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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)

HILTON WATERFRONT HUNTINGTON BEACH
21100 PACIFIC COAST HIGHWAY
HUNTINGTON BEACH, CALIFORNIA

MONDAY, JULY 21, 2014

10:47 A.M.

Reported by:

Marlee Nelson

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Andrew McAllister, Presiding Member

Pat Saxton, His Advisor

Karen Douglas, Commissioner

Jennifer Nelson, Her Advisor

Eileen Allen, Commissioners' Technical Advisor for
Facility Siting

HEARING OFFICER:

Susan Cochran, California Energy Commission

CEC STAFF PRESENT:

Kevin W. Bell, Esq., Senior Staff Counsel

Felicia Miller, Project Manager

PETITIONER/APPLICANT:

Stephen O'Kane, VP for AES Southland Development

Melissa Foster, Esq., Stoel Rives

Kristen Castanos, Esq., Stoel Rives

Robert Mason, CH2M Hill

INTERVENER:

Monica Rudman

ALSO PRESENT:

Paul Kramer, Chief Hearing Officer

APPEARANCES

AIR QUALITY/GHG PANEL

Jerry Salamy, CH2M Hill

Stephen O'Kane, AES Southland

Andrew Lee, SCAQMD

Matthew Layton, CEC

VISUAL PANEL

Thomas Priestley, PhD, CH2M Hill

Jeanine Hinde, CEC

BIOLOGICAL RESOURCES PANEL

Mark Bastash

Melissa Fowler

Jennifer Lancaster

Scott White

Dr. Robert J. Dooling (Telephonically)

ALTERNATIVES PANEL

Robert Mason

Matt Franck

Stephen O'Kane

Jeremy Salamy

Negar Vahidi

Scott Debauche

CULTURAL RESOURCES PANEL

Clinton Helton

Gabriel Roark

APPEARANCES

PUBLIC SPEAKERS:

Andrew Lee, SCAQMD

Jane James, Huntington Beach

Don Hansen, Huntington Beach

Barbara Delgleize, Huntington Beach

Charlotte Augestein, Huntington Beach

Jon Baley, Huntington Beach

Travis Allen, Assemblyman, 72nd District

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1

P R O C E E D I N G S

1
2 JULY 21, 2014

10:47 A.M.

3 COMMISSIONER MC ALLISTER: Okay, so we are good
4 to go. We have AV. I believe we have Web-Ex. And we
5 have a little bit of feedback.

6 My name is Andrew McAllister. I'm the Lead
7 Commissioner on the Huntington Beach Energy Project
8 application for certification, 12-AFC-02. And we are
9 opening our evidentiary hearing today, right now.

10 And we will be in closed session until 12:30 and
11 at which time we will begin the public portion of the
12 evidentiary hearing that will last, we anticipate, the
13 entire afternoon.

14 And look forward to those of you who are on
15 WebEx, and many folks who will be in the room with us at
16 that time.

17 Commissioners Douglas and myself will be in the
18 closed session until 12:30.

19 And I will pass the microphone to Susan Cochran,
20 the Lead Project Officer.

21 HEARING OFFICER COCHRAN: Thank you,
22 Commissioner McAllister.

23 We are now going to closed session pursuant to
24 notice as contained in the agenda.

25 And we're off the record.

1 (Closed Session from 10:48 a.m. until
2 12:43 p.m.)

3 COMMISSIONER MC ALLISTER: All right, we're
4 going to get started. I want to thank everybody for
5 coming. It looks like we have a lot of participation
6 here.

7 My name is Andrew McAllister. I'm a
8 Commissioner at the California Energy Commission and
9 Lead on the AFC for the Huntington Beach Energy Project,
10 12-AFC-02.

11 We are here today for an evidentiary hearing.
12 It is excellent to be in the place that holds the site
13 about which we are discussing. It gives the opportunity
14 for anybody who wants to, from the community, come in
15 and let us know their feelings and thoughts about it.
16 And, certainly, that is a key part of the process.

17 Quite a bit of time has passed since our last
18 visit down here. We had a site visit and understood the
19 site, itself.

20 And so, we've reengaged and, you know, we
21 obviously have a fairly in-depth record developed
22 already.

23 I want to again thank you all for coming. I'm
24 looking forward to a very productive discussion about
25 all our pending issues.

1 You know, the record have gone through a lot of
2 back and forth, already, between all the parties and a
3 fairly robust record on many issues.

4 But there are still some issues hanging out
5 there that we have to work through and today is a
6 terrific opportunity to push that discussion forward.

7 Hopefully, we reach some resolution on some of
8 the issues and certainly lay out the next steps for
9 examining that are still up in the air.

10 On the dais, with me, I'll just go left to
11 right, Eileen Allen on my far left. Eileen Allen is
12 Advisor to -- Technical Advisor to the Energy Commission
13 on siting matters.

14 Jennifer Nelson, next to her, is Advisor for
15 Commission Douglas.

16 And next to her is Commissioner Karen Douglas,
17 who is the Associate Member on this Committee. I want
18 to thank her for being here today, as well. It's a
19 pleasure to work with her.

20 Next to me, on my left, is Susan Cochran, who is
21 the Hearing Officer on this case, who will be doing much
22 of the shepherding of the proceedings today. So, I
23 thank Susan for her facilitation of this up to date and
24 going forward.

25 And to my left, Patrick Saxton, who is my

1 advisor on siting matters.

2 And with that, I will pass the microphone to
3 Commissioner Douglas if she wants to make some comments
4 or to -- if not, then Susan Cochran.

5 HEARING OFFICER COCHRAN: Thank you and good
6 afternoon. As Commissioner McAllister indicated, this
7 is the evidentiary hearing for the Huntington Beach
8 Energy Project.

9 We had a closed session before the commencement
10 of this, the public participation portion. No action
11 was taken during closed session.

12 At this point I would like the parties to this
13 proceeding to identify themselves and if we could start
14 with the Applicant, please?

15 MR. O'KANE: Good afternoon, my name's Stephen
16 O'Kane. I'm the Vice-President of Southland
17 Development, the Applicant for the Huntington Beach
18 Energy Project.

19 MS. FOSTER: Good afternoon, I'm Melissa Foster
20 with Stoel Rives, outside counsel for the Applicant.

21 MS. CASTANOS: Good afternoon, Kristin Castanos
22 with Stoel Rives, also outside counsel for the
23 Application.

24 MR. MASON: Robert Mason, CH2M Hill, Project
25 Manager on the consultant side for the AFC for the

1 Applicant.

2 MR. BELL: Good afternoon, Kevin W. Bell, Senior
3 Staff Counsel, representing staff in these proceedings.

4 With me is Felicia Miller, Project Manager.

5 MS. RUDMAN: Hi, Monica Rudman. I'm an
6 Intervener in the proceeding.

7 HEARING OFFICER COCHRAN: We have had a prior
8 intervener in this case named Jason Pyle. Mr. Pyle, are
9 you present this afternoon?

10 I know that there are some folks who are
11 participating via WebEx. And because that is not within
12 my core competency, I would ask that if you are
13 participating via the call-in number on WebEx that you
14 mute yourself.

15 And then, in the event that you wish to speak
16 that you unmute yourself and we'll be able to identify
17 you that way.

18 COMMISSIONER MC ALLISTER: So, I wanted to just
19 point out that, typically, we have the Public Adviser
20 here, present with us. Alana Matthews had a family
21 emergency and so wasn't able to be here with us.

22 And I guess I wanted to see if -- or sort of ask
23 what the procedure going forward -- Mr. Bell, are you
24 subbing for the Public Adviser, or what's the --

25 MR. BELL: Yes, Commissioner McAllister, our

1 regulations provide that in the absence of the Public
2 Adviser staff counsel shall serve in that position.

3 COMMISSIONER MC ALLISTER: Okay, so those of you
4 who are familiar with the role of the Public Adviser for
5 participation, to facilitate participation questions
6 about the proceeding, access to the process, our Public
7 Adviser process is in place. You can look on our
8 website, it's got all that information, and we're happy
9 to provide that to you today.

10 But, also, in lieu of Alana and her staff being
11 here, Mr. Bell can serve that purpose as well and hook
12 you up with the right processes and information you need
13 to participate.

14 So, I would just point out that that really is
15 what is a real resource that the public can use to make
16 sure that they understand what's going on, and
17 navigating what can be quite a complex process.

18 HEARING OFFICER COCHRAN: We would also like to
19 recognize other entities and agencies that may be
20 present.

21 Are there any Federal Government agencies
22 present, either in the room or online?

23 Any officials representing Native American
24 Tribes or Nations?

25 Finally, are there any other officials from

1 state, county, regional or local jurisdiction, in
2 particular, anyone from South Coast Air Quality
3 Management District?

4 Yay, thank you so much.

5 Anyone from the City of Huntington Beach?

6 If you could come up and introduce yourselves,
7 don't be shy.

8 MR. LEE: My name is Andrew Lee. I'm the Senior
9 Engineering Manager for the South Coast Air Quality
10 Management District.

11 HEARING OFFICER COCHRAN: Mr. Lee, could you
12 spell your last name for us, please?

13 MR. LEE: My last name is spelled L-e-e.

14 HEARING OFFICER COCHRAN: Thank you so much.

15 MS. JAMES: Good afternoon, my name is Jane
16 James. I'm the Planning Manager for the City of
17 Huntington Beach Planning and Building Department.

18 HEARING OFFICER COCHRAN: Thank you so much.

19 Are there any other state, county, regional,
20 local jurisdictions, California Coastal Commission,
21 water districts?

22 Okay, then let's have some fun.

23 The evidentiary hearing is an administrative
24 adjudicatory proceeding to receive evidence into the
25 formal evidentiary record from the parties.

1 The purpose of this hearing is to obtain
2 evidence on the application for certification for the
3 Huntington Beach Energy Project.

4 This evidence should relate to disputed issues
5 and we'll talk about that in a moment.

6 We define disputed to mean that there is a need
7 for additional evidence or explanation of existing
8 evidence, not merely argument about existing facts.

9 The parties have previously submitted
10 declarations, there has been a staff assessment done,
11 both a preliminary and a final staff assessment, as well
12 as various types of testimony provided in advance.

13 So, when we talk about disputed and existing
14 testimony, that's the existing facts that we're
15 referring to.

16 Issues relating to the wording of conditions of
17 certification, which are part of our process that talk
18 about the manner in which a project will be built,
19 maintained, operated and, ultimately, potentially
20 decommissioned may be disputed because of the connection
21 between those conditions and mitigation of environmental
22 impacts and/or compliance with laws, ordinances, rules
23 and standards.

24 In other words, if the condition has changed
25 does it still meet the goal of reducing impacts or

1 ensuring compliance?

2 Only the parties, Applicant, Interveners and the
3 Energy Commission staff may present evidence for
4 introduction into the formal evidentiary record, which
5 is the only evidence upon which the Commission may base
6 its decision under the law.

7 Technical Rules of Evidence may be relied on as
8 guidance. However, any relevant noncumulative evidence
9 may be admitted if it is the sort of evidence upon which
10 responsible persons are accustomed to rely on in the
11 conduct of serious affairs.

12 Testimony offered by parties shall be under
13 oath. Each party has the right to present witnesses,
14 introduce exhibits, and to rebut evidence of another
15 party.

16 Questions of relevance shall be directed to the
17 Committee.

18 Hearsay evidence may be used to supplement or
19 explain other evidence, but shall not be sufficient in
20 and of itself to support a finding.

21 And that's pursuant to section 1212 of the
22 Energy Commission's regulations.

23 The Committee will rule on motions and
24 objections. The Committee may take official notice of
25 matters within the Energy Commission's field of

1 competence, and of any fact that may be judicially
2 noticed by California Courts.

3 The official record of this proceeding includes
4 sworn testimony of the parties, whether live or by
5 declaration, the reporter's transcript of the
6 evidentiary hearing, the exhibits received into
7 evidence, briefs, pleadings, orders, notices, and
8 comments submitted by members of the public.

9 The Committee's decision will be based solely on
10 the record of competent evidence in order to determine
11 whether the project complies with applicable law.

12 Members of the public, who are not parties, are
13 welcome and invited to observe the proceedings.

14 There will also be an opportunity for the public
15 to provide comment at the conclusion of the evidentiary
16 hearing today.

17 At a minimum, the Committee has agreed to hold
18 public comment open until 5:30 p.m. to accommodate all
19 members of the public.

20 In other words, as we're going through the
21 topics that were previously found to be disputed at a
22 pre-hearing conference that was held in Sacramento, on
23 July 14th -- I'm sorry, July 10th, we will then have
24 public comment after that.

25 If we haven't finished, we will break at about

1 5:30 to take public comment, assuming that we're at a
2 place that we can logically break.

3 Depending on the number of persons who wish to
4 speak during the public comment portion, the Committee
5 may have to limit the time allowed for each speaker.

6 This public comment period is intended to
7 provide an opportunity for persons, who attend the
8 hearing, to address the Committee.

9 It is not an opportunity to present supplemental
10 written, recorded, or documentary materials.

11 However, you may put such materials onto the
12 docket by submitting them to the Energy Commission for
13 inclusion in the administrative record.

14 Members of the public may submit written
15 comments, if they would prefer that to speaking directly
16 to the Committee.

17 If you feel that you would like to participate
18 in the public comment portion, please let Mr. Bell know,
19 or let me know if we're during a break, so that we can
20 make sure to include you in our proceedings today.

21 Usually, we have a blue card, but I don't think
22 we have any today. And so just, like I said, approach
23 either me or Mr. Bell and we'll make sure that you have
24 a place to comment.

25 As I said before, I had placed an exhibit list

1 on the back table. That exhibit list was generated
2 through the Commission's electronic docket, which is a
3 public document. And there are a few copies that I
4 brought with me today.

5 I have also brought a witness list with me today
6 that outlines the witnesses.

7 If I could ask a quick question of the
8 Applicant, as well as Ms. Redman; when I was preparing
9 the witness list for the topics of efficiency and
10 reliability I was unable to determine witnesses for the
11 Applicant. That could be an oversight on my part.

12 MR. O'KANE: Witnesses for the Applicant, for
13 efficiency would be myself, Stephen O'Kane, and Horatio
14 Larios. He's not in attendance today.

15 HEARING OFFICER COCHRAN: Okay, thank you.

16 And would that be the same for reliability, as
17 well?

18 MR. O'KANE: Yes.

19 HEARING OFFICER COCHRAN: Thank you.

20 As we explained in the notice of pre-hearing
21 conference, at evidentiary hearing, scheduling order and
22 further orders dated June 9th, 2014, we are proceeding
23 by way of an informal hearing format today.

24 The Committee will call all witnesses to testify
25 as a panel on the topic at hand.

1 Witnesses may only testify on topics or issues
2 within their expertise. The testimony may include
3 discussion among the panel, without the lawyers asking
4 the questions.

5 Then we will turn to the parties and have them
6 question the witnesses. And then the Committee will ask
7 questions of the panel as they see fit.

8 At the pre-hearing conference on July 10, 2014,
9 the Committee worked with the parties to identify issues
10 to be discussed today.

11 Could you please display the issue list? And I
12 would like to thank Paul Kramer, the Chief Hearing
13 Officer, for being here today to help with the
14 proceedings.

15 The first area that is listed are the topics
16 that are in dispute. In other words, we were not
17 anticipating spending hearing time today. And that
18 includes project description, facility design,
19 efficiency, reliability, transmission safety
20 engineering, transmission line safety and nuisance,
21 public health, workers' safety, fire protection, and
22 waste management.

23 Turning first to the Applicant, are there any of
24 these issues that are now in dispute?

25 MS. FOSTER: No.

1 HEARING OFFICER COCHRAN: Staff, are any of
2 these issues now in dispute?

3 MR. BELL: No.

4 HEARING OFFICER COCHRAN: Ms. Rudman, are any of
5 these issues now in dispute?

6 MS. RUDMAN: I believe, for me public health was
7 always an issue in dispute, especially as it connects to
8 air quality. So, I don't know if we were covering it
9 through the air quality.

10 And the project description has never been clear
11 to me so that was something that has been in dispute.

12 HEARING OFFICER COCHRAN: What is the nature of
13 the dispute that you see with project description? Is
14 it a function of additional evidence that you have today
15 to bring to the Committee's attention?

16 MS. RUDMAN: It's not additional evidence, but
17 it is questions about the ability of the Applicant, or
18 also JP Morgan's willingness to demolish Units 3 and 4
19 given the synchronous condenser project.

20 And so, I don't see a clear schedule or a clear
21 description, really, of the project. It's a very
22 general schedule.

23 So for me, I would have additional questions
24 like really what is the schedule of the project, the
25 demolition and construction.

1 HEARING OFFICER COCHRAN: So, you have questions
2 but you don't have independent evidence to present on
3 the topic?

4 MS. RUDMAN: Oh, correct.

5 HEARING OFFICER COCHRAN: Yeah, okay. And the
6 same for public health, you said that was largely
7 focused on air quality. Is it possible to ask your
8 public health questions when we're talking about air
9 quality, which is one of the matters that's in dispute?

10 MS. RUDMAN: Yes.

11 HEARING OFFICER COCHRAN: Okay, so in terms of
12 project description, if I could just talk to the
13 Committee really briefly.

14 (Off-record colloquy between Committee members
15 and the Hearing Officer)

16 HEARING OFFICER COCHRAN: At this point I think
17 that what we'll do is there will probably be some
18 opportunity for you to ask your questions as we're going
19 through some of the other subject matters because I know
20 that the Committee has questions on some of this, as
21 well.

22 And if at the end of it we still haven't
23 answered your questions, then we'll figure out how to
24 fix that.

25 MS. RUDMAN: Okay.

1 HEARING OFFICER COCHRAN: Okay, so now let's
2 turn to the topics that are in dispute.

3 And the order that you see here is the proposed
4 order that I had come up with. However, as an
5 accommodation to the Air District, we will be taking air
6 quality as our first topic.

7 So, the question I would ask is, is air quality
8 still in dispute between the parties, and we'll turn to
9 Applicant first? Is there still a dispute regarding air
10 quality?

11 MS. FOSTER: There is a dispute related to some
12 of staff's conclusions on air quality. Applicant does
13 not dispute the content of the FDOC. And we did not
14 intend to provide any live testimony on air quality
15 today. We have our written testimony that has been
16 provided.

17 But we do have Stephen O'Kane and Jerry Salamy
18 available to respond to questions on this topic.

19 HEARING OFFICER COCHRAN: Okay. And staff?

20 MR. BELL: Similarly, we have a witness
21 available who can answer questions, but it's not staff's
22 intention to provide live testimony today.

23 HEARING OFFICER COCHRAN: And Ms. Rudman?

24 MS. RUDMAN: I disagree with the conclusions in
25 the FSA and the Applicant, so I would say it's in

1 dispute.

2 HEARING OFFICER COCHRAN: Okay. Then let's talk
3 about visual next. Well, let's do it this way, rather
4 than go one by one, so we have visual, cultural
5 resources, land use, hazardous materials, biological
6 resources, water resources, soils and geology,
7 alternatives, and compliance conditions.

8 Are any of those topics no longer in dispute;
9 Applicant? Staff?

10 MR. BELL: There are several topics that we've
11 had our own internal discussions amongst ourselves, at
12 the Commission staff, and we believe that in a couple of
13 these topic areas we may be able to come to some
14 agreement with the Applicant, if given the opportunity
15 to break out to a brief workshop.

16 There are advantages to doing it that way. I've
17 done that in several other hearings where if we spend 15
18 minutes, half an hour workshopping an issue, that saves
19 us an hour and two hours' worth of testimony, and cross-
20 examination and questions.

21 HEARING OFFICER COCHRAN: Okay, and are you
22 proposing to do that today?

23 MR. BELL: Yes.

24 HEARING OFFICER COCHRAN: And what topics are
25 those?

1 MR. BELL: Hazardous materials and, let's see,
2 waste, land use, I believe we'll be able to come to some
3 agreement on.

4 And we'd certainly like the opportunity to at
5 least try one more time on each of the remaining topic
6 areas. But I don't anticipate that we would need more
7 than about 30 minutes to go through these.

8 HEARING OFFICER COCHRAN: Okay, I will hold that
9 request in abeyance. I need to look at something before
10 I commit to that course of action, first.

11 MR. BELL: Certainly. We're just trying to make
12 an efficient use of our time and shorten a lot of
13 testimony.

14 HEARING OFFICER COCHRAN: And we appreciate
15 that. It becomes a function, though, of whether we're
16 following our own requirements about noticing for those
17 types of conversations. And so, I don't want to -- I
18 don't want to overstep our authority to do that.

19 So, I just need to recheck the regs on that.

20 MS. RUDMAN: I have concerns about that process
21 because it is a public process and it does move quite
22 quickly, and it's very difficult for the public to
23 participate in that and come to an understanding.

24 So, I think it should remain a public process.

25 MR. BELL: May I respond?

1 HEARING OFFICER COCHRAN: Yes, sorry.

2 MR. BELL: It is a public process. The workshop
3 would be done here, in the open, with the public invited
4 to listen in. That's how we've done it in the past.
5 It's an extension of the hearing, itself. The public
6 would get a chance to listen to the parties talk about
7 the various issues and propose resolutions.

8 We go out of our way to be inclusive of the
9 public and make sure they can not only observe the
10 process but also, during that process, be given the
11 opportunity to ask questions.

12 (Off-record colloquy between Committee members
13 and the Hearing Officer)

14 HEARING OFFICER COCHRAN: We're working on a
15 process. We'll let you know.

16 MR. BELL: Thank you.

17 HEARING OFFICER COCHRAN: At this point the
18 parties had pre-marked their exhibits. I know that I
19 said there's an exhibit list at the back of the room.

20 Staff, do you have exhibits -- your exhibits, as
21 I understand it, are three at this point. You have
22 Exhibit 2000, which is the final staff assessment,
23 Exhibit 2001, which is the final determination of
24 compliance by the South Coast Air Quality Management
25 District.

1 And then there will be an Exhibit 2002, which I
2 believe is a picture, a map, a diagram however you wish
3 to describe it.

4 MR. BELL: Yes, we have a -- and there's
5 actually an additional one that we have in hardcopy
6 format, electronic form. These are items that staff had
7 no intended on introducing into evidence. They're for
8 demonstrative purposes, only.

9 HEARING OFFICER COCHRAN: But to the extent that
10 they're going to form the basis of testimony or
11 reference, they need to be docketed so that they are
12 part of the record.

13 MR. BELL: Yeah, we can certainly do that.

14 HEARING OFFICER COCHRAN: Thank you.

15 MR. BELL: The other item that we have, when we
16 get to it, is just a slight modification of photographs
17 that have already been entered into evidence that staff
18 have -- well, we can get to that when we get to that.

19 HEARING OFFICER COCHRAN: Okay.

20 MR. BELL: But it's something that's already in
21 evidence, just in a slightly different format.

22 HEARING OFFICER COCHRAN: Okay.

23 MR. BELL: But again, if it's the -- if the
24 Committee would prefer that we mark those, we certainly
25 can.

1 But again, we're not planning on introducing
2 those into evidence. It's to clarify or to help make
3 understood staff's verbal presentation.

4 HEARING OFFICER COCHRAN: Well, I think to the
5 extent that they clarify or otherwise are assistive to
6 the Committee, it would be better to have them marked as
7 exhibits and admitted so that that way the
8 administrative record is clear, as well as the
9 transcript, so everyone knows what we're referring to.

10 And then, Applicant, you had an Exhibit A to
11 your rebuttal testimony. Is that the list of exhibits
12 and the top subject matters to the exhibits refer?

13 MS. FOSTER: Yes, that was our exhibit list.

14 HEARING OFFICER COCHRAN: Okay.

15 MS. FOSTER: And we do have two, possibly three
16 additions to that list.

17 HEARING OFFICER COCHRAN: Okay.

18 MS. FOSTER: That I would like to go through
19 right now, if that's possible.

20 HEARING OFFICER COCHRAN: Absolutely.

21 MS. FOSTER: The first is a -- I can give you
22 the TN number, if you would like. It's TN202710. It
23 relates to land use LORS that was docketed on July 15th,
24 by the Applicant, in response to questions raised at the
25 pre-hearing conference. That would be proposed Exhibit

1 1138 for the Applicant.

2 The next one would be proposed Exhibit 1139, TN
3 Number 202774. That's a copy of the final determination
4 of compliance dated July 18th. It was docketed
5 yesterday and uploaded to the docket this morning by the
6 Docket Unit.

7 And then today, during the evidentiary hearing,
8 Applicant has compiled exhibits that are already in the
9 record into PowerPoints related to visual resources and
10 biological resources.

11 And we didn't know if you would like us to
12 docket those again as one exhibit, proposed Exhibit
13 Number 1140, which we will docket after the hearing
14 today.

15 HEARING OFFICER COCHRAN: And that's a
16 PowerPoint presentation?

17 MS. FOSTER: It's three separate PowerPoint
18 presentations that relate to the issue areas of
19 cultural, visual and biological resources as it pertains
20 to noise.

21 And those PowerPoints contain only information
22 that is already accessible in the record.

23 HEARING OFFICER COCHRAN: I think that, again,
24 if you're going to be referring to them today during
25 testimony, it would be helpful to separately docket them

1 so that way the record is clear as to what's being
2 referred to.

3 MS. FOSTER: Okay, would you prefer that we
4 docket each individual issue area separately or docket
5 just one docket of the three that are going to be relied
6 on today?

7 HEARING OFFICER COCHRAN: Let's do them
8 separately for each topic area, please.

9 MS. FOSTER: Perfect. We'll go ahead and do
10 that.

11 HEARING OFFICER COCHRAN: Okay. Do I have a
12 motion from any party as to their exhibits?

13 MS. FOSTER: The motion that Applicant would
14 like to make is Applicant's Exhibit Numbers 1001 through
15 what looks like will be --

16 HEARING OFFICER COCHRAN: 1142?

17 MS. FOSTER: -- 1142 be moved into evidence.

18 HEARING OFFICER COCHRAN: Is there any objection
19 from staff?

20 MR. BELL: None.

21 HEARING OFFICER COCHRAN: Any objection from the
22 Intervener?

23 MS. RUDMAN: No.

24 HEARING OFFICER COCHRAN: They are accepted into
25 evidence.

1 (Applicant Exhibit Nos. 1001 through 1142 were
2 marked for identification and admitted into
3 evidence.)

4 HEARING OFFICER COCHRAN: Staff, do you have a
5 motion regarding your exhibits?

6 MR. BELL: At this time staff would be moving
7 Staff's Exhibit 2000, the final staff assessment,
8 Exhibit 2001, the FDOC.

9 And I have that transaction number, if you need
10 that for the FDOC. That was just docketed. It's
11 transaction number 202774.

12 HEARING OFFICER COCHRAN: We just admitted that
13 as 1139, I believe.

14 MR. BELL: Oh, okay.

15 HEARING OFFICER COCHRAN: And we can only
16 have -- we can only docket a TN once.

17 MR. BELL: That's fine.

18 HEARING OFFICER COCHRAN: So, are you
19 withdrawing 2001?

20 MR. BELL: We'll withdraw.

21 HEARING OFFICER COCHRAN: Thank you.

22 MR. BELL: We'll wait -- I prefer to wait on
23 staff's next two in order until they come up during
24 testimony.

25 HEARING OFFICER COCHRAN: Okay, that's

1 acceptable.

2 Is there any objection from Applicant to
3 admitting Exhibit 2000, the final staff assessment?

4 MS. FOSTER: No objection.

5 HEARING OFFICER COCHRAN: Any objection, Ms.
6 Rudman?

7 MS. RUDMAN: No.

8 HEARING OFFICER COCHRAN: Exhibit 2000 is
9 admitted into evidence.

10 (Staff Exhibit 2000 was marked for
11 identification and admitted into evidence.

12 HEARING OFFICER COCHRAN: Ms. Rudman, do you
13 have any motions concerning your exhibits?

14 MS. RUDMAN: Yes, I would like to submit into
15 evidence my Exhibits 4000 through 4034.

16 HEARING OFFICER COCHRAN: Applicant, do you have
17 any objections?

18 MS. FOSTER: No.

19 HEARING OFFICER COCHRAN: Staff?

20 MR. BELL: None.

21 HEARING OFFICER COCHRAN: Then Exhibits 4000 to
22 4034 are admitted into evidence.

23 (Intervenor Exhibits 4000 through 4034 were
24 marked for identification and admitted into
25 evidence.)

1 HEARING OFFICER COCHRAN: Okay, we've gone
2 through our lists. So, now that we've established the
3 issues, let's try to break down a little bit as to what
4 specific key points of disputes are within each of the
5 areas of dispute.

6 Turning first to visual, what are the key topics
7 of dispute? And when I ask this question, it's open to
8 whoever wishes to speak first. I'm flexible.

9 If it becomes difficult for the court reporter
10 to follow, then I'll do staff/applicant/intervener.

11 MS. FOSTER: Applicant disputes five separate
12 areas in the issue of visual resources. Those topic
13 areas relate to staff analysis at KOP-4 and KOP-5, as
14 well as analysis related to construction.

15 And we plan on providing live testimony on those
16 topics today.

17 The other two issue areas relate to lighting and
18 glare, and cumulative impacts. And we would propose
19 that our written testimony suffice for our topics on
20 those two other issues, but our witness is available to
21 respond to questions on lighting and glare, as well as
22 cumulative impacts, as well.

23 We have various proposed revisions to the
24 majority, if not all of the visual conditions that were
25 outlined in our opening testimony.

1 HEARING OFFICER COCHRAN: Staff, do you agree
2 with the issues specified by the Applicant?

3 MR. BELL: Yes, those are the issues of
4 contention.

5 HEARING OFFICER COCHRAN: Do you have additional
6 areas of contention in visual?

7 MR. BELL: No, staff is relying on the written
8 testimony. Our witness is available to answer questions
9 and engage in panel discussion.

10 HEARING OFFICER COCHRAN: Okay. Ms. Rudman, on
11 visual resources do you have additional areas of dispute
12 beyond that that we've already discussed?

13 MS. RUDMAN: My areas of dispute are in my pre-
14 hearing conference statement -- or my opening testimony.

15 HEARING OFFICER COCHRAN: Okay.

16 Let's turn, now, to cultural resources. Can
17 someone specify for me the cultural resources issues
18 that are in dispute?

19 MS. FOSTER: Applicant disputes two different
20 cultural resources conditions. Applicant proposed minor
21 revisions to CUL-1 and proposed more revisions to CUL-6.
22 Applicant objects to staff's analysis and the proposed
23 CUL-6 in that it's not commensurate with the impacts at
24 the site.

25 So, we have a witness here who is prepared to

1 provide live testimony as it relates to that issue.

2 HEARING OFFICER COCHRAN: So, is CUL-2 no longer
3 an issue?

4 MS. FOSTER: It's my understanding from
5 reviewing staff's pre-hearing conference statement that
6 CUL-2 is no longer an issue. I believe they agreed to
7 Applicant's proposed revisions.

8 MR. BELL: That's correct.

9 HEARING OFFICER COCHRAN: Ms. Rudman?

10 MS. RUDMAN: I'm going to stand aside on that.
11 I'm not familiar with it.

12 HEARING OFFICER COCHRAN: Okay.

13 Staff, do you agree or are there additional
14 issues?

15 MR. BELL: I'm sorry. No, we agree.

16 HEARING OFFICER COCHRAN: Okay. So, it's CUL-1
17 and CUL-6.

18 Then land use and HAZ MAT is the area in which
19 you wish to have a workshop. And so, let's pass that by
20 for the moment and try to get into some of the others
21 that may be less amenable to quick resolution.

22 Turning now to biological resources, what are
23 the key points of dispute?

24 MS. FOSTER: Applicant proposed revisions to a
25 few biological resources conditions. The key points are

1 dispute are certain language in BIO-8 and noise as it
2 relates to biological resources, as set forth in staff's
3 proposed BIO-9.

4 We have a biologist available today for live
5 testimony, as well as an acoustic specialist, and an
6 expert witness who will be on the telephone, available
7 after 3:00 p.m. today, on the same topic.

8 HEARING OFFICER COCHRAN: Okay, but I was just
9 going to point out that we were aware that there were
10 issues with your witness not being available until 3:00,
11 so we've committed to now do BIO until 3:00 or until
12 after 3:00.

13 Water resources?

14 MR. BELL: Before we move on to that --

15 HEARING OFFICER COCHRAN: I'm sorry.

16 MR. BELL: -- staff agrees --

17 HEARING OFFICER COCHRAN: I'm so sorry.

18 MR. BELL: I'm here for you.

19 HEARING OFFICER COCHRAN: Thank you.

20 MR. BELL: Staff agrees those are the issues.
21 We have witnesses available.

22 Staff is standing on our written testimony, but
23 the witnesses are available to answer questions and
24 engage in panel discussion.

25 HEARING OFFICER COCHRAN: Okay.

1 (Off-record colloquy between Committee Members
2 and the Hearing Officer)

3 HEARING OFFICER COCHRAN: So then there's
4 agreement on BIO-2 and 5?

5 MR. BELL: Yes.

6 HEARING OFFICER COCHRAN: Okay.

7 MS. FOSTER: And Applicant wishes to add that
8 Stephen O'Kane may need to be called as a witness in
9 this issue area, as well, as it relates to construction
10 schedule.

