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BEFORE THE CALIFORNIA ENERGY COMMISSION

EVIDENTIARY HEARING

PUENTE POWER PROJECT

OXNARD PERFORMING ARTS CENTER

800 HOBSON WAY

OXNARD, CA 93030

TUESDAY, FEBRUARY 7, 2017

9:31 A.M.

Reported by:
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Karen Douglas, Associate Member

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Matthew Coldwell, Adviser to Commissioner Scott
Jennifer Nelson, Adviser to Commissioner Douglas
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HEARING OFFICER

Paul Kramer, Hearing Officer

CEC STAFF

Shawn Pittard, Staff Project Manager
Kerry Willis, Assistant Chief Counsel
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PUBLIC ADVISER'S OFFICE

Alana Mathews, Public Adviser

APPLICANT

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George Piantka, PE, Director of Environmental Affairs, NRG Energy, Inc.
Dawn Gleiter, Director of Sustainable Development, Project Manager, NRG Energy, Inc.

INTERVENERS

Carmen Ramirez, Mayor Pro Tem, City of Oxnard
Matthew Smith, Environmental Defense Center
Alicia Roessler, Environmental Defense Center
Ellison Folk, Shute, Mihaly & Weinberger LLP, City of Oxnard
Robert Sarvey
Lisa Belenky, Center for Biological Diversity
Grace Chang, Fighting for Informed Environmentally Responsible Clean Energy
Shana Lazerow, California Environmental Justice Alliance

APPEARANCES (Cont.)

OTHERS PRESENT

Amanda Fagan, Community Planning Liaison Officer, Naval Base Ventura County
Joseph Street, California Coastal Commission
Louise Warren, California Coastal Commission
Allegra Roth, on behalf of Assemblymember Monique Limon

APPLICANT'S WITNESSES

Gary Rubenstein, Senior Partner, Sierra Research

STAFF'S WITNESSES

Mike Villegas, Air Pollution Control Officer, Ventura County Air District
Gerry Bemis, Air Resources Supervisor, California Energy Commission
Matthew Layton, California Energy Commission
David Vidaver, California Energy Commission
Dr. Huei-An Chu, California Energy Commission
Jeanine Hinde, California Energy Commission

INTERVENER'S WITNESSES

Todd McNamee, Director of Airports for the County of Ventura
Bill Powers
Matt Vespa, Sierra Club
Irene Valencia, Oxnard citizen

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P R O C E E D I N G S

2 FEBRUARY 7, 2017

9:31 a.m.

3 COMMISSIONER SCOTT: All right, good morning
4 and welcome, everyone. This is the Puente Power
5 Project Evidentiary Hearing.

6 My name is Janea Scott, and I'm the
7 Presiding Member over this hearing.

8 And next to me, two folks over on my left is
9 Commissioner Karen Douglas, who's the Associate
10 Member.

11 We have up here with us, as well, Rhetta
12 deMesa and Matt Coldwell, who are my two Advisers.

13 To Commissioner Douglas's left, we have
14 Jennifer Nelson and Le-Quyen Nguyen, who are her two
15 Advisers.

16 And to my immediate left we have Paul
17 Kramer, who is our Hearing Officer.

18 Let me go through and have the parties
19 please introduce themselves. And we'll start with
20 the Applicant.

21 MR. CARROLL: Good morning. Mike Carroll,
22 with Lathan & Watkins. We're outside counsel to the
23 Applicant. On my right is George Piantka, Senior
24 Director for Environmental Affairs with NRG Energy.

1 And on my left is Dawn Piantka -- I'm sorry, Dawn
2 Gleiter, the Project Director for the Puente Project.
3 Also with NRG. Thank you.

4 COMMISSIONER SCOTT: Thank you. Good
5 morning. Let me have the Energy Commission staff
6 please introduce themselves.

7 MS. WILLIS: Good morning. My name is Kerry
8 Willis. I'm the Assistant Chief Counsel for the
9 California Energy Commission. And with us is Shawn
10 Pittard, the Project Manager.

11 MS. CHESTER: And Michelle Chester, Staff
12 Counsel.

13 COMMISSIONER SCOTT: Good morning. We'll go
14 through the Intervenors. May I have the City of
15 Oxnard please introduce themselves?

16 MS. FOLK: Good morning. Ellison Folk, with
17 Shute, Mihaly & Weinberger, and we're counsel to the
18 City of Oxnard.

19 MS. BELENKY: Lisa Belenky, with the Center
20 for Biological Diversity, Intervenor.

21 MR. SMITH: Matthew Smith, with the
22 Environmental Defense Center, and on behalf of EDC,
23 the Sierra Club Los Padres Chapter, and the
24 Environmental Coalition of Ventura County.

25 And to my left I have my colleague, Alicia
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1 Roessler.

2 COMMISSIONER SCOTT: Good morning. Let me
3 check on the phone lines. I don't see them here at
4 the table. Do we have Intervenor Bob Sarvey? Are
5 you on the phone line? Okay, we'll circle back.

6 Do we have CEJA, with Gladys Limon or Shana
7 Lazerow? Are you on the phone? If so, please speak
8 up and introduce yourself. Let me make sure
9 everyone's unmuted.

10 HEARING OFFICER KRAMER: They may have all
11 muted themselves.

12 COMMISSIONER SCOTT: Okay. Okay, and then
13 do we have Dr. Grace Chang, from FFIERCE?

14 Okay, we'll circle back in a little while to
15 see whether or not our other Intervenors have joined
16 us on the phone, or here in the room.

17 One through and see, do we have anyone from
18 the California Coastal Commission, either in the room
19 or on the line? If so, please introduce yourself.

20 Okay. I would also like to see whether or
21 not we have anyone from any other Federal, State, or
22 Local agencies, or Native American Tribes to
23 introduce themselves, please, if so.

24 MR. VILLEGRAS: Mike Villegas, the Air
25 Pollution Control Officer with Ventura County APCD.

1 COMMISSIONER SCOTT: Will you state it one
2 more time, the beginning didn't come through the mic.

3 MR. VILLEGAS: Oh, Mike Villegas, with
4 Ventura County Air Pollution Control District. I'm
5 the Air Pollution Control Officer.

6 COMMISSIONER SCOTT: Thank you. Good
7 morning.

8 I also want to introduce to you all our
9 Public Adviser, Alana Mathews. She's over there at
10 the yellow table and she's waving at you. If you'd
11 like to make a public comment or have any questions,
12 please speak with her and she will help you out.

13 Good morning, Alana.

14 MS. MATHEWS: Good morning.

15 COMMISSIONER SCOTT: All right. I will now
16 turn the conduct of this hearing over to our Hearing
17 Officer, Paul Kramer.

18 Oh, wait, let me -- before you start, I'll
19 also remind folks, our Public Adviser has asked us,
20 all the folks around the table, when you're speaking,
21 if you would please introduce yourselves, state your
22 name to make sure that the translators, who are
23 translating for folks speaking Spanish, on the WebEx.
24 They hear the same voice, so they don't hear the
25 transition unless we state our names and make sure

1 that they know a different person is speaking.

2 And, now, I'll turn it over to Paul Kramer.

3 HEARING OFFICER KRAMER: Okay. And, also,
4 remember to get really close to the mic and project.

5 And let's go off the record just for a
6 minute.

7 (Off the record at 9:35 a.m.)

8 (On the record at 9:35 a.m.)

9 HEARING OFFICER KRAMER: Okay. So, the next
10 four days we're going to spend most of our time on
11 Item 2, on the agenda, which is the Evidentiary
12 Hearing. It has many parts, many topics.

13 We have produced -- as of yesterday, I
14 revised the topic worksheet that we discussed last
15 week, at the Prehearing Conference, and I filed that
16 in the docket.

17 The changes were minor, but they were to
18 reflect some of the inaccuracies that some of you
19 reported, either Friday, or over the weekend, or
20 yesterday. And I want to thank you for that
21 feedback.

22 The first order of business are a couple of
23 motions. And, also, as I said in response to Mr. --
24 I think it was Mr. Smith, in an e-mail that I filed
25 yesterday, that our plan is to not stop at the end of

1 every topic and try to decide which exhibits relate
2 to that topic, and take five or ten minutes going
3 through the motions of admitting those documents.

4 But, rather, to consider that an item of
5 housekeeping that we'll take care of at the end of
6 the proceeding.

7 But there are a couple of proposed exhibits,
8 where we know that the parties have -- some parties
9 have objections. And it seems appropriate to take
10 care of those at the start of the hearings, because
11 we've been told that that might influence -- the
12 results of our ruling on the motions might influence
13 the amount of cross-examination and the topics upon
14 which the parties need to cross-examine other
15 parties' witnesses. And, perhaps, even the testimony
16 that they're going to put on themselves.

17 So far, those are two documents. First is -
18 - and we sort of previewed the arguments last week.
19 That's the Applicant's rebuttal testimony, at least
20 various parts of it.

21 The second document was also previewed last
22 week, and then converted to a written motion by staff
23 after the Prehearing Conference. And that is Exhibit
24 4030, which is the e-mail that came from the
25 Biologist for the Coastal Commission.

1 So, let's first speak to the City's motion
2 to strike. That's a term that both motions use, but
3 what it means to us, as the Committee, is that we
4 simply wouldn't accept the documents as evidence.
5 they would remain in the electronic record of this
6 proceeding, but they wouldn't be -- if the motions
7 are granted, they would not be something upon which
8 the Committee could rely in preparing and making its
9 decision -- or, recommended decision to the full
10 Energy Commission.

11 So, Ms. Folk, do you want to begin?

12 MS. FOLK: Sure, thank you. And before I
13 argue the City's motion to strike, I would like to
14 make one request related to the proceedings. And
15 it's my understanding that the California State
16 Coastal Conservancy has asked for permission to
17 present its letter regarding the project as testimony
18 in the proceeding. And was informed that they were
19 not allowed to do so because they are not a party to
20 the proceeding.

21 And I would simply ask that they be given
22 the same courtesy as the Navy Base, who also is not a
23 party to this proceeding, but has been invited to
24 testify and submit its comments.

25 HEARING OFFICER KRAMER: Get closer.

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1 MS. FOLK: Sorry. Submit its comments on
2 the project in the same manner. As they are a sister
3 State agency with concerns about the effect of this
4 project on their plans for conservation in the
5 Ventura County region, and along the Oxnard shore, in
6 particular.

7 HEARING OFFICER KRAMER: So, are you
8 suggesting that you'd like to add them as a witness?

9 MS. FOLK: I could do so. I understand they
10 contacted the Energy Commission yesterday, and were
11 told they could not present their evidence.

12 HEARING OFFICER KRAMER: Yeah, I received a
13 phone call, as I was driving to the airport.

14 MS. FOLK: Sorry.

15 HEARING OFFICER KRAMER: And I told the
16 gentleman, you know, if you want a communication to
17 receive more attention than a public comment, you're
18 probably -- you need to be ready to come here and
19 explain it, and take questions about it.

20 And that, of course, assumes that no party
21 objects to this rather late entry into the
22 proceeding. And the Committee -- or, if they do, the
23 Committee does not uphold those objections.

24 (Colloquy between hearing Officer and
25 Commissioners.)

1 COMMISSIONER DOUGLAS: So, we're just going
2 to take a moment and look at our regulations.
3 There's a provision in our regulations pertaining to
4 public comment, that actually came out in the revised
5 regulations, and so that might help here.

6 HEARING OFFICER KRAMER: It's going to take
7 a minute.

8 Okay, let's put a pin in that for the
9 moment, and we can come to that at the end of our
10 discussions that we already had on the schedule
11 today.

12 MS. FOLK: Okay.

13 (Colloquy between Hearing Officer and
14 Commissioners.)

15 HEARING OFFICER KRAMER: Okay. So, Ms.
16 Folk, if you want to go forward arguing your motion
17 to strike?

18 MS. FOLK: Sure. So, the reason the City
19 filed this motion to strike is the Applicant filed,
20 with its rebuttal testimony, over 800 pages of
21 testimony, including seven declarations that --
22 excuse me, nine declarations that specifically
23 respond only to the staff, the Final Staff Assessment
24 and the staff's testimony in the Final Staff
25 Assessment. And all those declarations go to the
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1 analysis of alternative sites and potential issues
2 they may raise.

3 It was our understanding, from the orders
4 from this Committee, that testimony that could be
5 submitted as opening testimony should not be
6 submitted as rebuttal testimony.

7 And all of this evidence could have and
8 should have been submitted as opening testimony. And
9 to allow the Applicant to come in and submit this
10 testimony as rebuttal testimony deprived the other
11 parties of the opportunity to respond to the
12 testimony.

13 And, in particular, I just want to point out
14 that what the Applicant did here was basically waited
15 until the end of the process and dumped a bunch of
16 information on the parties that they never had an
17 opportunity to respond to.

18 And the City, to be honest, thought about
19 this as an option because all of our testimony is
20 rebuttal to the Final State Assessment, our opening
21 testimony.

22 And if we had taken the Applicant's
23 approach, we would have waited until the very end and
24 they would not have had the opportunity to respond,
25 nor would have the staff.

1 And this gaming of the system is not
2 appropriate. We, in fact, asked the Public Adviser
3 if we were permitted to do that and we were told, no.
4 And I think there's good reason for that, is that the
5 idea is for people, and the parties, to put their
6 evidence in the record so that people have an
7 opportunity to respond to it.

8 And, therefore, we would ask that the
9 declarations that we've identified in the motion to
10 strike, all of which go to issues in the Final State
11 Assessment about alternative sites, not be considered
12 by the Committee.

13 HEARING OFFICER KRAMER: And would that be
14 the entirety of the filing or just pieces of it?

15 MS. FOLK: No, we've identified the
16 declaration specifically, in our motion to strike.
17 It's 9, of the 17, declarations. And they're listed
18 on page 2 of our motion to strike.

19 I could list them, now, if you'd like me to,
20 but I don't know if that's necessary.

21 And if you look at the titles, even, above,
22 of the declarations, they all refer to testimony
23 regarding alternative sites.

24 And then, if you look at the declarations,
25 themselves, they specifically identify the areas in

1 the Final Staff Assessment that they are responding
2 to.

3 And the only other point I'd make is in
4 response to the motion. The Applicant argued that
5 these are really submitted in rebuttal to testimony
6 from the City, and other Intervenors, that alluded to
7 a preference for inland alternative sites, as opposed
8 to a site on the coast. But these declarations don't
9 even have the pretense of responding to City
10 testimony or Intervenor testimony. If you read them,
11 they're all directed to the Final Staff Assessment.

12 HEARING OFFICER KRAMER: Okay, Mr. Carroll,
13 would you care to respond? And then we'll hear from
14 any other party who -- or, would you prefer that we
15 hear from all the other parties before you respond?

16 MR. CARROLL: That would be my preference.

17 HEARING OFFICER KRAMER: Okay. Does any
18 other party wish to respond regarding this first
19 motion?

20 Seeing none, Mr. Carroll.

21 MR. CARROLL: Thank you. Setting aside,
22 just for the moment, the irony associated with a
23 party who has proposed to sponsor a new witness this
24 morning, heretofore unidentified, then moving to
25 strike declarations filed by another party several

1 weeks ago, I'll just move to the merits of the
2 motion.

3 The City has raised no objections, including
4 in its argument this morning, that the declarations
5 are not relevant to the proceedings. The only
6 argument that has been raised is that the subject
7 declarations were filed on January 24th, and that
8 they should have been filed on or before January
9 18th, six days prior to that.

10 Under the circumstances, the City's claims
11 are not sufficient to overcome the rights of the
12 Applicant to offer written testimony, under oath,
13 that is firmly established in Section 1212(a), of the
14 Commission's governing regulations. That is a right
15 that is granted to all the parties, including the
16 Applicant.

17 And an assertion that certain testimony
18 could have been filed and should have been filed six
19 days prior to the date that it was actually filed is
20 not sufficient to overcome that right.

21 The declarations were submitted with the
22 Applicant's rebuttal testimony because that's what
23 we, and I, view them as, and continue to view them as
24 rebuttal testimony. They were directly responsive to
25 issues raised in the Final Staff Assessment, which we

1 view as the staff's opening testimony.

2 But more importantly than that, in contrary
3 to what Ms. Folk stated this morning, they were also
4 directly responsive to assertions in the opening
5 testimony of other parties. And, in particular, the
6 testimony of the City regarding the merits of inland
7 alternatives, in general, and the merits of the
8 Ormond Beach area offsite alternative, and the Del
9 Norte/Fifth Street offsite alternative, in
10 particular.

11 The opening testimony of Council Member
12 Ramirez, of the City's Fire Chief, of the Development
13 Services Director, Ashley Golden, Mr. McNamee, and of
14 Mr. Revell are all focused on the merits of inland
15 alternatives and these two sites, in particular.

16 The City goes so far as to submit a
17 declaration from the current owner of the Ormond
18 Beach site, purporting to offer the opening of
19 negotiations with the Applicant to acquire the site.

20 So, to suggest that the City's declaration
21 or the City's opening testimony was not primarily
22 focused on the alternative sites, and in particular
23 these two alternatives sites, is not accurate. And
24 under those circumstances it should have been
25 expected and it was completed appropriate for the

1 Applicant to rebut that testimony, with evidence
2 suggesting that there were problems associated with,
3 or may be problems associated with these alternative
4 sites.

5 In fact, as I said, the City should have
6 expected that such information might be forthcoming.
7 A number of the issues addressed in these
8 declarations were flagged as potential concerns in
9 the FSA. All the Applicant has done is pursued those
10 flags a little further.

11 As I mentioned at the status -- or at the
12 Prehearing Conference, at the Committee Status
13 Conference, of September 27th, 2016, the Committee
14 specifically requested additional information on some
15 of the issues raised in the declarations that are the
16 subject of the motion.

17 And I'm quoting, now, from the transcript of
18 that Status Conference, page 21, lines 17-25, through
19 page 21, line 1-3. And this is the quote, "In the
20 Alternative area, just in general, in consideration
21 of the Ormond Beach and Del Norte/Fifth Avenue
22 alternative sites, there were several areas where the
23 PSA indicates that there was a need for more
24 information regarding, for example, determining
25 whether or not there were potential archeological

1 resources at the Del Norte/Fifth Street -- I'm sorry,
2 Del Norte/Fifth Street site, and whether or not there
3 was potential contamination. In general, just
4 needing some additional information to complete the
5 Alternatives analysis."

6 Two of the declarations, including the one
7 that the City calls out, in particular, the
8 declaration of Mr. Hale, related to cultural
9 resources, respond directly to these requests from
10 the Committee.

11 If the City had been inclined to look into
12 these matters further, to refute the suggestions in
13 the Final Staff Assessment, that these were concerns
14 with the property, or with the alternative sites,
15 they certainly could have done that. So, for them to
16 now claim that they're prejudiced because the
17 Applicant did, in fact, pursue these issues when they
18 had opportunity to do so, and did not, is really
19 somewhat disingenuous.

20 All of the information contained in the
21 declarations is publicly available information that
22 was collected from public databases. There is new --
23 I'm sorry, there is no complex, proprietary analysis,
24 or modeling. This is all information that the
25 Applicant gathered from publicly available databases

1 that the City, and the other parties, were perfectly
2 free to access and provide whatever information from
3 those databases they thought were important.

4 In this case, the Committee, depending on
5 how the proceedings play out, may be tasked with
6 making very specific findings with respect to the
7 availability of prudent and feasible alternative
8 sites. The City has not argued that the subject
9 testimony is not relevant to that inquiry, only that
10 it could have been provided to the parties six days
11 earlier than it was.

12 As I said at the outset, I wouldn't believe
13 that that's sufficient to overcome the right of a
14 party to present relevant evidence, or the value of
15 that information to the Committee, as it looks at
16 some, potentially, complicated and difficult
17 decisions down the road.

18 For all those reasons, we don't believe that
19 the evidence should be excluded and that the City's
20 motion should be denied. Thank you.

21 MS. FOLK: May I respond, just quickly?

22 HEARING OFFICER KRAMER: Yes, go ahead.

23 MS. FOLK: Yes. I just want to emphasize
24 that Mr. Carroll's argument just affirms that all of
25 this information was responsive to the Final Staff

1 Assessment. And, in fact, queries from the Committee
2 that came even earlier than the release of the Final
3 Staff Assessment.

4 And I'd also -- I just want to clarify the
5 issue with regard to the State Coastal Conservancy.
6 That was a request from the Conservancy, itself, as a
7 sister State agency. And I was just asking that they
8 be given the same courtesy as the Navy Base has been
9 given here, when it was specifically requested by the
10 Committee to present its testimony.

11 HEARING OFFICER KRAMER: Okay. Ms. Folk, a
12 question for you. What I thought I heard during the
13 Prehearing Conference that you, in your estimates of
14 the time you needed for cross-examination, and your
15 list of the people that you wished to cross-examine,
16 it was based upon an assumption that this document
17 would remain in evidence, correct?

18 So, is there something that you're not able
19 to do, that you feel you need to do, if we were to go
20 forward and admit this document?

21 MS. FOLK: I think the key issue is that we
22 may have tried to develop our own evidence in
23 response, and maybe had our own witnesses that would
24 discuss some of these issues that go to -- it has to
25 do with what potential impacts might occur at these

1 other sites. And, so, given the opportunity we might
2 have looked at well, what was -- what kind of
3 mitigation would have been imposed at that site.

4 And we would prefer to be able to have our
5 own witnesses on that issue and not just cross-
6 examine the witnesses from the Applicant.

7 HEARING OFFICER KRAMER: Do you have
8 witnesses in mind or would this be something that
9 would take you time beyond the duration of these
10 hearings to develop?

11 MS. FOLK: Well, I think it would take some
12 time. And that was one of the requests we made in
13 our motion was for additional time to respond. I
14 mean, there was only -- it was last -- I can't
15 remember the days, now. It was only a week and a
16 half ago, I guess. And, so, we would have to find
17 people and get them ready?

18 MR. CARROLL: And may I respond to that
19 point?

20 HEARING OFFICER KRAMER: Go ahead, Mr.
21 Carroll.

22 MR. CARROLL: You know, the City cannot have
23 it both ways. The City cannot base their motion on
24 the notion that this was all information and issues
25 identified in the FSA, that everyone was well aware

1 of, you know, some time ago, but then claim to be
2 prejudiced based on surprise and not having the
3 ability to present their own witnesses on these
4 topics.

5 If the City wanted to present witnesses
6 related to the merits of the alternative sites which,
7 in fact, they did, but if they wanted to present
8 additional witnesses on the specific issues addressed
9 in the subject declarations, they were perfectly
10 willing to do that.

11 We've known, all of the parties have known,
12 since at least the issuance of the FSA, that the
13 Ormond Beach area alternative and the Del Norte/Fifth
14 Street alternative were the two alternative sites
15 that the staff had focused on. And everyone was free
16 to develop whatever testimony, or to retain whatever
17 experts they wanted to provide testimony on that.

18 And there's no surprise, or should not be
19 any surprise here that the Applicant has concerns
20 about those sites, and that we would have presented
21 testimony on that.

22 MS. FOLK: I would like to respond to that
23 because the City was working off of the Final Staff
24 Assessment, which found that those sites did not
25 present significant impacts with respect to the areas

1 on which the Applicant has now submitted rebuttal
2 testimony.

3 And, so, we did not know what the
4 Applicant's position was until January 25th, when
5 they filed their rebuttal testimony. And at that
6 point, then the City would be required to go out and
7 develop its own evidence, and find its own experts on
8 that issue if they wanted to be able to present a
9 response.

10 HEARING OFFICER KRAMER: Okay, thank you.
11 It was your motion and you have just had the last
12 word. Stand by a second.

13 (Colloquy between Hearing Officer and
14 Commissioners.)

15 HEARING OFFICER KRAMER: Okay, so we're
16 going to -- it looks like we'll be taking a brief
17 closed session to talk about this motion. But to
18 make that most efficient, we are going to first
19 discuss the staff's motion. And, then, we're also
20 going to talk briefly about the Coastal Conservancy's
21 letter. So, maybe we can deal with all three in one
22 closed session.

23 COMMISSIONER SCOTT: This is Commissioner
24 Scott. I have just noticed that we have some
25 Intervenors who have joined us. Would you please go

1 ahead and introduce yourself, and welcome.

2 MS. LAZEROW: Hi, good morning. Shana
3 Lazerow, on behalf of the California Environmental
4 Justice Alliance.

5 MS. CHANG: Good morning. Grace Chang on
6 behalf of FFIERCE.

7 COMMISSIONER SCOTT: Good morning, welcome.
8 And while we're checking, may I check back on the
9 phone lines to see whether or not Intervenor Bob
10 Sarvey has joined us? If so, Mr. Sarvey, please go
11 ahead and introduce yourself, say hello. Okay, not
12 yet.

13 I will turn this back over to you, Hearing
14 Officer Paul Kramer.

15 HEARING OFFICER KRAMER: Okay. So, staff,
16 you get the first word on your motion regarding
17 Exhibit 4030.

18 And let me ask, do we have anyone on the --
19 okay. Folks, we're going to get in the habit, for
20 our Spanish translation, which is a separate WebEx
21 meeting, of saying our name when we speak. Because,
22 then, that allows the translators to identify us.
23 Because, as you can imagine, if they're repeating our
24 words, their voice remains the same and it's hard for
25 the listeners to that translation to pick among us.

1 At the present, there is nobody on that
2 meeting. So, we can gradually get good at saying our
3 name, and we'll probably be ready for public comment
4 tonight, when we are more likely to have people
5 involved in that meeting.

6 MS. CHESTER: This is Michelle Chester,
7 staff attorney. So, just --

8 HEARING OFFICER KRAMER: Hold on, I don't
9 think your mic's on. Try again.

10 MS. CHESTER: To reiterate what was stated
11 in staff's motion to strike, filed yesterday, we do
12 not believe that Exhibit 4030 -- well, first of all,
13 the exhibit does not include a declaration by Dr.
14 Engel, herself. Also, Dr. Engel's not currently
15 present. And as we heard at the Prehearing
16 Conference, no witnesses from the Coastal Commission
17 will be present for cross-examination at today's
18 hearing.

19 Furthermore, as stated in the follow-up
20 letter from Dr. Engel, the -- her e-mail responses do
21 not represent the views of the California Coastal
22 Commission. And, furthermore, they do not change the
23 conclusions reached in the Coastal Commission's
24 report.

25 Lastly, as we stated, the exhibit was
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1 received after rebuttal testimony was due and is,
2 therefore, untimely.

3 In response to the opposition to our motion
4 to strike, I would point out that staff did provide
5 parties notice of our motion at the Prehearing
6 Conference that we did, once we heard further
7 information from the Coastal Commission, which we did
8 receive on February 3rd, in the form of Dr. Engel's
9 letter to the Presiding Member, that we would reserve
10 the right to move to strike her e-mail responses.

11 Furthermore, it's clear that the questions
12 to Dr. Engel were solicited, based on the format of
13 the e-mail, and I would again reiterate that every
14 witness must sign a declaration or appear in person.
15 And this is supported by our regulation, Section
16 1212(c)(2). Which states that "Findings cannot be
17 based on unsupported conclusions or evidence."

18 At most, it's clear that this letter should
19 be viewed as public comment. Or, if not even that,
20 hearsay.

21 Finally, again, the report conclusions from
22 the Coastal Commission have not changed. And staff
23 worked closely with the Coastal Commission, leading
24 up to the final publication of their report, to
25 discuss comments and provide input. And this comment

1 came too late for that consideration.

2 HEARING OFFICER KRAMER: Okay. Let's hear
3 from the other parties, who are not the proponents of
4 the document, first, and then we'll hear from the
5 Environmental Coalition. Any other party wish to
6 comment?

7 MR. CARROLL: Nothing from the Applicant at
8 this point.

9 HEARING OFFICER KRAMER: Okay. This is Paul
10 Kramer. Go ahead, Mr. Smith.

11 MR. SMITH: Good morning, Mr. Kramer and
12 Commissioner Scott. This is Matthew Smith from the
13 Environmental Defense Center.

14 Let me say, first, that the Commission
15 really has before it, this morning, kind of a tale of
16 two motions. One motion was filed very timely, by
17 the City, in a manner that gave the opponent of that
18 motion ample opportunity to file responsive briefing
19 to the arguments that were raised in the motion.

20 The other one, the staff did not, despite
21 having knowledge of our intention to rely on this
22 exhibit since January 27th. Staff delayed until the
23 morning before the Evidentiary Hearings to file a
24 briefing.

25 Now, I recognize that they reserved a right,
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1 as they say, to file a motion to strike, at the
2 Prehearing Conference. But, ostensibly, that motion
3 could have been made simply orally. And in any
4 event, filing the motion the day before the beginning
5 of hearings gave the Environmental Defense Center a
6 scant eight hours to file responsive briefing. That
7 briefing was not even able to be filed on the docket
8 until this morning, and it's not clear to me that
9 the Commission has had sufficient time to consider
10 the issue and the arguments raised therein.

11 So, on that basis, I would actually request
12 that the Commission, to the extent that it hasn't had
13 enough time to consider our briefing, due to the
14 filing time by the staff, postpone a decision on this
15 question until it's actually had time to review our
16 papers, which only came in at about 7:30 this
17 morning, because they were filed around 6:00 last
18 night.

19 But assuming that the staff -- I apologize,
20 that the Commission wants to consider this issue
21 right now, most of the staff's arguments flunk the
22 rules of evidence. They go to the weight to be
23 accorded to this document, not to its admissibility.

24 They argue in their motion that the document
25 in question is not the most relevant evidence on

1 which the Commission could rely. There is no
2 requirement under the Commission's rules, or under
3 any California rules of evidence that the only
4 evidence before a decision maker should be the most
5 relevant evidence. That's simply a question of the
6 weight to be accorded to the document, not the
7 admissibility.

8 Staff, and all the other parties in this
9 room, will have ample opportunity through the course
10 of briefing, and the remainder of this hearing, to
11 debate the weight to be given to this document and
12 what purposes it may be used to show.

13 But the mere fact that it's not the most
14 admissible evidence -- or the most relevant evidence,
15 in their view, in the view of one party, is not a
16 basis to exclude it.

17 Now, secondly, staff touches on several
18 objections that appear to be essentially attempting
19 to make a hearsay argument. That the declaration in
20 this case. Dr. Engel, is not present to testify at
21 the hearing. And that is true, because of the Coast
22 Commission's decision at the Prehearing Conference,
23 she won't be.

24 And staff cited a regulation on this
25 question, the subsection 2 of 20 CCR 1212. But if

1 staff would look just one bullet point down from
2 that, they would see that the rule, promulgated by
3 this Commission on hearsay evidence, is as follows.
4 "Hearsay evidence may be used for the purpose of
5 supplemented or explaining other evidence." I'll
6 start with that portion, okay.

7 Now, in the record at this point, we have a
8 30413(d) report from the Coastal Commission which
9 states, in a footnote, Footnote 13, on page 3, that
10 environmentally sensitive habit areas are "not known"
11 to be present on the site.

12 Dr. Engel, according to that same letter, is
13 the biologist who carried out the biological surveys
14 on the site. And her e-mail represents that the
15 staff's report, the Coastal Commission staff's report
16 was not based on any on-site surveys, and that its
17 review of the site was constrained to identifying the
18 presence of a two-acre wetland.

19 At the very least, that testimony is
20 relevant to clarifying, as it says right here in this
21 regulation, "For the purpose of supplementing or
22 explaining" this statement in this Coast Commission
23 report, Footnote 13, as to why it is not known
24 whether ESHA was present on the site.

25 Our argument on that basis would be that

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1 it's not known because people didn't look.

2 Now, it's also important to note, I think
3 here, that even if, you know, we moved beyond that
4 portion of the regulation, if you read further into
5 1212(c)(3), the second section of this says that,
6 "That hearsay evidence may be for the purpose of
7 supplementing or explaining other evidence," and as I
8 just explained, I think it should be admitted for
9 that basis, "but shall not be sufficient in itself to
10 support a finding, unless it would be admissible over
11 objections in civil actions."

12 We submitted the letter from Dr. Engel,
13 supported by the declaration of Brian Trautwein, who
14 was the custodian of the document, testifying to the
15 elements of the Business Records Exception, found in
16 California Evidence Code 1271.

17 Now, staff contends that the document is
18 flawed because it doesn't contain an exhibit from Dr.
19 Engel. But there is no such requirement in the
20 California evidentiary rules that the only declarant
21 who can speak to the issue of a business record is
22 the person who wrote the document.

23 In fact, I would cite the Commission to the
24 case Unifund CCR, LLC v. Dear, 197 Cal Reporter 3d,
25 445, which recites settled law in California. But

1 the qualified witness who testifies to the business
2 records exception need not be -- I'm quoting, "Need
3 not be the person who created the record."

4 So, there's simply no requirement, and this
5 is staff's own invention, that there needs to be a
6 declaration from the person who created the document.

7 Now, as to the presence to testify argument,
8 obviously, she's not present to testify because
9 that's why we concede it is, in itself, hearsay. But
10 again, the Commission has a rule explicitly
11 addressing hearsay. Which is as I just described,
12 it's admissible to supplement or explain other
13 evidence, and it's admissible if it would be
14 admissible in civil actions.

15 And for the reasons that I just explained, I
16 think it would be admissible in civil actions.

17 We've also, I should note for the
18 Commission, if the Commission wants additional
19 clarification on the circumstances in which that
20 record was maintained, Mr. Trautwein has filed a
21 supplemental declaration, with our opposition brief,
22 providing further details to the Commission about how
23 these records are maintained.

24 As the Commission is probably fully aware,
25 in civil actions the issue as to the keeping of a

1 business record is whether the business record was
2 kept in the ordinary course of business. It doesn't
3 require testimony from the person who created the
4 record. It requires testimony from the person who
5 kept the record. And that's exactly what Mr.
6 Trautwein has provided.

7 Now, finally, this question as to whether
8 Dr. Engel's responses represent the views of the
9 Coastal Commission is a red herring. We are not
10 offering it to show the views of the Coastal
11 Commission. We are offering it to supplement and
12 explain the Coastal Commission's footnote as to why
13 it was not known that there was ESHA on the site.

14 There's no question that Dr. Engel, as the
15 person who conducted those surveys, is competent to
16 testify to what she saw and did, and that's what
17 she's doing in that e-mail.

18 And that, under this Commission regulation,
19 again, I apologize for repeating myself, but is
20 admissible for purposes of explaining that aspect of
21 the report. It is hearsay evidence, but it comes in
22 under this exception.

23 And, again, this question of whether it
24 represents the views of the Coastal Commission,
25 itself, is once again just a question of multiple

1 admissibility. It's admissible for the purpose -- in
2 a civil action, it would be admissible for the
3 purpose of demonstrating what Dr. Engel saw and did,
4 as one of the authors of the report, and what here
5 opinions are based on what she saw and did, as the
6 person who did the surveys. It would not be
7 admissible to show the views of the Coastal
8 Commission.

9 But as we cite in the brief, and I think
10 it's the Abdelrhaim case, which is cited in our
11 briefing, questions of a hearsay declarant's
12 authority to make a statement, again, usually goes to
13 the weight.

14 Staff is free to argue to the Commission,
15 throughout this proceeding that, Commission, we do
16 not believe that you should rely on this document
17 because it's not the Coastal Commission's official
18 views. But that's a question that goes to the weight
19 of the evidence, not to its admissibility. It is
20 still relevant evidence that's based on her personal,
21 objective observation. That if, admitted as hearsay,
22 would be acceptable under 1212(c)(3), for both of the
23 reasons that I just described.

24 And, finally, the question as to whether Dr.
25 Engel's e-mail changes the Coastal Commission's

1 recommendations, staff cites the letter that Dr.
2 Engel put into evidence, and we acknowledge that.
3 But notably absent from that e-mail is any retraction
4 of the accuracy or the voracity of the statements
5 that Dr. Engel made in the e-mail.

6 She's saying it's not the Coastal
7 Commission's views. That's fine. We're not
8 presenting it as the Coastal Commission's views. We
9 are presenting it as the accurate and truthful
10 representations of a percipient witness, whose
11 testimony fits in, clearly, under the hearsay, under
12 the regulation that I've just cited.

13 And, finally, as to the timeliness issue, we
14 can't submit a document before it exists. The e-mail
15 was sent, as the date stamp of the document reveals,
16 on the 26th of January, at 4:17 p.m. We filed it
17 promptly the next day. Staff said nothing in
18 response. They didn't object. And we had no
19 knowledge, whatsoever, that they were going to be
20 opposed to this in whatever way.

21 So, let me make one final point and then
22 I'll rest, after just briefly summarizing.

23 I'd just also like to point out that at the
24 Prehearing Conference, when the issue of Dr. Engel's
25 presence for this issue was discussed, I do not

1 recall staff speaking up or lifting a finger to
2 obtain Dr. Engel's presence to testify here. They
3 must have known that they were going to oppose the
4 introduction of this e-mail.

5 And if they were so concerned about their
6 ability to cross-examine Dr. Engel, notwithstanding
7 the fact that the hearsay rule that the Commission
8 has promulgated admits it nonetheless. But if they
9 were so concerned about this, they should have spoken
10 up about it while Applicant and EDC were advocating,
11 forcefully, to try to get her here.

12 So, I really think that this argument is too
13 little, too late.

14 So, in conclusion, I'd just like to
15 emphasize, so just to summarize, the e-mail's
16 admissible for its substance under 20 CCR 1212(c)(3),
17 because it would be admissible in a civil action,
18 over objections. And that is what that regulation
19 says.

20 But even if it were not, because of the
21 declaration of Brian Trautwein, which has been
22 supplemented in our opposition brief, but even if it
23 were not, it is also admissible for the purpose, I'm
24 quoting, "Of supplementing or explaining other
25 evidence," which is the foundation for the Coastal

1 Commission's statement, in its report, that ESHA is
2 not known to be on the project site.

3 I don't believe that we should be deprived
4 of the ability to use this evidence for relevant
5 purposes. It is not relevant for some purposes, I
6 concede that. But it is relevant for others. Under
7 the rule of multiple admissibility, the document
8 should come into evidence.

9 HEARING OFFICER KRAMER: So, two quick
10 clarifying questions. So, when you speak of a
11 business record, you mean the e-mail?

12 MR. SMITH: Correct.

13 HEARING OFFICER KRAMER: Okay. And then,
14 the substance of the e-mail, that you're offering it
15 for, is the assertion that no surveys were conducted
16 by the Coastal Commission, when they conducted their
17 analysis?

18 MR. SMITH: I'm sorry, Your Honor, I had a
19 glitch in my aural ability. Would you mind repeating
20 that question?

21 HEARING OFFICER KRAMER: So, the substance
22 that you're referring to, of the e-mail, is that the
23 Coastal Commission did not conduct any on-site
24 surveys as a part of their work, in preparing their
25 report?

1 MR. SMITH: Well, I think the clarifying
2 aspect of the e-mail is that the staff did not
3 conduct on-site surveys and that the staff's review
4 is limited to a 2.03-acre wetland delineation, and
5 did not consider other aspects of the site.

6 That is clarifying as to the statement in
7 Footnote 13, of the 30413 report, that ESHA is not
8 known to be present on the site, because it supports
9 an argument that that statement is not entitled to
10 great weight because it may not have been based, not
11 just on focused surveys, but also it was based on a
12 narrow review of the site.

13 And that can be admitted as clarifying
14 evidence. I think it can also be admitted, though,
15 and my preference would be to have the Commission as
16 admit it as substantive evidence, as I understand
17 Your Honor's referring to. Because, again, it is
18 introduced in the context of a business record that's
19 been properly authenticated. And that authentication
20 has not been rebutted by any party to this case.

21 HEARING OFFICER KRAMER: Okay.

22 MS. CHESTER: May I respond?

23 HEARING OFFICER KRAMER: Thank you for that
24 clarification.

25 MS. CHESTER: Hearing Officer, may I
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1 respond?

2 HEARING OFFICER KRAMER: One more round of
3 responses and then Mr. Smith will get the final word.

4 Did the Applicant want to say something,
5 first, or defer to staff, first?

6 MR. CARROLL: We'll go ahead. I appreciate
7 the opportunity to defer my comments. I had not had
8 an opportunity to read Mr. Smith's response to the
9 motion prior to this morning.

10 Having heard his responses, presented in
11 oral argument, Applicant strongly supports the motion
12 of the Energy Commission.

13 Mr. Smith speaks as though this individual
14 is a common member of the public, who has expressed
15 an opinion about the project. And I think that that
16 glosses over the highly unusual circumstances within
17 which we find ourselves. In which the individual in
18 question is a member of the staff, of a sister
19 agency, and was the person primarily responsible for
20 preparing a portion of that agency's report that was
21 developed and submitted to this agency, pursuant to
22 statutory provisions that lay out exactly how that
23 process is to proceed.

24 And what we have, now, is that same person
25 through, what I will describe as suspicious means,

1 advocating a position that is directly contrary to
2 positions that were taken by the Commission, its
3 report.

4 And, so, I think it's highly unusual that
5 there would be permitted, into evidence, the
6 statement of a staff person, sort off the record,
7 outside the context of her role as an agency staff
8 person, that is contrary not only to her own
9 statements, in support of the agency's report, but to
10 the final report adopted by the agency.

11 So, you know, under other circumstances some
12 of the arguments that Mr. Smith makes may have merit.
13 In these circumstances, where the individual is a
14 member of a staff, of an agency, charged with
15 preparing a report and, in fact, participated in the
16 preparation of that report and is now taking
17 positions directly contrary to her positions in the
18 report, and the Commission's -- and the report is
19 adopted by the Commission, I think it's highly
20 inappropriate that that will be allowed.

21 Let me also say, you know, we will have much
22 more to say about Ms. Engel's actions, in connection
23 with this matter, and the implications of that for
24 not only what's in the e-mail in question, but what's
25 in the Coastal Commission's report that's attributed

1 to her. We'll reserve those for a more appropriate
2 time.

3 But at this time, we submit -- or we support
4 the staff's motion to strike this e-mail. Thank you.

5 HEARING OFFICER KRAMER: Ms. Chester?

6 MS. CHESTER: This is Michelle Chester,
7 staff counsel. I would like to say, first off, in
8 response to Mr. Smith's characterization of the e-
9 mail as hearsay, the information does not support a
10 finding. Staff thinks it's insufficient in that
11 sense.

12 We do not object that the e-mail was sent.
13 We do not object -- or we do not believe that the
14 information was made up.

15 But we did have staff on site, with Dr.
16 Engel, from the Coastal Commission, as well as a
17 member from the State Department of Fish and
18 Wildlife. And we may have objections as to how Dr.
19 Engel characterized her observations on the site.
20 And if she were here today, as a witness, we would
21 pursue that information further.

22 However, the Coastal Commission is a sister
23 agency and we have discussed information with them,
24 and we work together with them. We would not be
25 comfortable subpoenaing a witness in this hearing.

1 As to the timing argument, I would say
2 that's a double-edged sword. We responded, when we
3 received additional information from Dr. Engel. I
4 apologize that it was in such close timing to the
5 hearing, but that's when the information came in.

6 Again, as to the weight of the evidence,
7 staff does not object to the information being
8 considered as public comment. But we do not feel
9 it's appropriate to consider it as substantive
10 towards the Committee's findings.

11 HEARING OFFICER KRAMER: Okay. Mr. Smith, a
12 brief closing?

13 MR. SMITH: Thank you, Mr. Kramer. I'm just
14 going to work backwards through the comments that
15 were just made. So, staff's counsel's proposal that
16 it be treated as a comment, as in response to the
17 argument about the degree of weight should be given
18 to the document, is sort of a non sequitur. Because
19 treating it as a comment is excluding it as evidence.

20 Our argument is that all of the arguments
21 they've raised, including many of the arguments that
22 were ably made just now by Mr. Carroll, and by
23 staff's counsel, go to the weight that should be
24 accorded to the evidence.

25 The arguments that Mr. Carroll has raised

1 about what he construes as the context of the
2 writing, and whether normal procedures were followed,
3 are all issues that can be addressed as a matter of
4 the weight to be given to the document. They don't
5 bear on the relevance of the document and they don't
6 bear on its permissibility under 20 CCR 1212(c)(3),
7 which expressly contemplates the admission of
8 hearsay.

9 To the point, again, about cross-
10 examination, I understand that staff may not be
11 comfortable subpoenaing a witness from a sister
12 agency, but I don't think that Intervenors should be
13 penalized from putting in relevant evidence because
14 of staff's comfort level with subpoenaing a custodian
15 of relevant information. It has nothing to do with
16 whether the evidence is relevant, or non-hearsay, or
17 within a hearsay exception.

18 Staff's contention that other members were
19 present during the site visit, that simply shows you
20 that there are witnesses under their control, who can
21 testify to the facts that they want to put in the
22 record, about why they think Dr. Engel's statements
23 are wrong. That simply shows that they haven't been
24 deprived of the opportunity to contest this issue in
25 any meaningful way.

1 And, again, I would say once more that that
2 simply goes to a question of weight. They can say,
3 we think our people are right in the way they saw the
4 site. We can say, we think Dr. Engel's e-mail speaks
5 for itself. But none of those are issues of
6 admissibility. Those are all issues of weight.

7 Again, the document can admitted either, I
8 think, to support a finding as substantive evidence
9 under the permissibility for admitting documents that
10 would be admissible over objections in civil actions.
11 Or, as the regulation says, for the purpose of
12 supplementing or explaining the 30413(d) report.

13 And, finally, just as to Mr. Carroll's
14 comments about sort of the propriety of the e-mail.
15 This is a public agency. And our environmental
16 analyst has given the Commission ample information,
17 in detail, about why it is a normal part of his job
18 responsibilities to consult with biologists, and
19 other professional scientists, who are members of
20 public agencies, about matters that are within the
21 Environmental Defense Center's mission. I don't
22 think there was any impropriety to this.

23 But, once again, arguments about impropriety
24 are a question as to the weight. They're as to the
25 authority of the speaker. They're not a question as

1 to the relevance of it, or whether it's hearsay, or
2 not.

3 And with that, I'm happy to take any
4 questions from the Commission, but I'll be good with
5 that. Thank you for your time.

6 HEARING OFFICER KRAMER: Thank you.

7 Let's move on, then, to the third question,
8 and that was the Coastal Conservancy's comments that
9 came in yesterday, at about 3:00 p.m.

10 It was said earlier, suggested earlier, that
11 this is similar to the Navy letter, and I think
12 that's true. And it sounds like at least some of the
13 parties want to have it considered.

14 One of the questions we have, though, it's a
15 question of fairness to all the parties, and that's
16 whether the authors of this letter, or somebody who's
17 familiar with the contents can be available to answer
18 questions about it? You know, opinions that are just
19 submitted, without the opportunity to cross-examine,
20 are, of necessity, given less weight. This may fit
21 into the hearsay category, as well.

22 So, does anyone know if we would be able to
23 get somebody to testify? Ideally, during, I suppose
24 it would be during the Biology segment. But, you
25 know, we can make some accommodations, as we have for

1 other witnesses.

2 So, has anybody been able to talk to the
3 Coastal Conservancy to see what their availability
4 might be?

5 MS. FOLK: So, my understanding is that they
6 may be able to make someone available by phone to
7 introduce the letter, in a similar way that the
8 Coastal Commission introduced its letter, and to
9 answer questions about the document.

10 It deals with more than just the Biology
11 issue. It has to do with the Coastal Conservancy's
12 planning efforts in the area and its work on sea
13 level rise.

14 HEARING OFFICER KRAMER: Anyone else had any
15 contact with them?

16 MR. CARROLL: Applicant has not had any
17 contact with the Coastal Conservancy on this issue,
18 per se.

19 HEARING OFFICER KRAMER: Okay. All right.
20 Well, we --

21 MR. CARROLL: May I, on behalf of the
22 Applicant, express a view with respect to whether or
23 not the Coastal Conservancy letter comes in?

24 HEARING OFFICER KRAMER: I'm sorry, I didn't
25 quite hear you.

1 MR. CARROLL: May I, on behalf of the
2 Applicant, express a view? And I will say,
3 initially, it's difficult to take a position with
4 respect to the Coastal Commission -- I'm sorry, the
5 Coastal Conservancy letter, not knowing where the bar
6 is going to be set for admissibility of this type of
7 evidence.

8 Certainly, if the Coastal Conservancy letter
9 were to be allowed in, that would certainly suggest
10 to me that some of the other documents that are at
11 issue, in some of the motions that we've discussed
12 this morning, should certainly be admitted.

13 So, without knowing exactly where -- we've
14 got three motions pending. Without knowing exactly
15 where the Committee is going to come down and where
16 the bar is, it's difficult to take a position on
17 this. So, I guess I would reserve the right to
18 change my position on this, depending on the outcome
19 with respect to some of the other motions.

20 But as we sit here, in the abstract,
21 Applicant would not be opposed to the Coastal
22 Conservancy letter coming in, provided that somebody
23 from the Coastal Conservancy is here, and available
24 for questioning on the positions taken in the letter.

25 HEARING OFFICER KRAMER: Okay, thank you.

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1 Any other parties have comments on -- answer
2 the question, so much, what Mr. Carroll just
3 answered. Would you be objecting to the entry of
4 this letter?

