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ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
HUNTINGTON BEACH ENERGY PROJECT
BEFORE THE CALIFORNIA ENERGY COMMISSION

In the matter of,)
) Docket No. 12-AFC-02
Huntington Beach Energy)
Project)

CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, HEARING ROOM A
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 6, 2014

1:30 P.M.

Reported by:

Adrian Edler

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Andrew McAllister, Presiding Member

Pat Saxton, His Advisor

Karen Douglas, Commissioner

Eli Harland, Her Advisor

Jennifer Nelson, Her Advisor

HEARING OFFICER:

Susan Cochran, California Energy Commission

CEC STAFF PRESENT:

Kevin W. Bell, Esq., Senior Staff Counsel

PETITIONER/APPLICANT:

Stephen O'Kane, VP for AES Southland Development

Melissa Foster, Esq., Stoel Rives

Robert Mason, CH2M Hill

INTERVENER:

Monica Rudman

APPEARANCES

SOIL AND WATER RESOURCES PANEL

Matthew Franck, Applicant

Mike Conway, CEC Staff

AIR QUALITY/GHG PANEL

Jerry Salamy, CH2M Hill

Stephen O'Kane, AES Southland

Tao Jiang, PhD, CEC Staff

David Vidaver, CEC Staff

GEO/PALEO PANEL

Thomas Lae, CH2M Hill

Casey Weaver, CEC Staff

Mike Conway, CEC Staff

COMPLIANCE & CLOSURE PANEL

Stephen O'Kane, AES Southland

Eric Veerkamp, CEC Staff

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1

P R O C E E D I N G S

1
2 AUGUST 6, 2014

1:30 P.M.

3 COMMISSIONER MC ALLISTER: I'd like to take the
4 opportunity to welcome you to the continuation of the
5 Huntington Beach Energy Project Evidentiary Hearing, which
6 may include a staff workshop. I think that's one of the
7 things we're going to talk about, whether that's needed and
8 the parties still desire it.

9 I wanted to call us to order. My name is Andrew
10 McAllister. I'm the Lead Commission on this case.

11 And from your right to left is Pat Saxton, who's my
12 adviser on siting matters, Susan Cochran, the Hearing
13 Officer, Commissioner Karen Douglas and Eli Harland, her
14 advisor.

15 So, I think we all know each other from the meeting a
16 couple of weeks ago down in Huntington Beach. And the goal
17 here is to continue the agenda, get through it this
18 afternoon, if we can, and get on to the next steps.

19 So, I'll pass the microphone off to Commissioner
20 Douglas, if she wants to say any words, and then on to Susan.

21 COMMISSIONER DOUGLAS: No, thank you, just welcome to
22 everybody.

23 HEARING OFFICER COCHRAN: Those of you who have
24 called in on the phone, in a little bit I'm going to ask you
25 to mute yourself until such time as you need to talk because

1 it creates feedback and noise here in Hearing Room A, where
2 we have been graciously granted the opportunity to use.

3 I see that the Public Adviser is here or at least
4 someone standing in for the Public Adviser.

5 If there are members of the public present, who would
6 like to speak, there are little blue cards that will let us
7 know that you'd like to speak. So, if you could hand those
8 in, if you could raise your hand and say howdy. I'm sorry, I
9 haven't met you, yet.

10 At this point I would like the parties to identify
11 themselves.

12 MR. BELL: Kevin W. Bell, Senior Staff Counsel, here
13 on behalf of Commission staff.

14 HEARING OFFICER COCHRAN: Thank you.

15 MS. RUDMAN: Monica Rudman, Intervener.

16 MR. O'KANE: Stephen O'Kane with AES, the Applicant.

17 MS. FOSTER: Melissa Foster with Stoel Rives, counsel
18 for the Applicant.

19 MR. MASON: Robert Mason with CH2M Hill, Project
20 Manager for the Applicant.

21 HEARING OFFICER COCHRAN: Thank you. Is there anyone
22 on -- are there any Federal governmental agencies present
23 today?

24 Any officials representing Native American Tribes or
25 Nations?

1 Any other officials from State, county, regional, or
2 local jurisdictions?

3 Okay, at the first evidentiary hearing we detailed
4 the evidentiary standards to be used in this adjudicatory
5 proceeding.

6 I will now review, briefly, some of the salient
7 points.

8 The formal evidentiary record is the only evidence
9 the Commission may base its decision on. The formal
10 evidentiary record is sworn testimony of the parties'
11 witnesses, whether live testimony or by declarations that
12 were pre-filed some time ago, the reporter's transcripts of
13 the hearings.

14 We do have a court reporter present and for clarity
15 of the record it would be much better if we only spoke one at
16 a time.

17 The exhibits received into evidence, and briefs,
18 pleadings, orders, notices and comments submitted by members
19 of the public.

20 Only the parties, Applicant, Interveners and Energy
21 Commission staff may present evidence for introduction into
22 the formal evidentiary record.

23 Testimony offered by the parties shall be under oath.
24 Each party has the right to present witnesses, introduce
25 exhibits, and to rebut evidence of another party.

1 Technical rules of evidence do not apply to these
2 proceedings, but they do provide us with some guidance.

3 Also, we will tend to admit any relevant, non-
4 cumulative evidence if it is the sort of evidence upon which
5 responsible persons are accustomed to rely in the conduct of
6 serious affairs.

7 I didn't write that, someone else did.

8 Hearsay evidence may be used to supplement or explain
9 other evidence, but shall not be sufficient in itself to
10 support a finding.

11 That means we have to have direct evidence.

12 The Committee will rule on motions and objections,
13 including objections relating to relevance.

14 The Committee may take official notice of matters
15 within Energy Commission's field of competence and of any
16 fact that may be judicially noticed by California courts.

17 Members of the public who are not parties are welcome
18 and invited to observe the proceedings. There may also be an
19 opportunity for the public to provide comment at the
20 conclusion of the evidentiary hearing today.

21 Depending upon the number of persons who wish to
22 speak, the Committee may have to limit the time allowed for
23 each speaker.

24 This public comment period is intended to provide an
25 opportunity for persons who attend the hearing to address the

1 Committee.

2 It is not an opportunity to present supplemental
3 written, recorded, or documentary materials. However, such
4 materials may be docketed and submitted to the Energy
5 Commission for inclusion in the administrative record, which
6 is not necessarily the same thing as the evidentiary record.

7 Members of the public may submit written comments, if
8 they would prefer that to speaking directly to the Committee.
9 There is room for that on the blue card that the Public
10 Adviser has.

11 There is an exhibit list out in the foyer that was
12 prepared on the electronic docket, from the electronic
13 docket, so that you may automatically update your own
14 witness -- I'm sorry, own exhibit list by going to the Energy
15 Commission docket.

16 While I'm speaking about the docket, I did have a few
17 clarifying questions I wish to ask.

18 At the evidentiary hearing down in Redondo Beach,
19 staff had marked and admitted -- I'm going to now show you
20 this lovely picture that was printed, 18 inches, to be held
21 12 inches out, key observation point number 5, regarding
22 visual resources. This was admitted into evidence as Exhibit
23 2002.

24 Mr. Bell, are you intending to docket this or are we
25 now going to withdraw Exhibit 2002?

1 MR. BELL: The item 2002 has actually already been
2 docketed. It's part of, I believe it was, the Applicant's
3 original submissions in the AFC.

4 The only difference is that is actually to scale
5 whereas what we had docketed in the AFC was not to scale.

6 HEARING OFFICER COCHRAN: Okay, so --

7 MR. BELL: Originally, we were offering that for
8 demonstrative purposes, only, and I understand the parties
9 wanted that docketed. But, in fact, that already has been
10 docketed, just not to scale.

11 And I don't know if our dockets can take an item like
12 this that's oversized.

13 HEARING OFFICER COCHRAN: I don't believe they can.
14 My understanding is that what we would have to do is put a
15 note on the docket that essentially says that in order to
16 view this exhibit you need to print it at 18 inches and hold
17 it at 12 inches.

18 You had clearly marked on the copy that it was
19 originally from TN71338.

20 MR. BELL: Yes.

21 HEARING OFFICER COCHRAN: So, the difficulty's going
22 to be that we cannot have a single TN with multiple exhibit
23 numbers.

24 So, I think that what we'll do is we'll keep this as
25 demonstrative, but I'm not sure, now that we're electronic as

1 opposed to having written, paper copies, how it's going to
2 look in the record.

3 MR. BELL: Yeah, the electronic docketing and
4 electronic evidence is new to me. I'm just what they would
5 call a simple country lawyer, who's used to handing things
6 over and publishing.

7 One thing I would like to do, we can withdraw that
8 from evidence and I will so move.

9 But if I did not do this before, I would like the
10 record to reflect that as I was describing the document,
11 being the proper scale and held at 18 inches, that without
12 prompting both Commissioners and Madam Hearing Officer
13 actually did that. It was suggestive powers that helped that
14 out.

15 HEARING OFFICER COCHRAN: That's what makes a simple
16 country lawyer worth every penny you pay.

17 MR. BELL: May the record so reflect that? No, that
18 they actually held it out, not the other.

19 (Laughter)

20 MR. BELL: And if so, I'll ask that it be withdrawn.

21 HEARING OFFICER COCHRAN: Thank you. Then what we
22 will do is we will withdraw Exhibit 2002 from the record
23 because it's not -- I don't think it's going to work the way
24 that we had all envisioned.

25 (Staff Exhibit 2002 was withdrawn)

1 HEARING OFFICER COCHRAN: Turning now to the
2 Applicant, at the beginning of the last hearing you had
3 mentioned that there were going to be three presentations
4 that were going to be docketed. Have you docketed all three
5 or were there only then two?

6 MS. FOSTER: There were only two. The third one was
7 not relied upon during the evidentiary hearing.

8 HEARING OFFICER COCHRAN: Okay. So, originally we
9 had docketed through, I believe, 1043, and now you only have
10 through 1042; is that correct?

11 MS. FOSTER: I believe that we docketed 1140 was the
12 Visual Resources presentation, and 1141 was the Cultural
13 Resources presentation.

14 HEARING OFFICER COCHRAN: Thank you.

15 MS. FOSTER: And then we do have --

16 HEARING OFFICER COCHRAN: That's correct. So, then
17 the record should reflect that 1142, which was admitted when
18 we were down in Huntington Beach, shall be withdrawn from the
19 record. Is that correct?

20 MS. FOSTER: That's correct.

21 HEARING OFFICER COCHRAN: Thank you.

22 (Applicant Exhibit 1142 was withdrawn)

23 HEARING OFFICER COCHRAN: And then finally, Ms.
24 Rudman, I believe that you have docketed another item that's
25 to be an exhibit?

1 MS. RUDMAN: Yes and I would like to make a motion to
2 move it into evidence.

3 HEARING OFFICER COCHRAN: Okay, why don't we wait
4 until we get to the subject matter that that evidence refers
5 to?

6 MS. RUDMAN: Okay.

7 HEARING OFFICER COCHRAN: Okay.

8 MS. FOSTER: And Applicant has two additional items
9 that have been docketed that we would like to move into
10 evidence, as well.

11 HEARING OFFICER COCHRAN: Okay, can we do
12 that -- for future exhibits that we're now going to add, that
13 are not reflected on the exhibit list that was out in the
14 foyer today, let's move them in during the subject matter
15 that they relate to.

16 MS. FOSTER: They were the documents submitted last
17 week, the pre-hearing statement --

18 HEARING OFFICER COCHRAN: Okay.

19 MS. FOSTER: -- and the responses to questions, so
20 they don't relate to a specific subject.

21 HEARING OFFICER COCHRAN: Oh, okay, then
22 let's -- so you would like to have marked for identification
23 1142, which is?

24 MS. FOSTER: Applicant's pre-hearing statement. It's
25 TN202855.

1 HEARING OFFICER COCHRAN: 855 thank you.

2 And 1143?

3 MS. FOSTER: Applicant's responses to questions and
4 the Committee's order after pre-hearing conference, TN202862.

5 HEARING OFFICER COCHRAN: 202862. Is there any
6 objection to receiving those into evidence?

7 MR. BELL: None.

8 MS. RUDMAN: No.

9 HEARING OFFICER COCHRAN: Those items will be
10 received into evidence.

11 (Applicant Exhibit Nos. 1142 and 1143 were
12 marked for identification and admitted into
13 Evidence.)

14 HEARING OFFICER COCHRAN: Staff, did you have
15 additional exhibits you wish to admit into evidence?

16 MR. BELL: Yes, we have one additional exhibit. It
17 was docketed earlier this week. It's the Energy Commission
18 staff's proposed Conditions of Certification Revised.

19 And I don't have the transaction number in front of
20 me.

21 HEARING OFFICER COCHRAN: Let's mark those as 2003
22 and I'll fill in the TN. So, that will be Exhibit 2003.

23 MR. BELL: Yes, I just wanted to clear that as the
24 Conditions of Certification Revised.

25 HEARING OFFICER COCHRAN: Right, that was filed

1 earlier this week.

2 MR. BELL: Yes.

3 MS. RUDMAN: I have the TN number, if you need it.

4 HEARING OFFICER COCHRAN: Thank you.

5 MS. RUDMAN: 202882.

6 HEARING OFFICER COCHRAN: 202882?

7 MS. RUDMAN: Yeah.

8 HEARING OFFICER COCHRAN: Thank you. Is there any
9 objection to receiving Exhibit 2003, the Revised Conditions
10 of Certification into evidence?

11 MR. BELL: Before it's submitted, I do have on minor
12 change.

13 HEARING OFFICER COCHRAN: Okay.

14 MR. BELL: One minor revision to the Revised
15 Condition of Certification.

16 And that is under Cultural Resources, Condition of
17 Certification CUL-1, on page 46, verification number two. It
18 currently reads, up to the first comma, "at least ten days
19 prior to a denial," and "denial" being bold and underlined as
20 language that staff was proposing be included.

21 "Denial," should be stricken and moved to -- after
22 "resignation" along with the word "or". So, the first two
23 lines of page 46, verification number two, should read as
24 follows:

25 "At least ten days prior to a termination or release

1 of the CRS, or within ten days after the resignation or
2 denial of a CRS," and the remainder remains the same.

3 HEARING OFFICER COCHRAN: Okay. With that further
4 amendment to the Revised Conditions of Certification, is
5 there any objection to the admission of Exhibit 2003?

6 MS. FOSTER: Applicant just has a quick question for
7 staff counsel.

8 Mr. Bell, it looks as though the revised conditions
9 only include Waste Management Conditions 1 and Conditions 2,
10 but not the remainder of the Waste Management Conditions.