11 HEARING OFFICER COCHRAN: Thank you.

12 Ms. Rudman?

13 MS. RUDMAN: Can you repeat the ones that --

14 HEARING OFFICER COCHRAN: Condition of
15 certification BIO-8 and then the impact of noise on
16 biological resources during construction, which is
17 condition of certification BIO-9.

18 MS. RUDMAN: I think that BIO-9 is going to be
19 an important issue that I personally would not think
20 should just go away because of the impact of the pile
21 driving, the noise of the piling driving.

22 HEARING OFFICER COCHRAN: No, these are the
23 issues that we're going to be having further discussion
24 on today.

25 MS. RUDMAN: Oh, okay.

1 MR. BELL: These are the disputed ones.

2 HEARING OFFICER COCHRAN: Disputed.

3 MS. RUDMAN: Okay. I have to agree with that.

4 HEARING OFFICER COCHRAN: Now, we'll move on to
5 water resources, key areas of dispute.

6 MS. FOSTER: Applicant is not in dispute with
7 staff's testimony as it relates to water resources. We
8 do have a witness present in case the Intervener has
9 questions on water resources. But Applicant does not
10 dispute staff's testimony on water resources.

11 HEARING OFFICER COCHRAN: Okay, Ms. Rudman, what
12 is the area of dispute with water?

13 MS. RUDMAN: I have questions about the
14 feasibility of using wastewater from the water treatment
15 plant on Brookhurst Street.

16 HEARING OFFICER COCHRAN: So, the feasibility of
17 recycled water use?

18 MS. RUDMAN: It's probably more better described
19 as wastewater use.

20 HEARING OFFICER COCHRAN: Yeah. Staff?

21 MR. BELL: Staff doesn't see this as a disputed
22 topic. However, we do have some minor proposed
23 revisions to conditions. We'd like a chance to discuss
24 that in a workshop format with the Applicant, with the
25 public present as well.

1 The staff is available to answer questions and
2 participate in panel discussion on the issues identified
3 by Intervener Rudman.

4 HEARING OFFICER COCHRAN: Okay, thank you.

5 Soils and geology, who's -- is that your issue,
6 Ms. Rudman?

7 MS. RUDMAN: Yes.

8 HEARING OFFICER COCHRAN: And what is your key
9 point of dispute in soils and geology?

10 MS. RUDMAN: I dispute that the project site is
11 safe.

12 It's situated on areas that are hazardous, so my
13 area of dispute relates to that.

14 COMMISSIONER MC ALLISTER: Is this earthquake
15 related or other --

16 MS. RUDMAN: There's just a variety of concerns
17 related to the site.

18 HEARING OFFICER COCHRAN: Okay, staff and/or
19 Applicant, are there additional issues?

20 MS. FOSTER: Applicant does not have any
21 additional issues. We do have some folks present today,
22 but one of our witnesses, if he is needed related to
23 seismic activity, is only available on the phone after
24 2:00 p.m.

25 HEARING OFFICER COCHRAN: Okay.

1 MR. BELL: And we're witness is available to
2 participate in panel discussion and answer questions.

3 HEARING OFFICER COCHRAN: Okay, thank you.

4 Alternatives, Ms. Rudman is that --

5 MS. RUDMAN: So, the question at hand is like is
6 there additional -- I mean, it seems like there's like
7 mixed things going on, like staff and the Applicant are
8 agreeing to certain conditions of compliance that I
9 haven't really had a chance to fully review, like
10 they're buying off on them.

11 So, I'm not really sure what we're doing right
12 here in terms -- you know --

13 HEARING OFFICER COCHRAN: What we're trying to
14 determine is the nature of the dispute, the specific
15 areas of dispute within given topics.

16 MS. RUDMAN: Right.

17 HEARING OFFICER COCHRAN: Because the topics are
18 pretty broad.

19 MS. RUDMAN: Right.

20 HEARING OFFICER COCHRAN: And so, within the
21 topic of alternatives what are the specific concerns
22 that you had that would require the taking of additional
23 evidence today in order for the Committee to be able to
24 resolve them in preparing a decision on the application
25 for certification.

1 MS. RUDMAN: Okay, yeah, so for alternatives,
2 obviously I do have areas of dispute.

3 My areas of dispute are that I believe that the
4 no-project alternative is really not a no-project
5 alternative. It's not clearly defined what would happen
6 in a true no-project alternative.

7 And I believe that there is not adequate or any
8 consideration given to an environmentally-preferred
9 alternative.

10 HEARING OFFICER COCHRAN: That sounds to be more
11 in the nature of argument than evidence. Do you have
12 additional facts that you want to bring into the record
13 or is it more just a discussion of why the analysis
14 provided today may not meet the requirements of our
15 regulations?

16 MS. RUDMAN: I do have some additional facts
17 that are related to the additional questions that were
18 requested from us, but that would be handled, maybe, at
19 a different point. I'm not sure, but I do have
20 additional evidence --

21 HEARING OFFICER COCHRAN: Okay.

22 MS. RUDMAN: -- to bring into the record for
23 that.

24 HEARING OFFICER COCHRAN: Okay, we're just going
25 to watch very closely, though, that we don't veer off

1 into argument. It's about evidence, okay.

2 MS. RUDMAN: Uh-huh.

3 HEARING OFFICER COCHRAN: And then compliance
4 conditions?

5 MS. FOSTER: The Applicant has proposed changes
6 to COM-13 and COM-15, and we intend to provide testimony
7 with respect to those proposed revisions.

8 HEARING OFFICER COCHRAN: Okay.

9 Staff?

10 MR. BELL: Staff does not have a witness
11 available. We're standing on the testimony, or the
12 proposed conditions that have been provided.

13 I am available to answer questions, if you need
14 me to, but I cannot testify.

15 HEARING OFFICER COCHRAN: Okay. Ms. Rudman?

16 MS. RUDMAN: I don't have additional evidence to
17 bear on those topics.

18 HEARING OFFICER COCHRAN: Okay. Okay, so let's
19 talk about how we're going to handle witnesses at this
20 point.

21 Now that we've established the issues and the
22 key points of dispute, let me talk a little bit about
23 the informal hearing process.

24 For each issue, what we'd ask is that all of the
25 witnesses come forward and create a panel here, at this

1 front table here. There are two microphones for you to
2 share.

3 We would ask that you identify yourself, as well
4 as the party who has called you or is sponsoring your
5 testimony today, or even if you're appearing on behalf
6 of another agency, the agency that you're appearing for.

7 If a party has an objection to the
8 qualifications of a witness, you need to raise your
9 objection at the time the panel comes forward to be
10 sworn.

11 Once the time for objections to an expert has
12 passed, then each witness with then briefly summarize
13 his or her testimony, limited to the contested issues
14 that we just described.

15 And as the panels come up to testify, we'll
16 remind you of what the issues are as we understood them,
17 and the parties are free to correct me if I wasn't
18 taking notes quickly enough or didn't capture all of
19 your nuances.

20 Dialogue between the panel members will be
21 permitted to the extent that it is efficiently providing
22 useful information to the Committee.

23 And panel members may ask questions of one
24 another.

25 In specific, when the panelists are here, we

1 would ask them to respond to issues from the order after
2 pre-hearing conference that was filed last Thursday, as
3 well as to the extent applicable those issues raised in
4 the Coastal Commission letter of July 14, 2014.

5 The Committee will guide the discussion and may
6 ask questions of any witness at any time.

7 If a question is directed either by the
8 Committee or by the parties to any specific panel
9 member, all of the panel members have the opportunity to
10 respond to the question posed.

11 However, the panelists should only speak one at
12 a time for the benefit of the court reporter, so that
13 the record is clear and we'll be able to read it.

14 We will then ask the parties to ask questions of
15 the witnesses. And after that the Committee may ask
16 questions of the witnesses, itself.

17 The Committee may establish limits, as needed,
18 on the number of questions a party may ask and the
19 amount of time the line of questioning may consume.

20 The party with the burden of proof may provide
21 final rebuttal testimony. If the Committee deems it
22 necessary, the Applicant bears the final burden of proof
23 and so the Applicant has the right to rebuttal
24 testimony.

25 The Committee, in the interest of efficiently

1 completing all topics at the evidentiary hearing, may
2 curtail testimony or examination of a witness if it
3 becomes cumulative, argumentative, or in any other way
4 unproductive.

5 So, at this point what I would like to do, based
6 on what we've spoken about, is call the topic of air
7 quality. I know that we have Mr. Lee present from South
8 Coast Air Quality Management District.

9 MR. BELL: Staff will be offering Matthew Layton
10 as an expert on behalf of staff.

11 HEARING OFFICER COCHRAN: If you could all raise
12 your right hands. If you're going to give testimony,
13 you need to raise your right hand.

14 (Air Quality Panel Members were
15 sworn collectively by the Hearing Officer)

16 HEARING OFFICER COCHRAN: Okay, if you could
17 each identify yourselves and state the party that you're
18 testifying on behalf of, starting with Mr. O'Kane.

19 MR. O'KANE: Stephen O'Kane, Vice-President of
20 AES Southland Development, the Applicant.

21 MR. SALAMY: Jerry Salamy, Principal Project
22 Manager with CH2M Hill, on behalf of the Applicant.

23 MR. LEE: Andrew Lee from the South Coast Air
24 Quality Management District.

25 MR. LAYTON: Matthew Layton with the California

1 Energy Commission.

2 MS. RUDMAN: Monica Rudman, Intervener.

3 MS. FOSTER: Applicant would like to let the
4 record reflect a standing objection that Ms. Rudman is
5 not an expert, nor has offered any expert testimony on
6 this issue area or any of the issue areas that will be
7 presented today. This is also reflected in our written
8 rebuttal testimony.

9 HEARING OFFICER COCHRAN: Right, thank you.

10 So, at this point, starting with the Applicant's
11 experts, if you could provide a brief summary of your
12 testimony as it relates to, I guess most specifically
13 the final determination of compliance.

14 I haven't had a chance to read it, I'll be
15 honest. And so, perhaps we could talk about the final
16 determination of compliance and if there are any changes
17 to what has been previously stated.

18 MR. SALAMY: The Applicant prepared an analysis
19 of the project's impacts with air quality regulations
20 and standards.

21 The CEC also completed a similar analysis, as
22 did the South Coast Air Quality Management District.

23 All three organizations came to the same
24 conclusion that the project does not constitute a
25 significant impact to air quality and complies with

1 applicable LORS.

2 That's the conclusion of my summary.

3 HEARING OFFICER COCHRAN: Thank you.

4 MR. LEE: Andrew Lee for South Coast AQMD. My
5 organization basically developed a FDOC which,
6 unfortunately, was submitted very late on Friday.

7 I have 30 years of experience. I'm the Senior
8 Engineering Manager in regards to the permitting for
9 this particular project.

10 MR. LAYTON: This is Matthew Layton with the
11 California Energy Commission. I'm filling in for my
12 staff that prepared the PSA and FSA for this project.

13 I do have a couple corrections to a condition
14 that we submitted in the prehearing conference
15 statement, a couple typos. I'm prepared to get them
16 into the record whenever you want that.

17 HEARING OFFICER COCHRAN: Now would be fine,
18 thank you.

19 MR. LAYTON: In the pre-hearing conference
20 statement, I think from July 7th, air quality condition
21 AQSC6, we left out a "to" in between some words that --
22 the first part of that condition.

23 And prior to some insert, the word "provide",
24 prior to the word "provide" we would like to see the
25 word "to". Actually, I think we deleted an extra "to".

1 And also, in the verification to that condition,
2 AQSC6, the last sentence in the verification, we should
3 have deleted the word "sweeping".

4 HEARING OFFICER COCHRAN: Okay. Ms. Rudman?

5 MS. RUDMAN: So, you're not going to rule that
6 I'm not -- I'm not disqualified?

7 (Off-record colloquy between the Committee
8 Members and the Hearing Officer)

9 HEARING OFFICER COCHRAN: On the objection, Ms.
10 Rudman, the question that the Committee would have is
11 what is the nature of the evidence that you wish to
12 submit versus questions that you wish to ask the other
13 panelists?

14 Because we have to be able to determine what
15 special qualifications, expertise, education, et cetera
16 that you have that -- you know, like Mr. Lee said that
17 he's been an engineer for 30 years and that gives us a
18 sense of his qualifications to opine on air quality.

19 MS. RUDMAN: Uh-hum.

20 HEARING OFFICER COCHRAN: Well, what's the
21 nature of the evidence that you wish to present, as well
22 as what gives your testimony -- what education,
23 qualifications, et cetera do you have to have that be
24 expert testimony?

25 MS. RUDMAN: Well, I'm an energy specialist.

1 I've been an energy specialist for 20 years.

2 COMMISSIONER DOUGLAS: Ms. Rudman, could you
3 start with the nature of the evidence that you'd like to
4 present because that will help us -- that will help us
5 relate that to the qualifications that you give us.

6 MS. RUDMAN: Okay, my evidence is based on
7 publicly available research and information about the
8 weather that was used in doing the air quality analysis.

9 So, based on my review of the analysis that was
10 done by staff and by South Coast Air Quality Management
11 District, where they used a weather station that doesn't
12 have appropriate -- or the same weather as Huntington
13 Beach, and then based on my review of publicly available
14 documents that say that when you have inversions and
15 other things, that the particulates and air pollution
16 will remain in the area, and will not be dispersed as
17 much that --

18 COMMISSIONER DOUGLAS: Sorry, we are listening.

19 HEARING OFFICER COCHRAN: Yeah.

20 MS. RUDMAN: Okay.

21 COMMISSIONER MC ALLISTER: I guess I wanted to
22 just -- so, there was some back and forth about this,
23 already, you know, on the record where -- and a response
24 from South Coast explaining why they chose the weather
25 station that they chose and kind of, you know, providing

1 some context, and backup, and response to your original
2 inquiry.

3 And so I guess then the question is, is there
4 new evidence that you're wanting to present now to rebut
5 or to kind of further inform that topic area?

6 MS. RUDMAN: Well, I don't understand why I have
7 to be the one to present new evidence and they're not?
8 I guess I'm a little bit confused about the process.
9 So, I mean --

10 COMMISSIONER MC ALLISTER: So, let's just back
11 up a second. So, you know, the sort of expertise that
12 puts, you know, detailed into the record is very
13 necessary for the process, as is the -- as is argument,
14 right? As is, you know, advocacy, intervener advocacy
15 from whatever position that is. All of that is
16 necessary for the process, but there's a time for each
17 part of that.

18 And so, the evidentiary hearing is for
19 presenting evidence in support of, you know, those
20 positions. So, hopefully, that's a fair assessment
21 here.

22 So, the time for putting evidence in -- you
23 know, it is based on technical expertise in the detailed
24 areas and the specific areas that we're talking about
25 here.

1 So, it's not that what you have to say doesn't
2 have a place to come into the record, but it may not be
3 in evidence in all cases.

4 And so, I think what the Committee is trying to
5 get at is what parts of what you want to get on the
6 record are actually new evidence in terms of, you know,
7 backup that you can provide, or expertise that you can
8 provide on the specific issues that are still in
9 dispute, that we're trying to inform today?

10 HEARING OFFICER COCHRAN: Beyond the testimony
11 that you've already put into the record as your direct
12 testimony or as your rebuttal testimony, that's what
13 we're looking for.

14 So, for example, when Mr. -- I'm sorry?

15 MR. SALAMY: Salamy.

16 HEARING OFFICER COCHRAN: Thank you. When Mr.
17 Salamy was discussing the conclusions that were reached,
18 it was on the basis of the direct and rebuttal testimony
19 that was in place.

20 And when Mr. Layton spoke, it was as it related
21 to that information that was contained in the
22 preliminary staff assessment and the final staff
23 assessment.

24 And every one of those gentlemen has a resume or
25 a CV as part of their declaration that establishes their

1 qualifications as an expert.

2 MS. RUDMAN: Well, as a member of the public,
3 it's difficult to be an expert on everything.

4 What I do bring to the table is I do have years
5 of experience as an energy specialist. I have the
6 ability to analyze information. I have the ability to
7 review public documents.

8 And based on that I have come to certain
9 conclusions and I certainly would like to have a similar
10 opportunity to air those conclusions as all of these
11 experts.

12 HEARING OFFICER COCHRAN: Right.

13 MS. RUDMAN: So, in addition, I do have some
14 additional questions that have --

15 COMMISSIONER MC ALLISTER: Absolutely.

16 HEARING OFFICER COCHRAN: Absolutely. And even
17 if we decide that you're not an expert that does not
18 preclude you from asking those questions.

19 It's just that it's not necessarily additional
20 evidence that can be put into the record.

21 The time for that was in direct testimony and in
22 rebuttal testimony.

23 Does that make sense?

24 MS. RUDMAN: Yes.

25 HEARING OFFICER COCHRAN: Okay.

1 (Off-record colloquy between Committee Members
2 and the Hearing Officer)

3 HEARING OFFICER COCHRAN: Mr. Lee, to benefit
4 the Committee could you give us a little bit of an
5 understanding of what differences, if any, there are
6 between the final determination of compliance and the
7 preliminary determination of compliance, as well as some
8 of the broad conclusions that were reached in the FDOC?

9 MR. LEE: Yes, the difference between the FDOC
10 and the PDOC is in the FDOC we tried to respond to the
11 comments that we received from the Applicant, from Ms.
12 Rudman, as well as from the CEC, itself.

13 And the FDOC basically aligns with, basically,
14 our conclusions based upon the questions that were
15 submitted.

16 And, unfortunately, we did complete the FDOC on
17 Friday, the 18th, in a very late hour. And I do have a
18 signed copy from Mohsen Nazemi, our Deputy Executive
19 Officer, that's available for this board.

20 The conclusion, basically, of the FDOC is that
21 the facility and the project will comply with all of the
22 District Air Quality Management District's rules and
23 regulations.

24 (Off-record colloquy between Committee Members
25 and the Hearing Officer)

1 HEARING OFFICER COCHRAN: Does any party have
2 any question of any member of the panel?

3 MS. RUDMAN: I have questions.

4 COMMISSIONER MC ALLISTER: I just want to ask
5 one question, actually, and certainly then Ms. Rudman
6 can go.

7 So, was there any time variation of that
8 compliance? Like, overall, were --

9 MR. LEE: The conclusion that we have is based
10 upon the district rules and regulations that equipment
11 will comply with the requirements, that the facility
12 operate under the conditions that we provided in our
13 permit when the CEC is able to or will issue a license.

14 COMMISSIONER MC ALLISTER: Okay, so the
15 equipment, once it's fully installed. So, I guess, is
16 there any -- during the construction phase or during the
17 various operations at different capacities, over the
18 long course of project development which, you know, it
19 is around a 90-month period time frame.

20 Are there any points at which compliance is less
21 or more clear?

22 MR. LEE: I believe those questions, actually,
23 are directed toward the agency who would develop the air
24 quality equivalent for -- you would call it the
25 California -- the CEQA document, basically.

1 COMMISSIONER MC ALLISTER: Okay, I understand
2 that, yeah.

3 MR. LEE: And so, basically, I believe that the
4 lead agency here, in this particular case, was the CEC.

5 COMMISSIONER MC ALLISTER: Okay, but you didn't
6 look at those issues of during the construction phase,
7 you really were looking at the long term --

8 MR. LEE: Correct.

9 COMMISSIONER MC ALLISTER: -- operation of the
10 plant.

11 MR. LEE: Correct.

12 COMMISSIONER MC ALLISTER: Okay, thanks.

13 MR. LAYTON: Commissioner McAllister, I guess
14 we -- I guess we understand that we saw that question
15 about BACT over the 90 months and that has not changed
16 much in the last 15 years.

17 When the power crisis started, which seems to be
18 going on for 15 years, now, the BACT did markedly
19 change, the BACT levels for NOx, in particular.

20 But since then it has not really budged. I
21 think it is a reasonable question to ask would BACT
22 change over the 90 months. And I think if it did that
23 it might be an amendment, that we would address it at
24 that point in time.

25 I think there is a possibility that the turbine

1 that they specify today may not be what they get
2 delivered. And again, the turbine manufacturer will
3 give them the latest and the greatest, probably for
4 maybe less money. I'll let them -- they work that out.

5 But at the same time, whatever they do comply
6 will have to comply.

7 COMMISSIONER MC ALLISTER: Yeah.

8 MR. LAYTON: It might be a better turbine. But
9 I don't see BACT changing dramatically and, therefore, I
10 don't think it's a concern other than the amendment
11 process could address it.

12 COMMISSIONER MC ALLISTER: Yeah, so I think we
13 want to have a process discussion. Probably not right
14 now, but at some point during the day about how we built
15 that flexibility in, and whether it's always going to be
16 an amendment or, you know, what other changing
17 conditions on the ground and how the development process
18 can handle different scenarios going forward.

19 And so I think we have some -- you know, maybe
20 they're general questions. But, you know, what if
21 demand side resources, for example, really come online,
22 what does that mean down the road.

23 But anyway, I don't want to get there right now.
24 Yeah, so -- well, I think for now on the air quality
25 issue probably okay. I guess there are likely to be

1 some discussions just about trying to take that longer-
2 term view with respect to compliance today versus
3 potential scenarios down the road, and where we might be
4 with respect to carbon emissions in the long term.

5 But, you know, I'll just stop there.

6 MR. LEE: Excuse me?

7 COMMISSIONER MC ALLISTER: Go ahead, yeah.

8 MR. LEE: If I can add, the permit has not been
9 issued, yet. It's at the time -- because the facility
10 is a Title 5 Federal permit, it's at the time that we
11 issue the permit when we will determine the BACT once
12 again.

13 So, if the project was to begin two years from
14 now, we actually will review it to see if the BACT has
15 changed at that particular time.

16 COMMISSIONER MC ALLISTER: Oh, that's good to
17 know. So, because I mean this is a combined cycle,
18 relatively -- relative to the whole market it's
19 relatively efficient, but it's a fairly basic combined
20 cycle unit, right. I mean, there are others that also
21 purport -- there are other designs that also purport to
22 be able to ramp and start, and multiple times, you know,
23 every day that are more efficient than this unit.

24 And so I guess, you know, part of the -- I might
25 want to explore that, a little bit why certain decisions

1 were made. That would be a direct -- that would be,
2 probably, a question for the Applicant in terms of the
3 project definition, the specifics of the project
4 definition and how you might sort of explain the
5 technical decisions that were made when you were putting
6 this application together.

7 MR. O'KANE: Certainly, and maybe I can address
8 that. My name is Stephen O'Kane, AES Southland
9 Development.

10 So, the project description, the project
11 components were developed based on our view of the
12 market really post-2020. So, we are looking at what we
13 believe would be the appropriate technology, not today
14 but in the future.

15 And that is primarily driven by what the
16 California Public Utility Commission believes is needed
17 for the area.

18 And they go through a long-term planning process
19 which, actually, you've referred to demand side resource
20 management resources, renewable energy.

21 So, we had to design the project to play in a
22 market where all of those are available.

23 So, it is anticipating that type of market. So,
24 we've designed the most efficient for what we believe to
25 be its duty cycle.

1 While others might -- other types of equipment
2 might be more efficient at a different profile,
3 operating profile, the operative profile that we see, we
4 believe this is the most efficient.

5 Obviously, if conditions change prior to
6 construction or prior to our financial close in
7 developing the project, there is a chance for change.

8 And with the very prescriptive process like we
9 have with the CEC and the AQMD, it would require an
10 amendment.

11 So, that is where we are today. The project in
12 front of you is what we believe is the most efficient
13 and is the one we are seeking approval for construction.

14 COMMISSIONER MC ALLISTER: Thanks for that.

15 (Off-record colloquy between Committee Members
16 and the Hearing Officer)

17 HEARING OFFICER COCHRAN: Do any of the parties
18 have any questions? I'll start with Applicant.

19 MS. FOSTER: Applicant does not.

20 HEARING OFFICER COCHRAN: Staff?

21 MR. BELL: No questions on behalf of staff,
22 either.

23 MS. RUDMAN: I have questions.

24 COMMISSIONER MC ALLISTER: Yeah, go ahead.

25 MS. RUDMAN: Okay. First of all, it does have a

1 very high heat rate. It is not particularly efficient
2 relative to a lot of other climates.

3 But some of my questions are the air quality
4 standards are exceeded and the project will only be less
5 than significant when you buy the emission reduction
6 credits.

7 Given that the air quality in Huntington
8 Beach -- how will the air quality in Huntington Beach
9 change given that its climate is different than the one
10 used in the models and is prone to more inversions?

11 MR. SALAMY: Well, this is Jerry Salamy with
12 CH2M Hill, for the Applicant.

13 First, I would contend that the dispersion
14 modeling or the meteorological data used in the
15 dispersion model are not different than the project
16 site.

17 The location of the monitoring site or the
18 meteorological monitoring site is about 10 kilometers
19 away. It's not reasonable to conclude, without some
20 significant topographic feature between the project site
21 and the meteorological station that the climactic
22 conditions would be drastically different.

23 So, we don't agree with that contention.

24 However, we did analyze the project over a five-
25 year period of time. We used the maximum impact level

1 for that period of time for each pollutant and each
2 averaging period, and then we compared that to the
3 ambient air quality standard.

4 With the exception of those pollutants that
5 already exceed the ambient air quality standard, the
6 modeling demonstration showed that there were no
7 significant impacts, i.e., we did not violate the
8 standard, our project, plus an appropriate background
9 level.

10 For those pollutants where the standard or the
11 ambient data are already over the standard, those
12 impacts are addressed through the providing of
13 mitigation in the form of either emission reduction
14 credits, or reclaimed trading credits, in the case of
15 NOx and SO2.

16 So, we believe that even though the project has
17 an impact above an ambient air quality standard when you
18 add background that the impacts are mitigated to less
19 than significant levels.

20 MS. RUDMAN: In Huntington Beach?

21 MR. SALAMY: Everywhere.

22 MR. BELL: Mr. Layton, while Mr. Salamy was
23 answering the question, I noticed you nodding vigorously
24 at moments. Is there something that you wanted to add
25 to that?

1 MR. LAYTON: No, Mr. Salamy did a fine job. I
2 think it is important that the project, in our
3 estimation, did not cause any new violations of
4 standards. It did contribute to existing violations of
5 some standards and the mitigation, we believe, addressed
6 that.

7 MS. RUDMAN: May I ask a follow-up question?

8 HEARING OFFICER COCHRAN: Yes.

9 COMMISSIONER MC ALLISTER: Sure, go ahead.

10 MS. RUDMAN: I've been looking at the air
11 analysis for other power plant projects and I noticed
12 that kind of a standard piece of analysis that's done,
13 commonly, is to look at the fumigation impacts of the
14 projects. That was omitted from this.

15 Can you explain what the impacts would be of the
16 fumigation?

17 MR. SALAMY: The requirement to include a
18 fumigation analysis is included in the Energy
19 Commission's siting regulations.

20 So, in our AFC section we included a fumigation
21 analysis. The results of that analysis were less than
22 the project impacts that we showed through non-
23 fumigation impacts which is why we continued looking at
24 only the project modeling impacts through a normal
25 operation, not through fumigation.

1 And if you'd like, I can give you a reference to
2 the table in the AFC.

3 MS. RUDMAN: Thank you.

4 MR. SALAMY: If I can spell it right.

5 MS. RUDMAN: And maybe meanwhile I could ask a
6 question of Mr. Lee. Where are the emission reduction
7 credits to be located? Are there projects specifically
8 lined up in Huntington Beach that will mitigate for the
9 impacts in Huntington Beach?

10 MR. LEE: The closure of the Generator Sets 1
11 and 2 will provide some of those mitigations, as well as
12 the emissions from Redondo Beach also will be forwarded
13 over to the facility at Huntington Beach for mitigation.

14 MS. RUDMAN: But those currently emit less than
15 this project is projected to emit.

16 MR. LEE: Based upon our regulation, we
17 basically are basing it off megawatt production that the
18 facilities are permitted to emit. And so, those
19 emissions under our Regulation 1304(a)(2) basically are
20 a means of where the mitigation credits are moving from.

21 MS. RUDMAN: So, but really, when you look at
22 the impact, you're going to be taking -- you're going to
23 be shutting down some very rarely used, old boilers that
24 admittedly are inefficient. However, they've been so
25 rarely used that they don't emit very much pollution.

1 And now, this new project is permitted to emit,
2 you know, huge amounts of particulate matter that's
3 going to be spewing over on the communities that's
4 located next to schools. You've got a beach here.

5 COMMISSIONER MC ALLISTER: Can you clarify what
6 those facilities are permitted to emit?

7 MR. LEE: In regards to the emission numbers I
8 don't know offhand because our Regulation 1304(a)(2) are
9 basically based upon a megawatt level.

10 I don't have the number here with me. But I
11 believe the overall number is 1,085 for the new project,
12 430 are coming from the closures of Generator 1 and 2,
13 and the other mitigations will be coming from Boiler 6
14 and Boiler 8 of AES Redondo Beach.

15 MR. O'KANE: I wonder if I may, this is Stephen
16 O'Kane, if I could jump in on this to clarify Mr. Lee's
17 explanation of 1304(a)(2)?

18 The emission reduction credits that are used to
19 mitigate the emissions from the new power plant are
20 emission reduction credits that the Air Quality
21 Management District has already tracked, banked, and has
22 in their own bank.

23 The shutdown of the Huntington Beach Units 1 and
24 2, and Redondo Beach 6 and 8, are actually in addition
25 to those credits that will be used to mitigate the

1 emissions.

2 So, when Ms. Rudman asks for locationally-
3 specific, we can tell you that in addition to the banked
4 emission reduction credits that will be retired on a new
5 source review, in addition to that will be the shutdown
6 of those boilers which emit emissions on a -- depending
7 on how they're dispatched each year. But they also have
8 a potential to emit which will forever be eliminated.

9 HEARING OFFICER COCHRAN: I have a quick
10 question, Mr. Lee. Is the Air Quality District
11 certifying that AES has identified a complete package of
12 emissions offset that will be obtained within the time
13 required by the District's rules?

14 MR. LEE: Yes.

15 HEARING OFFICER COCHRAN: Thank you.

16 Mr. Salamy, have you found your magic table for
17 us, on fumigation impacts?

18 MR. SALAMY: I'm not sure how magic it is, but I
19 have. It's in Exhibit 1001 and it is Table 5.1-33.

20 HEARING OFFICER COCHRAN: 5.1-33, thank you.

21 MR. LAYTON: And this is Matthew Layton with the
22 Energy Commission.

23 The emission reduction credits that are offered
24 up for this project, staff has looked at them. Part of
25 them come from the Reclaim Program, which is a basin-

1 wide trading program. Actually, I guess two separate
2 regions within the air basin.

3 So, the NOx credits can come from different
4 facilities throughout the air basin, the same with the
5 SO2 credits.

6 And with the PM-10 and --

7 MR. SALAMY: VOCs.

8 MR. LAYTON: Thank you, the VOCs. That's good.
9 I forget what VOCs are at this stage of my life.

10 They are being provided from internal accounts.
11 Again, we went and looked at the internal accounts
12 because South Coast has been using their total credits
13 on other projects that the Energy Commission has
14 reviewed.

15 We want to understand what those credits are,
16 where they come from, when they were banked.

17 So, we've actually gone and sorted through quite
18 extensive records that they have. Most of them are
19 combustion, which we think is very appropriate for
20 combustion PM-10 from a new source that we're
21 permitting.

22 So, we think those internal accounts -- internal
23 credits that the South Coast is offering up do, in fact,
24 provide mitigation.

25 It's not exactly contemporaneous, nor is the

1 location always specific, but it's important to
2 understand this is an offsetting program that goes
3 basin-wide.

4 While Huntington Beach may value credits from
5 some location that's further away, eventually a project
6 over there, say in Riverside, is going to buy credits
7 from Huntington Beach. Basin-wide emissions are going
8 down. We think the offset program that the South Coast
9 has does provide mitigation for this project.

10 HEARING OFFICER COCHRAN: Ms. Rudman, do you
11 have additional questions?

12 MS. RUDMAN: Yes, I do. Actually, I was hoping
13 that I could pull up one of my pictures, some of my
14 pictures at this point.

15 MR. KRAMER: Which ones?

16 MS. RUDMAN: I gave you my list. The one of the
17 children at the beach.

18 COMMISSIONER MC ALLISTER: So, while it's
19 happening could I maybe ask a follow-up question? I
20 guess maybe, Mr. Lee, you could sort of talk about NOx
21 as a precursor to ozone, sort of the nature of that, and
22 to -- follow up on Mr. Layton's point just now. Maybe
23 make a brief description of the local versus regional
24 nature of these pollutants?

25 I guess, you know, the reclaim exists and

1 there's a basin-wide approach to this for a reason,
2 which that you get mixing and you have ozone, which NOx
3 is a precursor to.

4 So, maybe, you know, the point source issue,
5 maybe could you just put that in context in terms of
6 sort of what the long-term goal for your agency is with
7 respect to these types of emissions?

8 MR. LEE: Sure. The long-term goal of the
9 district is basically to come into the National Air
10 Quality Standards as quickly as possible.

11 In so saying that, it basically is a basin-wide
12 or district-wide requirement that the facilities comply
13 with, meaning all facilities, based upon all their
14 individual contributions.

15 And in that regard we, as Mr. Layton had
16 mentioned before, we actually two have two zones in
17 regards to where the emission credits come from or where
18 the emissions are being produced, meaning that coastal
19 regions, the emissions from coastal regions actually
20 affect the regions in the Inland Empire, such as
21 Riverside, and San Bernardino, and so forth.

