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EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for)	
Certification for the)	Docket No.
Carlsbad Energy)	07-AFC-6
Center Project)	
_____)	

WAVECREST ROOM
HILTON GARDEN INN HOTEL
CARLSBAD, CALIFORNIA
TUESDAY, FEBRUARY 2, 2010
9:06 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

APPEARANCES

COMMITTEE MEMBERS PRESENT

James Boyd, Associate Member

Anthony Eggert, Commissioner

HEARING OFFICER AND ADVISERS

Paul Kramer, Hearing Officer

Tim Olson, Adviser

STAFF AND CONSULTANTS PRESENT

Mike Monasmith, Project Manager

Dick Ratliff, Staff Counsel,

Neghar Vahidi

APPLICANT

John A. McKinsey, Attorney

Brian J. Nese, Attorney

Stoel Rives, LLP

George L. Piantka

NRG West

CITY OF CARLSBAD

Ronald R. Ball, Attorney

City Attorney

Joe Garuba

Allan Thompson, Attorney

APPEARANCES CONTINUED

INTERVENORS

Arnold Roe
Julie Baker
Power of Vision

Kerry Siekmann
Terramar

William Rostov
Sara Jackson
Earthjustice, CBD

Rob Simpson

WITNESSES

Mr. Barberio

Mr. Donnell

Marsha Gale

Alvin Greenberg

Edward Holden

Mr. Kanemoto

Sharab Khoshmashrab (telephonic)

Juan Martinez

Robert Mason

Steven Moore

Don Neu

Mr. Rouse

Gary Rubenstein

William Walters

Diane Wist

Mr. Wojcik

APPEARANCES CONTINUED

ALSO PRESENT

Leland Alton

Bill Baer

Lin Ball

Glenn Bernard

Laurie Boone

Tracy Carmichael

Doug Casey

Wayne Chapman

Chuck Collins

Susan Davison

Kevin Davies

Gary Duerst

Michael Fritz

Laura Gonzalez

Sheila Henika, Encina Power Station

Ace Hoffman

Phyllis Jessee

Lisa Jessup

G. Lance Johannsen

David Johnson

Jonnie Johnson

Jeff Kasschau, citizen

APPEARANCES CONTINUED

ALSO PRESENT

Karena Kelley

Councilman Jerry Kern, Oceanside

Hak Krautter, NRG

Jack Kubota

Mayor Pro Tem Ann Kulchin, Carlsbad

Tom Lemmon, Building Trades

Jeff Lynch

Aggie Madden

Brian McCann

Chris McCann

Michael Merhab, Power of Vision

Catherine Miller

Sam Miller

Mark Nordquist

Councilman Mark Packerd, City of Carlsbad

Ino Rivera

Jaques Romatier

Bettymae Rose

Tim Royalty

Roubina Ruby

Glenn Semel

Tom Siekmann

Rob Simpson

APPEARANCES CONTINUED

ALSO PRESENT

Terry Simokat

Lisa Smith

Ray Stainback

Tim Sullivan, citizen

Russell Stevens

Patrick Uriell

Ted Viola

Larry Williams

Roger Williams

Commissioner Edward G. Winrow

Jeff Woolson

John Zeger

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1 PROCEEDINGS

2 HEARING OFFICER KRAMER: Okay. We are back on
3 the record for the proposed Energy Center Project
4 evidentiary hearing, day two, on February 2nd, 2010.

5 We are continuing the land use topic that we did
6 not quite complete yesterday. And if I recall correctly,
7 we are up to the city's cross-examination. Does that
8 sound right?

9 MR. THOMPSON: I have a few questions on rebuttal
10 to Mr. Donnell and then re-cross.

11 HEARING OFFICER KRAMER: Okay. Why don't you
12 combine those two?

13 MR. THOMPSON: Okay.

14 REBUTTAL

15 BY MR. THOMPSON:

16 Q Mr. Donnell, yesterday --

17 HEARING OFFICER KRAMER: Louder.

18 By MR. THOMPSON:

19 Q Yesterday, staff counsel was asking applicant's
20 counsel questions about the city's land use regulations.
21 And I had a couple questions to see if we can clarify the
22 record.

23 Number one, Mr. Rouse testified that the CECP is
24 consistent with the city's general plan. Do you disagree?
25 And if so, give us a reason.

1 A I do disagree with that and I would like to point to
2 my testimony beginning on page 9. The land use testimony.
3 There are three-and-a-half pages from page 9 to page 13,
4 which describe 14 different general plan policies with
5 which the CECP is consistent. These are policies that
6 have been taken from the land use element, the circulation
7 element, open space and conservation element, because
8 policies listed in the testimony as followed by reasons
9 why the project is inconsistent with the general plan.

10 For the city's purposes, we look not only at the
11 basic land use, the land use designations, for example,
12 but we also have to dig deeper into the general plan and
13 find other applicable policies, a couple of which, for
14 example, include land use element, overall land use
15 pattern Goal A.1. which simply says a city which preserves
16 and enhances the environment, character and has a
17 desirable residential, beach, and open space oriented
18 community. This is the first policy called out on page 9
19 in my testimony.

20 We're concerned that the CECP does not comply
21 with that requirement and we describe that because of its
22 height of the stacks, for example, the mass of the
23 building, its location in proximity to a sensitive lagoon.
24 All of those things combined do not enable the project to
25 meet that overall land use pattern goal.

1 And just to point out one more policy that we do
2 not think the project does not comply, on page 11 of my
3 testimony, number nine is land use element environmental
4 objective C5 which states, "limits future development
5 adjacent to lagoons and beach in such a manner so as to
6 provide the greatest extent feasible, the physical and
7 visual accessibility to these resources for public use and
8 enjoyment."

9 And once again because of the proximity of the
10 project and its appearance in that sensitive area along
11 the ocean adjacent to the lagoon, that's another reason
12 why we believe the project is not consistent with the
13 general plan.

14 Q Thank you.

15 Number two, as you look at the staff's
16 conclusions in their FSA from page 4.3-21 to 28, zoning
17 and PU&Y designations in zoning are listed as one.
18 Sometimes the only -- but they are listed in every single
19 land use document as a reason for consistency. Would you
20 comment on that?

21 A And Ms. Vahidi has done a good job of outlining the
22 city's requirements, not only the general plan, but also
23 the land use plan, the specific plan and the zoning
24 ordinance. But the review that the city does -- and I
25 think as this table provides evidence -- is we go far

1 beyond what the land use designation is. And certainly an
2 initial test would be is the general plan land use
3 designation, is the zoning, are any other applicable
4 requirements that specify use, does the project meet that?
5 And that certainly is the initial test.

6 But as we just described, there are 14 different
7 general plan policies at least with which we must
8 determine compliance. And this table helps to illustrate,
9 for example, in addition to the general plan there's also
10 the specific plan layer, the Agua Hedionda, the land use
11 plan layer, and the zoning ordinance layer, all of which
12 we have to factor in on our review.

13 And just to highlight one of those on the Table
14 2B, which begins on page 4.5-21 on the final staff
15 assessment, there is a section that discusses the precise
16 development plan and that actually appears beginning on
17 page 4.5-26. And this discussion discusses the precise
18 development plan and outlines the requirements of it.
19 Some of those requirements that we must review the CECP
20 against have to do with parking, setbacks, landscape
21 standards, and overall compatibility in terms of
22 appearance.

23 The desalination project, which the city approved
24 in 2006, had to go through that filter. We had to analyze
25 the project to determine did it meet setback requirements,

1 was it visually pleasing, et cetera. The city did not
2 have that opportunity. That information was not provided
3 with the calls of that Energy Center project. There was
4 no way the city had the ability to determine consistency
5 with the precise development plan, for example. So not
6 only are we concerned about inconsistency with the general
7 plan, it's with the other land use documents as well.

8 Q Thank you.

9 Number three, Mr. Rouse discussed the amendments
10 to the Encina specific plan, and I believe he testified
11 that Amendment H, as in horse, was the eighth or ninth
12 amendment. Would you like to comment?

13 A Yes. The Encina specific plan 144 was adopted as an
14 ordinance in 1971. It has been amended eleven times. The
15 first several amendments, basically A through E, were all
16 completed in the 1980s. Many of them had to do with
17 permit improvements required to Encina Power Station at
18 the time, such as the addition of a 400-foot tall stack.
19 A couple of those amendments were also withdrawn.

20 In 1989 -- and this is in Exhibit 14 17 of the
21 land use exhibits we provided -- the planning director for
22 the city of Carlsbad issued a letter which says, "any
23 complete" -- "any future improvement on the Encina Power
24 Station would require complete and major amendment to the
25 specific plan." That's the requirement that we've been

1 discussing the comprehensive update of the specific plan.
2 And subsequent to that letter written in July of 1989, a
3 specific plan amendment was processed in 1993. However,
4 that was withdrawn. A specific plan amendment was also
5 processed in 1996. That did not propose any improvements
6 to the specific plan. It simply de-annexed or removed
7 about 24 acres.

8 Subsequent -- in other words -- to that letter
9 from the planning director in 1989, there had not been any
10 amendments to the specific plan that had proposed
11 improvements, with the exception of the desalination
12 project.

13 And of course, that was subsequent to the city
14 council's resolution in 1998 that's provided as exhibit
15 1415 that really outlined what the comprehensive update of
16 the specific plan that was required. That specific plan,
17 144H was the amendment that was processed for the
18 desalination plant for the precise development plan, and
19 there was an exception made by the county three years
20 earlier which said that that particular project did not
21 need to perform the comprehensive update of the specific
22 plan.

23 Q And did the SB 144 amendment for the Poseidon desal
24 facility apply to the Encina Power Station?

25 A It applied to the desalination project and it applied

1 to the Encina Power Station in that it applied to the
2 precise development plan. And the precise development
3 plan did two things: It served as the permit for the
4 desalination plant, but it also served as the planning
5 document for the entire Encina Power Station that
6 established a development standard, for example. It did
7 not, however, serve as any kind of blanket exemption for
8 any improvement to occur at the power station in the
9 future.

10 Q An ultimate question, staff is requiring the city to
11 accept a Coastal Rail Trail on the west side of the tracks
12 or exempt some money in lieu of. Would you please give us
13 your view on this?

14 A With regards to the latter part first, the idea of
15 accepting money, that could defeat the purpose of the
16 Coastal Rail Trail. Of its name itself, it's intended to
17 be a trail alignment adjacent to the railroad. The idea
18 of accepting money to allow a trail built elsewhere may
19 not accomplish that purpose.

20 And secondly, the land certification requirement,
21 the land certification one I believe suggests that the
22 rail trail can be located on the west side of the railroad
23 tracks. And that's really counter to the work the city
24 has done and other agencies as well to see that rail trail
25 go through.

1 City counsel's approval of this project in 2001
2 approved an alignment on the east side of the railroad
3 tracks, as did the environmental document for the Coastal
4 Rail Trail looking at an eastward alignment.

5 In addition, improvements to the south and the
6 north also reflect an alignment on the east side as
7 opposed to the west side, which is what staff is
8 recommending in its condition of certification.

9 And one reason the city is advocating the east
10 side alignment is because it represents lesser
11 construction costs. Our engineering department estimates
12 that the rail trail as built on the east side would cost
13 about a million dollars less than if it were on the west
14 side due to the trail on the west side being longer, due
15 to the need for an under-crossing below the railroad
16 bridge, and also due to the need for additional retaining
17 walls.

18 Q Thank you.

19 Finally, in your opinion, is SB 144 a plan or a
20 permit?

21 A SB 144 is a document adopted by ordinance that is a
22 legislative act. It is not a permit.

23 MR. THOMPSON: Thank you. That completes my
24 redirect of Mr. Donnell.

25 HEARING OFFICER KRAMER: And cross-examination of

1 the other witnesses as well?

2 MR. THOMPSON: I'm not as fast as my kids on this
3 thing.

4 HEARING OFFICER KRAMER: Okay.

5 MR. THOMPSON: I just have a few questions. I
6 was able last night to go through and reduce a number of
7 them.

8 CROSS-EXAMINATION

9 BY MR. THOMPSON:

10 Q Ms. Vahidi, a couple of questions.

11 Are you aware of the MOU, Memorandum of
12 Understanding, between the Energy Commission and the
13 Coastal Commission of April 2005? I think it's entitled
14 "Regarding Coastal Commission's Role in the Energy
15 Commission's AFC Proceedings"?

16 A Yes, I'm aware of the MOU.

17 Q And that was signed by the Commissioners of both
18 agencies; is that correct?

19 A I'm not sure of the details -- I mean, I'm guessing
20 since both Commissions were in the MOU, yes.

21 Q Okay. Yesterday, you stated you did not consider the
22 closure of Encina Units 4 and 5 as a cumulative project;
23 is that correct?

24 A Correct.

25 Q If you had considered Encina Units 4 and 5 as a

1 cumulative project, would you still consider the CECP to
2 be coastal dependent?

3 A That's a pretty complicated question. If I were to
4 consider Units 4 and 5 closure, I would need to know a lot
5 of details about that activity before I could do a
6 cumulative analysis. I can't really answer that question.

7 Q Okay. You criticized the city for its assertion that
8 land one that appeared in the PSA and land one that
9 appeared in the FSA we thought were different and you
10 criticized that; is that correct?

11 A The way I read Mr. Donnell's comment was I took it as
12 that we didn't even include land one in the PSA and we
13 were just correcting the fact we did. The text of land
14 one is, in fact, different in the FSA.

15 And the reason for that, as I mentioned
16 yesterday, is we had to coordinate with hazard staff
17 regarding the alignment for the Coastal Rail Trail due to
18 safety and security reasons. Again, Dr. Greenberg will
19 speak about that if you need him to.

20 But the reason the assignment was moved was for
21 that specific reason, for the safety security reasons of
22 the users of the trail and so on and so forth.

23 Q Did you have any conversations with city personnel on
24 the feasibility or alignment of this trail on the west
25 side following I guess it's a determination by your worker

1 safety staff that that's where it should go?

2 A I did not have conversations once the alignment was
3 changed to a recommendation on the west side, because we
4 are charged with being the ones that know how to deal with
5 safety security reasons for power plants. So I depended
6 on staff for that.

7 Q Would your charge also include your experience and
8 knowledge in the protection of desalination plants that
9 serve potable water to millions of people?

10 A I'm not sure I understand the question.

11 Q You told me that you're charged with the safety of
12 power plants.

13 A No. The safety and security of folks that would be
14 affected by power plants.

15 Q And I'm asking about the -- your alignment -- the
16 staff's alignment of the Coastal Rail Trail goes right
17 next to a desalination facility serving potable water.

18 STAFF COUNSEL RATLIFF: I object on the grounds
19 this is outside of Ms. Vahidi's testimony. We have
20 another witness who could answer this question. But it
21 isn't Ms. Vahidi who is testifying as the public safety
22 and securities issues involved in the trail alignment.

23 MR. THOMPSON: Mr. Ratliff, the only reason I
24 went there is she brought up that the Commission was
25 charged with the safety. It was just a follow-on.

1 BY MR. THOMPSON:

2 Q A last point here. On your FSA page 4.5-18, I believe
3 it's at the top of the page, you say that the staff is
4 permitted to rely on local land use interpretation. Is
5 that -- is that a reference to 20 CCR 1744(e)?

6 A I don't know what -- what you're actually quoting. I
7 don't know what 20 CCR is. It's not mentioned in here. I
8 don't know what that is, so I can't answer that question.

9 Q That's fine. If I may, Mr. Commissioner, Hearing
10 Officer, we have had a lot of discussions with our group
11 here on the due deference. The due deference of state law
12 on 1744(e), we've considered things like motion to strike,
13 testimony that doesn't conform to state law, that doesn't
14 seem very satisfactory for the record. And I guess I'd
15 ask if there's any guidance that you can give us with what
16 to do with testimony that clearly does not give the city
17 its due deference.

18 HEARING OFFICER KRAMER: If I understand your
19 question, you're asking us to rule in effect -- and
20 exclude testimony because we decide that due deference was
21 not given to the city's opinion about a topic or --

22 MR. THOMPSON: The due deference standard,
23 1744(e) says, "comments and recommendations by interested
24 agency on matters within that agency's jurisdiction shall
25 be given deference by the Commission staff." That wasn't

1 done, clearly. And I don't know if it's a remedy to move
2 to strike. I guess I'm seeking to strike.

3 MR. MC KINSEY: I object. Whether deference was
4 given or not in and of itself would have to be a fact that
5 you would present evidence on to help somebody reach a
6 conclusion on that.

7 HEARING OFFICER KRAMER: I'm not sure it's
8 entirely factual, but it's something to be argued. The
9 staff is proposing its version of the facts and its
10 interpretation of the facts and its interpretation of the
11 way the law applies to those facts. The cities are doing
12 the same. The other parties will no doubt be doing the
13 same, the applicants. And we have to take all that in and
14 try to sort it out and we make our own decision about, for
15 instance, how much deference should be accorded to the
16 city's opinion. So I don't think it would be appropriate
17 today to start taking evidence on and off of the table,
18 making that determination.

19 It's a determination we won't make until we have
20 all the evidence in. And we'll have to go back and then
21 wait for your briefs to come in and we'll consider that
22 whole package of facts and argument and come to our own
23 determinations.

24 MS. VAHIDI: Could I make one -- just give
25 everybody one point of information is I'd like to point

1 out that Land Use Table 2B, the center column is the city
2 of Carlsbad's and the "land use analysis" they provided to
3 us when we coordinated initially in spring of 2008 and
4 requested that they provide their input.

5 So what I'd like to point out is, is that a lot
6 of what you seem to be -- other than what's in the
7 right-hand column is verbatim from the city's letter to
8 us. Just to point that out so that the information is
9 included in the FSA.

10 Now, we are required to make our own conclusions
11 as well. We don't necessarily just rely on in citing
12 cases we don't necessarily always just rely on everything
13 that the local agencies say about their own documents.

14 HEARING OFFICER KRAMER: Yeah. I think, Mr.
15 Thompson, deference is something you're going to have to
16 argue with all the other things that you're going to be
17 arguing in your briefs. And on the hierarchy of
18 standards, in my mind, deference falls somewhere below
19 rebuttal presumption. So staff is not required certainly
20 to adopt everything that the city suggests or recommends
21 to them.

22 MR. THOMPSON: I understand that. And we look
23 forward to a briefing on this, because I actually think
24 the statute and the way that this Commission has
25 interpreted that statute and discussed it are fairly

1 clear. But we will brief it.

2 And I would say I don't think the recitation of
3 what the city submits is in any way deference. But
4 we'll -- we will include this in your list of briefing
5 items.

6 STAFF COUNSEL RATLIFF: Yes, Commissioner, I'd
7 have to ask that Carlsbad certainly isn't the first
8 municipality to oppose power plant projects quite
9 vigilantly. And, obviously, the role of staff is to pay
10 attention to what the local government says about itself
11 ordinance but not just accept their interpretation for
12 whatever political purposes they may have. So I think
13 it's important staff be independent and allowed to have
14 its own view on whether or not there is conformity
15 locally. And I think the Commission has very clearly
16 acknowledged that role for staff.

17 MR. THOMPSON: I take exception to the idea that
18 somehow our legal arguments and our testimony are
19 politically driven.

20 HEARING OFFICER KRAMER: We don't consider the --

21 MR. MC KINSEY: I'd like to apologize --

22 HEARING OFFICER KRAMER: -- those arguments.
23 They are looking for arguments on the merits.

24 MR. MC KINSEY: On 1744, just as a distinction,
25 it applies to the staff. It doesn't apply to the

1 Committee.

2 And, Officer Kramer, so the question he's raising
3 is whether or not the staff has followed 1744 in giving
4 due deference to an interested agency. And that is a
5 different legal question than the question of whether or
6 not the Committee has reached correct findings as well.
7 So the legal issue you're raising is whether the staff has
8 given due deference to the city's findings or comments or
9 recommendations.

10 MR. THOMPSON: And I think that's the way I
11 framed it. I would point out that I think it's difficult
12 that you didn't know the section of the law. But that was
13 the argument I was making about staff. I did not intend
14 to make the argument that the Committee was referencing.

15 MS. VAHIDI: And I would point out I'm not an
16 attorney.

17 MR. THOMPSON: Well, judging from what we just
18 went through, I bet you're lucky about that.

19 HEARING OFFICER KRAMER: Okay. So one more item
20 for the briefs if it wasn't there already. You have a
21 question?

22 COMMISSIONER EGGERT: As it relates to the land
23 use tables within the FSA, the center column of the city
24 of Carlsbad compliance requirements/consistency
25 determination by the city of Carlsbad, is your

1 interpretation of that language as it relates to each of
2 these topic areas within the table is it consistent with
3 what you provided?

4 MR. THOMPSON: I'm looking over at Scott for a
5 nod of the head, but I think we believe that it was well
6 done; that it represents the city's position.

7 COMMISSIONER EGGERT: Okay.

8 HEARING OFFICER KRAMER: He said that a few
9 minutes ago.

10 By MR. THOMPSON:

11 Q One final area, Ms. Vahidi. This has to do with
12 coastal access and Public Resources Code 25529. On page
13 4.5-15 of your testimony, you reference that code
14 provision and its requirement I think that an area shall
15 be acquired and maintained by the applicant for public
16 access and use.

17 A Yes. Under the Warren-Alquist Act, yes.

18 Q And what was the area that will fulfill that
19 requirement?

20 A Well, actually, condition of certification land one
21 was recommended as the component that would satisfy that.
22 And that's consistent with other recent projects we've
23 done at other coastal power plants.

24 Q Wasn't the Coastal Rail Trail an action that has
25 already been proposed and implemented by the city in

1 another case?

2 A "Another case" meaning?

3 Q Meaning the Poseidon desal facility.

4 A Yes. I understand that.

5 Q So it's a duplicate type requirement? You're trying
6 to satisfy the code by having the applicant give something
7 that's already been donated?

8 A In as much as -- I mean, even in our initial
9 conversations with the city, the Coastal Rail Trail
10 discussions were focused on how they would -- or the
11 dedication of the easement was a discussion of how this
12 applicant and this property owner would provide either
13 fees or easement as it relates to impacts related to this
14 project.

15 HEARING OFFICER KRAMER: While you're on that,
16 I'm curious then has the land been donated already. That
17 was the implication of your question, Mr. Thompson.

18 MR. THOMPSON: Yeah, and you're asking -- let me
19 say I think so. But if I could ask Mr. Donnell to address
20 that.

21 MR. DONNELL: No, I do not believe the land has
22 yet been dedicated. But it is a condition of approval
23 that's been placed on the desalination project for that
24 applicant to fulfill.

25 HEARING OFFICER KRAMER: And does this condition

1 differ in any significant way from the condition that was
2 placed on the desal plant?

3 MR. DONNELL: The intent of it is largely the
4 same, except that it fixes it on the west side and also
5 allows a way out in the way of I think the cash option.

6 HEARING OFFICER KRAMER: Okay. So the desal
7 condition was not specific as to location?

8 MR. DONNELL: Other than it needed to be
9 somewhere within the precise development plan area.

10 HEARING OFFICER KRAMER: So that could be between
11 I-5 and the coastal road.

12 MR. DONNELL: That's correct.

13 HEARING OFFICER KRAMER: Thank you.

14 MR. THOMPSON: A follow-up question, Mr. Donnell.
15 Was it the intention of the city that the Coastal
16 Rail Trail donated pursuant to the desal decision would be
17 on the east side pursuant to city council resolution?

18 MR. DONNELL: The condition that was placed on
19 the precise development plan did not fix the location of
20 the rail trail. It did not look back to the city
21 council's decision from several years before. It just
22 acknowledged it as a permitted use within the precise
23 development plan.

24 MR. THOMPSON: Thank you very much.

25 HEARING OFFICER KRAMER: Thank you. Next

1 cross-examination will be the Center for Biological
2 Diversity.

3 MR. ROSTOV: Thank you, Mr. Kramer. I just have
4 a couple questions.

5 CROSS-EXAMINATION

6 BY MR. ROSTOV:

7 Q For Mr. Barberio, I believe you testified yesterday
8 that CECP the city considers that Carlsbad project to be
9 merchant plant; is that true?

10 A Yes, that is the city's position. As far as we know,
11 it's -- everything we have indicates that they have no
12 contracts to provide -- to public. So that's been our
13 position, that it's strictly a merchant plant.

14 Q My follow-up question is: Why do you consider it a
15 merchant plant? And the main reason is you believe it
16 doesn't have -- I don't want to put words in your mouth.
17 Enumerate all the reasons you believe it is a merchant
18 plant.

19 A In my testimony, the merchant plant issue was related
20 to the conformance of the CECP proposal to the land use
21 designation and the zoning designations on the site. And
22 the city's position is as a merchant plant and not a
23 public utility. The proposal is not consistent with our
24 general plan or zoning.

25 MR. ROSTOV: Okay. And then I have one other

1 question for Ms. Vahidi, the CEC staff person.

2 CROSS-EXAMINATION

3 BY MR. ROSTOV:

4 Q How do you say your name?

5 A Vahidi.

6 Q Sorry. So the state has a policy of closing
7 once-through cooling units which would include Units 4 and
8 5. Can you explain why the closer of Units 4 and 5 as a
9 result of the once-through cooling regulations is not a
10 probable project for a cumulative impact analysis?

11 A Someone else can probably clarify this, but that
12 "project" is a proposed one at the moment. And as I
13 understand it -- and it wasn't even proposed until about a
14 month and a half, two months ago. And that was post-FSA
15 publication and a proposal as I understand that's fairly
16 speculative.

17 MR. MC KINSEY: Can I -- I don't understand. I
18 don't think I know of any project proposed to shut down
19 Units 4 and 5.

20 MS. VAHIDI: I mean, the applicant would have to
21 be the one that would propose it, I would imagine.

22 MR. MC KINSEY: I'm not aware of any proposal to
23 shut down Units 4 and 5.

24 MR. ROSTOV: I'm just saying there is a state
25 law --

1 MR. MC KINSEY: Which is actually the issue the
2 city is raising.

3 MR. ROSTOV: There's actually just a state law
4 that requires once-through cooling projects to shut down
5 in the near future.

6 STAFF COUNSEL RATLIFF: What state law is that,
7 Mr. Rostov?

8 MR. ROSTOV: It's the once-through cooling
9 regulations. I don't have the site.

10 STAFF COUNSEL RATLIFF: Well, we could argue
11 about that. But I think you're talking about the proposed
12 State Board water policy, which is so far only proposed.
13 It has not been adapted and is heavily caveated. So I
14 mean, we'll talk about that under water policy I suppose.
15 But I don't think there is -- I'm not aware of any state
16 law you're requiring to that would require the shut down
17 of four and five.

18 MR. MC KINSEY: I would agree. I think we'll get
19 into this topic on water on Thursday.

20 HEARING OFFICER KRAMER: Mr. Rostov, you asked
21 him about land use aspects of the shut down, if one were
22 to occur.

23 MR. ROSTOV: Yes.

24 HEARING OFFICER KRAMER: And to the extent you're
25 digging into that issue, that does seem appropriate for

1 this panel, land use.

2 Sorry. I'll speak up. Mr. Ratliff, I'm
3 channeling you. If you could rephrase.

4 MR. ROSTOV: Yeah, I can rephrase my question.

5 BY MR. ROSTOV:

6 Q Within the state of California, there is a movement to
7 close down the once-through cooling systems at the coastal
8 power plants, and that would include Units 4 and 5. Have
9 you looked at that in terms of your land use analysis?

10 A Well, if you read the land use FSA, no, shut down of
11 Units 4 and 5 is not part of the proposed project. We're
12 required to look at the proposed project application, and
13 I did not consider it as a cumulative project.

14 HEARING OFFICER KRAMER: Mr. Rostov, by "shut
15 down," do you mean the removal of the units or simply the
16 turning them off or turn off the cooling system that draws
17 ocean water? Those are two different things.

18 MR. ROSTOV: Actually, I think I meant both.

19 HEARING OFFICER KRAMER: So it would include --

20 MR. ROSTOV: It would include both. But I mean
21 the answer to my impression of the witness's answer would
22 be to both of those questions.

23 BY MR. ROSTOV:

24 Q Is that correct?

25 A That would be correct. Yes. That's accurate.

1 MR. ROSTOV: Okay. I have no other questions.

2 HEARING OFFICER KRAMER: Thank you.

3 Power of Vision.

4 MS. BAKER: Thank you.

5 CROSS-EXAMINATION

6 BY MS. BAKER:

7 Q And good morning, everyone.

8 Mr. Donnell, Ms. Vahidi suggested yesterday that

9 Carlsbad development rules are a series of nesting dolls

10 and that it's impossible for an applicant or very

11 difficult for an applicant to know what will be required

12 of them until they actually file an application. Would

13 you characterize that description as being accurate?

14 A I wouldn't characterize the description of an

15 applicant not knowing what is applicable. I think that's

16 been made pretty clear. It was demonstrated, for example,

17 with the desalination plant proposal.

18 In terms of the nesting dolls, that's somewhat of

19 an accurate way to describe it in the sense that we have

20 these larger documents, the general plan, which are

21 implemented by smaller, more focused documents: The

22 specific plan, for example, or the redevelopment plan. So

23 it is like a nesting doll in that they all are

24 interrelated.

25 Q Thank you.

1 And would you say the general plan has several
2 requirements? And we touched on these a little bit
3 earlier today. Just because an individual land use is
4 allowed in -- let's say, an office building, an office
5 designation -- does that mean it's automatically approved?
6 Aren't there other rules that you would have complied with
7 before the project is approved?

8 A That brings up the nesting doll example, not only in
9 the power station property, but in other areas of the
10 city. It's not just an automatic in if your use is
11 permitted by land use designation. There are other city
12 standards, whether they would be overlay zones or a
13 specific plan, all of which must be considered to
14 determine whether or not a project is allowed.

15 Q And then yesterday, Mr. Donnell again, there was
16 several comments regarding SB 144, the redevelopment plan,
17 the Agua Hedionda land use plan that provided for a
18 smaller more efficient power plant.

19 At the time those documents were constructed and
20 approved, isn't it true that the city was not aware of
21 newer technology that power plants would be air cooled and
22 did not necessitate the use of ocean water? So if that
23 knowledge had been known at the time, that those documents
24 would not necessarily have provided for power plants?

25 A That's somewhat of a speculation to respond to the

1 second part of your question. But, yes, I believe at the
2 time generally ten years ago that the thought was that
3 power plants must be located on the ocean. We were not
4 aware of the technology that would allow something other
5 than once-through cooling.

6 Q Thank you.

7 And then I have another couple questions for Ms.
8 Vahidi.

9 You say in the FSA that the sounding land uses
10 are compatible for CECP. And yet there are people,
11 residents, that are less than half a mile away. And as a
12 matter of fact, the Encina plant really is located in a
13 neighborhood. And that neighborhood actually existed
14 before Encina was built. What standard is required by the
15 California Energy Commission that ignores the fact that
16 there are residents that are so close by?

17 I'm not saying that very well.

18 But what I'm trying to get to is because people
19 do live so close to the power plant and the proposed new
20 one, why were those not considered when you say that the
21 project is a compatible land use?

22 A They were considered. You'll note by the setting
23 discussion that we provided a land use inventory. And you
24 will note that when we made the statement, the CECP as
25 sited in the location it's sited at, the site of an

1 existing industrial facility, which is a power plant.

2 Sandwiched between a railroad track and Interstate 5 is
3 definitely compatible with its adjacent uses, physically
4 compatible.

5 Q But that just goes to my question in how far away do
6 residents have to be before they're not considered or how
7 close -- maybe that's a better way to phrase this. How
8 close do residents have to be before they're considered
9 not compatible?

10 A That's a very broad question. It depends on a case by
11 case.

12 Q So you have no set standard? In other words, is it a
13 half a mile? A third of a mile? A mile away? You have
14 no set standards? So it's a judgment call on your part
15 whether or not a neighborhood is considered compatible
16 with a power plant?

17 A With regard to residential uses or --

18 Q Yes.

19 A Yeah, there's not a specific set standard. It depends
20 on a number of factors when we do analysis.

21 Q And what would that factor be, for example?

22 A Well, again, it depends on a case by case basis. You
23 know, the reasoning and methodology's pretty detailed
24 specifically in the FSA. I can read it for you. I can go
25 through it for you if you want.

1 Q No, that's not necessary. I read the FSA and I do
2 realize that you mention there are residents but they are
3 less than half a mile away. So again that's not the
4 standard again. It's closer, in other words?

5 A The thresholds are listed. There are no specific
6 distance thresholds for determining level of significance.

7 Q Okay. Thank you.

8 And then again I'm curious about the issues that
9 we talked about. It's been touched on by some of the
10 other questioners today about whether the CECF is an
11 expansion or whether it's a brand-new project. And I
12 believe we talked also a lot about in the foreseeable
13 future that Units 4 and 5 will be decommissioned and at
14 some point Encina will be taken down. So I am curious as
15 to why CECF in your testimony or in the FSA rather in
16 terms of coastal dependent use is considered an expansion
17 rather than a new project

18 A Well, the reason for that is again it's taking out
19 existing oil tanks and it will lead to the actual
20 retirement of Units 1, 2, and 3. And it's a power plant
21 that's actually owned by the same applicant.

22 Q So the fact it's owned by the same applicant makes it
23 an expansion --

24 A No, there are a number of factors but --

25 Q But it's a whole separate --

1 A It's a matter of semantics, new project/expansion.
2 It's a power plant being developed at the site of an
3 existing power plant. And is going to -- is connected to
4 leading to the shut down of Units 1, 2, and 3.

5 Q But it's not an expansion of the existing Encina
6 plant. It's a whole new building with whole new
7 equipment, brand-new stacks --

8 STAFF COUNSEL RATLIFF: I have to object. The
9 question is argumentative.

10 MS. BAKER: I'm not going to argue the point with
11 you.

12 STAFF COUNSEL RATLIFF: There is a question. I
13 think it should be phrased as a question.

14 MS. BAKER: I did ask the question why the -- I'm
15 trying to get clarification on why in terms of in the
16 coastal dependent industrial facilities in the FSA that
17 CECP is not considered a new use; it's a cumulative use
18 rather than considered an expansion. That's all. I don't
19 believe my question has been answered.

20 HEARING OFFICER KRAMER: I'll sustain the
21 objection to argumentative. But you could ask her whether
22 or not she sees it as an expansion and why.

23 MS. BAKER: Thank you.

24 HEARING OFFICER KRAMER: The true question is
25 really in the form of an argument, trying to convince her

1 that she should answer one way or the other.

2 MS. BAKER: Well, again, no disrespect intended.
3 I'm trying to get an answer to the question. I'm not
4 trying to convince her of anything.

5 STAFF COUNSEL RATLIFF: Well, I think Ms. Vahidi
6 was asked this question first. I think she did, in fact,
7 answer the question. And then this turned into an
8 argumentative kind of retort. And I believe the question
9 has been asked and answered. But if it needs to be
10 answered again --

11 HEARING OFFICER KRAMER: Let's try it one more
12 time.

13 MS. BAKER: Yes, please. I must be dense, so I
14 would appreciate a clarification.

15 MS. VAHIDI: If it helps to look at it this way
16 as far as power plant siting goes, just note the fact that
17 this particular proposed project will be using a lot of
18 existing infrastructure that is attached to the existing
19 EPS. Whereas, if you were to site a new power plant
20 somewhere else, you would need, you know, lots of
21 infrastructure to connect it to the grid, water, so on and
22 so forth. So in my view, I view it as, you know, as an
23 expansion as stated.

24 BY MS. BAKER:

25 Q I have just one follow-up, and then I promise I'll be

1 finished with this.

2 So the existing infrastructure you're talking
3 about, could you elaborate that for me?

4 A Again, I can sit here and read through all of the
5 stuff I've said in here, but --

6 Q No. No. No. What I meant was did you mean
7 pipelines? Did you mean transmission lines? That's what
8 I wanted to know.

9 A All of the above. I mean, there's a lot of
10 existing -- I could sit here and tell you what all of the
11 project components are that are going to attach to the
12 existing infrastructure. If you'd like me to, I could go
13 through the list.

14 Q No. That would be unnecessary. Thank you very much.

15 HEARING OFFICER KRAMER: Thank you.

16 Finally, Terramar Association, your
17 cross-examination. Did you have any?

18 MS. SIEKMANN: I thought I already did it.

19 HEARING OFFICER KRAMER: Actually, you're right.
20 Thank you for your honesty.

21 We have a couple questions. Do you have any
22 before I go? Okay.

23 EXAMINATION

24 HEARING OFFICER KRAMER: The state of the Coastal
25 Rail Trail, why don't you know -- from any of the

1 witnesses who know, what is the state to the north and the
2 south of the project? In other words, is something built
3 or planned on both sides?

4 Mr. Donnell, if you want to start.

5 MR. O'DONNELL: Yes. The Coastal Rail Trail in
6 Carlsbad has been divided into six segments, some of which
7 have been complete. For example, there is a segment to
8 the north that has been located on the east side of the
9 railroad tracks which runs roughly from our village area
10 north of the power plant to I believe Tamarack -- thank
11 you -- within the railroad right-of-way.

12 HEARING OFFICER KRAMER: To where?

13 MR. O'DONNELL: Roughly from our village area to
14 Tamarack. Tamarack is just north of the Auga Hedionda
15 Lagoon.

16 HEARING OFFICER KRAMER: Now, is that going to be
17 able to cross the lagoon on the railroad bridge?

18 MR. O'DONNELL: Not on the railroad bridge.
19 There is a bridge to the east of that, a smaller bridge,
20 which holds a gas pipeline as well as a sewer pipeline.
21 And it's envisioned that the rail trail would be built as
22 part of the enhancements to that bridge, which is part of
23 another project which is in this same area.

24 HEARING OFFICER KRAMER: Okay.

25 MR. O'DONNELL: And in addition to that, to the

1 south, on the east side of the tracks, to the north of
2 Canon road, so this case by is adjacent to the power
3 plant -- the west resort development which was completed
4 several years ago anticipated the construction of the Rail
5 Trail on the east side. In fact, its landscaped plans
6 have been designed to accommodate that and the city
7 required a near irrevocable offer of dedication for that
8 future trail.

9 HEARING OFFICER KRAMER: And I'm sorry. This is
10 on the north side of the power plant?

11 MR. O'DONNELL: This would be just to the south
12 of the power plant, but on the north side of Canon Road.

13 HEARING OFFICER KRAMER: Okay. Thank you.
14 That's not constructed yet?

15 MR. O'DONNELL: That's correct.

16 HEARING OFFICER KRAMER: Has it been dedicated to
17 the city?

18 MR. O'DONNELL: Irrevocable offer, too.

19 MR. ROUSE: If I may, Mr. Kramer, Hearing
20 Officer Kramer.

21 HEARING OFFICER KRAMER: Go ahead.

22 MR. ROUSE: The reference to the west development
23 project is the final -- I'm going to say 500 feet
24 immediately north of Canon Road.

25 The longer range plans of the city for the

1 Coastal Rail Trail from Canyon Road, which is southerly of
2 the project the Encina Power Plant Station -- Canon Road
3 is the southern arterial. The future design of the
4 balance of the Coastal Rail Trail throughout the city to
5 its city limits is on the westerly side of the tracks. It
6 necessarily needs to move over to the westerly side in
7 order to bridge yet another lagoon and to correspond with
8 the commuter rail station further to the south. And it
9 will eventually, before it leaves the city's limits to the
10 south, will go all the way over to Carlsbad Boulevard,
11 because there is yet another lagoon to cross.

12 So the city -- Mr. Donnell's testimony is correct
13 regarding the first segment from the downtown village area
14 to Tamarack. But after that, there are a number of areas
15 in which the necessary logical location and physical
16 location is anticipated to be westerly of the railroad
17 tracks and even in some instances all the way out to
18 Carlsbad Boulevard in order to cross lagoons and other
19 elements.

20 MR. O'DONNELL: And, Mr. Kramer, if I could
21 clarify as well, at the west development this has been a
22 portion of the Coastal Rail Trail developed.

23 And to respond to something Mr. Rouse raised,
24 south of Canyon Road there has been discussion about
25 locating the trail on the west side of the tracks.

1 However, we go back to the council approval, which was to
2 locate the trail on the east side. In other words, it's
3 not completely clear the final alignment. I would
4 hesitate to fix it to the west side. There are other
5 agencies involved with funding of this project, and it's
6 more than likely that the city will try to implement the
7 council's vision of locating it on the east side.

8 MR. ROUSE: And my real point was it's not set in
9 stone. There is no fixed right-of-way that compels it to
10 be on the east side of the tracks through the Encina Power
11 Station.

12 The power plant owner's obligation under the PDP
13 is to reach a mutually agreeable location with the city
14 for the alignment through the power station PDP area,
15 which is not required to be on the east side. So I think
16 it's still a work in progress as it relates to
17 establishment of a fixed location for the Coastal Rail
18 Trail southerly of Tamarack Avenue, which is in turn
19 northerly of the lagoon.

20 HEARING OFFICER KRAMER: If the existing units
21 were ultimately removed and that land was given over to
22 some non-electricity generating use, would there be any of
23 the auxiliary facility that would remain on the parcel to
24 the west of the railroad tracks in order to service the
25 new project that Carlsbad Energy Center? Do you

1 understand the question?

2 MR. MC KINSEY: I do understand the question.

3 And Mr. Rostov would not be able to answer that question.

4 And Mr. Piantka, who's next to me, who was sworn in

5 yesterday, I think can answer the question, but I don't

6 know if he was completely prepared for it because it

7 probably involves some speculation about what might occur

8 on that site. But let me just ask him if he thinks he can

9 answer.

10 HEARING OFFICER KRAMER: If there is just an

11 exhibit you can point me to; I'm just trying to understand

12 how many of the shared facilities are west of the railroad

13 tracks, if any.

14 MR. MC KINSEY: Maybe we'll come back to that

15 question. And, in fact, it might logically come up in

16 water again Thursday, because a lot of the facilities that

17 might remain are related to the water system from Poseidon

18 and the Poseidon facility. But I don't think we could

19 answer it today.

20 HEARING OFFICER KRAMER: Okay. Remind me where

21 the switchyard is. Is it near Canyon to the west of the

22 tracks?

23 MR. MC KINSEY: There's the switchyard. The

24 existing is west to the tracks.

25 HEARING OFFICER KRAMER: The switchyard to serve

1 the new would be east?

2 MR. MC KINSEY: Both.

3 HEARING OFFICER KRAMER: Both sides. Okay. We
4 can come back to this in water if we need to.

5 MR. THOMPSON: Mr. Kramer, can I ask one follow
6 on question on the Coastal Rail Trail?

7 HEARING OFFICER KRAMER: Yeah. I think I'm done
8 with that. Why don't you wait until we've asked all the
9 others, because you may have a couple follow-up questions.

10 MR. THOMPSON: I'm sorry. I didn't realize.

11 HEARING OFFICER KRAMER: And you can do it all at
12 once.

13 I'm trying to understand the function of some of
14 the immediate nest of dolls, if you will, the specific
15 plan and the PDP. I've forgotten what the first "P"
16 stands for. But let me ask any members of the panel who
17 want to answer to answer.

18 If one has a -- I gather that if one has a PDP,
19 that's where you will find the project-specific
20 development standards such as setbacks, height limits,
21 maybe some landscaping requirements, the treatments on the
22 exterior of the facility, that sort of thing; is that
23 correct?

24 MR. O'DONNELL: Yes.

25 HEARING OFFICER KRAMER: Now, are those

1 development standards set out somewhere else in the city
2 codes or some other place?

3 Let's say I'm coming to develop a commercial
4 property. I can look at a list somewhere to get a feeling
5 for what standards would apply to something as simple as
6 knowing what the setbacks are going to be on my commercial
7 lot.

8 MR. O'DONNELL: Chapter 2136 of our zoning
9 ordinance, the public utilities zone clearly calls out
10 that a precise development plan is required to implement
11 that zone. So right away, the reader knows there is
12 another document to which he needs to refer. The precise
13 development plan is a document like this that does contain
14 the standards that someone can go to to find out what
15 applies.

16 HEARING OFFICER KRAMER: So those plans exist
17 independently of a particular parcel?

18 MR. O'DONNELL: "Those plans" being precise
19 development plan?

20 HEARING OFFICER KRAMER: Right.

21 MR. O'DONNELL: There is a precise development
22 plan particularly for the Encina Power Station.

23 HEARING OFFICER KRAMER: No. I mean, let's
24 say -- Mr. Rouse --

25 MR. ROUSE: If I may, I think one of the unique

1 nested dolls and perhaps one of the smallest one in the
2 nesting stack is the precise development plan permit is
3 only operative in connection with the utility designated
4 areas in the city. So precise development plan permit has
5 nothing to do with the other kinds of land uses designated
6 throughout the city.

7 In the nesting dolls analogy function here, it is
8 you only get a precise development plan permit when you
9 have a specific construction project present as with the
10 desalination plant. So it is only, if you will, an
11 explanation of those specific design standards and other
12 elements that relate to the specific project application.

13 Comes back to our theme that we believe to be
14 consistent throughout is that the authorized uses are in
15 the more superior nested dolls, general plan, zoning
16 ordinance, specific plan, Auga Hedionda and the land use
17 plan. And then it's the details of implementing those
18 uses that are contained in the precise development plan
19 permit requirement. So there are details in it, but there
20 are details to relate to the project that underlie the
21 adoption of the precise development plan. It is a little
22 bit confusing.

23 HEARING OFFICER KRAMER: Okay. Yeah. I'm
24 starting to -- maybe in a couple more questions I'll get
25 it.

1 So if I have an empty parcel that happens to be
2 zoned utility, is it fair to say that until I get a
3 precise development plan approved I won't know what the
4 setback requirements are, because they are only developed
5 when you go through the process of developing that plan
6 for that specific parcel?

7 MR. O'DONNELL: As with any property in Carlsbad,
8 whether along the lagoon or not, a permit is required to
9 develop the property. In the case of the Encina Power
10 Station, one must refer to the precise development plan to
11 determine what the standards are that are applicable.

12 It may be helpful, by the way, to refer to
13 Exhibit 414. That is a map that shows how the different
14 jurisdictions Auga Hedionda, the land use plan, precise
15 development plan redevelopment plan, et cetera, all are
16 related. It sort of gives you a visual that maybe helps
17 one understand the relationship.

18 HEARING OFFICER KRAMER: What was the number
19 again?

20 MR. O'DONNELL: 414.

21 HEARING OFFICER KRAMER: Okay. Now is there
22 somewhere in that ordinance a general statement of what
23 the setback requirements are and limits? Or is that
24 simply developed when you develop a PDP for a project?

25 MR. O'DONNELL: Correct.

1 HEARING OFFICER KRAMER: A or B?

2 MR. O'DONNELL: I'm sorry. It's in 2136 of the
3 zoning ordinance it does say that the city council has the
4 ability to establish development standards and those are
5 done through the precise development plan.

6 HEARING OFFICER KRAMER: Okay. So until you ask,
7 you won't know -- you just can't look it up? You can't be
8 a stealth developer searching the web from New York and
9 decide if you want to propose a project?

10 If I was trying to explain this to a colleague in
11 city, say, in northern California, would it be fair to say
12 the PDP is the functional equivalent of a conditional use
13 permit?

14 MR. O'DONNELL: I would disagree with that due to
15 the fact that precise development plan recognizes that
16 utility uses are unique. We're not a shopping center or
17 single-family home. The precise development plan is a
18 document which is more like a specific plan I would say
19 rather than a conditional use permit because it lays out
20 the permitted uses and development standards.

21 MR. ROUSE: I beg to differ, if I may. I don't
22 know the practice in northern California, but I think what
23 we're distinguishing here is the uniformly-applied plans
24 and ordinances that set out the allowable uses. And that
25 goes through general plan zoning ordinance, specific plan,

1 Auga Hedionda, and the land use plan, and of course the
2 South Carlsbad redevelopment plan. These are all planning
3 documents that tell everybody in the world how the city
4 has determined to divide up its city, where they want this
5 tree, where they want utilities, where they want
6 government functions, where they want residential, where
7 they want high density residential, where they want open
8 space. Those are the functional documents.

9 In the unique characteristic of the public
10 utility designated area, they have the further requirement
11 of a precise development plan which functions as the
12 permit where you look at the details of the project that
13 is being proposed. And I firmly believe it's not closer
14 to a conditional use permit and in fact not quite
15 analogous to a conditional use permit, but is the
16 examination of the design of the other elements of the
17 specific project rather than identification of broadly
18 applied categories where land use elements can occur
19 throughout the city for the types of land uses.

20 So in that regard, I think it functions as a
21 permit in which issues are relevant to the design and
22 height and those kinds of things. But it's still at the
23 permit level rather than at the broad general plan
24 zoning/specific plan level that identifies the range of
25 permissible uses throughout the city in various locations.

1 HEARING OFFICER KRAMER: Mr. Donnell, does the
2 city have -- does it use a tool like a conditional use
3 permit for other zones?

4 MR. O'DONNELL: Yes.

5 HEARING OFFICER KRAMER: What do you call it?

6 MR. O'DONNELL: It's called a conditional use
7 permit. And in fact, there are conditional use permit
8 uses permitted in the precise development plan area.

9 HEARING OFFICER KRAMER: So you may have to have
10 a PDP and then also have a conditional use permit?

11 MR. O'DONNELL: Well, it depends. If the use is
12 consistent with the PDP, if the PDP calls that particular
13 use required a CUP, you would not need to amend the
14 precise development permit; you would simply apply for the
15 CUP.

16 MR. ROUSE: Again, I've got to differ a bit here,
17 because the precise development plan is not -- does not
18 change the allowed uses. It does not establish a
19 pre-permit for future uses that are consistent with it. A
20 precise development plan permit is required for any
21 development within the public utility and utility
22 designated areas. So by definition, it's not a
23 forward-looking document to plan the city. It's a
24 project-specific analogous to a conditional use permit and
25 other types of implementing permits that the city has in

1 its land use regime.

2 HEARING OFFICER KRAMER: Thank you.

3 Ms. Vahidi, if I were to ask you -- well, I'm
4 going to ask you, does the proposed project meet the city
5 development standards, such as setback requirements, in
6 your opinion?

7 MS. VAHIDI: To clarify, the approach you see
8 that we took in the FSA is a little bit different than
9 what you normally see in our FSAs. I can't actually say
10 that it is because I don't know what those development
11 standards would be.

12 So in other words, unless the applicant got their
13 PDP, I wouldn't know what those would be for me to do
14 standard by standard analysis. Does that answer the
15 question?

16 HEARING OFFICER KRAMER: Okay. But if the
17 Commission approves the project as staff is recommending,
18 then at some point the applicant is going to have to
19 present a plan to the compliance staff and the compliance
20 staff is going to have to ask, well, was the project
21 properly set back from the boundaries? Is it too high, et
22 cetera, et cetera?

23 I think the design issues will be covered in the
24 visual analysis, so that's probably less of an issue. And
25 what are we going to be able to tell the compliance staff

1 to use as standards?

2 MS. VAHIDI: Therein lies the confusion, because
3 when we try to request information from the city to help
4 us with that, the response we have been getting is that
5 the applicant would need to do the comprehensive SP 144
6 update and the associated PDP.

7 So I guess I don't know how to answer that at the
8 moment.

9 HEARING OFFICER KRAMER: Is there someplace you
10 could look in the city's -- either in the --

11 MS. VAHIDI: There is. And the applicant may be
12 able to verify this. I believe at the beginning stages of
13 the project an applicant did put in the PDP application to
14 the city for the project. But I don't think that was
15 pursued further. So we could maybe look at that.

16 HEARING OFFICER KRAMER: Okay. Because one of
17 the things the Commission does -- I mean, the Commission
18 likes to receive advice from local agencies. But if for
19 whatever reason they choose not to supply the advice, then
20 the Commission has to go and do the best job it can of
21 asking itself what the city would require and maybe
22 requiring that or something different. But we do need to
23 have some kind of standards.

24 So I think what I've identified here is an issue
25 that certainly if the ultimate decision is to go forward,

1 we need to have something by way of standards so that the
2 applicant can design -- can finally design to those
3 standards and we can verify whether or not they have
4 successfully done so.

5 MS. VAHIDI: We could look at the most current
6 versions of the SP and PDP because they do cover some of
7 the power plant infrastructure. So we could look at that
8 and SP 144H does include the EPS. So we could look at
9 that.

10 HEARING OFFICER KRAMER: Do you believe that you
11 will be able to find those standards in there?

12 MS. VAHIDI: Well, it definitely does have a list
13 of development standards.

14 HEARING OFFICER KRAMER: So maybe we'll have to
15 see if it provides all the information we need. But we
16 may then have to have the parties point to those standards
17 in their briefs so that we can consider that.

18 MR. MC KINSEY: And to clarify, the PDP, the
19 application that Ms. Vahidi spoke of, which the project
20 was originally envisioned, the tank demolition that is
21 required for the installation of new units was going to be
22 done as a city-based project. And so a precise
23 development plan permit application was submitted for the
24 removal of those tanks.

25 At various points, it became clear it needed a

1 change in the project enhancement and refinement document
2 and moved all of these activities, partly because
3 everybody was saying they needed to be part of one project
4 into this project, eliminating the purpose of having the
5 city permit the tank demolition.

6 So the tank demolition, all the remediation on
7 the tank farm construction units, is all one project. But
8 that original PDP application was for the demolition of
9 the tanks and remediation of that area.

10 HEARING OFFICER KRAMER: Was that one of your
11 exhibits?

12 MR. MC KINSEY: Yeah, it is an exhibit. I can
13 give you a number.

14 HEARING OFFICER KRAMER: If you could give me a
15 number, it would be helpful.

16 MR. O'DONNELL: Mr. Kramer, could I offer some
17 input on that?

18 HEARING OFFICER KRAMER: Okay.

19 MR. O'DONNELL: My recollection is the precise
20 development plan amendment that was submitted by NRG in
21 2007 was for the Carlsbad Energy Center Project not to
22 demolish the tanks. It was for the power plant itself.

23 HEARING OFFICER KRAMER: I think when we looked
24 at --

25 MR. MC KINSEY: It's Exhibit 7.

1 HEARING OFFICER KRAMER: Seven? Thank you.

2 When we look at that, we can hopefully resolve
3 that on the face of the document.

4 Okay. Any --

5 COMMISSIONER EGGERT: This may have been answered
6 and I might have missed it. But just so I can further
7 understand the PDP, CUP, is there any examples of where
8 there was a project within a utility zone that was
9 consistent with an existing PDP that only required a CUP
10 and not an update to the PDP? Is that --

11 MR. O'DONNELL: Good question. I'm not aware off
12 hand of a project in the PDP, that required a CUP.
13 However, I think the best example is the desalination
14 plant which did require a PDP which did comply with the
15 PDP standards and other standards of the specific plan,
16 the Auga Hedionda land use plan.

