bob Sarvey, Intervener.

16 COMMISSIONER DOUGLAS: All right, welcome.

17 Is anyone on the WebEx from Sierra Club?

18 All right, City of Carlsbad?

19 MR. THERKELSEN: Bob Therkelsen, representing the
20 City of Carlsbad.

21 COMMISSIONER DOUGLAS: Great. And let's see, Public
22 Adviser's Office? I don't see them at the moment.

23 Is anyone here from California ISO, or San Diego Air
24 Pollution Control District, or Coastal Commission, or any
25 other state, local or federal government agency?

1 All right, then, I'll ask the Hearing Officer to take
2 this from here. Thanks.

3 HEARING OFFICER KRAMER: Okay, thank you,
4 Commissioner Douglas. Good morning, everyone.

5 The purpose of today's hearing is to consider
6 comments on the Presiding Member's proposed decision that was
7 issued, I believe it was on June 9th. And I will note that
8 the comment period remains open until -- well, I'd better
9 look that up in the notice, but I believe it's July 9th.

10 After which, the Committee plans to issue any
11 necessary errata and then the matter is scheduled for the
12 Commission business meeting on July 30th. And I'm certain of
13 that date in my memory.

14 And also, today we, having reviewed the comments,
15 especially those of the staff, we have some specific
16 questions we want to ask of the staff.

17 But first, let's go around and ask the parties if
18 they wish to add anything to their written comments that
19 they've already filed. And we want to thank everyone, also,
20 for getting their comments to us prior to this meeting so
21 that we can all have a dialogue.

22 With one exception, there was no real proposal to
23 change the conditions. And that, of course, was our main
24 reason for wanting the comments in advance so if one party
25 was proposing to make some particular change, and another

1 party wanted to tweak that change a little bit we can have a
2 real-time dialogue, which is a lot more efficient than just
3 having papers flowing back and forth over the e-mail. And it
4 makes it easier for the Committee to help resolve minor
5 disagreements, if you will, about the form of a condition.

6 But anyway, going forward, let's begin with the
7 Applicant.

8 MR. PIANTKA: Good morning, George Piantka here, on
9 behalf of Carlsbad Energy Center, LLC. And, first, you know,
10 we did file our comments. And what we find that -- really,
11 praise and thanks. Thanks to the Committee, thanks to the
12 staff, the Interveners, the City of Carlsbad. Overall, we've
13 been pleased with the PMPD, pleased with, throughout the
14 process the comments we've raised in the PSA and FSA, and how
15 they were addressed.

16 We've found that the overall PMPD is fair and
17 including those points that were brought up with respect to
18 impacts, the visual and land, and how the Committee's
19 proposed to address those. So, that really addresses my
20 comments, thanks.

21 HEARING OFFICER KRAMER: Okay, thank you.

22 Staff, do you have anything to add to your --

23 MR. RATLIFF: Only this, late comments from Terramar
24 identified an issue that they had raised earlier concerning
25 traffic and transportation, regarding the Cannon Street

1 crossing of the railroad tracks, and the potential for
2 vehicles, and particularly long trucks, to be stuck by the
3 traffic light in a manner that would block the railroad
4 tracks.

5 And we have a condition which we, after collaborating
6 with the City on this, we believe addresses that problem.
7 But it seemed to us, in reviewing our own condition, which is
8 to have an elaborate traffic plan that assures the safety of
9 the railroad tracks with certain features that are in that
10 traffic plan, that we probably should alter our
11 Transportation Conditions of Certification to specifically
12 require that that traffic plan include, at a minimum, a
13 flagman at the Cannon Street crossing of the railroad tracks
14 during construction and demolition activities.

15 We were looking at this just before we came in here
16 this morning that the condition is written. And our tendency
17 is to think that we ought to just edit that condition to
18 include that more specific feature, and also to eliminate any
19 ambiguity that may exist in the current wording.

20 So, we would ask the Commission for the forbearance
21 that we file a revised Traffic and Transportation Condition.
22 I believe, is it Trans 1? And include in those revisions
23 more specific wording that would require the traffic plan to,
24 at a minimum, include a flagman at the Cannon Street crossing
25 during construction and demolition activities.

1 HEARING OFFICER KRAMER: The Applicant, in its
2 response to Ms. Siekmann's motion, said that it -- she was
3 asking that there be a flagman there for basically five
4 years. And are you planning on -- you know, full time. And
5 I think the Applicant was reluctant to provide that extensive
6 amount of flagging, if you will.

7 Do you have thoughts about how you would deal with
8 that concern or do you think it's not -- shouldn't be a
9 concern?

10 MR. RATLIFF: Well, I don't have any new or original
11 thoughts on that. But I think the Terramar has made very
12 specific references to specific incidents of issues with the
13 Cannon Street crossing. And the consequences of an accident
14 of that crossing could be very high.

15 And we think that a traffic plan might -- the traffic
16 plan should, at a minimum, address that specific concern.
17 And a flagman seems like a fairly modest proposal for that.

18 HEARING OFFICER KRAMER: Does the Applicant want to
19 respond?

20 MR. MC KINSEY: Hearing Officer Kramer, can you hear
21 me? This is John McKinsey.

22 HEARING OFFICER KRAMER: Yeah, go ahead, John.

23 MR. MC KINSEY: I want to say two things. First, the
24 proposal that Mr. Ratliff has proposed gives me a little
25 trouble in the procedural aspect of it, at a minimum, which

1 is that the staff would be filing a revised condition that
2 ostensibly would be a comment.

3 I think if the staff wants to make a further comment
4 within the comment period, recommending something to the
5 Committee, I understand that completely.

6 But I don't like the idea of establishing that
7 there's going to be a procedural step whereby the staff would
8 be providing another version of a condition. I think it's
9 the Committee's task, now, to make a decision on this issue.
10 And the Committee should take everybody's input under
11 advisement.

12 And then secondly, I think a flagman is certainly
13 something that has to be evaluated. And there was even a
14 little bit of conflict in Mr. Ratliff's discussion where he
15 says, you know, it ought to be addressed, but it also ought
16 to be required.

17 And I still think the right answer is that we
18 shouldn't mandate or specify anything. And I think we came
19 out of the evidentiary hearings with a proposed answer on
20 this topic from the Committee and I don't think that the
21 recent incident changes those circumstances at all. Which is
22 that this intersection needs to be studied and that the right
23 answer is to provide the traffic management plan that now,
24 specifically, under the current wording of the Condition has
25 to address this condition.

1 And the City gets to comment on it and the staff gets
2 the say of whether or not they're satisfied.

3 And I think what we're hearing is that the staff is
4 certainly going to be expecting a flagman under some
5 circumstances, or perhaps a lot of circumstances, and we
6 already know that. And we already know that that's something
7 we're evaluating. But we still don't think it's the right
8 answer to now, suddenly, mandate a flagman under some special
9 circumstances.

10 And I also don't think that the newest incident
11 really changes what we already evaluated and considered.

12 HEARING OFFICER KRAMER: Well, parties can certainly
13 propose changes to Conditions in their comments.

14 What would be ideal, I think, from the Committee's
15 perspective, is if we can hear a proposal today and get the
16 Applicant to respond to it. And, you know, maybe at least
17 resolve, among the staff and the Applicant, upon some
18 language that then the Committee could look at.

19 So, hold on a second. We have the time, for
20 instance, where after we get done with most of this, we
21 could -- or perhaps we can even lead the discussion, since
22 there's no workshop that's been noticed, where the two
23 parties could talk about proposed language.

24 But let's finish with everybody's sort of general
25 comments about their comments and any additions they wanted

1 to make to what they had given to us in writing.

2 Were you finished otherwise, Mr. Ratliff?

3 MR. RATLIFF: Yes.

4 HEARING OFFICER KRAMER: Okay, thank you.

5 Mr. Therkelsen, you're not a party, but on behalf of
6 the City you file comments and you have a sort of special
7 friend of the Commission status, as a public agency, I
8 suppose we could call it. So, go ahead.

9 MR. THERKELSEN: As a special friend, I didn't want
10 to interrupt your flow with going through the parties, first.
11 But I did want to say the City has significant issue in this
12 transportation issue and would want to be involved in any
13 discussions on that.

14 Just to briefly summarize, the City's feeling is the
15 existing condition is adequate. Everyone recognizes that
16 this issue of the railroad and crossing is something that
17 needs to be addressed in that traffic control plan. And
18 believes that that is the appropriate place to look at it,
19 the circumstances, the needs, when everybody is evaluating
20 the project together.

