

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification for)
the Rice Solar Energy Power)
Plant Project)
_____)

Docket No.
09-AFC-10

DOCKET

09-AFC-10

DATE DEC 03 2010

RECD. DEC 15 2010

CALIFORNIA ENERGY COMMISSION

HEARING ROOM B

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 3, 2010

10:00 a.m.

Reported by:
John Cota
Contract No. 170-09-002

EHLERT BUSINESS GROUP

(916) 851-5976

COMMITTEE MEMBERS PRESENT

Robert B. Weisenmiller, Presiding Member

Karen Douglas, Chairman and Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kourtney Vaccaro, Hearing Officer

Eileen Allen, Advisor to Commissioner Weisenmiller

Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS PRESENT

Dick Ratliffe, Senior Staff Counsel

John Kessler, Project Manager

Bill Kanemoto

Alan Lindsley, Lindsley Architectural Lighting

Terry O'Brien

Rick Tyler

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Scott Galati, Attorney
Galati and Blek

Jeff Benoit
Scott Kaminsky (via telephone)
Solar Reserve

Douglas Davy
CH2MHILL

Andrea Grenier
Grenier and Associates

ALSO PRESENT

Jason Neuman (via telephone)
Riverside County Fire Department

Liana Reilly (via telephone)
Bill Werner (via telephone)
Western Area Power Administration

Greg Javin

I N D E X

	<u>Page</u>
Proceedings	1
Introductions	1
Discussion	3
Visual Resources	37
Opportunity for Public Comment	88
Closing Comments	93
Adjournment	95
Reporter's Certificate	96

P R O C E E D I N G S

10:06 a.m.

1
2
3 PRESIDING MEMBER WEISENMILLER: This is our
4 workshop this morning, excuse me, our hearing this morning
5 on the Proposed Decision in the Rice case. So welcome
6 everyone this morning.

7 We'll go to introductions. All of you know the
8 Hearing Officer, Kourtney Vaccaro. To my left, to your
9 right is my advisor, Eileen Allen; I'm Commissioner
10 Weisenmiller. Chair Douglas will be here shortly and her
11 advisor, Galen Lemei, also.

12 So with that I'll turn to the applicants to
13 introduce themselves.

14 MR. GALATI: My name is Scott Galati representing
15 Rice Solar Energy, which is a wholly owned subsidiary of
16 Solar Reserve.

17 MR. BENOIT: Good morning. This is Jeff Benoit;
18 I'm the Rice Project Director for Solar Reserve.

19 MS. GRENIER: I am Andrea Grenier, I'm a
20 consultant to Solar Reserve.

21 MR. DAVY: My name is Doug Davy, I'm a consultant
22 to Solar Reserve. I assisted in preparing the application.

23 MR. GALATI: We also have in the audience if the
24 Committee wishes to hear comments from John Snell and Wes
25 Alston who you've heard from before on Worker Safety Fire

1 Protection and Worker Safety and Tom Priestley a consultant
2 with CH2MHill on visual.

3 PRESIDING MEMBER WEISENMILLER: I forgot to also
4 introduce Jennifer Jennings in the back, our Public Advisor.
5 Staff.

6 MR. RATLIFFE: I'm Dick Ratliffe sitting in for
7 Deborah Dyer today who is absent for medical reasons.

8 MR. KESSLER: John Kessler, project manager. And
9 with us in the audience, not at the desk currently are
10 Mr. Rick Tyler who will be available for Worker Safety and
11 Fire Protection Services. Mr. Terry O'Brien is present and
12 we also have Bill Kanemoto our legal resources specialist
13 and Alan Lindsley.

14 HEARING OFFICER VACCARO: I think everybody at
15 this point recognizes there are only two parties to this
16 action, there were no intervenors.

17 But I think just for the purposes again for the
18 record, there were some representatives of local state and
19 federal agencies on the line. So would you please, just
20 again for the record, state your name and your affiliation.

21 I believe we have two agents of Western, we've got someone
22 on behalf of the Riverside County Fire Department as well.

23 MR. WERNER: Madame Hearing Advisor, Bill Werner,
24 Western Area Power Administration, Desert Southwestern
25 Region.

1 THE REPORTER: We need them to speak up Madame
2 Chair.

3 MS. REILLY: Liana Reilly, Western Area Power
4 Administration, Corporate Office.

5 HEARING OFFICER VACCARO: Thank you.

6 MR. NEUMAN: Jason Neuman, Riverside Fire
7 Department, Strategic Planning, Perris, California.

8 HEARING OFFICER VACCARO: Great, thank you. And
9 it sounds like most of you are speaking quite loudly and we
10 can hear you but when you do speak again if you could make
11 sure that you're speaking directly into the telephone it
12 would make it easier for everyone to hear you.

13 So I think now that we've got that housekeeping
14 completed, we all understand the reason that we're here
15 today. It's to receive and discuss some early comments on
16 the Presiding Member's Proposed Decision.

17 I think everyone is aware that the comment period
18 doesn't end until December 13 but it gives the parties and
19 the Committee an early opportunity to identify potential
20 issues and work them through before this PMPD and the
21 corresponding Errata are submitted to the full Commission.

22 The parties both submitted timely and thorough
23 comments with respect to the Presiding Member's Proposed
24 Decision. I think we'll be able to go through things pretty
25 efficiently today.

1 What I generally admonish people is that you
2 should assume that the Committee has read everything. So
3 it's more helpful to the Committee not to hear everything
4 that you've already said as a general matter but to
5 underscore the things that the Committee needs to know or
6 make new points if you need to do that.

7 I say that's a general admonition because we are
8 aware that there are, there's one issue today that is going
9 to require, I think, both repetition and sort of some
10 expansion. And we're expecting that on the topic of Visual
11 Resources.

12 So I think what we'll do is we'll start with the
13 applicant and we're going to do this in a very sort of round
14 robin controlled fashion. What we'd like to do is hear from
15 you first just on your comments to the PMPD. And after that
16 we'd like staff to respond just to applicant's comments.

17 But let's leave the Visual Resources topic until
18 later in the proceeding after we hear from the applicant on
19 their comments to the PMPD.

20 We'll turn to staff to do the same, again, leaving
21 Visual Resources to the very end because there's a motion to
22 address as well as, I think, a number of issues relating to
23 Visual Resources.

24 So I think with that, Mr. Galati, if you would
25 like to go ahead and present to the Committee applicant's

1 comments with respect to the PMPD.

2 MR. GALATI: I think what I'll do is I'll focus on
3 only those comments that might be in conflict with staff's
4 comments as the Committee has read them.

5 Most of the comments, first of all we'd like to
6 thank the Committee for getting the PMPD out quickly and we
7 think that it's a very good document.

8 There were a couple of mistakes and errors or
9 things that weren't quite presented well from our
10 perspective that we wanted to make sure were addressed.

11 There's some distances and some acreage
12 calculations and I think they speak for themselves so I'm
13 not going to go through those.

14 I would note that staff's Biology comments on the
15 PMPD and our Biology comments on the PMPD are almost exactly
16 the same except there are a couple of small, little number
17 changes. We'd prefer you to use our numbers and I think it
18 has to do with rounding. We modified the same tables but in
19 a little bit different ways. And so we would submit to you
20 that I think our comments are more accurate on the actual
21 disturbance acreages and things of the nature; the distances
22 of roads, the distances of transmission lines.

23 We went back through and checked everything to
24 make sure that it was the accurate representation and I
25 think staff may have been using some documents throughout

1 the time where maybe there were mistakes or errors or things
2 have changed. So we ask you to use our numbers in that
3 case.

4 The only area that is -- that we're in
5 disagreement is how to address the technical rescue
6 capability and aspect in the conditions.

7 We are not in disagreement that the conditions
8 ought to reflect the applicant's commitment to require
9 technical rescue capability in accordance with the same
10 regulation that staff recommended.

11 The real issue is where should it be put. And
12 from our perspective, rather than confuse the issue with
13 Worker Safety 9 and 10 which deal specifically with
14 providing emergency medical response, we believe that it's
15 appropriate, and more appropriate to include this as part of
16 the overall Construction Safety Program, which is part of
17 Worker Safety 1. And we then took the language requiring
18 those capabilities and made sure that it was in the Worker
19 Safety 1 Program.

20 The reason that we did that is that our experience
21 is during construction and compliance this is the document,
22 this program, this safety program, that the Safety Monitor
23 uses. It's the program that the CBO uses and it's the
24 program that can be tailored to specific activities on the
25 site.

1 So rather than have it buried in Worker Safety 9
2 and 10 where it might get lost, we thought it would be
3 better to put it in that program and allow it to be fluid.

4 And what we mean by that is, how someone would
5 contract. For example, let's take the issue of the trench
6 collapse on a worker.

7 How you would contract is you would get the EBC
8 contractor, and as part of your contract as an owner you
9 would require that a sub who is going to do the trenching
10 provide those safety requirements and that particular
11 technical capability so that those people are on site during
12 that activity.

13 Well that contract may end. So we wanted to make
14 sure that the technical rescue capabilities were specific to
15 the job being done and were only for the time that job was
16 being done.

17 Staff's proposal is we shall have technical rescue
18 capability during any construction activities. So it didn't
19 make any sense to us to have a trench rescue crew when
20 trenching was done. It wouldn't make any sense to us to
21 have a high angle rescue crew when we haven't come out of
22 the ground yet. So we wanted to make sure that the Worker
23 Safety Program was tailored to the activities and we thought
24 that's why it would be best in Worker Safety 1. That's why
25 we did it.

1 We don't disagree that we should provide those
2 services during that time. And we are going to provide that
3 type of services, whether the Commission puts it in a
4 condition or not. So that's the area of Worker's Safety
5 that was a little bit in dispute.

6 The other area of dispute that we learned today,
7 based on the staff's recent filing today is they disagree
8 with our request to have a letter of credit as the mechanism
9 by which money changes hands. I would note that we disagree
10 with the staff's comments that the other projects will not
11 have a letter of credit because there's an ongoing
12 obligation.

13 I just wanted to go back to Genesis, Palen and the
14 Blythe Project. Of course Palen is not yet approved but the
15 conditions have been agreed to. There are two aspects to
16 those conditions. There's an initial capital up-front cost
17 and there is an ongoing payment from those projects. Both
18 of those are allowed to do with a letter of credit. A
19 letter of credit is a financial assurance. The same kind of
20 financial assurance you use for mitigation measures, for
21 environmental mitigation.

22 So the purpose for a letter of credit is to allow
23 us to finance that cost. To roll that in. We can put in a
24 letter of credit and then when financing closes, which is
25 often right -- sometimes right at construction or sometimes

1 even during construction like in the case of the Blythe
2 Project, which is not fully financed yet. A letter of
3 credit is important for the bank and it's important for you
4 to have cash on hand to be able to pay services while you're
5 waiting for financing. That's all it is.

6 So we would ask you, again, to allow a letter of
7 credit for the one-time payment to Riverside County in the
8 same fashion that you've allowed it for the other three
9 projects, both for the one-time capital as well as the
10 ongoing.

11 So we don't believe that a letter of credit should
12 be denied to the project.

13 While it's a small amount of money; its's only a
14 small amount of money when you compare it to -- \$570,000 is
15 a large amount of money. People don't have that in their
16 pocket, they want to finance it. So that's why we're asking
17 for a letter of credit.

18 I think those are really the only two areas on
19 Worker Safety where we don't agree with the staff's
20 comments.

21 Oh yeah, I apologize. In staff's most recent
22 comments on Worker Safety 10. I wanted to address to you
23 why we did what we did for Worker Safety 9 and 10.

24 The issue had come up about whether or not we
25 could lawfully provide or whether or not the project would

1 comply with ordinances to be able to provide this on-site
2 emergency medical response team.

3 And what we found out and what we proposed to do
4 when we changed the conditions to allow that was when you
5 provide an EMTP, and that's advanced life support; in order
6 to comply with the rules we could contract with somebody who
7 could provide that service because they are supervised by a
8 doctor they're part of a group, they're certified, as
9 opposed to hiring an employee, training them and having them
10 on site. So we made the change to Worker Safety 9 with
11 staff supporting.

12 When we get to Worker Safety 10 we are not having
13 the risks where we need to provide the same sort of
14 emergency care that you would, that was pointed out at our
15 construction with all of the employees on site during
16 construction and the chances of cutting themselves, hurting
17 themselves; what you have is the typical operational
18 project with a very strong safety program.

19 So the person that we need there is not an EMTP
20 but what we call an EMT. Because you can provide an EMT
21 without actually having to contract with advanced life
22 support that's why Worker Safety 10 is different. We can
23 provide an EMT, contract with someone to provide air
24 services and all those things but Worker Safety 9 was
25 different.

1 The risk that was identified was the risk
2 associated with so many workers on site that the chances of
3 an injury are higher than operations. That's why we're
4 doing advanced life support for 9 and why we do not want it
5 to be an EMTP or advanced life support for the life of the
6 project in operations. The risks don't warrant it.

7 And our revised fire needs for that particular
8 part of our revised fire needs assessment, that's why we
9 disagree with staff's change to require advanced life
10 support services for Worker Safety 10.

11 So we ask you to adopt our 9 and 10.

12 Yes, I would point out that in both cases we would
13 have an MOU, a memorandum of agreement (sic) with Riverside
14 Emergency Medical Services so that we can, so that things
15 can be dispatched. That solves both of those problems.