17 MR. ROUSE: If I may, the trouble with that
18 answer is there was no PDP in existence until the
19 desalination plant came forward. So to say that a project
20 was in conformity with a permit that didn't exist until
21 the city council approves the project, there was no place
22 to look until the final gavel struck that authorized the
23 project.

24 And that's the dilemma we have here. It's not in
25 my judgment the plan level document, but a permit issue

1 and implementation level document.

2 HEARING OFFICER KRAMER: To use the nested dolls
3 analogy, if you needed both a PDP and a CUP, that would be
4 twins; right?

5 MR. ROUSE: It would be twins, and then you've
6 got, you know -- I won't go there.

7 HEARING OFFICER KRAMER: Let's see. That
8 concludes -- I think we've exhausted the public utility
9 question. So that was all the questions I had.

10 Do you have any questions?

11 So, Mr. Thompson, you wanted to ask a couple
12 follow-ups, and then we'll let others if they need to as
13 well.

14 MR. THOMPSON: Just a couple.

15 FURTHER CROSS-EXAMINATION

16 MR. THOMPSON: Mr. Donnell, back to when we were
17 discussing the Coastal Rail Trail, how would that trail
18 cross Hedionda lagoon?

19 MR. O'DONNELL: There is an existing sewer bridge
20 that supports the Vista Carlsbad sewer interceptor. The
21 Coastal Rail Trail would be located on top of that bridge.
22 That bridge is anticipated to be expanded soon as part of
23 the Vista Carlsbad sewer replacement project.

24 Presently, there is an easement that runs along
25 the NRG property on the east side of the tracks. The new

1 sewer line would be located in that easement. It is
2 anticipated the Coastal Rail Trail would be on that
3 existing easement as well.

4 MR. THOMPSON: Because that's the logical place
5 to put it?

6 MR. O'DONNELL: Correct.

7 MR. THOMPSON: Under the design guidelines for
8 Poseidon, if the Committee wants to look at the Poseidon
9 case as an example of a facility that has been constructed
10 in accordance with the city's rules and regulations, are
11 there any elements or aspects of that design and
12 requirements that were imposed on Poseidon that you think
13 would be relevant to this discussion?

14 MR. O'DONNELL: The city was very conscientious
15 when the desal project was proposed to ensure that its
16 design resembled that of a modern office building. We
17 wanted to ensure whatever development occurred at the
18 Encina Power Station would be compatible with future
19 redevelopment. So we went to extra efforts as did the
20 applicant for the desalination project to ensure the
21 design did just that, resemble an office building through
22 materials, through height, through overall design.

23 I do have a colored elevation of the approved
24 project for the Commission's review.

25 HEARING OFFICER KRAMER: Are you offering some

1 evidence?

2 MR. THOMPSON: I'm actually looking to see if we
3 have sufficient copies.

4 MR. O'DONNELL: And this project that Mr. Garuba
5 is showing you is the desalination plan as approved by the
6 city council in September 2009. This is looking at the
7 reverse osmosis building. Both the applicant and staff
8 attempted to reach a design to be compatible with future
9 redevelopment. It should be noted, too, this project has
10 a maximum height --

11 MR. MC KINSEY: Can I interrupt, just because I
12 haven't seen this document. I'm not sure what it is.

13 HEARING OFFICER KRAMER: It's coming around.

14 Irregardless of whether this comes in, we should
15 mark this as Exhibit Number 434.

16 (Thereupon the above referenced document was
17 marked for identification by the Hearing Officer.)

18 HEARING OFFICER KRAMER: And for the record, it
19 is a drawing, city of Carlsbad seawater desalination
20 project view from the south. The reverse osmosis
21 building, dated May 6, 2009, prepared by Gillis and
22 Pamichapan Architects.

23 MR. THOMPSON: Mr. Kramer, if I may?

24 HEARING OFFICER KRAMER: Go ahead.

25 MR. THOMPSON: Is Exhibit 434 a correct rendition

1 of the desalination plant that has been approved by the
2 city?

3 MR. O'DONNELL: Yes, it is.

4 MR. THOMPSON: And is this representation also
5 approved the concept was with Poseidon desalination?

6 MR. O'DONNELL: I'm sorry. Could you repeat the
7 question?

8 MR. THOMPSON: Has the Poseidon company agreed
9 that this is what their structure would look like?

10 MR. O'DONNELL: Yes.

11 MR. THOMPSON: How tall is it?

12 MR. O'DONNELL: Thirty-five feet.

13 MR. THOMPSON: I would like to offer this into
14 evidence.

15 HEARING OFFICER KRAMER: Any objection to its
16 receipt?

17 Hearing none, it is accepted into evidence.

18 (Thereupon Exhibit 434 was received into
19 evidence.)

20 STAFF COUNSEL RATLIFF: Mr. Kramer, it occurs to
21 me -- I don't know if this is the right time to raise the
22 issue, but there is precedent in the Commission's prior
23 cases. Metcalf is the example that stands out in my mind
24 where a condition of certification that staff imposed was
25 one which required the local government to be included in

1 the process of the final aesthetic design that was used
2 for the power plant. I'm told that worked quite
3 successfully post-licensing in the Metcalf case and that
4 the Metcalf facility benefited aesthetically from the
5 treatment that it received post-licensing.

6 There hasn't been I think much back and forth
7 between the city and the staff on the potential for such
8 cooperation I think here. But I think it's something that
9 could be considered like I say that in more than one
10 case -- I think Caulin is another example. There was
11 considerable amount of effort given to trying to ensure
12 the concerns the local government were taken into
13 consideration -- with consideration with the final
14 aesthetic appearance of the structure. And since that is
15 one of the concerns the city of Carlsbad has been
16 expressing in this hearing, it might be something that we
17 should be considering for this project as well.

18 HEARING OFFICER KRAMER: Are you speaking with
19 regard to the design of the project or the location -- the
20 negotiations of the location?

21 STAFF COUNSEL RATLIFF: No. Not the location,
22 but the actual architectural treatment that's given to the
23 facility when it's built. I mean, there are certain
24 things obviously such as the height of the stacks that
25 can't change for air quality reasons. But there are other

1 aesthetic aspects that can be adjusted and have been in
2 some of the prior projects.

3 And I only mention that because unfortunately we
4 just haven't had that discussion. And I think this
5 concern probably not -- might be one of the things that
6 staff does is talk with the city more about the
7 possibility of -- and with the applicant as well.

8 HEARING OFFICER KRAMER: We're crossing over into
9 the visual topic.

10 STAFF COUNSEL RATLIFF: Yes, we are. And that's
11 why I was a little uncertain as to whether this is the
12 right time to raise it. But it keeps coming up in our
13 discussions and it seemed to be pertinent to the
14 discussion right now so --

15 HEARING OFFICER KRAMER: So you're offering, I
16 gather, a heads-up for this afternoon's discussion of
17 visual? And maybe the parties can talk a little bit --

18 STAFF COUNSEL RATLIFF: Well, I haven't prepared
19 my witness to discuss this. But I mean, it's one of the
20 things that in the press for going to hearings has never
21 been explored, and I think that was actually the case in
22 the example of Metcalf as well. I mean, these are the
23 things that seemed to be a good idea that were added later
24 in the proceeding and did seem to have some success in
25 terms of the outcome. At least I'm told most people felt

1 that way. I only offer it up as an idea that we might try
2 to incorporate into this process at some point.

3 HEARING OFFICER KRAMER: Well, okay. Why don't
4 we touch on that. We'll give the parties some time to
5 think about it between -- while they're daydreaming during
6 our other discussion and we can discuss it again in the
7 visual session. If the parties would find it helpful to
8 have the opportunity to explore this further, we could
9 keep the record open or reopen it in the future to receive
10 additional testimony and suggest a condition. But I
11 suspect you're going to have a difficult time negotiating
12 that today during the course of hearings where I'm going
13 to be leaning on you to be concise and efficient in your
14 use of time. But I think we're open to anything that
15 appears to solve somebody's concerns and make all the
16 parties a little happier.

17 So Mr. Thompson, so 434 is in. Did you have more
18 questions?

19 MR. THOMPSON: No. We can broach this in the
20 visual. And I think we'll be more than happy to.

21 But I think we're going to probably want to look
22 at other things as well, the mass of the structure, the
23 proximity to the freeway and the lagoon. There are other
24 elements other than just the treatment of the building
25 itself. But I think we're more than happy to discuss that

1 on the record or off.

2 HEARING OFFICER KRAMER: Okay. I don't have it
3 clear in my mind where the Poseidon facility is located.
4 And I don't need somebody to do anything more than point
5 me to an existing exhibit that would indicate that for me.
6 Did anyone else have any --

7 STAFF COUNSEL RATLIFF: Do you want us to put it
8 up or --

9 HEARING OFFICER KRAMER: Looks like Mr. Donnell's
10 got it.

11 MR. MONASMITH: Project Description Figure 2 you
12 would be able to see where it's located.

13 HEARING OFFICER KRAMER: Could you put that up
14 then? Does any other party have questions that were
15 engendered by the discussion with the questions that I
16 asked earlier?

17 MS. SIEKMANN: May I say one thing? This
18 discussion that may occur between the applicant and the
19 city regarding the visual, I feel that all the intervenors
20 should be allowed in that discussion as we are all sitting
21 at the table. Thank you.

22 MR. THOMPSON: Mr. Kramer, I think the city may
23 have a map on the single page shows the exact location of
24 the desal facility. And we will provide copies for the
25 record and make it an exhibit if you'd like.

1 HEARING OFFICER KRAMER: Okay. So it's not
2 already drawn in one of these exhibits?

3 MR. MONASMITH: You can point it to on the map.

4 HEARING OFFICER KRAMER: Take Mr. Microphone.
5 There you go.

6 MR. O'DONNELL: The approved desalination plan
7 option the site of this tank number three, and also land
8 to the south of tank number three at total site area of
9 just under six acres.

10 HEARING OFFICER KRAMER: So it's on the west side
11 railroad tracks from the tanks which is on the other side?

12 MR. O'DONNELL: Right. Energy Center Project is
13 here. Desalination plant is here on the other side of the
14 railroad tracks.

15 HEARING OFFICER KRAMER: Okay. So the opposite
16 the two southern most tanks to the east of the railroad
17 tracks.

18 MR. O'DONNELL: That's correct.

19 HEARING OFFICER KRAMER: Thank you. Any other
20 questions about land use? Seeing none --

21 MR. MC KINSEY: Just while we're on this topic, I
22 think it would be useful -- and, Mr. Donnell, you can
23 probably answer this question. But the project I think
24 has started grading, correct? The desalination project?

25 MR. O'DONNELL: I don't think grading has begun

1 yet. I think just demolition of the existing site and
2 some other site preparation.

3 HEARING OFFICER KRAMER: Okay. Thank you,
4 everyone. Panelists, thank you.

5 We'll start our air quality panel and then take a
6 couple minute break.

7 So that panel will be Mr. Rubenstein for the
8 applicant; Mr. Walters and Mr. Moore from the air district
9 for the staff; Ms. Siekmann from Terramar, and along with
10 Diane Wist from Terramar. You folks could move your
11 materials up to the table, and we will start our air
12 quality segment in about five minutes.

13 (Recess taken)

14 HEARING OFFICER KRAMER: Somebody pointed out
15 some of our audience members are new to us today and were
16 not here yesterday, so what we'll do for their sake is
17 introduce everyone around the table so they know who is
18 who up here at the dais and the party tables. And then
19 we'll begin with the folks on my far right.

20 MR. MC KINSEY: My name is John McKinsey. I'm
21 the counsel for the applicant, NRG Energy at Carlsbad
22 Energy Center, LLC.

23 And with me at the table is George Piantka, the
24 project manager for the project.

25 HEARING OFFICER KRAMER: Mr. Simpson, you want to

1 introduce yourself?

2 MR. SIMPSON: Good morning. I'm Rob Simpson.

3 I'm an intervenor here.

4 STAFF COUNSEL RATLIFF: I'm Dick Ratliff, counsel
5 for staff. On my left is Mike Monasmith.

6 UNIDENTIFIED SPEAKER: Excuse me. Please speak
7 loudly into the microphone.

8 HEARING OFFICER KRAMER: Sorry. Could I also
9 suggest that you maybe sit over -- because I'm on the
10 verge of feedback here.

11 UNIDENTIFIED SPEAKER: It's not just me. People
12 can't hear if you don't speak clearly into the microphone.

13 UNIDENTIFIED SPEAKER: You have microphones, so
14 speak into them.

15 HEARING OFFICER KRAMER: Is there a speaker
16 behind that screen? My point to you is if you are sitting
17 in front of the speakers so you're probably not taking
18 advantage --

19 STAFF COUNSEL RATLIFF: I think there is a
20 difference. Right here they hear me fine, but back here
21 they don't hear me very well. So I will get pretty close.

22 HEARING OFFICER KRAMER: Mr. Ratliff, try it
23 again.

24 STAFF COUNSEL RATLIFF: My name is Richard
25 Ratliff. It doesn't like the Richard.

1 And with me is Mike Monasmith, the project
2 manager on my left.

3 HEARING OFFICER KRAMER: And who's the gentleman
4 on your right?

5 STAFF COUNSEL RATLIFF: On my right is Dr. Alvin
6 Greenberg, who's one of our witnesses on public health.
7 Should he be testifying with this panel?

8 HEARING OFFICER KRAMER: We'll get to that in a
9 minute.

10 In the back corner is our court reporter. His
11 only request is if you want to see your name spelled
12 correctly in the transcript and it's not obvious how it's
13 spelled to spell it for him.

14 To my right is Commissioner Anthony Eggert.
15 He'll be back with us in a moment.

16 To my left is Commissioner -- I'm Paul Kramer,
17 the Hearing Officer.

18 To my right is Commissioner Jim Boyd. He and
19 Commissioner Eggert are the Commissioners on this
20 Committee.

21 Commissioner Boyd's Advisor Tim Olson is sitting
22 to his left. And then we'll continue around.

23 MR. ROSTOV: I'm Will Rostov. I'm counsel for
24 intervenor, Center for Biological Diversity with
25 Earthjustice.

1 And to my right is Sara Jackson who is a research
2 associate with us.

3 MS. BAKER: And I'm Julie Baker with the
4 intervenor Power Vision.

5 And to my left is Dr. Arnold Roe, also an
6 intervenor with Power Vision.

7 MR. THOMPSON: These three chairs have always
8 been occupied by representatives of the city of Carlsbad.

9 My name is Allan Thompson. I'm CEC counsel for
10 the city.

11 To my left is Joe Garuba.

12 And occasionally to my right is Ron Ball, the
13 city attorney.

14 HEARING OFFICER KRAMER: Okay. The witnesses
15 we'll have identify themselves in a moment.

16 Mr. Ratliff has suggested, and unless a party
17 objects, we will have both the public health and the air
18 quality panels heard together. I note that there are
19 no -- well, there's one witness here on air quality, but
20 otherwise the witnesses are basically the same. And I
21 think that will be more efficient, certainly for the
22 public, because their issues relate both to the types of
23 contaminants that come out of the power plant that are
24 regulated as air quality issues and also those that are
25 discussed in the public health section.

1 So in order to make the panel complete, Dr.
2 Greenberg needs to find himself a seat up there. Okay,
3 Ms. Siekmann will move back to her place and we have a
4 space for Dr. Greenberg.

5 So let me then have the panel introduce
6 themselves. And if any of you have not been sworn in as
7 witnesses yet, let me know and when you're done
8 introducing yourself we'll swear you in as a group. Begin
9 with Ms. Siekmann.

10 MS. SIEKMANN: My name is Kerry Siekmann and I'm
11 intervenor for Terramar, the neighborhood to the south of the
12 Encina site.

13 HEARING OFFICER KRAMER: Steve.

14 MR. MOORE: My name is Steven Moore. I'm a
15 senior engineer at the San Diego Air Pollution Control
16 District.

17 MR. WALTERS: My name is William Walters. I
18 prepared the air quality staff analysis for the CEC.

19 MS. WIST: My name is Diane Wist. I'm a resident
20 of Terramar, 5440 Los Robles. And I am a principal at an
21 elementary school.

22 MR. GREENBERG: I'm Alvin Greenberg. I'm a
23 toxicologist. And I prepared the staff's public health
24 analysis.

25 MR. RUBENSTEIN: I'm Gary Rubenstein with Sierra

1 Research, and we are air quality consultants for the
2 applicant. And I work in both the air quality and public
3 health sections of the application for certification.

4 HEARING OFFICER KRAMER: And does anybody need to
5 be sworn in? Okay. If you would stand and raise your
6 right hand.

7 ALL PROSPECTIVE WITNESSES,
8 being sworn to tell the truth, were examined and testified
9 as follows:

10 HEARING OFFICER KRAMER: Okay. You are sworn.

11 Ms. Siekmann, you were previously sworn; correct?

12 MS. SIEKMANN: Yes.

13 HEARING OFFICER KRAMER: Okay. This is a panel
14 presentation on the land use plan. The way we will
15 operate is each party will be allowed to ask questions to
16 introduce the opening testimony from their witnesses.

17 And then following that, we will then go into
18 cross-examination phase where each party can ask questions
19 of any of the panel members they desire to ask them of,
20 with the caveat that other members may choose to answer
21 the question following the answer that's provided by the
22 person to whom the question was directed.

23 So we'll begin with the applicant, Mr. McKinsey.

24 MR. MC KINSEY: Thank you, Mr. Kramer.

25 DIRECT EXAMINATION

1 By MR. MC KINSEY:

2 Q Gary, can you summarize your conclusions from your air
3 quality impacts analysis evaluations and testimony,
4 including the degree to which the project complies with
5 the applicable air quality laws, ordinances, regulations
6 and standards and how the project is offset?

7 A Yes, I can. There are three principle elements to the
8 air quality analyses conducted by the applicant, the
9 district, and the Energy Commission staff. These three
10 elements are: Best available control technology, air
11 quality impact analysis, and an analysis of cumulative air
12 quality impacts.

13 With respect to best available control technology
14 requirements, the project is required by air district
15 regulations to use the cleanest technologies available to
16 ensure that emissions are minimized, and we have done
17 that.

18 The purpose of the air quality impact analysis,
19 the second element, is to ensure that the project will not
20 cause or contribute significantly to a violation of any
21 state or federal air quality standard. This analysis is
22 extremely conservative in terms of how it's conducted.
23 It's based on worst case emission rates, worst case
24 weather conditions, and worst case background air quality
25 concentrations, even if it's not physically possible for

1 all three of those to occur at the same time.

2 The result of the analyses that we performed
3 indicate that the project will not cause or contribute
4 significantly to a violation of any state or federal air
5 quality standard under any operating conditions, under any
6 weather conditions at any location.

7 The only caveat to this conclusion is that the
8 project will contribute to existing violations of some
9 ambient air quality standards for ozone and particulate
10 matter. This is not surprising in California. For
11 example, most of the state of California is non-attainment
12 for the state PM10 air quality standard. The implications
13 of some are fairly straight forward. The project is
14 required to provide emissions offsets or emission
15 reduction credits for oxides of nitrogen emissions to
16 satisfy San Diego air district requirements to address the
17 project's contribution to existing violations of the ozone
18 standard. And the project is required by proposed
19 conditions of certification by the Energy Commission staff
20 to provide emission reduction mitigation to address
21 hydrocarbon and particulate matter emission increases with
22 respect to the remaining issues.

23 The third element of the analysis addresses the
24 potential for cumulative air quality impacts and several
25 analyses were performed. First, the project air quality

1 impact analysis that I just discussed combined project
2 impacts with existing worst case background levels. That
3 is one type of cumulative air quality impact analysis.

4 In addition, because of the fact that the
5 Carlsbad Energy Center Project will be replacing three
6 units at the Encina Power Station and will in the future
7 operate from time to time in combination with three
8 remaining units the two steam boilers and the small
9 turbines, some specialized cumulative impacts analyses
10 were also conducted looking at air quality impacts during
11 commission of the new units in combination with operation
12 of some of the existing units as well as looking at longer
13 term operation of the new generated plant in combination
14 with Units 4 and 5 and the small turbine. That's the
15 second topic of cumulative impact analysis that was
16 conducted.

17 The third type of analysis was based on
18 consultation with San Diego Air District to look for
19 potential additional cumulative impact sources. And in
20 particular, we looked for sources located within six miles
21 of the plant, which is generally accepted as a radius in
22 which localized cumulative impacts might occur, to find
23 sources that were not already reflected in the background
24 air quality concentrations that were used and to find
25 sources that were large enough or close enough so they

1 might contribute significantly to air quality impacts at
2 the same location where the proposed project was.

3 That analysis as well as the upper two analyses
4 led us to the conclusion -- and we believe the district
5 and the CEC staff also agree -- that there are no
6 significant cumulative air quality impacts.

7 There were some comments and testimony by the
8 city regarding a failure to evaluate cumulative air
9 quality impacts. Those were addressed in a rebuttal
10 testimony and the projects identified do not raise the
11 specter of any significant cumulative air quality impacts.

12 In short, project complies with all applicable
13 air quality laws, ordinances, regulations, and standards,
14 does not result in any significant air quality impacts.
15 Does not result in any significant cumulative air quality
16 impacts.

17 Q Thank you. Can you describe any other air quality
18 related issues that you think are probably going to be
19 raised today or have been raised in previous proceedings
20 and comments?

21 A Yes. I think there are three additional issues that
22 are going to be raised today in the context of air
23 quality. One relates to the San Diego Air District's
24 hearing board process. The second relates to the
25 potential applicability of federal prevention of

1 significant deterioration or PSD regulations. And the
2 third relates to a new nitrogen dioxide ambient air
3 quality standard that was established by U.S. EPA just
4 last week.

5 Q So can you summarize what you think is the issue and
6 the proper conclusions regarding the San Diego Air
7 Pollution Control Board hearing process?

8 A Yes. Some project opponents and community
9 representatives have already appealed the air district's
10 final determination of compliance to the San Diego Air
11 District hearing board. That appeal was rejected and a
12 brief order is being untimely.

13 I believe that the district hearing board's
14 rejection of the appeal was consistent with both district
15 rules and with the memorandum of understanding between the
16 California Energy Commission and the California Air
17 Resources Board from March 1979. That MOU indicates --
18 that MOU and the Air Districts's rules both indicate that
19 the final determination of compliance becomes authority to
20 construct upon approval of the project by the California
21 Energy Commission. And obviously that has not occurred.
22 Upon approval of the project by the Commission, should the
23 Commission approve the project, the FDOC would become an
24 authority to construct and at that time I believe that an
25 appeal to the hearing board would be right.

1 In some air districts, a separate authority to
2 construct is issued to confirm the California Energy
3 Commission's approval. That has not historically occurred
4 in San Diego. But even if it does occur in this case, the
5 appeal process to the hearing board is still straight
6 forward and most importantly is unrelated in my opinion to
7 the Commission's review process.

8 The hearing board appeal can only address the
9 question of whether the air district properly issued a
10 final determination of compliance as it becomes an
11 authority to construct in a manner consistent with its
12 regulations, the district's regulations. The hearing
13 board has no role in either the federal PSD review process
14 or in the Energy Commission siting process and the hearing
15 Board cannot reach to any decisions made either by EPA or
16 by the Commission.

17 Q Thank you.

18 Can you explain the issues surrounding the
19 applicability of federal PSD requirements to the project?

20 A Yes. I suspect the Committee today will also hear
21 issues that refer to the applicability of the federal PSD
22 requirements to this project.

23 MR. SIMPSON: I'm sorry. Can you identify what
24 PSD is for people in the audience?

25 MR. MC KINSEY: Actually, I think he did, but you

1 can do it again.

2 MR. RUBENSTEIN: I can do it again. PSD is
3 prevention of significant deterioration.

4 You'll also hear issues raised today that refer
5 to the applicability of the federal PSD requirements to
6 this project and to the decision by the U.S Environmental
7 Protection Agency's Environmental Appeals Board related to
8 the Russell City Energy Center.

9 As I'll explain, these issues are not relevant to
10 the Commission's siting process for the Carlsbad Energy
11 Center Project. And this is for the following reasons:
12 First, the Carlsbad Energy Center project has a request
13 pending before the U.S. EPA for determination with the PSD
14 program requirements are not applicable to this project.
15 That request is still pending. There are only two
16 possible outcomes to that request: Either EPA agrees, in
17 which case the federal PSD requirements are not applicable
18 to the project; or EPA disagrees. In the event EPA
19 disagrees, we will have to address EPA's requirements for
20 federal PSD permit.

21 In either event, this is not an issue for the
22 Energy Commission, as the PSD process is a federal process
23 that generally runs outside of and typically beyond the
24 duration of the Energy Commission siting process. If
25 someone disagrees with EPA's decision in the event EPA

1 decides the PSD regulation are not applicable, the only
2 resource is to appeal to a court or to file a citizen's
3 suit under the Federal Clean Air Act.

4 Once again, there is no impact on the Energy
5 Commission siting process. If EPA decides a PSD permit is
6 required for this project -- and I'm not convinced they
7 will -- but if they decide that a PSD permit is required
8 and someone appeals that decision, that permit -- all of
9 this is very speculative -- that appeal would go to EPA's
10 Environmental Appeals Board. Once again, there is no
11 impact on the Commission siting process.

12 Finally, with respect to the Russell City
13 decision that I mentioned earlier, that decision the
14 Environmental Appeals Board questioned the Bay Area Air
15 Quality Management District's compliance with EPA's public
16 notice requirements for PSD permits when the Bay Area
17 District was standing in the shoes of EPA and issuing a
18 PSD permit.

19 That is irrelevant in this case because: First
20 of all, no determination has yet been made a PSD is in
21 fact required for this project; second, even if a PSD
22 permit is required, no PSD permit has been issued for
23 public comment, therefore there can be no judgment about
24 whether the proper procedures were followed; and third,
25 even if a PSD permit is required, a PSD permit would be

1 issued by EPA directly and not by the San Diego Air
2 Pollution Control District.

3 Once again, all of these issues have no bearing
4 on the Energy Commission siting project.

5 BY MR. MC KINSEY:

6 Q Thank you. And your last issue regarding the new EPA
7 one-hour nitrogen oxide ambient air quality standards.

8 Can you explain how that could or does apply to this
9 project?

10 A Yes. Just last week, the U.S. Environmental
11 Protection Agency issued a press release and they drafted
12 a Federal Register notice that establishes a new one-hour
13 average ambient air quality standard for nitrogen dioxide.
14 That's a standard that has not been analyzed in any of the
15 documents to date because that standard didn't exist.
16 That standard is not effective until 60 days after it is
17 published in the Federal Register. I checked this morning
18 and at least yesterday that standard has not been
19 promulgated in the Federal Register, meaning that its
20 effective date is at least 60 days from yesterday.

21 Even if that new standard were effective today,
22 one has to be very careful in taking a look at information
23 contained in the final determination of compliance or the
24 final staff assessment to evaluate compliance.

25 In particular, you can't simply add your numbers

1 contained in any of the documents that are before you.
2 The evaluation of whether a project would cause a
3 violation of that standard is much more complicated than
4 simply adding any two numbers present in the record as
5 yet.

6 In anticipation of that possibility that standard
7 might apply, I've had my staff conduct some very
8 preliminary modeling results which indicate the project
9 would comply. But once again, the standards are not yet
10 in effect. There is no evidence based on anything that's
11 in the record that the project will not comply even if the
12 standard were effective. It is possible that the San
13 Diego District might determine that the standard applies
14 to this project depending on the timing of when the
15 project is approved by the Commission and when the
16 standard actually takes effect.

17 As I said, I suspect the project would comply.
18 But before we can make that demonstration, the San Diego
19 Air District would have to determine procedures to
20 evaluate compliance. Because as I indicated, it's not as
21 simple as adding two numbers together. And that has not
22 been done yet.

23 In conclusion, the bottom line is that this new
24 standards that was just announced last week is not
25 effective of today. To the extent it might be applicable

1 to the project I believe is some very preliminary results
2 that the project would not cause a violation of that
3 standard.

4 MR. MC KINSEY: Thank you. I believe you said we
5 were going to do public health and air quality at all
6 once; correct?

7 HEARING OFFICER KRAMER: Correct.

8 MR. MC KINSEY: Thank you.

9 BY MR. MC KINSEY:

10 Q Can you also summarize your conclusions regarding the
11 analysis of the public health effects of this project?

12 A Yes. In order to evaluate potential impacts on public
13 health from a project, we conducted a health risk
14 assessment similar to the air quality impact analysis that
15 I discussed earlier. The health risk assessment is
16 performed using very conservative assumption, including
17 worst case project emissions and worst case weather
18 conditions. All analysis, as well as the analyses
19 performed by the district and the CEC staff all indicate
20 that the project impacts are well below any applicable
21 significance levels.

22 There is also no potential for significant
23 cumulative public health impacts due to the very nature of
24 the public health significance levels. In particular,
25 those levels have been established by air pollution

1 regulatory agencies to be so conservative as to preclude
2 the potential for cumulative impacts from multiple
3 facilities.

4 In short, with respect to both air quality and
5 public health, my conclusions are that the air district's
6 hearing board appeal process as clearly established and
7 not related to the Energy Commission siting process, the
8 applicability of federal PSD requirements to the project
9 is currently under review by EPA and to the extent PDS
10 review requires those procedures are clearly established
11 and again not relative to the Commission siting process.
12 The new EPA one-hour NO2 quality standard is not
13 applicable to the project at the present time and to the
14 extent it does I believe based on preliminary analyses
15 that it will comply.

16 The project complies with all applicable air
17 quality laws and ordinances, regulations, and standards.
18 The project complies with all public health laws
19 ordinances, regulations, and standards, will not result in
20 a significant public health impact and will not result in
21 a significant cumulative public health impact.

22 And finally, the project provides environmental
23 benefits in terms of reduced criteria pollutant emission
24 rates for every megawatt hour of electricity generated
25 through the displacement of generation from older, higher

1 emitting generating resources.

2 Q Thank you. That's all of our direct testimony.

3 HEARING OFFICER KRAMER: Staff?

4 STAFF COUNSEL RATLIFF: Yes, the staff has two
5 witnesses and is sponsoring the air district's Dr. Moore
6 to answer questions about the final determination of
7 compliance. And so I'll start with Dr. Moore.

8 DIRECT EXAMINATION

9 BY STAFF COUNSEL RATLIFF:

10 Q Thank you, Dr. Moore, for attending today.

11 I have to ask you this, because it's a basis of a
12 finding the Energy Commission must make. But can the
13 district certify that the emissions offsets have been
14 identified for this project and will be obtained as
15 required by the district's rules?

16 A The answer to that is yes at the present time. They
17 either have secured offsets they own or they have an
18 option to buy offsets. They're sufficient to cover the
19 necessary offsets for the project. However, the option
20 contract is likely to expire before the CEC takes final
21 action. So that contract would either have to be
22 re-negotiated to extend its time or they would have to
23 purchase the PRCs under that contract.

24 Q Thank you, Dr. Moore.

25 And one other question before I move on, and that

1 is did the air district perform its own health risk
2 assessment for this project?

3 A We did perform a supplemental health risk assessment
4 regarding the PDOC.

5 For the FDOC, we basically reviewed the health
6 risk assessment prepared by the applicant. In that
7 review, we reviewed the emission factors and actually
8 recommended emission factors they use. We reviewed the
9 scenarios and recommended additional scenarios for them to
10 analyze. We reviewed and suggested release parameters.
11 That's the stack parameters in relation to the modeling.
12 And we reviewed the final modeling results for the health
13 risk assessment.

14 Q Thank you very much.

15 STAFF COUNSEL RATLIFF: Our next witness is Mr.
16 Will Walters.

17 BY STAFF COUNSEL RATLIFF:

18 Q And Mr. Walters, since the panel -- I'm not sure --
19 certainly Commissioner Eggert is not familiar with you,
20 could you briefly describe your qualifications and
21 experience in this matter?

22 A Yes. I'm a chemical engineer, professional engineer
23 registered in the state of California. You have been
24 working for over 20 years in the air quality field. I
25 have been working on CEC siting cases for over the last

1 ten years, including doing air quality analysis for well
2 over two dozen cases during that period of time.

3 Q Thank you.

4 Can you please summarize the nature of your
5 analysis and your conclusions regarding air quality?

6 A Yes. We start by analyzing the AFC and determining if
7 there are any issues, deficiencies in the analysis
8 performed by the applicant. We provide the number of data
9 requests and we identify issues to the Commission.

10 We did find some issues. In particular, there
11 were problems with the air quality modeling that we had
12 the applicant completely re-performed to deal with issues
13 of the height of the facility as well as the height of the
14 stack and issues with compliance with regulations for the
15 stack height where they had to increase the stack height
16 in order to meet EPA regulations.

17 We reviewed the baseline emissions very
18 thoroughly with the district in order to make a
19 determination of what the emission increases would be for
20 the project.

21 We obtained data responses from the applicant.
22 We reviewed that corrected and new information, analyzed
23 the project in terms of compliance with laws, ordinances,
24 regulations and standards, LORS, in terms of both the
25 localized and cumulative impacts of the project. And then

1 we determined what we consider to be necessary mitigation
2 to reduce construction/operation impacts to less than
3 significant.

4 In determining our mitigation requirements for
5 construction, the Energy Commission uses some of the most
6 restrictive conditions that any agency uses in its
7 requirements. We have very stringent fugitive dust
8 requirements above and beyond the requirements of the
9 district's new fugitive dust rule. We also required
10 additional mitigation for the construction equipment to
11 use newer cleaner engines to substantially reduce the NOx
12 emissions and the diesel particulate emissions.

13 For operating emission mitigation, we first
14 identified the mitigation that is required by the district
15 and then we determined if we believe additional mitigation
16 is required. For this case, staff identified that
17 additional mitigation in terms of particulate matter
18 emissions and VOC emissions offsets were necessary to
19 fully offset the project's non-attainment pollutant
20 emissions for precursor non-attainment pollutant emissions
21 in order to meet CEQA.

22 With these mitigation measures, staff has
23 concluded that the project compliance with LORS and the
24 mitigation reduces air quality impacts to less than
25 significant.

1 There are a couple of other issues I want to go
2 over that are related to issues that were brought up in
3 the public testimony yesterday. Just for clarification,
4 for the public probably more than the Commissioners, but
5 applicable the both.

6 First, there has been a statement and in fact on
7 the television in terms of the program that has been on
8 various stations that I believe the city has put out that
9 identifies that this project will create a ten-fold
10 increase in emissions.

11 I need to note that the statement is erroneous,
12 completely erroneous. The permitted emission limits for
13 this facility would not allow a ten-fold increase in
14 emissions from current levels, much less historic baseline
15 levels. If anybody really wants to see what this facility
16 used to emit, they can go back and look at the facility
17 search engine in A or B and see what the emissions were
18 like in 1990, just to see what the difference is between
19 the project now and what the old Encina plant used to
20 emit.

21 Over time, those emissions have gone down through
22 the reduction of fuel oil use, to reduce SOX emissions and
23 through the addition of significant NOx emission controls
24 that happen in the early part of the 2000 decade. I
25 believe it was in 2003 it was finally initiated.

1 The other parts of this ten-fold increase is the
2 fact that Units 1, 2, 3 will shut down, which offset a
3 great deal of emission increase from the new project. And
4 the rest of the emission increase from the project will be
5 offset either through the district regulations or if
6 approved by the Commission by staff's recommended
7 condition for additional emission offsets for PM 10 and
8 VOC.

9 One other issue I'd like to bring up is the
10 difference between permitted emissions and actual
11 emissions. In the comparison between baseline emissions
12 and the new facility emissions in determining the
13 differential, we look at permitted emissions for the
14 facility and we look at actual emissions for Units 1
15 through 3 in making that comparison. And the difference
16 between permit and actual emission based on source test
17 the staff has reviewed for a number of similar types of
18 turbines is such that the VOC and CO would be expected to
19 be less than ten percent of that that is proposed as the
20 maximum permitted emissions.

21 The NOx would be somewhat less, 85 to 95 percent,
22 depending on the amount of safety that the operator runs
23 underneath the two PPM limit for the facility. And
24 particulate matter emissions would be somewhere between 40
25 to 70 percent of the permitted maximums.

1 In addition, the sulfur emission would also be
2 less, because the normal fuel sulfur content in southern
3 California is about 40 percent or so of the permitted fuel
4 sulfur content that was used for emission determination,
5 about .10 grain per 100 cubic foot. For actual
6 conditions, about .25 was the permitted level.

7 The other issue that was brought up was that the
8 technology for this plant is not better than the current
9 power plant. And I think at least in terms of emissions
10 rate per unit of generation everybody should know there is
11 a significant improvement of emissions for criteria
12 pollutants for the new plant versus the old plant. In a
13 pound per megawatt hour basis, the emission reductions
14 would be approximately 48 percent for nitrous oxides of
15 NOx, approximately 81 percent for carbon monoxide;
16 approximately 70 percent volatile organic compound, VOC;
17 approximately 79 percent for sulfur oxides, SOX; and
18 approximately 70 percent for particulate matter.

19 And this does not include that issue of the fact
20 the permitted emissions will actually -- assume the actual
21 emissions for the project will be less than permitted
22 emissions which would add to those factors.

23 Also in terms of technology being better,
24 efficiency has been increased or is better than the old
25 boilers by about a 40 percent factor. The old boilers in

1 terms of actual operation average around 12,000 BTU
2 kilowatt hour. The new plant will be somewhere around
3 7200 BTUs for kilowatt hour in the hierarchy value basis.

4 Also in comparing this plant the other types of
5 plants that would need essentially the roles of this
6 plant, which is either peak or mid-merit plant, other
7 designs could be LM6000 peaking turbines or the more
8 efficient LM100 peaking turbines. And their efficiencies
9 are 10,930 respectively, again quite a bit higher than
10 7200 BTU per kilowatt hour.

11 So I just wanted to address those issues and make
12 sure that people do understand that this new project is
13 considerably better than the existing power boilers we're
14 partially replacing and that there is no ten-fold increase
15 in any emissions for any time frame from this new project.

16 Q Thank you, Mr. Walters.

17 One question to clarify. Did you say that the
18 Energy Commission is requiring offsets beyond those the
19 air districts required? Or are the conditions of
20 certification merely reflective of the offsets that the
21 air district would require?

22 A The Energy Commission is requiring or recommending, I
23 should say, additional offsets for particulate matter and
24 for VOC emissions so that the facility is fully offset.

25 Q Above and beyond --

1 A Above and beyond the district requirements.

2 Q Thank you.

3 And this would go just a point to Dr. Greenberg.

4 Dr. Greenberg, could you briefly summarize your
5 qualifications?

6 A Thank you, Mr. Ratliff.

7 Yes, Hearing Officer Kramer has asked me to be
8 very brief in my qualifications. And towards that, I will
9 only give my qualifications as an expert in public health
10 and leave my qualifications to opine in hazmat and worker
11 safety fire protection to Thursday.

12 I received a Ph.D. from the University of
13 California at San Francisco, conducted three years of
14 post-doctoral work in neurotoxicology.

15 I was an assistant professor there at UCFS
16 teaching antibiotics and cancer chemotherapeutic agents,
17 received additional advanced training in inhalation
18 toxicology at the prestigious Loveless Inhalation
19 Toxicology Research Institute in Albuquerque, New Mexico.

20 I served for six year as the Bay Area Air Quality
21 Management District Hearing Board Chair.

22 I served on many Department of Toxic Substances
23 Control, Office of Environmental Health Hazard Assessment,
24 State Water Resource Control Board, Air Resources Board,
25 and U.S. EPA advisory committees.

1 I'm a consultant to the California Department of
2 Toxic Substances Control, the Office of Environmental
3 Health Hazardous Assessment, and I'm a contractor and
4 consultant to the California Energy Commission.

5 I've authored over 50 human health assessments in
6 the past 25 years, reviewed and evaluated more than 100,
7 and being a consultant to the Energy Commission since 1993
8 which kind of makes me the dean of contractors at the
9 Energy Commission, I've been involved in 82 power plant
10 siting cases statewide.

11 I'm Board certified as a qualified environmental
12 professional and I'm a California registered environmental
13 assess or.

14 Q Thank you, Dr. Greenberg. I'm glad you gave us the
15 abbreviated version.

16 I would like you then to summarize what you
17 looked at and your conclusions regarding the potential for
18 impact on human health. And in doing so, one particular
19 question I wanted you to address is whether the Energy
20 Commission did its own health risk assessment.

21 A I shall be happy to, Dr. Ratliff.

22 First and foremost, I would like to point out not
23 only to the Commissioners but also to members of the
24 public that staff is not defending this project. What we
25 are doing is of course defending our own independent

1 analysis whether or not the project gets built is up to
2 the Commissioners and not up to staff.

3 So when I'm talking about my assessment, it is
4 just that, Mr. Ratliff. And I'm really glad you asked me
5 to opine on that, that I conducted my in independent
6 assessment and did not rely on the applicant's human
7 health risk assessment, nor did I rely solely on the air
8 district's human health risk assessment.

9 So in this case, we have three separate
10 individual risk assessments that look at the potential of
11 emissions from this project to cause adverse impacts in
12 this surrounding community.

13 Now, we are here as a panel on air quality and
14 public health and many times the public wonders why air
15 quality doesn't address public health or what's the
16 difference between the two. Well, they both address
17 emissions of contaminants that can potentially cause
18 adverse public health impacts. But as many people know
19 and perhaps a lot of people don't know, the reason we have
20 air quality as one subject, it handles what we call
21 criteria air pollutants, those for which there are
22 national ambient air quality standards.

23 The public health section, which I authored,
24 addresses those toxic air contaminants which are
25 designated as toxic air contaminants by the California Air

1 Resources Board or another word is HAPS, H-A-P-S,
2 hazardous air pollutants, which are designated as such by
3 U.S. EPA for which there are no ambient standards and
4 therefore they're included in a human health risk
5 assessment, a risk-based determination as to whether or
6 not an additive method, the emissions of toxic air
7 contaminants, would or would not cause a significant risk.

8 The assessment that I conducted was actually very
9 unique. In all my previous 82 siting cases, I had not
10 conducted this particular assessment. This was the most
11 in-depth human health risk assessment that I've conducted
12 for a stationary source emitting toxic air contaminants.

13 Previously, we had not looked at emissions during
14 conditions other than normal operation times. In this
15 case, I looked at emissions during start up, shut down,
16 normal times, and commissioning. Now, I got those
17 emission factors from the air district. So I relied on
18 the air district in developing the emission factors that
19 go into a human health risk assessment.

20 Again, I did not use the applicants. The
21 applicant's emission factors were similar to the air
22 districts. But I relied on the air districts, looked at
23 all of those four areas of operations and commission,
24 start up, shut down, commissioning and operations, plus I
25 conducted a cumulative human health risk assessment. I

1 did that not because I had found in the past there could
2 be a cumulative risk, but because there was great public
3 concern. The public asked for a cumulative assessment,
4 assessing not only the proposed emissions from the
5 proposed CECP plant, but the existing Encina Power Station
6 Units 4 and 5 which would remain operating.

7 The human health risk assessment that I conducted
8 I used the HARP, H-A-R-P, developed by the Air Resources
9 Board and the Office of Environmental Health Hazard
10 Assessment. Stands for Hot Spots Assessment and Reporting
11 Program. Hot Spots Analysis and Reporting Program.
12 Imbedded in the HARP Program is the ISC, industrial source
13 complex model. Nowadays, most everybody is using the air
14 mod. It is a more refined air dispersion model. It is
15 certainly accepted by Air Resources Board and Office of
16 Environmental Health Hazard Assessment, but so is the
17 existing HARP Program with the ISC model. This could
18 account for some of the minor differences between what the
19 applicant and the air district would use air mod and what
20 I came up with.

21 One of the main reasons that I chose to continue
22 to use the HARP model with the ISC model is on all
23 previous power plant siting cases that I have worked, I
24 have presented to you results using the HARP model. I did
25 not want to deviate because I wanted you to be able to

1 compare apples to apples and knowing that I used the same
2 exact methodology, the same exposure assessments as all
3 the other power plants in the past. So you can rest
4 assured that my analysis is consistent with past analyses.

5 This analysis is conservative. What I mean by
6 that is health protective in nature. We know the air
7 dispersion models tend to overestimate the airborne
8 concentrations. I can also assure you that the exposure
9 assumptions that I used for how long an individual could
10 be exposed during a 70-year lifetime also overstates the
11 risk. The risks are expressed as a theoretical upper
12 bound cancer risk. In other words, what are the
13 chances -- that's what risk is, a chance, a probability --
14 of getting cancer if somebody stood at the point of
15 maximum impacts for every hour of every day for 70 years.
16 Obviously, a physical impossibility.

17 Nevertheless, that is the metric that we use in
18 every siting case. And yes, it is a overestimation. But
19 we do that to ensure that we're not underestimating the
20 risk. The last thing I would want to do is underestimate
21 the risk.

22 So if I were to conduct an uncertainty analysis
23 for my human health risk assessment, I could point out
24 various areas where I totally put in overestimation of
25 exposure to ensure whatever number I come up with it is a

1 theoretical maximum level and the real risk would be
2 somewhere between zero -- in other words, if there's no
3 exposure, the risk would be zero, all the way up to that
4 level. And if that level that I found was below our level
5 of significance, I could sit here with a great deal of
6 certainty and reassure you and the public that the best
7 scientific methodology and the best scientific evidence
8 shows that the power plant emissions would not cause a
9 significant risk of adverse impacts. That is what I did.

10 I also used an operating scenario of one year's
11 operations, which is 8750 hours, which I believe is just
12 not going to happen -- I'm sorry -- 8760 hours, which is
13 24 hours a day for 365 days out of the year. Another
14 conservative assumption that I put into the exposure
15 assessment.

16 I believe the facility will probably only be
17 permitted at around 4100 hours, which is only 46 percent
18 of the value. So you can do the math and see that I
19 virtually already doubled the risk in my health risk
20 assessment then what it would really be in real life.

21 When I look at the point of maximum impact and I
22 see that that risk is about ten times lower than our
23 definition of what's a significant risk level, I can also
24 reassure you that at any other location, whether it be a
25 residence, whether it be another factory, whether it be

1 another point on the beach, whether it be a school, that
2 if somebody were to be at that location for every hour for
3 seven years, the risk would be much lower than that at the
4 point of maximum impact.

5 So given the nature of our risk assessment
6 process where we want to re-assure people that we're not
7 underestimating the risk, that we're using the best
8 scientific tools available today -- I can tell you that in
9 my professional opinion that the risk is less than
10 significant and the hazard -- that's the chances of there
11 being a non-cancer impact such as an impact on respiratory
12 system -- or the immune system or cardiovascular system
13 also will not occur.

14 Q Thank you. That concludes our direct testimony.

15 HEARING OFFICER KRAMER: Okay. Next we have
16 Ms. Siekmann. And you can either go first or ask questions
17 of Ms. Wist. Your option.

18 MS. SIEKMANN: I would like to question Ms. Wist
19 so maybe cross could be done for her and she could be
20 excused to go back. She's a principal of a school so --

21 HEARING OFFICER KRAMER: Go ahead.

22 MS. SIEKMANN: Thank you.

23 DIRECT EXAMINATION

24 BY MS. SIEKMANN:

25 Q What is your name and address?

1 A My name is Diane Wist. And I live at 5440, Los Robles
2 Drive, Carlsbad.

3 Q Are you currently employed? Where? And what you are
4 your responsibilities?

5 A I'm currently employed at Del Mar Pines Elementary
6 School, a K through six private school.

7 I graduated from Arizona State University with a
8 Bachelor's degree in social work and Northern Arizona
9 University with a Master's degree in educational
10 psychology.

11 My responsibilities as a principal at Del Mar
12 Pines School is to oversee the social, emotional, and
13 educational needs of my student body.

14 Q And how long have you lived in Carlsbad?

15 A I've lived in Carlsbad for ten years.

16 Q And are you a resident of Terramar?

17 A Yes, I am.

18 Q As a resident of Terramar, what impacts from the
19 proposed CECP concern you?

20 A Once the I-5 is widened, visual impacts created by the
21 proposed CECP can change how Carlsbad residents and
22 visitors feel about spending their time and money in our
23 community. The proposed expansion of the power plant is
24 not the back drop that individuals and their families are
25 looking for when spending time on the California

1 coastline. This would have a negative impact on tourism
2 in Carlsbad.

3 Noise pollution is another concern. I have
4 noticed that in varied weather patterns impacts and
5 background noise in our neighborhood directly. And in
6 dealing with big noise impacts from the Encina plant and
7 the I-5 as well.

8 I also have concerns about the safety issues
9 expressed by the Carlsbad Fire Department concerning the
10 proposed plant. As a resident and potential neighbor to
11 the proposed project, this creates safety concerns for my
12 family and neighbors. The safety of our community and its
13 members is an essential right that is owned to each and
14 every one of us.

15 Q And as the principal of a school, what are your
16 concerns with the proposed CECP?

17 A Increased air pollution would be my first concern.
18 San Diego is already in non-attainment for particulate
19 matter and ozone. Adding more pollution to the San Diego
20 air basin is a real concern, no matter how much mitigation
21 is done. And from what I've read, particulate matter
22 causing lung damage, especially to children with asthma,
23 you can't mitigate that.

24 I have concerns about greenhouse emissions and
25 the impact not only on a healthy individual but also

1 individuals with compromised health profiles. Being a
2 principal and looking after the future of our children is
3 always on my mind. Teaching them to be good stewards of
4 the planet is a way of ensuring a better future for
5 younger generations.

6 From what I have read, GHGs from the plant are 85
7 million tons a year. So far, there is no mitigation for
8 that either.

9 As an educator and advocate for children and
10 their families, I have read the works of Richard Loob, a
11 local journalist and our responsibilities we have to one
12 another and our community and nature. He writes:

13 "Nature comes in many forms, a new calf
14 screaming, a pet that lives and dies, a woods with beaten
15 paths and stinging thistles. Whatever form nature takes,
16 it offers children a world separate from parents and older
17 than them; a kind of greater father and mother. It gives
18 children a sense of place and time. Unlike television,
19 nature does not steal time from adults or children. It
20 augments that time, making the time fuller and richer.
21 And for those children for whom family is destructive,
22 nature can offer healing. Nature also serves as a blank
23 slate upon which children may draw their fantasies
24 supplied by the culture. Nature nurtures creativity in
25 children, in part by demanding visualization, the full use

1 of sense. We do not fully understand how much we wound
2 children by the destruction of nature. The preservation
3 of nature should be among our central goals which we weave
4 the web of life, not only for protection of the last turn
5 but also for the mental health and the creativity of the
6 next generation. So wonderfully put, Chief Seattle said
7 did not weave the web of life. He is merely a stick
8 stranded in it. Whatever he does to the web, he does to
9 himself."

10 Q Thank you. Well said.

11 That's it.

12 HEARING OFFICER KRAMER: So you'd like to offer
13 her for cross-examination? How long were you going to
14 testify?

15 MS. SIEKMANN: That's a gift I'm going to give to
16 you today. I'm changing my testimony time because I went
17 through and crossed many things out. So I think I'll take
18 five minutes for testimony.

19 HEARING OFFICER KRAMER: Okay. Then so Ms. Wist
20 can get back to her school, do any of the parties have
21 cross-examination questions for her or object to excusing
22 her at this time?

23 MR. MC KINSEY: I only want to say that I
24 wouldn't even go near cross-examining her, because my wife
25 is an elementary school principal and she's more eloquent

1 than my wife. So I would be crazy to ask questions.

2 HEARING OFFICER KRAMER: Any other parties wish
3 to cross-examine her?

4 STAFF COUNSEL RATLIFF: Thank you, Ms. Wist, for
5 your testimony.

6 HEARING OFFICER KRAMER: Thank you.

7 MS. WIST: Thank you.

8 HEARING OFFICER KRAMER: Ms. Siekmann, if you want
9 to continue with your direct testimony.

10 MS. SIEKMANN: Although I diminished significantly
11 the amount of time I want to use for testimony, I'm not
12 planning on diminishing my cross-examination.

13 HEARING OFFICER KRAMER: Okay. And you'll be
14 speaking both the air quality and public health right now;
15 correct?

16 MS. SIEKMANN: That is correct.

17 As far as air quality goes, Terramar is in an
18 area designated as non-attainment for health risk
19 pollutants of ozone and particulate matter. Terramar and
20 the neighbors to the north and east of the Encina property
21 are influenced by immediate high level pollution sources:
22 The I-5, the widening of the I-5, the railway, the Encina
23 Power Station, and now a proposed second power station.

24 Terramar is frequently exposed to diesel
25 emissions as trains occasionally sit behind the

1 neighborhood and passing trains come by about every half
2 hour.

3 Many Terramar residents have spoken to me about
4 their concerns regarding exposure to cumulative emission
5 impacts. We have specially with projected new emissions
6 from the CECP and the widened I-5 project. We have
7 requested that each impact source be addressed as direct
8 impacts, but the I-5 and the train diesel are modeled as
9 background and the widening is not modeled at all.

10 Staff has also suggested that the impacts from
11 the I-5 widening are the responsibility of Caltrans to
12 model. Yet the I-5 widening is a foreseeable project, and
13 therefore the responsibility of the CEC to model.

14 Per page 4.1-29, cumulative impacts analysis
15 assesses the impacts that result from the proposed
16 project. Incremental efforts viewed over time together
17 with other closely related past, present, and foreseeable
18 future projects whose impacts may compound or increase the
19 incremental effect of the proposed project.

20 That's my testimony for air.

21 Now I have to find my other testimony as I didn't
22 know we were going to do these two together. I think I
23 found them.

24 And to beat a dead horse, the I-5 expansion is a
25 project that will affect millions of people. The I-5

1 expansion can occur only in one place, and that is where
2 the I-5 currently exists. A power plant can be located in
3 other places. The CEC has been informed by Caltrans that
4 the I-5 widening project is going to occur. And yet so
5 far staff has not evaluated its effects on the air quality
6 of an area of one power plant, possibly a second one and a
7 railway, even though it states once again on page
8 4.1-29 -- and I will save you all from listening to that
9 again. But you know exactly what quote I'm talking about.

10 So that's my public testimony.

11 HEARING OFFICER KRAMER: Okay. Thank you.

12 Then let's begin cross-examination. We'll go
13 back to the top of the list.

14 Actually, Mr. McKinsey, you did not request any
15 cross-examination time.

16 MR. MC KINSEY: That's correct.

17 HEARING OFFICER KRAMER: And you're still happy
18 with that?

19 Then let's begin with the city and the
20 redevelopment agency.

21 MR. THOMPSON: I only have one question, I
22 believe. And I think this would probably be Mr. Walters.
23 I think you addressed this in your testimony that you just
24 filed.

25 CROSS-EXAMINATION

1 BY MR. THOMPSON:

2 Q If you compare the annual emissions of the CECP on its
3 permitted level with the 2008 actual emissions from one to
4 three, would you give us those two numbers for NOx?