21 That putting some kind of a prescriptive requirement,
22 like that, in the condition is not necessary at this time.

23 MS. SIEKMANN: Hello.

24 HEARING OFFICER KRAMER: Ms. Siekmann, is that you?

25 Go ahead.

1 MS. SIEKMANN: Okay, I've been having -- I don't
2 even -- I just got -- are we talking about my motion?

3 HEARING OFFICER KRAMER: Well, not yet, formally.
4 But did you just get on the line?

5 MS. SIEKMANN: Yes, I just was able to get in. The
6 information for WebEx was wrong, so it wouldn't accept the
7 meeting number on my computer. Well, on WebEx.

8 HEARING OFFICER KRAMER: Okay. Well, I'm not sure
9 what happened there because other people did make it on.
10 Yeah, Mr. Ratliff --

11 MS. SIEKMANN: I sent you an e-mail, too.

12 HEARING OFFICER KRAMER: I'm not the best multi-
13 tasker.

14 MS. SIEKMANN: Yeah, and also was it John Hilliard?
15 I called him, too. I've been trying for 25 minutes to get
16 on.

17 HEARING OFFICER KRAMER: Okay. Well, you didn't miss
18 much. Mr. Ratliff just said that the staff was rethinking,
19 in some ways, their approach to Trans 1 and were considering
20 adding some language that might involve the requirement for a
21 flagman, for instance.

22 MS. SIEKMANN: Thank God. Oh, I'm so glad to hear
23 that.

24 HEARING OFFICER KRAMER: Okay, so for the record,
25 this is Kerry Siekmann, who's been speaking on behalf of

1 Terramar. So, we'll mark her as present.

2 MS. SIEKMANN: Thank you.

3 HEARING OFFICER KRAMER: And if you're ready to go,
4 what we were doing was going around and having the parties
5 summarize -- not so much summarize their comments that
6 they've already submitted in writing, but to say anything
7 they wanted to say in addition to what they'd already
8 written. So, if you want to go ahead with that?

9 MS. SIEKMANN: Okay. Well, first of all, as you
10 know, I submitted comments about the railroad tracks and the
11 grave concern that finding out that there is another event
12 that occurred.

13 And so, if I and someone else saw it happening, and I
14 just happened to be talking -- I was at my book club, with my
15 friends. To find out that it happened again, it just makes
16 me wonder how many times it has happened and it will happen.
17 And I am quite aware of the fact that there is some kind of a
18 sensor that changes the light to green. And this is a
19 project that's going to go on for five years, and God forbid
20 that sensor doesn't work, or the semi gets hooked up on the
21 tracks.

22 So, I truly appreciate the fact that you're
23 considering changing that condition because I think it's
24 sorely needed to save a lot of people's lives for a possible
25 event.

1 And then the second thing I would like to say is I'm
2 very sorry that the PMPD approved 600 megawatts, instead of
3 500, because there was nothing in the PMPD, in my opinion,
4 that showed -- because there's an override, I see the public
5 convenience that -- I see the public convenience in the PMPD,
6 but I do not see anything addressing the need. And that is
7 part of the rule. So, I feel like that's sorely missing.
8 Thank you.

9 HEARING OFFICER KRAMER: Okay, thank you.

10 Power of Vision, are you with us, now?

11 MS. SIEKMANN: They're both out of town.

12 HEARING OFFICER KRAMER: Okay. Anyone from the
13 Sierra Club? They didn't file any comments, but I wonder if
14 they're with us.

15 Okay, Mr. Sarvey.

16 MR. SARVEY: Thank you. Many of the PMPD findings
17 and conclusions lack an evidentiary basis and I don't think
18 the preponderance of evidence supports your PMPD.

19 I've outlined in my preliminary comments how the
20 amendment does not meet the Commission's amendment
21 requirements. Will be adding additional comments by the
22 deadline.

23 And I had some topics that I'd like to discuss, that
24 I put in my preliminary comments. And I'd have to agree with
25 Terramar that there's nothing supporting a need for a 633-

1 megawatt project in the evidence of this proceeding.

2 And as far as the traffic issue, I support Terramar's
3 motion. I believe that a flagman is a small cost to pay, to
4 avoid a major accident between a train and a truck. I think
5 that's pretty simple. Thank you.

6 HEARING OFFICER KRAMER: Okay. Did any party want to
7 respond to any of the other parties' comments, before we get
8 on to the Committee's questions? Okay.

9 MR. SIMPSON: Well, I'd like to make my --

10 HEARING OFFICER KRAMER: Who is that?

11 MR. SIMPSON: This is Rob Simpson.

12 HEARING OFFICER KRAMER: Okay. Oh, okay, Mr.
13 Simpson, you hadn't filed any comments, yet, but go ahead,
14 did you want to make some?

15 MR. SIMPSON: Well, sure. I guess, since you
16 mentioned that, I would like to understand the comment
17 deadline. It seems like there's a few different dates flying
18 around, but I'm not sure of the extension of when the
19 comments are filed up until the whole Committee
20 determination, with when I can make the comments.

21 HEARING OFFICER KRAMER: Okay, Susan, could you pull
22 up the Notice of Availability? It might take a minute.

23 MR. SIMPSON: I can move on a little bit, if you
24 like, and come back to that.

25 HEARING OFFICER KRAMER: Okay. And if you could

1 enunciate or speak up a little bit more? You're starting to
2 fade into the background.

3 MR. SIMPSON: Is that better?

4 HEARING OFFICER KRAMER: That is much better, thanks.

5 MR. SIMPSON: Okay. It's not clear to me, from the
6 proposed decision, what law you're overriding?

7 HEARING OFFICER KRAMER: Oh, it was the height limit
8 in the Agua Hedionda land use plan. It has a 35-foot
9 structure height limit.

10 MR. SIMPSON: Okay.

11 HEARING OFFICER KRAMER: So, you'd find that in the
12 land use section.

13 MR. SIMPSON: Well, I find that it alludes to the
14 Coastal Commission's authority. So, are you overriding the
15 Coastal Commission, or you're overriding the City, or both?

16 HEARING OFFICER KRAMER: It found that the project
17 was consistent with the Coastal Act, so we're not overriding
18 that. It's just the City's land use regulation.

19 MR. SIMPSON: Because the decision mentions that --
20 oh, nuances of the Coastal Commission, I think was the
21 wording it used, that it doesn't conform with. And because
22 the City doesn't have authority for a coastal permit in the
23 location of the project, and the Coastal Commission doesn't
24 have a variance procedure, I'm not sure how it's not
25 overriding the Coastal Commission's authority. But I think I

1 heard what you said.

2 HEARING OFFICER KRAMER: Yeah, well, this isn't the
3 time for you to question the Committee because we --
4 actually, we generally don't have a place for that. You're
5 allowed to make comments saying -- I'm not sure what you're
6 meaning, perhaps. And so, we'll take what you just said on
7 that basis.

8 Did you have anything else that you wanted to say
9 today?

10 MR. SIMPSON: Yeah, yeah. I noticed that the
11 Condition AQSC 11 has been removed, which was prior to start
12 of construction the project owner shall provide proof of PSD
13 permit, or certification that no such permit is required.

14 My understanding was that the Commission didn't have
15 authority to make PSD determinations. And the EPA hasn't
16 made any such determination. So, does this represent an
17 override of the EPA authority?

18 HEARING OFFICER KRAMER: No, it's simply -- I think
19 the assumption is that there will be no PSD permit required.
20 All the condition did was called it out as a, if you will, a
21 box to check, in staff's review of the readiness of the
22 project to begin construction.

23 And if it does turn out that a PSD permit is
24 required, then one will still be required. We're not
25 purporting to say that the Federal Government is bound by

1 anything we might opine in that regard.

2 MR. SIMPSON: But the condition of determination is
3 made, or certification that it's not required has been
4 removed.

5 HEARING OFFICER KRAMER: Well, but again, that's just
6 a requirement that they provide us proof that they touched
7 bases with the Federal Government. And they're, presumably,
8 either still going to have to do that or go forward with the
9 risk that the Federal Government is going to decide that they
10 should have, and come after them if they start to construct
11 without that permit.

12 MR. SIMPSON: Okay. I'm not sure how the Commission
13 is benefitted by removing that condition.

14 HEARING OFFICER KRAMER: Okay, well, we'll take that
15 as a comment. We're not here to debate this with you. And
16 so, you're free to put that in your comments.

17 We do not interpret the removal of the condition as a
18 determination by the Commission about whether a PSD permit is
19 required. That's still to be determined by the appropriate
20 federal authorities, or delegated local authorities as the
21 case may be.

22 So, what else do you have?

23 MR. SIMPSON: Okay. Well, I'm not sure, are you
24 saying you're only taking comments or there's some discussion
25 that happens here?

