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EVIDENTIARY HEARING BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION

In the matter of,)
) Docket No. 13-AFC-01
Alamitos Energy Center)
Project)

VOLUME II

THE GRAND EVENT CENTER
CATALINA ROOM
4101 E. WILLOW STREET
LONG BEACH, CALIFORNIA

TUESDAY, DECEMBER, 2016

12:08 P.M.

Reported by:

Martha Nelson, CERT

CALIFORNIA REPORTING, LLC
229 Napa Street, Rodeo , California 94572 (519) 224-4476

APPEARANCES

COMMISSIONERS (AND THEIR ADVISORS) PRESENT:

Karen Douglas, Commissioner, Presiding Member

Le-Quyen Nguyen, Advisor to Commissioner Douglas

Janea Scott, Commissioner, Associate Member

Rhetta DeMesa, Advisor to Commissioner Scott

Matthew Coldwell, Advisor to Commissioner Scott

Kristy Chew, Technical Advisor on Siting

HEARING OFFICER:

Kenneth Celli, California Energy Commission

CEC STAFF PRESENT:

Michael Lewis, Deputy Director

Jared Babula, Staff Counsel

David Vidaver

Keith Winstead, Project Manager

Garry Maurath, Geologist

Nancy Fletcher, Air Quality Specialist

Matthew Layton, Supervising Mechanical Engineer

Garry Bemis

Ann Chu (via phone)

1 | Public Adviser:
Alana Mathews

APPEARANCES

PETITIONER/APPLICANT:

Stephen O’Kane, Vice President, AES Alamitos Energy, LLC

Jeffery D. Harris, Attorney, Ellison, Schneider & Harris LLP

Samantha G. Neumyer, Attorney, Ellison, Schneider & Harris LLP

Jerry Salamy, Senior Project Manager, CH2M Hill

Elyse Engel, CH2M Hill

INTERVENOR:

Joe Geever, Los Cerritos Wetlands Lands Trust

Bill Powers, ~~Los Rios Wetlands Land Trust~~, Powers ~~Engineering~~

AIR QUALIITY PANEL

Elyse Engel

Jerry Salamy

Stephen O’Kane

Bill Powers

Nancy Fletcher

Gerry Bemis

David Vidaver

Matthew Layton

Benjamin Beattie (via phone)

~~HUMAN-PUBLIC~~ HEALTH PANEL

Ann Chu, CEC Staff

APPEARANCES

PUBLIC COMMENT

Scott White, Aspen Environmental

Bhaskar Chandan, South Coast Air Quality Management District

Melinda Cotton

James Gallo

Anna Christensen

Randy Gordon (via Public Adviser), Long Beach Area Chamber of
Commerce

Lorraine Faber

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P R O C E E D I N G S

1
2 December 20, 2016

12:08 P.M.

3 COMMISSIONER DOUGLAS: Welcome to Part 2 of the
4 Evidentiary Hearing on the proposed Alamitos Energy Center.
5 Before we begin, we'd like to introduce the Committee, and
6 then ask the parties to identify themselves for the record.

7 I'm Karen Douglas. I'm the Presiding Member on the
8 Committee assigned to deal with this matter. Now,
9 Commissioner Janea Scott is the Associate Member. And to my
10 immediate left is our Hearing Office Ken Celli. To my right
11 is my Adviser Le-Quyen Nguyen. And Kristy Chew, the
12 Technical Adviser for the Commissioners. To Commissioner
13 Scott's left are her Advisers Rhetta DeMesa and Matt
14 Coldwell.

15 At this point I'll ask the parties to please
16 introduce themselves their representatives, starting with the
17 Applicant.

18 MR. O'KANE: We're good to go? There we go. Thank
19 you.

20 Good afternoon. I'm m Stephen O'Kane, and I'm Vice
21 President of AES, Alamitos Energy, the Applicant. My counsel
22 and expert witness is with me, and I'll let them introduce
23 themselves.

24 MR. HARRIS: Hi. Good afternoon. Jeff Harris of
25 Ellison, Schneider and Harris, on behalf of the Applicant.

1 MS. NEUMYER: Good afternoon. Samantha Neumyer,
2 Ellison, Schneider and Harris, on behalf of the Applicant.

3 MR. SALAMY: Jerry Salamy, Project Manager, CH2M
4 Hill.

5 MS. ENGEL: Elyse Engel, Air Quality Specialist, CM2M
6 Hill.

7 COMMISSIONER DOUGLAS: Great. Thank you.
8 Staff?

9 MR. WINSTEAD: Keith Winstead, Project Manager,
10 California Energy Commission with the Alamitos Energy Center
11 Project.

12 MR. BABULA: Jared Babula, Staff Counsel.

13 COMMISSIONER DOUGLAS: Thank you very much.
14 Now, Intervener, Los Cerritos Wetlands Land Trust.

15 MR. GEEVER: My name is Joe Geever. And I'm here --
16 well, the Trust's legal counsel wasn't available on short
17 notice, so I'm going to try and fill in as best as I can.

18 COMMISSIONER DOUGLAS: Thank you. Thanks for being
19 here.

20 MR. POWERS: Bill Powers, Powers Engineering, a
21 witness for the Los Cerritos Wetlands Land Trust.

22 COMMISSIONER DOUGLAS: Thank you. And, let's see,
23 the Public Adviser, is the Public Adviser or someone from the
24 Public Adviser's Office here?

25 HEARING OFFICER CELLI: Not yet.

1 COMMISSIONER DOUGLAS: Not yet. So we understand the
2 Public Adviser did have some delay in getting here.

3 And let me just ask Staff if you could sort of keep
4 an eye out for her. But also, we may ask you to assist the
5 public with, for example, just letting them know the blue
6 cards and so on, until she gets here.

7 MR. BABULA: Do you have blue cards?

8 HEARING OFFICER CELLI: What I've done is I've put
9 exhibits -- this is Hearing Adviser Ken Celli.

10 I put exhibit lists and the notice for today's
11 hearing on the back table on the right towards the back of
12 the room that will be the Public Adviser's table when she
13 gets here. But when she gets here, we'll raise the issue of
14 blue cards and all that.

15 MR. BABULA: Okay. So the process is if the Public
16 Adviser is not present, then the Staff Counsel is supposed to
17 kind of do that. So I will keep an eye out for people who
18 have questions. But we don't have blue cards.

19 COMMISSIONER DOUGLAS: Right. Well, that's a good
20 point. So please do keep an eye out. And also, if it
21 becomes helpful to have somebody sitting at the table, if it
22 looks like there might be people who have questions, that
23 would be very helpful, as well.

24 MR. BABULA: And looking, right now it looks like
25 most people in the audience are either from Staff or from the

1 Air District. So right now, I think we're okay.

2 COMMISSIONER DOUGLAS: Right. All right. Thank you.
3 All right.

4 So are there any representatives, members, staff or
5 elected officials or representatives from federal or state or
6 local agencies, or Native American tribes? If there are,
7 could you please introduce yourselves at the microphone?

8 Again, I'll just ask, staff or elected
9 representatives at the local, state or federal level, or
10 representatives of Native American Tribes, please come
11 forward.

12 MR. CHANDAN: My name is Bhaskar Chandan. I'm a
13 Supervisor with the Engineering and Permitting Group at the
14 South Coast Air Quality Management District.

15 COMMISSIONER DOUGLAS: Great. Thank you for being
16 here.

17 Anybody else? What about on WebEx? All right.

18 Is the Mayor or Long Beach here by any chance? I
19 don't think so. Okay.

20 So with that, then I'll turn this over to the Hearing
21 Officer Ken Celli.

22 HEARING OFFICER CELLI: Thank you, Commissioner.

23 So the first bit of housekeeping I'm going to ask
24 Jamie is to make sure that if -- Jeff, would you raise your
25 hand, and Bill Powers raise your hand, keep your hand up, and

1 Jared Babula, raise your hand, these mikes need to stay hot
2 throughout the whole hearing. These people have the right to
3 pipe up and object and things like that, so I want your mikes
4 to work, okay? And then later, when we take public comment,
5 we'll take public comment from this podium.

6 We're still getting the WebEx. We're making sure
7 that people on the phone can participate electronically.

8 So today, I just want to, for the people who are here
9 in the room, if this is the first time you are with us and
10 you weren't with us at the last hearing we had on November
11 15th, the exit -- there's an exit in the back of the room.
12 There's an exit out here on the front, where most everybody
13 came in. Restrooms are to the right, male and female.
14 There's water over -- and coffee on the table in the back, my
15 left, your right, if you're looking towards me. And when the
16 Public Adviser -- oh, and there seems to be some goodies in
17 the back of the room. It looks like there's pastries and
18 things, courtesy of the Applicant.

19 And then to the right of that table with the pastries
20 and so forth will be the Public Adviser's table. And so later
21 on, if you want to make a public comment, when the Public
22 Adviser arrives we'll make sure that -- I will announce how
23 you get yourself on the list to make a public comment.

24 So first order of business is, as you can see, I'm
25 talking straight into this microphone. And when I'm speaking

1 right into this microphone, you have really high fidelity and
2 you can hear me really well. But if I start turning my head
3 to the side, or turning it to the other side, or looking up
4 or looking down as I'm reading, you lose that. So I'm going
5 to ask anyone who is going to make a public comment or use a
6 microphone in the room to please speak -- shoot your voice
7 right down into that, like you're playing a clarinet, okay?

8 Now, yesterday, here's -- we're into our first agenda
9 item, which would be housekeeping. There are some matters we
10 have to take care of.

11 And the first one was yesterday I sent out a memo. I
12 docketed it. I hope all of the parties saw it. There was
13 some concern about whether CDF&W and any other agencies got
14 notice of this. And so we asked Staff to remedy this before
15 Thursday.

16 And I just want to check in with Staff and see
17 whether you got the memo, and what action is being taken,
18 please, Mr. Babula?

19 MR. BABULA: Yeah, we did receive the memo and we
20 looked into it. And we believe that the California
21 Department of Fish and Wildlife had received notice in a
22 couple different ways.

23 First, technical staff did engage with them and
24 provided them links and information about the original AFC,
25 and notified them when our PSA was being published and asked

1 if they had any comments. And so we do have biology staff
2 present today, if you would like additional info on the
3 engagement.

4 Also, the person that he had talked to, she was
5 identified on the service list, even though it was like a
6 separate -- so the line item for California Department of
7 Fish and Wildlife may have been removed accidentally. But she
8 had her own name on it in another place on the Service List
9 5407.

10

11 HEARING OFFICER CELLI: What was her name?

12 MR. WINSTEAD: Kelly Schmoker.

13 HEARING OFFICER CELLI: So when I -- is it Kelly with
14 a Y or an I-E?

15 MR. BABULA: Y.

16 HEARING OFFICER CELLI: Okay.

17 MR. BABULA: Yeah. And we have emails to her, as
18 well --

19 HEARING OFFICER CELLI: Okay. Great.

20

21 MR. BABULA: -- that can be produced.

22 HEARING OFFICER CELLI: So because I know that there
23 were several names, and then it would say -- there's a box
24 for organization, which is blank for many of them. So I take
25 it that Kelly Schmoker is the one who is one of those, and it

1 didn't designate her as CDF&W?

2 MR. BABULA: That's my understanding, yes.

3 HEARING OFFICER CELLI: But that CDF&W or Kelly
4 Schmoker has been on that list all along?

5 MR. BABULA: Right. And she was the one who was
6 targeted with the email from Program Staff to have specific
7 questions about this project.

8 HEARING OFFICER CELLI: Okay.

9 MR. BABULA: And so she's been the one from the
10 beginning. And again --

11 HEARING OFFICER CELLI: And did she -- go ahead.

12 MR. BABULA: Yeah. And again, I don't know, do you
13 want to have our biologists just sort of give you --

14 MR. WINSTEAD: She's been in direct contact with her.

15 HEARING OFFICER CELLI: Yes. The one question I just
16 wanted to ask was whether Kelly Schmoker actually
17 acknowledged that she's been receiving mailings from us?

18 MR. BABULA: The email I saw said that she was not
19 going to be able to come out for the workshop, the staff
20 workshop on the PSA, and that she didn't have any comments on
21 it. But I believe our biologist had specific questions to
22 her about a tar plant. And so it might be best if he just
23 gave you a quick summary.

24 HEARING OFFICER CELLI: Okay. So what's the
25 biologists name?

1 MR. WHITE: Scott White --

2 HEARING OFFICER CELLI: Scott White.

3 MR. WHITE: -- Biologist.

4 HEARING OFFICER CELLI: Thank you. Nice to see you
5 in person.

6 MR. WHITE: Hi. Thanks. This one's on? Yeah.

7 Kelly Schmoker, just a correction. It's
8 S-C-H-M-O-K-E-R.

9 HEARING OFFICER CELLI: Thank you.

10 MR. WHITE: So I talked to Kelly two or three times
11 during the course of preparing the PSA and the FSA about
12 several different issues. I informed her of the dates of the
13 Evidentiary Hearing Part 1, and the PSA Workshop earlier, and
14 we talked about a couple of different issues.

15 We also gave her the -- I don't remember if we
16 actually forwarded the documents, but we gave her the web
17 link, the Energy Commission project page, and let her know
18 that she could download the PSA and the FSA at that site.

19 HEARING OFFICER CELLI: Okay. I mostly wanted to
20 make sure that she was getting the mailings. And she
21 acknowledged that to you, Mr. White?

22 MR. WHITE: That I'm not sure of.

23 HEARING OFFICER CELLI: Oh.

24 MR. WHITE: I can check with her though.

25 HEARING OFFICER CELLI: That would be good to know.

1 MR. WHITE: Sure.

2 HEARING OFFICER CELLI: Thank you. That, to me,
3 is -- this is a procedural, but that satisfies us. Thank you
4 very much.

5 MR. BABULA: Right. I believe that we've engaged
6 with them enough that if they had any other issues, they
7 would make themselves known.

8 MR. HARRIS: And, Mr. Celli, if I could just add two
9 citations to the record, as well?

10 Exhibit 1453 was the original AFC. The Appendix
11 5.2E, as in elephant, includes our contacts with the same
12 folks at the Department. And so they have actual knowledge
13 from that document, again, 1453.

14 And then again when the Supplemental AFC was filed in
15 October of '15, Exhibit Number 1505 includes in that Appendix
16 5.2E a series of emails from us to the Department, as well.

17 And I think I just wanted to cite those for you, as
18 well.

19 HEARING OFFICER CELLI: Thank you very much. Thanks
20 for putting that in the record. We're trying to be extremely
21 careful here in making sure that everybody -- so if there's
22 any question between Staff and Applicant, if there's somebody
23 omitted or someone you think that should be on that, I mean,
24 this would be the time to cure that defect. So thank you
25 both for that.

1 There is one other request I have of Staff which
2 is -- well, Applicant or Staff, we'll see how you want to
3 work it out. But we've had a number of iterations and
4 changes to Conditions of Certification now, and I want to
5 make sure that what we have is the most current version.
6 Now, we have at least -- let me get into my --

7 MR. BABULA: Are you still on the memo? Because you
8 had a question regarding the --

9 HEARING OFFICER CELLI: Yeah.

10 MR. BABULA: -- surface elevation. And we do have
11 our geologist on the phone who can clarify your questions.

12 HEARING OFFICER CELLI: Good. I will want to -- we
13 will definitely want to clarify that.

14 The question I had, though, was whether I could get a
15 compilation of the Conditions of Certification that's the
16 most current, so I can avoid delays because I inadvertently
17 didn't have the most current condition when we go to
18 publication. So how would you -- normally, I would ask Staff
19 to just provide us a compilation of all of the Conditions of
20 Certification in their most current form. I know that there
21 are still a few, I think there's six or eight that are in
22 dispute. And maybe you can just highlight those in yellow
23 using --

24 MR. BABULA: Yeah. I don't think there were that
25 many. But we could put together a set of current conditions

1 and those ones where there may be a dispute, and then send
2 them to the parties to sort of approve to form type thing,
3 just to give them a heads-up, and then provide that.

4 HEARING OFFICER CELLI: That would be great. Thank
5 you for doing that. I know it's Christmastime and
6 everything, so hopefully we can all this going before
7 everybody leaves town. Okay.

8 And then there was the other question having to do
9 with the elevation. There were some inconsistencies that we
10 recognized in the FSA sections. And we wanted some
11 clarification on site elevation from Staff's witness.

12 So who is the witness on the phone?

13 MR. BABULA: It's Garry.

14 MR. MAURATH: Yes. This is Garry Maurath.

15 MR. BABULA: Go ahead.

16 HEARING OFFICER CELLI: Go ahead, Mr. Maurath.

17 MR. MAURATH: Yes. I have reviewed the elevation
18 data in question, and I can understand the discrepancies. It
19 has to do with accuracy and precision of the data. The most
20 precise elevation data was presented on page 5.2-4 in
21 reference to mean site elevation between 8 and 15 feet above
22 sea level. The site is relatively flat. That elevation was
23 presented by Ninyo & Moore Consultants in a geotechnical
24 report where they had to measure the elevations of drilling
25 columns for boreholes.

1 Elevation references in other portions of the FSA are
2 less precise. In the geo-paleo section on page 5.2-23, it
3 referenced the elevation from a 1-to-24,000 scale topo map as
4 being less than 10 feet above sea level. The accuracy of
5 that map is plus or minus five feet. So although the
6 elevation is around ten feet, it could be plus or minus five
7 feet. So the measurements taken off of the topo maps are not
8 as precise as those taken when drilling boreholes.

9 And elsewhere in the FSA, elevations were referred
10 to, I think Individual Resource section, where the elevation
11 was taken off of Google Earth. That elevation is based on an
12 elevation algorithm that they use that is accurate to plus or
13 minus 15 feet. So where the elevation was referenced as 10
14 to 20 feet, that probably should say 10 to 20 feet plus or
15 minus 15 feet.

16 So all of the data in terms of site elevation was
17 accurate, but it was not extremely precise. So overall, the
18 elevation of the site is between 8 and 15 feet as observed by
19 the Ninyo & Moore Geotechnical Consultants.

20 HEARING OFFICER CELLI: Thank you.

21 Before I let Mr. Maurath go, is there any question
22 from Applicant of Mr. Maurath?

23 MR. HARRIS: No. I just want to confirm that the
24 geotech is the most accurate one. And that's part of Exhibit
25 1505, and that's Appendix 5.4A, as in apple. So that's the

1 precise reference there. But he's correct in his statements.

2 HEARING OFFICER CELLI: Thank you.

3 MR. HARRIS: Thank you.

4 HEARING OFFICER CELLI: Any question, Mr. Geever?

5 Okay, he's indicating no.

6 You probably should have your microphone right in
7 front of you because --

8 MR. GEEVER: No.

9 HEARING OFFICER CELLI: Thank you.

10 MR. GEEVER: Thank you.

11 HEARING OFFICER CELLI: And anything further from
12 Staff?

13 MR. BABULA: Nothing further.

14 HEARING OFFICER CELLI: Okay. Thank you, Mr.

15 Maurath. Thank you for being on the phone.

16 Okay, then, I think that takes care of housekeeping.

17 Okay. All right.

18 So today -- let me just open this. The Committee
19 noticed today's Evidentiary Conference in the Notice of
20 Second Evidentiary Hearing, Scheduling Order and Further
21 Orders Issued on November 23rd, 2016. We had the first
22 Evidentiary Hearing on November 15th, 2016, here in Long
23 Beach, where we took in all the evidence related to all
24 subject areas, except Public Health, Air Quality. And when
25 we talk about Air Quality, that's air quality, but it also

1 includes a separate analysis of greenhouse gases. Today we
2 will take in evidence on Public Health and Air Quality only,
3 after which we will close the hearing record for the Alamitos
4 Energy Center.

5 The Evidentiary Hearing is an administrative
6 adjudicatory proceeding to receive evidence into the formal
7 record, that's the evidentiary record or hearing record from
8 the parties. Only the parties, and the parties are the
9 Applicant AES on my left, your right, the Intervener Los
10 Cerritos Wetlands Land Trust sitting over here, and the
11 Energy Commission Staff on my right, your left, only the
12 parties may present evidence for introduction into the formal
13 evidentiary record, which is the only evidence upon which the
14 Commission may base its decision under the law.

15 Technical rules of evidence may be relied upon as
16 guidance. However, any relevant non-cumulative evidence may
17 be admitted if it is the sort of evidence upon which
18 reasonable persons or responsible persons are accustomed to
19 rely in the conduct of serious affairs.

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

23 Questions of relevance will be decided by the
24 Committee. Hearsay evidence may be used to supplement or
25 explain other evidence, but shall not be sufficient in itself

1 to support a finding.

2 The Committee will rule on motions and objections.

3 The Committee may take official notice of matters
4 within the Energy Commission's field of competence. And any
5 official notice of any fact that may be judicially noticed by
6 the California courts. If the parties want us to take
7 official notice of anything, I would ask that you make that
8 request on the record.

9 The hearing record of this proceeding includes sworn
10 testimony of the parties witnesses, the Reporter's
11 transcripts of the Evidentiary Hearings, the exhibits
12 received into evidence, any matters officially noticed, and
13 comments -- I'm sorry -- comments submitted by members of the
14 public.

15 The Committee's decision will be based solely on the
16 record of competent evidence in order to determine whether
17 the people -- to determine whether the project complies with
18 applicable law. I'm going to say that again. The
19 Committee's decision will be based solely upon the record of
20 competent evidence in order to determine whether the project
21 complies with applicable law.

