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EVIDENTIARY HEARING

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

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

HILTON GARDEN INN

CARLSBAD, CALIFORNIA 92008

THURSDAY, FEBRUARY 4, 2010

9:15 A.M.

Reported by:
Troy Ray
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Presiding Member

Anthony Eggert, Associate Member

HEARING OFFICER and ADVISERS PRESENT

Paul Kramer, Hearing Officer

Tim Olson, Adviser

STAFF AND CONSULTANTS PRESENT

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Richard Ratliff, Senior Staff Counsel

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Brian J. Nese, Attorney

Kimberly J. Hellwig, Attorney

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NRG West

Carlsbad Energy Center, LLC

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City of Carlsbad

Allan J. Thompson, Attorney

Ronald R. Ball, Carlsbad City Attorney

South Carlsbad Coastal Redevelopment Agency

Julie Baker

Arnold Roe

Power of Vision

Kerry Siekmann

Terramar Associates

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1 P R O C E E D I N G S

2 10:40 a.m.

3 HEARING OFFICER KRAMER: We're back on
4 the record for day four of the --

5 (Microphone check.)

6 HEARING OFFICER KRAMER: Well, I'm
7 getting a Grammy for this rock star microphone
8 performance.

9 Okay, welcome to the fourth day of the
10 hearings for the Carlsbad Energy Center project.
11 There may be a few of you -- well, let me ask. Is
12 there anyone in the audience who's new here today
13 that doesn't know who these people are up here at
14 the table? I'll introduce us if there is somebody
15 who needs that, but I won't spend the time if
16 nobody -- does somebody want to know who we are?
17 Okay. Let's do it for the firemen.

18 My name is Paul Kramer; I'm the Hearing
19 Officer for this Committee of the Energy
20 Commission. To my right is Commissioner Anthony
21 Eggert. He is a Member of the Committee; he's the
22 Associate Member, or we sometimes call them the
23 Second Member.

24 And to my left is the Vice Chairman of
25 the Energy Commission, Jim Boyd. He is the

1 Presiding Member of this Committee. To his left
2 is his Advisor, Tim Olson.

3 And we'll just quickly go around the
4 table to ask the parties to introduce themselves
5 so that anybody who's new in the audience and our
6 new witnesses know who we are for future
7 reference.

8 So, let's begin with the city on left.

9 MR. THOMPSON: Thank you, Mr. Hearing
10 Officer. My name is Allan Thompson, Special
11 Counsel to the city for CEC matters. And to my
12 left is Joe Garuba.

13 DR. ROE: I'm Arnie Roe representing
14 Power of Vision. And to my right is Julie Baker.

15 MS. SIEKMANN: I'm Kerry Siekmann,
16 intervenor for the neighborhood of Terramar.

17 HEARING OFFICER KRAMER: Staff.

18 MR. RATLIFF: Dick Ratliff, Counsel for
19 staff. And on my left is Mike Monasmith, the
20 Project Manager.

21 MR. MCKINSEY: John McKinsey; I'm
22 Counsel for the applicant, Carlsbad Energy Center,
23 which is NRG Energy is the parent company. To my
24 right is George Piantka, the Project Manager for
25 NRG Energy. To my left is Bob Wojcik, which is

1 somebody who has already appeared as a witness.
2 And it's possible I may use him as a redirect
3 witness, depending on how things go.

4 HEARING OFFICER KRAMER: Okay. One of
5 the jobs I have today is to step in and substitute
6 for the Energy Commission's Public Adviser. Her
7 name is Jennifer Jennings. We were up late last
8 night, so if I pause once in awhile, please
9 indulge me.

10 And she was here when we had great
11 numbers of the public on Monday and Tuesday
12 evenings. Her job basically is to explain the
13 Energy Commission, not to apologize for us, but to
14 explain us to the public. And to help the public
15 understand what it is we do and how our process
16 works, and how you can participate in that
17 process. So, if you have any questions about
18 that, you can ask me during the break.

19 Out in the foyer on the table there we
20 have a sign-in sheet. So, if you want to sign up
21 to be on our email list or to receive some written
22 notices via the regular mail, please put your name
23 and address on that sheet. And please write
24 legibly. Sometimes we have problems that mail
25 won't get to you, or the emails won't get to you

1 because we just couldn't read your writing. And,
2 of course, you won't be around anymore so we can
3 track you down and try to clarify if we can't read
4 it. So printing would be the best option there.

5 If you do use email, that's an
6 especially convenient way to keep an eye on this
7 case. You won't receive copies of all of the
8 documents that are filed in the case, but you'll
9 receive notice that the major documents go up on
10 our website where you can download them. And
11 you'll also receive electronic notices of future
12 hearings in this case.

13 So I encourage you to choose that option
14 if that works for you. Because it also is better
15 for us. We're trying to cut down the amount of
16 paper that we generate for all kinds of reasons,
17 the environment, and these days especially
18 economics.

19 So, with that, --

20 MR. RATLIFF: Mr. Kramer, --

21 HEARING OFFICER KRAMER: Mr. Ratliff.

22 MR. RATLIFF: -- before we start there
23 was a request after the air quality portion of the
24 hearing for information regarding the contribution
25 to health risk of mobile sources.

1 And we'd like to have that marked as an
2 exhibit, and we'd like to lodge it with the
3 Committee. I don't know if anyone cares, whether
4 it's going to be objected to. But, I'd just like
5 to lodge it with the Committee so the Committee
6 has it. And we can provide it to the other
7 parties.

8 HEARING OFFICER KRAMER: Okay, let me
9 ask you, the request came from whom?

10 MR. RATLIFF: I can't remember.

11 HEARING OFFICER KRAMER: Dr. Greenberg,
12 do you know that?

13 DR. GREENBERG: A couple member of the
14 public, amongst other people.

15 HEARING OFFICER KRAMER: Okay. And can
16 you describe the document you're proposing as an
17 exhibit?

18 DR. GREENBERG: Yes, there are two -- am
19 I on? Good. Mr. Hearing Officer, there are two
20 documents. One is the 2009 South Coast Air
21 Quality Management District MATES-2 study; that's
22 multiple air toxics exposure study, phase 2.

23 And the second one is the 2003 Bay Area
24 Air Quality Management District air toxics
25 inventory report. I have them with me. I thumb-

1 drive; I can give it to anybody who wants it. I
2 have the full reports. And I am asking if I could
3 docket this as an exhibit because it goes directly
4 to my testimony in public health where I mention
5 these two studies as showing what toxic air
6 contaminants contribute to the background risk in
7 those two air basins.

8 HEARING OFFICER KRAMER: It wasn't clear
9 to me. Was the second document, the 2003 report,
10 was that also a South Coast --

11 DR. GREENBERG: Bay Area.

12 HEARING OFFICER KRAMER: Bay Area.

13 DR. GREENBERG: Bay Area Air Quality
14 Management District.

15 HEARING OFFICER KRAMER: Okay. The 2009
16 South Coast report will be numbered as exhibit
17 224. And the 2003 Bay Area report would be 225.

18 Is there any party that objects to the
19 entry of those -- or the acceptance of those
20 exhibits into evidence, or wants additional time
21 to review them before you make a determination?

22 Seeing none, we will accept those into
23 evidence. And, staff, I'll need to get a printed
24 written copy, as well as an electronic copy of
25 that after we return to Sacramento for the

1 official record.

2 DR. GREENBERG: Thank you, Mr. Kramer.

3 HEARING OFFICER KRAMER: Anything
4 further from the parties before we begin the
5 panel?

6 Okay, we have some people that were not
7 with us before, so you need to be sworn in as
8 witnesses. So, if you would stand, anybody who
9 has not been sworn before, and raise your right
10 hand.

11 Whereupon,

12 PROSPECTIVE WITNESSES
13 were called as witnesses herein, and after first
14 having been duly sworn, were examined and
15 testified as follows:

16 HEARING OFFICER KRAMER: Thank you. You
17 are sworn in.

18 Okay, and also for the benefit of the
19 new witnesses, and perhaps others, we are
20 operating this in a panel presentation forum. So
21 we will have each of you identify yourself to
22 begin with, just your name and your employment.
23 Don't go into your qualifications at that point.

24 And then each of your sponsors will ask
25 you questions by way of eliciting your opening

1 testimony. And then following that we will have
2 cross-examination.

3 When we get into the cross-examination
4 period, even though the question is directed at
5 one of you from one of the parties, if one of the
6 others of you feels that you have something to add
7 by way of a response, feel free to chime in after
8 the original answerer finishes their answer.

9 Please try not to talk over each other.
10 And everybody put your cellphones on vibrate or
11 silent mode, if you can. And in the back, if
12 you're having trouble hearing at some point, raise
13 your hand, wave at me or something, and we'll
14 remind people.

15 And for those of you at the table, the
16 smaller microphones that are in front of you are
17 just for the court reporter, so you don't use
18 those. You need to use these bigger ones like I
19 have, or the hand-held mic. And you need to have
20 it relatively close to your face. We've been
21 calling that rock star positions.

22 PRESIDING MEMBER BOYD: Real close.

23 HEARING OFFICER KRAMER: So, with that,
24 let me ask the gentleman on my left, and then
25 going across, for the witnesses to identify

1 themselves.

2 MR. HEISER: Mr. Hearing Officer and
3 Commissioners, my name is Chris Heiser. I'm the
4 Division Chief --

5 HEARING OFFICER KRAMER: Closer.

6 MR. HEISER: Mr. Hearing Officer and
7 Commissioners, my name is Chris Heiser. I'm the
8 Division Chief in charge of operations for the
9 Carlsbad Fire Department.

10 MR. CRAWFORD: Mr. Hearing Officer,
11 Commissioners, my name is Kevin Crawford and I'm
12 the Fire Chief for the City of Carlsbad.

13 MR. WEIGAND: Mr. Hearing Officer and
14 Commissioners, my name is James Weigand. I'm the
15 Fire Marshal for the City of Carlsbad.

16 DR. GREENBERG: Good morning. I'm Alvin
17 Greenberg; I authored the staff assessment in the
18 area of worker safety and fire protection.

19 MR. COLLINS: Good morning. I'm Frank
20 Collins with Shaw, representing NRG, applicant.

21 MS. SPEAKER: Could you repeat that,
22 please? I didn't hear.

23 HEARING OFFICER KRAMER: Sounds like
24 you're a soft-spoken person. You need to speak up
25 and project a little bit.

1 MR. COLLINS: Oh, okay. I'm sorry. My
2 name's Frank Collins with the Shaw Group,
3 representing the applicant.

4 MR. HOLDEN: My name is Ed Holden. I'm
5 with the Shaw Group, representing the applicant.

6 HEARING OFFICER KRAMER: You, on the
7 other hand, probably could back off just a little
8 bit.

9 (Laughter.)

10 HEARING OFFICER KRAMER: Mr. Mason's on
11 your list. Is he going to be one of the
12 witnesses?

13 MR. MCKINSEY: No, no, he's not going to
14 be a witness on this panel.

15 HEARING OFFICER KRAMER: Okay. And then
16 for Terramar we have Ms. Siekmann.

17 Okay, Mr. McKinsey, if you want to go
18 ahead with your direct examination.

19 MR. MCKINSEY: Thank you.

20 DIRECT EXAMINATION

21 BY MR. MCKINSEY:

22 Q Ed and Frank, you've already introduced
23 yourselves, but I'd like to ask each of you to
24 just briefly summarize your experience and your
25 background and the nature of your testimony today.

1 MR. HOLDEN: Yes. Again, my name is Ed
2 Holden. I'm a masters prepared engineer and a
3 California registered professional engineer.

4 I have over 30 years experience in
5 engineering, and close to 30 years in the power
6 plant design, commissioning and startup.

7 I'm a Senior Project Manager at the Shaw
8 Group in the power division. Our company has 120
9 years power experience on a global venue. We have
10 power plants around the world.

11 Again, my experience ranges from
12 permitting to engineering design, all the way
13 through startup, commissioning and operations.

14 MR. MCKINSEY: Thank you.

15 MR. COLLINS: My name's Frank Collins.
16 And I'm a Fire Protection Specialist with the Shaw
17 Group. I have over 30 years of operations, design
18 in power plants, specializing in fire protection
19 features.

20 I served on the NFPA, excuse me, the
21 National Fire Protection Association committees
22 for design of power plants. I have published fire
23 safety design documents. On this project I've
24 worked on the fire safety features for the plant.

25 MR. MCKINSEY: Thank you. Frank, I'd

1 like to begin by focusing on chemical-based
2 emergencies. What types of chemical hazardous
3 material emergencies could occur with this
4 project?

5 MR. COLLINS: For this particular plant
6 the only significant chemical material is the
7 ammonia. The ammonia is stored in two horizontal
8 tanks with containments. In the highly unlikely
9 event that the tank should rupture, the
10 containment and spill would be contained by the
11 design features of the plant.

12 The concern would be with the
13 vaporization of the ammonia into a gas. And this
14 is a slow process, it would take time. In the
15 event nothing was done the vapors would not
16 present a significant hazard off the property.

17 The applicant plans to contract with a
18 third party for hazmat first response.

19 MR. MCKINSEY: Are the hazardous
20 material response times, speaking again about
21 chemical-based emergencies, are the hazardous
22 material response times acceptable?

23 MR. COLLINS: Yes, they are. First of
24 all, the design of the plant will contain a spill
25 so that I don't have to get somebody in there to

1 contain it.

2 Second of all, the people on site are
3 trained to handle these emergencies, and also how
4 to evacuate the site, if necessary.

5 Again, this is a slow process, so an
6 immediate response is not a critical item. And
7 based on the planned contract response of one
8 hour, that's more than acceptable.

9 MR. MCKINSEY: And then can you describe
10 the nature and the type of fire emergencies that
11 could occur at the site and with this project?

12 MR. COLLINS: Yeah. First of all I'd
13 like to distinguish between the difference between
14 a life-safety response and a property-loss
15 response.

16 During the construction the
17 noncombustible nature of the facilities and the
18 low occupancy of life-safety response is highly
19 unlikely. Basically we would be looking for a
20 response for property loss or for property
21 protection.

22 The plant is, again, designed to
23 mitigate that due to separate features,
24 noncombustible construction, fire-prevention
25 features.

1 The most significant concern is actually
2 with the natural gas lines coming into the site.
3 These lines are provided with multiple isolation
4 valves. They're provided with automatic and
5 remote shutdown features so that we can isolate
6 the gas as quick as possible.

7 Particularly with natural gas, isolation
8 is the best thing to do. We don't actually want
9 to suppress a fire with natural gas because of the
10 potential spread of the actual gas. We want to
11 defer until we can get it isolated. And that's
12 what the plant is designed to do.

13 And we've taken many precautions. The
14 lines are buried so they're not readily
15 accessible. There are the built-in safety
16 features to all the equipment to shut down and
17 isolate. There are automatic fire features and
18 gas monitoring systems, again, to automatically
19 shut down and isolate the gas.

20 The next area would be the lubricating
21 oil systems. These are class three combustible
22 liquids. But the concern is only due to the
23 quantities and the pressures that the systems
24 operate at.

25 In order to mitigate any potentials at

1 all, supply pipes are either guard-piped or
2 provided with protective flange guards to prevent
3 the spraying of the oil.

4 The oil systems are provided with fixed
5 suppression systems on the case of the STG, the
6 steam turbine. The CTGs are provided with gas
7 suppression systems to automatically suppress or
8 extinguish any fires in any of these systems.

9 Third item, due again to the quantity of
10 oil, would be the main transformers. These
11 transformers are separated either by distance or
12 by fire barriers from the rest of the site. They
13 are provided with containments to collect the oil.
14 And the containments are actually either filled
15 with stone or provided with some other means to
16 prevent air infiltration to limit the size of the
17 fire within the containment.

18 The next item is actually the gas
19 compressors, again due to the quantities of oil.
20 And these will be provided with automatic shutdown
21 features and isolation features for the gas
22 suppression system.

23 Again, the anticipated response in this
24 kind of action would be for property protection
25 and not for fire life safety.

1 MR. MCKINSEY: Can you describe the key
2 fire protection systems that are designed in this
3 project?

4 MR. COLLINS: Yeah, the key fire
5 protection systems, first of all are the built-in
6 design fire systems, such as the fact that it's
7 noncombustible construction; it's concrete and
8 steel.

9 The equipment is separated. We have
10 controls on the types of materials such as the
11 cable is IEEE 383 qualified, which is a fire
12 retardant, self-extinguishing type cable. Other
13 materials are fire retardant or fire resistant.

14 We also have many safeguard features in
15 the plant, so if we have an abnormal condition it
16 will put the plant in a safe condition, either
17 shutting down or whatever else is necessary, to
18 prevent a fire.

19 And that's our key, our whole goal, is
20 first to prevent a fire. And then if we have it,
21 to mitigate the consequences. That's why we have
22 a self-contained fire water system, consisting of
23 a fire water storage tank, redundant fire pumps, a
24 looped yard main with hydrants strategically
25 located around the site. A fixed fire suppression

1 system for things like the turbine bearings,
2 underneath the pedestal, lube oil systems. In the
3 case of the CTGs we have gas suppression systems.
4 We have a site fire alarm system. And we have
5 portable fire extinguishers.

6 MR. MCKINSEY: So, can you walk me
7 through an example of a fire emergency that might
8 occur at this project, no matter how unlikely or
9 unexpected? Or maybe it's an example of the types
10 that have occurred at power plants of this type.

11 MR. COLLINS: Yes. The first one that
12 would come to mind is basically a, it would be a
13 turbine bearing failure which would be caused by
14 an oil leak and a hot bearing.

15 First of all, the bearing being hot
16 would come back on the design system. The fact of
17 losing oil would be identified. Fire detection
18 system would activate, notify of the fire. The
19 suppression system would suppress the fire, by
20 design.

21 MR. MCKINSEY: So, what is the role for
22 municipal fire response in a power plant like
23 this?

24 MR. COLLINS: In a power plant like this
25 the primary role of the fire department is as a

1 backup to the fixed suppression systems for large
2 fires. For very small fires they wouldn't need to
3 respond because this fire would be too small to
4 actually actuate one of the fixed systems. Or it
5 would be something that the plant, like a small
6 trash bucket fire, something you can normally
7 typically put out with a fire extinguisher.

8 Or some of the suppression systems you
9 would be required to come in and I would say mop
10 up, because they may not fully extinguish, or you
11 might have smoldering embers or something, that
12 they need to get in and access.

13 Again, this is all for property
14 protection.

15 MR. MCKINSEY: So if I can summarize
16 your testimony here, fire emergencies unlikely.
17 They're considered in design. There's redundant
18 safety fire protection features which essentially
19 make fire suppression and control nearly
20 automatic. And that municipal fire response is
21 essentially a secondary and non-urgent response.

22 MR. COLLINS: That's absolutely correct.

23 MR. MCKINSEY: Have you evaluated the
24 city's testimony where they indicate that the fire
25 water system design is inadequate?

1 MR. COLLINS: Yes, we have looked at
2 that. The design is based on standards and code
3 practices. It's a system with a design and a
4 multitude of other sites. The system is a loop
5 system. It's reliable. The tank is designed for
6 minimum of two hours, and to hold at least 240,000
7 gallons.

8 There are redundant fire pumps. The
9 system is running at a higher pressure than the
10 city runs at, so the fire suppression systems will
11 work properly.

12 Again, it makes the city connection
13 unnecessary.

14 MR. MCKINSEY: Have you evaluated the
15 city's testimony regarding fire emergency response
16 times?

17 MR. COLLINS: Yes, we have.

18 MR. MCKINSEY: Are the city's projected
19 response times adequate?

20 MR. COLLINS: Yes, they are. It's based
21 on the nature of the design of the plant with
22 limited combustibles and control and separation of
23 the plant. The fact that it's got a very low
24 occupancy so that I'm allowed to extend my times
25 because I won't get the fire growth rates, and I

1 don't have the combustible construction to allow a
2 spread of the fire. So the times they proposed
3 are adequate.

4 MR. MCKINSEY: Thank you. And I'd like
5 to ask you a couple questions about the facility
6 and the project design. Can we put exhibit 190 up
7 on the screen? We handed out a copy of exhibit
8 190, as well. It's the 8.5-by-11 color chart.

9 (Pause.)

10 MR. MCKINSEY: Ed, how is emergency
11 access to the site provided for?

12 MR. HOLDEN: There's at least two access
13 routes recommended on exhibit 190. While you're
14 getting oriented there, this is a plot plan. This
15 is based on the plot plan you've already seen
16 throughout the proceedings here.

17 North is to the left. The main gate is
18 on the bottom of the exhibit off of Carlsbad
19 Boulevard.

20 The primary access route comes off of
21 Canon Road through the main gate. This will put
22 them closest, as they enter the site, closest to
23 the emergency and security staff for maybe some
24 previews to the situation.

25 They'll proceed east through the

1 property, crossing the railroad at the existing
2 crossings. And you can either continue east and
3 approach the fire through the southeast ramp, or
4 make a left turn and approach the power block area
5 from the north access ramp.

6 The secondary access comes off of Canon
7 Road; does not involve crossing the railroad
8 tracks. It is a paved road entering the SDG&E
9 switchyard. We're recommending a right turn past
10 the switchyard on the east side, and approach the
11 power block area from the southeast ramp.

12 MR. MCKINSEY: On this map you indicated
13 you're recommending a right turn. We don't have
14 highlighted, but in other documents we've
15 indicated that there's really two routes through
16 the SDG&E switchyard, correct? One going
17 straight, and then one turning right?

18 MR. HOLDEN: Yes, there's open space to
19 take that into consideration.

20 MR. MCKINSEY: So there's essentially
21 two optional ways to go across the SDG&E
22 switchyard?

23 MR. HOLDEN: Yes. We've recommended
24 this, again, to line up better with the east,
25 southeast corner access ramp.

1 MR. MCKINSEY: Thank you. Can you tell
2 the Commissioners how access within the site is
3 provided?

4 MR. HOLDEN: There are two access ramps
5 down into the power block area. You can enter the
6 power block area from the southeast on a graded
7 ramp down into the power block grade level.

8 You can also enter the power block area
9 from the north, which also coincides with what
10 will be used as the heavy-haul road.

11 Once inside you can circumnavigate on
12 the perimeter road at the power block grade level.
13 Ramps, perimeter roads within the power block area
14 are laid out to 28-foot widths.

15 MR. MCKINSEY: Thank you. Frank, have
16 you evaluated the city's testimony that the
17 project requires a 50-foot-wide perimeter road?

18 MR. COLLINS: Yes, we have.

19 MR. MCKINSEY: Can you explain whether
20 this is a standard design practice or if it's
21 needed or required for this project?

22 MR. COLLINS: The standard design
23 practice for power plants like this would be a 20-
24 foot road. Part of this is due to the limited
25 amount of -- actually, almost no traffic on the

1 road, so that the only thing you're really
2 concerned about is getting around a parked
3 vehicle.

4 This particular site is a wide open site
5 so that I don't need a clear distance from my
6 structures. I can back away and still be a safe
7 distance while handling a fire. Again, I have
8 separation so I do not have to worry about a fire
9 spreading over the entire site.

10 And this is a very common practice
11 throughout the country for power plants of this
12 type.

13 MR. MCKINSEY: What about the argument
14 that this, the power block is recessed in
15 essentially a bowl?

16 MR. COLLINS: The power block is a 10-
17 acre site. That's very large actually, so there
18 is room to maneuver down along the perimeter road,
19 subdividing roads within the power block.

20 And, again, we have enough room within
21 that area to get away from a fire, should anything
22 happen that you need to get away from the fire
23 without even having to evacuate the power block
24 area.

25 MR. MCKINSEY: Have you evaluated the

1 city's testimony that the project must have a 25-
2 foot-wide rim road that surrounds the entire power
3 block, including specifically the east side of the
4 power block?

5 MR. COLLINS: Yes, we have. First of
6 all, talking strictly from a fire-fighting
7 standpoint, the rim road does not provide me any
8 benefit due to the height and the types of
9 construction.

10 I've got steel and concrete
11 construction, so water coming down from that
12 particular area would not be able to penetrate
13 that and get to the basis of the fire.

14 These types of fire really need to be
15 fought from grade level so that you can get in and
16 get at the base of the fire if necessary.

17 There is no requirements for secondary
18 roads, and it would be very unusual at a power
19 plant to have secondary roads.

20 MR. MCKINSEY: That's our direct
21 testimony. Thank you.

22 HEARING OFFICER KRAMER: Thank you.
23 Staff.

24 ASSOCIATE MEMBER EGGERT: Actually just
25 a quick question. On the diagram here you may

1 have mentioned this, but this yellow below here,
2 is that the new desal plant?

3 MR. HOLDEN: That's correct, that's
4 Poseidon.

5 ASSOCIATE MEMBER EGGERT: Okay.

6 DIRECT EXAMINATION

7 BY MR. RATLIFF:

8 Q Good morning, Dr. Greenberg. You have
9 previously testified and provided your
10 qualifications regarding public health issues.
11 Could you also now provide your qualifications
12 regarding fire safety issues?

13 DR. GREENBERG: Mr. Hearing Officer,
14 Commissioners, if it please the Hearing Officer,
15 because I'm also going to testify this morning on
16 hazardous materials, and it's so closely linked to
17 worker safety/fire protection, I'm going to
18 include my qualifications not just in worker
19 safety and fire, but also hazardous materials and
20 infrastructure security.

21 HEARING OFFICER KRAMER: Go right ahead.

22 DR. GREENBERG: Thank you. In 1979 I
23 was appointed Assistant Deputy Chief for Health
24 with CalOSHA. I served in the enforcement branch
25 for over three and a half years. Had the

1 responsibilities for reviewing and evaluating the
2 need for safety and occupational health standards.

3 That was the time that AB-1111 was
4 enacted, and the Office of Administrative Law came
5 into being. I'll not comment on how I felt about
6 that.

7 And every single CalOSHA safety and
8 health standard, construction safety orders, fire
9 orders, elevator orders were reviewed, evaluated,
10 revised or left the same under my direction. I
11 interacted at that time with numerous fire
12 departments across the state.

13 In 1983 I was appointed by Governor
14 Jerry Brown to the CalOSHA Standards Board. The
15 seven-member board, if you will, is the
16 legislative arm of CalOSHA responsible for
17 enacting all safety and health regulations in the
18 state affecting 11 million workers.

19 At that time I also interacted with a
20 number of fire departments who came before the
21 standards board asking for variances,
22 demonstrating equivalent safety, but wanting to
23 provide that equivalent safety in a different
24 manner to their firefighters.

25 As a consultant contractor to the

1 California Energy Commission, I have written over
2 75 different worker safety and fire protection
3 staff assessments. Same thing with hazardous
4 materials management.

5 And I have visited and talked with, or
6 my staff has had interaction with, over 50 fire
7 department jurisdictions in the State of
8 California.

9 I have conducted safety, fire
10 prevention, hazmat and security audits at 19 power
11 plants around the state. These were in-depth,
12 focused on those matters at these 19 power plants
13 around California.

14 I'm a member of the National Fire
15 Protection Association. I have taken courses in
16 industrial safety and in fire protection,
17 emergency response and infrastructure security, as
18 well as emergency response security.

19 My security training started in 2002
20 with Israel's oldest security firm, known as SB
21 Security, LLC. In Hebrew it's Smerov Bitufan
22 (inaudible), which literally means guard and
23 protect.

24 I was trained by members of that
25 security firm who were former Israeli Defense

1 Force Commandos, members of Shin Bet, which is the
2 Israeli equivalent of the FBI; the Mossad, which I
3 think most people know is their CIA equivalent.
4 And Colonel Menachem Bacharach -- yes, he is the
5 cousin of Burt Bacharach -- came to Sacramento.
6 We team-taught, no -- but we team-taught CEC
7 compliance project managers on infrastructure
8 security.

9 I have taken courses in infrastructure
10 security from the Department of Homeland Security,
11 including those in Washington, D.C., the Bay Area.
12 Trained in the CFATS program; that's chemical
13 facility anti-terrorism standard.

14 Wrote the California Energy Commission's
15 vulnerability assessment matrix in 2003 and 2004.
16 And I review and evaluate security plans for the
17 Energy Commission.

18 I've also been involved in security
19 matters for proposed LNG facilities in California.
20 I have U.S. Department of Energy security
21 information clearance, and U.S. Coast Guard
22 sensitive security information. And, yes, I had
23 15 private minutes with Tom Ridge, the first
24 Homeland Security Director, when I was doing
25 energy infrastructure security for the State of

1 Hawaii. He happened to be there when I was there.

2 And thank you for your patience.

3 MR. RATLIFF: Thank you. Could you
4 summarize your conclusions regarding fire safety?

5 DR. GREENBERG: Yes. And, Mr. Ratliff,
6 if we could do one thing on worker safety before
7 we go on to --

8 MR. RATLIFF: Sure, go ahead.

9 DR. GREENBERG: -- fire issues, I know
10 that's a big issue. But the applicant has made a
11 proposed suggestion to worker safety-8. And so if
12 we could turn to FSA worker safety-8, which would
13 be found on page 4.14-22.

14 This is a proposed condition of
15 certification which, if the Commission certifies
16 this project and adopts my recommendation, the
17 project owner would have to insure that no less
18 than two workers would be present on the actual
19 site, that is in the bowl, as opposed to being in
20 a control room, which is proposed to be located on
21 the Encina Power Station site, whenever the
22 facility is operating.

23 The applicant is proposing to add words
24 "when the units are dispatched from a shutdown
25 condition project owner shall send the two workers

1 to the site while commencing startup; and the two
2 workers shall proceed directly to the site."

3 The control room that they would be
4 based in would be roughly five to eight minutes
5 slow walking distance. I think they could do it
6 faster if they did a brisk walk.

7 This is a practice that is currently in
8 effect at a number of peaker plants that are
9 remotely started up in California. I have talked
10 this over with Rick Tyler, the Senior Engineer
11 whom I report to. And we have no objection to
12 this change.

13 MR. RATLIFF: Does that conclude the
14 worker safety portion that you wanted to address?

15 DR. GREENBERG: Yes. I'm not going to
16 go into my conclusions on worker safety. It speak
17 for itself. In the interests of time we'll go
18 right to fire protection.

19 HEARING OFFICER KRAMER: So, because I
20 don't have the city's change in front of me, are
21 you agreeing to the exact language that they
22 proposed to amend the condition?

23 MR. RATLIFF: Yeah, but --

24 MR. MCKINSEY: It's the applicant's
25 change.

1 HEARING OFFICER KRAMER: I'm sorry,
2 that's right.

3 DR. GREENBERG: Yes. They proposed it
4 December 15, 2009, in the applicant's opening
5 testimony, preliminary identification of contested
6 issues, and witness and exhibit list. And I'm
7 agreeing with their exact language.

8 HEARING OFFICER KRAMER: Okay, thank
9 you.

10 DR. GREENBERG: Thank you.

11 DR. ROE: Mr. Kramer, is this the
12 appropriate time for cross on worker safety?

13 HEARING OFFICER KRAMER: No. We're
14 doing them both together, so when your cross time
15 comes, if you have questions you can do it then.

16 DR. GREENBERG: Now I'll answer your
17 question, Mr. Ratliff.

18 MR. RATLIFF: Okay.

19 MR. MCKINSEY: Can I -- I don't want to
20 interrupt, but I think Dr. Roe may be bringing up
21 a topic that might just get worked out must faster
22 about worker safety-2, is that correct?

23 DR. ROE: Worker safety-8.

24 MR. MCKINSEY: You had made a request,
25 as well, that we agreed to, I think.

1 DR. ROE: Which is?

2 MR. McKINSEY: I'm not -- that's what
3 I'm asking. Was that what you were asking about?

4 DR. ROE: I want to respond to a
5 question --

6 MR. McKINSEY: Okay, I'm sorry. I must
7 not be remembering correctly, sorry. I apologize,
8 Hearing Officer Kramer.

9 DR. GREENBERG: Fire protection is a
10 very important issue in building a power plant
11 during construction, as well as in operating the
12 power plant.

13 The applicant has demonstrated, through
14 their application for certification, as well as
15 their response to data requests, that they are
16 knowledgeable of the LORS, laws, ordinances,
17 regulations and standards. And that they will
18 operate this power plant with the safeguards that
19 are appropriate.

20 They will follow NFPA-850. The
21 witnesses for the applicant have gone into the
22 numerous automatic fire detection and suppression
23 systems. I won't go into that now.

24 I made a concerted effort, and other
25 staff members joined me in this, to review the

1 impacts of the proposed widening of I-5 on the
2 site and safety and fire response access and
3 emergency response access. Doesn't necessarily
4 have to be a fire; could be hazmat or it could be
5 emergency medical services response.

6 Staff me with Caltrans after exchanging
7 some letters. We did so during a workshop right
8 here in Carlsbad. We also met with them in a
9 teleconference where we were all onboard. And I
10 personally came down here and met with a Caltrans
11 engineer. The day after, upon my request,
12 Caltrans conducted a survey and put in precise
13 locations on the site, on the eastern boundary of
14 the site where the I-5 widening would most likely
15 go.

16 Again, the I-5 widening project is
17 certainly more than a gleam in somebody's eye.
18 But staff has been wrestling with the precise
19 configuration, because Caltrans does not have a
20 draft environmental impact report out. They have
21 not identified exact measurements.

22 So I asked them to do so earlier, and
23 they did. I want to thank Caltrans. They were
24 very cooperative.

25 Some of the photos you have in front of

1 you shows some of the stakes that the Caltrans
2 survey team put out there.

3 I have available for the public to look
4 at, and if we go to this handout that I provided,
5 page 2, which is photo 009 --

6 MR. THOMPSON: Mr. Kramer, if you could
7 stop 30 seconds while we see if our guys have
8 this?

9 HEARING OFFICER KRAMER: And while we're
10 on pause, that was passed out this morning by Dr.
11 Greenberg. I think it's similar to what Mr.
12 Kanemoto did yesterday. It's simply a convenient
13 compilation of pictures that are already in one of
14 the exhibits.