11 Did you intend to delete those or remove those from
12 the revised condition?

13 MR. BELL: The remaining Waste Management conditions
14 should be included in this, as well.

15 In that section it appears that the revisions to the
16 Waste conditions were the ones that are in this document.
17 But the remaining proposed conditions of certification, as
18 originally proposed, should remain the same.

19 MS. FOSTER: Okay, thank you.

20 MS. RUDMAN: These conditions were something that I
21 just saw recently, so I would like to have adequate time to
22 review them and comment on them.

23 HEARING OFFICER COCHRAN: That will probably occur
24 during briefing. That will be something that you'll need to
25 brief.

1 MS. RUDMAN: Okay.

2 HEARING OFFICER COCHRAN: So, are there any further
3 objections to receiving Exhibit 2003, as we've described it?

4 MS. FOSTER: None from the Applicant.

5 MR. BELL: None from staff.

6 HEARING OFFICER COCHRAN: Seeing none, we will admit
7 the Exhibit 2003 into evidence.

8 (Staff Exhibit No. 2003 was marked for
9 identification and admitted into evidence.)

10 HEARING OFFICER COCHRAN: I have also provided out in
11 the foyer, today, an updated witness list that lists only
12 those topics that we will be discussing today. They are also
13 in the order that we wish to proceed.

14 So, with one caveat, the Applicant's Water witness is
15 only available now, and only available by phone. So, any
16 questions that any party may have relating to water-related
17 issues should be brought at this time, while that person is
18 on the phone.

19 Is that Mr. Franck?

20 MS. FOSTER: That is Mr. Franck, correct.

21 HEARING OFFICER COCHRAN: Thank you.

22 So, if there are questions relating to water,
23 regardless of what topic they would generally flow, no pun
24 intended, flow from please raise them now.

25 As we said, we are proceeding by an informal hearing

1 format. So, what will happen is we will call of the
2 witnesses to testify as a panel on the topic at hand. The
3 witnesses will be sworn.

4 The Committee will consider any objections to the
5 qualifications of offered expert witnesses.

6 Each witness will then briefly, and let me stress
7 again, briefly summarize his or her testimony limited to the
8 contested issues that we're going to describe in a minute.

9 Witnesses may only testify on topics or issues within
10 their expertise.

11 The panel may discuss issues amongst themselves,
12 without the lawyers asking questions.

13 Panel members may also ask brief questions of one
14 another. Please, remember the word "brief".

15 The Committee will guide the discussion and may ask
16 questions of any witness at any time. Even if a question is
17 directed to only one panel member, all panel members have the
18 opportunity to respond to the question posed.

19 However, the panelists should only speak at one time
20 for the benefit of the court reporter. I'm trying.

21 The Committee will allow questioning of the panel by
22 the parties.

23 As of July 24, 2014, the following topics are still
24 in dispute; Land Use, Hazardous Materials, Water Resources,
25 including both the feasibility of the use of wastewater and

1 the conditions of certification, Soils and Geology,
2 particularly as it relates to seismic issues and fracking,
3 Greenhouse Gases, the compliance conditions particularly
4 Compliance Condition 113, incident reporting requirements for
5 HAZMAT or other incidents, and COM facility closure planning.
6 And then, finally, Waste Management Conditions of
7 Certification 1 and 2.

8 Are any of these topics now undisputed? We can move
9 them to -- we're going to submit on the evidence that the
10 Committee currently has.

11 MS. FOSTER: Applicant can speak to two of the topics
12 listed here.

13 HEARING OFFICER COCHRAN: Okay.

14 MS. FOSTER: Applicant no longer has any issues with
15 staff's proposed HAZ-6, as docketed on August 4th, Staff's
16 Exhibit 2003, as well as Waste 1 and Waste 2 reflected in
17 that document.

18 HEARING OFFICER COCHRAN: Staff?

19 MR. BELL: That is correct we no longer have, I
20 believe, a disagreement between Applicant and Staff on those
21 issues.

22 I do note that Intervener Rudman still has one of
23 those issues, Hazardous Materials, down as a contested area.

24 HEARING OFFICER COCHRAN: Okay.

25 MR. BELL: But again, as we stated before, we don't

1 know what the nature of that issue is.

2 HEARING OFFICER COCHRAN: Okay. Ms. Rudman, I was
3 just going to ask Ms. Rudman, what is the nature of your
4 concern with Hazardous Materials?

5 MS. RUDMAN: It would be the interface between
6 hazardous materials and sea level rise. I don't think that's
7 been adequately addressed.

8 HEARING OFFICER COCHRAN: What evidence do you have
9 to put on regarding that?

10 MS. RUDMAN: Oh, I just have questions.

11 HEARING OFFICER COCHRAN: Okay. Do you have any
12 questions or continuing need to have evidence taken on the
13 subject of Waste Management?

14 We've lost our signal.

15 MS. RUDMAN: I mean I do have -- I mean my opening
16 brief or opening statement had a discussion of that issue.

17 HEARING OFFICER COCHRAN: Of Waste Management?

18 MS. RUDMAN: Opening testimony.

19 COMMISSIONER MC ALLISTER: All right, hang on
20 everybody, we're going to see if we can control the AV system
21 here.

22 HEARING OFFICER COCHRAN: I don't know if this mic is
23 live. It is live.

24 I may have to stop -- I may have to mute everyone
25 unless you mute yourself because that's what's causing the

1 feedback that we're hearing in the hearing room.

2 So, for those of you who are calling in, if you could
3 mute yourself? Because if I have to mute you, then that's
4 not being something I'm really good at, or my core
5 competency, that it may be that you will be unable to speak
6 when you wish to.

7 COMMISSIONER MC ALLISTER: Could you just mute
8 everyone?

9 HEARING OFFICER COCHRAN: Yeah, I will.

10 COMMISSIONER MC ALLISTER: And then they can raise
11 their hands online if they need to speak.

12 HEARING OFFICER COCHRAN: Okay. Okay, everyone has
13 now been muted and I don't know which is the Applicant's
14 witness.

15 The chat feature is working so if you want to chat,
16 if you'll let us know that you need to call, if you'll send a
17 chat then we'll be able to see that you, in fact, want to be
18 recognized.

19 Do you have evidence or questions on Waste
20 Management, Ms. Rudman?

21 MS. RUDMAN: Well, in my opening testimony, on page
22 8, I discuss the implications of sea level rise on critical
23 facilities.

24 And then, in addition, the Coastal Commission has
25 recently submitted comments on the project, which I'd like to

1 move into evidence.

2 HEARING OFFICER COCHRAN: I believe those are already
3 in evidence, they were moved --

4 MS. RUDMAN: Okay, yeah, so they raised concerns
5 about, and I raised concerns as well about the issues related
6 with sea level rise and hazardous materials.

7 HEARING OFFICER COCHRAN: Okay, Hazardous Materials
8 is separate from Waste Management.

9 MS. RUDMAN: Right.

10 HEARING OFFICER COCHRAN: So, looking at Waste
11 Management.

12 MS. RUDMAN: Okay.

13 HEARING OFFICER COCHRAN: Can we move that to the
14 undisputed --

15 COMMISSIONER MC ALLISTER: Yeah, so the record is
16 from -- so I guess the question is do you have new evidence
17 on either of these issues that's not already in the record to
18 inform decision making.

19 MS. RUDMAN: No.

20 COMMISSIONER MC ALLISTER: Okay.

21 HEARING OFFICER COCHRAN: Okay, so you don't have any
22 new or additional evidence to present today on Hazardous
23 Materials?

24 MS. RUDMAN: Right.

25 HEARING OFFICER COCHRAN: Okay, so then I believe we

1 can move Hazardous Materials and Waste Management to
2 undisputed; is that correct?

3 MS. RUDMAN: Well, I don't have new evidence, but
4 that doesn't mean it's undisputed.

5 HEARING OFFICER COCHRAN: Well, it just means that we
6 don't need additional evidence. It's more a function of what
7 we're going to take hearing time to hear as opposed to
8 arguments or disputes you may have that you'll bring up in
9 briefing to follow.

10 MS. RUDMAN: Okay, well, it's a little confusing when
11 you say it's undisputed. So, it's just we're not going to
12 discuss it today.

13 HEARING OFFICER COCHRAN: Correct.

14 MS. RUDMAN: It's off the table, but it's still
15 disputed.

16 HEARING OFFICER COCHRAN: Correct.

17 MS. RUDMAN: Okay, thank you.

18 HEARING OFFICER COCHRAN: Okay, then let's start with
19 Water.

20 MS. FOSTER: Can I state one more thing?

21 HEARING OFFICER COCHRAN: Certainly.

22 MS. FOSTER: I apologize. Land Use, Applicant
23 previously had a concern with Staff's Land 1 Condition. And
24 in the revised conditions that were docketed on August 4th,
25 Applicant agrees with Staff's revision that was made. So, I

1 believe that Land Use is undisputed as between Applicant and
2 Staff.

3 MR. BELL: That's correct.

4 HEARING OFFICER COCHRAN: Okay. I know that Ms.
5 Rudman had questions about Land Use.

6 MS. RUDMAN: Yes.

7 HEARING OFFICER COCHRAN: And so we'll -- let's touch
8 on that, briefly. Keeping in mind what we mean by
9 undisputed, is there additional evidence that needs to be
10 brought to the Committee's attention in order to act on the
11 issue of Land Use?

12 In your pre-hearing statement for this hearing it
13 seems as though most of what you wanted to present was
14 argument concerning land use issues.

15 What additional information does the Committee need
16 in order to resolve issues relating to land use?

17 MS. RUDMAN: Well, I mean in terms of land use,
18 again, you know, it was relative to the Coastal Commission
19 evidence.

20 And so, I would like to question the parties on why
21 they draw different conclusions than the Coastal Commission
22 on the hazards associated with sea level rise and the
23 applicability of -- well, the Huntington Beach general plan
24 says that that site is only appropriate for coastal-dependent
25 facilities. I mean there's a lot of different language in

1 the general plan.

2 But one piece of the general plan says that site is
3 appropriate for coastal-dependent facilities which, if this
4 no longer requires the ocean for cooling, it's not coastal
5 dependent.

6 MS. FOSTER: Applicant objects to that
7 characterization of the general plan.

8 HEARING OFFICER COCHRAN: Well, and that, to me, is
9 again, while it's based on the presentation, it's sounding to
10 me as though this is more in the nature of argument than in
11 new or additional facts.

12 The general plan says what the general plan says and
13 the Committee will review it and draw its own conclusions
14 considering the parties' various positions.

15 But what additional evidence do we need regarding the
16 general plan, or the zoning or planning codes in order to
17 make the determinations necessary for the PMPD?

18 MS. RUDMAN: Well, I would urge you to take a look at
19 what the Coastal Commission says.

20 HEARING OFFICER COCHRAN: Okay.

21 COMMISSIONER MC ALLISTER: Yeah, I believe that is --
22 their letter is in the record and it's all good.

23 HEARING OFFICER COCHRAN: That's correct.

24 COMMISSIONER MC ALLISTER: So, again, the point isn't
25 that everybody -- that we're pulling things off of the agenda

1 because everybody's all hunky dory and kumbaya with each
2 issue, right. It's that everybody agrees that the evidence,
3 the evidentiary record is now complete and doesn't bring --
4 each party doesn't bring new evidence to the given issue.
5 That's what uncontested means.

6 MS. RUDMAN: Yeah, I mean that is very helpful for
7 me, who is not a lawyer, to hear it phrased in that way
8 rather than, you know, there's no longer a dispute. Because
9 to me that's something different, so that's helpful, yes.
10 Thank you.

11 HEARING OFFICER COCHRAN: So then Land Use is again a
12 topic that will be addressed in the briefs, and will not be
13 addressed at the hearing today.

14 The Coastal Commission letter came in as TN202701, so
15 it is already in evidence.

16 So, let's now turn to Water. And I know that one of
17 the callers is Water. Could we also have Staff's Water
18 witness come forward? I'm assuming that's you. Thank you.

19 MS. FOSTER: And Applicant's witness does not have
20 the ability to use the chat function.

21 HEARING OFFICER COCHRAN: Okay.

22 COMMISSIONER DOUGLAS: All right, so the lines are
23 unmuted, so could Applicant's witness please speak?

24 HEARING OFFICER COCHRAN: Yes.

25 MR. FRANCK: Hi, this is Matt Franck from CH2M Hill,

1 Applicant's witness for Water Resources.

2 COMMISSIONER DOUGLAS: All right, thank you.

3 COMMISSIONER MC ALLISTER: So, this is call-in user
4 three. Let's mute everybody else and unmute him. There we
5 go.

6 HEARING OFFICER COCHRAN: Okay and from Staff?

7 MR. CONWAY: This is Mike Conway.

8 HEARING OFFICER COCHRAN: Okay, Mr. Franck, if we
9 could briefly get --

10 I'm sorry. Thank you.

11 If you can raise your right hand, Mr. Franck, we can
12 all see you. If you can raise your right and do
13 you --

14 MR. FRANCK: Okay, it's raised.

15 HEARING OFFICER COCHRAN: Okay, thank you.

16 (Witnesses were collectively sworn)

17 HEARING OFFICER COCHRAN: Thank you.

18 Now that you've been sworn, can you give us a brief
19 summary, Mr. Franck of your testimony on --

20 MS. FOSTER: Before Mr. Franck does this, this is
21 Applicant's counsel, as noted in our pre-hearing statement,
22 Applicant did not intend to provide any live testimony today
23 on water resources.

24 HEARING OFFICER COCHRAN: Right.

25 MS. FOSTER: We, until August 4th, had no issues with

1 staff on water resources.

2 We have seen that there is a new proposed soil and
3 water condition, Soil and Water 8. And as our applicant is -
4 - or excuse me, as our witness is unavailable, we haven't had
5 time to provide feedback on Soil and Water 8, so we would
6 like to reserve the right to provide written feedback post-
7 hearing on that topic.

8 Otherwise, all of our testimony has been done in
9 writing.

10 HEARING OFFICER COCHRAN: Okay.

11 COMMISSIONER MC ALLISTER: So, is there a reason for
12 this witness to present anything right now?

13 MS. FOSTER: He's available to answer questions.

14 COMMISSIONER MC ALLISTER: Oh, okay.

15 MS. FOSTER: I believe Ms. Rudman has some questions.

16 HEARING OFFICER COCHRAN: I have questions.

17 Actually, I have questions and so I will start, to make this
18 a little bit easier.

19 In the water assessment portion of the discussion
20 there is a comparison of how much water is used by HBGS, the
21 existing power plant, and the proposed HBEP.

