

BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:                    )  
  )  
Business Meeting                    )  
  )  
\_\_\_\_\_                              )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 8, 2008

10:00 A.M.

Reported by:  
Ramona Cota  
Contract Number: 150-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Chairperson

Jeffrey Byron

Karen Douglas

Arthur H. Rosenfeld

STAFF and CONTRACTORS PRESENT

Susan Brown

Barbara Byron

William Chamberlain, Chief Counsel

Susan Gefter

Caryn Holmes

Jim Holland

Melissa Jones, Executive Director

Harriet Kallemeyn, Secretariat

John Kessler

Paul Kramer

Christopher Meyer

Richard Ratliff

Raoul Renaud

Mike Smith

Gabriel Taylor

Ivor Benci-Woodward

PUBLIC ADVISER

Elena Miller

ALSO PRESENT

Chip Little, Manager of Government Affairs  
Mirant California

Garrett D. Evans, General Manager  
City of Pittsburg, Pittsburg Power Company

Michael J. Carroll, Attorney  
Latham & Watkins  
Counsel to the Palmdale Hybrid Power Project

Christine Henning, Project Manager  
Stirling Energy Systems

Jane E. Luckhardt, Attorney  
Downey Brand  
Counsel to the Eastshore Energy Center

Todd Smith, Attorney  
Pillsbury Winthrop Shaw Pittman  
Counsel to the City of Hayward

Michael S. Hindus, Attorney  
Pillsbury Winthrop Shaw Pittman  
Counsel to the City of Hayward

Andrew Massey, Associate County Counsel  
Office of County Counsel, Alameda County

Paul N. Haavik

Jewell Hargleroad, Attorney  
Counsel to Group Petitioners

Andrew Wilson, III

Jesus Armas

Audrey LePell, Citizens Against Pollution

Juanita Gutierrez, Citizens Against Pollution

Rob Simpson (via telephone)

Robert Sarvey (via telephone)

## I N D E X

	Page
Proceedings	1
Items	1
1 Consent Calendar	1
2 Willow Pass Generating Station	2
3 Palmdale Hybrid Power Project	11
4 Stirling Energy Systems Solar Two Project	13
5 Chevron Richmond Power Plant Replacement Project	18
6 Energy Commission Committee Appointments	19
7 County of Alameda	20
8 Western Governors' Association	24
9 California Highway Patrol	24
10 Eastshore Energy Center	26
11 Order Instituting Investigation	100
12 Minutes	109
13 Commission Committee Presentations/Discussion	109
14 Chief Counsel's Report	110
15 Executive Director's Report	110
16 Legislative Director's Report	110
17 Public Adviser's Report	110
18 Public Comment	111
Adjournment	111
Certificate of Reporter	112

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

2 10:00 a.m.

3 CHAIRPERSON PFANNENSTIEL: Good morning.

4 I think we are ready to get started. This is the  
5 Energy Commission biweekly Business Meeting.

6 Please join me in the Pledge of Allegiance.

7 (Whereupon the Pledge of Allegiance was  
8 recited in unison.)9 CHAIRPERSON PFANNENSTIEL: The Consent  
10 Calendar. Is there a motion to approve the  
11 Consent Calendar?12 COMMISSIONER ROSENFELD: I move the  
13 Consent Calendar.

14 COMMISSIONER BYRON: Second.

15 CHAIRPERSON PFANNENSTIEL: All in favor?

16 (Ayes.)

17 CHAIRPERSON PFANNENSTIEL: The Consent  
18 Calendar is approved.19 Item number 2, Willow Pass Generating  
20 Station. Possible approval of the Executive  
21 Director's data adequacy recommendation for Mirant  
22 Willow Pass, LLC's Application for Certification  
23 of the Willow Pass Generating Station. Good  
24 morning.

25 MR. BENCI-WOODWARD: Good morning. Good

1 morning, Chair and Members of the Commission. My  
2 name is Ivor Benci-Woodward. I am representing  
3 the Siting, Transmission and Environmental  
4 Protection Division. Item number 2 on the agenda  
5 this morning is reconsideration of the data  
6 adequacy recommendation for the Application for  
7 Certification for Willow Pass Generating Station.

8 On June 30, 2008, Mirant Willow Pass,  
9 LLC, filed an Application for Certification  
10 seeking approval from the Energy Commission --

11 CHAIRPERSON PFANNENSTIEL: Excuse me,  
12 could you speak into the mic a little closer.

13 MR. BENCI-WOODWARD: Oh yes.

14 CHAIRPERSON PFANNENSTIEL: I think  
15 people are having trouble hearing you. Make sure  
16 it's on.

17 MR. BENCI-WOODWARD: On June 30, 2008  
18 Mirant Willow Pass, LLC, filed an Application for  
19 Certification seeking approval from the Energy  
20 Commission to construct and operate the proposed  
21 Willow Pass Generating Station.

22 The Willow Pass Generating Station would  
23 be a 550 megawatt dry-cooled natural gas-fired  
24 electric power facility consisting of two Siemens  
25 Flex Plant 10 combined-cycle units.

1           The project would be located in the City  
2           of Pittsburg in Contra Costa County, California,  
3           within a brownfield site in the existing Pittsburg  
4           Power Plant. Power from the Willow Pass would be  
5           delivered to the PG&E switchyard adjacent to the  
6           project site by a 230 kilovolt transmission line.

7           Natural gas for the project will be  
8           delivered by a 2700-foot long PG&E pipeline  
9           connected to an existing gas transmission line  
10          near the Pittsburg Power Plant metering station.  
11          Two water pipelines approximately five miles  
12          inland would be constructed to bring recycled  
13          water from a return with processed wastewater to  
14          the Delta Diablo Sanitation District Water  
15          Treatment Plant. Estimated water usage would be  
16          781 acre-feet of water per year.

17          If the project is approved construction  
18          would begin in the fall of 2009, with commercial  
19          operation commencing in the summer of 2012.

20          The staff completed its data adequacy  
21          analysis and the Executive Director's  
22          recommendation was filed on July 30, 2008. The  
23          AFC was deficient in seven areas, air quality,  
24          biological resources, cultural resources,  
25          paleontological resources, transmission system

1 design, soils and visual resources.

2 The applicant has subsequently filed a  
3 supplement to the AFC. Staff has reviewed the  
4 supplemental information and finds it data  
5 adequate. The staff recommends that the  
6 Commission find the Willow Pass Generating Station  
7 AFC data adequate and request that a committee be  
8 appointed for final environmental review.

9 There is one additional comment I wish  
10 to make to the Commission. The Commission should  
11 be aware that there was a noticing glitch to the  
12 City of Pittsburg municipal agencies and staff  
13 apologizes for that issue. If there are any  
14 things that we can bring more forward I would be  
15 willing to do that or to meet with the City staff  
16 at their discretion.

17 CHAIRPERSON PFANNENSTIEL: Thank you.  
18 Well we have two requests to speak on this subject  
19 and then we may come back to that glitch. Chip  
20 Little, Manager of Governmental Affairs of Mirant  
21 California.

22 MR. LITTLE: Madame Chairwoman,  
23 Commissioners, good morning. My name is Chip  
24 Little, Manager of Government Affairs for Mirant  
25 California, and I am pleased to be appearing

1 before you again in regards to Mirant's Willow  
2 Pass data adequacy finding before the Commission.

3 First I would like to thank the  
4 Commission staff for their diligence in completing  
5 the data adequacy review of the Willow Pass  
6 application.

7 I would also like to echo the comments  
8 made by my colleague, Jonathan Sacks, two weeks  
9 ago in the Mirant Marsh Landing data adequacy  
10 hearing recognizing the assistance and guidance of  
11 Mark Hesters, who is integral in working with us  
12 and our consultant to develop an electric  
13 transmission system impact study that provides the  
14 necessary information to the Commission to  
15 evaluate the project's potential impacts.

16 As you will recall, we were asked to  
17 provide a system impact study prepared by a third-  
18 party consultant in lieu of the ISO's system  
19 impact studies because the ISO process had been  
20 temporarily suspended as part of the ongoing  
21 generator interconnection reform process.

22 Our consultant study is complete and has  
23 been provided to the staff for their review.  
24 While we believe that this has been time well  
25 spent we are hopeful that having a completed study

1 at this stage in the process will help accelerate  
2 the analysis of our project. Mirant Willow Pass  
3 is dedicated to the process and we continue to do  
4 everything we can to assist staff and the  
5 Commission with their review of the project.

6 We look forward to working with you to  
7 complete our certification process as  
8 expeditiously as possible and than you for your  
9 consideration this morning.