22 Now, members of the public who are not parties are
23 welcome and invited to observe the proceedings, either in
24 person or via the WebEx teleconferencing. There will also be
25 an opportunity for the public to provide comment after the

1 record is closed, and at about two o'clock today, plus or
2 minus. Depending upon the number of persons who wish to
3 speak, the Committee may have to limit the time allowed for
4 each speaker.

5 The public comment period is intended to provide an
6 opportunity for persons who attend the hearing to address the
7 Committee about anything having to do with the project. It
8 is not an opportunity, however, to present supplemental
9 written, recorded or documentary materials. However, such
10 materials may be docketed and submitted to the Energy
11 Commission for inclusion in the administrative record.
12 Members of the public may submit written comments if they
13 would prefer that to speaking directly to the Committee.
14 And like I said, when the Public Adviser gets here, I will
15 alert you all to that.

16 Okay, so we're going to try to open up for public
17 comment around two o'clock. If we finish taking evidence
18 before that, we'll take public comment then, but we will
19 stick around to make sure that anyone who shows up around two
20 o'clock, just for the purpose of making a public comment, can
21 make their public comment.

22 The one thing I am going to ask is that people who
23 are on the phone, people who have a microphone in front of
24 them, do what you can to avoid speaking over somebody else.
25 The Court Reporter can only hear one speaker at a time. So

1 we want to make sure we have a distinct record, and that is
2 my request. And then if you don't do that, you'll hear from
3 me again.

4 Exhibits and witnesses. Now, on the overhead
5 projector, and also on WebEx, and I'm scrolling down now --
6 let's see if I can get this to look better -- at our first
7 hearing I presented the list of exhibits that were offered by
8 the witnesses but that were duplicates of another transaction
9 number of exhibit number. And the system only allows us to
10 have one exhibit number and one transaction number. So a
11 transaction number can't have multiple -- can't be someone's
12 Exhibit 1 and somebody else's Exhibit A. It can only be one
13 exhibit.

14 As a result, we had to change some of the numbering.
15 | And this ~~well~~will effect, for instance, your briefs, parties
16 | briefs and things like that, as you refer to exhibits. So I
17 | will put this table up. I will docket this when I get back
18 | to Sacramento. But I wanted you to be aware that the numbers
19 | that I'm showing were already -- and they're all in the 3000
20 | series. So any exhibit which is 3000 or greater is the
21 | Intervener's exhibits. So I wanted you to see that these
22 | were determined to be duplicative of already existing
23 | exhibits or someone else's exhibit number, okay?

24 So not to worry about that now. And this is
25 actually -- the exhibit list we have is accurate in terms of

1 your exhibit numbers, okay? But this is -- you'll need to
2 see this before you write your briefs.

3 MR. GEEVER: Joe Geever.

4 So did the Trust exhibits come from the spreadsheet
5 that I attached to the Prehearing Conference Statement?

6 HEARING OFFICER CELLI: Actually, they were attached
7 to, I think it was titled Opening Testimony. It was red. It
8 was red, looked like sort of a table, but kind of, yes.

9 MR. GEEVER: Okay. So there is difference from the
10 spreadsheet that was submitted with the Prehearing Conference
11 Statement. There's some additional exhibits.

12 HEARING OFFICER CELLI: Okay. It's very possible
13 that we have human error here. When I looked at the
14 prehearing conference from start -- Prehearing Conference
15 Statement from start to finish when I went online, I didn't
16 see any such tape.

17 MR. GEEVER: So it was attached.

18 HEARING OFFICER CELLI: It may be treated as another
19 submission by the docket's people.

20 MR. GEEVER: It is 214908-2.

21 HEARING OFFICER CELLI: Well, I'm just looking here.
22 Okay, now while I'm doing this, everybody, be watching the
23 screen. Because if anybody ever wanted to look at any
24 documents, this is how you do it.

25 You go to energy.ca.gov, which is what I've just

1 gotten into. And along the top you'll see there's tabs. And
2 I'm going to click on Power Plants. Oh, that's not on WebEx.
3 No wonder. Sorry.

4 Ari, can I do this without blowing WebEx? Can I go
5 into the internet and have it show on WebEx or --

6 (Colloquy Between Hearing Officer and Staff)

7 HEARING OFFICER CELLI: There you go. Now you're
8 able to see it.

9 So what you're looking at is the Energy Commission's
10 website. This is the home page. If you click, follow my
11 cursor, these are all these tabs up here, and you click on
12 Power Plants, all of the power plants that are currently
13 existing are listed in this list. And we're talking about
14 Alamitos, so you click on the Alamitos one.

15 Now this is the Alamitos home page for the Energy
16 Commission. And if you look on the right and you see
17 original proceeding, because this is the original proceeding,
18 there are a number of things you can do, submit an e-comment,
19 e-file, documents. Every document that's in the record is
20 shown right here. I'm going to click that in a minute, but I
21 also want to show that you can get your exhibit list here,
22 proof of service list, et cetera.

23 So I'm going to open up the documents.

24 And, Joe, Mr. Geever, which --

25 MR. GEEVER: It is 214908-2.

1 HEARING OFFICER CELLI: Got it. There you go. Okay.

2 Now, do we know -- can you tell me, does this table

3 differ from -- here, I'll tell you what, I'll open it.

4 Because where I got it -- there was one called Opening

5 Testimony. There you go.

6 So, Mr. Geever, I was using -- if you look up, that's

7 the list I was using, which is the list at the end of the

8 Opening Testimony. And does that differ or is that the same

9 list as that attachment that you filed?

10 MR. GEEVER: So the spreadsheet at 214908-2, when you

11 compare it to that, it includes Exhibit 3074 and on in the

12 spreadsheet and was not in that one that was cut and pasted

13 into the Opening Testimony.

14 HEARING OFFICER CELLI: This one stops at 3075.

15 So what I can do is I can open the spreadsheet that

16 you put in. And before I docket this little table that shows

17 the difference, I'll make sure that everything corresponds to

18 the spreadsheet that you filed.

19 MR. GEEVER: I'm sorry, Mr. Celli, I'm getting all of

20 these confused because now you have yours. So it's a little

21 bit hard to reconcile these because you've moved things

22 around a little bit in your list.

23 But -- well, maybe this is the simple way. The

24 spreadsheet, that 214908-2, is the list of exhibits that we

25 want in the record.

1 HEARING OFFICER CELLI: Okay. Good. So that's clear
2 in the record. Forgive me if I got the wrong list for that
3 table, but I'll correct it and I will put it up tomorrow so
4 you'll be able to that. Because as you write your briefs,
5 you're going to want to refer to documents. And in case
6 we're using a different number, you want to make sure we're
7 all on the same page, literally.

8 MR. GEEVER: Thank you.

9 HEARING OFFICER CELLI: So that's what we will do.

10 (Colloquy Between Hearing Office and Staff)

11 HEARING OFFICER CELLI: Okay, so I as I said, the
12 exhibit list is available. It's on the back table. We think
13 it's current, but I may have to make some changes.

14 According to the Prehearing Conference Statement, the
15 witnesses today -- I'm going to get a picture up in a minute.

16 (Colloquy Between Hearing Office and Staff)

17 HEARING OFFICER CELLI: So now for the radio audience
18 and the people in the room, you can see what the witness list
19 looks like right now. We have Mr. Powers for Los Cerritos
20 Wetlands Land Trust, and Mr. Geever, also. We have Jerry
21 Salamy, Stephen O'Kane, Elyse Engel, Benjamin Beattie for the
22 Applicant. And then for Staff, we have Nancy Fletcher, Ann
23 Chu, and David Vidaver.

24 Is there anyone I'm forgetting?

25 MR. BABULA: I don't -- well, so Matt Layton is also

1 here, and so is Gerry Bemis. So they may also jump in,
2 depending on the nature of the discussion and what needs to
3 be said.

4 Ann Chu wasn't scheduled to present at all or be
5 available because there was no indication that Public Health
6 was an issue.

7 HEARING OFFICER CELLI: Okay. Well, we'll see about
8 that.

9 MR. HARRIS: And just for clarification --

10 MR. BABULA: But she's on the phone, if need be.

11 MR. HARRIS: -- with our witnesses, Mr. Salamy, Mr.
12 O'Kane and Ms. Engel are all available for public -- Quality
13 and Public Health. Mr. Beattie is only Air Quality, not
14 Public Health. But those are the correct individuals, and
15 they've been identified in our Prehearing Conference
16 Statement as such, so --

17 HEARING OFFICER CELLI: Thank you. Okay.

18 Now I'm going to -- go ahead, Mr. Geever.

19 MR. GEEVER: And so that wasn't on any list to be
20 here as a witness.

21 HEARING OFFICER CELLI: Right. I understand that.
22 Correct me if I'm wrong, but I understood that Los Cerritos
23 Wetlands Land Trust wanted to submit Mr. Powers' and your
24 testimony in writing only today.

25 MR. GEEVER: So mine would be in writing only. And

1 Mr. Powers would be in writing, supplemented by oral
2 testimony today.

3 HEARING OFFICER CELLI: Okay. And unless somebody
4 needs to cross examine, and then you'll be available for
5 that.

6 Let me just -- I want to describe -- go ahead, Mr.
7 Powers.

8 MR. POWERS: And I'm hoping to have the opportunity
9 to ask some cross examination questions during the hearing,
10 as well. Would that be part of the panel discussion?

11 HEARING OFFICER CELLI: Yeah. I'm about to describe
12 that right now, so, yes. In other words, you're going to be
13 acting both as witness and as attorney for Los Cerritos
14 Wetlands Land Trust?

15 MR. POWERS: Correct.

16 HEARING OFFICER CELLI: Okay. All right. Rather
17 than proceeding with the usual formal direct and cross
18 examination of individual witnesses, we may proceed today by
19 way of an informal hearing format. The Committee would call
20 all witnesses to testify as a panel on the topic at hand.
21 Witnesses may only testify on topics or issues within their
22 expertise. The testimony may include discussion among the
23 panel without the lawyers asking questions.

24 As we did in the Evidentiary Hearing Part 1, we will
25 conduct a hybrid between a formal and informal hearing,

1 wherein the Committee will allow the parties to question the
2 witnesses as a panel. The Committee may establish limits, as
3 needed, on the number of questions a party may ask and the
4 amount of time the line of questioning may consume.

5 Parties may object to evidence and questions, if
6 necessary. But I would encourage the parties to allow their
7 witnesses to correct the record with sworn testimony, rather
8 than cluttering the transcript with wasted colloquy.

9 The party with the burden of proof may provide final
10 rebuttal testimony if the Committee deems it necessary. The
11 Committee, in the interest of efficiently completing all
12 topics at the Evidentiary Hearing, may curtail testimony or
13 examination of witnesses if it becomes cumulative,
14 argumentative, or in any other way, unproductive.

15 The parties and witnesses are admonished to allow the
16 witnesses to finish their answer and to not talk while
17 another is speaking. Again, I want to make sure that we have
18 a clean record. When you read those transcripts, people can
19 speak in full sentences, so don't speak over each other.

20 Today's schedule looks like this, which is now up on
21 WebEx and on our projector screen. Right now we're doing our
22 welcome and housekeeping. And I've just explained -- I'm in
23 the middle of explaining the procedures. And then I'm going
24 to ask the parties to move their evidence into the record.

25 After that, we'll finish taking in exhibits, call

1 witnesses on Air Quality first. After that we'll call
2 witnesses on Public Health. And I have some questions I
3 going to ask regarding LORS for Air Quality and Public Health
4 before we even get started, having to do with the FSA. Then
5 at two o'clock, we will take public comment. And if we need
6 to after that, we'll finish taking evidence, if necessary.
7 Otherwise, we will adjourn at that time.

8 Now the Committee will allow the parties to reopen
9 subject areas from the Part 1, and this is Los Cerritos
10 Wetlands Land Trust, only upon a demonstration that the
11 subject area is materially affected by the evidence received
12 from Air Quality. If there's any question on this, please
13 let me know. But that was the understanding from the outset,
14 that we would allow Los Cerritos Wetlands Land Trust to
15 reopen under certain circumstances if they can show that
16 there is an air quality impact.

17 So if there are no questions at this time, we would
18 proceed through the uncontested topics, or really, not so
19 much uncontested topics as I would receive motions, first
20 from Applicant, then Staff, then Intervener to move your
21 evidence into the record.

22 So first, Applicant?

23 MR. HARRIS: We do have a preliminary matter that was
24 identified in our Prehearing Conference Statement. It's the
25 last item, Item 8, a potential motion to strike.

1 HEARING OFFICER CELLI: Yes.

2 MR. HARRIS: I'd like to address -- is it appropriate
3 for me to address that at this point?

4 HEARING OFFICER CELLI: Yes. I read the motion. I
5 just want to make clear that because we're doing sort of this
6 hybrid -- so each party is going to ask questions of the
7 panel and then -- and be able to cross. If there are any
8 objections, the usual objections, I'm not so much interested
9 in form of the question, unless it really messes up the
10 transcript, but if there are the usual relevance and those
11 types of objections, then absolutely, the parties should be
12 making those objections. If there's a motion to strike, make
13 such a motion.

14 But the beauty of the informal process is that what
15 we get is a transcript that is fact-filled. Because what
16 takes up all of the ink in the transcript is testimony from
17 witnesses, not lawyers arguing. And so I want to encourage
18 that we make that kind of a transcript.

19 MR. HARRIS: We will participate in that, for sure,
20 and we'll get to there.

21 I would like to talk about our concerns about the
22 overall testimony we received from the Trust, and that was
23 the subject of our potential motion to strike.

24 As you well know, the process really here is to
25 develop a factual record. We have two basic concerns with

1 the Trust's Opening Testimony and their rebuttal testimony.

2 Number one, their testimony is replete with legal
3 arguments. They spent a lot of time talking about case law.
4 And just to give a specific citation, this is not the only
5 one, but starting on page eight there's a paragraph in their
6 testimony that starts with, "Further, the Commission and the
7 Applicant rely on the Warren Alquist Act in 1999." Pretty
8 much everything that follows that is legal argument. It
9 continues on through numerous pages, including citations to
10 cases. We think we'd be fully within our rights to bring a
11 motion to strike those portions of the testimony that are
12 legal argument because they're outside of the scope of what
13 you're doing here.

14 In the interest of moving things along, and also,
15 more importantly, recognizing that the Committee can
16 distinguish between factual arguments and legal arguments,
17 we're not going to go through line by line and try to strike
18 out portions of their written testimony that we think is
19 legal argument. We won't do that. We'll rely on you all to
20 understand the distinction between those two things when
21 you're looking at it. So that's for the written testimony.

22 As to Mr. Powers', you know, oral testimony, if he
23 starts going down the legal argument road, we will reserve
24 the right to object. So we're not going to make a formal
25 motion to strike that testimony with that understanding, that

1 you all can tell the difference between argument and factual
2 matters.

3 But we wanted to get on the record that we think the
4 vast majority of what they filed is argument. Now, they're
5 ahead of us a little bit. They'll get to write their brief
6 over Christmas, probably relying on their testimony, so I
7 envy them in that respect. But I did want to raise that
8 issue. I think it's a significant issue here. But we are
9 definitely interested in moving along the proceedings. And
10 so we're not going to actually move to strike. We'll just
11 reserve the right to do that orally.

12 The second concern we have -- so that's as to their
13 written testimony.

14 The second concern we have is some of the documents
15 they've cited and attached to their testimony, those are not
16 the kinds of things upon which reasonable people rely to make
17 factual determinations.

18 And just to highlight, I guess one of them that is
19 particularly concerning to us is 214861. This the testimony
20 of Mr. Powers. It's the attachment of Mr. Powers' brief
21 before the California Public Utilities Commission. That is a
22 document that is not a factual document. It's a legal
23 argument by its very nature. It's a brief. It's for a
24 different matter and for a different proceeding. And we
25 don't want to be in a situation where the trust can convert

1 their legal arguments in the PUC forum into facts in this
2 case.

3 And so there are four documents in particular that we
4 would like to see -- they can be marked into evidence but not
5 admitted. There are three or four more that are sort of on
6 the fence that we'll highlight for you, but probably not be
7 as concerned about. But definitely the number one we're
8 concerned about is that reply brief.

9 And so if you want to deal with those documents now
10 or later, we're open to that. I just really wanted to kind
11 of set the stage for our concerns.

12 HEARING OFFICER CELLI: Here's how I'd like to
13 proceed, and this goes for everybody, is I'd like first to --
14 I'm going to take Applicant's motion to move your evidence
15 in. Then I'm going to take Staff. Then I'm going to take
16 the Intervener. When a party is moving in their evidence,
17 that's the time to object. If I receive -- if there's no
18 objection to any evidence, then it will be received into
19 evidence, okay?

20 So that's what we're doing here. If there's a motion
21 to move it in, if there's no objection, we will receive it
22 into evidence. If there's an objection, we will deal with
23 each objection per exhibit. That's the way we're going to
24 have to do it. So at this time, I hope that's clear to
25 everybody.

1 So then, beginning with the Applicant, do you have a
2 motion at this time?

3 MS. NEUMYER: We would like to move Exhibits 1600
4 through 1620 into the record please.

5 HEARING OFFICER CELLI: Is that everything?

6 MS. NEUMYER: Yes.

7 HEARING OFFICER CELLI: Okay. Any objection, Staff?

8 MR. BABULA: No objection.

9 HEARING OFFICER CELLI: Any objection from the
10 Intervener?

11 MR. GEEVER: No objection. Thanks.

12 HEARING OFFICER CELLI: Okay. Then Exhibits 1600
13 through 1620 will be received.

14 (Whereupon, Applicant Exhibits 1600 through 1610-1611 are
15 received and admitted.)

16 HEARING OFFICER CELLI: Staff?

17 MR. BABULA: We'd like to move in Exhibit 2014, the
18 Final Staff Assessment Part 2.

19 HEARING OFFICER CELLI: Is that the only exhibit?

20 MR. BABULA: That's the only exhibit.

21 HEARING OFFICER CELLI: Does that exhibit include CV
22 or resume info?

23 MR. BABULA: It's all included. It's all attached.

24 HEARING OFFICER CELLI: Okay. Thank you.

25 Any objection, Applicant?

1 MR. HARRIS: No objection.

2 HEARING OFFICER CELLI: Any objection from the --

3 MR. GEEVER: No objection, no.

4 HEARING OFFICER CELLI: Okay. Then 2014 will be
5 admitted.

6 (Whereupon, Staff Exhibit 2014 is received and admitted.)

7 HEARING OFFICER CELLI: Los Cerritos Wetlands Land
8 Trust, do you have a motion?

9 MR. GEEVER: So we would move into evidence the
10 spreadsheet 214908-2. I would -- I guess I'll note this.

11 HEARING OFFICER CELLI: I'm going to -- let me just
12 make life easy. That will be received into evidence. But
13 what exhibit number is that list? That would be your last
14 number. In other words, I think if you go up to 3075,
15 wouldn't it be 3076?

16 MR. GEEVER: Oh, so I don't know how to do that
17 because I don't know which --

18 HEARING OFFICER CELLI: Well, here's the point.

19 MR. GEEVER: -- list to look at.

20 HEARING OFFICER CELLI: Let me -- you put that list
21 together. But I imagine at the time you put it together you
22 weren't intending to put that list, and you didn't list that
23 list itself in your list of exhibits, so it doesn't have an
24 identified number at this time.

25 So what my recommendation would be, that you go to

1 your last number plus one, and we'll call that list that
2 exhibit number, because I have to give it an exhibit number
3 for the record.

4 MR. GEEVER: Okay. Then I would offer that list from
5 Exhibit Number 3084.

6 HEARING OFFICER CELLI: Okay. So that -- the exhibit
7 list is Exhibit 3084 from now on, so we'll refer to it as
8 that. And that will be received into evidence.

9 MR. GEEVER: And that's -- 3084 is the last number in
10 the list; right?

11 HEARING OFFICER CELLI: Oh, so you need it to be
12 3085?

13 MR. GEEVER: No, no, I'm sorry, 3084 is the last one
14 in the spreadsheet.

15 HEARING OFFICER CELLI: Okay. So the spreadsheet
16 itself will be 3085.

17 MR. GEEVER: Well, I'm sorry if I'm confusing this.
18 But the spreadsheet itself is listed as one of those
19 exhibits --

20 HEARING OFFICER CELLI: Oh, which one is it?

21 MR. GEEVER: -- as 3083.

22 HEARING OFFICER CELLI: Oh, good. Okay.

23 MR. GEEVER: But it doesn't have a TN number because
24 there wasn't time for that.

25 HEARING OFFICER CELLI: Right. So TN Number 214908-

1 2, which is the spreadsheet of exhibits for Los Cerritos
2 Wetlands Land Trust, will be received into evidence as
3 Exhibit 3083; correct? Do I have that right?

4 (Whereupon, Intervener Exhibit 3083 is received and
5 admitted.)

6 MR. GEEVER: That's right. And there is one piece of
7 evidence. It would be --

8 HEARING OFFICER CELLI: Yeah, I just want to make --
9 the reason I wanted to do this is because in the event, the
10 way -- and lawyers, I want you all to understand what I'm
11 doing. I'm going to allow Mr. Geever to enter the numbers
12 that are on his spreadsheet. It may turn out that there
13 might be a duplicate number or two in there that we're going
14 to have to convert later, and I will send that around, and I
15 will put that up and make it our own exhibit, I think. But
16 like for now, let's just use the numbers that Los Cerritos
17 Wetlands Land Trust intended to use.