22 In specific, in analyzing the alternative of using
23 wastewater, there's a discussion of "saved water".

24 My question is the current demand for HBGS is
25 characterized as being 290 acre feet per year. Is that

1 potable water or salt water?

2 MR. FRANCK: Potable water.

3 HEARING OFFICER COCHRAN: And what's that potable
4 water used for currently?

5 MR. FRANCK: Industrial processes at the plant. I
6 could look at the -- I'd have to look back at the existing
7 water balance to determine exactly what uses, but the same
8 sorts of uses that would be used by the new plant in terms of
9 NOx control, a few other what I guess we would generally
10 characterize as industrial processes.

11 Plus, general potable uses. But potable uses for the
12 staff there are very, very small compared to the industrial
13 uses.

14 HEARING OFFICER COCHRAN: Right. So, I just wanted
15 to clarify that that was the potable demand. That's not any
16 of the salt water, once-through cooling demand that the plant
17 had originally used?

18 MR. FRANCK: That is correct.

19 HEARING OFFICER COCHRAN: Okay. Those are all my
20 questions.

21 Oh, I'm sorry, one other question. I know that is
22 the Poseidon Plant that's nearby, that's the desalinization
23 project.

24 Can someone provide us with an update of that
25 project? Does anyone know? I thought that Ms. Miller might

1 know. Mr. Conway?

2 MR. CONWAY: Well, this is Mike Conway again. Good
3 afternoon.

4 I have very limited knowledge of current activities,
5 but I did speak with a general manager of the Poseidon
6 facilities, I think headquartered in Carlsbad. In fact, it
7 was to learn about some of the alternative or potential ways
8 to get water to the site, with other qualities and such.

9 Anyway, I think the short answer is they expected it
10 to -- I don't know that it's fully permitted or it may have a
11 couple of other hurdles, but they expect those to be overcome
12 and they expect it to be operational by 2018 or so. So,
13 that's a real informal answer. I don't recall exactly what
14 hurdles they have.

15 I believe they -- I think they are permitted by the --
16 - whatever their last hurdle was, I think they got over it
17 and now there's a couple small things being worked out.

18 MS. FOSTER: For the record, Applicant would like to
19 clarify that they have not received all their permits. It's
20 my understanding that the Coastal Commission has not approved
21 the project.

22 COMMISSIONER MC ALLISTER: So, this is informational.
23 I mean this co-location of the site is additional impacts, in
24 addition to the project we're talking about. So, obviously,
25 this is not -- nobody here is able to say officially what's

1 going on with that plant because it's nobody here's project.

2 But I think, you know, it is a -- broadly speaking,
3 it's a water-relevant project and it would be good to
4 understand, at least try to understand a little bit of what
5 the impacts over time might look like.

6 If it turns out that, you know, they're 2014 to 2017
7 construction period that I think they're sticking to for the
8 moment, 2015 to 2017, something like that, actually were to
9 come to pass. So, it's kind of the relevant context.

10 HEARING OFFICER COCHRAN: The Poseidon Project is
11 also included in the Cumulative Impacts section of the entire
12 project so --

13 MR. BELL: And something else we have to take into
14 consideration, too, is we do have two separate licensing
15 agencies that will be licensing two separate projects. And
16 we have to assume that whichever governmental agency is
17 overseeing the Poseidon project will also look at the
18 cumulative effects of the project that the Commission is
19 licensing, the Huntington Beach Energy Project.

20 So, it's not as if any potential adverse impacts from
21 that Poseidon Project are going to be out there and
22 unaddressed. They will be addressed in some form.

23 Of course, this isn't the forum to address those
24 direct impacts from that project. Although, cumulatively
25 speaking, we have to look at anything that's foreseeable, you

1 know, which could be that.

2 COMMISSIONER MC ALLISTER: Well, in your latest
3 update on the cumulative impacts it's in there, and it's
4 listed in a table with a time line that is, you know, I think
5 the currently asserted time line. And whether or not that
6 pans out, who knows.

7 But, you know, things like beach access, parking, all
8 that kind of stuff it's relevant to consider.

9 MS. RUDMAN: I might add it's also relevant for the
10 visual impacts. If you notice though, however, the visual
11 impacts, the cumulative impacts of the Poseidon Project have
12 not been kind of layered on top of the visual impacts for the
13 Huntington Beach Energy Project in any of the documents,
14 which has always been interesting from my perspective because
15 it should have an additional visual impact on the area.

16 HEARING OFFICER COCHRAN: Anything else on the
17 desalinization plant?

18 I'm sorry, go ahead.

19 MR. CONWAY: Well, my memory's a little bit more
20 clear, now. The project was officially denied maybe in
21 October of 2013 and I think it was by the City of Huntington
22 Beach.

23 But they were confident, the management was confident
24 that they can stick with a schedule of being operational
25 perhaps by 2018.

1 And they are -- they're formally engaged in some kind
2 of a contract with the City of Huntington Beach to reserve
3 Hamilton Avenue. They have the remaining, I don't know,
4 rights for whatever easement is left on that street.

5 So, no other utilities can be built in that roadway
6 as of now.

7 HEARING OFFICER COCHRAN: That was part of the
8 discussion on the infeasibility of using recycled water from
9 the adjacent water treatment plant because there was
10 insufficient PUE in the right-of-way for a recycled water
11 pipeline to take the treated effluent from the wastewater
12 treatment plant to HBEP.

13 MS. RUDMAN: I'm a little unclear, though, relative
14 to that, what treatment plant staff was talking about. So,
15 that would be one area that I'd like to ask some questions.

16 HEARING OFFICER COCHRAN: If you know the answer?

17 MR. CONWAY: Sure. In general, when we talked about
18 Hamilton Avenue we hadn't even -- we had considered that it
19 could have come from the Plant 1 or the Plant 2. And it
20 becomes difficult to even point to exactly whose water it is
21 at that point. There's an inter-plant pipeline that moves
22 water between the Plant 1, which is generally north, and the
23 Plant 2 which is the one closer to the coast.

24 And so the idea is that Hamilton Avenue will provide
25 kind of a straight shot almost all the way to the project

1 site. So, we kind of looked at an interconnection, you know,
2 whether it would technically be classified as Plant 1's water
3 or Plant 2's water. It didn't matter so much to us other
4 than we were talking about secondary treated effluent.

5 So, we were more interested in the quality and the
6 point of connection.

7 So, the planning level is pretty theoretical as far
8 as describing whose it was.

9 MS. RUDMAN: I do have follow-up questions to that.
10 I think it is -- they are very different.

11 Could we pull up my document below there, and it has
12 a map of the treatment plants in the area. I think it's
13 really helpful to take a look at that.

14 HEARING OFFICER COCHRAN: It's the -- that's the one.

15 MS. RUDMAN: Yeah.

16 HEARING OFFICER COCHRAN: Okay, so for purposes of
17 the record we're looking at TN202850.

18 MS. RUDMAN: And I'd like to make a motion to move
19 this into the record. I think I already have
20 but --

21 HEARING OFFICER COCHRAN: Any objections?

22 MS. FOSTER: No objections from Applicant to moving
23 this into the record. But I would like to reiterate the
24 objection I made at the July 21st hearing related to Ms.
25 Rudman's expert testimony and questioning as -- or testimony

1 as an expert witness in that she's not a qualified expert
2 witness on the topics she's identified in her pre-hearing
3 statement.

4 HEARING OFFICER COCHRAN: Okay. My understanding is
5 that she's asking questions.

6 MS. RUDMAN: So, keep scrolling. There should be a
7 really nice map which is really clarifying.

8 HEARING OFFICER COCHRAN: So then your motion, Ms.
9 Rudman, is to have TN202850 be marked identification as
10 Exhibit 4035 and that it be admitted into evidence.

11 MS. RUDMAN: Yes.

12 HEARING OFFICER COCHRAN: Does staff have any
13 objection?

14 MR. BELL: None.

15 HEARING OFFICER COCHRAN: Exhibit 4035 is admitted
16 into evidence.

17 (Intervener Exhibit 4035 was marked for
18 identification and admitted into evidence.)

19 HEARING OFFICER COCHRAN: So, you now have page 8 of
20 89 on the screen, which is a map that shows the two treatment
21 plants.

22 MS. RUDMAN: Yeah, if you can make it a little
23 smaller so it would fit on one page, it would be helpful, and
24 then scroll down.

25 So, you see kind of near the top of the page, by

1 Fountain Valley, it shows the Water Treatment Plant Number 1.
2 And then water is fed by gravity, I believe, and it was
3 downriver from Plant 1 to Plant 2.

4 MR. BELL: I have to object, assuming facts not in
5 evidence.

6 HEARING OFFICER COCHRAN: Okay, sustained.

7 MS. RUDMAN: But most of the source of the
8 wastewater, as you see, is coming from Newport Beach.

9 MR. BELL: I'll have to object again, stating facts
10 not in evidence.

11 HEARING OFFICER COCHRAN: My understanding is that
12 you wanted to use this map to show the location of the power
13 plants. Is that correct?

14 MS. RUDMAN: Yes, but I also wanted to use it as
15 additional evidence to demonstrate, first of all, that there
16 seems to be some confusion in the testimony that's already
17 been presented about where this water is coming from.

18 And if you notice that the Treatment Plant Number 2
19 is very close to the site of the Huntington Beach Energy
20 Project and currently they've upgraded the pipes to flow five
21 miles out in the ocean. These are 10-foot in diameter pipes.
22 And that's to discharge treated wastewater.

23 So, obviously, you don't go through a process of
24 upgrading pipes like that if you plan on injecting it into
25 the groundwater.

1 So, obviously, there's a lot of water that's being
2 dumped into the ocean from Treatment Plant Number 2.

3 And Treatment Plant Number 2, one of the more logical
4 routes, I would think, would not to go through Hamilton
5 Avenue but to go --

6 HEARING OFFICER COCHRAN: I need to stop you.

7 MS. RUDMAN: Okay.

8 HEARING OFFICER COCHRAN: This is beyond the scope of
9 your expertise. I will sustain Applicant's objection to your
10 testifying as an expert. You're not a water or sewer
11 treatment expert. And this is more in the nature of argument
12 about what has been described or not described.

13 Now, if you have questions that you could ask of Mr.
14 Franck or Mr. Conway that may provide this evidence for you,
15 that would be helpful.

16 MS. RUDMAN: Uh-huh.

17 HEARING OFFICER COCHRAN: But you're not able to
18 testify as an expert on this.

19 MS. RUDMAN: Okay. Well, if you could scroll down a
20 little bit further then I have a question that I could ask
21 them.

22 There's a statement from the Director --

23 COMMISSIONER MC ALLISTER: Well, presumably some of
24 this -- presumably some of the like infrastructure upgrades
25 and that report out, essentially, that you just made on

1 behalf of the Agency, the Water District here, is in this
2 report that's now in the record.

3 MS. RUDMAN: Yes.

4 COMMISSIONER MC ALLISTER: Some of this.

5 MS. RUDMAN: So, if you scroll -- if you scroll down
6 a little bit. Oh, I think stop.

7 Yeah, there's a statement at the bottom, the bullet,
8 so I would like to ask given that the General Director has
9 said that for the Plant Number 2, one of their major goals is
10 future water recycling, they want to determine partnerships,
11 strategies and et cetera, associated with recycling the
12 treated effluent from Plant Number 2 why this has not been
13 mentioned?

14 MR. CONWAY: I can respond to that, this is Mike.

15 MR. FRANCK: This is -- go ahead, Mike.

16 MR. CONWAY: Okay. We examined any number of options
17 to try and come up with some way to get recycled water to the
18 site or something that sounded reasonable to propose as an
19 alternative, and we couldn't find it.

20 And one of the places I did try was both I contacted
21 Orange County Sanitation District and talked to one of their
22 general managers. And, yes, they are open to sharing costs
23 and things, but they're talking large quantities of water,
24 large volumes of water and they have a high rate of
25 discharge.

1 They do discharge a minimum of 50 million gallons a
2 day of secondary treated effluent to the ocean.

3 So, for instance, if the plant were to take half of
4 that, you can imagine we may have a reasonable proposal for
5 someone.

6 But to take, you know, 100th of that water and to
7 engage in a cost-sharing on a pipeline construction doesn't
8 seem reasonable.

9 So, I agree that the route we looked at and then had
10 some further discussion about were through the State Park
11 land along the beach there, and I think that would be the
12 best option.

13 But even, as you begin to consider that you see why
14 that's probably not all that reasonable, either, because
15 there's no one else in the vicinity of the project that could
16 help share the cost of that, or could receive water of this
17 quality in the future.

18 And especially because the proposal for this power
19 plant is to substantially reduce the demand on the local
20 water system, meaning only beneficial impact, we really have
21 no impact to justify its being a very high amount on a very
22 small amount of water.

23 This amount of water is so little that it just
24 doesn't make sense to put through a large pipe. Whatever the
25 size, the pipe's going to be extremely large relative to this

1 amount of water.

2 COMMISSIONER MC ALLISTER: So, I guess I'm hearing
3 that you really have fully -- you've talked to the relevant
4 agencies and potential institutional partners investigating
5 that kind of alternative, of that option --

6 MR. CONWAY: We did.

7 COMMISSIONER MC ALLISTER: -- and it's reflected in
8 the FSA, correct?

9 MR. CONWAY: It never got to the point where we had a
10 valid proposal worth including, you know, in this.

11 What we decided to leave in the testimony was much
12 simpler and explains the case more clearly, but we did
13 investigate it.

14 COMMISSIONER MC ALLISTER: Now, isn't it true that
15 there are also other significant adverse impacts associated
16 with installing a pipeline along the State Parks?

17 MR. CONWAY: True, that's another thing. Anything
18 that we're talking about is additional impact. So, in the
19 global sense of water, we're talking about a net beneficial
20 or -- we had this discussion many times amongst staff, you
21 know, it's like a negative/negative impact. We're talking
22 about positive beneficial impacts here.

23 So, any substantial construction would obviously be
24 an increase in impacts. And, yeah, that might be fine if
25 there were a substantial benefit in the long term, but we're

1 not seeing it.

2 MR. FRANCK: I was hoping to add one other brief item
3 in a response, if that's okay.

4 COMMISSIONER MC ALLISTER: Go ahead.

5 MR. FRANCK: In terms of the Director's statements
6 about the desire to expand reclaimed water use from Plant
7 Number 2, in our responses to PSA Part B, I believe this was
8 back in the springtime, we did acknowledge and we looked at
9 the strategic plan of OCSD. And, yeah, it does say that OCSD
10 would like to study potential future use of the recycled
11 water from Plant Number 2 and it gave a variety of different
12 types of potential uses and, again, with the partnerships
13 that we would need to develop with private industry, or OCWD,
14 which is the water purveyor.