5 It's already in as public comment. But as
6 evidence, if there were somebody available to ask
7 questions about it?

8 MS. CHESTER: Michelle Chester, staff
9 counsel. We are not opposed to the letter being
10 entered as agency comment, if someone is available.

11 HEARING OFFICER KRAMER: Okay, anyone else
12 wish to comment?

13 MR. SMITH: No, Your Honor.

14 HEARING OFFICER KRAMER: Thank you for that,
15 but, yeah, I don't get that judicial pension.

16 (Laughter.)

17 MR. SMITH: Thank you for clarifying that.
18 I'll keep it up, if you prefer.

19 HEARING OFFICER KRAMER: Ms. Folk?

20 MS. FOLK: Can I just respond, quickly? I
21 would say there is something of a distinction between
22 what the Applicant did here, in holding back its
23 testimony, and the submission of the letter from the
24 State Coastal Conservancy. They're a State agency,
25 with many different obligations, and were able to put

1 in the letter as comment, as public comment, now,
2 which is similar to what the Navy did here.

3 HEARING OFFICER KRAMER: Okay, thank you.

4 Let me find my boilerplate.

5 There we go. The Committee's going to
6 adjourn into a closed session, in accordance with
7 Government Code Section 11126, subdivision (c) (3),
8 which allows a State body, including a delegated
9 committee, to hold a closed session to deliberate on
10 a decision to be reached in a proceeding that the
11 State body was required to conduct.

12 Hold on a second.

13 (Colloquy between Hearing Officer and
14 Commissioners.)

15 HEARING OFFICER KRAMER: Okay, we're going
16 to count this as a break for you folks, and the
17 parties in the audience. We'll try to be back in 10
18 minutes. We'll be back, ready to go no sooner than
19 10 minutes. If it takes a little bit longer, so be
20 it. So, we are adjourned into a closed session.

21 (Closed session convened at 10:31 a.m.)

22 (Open session reconvened at 10:43 a.m.)

23 HEARING OFFICER KRAMER: Okay, folks, we're
24 going to get started. Okay, we're back on the
25 record.

1 Reporting out from our closed session, the
2 Committee had decided to take all three documents
3 into evidence. I'll begin with the Applicant's
4 rebuttal testimony.

5 We find it appropriate to bring that in. It
6 is, as the Applicant points out, responsive to issues
7 that were either raised or amplified in some of the
8 opening testimony of the others.

9 As to the e-mail from Ms. Engel, the Coastal
10 Commission Biologist, that will come in as hearsay,
11 only, subject to her being available to answer
12 questions about the contents, but it can be used as
13 hearsay.

14 And, Mr. Smith's, as far as the timing of
15 the staff's objection, the way we operate it was, in
16 fact, not late. In some ways it could be considered
17 early. Because we allow people to object to the
18 introduction of documents when we get to the part of
19 the proceeding where we have everyone formally
20 introduce them, and they could have waited until that
21 time.

22 One of the reasons why I tried to tease out
23 the previews, at the Prehearing Conference, was so
24 that we could find out about objections. And,
25 normally, there aren't very many in these cases, and

1 especially those that might affect, you know, the
2 amount of, and the types of testimony in cross-
3 examination. But, otherwise, we'll probably wait
4 until the last day.

5 Now, let me also say to the parties if, for
6 some reason, say, you're going to leave the hearings
7 early and not be here at the last day, please let me
8 know before we leave and we'll take a pause to
9 discuss the admissibility of all of your particular
10 exhibits. So that, you know, you're not here to
11 defend any -- you're not put in the position of not
12 being here to defend any objections that somebody
13 might raise at that time.

14 But by and large, it's just more efficient
15 to just handle them all. Generally, it's in large
16 blocks, at the end of the hearings.

17 So, Ms. Engel's letter -- or, e-mail,
18 already has an exhibit number. Is that correct? I
19 didn't look but --

20 MR. SMITH: That is correct.

21 HEARING OFFICER KRAMER: That's right, it
22 was 4030. I should have remembered that.

23 Then, the final item is the letter submitted
24 via our public comment system, from the Coastal
25 Conservancy. And that has not, yet, been given an

1 exhibit number. Again, that will, just like the
2 Engel letter, that will be admitted, but it will have
3 the hearsay label on it because -- because and until
4 somebody is available from the Conservancy who can
5 answer questions about that letter. Because I am
6 presuming that one party or another does want to ask
7 a few questions.

8 If all the parties tell me they have no
9 questions then, perhaps, it would be appropriate.
10 And if somebody wants to argue that it should be
11 admitted as more than hearsay, we're willing to
12 entertain that.

13 But did any party have an intention to ask
14 questions about that letter?

15 MR. CARROLL: Mike Carroll, on behalf of the
16 Applicant. Preliminary, yes, we would have the
17 intention to ask some questions related to that
18 letter.

19 HEARING OFFICER KRAMER: Okay, so then that
20 will come in as hearsay at this point.

21 MS. FOLK: Actually, can I respond on the
22 hearsay issue? I believe it would be subject to an
23 exception from the hearsay rule, as an official
24 document of a State agency and, also, as a business
25 record.

1 HEARING OFFICER KRAMER: Well, as a
2 practical matter, from the Committee, it's going to
3 get -- you know, it's going to get the weight it
4 deserves. And without somebody here to answer about
5 it, you know, it's going to receive less weight than
6 it would have, if we do have the ability to ask
7 questions of the authors.

8 (Colloquy between Hearing Officer and
9 Commissioners.)

10 HEARING OFFICER KRAMER: Right. So, in
11 effect we'd be treating it like hearsay. Not able to
12 support a finding on its own.

13 MS. FOLK: Okay. And if someone from the
14 Conservancy was able to appear by telephone, would
15 that be possible during the course of the hearings?

16 HEARING OFFICER KRAMER: Yeah, that would
17 make it more valuable to us.

18 MS. FOLK: Okay, thank you.

19 HEARING OFFICER KRAMER: So, I have the
20 City's -- I'm presuming you would like to offer that
21 as an exhibit, on behalf of the City; is that
22 correct?

23 MS. FOLK: Yes, I would.

24 HEARING OFFICER KRAMER: Okay, your next in
25 number would be 3058. So, I will put on to-do list,

1 for this evening, to go into the system and actually
2 assign that number to it. So, if you were to click
3 on the link and print an exhibit list, in the
4 morning, you would see it there.

5 (Whereupon, Exhibit No. 3058 was
6 marked for identification.)

7 HEARING OFFICER KRAMER: So, I think that
8 resolves all those motions.

9 And, first, we wanted to check one more time
10 to see if Mr. Sarvey is with us. I do not see him on
11 the telephone, unless he's one of the call-in users.
12 there's one that's muted. I'll unmute that person
13 for the moment.

14 Mr. Sarvey, are you on the telephone?

15 Okay, I guess it's possible that he might
16 not be, since he did not have any testimony or wish
17 to cross-examine anyone.

18 And then, we are about to enter the topic of
19 Air Quality, which was followed by Greenhouse Gases
20 and Public Health.

21 I can't recall, did the parties see any
22 value in hearing all three of those together. That's
23 certainly a possibility we could entertain.

24 MS. WILLIS: Mr. Kramer, this is Kerry
25 Willis, counsel for the staff. We actually proposed

1 that in our Prehearing Conference, that Air Quality,
2 Greenhouse Gas, Public Health would all be on a
3 panel. Because, usually, there's some overlap in the
4 cross-examination questions, and it makes it easier
5 if everybody is just there. So that whoever is the
6 appropriate staff person can answer the questions, as
7 opposed to saying, oh, that section's already ended.
8 This way, we can have everybody there at once.

9 HEARING OFFICER KRAMER: Okay. Does any
10 part object to that approach?

11 MR. CARROLL: No, Applicant does not.

12 HEARING OFFICER KRAMER: Okay, let me go
13 down the list and people can start to get themselves
14 seated, of witnesses. So, we've got Gary Rubenstein
15 --

16 MR. CARROLL: Oh, I'm sorry, I may have
17 misunderstood what Ms. Willis was referring to as a
18 panel. So, we -- Applicant has one witness on these
19 three topics. It was our intention to present him
20 one time, for some relatively brief direct testimony,
21 as opposed to three times.

22 So, when Ms. Willis referred to panel, I
23 thought she meant all of each party's witnesses on
24 these three topics would be presented at a panel, not
25 that all of the --

1 MS. WILLIS: That would be correct. We
2 would just have our five witnesses up at the same
3 time. That would include Matthew Layton, Gerry
4 Bemis, Dr. Ann Chu, David Vidaver, and Mike Villegas
5 from the Air District.

6 HEARING OFFICER KRAMER: Okay. Well, then,
7 Mr. Rubenstein, if you'd come forward. The Applicant
8 normally goes first, so you'll be --

9 MR. CARROLL: Applicant calls Mr. Rubenstein
10 to the stand.

11 HEARING OFFICER KRAMER: Yeah. And while
12 he's coming up, I was assuming there would be more
13 people coming up. But I need to remind everyone of
14 our rules of decorum.

15 The purpose of today's hearing is to hear
16 evidence on the Application for Certification of the
17 Puente Power Project. Hearings begin today and
18 they're scheduled to end on Friday. The first and
19 longest portion of each day involves the presentation
20 of testimony and other evidence by the parties.

21 After that, we will take public comment.
22 Today, public comment is scheduled to begin at 5:30.
23 So, even if we're not done with a topic, we will
24 start the public comment at that point. And that was
25 designed to allow the public to come and be

1 guaranteed that they're not going to have to sit
2 through a lot of evidence, and testimony, if they
3 don't want to.

4 The Energy Commission values and encourages
5 public participation in its proceedings.

6 Participation has two parts. First is your ability
7 to speak to the Committee. Second is the ability of
8 others to hear what you and others have to say.

9 During the evidentiary hearing and public
10 comment portions of today's meeting, there is an
11 expectation that everyone present maintains standards
12 of decorum. What that means is that no person shall
13 be permitted to interrupt Committee members or other
14 speakers. No person shall engage in behavior that
15 disrupts the orderly conduct of the meeting,
16 including, but not limited to, using threatening
17 language, continuously making sounds that inhibit the
18 ability of others to participate in the meeting, and
19 hear the meeting content, or using actions, attire,
20 props, or signage that obstructs the view of meeting
21 attendees.

22 If these behaviors occur, the Presiding
23 Member has the authority to issue a warning. If the
24 disruptions continue, the Presiding Member may order
25 the disruptive person to leave the meeting. If the

1 person does not leave, the Presiding Member may call
2 a recess of the meeting, may clear the meeting room,
3 or may seek the assistance of security or law
4 enforcement to enforce the rules of decorum.

5 If order cannot be restored, the Presiding
6 Member may continue this meeting to another day,
7 time, and/or place.

8 To facilitate the orderly receipt of public
9 comments, we'll be asking the public to fill out a
10 blue speaker card and return it to our Public
11 Adviser. And, then, when the Presiding Member calls
12 the names, your name from the card, we ask that
13 people promptly come to the microphone and then
14 promptly conclude your comments when your time is
15 expired.

16 Failure to yield the podium at the end of
17 your allotted time is also considered behavior that
18 disrupts the orderly conduct of the meeting.

19 So, with that, Mr. Carroll, if you'd begin
20 your direct examination of Mr. Rubenstein.

21 MS. BELENKY: Excuse me, can I -- this is
22 Lisa Belenky. I just wanted to ask a point of order.
23 I am actually, now, confused. Staff asked for a
24 panel and I'm not sure, now, what you meant by that?

25 HEARING OFFICER KRAMER: Not, what Mr.
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1 Carroll clarified was that each party would have
2 their witnesses direct, and then we'd go around with
3 cross. And, so, in some cases, such as staff, they
4 do have more than one witness, so they would testify
5 as a panel.

6 But it's not going to be a panel of
7 combining the witnesses from different parties. And
8 it's going to be more formal than what you remember,
9 probably, from the last case that we did.

10 MS. BELENKY: Yes, but you had also asked
11 about grouping the Air Quality, Greenhouse Gas, and
12 the other.

13 HEARING OFFICER KRAMER: Right.

14 MS. BELENKY: Are we doing that or --

15 HEARING OFFICER KRAMER: Yes, Mr. Rubenstein
16 is going to testify about all three topics. Correct,
17 Mr. Carroll?

18 MR. CARROLL: That's correct. So, Applicant
19 calls Mr. Rubenstein on the topics of Air Quality,
20 Greenhouse Gases, and Public Health.

21 MS. BELENKY: And then, the staff will go
22 back through the three topics, and then each of the
23 Intervenors will go through the three topics?

24 HEARING OFFICER KRAMER: Right.

25 MS. BELENKY: Thank you for clarifying. I

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1 actually think this might be more confusing, but
2 we'll see how it goes.

3 HEARING OFFICER KRAMER: Go ahead, Mr.
4 Carroll.

5 MR. CARROLL: Thank you. Mr. Rubenstein,
6 can you please --

7 HEARING OFFICER KRAMER: Sorry, we need to
8 swear him in.

9 And to make this more efficient, if all the
10 witnesses who are going to testify on these three
11 topics would stand?

12 (Colloquy between Hearing Officer and
13 Commissioners)

14 HEARING OFFICER KRAMER: Is there anyone
15 online who's going to be testifying? Ms. Chester,
16 are all your witnesses here.

17 Okay. Well --

18 MR. CARROLL: Mr. Kramer, I'm not sure that
19 the Air District staff heard your request. I think
20 they were having a sidebar. He knows, now.

21 HEARING OFFICER KRAMER: Thank you.

22 Do you swear or affirm that the testimony
23 you're about to give is the truth to the best of your
24 ability?

25 MR. RUBENSTEIN: Gary Rubenstein. Yes, I
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1 do.

2 HEARING OFFICER KRAMER: Okay, thank you.

3 They all nodded affirmatively.

4 And we'll just confirm with witnesses, when
5 they come up, whether or not they were sworn. That
6 saved me from doing that six or seven times.

7 MR. CARROLL: Thank you. Mr. Rubenstein,
8 can you please state and spell your name, identify
9 your current employer and your current position?

10 MR. RUBENSTEIN: Yes. My name is Gary
11 Rubenstein, G-a-r-y R-u-b-e-n-s-t-e-i-n. I am
12 currently employed by Sierra Research, where I'm a
13 Senior Partner.

14 MR. CARROLL: What experience do you have
15 that's relevant to today's proceedings?

16 MR. RUBENSTEIN: I have over 44 years of
17 professional experience in evaluating the air quality
18 impacts of a variety of different activities,
19 including power generation. That experience includes
20 the review of air quality impacts of over 30,000
21 megawatts of generating capacity, using a variety of
22 different fuels and technologies. And over 18,000
23 megawatts of generating capacity that has been the
24 subject of licensing activities before the California
25 Energy Commission.

1 MR. CARROLL: Do you have in front of you
2 the documents marked for identification as first
3 Applicant's Exhibit, number 1103, entitled "Expert
4 Declaration of Gary Rubenstein Regarding Air Quality,
5 Public Health, and Specified Areas in Other
6 Disciplines"? And, secondly, Applicant's Exhibit
7 Number 1139, entitled "Expert Declaration of Gary
8 Rubenstein in Response to Opening Testimony of CBD
9 Witness Bill Powers"? And, thirdly, the exhibits
10 identified in each of those two declarations?

11 MR. RUBENSTEIN: Yes, I do.

12 MR. CARROLL: And was that prepared
13 testimony prepared by you or under your supervision?

14 MR. RUBENSTEIN: Yes, it was.

15 MR. CARROLL: Do you have any changes or
16 corrections to your prepared testimony that you'd
17 like to make today?

18 MR. RUBENSTEIN: Yes, I do. In my rebuttal
19 to the testimony of Mr. Powers, which I believe is
20 Exhibit 1139, there's a table at the top of page 4
21 that I reproduced, in part, from Mr. Power's
22 testimony, and then I added a row below, showing
23 greenhouse gas emissions from gas-fired generation in
24 California.

25 I need to correct that table by deleting the
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1 row that I added. I had, in creating that table,
2 relied on information from the California Air
3 Resources Board's website, and have subsequently
4 determined that over the course of the multi-year
5 period covered by that table, the ARB website used
6 different designations for what is a cogeneration
7 facility and what is a gas-fired power plant. And,
8 as a result, the numbers that I put in there are not
9 accurate.

10 The changes are not significant, but I
11 thought it would be easiest and cleanest to simply
12 delete that row.

13 Nonetheless, my conclusions are the same.
14 Which is that there is, in fact, no correlation
15 between the change in capacity factors for simple-
16 cycle or combined-cycle units over time and the
17 greenhouse gas emissions from natural gas-fired
18 generation.

19 MR. CARROLL: Thank you. Do you have any
20 other changes to your prepared testimony?

21 MR. RUBENSTEIN: I do not.

22 MR. CARROLL: Can you please provide a brief
23 summary of your analysis and conclusions with respect
24 to the project?

25 MR. RUBENSTEIN: Yes. We performed an
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1 analysis of the air quality impacts associated with
2 the Puente Power Project. That analysis was
3 performed using worst case assumptions regarding the
4 air emissions from the facility, regarding the
5 meteorology that would disburse those emissions,
6 regarding the existing background air quality into
7 which those emissions would be dispersed.

8 And based on that analysis, our conclusion
9 was that the project would not result in any
10 unmitigated, significant air quality or public health
11 impacts, including impacts related to greenhouse gas
12 emissions.

13 It was also our conclusion that the project
14 would comply with all applicable LORS, laws,
15 ordinance, regulations and standards.

16 MR. CARROLL: Thank you. Does that complete
17 your testimony today?

18 MR. RUBENSTEIN: Yes, it does.

19 MR. CARROLL: Mr. Rubenstein's available for
20 cross-examination.

21 HEARING OFFICER KRAMER: Okay. I'm going to
22 create a standard list here, of how we'll go through
23 cross-examination, beginning with staff.

24 MS. WILLIS: No cross.

25 HEARING OFFICER KRAMER: And the City of
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1 Oxnard?

2 MS. FOLK: No cross.

3 HEARING OFFICER KRAMER: Okay. Actually, I
4 should look at my list and see who's signed up to
5 cross.

6 Okay, Environmental Center is --

7 MR. CARROLL: I believe that the only party
8 who reserved cross of Mr. Rubenstein was Center for
9 Biological Diversity, who reserved 20 minutes.

10 HEARING OFFICER KRAMER: Okay.

11 MS. LAZEROW: Sorry. I believe that at the
12 Prehearing Conference -- sorry, this is Shana
13 Lazerow, on behalf of CEJA. At the Prehearing
14 Conference, the Energy Commission staff indicated a
15 degree of unwillingness to be the sole sponsor of
16 certain categories of testimony. And I just wanted
17 to clarify that for Air Quality and Public Health,
18 the staff people who are identified will not, when I
19 ask them specific questions, refer back to the
20 Applicant's expert. Because if we anticipate that
21 will occur, then I would like to pose a couple of
22 questions.

23 HEARING OFFICER KRAMER: Okay. So, does
24 anybody want to ask -- I don't see anybody who's
25 signed up to ask questions of -- Ms. Belenky, did you
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1 have questions of Mr. Rubenstein?

2 MS. BELENKY: Yes, we do.

3 HEARING OFFICER KRAMER: Okay, go ahead.

4 MS. BELENKY: We have questions in both the
5 Air Quality and Greenhouse Gas portions of his
6 testimony.

7 HEARING OFFICER KRAMER: Okay. And Public
8 Health, of course, is on the table, too, so go ahead.

9 MS. BELENKY: Yes, but I don't have
10 questions on the Public Health part.

11 Good morning.

12 MR. RUBENSTEIN: Good morning.

13 MS. BELENKY: I'm Lisa Belenky, for the
14 Center for Biological Diversity.

15 Mr. Rubenstein, turning first to the Air
16 Quality issues, in your rebuttal testimony you state
17 that the FDOC Condition 48, which limits -- you state
18 that it limits Puente's operation to 22,150 operating
19 hours, or a capacity factor of 24.5 percent.

20 Isn't it correct that there is no condition
21 or other provision of law restricting Puente to any
22 lower capacity factor?

23 MR. RUBENSTEIN: Can you point to me to
24 where, in my rebuttal testimony, you're looking,
25 please?

1 MS. BELENKY: You know, it's on the PDF of
2 238. So, I can pull that up. You have very -- okay,
3 in your testimony, that is page 7.

4 HEARING OFFICER KRAMER: What's the exhibit
5 number?

6 MS. BELENKY: The exhibit, I think it's all
7 one, big exhibit, and it's hard for me to use that
8 exhibit number. It's on page 7 of your testimony. I
9 believe this is the portion in response to Mr.
10 Powers. And this is Footnote 20. It also references
11 Footnote 20.

12 MR. RUBENSTEIN: This is Gary Rubenstein.
13 Mr. Kramer, it's Exhibit 1139. And it's on numbered
14 page 7, on that exhibit, Footnote 20.

15 And the answer to your question is I'm not
16 aware of any other condition that restricts the
17 operation of the Puente Power Project to fewer hours
18 than those that I've stated.

19 MS. BELENKY: Thank you. And is it correct
20 that nothing in the FSA or the Applicant's testimony
21 demonstrates, as a factual matter, that the
22 mitigation of air quality impacts, beyond an 11
23 percent capacity factor, is infeasible?

24 MR. RUBENSTEIN: Could you restate that
25 question? There were a few too many negatives in

1 there, for me.

2 MS. BELENKY: The question is, isn't it
3 correct that nothing in the FSA or your testimony,
4 Applicant's testimony, demonstrates that additional
5 mitigation, beyond 11 percent, is infeasible?

6 MR. RUBENSTEIN: I'm still not understanding
7 the question. Are you asking whether additional
8 mitigation, beyond 11 percent, is feasible?

9 MS. BELENKY: Let me go back a bit. In the
10 FSA and your testimony, you discuss mitigation that's
11 based on 11 percent capacity factor, rather than the
12 24.5 percent capacity factor which would be the
13 maximum allowable.

14 MR. RUBENSTEIN: No, that's not correct. I
15 do not discuss mitigation in the FSA at all.

16 MS. BELENKY: Yes, you don't discuss the
17 FSA. You discuss it in your testimony?

18 MR. CARROLL: May I ask where, in Mr.
19 Rubenstein's testimony, we're at now?

20 MS. BELENKY: Now, I'm getting confused.
21 You don't discuss the mitigation, you discuss the
22 capacity factor in your testimony. And you discuss
23 only the 24.5 percent capacity factor as the limit.
24 Is that correct? That's what we established in the
25 first question.

1 MR. RUBENSTEIN: That's correct.

2 MS. BELENKY: And do you have any testimony
3 regarding feasibility of additional mitigation?

4 MR. RUBENSTEIN: No. To the best of my
5 recollection, my testimony addresses the mitigation
6 that's required. I do not discuss any mitigation
7 beyond what is required.

8 MS. BELENKY: Sorry, I need just a minute.

9 HEARING OFFICER KRAMER: Well, while you're
10 thinking, Mr. Rubenstein, you refer to Exhibit 1139,
11 right?

12 MR. RUBENSTEIN: That's correct.

13 HEARING OFFICER KRAMER: Okay. I'll just
14 point out that because of exhibit number collisions,
15 that's actually 1121. The Applicant broke all of
16 that rebuttal package into separate exhibit numbers.
17 But that was physically impossible in our system.

18 And for everyone, when you're referring to a
19 document, please give us the exhibit number so that
20 at some point in the future, if people are trying to
21 figure out what we're talking about from the
22 transcript, they will have a better shot at finding
23 the correct document.

24 MR. CARROLL: Mr. Kramer, a point of
25 clarification on that. Obviously, all of Applicant's
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1 prepared testimony uses the exhibit numbers that we
2 assigned, which we broke down on a per-witness basis.
3 We actually thought that that would be easier to
4 follow. But I want to clarify that you're not asking
5 us to make that correction. That there will just be
6 a general understanding that the Committee has
7 renumbered that as a single exhibit?

8 HEARING OFFICER KRAMER: Right. And I've
9 produced and docketed, or filed is the correct term,
10 what I called an exhibit conversion table. In fact,
11 I had to pull it out to figure out what was going on.
12 So, that's in the record.

13 And when there's a proposed decision, it
14 will be affixed to the front of the exhibit list.

15 No, we're not expecting you to go back and
16 correct all your work. We're just providing somebody
17 with a cheat sheet, so they can find their way.

18 MR. CARROLL: Thank you.

19 MS. BELENKY: Thank you. I have a couple of
20 additional questions. Thank you for the
21 clarification as to Table 1, in your rebuttal. Given
22 that you deleted the line that you added to the
23 table, regarding greenhouse gas emissions, do you
24 also withdraw the remaining conclusions in paragraph
25 8, of your rebuttal, regarding the trends in

1 greenhouse gas emissions?

2 MR. RUBENSTEIN: All right. No, I do not.

3 This is Gary Rubenstein. No, I do not withdraw those
4 conclusions. As I indicated, when I made my
5 correction, I believe those conclusions are still
6 valid. Regardless of how you look at the data in
7 terms of whether it includes gas-fired cogeneration
8 or not, whether it includes steam boiler generation,
9 or just gas turbine plants that are not cogeneration,
10 and those are all different ways you can slice and
11 dice the data. Regardless of how you look at it, my
12 conclusion is the same. There is no correlation
13 between the greenhouse gas emissions from gas-fired
14 generation and the capacity factors that were
15 presented in Mr. Powers' testimony.

16 In fact, what the data show is that there
17 was a relatively large increase in greenhouse gas
18 emissions between 2010 and 2012, from gas-fired
19 generation in California, which was largely
20 attributable to the shutdown of the San Onofre
21 Nuclear Generating Station. And greenhouse gas
22 emissions from gas-fired generation in California
23 have been either relatively flat or declining,
24 slightly, since 2012. Notwithstanding the data shown
25 in Mr. Powers' Table 1, indicating an increase in

1 capacity factor for simple-cycle units over that same
2 period of time.

3 So, again, my conclusion remains that there
4 is no correlation between the capacity factors for
5 simple-cycle and combined-cycle units, as presented
6 in Mr. Powers' testimony, and greenhouse gas
7 emissions from gas-fired generation in California.

8 MS. BELENKY: Thank you. In your testimony,
9 rebutting Mr. Powers, you state that a document cited
10 by Mr. Powers, which was Exhibit 7005, I believe,
11 does not support his assertion that simple-cycle
12 units are displacing combined-cycle units. Is that
13 correct?

14 MR. RUBENSTEIN: Can you point me to the
15 specific statement in my testimony that you're
16 referring to, please?

17 MS. BELENKY: Yes, I believe it's on page --
18 sorry, page 4 of your -- well, page 3 of your
19 testimony.

20 HEARING OFFICER KRAMER: What page of the
21 PDF is that, do you know?

22 MS. BELENKY: It's 234, in your large PDF,
23 and it starts on the page before, I believe. So,
24 it's paragraph 7, from page 2 to 3.

25 MR. RUBENSTEIN: This is Gary Rubenstein.

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1 Yes, I made that statement in my testimony.

2 MS. BELENKY: Thank you. And your testimony
3 quotes a paragraph from that document. Is that
4 correct?

5 MR. RUBENSTEIN: That's correct.

6 MS. BELENKY: Isn't it correct that the
7 passage quoted in your testimony does not address the
8 presence or absence of any trend in the relative
9 dispatch of single-cycle and combined-cycle units?

10 MR. RUBENSTEIN: This is Gary Rubenstein. I
11 guess I disagree. What this paragraph is discussing
12 is how there are a number of factors that relate to
13 the capacity factors for simple-cycle and combined-
14 cycle units. And you can't make a simple
15 generalization that simple-cycle units are displacing
16 combined-cycle units, based on the information in
17 that report.

18 MS. BELENKY: Thank you. I'm not sure you
19 answered my question. Isn't it true that this
20 paragraph, that you quoted, does not address the
21 presence or absence of any trend in the relative
22 dispatch of single-cycle or combined-cycle units?

23 MR. RUBENSTEIN: This is Gary Rubenstein.
24 That's correct, this paragraph does not discuss a
25 trend, over time, of capacity factors of simple-cycle

1 versus combined-cycle power plants.

2 MS. BELENKY: Thank you. I believe that's
3 all of our questions. I just want to make sure my
4 co-counsel doesn't -- yes, I think we're fine. Thank
5 you.

6 HEARING OFFICER KRAMER: Okay. I think
7 that's -- or, Ms. Lazerow, did you have a question
8 for Mr. Rubenstein?

9 MS. LAZEROW: I did, thank you.

10 HEARING OFFICER KRAMER: Go ahead.

11 MR. CARROLL: This is Mr. Carroll, for the
12 Applicant. I'm just going to interject. We'll see
13 where this goes. Ms. Lazerow made a statement,
14 earlier, regarding staff looking to the Applicant to
15 support specific portions of the FSA.

16 My recollection of that discussion, at the
17 Prehearing Conference, was that it related to the
18 project description. And that, essentially, what
19 staff was saying is that they accepted the project
20 description as provided by the Applicant, and did not
21 have firsthand knowledge, for example, of the model
22 of the turbine, and those sorts of specific facts.
23 And Applicant agreed that Mr. Piantka, who is our
24 witness on Project Description, would be prepared to
25 substantiate and respond to questions about those

1 types of facts.

2 That's my recollection of that discussion.

3 It did not pertain to all of our witnesses,

4 certainly, and did not pertain to Mr. Rubenstein.

5 Having said that, I don't have an objection to an

6 initial question, subject to any objection I might

7 have on the substance. But I just wanted to state at

8 the outset that no time was reserved for this witness

9 on this topic. And, so, my hope would be that it's

10 not extensive.

11 HEARING OFFICER KRAMER: Go ahead, Ms.

12 Lazerow, and let's see.

13 MS. LAZEROW: Thank you. Good morning. I

14 only had one question for you. You stated that your

15 testimony analyzed worst case assumptions regarding

16 several factors, including background conditions.

17 And I just wanted to confirm that the background

18 monitoring stations that you had relied on for the

19 ambient air quality analysis were the same three

20 stations that were relied on by the Air District, and

21 by staff, in their analyses. The high school for

22 ozone, and NO_x, and PM. And, then, the Santa Barbara

23 location for sulfur dioxide. And, then, the Goleta

24 location for carbon monoxide.

25 MR. RUBENSTEIN: This is Gary Rubenstein. I
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1 understand the question. It will take me just a
2 second to find that part of the Application for
3 Certification.

4 I'm sorry, what were the three stations that
5 you mentioned, again?

6 MS. LAZEROW: Goleta, the local high school,
7 and Santa Barbara. If you are trying to word search,
8 it's Rio Mesa High School would probably get you
9 there the fastest.

10 MR. RUBENSTEIN: Yes, we used the Rio Mesa
11 School for PM-2.5, PM-10, ozone, and nitrogen
12 dioxide.

13 MS. LAZEROW: And did you use the other two
14 monitoring locations for carbon monoxide and for
15 sulfur dioxide, as well?

16 MR. RUBENSTEIN: We used UC Santa Barbara
17 for sulfur dioxide, and the East Cañon Perdido site
18 for carbon monoxide.

19 MS. LAZEROW: Thank you. That was my only
20 question.

21 HEARING OFFICER KRAMER: Any redirect, Mr.
22 Carroll?

23 MR. CARROLL: No. Thank you.

24 HEARING OFFICER KRAMER: Okay, thank you,
25 Mr. Rubenstein.

1 Okay, let's bring up the staff Air Quality
2 witnesses, Gerry Bemis, Dave Vidaver, Ann Chu,
3 Matthew Layton. Oh, and Mr. Villegas from the Air
4 District. And that looks like it. Thank you.

5 Okay, all of you have been sworn, is that
6 correct? They're all nodding yes.

7 Okay, Ms. Willis or Ms. Chester?

8 MS. WILLIS: I will begin. This is Kerry
9 Willis, counsel for the staff.

10 Good morning, I'm going to go through each
11 person and introduce. And I'm going to start with
12 Mr. Villegas, with the Air District. Could you
13 please state your name for the record?

14 MR. VILLEGAS: Yes. I'm Michael Villegas.
15 That's M-i-c-h-a-e-l V-i-l-l-e-g-a-s. I'm the Air
16 Pollution Control Officer for Ventura County.

17 MS. WILLIS: And are you sponsoring the
18 Final Determination of Compliance today, Exhibit
19 Number 2004?

20 MR. VILLEGAS: Yes, we are.

21 MS. WILLIS: And do you have anything that
22 you would like to add today?

23 MR. VILLEGAS: I wanted to make a statement
24 that kind of puts things in perspective here, in
25 Ventura County. We're the agency tasked with

1 attaining and maintaining Federal and State Air
2 Quality Standards to provide public health benefits
3 to all residents of Ventura County.

4 We received an application for this facility
5 in March of 2015, deemed it complete in May of that
6 year. Issued our Preliminary Determination of
7 Compliance in May of last year, and our Final DOC
8 October 13th of last year.

9 Just some quick background on Ventura County
10 air quality. We are deemed a serious non-attainment
11 area for the Federal Ozone Standard. And as you're
12 aware, ozone is not a pollutant, it's directly
13 emitted. It forms in the atmosphere as the result of
14 the emissions of reactive organic compounds, or
15 hydrocarbons, and nitrogen oxides in a photochemical
16 operation that lead to these issues.

17 To put things in perspective, the areas
18 where we actually have a smog problem or ozone
19 problem are limited in this county to, now, the Ojai
20 Valley and Simi Valley. We do not see ozone
21 exceedances in the western portion of Ventura County,
22 markedly in Oxnard where, to put things in
23 perspective, the design value for this region is 61
24 parts per billion. Compared to both the State and
25 Federal standard at 70 parts per billion. Both of

1 those standards were set to provide an adequate
2 margin of safety with ozone exposure for sensitive
3 receptors, such as children.

4 On the particulate matter side, we attain
5 both the Federal and the more stringent, PM-2.5
6 standard.

7 These facts are borne out when you look at
8 CalEnviroScreen. When you look at the census tracts
9 in Oxnard, you see very good rating for both ozone
10 and PM-2.5.

11 And as far as air quality improvement goes,
12 if you go back to 1990, we were exceeding the Federal
13 Ozone Standard of 75 parts per billion about 120 days
14 a year. The last two years, we've exceeded it four
15 days, both in the Simi and Ojai regions.

16 We have a plan in place that is going to
17 reach our statutory deadline of 2020 to attain this
18 Federal standard. And we have done a very
19 conservative emission forecast in that, that includes
20 all the emission reduction credits in our bank.
21 Actually, we modeled them as if they're in the air,
22 in the out years.

23 Meaning, significant growth in the
24 industrial sector. And we don't expect -- that's
25 kind of a -- it's a conservative budget, we're being
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1 safe. And what we know is that we are going to
2 continue to see improved air quality. And,
3 certainly, we're going to achieve those standards in
4 Simi, and we've already made it in Ojai, based on the
5 most recent data.

6 In closing, we believe that our Final
7 Determination of Compliance will protect air quality
8 and make sure that no citizens are subjected to any
9 adverse impacts. That's all I have.

10 MS. WILLIS: Thank you.

11 Next, I'd like to go to Mr. Bemis. Could
12 you please state your name for the record, and spell
13 it, please?

14 MR. BEMIS: Yes, my name is Gerry Bemis.
15 Spelled G-e-r-r-y B-e-m-i-s.

16 MS. WILLIS: Mr. Bemis, did you prepare or
17 assist in preparing the Air Quality testimony in the
18 Final Staff Assessment, marked as Exhibit 2000?

19 MR. BEMIS: I supervised Jacquelyn Leyva-
20 Record, who prepared the Air Quality testimony, and
21 Dr. Wenjun Qian, who prepared two appendices for the
22 Air Quality testimony, in response to comments.

23 David Vidaver, sitting on my left, prepared
24 the portion of the Greenhouse Gas appendix,
25 describing how Puente, if built, would participate in

1 the overall electricity system, providing electricity
2 to California.

3 Both Ms. Leyva-Record and Dr. Qian are not
4 available to testify directly.

5 I also supervised Dr. Huei-An Chu, would
6 conduct the Public Health analysis, and she's to my
7 right.

8 MS. WILLIS: Is the statement of your
9 qualifications attached to our testimony?

10 MR. BEMIS: Yes.

11 MS. WILLIS: And could you briefly state
12 your education, experience, as it pertains in air
13 quality analyses?

14 MR. BEMIS: Sure. I have a Bachelor's
15 Degree in Civil Engineering, and a Master's Degree,
16 also in Civil Engineering, where I took several
17 graduate level classes in atmospheric science.
18 During the 1977 through 1982 period, I did air
19 quality evaluations of proposed power plants,
20 preparing what was called a Notice of Intent, Air
21 Quality section, for several large, proposed, coal-
22 fired power plants.

23 Then, in 2009, I returned to the Siting
24 Division as an Air Resources Supervisor for seven
25 staff, preparing Air Quality, Public Health and

1 Transmission Line Safety and Nuisance sections of
2 power plant licensing proceedings.

3 I also, personally, developed California's
4 Greenhouse Gas Emissions Inventory in the mid-2000s,
5 before that work was transferred to the Air Resources
6 Board, with the adoption of AB 32.

7 HEARING OFFICER KRAMER: We, unless a party
8 feels strongly, we could dispense with the recitation
9 of qualifications, subject to a party wanting to make
10 an inquiry of a particular witness.

11 Is that acceptable to everyone? That will
12 save us a few minutes.

13 MS. WILLIS: And in this panel, I don't
14 think anybody had -- was questioning qualifications.
15 In other panels they were. So, we're happy to go
16 forward without that.

17 HEARING OFFICER KRAMER: Okay. So, folks,
18 help me then. We will not discuss qualifications
19 unless somebody needs to. But you can help me by
20 reminding me, when we start a particular witness, if
21 you have such questions, and then we'll go to --
22 because I don't think I have in mind exactly who
23 those people are. But thank you.

24 So, go ahead.

25 MR. CARROLL: Mike Carroll, on behalf of
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1 Applicant. Just a point of clarification. Then, so
2 absent an objection from a party, the experts will be
3 qualified as expert witnesses in the subject areas to
4 which they're testifying. Is that the understanding.

5 HEARING OFFICER KRAMER: Does anybody
6 disagree with that? It's fine with the Committee.

7 MR. SMITH: I think the Environmental
8 Defense Center would object to that procedure. I
9 think it's fine, if we can draw a distinction between
10 the necessity of reciting the qualifications for
11 witnesses, where there's no dispute as to their
12 qualifications, with a presumption that the witness
13 is qualified absent an objection. That would be our
14 strong preference. And my point is that --

15 HEARING OFFICER KRAMER: Okay.

16 MR. SMITH: Yeah.

17 HEARING OFFICER KRAMER: That's what I heard
18 Mr. Carroll to say.

19 MR. SMITH: Oh, I may have misunderstood Mr.
20 Carroll's point. If that was his point, then I
21 agree.

22 HEARING OFFICER KRAMER: Okay, so let's --
23 we are not stipulating that everybody is qualified,
24 but we are not going to go through the motions of
25 reciting the qualifications, unless somebody has a

1 concern.

2 MR. SMITH: Okay, fine. Thank you for
3 clarifying that.

4 MR. CARROLL: So, just so I understand the
5 point, belaboring the point that we have a lot of
6 experts that are going to come up over the next four
7 days, so we may as well get it straight.

8 So, absent an objection from one of the
9 parties, the witnesses will be presumed qualified as
10 experts within the area to which they're testifying.

11 HEARING OFFICER KRAMER: Yes.

12 MR. CARROLL: Thank you.

13 MR. SMITH: I'm sorry, I'm just not sure
14 what Mr. Carroll means by presumed qualified. If
15 that's -- I want to be clear that we're not waiving a
16 right to object to a witness's qualifications just
17 because the witness has not, on direct examination,
18 testified to their qualifications.

19 But I am certainly fine with agreeing that
20 we don't need to hear testimony on the witness's
21 qualifications if there is no objection. So, it's
22 the word "presumption" that I'm just struggling with
23 here.

24 MR. CARROLL: Let me restate. I didn't mean
25 by the use of the word "presumption" that anyone was

1 waiving. All I was saying that in the absence of an
2 objection, the witness will be qualified as an expert
3 and there's no need for the proponent of that expert
4 to recite the credentials. Which is the way we
5 typically proceed, and the way we assumed we were
6 proceeding with Mr. Rubenstein, which is why we
7 didn't provide detailed explanation of his
8 credentials.

9 MR. SMITH: That's fine, we're agreeable to
10 that.

11 HEARING OFFICER KRAMER: Okay, thank you.
12 Go ahead, Ms. Willis.

13 MS. WILLIS: Thank you.
14 Mr. Bemis, did you have any changes to your
15 testimony?

16 MR. BEMIS: Yes. The Federal Attainment
17 Standards for Ventura County, as the Air District
18 explained, should be listed in Air Quality Table 3 as
19 serious, not moderate.

20 This affects attainment planning for the
21 District, but does not change permitting requirements
22 for Puente.

23 MS. WILLIS: Thank you.

24 Mr. Layton, could you please state your name
25 for the record?

1 MR. LAYTON: Matthew Layton.

2 MS. WILLIS: And did you prepare or assist
3 in preparing the Air Quality and GHG testimony in the
4 Final Staff Assessment, marked as Exhibit 2000?

5 MR. LAYTON: I did.

6 MS. WILLIS: And was the statement of your
7 qualifications attached to the Air Quality testimony?

8 MR. LAYTON: Yes, it was.

9 MS. WILLIS: And do the opinions contained
10 in staff's testimony represent your staff's best
11 professional judgment?

12 MR. LAYTON: It does.

13 MS. WILLIS: And, Mr. Vidaver, could you
14 please state and spell your name for the record?

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

16 MS. WILLIS: And did you prepare or assist
17 in preparing the Greenhouse Gas testimony, in the
18 Final Staff Assessment, marked as Exhibit 2000?

19 MR. VIDAVER: Yes.

20 MS. WILLIS: Was a statement of your
21 qualifications attached to your testimony?

22 MR. VIDAVER: Yes.

23 MS. WILLIS: And do the opinions contained
24 in the staff's testimony represent the staff's best
25 professional judgment?

1 MR. VIDAVER: Yes.

2 MS. WILLIS: Okay. And, Dr. Chu, could you
3 please state and spell your name for the record?

4 DR. CHU: Hi, my name's Huei-An Chu. H-u-e-
5 i hyphen A-n, C-h-u.

6 MS. WILLIS: And did you prepare the Public
7 Health Testimony in the Final Staff Assessment,
8 marked Exhibit 2000?

9 DR. CHU: Yes.

10 MS. WILLIS: And did you provide a
11 statement of your qualifications?

12 DR. CHU: Yes.

13 MS. WILLIS: And do the opinions contained
14 in your testimony represent your best professional
15 judgment?

16 DR. CHU: Yes.

17 MS. WILLIS: Okay. I'd like to go back to
18 Mr. Bemis. Could you please describe the existing
19 air quality in the plant vicinity?

20 MR. BEMIS: Yes. The local area has
21 attainment of all ambient air quality standards,
22 expect the State and Federal Ozone Standard and the
23 State's PM-10 and PM-2.5 Standards. All of the
24 standards are set at levels to protect the health of
25 sensitive individual of the population, including the

1 young, the elderly, and people with preexisting
2 health conditions.

3 The local status of attaining ambient air
4 quality standards is shown in the Air Quality Table
5 3, on page 4.1-9, of the Final Staff Assessment.

6 Air Quality Table 4 shows ambient ozone
7 levels from 1990 to 2014, measured at the Rio Mesa
8 High School, Number 2 Monitoring Station.

9 Air Quality Table 5 shows PM-10 levels for
10 the same period and same location.

11 And Air Quality Table 6 shows PM-2.5 levels
12 from 1999 to 2014, at the same monitoring station.
13 These PM-2.5 measurements began in 1990.

14 MS. WILLIS: Could you please describe the
15 potential emissions from the proposed project?

16 MR. BEMIS: As described on page 4.1-19, of
17 the Final Staff Assessment, construction would occur
18 in three phases. Phase one would be facility
19 construction and initial commission, taking around 22
20 months, and it being concluded around June 2020.

21 Phase two would be retirement and
22 decommissioning of Mandalay Units 1 and 2, taking
23 around six months and completed by June 2021.

24 Phase three would be demolition of Units 1
25 and 2, taking around 18 months, and completed by

1 December 2022. These three phases would not overlap
2 and there could be some slack time between some
3 phases. Mandalay Unit 3 would not be affected by
4 these changes -- phases.

5 Emission rates from these three phases are
6 shown in Air Quality Tables 11, in pounds per day,
7 and Table 12, on page 4.1-21, with additional details
8 provided in backup tables 13 through 17.

9 Construction air quality impacts, due to
10 these emissions, were estimated and are shown in Air
11 Quality Table 22, on page 4.1-34.

12 Operating period emissions were also
13 evaluated. These emissions are shown on pages 4.1-25
14 through 4.1-30. Operating impacts, due to these
15 emissions, are shown in Air Quality Tables 23, on
16 page 4.1-39, and Table 24, on page 4.1-40.

17 MS. WILLIS: Mr. Bemis, does staff analyze
18 direct air quality impacts from this project?

19 MR. BEMIS: My staff did, under my guidance
20 and supervision.

21 MS. WILLIS: And what were the conclusions?

22 MR. BEMIS: We concluded that Puente would
23 not cause violation of State or Federal ambient
24 quality standards. Which, as I said, are set at
25 levels to protect health-sensitive members of the

1 public, with a margin of safety to ensure protection.
2 For those pollutants where the associated ambient Air
3 Quality Standards is already exceeded, the facility's
4 emissions of these pollutants and their precursors
5 are offset.

6 MS. WILLIS: Mr. Bemis, did staff also
7 analyze cumulative impacts to air quality from this
8 project?

9 MR. BEMIS: Yes. See pages 4.1-53 through
10 4.1-59, of the Final Staff Assessment. Due to
11 comments received after publication of the
12 preliminary staff assessment, staff did additional
13 analyses to make sure all combinations of facility
14 emissions were included in the assessment, including
15 the emissions for Mandalay Unit 3, and Southern
16 California Edison's McGrath facility. Both of which
17 are not under Energy Commission jurisdiction.

18 For details, see Appendix Air-2 and Air-3.
19 Staff concludes that cumulative impacts are not
20 significant.

21 MS. WILLIS: Has staff proposed conditions
22 of certification to mitigate construction impacts?

23 MR. BEMIS: Yes, staff prepared Condition of
24 Certification Number AQSC-1 through AQSC-5, to
25 mitigate emissions from construction of the proposed

1 facility.

2 MS. WILLIS: Are conditions of certification
3 being proposed to mitigate for operational impacts?

4 MR. BEMIS: Yes. Most of these conditions
5 were prepared by Ventura County Air Pollution Control
6 District, as part of their determination of
7 compliance. Conditions of Certification numbered AQ-
8 1 through AQ-61 match corresponding conditions
9 numbered, for conditions prepared by the Ventura
10 County District in the determination of compliance
11 that applied to the turbine.

12 Conditions of Certification AQDE-1 through
13 DE-12 were also prepared by the Ventura County APCD,
14 and applied to the associated diesel-fueled emergency
15 equipment.

16 In addition, staff's proposing Conditions
17 AQSC-6 to AQSC-11 to further mitigate operational
18 impacts. AQSC-6 would ensure improvement changes,
19 requested by or received by the Applicant, will be
20 made known to the Energy Commission's Compliance
21 Project Manager. SC-7 would require the Applicant to
22 submit quarterly operating reports. SC-8 would
23 ensure that the emergency generator would not operate
24 for energy testing during initial turbine
25 commissioning, to be consistent with the analysis.

1 AQSC-9 requires the CEQA mitigation of PM-10
2 and PM-2.5, and SOx emissions. AQSC-10 allows for
3 minor conditions of certification modifications under
4 certain limited circumstances, when there would be no
5 significant impacts due to the change.

6 AQSC-11 ensures that there would not be any
7 overlap or point in construction in Mandalay 1 or 2
8 demolition, or removal of the outfall structure.

9 And AQSC-12 is being withdrawn in response
10 to Applicant-requested changes, which I will discuss
11 later.

12 MS. WILLIS: Mr. Bemis, are the emission
13 offsets for this project adequate and/or valid?

14 MR. BEMIS: Yes, the emission offsets are
15 adequate and valid. The types of mitigation to be
16 imposed are fully consistent with measures used
17 statewide to mitigate CEQA-related air quality
18 impacts.

19 MS. WILLIS: CBD states that 11 percent
20 capacity factor must be enforceable cap. Do you
21 agree with that?

22 MR. BEMIS: No. The permit levels assume an
23 appropriate, approximate 24 percent capacity factor,
24 and the emissions estimated in impact analyses are
25 conducted at this capacity factor.

1 Ventura APCD conducted their LORS analysis,
2 laws, ordinance, regulations and standards, and
3 developed mitigation measures based upon the 24
4 percent, approximately, annual usage rate in
5 accordance with their adopter-permitting rules.