10 CHAIRPERSON PFANNENSTIEL: Thank you,  
11 Mr. Little. Also Garrett Evans, general manager  
12 of the City of Pittsburgh.

13 MR. EVANS: Good morning and thank you.  
14 My name is Garrett Evans. I am the General  
15 Manager of the Pittsburgh Power Company, the City  
16 of Pittsburgh's municipal utility, and representing  
17 the City here.

18 As this Commission is aware the City of  
19 Pittsburgh has a very proactive leadership role in  
20 the development of new, high-efficiency and  
21 complex power generation and HV transmission  
22 infrastructure projects within the city.

23 In the past decade the City has  
24 participated and supported the 540 megawatt Los  
25 Medanos Energy Center, the 880 megawatt Delta

1 Energy Center and its related 230 kV transmission  
2 lines. And we are under construction of the 400  
3 megawatt HVDC submarine cable known as the Trans  
4 Bay Cable Project, which will be operational March  
5 of 2010 and supply San Francisco with up to 40  
6 percent of their power.

7 As the Commission is also aware the City  
8 has a long history with the Pittsburg Power Plant,  
9 originally owned by PG&E and now owned by Mirant.  
10 We do appreciate the staff's acknowledgement and  
11 it is our sincere hope that we will be included in  
12 any and all future matters regarding this project.

13 To date working with Mirant has been  
14 very general. They did provide us a copy of the  
15 AFC. In our initial review we did find it very  
16 simplistic. Its approach and assessment is silent  
17 on a number of key issues of immediate importance  
18 and concern with us and we will be providing the  
19 Commission and staff with a comprehensive and  
20 detailed review of each of our concerns.

21 One item that we would like to request  
22 of the Commission. We have been made aware that  
23 the first public hearing is preferred to have a  
24 joint hearing with Marsh Landing. This is not a  
25 good way to facilitate public participation, given

1       that the location would be in the City of Antioch.  
2       And we would hope that the Energy Commission and  
3       staff would stick more to their guide on public  
4       participation where the first and formal hearing  
5       should be as close to the project site as  
6       possible.

7                   In closing, we look forward to working  
8       with the Commission, with the staff, and  
9       addressing the environmental, social and community  
10      issues associated with this project. And we thank  
11      you for your time.

12                   CHAIRPERSON PFANNENSTIEL: Thank you,  
13      Mr. Evans. On the issue of the first public  
14      workshop. Mr. Kramer, do you want to address  
15      that? Are you going to be the hearing officer on  
16      both of the cases cited?

17                   MR. KRAMER: Yes, that's correct. And  
18      as I understand it the Committee members will be  
19      the same two Commissioners, just flipping their  
20      roles. The Committee decided to hold both on the  
21      same day. They are not going to be held together  
22      in one big-time hearing but they will be held one  
23      after the other, for several reasons.

24                   For efficiency. Commissioner schedules  
25      are very full. We can do this all in one day. It

1 is easier to fit it into their schedules. And  
2 also to save resources, which I think is important  
3 in this day and age. The travel time for the  
4 Committee members, Commission staff.

5 And then finally for the convenience of  
6 the public. We expect that members of the public,  
7 at least some of them will be interested in both  
8 projects. And, for instance, if they have to take  
9 an afternoon off from work to go to the site  
10 visits they can take off one afternoon as opposed  
11 to two afternoons. So we believe that will  
12 further the Commission's goals to encourage and  
13 welcome public participation in that process.

14 The site we were looking at was  
15 tentatively for the hearing as opposed to the site  
16 visits, which obviously will be at the sites  
17 themselves, was the Delta Diablo Sanitation  
18 District. Which as I reckon, it is pretty close  
19 to the border between Pittsburg and Antioch. It  
20 is pretty close to halfway between the two project  
21 sites. And it was used by the Commission twice in  
22 this decade for hearings on the Delta Project and  
23 also Contra Costa Unit A. But that hasn't been  
24 decided. I would recommend that the Committee  
25 make that decision, however.

1           CHAIRPERSON PFANNENSTIEL: I think that  
2 that's a good idea. I think that Mr. Evans' point  
3 about having the hearing in the city is something  
4 that we really need to take a look at. So I would  
5 ask the Committee when appointed to consider that.

6           With that, Is there a motion to approve  
7 the Executive Director's data adequacy  
8 recommendation?

9           COMMISSIONER BYRON: I move the item.

10          COMMISSIONER DOUGLAS: I second.

11          CHAIRPERSON PFANNENSTIEL: In favor?

12          (Ayes.)

13          CHAIRPERSON PFANNENSTIEL: And I would  
14 nominate the Siting Committee of Commissioner  
15 Douglas Presiding and Commissioner Boyd as  
16 Associate. Is there a motion for that?

17          COMMISSIONER ROSENFELD: I move it.

18          COMMISSIONER BYRON: Second.

19          CHAIRPERSON PFANNENSTIEL: In favor?

20          (Ayes.)

21          CHAIRPERSON PFANNENSTIEL: The committee  
22 is assigned. Thank you all for your help in this.

23                 Item 3, Palmdale Hybrid Power Project.  
24 Possible Approval of the Executive Director's data  
25 adequacy recommendation for the City of Palmdale's

1 Application for Certification of the Palmdale  
2 Hybrid Power Project. Good morning.

3 MR. KESSLER: Good morning, Chairman  
4 Pfannenstiel and Commissioners. I am John  
5 Kessler, staff project manager for the Palmdale  
6 Hybrid Power Project AFC.

7 The City of Palmdale is proposing this  
8 project located in Palmdale, Los Angeles County,  
9 adjacent to the Los Angeles/Palmdale Regional  
10 Airport and Air Force Plant 42. The City of  
11 Palmdale filed their AFC on August 4, 2008.  
12 Palmdale would be an integrated solar thermal  
13 combined cycle facility similar to the Victorville  
14 2 facility approved by the Commission in July.  
15 Palmdale would have a net capacity of 617  
16 megawatts.

17 Staff initially found nine technical  
18 areas where data was inadequate. These included  
19 biological resources, cultural resources, project  
20 overview, socioeconomic, soils, traffic and  
21 transportation, transmission system design, visual  
22 resources and water resources. The Commission  
23 accepted the staff's initial data adequacy  
24 recommendation at the September 10, 2008 Business  
25 Meeting.

1           The applicant filed an AFC supplement on  
2           October 1, 2008. Staff has reviewed the  
3           supplemental information and it now believes the  
4           AFC meets the requirements in all 23 disciplines.  
5           We recommend the Commission find the Palmdale AFC  
6           as data adequate. And if the Commission agrees  
7           staff would also recommend the Commission consider  
8           appointing a committee. I would be happy to  
9           answer any questions you may have.

10           CHAIRPERSON PFANNENSTIEL: Thank you,  
11           Mr. Kessler. Is there a motion on this  
12           recommendation?

13           COMMISSIONER BYRON: I'll move it.

14           COMMISSIONER DOUGLAS: I'll second it.

15           CHAIRPERSON PFANNENSTIEL: In favor?

16           (Ayes.)

17           CHAIRPERSON PFANNENSTIEL: I recommend a  
18           siting committee of myself presiding and  
19           Commissioner Rosenfeld as Associate. Is there a  
20           motion?

21           COMMISSIONER ROSENFELD: I move it.

22           COMMISSIONER DOUGLAS: Second.

23           CHAIRPERSON PFANNENSTIEL: In favor?

24           (Ayes.)

25           CHAIRPERSON PFANNENSTIEL: That

1 committee is appointed. Thank you.

2 MR. KESSLER: Thank you. I also note  
3 that Mr. Carroll is here representing the  
4 applicant.

5 CHAIRPERSON PFANNENSTIEL: I'm sorry.

6 MR. KESSLER: I don't know if he would  
7 like a chance to say a few things.

8 CHAIRPERSON PFANNENSTIEL: Mr. Carroll,  
9 have you comments?

10 MR. CARROLL: I don't think it warrants  
11 any comments. We have what we came for. We would  
12 like to thank the staff for all the effort that  
13 went into moving this forward to data adequacy and  
14 looking forward to moving forward with the  
15 project, thank you.

16 CHAIRPERSON PFANNENSTIEL: Thank you.  
17 Thank you for being here.

18 MR. KESSLER: Thank you.

19 CHAIRPERSON PFANNENSTIEL: Item 4,  
20 possible approval of the Executive Director's data  
21 adequacy recommendation for Stirling Energy  
22 Systems Solar Two LLC's Application for  
23 Certification of Stirling Energy Systems Solar to  
24 a nominal 750 megawatt Stirling engine project.  
25 Stop with that. Good morning.