18 MR. GEEVER: Very good. Thank you.

19 HEARING OFFICER CELLI: Okay?

20 MR. HARRIS: So just for clarification, there's a
21 spreadsheet with a list of numberss. You're admitting the
22 spreadsheet, not everything that's on the spreadsheet?

23 HEARING OFFICER CELLI: That's correct. That's
24 exactly what I just did.

25 And so what now I'd like to do is have you move your

1 exhibits into the record. And then if there's an objection,
2 we'll take them one at a time.

3 MR. GEEVER: Do you want me to identify them by
4 number or by title?

5 HEARING OFFICER CELLI: Are they in a perfect order?
6 In other words, are they consecutive?

7 MR. GEEVER: Pardon me? I'm sorry, I didn't hear
8 that.

9 HEARING OFFICER CELLI: Are they consecutive, meaning
10 can you say I move 3000, and whatever the first one is,
11 through whatever the last one is --

12 MR. GEEVER: Yes.

13 HEARING OFFICER CELLI: Without gaps? Okay.

14 MR. GEEVER: Yes.

15 HEARING OFFICER CELLI: Go ahead. Then make that
16 motion please.

17 MR. GEEVER: So then Exhibit Numbers would be 3049-
18 3084.

19 HEARING OFFICER CELLI: Okay. So the motion is to
20 move Exhibits 3049 through 3084 into the record.

21 Any objection from the Applicant?

22 MR. HARRIS: Yes, although we're struggling with
23 exhibit numbers. Give us just a moment if you would, sir?

24 HEARING OFFICER CELLI: While we're doing this, Mr.
25 Geever, did you get a chance to look at the exhibit list that

1 I gave you, which was a printout this morning? And if --

2 MR. GEEVER: I did. I'm sorry, I'm not sure what I'm
3 looking at, whether this is the exhibit list that you created
4 after moving some things that were duplicative or --

5 HEARING OFFICER CELLI: What happens is when the
6 parties give me a Prehearing Conference Statement, I give it
7 to my secretary, who then finds that TN number that you've
8 identified and assigns it an exhibit number. And so what I
9 do is we put them all in. We try to make sure that they're
10 accurate. I actually gave her that list, the red list,
11 because I thought that was the exhibit list, I didn't see the
12 other one, and so she filled that out. And that's why I
13 passed it out today, to make sure that the parties can look
14 at it and say, wow, you got this wrong, or, no, that checks
15 out and that's correct, and those are the numbers we'd asked
16 for.

17 So that's -- if there are gaps, and I think there
18 would be, in the numbers on our exhibit list, that's because
19 there was a transaction number that already had a prior
20 exhibit number, and therefore, that's why it wouldn't come
21 up, okay? I hope that's clear. So let's do our best today.

22 Right now what I want to do is go back.

23 Ari, I'm going to probably need some help here.

24 When I'm -- just so people know, I'm talking to Ari
25 Guillermo, who's here courtesy of the IT Department at the

1 Energy Commission.

2 (Colloquy Between Hearing Office and Staff)

3 HEARING OFFICER CELLI: What we're looking at now on
4 the screen is Exhibit 3083, the spreadsheet that goes from
5 3049 to 3084.

6 So, Mr. Harris, if you're going to bring any
7 objections, my request for now, I'm sorry to do this to
8 everybody, is see if you can't identify the objection to the
9 exhibit number that's on Exhibit Number 3083, which is up on
10 the screen right now.

11 I'm sure if you're a member of the public listening
12 to this, this seems really hyper technical and boring and
13 crazy. But I promise you, if you were looking for this stuff
14 in the transcript and trying to understand what people are
15 talking about, it's important that we make sure that we're
16 absolutely accurate about talking about the exact same
17 document.

18 So go ahead, Mr. Harris.

19 MR. HARRIS: Okay. And I going to identify them both
20 by what I believe to be the exhibit number and the TN number,
21 so that it will be helpful.

22 HEARING OFFICER CELLI: Okay.

23 MR. HARRIS: The first one is the one I've already
24 mentioned. It's Mr. Powers' brief in the PUC proceeding,
25 which we have as Exhibit 3049, and the TN number on that is

1 214861. So that's one of our four.

2 The second one is identified as Exhibit 3056. And
3 that one has the TN number of 214857. And that's listed as
4 Attachment CPUC Revised 2014 LTPP Planning Assumptions. And
5 we believe that not to be a final document. We believe it to
6 be a set of planning assumptions in the middle of a
7 proceeding. So that's part of the reason for our concern
8 about that non-final document.

9 The third one is, according to our numbering system,
10 I think 3058 is the exhibit number, TN number 214854. And
11 that, again, is also an attachment. It's basically the Final
12 Staff Assessment for the Huntington Beach proceeding, the
13 entire Final Staff Assessment for Huntington Beach. And we
14 don't think that needs to come into this proceeding. It's
15 not relevant. And it's also quite voluminous, and no
16 specific pages are identified.

17 HEARING OFFICER CELLI: That was the FSA from
18 Huntington Beach, the original Huntington Beach?

19 MR. HARRIS: No.

20 HEARING OFFICER CELLI: Because right now they're
21 going through amendment petition.

22 MS. NEUMYER: so the TN number for that document
23 identified on Trust Exhibit 3083 is TN 214732, Final Staff
24 Assessment Part 2, and Supplemental Testimony.

25 HEARING OFFICER CELLI: Okay. I thought I had -- I

1 had it written down, 214854 for Exhibit 3058.

2 MS. NEUMYER: That's within the subject matter -- or
3 that's within the document title, and so they included the TN
4 for that document title, so that's why it has that TN number.

5 HEARING OFFICER CELLI: Oh.

6 MR. BABULA: So Intervener the Huntington Beach
7 docket --

8 MS. NEUMYER: Correct.

9 MR. BABULA: -- the number is embedded --

10 HEARING OFFICER CELLI: Oh, I see.

11 MR. BABULA: -- in the title.

12 HEARING OFFICER CELLI: So that's not our -- okay.

13 MS. NEUMYER: Correct.

14 MR. BABULA: Right.

15 MS. NEUMYER: So if you need to figure out which
16 Huntington Beach document, that's the transportation number
17 from the Huntington Beach proceeding.

18 HEARING OFFICER CELLI: From Huntington Beach.

19 Do we have a transaction number for Alamitos?

20 MS. NEUMYER: Yes. It is 214854.

21 HEARING OFFICER CELLI: 854, okay. Thank you. All
22 right.

23 And next?

24 MR. HARRIS: And then the fourth one we have we
25 don't -- we're not able to cross reference a docket number

1 off of Mr. Geever's list. But the TN number is 214858. And
2 that is listed as Attachment, and it's a PUC Application,
3 A14-11-012 SCE-1, Public Testimony of SCE on LCR RFO --

4 HEARING OFFICER CELLI: Oh, yeah. I saw that, yeah.

5 MR. HARRIS: -- in L.A. Basin VII-24-263.6 megawatt
6 ES.

7 HEARING OFFICER CELLI: What was the exhibit number?

8 MR. HARRIS: We weren't able to cross reference one
9 off any of the lists. So the TN number again is 214858. And
10 when I look at your list it comes up as 3016, but that's not
11 on their list.

12 HEARING OFFICER CELLI: I see 85.

13 MR. HARRIS: 858, 214858.

14 HEARING OFFICER CELLI: Mr. Geever, can you help us
15 with this?

16 MR. GEEVER: Is it 214885, is that what you're
17 talking about?

18 HEARING OFFICER CELLI: That is SCE L.A. Basin
19 Application Decision of Denial and Rehearing, May 26, 2016.

20 MR. HARRIS: Yeah, it's not that decision. It's the
21 testimony in that proceeding.

22 HEARING OFFICER CELLI: Well, I need to know what
23 exhibit number it is in order for us to make a record on
24 whether we're going to exclude it or allow it.

25 MR. BABULA: That one's not 3016?

1 HEARING OFFICER CELLI: 3016?

2 MR. BABULA: On page 11 of this document you provided
3 today.

4 HEARING OFFICER CELLI: The exhibit list?

5 MR. BABULA: Yeah, the exhibit list. 3016 is titled
6 Testimony of Southern California Edison on Results of Its
7 2013 Local Capacity Requirements Request for Offers.

8 HEARING OFFICER CELLI: If that's the case, that's
9 already in the evidence. If it's 3016, we received it last
10 time.

11 MR. HARRIS: Yeah. We'll withdraw that one then.

12 HEARING OFFICER CELLI: Okay.

13 MR. HARRIS: I want to note three more that we're not
14 going to object to. But I want to note for the Committee
15 that three of the documents that the Trust relies upon are
16 from the Draft EIR for the Long Beach, they call it the CDIP
17 SEADIP (phonetic) process.

18 HEARING OFFICER CELLI: Uh-huh.

19 MR. HARRIS: That's not a final document. And so
20 rather than trying to exclude those, we'll just ask the
21 Committee to weigh them accordingly.

22 HEARING OFFICER CELLI: You're asking the Committee
23 to waive them?

24 MR. HARRIS: Weigh.

25 HEARING OFFICER CELLI: Oh, weigh.

1 MR. HARRIS: I said that.

2 HEARING OFFICER CELLI: Okay. Thank you.

3 MR. HARRIS: I thank you, gentlemen, so, yeah.

4 HEARING OFFICER CELLI: Okay. So the motion is to
5 exclude Exhibits 3049, 3056 and 3058. The basis for the
6 motion on 3049 is it was Bill Powers' legal brief.

7 MR. HARRIS: Yeah. It is a legal brief in the PUC
8 proceeding. It is, by definition, legal argument and not
9 actual evidence. And we don't want them to tier off of a
10 legal brief, too --

11 HEARING OFFICER CELLI: Okay.

12 MR. HARRIS: -- for factual matters here.

13 HEARING OFFICER CELLI: Mr. Powers, can you make an
14 offer of proof as to any factual use of the document, please?

15 MR. POWERS: I can. It wasn't clearly defined what
16 portion of that reply brief was being referenced, which is
17 the attachment to the reply brief. That's two calculation
18 tables based on four California Energy Commission references
19 that are cited in the tables. It was not the text of the
20 reply brief.

21 HEARING OFFICER CELLI: Okay. I think that seems
22 relevant. And it isn't legal argument, per se, it's just a
23 citation.

24 MR. HARRIS: Well, one of the flaws here then is that
25 we had no idea what portion of that document he was referring

1 to.

2 HEARING OFFICER CELLI: Right.

3 MR. HARRIS: And so my experts have no chance to
4 review whatever sections he's putting into the record for.

5 HEARING OFFICER CELLI: I read that this morning.
6 This is just -- I think it's two tables.

7 That document only contains two tables; right?

8 MR. POWERS: That is correct. There's only one
9 attachment to the reply brief.

10 HEARING OFFICER CELLI: Oh, okay. And it just
11 mentions Alamitos 1 through 6; right?

12 MR. POWERS: It's a comparison of the capacity factor
13 of the coastal merchant steam units to the projected capacity
14 factors of the Alamitos combined-cycle unit and the
15 Huntington Beach combined-cycle unit. And it compares the
16 greenhouse gas emissions tonnage per year to those to.

17 HEARING OFFICER CELLI: Right. But that comparison
18 is with the AGS, the existing Alamitos Generating Station,
19 not the proposed Alamitos Energy Center.

20 MR. POWERS: It's both.

21 HEARING OFFICER CELLI: Oh, I couldn't tell, because
22 it said Alamitos 1 through 6. I thought those were the
23 units, 1 through 6.

24 MR. POWERS: Right. Table 1-A shows Alamitos 1
25 through 6. Table 1-3 at the base shows CO2 emission rate for

1 proposed combined-cycle and gas turbines at Huntington Beach
2 and Alamitos.

3 HEARING OFFICER CELLI: Okay. So forgive me for not
4 saying that, but that -- so what pages of the document are
5 those?

6 MR. POWERS: This is the attachment to the reply
7 brief.

8 HEARING OFFICER CELLI: Let me make sure that that
9 actually made it into the record. What was the name of that
10 document again?

11 MR. POWERS: That's 3049, is the document.

12 HEARING OFFICER CELLI: Okay. And it was 214861?

13 MR. POWERS: 214861.

14 HEARING OFFICER CELLI: Okay. I'm calling it up
15 right now. 214861, the document title is A1411012, Powers
16 Engineering Reply Brief with Attachment A71501. And so I am
17 just going to scroll down to the very back of this.

18 MR. POWERS: Correct.

19 HEARING OFFICER CELLI: Yes, this is a legal brief,
20 legal argument. But then, okay, there you go, what would be
21 page 13 and 14; right? Yeah. Okay.

22 So I guess at this time you would be moving in --
23 well, I guess it would be Applicant's motion to strike
24 everything. Well, you want to strike everything. But I'm
25 thinking what we might do is allow in these two charts for

1 whatever purposes he's going to use them.

2 MR. HARRIS: I would like to strike the entirety of
3 the document. I think it's a bit of an unfair surprise that
4 we're supposed to focus on things that were not identified.
5 My witnesses didn't have an opportunity to review those
6 tables.

7 And so on that basis, you know, certainly the first
8 11 pages that are legal argument, that can't come in. But in
9 addition, I think --

10 HEARING OFFICER CELLI: I would strike that, yeah.

11 But let me ask you, Mr. Powers, can you give us more
12 background about what these -- where did these tables come
13 from, and what are they telling us?

14 MR. POWERS: What the table are telling us is that
15 the greenhouse gas emissions from power generation in the
16 L.A. Basin are going to increase dramatically with the
17 permitting of this combined-cycle unit and the combined-cycle
18 unit at Huntington Beach. And that in my testimony in this
19 proceeding that refers to that information, I'm pointing out
20 that even if the permitting or the approval of this single
21 640 megawatt combined-cycle gas turbine unit at Alamitos will
22 exceed by a significant amount the emissions of greenhouse
23 gases from the merchant coastal units in the L.A. Basin.

24 HEARING OFFICER CELLI: Okay. Now, I just want
25 clarification here because I am looking at the chart on page

1 13, this one, Table A-1. It talks about El Segundo,
2 Huntington Beach 1 and 2, Redondo Beach 5, 6, 7 and 8, and
3 Alamitos 1, 2, 3, 4, 5, 6, which when I looked at this I took
4 that to mean Alamitos Units 1 through 6, which are the
5 existing Alamitos Generating Station, okay?

6 MR. POWERS: That is correct.

7 HEARING OFFICER CELLI: All right. And then on Table
8 A-2 we have El Segundo 4, Huntington Beach 1 and 2, Redondo
9 Beach 5 through 8, and then Alamitos 1 through 6 again, which
10 I took to mean Units 1 through 6 from the Alamitos Generating
11 Station.

12 MR. POWERS: Correct.

13 HEARING OFFICER CELLI: Okay. So I'm looking for
14 something that relates to the Alamitos Energy Center in the
15 document. Can you point me --

16 MR. POWERS: Yes. Why don't you scroll down a little
17 bit on that table? Scroll down --

18 HEARING OFFICER CELLI: This one?

19 MR. POWERS: -- to the end of the document.

20 HEARING OFFICER CELLI: I'm actually scrolling up in
21 my parlance, but is this the page you want?

22 MR. POWERS: No.

23 HEARING OFFICER CELLI: Okay.

24 MR. POWERS: Scroll down to the end of the document
25 please.

1 HEARING OFFICER CELLI: All right.

2 MR. POWERS: Okay. So the point of the Alamitos 1 to
3 6 calculations, the question I'm answering in that table is
4 what is the greenhouse gas emission rate of the existing
5 Alamitos Station today? In this case today was 2014. Same
6 with the other merchant coastal units in the L.A. Basin, how
7 much CO2, how much greenhouse gas is being admitted now? How
8 much will be admitted in the future if the Alamitos Energy
9 Center Combined-Cycle Unit Power Block 1 and it's equivalent
10 at Huntington Beach are operational?

11 HEARING OFFICER CELLI: Okay. I'm sorry if I'm being
12 dense.

13 MR. HARRIS: Mr. Celli, I might be able to help on
14 the document.

15 HEARING OFFICER CELLI: Okay. Go ahead.

16 MR. HARRIS: Our people are pretty smart, because
17 they figured out exactly which part of the reply brief to
18 focus on.

19 So we would not object to this coming in. We'd like
20 the first 11 pages struck.

21 HEARING OFFICER CELLI: Okay.

22 MR. HARRIS: The tables can come in, that's fine.
23 And the first 12 pages, whatever. Up to the signature block
24 we'll strike, how's that? The attachments can come in.

25 HEARING OFFICER CELLI: Okay.

1 MR. HARRIS: Ms. Pottinger is being precise, like she
2 always is, so --

3 HEARING OFFICER CELLI: Okay. I haven't heard from
4 Staff on that. Is there --

5 MR. HARRIS: One more explanation for that.

6 The reason that I know that we were focused on that
7 is that our Rebuttal Testimony, starting on page one under
8 the title Greenhouse Gas Emissions, so that's Exhibit 214906,
9 our Rebuttal Testimony, we addressed the issues that are in
10 that table. So it's not an unfair surprise, and so that's
11 why I withdraw my prior motions.

12 HEARING OFFICER CELLI: Okay. But I am going to
13 strike the legal argument, because that is irrelevant.

14 MR. POWERS: That is fine.

15 HEARING OFFICER CELLI: And so to be clear, Mr.
16 Powers, I'm admitting only the last two pages of Exhibit
17 3049.

18 MR. POWERS: Thank you.

19 HEARING OFFICER CELLI: Okay. So 3049, admitted,
20 only last two pages, so that's a modification, the last two
21 pages.

22 (Whereupon, Intervener Exhibit 3049 is received and
23 admitted.)

24 HEARING OFFICER CELLI: Staff?

25 MR. BABULA: So no objection as to the last two

1 pages.

2 Staff concurs with the general motion regarding the
3 legal argument in the briefing materials being stricken.

4 HEARING OFFICER CELLI: Thank you.

5 And let's move on to 3056. The Applicant had an
6 objection, 3056?

7 MR. HARRIS: Yes. And again, this is a PUC document.
8 It's not a final document, is our understanding. It is a set
9 of planning assumptions that were set forth by the PUC staff
10 during that process. And so as such it's not -- it doesn't
11 represent a final agency action. It does represent the
12 position of a party, the party being the Commission staff, I
13 think in this case, the PUC Commission staff. And so I we
14 don't believe it's the kind of thing that reasonable people
15 would rely upon for factual issues in an evidentiary hearing,
16 so --

17 HEARING OFFICER CELLI: Well, I'm going to let Mr.
18 Powers make an offer of proof.

19 But I just want to -- I'm just going to come out and
20 tell you that when I was reading these I have some concerns
21 about documents coming in from other agencies that are not
22 binding on this agency, that are basically focused on certain
23 projects that they do not have the same charter, shall we
24 say, and responsibilities that we have. And it is a can of
25 worms that I'm concerned about, especially with regard to

1 need, as you acknowledge. Because I read in one of your
2 motions or one of your papers today that although you
3 disagree with the idea of need, need is irrelevant to these
4 proceedings.

5 So when I've been seeing these documents that come
6 | through from the CPUC or that are affected by the ~~LTPP~~-LTPP
7 process, those usually go to need. I don't really see any
8 use for them, other than to bolster the argument with regard
9 to need that you've -- well, not you, I'm just saying you in
10 general, Los Cerritos Wetlands Land Trust, has made in
11 several of their documents. And so I'm questioning the
12 relevance of those documents.

13 So with that, I'm going to give you this chance now
14 to make an offer of proof, if you would.

15 MR. POWERS: Yeah. The offer of proof is not that
16 they are there to demonstrate need. They are there to
17 demonstrate what resources count for grid reliability. One
18 of the project objectives of this project is to meet the grid
19 reliability need of the L.A. Basin.

20 HEARING OFFICER CELLI: Right. But if, in other
21 words, if another agency makes a determination that there's a
22 need, we don't go there, basically. Someone comes in with an
23 application to the Energy Commission and says we want to
24 apply for this power plant, we pretty much do an analysis of
25 the power plant that they bring us. We don't really look at

1 | other proceedings, like the CPUC and the LTPPLTPP. We just
2 | assume they're doing their job and we're going to do ours.

3 | MR. POWERS: Well, to be fair, again to repeat, it's
4 | not about need, it's about grid reliability.

5 | But, two, in the first phase of this proceeding, PUC
6 | staff and Witness Vidaver were insistent that we should not
7 | revisit the LTPP-LTPP need determination. So the Commission
8 | is relying in its testimony on the need determination in the
9 | LTPPLTPP. And I say that only to mention that in Phase 2, to
10 | say we have nothing to do with the LTPP-LTPP need
11 | determination, and then to use it -- your witnesses are using
12 | it to say we should not revisit that, that creates some
13 | difficulty for us to speak to the issue.

14 | HEARING OFFICER CELLI: No, I understand that.

15 | What I would say is this, we heard an abundance of
16 | evidence with regard to the LTPP-LTPP process in Phase 1, in
17 | Part 1 of our Evidentiary Hearing. It was relevant to an
18 | alternatives analysis at the time, and that's how it came in,
19 | and I see it as relevant.