6 However, the District's rule compliance
7 method differs from staff's, the California
8 Environmental Quality Analysis, the CEQA analysis, of
9 the project emissions and impacts.

10 For those pollutants not required to be
11 mitigated by the District's rules, staff is proposing
12 additional mitigation for CEQA purposes, as described
13 below.

14 We look at the usage rate that is reasonably
15 expected to occur. This is not a cap, but represents
16 what we expect to happen if Puente is built and
17 operated. Traditionally, simple-cycle annual usage
18 rates in the region, and statewide, tend to range
19 from about 3 to 5 percent. This can be seen in Air
20 Quality Table 29, on page 4.1-29, and Air Quality
21 Figure One, on page 4.1-205.

22 Puente would be a simple-cycle facility. It
23 is reasonable worst case, annual operations are
24 conservatively estimated based upon an 11 percent
25 annual capacity factor.

1 We noted that MGS Units 1 and 2 historical
2 operations differ from other simple-cycles and the
3 proposed Puente Project, in that MGS Units 1 and 2
4 have a long startup time. They're boilers. Hours
5 versus minutes and different efficiencies than what
6 would Puente have.

7 Therefore, they are dispatched and operated
8 differently than Puente would reasonably be expected
9 to operate.

10 Some Intervenors wrongly state that the Air
11 Quality Impact Analysis was limited to only 876 hours
12 of operation, according to the PSA. This is untrue.
13 The analysis was based on five years' of hourly data,
14 which equates to about 43,800 hours. This was done
15 to determine worst case, hourly, three-hour, eight-
16 hour, daily and annual impacts over the five years of
17 the meteorological data used in the analysis.

18 The capacity factor, based upon the Puente
19 annual operating hours, reasonably expected to occur,
20 which was estimated at 10 percent in the PSA and 11
21 percent in the FSA, is only used to compute the
22 amount of CEQA mitigation needed, not the impacts.
23 This is mitigation beyond what the District rules
24 require.

25 MS. WILLIS: Mr. Bemis, the Applicant has
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1 proposed changes, in a separate filing, to several of
2 staff's Proposed Conditions of Certification.
3 Specifically, it's AQSC-12, AQ-29, AQ-48, and AQ-50.
4 And do you support these changes and can you address
5 each one, specifically?

6 MR. BEMIS: Yes. Specifically, AQSC-12 is a
7 condition that staff prepared. The Energy Commission
8 staff, and Ventura APCD, and the Applicant all agree
9 that the Federal Prevention of Significant
10 Deterioration, or PSD Program, would not apply to the
11 proposed project.

12 Since the USEPA does PSD permitting for
13 Ventura County at this time, they are the appropriate
14 entity to determine PSD applicability and to respond
15 to PSD issues raised by Intervenors.

16 Now, in an effort to address continuing
17 questions from Intervenors about PSD applicability,
18 staff added AQSC-12, requiring the Project Owner to
19 ask for a PSD determination from the USEPA. Now,
20 I'll note that it does not require a response. The
21 Applicant has requested that this condition be
22 removed.

23 We had offered this condition as a way of
24 laying out a path certain that could resolve PSD
25 uncertainty or confusion. This confusion arises

1 because the Ventura APCD has adopted a rule, 26.13,
2 to localize this Federal requirement. However, this
3 local rule has not yet been approved in the State
4 Implementation Plan, which is a Federal requirement.
5 therefore, EPA currently does PSD review in Ventura
6 County, using their version of PSD requirements.
7 This is explained in both the District's DOC and the
8 staff's Final Assessment.

9 Therefore, staff now recommends AQSC-12 not
10 be adopted by the Energy Commission. Upon further
11 consideration, Energy Commission staff believes that
12 the Energy Commission does not have the authority to
13 require the Applicant to submit a Determination
14 Request to the USEPA.

15 Finally, some Intervenors contend that the
16 PSA, and FSA, and the District's DOC are inadequate
17 because they dismissed PSD requirements. Some
18 Intervenors question the netting out approach used by
19 the Applicant, saying that existing Mandalay Units 1
20 and 2 should have their baseline emissions determined
21 by source testing, not by using what they call
22 arbitrary emission factors.

23 Again, since this is being raised and
24 questioning PSD applicability, this is a
25 determination to be made by the USEPA, not the

1 District and not by staff.

2 That's a summary of why we agreed to remove
3 AQSC-12.

4 AQ-29, the Applicant proposes relatively
5 minor wording changes to align this condition with
6 the District's Condition 29, and staff agrees.

7 AQ-48, the Applicant proposes several changes to
8 this condition to clarify how to address startups and
9 aborted startups.

10 (Phone line interruptions.)

11 MR. BEMIS: Should I go on?

12 MS. WILLIS: Yes, go ahead.

13 MR. BEMIS: Okay. AQ-48, these changes are
14 consistent with other startup conditions. In the
15 letter to Ventura County APCD, dated January 25th,
16 2017, the Applicant requested the District to agree
17 to these changes. The changes seem reasonable to
18 Energy Commission staff and they're also, apparently,
19 acceptable to the Ventura County APCD. Although, the
20 manner in which these changes would be incorporated
21 by the District is still being worked out.

22 Finally, AQ-50, the Applicant proposes minor
23 rewording to align this condition to the District's
24 Condition 50, and staff agrees.

25 MS. WILLIS: In your professional opinion,
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1 was the proposed mitigation -- with the proposed
2 mitigation, this project has any significant adverse
3 air quality impacts?

4 MR. BEMIS: With the mitigation measures
5 proposed by staff, the Puente facility would not
6 cause any significant adverse air quality impacts.

7 MS. WILLIS: And also, in your professional
8 opinion, will the project be in compliance with all
9 laws, ordinances, regulations and standards?

10 MR. BEMIS: Based on the analysis done by
11 Ventura APCD, and additional analyses conducted by my
12 staff, the proposed Puente facility would comply with
13 all applicable LORS.

14 MS. WILLIS: Now, Mr. Bemis, I'm going to go
15 over to -- move over to Greenhouse Gases analysis.
16 Did you prepare or assist in preparing the Air
17 Quality Appendix, AIR-1, Greenhouse Gas Emissions?

18 MR. BEMIS: I supervised Jacquelyn Leyva-
19 Record, who prepared the Air Quality Appendix AIR-1
20 testimony. The portion of this appendix addressing
21 the role that Puente would have on the overall
22 electrical system was prepared by David Vidaver, also
23 on this panel.

24 MS. WILLIS: Could you explain what
25 greenhouse gases are?

1 MR. BEMIS: Sure. Greenhouse gases consist
2 of carbon dioxide, and other gases and compounds,
3 that have been shown to increase the temperature of
4 the planet by acting like a blanket that surrounds
5 the surface of the earth, preventing the heat
6 received from the sun from re-radiating away from the
7 planet.

8 For fuel-burning thermal power plants,
9 carbon dioxide is by far the most significant type of
10 greenhouse gas, it's the largest in annual emissions.

11 Carbon dioxide is released when burning
12 carbon-containing fuels.

13 MS. WILLIS: Mr. Bemis, would this proposed
14 project emit greenhouse gas?

15 MR. BEMIS: Yes, both construction and
16 operation of Puente, if built and operated, would
17 entail use of carbon-containing fuels and, therefore,
18 emitting carbon dioxide.

19 Air Quality Greenhouse Appendix Table 2.a,
20 includes an estimate of construction emissions.
21 Table 2.b includes an estimate of demolition
22 emissions. And Air Quality Table 3, in the Appendix,
23 includes estimated operating emissions.

24 Construction emissions are modest compared
25 to operating emissions. The facility would be exempt

1 from the Emissions Performance Standard, when it's
2 imposed by California's SB 1368, because the maximum
3 capacity factor would be less than 60 percent.

4 However, I would note that the facility
5 would be so efficient that it would never meet this
6 limit.

7 The facility would also comply with all
8 requirements imposed by California's AB 32, the
9 Global Warming Solutions Act, or any subsequent,
10 similar program that might replace AB 32, as
11 California moves to a high renewable, low GHG,
12 electricity system.

13 MS. WILLIS: And, Mr. Vidaver, how would
14 this proposed plant affect the system wide GHG
15 emissions?

16 MR. VIDAVER: The operation of the project
17 would reduce greenhouse gas emissions across the
18 Western --

19 MS. WILLIS: Could you pull the mic just a
20 little closer? Thank you.

21 MR. VIDAVER: The development and operation
22 of the project would reduce greenhouse gas emissions
23 across the Western Interconnect.

24 MS. WILLIS: Thank you. Dr. Chu? And this
25 is moving to our Public Health.

1 What is the difference between staff's Air
2 Quality analysis and staff's Public Health analysis?

3 DR. CHU: My Public Health section is
4 different from the Air Quality section. Air Quality
5 focuses on criteria air pollutants, such as ground
6 level ozone, particulate matter, carbon monoxide,
7 nitrogen dioxide, sulfur dioxide, and lead.

8 These criteria air pollutants are regulated
9 by National and the State Ambient Air Quality
10 Standards. However, Public Health section only
11 focused on toxic air contaminants, also called TACS.
12 There are no ambient standards for toxic air
13 contaminants, so we have to conduct a Health Risk
14 Assessment to determine whether or not the risk of
15 toxic air exposure are higher than approved
16 thresholds.

17 MS. WILLIS: And did you perform a Health
18 Risk Assessment for this proposed project?

19 DR. CHU: Yes.

20 MS. WILLIS: Could you please describe how
21 you conducted your assessment?

22 DR. CHU: I conducted my assessment by
23 following the four risk assessment procedures
24 developed by USEPA, and then the Office of
25 Environmental Health Hazard Assessment, also called

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1 OEHHA. I conducted the public health analysis by
2 evaluating the information and data provided by the
3 Applicant. I reviewed and summarized the work of the
4 Applicant and evaluated the adequacy of the
5 Applicant's analysis by conducting an independent
6 Health Risk Assessment.

7 In my Health Risk Assessment, I followed the
8 guidelines of California EPA, Office of Environmental
9 Health Hazard Assessment, OEHHA, and the California
10 Air Resources Board, ARB. I also gathered
11 information, such as toxicity, cancer-producing
12 factors, and non-cancer reference exposure labels of
13 the toxic air contaminants for OEHHA and ARB.

14 Oh, and HOP-2, also called Hot Spots
15 Analysis Reporting Program Model for Gen-2, was the
16 software I used to calculate risks. This program was
17 developed by California Air Resources Board.

18 MS. WILLIS: Thank you. The next few
19 questions we're going to be asking will also kind of
20 be a crossover with Environmental Justice, because we
21 weren't sure quite how to handle them. But this
22 witness will also be on the Environmental Justice
23 Panel, so if there's not questions now, she'll be
24 available for cross-examination during that section.

25 Dr. Chu, did you consider the Environmental

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1 Justice population, including local agricultural
2 workers, in your analysis?

3 MS. CHU: Yes. As part of my analysis I
4 estimated the risk of the Environmental Justice
5 population. First, in the Health Risk Assessment I
6 considered the sensitive population. The sensitive
7 populations are a group of people that will be at
8 greater risk from exposure to immediate air toxic,
9 including the very young, the elderly, and those with
10 preexisting health conditions, such as specific
11 illness or diseases.

12 In my Health Risk Assessment, the sensitive
13 population include daycare centers, nursing homes,
14 schools, hospitals, college and sports arena.

15 Second, as for local farmworkers, we
16 consider all of site workers in the Health Risk
17 Assessment. The result of Health Risk Assessment is
18 presented as the Maximally Exposed Individual Worker,
19 also called MEIW.

20 Third, I discuss the cumulative impacts from
21 the air toxics immediate from the proposed Puente
22 Project, and the pesticide use on local agricultural
23 workers.

24 Finally, I conducted an analysis and
25 discussion regarding CalEnviroScreen scores and

1 factors related to public health.

2 MS. WILLIS: Dr. Chu, did you determine if
3 there were would be significant adverse impact to --
4 did you determine there would be significant adverse
5 impact to public health?

6 DR. CHU: No, there will be no significant
7 adverse impact to public health from either the
8 construction or operation of the proposed Puente
9 facility, including the general public and the EJ
10 population.

11 The release of toxic air emissions during
12 Puente construction and operation will be below
13 labels of potential health significance.

14 MS. WILLIS: And what were the results of
15 your analysis?

16 DR. CHU: As for construction and
17 demolition, my analysis for construction focused on
18 diesel particulate matter from the exhaust of diesel
19 fuel construction equipment. Based on my results of
20 Health Risk Assessment, and considering the following
21 two, additional factors.

22 First, the potential exposure of diesel
23 particulate matter would be sporadic and limited in
24 length. And, secondly, the predicted incremental
25 increase in cancer risk and the maximum residential

1 cancer risk, and the maximum exposure to individual
2 workers, and chronic health effects are less than the
3 significant thresholds.

4 So, I concluded that the impacts associated
5 with the diesel particulate matter from anticipated
6 Puente Power Project construction and demolition
7 activities will be less than significant.

8 MS. WILLIS: And for operations?

9 MS. CHU: All the cancers and non-cancer
10 risk from Puente operation will be below their
11 respective significant levels. No health impacts
12 would occur within all segments of the surrounding
13 population. There would be no significant health
14 impacts from the project's toxic air emissions.

15 MS. WILLIS: And for cumulative?

16 MS. CHU: I conducted a cumulative Health
17 Risk Assessment, including the proposed Puente
18 Project, Mandalay Generation Station, MGS Unit 3, MGS
19 Unit 1, and the McGrath Peaker.

20 According to the results of Health Risk
21 Assessment, if these sources run concurrently, the
22 cancer risk, at a point of maximum impact, or PMI, is
23 5.05 in one million. And the cancer risk for the
24 North Shore Development area is 4.27 in one million.
25 The cumulative risk are still below the significance

1 labels.

2 All other identified facilities are at least
3 three miles away from Puente. Therefore, I concluded
4 that the proposed Puente Power Project, even when
5 combined with these projects, will not contribute to
6 cumulative impacts in the area of Public Health. The
7 incremental risk estimated from Puente's operation
8 will not be a potentially significant contribution to
9 areas over all cumulative cancer risk. This includes
10 risk from the background pollutants from all existing
11 area sources.

12 MS. WILLIS: Did you determine if the
13 project was in compliance with all applicable laws,
14 ordinances, regulations and standards?

15 DR. CHU: Yes, I concluded that construction
16 and operation of the project will comply with all
17 applicable LORS, regarding long-term and short-term
18 project impacts in the area of Public Health.

19 MS. WILLIS: And, Dr. Chu, staff did not
20 propose any new Conditions of Certification for
21 Public Health. Why not?

22 DR. CHU: First, as for operation, all the
23 cancer and non-cancer risk from Puente operation
24 will be below their respective significance level.
25 This means that no public health impacts would occur

1 within all segments of the surrounding population.

2 Therefore, I concluded there is no need for
3 Condition of Certification to protect public health
4 during facility operation.

5 As for construction and demolition, I
6 regarded the Conditions of Certification in the Air
7 Quality Section as adequate.

8 First, I regard Condition of Certification
9 AQSC-3, also called Construction Fugitive Dust
10 Control, and AQSC-4, also called Dust Plume
11 Respondent Requirement, in the Air Quality Section,
12 as adequate to prevent all fugitive dust plumes from
13 leaving the project boundary.

14 As long as the dust plumes are kept from
15 leaving the project site, there will be no
16 significant concerns of fugitive dust adversely
17 affecting public health.

18 This was also limited potential of exposure
19 to hay fever to neighboring residents, farmworkers,
20 and members of the public traveling or recreating in
21 proximity to the proposed Puente.

22 Second, I regard the related Condition of
23 Certification, AQSC-5, also called Diesel Fuel Engine
24 Control, in the Air Quality section, as adequate to
25 ensure that cancer-related impacts of diesel exhaust

1 emissions for the public and off-site workers are
2 mitigated during construction and demolition to a
3 point where they are not considered significant.

4 MS. WILLIS: Dr. Chu, did you consider
5 pesticide use in your Public Health Analysis?

6 DR. CHU: Yes, in two subsections of my
7 analysis, first the Cumulative Impacts and, second,
8 Mitigation and -- oh, the first one is Cumulative
9 Impacts and Mitigation, and the second is
10 Environmental Justice.

11 In these two subsections, I discuss
12 pesticides. Here is my summary. First, the
13 indicator of pesticide use, of CalEnviroScreen,
14 that's not major exposure. Only quantities used in
15 the Census Tract. It used pounds of active
16 ingredients used per square mile as a surrogate.
17 Therefore, it represents potential exposure, not
18 actual exposure to pesticides.

19 Second, pesticide use is regulated by the
20 California Department of Pesticide Regulation and
21 monitored by California Air Resources Board. The
22 applicable regulations are intended to ensure the
23 safe use of each pesticide, whose use might produce
24 background levels that could be major.

25 Third, the closest found in Puente's
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1 approximately, 0.2 miles. The point of maximum
2 impact, also called PMI, for impacts from
3 construction and operation are located on the project
4 boundary. Also, as presented in Public Health Table
5 2, and Public Health Table 6, of the Final Staff
6 Assessment, the release of toxic emissions during
7 Puente construction and operation would be below
8 levels of potential health significance. Therefore,
9 Puente would not contribute significantly to any
10 health effects from existing pesticide use in the
11 area.

12 MS. WILLIS: Dr. Chu, did you also consider
13 incidences of asthma, in Ventura County, in your
14 Public Health Analysis?

15 DR. CHU: Yes. I briefly discuss asthma in
16 the subjection of Existing Public Health Concerns,
17 and conducted an in-depth analysis of existing asthma
18 concerns in Public Health Appendix A.

19 As for the generation condition of Ventura
20 County, according to statistics, I found, first, the
21 lifetime asthma prevalence rates of Ventura County
22 are slightly lower than the corresponding rates for
23 California.

24 Second, the numbers of asthma
25 hospitalization and emergency department visit of

1 Ventura County are lower than corresponding cases in
2 California.

3 I also discuss the indicator of asthma,
4 yeah, (indiscernible) of care, in EnviroScreen 2.0.

5 MS. WILLIS: Do you have any comment on the
6 asthma ER, emergency room, visits in the
7 disadvantaged communities identified by
8 CalEnviroScreen 3.0?

9 DR. CHU: Yes. The asthma percentile of the
10 Census Tract, which is Census Tract 6111002905. The
11 asthma percentile is 92.22. Meaning the asthma ER
12 visitation rate is higher than 92.22 percent of the
13 Census Tract in California.

14 As for the disadvantaged community, Census
15 Tract 6111002905, it overlaps with two zip codes.
16 The first one is 93036 and the second one 93030. Zip
17 code 93036 is where the proposed Puente site is
18 located, while zip code 93030 is on the adjacent east
19 side of the proposed Puente site.

20 I conducted an in-depth analysis of the
21 existing asthma concern in Public Health Appendix A.
22 the analysis include each of the just emergency room
23 visit rate due to asthma for some zip codes from 2012
24 and 2014. You can see the detailed information in
25 page 4.9-56 and 57 of my -- of the Final Staff

1 Assessment.

2 And according to the statistics I found,
3 first, in zip code 93036, where the proposed Puente
4 site is located, the rate of all ER visits due to
5 asthma is higher than corresponding rate of Ventura
6 County, but lower than the rate of California. The
7 rate of ER visits due to adult asthma is lower than
8 the corresponding value for both Ventura County and
9 California.

10 The rates of ER visits due to pediatric
11 asthma is higher than Ventura County, but lower than
12 for California.

13 In zip code 93030, which is located east of
14 the proposed Puente site, the rate of all adult and
15 pediatric ER visits due to asthma are higher than
16 corresponding rates for both Ventura County and
17 California.

18 Therefore, as the newly identified
19 disadvantaged community, which is Census Tract
20 6111002905, I estimated that the high asthma
21 percentile of 92.22 in CalEnviroScreen 3.0 might be
22 due to the higher emergency room visits rate in zip
23 code 93030, located east of the proposed Puente site.

24 However, as presented in Public Health Table
25 2 and Public Health Table 6, of the Final Staff

1 Assessment, the results of human health risk
2 assessment have shown that Puente's construction and
3 operation will lead to toxic emission impacts below
4 level of potential health significance.

5 Therefore, I concluded that Puente will not
6 contribute significantly to any of the first health
7 effects, including asthma, in Census Tract
8 6111002905.

9 MS. WILLIS: Thank you. Do you have
10 anything to add to your testimony?

11 DR. CHU: Yes, one more addition. In Public
12 Health, what we focus is the incremental risk, not
13 the total risk including the background risk. Also,
14 total incremental risk less than or equal to one
15 million is considered negligible. Under State
16 regulations, incremental cancer risk greater than ten
17 in one million for a project should be regarded as
18 suggesting a potentially significant carcinogenic
19 impact of public health.

20 MS. WILLIS: Does that conclude your
21 testimony?

22 DR. CHU: Yes.

23 MS. WILLIS: Does that conclude the panel's
24 testimony? Thank you. This panel's open for cross-
25 examination.

1 HEARING OFFICER KRAMER: Thank you. I don't
2 see anything listed for the Applicant. Is that
3 correct, Mr. Carroll?

4 MR. CARROLL: That's correct. Applicant
5 thanks the panel for their testimony and we have no
6 questions.

7 HEARING OFFICER KRAMER: Okay, CEJA.

8 MS. LAZEROW: Thank you for that testimony.
9 I think I will try to start with the order in which
10 you've presented, with Mr. Villegas. Thank you for
11 being here this morning.

12 I had, I think, two questions for you. The
13 first one is, when you say that you model your
14 Emission Reduction Credits as being in the air, is
15 that locationally, or is that throughout your air
16 region?

17 MR. VILLEGAS: Well, it would be throughout
18 the County. Because with ozone, you're looking at a
19 regional pollutant. And, for example, NOx emissions
20 on the coast would actually -- there's a phenomenon
21 known as NOx scavenging, which would actually lower
22 the ozone readings near the emission source. But
23 when they move inland, on the prevailing wind, they
24 reach the sunny, warm, Simi Valley areas of the
25 County, you know, in the eastern portion, then

1 they're going to react and form ozone there.

2 MS. LAZEROW: Thank you. That actually
3 leads to my next question, which is whether you are
4 aware of any air monitoring data, any ambient, or
5 monitoring data for ozone closer to the Puente site
6 than the seven mile -- more than seven-mile-away
7 location that I think is the basis for all of the air
8 quality analysis in this matter?

9 MR. VILLEGAS: Yes. If you're referring to
10 our site at Rio Mesa High School, that would be the
11 closest site. But that, we work with the Federal
12 Government -- when you site an air monitoring site,
13 you have to work with USEPA in determining that
14 that's going to be a good regional representation.
15 And working through that process, they believe that
16 site is adequate for the Western County.

17 The other -- in the past, we did operate a
18 site in Ventura, the City of Ventura, just north,
19 Emma Wood State Beach. And, basically, after
20 determining we never saw ozone there, and it really
21 showed the effect of NOx scavenging every time a
22 locomotive went by, EPA felt that we should shut that
23 site down. It was not providing any data that would
24 warrant any changes to our Air Quality Management
25 Plan.

1 MS. LAZEROW: How long ago did you shut down
2 that site?

3 MR. VILLEGAS: Oh, I would say in the
4 neighborhood of ten years.

5 MS. LAZEROW: So, about a decade ago?

6 MR. VILLEGAS: Yes.

7 MS. LAZEROW: Are you the Declarant to whom
8 I should address questions about the air emissions
9 from Puente, from construction, or should I direct
10 those to staff?

11 MR. VILLEGAS: On construction, probably
12 staff, yes.

13 MS. LAZEROW: But as far as -- well, why
14 don't I pose my question and you can tell me whether
15 you are able to answer it.

16 So, this facility is going to have a diesel
17 generator, in addition to a couple of other
18 combustion or air pollution sources. My question is
19 whether the emissions from the diesel generator will
20 be routed through the stack? Is that something you
21 know?

22 MR. VILLEGAS: We have Kirby Zozila here.
23 By my understanding is that the emissions from the
24 diesel generator would not be going through the stack
25 for the turbine. It's a separate emission unit.

1 MS. LAZEROW: Does anyone on staff want to
2 weigh in that, yes or not?

3 MR. BEMIS: Sure. The diesel emergency
4 equipment has their own stack.

5 THE REPORTER: Who is that, please?

6 MR. BEMIS: Yeah, this is Gerry Bemis
7 responding.

8 MS. LAZEROW: Thank you. Those were all my
9 Air Quality questions. I wanted to turn to Public
10 Health, if I might. I recognize that I only reserved
11 a small amount of time, but I had not prepared to
12 have all of these at once, so I hope you'll indulge
13 me.

14 HEARING OFFICER KRAMER: Well, I think it
15 totaled to 15 minutes so, yeah.

16 MS. LAZEROW: Oh, I should be fine, then.

17 I hoped I could ask a question or two about
18 the -- did you say you had run the HARP 2 model,
19 pursuant to the OEHHA and carbon, or was it another
20 model that you had run?

21 DR. CHU: I used HARP 2.

22 MS. LAZEROW: Thank you. That was what I
23 thought I saw from your testimony, your written
24 testimony. And that model, you included diesel
25 particulate matter as a toxic air contaminant, right?

1 DR. CHU: This is Huei-An Chu. Yes.

2 MS. LAZEROW: Did that consider the
3 farmworkers, the most in the closest field, that was
4 included in your analysis of all offsite workers?

5 DR. CHU: Yes, in -- this Huei-An Chu,
6 again. In Health Risk Assessment we did consider the
7 offsite worker. So, this is including the farm land
8 worker.

9 MS. LAZEROW: And did you assume that those
10 farmworkers had any of the attributes of sensitive
11 populations, such as asthma, or preexisting cardiac
12 conditions, or that they might be juveniles?

13 DR. CHU: This is Huei-An Chu. Oh, we set
14 these kind of sensitive receptors not according to
15 our own. We follow the guidelines from the OEHHA.

16 MS. LAZEROW: And, so, do those guidelines -
17 - I guess what I'm trying to get at is I saw the
18 locations of the sensitive receptors that you
19 identified, and I appreciate that. What I'm trying
20 to ask is whether the offsite workers were presumed
21 to be healthy white males, or whether the OEHHA
22 guidelines instruct that some should be considered to
23 have the attributes of sensitive receptors?

24 MS. CHU: This is Huei-An Chu. As for
25 workers, the difference between the workers and the

1 residential area receptors are that we assume the
2 exposure time are different. As for workers we
3 assume they have a standard work schedule, which is
4 eight hours per day, five days per week, 49 weeks per
5 year, for 40 years.

6 But for our sensitive and residential
7 receptors, we assumed they stay there for 70 years.

8 MS. LAZEROW: Thank you. And is that -- you
9 referred in your testimony, just now, that an
10 assumption that diesel particulate matter exposure
11 was sporadic and limited. Were you referring to the
12 worker hours or were you referring to the fact that
13 diesel particulate matter from construction and
14 demolition activities would only occur during
15 construction and demolition? And, similarly,
16 operation of the diesel generator would occur on a
17 less frequent schedule than operation of the rest of
18 Puente?

19 DR. CHU: Yes, we saw the emission of diesel
20 particulate matter is -- the length is limited.

21 MS. LAZEROW: I'm sorry, I didn't catch
22 that?

23 DR. CHU: Oh. We don't estimate the worker
24 for the construction, we only estimate the offsite
25 worker.

1 MS. LAZEROW: So, my question was about
2 exposure of any populations, worker populations,
3 residents, sensitive receptors to diesel particulate
4 matter. And I thought that you had testified, just
5 now, that you had assumed that it was sporadic and
6 limited?

7 DR. CHU: Yes.

8 MS. LAZEROW: And, so, was that with respect
9 to all of the populations you analyzed or just with
10 respect to workers?

11 DR. CHU: Oh, it is for all population.

12 MS. LAZEROW: Thank you. I wanted to turn
13 to the question of pesticide use. You assert that
14 the Department of Pesticide Regulation regulates the
15 use of pesticides. And I wondered whether you had
16 reviewed any exposure data that the Department of
17 Pesticide Regulation maintains?

18 DR. CHU: No. This is Huei-An Chu. This is
19 beyond my expertise.

20 MS. LAZEROW: Have you reviewed any data
21 about -- I mean, not just from DPR, Department of
22 Pesticide Regulation, but have you reviewed any
23 pesticide exposure data in the Puente area?

24 DR. CHU: This is Huei-An Chu. The only
25 data I evaluated is the CalEnviroScreen 2.0 and 3.0.

1 MS. LAZEROW: And, so, you asserted that the
2 fields, the farmland that is closest to the Puente
3 location is not in the PMI, correct?

4 DR. CHU: Yes.

5 MS. LAZEROW: How far outside the PMI is it?
6 It's not clear from your testimony.

7 DR. CHU: According to my memory, it's on
8 the northeast of the Puente Project site and is .02
9 [sic] miles away from the Puente Power Project.

10 I need to clarify, the point of maximum
11 impact is on the project boundary. And the closest
12 farmland is approximately 0.2 miles away from the
13 project.

14 MS. LAZEROW: Thank you. Those were all my
15 questions.

16 HEARING OFFICER KRAMER: Okay, thank you.
17 Correct me if I'm wrong, but I think that
18 concludes this panel, except --

19 MS. BELENKY: No, it doesn't. Excuse me.
20 The Center for Biological Diversity, we've reserved
21 time for cross-exam on these two -- these three
22 issues.

23 HEARING OFFICER KRAMER: Oh, that's right.
24 I just didn't have the names there. Okay, go ahead,
25 Ms. Belenky.

1 MS. BELENKY: Oh, I'm standing between
2 everyone and their lunch break.

3 (Laughter)

4 MS. BELENKY: Thank you. I'm going to try
5 and shorten this, but I do have quite a few questions
6 prepared.

7 The first one is for Mr. Bemis. And your
8 testimony did clarify some things about the
9 mitigation issue that we had raised. I just want to
10 clarify a bit further.

11 The Final Staff Assessment contains no
12 factual determination that additional CEQA mitigation
13 would be infeasible if the facility were to operate
14 in excess of the 11 percent capacity factor. Is that
15 correct?

16 MR. BEMIS: Did you say infeasible?

17 MS. BELENKY: Infeasible.

18 MR. BEMIS: It's not infeasible to require
19 additional mitigation.

20 MS. BELENKY: Thank you. And, then, I have
21 a series of questions on the greenhouse gas issue.

22 MR. BEMIS: That was Gerry Bemis responding.
23 Sorry.

24 MS. BELENKY: I have a series of questions
25 on the greenhouse gas issues and I'm not certain if

1 they're for Mr. Bemis, or Vidaver, now that, from
2 what you said in your initial opening, and so you can
3 respond, whichever one you would prefer.

4 In the FSA, on page 4.1-50 -- 4.1-158, you
5 state that the baseline used for assessing the
6 project's greenhouse gas emissions is the existing
7 Western Grid-wide generation system, and its
8 operation. Is that correct?

9 MR. BEMIS: Could you state the page again,
10 please?

11 MS. BELENKY: It was page 4.1-158.

12 MR. BEMIS: That's what I have written down
13 here. I think you could answer the question, since
14 you know your own testimony, as to whether you used
15 the baseline for GHG emissions was the Western Grid-
16 wide generation system and its operation.

17 MR. VIDAVER: This is Dave Vidaver. The
18 impact of the project on system-wide emissions would
19 be its difference from the system in the absence of
20 the project. So, that would be the existing system,
21 yes.

22 MS. BELENKY: Thank you. And you further
23 stated that you did not establish a baseline quantity
24 of greenhouse gas emissions associated with the grid
25 operation. Is that correct?

1 MR. VIDAVER: Other than to say that it's
2 the emissions from the existing system, no, we did
3 not quantity the emissions from the existing system,
4 correct.

5 MS. BELENKY: Thank you. You further state
6 that you did not attempt to compare the grid
7 emissions with and without the Puente Project through
8 a simulation modeling. Is that correct?

9 MR. VIDAVER: Correct.

10 MS. BELENKY: Is it correct, as you stated,
11 that you believe that such a comparison was
12 unnecessary because, and here I quote, "The economic
13 logic used by a simulation model would have resulted
14 in a reduction of greenhouse gas emissions."

15 MR. VIDAVER: Correct.

16 MS. BELENKY: So, is it correct to state
17 that the staff never attempted to calculate or
18 characterize the emissions from the Puente Project
19 relative to the baseline identified for CEQA
20 analysis?

21 MR. VIDAVER: No. I think it would be fair
22 to state that we never calculated the difference in
23 system-wide emissions from the system that did not
24 include the project, and a system that did include
25 the project. I don't believe that's what you said,

1 but -- we did not attempt to estimate, using a
2 simulation model, the actual emissions from the
3 project. Which is, I believe, what you asked if we
4 did.

5 MS. BELENKY: Thank you. Is your testimony,
6 and again I quote, "That the economic logic used by a
7 simulation model" is exactly the same as the
8 "economic logic" that governs the ISO dispatch
9 procedures?

10 MR. VIDAVER: Yes, I think that's true. The
11 economic logic that a simulation model uses attempts
12 to replicate the decision making processes made by
13 anybody who dispatches a system, whether that be a
14 utility that has a portfolio of generation resources,
15 or a balancing authority that is dispatching
16 resources, as needed, both to meet demand and secure
17 reliability.

18 MS. BELENKY: I'll take that as a yes.

19 MR. VIDAVER: Yes. Sorry, I'm very verbose.
20 And I've had a cookie, so I don't need lunch.

21 (Laughter)

22 MS. BELENKY: Can you point to specific
23 evidence in your testimony, showing that the economic
24 logic used by a simulation model also controls the
25 ISO dispatch procedures?

1 MR. VIDAVER: Specific evidence presented in
2 the testimony?

3 MS. BELENKY: Yes.

4 MR. VIDAVER: No.

5 MS. BELENKY: Thank you. Now, I would draw
6 your attention to page 4.1-152, of the FSA, where you
7 state that, "It is reasonable to assume that Puente
8 will always displace less efficient resources." Is
9 that correct?

10 MR. VIDAVER: Yes.

11 MS. BELENKY: Is it fair to characterize
12 your testimony as concluding that Puente will not
13 increase greenhouse gas emissions because it will
14 always, necessarily, displace less efficient
15 resources?

16 MR. VIDAVER: The word "necessarily",
17 perhaps, is not entirely appropriate. But under the
18 assumption that the aforementioned economic logic is
19 imposed by those who dispatch the system, the
20 statement stands as true, yes.

21 MS. BELENKY: And directing your attention
22 to page 4.1-162, there, you state, and I quote, "The
23 details of California's ISO's dispatch protocols are
24 thus unimportant as long as it dispatches the lowest
25 cost, i.e., most efficient/least emitting resources."

1 Is that correct?

2 MR. VIDAVER: Yes.

3 MS. BELENKY: And you italicized the phrase
4 beginning with "as long as", correct?

5 MR. VIDAVER: Correct.

6 MS. BELENKY: So, hypothetically, if ISO's
7 dispatch protocols, for whatever reason, allow the
8 dispatch of resources other than the most
9 efficient/least emitting resources, would your
10 conclusion be the same?

11 MR. VIDAVER: Can you repeat that? I'm
12 sorry.

13 MS. BELENKY: Hypothetically, if ISO's
14 dispatch protocols, for whatever reason, allow the
15 dispatch of resources other than the most
16 efficient/least emitting resources, would your
17 conclusion be the same?

18 MR. VIDAVER: My conclusion being that the
19 ISO always does that?

20 MS. BELENKY: Yes.

21 MR. VIDAVER: If, hypothetically, the ISO
22 did not do that, my conclusion would hypothetically
23 be different, yes.

24 MS. BELENKY: Thank you.

25 MR. VIDAVER: Yeah, sorry.

1 MS. BELENKY: Isn't it correct that your
2 testimony does not incorporate or otherwise describe,
3 in detail, ISO's actually dispatch protocols?

4 MR. VIDAVER: Correct.

5 MS. BELENKY: Have you reviewed Mr.
6 Caldwell's opening testimony, which is Exhibit 3047,
7 I believe, prepared on behalf of the City of Oxnard?

8 MR. VIDAVER: Yes.

9 MS. BELENKY: And on page 5 through 7, he
10 discusses scenarios where Puente would be dispatched
11 before more efficient resources and why that would
12 happen. Have you reviewed that part of his
13 testimony? Mr. Vidaver?

14 MR. VIDAVER: Yes, I did, but I don't have
15 it in front of me.

16 MS. WILLIS: Just one moment. Mr. Kramer,
17 I'd like to have my witnesses have a little bit more
18 time to find the pages that Ms. Belenky is referring
19 to.

20 MS. BELENKY: Oh, sure.

21 MS. WILLIS: We're kind of page hopping
22 here.

23 MR. BEMIS: I don't believe we have Mr.
24 Caldwell's testimony in front of us.

25 HEARING OFFICER KRAMER: I can put it on the
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1 screen. Give me the page, again. The PDF page,
2 ideally.

3 MR. BEMIS: I have the testimony.

4 MS. BELENKY: So, I would direct your
5 attention to his discussion on pages 5 to 7, where he
6 discusses scenarios where Puente could be dispatched
7 before more efficient resources and why that could
8 happen.

9 MR. BEMIS: One moment, please. Yes. It
10 says here, and I quote, "Thus, if P-3 is not selected
11 for economic dispatch as one of the least cost units
12 to supply energy to the grid, given its low
13 efficiency relative to the remainder of the fleet,
14 but the Moorpark Subarea does not have enough
15 resources online to withstand a contingency event, P-
16 3 would be committed by the MOC process out of merit
17 order. At the same time, the more efficient unit
18 outside the Moorpark Subarea would be backed down to
19 maintain system load resource balance."

20 Yes, this statement does not contradict
21 anything that I assert, when I say that the least
22 emission/most efficient resource is dispatched.

23 The problem here is that there are not
24 enough resources in the Moorpark Subarea. So, the
25 ISO could not dispatch, for example, a combined-cycle

1 sitting in the Mojave Desert. It would have to
2 dispatch a resource in the Moorpark Subarea to meet
3 this contingency event. In choosing which resource
4 in the Moorpark Subarea to dispatch, the ISO will
5 only dispatch P-3 if it is the least emitting/most
6 efficient resource in the Moorpark Subarea.

7 The fact that occasionally P-3 will have to
8 be dispatched to meet local reliability needs, that
9 cannot be met by other, more efficient resources that
10 sit in Northern California, or in San Diego, doesn't
11 change the conclusion that I reached in my testimony.

12 MS. BELENKY: Thank you. Are there
13 additional scenarios, beyond those that Mr. Caldwell
14 described, that you are aware of, that could result
15 in Puente being dispatched ahead of more efficient
16 resources?

17 MR. BEMIS: Theoretically, yes. I could
18 imagine a scenario in which, for some reason, the
19 cost of fuel delivered to Puente was much more
20 expensive than the cost of fuel being delivered to a
21 resource in the Mojave Desert. In which case, a less
22 efficient resource in the Mojave Desert would
23 actually be lower cost than Puente. So, you would
24 dispatch that less efficient resource because gas
25 was, let's say, \$2 a million Btu, than it is at

1 Puente. But the cost differentials for gas don't
2 work like that. It's almost always the case that gas
3 delivered to Puente will be no cheaper than -- or not
4 more expensive than gas delivered to the Mojave
5 Desert, the way the gas system works.

6 So, in theory, there are cases where you
7 would do this. But in practice, they don't really
8 exist.

9 MS. BELENKY: Thank you. To clarify, you're
10 saying that except for the exception that Mr.
11 Caldwell has identified, you don't believe it would
12 happen out of order. Is that what -- I got confused
13 at the end because you didn't answer --

14 MR. BEMIS: Sorry, I have a habit of doing
15 that.

16 MS. BELENKY: -- just the question.

17 MR. BEMIS: I could probably think of some
18 others, but that's the one I come up with. I could
19 possibly think of one or two more, but not off the
20 top of my head.

21 MS. BELENKY: Thank you. In the FSA, back
22 to the FSA, on page 4.1-156, you acknowledge that as
23 the California grid develops, efficient resources,
24 like Puente, may operate more than traditional, less
25 flexible resources. Your testimony does not define

1 these traditional, less flexible resources with any
2 specificity. Is that correct?

3 MR. BEMIS: Yes.

4 MS. BELENKY: On that same page, you state
5 that Puente is proposed to operate at a 25 percent
6 annual capacity factor. Correct?

7 MR. BEMIS: I don't believe -- it is not --
8 that should be clarified to mean that Puente is
9 permitted to operate at a 25 percent capacity factor.

10 MS. BELENKY: You also state that other
11 peaking duty facilities, in the local Big
12 Creek/Ventura area, operate an average capacity
13 factor of 3.5 percent. Is that correct?

14 MR. BEMIS: Yes.

15 MS. BELENKY: Does a facility operating at
16 3.5 percent capacity factor serve the same
17 operational function as a facility operating at a 25
18 percent capacity factor?

19 MR. BEMIS: I think it would be fair to say
20 no.

21 MS. BELENKY: Also, on page 4.1-156, of the
22 FSA, you state that if Puente displaces local peaking
23 duty units, it would have a much better heat rate
24 than the displaced peaking duty units. Is that
25 correct?

1 MR. BEMIS: Yes.

2 MS. BELENKY: On page 4.1-159, so three
3 pages later, you state that you do not know which
4 resources Puente would displace in the provision of
5 energy. Is that correct?

6 MR. BEMIS: Correct.

7 MS. BELENKY: And back to page 156, you
8 acknowledge that simple-cycle combustion turbines,
9 like Puente, have a higher direct heat rate than
10 combined cycle facilities or system average heat
11 rates. Is that correct?

12 MR. BEMIS: One moment. The word "direct"
13 is -- can you repeat the question?

14 MS. BELENKY: Yes, certainly.

15 MR. BEMIS: Thank you.

16 MS. BELENKY: On page 4.1-156, of the FSA,
17 you acknowledge that simple-cycle combustion
18 turbines, like Puente, have higher direct heat rates
19 than the combined-cycle facilities or system average
20 heat rates. Is that correct?

21 MR. BEMIS: Yes.

22 MS. BELENKY: Puente's heat rate is
23 substantially higher than that of the WEC and the
24 California gas-fired heat rate, stated in GHG Table
25 5. Is that correct?

1 MR. BEMIS: Yes.

2 MS. BELENKY: And the Puente heat rate that
3 is listed there is, I believe, 9,149 Btu per kilowatt
4 hour?

5 MR. BEMIS: Yes.

6 MS. BELENKY: Yeah. Turning your attention
7 to page 4.1-161, of the FSA, here you state that
8 Puente does not induce demand growth. Is that
9 correct?

10 MR. BEMIS: Yes.

11 MS. BELENKY: But isn't it the case that
12 Puente was proposed in response to a CPUC
13 determination that additional generation was needed
14 in the local capacity area?

15 MR. BEMIS: Yes.

16 MS. BELENKY: Still on page 161, you state
17 that any increase in demand must result in increased
18 generation. Is that correct?

19 MR. BEMIS: Yes.

20 MS. BELENKY: You go on to conclude that GHG
21 emissions associated with the system, with Puente,
22 will always be lower than emissions from the same
23 system without Puente. Correct?

24 MR. BEMIS: Correct.

25 MS. BELENKY: Would you reach the same

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1 conclusion if the demand proposed to be served by
2 Puente could be served by another type of generation,
3 such as battery storage?

4 MR. BEMIS: Would I reach the same
5 conclusion if the demand -- I'm sorry, I'm getting
6 confused. You ran me through about eight bits of
7 testimony and, now, have asked me a question. Can
8 you ask the last question, again?

9 MS. BELENKY: Yes, certainly. Well, this is
10 following up on your conclusion that a system with
11 Puente will always be lower in emissions than a
12 system without Puente.

13 MR. BEMIS: Yes.

14 MS. BELENKY: And we're talking about GHG,
15 of course.

16 MR. BEMIS: Okay.

17 MS. BELENKY: Would you reach that same
18 conclusion if the demand that is proposed to be
19 served by Puente, could be served by another type of
20 generation, such as battery storage?

21 MR. BEMIS: My statement, a system with
22 Puente will have fewer GHG emissions than the system
23 without it, assumes that there's no other change in
24 the resources available to the system.

25 So, if you begin to look at systems that are
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1 different in more respects than the presence or
2 absence of Puente, none of the conclusions that I've
3 reached necessarily follow.

4 And, now, you're looking at a third system,
5 in which you're comparing a system as is, with a
6 system with Puente, with a system with storage, with
7 a system with Puente and storage. And my testimony
8 doesn't go towards, for example, what happens if you
9 add Puente and storage, or and renewables. It's
10 simply the system as it exists and the system when
11 you add Puente.

12 MS. BELENKY: And just to follow up. So,
13 what you're saying is you didn't analyze any
14 alternatives to Puente in this --

15 MR. BEMIS: In the GHG section?

16 MS. BELENKY: In the GHG section?

17 MR. BEMIS: No, I did not.

18 MS. BELENKY: Thank you. I believe that's
19 all my questions. Let me just see if my co-counsel
20 has something. Little bit of a disadvantage as we're
21 one on the phone. But I think that's fine. Thank
22 you for your time.

23 HEARING OFFICER KRAMER: And that was all
24 three topics, correct?

25 MS. BELENKY: It was Air Quality, GHGs, and
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1 we did not have any questions on the Public Health.

2 HEARING OFFICER KRAMER: Okay. So, now I
3 might be correct in stating --

4 MS. CHANG: Excuse me. I'm so sorry. I
5 realize that everyone is hungry and tired. But I
6 just had a few follow-up questions to Dr. Chu. I
7 didn't understand her responses to two questions.

8 (Colloquy between Hearing Officer and
9 Commissioners.)

10 HEARING OFFICER KRAMER: What's the nature
11 of them, briefly? Because you didn't have any time
12 reserved for --

13 MS. CHANG: Right. I completely understand
14 that. The nature of them are, one was a question
15 that had been asked by Ms. Lazerow that I did not --
16 I either did not hear her correctly to respond to the
17 question, or perhaps she did not respond to the
18 question.

19 And, then, the second one was simply asking
20 for clarification about what tools she used to
21 measure, to assess something.

22 HEARING OFFICER KRAMER: Okay. You're going
23 to need to -- okay, we can allow you a couple of
24 minutes. But please speak up, into the microphone.

25 MS. CHANG: Absolutely, thank you.

1 So, Dr. Chu, in your testimony just now you
2 stated -- or, rather, Ms. Lazerow asked you, in your
3 assessment did you assume that the farmworkers might
4 have attributes such as asthma, cardiovascular
5 disease, and youth, you know, a younger age.
6 Particularly, I believe she asked that because we
7 were speaking about, we were trying to ask about the
8 farmworker population.

9 And she also asked you, in your measurement,
10 in your assessment did you presume them to be healthy
11 white males or did you assume them to perhaps have
12 attributes, such as youth, asthma, or cardiovascular
13 rates. So, that's one question.

14 DR. CHU: Okay, this is Huei-An Chu. I
15 think I mentioned that we -- the only difference
16 between the sensitive population and the residential
17 receptor is the -- the difference between these two
18 groups and the workers are the exposure duration of
19 time.

20 MS. CHANG: Okay, so that's --

21 DR. CHU: So, we don't assume the workers
22 have any like attributes of the sensitive population.

23 MS. CHANG: Okay, so that's helpful. And,
24 then, your answer leads me to a different question,
25 which is exposure of time, did you assume that

1 farmworkers were working a regular, 40-hour,
2 regulated workday? Or, is that assessment based on
3 that assumption?

4 DR. CHU: Yes, we assume it's eight hours
5 per day, five days per week, 49 weeks per year, for
6 40 years.

7 MS. CHANG: Okay, so a regulated workday and
8 work week, which is not necessarily the case for
9 farmworkers?

10 DR. CHU: Yes.

11 MS. CHANG: Okay, thank you. And, then, the
12 second question is Ms. Lazerow asked you if, in
13 reviewing the data surrounding asthma, did you refer
14 at all to the Department of Pesticide Regulations.
15 And you responded that, no, you relied only on the
16 CalEnviroScreen 3.0. Correct?

17 DR. CHU: What do you say, is pesticide or
18 asthma?

19 MS. CHANG: With regards to the asthma, the
20 issue of asthma. I believe she asked you had you
21 referred at all to the Department of Pesticide
22 Regulations data?

23 DR. CHU: I think you're confused with the
24 two subject of asthma and pesticides.

25 MS. CHANG: Oh, okay. Yeah, all right.

1 DR. CHU: So, for pesticides, I didn't
2 review the regulation of pesticides because we rely
3 on the expertise of the ARB, and the Pesticides
4 Control Agency.

5 But for asthma, I actually check many
6 different sources of the statistics, the public
7 health statistics, and reached my own conclusion.

8 MS. CHANG: Okay, including the
9 CalEnviroScreen, correct?

10 DR. CHU: CalEnviroScreen are -- actually, I
11 check the sources used, but CalEnviroScreen is also
12 one of my sources.

13 MS. CHANG: Okay, so you did --

14 DR. CHU: Which is in the sources.

15 MS. CHANG: So, let me just make sure I
16 understand. Do, you did include -- in your
17 assessment, you referred to several tools, and one of
18 them was the CalEnviroScreen. Is that correct?