5 A I'd have to look in my testimony to see if I have the
6 2008 numbers in there.

7 HEARING OFFICER KRAMER: And please give us the
8 page when you find it so we can follow.

9 DR. ROE: 4.1-106 and 4.1-107.

10 HEARING OFFICER KRAMER: That's the greenhouse
11 gas section?

12 MR. WALTERS: Yeah. That's not NOx emissions.

13 I believe what you're trying to get at is the
14 fact that general usage of Units 1, 2, 3 has gone down
15 significantly over the past few years. However, the
16 baseline has specific requirements based on when the
17 application came in. And also you need to factor in the
18 fact that when this facility starts operation, it's going
19 to displace operation of Units 4 and 5. The exact amount
20 and what that's going to do to the emissions I really
21 won't predict at this time, but that would occur.

22 MR. THOMPSON: Thank you very much. I understand
23 that.

24 HEARING OFFICER KRAMER: Okay. Mr. Rostov,
25 Center for Biological Diversity.

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

2 I actually have four questions for Mr. Moore.

3 Cross-examination

4 BY MR. ROSTOV:

5 Q My first question is: Has any LNG derived natural gas
6 been delivered to San Diego Air District?

7 A There was LNG delivered back in May of '08. It was a
8 one or two day event where they were doing a shakedown
9 essentially of the separate LNG facility located in Baja,
10 California. To my knowledge, that's the only LNG that's
11 been delivered to San Diego.

12 HEARING OFFICER KRAMER: Can you folks explain
13 LNG maybe for the public?

14 MR. WALTERS: LNG is liquefied natural gas. And
15 it's actually natural gas derived from liquefied natural
16 gas, which has a different composition than our historic
17 natural gas.

18 HEARING OFFICER KRAMER: So it starts out as
19 natural gas in some other continent and is liquefied for
20 transport and re-gasified?

21 MR. WALTERS: Right.

22 BY MR. ROSTOV:

23 Q And actually, your answer was so complete, you more or
24 less answered my other three questions. I think I have
25 one left.

1 But just to confirm what you were saying, if LNG
2 was delivered from Costa Azul, which is in Baja,
3 California, through Semptra through San Diego Gas and
4 Electric?

5 A Right.

6 Q Do you think it's likely that more LNG will be
7 delivered to San Diego in the next 30 years over the
8 lifetime of the project?

9 STAFF COUNSEL RATLIFF: Object. Question calls
10 for speculation.

11 BY MR. ROSTOV:

12 Q If it's within your professional experience. If it's
13 within your professional experience to answer that
14 question.

15 A I'd hate to speculate on that. It all depends on the
16 price of natural gas here and elsewhere. There I think
17 there's a potential that more LNG will be delivered to San
18 Diego, yes.

19 Q And the pipelines were designed to allow the LNG to be
20 delivered from Costa Azul to San Diego?

21 A Correct. There is a limit of how much can be
22 delivered, but it is a significant amount compared to our
23 normal gas consumption in San Diego County.

24 Q Do you know that number off the top of your head, what
25 percentage?

1 A It depends on where you are in the county. But as far
2 as north Encina Power Station, it's probably 400 million
3 CMPP per day would be the limit. But that's not to
4 Encina. That's to the entire county north of the southern
5 part of the county.

6 MR. ROSTOV: Thank you.

7 HEARING OFFICER KRAMER: Thank you.

8 Power of Vision.

9 CROSS-EXAMINATION

10 BY DR. ROE:

11 Q My question is addressed to Mr. Walters, who I think
12 has done a very thorough job in his air quality report.
13 And I commend him on that.

14 In your opening statement, you've made mention of
15 some public comments that indicated that pollution may
16 increase ten-fold over current pollution levels; is that
17 correct?

18 A Yeah. That was based --

19 Q Thank you.

20 I don't know who authored those comments, but I'm
21 looking at your report on air quality and there are two
22 sections: One dealing with greenhouse gases and one
23 dealing with other pollutants. And the greenhouse gas
24 section on page 4.106 you indicate that the potential for
25 greenhouse gas emissions occurring a year is 846,000

1 metric tons per year.

2 And on the very next page, you indicate that the
3 most recent operating information that we have -- I don't
4 know whether you have the 2009 information yet or whether
5 that's been made available to the air pollution district
6 or to the Commission -- to the Commission staff, but on
7 page 4.1-107, in the last year, the total annual emissions
8 from Units 1, 2, and 3 were 69,000 metric tons per year.
9 I'm not very good in math being a professor, but that
10 looks more than ten times, maybe twelve times as much --

11 HEARING OFFICER KRAMER: Is your question
12 relative to the air quality section? Or are you getting
13 off into the greenhouse gases which will be tomorrow?

14 DR. ROE: Well, I want to show where that comment
15 that he referred to may have come from. If we look at the
16 NOx emissions --

17 HEARING OFFICER KRAMER: Go ahead and ask him a
18 question. I'm just trying to make sure you're asking
19 about air quality.

20 DR. ROE: I finished my question.

21 HEARING OFFICER KRAMER: I don't recall him
22 answering it.

23 MR. WALTERS: Okay. I didn't actually hear a
24 question in there, but I'll try to figure out what I think
25 it was.

1 You really can't use the two tables to make a
2 comparison, because that is not how we did the analysis
3 for greenhouse gases. Those two tables provide two
4 points, but they don't provide the system-wide emissions.
5 The system-wide emissions from greenhouse gases due to
6 this project will go down because of the fact it is more
7 efficient unit and will be displacing a less efficient
8 unit. And that is our finding.

9 Therefore, this facility would not create a
10 ten-fold increase in emissions. It would create a
11 reduction in greenhouse gas emissions, which from the
12 point of view of the air quality section is not considered
13 a pollutant in the greenhouse gas section. It's a climate
14 change pollutant but not a health-based pollutant.

15 BY DR. ROE:

16 Q Now, you talk about a reduction. And I acknowledge it
17 will be a reduction because of the higher efficiency of
18 the new proposed plant as compared to the old plant. But
19 the overall production of greenhouse gases in the area
20 will increase more than ten-fold as I read your document
21 now over the current emissions. I don't want to argue the
22 point.

23 I'd like to go to the NOx emissions, which I
24 believe are stated on page 4.1-28. And though the table
25 on that page only shows the NOx and other emissions from

1 the current EPS Units 1, 2 and 3, other documents that
2 have been submitted show the data up to the year 2008.
3 And in the year 2008, the combined NOx emissions from
4 Units 1, 2, and 3 were 6.2 metric tons per year and the
5 permitted maximum NOx emissions from the new CECP are 72
6 metric tons per year. Again, to me, that looks like more
7 than ten times as much NOx emissions as the old units that
8 presumably will be shut down are currently emitting.

9 A Again, that does not address the displacement of Units
10 4 and 5 or the side effect or the displacement of other
11 units throughout the county which would reduce emissions
12 throughout the county. But in the site itself, Units 4
13 and 5 would have some amount of displacement, perhaps
14 significant, due to the new project.

15 Q Well, I'm under the impression this application does
16 not apply to Units 4 and 5. It's not a repowering of the
17 EPS but a separate stand-alone application.

18 And I don't understand in these proceedings why
19 the applicant wants to take advantage of the fact that
20 they are submitting a separate proposal aside from the
21 existing EPS and then when it suits their purpose they
22 bring in the fact that, yes, there are certain facets like
23 seawater circulation and air pollution that may effect
24 this proposal. That's been puzzling me throughout the
25 hearing.

1 HEARING OFFICER KRAMER: Well, if that's meant to
2 be some sort of implied criticism of Mr. Walter's answer,
3 he, of course, is not working for the applicant.

4 DR. ROE: No. I address that to the Committee.

5 HEARING OFFICER KRAMER: So that was in the
6 nature of argument?

7 Go ahead, if you have more questions.

8 DR. ROE: Yeah. Thank you.

9 HEARING OFFICER KRAMER: Please also include
10 public health in your questions. Also include your public
11 health questions. I want to make sure everyone recognizes
12 --

13 DR. ROE: I have no questions of public health.

14 BY DR. ROE:

15 Q Again, this question is for Mr. Walters.

16 Throughout the FSA, there's this curious
17 statement that the project has an enforceable operating
18 limit of less than 60 percent capacity or 4100 hours per
19 year. Could you explain what that enforceable provision
20 is and how it's covered by a permitting condition in the
21 FSA?

22 A Yeah, that enforceable limitation is a limitation on
23 emissions. And the emission limitations are such that
24 based on even the best case NOx there's no potential the
25 facility could operate at a 60 percent capacity factor and

1 that it's a megawatt capacity factor and still meet their
2 NOx limits.

3 Q And so that is a separate consideration from the fact
4 that the applicant was not required to meet the conditions
5 I think of AB 1382 not to operate over 60 percent of the
6 time?

7 A Actually, in terms of 1368 and the environmental
8 performance standard for CO2, our finding was that the
9 facility was permitted in such a way that it would be
10 under 60 percent capacity factor and therefore would not
11 trigger the EPS.

12 Our other part of the finding was if they were to
13 even have triggered the EPS, their emissions are well be
14 the .5 metric tons per megawatt hour CO2. So they would
15 have essentially met the EPS, had the EPS applied to the
16 facility.

17 Q Would staff object to a proposal that Power Vision
18 made that the limitation of 60 percent capacity or 4,000
19 hours per year be made a condition of the permitting?

20 STAFF COUNSEL RATLIFF: Would that be a 40
21 percent -- is it 40 -- is it 60 percent? It's less than
22 half the hours in the year.

23 DR. ROE: Yes, I know.

24 STAFF COUNSEL RATLIFF: So it would be a
25 limitation of what? Forty-six percent?

1 DR. ROE: Well, since the FSA mentioned both 60
2 percent and 4100 hours per year --

3 STAFF COUNSEL RATLIFF: Could we get Mr. Walters
4 to clarify that?

5 MR. WALTERS: Staff doesn't really consider that
6 to be necessary for air quality. And is that the
7 requirements -- our findings have determined that based on
8 the emission limitations there is a certain amount of
9 operation that can happen for this facility. And there
10 isn't a need to make that determination or add a condition
11 that requires them to be less than 60 percent. And staff
12 would essentially only recommend such a condition if the
13 applicant were to agree to it.

14 HEARING OFFICER KRAMER: To clarify that, could
15 you point to the emission-limiting conditions that result
16 in that limit? Sort of draw a roadmap for us.

17 COMMISSIONER EGGERT: And I guess a further
18 question on that. Is that based on estimated or actual in
19 terms of the capacity estimation?

20 MR. WALTERS: The capacity estimation is based on
21 permitted. The NOx emission would be very close -- the
22 actual would be very closed to permitted. Probably within
23 85 percent. So there isn't a great deal of latitude
24 between the estimates which are based on a little over
25 4,000 hours and the potential.

1 Now of course, there's always the issue of
2 running at part load which of course would be lower
3 emission periods. So they could run more hours if they're
4 part load. And staff is not seeking to try to keep them
5 from having that level of operating flexibility, as long
6 as they remain within the emission limits. And the
7 emission limit condition as requested is in condition
8 AQ-44, which is on page 41-77 of the revised version and
9 has all the tables corrected.

10 HEARING OFFICER KRAMER: Any further questions,
11 Dr. Roe?

12 DR. ROE: Yes. They're probably not as serious
13 as the issues I raised previously.

14 BY DR. ROE:

15 Q But in our opening testimony, which has now been
16 re-numbered 700, we pointed out that the turbine
17 manufacturer Siemens has indicated up to twelve parts per
18 million NOx emission could occur at ramp rates as low as
19 five megawatts per hour. And that at the higher ramp
20 rates, these turbines are capable of emissions as high as
21 20 parts per million, and that such emission would likely
22 exceed the usual two parts per minute limit averaged over
23 a one-hour condition imposed by the PSOD prepared by the
24 San Diego Air Pollution Control District.

25 The applicant has rebutted this argument by

1 stating that the SDAPCD concluded that the SCR system
2 would be able to help control short-term emissions spikes.
3 If that is the case, why do we need to change the normal
4 averaging period from one hour to three hours?

5 MR. MOORE: We added the condition to allow
6 three-hour averaging in the case of extreme ramp rates,
7 which is 50 megawatts per minute. Is a very high ramp
8 rate. The turbines are about 196 megawatts, something
9 like that at normal operation. So that means going from
10 zero to full load in four minutes. Just because the
11 possibility that it would be excess NOx emissions during
12 those times and gives them a little bit longer averaging
13 time to average out those emissions. We have another
14 facility in San Diego that has similar conditions and have
15 been able to comply with these.

16 DR. ROE: Again, a question to address to Mr.
17 Walters.

18 BY DR. ROE:

19 Q In the PSA, staff raised the question as to whether
20 the EPA's rules regarding the calculation of emission
21 credits that could be attributed to the shutting down of
22 EPS Units 1, 2, and 3 should prevail over the San Diego
23 Air Pollution Control District's rules. Calculations of
24 the emission credits by both methods show the EPA's rules
25 are more stringent. Don't you believe, therefore, that

1 the EPA rules should apply in this case?

2 A That issue was resolved through additional
3 conversation with the district. In terms of the MSR
4 requirements which the district permit covers, their rule
5 is the enforceable rule. For the potential for PSP as
6 noted previously, that's a federal issue outside of this
7 proceeding.

8 Q My last question, if I might.

9 The FSA equipment selection section on page 5.3-4
10 indicates that the Siemens turbines are capable of
11 reaching 150 megawatts in ten minutes from start up or 58
12 percent of their rated capacity in ten minutes, well
13 within the range of normal operating emissions.
14 Therefore, at 114 megawatts normal emissions could
15 probably be less than ten minutes after start up.

16 Do you agree with Power Vision's proposed change
17 to AQ-11 to make it more consistent with AQ-10 and with
18 actual operate conditions?

19 Now, for those of you who may not be up on what
20 AQ-11 is, it would be to end the startup period when the
21 electrical output of the combustion turbines reaches 114
22 megawatts or the first 60 consecutive minutes of
23 operation, whichever comes first.

24 MR. WALTERS: I'm assuming you're addressing this
25 question to me. This was a question I also had with the

1 district and was resolved through the PDUC comment period.
2 And to provide a more direct answer, I would suggest Mr.
3 Moore answer that question.

4 MR. MOORE: I guess from our perspective, we
5 would not agree with that. We want the turbines to start
6 as fast as possible. And in general we think there is
7 very little incentive for the operator not to start as
8 fast as possible.

9 One consideration is that during starts ups
10 there's more likely going to be a problem. So we don't
11 want a situation where the turbine starts up and then
12 because they're over 114 megawatts has to shut down. We
13 can use more emissions in a further start up.

14 There are other conditions in the FDOC and FSA
15 that are going to limit emissions during the startup
16 period. They have to have the SCR fully operational as
17 soon as it reaches operational temperature. So that will
18 occur in any event. Basically like to give them enough
19 flexibility during the startup period not to have to be
20 forced to shut down as I said.

21 DR. ROE: Well, I understand that there is an
22 overall cap, an annual running annual cap on NOx
23 emissions. And that I gather that the Air Pollution
24 Control District is not concerned -- overly concerned
25 about the excess NOx emissions that occur during brief

1 periods of time.

2 But my understanding of why we have NOx
3 limitations is not that this precursor of smog is averaged
4 over the years, the effect of the NOx emissions as a
5 precursor of smog occur in that short period of time or in
6 that day, and that any extension of time in which the
7 power plant is allowed to operate at high NOx emission
8 levels is not covered by the annual cap.

9 MR. MOORE: I'm not sure what your question is,
10 but all emissions count towards the annual cap. They're
11 not excused during startups or shut downs or any other
12 kind of normal operation.

13 DR. ROE: But allowing the startup period to
14 extend to 60 minutes when, in fact, they probably have
15 already reached emissions standards within ten minutes
16 somehow doesn't make sense to me.

17 MR. MOORE: It's not likely that they'll reach
18 emission standards within ten minutes. They may be able
19 to reach the operating level within ten minutes, but there
20 are other factors involved. For example, how hot the
21 catalyst is, that may take them longer to reach emission
22 standards. And if they reach emission standards, then
23 there is no excess emissions essentially. And so, you
24 know, we would like to have that flexibility during the
25 startup period.

1 DR. ROE: Thank you.

2 HEARING OFFICER KRAMER: Thank you.

3 Next will be Mr. Simpson.

4 CROSS-EXAMINATION

5 MR. SIMPSON: Thank you. Good morning. I'm Rob
6 Simpson.

7 Maybe we can start out -- can someone tell me who
8 has jurisdiction over the new source review provision of
9 the Clean Air Act?

10 STAFF COUNSEL RATLIFF: Objection. The question
11 is really a legal question. Has nothing to do with any of
12 the factual issues which are to be determined by the
13 Commission.

14 HEARING OFFICER KRAMER: Well, Mr. Simpson, are
15 you trying to determine which witness to address your
16 question to?

17 MR. SIMPSON: Yes, sir.

18 HEARING OFFICER KRAMER: I think you could just
19 address the question to the panel and one or all of them
20 will answer it as they feel qualified to do so.

21 MR. SIMPSON: Well, I think it's germane for me
22 to point out who's actually administering the Clean Air
23 Act here.

24 MR. MOORE: The district administers the Clean
25 Air Act.

1 MR. SIMPSON: Thank you.

2 And Mr. Greenberg, you referenced the Russell
3 City remand, which is earned against the power plant there
4 and you reference the hearing of the appeal of the air
5 district's determination.

6 MR. GREENBERG: I did not. I think you're
7 thinking of --

8 MR. SIMPSON: Mr. Rubenstein. We lost somebody
9 from the middle there.

10 I'd like to ask that the Commission take official
11 notice of those two proceedings.

12 HEARING OFFICER KRAMER: Before we rule on the
13 question, you need to be more specific. Are you talking
14 about all of the filings, rulings, and other evidence that
15 were submitted in those proceedings?

16 MR. SIMPSON: Yes, sir.

17 HEARING OFFICER KRAMER: To what purpose?

18 MR. SIMPSON: This process has deviated from the
19 Clean Air Act. The remand of the Russell City Energy
20 Center has demonstrated that the action of having these
21 air quality hearings or workshops, as you called the last
22 one without, recording the information, without responding
23 to the comments is not what the Clean Air Act was set up
24 to do. It's also not what CEQA is set up to do.

25 HEARING OFFICER KRAMER: So, Mr. Simpson, it

1 appears that you have then -- you have concerns that part
2 of the process in this case was not conducted according to
3 various laws and regulations. What about a determination
4 by another body relating to another case is relevant to
5 that making that point in this proceeding? To the extent
6 that some body ruled on that, this Board made rulings
7 about questions of law, you can site those in your
8 argument in your briefs in support of your legal arguments
9 that something is deficient in this case. But I fail to
10 see the relevance of bringing in both the evidence and all
11 the arguments from that case into this one, which has by
12 definition different facts and different parties. And we
13 will not take notice of that. Your request is denied.

14 MR. SIMPSON: Thank you.

15 The determination of the CEC and the air
16 districts, do they ever expire? If the applicant comes
17 back in ten years and wants to build this thing and they
18 say, well, ten years ago you guys said it's okay, are your
19 determinations still good? Or do you need to look at the
20 current laws at that time?

21 MR. WALTERS: It is my understanding that the CEC
22 licenses do have an expiration period. In fact, in my
23 last viewing of the current cases, I believe the San
24 Joaquin Valley Energy Center's license did recently
25 expire. The exact timing of that, I don't know.

1 MR. SIMPSON: Not so much the license I'm asking
2 about. I'm asking about your determination.

3 MR. WALTERS: If the license were to expire, we
4 would have to completely redo the case. So, yes, the
5 entire case would expire.

6 STAFF COUNSEL RATLIFF: Can I ask you, Mr.
7 Simpson, clarifying?

8 Are you talking about a license which has not
9 been exercised or are you talking about a license that has
10 been issued and the power plant has been built and is
11 operating?

12 MR. SIMPSON: I'm not talking about a license.
13 I'm talking about the air district's determination and the
14 determination in your air quality testimony.

15 STAFF COUNSEL RATLIFF: When you saw your -- are
16 you referring to the district or Mr. Walters? I'm not
17 following.

18 MR. SIMPSON: Both. I'm asking both.

19 STAFF COUNSEL RATLIFF: Those are two different
20 determinations though; right?

21 MR. SIMPSON: Correct.

22 STAFF COUNSEL RATLIFF: So be specific, please.

23 MR. SIMPSON: I'm asking both the air district
24 and the CEC witness if the determinations made in their
25 PDOC, FDOC, if that's what you want to call it, with the

1 air district and your testimony in the FSA, final staff
2 assessment, if those determinations expire at some point.

3 MR. MOORE: As far as the FDOC -- which
4 essentially takes on the rights and privileges when the
5 CEC approves it would be good for one year from that date
6 and it's renewable up to five years. After that point, we
7 would have to go back and re-evaluate the project. We
8 could re-evaluate sooner. It's our option whether to let
9 it to expend the FDOC essentially before they construct.

10 MR. SIMPSON: Thank you.

11 HEARING OFFICER KRAMER: I think he's already
12 answered. He said he thought it was five years.

13 MR. WALTERS: That's for a completed license. I
14 think the question was how long my analysis is good for,
15 which is essentially as long as it takes the Commission to
16 do a finding, unless there is a reason to provide any
17 addenda that could either come from some re-analysis from
18 the FDOC or other outside regulatory requirements that may
19 come enforce before the license suspension.

20 MR. MC KINSEY: I still think we're asking him to
21 make a lot of legal analysis and legal conclusions here
22 about when his finding has a particular effect and when it
23 takes effect. I don't see how that produces any relevant
24 evidence.

25 HEARING OFFICER KRAMER: We'll certainly consider

1 the legal expertise of the parties. And to the extent
2 there are actual rules that say otherwise, we'll rely on
3 those rules.

4 MR. SIMPSON: I think my question pertains -- my
5 understanding is there's time periods that your
6 determinations are supposed to be completed by. And I
7 believe those time periods are based upon these
8 considerations. These determination should be based on
9 today's law, on current law.

10 I understand air districts law or air quality law
11 changes continually. But if you're starting with an
12 application from three or five years ago and you're trying
13 to impose today's rules on that, what rules are you
14 dealing with? Are you dealing with the rules when the
15 application was made three years ago? Or are you dealing
16 with today's rules when you make a determination?

17 MR. MOORE: As far as the FDOC, it has to comply
18 with our rules and regulations on the date that it's
19 approved by the CEC. If something changes or a rule
20 changes in the period between the time we issue our FDOC
21 and the date the CEC acts, we would have to go back and
22 amend the FDOC and have to determine compliance based on
23 the rules at that time. We're not basing it on the rules
24 that were in place three years ago. We base it on the
25 rules that are in place when it becomes final.

1 MR. SIMPSON: I see.

2 And, Mr. Rubenstein, you mention that after -- if
3 this project is licensed by the CEC and the air district
4 issues their authority to construct, then that would be
5 right with the air district. Is that also the air
6 district's information?

7 MR. RUBENSTEIN: That is a legal question which
8 is very complicated. And I'm not a lawyer. I don't
9 understand the Warren-Alquist since I'm not familiar with
10 it. So I can't really answer that question.

11 MR. SIMPSON: Can anybody? I guess Mr.
12 Rubenstein has answered it. Thank you.

13 If LNG were delivered, could that change the
14 emission profile?

15 MR. MOORE: In our opinion, it would not. The
16 large cycles, usually have facilities that measure
17 composition of the gas.

18 And during the LNG event that occurred in May of
19 '08, we were monitoring the scents from various facilities
20 around the county. And those that had active control
21 systems, which means an SCR with the feedback to control
22 the ammonia injection, did not show any significant
23 increase in emissions during that event.

24 There have been other events that have
25 essentially had gas similar to LNG. Mr. Walters I believe

1 can talk about a little bit that impacted other plants and
2 they did not see any significant increase in emissions.

3 MR. GREENBERG: Mr. Simpson, I concur with Dr.
4 Moore's analysis.

5 A few years ago, I sat on the CEC's LNG work
6 group, which included representatives from Region 9 EPA,
7 Air Resources Board, the California Public Utilities
8 Commission. And this very issue was looked into from a
9 safety and public health standpoint. The available data
10 that I reviewed to that date, which was about two years
11 ago, showed that Dr. Moore is correct, that we would get
12 essentially the same emissions of toxic air contaminants
13 in very minute amounts.

14 MR. SIMPSON: Thank you.

15 And, Mr. Walters, is that --

16 MR. WALTERS: Yes, I actually completed a study
17 for a hot gas load that came down from northern California
18 and I was able to get SIMS data from four power plants for
19 that event. That study indicated there was no statistic
20 of increase in any of the pollutants that were measured
21 from the SIMS. There was a small statistical the amount
22 of ammonia that was injected because it was a small amount
23 of increase in the uncontrolled NOx or the pre-selected
24 catalytic reduction, pre-controlled NOx levels from the
25 turbine, not a particularly high level of increase from

1 either -- it was the only thing with any statistical
2 amount of increase.

3 MR. SIMPSON: Thank you.

4 This question is for all four of you. I'll try
5 to make it a yes or no.

6 Would the project result in an increase in
7 emissions or impact to the community?

8 MR. MOORE: It does result in an increase in
9 emissions. Our determination is that those emissions
10 increases are not significant.

11 MR. SIMPSON: I'll take that as a yes.

12 MR. MOORE: You have my answer.

13 MR. SIMPSON: You said it would result in an
14 increase in emissions; correct? Thank you.

15 UNIDENTIFIED SPEAKER: Staff agrees with the
16 district on that for increase in emissions from today but
17 not historically.

18 MR. SIMPSON: Mr. Rubenstein?

19 MR. RUBENSTEIN: I agree with Dr. Moore's
20 complete answer.

21 MR. SIMPSON: Thank you.

22 Mr. Greenberg?

23 MR. GREENBERG: Mr. Simpson, I did not look at
24 that issue, so I have no comment on it.

25 MR. SIMPSON: Thank you.

1 Dr. Greenberg, you did study the ammonia impacts
2 or how much ammonia this thing would put out. Can someone
3 tell me how much ammonia this project will put into the
4 air?

5 MR. GREENBERG: I did not look at the amount of
6 ammonia that would be coming out. In previous siting
7 cases -- excuse me. Let me clarify. If you're referring
8 to the ammonia slip --

9 MR. SIMPSON: Yes, sir.

10 MR. GREENBERG: Okay. The parts per million that
11 can be measured of the stack would be so diluted by the
12 time it reached any ground level receptor it would not
13 pose any hazard at all of impacts. Ammonia is not a
14 carcinogen, either animal or human. It would only cause
15 what we call non-cancer impacts; respiratory effects,
16 perhaps tearing of the eyes. But not at even the
17 concentration at the exact point of where it's emitted
18 from the stack. You could not even smell it even if you
19 were right up there at the stack.

20 MR. SIMPSON: But it might make your eyes burn or
21 something like that?

22 MR. GREENBERG: Probably would not, not at that
23 concentration at all.

24 MR. SIMPSON: On than those 82 siting that you
25 participated in, how many were rejections, you think?

1 MR. GREENBERG: Two.

2 MR. SIMPSON: Thank you.

3 MR. GREENBERG: In the last year. Both in the
4 last year.

5 MR. SIMPSON: The air district's responses to the
6 comments on the PDOC came out on the CEC website a week or
7 so ago. Did the CEC staff analyze those responses?

8 MR. WALTERS: CEC staff did analyze those
9 responses and actually got their portion of those
10 responses in advance of completing the FSA. We had
11 considerable additional discussion with the district so
12 that we understood those responses and found them
13 acceptable. And all of the changes that were and weren't
14 made to the conditions of certification were then found to
15 be acceptable by staff.

16 MR. SIMPSON: Have you published any analysis of
17 your responses? Or that's it, what you just told me?

18 MR. WALTERS: Any analysis of our responses would
19 essentially be our finding in the FSA.

20 MR. SIMPSON: Did you receive the entire stack of
21 PDOC comments and responses before you did the FSA?

22 MR. WALTERS: No, I did not.

23 MR. SIMPSON: So the -- well, is the CEC required
24 to respond to public comments?

25 MR. WALTERS: Absolutely. And we received quite

1 a few public comments. And those public comments were
2 responded to in the FSA in 17 pages or more of text.

3 MR. SIMPSON: I see. I submitted comments on
4 January 6th of '09. And so I should be able to find
5 responses to that somewhere?

6 MR. WALTERS: Were those comments on the PSA?

7 MR. SIMPSON: I submit the comments to the CEC.
8 They're on the docket.

9 MR. WALTERS: If they aren't direct comments to
10 the PSA, those comments would either have been dealt with
11 based on our analysis in the PSA -- but our current
12 response is limited to comments that are specific to the
13 PSA document. Other comments we received beforehand are
14 taken in by staff and addressed as necessary for the
15 completion of our PSA but are not necessarily noted
16 specifically in the PSA. And at that time, if someone
17 were to consider our response to their earlier comments as
18 not being adequate, then they would provide a comment on
19 the PSA where we could provide additional response in the
20 end.

21 MR. SIMPSON: I see.

22 Is the responses to the PDOC that was on the CEC
23 website, is that part of the record here? Is that an
24 exhibit? Maybe that's a hearing question.

25 HEARING OFFICER KRAMER: Are you talking about

1 the document that was docketed this past week?

2 MR. SIMPSON: Yes, sir.

3 HEARING OFFICER KRAMER: I believe Mr. Monasmith
4 told me this morning it was not. And that staff did not
5 intend to offer it. They were simply docketing it to put
6 it into the docket.

7 MR. SIMPSON: I see.

8 Does the CEC staff seek these comments as a part
9 of the FDOC?

10 MR. WALTERS: It was not provided as part of the
11 official FDOC. We see it as subsequent data that was
12 provided.

13 STAFF COUNSEL RATLIFF: Are we talking about the
14 errata to the air quality conditions?

15 MR. WALTERS: No. We're talking about the
16 comment response document from the PDOC.

17 MR. RUBENSTEIN: If I might, Mr. Kramer, that's
18 Exhibit 110.

19 HEARING OFFICER KRAMER: Oh, okay.

20 MR. SIMPSON: Thank you.

21 My understanding is no one on the panel has
22 authority to issue a PSD permit; is that correct?

23 MR. MOORE: That's correct for the air district.

24 MR. GREENBERG: I do not --

25 MR. SIMPSON: Thank you.

1 So do you have the authority to determine that a
2 PSD permit is not needed?

3 MR. MOORE: We don't have that authority either
4 if you're talking about the EPA's PSD permit. We have our
5 own PSD rules and regulations in the district. They have
6 not been approved by EPA and we have not been delegated by
7 EPA to enforce the rules and regulations. So we determine
8 compliance based on what our PSD regulations are.

9 MR. SIMPSON: Thank you.

10 Now I've got a couple of questions from the
11 response document. It's Exhibit 110. And part of the
12 basis is that apparently you look back at the previous
13 facility, look at the emission for that facility, take a
14 two-year time period and give them credit on the new
15 facility for offsetting those emissions.

16 MR. MOORE: That's not quite correct. We looked
17 at the existing Units 1, 2, and 3, not the whole facility,
18 and we looked at the average over a five year period. We
19 determined that there was not a two-year period that was
20 representative of the emissions because of the variation
21 in power plant emissions year to year. So we used the
22 five-year average, not a two-year period. Our rule out
23 the two-year period, but it also allows if we cannot
24 determine a representative two-year period, we can use a
25 five-year average.

1 MR. SIMPSON: I see. And I have the quote from
2 page 45 of that document. It says Units 1, 2, and 3 at
3 the Encina Power Plant Station have been used in recent
4 years more as peaking units than base load units. Peaking
5 units are typically only called on to operate by the
6 CalISO when high electrical demand requires additional
7 power.

8 So is this new plant a base load unit for a
9 peaking unit? It's for the air district. I'm sorry.

10 MR. MOORE: I would call it an intermediate load
11 unit. Based on the number of hours of operation, it has
12 certain features that are similar to peaking units that
13 can start very rapidly as opposed to most baseload
14 combined cycle turbines.

15 MR. SIMPSON: I see.

16 On page 50 of the same document, you indicated --
17 the air district indicated that the public will have the
18 opportunity to comment on the emission offsets as part of
19 the CEC certification process. When does that opportunity
20 arise?

21 That's an air district question.

22 MR. MOORE: I would say this is one opportunity
23 right now.

24 MR. SIMPSON: Thank you.

25 We had some issues about whether you were

1 supposed to monitor or model the existing air quality. My
2 contention was that monitoring was required. And the
3 district's response was that one year of on-site
4 monitoring data can only be required for a new PSD source
5 or PSD modification and you cited your rules. And that's
6 on page 52.

7 HEARING OFFICER KRAMER: We may have different
8 pagination in our document. Can you refer to it by
9 reference to your comment numbers?

10 MR. SIMPSON: Oh, the comment number?

11 HEARING OFFICER KRAMER: Yeah.

12 MR. SIMPSON: I could, but it will take longer.

13 HEARING OFFICER KRAMER: Well, for this one at
14 least. And I couldn't find your last statement in Exhibit
15 110 at the page you cited. Could you scroll up or down?

16 MR. RUBENSTEIN: I believe this one is comment
17 number 16, Mr. Kramer.

18 HEARING OFFICER KRAMER: Okay. Maybe we are
19 okay. Try that for a couple comments and we'll see.

20 MR. SIMPSON: Okay. I used the page numbers that
21 were identified on the document.

22 MR. MC KINSEY: Mr. Kramer, I have a question I'd
23 like to ask.

24 When Mr. Simpson appeared at the pre-hearing
25 conference without having filed any pre-hearing conference

1 statements, any comments, any testimony at all, you gave
2 him a specific permission to conduct some limited
3 cross-examination. I see that the scheduled noted 15
4 minutes of cross-examination. I'm certain he's exceeded
5 that at this point. And while I'm not trying to cut him
6 off, I think I think it would be appropriate to ensure
7 that we understand how much further he has to go and
8 whether that's going to significantly continue or not.

9 HEARING OFFICER KRAMER: You are correct. I've
10 been timing things and he's at about 20 minutes at this
11 point.

12 How long do you have, Mr. Simpson?

13 MR. SIMPSON: I believe I asked for two hours and
14 you offered me 40 minutes at the pre-hearing conference.

15 HEARING OFFICER KRAMER: We don't have a
16 pre-hearing conference transcript. But no, I said 15
17 minutes. It's -- you can take another --

18 MR. SIMPSON: I have another 15 minutes in public
19 health also.

20 HEARING OFFICER KRAMER: That's true. Okay.
21 Then you are out of your 30 minutes then, and I will the
22 minute we just used we will not subtract from your time.

23 MR. SIMPSON: Thank you.

24 So my question about this on-site monitoring, it
25 appears you had to make the determination that PSD rules

1 don't apply to determine the on-site monitoring. Now if
2 EPA comes out and they say, okay, you need a PSD permit,
3 does that alter your determination in this --

4 MR. MOORE: Under our rules and regulations, we
5 are not delegated to enforce EPA's rules. If they
6 determine that a PSD permit is required, they might
7 require on-site monitoring.

8 MR. SIMPSON: I understand there is a
9 presentation that you made at the air quality workshop --
10 well, let me start with the next comment on page 53. It
11 says because the district does not -- your response is
12 because the district does not attain the 24-hour PM10 and
13 annual PM10, PM2.5 ambient air quality standards, a
14 demonstration of the emissions from the project when added
15 to monitor background concentrations of PM10 and PM2.5
16 will not cause any additional violations of these
17 standards because you are already out of attainment.

18 So -- but when I look at your presentation from
19 that -- that's posted on the CEC website, it appears to be
20 the only record of that workshop. I can't find in your
21 tables that you presented to the public that you are out
22 of attainment. It appears from this table, which is on
23 page 13 of your 34-page presentation, that you are in
24 attainment for PM10 and PM2.5. Can you help me understand
25 the discrepancy?

1 STAFF COUNSEL RATLIFF: Mr. Simpson, I'm not able
2 to understand what your question is. Can you ask -- can
3 you say in a succinct manner what the question is?

4 MR. SIMPSON: Yes.

5 In the response to comments, you indicated that
6 you're out of attainment for PM10 and PM2.5. In the
7 presentation to the public, it appears you are in
8 attainment for these pollutants. And I'm trying to
9 understand the discrepancy.

10 MR. MOORE: I have to look up the table in my
11 presentation.

12 But in general, we do not attain state standards
13 for PM10 and PM2.5. We do attain the federal standards
14 for PM10 and PM2.5.

15 MR. SIMPSON: Okay. If you were in attainment
16 and this project caused you to be out of attainment, would
17 that trigger a PSD permit?

18 MR. MOORE: It wouldn't trigger a PSD permit. It
19 would basically mean they did not comply with the air
20 quality impact analysis requirements in our rules. They
21 have to demonstrate they will not cause any new exceedance
22 of the standard we attained.

23 MR. SIMPSON: The CEC staff -- you have an air
24 quality table, Table 22, on page 4.1-37. And it's
25 different than each of the tables I've seen so far.

1 On Table 22, it shows that annual PM2.5 being at
2 12 micrograms and this project will put it at 12.1, which
3 limiting standard is 12. So it was at 100 percent of the
4 limiting standard according to your table. And this puts
5 it at 101 percent.

6 Now at the paragraph below that you indicate the
7 applicant's modeling result indicates that the project's
8 normal operational impacts would not be in violation of
9 various standards but could further exacerbate violations
10 of PM10 and PM2.5 standards.

11 Now, I understand that you're indicating the
12 applicant's modeling results, but do your modeling results
13 show that this project will create a new exceedance of the
14 national ambient air quality standards?

15 MR. WALTERS: My answer is essentially the same
16 as the districts. They are already non-attainment for the
17 state standard for PM2.5, which is what that particular
18 row is comparing. The particular background is from a
19 particular station that may or may not be above or below
20 but would not change the attainment status for the area.

21 MR. SIMPSON: So is 12 micrograms out of
22 attainment?

23 MR. WALTERS: Let me try my answer again.

24 MR. SIMPSON: It's just a yes or no question.

25 MR. WALTERS: No, but the question makes no

1 technical sense.

2 MR. SIMPSON: Well, my understanding is 12
3 micrograms is 100 percent of the ambient air quality
4 standard.

5 MR. WALTERS: The attainment status is not based
6 on that number.

7 MR. SIMPSON: Okay. Then maybe you can explain.

8 MR. WALTERS: The attainment status is based on
9 the breadth and width of all the monitoring stations
10 within the county that were used to determine whether or
11 not the county was in attainment or not in attainment.

12 MR. SIMPSON: And the discrepancy between your
13 numbers and the district's numbers, can you help me
14 understand that? Because the same table that I see on the
15 workshop presentation has different results.

16 MR. MOORE: I'm still not sure what table you're
17 referring to.

18 MR. SIMPSON: On page 13 of your 34-page
19 presentation, you have what you refer to as your AQIA
20 results or AAQS.

21 HEARING OFFICER KRAMER: Now, Mr. Simpson, this
22 document is not in evidence; correct? So you're going to
23 have to show him this table if you want him -- unless he
24 remembers it. And he says he doesn't.

25 STAFF COUNSEL RATLIFF: Not only do we not have

1 that table, but we don't know what in that table is
2 supposedly discrepant. This is putting a lot of people at
3 a disadvantage here. We don't know what he's talking
4 about basically. We can't follow it.

5 MR. SIMPSON: I'm sorry. I pulled this off the
6 CEC website.

7 It's the workshop presentation. But if it's not
8 in evidence, I would like to introduce it into evidence.
9 It indicates the PM2.5 annual impact is currently at 14.1
10 micrograms and you're going to add another .1 micrograms,
11 which leads to the conclusion you are already out of
12 attainment and this is just making it worse so it's not so
13 bad. As opposed to the CEC's document that indicates
14 you're in attainment and this project will take us out of
15 attainment.

16 HEARING OFFICER KRAMER: Now I'm confused again
17 because you referred to it as though Mr. Moore wrote it.
18 But if it's a CEC document, I doubt that would be the
19 case.

20 STAFF COUNSEL RATLIFF: May I point out that the
21 witness has testified that the district is out of
22 attainment for PM2.5. I mean, there's no question about
23 that and there's no disagreement between the district and
24 the staff on that point. They're testifying in agreement.
25 So I don't know what this is relevant to in any way.

1 MR. SIMPSON: Well, my contention is that Table
2 22 of the final staff assessment states that you are in
3 attainment for PM2.5 standard.

4 STAFF COUNSEL RATLIFF: You asked the witness and
5 he answered that the district is out of attainment.

6 HEARING OFFICER KRAMER: Mr. Walters in effect
7 told you that the non-attainment status may have been
8 determined by a higher reading at some other monitoring
9 station; is that correct, Mr. Walters?

10 MR. WALTERS: Yes, that's correct.

11 MR. SIMPSON: So we shouldn't rely on Table 22?

12 HEARING OFFICER KRAMER: No. You rely on it for
13 what he says it was, which is a measurement at the most --
14 the nearest monitoring station of that particular criteria
15 pollutant. Is that correct, Mr. Walters?

16 MR. WALTERS: Yeah. It represents what we
17 consider the most representative worst-case conditions for
18 that area based on representative monitoring stations.

19 But again, that has nothing to do with the
20 findings of the attainment or non-attainment for the area.
21 The attainment -- non-attainment is very clearly evident
22 in table -- air quality Table 3 on page 41-7.

23 HEARING OFFICER KRAMER: And you're into the red
24 zone on the clock, Mr. Simpson. So please wind it up.

25 MR. SIMPSON: For the air district, it appears on

1 your response to comments -- I had a concern about an acid
2 rain permit application. It looks like it's page 56. It
3 looks like your FDOC indicated that the sub-part requires
4 any source to submit a complete acid rain permit by the
5 application deadline. And it says requirements for
6 submittal of acid rain application will be included in a
7 proposed authority to construct for the combustion
8 turbines of this project.

9 And my concern was that we couldn't comment on
10 the acid rain permit application, because as you said, it
11 would be included. But your response was that the
12 applicant submitted an acid rain permit application to the
13 district on September 4th of 2008 and the application is
14 available for public review and was available during the
15 PDOC comment period. Therefore, the public had the
16 opportunity to comment. It appears that the PDOC
17 indicates that the permit will be forthcoming and the
18 response indicated that it already happened. So I don't
19 understand when that happened or when my comment period
20 was.

21 MR. MOORE: I think PDOC had the same condition
22 as the FDOC for the acid rain. I'd have to check the
23 PDOC, but we have the same conditions in the PDOC as the
24 FDOC that they had to submit an acid rain application by
25 the date required. And they have complied with that

1 condition.

2 MR. SIMPSON: So according to your response, they
3 submitted the application on September 4 of 2008?

4 MR. MOORE: That's correct.

5 MR. SIMPSON: I see. Thank you.

6 And I'll make this one last question.

7 Would you -- for the whole panel, would you
8 expect that the emissions would be less if the electrical
9 generation equipment did not burn fossil fuels?

10 MR. MOORE: Would the emissions be less if they
11 didn't burn fossil fuels?

12 MR. SIMPSON: Yeah. Would you expect they would
13 be less?

14 MR. MOORE: Maybe, maybe not. Depends if they
15 burn biofuels, for example, which are not fossil fuels
16 necessarily. It could be more. I haven't really
17 investigated that at these facilities.

18 MR. SIMPSON: Well, if they use a source like
19 solar or wind power, would you expect the emissions to be
20 less?

21 MR. MOORE: If they use solar or wind power, if
22 they had the room to do that, they would be less. But
23 they don't have room on the facility to do that.

24 MR. SIMPSON: Thank you.

25 CEC staff?

1 MR. WALTERS: Your original question was whether
2 or not the equipment burned anything. And if it burns
3 anything, it could not be a solar facility.

4 MR. SIMPSON: So I'll take the revised question.

5 MR. WALTERS: Emissions from solar facilities per
6 megawatt hour are lower.

7 MR. SIMPSON: Thank you.

8 MR. GREENBERG: Emissions from solar facilities
9 are indeed lower.

10 I would, however, like to point out that many
11 people who are looking at a solar facility as being
12 totally not emitting are forgetting even with solar
13 photovoltaics if one conducts a life cycle assessment of
14 the manufacturing of all the materials that go into a
15 solar photovoltaic cell or a solar project that those
16 facilities that manufacture do have emissions. And yes,
17 the emissions would be very much lower at this location.
18 But then again, they would be higher in another location
19 that manufactures those facilities. This one life cycle
20 assessment I'm aware of was conducted about five or six
21 years ago by Professor Lester Laid at Carnegie Mellon
22 University.

23 MR. SIMPSON: Are you saying there should be less
24 cycle assessment of the development of these facilities
25 and the natural gas delivered?

1 MR. GREENBERG: No, I'm not saying that at all.
2 I'm just answering your question with the expertise that I
3 have.

4 MR. SIMPSON: I see.

5 HEARING OFFICER KRAMER: I think you said that
6 was your last -- oh.

7 MR. RUBENSTEIN: I'm afraid, Mr. Simpson, I've
8 gotten completely confused as to what your question is.

9 MR. SIMPSON: My question is if the project
10 generated electricity by use of solar power or wind power,
11 would you expect the emissions would be less?

12 MR. RUBENSTEIN: In the case of wind power for
13 the hours that the wind farm was generating electricity,
14 yes, it would be less. For the hours when the wind farm
15 was not generating electricity, it depends on where the
16 electricity was coming from.

17 In the case of solar, that would depend
18 completely on the design of the solar plant.

19 MR. SIMPSON: Thank you. No more questions.

20 HEARING OFFICER KRAMER: Thank you.

21 Terramar.

22 CROSS-EXAMINATION

23 BY MS. SIEKMANN:

24 Q Mr. Rubenstein, isn't it true we are in violation of
25 particulate matter and ozone in this area for the state

1 standards?

2 A I indicated that during my opening comments, yes.

3 Q And in your cumulative impacts, did you analyze the
4 railroad, the widened I-5 with the Encina plant and the
5 proposed CECP?

6 A We looked at that not quantitatively, but concluded
7 those impacts would not result in air quality impacts in
8 the same general locations of the plant because the
9 roadway and the locomotives are fundamentally different
10 type of emission source emitting at a much lower
11 elevation. So we did not do a quantitative analysis, but
12 yes, we did look at that.

13 Q Could you explain to me how you looked at it?

14 A Exactly the way I just said. The emissions associated
15 with both the vehicle traffic on I-5 and the emissions
16 associated with locomotives on the railroad tracks are
17 emitted at a much lower elevation than as compared with
18 the stacks from the CECP. As a result of those impacts
19 would occur in different locations and I would not expect
20 to see a significant cumulative impact.

21 Q So all impacts would be at different locations? I
22 mean, to me it seems like -- I don't know about this. It
23 seems like some would fall someplace and some would fall
24 other places. So if you have the I-5 and you have these
25 two different stacks, some could all fall in one location

1 or in one area or one neighborhood; is that possible?

2 A Well, the problem is with your premise that things
3 fall. The air pollutants that come from this project are
4 all gases that are emitted at elevated temperatures.

5 Q About what about particulate matter?

6 A Particulate matter, the kind of particulate matter
7 we're talking, which is the size of either ten microns or
8 two-and-a-half microns in size, that particulate matter is
9 so small that actually it behaves like a gas in the
10 atmosphere.

11 Q But it does eventually fall I would assume?

12 A If it was to deposit out, it would be miles from here.
13 It does not deposit immediately around the plant. That
14 was not always the case when this plant was burning oil --
15 residual fuel oil --

16 Q Is that the case with Encina, too?

17 A If I could finish my answer, please.

18 Q Oh, yeah, absolutely.

19 A That was not the case -- that was not the case when
20 the existing Encina Power Station was burning oil many
21 years ago. Some of the particulate matter from some of
22 the operations there would be large enough that it would
23 fall out near the plant. However, the Encina Power
24 Station no longer burns oil. Consequently, the
25 particulate matter that comes out of the stack is

1 principally this very small material that as I said
2 behaves like a gas.

3 Q Okay. So that's the case with Encina? That's the
4 case with the proposed CECP?

5 A That's the case with Encina today and the case with
6 the proposed CECP, that's correct.

7 Q Okay. Let's see. Have you handled all the air issues
8 for energy regarding the CECP project?

9 A To the best of my knowledge, I have, yes.

10 Q Okay. Is the FDOC -- and this is something you may
11 not be able to answer, but do you consider the FDOC a
12 final document?

13 A As I indicated earlier -- if you mean a final document
14 in terms of an appeal to the San Diego District Hearing
15 Board, my answer is no. If you mean a final document for
16 purposes of the Energy Commission proceeding, the answer
17 is yes, it is.

18 Q Right now it's a final document or when the license is
19 issued?

20 A My opinion -- and you might ask the district. But my
21 opinion is for purposes of these hearings, this
22 proceeding, the Energy Commission's licensing proceeding,
23 the FDOC is a final document. But for purposes of the air
24 district's rules and in particular when or whether you
25 might be able to appeal to the Hearing Board, the answer

1 is no.

2 MS. SIEKMANN: May I ask staff is the FDOC a final
3 document at this point?

4 MR. MOORE: I guess I'll answer that.

5 In our view, it is not final until the CEC acts
6 on the certification. Up until that point, as I said
7 before, we would -- a rule change or something required us
8 to amend the FDOC, we would do that.

9 HEARING OFFICER KRAMER: Could you get more
10 familiar with the microphone?

11 MR. MOORE: Sorry.

12 Basically, you know, as far as we know right now,
13 the FDOC, we're supposed to determine compliance and make
14 our recommendation to CEC. To the best of our knowledge,
15 they are in compliance with the rules at this time.
16 However, as I said before, if a rule change or something
17 like that occurred, we would have to amend the FDOC if
18 there was going to be an issue with compliance for the
19 facility.

20 MS. SIEKMANN: So are you saying to me at this
21 point it is not a final document until the end of -- until
22 the end?

23 MR. MOORE: That is correct. We do not view this
24 as final until the CEC approves the certification.

25 MS. SIEKMANN: Thank you.

1 Mr. Rubenstein, can I ask you why the applicant
2 sent notice out to the public, which is in my testimony
3 and has also been docketed, saying that notice of final
4 decision to approve the source of air pollution by the San
5 Diego Air Pollution Control District was sent out and in
6 it it said that this district considered all comments
7 received before taking its final action? The final
8 determination of compliance incorporates conditions
9 necessary to ensure compliance with all federal and
10 district requirements.

11 HEARING OFFICER KRAMER: Could you point us to
12 the page of the testimony where it's --

13 MS. SIEKMANN: Page eleven and twelve.

14 HEARING OFFICER KRAMER: Thank you. And that's
15 exhibit --

16 MS. SIEKMANN: That's Exhibit 327 -- well, Exhibit
17 300, sub-327.

18 HEARING OFFICER KRAMER: Right. I have that on
19 page 17 but --

20 MS. SIEKMANN: Oh, but that's the right exhibit
21 number. You know I've been trying to cut things back.

22 HEARING OFFICER KRAMER: Okay. Are you finished
23 with your cross?

24 MS. SIEKMANN: I haven't gotten an answer.

25 MR. RUBENSTEIN: I'm sorry. I was trying to find

1 the document.

2 MS. SIEKMANN: That's okay. I'm still waiting.

3 MR. RUBENSTEIN: Can you repeat the question
4 though?

5 MS. SIEKMANN: I'm asking based on the answer
6 given by Dr. Moore why the applicant sent that out saying
7 that it was a final document and that it did -- it did
8 comply with all federal and district requirements. And
9 twice it said all applicable federal requirements and that
10 it was a final document. I'm just wondering why the
11 applicant sent that out to the public. I received it at
12 my house.

13 MR. RUBENSTEIN: I'm not sure -- I take you at
14 your word you received it. I had nothing to do with
15 sending out this notice. I don't disagree with it
16 because, as I said earlier, in my opinion, the
17 determination of compliance issued by the district is
18 final for purposes of this Energy Commission decision.

19 And I understand and do not disagree with what
20 Dr. Moore said with the potential for the district to make
21 amendments if there are changes in any applicable rules
22 when the Commission approves the project. But for
23 purposes of this hearing, my opinion was that this is a
24 final document.

25 MS. SIEKMANN: I didn't realize that the

1 district -- my understanding was that the district isn't
2 responsible for all federal requirements; is that the
3 case? Or should I ask the district?

4 MR. RUBENSTEIN: Are you referring to something
5 in the notice now?

6 MS. SIEKMANN: In the notice, twice it says that
7 it complies with all federal and district requirements.
8 And then further above it says the district performed an
9 evaluation of the air pollution impacts of this proposal
10 and the (inaudible) is expected to operate in compliance
11 with all applicable district rules and regulations and all
12 applicable federal requirements.

13 MR. RUBENSTEIN: Right. I see that statement
14 now.

15 I think that the district in the final
16 determination of compliance rendered its opinion that the
17 project complied with all applicable federal requirements.
18 I think what you may be referring to is in addition to
19 that the applicant has asked EPA for a second opinion on
20 whether the federal PSD requirements apply. So I don't
21 see those are inconsistent.

22 MS. SIEKMANN: Thank you.

23 Dr. Moore, do you agree with that? Is that the
24 case?

25 MR. MOORE: The FDOC actually said they were in

1 compliance with all regulations of the district and all
2 federal regulations we were authorized to enforce.

3 MS. SIEKMANN: That's correct. I mean, I agree.
4 So does that mean that the FDOC complies with all federal
5 requirements?

6 MR. MOORE: For ones that were not authorized and
7 enforced, that's a decision for EPA to make.

8 MS. SIEKMANN: Thank you.

9 Okay. This is for the district. On my Exhibit
10 300 sub-exhibit 328 -- and thank you for all the answers
11 you provided me -- I'm sorry. It's not for the district.
12 It's for the CEC. I apologize. I apologize.

13 Why are the impacts from the train and the I-5
14 not analyzed as direct impacts like Encina and the
15 proposed CECP instead of as background? Since the I-5
16 widening is a reasonably foreseeable future project,
17 shouldn't it be included also?

18 MR. WALTERS: Let me find my response first.

19 MS. SIEKMANN: Okay.

20 MR. WALTERS: Okay. I probably need to supply
21 more information than I did in my written response. But
22 there are a number of reasons why we didn't include a
23 cumulative analysis.

24 MS. SIEKMANN: Okay.

25 MR. WALTERS: Number one, we could make an

1 estimate of what the emissions would be either during the
2 widening or after.

3 Number two, vehicle emissions are going down
4 steadily.

5 MS. SIEKMANN: I'm sorry. Could you repeat that?
6 I couldn't hear what you said.

7 MR. WALTERS: Repeat the first part?

8 MS. SIEKMANN: Yeah, the first part.

9 HEARING OFFICER KRAMER: You could get a little
10 closer to the mike as well.

11 MR. WALTERS: We were not able to determine what
12 the emissions -- in order to do a modeling analysis as
13 opposed to an analysis which we did have a finding on
14 cumulative it is in the FSA. But we did not include a
15 modeling analysis. And the reasons we did not include a
16 modeling analysis are that we did not have emissions for
17 either the widening project or what traffic would be like
18 afterwards.