1                   MR. MEYER: Good morning, Chair  
2 Pfannenstiel and Commissioners. With your very  
3 good summary of it I can sort of skip to the meat  
4 of the issue. My name is Christopher Meyer. I am  
5 the staff's project manager for the SES Solar Two  
6 project. The 6500 acre Solar Two project is  
7 located primarily on federal land managed by the  
8 BLM. And the site is approximately 100 miles east  
9 of San Diego, 14 miles west of El Centro in  
10 Imperial County.

11                   The primary equipment on the project  
12 would be approximately 30,000 25 kilowatt solar  
13 dish Stirling systems referred to as SunCatchers.  
14 The project would be constructed in two phases.  
15 Phase I having a nominal net generating capacity  
16 of about 300 megawatts with Phase II adding  
17 approximately 18,000 SunCatchers to expand the  
18 total capacity to 750 megawatts. The first phase  
19 could go on-line with the existing transmission  
20 systems but Phase II would require the completion  
21 of the 500 kV Sunrise Powerlink transmission line  
22 proposed by SDG&E.

23                   Staff initially found nine technical  
24 areas where data inadequate and the Commission  
25 approved that recommendation from the Executive

1 Director. On July 29 we provided the applicant  
2 the worksheets and on September 8 we received a  
3 supplement to the AFC. Staff was able to review  
4 that supplement and agree that it addressed all  
5 nine of the areas of data inadequacy, which were  
6 air quality, alternatives, biological resources,  
7 cultural resources, and that included a revised  
8 technical report, paleontological resources,  
9 socioeconomics, transmission system design, visual  
10 resources and water resources.

11 On October 1 staff issued a revised data  
12 adequacy recommendation letter and at this point  
13 the staff recommends that the Commission accept  
14 the SES Solar Two project as complete and data  
15 adequate. And if the Commission agrees then staff  
16 would recommend, request assignment of a  
17 committee. I'm available for any questions.

18 CHAIRPERSON PFANNENSTIEL: Thank you.

19 MR. MEYER: And we have representatives  
20 from SES Solar Two to answer any questions as  
21 well.

22 CHAIRPERSON PFANNENSTIEL: Thank you,  
23 Mr. Meyer. Comments.

24 MS. HENNING: Good morning, Christine  
25 Henning, project manager, Stirling Energy Systems.

1 First of all I want to say thank you so much for  
2 being here. We are very excited for the  
3 recommendation for data adequacy so we can move  
4 on. And I want to thank the staff and give an  
5 extended thank you to Mike McGuirt and Chris Meyer  
6 who were very diligent in getting us to this point  
7 today for the recommendation of data adequacy.

8 CHAIRPERSON PFANNENSTIEL: Thank you  
9 very much. Is there a motion to approve the --  
10 Were there questions? Either one.

11 COMMISSIONER BYRON: No. Well, I'll  
12 make a motion. But I have to tell you, Madame  
13 Chairman, it would give me great pleasure to move  
14 this item. As a young, structural engineer 20  
15 years ago, 29 years ago, I worked on two-axis  
16 tracking solar with Stirling engines hanging off  
17 the end of them. So I hope this one, I hope this  
18 one works. So I move the item.

19 CHAIRPERSON PFANNENSTIEL: Is there a  
20 second?

21 COMMISSIONER ROSENFELD: Second.

22 CHAIRPERSON PFANNENSTIEL: All in favor?

23 (Ayes.)

24 CHAIRPERSON PFANNENSTIEL: It is  
25 approved. And given his enthusiasm for this

1 project I would nominate a siting committee with  
2 Commissioner Byron as the Presiding Commissioner  
3 and myself as the Associate.

4 (Laughter)

5 CHAIRPERSON PFANNENSTIEL: Is there a  
6 motion for that committee?

7 COMMISSIONER DOUGLAS: So moved.

8 COMMISSIONER ROSENFELD: Second.

9 CHAIRPERSON PFANNENSTIEL: In favor?

10 (Ayes.)

11 CHAIRPERSON PFANNENSTIEL: It's  
12 approved. Thank you all.

13 MR. MEYER: Thank you, Chair  
14 Pfannenstiel and Commissioners.

15 CHAIRPERSON PFANNENSTIEL: That gives us  
16 how many siting cases in front of us, Commissioner  
17 Byron?

18 COMMISSIONER BYRON: Is that only three  
19 we are approving today?

20 CHAIRPERSON PFANNENSTIEL: Only three  
21 more today.

22 COMMISSIONER BYRON: I think somebody  
23 needs to tell the people of California to quit  
24 using so much electricity.

25 CHAIRPERSON PFANNENSTIEL: Well, we

1 certainly have a number of siting cases in front  
2 of us right now.

3 Item 5, possible adoption of the  
4 Committee Order Terminating Proceedings for the  
5 Chevron Richmond Power Plant Replacement Project.  
6 Mr. Renaud.

7 MR. RENAUD: Good morning, Madame Chair,  
8 Commissioners. I was the hearing officer assigned  
9 to this matter, which was a small power plant  
10 exemption application filed in June of 2007. In  
11 October of 2007 the applicant moved for a stay or  
12 suspension of the proceeding, which was granted.

13 In September of this year, September 10,  
14 the applicant filed a request to withdraw the  
15 application. A Committee Order terminating the  
16 proceeding was issued September 18. What is  
17 before you now is adopting that Committee Order.  
18 My understanding is the applicant is reconsidering  
19 the configuration of the power plant and other  
20 matters pertaining to the overhaul of its refinery  
21 in Richmond.

22 CHAIRPERSON PFANNENSTIEL: Thank you,  
23 Mr. Renaud. Are there questions?

24 COMMISSIONER BYRON: I was the Presiding  
25 Member on this and I think there were some serious

1 concerns as to whether or not this would indeed  
2 qualify for an SPPE so I think it is probably a  
3 good decision on the part of Chevron to withdraw  
4 at this point. So I would move the item.

5 COMMISSIONER ROSENFELD: Second.

6 CHAIRPERSON PFANNENSTIEL: In favor?

7 (Ayes.)

8 CHAIRPERSON PFANNENSTIEL: Thank you,

9 Mr. Renaud.

10 MR. RENAUD: Thank you.

11 COMMISSIONER BYRON: Thank you,

12 Mr. Renaud.

13 CHAIRPERSON PFANNENSTIEL: Item 6,  
14 possible approval of revised appointments to the  
15 Energy Commission's Standing Committees and Siting  
16 Committees. Ms. Brown.

17 MS. BROWN: Good morning, Commissioners.

18 I am here today -- I am Susan Brown, Special  
19 Advisor to Commissioner Boyd. I am substituting  
20 today for Tim Tutt.

21 You have before you a Commission Order  
22 that would finalize Policy Committee assignments  
23 that you voted on, I believe, at the September 10  
24 Business Meeting. I would also ask that the  
25 changes that were made today to the Siting

1 Committee Assignments also be reflected in this  
2 order. Not only the changes made today but at the  
3 last Business Meeting. So I recommend your  
4 approval.

5 CHAIRPERSON PFANNENSTIEL: Thank you,  
6 Ms. Brown. Is there a motion to approve the  
7 assignments?

8 COMMISSIONER ROSENFELD: I move the  
9 item.

10 COMMISSIONER BYRON: Second.

11 CHAIRPERSON PFANNENSTIEL: In favor?

12 (Ayes.)

13 CHAIRPERSON PFANNENSTIEL: Thank you.

14 Now Item 7. Possible approval to  
15 augment the City (sic) of Alameda's existing \$1.89  
16 million by \$362,000 to install lighting upgrades  
17 in the Santa Rita Jail. Good morning,  
18 Mr. Holland.

19 MR. HOLLAND: Good morning, Madame Chair  
20 and Commissioners. I'm Jim Holland from the  
21 Public Programs Office. And as you pointed out I  
22 am asking for a \$362,000 loan approval for the  
23 County of Alameda to augment a loan that was given  
24 to them last December for \$1.89 million.

25 The loan under consideration this

1 morning is to lighting projects at the Santa Rita  
2 jail facility. This project will be upgrading  
3 older generation T8 lamps and ballasts with new  
4 higher efficiency T8 lamps and ballasts.

5 The total project, which includes the  
6 project under consideration now and the one that  
7 was approved in December, would save 3.4 million  
8 kWh per year, reduce demand by 949 kw, has an  
9 estimated carbon dioxide reduction of 1388 tons  
10 and will save the County \$421,000 per year.