15 So, it was acknowledged, at least in the Applicant's
16 responses to PSA Part B that, you know, the strategic plan of
17 the District did mention that that was one of its objectives.

18 But that doesn't -- yeah, I think the conclusion was
19 that just because OCSD is committed to studying uses doesn't
20 mean the water's available for the project right now.

21 MS. RUDMAN: Did you take a look at -- recently there
22 was an article in the Sacramento local paper that the U.S.
23 Bureau of Reclamation's Water Smart Program gave a grant to
24 the Sacramento Power Authority COGEN Project to evaluate the
25 potential to use recycled water.

1 And then, also, the Regional Sanitation District
2 secured a \$1.55 million Proposition 84 Grant to assist with
3 projects that are locally not cost effective.

4 And the State Water Resources Control Board State
5 Revolving Funds Loan Program is also a source of additional
6 funding.

7 Have you looked into those partnerships?

8 MR. BELL: I'll have to object, relevance and
9 compound.

10 MS. FOSTER: Applicant would join those objections.

11 COMMISSIONER MC ALLISTER: So, I guess on the natural
12 great idea that, you know, OCSD looked for partners to study
13 and fund projects to help them recycle water, I guess that
14 seems like pretty much a completely different topic than this
15 discussion that we're having about the plant. I guess, you
16 know, so I would tend to agree with the relevance argument.

17 HEARING OFFICER COCHRAN: And it is compound because
18 you're talking about several different funding sources.

19 Perhaps the way to -- let me try to help you. Were
20 other funding sources considered or did we leave this in the
21 hands of the agency who controls it, which is OCSD?

22 MR. CONWAY: When I did my analysis, I considered
23 OCSD as a funding source and I also contacted Poseidon as a
24 potential funding source.

25 And again, because they are trying to get rid of a

1 minimum of 50 million gallons a day, I think average rates
2 are closer to 100 million gallons a day, you can imagine a
3 more interesting alternative would be, for instance, for the
4 plant to continue once-through cooling with recycled water
5 and maybe use 25 million gallons a day.

6 That's something that they would help support and dig
7 a pipeline for so they could get rid of that water. That
8 would be a good use for them.

9 But if you were to take less than one percent of the
10 water they're trying to get rid of, I can't imagine they'd
11 have any interest in cost sharing that.

12 MS. RUDMAN: But we're talking about outside agencies
13 that would also provide funding partnerships.

14 MR. CONWAY: Well, we didn't consider winnable
15 grants, that's true.

16 MS. RUDMAN: And then did you consider any
17 partnerships with the hotels that are just right along the
18 same plain, right up Pacific Coast Highway, that might be
19 able to use recycled water for their landscaping or other --

20 MR. CONWAY: In general, this water is of the poorest
21 quality in the spectrum of recycled waters that are generally
22 lumped together.

23 So, this water would require additional treatment and
24 disinfection, especially before it has the potential to come
25 in contact with humans.

1 COMMISSIONER MC ALLISTER: Yeah.

2 MR. CONWAY: So, it's not even -- this isn't the
3 typical -- when we hear recycled water, we're usually talking
4 about recycled water being purveyed by a seller in a form
5 that's very fit for landscaping or something like that, which
6 is probably drinkable water.

7 This is not of that same quality, so this is more
8 suited for an industrial user or someone who plans to engage
9 in industrial treatment.

10 For instance, one other thing, you know, along
11 Hamilton Avenue, for instance, there are a lot of parks and
12 schools and that's why we spent a quite a bit of time trying
13 to figure out for sure if that could or could not work
14 because that looked like a much better centrally located
15 pipeline to have future expansion. You know, just looking
16 into the future for the City, you know, that are had the
17 potential to do a cost sharing with Poseidon, the City of
18 Huntington Beach and the Applicant.

19 That's an example of, maybe, something that could
20 have gotten more interesting. But again, that Hamilton
21 Avenue sounds like it's an absolute impossibility, as we were
22 told in a workshop by the City of Huntington Beach and
23 confirmed at a later date.

24 MS. RUDMAN: But why would you worry about what
25 Poseidon would want to use recycled water for? I mean that's

1 irrelevant to --

2 MR. CONWAY: Just for instance, if Poseidon were to
3 use Hamilton Avenue as they're planning to move water out
4 they could share the cost of trenching if there were room to
5 move another pipe in. So, there would be one cost sharing
6 there.

7 And if the City were to expand their recycled water
8 movement in the future, then water could be pushed from
9 Hamilton Avenue to all the schools and parks along that way
10 which -- which are a few.

11 Whereas, along the beach route there appear to be
12 just fewer options, so we couldn't come up with any other
13 reasonable options.

14 Again, the problem, it's the good and the bad that
15 this project is using so little water in the whole scheme of
16 things that it's not enough -- the scale of it is not enough
17 to make a lot of things feasible it's such a low amount of
18 water.

19 COMMISSIONER MC ALLISTER: It sounds like, to me,
20 that we -- so, you did look into it, the planets didn't align
21 to make it feasible for -- you know, you looked at the
22 feasibility for this particular use in this particular
23 situation.

24 It stirred up a lot of good ideas in terms of -- it
25 turned up a lot of ideas that are basically under local

1 jurisdiction for how they're going to, you know, develop a
2 recycled water plan, and take advantage of their resources
3 and work with their local agencies on water issues which I'm
4 sure we would all encourage them to move forward with.

5 But that with respect to the boundaries of this
6 project you kind of figured out what the feasible options
7 were and that those are reflected in the FSA, right.

8 HEARING OFFICER COCHRAN: Given the time by which
9 this water would be needed in order to meet the project
10 objectives.

11 MR. CONWAY: That's correct, also. There are a
12 number of other things happening on slightly longer term
13 timelines that could be of interest, again in the future,
14 especially if we're talking about more water.

15 But again, this isn't quite of the scale to be making
16 deals with some of these larger water users.

17 For instance, the Poseidon, you know, could use or
18 deliver, I think it was in the neighborhood of 20 million
19 gallons per day. So, this is a much larger scale than we're
20 talking here.

21 MS. RUDMAN: Can I interject, it seems like they're
22 confusing the issue. The issue is recycled water from the
23 sanitation districts, not whether in the future at some point
24 Poseidon can provide desalination water along the same pipe.

25 I mean it seems kind of like not a --

1 COMMISSIONER MC ALLISTER: I don't believe that's
2 what we're talking about, actually, here but --

3 MS. RUDMAN: That's what he's saying.

4 HEARING OFFICER COCHRAN: I don't believe so.

5 MR. CONWAY: I can try to answer something to
6 be --

7 MR. BELL: I want to be clear that -- whether
8 Intervener Rudman is asking a question because this sounds
9 like argument.

10 HEARING OFFICER COCHRAN: So your objection is
11 argumentative?

12 MR. BELL: Yes.

13 HEARING OFFICER COCHRAN: Sustained.

14 Do you have any other questions, Ms. Rudman, on the
15 topic of water?

16 MS. RUDMAN: Well, I'm just still really not clear on
17 what was the source that you were analyzing. It just does
18 seem like you were analyzing the source from Water Treatment
19 Plant Number 1 and not Water Treatment Plant Number 2. Is
20 that correct?

21 HEARING OFFICER COCHRAN: What was the source
22 of --

23 MR. FRANCK: I can speak to that. In terms of what
24 the Applicant analyzed, well, it started by looking at Plant
25 1 and Plant 2, as well as a couple other sources in the

1 region.

2 When we worked on PSA Part B, in the springtime, we
3 focused entirely on OCSD Plant Number 2.

4 MS. RUDMAN: But subsequently, when staff took up the
5 issue and analyzed it I believe they focused on the Treatment
6 Plant Number 1.

7 MR. CONWAY: We looked at both Plant Number 1 and
8 Plant Number 2. Plant Number 1 primarily deals in the
9 tertiary treated water. None of that is available to the
10 project and that's because the City has options to inject
11 that water in the future.

12 The tertiary treated water is a very important part
13 of the groundwater replenishment program in Orange County.
14 So, in a sense, all of the water is spoken for in Orange
15 County that is of decent quality. And this is the tertiary
16 water or, you know, potable water.

17 MS. RUDMAN: From 1.

18 MR. CONWAY: From Plant 1. So, generally, when we're
19 talking about the secondary treated effluent we're talking
20 about what's available from Plant 2.

21 And yes, it's true, they are looking for users of
22 this and this is the 50 million gallons a day.

23 But again, this water is not fit for anything legally
24 as it is right now. It needs to be taken up to at least a
25 disinfected standard before it can be used.

1 MS. RUDMAN: And my understanding is that for the
2 other power plants that are required to use wastewater, they
3 have to do some type of treatment, as well.

4 MR. BELL: Objection relevance and vague as to which
5 power plants we're talking about.

6 MS. FOSTER: Applicant joins the objection.

7 MS. RUDMAN: Okay, Pio Pico.

8 HEARING OFFICER COCHRAN: If you know?

9 MR. CONWAY: I don't.

10 HEARING OFFICER COCHRAN: What is the level of water
11 quality needed for a power plant? Can they use secondary or
12 does it require additional treatment?

13 MR. CONWAY: That's a very big question, if I may.

14 HEARING OFFICER COCHRAN: Then forget it.

15 MR. CONWAY: A lot of times we talk about quality.
16 You know, one proxy we talk about is total dissolved solids,
17 which is just kind of general constituents in the water.

18 But where we're really not as much talking about
19 that. We're not talking about what exactly has been
20 filtered. We're talking about bacteria counts and things
21 like that.

22 HEARING OFFICER COCHRAN: Let me try to simplify the
23 question. For the proposed technology used at the Huntington
24 Beach Energy Project and knowing the water quality of the
25 Plant 2 secondary treatment wastewater available from OCSD,

1 would pretreatment be necessary?

2 MR. CONWAY: Oh, definitely. That's true.

3 HEARING OFFICER COCHRAN: Okay. And the cost of that
4 pretreatment is included in the FSA, is that correct?

5 MR. CONWAY: Yes.

6 MR. FRANCK: Yes, from the Applicant's perspective,
7 the cost of the additional treatment was provided based on
8 our calculations in our subsequent responses to PSA Part B.

9 Mike, I don't recall if those numbers were actually
10 in the FSA. But, actually, I believe they were. I'll let
11 you speak to that.

12 MR. CONWAY: Yes.

13 MR. FRANCK: But those calculations were made three
14 or four months ago.

15 MR. CONWAY: Yes, I believe they are included in the
16 FSA, 4.9-15.

17 COMMISSIONER MC ALLISTER: So, Ms. Rudman, do you
18 have any additional evidence that would, you know, more fully
19 inform this technical discussion about the infrastructure and
20 costs to use recycled water that you want to put in the
21 record?

22 MS. RUDMAN: Well, again, I have information about
23 other power plants that have explored grants and partnerships
24 to help defray those costs. And then the Energy Commission's
25 record for other power plants clearly shows that they are

1 required to use treated wastewater, as well.

2 So, it seems to me kind of there's an issue of like
3 what's --

4 COMMISSIONER MC ALLISTER: Well, those are highly
5 contextual. So, I think in order to actually influence the
6 decision in this case it has to be contextualized and there
7 has to be sort of some expert testimony that says here's
8 exactly the deal for this case.

9 And I'm not really hearing that. I'm hearing some
10 conjecture and some argument, but not really hearing new
11 evidence on this particular case about what it would take to
12 -- you know, what alternative you're sort of offering and
13 justifying so I don't --

14 MS. RUDMAN: Okay, well, I'd like, you know, to
15 respectfully question. I thought that the point was the
16 Applicant was supposed to have the burden of proof about
17 whether something is feasible or not.

18 And I do have, you know, evidence here that the
19 Orange County Sanitation District budget says they are very
20 interested in exploring these partnerships so --

21 COMMISSIONER MC ALLISTER: Well, I mean so, for
22 example, if you were to sort of get the District and say,
23 hey, you know, and bring them in as your expert witness and
24 say what their intent is, which it sounds like staff has
25 already done a lot of that legwork, actually, to get those

1 considerations into the record.

2 But if there's a different outcome based on expert
3 witnesses in this case that are relevant there, in this site,
4 then that would obviously be welcomed into the record.

5 MS. RUDMAN: Well, it's just my opinion that they
6 haven't achieved the burden of proof that it's not feasible
7 given that there's statements here.

8 HEARING OFFICER COCHRAN: Okay, thank you. That's
9 argument and your opinion.

10 So, if that's all that we have left, then let's move
11 on to the next subject matter.

12 Is there anything further that anyone would like to
13 offer on the subject of Water?

14 That's now closed. Thank you, Mr. Conway. Thank
15 you, Mr. Franck. The panel is excused.

16 MR. FRANCK: Thank you.

17 HEARING OFFICER COCHRAN: Let's turn, now, to
18 Greenhouse Gases.

19 Are you waiting for your other Greenhouse Gas
20 witness, Mr. Bell?

21 MR. BELL: Yes. We can get started, though.

22 HEARING OFFICER COCHRAN: Okay, if the witnesses
23 could state their names for the record, starting with
24 Applicant.

25 MR. O'KANE: Stephen O'Kane, AES Southland.

1 MR. SALAMY: Jerry Salamy, CH2M Hill.

2 MR. JIANG: Tao Jiang, Air Resource Engineer for
3 Energy Commission.

4 MR. BELL: And we will have David Vidaver present
5 momentarily.

6 HEARING OFFICER COCHRAN: Okay.

7 MR. BELL: But we can get started.

8 HEARING OFFICER COCHRAN: I'm going to go ahead and
9 swear these three witnesses, if you could raise your right
10 hand.

11 (Witnesses were collectively sworn)

12 MR. JIANG: Tao Jiang, T-a-o J-i-a-n-g.

13 HEARING OFFICER COCHRAN: Oh, and here's staff's
14 other witness who gets to be separately sworn.

15 MR. BELL: He gets his own special swearing in.

16 HEARING OFFICER COCHRAN: That's quite all right.

17 If you could state your name for the record, please?

18 MR. VIDAVER: David Vidaver, V-i-d-a-v-e-r.

19 HEARING OFFICER COCHRAN: If you could raise your
20 right hand?

21 (Mr. Vidaver was sworn)

22 HEARING OFFICER COCHRAN: Again, my understanding is
23 that neither Applicant nor Staff has questions for the
24 witnesses and that the questions are going to be from Ms.
25 Rudman. Is that correct?