22 So, therefore, the emissions, basically the
23 reductions that you actually will get from the coastal
24 region actually benefits the -- not only the coastal
25 regions, but also the Inland Empire, basically.

1 So, it's a basin-wide, again, approach to
2 reducing emissions.

3 The Reclaim Project, basically, is for NOx and
4 Sox, only, in regards to large emitters.

5 And, in essence, there's a level that's put on
6 each of those two pollutants to where actually we're
7 going through a review right now to see if there should
8 be a decline due to the advancement of technology for
9 emission reductions in NOx and SOx to what they call a
10 shave.

11 So, therefore, you automatically remove those
12 amount of emissions from existing facilities that are
13 operating. And that study is going through right now.

14 Again, it's a basin-wide approach to reducing
15 emissions in the district as a whole.

16 Individual point source facilities, meaning a
17 piece of equipment or a facility as a whole, are
18 required to meet our district standards for new source
19 review, as well.

20 Typically, every single source is required to
21 offset emissions. The majority of those emissions are
22 offset by the district, itself, if they're under four
23 tons.

24 If they're greater than that, the facility is
25 obligated to reduce those emissions, themselves.

1 But in any case, it's a net zero impact in the
2 basin as a whole.

3 So, again, the whole idea is -- our goal in the
4 district is basically to get to the National Ambient Air
5 Quality Standards as quickly as possible.

6 And so, we do have a program such as Reclaim to
7 give the flexibility to large emitters to get to that
8 level as quickly as possible.

9 Whether that be purchasing credits or actually
10 installing control equipment, which is the ultimate
11 goal.

12 COMMISSIONER MC ALLISTER: So you -- in this
13 case or, really, just in general in any case, once those
14 credits are provided they can't go to anybody else and
15 they --

16 MR. LEE: That's correct.

17 COMMISSIONER MC ALLISTER: There's obviously no
18 double counting. So that next facility, or that next
19 facility has to, you know, potentially jump through more
20 hoops, or pay more, or whatever the market is --
21 whatever the situation is. Those credits become harder
22 to obtain --

23 MR. LEE: Correct.

24 COMMISSIONER MC ALLISTER: -- the further down
25 the road you go, right, as you guys put the screws down.

1 MR. LEE: Absolutely.

2 COMMISSIONER MC ALLISTER: Yeah, okay, thanks.

3 MS. RUDMAN: Okay, and if you could now pull up
4 the picture?

5 So, one of the proposed mitigations is for the
6 Applicant to sweep the neighborhoods. It was originally
7 sweeping the neighborhoods.

8 This is where -- this is what I saw at high
9 school every day.

10 This is from the Edison High School parking lot.
11 This is the power plant in the background. I saw the --
12 you know, the plumes, you know, wafting over me.

13 But at any rate, so during -- during inversions
14 and things like that, I'm still not 100 percent sure
15 that the air is going to be clean in Huntington compared
16 to basin-wide.

17 One thing that the Applicant is proposing to do
18 is to sweep the streets. Well, the staff had requested
19 that they sweep the streets -- say that three times.

20 (Laughter)

21 HEARING OFFICER COCHRAN: Sweep the streets.

22 MR. WHITEHEAD: Sweep the streets. And now,
23 they propose mitigation, but it seems like it's agreed
24 upon by staff and the Applicant, is they're only going
25 to sweep -- not just the neighborhoods, but they're

1 going to sweep the Pacific Coast Highway.

2 So, I'm concerned about -- what about the
3 neighborhoods? What about the beach?

4 If you could pull up the picture of the kids on
5 the beach, which is right across the street from the
6 power plant, how are you going to sweep the particulates
7 off of the beach?

8 HEARING OFFICER COCHRAN: Just one moment. For
9 the record, I believe that the current picture that's on
10 the screen is Exhibit 4004.

11 MR. KRAMER: No, 4002.

12 HEARING OFFICER COCHRAN: Thank you.

13 Ms. Rudman, if you could identify the exhibits
14 that you're using --

15 MS. RUDMAN: Oh, sure.

16 HEARING OFFICER COCHRAN: -- when we're having
17 the discussion, it would help the record.

18 MS. RUDMAN: Okay.

19 HEARING OFFICER COCHRAN: Thank you.

20 MS. RUDMAN: Yeah, so --

21 MR. KRAMER: Do you want me to switch?

22 MS. RUDMAN: Yeah, you can switch.

23 MR. KRAMER: I'll try, anyway.

24 MS. RUDMAN: Yeah. So, this one is Exhibit
25 402657. And then Eder (phonetic) Elementary School is

1 not shown, but it also is quite -- you can see the
2 stacks and everything.

3 And then the new project is going to have lower
4 stacks so, you know, it won't disperse quite in the same
5 manner.

6 Okay, if you could switch?

7 MR. SALAMY: So, if I understand what you're
8 asking is, you're asking whether the street sweeping
9 will mitigate the impacts from the operation of the
10 plant?

11 MS. RUDMAN: Yeah, particularly when you're now
12 proposing to sweep only Pacific Coast Highway, rather
13 than the neighborhoods. And you never are going to be
14 able to sweep the beach.

15 MR. SALAMY: We're not actually proposing to
16 sweep streets or any other mitigation in that form to
17 mitigate operational impacts.

18 The operational impacts will be mitigated
19 through the providing of the claimed trading credits and
20 the district surrendering emission offset credits for
21 VOC and particulate matter.

22 The street-sweeping program that was initially
23 proposed was to mitigate construction fugitive dust
24 emissions --

25 MS. RUDMAN: Uh-hum.

1 MR. SALAMY: -- which would occur from vehicles
2 driving around the project site and kicking up dust.

3 Those impacts would occur very close to the
4 project site. They are not going to travel long
5 distances, which is why we initially proposed a program
6 that would reduce roadway particulate matter close to
7 the project site.

8 MS. RUDMAN: How far across the street is the
9 Huntington State Beach?

10 MR. SALAMY: If I'm not mistaken, the beach sand
11 does have particulate matters associated with it. So, I
12 don't know that we would be adding additional
13 particulate matter to the beach.

14 MS. RUDMAN: Well, it's usually pretty heavy, I
15 mean --

16 MR. LAYTON: This is Matt Layton with the Energy
17 Commission. The street-sweeping program or the -- thank
18 you, the construction fugitive dust mitigation program,
19 because it's no longer street sweeping, street sweeping
20 is very effective at reducing PM, local PM emissions.

21 The proposal for the Pacific Coast Highway,
22 there's obviously the highest traffic on there, on that
23 particular road and, therefore, you get the most bang
24 for your buck.

25 But I think the program, as it's put together by

1 the Applicant, would have to contain buy-in from the
2 locals, Huntington Beach or the other, adjacent cities.

3 They may want to do the local streets more so
4 than the Pacific Coast Highway for traffic reasons. If
5 they have to only do it at certain times of the day,
6 they may not want to congest Pacific Coast Highway.

7 Again, I think it's -- the intent is to be
8 flexible and provide local PM-10 reductions to address
9 what we believe are some impacts from construction PM.

10 COMMISSIONER MC ALLISTER: So, this is PM-10,
11 but it's construction and not power plant emissions; is
12 that correct?

13 MR. LAYTON: Correct.

14 COMMISSIONER MC ALLISTER: Okay.

15 MR. LAYTON: The power plant --

16 COMMISSIONER MC ALLISTER: So you're
17 considering -- so, the Applicant has considered those
18 full and staff, I think, agrees that that mitigation is
19 happening through the credit system?

20 MR. LAYTON: Internal accounts through the 1304
21 program.

22 One of the issues that the Applicant and staff
23 were having late in the proceeding, was it possible to
24 use the fees that the AES is going to pay to be able to
25 secure those 1304 credits?

1 The Energy Commission is involved in working
2 groups at the South Coast on those fees for both 1304.1
3 and 1304.2, which is collecting fees for the use of
4 these credits. 1304.2 is a rule that is being
5 promulgated and is not yet complete, but they will look
6 very similar.

7 And because there is always the option for the
8 developer to get a refund on those fees if they do not
9 build, South Coast has said that they are not going to
10 be implementing those air quality benefits, these are
11 not emission reductions. Emission reductions come from
12 the internal account and it's a separate issue.

13 AES was talking about whether those fees that
14 are paid could be used to offset the construction. And
15 again, the conclusion is no.

16 COMMISSIONER MC ALLISTER: Yeah, that's a little
17 bit of a red flag, right, in terms of -- well, we'd have
18 to get into the meat here, which I don't necessarily
19 want to do.

20 But utilizing ongoing fees for ongoing
21 emissions, is that the idea?

22 MR. LAYTON: No, the fees would be paid. The
23 fees are going to be used for air quality benefits
24 locally and then basin-wide, depending on what they can
25 secure in the way of offers.

1 They put out an RFP. People respond to that and
2 propose emission reductions that are going to benefit
3 air quality within the Los Angeles Basin.

4 Again, it's a long program. And so, that fee
5 payment, while there is going to be a lot of money
6 flowing to South Coast, we don't think the
7 implementation will occur during construction. So, that
8 was the issue on that.

9 COMMISSIONER MC ALLISTER: Oh, okay.

10 MR. LAYTON: So, that's why we proposed this
11 separate program which started off as street sweeping,
12 but now we are interested in whatever local benefits we
13 can provide during construction to address the PM from
14 the construction.

15 COMMISSIONER MC ALLISTER: Okay, so I guess I
16 would have some questions about those details when they
17 become available, and how far down the road we can get
18 during -- so that we can build that into the decision
19 that we finally come to, if that's a mitigation measure
20 that ends up being on the table, so what does that look
21 like, specifically, and what's the sort of level or
22 resources we're talking about?

23 For example, if we're going to leave the City
24 some flexibility to negotiate with the Applicant, we
25 would want to put some parameters around that in terms

1 of, you know -- you know, whatever. You can imagine a
2 bunch of them cost, and others.

3 MR. LAYTON: Staff is proposing Air Quality
4 Staff Condition 6 to the Committee to implement this,
5 CPMMP.

6 MR. O'KANE: So, since we're on the topic, I
7 would like to address the fees, the fees that would be
8 paid under 1304.1 to access the credits, which are under
9 Rule 1304(a)(2). There's a lot of numbers here,
10 alphabet soup.

11 So, I want to make sure everyone is clear on
12 exactly what the Applicant is doing to mitigate the air
13 quality, potential air quality impacts.

14 First and foremost, to meet the rules and
15 regulations -- the Federal rules and regulations for the
16 new source review for -- fully offset any emissions
17 associated with non-attainable pollutants, PM-10, VOC
18 and OX, those are fully offset either through RTCs or
19 emission reduction credits.

20 So, it's completely and fully offset and
21 mitigated in that effect.

22 In addition to that, AES will shut down Boilers
23 1 and 2 at Huntington Beach, and 6 and 8 at Redondo
24 Beach. This is added to the mitigation.

25 On top of that, a significant fee will be paid

1 to the Air Quality Management District for air quality
2 improvement projects consistent with the Air Quality
3 Management Plan, with a preference for local projects.

4 No credit is being given to the Applicant for
5 any of that fees paid and the good air quality projects
6 that will occur.

7 The issue has been for the -- this condition
8 we've spoke of for construction, whether or not any of
9 that fees will be available for construction mitigation.
10 And we would -- the Applicant would take it that if any
11 of those fees are available for air quality mitigation
12 projects, that they would be considered as mitigation
13 for construction.

14 COMMISSIONER MC ALLISTER: So just to
15 understand, that's the hanging issue is getting
16 agreement on whether that's a good use of those fees.
17 Is that correct?

18 MR. O'KANE: Correct.

19 MR. LAYTON: This is Matt Layton. I'm not sure
20 that I understand "good use of fees".

21 COMMISSIONER MC ALLISTER: Appropriate, rather.
22 No good, but appropriate. No value judgment, just
23 appropriate.

24 MR. LAYTON: Okay. In the working group that
25 the Energy Group is participation, that South Coast has

1 on 1304.1, and the rules are -- they've been put in
2 place and now they're discussing how to implement the
3 program, how to judge which program, which emission
4 reductions would be valuable and which should go forward
5 and be funded by these fees that they collect under
6 1304(a)(2).

7 And 1304.2 is a rule that they're also trying to
8 put in place which would have the same collecting fees
9 to allow a developer access to credits.

10 The fees collected only give you access to the
11 credits. The credits themselves, which South Coast has
12 in their possession and then dedicates to the particular
13 project, those are what provide the CEQA mitigation for
14 the project.

15 These fees and the air quality benefits that
16 might derive, the timing is very uncertain, so staff
17 does not believe they could be used to provide any
18 mitigation for construction.

19 I appreciate Mr. O'Kane's subtle point that they
20 might be available. I guess I have my doubts.

21 So, we would hope that the plan that they try to
22 put forward under SC6 wouldn't be weighted heavily to
23 waiting to see if those fees ever get implement and get
24 implemented in time for construction.

25 COMMISSIONER MC ALLISTER: So, these are really

1 two separate issues. One, how this mitigation happens
2 and then how it gets paid for, whether it's straight
3 mitigation of the project or whether there's some
4 concession down the road of how it gets paid for.

5 But I guess we are clear that this is a
6 mitigation measure that needs to happen, right, you both
7 agree on that?

8 MR. LAYTON: Well, SC6 is clear and I think the
9 Applicant is clear that they have to implement some kind
10 of plan to mitigate the construction emission.

11 Again, I guess Mr. O'Kane is holding out hope
12 that their fees, which are paid totally separate, might
13 provide some of those mitigation measures under the
14 plan. I doubt it.

15 COMMISSIONER MC ALLISTER: Okay.

16 MR. LAYTON: He has optimism.

17 MS. RUDMAN: I would like to add that these
18 mitigation measures should occur at the impact of the
19 project, which is going to be in Huntington Beach, not
20 just simply basin-wide.

21 And I'd also like to point out that if some
22 child breathes a whole lot of particulate matter and
23 then you mitigate it two hours later, it's not going to
24 do them any good.

25 COMMISSIONER DOUGLAS: So, Ms. Rudman, just to

1 be conscious of time and the topics we have to get
2 through, if you could -- you're asking some very good,
3 helpful questions. But if you could refrain from
4 argument here it would be helpful.

5 MS. RUDMAN: Okay.

6 MR. SALAMY: This is Jerry Salamy with the
7 Applicant.

8 Matt Layton at the Commission is correct, we do
9 not have any issues with AQSC6, the construction
10 fugitive dust or particulate matter mitigation measure
11 as currently envisioned by the Commission.

12 MR. SALAMY: Are there any other questions?

13 MS. RUDMAN: I do have another question.

14 HEARING OFFICER COCHRAN: About how many more
15 questions do you have?

16 MS. RUDMAN: Oh, this is my last one.

17 HEARING OFFICER COCHRAN: Oh, okay, thank you.

18 MS. RUDMAN: So, you talked about how -- what
19 will be the impact if over time the best available
20 control technology changes, but what we haven't talked
21 about is what if law changes over time?

22 This is a long construction project, eight
23 years. Presumably that standards are going to get more
24 stringent over time, what is the impact of, you know,
25 over time and increased air quality standard?

1 MR. SALAMY: This is Jerry Salamy with the
2 Applicant. If there is a new law promulgated for which
3 the project is subject to, we don't have a choice but to
4 comply with that regulation.

5 So, as the laws change and become more
6 stringent, we would be obligated to comply with those
7 laws, if they're applicable to the project.

8 MS. RUDMAN: And so does the South Coast Air
9 Quality Management District revise their permitting
10 requirements or how does that occur?

11 MR. SALAMY: Our compliance with the laws aren't
12 predicated on the district doing anything. They don't
13 need to take action for us to be either subject to a law
14 or we're required to comply with the law. It's the
15 owners of the piece of equipment's obligation.

16 It's helpful if the district does something, but
17 it's still our obligation.

18 MS. RUDMAN: Okay.

19 MR. O'KANE: We could give an actual example of
20 the existing power plant, how we reach today. When it
21 was originally built it was -- it was not fitted with
22 emission control equipment. Laws were passed, it was
23 required to install those and they were fitted. And as
24 such, the owner had to comply with the law.

25 COMMISSIONER MC ALLISTER: Did that require you

1 to go renegotiate your power supply contract with the
2 utility for those additional costs to be recovered?

3 MR. O'KANE: Depending on how those commercial
4 agreements are made, many times it's up to the owner,
5 it's on our cost.

6 MR. LEE: Andrew Lee from South Coast. To
7 answer Ms. Rudman's question, we actually do have a
8 compliance section in the district. And because these
9 facilities are Title 5 Federal permits, they are
10 required to meet those requirements irrespective of if
11 it's in the permit or not.

12 Obviously, depending on what the condition says
13 or what the facility has to operate on, it may
14 constitute a modification or a change of condition
15 which, basically, we would have to take
16 administratively.

17 MS. RUDMAN: Thank you.

18 HEARING OFFICER COCHRAN: Are there any further
19 questions on the topic of air quality?

20 If not, we'll excuse the panel and thank you for
21 your testimony and your attention today.

22 We'll now turn to the topic of visual impacts --
23 visual resources, excuse me.

24 We've been asked to take a brief recess, so
25 we'll be off the record for five minutes. Five minutes.

1 But the rest of the panel can come forward. Please
2 come, you know, have a seat.

3 (Off the record at 2:20 p.m.)

4 (On the record at 2:37 p.m.)

5 HEARING OFFICER COCHRAN: Okay, we're back on
6 the record, now.

7 And I've checked the regs and we've come up with
8 a solution for the workshop idea that you all have
9 presented, that would include the public, interveners,
10 everybody in the room.

11 What we would propose to do is to do visual
12 resources, cultural resources, and bio resources and
13 then we would take a break where the Committee members,
14 one at a time, could leave the dais, lurk in the back,
15 or just basically not be sitting here and give you all
16 some time to try to work through whatever those issues
17 are.

18 And then we would come back and try to finish up
19 the other issue areas that are in dispute, to the extent
20 that you don't work them out during that workshop.

21 Does that process sound workable for everyone
22 concerned?

23 MS. FOSTER: That's fine with Applicant.

24 HEARING OFFICER COCHRAN: Okay.

25 MR. BELL: That's fine with staff.

1 HEARING OFFICER COCHRAN: Okay, so the -- oh,
2 and the Intervener? I'm sorry.

3 MS. RUDMAN: I have my doubts.

4 HEARING OFFICER COCHRAN: Okay.

5 MS. RUDMAN: If it's workable but --

6 HEARING OFFICER COCHRAN: So, are you -- okay,
7 so then that's --

8 COMMISSIONER DOUGLAS: So, for the purpose of a
9 hearing "I have my doubts" could mean yes or no. You
10 should either object and say no, I don't think so
11 because or, yes, that's fine even though -- or whatever
12 it is.

13 MS. RUDMAN: I just think we should just do it
14 together as a group on the record and --

15 COMMISSIONER DOUGLAS: So, the record will --
16 the transcript will continue to roll and the WebEx will
17 continue to roll. We will have the transcript and we
18 will have WebEx.

19 The only difference will be that the Committee
20 members will not be in center stage, although one of us
21 will be in the room during the entirety of the
22 discussions.

23 HEARING OFFICER COCHRAN: Correct.

24 MS. RUDMAN: Well, can I move that we have that
25 last, then, I mean and work through the other issues?

1 HEARING OFFICER COCHRAN: That's what we've
2 done. We want to get through visual, cultural and
3 biological resources so that that way some of the other
4 areas we think will go a little quickly because they're
5 fairly focused.

6 MS. RUDMAN: Alternatives and -- and as I
7 mentioned, unfortunately, I separate my greenhouse gas
8 and air quality section, so I didn't get to the
9 greenhouse gas questions.

10 HEARING OFFICER COCHRAN: We'll make it work.
11 We'll make it work.

12 So, visual resources, could the panel identify
13 themselves?

14 MR. PRIESTLEY: Yeah, my name is Tom Priestley.

15 HEARING OFFICER COCHRAN: And who are you here
16 on behalf of?

17 MR. PRIESTLEY: Okay, yeah, so I'm a Senior
18 Environmental Planner with CH2M Hill. I'm the lead for
19 the company's visual resources practice.

20 And I was responsible for the preparation of the
21 visual impact assessment on behalf of the client. Some
22 of the work was done under the direction and most of the
23 work was done directly by me.

24 HEARING OFFICER COCHRAN: Okay, thank you.

25 MS. HINDE: I'm Jeanine Hinde with the Energy

1 Commission. I'm the planner who prepared the visual
2 resources analysis that was presented in the PSA and the
3 FSA.

4 HEARING OFFICER COCHRAN: Okay, thank you.

5 And then AES has a continuing objection to
6 Ms. Hinde.

7 MR. KRAMER: Do you want to swear them in?

8 HEARING OFFICER COCHRAN: Oh, I'm sorry. I
9 hadn't even gotten that far, yet. I was going to cover
10 the objection to Ms. Rudman. That's a continuing
11 objection.

12 MS. FOSTER: To the extent that she's holding
13 herself out to be an expert or wants to provide expert
14 testimony in this issue area, we have a standing
15 objection for any issue area.

16 HEARING OFFICER COCHRAN: Okay.

17 So, now, if those of you who are going to
18 testify could raise your right hand:

19 (Visual Panel Members were
20 sworn collectively by the Hearing Officer)

21 HEARING OFFICER COCHRAN: Thank you.

22 So, if you could state, briefly summarize your
23 testimony, and we'll start with you, Mr. Priestley.

24 MR. PRIESTLEY: Okay. So, the analyses that I
25 prepared and filed over the course of this licensing

1 process clearly document the fact that the proposed
2 project will not create any adverse, significant visual
3 impacts.

4 And what I'd like to do right now, as a very,
5 very brief preface is walk through a couple of images
6 with you that will highlight what's on the site now, how
7 views of the site will change with the project, and what
8 those changes mean.

9 So, what's -- what you see on the screen in
10 front of you right now is the view from KOP-1. This is
11 the view from Huntington State Beach, directly across
12 the street from the power plant site, giving you a full-
13 on view of the existing project.

14 And if you turn your attention to this top
15 image, that is a phone of the existing view of what is
16 on the site.

17 So, there are a couple of things to point out.
18 One is, you know, very clearly this is a 1950's era
19 power plant that was built using a quite different
20 technology.

21 And, as a consequence, is very large, looming,
22 has quite an industrial appearance. The two stacks are
23 202 feet tall. And not only are those stacks tall, but
24 they're massive.

25 If you take a look down toward the base of those

1 stacks, you can see just how wide they are in diameter.

2 Those kind of squarish structures that you see
3 behind the stacks are the boilers. One of those is 138
4 feet high, the other is 142 feet high.

5 You might be able to -- it might be a little
6 hard to see from the back of the room, but if you take a
7 look at the exteriors of the boilers, they have a very
8 industrial-like appearance with these exterior
9 stairways, and all of that exposed scaffolding.

10 In addition, you'll see other materials and
11 features on the exterior of the facility that do give it
12 rather an industrial-like appearance.

13 Something else to note is both the stacks and
14 the boilers are really lined up, quite close to PCH,
15 which has the effect of maximizing their visibility and
16 sense of visual dominance.

17 Our view is from the nearby areas of the beach,
18 the nearby areas of PCH. And actually, when you're
19 north or south on PCH, because you're so close it means
20 that you see these rather tall stacks as kind of a
21 prominent element in your view as you're driving in
22 either direction on the PCH.

23 Now, if you turn your attention to the slide
24 below or the image below, that is a simulation of the
25 project as it has been proposed. And there are a couple

1 of things to note.

2 Kind of the bottom line is that the existing,
3 antiquated facility is going to be replaced with, you
4 know, a contemporary gas-fired power plant that is much
5 more compact than the existing facility.

6 You can see that it's a lot shorter and a lot
7 sleeker. And the two 202-foot stacks are going to be
8 replaced by stacks that are 120 feet in height.

9 Those 138 to 152-foot boilers are going to be
10 replaced with HRSGs that are 94 feet in height. And the
11 ACCs are 104 feet.

12 So, again, the height of this thing is going to
13 be very substantially reduced.

14 Something else to note is all the external
15 stairways, scaffolding and other industrial-like
16 features that are on the exteriors of those boilers,
17 that's all going to go away.

18 And the new facilities will have a much more
19 refined exterior, with very limited exterior
20 appurtenances so, again, creating a much cleaner look.

21 And if we can move to the next slide -- whoops.
22 Here we go. What this slide is, is it's the simulation
23 on which we have superimposed the view of the existing
24 facility that we have done in blue, to give it a kind of
25 a ghosting appearance, with the idea that this provides

1 a basis for, you know, really understanding the
2 difference between the baseline that's on the site now
3 and what's going to be happening on the site with the
4 proposed project.

5 And this really highlights the fact that, you
6 know, first of all the new facilities are going to
7 appear much, much shorter than the facilities that are
8 on the site now.

9 And like, for example, if you compare that
10 rather -- those rather formidable looking stacks with
11 what's proposed, you can see that the new elements are
12 going to be a lot less physically imposing and
13 dominating than what is on the site right now.

14 This also enables you to see the difference in
15 the exterior treatments, you know, the cleaner, sleeker
16 look of the new facilities.

17 Something else that is worth pointing out here
18 is that the new -- the Power Block 2, which is on the
19 left here, will be pushed back from PCH. It will be
20 further from PCH than the existing units, so it will be
21 less dominating in views from the beach and PCH.

22 And very, very importantly, if you look on the
23 right side of this photo you can see that Power Block 1
24 is going to be pushed way back in the corner of the
25 site, you know, at the farthest possible point from PCH

1 and the beach. And you can see what that does in terms
2 of its apparent scale. It greatly reduces the apparent
3 scale of that facility.

4 HEARING OFFICER COCHRAN: Mr. Priestley, if I
5 could just ask you a question?

6 MR. PRIESTLEY: Sure.

7 HEARING OFFICER COCHRAN: I'm sorry, Dr.
8 Priestley. Sorry.

9 MR. PRIESTLEY: Don't worry.

10 HEARING OFFICER COCHRAN: One of the questions I
11 would have is in the Coastal Commission's letter from
12 July 14 they made certain suggestions relative to
13 setback from the south side.

14 You've mentioned the setback from PCH. Is there
15 an additional amount of setback with the proposed
16 structures from the border as it relates to that wetland
17 nature preserve to the south?

18 MR. PRIESTLEY: To the marsh?

19 HEARING OFFICER COCHRAN: Yeah.

20 MR. PRIESTLEY: This is something I think that
21 the Applicant needs to respond to because there you're
22 really getting into some engineering issues. So,
23 whether or not this is at all technically possible is
24 something that has to be looked at.

25 HEARING OFFICER COCHRAN: Okay.

1 HEARING OFFICER COCHRAN: Do you want to go
2 ahead and answer?

3 MR. O'KANE: So, your question was what is the
4 setback for the proposed project?

5 HEARING OFFICER COCHRAN: Right, so there's a
6 current -- what's the current setback and then what's
7 the proposed setback on that southern aspect?

8 MR. O'KANE: On the southern --

9 HEARING OFFICER COCHRAN: By the marsh, by the
10 marsh.

11 MR. O'KANE: By the marsh. Well, the first new
12 block of our power plant would be the location where
13 there is no power generation facilities there. It's
14 currently an oil -- the current power generation
15 facility is currently an old oil storage tank facility
16 and what we call Unit Number 5, an old peaker that was
17 retired in 2003.

18 The setback for that peaker, I have not measured
19 it precisely, but it would be -- it would be less than
20 50 feet from our fence line, very close to that marsh.

21 Our new facility would be at least 100 feet
22 setback from the environmentally sensitive habitat area,
23 as designed in the City's Coastal Development Plan.

24 HEARING OFFICER COCHRAN: Okay.

25 MR. O'KANE: But would be close to our fence

1 line.

2 HEARING OFFICER COCHRAN: Okay. And for the
3 record that was Mr. O'Kane speaking.

4 MR. O'KANE: Yes.

5 HEARING OFFICER COCHRAN: Thank you.

6 I'm sorry, Dr. Priestly, please go ahead.

7 MR. PRIESTLEY: At this point what I'd like to
8 turn our attention, very quickly, then to discussion of
9 what's going on at KOPs 4 and 5. Those are viewpoints
10 at which our conclusions differ from those of staff.

11 MS. CASTANOS: This is Kristin Castanos. Can I
12 suggest that we hear the testimony on KOP-4 and then
13 have response and questions on that specific topic area,
14 and then move to KOP-5, and then move to construction?

15 COMMISSIONER MC ALLISTER: What's the reason for
16 that?

17 MS. CASTANOS: Just for clarity of keeping the
18 issues, yeah, the disputed issues within the visual
19 topic area, for keeping them clear to let all the
20 testimony and questions occur with respect to each of
21 those individual topic areas.

22 HEARING OFFICER COCHRAN: Okay. So, then should
23 we start now and address anything relating to KOP-1,
24 which I understand we just finished. Are there any
25 disputes with KOP-1? Staff?

1 MS. FOSTER: No.

2 HEARING OFFICER COCHRAN: Intervener?

3 MS. RUDMAN: I just have a very general dispute.

4 HEARING OFFICER COCHRAN: Okay, we'll handle
5 that at the end.

6 So, let's get through -- now, let's turn to KOP-
7 4, Dr. Priestley.

8 MR. PRIESTLEY: Okay, just to get everybody
9 oriented on what are we talking about, so here is a map
10 from the final staff assessment that shows the power
11 plant site, which for those of you in the back that's
12 kind of a checkerboard.

13 And it also shows the locations of the key
14 observation points. You can see KOP-1 directly across
15 the street, the viewpoint that we were just talking
16 about.

17 And right now we're going to talk about KOP-4
18 which, as you can see, to the right of the site it is
19 located on Magnolia, adjacent to the marsh.

20 And then a little bit later we'll be talking
21 about KOP-5, which is located on the other side of the
22 site, inside the Huntington By the Sea Mobile Estates.

23 So, let's go now to our photos.

24 MS. RUDMAN: Can I -- I do have questions about
25 KOP-1, actually.

1 MR. PRIESTLEY: Yeah. KOP which?

2 HEARING OFFICER COCHRAN: One.

3 MS. RUDMAN: One.

4 MR. PRIESTLEY: Okay.

5 MS. RUDMAN: If you could flip back to that?

6 You're proposing --

7 MR. PRIESTLEY: Can we go back to KOP-1?

8 MS. RUDMAN: You're proposing to screen the
9 power plant with some surfboard-like structures that
10 you're not discussing right here. So, I think the
11 Committee should be aware of that, with the 100-foot
12 surfboard type structures that haven't been mentioned.

13 MR. PRIESTLEY: Okay, so -- oh, what you are
14 talking about here is the analysis of the project as it
15 was filed.

16 And perhaps the client can talk a little bit
17 more about that. It is true that the client has been a
18 very good citizen and has been working very, very
19 closely with officials in the community, in Huntington
20 Beach, to come up with something that would be like a
21 real plus for Huntington Beach.

22 And working collaboratively with a team of
23 landscape architects, architects, planners and designers
24 we've come up with these scheme that would include
25 structural elements and surfboards.

1 But what I want to say is my analysis is that
2 without any of that, with the design that you see here,
3 with the pink colors, with the landscaping that the
4 project would not have a significant impact.

5 You might say that the deal that AES has worked
6 out with the City of Huntington Beach is kind of
7 frosting on the cake.

8 MS. RUDMAN: But it does jump out at you, I
9 would say, doesn't it?

10 MR. PRIESTLEY: Oh, yeah, I think it's really
11 terrific. It's a really creative collaboration between
12 the client and the City.

13 MS. RUDMAN: So, this is a matter, I think, of
14 taste whether you think a 100-foot faux surfboard is --

15 MR. PRIESTLEY: And I don't know whether Mr.
16 O'Kane would like to say anything about what they've
17 done with the City or is that something --

18 COMMISSIONER MC ALLISTER: What's the dispute
19 that we're having here, like where do we disagree --
20 we're having this, presumably, because there's a panel
21 at the evidentiary hearing to gather additional
22 information on a disputed point.

23 So, maybe what is the disputed point and how can
24 we sort of do what's necessary to move this forward.

25 MR. O'KANE: Okay, I'll attempt to answer that

1 one. Tom, you could have done it as well. So, the
2 disputed -- Mr. Priestley was walking through the CEQA
3 analysis of the development project.

4 And the disputed point is from KOPs 4 and 5 that
5 the Applicant, as we've stated in the record, and Mr.
6 Priestley's walked through, we do not find that to be a
7 significant visual impact on the CEQA.

8 COMMISSIONER MC ALLISTER: So, the KOP-1 was
9 just by way of background, then?

10 MR. O'KANE: Right.

11 MR. PRIESTLEY: Right, yeah, that was just to
12 put the whole thing in context.

13 MR. O'KANE: And Ms. Rudman was referring to
14 additional architectural treatments that, you know,
15 outside of the CEQA evaluation of the actual project we
16 worked out with the City of Huntington Beach that they
17 would like to see, you know, as further enhancements,
18 not as mitigation but as an enhancement of the project.

19 MS. RUDMAN: But I mean it's questionable what
20 we're looking at here. I mean I just think the
21 Committee should be aware of the visual is, probably
22 what the project will look like, ultimately, if that is
23 adopted. So, it's a little confusing.

24 MR. O'KANE: Well, as part of the record, as the
25 record shows that the visual treatment as worked out

1 with the City has been docketed into the record and
2 that -- those visual treatments are in the record.