16 I think that's, I think those are all our
17 highlights.

18 HEARING OFFICER VACCARO: Okay, so before we turn
19 to staff, just to make sure that everybody up here
20 understands what we're talking about. You submitted
21 comments and you just basically gave us the explanation of
22 your comments but you also underscored a little bit of
23 disagreement with staff.

24 And you just referenced a document that you
25 received today that, I'm quite certain I don't have and I'm

1 quite certain that the folks next to me don't have either.

2 So does anyone have a hard copy of the (copy
3 handed to Hearing Officer Vaccaro) thank you, it would be a
4 little more helpful for us.

5 And so --

6 MR. KESSLER: Ms. Vaccaro that's the document that
7 Mr. Galati is referring to --

8 THE REPORTER: We need your mic on.

9 MR. KESSLER: That's the document, I believe, that
10 Mr. Galati was referring to. This is our Set Two, a draft
11 of our Set Two PMPD comments where we address Worker Safety
12 and further discuss that.

13 If you could pass along the rest of those around
14 the room. I don't know if the applicant had the opportunity
15 to have a hard copy --

16 THE REPORTER: Mr. Kessler could I get you to move
17 that mic closer to you.

18 MR. KESSLER: Certainly.

19 THE REPORTER: Thank you.

20 HEARING OFFICER VACCARO: Okay, so just to make
21 sure I'm understanding, Mr. Kessler, thank you for the
22 explanation. We had applicant's comments. Staff did its
23 own independent comments. And we did notice that there were
24 differences in suggested language for Worker Safety 9 and
25 10.

1 Now you say this is a second set of comments. Are
2 these more in the nature of evaluating and responding to
3 what applicant had put in their comments or is this sort of
4 something altogether different?

5 MR. KESSLER: It's in response to their first set
6 of comments. And now we've heard further explanation, which
7 Mr. Tyler can help address those.

8 HEARING OFFICER VACCARO: Okay. Okay, thank you.
9 So I think what we'll do is we'll hear from staff and then,
10 I think, after we do that we'll be able to make, I think,
11 more sense of all of the documents that are now before us.

12 Mr. Tyler.

13 MR. KESSLER: If I could just give an overview
14 before we get to Worker Safety. There were a number of
15 topics that the applicant addressed in their PMPD comments
16 and we feel that in most cases those are complementary to
17 the staff's and we agree with them.

18 In the case of Soil and Water they pointed out
19 that the Soil and Water retention vehicle would no longer
20 needed and we agree with that.

21 And we, our specialist Mike Conway found a few
22 other places in the PMPD where there is a reference to that,
23 we're suggesting that be deleted. So that's included in our
24 Draft Set Two comments.

25 Those other places besides Soil and Water include

1 Project Description and Cultural Resources as noted in this
2 draft.

3 With respect to Bio Resources, we agree with the
4 updates that are suggested with regard to acreages and so
5 on. So if you could update the PMPD accordingly we would
6 appreciate that.

7 With regard to Worker Safety, of course, that's
8 the subject that we want to move on to. So I'll pass this
9 to Mr. Tyler, thank you.

10 HEARING OFFICER VACCARO: Thank you.

11 MR. TYLER: Okay, I guess, first I would like to
12 go to the issue of Worker Safety 9 and the rescue team.

13 I see no conflict between putting a provision in
14 the plan that is used by the CBO.

15 The reason it needs to be in the condition as well
16 is the ultimate responsibility has to lie with the project
17 owner as far as ensuring that those services are on site.
18 In other words, there's been a lot of problems over time
19 with contractors having responsibility for safety which we
20 are well aware that they have the primary responsibility.
21 They're the employer and they're responsible for the safety
22 to their workers. However, I would point to an accident we
23 had where a well-trained engineer was electrocuted entering
24 a -- entering a circuit breaker without proper grounding out
25 and so on.

1 So really what, I guess, we're trying to do by
2 this condition or what we are trying to do by this condition
3 is ensure that the applicant has the primary responsibility
4 for ensuring that the right type of capability is on site
5 when the hazard exists.

6 And I don't think it requires that you have your
7 own team. What it requires is that you provide us
8 documentation that you recognize primary responsibility for
9 ensuring that those capabilities are on site during any
10 activity that would pose a risk to the worker.

11 HEARING OFFICER VACCARO: Mr. Galati did you want
12 to respond? I think this is good to sort of get to the
13 heart of, maybe, where there might be either lack of
14 clarification or a need for it.

15 MR. GALATI: I was going to propose something
16 that, I think, would solve that problem. I think what maybe
17 we put in our language that is objectionable to staff is we
18 actually got, the contractor shall provide.

19 And we could easily change that language to say,
20 the project shall, the project owner shall ensure. And if
21 that solves that problem maybe we don't have a dispute about
22 where it goes, how it goes and the language we can use.

23 HEARING OFFICER VACCARO: I think that's an
24 interesting proposal but what would be helpful to us is if
25 you could, please, direct us to the exact part of Worker

1 Safety 9 that you're referring to.

2 MR. GALATI: Yeah, I apologize. I will say that
3 we have been filing documents sort of out of sequence and
4 different than the Committee was aware of.

5 I actually think that's a good thing. In this
6 case I don't anybody intended to surprise at the last
7 minute. I think we're trying to share so that we can have
8 this dialogue here without staff having heard it for the
9 first or us having heard it for the first time.

10 So I actually appreciate getting the document
11 today that I got from staff.

12 It's in our December 2nd filing, which is the
13 responses to staff's PMPD comments. And at the very end
14 before the signature block there is a bullet; and it's that
15 bullet that we tried to encompass what staff did in 9 and 10
16 and move it to Worker Safety 1. So this is a bullet we're
17 asking be put in Worker Safety 1 instead of staff's changes
18 to 9 and 10.

19 And so in the middle of that paragraph, that
20 bullet, there's language that says, the contractor shall
21 provide a rescue team. And based on what I just heard from
22 staff we would be comfortable saying, the project owner
23 shall ensure that a rescue team, you know, or shall provide
24 or ensure that is provided, so that we understand and staff
25 acknowledges that we are ultimately responsible for what

1 happens on the project site.

2 So we may do that by contract, but to the Energy
3 Commission we're responsible to ensure that that is done.
4 Which is how all the other conditions work.

5 So the word, contractor, here may not be
6 appropriate for the condition and we'd be willing to change
7 that if that would solve the problem.

8 HEARING OFFICER VACCARO: Perhaps. And we'd like
9 to hear from staff. But again, I want to make sure I'm
10 understanding. Are you talking about a modification to the
11 bullet as well as retaining the language that was proposed
12 by staff or are you talking about sort of an either/or?

13 MR. GALATI: This would replace staff's changes to
14 Worker Safety 9 and 10 in which they require that this
15 particular safety, this technical rescue safety provision be
16 provided.

17 Our purpose for moving it here, and we're not 100
18 percent wed to moving it. But what we want to make sure
19 that happens is that the, it's part of the overall program.

20 And that as part of the overall program we are not going to
21 have a technical rescue team on the project site from the
22 moment we mobilize to the moment we quit.

23 We're only going to have technical rescue teams
24 associated with particular risk activities that require
25 technical rescue teams.

1 Otherwise, we'd have the EMTP service provider on
2 site. And so just like all other projects, the only thing
3 we're adding different is this particular technical rescue
4 capability that is associated with the risk. That's why we
5 moved it to 1 because that's the overall construction
6 program. And we thought it went better there.

7 HEARING OFFICER VACCARO: Mr. Tyler.

8 MR. TYLER: Basically what, I think, part of the
9 conflict is, is that we need some sort of advanced
10 documentation that the team is there.

11 Originally the proposal was that the project owner
12 would provide their own team. And the idea was that that
13 would actually reduce the potential for draw down on the
14 fire department or anyone that had to respond.

15 So originally we were under the impression that
16 the team would be the owner's team.

17 I understand your concern and I sympathize and
18 agree with what you're saying, that generally if you're
19 doing a trenching activity and that's the only real
20 significant hazard that exists at the site at that point in
21 time, then the contractor, you can require that the
22 contractor provide that capability.

23 But before that activity occurs we need to have
24 some assurance, some sort of documentation that, in fact,
25 that activity will occur at some point and that that team

1 that's certified according to the condition will be on site,
2 from the project owners.

3 So that's why we wanted it in a condition. So
4 that's still, I believe, a conflict with it just simply
5 being in the plan.

6 HEARING OFFICER VACCARO: It sounds to me, and of
7 course correct me, I could be wrong, that you're not really
8 saying different things. You're recognizing the need for
9 acknowledgement that it's the project owner's
10 responsibility, that it would be, the services provided
11 would be commensurate with the activities that are being
12 performed. That bullet one gives greater clarity that shows
13 that you're really trying to wed the requirement with the
14 actual activities and that staff is saying, this has to have
15 teeth though. It's nice that it's in the plan but it's not
16 good enough. The way that it has teeth is to put it in a
17 condition.

18 So I guess, did I misstate that? And if so,
19 please explain how, starting with the applicant.

20 MR. GALATI: I don't think you misstated it. I
21 don't think it's accurate though.

22 HEARING OFFICER VACCARO: Okay.

23 MR. GALATI: But let me tell you why. This is not
24 just in the plan. While it's in the condition that requires
25 a plan, we put it as a specific bullet.

1 It doesn't say that the plan should just address
2 it. But the best way to identify how it is to be done is in
3 the plan that has to be approved by the CPM and then used by
4 the CBO and the safety monitor.

5 So, for example, the idea that Solar Reserve is
6 going to hire a technical rescue team capable of all
7 possible technical rescue doesn't make sense because it
8 might be a different technical rescue team that does high
9 angle rescue.

10 So we're going to make our contractor, we'll be
11 responsible that they're on site. We'll be responsible that
12 they are certified. But we are going to have our contractor
13 go out and find the person who and there's a part of the
14 contract that the sub-contractor might be doing the higher,
15 the work that requires high angle rescue; they might have a
16 relationship with somebody who has a high angle rescue team
17 that they're going to be out on the site.

18 So there's no question that they're going to be
19 out on the site. This really isn't just in the plan. This
20 plan has teeth. In fact, Worker Safety 1 is the total plan
21 for all worker safety. So it has teeth.

22 If you don't comply with the plan that is approved
23 by the CPM that's a violation of the condition.

24 So if, -- the reason that we wanted in the plan is
25 so we could spell out to staff, month two, we're doing

1 trenching. The people that will be out there during
2 trenching are people with this qualification, here they are,
3 there's two of them.

4 And staff could say, we want three. And we can go
5 back and forth when the plan is approved. Once the plan is
6 approved we just implement it.

7 And that's when you have these detailed
8 conversations we're trying to have at the moment.

9 And so I didn't want to give you the impression
10 that we weren't going to do it or that it wasn't
11 enforceable. We think it is.

12 HEARING OFFICER VACCARO: Thank you.

13 MR. TYLER: I think what we're looking for is an
14 advanced ability to look at the certification of the team,
15 make sure it complies with the regulations in each
16 individual case.

17 And, again, keep in mind that at the time that
18 this was proposed what we're trying to do is avoid the
19 necessity for the fire department's response and draw down
20 of their capabilities.

21 So we also would need to have their input as to
22 the efficacy of the team. So we need some level of
23 documentation in, I guess what you're saying is we would
24 have that under the plan but I don't see the mechanism that
25 exists for that at this point in time that has the same

1 effect as this condition does.

2 HEARING OFFICER VACCARO: Okay, is there any more
3 that can be said on that point? You have all made your
4 points very well. I think we are understanding where there
5 is sort of agreement conceptually and where there is some
6 disagreement in terms of where some of this language needs
7 to be and the effect and import the language.

8 So unless there's anything else to add with
9 respect to those Worker Safety 9 and 10, I think, we
10 understand and have received your comments.

11 MR. GALATI: The only qualifier that we would have
12 is we'd like to understand that staff is comfortable with
13 the idea that there could be more than one technical rescue
14 team and that they do not have to be on site from the
15 mobilization to commercial operation.

16 That they would be on site during those activities
17 that raised that technical rescue risk.

18 MR. TYLER: I think that's, I understand where
19 you're going with that and I do understand why you need to
20 do that.

21 However, it's going to be a bit of a challenge to
22 ensure that all the risks at any one point in time are being
23 addressed in their total.

24 And so it's going to also be a bit of a challenge
25 for staff to ensure that the specific certifications and

1 that the types of things being done are being restricted to
2 those activities only and that we're sure that the
3 capabilities are on site to address any real hazard that
4 exists.

5 HEARING OFFICER VACCARO: Mr. Galati do you have a
6 response or further comment to make in that regard?

7 MR. GALATI: Just one further comment and I
8 probably won't go any further. But the risks that were
9 identified that make the Rice Project so different was a
10 high tower and trench collapse and confined space entry that
11 make the specific rescue difficult because of the distance
12 from the fire department.

13 That if they had to respond to that there would be
14 a potential draw down.

15 Other than the high angle rescue, although I would
16 say that the high angle risk on every project, especially
17 natural gas-fired projects with stacks and cooling towers
18 and things like that are maybe not the same because of the
19 high angle of some of our towers, that, again, what we would
20 be doing is be requiring the EBC contractor through the
21 subcontracts to provide those people.