1 MR. BELL: That's correct.

2 MS. FOSTER: That is correct.

3 HEARING OFFICER COCHRAN: Ms. Rudman, could you give
4 us a sense of the questions you wish to ask? Sort of what
5 we, in the legal profession, would call an offer of proof,
6 what is it you're trying to get from these witnesses?

7 MS. RUDMAN: I'm trying to get a sense of what were
8 the analytical methods that they used and whether those are
9 up to industry standards.

10 HEARING OFFICER COCHRAN: Okay, ask your first
11 question.

12 So, let's first start -- I'm assuming, also, Staff
13 and Applicant that you weren't going to give any live
14 testimony, this is only going to be questions. Is that
15 correct?

16 MR. BELL: That's correct.

17 MS. FOSTER: That is correct.

18 HEARING OFFICER COCHRAN: Okay, if you could ask your
19 questions, Ms. Rudman.

20 MS. RUDMAN: Okay, thank you.

21 So, what analytical tools did Staff use as input to
22 their conclusion that greenhouse gas impacts are less than
23 significant?

24 MR. JIANG: So, we have the greenhouse gas emissions
25 reported by the Applicant from the operation of the projects,

1 including the carbon dioxide and sulfur fluoride.

2 We calculate all the emissions and we compare these
3 emissions to the State and Federal Standard, and we reach the
4 conclusion that the greenhouse gas impacts from this project
5 is not significant.

6 MS. RUDMAN: Can you elaborate because I believe you
7 reached the conclusion that the greenhouse gas impacts are
8 not significant because it's going to integrate renewable
9 energy, correct.

10 I mean on its own the greenhouse gas impacts are
11 significant. But the reason that you concluded it's not
12 significant is that you're saying that in the future
13 renewable energy will be integrated by the ability of this
14 project to --

15 MR. BELL: Objection argument.

16 MS. RUDMAN: I'm not arguing. I'm trying to help
17 clarify here because I don't --

18 COMMISSIONER MC ALLISTER: Yeah, so, I mean you're
19 characterizing their testimony, I guess, or they're -- let's
20 let staff characterize the impact assessment.

21 So, again, you know, we're going to go down this path
22 of what -- so, you know, factual questions about what the
23 staff did. If you want to parry, or complement, or offer
24 additional testimony that's not in the record already, with a
25 different conclusion or something, then that's what

1 evidentiary hearings are for.

2 MS. RUDMAN: I'm trying to ask questions about what
3 they did do.

4 And so, they did more than just look at the
5 greenhouse gas impacts and stop there. They drew their
6 conclusion because they said that the ability of this project
7 to integrate renewables is why the greenhouse gas impacts are
8 less than significant.

9 It's very important to my line of questioning.

10 COMMISSIONER MC ALLISTER: Let me try this. First of
11 all, let me make it clear that a lot of questioning is
12 inherently argument, right.

13 MS. RUDMAN: Right.

14 COMMISSIONER MC ALLISTER: So that's not what we're
15 doing right now.

16 MR. BELL: That is my objection.

17 HEARING OFFICER COCHRAN: Because I think that Dr.
18 Jiang, is that how you pronounce it?

19 MR. JIANG: Yes.

20 HEARING OFFICER COCHRAN: I believe that Dr. Jiang
21 just said what his process was. So, I'm not understanding
22 your characterization of what he said or why this isn't in
23 the nature of argument that should be in your brief.

24 COMMISSIONER MC ALLISTER: So, was there a model that
25 sort of said, okay, the system impacts of this plant allow

1 integration of renewables in a way that counting the
2 molecules results in some kind of overall incorporation of
3 low carbon energy into the grid and therefore -- like could
4 you characterize the nature of the assessment of the impacts
5 and against what baseline?

6 MR. VIDAVER: I'll give that a shot. At the outset
7 I'd like to make it clear that I'm not testifying that the
8 impacts are less than significant in the sense that CEQA
9 defines it. That's not my background.

10 My background is in electricity systems operation.
11 So, my testimony is to the effect that the siting and
12 operation of the project would lead to a reduction in
13 greenhouse gas emissions in two senses.

14 One is that normally a power plant is dispatched to
15 accomplish certain -- to realize certain needs, whether they
16 be energy or local reliability, and the least cost plant is
17 dispatched at any given point in time.

18 The cost of a plant -- of dispatching a plant is
19 generally agreed to be the cost of the fuel that is consumed
20 in providing the service that the plant provides, whether
21 it's energy or local reliability.

22 So, the plant that consumes the least amount of fuel
23 in providing that service is the one that is dispatched.

24 The plant that consumes the least amount of fuel,
25 assuming it's natural gas, is the one that has the least

1 impact upon greenhouse gas emissions.

2 If I am building and dispatching the Huntington Beach
3 Project, for example, and I'm dispatching it in lieu of any
4 other plant in the system, I'm realizing a lowest greenhouse
5 gas emissions outcome using the logic that the cost of
6 dispatching the plant is a function of how much fuel is
7 combusted in providing the service.

8 There are little anomalies. If you can provide the
9 same service from a plant that consumed gas that was much
10 less expensive, you would be willing to burn much more gas,
11 thereby increasing greenhouse gas emissions.

12 But the amount of gas combusted by -- the price of
13 the gas combusted by Huntington Beach is not any less
14 expensive than it would be if it were dispatched from -- if a
15 plant somewhere else was dispatched.

16 So, the only sense in which Huntington Beach is
17 somewhat anomalous is that Huntington Beach is designed to be
18 able to fast start and ramp in ways that allow more variable
19 energy resources to be integrated into the system.

20 You're all familiar with the Duck Chart and the need
21 to provide ramping services.

22 To the extent that Huntington Beach can do that more
23 effectively than other plants, in the course of needing a
24 particular service at a particular point in time it might
25 produce more greenhouse gas emissions than another plant

1 would. But that other plant would not be flexible enough to
2 allow the system to incorporate large amounts of variable
3 energy resources, which are zero carbon. So, this is the
4 logic behind it.

5 COMMISSIONER MC ALLISTER: Right, so you just talked
6 about dispatch. I guess, is there a local reliability
7 element to this discussion, as well, that was number two, I
8 think.

9 MR. VIDAVER: Yes, there is a local reliability
10 element. Obviously, the Huntington Beach Project would be
11 located in an area that's transmission constrained, where the
12 California ISO, the balancing area operator, needs a certain
13 amount of capacity.

14 There are also -- there's also a need for local
15 generation within the Los Angeles Basin.

16 COMMISSIONER MC ALLISTER: So, I want to be clear,
17 we're not talking about need here.

18 The question is what are the likely impacts on
19 overall system greenhouse gas emissions from this plant? So,
20 it's not a need discussion. It's really an impact
21 discussion.

22 But that context, I think, of the broader system is
23 helpful.

24 MS. RUDMAN: And can I follow up? Did you do a
25 PLEXOS model of the system to come to these conclusions?

1 What type of analytical processes did you go through to come
2 to these conclusions and what assumptions and data did you
3 use as input?

4 MR. VIDAVER: I have about 15 years' experience
5 either running production simulation models or supervising
6 people who run such models, or overseeing the development of
7 reports that utilize such analysis.

8 And I can tell you that these types of models, it's
9 not necessary to run one to verify that the solution you get
10 is as I described.

11 You don't need to actually compile the dataset and
12 run the model to come to the conclusion that this is the way
13 the system operates.

14 In fact, one might even argue that under certain
15 circumstances the system might not actually operate this way.

16 But the types of models that Ms. Rudman is asking me
17 if they were run in this case are designed in a way that
18 these types of economic relationships drive the outcome that
19 the model arrives at. So, it's not necessary to do a
20 particular study.

21 COMMISSIONER MC ALLISTER: Does any of this --

22 MR. O'KANE: May I?

23 COMMISSIONER MC ALLISTER: Yes, go ahead, Applicant.

24 MR. O'KANE: You know, what we're discussing here is
25 system impact, which is really the ancillary benefits of the

1 plant and that the primary objective of this power plant is
2 to provide local area reliability and local generation.

3 And in the objective for the power plant, itself, we
4 looked at the projected operating profile of it and then
5 analyzed the technologies that could potentially serve that
6 same objective with a lower greenhouse gas emission rate.

7 And the conclusion of that study, the analysis for
8 greenhouse gas, the best available control technology was
9 that the proposed technology is the lowest emitting for the
10 project objectives. So, that was first and foremost.

11 The system reduction impacts are really ancillary
12 benefits.

13 So, to provide the local area reliability, provide
14 that local generation we looked at alternative thermal
15 generation, battery storage, other types of generation and
16 this is -- that was the analysis conducted to demonstrate
17 that this was the lowest greenhouse gas generating technology
18 for the objective.

19 COMMISSIONER MC ALLISTER: Yeah, thanks. I want to
20 point out last time we had a little bit of
21 discussion -- when we were in Huntington Beach a couple of
22 weeks ago we had a little bit of a discussion about scenarios
23 over the long implementation time of this project and how
24 things may or may not change. And so I think that still
25 applies and certainly is relevant with respect to greenhouse

1 gases.

2 And I wanted to just point out and maybe ask David
3 Vidaver about the range of possible operating hours of this
4 plant. Sort of, you know, I'm not going to ask you to
5 speculate too much, but sort of there is an envelope. You
6 know, it could be less or it could be more depending on how
7 scenarios play out.

8 Does any of that -- do the ends of that range of, you
9 know, high end being the maximum permitted hours, the low end
10 being basically zero, any of that -- does your analysis vary
11 across that range, I guess, in terms of this being the lowest
12 impact?

13 MR. VIDAVER: Whether or not the project is developed
14 and comes online doesn't affect the total amount of energy
15 that the system will require.

16 So, if the Huntington Beach Energy Project comes
17 online and local reliability needs, local generation needs
18 resulting it in operating in a very high capacity factor
19 simply means that some other plant, somewhere else, with a
20 worse emissions profile is simply going to be displaced.

21 That plant may be -- if Huntington Beach is not being
22 dispatched for local reliability needs that plant may very
23 well be in Arizona or Washington.

24 If Huntington Beach is being dispatched for local
25 reliability needs, there's another plant with a worse

1 emissions profile somewhere in the Los Angeles Basin or
2 Southern California that's being dispatched less.

3 COMMISSIONER MC ALLISTER: Thanks.

4 MS. RUDMAN: And so, I mean we're trying to get at
5 the greenhouse gas question here. That's really what we're
6 trying to get it. So, I want to like bring it back to that
7 because I think we're kind of mixing up the two things.

8 COMMISSIONER MC ALLISTER: I think that's exactly
9 what we've been talking about, actually.

10 MS. RUDMAN: Okay. So, if you dispatch -- if you
11 don't dispatch --

12 COMMISSIONER MC ALLISTER: So, the reason I asked the
13 question about dispatch scenarios is that, for example, if a
14 lot of preferred resources were to come online in the next
15 five years and this plant was -- that had demand response, or
16 battery storage, or something were to come online that would
17 then offset the need to dispatch this plant, and the
18 operating hours went down, it sounds to me that the profile
19 of this plant can accommodate that, based on what we talked
20 about last time and what David just said.

21 So, I guess, and my question just went to does that
22 change the assessment that this plant -- that the least --
23 that that's part of the scenario that is among the lowest or
24 the least emissions -- implies the lowest or the least
25 emissions of the various scenarios that have been considered.

1 So, I guess, I feel like we're -- this is exactly
2 what we've been talking about, actually.

3 MS. RUDMAN: I guess --

4 COMMISSIONER DOUGLAS: Do you have more questions,
5 Ms. Rudman?

6 MS. RUDMAN: Yeah. Okay, so in staff's testimony
7 they refer to the Avenal analysis as precedential setting.

8 So, my question is since the Avenal decision have you
9 upgraded your demand forecast? Have you upgraded additions
10 to the system that have occurred since that assessment was
11 made? So that's one question so I'll stop there.

12 MR. VIDAVER: The Avenal decision was several years
13 ago so, yes, the Energy Commission Staff has developed
14 several demand forecasts in the interim and has done analysis
15 that considers all the changes to the electricity system at
16 the Western United States, yes.

17 MS. RUDMAN: So, the conclusion that power plants
18 that ramp quickly are needed to integrate renewables and,
19 therefore, reduce greenhouse gases, that conclusion that was
20 made for Avenal is still the same appropriate conclusion that
21 you would make given the new demand forecast, and given the
22 additions to the system since then?

23 MR. VIDAVER: I don't believe that the Staff's
24 analysis of the impact of Avenal considered ramping needs and
25 minimum operating levels, et cetera.

1 MS. RUDMAN: It was kind of more qualitative?

2 MR. VIDAVER: No, it's just there were
3 different -- the issues of integrating large quantities of
4 variable integrated -- if integrated large quantities of
5 variable energy resources was not part of the Avenal
6 discussion.

7 COMMISSIONER MC ALLISTER: Any additional questions?

8 MS. RUDMAN: Okay, yeah. Do you have any analysis
9 regarding the effect of the new Track 4 solutions, if they
10 are put into place, more reactive support, new transmission
11 upgrades, and include Western Electricity Coordinating
12 Council and ISO coordination on the need for this plant to
13 integrate renewables and, therefore, reduce greenhouse gases?

14 MR. VIDAVER: I think you're talking about -- I want
15 to make it -- the Public Utilities Commission has or is in
16 the process of considering three sources of need for
17 flexible, dispatchable, least-cost gas-fired generation.

18 One is to meet local capacity needs in the Los
19 Angeles Basin. Another is to replace the San Onofre Nuclear
20 Generation Station. And a third is to integrate variable
21 energy resources into California's electricity system.

22 They have issued decisions in their long-term
23 procurement proceeding regarding the first two of these and
24 in both cases the need for such generation was found to
25 exist.

1 The CPUC has not come to a decision regarding the
2 need for flexible, dispatchable gas-fired generation to
3 integrate variable energy resources. That is the topic of
4 the ongoing track in their procurement proceeding.

5 COMMISSIONER MC ALLISTER: Any further questions?

6 MS. RUDMAN: Well --

7 MR. O'KANE: Considering that answer, you just said
8 the three objectives were to replace SONGS, supply local area
9 reliability capacity in the Western Los Angeles Region, and
10 provide flexible generation to integrate renewables.