20 | What I'm interested in right now is how does this
21 | document relate to Air Quality? Because that's where we're
22 | going.

23 | MR. POWERS: The way it relates to Air Quality is
24 | that the Applicant, AES, is -- I would call it a
25 | substitution, not an alternative. We have four LMS100 gas

1 turbines as part of the application. That's not in dispute.
2 That wouldn't be an alternative, that's on the table as
3 something they want to build.

4 HEARING OFFICER CELLI: It's part of the application,
5 yes.

6 MR. POWERS~~HEARING OFFICER CELLI~~: Yes. And they have
7 -- they're going to build 100-megawatt battery storage system
8 which the CEC does not regulate, does not get involved in.
9 And the point is this is an Air Quality segment, and that in
10 the Phase 2 testimony we're pointing out that they're going
11 to build two batteries; 400 megawatts of fast-start simple-
12 cycle turbines are already in the application. And one issue
13 that was raised in the first phase but is relevant to Air
14 Quality is if there is only a need for 640 megawatts, if that
15 640 megawatts is 400 megawatts of LMS100 units that are
16 already in the application, and the 200 megawatts of
17 batteries they say they want to build by 2021 and 2023,
18 you've met the grid reliability requirement and you've
19 dropped your air emissions 90 percent relative to that 640-
20 megawatt combined-cycle plant.

21 MR. HARRIS: Mr. Celli, this is starting to sound a
22 lot like the testimony --

23 HEARING OFFICER CELLI: Right.

24 MR. HARRIS: -- that we have concerns about, so --

25 HEARING OFFICER CELLI: Well, let me just say that

1 we've heard this already. We've already got all of this when
2 we were talking about alternatives before.

3 MR. POWERS: That is not correct. We did not raise
4 this as an alternative.

5 HEARING OFFICER CELLI: Well, it came in, in your
6 testimony. I thought it was in Alternatives. But the point
7 is we've heard that there are alternatives to this project in
8 terms of demand response, a smaller project. We talked about
9 the La Paloma in association with the data response. And
10 really, all of this seems to be creeping into the arena of
11 need. And now necessarily, we aren't necessarily using the
12 word need, we're calling it requirements or the necessity or
13 need, but it's all in the arena of need.

14 And I'm of the mind, and I'll give Staff a chance to
15 speak afterwards, but this is Los Cerritos Wetlands Land
16 Trust's offer of proof at this time, but I'm just saying that
17 I'm disinclined to go in the direction of anything having to
18 do with need or alternatives, because we've already heard it.

19 So anything further on that?

20 MR. POWERS: Not specifically on the offer of proof
21 for that --

22 HEARING OFFICER CELLI: For this exhibit?

23 MR. POWERS: -- document.

24 HEARING OFFICER CELLI: Okay. We're talking about
25 3056.

1 Staff, anything?

2 MR. BABULA: Well, I would agree with Mr. Powers that
3 the 400-megawatt simple-cycle concept is new to this filing.
4 Like this was not brought up before. Before they had just
5 wanted the 640. So it had been -- now I would argue it's an
6 alternative that should have been brought up before, because
7 that's record is closed.

8 But as for the document, Staff's neutral on if it
9 comes in or not. I believe it's repetitive of stuff that has
10 been submitted before with other PUC proceeding documents in
11 the first FSA, so it's probably duplicative.

12 HEARING OFFICER CELLI: Okay. If you'll just give us
13 a moment here.

14 (Colloquy Between Hearing Officer and Commissioners)

15 HEARING OFFICER CELLI: Okay. And then, so I'm just
16 going to hold on to that.

17 We're going to go to 3058 next, which was Applicant's
18 motion to exclude the FSA on the Huntington Beach Energy
19 Project. And you know something, I'm going to save us a lot
20 of time. That is irrelevant to our -- to these proceedings.

21 We have a process by which each power plant that we
22 certify is unique and treated as such. We can, by law, under
23 Government Code section 11425.60, designate an Energy
24 Commission decision as precedential, meaning that it can be
25 used, relied on as authority in other decisions, other

1 applications. This is something that is used extremely
2 rarely. I know that we used it in the Avenal case with
3 regard to the factors in deciding how to deal with greenhouse
4 gases. I'm not sure we've ever used it anywhere else.

5 So what I can tell you is Huntington Beach is not a
6 precedential decision, and so I would not include it. Unless
7 you have anything further on that, that would be the ruling
8 on that.

9 Anything, Applicant?

10 MR. HARRIS: I think I'd just note that that's not a
11 Commission decision, it's a Staff document. That's another
12 reason I think it should be excluded, so --

13 HEARING OFFICER CELLI: Oh, the document, oh, I
14 thought I was -- yes, that's true, that is.

15 MR. BABULA: It's an FSA. I think it's the current
16 one that just got published a couple weeks ago. I mean, I
17 think this is the current one that's still in front of the
18 Committee being processed.

19 HEARING OFFICER CELLI: Oh, okay.

20 MR. BABULA: Is that correct?

21 HEARING OFFICER CELLI: So it never --

22 MR. BABULA: Yeah.

23 HEARING OFFICER CELLI: It hasn't even reached --

24 MR. BABULA: Right.

25 HEARING OFFICER CELLI: -- the decision stage?

1 MR. BABULA: In fact, it's probably part of the same
2 Committee that might be on it right now.

3 HEARING OFFICER CELLI: Yeah. So we would not
4 include that. We would strike that.

5 MR. POWERS: And --

6 HEARING OFFICER CELLI: Mr. Powers?

7 MR. POWERS: -- it's just a reference to a quotation
8 that's in the testimony. So the quotation will be there
9 without a reference, which is fine.

10 HEARING OFFICER CELLI: Okay. Great. Then with
11 that, that covers all of Applicant's motions to strike.

12 Staff, did you have any other exhibits that you
13 sought to strike?

14 MR. HARRIS: Well, you didn't -- I'm sorry, you
15 didn't rule on 30.

16 HEARING OFFICER CELLI: I know I haven't because --

17 MR. HARRIS: Okay. I'm sorry. I'm sorry.

18 HEARING OFFICER CELLI: -- I'm trying to get --

19 MR. HARRIS: All right.

20 HEARING OFFICER CELLI: -- the full total of what
21 exhibits I'm having to deal with.

22 So, Staff?

23 MR. BABULA: Staff has nothing further. We believe
24 that Staff has and is prepared today to respond to what we
25 think are inaccuracies and issues with the stuff being

1 brought in. But we believe it's fine to bring it in, and
2 we'll address it in testimony.

3 HEARING OFFICER CELLI: Okay. Then the motion before
4 us from the Los Cerritos Wetlands Land Trust was to move into
5 evidence Exhibits 3049 through 3084. The Applicant sought to
6 strike -- or objected, and wanted to exclude Exhibits 3049,
7 3056, 3058.

8 So the ruling is that Exhibit 3049 will be admitted,
9 but that admission is modified to include only the last five
10 pages of Exhibit 3049 that contains the tables that Mr.
11 Powers relied upon.

12 Exhibit 3050 through 3055 are admitted and received.

13 (Whereupon, Applicant Exhibits 3050 through 3055 are
14 received and admitted.)

15 HEARING OFFICER CELLI: Exhibit 3056 is excluded as
16 irrelevant.

17 Exhibit 3057 is admitted.

18 (Whereupon, Applicant Exhibit 3056 is received and
19 admitted.)

20 Exhibit 3058 is excluded. That's the Huntington
21 Beach Energy Project FSA.

22 3059 through 3084 will be admitted.

23 (Whereupon, Applicant Exhibits 3059 through 3084 are
24 received and admitted.)

25 HEARING OFFICER CELLI: Okay. And with that we've

1 now taken care of all of the -- oh, where am I? We've
2 received all of the written testimony that was offered.

3 At this time, I'm going to go ahead and -- oh, I want
4 to take advantage of the fact that Alana Matthews is here.

5 Alana, if you wouldn't mind standing up and waiving
6 your hand?

7 If there is anyone in the room who is a member of the
8 public who would like to make a comment today at two o'clock
9 or sometime thereafter, we will need you to go into the back
10 where the Public Adviser is. She's holding up one of those
11 blue cards. Fill out the blue card and we will call your
12 name at the public comment designated time.

13 If you would like to make a comment but you don't
14 like public speaking, you just want to write something down
15 and have somebody else read it, the Public Adviser will take
16 your comment and read it into the record. But we still need
17 you to fill out that blue form.

18 So thank you for being here, Ms. Matthews.

19 And if you have any questions, the Public Adviser is
20 here to help you understand our process and facilitate
21 participation in it.

22 Okay, with that, I'm now going to ask some questions
23 of Staff with regard to LORS. And this is -- I'll tell you
24 what, I'm going to swear in your witnesses first, because
25 this is all Air Quality.

1 So Bill Powers or Joe Geever, which of you are -- are
2 you both here for Air Quality or --

3 MR. POWERS: Bill Powers is here for Air Quality.

4 HEARING OFFICER CELLI: And then I have Jerry Salamy,
5 Stephen O'Kane, Elyse Engel, Nancy Fletcher, David Vidaver,
6 Gerry Bemis, sorry, and Matt Layton here for Staff; is that
7 correct? Have I forgotten anybody in terms of Air Quality
8 witnesses?

9 MR. BABULA: That's everybody.

10 MR. O'KANE: I think you missed Ben Beattie, who is
11 on the phone.

12 HEARING OFFICER CELLI: I thought he was Public
13 Health only.

14 MR. O'KANE: No. He was Air Quality only, not Public
15 Health.

16 HEARING OFFICER CELLI: Oh, okay. And Ben Beattie.
17 Well, I'm going to have to swear him in separately because
18 he's on the phone.

19 So the names I just called, if you would please
20 stand, raise your right hand, and then I'm going to call you
21 by name.

22 (Witnesses are collectively sworn.)

23 HEARING OFFICER CELLI: Ms. Engel?

24 MS. ENGEL: Yes.

25 HEARING OFFICER CELLI: Mr. Salamy?

1 MR. SALAMY: Yes.

2 HEARING OFFICER CELLI: Mr. O'Kane?

3 MR. O'KANE: Yes.

4 HEARING OFFICER CELLI: Mr. Powers?

5 MR. POWERS: Yes.

6 HEARING OFFICER CELLI: Ms. Fletcher?

7 MS. FLETCHER: Yes.

8 HEARING OFFICER CELLI: Mr. Bemis?

9 MR. BEMIS: Yes

10 HEARING OFFICER CELLI: Mr. Vidaver?

11 MR. VIDAVER: Yes.

12 HEARING OFFICER CELLI: Mr. Layton?

13 MR. LAYTON: Yes.

14 HEARING OFFICER CELLI: Thank you. You may be
15 seated.

16

17 And then, Mr. Beattie, can you hear me?

18 MR. BEATTIE: Yes, I can.

19 HEARING OFFICER CELLI: Okay. Would you please
20 stand, raise your right hand?

21 (Benjamin Beattie is sworn via WebEx.)

22 MR. BEATTIE: I do.

23 HEARING OFFICER CELLI: Thank you. You may be
24 seated.

25 Before I'm going to turn this over to the parties, I

1 have certain questions I'm going to ask of Staff, Staff's
2 witnesses.

3 And, Jamie, these witnesses mikes are going to have
4 to be able to be functional over here.

5 So I thought that -- well, I guess that doesn't
6 matter. So who wrote -- which among -- who wrote the Air
7 Quality section for the FSA? Okay.

8 Ms. Fletcher, this question is for you.

9 In the LORS table there was -- and I don't have a
10 page for you, but I can tell you, there is the Air Toxics Hot
11 Spot Information Assessment Act that was mentioned. And at
12 the bottom of the page it says something about being below
13 levels of significance, or something like that. And I wanted
14 to ask you -- do you see what I'm talking about?

15 MS. FLETCHER: Hello?

16 HEARING OFFICER CELLI: Yes.

17 MS. FLETCHER: Yes. Health and Safety Code 44300,
18 Air Toxics "Hot Spots" Information and Assessment?

19 HEARING OFFICER CELLI: Yes. And if you look over on
20 the conclusions -- now you may not have -- I may have had to
21 have drawn this conclusion from text below. I don't remember
22 if you have a third column or not.

23 MS. FLETCHER: No. But there is another LORS section
24 in the document which talks about the LORS.

25 HEARING OFFICER CELLI: That's what I'm talking

1 about.

2 MS. FLETCHER: Okay.

3 HEARING OFFICER CELLI: The one that actually comes
4 to a conclusion.

5 MS. FLETCHER: Yes.

6 HEARING OFFICER CELLI: Okay.

7 MS. FLETCHER: Compliance with LORS section.

8 HEARING OFFICER CELLI: Correct. And in the far
9 right column for that code section there is a -- it basically
10 concludes that there would be no significant impacts, which
11 is a CEQA concern.

12 And what I want to know is whether, instead of saying
13 that,

14 "The AEC estimated independently by the Applicant, Staff
15 and South Coast Air Quality Management District are all
16 within acceptable levels," which would be a LORS inclusion
17 rather than a CEQA conclusion, in other words, I'm trying
18 to get to the LORS rather than a determination that
19 there's a significant impact, I want to know, is it within
20 code?

21 MS. FLETCHER: Can I ask you, is that in Public
22 Health section or Air Quality?

23 HEARING OFFICER CELLI: Oh, there you go. No, that's
24 Public Health. Sorry. Strike that.

25 The one for Air Quality was 40 Code of Regulations,

1 Parts 51, 52, 70 and 71. It's the first one. And my
2 question there is --

3 MS. FLETCHER: I'm sorry. You were saying CFR?

4 HEARING OFFICER CELLI: Yeah, CFR, Parts 51, 52, 70.

5 And it says --

6 MS. FLETCHER: Okay.

7 HEARING OFFICER CELLI: -- the description of the
8 LORS says, "This rule tailors GHG emissions to PSD and Title
9 5 permitting applicability criteria."

10 MS. FLETCHER: I'm sorry. Are you in the GHG section
11 or the Air Quality? Are you in the GHG appendix?

12 HEARING OFFICER CELLI: Probably GHG.

13 MS. FLETCHER: Okay. Let me get to that page.

14 HEARING OFFICER CELLI: Sorry. As you're looking
15 through this, I'll tell you what my question is. I'm trying
16 to determine, because I looked at those sections and they
17 looked to me like a lot of description of what states have to
18 do to implement the State Implementation Plan and things at
19 that level, which would not be an affirmative requirement on
20 the Applicant themselves.

21 And that's why I'm trying to determine, is this an
22 applicable LORS or not in terms of -- in other words, if
23 these are directive to state agencies, federal and state
24 agencies saying you must do this, you must do that, but
25 there's nothing in there for the Applicant to do, then I

1 would not consider it an applicable LORS. I would strike it.

2 MS. FLETCHER: Well, a lot of these regulations,
3 they're very broad and they have a lot of different
4 requirements, so they may be subject to them. And some of
5 the requirements in them, they have the Title 5 permitting
6 program in there and they are subject to Title 5, due to
7 their size.

8 HEARING OFFICER CELLI: Okay. Then what I need to
9 know because I didn't see anything in the record is, is this
10 Applicant in compliance?

11 MS. FLETCHER: We expect them to be in compliance
12 with all the LORS.

13 HEARING OFFICER CELLI: Okay. So for purposes, as
14 the Air Quality expert, when you write these decisions, what
15 the Committee is looking for is an analysis of whether, if
16 they're going to be in compliance, if there are any
17 applicable Conditions of Certification that sort of guarantee
18 compliance with that, what would they be?

19 MS. FLETCHER: We do have some in this section.

20 HEARING OFFICER CELLI: Right. I know that there are
21 conditions. What I want to know is which conditions ensure
22 that the Applicant will be in compliance with 40 Code of
23 Federal Regulations, Parts 51, 52, 70 and 71?

24 MR. SALAMY: Mr. Celli, this is Jerry Salamy.

25 HEARING OFFICER CELLI: Yes.

1 MR. SALAMY: If I may?

2 HEARING OFFICER CELLI: Please.

3 MR. SALAMY: These are the regulations, as you point
4 out, that require an applicant, or in this case the
5 jurisdiction delegated authority for these regulations, to
6 promulgate laws, ordinances, regulations or standards to
7 implement these programs.

8 In this case the South Coast has been delegated
9 authority to implement those programs. So the demonstration
10 of AES's compliance with these standards is actually nested
11 in Staff's analysis of compliance with the --

12 HEARING OFFICER CELLI: South Coast.

13 MR. SALAMY: -- South Coast Air Quality Management
14 District Regulations, specifically their rules, 1300 and 1700
15 rules.

16 HEARING OFFICER CELLI: Thank you.

17 MR. SALAMY: You're welcome.

18 HEARING OFFICER CELLI: That's what I was looking
19 for. Thank you.

20 Then one more question. If you look at page 4.1-184,
21 this might just be a typo, but it says,

22 "Compliance with local LORS, the FSA says that South Coast
23 Air Quality Management District Rule 1714 establishes
24 preconstruction review requirements for GHGs, and the AEC
25 is evaluated for these requirements in the PDOC."

1 And I'm just wondering, should that have said FDOC?
2 Was that carried forward?

3 MS. FLETCHER: Yes. It was in both the PDOC and the
4 FDOC.

5 HEARING OFFICER CELLI: Okay. Thank you. Good.

6 MS. FLETCHER: Right.

7 HEARING OFFICER CELLI: Now, we have received written
8 testimony from all of the parties with regard to Air Quality.
9 So at this time what I'm interested in doing, because the
10 written testimony -- oops, there it is -- the written
11 testimony and rebuttal testimony operates as, basically, your
12 direct testimony, as though some attorney was asking direct
13 examination of all of the witnesses. So now we're only
14 interested in, at this time, rebuttal testimony.

15 Los Cerritos Wetlands Land Trust did not seek to put
16 on any further Air Quality evidence, other than the written
17 testimony.

18 Applicant, did you ask for oral testimony? I don't
19 think so.

20 Or Staff?

21 MR. BABULA: I thought you -- didn't you guys want to
22 put on additional or --

23 MR. HARRIS: Yes.

24 HEARING OFFICER CELLI: That's right.

25 MR. HARRIS: We do have some.

1 MR. BABULA: Yeah.

2 HEARING OFFICER CELLI: I'm sorry.

3 MR. BABULA: They do.

4 HEARING OFFICER CELLI: Okay. Thank you.

5 MR. BABULA: Yeah.

6 HEARING OFFICER CELLI: Mr. Powers, you wanted to put
7 on some additional testimony. So with that, you have the
8 floor. If you would please give us the testimony you wanted
9 to give us on Air Quality today.

10 MR. POWERS: And I may be out of step at this point
11 with where we at on the panel discussion. I had questions
12 for Staff and for AES.

13 HEARING OFFICER CELLI: We're going to -- what I
14 suspect is going to happen is you're going to give your
15 testimony now. And the experts will probably speak up on
16 issues that they had questions about. And then there will
17 probably be some discussion. And you'd be able to ask those
18 experts, as well. But first, let's bring in the additional
19 testimony you wanted to bring in, and then we'll go around.

20 MR. POWERS: And I do not have additional testimony,
21 beyond what you were calling direct testimony, the opening
22 and rebuttal --

23 HEARING OFFICER CELLI: Perfect.

24 MR. POWERS: -- that's already been filed.

25 HEARING OFFICER CELLI: Then you're free to go ahead

1 and start asking questions of the witnesses as you wish.

2 MR. POWERS: Very good. Thank you.

3 I think the first question would be for Staff, and
4 that is just to get a clarification, and it's a combination
5 of Staff and AES. In AES rebuttal to my opening, they
6 indicate that I'm confused on the amount of time for the
7 emission control systems to warm up, 30 percent for warm-hot
8 start, 60 minutes for cold start, and not the electrical
9 output, meaning how much time it takes to get to full output.
10 Yet, in your FSA Part 2, page 4.7-28, when you describe the
11 start-up events for the combined-cycle turbines, at the
12 bottom of that page you have bulleted the cold-start event,
13 warm-start event, hot-start event. You state, "It can take
14 up to 60 minutes from fuel initiation for the equipment to
15 reach a baseload operating rate."

16 Now did you mean to meet the electrical baseload
17 operating rate, it could take up to 60 minutes from ignition
18 to reach that baseload operating rate?

19 HEARING OFFICER CELLI: And before anybody answers,
20 I'm going to ask for this panel discussion, always state your
21 name before you speak so that the people on the phone and for
22 the Court Reporter, we know who's speaking.

23 So please go ahead.

24 MS. FLETCHER: Nancy Fletcher, Energy Commission.

25 So when we are describing these events in the Air

1 Quality section, we are looking at things from an air quality
2 point of view and what emission rates are. So when we look
3 about -- when we discuss the times for a cold-start event and
4 the times for the warm start and hot start, we're looking at
5 emission controlled equipment and how long it takes the
6 equipment to start operating at what we call a baseload
7 emission rate, which is what the requirements state.

8 MR. POWERS: Thank you.

9 MS. FLETCHER: Okay.

10 MR. POWERS: But just to be clear, what you're
11 talking about is fuel initiation, first gas into the
12 combustion chamber to the point where this combined-cycle
13 unit is rated at 640 megawatts.