22 And those people who do that work often have
23 employees that qualify for that particular type of risk.
24 They protect their own workers. Nobody goes out and does a
25 high angle project and just hopes the fire department is

1 going to save them, okay.

2 Those contractors who do that work have their high
3 angle rescue people available. We'll be more than happy to
4 provide the documentation to staff to show that that will
5 occur prior to them mobilizing. And that's why we felt the
6 plan would be the right place to say when those
7 opportunities are.

8 And we'll provide that. When we get the contract
9 we'll show, here's the certification. Here is when these
10 people mobilize at the site they will have the following
11 people.

12 The same thing with trench collapse. Nobody waits
13 for the fire department, even if they're 20 minutes away, to
14 save the guy in the trench. We don't do that. We have
15 somebody on the site and contractors do protect their own
16 employees. We'll show that to staff, the people that are
17 doing that.

18 And confined space entry. You don't have people
19 who do confined space entry that are not confined space
20 entry specially trained.

21 Worker Safety 1 already requires us to show that
22 we only use people that are trained.

23 So all we'll do is show that not only are they
24 trained but they all should have the rescue capability and
25 we'll require that as part of our contract.

1 We agree we're ultimately responsible but the idea
2 that we won't be able to prove it unless we have some, a
3 technical rescue team all on site all the time, we're just
4 now talking about practicalities.

5 If we need to change the verification to Worker
6 Safety 1 that says, 30 days prior to doing trenching, 30
7 days prior to doing confined space entry, 30 days prior to
8 doing technical rescue, you shall provide that information
9 to staff, we can do that.

10 So I think it's easily solvable and I don't think
11 that we're at odds with what we want to accomplish.

12 So I'd hate to throw that in the Committee's lap.
13 I would like, if at all possible, because I think we're
14 close, to maybe, after the conference, maybe work on joint
15 language with staff on Worker Safety 1 or 9 or 10.

16 We're not wed to being in 1 to accomplish this
17 goal as long as it, when I heard Mr. Tyler say that, I'm
18 sorry Dr. Tyler, when I heard Dr. Tyler say that they
19 understand that we don't want to have a rescue on site for
20 the whole time, I think we have 100 percent agreement.

21 I'd like to have the opportunity to work that out
22 rather than throw that in the Committee's lap.

23 MR. TYLER: I think the only thing I would like to
24 caution about, and I agree with the concept of what you're
25 proposing. The one type of rescue that's particularly

1 difficult in this regard is confined spaces because confined
2 spaces exist all over the facility.

3 You may have multiple contractors working in
4 different areas of the plant and that's one place where we
5 see a lot of problems.

6 If someone doesn't properly identify a confined
7 space or, you know, isn't really aware, a contractor gets
8 out of phase.

9 For instance, in the case I was talking about,
10 PG&E had made it very clear to the contractor that they
11 wanted a plan for entry to that circuit breaker in advance
12 of any work being done there. The plan was never submitted.

13 The person came on site and then entered the space and was
14 basically obliterated because it was still hooked to the
15 transmission line.

16 So what, I guess, we're trying to do is staff also
17 has a responsibility to ensure, to the extent that we can,
18 that these activities are being, that people are available
19 to rescue and that these activities are being done in an
20 appropriate manner. Okay.

21 HEARING OFFICER VACCARO: Okay, thank you. So I
22 think, again, there's still time left in the comment period
23 and certainly the Committee, I think, would welcome and
24 invite the parties to continue to try to work through to the
25 extent that you can reach agreement on most; and whatever it

1 is that is still outstanding, that, of course, is the
2 Committee's job to consider the comments in light of all of
3 the evidence and make a final determination.

4 So we encourage you to continue to work in that
5 regard.

6 MR. TYLER: I would, also, I guess there's the
7 issue of the letter of credit. In this case, again, we're
8 trying to deal with issues of the fire department being
9 impacted.

10 We believe that in the case where there's an up-
11 front payment, that the fire department needs some lead time
12 to do whatever they need to do to be able to respond.

13 So in a case where we're not dealing with, not
14 dealing with ongoing payments, I would, I understand the
15 fire department's reservations about the letter of credit.

16 However, the fire department is on the line and I
17 think they would be as capable as anyone of expressing
18 whatever concerns they have.

19 That's the primary issue that staff has is that
20 the fire department is given what they need to be ready when
21 the plant starts its activities.

22 So with that, I guess, I would ask the fire
23 department wanted to --

24 HEARING OFFICER VACCARO: Well, you know,
25 actually, I think we would like to hear from the fire

1 department on these various issues or anything else that
2 they would like to independently raise with respect to
3 Worker Safety and Fire.

4 But I think right now what we'll do is continue
5 with the rhythm that has already been set as far as the
6 staff and the parties, I mean staff and applicant and the
7 parties on particular comments, concerns with the PMPD and
8 then we'll move to the concerns of others. And if that
9 requires further discussion from applicant and staff we'll
10 invite that at that point as well.

11 MR. TYLER: Okay, okay.

12 HEARING OFFICER VACCARO: So I think just to be
13 clear, we started with the applicant. We invited the
14 applicant to expand upon or underscore comments that had
15 already been made on the PMPD, invited staff to respond and
16 Mr. Kessler also did the courtesy of sort of explaining
17 Comment Set Number Two which, I think, shows where you agree
18 or where you've reached some sort of agreement with the
19 applicant.

20 So is there anything else not before Resources
21 that staff would like to add with respect to its comments on
22 the PMPD that has already been addressed?

23 MR. TYLER: There's also a comment from the
24 applicant regarding the EM -- basically the requirement for
25 an EMT, advanced life support provider in, throughout the

1 project's life.

2 And the way I understand their concern is that
3 they want to provide a different level of provider during
4 the operational phase of the project because of the
5 difference in the risk profile of the facility during that
6 phase.

7 At least that's what I understood from their
8 comments and what they've said here.

9 Basically, I think, again, we're going back to the
10 idea of draw down upon resources of the fire department. In
11 fact, the fire department is, the major issue is the amount
12 of time it takes for the fire department to respond.

13 And to the extent that this different level of
14 capability on site would increase the probability that the
15 fire department would have to respond would be a concern to
16 staff because, really, in essence, it's the applicant's
17 ability to respond to their own needs and adequately protect
18 the personnel there to the extent that it virtually
19 precludes the fire department's need to respond that we
20 understood as their objective in developing their proposals.

21 And so I feel that the advanced life support
22 should be carried into the operational phase unless there
23 can be a clear demonstration that that would not increase
24 the probability of the fire department needing to respond.

25 (Thereupon the tape was changed.)

1 HEARING OFFICER VACCARO: Have you completed your
2 comments?

3 MR. TYLER: Yes, I think that's everything that we
4 had that has been addressed. I want to make sure I get
5 everything and I think that's the last of it.

6 HEARING OFFICER VACCARO: Thank you. Mr. Galati,
7 I think you probably want to get the last word in response
8 or perhaps to address the comments that Mr. Tyler has made?

9 MR. GALATI: You know me so well (laughter). I
10 would remind the Committee that we're mitigating for a
11 residual impact of \$570,000 for the project's impacts that
12 are above and beyond what the applicant has already given
13 for these impacts to the fire department.

14 Our proposal was never to have an EMTP capability
15 with an ambulance and other kinds of things during operation
16 at that time.

17 An EMT is capable of doing -- and the MOU with the
18 Riverside Emergency Medical Service that allows the EMT to
19 actually call and get the air support and ambulance
20 dispatch.

21 So under no circumstances, whether it's an EMTP or
22 an EMT, would the fire department be able to respond quicker
23 because we would have a person on site.

24 And that person on site will be able to call and
25 get transport services quicker than the fire department and

1 that was our goal.

2 But our goal was not to have the person who can
3 handle broken legs and severe cuts and things that we've
4 identified --

5 UNIDENTIFIED PHONE LISTENER: Okay.

6 MR. GALATI: -- as possibilities during
7 construction and then put that person in an ambulance. That
8 was solely because of the number of people that would be
9 working, creating the probability and the risk that
10 something like that could happen, far greater.

11 And that was to address specifically the fire
12 department's concerns and the staff's concerns about how
13 construction was different than operations.

14 I would note that the purpose of the Worker Safety
15 10 from our perspective is to provide care quicker but not
16 to provide the first responder kind of response that we're
17 talking about during construction.

18 So that's why there is an MOU with the REMS and
19 the EMT. And it's, we think, a significant difference
20 that's associated with a significant level of risk that's
21 far reduced with 50 people on site versus, you know, 400.

22 HEARING OFFICER VACCARO: Okay, so it seems to me
23 then we're ready to proceed to, I think, what was the,
24 perhaps, last item that required discussion. And that would
25 be the technical area of Visual Resources.

1 Is that your understanding, Mr. Galati?

2 MR. GALATI: Yes, I believe so.

3 HEARING OFFICER VACCARO: Mr. Ratliffe?

4 MR. RATLIFFE: Ms. Vaccaro, I don't think it would
5 belong in this discussion but there was also the issue of
6 the letter of credit, which I don't believe ever got
7 discussed.

8 HEARING OFFICER VACCARO: Mr. Galati made some
9 points in that regard and Mr. Tyler did as well, but if you
10 believe there is --

11 MR. RATLIFFE: Oh, okay --

12 HEARING OFFICER VACCARO: -- something else that
13 we need to hear on that point we're open.

14 Mr. Neuman are you still on the line?

15 MR. NEUMAN: Yes ma'am.

16 HEARING OFFICER VACCARO: And I understand that
17 you probably want to make some comments. Do you have
18 technical areas other than Worker Safety and Fire that you
19 would like to address or is that the sole topic that you'd
20 like to comment on today?

21 MR. NEUMAN: Just several comments on the topics.

22 HEARING OFFICER VACCARO: Okay, why don't we go
23 ahead and hear what you have to say on Worker Safety and
24 Fire since all of the information is, sort of, fresh and
25 it's just been put before everyone.

1 So if you could project or get really close to the
2 phone I think that would be helpful for all of us.

3 MR. NEUMAN: Okay, how's that?

4 HEARING OFFICER VACCARO: That's perfect. Thank
5 you.

6 MR. NEUMAN: The fire department, we agree with
7 the staff's decision and the statements that Dr. Tyler just
8 identified.

9 Looking at Worker 9 and 10, we had the discussion
10 with REMS. I think there needs to be some clarification
11 with some of the language that's been identified in that
12 document.

13 If there is a contingency plan should REMS not
14 allow that type of activity for an ALS ambulance as well as
15 an EMTP paramedic.

16 On the issue with the hazardous material or
17 technical rescue team, Mr. Galati alluded to the fact that
18 they would get there quicker.

19 I think there needs to be some analysis there.
20 Specifically the EMT paramedic on site would basically be an
21 individual that is certified through the state as a
22 paramedic. Now for simply making that call would still go
23 through the 911 system.

24 When it goes through the 911 system there will
25 have to be a response from the fire department for a

1 specialized rescue, whether again, a technical high angle or
2 a confined space or a trench rescue and that will have to be
3 a response from the Riverside County Fire Department.

4 So I don't believe there is an accurate time
5 savings at that point.

6 And the same would be true for an EMS response
7 should it be a major life saving issue.

8 And as an example, if you look at an EMT paramedic
9 that's on site. Should there be an incident that occurs
10 during the construction phase or during the operations
11 phase, if it is a cardiac emergency it's going to require
12 numerous individuals.

13 An example, if you have an EMT driver, an EMT
14 paramedic, the paramedic would have to make base station
15 contact to get the orders to push or use the lifesaving
16 drugs whatever they may be, whatever that situation would
17 be.

18 During -- in route to the emergency room it would
19 take additional personnel to assist the paramedic and also
20 to provide patient care.

21 An EMT paramedic would probably, I would imagine
22 to get assistance, would make a call to Riverside County
23 Fire Department and then, again, a response would be
24 activated as well as Dr. Tyler mentioned a draw down
25 (inaudible) fire department.

1 On the letter of credit. We're looking at a sum
2 to be paid as identified in the PMPD. I believe that's the
3 only issues we talked about.

4 HEARING OFFICER VACCARO: It's getting a little
5 difficult to hear you.

6 MR. NEUMAN: How's that?

7 HEARING OFFICER VACCARO: That's much better.
8 Thank you.

9 MR. NEUMAN: Better? Okay. I think that's all
10 the issues that the Fire had comment on from Dr. Tyler's
11 information he provided.

12 HEARING OFFICER VACCARO: You might have actually
13 cut out. You started speaking about the letter of credit
14 and then I couldn't hear anything else after that.

15 Did you actually make a comment with respect to
16 the letter of credit? And if so, would you please repeat
17 it.

18 MR. NEUMAN: The letter of credit. The Fire
19 Department is looking for the letter of credit, we're
20 looking for the payment in lieu of a letter of credit.

21 So we agree with Dr. Tyler's comments that go
22 along with the PMPD.

23 HEARING OFFICER VACCARO: Okay, thank you.
24 Anything else on Worker Safety and Fire?

25 MR. NEUMAN: No further comment.

1 HEARING OFFICER VACCARO: Okay, thank you.

2 PRESIDING MEMBER WEISENMILLER: Hi, this is
3 Commissioner Weisenmiller. One question. Obviously these
4 letters of credit are recognized financial instruments.