11 In your expert opinion, would the Huntington Beach
12 Energy Project serve all three of those purposes?

13 MR. VIDAVER: Yes.

14 HEARING OFFICER COCHRAN: Ms. Rudman, do you have any
15 further questions?

16 MS. RUDMAN: Well, but what I'm trying to get at is
17 the assessment that this plant, which is going to ramp up and
18 down, which currently is permitted to operate so frequently
19 that it will increase the greenhouse gases significantly.

20 The way that Staff and others have said that that
21 impact will not be significant is due to the renewable
22 integration aspect of it.

23 So I think, you know, I just want to stay focused on
24 that because I'm really focused on whether the greenhouse
25 impact from this plant is going to be significant.

1 And it is currently significant unless -- well, it
2 is.

3 MS. FOSTER: Objection argumentative.

4 COMMISSIONER MC ALLISTER: Yeah, so I guess -- so I
5 mean, again, is there a question or is there new evidence
6 that says somebody else modeled this and got a different
7 opinion that you want to put in the record that it has.

8 MS. RUDMAN: Yeah, I'd like to put into the record
9 ORA's testimony, where they modeled using PLEXOS and more up-
10 to-date assumptions, where they concluded that there are only
11 very few hours in the year where this renewable integration -
12 -

13 COMMISSIONER MC ALLISTER: You submitted that to the
14 record already, right, that ORA study?

15 MS. RUDMAN: Yes.

16 COMMISSIONER MC ALLISTER: So that's -- we're good
17 with that, that's in the record.

18 COMMISSIONER DOUGLAS: So that's in the record.

19 MS. RUDMAN: Yeah.

20 COMMISSIONER MC ALLISTER: Yeah.

21 COMMISSIONER DOUGLAS: So you can cite to this in
22 your brief and you can pull your arguments together in your
23 brief.

24 What we want to make sure you have the opportunity to
25 do today is ask these expert witnesses anything you need to,

1 to get responses to questions.

2 How many more questions do you have?

3 MS. RUDMAN: For Greenhouse Gases, I've pretty much
4 gone through mine.

5 COMMISSIONER DOUGLAS: Okay.

6 HEARING OFFICER COCHRAN: Is there anything further
7 on Greenhouse Gases that anyone wishes to offer?

8 MR. BELL: No, not on behalf of Staff.

9 MS. FOSTER: Nothing from Applicant.

10 HEARING OFFICER COCHRAN: With that I would thank the
11 panel and you are excused.

12 And now, we turn to Geo/Paleo, which is where seismic
13 and fracking issues are.

14 If the members of the panel could identify
15 themselves, please?

16 MR. WEAVER: This is Casey Weaver.

17 MR. CONWAY: This is Mike Conway, again.

18 MR. LAE: And I'm Thomas Lae, CH2M Hill.

19 HEARING OFFICER COCHRAN: Thank you.

20 Ms. Rudman, I believe that -- well, strike that,
21 let's try this the right way.

22 Do the Applicant and Staff wish to present or is this
23 only to allow Ms. Rudman to ask questions?

24 MS. FOSTER: Applicant has no direct live testimony
25 on this topic.

1 MR. BELL: Nor does staff.

2 HEARING OFFICER COCHRAN: Ms. Rudman, your questions,
3 please?

4 Oh, I'm sorry, thank you.

5 (Witnesses were collectively sworn)

6 HEARING OFFICER COCHRAN: Now, Ms. Rudman, do you
7 have any questions?

8 MS. RUDMAN: Okay, yes. Did you assess the impact of
9 fracking on the abandoned oil wells on the property?

10 MR. WEAVER: No, I did not address fracking of the
11 abandoned oil wells on the property. There's one abandoned
12 well.

13 MS. RUDMAN: My question is more, you know, there's
14 going to be pressure. There is currently and has been some
15 fracking off the offshore oil wells. There's a quite a large
16 reserve of oil and there's going to be pressure for fracking
17 from various spots. And what happens with fracking is you
18 can go kind of under the -- I'm sure, as you're well aware,
19 you can go under the soil and sites can be affected that are
20 not directly related to where the fracking is occurring.

21 And weak spots tend to be like abandoned oil wells or
22 other points. And so, okay, so you have not looked at
23 whether that abandoned oil well on the property might be
24 subject to impact from fracking somewhere else?

25 MR. BELL: Two objections. The first is this is

1 argument, partly, and the final question that was asked was
2 asked and answered.

3 HEARING OFFICER COCHRAN: I would sustain that
4 objection.

5 So let's, again, I would caution you, Ms. Rudman,
6 that you're not an expert on fracking so what we need are
7 direct questions to them, in much the same way that you just
8 asked in Greenhouse Gases about the analysis that they
9 undertook.

10 My understanding is that they did consider fracking
11 impacts on the abandoned oil well.

12 MS. RUDMAN: They did not.

13 HEARING OFFICER COCHRAN: Did not, sorry.

14 HEARING OFFICER COCHRAN: So, are there any other
15 questions?

16 MS. RUDMAN: Yeah. There is evidence that fracking
17 can lead to increased seismicity. Do you have any analysis
18 to offer on what the additional impact of fracking is on
19 hazards associated with the earthquake faults and everything
20 close to the site?

21 MR. BELL: I have to object on grounds of being
22 vague. If I can explain?

23 Okay, Intervener Rudman talks about evidence that
24 demonstrates that fracking increases seismicity, but has not
25 cited that evidence.

1 Before the witness answers that question, in order to
2 hone in on exactly what she's talking about, or what evidence
3 she's talking about we need a citation that we need to know
4 what she's talking about.

5 MS. RUDMAN: I submitted into the record, it was a
6 study done in Oklahoma that said that fracking there led to
7 increase seismicity. I don't remember my number offhand.

8 COMMISSIONER MC ALLISTER: I think I --

9 MS. RUDMAN: It's TN202689.

10 COMMISSIONER MC ALLISTER: Yeah, I think we saw that
11 come in and it's in the record. And, you know, is there
12 anything to add?

13 So, are you asserting something parallel? Is there a
14 linkage from, you know, that --

15 MS. RUDMAN: Right.

16 COMMISSIONER MC ALLISTER: -- to this site and, you
17 know, do you have some sort of expert that you have or can
18 put on the record saying, you know, why that case is relevant
19 to this site, specifically?

20 MS. RUDMAN: Well, I'm asking the Staff that did the
21 analysis if they looked at the fracking impact.

22 COMMISSIONER DOUGLAS: Okay, Staff, did you look at
23 the impacts of fracking or potential impacts of fracking on
24 the project?

25 MR. WEAVER: No, I did not look at fracking impacts

1 to the site. I looked at the seismic issues, the tectonic
2 seismicity in the area and how it related to the design and
3 siting of the project.

4 Fracking is a minor element of that. Yes, fracking
5 does induce seismicity in the nature of its development. But
6 the amount of energy released during fracking is far less
7 significant than the tectonic seismicity in the region.

8 COMMISSIONER DOUGLAS: All right, thank you.

9 COMMISSIONER MC ALLISTER: Applicant have anything to
10 say about this?

11 MR. LAE: I would just agree that the LORS
12 are -- the seismic building standards are robust enough to
13 encompass any small fracking impacts to the overarching
14 seismic events that could occur from the major earthquakes in
15 the region.

16 COMMISSIONER MC ALLISTER: Okay.

17 MS. RUDMAN: You know the size of the fracking that
18 has occurred?

19 MR. LAE: No, I do not.

20 COMMISSIONER MC ALLISTER: Any other questions?

21 MS. RUDMAN: No.

22 COMMISSIONER MC ALLISTER: Okay.

23 MS. RUDMAN: On that.

24 HEARING OFFICER COCHRAN: Is that all of your
25 questions in the area of Geology?

1 MS. RUDMAN: I do have questions and I think it's in
2 geology. It should be a separate section. But on sea level
3 rise, the impacts of sea level rise. I think it's related to
4 like where the site is located, so it's Geology in a way.

5 MS. FOSTER: For the record, Applicant's Water
6 Resources witness is no longer available and was available
7 earlier to answer questions related to sea level rise.

8 MS. RUDMAN: But isn't that a geology issue?

9 HEARING OFFICER COCHRAN: Or climate change but it --

10 MR. CONWAY: It was all contained in the Soil and
11 Water Resources section. That's why I'm here.

12 HEARING OFFICER COCHRAN: Okay.

13 MS. RUDMAN: So, okay, so I just wanted to ask the
14 California Coastal Commission, for example, expressed
15 concerns regarding sea level rise, waves, tsunamis, and said
16 that "The Huntington Beach Energy Project could become an
17 island surrounded by water as sea level rises".

18 What measurements did you make to determine the
19 elevation above sea? Where were you standing on the
20 property? What was the -- okay, I'll do one at a time.

21 MR. CONWAY: Well, to perform our analysis we did not
22 take measurements in the field, but we relied on the FEMA
23 floodplain mapping studies, specifically the flood insurance
24 rate maps to get the elevations.

25 And we can to the same conclusion it's true that the

1 power plant site would be one of the few areas safe from a
2 catastrophic flood in that area. Specifically, that we're
3 talking about the 100-year flood and that's as catastrophic
4 as is analyzed for this area.

5 And so, yes, the problem would be everything but the
6 site. The site would not be impacted by the 100-year flood.

7 MS. RUDMAN: Okay.

8 MR. WEAVER: I could add a little bit to that, also.
9 We looked at the site plans that identified the elevations of
10 the property, of both the existing and proposed project and
11 compared that against the inundation elevations to make
12 Mike's determination.

13 MS. RUDMAN: And then did you consider the impact of
14 like waves that batter the site and also they can carry
15 things that batter against the site, as well?

16 MR. CONWAY: That's also contained in this analysis.
17 The flood insurance rate maps actually include all of those
18 affects when mapping the floodplain in the coastal zone.

19 So, when we're in a non-coastal zone we're looking at
20 river stage or something like this.

21 But when we're in a coastal zone, we're specifically
22 looking at storm surge, wave run up and these other things.

23 So, all of those are included in the FEMA floodplain
24 mapping. And no, none of those result in anything that would
25 reach the site.

1 COMMISSIONER MC ALLISTER: Also, there's a condition
2 on some of this, as well, which maybe Applicant could speak
3 to in terms of the design condition, one of the GEN
4 conditions, I believe.

5 MR. O'KANE: Well, I'm not sure specifically which
6 condition you're referring to. But if you're referring to
7 designing the project to meet the local requirements, all
8 LORS, then yes that's an obvious condition that we would be
9 designing and building the project to.

10 COMMISSIONER MC ALLISTER: So the specifics of that
11 would wait until your submittal of the final design, is that
12 right or --

13 MR. O'KANE: Correct.

14 COMMISSIONER MC ALLISTER: Okay.

15 MR. O'KANE: Correct.

16 HEARING OFFICER COCHRAN: And again, Mr. O'Kane is
17 still under oath.

18 MR. O'KANE: Thank you.

19 MS. RUDMAN: Okay and the LBNL study, July of 2012
20 that I submitted into the record recommended that power
21 plants be located away from the coast.

22 So, you're saying that is taken into account with
23 your building design process?

24 HEARING OFFICER COCHRAN: Can you cite to a specific
25 exhibit number or TN that you're relying on, please?

1 MS. RUDMAN: That would be TN202086.

2 HEARING OFFICER COCHRAN: That would be Exhibit 4022.

3 MS. RUDMAN: Oh, okay, yeah.

4 HEARING OFFICER COCHRAN: And I'm sorry, what's your
5 question relating to Exhibit 4022?

6 MS. RUDMAN: Well, in that study they conclude that
7 because of the hazards of sea level rise on coastal power
8 plants that it probably would be a good idea to locate them
9 away from the coast.

10 HEARING OFFICER COCHRAN: Is there a question that
11 you wanted to ask the witnesses?

12 MS. RUDMAN: Yeah, so was that accounted for in the
13 design?

14 COMMISSIONER MC ALLISTER: Is that for Applicant or
15 Staff?

16 MR. O'KANE: Well, I guess the Applicant. I'll just
17 reiterate what we said that the project design would meet all
18 standards, meet all LORS. And I don't believe Ms. Rudman has
19 cited any standard or LORS, but sort of a study that talks
20 about preference for new power plants.

21 And we, of course, are talking about the rebuilding
22 of an existing power plant.

23 COMMISSIONER MC ALLISTER: Staff have anything to add
24 on that?

25 MR. CONWAY: No.

1 HEARING OFFICER COCHRAN: Okay, any further
2 questions?

3 MS. RUDMAN: Oh, yeah, for the Applicant. Can you
4 state what your level of insurance coverage is? And I've
5 read that it's very difficult to get insurance from FEMA,
6 now. Are you privately insuring? Are you --

7 MS. FOSTER: Objection, relevance.

8 MR. BELL: It also seems to be outside the scope of
9 the identified cross-examination in this area.

10 MS. RUDMAN: Well, it's due to the sea level rise. I
11 mean there's going to have to be insurance.

12 MR. CONWAY: I'd like to add that the project is not
13 required to get flood insurance at this time. And they just
14 got a recent flood insurance rate map update.

15 MR. BELL: We do have two objections on the table.

16 HEARING OFFICER COCHRAN: I would sustain as to
17 relevance. I don't think insurance is relevant. That would
18 just be to cover damages to the plant, itself, not
19 necessarily related to whether there are impacts to the plant
20 from sea level rise.

21 COMMISSIONER MC ALLISTER: So, now, just also remind
22 us the issues of, you know, risk really end up being
23 ratemaking issues and belong in the PUC in terms of hammering
24 out contracts, and costs, and all of that.

25 HEARING OFFICER COCHRAN: Anything else, Ms. Rudman?

1 MS. RUDMAN: No.

2 HEARING OFFICER COCHRAN: Okay, so that completes the
3 testimony on Geo/Paleo. I would thank the panel and you are
4 excused.

5 Finally, Compliance and Closure, I know that there
6 were two Compliance and Closure conditions.

7 HEARING OFFICER COCHRAN: Ms. Rudman, did you have
8 any questions on the Compliance and Closure conditions?

9 MS. RUDMAN: Yes, I do.

10 HEARING OFFICER COCHRAN: Okay, other than 13 and 15?
11 So, my understanding was that we were dealing with Compliance
12 and Closure Condition 13 and 15.

13 MS. RUDMAN: I thought I could ask questions about
14 closure.

15 HEARING OFFICER COCHRAN: Well, that -- Compliance 15
16 is about closure.

17 MS. RUDMAN: Oh, it's the -- okay.

18 HEARING OFFICER COCHRAN: That's facility closure
19 planning.

20 MS. RUDMAN: What page is that on in the Revised
21 Conditions of Certification? Is it in the Revised Conditions
22 of Certification?