19 DR. CHU: No, not really. I mean,
20 CalEnviroScreen, they used the entire sources I used.
21 But I only present my own conclusion. And, also,
22 conclusory present the results of CalEnviroScreen.

23 MS. CHANG: I'm sorry, could you repeat the
24 last thing you said? So, you only -- you only
25 presented what, I'm sorry?

1 DR. CHU: You can check my Public Health
2 Appendix A. You can see I searched different kind of
3 detail sources of public health regarding asthma, and
4 I present different statistics for asthma, from
5 different sources.

6 But in my section, I also presented the
7 results of CalEnviroScreen.

8 MS. CHANG: Okay. So, would you say that
9 the CalEnviroScreen is a reliable tool or is a useful
10 tool in assessing public health or health risks?

11 DR. CHU: So, if you'll check the guideline
12 of the CalEnviroScreen 2.2, you'll see that as for
13 asthma they use the California Office of Statewide
14 Health Planning & Development, OSHPD, and California
15 Environmental Health Tracking Program, California
16 Department of Public Health. They use the data from
17 these agencies.

18 And I also presented the data from these
19 agencies. So, I don't mean the CalEnviroScreen -- I
20 mean, we share the same data sources.

21 MS. CHANG: Okay. Thank you very much, I
22 appreciate it.

23 HEARING OFFICER KRAMER: Okay, thank you.
24 Any redirect?

25 MS. WILLIS: None.

1 HEARING OFFICER KRAMER: Okay, I have two
2 questions. One is, Ms. Willis, you have mentioned
3 that there's crossover into the Socio and
4 Environmental Justice Portion for Dr. Chu. Is she
5 going to be with us during that portion of our
6 hearings?

7 MS. WILLIS: She will.

8 HEARING OFFICER KRAMER: Okay.

9 MS. WILLIS: And that was the point I was
10 trying to make, that she was going to present her
11 Public Health portion during this panel. We had
12 initially asked, during our Prehearing Conference,
13 that Environmental Justice would be back to back.
14 Since it's been moved, I think Dr. Chu will just
15 remain for whenever we get to that portion.

16 HEARING OFFICER KRAMER: Okay, because I
17 could imagine there might be a couple more questions
18 where it will be useful to have her.

19 MS. WILLIS: Oh, I suppose so.

20 HEARING OFFICER KRAMER: And, then, my
21 question for Mr. Carroll. Mr. Rubenstein mentioned
22 that there were some revisions to one table, when he
23 was discussing his revisions to his testimony. Would
24 it be worthwhile for him to file just a revised
25 version of that table, so that everyone can see the

1 changes?

2 He did say they were inconsequential, but if
3 we have a version of that in the record, people can
4 decide for themselves.

5 MR. CARROLL: Yes, we'd be happy to do that.

6 HEARING OFFICER KRAMER: Okay. And, then, I
7 noticed one more for staff. In your rebuttal
8 testimony, you repeated the Air Quality Conditions.
9 Were those -- is that the version of the Air Quality
10 Conditions that's in the compilation of conditions
11 that you've provided? You know, the appendix where
12 all the conditions are together, or does some
13 revision need to be made to the appendix to account
14 for any changes that were made in the rebuttal
15 testimony?

16 MR. LAYTON: This is Matt Layton. The
17 answer is yes. The Applicant filed some comments
18 late. It's in the docket, they're comments. We were
19 just addressing those comments. And, so, the
20 conditions that are finalized do not reflect that,
21 yet.

22 HEARING OFFICER KRAMER: The appendix needs
23 some updating?

24 MR. LAYTON: Correct.

25 HEARING OFFICER KRAMER: Okay. And there

1 were no underline and strikeout in the rebuttal, so
2 we have to figure out what the changes are, I guess,
3 from the narrative. Is that correct?

4 MR. LAYTON: We can defer to what the
5 Applicant filed, because they have redline/strikeout
6 that we concur with.

7 HEARING OFFICER KRAMER: Okay. And to make
8 sure I noted it correctly, you are recommending that
9 AQSC-12 be deleted. Correct?

10 MR. LAYTON: Yeah, this is Matt Layton.
11 That is correct.

12 HEARING OFFICER KRAMER: Okay, thank you.
13 Okay, that concludes those three topics.

14 MR. CARROLL: Oh, Mr. Kramer, if I may,
15 because the testimony went beyond just AQSC-12, so
16 just to make sure that we are capturing everything,
17 we did identify, as an exhibit, the proposed changes
18 that were discussed. It's -- well, it's Applicant's
19 proposed Exhibit 1098, now part of Exhibit 1101. But
20 that is the redline/strikeout set of proposed changes
21 to the conditions that Mr. Layton just referred to.

22 HEARING OFFICER KRAMER: Okay, thank you.
23 So, it looks like we're running a little behind
24 today. And we're going to break for lunch. And in
25 order to allow us to save some time, the Applicant is

1 providing for the parties, and staff, and those
2 members of the Committee who choose to partake, lunch
3 in back through the kitchen area. That allows us to
4 take a 30-minute lunch break.

5 But I want to assign a little homework. And
6 that's simply, because there were some people who are
7 later in today's topic spreadsheet, who need to
8 testify today, or desired to testify today so that
9 they did not have to be here for the subsequent days.

10 I want to make sure, when we come back, that
11 we make sure we understand who all those people are
12 and we arrange our afternoon so that we can honor
13 those requests, at least to the extent that we have
14 already tried to do in the topic spreadsheet. So,
15 we'll talk about that first thing after lunch.

16 MS. BELENKY: Excuse me, Hearing Officer?
17 Sorry, we didn't finish Air Quality and Greenhouse
18 Gases. We still have our --

19 HEARING OFFICER KRAMER: Oh, yeah, that's
20 true. Yeah, we have a couple more witnesses, you're
21 right.

22 MS. BELENKY: Yes.

23 HEARING OFFICER KRAMER: Mr. Powers. So, we
24 will get to him after lunch, which will be at, let's
25 go with 1:20. Thank you.

1 MR. CARROLL: Mr. Kramer, just one
2 clarification, which may help for parties who may
3 preparing for cross-examination during lunch. At the
4 Prehearing Conference, I had identified a four-
5 witness panel for Alternatives, Part One. I was
6 being over-inclusive then because we had just
7 established the Part One/Part Two dichotomy, and I
8 was trying to think through my mind who was
9 appropriate. We will only have two witnesses, Mr.
10 Theaker and Mr. Beatty, testifying on Alternatives
11 Part One this afternoon.

12 Mr. Menta and Mr. Rubenstein, who had been
13 identified for both Part One and Part Two, upon
14 further analysis I concluded that they are really
15 only relevant for Part Two.

16 So, Mr. Menta and Mr. Rubenstein will not be
17 on for Part One today. They will be on for Part Two,
18 tomorrow.

19 HEARING OFFICER KRAMER: Okay, and Mr.
20 Theaker is one of the people we're trying to finish
21 with today, correct?

22 MR. CARROLL: Yes. But since you've raised
23 that, Mr. Theaker can also be present tomorrow, for
24 Part Two. And, so, since we are running a little bit
25 behind schedule, there's no need to pull him up to

1 and out of order today.

2 HEARING OFFICER KRAMER: Okay, so it looks
3 like we could then just recombine Overrides Part One
4 with the Part Two that's more extensive, later.

5 MR. CARROLL: Yes.

6 HEARING OFFICER KRAMER: Oh, well --

7 MS. BELENKY: Excuse me --

8 HEARING OFFICER KRAMER: No, actually, that
9 would take him to the fourth day. Would that be a
10 problem? I thought -- we were going to have this
11 discussion after lunch but --

12 MR. CARROLL: Yeah. So, you know, as I said
13 at the Prehearing Conference, we don't really have
14 witnesses who are Override witnesses, per se.
15 Frankly, we think almost all of our witnesses, in
16 some respects, are providing evidence that relate to
17 the Override, you know, should that be something that
18 the Committee determines is necessary.

19 So, Mr. Theaker isn't going to say -- Mr.
20 Theaker is not going to say anything different on
21 Friday, as an Override witness, from what he would
22 say tomorrow, as an Alternatives witness. So, our
23 proposal would be that Mr. Theaker participate on
24 Alternatives Part One today, and Alternatives Part
25 Two tomorrow. And to the extent anybody has

1 questions for him, that they deem an Override
2 question, they ask him those questions either today
3 or tomorrow.

4 HEARING OFFICER KRAMER: Okay. So, that's
5 kind of the way I had it set up, that he would be on
6 today. Okay, but we can at least push that over
7 until tomorrow, then, if we have to.

8 MR. CARROLL: Yes. Thank you.

9 HEARING OFFICER KRAMER: Okay, thank you.

10 See you back at 1:20.

11 (Off the record at 12:55 p.m.)

12 (On the record at 1:45 p.m.)

13 COMMISSIONER SCOTT: Paul Kramer to pick us
14 back up for where we left off. I'm waiting for the
15 signal from the court reporter that she's ready.
16 And she's ready, so handing this back over to Paul
17 Kramer to get us kicked off or not kicked off, but
18 continued.

19 HEARING OFFICER KRAMER: Okay, there we go,
20 I had WebEx muted for a minute. Okay. So we're back
21 on -- we're back on the record, Marlee?

22 COURT REPORTER: Yep, she's ready.

23 HEARING OFFICER KRAMER: Okay. So the first order
24 of business before we get to Mr. Powers and finish up air

1 quality, public health, and greenhouse gases, was to talk
2 about who we need to make sure that we get to this afternoon.

3 And Ms. Belenky mentioned to me that Mr. Powers is
4 one of those people that can't be here tomorrow, in person.
5 So he is on alternatives and that's it. Right, Ms. Belenky?

6

7 MS. ROESSLER: We have someone, as well -- sorry to
8 interrupt -- Matt Vespa on alternatives. Also --

9 HEARING OFFICER KRAMER: Okay. Well, let me hear
10 from Ms. Belenky first.

11 MS. ROESSLER: Okay.

12 HEARING OFFICER KRAMER: So Mr. Powers, you just
13 need him for alternatives today, correct?

14 MS. BELENKY: Yes, just today for alternatives and
15 air quality.

16 HEARING OFFICER KRAMER: Okay. And then we also
17 have, let me just spot the ones that I can spot, and then you
18 folks can tell me what I missed.

19 We also have -- for CEJA we have Strela Cervas who,
20 as I recall the constraint was she needs to be finished by
21 about 3:00 p.m. Is that about right? Okay. I think that's
22 right.

23 And then we have Irene Valencia, who is available
24 today after 5:00 p.m., which of course crashes into our 5:30
25 public comment period. So we're going to have to accommodate
26 her. I think we'll probably have to put her on right before

1 public comment. But we don't want to interfere with the
2 promise we made to the public that we'd be ready for them at
3 5:30. And let's see, well Dr. Chang isn't here either.
4 Okay. So we've got those, Mr. Powers, Ms. Cervas, Irene
5 Valencia.

6 Mr. Carroll, where do we stand with Mr. McNamee?
7 Do we still need to have him on this afternoon?

8 MR. CARROLL: That's a city witness. We would ask
9 some time to cross, but it's a city witness.

10 HEARING OFFICER KRAMER: Oh, I'm yeah. I crossed
11 my cross and direct.

12 So Ms. Folk, does he need to come today?

13 MS. Folk: Yeah, he is here today and is not
14 available again until Friday.

15 HEARING OFFICER KRAMER: Okay. We'll mark him
16 down. And then Mr. Vespa was the last one; is that correct?

17

18 MS. ROESSLER: Yes.

19 HEARING OFFICER KRAMER: And then we said before
20 the break Mr. Theaker could go over until tomorrow, am I
21 remembering that correctly?

22 Ms. Chew, do we have anybody? Okay.

23 Again, so we're in practice mode as far as
24 identifying ourselves right before we speak, but so far we
25 have no active listeners to the Spanish translation. So
26 let's get better, including me, by this evening.

1 MR. CARROLL: So yes, to answer your last question,
2 Mr. Kramer, yeah so Mr. -- it's Theaker -- I mispronounced it
3 before the break, but Mr. Theaker is available today for Part
4 1 Alternatives and tomorrow for Part 2 Alternatives according
5 the regular schedule.

6 HEARING OFFICER KRAMER: Okay. So if we had to
7 sacrifice his time today that wouldn't be a horrible
8 inconvenience except --

9 MR. CARROLL: Actually that would be a problem,
10 because his testimony today on Part 1 is joint testimony with
11 Mr. Beatty and it's fully integrated as a panel. So that's -
12 -

13 HEARING OFFICER KRAMER: Oh, I see. I was thinking
14 of transportation, but you're right he's on -- so maybe his
15 transportation testimony could be postponed until tomorrow?

16 MR. CARROLL: Transmission.

17 HEARING OFFICER KRAMER: Okay.

18 MR. CARROLL: Yes.

19 HEARING OFFICER KRAMER: Okay. So let's --
20 actually that was overrides, not transportation, but on Mr.
21 Theaker. Okay. Let's finish with Mr. Powers and the three
22 air quality-related topics. And then we will -- then Ms.
23 Lazerow, when could Ms. Cervas be here?

24 MS. LAZEROW: She is here. She's been here all
25 day. She needs to go by 3:00 though.

26 HEARING OFFICER KRAMER: Okay. So then after we

1 finish Air Quality we will go to her. And is Mr. Lopez
2 available too?

3 MS. LAZEROW: He is available.

4 HEARING OFFICER KRAMER: Okay. Or could he come
5 another day if we had to?

6 MS. LAZEROW: I just texted him to find out whether
7 he would be available another day.

8 HEARING OFFICER KRAMER: Okay. And then if we're
9 going to get Ms. Valencia in, it's going to have to be right
10 at 5:00 o'clock.

11 MS. LAZEROW: I'm texting her to see whether she
12 would be able to do tomorrow at 5:00 instead, since I know
13 that she -- she let me know first thing this morning that it
14 was going to be a little bit after 5:00. She has family
15 duties right after work.

16 HEARING OFFICER KRAMER: Okay, then I'll have the
17 same constraints, so that we need to finish her by 5:30,
18 because we'll be starting public comment.

19 Okay. Mr. Powers, you're there. Were you sworn
20 earlier?

21 MR. POWERS: I was.

22 HEARING OFFICER KRAMER: You were, okay.

23 Ms. Belenky?

24 MS. BELENKY: Thank you. Good morning, I mean good
25 afternoon. Mr. Powers, did you prepare the testimony that
26 was filed as opening testimony and rebuttal at we used Number

1 7000 and 7027?

2 MR. POWERS: I did.

3 MS. BELENKY: And do you have anything to add to
4 that testimony or any corrections to make at this time?

5 MR. POWERS: I do not.

6 MS. BELENKY: Thank you. For the air quality
7 section -- And I'm going to do this in two sections, air
8 quality and greenhouse gasses -- would you like to summarize
9 briefly your testimony and just to start us off, so we're all
10 back on the same page?

11 MR. POWERS: I have a request. Since it's my
12 testimony is combined to one package, could I summarize the
13 testimony as a package?

14 MS. BELENKY: Yes, I believe that would be fine.

15 MR. POWERS: Thank you. First, I'll summarize my
16 opening testimony. Number one, the project objectives need
17 to be modified, so that your listing performance objectives
18 as opposed to specifically identifying the make and model of
19 turbine or a simple cycle turbine, is the only solution to
20 the need.

21 Number two, the decline in peak load in the Big
22 Creak Ventura local capacity area has eliminated a grid
23 reliability justification for the project. Making the no
24 project alternative --

25 HEARING OFFICER KRAMER: I'm sorry.

26 MS. BELENKY: I'm sorry. Mr. Powers, I think we

1 still need to stay with air quality and greenhouse gas first
2 and then talk about alternatives, because of the order --

3 MR. POWERS: Okay. I was just going through the
4 order of the testimony --

5 MS. BELENKY: I know, it's complicated, because we
6 separated them out. But we haven't quite gotten towards the
7 alternatives issues yet.

8 MR. POWERS: Very good, and maybe you could help me
9 on this. When I talk about the heat rate of the turbine, is
10 that considered air quality, or would that be considered
11 something else?

12 MS. BELENKY: I believe that's the greenhouse gas
13 air quality section, yes.

14 MR. POWERS: Okay. The Puente unit project will
15 contribute to an increased average heat rate of the
16 California fleet of gas-fired generators. Greenhouse gas
17 standpoint, meaning on at least on a unit basis it will be
18 increasing the greenhouse gas footprint of gas-fired
19 generation in California.

20 The only entity that actually calculated what an
21 appropriate capacity factor would be for this unit is
22 Commission staff, conservatively calculating 11 percent
23 capacity factor. And that should be the mandatory capacity
24 factor in the air permit for the facility.

25 I'll switch now to my -- the other comments relate
26 other topics. I'll switch to my rebuttal testimony of Mr.

1 Rubenstein. His focus on the efficiency of Puente, relative
2 to the older units in the local area, is misplaced. The unit
3 is adding to or contributing to a lower efficiency overall
4 for gas-fired generation in California. That's the
5 fundamental point.

6 The Cap and Trade Program won't resolve this issue.
7 The program is only authorized through 2020. Puente is
8 replacing units that have operated for 60 years. Puente
9 could operate for 60 years as well. At some point, even if
10 Cap and Trade is operational, you're going to run out of
11 greenhouse gas credits to trade as we get down to zero and
12 end up with a stranded asset.

13 One other point, I noted that if staff has
14 determined that 11 percent is a conservative estimate of what
15 the capacity factor should be for the facility that should be
16 in the air permit. The independent system operator always
17 has the authority of override and operate Puente to maintain
18 grid stability and grid reliability regardless of what that
19 permit says about capacity factor. So you're not limiting
20 the ability of Puente to serve as a grid reliability resource
21 even if it hits its capacity factor.

22 That's a summary.

23 MS. BELENKY: Thank you. I just want to see if
24 there are a few issues we wanted to discuss. I did want you
25 to maybe just shed a little bit more light on the reliability
26 standards that were used here. And I think that's for the

1 section -- and the dispatch if there is -- is it possible to
2 have this out of order dispatch, so that you do utilize less
3 efficient units?

4 MR. POWERS: Yes. The independent system operator
5 imposes a local generation component to dispatching units,
6 meaning it's been 25 percent of the generation has to be
7 local, within the local area. If you had a mix of combined
8 cycle -- high-efficiency combined cycle units, lower
9 efficiency simple cycle units, then the unit that's going to
10 be dispatched in the local area to cover that 25 percent is
11 going to be a combined cycle unit.

12 But if your local area, if the best you've got is
13 Puente and it is relatively low efficiency, but everything
14 else that's available is lower Puente will be dispatched.
15 Not a combined cycle unit, not a high-efficiency unit, so
16 there's definitely a scenario where you could see a lot of
17 use of a simple cycle unit. In particular local capacity
18 areas like this one, especially, as opposed to a dispatch
19 stack where you've got combined cycle units and high
20 efficiency assets that you can call upon.

21 MS. BELENKY: Thank you. And I am trying to make
22 sure we're efficient in the testimony, but not to miss any of
23 your major points. The heat rate issue, you came up a
24 different amount than, I believe, staff or one of the
25 applicants' experts. Can you explain the heat rate issue and
26 how you reached the amount of heat that you believe Puente

1 would --

2 MR. POWERS: And this is the specific number?

3 MS. BELENKY: Yeah, I believe it's 9,819.

4 MR. POWERS: Right. I noticed Mr. Rubenstein had
5 referenced a different heat rate in the greenhouse gas
6 section of the FSA, but this is really a simple issue. In
7 the efficiency section, it states it's a 262-megawatt net
8 output unit. It then states that it consumes a maximum of
9 2,572 million Btus per hour. It then provides a total fuel
10 usage for the year, which is multiplying the number of hours,
11 2150 hours, by that amount of heat.

12 So I know it was brought up that this is a maximum,
13 this isn't what you should use to calculate heat rate. These
14 are the only numbers in the plant efficiency chapter and it's
15 just an odd comment. The problem is the FSA has a couple of
16 different numbers. But the way you calculate heat rate is
17 net megawatts to the grid, or excuse me, heat in divided by
18 net megawatts to the grid. That's the heat rate.

19 MS. BELENKY: Thank you. I'm just checking my
20 notes, if I had anything else I wanted to ask you on direct
21 on these two questions.

22 I think Mr. Powers is available for rebuttal, I
23 mean for cross examination.

24 HEARING OFFICER KRAMER: Okay. I don't see anyone
25 who's indicated any time allocated to cross examine him.
26 Does any party have cross-examination questions for Mr.

1 Powers?

2 MR. CARROLL: Applicant does not have any questions
3 for Mr. Powers, but do have objections to certain exhibits.
4 But my understanding, based on our conversation from this
5 morning, is that we're going to deal with those at a later
6 time.

7 MS. BELENKY: We would like to hear what the
8 objections are, because Mr. Powers is here. And we could --

9 HEARING OFFICER KRAMER: Yeah, I think that would
10 be more effective, so we don't have -- in case he has
11 something to offer about the relevance of the exhibits, so
12 which?

13 MR. CARROLL: And it's really only one, so it
14 shouldn't take long. Actually two, but the objection is the
15 same.

16 So with respect to CBD's Exhibit Number 7013, the
17 title of the document -- and this is TN number 215446-3 --
18 the title of the document is "Sears Expert Report."

19 This is a report prepared by an air quality expert
20 and submitted earlier in the proceedings on behalf of a
21 different intervenor, Sierra Club. It was submitted as TN
22 212635-2 on August 4th of 2016.

23 This is a hearsay document. It's essentially
24 prepared testimony from an expert witness who has not been
25 presented as a live witness, or made available for cross
26 examination by any party and so we object to the report as

1 hearsay. And to the extent that Mr. Powers relies on that
2 report for any conclusions reached in his own prepared
3 testimony, we would similarly object to those portions of his
4 testimony as hearsay.

5 The second document to which we have an objection -
6 - and I'm not sure whether Mr. Powers is -- Well, no. I'm
7 sorry, I believe Mr. Powers is sponsoring this, so this is
8 CBD's Exhibit 7029, TN 215535-1, which consists of Center for
9 Biological Diversity's PSA comments.

10 To the extent that Mr. Powers is sponsoring these
11 for the truth of the matter that they are, the PSA comments
12 submitted by CBD, we have no problem with that. However, the
13 PSA comments are far-reaching, many of them outside the scope
14 of Mr. Powers' expertise. And so with respect to anything
15 else outside the scope of his expertise there would be no
16 foundation, no witness present to specifically sponsor those
17 portions of the document, making them also hearsay evidence.

18 HEARING OFFICER KRAMER: Ms. Belenky, do you have
19 any reply?

20 MS. BELENKY: Yes. I believe that the Sears
21 testimony was only relied on in one footnote of Mr. Powers'
22 testimony -- and I can try and pull that up. And he could
23 respond to whether it's necessary -- and I will do that in a
24 minute.

25 And the PSA comments, I think to the extent that
26 they are within his expertise and he is adopting them, that's

1 why they were submitted as an exhibit to his testimony on
2 rebuttal. Not as to any other aspect of those.

3 MR. CARROLL: Then we withdraw our objection with
4 respect to the PSA comments, based on that statement by Ms.
5 Belenky.

6 HEARING OFFICER KRAMER: Okay, that's 7029,
7 objection withdrawn. Okay, so the Sears Report?

8 MS. BELENKY: All right, and it'll just take me a
9 second to pull up the reference.

10 Okay. So Mr. Powers, in your opening testimony
11 there's a discussion of NOx and VOx and the mitigation. And
12 it discusses the air dispersion modeling that was performed
13 for the Sierra Club by, I believe it's Ms. Sears. And you
14 said as a -- and you rely on it, cite to it in a footnote,
15 regarding the NO₂ emissions exceeding air quality standards;
16 is that correct?

17 MR. POWERS: Yes.

18 HEARING OFFICER KRAMER: Which footnote was that?

19 MS. BELENKY: It's footnote 46, on page 15, or Mr.
20 Powers' opening testimony, which is Exhibit 7000.

21 HEARING OFFICER KRAMER: Okay. Go ahead.

22 MS. BELENKY: So that's the only basis that the
23 Sears testimony was submitted, I believe for --

24 MR. CARROLL: So perhaps I can resolve that? I
25 have no objection to the Sears Exhibit coming into the record
26 for the sole purpose of supporting that point in Mr. Powers'

1 testimony, but no other. Or it would be relied upon as
2 support for nothing other than that point in Mr. Powers'
3 testimony. If that's the case, then we have no objection.

4 MS. BELENKY: Thank you.

5 And Mr. Powers' did you have anything to add to
6 your initial statements?

7 MR. POWERS: No.

8 MS. BELENKY: On your opening statements --

9 MS. BELENKY: Okay.

10 HEARING OFFICER KRAMER: So then Ms. Belenky, if we
11 noted in the record that 7013 would be admitted for the sole
12 purpose of the reference in Mr. Powers' testimony, does that
13 satisfy your needs?

14 MS. BELENKY: It does as far as evidence. It was
15 of course, submitted by Sierra Club as part of their
16 comments, and so it has its own weight as a public comment as
17 well.

18 HEARING OFFICER KRAMER: Although the way --

19 MS. BELENKY: But that's not my concern, that's
20 Sierra Club's concern.

21 HEARING OFFICER KRAMER: Right, and they had that
22 docketed earlier as well.

23 Although this may be a good point for me to just
24 mention that comments in the Preliminary Staff Assessment are
25 not really relevant to the committee, except historically at
26 this point, because they would have been responded to by the

1 staff and in the Final Staff Assessment. And so the
2 committee doesn't feel bound to go back and review all those
3 PSA comments and track what happened to them. What we expect
4 is that if people still find the FSA lacking, or the
5 Presiding Member's proposed decision for that matter, that
6 they will renew those comments.

7 Okay. So it looks like the exhibit list is not
8 only going to have, when it's published in the proposed
9 decision, it's not only going to have that table showing
10 where some of the exhibit numbers went. But it's going to
11 have a few notations similar to the one I just stated, that
12 some exhibits were admitted either partially or for a
13 particular purpose or accepted as public comment.

14 And the only reason I have to do that is because
15 there's no way to put that directly into the exhibit list
16 when it's formatted by our computer system. That's something
17 that maybe a future version of our software will allow, but
18 it doesn't now.

19 Okay. So I think we've dealt with the objections.
20 And there was no cross, so there would be no redirect, so I
21 think we are finished with Mr. Powers on this topic.

22 MS. BELENKY: Yes, thank you.

23 HEARING OFFICER KRAMER: You agree?

24 MS. BELENKY: I agree.

25 HEARING OFFICER KRAMER: Thank you.

26 Okay. Thank you, Mr. Powers.

1 MR. POWERS: Thank you.

2 HEARING OFFICER KRAMER: Okay. So next, we're
3 going to take -- and we'll skip ahead to a portion of the
4 Socioeconomics, Environmental Justice Part 1 topic. And Ms.
5 Cervas is here, have a seat. Is Mr. Lopez here, not yet?

6 MS. LAZEROW: He should be here any moment, he's on
7 his way.

8 HEARING OFFICER KRAMER: Okay. Would he also be
9 capable to maybe go right before 5:00, do you think?

10 MS. LAZEROW: I can ask him when he gets here.

11 HEARING OFFICER KRAMER: Okay. If he gets here
12 while we're in the middle of Ms. Cervas, we could add him on
13 I think. But otherwise we may have to go on to something
14 else.

15 So, Ms. Cervas, you were here earlier to be sworn
16 as a witness?

17 MS. CERVAS: I was not.

18 HEARING OFFICER KRAMER: No, okay. Well, if you
19 can raise your right hand.

20 (Whereupon, Strela Cervas is duly sworn.)

21 MS. CERVAS: I do.

22 HEARING OFFICER KRAMER: Thank you. You are CEJA's
23 witness, so Ms. Lazerow, if you would proceed with your
24 direct examination and then we will go on to cross
25 examination.

26 MS. LAZEROW: Yes. Thank you.

1 Good afternoon, Ms. Cervas. If you could please
2 state and spell your name for the record, get close to the
3 microphone.

4 MS. CERVAS: Strela Cervas, S-t-r-e-l-a, last name
5 C-e-r-v-a-s.

6 MS. LAZEROW: Thank you. Are you sponsoring
7 Exhibit 6000 Testimony of Strela Cervas, today?

8 MS. CERVAS: Yes.

9 MS. LAZEROW: And Exhibit 6003 Rebuttal Testimony
10 of Strela Cervas?

11 MS. CERVAS: Yes.

12 MS. LAZEROW: And Exhibit 6004 Comments of the
13 California Environmental Justice Alliance on Preliminary
14 Staff Assessment?

15 MS. CERVAS: Yes.

16 MS. LAZEROW: And finally, Exhibit 6005
17 Presentation of CEJA on Preliminary Staff Assessment
18 Workshop?

19 MS. CERVAS: Yes.

20 MS. LAZEROW: And Hearing Officer Kramer, would it
21 be possible to have that Exhibit 6005 on the WebEx? It is
22 the PowerPoint presentation, which Ms. Cervas was hoping to
23 give the first maybe seven 7 slides to describe some
24 CalEnviroScreen.

25 HEARING OFFICER KRAMER: Okay. It'll take me just
26 a moment, because that one was a late-filed exhibit.

1 MS. LAZEROW: I apologize. I can give you the TN
2 Number, if it would be easier?

3 HEARING OFFICER KRAMER: It was late identified, so
4 I need to go to the website to find it. If you could -- do
5 you need it to get started? In other words, if there are
6 some other questions you could ask for just a minute and I
7 will get it for us.

8 MS. LAZEROW: Sure, maybe I'll start at the end.

9 So Ms. Cervas, are you aware of any recent studies
10 looking at the capability of resources other than gas-fired
11 generation for environmental justice communities?

12 MS. CERVAS: Yes. The Elena Krieger study that I
13 reference in my testimony, looked at how energy storage can
14 meet some of the needs that gas-fired peaker plants meet.
15 The study particularly look at how air quality concerns,
16 during peak need to be addressed with storage.

17 MS. LAZEROW: Great. Are you aware of any other
18 recent studies about preferred resources meeting the needs
19 that gas-fired generation often serve in environmental
20 justice communities?

21 MS. CERVAS: Yes. The CAISO study that I also
22 referenced looked at how solar generation is able to serve
23 needs like ramping, spinning reserves and other ancillary
24 services. I discussed this study with CAISO representatives.
25 And they were actually enthusiastic about how well a storage
26 project that was designed to provide ancillary services had

1 performed.

2 MS. LAZEROW: Thank you. I think that my remaining
3 questions go to her PowerPoint presentation.

4 HEARING OFFICER KRAMER: There you go.

5 MS. LAZEROW: Great, okay.

6 HEARING OFFICER KRAMER: Ari, could you make this
7 full screen get rid of the participants' panel?

8 MS. CERVAS: Thank you. So this first slide just
9 describes the California Environmental Justice Alliance
10 organization, and they're a statewide alliance of community-
11 led environmental justice organizations that advance
12 statewide policy. They represent around 30,000 community
13 members statewide. And we organize in the interests of low-
14 income communities and communities of color for statewide
15 policy change. Next slide, please.

16 This slide just describes the importance of the
17 cumulative impacts screening tool. Usually, environmental
18 decision-making looks at pollution on a case-by-case basis,
19 rather than looking at a comprehensive or totality of
20 pollution and other issues.

21 Typically, in the past we've gotten the question
22 from policy makers, "Where exactly are environmental justice
23 communities?" And they have found that they've needed
24 academic research that shows where environmental justice
25 communities are located. It is for these reasons that
26 environmental justice communities have pushed for a

1 cumulative impacts tool. And we wanted to use the tool to
2 connect overburdened communities to state resources and
3 beneficial local, regional and statewide policies. Next
4 slide, please.

5 Overall, the CalEnviroScreen has multiple versions.
6 We are now at Version 3.0. It identifies communities in
7 California that are most burdened by pollution from multiple
8 sources and most vulnerable to its effects, taking into
9 account socioeconomic characteristics and underlying health
10 statuses.

11 The definition, state law defines environmental
12 justice as, "The fair treatment of people of all races,
13 cultures and incomes with respect to the development,
14 adoption, implementation and enforcement of environmental
15 laws, regulations and policies."

16 CalEnviroScreen provides a broad picture of the
17 relative burdens in California communities from pollutions.
18 This slide shows that there are, as of Version 2.0, 19
19 different indicators that are scored for almost 8,000 census
20 tracts in California.

21 Since I last gave this presentation, the tool has
22 been updated to now CalEnviroScreen 3.0, that includes now 20
23 different indicators. Next slide, please.

24 And the development of CalEnviroScreen has gone
25 through many, many years. First in (indiscernible) from
26 between 1999 to 2000 the environmental justice statutes,

1 which I just described, talked about and defined
2 environmental justice. Then in 2004, an advisory committee
3 gave recommendations. And the CalEPA EJ action plan
4 discussed CalEnviroScreen needs. Between 2008 to 2013, a
5 work group on cumulative impacts also discussed the need.
6 And then in 2010, a proposed screening tool was released.
7 Between 2010 and 2013, various workshops and consultations
8 processes took place. And then finally between 2013 and
9 2014, CalEnviroScreen released its public versions.

10 This was the process that describes the background
11 of how stressors and vulnerabilities were determined over
12 the years. Next slide, please.

13 So how does CalEnviroScreen work? Quite simply,
14 there are two buckets or two components of representing
15 pollution exposures and environmental effects. And then
16 population characteristics, which includes sensitive
17 populations and socioeconomic factors. Next slide, please.

18 And then as of Version 2.0, these are the 19
19 different indicators. Exposures, means pollution that people
20 come into direct contact with, for example, by breathing.
21 Environmental effects, means adverse environmental conditions
22 caused by pollutants. Sensitive populations, are populations
23 with biological traits that result in increased vulnerability
24 to pollutants. And then socioeconomic factors, are community
25 characteristics that result in increased vulnerability to
26 pollutants.

1 In CalEnviroScreen 3.0, cardiovascular incidents
2 was added because individuals who have had heart attacks may
3 have a higher risk of dying after exposure to both short and
4 long-term exposure to air pollution. The next slide, please.

5 And then finally, this is the scoring method
6 CalEnviroScreen assigns weighted average scores within each
7 category and adds them up. So each category is up to a score
8 of 10, then multiplies burdens times population
9 vulnerabilities for a maximum score of 100, so that's 10
10 times 10. And this is multiplied because stressors are cited
11 as modifiers of pollution burdens. For example, children may
12 be 10 times more susceptible to certain chemical exposures
13 than adults.

14 Under CalEnviroScreen 3.0, the census tract where
15 the Puente Power Plant would be located, tract 6111002905 --
16 is in the 86 to 90 percentile overall ranking -- indicating
17 that the 5,000 or so people who live there are significantly
18 impacted by cumulative impacts.

19 So in conclusion, the CalEnviroScreen is a tool
20 that is very well suited for describing environmental justice
21 impacts that are already being suffered by a community.

22 MS. LAZEROW: Thank you. Ms. Cervas, is race
23 considered in the CalEnviroScreen score?

24 MS. CERVAS: No, race is not considered. But the
25 2010 census information about race is included on the
26 CalEnviroScreen site. And that for the Puente census tract

1 6111002905 the population is 56 percent Latino and 75 percent
2 non-white.

3 MS. LAZEROW: Thank you.

4 I have no further direct questions for Ms. Cervas.

5 HEARING OFFICER KRAMER: Mr. Carroll?

6 MR. CARROLL: Thank you.

7 Good afternoon. Hi, Ms. Cervas. I'm Mike Carroll.

8 I represent the applicant for the project.

9 Have you reviewed, and are you familiar with
10 Section 4.5 of the California Energy Commission staff's Final
11 Staff Assessment pertaining to environmental justice? Wait,
12 well let me back up. When I say Final Staff Assessment, do
13 you know what document that I'm referring to?

14 MS. CERVAS: I would need a reference.

15 MR. CARROLL: Okay. So the Final Staff Assessment
16 is the document that was prepared by the Energy Commission
17 staff, assessing various subject areas related to the
18 project. Amongst the topics addressed was environmental
19 justice, which was covered in Section 4.5. And I'm just
20 wondering if you have had an opportunity to review that?

21 MS. CERVAS: I don't think I've reviewed it
22 recently.

23 MR. CARROLL: Okay. Thank you. Were you aware
24 that staff did complete a supplemental environmental justice
25 analysis utilizing the CalEnviroScreen -- I believe, well I
26 shouldn't speak to their motivation -- but are you aware that

1 they did complete a supplemental environmental justice
2 analysis related to the project, utilizing CalEnviroScreen as
3 a tool?

4 MS. CERVAS: I believe so.

5 MR. CARROLL: And are you familiar with the
6 conclusions that they reached in that analysis?

7 MS. CERVAS: If you would be so kind as to go over
8 that, then that would be wonderful.

9 MR. CARROLL: Sure. Well, in general they
10 concluded that the project would not result in any
11 environmental justice impacts. Do you agree or disagree with
12 that general conclusion?

13 MS. CERVAS: I would disagree.

14 MR. CARROLL: Okay. And on what basis would you
15 disagree with that conclusion?

16 MS. CERVAS: On the basis of the presentation that
17 I just gave on CalEnviroScreen, that the census tract where
18 Puente would be located is an already overburdened census
19 tract. It is in the top 25 percent overly burdened census
20 tracts.

21 MR. CARROLL: And in addition to disagreeing with
22 the conclusion of the staff, do you disagree with the
23 methodology that they utilized to conduct their supplemental
24 environmental justice analysis?

25 MS. LAZEROW: Objection. I think that it's clear
26 that this witness has not been made familiar with that

1 methodology. And she doesn't purport to have reviewed the
2 staff's environmental justice analysis in any of her
3 testimony.

4 MR. CARROLL: Okay. Then we have no further
5 questions. Thank you for your testimony.

6 MS. CERVAS: Thank you.

7 HEARING OFFICER KRAMER: Dr. Chang. Did you have
8 questions for Ms. Cervas?

9 DR. CHANG: Ms. Cervas, thank you. I actually read
10 the opening testimony that was submitted by you.

11 MS. CERVAS: Uh-huh.

12 DR. CHANG: And --

13 HEARING OFFICER KRAMER: Could you speak up?

14 DR. CHANG: Yes.

15 HEARING OFFICER KRAMER: Thanks.

16 DR. CHANG: Ms. Cervas, I just said that I had read
17 the opening testimony submitted by you. And as it relates to
18 some of the earlier testimony today, I would love to ask you
19 to clarify or repeat some of these things.

20 MS. CERVAS: Okay.

21 DR. CHANG: So, on any given day, farm workers
22 numbering roughly between -- can you tell me on any given day
23 how many farm workers might be present in the census tract in
24 question?

25 MS. CERVAS: Okay. Let me just go to that
26 particular --

1 HEARING OFFICER KRAMER: Could I ask both of you if
2 you need to move the microphone fine, but you really need to
3 aim your voice right at the microphone. If you're talking
4 off to the side a little bit, it doesn't work so well.

5 DR. CHANG: Sure.

6 MS. CERVAS: Okay. I believe you are referencing
7 page 9 of my testimony?

8 DR. CHANG: Correct.

9 MS. CERVAS: Where I reference the 2013
10 publication by the Oxnard Chamber of Commerce, where
11 agriculture is the largest industry jobs sector, and talk
12 about the U.S. Census Bureau's fact finder website for
13 industry by occupation in Oxnard. Revealing that agriculture
14 is the second largest job sector, only slightly below
15 educational, healthcare and social assistance service
16 sectors. According to the U.S. Census Bureau over 15,000
17 Oxnard residents are employed in the agricultural industry,
18 with well over 90 percent in non-management, non-sales jobs.

19 DR. CHANG: Right, and on any given day is my
20 understanding that between 1,000 and 3,000 farm workers might
21 be present working in that region of the census tract?

22 MS. CERVAS: Yes, that's correct.

23 DR. CHANG: And that region is -- can you tell me
24 what the distance range is from the plant itself?

25 MS. CERVAS: I believe we talk about between a six-
26 mile radius.

1 DR. CHANG: Okay. And to be more specific, the
2 closest that workers might be would be, my understanding is
3 less than half?

4 MS. CERVAS: Yes. What I put in my testimony,
5 agricultural fields and their workers that are in closest
6 proximity are less than half-a-mile away from the power
7 plant.

8 DR. CHANG: And the furthest they might be, might
9 be what?

10 MS. CERVAS: The furthest out are only about four
11 miles away.

12 DR. CHANG: Okay. So within that six mile, some
13 are quite close, including less than half-a-mile away from
14 the plant?

15 MS. CERVAS: Yes.

16 DR. CHANG: Directly adjacent to the farmlands, to
17 these agricultural fields, are a number of -- is a school
18 site, correct?

19 MS. CERVAS: Correct.

20 DR. CHANG: And that's the Oxnard High School?

21 MS. CERVAS: Correct.

22 DR. CHANG: And could you describe some of the
23 population characteristics of the high school?

24 MS. CERVAS: It is the second largest school in the
25 district with an enrollment of over 2,800 students, who spend
26 seven to ten hours per day on campus, five days per week. It

1 is a Title I school, the federal designation for schools with
2 socioeconomically disadvantaged students. It has a body that
3 is 84 percent Latino, 91 percent students of color, and 65
4 percent economically disadvantaged; 10 percent of its
5 students have disabilities and 15 percent are English
6 learners.

7 DR. CHANG: And so between the farm workers, the
8 students, and perhaps beachgoers, if there are people who are
9 trying to have recreation in this region -- which as we know
10 is a very park poor region -- between all those populations
11 we have a number of people who would be present in any given
12 day. Would they be accounted for in the residency
13 statistics?

14 MS. CERVAS: Environmental justice communities
15 should include not just the residents of the census tracts
16 that we are talking about, but those that actually work and
17 go to school in the area of concern.

18 DR. CHANG: Yeah, my understanding is that the sort
19 of classic definition of environmental justice is those who
20 are impacted in the areas where they live, work and play?

21 MS. CERVAS: Yes, correct.

22 DR. CHANG: Fine, okay. Thank you.

23 I noticed that in the Power Point projection that
24 you had projected, it was the CalEnviroScreen 2.0. And then
25 you indicated that there were a few revisions to that and
26 updates and upgrades. Could you review again what the

1 improvements -- or the revisions?

2 MS. CERVAS: The latest, most significant, revision
3 to between 2.0 and 3.0 added the cardiovascular indicator.
4 Again, because individuals who have had a heart attack may
5 have a higher risk of dying after exposure to both short and
6 long-term exposures to air pollution.

7 DR. CHANG: Okay. And so some of the indicators
8 that would lead to an increased vulnerability to pollutants
9 included, you said, cardiovascular asthma, and low birth
10 rate. And then are these in addition? I'm not sure? The
11 linguistic isolation, poverty, socioeconomic status, are
12 those
13 the --

14 MS. CERVAS: Those are included in CalEnviroScreen
15 --

16 DR. CHANG: These are the current ones, correct?

17 MS. CERVAS: -- prior to the upgrade, yes, correct.

18 DR. CHANG: Okay, great. And the CalEnviroScreen
19 tool is used by several public agencies, and it has been used
20 by several public agencies in proceedings around a number of
21 legislations including SB 535 and SB 43, correct?

22 MS. CERVAS: That's correct, yes.

23 DR. CHANG: Could you tell me some of the public
24 agencies that have utilized the tool?

25 MS. CERVAS: Utilized, California Public Utilities
26 Commission has used the tool quite extensively. And then

1 besides the agency, the Legislature utilizes the tool in a
2 number of different pieces of legislation.

3 DR. CHANG: Okay, great.

4 If I may just expand on that, I might name two
5 pieces of legislation that might be relevant. For example,

6 SB 673 says that the Department of Toxic Substances Control

7 must use more protective permitting criteria and enhance

8 involvement from communities identified by CalEnviroScreen.

9 So as recently as 2016, the Legislature anticipated that

10 agencies would be using CalEnviroScreen when making

11 permitting decisions.

12 With respect to electricity, SB 350 as many of us

13 know, by Senator Kevin de Leon, contemplates that the

14 California Public Utilities Commission uses CalEnviroScreen

15 to decide where to seek beneficial projects like energy

16 efficiency. It also requires utilities to use

17 CalEnviroScreen to prioritize environmental justice

18 communities where they will minimize localized air polluting,

19 so requiring that procurement decisions include environmental

20 justice air impacts as determined by CalEnviroScreen.

21 DR. CHANG: Great. Thank you so much for that

22 alliteration. I have no further questions. Thank you.

23 HEARING OFFICER KRAMER: Okay. Any redirect, Ms.

24 Lazerow?

25 MS. LAZEROW: I have no redirect. Thank you.

26 HEARING OFFICER KRAMER: Okay. Thank you, Ms.

1 Cervas.

2 MS. CERVAS: Thank you.

3 HEARING OFFICER KRAMER: Is Mr. Lopez here yet?

4 MS. LAZEROW: He is here.

5 HEARING OFFICER KRAMER: Okay. Mr. Lopez, if you
6 could come forward? First, we need to swear you in, so raise
7 your hand.

8 (Whereupon, Raul Lopez is duly sworn.)

9 MR. LOPEZ: I do.

10 HEARING OFFICER KRAMER: Thank you.

11 MS. LAZEROW: Good afternoon. Could you please
12 state and spell your name for the record?

13 MR. LOPEZ: Sure. My name is Raul Lopez. R-a-u-l
14 L-o-p-e-z.

15 MS. LAZEROW: Thank you. How long have you lived
16 in Oxnard?

17 MR. LOPEZ: Thirty-four years, as long as I've been
18 alive.

19 MS. LAZEROW: Are you sponsoring CEJA Exhibit 6002,
20 your testimony, into evidence today?

21 MR. LOPEZ: Yes.

22 MS. LAZEROW: Do you have family here in Oxnard, as
23 well?

24 MR. LOPEZ: Yeah, besides myself, my wife, and my
25 three children I have a very, very, very big family here in
26 Oxnard. My mom has 11 siblings, my father has 13 siblings

1 and more than half of them are actually residing here in the
2 City of Oxnard.

3 MS. LAZEROW: I wonder if you could speak to your
4 immediate family and your experiences raising your family
5 here in Oxnard?

6 MR. LOPEZ: I love Oxnard. I've been blessed in
7 the fact that I've been able to do a lot of different work
8 and travel across the country, and to other countries, and
9 come back home to the City of Oxnard. It truly is the only
10 place I'll ever want to live.

11 So being that I'm a father of three, my oldest is
12 eight. He's a boy, right under him I have a daughter who's
13 seven. And then I have a two-year-old daughter. We happen
14 to just be beach lovers. As it happens, we try to be at the
15 beach almost every weekend, spend a lot of time on the water
16 fishing, boating. We just love the ocean. Maybe because I
17 grew up here and I'm used to it, but I especially love
18 taking them and making sure they have memories in the future
19 spending their young life on the shore.

20 MS. LAZEROW: So do you take your children to the
21 beach at Mandalay?

22 MR. LOPEZ: No. Growing up my parents to the Pier
23 in Hueneme. They used to take me to Mandalay Beach once in a
24 while, and all the Oxnard beaches, really.

25 But as I got older and then I had my kids -- it's
26 really weird how careless I was until I had kids. Once I had

1 kids I really looked out a little bit more about food,
2 environment and stuff like that. When it was just me, I
3 didn't seem to really give it as much weight until I see the
4 eyes of my kids looking back at me. So for me, I don't take
5 my kids to the beaches in Oxnard any more.

6 It's unfortunate, because I truly, truly love
7 Oxnard. If you guys can read my hat, it says "Ox City
8 Originals." I created a whole clothing brand, because I love
9 my city so much. So it's an especially sad thing for me
10 loving the ocean so much, that I don't take them to Oxnard
11 beaches. We frequent Ventura beaches now.

12 MS. LAZEROW: So why don't you go to the beach in
13 Oxnard?

14 MR. LOPEZ: Well, in all honesty, it's a couple of
15 things. The aesthetics aren't the nicest, since we have a
16 big gigantic plume of smoke stack to look at and then
17 especially on days where you can't -- when the smoke stacks
18 are on sometimes, you can't tell where the clouds begin, and
19 the smoke ends. So it all looks like one giant thing above
20 our heads.

21 So for me, it's really easy to drive the other way.
22 Harbor connects Ventura and Oxnard beaches, so when you drive
23 down the Coast of Oxnard and you see the smoke stacks
24 producing, it's really, really easy to just turn right and go
25 to a beach that doesn't have it.

26 MS. LAZEROW: Do you have any family members who

1 have asthma?

2 MR. LOPEZ: My daughter. Well, it's interesting.

3 My daughter, she got diagnosed with asthma as a baby. She
4 was given a nebulizer after she was born. She was given an
5 inhaler when she was in school. So through preschool, her
6 first four or five years of life, we would have an inhaler.
7 She would use it. And then about, when my daughter was in, I
8 think going into first grade, we took her and switched her
9 out of an Oxnard school and we put her in a Ventura school,
10 called Portola Elementary School.