5 Does the Fire Department accept letters of credit
6 in any other circumstance?

7 MR. NEUMAN: Yes sir. We have accepted letters of
8 credit with the Blythe Power Plant.

9 PRESIDING MEMBER WEISENMILLER: And the inadequacy
10 of one in this specific application? I'm just trying to
11 make sure I understand that a little better.

12 MR. NEUMAN: What we're looking at is to receive
13 the one lump sum as Dr. Tyler mentioned. We have to look at
14 future plans for infrastructure to support that area and the
15 following towns.

16 PRESIDING MEMBER WEISENMILLER: That gets to the
17 time scale. If you need the cash right now to make a
18 purchase right now it's pretty clearly understood. Although
19 certainly letters of credit can be used for purchases if
20 there's a gap in time.

21 Then again, I'm just trying to understand the
22 difficulties of relying on a letter of credit.

23 MR. NEUMAN: That's the decision that the Fire
24 Department, that is our position at this point.

25 PRESIDING MEMBER WEISENMILLER: Okay, thank you.

1 HEARING OFFICER VACCARO: Okay, I think that now
2 we're ready to move to the topic of Visual Resources.

3 The first item of business there, of course, is
4 the applicant filed a motion to strike, that's a motion to
5 strike.

6 The staff filed an opposition to that motion and,
7 again, as with every document that is submitted in a timely
8 fashion, those documents have been read, they are
9 understood.

10 But we'll give the parties the opportunity to make
11 any additional comment with respect to the motion before the
12 Committee weighs in.

13 But, again, you need not repeat everything that
14 you've already said. But if there's something that needs to
15 be underscored, elaborated on, please feel free.

16 We'll go with the applicant first since it was
17 your motion.

18 MR. GALATI: I would first like to say, I believe
19 that, and I apologize for citing the wrong section in my
20 number, it's 1754 not 1745 of the Commission regulations. I
21 think that was clearly intended to apply to this hearing
22 which as the regulation says, it could also be the same as
23 the adoption hearing right before the Business Meeting. So
24 I believe that the Commission regulations and the intent was
25 to not take evidence in a hearing such as this one.

1 There has not been a motion to reopen the record.
2 But I want to take a step back and just talk about fairness.

3 I think that it would be a bad thing for the
4 Commission to say that parties who should be treated
5 differently, such as members of the public, have the ability
6 to come and file testimony, and then if you don't get your
7 testimony in have them just call it a comment later.

8 We just don't think that's fair. The concept of
9 lead agencies commenting, other responsible agencies
10 commenting, those kinds of things that are inherent in CEQA
11 and everywhere else are intended for those agencies that are
12 not a party. They're intended for those people who don't
13 have the proof of testimony, that don't have a burden.

14 But in the way the Energy Commission process works
15 and why it is based on testimony is because there are
16 burdens placed on parties.

17 There is a burden placed on the applicant. There
18 is a burden placed on staff and there's a burden placed on
19 intervenors.

20 And as we heard in the hearings on the Cultural
21 Resources information and that we went through before on
22 whether it's confidential and who has the burdens and how
23 parties are different, have you got a difference?

24 That's why you as the Committee can tell us to
25 file our comments sooner. That's why you as the Committee

1 can tell us, I'm not going to hear evidence in this area.

2 So what happens is that people just filed it as
3 comment later. Even though it might not be given the same
4 weight, it provides an element of surprise in an area where
5 people have burdens.

6 So, for example, in this case it's fundamentally
7 unfair for me to not be able to or bring witnesses to tell
8 you what we think of those photos.

9 I can't really do that effectively unless you
10 allow me to. And if you allow me to do that you're
11 basically opening up an evidentiary hearing.

12 So we'd ask you just to strike those and also send
13 a very, very strong message that when you're a party the
14 time to say something that is evidentiary, that is factual,
15 the time to say that is at evidentiary hearing.

16 In this case we had a staff assessment and then
17 rebuttal testimony on the Visual. So they have the ability
18 to bring this information in in rebuttal in response to what
19 we brought.

20 They also have the ability, as we always work
21 together, and in this case this dispute does not in any way,
22 shape or form reflect how we've been working with staff.

23 At the evidentiary hearing we both had documents
24 that were kind of late. We worked with each other. We put
25 them in. We put them in in the evidentiary hearing.

1 But today we're in a situation where there's going
2 to be a slide show, and other than the fantastic photos of
3 Mr. Ratliffe (laughter), the -- I think we -- I'm not sure
4 quite how -- I don't get to ask anybody questions about what
5 was your lens that you used when you took that photo? What
6 is the scale of that document?

7 So I end up being, the only way to really respond
8 to that is as a lawyer in cross examination in evidentiary.

9 So I'd ask you to just, please, strike those.
10 Let's deal with the evidence that's submitted. I did not
11 even pretend to strike a single argument that the staff said
12 using the evidence that's in there.

13 And so that would be my fundamental fairness.
14 Let's not open up comment as a back door to get things in
15 that would have been properly -- that there be a proper
16 foundation and properly challenged.

17 HEARING OFFICER VACCARO: Mr. Ratliffe.

18 MR. RATLIFFE: Yes. Good morning, Commissioners.

19 I think in some ways the motion to strike is mainly a
20 distraction because I think it's very clear there is
21 abundant evidence in the record to support my insignificance
22 in this case.

23 The thing that concerned me when the motion to
24 strike was provided was that, I believe, it relies on an
25 interpretation of the regulation which is, I think,

1 inconsistent with the Energy Commission's regulations and
2 with its practice of essentially dealing with evidence in
3 the PMPD processing at the final decision stage by assigning
4 it different weights.

5 And, I think this an essential part of the Energy
6 Commission's procedure inasmuch as this is not an accusatory
7 style hearing. And I would note that even accusatory style
8 hearing is under the state AVA have different levels of
9 weight as well such as the allowance of hearsay but as a
10 secondary level of evidence.

11 In the Commission's process you have to have a
12 much more forgiving assessment of the evidence that is
13 provided, even after the evidentiary hearings, simply
14 because of our need to accommodate CEQA comments.

15 So my principal concern in responding to the
16 motion to strike requesting that you deny is that I don't
17 think it would be healthy for the Commission to interpret
18 the provision that was cited as one that disallows evidence
19 that was not provided at the evidentiary hearing. That
20 would be a very dangerous precedent.

21 The slides that we produced today, I think, are
22 illustrative of some of the points we wanted to make but are
23 hardly essential and the staff has provided a great deal of
24 evidence. The slides, I think, were reflective of the
25 evidence already in the record.

1 First of all, the proximity of the site to other
2 wilderness areas and the National Park. They also, I think,
3 are illustrative of the difficulty which, and this is a real
4 problem for staff on this topic, the difficulty of actually
5 illustrating the effect of the illuminance from the power
6 towers on the projects.

7 The slides that we have proposed to show do not,
8 in our view, actually, spatially indicate that level of
9 illuminance but there is also the problem of presenting that
10 effectively as testimony because there is no way you can
11 simulate such things as Mr. Lindsley would be able to
12 elaborate on further.

13 So, you know, these particular slides are not
14 critical to the staff case. And we didn't intend to get
15 into a big fight about the size.

16 But I think it's very important that the
17 Commission not start sustaining motions to strike on
18 evidence that is submitted at a hearing before the
19 Commission such as this evidence.

20 In turns of fundamental fairness I'm actually very
21 sympathetic to Mr. Galati's argument that it really should,
22 parties really should put on their cases at the evidentiary
23 hearings and I think we did so.

24 But, you know, I think parties probably should be
25 held by higher standard than the public general and agencies

1 which often have to comment later.

2 So, you know, I think there is an aspect of
3 fairness that is, that I think that we agree about. But I
4 don't think these particular slides, including the ones of
5 myself, have much to do or -- are actually going to be
6 particularly difficult or particularly unfair to the
7 applicant in this case.

8 HEARING OFFICER VACCARO: Okay, thank you.

9 I think, do other -- do you have any questions
10 that you would like to pose to parties in respect to moving?

11 PRESIDING MEMBER WEISENMILLER: I think the
12 obvious question in this area was at, I believe at the
13 scoping session Wayne Gould was there. And Wayne and the
14 visual issue came up and Wayne pointed people to Solar One,
15 which was in California; it was in Barstow, had many years
16 of operation. And then the re-power of Solar One as a place
17 to look for visuals.

18 So, you know, this is one where there was a lot a
19 multitude of data on this issue with the power towers. So
20 it is a bit late in the process to be raising it in that
21 context. I'm assuming the staff followed up on Wayne's
22 point.

23 HEARING OFFICER VACCARO: I think now that we've
24 heard from you orally and then the Committee has also been
25 apprised of all of your arguments in writing, what I'd like

1 to be able to do is go off the record for about, oh, I don't
2 know, let's call it 10 minutes. Come back at 11:15 and the
3 Committee will give its ruling on the motion and then we'll
4 move forward with Visual Resources.

5 (Off the record at 11:05 a.m.)

6 (On the record at 11:20 a.m.)

7 HEARING OFFICER VACCARO: The comments that were
8 made by the staff and applicant, I think, underscore issues
9 that this Committee takes very seriously.

10 These are issues of fairness, issues of prejudice.

11 And those are things that are important because everyone
12 knows that transparency, a full and fair opportunity to be
13 heard, whether a party or member of the public, are part of
14 these siting processes. But it doesn't appear that what
15 we're dealing with today is something truly that rises to
16 the level of fairness or prejudice.

17 What we're dealing with today are comments,
18 comments at a comment conference on the Presiding Members
19 Proposed Decision.

20 This Committee invited comments from the parties,
21 from members of the public and any interested person or
22 agency without limitation.

23 We aren't talking about a reopening of the
24 evidentiary record or an 11th hour 59th minute introduction
25 of evidence at an evidentiary hearing.

1 All the comments are fair in this proceeding. I
2 think what staff has done is given the applicant timely
3 notice as requested by the Committee of all comments it
4 initially had on the PMPD.

5 The applicant has, in fact, been able to respond
6 in some fashion and they've also been able to mobilize some
7 of their experts to be here to comment on whatever it is
8 that staff is proposing.

9 I think with that the Committee is denying the
10 motion but recognizes that the applicant has the ability
11 today to make the points that you'd like to make.

12 Although you may not cross-examine, of course, I
13 think there's plenty of opportunity for staff to fully
14 address these comments and for the applicant to respond in
15 kind.

16 And as indicated in the notice of the PMPD the
17 comment period is still running and we specifically
18 identified that the parties may file supplemental or
19 responsive comments to these initial set of comments that
20 are coming in.

21 So the motion is denied but the applicant will
22 have a full and fair opportunity to make its position known
23 on the record with respect to any comments that staff is
24 making today.

25 And the visual presentation is something that is

1 also allowed at today's proceeding.

2 So with that instead of starting with the
3 applicant first, I think what we'll go ahead and do is we're
4 going to start with staff first; hear out the staff in terms
5 of its comments, take a look at the presentation. And then
6 applicant, you will have the opportunity to comment. And if
7 the way that you make that comment is with the assistance of
8 the expert that you brought, that's fine as well.

9 So, Mr. Kessler I think you're about to, you're
10 manning/presenting the audio-visual and Mr. Ratliffe you're
11 going to speak. But I think I personally am going to move
12 to the back so that I can see once you start the visual
13 portion but I suspect there's going to be some narrative
14 first.

15 MR. RATLIFFE: Yes.

16 HEARING OFFICER VACCARO: Okay.

17 MR. RATLIFFE: Thank you, Commissioners. One of
18 my favorite authors, Jorge Ruiz Volles when describing his
19 reaction to the, an Argentine writer I should add, was
20 describing his reaction to the Falklands War, commented that
21 the war was like a fight between two, old, bald-headed men
22 over a comb (laughter).

23 And it occurred to me that one might, I think,
24 incorrectly, attribute the dispute we're having today and
25 say that it's a similar kind of fight as we have nothing at

1 stake.

2 I think, actually, there is something at stake
3 today even though one might note that what staff is asking
4 for is not, we're not asking that you deny the project. And
5 as evidenced by the PMPD itself it appears that it probably
6 intends to recommend that it be approved.

7 So we're not asking for a denial of the project
8 and changing the significance of the determination which is
9 our request. We're not suggesting that there should be any
10 different or greater level of mitigation be imposed on the
11 applicant because there really is no way that these things
12 can be (inaudible).

13 So in essence there is, one might say that there
14 is very little at stake. But the staff does believe that,
15 in fact, there are some important things that are at stake
16 here that have to do with consistency of the way the Energy
17 Commission has evaluated Visual Resources.

18 The consistency of that evaluation amongst the
19 evaluations in other desert projects that have already been
20 permitted.

21 And one of the things that I think has really been
22 right and good about our very difficult experience with the
23 ARRA projects is that I think the Commission has been very
24 forthright about identifying significant impacts and saying
25 those are significant and then making findings where the

1 effects are significant.

2 And that has been what we've seen in the prior
3 projects. And what we are here today to talk about is why
4 we think that if there is a desire to approve this project
5 that that is what the Committee should do or recommend to
6 the full Commission with regard to this particular impact,
7 which that is very significant and not susceptible to the
8 finding, not reasonably susceptible to the finding, being
9 less than significant.