23 HEARING OFFICER COCHRAN: I don't know.

24 Applicant, did you wish to speak to Compliance and
25 Closure Condition 13, was that what I understand?

1 MS. FOSTER: Yes, Mr. O'Kane would like to provide
2 direct testimony.

3 HEARING OFFICER COCHRAN: Okay, Mr. O'Kane, you are
4 still under oath.

5 MR. O'KANE: Thank you. I guess we have suggested
6 changes to COM-13, minor changes with respect to the deadline
7 for submitting a detailed incident report.

8 Staff has suggested within one week and we have made
9 a request to make that to within six business days. A minor
10 change, but we do take our compliance with all conditions
11 very seriously and when we think through all -- 99 percent of
12 the time I think within one week would be absolutely fine to
13 do.

14 But should the incident, say, occur on a Friday night
15 of a long weekend, it really leaves -- it could leave the
16 professional staff, the engineers, the supervisors, et cetera
17 to do the root cause analysis. To finish a detailed report
18 it's quite a tight timeframe to get it by that next Friday,
19 really four working days.

20 And so, by asking for six business days we'd ensure
21 the robustness of that report and we can meet all of the
22 conditions of compliance.

23 HEARING OFFICER COCHRAN: Okay, before I hear from
24 Staff's witness, I think I need to swear you in.

25 Could you identify yourself for the record, please?

1 MR. VEERKAMP: My name is Eric Veerkamp.

2 HEARING OFFICER COCHRAN: Would you raise your right
3 hand?

4 (Mr. Veerkamp was sworn)

5 HEARING OFFICER COCHRAN: Thank you.

6 Did staff have a response to applicant's proposed
7 edit?

8 MR. BELL: Yeah, I can. And as Mr. O'Kane said, 99
9 percent of the time these kinds of conditions would present
10 no challenges for Staff or for the Applicant.

11 But the one percent of the time where it may, Staff's
12 strong preference is to leave a hard and fast time frame in
13 there like this for that -- not just the 99 percent of the
14 time where it's not going to make a difference. But for the
15 incident that occurs on Friday, before Memorial Day weekend,
16 staff isn't going to get notified of an incident that may
17 happen on that Friday for six business days after that, which
18 would be almost two weeks after the event in that one percent
19 of the very small chance that something like that would
20 happen.

21 I understand Mr. O'Kane's -- or, I'm sorry, not just
22 Mr. O'Kane, but the Applicants view on this that it may
23 shorten up the time frame that they would have to report the
24 incident.

25 I can say that the Compliance Program -- or I'm

1 sorry, the compliance project managers for the Commission do
2 work with the applicants, with the project owners in areas
3 where there may be an incident.

4 I can say from past experience, although these aren't
5 precedential, but past experience we have had incidences
6 before where we find out about a major incident at a project
7 site from a third party, instead of the project owner because
8 we have something along the effect of a certain number of
9 business days afterwards that stretches into a much longer
10 time frame that would otherwise normally be required.

11 You know, I do acknowledge that there could be a one
12 percent chance or a very small percent chance that we could
13 run into an issue here. But it's such a small chance of
14 happening that Staff doesn't see this as being something that
15 we should really see as a big issue.

16 MR. O'KANE: I wonder if I could interject a little
17 bit and make sure we're talking about exactly the same issue
18 because we have no objection to the reporting, which we would
19 report an incident within one hour after it's safe to do so.

20 We are talking about the submittal of the details
21 report. And it was pretty specific of what kind of details
22 would be in such a report.

23 COMMISSIONER MC ALLISTER: I was going to ask,
24 actually, the staff would know. I mean you wouldn't be
25 waiting a whole -- regardless of which option and we don't

1 have to just -- you know, whatever, we're going to take it
2 under advisement, both oppositions here.

3 But I guess my question is what's the -- you're not
4 going to not know about it for that week, or six days, or
5 whatever it ends up being because they will have told you in
6 an hour, right, of it being --

7 MR. BELL: Yeah, what's less of an objection to this,
8 just for conversational purposes --

9 COMMISSIONER MC ALLISTER: Yeah.

10 MR. BELL: -- in the end, if the Committee thought
11 that the six business days was the prudent course to take,
12 staff wouldn't have heartburn over that.

13 Staff may have a preference. But within six business
14 days is something that Staff could certainly not only live
15 with, but actively assist them in overseeing the project.
16 That's not going to interfere with Staff's duties.

17 Likewise, there's another timeframe that was included
18 in here that was -- excuse me for a second.

19 Oh, I'm sorry, it was just before we -- or just at
20 the very end of COM-13, the last sentence of COM-13 currently
21 reads, "After the submittal of the initial report for any
22 incident the project owner shall submit to the CPM copies of
23 incident reports within 24 hours of a request".

24 With that one I'm going to head off the Applicant on
25 this. Staff would be okay changing that to 48 hours.

1 MS. FOSTER: That is what Applicant has requested.
2 We appreciate that.

3 MR. BELL: I didn't mean to steal their thunder on
4 that.

5 But the issue of whether it's six business days or a
6 hard and fast one week, again, that's for conversation
7 purposes only. Staff doesn't have any objection to that.
8 But there are just some factors that go into that, that we
9 wanted the Committee to be aware of especially considering
10 since the compliance conditions don't have a CEQA element to
11 an analysis, so we don't really have testimony in this area.

12 HEARING OFFICER COCHRAN: Ms. Rudman, did you have
13 anything on COM-13?

14 MS. RUDMAN: No.

15 HEARING OFFICER COCHRAN: Okay, let's turn now to COM
16 --

17 MS. RUDMAN: I would prefer shorter, of course,
18 but --

19 HEARING OFFICER COCHRAN: Thank you. COM-15, what
20 are your questions regarding COM-15?

21 MS. RUDMAN: First of all, I'm not clear from here,
22 or anywhere, what methods are going to be used to demolish
23 Units 3 and 4. Like are you going to use dynamite, like in
24 Chula Vista?

25 HEARING OFFICER COCHRAN: Those are already -- the

1 removal of 3 and 4 are already subject to a separate license
2 from the HBEP and so are not considered part of this project.

3 MS. RUDMAN: But the analysis of this project is very
4 contingent on that occurring.

5 HEARING OFFICER COCHRAN: Except that the analysis of
6 this project states repeatedly that the removal of those
7 units is not part of the project, that that was already part
8 of a separate licensing
9 procedure -- proceeding.

10 MS. RUDMAN: But if you look at the Visual Impacts,
11 it's assumed that those units are going to be demolished.

12 HEARING OFFICER COCHRAN: That's correct because they
13 have an independent right to do that under the prior
14 proceeding. That's why they are not part of this project.

15 MS. RUDMAN: Okay. So, all right, let's move on to
16 Units 1 and 2. Are you going to use dynamite to demolish
17 Units 1 and 2 when the time comes?

18 MR. O'KANE: No.

19 MS. RUDMAN: Okay, what month will you be doing the
20 demolition?

21 MR. O'KANE: A full description of the schedule for
22 demolition was provided in the AFC, as well as all of the
23 potential impacts from the construction workers, man hours,
24 equipment on site, truck trips, hazardous waste generated and
25 where that waste would go.

1 So, a full analysis of the demolition was included in
2 the AFC.

3 MS. RUDMAN: Oh, okay. So, you have described the
4 permits that you're going to need for the demolishment. And
5 have you obtained the permits?

6 MR. O'KANE: I think the permit would be the license
7 that this Committee is -- we're seeking to approve.

8 MS. RUDMAN: Don't you need permits from the Coastal
9 Commission and also from --

10 MR. O'KANE: No.

11 MS. FOSTER: The site is under the exclusive
12 jurisdiction of the Energy Commission. It's the equivalent.
13 The license is the functional equivalent of any other
14 necessary permits at the site.

15 MS. RUDMAN: Okay, I'm not going to argue about that.
16 I'm surprised, personally, because I know looking at Chula
17 Vista, and some other ones, they needed permits from the
18 Coastal Commission, and the City Council and other parties,
19 so okay.

20 Have you -- are you planning on hiring a firm to do
21 the demolition that would lead the demolition?

22 MS. FOSTER: I'm going to object that this is -- it's
23 seeking speculation as to things that will be dealt with via
24 the conditions in the license in the future.

25 MS. RUDMAN: To me it seems like part of the plan.

1 MR. O'KANE: Sure, I didn't intend to tear it down
2 with my own hands. So, yeah, AES did intend to contract that
3 work, yes.

4 MS. RUDMAN: Okay. So, do you currently operate
5 Units 1 and 2 under a reliability must-run contract for the
6 independent system operator and do you have their approval
7 and permission to discontinue that contract?

8 MS. FOSTER: I'm going to object, relevance.

9 MS. RUDMAN: But their permission is required if you
10 have a reliability must-run contract.

11 MR. O'KANE: Just for the sake, Units 1 and 2 do not
12 run under a reliability must-run contract.

13 MS. RUDMAN: Thank you. And so do you have an
14 agreement with the other party that is in charge of the
15 demolition of Units 3 and 4 that they will, in fact,
16 proceed with the demolition? I mean I've never seen a
17 clear agreement on that.

18 HEARING OFFICER COCHRAN: Again, that's not part of
19 this proceeding. Units 3 and 4 have already been separately
20 permitted for demolition under another Energy Commission
21 proceeding.

22 MS. RUDMAN: Well, I am surprised because I mean
23 while it is outside the control of the Applicant, which is my
24 point, it does seem that the project is very dependent on
25 that occurring, yet that is outside the control of the

1 Applicant.

2 And I just want to make sure that these permits are
3 secured.

4 HEARING OFFICER COCHRAN: There is a permit for the
5 demolition of Units 3 and 4 that was granted in a separate
6 Energy Commission proceeding.

7 MS. RUDMAN: Wasn't there subsequently an Energy
8 Commission proceeding to do synchronous condensers on that
9 site?

10 HEARING OFFICER COCHRAN: But that doesn't make the
11 demolition permit go away.

12 MS. RUDMAN: So is there a clear date, I guess, where
13 they are going to do this? I mean have they set a date?
14 What month is it?

15 MR. BELL: Objection asked and answered.

16 HEARING OFFICER COCHRAN: I believe Mr. O'Kane just
17 told you that in the AFC there is a time table that's also
18 carried forward into the FSA. Isn't that correct?

19 MS. RUDMAN: I believe it's very vague, it sort of
20 like gives a year but not a month.

21 COMMISSIONER MC ALLISTER: Well, what's your -- what
22 are you trying to get at exactly? Like what's your concern
23 here?

24 MS. RUDMAN: I don't see -- in my mind a plan is who
25 does what, where, by when. And those things are clearly

1 specified.

2 I don't see anything clearly specified and so I have
3 to question, really, is this plan something that can be
4 implemented?

5 So, I'm concerned that there isn't really going to be
6 the demolition that's promised and that the visual impacts
7 are predicated upon and other things.

8 So, until -- from my perspective, until I see a
9 firmer like description of whether these permits are secured
10 and there is a plan in place that has some parameters around
11 it, it seems a little vague right now.

12 I don't think you're going to go -- I guess you're
13 not going to use dynamite. But in some cases they do use
14 dynamite to demolish plants. You don't, I'm sure, do that in
15 the summer or when school's on.

16 So, you know, when exactly would that occur? And I'm
17 not seeing that in the record or in the FSA, or anywhere,
18 it's just very vague. There's a year.

19 COMMISSIONER MC ALLISTER: So, in Huntington Beach we
20 talked about Visual Impacts.

21 I guess is there any reminders you want to give us,
22 staff, on the front of Visual Impacts? I mean it seems like
23 the parameters around that are known. I mean we have visual
24 conditions.

25 MR. BELL: My struggle is I think the same that the

1 Committee is sharing is what Intervener Rudman is getting at.

2 They have to tear down the old plant before they
3 build the new plant. If they don't tear down the old plant,
4 they won't build the new plant.

5 I'm not sure where we're going with this.

6 MS. RUDMAN: I don't think that's true.

7 MR. BELL: I don't know if I can answer the question.

8 MS. RUDMAN: Yeah, but that isn't true. The unit --
9 the first -- you know, this is a multi-year project, as Susan
10 has pointed out. And the first phase of the project is they
11 will build a power plant on a site currently unoccupied by
12 Units 1 and 2, and then they'll plan or they expect that
13 Units 3 and 4 will be demolished. And then they will
14 demolish Units 1 and 2.

15 So, I mean there's a phase and a sequencing. And
16 from my perspective, if this isn't clearly laid out with a
17 schedule, I know it's eight years but it goes by pretty fast.

18 COMMISSIONER DOUGLAS: So is your concern that the
19 schedule lays out years, but not months, for things to
20 happen?

21 MS. RUDMAN: And I don't see clear demonstration that
22 all the permits are secured, and the permissions are secured,
23 and especially from a party that is not at the table right
24 here.

25 HEARING OFFICER COCHRAN: Okay, this is sounding more

1 to me an issue for the briefing, so that that way everyone
2 has the chance to go back and review the AFC to provide, you
3 know, this is where the construction schedule is, where in
4 the evidentiary record the construction schedule is.

5 And it may be that Staff and Applicant can point to
6 that.

7 You know, I believe that there are at least month-by-
8 month descriptions of it in Traffic and Trans, as well as
9 some of the other sections.

10 But, you know, that's for the parties to tell us. If
11 you think that that's not clearly set forth, I mean then -- I
12 mean, basically, you're arguing evidence of absence and I'm
13 not sure how far that is going to get us.

14 COMMISSIONER MC ALLISTER: Well, in a brief scenario
15 you could say, you know, as the opinion of an Intervener in
16 this case, of a party to this case, you could say, you know,
17 that from your perspective it's inadequate in this, that and
18 the other way. And then that will go into the record and
19 then that will inform the Committee about, you know, going
20 forward.

21 So, I think that's the way to get your viewpoint into
22 the record.

23 MS. RUDMAN: Okay, I'm just -- yeah, I'm very
24 concerned that you build on one part of the property and then
25 the permission somehow doesn't materialize, or the permits

1 don't materialize for the demolitions that were promised.
2 And that's kind of the worst of all worlds from my
3 perspective.

4 HEARING OFFICER COCHRAN: Are there any other
5 questions?

6 So at this point is there any further evidence that
7 we need to receive on the Compliance Conditions?

8 MS. FOSTER: Yes, Applicant has some direct testimony
9 related to COM-15.

10 HEARING OFFICER COCHRAN: Please proceed.

11 MR. O'KANE: We are requesting revisions to Staff's
12 COM-15 to modify the requirement that the provision of
13 closure plan and cost estimate reflect the use of an
14 independent third party to carry out that closure, to instead
15 reflect "closure will be carried out by qualified personnel".