15 But I've asked him to refer to it by
16 exhibit number and page so that the transcript
17 makes sense. And I should give him the exhibit
18 number so he can do so. And that is 223.

19 DR. GREENBERG: Say again?

20 HEARING OFFICER KRAMER: 223.

21 DR. GREENBERG: 223, exhibit 223. Now,
22 these photos are not new. They're taken from the
23 final staff assessment. You can find them in the
24 back of the final staff assessment. It's also
25 referred to as either worker safety/fire

1 protection figure 2, or photo 009. And you can
2 see the survey stakes there.

3 We did go through an extraordinary
4 effort to determine what would be the maximum
5 encroachment of the I-5 widening on the project,
6 for the most likely scenario that Caltrans
7 engineers indicated that they would choose.

8 We also --

9 DR. ROE: Excuse me, Dr. Greenberg.

10 DR. GREENBERG: I also looked at --

11 DR. ROE: Excuse me, Dr. Greenberg. I'm
12 looking at that photo and that looks like a
13 picture of the upper rim road, and not of the I-5.

14 DR. GREENBERG: The I-5, I'm saying this
15 is the survey stakes of the maximum encroachment
16 of the widening of I-5. I-5 is just to the right
17 there, which would be to the east. It would go
18 that close to the rim road, Dr. Roe.

19 DR. ROE: I see, thank you for that
20 explanation.

21 DR. GREENBERG: You're welcome.
22 Obviously there's no pictures of the widening of
23 I-5, because it hasn't been done yet. So we're
24 trying to get a picture here.

25 But I did factor into my analysis if

1 Caltrans should not follow through on its
2 description to us of what they think will be their
3 preferred alternative, because it's still not
4 chosen yet, and that would be a -- this, by the
5 way, is the 8-plus-4 with barrier configuration.
6 They might go to a 10-plus-4 with barrier
7 configuration. And that would take out another
8 several feet there.

9 But yet I included that in my analysis.
10 And I have determined that there is adequate room
11 for access for emergency response; for a sloped
12 road on that side to go down into what I call the
13 bowl, which is approximately 30 feet below that
14 rim road.

15 If you look at exhibit 223, page 1,
16 which is also known as photo 002, you can see the
17 45-degree slope very plain. And the rim road is
18 above that. And then down below you can see the
19 tanks. Those tanks, of course, are going to be
20 removed.

21 And there would be enough room for at
22 least a 28-foot-wide firelane around the bottom of
23 the bowl, which means it would be around all the
24 energy infrastructure, so as to provide access to
25 any point at the bottom of the bowl.

1 The 45-degree slope there would have to
2 be removed in order to maintain that 30 feet. In
3 other words, you remove that and put up a
4 retaining wall, and you gain 30 feet of horizontal
5 width. You still have 30 feet of vertical width,
6 but instead of it being a 45-degree slope, it
7 would just go straight up with a retaining wall.

8 That means then that there is adequate
9 access, in my opinion, 28 feet. This 28-foot
10 distance is consistent with what the fire
11 department had been saying to me up until their
12 prefiled testimony.

13 In the end of March of 2009, the last
14 word that I had heard from the fire department was
15 that they wanted 24 feet. And this was a letter
16 from the fire department that was docketed. And
17 so it is in the record.

18 And then, of course, they've moved to 50
19 feet in their prefiled testimony. And, of course,
20 they're here today to explain that. And I'm
21 certainly eager, you know, to hear that
22 explanation of going from 24 to 50 feet, the
23 necessity for that.

24 But my review of the situation shows
25 that while this is a constrained space, I do agree

1 with the fire department and others that it is
2 tight, it is no more tight than other constrained
3 spaces which have power plants certified by the
4 Energy Commission.

5 And, in fact, it has room for greater
6 fire lanes than some of these other power plants
7 that have been approved by you, that are
8 constructed, that are operating. And I have not
9 heard from the fire departments, either during the
10 siting process, or afterward, that a firelane
11 greater than 20 feet is required.

12 If you look at my rebuttal testimony
13 that was filed, there is an exhibit there, a table
14 of representative, I call restricted, access power
15 plants.

16 HEARING OFFICER KRAMER: Do you happen
17 to know the exhibit number? Maybe I can find it.

18 (Pause.)

19 HEARING OFFICER KRAMER: It may be
20 exhibit 203. We'll pull it up here on our
21 computers and look.

22 MR. RATLIFF: Mr. Kramer, what are you
23 asking? I didn't hear.

24 HEARING OFFICER KRAMER: He's referring
25 to his rebuttal testimony.

1 MR. RATLIFF: 203.

2 DR. GREENBERG: Exhibit 203, you say?

3 HEARING OFFICER KRAMER: Yes. Do you
4 happen to have a page number for your testimony?
5 It's not bookmarked.

6 MR. RATLIFF: Which or what are we
7 referring to?

8 Mr. Kramer, I'll try to answer your
9 question. I have his testimony in my hand. If
10 you could --

11 HEARING OFFICER KRAMER: Okay, I've got
12 it here on my screen. It looks like it begins at
13 page 22 of exhibit 203.

14 MR. RATLIFF: Okay.

15 HEARING OFFICER KRAMER: And it looks
16 like the response about the access road is --
17 that's what you're referring to?

18 DR. GREENBERG: I can't hear.

19 HEARING OFFICER KRAMER: You're
20 referring to your response about the access road?

21 DR. GREENBERG: Yes.

22 HEARING OFFICER KRAMER: That begins on
23 page 23.

24 DR. GREENBERG: It would be a table
25 entitled exhibit 1, followed by one, two, three,

1 four, five figures.

2 HEARING OFFICER KRAMER: That is on page
3 28. But I have it before me. So, go ahead.

4 DR. GREENBERG: Thank you, Mr. Kramer.
5 These are five sites that I consider to have
6 restricted access that just came into mind. I
7 have visited, personally been to all five of
8 those.

9 And if you look at the table you can see
10 that some of them have sizes of 34 acres, all the
11 way down to the proposed CECP at 23 acres. And
12 even the Von Raesfeld, formerly known as the Pico
13 Power Plant in Santa Clara, which is 2.86 acres.
14 That is so tight.

15 That is so access-restricted that they
16 couldn't even put the gas compressor station on
17 the site. That's why you see that parenthetical
18 figure of plus .26. The gas compressor station is
19 on the other side of the street; a very busy
20 street, I might add.

21 And the point here is looking at many of
22 these sites, some of them abut railroad tracks;
23 some are right on the beach; some are right on
24 highways; some are right near interstates.

25 Many of these urban power plants have

1 restricted access. We insure that there are at
2 least two access points. Even out there in some
3 of the proposed solar power plants we are
4 requiring, or we're telling the applicants we want
5 two access points.

6 And all of these do have two, but many
7 of them do not have any other access points.
8 There's buildings right alongside. Some of them
9 have homes within 350 feet. Busy intersections,
10 et cetera.

11 I think probably the best example would
12 be one right here in north San Diego County; and
13 that would be shown on the next two figures there
14 of this exhibit. And this is the Palomar Energy
15 Center project, which I have visited four times.

16 HEARING OFFICER KRAMER: Do you mean the
17 photographs or your rebuttal testimony?

18 DR. GREENBERG: No, this is still the
19 rebuttal testimony, Mr. Kramer. I have figures
20 there on the site arrangement for Palomar.

21 HEARING OFFICER KRAMER: I see them. Go
22 ahead.

23 DR. GREENBERG: If you look at the
24 figure 2.3-1, which is attached to my rebuttal
25 testimony, and the next figure, 2.5-2, which shows

1 the site topography, this is another restricted
2 site.

3 In fact, to the north there is a 20-foot
4 high berm; to the west is a 70-foot high wall.
5 This power plant site was literally excavated out
6 of the ground.

7 To the east is 40 foot high. And these
8 are almost vertical, almost straight up. The fire
9 lanes here are 20 feet.

10 Now, to the south it is more open.
11 There's only a gentle slope going up on the
12 southern end. But as you can see from figure 2.4-
13 1 that access is relatively restricted due to a
14 very large cooling tower.

15 But nevertheless, once you get around to
16 the east, west and north sides of the power plant,
17 you have 20-foot-wide fire access lanes.

18 The Escondido Fire Department never
19 brought up any issue with this site either during
20 the siting process or since then.

21 The fire department initially had said
22 to me that they felt that there could be a
23 cumulative impact. Now when a fire department
24 says to me that there could be a cumulative impact
25 on their ability to respond, I take note of that.

1 We take that very seriously.

2 In fact, we've established a procedure,
3 the staff has established a procedure, whereby
4 it's almost a prima facie case has been
5 established that there would be a cumulative
6 impact.

7 And that triggers an analysis
8 requirement for the applicant. That's what
9 happened in this case. In fact, the preliminary
10 staff assessment, indeed, I noted that the fire
11 department had indicated there could be a
12 cumulative impact. And I agree with them, because
13 that was the information I had at the time.

14 However, the applicant is given an
15 opportunity to provide two additional assessments.
16 A fire needs assessment, which they did. And a
17 risk assessment to talk about not if there could
18 be a cumulative impact, but what were the odds,
19 what was the actual risk of there being a
20 cumulative impact in a quantitative manner.

21 The city had told me that they were
22 working on their own fire needs assessment. But
23 as of today I guess they had not been able to
24 complete that.

25 So the information that I have in order

1 to assess whether a cumulative impact on the fire
2 department was, indeed, present, was the opinion
3 of the fire department, a fire needs assessment
4 from the applicant, a risk assessment from the
5 applicant, comments from the Carlsbad Fire
6 Department on those two documents, and then my own
7 internal risk assessment, which I really did not
8 base my decision on. I use that only to see if
9 the applicant's risk assessment was within the
10 realm of accuracy. And I determined that it was.
11 But I want to make clear I'm not basing my opinion
12 on my own work, but rather what the applicant has
13 provided.

14 And so it was at that time that I
15 determined that there was not a significant impact
16 on the fire department, because there was not a
17 significant chance that there could be that
18 impact.

19 So the fire department was very much
20 involved. I contacted the fire department. I
21 took their information. In my independent
22 evaluation of their opinion, the applicant's
23 opinion, I came up with a condition of
24 certification that said that the applicant needed
25 to build the project to the specifications of a

1 certain figure that showed fire lane widths,
2 which, at the time I thought was 30-feet wide.
3 And that was because it was based upon some
4 rather, you know, gross initial measurements.

5 But the applicant has indicated using
6 more precise autocad measurements of their
7 engineering design, that that minimum width is
8 more 28 feet and not 30 feet.

9 But because my proposed condition of
10 certification says it needs to follow that figure,
11 that design figure, the 28 feet is acceptable to
12 me. That's minimum. It will be wider at other
13 points.

14 With that, Mr. Ratliff, I can conclude
15 that I believe that the worker safety and fire
16 protection LORS will be followed. That this is
17 not so unusual a site that a safety issue or an
18 access issue causes me concern.

19 I find that the Carlsbad Fire Department
20 or any fire department, in that matter, could
21 indeed respond as needed to this particular site.

22 MR. RATLIFF: Just to be clear there's
23 nothing in the California Fire Code or any other
24 LORS that is applicable to this project that would
25 require a wider road than that that is provided?

1 DR. GREENBERG: The California Fire
2 Code, which is the controlling code in this
3 matter, does indeed mention a 20-foot width. The
4 fire chief and fire marshal correctly point out
5 that the next paragraph gives the fire authority
6 great latitude in determining whether they need to
7 have a wider width.

8 The problem is that the code doesn't
9 speak to how the fire chief and fire marshal
10 should exercise that latitude. I'm anxious to
11 hear their reasons why. And I am looking for
12 objective reasons and evidence in order to
13 understand why 50 feet, as opposed to the initial,
14 their initial assessment of 24 feet, or the code
15 requirement of 20 feet is needed.

16 MR. RATLIFF: Is the term confined space
17 a term of art that is relevant to the project
18 site?

19 DR. GREENBERG: No. I saw that in the
20 fire department's response. And I understand that
21 they're not saying that it is a confined space
22 pursuant to the letter of the law. I think they
23 use the term to indicate that it appears that way.

24 And I would just respectfully disagree,
25 particularly as somebody who rewrote the confined

1 space regulations when at CalOSHA.

2 It's very clear, the definition of a
3 confined space, in California Code of Regulation
4 section 8 -- Title 8, section 5157(b)(3) would
5 certainly preclude anybody from calling this a
6 confined space. In my view, it does not even
7 remotely resemble a confined space.

8 MR. RATLIFF: You address the upper
9 road, sometimes called the rim road, around the
10 project site. How does the, taking into account
11 the cumulative effect of the potential I-5
12 widening, how does that effect the existence of
13 this upper road around the site?

14 DR. GREENBERG: Well, first off, I
15 certainly do agree with the applicant's experts
16 who testified there is no requirement for it or
17 need. It's nice that it's there. The applicant
18 will, indeed, maintain it, as I understand it.

19 But the encroachment of I-5 under the 8-
20 plus-4 with barrier configuration would not
21 eliminate entirely the rim road on the eastern
22 side. It would reduce its width. But certainly,
23 automobiles, pickup trucks could get by there.

24 But that's just for a small portion on
25 the east side. The north side, the south side and

1 the west side of that rim road would still be
2 intact.

3 MR. RATLIFF: Is there anything else
4 that you would like to address regarding your
5 testimony?

6 DR. GREENBERG: No.

7 MR. RATLIFF: Thank you.

8 HEARING OFFICER KRAMER: City witnesses,
9 Mr. Thompson.

10 MR. THOMPSON: Thank you very much, Mr.
11 Hearing Officer. I guess what I'd like to do is
12 take you one at a time. Let me start with you,
13 Mr. Weigand, Chief Weigand, the Fire Marshal.

14 DIRECT EXAMINATION

15 BY MR. THOMPSON:

16 Q Would you please state your name and
17 position with the fire department for the city.

18 MR. WEIGAND: Mr. Hearing Officer,
19 Commissioners, James Weigand, Fire Marshal for the
20 City of Carlsbad.

21 MR. THOMPSON: If I were to ask you
22 today the questions contained in your prepared
23 testimony, would your answers be the same under
24 oath?

25 MR. WEIGAND: They would.

1 MR. THOMPSON: Would you please describe
2 your relevant experience with regard to the
3 matters you're going to be testifying to today.

4 MR. WEIGAND: Certainly. I've been in
5 the fire service 23 years. Prior to that I had
6 spent some time in law enforcement. During those
7 23 years the vast majority of my time has been
8 spent regulating industrial facilities, large
9 facilities, including government-owned,
10 government-operated facilities, government-owned
11 contractor-operated facilities and private
12 facilities.

13 A number of those facilities had
14 significant security interests because of what
15 they did on those sites. And so I participated in
16 the response to those.

17 I am currently the Chair of the National
18 Code Services Association, which is a section of
19 the Western Fire Chiefs Association that's
20 responsible for providing code input and fire
21 prevention support for the fire departments in the
22 ten western United States.

23 Prior to that I was the Chairperson of
24 the Board of the Uniform Fire Code Association
25 when the Uniform Fire Code was published. We were

1 responsible for the publication of that document,
2 also a section of the Western Fire Chiefs
3 Association.

4 During my time in the code business I
5 have been a member of and Chair of the Code
6 Development Committee. That's the committee that
7 hears proposed changes for the Uniform Fire Code
8 when we had it. And acted administratively upon
9 what went into the code based upon actual need.

10 I also served as a member of, and later
11 Chair, of the Code Interpretation Committee. That
12 Code Interpretation Committee rendered
13 interpretations relative to the meaning of the
14 code and the intent of the code for agencies in
15 the 28 western states that used that code.

16 I also serve on a National Fire
17 Protection Association Committee with the NFPA-1
18 Uniform Fire Code.

19 MR. THOMPSON: I'm afraid even to ask
20 this, but do you have actual on-the-ground
21 firefighting experience that you found valuable in
22 your duties and responsibilities in code writing?

23 MR. WEIGAND: Certainly. And that's one
24 of the most important things in code writing is
25 having that experience. In those 22 years I've

1 done everything from point a hose at things that
2 were burning, all the way up to command divisions
3 of firefighters responding to flood emergencies in
4 northern California, and everything in between.

5 And one of the things that we used as a
6 basis in the Uniform Fire Code, which became the
7 basis of the International Fire Code, which is
8 used today, was we always required that there had
9 to be a real-world application and need for the
10 things that made it into the code, so that it was
11 more than speculation. There was a real need, a
12 real problem, and the problem was being addressed.

13 MR. THOMPSON: After reviewing the
14 rebuttal testimony of staff and the applicant,
15 have you changed your conclusions?

16 MR. WEIGAND: No. I haven't. I still
17 believe that we need a significant space, not only
18 -- maybe, you know, 50 feet -- let's jump to the
19 50-foot issue since that seems to be what's in
20 play here.

21 When we went to the Escondido site and
22 visited the Escondido site, they actually, their
23 firelanes are more than 20 feet. The term
24 firelane, on the plans and in the code,
25 specifically refers to the portion of roadway that

1 literally, for all intents and purposes, belongs
2 to the fire department for emergency response.
3 Nothing else can use it; nothing else can be
4 there; it has to be open and clear at all times.

5 When we started measuring the Escondido
6 site, we actually found out that from where the
7 slope was to where the buildings were, with the
8 exception of a couple cut-outs that were made on
9 the opposite side of the fire-road, was actually
10 in excess of 50 feet.

11 Because in that fire-access roadway we
12 have multiple needs. We have the need to be able
13 to drive and respond, pass anything that's there,
14 lay hose, open up and operate our equipment, and
15 still be able to move equipment around the
16 facility in order to meet emergency need.

17 MR. THOMPSON: I would like to ask the
18 other two gentlemen, if you want to now, to
19 comment on the 50-foot requirement while we have
20 that subject. Or would you like to defer that?

21 MR. HEISER: Mr. Hearing Officer,
22 Commissioners, I'm the Operation Chief of the
23 Carlsbad Fire Department. My view comes from the
24 practical application of the codes and the design.
25 So my bias lies with the fact that I view it not

1 so much from a compliance issue, but simply how
2 will I conduct fire-ground operations or rescue
3 operation or EMS operation in regard to a response
4 or demand. So looking at the roadway width is
5 just an example.

6 Our fire apparatus are relatively large.
7 We have one truck in the city. It's 56 feet long.
8 It's about ten feet wide and about 13 feet tall.
9 That's its driving dimensions. In order to
10 utilize it effectively on a fireground or in
11 rescue I need a little bit bigger footprint.

12 So when you look at what the operational
13 footprint is for that truck, it's approximately 20
14 feet wide and about 90 feet long. And that comes
15 from the fact that a fire truck, for example, and
16 the fire truck is the long one with the big ladder
17 on it, really is just a giant toolbox. And as you
18 go around it you're opening doors and taking out
19 all the tools you need to do your job on the
20 fireground.

21 So if you've got a vehicle that's
22 approximately 10 to 11 feet wide, and then need a
23 minimum of five feet on each side, you're starting
24 to get this 20-foot width just to operate safely
25 around it and access the equipment.

1 Then in the example of the fire truck,
2 the one that's again long, we have ladders that
3 are stored underneath it that we need to access
4 from the rear, so that 90 feet is just to gain
5 effective access to both the front and the rear of
6 the truck.

7 Fire engines are the smaller ones.
8 They're only about 30 feet long. They carry the
9 500 gallons of water and a bunch of hose, but have
10 the same requirements when they're laid out. I
11 need about 90 feet of length to pull hose off the
12 back end and effectively deploy it. I need access
13 to the sides.

14 So, when you start talking about how
15 much room do I need to safely drive in and
16 effectively operate, I start looking at what my
17 initial footprint is. And then how much room do I
18 have on each side. And if one side's a vertical
19 wall, that limits options.

20 If the other side I need a certain
21 degree of standoff, an operating area that
22 provides me with a degree of safety for the
23 personnel that I've deployed down inside that
24 area, I start looking at 20 feet isn't even close
25 to what I would consider reasonable. And start

1 looking at passing of additional apparatus, once
2 I've placed apparatus. And at that point you
3 start looking at 50 feet seems to be a reasonable
4 width to safely conduct fireground and rescue
5 operations.

6 One of my concerns is both the proactive
7 and reactive approach, and I need the ability to
8 safely deploy my resources and recover them. So I
9 need width, length, height and 50 feet provides
10 that.

11 MR. CRAWFORD: Well, the Fire Marshal
12 and the Operations Chief have done a very succinct
13 and thorough job of describing the importance of
14 the access issues that we have with the access
15 issues that are of concern to us.

16 The only thing that I would add to that
17 is that once we set up our operations and we begin
18 our operations, we're anchored in there. We don't
19 have the latitude or the luxury of being able to
20 pick up and move.

21 So if you visualize the operations as
22 maybe you would with your personal vehicle, where
23 if you're unloading your car and you decide you
24 need to reposition for some reason, you can easily
25 do it. You can lower the truck and get in your

1 car and move. That just is not an option for us
2 when we're establishing fireground operations.

3 We take up a lot of space. We're
4 anchored in there. And we're going to be there
5 for the duration of the incident. So that would
6 be the only other thing that I would add to the
7 record.

8 MR. THOMPSON: Thank you very much.
9 Chief Weigand, let me get back to you. Dr.
10 Greenberg mentioned the term confined space and
11 how, in his opinion, the pit is not a confined
12 space. Do you have any additional thoughts on
13 that?

14 MR. WEIGAND: Thoughts on the term
15 confined space certainly we're not talking a
16 permitted confined space like OSHA would talk
17 about.

18 The problem the pit provides for us is
19 if something goes wrong, if I have to get my
20 firefighters out of the situation that they're in,
21 the vertical wall on the I-5 freeway, near-
22 vertical wall on the I-5 freeway, which is going
23 to have a soundwall or berm on the top of it, is
24 impossible for my folks to get out.

25 So confined space, as we use the term,

1 is used to represent any location where we just
2 can't get the people to be able to self-rescue
3 themselves. And we've placed them in a position
4 where their options, if we have problems, and
5 unfortunately in our business we have to plan for
6 the worst, and hope that the engineering fixes and
7 the things that are in place work.

8 But we respond to incidents when those
9 systems fail. And unfortunately, they fail rather
10 frequently. So if they can't get out, that's what
11 we're talking about with a confined space or
12 restricted space.

13 MR. THOMPSON: Thank you. Did you hear
14 the testimony this morning about your suggestion
15 of a looped fire system and the applicant's belief
16 that it's hooking into the tank with a backup at
17 the Encina Station is sufficient? Do you have any
18 comment on that?

19 MR. WEIGAND: I do. Hooking into tanks
20 is permissible by National Fire Protection
21 Association standards. But it's not the preferred
22 method of providing water, because of the
23 limitation.

24 The preferred method of providing water
25 for any site with a municipal water system that's

1 reliable, such as ours, is to loop the system into
2 the municipal waterlines. You can still add fire
3 pumps. If they work, great; if they don't, you've
4 still got this unrestricted amount of water.

5 A tank provides limitations for us. You
6 heard the limitations mentioned by the engineer.
7 Two hours worth of water.

8 On the other hand, if we hook into the
9 city water supply, barring a catastrophic failure
10 of the city water system, we have a reservoir with
11 millions of gallons of water that would keep
12 flowing through those pipes until such time as we
13 no longer needed it.

14 I experienced problems when I was in
15 northern California with such a tank system,
16 operated by a municipal utilities district. They
17 had a water tank; they had a very significant
18 jockey pump, then fire pump system to provide
19 water for the Township of LaGrange.

20 We had a fire in the Township of
21 LaGrange. The pump failed. It did not come
22 online. The jockey pump failed. It did not come
23 online. In order to provide firefighting water,
24 more than the 500 gallons we carry on the engine
25 company, and that's just a few minutes worth of

1 firefighting ability, I had to wait until we were
2 able to get multiple pieces of fire apparatus to
3 pump water out of an old mining pit and pump it
4 down a state highway before I was able to have
5 adequate water supply to put out the fire.

6 So, a tank, because of where they are, a
7 small township is an acceptable method of
8 providing water, and it even failed there. In a
9 municipality such as this, with a reliable water
10 supply and reservoirs with millions of gallons of
11 water, it's a less acceptable option.

12 MR. THOMPSON: There have been comments
13 made this morning about the risk of fire. And I
14 think that the applicant was making a distinction
15 between a prospective fire that would involve
16 personnel or a small fire, or maybe an incident
17 that didn't involve a lot of people, I'm not
18 exactly sure.

19 Does the fire department react
20 differently to those events?

21 MR. WEIGAND: No, we don't react
22 differently because it's impossible, first of all,
23 to tell whether or not there's anybody there. I
24 mean there's always the potential for a life-
25 safety event.

1 The other thing is the engineering
2 safety concerns that were made, I could probably
3 go for quite a bit of time talking about
4 engineering fixes that failed, starting with the
5 Titanic. It wasn't supposed to be able to sink.
6 And working all the way up to maybe the MGM Grand
7 fire in Las Vegas, which was supposed to be a
8 fireproof hotel. And we know what happened with
9 the MGM Grand fire. We had multiple fatalities
10 there.

11 Fire services have to plan for what
12 happens and what we do when everything fails when
13 the facility you are building is fully occupied.
14 Because that's what we have to protect.

15 Other comments by the applicant's
16 engineers, gaseous or, you know, controlled
17 systems for fighting fire. They work great as
18 long as they remain confined in a room. But if
19 somebody's propped open a door, or if a door is
20 left ajar, and the gas system disperses and
21 discharges, it goes right out the door. Not an
22 effective firefighting measure.

23 So, once again, this is another reason
24 we have to plan for worst case scenarios.

25 MR. THOMPSON: Thank you. I realize

1 that exhibit 190, which was passed out this
2 morning, I don't know if you've had much time to
3 look at it, but from a perspective of the City's
4 Fire Marshal position, do you have any comments on
5 what I'll call that fire plan, I guess.

6 MR. WEIGAND: Well, if I were reviewing
7 this, as submitted for this particular facility,
8 I'd look at a number of things.

9 First of all, the entrance off of
10 Carlsbad Boulevard is great. But each and every
11 time you put a turn in there it slows down our
12 response. So by the time you take all of these
13 multiple turns, our response time down into the
14 area that we're really talking about today, is
15 going to be significantly reduced. And I'll rely
16 upon Chief Heiser to make more comments relative
17 to that.

18 There seems to be a lot of 90-degree
19 turns. You know, fire apparatus don't make 90-
20 degree turns. So we have to take a look at
21 turning radius instead. And those aren't
22 depicted.

23 I'm particularly concerned with what
24 they refer to as light-duty fire truck access.
25 Our fire trucks come in two kinds -- three kinds

1 here in Carlsbad. We have the long truck company
2 with the ladders; we have the type 1 engine
3 companies; and we have type 3 brush engines that
4 we only staff during brushfire emergencies.

5 Most of the time when people talk about
6 light-duty fire trucks they're talking about
7 something that are used primarily by volunteer
8 departments and small departments in northern
9 California where there may be a two-ton crew cab,
10 a little firefighting pack and some water on the
11 back. Basically a fire extinguisher with wheels.

12 Since we don't have those types of
13 equipment, and wouldn't use them anyhow in an
14 industrial fire situation, any reference to a
15 light-duty fire truck access or ability is sort of
16 irrelevant.

17 And then even in this particular case,
18 if you take a look at the north side where they
19 show the light-duty firetruck access across the
20 rim, they failed to provide a turnaround. How do
21 you turn that piece of fire apparatus around? So,
22 once again that portion of the rim road becomes
23 somewhat useless to us.

24 The other thing that really concerns me
25 and concerns me, again, is -- and I talked about

1 the separation from walls to the facility. We
2 talked about the Palomar Plant and the fact that
3 there's really 52 feet before you have the
4 facility.

5 In the California Building Code they
6 actually allow for this, what's called side yards.
7 And the thing about side yards is, side yards are
8 there for firefighting use, to give us room to
9 work, as Chief Heiser talked about.

10 And this particular plant doesn't seem
11 to provide us the room that we're going to need to
12 work in case of a failure of the systems.

13 So those are just the things off the top
14 of my head, looking at it for just a couple of
15 minutes, that concern me.

16 MR. THOMPSON: Thank you, Chief. One
17 last question. Also handed out this morning were
18 some photographs. I think these were marked
19 exhibit 223. Do you have those?

20 If you would take a look, please, at the
21 second page. This is the shot of what we're
22 calling the upper rim road, I think. And there's
23 a couple yellow or red stakes on -- yellow stakes,
24 red flags on the right-hand side of that road.

25 That, I believe, is meant to signify the

1 extent of the I-5 widening, the extent of the
2 Caltrans right-of-way.

3 Now, if you picture on the pit side of
4 the right-of-way foliage, tall trees to block the
5 view, does that, in your opinion, pose any
6 additional risk to the firemen, the public or the
7 equipment?

8 MR. WEIGAND: The problem that I see
9 with this, if there's the berm and the trees and
10 all that kind of stuff, is if, for some reason, we
11 can't get down into the pit, the bowl, whatever
12 you choose to call it, to fight the fire. And
13 because of the way that the site is laid out, it's
14 the long side of the facility for us, would have
15 to be fought potentially with aerial streams off
16 ladder trucks off the I-5 freeway, itself.

17 And if you can contemplate what it would
18 be like closing the I-5 freeway. Us having to lay
19 multiple, large-diameter hose lines with relay
20 pumping to get the water there, and shoot down and
21 over it, if we couldn't get into it. And if there
22 was a failure of the system. Or if we ended up
23 with a mineral oil fire in the large transformers
24 that are part of this system, which weren't
25 particularly covered in hazardous materials. But

1 there's certainly more than just the ammonia, if
2 you use the California definition of a hazardous
3 material.

4 It potentially is going to provide a
5 great obstruction to us and our ability to try and
6 deal with what's happening in the bowl, if we
7 cannot make entry.

8 MR. THOMPSON: I have one last request,
9 and this is a bit unusual. I heard you, at one
10 time, talk about what the most likely response
11 event would be, starting with calls on the
12 freeway. Would you repeat that for the benefit of
13 the Commissioners?

14 MR. WEIGAND: Certainly. You know, what
15 we were talking about, what would really happen
16 here in the case of a large fire.

17 We're looking at the I-5 freeway, the
18 major north/south artery through the State of
19 California. The minute any plume of smoke comes
20 up over that, cellphone calls, probably the first
21 50 calls will come from people on the I-5 freeway.

22 The other thing that's going to happen
23 at this point in time because of the proximity to
24 the freeway, the freeway's going to lock up.
25 We're going to get the people that decide to get

1 off at Canon or Tamarack because they're going to
2 go look and see. That's going to lock up our
3 streets.

4 As we work farther and farther, if we do
5 end up with a significant fire here, the streets
6 are going to become totally crammed with people,
7 and some people leaving because of fear of what
8 might potentially be happening, or be involved in
9 the plant. You know, the general public doesn't
10 necessarily involve or understand. All they see
11 is a big industrial plant, and they see a hazard.

12 And what that does to us is it makes our
13 ability to respond with equipment, and I know
14 Chief Heiser is going to talk about this more, our
15 ability to respond with equipment in a timely
16 manner, and be able to be effective at this
17 facility, even worse than what's imagined.

18 Just this proximity to that, the rail
19 lines, the potential for a rail line hazmat
20 incident. All those sorts of things that would
21 impact our ability to deal with it.

22 MR. THOMPSON: Thank you, Chief.

23 DIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q Chief Heiser, would you please state

1 your name and position with the City of Carlsbad.

2 MR. HEISER: Mr. Hearing Officer,
3 Commissioners, again, my name is Chris Heiser.
4 I'm the Division Chief in Charge of Operations for
5 the Carlsbad Fire Department.

6 MR. THOMPSON: And would you please
7 recite any personal experience and background that
8 is beneficial to your testimony today.

9 MR. HEISER: I'm currently assigned as
10 the Operations Chief for the fire department. I'm
11 responsible for the command and coordination of
12 emergency operations.

13 Emergency operations include both fire
14 responses, EMS, hazmat and technical rescue. I
15 also develop and write the policies and procedures
16 and guidelines for the effective utilization and
17 management of emergency operations in the city.

18 I have approximately 30 years in the
19 fire service and EMS service. I served in the
20 position of paramedic/firefighter, firefighter,
21 captain, battalion chief and now operations chief.

22 I've had the opportunity to respond to
23 and command all types of incidents, including
24 significant structure fire, wildland incidents,
25 hazmat events, technical rescue and multi-patient

1 EMS events.

2 I'm currently licensed in the State of
3 California as both a paramedic and registered
4 nurse. I'm a graduate of the U.S. Army Special
5 Operations Medical Corps, which is considered one
6 of the defining medical programs for the military
7 in the United States.

8 I have approximately 35 years both
9 active duty and reserve in the U.S. Military. All
10 of it in the special operations community. I've
11 conducted numerous threat assessments and
12 infrastructure analysis. And then had the
13 opportunity to apply the analysis to see how well
14 it worked.

15 I'm Co-chair and a Task Force Leader for
16 the Metropolitan Medical Strike Team in San Diego
17 County. That is the terrorism response unit for
18 San Diego County. And in that position I've
19 conducted numerous threat assessments on a
20 multitude of targets, developed plans and have
21 been the task force leader during the simulated
22 exercises.

23 MR. THOMPSON: Thank you. The response
24 time, and I think you're the right person to ask
25 this, the response time to an incident has been

1 somewhat debated, and I think that the staff has
2 given a time of six minutes.

3 Would you comment on that, and then kind
4 of give what occurs as far as getting equipment to
5 the site for that response time?