10 There are two basic reasons why we think there may
11 be errors in this regard. And the first, I think, has to do
12 with context.

13 And the visual that we do have here is a visual,
14 apparently not to scale, but which, I think, does fairly
15 depict the location of the project vis-à-vis the surrounding
16 wilderness areas.

17 The project is on Highway 62, which is a long
18 desert road without much development on it and it which runs
19 through wilderness areas in which it extends to the west and
20 goes to Joshua Tree National Park.

21 So all of these things, from the staff's
22 perspective suggest, a high degree of viewer sensitivity
23 that exceeds that of any of the other cases that might have
24 been considered by the Commission thus far.

25 The thing that we believe, I mean, we think that

1 where the Commission errs in trying to evaluate viewer
2 sensitivity here is that one of the factors of viewer
3 sensitivity is the number of viewers.

4 And I think there's a notion here that because the
5 road has less traffic than, perhaps, one of the interstates
6 or because the frequency of use, as may be the case in
7 wilderness areas, may be low, that that particular criterion
8 should determine the impact is less than significant.

9 I think, but what is Mr. Kanemoto can speak to a
10 greater elaboration than I, and we would like to give him by
11 the way, an opportunity to speak a little bit. We don't
12 want to have a long, too long a process here but we do want
13 to allow Mr. Kanemoto to speak to that later; that the
14 criterion that both BLM and the staff used is that they used
15 criteria that the number of viewers is one of those criteria
16 but a very important criteria.

17 And we believe that the context of this is very
18 important to the surrounding context.

19 A Burger King is a Burger King whether you put it
20 on K Street or whether you put it on Tuolumne Meadows; it's
21 the same, perhaps, box. But the effect that it has on
22 people on K Street will probably be less objectionable to
23 many of them than it would be were it placed in Tuolumne
24 Meadows.

25 And, that's a crude example perhaps, but we felt

1 that context got lost in terms of looking at the number of
2 viewers. Obviously there are more viewers on K Street than
3 there are in Tuolumne Meadows but that isn't, perhaps, the
4 most important point.

5 The other thing that we think is not, perhaps,
6 sufficiently appreciated in this is, partly, I think, the
7 difficulty that staff has in trying to communicate is the
8 issue of illuminance.

9 And, by the way, this, I put this in because we
10 wanted to illustrate this. It's actually very easy to walk
11 for miles out in the desert even without trails. Just in
12 running shoes you can get to vantage points.

13 That was about a two-hour, four mile walk up a
14 hill that's overlooking the Ivanpah site and it's -- I like
15 to walk in the desert. And whenever I do I'm always amazed
16 at no matter how deep into the desert I get, no matter how
17 often I might think that I'm in a place no one has ever been
18 before, I always find evidence that other people have been
19 there and quite often, rather recently, either because
20 they've left debris there or because they've left footprints
21 in the mud after the last rain storm. So you see evidence
22 of people everywhere in the desert in the most surprising of
23 places.

24 And even though people may not stand on any
25 precise KOP that was used in this -- in this staff analysis,

1 I think it's important to realize that people do hike
2 deserts, do get to high places, do overlook the valleys
3 below and will see this project.

4 That was the only importance of this particular
5 slide.

6 Moving back to my second point, the point that I
7 wanted to make about illuminance is that staff has not yet
8 found a way to submission or illustrate what glare from
9 these projects actually looks like.

10 This is a hodgepodge attempt to do that. I'm sure
11 Mr. Priestley will have a lot to say about it. It was an
12 attempt to, I think, try to put together a photo that would,
13 I'm sorry, Dr. Priestley, a photo that would capture the
14 brightness of what the testimony describes as a very strong
15 visual nuisance for kind of the dominating effect that comes
16 from these very bright solar collectors.

17 In this case the solar collectors in these photos
18 is one-sided. The collector of the other project on hand
19 is, as I understand it, is cylindrical and a full view
20 within and is pointing in all directions.

21 We had different attempts to take photos of these
22 things. We have, at least, succeeded at replicating them in
23 a way that we think is particularly effective.

24 What we really hope the Committee will not buy
25 into this notion that these look like some distant light

1 bulb because they're very much brighter than that and they,
2 sometimes, being as bright as half the brightness of the
3 sun.

4 So they're very, very visible when they are going
5 and we understand that we have not yet succeeded in finding
6 a way to convey that. But we have, we're still working at
7 it. We're just trying to find to, and we haven't had that
8 much experience with these solar projects really. So we're
9 -- in Blythe and Ivanpah we first discussed it and we don't
10 really know how it's going to be conveyed.

11 Finally to talk about something. And Mr. Galati
12 and I disagree about a lot of things today but I think we do
13 agree about one thing that is important. And that is one
14 that I think is important to the Committee and that is the
15 consequence if you do change your position about the
16 significance of the impact.

17 I think that you should do that. I think you
18 probably are concerned about the time factor because this in
19 some ways requires more time.

20 And without wanting to suggest that there's no
21 work involved, there is. I think that Mr. Galati and I do
22 agree on this, that the provisions of Section 15162 set the
23 guidelines which apply to recirculation do not apply to the
24 subject change in the significance of this condition.

25 So, although you would have to write the provision

1 on override and discuss the evidence that it does support on
2 override issues, Mr. Galati assures me it is abundant in
3 this proceeding it would not require any further provided
4 that --

5 And I think that's an important thing for the
6 Committee to think about because of the consequences that it
7 could change its mind about the impact herein.

8 At this point I'd like, I know Mr. O'Brien also
9 wants to make some comments and I hope you'll indulge the
10 staff and allow our two witnesses summarize some more
11 specific -- to perfect our -- or at least to make some
12 specificity so that my comments in terms of particular
13 things that are in the PMPD that they might --

14 HEARING OFFICER VACCARO: Before we do that if you
15 could just clarify on this topic of timing. Should the
16 Committee decide in any fashion to revise the PMPD, isn't
17 there a 15 day comment period that we would follow here at
18 the Energy Commission notwithstanding what CEQA says if, in
19 fact, the PMPD were revised to --

20 MR. RATLIFFE: I think that's a good idea.

21 HEARING OFFICER VACCARO: Thank you. So with
22 that, Mr. O'Brien.

23 MR. O'BRIEN: Thank you. I'll be brief, in part,
24 because I don't have any clever quote from the Falkland
25 Islands War, which I'm a little envious now that I don't

1 have one.

2 But I will repeat a couple of things that
3 Mr. Ratliffe said.

4 First of all, my comments today are directed
5 solely to the issue of the impacts of the PMPD's finding of
6 no significant impact.

7 And the staff is not arguing today about the issue
8 of whether this project should be licensed. I just want to
9 be very clear on that given to what I filed earlier in the
10 proceeding.

11 The staff strongly disagrees with the findings of
12 the PMPD that the Rice Project does not create a significant
13 and adverse visual impact.

14 We believe the findings of the PMPD in regard to
15 Visual Resources are inconsistent with the Commission's
16 findings in many of the other solar projects.

17 In particular, I would note that the PMPD's
18 conclusion is at variance with the Ivanpah Project where the
19 Commission did find a significant visual impact.

20 Ivanpah employs a similar technology and was sited
21 in a much more visually degraded setting given the high-rise
22 casinos, a nearby power plant, multiple transmission lines,
23 a golf course and a major interstate all within close
24 proximity of the project.

25 I have been to Spain and seen those solar towers

1 and have also witnessed the operation of the East Solar
2 Project in Palmdale.

3 No photograph can accurately depict how visually
4 significant and adverse the impacts of this technology are.

5 The Rice Project will be visible for miles and it
6 will be incredibly visually dominating, obtrusive and
7 discordant with its surroundings.

8 The impact will be significant and adverse to
9 anybody driving down that highway or hiking in the
10 wilderness areas who is at all intent upon enjoying the
11 scenery.

12 Last and perhaps most important, is that if the
13 findings of the PMPD stand the Commission will have created
14 an unfortunate incentive for project developers to locate
15 their projects in remote areas, California's deserts, which
16 is not consistent with the goals previously articulated by
17 this Commission and the objectives of the DRECP, the Desert
18 Renewable Energy Conservation Plan and the Renewable Energy
19 Action Team.

20 The staff urges the Committee to revise the PMPD.

21 (Thereupon the tape was changed.)

22 HEARING OFFICER VACCARO: Mr. Ratliffe I believe
23 you indicated that you wanted Mr. Kanemoto --

24 MR. RATLIFFE: Yes, I wanted to provide both
25 Mr. Kanemoto and Mr. Lindsley a brief opportunity to discuss

1 or further elaborate on our comments.

2 HEARING OFFICER VACCARO: Okay. Brief and further
3 elaborate I think were the key words that you used.

4 MR. RATLIFFE: Yes.

5 MR. KANEMOTO: I just wanted to -- just a couple
6 of points on the PMPD that I think are important and could
7 use some clarification.

8 The first part of the PMPD concludes on all the
9 KOPs on State Route 62, that is KOPs 1, 2 and 4. The PMPD
10 discussion concluded that impacts to motorists on SR 62
11 would not be significant primarily because the view is of
12 concern to motorists within 1 mile of the site. That was
13 stated for KOPs 1 and 2.

14 This conclusion simply misinterprets staff's
15 intended meaning, possibly because of unclarity in the staff
16 assessment. And so it seems important to clarify what was
17 actually intended in that part of the analysis.

18 It says that the heliostat field would be limited
19 to a four mile limit on SR 62, that's true. And, however,
20 it is very bright and glare would be experienced by the SR
21 62 motorists for much greater distances, far greater than
22 one or four miles.

23 This is illustrated in the solar power view shed
24 map which was provided by the applicant in the AFC and
25 reproduced in the staff assessment, Staff Assessment Figure

1 2, which indicates the visibility of the tower where it
2 extends to distances of over 20 miles.

3 The staff assessment, per our analysis, estimated
4 that these impacts could extend for 10 miles or more based
5 on the data that was available at the time.

6 Staff experiences with the -- advised strongly
7 enforced these initial concerns to the extent of the --

8 Second, the PMPD discussion concludes that impacts
9 to motorists on SR 62 would not be significant based on
10 characterizing visual sensitivity of SR 62 motorists as
11 moderate and low for moderate due to the level of traffic.

12 This is estimated by CalTrans to be about 2200
13 average daily trips. However, under BLM's visual resource
14 management handbook the CalTrans estimate of 2200 daily
15 trips or 800,000 trips per year, was clearly classified as a
16 high level of use to determine viewer sensitivity and
17 suggests higher viewer sensitivity.

18 The BLM handbook classifies 45,000 annual trips as
19 indicating high on visual sensitivity. But the level of
20 traffic on SR 62 is nearly 18 times higher than the
21 threshold considered high by BLM for the purposes of visual
22 analysis. Staff has tried to maintain consistency with BLM
23 practice.

24 The third point relates to visual sensitivity,
25 awareness (inaudible) that Brian just spoke about

1 (inaudible), the PMPD discounts potential impacts to where
2 these are based on low numbers of potential viewers. The
3 staff has in its comments to the PMPD, however, that fewer
4 numbers is only one of several factors used to determine
5 visual sensitivity

6 To give just one example. The BLM handbook
7 specifically identifies the importance of visual quality for
8 the management objective of special areas such as wilderness
9 areas as one of the primary factors in determining visual
10 sensitivity.

11 In general, applying fewer numbers as the sole or
12 overriding factor in visual sensitivity concluded logical
13 problems in staff's visual analysis.

14 As Mr. O'Brien I think stated, no wilderness area could
15 experience the (inaudible) almost by definition because of
16 the fact of both viewer numbers, which is slightly counter-
17 intuitive.

18 Secondly, as (inaudible) projects in those areas
19 are of utmost (inaudible).

20 Finally, we would just like to highlight the fact
21 that with this new solar power technology on this project
22 and Ivanpah because of its unique potential for adversely
23 affecting large areas of the desert landscape it presents a
24 new type of visual impact to wilderness areas that has not
25 been encountered before or seen previously; which in staff's

1 opinion, merits careful consideration by the Commission.

2 It raises various questions including just where this
3 is affected and just where it would continue to qualify as a
4 wilderness. That's all.

5 HEARING OFFICER VACCARO: Thank you, Mr. Kanemoto,
6 Mr. Lindsley.

7 MR. LINDSLEY: Good morning. My specialty is the
8 luminance in contrast of the facilities and these projects
9 are very challenging to assess much less communicate to
10 people who don't deal with this as their own technical
11 business, if you will.

12 One of the challenges is that when you look at the
13 photograph on the screen the brightest point there in the
14 field of view is no brighter than the border, the white
15 border around the picture itself.

16 But in reality it's many, many, many magnitudes
17 brighter.

18 And the Solucar facility provides a unique
19 opportunity to characterize it in a way that the potential
20 impacts for the size and brightness of the solar towers can
21 be explained.

22 I think that in the AFC the applicant made mention
23 of that it was no brighter than a 100 watt incandescent lamp
24 and that the a surface that is where the heat is absorbed
25 from the mirrors is asorbtive not reflective.

1 And we had requested additional information of
2 which probably got lost in the shuffle because we never saw
3 anything.