11 So in preschool, we had to keep an inhaler at my
12 daughter's school, just in case she had an attack and needed
13 to inhale. So we kept it there and then when she switched
14 over to Ventura, she just slowly didn't need it anymore. And
15 now she's in second grade and she doesn't even use the
16 inhaler that she's been given by her doctor anymore.

17 MS. LAZEROW: I have no further questions for the
18 direct questions for this witness.

19 HEARING OFFICER KRAMER: Mr. Carroll, you weren't
20 on the list for them, but did you have questions?

21 MR. CARROLL: No, we do not. Thank you.

22 HEARING OFFICER KRAMER: Okay. Thank you.

23 Dr. Chang?

24 DR. CHANG: Yes, thank you. Again, I have reviewed
25 your testimony and found it very powerful.

26 HEARING OFFICER KRAMER: Please, project your

1 voice.

2 DR. CHANG: Yes. The other day when my chatter was
3 being projected -- when I was presenting by WebEx -- I
4 apologize that apparently my voice was much more audible at
5 that point than it is now, so I'll try to project.

6 In your testimony, on the second page, you speak
7 about -- well, I'll just read the line. "There was a whole
8 generation of youth whose parents kept their heads down and
9 worked, dealing with any problems in the family."

10 And I understand that you're an organizer here with
11 CAUSE, with obviously a long and multi-generational presence
12 in this community. And I was very much struck by this
13 portion of your testimony, because I think it really speaks
14 to what we're trying to get at here. Which is when we want
15 to create a situation of bringing actual environmental
16 justice, you have to work with a community who has been
17 operating under certain conditions.

18 So would you mind talking a little bit more about
19 that?

20 MR. LOPEZ: Sure. My family, pretty much 100
21 percent of my cousins, uncles, parents, including myself, we
22 all worked in the strawberry fields here in Oxnard for
23 generations. My grandfathers, both of them, were *braceros* so
24 they've been here in California, growing crowing crops for
25 everybody in the State of California, since the '40s, since
26 the early '40s. So for me, it's a generational thing, our

1 family helped create the agricultural industry in this state.
2 Our family also ate off of the agricultural industry in this
3 state.

4 But we also -- I and a whole generation of people
5 grew up -- being their mom and dad's translator. We grew up
6 witnessing our parents getting treated like third-class
7 citizens, not just second-class citizens. We grew up with
8 our family members being sick, run over by trucks in the
9 field, being sprayed pesticides all day while we're working.
10 And kind of not really being noticed by anybody making and
11 reaping the benefits of their work. So growing up you
12 witness everything your parents are going through. And when
13 you try to speak up as a kid, you are told to be quiet, to
14 shut up, "Don't get us in trouble, don't, don't, just shhh!
15 We just want to work. We just want to do what we're going to
16 do and that's it."

17 So being one of those kids that grew up being
18 shushed, grew up picking strawberries, grew up watching my
19 parents get looked at like they didn't deserve to be alive,
20 didn't deserve to be where they are, didn't deserve to be in
21 this country, being looked at by all the people that they
22 fed. That for me was powerful and that was never lost on me,
23 so I'm just a lucky person that was able to grow up like
24 that. And now I have the ability, the tools and the way to
25 actually bring that, and bring it to the forefront. And let
26 everybody know that all those kids that were just like me?

1 We're all of age now. And we're all out here. And we're all
2 going to be speaking and we're all going to try to resist all
3 of this -- really what it is, it's environmental racism,
4 right? We've been dealing with this for a long time.

5 And it's not the first time that our community gets
6 dumped on. Literally, we had a dump on Victoria, so I mean
7 we've literally been dumped on.

8 So it's real easy for big corporations to come into
9 a low-voter turnout city like ours, especially when we're the
10 biggest city in the county, and just kind of impose their
11 will and not listen to the community they come into. I've
12 been living my whole life with parents who weren't listened
13 to, were afraid to talk, and I had to be the same or else I
14 would get everybody in trouble, including my whole family.

15 So just growing up in the generation that was
16 watching their parents just accept abuse, we won't. I won't.
17 And I am fortunate and humbled by the fact that I can be a
18 steward and representative of that generation in any way that
19 I can. So I will continue to do the same.

20 And when it comes to my children, I will not be
21 like my parents. I will not. I have the ability of not
22 having -- I'm lucky that I don't have to worry about getting
23 deported. I don't have to worry about getting deported, so
24 I'm going to speak up. And when I see something that I don't
25 like I'm also going to speak up on it.

26 I'm not here to say that this new plant is going

1 ruin Oxnard, but what I am saying is that it's not going to
2 help it. I'm aware that the smoke stacks of the new power
3 plant may not drive our air quality into the ground, but I
4 guarantee it will not better our air quality. It will not
5 help our air quality. It will not.

6 It's like, just give us a break. Really, that's
7 what Oxnard is saying to you guys, "Just give us a break."
8 We've been dumped on. We've been treated like third-class
9 citizens. And a lot of people have reaped the benefits in
10 very, very big ways, so take your money and go. You know?
11 We just want everybody to realize that we're working to
12 become better, while other companies are just trying to pass
13 a contract or get their agenda passed.

14 And I understand, work can become very tedious and
15 it becomes your life. But when your life becomes the foot
16 stepping on an entire community that you don't hear it's
17 dangerous. So thank you.

18 DR. CHANG: I have just two more questions. So I'm
19 an academic and part of my job in life is to try to decipher
20 things that I think are sometimes obscuring simple facts. So
21 there's a term, "linguistic isolation," and I think you've
22 spoken to that just now. Linguistic isolation could be
23 identified as people being isolated from being able to assume
24 power in different ways or obtain their rights, because they
25 are isolated by limitations on their language.

26 And you've spoken to a generational change in that.

1 And can you tell me in this process, during this process, how
2 easy has it been to get materials in a language that's
3 accessible to your communities?

4 MR. LOPEZ: That's been a lifelong struggle.

5 Again, I had to be the translator for my parents. My parents
6 didn't speak English, so and I myself didn't speak English
7 until I was like six or seven years old, so school really
8 helped me a lot.

9 But throughout life I've again witnessed my parents
10 get yelled by random strangers, "Go back to your country."
11 Or, "If you're going to be here, learn our language." Or my
12 parents have been turned away as far as I can remember, since
13 I was like five-six years old, being turned away at the DMV,
14 because we asked for Spanish -- that my mom had me ask for
15 Spanish applications and let's just say it wasn't well
16 received at the counter back then. But it's a life-long
17 struggle just to get things.

18 Finally now, it's barely starting to really catch
19 up a little bit. But life has been no easy task for people
20 that speak a different language in this community, or in this
21 country. But for my parents, I'm just super glad they had
22 me, because I can only imaging all the other people that live
23 there that didn't have an interpreter in-house, right? Like
24 one of their children that is of age that can translate for
25 them.

26 Again, it's a life-long struggle with big

1 corporations coming into a community that either has lower-
2 voter turnout, or they're not working, or they -- I've
3 witnessed so many people get sick and not report it. Why?
4 Because they don't want to get in trouble. And in all
5 honesty, these people have heart, they don't want to get
6 someone else in trouble. They don't want to get their
7 employer in trouble. So they're grateful for the job that
8 they have. They're grateful for the pay that they get, even
9 though many time it is way below what they should get, but
10 they're grateful for it.

11 So when companies take advantage of someone not
12 speaking a certain language, and they abuse that power? I
13 think it's deplorable in every sense, because the ability to
14 speak and the ability to have power and resources, it's a
15 privilege. Just like charisma is a privilege, because if you
16 have a certain level of power, it comes with responsibility
17 or else you're just going to take advantage of everybody that
18 comes across in front of you. So if you cannot control that,
19 then you've lost your sense of humanity in same way.

20 DR. CHANG: I appreciate that and I just wanted to
21 clarify. I was wondering specifically, during this process,
22 about these power plants and the proposal, how often have you
23 had to do translation just for a simple notice about a
24 meeting like this? Or would you say that translation has
25 been provided for you for notices regarding this matter, or
26 any materials regarding this matter?

1 MR. LOPEZ: No.

2 DR. CHANG: Okay. And how often do you think that
3 may have happened?

4 MR. LOPEZ: We, at this point, try to translate
5 whatever we can. And even then it's just not done in time or
6 not doing it correctly, because we're not the ones that
7 author whatever we're trying to translate.

8 Again, a lot of people just don't seem to care
9 about that given population reading anything. It's a
10 conscious choice when organizations don't produce --
11 especially in Oxnard. Here? Everybody speaks Spanish, so if
12 you're not putting something out in Spanish, there is a
13 reason. Because you cannot, by any objectionable reason, walk
14 into a Spanish speaking community and assume that only
15 English language is going to be understood. It just does not
16 make sense.

17 So I can't tell you how many times we've had to
18 translate. In all honesty, I can't tell you because we
19 translate so much, so often, that it hurts the brain. So we
20 don't even keep count, we don't. Because we just know that
21 our people, we're going to kind of have to support them in
22 translating materials, meeting agendas, or proposals by
23 companies like NRG.

24 Because it does not seem, if there was a real
25 investment and someone really cared to get the actual
26 community participation or community involvement or even get

1 their opinion, I think that would be obvious that everything
2 would be in Spanish. Don't you?

3 DR. CHANG: Uh-huh.

4 MR. LOPEZ: I mean that's just common sense. I
5 wouldn't come to anybody's house here with a book written in
6 100 percent Chinese. How much sense would that make? It
7 just doesn't make any sense. I could hand all of you right
8 here on this panel something with Cantonese written on it and
9 I expect you to understand and then respond? It's not going
10 to happen.

11 DR. CHANG: Okay great. Thank you. And one more
12 question. So you mention that in your family and in your
13 community, it's been multi-generations beginning with the
14 Bracero Program. And you have people in your family who were
15 bracero workers on down the line as farm workers are
16 different points. And would you say that the life of a farm
17 worker, what kinds of hours would a farm worker be working,
18 typically? Would it be the standard 40 hours, regulated by
19 the U.S. Government?

20 MR. LOPEZ: That's funny. No, no, no, not at all.

21 (Chuckles.)

22 DR. CHANG: What would you estimate then?

23 MR. LOPEZ: I could give you our personal
24 experience. I mean, in my family, my parents would wake up
25 at 3:00, 4:00 in the morning. They'd be gone by 4:30. They
26 wouldn't come back until like 6:00, 7:00 at night. So I

1 guess you can do the math, but it would never an average
2 eight-hour day. God, I would have seen my parents growing
3 up. I would have actually seen them. I didn't get to see
4 them as much, because they were always working.

5 And as everybody probably knows, they weren't
6 getting paid overtime. So it's a situation where they were
7 working because they had to and they had to work as many
8 hours as they could, because they weren't getting paid what
9 they were worth, right? So they had to stretch it as much as
10 possible. So yeah, there is no way that a 40-hour work week
11 is the average life of a farm worker, a field worker that
12 picks. Maybe for the boss, maybe for the manager, maybe for
13 the owner, but I guarantee you 90 percent of that work force
14 that is out picking or weeding, or laminating, or spraying,
15 or just being out there is not doing just eight hours in a
16 day and clocking out. That just doesn't happen.

17 I mean I'm sure it does happen, but it's not common
18 place. It is not typical, right? They spend more of their
19 life on a field than they do in their own home, because that
20 time their spending at home is spent sleeping. So yeah, if
21 you're spending the majority of your life on the field and
22 nobody seems to care, well that kinds of sucks.

23 DR. CHANG: Thank you, sir, so much. And thank you
24 for your work.

25 MR. LOPEZ: Thank you.

26 HEARING OFFICER KRAMER: Okay. Thank you.

1 Any redirect?

2 MS. LAZEROW: I have no redirect. Thank you.

3 HEARING OFFICER KRAMER: Okay. Thank you.

4 Okay. Then we still have, for later, Irene
5 Valencia.

6 Thank you Mr. Lopez.

7 MR. LOPEZ: No problem.

8 HEARING OFFICER KRAMER: But that otherwise
9 completes Part 1 of Socioeconomics and Environmental Justice.

10 So I think the best way to keep our momentum, when
11 we get to alternatives, would be to spend 15 to 20 minutes
12 talking to Mr. McNamee first about Traffic and Transportation
13 Part 1. So Mr. McNamee, if you're here could you come
14 forward?

15 And if you'd raise your right hand.

16 (Whereupon, Todd McNamee is duly sworn.)

17 MR. MCNAMEE: I do.

18 HEARING OFFICER KRAMER: Thank you.

19 MS. FOLK: Hi, if I may? I have three files on
20 here that I'd like to use during the testimony?

21 HEARING OFFICER KRAMER: Are they already in the
22 docket?

23 MS. FOLK: One is. The other are just two Google
24 Earth images that he can refer to. I'm not offering them as
25 exhibits, but more for context.

26 HEARING OFFICER KRAMER: Well, ultimately if

1 they're going to be shown and people talk about them, we need
2 to make them exhibits, so they're a part of the record if
3 they ever become a part of a dispute. Are you logged into
4 WebEx?

5 MS. FOLK: Yeah, I think I can do that.

6 If you are I can make you a presenter and you can
7 show it from your computer. I'm a little reluctant in this
8 day of malware to share memory cards with people on what are
9 my personal computers.

10 MS. FOLK: Yeah, I need to log into WebEx. I'm
11 sorry.

12 HEARING OFFICER KRAMER: So this goes for anyone
13 else who's trying to make presentations.

14 First of all, we need to have a record of these
15 things. You can get the meeting number from the monitor
16 screen. So we need to get them in the docket. Ideally,
17 before we start to talk about them, but in any event
18 afterwards. And of course, if you're first presenting that
19 to this community of participants, some of them may decide to
20 object, so you're better off to give them as much advanced
21 information about what you're proposing to present as
22 possible.

23 MR. CARROLL: This is Mike Carroll on behalf of the
24 applicants. While Ms. Folk is looking for the documents, I
25 will in fact object to any new documents being presented that
26 have not been provided to the parties in advance.

1 Ms. Folk indicated that she doesn't intend to offer
2 them as exhibits. But as a practical matter if the witness
3 is testifying to them, either the testimony will be
4 meaningless or the documents will ultimately be moved, by Ms.
5 Folk, as exhibits. So we do object to new documents being
6 projected on the screen that have not been provided to the
7 parties in advance of this moment.

8 HEARING OFFICER KRAMER: Are you logged in yet?

9 MS. FOLK: I'm logging in right now. I'm really
10 sorry I didn't. I thought I could --

11 HEARING OFFICER KRAMER: And I wasn't meaning to
12 say that you were distributing malware. It's just that stuff
13 gets on our computers and we don't always realize it.

14 MS. FOLK: Okay. Yeah, so one of the documents is
15 an exhibit to Mr. McNamee's testimony. The other really are
16 just -- I mean they're subject to judicial notices.

17 HEARING OFFICER KRAMER: Okay. So I can put up the
18 testimony. What's the exhibit number?

19 MS. FOLK: I'm sorry, let me go find it. It is
20 3010 and --

21 HEARING OFFICER KRAMER: Okay. Exhibit 3010. MS.
22 FOLK: 3010.

23 HEARING OFFICER KRAMER: I'll have up in a second.

24 MS. FOLK: And it is a diagram --

25 HEARING OFFICER KRAMER: Well, Mr. McNamee, while
26 we're waiting if you could state your name for the record and

1 spell it, that'll take care of one item.

2 MR. MCNAMEE: Yes, Todd McNamee, T-o-d-d M-c-n-a-m-
3 e-e.

4 MS. FOLK: So for some reason I'm not able to log
5 in easily, so I guess we can just do this without the
6 exhibits.

7 HEARING OFFICER KRAMER: Well, why don't you
8 describe the couple of slides and Mr. Carroll may get so
9 upset that you may not have to find them.

10 MS. FOLK: So the one slide is in Mr. McNamee's
11 comments on the Preliminary Staff Assessment, which he
12 attached as an exhibit to his testimony. And it is the shot
13 of the overflights for the Puente Project. It's probably --
14 I don't think the testimony is that long. Oh, and actually
15 there is -- yeah, we could use that one as well for --

16 HEARING OFFICER KRAMER: Is this is it or is it
17 later?

18 MS. FOLK: This is the Google shot, earth shot.

19 HEARING OFFICER KRAMER: So this, is this what
20 you're looking at?

21 MS. FOLK: Yeah.

22 HEARING OFFICER KRAMER: I'll turn it sideways in a
23 minute. So is this the one?

24 MS. FOLK: Yeah, we can just leave that up there.
25 We can just leave that up there for now.

26 HEARING OFFICER KRAMER: Okay.

1 MR. CARROLL: And I'm sorry, so I'm unclear. I am
2 looking at what I had understood to be Mr. McNamee's opening
3 testimony, which is TN 215442. And I'm not seeing any
4 attachments to that document.

5 HEARING OFFICER KRAMER: This is Exhibit 3010 TN
6 213674. Yeah, let me flip back and we'll see what -- oops,
7 now it's rotated. It looks like it was a public comment that
8 was submitted that way.

9 MS. FOLK: And I believe he's sponsoring it for
10 admission as an exhibit.

11 MR. CARROLL: Okay. I understand. So this is a
12 previously docketed document, not --

13 MS. FOLK: Yes, by Mr. McNamee

14 MR. CARROLL: Okay. Not identified or attached to
15 his opening testimony, but identified in your exhibit list?

16 MS. FOLK: Yes. Yes.

17 MS. CARROLL: Thank you.

18 MS. FOLK: Good afternoon, Mr. McNamee and can you
19 state and spell your name for the record?

20 HEARING OFFICER KRAMER: We did that.

21 MS. FOLK: Oh, I'm sorry. You're right, I was so
22 flustered with WebEx.

23 Can you tell me what your job title is?

24 MR. MCNAMEE: Yes, Director of Airports for the
25 County of Ventura.

26 MS. FOLK: And can you provide your professional

1 and -- well, excuse me, before we go there -- did you prepare
2 the testimony that you've submitted in this proceeding, which
3 is City of Oxnard Exhibit 3048?

4 MR. MCNAMEE: I did.

5 MS. FOLK: And did you prepare the comments that
6 were submitted on the Preliminary Staff Assessment that are
7 submitted? It's the City's Exhibit 3010?

8 MR. MCNAMEE: I did.

9 MS. FOLK: And can you describe your professional
10 and personal experience with the air traffic conditions at
11 the Oxnard and the Camarillo airports?

12 MR. MCNAMEE: Yeah, so as Director of Airports we
13 do our best to maintain positive community relations around
14 both airports. And so using our comprehensive land use plan
15 for the airports that more or less lay out flight tracks for
16 both Camarillo and Oxnard airports, familiar with them that
17 way. Also responding to noise complaints when planes are
18 overflying certain areas around the airports where perhaps
19 they shouldn't be. And then also using that same land use
20 plan for development around the airports, looking at
21 compatibility and consistency.

22 And then personally I'm a pilot that has an
23 aircraft based at Camarillo Airport, so I'm routinely flying
24 in and out of that airport and flying those traffic patterns.

25 MS. FOLK: And I'd like to just ask you a few
26 questions about how the Puente Project will affect air

1 traffic in and around the Oxnard Airport. And I'd just like
2 to start by asking you, how is it that the power plant will
3 affect air traffic safety?

4 MR. MCNAMEE: If it's possible to go the other
5 diagram that shows the pilot guide, it's one slide up I
6 believe. That one, yeah.

7 And so the Puente Power Plant or the proposed
8 Puente Power Plant, you can see is highlighted by the red
9 star. So it's just north of a direct path out to the Coast
10 for larger aircraft. And so the stack itself, I think is
11 similar in height to what exists there today, but it's the
12 high-velocity plume that is of concern based on the Final
13 Staff Assessment. It's my understanding that the velocity of
14 that plume is of concern to where it could potentially create
15 impact or a loss of control for aircraft up to altitudes
16 above 2,000 feet.

17 And if you look at the location of the airport I
18 think that's 1.7, 1.8 miles off the end of the runway. And
19 routinely aircraft go either straight out to the Coast or
20 make a left-hand turn to proceed northwest. And it's at the
21 pilot's discretion that they would make that turn and as
22 they're departing the airport they would routinely be less
23 than 2,000 feet. And so the concern would be that an
24 aircraft departing Oxnard would be prone to encounter that
25 high-velocity thermal plume for Runway 2-5, which is
26 departing to the west.

1 And then if you're -- with east winds if you're
2 using Runway 7 or coming in from the Coast into that runway,
3 if you're doing what's called closed pattern or training
4 operations, if that pattern gets busy it gets extended out.
5 And so you potentially extend out to where pilots would be
6 making a downwind base to final turn over that power plant.
7 And so if it's something that you are trying to avoid, that
8 would technically -- the technical term would be "muck up"
9 that traffic pattern for those pilots that are flying there.

10 MS. FOLK: And is it your understanding that the
11 mitigation proposed in the Final Staff Assessment involves
12 providing notice to pilots about the potential hazard?

13 MR. MCNAMEE: Yeah, I believe in the FSA it's
14 TRANS-7 where the Applicant I guess, or the staff for CEC,
15 talks about notification to pilots through NOTAM or Notice to
16 Airmen. That's a temporary measure that usually lasts a
17 couple of months. And then more or less, if it's standing
18 you're mandated to put it into what's called the Airport
19 Facility Directory, which is a page in a book that describes
20 conditions in airports.

21 And then, of course, potentially updating our own
22 pilot guide that you see here. But really just informing
23 pilots that it exists, that the thermal plume and the power
24 plant exist there, they believe that would be adequate
25 mitigation and I tend to disagree.

26 MS. FOLK: And can you tell me why you don't

1 believe that would be adequate mitigation?

2 MR. MCNAMEE: Well, we don't specifically call out
3 the power plant already with a pilot guide that's been in
4 distribution for many years. And if you go to the previous
5 slide you can see there is some number of aircraft that are
6 still overflying the proposed site. So it's outlined there
7 is light blue and I've highlighted with little stars the
8 different altitudes. And so a good number of those are below
9 2,000 feet. They're currently overflying the site even with
10 that noise guide being distributed.

11 And so I would say just human nature as well. If
12 you have a little note and in what's called an airport
13 facility's directory or a book, if you're a pilot that
14 routinely flies in and out of Oxnard it's not something you
15 may reference on a regular basis. And so just human nature,
16 you sometimes become lackadaisical that way. And so again,
17 it's discretion of the pilot if they turn once they reach the
18 Coast, or turn before the Coast, how fast they may turn.
19 It's still very possible that they would overfly the site.

20 MS. FOLK: And based on your experience as a pilot
21 who frequently uses the Camarillo Airport, can you please
22 comment on how the Camarillo Airport flight tracks that are
23 discussed in the Final Staff Assessment Alternative section
24 are used in practice?

25 MR. MCNAMEE: So if I remember correctly they refer
26 to pages out of the Comprehensive Airport Land Use Plan,

1 Exhibits 2F and 2G, which are the traffic patterns around the
2 Camarillo Airport. And so that would be more relative to the
3 alternative site for 5th and Del Norte. The difference
4 between the two, this one while it might be farther away, is
5 just slightly off of a typical departure path. Whereas the
6 5th and Del Norte alternative, while it's a bit closer I
7 think -- a mile and a half from the end of the runway at
8 Camarillo -- is quite a bit further south and more or less
9 outside of the typical traffic pattern.

10 And the Staff Assessment was that that one, 5th and
11 Del Norte, would actually be considered a potentially
12 significant impact to aviation that could not be mitigated.
13 Whereas this one at Oxnard could be and it's my opinion that
14 this one is actually something that would be more prone to
15 overflight than the 5th and Del Norte.

16 And when you talk about TRANS-7 as a mitigation
17 measure it's hard for me to believe that that couldn't be
18 applied to 5th and Del Norte for Camarillo Airport. Not that
19 I would prefer to see either one of those be built.

20 MS. FOLK: And can you elaborate on your concern
21 that the project, the Puente Project, will impede commercial
22 airline service in -- returning commercial airline service to
23 Oxnard?

24 MR. MCNAMEE: So Oxnard Airport, out of our two
25 airports that we operate, is designated as the Part 139
26 certificated airport. In other words, it's open to airlines.

1 Camarillo is not. And we lost air service back in 2010 based
2 on rate hikes from the airline that was operating at the
3 time.

4 We have been working to restore airline service
5 ever since and continue to do so. And potentially putting a
6 note or something else that basically says don't fly near the
7 airport in this area, is putting up something that we would
8 consider to be a restriction. And when airlines are looking
9 at airports they are very risk adverse, and so any factor
10 that would show that either the community doesn't support the
11 airport or that there's risk to their operations, leads them
12 to look elsewhere.

13 MS. FOLK: Okay. Thank you, I have nothing else.

14 HEARING OFFICER KRAMER: Mr. Carroll?

15 MR. CARROLL: Thank you.

16 Good afternoon, Mr. --

17 MR. MCNAMEE: Good afternoon.

18 MR. CARROLL: -- I'm sorry, McNamee?

19 MR. MCNAMEE: McNamee.

20 MR. CARROLL: McNamee, thank you.

21 Are you familiar with the analysis that the CEC
22 staff conducted related to potential hazards to aviation
23 contained in Section 4.12 of their Final Staff Assessment?

24 MR. MCNAMEE: I have reviewed it, yes.

25 MR. CARROLL: Thank you. And do you dispute that
26 the FAA flight tracking data, which is cited at pages 4.12-16

1 and 17 of that document replied upon by staff indicating that
2 the V 25 VFR Corridor west of the project site and the V 27-
3 485 VFR Corridor east of the Oxnard Airport are the
4 predominant flight corridors in the vicinity of the project?

5 MR. MCNAMEE: Can you pull those up on the screen
6 where I can see them?

7 MR. CARROLL: Sure, so do you have a copy
8 of --

9 MR. MCNAMEE: I do not.

10 MR. CARROLL: If we could -- this is Final Staff
11 Assessment page 4.12-16 and 17.

12 HEARING OFFICER KRAMER: It's a big document.

13 MR. CARROLL: Page 4.12-16.

14 HEARING OFFICER KRAMER: Searching for it.

15 MR. CARROLL: Oh, I'm sorry. Would it make it
16 faster if I gave you the TN number?

17 HEARING OFFICER KRAMER: Nope, got it. Top of the
18 page or?

19 MR. CARROLL: It's actually at the bottom of the
20 page.

21 HEARING OFFICER KRAMER: Right there, is that it?

22 MR. CARROLL: And so --

23 HEARING OFFICER KRAMER: So you wanted the diagram,
24 right?

25 MR. CARROLL: Not the diagram.

26 So Mr. McNamee, the language that I'm referring to,

1 it begins at the last paragraph on page 4.12-16, which is on
2 the screen and then continues down into the next page.

3 So perhaps we can just give you a moment to review
4 that. And just to refresh your recollection, my question for
5 you is that my reading of this paragraph is that it
6 identifies the primary corridors that are utilized in this
7 area. And my question of you is whether you disagree with
8 that data relied upon by staff?

9 MR. MCNAMEE: No. if they're getting data from the
10 FAA, I would depend on that data. When I'm looking at figure
11 4 that it refers to, it still shows some number of overflight
12 over the site.

13 MR. CARROLL: Thank you. Do you dispute the
14 determination of no hazard to air navigation that was issued
15 by the FAA on October 7th, 2015 and cited on page 4.12-19 of
16 the FSA in which the FAA concluded that the stack for the
17 proposed project would not be a hazard to air navigation?

18 MR. MCNAMEE: I do not.

19 MR. CARROLL: Are you aware that the FAA
20 determination concluded that marking and lighting the project
21 stack were not even necessary for aviation safety, as
22 indicated in page 4.12-19 of the FSA?

23 MR. MCNAMEE: I do not.

24 MR. CARROLL: Thank you. Did you conduct any
25 thermal plume modeling of your own?

26 MR. MCNAMEE: I did not.

1 MR. CARROLL: And in what year did the Oxnard
2 Airport commence operations at its current location?

3 MR. MCNAMEE: So the County began operating the
4 airport in 1934 to the best of my recollection.

5 MR. CARROLL: Thank you. And are the sorts of
6 notifications that would be provided pursuant to staff's
7 TRANS-7, are those unusual or are such notifications to
8 pilots fairly standard?

9 MR. MCNAMEE: I wouldn't say that they're unusual.
10 What I would say is the one where we talk about, if I
11 remember correctly, it talked about having it on the
12 automated weather reporting. That would be nonstandard to
13 have something like that on there, but other than that
14 putting conditions that might be something other than normal
15 in an airport facility's directory or through a NOTAM is not
16 -- it is routine.

17 MR. CARROLL: And are those something -- are those
18 the types of things that pilots flying in and out of that
19 airport would typically make themselves aware of?

20 MR. MCNAMEE: They should, especially if they're
21 transient. In other words, they're not based at the airport.
22 So if they're visiting those are typically documents that a
23 pilot should look at, yes.

24 MR. CARROLL: And those that would be non-transient
25 or -- I don't know exactly what the term is
26 -- resident at that airport, wouldn't they also be aware of

1 those types of notifications?

2 MR. MCNAMEE: They would.

3 MR. CARROLL: Have you read the comments that are
4 dated January 25th, 2017 that were submitted to the CEC
5 docket by the Naval Base Ventura County, in which they
6 express some views related to some of the offsite
7 alternatives that have been proposed?

8 MR. MCNAMEE: Let me just double check and make
9 sure that I have the same thing you're talking about.

10 HEARING OFFICER KRAMER: Mr. Carroll, do you want
11 that on the screen or --

12 MR. MCNAMEE: September 24th, 2015; is that right?

13 MR. CARROLL: I have -- well, I --

14 MR. MCNAMEE: No, I'm sorry. That's something
15 else.

16 MR. CARROLL: -- I have a more recent document,
17 January 25th, 2017. So this was just --

18 MR. MCNAMEE: Yes, I do have that.

19 MR. CARROLL: Thank you. Are you -- have you read
20 that document?

21 MR. MCNAMEE: I've been through it, yes.

22 MR. CARROLL: Okay. Do you disagree in any way
23 with the comments of Naval Base Ventura County as set forth
24 in that letter?

25 MR. MCNAMEE: No.

26 MR. CARROLL: Okay. Thank you, I have no further

1 questions.

2 HEARING OFFICER KRAMER: Okay.

3 MS. FOLK: I have a few clarifying questions.

4 HEARING OFFICER KRAMER: Okay. He has touched on -

5 -

6 MS. FOLK: Yeah.

7 HEARING OFFICER KRAMER: Let me see if anyone else,
8 because he's crossed over into alternatives on sites and he's
9 not going to be with us beyond today. Let me see if any
10 other party has any questions for him first and then we can
11 go to redirect.

12 Anybody?

13 MS. WILLIS: No questions.

14 HEARING OFFICER KRAMER: Okay. Redirect?

15 MS. FOLK: Sure. I just have a few clarifying
16 questions and the first is your answers to the questions
17 regarding the FAA determination with regard to the stack at
18 Puente. Were those related to the height of the Puente
19 stack?

20 MR. MCNAMEE: Correct, the height of the stack.

21 MS. FOLK: And not to the thermal plumes?

22 MR. MCNAMEE: No, the FAA does not review for
23 obstruction of the plumes themselves, but they do -- in fact,
24 it was attached to the Navy's comments that the gentleman
25 just brought up, on page 2. When it talks about thermal
26 plumes near airports it does state, "After a thorough

1 analysis, the FAA has determined the overall risk associated
2 with thermal exhaust plumes in causing a disruption of flight
3 is low. However, the FAA has determined that thermal exhaust
4 plumes in the vicinity of airports may pose a unique hazard
5 to aircraft in critical phase of flight, particularly
6 takeoff, landing and within the pattern, and therefore are
7 incompatible with airport operations."

8 MS. FOLK: Okay. And the Final Staff Assessment
9 here did find that the thermal plumes presented a potentially
10 significant impact at the Oxnard Airport; is that correct?

11 MR. MCNAMEE: Correct.

12 MS. FOLK: And TRANS-7, the mitigation measure,
13 could that mitigation measure also be applied if the project
14 were built at the Del Norte and 5th Street site?

15 MR. MCNAMEE: So I would first say that I don't
16 think it's adequate, but yes it could be applied to either
17 site.

18 MS. FOLK: All right, and finally do you -- have
19 you ever flown in and out of the naval base?

20 MR. MCNAMEE: I have not flown out of the naval
21 base, no.

22 MS. FOLK: (Overlapping) No, and are you familiar
23 with the flight patterns around that?

24 MR. MCNAMEE: For the most part.

25 MS. FOLK: Okay. Thank you.

26 MR. MCNAMEE: Um-hmm.

1 MR. CARROLL: May I just ask one clarifying
2 question with respect to the document that the witness was
3 reading from?

4 HEARING OFFICER KRAMER: Yes, go ahead.

5 MR. CARROLL: Mr. McNamee, am I correct that that
6 document that you were reading from, that that is a general
7 statement from the FAA with respect to airports and power
8 plants? That that's not a comment letter or referring to any
9 specific analysis in connection with this project; is that
10 correct?

11 MR. MCNAMEE: No, it's a general publication,
12 "Technical Guidance and Assessment Tool for Evaluation of
13 Thermal Exhaust Plume Impact on Airport Operations."

14 MR. CARROLL: Thank you.

15 HEARING OFFICER KRAMER: Okay. How about a little
16 more information just for the record on who wrote it, and
17 what's the date of it?

18 MR. MCNAMEE: September 24th, 2015 from the
19 Director, Office of Airport Planning and Programming and the
20 Director, Office of Airport Safety and Standards. And it was
21 sent out to regional division managers, branch managers, and
22 airports district office managers. And the airports district
23 offices are typically our corresponding office for airports
24 when we're discussing things with the FAA.

25 HEARING OFFICER KRAMER: Okay. And then they were
26 the FAA?

1 MR. MCNAMEE: Yes.

2 HEARING OFFICER KRAMER: The authors, okay thank
3 you.

4 MS. FOLK: I have nothing further.

5 HEARING OFFICER KRAMER: Okay. Thank you, Mr.
6 McNamee.

7 MR. MCNAMEE: Thank you.

8 HEARING OFFICER KRAMER: This seems like an
9 opportune time to take a ten-minute break. And if staff's
10 witnesses on Alternatives Part 1 could assemble at the table
11 at the end of the break, that would be great.

12 MS. FOLK: Mr. Kramer, are we going to be doing
13 anymore environmental justice for today except for CEJA's
14 witness at 5:00-ish?

15 HEARING OFFICER KRAMER: Valencia, if Ms. Valencia,
16 we will probably do her right around 5:00 o'clock in that
17 time between 5:00 and the start of public comment.

18 MS. FOLK: And then no other --

19 HEARING OFFICER KRAMER: The rest of environmental
20 justice will be on --

21 MS. FOLK: Tomorrow?

22 HEARING OFFICER KRAMER: Yes, tomorrow.

23 MS. FOLK: Thank you.

24 MS. BELENKY: Mr. Kramer, on alternatives our
25 witness Bill Powers, is only able to be here in person today.
26 So if we could schedule him in the remaining time today?

1 MS. ROESSLER: That's the same for Matt Vespa too.

2 HEARING OFFICER KRAMER: Okay. Yeah, I didn't have
3 Mr. Powers circled, but I guess I should have.

4 We'll start with staff to set the -- what's the
5 phrase -- the mood. And then we'll go to your witnesses to
6 make sure that we complete them today.

7 MS. BELENKY: Thank you.

8 HEARING OFFICER KRAMER: So, be back in ten
9 minutes. Thank you.

10 (Off the record at 3:06 p.m.)

11 (On the record at 3:20 p.m.)

12 HEARING OFFICER KRAMER: Having little technical
13 issues, but she says we're good. So let's restart, and we're
14 now on topic we're calling Project Alternatives, Part 1,
15 which includes everything but Site Location Alternatives.

16 And we're starting -- you know, Mr. Carroll, I
17 guess I kind of goofed there. Normally, we would start with
18 the Applicant's witnesses, but do you have any objection
19 starting with staff?

20 MR. CARROLL: No, we do not.

21 HEARING OFFICER KRAMER: Okay. Thank you. All
22 right. So some of you may not have been sworn in already.
23 Let me ask all the witnesses, including those who are sitting
24 in the audience who are going to be testifying on this topic,
25 to raise your right hand, and I'll ask you in unison.

(Whereupon, Speakers on Topic duly sworn.)

2 HEARING OFFICER KRAMER: Okay. Thank you. So
3 let's begin with Staff's panel. It's going to be you, Ms.
4 Willis, or Ms. Chester?

5 MS. CHESTER: I'd like to clarify that we're
6 providing direct testimony from Jeanine Hinde and David
7 Vidaver, and the rest of the Staff will be available for any
8 cross-examination questions on Alternatives that cover
9 specific subject areas. Again, Staff is presenting on
10 Alternatives, both Parts 1 and 2. DIRECT TESTIMONY OF DAVID
11 VIDAVER AND JEANINE HINDE

12 MS. HINDE: Jeanine Hinde, J-e-a-n-i-n-e, H-i-n-d-
13 e.

14 MS. CHESTER: Was a statement of your
15 qualifications attached to this testimony?

16 MS. HINDE: Yes.

17 MS. CHESTER: Are you sponsoring the testimony
18 Alternatives in the Final Staff Assessment marked as Exhibit
19 2000?

20 MS. HINDE: Yes. I am co-sponsoring the testimony
21 with David Vidaver.

22 MS. CHESTER: Does the analysis contained in your
23 testimony represent your best professional judgment?

24 MS. HINDE: Yes.

25 MS. CHESTER: Do you have any changes to your

1 testimony?

2 MS. HINDE: Yes. For the Ormond Beach Area Offsite
3 Alternative, Traffic and Transportation Staff analyzed
4 potential impacts of thermal plumes on aircraft and pilot
5 safety, and concluded that the impact would be less than
6 Puente and less than significant, based on sources consulted
7 by Staff for the analysis.

8 Following publication of the final Staff
9 Assessment, comments on this issue were submitted by Naval
10 Base Ventura County, Point Mugu, which is TN Number 215583.
11 In those comments it was stated that the Alternative could
12 impact military aircraft conducting field carrier landing
13 practice operations from Runway 27, and that it also could
14 cause an impact on operation of military drones near the
15 site.

16 MS. CHESTER: Does this new information change any
17 of your conclusions?

18 MS. HINDE: Staff now considers the impact to be
19 similar to Puente and potentially significant. I would also
20 like to add that the Ormond Beach Area Offsite Alternative
21 would avoid three of Puente's significant effects, based on
22 Staff's analysis, including the filling of Coastal Commission
23 defined wetlands, the risk of inundation by tsunami and
24 temporary water quality impacts during demolition.

25 Because of these avoided impacts Staff still

1 concludes that this offsite Alternative is environmentally
2 superior to Puente. The facts also indicate the potential
3 for this offsite Alternative to impact a built environmental
4 -- excuse me -- a built environmental historical resource,
5 and aircraft and pilot safety relating to flight operations
6 at Naval Base Ventura County, Point Mugu.

7 MS. CHESTER: Thank you. Mr. Vidaver, can you
8 please state and spell your name for the record?

9 MR. VIDAVER: David Vidaver, V as in Victor, i, D
10 as in David A, V as in Victor, e-r.

11 MS. CHESTER: Was a statement of your
12 qualifications attached to your testimony?

13 MR. VIDAVER: Yes.

14 MS. CHESTER: Are you sponsoring the testimony
15 entitled, Alternatives in the Final Staff Assessment, marked
16 as Exhibit 2000?

17 MR. VIDAVER: I am co-sponsoring it with Ms. Hinde.

18 MS. CHESTER: Does the analysis contained in your
19 testimony represent your best professional judgment?

20 MR. VIDAVER: Yes.

21 MS. CHESTER: Do you have any changes to your
22 testimony?

23 MR. VIDAVER: Yes. I testified that -- I sort of
24 blindly dismissed behind the meter multi-hour energy storage
25 as being capable of providing -- contributing to meeting

1 local capacity requirements in the Moorpark area. This is
2 not true.

3 I had a certain vision of what resources were being
4 considered. While being behind the meter make such resources
5 a bit more difficult for the independent system operator to
6 see under some circumstances, as long as such resources are
7 controlled by either the ISO or the utility and can inject
8 energy within specified time periods for specified durations,
9 they are capable of contributing to local capacity
10 requirements as long as said energy is delivered --
11 deliverable to load.

12 MS. CHESTER: Does this new information change any
13 of your conclusions?

14 MR. VIDAVER: Other than the obvious, no.

15 MS. CHESTER: Ms. Hinde, can you please state the
16 purpose of Staff's Alternatives Analysis?

17 MS. HINDE: The purpose of the Alternatives
18 Analysis is to describe and analyze a range of reasonable
19 Alternatives to the project or to its location, which would
20 feasibly attain most of the basic objectives of the project,
21 but would avoid or substantially lessen any of the proposed
22 project's significant effects, and also to evaluate the
23 comparative merits of the Alternatives.

24 MS. CHESTER: Are the Alternatives to the proposed
25 project analyzed in the same level of detail as the proposed

1 project itself?

2 MS. HINDE: No. Under CEQA the Project

3 Alternatives are evaluated in less detail than the proposed
4 project. The significant effects of an alternative are
5 required to be discussed, but in less detail than the
6 significant effects of the proposed project.

7 MS. CHESTER: Could you briefly list Staff's
8 Alternative site identification process?

9 MS. HINDE: Staff evaluated information provided by
10 city Staff and possible alternative sites on the outskirts of
11 Oxnard to help determine Alternatives that should be carried
12 forward for analysis in the Staff Assessment.

13 Staff also evaluated information submitted by the
14 Applicant in its Alternative Sites Summary, which included
15 the existing Ormond Beach Generating Station as a possible
16 offsite alternative. Staff also attempted to find possible
17 offsite Alternatives by using the US EPA's online database,
18 the Facility Registry Service. The database ended up not
19 being a useful source to identify other sites for analysis.

20 MS. CHESTER: How many alternative sites were
21 originally considered by staff?

22 MS. HINDE: Staff initially screened 14 potential
23 offsite locations, including six sites that resulted from
24 using the EPA's Facility Registry Service, which initially
25 yielded a list of 85 locations.

1 MS. CHESTER: How did you determine which sites to
2 assess in further detail?

3 MS. HINDE: Staff applied site screening criteria,
4 including identifying sites outside of the coastal zone,
5 identifying sites in the Moorpark sub-area of the Big
6 Creek/Ventura Local Reliability Area, determining whether a
7 site was potentially feasible for development of a project
8 similar to Puente while reducing one or more of Puente's
9 significant impacts without causing its own impacts, finding
10 sites covering approximately 10 to 20 acres and identifying
11 sites within about a mile of a natural gas pipeline and five
12 miles of a 220 to 230 KV transmission line that could connect
13 to a Southern California Edison substation with a potential
14 to serve load in the Moorpark sub-area.

15 MS. CHESTER: Based on your screening criteria, how
16 many Alternatives did you assess in detail?

17 MS. HINDE: The screening process eliminated
18 several alternative sites due to existing or proposed onsite
19 land uses, multiple local regulatory issues that would affect
20 the potential feasibility of a site and inability to avoid or
21 reduce any of Puente's significant impacts.

22 Following site screening, two offsite Alternatives
23 were carried forward: the Del Norte Fifth Street Offsite
24 Alternative, and the Ormond Beach Area Offsite Alternative,
25 both of which are outside of the coastal zone. Two

1 conceptual onsite reconfigurations of the project to avoid
2 filling the 2.03 acres of Coastal Commission defined wetlands
3 were also carried forward, and the No Project Alternative, as
4 required by CEQA, to allow decision-makers to compare the
5 impacts of approving the project to the impact of not
6 approving the project.

7 MS. CHESTER: How did you use or rely on the
8 project objectives in preparing the Alternatives analysis?

9 MS. HINDE: Staff broadly interpreted the project
10 objectives provided by the Applicant to foster a robust
11 analysis of potential Alternatives. Consistent with one of
12 the project objectives, I assumed that for an alternative to
13 be carried forward for analysis it would need to be a
14 dispatchable energy resource with a similar generating
15 capacity as Puente, and be located in the Moorpark sub-area
16 of the Big Creek/Ventura Local Reliability Area.

17 And then I disregarded the Applicant's first
18 objective to fulfill its obligations under its contract with
19 Southern California Edison. Staff is not privy to the
20 agreement provisions and it is not known whether and to what
21 extent an alternative could comply with the agreement, and
22 the Applicant's contractual agreement is irrelevant to the
23 analysis of environmental -- the comparative analysis of
24 environmental impacts for the Alternatives.

25 MS. CHESTER: Did Staff eliminate any Alternatives

1 from consideration because they did not match the Applicant's
2 proposed objectives?

3 MS. HINDE: No.

4 MS. CHESTER: What are the technical areas of the
5 project that you considered in your Alternatives analysis?

6 MS. HINDE: All technical areas that were analyzed
7 for the project as proposed.

8 MS. CHESTER: Did you consider the feasibility of
9 project alternatives?

10 MS. HINDE: Yes. I assessed potential feasibility
11 issues for the offsite Alternatives, and primarily that the
12 Applicant does not have site control of either of the two
13 offsite Alternatives that were carried forward for full
14 analysis.

15 I identified a potential feasibility issue for the
16 two conceptual onsite project reconfigurations, which would
17 require a redesign of the site plan and moving some of the
18 site infrastructure, which would delay the project schedule,
19 though I also stated that it is not known to staff at what
20 point such a project schedule delay would affect the
21 viability of an alternative.

22 MS. CHESTER: Did you consider the City of Oxnard
23 2030 General Plan in selecting alternative sites?

24 MS. HINDE: Yes. Staff considered offsite
25 Alternatives that are outside of the coastal zone and that

1 were recommended for analysis by the city.

2 MS. CHESTER: Can you briefly summarize your
3 conclusions from this Final Staff Assessment?

4 MS. HINDE: For the No Project Alternative it would
5 avoid several of Puente's construction and operations
6 impacts, because no project -- the No Project Alternative in
7 this instance means no build. However, it would not meet the
8 basic project objectives.

9 It would cause a significant impact on biological
10 resources as long as the Mandalay Generating Station Units 1
11 and 2 remained nonoperational on the site. The reason for
12 that is the power plant structures, this was an analysis done
13 by Biological Resources staff, determined that power plant
14 structures could provide nesting and perching opportunities
15 for raptors and other predatory birds, to prey on special
16 status birds nesting near the site.

17 For the Del Norte Fifth Street Offsite Alternative
18 I determined that it would avoid -- Staff, the team,
19 determined that it would avoid the significant impact
20 relating to the risk of inundation by tsunami. However,
21 Staff concluded that use of the site, Traffic and
22 Transportation Staff, determined that use of the site would
23 result in significant impacts on airport and pilot safety.

24 For the Ormond Beach Area Offsite Alternative, it
25 was concluded that it would avoid three significant effects

1 of Puente, which I stated before as being -- as avoiding the
2 Coastal Commission defined wetlands, would avoid the risk of
3 inundation by tsunami and would avoid temporary water quality
4 impacts during demolition.

5 During preparation of the Final Staff Assessment,
6 Cultural Resources Staff identified a potential impact on a
7 built environmental historical resource, the Ventura County
8 Railway. This impact would occur only if a spur line that
9 extends south of the railroad and into the site is determined
10 to be a contributing element of the Ventura County Railway.

11 Staff concluded that the impact was potentially
12 significant and could be reduced to less than significant if
13 the impact in fact occurred with implementation of mitigation
14 measures.

15 For Conceptual Site Reconfigurations 1 and 2, Staff
16 concluded that those would avoid filling the 2.03 acres of
17 Coastal Commission defined wetlands without causing other
18 significant environmental impacts. It simply assumes that no
19 construction would occur within that footprint where the
20 Coastal Commission defined wetlands are located.

21 MS. CHESTER: Of the Alternatives you've
22 considered, did you find any to be environmentally superior
23 to the proposed Puente Project?

24 MS. HINDE: Yes. The Ormond Beach Area Offsite
25 Alternative for avoiding the three significant impacts

1 discussed just before this, and Conceptual Site
2 Reconfigurations 1 and 2.

3 MS. CHESTER: Thank you. Mr. Vidaver, does your
4 analysis in the Final Staff Assessment include a discussion
5 of preferred resources?

6 MR. VIDAVER: Yes. We discussed preferred
7 resources in terms of their ability to contribute to meeting
8 reliability needs in the Moorpark area by providing or
9 reducing the need for generating capacity in the area, and
10 facilitating the integration of renewable resources.

11 Staff also discussed the CPUC's finding in its
12 long-term Procurement Planning Proceeding regarding the
13 availability, feasibility and cost-effectiveness of preferred
14 resources in the Moorpark sub-area and the need for new
15 generating capacity in the area.

16 MS. CHESTER: Would Preferred Resources meet the
17 proposed project objectives?

18 MR. VIDAVER: Yes. Preferred Resources are able to
19 contribute to meeting local capacity requirements and
20 facilitate the integration of renewable generation, and are
21 assumed by the CPUC to do so in their assessment of the
22 Moorpark area.