6 MR. HEISER: When we discuss the
7 response time concept we like to break it out a
8 little bit. It starts with how long does it take
9 to process the first call. And right now the data
10 that we get back from our central dispatching
11 agency is that's approximately a minute.

12 Current industry standards and
13 recommendations is what we call a turnout time, or
14 the time it takes us from the time we receive the
15 call until we can start driving out the door;
16 that's approximately two minutes.

17 And then what is usually referred to as
18 travel time, or driving time. How long does it
19 take for us just to drive to the site.

20 So if you were to look at six minutes
21 from our nearest fire station to the entry point
22 off Carlsbad Village Drive, not to the bottom of
23 the constricted space or the bowl, I would say six
24 minutes for the first apparatus to arrive.

25 But what we really need to look at is

1 what does it take to effectively manage the
2 incident. How long does it take to get those
3 cumulative resources there.

4 So, for a basic medical aid, we
5 currently dispatch an engine and a paramedic unit.
6 All our engines are staffed with a minimum of one
7 paramedic, but in a real emergency or medical aid
8 call, we feel that having multiple paramedics
9 there and the ability not only to rapidly treat,
10 but then transport the patient, is imperative.

11 If it's a fire or technical rescue at a
12 facility of this type, or normal response package,
13 and that's preprogrammed, will be a battalion
14 chief, a chief responding from a central location
15 within the city. There will be one truck or
16 engines, and one paramedic ambulance. That's what
17 just initially dispatched if someone picks up the
18 phone from the power plant or neighboring area and
19 reports an emergency.

20 So what we need to look at is how long
21 is it going to take for that effective fighting
22 force to get in enough or close proximity to the
23 event to effectively start.

24 So we looked at approximately 12 minutes
25 for our farthest apparatus. Assuming that they're

1 not on another call, there are no significant
2 traffic issues. That optimally 12 minutes we
3 would have resources at the front gate.

4 Then we need to navigate from the front
5 gate into the area of the bowl, or the event,
6 which is what we're primarily focusing on. And we
7 look at that as maybe an additional two minutes.

8 So, I tend to round up. So, about 15
9 minutes from the time somebody dials 911 until
10 we're placing an effective force at the area of
11 the bowl to start making tactical decisions.

12 MR. THOMPSON: Thank you. I think you
13 were here this morning when the applicant's
14 witnesses testified, and I think you heard this
15 correctly, that they would view the Carlsbad Fire
16 Department as a backup for property-protection
17 incidents. Does that work from a response
18 perspective?

19 MR. HEISER: I've never, in my
20 experience I've never been referred to, when
21 responding to an emergency, as a backup entity.
22 Our focus is life, environment and property, none
23 of which are truly addressed adequately with a
24 fire protection system.

25 Fire protection systems hold or

1 constrain an event, they don't prevent,
2 necessarily mitigate the event, or provide the
3 level of protection that a community or society
4 expects.

5 So when you think of an emergency, the
6 primary response to an emergency that involves
7 life safety, environment or property is the fire
8 department.

9 The safety systems they describe are an
10 adjunct. They're a priority. They're extremely
11 helpful in minimizing the event. But if they
12 worked every time you wouldn't need us. And the
13 reality is that they buy time to allow us to get
14 into position. They don't make the bad things go
15 away.

16 MR. THOMPSON: Chief Heiser, we've
17 talked about the comparison of the CECP with the
18 Palomar facility. And Chief Weigand gave his
19 views on that. Have you had any experience either
20 being there or talking to anybody at that
21 facility? Do you have any thoughts on the
22 different in fighting a fire between the CECP and
23 Palomar?

24 MR. HEISER: We did take the
25 opportunity, our fire staff, to go out and do a

1 walk-through of the plant in Escondido.

2 The representatives of the plant were
3 extremely helpful, allowed us free access to the
4 plant and walk around; allowed us to take
5 measurements so we could get a better feel.

6 We discussed problems or issues they
7 had, and also discussed the interaction with the
8 Escondido Fire Department.

9 There were a few things that stood out
10 in my mind in doing the walk-around. One is
11 already stated, the distances we saw did seem to
12 be significantly greater, either from a visual
13 impact or from an actual measurement, beyond the
14 distance that's been mentioned here.

15 And in a number of cases when we had the
16 wheel out, it was conservatively 50 feet. There
17 was also gravel areas that may support fireground
18 operations or avenue of egress out of it.

19 Next, again walking the plant, and then
20 utilizing Google imagery to get a better feel for
21 looking down on it, although it's described
22 similar to this facility, there still are a number
23 of open areas, as already mentioned.

24 And when I see open areas, to me that
25 represents avenues of egress out of it. And

1 larger areas for me to utilize apparatus and
2 conduct fireground operations.

3 So there are some similarities, I'm in
4 agreement. But for the most part I didn't see
5 that facility as a constrained space. I didn't
6 see any vertical walls of significance or of the
7 length described in the facility that's proposed
8 in Carlsbad.

9 I didn't see the same avenues of access
10 to it. In other words, a 10-degree downslope into
11 a bowl after a hard turn was not the visual image
12 or what I saw when I visited the site.

13 In addition I went and did -- I
14 recognize the limitation of this -- did a Google
15 search of the other facilities that the Doctor
16 referenced, and although I would agree with his
17 statement that they all had some degree of
18 confinement and/or challenges, what I still see in
19 the Carlsbad site is taking all those comments and
20 putting it in one place.

21 So the Carlsbad site, as proposed, the
22 bowl does provide an opportunity of having all of
23 those issues in one spot. It does have
24 significant environmental concerns to me, because
25 that is one of my responsibilities. It does have

1 a freeway next to it. It does have a rail line.

2 It does have natural gas.

3 I didn't see those same issues in
4 totality in the other sites referenced. More
5 importantly, I didn't see that referenced in the
6 one site I visited on the ground.

7 MR. THOMPSON: Chief Heiser, I think you
8 heard testimony this morning and probably have
9 read testimony submitted by the applicant that the
10 CECP is, in my words, kind of a steel-and-block
11 wall, not very susceptible to fires, and is pretty
12 safe.

13 Do you have any comment with regard to
14 -- and I'm sure it's well designed, but do you
15 have any comment on kind of the fire department's
16 response worries on a low-risk designation, if you
17 will?

18 MR. HEISER: I believe the applicant's
19 made every attempt to design the structure with
20 all the optimal technology to prevent or minimize
21 an event from occurring.

22 I view the response -- my responsibility
23 to look at the potential that exists, and also to
24 take my experience.

25 We have a power plant in the city now.

1 I've responded to that power plant. We've had
2 significant events at that power plant. I've been
3 part of responses to those events.

4 So, when I see this power plant I
5 recognize it's a change in technology. But it
6 still represents a potential threat. So I look at
7 what is the probability or possibility, and try
8 and factor that in.

9 And then simply say, I'm going to be the
10 one that's responding. I'm the one that has the
11 obligation when the event occurs to respond to
12 that event and attempt to mitigate it or handle
13 it. So I still see significant threat.

14 MR. THOMPSON: I think the record will
15 show that during construction there could be up to
16 350 workers at or near the site. But during
17 operations there may be only a couple within the
18 pit. Does that matter to you in a response mode?

19 MR. HEISER: The number of personnel
20 really is significant only when you look at if
21 everything goes bad how big of an event is it
22 going to be and how many patients do I have to
23 treat and transport.

24 But if you get down to the core
25 philosophy of the fire service, society's

1 expectation and our obligation is life. And it's
2 the preservation and protection of that.

3 So, whether there's 350 people involved
4 or just two people down inside there, my entire
5 operational focus will be the rescue and
6 protection of those individuals.

7 So, from an operational standpoint
8 nothing really changes, whether there's two or
9 350. It's just the complexity event beyond that.
10 But our core responsibility, again, is life,
11 environment and property.

12 MR. THOMPSON: With regard to the upper
13 rim road, the applicant is proposing that there
14 not be one. And I've heard Mr. Weigand comment on
15 the necessity, from his standpoint, --

16 MR. MCKINSEY: I'm just going to object.
17 I don't think that characterizes our testimony
18 regarding, you stated that the applicant has
19 proposed that there will not be one. I think our
20 testimony has been that the I-5 widening, as a
21 possible future project, a cumulative effect could
22 reduce or eliminate the eastern side of the upper
23 rim road.

24 MR. THOMPSON: I'll go with that. If
25 the upper rim road is reduced through the widening

1 of the I-5 freeway, and that impinges or take out
2 portions of that upper rim road, especially on the
3 easterly side, does that cause you any concern?

4 MR. HEISER: When I do a target analysis
5 or a threat analysis and develop an operational
6 plan, one of the biggest things we look at is
7 after you look at what threat is being presented,
8 is what level of access do I have to mitigate that
9 threat.

10 So anytime you limit my access,
11 representing the fireground operations, you limit
12 my options to what I can do. And it starts
13 shifting from offensive to defensive. And can I
14 support defensive operations.

15 It also limits some of my access to
16 different portions of the structure. I'm not just
17 responsible for the fire mitigation, I'm
18 responsible for any rescue that occurs there. So,
19 I look at it in the totality of giving me the best
20 opportunity to access the majority of points on a
21 facility is what I look for.

22 And that road would provide additional
23 support for fireground operations, rescue,
24 hazardous material evaluation, those types of
25 events. It also gives me what is generally termed

1 as defensible space. Just some depth before it
2 impacts the next event.

3 We've already mentioned the location of
4 I-5. And so anything that gives me some buffer
5 zone between that and the interstate provides some
6 degree of safety.

7 MR. THOMPSON: There's been testimony
8 that the hydrants and the hose lengths will meet
9 fire code requirements for access to areas not
10 directly accessible by fire trucks along the
11 perimeter of the berm area.

12 Do you have any thoughts how you -- I
13 think you used the term run hose or pump on this
14 site.

15 MR. HEISER: Well, if there is a fire,
16 and generally the most applicable way to
17 extinguish it is going to be water and foam,
18 recognizing there's a variety of things that we
19 take into consideration. I need the ability to
20 get water to those fire engines.

21 As I previously stated, 500 gallons that
22 our current engines carry sounds like a lot of
23 water. Not that long ago, about a year and a
24 half, we had a pizza store, you know, kind of a
25 nice walk-in restaurant, not very big, served

1 pizza. Sammy's Wood Farm was the name.

2 And it had a fire protection system in
3 place. It had been checked out. And there was a
4 catastrophic barrier resulting from an explosion
5 that required our response and our fireground
6 attack. At one point we were flowing 4000 gallons
7 of water a minute on a commercial building.

8 So what I need to put fire out is I need
9 a lot of water, and I need a way to get it to
10 those pumps.

11 So the availability of the hydrants,
12 their location, and how much water is available
13 affects our decision of how to manage an incident.

14 MR. THOMPSON: The CECF has testified, I
15 believe, that they will retain a private first
16 responder. Are you familiar with the role that
17 that person would fulfill?

18 MR. HEISER: Specific to this site it
19 was the first mention I saw that I'm not familiar
20 with what the applicant's expectation is regarding
21 either their third-party hazardous material
22 responder, or the other.

23 We've had experience with those. And
24 our biggest challenge with any onsite or auxiliary
25 is the coordination of those resources. Because

1 once we arrive we assume an incident command role
2 and all resources fall under us. And it's
3 imperative that we be able to control and
4 integrate those resources.

5 In a hazardous material response, this
6 county has a joint powers agreement to provide
7 hazardous material response. The term that's
8 referred to is HIRT, hazard incident response
9 team.

10 It's made up of sources out of San Diego
11 City, their hazardous material response team, and
12 Department of Environmental Health Response. It's
13 an integrated, well choreographed response.
14 Historically response for hazardous material
15 events, our community, have run approximately one
16 hour for them to get on scene.

17 There is mention of the utilization of
18 Camp Pendleton's hazardous material team. That is
19 an adjunct to San Diego County HIRT. And for
20 reference resources on Camp Pendleton are at the
21 sole discretion and deployment of the commanding
22 officer of Camp Pendleton Marine Corps Base. So
23 they are not seen as a reliable or consistent part
24 of a response plan, simply an adjunct.

25 Our hazardous material response is well

1 choreographed and integrated out of HIRT. And,
2 again, with a response time of approximately one
3 hour.

4 MR. THOMPSON: Thank you very much. I
5 think finally, again, and I asked Mr. Weigand this
6 question, exhibit 190 is the fire plan, I guess.
7 From the aspect of your position, do you have any
8 comment on responding to incidents when you look
9 at this?

10 MR. HEISER: Similar to what the fire
11 marshal stated, I was simply reviewing the
12 document from the standpoint of how much it's
13 going to delay or affect my response and where I'm
14 staging apparatus.

15 The secondary response that comes off of
16 Canon looks to be a quicker cleaner response. But
17 it does force me to respond underneath the
18 powerlines.

19 So looking at the other, the length and
20 the number of turns, and the fact that I'm then
21 have to cross a railroad line to gain access, and
22 the sharp turns, is going to delay my response to
23 the event.

24 And unlike other things, when it comes
25 to fires, emergencies, hazardous materials, longer

1 doesn't make them get better. Historically over
2 time, whether it's a medical emergency or a fire
3 hazardous material event, the longer it lasts the
4 more damage occurs.

5 So our goal is to get there as quick as
6 possible. The response diagram, as stated, does
7 appear to increase our response times.

8 MR. THOMPSON: Thank you very much.

9 Chief Crawford, your turn.

10 DIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q Would you please state your name and
13 your position for the record.

14 MR. CRAWFORD: My name is Kevin Crawford
15 and I'm the Fire Chief of the City of Carlsbad.

16 HEARING OFFICER KRAMER: Mr. Thompson,
17 because of the importance of this issue and the
18 interest the Committee has in it, we've allowed
19 you to go on way past the 15 minutes you
20 estimated. But I hope you can speed things up.

21 MR. THOMPSON: We will try. I have
22 noted during these proceedings that some of them
23 do go well beyond, and I would ask your
24 indulgence. But we will try and finish this
25 fairly quickly here.

1 Would you please briefly list your
2 experiences relevant to your testimony today?

3 MR. CRAWFORD: Certainly. While I
4 certainly feel like a donkey at the Kentucky Derby
5 with my colleagues here, I will attempt to do
6 that, and to do it in short order.

7 I have roughly 30 years of experience in
8 the fire service. Began in Poway as a paramedic
9 firefighter, and moved over to the City of
10 Carlsbad in 1986. Promoted up through the ranks,
11 holding various positions along the way,
12 paramedic, paramedic/firefighter, fire captain,
13 battalion chief and ultimately was appointed to
14 the position of fire chief in 2002.

15 Currently I am the Senior Fire Chief in
16 the County of San Diego. I have had the great
17 privilege of serving on a number of very
18 prestigious committees over my tenure as fire
19 chief. Including establishing a new fire system in
20 New Orleans post the hurricane. Also led a task
21 force back to New York after the 9/11 attacks.

22 And including taking a team over to the
23 country of Russia a number of times to help them
24 develop the fire system there.

25 So that, in short order, is my

1 biography.

2 MR. THOMPSON: Thank you. Let me jump
3 around a bit, if I may. Earlier this morning we
4 heard that the fire department had, I think the
5 term was used, recommended a 24-foot-wide lower
6 road. And then later changed it to 50.

7 Are you familiar with the circumstances
8 behind that change?

9 MR. CRAWFORD: I would defer to the fire
10 marshal for the specifics of 24-to-50. I would
11 like to comment, though, on, if I may, on the
12 philosophy of this fire department's willingness
13 and interfacing with the public when it comes to
14 developing projects like this, or frankly, any
15 projects in the City of Carlsbad.

16 And the philosophy that we maintain is
17 that we want to see any applicant, all applicants,
18 be successful in what they want to do. At the
19 same time, we want to make sure that our community
20 and those that reside here and those that visit
21 the City of Carlsbad, are doing so in a safe
22 place.

23 So, to that end, we go to great lengths
24 to cooperate with any applicant. And those are my
25 instructions to the fire marshal. And we are

1 willing to go to any lengths to have as many
2 conversations as necessary to understand what the
3 applicant wants to do. And to make it as safe and
4 make their dream, if you will, become a reality.

5 One of the things that has caused me so
6 much consternation about this whole project is the
7 difficulty in getting the applicant to sit down
8 with our staff and discuss this in a thoughtful
9 and intelligent manner.

10 I've sent multiple letters to them
11 requesting information, requesting the opportunity
12 to sit down and discuss this. Because we're not
13 in the business here of land use. That's not the
14 concern of the fire department.

15 Our job is to give our best professional
16 recommendations as to the safety of the project as
17 it's applied right now.

18 So, I just say that kind of as a
19 foundational thought before we get any further
20 with my testimony.

21 MR. THOMPSON: Thank you. I'm trying to
22 cut out the testimony, recognizing that we're
23 under some time constraints.

24 You were obviously here to listen to
25 your chiefs on either side testify this morning

1 about the difficulty of having a blocked or
2 partial upper rim road in the event of the
3 widening of I-5 and the necessity of having a
4 lower rim road of at least 50 feet.

5 If you agree with my characterization,
6 how do you feel about that testimony of your two
7 chiefs?

8 MR. CRAWFORD: I do agree with your
9 characterization. And I completely endorse the
10 recommendations of the fire marshal and the
11 operations chief with regards to it.

12 And it's important to understand that
13 I've scrutinized very thoroughly their
14 recommendations and their analysis of this
15 project.

16 MR. THOMPSON: One final question. The
17 California Fire Code has been brought up a number
18 of times. And I believe that there is a provision
19 that allows or provides for a chief fire official
20 to make recommendations for requirements that are
21 above and beyond those listed in the fire code.

22 Do you believe that use of that power is
23 appropriate here?

24 MR. CRAWFORD: Yes, sir, I do.

25 MR. THOMPSON: Do you have any final

1 recommendations or comments?

2 MR. CRAWFORD: My recommendations would
3 be consistent with what my colleagues have already
4 recommended, and that is that a rim road up top of
5 25 feet, and an access road at the base of 50
6 feet, as well as consideration to the fire
7 protection system, the onsite fire protection
8 system, are of paramount concern to us.

9 MR. THOMPSON: Thank you. Thank you
10 very much.

11 HEARING OFFICER KRAMER: Thank you. Ms.
12 Siekmann, your direct testimony.

13 MS. SIEKMANN: As you know, Mr. Kramer,
14 throughout I have tried to diminish the amount of
15 time that I take. And I was wondering if I could
16 transfer, not add, but transfer ten minutes of my
17 testimony time to cross in this category.

18 HEARING OFFICER KRAMER: Okay.

19 MS. SIEKMANN: Thank you.

20 HEARING OFFICER KRAMER: Please proceed.

21 DIRECT TESTIMONY

22 MS. SIEKMANN: I'm an intervenor for a
23 neighborhood approximately one-half mile from the
24 Encina property. Residents have voiced concern
25 with emergency and fire safety if the proposed

1 CECP is built.

2 The Carlsbad Fire Department has stated
3 its concerns regarding the project per the quote,
4 "The Carlsbad Fire Department has stated that its
5 ability to respond during a major crisis may very
6 well be impacted by the operation of this power
7 plant." In docketed letters to the CEC.

8 The Carlsbad Fire Department is held in
9 high esteem in the community of Carlsbad. I've
10 heard this from many many residents.

11 The California Energy Commission Staff
12 resides far offsite and work on multiple projects
13 around the state at the same time. The Carlsbad
14 Fire Department's single focus is to protect the
15 City of Carlsbad and its residents.

16 The Carlsbad Fire Department has stated
17 that its ability to respond during a major crisis
18 may be impacted by the operation of the plant.
19 This community depends on them to have the
20 experience and knowledge of this area, and know
21 how to protect me and my city.

22 Staff determined that while this project
23 may have an impact on the fire department's
24 ability to respond to a fire or other emergency
25 under unique catastrophic circumstances, the

1 potential for impact is below the staff's level of
2 significance.

3 The LOSSAN rail corridor and the I-5
4 sandwich the CECP site. Both are significant
5 transportation corridors for San Diego residents
6 and commodities. A major accident at the CECP
7 site, the I-5 site, the LOSSAN rail site could
8 ultimately shut down one or both transportation
9 corridors. And the Carlsbad Fire Department would
10 have to deal with major impact.

11 Proposing to place a power plant in
12 between two major transportation corridors in a
13 very small area can create many dangerous
14 possibilities, some we probably haven't even
15 thought of yet. And with the widening of the I-5,
16 the possibilities increase.

17 The Carlsbad Fire Department is required
18 to be cognizant of the possibilities and be ready
19 to protect the public and maintain safety for the
20 firefighters.

21 The applicant and the California Energy
22 Commission will not be the ones to protect us. It
23 will be the Carlsbad Fire Department.

24 All of the hazards noted on page 4-14 --
25 no, 4.14-5 can create secondary visual and noise

1 impacts for drivers along the I-5 and these will
2 be exacerbated when the I-5 is widened.
3 Ambulances, alarms, fire, smoke, plumes, et
4 cetera, are very distracting occurrences that can
5 create secondary possibilities of severe impacts
6 on the I-5, especially when it's widened.

7 The suggestion for a barrier along the
8 I-5 creates a multitude of concerns in other areas
9 of impact. Creating such a barrier affect issues
10 of safety, visual, noise in all directions, north,
11 south, east and west.

12 Since the I-5 widening is a foreseeable
13 project, the details of the cumulative impacts
14 created by the barriers should be worked out prior
15 to any project licensing. By avoiding these
16 issues we feel we're being denied the chance to
17 weigh in on those issues.

18 There's also a huge taxpayer issue
19 created by the cost to Caltrans for their share of
20 this expansive barrier.

21 That's all I'd like to say. Thank you.
22 I'm going to --

23 HEARING OFFICER KRAMER: Thank you.
24 Back to cross-examination. First from the
25 applicant.

1 MR. McKINSEY: Thank you, Hearing
2 Officer Kramer.

3 CROSS-EXAMINATION

4 BY MR. McKINSEY:

5 Q Dr. Greenberg, I had one question for
6 you. Do you agree with the fire marshal's
7 testimony regarding the character and the extent
8 to which the applicant and the fire department
9 have communicated and otherwise collaborated?

10 DR. GREENBERG: I would have to
11 respectfully disagree with the fire department's
12 characterization of the applicant not being
13 responsive to their requests for information.

14 MR. McKINSEY: Thank you. Fire Marshal
15 Crawford, I had a question for you. You specified
16 in your testimony just now, did you not, that you
17 scrutinized your two chiefs' testimony? Correct?

18 MR. CRAWFORD: Did you want the fire
19 marshal or the fire chief, I'm sorry?

20 MR. McKINSEY: Fire chief.

21 MR. CRAWFORD: That's okay, that's okay,
22 I just wanted to make sure.

23 MR. McKINSEY: It's hard not to use the
24 Misters.

25 MR. CRAWFORD: I understand, I

1 understand.

2 MR. McKINSEY: I don't mean that in a
3 derogatory way, either, but --

4 MR. CRAWFORD: I understand.

5 MR. McKINSEY: -- just there's three
6 uniforms in front of me and I have to keep them
7 straight.

8 (Laughter.)

9 MR. CRAWFORD: Yeah, a lot of bling.

10 (Laughter.)

11 MR. McKINSEY: So, as a former enlisted
12 man, it always can make you nervous anyway, when
13 you see a lot of stripes around the sleeves.

14 But you stated specifically that you
15 scrutinized the recommendations of your two
16 chiefs, correct?

17 MR. CRAWFORD: Yes, sir.

18 MR. McKINSEY: In your written
19 testimony, in response to one question regarding
20 the need for the 50-foot-wide access road, it's
21 your question 10, answer 10, on page 3 of your
22 testimony. Which is, just for the record, exhibit
23 433, which is the city's written testimony. It's
24 broken out by witnesses, and this would be
25 Crawford page 3.

1 You have two statements in there
2 regarding the 50-foot-wide road need. One of them
3 is, an access road around the base plant. And
4 then another phrase is, you refer to the daily
5 traffic of the plant.

6 It seems to me that you're -- that I
7 think you may be confusing the 50-foot-wide road
8 width as either being applicable to the area
9 around the plant, which is I think what your
10 chiefs testified, and the need to have a 50-foot-
11 wide access road to the plant, is that correct?

12 MR. CRAWFORD: No, sir. My concern is
13 the access directly adjacent to the plant, and
14 that needing to be 50, as opposed to 28.

15 MR. MCKINSEY: I'd like to understand,
16 what was the daily traffic in that location that
17 you were concerned about?

18 MR. CRAWFORD: It's a reference, and
19 it's my concern to any operations, non-fire
20 department operations, that would be a part of the
21 plant's normal business. And needing to move
22 around those obstacles.

23 For example, if a car gets parked to go
24 in and do some operations.

25 MR. MCKINSEY: So it could have been as

1 small as just one vehicle?

2 MR. CRAWFORD: Yes, sir.

3 MR. McKINSEY: Thank you. Chief Heiser,
4 I had a question for you, once I find it -- give
5 me just a moment.

6 MR. HEISER: Yes, sir, and I was
7 enlisted, too.

8 MR. McKINSEY: Lost a note page. Here
9 we go. I think it was your testimony that you're
10 not familiar with -- well, first, I think it was
11 your testimony that you've responded to
12 emergencies at the existing plant?

13 MR. HEISER: Yes, sir.

14 MR. McKINSEY: And so I presume you're
15 familiar with the procedures and the constraints
16 around the existing plant?

17 MR. HEISER: Yes, sir.

18 MR. McKINSEY: And you also testified
19 that you weren't familiar with either the concept
20 or the applicability of a contracted, third-party
21 first responder for a power plant like this,
22 correct?

23 MR. HEISER: My answer was predicated on
24 it being specific to the application at the
25 proposed plant. Not -- in other words, I was

1 trying to convey that in the context of how it
2 would be applied in the proposed plant, I haven't
3 been provided information, what it looked like or
4 how it would interact.

5 I am familiar with third-party
6 interactions.

7 MR. MCKINSEY: Then you must certainly
8 know that the existing facility has a third-party
9 contracted first responder for hazardous material
10 emergencies, that you actually understand and
11 anticipate that condition, correct?

12 MR. HEISER: Yes.

13 MR. MCKINSEY: Okay, thank you. And
14 then, finally, Chief Weigand, I had a question for
15 you. And this involves your testimony, which
16 would be page 3 of your testimony. And I didn't
17 write the question down, but it's near the bottom
18 of page 3 of your testimony. Actually, I think it
19 goes from the bottom of 3 to the top of page 4.

20 You provide, as an example, I think, of
21 the discretion that fire officials could apply to
22 road width at the Poseidon Desal project, correct?

23 MR. WEIGAND: That is correct.

24 MR. MCKINSEY: And you state that the
25 Poseidon Desal project is an example of that

1 discretion where you actually required a 42-foot-
2 wide access road due to potential hazardous
3 materials issues, correct?

4 MR. WEIGAND: That is correct.

5 MR. McKINSEY: Isn't it true that there
6 is no 42-foot-wide access road around the Poseidon
7 Desal Plant?

8 MR. WEIGAND: The plans that I've seen
9 show an access road around the Poseidon Desal
10 Plant. As a matter of fact, part of it was put
11 there -- supposed to be put there at their request
12 so they'd be able to unload and offload the trucks
13 of hazardous materials in a safe location and
14 still have bypass around it.

15 MR. McKINSEY: Well, I think what you
16 indicated is that you specifically required that
17 access road to be 42 feet wide, if I'm reading
18 your testimony correctly, correct?

19 MR. WEIGAND: You're reading it
20 correctly, yes.

21 MR. McKINSEY: Okay. So then I need to
22 add an exhibit, which I have copies of.

23 HEARING OFFICER KRAMER: Okay, the next
24 number is 197, if I am keeping track correctly.

25 MR. McKINSEY: The document is Planning

1 Commission Resolution number 6635. It also has a
2 case number RP05-12(a). The last page has a dated
3 approval of August 19, 2009.

4 I'd like to have this admitted as an
5 exhibit. I'd certainly give the parties a chance
6 to raise any objections.

7 HEARING OFFICER KRAMER: Any objections
8 to receiving this exhibit?

9 MR. THOMPSON: None.

10 HEARING OFFICER KRAMER: Seeing none, it
11 is received as exhibit 197.

12 MR. McKINSEY: Chief, forgive me, is it
13 Weigand or Weigand?

14 MR. WEIGAND: Weigand.

15 MR. McKINSEY: Thank you. That's how I
16 always remember pronouncing it. A friend of mine
17 had the same last name.

18 Chief Weigand, have you seen this
19 document before? Are you familiar with it?

20 MR. WEIGAND: I am not. It's a planning
21 commission document provided by the planning
22 commission, prepared by the planning commission or
23 by planning staff.

24 MR. McKINSEY: And would you agree it
25 applies to the Poseidon Desal project, just based

1 on its face?

2 MR. WEIGAND: Based upon the title of
3 the document, yes.

4 MR. McKINSEY: I'd like to go to page
5 16, it's the third-to-the-last page of the
6 document. And it's item 43 on that page.

7 Could you just read item 43 out loud?

8 MR. WEIGAND: Item 43 is the standard
9 planning department condition regarding turning
10 radiuses on turns on fire access roadways,
11 regardless of their width.

12 This one says fire department turning
13 radius of 21 feet inside and 42 feet outside shall
14 be provided and shown on the plans.

15 MR. McKINSEY: So are you certain that
16 you're not confusing a turning radius with access
17 width?

18 MR. WEIGAND: No, the access width
19 requirements will actually show up on the building
20 construction plans. This is just the standard
21 fire department conditions that are included in
22 all planning department documents that go to the
23 planning commission.

24 MR. McKINSEY: Can you cite to any
25 document or any evidence that you actually

1 specified a 42-foot-wide access width?

2 (Parties speaking simultaneously.)

3 MR. WEIGAND: -- here. And I don't have
4 the building plans and all of those sorts of
5 things. But this is a standard planning
6 commission document.

7 MR. THOMPSON: We will submit Poseidon
8 plans, if the Chief's word is not good enough for
9 you.

10 MR. MCKINSEY: Well, I'm not challenging
11 the Chief's word whatsoever. And that's not
12 necessary.

13 So I just have three more questions.
14 Well, first, the Poseidon Desal project, I'm sure
15 you're familiar with it, having specified the 42-
16 foot-wide roadway, has a road that essentially
17 goes from the west to the east through the middle
18 of it.

19 And then it has a road that runs north/
20 south on the north side of it. And then a similar
21 road that runs north/south on the south side --
22 excuse me, on the west side of it. And then
23 there's a back road on the north end.

24 Does that makes sense? In other words,
25 one --

1 MR. WEIGAND: I would have to take your
2 word for it, not having the plans here to look at
3 for a reference. It's a bit difficult. I do deal
4 with a significant number of those a year.

5 MR. MCKINSEY: So, I just want to -- I'm
6 going to say, isn't it true that the access road
7 that bisects it is 25 feet wide in their plans.
8 The other roads are 20 or 15 feet wide? And you
9 can --

10 MR. WEIGAND: Once again, without plans
11 to take a look at, I can't tell you. And then it
12 would also depend upon the revision of the plans.

13 MR. MCKINSEY: Well, one more question,
14 then. Can you tell me which of those roads has a
15 planned 42-foot-wide road width? The one that you
16 specified.

17 MR. WEIGAND: It should be adjacent to
18 the hazardous materials storage area.

19 MR. MCKINSEY: And where is that
20 hazardous materials storage area?

21 MR. WEIGAND: The east side of the
22 facility.

23 MR. MCKINSEY: Thank you. No more
24 questions.

25 HEARING OFFICER KRAMER: Thank you.

1 Staff.

2 CROSS-EXAMINATION

3 BY MR. RATLIFF:

4 Q Good morning, gentlemen, and thank you
5 very much for being here today and giving us this
6 important testimony. I only had a couple of
7 questions to try to clarify a couple of things.

8 I think, Chief Crawford, the question I
9 had for you is did you, or anyone else in the fire
10 department, communicate to the applicant in
11 correspondence that a 24-foot access road would be
12 sufficient for the width of access roads for this
13 project?

14 MR. CRAWFORD: I would defer to the fire
15 marshal for the specifics of that.

16 MR. WEIGAND: In the very very
17 preliminary discussions, the discussion was what
18 was the minimum firelane width in the City of
19 Carlsbad. The answer to that question was 24
20 feet, which is the minimum firelane width in the
21 City of Carlsbad.

22 Then pursuant to the code, based upon
23 special circumstances, because that's designed for
24 a facility that sits on flat ground, has normal
25 hazards, has side yards that allow access, that

1 based upon specifics of the facility that number
2 increases based upon our need to be able to access
3 it or other specific hazards.

4 But the 24-foot comment came from the
5 initial question from your staff as to what the
6 minimum firelane width was in Carlsbad.

7 MR. RATLIFF: And when was the first
8 time you communicated your desire for a 50-foot
9 width to either the staff or the applicant?

10 MR. WEIGAND: The exact date I'm not
11 sure of, but it evolved as we started going
12 through this project when we started looking at
13 the ability for us, in the proposed things.

14 Mind you that even up through this
15 Commission hearing there have been different
16 versions of what this site is going to look at
17 that have been provided in various exhibits.

18 When we started looking at what it was
19 going to take for us to be able to deploy our
20 equipment, primarily to give you an example, for
21 instance, the truck company, that's the long one
22 with the ladders, that has the 100-foot ladder
23 that we would use in a confined space rescue from
24 somebody stuck up on the building, and that is a
25 confined space.

1 Or to use for firefighting. You have to
2 have that offset from the structure, itself, in
3 order to be able to use it. When it's straight
4 vertical you can't use it, the load tip won't
5 support it. When it's straight horizontal it
6 won't.

7 You have to be able to move away from
8 it. And one of the things we found in many of the
9 various proposals that we saw was that that width
10 was not available to us unless we included it in a
11 fire access roadway.