19 Number two, the fact that traffic
20 emissions/vehicle emissions are going down over time.

21 And three, we use worst-case background already
22 as a basis in both our project cumulative and our
23 Encina-plus project cumulative. And we considered that
24 along with the conservatism in the modeling to provide
25 enough conservatism to address any impacts that would be

1 occurring in the future that would include these
2 additional future projects.

3 BY MS. SIEKMANN:

4 Q Okay. I had a question on fumigations, which you did
5 answer. And that would be exhibit -- my Exhibit 300,
6 sub-310. And then you gave an answer to me about the --
7 were significant impacts determined during shoreline or
8 inversion break-up fumigation conditions. Your response
9 was no, the concentration of pollutants during fumigation
10 conditions during to the configuration of stacks and
11 temperature of the exhaust were not found to be higher
12 than those during normal operations.

13 My continued question to you would be: Would
14 staff please point out to me where the concentration of
15 pollutants during fumigation conditions versus formal
16 operations are reported in the FSA?

17 A The maximum fumigation impacts are identified near
18 Table 24.

19 Q Twenty-four, okay.

20 A And it has two sub-sections both for the inversion
21 fumigation and for the shoreline fumigation. The normal
22 operating impacts are identified in Table 22 and are also
23 additional tables that deal with some of the other
24 commissioning, including start up, shut down, and initial
25 commissioning.

1 Q So basically you're confirming to me that those of us
2 who exercise strenuously along the coastline have no
3 worries under any conditions of weather, wind, whatever,
4 of problems with fumigation?

5 A The modeling impacts for fumigation show no concern.

6 Q Ever? Under any conditions?

7 A Based on the conditions in which the models operate --

8 Q Based on the conditions? I'm sorry the --

9 A Based on the conditions and the calculations used in
10 the models, yes.

11 Q What conditions does it uses for the fumigation
12 modeling?

13 A I don't have all of the calculational --

14 Q Did you use, like, different conditions? Because our
15 conditions change significantly, especially with all the
16 marine layer.

17 A The model has certain assumptions and it's very
18 simplified and over-predictive model for potential forced
19 fumigation. And essentially fumigation is going to happen
20 more often in cases where you don't have a thermally
21 buoyant stack like you do here. And that's why the
22 results are as low as they are for this particular
23 project.

24 Q I'm sorry. Go ahead. Continue. Were you going to
25 say something else?

1 A I could, but I don't need to.

2 Q Okay. Exhibit 300-313, I talk about power block -- it
3 talks about -- the staff talks about power block unit six
4 and it gives exactly what that consists of. And what I
5 was wondering was does staff know if this equipment has
6 been partially or completely purchased?

7 A I believe that's a question that should be addressed
8 by the applicant.

9 MS. SIEKMANN: Okay. Mr. Rubenstein, has that
10 equipment been partially or completely purchased?

11 MR. RUBENSTEIN: I'm sorry, Ms. Siekmann. I'm
12 still looking for that reference. What was the exhibit
13 again?

14 MS. SIEKMANN: It's number 313.

15 HEARING OFFICER KRAMER: Exhibit 300, page 6.
16 Near the top -- in the middle.

17 MR. RUBENSTEIN: I do not know the extent to
18 which the equipment has been purchased.

19 MS. SIEKMANN: You do not know whether it's been
20 partially or completely purchased?

21 MR. RUBENSTEIN: That's correct.

22 MS. SIEKMANN: So going on to the next exhibit,
23 this would be to staff again, number 314, and I'm sure
24 that you don't want me to read the whole question, or do
25 you want me to? So I can ask my question, the quote it's

1 coming from --

2 HEARING OFFICER KRAMER: You can probably read it
3 faster.

4 MS. SIEKMANN: It's AQ-28. My question is if a
5 one clock hour average was used, would the emission
6 concentrations of oxides of nitrogen exceed 2.0 parts per
7 million by volume on a dry basis corrected to 15 percent
8 oxygen?

9 MR. WALTERS: The way the condition is set up,
10 it's a three-hour average. So there certainly is the
11 potential that on a one-hour average the hourly average in
12 any given one hour during that period could be over two,
13 but not much over two or it can never get back down to an
14 average of two over three hours.

15 MS. SIEKMANN: So it could exceed?

16 MR. MOORE: That's only under conditions of the
17 rapid transient megawatts per minute. That's the only
18 time that the three-hour average is allowed.

19 MS. SIEKMANN: But isn't that one of the purposes
20 of this plant, the fact that it can do that so rapidly?

21 MR. MOORE: Not necessarily that rapidly. It can
22 change those fairly rapidly. Most turbines can do that.
23 They had asked for a much more expansive relief during
24 transient. However, they did not provide in our opinion
25 sufficient evidence to back that up. So, you know, we had

1 given this condition to other combined cycle plants and
2 they haven't been able to comply with it.

3 MS. SIEKMANN: So based on that question, would
4 the one-hour average create a violation?

5 MR. MOORE: You mean if they had a one-hour
6 average in rapid transient?

7 MS. SIEKMANN: Yes.

8 MR. MOORE: Possibly. Until it operates and you
9 see how much of an exceedance in any minute or few minutes
10 there might be, you wouldn't know the answer to that.

11 I guess I would add that the emission that would
12 be allowed in the three-hour average at most would be
13 about six times. And if they had zero the other two
14 hours, they could essentially have a six PPM NOx during
15 that hour. So that's well within the AQIA analysis that
16 was done for a much larger amount of NOx during
17 commission. And they complied with that requirement as
18 far as the air quality standards go.

19 MS. SIEKMANN: So I would just like to make a
20 comment that Terramar would like to see that as a one-hour
21 average, because we do not want any exceedance in an hour.

22 So I would like to move on to AQ-29, which is a
23 very similar situation. Let me give you a moment. With a
24 one clock hour average was used, would the emission
25 concentrations of carbon monoxide exceed 2.0 PPMBD

1 corrected to 15 percent oxygen?

2 MR. MOORE: That's essentially the same answer as
3 for NOx. I would add that BACT requirement, best
4 available control technology -- and one of the
5 requirements of BACT is it must be technically feasible.
6 You can't put a one-hour average in if it's not
7 technically feasible for them to achieve --

8 BY MS. SIEKMANN:

9 Q Could you please explain that to me? Technically
10 feasible?

11 A That means can they achieve that limit using the best
12 available control that they have. If they were to improve
13 the operation of the turbine and the control system and so
14 on.

15 Q So if you used a one-hour average, would they create a
16 violation? Is that what you're trying to tell me?

17 A No, I don't think --

18 Q Not in this one?

19 A I can't -- it's kind of speculation. It's here in
20 case they need that flexibility. When it operates, we can
21 see how well they comply or if they have issues with this.
22 And it's possible we re-visit this at some point in the
23 future.

24 Q You mean pre-licensing or post-licensing?

25 A No, it would be post-licensing. I think unless we

1 have actual data from (inaudible) we wouldn't have a
2 really good feel for how likely it would be they would
3 exceed the two PPM. The 50 megawatts a minute is
4 extremely I guess stringent requirements. They do not
5 ramp that up 50 megawatts a minute very often.

6 MR. WALTERS: I want to make a clarification.
7 When Dr. Moore is identifying exceedance, he's
8 talking about the stack level concentrations. He's not
9 talking about ground level concentrations. And --

10 MS. SIEKMANN: My question was about violations
11 so --

12 MR. WALTERS: Okay.

13 MS. SIEKMANN: My second question --

14 MR. WALTERS: But getting back to CO with the
15 same answer being you could essentially max out at six PPM
16 if one hour if you had zeros, the other two, six PPM is
17 well below the ambient air quality standard so there would
18 be absolutely no potential to cause the ground level
19 exceedance.

20 MS. SIEKMANN: That's why I asked about
21 violations.

22 MR. MOORE: The other question is how frequently
23 you're going to see a 50 megawatt per minute transient.

24 HEARING OFFICER KRAMER: Just to be clear, when
25 Ms. Siekmann, you use the word "violation," are you talking

1 about condition or air quality standard?

2 MS. SIEKMANN: APCD violation.

3 HEARING OFFICER KRAMER: Of the condition? Not
4 of the air quality standard.

5 MS. SIEKMANN: Well, either one.

6 HEARING OFFICER KRAMER: I just want to make sure
7 you're using the same language.

8 MR. MOORE: The modeling shows there wouldn't be
9 any violation of the air quality standard with this
10 condition. So I think the only relevant question is --
11 it's sort of a hypothetical question if we held them to a
12 one-hour standard at all times, is it possible they might
13 exceed it under rapid transient. I don't think we're
14 going to know that until the facility is actually
15 operating. We look for evidence to try to see whether it
16 is the case or not and couldn't find it.

17 BY MS. SIEKMANN:

18 Q Dr. Moore, may I just ask you, is there a plant like
19 this anywhere in the country?

20 A Not as far as I know.

21 Q Thank you. So basically is everything that you're
22 talking about theoretical as far as this conversation
23 goes? As far as the plant in this --

24 A What do you mean by theoretical?

25 Q Well, since there isn't a plant, you had to base it on

1 something.

2 A That's true. It's based on information provided by
3 the turbine manufacturer. There are other plants that are
4 similar to this that are operating, although we do not
5 have the rapid start capability. So we have that
6 information. For example, like I said the three-hour
7 transient is another permit we had with another large
8 combined cycle.

9 Q Okay. Thank you.

10 And then we will move to 315.

11 MR. MC KINSEY: I don't mean to interrupt, but my
12 witness is signaling me he needs a biology break. I might
13 need one too, but I'm not about to get up and go to the
14 bathroom when I know he can't. So I don't know if it's
15 time to break for lunch any time but --

16 MS. SIEKMANN: Okay.

17 HEARING OFFICER KRAMER: How much more time do
18 you have?

19 MS. SIEKMANN: Let them go.

20 HEARING OFFICER KRAMER: I'm trying to decide if
21 you just have a few minutes, I know --

22 MS. SIEKMANN: I might be more than a few.

23 HEARING OFFICER KRAMER: Perhaps we should just
24 break for lunch then.

25 MR. ROSTOV: I just have one question. I wasn't

1 planning on coming back after lunch. Was a redirect on
2 something Mr. Simpson asked. I was just wondering if I
3 can get two minutes before we break for lunch.

4 HEARING OFFICER KRAMER: Go ahead.

5 REDIRECT-EXAMINATION

6 BY MR. ROSTOV:

7 Q It's to Mr. Moore -- Dr. Moore. There was a question
8 about emission profiles regarding LNG. I think Mr.
9 Walters also answered this question. You both said that
10 emission profiles haven't changed. But when you were
11 talking about emissions profiles, you were talking about
12 criteria pollutants; correct?

13 A That's right, NOx in particular.

14 MR. WALTERS: Yes. The answer was in context to
15 criteria pollutants.

16 MR. ROSTOV: Thank you.

17 HEARING OFFICER KRAMER: I think it is also the
18 case that Dr. Greenberg asked for the non-criteria
19 pollutants.

20 MR. ROSTOV: Oh.

21 MR. GREENBERG: That is correct. I was talking
22 about toxic air contaminants as well.

23 MR. ROSTOV: Thank you.

24 HEARING OFFICER KRAMER: Thank you.

25 Then I was hoping to finish this up so the panel

1 could not have to come back after lunch. But given the
2 more immediate needs, we will break for lunch for one hour
3 and return here at 2:15 to continue. Thank you.

4 (Thereupon a lunch recess was taken at 1:13 p.m.)

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1 AFTERNOON SESSION

2 2:26 p.m.

3 HEARING OFFICER KRAMER: Ms. Siekmann, do you have
4 that exhibit?

5 MS. SIEKMANN: Yes, I do.

6 HEARING OFFICER KRAMER: If you want to work on
7 your notes, maybe Dr. Roe or somebody can help you pass it
8 around.

9 This is an exhibit she's proposing for the
10 parties tomorrow regarding greenhouse gases. And we
11 wanted to let people look at it ahead of time and decide
12 whether or not they were going to have any objections.

13 And Mr. McKinsey, you've changed.

14 MR. NESE: Good afternoon, Hearing Officer
15 Kramer. I'm Brian Nese, N-e-s-e, from Stoel Rives sitting
16 in for John McKinsey.

17 HEARING OFFICER KRAMER: Okay. I don't need one.
18 The exhibit she just passed out is just a review in
19 advance of tomorrow so you're not surprised as you might
20 otherwise be.

21 Ms. Siekmann, if you want to continue your
22 cross-examination.

23 MS. SIEKMANN: Okay. Are you ready?

24 CROSS-EXAMINATION

25 MS. SIEKMANN: This is a question for staff, and

1 it is Exhibit 300-315 B regarding AQ 33. I'll give you a
2 moment to look at it.

3 My question is, if the CECP is required to use
4 BACT, B-A-C-T, why would they be allowed to run without
5 the post-combustion air pollution control equipment that
6 controls NOx?

7 MR. WALTERS: This is a district condition, so I
8 think it's better for the district --

9 MS. SIEKMANN: Thank you.

10 MR. MOORE: BACT has to be technically feasible.
11 And the only time you're allowed to run without the
12 control equipment is during commissioning. And during the
13 early parts of commissioning, it's often the case they can
14 poison the catalyst for the SCR if they have it in place.
15 So during the early portions of commissioning, they don't
16 have the combustion control on, which is one of the
17 reasons emissions are so much higher than during normal
18 operations.

19 BY MS. SIEKMANN:

20 Q So should there be a condition on that at some point
21 where then it does kick in?

22 A They have to install at the end of commissioning as
23 soon as possible actually, as soon as feasible.

24 Q Is that a requirement?

25 A It's in the conditions, yes.

1 Q Okay. I guess this is a district question also.

2 Exhibit 300-316 from the FSA page 4.1-86. AQ 69 states
3 the SEMS shall be in operation at all times when the
4 turbine is in operation. AQ 70 states when SEMS is not
5 reporting data and the combustion turbine is operating and
6 it continues, these two conditions of certification seem
7 to oppose each other. Could you please explain that?

8 A Just like everything else, SEMS occasionally break
9 down. So the second condition is a way of filling in data
10 for annual emissions during the period when a SEMS might
11 be off line for one reason or another.

12 Q Thank you.

13 And then B, have that same exhibit where AQ 71
14 states any violation of any emission standard as indicated
15 shall be reported to the district's compliance division
16 within 96 hours after such occurrence. What does the
17 district do with this violation information and how
18 quickly do you respond?

19 A Kind of depends on the violation. But in general, we
20 investigate it so see if it was due to a breakdown, in
21 which case there is possible relief under Rule 98.

22 Otherwise, we follow up -- it's not a breakdown,
23 we would follow up at the next regularly scheduled
24 inspection, usually quarterly for a site like this, at
25 least when it initially starts operating. If it's a

1 one-time operation, then there's no real reason to go out
2 there immediately as long as it's fixed. If it's a
3 continuing violation, then the fines would be in violation
4 for every day it occurs and the fines escalate rapidly in
5 that case if they're knowingly violating conditions.

6 Q And normally you do quarterly inspections?

7 A It depends on the history of the site. A site like
8 that when we first start out we would probably be doing
9 quarterly inspections. If they show a history of
10 compliance, we would probably drop that back down to
11 semi-annual inspections. But we try to do them at least
12 twice a year.

13 Q And does the staff at this time have enough staff to
14 do these quarterly inspections?

15 A As far as I know, we have 23 inspectors on our staff.

16 Q Now is this information available to the public? And
17 if so, where and how soon?

18 A You would have to make a public information request.
19 You're referring to violations?

20 Q Uh-huh.

21 A You have to make a public information request. You
22 can request all the violations that have been issued to a
23 certain site.

24 Q You have to request the information? It's not posted
25 anywhere?

1 A It's not posted, no.

2 Q Okay. Now if the district finds a violation that was
3 not reported, how do you react to that?

4 A Issue a notice of violation.

5 Q And are there any repercussions from the notice of
6 violation?

7 A Well, there is a fine associated with it.

8 Q Now, can you give me an estimation of fines -- let's
9 say they violated their PM or their NOx. How much would
10 the -- you know, an example.

11 A It's a case by case analysis that's done by our
12 compliance division. And it all depends on how much
13 emissions were. If it's a violation of recordkeeping that
14 didn't impair our ability to enforce compliance, the fine
15 would be much less. If it's a large emission -- increase
16 in emissions, exceeds a large exceedance, then the fine
17 would be more.

18 Q And about how much would those larger fines be?

19 A The starting point is \$10,000 a day unless they can
20 show that it's due to a breakdown, in which case it's a
21 thousand dollars a day. They're a Title 5 site, so they
22 are more stringent requirements basically in that regard.
23 It escalates all the way up to I think a million dollars a
24 day in certain situations if they're actually causing harm
25 to people, for example.

1 Q Thank you.

2 Do you have random audits?

3 A We do not generally announce our audits. We are not
4 random in the sense -- they're usually on a quarterly
5 schedule for a site like this or semi-annually. So we
6 show up twice or four times a year. We don't generally
7 announce our visits in advance. So in that sense they're
8 not scheduled.

9 Occasionally, if a site -- for some reason to
10 notify the site or we have to make special preparation or
11 something and they get notified, that means we show up on
12 schedule.

13 Q Thank you.

14 In Exhibit 300-317, this is just -- I think you
15 might have clarified this. And this is to energy staff.
16 AQ 82 states beginning with the initial start up of
17 turbine A and you might have sent this -- correction in
18 your errata. You can't remember. Regarding turbine 8,
19 has it been clearly stated that A is defined was the first
20 turbine to be installed --

21 A It's the first turbine to end its commissioning
22 period -- or shakedown period. Excuse me.

23 Q So both could be shaking down at the same time?

24 A That's possible, yeah.

25 Q What about the prior exceedances that I asked you

1 about, the one-hour versus the three hour? What if both
2 of those were exceeding at the same time? Could that
3 occur?

4 A Well, they wouldn't be exceeding the existing permit
5 conditions. They might be exceeding the one-hour
6 condition that you had suggested. But as I said, you
7 know, even if they're both exceeding, the emissions -- the
8 maximum emissions they could have as long as they say
9 during the three-hour average would not be in excess of
10 the AQIA model as far as hourly NOx impacts or CO impacts.

11 Q Using a three-hour average, not a one-hour average?

12 A The maximum emissions they could have in any one hour
13 would still be less than the maximum emissions that were
14 modeled to determine compliance with the one-hour ambient
15 air quality standards for NOx or CO. We don't model VOCs,
16 so that doesn't apply to VOCs.

17 Q Also I had a question, what's the difference between
18 AQ 86 and 87?

19 A AQ 86 requires calendar monthly records from each unit
20 and AQ 87 requires aggregate emissions --

21 Q Say that again. Requires --

22 A Calendar monthly emissions. So they have to report
23 the emissions from each unit monthly. 87 requires that
24 they report aggregate emissions from all the units.

25 Q Okay.

1 A And also the rolling twelve-month average. We could
2 have combined the same condition, but it just seemed
3 cleaner to spread it out.

4 Q And regarding AQ 85, my question is why is there not
5 another general condition for turbine eight?

6 A Turbine B falls under the general impact or the
7 general conditions for limiting emissions from both
8 turbines combined once it starts up, which is AQ 44 I
9 believe. And AQ 45 is supporting recordkeeping for that
10 condition. So it is subject to the same type of
11 recordkeeping as the first turbine.

12 Q Even though it doesn't say that specifically?

13 A It's in the conditions. Once B starts up, both
14 turbines are subject to a combined cap on both turbines
15 combined.

16 Q I understand. Thank you.

17 And then Exhibit 300-319 regarding AQ 89, it's
18 very long, so I don't want to read it out loud. But it
19 has to do with notice.

20 A Right.

21 Q Are these notices -- notices of this sort posted
22 anywhere by the district?

23 A The answer is no. You can request them if you make a
24 public information request.

25 Q This is for staff. Does the staff consider the I-5

1 widening as a reasonably foreseeable future project?

2 MR. WALTERS: I believe my analysis did indicate
3 that it was considered as part of the cumulative analysis.
4 So yes.

5 MS. SIEKMANN: So it is considered a reasonably
6 foreseeable future project?

7 MR. WALTERS: Correct.

8 MS. SIEKMANN: Thank you.

9 Okay. This is my last question. This is
10 question or Exhibit 300-330 regarding page 4.1-140.
11 Through accommodation of the district-required NOx
12 offsets, the shut down of Encina Units 1, 2, and 3, and
13 staff's required offsets for PM10 and VOC, there would be
14 no permitted emission increases of particulate emission or
15 criteria pollutant particular precursor emissions.
16 Where -- and above that -- I'm sorry.

17 The specific amount of secondary particular
18 formation cannot be reasonably estimated. Air quality
19 4.1-140 November 2009 either during short-term startup
20 events or over the long term due to the complexity of
21 reaction that that causes secondary particulate formation
22 and the variability of the ambient conditions that
23 influence this process. Do you have the calculations on
24 PM for this, as PM emissions are so dangerous?

25 MR. WALTERS: As is indicated in the response,

1 the modeling for the determination of secondary
2 particulate, which is essentially the formation of
3 particulate from nitrate formation through NOx or sulfate
4 formation through SOX or particulate from VOC and in
5 variabilities between the three, combinations between the
6 three, the chemistry is so complex that there really
7 aren't any good ways of modeling it and to know exactly
8 how much when and where. We know it occurs and therefore
9 we are requiring mitigation for those pollutants.

10 MS. SIEKMANN: Thank you.

11 And in public health, which would be Exhibit
12 300-348, once again, a big thing I'm interested in is
13 cumulative impacts. And once again as stated on page
14 4.1-29 about the cumulative impact analysis assesses the
15 impacts that result from the proposed project, incremental
16 effect viewed over time together with other closely
17 related past, present, and reasonably foreseeable future
18 projects whose impacts may compound or increase the
19 incremental effect.

20 For public health -- this is a question for
21 public health. Has public health assessed or can assess
22 as direct impacts all of the cumulative impacts in the
23 area surrounding Terramar which would include CECP,
24 Encina, the railway, the I-5, and the widening of the I-5?

25 MR. WALTERS: The answer is no. And I believe

1 you asked the similar question to air quality staff.

2 MS. SIEKMANN: Yes, I did.

3 MR. WALTERS: And rather than reiterate some of
4 their reasons, let me say I do associate myself with their
5 responses that you're dealing with two different sources
6 of train, highway. Those are mobile sources with very
7 close to ground level emissions. This is a set that has
8 atmospheric injection, very different modeling. It's also
9 complex. I did, however, include as you are aware, the
10 existing Encina Power Station, but not Units 1, 2, and 3;
11 Units 4 and 5.

12 The issue of the highway, the I-5, as it exists
13 as I responded to you in my response to comment is really
14 in the background risk. We do assess risk of cancer and
15 hazard index of non-cancer impacts quite differently than
16 for air quality which have national ambient air quality
17 standard. So we're looking at the increment of the
18 project plus the cumulative of whatever is technically and
19 scientifically we are able to assess.

20 Now, I say that because you've asked several
21 times about the I-5 expansion. Granted, it is more than
22 just a gleam in Caltrans' eye. However, it is scheduled
23 for completion perhaps with a bit of luck in eight to
24 ten years from now. I do not have -- I don't believe
25 anybody has the answers to the question of what the

1 traffic would be like eight to ten years from now. We are
2 on a continuum of risk reduction due to exhaust from
3 vehicular traffic, both diesel particulate matter from
4 diesels and other toxic air contaminants from gasoline. I
5 really don't have enough information to do that. And
6 whether or not Caltrans will have to do that eight to
7 ten years from now is a legal question of CEQA
8 applicability that I won't answer.

9 MS. SIEKMANN: Based on your answer and knowing
10 that there is secondary particulate formation as well as
11 the fact that we're in non-attainment for ozone and
12 particular, as a non-scientist, I just can't understand
13 how there can be no health risk impacts with adding
14 pollution to the site that already is in non-attainment
15 for both of those, plus secondary particular being created
16 and these cumulative effects.

17 MR. WALTERS: This is an air quality question.
18 Public health doesn't deal with the criteria pollutants.

19 The issue with criteria pollutants is the fact
20 the standards are health-based standards, and maintaining
21 those underneath those standards provides an assurance
22 that there will be a safety factor for the public.

23 MS. SIEKMANN: Well, then what's the meaning of
24 non-attainment? I mean, if you're in non-attainment --
25 non-attainment has to stand for something.

1 MR. WALTERS: Exactly. And that's why staff has
2 proposed additional mitigation in those areas where we
3 have non-attainment pollutants and non-attainment
4 precursor pollutants. And we're requiring that the
5 facility fully mitigate all of those pollutants through
6 the acquisition of additional offsets.

7 MR. RUBENSTEIN: Perhaps I can help with that
8 answer, if it would be acceptable.

9 MS. SIEKMANN: Sure. Thank you.

10 MR. RUBENSTEIN: The non-attainment term as I
11 think someone said it earlier -- it's a regulatory
12 definition. And typically that applies to the entire
13 county. What the staff is attempting to do is do a more
14 localized analysis, taking a look at the newest monitoring
15 stations which won't necessarily have the same
16 concentrations as whatever the station is that was used to
17 make the attainment designation and do a more localized
18 analysis on their CEQA. So maybe that's the difference.

19 Does that help?

20 MS. SIEKMANN: No, that doesn't. Because I mean,
21 the mitigation that's done is not for just in our area
22 where all these cumulative impacts are. Mitigation --
23 like sometimes it's buses and sometimes it's other things.
24 But will effect the background possibly and you know --
25 but I understand how -- I understand mitigation, but I do

1 not understand when you're not attainment and you're
2 adding these other pollutants and you're doing health risk
3 assessments that there are not health impacts. I guess
4 that's my answer. I just won't ever understand.

5 MR. RUBENSTEIN: Let me try one more time. I
6 didn't mean to argue with them. I'm just trying to
7 explain.

8 The two pollutants for which the Commission staff
9 is requesting additional mitigation are ozone and PM2.5.
10 Both of those are actually regional pollutants.
11 Consequently, the impacts of any particular project are
12 not localized. The NOx emissions from this plant does not
13 create ozone here in Carlsbad. It creates ozone somewhere
14 else. Similarly, the NOx emissions and VOC emissions
15 don't create PM 2.5, because it takes several hours in the
16 atmosphere for that to form.

17 Consequently, the staff has concluded, and
18 technically I agree, that regional mitigation as opposed
19 to localized mitigation is appropriate. They don't always
20 do that. There are some cases where they clearly believe
21 there is a localized impact. And I'll let Mr. Walters
22 speak for himself, but I don't believe they found that in
23 this particular case.

24 HEARING OFFICER KRAMER: Ms. Siekmann, you've hit
25 15 minutes. So are you about to wrap it up?

1 MS. SIEKMANN: I'm just about to wrap it up, yes.

2 HEARING OFFICER KRAMER: Please do.

3 MS. SIEKMANN: Okay. These are very quick
4 questions.

5 Exhibits 300-349 on page 4.7-3, it says the
6 nearest residence is approximately .44 miles northeast of
7 the site. But on page 46-5, it states measuring location
8 M7 that it's 1750 feet. Which is the nearest site?

9 MR. GREENBERG: Well, I think you're pointing out
10 the difference between the .44 miles, which I use in the
11 public health assessment which came from the applicant and
12 the AFC, and another section, which was I believe the
13 noise section. And I think I'm going to defer here to
14 Mike Monasmith.

15 Mr. Monasmith, did you find out -- I think the
16 noise measured if a different location other than the
17 stacks, which is where I would measure.

18 MR. MONASMITH: Yes, there were two different
19 standards. And staff will attest to that during the noise
20 analysis. But the difference between the nearest
21 residence and the nearest sensitive receptor for noise are
22 two different locations. They are relatively close, but
23 they are two different locations, which account for the
24 two figures we're looking at here.

25 MS. SIEKMANN: Someone has gone out and measured

1 those?

2 MR. MONASMITH: Yes, the noise analysis was
3 conducted based on the nearest sensitive receptor for
4 noise as opposed to the nearest residence, which is what
5 Alvin was referring to.

6 MR. GREENBERG: So both figures are correct. One
7 is referring to residence. The other is risk to a
8 sensitive receptor and they're using two different study
9 points within the facility.

10 MS. SIEKMANN: Does anyone know the sensitive
11 receptor at the end of harbor?

12 MR. MONASMITH: We will talk about in noise. The
13 staff is prepared to explain that, because I know you're
14 curious about that.

15 MS. SIEKMANN: Yeah, I am. Thank you.

16 And then I just wanted to state on page 4.7-3
17 that the Agua Hedionda Lagoon is missing from the
18 description. And I just wanted to make that comment.

19 And then also Exhibit 300-351, page 4.7-22, since
20 it states the maximum cancer risk for emissions from the
21 CECP calculated by staff as scenario four above is .89 in
22 one million, staff believes that additional increment
23 would not cause a significant cumulative impact. I just
24 couldn't find that value --

25 MR. GREENBERG: And neither can I, because you

1 pointed out a typo. It is 1.1 in one million. But the
2 statement still stands that it's still a very small
3 additional increment and would not by itself be a
4 significant impact.

5 That was just a typo. Apologize for that.

6 MS. SIEKMANN: Thank you.

7 HEARING OFFICER KRAMER: Okay. A couple
8 questions for you. I'll start with you, Dr. Greenberg.

9 And along with the theme you were just speaking
10 about, you said that's the cancer risk is 1.1 in a
11 million?

12 MR. GREENBERG: That's what I found, Mr. Kramer,
13 in the scenario four which includes the maximum number of
14 hours in a year, not the maximum that would be permanent.
15 So includes operational hours of 24 hours a day for 365
16 days.

17 HEARING OFFICER KRAMER: Okay. If somebody
18 stands in that spot for 70 years --

19 MR. GREENBERG: That is correct.

20 HEARING OFFICER KRAMER: Without a vacation.

21 MR. GREENBERG: No vacation for that person.

22 HEARING OFFICER KRAMER: What is the background
23 cancer rate? In other words, the rate that somebody in
24 that location is expected to experience without the power
25 plant existing?

1 MR. GREENBERG: For the background cancer rate in
2 the United States is fairly consistent in just about every
3 state. And it ranges from about one in four to one in
4 three people. Statistically speaking, between yourself
5 and Commissioners Boyd and Eggert, one of you would be
6 expected to get cancer over your lifetime.

7 VICE CHAIRPERSON BOYD: You could have gone all
8 day without saying that.

9 MR. GREENBERG: He asked the question.

10 HEARING OFFICER KRAMER: I think it's good to put
11 things in perspective.

12 Now, you were here last night, so you heard some
13 of the people making public comments talk about soot or
14 black dust they were finding on their properties. Do any
15 of you have any idea what the source of that might be?

16 MR. MOORE: I guess the answer is no. We can
17 speculate. The plant used burn fuel oil which generated a
18 lot of soot. And we did have soot problems at the time
19 when they blew soot out of the stacks, for example. But
20 they haven't burned residual fuel oil in any quantity I
21 think since NRG has owned it. And I think they even cut
22 back on the test. They wanted to do a certain amount for
23 testing and they can only burn fuel at the present time --
24 there is a force majeure gas curtailment. So it's only a
25 few hours per year they burn residual fuel oil.

1 There are plenty of other sources potentially
2 that could be the source of the soot: The I-5, the
3 railroad. But we haven't done any studies to quantify or
4 pin it down essentially.

5 HEARING OFFICER KRAMER: But would you expect any
6 soot to come either from the current power plant burning
7 natural or the new one?

8 MR. MOORE: We could not expect any soot under
9 those circumstances, no.

10 HEARING OFFICER KRAMER: Okay. Mr. Rubenstein,
11 when was the last time the plant has burned the fuel oil?

12 MR. RUBENSTEIN: I had that information that I
13 have to check. I think it was a couple of years ago to
14 empty the tanks.

15 HEARING OFFICER KRAMER: That was for testing?

16 MR. RUBENSTEIN: It was either for testing or
17 emptying the -- (inaudible)

18 HEARING OFFICER KRAMER: But they no longer do
19 that; is that correct?

20 MR. RUBENSTEIN: That is correct.

21 VICE CHAIRPERSON BOYD: Let me add to that. Do
22 they still even have dual fuel capability at the facility?

23 MR. RUBENSTEIN: I believe that was surrendered
24 in terms of the permit capability. But I'd have to double
25 check to be certain.

1 VICE CHAIRPERSON BOYD: That was my thought. I
2 don't know if there's any plant left in California with
3 dual fuel capability.

4 MR. GREENBERG: Commissioners Boyd, you are
5 right. They do not -- they cannot burn fuel oil. And if
6 you accept any proposed condition of certification public
7 health one, they would not be able to burn fuel oil at the
8 Encina Power Station. Only pipeline quality natural gas.

9 MR. PIANTKA: Commissioner Boyd, the ISOR removed
10 dual fuel requirement in the beginning of 2009. So
11 there's no longer dual fuel.

12 VICE CHAIRPERSON BOYD: Thank you. It must have
13 been among the last of the dual fuel capability.

14 HEARING OFFICER KRAMER: Is it possible for you
15 to compare for us the emissions that the public is
16 experiencing from the power plant other than new or old
17 compared with what they receive from train and automobile
18 and truck traffic in the vicinity? I'm not expecting a
19 quantitative comparison, but some sort of subjective
20 relative comparison. In other words, which one should be
21 of more concern to them?

22 MR. GREENBERG: Mr. Kramer, there are a number of
23 studies. Probably most important ones and recent ones are
24 from the South Coast Air Quality Management District the
25 MATES II, MATES III studies. There's also studies, of

1 course, from the Bay Area Air Quality Management District.

2 These studies show that approximately 94 to 96
3 percent of the risk due to airborne toxic comes from
4 mobile sources, vehicles, diesel particulate matter from
5 trucks and cars running on diesel or benzene, 1-3,
6 Butadiene coming from automobiles running on gasoline.

7 So in comparison, if you look at the background
8 risk, we don't exactly have the background risks in
9 Carlsbad, but other locales within the San Diego County
10 area show risks in the hundred million -- risk of a
11 hundred in a million. And my calculations show that if
12 this facility is built and operated and even if it runs
13 every day for the entire year, the risks would be a
14 maximum of 1.1. So you can do the math and see you're
15 looking at mobile sources being about 100 times the cancer
16 risk than this facility.

17 VICE CHAIRPERSON BOYD: No, you asked some of my
18 questions and -- you asked several of the questions I had
19 in mind, and I was waiting for a comment that Mr. Walters
20 made just recently about all the air quality standards are
21 predicated on public health concerns. So you did answer
22 that question.

23 So now I think I have no further questions.

24 HEARING OFFICER KRAMER: Okay. Commissioner
25 Eggert has one.

1 COMMISSIONER EGGERT: Just a question of
2 clarification for the staff on the air quality assessment
3 Table 19. This basically shows the CEC's expected maximum
4 annual emissions at the Encina Power Plant emissions. And
5 the net increase -- I think I understand from the
6 footnotes that the CEC expected maximum annual is what
7 you're calling the conservative estimates for the
8 facility; is that correct?

9 MR. WALTERS: Actually, they're the permitted
10 maximums.

11 COMMISSIONER EGGERT: They're the permit
12 maximums. That would be if it was operating up to the
13 allowable permit levels?

14 MR. WALTERS: Correct.

15 COMMISSIONER EGGERT: Okay. And then the Encina
16 Power Plant Units 1 through 3 is based on the average of
17 five years prior to the permit application?

18 MR. WALTERS: Yes, actual based on source test
19 information, fuel use, and/or continuous emission
20 monitors.

21 COMMISSIONER EGGERT: Okay. And the final
22 question: Is it appropriate to interpret the net
23 emissions that would be required? Is that covered by the
24 ERCs?

25 MR. WALTERS: Yes. All of the three values

1 they're showing as positives are either covered by the
2 district ERCs in the case of NOx or the staff recommended
3 ERCs in the staff condition or VOC, the intent.

4 COMMISSIONER EGGERT: Thank you.

5 HEARING OFFICER KRAMER: One more question.

6 The nitrogen dioxide, let me ask the panel, are
7 you expecting this new rule to become applicable to the
8 project in the next three or four months? And if it is,
9 will it require any modification to the conditions you've
10 recommended?

11 MR. MOORE: If nothing intervenes, like a
12 lawsuit, for example, it would be probably effective in I
13 guess 70 days. Depends on when it gets in the Federal
14 Register. And there is a 60-day waiting period before
15 it's effective. And if it becomes effective, we would
16 want to see an analysis to show they comply with that
17 ambient air quality standard. If it's stayed by the
18 courts or something like that and you act before and make
19 the certification final before it becomes effective, then
20 we would not do that analysis.

21 HEARING OFFICER KRAMER: Okay. So it sounds as
22 if we'll have to play it by ear and see what happens. So
23 if the rule does become effective, we would request the
24 parties, at least one of you, send the Committee a final
25 status report or something informing us of that fact and

1 what you believe, if any, might be required to address
2 that.

3 With that, do we have any follow-up questions?
4 And that would be follow-up issues the Committee raised in
5 its questions from any of the parties.

6 MR. SIMPSON: I do.

7 HEARING OFFICER KRAMER: Mr. Simpson.

8 MR. SIMPSON: Thank you.

9 Commissioner Boyd, you mentioned the dual fuel
10 capability. On September 24th, 2008, the Commission
11 licensed the Humboldt Bay Facility to burn up to 270,000
12 gallons of diesel per day. I've got an appeal hearing
13 scheduled on that on Friday. It will burn over a million
14 gallons of diesel per year under its current license.

15 VICE CHAIRPERSON BOYD: At least it's diesel.

16 MR. SIMPSON: I guess.

17 VICE CHAIRPERSON BOYD: Beats bunker fuel.

18 MR. SIMPSON: I've got a couple of I guess
19 redirect questions you'd call them.

20 REDIRECT EXAMINATION

21 MR. SIMPSON: The industry testified that about
22 the emissions of the relationship to the SCR in the
23 startups. Would that change if the technology used was
24 SCO-NOx or whatever they call it?

25 MR. MOORE: I don't know. But SCO-NOx has not

1 been demonstrated on a large facility. There were certain
2 technical issues with that. That's why it's not backed
3 for this facility. It was discussed in the FDOC.

4 MR. SIMPSON: And CEC staff mentioned a few
5 sources of particulate matter. Is the water that the
6 facility will evaporate a source of particulate matter?

7 MR. WALTERS: The facility is dry cooled.

8 MR. SIMPSON: The facility uses will use 4.32
9 million gallons of water per day. It must go somewhere.

10 MR. WALTERS: But it's not for the cooling.

11 MR. SIMPSON: But it evaporates four million
12 gallons of water per day?

13 MR. WALTERS: I only deal with the air quality
14 part of whether or not water is used in the cooling tower.
15 Any other questions in terms of water use would need to be
16 to whoever wrote that particular section of the AFC.

17 HEARING OFFICER KRAMER: What about water
18 injection? Would that be in your --

19 MR. WALTERS: Well, yeah, there may be water used
20 in terms of evaporative cooling. I have to --

21 MR. RUBENSTEIN: I believe there's also power
22 steam augmentation. It's another water use.

23 MR. WALTERS: And there's water losses in the
24 steam cycle as well. But in terms of particulate
25 emissions, that water, it would have small amount of TDS

1 after it's cleaned up for use in the turbines in that
2 particulate is part of the particulate limits for the
3 turbines.

4 MR. SIMPSON: So are you saying that the
5 particulate emissions of this four million gallons of
6 water that's transpired per day has not been studied in
7 relationship to air quality?

8 MR. MOORE: The manufacturers guaranteed the PM
9 emission rates and they're basically fully aware it's
10 going to use steam injection and evaporative cooling
11 potentially. So it's clear in the 9.5 pounds per hour for
12 each turbine that's the emission limit for those turbines.
13 And that's the limit they'll be held to.

14 MR. SIMPSON: So then the contention would be the
15 four million gallons is going to be evaporated per day
16 will only include nine pounds of TDS of particulate
17 matter? Is that --

18 MR. MOORE: It's within that 9.5 pounds.
19 Whatever goes through the turbine would be included in
20 their emissions. We're not going to go further out and
21 say that doesn't count, if that's the question.

22 MR. SIMPSON: You were asked to speculate on the
23 source of soot. Could soot also be particulate matter?

24 MR. MOORE: Yeah, I would say soot is particulate
25 matter by definition.

1 MR. SIMPSON: I see. So then the existing plant
2 and the new plant that both emit particulate matter could
3 be a source of soot?

4 MR. MOORE: We would not expect any soot from
5 natural gas firing. The only time it occurs is if it runs
6 extremely rich, which is very inefficient and the
7 operators of the power plant do the best they can to avoid
8 that situation.

9 MR. SIMPSON: Maybe I'm not understanding. I
10 thought you said that soot would be considered particulate
11 matter and the facility will emit particulate matter so
12 doesn't that translate to the facility emitting soot?

13 MR. MOORE: I think it depends what you define as
14 soot. All particulate matter is not soot.

15 MR. SIMPSON: Okay. The facility will emit
16 particulate matter?

17 MR. MOORE: Yes.

18 MR. SIMPSON: Okay. The -- you indicated --
19 well, I contend that your emission reduction -- your
20 emission offsets don't comply with your district
21 regulations or federal law, and you indicated that would
22 be the opportunity for the public to comment on that. Is
23 that consistent with the CEC's position? Should I be
24 commenting on the emission offsets in the PDOC, FDOC at
25 this time based on what I was informed from the air

1 district an hour ago?

2 HEARING OFFICER KRAMER: Well, you were also
3 informed at the pre-hearing conference and prior to that
4 you should have indicated your intention to offer evidence
5 in that regard at this hearing. So because you did not do
6 that, I think you'll have to confine any comments you want
7 to make in that sort to your public comments.

8 You could file additional public comments in
9 writing after the hearing. You'll note at the table
10 outside, there is a flier that is extending to the public
11 the opportunity to provide public comments until -- they
12 must be received at the Commission by February 22nd. But
13 we're not going to let you put on testimony about that
14 topic today, A, because you didn't indicate it in your
15 pre-hearing conference statement that you wanted to; and
16 B, because we're not talking about rebuttal or rather
17 redirect questions. And you should at a minimum have
18 offered that as part of the opening testimony earlier
19 today.

20 MR. SIMPSON: Well, I did question about the
21 public's opportunities on page 50 of the response to the
22 public's comments that indicates the public will have the
23 opportunity to comment on the emission offsets as part of
24 the CEC certification process, which came on the record
25 last week. And the witness indicated to me that in his

1 testimony this morning that this was this opportunity. So
2 I'm just trying to determine if that's consistent with the
3 Commission's position or --

4 HEARING OFFICER KRAMER: You're going to have to
5 confine it at this point to public comments. Tonight you
6 made your oral public comment last night, so we would not
7 be inclined to allow you additional oral comment unless we
8 have plenty of room this evening. But we are trying not
9 to let people make duplicate public oral comments.

10 And as you said, you were told a while ago -- and
11 also one of the duties of an intervenor is to understand
12 the rules and our process and how it works and be ready to
13 do things like identify prior to the hearings your intent
14 to provide testimony. We're not going to let you open
15 that topic up right now.

16 MR. SIMPSON: Okay. It wasn't necessarily my
17 intent to until the witness identified this was the
18 opportunity. And I did make comments last night, but my
19 comments were put at the end of the agenda when I placed
20 my card in the beginning. So you're saying I'm precluded
21 from public comments tonight also?

22 HEARING OFFICER KRAMER: We may be able to give
23 you another three minutes, but we are definitely going to
24 give people who have not made a comment before first
25 opportunity to do so.

1 Anyway, as I think I said -- you may not have
2 been here when I laid down the ground rules Monday
3 morning, but when the Committee issues a ruling, then we
4 move on and we don't continue to argue. So do you have
5 any other questions by nature of redirect?

6 MR. SIMPSON: Sure.

7 Did the CEC and the applicant agree to the
8 extension of the timelines for this AFC beyond the
9 one-year timeline or the six-month timeline for the PDOC,
10 FDOC?

11 HEARING OFFICER KRAMER: I'm not aware of the
12 requirement. Maybe you can site that. I think that's
13 probably a question to be discussed in your legal briefs
14 if you have some legal argument.

15 MR. SIMPSON: Okay. I guess my question was just
16 if there was a decision made by the Commission to extend
17 the timelines.

18 HEARING OFFICER KRAMER: With the district?

19 STAFF COUNSEL RATLIFF: I think Mr. Simpson is
20 referring to the provision that says we will license power
21 plants within twelve months, unless the applicant agrees
22 to some later date. But I would note the applicant found
23 an amendment to the project which added greatly to the
24 time to process the case. And so there was mutual
25 agreement it would take longer than twelve months.

1 HEARING OFFICER KRAMER: Is it fair to say the
2 agreements imply that we don't normally have a formal
3 document memorializing that?

4 STAFF COUNSEL RATLIFF: Yes.

5 MR. SIMPSON: No.

6 STAFF COUNSEL RATLIFF: Yes. I mean, there have
7 been a series of status reports that have been filed with
8 the Committee on the schedule and on the processing of the
9 case in light of those amendments.

10 HEARING OFFICER KRAMER: Anything further, Mr.
11 Simpson?

12 STAFF COUNSEL RATLIFF: The applicant has never
13 objected to any of the scheduling orders that have
14 appeared. But certainly there has been no agreement or
15 anything among any of the parties I'm aware of regarding a
16 particular delay of schedule.

17 But if Mr. Simpson is raising an issue that
18 something is flawed because it hasn't been completed in
19 twelve months I think the answer on that would be to look
20 at the statute and whether that statute has been violated
21 and that's a legal question.

22 HEARING OFFICER KRAMER: So no more has that
23 project been approved by operation of law by the passage
24 of twelve months than it is denied by the passage of
25 twelve months without a decision?

1 STAFF COUNSEL RATLIFF: Correct.

2 HEARING OFFICER KRAMER: Simply moves on.

3 And, Mr. Simpson, do you have anything else?

4 MR. SIMPSON: Well, sure. I guess I can pose
5 this in the form of a question. Are the emissions offsets
6 contemporaneous? It's an air district question.

7 HEARING OFFICER KRAMER: And it's beyond the
8 scope of the issues the Committee raised. But if you can
9 give a brief answer, go ahead.

10 MR. MOORE: They have to write emission offsets
11 at the time they start off emissions increases. We have
12 to account for contemporaneous emission increases.

13 MR. SIMPSON: I sorry. I couldn't quite hear
14 you. Maybe it was the microphone.

15 MR. MOORE: The offsets, they provide the offsets
16 at the time they start up. They're based on the actual
17 emissions for the five-year period before they submitted
18 the application.

19 MR. SIMPSON: The emission reductions credits is
20 what I'm referring to. Are those contemporaneous?

21 MR. MOORE: I mean, we have contemporaneous
22 emission increases and decreases at the plant. And the
23 credits are something outside of that. They are provided
24 to offset any contemporaneous emission increase that
25 occurs.

1 MR. SIMPSON: I see. And so do the emission
2 reduction credits result in air quality improvement?

3 HEARING OFFICER KRAMER: You don't have to answer
4 that. That's beyond the scope of the issues we raised.
5 So I will sustain my own objection.

6 MR. SIMPSON: Thank you.

7 HEARING OFFICER KRAMER: Thank you.

8 Was it Dr. Roe I saw with your hand up over here?

9 DR. ROE: Yes, I have a question for Mr. Walters.

10 CROSS-EXAMINATION

11 BY DR. ROE:

12 Q In our opening testimony, we made mention of the fact
13 that in the power plant efficiency section there may be an
14 impact of the proposed efficiency of the CECP units may
15 possibly result in additional metric tons of greenhouse
16 gases and NOx emissions. Did you have an opportunity to
17 consult with the power plant efficiency staff about this
18 issue?

19 MR. WALTERS: Okay. First, that's a greenhouse
20 gas issue, and I believe we're taking testimony on that
21 tomorrow. So I would like to defer until we have the
22 entire panel for that testimony.

23 DR. ROE: How about the NOx emissions? Would
24 that come under air quality?

25 HEARING OFFICER KRAMER: His question is simply

1 did you consult with the efficiency --

2 DR. ROE: Did you consult with --

3 MR. WALTERS: In what regard? I would not
4 consult with the efficiency folks in terms of NOx.

5 DR. ROE: My question was did the power plant
6 efficiency staff consult with you about potential
7 increments and nauseous gas that may result from using a
8 power train that was not perhaps best available
9 technology?

10 MR. WALTERS: I don't think we consulted in that.

11 DR. ROE: Thank you.

12 HEARING OFFICER KRAMER: Ms. Siekmann.

13 MS. SIEKMANN: I just wanted to ask some questions
14 about the soot. I just want to let you know that Terramar
15 has that soot everywhere, which is probably some
16 particulate matter, and that's why we've taken this strong
17 concern with adding the cumulative impacts and looking at
18 the I-5 and the I-5 widening and the train and Encina and
19 the proposed CECP. So I just wanted to say that.

20 And also the public comments on the FDOC, we were
21 also at the same pre-hearing conference and were not
22 allowed to speak at the FDOC at that because the appeal
23 was denied. So if public comment is the place to say
24 that, the public doesn't really know that, first of all.
25 And second of all, that's not really counted as much as

1 the intervenors say, so I find that a matter of confusion.

2 HEARING OFFICER KRAMER: Well, you were allowed
3 in your testimony -- and you were asking questions that I
4 understood to be probing at the appropriate --

5 MS. SIEKMANN: I'm not talking about me. I'm just
6 talking about in general.

7 HEARING OFFICER KRAMER: Okay. Well --

8 MS. SIEKMANN: I'm talking about the public.

9 HEARING OFFICER KRAMER: Well, at the pre-hearing
10 conference, I believe I said what we wanted to hear was
11 not people complaining about what the air district did
12 about responding to their concerns, because we have before
13 us the air district's report and we were going to evaluate
14 it with all the other evidence --

15 MS. SIEKMANN: That I --

16 HEARING OFFICER KRAMER: Let me finish. And then
17 decide what was appropriate to do with regard to air
18 quality.

19 So we wanted to hear people if they had
20 criticisms or concerns or evidence to cause us to come to
21 a different conclusion than the air district did, we
22 wanted to hear that evidence. I think you and several of
23 your colleagues attempted to offer that today and the city
24 to some degree as well and that's going to -- shortly
25 we're going to close the record on that and make a

1 decision based on what we heard.

2 The public is free to comment about anything.

3 And while I didn't hear a lot of expert testimony last
4 night in their comments, people did tell us I think
5 genuinely what they felt and they were concerned in the
6 sort of general way you would expect people that are not
7 trained in air quality matters to be about their
8 perception that the power plant is somehow adversely
9 affecting them. So I think they did comment.

10 The concern about what Mr. Simpson is doing is
11 that he just kind of -- it appears to be anyway at the
12 spur of the moment to us and the other parties because he
13 has not telegraphed in advance the issues he wishes to
14 raise.

15 It's true he raised a lot of issues in his
16 comments. But by failing to indicate at the pre-hearing
17 conference stage he was still interested in raising those
18 issues, the parties I think rightfully assumed that they
19 would not be hearing from him about those issues. And
20 therefore it's not fair to the other parties for him to --
21 especially in the second round of the questioning of this
22 panel to all of a sudden open up a new issue that was not
23 telegraphed. And that's why we denied his ability to do
24 that.

25 So we didn't find anything inappropriate in what

1 the public was saying last night. And I expect we'll hear
2 many of the same comments again this evening. Does that
3 answer your question?

4 MS. SIEKMANN: No, it does not. I appreciate your
5 opinion on that. I'm just trying to inform you that there
6 was -- for San Diego and anyone else who would be
7 interested in commenting on the FDOC, there was no way for
8 all of us -- except for intervenors to actually make an
9 on-the-record type of comment.

10 It's because the FDOC was not considered a final
11 document, therefore we could not have an appeal on it.
12 And it comes here. So those of us who are intervenors on
13 the record -- but the public comment, as you said at the
14 beginning, isn't held in as maybe high esteem as the
15 comments we make. Therefore, I just want to make a note
16 that the process may need some care and change in order
17 for people to in the future have more of an opportunity to
18 discuss an FDOC at some point except for at the Supreme
19 Court.

20 STAFF COUNSEL RATLIFF: Mr. Kramer, I think maybe
21 this confusion arises from I think the misconstrued
22 statement of Dr. Moore in that this is an opportunity to
23 comment on the FDOC. It is such an opportunity or has
24 been. But it's not the only one. If people want to file
25 comments prior to the date you set on the FDOC, I presume

1 they certainly can. So there isn't any inability to
2 continue to comment until the comment period ends with
3 regards to the FDOC.

4 I think there is a sense here that because Dr.
5 Moore said this is an opportunity to comment on the FDOC
6 there has been a misconstruction of you saying this is the
7 only opportunity to comment on the FDOC and you don't get
8 another one. And I don't think that's correct.

9 HEARING OFFICER KRAMER: The FDOC is simply part
10 of the evidence that's before us. There is -- people seem
11 to be confused and think that they need to somehow
12 convince the air district to change its mind. And they
13 appear to believe, falsely it turns out, that there are
14 two steps to the process.

15 One is that the air district fully goes through
16 some elaborate process that includes an appeal before its
17 opinion comes to the Commission and is acted on possibly
18 the Commission. And that step that I just described at
19 the air district where there is an appeal is -- well, it's
20 just not part as their process as they've told us.

21 I think Mr. Rubenstein pretty eloquently
22 summarized that this morning that until the Commission
23 acts -- and Mr. Moore said the same thing -- until the
24 Commission acts, the air district FDOC is simply a
25 recommendation. It will convert to an authority to

1 construct if the Commission approves the project. And at
2 that point in time, under California law, the appeal is by
3 way of a writ to the Supreme Court.

4 People can comment in the mean time. We welcome
5 comments that give us a better view of the efficacy of the
6 FDOC, and I think we need to leave it at that.

7 So are there any other redirect questions?

8 MR. SIMPSON: Yeah, I'd like to respond, and I
9 have one last question.

10 HEARING OFFICER KRAMER: No, Mr. Simpson. If you
11 want to propose something or provide us with some new
12 thoughts by way of public comment, that's fine. But we
13 are just not going to go round after round after round.

14 MR. SIMPSON: I'm sorry. I thought you just
15 asked if there were any other questions.

16 HEARING OFFICER KRAMER: I should have said from
17 people who have not already asked redirect questions.

18 MR. SIMPSON: My question is pertaining to the
19 conversation that happened after my redirect questions.

20 HEARING OFFICER KRAMER: Okay. If it's -- are
21 we -- is this by way of arguing again about whether you
22 should be allowed to ask more questions or the public
23 comment aspect that we thoroughly explored?