23 The CPUC found, however, that cost-effective
24 preferred resources with the operating characteristics of gas
25 fire generation necessary to contribute to local capacity

1 requirements were not available in sufficient quantities so
2 as to obviate the need for gas fire generation in the
3 Moorpark area.

4 MS. CHESTER: Did Staff undertake an independent
5 assessment of the Public Utility Commission's findings
6 regarding the need for new capacity or the availability and
7 feasibility of developing preferred resources in the Moorpark
8 sub-area?

9 MR. VIDAVER: No. Such matters require detailed,
10 sophisticated, technical analysis by the California ISO in
11 order to determine the need for new generating capacity, the
12 operating characteristics of that capacity and its location.
13 The California Public Utility Commission needs to assess
14 whether or not the input assumptions used by the ISO in their
15 studies are suitable, and they also need to oversee the
16 requests for offers for new generating capacity that are run
17 by load-serving entities.

18 MS. CHESTER: Thank you.

19 MR. VIDAVER: Staff doesn't have the authority to
20 do that.

21 MS. CHESTER: Thank you. That concludes my
22 questions.

23 HEARING OFFICER KRAMER: Okay. Cross-examination,
24 beginning with the Applicant.

25 MR. CARROLL: No questions at this time. Thank

1 you.

2 HEARING OFFICER KRAMER: City of Oxnard.

3 MS. FOLK: And just to clarify, should we be doing
4 cross-examination on both Part 1 and Part 2 of the
5 Alternatives, because that could take some time.

6 HEARING OFFICER KRAMER: Good question. Ms.
7 Chester, I gather by combining them you were intending to
8 release many of these witnesses --

9 MS. CHESTER: Yes.

10 HEARING OFFICER KRAMER: -- after today?

11 MS. CHESTER: That's what we discussed at the
12 Prehearing Conference.

13 HEARING OFFICER KRAMER: Okay. So yes. All Parts
14 1 and 2. And I think there's now a Part 3, if I recall
15 correctly.

16 MS. CHESTER: Right.

17 MS. FOLK: All right. I'll do my best. And I'm
18 not sure to whom I should direct the questions. So I'll ask
19 them and I assume that the appropriate person will answer.

20 CROSS-EXAMINATION

21 MS. FOLK: On page 4.2-8 of the Final Staff
22 Assessment you state that you broadly interpret the
23 Applicant's objectives to allow for a robust analysis. Did
24 the Staff come up with its own set of objectives for
25 determining which Alternatives to evaluate?

1 MS. HINDE: No.

2 MS. FOLK: So what did you do to interpret them
3 broadly?

4 MS. HINDE: I described how I used and relied on
5 the project objectives in my direct testimony that I just
6 offered. In particular, I assumed that for an Alternative to
7 be carried forward for analysis it would need to be a
8 dispatchable energy resource with a similar generating
9 capacity as Puente, and be located in the Moorpark sub-area.

10 I also stated that I disregarded the Applicant's
11 first objective to fulfill its obligations under its contract
12 with SCE, which I'm not -- I do not know what's in that
13 contract. In taking that approach, I evaluated offsite
14 Alternatives, and the two onsite reconfigurations.

15 So broadly interpreting the project objectives
16 allowed me to, or facilitated in analysis of Alternatives
17 that were offsite, and also Alternatives that the project
18 Applicant does not have site control of.

19 MS. FOLK: Okay. And Mr. Vidaver, in your rebuttal
20 testimony you state that, "The local capacity area demand is
21 not the relevant metric for determining project need.
22 Instead, it is the LCR need for the subarea," and that's in
23 your rebuttal testimony on page 1.

24 MR. VIDAVER: Yes, ma'am.

25 MS. FOLK: So is it your testimony, then, that the

1 relevant metric for determining the need for the Puente
2 Project is the LCR need in the Moorpark sub-area?

3 MR. VIDAVER: Yes, that and the capacity associated
4 with existing resources, yes, and the --

5 MS. FOLK: That's not my question.

6 MR. VIDAVER: Okay. Sorry. I apologize.

7 MS. FOLK: And do you agree that the LCR need is
8 designed to address the N-1-1 contingency to avoid voltage
9 collapse?

10 MR. VIDAVER: Voltage collapse if N will overload,
11 yes. The specific capacity need in the case of the Moorpark
12 area was for a contingency that resulted in voltage collapse.

13 MS. FOLK: To address voltage collapse, yes. And
14 the Final Staff Assessment at page 4.2-10 to 14 discusses
15 preferred resources generally. Is that correct?

16 MR. VIDAVER: Yes, ma'am.

17 MS. FOLK: And at page 4.2-14 the Final Staff
18 Assessment states that, "In approving the contract the CPUC
19 has effectively found that preferred resources beyond those
20 assumed to be developed in setting the LCR for the Moorpark
21 sub-area could not feasibility and reliably be counted on to
22 cost-effectively meet reliability needs."

23 So is it fair to say that your conclusion regarding
24 the feasibility of preferred resources was based on the PUC's
25 decision to approve the contract between Southern California

1 Edison and not NRG?

2 MR. VIDAVER: I think it would be more accurate to
3 say that the CPUC's decision was based on the responses that
4 Southern California Edison received to its RFO for capacity
5 in the Moorpark area to meet local capacity requirements.

6 MS. FOLK: And did the CEC consider any new
7 information since the LTTP was issued in February '13, in
8 determining the feasibility of preferred resources?

9 MR. VIDAVER: No.

10 MS. FOLK: And would you agree that the market for
11 preferred resources has matured since that time?

12 MR. VIDAVER: There is nothing in my testimony as
13 to whether or not there -- that indicates that the market has
14 matured or not matured. So I'm not -- I would imagine that
15 the cost of storage has gone down, but I have no independent
16 estimate of how much in the way of preferred resources would
17 be available in the Moorpark sub-area because I have
18 absolutely no -- there has been no RFO.

19 MS. FOLK: And you have not evaluated that?

20 MR. VIDAVER: I have not looked at that, no, ma'am.

21 MS. FOLK: And are you aware of the recent battery
22 storage project by Tesla and Greensmith Energy that was
23 recently built to replace natural gas storage lost at Aliso
24 Canyon.

25 MR. VIDAVER: I'm aware that there are storage

1 facilities being built outside the Moorpark sub-area, yes.

2 MS. FOLK: And are you aware that that project
3 brought 70 megawatts of battery storage online in less than
4 eight months from the time of the procurement through the
5 construction?

6 MR. VIDAVER: I will take your word for it that
7 that's the case.

8 MS. FOLK: And do you agree that battery storage is
9 the type of energy resource that could meet the LCR need?

10 MR. VIDAVER: Under certain circumstances, yes.

11 MS. FOLK: And when you are considering the
12 feasibility of Preferred Resources did you consider that
13 Southern California Edison is planning to procure more
14 resources in the Moorpark sub-area, particularly in the
15 Goleta-Santa Barbara area?

16 MR. VIDAVER: I'm aware that there's an RFO for
17 Preferred Resources, yes.

18 MS. FOLK: And did you consider the power that
19 could be generated by the Mandalay 3 Unit in determining the
20 local capacity requirements for the Moorpark sub-area?

21 MR. VIDAVER: I'm aware of the fact that the
22 estimates of local capacity required assumed the retirement
23 of Mandalay 3.

24 MS. FOLK: And do you agree that if Mandalay 3
25 continues to operate it will reduce the amount of new energy

1 that would be needed to meet the LCR need for the Moorpark
2 sub-area?

3 MR. VIDAVER: There would -- it would reduce the
4 amount of capacity that would be needed, yes.

5 MS. FOLK: And I'd like to ask some more questions,
6 I believe it would be of Ms. Hinde, regarding the feasibility
7 of project alternatives. And you mentioned earlier that the
8 Final Staff Assessment did look at Alternatives that were not
9 under the control of the Applicant.

10 MS. HINDE: Yes.

11 MS. FOLK: Does the project alternative have to be
12 feasible to -- to be feasible does it have to be under the
13 control of the Applicant?

14 MS. HINDE: There needs to be a reasonable
15 expectation that the Applicant could achieve, could acquire
16 access to a site, or site control, in a way that would allow
17 the project to go forward in a successful manner.

18 MS. FOLK: So your position is, it has to be a
19 project that the Applicant can do, as opposed to a project
20 that is feasible?

21 MS. HINDE: Well, yes, because this is a proposal
22 by the Applicant, by energy for a project at the Puente site,
23 and we -- that is what we're evaluating.

24 MS. FOLK: So for example, you testified earlier
25 that the factors that you were looking at were resources that

1 could be dispatchable, that dispatchable energy resource with
2 a similar output to Puente in the Moorpark sub-area. Is that
3 correct?

4 MS. HINDE: Yes.

5 MS. FOLK: And do you agree that the Mission Rock
6 Project meets this objective?

7 MS. HINDE: That's not a project that is approved.
8 It's currently undergoing analysis by the Energy Commission.

9 MS. FOLK: Yes. And do you agree that the Mission
10 Rock Project could meet the LCR need?

11 MS. HINDE: That would be a question for Mr.
12 Vidaver.

13 MR. VIDAVER: Yes. I would think the gas-fired
14 generating capacity located anywhere in the Moorpark sub-area
15 could contribute to meeting the sub-area's local capacity
16 requirements.

17 MS. FOLK: Did you look at any alternative site
18 outside the City of Oxnard in the Final Staff Assessment?

19 MS. HINDE: Not in the Final Staff Assessment, no.
20 They were all in the outskirts of Oxnard, just -- or just
21 adjacent to the city boundary.

22 MS. FOLK: So I have some questions about
23 alternative locations. For the No Project Alternative, the
24 Ormond Beach Inland Alternative and the Fifth and Del Norte
25 Alternative, all of these Alternatives assume that Units 1

1 and 2 at Mandalay would remain in place. Can you tell me the
2 basis upon which you made that determination?

3 MS. HINDE: Yes. There is no way of predicting or
4 knowing the future schedule or circumstance under which the
5 city would proceed with requiring demolition and removal of
6 MGS Units 1 and 2. It can't simply be assumed as something
7 that would occur under the No Project Alternative.

8 MS. FOLK: And it's not because NRG informed you it
9 would not remove the facilities unless --

10 MS. HINDE: No. I have had no conversation with
11 NRG regarding project alternatives.

12 MS. FOLK: Okay. So is there any reason removal
13 could not be made part of those alternatives?

14 MS. HINDE: I don't believe that the Commission
15 would have the authority to require removal of MGS Units 1
16 and 2 in the absence of a license for a project at that site.

17 MS. FOLK: Could it require them as mitigation for
18 impacts associated with developing a new facility?

19 MS. HINDE: At a different site?

20 MS. FOLK: Yes.

21 MS. HINDE: I don't believe so.

22 MS. FOLK: With respect to the Ormond Beach site,
23 did you contact the project owner regarding whether he was
24 willing to make his property available to NRG?

25 MS. HINDE: The --

1 MS. FOLK: At the Ormond Beach site?

2 MS. HINDE: The project owner?

3 MS. FOLK: Yeah, the property owner.

4 MS. HINDE: Of that site; no, I did not.

5 MS. FOLK: In the Final Staff Assessment it states
6 that NRG made a fair offer to the owner of the Ormond Beach
7 Inland Site, but it was rejected. How do you know that it
8 was a fair market offer?

9 MS. HINDE: I don't know that it was -- I don't
10 know anything about the offer. That particular statement in
11 my Final Staff Assessment was taken directly from NRG's
12 Alternative Sites Summary.

13 MS. FOLK: Okay. Did you ever contact the owner of
14 the Mission Rock Project about whether it might be willing to
15 make its project available to NRG?

16 MS. HINDE: No.

17 MS. FOLK: The Ormond Beach Inland Alternative is
18 not in the coastal zone. Is that correct?

19 MS. HINDE: That's correct. It's directly outside
20 of the coastal zone.

21 MS. FOLK: So that Alternative would avoid
22 conflicts with the city's local coastal plan. Is that
23 correct?

24 MS. HINDE: I believe so.

25 MS. FOLK: And would the Ormond Beach Inland

1 Alternative also avoid conflicts with Safety and Health
2 Policy 3.5 in the city's General Plan?

3 MS. HINDE: I don't know.

4 MS. FOLK: Did you evaluate that issue?

5 MS. HINDE: No.

6 MS. FOLK: Okay.

7 MS. HINDE: Well, I don't know what that policy
8 says.

9 MS. FOLK: It's the city's policy that prohibits
10 the construction of power plants in areas subject to
11 environmental hazards.

12 MS. TAYLOR: This is Marylou Taylor. I'm with
13 Staff. I did the analysis for sea level rise, coastal
14 hazards, and the Ormond Beach Alternative Site would comply
15 with City of Oxnard Policy 3.5, I believe that is, because it
16 is outside the coastal zone.

17 MS. FOLK: That's all I've got. Thank you.

18 HEARING OFFICER KRAMER: Okay. I'll note that
19 Carol Watson and John Hilliard are on the phone, and I'm
20 going to unmute them in case they need to answer any of the
21 cross-examination questions. Mr. Hilliard and Ms. Watson,
22 we're -- did you take the oath when I administered it to the
23 rest of the panel? Okay.

24 Well, if they speak up we'll make sure and cover
25 that detail with them. Okay. Next would be Environmental

1 Center and the Sierra Club.

2 MS. BELENKY: Thank you. If Bill Powers could go
3 before their witness, because he has to -- he won't be here
4 tomorrow.

5 MR. CARROLL: When does he have to leave?

6 MS. ROESSLER: It's totally fine by us.

7 MS. BELENKY: Oh. You were doing the cross-
8 examination.

9 MR. CARROLL: Right.

10 MS. ROESSLER: Oh, you're on cross. Oh, sorry.

11 MS. BELENKY: Yeah. We got a little confused where
12 we --

13 MS. ROESSLER: I thought you went to direct, too.
14 Pardon me. Actually, we'll be waiving on our cross.

15 HEARING OFFICER KRAMER: Okay. Thank you. Ms.
16 Belenky, you've had the opportunity for cross?

17 MS. BELENKY: No cross on these witnesses.

18 HEARING OFFICER KRAMER: Any redirect?

19 MS. LAZEROW: Excuse me if I might. Shana Lazerow
20 for CEJA. I do have a couple of questions for this panel.
21 They're short.

22 HEARING OFFICER KRAMER: Okay. I didn't have you
23 down as -- for any cross, but we can entertain a couple of
24 questions.

25 MS. LAZEROW: Thank you. Ms. Hinde, I wanted to

1 ask about the criteria that you applied in evaluating
2 alternatives. Did you consider seeking any locations that
3 are not in environmentally over-burdened or Environmental
4 Justice communities? Was that one of your criteria?

5 MS. HINDE: It's not one of my criteria. Going
6 back to my direct testimony, the criteria included evaluating
7 sites that could reduce one or more of the significant
8 impacts of the proposed project. An alternative that would
9 reduce any of the project's significant impacts could
10 reasonably be considered to reduce an environmental effect on
11 the community overall, including the disadvantaged community.

12 I would also like to state on that subject that
13 during October and November I began to screen potential
14 offsite Alternatives for the Mission Rock Project, which I
15 had just started to work on, and I became aware of a possible
16 alternative site called the Petrochem Refinery, which is
17 along the west side of State Route 33, between Ventura and
18 the community of Casitas Springs.

19 My colleague, Lisa Worrall, determined the site to
20 be outside of a census tract identifying a disadvantaged
21 community. The site is outside the coastal zone. However,
22 in my initial screening, and that's where it's at, at this
23 point. I had done some initial screening that last fall.

24 Based on that, environmental issues appeared to
25 include potential visual impacts due to its location along a

1 county scenic highway. Two residential developments are
2 located immediately northeast and southeast of the site, on
3 the east side of State Route 33.

4 The Ojai/Ventura Bike Path borders the west side of
5 the site. The Ventura River borders the bike path. Most of
6 the site, except for a raised area that once contained above-
7 ground storage tanks, is in the 100-year flood plain, and the
8 site had been subject to federal, state and local regulatory
9 oversight relating to cleanup of onsite soil contamination,
10 although the Ventura County reports that site cleanup is
11 almost complete.

12 Based on my initial analysis at the site, impacts
13 relating to visual resources, soil and water resources,
14 transmission and natural gas pipeline interconnections,
15 perhaps cultural resources, perhaps construction traffic
16 along State Route 33, perhaps noise could be similar or
17 greater than the impacts of Puente.

18 I'm not making any firm conclusions, because again,
19 it was -- I have evaluated thus far in a -- at a high level.

20 MS. LAZEROW: And so I'm sorry. I'm a little bit
21 lost. Is this something you considered for a different
22 application for certification that you're using as an example
23 of something that you might have wanted to have considered
24 had this proceeding carried on for longer, or given you other
25 choices?

1 MS. HINDE: I might have considered it, yes.

2 MS. LAZEROW: I see. Thank you.

3 MS. HINDE: However, I am -- I'm not quite
4 finished. I wanted to state that the -- for -- if a site is
5 physically located outside of a census tract that is
6 identified as having a disadvantaged community, it does not
7 necessarily follow that that site would have fewer impacts
8 than another site.

9 So for example, the Ormond Beach Area Offsite
10 Alternative, which was interesting, given that it's in an
11 industrial area on the edge of Oxnard, the Staff determined,
12 the team determined, that it would avoid three of Puente's
13 significant impacts, although it is shown to be located in a
14 census tract with a disadvantaged community.

15 MS. LAZEROW: So if I'm understanding you
16 correctly, the driving factor of avoiding impacts to
17 disadvantaged communities does not always resolve in avoiding
18 other environmental impacts. As the record stands now, what
19 I heard you testify was that disadvantaged communities,
20 environmental justice impacts, were not one of the criteria
21 that you were using to seek alternatives?

22 MS. HINDE: Correct.

23 MS. LAZEROW: Thank you. I have no further
24 questions.

25 HEARING OFFICER KRAMER: Okay. Thank you. Does

1 anybody believe that we are not finished with Staff's
2 witnesses at this point? Okay. Thank you, all. Mr.
3 Carroll, to make sure that Mr. Vespa and Mr. Powers finish
4 today would it bother you to have your witnesses after them?

5 MR. CARROLL: No.

6 HEARING OFFICER KRAMER: Thank you. So let's go
7 onto the city -- I'm sorry -- the Environmental Center, or
8 does Mr. Powers need -- okay. Mr. Vespa yields to Mr.
9 Powers. So Ms. Belenky, if you would put him on for direct
10 examination.

11 MS. BELENKY: Yes. Thank you.

12 DIRECT TESTIMONY

13 MS. BELENKY: Good afternoon, Mr. Powers. You've
14 already stated that you did prepare the testimony that was
15 submitted on your behalf. So we're now on the Alternatives
16 section and I would like you to briefly give a little bit of
17 background on your testimony on project objectives, the need
18 for the project and Alternatives, how those all fit together.

19 MR. POWERS: Very good. The first comment for my
20 opening testimony is that the project objectives need to be
21 modified to be performance-based, as opposed to being
22 explicit requirement of the project to build the exact make
23 and model of turbine that is proposed by the Applicant and
24 was included in the approved Power Purchase Agreement by the
25 Public Utility Commission.

1 The next issue from, or point, summary point from
2 the opening testimony is that the CEC in its California
3 Electricity Demand Forecast, has been forecasting lower and
4 lower demand out in the future than at the time that this was
5 first considered in Track 1 of the Commission's 2012 Long-
6 Term Procurement Proceeding.

7 The demand has dropped 700 megawatts since that
8 time and that has eliminated the need for the project, making
9 a No Project Alternative both feasible and appropriate for
10 the site. I would also like to point out that Staff Witness
11 Vidaver indicated that while demand has dropped, ISO is still
12 projecting a demand or a need of 234 megawatts in 2025.

13 It's important to point out that the Commission,
14 the Public Utility Commission, cut the ISO's demand
15 projection in half in the Commission proceeding, indicating
16 that a minimum of 215 megawatts of need was present, even
17 though the ISO had indicated 430 megawatts of need, dropped
18 it by 215 megawatts.

19 If you were to apply that same adjustment which
20 takes into account preferred resources that the Commission
21 reasonably expects to develop in the Moorpark sub-area, even
22 in 2013 that 215 megawatt reduction from the 234 megawatts
23 that Mr. Vidaver indicated that the Commission or ISO is
24 identifying as need for 2025, that'd leave a need of 19
25 megawatts in 2025.

1 I see that as supporting the No Project Alternative
2 and the fact that there's no need for the project. In my
3 opening testimony I also indicate two other Alternatives.
4 Battery storage is feasible, cost-effective, even by Southern
5 California Edison's own least cost, best fit modeling.

6 The only reason that, or a likely reason that only
7 .5 megawatts of storage was contracted for in the Moorpark
8 sub-area is SCE imposed a cap of 100 megawatts on -- in front
9 of meter storage in the Public Utility Commission proceeding,
10 even though their modeling indicated that battery storage is
11 more cost effective than peaking gas turbines.

12 And in addition, SCE is under a Public Utility Code
13 mandate to have 580 megawatts of energy storage under
14 contract by 2020. They contracted for 264 megawatts in the
15 L.A. Basin, .5 megawatts in Moorpark sub-area. That leaves
16 316 megawatts of energy storage they need to get under
17 contract by 2020.

18 So it adds another element here where this project
19 is approved, and they're still going to build 316 megawatts
20 of energy storage by 2020. Finally, demand response is
21 feasible and both battery storage and demand response meet
22 the performance objectives of the project.

23 Obviously, they don't meet the make and model
24 numbers of the gas turbine proposed by Energy, but they meet
25 the performance objectives of the project. And there was no

1 inquiry by Staff into the amount of demand response that is
2 available to meet the need to displace the gas turbine.

3 MS. BELENKY: Thank you. And I just want to draw
4 your attention to Exhibit 7032, which we filed last night or
5 was filed this morning, which is a copy of an article from
6 the Los Angeles Times that came out this Sunday, and it is
7 called, "Californians are paying billions for power they
8 don't need. We're using less electricity. Some power plants
9 have even been shut down. So why do state officials keep
10 approving new ones." That is the title.

11 And we did submit it as an exhibit, and Mr. Powers,
12 could you explain how this investigative journalism report
13 relates to the issues of need and reliability that have come
14 up at this hearing?

15 MR. POWERS: Yes. In that article the chair of the
16 Public Utility Commission, Michael Picker, says that it's for
17 reliability. This seeming excess of gas turbine procurement
18 is for reliability. And it's important to point out that the
19 federal standard for reliability is if you lose your single
20 biggest piece of infrastructure, it's N-1, you lose your
21 biggest transmission line or your biggest generator and you
22 have to hold the load under that condition, meaning you don't
23 partially or fully blackout any customers.

24 In this case the ISO is applying a much more
25 rigorous reliability criteria, and it is assuming that the

1 three biggest transmission lines in the area are out of
2 service. And I notice, I think in Mr. Coldwell's testimony,
3 he identifies that as an N-1-1.

4 I mean, I'd identify it as an N-1-1-1. That's a
5 Category D, act of God, highly improbable standard for
6 assuring no loss of load in the area. And so it's important
7 to keep in mind that the level of conservatism that is being
8 used by the ISO to justify these grid reliability projects is
9 far beyond the federal standard, far beyond the California
10 standard we had until just a couple of years ago.

11 And then it's become a moving target, these
12 increasingly stringent, grid reliability requirements that
13 are no longer representative of a balance between reliability
14 and cost reasonableness.

15 MS. BELENKY: Thank you. I don't have any more
16 direct.

17 HEARING OFFICER KRAMER: Okay. Well, you mentioned
18 an exhibit, the L.A. Times article. So we need to put a
19 number on that.

20 MS. BELENKY: I gave it the number 7032 when I
21 filed it.

22 HEARING OFFICER KRAMER: Did you say 3-2, or --

23 MS. BELENKY: Yes, 7032.

24 HEARING OFFICER KRAMER: Okay. Yep.

25 MS. BELENKY: I think that was my next number.

1 HEARING OFFICER KRAMER: And then for the
2 transcript, the TN number is 215785. So again, I'll take
3 that home tonight as homework and get those recorded in the
4 system. Cross-examination of Mr. Powers. Let's begin with
5 the Applicant.

6 MR. CARROLL: Thank you.

7 CROSS-EXAMINATION

8 MR. CARROLL: Good evening, Mr. Powers. The party
9 that you're representing here today, Center for Biological
10 Diversity, or CBD, was a party in the CPUC proceeding
11 approving the Resource Adequacy Procurement Agreement or RAPA
12 for Puente. That's Proceeding D-16-05-050, and the rehearing
13 decision on that, RAPA D-16-12-030. Is that correct?

14 MR. POWERS: Correct.

15 MR. CARROLL: And did you submit testimony on
16 behalf of CBD in those proceedings?

17 MR. POWERS: I did.

18 MR. CARROLL: In those proceedings, CBD filed an
19 Application for Rehearing of the CPUC's approval of the
20 project, correct?

21 MR. POWERS: That is correct.

22 MR. CARROLL: In that application, CBD challenged
23 the CPUC's need determination, correct?

24 MR. POWERS: Can you repeat that question?

25 MR. CARROLL: In its application, that being, in

1 CBD's Application for Rehearing --

2 MS. BELENKY: Excuse me. Objection. Mr. Powers
3 did not file those documents and he may not be the correct
4 person to be asking.

5 MR. CARROLL: Well, if he doesn't know the answer,
6 I guess he can tell me that he doesn't know the answer, but
7 he did say that he submitted testimony on behalf of CBD. So
8 I think it's reasonable to assume that he may be familiar
9 with the claims upon which his testimony was submitted.

10 MS. BELENKY: He's certainly familiar with it, but
11 you're asking him whether someone filed a brief or a
12 rehearing request --

13 MR. CARROLL: Let me --

14 MS. BELENKY: -- in another Commission. It isn't
15 in his expertise. It's simply a fact that you don't need Mr.
16 Powers to attest to.

17 MR. CARROLL: Let me rephrase the question.

18 MS. BELENKY: Thank you.

19 MR. CARROLL: Mr. Powers, you've just testified
20 that you submitted testimony on behalf of CBD in the
21 referenced proceedings. Did your testimony address the
22 CPUC's need determination for the project?

23 MR. POWERS: Yes.

24 MR. CARROLL: And is it true that the CPUC denied
25 CBD's challenge?

1 MR. POWERS: Correct.

2 MR. CARROLL: And when was that ruling from the
3 CPUC?

4 MR. POWERS: The 1612 ruling?

5 MR. CARROLL: Yes.

6 MR. POWERS: December.

7 MR. CARROLL: Of?

8 MR. POWERS: 2016.

9 MR. CARROLL: I'm sorry. I'm sorry I interrupted
10 you.

11 MR. POWERS: December 2016.

12 HEARING OFFICER KRAMER: If you could get a little
13 closer in, speak more directly at the mic, that would help.

14 MR. POWERS: Yes.

15 HEARING OFFICER KRAMER: Thank you.

16 MR. CARROLL: So just to make sure that we weren't
17 speaking over each other, that ruling was when?

18 MR. POWERS: Just let me get clear on what you're
19 asking. Are you asking when the Application for Rehearing
20 was denied or when --

21 MR. CARROLL: Yes.

22 MR. POWERS: My understanding, it was denied on
23 December 1st, 2016.

24 MR. CARROLL: Thank you. And in those proceedings
25 CBD argued that changed circumstances demanded

1 reconsideration of the CPUC's determination, did it not?

2 MR. POWERS: Correct.

3 MR. CARROLL: And the CPUC concluded --

4 MS. BELENKY: Objection. Again, these are legal
5 questions that were part of that Commission process, and I
6 don't know why you would be asking Mr. Powers these
7 questions.

8 MR. CARROLL: Well, Mr. Powers has testified that
9 he was an expert on behalf of CBD in connection with those
10 proceedings. And so I'm trying to understand what he
11 understands about those proceedings and the decisions that
12 were made in those proceedings.

13 MS. BELENKY: But the decision speaks for itself,
14 the Commission's decision, the California Public Utilities
15 Commission's decision speaks for itself. The date of that
16 decision is public record. It is not within Mr. Powers'
17 expertise to be questioned on these matters.

18 HEARING OFFICER KRAMER: Mr. Carroll, what -- are
19 you going to the information that underlies his opinion?

20 MR. CARROLL: Well, I'm going to information that
21 is contained in his testimony filed in these proceedings that
22 appears to be repetitive of testimony that he filed in the
23 CPUC proceedings. And so I'm trying to understand the
24 relationship between the testimony that he's providing in
25 these proceedings and the testimony that he previously

1 provided in the CPUC proceedings. But and I'll move on from
2 this line.

3 HEARING OFFICER KRAMER: Well, objection's
4 overruled.

5 MR. CARROLL: In your testimony here before the
6 Energy Commission you contend that the CEC's 2016 peak demand
7 forecast justifies changing the need determination because it
8 is less than the 2009 CEC forecast that the CPUC used to
9 identify the need in Moorpark. Is that correct?

10 MR. POWERS: Correct.

11 MR. CARROLL: And that report was published in
12 January 2016?

13 MR. POWERS: Correct.

14 MR. CARROLL: And is it --

15 MR. POWERS: Excuse me. That should be a
16 correction. The 700 megawatt reduction should be corrected
17 to December 2016.

18 MR. CARROLL: Thank you. And didn't the 2014-15
19 Transmission Plan, which was released in March of 2015,
20 include similar information about the local need?

21 MR. POWERS: I did not address that, but I did see
22 that in Mr. Coldwell's testimony.

23 MR. CARROLL: Thank you. Do you recall during the
24 CPUC proceedings that on May 29th, 2015, your client, CBD,
25 cross-examined the Cal ISO witness, Robert Sparks,

1 extensively about the 2014-2015 Cal ISO Transmission Plan?

2 MS. BELENKY: Objection. Mr. Powers is not an
3 expert on who was cross-examined in another proceeding at
4 another Commission, and that is a matter of public record
5 that can be established without Mr. Powers' testimony.

6 HEARING OFFICER KRAMER: Overruled.

7 MR. CARROLL: Well, mister -- thank you. Would you
8 like me to restate the question?

9 MR. POWERS: Please do.

10 MR. CARROLL: Do you recall that on May 29th, 2015,
11 in the CPUC proceedings about which we've been talking that
12 your client, CBD, cross-examined the Cal ISO witness, Robert
13 Sparks, about the 2014-2015 Cal ISO Transmission Plan?

14 MR. POWERS: I don't recall it. I don't think I
15 was at that hearing.

16 MR. CARROLL: Thank you. Do you recall whether or
17 not CBD argued in its Application for Rehearing that the
18 2014-2015 Transmission Plan demonstrated that there is a 230-
19 megawatt need in Moorpark?

20 MS. BELENKY: Again, I object. Mr. Powers is not
21 an expert as to our arguments, the arguments of the Center
22 for Biological Diversity. He is an expert witness on these
23 matters of Alternatives.

24 MR. CARROLL: Well --

25 MS. BELENKY: That's a matter of public record in

1 our briefing before another Commission.

2 MR. CARROLL: Well, but Mr. Powers has testified in
3 these proceedings that the 2016 peak demand forecast
4 justifies changing the need determination now, because it was
5 less than the 2009 CEC forecast that the CPUC relied upon.
6 So he has held himself out as an expert on that very subject
7 in these proceedings.

8 And all I'm asking him is whether or not he is
9 aware that that very issue was addressed by the CPUC in the
10 prior proceedings.

11 HEARING OFFICER KRAMER: Goes to the basis for his
12 opinions, and the objection's overruled.

13 MR. CARROLL: Would you like me to repeat the
14 question, Mr. Powers?

15 MR. POWERS: No. No. I'm not aware of that
16 passage in CBD's Application for Rehearing, but I just
17 addressed that point a few minutes ago in summarizing my
18 testimony.

19 MR. CARROLL: Thank you. In your testimony earlier
20 today you repeated a statement from your prepared testimony
21 that because the decrease in the demand forecast in the Big
22 Creek/Ventura Area -- I'm sorry -- because of the decrease in
23 the demand forecast in the Big Creek/Ventura Area, that the
24 No Project Alternative is feasible. Did I correctly restate
25 your testimony?

1 MR. POWERS: That's correct.

2 MR. CARROLL: But isn't the relevant area here the
3 Moorpark sub-area?

4 MR. POWERS: In this case I'm using that as a
5 synonym for Moorpark sub-area.

6 MR. CARROLL: Thank you.

7 MS. BELENKY: Bless you.

8 MR. CARROLL: In the proceedings before the CPUC in
9 which you participated, CBD challenged the CPUC's ruling
10 regarding SCE's acceptance of Preferred Resource bids. Is
11 that correct?

12 MR. POWERS: Can you repeat that question?

13 MR. CARROLL: In the CPUC proceedings in which you
14 participated as an expert on behalf of CBD, was part of the
15 argument that CPD put forward a challenge to the CPUC's
16 ruling regarding SCE's acceptance of Preferred Resource bids?

17 MR. POWERS: Possibly. I don't think I was engaged
18 in that.

19 MR. CARROLL: Okay. Do you know whether the CPUC
20 concluded that cost-effective Preferred Resources were not
21 available to meet the identified need?

22 MR. POWERS: I think in Mr. Theaker's testimony
23 indicates that they did get Preferred Resource bids from
24 energy storage and did not select them, SCE.

25 MR. CARROLL: So your recollection is that SCE did

1 not select some of the bids for energy storage that were
2 submitted?

3 MS. BELENKY: Objection. You're asking him about
4 someone else's testimony now?

5 MR. CARROLL: No. I'm asking him about the outcome
6 of the CPUC proceedings in which he participated. He
7 referenced someone else's testimony. I'm familiar with that
8 testimony. That is the Applicant's witness.

9 MS. BELENKY: I'm sorry. I'm just not sure where
10 this line of questioning is going, because you keep asking
11 about briefing that the Center submitted and not Mr. Powers's
12 testimony.

13 MR. CARROLL: Well, again, Mr. Powers was an expert
14 on behalf of CBD in those proceedings. He is now an expert
15 on behalf of CBD in these proceedings. And therefore, I
16 think that the positions that he took on behalf of his client
17 in those proceedings are relevant to these proceedings.

18 I will point out that it was the Intervenors'
19 witness who submitted as attachments to its opening testimony
20 all the documents that I'm referring to here today. These
21 were not documents that were put into the record by the
22 Applicant.

23 All of the documents in the CPUC proceedings were
24 exhibits to CBD's opening testimony, as well as the opening
25 testimony of several of the other witnesses that we're going

1 to get to shortly. So having put all of these issues
2 squarely into play in these proceedings, I find it a little
3 bit troubling that all of my questions about them are giving
4 rise to objections.

5 MS. BELENKY: Well, if I may, I don't believe we're
6 objecting to you putting the issues. It's just, are the
7 questions directly properly at Mr. Powers. If you have
8 questions about briefs that were submitted by the Center,
9 that is -- he is not the one who submitted them or wrote the
10 briefs. If you have questions about --

11 MR. CARROLL: Well, I --

12 MS. BELENKY: -- his testimony at that Commission,
13 that would be a different matter.

14 MR. CARROLL: Well, these documents were supported
15 -- were provided as exhibits in support of Mr. Powers'
16 prepared testimony in these proceedings. If what you're
17 saying is that he's not knowledgeable about them, that's good
18 information to have when it comes time to the -- make the
19 objections.

20 But my understanding, based on the filing and his
21 testimony and the supporting exhibits, was that these were
22 areas with which he was familiar and that were appropriate
23 for questioning.

24 MR. POWERS: And I'd like to step in. I don't
25 recall submitting any CBD briefs as exhibits. I might have,

1 but I don't recall that. I do recall submitting Commission,
2 Public Utility Commission decisions.

3 MS. BELENKY: And if I may, I believe you meant
4 exhibits to our PSA comments. Is that correct?

5 HEARING OFFICER KRAMER: What was that number
6 again?

7 MR. CARROLL: Just one moment.

8 MS. BELENKY: So there may be some confusion,
9 because our PSA comments were submitted on the issues that
10 Mr. Powers is knowledgeable. He was an expert in the other
11 proceeding, but he's not an expert on every brief that the
12 Center wrote in that matter.

13 MR. CARROLL: And I -- the questions that I've been
14 asking, all of the references have been to the decisions of
15 the CPUC, not to the briefs of the party. I have asked Mr.
16 Powers, since he participated as an expert and submitted
17 testimony, about some of the positions that he took in those
18 proceedings.

19 I'm not interested, necessarily, in his exhaustive
20 knowledge regarding the briefs, but presumably, as the expert
21 witness in those proceedings he knows -- I'm asking about his
22 expert testimony. Whether or not some of his expert
23 testimony was also in the briefs, I don't know and that's not
24 relevant.

25 So all I'm asking him about is his expert testimony

1 in those proceedings and the documents that were attached to
2 his opening testimony in these proceedings.

3 HEARING OFFICER KRAMER: Mr. Carroll, can I ask how
4 many more questions you have of him?

5 MR. CARROLL: We had a couple more questions, but
6 they're actually very much in line with the previous
7 questions. So I think at this point we can actually wrap it
8 up.

9 HEARING OFFICER KRAMER: Well, I'm going to
10 overrule the objection and go ahead and ask your couple more,
11 and then --

12 MR. CARROLL: So the question was, is it true that
13 CBD challenged the CPUC's ruling in D-16-05-050 regarding
14 SCE's acceptance of Preference Resource bids?

15 MR. POWERS: Yes. They did submit an Application
16 for Hearing [sic].

17 MR. CARROLL: And was one of the claims in that
18 Application for Rehearing that a challenge to the CPUC's
19 ruling regarding SCE's acceptance of the Preferred Resource
20 bids?

21 MR. POWERS: I'd have to look at it to refresh my
22 memory on that point.

23 MR. CARROLL: Thank you. And is it safe to assume
24 that you do not recall what the CPUC concluded with respect
25 to those arguments made by CBD?

1 MR. POWERS: No.

2 MR. CARROLL: Thank you. We have no further
3 questions at this time.

4 HEARING OFFICER KRAMER: Okay. Thank you. Staff.

5 MS. CHESTER: We have no questions.

6 HEARING OFFICER KRAMER: Thank you. City of
7 Oxnard? Get to the right place here. Actually, the city did
8 not indicate any -- they had any questions and she shakes her
9 head to the effect that they do not. Environmental Center,
10 any questions for Mr. Powers?

11 MS. ROESSLER: No, we do not.

12 HEARING OFFICER KRAMER: Okay.

13 MS. BELENKY: If I might have redirect, Mr. Kramer?

14 HEARING OFFICER KRAMER: Redirect? Sure.

15 REDIRECT TESTIMONY

16 MS. BELENKY: Thank you. Mr. Powers, if you know,
17 do you know the basis -- do you know whether in denying the
18 rehearing at the California Public Utility Commission the
19 Commission declined to conduct any CEJA analysis?

20 MR. POWERS: That is correct, they did decline to
21 conduct CEJA analysis.

22 MS. BELENKY: Thank you. And if you know, did the
23 CPUC's grounds for denying -- not requiring a CEQA analysis
24 at the CPUC, was it that this body, the California Energy
25 Commission, was going to conduct an independent analysis

1 under CEQA?

2 MR. POWERS: That is correct.

3 MS. BELENKY: And if you know, in through the time
4 of the denial of rehearing, isn't it true that the CPUC
5 continued to rely on demand projections formulated in 2008?

6 MR. POWERS: Correct.

7 MS. BELENKY: I have just one more question. Isn't
8 it correct that the 2016 Demand Forecast you mentioned here
9 in your testimony today, that it wasn't published until
10 December of 2016?

11 MR. POWERS: That is correct.

12 MS. BELENKY: Which was after the CPUC's denial of
13 rehearing in the matter of the Puente PPA?

14 MR. POWERS: Yes.

15 MS. BELENKY: Thank you. No further questions.

16 HEARING OFFICER KRAMER: Okay. Thank you. None of
17 the other parties had any time allotted for cross of Mr.
18 Powers. So let's go to Mr. Vespa. Thank you, Mr. Powers.

19 MR. POWERS: Thank you.

20 HEARING OFFICER KRAMER: Did you take the oath a
21 few minutes ago?

22 MR. VESPA: I did.

23 HEARING OFFICER KRAMER: Okay. Thank you. Mr.
24 Smith or Ms. Roessler?

25 MS. ROESSLER: Yes.

1 HEARING OFFICER KRAMER: Go ahead.

2 MS. ROESSLER: I'm ready. Thanks.

3 DIRECT TESTIMONY

4 MS. ROESSLER: Can you please state your name for
5 the record?

6 MR. VESPA: Yes. Matt Vespa, M-a-t-t, V as in
7 Victor, e-s, P as in Paul, a.

8 MS. ROESSLER: Thank you. Mr. Vespa, is Exhibit
9 4000 your testimony in this proceeding?

10 MR. VESPA: Yes, it is.

11 MS. ROESSLER: Did you prepare this testimony
12 yourself?

13 MR. VESPA: I did.

14 MS. ROESSLER: And you have included Exhibits 4001
15 to 4016 as support for your testimony, correct?

16 MR. VESPA: Yes.

17 MS. ROESSLER: And to your knowledge, are the
18 documents that comprise Exhibits 4001 to 4016, true and
19 correct copies of the original?

20 MR. VESPA: Yes.

21 MS. ROESSLER: What is the subject of your
22 testimony?

23 MR. VESPA: Well, based on my experience with
24 procurement at the Public Utility Commission, I submitted
25 testimony to rebut the FSA conclusions that Preferred

1 Resources are not a feasible alternative. As we heard from
2 staff earlier, that conclusion is based entirely on the
3 results of the Moorpark RFO that was issued over three years
4 ago.

5 I also submitted testimony to rebut assertions in
6 the FSA that energy storage is not a cost-effective resource
7 and that behind the meter storage cannot be procured to meet
8 local capacity needs. That latter point was corrected by
9 Staff earlier today.

10 MS. ROESSLER: Thank you. Can you summarize why
11 the Moorpark RFO is not determinative of Preferred Resource
12 potential in the Moorpark sub-area, and therefore, should not
13 have relied upon -- should not be relied upon to conclude
14 Preferred Resource Alternatives are infeasible?

15 MR. VESPA: Well, the FSA concludes that Preferred
16 Resource Alternatives are not feasible because a limited
17 amount of offers were procured in the Moorpark RFO, and I
18 disagree with its conclusion for a number of reasons, the
19 first of which is you have to look at the historical context
20 of that RFO.

21 It was issued at the same time as the L.A. Basin
22 RFO. The L.A. Basin RFO was much, much bigger. It had
23 Preferred Resource minimums. It had a 50-megawatt energy
24 storage minimum. It might seem quaint now, around a 50-
25 megawatt storage requirement, but that was the first of the

1 kind in the nation.

2 It made an incredible buzz. There was a lot of
3 uncertainty about how the market was going to perform, or if
4 even storage bids would be realized. You know, indicative
5 offers for in front of the meter storage do require site
6 control. There is work in putting a bid in.

7 It was a nascent market and the focus for potential
8 storage provides was going to be in the RFO that actually had
9 a storage procurement minimum. You just had a better chance
10 of getting your bid picked. SCE admitted during hearings in
11 Moorpark that the market was focusing its efforts on the LA
12 Basin RFO.

13 So you know, this is one of the reasons that while
14 the Moorpark RFO results are a data point, they are not
15 determinative of Preferred Resource potential or the
16 feasibility of Preferred Resource Alternatives for Moorpark.

17 MS. ROESSLER: Can you summarize what other
18 information should be accounted for in evaluating the
19 feasibility of Preferred Resources to meet local area
20 resource needs?

21 MR. VESPA: Yeah. It's also important to look at
22 Southern California Edison's experience with subsequent
23 Preferred Resource solicitations. The L.A. Basin RFO was
24 widely viewed as a success story for energy storage. They
25 were over 250 megawatts of behind the meter and utility skill

1 storage procured, all of which was approved by the PUC.

2 But the success of that solicitation did not mean
3 Preferred Resource potential in the L.A. Basin was
4 extinguished. You know, SCE then went on and did its
5 Preferred Resource Pilot 2 Solicitation, which was in a much
6 smaller area of the L.A. Basin, and they got 125 megawatts of
7 additional Preferred Resources, which they're now seeking
8 approval for.

9 So this notion that I have certain results in one
10 RFO from several years ago, and therefore, there's no more
11 potential, is belied by the success of the Preferred Resource
12 Pilot Solicitation that has just occurred. And we're
13 experiencing amazing transformation in the sector.

14 The market is much more mature. Bids are cheaper
15 than ever before, and to suggest that there is no Preferred
16 Resource Alternative due to an RFO that was compromised and
17 issued some time ago, you know, I don't think that's
18 supportable.

19 MS. ROESSLER: Can you summarize your testimony on
20 continued --

21 MR. VESPA: I just have one more point to make on
22 that.

23 MS. ROESSLER: Oh, sorry.

24 MR. VESPA: Yeah. In addition to the Preferred
25 Resource Pilot RFO we did hear some testimony earlier about

1 the success of the storage procurement to address Aliso. You
2 know, we had 70 megawatts of storage come online in six
3 months.

4 This was just covered in an article in Green Tech
5 Media, where -- last week -- where President Picker was
6 quoted as saying, "I was stunned by the ability of batteries,
7 and the battery industry's ability to meet our needs."

8 You know, storage is here right now. It is
9 delivering the -- in the Staff testimony we heard that it can
10 meet local capacity needs. It also integrates renewable
11 resources much better than gas, because it can charge during
12 periods of over-generation and deal with the duct graph in a
13 much better way.

14 You know, it's a prudent and feasible alternative
15 to Puente that I feel was improperly dismissed in the FSA on
16 unsubstantiated assertions of cost-effectiveness that are
17 inconsistent with actual bid valuations that just storage can
18 offer better value than new gas-fired peaker plants like
19 Puente.

20 MS. ROESSLER: Can you summarize your testimony on
21 the continued operation of Mandalay 3 as a near-term solution
22 to meeting local area need?

23 MR. VESPA: Yeah. We heard a little bit about
24 Mandalay 3 earlier today. It's 130-megawatt, existing
25 resource at the project site. In a data request response in

1 this proceeding NRG admitted that it, "Intends to continue
2 operation of Mandalay Unit 3 as future market conditions
3 allow, that unlike Units 1 and 2, there's no looming
4 regulation that affects Unit 3's permanent operations and
5 that with continued maintenance Mandalay Unit 3 will be
6 capable of operating well into the future."

7 So this is a 130-megawatt resource that can
8 contribute to meeting the 234 megawatts of local capacity
9 needs. You know, it's exactly what we should be doing here,
10 is leveraging our existing fossil generation to create the
11 time and space for additional Preferred Resource procurement.

12 If you consider Mandalay 3, 130 megawatts, plus the
13 12 megawatts at Preferred Resources the RFO procured, you
14 know, you're down to around 90 megawatts of residual need.
15 As we heard earlier today, SCE's initiating an RFO in Goleta
16 for up to 50 megawatts. So now you're down to 40 megawatts.

17 So you know, you can get there and meet the local
18 capacity and meet it in a timely way without resorting to
19 building a new -- you know -- new gas plant which will last
20 for decades to come on Oxnard's shores.

21 MS. ROESSLER: Can you summarize or elaborate on
22 your testimony on the Goleta RFO?

23 MR. VESPA: Yeah. As I mentioned, SCE is launching
24 an RFO for Goleta. It's a smaller subset of the Moorpark
25 area. The resources procured there would count toward

1 Moorpark area need. You know, it's up to 50 megawatts. You
2 know, we don't know what the bids are going to be.

3 You know, but at the same time, the market is more
4 mature. There aren't a lot of procurement opportunities out
5 there. So the market will be more focused than I think it
6 was when the initial Moorpark RFO was issued. And you know,
7 it's worth noting, there'll be an open RFO. So you know,
8 procurement to meet local capacity needs can start right
9 away.

10 MS. ROESSLER: Thank you.

11 HEARING OFFICER KRAMER: You have cross, the
12 Applicant.

13 CROSS-EXAMINATION

14 MR. CARROLL: Thank you. Mr. Vespa, I assume from
15 your resume that you hold a law degree and bachelor's and
16 master's degrees in biology. You're not an electrical
17 engineer, correct?

18 MR. VESPA: No.

19 MR. CARROLL: Have you ever worked for a utility
20 company?

21 MR. VESPA: I have not.

22 MR. CARROLL: A private energy company?

23 MR. VESPA: No.

24 MR. CARROLL: Cal ISO?

25 MR. VESPA: It's all in my resume, no, I didn't

1 complete --

2 MR. CARROLL: Okay.

3 MS. ROESSLER: Objection. What's this line of
4 questioning going to? There were no objections made in the
5 beginning about him qualifying as an expert, and then he just
6 testified. I thought if you were going to -- it sounds like
7 that's what you're trying to make an objection to.

8 MR. CARROLL: Well, I --

9 MS. ROESSLER: Or --

10 MR. CARROLL: -- this testimony, the question does
11 go to his qualifications to make the testimony that he just
12 made, yes.

13 MS. ROESSLER: I thought in the beginning of the
14 proceedings today that we waived our objections unless we
15 made them in the beginning, and which there were none made as
16 to the qualifications of Mr. Vespa, which is why we didn't
17 ask any questions.