12 And that's where this, as I mentioned in
13 my testimony, this plant differs from the Palomar
14 Plant. In the Palomar Plant they have a narrow
15 roadway, but their layout, because they have
16 significantly more room, provided that access for
17 their fire department to be able to have the
18 stand-off distance away from the building that was
19 necessary.

20 MR. RATLIFF: Thank you. But my
21 question is, though, is there anything that you're
22 aware of, prior to the filing of your testimony in
23 January, that indicated that a 50-foot road width
24 was necessary?

25 MR. WEIGAND: Yeah, I believe it was

1 mentioned prior to that exact date. I'm not sure.

2 MR. RATLIFF: Okay. And as to your
3 explanation about the vertical walls and the
4 importance of that, how much -- at what level of
5 inclination, is it 60 degrees, at what point does
6 self-rescue become possible with a less-than-
7 vertical wall?

8 MR. WEIGAND: I'd have to defer to Chief
9 Heiser.

10 MR. HEISER: If the question is what
11 angle of a slope could you self extricate, it's --
12 I don't want to say -- it's a little bit hard to
13 answer. A firefighter dressed in full protective
14 clothing, which is the turnout coat and helmet,
15 potentially an SCBA on his back, isn't going to
16 run up even a gradual slope effectively,
17 particularly if it's undeveloped.

18 So, if you're looking at an earthen
19 side, trying to run up it, it's a pretty shallow
20 slope, probably 10, 15 degrees at the most, if I'm
21 able to visualize that angle. I would say
22 shallow, as opposed to anything else, for self
23 extrication from a firefighter's standpoint,
24 because of the level of protective clothing we're
25 wearing.

1 MR. RATLIFF: Okay. If you assume the
2 slope was coarse concrete, what would it be?

3 MR. HEISER: If it was concrete?

4 MR. RATLIFF: Yes.

5 MR. HEISER: I'd still look at about the
6 same thing. Maybe -- I'd rather have an
7 opportunity to visualize the actual diagram, to
8 base my decision. So if that can be the
9 disclaimer, for lack of a better term. Maybe,
10 still 15 to 20 degrees.

11 You're in full protective clothing. It
12 limits your ability, from the firefighter's
13 standpoint, from a non-restrained worker, then I
14 would say that slope potentially could be steeper.

15 MR. RATLIFF: Regarding this particular,
16 the existing facility, I would think the fire
17 department's had at least 50 years or more of
18 experience with emergencies at the existing
19 facility.

20 What has been the, in your experience
21 historically, the frequency of events that you've
22 had to respond to at the existing facility?

23 MR. HEISER: Okay, a little soft, but
24 could I say it's a question in response to the
25 existing facilities?

1 MR. RATLIFF: Yes.

2 MR. HEISER: Okay. We did go back and
3 try and do an analysis of total responses to the
4 existing power plant. We've changed some of our
5 databases. But I would say that looking at it
6 from a historical perspective, the Carlsbad Fire
7 Department has been responding to that power plant
8 to some degree since its inception.

9 The first notable event would be 1976
10 during construction. A crane collapse that
11 resulted in the fatality of six individuals. That
12 was a Carlsbad Fire Department response.

13 Since then we've responded to
14 transformer fires, medical aid calls and hazardous
15 material events. And that frequency kind of goes
16 up and down. And there's been years -- a year
17 period or a couple of years where we documented no
18 responses. Others, there's been a few responses.

19 None of those, I would say, have been of
20 dramatic significance, but all of them have
21 required us to respond and interface with the
22 employees and mitigate the event.

23 MR. RATLIFF: Thank you.

24 HEARING OFFICER KRAMER: That's it, Mr.
25 Ratliff?

1 MR. RATLIFF: Yes.

2 HEARING OFFICER KRAMER: Thank you. The
3 city, Mr. Thompson.

4 MR. THOMPSON: Thank you. This is a
5 very distinguished panel.

6 CROSS-EXAMINATION

7 BY MR. THOMPSON:

8 Q Just a few questions for you, Dr.
9 Greenberg. Number one, would you describe the
10 location of the coastal rail trail according to
11 your recommendation in the FSA?

12 DR. GREENBERG: Thank you, Mr. Thompson.
13 You didn't ask me any questions during public
14 health, so I'm relishing the opportunity to
15 provide answers to you.

16 MR. THOMPSON: Oh, good.

17 DR. GREENBERG: Could we please bring up
18 some slides, and those who have copies of exhibit
19 223, those are the handouts I provided. You'll
20 look on page 7 of exhibit 223. Can you bring up
21 on the slides there photo 059, please. And get
22 ready to bring up 060, as well, which would --
23 these two photos on exhibit 223 are on page 7 and
24 page 8. And, unfortunately, it seems if those
25 pages are not numbered, but they're the last two

1 pages. And so page 7 is photo 059 and page 8 is
2 photo 060.

3 This depicts the western side of the
4 site. And this is where the proposed rail trail
5 would be, and this is where I would object to it
6 being. This is the western side of the site, but
7 it's the eastern side of the rail tracks.

8 So you want to then move to the other
9 side, which would be depicted in 057, which is
10 page 5 of exhibit 223. Yes. And that is the
11 western side of the railroad tracks.

12 And that's where I would recommend that
13 the rail trail be placed, anywhere on the western
14 side. Quite frankly, my professional opinion is
15 that it should be along Carlsbad Boulevard. But
16 anywhere on the location of the Encina Power
17 Station site, the applicant and the city can
18 certainly talk about that.

19 But, as I stated, Mr. Thompson, in my
20 final staff assessment, that the eastern side of
21 the tracks, which are depicted there in 059 and
22 060, is a very wide access road which I would hope
23 that the fire department would support me in
24 wanting to maintain that as an access road.

25 Also, it serves as a security buffer.

1 So for safety and security reasons, I do not think
2 that the rail trail should be east of the railroad
3 tracks.

4 MR. THOMPSON: I understand that, Dr.
5 Greenberg. The only thing I was going to was
6 whether or not, if the coastal rail trail went in
7 any close proximity to the Poseidon tank storage
8 area, whether -- and my followup question would be
9 whether you or the city's witnesses felt that
10 there could be a national security threat, or a
11 threat to the population of Carlsbad?

12 DR. GREENBERG: And, you know, you bring
13 up a very good point. I think you'll note I
14 stated in my final staff assessment testimony that
15 the wisdom of even placing a trail along railroad
16 tracks poses some safety and security issues for
17 me.

18 And I didn't want to get into that.
19 But, quite frankly, railroads in this country were
20 first built out in the open, and then industry
21 naturally grew up along the rail lines. So this
22 is not the only section of any railroad right-of-
23 way in the country that goes through
24 industrialized areas. And, yeah, it does pose a
25 safety, security, and then, of course, there's a

1 public health impact by virtue of the diesel
2 exhaust coming from the train engines, themselves.

3 MR. THOMPSON: Just a couple more. Did
4 you analyze the applicant's current proposed fire
5 plan?

6 DR. GREENBERG: What are you referring
7 to when you say the current?

8 MR. THOMPSON: Let's say the one in the
9 FSA, I guess as modified by this.

10 DR. GREENBERG: Yes.

11 MR. THOMPSON: And do you have any
12 comments on it?

13 DR. GREENBERG: Well, I --

14 MR. McKINSEY: Can you just state for
15 the record what "this" is?

16 MR. THOMPSON: Exhibit 190, I don't see
17 a title to it. Exhibit 190.

18 DR. GREENBERG: I initially had a
19 comment on it. But the applicant's experts
20 testified that even though the straight-line
21 access route, coming from Canon Road to a gate
22 between the SDG&E substation property and the CECF
23 property, would still be maintained as an access
24 point.

25 That satisfied me that there's actually

1 three ways now into the actual power plant site.

2 MR. THOMPSON: Thank you very much.

3 DR. GREENBERG: You're welcome.

4 MR. THOMPSON: This is for the
5 applicant's panel. Do you know how many people
6 will regularly be onsite within the pit?

7 MR. COLLINS: I need to just clarify
8 your question if that's acceptable?

9 MR. THOMPSON: Sure.

10 MR. COLLINS: You mean regularly, you
11 mean under normal operating conditions? I just
12 want to make sure that's what we're talking about.

13 MR. THOMPSON: Normal operating
14 conditions.

15 MR. COLLINS: Normal operating
16 conditions you would have two to maybe four people
17 onsite.

18 MR. THOMPSON: And when you do
19 maintenance, I don't know if you do hot gas path
20 inspections, those kinds of maintenance
21 activities, how many would be there?

22 MR. COLLINS: For normal maintenance
23 activities the number wouldn't change.

24 MR. THOMPSON: It wouldn't change. And
25 during non-routine maintenance, anything up to

1 major overhauls, can you give us an idea?

2 MR. COLLINS: Basically up to major
3 overhauls the number wouldn't change. In an
4 outage, the numbers might go up -- I apologize,
5 I'm trying to think of other jobs --

6 MR. THOMPSON: Take your time.

7 MR. COLLINS: Based on past experience,
8 I'd say for this type of plant you're probably
9 looking at less than 50 people. And that's a very
10 rare occasion.

11 MR. THOMPSON: And the next question,
12 please only answer if you know. I recognize the
13 difficulty of some of this. Do you know how many
14 people would be onsite once the Encina Power
15 Station closes or decommissions?

16 MR. MCKINSEY: Can I object to that
17 question. That presumes a thoroughly uncertain
18 condition. I mean, could you specify when and how
19 the Encina Station closes?

20 MR. THOMPSON: We have heard testimony
21 in this proceeding that the target date for the
22 reduction of once-through cooling water is 2017.
23 Assume with me, that at that time the five units
24 are decommissioned, not necessarily torn down but
25 decommissioned, would you anticipate that there

1 would be additional CECP onsite personnel because
2 of that?

3 MR. COLLINS: I couldn't answer that. I
4 can't answer that question.

5 MR. THOMPSON: Okay. Does your proposed
6 fire plan show where the applicant's proposed
7 visual mitigation berm and vegetation would be?

8 MR. COLLINS: That's out of my area of
9 expertise.

10 MR. MCKINSEY: I think that's a question
11 that our other panelist --

12 MR. HOLDEN: Yes, we've taken that into
13 account by showing that the road that we've
14 identified in blue does not continue on the east
15 side. We show it there in phantom, but the cross-
16 hatching does not continue.

17 MR. THOMPSON: And I think that there
18 are depictions of a berm, at least in figure 211,
19 a berm with vegetation on the west side, as well.
20 Would you address that? I don't care who does.

21 MR. MCKINSEY: This is a different
22 figure you're asking a question about?

23 MR. THOMPSON: Well, I don't see it on
24 this figure, I guess, so --

25 MR. MCKINSEY: Right.

1 MR. HOLDEN: In the AFC version there
2 was a berm there --

3 MR. THOMPSON: Yes, that's it.

4 MR. HOLDEN: We went to pretty great
5 lengths to keep that area open, so we
6 redistributed that berm for the version that was
7 in the prepared document.

8 MR. THOMPSON: Thank you. Final
9 question. Does this proposal show in any way the
10 location of what's called the LOSSAN, the Los
11 Angeles/San Diego double tracking?

12 MR. HOLDEN: That was not presented on
13 this.

14 MR. THOMPSON: Are the roads within the
15 pit, are they categorized as fire apparatus access
16 roads?

17 MR. HOLDEN: We've just given them a
18 generic code. I haven't given it a specific code
19 definition, no.

20 MR. THOMPSON: Okay, thank you very
21 much. That's the extent of the cross.

22 HEARING OFFICER KRAMER: Thank you.
23 Power of Vision, Dr. Roe. Or it will be Ms.
24 Baker.

25 MS. BAKER: Actually, I have two

1 questions and then Dr. Roe has a few.

2 CROSS-EXAMINATION

3 BY MS. BAKER:

4 Q My first question is for Chief Heiser.
5 We've talked a lot about how the main access road
6 comes in through on Carlsbad Boulevard. Does
7 crossing the track present any additional
8 concerns, especially because in the current
9 situation there's a gate and then a hump. Does
10 that slow down your response times even more than
11 what you've mentioned earlier?

12 MR. HEISER: Yes. Yes, ma'am. We tried
13 to look at the applicant's diagram and formulate
14 an opinion of how much time it would add to the
15 response plan from the entry point off of Carlsbad
16 Boulevard to the front and primary access point
17 down into the bowl.

18 And we're estimating -- and it's hard
19 because we were just presented with this recently,
20 and I -- somewhere in the neighborhood of two
21 minutes doesn't seem unreasonable, because we have
22 to insure the gate's open, the turns, the speed
23 bumps, as you described.

24 And then although it's, I say, rare,
25 listening to normal emergency response traffic, we

1 have delays on a more regular basis than people
2 would think, because of the rail crossing. So it
3 does affect it.

4 MS. BAKER: Okay, thank you. And then
5 this question would be for the applicant, and I
6 don't know quite who to address it to. But, since
7 your main route is over the railroad line, do you
8 have a current easement with the operator of the
9 railroad tracks for access over that? Is one
10 necessary? And I guess the question should be, is
11 one necessary. And if it is, is that prepared?

12 MR. MCKINSEY: The first question, I
13 don't think they can answer.

14 MS. BAKER: No, I -- probably you or Mr.
15 Piantka would be the appropriate --

16 MR. MCKINSEY: But I mean, I think
17 you're familiar, George, you're familiar with
18 generally the land use rights that NRG has
19 regarding the railroad, right?

20 MR. PIANTKA: We have an agreement to
21 cross the railroad in the form of an easement or
22 agreement.

23 MS. BAKER: And that's currently in
24 place?

25 MR. PIANTKA: To my knowledge, yes, it's

1 currently in place.

2 HEARING OFFICER KRAMER: Was he sworn as
3 a witness?

4 MR. PIANTKA: Yes.

5 MS. BAKER: And do you have a copy of
6 the agreement? Can that be supplied?

7 MR. PIANTKA: I mean, I would suspect
8 that we do have a copy of the agreement. But I
9 actually, and I'm making the presumption it's
10 memorialized in writing, but I'm assuming that.
11 That shouldn't be a problem for us to add that
12 into the record.

13 MS. BAKER: Okay, thank you.

14 CROSS-EXAMINATION

15 BY DR. ROE:

16 Q My question is for my friend, Dr.
17 Greenberg, on worker safety-8. Dr. Greenberg, you
18 may recall in some of the early workshops where we
19 talked about safety provisions in the old or the
20 new proposed power plant.

21 We talked about two conditions. And I
22 was very happy to see that at least one of them
23 was satisfied. That is that there would be
24 workers present whenever the plant was operating.

25 But the other point we mentioned was

1 that one of the reasons to have the workers there
2 was so that they would have the facility to shut
3 down the plant quickly in case of some disaster in
4 the operating room in the existing EPS or some
5 other emergency conditions.

6 And also the ability for them to start
7 that plant if there was a disaster in the existing
8 EPS and their emergency power from the new
9 proposed CECP would be required, then they would
10 also have the ability to start the plant
11 independently of the remote control room.

12 I don't see any mention in worker
13 safety-8 of the provision that there be emergency
14 startup and emergency shutdown facilities in the
15 bowl. Have you changed your mind about having
16 those there? Or was that an oversight? Or
17 thirdly, would you recommend that worker-8 be
18 supplemented with that provision for emergency
19 startup and shutdown?

20 DR. GREENBERG: Dr. Roe, the answers to
21 your questions are no, no, and yes.

22 No, I have not changed my mind, but what
23 I did is incorporate that concept into worker
24 safety-8. And if you'll notice, there is a
25 provision for real-time communication with the

1 control room.

2 The intent there -- oh, and by the way,
3 this plan will have to be submitted should the
4 facility be certified by the Energy Commission.

5 Worker safety requires the project owner
6 to submit their plan for real-time communication
7 and how these two individuals are going to
8 interact with the control room to the compliance
9 project manager, so the Energy Commission will
10 have the final say as to whether that's adequate.

11 But the control room will be on the EPS
12 site. It won't be that far away. We deal with
13 some remote locations where there's a onsite
14 control room, but they start it up from 50, 60, 70
15 miles away.

16 And in this case it's going to be
17 started up and shut down from a control room, you
18 know, couple hundred feet away.

19 So it gives the onsite personnel the
20 ability to point out problems in an emergency
21 matter, and get a quick shutdown.

22 DR. ROE: I understand that. But I was
23 in a power plant where the control room was
24 disabled. And in such an event as the control
25 room is in the EPS and it's disabled, then what

1 provision could there be for the two workers who
2 are at the units 6 and 7 to, in an emergency, shut
3 down those units if necessary, or to start them up
4 if their power was needed to supplement some
5 disaster in the EPS?

6 I think that was my concern. Not the
7 communication between the workers and the control
8 room, but the facility to actually open, shut it
9 down, or start it.

10 DR. GREENBERG: I think that question is
11 best handled by the applicant.

12 DR. ROE: Good.

13 MR. McKINSEY: Can I, in fact, -- we
14 agreed at the prehearing conference to these
15 changes. But I don't know that Dr. Greenberg was
16 there or remembers that. And so I have on the
17 screen here from your prehearing conference
18 statement, your request for that specific language
19 change to worker safety-8.

20 DR. ROE: Yes, as a matter of fact, I'd
21 even supplement that with the fact that their only
22 reference, the alluding to shut down the plant if
23 the control room was not operational.

24 And today I'm asking Dr. Greenberg or
25 Mr. Holden whether they could also start it up.

1 Because I've heard testimony here that in
2 emergencies that plant may be needed to carry the
3 system load. Mr. Holden wants to answer, I see.

4 MR. HOLDEN: I guess I can also say that
5 for eight years I was the instrument controls
6 chief for the entire company, too, so you've kind
7 of gotten right into some of the detailed design
8 that is going to be coming down the pike to meet
9 these functional requirements.

10 But we can expect emergency stop
11 locally, within the power block, provided by the
12 technology supplier. And through the recent
13 requirements, we're going to be using a network-
14 based control system that's going to be tied into
15 the Siemens equipment. That station could have an
16 engineering work station and have some stop/start
17 capability. What we would call remotely, because
18 it's controlled locally from the control room at
19 the existing plant.

20 DR. ROE: So you wouldn't object then to
21 the addition of a statement in worker safety-8
22 that that at facility emergency start and stop
23 would be there.

24 MR. HOLDEN: I would preclude getting
25 into a whole lot of detail, but I think that's a

1 reasonable request.

2 DR. ROE: Thank you. That addresses my
3 concern there.

4 DR. GREENBERG: Could the applicant
5 please clarify in total the revisions to worker
6 safety-8 that they're proposing? This additional
7 language is not in your December 15th statement.

8 MR. MCKINSEY: Correct. At the
9 prehearing conference Dr. Roe proposed, or at
10 least we addressed the changes proposed in Power
11 of Vision's prehearing conference statement.

12 And what's on the screen, which is a
13 proposed change to worker safety-8, suggests
14 inserting "provisions shall be provided on the
15 site for the workers to shut down the units in an
16 emergency."

17 That sentence would be inserted at the
18 end of the first full sentence of the condition of
19 certification, following the word "operating."

20 And that it's clearly certain, I think
21 Dr. Roe is asking for some other language, which
22 would presumably continue by saying, or maybe
23 modify that sentence by saying, provisions shall
24 be provided on the site for workers to shut down
25 or start up the units in an emergency.

1 And we don't have any objections to that
2 language.

3 DR. GREENBERG: Is that in addition to,
4 or instead of the December 15, 2009 proposed
5 revisions by you?

6 MR. MCKINSEY: So it would be in
7 addition to our proposed provisions, which we
8 addressed earlier on the record.

9 DR. GREENBERG: Okay.

10 HEARING OFFICER KRAMER: So let me
11 suggest that you propose a final version in your
12 first brief.

13 Any other questions, Dr. Roe?

14 DR. ROE: No, thank you.

15 HEARING OFFICER KRAMER: Thank you. Mr.
16 Simpson is not with us, so, Ms. Siekmann.

17 MS. SIEKMANN: Thank you.

18 CROSS-EXAMINATION

19 BY MS. SIEKMANN:

20 Q Mr. Holden, have you ever been a
21 firefighter?

22 MR. HOLDEN: I have not been a
23 firefighter.

24 MS. SIEKMANN: Thank you. Mr. Collins,
25 have you ever been a firefighter?

1 MR. COLLINS: Yes, I have.

2 MS. SIEKMANN: How long?

3 MR. COLLINS: I was doing volunteer for
4 about a year.

5 MS. SIEKMANN: Okay, thank you.

6 MR. COLLINS: But we also have
7 firefighter training and experience from the Navy.
8 So we also have fall-back, also, in addition.

9 MS. SIEKMANN: Thank you. And, Dr.
10 Greenberg, have you ever been a firefighter?

11 DR. GREENBERG: No, I've never been a
12 firefighter. I have never put out a fire with the
13 exception in 1974 there was a heater fire in my
14 laboratory --

15 (Laughter.)

16 DR. GREENBERG: -- and I just pushed the
17 button in the fume hood, and it took care of it.

18 MS. SIEKMANN: Thank you. The rest of
19 my questions go to the stellar Carlsbad Fire
20 Department.

21 Isn't it true that after the widening of
22 the I-5, any unusual physical activity or sound
23 occurring at the CECP site could have the ability
24 to distract I-5 drivers?

25 MR. HEISER: It's our belief, based on

1 past experience, of what impacts traffic on
2 Interstate 5 that the proximity of the power
3 plant, that as you described, any visual change,
4 off-gassing, fire, smoke or any event that is
5 visible to the Interstate 5 corridor, has
6 significant potential based on past observations,
7 of causing significant impact to the traffic flow
8 in both directions.

9 And the magnitude of that traffic flow
10 would be predicated on the magnitude of the event.
11 A small example would be that small structure fire
12 that we had that I've mentioned earlier, was
13 literally next to an onramp or offramp coming off
14 Interstate 5, so its visual proximity was right
15 there. And it caused Interstate 5 in both
16 directions to, in essence, grind to a halt.

17 MS. SIEKMANN: Thank you. And so isn't
18 it also true that impacts that people -- these
19 visual impacts could also cause looky-loo-types of
20 accident on the I-5? And does everyone know what
21 I mean by looky-loo? Okay, thank you.

22 MR. HEISER: Probably what I'd say is
23 the CHP would be the best answer for that. But I
24 can tell you, based on interfacing with them, that
25 historically secondary accidents, or accidents

1 caused by looky-loos is sort of a concern to them.
2 That's why one of their priorities and ours is to
3 keep traffic moving.

4 So, generally if you have that level of
5 impact at some point, and that's based on my
6 observations of seeing responses that occur,
7 traffic-related, generally do occur anytime that
8 you impact Interstate 5 to that degree.

9 MS. SIEKMANN: And I believe you've
10 answered this question, but isn't it true that a
11 fire or an emergency at the CECP site could result
12 in the I-5 freeway being shut down due to safety
13 concerns or -- actually, what you said, you know,
14 even with the hoses. But this would be due to
15 safety concerns created by the close proximity of
16 the site to the I-5?

17 MR. HEISER: When any fire department
18 responds to an emergency event one of our
19 obligations under the incident command system, and
20 particularly for the incident commander, is to
21 view not just the incident that's occurring, but
22 its potential spread and impact.

23 So one of the things that we generally
24 do is try and control movement and limit that
25 liability. So even if the event, itself, didn't

1 shut Interstate 5 down, if anything that was
2 coming from the power plant posed that potential,
3 then as the IC I would request to the CHP the
4 closure of Interstate 5.

5 I'd also be looking at closing the rail
6 line. And then also contacting the agencies who
7 are responsible for the environmental event.

8 But that applies to any event that
9 impacts to that degree. Events at the airport, we
10 routinely control avenues of egress and ingress
11 out of the facility. We also control the air
12 space over it at our request. Because the
13 obligation for the incident commander is not just
14 the management of the incident, but it's the
15 welfare of the community around it.

16 MS. SIEKMANN: Thank you. And in most
17 cases would the fire department also have to
18 respond to emergencies that occur on the I-5
19 because of these events? Like, you know,
20 accidents that happen because of all -- there's an
21 event at the site, and then it slows down or stops
22 the freeway. And then aren't there -- wouldn't
23 you have to take care of impacts like accidents
24 that occur on the I-5, as well?

25 MR. HEISER: Yes. Yes, ma'am. Again,

1 we're part of a mutual aid and automatic aid
2 boundary drop agreement which provides depth to
3 not just our community, but neighboring
4 communities.

5 But that's built in because generally if
6 one event occurs somewhere, there's potential or
7 actual events. And when an individuals dial 911
8 we will have to meet that response, regardless of
9 what else we're doing.

10 So we have depth built into the system.
11 But it starts to task the total depth of that
12 system as you add more and more events.

13 MS. SIEKMANN: Which brings me to my
14 last question. Would this detract from the
15 department's availability for the rest of the
16 community?

17 MR. HEISER: I'd probably have to say
18 that the strength of the fire service lies in that
19 mutual aid and automatic aid agreement. The
20 magnitude of the event is what really starts to
21 task your resources.

22 So, if -- we have the ability, and
23 that's again what I appreciate about my
24 profession, of requesting resources. If you've
25 seen a major wildland events, from not just

1 throughout the state, from throughout the nation,
2 what occurs when that happens isn't so much that
3 we are still going to come. It's how long does it
4 take us to get there.

5 So anytime you start adding more events
6 or have an event of impact what you see is the
7 delay in our response not just to that event, but
8 to subsequent events that occur.

9 MS. SIEKMANN: Thank you so much.

10 MR. HEISER: Yes, ma'am.

11 HEARING OFFICER KRAMER: Thank you.

12 That completes the cross-examination. Do we have
13 any redirect questions?

14 MR. THOMPSON: Not from us.

15 HEARING OFFICER KRAMER: From any other
16 party?

17 MR. RATLIFF: Yes, --

18 HEARING OFFICER KRAMER: How long do you
19 think it will take?

20 MR. RATLIFF: I think it will be quite
21 brief.

22 HEARING OFFICER KRAMER: Okay.

23 REDIRECT EXAMINATION

24 BY MR. RATLIFF:

25 Q There's been a great deal of testimony

1 today, Dr. Greenberg, and I just wanted to allow
2 you the opportunity to react to anything that you
3 have heard today, and give your response to it, if
4 you believe you'd prefer to.

5 DR. GREENBERG: Thank you. There's been
6 some comment about the Palomar Power Plant site,
7 and after all, I did bring that up as an example.
8 And I have to disagree with some of the statements
9 made by the fire department. Yes, I know that
10 they were there. And certainly I have been there
11 four times.

12 Clearly the designated firelanes there
13 are 20 feet. And as anybody knows, if you have
14 ancillary equipment you store it just about
15 anywhere at a power plant, as long as it's not in
16 the firelane. And so functionally in real life
17 you can't count on anything more than 20 feet.

18 When I did my safety and security audits
19 at 19 power plants around the state, the first
20 batch of them we gave them about three or four
21 days notice. And let me tell you, those power
22 plants were just spic-and-span.

23 We gave them 24 hours notice and then I
24 would show up. And we would find a lot of
25 different things. And so I think just from a

1 practical standpoint, no matter how much extra
2 space there is, it often gets filled by contractor
3 cars and equipment and whatnot.

4 Second of all, I again would have to
5 respectfully disagree with the statement that
6 there is 50 feet or 52 feet in all areas
7 available. There's two notable areas on the
8 western edge of the Palomar Power Plant where
9 there's a aqueous ammonia storage tank that is
10 actually west of the firelane. In other words, it
11 is up against, set back, of course, from a near-
12 vertical wall of 70 feet high of earth and rock.

13 Between there and other power plant
14 equipment is not 50 feet. It is more like 20 to
15 25 feet.

16 Same thing just a little bit further
17 north where the hydrogen gas cylinders are stored,
18 along with nitrogen gas cylinders. There's a
19 suitable setback from the wall, and then there's
20 the firelane, and then there are other stationary
21 equipment of the power plant. And there's not 50
22 feet there. It's, again, more like between 20 and
23 25 feet.

24 I think that one of the differences
25 between my assessment and the fire department's

1 assessment really does go down, or come down to
2 risk or chance of it.

3 I understand the fire department's
4 position, that they have to prepare for every
5 contingency. I, however, am doing a different
6 type of analysis where I'm looking at what are the
7 chances of that actually occurring.

8 One of the bases of my assessment, and I
9 wrote this, it's contained in my final staff
10 assessment testimony, is the history of events at
11 CEC-licensed power plants in the state.

12 The history of fires, emergency response
13 for medical services, emergency response for
14 hazardous materials spills. They are few and far
15 between, except for the smaller ones.

16 We do not have anything major. We do
17 not have anything even medium. And I certainly do
18 agree with Chief Heiser when he said that
19 responses to the Encina Power Plant were not of
20 great significance. Not his exact words.

21 But that's really the history. Because
22 these are very well built power plants, they are
23 constantly inspected by the compliance project
24 managers, the fire departments, and by CalOSHA.

25 We have had in the last 20 years two

1 fires at power plants. One was the SEGS, the
2 Solar Electric Generating Station. And that was a
3 heat transfer fluid fire that was allowed to burn
4 out.

5 The other was at Power Plant that PG&E
6 has near -- I may be pronouncing the name wrong,
7 but it's near McKittrick. I did the fire incident
8 investigation for the Energy Commission. And in
9 that role, the fire department, the McKittrick
10 Fire Department, served actually as the mop-up
11 fire team that came onsite.

12 It was a hydraulic fluid hose leak
13 within the combustion turbine building. That
14 caught fire due to the heat. There was some
15 insulation that burned. The automatic fire
16 suppression systems worked. And the fire
17 department came out once, and then there was some
18 more smoldering insulation and they came back
19 again and effectively removed it.

20 So the incidences are very rare. And I
21 think that's probably the difference in our
22 opinion here, is that I feel that the chances of a
23 major or even a medium conflagration that could
24 engulf this power plant are very very small. It
25 hasn't happened yet. I doubt that it will happen.

1 But I understand the fire department's position.

2 Ms. Siekmann, I would like to respond to
3 your question, the last question. I agree with
4 the fire department that should there be an
5 incident, a fire at this power plant, I-5 traffic,
6 there will be looky-loos.

7 However, one could say that about any
8 power plant in the State of California. We've got
9 power plants within 2000 feet of Interstate 5 in
10 Burbank, and then right on the other side is
11 downtown Burbank.

12 We've got them right there in El
13 Segundo, on Pacific Coast Highway between Pacific
14 Coast Highway and the beach. We've got power
15 plants -- I think we've got refineries, we've got
16 water treatment plants, virtually any industrial
17 facility along the freeway, yes, you're going to
18 get looky-loos. And there are going to be
19 problems.

20 Are the problems insurmountable? No.
21 There are experiences in dealing with this. And
22 so I'd say that, yes, I agree with the department.
23 But it's not unusual. And it's not something that
24 results in, you know, major catastrophes when it
25 comes to power plant responses.

1 That's all I had.

2 MR. RATLIFF: Thank you.

3 HEARING OFFICER KRAMER: Thank you. Any
4 further redirect?

5 MS. SIEKMANN: Yes.

6 HEARING OFFICER KRAMER: Okay. A
7 question for whom?

8 MS. SIEKMANN: For the fire staff.

9 HEARING OFFICER KRAMER: Okay. Please
10 go ahead. And then we are going to take a short
11 break after we conclude --

12 PRESIDING MEMBER BOYD: After I ask my
13 questions, please.

14 HEARING OFFICER KRAMER: Okay.

15 RE CROSS-EXAMINATION

16 BY MS. SIEKMANN:

17 Q I would like the fire staff to respond
18 to Dr. Greenberg's statements.

19 MR. CRAWFORD: I'm assuming his last
20 series --

21 MS. SIEKMANN: Yeah, that is correct.

22 MR. CRAWFORD: -- statements? I would
23 concur that large fire incidents are rare. We
24 don't see them monopolizing our call. But we
25 don't get to the end of business of hoping that

1 the fire protection systems that we put in place
2 to assist our response completely eliminate the
3 need for our response. So any response at all
4 gets our full attention.

5 In addition to that, fires are one
6 thing, but rescue and emergency medical calls are
7 another. And they constitute over 70 percent of
8 the calls that we go on each and every day.

9 So, while large-scale fires may not have
10 great frequency, the need to go in there and set
11 up operations to save a rescuer, to lower a
12 rescuer that's had a heart attack, even simply
13 throwing out his back up on some catwalk still is
14 a significant operation and requires us to have
15 the access that we're requesting to do our job
16 effectively and safely, both for the person that
17 we're assisting and for our personnel.

18 MS. SIEKMANN: Thank you.

19 HEARING OFFICER KRAMER: Thank you.

20 Anyone else with the direct questions.

21 DR. ROE: Can I address remarks by Dr.
22 Greenberg?

23 HEARING OFFICER KRAMER: Are you going
24 to testify or ask a question?

25 DR. ROE: Going to ask --

1 (Laughter.)

2 PRESIDING MEMBER BOYD: Welcome to
3 process and procedures.

4 DR. ROE: Step on my toes if I get out
5 of line again.

6 RECROSS-EXAMINATION

7 BY DR. ROE:

8 Q Dr. Greenberg, you just testified that
9 it's a common occurrence for traffic congestion on
10 freeways when they go through industrialized
11 areas, is that correct?

12 DR. GREENBERG: If there's an event --

13 DR. ROE: Yes.

14 DR. GREENBERG: -- in an adjoining
15 industrialized area. And it's not limited to
16 freeways; you know, surface streets, main routes.

17 DR. ROE: We, in this hearing, have the
18 opportunity to eliminate such a possibility in
19 this case by not siting that power plant in that
20 location close to the freeway.

21 Would you agree that if there was no
22 power plant there, then the opportunity for such
23 an event would be eliminated?