4 Suffice it to say is that when you go out and you
5 visit the site you really have to characterize the
6 brightness of these towers and in the matter of is it one
7 sun, is it a half a sun because its', you're dealing with
8 the brightness of the sun which, frankly, my mom said, never
9 look at the sun. So I didn't think about that very much
10 until you're trying to illustrate how bright these objects
11 really are.

12 Solucar's apparent brightness is about half a sun
13 and when we compare the height of the tower there which is
14 about 377 feet versus the Rice tower which is 672.

15 The Solucar lateral surface, the area that's
16 actually the receiver that the mirrors image hits is about,
17 roughly, 14 hundred square feet, give or take. And I'm
18 talking orders of magnitude here just to kind of get people
19 a sense of what we're talking about.

20 The Rice lateral surface is about four times that.

21 Now what's interesting is there's a significantly
22 larger number of mirrors at the Rice Facility.

23 So we did a quick comparison.

24 And if you look at the Solucar receiver area
25 versus the number of mirrors we came up with an arbitrary

1 factor of 585.

2 And this is without any hard numbers. This is
3 just multiplying the reflective ability of the mirrors into
4 the receiver area.

5 When you look at the Rice number it's over twice
6 as high. Now it's not going to be twice as bright but
7 without additional information we couldn't tell you how much
8 brighter it really is going to be.

9 But I think the significant thing to keep in mind
10 about the difference between Solucar and Rice besides the
11 height is that Solucar only has a viewing angle from the
12 north of about a 160 degrees.

13 If you look at the Rice Facility the mirrors will
14 extend all the way around it in a circle and all sides will
15 be roughly the same brightness.

16 So I would consider you, I would ask that you
17 consider that the illustrative material that we have is as
18 good as today's media will allow but it really does not
19 address the true brightness of what we're looking at there.

20 The only way I could demonstrate that would be to
21 take a flashlight and shine into your eye in a dark room and
22 that would be similar.

23 No further comment.

24 HEARING OFFICER VACCARO: Okay, Mr. Ratliffe is
25 there anything else that the staff would like to add with

1 respect to Visual Resources?

2 MR. RATLIFFE: I believe not, no.

3 HEARING OFFICER VACCARO: Okay. I have two sort
4 of a comment and a question. The first is that, could we
5 please make sure that all these visuals are docketed.

6 I think some of them exist in the record in some
7 fashion and others not truly as the comments that are being
8 presented today in these visual forms.

9 So could we get hard copies of those docketed?

10 MR. RATLIFFE: Sure, yes.

11 HEARING OFFICER VACCARO: Okay. The other is, and
12 this is only if you have an answer and then we sort of were
13 coming to this process late on this particular project but
14 Commissioner Weisenmiller asked a question or made a
15 comment, I guess I should say, regarding the motion itself
16 to strike the evidence and he was commenting on the fact
17 that there was information available with respect to another
18 project and a similar technology is being used and he posed
19 it as a statement not as a question.

20 But I'm going to ask it as a question. Is there
21 some reason that that was not brought into this process
22 during the evaluation of the project through the staff
23 assessment, through the workshopping, at any point before
24 receiving these comments? And even I see that it's not
25 woven into the comments that are presented today or in the

1 written comments from staff.

2 And I don't say that as a challenge, it's just
3 really to kind of get a sense of some of the things that
4 staff might have been grappling with in evaluating visual
5 impacts.

6 MR. RATLIFFE: I don't have an answer. I'm not
7 acquainted with that facility. But I think, maybe, Mr.
8 Lindsley may know something more about it than I do and it
9 might be worth seeing if he does.

10 MR. LINDSLEY: From the very beginning our team
11 had asked what types of facilities were available for us to
12 go physically look at because our experience indicates,
13 that's the only way that you can effectively imagine and
14 analyze how bright they really are.

15 I believe that Solar One was something that was
16 mentioned earlier today. That's the first time I've heard
17 that mentioned as a potential facility.

18 But I also understand that it might have been out
19 of commission during the time that we had the research
20 period available for this project.

21 MR. KESSLER: Yes, I can say for myself, I was not
22 aware of these solar projects until -- . I did make a trip
23 down there to get photographs of the project but when I
24 arrived it was not in operation.

25 HEARING OFFICER VACCARO: Okay, thank you.

1 Commissioner Weisenmiller did you have any other questions
2 you might want to ask of the staff?

3 PRESIDING MEMBER WEISENMILLER: No questions.

4 HEARING OFFICER VACCARO: Mr. Galati.

5 MR. GALATI: Only one comment. And I sure would
6 like to cross-exam Mr. Lindsley on some of his opinions to
7 find the basis for them.

8 With that out, let me take a step back for a
9 minute. Why are we here? I won't quote from the Falkan War
10 but I'll quote from something more akin to my family
11 meetings which is, if you punch somebody in the nose and
12 then it didn't do anything, so you say, h-m-m, I'm not going
13 to punch you in the nose anymore.

14 That is the same as staff, remember staff
15 recommended that you deny this project. That's what they
16 recommended.

17 They didn't recommend that you find an override.
18 They said this project wasn't good enough for a finding of
19 override. And they testified under oath to that.

20 Second, staff testified that the only way to make
21 the impact less was to move it farther away.

22 So this concept of remoteness and this concept of
23 fewer viewers not mattering. It does matter because staff's
24 witness said, the weight -- because I asked the question, is
25 there any place in California to put this facility and not

1 have a significant impact? And their response was, further
2 away from roads, further away from development, further away
3 from people. That's what was intended.

4 So the real question here is are we far enough
5 away or are we too close or where are we?

6 There's a difference between being in a wilderness
7 area, around the edge of a wilderness area and not. And
8 we're not in a wilderness area, okay.

9 We're on a road that is, contrary to staff's view
10 that there are many, many, many, many people driving from
11 Arizona through Highway 62 to get to Joshua Tree as opposed
12 to all the people going to Joshua Tree and many of them are
13 Californians that never come across to our side.

14 They come into Highway 62 to Joshua Tree long
15 before they come into our side. Contrary to that, the
16 viewer sensitivity and the amount of people viewing it are
17 very important criteria.

18 The PMPD does not rely just on that. The PMPD
19 relies on several other factors, the slope of the land.
20 They rely on the visual simulations that were done.

21 I'd like to address something else about
22 qualifying it as the sun and how many suns.

23 One thing that is unique about the sun is that
24 everywhere you go, let's say within the project area from
25 Joshua Tree to Parker, you look up at the sun. It really

1 hasn't changed appreciably in distance. So its brightness
2 is about the same.

3 What staff is not taking into account is that as
4 you move farther from the project it gets -- illuminance is
5 less. That is what is incumbent by the equivalence of a
6 light pole. Nobody says that if you're on the project site
7 looking up at the, that's it's a light pole.

8 Okay, but as you move out and one thing that staff
9 has not addressed is as you move out, yes you can see it for
10 miles around. But it's obviously not as bright as the sun
11 if you're four or five miles away.

12 So the concept that this project obliterates the
13 view is something that is such a huge overstatement that we
14 don't want the Committee, I mean, the Committee heard that
15 testimony already, it's in the transcript and we disagree
16 with it and we've asked that you not agree with that again.

17 Also the concept that a developer is going to be
18 incentivized to go find remote locations. Developers site
19 projects where they can get access to transmission, where
20 they can get property, where they can be close enough to the
21 infrastructure that they need and then do their best --
22 because the project has got to be economic first; do their
23 best to site within a circle, so to speak, on minimizing
24 environmental impacts.

25 There is no incentive whatsoever for an applicant

1 to go out and find an extremely remote location.

2 I will also say that if staff is concerned with
3 that possibility the forum to send the message of where to
4 develop is in the DRECP and is in the rating process and is
5 in the pre-filing process.

6 It is -- it is troubling that using staff's
7 methodology I cannot see a place that a power tower could be
8 sited in California without relying on the Energy Commission
9 to make a finding of override.

10 And if you had followed staff on this subject,
11 you'd be denying the project.

12 We think that the Committee considered the
13 evidence. We think there was ample opportunity, there was
14 cross-examination, there was direct examination, there were
15 multiple witnesses, there were multiple documents. We think
16 Committee did a good job of balancing the characteristics of
17 this project.

18 What I think has happened is staff didn't think
19 you'd listen to them on the finding of override. I think
20 they really didn't think you would.

21 And so now that you haven't listened to them on
22 that and you haven't listened to them on the significant
23 impact what we're arguing now is not the Rice Project.

24 We're arguing about how staff goes forward on
25 other projects to determine their visual analysis.

1 As a practitioner before this Commission I can
2 tell you that a very, very few number of times I've been
3 able to say, well you found this in this project, you can
4 find this in that other project.

5 I'll give you a perfect example, the Genesis water
6 issue that nobody followed Blythe 1 and Blythe 2. I'll give
7 you the Palen sand transport issue. Nobody followed what we
8 did in Blythe 1 transmission line.

9 So the concept that somehow we set a precedent
10 here that affects the ability to staff, write a staff
11 assessment is a project-by-project characteristics.

12 This project for all the reasons that the
13 applicant points out, for all the reasons identified in our
14 testimony and that we pulled out of staff on cross-
15 examination, the project just does not have a significant
16 impact in this location. There are places that it would.
17 This is not one of them.

18 And we think using words like obliterate, using
19 words like incentivize people to find pristine and this is
20 not a pristine site, there is development there.

21 The former used airport, it was, it's got an
22 aqueduct and other manmade things around it.

23 So I think what we're doing is going backwards
24 instead of going forward. I don't think that we've heard
25 anything today that couldn't have been done at evidentiary

1 hearing nor have we heard anything today that we think
2 should change it completely.

3 I do want to get an opportunity for my expert to
4 respond to those items that were put up and the testimony
5 about the Spain Project and staff's characterization with
6 some of their comments, Dr. Priestley.

7 DR. PRIESTLEY: Yeah, my name is Tom Priestley.
8 And I want to start by mentioning that in an earlier phase
9 of my career I was a professor at Cal Poly, Pomona where I
10 taught environmental planning and urban design.

11 And reading over the staff comments on the PMPD
12 reminded me of some of the undergraduate papers that I got.

13 And my response was, if I were still at Cal Poly
14 reading these things I would, this paper would not get a
15 very high grade.

16 And I, presumably you have read over these
17 comments yourselves and you probably have an idea of why I
18 reached that judgement.

19 And very, very briefly stated, this piece is rife
20 with sweeping generalizations which upon close scrutiny do
21 not hold up.

22 And, even worse, in many cases provide the
23 entirely wrong impressions and suggest things and effects
24 that are not at all the case.

25 Secondly, --

1 UNIDENTIFIED PHONE SPEAKER: I can't hear
2 anything. Is he still speaking?

3 HEARING OFFICER VACCARO: I'm sorry, you know, Mr.
4 Brewster --

5 UNIDENTIFIED PHONE SPEAKER: Is the mic on up --

6 DR. PRIESTLEY: Is this better? Can you hear me
7 now?

8 UNIDENTIFIED PHONE SPEAKER: Yes.

9 DR. PRIESTLEY: Okay, my apologies. Is there any
10 need to repeat anything?

11 HEARING OFFICER VACCARO: Stop please. Someone,
12 there was a female voice on the line --

13 MS. JENNINGS: Yes, this is Ms. Jennings and you
14 need to start over. We lost it.

15 HEARING OFFICER VACCARO: Okay, thank you. Thank
16 you for letting us know that caller. Sometimes we can all
17 hear everything just fine even without the microphones and
18 sometimes forget.

19 So Mr. Priestley, Dr. Priestley they're going to
20 need you to basically reintroduce yourself and kind of visit
21 those points again because the callers were unable to --

22 UNIDENTIFIED PHONE SPEAKER: For the first four
23 minutes or so of what he said, we don't need to go all the
24 way back to your points.

25 HEARING OFFICER VACCARO: He's only been speaking

1 for like about a minute. So I think we're in good shape.

2 DR. PRIESTLEY: Yeah, my apologies. I'm not
3 entirely familiar with this equipment.

4 So as I was starting to say, one of the things I
5 wanted to mention was that in another phase of my career I
6 was a professor at Cal Poly, Pomona where I taught classes
7 in environmental planning and urban design.

8 And reading over the staff comments on the PMPD
9 reminded me of some of the undergraduate papers that I used
10 to have to review. And my response was to feel that, well
11 if I were grading this paper it would not get a very good
12 grade.

13 And for a couple of reasons, one, these comments
14 are rife with sweeping generalizations which upon a close
15 scrutiny just do not bear out and which unfortunately are
16 used to lead to very misleading conclusions.

17 Secondly, the comments related to the California
18 Desert Conservation Area Plan and to wilderness areas
19 portrayed, let's say, a very naive understanding of what
20 both the Plan and the nature of wilderness and planning for
21 wilderness areas and their areas around them.

22 And, again, that lack of understanding of these
23 policy areas, again, leads to some conclusions that are
24 very, very misleading.

25 And, finally, in questions of graphics and of

1 photography I'm afraid that the student would fail. I'll
2 talk a little bit more about that as I move along.

3 Now I could spend all morning here picking apart
4 these comments, but I will not. What I would like to do if
5 you would allow me is to just provide a couple of specific
6 examples of the kinds of things that I'm talking about so
7 that as you are reading this paper yourself you kind of keep
8 this perspective in mind in terms of interpreting what it
9 is, in evaluating what it is that you are reading.