11 The phase that we were considering today  
12 would save -- would cost \$362,000 for the County  
13 but would save \$62,238 per year and the current  
14 project has a potential rebate of \$20,000 from  
15 PG&E. So unless you have any questions I ask for  
16 approval of this loan.

17 CHAIRPERSON PFANNENSTIEL: Thank you,  
18 Mr. Holland. It is interesting to me that Alameda  
19 County is one of those who really seems to  
20 recognize the value of our loan program for energy  
21 efficiency over the years.

22 MR. HOLLAND: Mr. Muniz, the project  
23 manager for Alameda County is extremely proactive  
24 and he doesn't miss many opportunities.

25 CHAIRPERSON PFANNENSTIEL: Do you have

1 any idea how many dollars we have loaned to them?

2 MR. HOLLAND: Yes, as a matter of fact.

3 CHAIRPERSON PFANNENSTIEL: Oh, good. We  
4 didn't practice this. Go ahead.

5 (Laughter)

6 MR. HOLLAND: No we didn't but it works.  
7 The total loan amount for Alameda County to this  
8 point has been over \$15 million. And for the  
9 Santa Rita Jail facility alone, for which this  
10 project is going, has been \$5 million. That  
11 includes the \$1.8 million we gave them in  
12 December, a loan previous to that, and then this  
13 one.

14 CHAIRPERSON PFANNENSTIEL: And do you  
15 have anything on your sheet that says what the  
16 energy savings might be from these?

17 MR. HOLLAND: I do.

18 CHAIRPERSON PFANNENSTIEL: For Alameda  
19 County?

20 MR. HOLLAND: If only my glasses worked  
21 better. The total estimated savings, kWh savings  
22 for all the previous loans, not counting the  
23 current, would be 29,967,167 kWh.

24 COMMISSIONER BYRON: Wow.

25 CHAIRPERSON PFANNENSTIEL: Very nice.

1                   MR. HOLLAND: With a total savings of  
2                   2.3 million.

3                   COMMISSIONER ROSENFELD: Per year.

4                   CHAIRPERSON PFANNENSTIEL: Thank you  
5                   very much. Are there questions, other comments?

6                   COMMISSIONER BYRON: Is there a cap on  
7                   these kinds of loans?

8                   MR. HOLLAND: No sir. As long as they  
9                   keep showing progress in their projects we'll keep  
10                  giving them the money.

11                  COMMISSIONER BYRON: And as long as they  
12                  meet the payback period.

13                  MR. HOLLAND: Yes sir.

14                  CHAIRPERSON PFANNENSTIEL: Under ten  
15                  years. Yes, that's right. These are an excellent  
16                  program and I wish that more public entities in  
17                  California were taking advantage of them as is  
18                  Alameda County.

19                  COMMISSIONER BYRON: Well we have other  
20                  general managers here in the audience today.

21                  CHAIRPERSON PFANNENSTIEL: Okay.

22                  COMMISSIONER BYRON: Or retired general  
23                  managers.

24                  CHAIRPERSON PFANNENSTIEL: Further  
25                  discussion or questions?

1 Is there a motion?

2 COMMISSIONER ROSENFELD: I so move.

3 COMMISSIONER DOUGLAS: Second.

4 CHAIRPERSON PFANNENSTIEL: In favor?

5 (Ayes.)

6 CHAIRPERSON PFANNENSTIEL: Thank you,

7 Jim.

8 MR. HOLLAND: Thank you.

9 CHAIRPERSON PFANNENSTIEL: Item 8,  
10 possible approval of Amendment 1 to Contract RMB  
11 150-07-005 with Western Governors' Association to  
12 receive up to \$30,000 from WGA to continue state  
13 preparation for federal nuclear waste shipments to  
14 the Waste Isolation Pilot Plant in New Mexico.  
15 Ms. Byron.

16 MS. BYRON: Good morning, Madame Chair  
17 and Commissioners.

18 CHAIRPERSON PFANNENSTIEL: Good morning.

19 MS. BYRON: Items 8 and 9 are related so  
20 I would request that they be considered together.

21 The Western Governors' Association is a  
22 contract, is a continuing contract whereby we  
23 receive funds to prepare for these shipments. And  
24 then Item 9 is to pass-through \$29,500 of the  
25 \$30,000 to the California Highway Patrol for

1 inspections and shipment escorts and training.

2 And I would request your approval of  
3 these two items.

4 CHAIRPERSON PFANNENSTIEL: Questions or  
5 discussion? Is there a motion?

6 COMMISSIONER ROSENFELD: I move it.

7 COMMISSIONER BYRON: Second.

8 CHAIRPERSON PFANNENSTIEL: All in favor?

9 (Ayes.)

10 CHAIRPERSON PFANNENSTIEL: Thank you,  
11 Barbara.

12 Item 9.

13 COMMISSIONER ROSENFELD: We have already  
14 done it.

15 CHAIRPERSON PFANNENSTIEL: Pardon me?

16 COMMISSIONER ROSENFELD: We just did it.

17 CHAIRPERSON PFANNENSTIEL: I thought we  
18 did 8?

19 COMMISSIONER ROSENFELD: We did 8 and 9.

20 COMMISSIONER BYRON: She combined it.

21 COMMISSIONER ROSENFELD: Except for the  
22 \$500.

23 CHAIRPERSON PFANNENSTIEL: I missed the  
24 fact they were combined, thank you.

25 Item number 10, possible adoption of the

1 Eastshore Energy Center Revised Presiding Member's  
2 Proposed Decision dated August 29, 2008. We do  
3 have a number of parties who have asked to speak  
4 on this so I thought that I would like to proceed  
5 with Ms. Gefter to introduce the item and then  
6 staff and then applicant and then other parties  
7 who have asked to speak. So, Ms. Gefter.

8 MS. GEFTER: I am Susan Gefter; I was  
9 the Hearing Officer on this item. The Revised  
10 PMPD recommends that the Commission denies  
11 certification because the Eastshore project is not  
12 consistent with laws, ordinances, regulations and  
13 standards, which we call the LORS, and it also  
14 violates CEQA requirements.

15 The Revised PMPD also recommends that  
16 the Commission decline to override the LORS  
17 inconsistencies and CEQA violations because the  
18 project's benefits do not outweigh its unmitigable  
19 impacts on public health and safety.

20 I would like to begin with an overview  
21 of the Committee's findings in the Revised PMPD.  
22 It may take a little while because we have spent  
23 over two years reviewing this case and we have a  
24 lot of issues to cover. And so I will summarize  
25 for you and then the parties can actually give you

1 more information.

2 CHAIRPERSON PFANNENSTIEL: Thank you.

3 MS. GEFTER: The Eastshore Energy Center  
4 is a 115 megawatt peaker project proposed in the  
5 City of Hayward. The facility includes 14  
6 W„rtsil„ reciprocating engines with 14 70-foot  
7 exhaust stacks plus two 20-foot tall radiator  
8 exhaust stacks. Each stack will produce a high  
9 velocity thermal plume with a potential for stack  
10 exhausts to merge into a single plume above the  
11 site.

12 The site is located one mile south of  
13 the Hayward Executive Airport, adjacent to the  
14 departure route for Runway 10R-28L. The reason I  
15 am mentioning that is because we discuss this  
16 quite a bit in the record so I wanted just to give  
17 you a heads-up on that.

18 The site is within the boundaries of the  
19 Hayward Airport approach turning zone as defined  
20 in the City of Hayward's Airport Approach Zoning  
21 Regulations. The copy of these regulations is  
22 actually incorporated into the Revised PMPD at  
23 Appendix F so you might look at the regulations if  
24 that comes up during our discussion. The City of  
25 Hayward owns the airport. It is subject to

1 Federal Aviation Administration requirements for  
2 aviation safety.

3 The project's invisible, vertical plumes  
4 from the exhaust stacks could cause turbulence  
5 several hundred feet above the site. After  
6 reviewing extensive evidence about the plumes the  
7 Committee determined that significant velocity  
8 could occur within a range of 300 to 480 feet  
9 above ground level, where some aircraft fly during  
10 takeoff and landing maneuvers at Hayward Airport.

11 Since the project's plumes are invisible  
12 pilots flying through the plumes can encounter  
13 unexpected turbulence, causing a potential risk of  
14 upset or crash. The Committee found therefore  
15 that unexpected turbulence from the plumes could  
16 create an aviation hazard to public health and  
17 safety and violate the City's airport approach  
18 zoning regulations.