24 DR. GREENBERG: Dr. Roe, you're asking
25 the risk assessor --

1 DR. ROE: That's right.

2 DR. GREENBERG: -- to say would there be
3 zero risk if there was no power plant there.
4 Well, --

5 DR. ROE: No, I'm asking if --

6 (Parties speaking simultaneously.)

7 DR. ROE: -- congestion on the
8 freeway --

9 DR. GREENBERG: Let me finish answering,
10 please. It would eliminate that, but wherever you
11 put it, or wherever you have an industrial
12 facility you're still going to have that
13 opportunity for looky-loos.

14 So maybe it wouldn't be on the part of
15 I-5, maybe it would be on some other route or some
16 other location.

17 But, yes, the answer is obvious that if
18 you don't have it there you eliminate that. But
19 the thing is it hasn't happened in the history of
20 the California Energy Commission. And you're
21 asking me, then, to essentially say what's the
22 difference between, you know, a minute risk and
23 zero risk.

24 DR. ROE: Thank you.

25 HEARING OFFICER KRAMER: Thank you.

1 Commissioner Boyd.

2 EXAMINATION

3 PRESIDING MEMBER BOYD: Thank you,
4 gentlemen. Thanks to all of you folks, the
5 witnesses, but in particular thank the fire folks
6 for being here.

7 A couple of, maybe three questions for
8 clarification. And, Chief Crawford, I'll let you
9 designate who you want to answer. I think these
10 are in your direction.

11 In the discussion of incidents that have
12 taken place at the existing Encina facility, I
13 want to burrow a little deeper. The piece of
14 property in question to be utilized by this power
15 plant has been for, I guess, most of the life of
16 the power plant, a tank farm, at one time full of
17 fuel oil for the plant.

18 Has there ever been an incident in that
19 tank farm that you had to respond to?

20 MR. CRAWFORD: Can I get some clarity on
21 the type of incident that you're talking about?

22 PRESIDING MEMBER BOYD: Well, let's
23 break it into two categories. Have you had a
24 fire, explosion or anything like that. And the
25 other question would be have you had to respond to

1 some worker safety injury or what-have-you?

2 MR. CRAWFORD: Well, the answer to your
3 question with regards to a fire incident, my
4 recollection doesn't bring to mind any fire event
5 involving the tanks, the fuel tanks.

6 With regards to worker injuries and EMS
7 and rescue-type incidents, they have -- we've
8 experienced those all throughout the plant. So
9 while I can't remember off the top of my head, and
10 remember there's a lot of other people that
11 respond to the incident other than me, my
12 recollection is not specifically.

13 But I can certainly testify with great
14 clarity and great confidence that we've been to
15 the existing plant a number of times for rescue
16 and EMS calls.

17 PRESIDING MEMBER BOYD: I heard that,
18 thank you. Well, based on the concerns that the
19 department has expressed here this morning, I
20 infer that you must have been quite concerned
21 about this tank farm property down through the
22 years, being full of volatile fluid.

23 Do you consider the proposed new use of
24 that piece of land to be of higher risk than the
25 past use might have been?

1 MR. CRAWFORD: I'm going to defer that
2 to Chief Heiser. He's whispering in my ear.

3 MR. HEISER: Commissioner, I'll make an
4 attempt, but I'll gladly be corrected. My
5 impression of the fuel tanks is what's stored in
6 there is more like a thick tar. In fact, in order
7 to pump it out of those tanks it has to be heated
8 and then moved.

9 So every time we went out there and
10 tried to do the threat assessment, what we found
11 was that the construction and design, and the
12 actual product, itself, didn't rise to that big of
13 a threat level.

14 It still was a threat. They have deck
15 guns in place. It's got a containment so if a
16 tank failed it would capture it. But when we
17 talked to the individuals that were knowledgeable
18 they would literally take you over at times and
19 show you the product. And it looked like a very
20 thick tar.

21 So it wasn't as volatile or appeared as
22 big a threat, the actual tanks, as we had thought.

23 PRESIDING MEMBER BOYD: I agree. It's
24 pretty crummy bunker fuel. But the same bunker
25 fuel that ships used on them for years. And ship

1 fires are, as the gentlemen in the Navy would be
2 able to recognize, are pretty severe.

3 Okay, thank you for your questions.

4 Just for the record I have a fair amount of
5 experience with fire stuff. My son-in-law is the
6 State Fire Marshal in Nevada, and a long-time CDF
7 employee prior to that.

8 Plus I've actually been in incident
9 command of several of the forest fires in
10 California over the years, because I did a tour of
11 duty in the California Resources Agency.

12 So I appreciate what you've all done. I
13 have visited firemen in hospitals who were pretty
14 badly burned, et cetera, et cetera, so thank you
15 for your service, and thanks for your answers.

16 MR. CRAWFORD: Thank you for yours.

17 HEARING OFFICER KRAMER: Okay, we'll --

18 ASSOCIATE MEMBER EGGERT: I guess a
19 quick question. I have to admit my own fire
20 experience is primarily limited to self-inflicted
21 fire events, --

22 (Laughter.)

23 ASSOCIATE MEMBER EGGERT: -- mostly --

24 PRESIDING MEMBER BOYD: The backyard
25 barbecue?

1 ASSOCIATE MEMBER EGGERT: I was going to
2 say, mostly cooking experiments gone wrong.

3 Actually just a quick question in the
4 spirit of considering, you know, minimizing risk.
5 I noticed, Chief Crawford, in your testimony I
6 think it was question nine, you talked about based
7 on the information available the project is
8 deficient in several areas, including the fourth
9 bullet says the inadequacy of the proposed fire
10 suppression equipment.

11 Is that still your assessment of the
12 project?

13 MR. CRAWFORD: Yes, sir, it is.

14 ASSOCIATE MEMBER EGGERT: And just maybe
15 you could expand a little bit in terms of the
16 basis of that particular assessment?

17 MR. CRAWFORD: My opinion is I rely upon
18 the fire marshal's assessment to come to that
19 opinion with respect to the loop water system
20 versus the storage reserve water tank.

21 ASSOCIATE MEMBER EGGERT: So it's
22 basically access to adequate water capacity?
23 Okay.

24 MR. CRAWFORD: Yes.

25 ASSOCIATE MEMBER EGGERT: I think that's

1 my only question. And, again, I want to thank you
2 for being here and your obvious commitment to your
3 job, and its interest in providing information on
4 this project.

5 HEARING OFFICER KRAMER: Okay. Just for
6 members of the public, we've been normally
7 breaking at about 1:00. And we'll try to time
8 things to do the same today, but we're going to
9 take a five-minute break for -- we now call those
10 bio-breaks --

11 (Laughter.)

12 HEARING OFFICER KRAMER: -- apparently.

13 (Brief recess.)

14 HEARING OFFICER KRAMER: Okay, we're
15 going to start. Let's go on the record. Since
16 this is basically between Ms. Siekmann and the
17 staff witness, the only folks identified any
18 interest in speaking about hazardous materials
19 management, we will begin the hazardous materials
20 discussion.

21 Mr. Ratliff, do I have it correctly that
22 you're simply offering Dr. Greenberg for cross-
23 examination?

24 MR. RATLIFF: We're just offering him
25 for cross, yes.

1 HEARING OFFICER KRAMER: Okay. So,
2 Ms. Siekmann, you had some direct testimony.
3 Please begin that; and then conduct your cross-
4 examination of Dr. Greenberg.

5 MS. SIEKMANN: I've cut this back
6 significantly due to the answers that Dr.
7 Greenberg gave me before --

8 HEARING OFFICER KRAMER: Closer.

9 MS. SIEKMANN: Can you not hear me? I
10 have -- I will be about five minutes due to the
11 fact that Dr. Greenberg already has answered some
12 of my questions when the staff -- what was the
13 document, was it their errata or the revised or --
14 anyway, it will be very quick.

15 HEARING OFFICER KRAMER: Okay, let me
16 interrupt you just to say that I just received the
17 latest copy of the exhibit list that I created.
18 And I'm going to pass that out while you're
19 working. And at the end of the proceeding we're
20 going to discuss some cleanup motions and making
21 sure that I've got the documents described
22 accurately.

23 So if people can begin to look at this
24 list, that will be helpful.

25 MS. SIEKMANN: Also, Mr. Kramer, I was

1 hoping, since I am cutting this back
2 significantly, that I've asked about the once-
3 through cooling question, about the water, a
4 number of times. And I keep getting referred to
5 the water section. But I don't have any time in
6 the water section. May I ask about that in the
7 water section?

8 HEARING OFFICER KRAMER: Yes, we'll let
9 you do that.

10 MS. SIEKMANN: Thank you.

11 DR. GREENBERG: Give me a second to get
12 your testimony out.

13 MS. SIEKMANN: Okay.

14 MR. McKINSEY: And in a second -- I'll
15 note that we're having some food that will be
16 brought over here, so even though we're running
17 through, if you want to run up and grab something,
18 you'll be able to.

19 PRESIDING MEMBER BOYD: Very good.

20 MS. SIEKMANN: Well, we wanted to bring
21 the food.

22 MR. McKINSEY: Well, the hotel is
23 bringing the food.

24 MR. THOMPSON: I saw you contemplating
25 that cookie at about 10:00 --

1 HEARING OFFICER KRAMER: Okay, well,
2 then that does --

3 (Laughter.)

4 HEARING OFFICER KRAMER: -- that does
5 remind me that we were looking at the schedule,
6 and let me ask, does anybody have an objection to
7 just continuing through, especially with this
8 incentive that Mr. McKinsey has offered?

9 If we're efficient we might be done as
10 early as 2:30, as I calculate things.

11 MR. THOMPSON: No objection.

12 HEARING OFFICER KRAMER: Seeing no
13 objection, then we will not be taking lunch at
14 1:00.

15 So, Ms. Siekmann, go ahead.

16 MS. SIEKMANN: I'm waiting for Mr.
17 Greenberg -- Dr. Greenberg asked me to wait until
18 he had my material.

19 DR. GREENBERG: I have it.

20 PRESIDING MEMBER BOYD: Just please
21 don't ask him for his r, sum, again.

22 (Laughter.)

23 (Parties speaking simultaneously.)

24 DR. GREENBERG: Point well taken,
25 Commissioner Boyd.

1 PRESIDING MEMBER BOYD: Well, I'm
2 impressed, but, you know, eight years as a
3 Commissioner, I've seen a lot of Dr. Greenberg and
4 I couldn't match his r, sum,. I'd give him a hell
5 of a run for his money, but I couldn't match it.

6 (Laughter.)

7 DR. GREENBERG: Thank you.

8 DIRECT TESTIMONY

9 MS. SIEKMANN: On page 4.4-17 in the FSA
10 it says, I've seen in appendix B photo 63 the
11 current rail corridor is single track and sunken
12 below existing grade as it goes by the power plant
13 site. Staff understands that one option for the
14 LOSSAN rail corridor would have two tracks within
15 this area, and sink the new side-by-side tracks a
16 bit further below grade. This will add to safety
17 by reducing the chances that a derailment will
18 jump the depression and result in railcars falling
19 through the CECP western fence and onto the power
20 plant site.

21 This quote identifies just one of the
22 significant safety issues involved with placing a
23 power plant in between two major transportation
24 corridors.

25 That's my testimony.

1 CROSS-EXAMINATION

2 BY MS. SIEKMANN:

3 Q And then my cross refers to exhibit 300-
4 333 in which, Dr. Greenberg, you did give me an
5 answer, but it didn't fit with what my question
6 was, in my opinion.

7 So, do you want to review it for a
8 second?

9 (Pause.)

10 DR. GREENBERG: This is about the
11 coastal rail trail?

12 MS. SIEKMANN: No, this is not.

13 DR. GREENBERG: Oh, I'm sorry. I have
14 exhibit 333 --

15 MS. SIEKMANN: Well, yeah, actually it
16 is about the coastal rail trail, it's about the
17 diesel particulate matter from the trail by the
18 coastal rail trail.

19 DR. GREENBERG: Yes.

20 MS. SIEKMANN: Okay, great.

21 DR. GREENBERG: What is your question?

22 MS. SIEKMANN: My question -- the
23 question's not fully answered by staff. This
24 question refers to staff expressing concern for
25 those passing through the rail trail, if it is

1 placed next to the train in the Encina site, and
2 the exposure to intermittent diesel emissions.

3 If those emissions are so dangerous for
4 people who pass by there once a week for just a
5 few seconds, in Terramar we have that train
6 sitting behind our neighborhood, on occasion, and
7 it passes behind our neighborhood every half an
8 hour.

9 I know this is not an air emissions
10 section, but this is where it was brought up in
11 the FSA. How -- how will I state this?

12 Terramar would like for staff to address
13 this exposure because not only do we have those
14 diesel emissions from the train, but the
15 cumulative emissions from two power plants, the I-
16 5 and possibly the I-5 widening.

17 DR. GREENBERG: That is more of a public
18 health question, which I did address that very
19 issue. And I'll just be very brief, if the
20 Hearing Officer and Committee wish me to reiterate
21 that, but in a different context.

22 HEARING OFFICER KRAMER: Go ahead.

23 MR. THOMPSON: Once again, emissions
24 from vehicles powered by gasoline or diesel and
25 diesel locomotives on the railway are closer to

1 the ground than are emissions from a power plant
2 stack where there is an ejection velocity, as well
3 as a heat plum, rise. And so there is much, much
4 greater dispersion from a stack.

5 The ground level contribution is very
6 minimal, such that when one does atmospheric
7 dispersion modeling -- and these models, by the
8 way, Ms. Siekmann, are, indeed, validated using
9 tracer gases from -- the USEPA validates these
10 models -- so they're fairly accurate. And, again,
11 as I mentioned on Monday, they do tend to
12 overestimate the predicted ground level
13 concentration.

14 But nevertheless, the contribution from
15 the proposed Carlsbad Energy Center project would
16 be very small in comparison to what you already
17 have from diesel trains, what you already have
18 from I-5, and what you would get from an expanded
19 I-5.

20 You know, I did write in my hazardous
21 materials section here on page 4.4-17, you know,
22 maybe I was being a little too cute, but I stated
23 staff will avoid discussing the obvious safety and
24 public health issues of placing a trail for use
25 along a rail corridor, which necessarily go

1 through industrialized areas.

2 That's not the purpose of my testimony
3 to criticize the entire rail trail concept, but I
4 do have some concerns about that.

5 MS. SIEKMANN: Well, it was your comment
6 in there about the diesel emissions that brought
7 up my concerns for the neighborhood as far as the
8 diesel emissions go, which I know is not part of
9 the CECP. But the combination was of great
10 concern to me.

11 So, thank you very much.

12 DR. GREENBERG: You're welcome.

13 MS. SIEKMANN: That's it for the
14 hazardous materials section.

15 HEARING OFFICER KRAMER: Okay, thank
16 you. Any redirect, Mr. Ratliff?

17 MR. RATLIFF: I'm sorry?

18 HEARING OFFICER KRAMER: Any redirect?

19 MR. RATLIFF: No.

20 HEARING OFFICER KRAMER: Okay, thank
21 you. We'll close out hazardous materials. I
22 understand from Mr. Monasmith during the break
23 that our soil and water witness who is listed is
24 available, could be available right now. But
25 staff had also arranged to have a representative

1 of the Regional Water Board available.

2 I appears that -- is it a she? She's at
3 lunch, so we -- probably won't be able to here
4 until after 1:00.

5 So we're going to move on, as I think
6 some of the parties seem interested in hearing
7 from the board.

8 Let's move on to the -- well, actually
9 all the next three issues, the last three, have
10 telephone appearances. Mr. Monasmith, who's
11 queued up to appear by telephone and in which
12 area?

13 MR. MONASMITH: Yes. Soil and water,
14 our staff is online right now. Mike Conway. So
15 we could go with --

16 HEARING OFFICER KRAMER: Well, but we
17 want the Regional Board witness, as well, right?

18 MR. MONASMITH: Right. Right. The
19 Regional Board would not be able to get on till
20 1:00, so as you know, we can't go simultaneously,
21 given the IT constraints. It would be one after
22 the other, so --

23 HEARING OFFICER KRAMER: Well, no. I
24 thought you had said that we would have the
25 Regional Board witness call the staff witness, and

1 then the staff witness could call in.

2 MR. MONASMITH: Yeah, we were going to
3 try to do that, but I can't do that until they get
4 back from lunch --

5 HEARING OFFICER KRAMER: Right, and --

6 MR. MONASMITH: -- at 1:00 and --

7 HEARING OFFICER KRAMER: -- that's why
8 I'm asking you as of the other topics, noise,
9 traffic or bio, who would be available most
10 quickly to call in at this point?

11 MR. MONASMITH: Probably any of them.
12 They are all our staff in Sacramento. I could
13 call and try to find out.

14 HEARING OFFICER KRAMER: Okay. Please
15 see who you can raise for us.

16 And in the meantime we will do some
17 housekeeping. On the last page of the worksheet
18 we have the topics that were not contested at all.
19 That's compliance and closure, facility design,
20 power plant reliability, transmission system
21 engineering, transmission line safety and
22 nuisance, cultural resources, geological and
23 paleontological and waste management.

24 We would entertain a motion from a party
25 to take all of those topics by or on the basis of

1 the identified exhibits and the affidavits of the
2 witnesses, without any oral testimony or cross-
3 examination.

4 MR. McKINSEY: So applicant would so
5 move.

6 HEARING OFFICER KRAMER: Okay, any
7 objection to doing that?

8 MR. THOMPSON: None.

9 HEARING OFFICER KRAMER: Seeing none,
10 then those topics I just read will be taken in by
11 affidavit and the written evidence that was
12 submitted without further testimony or
13 examination.

14 And then, Mr. McKinsey, you had told me
15 you were going to suggest an approach to the
16 briefing issue?

17 MR. McKINSEY: Yeah, I --

18 HEARING OFFICER KRAMER: Could you
19 discuss that now?

20 MR. McKINSEY: -- had a suggestion that
21 might avoid you getting overwhelmed with kind of a
22 discordant wall of briefs. It was that the
23 Committee direct the parties to first submit to
24 you a list of topics that they would like briefed,
25 so that then the Committee can make an order that

1 would say, please, we would prefer that you brief
2 your issues using the following either order of
3 issues, and some structure, so that what you
4 receive, in terms of briefs, follows that, and
5 would allow the Committee to work their way
6 through that a lot more easily.

7 HEARING OFFICER KRAMER: Does any other
8 party want to comment on that approach?

9 MR. THOMPSON: I have no objection, but
10 I assume that the Committee would have its own
11 list of items that it may want briefing on.

12 HEARING OFFICER KRAMER: Yes. We would
13 include those. Although I think frankly Mr.
14 McKinsey, in his original suggestion, covered a
15 lot of those. But, yeah, I think there is some
16 value to having at least a common format.

17 Now this would not preclude the parties
18 from briefing other issues they wish to raise.
19 We're not meaning to limit the field of issues,
20 but to provide some organization to them.

21 And also not every party would need to
22 brief every issue. I know Mr. Rostov is only
23 interested in a few issues, and we're not going to
24 force him to address all of them. But he simply
25 will, by virtue of being silent, have to accept

1 the results.

2 Ms. Baker?

3 MS. BAKER: Are briefs only accepted
4 from the intervenors and interested parties, or
5 can they be accepted from, say, an interested
6 citizen who attended the hearings and wanted to
7 submit a brief?

8 HEARING OFFICER KRAMER: Only parties.
9 Intervenors or the applicant or staff can submit
10 briefs. Those kind of briefs.

11 The public would simply put their
12 thoughts in the form of a public comment. And
13 those would need to be submitted by the 22nd.

14 MS. BAKER: And even if they were legal
15 in nature, still in terms of a public comment?

16 HEARING OFFICER KRAMER: They can make
17 policy arguments or legal arguments, but they --
18 in order to be a formal party and brief them in
19 the way that you're allowed to, they needed to
20 sign up as an intervenor.

21 MS. BAKER: Okay. Thank you. I wasn't
22 sure; I appreciate the clarification.

23 HEARING OFFICER KRAMER: So, seeing
24 no --

25 MR. BALL: I wanted to --

1 HEARING OFFICER KRAMER: Mr. Ball.

2 MR. BALL: Yeah, I have one comment.

3 Because I think it would help the Redevelopment
4 Agency and it would help the city if we would sort
5 of agree on -- and I've been keeping a running
6 list of some of the issues that the Commission was
7 interested in hearing, or receiving a legal brief
8 on.

9 And I don't want to just over, as you've
10 said, overwhelm the Committee with briefs on
11 topics that aren't so important. So if we could
12 spend a few minutes indicating what -- I can give
13 you the list of what I have, but if you've been
14 keeping a list or anybody has an idea --

15 MR. McKINSEY: Ron, my suggestion was
16 that they wait to issue the briefing order until
17 after they first hear from the parties.

18 In other words, the Committee would give
19 the parties right now a deadline to tell them the
20 topics they're interested in. And then the
21 Committee could express their desires in the
22 actual briefing order.

23 MR. BALL: Yeah, and that's fine. I
24 understood that. I just, while we're all here, if
25 there's some issues that have come up that you

1 want to focus our attention on, rather than us
2 suggesting a list, but for the Committee to say
3 we're particular want information or arguments on
4 this or that issue, because there have been some
5 fascinating issues throughout this hearing. So
6 that's my --

7 HEARING OFFICER KRAMER: Well, I can
8 certainly read from my list before we leave. I'm
9 hesitant to get into a long discussion and
10 negotiation, though.

11 MR. BALL: That wasn't my intent.

12 HEARING OFFICER KRAMER: Okay. And just
13 so you know, the transcripts, I believe our
14 contract with the reporting company says that they
15 are supposed to get them to us within 14 days.

16 We're certainly overloading their system
17 perhaps with what we've just done, so it might be
18 a little longer than that. But I guess what I'm
19 also saying is it probably will not be any sooner
20 than 14 days that we'll receive the transcripts.

21 And for those of you who aren't familiar
22 with our process, if you were going into court
23 you'd probably find that you had to pay the
24 reporter for your own copy of the transcripts.
25 But the way we work is we obtain them, and then

1 they're converted to pdf's and they're posted on
2 our website. So you won't have to pay anything,
3 and you can download them when they're available.

4 You should get a notice to the proof of
5 service list when they become available, as well.
6 But you can also just look on the website to make
7 sure.

8 Mr. Monasmith, do you have somebody
9 ready?

10 MR. MONASMITH: Yes, Mr. Kramer. Scott
11 Debauche on traffic and trans. He's on hold. And
12 we can then proceed with biology, noise or soil
13 and water. Again, we cannot, the technology here
14 does not allow us to simultaneously call more than
15 one party at a time.

16 And we will not be able to talk with
17 both the San Diego Regional Water Quality Control
18 Board Staff and CEC Staff at the same time.
19 They'll have to be concurrent, one after the
20 other, when we get to that topic discussion,
21 unfortunately.

22 HEARING OFFICER KRAMER: Well, let's go
23 off the record for a minute.

24 (Off the record.)

25 HEARING OFFICER KRAMER: Okay, so,

1 Mr. Monasmith, you said we had Mr. Debauche or
2 Debauche, and that's for traffic and
3 transportation. We'll put him on the line in a
4 minute.

5 So to close the loop on the discussion
6 of briefing, let me suggest that we have the
7 parties submit their proposals for topics by next
8 Friday. And then we'll issue an order by the
9 following Friday.

10 And as far as deadlines go, we might as
11 well finish that, as well. Mr. Rostov suggested
12 or requested that the opening briefs be due no
13 earlier than the middle of March.

14 If the transcripts are available
15 according to the contract limits that would be
16 about three and a half weeks after the transcripts
17 become available, and about five weeks after
18 Monday's -- actually six weeks after Monday's
19 hearing -- I'm sorry, five weeks.

20 So, how does March 15 sound as an
21 opening brief deadline? I'm seeing nodding around
22 the table.

23 And then for reply briefs -- that would
24 give you about three and a half weeks after the
25 transcripts are available. If the transcripts are

1 significantly delayed, then we may revisit the
2 deadline.

3 And then I think Passover, he told me it
4 comes approximately March 28th, in that range.
5 So, how about reply briefs being due on April --

6 MS. SIEKMANN: But we couldn't
7 understand you. I'm so far --

8 MS. BAKER: What's due in April?

9 HEARING OFFICER KRAMER: Reply briefs.

10 MS. BAKER: Oh, reply briefs.

11 MS. SIEKMANN: Oh, okay.

12 HEARING OFFICER KRAMER: April 2nd.

13 Does that work for the parties?

14 MR. RATLIFF: It doesn't work for me,
15 because I'm going to be on vacation the last two
16 weeks of March.

17 PRESIDING MEMBER BOYD: You get a
18 vacation?

19 (Laughter.)

20 PRESIDING MEMBER BOYD: That was a joke.

21 MS. SIEKMANN: Well, we're our --

22 (Laughter.)

23 PRESIDING MEMBER BOYD: Well, remember
24 this gentleman and all the lawyers have about 35
25 cases that --

1 MS. SIEKMANN: Right, and --

2 PRESIDING MEMBER BOYD: -- we're trying
3 to wrestle with, so I have sympathy --

4 MR. RATLIFF: Thank you. Thank you, Mr.
5 Boyd.

6 HEARING OFFICER KRAMER: So, you're back
7 when?

8 MR. RATLIFF: I'll be back around April
9 2nd. And I think I'll need two weeks to write the
10 brief, the reply brief, so.

11 HEARING OFFICER KRAMER: Well,
12 realistically, Commissioner Boyd and I are on
13 another case called Ivanpah, which is a renewable
14 case in the Mojave Desert.

15 And the Commission is, for various
16 reasons, including responding to a Governor's
17 Executive Order, is giving priority to the
18 processing of those cases.

19 So, it is not going to delay things
20 much, I think it's fair to say, if we extend the
21 briefing schedule. Would you agree, Commissioner
22 Boyd?

23 PRESIDING MEMBER BOYD: No, but I would
24 like to invite the entire City of Carlsbad to the
25 desert with us --

1 (Laughter.)

2 PRESIDING MEMBER BOYD: -- to explain to
3 those people that it's okay to put this facility
4 out there, because they don't want anything here.

5 (Laughter.)

6 (Parties speaking simultaneously.)

7 MR. THOMPSON: Will this be in August?

8 (Laughter.)

9 PRESIDING MEMBER BOYD: In Barstow. No,
10 actually, Ivanpah's in the middle of nowhere.

11 HEARING OFFICER KRAMER: So, how about
12 March 22nd for opening briefs. And then --

13 MS. SIEKMANN: March --

14 MS. BAKER: No, opening.

15 HEARING OFFICER KRAMER: No, opening.
16 We add a week there. And then March -- I'm sorry,
17 April 14 for reply briefs. Does that work?

18 MS. SIEKMANN: Mr. Kramer, are there,
19 anywhere on the website, guidelines for briefs?

20 HEARING OFFICER KRAMER: As far as what
21 goes in them? No. You should probably speak to
22 our new Public Adviser, who is -- for awhile we
23 have not had a lawyer in that position. And I
24 think she'll be a little better equipped to help
25 you understand those requirements.

1 MS. SIEKMANN: Thank you.

2 HEARING OFFICER KRAMER: Or what would
3 be best.

4 MS. SIEKMANN: Thank you.

5 HEARING OFFICER KRAMER: But you could
6 also look at some of the briefs that are filed in
7 other cases. That may help you, as well.

8 So let me write that down before I
9 forget. March 22 for opening briefs. And April
10 14, I said?

11 MS. SIEKMANN: Yes.

12 HEARING OFFICER KRAMER: -- for reply
13 briefs?

14 MR. BALL: So, Mr. Kramer, then the
15 11th, Friday the 11th is when you wish the parties
16 to submit their list of topics?

17 HEARING OFFICER KRAMER: Yes, next
18 Friday, the 11th, February 11th, would be
19 suggested briefing topics due to the Committee.

20 MR. BALL: And then you said, you
21 suggested that one week later then the Committee
22 would organize those, or prioritize those, or what
23 exactly would the Committee --

24 HEARING OFFICER KRAMER: On the 18th the
25 Committee will issue an order where we'll

1 reiterate these other deadlines, and we'll also
2 list the briefing topics that we are interested in
3 receiving discussion of.

4 MR. BALL: Does the Committee have
5 discretion to decide whether or not it wants to
6 include a topic, or --

7 HEARING OFFICER KRAMER: We would, but
8 as I said, we will also say that you're free to
9 brief anything else that you want.

10 MR. BALL: And that was --

11 HEARING OFFICER KRAMER: Or not to brief
12 something that we list.

13 MR. BALL: That was my initial question,
14 is what particular areas of interest of the
15 Committee.

16 HEARING OFFICER KRAMER: Okay, well, let
17 me pull up my list so we can close this
18 discussion.

19 MR. MCKINSEY: And just for the record,
20 I think Friday is the 12th, not the 11th.

21 HEARING OFFICER KRAMER: Oh, good point.
22 So that'll be February 12th, followed by February
23 19.

24 I trust that people will be serving
25 these by email and mail, and not attempting to

1 deliver anything massive to the Commission,
2 because those are furlough Friday days, and people
3 have had some difficulty getting into the building
4 at times. I think it was more in the Ivanpah
5 case, but one of the parties was trying to deliver
6 something via FedEx, and they couldn't seem to
7 find anybody to give it to.

8 MS. SIEKMANN: Mr. Kramer, I'm so sorry,
9 but we can't understand anything you're saying.

10 HEARING OFFICER KRAMER: Is it because
11 of the speakers?

12 MS. SIEKMANN: It could be --

13 MR. SPEAKER: Yes.

14 MS. SIEKMANN: Yeah, I'm so sorry. So
15 we really couldn't hear --

16 HEARING OFFICER KRAMER: Okay.

17 MS. SIEKMANN: I'm so sorry.

18 DR. ROE: You can actually hear it
19 better out in the foyer than you can in here.

20 HEARING OFFICER KRAMER: Yeah, actually
21 -- and I've observed that phenomenon with some of
22 the other speakers. Okay.

23 Next Friday, February 12th, that's when
24 you're going to provide the Committee and all the
25 other parties your list of topics that you think

1 should be briefed, discussed in the briefs.

2 And then the following Friday, or
3 sooner, the Committee will send out an order
4 listing the topics that we are interested in
5 hearing discussion about in the briefs.

6 I think one of our functions will be if
7 people describe something in slightly different
8 ways, you know, we'll come up with the common
9 formulation of the question.

10 But we'll also mention, and I'll say
11 again here, that you're free to brief whatever
12 else you think you want to brief. You don't have
13 to be confined to that list. And also you're not
14 required to brief everything that's on the list if
15 that's not something you're interested in.

16 Opening briefs will be due on March
17 22nd. Reply briefs will be due on April 14th.

18 And, the reporter, you're still getting
19 me just fine? Okay, so I'll back off a little bit
20 since there isn't much of an audience.

21 I think that -- I was going to read my
22 topics. Let me find those. Okay, one topic is
23 whether there should be overrides, that is if
24 there's a need for overrides. And what grounds
25 would the overrides be based on.

1 Relating to that would be whether there
2 are significant impacts or not.

3 ASSOCIATE MEMBER EGGERT: All areas?

4 HEARING OFFICER KRAMER: Well, in any
5 area. I think some people would argue that there
6 are visual impacts and land use LORS issues. And
7 people may feel that there are other impacts that
8 were not identified by staff.

9 Does the Coastal Commission have to
10 comment on this case in order for the Commission
11 to act?

12 Whether this project is a utility or a
13 public utility, as those terms are used in the
14 city's ordinances and plans.

15 Whether the Warren Alquist Act preempts
16 the Redevelopment Agency's permit authority. I
17 know they argued that it does not.

18 And Mr. McKinsey added whether the
19 Warren Alquist Act, that's the Energy Commission's
20 law, preempts the city from its normal approval
21 authority over the stormwater pollution prevention
22 plan.

23 We covered the Coastal Commission.

24 And then to what extent the decision and
25 the opinions that were rendered regarding the

1 notice of intent proceedings in '89 and '90 has
2 any relevance or binding effect on this case.

3 Mr. Simpson has alluded to notice
4 issues. I don't know if he's going to continue to
5 raise that, but that may pop up. I think we're
6 probably only going to be interested in hearing
7 about that if he continues to raise them. I will
8 make a note to make sure that he knows about these
9 deadlines.

10 And then finally I had does the city's
11 moratorium affect the -- or does it apply to the
12 Energy Commission's consideration of this project.
13 In other words, is it simply a restriction on the
14 city approving something during this period, or
15 does it also apply to the Energy Commission's
16 ability to approve a project during the pendency
17 of the urgency ordinance -- of the moratorium.

18 MR. RATLIFF: Is that a subpart of 1,
19 then?

20 HEARING OFFICER KRAMER: One was
21 Redevelopment Agency, but --

22 MR. RATLIFF: No, one was overrides.

23 HEARING OFFICER KRAMER: Oh. You might
24 look at it that way. You know, propose a
25 formulation you think that, you know, an

1 organization you think works best for that.

2 So, I'm just tossing those out to -- I
3 think Mr. Ball wanted some, at least some ideas
4 and --

5 MR. BALL: Thank you. That's very
6 helpful. I had a few more things on my list that
7 I could repeat now, if it would be of interest or
8 not, because I thought the issue of standards at
9 one point became important. And Commissioner Boyd
10 was interested in that. What standards do we
11 apply to a condition, and how are those
12 determined. And who applies the standards and how
13 are they applied. I think that was a theme that
14 was running through those questions that we had
15 the other day regarding the conditions to
16 certification and what would the CPM use.

17 HEARING OFFICER KRAMER: Oh, setbacks,
18 height restrictions, that sort of thing?

19 MR. BALL: Yeah, those sorts of things.

20 HEARING OFFICER KRAMER: Yes.

21 MR. BALL: Where do those standards come
22 from, and whose are they.

23 HEARING OFFICER KRAMER: Right.

24 MR. BALL: Where are they found really.

25 HEARING OFFICER KRAMER: Okay. Anything

1 else?