14 MS. FLETCHER: No, I'm not talking about megawatt
15 rating.

16 MR. POWERS: Doesn't baseload operating rate mean
17 baseload electrical?

18 MS. FLETCHER: Right. Right. It can be up to --

19 MR. POWERS: Understood. But we're talking about --

20 MS. FLETCHER: -- 60 minutes.

21 MR. POWERS: -- electrical here. It's electrical
22 capacity, baseload meaning megawatts.

23 MR. LAYTON: This is Matt Layton.

24 The way I understand it is the start-ups defined by
25 the District are up to, so it may take up to 30 minutes. At

1 that point you have to be in compliance with the normal
2 operating parameters. You may start up in fewer than 30
3 minutes or 60 minutes.

4 MR. POWERS: Right.

5 MR. LAYTON: The baseload, I think, is the megawatts
6 output. But the District is here and they could answer that
7 question, if you want to ask them specifically.

8 MR. POWERS: No, that answer is sufficient.

9 HEARING OFFICER CELLI: Actually, I wonder if I
10 should have the District come up and be sworn and brought in?

11 MR. SALAMY: I was going to modify that answer a
12 little bit. I think --

13 HEARING OFFICER CELLI: State --

14 MR. SALAMY: I think Matt hit --

15 HEARING OFFICER CELLI: State your name please.

16 MR. SALAMY: I'm sorry. This is Jerry Salamy, CH2M
17 Hill. I was going to modify the answer that Matt provided.

18 There are two components that we're talking about,
19 two main components that we're talking about in terms of
20 startup. When you start up a project you start up the gas
21 turbine, which in the case of the AEC Project, the Alamos
22 Energy Center Project, the gas turbines start up very
23 quickly. They can reach baseload within ten minutes from the
24 time you initiate fuel flow.

25 The other component is the steam cycle. For a hot

1 and warm start, that steam cycle will take an additional 20
2 minutes to heat up and reach baseload. So in this case,
3 baseload is talking about the entire project, not just the
4 gas turbine portion of it.

5

6 HEARING OFFICER CELLI: I'm clear.

7 Go ahead, Mr. Powers.

8 MR. POWERS: Good. I appreciate that clarification.

9 A related question is, and it's probably a better
10 question for CH2M Hill, is the -- or for the staff, is you
11 talk about from fuel initiation until baseload operating
12 rate. In the second case, ten minutes on combined-cycle
13 unit, simple-cycle component, ten minutes to full load, an
14 additional 20 minutes to steam cycle coming up to full load,
15 is there also a time between dispatch signal from ISO, for
16 example, and fuel initiation?

17 MR. SALAMY: From an air quality standpoint, we look
18 at the time when you're actually going to be generating air
19 emissions. So whatever communication between the project and
20 ISO or whatever utility is dispatching them is really
21 irrelevant from our standpoint.

22 MR. POWERS: I'd like to introduce an exhibit at this
23 point because what --

24 MR. HARRIS: And I, as you might imagine, I have
25 concerns about that.

1 HEARING OFFICER CELLI: Well, let me hear what it is
2 and then we'll make a ruling --

3 MR. POWERS: So --

4 HEARING OFFICER CELLI: -- and then we'll hear from
5 everybody.

6 Go ahead, Mr. Powers.

7 MR. POWERS: In my rebuttal testimony, I alleging a
8 LORS violation, that ISO requires resources that are serving
9 grid reliability purposes to go from zero to full load in 20
10 minutes or less. The combined-cycle component of this system
11 cannot do that. However, I do not know how many minutes that
12 total, zero to full load, is because I don't know the amount
13 of time between the dispatch signal that initiates that 20
14 minutes.

15 HEARING OFFICER CELLI: So the motion to put in more
16 testimony at this time, I think we've got all of the evidence
17 that we need with regard to this.

18 The question, I think, that's relevant here is if
19 you're alleging a LORS violation, you should probably start
20 by telling us what law or ordinance you are alleging has been
21 violated.

22 MR. POWERS: I'd like to refer to my rebuttal
23 testimony that was filed.

24 HEARING OFFICER CELLI: And I'll just save us all
25 some time, that a decision from another agency isn't a LORS.

1 It's not a law. It's not an ordinance. It's not a
2 regulation. And it's not a standard. Because a standard,
3 which is the most, I guess, broadest of those acronyms that
4 make up LORS, they apply to everybody, but a decision applies
5 to a project. And so it's like a court decision, it's not
6 law per se. It's binding -- I mean, a trial court decision
7 is binding on those parties only, and so that's not a LORS.
8 So I've read several documents that made some mention to that
9 effect, argument in terms of briefs and things like that.

10 So I would say that, unless you've got a code section
11 or something in that regard, I'm disinclined to include more
12 testimony based on that.

13 So do you have -- I'll entertain an offer of proof,
14 Mr. Powers.

15 MR. POWERS: This is the California Independent
16 System Operator Tariff section 40.3.1.1.

17 HEARING OFFICER CELLI: One -- say that again.

18 MR. POWERS: California Independent System Operator
19 Tariff section 40.3.1.1.

20 MR. HARRIS: And where is this in Mr. Powers' pre-
21 filed testimony?

22 MR. POWERS: Page one of rebuttal testimony filed
23 yesterday.

24 MR. HARRIS: Page one? Thank you.

25 MR. POWERS: Or page two, excuse me. Page two.

1 HEARING OFFICER CELLI: And that -- this is a ripe
2 area for discussion among the experts.

3 MR. O'KANE: This is Stephen O'Kane. Maybe I could
4 provide some clarification.

5 HEARING OFFICER CELLI: Please.

6 MR. O'KANE: So he's cited a CAISO Tariff, which
7 is -- which categorizes a resource and how it can be
8 dispatched. And in terms of a combined -- a two-on-one
9 combined-cycle unit, there's actual three resources that the
10 CAISO would then designate and categorize, because there are
11 three generators, electrical generators. There's an
12 electrical generator that's attached to each gas turbine and
13 an electrical that's attached to the steam turbine.

14 The generators that are attached to the gas turbine
15 qualify under that tariff. Those are fast starting gas
16 turbines. They can reach full load in ten minutes. The
17 steam turbine lacks, as heat has to be put into the steam
18 system, so it lags. It's slower. It doesn't meet that fast-
19 start resource. So two out of the three on the combined
20 cycle, two out of the three generators or resources meet that
21 tariff.

22 HEARING OFFICER CELLI: Okay. So thank you for that
23 clarification, Mr. O'Kane.

24 You know, as we're talking the question of a
25 violation of LORS is a legal question that Los Cerritos

1 Wetlands Land Trust is free to argue in a brief, and that
2 would be the appropriate place to do that, but not now. At
3 this point we're trying to build the record of facts that
4 will support your briefs later.

5 So I think that you probably have enough evidence
6 there in terms of what you've already submitted, plus what's
7 in the FSA and the AFC to be able to make those arguments in
8 a brief.

9 MR. POWERS: May I make another statement?

10 HEARING OFFICER CELLI: Yes.

11 MR. POWERS: I don't contest what AES -- the
12 statement that AES just made. The simple-cycle component of
13 the combined-cycle unit can, in fact, meet the response time
14 standard. You have a situation where you have a 640-megawatt
15 grid reliability project wherein only maybe 400 or 420
16 megawatts can actually meet your project objective, grid
17 reliability.

18 HEARING OFFICER CELLI: Well, yeah, I read that in
19 your moving papers. Yes.

20 MR. POWERS: And so this is the Air Quality section.
21 If you had 1,040 megawatts of LMS100 turbines, or since
22 they're 100 megawatts each, let's say 1,000 megawatts --

23 MR. HARRIS: Mr. Celli, we're into legal argument
24 again.

25 HEARING OFFICER CELLI: I know. I'm just going to

1 let him finish the argument.

2 MR. POWERS: This is not legal argument. This is Air
3 Quality. The LMS100s emit much less on startup than the
4 combined-cycle unit does.

5 HEARING OFFICER CELLI: Right.

6 MR. POWERS: Therefore, it is an issue of the only
7 reason they're emitting more on startup is because their
8 startup takes quite a bit longer on the combined-cycle units.

9 And so this LORS violation is a critical issue
10 because --

11 MR. HARRIS: And I'd object to that
12 characterization --

13 HEARING OFFICER CELLI: Well --

14 MR. HARRIS: -- as a LORS violation.

15 HEARING OFFICER CELLI: -- I'll sustain that
16 objection, but the alleged violation.

17 Go on.

18 MR. POWERS: And I would appreciate not being
19 interrupted --

20 HEARING OFFICER CELLI: Well, they --

21 MR. POWERS: -- by Counsel for AES.

22 HEARING OFFICER CELLI: That is actually the
23 prerogative of the parties to object, because they need to
24 timely object in order to make the record, otherwise, they
25 waive the objection. So welcome to lawyer world. This is --

1 MR. POWERS: I think --

2 HEARING OFFICER CELLI: This is what --

3 MR. POWERS: -- it's fine to object, but let me
4 finish the sentence. There's time at the end of the sentence
5 to make the objection. It's just a courtesy issue.

6 HEARING OFFICER CELLI: Yeah. This is a different
7 kind of arena than that, but go ahead.

8 MR. POWERS: And that's all I have to say on this
9 issue.

10 HEARING OFFICER CELLI: Okay. What I want to be
11 clear about here is that we are looking at an application to
12 certify the AEC as we received it, as they've applied for it.
13 You know, I read where there are alternatives that I actually
14 read and understood, and I thought you did a clear job of
15 explaining the position that a simple cycle could be less --
16 cause less emissions than combined cycle in this case, and I
17 understood that. But those would be under the umbrella of
18 alternatives.

19 Really, at this point we're talking about air
20 quality. We want to know -- and we have the facts. I mean,
21 you have the facts now, unless you have other facts you want
22 to present, which we're happy to take. We're talking about
23 the quantification of emissions. We're talking about the
24 impact of those emissions on air quality, and that is the
25 subject area that we're talking about today.

1 So I want to draw a distinction so that we don't have
2 to keep going to alternatives, that there may be better ways
3 or other ways to do this. But we are looking at the
4 application that AES put forth for this particular
5 configuration, the 640 of combined cycle and the 400 of --

6 MR. POWERS: Just a clarification --

7 HEARING OFFICER CELLI: -- simple cycle.

8 MR. POWERS: -- for me, that my understanding was
9 that the Commission had an obligation to opine on a potential
10 LORS violation. I think what you're telling me is --

11 HEARING OFFICER CELLI: We do.

12 MR. POWERS: -- we don't have to opine on this LORS
13 violation --

14 HEARING OFFICER CELLI: No.

15 MR. POWERS: -- that we will put it forward as legal
16 argument. If you do opine on this LORS violation and say we
17 don't see it is a violation, that's one way to go. If, as it
18 does appear, if it takes 60 minutes to start up, and ISO is
19 saying in their standard, they've got to start up in less
20 than 30 minutes to be considered a grid reliability resource,
21 you will have to make a finding of overriding considerations
22 to allow that combined cycle to go through.

23 So it would appear to be a relevant issue, not just a
24 legal argument for later.

25 HEARING OFFICER CELLI: It is an issue that's going

1 to make its way to the Committee by way of your brief, and
2 when I say you, I'm talking about Los Cerritos Wetlands Land
3 Trust's brief. Because basically, a LORS is clear on its
4 face, presumably. It says thought shalt do this or not do
5 that, or though shalt do it at such and such a level, et
6 cetera. And if you can show that the evidence shows that it
7 does not do that, the project falls short, the project
8 violates that section, it can't comply, then that is exactly
9 the reason we have interveners, to bring that to the
10 attention of the Committee.

11 MR. POWERS: Very good.

12 HEARING OFFICER CELLI: But that is to be done in the
13 brief. Because really, if we start getting into legal
14 argument, as you see, the lawyers start speaking up and we
15 don't hear anything from the experts. So --

16 MR. POWERS: Very good.

17 HEARING OFFICER CELLI: -- we want to hear from the
18 experts.

19 So you still have the floor, if you had any other
20 further questions on this.

21 MR. POWERS: And I think I've stated enough on that
22 issue of the LORS.

23 Let me just take a moment to --

24 MR. LAYTON: Mr. Celli, could I respond to Mr.

25 Powers?

1 HEARING OFFICER CELLI: Mr. Layton, say your name
2 before you speak.

3 MR. LAYTON: This is Matt Layton.

4 One of the reasons I'm sitting up here today is
5 because I'm concerned about some of the facts that got into
6 Mr. Powers' testimony where ultimately he says that the
7 simple cycle would admit less emissions, and that's
8 absolutely true. If you run it, you know, ten percent of the
9 time compared to how many megawatt hours you might get from
10 the combined cycle, so I'm very concerned about that.

11 The combustion term of combined cycle, its pounds of
12 NOx on a million BTU input basis is less than the simple
13 cycle. Its parts per million is less than a simple cycle, 2
14 PPM versus 2.4 PPM. Its pounds per hour would be greater.
15 It's a bigger machine. But the pounds per megawatt hour is
16 less.

17 Now, I think it is important to acknowledge that
18 startups, shutdowns, running off design can, you know, tweak
19 the numbers. The numbers will be pushed one way or the
20 other. But I think his math on pages six and seven in the
21 footnotes, he's -- you know, the math is correct, I just
22 don't think the concepts are correct. So I --

23 HEARING OFFICER CELLI: And that's -- I love that you
24 raise that. Because here again, that is something that I
25 would expect to see in Staff's brief because --

1 MR. LAYTON: That's why I'm here today.

2 HEARING OFFICER CELLI: -- yeah, we're going to
3 have -- I mean, there are the facts that Staff put forth ~~it~~
4 in the FSA. There are the facts that Staff analyzed that
5 came from the AFC and the ~~AES~~-SAFC. And there are facts that
6 we received from LCWLT, Los Cerritos Wetlands Land Trust.
7 And it's in the briefs that we are looking to the parties to
8 make this information clear.

9 MR. LAYTON: And lastly --

10 HEARING OFFICER CELLI: Yes.

11 MR. LAYTON: -- this is Matt Layton again, I am
12 concerned that Mr. Powers is bringing need back into it,
13 because he's suggesting that the local reliability concerns,
14 which I don't want to discuss, but they can be addressed by
15 simple cycles operating fewer hours. I don't know, but I
16 would not suggest that we could, you know, plug in one for
17 another without some thought by another agency that actually
18 does the need assessment.

19 HEARING OFFICER CELLI: Right. Well, we actually, we
20 don't do the need assessment, but we do look at alternatives.
21 And we've already closed the record on Alternatives because
22 we've already received evidence on the alternatives. We've
23 received briefing on the Alternatives from Los Cerritos
24 Wetlands Land Trust pointing out what were perceived as
25 weaknesses or emissions in the analysis. And the Committee,

1 well, we've closed the record. We'll take all of that
2 information and weigh it and use that in their PMPD, which is
3 the Presiding Members Proposed Decision.

4 When the PMPD comes out, there is a 30-day comment
5 period. And I'm sure all of the parties will be commenting
6 on the PMPD. And so that's the way this process sort of
7 works out, okay?

8 And I just want to caution the parties, that if there
9 are factual differences, let's talk about the factual
10 differences. Let's not get into the conclusions or the, you
11 know, ramifications of these things. We want to know where
12 the factual differences are, if any. There may not be any,
13 but let's hear it.

14 So anything further from Los Cerritos Wetlands Land
15 Trust, Mr. Powers?

16 MR. POWERS: Just in response to Staff, to be clear,
17 there is no unique characteristic in the project's objectives
18 in the FSA that requires a combined-cycle gas turbine. A
19 simple-cycle gas turbine could meet all the project
20 objectives.

21 HEARING OFFICER CELLI: That's -- thank you.

22 Now, anything from Staff?

23 MR. BABULA: Well, I just wanted to -- this is Jared
24 Babula, Staff Counsel.

25 And I want to make sure we're clear that the factual

1 stuff is what we want. You know, I don't want the Committee
2 to -- if they have questions or something that's not clear,
3 we should make sure we flush it out now and don't rely on
4 briefing for the technical stuff.

5 Also, I want to note a procedural matter. Since the
6 Air District is here, usually they verify the FDOC. And
7 there's a little bit of -- a little presentation or some
8 acknowledgment. So I don't know how you want to handle
9 that --

10 HEARING OFFICER CELLI: Well --

11 MR. BABULA: -- just to identify FDOC and that it's
12 been completed, just to remind you of that.

13 Thanks.

14 HEARING OFFICER CELLI: Thank you. My intention
15 would be to have the South Coast Air Quality Management
16 District comment rather than testify, unless there's some
17 party that needs testimony from South Coast? And everybody
18 is shaking their head in the negative, so --

19 MR. BABULA: No. It's just normally part of our
20 process, is they just verify that the FDOC was complete
21 and --

22 HEARING OFFICER CELLI: Okay. We'll get to that in
23 comment. In fact, we'll let South Coast go first, unless the
24 Queen of England comes and then, you know -- okay.

25 So nothing further from Staff on Air Quality?

1 MR. BABULA: Well, yes. We do have -- so we didn't
2 file rebuttal testimony. We want to take this opportunity to
3 just hit some key points. And so the various Staff people
4 here will have some info to just clarify and primarily
5 respond to some of the information that the Trust filed.

6 And then, also, the Applicant filed some comments in
7 their Opening Testimony regarding a couple errata-type
8 changes to the FSA in some numbers. And so we did go through
9 and take a look, and there were some things in the FSA that
10 needed to get cleaned up to match. And so I guess we can
11 talk about that, and also how you want to get that
12 reconciled. If you want us to file a little errata that
13 basically takes what's already in the record from the
14 Applicant and just confirms, yes, it should have been 1.5,
15 not 1.6 --

16 HEARING OFFICER CELLI: That would probably be the
17 easiest thing.

18 MR. BABULA: Right.

19 HEARING OFFICER CELLI: Because then I'd be able to
20 point to it and cross reference --

21 MR. BABULA: Right.

22 HEARING OFFICER CELLI: -- and all of that, rather
23 than --

24 MR. BABULA: Okay.

25 HEARING OFFICER CELLI: -- having people testify to

1 it because then I'm, in the transcript, trying to make
2 sure --

3 MR. BABULA: Right.

4 HEARING OFFICER CELLI: -- if the court reporting
5 company decides to type in ten or numeral 1-0 --

6 MR. BABULA: Right.

7 HEARING OFFICER CELLI: -- I mean, it gets confusing.
8 So, yeah, I think an errata would be the best way to go.

9 Would the Applicant have any objection to Staff
10 filing an errata?

11 Where are we at? What would that be, in terms of
12 numerically? Where are at in your exhibits, 2014 is your
13 next one?

14 MR. BABULA: Yeah, we're on 2014.

15 HEARING OFFICER CELLI: So that would be 2015.

16 MR. BABULA: 2015.

17 HEARING OFFICER CELLI: Any objection to the
18 admission by the Applicant of Exhibit 2015, which would be
19 errata in Air Quality?

20 MR. HARRIS: No objection. Thank you.

21 HEARING OFFICER CELLI: Any objection from Los
22 Cerritos Wetlands Land Trust?

23 MR. POWERS: No.

24 HEARING OFFICER CELLI: Thank you. Okay. Then --

25 MR. BABULA: Okay. And then --

1 HEARING OFFICER CELLI: So I'm just going to say --

2 MR. BABULA: -- so there were --

3 HEARING OFFICER CELLI: -- for the record, that 2015
4 would be admitted --

5 MR. BABULA: Right.

6 HEARING OFFICER CELLI: -- and is admitted.

7 (Whereupon, Staff Exhibit 2015 is received and admitted.)

8 MR. BABULA: And then did the Applicant -- there were
9 two comments that you made regarding --

10 MS. FLETCHER: I got clarification on this one.

11 MR. BABULA: Oh, you did? Okay. Are we okay?

12 MS. FLETCHER: Yeah. Yeah, the emissions rates were
13 updated. There was a label.

14 MR. BABULA: Same as Jerry.

15 MS. FLETCHER: It's Nancy Fletcher from Energy
16 Commission.

17 There was a couple of comments that they had that I
18 need to get some clarification on.

19 HEARING OFFICER CELLI: And who's they?

20 MS. FLETCHER: The Applicant.

21 HEARING OFFICER CELLI: Thank you.

22 MS. FLETCHER: And so I confirmed that the emission
23 rates in the table were correct. It was just a labeling that
24 needed to be addressed.

25 HEARING OFFICER CELLI: Okay. And that will be in

1 your errata; right? That will be in --

2 MR. BABULA: That's correct.

3 HEARING OFFICER CELLI: -- Exhibit 2015?

4 MS. FLETCHER: That will be, yes.

5 HEARING OFFICER CELLI: Okay. Thank you.

6 MS. FLETCHER: And then (indiscernible). And then he
7 final was they had proposed some language changes to AQSC 9.
8 And at this time I can't conclude with certainty that the
9 changes would be acceptable. It had to do with simultaneous
10 firing of the auxiliary boiler commissioning, and the
11 commissioning of the combined-cycle gas turbines. And in the
12 analysis, we looked at those as two separate events. We
13 looked at the commissioning of the boiler being completed
14 prior to the commissioning of the combined-cycle gas
15 turbines.

16 Now, acknowledging that the commissioning for the
17 auxiliary boiler, the emissions are very low. And it may be
18 acceptable, I just cannot conclude at this point without
19 going back through my analysis and the FDOC with the South
20 Coast Air District, because they also did their analysis
21 based on the commissioning of the boiler being prior to the
22 commissioning of the combined-cycle.