1 HEARING OFFICER KRAMER: Well, there can be, but
2 you're wanting to debate the legal issues and we're -- this
3 is not something where we see any value in debating it.

4 MR. SIMPSON: Okay. And did you have a response on
5 the comment deadline and what the different deadlines would
6 mean?

7 HEARING OFFICER KRAMER: Yeah, do you happen to have
8 the WebEx display up on your screen or you're just on the
9 telephone?

10 MR. SIMPSON: I might be able to open up the WebEx.
11 Here we go, yeah.

12 HEARING OFFICER KRAMER: Okay. So, we have the
13 portion of the Notice of Availability of the PMPD up here.
14 And it says -- well, actually, it asks the staff and
15 applicants to file their comments by -- oh, it was 4:00 p.m.
16 Okay, I was waiting at 5:00, expecting last-minute filings.

17 Anyway, on June 26th. And then for everyone else,
18 the deadline is 5:00 p.m. on July 9th.

19 The reason we had the earlier deadline for staff and
20 the applicant is they're the people most likely to be
21 proposing changes to the conditions. And what we hoped to do
22 is have those in front of us, here at this meeting, so that
23 we can talk out any minor differences and, you know, come to
24 some kind of conclusion on that.

25 Rather than the Committee having to try to figure it

1 out, and figure out what they really meant, and how would
2 they respond to this counter argument, you know, on the basis
3 of comments we just receive on July 9th.

4 So, when we finish up everything else today, what we
5 may do is go back to the transportation condition, if we have
6 time, and try to have that dialogue here, while everybody's
7 still available, and see if we can't come out -- come to at
8 least an agreement to disagree or a somewhat more fleshed out
9 version of staff's proposal to change Trans 1, and the
10 Applicant's response to it.

11 So, does that answer your question, then, about
12 deadlines, Mr. Simpson?

13 MR. SIMPSON: A little bit. But my understanding is
14 that it will come before the whole Commission and comments
15 can be made at that time or up until that time?

16 HEARING OFFICER KRAMER: That's true.

17 MR. SIMPSON: I'm just trying to get a distinction of
18 what comments made now or comments made then, how that -- is
19 it considered differently or what's the --

20 HEARING OFFICER KRAMER: Well, the Commission doesn't
21 necessarily have to respond to environmental comments that
22 are made. Well, they can respond to those up until the
23 business meeting.

24 But other comments, for sure we don't have to respond
25 to those if they're made after July 9th. In other words, you

1 don't want people sandbagging the Commission, waiting until
2 the last minute to make significant comments.

3 If you expect a response, you know, you really should
4 get it in. You need to get it in by July 9th.

5 MR. SIMPSON: Okay. And so, if I sign in for the
6 Commission decision and made a comment there, are you saying
7 it doesn't get considered or it gets considered differently,
8 or what's the -- it's just for myself. It's knowledge I'd
9 like to be able to share. If the public wants to comment at
10 the Commission decision hearing, is that a different
11 threshold or is it a different process than commenting up
12 until July 9th? See what I mean?

13 HEARING OFFICER KRAMER: You're really asking for
14 legal advice that, given that I'm the adviser to the
15 Committee, is not appropriate for me to give.

16 MR. SIMPSON: Okay. Then I suppose the rest of my
17 comments I can put in writing and see what happens.

18 HEARING OFFICER KRAMER: Okay, thanks.

19 MR. SIMPSON: Sure.

20 HEARING OFFICER KRAMER: Okay, I think that's
21 everyone. Susan, do we have any new people on the telephone?
22 Can you just show us the participants' list?

23 Okay, we have a couple new call-in users, who are not
24 identified by name. Does anybody wish to -- for instance,
25 are any of them related to one of the Interveners, or wish to

1 identify yourselves otherwise?

2 MR. MASON: This is Robert Mason, consultant to the
3 Applicant.

4 HEARING OFFICER KRAMER: Okay, thank you. I presume
5 you're just here for questions, if they arise?

6 MR. MASON: Mostly to listen, that's correct.

7 HEARING OFFICER KRAMER: Okay, thank you.

8 Anyone else?

9 Okay, the Committee has a few questions, in addition
10 to those we put out in the memo last week. And they're all
11 interwoven in my outline here, so we will get to those from
12 the memo in a little bit.

13 Now, the first regards alternatives. And staff
14 wanted us to say that in the comparison of the currently
15 approved CECP versus the A, the proposed amended CECP, that
16 the CECP's potential use of ocean water would raise concerns
17 about the impacts to that resource.

18 But I wonder, the original decision, in 2012, found
19 that the use of ocean water would not be significant, would
20 not create significant impacts.

21 So, I'm wondering if staff has in mind some other
22 concerns or -- do you see what I'm saying, there's kind of an
23 inconsistency there on the two approaches?

24 MR. RATLIFF: I understand your response. I don't
25 consider it an inconsistency. The license for the original

1 CECP had a condition requiring, and this was in response to
2 the recommendations and the concerns of the Regional Water
3 Quality Control Board, that the Applicant would have to go
4 back for a new NPDES permit at the time of the closure of the
5 Units 1, 2 and 3, and the commencement of the operations of
6 the CECP.

7 And this concern was related to the continued use of
8 ocean water that would be used by the CECP facility. And
9 with the amended project, of course, that entire issue is no
10 longer relevant.

11 HEARING OFFICER KRAMER: So, what's the concern? The
12 concern about water use is just that they'd have to renew
13 their permit?

14 MR. RATLIFF: The concern was there was a continued
15 use of ocean water, not for marine cooling, but for the
16 processes of the plant. And that would require the Applicant
17 to go back for an additional NPDES permit as a requirement.
18 I believe it was a biological condition for the existing
19 project.

20 And with the elimination of any use of marine water,
21 one of the benefits of the amended project is that concern
22 and that condition are no longer relevant to the project.

23 HEARING OFFICER KRAMER: Okay, thanks.

24 Following Finding 9, in Alternative, you're proposing
25 a new finding that the amended project would displace more

1 energy from very high-emitting peaking resources, and
2 integrate larger amounts of intermittent renewables than
3 would the CECP.

4 And we're wondering where we would find the support
5 for this in the record?

6 It may be something you want to flesh out in your
7 follow-up comments.

8 MR. RATLIFF: Which page are you on, currently?

9 HEARING OFFICER KRAMER: The comment relates to page
10 3.13, following Finding 9, of the -- in the PMPD. And I'll
11 find the page in yours, in a second.

12 MR. RATLIFF: Yes, and I thought we provided that
13 citation to the transcript and to the written testimony.
14 It's in both. It may appear -- that citation may be on the
15 greenhouse gas portion of the testimony. I think it -- yeah,
16 it's on page 6, under the two bullets. Page 6, it's the
17 same, basically the same point, and refers to the staff
18 testimony on that point.

19 HEARING OFFICER KRAMER: Okay, thank you.

20 And then, next you suggest that there's no legal
21 requirement that we identify an environmentally superior
22 alternative because the no-project alternative is not
23 environmentally superior to the proposed project here.

24 So, would it be your recommendation that we just
25 delete our discussion of environmentally superior projects or

1 alternatives?

2 MR. RATLIFF: Yes.

3 HEARING OFFICER KRAMER: Thank you.

4 And then in the Conclusion number 1, this is on page
5 4 of your comments, you wanted to add the adjective
6 "potential" to "significant cumulative impact". And could
7 you explain the rationale for that?

8 MR. RATLIFF: Well, we think that that word was an
9 important word in terms of staff's assessment of the
10 potential for successfully mitigating that impact.

11 The recommended override regarding this future
12 cumulative impact of another project relates to the inability
13 to control the outcome of the efforts to mitigate the visual
14 impact that CalTrans is required by law to undertake.

15 So in fact, I think staff's testimony was very clear.
16 We don't think there will be a significant impact for the
17 freeway widening, but there is the potential for that in the
18 absence of our ability to control CalTrans' mitigation in
19 that regard. And that was the reason we recommended the
20 override.

21 HEARING OFFICER KRAMER: Okay, thank you.

22 In the staff analysis and then carried over into the
23 PMPD, this is in the greenhouse gases, now, there's a
24 statement made, a conclusion is drawn that "Condition Waste
25 5, which requires recycling of the demolition materials, to

1 the extent they can be recycled, mitigates construction
2 greenhouse gas emissions”.

3 I was wondering if somebody could draw the connection
4 for us?

5 MR. RATLIFF: You’re looking at me, so I think you’re
6 suggesting that staff had some explanation for this. And
7 it’s not in our comments so I --

8 HEARING OFFICER KRAMER: No, I understand.

9 MR. RATLIFF: I, personally, don’t. I can only think
10 that the only logic that occurs to me to say is that
11 recycling is perhaps better than no recycling in that regard.