3 HEARING OFFICER COCHRAN: So, looking
4 specifically at Exhibit 1069, is that visual treatment
5 depicted on these, on any of the photos that are within
6 Exhibit 1069?

7 MR. PRIESTLEY: The additional visual treatment
8 worked out with the City of Huntington Beach is not
9 depicted on any of the images that I am showing today.

10 Again, my goal here is to walk through the CEQA
11 analysis to establish, without even any application of
12 what's been worked out with the City, that the impacts
13 of this project are less than significant.

14 HEARING OFFICER COCHRAN: Okay.

15 COMMISSIONER MC ALLISTER: Does the Applicant
16 propose to have those mitigations, as worked out with
17 the City, included in the project?

18 MS. FOSTER: The applicant disagrees with staff
19 requiring those enhancements as mitigation for some
20 impact that the project may have.

21 It's Applicant's position that the project is a
22 visual resources -- it improves the visual resources of
23 the area and that there are no significant impacts
24 associated with visual resources.

25 As Mr. O'Kane indicated, the City has adopted a

1 resolution regarding this visual enhancement package, so
2 that now it is a LORS. And the Applicant and the City
3 have agreed to additional enhancements.

4 But referring to it as a mitigation measure to
5 mitigate an impact to a less than significant level is
6 where Applicant disagrees with staff's analysis.

7 MR. BELL: Yeah, I can provide some further
8 clarification there.

9 The disagreement is as Ms. Foster stated, and
10 that is over how do we get to the end result? The end
11 result, I think staff and Applicant are in agreement
12 over, which is that these -- the visual treatment for
13 this facility is beneficial, but for different reasons.

14 Staff sees it as both an impacts issue and a
15 LORS issue.

16 The Applicant disputes whether or not there's an
17 impact, but they agree that it -- it's LORS compliance
18 because they're agreeing with the City and the adoption
19 of the City's resolution with respect to that.

20 So what we're talking about is not the end
21 result, it's how we get to that end result. And that's
22 wherein the dispute lies.

23 COMMISSIONER MC ALLISTER: Okay, thanks.

24 And, Ms. Rudman, it sounds like you don't
25 necessarily come down on one side or the other in terms

1 of what that mitigation ought to look like or how that
2 conversation happens. What's the disagreement here?

3 MS. RUDMAN: Well, I personally don't think a
4 100-foot surfboard sculpture is visually pleasing or
5 neutral.

6 I mean it's going to be quite large and continue
7 to dominate. So, I'll show you in some other pictures
8 as we go that I think, you know, it's going to be still
9 a major visual intrusion on the viewer, which is a very
10 significant dew point.

11 COMMISSIONER MC ALLISTER: Well, so do you
12 propose to work with the City of Huntington Beach and
13 the Applicant -- you know, are you including it in this
14 discussion now, or with the City and the Applicant to
15 resolve the details of any enhancement or mitigation, or
16 however we come down, would look?

17 MS. RUDMAN: Well, would dispute that the
18 project has some -- from some various viewpoints that it
19 has, you know, not a significant visual impact.

20 COMMISSIONER MC ALLISTER: If you think about it
21 as a baseline, that is the status quo as baseline, do
22 you think it's an improvement or not?

23 MS. RUDMAN: Well, the Applicant has proposed --
24 well, all through the Applicant's application and the
25 final staff assessment, they are saying they're going to

1 be tearing down Units 3 and 4. So, for me the baseline
2 is Units 3 and 4 down, not the baseline of the existing
3 power plant. They've already stated they're going to
4 come down, so to me that should be the baseline.

5 And so then to have a power plant, with a 100-
6 foot surfboard, you know, that you can see for miles and
7 miles up the coast is visually intrusive.

8 (Off-record colloquy between Committee Members
9 and the Hearing Officer)

10 HEARING OFFICER COCHRAN: Right, I think we need
11 to finish, now, key observation point 4. We backtracked
12 to 1, we're going to go forward to 4, and then we'll
13 march on through 5 and construction impacts.

14 So, if you could finish up on KOP-4.

15 MR. PRIESTLEY: Okay, let's go back to KOP-4.
16 And just as a reminder, this is the view from Magnolia
17 Street, near Pacific Coast Highway.

18 There are a couple of things to know about this
19 view. This, in a way, is intended to be representative
20 of views that people might see as they -- particularly,
21 as they're driving up PCH, also perhaps as they were
22 driving up Magnolia.

23 It's also important to point out that this does
24 not reflect the view for residential areas. The
25 residential areas that are nearby, the views are

1 screened by the big farm surrounded by a berm. So, this
2 is not a view that is seen by residential neighborhoods.

3 And in understanding this view, too, it's
4 important to know that to take a nice picture I went
5 down -- there's like a little access road and I went to
6 the end of that where I could take a picture that did
7 not include the chain link fence that surrounds the
8 marsh because the reality is if you are driving up
9 Pacific Coast Highway, or up Magnolia, what you're going
10 to be seeing is the street, the sidewalks, and this
11 chain link fence which will have an effect on screening
12 your views into the site.

13 So, this is really a very idealized view of this
14 area.

15 Now, when you take a look at the existing view,
16 the thing that's most striking is the area of marshland
17 in the foreground. This is truly, you might say, the
18 visual resource in this view.

19 The water and the vegetation, and it's color are
20 all very, very attractive features. So, this is the
21 most outstanding part of this view.

22 Now, behind this view you have this line of
23 industrial/energy production infrastructure, including
24 those 202-foot stacks, the 240 to 250 -- yeah, 240 to
25 250-foot boilers covered with all of that industrial-

1 appearing equipment.

2 And kind of in the middle of the view you have
3 Unit 5, you have tanks, you have transmission towers,
4 you have the SCE substation. So, this is a very busy
5 industrial kind of backdrop to this very nice marsh
6 view.

7 Something else to note is that when you look at
8 this view we don't see any distant landmark features,
9 like mountains or other things that might attract your
10 attention and be kind of an important role.

11 So, when you take a look then at the bottom
12 photo, which is a simulation of this view as it would
13 appear with the project in place, the most important
14 thing to notice is absolutely no change to that marsh.

15 The proposed project does not in any way intrude
16 into that marsh and does not at all screen or otherwise
17 block views of the marsh.

18 So the marsh, the most important visual feature
19 is left entirely intact.

20 Also, in terms of what's going on in the
21 backdrop, those tall, massive stacks from the existing
22 units are gone. The boilers and all that industrial
23 appendages, that's all gone, the tank's gone.

24 In a way, the mass of the existing facility has
25 been redistributed across the site because we are seeing

1 Block 1 over on the right-hand corner of the view, where
2 the tank was before.

3 We're also seeing, actually, a little screening
4 of some of the transmission equipment in the background.

5 So, in terms of overall visual quality, my
6 analysis is that either there is no visual impact or, in
7 fact, an improvement in this view. Again, because the
8 key visual elements of the view have been preserved and,
9 arguably, there is a higher level of visual unity in
10 this view given the consistency of the exteriors of the
11 structures, the removal of all of that industrial-
12 appearing appendages.

13 So, yeah, my analysis is clearly that there is
14 no significant visual here.

15 And, interestingly enough, staff in its analysis
16 included that they concluded that the level of visual
17 change in this view would be moderate.

18 HEARING OFFICER COCHRAN: So, are there any
19 questions regarding KOP-4 from staff?

20 MR. BELL: Could we hear staff's opening
21 position, first, before we get to questions?

22 HEARING OFFICER COCHRAN: Sure.

23 MR. BELL: Thank you. Go ahead, Ms. Hinde.

24 MS. HINDE: I have an opening statement --

25 HEARING OFFICER COCHRAN: Okay.

1 MS. HINDE: -- that includes the summary of my
2 conclusions.

3 In December of 2012 I participated in a site
4 visit to survey and document visual resources conditions
5 in the project area, including the five key observation
6 points, KOPs, that had been selected for analysis by
7 CH2M Hill staff, in consultation with Energy Commission
8 staff.

9 The site visit included an informal meeting with
10 City of Huntington Beach staff. The City staff
11 requested adding a KOP along northbound Pacific Coast
12 Highway, PCH, at Brookhurst Street. And that viewpoint
13 became KOP-6 in my analysis.

14 During the site visit I surveyed the residential
15 area northwest of the project site, along the southern
16 edge of the Huntington Beach Mesa and identified the
17 need for an additional KOP along Frankfurt Avenue.

18 That viewpoint became KOP-7 in my analysis.

19 Visual simulations prepared by CH2M Hill staff
20 for the two new KOPs were submitted to Energy Commission
21 staff for analysis.

22 During the site visit I considered the area
23 where potentially significant impacts on visual
24 resources could occur and determined that it encircled
25 the project site of at a distance of about one and a

1 half miles. This area is called the visual sphere of
2 influence.

3 The massive proposed project structures and
4 views at greater distances from the site would be much
5 less dominant in the landscape.

6 I reviewed the City's general plan and its
7 zoning and subdivision ordinance to identify aesthetics
8 and visual resources-related policies and regulations
9 applicable to the proposed project and its location.

10 I reviewed the section of the Coastal Act
11 requiring consideration and protection of scenic and
12 visual qualities in coastal areas.

13 And over the course of preparing the visual
14 analysis, I evaluated the proposed project's consistency
15 with applicable laws, ordinances, regulations and
16 standards, LORS.

17 My analysis of visual impacts for each KOP
18 assessed the existing visual character and quality in
19 the project area, the viewer exposure and viewer
20 sensitivity represented by each KOP, and the estimated
21 viewer response to the visual change that could occur
22 with project implementation.

23 My conclusions for overall visual sensitivity
24 and overall visual change were combined to reach impact
25 conclusions.

1 For five of the KOPs, when comparing the
2 proposed project to existing conditions, the visual
3 change was minimal. For these KOPs, regardless of
4 visual sensitivity -- excuse me, viewer sensitivity, the
5 impact conclusion is less than significant.

6 We were just talking about KOP-4, which
7 represents the view from Magnolia Street, near the PCH.
8 And KOP-5 represents the view of Newland Street, next to
9 the power plant site and the Huntington Beach Mobile
10 Home and RV Park.

11 For those two KOPs, compared to the existing
12 power-generating units at the site, the proposed project
13 would involve constructing new power plant structures
14 closer to sensitive viewer areas with relatively high
15 levels of viewer exposure.

16 For KOP-4, I conclude that overall visual
17 sensitivity is moderate to high and overall visual
18 change with the proposed project is moderate.

19 My impact conclusion for KOP-4 is potentially
20 significant.

21 For KOP-5, I conclude the overall visual
22 sensitivity is moderate to high and overall visual
23 change with the proposed project is moderate to high.

24 My impact conclusion for KOP-5 is significant.

25 I am proposing VIS-1, which requires preparing

1 and implementing a visual screening and enhancement plan
2 for project structures.

3 This one requires the plan to be consistent with
4 the City's Resolution 2014-18, which recommends that the
5 Applicant's proposed architectural enhancements be
6 incorporated in the Energy Commission's final decision,
7 with modifications requested by the City.

8 I am also proposing VIS-2, which requires a
9 perimeter screening and on-site landscape and irrigation
10 plan.

11 For KOP-4, the architectural enhancements at
12 VIS-1 would hide or obscure views of the most visible
13 industrial-type structures and provide unifying design
14 elements at the site.

15 We're not looking at these images right now.
16 They are presented in the final staff assessment to show
17 what the enhancement plan would look like.

18 The repeated wave form and architectural screen
19 would improve visual quality, which is a key goal to
20 achieve for the proposed project.

21 VIS-2 would contribute to screening and
22 softening the views of the power plant, and
23 implementation of VIS-1 and VIS-2 would reduce the
24 impact at KOP-4 to less than significant.

25 Similarly, for KOP-5, the architectural

1 enhancements in VIS-1 would obscure the view of Power
2 Block 2 behind a wave screen.

3 The City Council expects to continue working
4 with the project applicant to improve the effectiveness
5 of the screening enhancements and surface treatments for
6 the project, including treatments for the air-cooled
7 condenser next to the power block.

8 When the visual screening and enhancement plan for
9 project structures is submitted to the compliance
10 project manager, copies will be provided to the City for
11 review and comment.

12 I anticipate that most, if not all of the design
13 elements in the plan, and any modifications will be
14 known to City staff prior to its submittal by the
15 project applicant.

16 Implementation of VIS-1 and VIS-2 would improve
17 visual quality and reduce the impact at KOP-5 to less
18 than significant.

19 I conclude that the proposed project's
20 construction and demolition phases would cause a
21 significant impact primarily due to the seven-year plus
22 construction time frame, the proximity of sensitive
23 viewer groups to the project site, and the large scale
24 of work at the site.

25 I am proposing VIS-3, requiring preparation and

1 implementation of a construction screening, landscape
2 protection, and site restoration plan to reduce this
3 impact to less than significant.

4 I analyzed the potential for lighting of the
5 project site and structures during demolition,
6 construction commissioning and operation to create new
7 sources of substantial light or glare.

8 I conclude that project lighting could adversely
9 affect nighttime views in the area and that potential
10 lighting glare impacts would be significant.

11 I am proposing VIS-4, VIS-5 and VIS-6 to reduce
12 the effects of lighting glare on visual resources to
13 less than significant.

14 VIS-4 requires minimizing or avoiding lighting
15 impacts during project demolition, construction and
16 commissioning phases.

17 VIS-5 requires preparing and implementing a
18 lighting management plan for project operation.

19 VIS-6 requires preparing and submitting a letter
20 report on the lighting management plan to identify any
21 changes or updates that may be needed before Power Block
22 2 is constructed.

23 Table 2 in my visual resources analysis
24 summarizes applicable LORS. There are quite a few that
25 address improving, enhancing, screening of this type of

1 development and a couple of them that specifically
2 screening of the power plant site.

3 As described in Table 2, the proposed project
4 would be consistent with LORS with implementation of one
5 or more of my proposed conditions of certification.

6 Thank you.

7 HEARING OFFICER COCHRAN: I think a question
8 that the Committee included in the order after pre-
9 hearing conference concerned condition of certification
10 VIS-2 as it related to the lawn.

11 Can you tell us how having a lawn mitigates what
12 you've identified as a potentially significant or
13 significant impact and what alternate mitigation might
14 be possible in order to avoid the appearance that we are
15 using water inappropriately during drought conditions?

16 MS. HINDE: I think that it may be that you
17 misread what was written in VIS-2, what's presented in
18 the final staff assessment.

19 If we could, perhaps, if the FSA is available
20 and we could put it on the screen, Ms. Cochran is
21 talking about the text on page 4.12-53 of the final
22 staff assessment.

23 HEARING OFFICER COCHRAN: Paul is looking for
24 the site we're looking for.

25 MR. KRAMER: Working on it.

1 MR. PRIESTLEY: While we're looking for the
2 specific text, I might say something that pertains to
3 the lawn. Because I think that, yeah, the concerns that
4 have been raised about the lawns probably reflect a
5 misreading or a misperception.

6 The only mention of the lawn that I'm -- well,
7 first of all, in terms of what's happening on the
8 exterior of the site intended to blend the site into its
9 surroundings shows plantings of palm trees, and berms
10 planted with appropriate native vegetation.

11 So, we're talking about generally low water-
12 using plant materials.

13 You know, right at the moment there is a very
14 small, little lawn area at the entrance to the plant
15 that provides a very attractive entry and kind of
16 relates to the residential character of the mobile home
17 estates across the way.

18 We hadn't really indicated anything about what
19 we were going to do with that. If there's a preference,
20 that could be converted to a drought-tolerant species of
21 some kind.

22 And the only other mention of a lawn is, you
23 know, inside the power plant site there is an outdoor
24 picnic pavilion for use by employees and next to it is a
25 small lawn area that's used for employee recreational

1 activities.

2 And in the latest version of this Commission,
3 the condition of certification we included some language
4 that if there is going to be a lawn inside the power
5 plant site for the recreational use of employees that it
6 be kept to the minimum size required for that purpose.

7 So, basically, we're not talking about
8 installation of vast areas of lawn, either on the
9 exterior of the plant or on the inside. A very limited
10 little lawn area for recreational use of employees, and
11 that would be a replacement of something that's there
12 now.

13 COMMISSIONER DOUGLAS: So, what kind of
14 recreational use are you thinking about?

15 MR. PRIESTLEY: Maybe Mr. O'Kane can tell us a
16 little bit more about what happens on that site.

17 MR. O'KANE: Okay, I'll quickly say we have just
18 a break area for our employees. Sometimes we have, you
19 know, company luncheons, barbecues out there, a place
20 for the employees to relax a little bit outside.

21 But we have no objection to the change there, so
22 no new or replacement lawn areas shall be planted
23 anywhere on the site, on the interior and we have no
24 objection to maintaining that condition.

25 MS. FOSTER: We had originally proposed

1 revisions to that language and in light of recent events
2 and things that have happened in the time frame between
3 when we proposed those revisions a few weeks ago, and
4 now we are okay with staff's original proposed statement
5 that no new or replacement lawn areas will be planted on
6 the site.

7 So, that should address the question that was
8 raised in the order after pre-hearing conference.

9 HEARING OFFICER COCHRAN: Okay, thank you. Then
10 do we still need to see the --

11 MS. HINDE: I can -- I can tell you what it
12 says, if that would be helpful.

13 COMMISSIONER MC ALLISTER: That would be great.

14 HEARING OFFICER COCHRAN: That would be great.

15 MS. HINDE: Yes. This is under the section of
16 VIS-2, on page 4.12-53 of the final staff assessment.

17 It says, "The perimeter screening and on-site
18 landscape and irrigation plan shall meet the following
19 minimum requirements".

20 The first bullet item ends with the sentence,
21 "No new or replacement lawn areas shall be planted
22 anywhere on the site interior".

23 I have not been on the site. I've been on the
24 outside of the site and I don't have any knowledge of
25 what Mr. O'Kane just explained, or it was explained

1 what -- I guess there is some lawn area inside the site.
2 And I asked that no new or replacement lawn areas should
3 be planted.

4 I believe that there will be quite a bit of
5 changes to the existing landscaped areas that will be
6 necessary in order to construct the new power plant.
7 And we don't currently have details on what those
8 changes will be.

9 So, in answer to your question, I'm not sure
10 what it was that you might have seen in the final staff
11 assessment that indicated that I might have put
12 something in that indicated that lawn areas would be
13 planted on the site.

14 HEARING OFFICER COCHRAN: Okay. I think we can
15 continue in light of that discussion, that you've
16 answered the Committee's question from the order.

17 So, does either party have questions of the
18 panel -- does any party have questions?

19 MS. RUDMAN: I have questions.

20 MS. FOSTER: Well, and I'd just like to also
21 state that our witness has not provided his testimony
22 with respect to KOC-5, and construction --

23 HEARING OFFICER COCHRAN: Okay.

24 MS. FOSTER: -- although staff's witness has
25 covered those topics, so I don't know how you want to

1 handle it.

2 HEARING OFFICER COCHRAN: Okay, let's go ahead
3 and, Mr. Priestly, if you could do KOP-5 and then we'll
4 talk about KOP -- okay, let's talk about KOP-4, first.

5 MR. PRIESTLEY: Okay, yeah.

6 HEARING OFFICER COCHRAN: So, we have your
7 testimony on KOP-4. We have staff's position on KOP-4.

8 So, Applicant, do you have questions of staff's
9 witness?

10 MR. PRIESTLEY: And if we could go back to the
11 images for KOP-4, because actually the one I didn't get
12 a chance to show is -- we saw the before and with the
13 existing project.

14 And I just want to flash by you very, very
15 quickly an analysis that I filed in response to the PSA
16 in which I looked at both KOPs 4 and 5 and prepared a
17 spread sheet that very systematically documented the
18 existing visual conditions in the view, the visual
19 conditions as they would appear with the project in
20 place.

21 And then identified, okay, what are the changes
22 between those two conditions to provide a basis to
23 document my finding that there would be no substantial
24 change to this view.

25 Something else I want to mention, too, in terms

1 of the staff's finding that this -- what they indicate
2 to believe to be a moderate change would morph into a
3 significant change is that they kind of ran this through
4 the grinder of presumed visual sensitivity.

5 But if you look at the CEQA questions regarding
6 visual impact, what the CEQA question says, "Will the
7 project have a significant adverse impact on the visual
8 character and quality of the site and its surroundings?"

9 It makes absolutely no mention of intervening
10 calculations based on presumed visual sensitivity of the
11 view. So, I'll just note that.

12 But in any case our finding is that the impact,
13 itself, is actually either nonexistent or very, very
14 minimal and couldn't possibly be a significant impact.

15 So, at this point I probably -- unless you have
16 questions for me, I'm ready to open it up for
17 discussion.

18 MS. CASTANOS: I do have a question for staff,
19 which is can you point to a table or a paragraph in your
20 analysis, similar to what's on the screen, now, where
21 you directly compared the existing conditions in the
22 view from KOP-4 with the visual conditions that will
23 exist with the project in place?

24 MS. HINDE: Yes. I need a moment to look at the
25 FSA. The analysis of KOP-4, with the proposed condition

1 is on pages 4.12-22 to 4.12-24. The second paragraph on
2 page 4.12-23 -- actually, the first paragraph and the
3 second paragraph I indicate that the proposed project,
4 similar to the existing Huntington Beach Generating
5 Station would contrast sharply with the natural
6 landscape.

7 The proposed project would increase the mass,
8 number and prominence of Huntington Beach Energy Project
9 structures in the view for KOP-4.

10 The Power Block 1 would be constructed at the
11 furthest northeast portion of the project, site adjacent
12 to Magnolia Marsh. So, it's around 500 to 600 feet of
13 the existing power block structures.

14 The level of visual contrast and increased
15 dominance of the power plant structures in the view
16 would be greater for this KOP compared to existing
17 conditions.

18 COMMISSIONER DOUGLAS: So, I'm just going to
19 interject a question. So, you're responding to a
20 question that was asked. I mean, does that response
21 answer the question? Do you want her to continue
22 reading? We have that.

23 MS. CASTANOS: Yeah, that's fine.

24 MR. PRIESTLEY: So, now, I guess we're supposed
25 to leave things open should anybody have any questions

1 about KOP-4. I'm quite ready to move on to KOP-5 but --

2 HEARING OFFICER COCHRAN: Well, we still need to
3 ask Mr. Bell, who's not there -- well, he's over there.

4 So, we'll skip to Ms. Rudman. Do you have
5 questions concerning KOP-4?

6 MS. RUDMAN: No.

7 HEARING OFFICER COCHRAN: Okay.

8 MR. PRIESTLEY: Okay --

9 HEARING OFFICER COCHRAN: Hold on just one
10 second, we have to let staff have a chance with you.

11 MR. PRIESTLEY: Okay.

12 (Off-record colloquy between Committee Members
13 and the Hearing Officer)

14 COMMISSIONER DOUGLAS: Staff, do you have any
15 questions on KOP-4?

16 MR. BELL: As part of the panel discussion I
17 understand that (inaudible) --

18 HEARING OFFICER COCHRAN: Yes.

19 MS. HINDE: Mr. Priestly, in your testimony you
20 disagreed with my conclusions that the impact at KOP-4
21 is potentially significant.

22 This is actually a question on both KOPs.

23 HEARING OFFICER COCHRAN: Well, let's ask it on
24 4 and then we'll ask it again when we move to 5. Thank
25 you.

1 MS. HINDE: All right. Well, there's -- yes,
2 okay. For KOP-4, you questioned how my conclusion can
3 be justified when the overall visual change with the
4 proposed project is moderate.

5 On page 4.12-8 of the final staff assessment I
6 explained that the ratings for overall visual
7 sensitivity and overall visual change are combined to
8 determine the visual impact for each KOP.

9 Also, I want to go back for a moment to Mr.
10 Priestley's comments on how the CEQA checklist doesn't
11 say anything about viewer sensitivity.

12 However, it is -- for those of us who do visual
13 analysis, it's commonly understood that a complete
14 visual analysis considers a number of things. CEQA
15 doesn't tell us how do you do the analysis. There's
16 nothing that tells us how to do that.

17 However, there are a number of commonly used
18 methodologies that help us along a lot in determining
19 how to do a visual analysis.

20 A complete visual analysis you need to, of
21 course, assess the visual environment. That often
22 involves using the analysis tools of commonly used
23 visual impact assessment methodologies, such as U.S.
24 Department of Transportation, U.S Forest Service, and
25 BLM.

1 Also, it's necessary to identify viewer groups
2 and assess viewer response to visual resources.

3 The other major step after assessing visual
4 environment is to assess the visual resource change.

5 Again, the analyst would use the analysis tools
6 of the commonly used visual impact assessment
7 methodologies.

8 You would identify or I have identified the
9 resource change and the associated viewer response. And
10 both of those steps are necessary to determine the level
11 of visual impact.

12 This is documented in the U.S. Department of
13 Transportation method. And, in fact, if we could flip
14 to Appendix 2, to my visual impact, to my final staff
15 assessment, which should be, of course, at the end of
16 that file that's on the screen.

17 MR. KRAMER: So what page, then?

18 HEARING OFFICER COCHRAN: Appendix 2.

19 MS. HINDE: It's Appendix 2, to my final staff
20 assessment, which includes applicable pages from the
21 visual impact assessment guidance provided by U.S.
22 Department of Transportation.

23 It should be right at the end of my FSA.

24 MR. KRAMER: What's the title of that?

25 HEARING OFFICER COCHRAN: Appendix 2.

1 MS. HINDE: Yes.

2 MR. PRIESTLEY: Yeah, I don't see a page
3 interleave here that says Appendix 2, so maybe if you do
4 a search for something like visual impact assessment for
5 highway projects, maybe you can get to this page more
6 efficiently.

7 HEARING OFFICER COCHRAN: We'll be able to
8 review that page later. Is there something specific
9 or --

10 MS. HINDE: Well, there is a simple diagram on
11 that page. There it is.

12 If you please go to page 7 of that appendix.

13 MR. KRAMER: Oh, there we go.

14 MS. HINDE: So, back up a little bit, please,
15 and then down just a little bit. That little diagram,
16 the visual environment, is a simple tool, a simple
17 illustration of what I'm explaining.

18 The visual environment involves visual resources
19 and the viewers. As part of assessing visual resources,
20 the analyst should assess visual character, visual
21 quality for the viewer side to determine viewer exposure
22 and viewer sensitivity.

23 Then you come down and you assess what is the
24 resource change that could be introduced by the proposed
25 project, how might that change affect visual character

1 and visual quality.

2 Then on the other side, you assess what might
3 the viewer response be. It's commonly accepted by the
4 visual impact assessment methodologies that the
5 residents and recreationists have relatively high
6 concern for visual quality.

7 So, in reaching a visual impact it's necessary
8 to look not only at the resource change, but also at
9 viewer response in order to reach an impact.

10 As it says underneath that diagram, these are
11 the principal issues that a visual impact assessment
12 should address. The relative importance of these issues
13 will change from project to project.

14 This is not the only place that this kind of
15 information is conveyed in the commonly used visual
16 impact assessment methodologies. You will see other
17 statements in this document of U.S. Department of
18 Transportation on assessing visual sensitivity, viewer
19 sensitivity.

20 You will see similar things in the U.S. Forest
21 Service manual that is used for assessing -- for
22 addressing visual impact assessments.

23 COMMISSIONER MC ALLISTER: Can I ask a quick
24 question here?

25 MS. HINDE: Yes.

1 COMMISSIONER MC ALLISTER: And so, presumably,
2 the numbers of people at any given KOP would be included
3 in viewer exposure? Is that an absolute exposure or is
4 that --

5 MS. HINDE: No, except --

6 COMMISSIONER MC ALLISTER: So, where is the sort
7 of traffic element of this? Like on the beach, you're
8 probably going to have more people than at the marsh I
9 would imagine, I don't know that.

10 MS. HINDE: Correct.

11 COMMISSIONER MC ALLISTER: So, is that sort of
12 weighting by actual exposure to --

13 MS. HINDE: In the section of my analysis, in
14 the final staff assessment, it talks about existing
15 conditions.

16 Because the project is situated -- there's
17 Magnolia nearby, of course, Newland Street, and the PCH,
18 and the beach.

19 And what I did was, as part of the evaluation of
20 roughly how many people might be viewers, I looked at
21 the traffic numbers in the Applicant's AFC to find out
22 what those numbers are, as reported in the AFC.

23 So, that helped to inform numbers of viewers.

24 We also have, in the very big sense, the rough
25 numbers of viewers to the beach, which I think was 16

1 million in here annually.

2 So, it was safe to say that there's the
3 potential for many people to view -- to be able to view
4 the project.

5 So, I did include -- I also considered not views
6 from particular residences, but just in assessing and
7 being at the site, and also assessing maps, and looking
8 at where residential areas are, it was also possible to
9 come up with estimates of the number of viewers who are
10 local residents, who might be in the area at a given
11 time.

12 So, the numbers are not -- they're estimates,
13 which is made clear also in the discussion in my
14 Appendix 1, which explains a bit more about, you know,
15 what is duration of view and how is that estimate
16 reached.

17 And numbers of viewers similarly although, as I
18 said, the part about traffic numbers does help to come
19 up with the estimates of numbers of people who might see
20 it from adjacent roadways.

21 I do have -- I took that --

22 COMMISSIONER DOUGLAS: So could we -- we are
23 actually at a point where you were asking questions of
24 Mr. Priestley.

25 MS. HINDE: Correct.

1 COMMISSIONER DOUGLAS: Okay, was that a
2 question? Was there a question?

3 MS. HINDE: I took that opportunity to explain
4 the importance of assessing visual sensitivity and I
5 would like to continue with the questioning, if I may.

6 COMMISSIONER MC ALLISTER: Please.

7 HEARING OFFICER COCHRAN: Okay.

8 MS. HINDE: The AFC describes visual sensitivity
9 for the KOPs in the project, setting discussions.
10 However, your analysis does not account for viewer
11 response or viewer sensitivity in its assessment of
12 project impacts.

13 For example, your testimony on KOP-4 states that
14 Magnolia Marsh "will not be affected in any way by the
15 project".

16 A similar statement is included in your comments
17 on the preliminary staff assessment. "The project will
18 have absolutely no effect on Magnolia Marsh, itself.
19 None of the project facilities will be built in the area
20 now occupied by the marsh."

21 These statements indicate that you discounted or
22 misunderstood the need to account for the relatively
23 high viewer concern of viewer groups represented by KOP-
24 4, including views from Magnolia Marsh, which would be
25 affected by visual changes at the power plant.

1 Why didn't you address or account for viewer
2 response in your assessment of visual impacts, not only
3 for KOP-4, but also for KOP-5?

4 COMMISSIONER DOUGLAS: Well, why don't you
5 answer for KOP-4.

6 MR. PRIESTLEY: Okay, there's been a whole raft
7 of statements made here and I think I probably have like
8 at least four things to say and I want to say them all
9 just as efficiently as possible.

10 The first point is, yes, of course we are very
11 aware of the standard methodology for visual impact
12 assessment, particularly that as documented in the FHWA
13 methodology because we use these methodologies all the
14 time for a very, very wide array of projects.

15 And in particular, for anything that is a NEPA
16 analysis absolutely evaluation of the impacts in light
17 of viewers, and viewer concern is very, very important,
18 and there are some very specific methodologies that one
19 uses to very closely document those kinds of things.

20 So first of all, yes, for a NEPA analysis we
21 would do this.

22 Now, it's interesting, CEQA, if you read CEQA as
23 it's stated, it specifically has to do with the visual
24 change.

25 I see no language in CEQA that requires you to

1 take a low impact and make it a high impact because of
2 viewer sensitivity. I don't know, maybe I'm missing
3 something, but I don't see that in CEQA.

4 But in any case, this whole discussion maybe is
5 moot because I think that our analysis very, very
6 clearly establishes that the degree of visual change in
7 the views for KOP-4 and KOP-5 is very low.

8 So even if the viewers were -- there were large
9 numbers of hypersensitive viewers, you still could not
10 make the case that, oh, these low levels of impacts kind
11 of morph into a significant adverse impact.

12 MS. HINDE: There wasn't any morphing. It was
13 based -- it is based on a systematic analysis, KOP-by-
14 KOP, of the visual change compared to and considering
15 visual sensitivity to reach impact conclusions.

16 It is --

17 COMMISSIONER DOUGLAS: Ms. Hinde, you've
18 described your methodology already and we heard you. Do
19 you have more questions?

20 MS. HINDE: Yes. Mr. Priestley, in your
21 testimony you state that there is no basis for
22 concluding that light and glare impacts would be
23 significant. You claim that staff's analysis does not
24 consider existing lighting at the site.

25 Simply referring to existing lighting and

1 stating that the proposed project's lighting, by
2 comparison, would be reduced is not enough to reach a
3 conclusion that no impact will occur.

4 Your analysis in the AFC includes statements on
5 project lighting under the subsections "lighting" and
6 "light and glare". Both subsections stated:

7 "To reduce offsite lighting impacts, lighting
8 for the project will be restricted to areas required for
9 safety and operation."

10 And then the AFC describes things that the
11 Applicant will do to reduce lighting effects.

12 The discussion under lighting concludes:

13 "Despite these measures there may be limited
14 times during the construction commissioning period when
15 the project site may appear as a brightly lit area as
16 seen in close views and from distant hillside
17 residential areas."

18 The discussion under lighting glare states:

19 "The project's effects on visual conditions
20 during hours of darkness would be limited."