10 So I'd like to start by providing just a few brief
11 examples of some of the sweeping generalizations that have
12 been made in this set of comments.

13 HEARING OFFICER VACCARO: Before you do so --

14 DR. PRIESTLEY: Yeah.

15 HEARING OFFICER VACCARO: -- we do have here
16 before us copies of, the full copy of staff's Visual
17 Resources comments. But for those who don't and for the of
18 this record and recording it's very important that you
19 identify by page or by some specific reference so that
20 everyone will know what it is that you're speaking about.

21 DR. PRIESTLEY: Okay, yeah, yeah, very fair, very
22 reasonable. So just one, so just one example, on page four
23 of the comments, the last paragraph, about two-thirds of the
24 way down the paragraph there is a sentence that reads, for
25 distance of roughly four miles as viewed from SR 62 the

1 project will largely obliterate southward panoramic views of
2 Rice Valley and its background mountain ranges.

3 And I think any reasonable person has to take
4 exception to the use of the word, obliterate, in this
5 context.

6 It's highly charged. It's hyperbolic. It does
7 not, at all, capture what the effect of the project in these
8 particular views will be.

9 To obliterate suggests to destroy and remove. And
10 if I had a view of San Francisco Bay from an office building
11 in San Francisco and somebody put in a building right next
12 door that completely blocked it, it might be fair for me to
13 characterize that as an obliteration of my view.

14 But when you have a very large, wide open desert
15 landscape within which you have a single element that barely
16 blocks anything in the view which certainly will change the
17 view in some ways but will not completely block or destroy
18 that view.

19 To use the term, obliterate, I think is, you know,
20 irresponsible and does not show a very high degree of, oh I
21 don't know, professional judgement in terms of communicating
22 remarks of what the actual impact of the project would be.

23 On the very, in the very next sentence there is a
24 statement that, receiver tower would potentially be visible
25 as a source of nuisance for approximately 50 miles along SR

1 62.

2 And this seems to be a sweeping overstatement as
3 well. In fact, if I heard him right I thought I heard our
4 expert just say that, well, the glow from the towers could
5 be visible for a distance of 10 miles which is not the,
6 presumably the 25 miles that this statement would suggest.

7 And there is, certainly, a difference between
8 being able to, you know, maybe, see or detect something way
9 off in the distance in the landscape and saying that it
10 would have a major and significant impact.

11 So, again, sweeping statements without developing
12 into them, providing the sense of nuance that would enable
13 us to take the analysis more seriously.

14 So, again, in terms of sweeping statements that
15 are not well founded there is reference to contact levels
16 and speculation as to the numbers of people on SR 62 in the
17 vicinity of the project site who are heading towards Joshua
18 Tree National Park.

19 And if you look on page six their comments, right
20 at the top of the page in the very first full paragraph
21 there is a, there is a whole series of statements that,
22 although may be true in some ways, are incredibly
23 misleading.

24 SR 62 serves as a primary access route to Joshua
25 Tree National Park which is only 25 miles to the west of the

1 RACP site. And then a little bit further down the
2 indication that there 1,300,000 visitors to the Park, 78
3 percent of them enter the Park through entrances on SR 62.

4 So this information is presented in a way which
5 makes it sound like there's a steady caravan of people
6 driving down SR 62 past the project site on their way to
7 visit Joshua Tree National Park.

8 Now if I, something I might mention to you, as a
9 southern Californian who is out and around in this region
10 all the time I always carry copies of the Automobile Club of
11 Southern California regional map which I found to be an
12 incredibly valuable resource because they do a fantastic job
13 of showing the locations of the parks, monuments, wilderness
14 areas, all the roads, the cultural sites, the visitor
15 attractions and so on.

16 And I just happen to have two copies with me. I'd
17 like to, if I may, bring one up to you to be looking at
18 while I talk.

19 HEARING OFFICER VACCARO: My only concern with
20 that, of course, is that while it's important for the
21 Committee to have a copy of what you're looking at, it's
22 equally, if not more important, that the staff also has a
23 copy of that --

24 DR. PRIESTLEY: Well you know, I have another one.
25 I know what I'm talking about enough so that I can hand

1 this over to them and --

2 HEARING OFFICER VACCARO: Yeah, if you would do
3 that and --

4 DR. PRIESTLEY: Yeah, I can bring that one too.
5 And --

6 HEARING OFFICER VACCARO: I think that's
7 important.

8 DR. PRIESTLEY: -- so, the section we want to look
9 at is the eastern half of, yeah the back of the map there is
10 a big regional map of southern California.

11 And the section that we want to look at is, you
12 know, the eastern half. And if you look on the map you can
13 see along SR 62 you can see a little dot that says, Rice,
14 which is just immediately to the west of the project site.

15 So I'll give you a second to get yourselves
16 oriented.

17 HEARING OFFICER VACCARO: Mr. Ratliffe have you
18 looked at that.

19 MR. RATLIFFE: Yes.

20 DR. PRIESTLEY: Are you, okay --

21 HEARING OFFICER VACCARO: Yes, we're all oriented
22 to this.

23 DR. PRIESTLEY: -- okay, now the first thing I
24 want to say, now that you have this map in front of you if
25 you do a quick comparison of this map with the map that the

1 staff has submitted you will see that the map that staff has
2 submitted is seriously flawed.

3 And, again, if I were wearing my professor hat I
4 would give this one an F and make the student redo it
5 because to submit a map without a scale bar and that is not
6 to scale is a violation of the most basic cartographic
7 principles because how are you to understand the
8 relationships among things if you don't, if it's not to
9 scale and there is no scale bar because the map could then
10 very easily present a distorted understanding of what is
11 actually happening in the environment.

12 Secondly, I would toss this map back because much
13 of the information here is absolutely incorrect. If you
14 compare this map --

15 UNIDENTIFIED PHONE SPEAKER: Okay, is the --

16 DR. PRIESTLEY: -- with the Triple A map, you can
17 see that the boundaries of many of the --

18 UNIDENTIFIED PHONE SPEAKER: -- you know, you --

19 DR. PRIESTLEY: -- wilderness areas are wrong and
20 that the boundaries shown for the Joshua Tree National Park
21 there is actually no relationship to the actual Park
22 boundaries.

23 And, beyond that, the whole idea cartography like
24 in planning is to provide useful information that will allow
25 decision makers to make a well-informed decision.

1 And this map does not provide the information of
2 relevance to the decision that you are, that you need to be
3 making today.

4 And one of the reasons --

5 HEARING OFFICER VACCARO: I'm going to interrupt
6 you for just one moment please, if you'll hold that thought.

7 DR. PRIESTLEY: Yeah, sure.

8 HEARING OFFICER VACCARO: Mr. Kessler would you
9 mind please putting up, getting us back to what, I believe,
10 is Visual 1 of your presentation since what we're doing is a
11 comparison between two maps. Thank you.

12 You don't need to repeat what you just said --

13 DR. PRIESTLEY: Oh, okay --

14 HEARING OFFICER VACCARO: I just wanted to provide
15 --

16 DR. PRIESTLEY: Yeah --

17 HEARING OFFICER VACCARO: -- in the context for
18 what it is that you just said --

19 DR. PRIESTLEY: -- yeah, yeah --

20 HEARING OFFICER VACCARO: -- and what you may
21 next.

22 DR. PRIESTLEY: Yeah, so, yeah, so I want to get
23 back to contacts because that's something that Mr. Ratliffe
24 mentioned a little earlier this morning and I think people
25 contacts in very, very important in this case.

1 And this map fails to show the proper contacts of,
2 in fact, we need much more of a regional view and we need to
3 take in the area much further to the east.

4 Here is one of the reasons why. Also in this
5 analysis there is a reference to SR 62 in the vicinity, or
6 the contact site being on SR 62 which is the highway that
7 leads to the front entrance of the Joshua Tree National
8 Monument.

9 Well, it may be true that the eastern most
10 boundary of the National Park --

11 UNIDENTIFIED PHONE SPEAKER: We don't have --

12 DR. PRIESTLEY: -- is 25 miles to the west of the
13 project site but the reality is the closest entrance to the
14 Park is 75 miles to the rest of the --

15 UNIDENTIFIED PHONE SPEAKER: We are all --

16 DR. PRIESTLEY: -- site in Twenty-nine Palms which
17 is, so, it's seems like, it seems like --

18 UNIDENTIFIED PHONE SPEAKER: -- it's sounds like,
19 this is --

20 HEARING OFFICER VACCARO: I'm not sure if anyone
21 on the phone lines has forgotten, sort of, or doesn't know
22 the basic rules for these proceedings but it's important
23 that you hit your mute buttons so that we don't hear any
24 background.

25 If you're using a cell phone we'd really might get

1 some interference or feedback. So right now we are hearing
2 some noise. It could be our equipment but it could also be
3 the way that the phone lines are being used by the callers.

4 So if you could please be mindful of putting us
5 on, hitting the mute button and don't put us on hold please.

6 And if you're using a cell phone see if you can't
7 maybe call in again and get a better connection. Thank you.

8 DR. PRIESTLEY: So, the related point is the
9 reality is just looking at this map, it would be very easy
10 to develop the hypothesis that the majority of the 1.3
11 million people who will visit the Park every year are
12 probably coming from the west, from the, either from the
13 L.A. Basin or from the Palms Springs area where they would
14 be using, they would, in fact, be using SR 62 but they would
15 be heading eastbound just up to the Twenty-nine Palms Park
16 entrance.

17 And in terms of visitors coming from the east, if
18 you take a look at this map you can see the Mojave National
19 Preserve in the area to the north.

20 And I'm referring to --

21 HEARING OFFICER VACCARO: Excuse me, that's --

22 DR. PRIESTLEY: -- I'm referring to the Triple A
23 map.

24 HEARING OFFICER VACCARO: -- okay, yes. Thank
25 you, for the purposes --

1 DR. PRIESTLEY: -- yes --

2 HEARING OFFICER VACCARO: -- of the record it's
3 very important that we know --

4 DR. PRIESTLEY: -- yeah, yeah --

5 HEARING OFFICER VACCARO: -- which map we're
6 seeing now.

7 DR. PRIESTLEY: -- which is another illustration,
8 again, of why this map should be rejected because it --

9 UNIDENTIFIED PHONE SPEAKER: It's charging --

10 HEARING OFFICER VACCARO: This map being --

11 DR. PRIESTLEY: -- the map that staff introduced
12 should be rejected because it does not show sufficient
13 context or properly understanding this site because, you
14 know, I spend a lot of time in the desert and one of the
15 things that I've become aware of is that there is a very,
16 very popular tourist group, particularly for European
17 tourists who start out in Las Vegas. They come down I15 and
18 then they travel through the Mojave National Preserve where
19 they get the sense of remoteness in a context where the site
20 has been protected for all time and where there are visitor
21 and interpretive facilities that make this really, you know,
22 kind of a positive, worthwhile experience as opposed to say,
23 SR 62 where you don't have any of the interpretation and
24 where the quality of scenery is not the same.

25 So, anyway, these people coming from the east that

1 are coming from the north and then they --

2 UNIDENTIFIED PHONE SPEAKER: Why don't you --

3 DR. PRIESTLEY: -- access SR 62 very close to
4 Twenty-nine Palms and then into the Park from there.

5 HEARING OFFICER VACCARO: Thank you. And you gave
6 us two examples of the types of concerns that you have.

7 DR. PRIESTLEY: Yeah.

8 HEARING OFFICER VACCARO: And I did ask staff and
9 I only say this because we need to be fair here, right?

10 DR. PRIESTLEY: Yes.

11 HEARING OFFICER VACCARO: The key words were,
12 staff were, brief, and, underscore; certainly very aware of
13 issues and fairness and prejudice, but again, as we've
14 mentioned, this isn't the first and last opportunity for --

15 DR. PRIESTLEY: Yeah.

16 HEARING OFFICER VACCARO: -- either party to
17 address this. So I just want to be clear that there were
18 two points that you were raised and that we're going to get
19 to the second one fairly soon.

20 DR. PRIESTLEY: Yeah and we'll get to it right
21 now. And that has to do with the California Desert
22 Conservation Area Plan and the wilderness areas.

23 Very briefly, I don't know how many of you know
24 the history of the California Desert Conservation Area Plan
25 but the Plan got started in the 1970s.

1 The Plan was adopted in 1980. And prior to the
2 adoption of this Plan there was very little protection out
3 there in the Mojave Desert. The whole thing was fair game.

4 Which is the reason why there was so much concern
5 about loss of scenic resources and so on.

6 But this plan in a way has been a success because
7 when you look at that Triple A map and you see the giant
8 green area that is a part of Mojave National Preserve, you
9 see all those grey areas that are BLM wilderness areas; all
10 of those areas have been created since the time that Plan
11 was adopted and, essentially, our reflection of the final
12 process that took place at that time which identified the
13 places out there in the desert which was, which was the most
14 unique, sensitive and most worthy of preserving and one
15 might say also, the most remote which have already been
16 locked up and given a fair amount of protection.

17 And this doesn't seem to have been acknowledged.
18 That, in fact, the Plan, if you look at the plan for the
19 project, if you look at the portion of the Plan we rated the
20 project area, of course, the project site itself is not
21 subject to the Plan because of the project plan but for the
22 BLM lands around the site the Plan designates it for a
23 moderate level of use.