2 MR. BALL: We wanted to brief the issue
3 of due deference and/or discretion. I think
4 that's a theme that followed throughout the
5 proceedings here is the due deference. Was due
6 deference given to the city's LORS by the staff.

7 And so we'd like to -- we think that's a
8 really important issue, and we'd like to brief
9 that one.

10 HEARING OFFICER KRAMER: Okay, well,
11 certainly add that to your list.

12 MR. BALL: Thank you. And then sort of
13 a subtopic of the due deference is the discretion.
14 And that sort of interrelates with the idea of
15 standards.

16 Because sometimes the standards are
17 objective and palpable, and sometimes they're
18 discretionary. And so there may be -- and that
19 ran through the land use, the theme testimony in
20 the land use is that who gets to exercise the
21 discretion and when is it exercised. And I think
22 that's a topic we'd like to brief.

23 HEARING OFFICER KRAMER: Okay. Well,
24 hopefully that will inform -- oh, I was reminded
25 of one more issue when you were speaking. But not

1 well enough that I've remembered it now. So if it
2 comes to me I'll mention it later.

3 ASSOCIATE MEMBER EGGERT: Maybe as a sub
4 to the first LORS is more information on the
5 difference between a PDP and a conditional use
6 permit. I think that's within that category --

7 MR. BALL: Thank you. I had that on my
8 list, I just forgot to mention it. I think that's
9 one we'll brief.

10 HEARING OFFICER KRAMER: Yeah, the one I
11 can't remember I thought was really good when I
12 did remember it. Maybe it'll come back.

13 Okay, let's go on then --

14 DR. ROE: Mr. Kramer, can I please
15 request that this schedule that you're just
16 enunciating starting February 11th through April
17 14th be sent by email to all the interested
18 parties. Just so that we don't go through all the
19 excruciating arguments that we had with Mr.
20 Simpson about being prepared to submit things in
21 the appropriate time.

22 MR. MCKINSEY: I was tempted to point
23 out that parties not here have waived the
24 opportunity, but I really didn't want to penalize
25 the other party that's not here.

1 HEARING OFFICER KRAMER: I was going to
2 definitely mention it to Mr. Simpson, but you make
3 a good point. It would be just as easy for me to
4 send it to the whole proof of service email list,
5 and I will do that.

6 DR. ROE: Thank you.

7 MR. MCKINSEY: I would just make one
8 comment to that. Normally I think an order or
9 notice might require a ten-day notice. And I
10 think intent of having a hearing and your ability
11 to require, for instance, the first delivery to be
12 next Friday, I think is effective. And so even
13 though you would be sending out a proof of
14 service, I don't think it should be that fine a
15 point.

16 You want to make it clear if you're
17 sending out notice via email that a ten-day notice
18 requirement doesn't apply to that.

19 HEARING OFFICER KRAMER: I think that
20 would only apply to a hearing is my understanding.

21 MR. RATLIFF: Yeah, that's right.

22 HEARING OFFICER KRAMER: And ultimately
23 this is all optional because we're not going to
24 throw out somebody's brief if they fail to address
25 a topic, nor are we going to reject arguments on a

1 topic that we didn't list. We're just trying to
2 give this thing a little more structure.

3 But ultimately it's the job of the
4 parties. And I think in this case especially to,
5 in your briefs, concisely but clearly tell us what
6 you think we should be deciding and why. And
7 point to the evidence that you believe supports
8 the conclusion you're asking us to draw.

9 It's been my experience that the better
10 you can draw those lines, it certainly helps your
11 argument to be heard and seriously considered.
12 You know, it's not our job to try to dig in the
13 evidence and make your case for you. That's your
14 job.

15 So, let's go on to the topic of traffic
16 and transportation. Could you activate Mr.
17 Debauche on the telephone.

18 Okay, can he hear us now? Mr. Debauche?

19 MR. DEBAUCHE: I can hear you fine.

20 Yeah, I'm here, if you can hear me.

21 HEARING OFFICER KRAMER: Okay, and you
22 were sworn yesterday, correct?

23 MR. DEBAUCHE: Yes, sir.

24 HEARING OFFICER KRAMER: Okay.

25 //

1 Whereupon,

2 SCOTT DEBAUCHE

3 was called as a witness herein, and having been
4 previously duly sworn, was examined and testified
5 as follows:

6 HEARING OFFICER KRAMER: Mr. Ratliff,
7 did you wish to simply offer him for cross-
8 examination?

9 MR. RATLIFF: Yes.

10 HEARING OFFICER KRAMER: Okay, so, Mr.
11 Thompson, the city desires to cross-examine Mr.
12 Debauche? Is it Debauche or Debauche?

13 MR. DEBAUCHE: Debauche actually.

14 HEARING OFFICER KRAMER: Debauche.
15 Okay, the "a" is silent, more or less. So, Mr.
16 Thompson, if you would conduct your cross-
17 examination on the topic of traffic and
18 transportation.

19 MR. THOMPSON: Thank you very much.

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q Good afternoon, Mr. Debauche. Would you
23 please tell us which cumulative projects you
24 considered in your cumulative analysis?

25 MR. DEBAUCHE: In the traffic cumulative

1 analysis projects were looked at that included the
2 flower fields project, the I-5 widening project,
3 Carlsbad Seawater Desal Plant project, the City of
4 Carlsbad capital improvement program, the LOSSAN
5 double-tracking project, and the coastal rail
6 trail.

7 MR. THOMPSON: Did I miss the sewer
8 interceptor project in that list?

9 MR. DEBAUCHE: I believe I referred to
10 that as part of the City of Carlsbad capital
11 improvement program.

12 MR. THOMPSON: Thank you. And what
13 timeframe did you consider for the LOSSAN project?

14 MR. DEBAUCHE: I didn't look at projects
15 -- the other, the cumulative projects identified,
16 obviously the construction dates of those are
17 unknown. I only know what was planned for the
18 construction dates of the proposed CECP.

19 MR. THOMPSON: Without looking at the
20 construction dates, were you able to make any
21 assessment of whether or not there would be two or
22 more projects under construction at the same time
23 with the CECP?

24 MR. DEBAUCHE: The cumulative impact
25 analysis assumed that one or more of those

1 projects could be under construction at the same
2 time.

3 HEARING OFFICER KRAMER: You're sounding
4 muffled. Are you using a speakerphone, by chance?

5 MR. DEBAUCHE: I am not. I do get quite
6 a bit of reverberation of my own voice through on
7 this end.

8 HEARING OFFICER KRAMER: That was a
9 little better. Try being a little bit further
10 away from your microphone.

11 MR. DEBAUCHE: Okay.

12 HEARING OFFICER KRAMER: And say a word
13 or two so we can see if that works.

14 MR. DEBAUCHE: Is that any better?

15 HEARING OFFICER KRAMER: That is, thank
16 you.

17 MR. DEBAUCHE: Okay.

18 MR. THOMPSON: If you would just be so
19 kind as to repeat your last response. I couldn't
20 get whether it could or not.

21 MR. DEBAUCHE: Okay. The cumulative
22 traffic analysis did assume that one or more of
23 the cumulative projects could be under
24 construction at the same time as the CECF.

25 MR. THOMPSON: Did assume?

1 MR. DEBAUCHE: Yes, it did.

2 MR. THOMPSON: Thank you very much,
3 that's all.

4 HEARING OFFICER KRAMER: Okay. Mr.
5 Monasmith is not in the room, so I don't know who
6 he has --

7 MR. RATLIFF: He's having Doug call the
8 next person right now to get them on the line.

9 HEARING OFFICER KRAMER: Okay.

10 MR. RATLIFF: Or perhaps line up the
11 Water Board, I'm not sure.

12 HEARING OFFICER KRAMER: Well, then
13 maybe we can, in the meantime, attack the
14 exhibits. We are now using, as I said the other
15 day, to avoid having to refer to the documents by
16 more than their exhibit numbers, we're using the
17 exhibit list, the 2/4/10 version that I just
18 handed out a few minutes ago.

19 Oh, Mr. Debauche, you're free to go.

20 MR. DEBAUCHE: Okay, thank you.

21 HEARING OFFICER KRAMER: And thank you
22 for your testimony.

23 I have exhibits 1 through 193 as
24 previously -- as having been accepted, received
25 into evidence on February 1st. Exhibit 194

1 received on February 2nd. 195 and 196 received
2 yesterday, February 3rd. And 197 was received
3 this morning, February 4th.

4 Staff exhibits 200 through 220 were
5 received on February 1st. Exhibit 221 was
6 received on February 3rd. 224 and 225 were
7 received today, February 4th. That leaves 222 and
8 223 yet to be received into evidence. Mr.
9 Ratliff, do you have a motion?

10 MR. RATLIFF: Yes. Could you please
11 enter exhibits 222 and 223 into evidence?

12 HEARING OFFICER KRAMER: Any objection?
13 Seeing none, they were received today, February
14 4th.

15 Terramar exhibit 300 was received on
16 February 1st. Exhibit 376, the slides from Mr.
17 Sharman, I do not believe were ever received. Or
18 not yet, anyway. So do I have a motion?

19 MS. SIEKMANN: He passed it out to
20 everyone.

21 HEARING OFFICER KRAMER: No, we have the
22 document. It's just that you have not made a
23 motion to have that accepted into evidence.

24 MS. SIEKMANN: Oh, I didn't realize
25 that, I'm sorry. May I make that a motion?

1 HEARING OFFICER KRAMER: Yes, I was
2 actually trying to coerce you into doing that.

3 MS. SIEKMANN: Thank you.

4 HEARING OFFICER KRAMER: Any objection
5 to receiving that document?

6 MR. RATLIFF: No.

7 MS. SIEKMANN: Thank you.

8 HEARING OFFICER KRAMER: So that will be
9 received today, February 4th.

10 The City of Carlsbad exhibits 400
11 through 433 were received on February 1st. The
12 only additional document I identified was the, I
13 guess it's the artist's rendering of the closeup
14 view of the reverse osmosis building for the
15 desalinization plant. That's exhibit 434.

16 Let me ask, were there any others, Mr.
17 Thompson?

18 MR. THOMPSON: We believe that maybe
19 there was a letter from Caltrans that was
20 identified from Mr. Neu's testimony.

21 HEARING OFFICER KRAMER: I don't recall
22 seeing it. We can come back to that and look for
23 that. In the meantime, exhibit 434, are you
24 moving that into evidence?

25 MR. THOMPSON: Yes, the city would like

1 to move 434 into evidence, please.

2 HEARING OFFICER KRAMER: Any objection?

3 MR. RATLIFF: No.

4 HEARING OFFICER KRAMER: Seeing none,
5 that's received on February 4th.

6 The Center for Biological Diversity's
7 exhibits 600 through 647 were all received on
8 February 1st.

9 There is some duplication, however,
10 between those exhibits and the staff exhibits.
11 And Mr. Monasmith has examined that and suggests
12 the following corrections:

13 Exhibit 600 equates to staff exhibit
14 210. Exhibit 601 equates to staff 211. Exhibit
15 602 equates to staff 214. Exhibit 603 equates to
16 exhibit 215. Exhibit 604 equates to 205. Exhibit
17 605 equates to 204. And exhibit 213 equates to
18 exhibit 213 -- I'm sorry, 606 equates to 213.

19 So, what I propose to do is simply mark
20 exhibits 600 through 606 as duplicates of their
21 corresponding exhibits that I just read. And then
22 we will basically use the staff exhibits as the
23 official exhibits. Does anybody object to that
24 approach?

25 DR. ROE: Just getting ready.

1 HEARING OFFICER KRAMER: Oh, okay. You
2 scared me, Dr. Roe.

3 (Laughter.)

4 HEARING OFFICER KRAMER: Seeing none,
5 then that is what we will do. And thank you, Mr.
6 Monasmith, for looking into that.

7 DR. ROE: Mr. Kramer, you didn't ask us
8 about our exhibits, and I'd like clarification.

9 HEARING OFFICER KRAMER: Okay, go ahead.

10 DR. ROE: You list exhibits 701 - 741,
11 excluding 727 and 738. In our exhibit 739, our
12 original 739, we detail a number of references
13 such as the CEC 2009 IEPR and so forth. Are those
14 references then included in exhibits 701-741?

15 HEARING OFFICER KRAMER: I don't have an
16 exhibit -- 739 was a part of exhibit 700, is that
17 right?

18 DR. ROE: It was originally part of 700.
19 And I notice nowhere else is --

20 MR. McKINSEY: It still is. That second
21 line, where it says exhibit 701 to 741, notes that
22 all of those exhibits have been incorporated into
23 700. And that's just blocking those numbers from
24 being used. So 739 is one of the exhibits that
25 became exhibit 700.

1 DR. ROE: That became exhibit 700?

2 HEARING OFFICER KRAMER: Right.

3 DR. ROE: And there's no need to detail
4 the various references elsewhere?

5 HEARING OFFICER KRAMER: Well, I think
6 he may be making a different point, Mr. McKinsey.
7 Are you suggesting -- I have to pull up your
8 exhibit, but are you suggesting that you referred
9 to some other documents in that 739, --

10 DR. ROE: Yes, we --

11 HEARING OFFICER KRAMER: -- and you
12 meant to --

13 DR. ROE: -- we referred --

14 HEARING OFFICER KRAMER: -- incorporate
15 those?

16 DR. ROE: Yes.

17 HEARING OFFICER KRAMER: And are those
18 somebody else's exhibit, by chance, or --

19 DR. ROE: They're all somebody else's
20 exhibits.

21 HEARING OFFICER KRAMER: Okay, so the
22 documents you need are in the evidence by some
23 way?

24 DR. ROE: Yes.

25 HEARING OFFICER KRAMER: Okay. So then

1 I don't think we need to be concerned that you
2 also mentioned them in your, let's call it
3 paragraph 739.

4 DR. ROE: Okay. So we could reference
5 them in any brief without --

6 HEARING OFFICER KRAMER: Right. You can
7 also use other people's exhibits. You're not
8 limited to only your own.

9 DR. ROE: Some of them were not
10 referenced anywhere else.

11 HEARING OFFICER KRAMER: Now that might
12 be an issue. So, --

13 DR. ROE: For example, the California
14 ISO 2011/2013 is not referenced by anybody else, I
15 don't think.

16 MR. RATLIFF: I thought it was. Let
17 me --

18 MR. MCKINSEY: Well, I mean but all of
19 those are now part of exhibit 700, so they're in
20 the record, but it's your concern that you were
21 referring to them as exhibit 739. So in the
22 record right now your comments would say exhibit
23 739?

24 DR. ROE: Okay.

25 MR. MCKINSEY: Well, is that the

1 concern?

2 DR. ROE: Yes.

3 HEARING OFFICER KRAMER: Are you talking
4 about the local capacity technical analysis
5 report?

6 DR. ROE: Yes.

7 HEARING OFFICER KRAMER: Okay. I think
8 I would prefer that you refer to it by exhibit
9 208, which is what it appears to be, --

10 DR. ROE: Yes.

11 HEARING OFFICER KRAMER: -- rather than
12 your exhibit number.

13 DR. ROE: 208.

14 MR. RATLIFF: That's right.

15 HEARING OFFICER KRAMER: Yes. And I'm
16 sure Mr. Ratliff will be willing to help you, or
17 Mr. Monasmith, if you have trouble figuring out
18 which exhibit you're referring to.

19 DR. ROE: Thank you.

20 HEARING OFFICER KRAMER: Okay, so -- but
21 stand by, Dr. Roe, because you may have to make a
22 motion. So your exhibit 700 was admitted on
23 February 1st. The entry below is simply to
24 indicate, hopefully I was clear, that we're not
25 using those numbers because we don't want to

1 overlap with the way you used them in exhibit 700.

2 With the exceptions of 727, which were
3 the photographs, which were received on February
4 1st. And also the petition which was also
5 received on February 1st, that's 738.

6 Actually your other two exhibits, 742
7 and 743 were also received on February 1st, so we
8 do not require an additional motion from you.

9 So, just to be clear, for the transcript
10 and the record and my office manager, can we have
11 a motion to admit all of the documents that are
12 listed on the exhibit list, the February 4th
13 version, that have not already been admitted for
14 one reason or another?

15 MR. McKINSEY: I move that we admit all
16 the documents listed on the February 4th version
17 of the list of exhibits that were not otherwise
18 admitted during this proceeding.

19 HEARING OFFICER KRAMER: Any objection?

20 MS. BAKER: I don't have an objection,
21 I've been trying to ask you a question.

22 HEARING OFFICER KRAMER: I'm sorry.

23 MS. BAKER: When the applicant agreed to
24 provide the easement agreement from NCTD, is that
25 entered as an exhibit or how is that handled?

1 HEARING OFFICER KRAMER: Okay, Mr.
2 McKinsey, what was your intention?

3 MR. MCKINSEY: I did not have an
4 objection. We agreed to enter it, but I just
5 don't have it. So we would simply need to add
6 that as an exhibit. But that would be subject to
7 objections by parties, but --

8 HEARING OFFICER KRAMER: Okay.

9 MR. MCKINSEY: -- enter right now,
10 because we don't have it.

11 MS. BAKER: I just didn't know how that
12 would be handled. I apologize.

13 HEARING OFFICER KRAMER: Okay, let me --
14 well, no, let me put that off for a minute, and
15 then seeing no objection to Mr. McKinsey's motion
16 to have everything that is currently listed on the
17 February 4th version of the exhibit list admitted
18 into evidence. Seeing no objection, we will admit
19 all those documents.

20 Now, as far as this additional document
21 goes, is it going to be one of your exhibits, Mr.
22 McKinsey, do you know?

23 MR. MCKINSEY: Yes.

24 HEARING OFFICER KRAMER: Okay, so that
25 would be number 198. And can you give me some

1 kind of description that I can put in as a
2 placeholder?

3 MR. MCKINSEY: I'm just going to say
4 railroad easement document, because I don't know
5 what the actual name of the railroad company was
6 at the time.

7 AUDIENCE SPEAKER: (inaudible).

8 HEARING OFFICER KRAMER: I heard another
9 term from the audience. Is that more precise?

10 MR. MCKINSEY: Well, I'm hesitant to be
11 certain on it, but it may be a license and not an
12 easement. It may be a right-of-way license.

13 HEARING OFFICER KRAMER: Easement or
14 right-of-way license. Okay, and because the
15 other parties haven't had an opportunity to look
16 at it yet, what we'll do is have Mr. McKinsey file
17 it and serve it on the parties. And the parties
18 will have seven days in which to file any
19 objections that they want to make to the receipt
20 of that document.

21 Does that work for everyone? I see no
22 concerns.

23 Okay, we may have additional exhibits.
24 It's unlikely, but from the last three sections
25 we're going to discuss, but let us move forward.

1 Mr. Monasmith, that was, again?

2 MR. MONASMITH: With the Regional Water
3 Quality Control Board Staff who are calling in to
4 talk with the Committee, per your request.

5 HEARING OFFICER KRAMER: Okay, thank
6 you. Can you activate their telephone.

7 Okay, this is Paul Kramer, the Hearing
8 Officer for the Energy Commission Committee. Who
9 do we have on the telephone?

10 MS. MATA: Michelle Mata and Brian
11 Kelley is here, as well.

12 HEARING OFFICER KRAMER: Okay, could you
13 spell your names, please?

14 MS. MATA: Yeah, my name is, my first
15 name is Michelle, M-i-c-h-e-l-l-e. My last Mata,
16 M-a-t-a.

17 HEARING OFFICER KRAMER: I'm sorry,
18 could you spell that phonetically? Your voice is
19 not, because you're on the telephone and you're
20 coming through overhead speakers, it's not as
21 clear as we might like. So please spell your last
22 name phonetically for me.

23 MS. MATA: Can not hear me. How can I
24 say this --

25 HEARING OFFICER KRAMER: Just say the

1 letters slowly.

2 MS. MATA: M --

3 HEARING OFFICER KRAMER: Okay, M as in
4 Mary.

5 MS. MATA: Yes. A, as in apple.

6 HEARING OFFICER KRAMER: A.

7 MS. MATA: T as in Tim. And A as in
8 apple.

9 HEARING OFFICER KRAMER: M-a-t-a?

10 MS. MATA: Correct. Okay. And your
11 other partner there?

12 MR. KELLEY: Yes, my name is Brian
13 Kelley; and the last name is spelled K-e-l-l-e-y.

14 HEARING OFFICER KRAMER: You sound
15 pretty good, thank you.

16 MR. KELLEY: Oh, good.

17 HEARING OFFICER KRAMER: Okay. I need
18 to swear you in as witnesses, so if you could
19 raise your hand.

20 Whereupon,

21 MICHELLE MATA and BRIAN KELLEY
22 were called as witnesses herein, and after first
23 having been duly sworn, were examined and
24 testified as follows:

25 HEARING OFFICER KRAMER: Thank you.

1 Staff, did you wish to ask any preliminary
2 questions of these witnesses, or just make them
3 available for questions from the other parties?

4 MR. RATLIFF: Right. I think that
5 you're to answer any questions from any of the
6 parties, or from the Committee. I have no direct,
7 they have no testimony. This is just for your
8 information.

9 HEARING OFFICER KRAMER: Okay. I think
10 the Committee may have some questions, as well,
11 but we'll begin with Power of Vision. Dr. Roe or
12 -- it's going to be Ms. Baker.

13 DR. ROE: Is this soil and water?

14 HEARING OFFICER KRAMER: Soil and water,
15 and these people -- actually, maybe, Ms. Mata and
16 Mr. Kelley, if you could just tell us for a moment
17 what you do -- you're with the Regional Water
18 Quality Control Board, correct?

19 MS. MATA: Correct. I can give you a
20 summary. I can begin by summarizing what the
21 Regional Water Board's role is in this matter.

22 DIRECT TESTIMONY

23 MS. MATA: The Regional Water Board is
24 charged with regulating discharges of waste to
25 waters of the U.S., waters of the state. The

1 Regional Water Board implements provisions of the
2 Federal Clean Water Act, the California Water Code
3 through issuance of waste discharge requirements
4 and national pollutant discharge elimination
5 permits, which we usually call NPDES permits.

6 Each regional water board has
7 established water quality objectives in the water
8 quality control plan to insure the protection of
9 beneficial uses, and the prevention of nuisance.

10 The proposed discharge contains
11 pollutants that have a potential to cause
12 excursions above a numeric water quality standard,
13 and thus must be regulated by an NPDES permit.

14 In addition, the proposed project was
15 drawing in water from the Agua Hedionda Lagoon
16 through an intake structure that may have reverse
17 impacts on the biological communities caused by
18 impingement and entrainment effects. The Regional
19 Board also has jurisdiction over such potential
20 impacts.

21 So on August 15, 2008, Regional Board
22 received an application for a new NPDES permit for
23 the discharge of up to 4.32 million gallons per
24 day of brine, this is from reverse osmosis, and
25 associated dilution water from the operation of

1 the Carlsbad Energy Center project.

2 Since then the Regional Board requested
3 additional clarifying information and has received
4 several responses from the project proponent, the
5 latest which was received in December of 2009.

6 Based on information submitted to date
7 to the Regional Board is conducting a detailed --
8 to determine the applicability of California Water
9 Code section 13142.5, which states: for each new
10 or expanded coastal power plant, or industrial
11 installation using seawater for cooling, heating
12 or industrial processing, the best available site,
13 design, technology and mitigation measures
14 feasible shall be used to minimize intake and
15 mortality of all forms of marine life.

16 If it is determined that Water Code
17 section 13142.5 applies to the project, then the
18 Regional Water Board would need to evaluate the
19 site, design, technology, and this refers to the
20 intake structure, and mitigation associated with
21 the proposed facility.

22 The project proponent would need to
23 clearly identify all these and how their project
24 complies with the statute.

25 For example, during the evaluation the

1 Regional Water Board evaluates intake alternatives
2 such as vertical and horizontal beach wells,
3 slant, new open ocean intakes or modification to
4 the existing structure.

5 The Regional Water Board needs to be
6 able to find in a document permit that the
7 project, as proposed, uses the best available
8 site, design, technology and mitigation measures
9 to minimize the mortality of marine life.

10 Appropriate requirements would be
11 included in any draft -- permits for the facility.
12 After appropriate requirements determine the
13 project and the Regional Water Board draft
14 discharge requirements -- public comment. And to
15 present to the board for consideration of adoption
16 at a future meeting.

17 So, if you have any questions for us.

18 EXAMINATION

19 HEARING OFFICER KRAMER: So, what are
20 your conclusions about the project's proposed use
21 of the seawater?

22 MS. MATA: We are still evaluating the
23 application.

24 HEARING OFFICER KRAMER: Okay, so you
25 will issue a permit or not at some point in the

1 future?

2 MS. MATA: Correct.

3 HEARING OFFICER KRAMER: Do you have an
4 approximate schedule for when that would occur?

5 MS. MATA: Well, it depends on the
6 outcome of the evaluation. If it's determined
7 that the water code section does apply, it really
8 depends on what we're going to ask the applicant
9 and how soon they can get information to us.

10 And if it doesn't apply, I'd say maybe
11 four to six months.

12 HEARING OFFICER KRAMER: And the water
13 section you refer to, is that the one that relates
14 to the policy 7558, I think it is, about the
15 hierarchy of the water use?

16 MS. MATA: No.

17 HEARING OFFICER KRAMER: Okay.

18 MS. MATA: This is for the intake
19 structure.

20 HEARING OFFICER KRAMER: Oh, I see. One
21 question we did hear is currently the project is
22 just withdrawing -- I mean it's taking its water
23 out of an existing process that withdraws water
24 from the ocean, correct? In other words, it's
25 plumbed itself into the cooling system of the

1 existing power plant.

2 MS. MATA: Correct.

3 HEARING OFFICER KRAMER: And -- or
4 parasitic is the term somebody just used here.
5 And if the existing power plant, at some point,
6 closes and no longer is drawing any water for
7 cooling, and no longer needs to operate its
8 cooling system, how will the Regional Board --
9 will it need to do anything further with regard to
10 the Carlsbad Energy Center project, if it is
11 approved?

12 MS. MATA: Well, that is what we are
13 evaluating right now.

14 HEARING OFFICER KRAMER: Okay, so you
15 don't have an answer yet?

16 MS. MATA: No.

17 HEARING OFFICER KRAMER: Okay, we may
18 have some more questions from the Committee, but
19 let's go on to the city. Mr. Thompson.

20 MR. THOMPSON: Thank you. Mr. Garuba
21 would like to ask a question, if that's okay.

22 HEARING OFFICER KRAMER: Okay. Please
23 introduce yourself for the witnesses on the
24 telephone.

25 MR. GARUBA: Yes, hello, Michelle, it's

1 Joe Garuba with the City of Carlsbad.

2 MS. MATA: Hello.

3 CROSS-EXAMINATION

4 BY MR. GARUBA:

5 Q Is part of the Regional Board's
6 evaluation considering the potential shutdown or
7 elimination of Encina Units 1 through 5, the
8 applicability of the Clean Water Act, I think it's
9 316(b) part or phase one, the thresholds that they
10 have for new power plants?

11 MS. MATA: Yes, 316(b) would not apply
12 to this facility.

13 MR. GARUBA: Thank you.

14 HEARING OFFICER KRAMER: Okay, Power of
15 Vision.

16 CROSS-EXAMINATION

17 BY DR. ROE:

18 Q Yes. My name is Arnold Roe; I'm with
19 Power of Vision. I want to thank you, Ms. Mata,
20 for all the statements you made earlier, because
21 that cuts my questioning to the applicant and to
22 the staff --

23 MS. MATA: Okay, you're welcome.

24 DR. ROE: -- quite a bit. Ms. Mata,
25 have you read the CEC Staff's FSA condition of

1 licensing soil-and-water number 4, in which they
2 require the applicant to obtain a waste discharge
3 requirement order prior to operation of the
4 desalination plant?

5 MS. MATA: Yes.

6 DR. ROE: You're familiar with that?

7 MS. MATA: Yes, that's correct.

8 DR. ROE: And you mentioned the
9 applicant's letter of December 14, 2009, to you.
10 I think that's exhibit 142 in our proceeding. In
11 which the applicant indicated their intention not
12 to comply with that requirement, but instead seek
13 that permit at the time that units 1 through 5 are
14 all shut down?

15 MR. McKINSEY: I think I would just
16 articulate I don't think the -- this is John
17 McKinsey, counsel for the applicant. And just to
18 clarify, Dr. Roe, I don't think you mean to say we
19 won't comply with the law. Perhaps at one point
20 the way that you would conform to that requirement
21 may be different than another.

22 Or are you suggesting that we're stating
23 we're not going to comply with --

24 DR. ROE: Well, my interpretation of
25 your communications to the Regional Board was that

1 you had another plan, another time in mind. Maybe
2 I could ask Mr. Mason whether the applicant
3 intends to comply with the current wording of soil
4 and water-4.

5 HEARING OFFICER KRAMER: I think we're
6 just trying to clear up all the questions with the
7 Regional Board witnesses right now so we can
8 release them.

9 DR. ROE: Okay.

10 HEARING OFFICER KRAMER: And then we'll
11 have the staff witness on the phone, along with
12 the applicant's witness. But, --

13 DR. ROE: Okay, let me continue then
14 with Ms. Mata.

15 HEARING OFFICER KRAMER: So it's
16 perfectly okay for you to ask her what she thinks
17 the letter means, for instance. But what you
18 interpret it to mean --

19 DR. ROE: Yes.

20 HEARING OFFICER KRAMER: -- is probably
21 best addressed in your brief.

22 DR. ROE: Ms. Mata, did you hear the
23 comments of Mr. Kramer?

24 MS. MATA: Yes.

25 DR. ROE: Could you respond to what your

1 interpretation of the letter is, in the context of
2 the condition of licensing soil and water-4?

3 MS. MATA: Well, we are trying to
4 determine now whether at some time in the future
5 those units will be taken offline. We need to
6 consider that now, and not at a later date.

7 DR. ROE: Thank you, Ms. Mata.

8 MS. MATA: You're welcome.

9 HEARING OFFICER KRAMER: Let's see, Ms.
10 Siekmann, this was the topic where you asked
11 for --

12 MS. SIEKMANN: (inaudible).

13 HEARING OFFICER KRAMER: Oh, okay. A
14 followup to --

15 MS. SIEKMANN: Repeat so it's on the
16 record. Ms. Mata is not the person I was
17 intending to ask my question of, thank you.

18 HEARING OFFICER KRAMER: Okay, thank
19 you.

20 FURTHER EXAMINATION

21 HEARING OFFICER KRAMER: Ms. Mata, I
22 recall seeing -- this is the Hearing Officer -- I
23 recall seeing in my email box some time ago a
24 letter from, it might have been from your agency,
25 to the effect that you thought you might, after

1 the existing units, once-through cooling units,
2 closed, might reopen the permit.

3 Was that your position or speculation
4 some time ago?

5 MS. MATA: That is an option.

6 HEARING OFFICER KRAMER: Okay, but are
7 you now saying that you're trying to analyze all
8 the issues before you issue the permit that's
9 currently before you?

10 MS. MATA: That is correct.

11 HEARING OFFICER KRAMER: Okay, thank
12 you.

13 Does any party have any additional
14 questions for either Ms. Mata or Mr. Kelley?
15 Seeing none, thank you for calling in. We
16 appreciate your helping us out with these
17 questions.

18 MS. MATA: You're welcome.

19 HEARING OFFICER KRAMER: And we're going
20 to hang up on you so we can have somebody else
21 call in.

22 MS. MATA: Okay.

23 MR. KELLEY: Okay, thank you.

24 HEARING OFFICER KRAMER: Thanks, again.

25 While we're waiting for that connection

1 to be established, on an unrelated bit of
2 housekeeping, the city made a motion to have the
3 record kept open until some sort of communication
4 is received, I think they mean something on the
5 order of a report that they believe is required
6 from the Coastal Commission.

7 I think what we will do is take that
8 under advisement and have -- Mr. McKinsey has
9 already filed, I believe, a response on that
10 question, as I recall.

11 MR. MCKINSEY: That's correct. Our
12 response articulated that we objected to keeping
13 the record open for that report.

14 HEARING OFFICER KRAMER: The other
15 parties have not weighed in yet at this point.
16 So, --

17 MS. SIEKMANN: Mr. Kramer, Terramar has
18 no objection to that.

19 HEARING OFFICER KRAMER: To keeping the
20 record open?

21 MS. SIEKMANN: Yeah, for the Coastal
22 Commission.

23 HEARING OFFICER KRAMER: Okay. The
24 applicant does, I believe. We will take that
25 under submission and invite the other parties, and

1 Mr. McKinsey, if he has anything else to add, to
2 address that in their opening briefs.

3 And it will not affect the progress of
4 the case, to keep the record open on that limited
5 point.

6 MR. BALL: Mr. Kramer, we'll include
7 that in our brief, and what the appropriate
8 remedies would be. So that's one of them, keeping
9 the record open. There may be other remedies that
10 would be appropriate or applicable, also.

11 HEARING OFFICER KRAMER: Okay. But
12 everything I think we're going to hear in the
13 briefs is going to be by way of --

14 MR. BALL: Just to be clear --

15 MR. MCKINSEY: Are you amending your
16 motion? Because you made a motion to keep the
17 record open, and that's what we filed a response
18 objecting to that motion.

19 MR. BALL: Unless we get a ruling today,
20 we're saying that there may be other remedies
21 besides keeping the record open. There may be
22 more -- more appropriate. And so we haven't
23 thought of all those remedies, yet. But keeping
24 the record open is one of them. Closing the
25 record is another.

1 MR. MCKINSEY: I'd like to be kind of
2 clear here. The reason we're opposed to it is
3 because no such document is ever going to come
4 into existence. And so it is a legal strategy, or
5 I think, to some extent, to point out that.