12 HEARING OFFICER KRAMER: Maybe we could put this on
13 the list of homework for staff?

14 MR. RATLIFF: Okay, you want us to respond further on
15 that point, when we can attempt to?

16 HEARING OFFICER KRAMER: Right, to the extent the
17 record helps us there, yeah.

18 And then we come to Air Quality. And one of our
19 questions in the memo we sent out on Friday, staff uses the
20 adjective “normal” several times. And we were just wondering
21 what that term meant or what that was telling us?

22 MR. RATLIFF: My correspondence with the air quality
23 experts on this suggests that there is a meaning to that.
24 But I won’t attempt to explain it, myself. I would prefer to
25 have Mr. Gerry Bemis address it, if you want him to.

1 HEARING OFFICER KRAMER: Please.

2 MR. RATLIFF: You want a full explanation of the term
3 "normal".

4 MR. BEMIS: Good morning. Yeah, "normal", in the
5 context which it's used, means under full load operation,
6 with no starts and stops. It excludes initial commissioning,
7 things like that. It means when everything's working right.

8 And we use it in several cases that are mentioned in
9 the PMPD and that's basically what it means. It means under
10 normal operations.

11 HEARING OFFICER KRAMER: But is that including, then,
12 the startups and --

13 MR. BEMIS: Excluding startups and shutdowns.

14 HEARING OFFICER KRAMER: Okay, so just, yeah, full on
15 sort of maximally efficient?

16 MR. BEMIS: Yes.

17 HEARING OFFICER KRAMER: Okay, thank you. And you
18 might stick around for a second.

19 The next question is, and this probably came from an
20 engineer, at one point in the -- a couple points in the PMPD
21 we describe the emergency generator as 500 kilowatts,
22 specifically at page 6.2-3 and the preamble to Condition AQ-
23 106.

24 And then in another place as 779 brake horsepower,
25 which according to the conversion formula, I guess what's

1 commonly used is more like 581 kilowatts.

2 I realize we're hitting you with this cold, but could
3 you perhaps go back and just determine which is which, or
4 maybe Mr. Rubenstein even knows. It's just an inconsistency
5 we were just trying to hammer out of this, wanted to call to
6 your attention.

7 Okay, nobody seems ready to --

8 MR. RUBENSTEIN: No, I will need a couple of minutes,
9 but I will have an answer for you today.

10 HEARING OFFICER KRAMER: Okay. Just showing off, as
11 an engineer, our conversion factor was .746 kilowatts per
12 BHP.

13 MR. RUBENSTEIN: That's close enough.

14 HEARING OFFICER KRAMER: Okay, I feel validated.
15 Thank you.

16 The next question is, Mr. Bemis, you're off the hook,
17 it's in Biology. And Mr. Ratliff, you describe the staff
18 testimony in the amendment proceeding as supplementing the
19 staff testimony or, rather, the 2012 decision.

20 But what we were trying to do with many of these
21 topics is, first, determine if there was any need to
22 supplement the previous environmental analysis. And if there
23 wasn't, just rely upon it.

24 So, I'd like to get a better sense from you as to
25 whether you believe that it is required that we supplement

1 the 2012, as opposed to just relying on its analysis, perhaps
2 with the staff's testimony in this current proceeding as
3 evidence, instead, that there's no reason to revisit those
4 conclusions or supplement them?

5 The distinction being that if we're reusing the 2012
6 decision, the opportunity to re-litigate or the ability to
7 re-litigate all of that is much reduced probably, you know,
8 to zero.

9 MR. RATLIFF: I understand your point. And I think
10 that you're correct that, you know, there is no change in the
11 project with regard to biological resources. There is no
12 requirement for supplementation of the environmental analysis
13 in that regard and, therefore, no issue.

14 In the present situation, staff did in fact produce
15 supplementary environmental analysis, in part because of
16 certain differences in the project, such as the construction.

17 But it, also, the analysis was complete and included,
18 you know, such issues as avian species. This elicited public
19 comment on that issue and some of that public comment was, in
20 fact, beyond the issues that had been raised in the prior
21 proceeding.

22 I, therefore, think that it's a better course to say
23 that you're relying on both the original analysis, but as
24 supplemental by the additional analysis that discusses those
25 issues.

1 HEARING OFFICER KRAMER: Okay, thank you.

2 Next, you proposed a change to Footnote 5 to add the
3 phrase, "And provided no testimony". So, it reads, "As Mr.
4 Simpson was not admitted as an Intervener on this topic and
5 provided no testimony, we treat his brief as public comment".

6 And I was wondering what that adds? Is that saying
7 that parties cannot brief issues about which they provided no
8 testimony? In other words, is it necessary that they provide
9 testimony in order to be able to brief an issue as those come
10 up?

11 MR. RATLIFF: No, that was not the intent. It was
12 merely to further clarify that this was -- the reason that
13 this was not in fact testimony. It was, in fact, public
14 comment.

15 HEARING OFFICER KRAMER: Oh, so in other words, it's
16 because he was not able to -- because he was not an
17 Intervener on the topic, he was not able to present -- he was
18 precluded from presenting public -- or, rather, testimony?

19 MR. RATLIFF: He did not present testimony.

20 HEARING OFFICER KRAMER: Okay, thank you.

21 MR. SIMPSON: Well, I think precluded sounds more --

22 HEARING OFFICER KRAMER: Enunciate, please.

23 MR. SIMPSON: Okay, I think precluded from providing
24 testimony is more like it.

25 HEARING OFFICER KRAMER: Okay, thank you, Mr. -- that

1 was Mr. Simpson, for the record.

2 MR. SIMPSON: Yes.

3 HEARING OFFICER KRAMER: Okay, regarding staff's
4 comment on Waste, it was just to note -- it was to renumber a
5 condition reference. But that results from between the time
6 of the FSA and the staff's compilation of the final set of
7 conditions you chopped out Waste-10, because that was
8 deleted.

9 But that creates a disconnect in the record because
10 all your testimony referred to the Condition Waste-12, as
11 Waste-12, because that's what it was. So, we're going to
12 leave it that way and just put Waste-10 back in, and mark it
13 as deleted, like we did in a couple other places. Just so
14 people won't get lost.

15 We'll come back to Trans-1 at the end.

16 So, let's go on, then, to our Soil and Water
17 questions in the memo, how to reconcile Soil and Water-2 and
18 6, and then also a question about some of the internal parts
19 of Soil and Water-2.

20 And first, let's go to the internal part. Soil and
21 Water-2 provides that potable water should not be used for
22 any construction activity, including EPS demolition
23 activities that is suitable for non-potable water use, if a
24 non-potable water source is available.

25 And then there's a second paragraph there that just

1 says, "potable water for EPS demolition activities that are
2 suitable for non-potable water shall count towards the
3 cumulative total limit in Soil and Water-6".

4 So, our first question is should the stipulation
5 that's in the first paragraph that the water has -- the non-
6 potable water has to be available apply to that second
7 paragraph, as well, just for the sake of consistency?

8 MR. RATLIFF: We have the staff witness on the topic,
9 Mary Lou Taylor. I would prefer that she answer the
10 question.

11 HEARING OFFICER KRAMER: Okay, sure. Could you make
12 sure you spell her name for the court reporter?

13 MS. TAYLOR: Mary Lou is M-a-r-y L-o-u. Taylor is T-
14 a-y-l-o-r.

15 And I'm sorry, will you repeat the question?

16 HEARING OFFICER KRAMER: The first part of Soil and
17 Water 2 has a stipulation, in the first sentence, that the
18 non-potable water has to be available.

19 But when, basically, the same phrase is used in the
20 second paragraph, it doesn't have that same stipulation. So,
21 if non-potable water is not available and they are forced to
22 use potable water, it would count against the limitation.
23 But I don't know if that's fair since, by definition, they
24 had no other choice if the non-potable water was not
25 available.

1 MS. TAYLOR: I guess the confusion is the timing.
2 Because potable water is expected to be available at the time
3 that CECP operations begins, which is also the same time
4 where they would start EPS demolition, then potable water
5 should be available at the time.

6 HEARING OFFICER KRAMER: Do you mean to say non-
7 potable water?

8 MS. TAYLOR: Sorry, non-potable. Recycled water,
9 I'll just say recycled water.

10 HEARING OFFICER KRAMER: Yeah, let's do that.

11 MS. TAYLOR: I'm sorry, yes, you're correct.
12 Recycled water will be available during operations of CECP
13 and because demolition of EPS would not begin until after
14 CECP begins operations, therefore, recycled water will be
15 available during the EPS demolition.