21 The discussion concludes:

22 "With the construction of the Huntington Beach
23 Energy Project the overall change in ambient lighting
24 conditions in the area surrounding the site would not be
25 substantial. The lighting associated with the project

1 will not substantially exceed and may represent a slight
2 decrease in the lighting used on the existing Huntington
3 Beach Generating Station. Therefore, there would be no
4 significant change to light and glare effects."

5 By comparison your opening testimony states:

6 "With development of the project, the overall
7 amount of lighting on the site" --

8 HEARING OFFICER COCHRAN: Excuse me. Pardon me.
9 We're trying to get away from this sort of classic
10 cross-examination and have these questions be more open-
11 ended and sort of less argumentative or, you know -- if
12 there's a more open-ended way that you could ask this
13 question, like can you explain why there's a difference
14 between this testimony and that testimony, that would be
15 more helpful than reading from his various testimonies.

16 I mean, we're trying to make this informal and
17 to try to get this to move along a little bit quickly.

18 MS. HINDE: The first question is how do you
19 explain statements in the AFC implying that offsite
20 lighting impacts could occur?

21 MR. PRIESTLEY: So, was -- you'll have to
22 refresh my memory, was that a statement about the
23 construction period impacts?

24 MS. HINDE: It was talking about, as I stated a
25 moment ago, to reduce offsite lighting impacts. It

1 doesn't say that this is for construction. Lighting for
2 the project will be restricted to areas required for
3 safety and operation.

4 COMMISSIONER DOUGLAS: Why don't you give him
5 the page number, if you could?

6 MS. HINDE: Of the AFC, pages 5.13-14 and 5.13-
7 17.

8 COMMISSIONER DOUGLAS: And are you asking him to
9 explain the statements made therein, is that the
10 question?

11 MS. HINDE: Excuse me?

12 COMMISSIONER DOUGLAS: What are you asking him
13 about those sections?

14 MS. HINDE: The applicant's consultant is
15 stating that there wouldn't be any lighting impacts
16 because look at what the existing project looks like.
17 That's not enough for me to conclude that, in fact,
18 lighting impacts of the proposed project would be less.

19 Also, in stating that -- and including the
20 statement to reduce outside lighting impacts and things
21 that the Applicant will do to make sure that that
22 doesn't occur, it sounds to me like there is a -- there
23 are statements that are made in the AFC acknowledging
24 that there's the potential for lighting impacts and this
25 is what we will do to see that it doesn't happen.

1 It sounds to me like that's identifying
2 potential lighting impacts that would have to be
3 mitigated.

4 COMMISSIONER DOUGLAS: Okay, so why don't we see
5 how he addresses that issue.

6 MR. PRIESTLEY: Okay, the first thing, in terms
7 of this quotation from page 5.13-4 --

8 MS. HINDE: It was page 14.

9 MR. PRIESTLEY: Yeah, 5.13-14, this is a
10 reference to lighting that might occur during the
11 construction period. So, it is assumed to the extent to
12 which construction -- to which there are nighttime
13 construction activities that require illumination, it is
14 quite possible that there might be short periods in
15 which there may be a bright light visible offsite.

16 But a number of short episodes of that type, is
17 that the same as a significant impact? You know, that's
18 kind of my question. And actually, you know --

19 MS. HINDE: This doesn't say project
20 construction. This is talking about operational
21 lighting.

22 MR. PRIESTLEY: Where is this?

23 MS. HINDE: The first paragraph.

24 MR. PRIESTLEY: Okay, but the sentence you just
25 quoted was at the very end of the third paragraph it

1 specifically pertained to construction lighting.

2 HEARING OFFICER COCHRAN: Okay, the Committee is
3 finding that this testimony is somewhat cumulative.

4 MR. PRIESTLEY: Yeah.

5 HEARING OFFICER COCHRAN: Do you have additional
6 questions and, if so, how many?

7 MS. HINDE: I have three questions, additional
8 questions relating to lighting. I have one question
9 relating to construction and demolition.

10 HEARING OFFICER COCHRAN: Okay, it was my
11 understanding based on what Applicant said at the
12 beginning, that you were submitting that on declaration;
13 is that correct?

14 MS. FOSTER: Right, it was our written testimony
15 and our witness was available for questions. It was our
16 understanding we were just discussing KOP-4 at this time
17 and then we would move into KOP-5.

18 HEARING OFFICER COCHRAN: Correct.

19 MS. FOSTER: He has not summarized his testimony
20 as to that, and then construction impacts.

21 HEARING OFFICER COCHRAN: Right. So, do you
22 have any additional questions relating to KOP-4?

23 MS. HINDE: No.

24 HEARING OFFICER COCHRAN: Okay. Ms. Rudman, I
25 believe I already asked you but I just want to make

1 sure, do you have any questions relating to KOP-4?

2 MS. RUDMAN: Not to KOP-4.

3 HEARING OFFICER COCHRAN: Thank you.

4 So, let's move on to KOP-5.

5 MR. PRIESTLEY: Okay, a little earlier I showed
6 you a map with the location of KOP-5, which is located
7 across Newland Street from the proposed project site.
8 And it is not on Newland Street, it is actually inside
9 the Huntington By the Sea Mobile Estates, which is
10 actually private property.

11 We usually avoid having KOPs on private
12 property, but we had -- the original KOP was actually
13 taken from the street, but at the request of staff we
14 took another photo.

15 We had to get back to take in both the existing
16 facility and the site of the new facility.

17 So, this photo may be a little visually
18 confusing, so just to make sure everybody is oriented,
19 you see the stop sign and then behind that, you know,
20 you see the driveway. And then you can see Newland
21 Street, and the curve along the street, and then you see
22 a wall. That wall is behind the perimeter of the site.
23 Behind the wall there is landscaping. And then you see
24 one of the existing units.

25 So, actually, this location is inside the Mobile

1 Estates and you can see the gates at the Mobile Estates.

2 And something I want to make very, very clear is
3 you might say this is the point within the Mobile
4 Estates at which you have the maximum view toward the
5 project site.

6 The reality is, is when you get inside the
7 Mobile Estates, because the units are so tightly
8 configured inside, most of your views are restricted to
9 the immediate foreground. You know, you're seeing the
10 units.

11 Right now, to the extent that you see anything,
12 for most locations it would be the very top of the
13 stacks or the very tops of the boilers.

14 In fact, one could say that because the proposed
15 facilities are going to be so much lower than what is
16 there now, the likelihood of any of them actually being
17 seen from most areas within the Mobile Estates is low.

18 But anyway, we bent over backwards here to not
19 sugarcoat this and have, you know, the maximum possible
20 view.

21 Something else that I might point out here is
22 this view -- this view is somewhat kind to the existing
23 view in that you'll note that the existing power block
24 is hidden behind that tree.

25 If I were to be standing a little bit over to

1 the left, for example, you would be able to see that
2 power block which would be quite visually dominating.
3 And you would be able to see at very close hand all of
4 that industrial-appearing stuff on the exterior of it,
5 as well.

6 Something else to note is that clearly this is a
7 view of a site that has a well-established
8 industrial/energy production visual character to it.

9 And in addition, when you look at the site there
10 are no distant views that we are seeing of mountains, or
11 other kinds of landmark features of visual importance.

12 So, with the project what would happen is that
13 the existing power blocks and -- or power units and
14 those giant stacks would be completely removed. They
15 would be replaced with this modern power plant.

16 So, essentially, you know, the mass that you see
17 on the site now would be redistributed. You know, for
18 better or for worse, the facilities would be directly
19 across from the entrance.

20 But my assessment is that there is essentially
21 no change in either of the visual character of the site,
22 which remains a power production site, or in the overall
23 level of visual quality.

24 These facilities, you know, have a much sleeker
25 design, much less industrial appearing than the

1 facilities that are now on the site.

2 If you take a look at the area just behind that
3 wall along Newland Street, you can see that it has been
4 very -- there's actually a berm behind there that has
5 been very densely planted according to the landscape
6 plan. We had filed a landscape plan. So, in this nome
7 what we are proposing in terms of landscaping, and
8 according to that plan there would be a mixture of
9 appropriate native shrubs that would provide a very nice
10 transition between the site and its surroundings.

11 In addition, we're planting a rather lavish use
12 of palm trees, as well, again to connect with the
13 overall theme of palm trees here in the coastal area of
14 Huntington Beach, and also to integrate the plant into
15 the site.

16 So, our finding is that the level of visual
17 change, adverse visual change, that there would be
18 little to no adverse visual change to this view.

19 And even if you were to assume that this very,
20 very short view that is seen by people as they are
21 leaving the mobile estates is highly sensitive, even
22 given that, given the very low level of impact on the
23 visual quality of the view, the overall impact here
24 would be certainly less than significant.

25 And if we want to flip to the next slide, and

1 I'm not going to go into this, but again in my response
2 to the PSA, I very systematically documented the
3 characteristics of the existing view, the view as it was
4 proposed.

5 And I very carefully identified, well, what are
6 the differences. And the final column is the "so what?"
7 And this document provides a basis for understanding my
8 conclusion that the change to the visual quality of this
9 view would be very limited.

10 So, I'll end there and be open to questions.

11 HEARING OFFICER COCHRAN: Ms. Hinde, do you have
12 any further questions for the witness about KOP-5 that
13 weren't covered in your initial discussion about the
14 different methodologies used?

15 MS. HINDE: Yes.

16 MR. BELL: Before we start that, if I can
17 assist?

18 MS. HINDE: Sure.

19 MR. BELL: Thank you. WE do have a visual aid
20 prepared as to Exhibit 1069, as we laid the foundation
21 of --

22 (Push your button)

23 MR. BELL: Ah, usually I talk loud enough I
24 don't need one of these.

25 Ms. Hinde, are you familiar with Exhibit 1069,

1 1-0-6-9, that's up on the board?

2 MS. HINDE: Yes.

3 MR. BELL: Okay. That's -- it has been docketed
4 as Visual Resources Figures 12a and 12b. Now, on that
5 is a note that says a print copy with an image width of
6 about 18 and a half inches, and held at a reading
7 distance of approximately 12 inches, would approximately
8 represent life size scale.

9 Now, what was docketed, though, was not 18 and a
10 half inches, was it?

11 MS. HINDE: Correct.

12 MR. BELL: Did you print out copies of Exhibit
13 1069 at a scale of 18 and a half inches width, as was
14 suggested on that note?

15 MS. HINDE: Yes.

16 MR. BELL: And did you bring those here with you
17 today?

18 MS. HINDE: Yes.

19 MR. BELL: Okay. May I approach?

20 HEARING OFFICER COCHRAN: Yes, thank you.

21 MR. BELL: I've already provided copies of this
22 to --

23 MR. PRIESTLEY: I don't have copies of yours.

24 HEARING OFFICER COCHRAN: And will this be
25 Exhibit 2002, Mr. --

1 MR. BELL: We can so mark it. However, I will
2 say that this is merely Exhibit 269 --

3 HEARING OFFICER COCHRAN: Okay.

4 MR. BELL: -- blown up to the proportions that
5 are suggested in the exhibit, itself.

6 HEARING OFFICER COCHRAN: Okay.

7 MR. BELL: And I made copies for Applicant,
8 along with Mr. Priestley, and Intervener Rudman, and
9 already passed those out.

10 MR. PRIESTLEY: Yeah. Yeah, I don't know why
11 you're looking at this. Let me say something in terms
12 of putting up this little issue in context, yeah.

13 Certainly, as a professional that's been
14 involved in visual impact assessment, and spent years at
15 the Environmental Simulation Laboratory at Berkeley, I'm
16 very, very well aware of this issue of having your
17 simulations at a size that kind of is reflective of what
18 you would see if you were on the site.

19 And certainly, in doing my own analyses I print
20 out large images. But as a very, very practical matter,
21 when you are sending -- you are docketing reports with
22 the Energy Commission they become very unwieldy to have
23 them filled with bed size sheets.

24 So, just as a matter of practicality we put in,
25 you know, an 11 by 17 and we assume, then, that the

1 staff will recognize this. They have a digital image
2 and they can blow it up to whatever size they are most
3 comfortable in evaluating.

4 Because certainly at our end I do not like to
5 look at like little photographs, I definitely blow
6 things up, you know, to a size like this in doing my own
7 analysis.

8 MS. HINDE: One comment I would like to make on
9 simulations, these simulations and simulations in
10 general. They are extremely valuable, but they also are
11 showing three-dimensional structures on two-dimensional
12 pieces of paper or a two-dimensional screen.

13 And so, they tell part of the story, but not the
14 whole story.

15 The other thing I would like to mention is that,
16 yes, the power block structures will be shorter, the
17 shorter stacks definitely, but there's also these
18 structures have length and they have width.

19 So, for example, for this Power Block 2 that's
20 represented on the lower image, the heat recovery steam
21 generators, there will be three of them, they would be
22 92 feet high, 44 feet wide, and 77 feet long and there
23 would be three of those.

24 The stacks, which would be roughly 82 feet
25 shorter, there will be three stacks at Power Block 2.

1 The air-cooled condenser that you're looking at,
2 that's the side view with the pipes coming over the top
3 and down the sides, 104 feet high, 127 feet wide. And
4 what you're not seeing, of course, is the length from
5 this view, which is 209 feet.

6 So, while it is true that the vertical scale is
7 reduced, the structures of the power plant take up
8 considerable space. They're not little. And given the
9 number of the pieces of equipment for each power block,
10 they will be large in the views, and including this
11 view.

12 COMMISSIONER MC ALLISTER: Ms. Hinde, thanks for
13 laying that background and providing some clarification.
14 Did you have some questions for Applicant's witness?

15 MS. HINDE: I have one question. For KOP-5 you
16 state in your testimony -- instead of reading this, what
17 I want to point out is that the -- Mr. Priestley is
18 talking about the addition of the landscaping that is
19 shown on the lower image.

20 And he describes it as a fringe of landscaping
21 will be reinforced with layers of tall, dense vegetation
22 that will extend across the mid-foreground of the view.

23 He describes the dense, highly-textured tapestry
24 that creates visual interest.

25 So, if we're looking at this from 12 inches,

1 roughly, the idea is if you were standing at the
2 location of this KOP and you have this image about 12
3 inches away, then the power plant structures would be
4 very close to this size. That would be what you would
5 be looking at.

6 The landscape plantings that are shown in the
7 visual simulations are based on a conceptual landscape
8 plan that was submitted by the Applicant in November
9 2013, on a site arrangement plan that requires revision
10 and would reduce areas available for landscaping on the
11 site.

12 We don't -- as I understand it, I have not seen
13 an updated site plan.

14 I do know, I think there were -- there was going
15 to be a need to change the size of the emergency access
16 roads on the site, which I believe it was understood
17 would reduce available areas for landscape plantings.

18 So, the simulation for KOP-5 does not provide an
19 accurate representation of potential future landscape
20 plantings on the project site.

21 The other thing I want to point out is our
22 conclusions to these KOP-5 -- for KOP-5 I found that the
23 impact would be significant when you take into
24 consideration the visual change and viewer response.

25 Mr. Priestley's position is that the change from

1 the image at the top, with existing conditions, compared
2 to the image from the bottom --

3 HEARING OFFICER COCHRAN: Let me stop you. Why
4 don't we just ask him what his response is?

5 MR. PRIESTLEY: Okay, there are a couple of
6 issues that have come up here. One has to do with the
7 reconfiguration on the site. And maybe, Stephen, you
8 can correct me if I'm wrong.

9 But the moving, any readjustment in the location
10 of that fire access road I don't believe would affect
11 any of the landscaping that we see in this image.

12 MR. O'KANE: That's correct. And I think that's
13 a bit of a misnomer to call it a revision of the site
14 plan. The only change needed to make was to ensure that
15 the site accurately depicted fire roads that met local
16 LORS of 26 feet wide. So, there was a potential revisit
17 of that width of a fire road around block 1, on the
18 other side of the plant from this view, KOP-5.

19 So given that, I think we can say, contrary to
20 staff's intention, that in fact the landscaping that we
21 see in this image is in fact reflective of what it is
22 quite possible to do, and what the Applicant intends to
23 do in this view.

24 COMMISSIONER MC ALLISTER: Well, I guess I would
25 just point out, you know, there's a lot more sky, for

1 example, in this KOP in the top image than in the bottom
2 image.

3 MR. PRIESTLEY: Yeah.

4 COMMISSIONER MC ALLISTER: And there's, you
5 know, obviously a large, new -- I mean these are
6 different.

7 MR. PRIESTLEY: Yeah, it's true. Yeah, quite
8 admittedly they're different. But if you look over to
9 the right, where the existing power block is, you're
10 suddenly seeing sky there.

11 COMMISSIONER MC ALLISTER: Absolutely. So, but
12 that's why we have KOPs, they're supposed to be overall
13 representative. There's going to be different impacts
14 for each one and they are -- you know, they go in all
15 directions.

16 So, I think we're establishing the record here
17 that we need, which is good.

18 I guess I have one specific question for you
19 which is you seem to put a lot of weight in the kind of
20 industrial accoutrement there on any given facility --

21 MR. PRIESTLEY: Yeah.

22 COMMISSIONER MC ALLISTER: -- and it's smooth
23 exterior seemed to hold a lot of weight for you. Is
24 there any justification for that? And that's a question
25 for both of you, actually.

1 Is there any particular reasons to believe that
2 a smooth structure is visually preferable over a complex
3 industrial looking structure?

4 MS. HINDE: I would say this does look like an
5 industrial structure. It's certainly different than the
6 existing Huntington Beach Generating Station, which has
7 all that exterior --

8 COMMISSIONER MC ALLISTER: Noise, or visual
9 noise.

10 MS. HINDE: There's no façade on it. You know,
11 you can basically see to the inside of all that tubing
12 and the stuff on -- there's no treatment of it to hide
13 that stuff.

14 This is still a power plant. It has large pipes
15 coming down the side which City Council Members,
16 Huntington Beach, during the meeting that they had on
17 April 7th to vote to approve that plan, meaning
18 recommend that the Energy Commission put that in the
19 final decision, that they have this approved idea --

20 COMMISSIONER MC ALLISTER: Shielding and shading
21 there.

22 MS. HINDE: -- for visual screening. But there
23 was concern expressed by a couple of the Council Members
24 about the ACC unit, the large pipes. It still looks
25 like a power plant.

1 COMMISSIONER MC ALLISTER: Yeah, so Mr.
2 Priestley, do you have a quick answer to this?

3 MR. PRIESTLEY: Yeah, getting back to your
4 original question, which was a good one, if you look at
5 like design theory, environmental psychology, you will
6 see that people have a preference for views of things
7 that are, you know, kind of well organized.

8 So, I do focus on these industrial-appearing
9 things because essentially what you're seeing here is
10 something that looks, you know, very cluttered and
11 disorganized. And, you know, that is not visually
12 appealing.

13 Clearly something with, you know, cleaner,
14 simpler lines would have -- most people would evaluate
15 as having a higher level of visual appeal. And that
16 kind of fits into my assessment of high level of visual
17 unity of this view.

18 HEARING OFFICER COCHRAN: I just have one final
19 question, if I may?

20 MR. PRIESTLEY: Yeah.

21 HEARING OFFICER COCHRAN: My understanding is
22 that the resolution that the City of Huntington Beach
23 adopted discussed various paint treatments to be used on
24 some of these structures.

25 Do these KOP simulations reflect those paint

1 colors? I thought that they had talked about browns and
2 blues.

3 MR. PRIESTLEY: Yeah, so actually these are
4 slightly earlier. What you're looking at here are
5 slightly earlier versions of the simulations. And we
6 have worked out a very nice color scheme that involves
7 making like the blast walls a brown color that has a
8 relationship to the color of the beach sand. And then
9 the upper, the taller elements a couple of different
10 shades of blue to help them merge into -- well, it does
11 two things.

12 It creates a matriculation that makes the visual
13 interesting, and also to help them blend in with the
14 sky.

15 HEARING OFFICER COCHRAN: And are those depicted
16 in any of the exhibits? I'm looking specifically at
17 Applicant. Do you know if that's part of what's
18 attached to the resolution?

19 MS. FOSTER: Yes, I believe --

20 HEARING OFFICER COCHRAN: Great.

21 MS. FOSTER: -- it's the Exhibit 1134.

22 HEARING OFFICER COCHRAN: Okay, thank you.

23 Okay, are there any further questions on KOP-5?

24 MS. RUDMAN: I do have a question. One thing
25 that I thought was interesting, you just sparked

1 something in me when you're talking about visual
2 psychology.

3 When you went to the City Council, I noticed
4 there was a flag pole that was higher than the size of
5 the surfboard. And it kind of gave the impression this
6 wasn't going to be so dominant.

7 Can you speak to that? Because would that
8 flagpole be legal in Huntington Beach?

9 MR. PRIESTLEY: You know, I better let Mr.
10 O'Kane speak to this since he was the person most
11 directly involved in the conversations with the City.
12 And if I'm not mistaken, that was the City's idea but --

13 MS. RUDMAN: To have that flagpole that was
14 probably not legal, but makes the project look a little
15 smaller?

16 MR. KRAMER: With respect to the legality of the
17 flagpole, the City height restrictions exempt flagpoles
18 from the height restrictions.

19 HEARING OFFICER COCHRAN: Okay, so now are there
20 any further questions on KOP-5? Going once, going
21 twice.

22 Moving on to construction impacts, is this where
23 you also wanted to talk about revisions to the
24 conditions of certification or is that still a separate
25 topic?

1 MS. FOSTER: We have -- we've proposed numerous
2 revisions to the visual conditions. I don't know if you
3 want to talk them through here today, but they're
4 outlined in detail in the opening testimony.

5 They're pretty lengthy conditions as proposed
6 and the revisions are pretty detailed so --

7 HEARING OFFICER COCHRAN: Okay, so then why
8 don't we switch, then, to construction-related impacts.

9 MR. PRIESTLEY: Okay.

10 MS. RUDMAN: Could we talk about -- I mean at
11 some point I have like questions about as-built, and
12 it's a different KOP that nobody considered.

13 HEARING OFFICER COCHRAN: And which KOP does it
14 relate to?

15 MS. RUDMAN: It relates to the Newport Pier,
16 which is a very significant viewpoint, nobody --

17 MR. PRIESTLEY: To the Newport Pier?:

18 MS. RUDMAN: Yes.

19 MR. PRIESTLEY: I'm prepared to address that, if
20 you'd like me to?

21 MS. RUDMAN: Well, I'd like to have the picture
22 up that I have, it's Exhibit Number 4013.

23 HEARING OFFICER COCHRAN: And which KOP does
24 this relate to?

25 MS. RUDMAN: They haven't -- this was the KOP

1 they ignored, so this is a KOP that I've introduced.

2 And if you notice, this is from the Newport Pier
3 and it's a very -- it's probably a little bit hard to
4 see, but you can see in the background -- just because
5 of the quality of the photograph, I took it with my i-
6 Phone.

7 But you can see from the Newport Pier there is
8 the Huntington Beach Energy Project that are completely
9 dominating miles of very significant views from the
10 beach.

11 As we said, it's really important to look at the
12 sensitivity to viewers.

13 I have entered into evidence how many people are
14 attending the beach. We've always considered this a
15 monstrosity, let me tell you.

16 But if you look, you'll see it's surrounded by
17 some two-story houses at the most, maybe some one-story
18 houses.

19 So, even the new project is going to dominate
20 the views, especially with this huge surfboard structure
21 on the outside of it.

22 So, it still will be very dominant.

23 And I also believe that what's not being
24 addressed here is that it's always been in the project
25 that Units 3 and 4 are going to be demolished. So, the

1 appropriate baseline is no power plant.

2 And a lot of this discussion is relative to the
3 existing power plant and I don't think that's
4 appropriate.

5 Clearly, from the Newport Pier and up and down
6 the Newport coast this project, with a 100-foot
7 industrial-look project is going to dominate the
8 landscape and it's an area of very high viewer
9 sensitivity.

10 In fact, one thing that the Commission already
11 found in its decision for the Huntington Beach
12 Generating Station Emergency Certification was that the
13 coast is highly significant. It has highly significant
14 views. And so, that decision's been made by the
15 Commission.

16 And I don't think it's anything to be litigated.

17 HEARING OFFICER COCHRAN: My question, Ms.
18 Rudman, is did you perform an analysis of this and is
19 that in your testimony?

20 MS. RUDMAN: That's in my testimony.

21 HEARING OFFICER COCHRAN: So, then this is
22 cumulative of your testimony that you've already
23 submitted.

24 MS. RUDMAN: Yeah.

25 HEARING OFFICER COCHRAN: Okay.

1 MS. RUDMAN: And I don't believe, though, I did
2 make the point of the base conditions --

3 HEARING OFFICER COCHRAN: Okay.

4 MS. RUDMAN: -- and Units 3 and 4 being down,
5 which is something that is everywhere in the FSA, it's
6 everywhere in the Applicant that the assumption is Units
7 3 and 4 are going to be demolished, anyways. So that,
8 to me, is the appropriate baseline.

9 HEARING OFFICER COCHRAN: Okay.

10 MR. PRIESTLEY: So, if I may, I have a couple of
11 questions for Ms. Rudman.

12 A very, very first question is can you tell us
13 what the 35-millimeter camera equivalent focal length of
14 this photo would be?

15 MS. RUDMAN: No, I cannot.

16 MR. PRIESTLEY: Well, if that's the case, I
17 think that -- I don't think that we can enter this photo
18 into the proceedings because one of the principals of
19 visual impact assessment, and I know staff would agree
20 with me, is that we need to be using photos that
21 represent the view that one would actually see with your
22 eye while you are there.

23 And I've been in this a long time and I know
24 very well that the specialists in this area have worked
25 out that the kind of photo that you need to use is the

1 equivalent of a 50 millimeter -- a photo take with a 35-
2 millimeter camera using a 50-millimeter lens.

3 And here in the age of digital photography, one
4 has to be very careful to do an analysis of your camera,
5 find out how big the image area inside your camera is
6 and do some math to figure out, okay, what focal length
7 setting on your digital camera is going to give you the
8 results that will provide an image that reflects what
9 you're seeing.

10 Because I have no way of knowing, for example,
11 if this might represent a zoomed view that over -- you
12 know, that gives us a misleading understanding of the
13 relative size of that power plant.

14 MS. RUDMAN: Well, I think if you went there and
15 you included this in your testimony, it certainly is
16 actually much more visible when you're there in person,
17 believe me.

18 MR. PRIESTLEY: Well, a couple of things I might
19 mention. First of all, the set of viewpoints that we
20 used was one that we worked out in collaboration with
21 staff, so it's a kind of a consensus of the most
22 appropriate views.

23 Secondly, I might say that essentially we have
24 this kind of view covered in that staff asked to prepare
25 a view from the Newport -- from the Huntington Beach

1 Pier, which is also a view looking down the coast,
2 showing the coastline with the power plant in its
3 context.

4 MS. RUDMAN: That's KOP-2.

5 MR. PRIESTLEY: And what's very important about
6 that is the end of the Huntington Pier is 1.6 miles from
7 the power plant site, where the Newport Beach plant is
8 more on the order of 3.6 miles.

9 So, what's very important are two things. First
10 of all, we heard staff tell us a little earlier that her
11 assessment was that the project would not have any
12 potential for a significant impact beyond the distance
13 of 1.5 miles.

14 So, this zone is well outside that. And
15 additionally, staff concluded that in the view from KOP-
16 2, which is the view from the Huntington Beach Pier, the
17 impact would be less than significant.

18 MS. RUDMAN: I just believe that as a person
19 that's --

20 MR. PRIESTLEY: You know, given the fact this --

21 HEARING OFFICER COCHRAN: Excuse me, one at a
22 time, please.

23 MR. PRIESTLEY: Yeah, given the fact that this
24 view is more than twice as far as the view from the
25 Newport Pier, I really can't understand, you know -- I

1 would have to see somebody, you know, really make the
2 case that the impacts on this view would be significant.

3 MS. RUDMAN: Okay and --

4 HEARING OFFICER COCHRAN: Now, at this point
5 we've -- briefly.

6 MS. RUDMAN: Okay. So, obviously, the coast has
7 a different curvature and everything from the different
8 perspectives. And this particular viewpoint maybe
9 not -- wouldn't be something that a person from -- that
10 doesn't live in the area would necessarily come to their
11 mind initially, as a viewpoint. However, people that
12 live in the area recognize that this is a very
13 significant viewpoint.

14 And so, living in the area gives me the
15 perspective that enabled me to realize that, ooh, a
16 significant viewpoint was omitted where perhaps if
17 you're not from the area, you wouldn't necessarily know.

18 I mean, it's not the same from the Huntington
19 Beach Pier. This is actually, as you pointed, is
20 further away. If you went there in person, you would
21 see how large that power plant looms on the horizon.

22 HEARING OFFICER COCHRAN: Okay. Anything
23 further on KOP-2 or 6?

24 Hearing none, we'll move now onto construction-
25 related visual impacts.

1 MR. PRIESTLEY: Okay, if we could move to the
2 construction images. Again, I will try to make this
3 just very, very much to the point since I know we've
4 used up a lot of time here.

5 And while we're waiting for the images to queue
6 up I'll start by saying that the -- an analysis of the
7 construction period impacts has two parts. One is
8 evaluation of the impacts of use of the five parking
9 areas that are proposed as part of the project.

10 The other has to do with the visual impacts of
11 the activities taking place on the site, itself.

12 And while we're waiting, I will mention that of
13 the five sites, staff and I are in agreement that there
14 will be no significant impacts on three of the sites.

15 So right now, I'm just going to focus on two
16 sites where we have come to different conclusions about
17 the visual impacts.

18 The first of the parking sites that we need to
19 talk about is on Newland Street, which is located right
20 across the street from the power plant site.

21 My analysis is that introduction of parking on
22 the site, a conversion of the site to a parking lot
23 would not constitute a substantial adverse visual
24 impact.

25 The reason being is that, as you can see from

1 the top photo that that site is fenced and has already
2 been graded.

3 On the site, itself, there are no important
4 visual resources that would at all be destroyed or
5 disturbed.

6 In addition, it's a little hard to see here, but
7 when you look at the photos you can see at the far end
8 of that site, on the adjacent property there's already
9 parking taking place that's kind of an adjunct to
10 Huntington By the Sea Mobile Estates.

11 So again, bottom line, yeah, there will be
12 visual changes with the presence of cars here but is
13 this a substantial -- is this a substantial degradation
14 of this view?

15 The second one that we need to talk about is the
16 proposed parking that would take place at the corner of
17 PCH and Beach Boulevard. It's a little hard to tell
18 from that photo, but it's the site that's kind of
19 kiddie-corner from us, as we're looking through that
20 photo.

21 And if you've had a chance to drive by there,
22 what you will notice is that site is already fenced and
23 it is already paved. So, conversion of the site to
24 parking would not transform -- you know, would not be
25 disturbing existing vegetative material, for example.

1 It would not be transforming something that has a
2 high -- that has high visual quality.

3 In fact, when you drive by there take a very,
4 very careful look because my analysis is that, in fact,
5 conversion of this area to parking could probably well
6 be a visual improvement because at the moment that site
7 looks rather derelict and is highly littered.

8 So, we know that with use for a project parking
9 it would have a much more orderly appearance.

10 So, anyway, that's the first part of the
11 construction period impacts.

12 And if you don't mind me moving on to the second
13 part, then we can have a discussion afterwards.

14 So the second part, if we can have the next
15 slide, has to do with the construction activities on the
16 site, itself.

17 And, you know, this project has drawn on for a
18 very, very long time. And over that time I have really
19 begun to appreciate some things about what's going on
20 here.

21 And one factor is, you know, this site is very,
22 very large.

23 And in addition, the project is going to be
24 taking place in phases. So, it's not like the whole
25 thing's going to be one giant construction site all at

1 the same time. In fact, construction's going to be
2 taking place at discrete little places over the
3 construction period.

4 And in the meantime, there will either be
5 existing structures or new structures that will
6 partially screen some of the things that are going on
7 and will also provide a context.

8 So, in terms of like the visual change brought
9 about by the presence of construction activities and the
10 like, they will be seen in the context of existing
11 facilities.

12 So, very quickly, the very first phase of the
13 project would occur over at this corner where the
14 existing tanks would be removed and then replaced with
15 construction of Power Block 1.

16 And then, if we could have the next slide?
17 Well, if we could go back to that one just very quickly,
18 a very important point here is the existing units would
19 substantially screen views towards the construction
20 activity from PCH and the beach. And certainly being at
21 the far end of the site, these activities would not be
22 particularly visible from the closest residential area,
23 which is the Huntington By the Sea Mobile Estates that
24 you can see on the far side of this photo.

25 So, if we can now go to the next photo? So, the

1 next phase would involve demolition of the units that
2 are over by PCH and Newland.

3 And next, and then a replacement -- then
4 construction in that area of Power Block 2, and the
5 final phase would be demolition of the remaining unit.

6 So, again, the point I'm trying to make here is
7 that the construction would take place in these discrete
8 phases. In the meantime there would be large elements
9 on the project, other structures that would either
10 screen the construction activities and/or provide the
11 context within which the construction activities take
12 place, reducing the level of context.

13 And something I might mention, too, that I have
14 a greater appreciation of now, in terms of the nighttime
15 lighting impacts, any construction lighting will be seen
16 in the context of the lighting that now exists on the
17 site.

18 And actually, rather interestingly, as those
19 existing power blocks are torn down, the overall level
20 of lighting on the site will reduce.