19 Witnesses from both the FAA and Caltrans  
20 Aeronautics recommended that the project not be  
21 located within the Hayward Airport takeoff and  
22 landing airspace. According to the Caltrans  
23 Aeronautics witness, the Hayward Airport has the  
24 lowest traffic pattern altitude in the state of  
25 California to avoid interference with aircraft

1 flying into Oakland and San Francisco Airports.  
2 The pattern altitude for Hayward Runway 10R-28L is  
3 limited to only 650 feet above ground level.  
4 Under certain circumstances aircraft may fly as  
5 low as 492 feet above ground level, or even 100  
6 feet lower to 392 feet and still be within legal  
7 operating limits.

8 Evidence in the record shows that  
9 aircraft regularly fly over or near the project  
10 site at low altitude. There is no mitigation  
11 available for aircraft to avoid flying over the  
12 site because the no-fly zone mitigation plan  
13 adopted for the nearby Russell City project  
14 constricts available air space for the Hayward  
15 Airport.

16 The aviation witnesses from FAA and  
17 Caltrans agreed that pilots should not be required  
18 to see and avoid flying over the project site  
19 since they would then have to divert their  
20 attention from safe operation of the aircraft to  
21 observe structures on the ground.

22 The Committee also found the project is  
23 inconsistent with the City of Hayward's General  
24 Plan and it does not comply with the City's  
25 conditional use permit requirement. Applicant

1       contested these findings and continues to revisit  
2       the same issues in its comments on the Revised  
3       PMPD.

4               The Commission typically gives due  
5       deference determinations of other expert agencies  
6       including the FAA, Caltrans, the Bay Area Air  
7       District and a local jurisdiction's interpretation  
8       of its own land use policies and zoning  
9       regulations. In this case the City of Hayward.

10              The Revised PMPD includes extensive  
11       discussion of this issue, especially in the  
12       section on land use. Representatives from the  
13       City of Hayward and also from Alameda County are  
14       here today to respond to Applicant's comments on  
15       these land use issues.

16              There is substantial evidence in the  
17       record to support the Committee's findings in the  
18       Revised PMPD, including the recommendation to deny  
19       an override in this case. As a matter of law the  
20       Commission's override authority is discretionary.  
21       Even if the Commission determined that the project  
22       is required for public convenience and necessity,  
23       the Commission would still not be required to  
24       override LORS or CEQA violations.

25              Applicant identified a project objective

1 to interconnect at the Eastshore Substation in  
2 Hayward based on a power purchase agreement with  
3 PG&E that was approved during the 2004 RFO process  
4 at the CPUC. Based on that RFO contract applicant  
5 insisted that its objective to interconnect at the  
6 Eastshore Substation could not be changed to a  
7 different Bay Area substation outside of Hayward.

8 However, Applicant terminated the  
9 contract with PG&E on May 18, 2008, before the  
10 PMPD was issued in June. The Applicant no longer  
11 has a contract to sell electricity to PG&E. With  
12 the termination of the contract there is no  
13 evidence in the record to indicate that PG&E  
14 requires the Eastshore project to interconnect at  
15 the Eastshore Substation in Hayward for voltage  
16 support or grid stability in the Bay Area.

17 There are six intervenors in this  
18 proceeding including the City of Hayward, Alameda  
19 County, Chabot-Las Positas Community College  
20 District, as well as Mr. Robert Sarvey and  
21 Mr. Paul Haavik and Group Petitioners who include  
22 the California Pilots Association and the San  
23 Lorenzo Village Homes Association. All the  
24 intervenors have opposed the project from the  
25 beginning. The intervenors and several members of

1 the public wish to participate in today's hearing,  
2 as indicated by the Public Adviser's blue cards  
3 that she brought to you already.

4 The Committee recommends that the  
5 Commission adopt the Revised PMPD along with the  
6 Committee Errata which was served on the parties  
7 yesterday. The list of Errata incorporates the  
8 parties' comments on the Revised PMPD and includes  
9 clarifications of the record.

10 And with that summary the parties would  
11 like to address the Commission.

12 CHAIRPERSON PFANNENSTIEL: Thank you,  
13 Ms. Gefter. Staff, comments? Ms. Holmes.

14 MS. HOLMES: Very briefly. The staff  
15 supports the Proposed Decision. We have had  
16 several minor disagreements with certain of the  
17 specific topic areas in the PMPD which are noted  
18 in our comments on the PMPD and in our comments on  
19 the Revised PMPD. But nonetheless we believe that  
20 the decision to deny the application for  
21 certification is correct.

22 CHAIRPERSON PFANNENSTIEL: Thank you.

23 MS. GEFTER: I would also note that the  
24 staff's comments on the PMPD and the Revised PMPD  
25 were basically incorporated into the Revised PMPD

1 by the Errata that was issued yesterday.

2 COMMISSIONER BYRON: Right. I would  
3 like to make sure I understand, Ms. Holmes. That  
4 as I read your comments on the Revised PMPD, the  
5 comments were rather minor; is that correct?

6 MS. HOLMES: That's correct.

7 COMMISSIONER BYRON: All right, thank  
8 you.

9 CHAIRPERSON PFANNENSTIEL: Comments from  
10 Applicant?

11 MS. LUCKHARDT: I am going to need  
12 access to the overhead so I don't know if it is  
13 easier to use my computer or to put a disc into  
14 the computer that you guys have.

15 CHAIRPERSON PFANNENSTIEL: Have you  
16 already arranged for the overhead?

17 MS. LUCKHARDT: I have not. If that's a  
18 problem they can do it, it's just a short piece.  
19 Are they gone?

20 CHAIRPERSON PFANNENSTIEL: We'll see if  
21 we can find somebody to help with that.

22 MS. LUCKHARDT: Okay. I'll pull the  
23 disc out. I think you have a computer right up  
24 here.

25 MR. TAYLOR: The projector has to warm

1 up. Sorry about the delay.

2 MS. LUCKHARDT: He is going to load  
3 stuff up. It's just one part.

4 CHAIRPERSON PFANNENSTIEL: Jane, why  
5 don't you introduce yourself for the record,  
6 please.

7 MS. LUCKHARDT: Good morning. My name  
8 is Jane Luckhardt and I am here on behalf of  
9 Eastshore. And I am assuming that you all have  
10 actually read everyone's comments.

11 And what I want to talk to you about  
12 today is the problems that I see with this  
13 decision. And I see these problems in this  
14 decision regardless of which way you decide to  
15 vote on this project.

16 I think that this particular decision  
17 has findings in it that will be problematic for  
18 this Commission going forward. And I believe that  
19 this is going to be one of those decisions that  
20 for those of us who practice in this area, and the  
21 Commissioners and your future Commissioners, hope  
22 ends up in some corner gathering dust somewhere.

23 And I find it very, very interesting.  
24 And I have practiced before this Commission for  
25 about 20 years. And sometimes I hate to think

1 about that because that means I have been in  
2 practice for 20 years. But nonetheless, I have  
3 not seen before this particular decision, a  
4 specific acknowledgement that appears at least  
5 once if not twice in the decision that the  
6 decision is not precedential and does not  
7 establish Commission policies on items such as  
8 locating power plants near airports.

9           Whenever a decision feels like it needs  
10 to specifically acknowledge that I find that quite  
11 surprising and telling. Because this particular  
12 -- No decision is binding, according to the Energy  
13 Commission's rules, on a future Commission. No  
14 decision is binding on any future Commission. So  
15 for there to be an explicit statement within this  
16 decision that it should not be considered  
17 precedential is almost like depublishing a court  
18 decision.

19           And I think at the outset if that is the  
20 way you are characterizing this decision you  
21 really ought to take some time to fix some of the  
22 problems in it. And the problems as I see. Not  
23 only do we not agree with the underlying findings  
24 of fact, which I think everyone is aware of. I  
25 don't think there is anything new or unusual

1       there, although it hasn't been presented  
2       explicitly to all of you. We also don't agree  
3       with the way some of the decision is written.

4               When I say the decision has problems  
5       what do I mean? I mean that the future for using  
6       this decision as far as intervenors looking at it,  
7       cities looking at it, other project developers  
8       looking at it. That there are things in this  
9       decision that will be problematic for this  
10      Commission going forward.

11             And the first one I would like to talk  
12      about is where this decision, as I see it, really  
13      undercuts the ability of this Commission and the  
14      legal standing that this Commission has to make  
15      state decisions on power plants. This was given  
16      to this Commission to avoid making decisions based  
17      on local politics or necessarily just concerns of  
18      local citizens.