24 MR. SIMPSON: Well, you indicated that it sounds
25 like you feel blind-sided by my line of questioning. I

1 filed my comments with the CEC January 6th of 2009.

2 HEARING OFFICER KRAMER: I addressed that in my
3 statement. And I said while you may have filed comments
4 some time ago, what you did not do is indicate you were
5 still interested in pursuing them. And we do not assume
6 that you can come into the hearing and raise anything that
7 you've raised at some point throughout the proceeding.
8 You need to as some of the other parties have focused
9 yourself and tell all of us what your issues and topics
10 are going to be so that we can prepare -- not so much the
11 Committee but the other parties, because that is the fair
12 way to conduct this proceeding and that is the way we
13 intend to conduct it.

14 MR. SIMPSON: I was led to believe that the air
15 district was the recipient of the PDOK and FDOC comments,
16 so I took it and appealed there. And their record didn't
17 come onto the CEC document until last week. So I didn't
18 have an opportunity with the CEC record to address the air
19 district response to public comments.

20 STAFF COUNSEL RATLIFF: Why can you not put it in
21 writing as you were just offered the ability to do?

22 MR. SIMPSON: Oh, I will. I'm not trying -- I'm
23 just trying to clarify that my comments aren't new. My
24 position is not new. It's been here for a year and a half
25 without response.

1 HEARING OFFICER KRAMER: Have you, Mr. Moore --
2 Mr. Simpson, I think you dedicated ten or more pages in
3 the November responses to comments to relying to his
4 comments; is that correct?

5 MR. MOORE: I haven't counted the pages, but that
6 sounds about right.

7 HEARING OFFICER KRAMER: And when you produced
8 that and released that in November, did you mail it
9 directly to Mr. Simpson, did you think --

10 MR. MOORE: Yes. He was cc'ed on the e-mail that
11 went to the CEC with those comments.

12 HEARING OFFICER KRAMER: Okay. So, Mr. Simpson,
13 I think it's a bit disingenuous of you to imply that you
14 first received them last week.

15 MR. SIMPSON: I didn't mean to imply that. What
16 I said is it didn't come onto your record until last week
17 after the pre-hearing conference where I searched where
18 this information was.

19 HEARING OFFICER KRAMER: But when it hit the
20 Commission docket is not relevant. It's when you knew and
21 when the other parties knew. You could have identified
22 these issues in your pre-hearing conference statement that
23 you did not file.

24 Again, as I said yesterday, when the Committee
25 rules, we move on. So seeing no more redirect

1 questions --

2 MR. SIMPSON: So can I ask my last question?

3 HEARING OFFICER KRAMER: No. Denied.

4 We've exhausted this panel, perhaps in more ways
5 than one. And I thank you all for coming.

6 And we will move on to -- we have an editorial decision
7 here. We had 15 minutes scheduled for power plant
8 efficiency. But we also have visual resources that was
9 estimated to take three hours. We don't have that time
10 left this afternoon.

11 But Mr. Ratliff, is Mr. Khoshmashrab -- would he
12 be available later by telephone as well, do you think?

13 STAFF COUNSEL RATLIFF: Yes, he will be
14 available. He's on-line right now. Perhaps we should ask
15 him when he --

16 HEARING OFFICER KRAMER: Oh, is he online? Well,
17 why don't we take care of his testimony then and hope that
18 it will only take the 15 minutes just to -- it does appear
19 that Dr. Roe has some cross-over issues that relate to air
20 quality. So it might be more efficient. Dr. Roe has also
21 asked to avoid your criticism of his questions as
22 argumentative and testimony if he could not convert some
23 of his cross-examination time into direct testimony. Does
24 any party object to his doing that?

25 STAFF COUNSEL RATLIFF: No.

1 HEARING OFFICER KRAMER: Seeing none, Mr.

2 Khoshmashrab, can you hear us? Shahab, can you hear us?

3 MR. KHOSHMAHRAB: Yes.

4 HEARING OFFICER KRAMER: Okay. You've not been
5 sworn in, so could you stand if your phone cord will allow
6 you to do that and take the oath? Are you ready?

7 MR. KHOSHMAHRAB: Yes.

8 SHAHAB KHOSHMAHRAB,
9 was called as a witness herein and, after having first
10 been duly sworn, was examined and testified as follows:

11 MR. KHOSHMAHRAB: I do.

12 HEARING OFFICER KRAMER: Dr. Roe is going to
13 testify for a few minutes and then he will have
14 cross-examination questions of you. So just please listen
15 to him. Let us know if you're having trouble hearing.

16 DR. ROE: May I please ask a few clarifying
17 questions of Mr. Khoshmashrab before I give my direct
18 testimony?

19 HEARING OFFICER KRAMER: Any objection to that?
20 It's a little bit out of order but --

21 STAFF COUNSEL RATLIFF: Well, is Mr. Khoshmashrab
22 going to be allowed to respond after he's been both --

23 DR. ROE: Yes.

24 STAFF COUNSEL RATLIFF: -- cross-examined and
25 listened to the direct as well?

1 HEARING OFFICER KRAMER: That would certainly be
2 fair, so yes.

3 STAFF COUNSEL RATLIFF: Okay.

4 HEARING OFFICER KRAMER: Go ahead.

5 CROSS-EXAMINATION

6 BY DR. ROE:

7 Q Mr. Khoshmashrab?

8 A Yes.

9 Q Did you prepare the power plant efficiency section of
10 the PSA and the FSA?

11 A Yes.

12 Q Could you please explain to me why you came up with
13 different net plant efficiencies in the PSA of 57 percent
14 and in the recently released FSA it shows only 48 percent?

15 A Fifty-seven percent for -- 57 percent for what? I
16 don't have a copy of the PSA with me.

17 Q Well, if you like, I could read to you that section of
18 the PSA.

19 A Okay.

20 Q And on page 5.3-4 of the PSA under equipment selection
21 it says that the Siemens complex ion gas turbine generator
22 in a 101 combined cycle power train normally rated at
23 295.7 megawatts and 57 percent net plant efficiency. Does
24 that refresh your memory?

25 That's all right. If you can't answer that

1 question --

2 A No, it doesn't really.

3 I need to clarify something. I did not prepare
4 the PSA. It was prepared by Steve Baker, who is now
5 retired. The FSA also basically was prepared by Steve
6 Baker, but I'm here to testify on his behalf.

7 Q I'm not really --

8 A I'm not sure why that number would be there in the
9 PSA.

10 STAFF COUNSEL RATLIFF: If I could just offer a
11 potential possibility. There was -- after the PSA was
12 issued, there was a major amendment to the project which
13 included certain other aspects, such as the osmosis
14 desalination project. I don't know that adds to --

15 DR. ROE: That's not a statement of fact, sir,
16 because the AFC indicates in the figure 2.2-5 the heat
17 valve's calculation of 7,165 BTU per kilowatt hour at base
18 load. And that translates not into 48 percent but 47.7
19 percent net plant efficiency. So that information was
20 presumably available to the staff from the date that the
21 AFC was presented. Yet, the PSA, power plant
22 efficiency -- which by the way, Mr. Khoshmashrab, has your
23 name as the author of that section, not anybody else's.

24 MR. KHOSHMAHRAB: Sure. Sure.

25 DR. ROE: I only bring that up because I wasn't

1 myself aware that the net efficiency of the power plant
2 was potentially below that 57 percent until I saw it in
3 the FSA. And evidently other witnesses that will appear
4 for this hearing, this Commission, are also under the
5 impression according to their testimony that the Siemens
6 units will produce -- according to their testimony will
7 operate at 55 to 56 percent efficiency. That's why I
8 raise that question.

9 MR. KHOSHMAHRAB: One thing I did offer here is
10 explanation maybe that would help. I'm not aware of the
11 PSA, but I have good knowledge of the FSA.

12 The number in the PSA might have been returning
13 to a combined cycle plan and not a rapid response combined
14 cycle plant. A typical combined cycle plant would use
15 triple pressure (inaudible) and steam turbines, and it
16 would have that higher efficiency. But for the rapid
17 response, the first thing is a single pressure. So in
18 order to expedite the warming of the equipment and
19 generating power plant quickly, it had been redesigned.
20 So the efficiency that was seen in the PSI I assume was
21 referring to a typical combined cycle plant.

22 BY DR. ROE:

23 Q I don't want to belabor that issue. I'd like to move
24 ahead to the AFC figure 2.2-5 in the heat pounds
25 calculation prepared by Shaw Stone which you specifically

1 reference in the FSA.

2 A Right.

3 Q That was prepared prior to the applicant's proposing
4 to include a desalination plant. So that efficiency
5 factor of 47.7 percent refers to a plant that does not
6 have a power plant proposal that does not include the
7 desalination plant. And desalination plants are notorious
8 for their intensive use of power. Do you know by how much
9 that 47.7 percent efficiency would be reduced by the
10 energy required to run the desal plant? Because that goes
11 into the net power plant efficiency.

12 A That power unit for the desalination plant is
13 basically power that's drawn when the power plant actually
14 generates power. If you're 48 percent efficiency -- I
15 have not only seen it in this application; it's what the
16 manufacturer Siemens provides for their rapid response
17 combined cycle plant.

18 Q Thank you.

19 I'll come back to some questions if I may.
20 Perhaps this might be the appropriate time to go into my
21 direct testimony.

22 HEARING OFFICER KRAMER: Go ahead.

23 DIRECT EXAMINATION

24 DR. ROE: And I raise these questions in the
25 context of understanding whether this project is in the

1 best interest long term of the public. And in that
2 regard, the staff has indicated that there is available
3 other current technologies -- technologies that I believe
4 have been tried and tested as compared to the Siemens
5 units which have not been tried and tested, that according
6 to the report of staff show a net plan efficiency of 55
7 and a half percent.

8 Now, that's a difference of eight percent in
9 power plant efficiency that I must tell you in my
10 experience in ordering new power plant facilities, I would
11 have given my eye tooth to have one or two percent better
12 efficiency from an alternative technology, even though
13 that alternative technology may have been much more
14 costly. Because in the overall long-term life, 30 or 40
15 years, sometimes 50 years of a project, the small
16 incremental cost and the savings on efficiency would far
17 offset any costs for operation fuel costs.

18 Now, furthermore, the power plant efficiency
19 statement of the FSA very blithely dismisses that, to me,
20 very significant difference in efficiency by saying it's
21 offset by the important attribute of a quick startup
22 facility. Yet, I find no reference in that analysis that
23 the staff just consulted with either the California
24 Independent System Operator or SDG&E as to the relative
25 merit of the fast startup capability as opposed to lower

1 or higher efficiency.

2 Now, that also impinges on the public interest,
3 because if, indeed, this plant is permitted using a
4 technology that does not meet the standard of available
5 technologies, then they will have to somehow or other
6 recover their money. And they would do it by proposing to
7 the local supplier or the local utility SD&G a rate for
8 operating their plant that would have to be higher than if
9 they had an efficient unit.

10 SDG&E, if they were to accept such a proposal,
11 which they have not done to this point and very wisely --
12 if they were to accept such a proposal, would be faced
13 with having to themselves be reimbursed by the higher
14 charges. And that would in turn be reflected to the
15 public in the higher utility rates. So it's very much in
16 the interest of the public to see that the most efficient
17 technology is used. And that very point re-emphasized in
18 the California Energy Commission's 2009 IEPR where they
19 state, amongst other things, that since efficiency effects
20 such things as emissions that the strongest efforts should
21 be made to procure plants with the highest efficiency.

22 So I also failed to see when they talked about
23 this so-called relative merit of the fast start up -- as I
24 say, I don't think they had no consultations with the
25 interested and regulators or purchasers of their power

1 about the relative merits. But this so-called ability for
2 fast start up comes into question, comes into question
3 because in the I believe the CalISO's 2010, 2013 forecast
4 for need for --

5 HEARING OFFICER KRAMER: Can I stop you there?
6 You're really drifting into the area of alternatives. And
7 you're about to talk about a CalISO report at a time when
8 the CalISO witness who will be here tomorrow isn't with
9 us. So can I suggest that you have that discussion with
10 that witness tomorrow?

11 DR. ROE: I'd like to talk about actually the
12 need for the quick start up.

13 HEARING OFFICER KRAMER: But is it --

14 DR. ROE: The reason that Mr. Khoshmashrab has
15 indicated that he doesn't think efficiency is important,
16 because the startup factor of this plant was that much
17 more significant. And he has not referred to the
18 frequencies with which such very fast startups would be
19 needed compared to what I would call a normal fast start
20 up where normally you would not ramp up the turbines at
21 the maximum ramp rate unless required to do so in an
22 emergency situation by CalISO. And --

23 HEARING OFFICER KRAMER: So again --

24 DR. ROE: How frequently such requests have come
25 to the San Diego Gas and Electric District for such need

1 for very fast startups. And it's a matter of weighing the
2 merits of the fast start up versus the lower efficiency
3 that was raised in the FSA by staff.

4 HEARING OFFICER KRAMER: Okay. I understand
5 that, but I think the Committee would like to hear the
6 CalISO respond to your testimony. And we can more
7 effectively do that if you wait to summarize it until
8 they're present tomorrow.

9 DR. ROE: That's really good.

10 I have one more question of -- if I can get out
11 of my direct testimony.

12 HEARING OFFICER KRAMER: Please.

13 CROSS-EXAMINATION

14 BY DR. ROE:

15 Q Mr. Khoshmashrab, in your job at the Energy
16 Commission, is it your duty to keep abreast of the best
17 available technologies for producing electrical energy
18 from natural gas-powered units?

19 A Yes, it is.

20 Q Are you aware then of the quick startup capabilities
21 of the GE 7FA combined cycle plant that was recently
22 tested in Florida that may rival the quick startup
23 capabilities of the proposed Siemens combined cycle units?

24 A Not that particular power plant. But I'm aware of the
25 GE's OpFlex, which is what I assume you are referring to.

1 Q OpFlex is a computer program that does help power
2 plants start up quickly. And I assume the Siemens units
3 will have comparable computer capabilities on their
4 plants.

5 But I'm referring specifically to the test
6 results on how fast the GE 7F combined cycle plant can
7 start up. And whether your report in the PSA took that
8 into consideration.

9 A My report to the FSA took into account the efficiency
10 rating that had to be provided by the manufacturer, which
11 is the GE and also Siemens for Siemens machines.

12 Q I think my other questions have already been asked by
13 other people, so I'll cease my testimony now.

14 HEARING OFFICER KRAMER: Mr. Khoshmashrab, on
15 page -- do you have the FSA in front of you?

16 MR. KHOSHMAHRAB: I have the FSA.

17 HEARING OFFICER KRAMER: On page 523-4 after the
18 end of the first full paragraph there, efficiency of 55 to
19 60 percent is cited there. Should that be corrected as
20 well?

21 MR. KHOSHMAHRAB: Fifty-five to 60 percent?

22 HEARING OFFICER KRAMER: I'm sorry. Fifty-six
23 percent.

24 MR. KHOSHMAHRAB: No. That is a typical
25 combined cycle power plant that normally takes up to

1 two-and-a-half, three hours to get the full load. And --

2 HEARING OFFICER KRAMER: Oh, I see.

3 MR. KHOSHMAHRAB: So it's not the same as the
4 Siemens.

5 HEARING OFFICER KRAMER: Okay. I must have read
6 that to be that you were describing this plant. Okay.
7 Thank you.

8 Did we have anybody else who wanted to
9 cross-examine?

10 MR. SIMPSON: I have a couple questions.

11 MR. THOMPSON: Mr. Kramer, I don't -- maybe a
12 question on the professor's credentials. And I'm not sure
13 you sworn him in for his testimony.

14 HEARING OFFICER KRAMER: You were sworn in
15 earlier in the week, weren't you?

16 DR. ROE: Yes.

17 STAFF COUNSEL RATLIFF: He's been sworn in and
18 we've already established he's an expert.

19 MR. THOMPSON: Nevermind.

20 DR. ROE: I have a further question. The
21 witness -- the applicant has Mr. Edward Holden here to
22 testify of this section. Is Mr. Holden here now?

23 HEARING OFFICER KRAMER: Did you want to ask
24 questions of him?

25 STAFF COUNSEL RATLIFF: Before we leave Mr.

1 Khoshmashrab, can we have an opportunity to explain
2 briefly the advantages of dead start turbine as opposed to
3 a combined cycle turbine and how the efficiency tradeoff
4 works? Because he really hasn't been given an opportunity
5 to explain that.

6 VICE CHAIRPERSON BOYD: I would also like while
7 we're at it to answer the question relative to your
8 typical simple cycle peaker plant also. Because in my
9 mind, there's tradeoffs involved here much more sufficient
10 simple cycle because of its extreme rapid start, typical
11 combined cycle as we just heard, long period start and
12 this new technology we're seeing more of which kind of
13 combines some of both. So there's tradeoffs in my mind.
14 I'd like to understand that.

15 STAFF COUNSEL RATLIFF: Mr. Khoshmashrab, did you
16 hear the questions that we just discussed?

17 MR. KHOSHMAHRAB: Yes, I did.

18 STAFF COUNSEL RATLIFF: Could you please address
19 them?

20 MR. KHOSHMAHRAB: Sure. This is exactly in my
21 opinion why Siemens has come up with this technology,
22 because you have simple cycle plants that can come online
23 very quickly, but their efficiencies are in the upper 30s,
24 near 40 percent. And then you have combined cycle science
25 that takes long time to ramp up the higher efficiencies in

1 the mid-50s. So because of the demands for equivalent
2 efficiency, plus at the same time power plants being able
3 to come online very quickly, Siemens and GE have come up
4 with these configuration, these technologies.

5 And I believe if there was no need for any of
6 these and electrical grid system, Siemens would have never
7 spent millions and millions of dollars develop such a
8 technology. And I know that some of the base plant power
9 plants that are currently in operation have been forced
10 from time to time to act as peakers. And so there is a
11 need and a demand for a plant that can come online quickly
12 and more efficiently than a simple cycle.

13 HEARING OFFICER KRAMER: Does the Siemens plan
14 meet the predicted performance parameters come online as
15 quickly as the -- what we'll call the traditional peaker
16 would?

17 MR. KHOSHMAHRAB: A traditional peaker would
18 generally be smaller or have less megawatts. But in terms
19 of timing, it would probably be similar to that.

20 HEARING OFFICER KRAMER: So then the Siemens
21 authors the speed of the traditional peaker with higher
22 capacity --

23 MR. KHOSHMAHRAB: With higher capacity.

24 HEARING OFFICER KRAMER: And greater efficiency.

25 MR. KHOSHMAHRAB: Greater efficiency, that's

1 right.

2 HEARING OFFICER KRAMER: Mr. Ratliff, does that
3 satisfy you?

4 STAFF COUNSEL RATLIFF: Yes, it did, but I want
5 to be sure Mr. Boyd is satisfied as well.

6 HEARING OFFICER KRAMER: He is.

7 VICE CHAIRPERSON BOYD: Yes. Yes.

8 HEARING OFFICER KRAMER: Okay. Mr. McKinsey, is
9 Mr. Holden here?

10 MR. MC KINSEY: No, he's not. I think he was on
11 your chart, because he was listed as the witness for power
12 plant efficiency, but we can designate any time for him.

13 HEARING OFFICER KRAMER: Dr. Roe, were you
14 intending to ask him questions?

15 DR. ROE: Yes, sir, I did.

16 MR. MC KINSEY: Actually, he is in the audience.
17 I didn't know he was here. Let me confer with him briefly
18 just to see if he's ready, comfortable.

19 MR. SIMPSON: I have a couple of questions for
20 the witness online.

21 STAFF COUNSEL RATLIFF: I don't see Mr. Simpson
22 having reserved any time on power plant efficiency. So
23 request the witness be dismissed.

24 MR. SIMPSON: Cross-examination.

25 STAFF COUNSEL RATLIFF: You weren't listed on

1 cross-examination.

2 MR. SIMPSON: Redirect.

3 STAFF COUNSEL RATLIFF: Or redirect.

4 HEARING OFFICER KRAMER: Mr. Simpson, are these
5 questions prompted by the exchange the Committee had with
6 Mr. Khoshmashrab?

7 MR. SIMPSON: Yes, sir.

8 HEARING OFFICER KRAMER: Okay. You can ask one
9 question and maybe two, but we'll be carefully examining
10 them to see if that is, in fact, true.

11 STAFF COUNSEL RATLIFF: Just a point of order.
12 We're behind schedule and we have a visual witness who's
13 got to testify this afternoon. And Mr. Simpson is asking
14 for time he did not reserve or request at the pre-hearing
15 conference. So we're going to lose more time on our
16 schedule.

17 HEARING OFFICER KRAMER: Well, we've ruled.
18 Let's not lose more time arguing that.

19 Mr. Simpson, go ahead.

20 MR. SIMPSON: Sir, do you have any evidence that
21 the demand for this facility to come online quickly?

22 HEARING OFFICER KRAMER: Mr. Simpson, I just
23 coerced Dr. Roe into postponing that discussion until
24 tomorrow and in alternatives.

25 MR. SIMPSON: Oh, okay.

1 HEARING OFFICER KRAMER: I think on that topic
2 you may have reserved some time. I don't recall.

3 MR. SIMPSON: I'll trade. I believe the witness
4 testified that he didn't have the PSA testimony; is that
5 correct?

6 MR. KHOSHMAHRAB: The PSA, that's correct. The
7 PSA is the draft. The FSA is the testimony.

8 MR. SIMPSON: Did you prepare the PSA?

9 MR. KHOSHMAHRAB: No, I did not.

10 HEARING OFFICER KRAMER: We've already been on
11 that ground.

12 MR. SIMPSON: I didn't quite understand the PSA
13 also indicates it's-- does the facility's desalination
14 plant, is that factored into your creation of power plant
15 efficiency?

16 HEARING OFFICER KRAMER: That question was asked
17 and answered earlier. Mr. Simpson, thank you for your
18 questions.

19 Mr. Holden, you probably didn't take the oath of
20 office -- not the oath of office, but it's very similar
21 except the constitution is involved. Would you please
22 stand and raise your right hand?

23 EDWARD HOLDEN,
24 was called as a witness herein and, after having first
25 been duly sworn, was examined and testified as follows:

1 MR. HOLDEN: I do.

2 HEARING OFFICER KRAMER: Thank you. Please state
3 and spell your name for the record.

4 MR. HOLDEN: Edward Holden. E-d-w-a-r-d,
5 H-o-l-d-e-n.

6 HEARING OFFICER KRAMER: Dr. Roe, do you have any
7 questions?

8 CROSS-EXAMINATION

9 BY DR. ROE:

10 Q Mr. Holden, I'm pleased to meet a representative of
11 Store, Stone and Webster, one of my famous competitor when
12 I was working for them. I appreciate your being here.

13 Were you involved in preparing AFC figure 2.2-5
14 which showed the calculations of the CEC plan having met
15 7165 BTU?

16 A Yes, I was part of that team, yes.

17 Q I see. And are you aware since you made that analysis
18 that the applicant has submitted what they call a pair in
19 which they proposed adding a desalination plant?

20 A Yes, I'm aware of that.

21 Q Good. And did the applicant ask you to revise that
22 heat balance to take into consideration the drain of net
23 available energy that would result from the desalination
24 plant operation?

25 A You mean auxiliary load? The auxiliary load for that?

1 Q Yes.

2 A We made some adjustments based on what we got from the
3 equipment manufacturer, but there wasn't any major drain
4 to it. There's a few more trailers to it. And there is a
5 removal process. Some of that work is preliminary. There
6 also is a little bit more of a load, yes.

7 Q I'm sorry. I didn't understand the last part of your
8 response.

9 A There is an NOx load associated with adding the
10 desalination.

11 Q Do you have an estimate how that would affect the
12 efficiency in your experience?

13 A I think that would be kind of marginal based on
14 overall NOx loads that are associated with the plant.

15 Q And which would be the most significant auxiliary
16 loads that effect the rate?

17 A Probably the water treatment plan one. The water
18 treatment system as a whole. I guess that would be my
19 biggest concern there, too.

20 Q It's not the energy used in the air cooling?

21 A That's all part of the Siemens heat balance. I
22 misunderstood. This is for the water treatment piece of
23 it?

24 Q Uh-huh.

25 A Yeah. I'm thinking of the balance. The water

1 treatment, the cooling cycle is included in the OEM, the
2 equipment suppliers heat balance.

3 Q Thank you.

4 HEARING OFFICER KRAMER: Thank you.

5 No further questions?

6 Okay. Thank you.

7 Mr. McKinsey, did you need to ask him any?

8 Okay. That concludes power plant efficiency.

9 Now let's move on to visual resources.

10 MR. MC KINSEY: I have maybe an unusual request,
11 and Ms. Siekmann may object to it. But it's well intended.
12 And you may not want to do this, but you're proposing
13 through your witness to put on some information about
14 climate change and it's powerful, wonderful information.
15 And when that comes up tomorrow, we may be objecting about
16 its relevance considering how much time we have.

17 But that presentation I think -- I also know that
18 the Commissioners and yourself understand the implications
19 of climate change so well I think that would actually be
20 very appropriate for some or all of that to be presented
21 tonight at public comment, depending on whether you wanted
22 to allow them to present that information and they were
23 going to do that. You would still hear the information,
24 but I think you would reach a different audience and have
25 a bigger effect and save us time tomorrow. And I wouldn't

1 have to object it in terms of taking up time on relevancy
2 for a topic we assume as a fact already.

3 HEARING OFFICER KRAMER: So you would be willing
4 to leave the public comment section with this then?

5 MR. MC KINSEY: Well, what I'm suggesting is a
6 really logical way to use the time more effectively. But
7 of course I know you're very sensitive as to using that
8 public comment time, but I think it wouldn't take that
9 long and probably be effective. Similar to some
10 Commission comments last night.

11 HEARING OFFICER KRAMER: I guess our witness
12 excused himself. Hold on a second.

13 MR. THOMPSON: Mr. Kramer? Mr. Kramer?

14 HEARING OFFICER KRAMER: Do any other parties
15 have any thoughts to add to Mr. McKinsey's request?

16 MR. THOMPSON: I would suggest delaying it for a
17 little bit. I know that the Center for Biological
18 Diversity is working over in the other building and this
19 was their big issue. And I would just kind of be hesitant
20 about making a ruling on that without them having the
21 opportunity to weigh in.

22 HEARING OFFICER KRAMER: I have to believe this
23 information is second nature to them. But maybe -- so
24 they're still at the hotel?

25 MR. THOMPSON: Yes, I believe so.

1 HEARING OFFICER KRAMER: Ms. Siekmann, this is
2 your witness; correct?

3 MS. SIEKMANN: Yes, it is.

4 HEARING OFFICER KRAMER: How do you feel about
5 Mr. McKinsey's proposal?

6 MS. SIEKMANN: I think I would like to ask the
7 witness as these are their slides.

8 HEARING OFFICER KRAMER: Would you please
9 identify yourself?

10 MR. SHARMAN: Yes. Lane Sharman.

11 HEARING OFFICER KRAMER: And spell your last name
12 for the court reporter.

13 MR. SHARMAN: S-h-a-r-m-a-n.

14 HEARING OFFICER KRAMER: Thank you.

15 MR. SHARMAN: In the interest of time, I would be
16 willing to strike some of the slides as being redundant
17 because I don't believe the case rests on the existence or
18 non-existence of climate change.

19 So I'd like to give my testimony, and I intend to
20 give my testimony. But in the interest of time, I'm
21 willing certainly to strike some of the slides in that
22 exhibit. But those slides largely support the written
23 testimony and exhibit that has already been placed in the
24 record and is used to elaborate that testimony visually
25 and graphically so that the concepts are well understood.

1 HEARING OFFICER KRAMER: So would you cut this
2 down to ten minutes for this evening?

3 MR. SHARMAN: Excuse me?

4 HEARING OFFICER KRAMER: Could you cut this down
5 to ten minutes for this evening?

6 MR. SHARMAN: Sure. I could do it in ten minutes
7 easily.

8 MS. SIEKMANN: But my question is does that mean
9 that's his testimony time or --

10 HEARING OFFICER KRAMER: Well, if he was -- well,
11 it would be a portion of it if he was going to present
12 this. If you intend to present him tomorrow that would
13 come out of --

14 MS. SIEKMANN: So that would come ten minutes out
15 of his testimony time. But would it be considered on the
16 record?

17 HEARING OFFICER KRAMER: We would note this is
18 testimony.

19 MS. SIEKMANN: Oh.

20 HEARING OFFICER KRAMER: But also it has an
21 educational component for the public.

22 MR. SHARMAN: I think it's logical that this
23 group, your group, does not dispute the existence of
24 climate change.

25 HEARING OFFICER KRAMER: Okay. Let's not get

1 into the details. Let's not talk about policy at this
2 moment.

3 MS. SIEKMANN: But I just want to clarify will
4 there be any slides shown tomorrow at all?

5 HEARING OFFICER KRAMER: Well, if he's going to
6 repeat this tomorrow, then there's no point in doing it
7 this evening. The idea was to move that portion so we'd
8 hear it once. But Mr. McKinsey I think is suggesting that
9 the public might be interested and benefit from receiving
10 this information. And there will be a lot more people
11 here tonight.

12 So Ms. Siekmann, you're the representative of
13 Terramar. So it's --

14 MS. SIEKMANN: Let me ask you, the slides, do they
15 need to go throughout your entire testimony or are they
16 just a segment of it?

17 MR. SHARMAN: Just a segment.

18 MS. SIEKMANN: Okay. Do you want to do that
19 segment tonight?

20 MR. SHARMAN: Yes, I can do that segment tonight.
21 And then I can -- I can effectively -- if I give that
22 presentation tonight, I can then effectively reference
23 tomorrow in my testimony those elements that need to be
24 referenced and you will all have a copy of them in front
25 of you. And should I reference that, that would be

1 sufficient for me.

2 MS. SIEKMANN: And you're willing to cut your
3 testimony back by ten minutes?

4 MR. SHARMAN: I am.

5 MS. SIEKMANN: Okay. And as long as it's part of
6 the intervenor record, you know, the hearing record, then
7 that's fine. No problem.

8 HEARING OFFICER KRAMER: Now, he was intending to
9 show us his presentation tomorrow at some point as part of
10 his testimony?

11 MS. SIEKMANN: As part of his testimony, that's
12 correct.

13 HEARING OFFICER KRAMER: So he was just not going
14 to offer the document as something we would read?

15 MS. SIEKMANN: Excuse me?

16 HEARING OFFICER KRAMER: He was not going to
17 offer this as something -- he was going to go through the
18 individual slides?

19 MS. SIEKMANN: I don't understand your question.
20 I'm sorry.

21 HEARING OFFICER KRAMER: Well, I want to make
22 sure we're saving time. Because if he was going to read
23 this and refer to one or two slides, then the answer might
24 be a little bit different. But it's --

25 MR. SHARMAN: That's not my intent.

1 HEARING OFFICER KRAMER: Thank you.

2 Staff, do you have any objection to this
3 approach?

4 STAFF COUNSEL RATLIFF: No.

5 HEARING OFFICER KRAMER: Okay. Can somebody send
6 Mr. Rostov the message?

7 MR. THOMPSON: We couldn't find him, so I guess
8 he's on his own.

9 HEARING OFFICER KRAMER: Okay. I really don't
10 think he's going to mind, because as I say, this would be
11 old news to him. Okay. We'll do that this evening.

12 Please make sure that Kimberly has the power
13 point on her computer so that she's all set up to go at
14 6:00 this evening.

15 Visual resources was our next topic I believe.
16 And this will be another panel from the applicant: Marsha
17 Gale -- is it Wojcik, Robert Mason, Mr. Kanemoto from the
18 staff, Juan Martinez, and Don Neu for the city.

19 Ms. Siekmann and Katherine Miller from Terramar.
20 Is Ms. Miller here? Why don't you sit by Ms. Siekmann
21 because they're running out of room at the table. And
22 those are the witnesses.

23 We actually have relatively limited
24 cross-examination, so it would be nice if we could finish
25 today. That would be compressing the time horribly, so I

1 don't know that we will. But let's see if we can get as
2 far as we can.

3 And then let me ask if any witness has any -- Mr.
4 Ratliff, do you have one witness you were trying to finish
5 today?

6 STAFF COUNSEL RATLIFF: Yes, we have one witness.
7 How do you desire to proceed?

8 HEARING OFFICER KRAMER: Well, does any other
9 party have a witness who needs to or who would like to be
10 able to finish today?

11 MR. THOMPSON: Mr. Martinez has a flight back to
12 Dallas at 7:00 tonight.

13 HEARING OFFICER KRAMER: Okay. And Mr. Kanemoto,
14 how urgent is his need? Mr. Kanemoto, you need to be done
15 today? Is that absolute or could you speak into the
16 microphone? And given your soft-spokenness, you want to
17 be really close to the microphone. Try again.

18 MR. KANEMOTO: Could you repeat the question,
19 please?

20 HEARING OFFICER KRAMER: Are you available to
21 stay over until the morning?

22 MR. KANEMOTO: Yes, if necessary.

23 HEARING OFFICER KRAMER: Was there anyone else
24 who had a timing issue? Okay. Then I guess it's Ms. --
25 was it Mr. Martinez or was it -- okay. Does any party

1 object to having Mr. Martinez testify first and then we'll
2 allow cross-examination of him and then he can be excused?

3 Seeing none, Mr. Thompson, would you please go
4 ahead with -- does it make more sense to have your entire
5 panel testify? Do they work together better as a group?

6 MR. THOMPSON: No, not really. This is one panel
7 where it's really a pass off. Mr. Martinez did the photo
8 simulations.

9 MR. MARTINEZ: The photo visualizations.

10 MR. THOMPSON: Visualizations and then passed
11 them off to Mr. Neu. And so if we can do Mr. Martinez and
12 then if there are any questions about the visualizations,
13 then the rest of it would be on the analysis of those
14 would be on --

15 HEARING OFFICER KRAMER: Okay. Go ahead with Mr.
16 Martinez.

17 MR. THOMPSON: Mr. Martinez, do you have any
18 corrections, additions to make on your testimony?

19 HEARING OFFICER KRAMER: I guess we should ask if
20 anybody has not been sworn. Okay. Let me take care of
21 that first. If you could stand and raise your right hand,
22 those of you.

23 JUAN MARTINEZ,
24 was called as a witness herein and, after having first
25 been duly sworn, was examined and testified as follows:

1 MR. MARTINEZ: I do.

2 HEARING OFFICER KRAMER: Thank you. Go ahead.

3 MR. THOMPSON: Thank you.

4 DIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q Do you have any directions or additions to make to
7 your testimony?

8 A I do. In the testimony the word "simulation" is used.
9 Simulation should not be used in that testimony. It's
10 more of a visualization. The difference between
11 simulation and visualization is that a simulation implies
12 that certain levels of effort have been taken to ensure
13 that what you're seeing is backed by data that you can
14 present. So visualization is what should be used.

15 And also it was pointed out that the existing
16 smokestack, the diameter that was modeled was actually
17 incorrect. The diameter that's depicted is about half of
18 what it needed to be. So in reality what you see there
19 should be larger, should be a wider, thicker diameter.

20 Q Now, there was some criticism of the use of KOPs not
21 exactly mirroring the key observation points that we used
22 by CEC staff. Do you have a comment?

23 A Yeah. The intent of the visualization was not to
24 exactly mirror the KOPs. They were just -- points were
25 identified where a camera should have been placed. It was

1 not intended to be an exact mirror of the existing KOPs.

2 Q Would you briefly outline your experience in creating
3 visualization?

4 A Yes, I have about eleven years experience. All of
5 that is with the AEC industry which is architectural
6 engineering and construction. All that, about eight years
7 is related to civil engineering and six years related to
8 transportation type of projects for civil engineering.

9 Q Thank you.

10 Now your work at HNTB and doing work for
11 Caltrans, if you can bring some of that into the
12 following, I'm going to ask you to walk through the steps
13 you took to create your exhibits.

14 A Okay.

15 HEARING OFFICER KRAMER: Can you tell us which
16 exhibit numbers those are?

17 MR. THOMPSON: 421, 422, 23, 24, 430, 431 and
18 434.

19 MR. MARTINEZ: Okay. Those exhibits originated
20 with -- we were leveraging an existing 3-D model that was
21 developed for our California department of Transportation.
22 So in doing so, we took the already -- the terrain,
23 everything that was built. We used -- let me look at my
24 notes real quick.

25 We used Table 5.13-2 from the CECP 005.13 to

1 identify what components were going to be placed in there.
2 We then took that -- it was a ragster image. So we had to
3 rubber sheet it onto the CAT application. By doing so, we
4 were able to get the size and scale and location of where
5 everything needs to be. So that defined the components
6 that were going to be modeled as generic gray masses and
7 that was pretty much it. I can get into more detail if
8 you ask.

9 BY MR. THOMPSON:

10 Q The plant layout and equipment you got from a CEC
11 file?

12 A Yes. The plant layout -- let me pull that out. The
13 plant layout was from figure 2.2-1. And that showed -- it
14 showed more than what we modeled. The components that we
15 modeled were in the table that I mentioned earlier. And
16 that plant layout is what we rubber sheeted on to the 3-D
17 model.

18 Q Thank you.

19 Before I tender Mr. Martinez for
20 cross-examination, I would like to point out that the CECP
21 filed some exhibits that were previous visual whatevers
22 from the city that were done a year or so ago. We heard
23 some criticisms about those. And because of that, the
24 city went off and retained HMTB to create these visuals.
25 So hopefully that is some background that will help.

1 Mr. Martinez is tendered for cross-examination.

2 HEARING OFFICER KRAMER: Mr. McKinsey.

3 MR. MC KINSEY: Thank you.

4 CROSS-EXAMINATION

5 BY MR. MC KINSEY:

6 Q I'd like to start by follow up with your comment about
7 changing the name of these from simulations to
8 visualization. And I think you indicated -- or maybe you
9 could explain again exactly why you think one name is
10 preferred over the other.

11 A Sure. We've been asked to do simulations before in
12 the past, such as a traffic simulation. And when we do
13 that, it is backed by data that we can then go back and
14 say this is what generated. For example, they may ask us
15 to do something that have 2040 traffic data for an a.m.
16 peak time for a certain corridor. That's backed by
17 software like Vision, which is what traffic engineers
18 would use to create that data and give that to us. We
19 import that data and then the software generates the cars
20 and stuff where they need to be.

21 A visualization is really more of a tool to --
22 it's used mainly for public outreach to tell the story.
23 It's a visualization tool. It's not -- it doesn't have
24 that data that's backed by -- in other words, the cars
25 that are on the -- what we did for the city, there's no

1 information behind it. There's -- there just isn't
2 anything that we can say that this is backed by certain
3 data. Does that answer your question?

4 Q It does.

5 Are there any other examples of the data? If I
6 understand correctly, you're indicating you did not want
7 to call them simulations because that would imply they
8 were backed by some types of data you would want to have
9 there. And you indicated one of those is the lack of data
10 on the number of cars that would have been on the freeway.
11 What other data was lacking, if any, that makes you want
12 to call it a visualization?

13 A Well, you could say there was the comparison between
14 the original KOP images and what we generated. In order
15 to generate an image of photo match, you need more than
16 just to know the dimensions in the plans. You need to
17 have points and space relative to the camera. You can't
18 just say, okay, I know I'm standing 150 feet. I know my
19 camera's visual view is a 40-degree angle and then kind of
20 assume and put a camera there. It could be inaccurate.

21 What I would do is actually identify -- I would
22 have a surveying crew identify points in space relative to
23 a camera and those points in space correlate to something
24 that's in that image that I'm going to be matching it to.
25 And then the software creates the camera for you after

1 you've identified the points in space.

2 Q And that probably relates -- I'd like to ask you a few
3 questions about how you prepared it specifically. If I
4 contrast the visualization that you've prepared with the
5 simulations that the applicant's provided, I note there is
6 no landscaping. There's no trees. There is a big
7 difference between the two. Were you not provided data on
8 what the landscaping would be like?

9 A No. We had existing landscaping. That was off
10 existing aerials. As I mentioned earlier that the
11 original model, the basis of what we made for the city
12 originated from a model that was generated for Caltrans,
13 for the California Department of Transportation. They had
14 requested landscaping to be removed. So that found its
15 way into what was used for the city.

16 Q So what instructions, if any, were you given about
17 what -- what were you told to prepare?

18 A What we prepared was -- what we prepared was the 10
19 plus 4 alternative. That's five general purpose lanes,
20 two managed lanes and that this location had an auxiliary
21 lane in each direction.

22 That roughly I believe that was about -- that's
23 also about an 18-meter increase outside of the edge of the
24 shoulder, which is about 60 feet. So what you're seeing
25 there is the landscaping berm is being eaten up by that

1 increase in right-of-way and road that's being built. And
2 then the landscaping, the trees themselves were removed at
3 a request from Caltrans.

4 Q And what request asked you to remove the trees?

5 A I'm sorry?

6 Q Who or what was the request that asked you to remove
7 the trees?

8 A That was done at an 8 percent incremental --

9 Q I mean who or what. Who asked you to or what was the
10 request --

11 A The request was made by Arturo Jacobo from Caltrans.
12 And I don't know if you need this, but I have incremental
13 review meeting minutes from that request.

14 Q Okay. That's fine. I'd like to know -- it's Mr. Neu;
15 correct? What instructions did Mr. Neu give you, if any,
16 regarding the purpose of what you are preparing or any
17 specific instructions regarding where to locate your point
18 of view?

19 A No, sir. I received -- I received instructions from
20 the city on where to put my point of view.

21 Q Who in the city gave you those instructions?

22 A I received an e-mail from Joe Garuba.

23 Q Can you tell me what KOP stands for?

24 A Gosh, it's -- off the top of my head I can't recall
25 exactly what it stands for -- observations point or

1 something like that.

2 Q Could you consider -- you stated earlier that your
3 intent is not to mirror the exact location of the KOPs.
4 So when you said that, why was that the case? I mean,
5 were you just not worried about matching a particular
6 location?

7 A I had no idea KOPs existed until after I was asked by
8 the city to label them. So I received a site map of the
9 corridor in the general vicinity. And in pencil or pen,
10 Mr. Garuba wrote down kind of like a cone, a field of view
11 saying I want a camera here looking that direction. I
12 want a camera here southbound looking that direction.
13 Later on, when I was -- after the graphics were created, I
14 was asked to put KOP 6, KOP -- whatever the numbers were.

15 Q So I think you indicated there is a difference
16 between -- you've seen the renderings that are received to
17 KOP 6 by the applicant?

18 A Yes.

19 Q And KOP 4?

20 A Yes.

21 Q And both of those they appear to be different in
22 location; right? And appear to be different in their
23 view? I think you were indicating that your intent wasn't
24 to mirror the same locations; correct? You were
25 attempting to --

1 A I wasn't trying to mirror any existing images. Again,
2 I was just instructed to put a camera at a point and, you
3 know, render out an image from that advantage point.

4 Q Another one of your views, it's the north bluff view?

5 A Okay.

6 Q I note that it has a large white kind of surface area
7 in the middle of it. Did you actually in doing this did
8 you go to any of those points and take any photographs or
9 observe what the area actually looked like to help you
10 prepare?

11 A We did not, no.

12 Q Have you been to those sites since then?

13 A Yes.

14 MR. MC KINSEY: I may be done. Let me check.

15 BY MR. MC KINSEY:

16 Q So if I asked you to tell me for a KOP, KOP 4 or your
17 KOP 6, the visualization the city provided referred to as
18 KOP 4 and KOP 6, could you tell me if I put on the map the
19 exact point on a map and then how high above the grounds
20 these points are in elevation?

21 A I couldn't tell you an exact point on the map because
22 they weren't tied to any station. I can give approximate
23 points.

24 As far as the height, again this is not a
25 simulation, so I did use an elevation of a five-foot

1 camera angle above the ground.

2 Q So you believe they represented five feet above the
3 ground or at least the elevation at that point?

4 A Yes. Now, I don't recall what field of view what type
5 of millimeter lens I was using. Generally, I tend to use
6 a wide angle lens because it captures more the peripheral
7 view. So I know it wasn't a 50 milliliter lens I used.

8 MR. MC KINSEY: Thank you. I have no other
9 questions.

10 HEARING OFFICER KRAMER: Staff?

11 STAFF COUNSEL RATLIFF: Yes.

12 CROSS-EXAMINATION

13 BY STAFF COUNSEL RATLIFF:

14 Q Good afternoon, Mr. Martinez.

15 A Good afternoon.

16 Q Just a clarification question. You were instructed to
17 assume how much additional width on the I-5 widening?

18 A I'm sorry? Could you say that again?

19 Q If response to a question from Mr. McKinsey a minute
20 ago, I thought you said you had assumed an additional 18
21 meters, is that correct, on the I-5 widening?

22 A That was -- I have a section I'm using here. The
23 alternative that we were using was the 10 plus 4 --
24 alternative.

25 Q Could you just explain for all of us what 10 plus 4

1 means?

2 A What that means is there's 10 general purpose lanes
3 and four managed lanes, which are HOV lanes in this case.
4 So you divide that by two so there's five general purpose
5 lanes and two HOV lanes in each direction.

6 Q Yes.

7 A And at this location there is also an auxiliary lane
8 which allows access from -- can't really recall the north.
9 Canon I believe is south. But it allows access to Canon.
10 So it has an extra lane there essentially. And what
11 you're looking at is 18 meters is the proposed widening.
12 Now, that is from the shoulder, from the shoulder line.
13 And 18 meters is about 60 feet.

14 Q Who gave you that instruction?

15 A We received CAT files from Caltrans to build it that
16 way.

17 Q And did they tell you that that was their preferred
18 widening route or did they tell you something else?

19 A They didn't give us any other routes.

20 Q They just gave you the dimensions?

21 A This is what they wanted us to build. They gave us
22 the design files and this is what they wanted us to
23 depict.

24 Q Okay. Thank you.

25 A Thank you.

1 MR. THOMPSON: Can we have 30 seconds here?

2 HEARING OFFICER KRAMER: Okay. Next would be
3 Power of Vision. Do you have any questions for this
4 witness?

5 MS. BAKER: Not for this witness, but we will
6 have cross-examination later.

7 HEARING OFFICER KRAMER: Okay. Terramar?

8 MS. SIEKMANN: Not for this witness.

9 HEARING OFFICER KRAMER: I think that does it for
10 you, Mr. Martinez.

11 Did you have any redirect Mr. Thompson?

12 MR. THOMPSON: No. I think my witness wants to
13 get out of town.

14 HEARING OFFICER KRAMER: Okay. Have a safe
15 flight.

16 MR. MARTINEZ: Thank you.

17 HEARING OFFICER KRAMER: Okay. Now we'll go back
18 to the usual order. And that would be --

19 MR. MC KINSEY: One moment. Going out of order
20 caused me to lose my questions.

21 HEARING OFFICER KRAMER: I could ask Mr. Ratliff,
22 let me ask him regarding Mr. Kanemoto, I'm assuming that
23 you're going to want to keep him around until this is
24 over; is that correct?

25 STAFF COUNSEL RATLIFF: Yes.

1 HEARING OFFICER KRAMER: So then there would be
2 no utility to putting him on next?

3 STAFF COUNSEL RATLIFF: No.

4 HEARING OFFICER KRAMER: Go ahead, Mr. McKinsey.

5 DIRECT EXAMINATION

6 MR. MC KINSEY: I would like to begin by asking
7 our three witnesses to state their name and describe a
8 little bit of their background experience and what the
9 nature of their testimony is and visual.

10 MS. GALE: My name is Marsha Gale. I'm managing
11 principle of Environmental Vision. We prepared the
12 computer-generated visual simulations and visual analysis
13 material for the CECF.

14 I have more than 25 years of professional
15 experience and hold undergraduate and graduate degrees in
16 landscape architecture as well as a Masters degree in city
17 regional planning.

18 My practice focuses on visual impact assessment,
19 aesthetic mitigation design, and visual simulations
20 applications. I contributed to numerous environmental
21 impact documents that conform to CEQA, and I also have
22 considerable experience preparing visual impact studies
23 for infrastructure improvements projects, including energy
24 generation, electric transmission, and highway widening
25 projects.

1 MR. MASON: Good afternoon.

2 My name is Robert Mason with CH2M Hill. I'm the
3 project manager for NRG for the preparation of the
4 application for certification. I have both a Bachelor's
5 and a Master's in urban and regional planning, 30 years of
6 experience in the evaluation of environmental impacts,
7 including visual for industrial projects, including power
8 plants, various proceedings and projects that have come
9 before you as well.

10 And in terms of the overall responsibility that I
11 had as the project manager was to provide direction,
12 guidance and review to the work that was accomplished by
13 the various technical experts, including Marsha Gale.

14 MR. WOJCIK: My name is Bob Wojcik.

15 I have a degree in civil engineering from the
16 University of Illinois. And I'm a registered civil
17 engineer in the state of California.

18 Since 2006, I've been director of engineering for
19 Hoffman Planning Engineering. Prior to that, I was deputy
20 city engineer for the city of Carlsbad in charge of land
21 use review. And I worked there for 26 years. And I will
22 be testifying about the preparation of exhibits and visual
23 simulations on the impacts of the I-5 widening and how
24 those impacts can be mitigated.

25 MR. MC KINSEY: Marsha, you indicated that you

1 were responsible for preparing the evaluation, including
2 the simulations. Can you summarize how you prepared the
3 visual simulations for this project and all the
4 simulations that you've prepared for this project?

5 MS. GALE: Yes. The visual simulations presented
6 in the FSA were prepared according to accepted technical
7 standards and are the result of a systematic technical
8 process.

9 Basic steps in that process include first
10 selecting appropriate representative simulation viewpoints
11 or key observations points and concluding controlled high
12 quality digital photography.

13 Next step includes developing accurate
14 three-dimensional computer modeling based on topographic
15 and engineering design data.

16 The following steps involve the digital composite
17 of site photography in the 3-D model with scale
18 verification measures.

19 Lastly, a computer rendering of that image to
20 produce accurate and realistic photo-based simulation
21 images.

22 Let me go into just a little bit more detail on
23 each of those steps that we implemented.

24 The selection of visual simulation viewpoints, or
25 KOPs, involved identifying important representative public

1 viewing locations from which the CECP would be visible.
2 View corridors such as Carlsbad Boulevard, the I-5
3 freeway, and various vista points delineated in the city's
4 local coastal plan. Site photography was shot using a
5 digital lens reflex camera, commonly known as an SLR
6 camera, with a normal lens that captures a 40-degree angle
7 horizontal view of version.

8 Further viewpoint locations in the field were
9 recorded using both global positioning system, or GPS,
10 technology as well as hand annotating aerial photography
11 to clearly show our viewpoint location for each
12 photograph.

13 The subsequent phase of work entailed
14 constructing a three-dimensional computer model of
15 existing and proposed conditions. Existing conditions
16 included incorporating digital terrain data for the site
17 as well as the photo viewpoint location and also employing
18 data on existing conditions from the EPS site including
19 known building footprint locations and heights.

20 For the 3-D model of the CECP facility, we
21 modeled both proposed structures and grading based on a
22 variety of engineering data provided to us by Shaw
23 Engineering, including grading plans, site plans,
24 structure, elevation drawings.

25 Using five feet as an assumed eye level, we

1 proceeded to the next step of our process what we call
2 constructing a wire frame image of the 3-D model and
3 overlaying it on each of the selected photographic views.
4 Vertical scale and position of this composite image were
5 verified using known data points in the existing
6 environment.

7 Lastly, the digital model was rendered for each
8 of the KOP views to produce a set of accurate, realistic,
9 visual simulations. Importantly, to facilitate objective
10 comparison of the four inactive visual conditions, you'll
11 note that the visual simulations are presented paired with
12 the corresponding existing view. And I'd like to show
13 just a few of those images briefly on the screen beginning
14 with KOP 5.

15 MR. MC KINSEY: Can you make sure you note the
16 exhibit numbers so everybody knows which exhibit it is as
17 well? I'm missing my one note page.

18 MS. GALE: KOP 5.

19 MR. MC KINSEY: So it's in the FSA.

20 MS. GALE: Kim, are we showing both images
21 together on the screen? If we could do that, they won't
22 be as large, but I think it will be helpful for purposes
23 of our testimony.

24 We're really not going into any detailed visual
25 analysis at this time, but we want you to illustrate first

1 the technique I just described and review very briefly
2 with a couple of the KOPs how those images appear. I
3 notice on your screen they're a little bit hard to see I
4 think because the room is so bright. You're really not
5 going to be able to see as well.

6 But this first KOP shows one of the LCP vistas
7 review from Harvard Drive located about a third of a mile
8 to the north. An existing view we clearly see the lagoon
9 in the foreground with the existing landscape, mature tree
10 cover and the existing EPS facility off to the right.

11 In the lower image, which I fear you'll have
12 trouble seeing clearly, we are showing a visualization of
13 the CECF. If you look, they clearly you see a bit of one
14 of the stacks peaking up above the tree canopy and you can
15 also make out elements of the HRSF that appear partially
16 screened beyond the tree cover. And quickly we'll look at
17 two others. KOP 7 shows a view from northbound I-5.
18 Yeah. So here we've got a view very much dominated by the
19 foreground freeway. The top view of the existing view,
20 what you see today with some large scale transmission
21 structures to the left.

22 And in the lower image, you can see portions of
23 the CECF beyond some of the roadside vegetation and berm
24 area, particularly the stacks -- the upper portions of the
25 stacks are visible. However, there's considerable

1 landscape screening which reduces the overall visibility
2 of the CECF.

3 In this final image, KOP 6, we've got southbound
4 I-5, another view which includes elements of the freeway
5 in the foreground. But in this view, as you look at the
6 top image, the existing view, we have the whole thing,
7 Kim?

8 Well, we're looking at the top view here. What
9 you see today -- no one can see anything. But this really
10 is a relatively close range view of the CECF site. Here
11 again, we're seeing the lagoon in the foreground, very
12 important visual resource to the project view shed. We've
13 got landscape berm and the existing EPS stack partially
14 screened by the trees on the site.

15 In the lower image, we can see a portion of the
16 CECF site. In this case, not rising above the tree canopy
17 but partially visible again to the left of the existing
18 EPS stack you can see the HRSG below the tree canopy line.
19 Again, very effective screening provided by that existing
20 landscape berm.

21 MR. MC KINSEY: So you prepared an evaluation
22 presented in the application for certification and revised
23 in some instances. In summary, you evaluated whether or
24 not this project has any significant visual impacts;
25 correct?

1 MS. GALE: Yes, we did.

2 MR. MC KINSEY: And what was your evaluation and
3 your conclusion?

4 MS. GALE: Our conclusion is that the visual
5 impact will be less than significant.

6 MR. MC KINSEY: And another kind of overview
7 question. I think you've heard has come up and that is
8 can you give an example of the types as least some of the
9 key other projects that you consider for purposes of
10 cumulative impacts analysis?