24 So it does not lock up this land for preservation
25 because it just happens to be close to a wilderness area.

1 And at this time, I think, it's also very
2 incorrect to invoke this Plan as being a basis for saying
3 that every single view of, in the Mojave Desert is a
4 sensitive view that requires protection.

5 So, let me move on very briefly now to wilderness
6 areas. We have submitted written testimony which largely
7 deals with the question of wilderness that kind of reviews
8 what wilderness designation really means, what the intent of
9 it is and the bottom line is, wilderness designation does
10 not entail control and limitation of involvement in every
11 single area visible from the view sheds of the wilderness.

12 And this is very much policy that is followed,
13 say, by the BLM and by other regulatory agencies. But
14 you'll have the opportunity to read that yourselves.

15 And I think that at this point I should probably
16 wrap up.

17 HEARING OFFICER VACCARO: Thank you. And any
18 questions?

19 PRESIDING MEMBER WEISENMILLER: I had two
20 questions. Scott you had referred to the relationship
21 between source and inception in terms of distance. And this
22 is explained on the record that inverse, you know, the
23 distance or the distance squared or --

24 MR. GALATI: Yes we certainly have I think in our
25 testimony have a table and a chart that I can quickly look

1 up something and give you something from it which is, in the
2 chart that we have identified 16 hundred meters away the
3 illuminance is 154 lux.

4 A 100 watt lightbulb has a luminance of 191 lux.
5 So the illuminance does drop drastically with distance.

6 And, again, our position has not been that you
7 won't see it. Our position has been that it is
8 inappropriate and irresponsible to think of some place in
9 the wilderness area looking at something that's half a sun.
10 That is an inappropriate characterization.

11 PRESIDING MEMBER WEISENMILLER: The last question.
12 Obviously Solar One operated for many years and the
13 decommission staff indicated, my recollection is that was an
14 experimental project with the Department of Energy and
15 Southern California Edison.

16 Were there any reports produced on the experience
17 of that, including visuals?

18 MR. GALATI: I'm not aware of anybody doing the
19 report in association with visuals. I can tell you that
20 there are all kinds of photographs, in fact, they're often
21 used from that site sometimes showing the actual tower in
22 operation.

23 That's the only thing I'm familiar with and Bill
24 Gould as well had talked to us about it at the site visit
25 informational hearing.

1 The reports that I'm aware of have to really so
2 with its efficiency and then there was a report on birds
3 association which I think was used by staff.

4 But I don't believe that there is information
5 available from a visual perspective other than those photos.

6 PRESIDING MEMBER WEISENMILLER: Thanks.

7 HEARING OFFICER VACCARO: Okay. So, thank you
8 all. That was quite a bit of comment on Visual Resources
9 but the Committee understands why that's a very important
10 issue in this proceeding.

11 What we'd like to do now is make it clear that
12 this is an early opportunity for the Committee to get
13 comments from the parties, for the parties to hear from one
14 another on any manner of topics related to the PMPD.

15 We still have time left in this 30 day PMPD review
16 period and the end of comment is the 13th but we encourage
17 staff and the applicant, should you choose to comment
18 further on what you've heard today, or anything that's been
19 submitted in writing by either party, that you do it as soon
20 as is possible. And please don't wait until five o'clock on
21 the 13th to submit a comment to the Committee on these
22 topics.

23 But we understand that there may be more that
24 either or both might wish to say with respect to what's come
25 out today and what was submitted in the written comments on

1 Visual Resources.

2 And I think with that we're going to end the
3 comments from the parties on Visual Resources. But the
4 Committee is curious if anyone who is on the line on behalf
5 of Western if you would like to add any comments or have
6 anything to say with respect to Visual Resources,
7 methodology or any of the other matters that were raised
8 either today in the PMPD.

9 I'm not hearing anyone.

10 MS. REILY: This is Liana Reily from Western. I'm
11 our Environmental Project Manager for the project.

12 And the only comment that Western really has with
13 regards to this is that we stand behind the staff
14 assessment. It's also our job the Environmental Impact
15 Statement and so we stand with staff with regards to Visual
16 Resource impacts.

17 That's not saying that we think the project
18 shouldn't be moved forward. It's just saying that basically
19 there are going to be visual resources, visual impacts due
20 to the project.

21 Now other than, the Bureau doesn't have anything
22 else to comment on with regards to Visual Resources.

23 And the only other comments that we have, most of
24 them were given to staff and they were included in their
25 comments that they submitted to you all is that Western has

1 its own decision-making process so everything in regards to
2 Western is --

3 Other than that I think staff did a great job of
4 incorporating Western's comments in their comments to you.
5 Thank you for the opportunity to comment and participate.

6 HEARING OFFICER VACCARO: Well thank you. Thank
7 you for your comments. I think with that, unless there are
8 any other technical areas which, I believe, there shouldn't
9 be based on our prior agreements I think the parties have
10 exhausted comments at this point.

11 Are there any members of the public on the
12 telephone who might wish to speak on the PMPD?

13 MR. ELLIS: Yes, I would. My name is Bob Ellis
14 and I represent a group called Desert Survivors.

15 HEARING OFFICER VACCARO: Okay Mr. Ellis why don't
16 you go ahead and take a few moments to give us your
17 comments.

18 MR. ELLIS: Sure. I submitted comments by email
19 just last night. But our group has been hiking in the
20 desert for 20 years now. We're a desert conservation group
21 and mostly do hiking and advocacy for desert protection.

22 Most of us live in the Bay area but we get down to
23 this area quite a bit and into Nevada.

24 We've done a number of hikes in this area. We've
25 hiked and backpacked in the McCoy Wilderness. We've hiked

1 in the Riverside Mountains Wilderness. We've hiked in the
2 Turtle Mountains Wilderness.

3 So we're quite familiar, on the ground, with the
4 area. Not only the wilderness attracts us but many of our
5 members have camped at the Iron Mountain Camp. We've been
6 down the Rice Middlin Road and camped a couple of times in
7 the Little Marias which is just off the Rice Middlin Road.

8 And also I certainly camped several times in the
9 Arica Mountains which really gives you a wonderful view
10 right across the project.

11 I think the main concern that our group has is the
12 loss of landscape in these big desert areas that we're so
13 lucky to have in the California deserts.

14 We've seen these projects coming along and
15 flopping, in this case, right down in the middle of a vast
16 valley that we have really gotten lots of enjoyment out of.

17 One of the reasons that I think our group has
18 drawn people from urban areas to these wide-open spaces that
19 we have is because we who live in the cities really need
20 these open spaces for our mental health.

21 I truly, I worked 20 years in a county building in
22 the basement and I drive out to the desert a big sigh of
23 relief comes along.

24 So I'm an advocate of open space and the landscape
25 and, in fact, we recently heard that Secretary of the

1 Interior Salazar celebrated the National Landscape
2 Conservation System.

3 So I think that this project really has
4 significant visual impacts.

5 I camp in all different locations around there.
6 I've spent many evenings looking across that valley. I've
7 seen the communication towers a little further along 62 lit
8 up night.

9 I've also seen it in the day lots of times.

10 Any big 600 foot tower is a big thing and in any
11 mile or so circle of shining things is a significant thing.

12 If you look at the BLM process for determining
13 visual impacts, you know, they really do talk about an
14 industrial scale being way out of character of the
15 landscape. And that's exactly what is happening here.

16 So I was shocked when I heard that you felt that
17 the visual impact was not significant.

18 So it's, I think you're really need to accept its
19 significant impact and, you know, it's like Ivanpah and
20 other of these projects you feel you can override that, you
21 know, or the Secretary of the Interior wants to override
22 that, well then, okay.

23 But let's accept the significant impacts that's
24 happening here. I think that both --

25 HEARING OFFICER VACCARO: Mr. --

1 MR. ELLIS: -- of those significant impacts to
2 place this project right smack on top of what's really a
3 very interesting historical site.

4 The Rice Camp and the Granite Mountain Camp and
5 the Iron Mountain Camp all represent, you know, a time that
6 us older folks don't have too many memories of but when I
7 was a kid I did have some memories of that.

8 And now when I go out to the desert I've found
9 that I really enjoy camping in the Iron Mountain Camps where
10 you can see these little Rock Herrons --

11 So, I know you're on disturbed land there but you
12 are going to, let's use the word, obliterate, which I heard
13 earlier on the phone call. You're going to obliterate the
14 historical camp there.

15 And I think that is a significant impact. Let's
16 call it what it is. It's significant.

17 If you want to override those I guess you can get
18 somebody to do that. But I do think it's mischaracterizing
19 saying to duck that issue and try to say it isn't
20 significant.

21 The other land use issue I wanted to mention was
22 that there is apparently a, that Route 62 is ultimately to
23 be designated a scenic highway and I certainly and our group
24 feels that it's a very scenic highway.

25 When you go from Joshua Tree to the east on that

1 highway much of it doesn't have a telephone pole. It's a
2 big, broad view all the way.

3 They're changing views from open valley to
4 mountain ranges. This area here is part of that view. It's
5 true that there's a railroad there. It's true there's a
6 berm from behind which the canal goes through.

7 But in the south the Rice Valley expands where the
8 river softens and the Big Santa Maria Mountains, it's an
9 impressive view and it's really worth as a scenic
10 designation.

11 I think this project would really be a significant
12 impact on that possibility of making it a scenic road.

13 So that's a couple of items that I think that our
14 group would feel quite disappointed if you didn't reverse.

15 I think the main point I'd like to make is please
16 call these impacts significant. They really are. And if
17 you choose to get them overridden I guess that's your right.

18 But I don't think it's right to have an
19 environmental report which doesn't really characterize
20 things correctly. Thanks very much.

21 HEARING OFFICER VACCARO: Thank you Mr. Ellis.
22 And I apologize. We haven't had the benefit of looking at
23 your email yet but we'll certainly do that when we receive
24 it. Thank you.

25 MR. ELLIS: Thank you.

1 HEARING OFFICER VACCARO: Any other members of the
2 public who wish to comment on the Presiding Members Proposed
3 Decision that are on the telephone?

4 Okay, I hear none. And it appears that there are
5 no members of the public here in the room. So with that I'm
6 going to make a few of my own closing comments before I turn
7 it over to Commissioner Weisenmiller.

8 I thank you all very much for, I had mentioned
9 this to the applicant and to staff's attorney, thanking you
10 all for your diligence and thoroughness and speed in
11 reviewing the PMPD because we've all been moving very
12 quickly in this process.

13 When that happens, of course, unintended errors
14 are made as well and with that I personally apologize to
15 applicant, staff and the Committee for the oversights with
16 respect to Cultural Resources.

17 Everything is in the record. It was in the record
18 and the changes that both staff and the applicant have asked
19 to be made are fully supported in the record, should have
20 been made in the first place and will be incorporated into
21 an errata that gets prepared for consideration by the
22 Commission.

23 And with that I will turn it over to Commissioner
24 Weisenmiller.

25 PRESIDING MEMBER WEISENMILLER: Thank you. As she

1 indicated this has been a process where, I think, everyone
2 has worked very diligently and --

3 UNIDENTIFIED PHONE SPEAKER: Speak up please, it's
4 hard to hear you. You're fading in and out.

5 PRESIDING MEMBER WEISENMILLER: Sure. I was just
6 going to say, when this project first came before the
7 Commission I think all of us were thinking it would be a
8 very hard stress to get here and I think it's taken an awful
9 lot of hard work by the applicant, by the staff and
10 certainly by the Committee and office to really get us to
11 this point now in the decision.

12 That being said, I certainly appreciate getting
13 the comments today from the different parties. I mean
14 getting that input is certainly, is valuable and we would
15 certainly consider that.

16 We had a lot of comments today. We'll certainly
17 weigh those comments moving forward.

18 And, again, I'd like to thank everyone for your
19 patience.

20 HEARING OFFICER VACCARO: Okay, if there are any,
21 we usually throw it open for final comments by the applicant
22 and staff.

23 I think maybe we should do that. I skipped that
24 part and do apologize. Is there any last comment by anyone
25 in terms of Mr. Galati or Mr. Ratliffe before we leave?

1 MR. RATLIFFE: No.

2 MR. GALATI: There is one thing that I did not
3 address that I think that Mr. Ratliffe and I do agree that
4 CEQA would not require a recirculation.

5 But I don't believe I agree that a revised
6 decision of this nature would need to be a revised decision.

7 I think we can still do it as an errata basing it only on
8 what's in the record.

9 HEARING OFFICER VACCARO: Mr. Ratliffe.

10 MR. RATLIFFE: Yes, I think that perhaps I was too
11 quick to agree that a 15 day comment period would be
12 required. I would like to look at that before I, I'd like
13 to reevaluate that I'm sure.

14 HEARING OFFICER VACCARO: Well I think that's
15 fair. I think that the question that I posed was one more
16 of if this were a revised PMPD, would we need --

17 MR. RATLIFFE: Yes.

18 HEARING OFFICER VACCARO: -- for 15 days. The
19 question was not posed, should it be if there are any
20 changes made, made solely by errata versus a revised --

21 MR. RATLIFFE: Okay.

22 HEARING OFFICER VACCARO: Okay, thank you
23 everyone. We will go off the record.

24 (Whereupon, at 12:42 p.m. the
25 Committee Conference was adjourned.)

CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that I thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of December, 2010.

JOHN COTA