21 So, that's what I have to say. So, the bottom
22 line is my assessment is given the fact that the site is
23 large, that the activities are going to be phases, that
24 there will be screening during this time that the
25 construction activities will be seen in the context of

1 existing facilities on the site, you know, my contention
2 is that what we'll be seeing would not constitute a
3 substantial degradation of the visual quality and
4 character of that site. Thus, the impacts would be less
5 than significant.

6 HEARING OFFICER COCHRAN: Any questions on this?

7 MS. HINDE: I have one question.

8 HEARING OFFICER COCHRAN: Oh, I'm sorry. I keep
9 waiting for him to play quarterback.

10 MR. BELL: That's good. As part of the panel
11 discussion, Ms. Hinde has questions to ask.

12 HEARING OFFICER COCHRAN: Thanks.

13 MS. HINDE: I do want to note that in the AFC
14 Mr. Priestley did not discuss, or describe or analyze
15 potential effects of on-site project construction and
16 demolition.

17 My question is, you acknowledge no impact and
18 propose no methods or conditions to reduce visual
19 impacts during project demolition and construction. Why
20 does your opening statement -- excuse me, opening
21 testimony, and this is page 5 of the Applicant's opening
22 testimony on visual resources.

23 Why does your opening testimony state that the
24 measures outlined in VIS-3 would be undertaken by the
25 Applicant in any case, when your position is that no

1 impacts would occur?

2 MR. PRIESTLEY: And I guess, you know, my
3 thought is why not? These kinds of measures, I think,
4 are pretty much standard operating procedure these days,
5 particularly in a case like this one where AES has
6 developed very nice relationships with the City and
7 wants to be a good neighbor.

8 MS. HINDE: I have no further questions.

9 (Off-record colloquy between Committee Members
10 and the Hearing Officer)

11 HEARING OFFICER COCHRAN: Are there any other --
12 Ms. Rudman, do you have any questions on the
13 construction-related visual impacts?

14 MS. RUDMAN: It would be to the end visual or
15 are there more aspects to visual? Is this the last kind
16 of --

17 HEARING OFFICER COCHRAN: Well, I believe that
18 Dr. Priestley's available for lighting, and glare, and
19 cumulative, as well.

20 MS. RUDMAN: Uh-hum.

21 HEARING OFFICER COCHRAN: But he has just
22 finished giving his -- giving his summary of his
23 testimony on construction. So, we're trying to keep
24 this focused on those areas that we talked about at the
25 beginning of the hearing.

1 MS. RUDMAN: I do have like this kind of a wrap-
2 up that I could do at the end kind of a thing.

3 HEARING OFFICER COCHRAN: Okay, that's fine.

4 And is it a question or is it like a statement
5 that you want to make?

6 MS. RUDMAN: I can make it a question.

7 HEARING OFFICER COCHRAN: Okay. But do you have
8 any specific construction impacts on visual resources
9 related questions?

10 MS. RUDMAN: No.

11 HEARING OFFICER COCHRAN: Okay. Turning now to
12 lighting and glare, Applicant, do you have any
13 questions? I believe Ms. Hinde made her statement on
14 lighting and glare. Do you have any questions on
15 lighting and glare?

16 MS. FOSTER: No.

17 HEARING OFFICER COCHRAN: Staff, whether Mr.
18 Bell or Ms. Hinde, do you have questions on lighting and
19 glare?

20 MR. BELL: No.

21 HEARING OFFICER COCHRAN: Ms. Rudman, do you
22 have questions on lighting and glare?

23 MS. RUDMAN: No.

24 HEARING OFFICER COCHRAN: Excellent.

25 Cumulative impacts, staff, do you have

1 questions -- I mean, Applicant, do you have questions?

2 (Laughter)

3 MS. FOSTER: Applicant has no questions.

4 HEARING OFFICER COCHRAN: See, I like to just
5 trick people every once in a while.

6 Applicant do you have any questions?

7 MS. FOSTER: No questions.

8 HEARING OFFICER COCHRAN: Staff?

9 MR. BELL: No.

10 HEARING OFFICER COCHRAN: Ms. Rudman?

11 MS. RUDMAN: Is this the end?

12 HEARING OFFICER COCHRAN: Well, first, do you
13 have questions about cumulative impacts on visual
14 resources?

15 MS. RUDMAN: Well, again, my question is why, if
16 the Applicant is saying that Units 3 and 4 are going to
17 be demolished anyway, why, how can you say that there's
18 going to be no visual impact of these?

19 HEARING OFFICER COCHRAN: Do you have a response
20 to that, Mr. Priestley, or anybody else on the Applicant
21 team, relative to what the appropriate baseline is to
22 judge visual impacts?

23 COMMISSIONER MC ALLISTER: That seems like an
24 Applicant team question more than a -- it goes to the
25 project, the broader project, itself, so --

1 HEARING OFFICER COCHRAN: Yeah.

2 MR. O'KANE: So, the baseline is the -- the
3 baseline is the project compared to the existing
4 conditions. And the existing conditions is that we have
5 all four units standing.

6 HEARING OFFICER COCHRAN: Any other questions?

7 MS. RUDMAN: This is the last one. Yeah, I have
8 a question, has anybody taken a look at relative to the
9 entire spectrum of once-through cooling plants that are
10 going to be shut down, how does this one stack up in
11 terms of its setting, in terms of visual quality?

12 I mean to me, when I look at Huntington Beach, I
13 mean even though I may be a little bit prejudice because
14 I'm from Huntington Beach, I think it's an exceptionally
15 beautiful setting.

16 And when you look at all the other once-through
17 cooling plants, and if you had to make a choice, which
18 one would you say is in the most beautiful and visually
19 important setting?

20 And based on the survey that I've submitted into
21 evidence, this is the one that's visited the most. The
22 most people visit the Huntington Beach and Newport
23 beaches way more than any other beach. Look at how
24 beautiful it is today.

25 Do you know how many people are out there?

1 There's parking lots available for people to drive in.

2 So, has anybody made that assessment relative to
3 all the other power plants?

4 MR. BELL: Staff would have to object on several
5 grounds, relevance for one. Each project is analyzed
6 based on the individual aspects of that project and it's
7 not relevant what other projects look like.

8 Compared to the existing conditions versus the
9 proposed environment, also it assumes facts not in
10 evidence as to who visits what project and in, you know,
11 what amount.

12 MS. FOSTER: And the Applicant concurs with both
13 of those objections and restates those objections for
14 the record.

15 HEARING OFFICER COCHRAN: And we'll sustain that
16 objection. Thank you very much.

17 So, we're all done with visual. The Committee
18 would like to thank the panel.

19 And shall we take another five-minute break?
20 And I mean five minutes.

21 (Laughter)

22 HEARING OFFICER COCHRAN: And when we come back
23 we'll be dealing with cultural resources.

24 MR. BELL: I actually have a request as to
25 schedule. We do have several witnesses from Aspen

1 Environmental, who I believe that even though cultural
2 resources might take a few extra minutes, in the areas
3 of alternatives and biological resources, with respect
4 to noise, I think those are shorter subjects.

5 And for witness availability, I think if we can
6 dispense with those, if it pleased the panel.

7 HEARING OFFICER COCHRAN: Okay, we'll do bio
8 then. Yeah, we'll do bio resources when we come back
9 from the break.

10 (Off the record at 4:34 p.m.)

11 (On the record at 4:44 p.m.)

12 HEARING OFFICER COCHRAN: We are on biological
13 resources, right, you're my bio people.

14 And we wanted to talk a little bit about some of
15 the housekeeping.

16 Originally, when we set this hearing, we had
17 thought that we would be through, well, about now. And
18 we're obviously not. So, people have obviously made
19 travel arrangements.

20 The Committee has decided that we are going to
21 continue the hearing however late it takes this evening
22 to finish up.

23 The only two issues that we believe we might not
24 reach today are the compliance conditions and
25 alternatives.

1 And to the extent that we need additional
2 hearing time for that, we will set another date. We're
3 going to take that out of my hide as the Hearing
4 Officer, in the preparation of the PMPD, so that we can
5 develop a full record.

6 But we do want to finish as much as possible
7 with the witnesses who are here today.

8 So, at this point questions, comments, protests
9 on what I just said?

10 Okay, hearing none we'll now move on to
11 biological resources. And at the beginning of the
12 hearing today we were focusing on two, which is -- I'm
13 sorry, never mind.

14 Which was the effect of noise on biological
15 resources and BIO-8.

16 So, at the outset I'd like the panel to identify
17 themselves and who has sponsored you.

18 MR. BASTASH: Mark Bastach with CH2M Hill, on
19 behalf of the Applicant.

20 HEARING OFFICER COCHRAN: Thank you.

21 MS. FOWLER: Melissa Fowler, Biologist for CH2M
22 Hill, for the Applicant.

23 HEARING OFFICER COCHRAN: Thank you.

24 MS. LANCASTER: Jennifer Lancaster, biologist
25 with Aspen Environmental Group, on behalf of the Energy

1 Commission.

2 HEARING OFFICER COCHRAN: Thank you.

3 MR. WHITE: Scott White, biologist with Aspen
4 Environmental Group, also staff for the Energy
5 Commission.

6 HEARING OFFICER COCHRAN: Thank you.

7 MS. FOSTER: And the Applicant has a witness on
8 the phone.

9 HEARING OFFICER COCHRAN: Okay.

10 MS. FOSTER: Dr. Robert Dooling.

11 Dr. Dooling, can you identify yourself?

12 MR. DOOLING: Yes. Can you hear me?

13 HEARING OFFICER COCHRAN: Yes. Can you hear us?

14 MR. DOOLING: Yes, I can.

15 HEARING OFFICER COCHRAN: Okay, so we're going
16 to present that you're actually raising your right hand
17 right now. So, everyone raise your right hand.

18 (Biological Resources Panel Members were
19 sworn collectively by the Hearing Officer)

20 HEARING OFFICER COCHRAN: Thank you. Does
21 anyone have any objection to any of the witnesses that
22 have been called today for the Biological Resources
23 Panel?

24 MR. BELL: None on behalf of staff.

25 MS. FOSTER: None on behalf of Applicant.

1 MS. RUDMAN: No.

2 HEARING OFFICER COCHRAN: Hearing no objections,
3 and the panel having been sworn, if we could start with
4 Applicant and let's start with the condition of BIO-8,
5 which was identified as being an issue.

6 MS. FOSTER: We had prepared for the witnesses
7 to summarize their testimony.

8 HEARING OFFICER COCHRAN: Okay.

9 MS. FOSTER: And the discussion about BIO-8 and
10 BIO-9 sort of are commingled, I guess.

11 HEARING OFFICER COCHRAN: Okay.

12 MS. FOSTER: So, is it possible to do it --

13 HEARING OFFICER COCHRAN: Absolutely. I was
14 trying to separate them out but, you know, when I try to
15 be efficient it doesn't work so --

16 MR. BASTASH: Certainly. My name is Mark
17 Bastash. I'm a professional acoustical engineer with
18 the firm of CH2M Hill.

19 We are here discussing an area adjacent to
20 Highway 1 and a power plant, both of which have been
21 present for decades.

22 As the record shows, the sound levels in these
23 areas very substantially and routinely exceed staff's
24 criteria of 60 DBA. And no noise-sensitive special
25 study species have been identified in the adjacent

1 marsh.

2 We have expressed concern over firmly enforced
3 numeric limit for construction noise, as both ambient
4 and construction noise are highly variable. That
5 there's no evidence of harm and that BIO-8 establishes
6 monitoring measures to address any potential harm.

7 The biological basis for the proposed criteria
8 is not -- the proposed acoustical criteria is not
9 supported.

10 Birds do not hear the same as people. Birds are
11 less sensitive than humans, particularly to low
12 frequency noise.

13 The A weighting level is not an appropriate
14 metric to be representative of bird hearing and it's
15 unclear how the proposed time period of one hour is
16 supported by -- is supported in the record.

17 Applicant has offered clear and enforceable
18 criteria to trigger additional noise minimization
19 measures.

20 However, we feel that BIO-8, in and of itself is
21 also sufficient.

22 It is also unclear if staff's proposal is
23 feasible.

24 And with that, that's our summary.

25 HEARING OFFICER COCHRAN: Okay, thank you.

1 MS. FOSTER: Can I make one point of
2 clarification?

3 HEARING OFFICER COCHRAN: Absolutely.

4 MS. FOSTER: When Mr. Bastach is referring to
5 BIO-8, he's referring to Applicant's proposed revisions
6 to BIO-8 as being sufficient.

7 HEARING OFFICER COCHRAN: Okay.

8 MR. BASTASH: Thank you.

9 HEARING OFFICER COCHRAN: Thank you for that
10 clarification.

11 Do you have -- let's get staff's position,
12 please.

13 MR. WHITE: Sure, Scott White. Is this on?

14 Scott White, biologist with Aspen, Energy
15 Commission biology staff.

16 Very briefly, we've reviewed the Applicant's
17 opening testimony and we are prepared to make some
18 additional revisions to all four of the measures
19 mentioned in the testimony, 2 and 5 we briefly dismissed
20 at the beginning of the hearing today.

21 BIO-8, we're prepared to make some revisions to
22 that one, too, mainly focusing on the pre-construction
23 surveys that we recommended for the Light-Footed Clapper
24 Rail.

25 And our proposed revision would be to do a

1 habitat assessment in the marsh area prior to the start
2 of construction. If no suitable habitat for Light-
3 Footed Clapper Rail is present, then no follow up survey
4 for the bird, itself, would be necessary.

5 Staff will be submitting revised conditions of
6 certification with a brief sometime after the hearing,
7 so we would provide that at that time.

8 Should we go on to BIO-9?

9 HEARING OFFICER COCHRAN: Yes. My understanding
10 is that we were combining everything into one factor to
11 this one.

12 MR. WHITE: Sure, glad to. So, recommended
13 condition of certification BIO-9 is the one that has to
14 do with noise monitoring and noise management for the
15 potential impacts of noise to birds in the marsh.

16 We understand that there are differences between
17 bird hearing and human hearing, and that DBA, the A
18 scale of sound is perhaps not the appropriate to birds.

19 Our best understanding is that there's not a
20 modified sound scale that is more appropriate to birds,
21 although I know Dr. Dooling, on the phone, would
22 probably be aware if there's another scale that would be
23 the right one to use for birds. And we would certainly
24 advocate using that, if there is one.

25 But if there's not, I think the DBA is the best

1 model that we have and, really, our only choice.

2 What we've recommended or what we're prepared to
3 recommend in a revised version of BIO-9 is, as we've
4 already recommended, to ask the Applicant to prepare a
5 noise management plan for the way noise would affect the
6 marsh.

7 We apologize for wording in the FSA BIO-9 that
8 implied that ambient noise plus 8 decibels would be an
9 absolute threshold. We didn't intend to imply that and
10 that's actually something we discussed in a workshop
11 last April.

12 We would propose ambient noise plus 8 as an
13 action level. And at some point where noise monitoring
14 in the marsh indicates that noise has gone past ambient
15 and, furthermore, 8 decibels above that, that the
16 project owner, or construction company or, you know,
17 consultants work with the Energy Commission's CPM to
18 identify the reason for that high noise. And it may or
19 may not be project related.

20 It could be weather. It could be sirens or some
21 other aspect of the surrounding area, as pointed out in
22 the Applicant's opening testimony.

23 So between -- our recommendation is that if
24 noise exceeds that action level, rather than threshold,
25 that the Applicant and the CPM work together to

1 determine has there been project-related exceedance of
2 that level? And if so, at that point what kinds of
3 mitigation can we put in place to prevent further
4 excessive noise.

5 And what we're doing our best here and this,
6 again, we discussed at the workshop last April -- what
7 we're doing our best here to do is to have sort of a
8 reporting level for noise in the marsh comparable to
9 what residents might have in the nearby area.

10 You know, people, when they're bothered by
11 excessive noise from construction, have a phone number
12 that they can call to work with the project owner, or
13 work with the CPM to put in place measures to reduce
14 that noise and reduce the impacts to their families.

15 In the case of the wildlife in the marsh, they
16 can't use the phone, so this is our stand-in effort to
17 replace that.

18 HEARING OFFICER COCHRAN: Okay, thank you.

19 Dr. Dooling, your name was taken as it related
20 to finding a scale other than A weighting. Do you have
21 any such scale in mind?

22 MR. DOOLING: Yes. And I should say you were
23 cutting in and out, or rather this witness was cutting
24 in and out, so I didn't hear all of what he said, but I
25 did hear that section.

1 And so, I think maybe the best way to describe
2 this, if you can imagine in terms of the difference
3 between bird and human hearing, you can imagine a graph
4 with a sort of bowl shape in it and that would be the
5 human audiogram.

6 So, when you hear less well at low frequencies
7 and a little less well at high frequencies, but it's
8 shaped sort of like a bowl.

9 If you want to compare the bird audiogram to the
10 human audiogram, the bird audiogram is like a V in the
11 middle of that bowl.

12 So, you're right, we don't have a bird scale,
13 but you know what would happen if we did have a bird
14 scale. It would reduce the sound pressure level by
15 about a DB or so because birds hear much less well at
16 low frequencies than humans do.

17 And most of the energy in construction noises
18 and traffic noises is at low frequencies as opposed to
19 mid or high frequencies where birds vocalize.

20 So, even though we don't have a bird scale -- we
21 should make one, frankly. But if we made one, it would
22 show a 60 DB level. A 60 DBA sound would be about 45 to
23 50 DBA. That's the difference.

24 HEARING OFFICER COCHRAN: Okay, thank you.

25 Ms. Rudman, did you have any testimony on this

1 topic?

2 MS. RUDMAN: I do, actually. I had a friend
3 that works at the Department of Fish and Game take a
4 look at some of the points that remained.

5 And one of the points was relating to what is a
6 taking of an endangered species. And the Applicant's
7 experts argue that the --

8 HEARING OFFICER COCHRAN: Is this in your
9 testimony?

10 MS. RUDMAN: No.

11 HEARING OFFICER COCHRAN: Okay and is there a
12 reason why it wasn't included in your testimony?

13 MS. RUDMAN: I didn't have this information
14 available to me at that time.

15 HEARING OFFICER COCHRAN: And if this is
16 relating to the definition of a taking, why isn't that a
17 legal issue that can be handled in briefing?

18 MS. RUDMAN: I don't know. I mean I suppose it
19 could be. It seems like it would be something, though,
20 that hasn't been introduced and so it would be something
21 that I'd like to get introduced.

22 HEARING OFFICER COCHRAN: Well, generally, the
23 definition of a taking for an endangered species or a
24 fully protected species is a question of law, not a
25 question of fact.

1 MS. RUDMAN: Uh-hum. So, what you're saying is
2 this issue will not go -- it doesn't go away, but it can
3 be brought up later in the briefings?

4 HEARING OFFICER COCHRAN: In your briefings,
5 yes, correct.

6 MS. RUDMAN: Okay, then I do have some other
7 questions.

8 HEARING OFFICER COCHRAN: Okay, we haven't got
9 to questions, yet.

10 MS. RUDMAN: Okay.

11 MS. CASTANOS: Can I ask a question of Ms.
12 Rudman? Was the information that you're referring to
13 available at the time the rebuttal was submitted?

14 I recall at the pre-hearing conference that you
15 mentioned your friend at the Department of Fish and
16 Game.

17 MS. RUDMAN: When was the rebuttal due?

18 HEARING OFFICER COCHRAN: The 11th of July.

19 MS. CASTANOS: July 11th.

20 MS. RUDMAN: Yes, it was.

21 MS. CASTANOS: Thank you.

22 MR. BELL: And also, I have an objection to
23 Intervener Rudman asking any questions on cross-
24 examination. The pre-hearing conference order ordered
25 the parties to identify the witnesses they wished to

1 question, provide a summary of the scope of the
2 questions, the issues to which the questions pertained,
3 and the time desired to question each witness.

4 I don't believe that Ms. Rudman specified in her
5 pre-hearing conference statement any of that
6 information.

7 HEARING OFFICER COCHRAN: Well, I think she at
8 least indicated topic areas that she was interested in,
9 perhaps not with the level of specificity in terms of
10 time.

11 Having dealt with that, let's take Applicant,
12 now, do you have any questions of the panel?

13 MS. FOSTER: I have one question for Scott. And
14 I appreciate everything you said, that's very helpful
15 and useful. Unfortunately, we haven't seen anything
16 yet, so we're going to reserve comment.

17 My one question is you mentioned that the
18 ambient plus 8 would be an action level and you didn't
19 intend for it to be a threshold, an absolute threshold
20 as discussed at the April workshop.

21 And you said that the project owner at the time
22 would work with the CPM to identify a reason for any
23 exceedance of that ambient plus 8.

24 Did you -- have you contemplated measurements?
25 Are we talking ambient plus 8 over a one-hour time

1 period? What sort of time period are we talking about
2 or are you contemplating?

3 MR. WHITE: What we, and what's in our proposed
4 condition BIO-9 right now is that the Applicant would
5 prepare a sound management plan. And you're right, we
6 recommended sound measurements LEQ over a one-hour time
7 period average as what we thought was -- was a good way
8 to estimate sound levels over the course of a day, in
9 hourly increments.

10 Rather than focusing on what had been
11 recommended by U.S. Fish and Wildlife Service of using
12 LMAX, I guess, which records momentary noises.

13 So, for an activity like pile driving LMAX would
14 be very, very high at the moment of the hammer striking
15 the pile.

16 Rather than do it -- rather than calculate it
17 that way, we recommended this LEQ approach, believing
18 that a one-hour interval was a good, appropriate one.

19 If the Applicant believes 15-minute increments,
20 or two-hour increments for some reason would be better,
21 maybe it would be good to propose that in the sound --

22 MR. BASTASH: I have to say, we did make a
23 proposal in our testimony in terms of BIO-9 that was
24 consistent with some of our previous testimony and
25 filings.

1 And I guess what I'm still -- what's still not
2 clear to us is how BIO-I really provides any additional
3 protection that's not really afforded by BIO-8.

4 We were really -- we were kind of entertaining
5 the concept of BIO-9 and some noise monitoring, but
6 there really is no evidence of harm.

7 And just because a sound level exceeds a certain
8 number doesn't mean there is an adverse reaction.

9 So, you know, I don't know what ultimately
10 you've proposed. You've had our proposal for several
11 months. And so, I don't know if you're willing to
12 accept our proposal that we've got in our testimony.

13 MR. WHITE: We don't propose to accept it as
14 you've put it forth, but we do propose to take elements
15 of that and incorporate it into the BIO-9 that we had.

16 And I understand we don't -- we can't show that
17 to you right now.

18 But that is the objective to develop a sound
19 monitoring plan consistent with the discussion we had in
20 April and the discussion here this morning to avoid that
21 absolute threshold concern that you presented, and to
22 include sufficient monitoring to develop good baseline
23 data, and sufficient monitoring to address all the noisy
24 activities as -- in part, as you suggested, when a
25 certain noisy activity begins on the work site to

1 develop a good picture of how loud that is. And if the
2 noisy activity is moved closer to the marsh, get more
3 data at that point.

4 And what we'd like to do is fairly consistent
5 with what you're proposing.

6 The issue, your question of whether we should
7 have BIO-9 at all, whether sound could be adverse for
8 birds nesting in the marsh I believe we've addressed
9 that in the staff assessment.

10 But very briefly, I can say that it is -- it's
11 practice among the U.S. Fish and Wildlife Service, the
12 California Department of Fish and Wildlife, and other
13 lead agencies to limit the amount of noise that
14 construction projects have on the adjacent wildlife
15 habitat.

16 Either by scheduling the construction activities
17 or the noisiest ones outside the nesting season for
18 birds, for example, or to use other mitigation methods
19 to minimize the sound impacts, such as the things listed
20 in both our versions of the measure.

21 Typical thresholds, and they're often expressed
22 as thresholds, are on the order of 60 or 70 decibels,
23 and as thresholds, not as action levels as we've
24 suggested here.

25 MS. FOWLER: There's also even been thresholds

1 or guidance depending on what -- as high as 90 DBA. So,
2 it seems to be a wide range of whether you go from 60,
3 65, 70, even as high as 90 has been used for like Muir
4 Woods and Spotted Owl.

5 So, there's a wide range of what is being
6 proposed as an appropriate decibel threshold or
7 guidance, whichever term you want to use.

8 MR. WHITE: So, our recommendation is --

9 MR. BASTASH: And just to follow up on that a
10 little bit, and then BIO-8 actually includes the
11 evaluation of whether something is actually present, and
12 then an evaluation of whether something is actually
13 disturbed.

14 So, I'm not sure I still see that BIO-9 provides
15 any additional protection that isn't already afforded by
16 BIO-8, I think that's our --

17 COMMISSIONER MC ALLISTER: So, is there a
18 process solution here? So, I mean it seems like we're
19 arguing over merits that we don't have a true factual
20 foundation for. So, I guess I'm wondering how we move
21 on here and determine what -- you know, whether there
22 can be an agreement to disagree, or some agreement on
23 process going forward.

24 But the -- yeah, so are we at an impasse or not,
25 I guess is the question?

1 MR. BELL: Occasionally, in these type of
2 situations we get to a point where you have to agree to
3 disagree.

4 And as the decision makers, you have to make a
5 decision.

6 I suggest in this case that -- well, staff is
7 going to be submitting a revised set of conditions based
8 on any agreements that we've had with the Applicant over
9 those conditions, but also recommending some changes
10 that the Applicant may not agree with, but all that
11 staff believe are based on the evidence that we've
12 heard.

13 It could be that the decision makers are just
14 going to have to decide between two options based on the
15 evidence.

16 COMMISSIONER MC ALLISTER: I mean I think we're
17 all clear that at some point a decision has to be made.
18 But I want to just make sure that everybody's got their
19 cards on the table so we can actually base it on the
20 best information we can get.

21 And it sounds like there is a disagreement on
22 what -- well, about thresholds and whether they even
23 should be adopted.

24 And whether or not that's the case, on a
25 monitoring plan going forward, which it looks like it's

1 already in, in some fashion.

2 So, in any case, is there anything else new that
3 anybody wants to contribute here? Okay.

4 MR. WHITE: I don't think so. And I do think
5 that our recommended revision to BIO-9 is going to look
6 a fair amount like the Applicant's recommended revision
7 to it.

8 HEARING OFFICER COCHRAN: Okay.

9 COMMISSIONER MC ALLISTER: Okay great, thanks.

10 HEARING OFFICER COCHRAN: Thank you. We'll look
11 forward to receiving that.

12 MR. WHITE: Okay.

13 HEARING OFFICER COCHRAN: Ms. Rudman, do you
14 have any questions on the testimony from the Biology
15 Panel?

16 MS. RUDMAN: Yes, I do. Why do you believe that
17 the Energy Commission Project Manager would be the
18 appropriate decision maker? Shouldn't it be a biologist
19 or somebody with expertise in the area?

20 MR. WHITE: The CPM is the manager at that
21 point, but has the whole Energy Commission staff to
22 consult with and typically does consult with biology
23 staff on appropriate things, or other resource area
24 staff. So that's sort of, I guess, shorthand for
25 working with Energy Commission staff to work that out.

1 MS. RUDMAN: Yeah, so it seems -- okay, I have
2 no further questions.

3 HEARING OFFICER COCHRAN: Thank you.

4 MS. FOSTER: Can I ask a quick question, and
5 this is actually towards Mr. Bell's last statement about
6 when the conditions would be submitted.

7 Is it possible to provide conditions, especially
8 for a topic such as this, the proposed revisions prior
9 to whatever date the Committee sets for our post-hearing
10 briefing to be due? So, therefore, Applicant's able to
11 address those, have a time to review them and address
12 them in our post-hearing briefing?

13 MR. BELL: That would be my preference, but
14 that's a scheduling concern we can talk about the end,
15 because that will encompass all the different subject
16 matters.

17 Can we pass that to the end?

18 HEARING OFFICER COCHRAN: Yes.

19 Staff, did you have any questions of the panel?

20 MR. BELL: No questions on behalf of staff.

21 HEARING OFFICER COCHRAN: Is there anything
22 further on biology?

23 Thank you. Dr. Dooling, thank you for calling
24 in. We appreciate your participation.

25 And the panel is excused and we thank you for

1 your participation.

2 That went very well, thank you all very much.

3 So, shall we move on to cultural resources? Mr.
4 Bell, was cultural resources one of the groups or was
5 there something else?

6 MR. BELL: If I had my druthers, I would call
7 alternatives next.

8 HEARING OFFICER COCHRAN: I think we're going to
9 do alternatives.

10 MR. BELL: That should be fairly quickly.

11 HEARING OFFICER COCHRAN: Do you want to do
12 alternatives or do you want to do it last?

13 (Off-record colloquy between Committee Members
14 and the Hearing Officer)

15 HEARING OFFICER COCHRAN: Okay, we'll call
16 alternatives next, you've won us over.

17 MS. FOSTER: Applicant sees that Stephen O'Kane
18 is listed as the witness for alternatives. And he is
19 the witness for alternatives for certain topics. It
20 depends on what aspect of the alternatives we would like
21 to discuss.

22 We also have Robert Mason, Matt Frank and, if
23 needed, Jerry Salamy.

24 HEARING OFFICER COCHRAN: Okay, whoever is
25 needed.

1 MR. BELL: We're in the same boat here. We have
2 Negar Vahidi and Scott Debauche present, but we may call
3 additional witnesses if the subject matter calls for it.

4 HEARING OFFICER COCHRAN: Okay.

5 MR. O'KANE: Sorry for that, we're just finding
6 one of the other witnesses.

7 HEARING OFFICER COCHRAN: Oh, that's okay.

8 MR. O'KANE: There he is. Are we ready?
9 Would you like us to introduce ourselves?

10 HEARING OFFICER COCHRAN: Yes, if you could
11 identify yourselves and who you're testifying on behalf
12 of?

13 MR. O'KANE: Stephen O'Kane, Vice-President of
14 AES Southland Development, the Applicant for the
15 project.

16 MR. FRANCK: Matt Franck, CH2M Hill, consultants
17 for the Applicant.

18 MR. MASON: Robert Mason, consultant for the
19 Applicant, also CH2M Hill.

20 MR. SALAMY: Jerry Salamy, CH2M Hill, consultant
21 for the Applicant.

22 MS. VAHIDI: Negar Vahidi with Aspen
23 Environmental Group, consultant to the Energy Commission
24 and alternative staff.

25 MR. DEBAUCHE: Scott Debauche, Aspen

1 Environmental Group, consultant to the Energy
2 Commission.

3 HEARING OFFICER COCHRAN: Okay.

4 MS. RUDMAN: I would argue here I am an expert
5 on parts of the topic and would like to present
6 testimony or, you know, participate as a panel member.

7 HEARING OFFICER COCHRAN: Okay, there is a
8 continuing objection to your participation, so it may be
9 that you'll want to make focused objections as we move
10 through.

11 Are there any objections, other than the
12 continuing objection, to any of the panel members
13 serving as expert witnesses on the subject of
14 alternatives?

15 MR. BELL: None on behalf of staff.

16 MS. FOSTER: None on behalf of Applicant.

17 HEARING OFFICER COCHRAN: Okay, if you could all
18 please raise your right hand?

19 Sorry, I was distracted by a bright, shiny bulb.

20 (Laughter)

21 (Alternatives Panel Members were

22 sworn collectively by the Hearing Officer)

23 HEARING OFFICER COCHRAN: Thank you. Okay, I
24 think that the best way to handle the objection is if,
25 as it comes up, we could get a little bit more focused

1 on that.

2 Why don't we start with -- I think that this was
3 Ms. Rudman's area that she had concerns about, so I
4 think we're going to mix up the order a little bit just
5 to confuse everyone.

6 We're going to start with you, Ms. Rudman, as to
7 your opening statement on alternatives.

8 MS. RUDMAN: Okay. So, my name is Monica
9 Rudman. And my opening statement is that there are --
10 the alternatives analysis is not complete. That what is
11 now the no-project alternative is an alternative that
12 looks at using recycled water, which would be extensive
13 structures that would need to be built.

14 And I think those would be subject to CEQA, so
15 that would be not a no-project alternative.

16 I think what will be a no-project alternative
17 would be if nothing was to happen. And in that case, I
18 believe there's many questions about what the project
19 does look like. Would the synchronous condensers
20 remain? Would HV Generating Stations Units 1 and 4 be
21 closed, but remain on the site? Would they be
22 demolished? Would the synchronous condenser project
23 remain?

24 So, for me, it remains unanswered.

25 And the Energy Commission -- the staff, which

1 should asses or there should be an assessment of the
2 environmentally superior alternative. And that would
3 consist of alternatives that meet the objectives of the
4 project.

5 And these include energy efficiency, demand
6 response, and energy storage.

7 And, for example, there are a variety of
8 strategies that are outlined in an article called
9 *Teaching the Duck To Fly* that can be used to integrate
10 renewables.

11 And these include target energy efficiency to
12 the hours when loads ramp up sharply, orient fixed
13 access solar panels to the west, substitute solar
14 thermal with a few hours of storage in place of some
15 projected solar PV generation, implement service
16 standards, allowing the grid operator to manage electric
17 water heating loads to shave peak and optimize
18 utilization of available resources, require new, large
19 air conditioners to include two hours of thermal storage
20 capacity under grid operator control, retire inflexible
21 generating plants with high off-peak must surrender
22 coordinates, concentrate utility demand charges into the
23 ramping hours to enable price-induced changes in load,
24 deploy electrical energy storage in targeted locations,
25 including electric vehicle charging controls, implement

1 demand response programs and use interregional power
2 transactions to take advantage of the diversity in loads
3 and resources.