11 MS. GALE: Yes, I can. Some of the key projects
12 considered for the cumulative visual impacts analysis
13 include the Poseidon desal facility, the Coastal Rail
14 Trail, potential future use of the public by the EPS site,
15 and the I-5 widening.

16 MR. MC KINSEY: Thank you.

17 BY MR. MC KINSEY:

18 Q Robert, I'd like to ask you a couple of questions.
19 Have you ever viewed the city's testimony where they
20 discuss whether this project has any applicable height
21 restrictions?

22 A Yes.

23 Q And what's your opinion on the accuracy of that
24 depiction?

25 A I found that to be inaccurate.

1 Q And can you explain?

2 A Yes. As discussed yesterday during the land use
3 portion of the proceedings, specific plan 144, which is
4 applicable to the EPS site and also then to CECP site,
5 expressly anticipates electrical generation and
6 transmission use on the property that is EPS. And it
7 includes that area that for the CECP site.

8 The specific plan contains development standards
9 for application for EPS site and the CECP area itself and
10 it includes a recognition of future electrical generation
11 facilities which may exceed the city's 35-foot height
12 limitation for non-electrical generation structures.
13 Specifically, in the specific plan 144 in Section III.5 it
14 states in part -- and I'm quoting this directly -- "the
15 heights of future power generation buildings and
16 transmission line tower structures shall be of height and
17 of configuration similar to existing facilities."

18 Goes on to say all storage tanks shall be
19 screened from view. No other structures or buildings
20 shall exceed 35 feet in height unless a specific plan is
21 approved at the public hearing.

22 To me, that statement acknowledges that there is
23 an ongoing and dynamic nature of the project and of the
24 Encina Power Station itself looking for future electrical
25 generation use at the site and recognizing that the

1 electrical power generation and transmission facilities
2 are exempted from the city's general 35-foot height
3 standard.

4 Q Thank you.

5 And then, Bob, you indicated that you prepared
6 some -- in evaluation -- at least you participated in
7 providing an evaluation of the potential effects of the
8 future I-5 widening; correct?

9 A Yes.

10 Q Can you explain how you went about evaluating the I-5
11 widening project?

12 A Certainly. I contacted Caltrans and requested that
13 they send me the proposed alignments for the I-5 widening,
14 which they did through e-mails, phone conversations, and
15 meetings with Caltrans staff. I was informed that there
16 were two preferred alignments and that the 8 plus 4 with
17 barrier alignment was the one that would encroach the
18 farthest west into the CECP site.

19 Caltrans staff then sent me a set of
20 cross-sectional views of the 8 plus 4 with barrier. Those
21 cross sectional views showed the locations of their
22 proposed westerly right-of-way line, their proposed
23 retaining wall, the existing and proposed surface
24 elevations of the I-5 widening along with existing surface
25 elevations extending into the CECP site approximately 70

1 meters, or about 230 feet.

2 Using this information from Caltrans, I had
3 exhibits prepared to show how much area on the CECP site
4 would be available for a combination of grooming and
5 landscaping to meet the intent of Viz 5 and what possible
6 design could look like to implement that intent.

7 On Exhibit 177, this shows the area for berming
8 and landscaping depicted in green. And then Exhibit
9 179 --

10 COMMISSIONER EGGERT: While we're waiting for
11 that, just a question of clarification. This is with the
12 widened freeway or is this --

13 MR. WOJCIK: Yes. Both 177 and 179 represent the
14 8 plus 4 with barrier which Caltrans has told us is the
15 preferred alignment that encroaches furthest west into the
16 site.

17 BY MR. MC KINSEY:

18 Q Can you explain what Exhibit 179 depicts?

19 A Certainly. 179 on the left is an overhead view of the
20 8 plus 4 with barrier as well as the CECP site. And on
21 the right-hand side are three cross sections exhibiting
22 how berming and landscaping could be achieved within those
23 areas depicted on 177.

24 Q Thank you.

25 Marsha, I'd like to ask you using these exhibits

1 and this information that Mr. Wojchik prepared, will the
2 I-5 widening defeat or undermine any of the plans
3 screening that's provided for in the project?

4 A No. The freeway widening will not prevent plans
5 screening. As Bob just described, with the preferred I-5
6 widening scenario, there's sufficient room to construct a
7 landscape buffer at the CECP site that meets the
8 objectives of VIZ 5.

9 I'd like to bring up Exhibit 165, which related
10 very directly to what Bob presented in his engineering
11 drawings. Exhibit 165 shows conceptual landscape cross
12 section drawings to illustrate how we can achieve maximum
13 screening in the landscape buffer. These are conceptual,
14 but they do conform to the engineering data that Bob
15 outlined and presented.

16 The two diagrams here, the upper cross section
17 drawing shows the buffer at its narrowest area with a
18 retaining wall along the edge of the widened I-5
19 right-of-way. And that retaining wall is six feet tall.
20 And we can achieve a sloped embankment with a continuous
21 row of fast-growing evergreen trees at the top of the berm
22 with an understory planting of evergreen shrubs to provide
23 full screening from top of canopy down to the ground.

24 The lower of the two diagrams shows a more
25 typical condition in the landscape buffer where we have

1 more room to plant. And under this diagram, we're able to
2 accommodate three rows of fast-growing evergreen trees
3 again with understory shrub planting along the edge of the
4 widened freeway at the retaining wall.

5 HEARING OFFICER KRAMER: Which exhibit is this?

6 MS. GALE: This is Exhibit 165. It's up on the
7 screen.

8 HEARING OFFICER KRAMER: I can see it better on
9 my laptop.

10 MS. GALE: Okay. So it's the two cross section
11 diagrams. Again, in terms of the dimensions and grading,
12 they relate and correspond to the engineering drawings Bob
13 presented, and we've actually labeled the cross sections
14 the same as his if you want to later on review these and
15 compare. We've got slightly confusing.

16 On the top diagram is actually Section C. And
17 the lower one, the wider berm is Section B. And that's
18 what I'm describing here in terms of the narrowest portion
19 achieving continuous tree row with understory shrubs. The
20 wider more typical berm having multiple rows of
21 fast-growing evergreen trees with understory shrub
22 planting. Again, a continuous dense screening.

23 Now, I have just a few other exhibits I'd like to
24 go through quickly. Using the city's visualization, the
25 exhibit is 170. We've taken the city's rendering of the

1 widened freeway and using our engineering data, the
2 grading, and the cross-section diagrams provided by
3 Caltrans presented by Bob a few minutes ago, we've shown
4 the effect and view from southbound I-5, the driver's
5 view, the motorist's view approaching the CECP site with
6 the landscaped berm and tree growth at five years of
7 maturity. And what you see is a very effective screen, a
8 portion -- only a portion of one of the CECP stacks can be
9 seen.

10 And in this next Exhibit 171, we show the same
11 perspective from the widened I-5 roadway with the
12 landscape berm and tree maturity at ten years.

13 In this rendering, the screening is more
14 effective and virtually screens the CECP completely. You
15 do see just the uppermost portion of one stack peaking out
16 above the trees.

17 I'm just going to show you quickly then another
18 set of the images we just showed are renderings. They're
19 not photo based. But we know that they're accurate in the
20 sense that the berm and the trees are shown correctly
21 based on engineering data.

22 In this next set of images starting with Exhibit
23 166, we've created a set of visual simulations using an
24 actual photograph taken from a known location. This is
25 Adams Street just south of Hover looking west across the

1 lagoon. And Exhibit 166 shows you what you see today if
2 you go to that point. This is what you would see. And
3 you got some spectacular views here. With the lagoon in
4 the foreground off to the right, you can see the ocean.
5 On the left is the EPS facility.

6 And in the center of the view, we have the
7 existing I-5 freeway with the landscape berm as it appears
8 today along the eastern edge of the CECP site.

9 The next image, 167 is a visual simulation of the
10 CECP. In this view, we see the CECP partially screened
11 and the landscaped berm intact. And no substantial change
12 to the composition or character of the view.

13 In the following image, Exhibit 168, we are now
14 showing the CECP with the I-5 widening and the landscape
15 berm that we've just discussed. So near the center of the
16 view, the freeway has definitely been modified to meet the
17 ten plus four -- sorry -- 8 plus 4.

18 The widening scenario that Bob described which is
19 the preferred worst-case Caltrans widening scenario, we've
20 shown that much of the existing landscape berm located
21 along the eastern edge of the CEC property has been
22 replaced with a new berm. Although you will note that on
23 the northern portion much of that landscaping and berm
24 remains. Again consistent with the grading plans and our
25 understanding of Caltrans drawings, much of that northern

1 landscape berm will remain.

2 So in this visual simulation, we see that the new
3 landscape berm, the replacement berm at five years of tree
4 maturity will in fact provide considerable screening of
5 the CECP.

6 And when we look at the following Exhibit 169, we
7 have shown the same view with the CECP widened freeway and
8 the landscape berm at ten years of maturity where we have
9 the landscape buffer screening concealing virtually all of
10 the HRSG structures, leaving only the stacks visible. And
11 this level of screening as you will recall having looked
12 at the existing view, this level of screening is quite
13 comparable to what exists today. And I think these images
14 demonstrate how effective the mitigation will be with
15 respect to potential cumulative visual impacts associated
16 with the I-5 widening.

17 BY MR. MC KINSEY:

18 Q Is there anything else you'd like to say relative to
19 the potential cumulative impacts associated with this
20 project? Gale?

21 A There is one thing I could say about a positive
22 cumulative visual effect that may not have been noted
23 previously. Conditions of approval for the Poseidon desal
24 plant call for the installation of a screening wall with
25 landscaping along Carlsbad Boulevard at the EPS site

1 frontage. And I believe these aesthetic enhancements will
2 improve the CECP view shed with respect to views from the
3 west along Carlsbad Boulevard. Therefore, there will be a
4 beneficial cumulative visual effect.

5 Q In your testimony, you indicated that you prepared at
6 least some of these specifically in light of the city's
7 offered exhibits. Have you evaluated the city's exhibits
8 involved in its testimony regarding visual impacts?

9 A Yes, I have.

10 Q How would you characterize the city's exhibits?

11 A I would say the city's exhibits for purposes of visual
12 impact assessment are problematic and flawed.

13 Q And so I'd like to just kind of walk you through
14 several of them and ask you what's wrong with them. And
15 I'd like to begin with what the city referred to as KOP 6
16 and Mr. Martinez's earlier testimony.

17 A KOP 6, first of all, this prospective does not match
18 the KOP 6 presented in the FSA in terms of the
19 photographic view that was documented. The widened
20 roadway seemed somewhat reasonable and the heights of the
21 CECP structures also may be reasonable. However, there
22 are a number of inaccuracies here. And I'll point out a
23 few. The heights of the CECP structures are maybe
24 correct. However, as Mr. Martinez I think has already
25 stated, the diameter of the EPS stack is the existing

1 stack is incorrect. Similarly, the diameters of the
2 transmission structures new transmission poles are
3 incorrect. On the very right-hand edge of this image, the
4 existing tree pattern that is shown here is incorrect as
5 is the grading along the edge of the roadway.

6 The Caltrans wall that would appear midway along
7 the road is not shown. But I think I would have to say
8 the most glaring flaw with this image is the failure to
9 show the landscape buffer that's required under this
10 cumulative scenario, the landscape buffer that we
11 illustrated moments ago. In this respect, the view is
12 quite distorted in terms of how it represents the CECP.

13 Q Did you say the landscape buffer that's required, are
14 you referring to what's required under the proposed
15 condition of certification VIZ 5?

16 A Yes, condition of certification VIZ 5 is what I'm
17 referring to when I mention the landscape buffer.

18 Q So I'd like to ask you about what the city's referred
19 to in their exhibit and Mr. Martinez's testimony as KOP 4?

20 A KOP 4 is another view that's very problematic with
21 some of the same type of issues that I just mentioned.
22 Principally, the viewpoint shown here is hypothetical and
23 it does not match the KOP photograph. I'm not at all sure
24 that this represents a view that is a public view. It may
25 be actually up in the air out over the middle of the

1 lagoon. The perspective is odd in terms of anything you
2 might really see.

3 Again the EPS stack is not shown correctly.

4 Curiously, new landscaping is shown in the widened I-5
5 median area, yet none is shown along the roadside.

6 Certainly none is shown for VIZ 5 and it creates a very
7 misleading impression of the CECP.

8 Q And then finally, Exhibit 423, Mr. Martinez sponsored?

9 A I believe this is the view labeled North Bluff. This
10 is not a recognizable view and therefore not useful at all
11 for visual impact assessment purposes. If we're looking
12 south or southeast from a north bluff area, we should see
13 the lagoon in the foreground with mature trees on the
14 north side of the CEP site. This is a distorted image and
15 dis-represents the CECP and the visual conditions in the
16 project view shed.

17 Q So as a very basic simple question, can any of these
18 city's visual exhibits actually be used for an objective
19 visual analysis?

20 A I would say they are not appropriate for visual impact
21 analysis purposes because they do not show comparable
22 existing and future conditions. Therefore, an objective
23 comparison of before and after view shed conditions cannot
24 be ascertained. In addition, without the Viz 5 landscape
25 buffer, it's very misleading to show the CECP with the I-5

1 widening.

2 Q Thank you.

3 I have one more question I want to ask you. Are
4 you familiar with staff witness Bill Kanemoto's testimony
5 regarding the appropriateness of architectural screening?

6 A Yes.

7 Q And can you summarize what that view is and whether
8 you agree with it or not?

9 A Yes. I believe Mr. Kanemoto's assessment and
10 conclusion is that the most appropriate form of visual
11 mitigation for the project is landscape screening as
12 opposed to architectural treatment. And the reason is
13 that the project view shed and specifically the visual
14 context for the CECP includes a valued landscape berm that
15 provides a visual amenity to the back drop of the lagoon.
16 And to further enhance the existing visual resources by
17 creating additional landscape screening is a most
18 appropriate solution to reduce the project's visibility.

19 Q Thank you. And that concludes our direct testimony.

20 HEARING OFFICER KRAMER: Okay. We have public
21 comment scheduled at 6:00. So we need to allow ourselves
22 to fuel up for that. So we will continue this panel over
23 until the morning, continue it then. That's the fairest
24 approach for them.

25 I apologize that we fell behind today. Things

1 are hard to predict. We've been trying to push hard on
2 the parties and for the most part they've been
3 cooperating. But these are complicated issues and it does
4 take a little bit of time to discuss them. So we will
5 reconvene the panel back at 9:00 a.m. here tomorrow
6 morning.

7 And then we'll continue with I guess the city's
8 witnesses would be next. No, actually, Mr. Kanemoto, that
9 would be staff will begin. Thank you.

10 And we have not decided yet -- just so the
11 parties know -- we will have additional public comment
12 period tomorrow evening. So if we don't, I think we have
13 the possibility of carrying over into at least a portion
14 of the evening to perhaps catch up on our schedule. We'll
15 see how that goes.

16 So we'll see you back here at 6:00 the parties
17 and the public for public comment. Thank you. We're off
18 the record.

19 (Thereupon a recess was taken at 5:10 p.m.)

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1 To my immediate right is our Hearing Officer Paul
2 Kramer, who conducts most of our hearings for us.

3 And to his immediate right is Associate Member
4 Commissioner Anthony Eggert of the California Energy
5 Commission who's been with us for, what, a week now,
6 Anthony? For maybe a couple weeks anyway. He's a new
7 Commissioner. After about three years, he'll look like me
8 after just a few years of doing this kind of work.
9 Actually, I've been eight years at the Commission, so it's
10 worn me down gradually.

11 To my immediate left is my advisor, Tim Olson.

12 Mr. Eggert and I constitute the Committee. And
13 as I said, Mr. Kramer is the Hearing Officer who keeps us
14 in line and really does the heavy lifting in conducting
15 all of our public hearings.

16 We're scheduled to be here in Carlsbad for as
17 much as four days depending on how fast we get through our
18 agenda. We're not doing a very good job of it. So we're
19 behind schedule, but that's why we devoted a set time each
20 of these first two nights for public comment and meeting.
21 I really regret that the way processes work many of you
22 can't be here in the daytime to sit through what we sit
23 through, not so punish you and make you sit as long as we
24 do, but it's really highly educational. Some of us have
25 been through a lot of this, although you learn something

1 about every case. But so how much of what we hear from
2 the public is information that you would have benefited
3 from if only you could have sat through the hearings
4 during the day. But we know that's an impossibility.

5 Couple of other housekeeping notes for your
6 information. This may be repetitive. I already recognize
7 faces in the audience from last time. And then there are
8 those who have to be with us day and night.

9 But the rules of the law that created -- I should
10 say the law that created the Energy Commission set up some
11 pretty specific rules as to how these procedures take
12 place. The two Commissioners and their Hearing Officer
13 sit pretty much in -- well, definitely sit in a
14 quasi-judicial role. We don't get the black robes or the
15 big paychecks, but the legal process is much the same.

16 And that means that once we initiate a siting
17 case, ex parte rules as they are called kick in. And that
18 means that neither the applicant nor any of the
19 intervenors for any of the parties to the case -- and the
20 interesting thing is the staff of the Energy Commission is
21 a party to this case. They cannot communicate with us
22 about any features of the case other than the public
23 hearings, like this, or as have taken place over the past
24 couple of days and will take place in the future.

25 And we have to predicate our decision on the case

1 on the record that is developed. So that is why the
2 evidentiary hearings that we're engaging in now often take
3 quite some time, because the record has to be established
4 as it is in a court of law. That's where the decision is
5 predicated upon on that record. So it's important that we
6 hear all that has to take place. And it's important that
7 it take place in the sunshine as I like to say in public
8 forums and no smoke-filled back rooms, et cetera, et
9 cetera. No private conversations.

10 As I say, we can't even talk to the staff. We
11 Commissioners have advisors. We can talk to them. But
12 they, in turn, can't talk to the staff. So that's how the
13 process goes. I'm just trying to make you feel sorry for
14 us by describing it to you.

15 Also you have to have a strong constitution and
16 other parts of your anatomy to sit here day in and day
17 out.

18 But again I welcome you. As we said to the large
19 crowd last night, very impressed with your interest. Very
20 impressed with the civic spirit in this community. Very
21 impressed with your community. I haven't spent much time
22 here in my life, but I'm a native Californian, fourth
23 generation, born and raised in northern California. So I,
24 too, like my California.

25 And in any event, we'll proceed with the public

1 testimony in just a moment. I'll give my fellow
2 Commissioner Mr. Eggert a chance to say some words and
3 then turn it over to Mr. Kramer who is going to tell you
4 all about how punctual we need to be to give all of you a
5 chance.

6 We had an incredible stack of blue cards last
7 night. We got about two-thirds of the way through them,
8 because about a third of the people I think gave up and
9 went home. We can't see how many people are out there
10 standing in the parking lot. Hopefully tonight not as
11 many as I heard were out there last night who got cold and
12 gave up and went home. And it's up to other people to
13 keep the chairs full all the time so nobody is standing
14 outside.

15 It's not our idea. There are fire marshals in
16 every city who have their rules and regulations. And
17 they're here in force the last couple of nights. So
18 they're enforcing their rules.

19 With that, Commissioner Eggert.

20 COMMISSIONER EGGERT: Thank you, Commissioners.
21 And I will try to be brief so we can get to the public
22 comment period.

23 I've actually been on the job for three weeks and
24 I think I have noticed a change in the color of my hair.
25 I suspect it's only a matter of time --

1 VICE CHAIRPERSON BOYD: It's the amount of hair.

2 COMMISSIONER EGGERT: That, too.

3 But I just want to reiterate a couple of things.

4 I want to thank you for being here tonight and taking time
5 out of your busy schedules to participate in this very
6 important process.

7 We've come here to Carlsbad to your backyard
8 because we do want to hear from you, because hearing from
9 the local residents about what they feel about this
10 project, whether they support, oppose or neutral, we want
11 to understand the reasons why you hold those positions.
12 And so I'm very much looking forward to an informative
13 evening.

14 And with that, I will turn it back over to our
15 distinguished Hearing Officer, Paul Kramer.

16 HEARING OFFICER KRAMER: Thank you.

17 We'll go into the details of your public
18 testimony in a few minutes, because we're going to have a
19 brief presentation that the parties thought this afternoon
20 would be both interesting to you and it's something we
21 were going to hear as part of our evidentiary hearings
22 either tomorrow or the next day or tonight. So we thought
23 we would offer that to you this evening.

24 Those of you in the front row, I think can you
25 see the screen over there okay? Or that one? Okay.

1 The presentation is by Lane Sherman. He's going
2 to be a witness for Terramar on the topic of greenhouse
3 gases I believe, yes, tomorrow. And he's going to offer
4 us a presentation about sort of a basic understanding of
5 the greenhouse gas issue. And then when that's finished,
6 we'll go into the ground rules for the public testimony
7 portion.

8 But while you're out there, we will be calling
9 people whose names are on these blue cards. I'm assuming
10 all of you came in that our public advisor Jennifer
11 Jennings -- she's there at the door waving her hand.
12 She's relatively new at her job, but her job is to help
13 you understand our process and how to participate in it.
14 So if you have any questions about the process, feel free
15 to ask her either tonight or you can get a card from her
16 and reach her at her office at some future time.

17 So Mr. Sharman, if you want to go ahead and make
18 your presentation.

19 MR. SHARMAN: Thank you, Commissioners and the
20 public.

21 I'm going to take about ten minutes to explain
22 about 40 years of science and math that I think all of you
23 being alert and bright will understand and readily reflect
24 upon.

25 Next page.

1 The first slide is the record of 400,000 years
2 looking back. And it's a very interesting graph,
3 particularly for a mathematician such as myself, because
4 it shows the consistent equilibrium between greenhouse
5 gases, CO₂, and methane and temperature.

6 And so if you look at the top two graphs and you
7 see how they change, there's four minimum and four maximum
8 over the last 400,000 years. And you can see in the
9 bottom graph how temperature changes along with greenhouse
10 gases.

11 Greenhouse gases are a wonderful thing. They are
12 the thing that keeps our climate warm. Without greenhouse
13 gases, our climate today would be about minus 18 degrees
14 centigrade or zero degrees Fahrenheit, would be an
15 unlivable planet. So we absolutely need greenhouse gases
16 to have a happy place.

17 I'd like you to also note the amount of time that
18 it takes for greenhouse gases, particularly the CO₂ -- and
19 that's what we're going to focus on during the remainder
20 of the talk -- how long it takes for it to go from the
21 minimum, about 200, to the maximum, about 300.

22 And those hash marks, the large hash marks are
23 50,000 year intervals. So it takes about an average
24 25,000 years for CO₂ to move from 200 parts per million --
25 very important, about 25,000 years to move from 200 parts

1 per million to 300 parts per million. So the change from
2 the minimum to the maximum, 100 parts per million, about
3 25,000 years. So I want you to remember that. There's
4 going to be a test.

5 All right. Next slide.

6 During the last 10,000 years, we've had a
7 wonderful run. And this run has allowed ice sheets to
8 remain stable, Greenland to remain a white part of our
9 planet, mountainous glaciers have stabilized after
10 retreating during the last glacial period about 20,000
11 years ago, and civilization developed and flourished.

12 We were at about 200 years ago at about 260 parts
13 per million of CO₂.

14 Next slide.

15 During the last 200 years, CO₂ has been on a rise
16 like a youngster drinking full strength Coca-Cola. It is
17 going up mediocrally. It has changed directions at an
18 astounding rate. It is now today at 387 parts per
19 million. And that level has not been seen in 400,000
20 years if you recollect by looking at the first slide.

21 The rate of change -- and this is where I ask you
22 to recall -- has never been seen in the last 400,000 years
23 this kind of an increase. What this means is that
24 temperature is going to also change very quickly, and some
25 species and plants just simply will not be able to adapt

1 to a climate zone that shifts north or south at a very
2 high rate.

3 We do have a kind of an insight though even
4 though we have not seen this in 400,000 years looking back
5 at the paleo-climate record 50 million years ago, 65
6 million years ago. We do have an idea of what it will
7 look like if CO2 goes to 400 or 450.

8 The most recent recommendation by a very esteemed
9 scientists, a great American, James Hanson, is that we
10 need to bend this curve that's going straight up, flatten
11 it, and then return it to 350 parts per million.

12 Next slide.

13 I'd just like you to all quickly look at the
14 impacts from the elevation of climate change, effectively
15 a change in the warming relative to the mean that we had a
16 couple of a hundred years ago. This is a glacier called
17 the Rongbuk Glacier. It was a source of major water
18 supply. And you can see now that it has very little
19 potential for continuing to be a water supply during the
20 summer months.

21 Next slide.

22 Likewise, in Nepal, this water supply, which is a
23 water supply for billions of people, these glaciers are
24 going to diminish in their ability to supply water during
25 the summertime.

1 Next slide.

2 This is a particularly poignant slide. This is
3 the sole glacier in Bolivia. And from 1949 to 2005, it
4 lost virtually all of its mass and thereby eliminated the
5 sole skiing location for the residents of Bolivia.

6 Next slide.

7 Shepard glacier is in Montana's Glacier National
8 Park. And unfortunately, according to some experts, in
9 ten years Glacier National Park, our Glacier National
10 Park, will need a new name, because there will no longer
11 be a glacier in that park.

12 Next slide.

13 Greenland is the granddaddy event. We notice
14 that the Arctic is melting and we heard reports of that.
15 Well, Greenland is south of the Arctic and it is breaking
16 up at an astounding rate; 162 cubic kilometers per year of
17 ice mass on average is being lost. You have to ask
18 yourself, if Greenland were to disappear, what would be
19 the fate of a coastal community like Carlsbad?

20 Next slide.

21 Here is a good pictorial representation of the
22 rate of change of the loss of ice mass in Greenland.
23 According to our own U.S. Geologic Service, if Greenland
24 melts entirely and all the ice sheets fall into the sea,
25 sea levels will rise 21 feet. If the west Antarctic ice

1 sheet, which is today below sea level, you can add another
2 25 feet to sea level rise. Such numbers would submerge
3 all low-lying California coastal communities, Carlsbad
4 included.

5 Next slide.

6 Here is the Maldives as a tiny island with a
7 2,000 year history. It is threatened with extinction and
8 they are preparing to evacuate.

9 Next slide.

10 And we know here in our own community what the
11 impacts are of climate change with respect to the supply
12 of water on the Colorado.

13 Next slide.

14 Should we have an increase in sea level, we can
15 see from this chart looking at the United States row west
16 coast for just a six meter rise, approximately 20 feet,
17 the west coast would have two million people that would
18 have to evacuate. At 75 feet, six million people would
19 have to evacuate. The numbers are clearly disturbing.

20 Next slide.

21 In conclusion, we have to look to ourselves as a
22 country for having lived a prodigious, wealthy, but very
23 carbon-dependant life. We have contributed 27 percent of
24 all emissions -- manmade emission in the atmosphere, by
25 far the largest of any country. Yes, today we are equal

1 to China, but we have far fewer people than China.

2 So in conclusion, I would state that NRG has a
3 very exciting future. It is a great renewable energy
4 company. The power plant could become an advanced campus
5 for energy research. And it is for these reasons that I
6 have been asked to support the plant be denied.

7 Thank you.

8 HEARING OFFICER KRAMER: Thank you.

9 The parties will assign this an exhibit number in
10 the morning when we get to greenhouse gases.

11 So for the public, I've mentioned the public
12 advisor. She's the source of blue cards where we get your
13 name. Please print if you can, because otherwise you're
14 going to make me look bad when I mispronounce your name.
15 And I think she's been speaking to you.

16 But if you were by chance here yesterday and had
17 to leave yesterday before your name was called, then make
18 sure we know that and we'll check and then put you at the
19 beginning of the que so that you don't have to wait as
20 long as those who didn't spend some time here with us
21 yesterday.

22 For public comments, we also ask you to spell
23 your name for the court reporter, especially if you want
24 to see it correctly spelled in the transcript, because
25 everything we say here today will be transcribed. In

1 approximately two weeks, a transcript will be available on
2 our website, if you're interested in reading that or the
3 transcripts of any of our other hearings.

4 We are going to limit people to three minutes.
5 And we have a timer system here. There is a little stop
6 light simulator that's hanging on the back of the chair in
7 front of the podium. When I start it, you have three
8 minutes. It stays green, until it goes yellow when you
9 have one minute left. And when it goes red, you've used
10 up your three minutes and we ask you to wrap it up within
11 a few seconds and allow time for your neighbors.
12 Realizing that the more time you take, the longer some of
13 your neighbors and friends will have to wait for their
14 turn.

15 Also at the table of the public advisor's table
16 out in the foyer, there is a piece of paper that explains
17 how you can provide us written comments if that's your
18 choice. You can do that either instead of talking today
19 or in addition to talking today. It's your choice.

20 And of course, written comments are not limited
21 to three minutes. Novels we will probably critique and
22 send back to you with a rejection letter, but something
23 between a short letter and a novel is perfectly
24 acceptable.

25 So with that, I will call the first speaker who

1 is I believe Mayor Pro Tem Ann Kulchin.

2 And I'm going to call two names each time. So if
3 the second name I call can start to make their way toward
4 to podium so they're ready to take over the mike when the
5 current speaker finishes, that will speed things along a
6 little bit.

7 And that second person would be Mark Packard.

8 MS. KULCHIN: Good evening. My name is Ann,
9 A-n-n, Kulchin. Kul, K-u-l, chin, c-h-i-n.

10 I used to say "chin" and people used to say,
11 "It's very nice to meet you, Ms. Chin." So I have to make
12 sure I do say "Kul" first.

13 I'm Mayor Pro Tem in the city of Carlsbad. And I
14 have served on the city council for 30 years. Now, I know
15 I'm a new-comer compared to our mayor, who has served on
16 the city council for 40 years.

17 I would like to thank you for coming and
18 listening to our community. I'm so proud of the people
19 that are here tonight, the people that were here last
20 night, the people in the parking lot, and also very proud
21 of you, thank you for staying until 10:00. I know it's
22 hard sitting, listening. And don't drink too much water.

23 As you know, the city of Carlsbad city council is
24 unanimously opposed to this project, all five of us. Our
25 major concerns is that the visual impacts the proposed

1 plant will have on our community for decades to come. We
2 enjoy a quality of life in Carlsbad in part because we
3 have been blessed with the coastal environment. I say in
4 part because we have also taken a very aggressive role in
5 protecting the beauty and aesthetics of our community over
6 the years to ensure our quality of life is maintained.

7 We have a gift in our beautiful coastline. And
8 it is our responsibility to protect it. The city has a
9 building height limit of 35 feet. We don't allow
10 billboards. Forty percent of our land is dedicated to
11 open space. And as the local developers will surely
12 attest to, we spend an extraordinary amount of effort
13 making sure projects fit the character of our city.

14 If approved, the new power plant will be the
15 second largest structure in the city next to the existing
16 Encina Power Station. It will create an industrial
17 complex unlike anything else along north San Diego
18 County's coastline. And if approved, it will dominate our
19 view shed for decades to come, long after the existing
20 power plant is demolished.

21 In addition to my role with the city of Carlsbad,
22 I have for many years chaired a regional coalition to
23 preserve our beaches. As policy makers, our beaches and
24 coastline are valuable resources that we are charged to
25 protect. I urge you to help us protect our valuable

1 coastline from another 50 years of heavy industry. Thank
2 you so much for listening to me.

3 HEARING OFFICER KRAMER: Thank you.

4 Mr. Packard, Councilmember Packard, followed by
5 Councilman Jerry Kern from Oceanside.

6 DR. PACKARD: Thank you for allowing me the
7 opportunity to speak tonight.

8 My name is Dr. Mark Packard. I'm a member also
9 of the city council. I'm a second generation Carlsbad
10 resident.

11 I enjoy hearing, Mr. Boyd, that you're a fourth
12 generation Californian, so you understand, as you
13 mentioned, the blessing that it is to live here.

14 And I'm particularly blessed to have grown up in
15 Carlsbad, and my children and grandchildren are also here
16 in the community with me. So I have a strong commitment
17 to the city of Carlsbad as do many of the people or most
18 of the people behind me as you have a commitment to
19 California. And I have been given the stewardship as a
20 councilmember to ensure that we have a quality of life
21 that our residents have come to desire and expect, and
22 those that are coming after us. And I know that you have
23 in California the same level of commitment and stewardship
24 to protect our quality of life here as in our state. And
25 I thank you for the work that you do in accomplishing

1 that.

2 But tonight, we're not talking just about a
3 project in Carlsbad, at least in my mind I'd like to talk
4 about, because the issues is more than just this power
5 plant or part of the issue is more than this, because
6 power plants throughout the state are in the same place,
7 many of them. I'm sure you're all aware that historically
8 power plants in California were sited along the coast
9 because of the cooling needs and new technology has made
10 that not a necessity anymore. The new efficient power
11 plants, they can be located anywhere because of the air
12 cooling. So a more appropriate area is in the industrial
13 corridors in all different locations.

14 And you will hear testimony in the future days
15 that Carlsbad has tried and offered to cooperate in
16 relocating to another location, not along our coast. We
17 understand and acknowledge that moving a power plant will
18 require changing infrastructure and moving infrastructure.
19 And that's something that we understand would be workable.
20 But it's not just in Carlsbad, but in other communities
21 the same conditions apply where old coastal plants are
22 desired to be retired. I know it's not going to be easy,
23 but doing the right thing is not always easy. But it is
24 the right thing. Leadership means doing the right thing,
25 even when it's not easy.

1 So my request of you tonight is that you as
2 representatives of the Energy Commission show leadership
3 and help preserve and protect our beautiful and wonderful
4 coast lines in California and particularly in Carlsbad by
5 denying this project and directing that it be constructed
6 in a more appropriate location. I thank you for your
7 time.

8 HEARING OFFICER KRAMER: Thank you.

9 Councilman Kern, followed by Barry Bleecher I
10 believe.

11 COUNCILMAN KERN: Thank you, Mr. Chairman.

12 My name is Jerry Kern, K-e-r-n.

13 I'm here to speak in favor of the power plant.
14 The idea that the reason that the Commission is here today
15 is because a few years ago there was a power shortage in
16 California because no city wanted to build a power plant
17 anywhere and the State has taken on that responsibility
18 now to site power plants. I think that's why the Chairman
19 said earlier they have more applications for sites now
20 than any other time in the past.

21 For me, right now speaking not as an Oceanside
22 city council person but as a regional player in this area
23 is that we need power into this area and we need these
24 peaker plants. And the reason you're here tonight is for
25 the siting of a peaker plant. And it's very critical that

1 we have this in the region.

2 Now to me if we step back from this, the reason
3 the State has taken over the siting responsibility is
4 because no city anywhere could place a power plant within
5 their city limits because nobody wants power plants within
6 their city limits. I don't care if you're in Palm
7 Springs, Carlsbad, Oceanside, anywhere else.

8 So you have the responsibility. And I don't envy
9 you at all making that decision about placing these power
10 plants where it's needed. But it is needed here.

11 And right now it's where the infrastructure is.
12 The switching yards are here. The gas lines are here. It
13 would be easier to put it here and more convenient and
14 less costly to the rate payer eventually, because they're
15 going to have to pick up the cost of siting it someplace
16 else.

17 So as a rate payer in southern California, I
18 think it behooves us to make things as easy on the rate
19 payer as possible. And to me, it makes more sense to
20 leave it at this current location and bring power into the
21 region for everybody. I understand Carlsbad's reluctance
22 to do this. But we all have to pitch in and do our little
23 part to help.

24 So thank you for your time.

25 HEARING OFFICER KRAMER: Thank you.

1 We'd like to ask you instead of showing applause,
2 if you agree with what a speaker says to simply raise your
3 hands. It's a little bit quicker, but also we can
4 visually then note your agreement better. We don't have
5 volume meters in our head. We're not applause meters. So
6 you know, 20 people probably sounds like as much as 50.
7 But if we see 50 hands versus 20, we'll notice the
8 difference.

9 And also if you agree with what the previous
10 speaker has said and you don't need to repeat what they
11 said. If you'd like, you can simply say that you agree
12 with that person and we'll understand that you've adopted
13 that person's comments.

14 And, sorry, Mr. Beecher. Want to do one for
15 thing.

16 Last night, we had some people come up and ask us
17 who are all these other people up here. I guess some of
18 them thought they were all with the Commission. And
19 that's simply not the case. We have on my far right near
20 the screen two representatives from the applicant. An
21 intervenor, Rob Simpson, is sitting next to them.

22 The three people over in the corner are from the
23 Energy Commission staff. As Commissioner Boyd said, they
24 are a party in the case, not working directly for the
25 Commission.

1 And then we have basically Ms. Siekmann and
2 Ms. Miller, two intervenors over on that site. And there
3 are some representatives of the city that would normally
4 be sitting in the left corner over there and I gather
5 they're out in the audience.

6 And that also reminds me I should make one point
7 about what Commissioner Boyd said about ex parte contacts.
8 And that is that doesn't prohibit contacts about
9 procedural items. So you may have heard what he said and
10 then you've seen me just recently talking to Mr. Monasmith
11 about something. In the parking lot, I had a conversation
12 with Mr. McKinsey, the applicant's attorney, about a
13 procedural issue. But those were simply procedural
14 discussions. They weren't attempting to give me facts the
15 Committee would rely on in making its decision.

16 And of course the world wouldn't run if I
17 couldn't talk about the details of arranging this room for
18 instance or -- and when I spoke to Mr. Monasmith last, I
19 was simply reminding him to put that graphic up on the
20 screen to, because that was a request, another one from a
21 member of the public from last night, that you had
22 something to look at to perhaps put some of the things
23 you're going to hear into perspective.

24 So I talked enough for now.

25 Mr. Beecher, followed by Lisa Jessup.

1 MR. BERNARD: My name is Glenn Bernard. Barry
2 Beecher is a friend of mine that knows I was here last
3 night and didn't get a chance to speak. So on his card he
4 defers his time to me.

5 HEARING OFFICER KRAMER: Could you then spell
6 your name for me?

7 MR. BERNARD: B-e-r-n-a-r-d.

8 HEARING OFFICER KRAMER: That's Glenn with two
9 n's?

10 MR. BERNARD: Yes, sir.

11 HEARING OFFICER KRAMER: Thank you. Go ahead.

12 MR. BERNARD: I, too, was born and raised in
13 southern California. I'm a retired marine. I believe in
14 capitalism and also have a lot of environmental concerns.

15 Became a Carlsbad resident in '84.

16 And seems like with each passing day, I like
17 government less and less. However, and I typically have a
18 lot of criticism for what goes on in Sacramento. But just
19 to show you that you should never say never, some people
20 are saying Sacramento's never done anything right. But I
21 think that the creation of this neutral Commission is a
22 good thing. So we know that Sacramento has done at least
23 one thing right in the last 100 years.

24 Anybody that has -- there's a lot of people in
25 here with environmental concerns. I've owned a Prius

1 since 2005. I'd like to put solar panels on my roof. The
2 Carlsbad city council is kind of cool to the solar panels
3 going on my roof in the same manner they're cool to this
4 project.

5 We need some ordinance in this city to pull the
6 height of trees lower so that I can have clean efficient
7 solar panels on my roof. Just as I'd like to have that as
8 much as I enjoy my Prius and as much as I'd like to have
9 energy-producing, clean, efficient electricity. Like
10 everybody else, I look forward to that giant smokestack
11 coming down. And clean and efficient electricity is a
12 good thing.

13 So based on what I've observed in my 26 years of
14 living in Carlsbad, I think it's legit to bring .up the
15 concept of the boy who cried wolf too often. About
16 20 years ago involving a section of dirt between the end
17 of the runway and the freeway a company -- pretty much an
18 ignored piece of property -- a company called Lego said
19 they want to put an amusement park there. And a lot of
20 people in Carlsbad went high and to the right over that
21 one. And I just don't know why. But it seems like that
22 we have that sort of thing now concerning another piece of
23 dirt up against a freeway.

24 In 2008, the global economy was teetering on
25 disaster, but we had a company here in Carlsbad called

1 Hoehn that wanted to expand into a dirt parking lot next
2 to their Porsche facility. But for whatever reason, a
3 lady seeking votes from that neighborhood in her position
4 as Planning Commissioner encouraged the council to just
5 leave that dirt be. And so it's still dirt today.

6 And now this.

7 So my interpretation of this is that it's like
8 kids. You have something. You don't really want it. You
9 ignore it. But then you notice somebody else wants it and
10 then you have a big tantrum.

11 So as a person who, like I said, I'm a capitalist
12 with environmental concerns. Please, let us have clean
13 efficient electricity in southern California. The more
14 the better, thank you.

15 HEARING OFFICER KRAMER: Thank you.

16 Lisa Jessup, followed by Bettymae Rose.

17 MS. ROSE: My name is Bettymae Rose, R-o-s-e.

18 HEARING OFFICER KRAMER: Could you pull the
19 microphone down a little bit?

20 MS. ROSE: I thank you for coming to the place to
21 hear what the people would like to have.

22 I would like to point your attention to an
23 article on January 31st in the San Diego Union Tribute.
24 And it says turning back the clock in south San Diego Bay,
25 a \$7.7 million restoration project in the south San Diego

1 Bay highlights just how difficult it is to manipulate
2 nature, even when the goal is to make the landscape look
3 more like it did when development took over. It's part of
4 a national debate about how to balance competing demands
5 on the highly altered terrains used by people and animals.
6 They are going to restore all of the mistakes they made.
7 And this is the beginning. And it's costing \$7.7 million.

8 They say in this article -- I don't have time to
9 read it all to you -- that we've lost 50,000 acres of our
10 wetlands in southern California. We only have 13,000
11 left. And we don't really want those destroyed. It's not
12 only the discretion for ourselves. All of us here won't
13 probably live to see the damage. But our children and
14 grandchildren and those beyond us, we owe them an
15 obligation of love to make sure the world is safe for
16 them. Not just for the fallout, the lack of the wetlands,
17 but what about the security?

18 Most of you here are too young to remember World
19 War II. I remember when Carlsbad was a blackout area and
20 we can't even drive up and down at night. We are in an
21 area here that after the NRG -- let's say I'm a very
22 wealthy lady. If I looked at this development and looked
23 at this situation, I wouldn't invest in it. And I'll tell
24 you why. Once it's put in and the electric lines go
25 out -- and as I understand it, most of it is going to go

1 out of state anyway and it goes to all these important
2 areas, we're going to be a sitting duck for terrorists to
3 come in and blow it all up, and there goes their
4 adjustment. And I hope that you will consider these
5 things as well. Other people haven't discussed this as
6 much.

7 And I thank you again for your attention.

8 HEARING OFFICER KRAMER: Thank you.

9 Bettymae Rose followed by Ms. Laugherty. If you
10 could make your way to the front, we have some seats in
11 the front while you're getting ready to follow her. I'm
12 sorry. You're right. Then following Ms. Laugherty will
13 be Jacques Romatier. Did you speak yesterday?

14 MR. ROMATIER: Yes, I did.

15 HEARING OFFICER KRAMER: I'd like to let people
16 who didn't get a chance to speak yesterday wait until the
17 end. Is that okay with you?

18 MR. ROMATIER: I would like to speak three
19 minutes and I would like to do so.

20 HEARING OFFICER KRAMER: No. I'm just saying you
21 can do it after people who have not --

22 MR. ROMATIER: I cannot be here until 9:00.

23 HEARING OFFICER KRAMER: Okay. Ms. Laugherty,
24 you were -- did she speak, too? No, I think we were on
25 Ms. Laugherty. Is she here? We'll come back to her if

1 she returns.

2 Okay, Mr. Romatier.

3 MR. ROMATIER: My name is Jacques Romatier,
4 R-o-m-a-t-i-e-r.

5 As I mentioned yesterday, I've been in this
6 business 30 years in the energy business. And today I'm
7 coming here a person like everybody else in this room who
8 is receiving a bill from SGD every month. And this
9 afternoon we had discuss I think one part which is not
10 related to do we want the plant or don't we want a plant.
11 It's what's happened to people like us paying our bill
12 every month on electricity when we choose a technology for
13 this new plant.

14 And what I've heard this afternoon, I was
15 listening to the testimony is that a compromise plant or
16 hybrid plant was chosen. This hybrid plant has one major
17 advantage for me is that the efficiency as confirmed by
18 the discussion this afternoon is definitely and
19 significantly lower than peaker plant or plants which can
20 run at higher efficiency. The quantification today is
21 basically showing that 15 percent difference; 55 percent
22 for the technology, 47 percent for this one.

23 So as a person receiving a bill, I'm asking
24 myself who's going to pick up this inefficiency? Is it
25 NRG? No. NRG business model for me is quite clear and

1 rightly so for them. They are trying to maximize the
2 speed at which this plant is going to be online. And they
3 are going to pay a premium.

4 But someone has to pay. There is no free bill in
5 this world. And someone will have to pay for the 15
6 percent loss of efficiency. And if you look, you can see
7 it's not going to be SGD, because SGD can transfer the
8 additional costs of more feedstock for the plant. It's
9 going to be us, the people, paying our bill every month.

10 So I object to one thing. I think this plant is
11 the wrong technology and we should have been better off
12 with a plant which will accommodate high efficient plant
13 which will not have any impact on our plate. So what I'd
14 like to say is we should get assurance from NRG if they
15 have this plant that there will be no impact of this new
16 plant on the rate which are going to be charged by SGDE in
17 the future.

18 Thank you.

19 HEARING OFFICER KRAMER: Thank you.

20 Did Ms. Laugherty make it back?

21 Jack Kubota, followed by Leland Alton.

22 MR. KUBOTA: Good evening. My name is Jack
23 Kubota. Last name is spelled K-u-b-o-t-a.

24 I've been coming to Carlsbad since the summer of
25 1952 in business, and it's such a beautiful place I

1 brought my family here in December of 1956. I've been
2 here ever since, and I'm one of those very fortunate
3 people the watch this become one of the great jewels of
4 north San Diego County.

5 I thank you folks for spending so much time here
6 and giving us all a chance to share some things with you.

7 First of all, I'd like to point out I was at a
8 meeting I believe in December 17th of 2007 when the
9 applicants made their first proposals. And I have a
10 handout here and in that, the scheduled that was presented
11 was November of 2008. Now it's very possible there have
12 been some updates and things, but I want to report that my
13 house, the San Diego Gas and Electric Company put in a
14 smart meter. And then my wife and I decided to buy
15 ourselves a Christmas gift, a brand-new washer and dryer
16 that's labeled high efficiency. And among other things it
17 will save power and she has to get rid of all the jugs of
18 soap she has because even the soap didn't even work
19 anymore because we're upgrading our lives. Even our soap.

20 So in the context of this -- and I'm in the
21 utility business, by the way. My business is water and
22 sewer. I used to be a water meter reader and I used to
23 flip manhole covers. And I'm semi-retired, but I still
24 get around a bit.

25 So however this proceeding proceeds, by the time

1 that they bring the cranes and start building, you will
2 have a chance to look at what smart meters are doing to
3 the power system. You will have a chance to realize what
4 your consumers are doing. For our house, you know, boy,
5 you know we pay 300 bucks a month for our power bill and
6 natural gas. So we'll be looking at that. We'll be
7 looking at that.

8 I can tell you on the water and wastewater side
9 we are seeing a reduction in the way people utilize their
10 facility. Obviously, the water supply side is the drought
11 and you've heard all of that. On the waste water side,
12 surely you know they have to do their business and they
13 still take showers and they wash dishes. But everything
14 is what we're seeing a reduction -- a reduction in those
15 kind of things.

16 So in any event, I just wanted to point that out
17 to you.

18 One last thing I would like to share with you
19 all. I've been coming here since the San Diego Gas and
20 Electric Company dredged the lagoon and built the
21 facility. We have had a partnership with this great
22 enterprises. And I think we should continue in that
23 spirit of partnership. I think the whole program can move
24 in another dimension. Let the folks decide collectively
25 what should be built here along the coast side. Unlike

1 the city of Oceanside, the gentleman said they don't want
2 a power plant in Oceanside. Our city leadership are
3 saying, we will work with you. We will find a site here
4 that will be compatible with your needs.

5 And on that note, I just leave you folks I think,
6 you know I think partnerships is a good way to do
7 business. And so I just hope that the applicants will
8 recognize my sincere message I had for you tonight. Thank
9 you very much. You are very courteous for listening to an
10 old guy.

11 HEARING OFFICER KRAMER: Thank you.

12 Mr. Alton, followed by Catherine Miller.

13 MR. ALTON: Leland Alton. L-e-l-a-n-d,
14 A-l-t-o-n.

15 I'll raise my voice so maybe the people in the
16 back can hear.

17 I've been involved with the Coastal Commission
18 ever since the enactment of the California Coastal
19 Protection Act. I've seen the way the Coastal Act has
20 been adjudicated, watered down through the years.

21 A principle issue remains here. This proposal
22 does not comply with the spirit of the California Coastal
23 Protection Act. I don't think it complies with the letter
24 of the law either. And I wonder if that might possibly
25 have to be adjudicated.

1 I'm prompted to make a suggestion that will sound
2 kind of strange after all of these going ons. But I think
3 to clarify cases such as this -- my God, something that is
4 zoned the way it's zoned only because it has these flat
5 tanks in it, putting towers on it, that's not the way the
6 Coastal Commission saw it. That's not the way the
7 Protection Act saw it. That's not the way we, the people
8 that voted for it. Perhaps you remember. Were you a
9 California resident at the time?

10 VICE CHAIRPERSON BOYD: All my life.

11 MR. ALTON: I believe that the people of this
12 state would easily pass as they did the California Coastal
13 Protection Act an amendment to clarify cases such as a
14 horrible carbuncle visual -- I mean making something
15 rather poor looking increase ugliness. To clarify, cases
16 such as this is simply where an amendment in my opinion
17 carries statewide just as did the original Act.

18 The wording could be when power plants in the
19 coastal zone become obsolete or inefficient, any
20 replacement efforts shall be directed outside the coastal
21 zone. And that would pass, gentlemen.

22 HEARING OFFICER KRAMER: Thank you.

23 Ms. Miller, followed by Tim Sullivan.

24 MS. MILLER: My name is Catherine Miller,
25 C-a-t-h-e-r-i-n-e. Miller, M-i-l-l-e-r.

1 Thank you for being here tonight.

2 My name is Catherine Miller, and I'm a resident
3 of Terramar, the 250 homes closest in proximity to the
4 existing plant and proposed project. I'm also a mother of
5 two boys, ages 8 and 11.

6 The city of Carlsbad has done an admirable job of
7 developing our city by the sea and making this the desired
8 place to live in San Diego County. Carlsbad is not a
9 transient city. People dig in and stay.

10 Siting the second power plant on the coast in the
11 most scenic corridor of Carlsbad is selfish,
12 short-sighted, and just a bad idea. This area is the
13 major exit for the flower fields, strawberry fields,
14 Legoland, the Premium Outlets, Car Country Carlsbad, two
15 of the three golf courses, several hotels and restaurants,
16 the Gemological Institute, a world-class business park,
17 over 20 schools, not including preschools, and beautiful
18 beaches and homes.

19 All of these are here for the enjoyment and
20 pleasure of residents and tourists.

21 There are many reasons why we live here and
22 people choose to visit Carlsbad. The coast is the true
23 star though. Carlsbad is also a host to a bustling
24 airport, sewage treatment plant, two malls, three golf
25 courses, campgrounds, agriculture, major athletic events,

1 beautiful parks and recreational facilities, and an
2 existing power plant. I would like to know if there are
3 any other cities that boast this many attractions and
4 facilities for residents and tourists to enjoy. None come
5 to mind. The coast again is the true star. And it
6 already has a power plant. We don't want two.

7 Along with these assets, it's the people that
8 make a city and we have some of the best. If I can be the
9 voice for the families that are not represented tonight, I
10 say this is not good now, nor for the future generations
11 of children in Carlsbad and the surrounding areas. It
12 would be unfortunate for this plant to be built and have
13 my two boys ask me why I didn't do anything to help stop
14 it.

15 Our children learn from the decisions we make and
16 count on us to advocate on their behalf. I would like to
17 see this project not be sited anywhere in Carlsbad. I do
18 not wish to see it anywhere in San Diego County. In these
19 dire economic times, it just simply makes no sense.

20 On a personal note, I'm disappointed the Carlsbad
21 Unified School District failed to take a position on this.

22 And on another note, I'm concerned about the
23 cumulative noise impacts from the proposed plant, the I-5
24 freeway, train whistles, and the airport. There is
25 already a fair amount of rumbling from the existing plant.

1 Building this plant in my opinion is moving back in time.

2 Let's proceed forward to the future and seek alternatives.

3 Thank you very much.

4 HEARING OFFICER KRAMER: Mr. Sullivan, followed
5 by Jeff Kasschau.

6 MR. SULLIVAN: S-u-l-l-i-v-a-n.

7 I want to thank you for letting us to have the
8 opportunity to speak for three minutes on these plants
9 that might be here for 50 years.

10 My question to you guys is if the power as of
11 right now isn't even going to be used in Carlsbad or San
12 Diego for that matter, because at this point it doesn't
13 appear NRG even has a contract with SDG&E to service us,
14 why would we have to bear these plants? If it's just the
15 way it goes, that logic doesn't work and it's not fair to
16 us members of the community. I would challenge you, that
17 should be the end of the debate right there. If really
18 this power is not being used for us, why do we have to
19 live with it? We already have to live with one plant.
20 Why would one community have to deal with two more plants?

21 The second point I'd have for you guys and
22 challenge you to think about is why put these on the
23 ocean? Everyone knows the wind blows from west to east
24 here in San Diego basically year round. You basically are
25 exposing as many people as you possibly can in this

1 community to the carcinogens and everything else coming
2 out of this plant. And frankly I don't think we need the
3 effect of these plants on air quality. You're going to be
4 exposing more people by putting it on the coast than by
5 putting it closer to the desert where it could shoot out.
6 And if that gentleman from Oceanside is right that we have
7 to have a plant somewhere, let's harm the least amount of
8 people as possible.

9 And the next thing I would say to you -- we've
10 already hit on it -- let's keep this coast pristine. Do
11 we want to have more beaches like Huntington Beach and
12 Long Beach, or do you want to have more like Del Mar and
13 La Jolla? We have a beautiful coast here. We have one
14 ugly power plant. We've dealt with it. We've made it
15 beautiful and kept it beautiful. Please, let's try to
16 preserve this beautiful coast we have.

17 And along those lines, what's the plan for the
18 bike trail? I don't know if any of you have ever tried
19 riding a bike in coastal San Diego, but you go out for a
20 bike ride and good luck making it home. Cars are
21 everywhere, the bike lane is narrow. And frankly you're
22 in jeopardy of getting hit any day you go for a bike ride.
23 Try taking your two kids for a bike ride. I haven't
24 taught my five-year-old how to ride a bike because I have
25 nowhere to ride.

1 This is where the trail was going to be. We need
2 a bike trail to go from point A to point B for commuters.
3 We also need it for ourselves for our families. And what
4 are we going to do with a bike trail if this gets moved?
5 So I ask you guys to think about those types of things.