23 MR. SALAMY: Is that an analysis that will take a
24 substantial amount of time? If not, we would appreciate that
25 analysis being performed, because the added flexibility would

1 be a benefit.

2 Sorry. This is --

3 MR. BABULA: Well, we wouldn't be able to --

4 MR. SALAMYMS. STOKLEY: Sorry. This is Jerry Salamy
5 with CH2M Hill.

6 MR. BABULA: This is Jared Babula.

7 So, well, that means the record wouldn't be closed
8 after this event --

9 HEARING OFFICER CELLI: That's --

10 MR. BABULA: -- and we don't really want that, so
11 that we're probably just going to keep it as is, the
12 condition, as our recommendation, if you want to expedite
13 this.

14 MR. HARRIS: I think that's correct. We obviously
15 prefer our own language, surprisingly, but there aren't any
16 factual issues that have to be resolved on the record. And I
17 think we can brief the issue. And we'll continue to talk to
18 Staff, because this is a very, very minor point. And if we
19 were forced to live with the language in there, we would make
20 accommodations in our process. We're just, you know, looking
21 for a little flexibility.

22 So just to be 100 percent clear, we may ask the
23 Committee for our language, but we can live with the status.

24 HEARING OFFICER CELLI: Okay. But what I want to
25 make clear, that we intend to close to the record today. So

1 today is the day. If there is a dispute or a question of any
2 sort between the parties about language and conditions, today
3 is the day to resolve it.

4 MR. HARRIS: There are no ~~really-remaining~~ factual
5 ~~interest~~issues. And despite our interest in always having
6 more information, we don't need more information. And so we
7 want the record closed, as well, on these points.

8 _____

9 HEARING OFFICER CELLI: So that was on AQSC 9.

10 _____And Applicant is acknowledging that you're okay with
11 it the way that it is?

12 MR. HARRIS: We're okay with the state of the record,
13 yes.

14 MR. BABULA: Okay. So that will handle -- we'll get
15 the rest of those details in the errata, which will be
16 Exhibit 2015.

17 And then I believe Staff now wants to just hit some
18 high points and add some additional info.

19 HEARING OFFICER CELLI: So, folks, I just want to
20 acknowledge, it's ten after 2:00. We were going to break for
21 public comment.

22 How many people are members of the public here, a
23 show of hands that want to make a comment? I have one, two,
24 three people.

25 What I'd like to do, if it's okay with you all, is

1 finish this line -- we're going to finish up Air Quality in
2 about five or ten minutes, and then take public comment at
3 that time. So if you can sit tight, we'll get to that. So
4 thank you for your indulgence, members of the public.

5 And, Staff, we were with Staff.

6 MS. FLETCHER: Yes. We just wanted to make a
7 couple --

8 MR. BABULA: Name.

9 MS. FLETCHER: Nancy Fletcher from the Energy
10 Commission. I would just like to make a couple of comments
11 regarding the cumulative analysis. We feel that it was a
12 robust discussion. Just some clarifications.

13 If we look at the Cumulative Impact section, when we
14 look at Air Quality Table 47, what is included in this table
15 is we have our cumulative impacts which include emissions
16 from the Alameda [sic] Energy Center as proposed. And it
17 also includes emissions from surrounding facility stationary
18 sources that were considered significant that was modeled.

19 HEARING OFFICER CELLI: What page was that?

20 MS. FLETCHER: This is page 4.7-70 --

21 HEARING OFFICER CELLI: Thank you.

22 MS. FLETCHER: -- Air Quality Table 47. There is a
23 discussion preceding that which kind of summarizes what I'm
24 saying. But I don't believe that summary was properly
25 characterized in the testimony we received from the Trust.

1 So we have our cumulative impacts there. And those
2 were all modeled impacts that included, again, the Alamitos
3 Energy Center and the surrounding projects that was
4 determined significant, a list of projects that we had
5 emission data from that we were able to model.

6 And then we have a column with background. And that
7 background was a background baseline from monitors
8 surrounding the proposed site. And we have a very in-depth
9 discussion regarding the choice of monitors used and which
10 data was used, because it wasn't always the closest monitor
11 that was chosen because each different monitor has a
12 different function of whether it is recording what is to be
13 reflective of maximum impacts to an area or what is
14 background.

15 So we discussed previously in the analysis each
16 different monitor, and then we used very conservative
17 background information here. And then we added those
18 together and we looked at the total impact of that and
19 compared that to the limiting standard.

20 And just one other point is if we look at the
21 conclusions that we made under the table, one of our findings
22 that we make is that this area is nonattainment for PM-10 and
23 the PM-2.5. Therefore, any emissions are considered
24 significant to us and we do require mitigation for those. So
25 those findings are made alone -- are made, and we require the

1 mitigation.

2 So these findings underneath the table are based on
3 the impact analysis that was done. We did add some
4 additional information in the FDOC just to give a kind of
5 idea of what kind of emissions, what the level of those
6 emissions are in comparison to the background. That's
7 additional information. However, our analysis and our
8 conclusions were made in the paragraphs before.

9 MR. BABULA: So a quick question, Nancy.

10 MS. FLETCHER: Uh-huh.

11 MR. BABULA: This is Jared Babula.

12 So we went beyond? We didn't just do a ratio?

13 MS. FLETCHER: No, we did not just do a ratio.

14 MR. BABULA: Okay. Thank you.

15 HEARING OFFICER CELLI: Thank you. Anything further
16 from Staff that needs to clear the record in terms of Air
17 Quality?

18 MS. FLETCHER: This is Nancy Fletcher again from the
19 Energy Commission.

20 It seemed, also, that there was a little bit of
21 confusion when we were reading the submission from the Trust
22 as far as what we consider dust and what we consider
23 particulate matter. There was some questions being raised.

24 So what we look at as dust, is when we're looking at
25 that we're pretty much looking at that as particulate matter.

1 And now there are some subsets of that which are classified
2 as PM-10 and PM-2.5, and these are subsets because they
3 behave in very different types of ways than what you would
4 expect from particulate matter, which is larger in size.

5 So when we start looking at the PM-10 and the PM-2.5
6 and how they behave in the atmosphere, they are -- we're
7 looking at, first of all, when they're released, at the
8 height. When we're looking at the operation of the plant, we
9 are looking at the PM-10 and the PM-2.5 and the height it's
10 released and at what rate. Because there's different
11 chemical reactions depending on the meteorology, as well,
12 that it can -- that makes a difference on when it's going to
13 fall out and hit the ground. So that is what we are looking
14 at impacts from operation.

15 And when we start looking at the dust from
16 construction, it's a very different type of particulate
17 that's not a gaseous original. It's coming from -- it can
18 come from the cars tailpipes. It can also come from driving
19 depending on what the silt content is, if it's paved, if it's
20 not paved. And so those emissions are released at a
21 different point than what the stack is and so they're going
22 to behave differently, and so we look at those impacts as
23 more localized.

24 And so that is why we have two separate sections for
25 construction impacts and for operation impacts is because

1 what we're looking at in the types of pollutants and the
2 releases are different for construction than they are for
3 operation.

4 MR. BABULA: And then a question. This is Jared
5 Babula.

6 Do we mitigate for the secondary or the fugitive dust
7 from conservation?

8 MS. FLETCHER: We do. We do. And the mitigation
9 that is proposed are different for each type because they do
10 behave differently. So when we look at PM-10, and we look at
11 PM-2.5 which is what the gaseous emissions are made up of
12 from the operation, those can tend to move farther if they're
13 smaller in size. Once you get smaller in size, they can
14 move, you know, further away. Their impacts can be further
15 away from the project site. And we look at that as more of
16 on a regional basis. And we have the monitors at the site
17 that also pick up what the, you know, local contribution is
18 from those emissions, as well.

19 So when we start looking at our construction
20 mitigation, we look at how we're going to prevent these from
21 actually being formed, or even prevent them from moving
22 offsite. And again, a lot of these, we're looking at their
23 origin. It comes from, you know, a very lower based.
24 They're also disbursed on the project site. It's not all
25 confined to one area. So we have a different set of

1 mitigation that we propose for those.

2 HEARING OFFICER CELLI: Anything further?

3 MR. BABULA: Last one.

4 MR. VIDAVER: Good afternoon. Dave Vidaver with
5 Energy Commission Staff. You have my spelling over there?
6 V, as in Victor, -I-D, as in David, -A-V, as in Victor,
7 -E-R. Okay.

8 I was asked to review the Trust's Opening Testimony
9 over the weekend and offer comments, and I'll try to be
10 brief. And if I --

11 HEARING OFFICER CELLI: Let me just ask this because
12 if the briefs are mostly argument, and I want to make sure
13 that Mr. Vidaver is responding to factual differences, not
14 legal conclusions. And I hope that you've discussed that
15 with your counsel already.

16 MR. VIDAVER: I am only going to deal with the facts,
17 I hope.

18 HEARING OFFICER CELLI: Thank you.

19 MR. VIDAVER: I hope.

20 HEARING OFFICER CELLI: Go ahead.

21 MR. VIDAVER: You let me know if I venture into areas
22 I shouldn't, including, as you put it, un-predictive
23 colloquy --

24 HEARING OFFICER CELLI: Yes.

25 MR. VIDAVER: -- I believe you called it.

1 HEARING OFFICER CELLI: Thank you.

2 MR. VIDAVER: Okay. Section 1A of the testimony at
3 the bottom of page two states that the combined-cycle block
4 of the AEC is projected to emit up to 1.1 million metric tons
5 per year of GHG. That number is not a projection, that's a
6 cap on emissions. As you no doubt know, almost all, in fact,
7 I could probably safely say all plants are licensed to emit
8 at far higher levels than they're projected to emit for
9 various reasons.

10 On the following page the first full paragraph states
11 that,

12 "The FSA provides no information to support the claim that
13 the AEC combined-cycle block will reduce the use of higher
14 GHG-emitting resources somewhere in the WACC."

15 The Air Quality section contains, I believe, several
16 pages on how and why the AEC will displace energy from
17 higher-emitting resources. It's the inevitable outcome of
18 the economic algorithms that a utility uses to dispatch
19 generation at its disposal. It's an outcome of how the ISO
20 dispatches generation resources to maintain reliability.

21 And as my office has been asked in several instances,
22 can you prove this with a simulation model, I would say that
23 if we ran a simulation model and it showed that the AEC
24 resulted in an increase in GHG emissions, we would return the
25 model to the vendor and ask them to take the buttons out of

1 it, and they would apologize and look for them. The
2 reduction in cost means a reduction in fuel burn, which means
3 a reduction in GHG emissions.

4 And any other outcome -- the only circumstances under
5 which AEC could be built and operated and not reduce
6 greenhouse gas emissions, compared to a world in which it
7 were not built, would be if it were built and never run.

8 In the next paragraph the testimony says that,
9 "The AEC combined-cycle block will serve as an impediment to
10 meeting the state's GHG reduction targets."

11 There are numerous long-run studies that have been
12 performed at the request of the state's energy agencies and
13 the governor's office that look at the economy and the
14 electricity system in 2050 and what will be necessary to
15 reduce greenhouse gas emissions to the levels desired by the
16 state. And many of those assume very large amounts of
17 natural gas-fired generation. Because one or most of the
18 pathways that get us to a low GHG economy by 2050 assume an
19 incredible amount of electrification. We electrify the
20 transportation fleet. We electrify industry. We swap out
21 natural gas in our homes for electricity. Because the one
22 fuel source that we can decarbonize is electricity,
23 whether --

24 MR. POWERS: I would like to object at this point.

25 HEARING OFFICER CELLI: What's the objection?

1 MR. POWERS: The objection is I think this is
2 colloquy, you used the term, where I see no exhibits. I see
3 the Staff simply expounding on what he thinks he's read.

4 HEARING OFFICER CELLI: I'm inclined to sustain the
5 objection, because this is getting into argument. I have
6 actually read this before, what you're saying.

7 MR. VIDAVER: Yes.

8 HEARING OFFICER CELLI: It's in --

9 MR. VIDAVER: I believe it's in -- a reference is, if
10 it's not in this case, it's at least in several in the
11 Alternatives section.

12 HEARING OFFICER CELLI: I believe it's in -- I think
13 I read this in GHG and in testimony, prior testimony, when
14 you were testifying on the phone in Alternatives.

15 MR. VIDAVER: Okay.

16 HEARING OFFICER CELLI: So I'm going to sustain the
17 objection.

18 And let's see if there's -- unless there's anything
19 further that's --

20 MR. BABULA: Is that --

21 HEARING OFFICER CELLI: -- of a factual --

22 MR. BABULA: Yeah.

23 HEARING OFFICER CELLI: -- basis, Mr. Babula?

24 MR. BABULA: Is that sustained because it's just
25 repetitive of what's already in the record?

1 HEARING OFFICER CELLI: It's argument, which is what
2 Mr. Powers was saying in a roundabout way, colloquy. It was
3 really an argument. And I think that we have that evidence
4 in the record already. But we are interested in just
5 anything new. Go ahead.

6 MR. VIDAVER: The testimony asserts that simple-cycle
7 units will operate about one-tenth the hours operated by
8 combined-cycles on an annual basis, and therefore emit far
9 fewer GHG emissions. The energy that is not generated by
10 those combined-cycles would, of course, have to be generated
11 somewhere else. And that --

12 HEARING OFFICER CELLI: And when you say the
13 testimony, you're talking about Mr. Powers' testimony?

14 MR. VIDAVER: Yes.

15 HEARING OFFICER CELLI: Okay. Go ahead.

16 MR. VIDAVER: Yes.

17 HEARING OFFICER CELLI: Just to be clear. Go on.

18 MR. VIDAVER: The testimony states that the combined-
19 cycles will generate more, and despite being more efficient
20 will therefore produce more greenhouse gas emissions. If
21 instead you were to build a simple-cycle or several LMS100s,
22 they would, of course, generate far less and produce fewer
23 GHG emissions. But all that foregone energy would have to be
24 generated somewhere else.

25 The testimony also says that you could supplement or

1 replace gas-fired generation with storage and result in far
2 less emissions from the project. And that, of course, would
3 also be true, except to charge the storage you would need to
4 generate energy somewhere else, and that energy would have
5 emissions.

6 MR. POWERS: I have to object again. This, to me, is
7 simply argument.

8 HEARING OFFICER CELLI: It's actually rebuttal
9 testimony. So I was going to -- I'm going to allow that,
10 because you did make those assertions in your opening
11 testimony, I think it was your opening testimony, possible
12 your rebuttal testimony.

13 MR. POWERS: Very good.

14 HEARING OFFICER CELLI: And so I'm just going to give
15 Mr. Vidaver a chance to rebut it.

16 MR. VIDAVER: And I'll -- just two more comments.

17 One is at the bottom of page seven the testimony
18 states that,

19 "The certification by the CEC of excessive amounts of
20 combined-cycle gas-fired generation with no consideration
21 given in either case to the state's overarching energy
22 goal of rapidly reducing GHG emissions is contrary to
23 state laws, regulations and standards intended to rapidly
24 reduce GHG emissions in California."

25 At the risk of venturing into an area that I

1 shouldn't, it should be noted that the Public Utilities
2 Commission is charged with reducing greenhouse gas emissions
3 from the electricity sector to the extent that's possible,
4 while ensuring reliability. And they have approved a
5 contract with this facility.

6 The last comment I would like to make is that the Air
7 Quality section states that it is not expected that
8 developers of new capacity, such as a developer of the AEC,
9 would bring a project to completion without a contract,
10 quote, "This is an unnecessary and unsupported assumption."

11 Whether or not it is necessary is up to the
12 Committee. I think that if the Committee believed that
13 everything that was licensed by the Energy Commission was
14 indeed built, this hearing would have even more gravitas than
15 it does. The fact is that the Energy Commission has cited a
16 very large amount of gas-fired generation capacity over the
17 last 15 years that has not been built.

18 In fact, the only merchant gas-fired plant that has
19 been built in California in the last 15 years without a
20 contract with a utility or being owned by a utility was the
21 Inland Empire Facility back in -- I believe it was licensed
22 in 2003 and built in 2005, and that was state-of-the-art,
23 basically new generation turbine that was completely financed
24 by General Electric long before investors in the electricity
25 sector fully realized the dangers of building \$100 million

1 power plants without a contract. We have had numerous
2 facilities without a contract in the interim threaten to go
3 into bankruptcy, to retire, et cetera, and --

4 MR. GEEVER: I'm going to try and object here, too,
5 if you don't mind.

6 HEARING OFFICER CELLI: Okay. Well --

7 MR. GEEVER: What the --

8 HEARING OFFICER CELLI: -- give the basis of the
9 objection.

10 MR. GEEVER: This is irrelevant. Whatever the Energy
11 Commission had licensed and has gotten built in the past is
12 irrelevant. You're looking at a project now. The Applicant
13 is applying for this project. You have to assume he's going
14 to build it and operate it.

15 HEARING OFFICER CELLI: Sure. I think that what he
16 was doing, I think Mr. Vidaver was rebutting a statement
17 having to do with the odds of a power plant being built
18 without a PM -- a PPA, rather. But this project has a PPA,
19 so I don't even know why we're having this conversation.

20 MR. VIDAVER: The testimony filed by the Trust says
21 that the -- I'm sorry.

22 HEARING OFFICER CELLI: I actually recall.

23 MR. VIDAVER: I'm on the right path.

24 HEARING OFFICER CELLI: I know what you're saying --

25 MR. VIDAVER: Yes.

1 HEARING OFFICER CELLI: -- because I read it.

2 MR. VIDAVER: We're reviewing a 1,040-megawatt plant.
3 Testimony by Staff in the Air Quality section says that this
4 plant will not be built without a contract. This is a
5 question by the testimony, and I'm just offering support for
6 Staff's position.

7 HEARING OFFICER CELLI: Okay. Point made, I guess.
8 Anything further from Staff?

9 MR. WINSTEAD: Keith Winsted --

10 HEARING OFFICER CELLI: Mr. Winstead?

11 MR. WINSTEAD: -- the Project Manager.

12 I'm going to refer to the memo you sent out
13 yesterday, TN 214913. It has been verified through the
14 mailroom that that was sent. Those mailings have gone out --

15 HEARING OFFICER CELLI: We already took care of
16 that --

17 MR. WINSTEAD: -- on the list.

18 HEARING OFFICER CELLI: -- I think as housekeeping.

19 MR. WINSTEAD: Is it --

20 HEARING OFFICER CELLI: That was Mrs. Schmoker.

21 MR. WINSTEAD: Yeah. The 210301 on the list for that
22 7504. I just wanted to make sure we closed the loop on that.
23 Thank you.

24 HEARING OFFICER CELLI: Thank you, Mr. Winstead.

25 Anything further, Mr. Babula?

1 MR. BABULA: This is Jared Babula. He was just
2 clarifying that we did confirm with the mailroom that the
3 California Department of Fish and Wildlife, Kelly Schmoker
4 was on the list.

5 HEARING OFFICER CELLI: Good. Thank you.
6 Then, Applicant, anything further on Air Quality?

7 MR. HARRIS: No. Thank you.

8 HEARING OFFICER CELLI: Thank you.

9 Then at this time, Mr. Chandan --

10 MR. POWERS: I do have --

11 HEARING OFFICER CELLI: -- I'm going to ask you to
12 come forward please.

13 And, Mr. Powers, you have a question?

14 MR. POWERS: Just one final comment. Since Mr.
15 Vidaver opened this comment, I think he seemed to be aware of
16 mentioning that the PUC contract might be sensitive ground.
17 The contract is for 640 megawatts. I just want that on the
18 record.

19 HEARING OFFICER CELLI: That is abundantly clear in
20 several of the Trust's documents.

21 MR. POWERS: Thank you.

22 HEARING OFFICER CELLI: Thank you.

23 Mr. Chandan, please come forward and state your name,
24 and speak right into the microphone please.

25 MR. CHANDAN: Hi. My name is Bhaskar, it's

1 B-H-A-S-K-A-R, last name is Chandan, C-H-A-N-D-A-N,
2 Supervisor with South Coast AQMD.

3 HEARING OFFICER CELLI: Thank you for being here.
4 I'm just going to ask you, because now we're really into the
5 public comment section, and you're our first public
6 commenter. And as Mr. Babula commented, we need to hear from
7 South Coast Air Quality with regard to the FDOC and Staff's
8 FSA. Go ahead.

9 MR. CHANDAN: Okay. I'm here with Vicky Lee, who is
10 a Staff Engineer, who was the main person who worked on this
11 FDOC, PDOC. She has been involved with this for a couple of
12 years.

13 I think Staff was asking whether the FDOC is a final
14 document. There were some comments we have received on FDOC.
15 There were some discrepancies between the FDOC and the draft
16 permit that we had issued, so we are going to fix that before
17 we actually issue a permit to construct on this.

18 As you know, the PDOC, we had to re-notice it, so it
19 is in the re-noticing stage. Today is the final day for part
20 of the comments, the first stage of the end of the comment
21 period for the public notice, and we haven't received any
22 public comments yet.

23 HEARING OFFICER CELLI: Today is the last day?

24 MR. CHANDAN: Today, of the newspaper public notice.

25 We did receive one request for public hearing. That

1 was -- we received it on time and we are in the process of
2 responding to that. Our legal is reviewing the documents and
3 deciding on that.

4 So depending on the comments that we receive, we
5 believe we have done a good job. We have already addressed
6 all the comments that we received in the PDOC stage and
7 incorporated in the FDOC. We made some changes to the FDOC
8 based on the comments that we received on the PDOC.