4 And this is an alternative. These types of
5 programs have not really been fully addressed and I
6 think they're viable and should be considered.

7 COMMISSIONER MC ALLISTER: So, let's see, so
8 those are -- I'm the Lead on energy efficiency, as well,
9 and certainly very supportive of that.

10 And I would just note that there is a goal for a
11 lot of preferred resources in the SONGS-impacted area
12 so, you know, that is out there as well.

13 I guess I'm really cognizant and just want to
14 caution that this -- I guess that the system -- so, what
15 we're doing here, this is a proceeding about one plant.
16 And this is not about the sort of need for this plant
17 versus other alternatives in the system wide level.

18 That will get determined, essentially, in a
19 broader context that largely is in the PUC's court.

20 So, you know, whether those options should be
21 part of overall procurement that they order the
22 utilities to do is kind of in their court, not
23 particularly within this power plant discussion.

24 But certainly broadly speaking I'm sympathetic
25 of that. But let's, I think, try to keep the discussion

1 focused on the particulars of this application so --

2 MS. RUDMAN: Well, I mean it is required, I
3 believe, under CEQA to look at a variety of different
4 alternatives, including an environmentally superior
5 alternative.

6 So from that perspective, that's why I'm bring
7 it up because it is part of a normal --

8 COMMISSIONER MC ALLISTER: And certainly that --
9 we can certainly vet those other options in terms of
10 what we know about them.

11 HEARING OFFICER COCHRAN: Do any of the other
12 panelists have any comments that they would like to make
13 on the alternatives analysis that currently exists
14 before us, through your direct testimony and the other
15 items in the record?

16 MR. O'KANE: The Applicant agrees with the
17 staff's analysis that was conducted in the alternative
18 analysis. We don't have any contested issues in there.

19 We'd like to note that we did make an assessment
20 of other viable -- other technologies for the site,
21 including renewables, wind and solar.

22 And I'd like to remind the panel of the primary
23 objectives of the plant, which is to provide 939
24 megawatts of local, reliable energy from the Huntington
25 Beach site.

1 And the long list of options that were just
2 listed can't meet that primary objective, which is to
3 provide that local area, reliably, that much capacity
4 from this local spot.

5 HEARING OFFICER COCHRAN: Staff, did you have
6 any comments?

7 MS. VAHIDI: Just one point of clarification on
8 CEQA alternatives requirement and counsel can chime in.

9 CEQA doesn't actually specifically require
10 analysis of an environmentally superior alternative. It
11 tells you to, among the alternatives, look at if there
12 is one, to select an environmentally superior
13 alternative.

14 And you don't necessarily have to have an
15 environmentally superior alternative. You may not
16 actually come up with one so, just a point of
17 clarification.

18 And CEQA Guideline section 15126.6 provides the
19 details on alternatives analysis, just as a point of
20 clarification.

21 HEARING OFFICER COCHRAN: Thank you.

22 There is an outstanding question, though, about
23 the synchronous condensers. And that is how long are
24 they going to continue at the site? Will they be
25 repurposed or reused in the greater area, all as set

1 forth in the order after pre-hearing conference?

2 And I think that the Committee will like to hear
3 about that and I think that this is probably the best
4 place to raise it, given that they were mentioned.

5 MR. O'KANE: So, the record already describes
6 when the units would be taken offline in the development
7 of the Huntington Beach Energy Project. That's laid out
8 in our schedule for construction and demolition of the
9 units.

10 The question with respect to repurposing them
11 somewhere else, well, electrically VARS really can't be
12 moved very far. You only need them in certain areas.
13 They're very locally -- they're a very local-specific
14 requirement.

15 It wouldn't be feasible to move -- the
16 synchronous condensers are really the generators of the
17 old Units 3 and 4, very, very large, 1950s, 1960s era
18 generators in place on that turbine deck that are
19 synchronized to the electric grid.

20 It wouldn't be feasible to move those to another
21 location, build another -- build another facility that
22 could house those specific generators.

23 It was actually an opportunity that was realized
24 because of the very, very local need.

25 COMMISSIONER MC ALLISTER: So, these would be

1 disassembled and recycled, essentially, or what would
2 happen to them?

3 MR. O'KANE: That's correct they will be
4 disassembled and recycled.

5 Synchronous condensers could be employed
6 elsewhere if -- you know, for our other facilities if
7 such a need is needed at another specific location and
8 they exist already.

9 MS. RUDMAN: This is Monica Rudman. I'd like to
10 add there's been discussions of putting synchronous
11 condensers at the site of San Onofre, the former San
12 Onofre Nuclear Power Plant, or synchronous condensers
13 can be put at substations. So, they would provide
14 voltage support in different locations.

15 It doesn't necessarily have to be right here to
16 provide the same function.

17 HEARING OFFICER COCHRAN: Does anyone have any
18 questions of the panel? Applicant?

19 MS. FOSTER: Non.

20 HEARING OFFICER COCHRAN: Staff?

21 MR. BELL: None on behalf of staff.

22 HEARING OFFICER COCHRAN: Any additional
23 questions, Ms. Rudman?

24 MS. RUDMAN: No, but just clarifying the
25 procedure, we were asked to provide a whole, you know,

1 assessments of alternatives as well, which I did -- or
2 the feasibility of the alternatives to be implemented,
3 which I did prepare on that. So, is that going to be
4 allowed at a different or is this now or --

5 HEARING OFFICER COCHRAN: In the briefing.

6 MS. RUDMAN: Oh, it wasn't at the hearing. I
7 thought it -- yeah, to the order.

8 HEARING OFFICER COCHRAN: Oh, I'm sorry. So,
9 you're talking about the alternatives about impact over
10 time of preferred resources, such as renewables?

11 MS. RUDMAN: Right, I've prepared quite a bit on
12 that so --

13 (Off-record colloquy between Committee Members
14 and the Hearing Officer)

15 HEARING OFFICER COCHRAN: So, the question
16 actually was to the Applicant as to if additional
17 renewables became available over time, not looking for
18 speculation --

19 COMMISSIONER MC ALLISTER: So, I'll ask the
20 question. So and certainly happy to hear from Ms.
21 Rudman, as well.

22 I don't want to take up a lot of time on this
23 and I asked a little bit about it before. So, they're
24 relatively long in implementation period. It came up in
25 the context of best available control technology before.

1 But, similarly, if other preferred resources pan
2 out in this region, such that the need for ramping, the
3 need for some of the qualities of this plant, maybe it
4 gets reduced for example, how will you respond to
5 those -- well, I would presume your answer.

6 But if the landscape changes in terms of the
7 electrical grid situation and the need for the kinds of
8 attributes that this plant would provide, how would you
9 go about dealing with those? What flexibility do you
10 have built in to the implementation process?

11 MR. O'KANE: As I said before, when we had the
12 discussion about technologies, the project's been
13 designed for that future. We are assuming that the
14 significant amounts of demand side management, renewable
15 resources all do come to fruition and that this plan is
16 actually designed for that reality.

17 COMMISSIONER MC ALLISTER: Well, I'm thinking
18 about things like demand response where, you know, if
19 you're particularly talking about ramping capability,
20 quick start, quick dispatch, you know, there are
21 preferred resources such as storage, such as demand
22 response that could actually obviate some of those
23 needs.

24 And so that's all I'm trying to ask is sort of
25 what -- if those came on at some scale, and I think

1 there's a very legitimate, big questions about whether
2 that's going to happen, you know, there's diversity of
3 opinion about that.

4 But I'm just asking if that were to pass, then
5 what would that -- what would the implications be for
6 the plant?

7 MR. O'KANE: Once it's up and operating it would
8 change its operating profile.

9 So, what it would mean is it would be needed
10 less for integration and more for its primary use. And
11 its primary use is to provide local area capacity, local
12 area reliability. That's it's primary use.

13 You know, the CAL-ISO described this plant as a
14 three-fer. You get three for one. You get your local
15 area reliability, you get your ramping capability, you
16 get your reductions in greenhouse gases.

17 So, once the plant has been built or is in
18 construction and these things do come to fruition, it
19 would change how the plant is actually operated over
20 time.

21 COMMISSIONER MC ALLISTER: Okay, thanks.

22 HEARING OFFICER COCHRAN: Would anyone else care
23 to speak to that question?

24 MR. O'KANE: I might add, too, the less ramping
25 it has to do would actually make it more efficient. It

1 would then mean it would only run, if totally needed, at
2 its optimum point.

3 COMMISSIONER MC ALLISTER: Would you -- so, if
4 that scenario were to play out, would the plant likely
5 be operating more hours or fewer hours than as currently
6 planned?

7 MR. O'KANE: That's really difficult. That's
8 speculation, because you're asking is there a way to --
9 because there's ramping and ancillary services. There's
10 also actual capacity needs, energy needs. So, we'd have
11 to run a new scenario to look at where it lies in the
12 dispatch stack and come up with a scenario.

13 COMMISSIONER MC ALLISTER: Right. So thanks,
14 that's the extent of my question there.

15 HEARING OFFICER COCHRAN: Does anyone else wish
16 to speak to that question?

17 MS. RUDMAN: I would like to. If you see that I
18 already have submitted to the CPUC, which they ran
19 PLEXUS Models from different scenarios. And if you do
20 have energy demand response and other aspects of energy
21 efficiency coming into the market, which we fully expect
22 based on the programs that are put in place, and I can
23 describe some of those, that they have found that there
24 is no need for ramping at this time for, you know, a
25 flexible ramping product.

1 So, I would recommend taking a look at that.

2 COMMISSIONER MC ALLISTER: So, yeah, you
3 submitted that to the docket already, right?

4 MS. RUDMAN: Yes.

5 COMMISSIONER MC ALLISTER: So, that's not new
6 evidence.

7 MS. RUDMAN: No.

8 COMMISSIONER MC ALLISTER: Great, thanks.

9 MS. RUDMAN: But I do have new -- I did, in
10 response to your question, I did put kind of a quick
11 description together of some of the emerging programs or
12 the programs that are currently in effect, why I believe
13 that there's going to be a sustained push to do demand
14 response, energy efficiency and renewables and that
15 means the plant really is not going to be needed.

16 COMMISSIONER MC ALLISTER: So, I guess the
17 question really is does the Committee feel like they
18 need that additional input right now, or have it be put
19 into the docket?

20 I feel reasonably knowledgeable already about
21 the program landscape and how it's evolving working, you
22 know, closely with the PUC. But not all PUC issues are
23 actually relevant for the process that we're going
24 through here.

25 MS. RUDMAN: You did --

1 COMMISSIONER MC ALLISTER: So, I think it's up
2 to us to --

3 MS. RUDMAN: You did request it though, that's
4 the --

5 COMMISSIONER MC ALLISTER: Well, absolutely.

6 MS. RUDMAN: Yeah.

7 COMMISSIONER MC ALLISTER: So, I think it is
8 relevant for the docket and then we can sort through
9 what's going to influence the decision.

10 HEARING OFFICER COCHRAN: Do the parties have
11 any -- does the Applicant have any objection to that
12 approach?

13 MS. FOSTER: I don't have any objection to that
14 approach, but I do want to object to the extent that
15 "need" is discussed in this proceeding as it falls
16 outside the CEC's siting authority so --

17 COMMISSIONER MC ALLISTER: That's exactly what
18 I'm trying to say in terms of what's relevant for the
19 docket. And it sounds like with this testimony that you
20 have prepared, it's going to fall on both sides of that
21 line.

22 So, I just want to make sure that we sort
23 through it as appropriate, and with some time, which we
24 don't really have right now at this moment.

25 MS. RUDMAN: Okay. Well, what it is, it doesn't

1 get into the issue of need. It gets into a description
2 of the current programs related to demand response,
3 energy efficiency, renewables and storage, and some of
4 the current laws related to that, and why I -- why it
5 demonstrates that there is going to be a large quantity
6 of these preferred resources that will continue to be
7 provided in the market.

8 It doesn't get to need, it just addresses your
9 question.

10 HEARING OFFICER COCHRAN: Okay.

11 COMMISSIONER MC ALLISTER: Well, I think the
12 ORA, for example, much of what they say is about need.
13 And there is a lot of uncertainty about those programs
14 and how effective they'll actually be going forward.

15 So, I think there is quite a bit of room for
16 interpretation here, which is what we'll have to do.

17 MS. RUDMAN: Right. Well, that's why I think
18 you wanted additional information, which I'm prepared to
19 provide today.

20 COMMISSIONER MC ALLISTER: Okay, so I'd
21 appreciate it if we docket it.

22 HEARING OFFICER COCHRAN: Yes.

23 MR. BELL: And staff would join in the objection
24 from the Applicant.

25 And also, just to address the issue of the

1 questions asked by the Committee, it's staff's
2 understanding that not all the questions apply to all
3 the parties.

4 For example, the Committee's question of what
5 will happen to the synchronous condensers.

6 HEARING OFFICER COCHRAN: Right.

7 MR. BELL: Yeah, I don't know. That's not
8 directed at staff.

9 And as I understand it, Mr. O'Kane has answered
10 the question that the Committee asked, and I understand
11 Ms. Rudman says it doesn't have to do with need.

12 But we join in the Applicant's objection because
13 she is talking about need, which is slightly different
14 from the question that was asked by the Committee. And
15 I think Mr. O'Kane --

16 MR. O'KANE: Yeah.

17 MR. BELL: So, we join in Applicant's objection.

18 HEARING OFFICER COCHRAN: We appreciate that.

19 COMMISSIONER MC ALLISTER: Thanks.

20 HEARING OFFICER COCHRAN: Anything further on
21 the topic of alternatives?

22 MS. RUDMAN: Well, I would like answers to my
23 questions, like what's going to happen if the project
24 doesn't -- you know, what is the no-project alternative?
25 If this project didn't go forward, what is that site

1 going to look like?

2 MR. BELL: Yeah, I'd like to answer on behalf of
3 staff, and that is that's covered in Section 6,
4 Alternatives.

5 Staff has completed an alternatives analysis that
6 will answer the questions. And I believe Applicant has
7 done the same.

8 MS. FOSTER: Yes.

9 HEARING OFFICER COCHRAN: So, anything beyond
10 that would be argument that should be contained in the
11 briefs.

12 MS. RUDMAN: What staff and the Applicant have
13 said is that the no-project alternative would involve
14 using recycled water and then continuing the power
15 plant. But then later they say it's not feasible.

16 So, to me, it's very still -- it's very unclear.
17 And I don't believe -- if they say it's not feasible and
18 involves a lot of construction of supporting facilities,
19 I'd have to wonder if this project wasn't adopted what
20 does the site look like?

21 I still -- I'm not clear on that.

22 (Off-record colloquy between Committee Members
23 and the Hearing Office)

24 HEARING OFFICER COCHRAN: So, I guess that is a
25 question for the Applicant. What does the site look

1 like if the application for certification is denied?

2 MR. O'KANE: They believed the staff did a good
3 job of explaining in the no-project analysis of the
4 reasonable foreseeable future, which would be some of
5 those alternatives that were described.

6 HEARING OFFICER COCHRAN: Okay.

7 MR. O'KANE: Which didn't -- yeah, nothing
8 further.

9 HEARING OFFICER COCHRAN: So, that would include
10 Units 3 and 4 being demolished or --

11 MR. O'KANE: Sorry, the question that trailed
12 off include Units 3 and 4, sorry?

13 HEARING OFFICER COCHRAN: Being demolished, I'm
14 sorry, because that is discussed.

15 MR. O'KANE: Yeah, Units 3 and 4 on the
16 Huntington Beach side are currently under a CEC license
17 and have a license to operate through the end of 2020,
18 at which point a closure plan would have to be developed
19 and removal of much of the equipment there.

20 HEARING OFFICER COCHRAN: Okay.

21 MR. O'KANE: Units 1 and 2 are not under license
22 and could continue to operate, but would have to find a
23 way to comply with the once-through cooling policy.

24 HEARING OFFICER COCHRAN: Okay.

25 MS. RUDMAN: And can I ask, what is your -- you

1 have a closure plan which could be you just lock up the
2 doors and go away, and so the units stay in place. Do
3 you have a demolition plan?

4 MS. FOSTER: I would like to object to that
5 question as it relates to a project that's outside the
6 scope of this proceeding, but I just wanted to state
7 that for the record.

8 (Off-record colloquy between Committee Members
9 and the Hearing Officer)

10 HEARING OFFICER COCHRAN: Well, I think that Mr.
11 O'Kane has just answered that. He has a license for 3
12 and 4 through December of 2020. And then Units 1 and 2
13 have no license, but would need to comply with the
14 elimination of once-through cooling.

15 MS. RUDMAN: But in order to comply you could
16 just kind of lock the doors and walk away.

17 MR. O'KANE: Huntington Beach Units 3 and 4 have
18 a current CEC license 00AFC13, I believe is the number,
19 which have a number of conditions of certification
20 covering closure, development of a closure plan.

21 And I would direct Ms. Rudman to that compliance
22 proceeding for all of those conditions.

23 MS. RUDMAN: A closure plan.

24 HEARING OFFICER COCHRAN: Anything else on
25 alternatives, going once, going twice, fair warning.

1 Thank you, panel, for serving.

2 And we'll move on. Where shall we go next?

3 (Off-record colloquy between Committee Members
4 and the Hearing Officer)

5 HEARING OFFICER COCHRAN: Okay, at this point
6 we're going to start our public comment period. It is
7 5:30ish. Are there any members of the public who would
8 like to address the Committee on the Huntington Beach
9 Energy Project, 12-AFC-02. Don't all rush to the
10 microphone.

11 Thank you.

12 MR. HANSEN: Am I the only one, really.

13 HEARING OFFICER COCHRAN: You're the only one I
14 see. So, if you can give us your name?

15 MR. HANSEN: Absolutely. Good afternoon, my
16 name's Don Hansen and I served as a Huntington Beach
17 City Council member for eight years in the City of
18 Huntington Beach and I was Mayor in the year 2012.

19 I'm also a resident of Southeast Huntington
20 Beach and I live approximately two miles from the plant,
21 with my family.

22 So, I'm here today just to express local support
23 for the application and this process moving forward.

24 One of my main initiatives as a member of the
25 City of Huntington Beach's City Council was really to

1 look at a lot of our view corridors, and the areas that
2 could use improvement. And that ranged from retail, as
3 well as some of the industrial uses that are around us.

4 And I think the members of our community will
5 welcome, with open arms, the full retrofitting of this
6 facility. Not only from the aesthetic environment
7 improvement that we'll have from the view corridor but,
8 really, as a resident of the county and the
9 understanding of the impacts of some of the power plant
10 moves that have been made in recent history, most
11 specifically the decommissioning of SONGS and the
12 potential impact on the power supply for this region.

13 You know, my children go to school in the area.
14 My daughter will attend Edison High School. All these
15 will be impacted, I think, positively by, you know,
16 reducing the smoke stacks, by changing the view
17 corridors, all of the improvements that will happen
18 within the facility just from an aesthetic stand point.

19 Not to mention the enhancements that the
20 facility will generate from an efficiency stand point
21 from the new operation.

22 So, you know, as a member of this community in
23 Huntington Beach, I think every one of us in Huntington
24 Beach is an environmentalist, maybe not with a big "E",
25 but with a small "e".

1 And, you know, we care about our oceans, we care
2 about our local environment, we care about all the
3 things that impact this wonderful community.

4 And, you know, as someone who's been elected by
5 the voters twice in this area, I can speak confidently
6 in saying it will be a welcome change from what we have
7 today.

8 It will be welcomed from an efficiency stand
9 point, from the environmental awareness that we all
10 share as a community, and then the local impact of both
11 the jobs and the other side benefits that are probably
12 outside the purview of this Commission, but all will be
13 welcomed by this community.

14 So, you know, if you haven't been welcomed to
15 Huntington Beach already, you know, it's my pleasure to
16 do so. And I'd like to add my voice as one to support
17 this project wholeheartedly.

18 HEARING OFFICER COCHRAN: Thank you.

19 MR. HANSEN: Thank you.

20 HEARING OFFICER COCHRAN: Any other members of
21 the public?

22 MR. BELL: Yes, next up we have Barbara
23 Delgleize.

24 HEARING OFFICER COCHRAN: Okay.

25 MS. DELGLEIZE: Good evening and thank you. I,

1 too, am a local resident of the City of Huntington
2 Beach, lived in the community 40 years.

3 And I'm excited about the opportunity that we
4 have to replace this aging power plant with a cleaner,
5 more modern, environmentally friendly one.

6 The new plant will be more efficient, using more
7 natural gas to create more power and significantly
8 reducing the emissions that we see.

9 And the new plant will have lower stacks,
10 greatly improving the look and views for those living in
11 the neighborhood, the neighboring communities, and it
12 will serve as an iconic landmark with the new giant
13 surfboards and waves.

14 The new plant will be more flexible. And I wish
15 to communicate that it's critical for helping our State
16 integrate its renewable energy.

17 The new plant will be quieter and will add
18 additional sound walls.

19 And beyond the improvements of the plant,
20 itself, AES is investing nearly \$1 billion into the
21 project and will create paying jobs, local hires, and
22 increased tax revenue for local services.

23 The project will boost our local economy, which
24 at the same time help our State meet its clean energy
25 goals.

1 And besides that, I think the other part is that
2 by improving this facility it brings more certainty in a
3 time when we've had some serious things in our own
4 arena, South County, Orange County with San Onofre going
5 offline. This will be more of a way to protect our
6 residents of the City of Huntington Beach, and to cities
7 there out that it serves.

8 For this reason, I support the project and
9 encourage you to do the same. Thank you for your time.

10 HEARING OFFICER COCHRAN: Thank you.

11 MR. BELL: Next up we have Charlotte Augustein.

12 MS. AUGUSTEIN: Hello, welcome to Huntington
13 Beach.

14 As a resident, a realtor for Huntington Beach,
15 and President of the Huntington Beach Educational
16 Foundation, I just want to let you know we fully support
17 AES's plans for upgrades and improvements. And I
18 support everything that anyone has come up here and
19 said. You don't need to hear it again. Just I know
20 you'll make the right decision. That's it, thanks.

21 HEARING OFFICER COCHRAN: Thank you.

22 MR. BELL: John Bailey.

23 MR. BAILEY: Hi, I'm John Bailey, a resident of
24 Huntington Beach since the 70's. As far as I can tell,
25 it's a wonderful project and improves the view on the

1 shoreline.

2 The objections I've heard seem to be objections
3 just to don't do anything kind of thing. And I heartily
4 endorse the project and hope it goes forward.

5 HEARING OFFICER COCHRAN: Thank you.

6 MR. BELL: Are there any other members of the
7 public present who would like to give public comment?

8 That's all we have.

9 HEARING OFFICER COCHRAN: Okay, thank you very
10 much.

11 Is there anyone online who would like to speak
12 at this time, and do public comment?

13 MR. BELL: I am told that Assemblymember Travis
14 Allen is en route and he should be here shortly.

15 HEARING OFFICER COCHRAN: Okay.

16 MR. BELL: Once he gets here perhaps we can let
17 him address the Committee.

18 COMMISSIONER MC ALLISTER: We can take a hiatus
19 and let him speak.

20 MS. RUDMAN: Well, we didn't cover greenhouse
21 gas impacts.

22 HEARING OFFICER COCHRAN: No, we haven't covered
23 cultural --

24 COMMISSIONER MC ALLISTER: No, there's a number
25 of things.

1 MS. RUDMAN: Okay.

2 HEARING OFFICER COCHRAN: -- land use, HAZMAT.

3 Everyone is unmuted, if there's anyone who would
4 like to make public comment please do so now. Hello?

5 I hear none, so if we can re-mute people, Mr.
6 Kramer.

7 Okay, where shall we go now, cultural, land use,
8 HAZMAT, water, soils.

9 MR. BELL: Cultural resources.

10 HEARING OFFICER COCHRAN: Cultural resources,
11 okay.

12 (Off-record colloquy between Committee Members
13 and the Hearing Officer)

14 COMMISSIONER DOUGLAS: So, as we go into
15 cultural, I'll just take this opportunity to say that
16 this last panel was a refreshing change in the sense
17 that the more informal panel format seemed to be fairly
18 effective. And we heard people -- we heard our expert
19 witnesses talking to each other, asking questions in a
20 more conversational and informal way, as opposed to
21 another panel today that we spent a long time on, where
22 the questions appeared to be more cross-examination
23 style, however asked by a witness.

24 The Committee would be -- the Committee, at the
25 pre-hearing conference, offered the parties at the

1 opportunity to tell us if there were sections where they
2 wished for formal cross-examination. We weren't told
3 that the parties wanted any.

4 So, we are really going to be looking for the
5 questions being open-ended and aimed at soliciting
6 information, not aimed at impeachment or other types of
7 more lawyerly techniques.

8 If the attorneys would like to ask some
9 questions, as they have been from time to time
10 throughout the day, you are, of course, welcome to.

11 But we really want to keep the dialogue between
12 the witnesses substantive.

13 So with that, I'm looking forward to this panel.

14 HEARING OFFICER COCHRAN: Okay, if you can
15 identify yourselves for the record, with your name and
16 the party for whom you're appearing?

17 MR. HELTON: My name is Clinton Helton. I'm a
18 Senior Cultural Resources Specialist with the CH2M Hill.
19 I was the lead for the preparation of the Applicant's
20 cultural resources analysis.

21 HEARING OFFICER COCHRAN: Thank you.

22 MR. ROARK: My name is Gabriel Roark,
23 Archeologist with the Energy Commission. I was
24 responsible for coordinating the staff assessment and
25 specifically, personally wrote the archeological

1 assessment.

2 HEARING OFFICER COCHRAN: Thank you. Are there
3 any objections to the witnesses being considered as
4 experts on cultural resources?

5 MS. FOSTER: None on behalf of Applicant.

6 MR. BELL: None on behalf of staff.

7 MS. RUDMAN: None on behalf of Monica Rudman.

8 HEARING OFFICER COCHRAN: Thank you.

9 So, if you could please raise your right hand?
10 (Cultural Resources Panel Members were
11 sworn collectively by the Hearing Officer)

12 HEARING OFFICER COCHRAN: Thank you.

13 So, let's -- my understanding is that there are
14 essentially two areas of dispute and they relate to
15 conditions of certification CUL-1 and CUL-6.

16 How do you want to handle these? Do you want
17 to handle them one at a time? Do you want to provide a
18 broad overview?

19 What's easiest for you all?

20 MR. ROARK: Clint, I think these are handled
21 well separately, and I think that CUL-1 we could
22 probably deal with pretty summarily.

23 MR. HELTON: Okay.

24 MR. ROARK: If that's all right with you?

25 HEARING OFFICER COCHRAN: Okay.

1 MR. HELTON: That's fine with me. And then
2 maybe after CUL-1 I could just give a very brief summary
3 of the analysis and findings, and we could go to CUL-6.

4 HEARING OFFICER COCHRAN: Okay.

5 MR. HELTON: So, Applicant has objected to CUL-1
6 and CUL-1 deals with the qualifications and approval of
7 the cultural resources specialist.

8 The Applicant has proposed to remove CUL-1 in
9 its entirety.

10 CUL-1, as it's proposed, gives the Energy
11 Commission broad ability to reject a cultural resources
12 specialist and we believe that it does not adhere to the
13 Energy Commission's requirement for qualifications for a
14 cultural resources specialist.

15 So, we respectfully disagree entirely with that
16 condition.

17 MR. ROARK: I understand from the opening
18 testimony of Mr. Helton that he had expressed a concern
19 about possible costs and delay implications with the
20 inclusion of a specific paragraph in the staff proposed
21 CUL-1.

22 That paragraph can be found on 4.3-60. I'm
23 going to refrain from reading it verbatim.

24 HEARING OFFICER COCHRAN: Thank you.

25 MR. ROARK: But what it essentially says is that

1 the CPM has the latitude to deny or revoke, under
2 specific conditions, albeit broadly stated conditions --
3 may deny or revoke a particular cultural resource
4 specialist.

5 To put the cultural resource specialist in
6 context for you all, the cultural resource specialist is
7 the eyes and ears for the Applicant, as well as Energy
8 Commission once construction and any monitoring
9 commences.

10 They are essentially the first line of defense
11 or cultural resources monitors that they assign to the
12 project.

13 Staff's concern, and reason for including this
14 particular paragraph, which can look Draconian to some,
15 is when you read the balance of Energy Commission's
16 conditions, and we have employed a similar package to
17 what we've proposed for what we've proposed for
18 Huntington Beach Energy Project, it puts an incredible
19 onus on the cultural resources specialists to make
20 decisions.

21 Granted, they do have to make those decisions in
22 consultation with the CPM. But beyond that, there is no
23 stated recourse anywhere, in conditions I've seen,
24 including the general conditions or what I think we call
25 construction conditions, now, that would allow the CPM,

1 in instances of repeat failure to implement the
2 conditions, including the license -- no recourse
3 whatsoever, that I'm aware of, for them to ask that the
4 project owner have that individual step down and a
5 substitute step in.

6 There is provision, on the other hand, in one of
7 the other conditions for a CRM, a cultural resources
8 monitor, to fill in the gap for a few days so that
9 project construction may continue in the absence of a
10 CRS, should they have to quit or should they have taken
11 actions that would call for their removal, that there is
12 a provision for a CRM to step in and take over that role
13 until such a time as the Applicant is able to assign a
14 new CRS.

15 COMMISSIONER DOUGLAS: So, just as a question,
16 you know, when you look at CUL-1, what is it that you
17 mean by non-compliance of the CRS? And I also notices
18 that it's non-compliance in this project or another
19 project.

20 Is there something specific you have in mind?

21 MR. ROARK: Yes, there is. There have been
22 instances -- not with Mr. Helton, I want to make that
23 clear.

24 (Laughter)

25 MR. ROARK: There have been instances of

1 cultural resources specialists on some of our Bay Area
2 projects who have done irresponsible things, such as
3 encountered human bone during construction. Rather than
4 following the California Health and Safety Code
5 requirements, which are very clear and can be cited by
6 rote by most archeologists, he called them isolated
7 finds and, therefore, fell under a category of things
8 for that case that could be treated summarily. You
9 know, basically thrown in a bag and, okay, go on your
10 way.

11 No tribes were notified. And it took a very
12 long time for the CPM to catch wind that this was going
13 on.

14 COMMISSIONER DOUGLAS: Okay, so are you saying
15 that --

16 MS. FOSTER: So, we're talking about pretty
17 severe things here.

18 COMMISSIONER DOUGLAS: Are you suggesting that
19 it's for things of that magnitude? Is that what you're
20 talking about when you say "non-compliance of the CPM?"
21 Because those words could mean anything from non-
22 compliance with, you know, a day late on a filing
23 requirement to --

24 MR. ROARK: Oh, no, certainly not. That would
25 be obnoxious.

1 (Laughter)

2 COMMISSIONER DOUGLAS: And so how would that be
3 determined? Who would decide whether the CRS was
4 compliant, not compliant, what was severe enough to
5 warrant a CPM --

6 MR. ROARK: Sure. That starts with the
7 compliance project manager, the CPM. And CPMs are most
8 concerned that the information and, you know, basic
9 deadlines are being met or attempted.

10 COMMISSIONER DOUGLAS: Right.

11 MR. ROARK: The CPMs that are now can be very
12 flexible in that regard or understanding if something
13 just happens to fall under the wagon once in a while.

14 And then, if something comes up that the CPM
15 thinks is severe or unusual, they would get with the
16 assigned cultural resource staffer for the compliance
17 proceeding and seek their input.

18 We have had -- like I said, we've had several
19 very negative experiences come up working with some
20 particular CRSs. And even those were attempted -- the
21 first course of action was to try to work it out with
22 that individual in conjunction with the project owner
23 and the compliance project manager.

24 So, there wasn't a knee-jerk reaction of we have
25 to get this guy or gal off the project. It's something

1 didn't get through, we need to clarify this process and
2 have some assurance that the processes required in the
3 conditions will be adhered to.

4 COMMISSIONER DOUGLAS: Okay. So, you know, I'm
5 just going to suggest that the way the condition is
6 drafted and the way that you're describing it are pretty
7 different.

8 And in a moment I want to ask the Applicant's
9 witness what they think of your description as opposed
10 to the words on paper.

11 But before I do, I've got another question.
12 You've also got language in this condition providing
13 that the CRS cannot be on too many projects. But
14 there's no language saying how many projects are too
15 many or, you know, if we're going to be so concerned
16 about the CRS's ability to be on X number of projects,
17 what other obligations they might have, besides Energy
18 Commission projects that might limit their availability
19 on this project.

20 Is there -- you know, what are you trying to get
21 at here by -- you know, I'll just say my initial
22 disposition when I read that was that it didn't seem --
23 it didn't seem sufficiently focused or well explained,
24 and that's why I'm asking the question.

25 MR. ROARK: Got it and I understand that

1 concern. As a staff here, I've not seen any mechanism
2 by which the project owner or the CPM would know -- you
3 know, would know the availability of a CRS.
4 Increasingly, we do see many of the same firms, many of
5 the same individuals popping up on multiple Energy
6 Commission cases, who then do go on to be on five, six,
7 seven different projects.

8 And it does raise a concern, particularly in the
9 severe instance that I raised earlier about the CRS who
10 was writing off human remains.