19             And I don't mean to take away from the  
20      fact that local citizens are concerned. In a lot  
21      of these situations, you know, local citizens are  
22      concerned, sometimes for valid reasons and  
23      sometimes not. But it is their right. And as a  
24      democracy we appreciate having local citizens show  
25      up and voice their opinion and have this

1 Commission take that into consideration in making  
2 its decisions. Nonetheless, this Commission needs  
3 to make decisions based on the state as a whole.  
4 And that is how and why it was established. Is to  
5 move beyond the considerations of local agencies  
6 and entities.

7 In this instance we have this decision  
8 relying in the area of land use, taking the  
9 aviation issue aside, looking straight at land use  
10 conformity, where the Commission staff did not  
11 find that the project was inconsistent with land  
12 use.

13 In the area of zoning and the General  
14 Plan. Again taking the aviation issue aside, just  
15 looking at land use itself. This Commission  
16 relied upon the testimony of a city and a county  
17 and local intervenors whose expressed purpose in  
18 intervening in this project was in an attempt to  
19 have this Commission not certify the project.

20 So this decision relies upon and gives  
21 deference to the determination of a local agency  
22 who has made a previous statement and conclusion  
23 that they did not want this power plant in this  
24 location.

25 And there's been a lot of discussion

1 about the specific provisions in the General Plan.  
2 And one of those has to do with this business and  
3 technology corridor. In the General Plan there is  
4 a statement about a business and technology  
5 corridor. It is something the City of Hayward  
6 would like to establish. It is a goal. It is  
7 there in the General Plan. But nowhere in the  
8 General Plan does it dictate or does it say in any  
9 way where that corridor will be. What streets  
10 bound it, what areas are included, what parcels  
11 are included and what parcels are not. That is  
12 never stated in the General Plan.

13 The City has never gone forward with a  
14 zoning ordinance to identify where exactly this  
15 business and technology corridor should be placed.  
16 It is not there. The only identification of where  
17 that should be came from testimony from the City  
18 of Hayward saying, we would have put it here. We  
19 intended to put it there.

20 The problem with this is not that these  
21 people are being dishonest. But simply that we  
22 are taking a general provision from the General  
23 Plan saying they would like a business and  
24 technology corridor. And then we are allowing a  
25 party who is against the project to specify where

1 that technology corridor should be.

2 It is not written down in any documents.  
3 The City of Hayward has not moved forward with any  
4 zoning ordinances that say where that technology  
5 corridor should be placed, where its boundaries  
6 will be or what parcels are included.

7 Therefore this commission is relying  
8 upon the testimony of a city interpreting a  
9 general provision in the General Plan in finding  
10 nonconformity with LORS. And this is one of the  
11 major differences that is applied to this project  
12 as opposed to Russell City, which is in the exact,  
13 same zone. And that is where I find a problem.  
14 Is where this Committee and this decision relies  
15 upon that type of testimony when it has been  
16 presented in the General Plan in such a general  
17 way.

18 And I think that as you go forward, not  
19 only with this project but others, there will be  
20 an opportunity for other cities and counties or  
21 the citizenry is concerned, to put pressure on  
22 them to make determinations based upon  
23 generalities in their General Plan in an attempt  
24 to find nonconformance with the local LORS.  
25 Because that places a higher burden on the project

1 proponents and that is not an unknown or  
2 surprising thing.

3 And I think also given the decision made  
4 upon this project based upon in the override  
5 findings, which I will get to later, will also  
6 make these -- will put more pressure upon cities  
7 and city officials to make these kind of  
8 determinations based upon generalities in the  
9 General Plan.

10 And I really think that you as a state  
11 commission should look carefully at relying upon  
12 intervenors that have a stated purpose in the  
13 project to interpret something that is not written  
14 down anywhere. Nowhere in the evidence is it  
15 written down where that corridor is.

16 CHAIRPERSON PFANNENSTIEL:

17 Ms. Luckhardt, let me just make sure I understand  
18 your point here. Is it that the City's testimony  
19 is not neutral because they are a party or is it  
20 that they are arguing from a General Plan which is  
21 too general, in your opinion, to define these  
22 corridors?

23 MS. LUCKHARDT: I think it's both.

24 CHAIRPERSON PFANNENSTIEL: I am not sure  
25 which point I am supposed to take away from that.

1           MS. LUCKHARDT: I think it is both. I  
2 think that we are dealing with a city that is  
3 biased because of the general position that they  
4 have adopted and taken against this project. And  
5 therefore I think having this Commission rely upon  
6 a potentially biased party in an area where it is  
7 not clear. Where the General Plan has a general  
8 statement but there is nothing within the record,  
9 the written record of the zoning ordinance or any  
10 action that the City has taken that was submitted  
11 in this case that specifically lays out where that  
12 area is. The Committee had to -- The Committee  
13 decided to rely upon the comments of those  
14 witnesses in this area.

15           And I think the City was responding as  
16 cities should to the local residents. But I have  
17 to say, you know, as this Commission goes forward.  
18 And as many of you know, having local residents  
19 concerned about a project in their backyard is  
20 nothing new. And, you know, in fact a lot of the  
21 comments that were made by citizens in Hayward  
22 related to, why are you putting this power plant  
23 by all these people. Why are you putting it here.  
24 Shouldn't you put it out somewhere else.  
25 Shouldn't you use a different technology.

1           As those of us know who work in this  
2 industry, you can put a solar project in the  
3 middle of very few people and those people will  
4 say the exact opposite. Why are you putting it  
5 here where no one lives and there's very little  
6 load. Why don't you put it near the people who  
7 are actually using the electricity.

8           So I don't think having local opposition  
9 should necessarily make or break a case in one way  
10 or another. Because I think especially as  
11 California moves forward we probably will see  
12 concerns from local citizens regardless of the  
13 technology or the location.

14           Okay, now turning to aviation. There  
15 are a couple of issues in aviation. One of them  
16 is the concern expressed by Ms. Gefter about the  
17 cumulative impact of having both Eastshore and  
18 Russell City in the same general area near the  
19 Hayward Airport.

20           And I think as we look at cumulative  
21 impacts we need to understand that Russell City  
22 may or may not go forward. There is no assurance  
23 that Russell City will go forward. Russell City  
24 has been approved once. It's been moved. It's  
25 had its air permit challenged. It may very well

1       have to renegotiate its contract with PG&E. And  
2       there's no certainty as to whether it will go  
3       forward or not.

4                At this point is it reasonably  
5       foreseeable to consider Russell City as an in-fact  
6       project that will happen? What could result from  
7       all of this effort from all of the individuals who  
8       have been involved including the intervenors, the  
9       staff, the applicants, is that the Commission may  
10      have evaluated two projects, neither of which will  
11      ever get built.

12               And then there is the question about the  
13      aviation testimony. The aviation testimony itself  
14      I think poses a serious concern. And our concern  
15      revolves around the fact that the Committee  
16      accepted modeling results over actual impacts.  
17      And here is where I really look to Commissioner  
18      Rosenfeld, who is the scientific and engineering  
19      expert on the Commission, and has had extensive  
20      experience bringing projects from a theory to  
21      actuality. To see if it actually works. Mostly  
22      in the area of energy efficiency but I am sure in  
23      other areas as well.

24               This Committee has relied upon modeling  
25      results and has completely discounted actual

1 evidence. The only actual evidence presented was  
2 the evidence that the Applicant went out and  
3 obtained. And it was not a simple matter in any  
4 way shape or form to arrange to have a helicopter  
5 fly over Barrick while it was operating. It was a  
6 huge effort to make that happen and to -- we  
7 worked extremely hard to obtain the most  
8 conservative conditions possible for that flyover.

9 And in fact we overflew purposely in the  
10 winter when it was cold because that was when  
11 staff had identified the greatest impacts.  
12 Nonetheless, following that we were criticized for  
13 not overflying in the summer because the summer  
14 may have the greatest impacts. Well we came back  
15 and offered to do that too, actually. And I found  
16 it telling that the Committee wasn't interested at  
17 that point in really getting additional data on  
18 the actual potential impacts to aircraft  
19 overflying this facility.

20 And remember, this is an internal  
21 combustion engine facility. These are internal  
22 combustion engines. This is not a gas turbine.  
23 We talk about buoyancy flux as being the  
24 characteristic of the plume and the amount of  
25 buoyancy flux that is in the plume that determines

1       how high it will go and how much disturbance it  
2       creates in the air above the stack.