9 So going forward, we believe we have a good document,
10 a solid document. But we'll have to wait until we receive
11 the comments and see if there's any changes we need to make.
12 We have to address the comments going forward, whatever
13 comments we receive, whether it be from public or the EPA.

14 So we will know either -- today is the first stage of
15 comments. But then EPA has a little more time to comment on
16 this, also. We haven't heard anything yet, but we'll wait
17 until the comment period gets over.

18 HEARING OFFICER CELLI: Thank you, Mr. Chandan. If
19 you don't mind, I'm just going to see if any of the parties
20 have any questions.

21 MR. CHANDAN: Sure.

22 HEARING OFFICER CELLI: Applicant?

23 MR. HARRIS: Well, I guess I want to make sure that
24 we're checking the box here. So the Air District is here.
25 They've provided a witness, and he's presented and explained

1 the DOC. So you're asking me if I have any questions. I
2 don't need to have him sworn, so I'm good at this point. But
3 I appreciate having that option.

4 And I want to thank the Air District for their hard
5 work here, so thank you very much.

6 And thanks for the option to ask questions, but I
7 don't need to know myself.

8 HEARING OFFICER CELLI: Staff, anything?

9 Mr. Winstead, any questions of --

10 MR. WINSTEAD: Staff doesn't have any questions.

11 Thank you.

12 HEARING OFFICER CELLI: Okay. And then --

13 MR. WINSTEAD: Appreciate your hard work.

14 HEARING OFFICER CELLI: -- Los Cerritos Wetlands Land
15 Trust, any questions for Mr. Chandan, who's here today from
16 South Coast?

17 MR. GEEVER: No, sir.

18 HEARING OFFICER CELLI: Okay. That's a no, for the
19 record.

20 MR. WINSTEAD: So let's move that into the record.

21 HEARING OFFICER CELLI: Thank you for being here,
22 sir, and Ms. Lee.

23 MR. CHANDAN: I have just a couple of things I wanted
24 to point out from the FDOC, which I think the parties might
25 find useful going forward.

1 On page 95, Table 13 of the FDOC, there's, for the
2 existing boilers, the GHG -- first, I'm talking about GHG
3 emissions. The total potential to emit for all six current
4 boilers is 10.14 million tons per year, the current PTE
5 (phonetic) for those boilers. On page 96, Table 14, the
6 actual emissions from those boilers are at 0.91 million tons,
7 it's 910,000 tons per year. I checked the EPA GHG data, and
8 that lists about 925,000 tons for the entire AES Alamos
9 facility. So these two numbers are consistent. Our number
10 is based on the actual gas usage.

11 For the new project, the PTE for the CO2 emissions is
12 1.72 million tons per year. Compare that to the boiler which
13 is at 10.14 million BTUs. These are, again, in the FDOC.
14 It's on page 150, Table 45.

15 MR. HARRIS: Mr. Celli, can I interrupt for a second.
16 Maybe we ought to have him sworn in so that we can cite to
17 these numbers in --

18 HEARING OFFICER CELLI: Well, you know, here's my
19 thought on that. This is public comment. The document that
20 he's describing exists. This is all in the document, isn't
21 it? I mean, this is duplicative of existing evidence.

22 MR. HARRIS: Excuse my interruption. I apologize.

23 HEARING OFFICER CELLI: I mean, unless I'm missing
24 something. I don't think I am, but --

25 MR. HARRIS: No, I'm missing caffeine, so thank you.

1 I'm sorry.

2 MR. CHANDAN: I'm just highlighting some areas from
3 the FDOC. I'm not presenting new --

4 HEARING OFFICER CELLI: You're highlighting existing
5 evidence --

6 MR. CHANDAN: Yeah.

7 HEARING OFFICER CELLI: -- that we already have. Go
8 on.

9 MR. CHANDAN: Right.

10 HEARING OFFICER CELLI: Yeah, that's fine.

11 MR. CHANDAN: For GHG BACT, in the FDOC page 290 in
12 Condition E193.4, the combined-cycle units are limited at
13 937.88 pounds CO2 per gross megawatt hour. In Condition
14 E193.5 the GHG emissions are limited to 1,356 pounds CO2 per
15 gross megawatt hour. So as you can see, that's for the
16 simple-cycle. The first one was for combined cycle. So
17 simple cycles emit about 45 percent more GHG compared to
18 combined cycle.

19 So those were the notes I wanted to make on GHG
20 emissions.

21 There was some discussion of the startup time. We
22 have limits in the FDOC on the startup time.

23 For the combined cycle, on page 22 and 23, Condition
24 C1.3, for combined cycle it's 30 minutes for non-cold starts
25 and 60 minutes for cold start. And these are the limits that

1 we expect the unit to be in compliance with the Air Quality
2 Standards. We're not talking about the generation and
3 getting up to full load. We are just looking at the Air
4 Quality Standards. And that's the maximum allowed time for
5 them to get into compliance with the air quality limits that
6 we have in the permit. And for the simple cycle, we have a
7 30-minute time for the startup.

8 So I just wanted to highlight those from the FDOC,
9 which I think the parties will find useful.

10 HEARING OFFICER CELLI: Thank you so much. And thank
11 you for being here, and Ms. Lee.

12 MR. CHANDAN: Thank you.

13 HEARING OFFICER CELLI: Thank you.

14 The first person we have is Melinda Cotton. Please
15 come forward, and you can speak right into that microphone,
16 Ms. Cotton.

17 MS. COTTON: Thank you. And thank you for
18 interrupting your meeting to hear public comment.

19 I live in Belmont Shore. I live three miles from the
20 AES plant, and the DWP plant. I've lived there for 33 years.

21 So we're definitely impacted, both by the sight of
22 it, the sound of it, the fumes, the emissions that we don't
23 know what they are, so we're definitely impacted by that. We
24 look forward to having smaller plants.

25 But I ask you to look closely at what the Los

1 Cerritos Wetlands Land Trust is proposing, that please do not
2 oversize this. Please keep this at a renewable area, if at
3 all possible.

4 And I'd like to tell you what's going on in our
5 neighborhood. We have friends who for 25 years have had
6 solar on their roofs, and they love it. So in March of this
7 year, as the heat got more and we wanted air conditioning,
8 and we couldn't justify doing that and causing more impact on
9 the grid, so we put in solar in March. We've been giving
10 back solar energy to Edison regularly. We cover all of our
11 electricity. We have the mini splits. Mitsubishi and other
12 people make them, they're a heat pump. They do both air
13 conditioning and heating. So we covered all of our air
14 conditioning needs, all of our electric needs, and gave back
15 money -- electricity to Edison.

16 We're now in a really cold spell. So my husband is
17 checking every day to see how we're doing, and we're covering
18 almost all of the heating. And I never had heating in my
19 bedroom before, so now I have heating in my whole house.
20 It's electric. It's off the grid -- I mean, it's not off the
21 grid because we pay \$10.00 a month to Edison for our
22 electricity.

23 But that's what's happening in our house. We're
24 covering our heating, our electricity. We're giving back to
25 Edison. And we feel good about it. And we walk. We're both

1 retired, so we walk around our neighborhoods regularly, in
2 the Heights, the Peninsula and Naples. And we're so excited
3 because we keep seeing people putting in solar. We keep
4 reading about companies that are making their parking lots
5 and their roofs solar, and that they are doing the same
6 thing.

7 Elon Musk has batteries that are now going to be able
8 to be installed, either at home or commercially, where you
9 can save your own power.

10 So we're all excited about this.

11 We have a rental unit in a condominium complex. It
12 needs a new roof. I hear there's roofing that's going to be
13 solar. We have our meeting in January. So I assure you, I'm
14 going to be telling them how great it would be if we think
15 about and look for roofing that's solar.

16 So with that and the wind power, I really, really
17 urge you, for the sake of air quality, the environment, the
18 critters in the rivers, and for all of us, please look at the
19 renewables. Please don't oversize it. We're using -- I used
20 to use gas heat for my heating. I'm not using that now. So
21 you can save both in natural gas, which we're worried about
22 where it's coming from, and in just general impact on our
23 whole society if you really, hopefully, encourage more
24 installation of solar and wind. And hopefully, as little
25 expanse, as little impact on the environment as you can in

1 the way of new gas powered.

2 So thank you very much for listening. That's sort of
3 what's happening on the ground. And I hope that's -- I think
4 that's very important to what you're doing. Thank you.

5 HEARING OFFICER CELLI: Thank you, Ms. Cotton.

6 MS. COTTON: Thank you.

7 HEARING OFFICER CELLI: Thank you for your comments.

8 MR. BABULA: A quick response. I just want to let
9 you know that what you're seeing here is just one facet of
10 what the Energy Commission does. We have whole other
11 programs dealing with renewable energy, rooftop solar. Some
12 of the programs that we are involved in have led to, at last
13 count, 500,000 homes getting solar on it.

14 So this is just one small element of everything the
15 Energy Commission does in regards to pushing renewable energy
16 and assisting in that area, and also in other types of
17 renewable energy efficiency and storage and biofuels, and so
18 there's a whole gambit of other things that the Energy
19 Commission is involved in. And if you look at our website,
20 you'll see a lot of the different projects and funding that
21 we do.

22 MS. COTTON: I recognize that, but thank you very
23 much for covering that.

24 And I hope you all have a good holiday. Thank you.

25 HEARING OFFICER CELLI: Thank you. And same to you.

1 James Gallo, are you still here?

2 MR. GALLO: Yes, sir.

3 HEARING OFFICER CELLI: Mr. Gallo, please come
4 forward. Speak right into that microphone, please.

5 MR. GALLO: Hello everybody. My name is James Gallo.
6 I'm a Long Beach resident.

7 I was just curious about -- maybe this is a question
8 directed at the Applicant. What is the purpose of the power
9 plant? I mean, what purpose does it really serve to the
10 environment? I mean, does the benefits outweigh the, you
11 know, the adversities that come with it?

12 MR. HARRIS: The purposes of the application are set
13 forth, and I can give you a copy of that. There's a whole
14 myriad of purposes. But basically, it is to use the existing
15 facility and generate electricity.

16 MR. GALLO: It's to generate electricity. I guess,
17 because I guess the way I'm interpreting everything in my
18 head is that it doesn't really seem to serve much benefit to
19 the City of Long Beach in regards to protecting the
20 environment. I believe that, you know, there's better
21 alternatives available. And I believe that in the long run,
22 you know, especially considering, you know, my age, you know,
23 I'm going to be around for a long time, and I believe that,
24 you know, the environment should be a top priority, and that
25 projects that do not favor the environment should have no

1 purpose. That's what I believe.

2 So then also I'm also curious about what is
3 considered significant and what is considered insignificant,
4 and who set the standard for what is considered significant?
5 Because I heard that a lot throughout the meeting and it
6 seems to puzzle me. Because, pardon me, it just seems that,
7 I mean, because you mentioned the term mitigate. So if
8 something -- so if there's something that is adversely
9 impacting the environment because of what's being incurred
10 from having the power plant, I mean, what's the purpose of
11 mitigating anything when we shouldn't even have it in the
12 first place? If I'm making any sense right here.

13 HEARING OFFICER CELLI: You know, I'm actually --
14 thank you. First of all, I, too, hope you're around for a
15 long time.

16 MR. GALLO: Sorry.

17 HEARING OFFICER CELLI: And I really thank you for
18 being here and asking your questions.

19 In the general scheme, because this is a broad
20 question, you're asking a very broad question --

21 MR. GALLO: Yeah.

22 HEARING OFFICER CELLI: -- CEQA, the California
23 Energy -- Environmental Quality Act, California Environmental
24 Act couches -- requires the Energy Commission to make sure
25 that if there are any significant impacts as a result of a

1 project, a power plant project, that they either be mitigated
2 below significance, and that's why you heard a lot of people
3 talking about significant impacts.

4 So what is that? It depends. Because we're looking
5 at things like water impacts, biological. We're looking at
6 the efficiency of the project. There are many, many levels.
7 Some of them are straight numbers. If you hit ten, it's
8 significant, if it's nine, it's not, something like that. In
9 other cases it's not quite so easy. In some cases it's a
10 question of experts, like in biology, making calls,
11 determinations, that what general range would be below a
12 level of significance. You'll see that in like, for
13 instance, Public Health today. You know, in public health
14 there's a number, 1 in 10 million, okay?

15 So difficult to answer your question. But what I'm
16 going to invite you to do, in about a month, if there's some
17 wood to knock on, we're going to publish the Presiding
18 Members Proposed Decision. And in that document will be the
19 analysis of all of these issues, you know, waste, hazardous
20 materials, soil and water, noise, traffic and transportation,
21 visual impacts, the whole thing, all of whom have to be
22 analyzed for what is the impact on the environment and is it
23 significant, and if it is, has it been mitigated below
24 significance?

25 So I'm inviting you to stay tuned because what's

1 coming, the Presiding Members Proposed Decision, is going to
2 address that for you, and it will explain all that.

3 (Colloquy Between Hearing Officer and Commissioner Scott)

4 HEARING OFFICER CELLI: It's also in Staff's Final
5 Staff Analysis, which is now on our website. And if you just
6 go to energy.ca.gov and click on Power Plants, click on
7 Alamitos, all of those documents are in the record.

8 So what we're doing now is we're looking at the FSA.
9 We're looking at the documents provided by the Los Cerritos
10 Wetlands Land Trust. We're looking at Applicant's- and
11 we're looking at all of it to make a determination in all of
12 these areas, so it's coming.

13 MR. GALLO: Well, hopefully it favors the
14 environment. Thank you, Mr. Celli, is that right?

15 HEARING OFFICER CELLI: Yes. Correct. Thank you,
16 sir.

17 MR. GALLO: Happy holidays to all of you.

18 HEARING OFFICER CELLI: And happy holidays to you.
19 Anna Christensen? Hi.

20 If anyone else would like to make a comment, if you
21 came in late, there's these blue cards back there where Alana
22 is sitting. We need you to fill one out and she'll bring it
23 up to me, and we'll know that you want to make a comment.

24 Ms. Christensen?

25 MS. CHRISTENSEN: Yes. Good afternoon. Thank you

1 for taking this time, for taking these issues seriously
2 enough to make it, apparently, a career for those here, I
3 assume. You're here because this is your job, for the most
4 part, not mine. I'm retired.

5 I'm here, fundamentally, because of the wetlands, and
6 as a living being. We say ecosystem. Other people don't
7 exclude humans from that. Other cultures, original people
8 consider this a sacred area and practice ceremony in this
9 area. And under SB 18, I assume the Applicant has consulted
10 California Indian tribal peoples from the -- and has their
11 input on this project, as well as state agencies under SB 18,
12 who are required to have input from not only California
13 Indian tribes, but other -- I'll just wait. Are you done?
14 I'm a former teacher. Sorry.

15 So, you know, and I say I assume, but I really don't
16 assume it. In fact, I doubt it. Because what we see over
17 and over again when projects come along is that these
18 concerns are the very last concerns. There are huge bodies
19 of law, starting with the Constitution, maybe, that are, you
20 know, on record, your numbers, your experts.

21 I'm a professional amateur, but I will tell you that
22 groups like the Los Cerritos Wetlands Land Trust only exist
23 because people do not care enough, not only people whose job
24 it is to care, but just the general public doesn't care
25 enough to figure out how to survive on this earth with

1 others, which includes non-human others. And now we have
2 destroyed in California more of our wetlands than any other
3 state. We have destroyed buffers that now are impacting our
4 human quality of life, so we're starting to pay attention.
5 Oh, wait a minute, I have asthma, I think we need some rules
6 here.

7 But the tide is turning. We see activism and
8 activists getting together with each other, with native
9 peoples, with local communities, with underserved
10 communities, communities of color.

11 We have environmental racism going on way up in North
12 Dakota, where my daughter is at the moment, because it was
13 fine to put a pipeline -- fine to put an oil pipeline through
14 water by an Indian tribe, but not up in all White Bismarck.
15 And we can explore these issues and we can divide and get
16 into different camps about it.

17 But what I want to tell you people is, I guess, or
18 really just beg, is that you see yourself as part of a whole.
19 You can't mitigate that away. There is no way this power
20 plant is not going to have a negative effect on the tiny
21 little bit of the ecosystem that survives.

22 The Land Trust doesn't have the money to create the
23 beautiful wetlands that it has envisioned in its plan, nor
24 does the State Los Cerritos Wetlands Authority have that
25 money. Who has money are private companies to build things

1 that, this young man is absolutely right, we don't need. And
2 if we do need it, then we need to rethink why we need it. Do
3 we really need air conditioning in Long Beach? We really
4 don't even need air conditioning in Long Beach, you know?

5 So when we're looking at the long run, much longer
6 than some of me and Kenneth, longer than our run probably,
7 right, you know, I mean, it's interesting that in these
8 audiences it's unusual to have a young man come and be here
9 and speak so plainly, and maybe rather clearly and rather
10 bluntly about, hey, I don't think we need this.

11 So what we do need is for you, and I'm not going to
12 make, other than a very momentary reference to the L.A. Times
13 articles on who gets on commissions and who they back and who
14 gives money to what politician, because that's a whole other
15 crazy path, and it's real, it's there. It's obviously there
16 every day in the choices that get made.

17 But I'm going to just ask you to, if you have not
18 already contacted local Native California Indian tribes, and
19 that includes Luiseno, because these wetlands are a part of
20 the ancient city complex of Puvugna and part of ceremony, and
21 are used, are used by the Teot Society (phonetic) that rides
22 their canoes through this area, are used to gather, and could
23 be even more used should they be restored. But also, they're
24 just there, what tiny little bit remains. And those animals,
25 like the coyote, you know, is in danger now by our new city

1 ordinances.

2 People need to get a little more humble here as a
3 species. And hopefully you can share that.

4 Thank you very much.

5 HEARING OFFICER CELLI: Thank you very much, Ms.
6 Christensen.

7 Ms. Matthews?

8 MS. MATTHEWS: Good afternoon. I do have one comment
9 to read on behalf of Randy Gordon who is President and CEO of
10 the Long Beach Area Chamber of Commerce, which says,

11 "Dear Commissioners, The Long Beach Area Chamber of
12 Commerce has been following the process for the approval
13 of the renovation of the AES Alamitos Energy Center for
14 some time now. And we are pleased to strongly lend our
15 support for this project that is critical for the
16 reliability to the people of Long Beach. This project is
17 a major win for the City of Long Beach and the entire
18 Southern California region.

19 "There a few things that are more basic and important to a
20 successful business climate or the community than an
21 efficient, clean and reliable source of energy. This
22 project will ensure that. There is a need for clean,
23 reliable and affordable energy to power our everyday
24 lives. When the sun is not shining and the wind is not
25 blowing, this project will provide that.

1 "We cherish our environment in Long Beach and our quality
2 of life. By eliminating the use for seawater for cooling
3 reducing startup time to a fraction, and improving the
4 aesthetics of the facility and its surrounding area, this
5 project is a huge win for the community. And the \$1
6 billion investment AES is making in the project will
7 provide tremendous economic benefit in Long Beach and the
8 region.

9 "AES is an excellent community partner and corporate
10 citizen. The Long Beach Area Chamber of Commerce
11 wholeheartedly supports this project and moving it forward
12 as quickly as possible. Thank you for allowing our
13 comments into the official record. Sincerely, Randy
14 Gordon."

15 HEARING OFFICER CELLI: Thank you, Ms. Matthews.

16 COMMISSIONER DOUGLAS: So this is Commissioner
17 Douglas.

18 I just wanted to suggest, since one of our public
19 speakers asked a number of questions about tribal outreach, I
20 know we don't have the Cultural Resources staff here, but I
21 was hoping Staff could describe at a high level how we
22 approach consultation and analysis with regard to cultural
23 issues?

24 MR. BABULA: Yeah. This is Jared Babula. And I did
25 want to address that Cultural question.

1 So our Cultural staff had extensive conversations
2 with the tribes. And how the process normally works is we
3 identify the tribes in the area. We reach out to them
4 through letters and calls, and then engage them and give them
5 the information about the project, invite them to meet with
6 us.

7 And in this case, there were a number of meetings
8 with our Cultural staff. They came down here and they
9 listened to the tribes' concerns, and it was the tribes that
10 you've identified. And, in fact, in our last -- I don't know
11 if you were here for the first Staff -- the Evidentiary
12 Hearing we had last month, but the tribe was present.

13 MS. CHRISTENSEN: (Off mike.) (Indiscernible.)

14 MR. BABULA: The tribe. Well, there were two
15 representatives from the Tribe that were here. I think they
16 were both in the same tribe.

17 MS. CHRISTENSEN: (Off mike.) (Indiscernible.)

18 MR. BABULA: Well, they were -- no, so let me
19 clarify.

20 So we reached out to multiple tribes, who actually
21 showed up and made comments. There were two representatives
22 from one tribe. They made comments. We have had further
23 discussions after their comments to clarify. And so it has
24 been ongoing, and it's all chronicled in the staff assessment
25 on the Cultural Resources. It discusses the outreach that

1 was done, which tribes were talked to, which ones
2 participated. And as a result of that participation, there
3 will be tribal monitoring during construction, which is stuff
4 they wanted. So --

5 MS. CHRISTENSEN: (Off mike.) (Indiscernible.)

6 MS. MATTHEWS: If you're going to comment, make it at
7 the microphone please.

8 MR. BABULA: Okay. Well, I'm just explaining to you
9 the --

10 COMMISSIONER DOUGLAS: I just want to say, too --

11 MR. BABULA: -- what happened.

12 COMMISSIONER DOUGLAS: -- I asked Staff to do a brief
13 summary. We don't want a detailed back and forth, but go
14 ahead and ask your question.