6 And furthermore, in the case of tourism, this
7 goes from Carlsbad, a village by the sea, to Carlsbad
8 energy industries by the sea. What's that going to mean?

9 And again these are things you guys have to think
10 about, because we are the community and we don't want
11 this. Why are we having to put up a fight against a huge
12 money corporation like NRG that has all the money in the
13 world and they can send you all the expert witnesses who
14 can tell you everything you should hear. And I challenge
15 you guys to think this thing through because it's putting
16 us in a tough position and it's not fair.

17 And I'll end it with one last thought. Everyone
18 is saying they're glad they're not in your place. I would
19 flip that on its head and say I wish I was in your place.
20 You guys are the leaders of the energy department for the
21 state of California which is always led the United States
22 of America which has always led the world in advancements.
23 What better time to lead than right now? You guys --
24 (applause) -- the energy industry more than any other
25 industry in the world is at its cusp of change. And you

1 guys have the power to make that change. I'm going to
2 stand here and look at the past and put more plants up and
3 shake our heads or should we start putting alternative
4 energy in. Let's take advantage of the sun. Let's take
5 advantage of the wind.

6 Look at the front page of the L.A. Times today.
7 Look what's going on in Los Angeles. They're taking
8 advantage of the sun. Let's do the same thing here. NRG
9 does not have Carlsbad's best interest in their minds.
10 They have the money, they have the stockholders, and they
11 have their executives in their mind. It's your guys' job.
12 I wish I could be in your seat because I sure as heck
13 would put up a fight and do this right. Let's move into
14 solar and let's move into wind.

15 HEARING OFFICER KRAMER: Mr. Kasschau, followed
16 by --

17 MR. KASSCHAU: That was very good pronunciation.
18 Appreciate that.

19 HEARING OFFICER KRAMER: Well, good. Thank you.
20 Followed by Laurie Boone.

21 Go ahead, sir.

22 MR. KASSCHAU: My name is Jeff Kasschau, spelled
23 K-a-s-s-c-h-a-u.

24 I'm a Carlsbad resident and here as a proponent
25 of the Carlsbad Energy Center. I was here last night and

1 I appreciate everyone's comments, pro and con. And I
2 believe these forums are very important to let people have
3 their voices heard.

4 Commissioners, I'm a veteran of the last two
5 large de-regulation efforts here in the state of
6 California, including the latest MRTU implementation.
7 When I'm not engaged with de-regulation, I provide
8 services to enhance equipment reliability for energy
9 generation, transmission, and distribution. I also engage
10 with elements of smart metering and smart grid.

11 I understand transmission congestion. I
12 understand resource adequacy and locational marginal
13 pricing, our review of the California future electricity
14 marketplace and the future contribution of renewables.

15 That said, I'm for this project because it will
16 provide improved stability for the coastal north county
17 and likely more manageable price by limiting congestion
18 charges. And I believe when we move to the time of day
19 pricing we will see a less spiky price pattern.

20 I have lived here 25 years and appreciate the
21 value of this current location. However, we have lived
22 with it much like those that do around San Onofre and
23 those that do around Huntington beach. These facilities
24 are backbone elements of our current grid but
25 unfortunately they are coastal.

1 Moving this down in an area anywhere else in my
2 opinion is not environmentally friendly. This area is
3 what it is now. Why impact another area when we have
4 already done our damage? Further, I assume moving
5 transmission lines to accommodate another location would
6 follow the same pattern of damaging wildlife zones.
7 Again, I'm for the cool rule of this project and I thank
8 you for your time.

9 HEARING OFFICER KRAMER: Thank you.

10 Ms. Boone, followed by Tom Lemmon.

11 MS. BOONE: Good evening. I don't know if you
12 have noticed, but I've been here for every minute of
13 testimony. And I felt it was very important to really
14 come objectively to try to listen to all sides, because I
15 know that's what Mr. Eggert and Mr. Boyd are trying to do.

16 But I did ask that the community have a chance to
17 see the pictures that are up on the screen right now,
18 because this afternoon's expert testimony on the visual
19 impact analysis by Marsha Gale was very important to me
20 that the public would clearly see based on her testimony
21 that the current smokestack and the current power plant
22 would not be moved from its location even ten years after
23 the new plant is completed. So when you look at the map,
24 you see the red outline. That's where the new power plant
25 will be positioned. But the old smokestack and station,

1 that plant that's on the map, is still going to be there.

2 Now, something that Ms. Gale said really demanded
3 that I make a comment tonight. She was talking about the
4 visual impact. And she was showing landscape viewed from
5 a particular position on I-5 coming from the north
6 approaching the present location. And I want to quote
7 what she said. She said looking at the landscape and the
8 buffer that would be added to make a visual block of the
9 power plant, she said, at one point in the presentation
10 she said and I quote, "The existing smokestack is barely
11 seen peaking out of the tree canopy." And I thought very
12 strongly that I had to let the rest of the public that
13 might come tonight hear that statement. And I ran over to
14 Kinkos because I remember I had a picture in my digital
15 camera of a ten-mile away picture of the power plant and I
16 would like to give you a copy of my picture.

17 HEARING OFFICER KRAMER: Okay.

18 MS. BOONE: I want you to see that that picture
19 was taken from Double Peak Park which I estimate is at
20 least ten miles from Carlsbad. And you can see that the
21 only way that the smokestack that would be standing
22 ten years after the plant is built, the new plant is
23 built, the only way that the top of the smokestack could
24 barely peak above the canopy of the trees is if they plan
25 on building a mature giant sequoia forest.

1 HEARING OFFICER KRAMER: Mr. Lemmon, followed by
2 Diane Wist.

3 Mr. LEMMON: Good evening. Tom Lemmon, extra
4 sour, two m's, L-e-m-m-o-n.

5 I'm here today on behalf of the San Diego County
6 Building and Construction Trades Council urging you to
7 expedite your approval of the Carlsbad Energy's
8 application for certification. The building trades
9 represent trades unions in San Diego, whose primary
10 mission is to improve the health, job safety, and economic
11 conditions of not only its members, but of all working men
12 and women in the construction industry.

13 Right now, the quality of life is being
14 threatened by many things: The lack of affordable
15 housing, soaring gas prices, pricing costs for groceries
16 and other everyday goods, and a power grid that is
17 stretched to its capacity. At a time when the economy is
18 slowing and construction jobs are harder to come by, this
19 project will bring an estimated \$300,000,000 in spending
20 during construction, not to mention millions of dollars of
21 annual spending throughout the region once this power
22 plant is operational.

23 This project will have tremendous positive impact
24 on thousands of San Diegan workers and their families.

25 Encina is known for power generation, and the

1 site still makes sense because there is proximity to all
2 existing distribution lines as the infrastructure is
3 already in place. You have the power and the
4 responsibility to assure San Diego County's future energy
5 needs are met. I urge you to approve the Carlsbad Energy
6 Center's application for certification.

7 Thank you so much.

8 HEARING OFFICER KRAMER: Thank you.

9 Ms. Wist followed by -- is she here? There she
10 is. Followed by Jim McIntosh.

11 MS. WIST: Good evening.

12 First, I would like to thank the Commission for
13 giving me the opportunity to address you in this very
14 sensitive issue for southern California coastal residents.

15 Today, I was given the opportunity to speak as a
16 witness in opposition to the proposed power plant. I was
17 seated between two powerhouse experts witnesses, Dr.
18 Greenberg and Mr. Walters. For a principal of an
19 elementary school, their credentials were enough to
20 intimidate anyone in the room.

21 Tonight, I come to you not to talk about the
22 increase or decrease of greenhouse emissions, not NOx
23 emissions, particular matters, or the ozone layer. It was
24 stated today by Dr. Greenberg and Mr. Walters that
25 pollution generated by automobiles and truckers is far

1 worse than what would be created by the proposed power
2 plant. There is nothing we can do about the I-5. I think
3 that it is safe to say that it is here to stay.

4 The auto industry and President Obama are in
5 charge of making our automobiles cleaner and safer for our
6 communities.

7 My job as a principal and mentor to the children,
8 these are my people, but guess what. They're yours, too.
9 My job as a principal and mentor to children is not only
10 look at the here and now, but to look at the future. As
11 Ms. Busby said last night, you have a big job on your
12 hands. It is your morale and ethical responsibility to
13 protect and serve not only the members of this audience,
14 big and small, but also the individuals who are not able
15 to be here tonight. That includes the young man who died
16 just seven weeks ago that we heard about last night.
17 Emissions on any level, whether they meet the criteria or
18 not, is unacceptable in a residential area. I'm asking
19 you to please do what is right for the future.

20 Help is on its way. It stands right behind me.
21 We are living in a time of cutting innovation. Time is on
22 our side. The people have spoken. We do not want this
23 plant. Not now, not ever.

24 A couple of kids have -- they've given a couple
25 of journal entries about their life in Carlsbad. And this

1 one was written by Keely Hallinan and her school was
2 studying ocean day.

3 And, Keely, why don't you guys go up and take
4 this up to them, this picture. Take that picture up to
5 them. They're kind of scary, but it's okay. If I can do
6 it, you can do it. Come on guys, give them a warm
7 welcome.

8 They're working to protect their ocean. The
9 children gathered on the beach side and together spelled
10 out with their bodies "share the planet." We ask you,
11 please help protect our precious coastline, protect our
12 children. Thank you.

13 VICE CHAIRPERSON BOYD: You want to talk about
14 intimidation.

15 HEARING OFFICER KRAMER: Where did Mr. McIntosh
16 run off to? Mr. McIntosh, are you here? He may have
17 stepped out for the moment. Chuck Collins followed by
18 Susan Davison.

19 MR. COLLINS: Good evening. I'm Chuck Collins,
20 C-o-l-l-i-n-s.

21 I'm a resident of Carlsbad. I own two businesses
22 that operate at the Carlsbad airport. I'm am an airline
23 transport certificate holder and typed in five different
24 jets. I'm also a member of the Palomar Airport Advisory
25 Committee.

1 And I would like to point out to this counsel
2 that in the Palomar airport land use compatibility plan
3 there are two illustrations. One is the airport safety
4 zone. The other is the Palomar airport influence area.
5 The influence area has both sector one and sector two. I
6 believe all three of these areas are an important area to
7 protect. The thermal plume from the power plant is a
8 safety issue for all types of aircraft. We have general
9 aviation, commercial aviation, and business aviation at
10 Palomar airport and all three classes of aircraft would be
11 effected by this thermal plume.

12 Consequently, I'm here to point out that the
13 alternative sites offered to you at this time are not
14 compatible with that land use compatibility plan and
15 should not be approved. I believe as has been voiced
16 tonight your job is very difficult. And without a doubt,
17 we need to modernize our system.

18 I'm open to -- I'm neutral on the present
19 location of the power plant. But the alternative
20 locations are not acceptable. Thank you.

21 HEARING OFFICER KRAMER: So to be clear, your
22 concerns just apply to the alternatives?

23 MR. COLLINS: Yes, sir.

24 HEARING OFFICER KRAMER: Thank you.

25 Susan Davison, followed by Tim Royalty.

1 MS. DAVISON: Good evening. My name is Susan
2 Davison. Last name is spelled D-a-v-i-s-o-n.

3 I'm a local resident. I have been in this area
4 for 20 some years and I'm in support of this project. I'm
5 also an urban planner who is currently employed, which is
6 something to say in this economy for the last couple
7 years.

8 I'm also a local business owner. I have a
9 business that is in north county. We've had it for 17
10 years. And our business that relies on stable electricity
11 and water supplies for my business. And when we have
12 issues with the grid, I have issues in my business and I
13 have to send my employees home.

14 I also have a letter here in front of me from a
15 gentleman named Bruce Wolf. He is a friend of mine who
16 could not be here this evening. And he states,

17 "Dear Commissioners, I'm a resident of Carlsbad
18 with a view of the Carlsbad Energy Center project from my
19 home, and I also support this project.

20 "While I'm unable to attend the hearing, I'm
21 hoping that my comments will be read into the record.

22 "I'm in support of the project approximately one
23 year ago when I took a tour of the property. After
24 touring the site, I realized that the construction of the
25 facility and the Poseidon water facility on this location

1 would be a benefit to the city of Carlsbad as well as to
2 all users of electricity and water in southern California.
3 The land and the location seems logical, and I personally
4 see no genuine conflict with any of the adjacent property
5 uses, including the freeways which cries out for
6 improvements in horizontal and vertical alignment
7 notwithstanding the proposal.

8 "Additionally, the plant will be well buffered
9 with significant landscape improvements. The eventual
10 result of NRG's efforts in Carlsbad will facilitate the
11 availability of a large coastal property for development
12 with limitless possibilities. The city of Carlsbad and
13 citizens with concerns for the future of Carlsbad could be
14 and should be supportive of this project. I urge you to
15 support this.

16 "Thank you for your time.

17 "Bruce Wolf."

18 I also have additional letters here which I would
19 ask that be included in the record, too. And then one
20 more statement.

21 HEARING OFFICER KRAMER: Go ahead and make that
22 first.

23 MS. DAVISON: Lastly, as a planner who has
24 actually worked in the public and with the public for
25 many, many years, I appreciate the difficulty you have in

1 making this decision. There's many divergent opinions on
2 this, and you'll hear from very different people tonight
3 who live in the city and live in the area and care about
4 their community. We're born here. We get married here.
5 We work here and we have our children here as you say just
6 a few minutes ago. Okay. Yet, we often forget to think
7 about the houses that we need and the utilities that we
8 need and the supplies that we need as we continue to grow.
9 And that's why I'm here today in support of the project.

10 Thank you for your time.

11 HEARING OFFICER KRAMER: Thank you.

12 Mr. Royalty, followed by Jeff Lynch.

13 MR. ROYALTY: Good evening. My name is Tim
14 Royalty, R-o-y-a-l-t-y.

15 I've had the great privilege of living in the
16 city of Carlsbad now for 27 years. I know it's a long day
17 and I'll be very brief. I have one point to make.

18 If and only if this power plant could be built in
19 this location, I would not be excited about it, I would
20 learn to adjust and live with it. But that's not the
21 case. We have the technology and the skill to relocate
22 this facility into another area. It's not critical that
23 it be built here. It's convenient.

24 And my point is I'd like to see it relocated to
25 another location where it can be built and not have --

1 with all due respect, I'm sure it's a beautiful facility,
2 but it still is a monstrosity right on the coast. I ask
3 you that you not approve this project for another 400,000
4 years.

5 HEARING OFFICER KRAMER: We're not authorized to
6 make that promise.

7 Mr. Lynch, followed by Roger Williams.

8 MR. LYNCH: My name is Jeff Lynch, L-y-n-c-h.

9 And I came to talk I think a little bit about in
10 support of the project. I think that people have to
11 understand a lot of things.

12 First, it's easy to say I don't want it here.
13 It's easy to say I don't want a power plant. But we all
14 drove cars here and we all turn on lights when we get
15 home. So obviously somewhere we need power. And this
16 spot has never, in the current location which is closer to
17 the coast than the new plant is, has never infringed on my
18 ability to enjoy that coastline. I walk up and down that
19 coast. I bike up and down that coast. I go surfing in
20 that coastline, and it's right in front of the power
21 plant. It's never ever effected my view of the coast from
22 the coast highway.

23 And when you're going on I-5, I really hope that
24 the traffic never slows down long enough that I have to
25 sit and stare at it for five or six minutes. I don't

1 think it's a big deal when you're going on the freeway to
2 go by a power plant.

3 Now, there's a lot of people that are probably
4 going to have the views of their homes effected a little
5 bit, but the power plant was already there when they built
6 or bought those homes, too, so I don't think that's a real
7 excuses.

8 I think it's easy for everybody to say not in my
9 backyard, but we need a power plant. That's what we
10 already all talked about.

11 The other thing I'd like to bring up is the
12 corporate citizenship of NRG. People talk about the
13 lagoon, but they don't understand that there wouldn't be a
14 lagoon if NRG didn't dredge it every two years and spend
15 \$2 million every two years to do that. There wouldn't be
16 a sea bass fishery. There wouldn't be an oyster farm.
17 There wouldn't be -- what else do you have? We have the
18 seahorse farm and the water crop that go running around in
19 the lagoon because it's dredged.

20 And oh, by the way, the beach wouldn't have sand
21 on it if they didn't dredge the sand out of the lagoon and
22 put it back on the beach.

23 I've also seen NRG participate in a lot of
24 charities in Carlsbad. They give to this community. And
25 at the end of the day, I think what's really important --

1 one more point before I get to the end.

2 The cost, everybody is talking about just move
3 it. But there is a huge cost to that. And people are
4 talking about a few thousand or a few million dollars to
5 replenish some land somewhere.

6 The cost of moving the switchyard has got to be
7 in the hundreds of millions of dollars. And you're right.
8 SDG&E has stockholders. And those stockholders demand a
9 return. And they're not going to be the ones that absorb
10 a cost of moving a switchyard somewhere else. We are.
11 The rate payers are going to pay for that. And there has
12 to be a way that we don't pay these out things for land
13 that's already under use as a power plant. Let them.

14 NRG is also a cooperation that owns -- I know
15 it's a bad word these days to think a company should make
16 profit but the new efficient power plant is important for
17 their long term survival. Their ability to continue being
18 a good corporate citizen in Carlsbad is dependent on them
19 being a successful corporation.

20 And the last thing I would say is we're all here
21 today to voice our opinions and some of our opinions
22 differ. But at the end of the day, we all have to come
23 together as a community again. And whether you agree with
24 me or you agree with the other majority that's behind me,
25 I think at the end of the day it would be really nice for

1 you guys the make your decision, whatever your decision is
2 we'll live by it. I'll live by it if it goes the other
3 way or if it goes that way. And I hope everyone here will
4 do the same and move on and be a great place for us all to
5 live.

6 Thank you.

7 HEARING OFFICER KRAMER: Thank you.

8 Roger Williams, followed by Lisa Smith.

9 MR. WILLIAMS: My name is Roger Williams.
10 R-o-g-e-r, W-i-l-l-i-a-m-s.

11 As you can see, I'm not prepared. According to
12 Catherine, I'm never prepared when I'm speaking before a
13 large audience.

14 I've lived in southern California for 84 years,
15 34 of them have been within just a few 100 yards of the
16 plant. As a matter of fact, my home is in that picture.
17 I have to mow the lawn when I get home.

18 But I really have to apologize. I wasn't
19 prepared to speak when I came here. But I would like you
20 to know that I am 100 percent against any construction of
21 any power plant west of I-5. Thank you.

22 HEARING OFFICER KRAMER: Thank you.

23 Ms. Smith, followed by Lin Ball.

24 MS. SMITH: I can't help but laugh because I'm
25 not sure you really want me to spell my name. It's

1 L-i-s-a, S-m-i-t-h. It's probably the most common name
2 there is.

3 HEARING OFFICER KRAMER: And you're printing will
4 keep you out of medical school as well.

5 MS. SMITH: And I'm speaking on behalf of my
6 mother, Barbara Smith, who has sent me down here to speak
7 tonight because she is turning 90 the 16th of this month.
8 And as you might imagine, she's unable to attend due to
9 her medical issues.

10 She has been a resident for 20 years and has
11 expressed to me her concern about the construction of the
12 power plant. And I want to tell her and argue with her
13 all of the reasons why we need power here in Carlsbad, and
14 she says, yes, we need power, but this is an incredible
15 opportunity for the state of California to work with the
16 city of Carlsbad, the residents, and future developers to
17 self-impose alternative energy sources on those rooftops.

18 And recognize that there would be an additional
19 cost for any future residences. And when people ask why
20 are we deferring the cost to future development, we can
21 say to preserve the coastline. We can say, yes, we will
22 spend more money on a new unit in order to preserve the
23 coastline because we know we'll preserve the market.

24 And, wow, what an incredible opportunity the
25 State has to make a difference. You have a political hot

1 bed here, a political opportunity. All of these people
2 that came last night, tonight you've been working with
3 over the year. We both believe that you can adopt new
4 requirements that most cities would not agree to. And
5 you've seen what's already happened with the city of
6 Carlsbad. They've already adopted an inclusionary housing
7 requirement that 15 percent of all new units be affordable
8 and they actually required them to be constructed which
9 very few communities do that, but Carlsbad is a
10 progressive community because it can afford to do it. It
11 wants to preserve its charm and its coastline.

12 I have written some sample requirements and I'll
13 just hand them out to you.

14 HEARING OFFICER KRAMER: You can do that after
15 you've finished.

16 MS. SMITH: I want to start off by saying I know
17 these were flagged, because I wrote them. And I hope that
18 you will look at them in concept and see what you could
19 apply and what would work in a formal agreement with the
20 city of Carlsbad, because I really truly believe that
21 Carlsbad right now would much rather preserve the
22 coastline and impose upon themselves these regulations. I
23 think I'm probably short on time so I will just read the
24 first two and hopefully you will read the remaining.

25 Number one is all new construction, residential

1 or non-residential units, commercial and industrial in the
2 city shall be developed with power generating and energy
3 conservation measures that sustain the operation of the
4 unit or building over the amount of the above power unit
5 on an annual basis and to the maximum potential of that
6 particular site sustainability shall be confirmed prior to
7 building permit issuance and full operation of the
8 equipment as specified on building plans shall be
9 confirmed prior to occupancy of each structure.

10 Number two, the utility company shall buy back
11 the power that is not needed to operate that structure on
12 an annual average. At the same cost charged to the
13 customer up to the point that the cost of the equipment
14 and installation is paid for in full. That would happen
15 much quicker than what is in the current programs where it
16 takes 20 to 30 years to pay off installation or solar
17 photovoltaics.

18 HEARING OFFICER KRAMER: You've gone over by more
19 than a minute so I need you to wrap it up.

20 MS. SMITH: So in conclusion, I hope and my
21 mother hopes that you will take this opportunity to make a
22 difference. Thank you.

23 HEARING OFFICER KRAMER: Thank you.

24 Lin Ball, followed by Ted Viola.

25 Ted, are you still here? Okay. Good.

1 COMMISSIONER EGGERT: Just a quick comment before
2 you start.

3 I just wanted to make a mention of the fact this
4 came up a few times yesterday in the public comment.
5 Wanted to just encourage all of you that are interested in
6 some of the things that were just mentioned, the
7 opportunities for solar PV systems on your home, you have
8 a couple of programs in California, the California Solar
9 Initiative, the New Home Solar Partnership which we
10 administer at the CEC so you can get more information on
11 those programs on our website.

12 MS. BALL: Hello. My name is Lin Ball, L-i-n,
13 B-a-l-l. And I'm here as both a citizen and a homeowner
14 in Carlsbad. And specifically I'm opposed to the power
15 plant.

16 I specifically here because I live in a condo
17 minimum complex called ocean point. We are directly west
18 of I-5 and directly north on the lagoon. So if we had a
19 really strong arm and we could probably almost hit the
20 proposed power plant from where we live. There's 140
21 condominiums there and they all face the lagoon and they
22 will all face the proposed power plant.

23 I've been to many of these meetings over the last
24 year and a half, two years, although I wasn't able to
25 attend any of the recent ones today or yesterday. And I

1 have to tell you, I'm still concerned about air quality.
2 I'm still concerned about the visual impact, because you
3 know we already look at one power plant. As people have
4 said, we don't really need to have another one.

5 I'm also worried about safety issues that whether
6 or not there is going to be enough between the widening of
7 I-5 -- and I know months ago I heard about the fire
8 department talking about whether or not the safety
9 corridor would be enough between the widening and those
10 issues. I don't know if those have been resolved.

11 The bottom line is as a homeowner, 140-plus
12 condominiums, we don't really want to look at another
13 power plant. We don't want to have any of the air quality
14 or safety issues of the proposed power plant.

15 I appreciate NRG's stewardship of the lagoon
16 since I live on the lagoon. But I think there could be a
17 better place for the power plant. So I'm opposed to it.
18 Thank you.

19 HEARING OFFICER KRAMER: Thank you.

20 Mr. Viola, followed by Jonnie Johnson.

21 MR. VIOLA: Sure. I'll be brief. My name is Ted
22 Viola, V-i-o-l-a.

23 And my house is in the picture too. I live on
24 Tierra Del Oro. Probably the closest person to the power
25 plant literally. I live on the beach there. I built a

1 home there a few years back.

2 And the one thing I learned living on the beach
3 is -- and I've built before. I've built several homes.
4 Nothing that you can possibly put in your house is not
5 going to fall apart, period. I have copper. I have
6 brass. I have 316 stainless steal railings, and they
7 rust.

8 That power plant has been there 58 years, 59
9 years. I guarantee you behind that concrete there's an
10 awful lot of rust. There's an awful lot of Destruction
11 that's happened over the years. Not necessarily their
12 fault.

13 But I didn't just come in here to complain. I
14 did meet with NRG. I was at the very first meeting. I
15 spoke to them. I told them my concerns. I went over
16 there. I couldn't figure out why they spent \$80 million
17 for an old power plant and dump another \$26 million into
18 it knowing it was 59 years old if they didn't expect they
19 were going to be there for a while. I mean, I invest
20 money and I kind of know how it goes. You don't put money
21 in something if you're not going to get something back out
22 the other end unless it's charity. And the last time I
23 checked, they weren't operating on charity.

24 On a lighter note, I do live literally on Tierra
25 Del Oro, and I could hit the power plant with a tennis

1 ball from my house. And about three weeks ago the power
2 went out for ten hours. I could run an extension cord to
3 the power plant but I couldn't watch TV. So it's kind of
4 ironic that I live right next to it and I didn't have
5 power.

6 And that's kind of what's going to happen in the
7 future. I mean, there was some delivery issues but the
8 sad thing is the city of Carlsbad didn't come out and say
9 we don't want this here. Put it in somebody else's
10 backyard. They said you can keep it in our backyard, but
11 you need to move it off the coastline. It's time. It's
12 been there 59 years. So when you look at it this way you
13 say, okay. We're not being unreasonable.

14 But it almost seems like NRG saw the olive branch
15 and when they got it in their hand they saw a whip.
16 Because that's where we're at now. We got nowhere to go.
17 The city says we don't want it finally. You know, we're
18 not willing to take our team of three lawyers and go up
19 against NRG to say eminent domain, we're taking over this
20 land. We just want them to do the right thing.

21 We all need power. And not everybody agrees it
22 should be in Carlsbad and I can understand that.

23 As a builder, I also know there are certain
24 things you need. Power is one of them. There might be
25 another way to do this but it's probably not reasonable at

1 this point.

2 But I think if the city of Carlsbad wanted to put
3 a power plant somewhere else in the city of Carlsbad, they
4 could find another partner. We're one of the only cities
5 in the country that has a AAA rated bond. We could sell
6 those bonds. We could keep a piece of that power plant
7 and we could have an awful lot of facilities in the city
8 of Carlsbad paid for by the power plant. So there's a lot
9 of ways to look at this.

10 And I'll leave you with a joke. My mom just
11 turned 90 last week and the fact is she'd be here tonight
12 but she's at the Taj Mahal playing poker, Texas Hold 'Em.
13 I think that's great.

14 But the one thing she did teach me is two things.
15 If you don't like it, don't eat it. We had five kids.

16 And the second thing was, if you got something to
17 talk about, say it now. We don't want to hear you
18 bitching later. So that's how I lived my life.

19 I think the city here has done a great job. We
20 need your help. Thank you.

21 HEARING OFFICER KRAMER: Thank you.

22 Jonnie Johnson.

23 MS. JOHNSON: It's J-o-n-n-i-e Johnson.

24 I've lived in Carlsbad for the last 30 years.

25 And just for the sake of the lady back here, my house was

1 built at the same time the power plant was. At the same
2 time, we had an Italian rock pond planted in our backyard,
3 and it still isn't even tall enough. After 50 years, we
4 can still see that power plant.

5 But I sat here for three hours last night and I
6 listened to a lot of different conversation. And oddly
7 enough, I was sitting behind people who -- Ocean Hills who
8 were NIMBYs, just like we were NIMBYs because we do live
9 in that power plant right now and we've lived it in for
10 many, many years.

11 But I keep on coming back to some basic questions
12 here, which is why is this location? Why? Because it's
13 convenient for NRG. It's cost effective. It doesn't cost
14 them any money. Won't have to buy any property. Won't
15 have to do anything. Won't have to move transmission
16 lines, even though the transmission lines go in and out.
17 So you could move them out. SDG&E is going to pay for
18 those switching stations, right.

19 The other thing is the technology. Why do we
20 have to have an already dated technology? Doesn't NRG
21 know how to do anything else? They don't. They have
22 already a division for alternate technology. They have
23 the know how. But it's not cost effective for them,
24 because at this location, they're restricted to the type
25 of plant they want to put there. It's cost effective to

1 them. But what is it costing us?

2 And just as another point, where is the Coastal
3 Commission? I have to say something. I live in Terramar.
4 I'm not as unfortunate as Ted here to live on the beach.
5 But these people have to go through hoops to get steps to
6 go down to the beach. They have to go through hoops to
7 built a second story on their house. But are these rules
8 applied to everybody or just some people? So my
9 suggestion is you just say no.

10 HEARING OFFICER KRAMER: Thank you.

11 Ino Rivera, followed by Sam Miller.

12 MR. RIVERA: Good evening. My name is Ino
13 Rivera. That's I-n-o, R-i-v-e-r-a.

14 You've already heard anything that's on the
15 people's minds. I probably just want to say one thing.
16 Your two or three days if you've been here you've all
17 taken your bio breaks and walked down through the hallways
18 and seen all those great pictures, haven't you? You've
19 taken bio breaks.

20 HEARING OFFICER KRAMER: I can't say I recall the
21 pictures.

22 MR. RIVERA: Or tomorrow or tonight when you take
23 a break, go down the hallway, you're going to make a left
24 and just look on the walls. Those are pictures of our
25 coast and the surrounding community here. And there's not

1 one picture of there of the old power plant. I wonder why
2 that is.

3 Secondly, have you ever had a little stick in
4 your eye? What do you do when you have that little stick
5 in your eye? You remove it because it's an irritant.

6 That's what the old plant is. You guys have an
7 opportunity now to do something that is morally right and
8 you know it's going to effect, you know, future
9 generations down the road. Your legacy will be, hey, I
10 was part of that team there that oversaw us not putting a
11 power plant there.

12 I'm quite sure that if somebody parked a
13 Winnebago in front of your house, you would call the
14 police right away. Hey, that Winnebago is in front of my
15 house. I'd stake everything on that. I know you would do
16 that. It's time to do the right thing.

17 I would give anything to be in your shoes. I
18 really would, because I would do the right thing.

19 By the way, every one of those pictures that we
20 saw those glaciers melting, I've personally been to every
21 one of those locations since I was about 15 until
22 recently. And those glaciers are gone. They're leaving.
23 But you don't have to leave southern Cal to see glaciers
24 moving. You're in northern call. In Sierra Nevada, we
25 have our glaciers that are drying up at a tremendous rate.

1 Got rid of my script because everyone stole my
2 lines so I'm talking off the top of my head here.

3 Let me just reiterate, do the right thing. Do
4 the right thing. I agree we do need a power plant. I'm
5 not naive to say we don't need a power plant. We do need
6 a power plant. We do need that power plant. Do the right
7 thing and relocate it elsewhere. That would be the right
8 thing to do. That would be the noble thing to do.

9 Thank you very much.

10 HEARING OFFICER KRAMER: Thank you.

11 Sam Miller, followed by G. Lance Johannsen.

12 MR. MILLER: M-i-l-l-e-r. I live in Terramar and
13 I lived there my whole entire life. I'm (inaudible) and I
14 have asthma. I'm very concerned about air pollution. I
15 already have one power plant in my neighborhood. Our
16 pollution from the I-5 highway (inaudible). Please don't
17 add more pollution to our air. It only makes my asthma
18 worse.

19 Thank you.

20 HEARING OFFICER KRAMER: Thank you.

21 Mr. Johannsen, followed by Hank Krautter.

22 MR. JOHANNSEN: Yes, L-a-n-c-e,
23 J-o-h-a-n-n-s-e-n.

24 A resident of Terramar and author of a letter to
25 the editor published in Sunday's North County Times. In

1 my article, I ask Carlsbad city officials to start
2 monitoring air quality at several locations now to
3 establish baseline data for various local neighborhoods.
4 I waited until the second day of public comment here so I
5 could hear the others first. Now here are my comments.

6 Pollution pockets or domes caused by such
7 turbines are a real possibility. We already have
8 problematic pollution problems along the coast that I have
9 witnessed since the 1960s. During Santa Ana conditions,
10 the air is clear and beautiful many miles out to sea. But
11 because L.A. smog is being blown southwestward out to sea,
12 it accumulates out there until the winds change again.
13 Then it comes back at us in the form of an ominous brown
14 layer.

15 As a former resident on Skyline Road with one of
16 Carlsbad's best views, I will attest to the brown layer
17 conditions. I will also attest to agreeing with a sixth
18 grade friend that it actually hurt our throats to breathe
19 in foggy air laced with a heavy layer of smog.

20 Most nights the winds in Carlsbad die down to
21 nothing, which means the hazardous air quality from
22 reverse on-shore breeze can surround our homes for many
23 hours at night and remain until the daytime winds pick up
24 again.

25 I would like to illustrate with another air

1 quality phenomenon. Off the coast of France on calm wind
2 days they have found deceased fisherman in small fishing
3 boats dead for no readily apparent reason. I submit that
4 eventually there will be a finding that heavy smog on the
5 surface of the ocean can asphyxiate a healthy human.

6 As a final note, I submit this project will have
7 the effect of adding to the local air pollution such that
8 it will at times create hazardous pockets of pollution.

9 And the unfortunate humans breathing the gaseous
10 trap will pay the price in emphysema, cancer, and other
11 malities.

12 Mark this date for reference as February 3, 2010,
13 for it may become the day Carlsbad residents warned NRG
14 and CEC. If the CEC project -- that's the other CEC is
15 approved. It may become your Times Beach disaster.
16 Remember dioxins.

17 Carlsbad residents are not wallflowers. If you
18 think they have been damaged, they will use the courts in
19 a class action lawsuit against the perpetrators to
20 compensate themselves for their losses, whether it be
21 sickness, loss of life, or quality of their environments.

22 Thank you very much, Commissioners.

23 HEARING OFFICER KRAMER: Thank you.

24 Mr. Krautter, followed by Arnold Roe.

25 MR. KRAUTTER: My name is Hank Krautter,

1 K-r-a-u-t-t-e-r. And I am a long-time resident of
2 Carlsbad. Just part of that picture I brought up from
3 Kelly's school.

4 I've worked at this power station 32 years. And
5 I'm proud to say that it's been a great place. I've put
6 two daughters through elementary in Kelly, Valley Junior
7 High, and Carlsbad High School. And I'm very proud of
8 where they are at this time.

9 I'd like to say that in the many years that I've
10 been at the plant, along with enjoying the work, I've
11 enjoyed feel safe at the plant. Every day when I pass
12 through the gates I feel that the company puts their
13 utmost out to make it a safe place to work and that's very
14 important. And I think it's a safe environment, too.

15 While I have spent the bulk of my life at the
16 plant, I recognize that there are benefits and I think NRG
17 has been a very good corporate neighbor for the nine
18 years -- roughly nine years that they've been there. And
19 I believe our plant is clean and I think it's getting
20 cleaner as we go and the new technology is even cleaner
21 that will be coming. And I would like to say I look
22 forward to a place that will provide more jobs and
23 security and service to the community. And I appreciate
24 your time. And approve the Carlsbad Energy Center. Thank
25 you.

1 HEARING OFFICER KRAMER: Thank you.

2 Arnold Roe, followed by Donna Merhab.

3 DR. ROE: My name is Arnold Roe, spelled R-o-e.

4 I know you've heard from me during the daytime
5 sessions and you know of my experience as a professor and
6 a builder of power plants. When this plant was first
7 proposed, I, too, was of the opinion that the power plant
8 represented a need in this north county area. And I'm
9 sure that's what the NRG thought going back to 2006 and
10 certainly into 2007 when they were planning this plant,
11 because that's what the California Energy Commission
12 forecasts indicated, that by the time they would be ready
13 to build this plant, there would be need for a plant of
14 this size.

15 But NRG and the rest of our community had been
16 caught in an unfortunate downturn in the economic
17 situation since 2008. And the Commission's own reports
18 now indicate that what would have been a need at a certain
19 time in the future now will be a need possibly four or
20 five years later down stream. Not only that, in the
21 interim, there's been a tremendous movement to provide
22 alternative energy sources.

23 And so the company, the public utility to which
24 NRG must sell their power has in their own estimate
25 downgraded the need for the size of plant that NRG is

1 proposed a couple or three years ago. Three years ago,
2 maybe a 558-megawatt plant would have been warranted. But
3 NRG in their recent request for bids for suppliers of
4 power indicated they're only looking for about 200 to 400
5 megawatts. And I understand from conversation that
6 they're down in the lower end of that range.

7 They also have indicated by not accepting a bid
8 from NRG and other providers for power that they're
9 probably interested in seeing the power located in another
10 area of the county, probably the south bay area. And so I
11 understand where NRG came from in their original proposal
12 and they haven't had the guts to step forward and say,
13 look, we're not in tune with the times. Let us reconsider
14 what would be a better solution in view of the current
15 situation we currently find ourselves in. We must use
16 common sense and not be trapped in our own notions of what
17 would have been right three or four years ago.

18 Thank you.

19 HEARING OFFICER KRAMER: A couple times there I
20 think you meant to say SDG&E and you said NRG. Is that
21 right?

22 DR. ROE: I sorry? I said SDGE at certain times
23 because --

24 HEARING OFFICER KRAMER: They're the people
25 looking for the power.

1 DR. ROE: Oh, I'm sorry. Thank you for the
2 correction.

3 HEARING OFFICER KRAMER: Okay. Donna Merhab.

4 MR. MERHAB: I don't look like Donna Merhab.

5 HEARING OFFICER KRAMER: Okay. And you'll be
6 followed by Rob Simpson.

7 MR. MERHAB: Donna Merhab is my sister-in-law.
8 And unfortunately she had to go home to take care of her
9 son. She would have been here. She's been here all week,
10 all day, all afternoon. She's going to be here the rest
11 of the week because she's so passionate about this.

12 HEARING OFFICER KRAMER: Would you tell us who
13 you are?

14 MR. MERHAB: I'm Donna Merhab's brother-in-law.
15 My name is Michael Merhab, M-e-r-h-a-b.

16 HEARING OFFICER KRAMER: Thank you.

17 MR. MERHAB: But I think we've heard everybody
18 spill out really the justifications, the pros, the cons,
19 but it really doesn't boil down to the pros and cons.
20 It's not a matter -- we're hearing some experts say that
21 the pollutants are going to be damaging and some experts
22 say they may be damaging and we're hearing non-expert
23 citizens getting up here saying I don't think they're
24 going to be damaging. And it's usually one of the
25 citizens that lives in Oceanside or somewhere north of us.

1 And also the one percent of the people that are
2 coming up here and are pro-power plant, again, this is an
3 opportunity for you to make just with the forefathers when
4 they knew they had the responsibility to speak for the
5 people, they got up there and they wrote what they knew
6 the people wanted. They didn't write what they wanted.
7 They went out and talked to the people. And the people
8 spoke and they spoke through our forefathers.

9 And you now have the opportunity. The people
10 have spoken and the people do not want this power plant.
11 It's not a good thing. It's going to damage our coast.
12 It's going to damage the environment. It's going to be a
13 sore.

14 We have such a limited resource of coastal land
15 on the planet. Forget California. Forget the
16 United States. We're talking a planet. And now we're
17 looking at further detracting from that and it's just mind
18 boggling that we would do that when we have alternatives.
19 If we have no alternatives, I think we'd still be having
20 this meeting saying is this the right thing to do? No.
21 Let's just cut back on our use of energy.

22 But we actually have alternatives. And the fact
23 we do we need to exhaust all of those alternatives.

24 And I'm like the one gentleman who got up here
25 again who is part of the one percent that is pro-power

1 plant and says if we do it, great. If we don't do it,
2 great and I'll just let it go. I can tell you if you do
3 it, the people that are against it they're not going to
4 say great we're going to let it go. They're going to
5 continue to fight. They're going to continue to take this
6 to the courts. They're going to continue to push on
7 because it's the right thing to do.

8 But right now you have a chance to do the right
9 thing. So I just implore you, please do the right thing.

10 HEARING OFFICER KRAMER: Thank you.

11 Mr. Simpson, followed by Tim Fox.

12 MR. SIMPSON: Good evening. My name is Rob
13 Simpson.

14 I suspect the Commission has heard enough of me
15 today, so if you don't mind I'll turn my back. I'm really
16 here to speak to the people here.

17 No offense.

18 Maybe I'm a power plant geek. I follow these
19 proceedings around the state. This song and dance goes
20 from community to community. And the community never
21 really knows what's -- they're never given the information
22 of what the effect of this plant is going to be. I'll
23 probably never see this plant. But I came halfway across
24 the state to participate in this proceeding.

25 One of the big reasons is the effect on public

1 health. These things are usually put in poor minority
2 communities where the studies are starting to come out and
3 it's demonstrated they have higher asthma rates, they have
4 lower life expectancies, twelve to 17 years lower life
5 expectancy, they have higher respiratory failure rates for
6 seniors. And you forgot a condition, that's when the
7 lower life expectancy rates happen.

8 All the witnesses, the air quality experts today,
9 they all admitted this would worsen air quality. Your air
10 quality is going to be worse. And with the 800,000 tons
11 of greenhouse gas this thing will spew, it creates a dome
12 in the community that traps the pollutants here. So with
13 these increased emissions, you'll have them concentrated
14 in your community and it's not just the particulate matter
15 or the toxic air contaminants. This thing will transpire
16 four million gallons of water a day. So it will change
17 your atmosphere. That's a big difference from what the
18 existing plant does. It doesn't transpire so much water
19 because it spits it back into the ocean. This will just
20 evaporate the water through the system. It dumps a lot of
21 ammonia in the air. It dumps formaldehyde.

22 When I started looking at these plants, it was
23 more about global warming greenhouse gases. But the more
24 I study them, the more it's about public health. The more
25 this is a public health issue that this community should

1 know about. And you haven't received the notice that's
2 required by federal and state law that tells you what the
3 impact is going to be on air quality. Nobody has told you
4 what this impact is going to be. It's in report page 460
5 of the 800-page document. But if you haven't seen that,
6 you don't know this is going to exceed the national
7 ambient air quality standards for your community. This is
8 going to create a new exceedance of the safety limits for
9 air quality for your community.

10 HEARING OFFICER KRAMER: Thirty seconds.

11 MR. SIMPSON: The other reasons I participate in
12 these things is this is 1970 technology for a 2010
13 problem. We have -- we don't need these plants any more.
14 The CEC has got studies. They've got reports that show we
15 can meet our energy needs with renewable energy. We can
16 do the same thing.

17 But the problem is NRG can't make as much money
18 with renewable energy because it's so much more labor
19 intensive which makes a lot more jobs and it comes without
20 promise of the value of your energy dollar staying in your
21 community. It doesn't go up the pipeline or up the wire
22 somewhere else. It could stay here at home. And as we
23 move from these fossil fuels, maybe we'll send less of our
24 people to fight and die for fossil fuels in some other
25 countries.

1 HEARING OFFICER KRAMER: Time.

2 MR. SIMPSON: Thank you.

3 HEARING OFFICER KRAMER: Mr. Fox, are you here?

4 Guess not.

5 Ms. Laura Gonzalez, followed by Nina Eaton.

6 MS. GONZALEZ: Hello, my name is Laura Gonzalez.

7 I'm a student at Carlsbad High School. When my

8 dad settled in Carlsbad, he did so with the satisfaction

9 that it would be the perfect place for raising a family.

10 He chose a beautiful city of Carlsbad because it is

11 peaceful and safe. To this day, I truly believe he

12 couldn't have made a better decision.

13 I have lived in Carlsbad all my life and I love

14 the small town charm the city holds. I believe if we

15 allow another power plant to be built, not only will it

16 waste land but it will take away from the beauty of

17 Carlsbad. My dad chose this city with the intention of us

18 living in a beautiful and safe place and I hope that when

19 I have kids one day I also have that opportunity.

20 Thank you.

21 HEARING OFFICER KRAMER: Thank you.

22 Ms. Eaton.

23 Karina Kelly, followed by Aggei Madden.

24 MS. KELLEY: Hi. Good evening. My name is

25 Karina Kelly, K-a-r-i-n-a, K-e-l-l-e-y.

1 And I'd like to thank you for the opportunity to
2 address this Commission and I hope your logical evaluation
3 of this critical issue. It's greatly appreciated and
4 hopefully it will have a positive outcome for the city of
5 Carlsbad.

6 I've lived in Carlsbad for 15 years. I've lived
7 at 4908 Noblena Drive in Carlsbad for the past seven. My
8 home is located about half a mile from the lagoon. My
9 children attended Kelly School, Valley and Carlsbad High.
10 So you know well how close all those are to the power
11 plant.

12 My family and I swim, surf at warm waters at
13 Terramar, and I've pretty much walked the beaches daily
14 for exercise. I'm here tonight because I do not believe
15 the new power plant is necessary at all. There is no
16 demand for any new energy. Just ask San Diego Gas and
17 Electric. NRG has no contracts for commitments from
18 anyone. No one is interested in their energy because it
19 is unnecessary and archaic.

20 As Californians, we should be the frontier for
21 clean and renewable energy solutions, not the latest
22 fossil fuel junkie. Just look at NRG's website. They
23 have two other subsidiaries, Blue Water Wind and NRG Solar
24 that could provide clean energy anywhere on the globe,
25 nevermind the proposed location or any others here in

1 Carlsbad. I agree with the fellow resident who spoke last
2 evening that said who in their right mind would locate a
3 power plant on this beautiful coast when it is not
4 necessary?

5 I'll tell you who, a company shrouded in
6 perceived good works that knows this is the most
7 profitable solution for them and to hell with the
8 residents, because they don't live here. What do they
9 care that our children are getting sick and dying or that
10 the name north and south auto and train corridor of
11 California could be at risk in an emergency. Not the
12 mention the fire hazard it could create. The fire
13 department has already stated that they are not sure they
14 could defend a facility of this magnitude at that
15 location.

16 So far, every person that I have heard speak in
17 favor of this power plant are selfishly motivated, or at
18 least that's how it appears to me. The safety officer was
19 for his job, the boiler maker last night, for his future
20 job. The burrito job owner for increased business,
21 possibly a new kiosk in the new plant for the employees.
22 And interestingly enough, almost everyone I heard in favor
23 of it last night was immediately congratulated by Mr.
24 Lloyd of NRG.

25 My motivation in opposition to in new power plant

1 is because I care about my community, my fellow citizens,
2 and all of our children. As discussed last evening,
3 unfortunately, many children that I have known since they
4 were in kindergarten have died of cancer over the past few
5 years.

6 I worry daily about my own daughter's health.
7 Are we the next family to get hit with this cancer? How
8 many children do you know personally that have died of
9 cancer? Not many I'm guessing. Unfortunately for the
10 residents of Carlsbad, we all know at least one or two.
11 You hear the names in our restaurants, our supermarkets.
12 Our pastors and priests ask us for our prayers for them
13 and their families. How many funerals have you been to in
14 the past few years for a child that is 17 years or
15 younger?

16 HEARING OFFICER KRAMER: Can you wrap up, please?

17 MS. KELLEY: Sure.

18 The proposed plant's emission and pollution would
19 be catastrophic to Carlsbad as well as other neighboring
20 communities. Please deny this application for the greater
21 good of all. Please do not approve this for the benefit
22 of a few. Thank you.

23 HEARING OFFICER KRAMER: Thank you.

24 Ms. Madden, followed by Terry Simokat.

25 MS. MADDEN: Hi. Thank for being here. Thanks

1 for staying wide awake and looking like you're really
2 interested.

3 My name is A-g-g-i-e.

4 HEARING OFFICER KRAMER: And you were serious.

5 MS. MADDEN: Mary Agnus is my real name, nice
6 Irish Catholic from Chicago. And last name Madden, like
7 the coach, M-a-d-d-e-n. And, yes, I do have a son, John.

8 I haven't lived here for a long, long time. We
9 moved here in 2002 and I think we knew good things about
10 this because there is a grassy knoll by Garfield and
11 Chimiquin, which is or shortcut to the beach and the
12 people put the grass on it, you provided the land. So
13 that's how I started. But now I'm thinking when we had to
14 deal with this issue that it might help to look at a
15 perspective of somebody who came from somewhere else, you
16 know and dealt with similar issues.

17 And we came from a place called Bolder, Colorado.
18 And it has a whole front range, which is beautiful like
19 your ocean is beautiful. And your power plant was built I
20 think if I'm figuring right sometimes in the 50s. Well,
21 in the 60s in this front range guess what was built. The
22 National Center or Atmospheric Research, a beautiful
23 modern building designed by I.M. Pei, who you know.
24 Architects is very famous now for his addition to the
25 Louvre, but at the time was famous as well. And it was

1 put up there.

2 That was early 70s -- I mean early 60s. A little
3 while after you put your power plant in.

4 And then in 1967, people started thinking this is
5 the front range and if we keep going with development like
6 we've been going, there are going to be mountains -- I
7 mean buildings, homes, all the way up the side of this
8 beautiful scene, the flat irons, et cetera. And they just
9 proposed a tax to buy open space. 1967. And it continued
10 and it continues to this day. And if you go to Bolder,
11 Colorado, you're going to see an unimpeded front range.

12 And later in the 1980s, EMCAR. The beautiful
13 building by the world-famous architect was not big enough
14 and they needed to make an addition. And there was no
15 argument like this. There was nothing like this.
16 Everybody agreed, okay, EMCAR is up there but we will
17 never do that again. You've done it. Don't do any more.
18 Try to rectify it. I beg you, ocean front range, it's our
19 life blood. It's our future. Save it so our children
20 will see it. Thanks a lot.

21 HEARING OFFICER KRAMER: Thank you.

22 Mr. Simokat, followed by Larry Williams.

23 MR. SIMOKAT: My name is Terry Simokat,
24 T-e-r-r-y, S-i-m-o-k-a-t.

25 I've lived along the coast now for almost 30

1 years and I support the project. But I saw from the city
2 of Del Mar's opposition letter that they do not want
3 industry near the coast. And an article in the Sunday
4 Union Tribune refers to the power plant as heavy industry.
5 I know a little bit about heavy industry. And, in fact,
6 the power plant doesn't qualify as heavy industry.

7 I submit that the plant is not heavy industry but
8 in any case we should recognize it is industry that
9 creates strong economies and good jobs. During the course
10 of this project, jobs will be created. These jobs range
11 from blue collar to highly technical long-term positions
12 that have upward mobilities, meaning they have a future.

13 But even after the project is completed, the
14 power plant will create jobs or perhaps more accurately
15 careers. The San Diego Business Journal reported in
16 January that we lost nearly 8,000 manufacturing jobs in
17 the first eleven months of 2009. So where are these
18 people going to go to work?

19 California is not perceived as a
20 business-friendly state. And it seems we do everything
21 possible to reinforce that perception. If manufacturing
22 firms consider moving to San Diego or stay in San Diego,
23 they have to be assured of sufficient and reliable power.

24 If the project is rejected in favor of so-called
25 recreation facilities, what would we build? Boutique or

1 hospitals -- or hotels I mean and they block the view just
2 like this place does, this hotel.

3 And what kind of jobs will those facilities
4 create? And if they are built, they're going to need
5 power.

6 From a visual standpoint, if we compare the new
7 power plant to the Legoland's structure here and Flower
8 Hill, that straddles Power Hill, I suggest the power plant
9 might come out on the good side of this.

10 We are a small business focused on industrial
11 project logistics. We have no relationship at all with
12 NRG, not in the past and not now, and we've never talked
13 about anything. And we're hiring. Just this month we've
14 hired a couple more people for our increased bids. But
15 these positions are not for San Diego. They're for a
16 business we have in other areas, including the Imperial
17 Valley. We do some geothermal business some solar
18 business there. And the civic leaders in Imperial Valley
19 want us there.

20 But I have to mention one thing very quickly.
21 Looking at that picture on the screen, whoever thinks
22 they're going to pick that up and move it should think it
23 through very carefully. We do logistics. We have an idea
24 of what would have to happen just on the engineering side
25 to move that facility. And I don't think that the

1 residents would even allow it. So you've got another
2 problem there.

3 HEARING OFFICER KRAMER: Thank you.

4 Larry Williams, followed by Bill Baer.

5 MR. WILLIAMS: My name is Larry Williams.

6 L-a-r-r-y, W-i-l-l-i-a-m-s.

7 I've resided in Carlsbad since 1984. I live up
8 on the hill and have a wonderful view of the power plant,
9 which I don't appreciate. And I'm in opposition and can't
10 imagine that you're going to put another plant into the
11 Carlsbad area, specially for the reasons been very
12 thoroughly covered so far. But also I believe will have a
13 devastating impact on the value of real estate, specially
14 around the plant.

15 I don't know if that's been looked into, but it
16 should be, especially in view of what's happened in real
17 estate values here in the last two years.

18 Thank you.

19 HEARING OFFICER KRAMER: Thank you.

20 Mr. Baer, followed by Glenn Semel.

21 MR. BAER: My name is Bill Baer, spelled B-a-e-r,
22 not b-e-r.

23 I've been a resident since 1973. When we come
24 here, the stack was small. But sometime in the 80s they
25 built a bigger stack which has caused pollution, damage,

1 and disregard for health problems.

2 I firmly oppose this new plant for two reasons.
3 Visual blight to the coastline. I wrote a poem called
4 "Ode to the Stack" in the 80s, and it appeared in the
5 newspaper and it described how beautiful the coastline is.
6 However, this big stack stuck up and I think ruined the
7 landscape.

8 You heard last night example of the pollution
9 that has been caused by the present power plant. A
10 tragedy that shouldn't have occurred. I oppose this on
11 the visual blight. And it's not a local landmark. It's a
12 terrible looking situation for the beautiful coastline
13 that we have.

14 As noted in the new plans, there are going to be
15 two additional stacks that will be built. So we're going
16 to have three stacks. I don't know how long that's going
17 to be, but they say about ten years. Can we afford to
18 have this air pollution and really disgusting looking
19 stack in Carlsbad?

20 Thank you.

21 HEARING OFFICER KRAMER: Thank you.

22 Mr. Semel, are you here? Then Keely Hallinan
23 followed by -- are you Mr. Semel? Go ahead.

24 MR. SEMEL: The last name is spelled Semel,
25 S-e-m-e-l.

1 And I'd like to start with just a brief question
2 to both Commissioners. Do you have a value or cost of a
3 human life? We'll get back to that.

4 There's a number of things including the fact
5 that in the last year the cost for converting your home to
6 solar energy has been cut in half. The turn-around time
7 is now six years instead of 12 or 15.

8 I understand there is a new plan being proposed
9 by the state and city to include that installation in your
10 taxes which would further reduce the cost and greatly
11 increase the adoptability of that.