3               And when you compare a gas turbine  
4       facility with an IC engine facility there is no  
5       comparison. You are talking about the difference  
6       between standing behind a jet engine from an  
7       airplane, which most of us have had some  
8       experience with just sitting in the window of an  
9       airplane, and your car. Because your car is an IC  
10      engine. Granted, these are larger and there are  
11      more of them. Nonetheless the technology is  
12      completely different, the buoyancy flux is  
13      completely different, and the impact to aircraft  
14      is completely different.

15              Now staff performed a very conservative  
16      modeling analysis in an attempt to determine what  
17      the impacts might be to aircraft. We disagreed  
18      with their analysis. And in fact we were shocked  
19      when the Presiding Member's Proposed Decision  
20      originally came out and it said explicitly that  
21      Applicant hadn't done any modeling on this issue.  
22      And that was absolutely inaccurate and gave us  
23      great concern because we had done modeling and the  
24      fly-over.

25              And for this Committee to make a

1 decision without even acknowledging and in fact  
2 expressly stating that the applicant had not  
3 provided any modeling analyses was of great  
4 concern to us. It raised a question of whether  
5 the Committee had actually even evaluated that  
6 analysis that was done.

7 I find it a concern for this Commission  
8 to go forward and adopt testimony based solely on  
9 modeling. And the staff's modeling, as extremely  
10 conservative as it was, was incomplete. They only  
11 did half of the model.

12 There is a modeling protocol that has  
13 been established in Australia. And in fact I have  
14 had comments and concerns. People have come up to  
15 me asking, why didn't you do the Australian  
16 modeling for Eastshore. We didn't do the  
17 Australian modeling for Eastshore because when we  
18 did the initial screening level analysis our  
19 impacts were below the screening level.

20 This is a model where you do the  
21 screening level analysis. And if you are below  
22 that you don't go on and do the advanced modeling.  
23 We were below that on our model. Staff had a  
24 different result. But they nonetheless did not go  
25 forward with the entire modeling that you need to

1 do to truly determine whether there is a problem  
2 or not.

3           And in fact if you look at the  
4 Australian circular that describes the modeling  
5 protocol that they use in Australia it says you  
6 should not rely on the calm case condition alone.  
7 You have to go forward. If you show a problem at  
8 the screening level you have to go forward and  
9 complete the additional modeling analysis. And  
10 that was not done. So what this Committee is  
11 relying upon is the most of most conservative  
12 models that we would say, that from our position  
13 is so conservative as to not even give an accurate  
14 picture of what happen.

15           And at this point I would like to see if  
16 we can't get the computer up. I am not going to  
17 make you guys watch the entire, the entire runs  
18 over Barrick. What this is is this CD, which was  
19 filed in the record, has the overflight, the  
20 helicopter overflights of Barrick. And I am only  
21 going to show one section of it, which shows the  
22 lowest flights over Barrick.

23           (Whereupon, the video clip began  
24 running.)

25           MS. LUCKHARDT: The sound isn't going

1 over. But these are flights at 70 knots at 300  
2 feet over Barrick. And Ms. Gefter wanted me to  
3 clarify that yes, we did show this in the  
4 evidentiary hearing.

5 Is there any way to get the sound on?

6 MR. TAYLOR: I'm not sure.

7 CHAIRPERSON PFANNENSTIEL:

8 Ms. Luckhardt, remind me. How close is this  
9 configuration to the proposed Eastshore? Is it  
10 exactly the same? I don't remember.

11 MS. LUCKHARDT: It is not exactly the  
12 same. You will see the stacks are in clusters  
13 here at Barrick. The stacks are in a line at  
14 Eastshore. According to our experts the clustered  
15 stacks would actually create more impact than  
16 less. And I apologize, the sound is actually  
17 helpful. But we over-flew the site from two  
18 different directions. And there what they are  
19 trying to do is go right over the top of one  
20 cluster of stacks.

21 And this was not a simple feat,  
22 actually, to arrange for this to happen. And the  
23 lowest flight was actually at about 250 feet. We  
24 were trying to hit 300 feet above ground level.  
25 And we determined that the lowest aircraft over-

1 flight was about 250 feet.

2 Now there are comments from other  
3 parties that will say, well not all engines were  
4 running that day, and they weren't. We went over  
5 a stack configuration that we felt would have the  
6 greatest impact. We were able to determine, or  
7 the experts doing the test were able to determine  
8 that the aircraft actually went through the plume  
9 because they could hear a change in the sound  
10 level as it went through the plume. But the  
11 pilot, who was an experienced pilot. We wouldn't  
12 take a student pilot up to do a test like this.  
13 But nonetheless, he said if he hadn't been told  
14 what he was supposed to feel for he would not have  
15 noticed it.

16 This is the impact that this project --  
17 is one of the reasons that this project is being  
18 denied, is this kind of impact. Instead this  
19 Committee is relying upon extremely conservative  
20 modeling.

21 Okay, now I want to talk about the  
22 override for just a second. In the initial  
23 Proposed Decision, and in the Revised Proposed  
24 Decision, the Committee looked at the question of  
25 override. And when they did that they compared

1       this project to the benefits that were created by  
2       building Metcalf.

3               Metcalf is a much larger project. It is  
4       a two-on-one combined cycle project. And its  
5       benefits, by its very nature of being larger, will  
6       be larger. For Eastshore the correct comparison  
7       should have been to a project such as Los Esteros,  
8       which I believe is 140 megawatts or that range.  
9       Where the benefits were very similar to Eastshore.

10              My concern with the way this has been  
11       drafted is that it will be very difficult for any  
12       small peaking project in an urban area to obtain  
13       an override from this Commission based upon the  
14       conclusions that are found in this decision. This  
15       decision said that the benefits are relatively  
16       small.

17              We understand that this is a  
18       discretionary decision. And that the decision --  
19       that the Committee nor the Commission must grant  
20       an override. Nonetheless I believe it is  
21       important for this Commission to recognize the  
22       benefits of small peaking projects located in  
23       urban areas.

24              It is something that is explicitly  
25       recognized as necessary in your own Integrated

1 Energy Policy Report. That there is a need for  
2 peaking generation in the load center to help  
3 balance the addition of wind and solar and other  
4 renewables that are being added to the grid at  
5 this point and will be expanded with the decisions  
6 on greenhouse gas. The one that is up for review  
7 by both the PUC and the CEC next week. As well as  
8 CARB's scoping plan and draft scoping plan.

9 So the need for peaking generation  
10 located in the load center has not gone away. And  
11 actually I found it quite interesting to read  
12 Pacific Gas and Electric's application that they  
13 had to purchase and build the Tesla Power Plant.

14 I think that had they presented the same  
15 type of testimony that they presented in that  
16 application, explaining the need to purchase and  
17 advance Tesla, in the Eastshore project, that that  
18 would have made a difference. It may not have  
19 changed the mind of the Committee but I think it  
20 would have made a difference if PG&E had come out  
21 and said what they said in the Tesla application.  
22 Which is, we need generation, we need it in this  
23 load center, and we need it now.

24 CHAIRPERSON PFANNENSTIEL: But  
25 Ms. Luckhardt, they did not --

1 MS. LUCKHARDT: They did not.

2 CHAIRPERSON PFANNENSTIEL: -- say so in  
3 the record of this proceeding.

4 MS. LUCKHARDT: They did not, right. I  
5 don't think that takes away from the need for  
6 projects like this. And I use that as an example  
7 to simply say that these projects are needed in  
8 the local area. And that those things should be  
9 taken into account when reviewing an override  
10 decision.

11 I note in Ms. Gefter's summary that she  
12 said the lowest level at which an aircraft could  
13 travel over Eastshore was 392 feet AGL in one  
14 instance. The overflight that you just witnessed  
15 was at 250 feet AGL over Barrick.

16 In another instance she said, well,  
17 aircraft could fly between 300 and 400 feet. That  
18 would be helicopters only. But even at that level  
19 the Barrick overflight showed that there is no  
20 impact.

21 A lot is made of the contract with PG&E.  
22 And the contract with PG&E was terminated. And it  
23 was terminated -- actually given the kind of  
24 decision that was made in this case, was not  
25 necessarily a bad decision on behalf of EIF. They

1 had waited months for a proposed decision. And in  
2 fact I appeared in front of you asking you to move  
3 up that decision time frame. And at a point in  
4 May they had a key trigger date and they had to  
5 make a decision. Unfortunately their decision  
6 foretold the proposed denial of the project in the  
7 PMPD.

8 And then there were some comments made  
9 by Ms. Gelter about when individuals intervened  
10 and how vocal they were against the project. Yes,  
11 they were against the project from the beginning  
12 but they did not officially intervene until  
13 shortly before the prehearing conference, which  
14 occurred about a year after the project was  
15 determined data adequate. And the delays were not  
16 subject to any action by the applicant. We were  
17 at most one day late on one data response.