16 The objection to the independent third party makes it
17 seem like at an arm's length, you know, AES would still
18 maintain control and management of that party.

19 We would, of course, use qualified demolition firms
20 to do that, so this may be just an issue of language. I
21 think, hopefully, Staff is looking at it on the same vent.

22 And then also to delete the requirement to update the
23 provisional closure plan and cost estimate every five years.
24 That every-five-years doesn't really provide any value,
25 particularly on the cost estimate of it.

1 At the point that the plant is ready for retirement
2 and closure, regardless of when the last cost estimate was
3 done, whether it was two years before, three, five years
4 before a full cost estimate and detailed plan would be done
5 prior to the -- immediately prior to the actual closure of
6 that.

7 And so this updating every five years really provides
8 no value, no extra to it.

9 So, those are our requested revisions to COM-15.

10 COMMISSIONER MC ALLISTER: Staff, can you comment
11 maybe on -- could you comment on the project manager, sort of
12 how that relationship with Staff and the compliance project
13 manager would or wouldn't change with this proposal?

14 MR. BELL: Well, Staff has -- I believe we have that
15 language in front of us in strike-out, bold and underlined
16 for those proposed changes.

17 And Staff is amenable to the changes as proposed.

18 I don't believe we need to break out to workshop this
19 because we're agreeing to the language, but I'm just trying
20 to figure out a vehicle to get this in.

21 MS. FOSTER: Applicant is more than happy to docket
22 it in our filing. When we address your entire packet of
23 revised conditions we can update that.

24 MR. BELL: Yeah, that would be fine. What I can do
25 is I can read into the record the changes.

1 They are as Mr. O'Kane has suggested.

2 HEARING OFFICER COCHRAN: And are those already
3 contained in your revised conditions that --

4 MR. BELL: They are not. This is new.

5 HEARING OFFICER COCHRAN: Okay.

6 MR. BELL: Yeah, and I've spoken with Mr. Veerkamp,
7 who's here representing the Compliance Unit, and the
8 Compliance is amenable to the changes.

9 MS. RUDMAN: Can I add this is a process to develop a
10 closure plan and a closure plan is not a demolition plan.

11 But could I ask a question? I don't understand, is
12 this then a public process once it goes to compliance, or
13 does Compliance Unit make decisions on behalf of the public,
14 or does it become public?

15 Because it seems to me once a lot of these compliance
16 conditions are written I'm not clear how public it becomes at
17 that point.

18 HEARING OFFICER COCHRAN: Mr. Veerkamp, I think that
19 may be your area.

20 COMMISSIONER MC ALLISTER: Yeah, let's get the
21 Compliance people in on that.

22 MR. VEERKAMP: I'm not sure I'm prepared to respond
23 to that question.

24 COMMISSIONER MC ALLISTER: Did you understand the
25 question?

1 MR. VEERKAMP: Yeah. I could give my perspective in
2 that the public certainly always has the opportunity to
3 contact Compliance Staff at any time.

4 But when we have Compliance conditions in front of us
5 that we're implementing, they're implemented as they're
6 written.

7 COMMISSIONER MC ALLISTER: So, does a member of the
8 public have access to the Compliance conditions? And, if
9 they're paying attention, could potentially see places where
10 they're being respected?

11 MR. VEERKAMP: Oh, certainly.

12 COMMISSIONER MC ALLISTER: And then what do they do
13 then?

14 MR. VEERKAMP: They can contact us directly, either
15 by phone or by e-mail. And if something is
16 being -- a Compliance condition is being implemented, we can
17 certainly update them as to the status of any compliance
18 issues.

19 And if they point out that something is not being
20 implemented, then we can instigate --

21 COMMISSIONER MC ALLISTER: Does this proposed
22 change --

23 MS. RUDMAN: Are you informing the public as things
24 change? Because a lot of the discretion is allowed to the
25 Compliance Project Manager to make changes on the fly and

1 things like that.

2 I mean is there -- like does it go out to a list
3 serve, hey, we're changing this or does it sort of happen and
4 we have to ask you did anything happen last week?

5 MR. VEERKAMP: Well, when there's a formal proceeding
6 we follow our standard public notification process. But if
7 there is informal communication between the project manager
8 and the owner, or construction personnel, there's no formal
9 notice procedure for that.

10 COMMISSIONER DOUGLAS: So when you approve a final
11 version of a plan, like the Closure Plan, that's posted on
12 the web's; is that correct?

13 MR. VEERKAMP: Yes.

14 COMMISSIONER MC ALLISTER: And is there -- will this
15 proposed change to not every five years, but presumably less
16 often than that update the closure plan, would that in any
17 way compromise this process or keep the public from being
18 involved?

19 MR. VEERKAMP: No, I don't think it would. It would
20 just simply be we would have that closure plan. We would be
21 in possession of it until the time came for it to be
22 implemented. It just wouldn't be updated every five years.

23 MS. RUDMAN: And what rights does the public have to
24 input into the decision or make comments on the decision?
25 They can basically, what, let you know that, oh, this isn't

1 want I expected and it's changed?

2 I'm not clear, is there a process? What's the
3 process?

4 MR. BELL: Well, I have to object that we're getting
5 into argument, again.

6 COMMISSIONER MC ALLISTER: It seems like this is
7 probably -- this may be for the Public Adviser and again for
8 the brief, you know, for Intervener to express your concerns.
9 Which I think is, you know, obviously, perfectly legitimate.

10 MS. RUDMAN: It's supposed to be a public process. I
11 mean this is supposed to be a CEQA process and so much of it
12 now is in compliance and up to the discretion of the
13 Compliance Manager that it seems like it makes it very
14 difficult for the public, even more difficult to participate
15 and be informed.

16 COMMISSIONER MC ALLISTER: I guess, so are there any
17 more -- so I mean your point is taken. Certainly, you know,
18 a valid opinion on this issue.

19 Is there any other question with respect to Number
20 15, COM-15?

21 MS. RUDMAN: Well, like again, this is a process to
22 develop a plan and there's not a plan.

23 HEARING OFFICER COCHRAN: Okay. Is there anything --
24 are there any further questions you would like to ask,
25 anybody?

1 MR. BELL: None on behalf of Staff.

2 MS. FOSTER: Applicant does not have any.

3 HEARING OFFICER COCHRAN: Ms. Rudman?

4 MS. RUDMAN: No.

5 HEARING OFFICER COCHRAN: Okay, with that I will
6 close the evidentiary record except for the provision of the
7 revised Compliance conditions that we discussed today. The
8 language will be received.

9 Which brings us, then, to a housekeeping matter, the
10 Presiding Member's Proposed Decision is currently scheduled
11 to be issued on or before September 2nd.

12 Opening briefs are due two weeks after the transcript
13 of this hearing is available and reply briefs are due three
14 weeks after the transcript is available, which is, by my
15 calculation, about the time the PMPD is due to be published.

16 So, do the parties have any suggestions on how we can
17 work the schedule, understanding that we're currently
18 scheduled for the business meeting on October 7th?

19 MS. FOSTER: Applicant is prepared to provide post-
20 hearing briefing by the end of next week, and would just
21 reserve the right to address anything in the hearing
22 transcript and our PMPD comments. And we're fine with going
23 about it that way and not waiting for the transcript to be
24 available.

25 HEARING OFFICER COCHRAN: Okay.

1 MR. BELL: Staff can have our opening brief filed by
2 the end of next week, as well, which is a good thing since
3 I'm on vacation the week after that.

4 So, we can also address our rebuttal brief the
5 following week, well in time before the PMPD is filed.

6 I can't imagine that our rebuttal brief is going to
7 be more extensive than our opening brief, but we can
8 accommodate the Committee's schedule.

9 HEARING OFFICER COCHRAN: Okay, Ms. Rudman?

10 MS. RUDMAN: I am going to need the full time.

11 HEARING OFFICER COCHRAN: Knowing that you don't have
12 to cite to the transcript, you're saying that it will still
13 take you more than until August 15, 2014?

14 MS. RUDMAN: Yes.

15 HEARING OFFICER COCHRAN: The transcript is probably
16 -- we asked for a rush on the transcript. I'm looking at the
17 court reporter, who's studiously ignoring me.

18 We asked for the transcript to be rushed
19 Monday/Tuesday of next week, roughly.

20 MS. RUDMAN: I'm going to also need the full length
21 of time to prepare the brief. I mean having the transcript
22 does not -- you know, I'm trying to do this after work, you
23 know, on weekends.

24 I don't work on this full time, I don't have a lot of
25 staff to work on this, so I'm going to need the full amount

1 of time that was budgeted for this.

2 HEARING OFFICER COCHRAN: Okay. Okay, here's what
3 we're going to do then. We're going to keep the schedule as
4 is, with opening briefs due two weeks after the transcript of
5 the hearing is available.

6 And then reply briefs we do three days after that.

7 MS. FOSTER: Can you provide the dates? I don't have
8 a calendar in front of me.

9 HEARING OFFICER COCHRAN: I don't know the dates
10 because it's all going to be triggered off of when we get the
11 transcript. If we get the transcript on Monday, the 4th,
12 then opening briefs will be due on the 18th.

13 MS. FOSTER: You mean --

14 HEARING OFFICER COCHRAN: I'm sorry, Monday, the
15 11th, then opening briefs will be due August 25th.

16 MS. FOSTER: Can Applicant request that there be less
17 than two weeks' time to provide those turnaround briefs,
18 given that there will be time between now and when the
19 transcript is available for folks to start working on the
20 briefing?

21 MR. BELL: Well, and the other point there is that
22 we've already concluded Part A of the hearing that had the
23 primary contested issues, so we've had since that date to
24 this date to be preparing briefs on those issues. And an
25 individual who has not done that, well, that's up to them.

1 I mean I know there's been talk about resources. But
2 on behalf of Staff, I'm the Staff member who's preparing the
3 brief. Okay, I'm not relying on the multitudes of qualified
4 individuals here to help me out on this. I already have
5 their testimony on file.

6 We already have a transcript from the original
7 hearing, so I can already cite to that if we have to.

8 So, the second part of that brief should be
9 relatively minor and should be limited to those subject
10 matters that we covered today, which don't really seem to be
11 contested. We haven't taken any new information or new
12 evidence on those areas.

13 HEARING OFFICER COCHRAN: Okay.

14 COMMISSIONER MC ALLISTER: I mean I would like to
15 keep on the schedule and two weeks, plus a week is getting us
16 right to the PMPD date, right, so we need to kind of figure
17 out where to parse.

18 HEARING OFFICER COCHRAN: I would suggest that the
19 Committee is going to be going into Closed Session this
20 afternoon. We will issue a briefing schedule and let you all
21 know what the determination is on deadlines.

22 COMMISSIONER MC ALLISTER: So public comment?

23 HEARING OFFICER COCHRAN: So with that public
24 comment.

25 COMMISSIONER MC ALLISTER: Can we open up the mics?

1 If anybody is on the line as a call-in, if you could
2 raise your hand online, if possible, or use the chat function
3 to say you want to speak, and we are unmuting everyone here.

4 Hopefully, nobody's got background noise.

5 HEARING OFFICER COCHRAN: If there's anyone in the
6 hearing room who would like to speak, we don't bite.

7 Okay, I am not seeing anyone who wishes to provide
8 public comment.

9 So with that, the Committee will now adjourn to
10 Closed Session pursuant to Government Code section
11 11126(c)(3), which allows us to do so.

12 We are off the record.

13 (Closed Session from 3:44 p.m.
14 until 4:18 p.m.)

15 HEARING OFFICER COCHRAN: We are on the record. The
16 Committee has set the following briefing schedule. Opening
17 briefs will be due on Wednesday, August 20th. Reply briefs
18 are due Monday, August 25th.

19 Both of those deadlines are at 3:00 p.m. so the
20 dockets can docket the materials in time.

21 In the opening brief the Committee would like to
22 receive briefing on the following questions regarding the
23 Coastal Commission.

24 What is the role of the Coastal Commission in this
25 proceeding?

1 If the Coastal Commission is not required to issue a
2 formal report, how should the Committee treat the information
3 contained in the Commission's letter of July 14, 2014,
4 TN202701?

5 In addition, the parties are free to brief such other
6 issues as they feel relevant and helpful to the Committee.

7 Are there any questions, comments, protests?

8 MS. FOSTER: None from Applicant.

9 MR. BELL: None on behalf of Staff.

10 MS. RUDMAN: Can you elaborate? I mean that's not
11 the only content of your opening brief, that you want that in
12 addition?

13 COMMISSIONER MC ALLISTER: Anything else that you
14 feel you need to put in the brief. I mean we've talked about
15 several topics here so --

16 MS. RUDMAN: Right.

17 COMMISSIONER MC ALLISTER: -- you know, feel free to
18 put in anything you believe that needs to be points that need
19 to be made.

20 MS. RUDMAN: Uh-huh.

21 COMMISSIONER MC ALLISTER: But we're just suggesting
22 that the treatment of the Coastal Commission is one that we
23 would like to hear people's opinions on.

24 MS. RUDMAN: Okay. And then also I noticed that the
25 Applicant answered some of the questions that you had

1 attached to the hearing notice for the -- I mean for the
2 opening testimony hearing, so I plan on including answers to
3 those questions, as well.

4 HEARING OFFICER COCHRAN: In your brief?

5 MS. RUDMAN: Well, I never got a chance to answer
6 them, yeah.

7 HEARING OFFICER COCHRAN: Then they need to go in
8 your brief at this point.

9 MS. RUDMAN: Okay.

10 HEARING OFFICER COCHRAN: Because the evidentiary
11 record is closed except for that very small amount on the
12 conditions of certification that we talked about today.

13 MS. RUDMAN: Okay.

14 HEARING OFFICER COCHRAN: Okay. Anything further?

15 COMMISSIONER MC ALLISTER: All right, so we have a
16 schedule and I think I want to thank everybody for coming and
17 thank everybody's work on this. Certainly, all of the
18 participation is welcome.

19 And we are adjourned.

20 MR. BELL: Thank you.

21 (Thereupon, the Hearing was adjourned at

22 4:28 p.m.)

23 --oOo--

24

25

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 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 12th day of August, 2014

Adrian Edler
Notary Public

TRANSCRIBER'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 transcribed by me, a certified 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 12th day of August, 2014.



Barbara Little
Certified Transcriber
AAERT No. CET**D-520