16 HEARING OFFICER KRAMER: So you don't think, then,
17 there's a need for that sort of escape clause, then, if you
18 will?

19 MS. TAYLOR: I think so. I wanted to make the point
20 that although the CECP would be separated from the EPS site,
21 separated by the railroad tracks, that recycled water would
22 still be considered available to the EPS site for demolition
23 purposes.

24 And I believe that was reflected in my testimony.

25 HEARING OFFICER KRAMER: Okay. Then turning to the

1 limit that's described in the second paragraph of Soil and
2 Water-2, it talks about the cumulative total limit in
3 accordance with Soil and Water-6.

4 But to my eyes, anyway, Soil and Water-6 is just
5 talking about operation water use. Do you --

6 MS. TAYLOR: That -- I'm sorry.

7 HEARING OFFICER KRAMER: Go ahead.

8 MS. TAYLOR: That, again, goes back to the timing.
9 Soil and Water-6 is more applicable to when recycled water is
10 available during operations. Ideally, recycled water would
11 be used for CECP construction, CECP operation and EPS
12 demolition.

13 Because recycled water is not expected to be
14 available until well after construction of CECP begins, we
15 don't expect or we can't expect them to use recycled water
16 that's not available.

17 However, when operation begins at CECP it's the
18 timing when that recycled water becomes available, it will
19 also become available for EPS demolition.

20 So, I remember seeing in your comments or your
21 question that EPS demolition is more akin to construction
22 activity, than operation activity. That's correct. But,
23 ideally, all three of those activities would use recycled
24 water. It's just that for the beginning portion of the
25 construction of CECP, it would not be available.

1 HEARING OFFICER KRAMER: Yeah, Mr. Saxton just
2 pointed out that throughout Condition Soil and Water-6 we
3 seem to be using the acronym CECP, but it should be ACECP.
4 Does everyone agree?

5 MS. TAYLOR: Correct.

6 HEARING OFFICER KRAMER: Okay, good catch. So, we'll
7 make that a global change.

8 Okay, so I understand what you're trying to do. But
9 if -- and as the writer of the words, the Commission is
10 probably, you know, the one who gets ambiguities interpreted
11 against it. So, as it's currently set up, my concern is just
12 that because there really is no -- there's no cumulative
13 limit in Soil and Water-6 that seems to apply to this
14 demolition use, that there may effectively be no limit on the
15 use of potable water for EPS demolition.

16 So, I mean, I could try to fix this up in post-
17 production and maybe mess it up, and we have to discuss it at
18 the business meeting, or we could try to fix this today. Or,
19 am I the only person that seems to be seeing this problem and
20 I should just chalk it up to my misunderstanding?

21 Anything from the Applicant?

22 MR. PIANTKA: George Piantka for the Applicant. So,
23 I know we're looking at Soil-2 and Soil-6, and so apologize
24 for maneuvering back and forth, back and forth.

25 I mean, when we're looking through the conditions as

1 originally presented in the FSA and through that comment
2 period, you know, we were pleased with it.

3 Looking at the demolition scenario of EPS, we've
4 already -- looking at how to provide reclaimed water because
5 that will be a point when the City will have reclaimed water,
6 so that's the full intent.

7 If there was some emergency situation, some
8 interrupted part out of our -- you know, out of our ability
9 to address. Say, the City had interrupted reclaim supply and
10 potable was needed for EPS demolition, you know, our position
11 was that wouldn't count toward an annual cap.

12 And then you look at Soil-6, we're satisfied the way
13 Soil-6 is written in terms of potable use, the 3 acre feet,
14 and then the overall operational use of potable water and the
15 cap overall on that. We think that's fairly written.

16 But I guess the only part we had, you know, in
17 response to this additional point in Soil-2 is that, you
18 know, overall if you had an emergency situation for potable
19 use is that it not be counted toward a cap is how we're
20 initially viewing it.

21 I want to hear, you know, any further discussion that
22 we have here but I think that's generally the position.

23 HEARING OFFICER KRAMER: So, it sounds like you're
24 interpreting that the way I fear it would be interpreted,
25 which is it really is no limit on the use of potable water

1 for demolition.

2 MS. SIEKMANN: Mr. Kramer --

3 MR. PIANTKA: Potable -- oh, I'm sorry. Potable
4 water for EPS demolition --

5 HEARING OFFICER KRAMER: Right.

6 MR. PIANTKA: -- would only be an emergency situation
7 that the supply was interrupted from the City, from the
8 provider. So, that's the only scenario that I see that
9 situation, you know, arising.

10 MR. RATLIFF: Mr. Kramer, I'm as bad at multi-
11 tasking, at least as you are, and I'm trying to catch up
12 here. But the last paragraph under Soil and Water-2 seems to
13 address that, to me.

14 "Potable water use for EPS demolition activities that
15 are suitable for non-potable water shall count toward the
16 cumulative total limit in accordance with Soil and Water-6."

17 Does that answer the requirement or clarify the
18 ambiguity that you're suggesting is a problem?

19 HEARING OFFICER KRAMER: Well, it's because there
20 really is no cumulative limit on -- or I don't interpret the
21 limit in Soil and Water-6 as applying to construction type
22 activities.

23 MS. TAYLOR: The 300 acre feet is more of a bridge
24 for two reasons, either there's a problem with the supply of
25 recycled water from the City, so they're able to use it if

1 for some reason the infrastructure won't allow recycled water
2 to the site.

3 The second is if they're -- the second reason is in
4 the case of a delay with the City's infrastructure expansion
5 schedule. It's expected by the beginning of CECP operations.
6 But if, for some unforeseen reason, it's a few weeks, a few
7 months behind that 300 acre feet was to act as a temporary
8 bridge and to act as an emergency supply in case water
9 infrastructure did make it available, but for some reason it
10 wasn't -- there was interruption in the service.

11 HEARING OFFICER KRAMER: But that was intended more
12 for operations uses, right?

13 MS. TAYLOR: And EPS demolition because many EPS
14 demolition activities is suitable for non-potable water use.
15 And for those uses, we would like recycled water.

16 MR. PIANTKA: Hearing Officer Kramer, George Piantka
17 again, the Applicant.

18 So, looking at Soil and Water-6, one of the last
19 paragraphs, or last sentences in the condition starts with,
20 "If the CECP requires potable water for emergency uses, the
21 cumulative -- cumulatively exceed 300 acre feet".

22 You know, Soil and Water-6 talks, you know, more of
23 operations. I get it, normal operations. But it also talks
24 about the project. And, really, the project is the
25 construction of amended CECP, including the demolition of

1 EPS.

2 If it makes it simpler, you know, the 300 acre feet
3 as an annual cap, with Soil and Water-6, the way it's written
4 as the project, which is EPS demolition, and the additional
5 paragraph that you have there in Soil and Water-2 as an
6 annual cap at 300 --

7 MR. RATLIFF: Annual cap?

8 MR. PIANTKA: -- I'm okay with it. We can --

9 MR. RATLIFF: Annual cap or lifetime cap?

10 MR. PIANTKA: The lifetime cap, I'm sorry.

11 MR. RATLIFF: Yeah.

12 MR. PIANTKA: I'm okay with it. You know, we want to
13 get -- we want to get the recycled water there as soon as we
14 can and, you know, the cap, like I said, is a bridge. But
15 working with the City, we're really hoping that everything is
16 on schedule at that end. So, if it makes it simpler, we can
17 move forward with those.

18 HEARING OFFICER KRAMER: Okay, here's a proposal. If
19 the CECP requires potable water for EPS demolition and --
20 maybe that should be or -- emergencies that will cumulatively
21 exceed 300 acre feet during the life of the project, in my
22 mind that draws a connection between the two, 2 and 6. Does
23 that work for everyone?

24 Staff nods yes.

25 MR. PIANTKA: Yes.

1 HEARING OFFICER KRAMER: Okay, thank you.

2 Condition Waste-11 doesn't have a verification. I
3 think it really should just be the last paragraph, but I
4 wanted to give people a chance to confirm that for me.

5 MS. WILLIS: And that would be correct, starting at,
6 at least 45 days.

7 HEARING OFFICER KRAMER: Thank you.

8 Okay, now, then we're back to Traffic and
9 Transportation, Trans-1. Staff notes that in our narrative
10 the PMPD says that CalTrans would be involved in the review
11 of this plan and I agree that that's not correct as the
12 condition is written.

13 But in looking at the testimony of David Flores, he
14 did mention, orally, he talked about working both with
15 CalTrans and the City in review of the traffic plan.

16 So, I was wondering if it -- if rather than taking
17 CalTrans out of the narrative, we should be putting them into
18 the condition. I'd like the parties to comment about that
19 question.