6 I mean what the city is arguing as a
7 brief matter is that they feel a 30143(d) report
8 of the Public Resources Code is required in this
9 proceeding. And they said we want to hold the
10 record open until that's received.

11 And so I, you know, our objection was we
12 disagree with that position and we request a
13 ruling by the Committee on that. And we
14 appreciate it being taken under advisement.

15 HEARING OFFICER KRAMER: We will
16 certainly rule. At this point I don't think -- we
17 could say we hold the record open, we could say we
18 close the record subject to reopening. It's, you
19 know, six of one and half a dozen of another,
20 basically.

21 MR. BALL: And that's the remedies that
22 I meant is that we could hold it open for a
23 limited time for the report; we could close it
24 subject to the report coming in; and other
25 remedies.

1 So, it's an important issue that we want
2 to brief and have a --

3 HEARING OFFICER KRAMER: And you say
4 this because you know that the Coastal Commission
5 has a secret plan and they're working on a report?

6 (Laughter.)

7 MR. BALL: I wish I had that
8 information. I have no crystal ball and I don't
9 know that.

10 MR. RATLIFF: Well, Commissioner, in the
11 past, I mean staff has always been very
12 straightforward with the Coastal Commission Staff,
13 that the Coastal report, any report from them had
14 to be timely. It had to be before the FSA, in
15 fact.

16 I mean that train has left the station
17 as far as we're concerned. And we think that, you
18 know, to even hold the record open at this point
19 would be inappropriate because they have to
20 cooperate with us and provide timely assistance.

21 We specifically requested that they do
22 that. I personally called them and asked them to
23 do that. And they told us, no way.

24 HEARING OFFICER KRAMER: Well, we
25 actually have a new exhibit that shows three other

1 attempts, or two, at least, to get them to do
2 something, and they've consistently refused.

3 Now, we understand that's the state of
4 the record.

5 MR. BALL: Commissioner Kramer -- I mean
6 Hearing Officer Kramer, when you refer to "they"
7 it's usually they meaning the staff or the
8 Executive Director of the Coastal Commission. Not
9 they meaning the Coastal Commission.

10 So there has been no evidence that I
11 know of where the Commission has even considered
12 it. It needs to -- the request needs to be
13 considered by the Commission, not by the
14 Commission Staff.

15 MR. RATLIFF: Well, my point is it's
16 just not timely at this point. It's too late.

17 HEARING OFFICER KRAMER: Well, another
18 issue that is going to be briefed is whether
19 that's a prerequisite to the Energy Commission
20 taking some sort of action.

21 So they all relate, and we will sort it
22 out during the course of, you know, making rulings
23 on all the other issues such as significance of
24 impacts, whether we need to override and whether
25 we choose to, and that sort of thing.

1 having been duly sworn, was examined and testified
2 as follows:

3 HEARING OFFICER KRAMER: Thank you.
4 Please state your name and spell your last name
5 for our court reporter.

6 MR. CONWAY: My name is Mike Conway. My
7 last name is spelled C-o-n-w-a-y.

8 HEARING OFFICER KRAMER: Thank you. And
9 who do you work for?

10 MR. CONWAY: I work for the California
11 Energy Commission.

12 HEARING OFFICER KRAMER: Okay, Mr.
13 Ratliff, are you simply making him available for
14 cross-examination?

15 MR. RATLIFF: Yes, he is participating
16 because of a request that he be available for
17 cross-examination, I think by POV and the city.

18 HEARING OFFICER KRAMER: Okay. Mr.
19 McKinsey, is Mr. Mason also going to be available
20 for that purpose?

21 MR. MCKINSEY: Yes, Mr. Mason was
22 particularly made available at the request of the
23 Committee to have somebody from the applicant that
24 could also address topics related to units 4 and
25 5. And overall, the interrelationship of the

1 project to the once-through cooling system at the
2 existing facility.

3 HEARING OFFICER KRAMER: And, Mr. Mason,
4 were you previously sworn?

5 MR. MASON: Yes.

6 HEARING OFFICER KRAMER: Okay, thank
7 you. Power of Vision, Dr. Roe, do you want to ask
8 your -- did you have soil and water questions of
9 these witnesses, staff or the applicant?

10 DR. ROE: Yes, I wanted to restate my
11 question to Mr. Mason.

12 CROSS-EXAMINATION

13 BY DR. ROE:

14 Q I have not seen any indication from the
15 applicant to the CEC Staff that they are objecting
16 to the current phrasing of soil and water. Does
17 the applicant intend to abide by the current
18 writing in soil and water-4?

19 MR. MASON: Yes. We will supply the
20 information that's required. I guess in the end
21 of the day, though, it's going to be the Water
22 Board that will determine which type of permit we
23 may or may not get. But we will provide the
24 information required.

25 DR. ROE: Well, there seems to be some

1 conflict to what you say, if you say that you have
2 no objections to the current wording of soil and
3 water-4, the verification requires you to provide
4 a order, a permitting order, prior to operation of
5 the desalination plant.

6 MR. MASON: Well, what I'm indicating is
7 that it will be up to the Regional Water Quality
8 Control Board who determines what permit it is
9 that we get, whether or not it is waste discharge
10 requirements, or some other type of water permit
11 that they would issue. That's the purview of the
12 Water Board.

13 DR. ROE: Along the same lines, could I
14 ask staff whether they still expect that the
15 verification conditions of soil and water-4 will
16 be complied with?

17 MR. CONWAY: Yes, that's my
18 understanding.

19 DR. ROE: Thank you.

20 MR. McKINSEY: I'd like to clarify that
21 particular -- Dr. Roe is raising an interesting
22 question. The language in soil and water-4
23 requires the applicant, meaning the actual
24 condition language, to submit the information
25 necessary for the issuance of a waste discharge

1 requirements permit.

2 The verification language requires that
3 the applicant provide the actual resulting permit.
4 And there's a little disconnect in there that the
5 actual express language of the condition does not
6 require that the applicant have one.

7 And I believe the intent of that is
8 because the verification language can be
9 interpreted differently by the compliance project
10 manager than the absolute requirement. So that
11 the Regional Board, instead of issuing a WDR,
12 issues a different form of a permit, then the
13 compliance officer can deem that verification as
14 having been met.

15 And, I believe, and I could ask this
16 question to go to the staff on the phone, I
17 believe that's the reason why there is an express
18 language in the actual part of the permit
19 requiring that it be a particular form of a
20 permit, only that they submit the application to
21 the board.

22 HEARING OFFICER KRAMER: Is that a
23 question for Mr. Conway?

24 MR. MCKINSEY: Yes, I would like Steve
25 Conway -- or Mike Conway if he could either

1 indicate he agrees with that, or if he wants to
2 explain it. Dr. Roe's raising a good question.

3 MR. CONWAY: I'm reviewing that
4 condition right now, and trying to identify the
5 discrepancy you're describing, myself. I was,
6 prior to you mentioning that, unaware of such a
7 discrepancy. And I would have to look at them
8 both closely right now before I can comment on
9 that. So, sorry for the delay.

10 HEARING OFFICER KRAMER: Do you need a
11 minute to consider it, or --

12 MR. CONWAY: Yes, sir.

13 MR. RATLIFF: I would add that this FSA
14 section was written by a staff member who has
15 since retired. Mr. Conway has taken over this
16 section since that retirement and is sponsoring
17 it. But he did not actually write the condition,
18 himself, so.

19 MR. MCKINSEY: Let me give one more
20 example of how this relates. Soil and water-2
21 requires that the applicant comply with the
22 requirements of an NPDES permit for the discharges
23 of stormwater associated with industrial
24 activities, which is what Ms. Mata spoke about
25 earlier.

1 And it's possible that this may meet the
2 requirements, in other words they may only issue a
3 single permit, and it may be an NPDES permit, that
4 would allow both what's the subject of soil and
5 water-4 and the subject of soil and water-2 as one
6 single permit.

7 And so we interpret that -- so that, I
8 mean that's the other piece to this, and that's
9 why there could be two permits. But the board's
10 probably only going to issue one and they could
11 issue only a waste discharge requirement, they
12 could issue an NPDES permit. It's possible they
13 might issue different ones, as well.

14 But, in any case that's a little more
15 the explanation behind this thing. And that may
16 help Mike Conway.

17 MR. CONWAY: I can understand why a
18 question might arise there, either way. We're
19 speaking about a -VR, a waste discharge
20 requirement. So the form of that permit probably
21 is irrelevant as long as we have it, if I'm
22 understanding the issue correctly. And I think
23 that's the intent.

24 HEARING OFFICER KRAMER: Okay, Mr.
25 McKinsey, I didn't see any mention of an NPDES

1 permit in soil and water-2. Did you cite to the
2 wrong condition, or am I looking at the wrong
3 version of the report?

4 MR. MCKINSEY: You know, I was looking
5 at two versions. It's now soil and water-3. It
6 was soil and water-2 in the preliminary staff
7 assessment.

8 MR. CONWAY: Right.

9 HEARING OFFICER KRAMER: Okay, any
10 further questions? Dr. Roe? Ms. Siekmann?

11 CROSS-EXAMINATION

12 BY MS. SIEKMANN:

13 Q In a couple of other sections of the FSA
14 I have asked the question about eliminating the
15 daily needs for millions of gallons of once-
16 through ocean water cooling, and its associated
17 fish impingement and biological impacts.

18 Since units 1, 2 and 3 have been
19 minimally used in the last few years, I think the
20 number 7 percent has been discussed in the last
21 four days -- four days, yes.

22 I would ask what is the actual use by
23 units 1, 2 and 3 of water, daily use, in the past
24 year?

25 MR. MASON: I don't have that

1 information directly available. And if it is
2 available we can get that.

3 MS. SIEKMANN: I would very much like to
4 see that. I understand the 225 million is the
5 allowable -- maximum allowable use, but -- or the
6 maximum use that has been discussed, but I would
7 like to know actually what the actual savings from
8 the last year, as to the future would be, of
9 shutting those units down.

10 MR. MCKINSEY: And we have, I'm certain
11 that NRG would have no issue with disclosing that
12 information. But as to whether or not it's
13 relevant to be in the record, I think we would
14 object to, and we wouldn't offer up or agree to
15 provide that information for purposes of this
16 proceeding.

17 MS. SIEKMANN: May I ask why you would
18 object?

19 MR. MCKINSEY: Simply because it's a
20 very late request. We're at the end of the
21 evidentiary hearings. You know, tomorrow we could
22 ask for the data --

23 MS. SIEKMANN: I've --

24 MR. MASON: Can I finish my --

25 MS. SIEKMANN: You're --

1 MR. MCKINSEY: You know, tomorrow we
2 could say, what was the flow yesterday. But there
3 is a complete and robust assessment and evaluation
4 of data available. And if the proceeding took,
5 say, another six months there would be more data
6 available. And you have to draw a line somewhere.

7 We would say that we're at the point now
8 where the data that's been provided and updated is
9 adequate.

10 That being said, you know, we're not
11 trying to hide anything. We just don't want to
12 have the record drag out. And so we don't have a
13 problem with assembling information and providing
14 it. But in terms of we would object to its
15 relevance and necessity for the Commission to
16 evaluate the project before them.

17 MS. SIEKMANN: Well, I appreciate that,
18 Mr. McKinsey, but I do know that Power of Vision
19 has been trying to get that number for quite some
20 time. I've tried to get it in the last four days.
21 And now I'm asking again. So I don't think it's
22 very late in the record.

23 HEARING OFFICER KRAMER: Well, even the
24 last four days would be late.

25 MS. SIEKMANN: It's in Power of Vision's

1 opening testimony, as well.

2 HEARING OFFICER KRAMER: The request for
3 data? What would the relevance of this latest
4 information be? Mr. McKinsey has objected that
5 it's not relevant. And I need you to respond and
6 explain --

7 MS. SIEKMANN: The benefit --

8 HEARING OFFICER KRAMER: -- why it would
9 be relevant.

10 MS. SIEKMANN: The stated benefits of
11 the new project, saving millions and millions of
12 gallons of once-through cooling by going to these
13 new units. There's a lot of benefit stated from
14 changing from units 1, 2 and 3 and all that once-
15 through cooling to the new plant that only uses a
16 maximum of 4.32 million gallons a day.

17 So, there's a stated benefit over and
18 over and over again that I don't think exists.
19 And we have been trying to get the answer to that
20 question actually for quite a long time.

21 DR. ROE: Mr. Kramer, perhaps I can help
22 Ms. Siekmann, because there is data available that
23 has been supplied, 2008 flow. It's from units 1,
24 2 and 3. Would that satisfy your --

25 MS. SIEKMANN: (inaudible).

1 DR. ROE: -- request for information?

2 You still want 2009. May I point out the
3 information that's available from 2008; it may
4 help satisfy your request.

5 In 2008, units 1, 2 and 3 used a total
6 of 1,576.8 million gallons per year. That breaks
7 down to 23.6 million gallons of seawater. And
8 then you can compare that daily number, which is
9 the number, the type of metric that the applicant
10 uses, and compare the 23.6 million gallons of
11 seawater currently being used to the 224, is it --
12 -25 million gallons a day.

13 In other words, the plant actually uses
14 one-tenth of the proposed benefit to the public
15 that the applicant has indicated in many of its
16 statements in this process. And more importantly,
17 in many of the statements they made to the public,
18 also.

19 HEARING OFFICER KRAMER: Okay, where are
20 you reading from? Where are you reading from?
21 Are you reading from one of the exhibits?

22 DR. ROE: I don't know which exhibit it
23 was.

24 HEARING OFFICER KRAMER: Well, what is
25 the document? Maybe we can find it.

1 DR. ROE: I'm sorry?

2 HEARING OFFICER KRAMER: What is that
3 document you're looking at?

4 DR. ROE: We had requested that
5 information previously and it was supplied. And I
6 don't remember --

7 MR. MCKINSEY: I can explain even
8 better, I think. We did receive a request, and
9 the essential argument is whether you consider,
10 and I know Commissioner Boyd has dealt with these
11 things quite a bit, the baseline question of what
12 you consider the baseline while measuring
13 benefits.

14 And the Power of Vision requested, or an
15 intervenor requested flow data and we provided it.
16 It was a data request, data response series.

17 And what Ms. Seikman is indicating is
18 she wants newer data. And that's what we're
19 objecting to in terms of necessity and relevance,
20 simply because you can always keep drawing a newer
21 and newer period. And we would argue that the
22 data that's in the record is completely enough to
23 evaluate the benefits of the project, and
24 appropriate, given the baseline topics.

25 But I respect her point of view and we

1 just object to that being necessary to provide
2 more data. And the point we're making about
3 timeliness, it's not necessarily that she's making
4 it now, 2009 didn't end until December 31st of
5 2009. So she couldn't have asked for 2009 data
6 until January 1st.

7 Our point is really that you have to
8 kind of say, okay, it's time to do an assessment.
9 And so staff had to complete their assessment.
10 The parties requested data at a certain point and
11 did their assessment. And they have data to make
12 their argument from.

13 MS. SIEKMANN: Thank you.

14 HEARING OFFICER KRAMER: The objection
15 is sustained. You could, however, ask Mr. Mason
16 for a qualitative, that is a relative estimation
17 of whether the flows for 2009 differed
18 substantially from what was reported in 2008.

19 MS. SIEKMANN: Mr. Mason, do you mind
20 answering that question?

21 MR. MASON: I don't have any information
22 about that.

23 MS. SIEKMANN: Okay. May I ask staff a
24 question, then.

25 HEARING OFFICER KRAMER: Certainly.

1 MR. CONWAY: Yes.

2 MS. SIEKMANN: This is on the same
3 thing. I have quoted a number of places. One of
4 them would be page 1-7 in the project description
5 where it says, eliminating the daily need for
6 millions of gallons of once-through ocean water
7 cooling and its associated fish impingement and
8 biological impacts.

9 Based on the data that Dr. Roe just gave
10 us, could you please explain the millions of
11 gallons of water from once-through cooling that's
12 been eliminated?

13 MR. RATLIFF: This is the testimony --

14 MS. SIEKMANN: This is a water --

15 MR. RATLIFF: -- Mike Monasmith --

16 MS. SIEKMANN: Yeah, this is --

17 MR. RATLIFF: -- in the project
18 description --

19 MS. SIEKMANN: Yeah. And I asked him
20 and he referred me to the water section. And so
21 now I would like the answer to that, based on that
22 data.

23 HEARING OFFICER KRAMER: Do you
24 understand the question, Mr. Conway?

25 MR. CONWAY: I think I do. And what

1 immediately comes to mind is that the use of
2 already-used water for intake, opposed to the use
3 of ocean water for intake, and a net benefit. So
4 that's the simple, clear answer in my mind.

5 MS. SIEKMANN: Well, my question is if
6 4.32 million gallons can be used by the new CECF
7 project, and Dr. Roe just quoted that the daily
8 use for units 1, 2 and 3 is --

9 DR. ROE: 23.6.

10 MS. SIEKMANN: -- 23.6 million gallons,
11 I don't see the enormous benefit that was stated
12 in the -- could you please explain the enormous
13 benefit that was stated in the project
14 description? Do you still, knowing that
15 information that Dr. Roe just gave you, do you
16 still agree with that decision in the project
17 description?

18 MR. RATLIFF: Ms. Siekmann, can I
19 just --

20 MR. CONWAY: I'm not --

21 MS. SIEKMANN: I just want -- I just
22 don't --

23 MR. CONWAY: I'm sorry, and I'm not sure
24 I understand the scope of the question --

25 HEARING OFFICER KRAMER: It would help

1 if you asked one question at a time. I think you
2 got about three in there.

3 MS. SIEKMANN: Okay, I'll try. In the
4 project description it discusses eliminating the
5 daily need for millions of gallons of once-through
6 ocean water cooling and its associated fish
7 impingement and biological impacts, entrainment.

8 MR. CONWAY: Okay. I would say the same
9 thing I said initially. If a certain amount of
10 power would be produced by using water that was
11 already used, opposed to using water directly for
12 power plant cooling, then there would be a net
13 benefit.

14 MS. SIEKMANN: What do you mean by water
15 already used?

16 MR. CONWAY: The intake for those water
17 purification systems will be from the existing EPS
18 once-through cooling seawater discharge channel.

19 MR. RATLIFF: I don't frankly understand
20 either the question or the answer. So, you're
21 looking at me, but -- I think you're asking for a
22 comparison, is that --

23 MS. SIEKMANN: Yes, I am.

24 MR. RATLIFF: But I don't understand,
25 you seem to have some numbers. Some of them are

1 derived from what Dr. Roe just told us. But I
2 don't understand the numbers and I don't
3 understand for what period of time.

4 MR. CONWAY: Is the question that the
5 maximum permitted value of 225 may not be
6 reflective, and that 23.68 would, in fact, be a
7 better value for comparison?

8 MS. SIEKMANN: That is exactly right.

9 MR. CONWAY: Okay. Well, the 4.32, in
10 my understanding, is also a maximum value. So I
11 believe we're comparing maximum values. And I see
12 those --

13 MS. SIEKMANN: And that -- well, except
14 that 4.32 million -- 23.6, the difference between
15 those two is 20 million gallons. The difference
16 between 4.32 and 225 is 201 million gallons. So I
17 feel it's more appropriate to use the 23 million
18 gallon when you're -- especially in the last, what
19 we know for 2008. And I would assume for 2009,
20 based on the fact that units 1, 2 and 3 haven't
21 been used that extensively in 2009. So there is
22 not a huge significant benefit to the CECP by
23 saving millions of gallons of once-through cooling
24 water with the new CECP project.

25 That's the point that I'm trying to make

1 sure that staff has in their report, which seems
2 to be a more truthful statement than saving 201
3 million gallons of water a day.

4 MR. RATLIFF: Can someone restate for me
5 what the comparison is, though? Is it 4 to 26
6 that you're suggesting should be the comparison?

7 MS. SIEKMANN: Or it just should be
8 stated the actual usage of the 23.6 --

9 MR. RATLIFF: But the --

10 MS. SIEKMANN: -- and the maximum
11 possible of 4. -- go right ahead.

12 MR. RATLIFF: Is that the -- but is that
13 the comparison? 4 to 26, is that the comparison?

14 MS. SIEKMANN: No.

15 MR. RATLIFF: No. What is it?

16 MS. SIEKMANN: Oh, I'm sorry, I see what
17 you're saying. It's 4 to 225.

18 MR. RATLIFF: No, but that's --

19 PRESIDING MEMBER BOYD: Four to 24,
20 roughly.

21 MR. RATLIFF: Four to 24 is -- so then
22 agree that there is a reduction, a sixfold
23 reduction, one-sixth of the usage of --

24 MS. SIEKMANN: Yes, that is correct.

25 MR. RATLIFF: Okay.

1 MS. SIEKMANN: Yes, that is exactly
2 right. I just wanted to get that clarified,
3 that's all. I thank everyone for helping.

4 (Laughter.)

5 DR. ROE: Can I pose a followup question
6 that might perhaps clarify the issue a bit?

7 HEARING OFFICER KRAMER: Well, I think
8 at this point you've already asked your questions,
9 so that would be redirect. So you need to wait
10 until after --

11 DR. ROE: Okay.

12 HEARING OFFICER KRAMER: -- Mr. Thompson
13 has --

14 DR. ROE: There's no direct --

15 HEARING OFFICER KRAMER: Well, it would
16 be a followup after all the parties have crossed.
17 Let me put it that way. And Mr. Thompson hasn't
18 had his chance yet.

19 CROSS-EXAMINATION

20 BY MR. THOMPSON:

21 Q Did you consider the cumulative impacts
22 of the closure of all five units of the Encina
23 Power Station in your cumulative analysis?

24 MR. CONWAY: The closure of all five?
25 Is that the question, the closure of all five

1 units?

2 MR. THOMPSON: Yes, sir.

3 MR. CONWAY: I would need to have a
4 review of that. Doesn't seem like the most
5 relevant eminent cumulative impact. Is that the
6 foreseeable scenario?

7 MR. THOMPSON: Yeah. Listen, I
8 apologize. I realize you're stepping into the
9 shoes of another witness, Mr. Baker, here. And I
10 don't want to put you on the spot. I think it is
11 fair to say that there have been discussions about
12 that over the past four days. You know, --

13 MR. CONWAY: But beyond the four days,
14 though? I mean I'm just not sure if I've seen
15 that documentation, not to say that I haven't.

16 MR. RATLIFF: Well, if I could help a
17 little bit.

18 MR. THOMPSON: Please.

19 MR. RATLIFF: When Mr. Latteri wrote
20 this section -- when did he actually write it,
21 Mike? I mean it was about --

22 MR. CONWAY: The PSA?

23 MR. RATLIFF: It was prior -- anyway, it
24 was last spring and it was prior to -- no, the
25 FSA. It was written by Mr. Latteri prior to what

1 I think Mr. Thompson is referring to, which is, I
2 assume is the Water Board policy report. Which is
3 a proposed policy, which, if adopted, would
4 provide target dates for the shutdown of all once-
5 through cooling facilities --

6 MR. CONWAY: Correct. That post-dates
7 the analysis. That was not reasonably foreseeable
8 at the time of the cumulative analysis.

9 MR. THOMPSON: And I realize the
10 different portions of the FSA were written at
11 different times. And so that's fine, I think
12 that's --

13 MR. CONWAY: But I do believe, if I'm
14 correct in understanding where that document came
15 from that you were citing, the San Diego Board's
16 application of the 316(b), and description of the
17 power plant closing in 2017.

18 MR. RATLIFF: Yes, --

19 MR. CONWAY: Is that correct?

20 MR. RATLIFF: Yes.

21 MR. CONWAY: That was published after
22 this FSA was published.

23 MR. THOMPSON: So your section did not,
24 the water section did not consider the closure of
25 Encina Units 1 through 5 in its cumulative

1 analysis?

2 MR. CONWAY: The closure -- I need one
3 second.

4 MR. RATLIFF: Hasn't that been asked and
5 answered?

6 HEARING OFFICER KRAMER: Well, if it's
7 by this witness he doesn't sound sure, himself, at
8 this point.

9 MR. CONWAY: I'm going to refer to it,
10 so I have it in front of me before I make a
11 statement.

12 Again, I would say the eminent and
13 relevant cumulative analysis within the scope of
14 this FSA at the time it was written, I don't know
15 if -- I would say, well, I don't know. I'm not
16 going to -- need to look at it.

17 MR. THOMPSON: Mr. Monasmith, maybe you
18 can help me out here, as the Project Manager. Was
19 there a point in time when you directed your
20 staff, for example, to consider a list of
21 cumulative projects and what was on that list?

22 MR. MONASMITH: Yes, there's a whole
23 range of cumulative scenarios for reasonably
24 foreseeable events that any one of the 21
25 technical analyses would have considered.

1 In the soil and water, as you can read, there
2 were a number of reasonably foreseeable future
3 actions that were considered. At the time that
4 the FSA was written, it wasn't the determination,
5 at least -- and then upon staff review, that 4 and
6 5 retirement stipulated in the November 29, 2009
7 State Water Board draft policy was considered
8 reasonably foreseeable at the point that we wrote
9 it last spring.

10 So no, it was not in the analysis, as
11 you can read, in terms of the cumulative.

12 MR. THOMPSON: Because some of the
13 sections reflect it and some of them don't. So,
14 that would explain things?

15 MR. MONASMITH: Correct.

16 MR. THOMPSON: One last question.
17 Again, Mr. Monasmith, did you revise that list
18 after November to include --

19 MR. MONASMITH: The FSA was published
20 November 9, and certain instances were put into an
21 errata in terms of air quality. But we did not
22 file an errata for water to account for events
23 that had occurred after we published on November
24 3.

25 MR. CONWAY: I'm looking at our

1 cumulative analysis for the water supply. And we
2 do account for the closure of EPS Units 1 through
3 3. And I would say that was probably the more
4 likely cumulative analysis at the time.

5 MR. THOMPSON: Understand.

6 MR. CONWAY: And we have been in contact
7 with the Regional Board and so forth, so.

8 MR. RATLIFF: I would just add that, I
9 mean, we've considered the potential shutdown of
10 units 4 and 5 in, as you've suggested, in some of
11 the sections of our analysis. And even included
12 conditions, for instance, in biology, in the
13 biological resources section regarding that.

14 But, we did not consider it to be a
15 cumulative impact that would go into the
16 cumulative impact analysis because when our
17 sections were prepared there was no proposed
18 policy.

19 And I would also point out it's not
20 really clear to me how you would treat this as a
21 cumulative impact, because there's no adopted
22 policy. And even were there an adopted policy,
23 the policy, itself, by its own terms, contingent
24 on the provision of replacement power.

25 So although we would have a target and a

1 policy, we're pretty much in the same position we
2 were before we wrote the analysis. We know that
3 there's an expectation that some time probably
4 within the next decade that would be the closure
5 of those facilities. But we don't know really
6 when it's going to happen.

7 And additionally, that issue has to be
8 addressed squarely, as you've just heard, by
9 another agency that has jurisdiction over that
10 very matter.

11 So, I don't know how big a deal you want
12 to make of this, but that's, I think, the relevant
13 circumstance of something that's evolved this
14 summer. So.

15 MR. MONASMITH: And staff did note that
16 upon the retirement of 4 and 5 it was staff's
17 opinion that an amendment would be required of the
18 NPDES permit, as well. Most likely as amendment
19 to the Energy Commission's license.

20 So we obviously did give it weight. We
21 did look at it. We did provide the opinion that
22 amendments would be required at the time that 4
23 and 5 were shut down. So it's not as if we made
24 an analysis completely void of future
25 circumstances.

1 So, you know, that's contained within
2 the FSA, the specific language, in terms of an
3 amendment being required from both the Board and
4 our license.

5 MR. THOMPSON: Again, and I don't mean
6 to beat this into the ground, we asked early on in
7 the proceeding for an analysis of 13142.5, the
8 best available control technology, I think that's
9 the term, which has now been taken up by the
10 Regional Water Quality Control Board.

11 And I guess we expected to see an
12 analysis of that in the FSA water section.

13 MR. RATLIFF: Can you tell me just what
14 an analysis would look like of that? I mean what
15 would you analyze actually?

16 MR. THOMPSON: Well, I'm not going to
17 step in the shoes of the Regional Board and tell
18 you what their staff is analyzing.

19 But Michelle Mata, on the phone, talked
20 about slant wheels, design, mitigation, those type
21 of things that they're looking at now. I suspect
22 that --

23 MR. RATLIFF: So we can agree that this
24 is an issue that is within the jurisdiction of
25 another agency which is doing that analysis, and

1 whose permit is necessary to actually go forward
2 with any power plant. So.

3 HEARING OFFICER KRAMER: Dr. Roe.

4 RE CROSS-EXAMINATION

5 BY DR. ROE:

6 Q I know staff hasn't answered that
7 question, but may I can answer that question from
8 my perspective.

9 If you keep in mind what the purpose of
10 the public benefit for eliminating the use of
11 seawater, which is the amount of damage it could
12 do to ocean organisms, then the appropriate
13 analysis would not look at things like the
14 permitted amount of water.

15 The appropriate analysis would be to
16 compare the lifecycle use of ocean water for the
17 proposed plant, as compared to the lifecycle of
18 the shutdown of units 1, 2 and 3, which is the
19 comparison you're making.

20 MR. MCKINSEY: I'd like to object that
21 for the last three or four comments by the parties
22 it seems like the parties are all arguing, not in
23 an offensive way, but they're making arguments
24 about what they think the answers ought to be.
25 And I just don't hear any questions being directed

1 to witnesses.

2 DR. ROE: Well, I'm responding to the
3 question --

4 MR. MCKINSEY: I'm objection that this
5 is not a question. Respectfully, but --

6 HEARING OFFICER KRAMER: You can
7 respond, or you can make the points you're making
8 in your brief, if they're important to you. But
9 you're all interpreting the evidence, and we're
10 talking about things that were not done, rather
11 than eliciting facts about -- well, you did
12 establish, I believe, the extent to which the
13 shutdown of those units were considered in the
14 analysis.

15 And beyond that it was just argument
16 about what it means. And we're trying to confine
17 that to the briefs, because we simply don't have
18 time to engage in oral argument here today.

19 Anything further, Dr. Roe?

20 DR. ROE: You sustained --

21 HEARING OFFICER KRAMER: Sustained his
22 objection.

23 DR. ROE: Okay.

24 HEARING OFFICER KRAMER: Okay, you did
25 not have another question?

1 DR. ROE: No.

2 HEARING OFFICER KRAMER: Okay. All
3 right, anything by way of redirect? I think we've
4 gone through that. Okay.

5 MR. RATLIFF: We'll get the noise
6 witnesses now.

7 HEARING OFFICER KRAMER: Thank you, Mr.
8 Conway.

9 MR. CONWAY: Thank you.

10 HEARING OFFICER KRAMER: And Mr. Mason
11 here. You're excused.

12 MR. CONWAY: Thank you very much. Have
13 a good rest of the day.

14 HEARING OFFICER KRAMER: I'm sorry?

15 MR. CONWAY: Oh, I just said thank you
16 very much; have a good rest of the day.

17 HEARING OFFICER KRAMER: Oh. You, too.

18 Okay, we're going to go on to noise, is
19 that correct?

20 MR. RATLIFF: Yes.

21 HEARING OFFICER KRAMER: Okay. And
22 we'll be dialing on that witness. And that will
23 leave the topic of biological resources. And then
24 I think we have concluded our business.

25 Okay, Ms. Siekmann, are you going to

1 have testimony?

2 MS. SIEKMANN: Yes.

3 HEARING OFFICER KRAMER: Okay. Is she
4 on the phone? Ms. Bright?

5 MS. BRIGHT: Yes, speaking.

6 HEARING OFFICER KRAMER: Good afternoon.
7 This is Paul Kramer, the Hearing Officer.

8 MS. BRIGHT: Hi.

9 HEARING OFFICER KRAMER: You've not been
10 sworn in as a witness yet, correct?

11 MS. BRIGHT: No, that's correct.

12 HEARING OFFICER KRAMER: Okay, if you
13 could raise your right hand.

14 Whereupon,

15 ERIN BRIGHT

16 was called as a witness herein, and after first
17 having been duly sworn, was examined and testified
18 as follows:

19 HEARING OFFICER KRAMER: Okay, thank
20 you. And, Mr. Ratliff, again are you simply
21 making her available for cross-examination?

22 MR. RATLIFF: Yes.

23 HEARING OFFICER KRAMER: Okay. Ms.
24 Bright, Ms. Siekmann, one of the intervenors, has
25 some direct testimony to give. And then there

1 will be cross-examination of both you and her.
2 So, stand by and listen to her testimony, because
3 you may receive questions about it.

4 MS. BRIGHT: Okay.

5 HEARING OFFICER KRAMER: Ms. Siekmann,
6 go ahead.

7 MS. SIEKMANN: Thank you.

8 DIRECT TESTIMONY

9 MS. SIEKMANN: I've lived in many
10 different areas of the country and have never
11 experienced the changing levels of background
12 noise that I have experienced living in Terramar.

13 The Terramar is the neighborhood south of the
14 Encina site, about half a mile.

15 The background noise varies greatly,
16 depending upon weather conditions and wind
17 conditions. There are nights when it is so quiet
18 that I can hear barking seals located on the buoys
19 off the coast from the Encina Plant. On rare
20 occasions I can hear the ocean waves.

21 There are times when the Encina Plant
22 blows steam, and depending upon the direction of
23 the wind, cloud cover and the weather conditions
24 it is not audible in Terramar, but is heard inland
25 in Carlsbad in an area called Old Carlsbad.

1 Almost directly east of the plant.

2 Other times the opposite is true. I
3 have verified this with those I know who live in
4 Old Carlsbad. Noise from the I-5 is another
5 example. Sometimes it is overwhelmingly noisy in
6 Terramar, and other times the I-5 noise is barely
7 audible.