18 MR. VESPA: You know, I'm happy to talk about my
19 qualifications.

20 MR. CARROLL: Well --

21 MS. ROESSLER: I'm just curious, if that's where
22 you're going with the line. Are you objecting to his
23 qualifications for his testimony?

24 MR. CARROLL: Yes, I am. My understanding of what
25 we agreed to earlier today is that absent an objection by one

1 of the parties to the qualifications of a party -- or I'm
2 sorry -- the qualifications of a witness, that they would be
3 deemed qualified as an expert in that area.

4 This is one of those exceptions where I am
5 questioning the qualifications of this -- Mr. Vespa as to the
6 testimony that he has provided in these proceedings.

7 MS. ROESSLER: I presumed when we made that
8 agreement that it would just mean you would make the
9 objection in the beginning.

10 MR. VESPA: I'm happy to speak to my
11 qualifications.

12 MS. ROESSLER: That's fine if he wants --

13 MR. CARROLL: I appreciate Ms. Roessler's point
14 that I think that the process that we agreed to, you are
15 correct, because no party would know whether another party
16 was going to object to the qualifications until they made
17 that objection.

18 I have no concerns if the Committee wanted to
19 provide you an opportunity to further question Mr. Vespa on
20 his qualifications.

21 HEARING OFFICER KRAMER: Yeah. That's -- ideally,
22 questions about qualifications would come out before we hear
23 testimony from a witness in case it becomes unnecessary to
24 have the testimony, because their qualification as an expert
25 is -- has been extinguished.

1 But I'm gathering there's a little bit of confusion
2 about the time -- when the timing should be. So let's go
3 back and answer or attempt to address Mr. Carroll's
4 objections. But in the future, you know, it's not like if he
5 starts to answer, say his name it's too late, but please,
6 raise your concerns at the beginning of the witness's
7 testimony. So go ahead, Ms. Roessler.

8 MS. ROESSLER: Okay. Mr. Vespa, can you please
9 describe for us your professional background --

10 MR. VESPA: Well --

11 MS. ROESSLER: -- and expertise that provides the
12 basis for your testimony?

13 MR. VESPA: Well, specifically, to the basis of
14 this testimony, not to get into my whole resume, but over the
15 past five years my main focus in my work at the Sierra Club
16 has been on legal policy and technical issues related to
17 utility resource procurement, solicitations and local area
18 need findings.

19 I have participated in a number of utility
20 procurement application proceedings. I'm a member of the
21 Procurement Review Group, or PRG, for Southern California
22 Edison and San Diego Gas and Electric, where I am part of
23 review and deliberations on utility procurement.

24 So you know, from this five years of experience I
25 do have an in-depth understanding of utility procurement,

1 valuation, contracting and so on, and my testimony is focused
2 on procurement and bid valuation. I am not trying to assert
3 N-1-1 criteria or anything electrical.

4 It's all my testimony does cite to documents from
5 CAISO and so on and so forth. So I do feel like my testimony
6 is narrowly tailored to my specific experience.

7 MS. ROESSLER: Thank you.

8 MR. CARROLL: Thank you. I appreciate the
9 clarification on the scope of your testimony.

10 HEARING OFFICER KRAMER: So Mr. Carroll, are you
11 satisfied, then, at this point?

12 MR. CARROLL: I'm not objecting to Mr. Vespa's
13 testimony, to proceeding with further testimony from Mr.
14 Vespa or -- I mean, subject to objections that we may have
15 with respect to exhibits that he may be sponsoring. I'm not
16 objecting to Mr. Vespa providing testimony in these
17 proceedings.

18 I think the scope of his -- or the extent of his
19 qualifications do go to the weight, but that testimony should
20 be provided.

21 HEARING OFFICER KRAMER: Understood. Please
22 proceed.

23 MR. CARROLL: I take it from your prepared
24 testimony and with the testimony that you've provided tonight
25 that you are familiar with the decisions that we've been

1 discussing or that we discussed with Mr. Powers. Is that not
2 -- let me back up. You were present in the room during Mr.
3 Power' testimony. Is that correct?

4 MR. VESPA: I was, and I'm familiar with those
5 decisions.

6 MR. CARROLL: Thank you. Referring to what I think
7 you have used the shorthand title, the SCE RFO for the
8 Moorpark area, you state at page 1 of your prepared testimony
9 that the Preferred Resources contracts resulting from the
10 Moorpark Solicitation did not reflect the potential of
11 feasible, cost-effective Preferred Resources.

12 I think in your testimony tonight you used the term
13 "compromise" to describe the RFO. What analysis or data do
14 you rely upon to reach that conclusion?

15 MR. VESPA: Well, I discussed that in my oral
16 testimony tonight.

17 MR. CARROLL: I'm sorry.

18 MR. VESPA: The differences in the RFOs, the fact
19 that there was a minimum energy storage procurement
20 requirement in the L.A. Basin that was much larger, that it
21 attracted a much higher percentage of the bids than Moorpark
22 did, and SCE's testimony stating that the market was focused
23 on L.A. Basin.

24 MR. CARROLL: Is there any analysis that you've
25 prepared or that you're aware of that supports the

1 proposition that the L.A. Basin RFO somehow -- this is my
2 term, not yours -- but as I would describe your testimony,
3 scavenged the Moorpark RFO?

4 MR. VESPA: For the reasons I stated.

5 MR. CARROLL: In other words, your testimony is
6 that the mere existence of the L.A. RFO in your view
7 compromised the Moorpark RFO, but you don't have anything
8 further to support that?

9 MR. VESPA: Well, I did -- nothing further than
10 what I have stated orally and what is in my testimony. So in
11 other words, the fact that there were Preferred Resources
12 minimums, the fact that L.A. Basin was much larger, you know,
13 the fact that this was the first energy storage solicitation
14 in the country, that there was a high degree of uncertainty
15 about how storage would perform in this first solicitation
16 ever, and that, you know, given those circumstances as a
17 provider -- and this is also based on conversations with
18 providers at the PUC -- this was the -- the L.A. Basin RFO
19 was the place to be if you were trying to get a bid taken if
20 you were a Preferred Resource provider.

21 But that is what I have said in my written
22 testimony and my oral testimony, is the extent.

23 MR. CARROLL: Thank you. So you disagree with the
24 CPUC's statement at pages 17 and 18 of D-16-12-030 that, "The
25 Independent Evaluator Report confirms that SCE included

1 Preferred Resources in its evaluation process and conducted a
2 fairly substantial outreach to solicit all resource types"?

3 MR. VESPA: They did outreach to all resource
4 types. They did included Preferred Resources. So that's
5 true, and the outreach was, by the way, to all market
6 participants to enter into the same solicitation in which
7 some -- you know -- you could bid into either L.A. Basin or
8 Moorpark. So I'm not sure what you're distinguishing here.

9 MR. CARROLL: So let me rephrase.

10 MR. VESPA: Okay.

11 MR. CARROLL: Let me rephrase the question. The
12 Independent Evaluator Report confirmed in its view that the
13 solicitation was proper and that SCE conducted substantial
14 outreach to all resource types, including Preferred
15 Resources. It sounded to me like your testimony was contrary
16 to that, and so I'm trying to understand whether you --

17 MR. VESPA: No. I agree with that. There was a
18 lot of outreach. I would note that it was a single
19 solicitation and, you know, bidders could decide where they
20 put their bid. So it doesn't necessarily reflect Moorpark or
21 L.A. Basin.

22 MR. CARROLL: Okay. And were bidders required to
23 choose one or the other, or could they bid into both?

24 MR. VESPA: They could bid into both, but there
25 were certain -- like I mentioned, for indicative offers, you

1 did need site control for certain types of resource, not all
2 types of resources. So at a certain point you had to make a
3 determination about where you were going to put your
4 resources when you were bidding.

5 MR. CARROLL: Okay. So site control was a critical
6 issue to being in a position to participate in the RFO?

7 MR. VESPA: To have a valid bid, for not every
8 resource, but for example, in front of meter storage.

9 MR. CARROLL: Okay. The CPUC found that the
10 evidence showed that there were insufficient cost-effective
11 Preferred Resources bids in the Moorpark sub-area to meet the
12 identified need. Do you agree with that or disagree with
13 that?

14 And the reason I ask that question is that it
15 suggests -- your earlier testimony suggested that there were
16 additional resources available that either did not choose to
17 participate or were not selected.

18 MR. VESPA: Well, let me tell you what I know, and
19 then this probably answers your question. I mean, they did
20 take almost all of the Preferred Resource bids that were bid
21 into the Moorpark RFO, with the exception of some limited
22 number of energy storage contracts. And you know, I think
23 that reflects somewhat a lack of offers into that RFO.

24 MR. CARROLL: You indicated in your prepared
25 testimony that you felt that the CEC staff, moving to these

1 proceedings, had not properly considered Alternatives to the
2 proposed project. The FSA did analyze Preferred Resources.
3 That discussion is primarily at page 4.2-11 through 4.2-15.
4 In what ways did you find that analysis, in your word,
5 improper?

6 MR. VESPA: Well, as I mentioned, the conclusion
7 that Preferred Resources are not a feasible alternative is
8 dependent entirely on the results of the Moorpark RFO. And
9 so there was no consideration of advances in the energy
10 market. There was no consideration of the robust -- I guess
11 the Preferred Resources Pilots 2 RFO I mentioned, the fact
12 that energy storage is now coming online very quickly.

13 So it sort of froze things in time in 2013, and
14 didn't do initial analysis. I mean, you know, here we have a
15 situation where the Applicant waited a long time to file its
16 application at the CEC. You know, you didn't do this when
17 the need finding was first issued four years ago or when the
18 RFO was first issued.

19 And so I do feel like the Energy Commission does
20 have an obligation at this point in time to look at the state
21 of the market in this point in time and not rely on a three-
22 year-old RFO to determine the feasibility of Preferred
23 Resources.

24 MR. CARROLL: Do you recall the earlier testimony
25 regarding when the Petition for Rehearing on the RAPA was

1 rejected by the CPUC?

2 MR. VESPA: Are you talking about the Puente
3 contracts?

4 MR. CARROLL: Yes.

5 MR. VESPA: At which Petition for Rehearing?

6 MR. CARROLL: The Petition for Rehearing on the
7 RAPA, the number of the case --

8 MR. VESPA: No. There were just multiple parties.

9 So there was more than one petition. That's why I'm asking.

10 MS. CHESTER: Are you referring to an exhibit?

11 Perhaps that would be helpful.

12 MR. CARROLL: I'm referring to a decision -- sorry.

13 Let me get the correct number here. 1612-30.

14 MR. VESPA: Are you referring to the Rehearing
15 Petition for the PUC's approval of Puente and related
16 contracts?

17 MR. CARROLL: Yes.

18 MR. VESPA: Okay. Yeah. I'm not sure what 1612-30
19 is. There were -- from what I recall I think CBD fought a
20 petition. The Sierra Club and CEJA brought a separate
21 petition. There were different claims raised in those
22 petitions. So I'm not sure what you're specifically
23 referring to.

24 MR. CARROLL: That's okay. If you don't know which
25 one I'm referring to, you know which one I'm referring to.

1 MR. VESPA: Okay.

2 MR. CARROLL: We'll move on. You have also in your
3 prepared testimony questioned the current need for the
4 project by citing to information from the Cal ISO's 2015-2016
5 Transmission Plan. Is that correct?

6 MR. VESPA: Well, I do cite to that plan to
7 identify the most recent assessment of local area need. So
8 you know, and then I talk about Mandalay Unit 3 and other
9 potential ways of meeting that need.

10 MR. CARROLL: And do you not cite to that plan in
11 support of your claim that the need in the region is -- has
12 been -- is lower than what the CPUC determined it to be?

13 MR. VESPA: Well, the need finding in Tract 1 was
14 215 to 290 megawatts. And the latest LTPP has 234. So you
15 know, it is a more recent update, but it's roughly, you know,
16 in that range.

17 MR. CARROLL: Do you know whether or not that
18 Transmission Plan had been released and was available at the
19 time that the CPUC made its decision regarding the need?

20 MR. VESPA: For the Tract 1 decision?

21 MR. CARROLL: Yes.

22 MR. VESPA: Well, the Transmission Plan comes out
23 every year. It's updated every year. So --

24 MR. CARROLL: I'm sorry. I'm sorry. I didn't
25 understand the last thing that you just said.

1 MR. VESPA: Oh. Well, there's a CAISO, the CAISO
2 TPP or the Transmission Plan is released annually. So this -
3 - I tried to use the most recent TPP, because it was the most
4 recent data. So you know, in Tract 1 CAISO would have
5 actually submitted testimony on local area need as part of
6 the analysis, and of course, that now four or five years ago
7 that proceeding took place.

8 So it would have been, you know, their analysis
9 from at that point in time, which actually stated a much
10 higher need than they now indicate exists.

11 MR. CARROLL: And do you recall what the previous
12 need was?

13 MR. VESPA: Well, the year before was 230 in the
14 CAISO TPP. That would have been -- I don't know if the --
15 well, whatever, the year before this one. I don't know if it
16 was 2014-2015 or 2015-2016, and now it's 234.

17 MR. CARROLL: The prior year?

18 MR. VESPA: Yeah, the prior year. Thank you.

19 MR. CARROLL: One of the arguments that you've made
20 in your testimony this evening is that SCE recently saw an
21 approval of 125 megawatts of Preferred Resources from its
22 Preferred Resources Pilot, and as I understand your
23 testimony, you are citing to that as an example of a more
24 recent solicitation for Preferred Resources, that I assume
25 you're suggesting could be replicated in the Moorpark sub-

1 area?

2 MR. VESPA: Well, I'm citing it to show that there
3 has been growth in the sector, you know, that we are seeing,
4 you know, more Preferred Resources perform, and also citing
5 it for the fact that this was a solicitation that occurred,
6 you know, in the L.A. Basin where they had already procured
7 Preferred Resources.

8 So I think it does support the principle. It's not
9 that -- I think it's very obvious that, you know, a single
10 RFO does not dictate the Preferred Resource potential in an
11 area. And the fact that they got significantly more
12 Preferred Resources in their subsequent solicitation, you
13 know, confirms that.

14 MR. CARROLL: Are you aware of whether or not all
15 of those Preferred Resources have been implemented?

16 MR. VESPA: Well, it's an application right now.
17 So they are seeking approval.

18 MR. CARROLL: So they may or may not --

19 MR. VESPA: Well --

20 MR. CARROLL: -- attain what they're seeking?

21 MR. VESPA: -- well, the PUC would approve those
22 contracts and then they would, you know, be the foot
23 (phonetic).

24 MR. CARROLL: You also indicate that SCE plans to
25 hold an RFO to procure 50 megawatts of Preferred Resources

1 for the Goleta area in 2017.

2 MR. VESPA: Yeah.

3 MR. CARROLL: Is it possible that not all of the 50
4 megawatts of Preferred Resources that SCE is seeking in
5 Goleta would become a reality?

6 MR. VESPA: It's possible.

7 MR. CARROLL: On page 8 of your prepared testimony
8 you -- are you at page 8?

9 MR. VESPA: Yeah. Yeah. I -- yeah.

10 MR. CARROLL: Okay. You indicate, and I'm quoting
11 here, that, "None of the resources approved by the PUC in D-
12 16: --

13 MR. VESPA: Can you tell me where on the page you
14 are? I mean, the top or the -- I'm just -- where on page 8?

15 MR. CARROLL: Yeah. I don't believe there were
16 lines on the page. So I can't give you a --

17 MR. VESPA: Like first paragraph? Oh, okay. I see
18 it.

19 MR. CARROLL: Okay.

20 MR. VESPA: Okay.

21 MR. CARROLL: The quote is, "None of the resources
22 approved by the PUC in D-16-05-060 are needed to meet
23 reliability needs in the event of a loss of a major
24 transmission pathway into the Moorpark sub-area when demand
25 is at a 10-year high." Do you see that statement?

1 MR. VESPA: Yes.

2 MR. CARROLL: Does that single contingency drive a
3 sub-area requirement?

4 MR. VESPA: No. It's the Category C contingency,
5 but I did cite that just to point out, sort of what we're
6 talking about here.

7 MR. CARROLL: I guess I don't follow how that
8 supports what we're talking about here, or how that --

9 MR. VESPA: Oh.

10 MR. CARROLL: -- let me rephrase that. How that's
11 relevant to what we're talking about here.

12 MR. VESPA: Well, I'm -- you know -- they're in the
13 page 8, you know, I pull a screen shot from the TPP that
14 talks about both the Categories B and Category C contingency.
15 And I just think sometimes when we talk about keeping the
16 lights on and things like that, you know, we don't really
17 quite understand what we're talking about.

18 So I just wanted to make clear that under a
19 Category B contingency, which is used, you know, for one 10-
20 year heat demand where there was one major transmission
21 pathway out. So that is still in itself a very rare
22 occurrence if it ever has happened before.

23 There is no need for Puente or anything else. It's
24 only in the Category C contingency when you lose that second
25 transmission line on the hottest day in 10 years that the

1 need emerges. So that is all. I just -- I basically
2 described the table that I pull from.

3 MR. CARROLL: And how is that observation relevant
4 to the need for Puente?

5 MR. VESPA: I'm making an observation. I mean, we
6 are meeting a Category C contingency. It can be met, by the
7 way, through load draw. That is permissible under NERC
8 standards. But it is a way -- what I'm doing here is
9 describing, you know, what the TPP says in terms of need
10 under various contingencies.

11 MR. CARROLL: All right. So it's simply an
12 observation, not necessarily relevant to the Puente project.

13 MR. VESPA: I think it puts the need for the Puente
14 in some context.

15 MR. CARROLL: Thank you. No further questions.

16 HEARING OFFICER KRAMER: Staff.

17 MS. CHESTER: No questions.

18 HEARING OFFICER KRAMER: City of Oxnard?

19 MS. FOLK: I just have one clarifying question.
20 You were asked earlier a series of questions about the
21 independent evaluator's findings with respect to the
22 solicitation for resources in the L.A. Basin and Moorpark
23 area.

24 It's my understanding that that was a single
25 solicitation. And so do you know if the independent

1 evaluator, when he was discussing the outreach for that
2 solicitation, was he referring specifically to the Moorpark
3 area or to the solicitation as a whole?

4 MR. VESPA: It's my understanding he was referring
5 to the solicitation more broadly, and all the outreach that
6 was done for the solicitation meet both those areas' needs.

7 MS. FOLK: Thank you.

8 HEARING OFFICER KRAMER: Okay. Center for
9 Biological Diversity, do you have any --

10 MS. BELENKY: No cross.

11 HEARING OFFICER KRAMER: She says no cross. CEJA,
12 you're on the horns of a dilemma, because we were trying to
13 get in your witness. Is she here?

14 MS. LAZEROW: She is not here yet, and it is -- oh,
15 your clock says it's 5:01. My clock says it's 4:58, and I
16 have one tiny question for this witness, if I might.

17 HEARING OFFICER KRAMER: Go ahead.

18 MS. LAZEROW: Thank you. To your knowledge, in the
19 solicitation process for Moorpark did Edison express a
20 preference for Preferred Resources in environmental justice
21 communities or in disadvantaged communities?

22 MR. VESPA: It did not.

23 MS. LAZEROW: Thank you. That was my one question.

24 HEARING OFFICER KRAMER: Okay. Any redirect?

25 MS. ROESSLER: Yes. Thank you.

1

REDIRECT TESTIMONY

2 MS. ROESSLER: Do you have anything else to add to
3 your testimony or anything you need to clarify for us?

4 MR. VESPA: No. Thank you.

5 MS. ROESSLER: Thanks.

6 HEARING OFFICER KRAMER: Okay. Thank you, Mr.

7 Vespa. Ms. Lazerow, what's the word on your witness?

8 MS. LAZEROW: She's not here yet and I am texting
9 her to see what her ETA is.

10 HEARING OFFICER KRAMER: How long do you think she
11 would be testifying, and then I'll get an estimate as to the
12 others as to cross?

13 MS. LAZEROW: I reserved 10 minutes for her. I
14 would anticipate less, 10 minutes or less.

15 HEARING OFFICER KRAMER: Okay. Is anybody going to
16 want to cross Ms. Willis? You have really one candidate,
17 FFIERCE. Did you intend to ask any questions of Irene?

18 MS. CHANG: Most likely, I will not need to. Like
19 I can waive that if we're stretched for time.

20 HEARING OFFICER KRAMER: Okay. So we're going to
21 budget with 10 minutes, then, but in the meantime we're going
22 to take a break. Sorry for those who are going to stay for
23 public comment, but this is going to account for dinner.

24 And I anticipate some of the Intervenors may not
25 stick around for public comment, but you also have the option

1 to have a more leisurely dinner from what's available in the
2 room and, you know, sit in the back of the audience, wherever
3 you want.

4 But absent -- except for Ms. Valencia, that'll
5 conclude our testimony for today, and we want to be ready to
6 start up public comment at 5:30. So I will try to rally all
7 the troops a little bit before 5:20 and then we will finish
8 up with her in that 10-minute period and go right into public
9 comment. So we are in recess for -- until about 5:20.

10 (Off the record at 5:03 p.m.)

11 (On the record at 5:22 p.m.)

12 HEARING OFFICER KRAMER: Back on the record with
13 our last witness of the day, Irene Valencia, and I need to
14 swear you in. If you could raise your right hand.

15 MS. VALENCIA: Okay.

16 HEARING OFFICER KRAMER: I'm not sure why right,
17 but it's what we do.

18 MS. VALENCIA: I'm having a hard time --

19 (Whereupon, Irene Valencia, duly sworn.)

20 HEARING OFFICER KRAMER: Thank you.

21 DIRECT TESTIMONY

22 MS. LAZEROW: Good afternoon, Ms. Valencia. Could
23 you please state and spell your name for the record?

24 MS. VALENCIA: Yes. Irene, I-r-e-n-e, last name
25 Valencia, V-a-l-e-n-c-i-a.

1 MS. LAZEROW: Thank you. Are you sponsoring CEJA
2 Exhibit 6001, your testimony, into evidence?

3 MS. VALENCIA: Yes.

4 MS. LAZEROW: Great. Do you have family here in
5 Oxnard?

6 MS. VALENCIA: Yes, I do.

7 MS. LAZEROW: I'm sorry. I meant to ask first, how
8 long have you lived in Oxnard?

9 MS. VALENCIA: My entire life, 27 years.

10 MS. LAZEROW: And you have relatives here?

11 MS. VALENCIA: Yes.

12 MS. LAZEROW: As well?

13 MS. VALENCIA: Yes, I do.

14 MS. LAZEROW: Would you like to summarize your
15 testimony for us?

16 MS. VALENCIA: Sure. I have family members that
17 live throughout the entire region of Oxnard and in particular
18 an aunt, uncle and three cousins that lived off the Ormond
19 Beach for several years, and now live off of the Mandalay Bay
20 area.

21 And all three of my cousins, aged 20, 19 and 15,
22 ride their beaches [sic] back and forth to Mandalay off of
23 Fifth Street. All three suffer from asthma, some younger and
24 have had to be treated at a hospital for their asthma, and
25 another one that was more recently diagnosed with it and has

1 had difficulties with that.

2 In addition, I have sisters and my mother who have
3 severe allergies, and I do suffer from migraines, as well.

4 And when I provided my testimony I stated that, you know,
5 several people could say, oh, yeah, your migraines are due to
6 stress, but I would say that I've suffered from migraines
7 past the area of, you know, being stress.

8 It's, you know, I could be living a very relaxed
9 and -- my migraines are due to the pollution that I am
10 interacting with on a day to day basis in the area that I
11 live in. And I know that a lot of the health effects that
12 children in this community go through are related to the
13 pollution that we are exposed to from the power plants and
14 things of that.

15 MS. LAZEROW: Thank you. So in your testimony you
16 talked about pollution from the power plants and pollution
17 from other sources, as well. Did you want to talk about any
18 of your experience with different sources of pollution in the
19 area?

20 MS. VALENCIA: Yeah. I actually went to Ocean View
21 Junior High. It's surrounded by agricultural fields, and I
22 know during P.E. time we would have to run adjacent to the
23 fields that were around us. So I know that there's a lot of
24 pesticide exposure in that area, as well as other schools in
25 Oxnard.

1 And currently, in my professional experience of
2 serving -- I'm sorry -- serving students K through 12 that
3 have emotional disabilities and are receiving IEP services, I
4 have interacted with students from all parts of Ventura
5 County, Simi Valley, Westlake, Oxnard Fillmore, Ojai, and I
6 would say that based on my judgment the students on the east
7 part of the county suffer from a lack of love and students in
8 this region of the county suffer from a lack of resources,
9 and adding another power plant is only going to continue to
10 hinder the opportunity for these students to have the
11 resources to have a healthier life and to not be exposed to
12 these pollutants anymore.

13 MS. LAZEROW: Thank you. Is there anything else
14 you wanted to add? I have no further questions for you.

15 MS. VALENCIA: Just, you know, going along with a
16 lack of resources that our community is faced, with I think
17 it's time the NRG presented themselves no longer as the enemy
18 and the bad person, but as the contributor to our society
19 where they can offer resources.

20 And I think it would be great to bring down the
21 current power plant and instead maybe build a facility where
22 it's, you know, a summer camp for students to learn about
23 renewable energy and more positive ways of providing energy
24 to our communities.

25 MS. LAZEROW: Thank you.

1 MS. VALENCIA: Thank you.

2 MS. LAZEROW: I have no further direct questions.

3 HEARING OFFICER KRAMER: Thank you. Dr. Chang, any
4 questions?

5 MS. CHANG: No. In the interest of time I'm happy
6 to let this stand.

7 HEARING OFFICER KRAMER: Thank you.

8 MS. VALENCIA: Am I free to go?

9 HEARING OFFICER KRAMER: We have three minutes.

10 COMMISSIONER SCOTT: You want to start comment?

11 HEARING OFFICER KRAMER: Yeah. We can start public
12 comment.

13 MS. LAZEROW: I don't think anyone had asked for
14 cross-examination for Ms. Valencia.

15 HEARING OFFICER KRAMER: Correct. Just Dr. Chang
16 put potentially, and she waived hers.

17 MS. VALENCIA: Okay.

18 HEARING OFFICER KRAMER: So we can begin our public
19 comment section. First, I need to issue a reminder. The
20 Energy Commission values and encourages public participation
21 in its proceedings. Participation has two parts: the
22 public's ability to speak to the Committee, and also, the
23 ability of others to hear what you and other people are
24 saying.

25 During the evidentiary hearing today and during

1 tonight's public comment portions of today's meeting there is
2 an expectation that everyone present maintain standards of
3 decorum. And what that means is that no person shall be
4 permitted to interrupt Committee members or other speakers.

5 No person shall engage in behavior that disrupts
6 the orderly conduct of the meeting, including but not limited
7 to, using threatening language, continuously making sounds
8 that inhibit the ability of others to participate in the
9 meeting and hear the meeting content, or using actions,
10 attire, props or signage that obstructs the view of meeting
11 attendees.

12 If these behaviors occur, the presiding member has
13 the authority to issue a warning. If the disruptions
14 continue the presiding member may order the disruptive person
15 to leave the meeting. If that person does not leave, the
16 presiding member may call a recess of the meeting, may clear
17 the meeting room or may seek the assistance of security or
18 law enforcement to enforce the Rules of Decorum.

19 If order cannot be restored, the presiding member
20 may continue this meeting to another day, time and/or place.
21 To facilitate the orderly receipt of your comments we again
22 ask you to fill out a blue card. It's available from the
23 public adviser at the table in the corner with the yellow
24 tablecloth.

25 When the presiding member calls your name from the

1 card please promptly come to the microphone and then promptly
2 conclude your comments when your time is expired. And she
3 will likely call two names in a row. So if the second person
4 could start to make their way to the podium, that would be of
5 even more assistance.

6 Failure to yield the podium at the end of your
7 allotted time is also considered behavior that disrupts the
8 orderly conduct of the meeting. And with that, we are ready
9 to go with public comment.

10 COMMISSIONER SCOTT: Okay. Welcome, everybody. We
11 are looking very much forward to hearing from you. I'm going
12 to start with Allison Majinot, I think, and then she's
13 followed by Allegra Roth.

14 MS. MAJINOT: Good evening. I'm Allison Majinot,
15 here on behalf of Senator Hannah-Beth Jackson. From the
16 start, Senator Jackson has been opposed to the Puente Power
17 Project, given its proposed shoreline location on the
18 Mandalay Bay and in the City of Oxnard, a community of color
19 disproportionately impacted by pollution.

20 The senator will be here on Thursday to share her
21 thoughts and to strongly encourage the California Energy
22 Commission to pause this process and reevaluate the need for
23 this facility. Thank you.

24 COMMISSIONER SCOTT: Thank you. My next commenter
25 is Allegra Roth, followed by John Zaragoza.

1 MS. ROTH: Good evening. My name is Allegra Roth.
2 I'm here on behalf of Assembly Member Monique Limon, who
3 today issued the following statement of opposition to the
4 Puente Power Project. "After meeting with all stakeholders
5 it is clear that the Puente Power Project does not align with
6 the vision the City of Oxnard has for its future.

7 "With ongoing concerns voiced by the community and
8 new questions brought to light, we must reassess the need for
9 another power plant in an area saddled with more coastal
10 power plants than any other city in the state. As California
11 moves towards an ambitious renewable energy economy we must
12 not forget the communities that continue to bear the
13 environmental impacts of fossil fuels."

14 The assembly member hopes to be here on Thursday to
15 voice her opposition in person. Thank you.

16 COMMISSIONER SCOTT: Thank you. We have our public
17 adviser will read remarks from John Zaragoza, and that will
18 then be followed by Mike Stubblefield.

19 MS. MATTHEWS: "Good evening. I'm Ventura County
20 Supervisor John Zaragoza. I represent the Fifth District of
21 the County of Ventura, which covers most of Oxnard and our
22 coastline known as the Oxnard Shores, Mandalay Bay, Silver
23 Strand, Hollywood Beach, Hollywood by the Sea and Channel
24 Islands Harbor.

25 "I'm here as a citizen of Oxnard. I'm a native

1 county resident. I have raised my family here and we have
2 enjoyed our coastline for many years and are working hard to
3 improve it as we move forward with opposing a new power
4 plant. Tonight I would like to resubmit my opposition to the
5 NRG Puente Power Plant in Oxnard.

6 "Let me begin my previous letter. I am not in
7 support of a fourth power plant in Oxnard's beautiful
8 coastline. Oxnard is a working class community with a 70
9 percent Latino population. Let me repeat that, 70 percent
10 Latino population.

11 "Over the years we have been continuously plagued
12 by environmental injustices and undesirable industrial uses;
13 three power plants. We host three landfills and the Halaco
14 Superfund Site, which for years has caused our wetlands and
15 Ormond to suffer.

16 "Today, Oxnard is again left behind and ignored by
17 two state agencies: the California Energy Commission and the
18 California Public Utility Commission. Oxnard already has
19 three power plants on its unique and environmentally
20 sensitive coastline.

21 "The same agencies are considering approval of a
22 fourth natural gas power plant. The Commission continues to
23 ignore the existence of these power plants on our coastline
24 without future plans of removal, consideration of safety
25 hazards to our air or acknowledging concerns about how much

1 of an eyesore these plants are for our coastal assets.

2 "Again, I ask, why is Oxnard being forced to
3 continue the burden of 50 years of power plant energy
4 production for the whole region? We are not a dumping
5 ground. Enough is enough. We demand environmental justice
6 for Oxnard.

7 "Oxnard residents are working to improve and
8 conserve our beloved coastal assets. Why should we be forced
9 backwards like this? When it comes to treasuring assets in
10 Oxnard, disadvantaged communities are not any different than
11 privileged communities. We love our beaches, too.

12 "During the time when California's making great
13 progress towards cleaner and renewable energy it's not
14 unreasonable for our community to strive for and even expect
15 cleaner and more renewable sources of energy. Lastly, enough
16 is enough. Please help Oxnard preserve our precious
17 coastline for our future generations to enjoy. Our
18 children's children deserve it. Respectfully, John C.
19 Zaragoza, Supervisor, Fifth District."

20 COMMISSIONER SCOTT: Thank you. I have Mike
21 Stubblefield, followed by Judith Duncan -- Dugan. Mike, are
22 you here?

23 MALE SPEAKER: I think he left.

24 COMMISSIONER SCOTT: Okay. I have Judith Dugan,
25 followed by Mark Spellman.

1 MS. DUGAN: Thank you to the CEC for these
2 opportunities for our public comment. I'm Judy Dugan. I'm a
3 local resident. The information that we've heard tonight and
4 the testimony makes it clear that the need for this power
5 plant is minimal or even negative.

6 NRG is arguing on behalf of a Model T in the age of
7 Tesla. As demand declines and alternative energy becomes
8 cheaper and abundant, energy companies like NRG continue to
9 look backward, because that is where their profit is
10 greatest.

11 This profit motive is described in excruciating
12 detail in the L.A. Times investigation of California's power
13 glut. Not building a plant at all is the worst outcome for
14 NRG and the best outcome for Oxnard and its residents. It is
15 also best for ratepayers who will not have the cost of
16 building this unneeded power plant added to their monthly
17 bills for years.

18 NRG clings to old data and on demand and available
19 supply because it must for its stockholders. We urge the CEC
20 to put at least a hold on this proceeding while NRG's request
21 is reevaluated on the basis of current data and the
22 likelihood that the new plant will end up sitting idle,
23 rusting away while ratepayers pay. Thank you.

24 COMMISSIONER SCOTT: Thank you. I have Mark
25 Spellman, followed by Sherry [sic] Godwin. And just a

1 reminder before Mark starts. If you're here and you'd like
2 to make a comment, please be sure you get a blue card. Our
3 public adviser's back at the yellow table and she'll bring
4 those up to me and that's how we know you'd like to comment.
5 Please go ahead, Mark.

6 MR. SPELLMAN: Thank you, and thank your staff for
7 coming down again to hear fair and honest testimony from all
8 concerned and for sharing the technical aspects of this
9 project that will benefit the community. I hope the staff
10 understands the importance of this project to the City of
11 Oxnard and to Ventura County, not just to a small number of
12 vocal constituents that have their eyes shut and ears to some
13 well-drafted proposals NRG has brought forth.

14 I'm an immediate past president of my Rotary Club
15 of Oxnard here where I've been a member for 13 years. I'm
16 now serving my fourth year on the Oxnard Chamber Board of
17 Directors, and I work downtown Oxnard for Lazer Broadcasting.
18 It's a 100 percent minority-owned broadcast station that
19 represents Hispanic language, solamente, and I'm a long-time
20 homeowner and resident in Ventura County.

21 As a community leader I have seen the positives
22 that NRG has had on bettering our community. Therefore, I
23 strongly feel your staff should recognize NRG as a good
24 partner to our Oxnard community. Aside from supplying Oxnard
25 with city power, NRG takes an active role in being a part of

1 our community through helping our youth, with the Greater
2 Oxnard and Port Hueneme Boys and Girls Club, and they also
3 take an active role in our city's special events, including
4 our Oxnard Salsa Festival and the California Strawberry
5 Festival.

6 NRG is a true member of our community and cares
7 about making impacts that will help our Oxnard community grow
8 and succeed. And it's not an additional fourth power plant.
9 It replaces two much larger plants, and there's a
10 misconception, even in my office at work, that we're adding
11 power -- they're adding power plants.

12 No. It's Puente, which means bridge, and it's a
13 stopgap measure, because we can't rely on new energy sources
14 only. I grew up in the San Fernando Valley, and if we have
15 an earthquake there do you think anyone in Ventura County's
16 going to get energy if we don't have something here to insure
17 our own constituents have something?

18 The Puente Project before you will provide much
19 needed city power and much needed revenue. It offers a
20 flexible, efficient approach to meet our power needs, and
21 upon its approval will also lead to the demolition of those
22 two existing power plants on Mandalay Bay. To me it's a win,
23 win, win. Thank you very much for your time.

24 COMMISSIONER SCOTT: Okay. I have Shirley Godwin,
25 followed by Steve Nash.

1 MS. GODWIN: My name is Shirley Godwin. I'm a 55-
2 year resident of Oxnard and I've had very long-time interest
3 in our coast. Our own home is due north of the Ormond Beach
4 Power Plant. Every day when I go out to get my newspaper I
5 look down the street and there the power plant is.

6 We moved in at the same time it was under
7 construction and we were kept awake at night as they tested
8 it, and I've just had a long-time interest in what happens on
9 our coast. And this community went through quite an ordeal
10 over several years back in the '70s and then in the early
11 2000s with numerous LNG, liquified natural gas proposals I
12 was very involved in.

13 Did a lot of studying on my own. I've read all of
14 the postings on this project on the docket, and I've attended
15 all of these meetings. Something that really bothers me that
16 has really come out today is this term "reliability," that we
17 need this Puente Project for reliability.

18 And this is what we've heard in NRG's presentations
19 in the community. The problem is, if you're going to have
20 another peaker plant, do you want it located beside two
21 existing peaker plants. Unit 3 of the Mandalay Plant is
22 staying.

23 They say they need it for reliability. Okay. The
24 Edison McGrath peaker is right -- almost right beside it.
25 They need that for reliability in case of a disaster. Now,

1 you're going to put the third one. Where are you going to
2 put it? Right by the other two.

3 What if we have a tsunami? All three peakers would
4 be in the same place. What kind of reliability is that?
5 There's no backup there. It just doesn't make sense to have
6 three peakers serving the same thing in the same location.

7 If we need some backup reliability, put it in a
8 different location where it really would be a backup. The
9 other thing that really bothers me was said today. You were
10 talking about how much power supposed to have, what is
11 available.

12 It appears that the Staff did not know that NRG
13 planned to keep Unit 3. The community was deceived for quite
14 a while, but I was at a meeting, something called the Ormond
15 Beach Task Force, about a year ago and a representative of
16 NRG said, when we were talking about this and the impact on
17 our beaches, he says, oh, by the way, we're going to keep
18 Unit 3.

19 But what I understood from testimony today was that
20 the calculations on how much additional power is needed were
21 based on the assumption that Unit 3 would not remain. So I
22 urge you to support the No Project Alternative.

23 COMMISSIONER SCOTT: Thank you. I have Steve Nash,
24 followed by Martin A. Rodriguez.

25 MR. NASH: Thank you, Energy Commission. Welcome

1 back to Oxnard. Some facts from the L.A. Times article. I'm
2 sure you've all read it and y'all know that. "The Sutter
3 Energy Center closed after only 15 years because its power
4 was not needed.

5 "Colusa has operated far below capacity since
6 opening. Californians are paying a higher premium for their
7 utility supplied electricity. The gap is now -- has doubled
8 to nearly 50 percent more than what the rest of the nation
9 pays. Californians use 2.6 percent less electricity than we
10 did in 2008.

11 "California residential and business customers are
12 paying \$6.8 billion more than they did in 2008. State
13 regulators have approved higher rates for years to come so
14 utilities can recoup the expense of building and maintaining
15 the new plants, transmission lines and related equipment,
16 even if the power isn't needed."

17 So it's my understanding that the return on
18 investment is 10½ percent. That's a pretty sweet deal, even
19 if they don't have to -- even if their power isn't needed.
20 We're on a course to have a 21 percent cushion of excess
21 electricity when we only need a 15 percent, and some say it's
22 even less -- that you can get by on less than that.

23 And this doesn't count the soaring production of
24 electricity by rooftop solar panels. Loretta Lynch, a former
25 president of the PUC, stated, "We're awash in power at a

1 premium price." The California electric utilities are
2 typically guaranteed a rate of return of about 10½ percent.

3 As I said, this is a pretty sweet deal and the
4 power isn't even needed. Other natural gas plants, once
5 heralded as the saviors of California energy, troubles have
6 found themselves the victims of a power glut. Independent
7 power producers have announced plans to sell or close the 14-
8 year-old Moss Landing Power Plant, and the 13-year-old La
9 Paloma facility in Kern County.

10 Former PUC Commissioner Mike Florio stated, "Put
11 simply, for the foreseeable future we have more power plants
12 than we need." Most of the new plants that regulators
13 approved also operate at below 50 percent of the generating
14 capacity.

15 Please do not approve this dinosaur. Let's move
16 towards new technology. Let's move towards solar, battery
17 storage, wind, whatever it takes. It's ridiculous that we're
18 even discussing this. This is California. We should be
19 leading the world in alternative energy, and not commit
20 ourselves to the failed and dying fossil fuel dynamic that
21 NRG represents. Thank you.

22 (Applause)

23 COMMISSIONER SCOTT: Thank you. I have Martin A.
24 Rodriguez, followed by Lauraine Effress.

25 MR. RODRIGUEZ: Good evening. I'm Martin A.

1 Rodriguez, business agent, Ironworkers Local 433 and
2 President of the Tri-County Building Construction Trades, and
3 we approve of this project. We definitely support this
4 project. As rep for the building trades, I know it brings
5 opportunities to communities.

6 I'm looking at them right there. These kids that
7 are coming out of apprenticeship trades, this is what these
8 powerhouses provide, and I'm all about alternative energy
9 sources, also, but we're not there. You guys have heard all
10 this before. It's a good project.

11 It is the bridge that this county needs, as well as
12 the rest of the state, to bring in sustainable energy here.
13 It's been in the paper. The largest solar energy plant in
14 the country's going to be built in New Mexico, but we got no
15 way of getting it here.

16 Ironworkers and the building trades will build that
17 also, but we're not there yet, because then you got to build
18 a power grid, which is also in the works. 2025 is the
19 earliest we're going to have any of this. We need this power
20 plant. It is the bridge to the future. Thank you.

21 COMMISSIONER SCOTT: Thank you.

22 (Applause)

23 COMMISSIONER SCOTT: Thank you. I have -- so let's
24 -- just to make sure we can all hear each, if you don't mind
25 keeping the applause down just a little so that we can make

1 sure we all can hear one another as we go along. I have
2 Lauraine Effress, please, followed by Shaun Gallagher.

3 MS. EFFRESS: Good evening and thank you for
4 allowing the public testimony. I'm going to testify on the
5 No Project Alternative. I've talked about this from day one
6 when we started with NRG and the PUC that we did not need
7 this plant, and that it is the past and not the future.

8 It seems that NRG wants to build an Edsel -- Google
9 it if you don't know what an Edsel is -- and not a bridge.
10 Tesla battery storage system is perfected to the point that
11 home storage at a reasonable price is closer in time than
12 would be the finished peaker.

13 Michael Picker, PUC chair, says the pace is so fast
14 the regulators cannot keep up. The L.A. Times Investigative
15 Findings, February 5th, 2017, reveal that California has a
16 power surplus that by 2020 will produce 21 percent more power
17 than the state needs.

18 Rates in California are sky high, one of the
19 reasons being plants are operating below capacity due to
20 surplus. Yet we have to cover the costs of building them and
21 maintaining them when they're not needed. There's also a
22 proposal that's been in the news that our governor has
23 endorsed from Warren Buffet to bring wind power from Wyoming
24 through a regional transmission grid.

25 The proliferation of rooftop solar, which has

1 decreased in price to the point of being feasible for the
2 average homeowner, is supplemented by the utilities, such as
3 Duke and Xcel. These companies are getting into community
4 solar or shared solar across 32 states where customers buy or
5 lease panels, or just buy the power they produce the same way
6 they buy power now.

7 I've spoken before about Diablo Canyon, which
8 serves a million homes, is closing with no fossil fuel to
9 replace it, only renewables. In fact, two-thirds of the new
10 power generation in the country in 2016 was from wind and
11 solar.

12 Even if our president succeeds in making the
13 country second-rate again by bringing back coal, the cost of
14 coal will no longer be able to compete with the dwindling
15 cost of these renewables, which seem to be pulling even in
16 cost at this present moment with natural gas.

17 NRG, as the other utility companies of its kind,
18 are well aware of this information. They simply want to grab
19 the money while it still exists and are indifferent to the
20 distress and blight it will cause our city. NRG claims it's
21 building a Tesla -- everyone is saying that -- and a bridge,
22 but in fact, for the next 30 years it would be constructing
23 an Edsel that would be sitting on our beach.

24 And to the CEC I would say that you need to use
25 your vision and your eyesight to look forward. Otherwise,

1 you're going to be sitting there with a black eye. Thank
2 you.

3 (Applause)

4 COMMISSIONER SCOTT: Thank you. I have Shaun
5 Gallagher, please, followed by Julie [sic] Orlando Chacon
6 Serataneo (phonetic). I think I got that right. Shaun
7 Gallagher, please.

8 MR. GALLAGHER: Good evening.

9 COMMISSIONER SCOTT: Good evening.

10 MR. GALLAGHER: My name is Shaun Gallagher. I'm a
11 local resident and a local worker and I'm here to support
12 this project. Thank you.

13 COMMISSIONER SCOTT: Thank you. I have --

14 (Applause)

15 COMMISSIONER SCOTT: -- I'm sorry -- not Julie,
16 Josie Orlando Chacon Serataneo, followed by Jorge Toledono.
17 Oh, not Josie; Jose. I'm sorry.

18 MR. CHACON: Good evening. My name is Jose Chacon,
19 and I am a senior at Hueneme High School. I am part of the
20 Cause Youth Group, and I have lived in Oxnard since
21 kindergarten. I'm here to speak on behalf of my neighbors,
22 my friends, family, and those who cannot come here today to
23 speak about their concerns against a new power plant.

24 We are suffering from environmental racism. My
25 community is mainly composed of Latinos and we come from a

1 low income background. NRG has taken advantage of our
2 circumstances by building more power plants in our home. NRG
3 has built power plants in our home because they seek greater
4 profits.

5 They have no concern for the welfare of my
6 community. Oxnard has higher rates of asthma than over 90
7 percent of California. We deserve cleaner air and NRG isn't
8 prioritizing our health or community needs. Instead, they
9 plan to contribute to the pollution and harm us more.

10 NRG should abandon its obsession with fossil fuel
11 and use cleaner forms of energy that will not harm my
12 community's health. Stop making Oxnard the sacrifice zone.
13 This injustice has to end. We demand clean air now. Thank
14 you.

15 COMMISSIONER SCOTT: Thank you.

16 (Applause)

17 COMMISSIONER SCOTT: I have Jorge Toledono,
18 followed by Rob Ehlers.

19 MR. TOLEDONO (Through Interpreter): My name is
20 Jorge. I am a fieldworker and we're working 200 feet from
21 the electric plant. We get our lunch there. We eat nearby.
22 California is a much richer state. Our economy is in the
23 sixth place in the world.

24 Why do we want another power plant? If California
25 is the richest state, because of agriculture. And I ask

1 myself, why here, why Oxnard. Why don't they go to Malibu or
2 Santa Monica? Why? Why here in Oxnard. Just like my buddy
3 over here said, more than 90 percent of our children have
4 asthma.

5 And I ask myself, why here in Oxnard. We already
6 have three plants. What we need is clean air for our
7 children. That would be the only way we could have a future
8 for our children. Perhaps we're migrants and that's why you
9 don't listen to us, but we, the migrants, make this country
10 great.

11 And for the State of California, migrants is what
12 makes California great so that it occupies the sixth place in
13 the world in economy. We have no voice. We have no vote,
14 because you do as you please. And you don't care because you
15 don't live here. We live here. We work day after day. We
16 just want clean air for Oxnard. Thank you.

17 (Applause)

18 COMMISSIONER SCOTT: Thank you. I have Rob Ehlers,
19 followed by Paul Valdez, please.

20 MR. EHLERS: My name's Rob Ehlers and I'm a local
21 community member and I support this project. Thank you very
22 much for your time.

23 COMMISSIONER SCOTT: Thank you.

24 (Applause)

25 COMMISSIONER SCOTT: I have Paul Valdez, followed

1 by Tomas Williams. Paul, are you still -- oh, I see you.

2 MR. VALDEZ: My name's Paul Valdez. I'm like sixth
3 generation here in Ventura County, and I hear this about not
4 wanting this power plant. You're getting something, not an
5 extra one, but a better one, more efficient, and it's kind of
6 hard to understand. I approve this project and I think it's
7 good for Oxnard. I think it's good for Ventura County.

8 Thank you.

9 COMMISSIONER SCOTT: Thank you.

10 (Applause)

11 COMMISSIONER SCOTT: I have Tomas Williams,
12 followed by Kitty Merrill.

13 MR. WILLIAMS: My name is Tomas Williams. I'm also
14 a local community member, and I approve this project.

15 COMMISSIONER SCOTT: Thank you.

16 (Applause)

17 COMMISSIONER SCOTT: I have Kitty Merrill, followed
18 by Jeremy Meyer.

19 MS. MERRILL: Hi. My name is Kitty Merrill. I'm
20 an Oxnard resident for more than 30 years and I'm also a
21 member of the Unitarian Universalist Church of Ventura, and
22 I'm speaking on behalf of our Environmental Action Group and
23 Social Action Group against this project.

24 We have so many things that are going on in this
25 world, it's hard to remember that we've got to keep our eye

1 on our local community, keep our eye on what California
2 needs. Puente Power Plant's Proposal is old technology,
3 unnecessary technology, and we're learning more about that
4 day by day with newspaper reports from the L.A. Times and
5 from our Ventura County Star.