12 There's a number of the people that have spoken.
13 I'm glad that you're interested in the opinion and what
14 the vast majority was, because if you discount the people
15 that were here that worked for the new power plant that
16 worked for SDG&E, worked for the current power plant or
17 have another vested interest, the vast majority were
18 clearly opposed.

19 I looked up and saw the mandate and your vision
20 statement today. And I have both of those which I'm
21 assuming you're familiar with. Last night and earlier
22 tonight we had fire marshals here. They indicated that
23 the maximum capacity was 122 people for this facility. We
24 reached maximum capacity last night. And they stopped
25 people from coming in. The question to either of you is

1 would you have taken it upon yourself to override their
2 decision and decide to let more people in against what
3 their recommendations were? Probably not.

4 So while all of us have an opinion and I believe
5 they're all valuable, there is one opinion that has
6 significantly higher value. Actually a couple. And those
7 are the people like we entrust them to decide how many
8 people can safely be in a facility like this, because
9 that's their job. Because that's what they do, study,
10 decide, and understand based on our public safety what is
11 acceptable and what is not. And on the record, you have
12 both Kevin Crawford forward, the fire chief for the city
13 of Carlsbad, somebody who's been in the position for 25
14 years question and answered. You finally get to the point
15 where you ask his opinion, he clearly states that this
16 presents a dangerous situation and that he is opposed to
17 the power plant as it is currently presented. That's an
18 opinion that you should follow that carries more weight
19 than the general public.

20 Secondly, you have the fire chief, senior fire
21 marshal who is also responsible for some of the emergency
22 response in relation to anti-terrorism. That's another
23 opinion that should carry more weight. And his opinion on
24 the record when asked is that he does not agree with the
25 current assessment that NRG has laid forth in their

1 ability to respond and his opinion as to whether or not he
2 believes this should be approved is no. And those are
3 people we entrust for our safety whose opinion carries
4 more weight and it should with both of you as well.

5 HEARING OFFICER KRAMER: Thank you.

6 Keely Hallinan, are you here?

7 Sheila Henika, followed by Doug Casey.

8 MS. HENIKA: Good evening, Committee and staff.

9 My name is Sheila Henika. That's spelled S-h-e-i-l-a.
10 Last name, H-e-n-i-k-a.

11 I've been with Encina Power Station for nine
12 years as an environmental engineer. I'm also a resident
13 of Oceanside. I've been a resident of Oceanside for
14 20 years.

15 And for the record, I'm also a second generation
16 southern Californian. I have two children and I'm rushing
17 because I have to go get one.

18 We not only provide efficient energy generation
19 but are also the steward of the Agua Hedionda Lagoon. It
20 was brought up before, but just to enlighten you a little
21 bit more, Encina owns all three basins of the lagoon.
22 They were dredged originally as mentioned for the plant
23 cooling as well as we maintenance dredge them every
24 two years to keep the tidal prism, the flow, to replenish
25 the nutrients for the biota well as to replenish sand on

1 Carlsbad beaches.

2 I look forward to working at the new Carlsbad
3 Energy Center Project to continue my work as well as NRG's
4 environmental stewardship. I respectfully respect that
5 the Committee approve this project. Thank you.

6 HEARING OFFICER KRAMER: Thank you.

7 Doug Casey, followed by Robin Kuhn.

8 MR. CASEY: Hi. My name is Doug Casey,

9 C-a-s-e-y.

10 I'm a Carlsbad resident. I live here with my
11 family. My oldest daughter is a freshman at Carlsbad High
12 School. She's taking honors algebra this year. She
13 doesn't really like it. I was talking to her about it and
14 a commercial came on TV and it just came up watching some
15 of the earlier presentation. There was a commercial for
16 solar power. And she's going, what good is algebra?

17 Well, we just happen to have a neighbor that
18 installed solar panels on his house about two weeks before
19 that. I'm all for solar. I think it's great. I think
20 the State needs to push the technology. We used algebra
21 to calculate the return on investment on my neighbor's
22 house. It was 23 years. That 23 years as a return on
23 investment is not a good economic decision. Yes, we have
24 to push alternative energy, but we have to do it smart.
25 And economics are a key component of that.

1 Getting back to economics, the NRG power plant,
2 they're one of the major taxpayers in Carlsbad. I called
3 the NRG. I checked. The new power plant will provide
4 five to \$7 million a year in additional tax revenue.
5 That's a great deal of money.

6 I live here in Carlsbad because the quality of
7 life. The quality of life, it's location, location,
8 location. But that location really requires a balance and
9 there is an economic balance that the industries in
10 Carlsbad supplement the residents here. It takes a lot of
11 houses, a lot of property tax, thousands of houses to make
12 up five or \$7 million a year in property tax. And with
13 that said, I believe there is a balance. I think NRG has
14 been a good neighbor.

15 People talked about the sound. When the storms
16 hit in the winter and the beaches become rocky, the kids
17 don't want to go to the rocky beaches or go to the beaches
18 with the sand. Unfortunately, we've had NRG dredging the
19 lagoon so there's sand for the kids to go play at. That's
20 part of the location.

21 The lagoon, a few years ago there was a killer
22 algae that infected the lagoon. Killer taxidermia was the
23 name. Was NRG's leadership and resources that nipped it
24 in the bud. Today, the lagoon is a recreational resource
25 in the city of Carlsbad because of NRG's leadership.

1 They've been a good neighbor. They are an
2 important part of our local economy. And that's the
3 balance. That provides the quality of life which is why I
4 live here with my family. With that, I'd like to say I
5 support the power center.

6 HEARING OFFICER KRAMER: Thank you.

7 The man with the two young ladies, were you
8 planning on speaking, sir?

9 (Inaudible)

10 HEARING OFFICER KRAMER: Well, given that it's a
11 school night, when you're ready why don't you come up. I
12 assume you'd like to take your girls home. So -- you're
13 in no hurry. Okay.

14 Ms. Kuhn, are you here? Mr. Kuhn, are you here?

15 Ms. Roubina Ruby, followed by Michael Fritz.

16 MS. RUBY: My name is Roubina Ruby.

17 R-o-u-b-i-n-a, R-u-b-y.

18 I haven't come prepared, so I really don't have
19 anything written to tell you. But all I can say that I
20 oppose and I don't like to see the coast with a massive
21 gigantic industry that is going to ruin our environment.

22 Thank you.

23 HEARING OFFICER KRAMER: Thank you.

24 Mr. Fritz.

25 MR. FRITZ: Good evening. My name is Mike Fritz,

1 F-r-i-t-z.

2 HEARING OFFICER KRAMER: I'm sorry.

3 MR. FRITZ: That's all right. It's my
4 handwriting.

5 Anyway, you know, I came and I had a lot of
6 prepared statements I wanted to say tonight. And a lot of
7 people in the room have already left. And a lot of the
8 things I had to say have already been said for me.

9 But I should start out by saying I think of
10 myself as being eminently practical person. And my
11 politics, the way I usually think about things is all
12 geared towards what's practical. And clearly we need
13 power in California.

14 I've been a resident for the last 14 years. I
15 lived through the brownouts. I've lived in blackouts. I
16 was here when we had the power-outs ten days ago. I saw
17 all these things.

18 But yet I have to tell you as somebody who's out
19 of state and then moved here, I remember clearly twelve
20 years ago I was living in Phoenix and I came to San Diego
21 to interview. I was at La Jolla at the time. And my
22 employer that was prospecting for me said, "Mike, come
23 down to the beach and take a look." I went down to the
24 beach and I took a look and he said, "This is why you live
25 here. This is why you live here. This is the most

1 beautiful thing in the world."

2 When people think of California, they think of
3 the beaches. They don't think of the Inland Empire. This
4 is surfing. This is the cliffs. This is the fields.
5 This is the beaches. This is what we have. This narrow
6 strip of land that runs up and down the coast is what
7 California is famous for.

8 When these power plants were built, they were
9 built predicated on the idea that we needed to have water
10 cooled plants. That's not true anymore. It isn't true.
11 We don't have to do this. And it makes no sense at all.
12 I mean, Roubina, who just spoke, you know, we were walking
13 to the beach about three weeks ago, and we used to do that
14 three or four nights and week. And we walked down and saw
15 that power plant and we said how ugly is that. This has
16 an effect that goes on.

17 The other thing I would tell you besides talking
18 about the environment, about our health, about the air
19 quality, about all the other issues that have been raised,
20 I would tell you the other thing you have to decide is
21 about precedent. Because when you open the door in life
22 and you say this is acceptable, it becomes a precedent.

23 And we'll build other plants. This is not just
24 about this plant, this opportunity for energy to save
25 money. This is a money thing. There is no company that

1 exists except for the idea of making profit. That's what
2 companies do.

3 It's time to stand up. There's some things that
4 you cannot compromise in life. And this coastal small
5 piece of life that we have needs to be preserved and
6 maintained for what it is. And I promise you on behalf of
7 all the people here if you put this up to vote it would
8 never pass. And I can tell you if you haven't considered
9 this and haven't thought about it, we're going to fight.
10 And we will make it the most expensive lawsuit you ever
11 had. It's not going to pass.

12 HEARING OFFICER KRAMER: Thank you.

13 Gary Duerst, followed by Barbara Anderson.

14 MR. DUERST: My name is Gary Duerst, D-u-e-r-s-t,
15 I'm a resident of Carlsbad. I've been a property
16 owner since '79, a resident since '02. I live just a ways
17 north just above Tamarack, a half block from the beach.
18 So I'm one of the local neighbors. I'm also retired, not
19 working at all. I have absolutely no ties to NRG or
20 anyone else. So I want to let people know that I'm one of
21 the folks that is in support of this project that does not
22 have any ties to it.

23 I understand that there will be a need for
24 conventional power plants well into the future, even
25 though I'm all for alternative energy. And I personally

1 put my money where my mouth is by installing a PV system
2 over five years ago. But I understand that at this point
3 in time we don't have the battery storage or the other
4 ways to carry over to get to the point that we don't need
5 on-the-spot power that can only be supplied by the more
6 conventional power plants.

7 Everybody else has talked about trying to
8 relocate this thing, so I'm not going to mess with that,
9 or it has this support structure and all of that.

10 I would like to remind some of my fellow
11 residents that we have enjoyed -- because of the power
12 plant for the last 60 years the reason that Carlsbad
13 became a city, became a city was because of the tax base
14 that the power plant provided to the city. And the power
15 plant transformed Agua Hedionda from stinky water into the
16 multi-purpose water facility it is today. To quote from
17 Poseidon's website, Poseidon is another new industrial
18 project that is being built on the same site. It just
19 happens to be favored by the city and I favor it also.
20 But from their website it says in Spanish, Agua Hedionda
21 literally means "stinking water." This was an accurate
22 description of the stagnant lagoon before the Encina power
23 plant was commissioned in 52.

24 For over 50 years, the operators of the power
25 plant have regularly maintained the lagoon and dredged it

1 in opening to the ocean. As a result, today, the 380-acre
2 Agua Hedionda lagoon is a man-made shallow coastal
3 embankment teaming with marine life and array of
4 recreational and educational facilities and environmental
5 research. I wish my city had spent the time and money to
6 try and come up with the best looking power plant rather
7 than fighting it.

8 Here is an article in what they're doing in
9 England to try to soften and make the best -- making
10 lemonade out of lemons.

11 With that, I close my comments.

12 HEARING OFFICER KRAMER: Thank you.

13 Barbara Anderson.

14 Kevin Davies, followed by Jeannine Miller.

15 MR. DAVIES: First of all, I want to thank the
16 Commission for all the good work they've done on solar.

17 My name is Kevin Davies, D-a-v-i-e-s. I work for
18 Silicon Renewable Energy. And, yes, that is a solar
19 business. We install commercial solar systems. I didn't
20 come very well prepared this evening, but I just had a
21 couple of thoughts to leave with you.

22 And that is in our business, we're told
23 distributed electricity generation is what's sought after.
24 I think this is a rather large building that is being
25 built here or being extended, I guess more than double its

1 capacity. I'm just wonder what the CEC are thinking when
2 starting up a new plant when distributed electricity
3 generation seems to make a lot more sense to me.

4 And of course you might say I have a selfish
5 motive for being here, but believe me, I'm not in this
6 industry for selfish reasons. I could work in a number of
7 industries and enjoy my life. I've worked in nuclear
8 industry. I've worked in the oil industry. I've worked
9 all around the world. And I'm very surprised to see when
10 I moved here this plant being on the coast as it is,
11 because in many european countries you're not even allowed
12 to build anything higher than a two-story building on the
13 coastline because you block people's view.

14 So I was very surprised having only been here
15 six months. But I moved here because of the beach and
16 resort. Although I'm director of engineering at a
17 brand-new solar company -- and I wish the gentleman who
18 had been up only a few minutes ago who is saying where is
19 all the new jobs are coming from. Well, I'll tell you
20 where they're coming from. We've just employed
21 approximately 70 people in the last six months in our very
22 own business. And we're headquartered here in Carlsbad.
23 And we have a manufacturing facility in Oti Mesa, and
24 we're putting on extra shifts and solar is working.

25 And I also don't quite understand when we're

1 doing studies and we're trying to get transmission studies
2 done for solar, why the lines are being choked by fossil
3 fuel generation and dirty electrons leaving no capacity
4 for the future of renewable energy.

5 And this state has made it a policy that we have
6 a portfolio, a standard to meet given over the next few
7 years. And I don't know how we can achieve that if we
8 continue to put on -- build new power stations, be they
9 gas or oil or coal and not leaving us the extra capacity
10 to fit renewable energy on the power lines which are
11 already stressed. Surely, the policy should be for
12 distributed generation smaller units.

13 A lot of people in the room tonight have
14 suggested they relocate this power plant somewhere else.
15 I suggest you don't relocate this power plant somewhere
16 else. That in fact you put smaller power plants and
17 distributed them around into the neighborhoods where the
18 loads are. That would make far more sense to me.

19 So with that, I will end. But thank you. And I
20 do appreciate the CEC's good work in the solar industry.
21 I thank you for the plug earlier. I appreciate that.

22 HEARING OFFICER KRAMER: Thank you.

23 Jeannine Miller, were you here?

24 Ace Hoffman. Kathy Kinane.

25 You might be Mr. Hoffman?

1 MR. HOFFMAN: Yeah, I'm Ace Hoffman. A-c-e,
2 H-o-f-f-m-a-n.

3 And I've spoken in front of you guys a couple of
4 times about San Onofre. This is my first time here on
5 this issue.

6 NRG has a pretty bad reputation in the nuclear
7 industry because they're trying to re-start the nuclear
8 renaissance. So they started to build a new nuclear power
9 plant in Texas. And they said it was going to cost less
10 than \$10 billion, but Forbes -- the people are estimating
11 17, 18 billion dollars. Everybody is just saying all they
12 want to get government money. That's all they're really
13 interested in. I don't think they're really interested in
14 what we want locally.

15 And you said you can't go out 400,000 years
16 earlier tonight. You're not allowed to think out that
17 far. But when you let San Onofre stay open, they generate
18 waste which is sitting on our coast. Everyone who's
19 worried about our coast, we should worry about our coast
20 up there. And we have these transmission lines, this
21 switchyard here.

22 Why don't we build off-shore wind. Nobody is
23 going to come here and promote off-shore wind, because
24 people are just a little afraid maybe the waves will be
25 reduced in size or the view out the coast won't look that

1 good. The waves height would be negligible if you had
2 wind turbines on top of them 15 miles out, ten miles out.
3 And the view would not be damaged. Everybody is worried
4 about this damage right here.

5 Lastly, I wanted to mention I lived within about
6 a mile of this plant for about 15 years now. I always
7 blamed San Onofre for my bladder cancer. But maybe it
8 wasn't. Maybe it was this plant.

9 Now I've moved way away. I live four miles away
10 from it. So you're going to make it much bigger and who
11 knows what my future holds.

12 That's about all I had to say. Thank you very
13 much. I'm against it.

14 HEARING OFFICER KRAMER: Thank you.

15 Let me just correct one misimpression I had.
16 It's actually not the Energy Commission that regulates San
17 Onofre.

18 MR. HOFFMAN: No, I know. You advocate all
19 responsibilities saying the Nuclear Regulatory Commission
20 denies you the right to make any regulatory decisions on
21 it, which is the same thing.

22 VICE CHAIRPERSON BOYD: That's not true either,
23 but I'm not going to start a debate with you.

24 HEARING OFFICER KRAMER: Ms. Kinane, were you
25 here?

1 Tom Siekmann, I get you're still here.

2 MR. SIEKMANN: Hi. Siekmann, T-o-m.

3 When I was a child, I had this thing called a
4 View-Master. Did any of you guys have any of those? And
5 you would click it and see a picture and click it and see
6 another picture.

7 As you think about making this decision, picture
8 having that View-Master and you're putting the year 2030,
9 2040 in that View-Master and you're clicking and looking.
10 And what do we want to see? Do we want to see more fossil
11 fuel plants on the coastline of California? With all of
12 the technology developments, where are we going to be at
13 25 years, 30 years from now? We're going to be well
14 beyond that. And we don't want to look in the View-Master
15 and say way back there in 2010, we made a decision to put
16 another fossil fuel plant on the coastline in Carlsbad.
17 What were we thinking about?

18 And so put that View-Master on. Look where we're
19 going to be in 2035, 2045. Click, enjoy those clicks,
20 beautiful coastline. Power plants offer more alternative
21 fuel, alternative sources, and maybe even soon we can tear
22 down the big power plant.

23 Thank you.

24 HEARING OFFICER KRAMER: Thank you.

25 Gary Nessin.

1 John Zeger, followed by Brian McCann. Are you
2 here?

3 MR. ZEGER: My name is John Zeger. That's
4 spelled Z-e-g-e-r.

5 Commissioners, ladies and gentlemen, I'm
6 temporarily residing in Carlsbad. I say temporarily
7 because I do not usually make my home here or even in the
8 state of California, but rather I'm a visitor, a tourist
9 if you will from Canada.

10 I've been coming to San Diego north county every
11 winter for the past ten years, seeking sunshine, warmth,
12 and a beautiful natural setting in which to spend my time.
13 I return to north county every winter seeking these
14 things. And this year, I'm spending three months in
15 Carlsbad having a good time and spending my money.

16 I read about the proposal for the new power plant
17 in the North County Times and was disturbed by what I read
18 and the pictures I saw. I often travel along Highway 101
19 between Carlsbad village and old Encinitas and consider
20 the stretch of land to be some of the most beautiful
21 coastline in southern California. However, one thing that
22 I think spoils the beauty of the setting is the Encina
23 Power Plant with its tall smokestack. I can only imagine
24 how much more beautiful the coastline would be at this
25 location if the power plant were not here.

1 The prospect of an additional power plant with
2 two more smokestacks and the added mooring of the
3 aesthetics of the coast that this would involve is
4 unwelcome.

5 As I stated before, I come here annually seeking
6 sunshine, warmth, and a beautiful natural setting. If I'm
7 only seeking the former two, I would join the thousands of
8 other western Canadians who spend their winters in
9 Arizona. And I would live more cheaply at that.

10 But I also want the beauty that the California
11 coastline has to offer. I'm sure I'm not alone in feeling
12 this way. In fact, I know I'm not alone in feeling this
13 way. In fact, I know I'm not alone because I have run
14 into other Canadians on this trip who are seeking the same
15 thing.

16 So please give me a reason to come back here for
17 many years by rejecting this application for new power
18 plant at this location. Thank you.

19 HEARING OFFICER KRAMER: Thank you.

20 Brian McCann. Ms. Hubbard, you'll be next then
21 if you're here.

22 Mr. McCann, go ahead.

23 MR. MC CANN: Thank you. I come here not with a
24 prepared speech as a third generation resident and most
25 importantly to me as the father of a couple fourth

1 generation residents.

2 Initially, I read the city's mailer. I was very
3 opposed to the notion of any additional generation
4 facilities on the coast for the environmental impacts it
5 might have on my kids.

6 That said, I share my perspective with my father
7 and grandfather, who have been here for quite some time
8 prior to the existing power plant and they've shared with
9 me the good things that power plant has done for the city.
10 And it really is a lot and they've already been discussed
11 today so I'm not going to dwell on it.

12 But I'm here as a resident of eastern Carlsbad
13 where some of the alternative spots have been proposed.
14 And I just wanted to share not as a resident of Terramar
15 or any of the immediately adjacent sites, but as a
16 Carlsbad resident adjacent to the proposed alternative
17 sites that I prefer it to be in my backyard than in the
18 coastal part of our community which gives our community
19 its charm. I'd hate to detract from that further.

20 Thank you.

21 HEARING OFFICER KRAMER: Thank you.

22 Ms. Hubbard, were you present? I guess not.

23 Mark Nordquist. Commissioner Edward Winrow, are
24 you here? You'll be next then, sir.

25 MR. NORDQUIST: My name is Mark Nordquist,

1 N-o-r-d-q-u-i-s-t.

2 And I would like to thank you gentlemen for
3 coming here this evening. It's good to see decision
4 makers getting in touch with the real people.

5 And I don't come to these very often. I'm
6 astounded by what you have to put up with. Even someone
7 turning their back on you to grandstand. It's
8 unbelievable.

9 Anyway, I'm in favor of the plant. I don't have
10 any connection to the plant. Things that everybody seems
11 to be opposed to is the big stack. What they're missing
12 is if they don't build the two small stacks which you can
13 hide with vegetation, the big stack never comes down.
14 Everyone seems to be missing that point. Thank you.

15 HEARING OFFICER KRAMER: Thank you.

16 David Johnson, you'll be next.

17 COMMISSIONER WINROW: Edward Winrow, W-i-n-r-o-w.

18 I want to thank you all for being here and
19 listening to all of us.

20 As you'll quickly know, I'm not born and bred in
21 California. I grew up and spent my life in the New York
22 area. Within blocks of my New Jersey High School, we had
23 factories, power plants, and vacant lots.

24 As I grew up, my life changed. And like you, I
25 was a member of the Board of Commissioners serving the

1 public in a town that was on the north shore of Long
2 Island. I sat at meetings which I had to make decisions
3 much like you.

4 Like you, I listened to many pleas from
5 residents, communities, businesses, and NIMBYs as to where
6 to build or not to build power plants, parks, and prisons.
7 It's a tough job and I understand the passion of the
8 situation has little to do with the decision you'll make.

9 We have vacationed here in California for
10 20 years with the intent of retiring in southern
11 California. When we retired, with the help of God and
12 dumb luck, we found Carlsbad, a well-run city with money
13 in the bank. While other communities are firing police
14 and teachers, Carlsbad builds golf courses and parks,
15 preserving open space and thereby improving the lifestyle
16 of our community.

17 It's a tough choice where to build this power
18 plant. But the facts are clear. In the past, we had to
19 build near large bodies of water as was the case in 1954.
20 When the present plant was built, Carlsbad was a very
21 sleepy town. 101 was a one-lane road. Life has changed.
22 And so must we.

23 The city itself is opposed to the plant being
24 built on the coast and has offered alternative locations.
25 The builders, none of whom probably live here, want to

1 build this new plant close to where the old one was, of
2 course. It's money in their pockets.

3 I want to ask you to look in your hearts and ask
4 yourself do you want to destroy more beach area when you
5 can decide to move the plant elsewhere and open up some
6 more land in the community which has the resources to
7 build public parks and playgrounds along the coastal area.
8 You only need to drive along the east coast of the
9 United States to see how you can over build access to the
10 ocean. You have the powerful authority to make an
11 important decision which can dramatically change the
12 course of our city. Please, make the correct one and move
13 the plant inland. Let's not kill the dream that is
14 California.

15 HEARING OFFICER KRAMER: Thank you.

16 Mr. Johnson, go ahead.

17 MR. JOHNSON: I'm David Johnson. I live in
18 Carlsbad. And I was not here most of today. But
19 yesterday I was here. And a couple people or maybe a few
20 were saying they like the way the smokestack looks. I
21 guess it's a matter of your perception. I came up here
22 looking at the coast and saw the blinking lights and it
23 looked like a lighthouse. But during the day, it is very
24 ugly.

25 And when I was born, I saw the picture and I was

1 very ugly and my mom didn't think that way. But when my
2 younger brother was born, they didn't take a picture.
3 They just made that decision.

4 Now, I want to say something. When I was going
5 to college I was engaged and there was a company called
6 Shiley Heart Valve Company and they were making heart
7 valves that were defective, but they knew there was a
8 defect, but there were the only ones that could make the
9 valve.

10 And my probability teacher told me, well, I
11 understand how they could make that decision. And my ex
12 fiance who I never ended up marrying -- married someone
13 else -- she understood it, too. Well, it turned out years
14 later that the Shiley Heart Company got sued a lot. So
15 when you see these reports that say one thing, I know
16 that's all you have, but you have to use some common
17 sense.

18 I have another example, but I'll skip that one.

19 But even doctors, they make big mistakes. So
20 they'll say one thing and they make a huge mistake and
21 somebody dies.

22 In any case, my mother recently she was diagnosed
23 with type one cancer and it turned out she had type four.
24 So the doctors made a huge mistake and they did get her
25 into remission but she did pass away eventually after

1 nine months. That was two weeks ago.

2 So when you look at these reports, look at them
3 with a grain of salt, because these experts are not always
4 that way.

5 HEARING OFFICER KRAMER: Folks, are you hearing
6 him okay? The back?

7 MR. JOHNSON: Now this was mentioned yesterday,
8 why are they building a plant that has half the power of
9 what's already there? That does not make sense.

10 So I'm going to read this. I have a little time
11 left. I don't want to say part of this, but I have to say
12 part of it.

13 In this day and age, no one in their right mind
14 would approve placing a power plant on a lagoon or near
15 the ocean. If this is approved, there is a question of
16 competency of the California Energy Commission or worse,
17 if NRG Energy is on the up and up. I use that term "up
18 and up," because I was talking with the California
19 attorney general, that office, about another matter and
20 talking about some company and that's the term they used
21 is are they on the up and up.

22 And if you are worse -- okay -- if you search the
23 Internet, I just searched the Internet because I'm
24 wondering why are we even -- why are you even here? Why
25 are you deciding to put this plant here? It doesn't make

1 any sense in this day and age. So if you search "NRG
2 illegal bribe" on the Internet, you'll be surprised how
3 many articles come up. They are not on the up and up on a
4 lot of things it appears.

5 But whatever the reason, I know there's a few
6 sides to every story. And I don't like to say this, but
7 I'm going to say it. If this is approved, I think all the
8 California Energy Commission people and employees should
9 be terminated. The city of Carlsbad should impose
10 extremely costly -- my number is \$250 billion a year fees
11 and fines to recover lost revenues and costs associated
12 with the plants.

13 And I have two daughters here who I want to have
14 this place be beautiful. I'll probably move eventually if
15 this goes in and I will pursue every legal avenue to stop
16 this and recover loses.

17 HEARING OFFICER KRAMER: You need to wrap up,
18 sir.

19 MR. JOHNSON: But no amount of punitive damage
20 can cover the cost of life caused by health or other
21 hazard from the plant. And I'm sure there are plenty of
22 you have the scientific evidence to show it didn't happen,
23 but mistakes happen. So that's just what I think. If
24 this is approved, something is wrong.

25 HEARING OFFICER KRAMER: Your time is up. You're

1 two minutes over.

2 MR. JOHNSON: I have a prepared statement, too.

3 HEARING OFFICER KRAMER: And the people that have
4 prepared statements, they can just give them to us and
5 they'll be treated as if they were read.

6 VICE CHAIRPERSON BOYD: I've got to give this
7 gentleman a response.

8 We're here because the law of the state of
9 California says that anybody, any company, any utility,
10 anybody can submit an application for a power plant and
11 therefore our Commission has an obligation to review the
12 application and go through this process. And that's why
13 we're going through the process.

14 Nobody paid anybody. We're not the advocates for
15 the plant. We're not negative to the plant. We are to
16 hear all the evidence. And I'm mildly offended by your
17 testimony.

18 HEARING OFFICER KRAMER: Dr. Patrick Uriell,
19 followed by Ray Stainback. Are you here?

20 MR. URIELL: Good evening, gentleman. Thank you
21 for what you did. It's difficult to find someone to
22 represent the public and it's difficult job to do when you
23 do.

24 My name is Patrick Uriell, U-r-i-e-l-l. I'm a
25 resident of Carlsbad. And I'd like to say I sat here

1 through two days of testimony. I found some of it to be
2 amusing and some of it to be tedious, of course. The end
3 result really was that the emissions are going to go up
4 even though we talked about it for a few hours there but
5 finally agreed it's going to go up. And I know that it's
6 all driven by money. I mean, most of life is driven by
7 money, at least the dirty side of it.

8 And the end result here -- I think Enron taught
9 us that greed and money will get into the energy industry
10 also. And that's why we appreciate having somebody
11 represent the public in this.

12 I want to stand up for -- and it's nice the city
13 is not here because when you compliment somebody, kind of
14 nicer if they're not there. I have worked with the city
15 on doing projects or working with their system. And I
16 found the city of Carlsbad to be very honest, very
17 upfront, and very centered on Carlsbad. They worked with
18 teaching me design review and design standards and really
19 improved my project and didn't really cost me that much
20 difference in the money. I find they would do the same
21 thing for NRG. I'm sure they would. They would do the
22 best they could do for the city of Carlsbad.

23 I'm shocked that the project doesn't conform to
24 the revitalization standards or goals. I find that to be
25 uncharacteristic of the city of Carlsbad to not help them.

1 I'm sure they would help them unless they didn't want to
2 be helped.

3 The other thing -- and I have 35 years experience
4 in the fire industry, fire protection industry. That
5 wasn't done either. Your access roads weren't done in the
6 plan. How did a plan get this far that poor? It's
7 unfathomable that still that has not been worked out and
8 we are down to these final stages.

9 So everyone I'm sure -- most everyone knows when
10 you have an incident close to the freeway that the
11 evacuation zone would include a freeway. That means a
12 terrorist, a spill, a leak, almost any incident on that
13 particular zone they're planning on developing would
14 necessitate closing I-5.

15 Now, we had to do that back in the 80s once.
16 People died. You stop people in their car and back
17 traffic up to Orange County. And so people with heart
18 conditions, people with medication, people run out of gas.
19 We had a total disaster because we will to stop the
20 freeway. And this plan is really asking for this kind of
21 event to happen maybe repetitively.

22 It's just a poor plan. I'm not against the plan.
23 I'm against this plan. It's poorly done. It's not done.
24 And that became evident when everybody -- thank you -- all
25 the experts talked about it was very evident the plan

1 wasn't done. It's really a poor plan. Maybe a better one
2 can be done with the city's help.

3 Thank you very much.

4 HEARING OFFICER KRAMER: Russell Stevens,
5 followed by Phyllis Jessee.

6 I'm sorry. Mr. Stainback, go ahead.

7 MR. STAINBACK: Thank you. Good evening,
8 gentlemen.

9 My name is Ray Stainback, S-t-a-i-n-b-a-c-k.

10 I've been a resident of Carlsbad for about
11 ten years. And first thing I want to do -- I was here
12 couple hours last night, been here a couple hours again
13 tonight.

14 First thing I want to do is thank you. I have
15 great appreciation and respect for your attentiveness,
16 your patience, and even your continued sense of humor,
17 considering everything that you've been hearing for two
18 days now. So thank you.

19 My purpose in speaking is to ask you not to be
20 short-sighted but rather have a longer-term vision in
21 considering approval of this second plant. What I heard
22 in those couple hours last night and again tonight -- and
23 I hope you've heard as well is that the vast majority of
24 residents of Carlsbad are opposed to the second plant.
25 And last I heard -- and I still hope democracy still

1 counts for something in this country.

2 The other thing I heard and read is that the
3 second plant is not clearly needed at this time. Now, I
4 do realize that the existing half-century old plant and
5 the power it generates will need to be replaced
6 eventually. But what I question is does it need to be
7 replaced with the same half-century old technology?

8 If I'm not mistaken, your agency participated in
9 a renewable energy policy group meeting about a week ago.
10 And the purpose of that meeting was to discuss the timely
11 permitting of large scale solar, thermal plants and their
12 qualifying for the American Recovery Reinvestment Act. My
13 point being that within the decade or more timeline that
14 NRG has for taking the existing plant off line, there are
15 likely to be many, many more cost effective, more
16 environmentally-friendly options available.

17 I think are clearly right now on the cusp on the
18 thresholds of the billions of dollars being invested in
19 these alternative energy solutions. So please do not make
20 a decision today that is going to straddle us for another
21 half century with the fossil fuel burning power plant. It
22 is simply the wrong plant. It's the wrong place and it's
23 the wrong time. Thank you.

24 HEARING OFFICER KRAMER: Thank you.

25 Mr. Stevens.

1 MR. STEVENS: Hi. My name is Russell Stevens.

2 It's S-t-e-v-e-n-s.

3 And it's a real honor to be able to speak in
4 front of all you people, the representatives here and the
5 Commissioners. It's a great honor. And I appreciate you
6 being here to hear our concerns.

7 And I'm a concerned resident. I've lived in
8 Carlsbad for 25 of my 27 years and I was just a stone's
9 throw from the lagoon the whole time.

10 And I remember when I was younger I used to look
11 at the power plant and I saw the steam that was coming out
12 of it. And I honestly thought it was a cloud maker.
13 That's what I thought it was. And I used to tell my
14 parents that and they just laughed me off, because they
15 thought that was cute and nice and sweet. They didn't
16 really want to tell me the truth.

17 And that was naive thought back then and I've
18 noticed that there is a lot of naivety around that power
19 plant. And not just people from my generation but people
20 all over, from all walks of life, doctors, surfers,
21 whatever. It seems as if people think it's a stream
22 generating plant. And I tell them it's a polluter. They
23 say, no, it just produces steam. And I think, well, where
24 do you think -- how do you think they produce that steam.
25 And they produce that steam by burning the fossil fuels

1 which has its own emissions on top of the steam? That is
2 also emitted.

3 And that's really the need for the stack, because
4 the stack raises the level of where the emissions come out
5 of because they don't think that those emissions are fit
6 to be disbursed at ground level, because it's too toxic.
7 So they put it up high so it hopefully goes into the
8 atmosphere.

9 So I live in a very particular place in Carlsbad.
10 I live on the south side of the eastern part of the
11 lagoon. And my family lives on the top of the hill up
12 there. And it's right where all the clouds and different
13 emissions that come out of the power plant travel because
14 the wind is almost always going in one direction. It's
15 going southeast. So it brings everything down right over
16 our house.

17 And I was wondering why in the morning -- I have
18 a white car. And I always try to keep it clean. And in
19 the morning when I wake up and I come out, I see there is
20 a layer of soot on my car. And this is true. There is a
21 layer of black soot on my car. And I know it's coming
22 from the power plant because we are directly downwind.

23 And there have always been rumors of cancer rates
24 because of the power plant in the vicinity of the lagoon.
25 Those are just rumors. And God forbid somebody do a real

1 study not just on the entire area, I believe that's
2 probably what the studies do, but focus on -- but just on
3 that one small part where the actual emissions and the
4 wind takes it. And I know the results would be astounding
5 and alarming.

6 And so I'm completely opposed to the power plant
7 on the grounds this is a health hazard. There are cancer
8 rates.

9 My brother got a form of cancer that only 300
10 people get. This was in the Capri development. There are
11 other people here who are in the Capri who live in there.
12 In that same house that I grew up in, that my brother grew
13 up in, another boy got that same form of cancer. It's
14 called Berkins lymphoma. That only 300 people get in the
15 whole United States a year. And two people came from the
16 same house in two separate generations. And there was
17 just a funeral for that young man. He was I think 15
18 years old two weeks ago. And it might be related and it
19 might not be.

20 And there is one thing that is complete and true
21 and those emissions are deadly. It is not steam coming
22 out of there. And build the plant somewhere else. It's
23 too much concentrated of that toxin in one area. Keep the
24 power plant. Don't keep it. But don't add any more.
25 Because added emissions in that one area is going to

1 destroy the environment.

2 Thank you.

3 HEARING OFFICER KRAMER: Thank you.

4 Phyllis Jessee, followed by Chris McCann.

5 MS. JESSEE: Hi. I'm Phyllis Jessee. I'm a
6 33-year resident of north county, 29 of those in Carlsbad.

7 There was a gentleman earlier that was speaking
8 about the wonderful things that NRG has done with the
9 lagoon, with the land, and I agree. They've done a great
10 job taking care of the lagoon. But that's the same lagoon
11 that those breezes blow down all the pollutants to the
12 people that are now living in a pocket of cancer
13 basically. We heard it last night. We heard it tonight.

14 And I really urge you before you make a decision
15 to do an extensive study and see why that certain area has
16 all the cancer. It could be the lagoon. It could be the
17 breeze blowing down the lagoon with the pollutants. It
18 could be anything. But you need to make sure before you
19 make that decision.

20 I agree with most of the people that have come
21 before me that opposed this project. But I wanted to read
22 something that was in the newspaper this morning by
23 Barbara Henry in the North County Times that just kind of
24 raised a question in my mind. I didn't understand. Maybe
25 you can answer.

1 It says representatives for the NRG Energy, Inc.,
2 the company that owns the 95-acre Encina site have said
3 that this new project plus a second one later will allow
4 them to eventually remove the existing power plant on the
5 western edge of the property freeing it up the property's
6 oceanfront area for other development.

7 We're here tonight. We were here last night.
8 And you guys have been working on this for over a year I
9 guess to talk about the visual that we had with the two
10 stacks, the building that's going to go along the freeway.
11 Is there a second one that we are not understanding? It
12 says a second phase. What is the second phase? Are we
13 going to be back here for more hearings? I don't
14 understand what that second phase is. I know eventually
15 the existing power plant is supposed to come down. But
16 what is the second phase? Is it the same type of thing?
17 Are there going to be more turbines going in? What is the
18 deal with that? I don't understand it.

19 There was another gentleman that spoke about job
20 loss. If we didn't have the power plant, more than likely
21 the city is going to build. They're going to build houses
22 or a resort. We may lose the power plant -- hopefully we
23 will. We may lose the jobs for that. We may lose the tax
24 base. But a tax base in a hotel that is not only bringing
25 tourists in that are spending their dollars in our city

1 and the cities around us, a hotel has a huge tax basis. A
2 hotel employs many people. I don't think the city is
3 going to go under if we lose the power plant. In fact, we
4 may thrive without it.

5 We're not asking that you don't build it. We're
6 asking that you put it with better technology in a better
7 spot.

8 Thank you very much.

9 HEARING OFFICER KRAMER: Thank you.

10 Mr. McKinsey, we're not going to make a habit of
11 asking people to respond to questions immediately, but do
12 you know which statement she's referring to with regard to
13 the second plant?

14 MR. MC KINSEY: It's a newspaper article I
15 believe.

16 HEARING OFFICER KRAMER: It was quoting an NRG
17 spokesperson apparently.

18 MR. MC KINSEY: I'm not sure actually. You know,
19 I really have not been on the television or the newspapers
20 very much this week.

21 VICE CHAIRPERSON BOYD: I saw the article this
22 morning. I know we've not discussed that at all here.
23 It's not relevant to this particular set of hearings. But
24 I was curious about it myself. But it is just a newspaper
25 article.

1 HEARING OFFICER KRAMER: Well, then the answer
2 we'll have to --

3 MR. MC KINSEY: What was the question or --

4 VICE CHAIRPERSON BOYD: She asked if there was a
5 second phase. Mr. Kramer asked if there was anything to
6 that.

7 MR. MC KINSEY: There's no project that I know
8 of. I mean, this is the project that is proposed, and I
9 think that's one of the elements of the some of the
10 opposition is that there isn't something that's bringing
11 certainty about when the remaining units would shut down
12 and the existing structure would be removed. That's I
13 think the core driving components in opposition.

14 Does that answer your question?

15 HEARING OFFICER KRAMER: Was the quote referring
16 to a plant that might be somewhere else in the area that
17 would allow those units to be --

18 MR. MC KINSEY: I have not read the quotes so I
19 don't know. I'm not sure.

20 One of the things we've indicated is that in
21 order to release Units 4 and 5 that because of the need in
22 the region additional generation is needed. So it could
23 have been in reference to the fact that another project is
24 needed to eliminate Units 4 and 5. I'm just not sure.

25 HEARING OFFICER KRAMER: Okay. Thank you.

1 Mr. McCann.

2 MR. MC CANN: Chris McCann, Carlsbad,
3 M-c-C-a-n-n.

4 My brother spoke earlier. I'm a third generation
5 Carlsbad. I have children here also, fourth generation.
6 And I don't have any ill will towards the power plant or
7 NRG and I don't have any problems with big business. It
8 is what it is. And there's no problem there.

9 What I do have a problem with is if it is not
10 imperative to build the plant on the current site and
11 there is another viable option -- and I'm not smart enough
12 to know if that's the case or not. But if that is the
13 case and I know you have the collective wisdom to
14 determine so I'd like to see that happen.

15 I can see the current power plant from my house
16 as well as from my office. I walk by and run by the
17 current power plant probably twice a day. And I've seen
18 it there my whole life. And I don't necessarily have a
19 problem with it because I understand that even though my
20 grandparents came to Carlsbad before it was here, there
21 was a need for it to be placed in that current facility.
22 But if the need isn't to be placed there at the lagoon at
23 this time, I would like to see it moved.

24 Like my brother, I'm also an advocate of maybe
25 the eastern part of Carlsbad if that is a viable option if

1 the city puts that up.

2 And I'm not out against the power plant or NRG.
3 I also understand as a citizen if we want to do that maybe
4 we need to raise the bonds and figure out how to pay for
5 the infrastructure and I would support that. I've bought
6 Carlsbad bonds in the past and would continue to do so,
7 and I would support any financial backing the city would
8 do to help support the project. Again not to put harm to
9 NRG, but purely if there is a better viable option, I
10 would like to see that happen.

11 Thank you.

12 HEARING OFFICER KRAMER: Thank you.

13 Tracy Carmichael, followed by Jeff Woolson.

14 MS. CARMICHAEL: Hi. My name is Tracy
15 Carmichael, T-r-a-c-y, C-a-r-m-i-c-h-a-e-l.

16 I didn't have great plans to speak this evening.
17 I spoke at the preliminary staff assessment January of '09
18 of last year. And I told you I'm a citizen of Carlsbad.
19 I have two kids. I've raised them here. We moved here in
20 1987. In 2003 -- I'm going to give you a little bit of
21 background and why I'm a little compassionate about the
22 opposition of this power plant.

23 In 2003, my daughter, who is now a thriving
24 18-year-old going off the college, was diagnosed with
25 astrocytoma stage one brain tumor. I live above that

1 power plant. It is around the three-mile radius on this
2 map.

3 And when she was eleven and this occurred, she
4 came and said, why? Why does this happen to me? I didn't
5 have any answers for her.

6 And when I started getting involved and started
7 asking some questions and doing some research, I went to
8 the EPA. And wanted to know, okay, what's coming out of
9 that black smokestack. Like Russell Stevens, who lives up
10 the street from me in Capri and I live on Horizon, I'm in
11 that three-mile parameters that's on the map that I
12 printed out. And this is the location of sensitive
13 receptors. This is a three-mile radius around the power
14 plant.

15 When I saw that and in pulling up some of the
16 reports and trying to understand all of this, I also went
17 on the EPA. I wanted to know what's coming out and
18 learned a little bit about what are the health
19 environmental effects of toxic air pollution. People
20 exposed to toxic air pollution at significant
21 concentrations and duration may have increased chance of
22 getting cancer or experiencing other sensitive health
23 effects.

24 These health effects can include damage to an
25 immune system as well as neurological, reproductive,

1 reduced fertility, developmental respiratory, and other
2 health problems.

3 In addition, exposure from breathing air toxic
4 such as toxic air pollutants, such as mercury can deposit
5 into soils or surface waters. We also frequent the
6 lagoon. We have a boat. We ride on it.

7 I also went and pulled up some statistical data,
8 and I also had given that report of January of '09 when I
9 spoke to the Energy Commission staff at their preliminary
10 assessments. And I looked at the ten top emitted sources
11 in the San Diego basin and researched those. And those
12 come up with the top four. Three go back to in your staff
13 report known to be human carcinogens. I looked up the
14 word carcinogens, causes cancer. Reasonable anticipated
15 human carcinogens are some of the others on the list as
16 well.

17 Over the course of a few years -- I understand my
18 red light is going so I'll make this brief -- I know of a
19 minimum of 20 kids in my neighborhood in the proximity of
20 this three-mile receptor that have cancer. That have had
21 cancer who have passed away.

22 I want to know from any of the organizations here
23 who's going to help our community. Who is going to say to
24 the survivors how do we continue? How do we live on and
25 why has this happened? What do you say to the kids who

1 have lost their lives? And what do I say to their
2 parents? And do I respond to them when they say why has
3 this happened? And how can we stop this? I urge you,
4 please, take a hard, hard look.

5 My daughter is doing fine. She's going off to
6 college. And on a happy note, she's healthy, knock on
7 wall -- and I hope this isn't plywood and it's real. And
8 she's going to go to college and she wants to be a nurse.
9 She wants to work in oncology and work hopefully and
10 figure out why all this has occurred.

11 I thank you for your time, your energy, and I
12 hope to thank you some day for your support.

13 HEARING OFFICER KRAMER: There was a discussion
14 this afternoon about health risks. So you were here,
15 okay.

16 MR. WOOLSON: Name is Jeff Woolson. I'm a
17 citizen of Carlsbad. W-o-o-l-s-o-n.

18 That's a tough one to follow there. I'm in such
19 admiration of the people that have given their time and
20 their human resources to be here tonight to speak. You
21 gentlemen, this is your job and your job and everybody is
22 being compensated in some way. I'm sure you're not
23 getting overtime listening to all this.

24 But at the same time, these people, I'm past my
25 bedtime, and they've given up time with their families and

1 considerable amount of hours to talk with you people. And
2 I'm amazed.

3 I just want to share with you two brief moments
4 in my mind that have to do with the power plant.

5 The first one was when I moved into Terramar 18
6 years ago and I remember looking at some press clippings.
7 We're very proud of our neighborhood. We have some other
8 press clipping and I saw a picture. There was an article
9 in the paper about how the community was fighting the new
10 power plant going in and I remember thinking, are you
11 kidding me? The houses were here before the power plant
12 went in? I thought was an infill they put it way up here
13 and all these houses got built around it. Remember
14 thinking how sad that the people didn't have a voice back
15 then in the 50s. Everybody was smoking. It was free
16 love. And everybody was getting steam rolled when
17 something was going through. And there really wasn't any
18 say. So I said, hey, that was those times.

19 The second moment in time that really struck me
20 about this project was when somebody first told me that
21 this project didn't need to be cooled by water. Because I
22 heard the story -- I thought, hey, wouldn't it be great
23 take down the big plant.

24 And by the way, I don't know if this was brought
25 up yesterday, because I was one of the people turned away

1 yesterday. But you do know the surfers refer to it as the
2 "finger," that stack. So why not take down the fingers
3 and move it and make a smaller one and make it better
4 looking? And I was all in favor of that. But then I was
5 told that it didn't need water to be cooled. And, in
6 fact, this plant could be put anywhere in the county. It
7 could be put someplace in Carlsbad and I guess that's what
8 the city has proposed.

9 And you just know this would not be built where
10 it's built today if it was a brand-new plant. There was
11 no way it would happen. There was no Coastal Commission
12 back then. The citizens' voices weren't as loud. The
13 research wasn't as profound. It would not be built today
14 where it is. It's pristine coastline. We won't go into
15 all that. But we're blessed that we have a second
16 opportunity to get it right.

17 Half a century -- I think somebody came up and
18 talked about a half a century ago this thing was built.
19 And now the proposal is to get it to add onto this. And I
20 think if you're telling me the only place it can go is
21 there, I'm all in favor of power. If you're telling me it
22 can go anywhere, air cooled is the best way to go, I say
23 you got to be kidding me. It can go anywhere else and it
24 doesn't have to be there, then we need to do the right
25 thing; move the power plant.

1 And it goes back to the old thing that my mom
2 used to say, you know, fool me one, shame on you. Fool me
3 twice, shame on me.

4 Thanks.

5 HEARING OFFICER KRAMER: Thank you.

6 Wayne Chapman.

7 MR. CHAPMAN: I'm a citizen of Carlsbad. I live
8 up on the Highland, South Highland. My name is Wayne
9 Chapman, C-h-a-p-m-a-n. And after some of these
10 incredibly deep, sincere, genuine, meaningful messages
11 tonight, mine is just a little bit of fluff.

12 But I was born in 1935. And my grandparents
13 lived next door to us in Los Angeles. But grandpops had
14 about eight or ten lots at the top of the bluff in
15 Cardiff. And he owned a three-story building there across
16 the street from where the railroad station used to be.
17 And to get to the beach, we had to go to the slough. We
18 had to cross the slough. And it's now called a lagoon.
19 But it was a slough. And it was a mess. And south where
20 Del Mar is, there was another slough. And all of these --
21 now they're called lagoons. But they were sloughs. And
22 we came down here. We spent the summers here.

23 And during at the war, at the beginning, my
24 father was stationed at Camp Callan, which is now Torrey
25 Pines Golf Course. But that was an OCS, base office

1 candidate school. We had our Easters here. We had our
2 Christmases here. I learned to body surf down here. I
3 learned to drive on what is now Manchester. There weren't
4 any freeways. But these lagoons weren't these beautiful
5 places they are.

6 And I'm telling you, the Agua Hedionda Lagoon
7 that I looked down on is going to be taken care of whether
8 these NRG guys are here, not here. They not only have a
9 lot of money they have a charm and they have to do these
10 things for this community. But if they don't do it,
11 somebody else is going to take care of it. Somebody else
12 is taking care of all the other lagoons.

13 At any rate, I spoke last night and that was my
14 main message. Thanks for listening.

15 HEARING OFFICER KRAMER: Thank you.

16 I don't have any more cards. Is there anyone
17 else in the audience that wants to speak? Or if you gave
18 a card, you might not have been in the room when I called
19 your name. Does anyone else wish to make a public
20 comment? If so, please come up to the podium.

21 Seeing none, we have a couple cards of people who
22 either didn't want to speak or had to leave.

23 Gus Santerre -- and I'll give the cards to the
24 court reporter so he can get the spellings. He's says
25 that the plan is not in best interest of the city or its

1 residents.

2 Laura Green simply states her opposition to the
3 project, as does Patty Haugen again, as does Amy Shipley.

4 And even more so, Bill Kilpatrick, he's
5 vehemently opposed.

6 Lin Rogerson simply checked the opposed box.

7 And Richard James is strongly opposed.

8 Dr. Nancy Mills says that the plant should be
9 located inland. The coast is too beautiful for
10 development.

11 So those are all our comments. And I believe
12 that's all we need to go through this evening. Sir, in
13 the back, did you want to make a comment?

14 MR. HOFFMAN: I just wanted to clarify --

15 HEARING OFFICER KRAMER: You need to come up
16 here, but I believe you've already spoken.

17 MR. HOFFMAN: Briefly, I need to talk. I just
18 want to clarify.

19 VICE CHAIRPERSON BOYD: I think Commissioner Boyd
20 is still not interested in a debate on the NRC. But

21 MR. HOFFMAN: Well, it's just that you're not
22 allowed to cover safety issues. The NRC took all the
23 rules away from all the California organization, not just
24 yours.

25 HEARING OFFICER KRAMER: Well, we're not talking

1 about nuclear plants tonight.

2 MR. HOFFMAN: Right. But that was the
3 clarification. And can I leave a copy of my book on
4 nuclear issues? Where do we leave stuff?

5 HEARING OFFICER KRAMER: I'll take it. Are you
6 meaning to add this as a public comment? Is this just for
7 our information or is this part of a public comment?

8 VICE CHAIRPERSON BOYD: It's nuclear.

9 HEARING OFFICER KRAMER: Commissioner Boyd will
10 take it.

11 The one reminder, Ms. Jennings, do we still have
12 some of those fliers with the -- okay. So if you want to
13 make a written comment to add to or as your only comment
14 to the Committee, so long as it arrives up at the Energy
15 Commission offices by February 22nd, we will accept it.
16 It needs to be in writing for reasons of how comments get
17 processed. But you have that option.

18 If you need the address and how to properly label
19 it so it gets to the right place, there is a piece of
20 paper that the public advisor will give you that will give
21 you that information. Otherwise, I think that's all we
22 need to do this evening.

23 We will be continuing tomorrow morning. We did
24 not quite finish up our visual impacts discussion this
25 afternoon. So we will start with that and speak about

1 greenhouse gases and alternatives. If you're curious,
2 alternatives and perhaps greenhouse gases are the place
3 where there will be a discussion of to what extent fossil
4 fuel plants such as there are or are not still needed in
5 the electricity system.

6 And then on Friday we'll talk about -- Thursday
7 I'm sorry, furlough Friday -- we will not be here. Worker
8 safety/fire protection we'll discuss the issues that were
9 alluded to by a couple of speakers about whether there is
10 adequate access to the parcel for fire protection. And
11 we'll talk about hazardous materials management, soil and
12 water, which we'll talk about the use of among other
13 things the ocean water, and noise, traffic, and biological
14 resources. And then there are a bunch of other topics
15 that because no party either wanted to put on testimony or
16 in a live way or cross-examine other witnesses we will
17 simply take in as a group without discussing them
18 individually. So that's the preview of the rest of the
19 week. If you have any questions about that, come up and
20 see me afterwards. Both days we begin at 9:00 a.m.

21 Does any party have anything they wish to raise?

22 Seeing none, Commissioner Eggert.

23 COMMISSIONER EGGERT: I guess just a quick thank
24 you for your interest and endurance for those of you that
25 have stuck around until the end.

1 Again, I've found this to be quite informative
2 and interesting. Hopefully you have as well.

3 And I would very much encourage you if you want
4 to get to the meat of the issues to come tomorrow during
5 the day. We'll be going into great detail on a lot of the
6 things that were mentioned during the public comment
7 period and I think that's a way to get a much deeper
8 understanding of these issues. So you're welcome to join
9 us tomorrow.

10 MS. SIEKMANN: Mr. Kramer, I did have --

11 HEARING OFFICER KRAMER: Can you turn her on?

12 MS. SIEKMANN: When you were asking about the
13 Phase 2, I have actually heard about the Phase 2. I've
14 heard it spoken of more than once. And if you would like,
15 I will look through my materials and talk to the city and
16 see what I can provide for you.

17 HEARING OFFICER KRAMER: It's up to you. I was
18 just trying to get some sort of information so we could
19 respond to the comment. But if you have more specifics --
20 okay, Commissioner Boyd.

21 VICE CHAIRPERSON BOYD: Thanks you, everybody.
22 Good night. Be safe going home.

23 HEARING OFFICER KRAMER: Okay. Thank you. We're
24 adjourned.

25 (Thereupon the Commission recessed at 9:42 p.m.)