20 And they would just be, of course, a reviewer and a
21 commenter, not an approver. And that would include the City
22 among the potential responders to my question.

23 MS. SIEKMANN: Are you going to ask -- Mr. Kramer,
24 can you hear me?

25 HEARING OFFICER KRAMER: Yeah, you're coming through

1 well.

2 MS. SIEKMANN: Okay. This is Kerry Siekmann,
3 Terramar. Yes, I think it would be a very good idea for
4 CalTrans to be a reviewer.

5 HEARING OFFICER KRAMER: Who else? Mr. Knight, I
6 presume you're here for that. Turn your mic on.

7 MR. KNIGHT: Eric Knight, with staff. I guess I
8 would say if no CalTrans right-of-ways are being affected,
9 CalTrans doesn't need to be involved in the review of the
10 plan. And I don't believe we identified any effects to the
11 CalTrans right-of-ways.

12 HEARING OFFICER KRAMER: Would they maybe, though,
13 have a concern about where some of this traffic enters the
14 freeway, you know, among, say, the three intersections that
15 are possible in the vicinity?

16 MR. KNIGHT: I mean, it's possible. I mean, the
17 traffic is getting there from the state highways. But I
18 think the issue that Trans-1 is addressing is more on local
19 roadways, and which the City of Carlsbad would be the primary
20 entity that would have interest.

21 HEARING OFFICER KRAMER: Okay, anyone else have an
22 opinion about that?

23 MS. SIEKMANN: Mr. Kramer, there is one thing --
24 there is one thing that I -- you know, that occurred to me
25 that should be added. And on the other side of the

1 intersection, on the other side of the plant is where the
2 Caruso Project will be. And the Caruso Project will be
3 working with CalTrans. I mean, I have no idea when that
4 project will be started, finished, but they are starting to
5 do an initiative for a vote of the public for the project.
6 So, it's becoming much more of a viable possibility.

7 And so, with talking about if any of those semi's, et
8 cetera, traffic are going to be going under the freeway and
9 turning north on the I-5, there's going to be a project, a
10 huge project built on the other side, a huge project on this
11 side, and CalTrans runs the lights on both sides of the
12 interstate.

13 It could be a very messy time period and I think
14 coordination with CalTrans would be an excellent idea.

15 HEARING OFFICER KRAMER: Could you spell the name of
16 that project for us?

17 MS. SIEKMANN: Caruso, C-a-r-u-s-o.

18 HEARING OFFICER KRAMER: Okay, thanks.

19 MS. SIEKMANN: Yes.

20 HEARING OFFICER KRAMER: Okay, that brings us then
21 to --

22 MR. PIANTKA: I'm sorry, Hearing Officer Kramer, I
23 just wanted to echo staff and Mr. Knight's comments. I think
24 that the way the condition's written for Trans-1 and the, you
25 know, review comment period with the City and the CEC, I mean

1 that's the position we support and confident we can make that
2 condition work.

3 HEARING OFFICER KRAMER: Okay. So, let's talk about
4 the condition then. I don't know, Mr. Ratliff, if you've had
5 any people scribbling behind you with suggested language?

6 MR. RATLIFF: I believe it's on the screen, now.

7 HEARING OFFICER KRAMER: Oh.

8 MR. RATLIFF: And we have copies, hardcopies for the
9 Committee.

10 HEARING OFFICER KRAMER: And we could get this
11 docketed?

12 MR. RATLIFF: Certainly.

13 HEARING OFFICER KRAMER: Okay. So, let's see, Ms.
14 Siekmann, are you looking at your computer screen?

15 MS. SIEKMANN: I am not because, remember, I had to
16 call in because my WebEx -- I don't know. I followed the
17 directions exactly. I don't know if any of your other
18 Interveners went actually through WebEx to come up with you.
19 But I had to go through my phone because WebEx was not
20 accepting the meeting number.

21 HEARING OFFICER KRAMER: Okay. Well, for my --

22 MS. SIEKMANN: It's 495323210.

23 HEARING OFFICER KRAMER: I have a feeling you picked
24 the one for the business meeting and not for --

25 MS. SIEKMANN: No, no. No, no, it says right here.

1 PMPD conference date, Monday, June 29th, 2015. Meeting
2 number 495323210. Password PWD #1516. I have the correct
3 page. I entered it correctly.

4 MR. MC KINSEY: Hearing Officer Kramer, this is John.
5 And though I'm not normally calling in like I am today, I am.
6 And I was able to call in. Though, what threw me off
7 initially was that I was entering, first, just the four
8 numbers of the password and then I finally entered the three
9 letters, the pound sign and all the numbers, and then it
10 finally worked. But I'm on WebEx. And so --

11 MS. SIEKMANN: Well, I -- and I didn't even get to
12 the password part because it wouldn't accept the meeting
13 number. I tried the meeting number, 495323210, and I tried
14 it with spaces, and it didn't work either way for me.

15 MR. MC KINSEY: Yeah, I --

16 MS. SIEKMANN: I didn't even get to the password
17 part.

18 MR. MC KINSEY: All right. I mean I'm on. I'm on
19 WebEx, so it's definitely --

20 MS. SIEKMANN: Well, you're super lucky.

21 MR. MC KINSEY: Or not, depending.

22 HEARING OFFICER KRAMER: Okay. Well, we apologize
23 for whatever happened there. That means you can't see the
24 draft new language that we have here.

25 MS. SIEKMANN: Correct.

1 HEARING OFFICER KRAMER: Could somebody e-mail it to
2 her?

3 MS. SIEKMANN: Can you e-mail it to me? Yeah, you
4 can e-mail it to me, as well.

5 MS. KOCH: Hi, this is Andrea Koch. I can e-mail
6 that language to her. Should I go ahead --

7 HEARING OFFICER KRAMER: Okay.

8 MS. SIEKMANN: Okay.

9 MS. KOCH: Should I go ahead and get the e-mail
10 address right now?

11 MS. SIEKMANN: Sure, it's my last name,
12 Siekmann1@att.net.

13 MS. KOCH: Thank you. I'll go do that right now.

14 MS. SIEKMANN: Oh, awesome, thank you very much.

15 HEARING OFFICER KRAMER: Okay, that provides us an
16 opportunity to take a five-minute break. So, we'll be back
17 in roughly five minutes.

18 (Off the record at 10:54 a.m.)

19 (On the record at 11:09 a.m.)

20 HEARING OFFICER KRAMER: Ms. Siekmann, are you there?

21 MS. SIEKMANN: Yes.

22 HEARING OFFICER KRAMER: Okay, so did you get the
23 copy?

24 MS. SIEKMANN: Yes, thank you very much.

25 HEARING OFFICER KRAMER: Okay, so Mr. --

1 MS. SIEKMANN: Can you hear me? I did, yes. I did.

2 HEARING OFFICER KRAMER: Okay, yeah, we did, thanks.

3 MS. SIEKMANN: Okay.

4 HEARING OFFICER KRAMER: So, staff, do you want to
5 present the revised language? And it appears to me that only
6 the part that's yellow highlighted is new. Is that correct?

7 MS. KOCH: Hi, this is Andrea Koch. Yes, that is
8 correct, the yellow highlights are -- highlight the changes
9 we just made today.

10 So, I'll give a summary of the changes. Most notably
11 we -- well, I'll go in order. So, the first bullet, we
12 specifically added a mention of truck trips, to include
13 timing of truck trips, especially those that would cross the
14 railroad tracks. And the reason why is because truck trips
15 occurring during peak hours might -- where there's a lot of
16 traffic congestion, would probably have a greater probability
17 of getting stuck on the railroad tracks if they didn't leave
18 enough room in front of them and the light turned red.

19 The second bullet is more specific about the
20 requirement for the traffic control plan's flag person. And
21 says that a flag person, at a minimum, should be used for
22 trucks traveling eastbound on Cannon Road, from the SDG&E
23 service gate, to cross the railroad tracks.

24 And because we included this, further on down we
25 deleted the more general bullet that talks about including

1 safety considerations to avoid blockage of the railroad
2 tracks. We felt that this more specific condition or bullet
3 about the flag person substituted for the previous language.

4 And then the fourth bullet down, we just clarified
5 something, we wanted to -- new arrival and departure times
6 outside and during the peak traffic periods. Because, again,
7 truck traffic during peak traffic periods could potentially
8 get stuck on the railroad tracks more often than truck
9 traffic during non-peak traffic periods.

10 HEARING OFFICER KRAMER: Thank you. Any comments
11 from, first, the project owner?

12 MR. PIANTKA: Yes, George Piantka, with the project
13 owner. Looking at the changes, we're okay with them. We
14 would be willing to accept it as presented here.