15 MS. CHRISTENSEN: I just have one comment on that.

16 So this is the pattern, perfect patter. There will
17 be tribal monitors during construction, which means we're
18 going ahead. We're going to have our project. We are going
19 to dig up and destroy areas that you would prefer not, but
20 you can watch.

21 This is the history of CEQA, which should have been
22 somewhat slowed down by SB 18 which asks for looking at a
23 project from a tribal perspective.

24 I don't want to take up any more of your time. But
25 all I will say is it's business as usual. And I'd love to,

1 you know, talk with you further. But just as a matter of the
2 record and public education, the way this is usually done is
3 through sometimes even a consultant that hires an
4 archeologist, that sends out a couple of letters, most of
5 which come back, some of which come back addressee unknown,
6 and drop the ball, that's it.

7 But under SB 18 it seems to me, the way I read it, is
8 that the public agencies, maybe not your agency but certainly
9 my city, the City of Long Beach when it comes to what it's
10 about to do in our wetlands in terms of its General Plan, is
11 required to create an honest and sincere relationship with
12 California Indian people. I have yet to see that on the part
13 of my city.

14 And I would encourage you not to follow this pattern
15 of a couple of guys showed up and now we're just going to
16 have some guys watching the digs, because this is incredibly
17 sad. And I will just tell you, this is not what it means to
18 really understand California Indians and how they see the
19 world, and how we hope that they could teach us to see the
20 world, those of us who care to have a world for our children
21 that has a coyote in it. Just saying.

22 MR. BABULA: Okay. If you'd like, I can have you --
23 and if you'd like, I can get your contact info and have you
24 talk to our Cultural Resource Specialist Dr. Gates who worked
25 for tribes for a number of years. And so I think you'll find

1 that our outreach is much more intensive than just simply
2 sending out letters and then trying to blow through it. So I
3 do think we have a very sensitive cultural team that has
4 spent many years working with the different tribes in various
5 capacities. Okay.

6 And I would like to just thank the Wetlands Trust for
7 their participation, especially Joe Geever here who has spent
8 a lot of his own time and resources to participate in what's
9 been somewhat of a challenging process at times. And I think
10 he's done a good job and has had a good sense of humor about
11 it. But I do want to appreciate what they brought to the
12 table and the information and ideas they have presented in
13 front of everybody. Thank you.

14 HEARING OFFICER CELLI: Thank you.

15 What I need to do while we're still doing comments is
16 get the comments -- so we have no further comments from
17 people in the room. If you want to make a comment, please
18 fill out one of these blue cards that Alana has in the back
19 of the room.

20 We're going to go to the phones now. And if you are
21 on the telephone and would like to make a comment, would you
22 please speak up at this time? Anybody, if anybody is on the
23 phone right now and would like to make a comment?

24 Are they -- Ari, are these people all un-muted? I
25 want to make sure.

1 Some of you may be talking and don't know that you've
2 been muted on our end, so I'm going to ask it again.

3 Are we good? I've got a few that look like they're
4 muted.

5 (Colloquy Between Hearing Officer and Staff)

6 HEARING OFFICER CELLI: So if anyone is on the phone
7 at this time and you'd like to make a comment, please speak
8 up.

9 Hearing none, then here's what's going to happen,
10 Ladies and Gentlemen. We are going to take about a ten-
11 minute break. It's almost five after 3:00. When you -- if
12 you'd please come back by 3:15, we will finish off with
13 Public Health. Nobody's really asked for any witnesses on
14 that, but I have some questions for your Public Health
15 expert. And then I don't think that will take very long, but
16 let's take a break. Everyone get some water, stay hydrated,
17 and we will see you at 3:15. We're off the record.

18 (Off the record at 3:05 p.m.)

19 (On the record at 3:15 p.m.)

20 HEARING OFFICER CELLI: We're going to resume now.
21 And this is -- we've taken in all subject areas. I've taken
22 in all of the written testimony, all of the exhibits from all
23 of the parties now at this time. We've received all of the
24 evidence.

25 In this case, my recollection was there were no

1 questions on Public Health from Los Cerritos Wetlands Land
2 Trust; correct?

3 MR. GEEVER: We did not have time to go into the
4 Public Health section.

5 HEARING OFFICER CELLI: Okay. And then I have
6 questions for Staff, but did -- let me see, where did -- Mr.
7 Babula is not here yet, so I guess we can't resume. He's
8 talking to somebody over there. It looks like he's going to
9 be dragged in caveman style.

10 MR. WINSTEAD: He was working on the Cultural with
11 the --

12 HEARING OFFICER CELLI: That's right.

13 MR. WINSTEAD: -- with that lady.

14 HEARING OFFICER CELLI: He was engaged in important
15 statewide business. Okay. Thank you.

16 Mr. Babula, my recollection was that Staff had no
17 further questions or cross. We're down to Public Health now.

18 MR. BABULA: Okay. Yeah, I have nothing on Public
19 Health.

20 HEARING OFFICER CELLI: Okay. And then, Applicant,
21 did you have any further questions or cross on Public Health?

22 MR. HARRIS: We do not.

23 HEARING OFFICER CELLI: Okay. Then the only person
24 with questions is me on behalf of the Committee.

25 I'm going to have to switch what I'm looking at on

1 the internet. There we go.

2 Ms. Chu, can you hear me okay?

3 DR. CHU: Yes.

4 HEARING OFFICER CELLI: Okay. I have some questions
5 that have to do with the LORS table --

6 DR. CHU: Okay.

7 HEARING OFFICER CELLI: -- in Public Health. There
8 are three columns. The first column is Applicable LORS, the
9 middle column is description of LORS, and the last column is
10 Discussions and Conclusions.

11 And in the Public Health section, for the Air Toxics
12 "Hot Spots" Information and Assessment Act of 1987, do you
13 see where I'm looking?

14 DR. CHU: No. I'm still -- can you say which page?

15 HEARING OFFICER CELLI: No, because what I did is I
16 cut and pasted it into my own document, so it didn't retain
17 the page number.

18 DR. CHU: Okay.

19 HEARING OFFICER CELLI: But it's --

20 MR. SALAMY: 4.8-3.

21 HEARING OFFICER CELLI: 40?

22 MR. SALAMY: 4.8-3.

23 HEARING OFFICER CELLI: 4.8-3. And that's four
24 columns; right?

25 DR. CHU: Yeah.

1 HEARING OFFICER CELLI: Okay.

2 DR. CHU: Four columns.

3 HEARING OFFICER CELLI: It has four columns. And the
4 one that says Air Toxics "Hot Spots" Information and
5 Assessment Act of 1987 --

6 DR. CHU: Uh-huh.

7 HEARING OFFICER CELLI: -- okay --

8 DR. CHU: Yeah.

9 HEARING OFFICER CELLI: -- on the far right --

10 DR. CHU: Uh-huh.

11 HEARING OFFICER CELLI: -- in the last column --

12 DR. CHU: Uh-huh.

13 HEARING OFFICER CELLI: -- it says something about
14 being below the level of significance.

15 DR. CHU: Uh-huh.

16 HEARING OFFICER CELLI: And what I wanted to ask you
17 is can we say -- because significance is -- levels of
18 significance is a CEQA concern, not necessarily a LORS
19 concern. And I was wondering whether I could change this a
20 little bit and still have it comport with what you would
21 testify to.

22 And what I was going to write this -- at the end it
23 says,

24 "The maximum cancer risk and non-cancer hazard index, both
25 acute and chronic, for operations emissions from the AEC

1 estimated independently by the Applicant staff and the
2 South Coast Air Quality Management District are all within
3 acceptable levels," is that -- can I say that, instead of
4 saying "will have a less than significant impact?"

5 DR. CHU: Because our analysis, we usually say -- we
6 do our analysis according to the level of significance. So
7 we always say these terms. And for me, the acceptable level
8 is a little bit ambiguous.

9 HEARING OFFICER CELLI: I'm not sure I'm getting
10 that.

11 MR. SALAMY: So, hi, this is Jerry Salamy with CH2M
12 Hill.

13 The CEC's standard cancer risk significance level --

14 HEARING OFFICER CELLI: Yes.

15 MR. SALAMY: -- is ten in a million. And I believe
16 that's what Dr. Chu is referring to in her testimony.

17 Likewise, the chronic and acute health risks are
18 usually assessed based on a hazard index of less than 1.0.
19 And that, again, is considered a significance level from the
20 Energy Commission, as well as for the Air Toxics "Hot Spots"
21 Act.

22 HEARING OFFICER CELLI: What I'm trying to get to
23 here, because when I'm looking at a LORS table, is I'm
24 assuming that the LORS, in this case the Act or the one below
25 it, the South Coast Air Quality Management District's Rule

1 1401, that they set certain limits.

2 MR. SALAMY: Correct.

3 HEARING OFFICER CELLI: And if you're over the limit,
4 you're not in compliance, and if you're under the limit,
5 you're in compliance.

6 MR. SALAMY: And those values that I just provided
7 you were the limits for both the Air Toxics "Hot Spots" Act,
8 as well as the District's.

9 HEARING OFFICER CELLI: Right. But when it comes to
10 LORS analysis versus CEQA analysis, CEQA says is this thing
11 below the level of significance or not.

12 I mean, the way I like to think of it is if I get
13 pulled over by a cop because I'm speeding, if I tell the cop
14 that, well, sure, I was doing 80 for about a minute-and-a-
15 half, but before I got to that my average was way below
16 because it took me a long time to get up the onramp and to
17 kind of get up to 80. So in general, on average, I was under
18 80, and therefore my driving was less than significant. That
19 would be a CEQA analysis, versus the cop who's going to write
20 me the ticket because I was over 55, you know?

21 MR. SALAMY: I don't believe that you can permit a
22 facility in the State of California under the Air Toxics "Hot
23 Spots" Act with a hazard array -- excess cancer risk above
24 ten in a million.

25 HEARING OFFICER CELLI: All right. So that's why I'm

1 just -- this may sound nitpicky, but this is strictly a
2 language kind of thing where I want to get out of using the
3 term levels of significance ~~and~~ in the LORS analysis, because
4 we already have CEQA analysis that says that there will be no
5 significant impacts from the AEC on public health.

6 MR. SALAMY: I believe the Air Toxics "Hot Spots" Act
7 has a maximum allowable cancer risk.

8 HEARING OFFICER CELLI: Right.

9 MR. SALAMY: And that is the ten in a million.

10 HEARING OFFICER CELLI: And so therefore --

11 MR. SALAMY: If you're below ten in a million --

12 HEARING OFFICER CELLI: You are within acceptable
13 levels?

14 MR. SALAMY: You comply with the Air Toxics "Hot
15 Spots" Act regulation.

16 MR. HARRIS: So how about saying they're all below
17 the levels of significance, and therefore comply with this
18 provision? Because I understand your point, being a lawyer,
19 about significance in the CEQA sense. But this seems to be a
20 term of art in the public health, you know, levels of
21 significance as opposed to significant impacts. So --

22 HEARING OFFICER CELLI: Okay.

23 MR. HARRIS: -- why don't we just add "and then is
24 thus in compliance with this LORS?"

25 HEARING OFFICER CELLI: It's that it showed up in

1 different context. It was --

2 MR. HARRIS: Correct.

3 HEARING OFFICER CELLI: Yeah. There was one that was
4 federal.

5 MR. HARRIS: Us lawyers can't break our mold, is the
6 problem.

7 HEARING OFFICER CELLI: Yeah. So sorry. So anyway,
8 that was the only question I had for --

9 COMMISSIONER SCOTT: Did you swear her in?

10 HEARING OFFICER CELLI: No, I didn't. Thank you for
11 bringing that to my attention.

12 Ms. Chu, I need to swear you in.

13 DR. CHU: Okay.

14 (Ann Chu is sworn via WebEx.)

15 HEARING OFFICER CELLI: Okay. So I'm just going to
16 ask you quickly again that earlier you had testified that the
17 Air Toxics "Hot Spots" Information and Assessment Act of 1987
18 was below levels of significance.

19 DR. CHU: Uh-huh.

20 HEARING OFFICER CELLI: Is that correct?

21 DR. CHU: Yes.

22 HEARING OFFICER CELLI: Okay. And so my question to
23 you is does that mean, in other words, that the AEC cancer
24 risk is within acceptable levels?

25 DR. CHU: Yeah, you can say that.

1 HEARING OFFICER CELLI: Okay. And can I also say
2 that in terms of the South Coast Air Quality Management Rule
3 1401, New Source Review of Toxic Air Contaminants --

4 DR. CHU: Uh-huh.

5 HEARING OFFICER CELLI: -- that rather than saying
6 that it doesn't have a significant impact, can we say that
7 the AEC cancer risk, cancer burden and non-cancer acute and
8 chronic hazard index are below the limits prescribed by the
9 Rule 1401?

10 DR. CHU: Yes.

11 HEARING OFFICER CELLI: Okay. Thank you. And then
12 also, as to South Coast's Rule 212(c)(3), having to do with
13 standards for approving permits and issuing public notices,
14 that both the maximum individual cancer risk and the total
15 facility-wide maximum individual cancer risk for the AEC are
16 below prescribed limits?

17 DR. CHU: Yes.

18 HEARING OFFICER CELLI: Okay. Thank you.

19 I have no further questions of this witness.

20 Any follow-up from Applicant?

21 MR. HARRIS: No. Thank you for the clarifications.

22 HEARING OFFICER CELLI: From the Los Cerritos
23 Wetlands Land Trust?

24 MR. POWERS: Not on this issue, but I would like one
25 final opportunity to speak on the record, if that's possible.

1 HEARING OFFICER CELLI: Okay. Before you do, Staff,
2 anything from this -- for this witness?

3 MR. BABULA: No, nothing. Thank you.

4 HEARING OFFICER CELLI: Okay. Thank you, Ms. Chu.

5 Mr. Powers, you have a question of statement you wish
6 to make?

7 MR. POWERS: Just an observation.

8 HEARING OFFICER CELLI: Regarding Public Health?

9 MR. POWERS: Basically.

10 HEARING OFFICER CELLI: Okay.

11 MR. POWERS: Hearing Officer Celli, you've mentioned
12 numerous times over the last two hearings that other agency
13 deliberations are not of interest in this environment. We've
14 been talking about the PUC, and that the CEC is not concerned
15 with the need issue. But I do want to point out that
16 Chairman Weisenmiller in 2012 directly intervened in the Pio
17 Pico proceeding with letters to the CPUC Commissioners,
18 urging that it be built on the basis of need and grid
19 reliability.

20 So the track record has not been clean in terms of
21 the CEC intervening in PUC proceedings to see projects get
22 built.

23 HEARING OFFICER CELLI: I acknowledge that. Mostly
24 what I'm referring -- when I -- what I am relying on is
25 Warren Alquist Act section 25009 which, I forgot what year,

1 basically stated that it is inappropriate, meaning improper,
2 for the Energy Commission, in the context of siting, because
3 I don't know what Commissioner Weisenmiller's letter was
4 about, but in the context of siting, what we're doing here,
5 certifying a project, that it is inappropriate for the Energy
6 Commission to consider need. So that's where I'm speaking
7 from.

8 MR. POWERS: I understand.

9 HEARING OFFICER CELLI: Yes.

10 MR. HARRIS: I'd like some clarification. I assume
11 that was just public comment and not testimony --

12 HEARING OFFICER CELLI: It is.

13 MR. HARRIS: -- that Mr. Powers --

14 HEARING OFFICER CELLI: No, Mr. Powers is --

15 MR. HARRIS: -- is providing comment and not
16 testimony?

17 HEARING OFFICER CELLI: In his dual function --

18 MR. HARRIS: Okay.

19 HEARING OFFICER CELLI: -- as lawyer for Los Cerritos
20 Wetlands Land Trust --

21 MR. HARRIS: We'll get him a red hat and a white hat
22 next time, if it comes up.

23 HEARING OFFICER CELLI: Yes.

24 MR. HARRIS: So that was public comment. Then I have
25 no questions, of course.

1 HEARING OFFICER CELLI: Ladies and Gentlemen, you've
2 all been very, very patient with us. And I thank you for
3 your interest, especially the people from the community who
4 came out to speak, the people on the phone who came out to
5 listen. I know this can sometimes be dry and possibly
6 uninteresting, maybe, to someone. But thank you so much.

7 I just want to check to see if have any further -- do
8 I have any other members of the public who want to make
9 public comment here now in the room? I'm getting the no
10 from -- oh, go ahead. I need you to speak up to the
11 microphone, so please come forward. Yes, please come forward
12 and state your name and spell it.

13 MS. FABER: My name is Lorraine Faber,
14 F-A-B-E-R. I live here in Long Beach. I've been to many
15 meetings in Huntington Beach and the Coastal Commission, and
16 I think you guys did a very fine job.

17 HEARING OFFICER CELLI: Thank you very much for your
18 comments. I think that's the first time anyone has ever said
19 that.

20 Okay, with that, then if there's nobody -- is there
21 anyone on the telephone who would like to make a comment?
22 Please speak up now. Okay.

23 Hearing none, then we'll hand it back to the
24 Presiding Member, Commissioner Douglas.

25 MR. HARRIS: Before we do, one quick procedural

1 question. Briefing; page limits, font size, spacing, all
2 that kind of fun stuff. There was a little confusion last
3 time, and I guess I'm looking for a little more clarity.

4 HEARING OFFICER CELLI: Okay. So if my recollection
5 serves correctly, the opening briefs are due two weeks after
6 the transcripts become available. We expect the transcripts
7 should be available within about a week right now. So we set
8 an outside date of January 9th, which I think we would keep,
9 and January 17th for rebuttal. Opening briefs due January
10 9th. Rebuttal briefs would be due a week later or January
11 17th. So that will give you some Christmas time off, so you
12 don't have to be writing during Christmas.

13 In terms of limits, it seems to me that we are now
14 talking about only two areas, Air Quality and Public Health,
15 and that's all we want to hear briefing on at this time
16 because we've already closed the record on all the other
17 subjects. So it seems to me that a 20-page --

18 (Colloquy Between Hearing Officer and Commissioner
19 Douglas)

20 HEARING OFFICER CELLI: So January 9th for opening --
21 close of business January 9th, 2017 for opening briefs, and
22 rebuttal briefs, close of business January 17th, 2017 on the
23 subject areas of Air Quality and Public Health.

24 Any question about that, Applicant?

25 MR. BABULA: I think that you didn't -- did you say

1 20 pages?

2 HEARING OFFICER CELLI: Oh, I was going to say 20
3 pages.

4 MR. BABULA: Well, that seems kind of long.

5 HEARING OFFICER CELLI: You read my mind. Well,
6 that's an outer limit. You can certainly make it less than
7 20 pages --

8 MR. BABULA: Right.

9 HEARING OFFICER CELLI: -- if you would.

10 MR. BABULA: And then are these optional?

11 HEARING OFFICER CELLI: They are optional. But I'm
12 going to -- I want you to understand that though they are
13 optional, they are very useful. Because we've taken in an
14 awful lot of evidence, and it's nice for the Committee to
15 understand what the hot spots are, what your position is,
16 what the law is that supports the argument, and where the
17 facts are that apply the law in your favor in your argument.
18 So I strongly encourage all parties to file opening briefs
19 and rebuttal briefs, especially the rebuttal briefs, because
20 that's when we really understand, you know, when the parties
21 go toe to toe.

22 So please feel free to take advantage of that, but
23 that is optional.

24 Go ahead, Mr. Geever.

25 MR. HARRIS: Just a clarification, because I went to

1 law school and people asked stupid questions like this,
2 single spaced, double spaced, font size, margins? Because
3 I've seen people cheat the heck out of things before. I can
4 make 40 pages look like 20 with my magic little computer,
5 so --

6 HEARING OFFICER CELLI: Boy, you must have --
7 whatever law school that was.

8 MR. HARRIS: My wife would like to see me at
9 Christmas, I think.

10 HEARING OFFICER CELLI: Okay, 20 pages, 12 point
11 font, Courier.

12 MR. HARRIS: Courier? Oh, my god, I object.

13 HEARING OFFICER CELLI: I don't care what font you
14 use, double spaced, 20 pages, that ought to do it.

15 MR. HARRIS: Thank you.

16 HEARING OFFICER CELLI: Yes.

17 MR. HARRIS: Thank you.

18 HEARING OFFICER CELLI: Thank you.

19 And with that, now all subject areas in the Alamitos
20 Energy Center AFC are closed.

21 And with that, I'm going to hand it back to
22 Commissioner Douglas.

23 COMMISSIONER DOUGLAS: All right. Well, I want to
24 thank all of the parties for your hard work preparing for
25 today, and over the course of the proceeding. I want to

1 thank the Intervener for your participation, the members of
2 the public who are here today. It's great to see you engage.
3 It's great to hear from you. And we appreciate it.

4 And with that, this Evidentiary Hearing is adjourned.

5 (The hearing concluded at 3:34 p.m.)

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CERTIFICATE OF REPORTER

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of December, 2016.



MARTHA L. NELSON

CERTIFICATE OF TRANSCRIBER

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

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

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.



MARTHA L. NELSON, CERT**367

December 22, 2016