8 Because background noise changes to
9 drastically, a three-day survey may not represent
10 the changing background noise levels that occur in
11 the area surrounding the Encina site.

12 I also wonder if the noise modeling
13 contemplated in the FSA considered the fact that
14 most of the distance between the residents of the
15 north of the lagoon and the proposed site is over
16 water. I didn't see anything in the noise section
17 that referred to that fact, and how that might
18 influence how the sound would carry from the plant
19 to those residences.

20 Not long ago I visited the new Otay Mesa
21 Plant. During our tour of the plant we were told
22 that the plant had numerous sound buffers
23 installed. And yet, once the tour was over we had
24 headaches from the noise or the tone or both.
25 That plant is surrounded by empty land. This site

1 is surrounded by residents.

2 After that visit I became very
3 concerned, not only for Terramar, but especially
4 concerned for the residents north of the Encina
5 site, on the north side of the Agua Hedionda
6 Lagoon, and the noise impacts from the plant.

7 Carlsbad is a beach community with
8 temperate weather. The vast majority of Terramar
9 residents have their windows open day and night
10 most of the months of the year. I assume this is
11 the case with many of the Carlsbad Beach
12 communities.

13 Most residents don't have or use any air
14 conditioning. With our windows open very small
15 changes in the sound levels are easy to notice,
16 especially at night when trying to sleep.

17 I'm sure you will hear -- this part I'm
18 going to skip because it goes along with what was
19 going to happen in public testimony. So that
20 completes my testimony.

21 Thank you. Sorry, Mr. Kramer. I should
22 have gone on a little longer.

23 HEARING OFFICER KRAMER: No, I'll
24 swallow quickly.

25 (Laughter.)

1 HEARING OFFICER KRAMER: Since you're
2 going, why don't you conduct your cross-
3 examination.

4 MS. SIEKMANN: Okay.

5 PRESIDING MEMBER BOYD: Could I ask a
6 question as soon as I've chewed --

7 MS. SIEKMANN: Okay.

8 PRESIDING MEMBER BOYD: And I apologize
9 if I didn't hear something over my chewing. Did
10 you reference the noise of trains, which I've been
11 introduced to in the last --

12 MS. SIEKMANN: I did not reference it,
13 but since it's not part of this -- well, I guess
14 it would be cumulative impact on noise --

15 PRESIDING MEMBER BOYD: It's background.
16 It's background noise, I mean --

17 MS. SIEKMANN: Yes. I would like to add
18 that to my testimony, thank you.

19 PRESIDING MEMBER BOYD: Well, I'm just
20 saying isn't the sanctity of, you know, of the
21 people here -- I mean if people leave their
22 windows open, they --

23 MS. SIEKMANN: There are many many --

24 PRESIDING MEMBER BOYD: -- they've
25 acclimated to the sound --

1 MS. SIEKMANN: Yes.

2 PRESIDING MEMBER BOYD: -- of the
3 trains. We all are forced to do that. And
4 freeways off in the distance and what-have-you,
5 and other industrial noises.

6 MS. SIEKMANN: Um-hum. Well, you know,
7 I'm one of those people that, for some reason, the
8 trains have always been a kind of a good noise to
9 me, so.

10 PRESIDING MEMBER BOYD: Most of us,
11 trains, our minds block them out. We forget them
12 after we've lived with them for awhile. Anyway.

13 MS. SIEKMANN: I don't want to make that
14 testimony right now.

15 PRESIDING MEMBER BOYD: It was just a
16 question, not an attempt to make you change your
17 testimony.

18 MS. SIEKMANN: Thank you.

19 PRESIDING MEMBER BOYD: All right, Mr.
20 Kramer, back to you.

21 HEARING OFFICER KRAMER: Is there cross?

22 CROSS-EXAMINATION

23 BY MS. SIEKMANN:

24 Q It's Erin?

25 MS. BRIGHT: Yes.

1 MS. SIEKMANN: Thank you, Erin. The
2 proposed CECP project is the first of its kind.
3 From my understanding there is not one built in
4 this country anywhere. This creates concerns
5 about theoretically projected noise levels.

6 And as I said before, we visited the
7 Otay Mesa Plant and the constant noise was
8 overwhelming and caused a headache, either with
9 the noise or the tone, I can't say for sure, or
10 both. Upon departing it felt like we had a vise
11 lifted off our heads.

12 I have serious concerns for, as I said,
13 the residents north of the lagoon. And as I said,
14 the distance between that neighborhood north of
15 the lagoon and the site is almost entirely over
16 water. I didn't see anything in the FSA that
17 discussed that fact.

18 Has staff included in their modeling how
19 the noise impacts are affected by traveling over
20 the lagoon?

21 MS. BRIGHT: The noise analysis we
22 usually do is done as a free field analysis, which
23 actually doesn't take into account the extra
24 attenuated properties of topography. So it
25 actually most likely would take that into account.

1 If it was the case that once the project
2 was built and operating, noise condition 4
3 requires them to do a operational noise survey.
4 So if the noise traveling over water actually
5 ended up being higher than what the modeling
6 projected, the noise condition would require them
7 to do additional mitigation to bring that level
8 back down.

9 So it's kind of covered either way. But
10 we did do a very conservative analysis.

11 MS. SIEKMANN: So does that mean that if
12 the conditions over the water were an issue, that
13 survey would be conducted after the plant is
14 built?

15 MS. BRIGHT: Yeah, it's conducted once
16 the plant's up to 80 percent operating level.

17 MS. SIEKMANN: Um-hum.

18 MS. BRIGHT: And they have to do -- they
19 would have to do additional mitigation if it's
20 found that they -- at the operational level they
21 were over their -- I think we stated 51 decibels.

22 MS. SIEKMANN: Okay. Now, another thing
23 that concerns me is if the plant runs at night.
24 Now I did see in the FSA that it's expected to run
25 mostly at peak times.

1 MS. BRIGHT: Um-hum.

2 MS. SIEKMANN: But from being at the
3 Otay Mesa Plant and talking to the people who work
4 there, that plant has been called by Cal-ISO more
5 than they thought it was going to be, at least
6 that's what they said to me.

7 And my concern is if they call for this
8 plant at night, and we're all sleeping, and the
9 nighttime noise impacts from your study show that
10 it's less than in the day, has that situation been
11 evaluated?

12 MS. BRIGHT: The analysis values we
13 place as the standards, that we're going to be
14 placing for noise-4 on the project, are based off
15 of the L-90 values for nighttime noise, which is
16 basically the four quietest hours of the night, on
17 average. And that's what we base our values off
18 of for the standards.

19 So it would not be -- should not be a
20 impact, significant impact.

21 MS. SIEKMANN: Thank you.

22 MS. BRIGHT: And the most conservative
23 analysis in the country, so it should be not a
24 problem.

25 MS. SIEKMANN: Thank you. And on page

1 4.6-11, noise table 6. I was just curious why you
2 didn't use M6 in this table, because M6 showed, by
3 far, the lowest nighttime levels. Wouldn't that
4 be a good location to measure?

5 MS. BRIGHT: On review of the data that
6 was supplied by the applicant, the measurement at
7 noise monitoring location M6 was only done for a
8 period of approximately ten minutes.

9 And the closer measurement at M5 was
10 done over a period of 25 hours. So, when we were
11 looking at the two, M5 actually had a rather
12 higher value, you know, for the entire duration of
13 night. But it's only maybe 400 to 500 feet away
14 from M6.

15 So given the longer measuring time for
16 M5, and the closer duration, we kind of figured
17 that the M6 value that was presented could most
18 likely be a anomalous value, you know, just given
19 the short measuring time. So we chose to look at
20 M5 and M7 rather than M6 because of that
21 discrepancy.

22 MS. SIEKMANN: And it was the applicant
23 who chose all the levels, all the receptor
24 locations?

25 MS. BRIGHT: The receptor locations that

1 had data for them were provided by the applicant,
2 that's correct.

3 MS. SIEKMANN: And who performed the
4 survey?

5 MS. BRIGHT: The applicant provided the
6 survey data.

7 MS. SIEKMANN: This survey that you're
8 talking about performing after the plant is built.

9 MS. BRIGHT: Um-hum.

10 MS. SIEKMANN: Terramar would like to
11 request also being included in that survey.

12 MS. BRIGHT: We can definitely suggest
13 adding that into condition noise-4.

14 MS. SIEKMANN: Thank you.

15 MS. BRIGHT: That would not be a
16 problem.

17 HEARING OFFICER KRAMER: Hold on a
18 second. What do you mean by being included?

19 MS. SIEKMANN: Well, they were only
20 going to perform the survey at location M -- let's
21 see, when the project achieves a sustained output
22 of 80 percent or greater of rated capacity, the
23 project owner shall conduct a community noise
24 survey at monitoring location M7, or at closer
25 locations acceptable to the CPM. This --

1 HEARING OFFICER KRAMER: Okay, but I
2 don't have all the locations firmly in mind. Was
3 there a monitoring location that was in Terramar
4 in --

5 MS. SIEKMANN: Yes.

6 HEARING OFFICER KRAMER: -- in the
7 original analysis?

8 MS. SIEKMANN: Yes.

9 HEARING OFFICER KRAMER: So which one
10 was that? Do you know, Erin?

11 MS. BRIGHT: I'm thinking it's M2.

12 HEARING OFFICER KRAMER: Okay, --

13 MS. BRIGHT: Based on the noise figure.

14 HEARING OFFICER KRAMER: So, Erin, isn't
15 it normally the case that the study is just
16 conducted at one point?

17 MS. BRIGHT: For less contentious
18 projects we usually do just one point or a closer
19 point -- the noise sensor receptor, it could be
20 slightly closer. And then mathematically
21 extrapolated to, just to prove that the value is
22 not higher than what the standard states.

23 HEARING OFFICER KRAMER: Okay, so Ms.
24 Siekman then is proposing that M2 be added as an
25 additional post-construction testing point.

1 MS. BRIGHT: Yeah, which is not
2 unprecedented. We have done that in a few other
3 projects. Have several measuring locations for
4 the operational mode survey.

5 HEARING OFFICER KRAMER: So that would
6 be two locations, then, in total?

7 MS. BRIGHT: Um-hum.

8 THE REPORTER: She just said um-hum.
9 Could she say yes or no.

10 HEARING OFFICER KRAMER: Oh, the court
11 reporter would like you to say yes or no, as
12 opposed to um-hum.

13 MS. BRIGHT: Sorry. But, yes, that's
14 correct.

15 HEARING OFFICER KRAMER: We'll let Mr.
16 McKinsey think about that for a little bit, and
17 come back to it. Did you have any more questions?

18 MS. SIEKMANN: Yes, I do.

19 HEARING OFFICER KRAMER: Go ahead,
20 please.

21 MS. SIEKMANN: Thank you.

22 On page 4.6-24 it says, it has been
23 found that a weighting of sound intensities thus
24 reflects the human ear's reduced sensitivity to
25 low frequencies and correlates well with human

1 perceptions of the annoying aspects of noise.

2 What about people who are extremely
3 sensitive to sound? How do you handle the impacts
4 with people like that?

5 MS. BRIGHT: We kind of just do more of
6 an average. It's really hard to state how noise
7 is going to affect every individual person. So,
8 it's more the effect on the community of, you
9 know, a whole.

10 But most people will have the average
11 response to the noise.

12 MS. SIEKMANN: Thank you. And on page
13 4.6-27 it says doubling the distance from a noise
14 source reduces the sound pressure level by 6 db.
15 Is that true over water?

16 MS. BRIGHT: That 6 db is, as I said,
17 estimated over free field conditions, so it should
18 also apply to water. Yes, these are conservative
19 estimates of 6 db.

20 MS. SIEKMANN: It should, but have you
21 seen times when it doesn't?

22 MS. BRIGHT: There's always possibility
23 due to climate conditions, like we'll have
24 differing weather conditions that you'll get
25 alternative values.

1 So, we don't actually use the 6 db when
2 we're doing the analysis. It's more like a
3 guideline for explanation. So the numbers that we
4 provided that calculated for the standards and
5 things like that, are actually a logarithmic
6 scaling, probably a little -- than the 6 decibels.

7 But, yeah, based on climate it could be
8 a little bit different.

9 MS. SIEKMANN: Which would extend the
10 noise impacts farther, overcast or clear? High
11 wind or which?

12 MS. BRIGHT: It's not necessarily
13 further kind of thing. It's that in terms of
14 overcast weather you could possibly get noise
15 inversion, which is when the noise kind of bounces
16 off the clouds and comes back down.

17 So it might hit shorter or might hit
18 longer. It's kind of hard to say, you know, out
19 of hand. It's kind of dependent on the specific
20 day.

21 MS. SIEKMANN: Thank you. And, Erin, I
22 don't know if you realize it, but I'm not sure
23 where you live, but in coastal Carlsbad in May we
24 have what's called May grey, and in June we have
25 what's called June gloom. And it can pretty much

1 be cloud cover for most of those two months.

2 Is there a possibility that that could
3 affect the noise impacts?

4 MS. BRIGHT: It's a possibility that
5 cloud cover could impact the -- change the noise
6 impacts. Like I said, inversion is a possibility
7 with noise.

8 MS. SIEKMANN: And was that taken into
9 account in this -- in your report?

10 MS. BRIGHT: We did not specifically
11 study inversion, because it doesn't happen
12 everywhere, or it's not a typical thing that
13 happens all the time.

14 What I can suggest, if it's a major
15 concern, is that we add a secondary operational
16 survey to noise-4, taking place. One during, you
17 know, a warm sunny day of the year, and another
18 time when it's cloudy. And that should balance
19 out the impacts.

20 MS. SIEKMANN: Thank you. You've been
21 -- I'm not finished, but I really appreciate this
22 because we have those conditions here so much.
23 The cloud cover is here so much that I really feel
24 that that should be a further evaluation. Do you
25 agree?

1 MS. BRIGHT: If that's the case, then it
2 should be taken into account in noise-4, yes.

3 MS. SIEKMANN: Thank you. Cumulative
4 noise issues. I do not see addressed by the FSA
5 arise with the possible mitigation surrounding the
6 future widening of the I-5.

7 If any type of sound or security wall is
8 built there, won't unsolved issues of noise arise?

9 MS. BRIGHT: Are we talking like noise
10 bounce or something like that?

11 MS. SIEKMANN: Well, we don't even know
12 specifically what that wall will be, but there is
13 a suggested wall.

14 MS. BRIGHT: It really depends. I can't
15 say for certain what kind of impacts a wall would
16 have, because I don't have specifications on what
17 that wall would be. It really depends on the
18 thickness of the wall, the height, the placement,
19 things like that.

20 And so like I can't specify at this time
21 what those would be --

22 MS. SIEKMANN: Okay.

23 MS. BRIGHT: -- as far as going into
24 cumulative impacts.

25 MS. SIEKMANN: But in your evaluation

1 are walls along highways, do you do noise impact
2 studies for those kinds of walls because of noise
3 impacts changes?

4 MS. BRIGHT: We have not, I don't
5 believe. Most mitigations for power plant
6 structures take place closer to the noise source.
7 That's the most effective way to mitigate for
8 noise. So we don't tend to see a lot of walls
9 that would be that far away from where the center
10 of the project is. So I'm not certain on the --

11 MS. SIEKMANN: So if there were a wall
12 -- I'm sorry, I should have let you finish. I
13 apologize.

14 MS. BRIGHT: That's okay.

15 MS. SIEKMANN: So if there were a wall,
16 could it impact noise?

17 MS. BRIGHT: There could be very minor
18 impacts due to a wall. I don't think that they
19 would be greatly felt by any of the residents, nor
20 sensitive receptors that are pointed out, given
21 the parallel nature of the receptors to the
22 project and the freeway.

23 MS. SIEKMANN: I guess the reason I ask,
24 also, is because it sits right next to the I-5.
25 And with the I-5 widening, that wall would be --

1 that's where the wall would possibly be put in.

2 And we're concerned about I-5 noise
3 bouncing back to the east, and then project noise
4 bouncing back to the west.

5 MS. BRIGHT: It's a possibility that you
6 get bounce back to the west, although for one, any
7 bounce-back would be attenuated through the
8 buildings of the power plant, itself. So they
9 would kind of block the noise, any noise that
10 would be bouncing back from the wall on that east
11 side.

12 But also they would most likely bounce
13 directly perpendicular to the freeway, so it
14 wouldn't be felt by any of the noise-sensitive
15 receptors.

16 MS. SIEKMANN: Thank you. Those are all
17 my questions. Thank you very much.

18 MR. McKINSEY: I'd like to ask Erin a
19 question if it's possible. It relates to your
20 request.

21 CROSS-EXAMINATION

22 BY MR. McKINSEY:

23 Q Erin, this is John McKinsey, counsel for
24 the applicant.

25 MS. BRIGHT: Okay.

1 MR. McKINSEY: I think you understood
2 Ms. Siekmann's request to add an additional
3 monitoring location in noise-4 at M2?

4 MS. BRIGHT: Um-hum. Yes.

5 MR. McKINSEY: If I understand
6 correctly, the data we have for M2 is short-term
7 noise monitoring and not the long-term. How, if
8 we did that, how would the staff interpret the
9 resulting noise monitoring data that we would
10 collect at M2 at the 80 percent power level in
11 terms of determining what portion of that was
12 caused by the plant?

13 Do you understand my question? I wanted
14 to understand if we added in M2 --

15 MS. BRIGHT: Right. I do. I think we'd
16 have to do a further analysis on that. I would
17 imagine it would probably be the same value that
18 we've set for M7. Yes, the 51 that we placed for
19 condition noise-4 would most likely be the same
20 value that we'd be requiring for the M2 location.

21 But I would need to look at that again.

22 MR. McKINSEY: Well, then let me add one
23 more point. The applicant does not have an issue
24 with making that change to this condition. But if
25 we were to do this we'd have to do it promptly

1 just to change the language.

2 But it's tricky because M7 appears a few
3 times. It's singular, plural. But we could
4 easily simply -- I mean, this could get worked out
5 through the proposed decision if we simply
6 indicate to the Committee there's some agreement
7 on what noise-4 should read.

8 MS. BRIGHT: Um-hum.

9 MR. MCKINSEY: And that may be the way
10 that this can be accomplished. But we can't just
11 do it right now over the phone because it's too
12 complicated of a condition to make a simple
13 language change to accommodate it.

14 MS. BRIGHT: Yeah, right.

15 EXAMINATION

16 HEARING OFFICER KRAMER: Okay, well, let
17 me ask you, Ms. Bright, is the value in adding M2
18 simply to address the concerns of the neighbors.
19 Does it add anything to staff's ability to assure
20 that the power plant is producing no more noise
21 than was assumed in your analysis?

22 MS. BRIGHT: At this time I can't really
23 say. I'd have to review the data again. But most
24 likely it would be just to assure the public that
25 the south monitoring locations were also covered

1 by the noise survey, by the noise standard.

2 HEARING OFFICER KRAMER: And location M7
3 is where relative to the project?

4 MS. BRIGHT: It is north of the project.

5 HEARING OFFICER KRAMER: So across the
6 water?

7 MS. BRIGHT: Yes, across the water.

8 MR. McKINSEY: M7 was selected as the
9 nearest closest reception. And M2 is the nearest
10 residential receptor to the south. It's
11 substantially farther away. And it's in the
12 Terramar neighborhood.

13 MS. SIEKMANN: And frequently the wind
14 blows in our direction.

15 HEARING OFFICER KRAMER: Well, certainly
16 the Committee will consider something that the
17 parties want to propose. But I agree, it wouldn't
18 be efficient to try to negotiate that over the
19 telephone.

20 Further cross-examination from the city,
21 Mr. Thompson.

22 CROSS-EXAMINATION

23 BY MR. THOMPSON:

24 Q Good afternoon, Ms. Bright.

25 MS. BRIGHT: Hello.

1 MR. THOMPSON: In the AFC section on
2 noise and vibration, you discuss the cumulative
3 impacts starting at page 4.6-12.

4 MS. BRIGHT: Okay.

5 MR. THOMPSON: On the carry-over
6 paragraph to 4.6-13 in that first full paragraph,
7 you say that the applicant identified several
8 projects in the vicinity. And then the one most
9 likely to pose a potential for cumulative noise
10 impacts is the construction of the desal plant, is
11 that right?

12 MS. BRIGHT: I did not write that
13 testimony, but that's correct.

14 MR. THOMPSON: Do you have a list of the
15 cumulative projects that you considered for your
16 noise analysis? And I guess the second part of
17 that is does this -- does your response cumulative
18 construction noise?

19 MS. BRIGHT: I do not have a list of the
20 projects for myself, given that I did not write
21 that testimony portion. I don't have that list.
22 But the cumulative impacts generally take into
23 account only operational noise, I believe.
24 Construction is temporary and so we tend not to
25 consider that as a cumulative impact, that noise.

1 MR. THOMPSON: Thank you. My final
2 question is one more of curiosity. If a barrier
3 wall is built between the freeway and the power
4 plant, the noise bounce that you referred to,
5 would that also bounce traffic noise?

6 MS. BRIGHT: It depends on, like I said,
7 several factors, including the height of the wall
8 and any type of surface texture that it might
9 have. But that would be potential.

10 MR. THOMPSON: It sounds like there's
11 treatments or surface textures for the wall that
12 could reduce that noise?

13 MS. BRIGHT: I believe there are.

14 MR. THOMPSON: Thank you very much.

15 HEARING OFFICER KRAMER: Power of
16 Vision, any questions?

17 EXAMINATION

18 HEARING OFFICER KRAMER: Ms. Bright, go
19 back to the paragraph that Mr. Thompson referred
20 you to on 6. -- well, in the section at page 11 --
21 4.6-13, actually.

22 MS. BRIGHT: Yes.

23 HEARING OFFICER KRAMER: I'm asking
24 simply because this seems to contradict with the
25 answer you gave about cumulative impacts. It

1 says, the project most likely to pose a potential
2 for cumulative noise impacts is the construction
3 of the desal plant.

4 And it goes on to say that the actual
5 operation of the desalinization plant would be, in
6 effect, very quiet and would not contribute to
7 noise levels.

8 Would that change your answer to Mr.
9 Thompson's question?

10 MS. BRIGHT: Regarding construction
11 impacts?

12 HEARING OFFICER KRAMER: Yeah, because I
13 believe you said that you did not -- construction
14 impacts were not normally considered.

15 MS. BRIGHT: We don't normally consider
16 construction impacts. I believe that what that
17 text is, it's more -- Mr. Baker, writing that, was
18 talking about if the desalination plant was built,
19 as opposed to in the middle of construction. Like
20 construction as a term of -- basically just trying
21 to say that if it was operational, if it was
22 constructed and operated. Not the process of
23 construction, if that makes sense.

24 HEARING OFFICER KRAMER: So the
25 reference to construction was gratuitous?

1 MS. BRIGHT: Yes.

2 HEARING OFFICER KRAMER: Thank you.

3 Okay, any redirect?

4 MR. RATLIFF: No.

5 HEARING OFFICER KRAMER: Okay, thank
6 you, Ms. Bright.

7 MS. BRIGHT: Thank you.

8 HEARING OFFICER KRAMER: And we'll be
9 hanging up on you, I guess.

10 Our final -- we did traffic and
11 transportation, so our final topic is biological
12 resources. And we're getting that witness on the
13 phone. Do you still have questions, Mr. Thompson?

14 MR. THOMPSON: The same one or two --

15 HEARING OFFICER KRAMER: Okay, but you
16 have some?

17 MR. THOMPSON: Yes.

18 HEARING OFFICER KRAMER: Okay. Because
19 you're the only one who expressed an interest.

20 (Pause.)

21 HEARING OFFICER KRAMER: We'll go off
22 the record for a minute.

23 (Off the record.)

24 HEARING OFFICER KRAMER: Okay, we're
25 back on the record. And we have Heather Blair on

1 the telephone. Heather, can you hear us?

2 MS. BLAIR: Yes, I can.

3 HEARING OFFICER KRAMER: Okay, you were
4 not sworn in as a witness yet, I presume?

5 MS. BLAIR: No.

6 HEARING OFFICER KRAMER: If you could
7 raise your right hand.

8 Whereupon,

9 HEATHER BLAIR

10 was called as a witness herein, and after first
11 having been duly sworn, was examined and testified
12 as follows:

13 HEARING OFFICER KRAMER: Okay, thank
14 you. Please state your name and spell your name
15 for our court reporter.

16 MS. BLAIR: My name is Heather Blair, H-
17 e-a-t-h-e-r B-l-a-i-r.

18 HEARING OFFICER KRAMER: There was "B"
19 in there, I think it dropped out.

20 Okay, Mr. Ratliff, are you again
21 offering her simply for cross-examination?

22 MR. RATLIFF: Yes, to the city.

23 HEARING OFFICER KRAMER: Okay. Ms.
24 Blair, the only party that requested to speak with
25 you was the city, and Mr. Thompson will be doing

1 that.

2 CROSS-EXAMINATION

3 BY MR. THOMPSON:

4 Q Ms. Blair, this is Allan Thompson.

5 Would you please turn to page 4.2-17.

6 MS. BLAIR: I'm there.

7 MR. THOMPSON: Your discussion of
8 cumulative impacts. Do you have a list of those
9 projects that you evaluated for their cumulative
10 impacts?

11 MS. BLAIR: Yes, provided -- that second
12 paragraph.

13 MR. THOMPSON: So that would be the
14 highway I-5 widening project, and the desal plant.
15 Only those two?

16 MS. BLAIR: That's correct.

17 MR. THOMPSON: I take it then you did
18 not evaluate the prospective potential shutdown of
19 all Encina units?

20 MS. BLAIR: With the retirement of units
21 4 and 5, at the time I conducted my analysis, was
22 too speculative to be substantively considered in
23 the cumulative scenario.

24 However, I discussed the potential
25 retirement of units 4 and 5 with the National

1 Marine Fisheries Service, Fish and Wildlife
2 Service and Fish and Game, and decided to address
3 this retirement in condition of certification bio-
4 9, which would require a new agency consultation
5 if and when there were a proposal to fully retire
6 Encina.

7 MR. THOMPSON: Thank you very much.

8 HEARING OFFICER KRAMER: Any followup,
9 Mr. Ratliff?

10 MR. RATLIFF: No.

11 HEARING OFFICER KRAMER: Thank you, Ms.
12 Blair.

13 MS. BLAIR: Thank you.

14 HEARING OFFICER KRAMER: Okay, unless
15 somebody wants to argue with me, I think we've
16 covered all the topics. Nobody's -- you guys are
17 so worn out.

18 Let me just check for a moment to make
19 sure I've covered everything I need to.

20 (Pause.)

21 HEARING OFFICER KRAMER: Again, for the
22 public, the public comment period will remain open
23 for written comments -- we cannot accept them
24 solely by email -- until February 22nd. There's a
25 one-page flyer outside on the table that explain

1 this, and also where to send those comments.

2 Do the parties have any additional
3 business or questions that we need to consider
4 before we close up?

5 MR. RATLIFF: No.

6 HEARING OFFICER KRAMER: Nothing? Okay,
7 the record for all of the topic areas, with the
8 exception of soil and water, -- well, no, Coastal
9 Commission, I guess that would be land use, for a
10 report.

11 Well, let's see, the changes to the
12 condition are not new evidence. They'd just be
13 proposals to interpret the evidence.

14 So with the exception of, we'll say for
15 any topic that it's relevant to, the acceptance of
16 a report from the Coastal Commission, which nobody
17 is expecting, all the topic areas are closed.

18 We may find ourselves, for whatever
19 reason in the future, needing to momentarily
20 reopen a topic to receive some additional
21 evidence. Generally all the parties will be
22 stipulating to that and want us to do that. But
23 we are done taking evidence for the most part
24 today.

25 I thank you, and I'm sure Commissioner

1 Boyd wants to say a few words before we're done,
2 but thank you for cooperating with me and helping
3 me to keep the record more or less clear as far as
4 what we were talking about when.

5 And I look forward to seeing your
6 proposals for briefing topics. And then
7 synthesizing those and sending those out. And
8 then ultimately reading the briefs.

9 Commissioner Boyd.

10 PRESIDING MEMBER BOYD: I will be brief.
11 I just want to thank the hardy few who are still
12 here. But, you know, to any of you running into
13 your neighbors who played a role or some interest,
14 thank them all for their interest in this subject.

15 This has been an interesting experience.
16 There have been plenty of them, as I reflect back,
17 that have been equally interesting in terms of the
18 number of days it takes and what-have-you. But we
19 appreciate all the interest that particularly the
20 intervenors have shown. This has been a very
21 informative and educational experience. I am
22 impressed with the citizens of this fair
23 community, and the interest in what happens to
24 their city.

25 Believe me, we go many places where

1 there's very few people. Maybe that has something
2 to do with going to the middle of the desert once
3 in awhile.

4 (Laughter.)

5 PRESIDING MEMBER BOYD: In any event, we
6 will, Commissioner Eggert and I and our Hearing
7 Officer will ponder all the evidence that we've
8 heard, and all that has been submitted. And act
9 upon it as judiciously and speedy as we can.

10 I think we've pointed out repeatedly the
11 circumstances in Sacramento that lead us all
12 short-staffed, short-times, overwhelmed with work,
13 doing the best we can. And I, you know, a tribute
14 to the dedicated state employees who are working
15 in an absolutely crummy environment at the present
16 time, of not enough money and not enough staff.
17 And contrary to you people here, a public who
18 suddenly finds it fun to pick on government
19 employees.

20 In any event, I know the staff has
21 worked hard and will continue to work hard. And
22 we appreciate the magnitude of the task we have.
23 And, again, the work that you've done.

24 So my thanks to all of you. It's
25 actually been enjoyable. I have walked along your

1 bluffs each morning, which is the only thing that
2 keeps me going the next day for these marathons,
3 I'll tell you.

4 And although a long-time, you know,
5 native of California, actually I haven't -- I've
6 been here before, but barely. So this is nice to
7 see the community.

8 Unfortunately, I know of you because of
9 the giant thermometer you have as you drive by out
10 there. But I also did Morro Bay, and they had a
11 similar landmark that they deal with.

12 In any event, enough said. I can ramble
13 on way too long.

14 Commissioner Eggert, any comments?
15 You're really new to this stuff, and I enjoy
16 having a new, vigorous Commissioner to tag along.

17 ASSOCIATE MEMBER EGGERT: Thank you,
18 Commissioner Boyd. Yeah, I also want to just
19 thank everybody for all of your investment. I was
20 kind of going through all of the exhibits, you
21 know, throughout the hearing and just trying to
22 imagine the thousands and thousands of manhours
23 that have been put into this case on all sides; by
24 our staff, by the applicant, by the intervenors
25 and the parties that have a strong interest in the

1 results of this proceeding.

2 For me it's been really quite a
3 tremendous learning experience. I realized that
4 having a large bladder is perhaps maybe one of the
5 things --

6 (Laughter.)

7 ASSOCIATE MEMBER EGGERT: -- that they
8 should put on the application for this job as a
9 requirement. And certainly the ability to, you
10 know, sit for long hours.

11 I did also have the opportunity to take
12 a jog, and even borrowed a bike here from the
13 hotel to cruise around the community and get a
14 good feel for where we're at, and sort of all the
15 different landmarks that are being talked about
16 throughout the hearing.

17 So I think, you know, with that again I
18 would just want to thank everyone here. And
19 definitely can feel the weight of the decision
20 that we have to make here, which is pretty
21 substantial.

22 And I'm certainly committed to reviewing
23 all the evidence and doing my very best working
24 with my Commissioner, the Presiding Commissioner
25 Boyd, to make sound decision on this.

1 So, thank you.

2 MR. BALL: Since we're in the thank-you
3 mode, since I represent the City Council and the
4 City and the Redevelopment Agency, we really want
5 to extend our thanks to you all, the Commission
6 and Hearing Officer Kramer, for coming down and
7 being part of our community for these days.

8 As you know, we've taken a very
9 strenuous and a strong position, and we appreciate
10 the hospitality that you've shown us, and we could
11 respond to. It's been a very thoroughly vetted
12 proceedings.

13 The City Council is in an unusual
14 position because it's usually in charge of land
15 use decisions and licensing and so forth. So, it
16 thanks you. And I extend my thanks on its behalf.

17 Although we are unable to make the final
18 decision, we hope that we can offer you some
19 persuasiveness and some guidance, and perhaps some
20 wisdom. So we hope that our legal briefs will
21 help you in making a wise and careful decision.

22 So, thank you very much for your --

23 PRESIDING MEMBER BOYD: Well, thank you
24 to the city. I want to compliment the city. I've
25 been in many other circumstances where some cities

1 have painted us into very interesting corners.

2 The other thing I wanted to say is a
3 particular thanks to the applicant. I thought
4 they were incredibly courteous to the entire
5 community and to everyone involved in this. While
6 it's probably in their best interests to be nice
7 to use, we nonetheless, I'm impressed with the way
8 they've handled the situation and their generosity
9 to the community and what-have-you. And for all
10 these arrangements.

11 Great view out the window. Just enough
12 to know that there's something nice out there, but
13 just enough in the wait, and not really just get
14 preoccupied and look at the ocean or something. I
15 know it's out there, but I can't see over that
16 berm.

17 (Laughter.)

18 PRESIDING MEMBER BOYD: So, in any event
19 thanks to everybody.

20 Mr. Kramer, you get to clean it up.

21 HEARING OFFICER KRAMER: We are
22 adjourned and off the record. Thank you.

23 (Whereupon, at 3:10 p.m., the hearing
24 was adjourned.)

25 --o0o--

CERTIFICATE OF REPORTER

I, TROY A. RAY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing; that it was thereafter
transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing, nor in any way interested in outcome of
said hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 24th day of February, 2010.

/s/ Troy A. Ray

TROY A. RAY

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CERTIFICATE OF TRANSCRIBER

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

/s/ Margo D. Hewitt

February 24, 2010

Margo D. Hewitt,

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