15 HEARING OFFICER KRAMER: Ms. Siekmann?

16 MS. SIEKMANN: Well, I have a question, because I
17 don't see it in yellow. So, on the e-mail, the bullet point,
18 "Safety considerations to avoid blockage of the railroad
19 tracks per specification that large vehicles, with eight
20 wheels or more, such as semi-trailer trucks, use Avenida
21 Encinas exit, not exiting via the SDG&E service gate exit
22 when exiting the site to travel east on Cannon, to avoid
23 possible blockage of the railroad tracks".

24 Is that being deleted?

25 HEARING OFFICER KRAMER: Yes.

1 MS. KOCH: Yes.

2 MS. SIEKMANN: So, there's nothing in the condition
3 that asks them to use the Avenida Encinas exit whenever
4 possible?

5 MS. KOCH: No, currently there is not. I do
6 understand that during construction Avenida Encinas would be
7 used the majority of time. And certainly, during operation
8 it would be used all of the time because the project is
9 located east of the railroad tracks.

10 But now, we don't currently have that language in the
11 condition.

12 MS. SIEKMANN: Well, I would prefer to see some of
13 that language in the condition. I think that is excellent
14 language.

15 And then also, where it says the -- let's see, the
16 second bullet point, "redirecting construction traffic", I
17 would hope that would say reconstruction and demolition
18 traffic with a flag person.

19 MS. KOCH: Yes, that's a good point. We can propose
20 that added language.

21 MR. KNIGHT: Mr. Kramer, this is Eric Knight. I'd
22 just like to add that the language about restricting or
23 prohibiting trucks from using the SDG&E gate, that was
24 actually deleted in the PMPD. It was actually -- it was
25 deleted in our supplemental testimony, filed after the FSA.

1 Originally, in the FSA we proposed that they not use the
2 SDG&E gate based on some information that the Applicant had
3 presented, in terms of some difficulty with certain trucks
4 utilizing the internal crossing of the railroad tracks.

5 We went to this approach of using the flag person.
6 So, allowing them to use that gate. But as Ms. Koch pointed
7 out, it's the minority of the traffic that would be using
8 that gate. Most of the construction traffic will be using
9 Avenida Encinas to access Cannon Road, so avoiding the
10 railroad tracks.

11 So, our approach was to use the flag person timing
12 restriction. So, we're trying to make that clearer in our
13 current revisions to the condition right now, by these
14 additional --

15 MS. SIEKMANN: And may I ask -- oh, excuse me. May I
16 ask, so is this -- does this condition require a flag person
17 always when there's a truck exiting the part of the
18 construction or demolition?

19 MR. KNIGHT: Well, I think we're giving some
20 flexibility. I don't think it's specifying in all cases
21 there's a flag person.

22 MS. SIEKMANN: Oh, because, honestly, if you're not
23 going to do it all the time, what's the point? It's a very
24 dangerous site, a very, very, very dangerous site. I can't
25 tell you how dangerous it is.

1 Therefore, either don't cross the railroad tracks or
2 have a flag person there all the time. My preference would
3 be that a truck, like that, would never cross those tracks
4 pulling out of that site. It's a very dangerous -- I mean, I
5 can't tell you how dangerous it is. I've seen it and now I
6 have another friend who's seen it. So, God knows how many
7 other people have seen it. It's so dangerous. I want in the
8 record for it to be that I've said how dangerous I think it
9 is.

10 And the smartest thing would be not to have a truck
11 exit that site and cross the railroad tracks. So, other than
12 that, a flag person at all times should be required, in
13 Terramar's opinion. And I appreciate the fact that you're
14 even considering it. And I just can't tell you how dangerous
15 it is. Thank you.

16 HEARING OFFICER KRAMER: Well, I have a question for
17 you, Ms. Siekmann. How is the danger different than, say, if
18 the truck exited the EPS site on the Coast Highway, and then
19 made a left on Cannon, and came up to the railroad tracks
20 and, you know, misjudged whether it was going to be -- you
21 know, when it was safe to cross the tracks and not be jammed
22 up on the other side by the Avenida Encinas light?

23 MS. SIEKMANN: In my opinion, it's completely
24 different because these huge trucks are not only pulling out
25 of that site, but they're having to guesstimate. And if

1 you're pulling out of that site, there is a lot of railroad
2 equipment in your view. So, you're not making an easy left
3 turn because there's all the railroad, the arms, and the
4 other railroad equipment.

5 Secondly, you've got to watch for cars coming down
6 the hill, going to the railroad tracks, two lanes. And then
7 you've got people coming from the interstate, coming towards
8 them, also.

9 So you've got traffic in both directions, two lanes,
10 all the railroad equipment, and a very short amount of space
11 to park that huge vehicle as you're pulling out. It's
12 just -- it's hugely different than making that turn at
13 Cannon, hugely different.

14 HEARING OFFICER KRAMER: Okay, anymore thoughts from
15 any party?

16 MR. KNIGHT: Well, I guess staff was giving some
17 deference to the City of Carlsbad traffic engineer, who
18 didn't believe that the intersection required any special
19 treatment.

20 Looking at an aerial photograph here, and my
21 understanding from talking with staff and others, that
22 there's sufficient room for a truck pulling out of that gate
23 and making a left to get themselves onto the roadway and stop
24 before those tracks. If there was not enough --

25 MS. SIEKMANN: Well, there's --

1 MR. KNIGHT: If there was not enough room for them to
2 cross the tracks, say if there were other vehicles to the
3 east of the tracks, waiting at the red light at Avenida
4 Encinas. So, I think what's --

5 MS. SIEKMANN: Well, then why does it keep happening?

6 MR. KNIGHT: Well, I think what's happened, and I
7 guess there's two situation that we're aware of, is the
8 drivers have miscalculated how much space they had. They
9 couldn't get their vehicle completely across the tracks.

10 And, you know, anybody driving around downtown
11 Sacramento, with light rail tracks, you've seen people get
12 themselves stuck on the tracks because they miscalculated how
13 much space there was.

14 So I'm thinking, I don't know if we need to have a
15 flag person there a hundred percent of the time, for five
16 years, but we have that flexibility to require that, the way
17 the Traffic Control Plan Condition is written.

18 But I could see if the Applicant would propose that
19 trucks only exited that gate during non-peak hours, and there
20 wasn't a lot of traffic on the road, the driver would
21 probably have a better opportunity, then, to get himself in
22 the right position.

23 MS. SIEKMANN: Yes, and that's so kind of you. It's
24 just that this is a beach community. And so, you know, non-
25 peak times can be very high peak beach times. Do you see

1 what I'm saying?

2 So, for people going to the beach, so yes, peak times
3 are very important when people from the neighborhood are
4 leaving to go to work, et cetera. When the interstate is
5 jammed up and so people use city streets.

6 But what I'm saying to you is this -- we're going to
7 have construction up the wazoo going on all at the same time.
8 Not only are we going to have the power plant going on, we're
9 going to have the recycled water tear up. We're going to
10 have, possibly, a huge shopping center on the other side of
11 the interstate.

12 So, I believe that traffic is going to be the most
13 important item in this whole area for the next five years.
14 It's really going to be a nightmare.

15 And I'm not kidding. I mean, there are three huge
16 projects all happening in the same area for the next however
17 many years.

18 And I think it's a small thing for the neighborhood
19 to ask for the safety on the railroad tracks. Because
20 whatever is inside that train, and we have a lot of big
21 freight trains, it could get -- it may not just be an
22 accident there. It could be an accident that who, God knows
23 what's going to be inside that train when the accident
24 happens.

25 So, please, just give us safety at this crossing. I

1 mean, I don't think that's a whole lot to ask. We just want
2 safety when those semis pull out, cross two lanes of traffic,
3 into two lanes of traffic, with a railroad crossing and a
4 stop sign.

5 MR. THERKELSEN: Commissioner Kramer?

6 MS. SIEKMANN: And we've seen -- and we've --

7 HEARING OFFICER KRAMER: Thanks for the promotion,
8 whoever said that.

9 MS. SIEKMANN: The promotion?

10 HEARING OFFICER KRAMER: Somebody said Commissioner
11 Kramer.

12 MR. THERKELSEN: That was my comment, I referenced
13 Paul as Commissioner Kramer.

14 Hearing Officer Kramer?

15 HEARING OFFICER KRAMER: Mr. Therkelsen?

16 MR. THERKELSEN: Yes, the City's aware of all of
17 those concerns and the City does have overall responsibility
18 to make sure that safety in the entire City of Carlsbad is
19 taken care of, considering all of the activities going on.
20 Not just this one, but everything.