6 As the cost of renewables continues to drop, as the
7 cost of battery technology continues to drop and the
8 technology itself gets better and better, the forces indicate
9 this is not the time to be building a fossil fueled power
10 plant.

11 We need to be looking toward the future and toward
12 the things that are going to make our earth a better place.
13 We want to have great technology here and we want to have the
14 workers building things with technology that are going to
15 meet the needs of our future.

16 Additionally, the choice of location is
17 inappropriate, both in consideration of environmental justice
18 to the people who live here. The people of Oxnard suffer
19 through particulate matter with pollution from pesticides,
20 and adding insult to injury, another power plant is not fair.

21 Mitigation only goes so far. In addition, the
22 seaside location is subject to sea level rise, and as we've
23 been seeing from the weather this past year, it's -- weather
24 is unpredictable now and sea level rise is not something that
25 is something that we can predict or bank on.

1 Additionally, as a wetland the off-put from the new
2 power plant in the reconfigured design has not been studied
3 adequately to know how it would affect endangered species or
4 other wildlife of the wetlands. Please act for Oxnard. Act
5 for all our futures. Please say no to this plant.

6 (APPLAUSE)

7 COMMISSIONER SCOTT: Thank you. I have Jeremy
8 Meyers followed -- Jeremy Meyer, followed by Tomas Rebecchhi.

9 MR. MEYER: Good evening, Commission. My name is
10 Jeremy Meyer. I'm a resident of Oxnard for -- and Port
11 Hueneme for 18 years. My wife and my daughter were both born
12 and raised here. I won't speak about the environmental
13 racism and environmental justice side of it. I think that's
14 been thoroughly discussed.

15 I has a master of public health and I run the
16 health services for Child Development Resources of Ventura
17 County. So I oversee the health of 1200 children in very low
18 income situations, and I see the rising asthma rates. I see
19 the rise in allergies and other respiratory illnesses.

20 But what I wanted to talk to you about was looking
21 the way forward in terms of energy. I know the L.A. Times
22 articles has explained the lack of need very well, and I hope
23 you guys will pay attention to that closely. Besides working
24 in public health I've worked in the solar industry.

25 I helped to sell solar rooftop for homeowners.

1 Sold about 100 systems for homeowners, and I saw the
2 expansive growth in that industry, the jobs that were
3 created. It was tremendous for all levels of workers,
4 installers, electricians, administration, sales.

5 It was fantastic, and to see the grown happening,
6 not only for homeowners, but school districts taking
7 advantage, businesses taking advantage. Kohl's has a huge
8 array, Target, Costco, and then you see the military taking
9 advantage.

10 So that's the direction we're moving forward. I
11 just drove through Antelope Valley this weekend and I saw
12 massive solar arrays there, one a 266-megawatt solar array
13 in, you know, the vast desert there; a huge solar -- a huge
14 wind farm, as well, right nearby, and that's just one area.

15 This is the direction that we're moving forward.
16 Personally, I am fortunate enough to have solar on my home.
17 I didn't pay a dime for it. I just pay lower electricity
18 costs because of it, about 40 percent less than I would to
19 Edison, and are able to sell power back to Edison, as well.

20 And my home is not unusual. My situation's very
21 typical, living here in Oxnard, and most homeowners could
22 take advantage of a similar situation. Every homeowner
23 decreases the need for power by doing so. That doesn't even
24 get into energy efficiency work, what can be done to reduce
25 the need for power, which is the top priority, I know for our

1 state and for our country as we move towards energy
2 independence.

3 So I hope you'll consider those things. I'm
4 encouraged by the news and the new testimony that's -- will
5 cause y'all to rethink the need for this power plant and to
6 move forward in alternative directions for the benefit of our
7 state. Thank you.

8 (Applause)

9 COMMISSIONER SCOTT: Thank you. I have Tomas
10 Rebecchhi, followed by Ken S.

11 MR. REBECHHI: Hello. My name's Tomas Rebecchhi,
12 and I'm the local Ventura County Organizer for Food and Water
13 Watch, and I want to thank y'all for coming out again and
14 listening to us. I've been living here for three years.
15 When I first moved to Oxnard and been coming to a lot of
16 these hearings, first just as a resident, but now part as an
17 organization that opposes this project.

18 And I think we've already mentioned the L.A. Times
19 article a lot. So I won't get into too much, but it's
20 amazing how much solar has grown just in the past couple
21 years. And the U.S. Department of Energy just released their
22 stats last week, you probably all know this, too, that solar
23 employs more people in electricity generation than oil, coal
24 and gas combined, and that's in the U.S. and California also.

25 And there's been a 5000 percent growth in solar.

1 In that time natural gas only grew 30 percent. This bridge
2 fuel that's supposed to be this magic bridge fuel is a bridge
3 to nowhere, because we see that natural gas is still hurting
4 people from Aliso Canyon to here.

5 So I think demand -- we already talked about this -
6 - demand has been decreasing, too. So why do we need these
7 projects. The bidding process was very behind the scenes and
8 shady and I think we've brought this up a lot in the past,
9 and our local elected officials are taking the lead and
10 saying that we need to reopen this bidding process, because a
11 lot of renewable contracts were not renewed.

12 So this is all stuff you've probably all heard
13 before. So I don't want to -- I don't have some magical stat
14 or legal argument that's going to change your mind. Usually,
15 I'll come with like a more well prepared statement than this,
16 but I just wrote this before I came here today because I
17 really don't know what else we can say or what other
18 arguments we can say.

19 We're living in a pretty crazy time, and I think we
20 could all say that, to say the very least, and people are
21 really going to look back to what we're doing now and ask
22 what we did to stand up to injustices and what we did to stop
23 the perpetuation of environmental racism and the destruction
24 of our planet.

25 And yeah, I want to be able to answer that I stood up

1 and I said no, we don't need this, and so y'all maybe
2 approved this project. It might already be approved and
3 we're just speaking to a bunch of deaf ears. But it might be
4 a temporary victory, but we're going to continue to fight
5 this tooth and mail, legally through direct action, creating
6 our own Standing Rock here, because that movement was started
7 by the youth.

8 This movement is led by the youth. I don't see one
9 youth here tonight speaking out in favor of this -- oh,
10 maybe. Maybe she's getting paid off or something, but I
11 don't want to undermine here. But I'm just saying, the
12 majority of the youth have spoken.

13 They don't want this. They've been dumped on for
14 too long. So yes, I want to say I think it's time we stand
15 up and start listening to the will of the community, the City
16 Council, everyone around us, the youth, and Oxnard will no
17 longer be a sacrifice zone. This is an injustice that has to
18 end today and we demand clean air now. So thank y'all for
19 your time and we'll keep fighting.

20 (Applause)

21 COMMISSIONER SCOTT: Thank you. I have Ken S.
22 followed by Julie Pena.

23 MR. KEN S.: My name is Kenneth Schmelzel
24 (phonetic). I'm a local here, ironworker, apprentice. I'm a
25 marine veteran and I approve this project.

1 COMMISSIONER SCOTT: Thank you.

2 (APPLAUSE)

3 COMMISSIONER SCOTT: I have Julie Pena, followed by
4 Raul Lopez. And maybe while you're walking up let me remind
5 folks, if you're in the audience and you'd like to make a
6 comment, please be sure to fill out a blue card with our
7 public adviser.

8 She's here at the table that's yellow, and she'll
9 bring it up to me and that's how we know you'd like to speak.
10 So Ms. Lopez, please. All right.

11 MS. LOPEZ: Good evening, Commissioners. My name
12 is Julie Pena. I'm a beach community resident and also a
13 Cause board member, and I'm here to ask the Commissioners
14 that you stop making Oxnard the sacrifice zone. This social
15 injustice has to end.

16 You Commissioners, of all people, must know that
17 renewable energy is on the rise. You Commissioners, of all
18 people, must know that this is a soon to be antiquated energy
19 plant that NRG is proposing to build on our coastline. You
20 Commissioners, of all people, know that it has a limited
21 lifetime.

22 However, my understanding is that NRG stands to
23 benefit from this contract, whether or not the plant is being
24 utilized. You have heard from local officials, our city, our
25 county, our state. They all oppose this plant. So I'm

1 asking you to not approve this energy plant. Stop making
2 Oxnard the sacrifice zone. Thank you.

3 COMMISSIONER SCOTT: Thank you.

4 (Applause)

5 COMMISSIONER SCOTT: I have Raul Lopez, followed by
6 Erynn Smith.

7 MR. LOPEZ: Good evening, everybody. Nice to see
8 you again. I spoke with you guys not that long ago. Again,
9 I just want to, you know, pad what all these people are
10 saying. Oxnard is -- we're a humble community, ma'am. We're
11 full of workers.

12 We're full of people that are just trying to, you
13 know, work, feed our kids and have a life of some sort,
14 right? But after generations of this community getting
15 stepped on and getting dumped on, again, I'll say it again,
16 we do literally have gotten dumped on, right.

17 There was a dump on Victoria Road. We have three
18 power plants. We have the 90th percentile of asthma for the
19 entire State of California. I'm not here saying that the
20 cause of that 90 percentile is because of power plants, but I
21 am telling you that the power plants contribute.

22 So I'm here to tell you that this power plant in no
23 way is going to help our air quality, right. The only
24 possible effect it can have is a negative environmental.
25 It'll compound the negative factor on top of a community that

1 has already been -- is just tired. It's tired.

2 You'll be hard pressed to find anybody in this room
3 that is supportive of this that does not directly benefit
4 from this, okay. You will not find hardly anybody -- there's
5 always an exception -- but the majority of Oxnard is against
6 this, and the only people you will find speaking on this
7 microphone are people who directly benefit that'll approve
8 it, by a contract or by some money in their pocket or by some
9 form they will benefit, and it's obvious who those people
10 are. So I don't need to break that down anymore.

11 Now, it's again, like Tomas was saying, there's so
12 much we can say -- there's only so much we can say. I think
13 we've given all the arguments we could. Our City Council
14 unanimously against it. Senator Hannah-Beth Jackson, Monique
15 -- Assembly Member Monique Limon, Senator Henry Stern of
16 California, all against this.

17 So again, the only people that are for this,
18 obviously, the Applicant and obviously, people that are going
19 to benefit from the Applicant. So I'm here begging you guys
20 to hear the voices of the people. They're not monetarily
21 benefitting from this project.

22 Instead, hear from the people that you are leaving
23 this plant behind to deal with, because that's us. We have
24 to live here. We have to play here. We have to work here.
25 And again, I won't take my kids to the Oxnard Beach as long

1 as those plumes look like they're blending with the sky,
2 because you can't tell where the clouds end and the
3 smokestacks begin.

4 So again, if you guys had three power plants in
5 your community, 90th percentile for asthma in your
6 communities, I wouldn't come over there and shove it in your
7 face for a fourth. Thank you. Goodnight.

8 (Applause)

9 COMMISSIONER SCOTT: Thank you. All right. We're
10 going to ask, please, again that folks make sure we can all
11 hear each other. I'm going to go with Erynn Smith, followed
12 by Shannon Lopez.

13 MS. SMITH: I just found out I'm a millennial. So
14 of course, I'm going to use my phone. Good evening. My name
15 is Erynn and I'm with Ventura County Showing Up for Racial
16 Justice. I've attended these hearings over the past few
17 years, proudly witnessing the community and leaders of Oxnard
18 stand up for their health and the health of their coastal
19 wetlands.

20 I've witnessed this community take a stand with
21 farm workers and other community workers who have been
22 historically burdened and paying the consequences of
23 environmental hazards brought by profit-driven companies and
24 irresponsible city management.

25 I've been most amazed at Oxnard's youth, deeply

1 invested in the future of their community. The youth have
2 organized their community, including myself and other members
3 of SURJ VC to show up and actively build a healthier and more
4 just community.

5 Up to now I've just observed in these meetings.
6 What brings me to the podium today is indignation after
7 leaving about the California Public Utility Commission and
8 California Energy Commission's refusal to change its course
9 in building additional power plants despite a clear energy
10 oversupply in this state.

11 According to the Investigative Report in last
12 Sunday's L.A. Times article, PUC Commissioner Mike Florio
13 said, "For the foreseeable future we have more power plants
14 than we need." Yet here we are in this needless fight over
15 this power plant.

16 To members of the Commission, how can you justify
17 approving this plant when we are already well surpassing the
18 cautious 15 percent excess capacity required by the state?
19 According to the L.A. Times report, most of the big new
20 plants that y'all approved operate at below 50 percent of
21 their generating capacity, which means our rates go up and we
22 pay them not to use their power plants.

23 Listen to your own experts, accept your own data
24 and know your agency's own history of poor energy management.
25 It is clear, we do not need this plant. Stop making Oxnard

1 the sacrifice zone. This injustice has to end. We demand
2 clean air now. Thank you.

3 COMMISSIONER SCOTT: Thank you.

4 (Applause)

5 COMMISSIONER SCOTT: I have Shannon Lopez,
6 following by Mike De Martino.

7 MS. LOPEZ: Good evening. I'm Shannon Lopez and a
8 member of the community and I'm here to oppose this project.
9 We recently purchased a house here in Oxnard. I have taught
10 in this community. We have family that has lived here for
11 generations, and I am disappointed that with the evidence
12 that this power plant is needless and we do not need the
13 power, that we are going to be continuing forward.

14 And I would beg the Commission to look and see that
15 if it is not needed then an approval rate means that it --
16 for profit over people. I don't think that we need the
17 additional impact on our environment and on the toll it will
18 take medically on the people that live in this community.

19 I would also ask the Commission, if we are already
20 impacted by three power plants why is the site chosen to be
21 here and not in other communities. And I think the evidence
22 points to racial injustice, that we are a community that is
23 largely Latino.

24 We have people who are undocumented and are afraid
25 to speak out. I ask the Commission to stop making Oxnard the

1 sacrifice zone. This injustice has to end. We demand clean
2 air now. Thank you.

3 COMMISSIONER SCOTT: Thank you.

4 (Applause)

5 COMMISSIONER SCOTT: I have Mike De Martino,
6 followed by Josilan De Martino.

7 MR. De MARTINO: Hi there. If anybody's been
8 watching the news today, you notice there's another
9 billionaire appointed to our government. And as many people
10 that protested and didn't want that to happen, look what we
11 got. Look what's happened in the last two weeks.

12 We have as a secretary of state the CEO of Exxon.
13 What is going on in this country? I'll tell you what's going
14 on. There is a problem and it's called the energy oil
15 bubble, and what that means is that what these companies want
16 to do is inflate the value of their assets, oil and gas in
17 this country, by pushing through pipelines, building
18 facilities and closing down the EPA and shutting up our
19 scientists.

20 They're trying to shut down the environmental
21 movement. They're trying to shut down our move to clean
22 energy. Now, here we have this company, NRG, that if you go
23 to the Ventura County Fair and you'll see that you will see
24 that they have a booth there. And what are they selling?
25 Solar.

1 Oh, we're a great, wonderful solar, green energy
2 company. But when I talked to the man up in the front there
3 with the glasses, I think he's their local vice president,
4 about how come they're not putting any solar in here in our
5 community he says, oh, that technology isn't there yet.

6 It's not good. No. No. We got to go with these
7 gas plants. Okay. So now, here we are with this gas plant
8 that we don't need. Everybody's already established that.
9 And so now, instead of coming up with some better plan, if
10 NRG wants to be the friend of the community that they
11 supposedly are, they are a big solar company, we have plenty
12 of rooftops.

13 I'd be glad to see that we come up with some
14 easement allowing them to place a certain number of solar
15 panels on our roofs here that they'd get money for, and then
16 we can add on solar to that. They can have their energy
17 generation and we have ours, too.

18 We have clean air. We don't have a power plant on
19 the beach. We're able to get the use of the beach back and
20 develop other industries in our community. Thank you.

21 COMMISSIONER SCOTT: Thank you.

22 (Applause)

23 COMMISSIONER SCOTT: I have Josilan De Martino,
24 followed by Cali Piccirillo.

25 MS. DE MARTINO: Hi. My name is Josilan De

1 Martino. I'm in eighth grade. Oxnard already has three
2 power plants. So why do we need another one? If there's so
3 many things like renewable energy sources that we can use
4 like solar, why another, yet another one, like.

5 I'm 13 years old. I've lived on these beaches my
6 whole life. I go to these beaches every summer. I'm there
7 all the time. And the last thing I really want to see is
8 another power plant. And it's just sad. Like, if there's so
9 many things you can do, why dig into something that's so old
10 that does not need to be -- keep going with?

11 It's really sad, and seeing these people, the
12 community, trying to speak up against this and no one is
13 listening yet. Like I really urge you to say no to the power
14 plants. Thank you.

15 (Applause)

16 COMMISSIONER SCOTT: Thank you. I have Cali
17 Piccirillo, followed by Barry Gaynor.

18 MS. PICCIRILLO: All right. Hello and good
19 evening. My name is Cali Ann Piccirillo. Tonight I sit
20 before a table of very powerful individuals. I mean,
21 literally, I am standing in front of a power company, and the
22 gravity of that pun is not lost on me.

23 But I want you to think about that. You have the
24 power to create jobs that will not be at the expense of our
25 communities. Oxnard has been burdened enough in the name of

1 profit. I support jobs and our hardworking laborers in this
2 room and all over the country, but not at the expense of our
3 communities.

4 The air, waterways and land are not ours. They
5 belong to our children. So I ask the Commission, is it fair
6 to keep asking them to clean up our mess? We know better.
7 So we must do better. The market is speaking and it is
8 demanding renewable energy.

9 We do not need another power plant in Oxnard, and
10 therefore, I oppose this power plan. We demand clean air
11 now. Thank you.

12 (Applause)

13 COMMISSIONER SCOTT: Thank you. I have Barry
14 Gaynor, followed by Marie Claire De Martino.

15 MR. GAYNOR: Thank you for the chance to speak. My
16 name is Barry Gaynor. First, I admire the workers over
17 there, you guys over there. I also admire the migrant farm
18 worker. Probably the only body with a harder job in the
19 whole place, besides maybe police and nurses, is what I do
20 for a living.

21 I teach third grade, and as an Oxnard School
22 District teacher. But those guys working -- and like I said,
23 I mean that sincerely -- let's build something clean. I mean,
24 you need jobs now and I get it. I get it.

25 HEARING OFFICER KRAMER: You need to be speaking

1 into the mic or you won't --

2 MR. GAYNOR: But we --

3 HEARING OFFICER KRAMER: -- make it into the

4 transcript.

5 MR. GAYNOR: I appreciate it. They want their jobs

6 now, because clean energy is here now. Let's do it clean.

7 Also, the migrant worker, who is similar to a lot of the
8 parents of my students, who I admire very much, he said you
9 wouldn't listen.

10 And when I come up here I try to not say that even
11 though I respect what he said. I believe you will listen.

12 Last time I said I don't want to say that it's environmental
13 racism, because I don't know your heart. But they tried to
14 put a factory out in the ocean, an LNG factory between Malibu
15 and Oxnard and there was a huge -- we had Pierce Brosnan out
16 there, Laird Hamilton, the post-surfer.

17 At Malibu Pier we had big events and I noticed that
18 they didn't put a LNG factory in the middle of the ocean
19 between Malibu and Oxnard, and it was too close to Malibu.

20 It does make me wonder sometimes where they choose to put it.

21 The L.A. Times, I've been hearing, I see today bad
22 air effects on the rain. Research suggests a link between
23 pollution and dementia. With environmental regulations
24 expected to come under heavy fire with the Trump
25 administration, new research offers powerful evidence of a

1 link between air pollution and dementia risk, and cancer and
2 asthma and sickness.

3 And I get in trouble this year for telling a
4 student, hey, you're missing a lot of school, because I worry
5 and I got to get you caught up. So she went home, oh, the
6 teacher says I'm missing a lot of school. Mom called me and
7 said, look, she has severe asthma. She's missing tons of
8 school from this.

9 It's bad news for our place. And then the attorney
10 general, this was a letter in the L.A. Times, their Attorney
11 General Scott Pruitt to head the Environmental Protection
12 Agency. Pruitt disagrees with the basic instinct mission of
13 the EPA.

14 He's a shill for the oil and gas industries.
15 Unchecked global warming will make this planet unfit for
16 human life. When all the oil company customers and all their
17 employees are dead that's going to be really bad for
18 business.

19 Every few years we're out here. So let's do
20 something clean and I appreciate you considering my thoughts.
21 Thank you for your time.

22 (Applause)

23 COMMISSIONER SCOTT: Thank you. I have Marie
24 Claire De Martino, followed by Angela Whitecomb.

25 MS. DE MARTINO: Hello. My name's Marie Claire De

1 Martino and I'm 17 years old and I am a representative of the
2 Oxnard High School student body. And as an Oxnard High
3 School student I actually go to the school that's down the
4 street from the power plant that's right on the beach.

5 And I have lived my entire life watching this power
6 plant emit whatever it's going to emit into the air, and I'm
7 going to assume that it's not beneficial things for my lungs.
8 And as a student, we are led to believe that local community
9 government is where you have the most power.

10 And so with this speech, which I'm going to lay out
11 a few of my concerns, especially with this power plant, I
12 would like to find out if that is really where people have
13 the power. And so with that I would like to bring up the
14 most important cause for myself and I believe the rest of the
15 generations on this planet, and that is global climate
16 destabilization.

17 That is going to impact the entire planet, and not
18 just the poor people, not just people that live on the coast.
19 It is every, single individual and it will be affecting not
20 only our coastlines. It will be affecting the climate
21 differences and the legitimate -- so the climates in certain
22 areas will be shifting to something else.

23 And that is not necessarily how our planet should
24 be working, if it's happening at this rapid rate. You can
25 look up the facts if you need to. But I'm also bringing

1 forward ideas that are solutions to having -- instead of
2 having this power plant, which I am avidly against having
3 this power plant, I think it would be beneficial for not only
4 the representatives and the money that taxpayers put into the
5 Oxnard City Government.

6 I believe that money would be beneficial if we do
7 put it towards renewable energy, which are being vastly
8 improved at the speed of our technological development. And
9 I think if we know how rapid our technological development is
10 going we can assume that not only are solar and wind, but
11 possibly geothermal and numerous other forms of energy will
12 be improved so that the fossil, which is coal, gas and oil,
13 instead of using those resources for energy, which are
14 nonrenewable, we can be using resources which will be
15 resupplied every single day, which is through the sun, the
16 wind and numerous other ecological goings.

17 But my focus is on my peers and the people that
18 will be directly affected by this power plant, and hearing
19 about a lot of the asthma rates that have occurred within
20 this area, I do not believe it's necessarily beneficial to
21 have a power plant, which will be negatively impacting
22 people, their lungs, the way they are breathing, and now
23 pollution evidently has a connection to whether or not your
24 brain will get diseases.

25 And so I believe it would be the best possible

1 situation to put our money towards renewable energy where we
2 can build up our resources through that. So thank you.

3 (Applause)

4 COMMISSIONER SCOTT: Thank you. I have Angela
5 Whitecomb, followed by Elizabeth White.

6 MS. WHITECOMB: Good evening. My name is Angela
7 Whitecomb. I am a resident of Oxnard. I am a business
8 owner. I own a construction company here in town and I am
9 also a Commissioner on the Oxnard Parks and Rec Commission.
10 I just want to let you know I am also an asthma sufferer.

11 And every year it affects my ability to work, my
12 ability to parent. I still have two children that go to
13 Oxnard High School, and to just be a good citizen. It's
14 detrimental not only to my health, but to my family. As a
15 business owner I believe in smart construction.

16 I don't believe that all construction is going to
17 benefit the community. Obviously, I want the jobs. I'm one
18 of those people that are, you know, bidding for these
19 opportunities, but I don't think that it should come at a
20 cost to my children's future.

21 I would rather build more schools. I'd rather
22 build smart energy things. They've got these new tree -- I
23 don't know if you saw, but in front of the leaves -- that is
24 amazing. They're like pieces of art and they generate
25 electricity just by these beautiful leaves spinning.

1 And why can't we do that? Let's put our unions to
2 work putting trees all over our city, you know. They won't
3 be affected by the drought. Anyway, I'm also, as a Parks and
4 Rec Commissioner I fought really hard to protect Ormond Beach
5 and to have more open spaces.

6 I don't know if you're aware how the City of Oxnard
7 is really park deficient. We are a very large community and
8 the only way we get away with what we get away with is that
9 we use our beaches as public parks. And with that we know
10 that the energy -- you can't play there, and it's not safe.

11 And you've got an energy plant right next to
12 natural wetlands and a state park. Not that we can play in
13 the state park, because you know, global warming, tides have
14 changes. McGrath has been shut for six years now because of
15 these changes.

16 Wouldn't it be nice if we could use that an open
17 the wetlands and make it a little more nicer? We're also the
18 gateway to the Channel Islands National Park. We should be
19 setting the example of what green technology is and how we
20 are protecting our environment and coming up with solutions.

21 We need to set the pace. We need to move forward.
22 We need to be smart. We need to set the example. And I
23 think you guys -- you joined this board because you wanted to
24 be part of something powerful, to do something for your
25 future, to do something for our community.

1 Please remember why you joined the board and what
2 you stand for. I think all of us want to pay our bills, but
3 we also -- we want to enjoy where we live. Please let us do
4 that. Thank you.

5 (APPLAUSE)

6 COMMISSIONER SCOTT: Thank you. I have Elizabeth
7 White, followed by Pete Placencia. And just a reminder, if
8 you'd like to make a comment and you haven't filled out a
9 blue card, please do so. Our public adviser has them there
10 and she'll bring them up to me, which is how I know you'd
11 like to comment. Go ahead.

12 MS. WHITE: Good evening. My name's Elizabeth
13 White. I have been a resident of Oxnard for 10 years now.
14 I'm also a member of Showing Up for Racial Justice, Ventura
15 County, and I work as a psychotherapist here with the county,
16 of Behavior Health Ventura County.

17 I am a business owner, as well, and I teach yoga on
18 a paddle board in the harbor here in Channel Islands Harbor,
19 and live in a solar strong community. I have an intimate
20 relationship with coastlines, having been on the water every
21 weekend practically.

22 I get to observe the ecology of natural wetlands,
23 such as the blue heron, cormorants, manta rays, numbers of
24 really rare species we have here. Unfortunately, I've seen
25 the number of wetlands decline with the recent buildings over

1 the last few decades of the power plants we have now. And
2 now that's in even more jeopardy with the new power plant.

3 These power plants are not sustainable, and new
4 power plants continue the cycle of fossil fuel dependency and
5 rising electricity demand, and the risk of water level
6 rising. Also, it kills fish and creates air pollution.
7 Power plants use fossil fuel such as coal, oil and natural
8 gas, which are in finite supply.

9 These fuels cause a variety of health and
10 environmental problems and are not a long-term solution for
11 energy needs. We also know that power plants use water for
12 cooling, up to a billion gallons each day. As this water is
13 discharged back into the river thermal heath and pollution
14 occurs.

15 The pool of water can create ice-free pockets in
16 winter, which can attract and entrap many species when the
17 flow slows or stops. In the summer, the hot water can add to
18 eutrophication, which is oxygen deficiency in the river,
19 choking fish and aquatic life.

20 Heavy materials and chlorine in cooling water
21 discharges are also having a negative effect on river life.
22 The current power plant siting process is not protecting
23 communities or the environment. When the Commission is not
24 listening to the voices of the local civilians who are
25 directly harmed from this project, when the corporation does,

1 then this is environmental injustice.

2 We've heard a lot about the recent Los Angeles
3 Times articles stating that the power plants are on track to
4 be able to produce at least 20 percent more electricity than
5 it needs by 2020. And I don't know about everyone else, but
6 my bill has astronomically increased over the last number of
7 years that I lived here.

8 I'm not an environmental expert, but I am a
9 licensed mental health clinician, and I can tell you it's
10 harmful to the community when corporations such as NRG come
11 in and further marginalize members while not listening to the
12 voices of the community and lining their own pockets and
13 exploiting natural resources for their own gain.

14 The Cal Energy Commission and NRG folks are the
15 only thing here that benefit, but not for future generations
16 to come, and are the only ones benefitting from this project
17 full of risks for the rest of us. Thank you.

18 (Applause)

19 COMMISSIONER SCOTT: Thank you. I have Pete
20 Placencia, followed by Christian Aguero Quirino. Sorry, I
21 think I butchered that a little. Please go ahead.

22 MR. PLACENCIA: Good evening. My name is Pete
23 Placencia, and I been here in Ventura County for over 45
24 years. I was born in Santa Maria, but I was raised in East
25 Los Angeles in the '60s when they had that smog, and it was -

1 - L.A. was having a smog problem.

2 Now, if you read the national news, China, some of
3 their cities, they're wearing masks because they can't
4 breathe. And here in Ventura County we are just trying to
5 prevent from having smog in our coast. Everybody likes to go
6 to the beach.

7 Why does the power plants have to be here on the
8 beach? Why can't they have them inland? In other words,
9 when I think about that I always say, well, the people that
10 are up here in the front, there's 16 people of you, is -- you
11 know -- you're looking for job security, you know.

12 And you should think about -- you're not thinking
13 about the people that live here, and you should, not on the
14 beach. It doesn't belong here. It belongs inland. You can
15 make those decisions, you know, and still keep your job. And
16 I'm speaking in behalf of myself and I'm also the deputy
17 director for the Seniors on ULAC, the League of United Latin
18 American Citizens.

19 I have been the director, deputy director for three
20 years. And I'm talking about the seniors. Nobody's
21 mentioned the seniors. You know, the seniors are your
22 parents and your grandparents. I'm a senior. I was born in
23 1941 in Santa Maria.

24 I'm a veteran. I'm an army veteran. I'm a college
25 graduate. I graduated from USC, '71 and '73, in education,

1 and I love it here. But since most of you don't live here, I
2 mean, why are you trying to infringe in our area? Go take it
3 to your back yard, and it's all about jobs. And the future
4 is solar. It's not going to be the oil. So think about it.
5 Thank you.

6 (Applause)

7 COMMISSIONER SCOTT: Thank you. I have Christian
8 Aguero Quirino. I hope I'm -- sorry -- I feel like I'm
9 butchering that a little. Please come up, and followed by
10 Kevin Ward.

11 MS. QUIRINO: Hi. It's Christian Aguero Quirino,
12 and I am a resident of Oxnard, as well as a global studies
13 student and a Rio School District employee. And I think that
14 the California Energy Commission must not permit the Puente
15 Power Plant, or as an article in the press called it, bridge
16 to nowhere.

17 NRG designed its project to minimize
18 environmental impacts and states on its online website that
19 the previously disturbed site of the existing, less efficient
20 plant can be repurposed with this more efficient structure
21 and will do it with a state of the art design and LEED
22 certification.

23 And LEED is a step towards mitigation of
24 environmentally hazardous development, but it cannot be used
25 in this case to justify another vulnerable, fossil fuel-

1 powered plant. So let us continue to implement the local
2 coastal program policies of prohibiting additional energy
3 facilities in the coastal zone.

4 Furthermore, getting rid of the existing power
5 plants instead allow Oxnard to regain its shoreline. And by
6 the way, the United Nations deemed 2017 year of eco-tourism.
7 So let's get thinking, and invest your time and efforts into
8 building renewable sources of energy.

9 As SB-350 climate change policy requires to meet
10 the utilities transition towards at least 50 percent
11 renewable sourced energy by 2030, stop making Oxnard the
12 sacrifice zone. This injustice has to end. We demand clean
13 air now. Thank you.

14

15 (Applause)

16 COMMISSIONER SCOTT: Thank you. I have Kevin P.
17 Ward, followed by Musa Basey.

18 MR. WARD: Hi, again, and my name is Kevin Ward.
19 I'm a resident with my wife here for 16 years in Oxnard.
20 Here it's been the best place I've ever lived, honestly, in
21 spite of some of the battles we've waged against the energy
22 companies and the oil producers.

23 But now, it does seem as though the fossil fuel
24 industry is solidly in charge with the Secretary of State and
25 a lot of the rules and the regulations now thrown by the

1 wayside just in the past week. So I could understand anybody
2 wanting to go with the flow, I guess, you know.

3 But what this approval here in Oxnard will do for
4 our city, and I've heard claims of \$8 million thrown out
5 there, must be weighed against the encouragement of an
6 industry on its last legs, or pipes, as the case may be.

7 It's steadyng itself on our backs and our lungs.

8 It's time for us to draw a line in the sand again
9 in order to salvage our beaches, our way of life. Life.
10 Since the '70s the fossil fuel industry has known that the
11 effects of its unnecessary product would mean the poisoning
12 of our planet.

13 And now, faced with public growing awareness of our
14 climate and its cause, I mean, look out any window, okay.
15 You don't need a weatherman to know which way this wind
16 blows, right? The fossil fuel interests are intent on eking
17 out as much profit before they have to tread water in their
18 own useless commodity.

19 Solar is so much a threat to them that they fashion
20 excuses for continuance of the use of oil and gas as being
21 necessary for "transition" to renewables. Why, with a small
22 investment anyone can now set up an independent source of
23 electricity with the latest technology, a technology deferred
24 too long to prop up petroleum.

25 With political will to restore public transport,

1 once powered by electricity ironically, and cooperation of
2 our car manufacturers, electric cars could fill our highways
3 instead of guzzlers that help give L.A. the smoggy, asthmatic
4 reputation that it holds.

5 And California had them in 2000, before they were
6 destroyed by GM, if anybody remembers that saga. But NRG is
7 just an energy company looking to perpetuate old-fashioned
8 profit from our valuable shoreline, when we should be talking
9 dismantling their erector set structure that now only stands
10 as a tribute to their blight upon our environment.

11 We can all do more now, but disapproval of this
12 project's an important step in fighting the battle for our
13 very survival. It's that alarmingly important. Now, Oxnard
14 has won against the largest mining company in the world, and
15 Exxon was behind that.

16 It should not allow this project to degrade the
17 region or the earth. It's past time to divest all of our
18 investment from fossil fuels. You can do it. It's scary.
19 It's daring. It's a gamble, but you can do it, and invest in
20 a safer, healthier future.

21 Oxnard can win again, and if we continue to value
22 our resources that sustain us and our precious coastline,
23 it's an era of goldplate values that we live in, but what
24 we've got here is truly priceless.

25 (Applause)

1 COMMISSIONER SCOTT: Thank you. I have Musa Basey
2 followed by Reno Gutierrez. Musa, are you still here? It's
3 M-u-s-a. I hope I'm not butchering such that -- okay. Looks
4 like she's no longer here. I have Reno Gutierrez, followed
5 by Peter Gutierrez.

6 MR. R. GUTIERREZ: Good evening. I'm Reno
7 Gutierrez and I'm a local ironworker and I approve this
8 project. Thank you.

9 COMMISSIONER SCOTT: Thank you. I have Peter
10 Gutierrez, followed by Delores Mondragon.

11 MR. P. GUTIERREZ: Good afternoon. My name is
12 Peter Gutierrez. I'm a resident right here of Oxnard, Local
13 433 Ironworker and I approve this, and we've been out here a
14 lot of years and I got three healthy, healthy boys with no
15 asthma, and I'm Latino. I approve this. Thank you.

16 (Applause)

17 COMMISSIONER SCOTT: Thank you. I have Delores
18 Mondragon, followed by Steve Kenney.

19 MS. MONDRAGON: Hi, good evening. My name is Lola
20 Mondragon. I am a veteran, resident, a homeowner, I mean, a
21 Ventura resident, a homeowner and a navy veteran. My husband
22 just retired out of Port Hueneme after 22 years of service.

23 We have traveled the world. We have put up with a
24 lot of wars. My nephew's a Gold Star child. We came here to
25 retire. We came here because it was beautiful. We've been

1 all over the world and see what -- and know what the shores
2 look like, for example, out in Japan.

3 We don't want to leave. I'm a Chicana. I'm a
4 Native American. Today I heard about the approval of the XL
5 pipeline and North Dakota easement for 30 years by the Army
6 Corps of Engineers, which are going to be approved tomorrow.
7 I am compelled to remind us that if we do not take care of
8 our lands we will suffer the consequences in our communities.

9 I also study and teach about racism at UCSB, and
10 the legacy of racism is quite evident when we look at why
11 Oxnard is chosen for this power plant. The assumption that
12 we will not resist is erroneous. All you have to do is look
13 at all the veterans that went out to the XL, to the Dakotas.
14 It'd be ugly to see that out here.

15 I know socioeconomic success is desired by all
16 workers and profits by NRG, but we need to look at clean,
17 safe and equitable resources for our children and
18 grandchildren, and find ways to have interested workers find
19 work and clean energy.

20 Nobody deserves this form of racism in any
21 community. It is not invisible. It is visible to us, the
22 recipients of this violent abuse and trauma. Be ethical. Be
23 just. Be aware of our humanity. We did not go to fight wars
24 in other countries to come home and fight here.

25 Stop making Oxnard the sacrifice zone. This

1 injustice has to end. We demand clean air now. Thank you.

2 (APPLAUSE)

3 COMMISSIONER SCOTT: Thank you. I have Steve

4 Kenney, followed by Norissa Petchmuras.

5 MR. KENNEY: Good evening, ladies and gentlemen.

6 My name is Steve Kenney. I'm here as the executive director
7 of the Friends of Channel Islands Harbor. That is an
8 association composed of the owners of all of the private
9 investment surrounding the Channel Islands Harbor.

10 Our board has not taken up the issue of the Puente
11 Project, per se. So I'm not here tonight to speak either yea
12 or nay about the project, although as a business association
13 they have taken note of the potential financial benefits to
14 the city of \$1/2 million a year in property tax and to the
15 schools of \$1 million a year from property tax revenue, and
16 it's hard to dismiss that lightly, given the business
17 orientation.

18 But I am here tonight specifically, and I'm
19 guessing that I still only have three minutes, even though
20 the clock is granting me infinite privilege up there. I want
21 to talk about our experience with NRG as a community partner.

22 One of the prized qualities about Channel Islands
23 Harbor that we take seriously and with a great deal of pride
24 is the water quality in the harbor, perhaps the best in the
25 state among a commercial marina harbor such as ours. Well,

1 that water quality we've always believed to be integrally
2 entwined with the circulation up through the harbor and up
3 the canal to the power plant, and caused by the cooling pump
4 circulating the water out to the ocean.

5 So with the prospect at hand of looking four or
6 five years into the future and considering the pumps no
7 longer in operation, our concern was obvious that we thought
8 there might be some really harmful effects on the water
9 quality in the harbor.

10 So we took that concern to NRG, and I have to say,
11 number one, they listened openly. Number two, they were
12 actually energetic in trying to be creative in finding ways
13 to deal with this.

14 Ultimately, they volunteered their own resources to
15 do some water sampling in the harbor to ascertain present
16 conditions and to do some modeling about how those conditions
17 may change over time in the future, and ultimately came to an
18 agreement with us to enter into a binding agreement that will
19 last over the period of time after the plant closes, after
20 the pumps shot down and once we all can really see what
21 really happens to the water quality, and they pledge to
22 continue working with us if a problem really does occur.

23 That went way beyond our expectations, frankly. We
24 thought we would be, you know, making our best plea against a
25 corporate brick wall, but that was not our experience. In

1 fact, it was quite the contrary. So all this is to say
2 simply for you that when NRG makes a promise about willingly
3 committing to dealing with a community issue, our experience
4 tells us that they can be believed. Thank you.

5 (Applause)

6 COMMISSIONER SCOTT: Thank you. I have Norissa --
7 I'm sorry. I don't know how to say your last name. I'm
8 sorry about that. And you're followed by Laura Gallardo.

9 MS. PETCHMURAS: All right. Good evening. My name
10 is Norissa Petchmuras. I'm an organizer with Ventura County
11 Concerned Citizens, based in Newberry Park and broader East
12 Ventura County. Our group is not in support of this project.

13 We're in solidarity with our community members down
14 here in West County. Besides the obvious arguments of
15 environmental racism, adverse health effects, environmental
16 damage and general disdain for the project, I want to address
17 the arguments of those in favor of this project, that it will
18 be efficient and we aren't ready for solar power.

19 Echoing Cause organizers' noble sentiments, the
20 people in favor of this plant have something to benefit from.
21 Plus their argument, we aren't ready, is the oldest tale of
22 time justifying many unacceptable and oppressive status quos
23 throughout history.

24 How will you earn a living as you trash your planet
25 around you? What will you build and develop as we erode the

1 earth? At the rate we are going we are sacrificing the long-
2 term for short-term gain. One day we will reach a day with
3 no more to gain. We don't have that much time. Clean air is
4 possible.

5 NRG developed a solar power plan in gentrified San
6 Francisco and offers goal zero solar energy profit to
7 affluent recreational customers. Saying it's not possible is
8 a convenient fiction to tell oneself in favor of profit over
9 the greater good.

10 I know people want and need to make a living. Why
11 not make a living ethically? The two do not need to be
12 mutually exclusive. Right choice produces right action,
13 which produces right living which leads to a quality of life
14 for yourself and others.

15 So please, stop making Oxnard the sacrifice zone
16 for dirty energy. Oxnard demands clean air. This injustice
17 has to stop.

18 (APPLAUSE)

19 COMMISSIONER SCOTT: Thank you. I have Laura
20 Gallardo, followed by Patricia Trude.

21 MS. GALLARDO: Good evening. My name is Laura
22 Gallardo, and I'm vice president of the Good Club, which is a
23 Greater Oxnard Democratic Club. I'm here to also say that we
24 are opposed vehemently to the NRG project. People have
25 stated all the other reasons.

1 I would like to say that a shipping company, a
2 multi-million dollar, billion-dollar shipping company called
3 Pasha Group has established a zero-emissions project at the
4 Port of Long Beach, and this was after long decades of
5 wrangling by Wilmington, California, the Long Beach area, San
6 Pedro area, claiming that so much -- that damage was done to
7 the environment over the decades and that people were getting
8 sick. The youngsters were getting sick, seniors getting
9 sick, people with compromised immune system were suffering.

10 And the Pasha Group has decided that they can show
11 the world, and I'm not an advocate of large corporations, but
12 they can show the world you can do things with zero
13 emissions, zero emissions. And the group that is proposing
14 this is not going to have zero emissions.

15 They don't care about the environment. They don't
16 care about the populace here. I am a cancer survivor, and
17 I'm going to tell you that one day we're going to wake up and
18 there'll be no more resources. We don't need to use this
19 type of resource anymore.

20 It's not only antiquated, archaic, it is destroying
21 our earth. We as a population need to wake up. And the more
22 and more our government placates companies like NRG and
23 continues to harm our environment, the worse we're going to
24 be off, the worse out population would be off, the worse our
25 health is going to be off.

1 The catastrophic illnesses like cancer are going to
2 keep going up. So I am, for the record, against and opposed
3 vehemently to NRG's project here.

4 (APPLAUSE)

5 COMMISSIONER SCOTT: Thank you. I have Patricia
6 Trude followed by Brandon Martin, Brandon K. Martin.

7 MS. TRUDE: The name is Patricia Trude, T-r-u-d-e,
8 rude with a T in front. I'm Patricia Trude and I'm a member
9 of the Ventura County Co-Creators and we are against this
10 project. I was born in southeast Texas, Beaumont. The
11 closest, biggest city is Houston.

12 I know all about oil. I know the catastrophic
13 accidents that happen. My family came here to Oxnard in
14 1964. The marina wasn't out there. Fisherman's Wharf wasn't
15 out there. All that was out there were sand dunes and lemon
16 orchards.

17 Yes, progress happened. Things change. But in the
18 mid-60s I remember at Oxnard Shores, Sonny and Cher had a
19 home out there. That home continuously got flooded. That
20 whole area out on Fifth Street has flooded many times. I
21 don't know if any of you have lived here this long enough to
22 know that.

23 I also suffer from asthma and bronchitis, and when
24 we came to Oxnard it was really bad growing up here. Now,
25 the group that I belong to, the Ventura County Co-Creators,

1 we are a group that believe in making this earth a better
2 living place for everything, animals, plants, people.

3 We also educate the public about Standing Rock in
4 North Dakota. Now, the Native Americans of this country,
5 they were the first ecologists. They never took anymore from
6 the earth that they needed, and what they took, they used
7 everything. If they killed a buffalo, they used the hide.
8 They used the hoofs. They used the horn. They used the
9 meat. They used the fat. They used everything.

10 Now, I don't know why we insist on continually
11 using the energy that we have. Why don't we progress and get
12 more solar energy? Now, I don't know why Oxnard is
13 continuously picked for these energy companies that come in
14 here and rape, I said it, rape this city.

15 People deserve clean air, clean water. Water is
16 life and if we mess with our water we're dead. We're toast,
17 dead fish in the water. Does anybody remember the Love
18 Canal? Thank you.

19 (APPLAUSE)

20 COMMISSIONER SCOTT: Thank you. I have only one
21 blue card left. That is Brandon K. Martin.

22 MR. MARTIN: Good evening. My name is Brandon
23 Martin. I am actually a recent transplant from L.A. and I
24 can actually breathe a lot better since I've gotten here.
25 And my wife and I actually moved up in September, bought a

1 house up here because of -- you know -- because I love this
2 area. I love the ocean. I love being in nature and it
3 reminds me of where I grew up in Northern California.

4 And I am also a proponent for growth in this area.
5 I have noticed over the years that our infrastructure is in
6 dire need of repair, and I don't know if it's the same way
7 with our power grid, but I also understand that there are
8 arguments of even moving the facility to Fillmore where maybe
9 you would -- you would maybe even require easements and, you
10 know, restructuring the grid.

11 And I'm definitely propose to sustainable sources
12 of energy, and if those were available to this area, if there
13 was a plan for that, we as, you know, Local 433 Ironworkers
14 are also trained in, you know, building those types of
15 structures, too.

16 So I guess, you know, I'm also a proponent of, you
17 know, growth in this area and I have seen, you know, a lot of
18 growth, you know, with these new housing developments, and I
19 don't know how that impacts our energy grid also. But I can
20 see that we definitely need growth and I'm looking more into
21 the subject of, you know, power plants and, you know,
22 sustainable energy versus, you know, ways that have worked in
23 the past.

24 And I actually live like two minutes from the
25 facility off of Wooley, the Mandalay facility, and I surf out

1 in front of that thing all the time. I walk my dog there
2 every single day. I've never seen smoke coming out of that
3 thing, and I actually came from El Segundo in the South Bay
4 area where NRG did a project there just recently.

5 And I noticed that the plant does not operate as
6 often as it did before in El Segundo. And I heard something
7 about that it actually took a longer time for the engines to
8 actually warm up so they could produce energy. I don't know
9 if that's the same thing here.

10 But maybe, you know, looking into renewable sources
11 of energy might be an option if they're sustainable and
12 they're consistent with, you know, what we need in this
13 community. So I mean, if that's something, you know, I
14 definitely agree with that.

15 And you know, also, too, being a new contractor in
16 the area, I like to see growth, you know, with, you know,
17 people being able to have opportunities to join
18 apprenticeships and actually, you know, have a better way of
19 life, too. So you know, I afford that opportunity for
20 others, too. Thanks.

21 (Applause)

22 COMMISSIONER SCOTT: Thank you. That was the last
23 blue card that I had. Let me look to Kristy, too, back to
24 see if there's anyone on the Spanish WebEx. No one on the
25 Spanish WebEx. Okay. Let's turn to the English WebEx and we

1 will unmute you. Be prepared. We are unmuting you.

2 If you would like to make a comment, please go
3 ahead and speak up. Is everyone unmuted? So if you're
4 listening in on the WebEx and you would like to make a
5 comment, now is your opportunity. Please go ahead and speak
6 up. If so, please start by introducing yourself.

7 Okay. I think we are not hearing any folks who
8 would like to make public comment there on the WebEx. I just
9 want to say thanks so much to everyone for spending some time
10 this evening with us. We appreciate and value your comments.

11 Thank you for taking the time to come here and make
12 them for us, and let me turn to my fellow Commissioner to see
13 if she has any closing remarks.

14 COMMISSIONER DOUGLAS: Well, just to join
15 Commissioner Scott in thanking those of you who took time out
16 of your lives and away from families and other obligations to
17 be here tonight. We really appreciate that. And of course,
18 we will be here Wednesday, Thursday and Friday.

19 So for people who would like to come back and
20 comment again, or if you know people who couldn't come
21 tonight but might be able to come on another night, we'll be
22 here. Public comment is noticed for 5:30 tomorrow and on
23 Thursday and Friday it'll commence when we finish taking
24 evidence.

25 So there won't be as much certainty as the time

1 when public comment starts on Thursday and Friday, but we
2 will have it. So just thank you for being here.

3 COMMISSIONER SCOTT: Thank you.

4 HEARING OFFICER KRAMER: Okay. So with that we are
5 adjourned until 9:30 tomorrow morning. Same place. Thank
6 you.

7 (Adjourned at 7:01 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 6th day of March, 2017.



MARTHA L. NELSON, CERT**367

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber.

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IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of March, 2017.

A handwritten signature in black ink, appearing to read "Barbara Little", is written over a horizontal line.

Barbara Little
Certified Transcriber
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