11 COMMISSIONER DOUGLAS: Right, presumably not
12 because that person was on too many cases, though.
13 I guess we don't know.

14 MR. ROARK: They could be separable, indeed,
15 yes.

16 COMMISSIONER DOUGLAS: So, you know, I think
17 that when it comes to too many cases, you know, how many
18 is too many? You know, I'm not necessarily going to be
19 interested in the "we'll know it when we see it".

20 If someone is on too many cases or they are
21 working on other projects, even if they aren't Energy
22 Commission cases and they're not available, and that
23 comes through in performance, wouldn't there be ways to
24 take that up other than count the number of other Energy
25 Commission cases they're listed on.

1 MR. ROARK: I'm sorry, could you rephrase the
2 question? That was awfully long.

3 COMMISSIONER DOUGLAS: Sure. So, how do you
4 know how many cases are too many cases?

5 MR. ROARK: Well --

6 COMMISSIONER MC ALLISTER: Or if it's one case
7 for the Energy Commission and a whole bunch of other
8 stuff, that's got to manifest in some kind of
9 performance issue, right, I think that's what --

10 MR. ROARK: Yes, that is where I was going. But
11 as far as a hard and fast metric, a magic number, I
12 certainly could not provide one. It would be
13 performance driven.

14 And I think if a CRS was on an unmanageable
15 number of cases, the way that would become evident is if
16 they were able to comply with their basic
17 responsibilities laid out in the conditions.

18 COMMISSIONER DOUGLAS: Right, which might mean
19 that those two provisions are duplicative if --

20 MR. ROARK: Essentially what I'm saying.

21 COMMISSIONER DOUGLAS: -- if what you're really
22 saying is too many projects means the CRS isn't able to
23 comply with or ensure compliance with conditions. So, I
24 think that's enough. You're not -- I'll let you speak.

25 MR. ROARK: Well, I do agree that the two are,

1 you know, inextricably linked. And dispensing with the
2 language on unmanageable number of projects can be done.

3 COMMISSIONER DOUGLAS: Okay.

4 MR. ROARK: And the intent and integrity of CUL-
5 1 would still be maintained.

6 COMMISSIONER DOUGLAS: Okay, thanks. Applicant?

7 MR. HELTON: Well, I very much respect what Mr.
8 Roark is trying to do. He's trying to ensure that the
9 CRS performs their duties.

10 But I would submit to you that the duties of the
11 CRS are articulated in great detail in the conditions.
12 And, you know, as written the condition that is being
13 proposed essentially gives staff unchecked authority to
14 approve or deny the CRS for any reason.

15 And I just don't think that it's staff's role or
16 domain to determine what constitutes too much work, or
17 to determine what constitutes non-compliance unless that
18 word is very clearly described. And those areas where
19 someone could disqualify themselves from being able to
20 serve as CRS are very, very clearly articulated. And I
21 don't see that here.

22 But I think that at the base of this is an
23 unrealistic and, really, and unmanageable attempt to try
24 and constrain, to put conditions on the performance of
25 the CRS that go outside of the Energy Commission's basic

1 set of criteria to be eligible.

2 Which are, by the way, as we know that the
3 individual meets the Secretary of Interior professional
4 qualification standards, and that the CRS fulfill their
5 duties as outlined in the CFC.

6 So, you know, I don't see the need for this and
7 I see it being very problematic if we start to say that
8 we can arbitrarily define words like "non-compliance"
9 and "unmanageable".

10 HEARING OFFICER COCHRAN: Go ahead.

11 COMMISSIONER MC ALLISTER: So, what's the role
12 of the CPM here in terms of keeping an eye on things and
13 making sure that the trains are running on time, and
14 kind of making sure that your feet, you know, the
15 Applicant's feet are being held to the fire, and that
16 all the obligations, including this one, are complied
17 with?

18 I mean I think that's the basic question here is
19 how do we make sure that the cultural resources are
20 respected?

21 MR. HELTON: Well, I've been a CRS, as Mr. Roark
22 knows, and staff knows, on a number of projects over the
23 last decade. And we kind of joke to ourselves that the
24 Energy Commission -- we are the agents of the Energy
25 Commission, but we have very little authority because of

1 the fact that the CPM does, in fact, really review and
2 is in that chain of reporting for every decision that we
3 make.

4 So, the reality is that the CPM -- that the CRS
5 has no authority to make independent decisions, and
6 that's by prescription in the COCs, very typically.
7 And, in fact, all of the decision goes through the CPM.

8 COMMISSIONER MC ALLISTER: Well, so how does
9 the -- how does enforcement work sort of in reality? I
10 mean, if -- so, let's say that one of these bad apples,
11 you know, that has been alluded to before where you've
12 got somebody who's abused -- you know, hasn't done their
13 job in the past, and the Applicant hires one of those
14 people and sort of how does that play out in sort of
15 pragmatic terms with respect to the CPM knowing that and
16 trying to get something to happen if the Applicant -- I
17 guess staff can address that.

18 MR. ROARK: I have seen one case recently. And
19 do keep in mind that I have been here -- I've been a
20 consultant to the Energy Commission previously, and I've
21 been staff now a little over two years.

22 So, as far as the inside operations, I'm going
23 to have some limited examples.

24 COMMISSIONER MC ALLISTER: Okay.

25 MR. ROARK: But one that I can speak to from

1 personal knowledge, we did have a problematic CRS, at
2 least as viewed by one of my colleagues. And he did
3 make a suggestion to the CPM and to the project owner
4 via teleconference that they select a different CRS.

5 This was actually at the outset of the project
6 construction beginning. This wasn't as a result of a
7 violation of some sort, a noncompliance during the --
8 during construction. This was a decision made
9 beforehand based on past performance.

10 COMMISSIONER MC ALLISTER: So, I guess, I mean
11 I'm kind of hearing that the CPM does have some control,
12 even if it's not written in, explicitly, as proposed
13 now, into the conditions, to sort of get the -- to work
14 with the Applicant to get an appropriate specialist in
15 there.

16 MR. ROARK: They certainly have influence. I
17 think the word "control" is too strong a word to use
18 there.

19 COMMISSIONER MC ALLISTER: Okay.

20 HEARING OFFICER COCHRAN: So then my question
21 would be --

22 MR. ROARK: Well, in that -- sorry.

23 HEARING OFFICER COCHRAN: Go ahead.

24 MR. ROARK: Sorry, Ms. Cochran.

25 HEARING OFFICER COCHRAN: That's okay.

1 MR. ROARK: In that the CPM could not demand and
2 expect that the project owner would necessarily comply
3 or even consider beyond the duration of that phone call
4 to the CPM's request for a different CRS.

5 HEARING OFFICER COCHRAN: So, I guess that then
6 leads to the question, and this is probably not just for
7 the panel, but for the attorneys as well, in the order
8 after pre-hearing conference we talked about the need
9 for having conditions of certification, especially as it
10 related to these various on-site monitoring personnel
11 being consistent throughout.

12 And that we would talk about how we select,
13 approve, substitute or replace those folks, both in
14 cultural, as well as in biology, engineering, and
15 facility design, and other relevant disciplines.

16 Is this something that the parties are intending
17 to work together to try to come up with language that
18 meets the call of what the Committee is looking for?

19 Is it possible to define this, you know, who
20 does what, when, to whom.

21 MR. ROARK: Well, I'll -- yeah, go ahead.

22 MR. HELTON: So, you know, I will tell you that
23 on the other side I have seen already this philosophy of
24 arbitrary selection and denial of a CRS happening at the
25 Commission, with staff.

1 I know of at least two instances where a CRS has
2 been denied without any explanation offered by the
3 Commission with -- or offered by staff or the CPM for
4 that denial.

5 So, I'm really concerned that we're going down a
6 path here of very arbitrary, subjective definitions of
7 what constitutes professional qualifications, and
8 performance, and that sort of thing.

9 If we go down that path, we better be really
10 sure that we're not unduly capriciously denying a CRS
11 for anything other than a very severe reason.

12 Because I've already seen it begin to happen.

13 And so, I don't -- I very much, again, respect
14 what Mr. Roark is trying to do is maintain the quality
15 of work.

16 As an agent of the staff, we do bear that
17 responsibility. But at least as proposed, I see this
18 condition as totally unacceptable. And, frankly, I
19 think there are very significant legal issues that could
20 be brought up as part of the arbitrary nature of these
21 terms.

22 HEARING OFFICER COCHRAN: Okay, thank you.

23 Are there any other questions on CUL-1? I'm
24 assuming that the parties will be working on this.

25 MS. FOSTER: Kevin, can you speak to this? It's

1 our understanding staff was working on preparing
2 revisions to the conditions. We have not seen anything,
3 yet.

4 MR. BELL: Correct. We're planning on
5 submitting a whole new set of clean conditions that
6 staff's proposing. Many of those conditions are not in
7 dispute. Some of those conditions we will have some
8 agreement over and other conditions there may be
9 disagreement.

10 Of course, whether we do that prior to briefing
11 or after briefing, but before the PMPD, we're
12 anticipating that everybody will have a chance to at
13 least respond to those, to say whether or not they agree
14 with them, disagree with them, or provide their take on
15 what it should be.

16 HEARING OFFICER COCHRAN: Okay, that would be
17 great.

18 So, is there anything further on CUL-1, Ms.
19 Rudman?

20 MS. RUDMAN: I have no questions.

21 HEARING OFFICER COCHRAN: Okay, then let's turn
22 to CUL-6. Is this a similar issue in terms of the
23 language? And is it a question of the language in the
24 condition or is there something more substantive here?

25 MR. BELL: It's my understanding is there's a

1 substantive dispute.

2 MS. FOSTER: Yeah, I agree.

3 MR. HELTON: I think this is where it would be
4 helpful, Commissioner Conklin, if we have just a very
5 quick summary of --

6 HEARING OFFICER COCHRAN: I'm not a
7 Commissioner.

8 (Laughter)

9 MR. HELTON: Sorry, Ms. Cochran.

10 HEARING OFFICER COCHRAN: That's okay.

11 MR. HELTON: Let me give you just a very quick
12 summary of the Applicant's study and the results, and
13 I'll be quick and then we can launch into -- maybe have
14 resolved the issue with CUL-6.

15 HEARING OFFICER COCHRAN: Okay.

16 MR. HELTON: So, the Applicant conducted a
17 complete cultural resources study. That study included
18 archival research, it included a new pedestrian field
19 survey of the site, and it included preparation of
20 technical reports.

21 It also included outreach and consultation with
22 Native Americans.

23 And as a result of all of those elements of the
24 study, no historical resources were found to be present
25 at the site.

1 As a result of the Native American consultation,
2 no sacred sites or resources were found to be present at
3 the site, or nearby.

4 So, that takes us, I think, to the next very
5 important fact of the site, which is the condition of
6 the site, and whether or not there's any potential for
7 resources to be found sub-surface.

8 So, we've brought along these exhibits, which
9 are part of the record and have been entered. Do I have
10 the same one up? No.

11 If we go ahead and look at the one on the
12 screen, Exhibit 1111 -- let me switch them.

13 Just, very briefly -- is that the same one?

14 MR. SALAMY: It's cropped.

15 MR. HELTON: A good observation, thank you.

16 So, this exhibit shows the site as it was first
17 constructed in the 1950s. It shows the -- it begins to
18 show the nature of impacts at that time.

19 You can see lots of surface impacts and we see
20 in this photograph sub-surface impacts and some of them
21 are quite deep.

22 And if we can go to the next slide, please?
23 Here we can see -- here we can see in this slide the
24 actual excavation activities that occurred as part of
25 the original plant's construction.

1 And I think it's interesting to note the scale
2 here. If you look at the cars up in the parking lot,
3 and I've got my little pointer here, if you look at the
4 cars up in the parking lot you can see a stepping of the
5 excavations down to the bottom.

6 The scale is helpful to look at the cars and we
7 see a first excavation of maybe 10 or 15 feet.

8 We go down to the second step of excavation,
9 another maybe 10 feet. And, in fact, we go further down
10 another maybe 10 feet or so.

11 The Applicant has described, in its various
12 submittals, and I submitted as part of my own testimony,
13 that the literature documents that the site was
14 disturbed anywhere from 2 to 23 feet in depth of
15 excavations across the site.

16 And as you can see by this picture, that's
17 more -- that's closer to 23 feet than it is to two.

18 MR. ROARK: Yeah.

19 MR. HELTON: So, if we look at the next slide,
20 please, you can see how, again, we're looking at this
21 same view in the corner where we stepping of excavation.

22 To the right we see this area is -- has all been
23 mechanically graded. And then we see the excavations
24 going down again, somewhere in the neighborhood of 23
25 feet of depth of excavation.

1 The next slide, please; again, an overview
2 showing the amount and degree of surface disturbance.
3 Staff have concurred with this and acknowledged this in
4 their own analysis.

5 And these visuals just do give a nice picture to
6 show that there have been significant disturbance at the
7 site.

8 So, taken together, if we look at the facts
9 then, the results of the analysis show that there are no
10 historical resources present, we don't have any issues
11 that have been raised by Native Americans.

12 And we have a site that has been heavily,
13 heavily impacted, severely impacted in some cases across
14 the site, down to almost 25 feet.

15 So, the determination that I made as a
16 professional and as an archeologist is that we have a
17 site that has very low probability to contain intact,
18 buried archeological resources.

19 In fact, we agree completely, and we've brought
20 this up before, with staff's own analysis in the FSA
21 that they say -- in fact, staff said, in the FSA, on
22 page 4.3-40 -- let's see, sorry, that's not the right
23 one. It's 4.3-50. Staff said, "The likelihood that the
24 proposed project would actually result in significant
25 impacts to buried archeological resources appears low".

1 We fully agree. I fully agree with that
2 assessment and analysis that, in fact, we have a site
3 that does not present a moderate or even a high
4 probability for buried archeological resources to be
5 present.

6 So, that takes us to condition CUL-6, which --

7 MR. ROARK: Before we go on to CUL-6 --

8 MR. HELTON: Sure.

9 MR. ROARK: -- I do have some questions, if I
10 may.

11 MR. HELTON: Sure, I was just going to
12 summarize, kind of, what the concern over CUL-6 is and
13 then maybe we can go back and forth.

14 MR. ROARK: That will work. Let's do it.

15 MR. HELTON: So, that takes me to CUL-6. Gabe
16 and I work very well together.

17 That takes us to CUL-6, and in CUL-6 the
18 Applicant has recommended the highly rewritten to
19 reflect those actual conditions. As is, CUL-6 requires
20 a full time cultural resources monitor by at least one
21 monitor during construction of certain elements of the
22 project.

23 Now, in the pre-hearing statement that we have
24 received and have reviewed, staff has reduced those
25 areas. In other words, they have eliminated some of the

1 elements of construction from requiring full time
2 monitoring.

3 We welcome that and I couldn't agree more with
4 those deletions.

5 That said -- and by the way, those are mainly
6 Block 2, foundation slab, and proposed parking and lay
7 down areas.

8 MR. ROARK: Anything in Block 2, really, yes.

9 MR. HELTON: Anything in Block 2 and the
10 parking.

11 That does, however, still remain and include
12 full time cultural resources monitoring for Block 1.

13 And therein lies the, I think, divergence.
14 We're at a bit of an impasse because we don't -- I don't
15 agree that full time monitoring even of Block 1 is a
16 commensurate mitigation measure with the actual results,
17 and with the actual sensitivity, archeologically, of the
18 site.

19 I would just make one final point and then I'll
20 give it to Mr. Roark.

21 MR. ROARK: Okay.

22 MR. HELTON: I think what we might fail to
23 remember is that the Applicant has already agreed,
24 wholeheartedly, to a couple of mitigation measures to
25 deal with whatever remnant of sensitivity

1 archeologically that there may be at this site.

2 So, there are two very important mitigation
3 measures that have already been agreed to. And that is,
4 one, preparation of a cultural resources mitigation and
5 monitoring plan, otherwise known as a CRMIMP.

6 That plan is, by the way, very heavily
7 scrutinized by staff and we typically have lots of fun
8 going back and forth in terms of making sure that
9 content is acceptable and comprehensive.

10 Secondly, there is a worker environmental
11 awareness training plan that is prepared and delivered
12 to all of the on-site workers.

13 That plan, in fact, describes what you would do
14 in the event that archeological resources were to be
15 discovered. And it's very comprehensive and very
16 specific.

17 So, I would contend that the mitigation that's
18 been proposed, that of a preparation of a lengthy and
19 very detailed cultural resources management plan, in
20 addition to a WEEP, really to me it appears to be very
21 commensurate with the actual sensitivity or potential to
22 find buried archeological resources at the site.

23 MR. ROARK: Okay. I heartily and respectfully
24 have to disagree with Mr. Helton on the point of whether
25 we simply, essentially leave it up to a quickly trained

1 construction force to identify archeological resources
2 during construction, along with all of their other
3 duties.

4 Particularly in light of the fact -- these
5 construction photos we've been looking at, can you tell
6 us which units those are?

7 MR. HELTON: I can tell you units 3 and 4.

8 MR. ROARK: Units 3 and 4.

9 MR. HELTON: Yes.

10 MR. ROARK: Okay, so that corresponds with Power
11 Block 2.

12 MR. HELTON: That's right.

13 MR. ROARK: This is why upon receipt of these
14 photos, when they were docketed, I was perfectly
15 comfortable with dropping monitoring requirements for
16 Block 2.

17 The Applicant is simply not proposing any
18 excavations in those areas that we could actually
19 inspect -- that anyone could actually inspect that would
20 go deeper than what the previous excavations have
21 already done. Totally appropriate, I couldn't agree
22 more.

23 Then jump over to Units 1 and 2, which I think
24 they were preparing them in the upgraded area. You can
25 probably see it in the background there; probably

1 construction in much the same way.

2 Of course, the Applicant's not proposing much in
3 the way of excavation in that area, so that would not be
4 a concern.

5 But how much -- so, basically, what we have here
6 in Power Block 2, you know, what would be Power Block 2,
7 is we have something on the order of 23 feet of
8 infrastructure and fill dirt, okay.

9 How much fill dirt do we have at proposed Power
10 Block 1?

11 MR. HELTON: Well, what we have in testimony,
12 submitted, is that in Power Block 1 a 16-foot by 55-foot
13 area would be excavated. And the native sediments that
14 could prospectively be impacted in that area is
15 approximately one and a half feet into those native
16 sediments. Is that right?

17 MR. ROARK: For a portion of it, yes.

18 MR. HELTON: So, we're talking about a 60-foot
19 by 55-foot area where excavation in total is, I think,
20 eight to nine feet. Correct me if I'm wrong, Mr.
21 O'Kane.

22 MR. ROARK: I think that's about right.

23 MR. HELTON: And we're saying that the lowest
24 one and a half feet of that eight or nine feet is the
25 soil profile, the stratigraphic profile in which we

1 would expect excavations to prospectively impact the
2 soils that are undisturbed.

3 So, I guess, you know, I don't want to cut you
4 off, but my -- so, archeologically, we're saying that
5 there's a theoretical potential -- we haven't documented
6 that those soils are highly significant.

7 What we are saying is that there is a
8 theoretical potential that, A, native soils to be
9 impacted and then, by extension B, that there could be
10 archeological resources in those native soils.

11 MR. ROARK: Well, the fact that they're native
12 soils is not speculative or assumed that all that's
13 demonstrated by the presence of two borings at those
14 locations.

15 So, we do know in fact that they are not just
16 native soils, but also of the sort that would preserve
17 any archeological resources if present.

18 Additionally, if this is a very small area, it's
19 going to be quick monitoring. You know, the way the
20 condition is written, we've asked for monitoring at
21 locations where excavation would go below fill and only
22 for the duration of that excavation.

23 Not for what's above. You know, I'm not
24 interested in putting anybody out there to watch a bunch
25 of engineering fill get moved out. That would be

1 irresponsible.

2 We're only asking for -- and I've done this sort
3 of thing before many times. It's a simple matter of
4 making -- of coordinating with the construction manager
5 or foreman when will you be excavating in Block 1? When
6 will you be excavating -- when do you anticipate getting
7 below the fill?

8 You don't send a monitor out there until that
9 time. As soon as the excavations are complete in those
10 areas, I would fully expect the monitor to leave the
11 project site at that time, and provide the required
12 reporting.

13 I mean, Paul, Mr. Kramer, could you please pull
14 up the cultural resources figure that I provided you?

15 MR. KRAMER: Yes.

16 COMMISSIONER MC ALLISTER: Well, it sounds
17 like -- it sounds like we are getting to a kind of an
18 agreement on the substantive of what needs to happen.
19 And it sounds like there may be a coordination plan to
20 make sure that the right person is on site at the right
21 moment, which is some subset, some fairly small --

22 HEARING OFFICER COCHRAN: Definable.

23 COMMISSIONER MC ALLISTER: -- definable subset
24 of the construction process.

25 MR. ROARK: I mean, Mr. Helton's concern, the

1 Applicant's concern is well placed. Initially, based on
2 information supplied in good faith by the Applicant, we
3 believed that the excavation for specific project
4 elements, even in Power Block 2, were something on the
5 order of almost a third of what is evident in these
6 photos.

7 These photos were not available to staff until
8 June 23rd.

9 So, as soon as I saw this, you know, that put
10 the proverbial kybosh on the idea of monitoring across
11 the project site.

12 MR. HELTON: So to me, then you're saying that
13 just because we can't show a picture that this one and a
14 half feet below the eight feet, in a 50- by 60-foot
15 area, just because we can't demonstrate that that --

16 MR. ROARK: No, it's just not fill, that's the
17 problem.

18 MR. HELTON: I agree.

19 MR. ROARK: It's native sediment of the right
20 age.

21 COMMISSIONER DOUGLAS: All right, so we --

22 MR. HELTON: I agree with you completely that
23 just because we can demonstrate that it's of the right
24 age that somehow that monitoring is a commensurate
25 mitigation measure to defining soils that are of the

1 right age.

2 COMMISSIONER DOUGLAS: Got it. So --

3 MR. HELTON: I think under CEQA, monitoring as a
4 default measure, just because we have soils that are
5 theoretically of the right age, is onerous and not
6 commensurate with the actual scientific data.

7 COMMISSIONER MC ALLISTER: So, it sounds like --

8 COMMISSIONER DOUGLAS: So, the Committee is
9 beginning to feel like this is a productive, helpful,
10 considerate, good dialogue in every way. But we are
11 beginning to feel like we very clearly understand the
12 difference between the two positions that you have and
13 the reasons for that difference.

14 MR. HELTON: Okay.

15 COMMISSIONER DOUGLAS: So, let me ask, you asked
16 for a diagram to be pulled up. Why don't you tell us
17 what's in it and let's see if there's any final comments
18 and move on, if we could.

19 MR. ROARK: And the diagram is simply to
20 illustrate. At this point I won't call attention to the
21 one on the left because we're not dealing with Power
22 Block 2 any longer.

23 But if you look at the highlighted yellow part
24 on the right-hand portion of the diagram, that's the
25 proposed Power Block 1. It's something on the order of

1 15 percent of the project site.

2 And then there's also a small area, I think,
3 that's over on the left near Newland Street, which is, I
4 think, the relocated gas compressor building.

5 That actually has a very deep excavation
6 proposed, something on the order of 10 feet below sea
7 level. That's going to be at least a 15-foot excavation
8 in that area and will definitely get into native soils.

9 So, those two areas are what we're looking at.

10 There are some areas in Table 2, where I've
11 compiled the depth of excavation, as provided by the
12 Applicant, where we have some unknowns. And if the
13 Applicant can provide, you know, evidence saying this is
14 how deep we're going to dig in these areas, for these
15 project components, and it ends up being a fill
16 sediment, I would be professionally comfortable nixing
17 those areas from monitoring, as well.

18 MR. BELL: What I'd like to do is have this
19 marked as staff's exhibit next in order. We had
20 originally intended using this for demonstrative
21 purposes, only.

22 I understand that it's a preference that these
23 items be marked.

24 COMMISSIONER MC ALLISTER: Yes, please do.

25 Thank you.

1 MR. ROARK: And I have one final comment. Mr.
2 Helton had indicated that no Indian sacred sites were
3 found in the area or nearby. It's true that we don't
4 know of any sacred sites in the area.

5 However, there are, between the Santa Ana
6 River -- or, rather, were before development, between
7 the Santa Ana River and the project site two known
8 Indian villages.

9 We have the United Coalition of Pan Hai, which
10 is sort of a Pan-Indian group, who has written to the
11 Energy Commission stating that they consider this area
12 culturally sensitive and three other Indian tribes, who
13 advocate for monitoring on the project site.

14 So, his statement was only partially true.

15 COMMISSIONER MC ALLISTER: Okay, so I guess we
16 understand the differences here. You know, I'm
17 interested in the -- it sounds like we have, basically,
18 a difference on how many resources need to be dedicated
19 to this issue.

20 There's no difference on the fact that we have
21 to pay attention and if there are any cultural
22 resources, they should be detected, and they must be
23 registered in the right way and that process developed.

24 So, I think we still do have a difference on how
25 that should happen and sort of how systematic and how

1 targeted --

2 MR. ROARK: And, I mean, he's qualified to
3 actually do the looking, as it were.

4 COMMISSIONER MC ALLISTER: Yes, exactly. So,
5 but I think we do understand the positions of both.

6 And with that, I think we're done with cultural.
7 Are there any other questions on this?

8 HEARING OFFICER COCHRAN: Applicant, any close?

9 COMMISSIONER MC ALLISTER: Any other --

10 MR. HELTON: One last thing.

11 COMMISSIONER MC ALLISTER: Sure.

12 MR. HELTON: When we send -- when we begin to
13 set the precedent that a baseline mitigation measure,
14 any time there are soils that date to the Holacian
15 (Phonetic), require full time monitoring, I think that's
16 not historically been the application of monitoring
17 under CEQA.

18 CEQA requires that we demonstrate a substantial
19 adverse change to a historical resource. We don't have
20 either of those conditions at this site.

21 COMMISSIONER MC ALLISTER: Okay, I mean it would
22 be helpful if there's a -- so, barring that, how do you
23 make sure that there -- is it the sampling, like a pre-
24 digging sampling to see what's there?

25 MR. HELTON: No.

1 COMMISSIONER MC ALLISTER: What's your proposed
2 strategy here to deal with this? I don't necessarily --
3 we don't necessarily have time to go through all of
4 that, but it would be helpful to have that developed.

5 MR. HELTON: I think it's very simple. And that
6 is that we've got conditions, now, that specify that
7 preparation of a plan, a cultural resources monitoring
8 and mitigation plan, which is very comprehensive and
9 specifies exactly what you do once something is found,
10 and we have the training -- I agree with Mr. Roark that
11 we don't entirely trust that the construction personnel
12 will always do the right thing.

13 MR. ROARK: Or that they're truly trained.

14 MR. HELTON: True.

15 MR. ROARK: I mean you and I have Master's
16 Degrees in this subject.

17 MR. HELTON: True. But in this case we agree,
18 as staff has said, that the reasonable finding is that
19 there is not a likelihood that buried deposits will be
20 found. That's what we based our analysis on.

21 Mitigation measures, then, are based on that
22 fact. If there's a low likelihood, we apply the
23 mitigation measures that have been proposed. That is
24 the preparation of a CRMIMP and adequate training of the
25 contractors.

1 If the sensitivity were high, I would absolutely
2 agree with Mr. Roark that we should monitor every bit of
3 soil out there, right.

4 But the other thing I would just add in closing
5 is that when we put monitors in the field, in this case
6 the condition would require a monitor to be with every
7 piece of equipment located 50 feet apart.

8 Even though we're talking about a small area and
9 you say, gosh, it's not that big of a deal to put
10 monitors out in the field and very specifically monitor
11 this small area, we would still have to be aware that we
12 would have to staff a monitor at every piece of
13 equipment working 50 feet apart.

14 And the other thing I would say is that putting
15 monitors in the path of construction always presents
16 danger and always is a safety issue.

17 So, where we don't need to do that, I think it's
18 wise not to.

19 And I'm not opposed to monitoring whatsoever. I
20 simply think that in this case, in these circumstances
21 monitoring does not appear to be commensurate with the
22 actual sensitivity.

23 MR. ROARK: Previous monitoring on the project
24 site did only require five days of full time monitoring,
25 I will point out.

1 COMMISSIONER MC ALLISTER: Okay, interesting.
2 So, okay, I think we have a clear picture. So, thanks
3 very much for the cultural panel.

4 MR. ROARK: Thank you.

5 MR. HELTON: Thank you.

6 HEARING OFFICER COCHRAN: Just one housekeeping
7 item. I understand, Mr. Bell, that you wanted to have
8 the exhibit that's currently on screen --

9 MR. BELL: Yes.

10 HEARING OFFICER COCHRAN: -- marked next in
11 order, which will be 2002.

12 MR. BELL: Thank you.

13 HEARING OFFICER COCHRAN: And is there any
14 objection to receiving that into evidence?

15 MS. FOSTER: None from Applicant.

16 MS. RUDMAN: I have no objection.

17 HEARING OFFICER COCHRAN: Then the exhibit will
18 be received into evidence.

19 (Staff Exhibit 2002 was marked for
20 identification and admitted into evidence.

21 COMMISSIONER MC ALLISTER: Great. Okay, so
22 before we get on to the next panel, which I believe is
23 going to be land use, is that right? So, the land use
24 panel can get ready.

25 I wanted to acknowledge and invite to the podium

1 Assemblymember Travis Allen, from the 77nd District of
2 California. And we're happy to have all public
3 officials, but certainly our local Assemblymember here
4 chime in on the project and give us his view. So,
5 welcome.

6 MR. ALLEN: Thank you very much. Thank you very
7 much.

8 Good evening Commissioners, California Energy
9 Commission staff and members of the public. It's a
10 pleasure to be in front of you here today and I kind of
11 feel this is a long time coming.

12 My name is Travis Allen and I proudly represent
13 Huntington Beach in the 72nd Assembly District, which is
14 12 districts here in Coastal Orange County, which will
15 all be served by this plant.

16 Also, as Vice-Chair of Bank and Finance of the
17 Assembly, I value responsible growth and investment in
18 my community, as well as statewide.

19 Important to us is having a secure, diverse and
20 flexible power source that keeps our lights on here in
21 Southern California.

22 And the new Huntington Beach Energy Project will
23 be just that. It's a great example of private
24 investment doing the right thing for the economy, the
25 environment, and our local community.

1 The new project drives additional construction
2 jobs and additional money to the community, while
3 improving the environment.

4 The plant, as you know, will have a quick
5 startup time. The proposal's been flexible. It has
6 state-of-the art environmental attributes.

7 The plant will feature improved visuals, which
8 we'll all appreciate right here in Huntington Beach.
9 And the plan is going to be a win/win for everyone.

10 I've spent many hours with the AES staff. I've
11 learned about the electric grid here, as well as the
12 diverse fleet of generation facilities that AES
13 maintains worldwide.

14 And I'm convinced that AES is a solid partner
15 that is deeply committed to the communities they serve,
16 as well as our local community here in Huntington Beach.

17 As a personal aside, the design elements
18 incorporated into the new plant I think will be an
19 enhancement for everyone here, especially the surfboard
20 elements that I'm hearing a lot about.

21 As surfers, it's kind of a nice reference point
22 as we're out there in the water.

23 And with all of the development that we've seen
24 in Huntington Beach and our improved tourist climate,
25 and all of the improvements we continue to do, I think

1 this will be a great aesthetic element for the City that
2 everyone will enjoy, not only our residents, but also
3 our many visitors.

4 So, simply put, with the unexpected retirement
5 of the San Onofre Generating Station, this plant is
6 needed to keep the lights on in Orange County.

7 And I strongly urge the California Energy
8 Commission to move forward and approve this landmark
9 project for not only Huntington Beach, but also all the
10 residents in the 72nd Assembly District and Southern
11 California.

12 Thanks for your consideration tonight.

13 COMMISSIONER MC ALLISTER: Thanks for being
14 here. We appreciate your public service, as well.

15 MS. FOSTER: For the record, Applicant's soil
16 and water witness has to leave and I'm wondering if we
17 can do soil and water prior to talking about land use?

18 COMMISSIONER MC ALLISTER: Is there any
19 objection or --

20 HEARING OFFICER COCHRAN: Is there any
21 objection?

22 MS. RUDMAN: No.

23 MR. BELL: No.

24 COMMISSIONER MC ALLISTER: You said soil and
25 water?

1 MS. FOSTER: Water resources.

2 HEARING OFFICER COCHRAN: Soil and water.

3 MR. BELL: We had identified water resources and
4 then soils and geology.

5 MR. LEE: Water staff has already gone to get
6 the car, so it's going to be difficult to have him
7 testify.

8 COMMISSIONER MC ALLISTER: He's what?

9 MR. LEE: He's gone to get the car to go to the
10 airport.

11 (Off-record Colloquy between Committee Members
12 and the Hearing Officer)

13 HEARING OFFICER COCHRAN: That means we need a
14 second day.

15 We're going to take a brief recess offline.

16 (Off the record at 6:37 p.m.)

17 (On the record at 6:45 p.m.)

18 HEARING OFFICER COCHRAN: It's apparent to us
19 that we're not going to be able to finish today since we
20 lost staff's witnesses. It makes it difficult to have a
21 hearing.

22 So, what we would like to do, we're going to
23 keep the evidentiary hearing open and we are going to
24 continue the hearing to Wednesday, August 6th, at 1:30
25 p.m., in Sacramento.