21 One of the reasons that the City has made sure that
22 there is a traffic signal preemption system at this and other
23 railroad crossings is to help improve the safety in these
24 kind of situations.

25 And the City monitors those systems. They work with

1 the railroad on them to make sure that they're operational,
2 not only here, but elsewhere within the City.

3 And I do think that all of those considerations need
4 to be taken into account in a specific traffic control plan
5 prepared for this project by the Applicant.

6 The modifications that the staff has proposed, in
7 terms of things that need to be looked at in that plan, the
8 City is comfortable, I think.

9 HEARING OFFICER KRAMER: Okay, thank you.

10 Anything else from staff?

11 MS. KOCH: Yes, thank you. I wanted to add that this
12 condition gives staff the flexibility to require certain
13 things in the traffic control plan. And staff could require
14 a flag person at all times for trucks going east on Cannon
15 Road, from the SDG&E service gate. And perhaps, as the
16 project goes on, if there aren't any problems that
17 requirement could be relaxed. But we could initially, at
18 least, start off with that approach.

19 HEARING OFFICER KRAMER: Okay, thank you.

20 Anything else from any party?

21 MR. PIANTKA: Yeah, Hearing Officer. George Piantka.
22 So, since my last vote there was an addition there, so I'm
23 good with the word "demolition" in there, just to be clear
24 there.

25 I do recall from the record, the evidentiary record,

1 we did look at vehicle, vehicle lengths, vehicles that are
2 referenced in the prior version of this condition, and did
3 show there's ample space. Whether there was another truck in
4 the community that was using Carlsbad Boulevard and turning
5 on Cannon, or emanating from that service center gate,
6 there's ample space.

7 And the way the condition's written, and to the
8 discretion that staff just mentioned, the plan will -- you
9 know, among will address, you know, a flag person. So, these
10 trucks aren't going to be continually streaming in and out.
11 It's certainly, you know, in our best interest to run a
12 project efficiently, to schedule and be aware of how many
13 trucks per day, and the timing of them, and how to minimize
14 impacts during peak and off peak times.

15 So, again, the plan that will be required under this
16 condition will address all of those. And I think much of
17 what are Ms. Siekmann's concerns, the plan will address that.

18 HEARING OFFICER KRAMER: Okay. Anything else?

19 MS. SIEKMANN: Well, I would just like to say one
20 more thing, Mr. Kramer, about this very serious issue. I
21 would absolutely love a 100-percent assurance that there is
22 not going to be an accident on the railroad tracks caused by
23 a semi-truck, or any of the vehicles from this project
24 causing an accident at this railroad crossing.

25 HEARING OFFICER KRAMER: Okay, thank you.

1 We are going to treat your motion as a comment.
2 There's no reason that it needed -- I think we've gotten --
3 some people have gotten in the habit, in this case, of making
4 motions to ask for things that could simply be requested by
5 virtue of a comment. And making it in the form of a motion
6 doesn't give it any elevated status or, you know, it simply
7 is what it is.

8 So, to the extent we need to rule on the motion,
9 we're going to deny it, but consider the request as a comment
10 and we'll respond to it.

11 Ms. Koch, if you could docket, kind of like maybe a
12 PDF of what you handed out, so it looks the way it does on
13 paper, the way you handed it out today, so that's in the
14 record.

15 MS. KOCH: Sure.

16 MS. SIEKMANN: Mr. Kramer, there needs to be that
17 addition of the word "demolition".

18 HEARING OFFICER KRAMER: Right. We'll make -- I
19 don't want her to make it to the copy that she's going to
20 docket because we have that. You know, we want people to be
21 able to see what we were looking at, which was without that.
22 But we will -- I think it's fair to say we will be adding the
23 word "demolition" to the condition, if we incorporate this
24 into the decision by way of an errata.

25 Okay, so with that, the only other comments that we

1 were interested in discussing, to the extent the parties wish
2 to, are Mr. Sarvey's. And if nothing else, we want to invite
3 the staff to respond to his comments, especially on the
4 relative efficiency of the CECP versus the ACECP. That's an
5 invitation for everybody, but especially the staff because
6 they're probably most intimately familiar with those issues.

7 Did any party want to comment on any of the -- Mr.
8 Sarvey's or any of the other comments we've received to date?

9 MR. SIMPSON: Hi, this is Rob Simpson.

10 HEARING OFFICER KRAMER: Okay, and Mr. Simpson, let's
11 go with speak up.

12 MR. SIMPSON: Is that better?

13 HEARING OFFICER KRAMER: That is.

14 MR. SIMPSON: I'm trying to determine if the
15 Commission has taken notice of the PUC decision, or is it
16 part of the evidentiary record, or can I ask that the
17 Commission take official notice of the PUC decision.

18 HEARING OFFICER KRAMER: You mean the one approving
19 the five-turbine contract?

20 MR. SIMPSON: Yes.

21 HEARING OFFICER KRAMER: Yeah, we did. Let me find
22 that exhibit. And we now have the ability, in our system, to
23 mark exhibits as having had official notice taken of them.
24 So, I think I've updated all of them. In the live system,
25 now, you'll see that.

1 But when we produce the final decision, we'll have it
2 updated in there as well.

3 So, you're talking about -- I think that's Exhibit
4 501.

5 MR. SIMPSON: Okay. And so does that mean you'll
6 take official notice of it or it's part of the evidentiary
7 record or --

8 HEARING OFFICER KRAMER: It is. I think in the PMPD
9 we did take official notice of it.

10 MR. SIMPSON: Okay.

11 HEARING OFFICER KRAMER: Anything else from anyone?

12 Mr. Rubenstein, you were going to get back to me on
13 the 500 versus 581 emergency generator?

14 MR. RUBENSTEIN: Yes. Mr. Kramer, your calculator
15 was correct. However, both numbers are correct. 500
16 kilowatts is in fact the rating of the electrical generator.
17 The engine that's provided by the manufacturer is slightly
18 larger than necessary to drive that generator, and it is
19 rated at 779 horsepower.

20 All of the air quality impacts are assessed based on
21 the larger size of the engine even though, in reality, it
22 won't be able to operate at that higher horsepower output
23 because it's going to be driving a generator that's a little
24 bit smaller.

25 HEARING OFFICER KRAMER: Are there some losses in

1 between the two that would mean that it would need to have to
2 put out more than 500 to generate 500?

3 MR. RUBENSTEIN: No. Nothing of any consequence.

4 HEARING OFFICER KRAMER: Oh, okay. Thank you.

5 Okay, so we've dealt with Terramar's motion. And do
6 we have anything further from the parties one last time?

7 Seeing none, then we have the portion of our agenda
8 for public comment, where members of the public --

9 MS. SIEKMANN: Mr. Kramer, yeah, I have one more
10 thing I want to say.

11 HEARING OFFICER KRAMER: Okay, Ms. Siekmann.

12 MS. SIEKMANN: This is Kerry Siekmann, Terramar. I
13 want everyone to know that I've fought as hard as I could to
14 get that crossing safe. Because when I was sitting there,
15 behind that truck, and I saw that train coming it scared me
16 to death. I thought I was going to die.

17 And thank God the light changed, and I know there's
18 some sensor. And I hope to God that that sensor never fails.
19 And it honestly scared me out of my mind. And so, I just
20 hope that everybody takes that into account when they're
21 developing this plan because it's -- and then it happened
22 again to someone else. It's really dangerous. Please,
23 please, I beg of you, please take this all into account. I
24 really would appreciate that.

25 And I appreciate the changes that you've already

1 made. But please, make more. Thank you.

2 MR. KENDRICK: Hearing Officer Kramer?

3 HEARING OFFICER KRAMER: Go ahead.

4 MR. KENDRICK: Much in the vein of Waste-11, TLSN-3
5 is missing its verification. It's the second paragraph of
6 TLSN-3. Just wanted to bring that to the Committee's
7 attention.

8 HEARING OFFICER KRAMER: And where do you think it
9 should be?

10 MR. KENDRICK: It should be at the start of the
11 second paragraph, which begins, "During the first five years
12 of plant operation, the project owner shall provide a summary
13 of inspection results".

14 HEARING OFFICER KRAMER: Oh, okay, yeah. And it's
15 even formatted, it appears to just be missing the word.
16 Thank you.

17 Okay, so public comment, the time for members of the
18 public and other interested persons, and entities to speak up
19 to three minutes on a matter appearing on this agenda. Do we
20 have any public comments, either on the telephone -- can we
21 unmute everyone?

22 MS. COCHRAN: Whoever's muted has muted themselves.

23 HEARING OFFICER KRAMER: Okay. We note the people
24 who have muted, have muted themselves. So, presumably, they
25 could unmute if they wanted to speak.

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

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