18 I note that there is a comment in the  
19 errata. It's under Transmission System  
20 Engineering 10 where they talk about the  
21 interconnection agreement. Interconnection  
22 agreements can be extended once by applicants, in  
23 this instance. So I don't know that questioning  
24 whether the interconnection analysis is still  
25 valid or not is truly a reason to deny the

1 project.

2 I notice there is a comment in the  
3 errata, number 24 under Land Use. And the real  
4 issue with land use is the fact that the City has  
5 not described and defined the business and  
6 technology corridor. That is the real question.  
7 And that's the real issue, relying upon the  
8 information that was provided, simply orally,  
9 where there is nothing in writing as to where that  
10 business and technology corridor exists.

11 And lastly, the footnote on 29, the  
12 comment on 29 which talks about the fact that the  
13 project did not file a petition for  
14 reconsideration regarding our request to conduct a  
15 second over-flight in the summer in an attempt to  
16 provide additional data to convince the Committee  
17 that there would not be an impact from this  
18 project on aircraft. The regulation specifically  
19 cited there I note does say may, it does not say  
20 must.

21 I also note that staff had, while that  
22 request was pending and prior to action by the  
23 Committee, had asked -- had said they would  
24 support it if FAA and Caltrans would also  
25 participate in that action. We took staff's

1 request and were out actually contacting FAA and  
2 Caltrans. And to Gary Cathey, the Caltrans  
3 witness' credit, he was interested in getting the  
4 additional information.

5 But once the decision of the Committee  
6 came out then he said, it's over, I'm not going to  
7 go forward any more. But he was at least  
8 interested in getting the additional information  
9 prior to them. And we were working to try and  
10 satisfy the staff's request of getting both a  
11 commitment from Caltrans and FAA to participate in  
12 that additional analysis.

13 Which we really felt would have made a  
14 very solid evidentiary record on what the actual  
15 impacts of this project are. Or would be if this  
16 project were placed there. It is the applicant's  
17 firm belief that if this project were in place and  
18 operating there would be no impact to aircraft  
19 overflying the project, no matter how rare that  
20 may be or how rare calm conditions may be in that  
21 area. Worst case conditions are under calm. It's  
22 only nine hours in five years. Very, very few  
23 hours.

24 So in this instance I will close my  
25 remarks assuming that you have read the rest of

1       them.  And just ask that you think about whether  
2       the way this decision is written is really the way  
3       you want to vote this decision out.  And I ask you  
4       to consider whether this decision needs a little  
5       more work before you go forward.  Thank you.

6                   CHAIRPERSON PFANNENSTIEL:  Thank you.  
7       Are there questions of counsel?  Commissioner  
8       Rosenfeld.

9                   COMMISSIONER ROSENFELD:  Yes, to Jane  
10       Luckhardt.  I am honor bound to respond to you  
11       since you used my name.  And I'm sorry, I had not  
12       paid any attention to this case.  I mean, I sat  
13       here and listened to problems with the overflight.

14                   But I guess I do have a question for  
15       either staff or maybe the Committee.  What we have  
16       here is a bunch of internal combustion engines.  
17       If there is a problem with stack effect I guess I  
18       don't understand why there wasn't some discussion  
19       of spreading out the individual -- what is it,  
20       ten?

21                   MS. LUCKHARDT:  Fourteen.

22                   COMMISSIONER ROSENFELD:  Fourteen.  The  
23       individual 14 exhausts over a large enough area  
24       that a draft would be negligible.  I can certainly  
25       conceive of spreading these out over a square of a

1 quarter of a mile or something. It seems like it  
2 would detract at most a percent from the upward  
3 power and you could have as smooth a draft as you  
4 needed. So I don't know whether anybody  
5 considered spreading out.

6 You said that updraft, the plume effect  
7 is less serious if the plumes don't merge. Why  
8 can't one spread out the individual 14 plumes so  
9 that they don't merge?

10 MS. LUCKHARDT: Well, under our  
11 analysis, and the analysis that was done by the  
12 Applicant, even with merging seven -- there are  
13 two sets of seven. Even with merging two sets of  
14 seven we did not see an impact over the Australian  
15 screening level analysis. So we didn't see an  
16 impact one way or another.

17 Staff's analysis evolved over the period  
18 of the case. It started off with an outright ban  
19 of the project in the PSA then flipped to a  
20 concern over the stacks and then a concern over  
21 the radiator fans, of all things.

22 But nonetheless, and so as we were  
23 jockeying to try and respond to the staff analysis  
24 as it evolved over time. And it did change  
25 drastically over the course of this proceeding.

1 That particular request was not presented. We  
2 didn't see it as being an issue because our  
3 analysis did not show an impact.

4 COMMISSIONER ROSENFELD: I understand.  
5 I guess my question is really more of the staff.  
6 If there is a concern about a plume, why not make  
7 the plume broader and less velocity?

8 MS. HOLMES: As Ms. Luckhardt pointed  
9 out, we did not evaluate an alternative site  
10 configuration or conduct our modeling analysis on  
11 a different set of parameters for the stack and  
12 the radiators.

13 MS. GEFTER: I also wanted to read to  
14 you from the Revised PMPD the project description.  
15 The 14 generator exhaust stacks are 70 feet tall.  
16 They are four feet in diameter at the top, eight  
17 feet in diameter at the base. They will be  
18 constructed in two clusters of seven stacks each,  
19 extending a total of approximately 425 feet in  
20 linear array. So you have two sets of seven  
21 stacks each. That's what Ms. Luckhardt was  
22 describing to you.

23 COMMISSIONER ROSENFELD: I guess I still  
24 wonder if there isn't a simple, a fairly simple  
25 engineering way out of this problem. I don't want

1 to get into modeling versus common sense. I do  
2 think there are some virtues to common sense.

3 CHAIRPERSON PFANNENSTIEL: Thank you.  
4 Are there further questions of counsel.

5 COMMISSIONER BYRON: Commissioner, I  
6 have to say, with regard to buoyancy flux. My  
7 buoyancy is in flux here as a result of hearing  
8 that you haven't read this entire decision.

9 (Laughter)

10 CHAIRPERSON PFANNENSTIEL: Some of us  
11 have. Okay, we have a number of requests to speak  
12 so I am just going to go through the pile of cards  
13 that I have in front of me. First, Todd Smith  
14 and/or Michael Hindus from the City of Hayward.

15 MR. SMITH: Good morning, Madame  
16 Chairperson and fellow Commissioners. My name is  
17 Todd Smith; I am with the law firm of Pillsbury,  
18 Winthrop Shaw Pittman. We represent the City of  
19 Hayward.

20 There's two things I would like to do  
21 before you today. One, Mayor Michael Sweeney, who  
22 is the mayor of the City of Hayward, intended to  
23 appear but as unable to appear and he has given me  
24 a written statement that he would like me to read  
25 into the record on his behalf.

1                   CHAIRPERSON PFANNENSTIEL: Fine, thank  
2                   you.

3                   MR. SMITH: I can do that now or at the  
4                   end of my statement, whichever is preferable to  
5                   you.

6                   CHAIRPERSON PFANNENSTIEL: It is up to  
7                   you.

8                   MR. SMITH: The statement of Mayor  
9                   Michael Sweeney.

10                   " My name is Michael Sweeney.  
11                   I am the Mayor of the City of  
12                   Hayward. I would first like to  
13                   thank Commissioner Byron, Hearing  
14                   Officer Gefter and the Commission  
15                   staff for their diligent efforts in  
16                   shepherding this proceeding towards  
17                   conclusion. And most of all, for  
18                   issuing a very well-reasoned and  
19                   fair Revised Presiding Member's  
20                   Proposed Decision solidly based on  
21                   the evidentiary record.

22                   "The recommended decision  
23                   correctly concludes that the  
24                   thermal plumes from the facility  
25                   would present a significant public

1 safety risk to low-flying aircraft  
2 during landing and takeoff  
3 maneuvers as a result of the close  
4 proximity to the Hayward Executive  
5 Airport.

6 "The recommendation also  
7 correctly recognizes that separate  
8 and apart from the safety impact in  
9 the thermal plumes, locating the  
10 facility at the proposed location  
11 would cause a significant  
12 cumulative impact on the operations  
13 of all the Hayward Airport by  
14 further reducing already  
15 constrained airspace and increasing  
16 pilot workload to the detriment of  
17 air safety.

18 "These public safety issues  
19 are of paramount concern to the  
20 people of Hayward and we appreciate  
21 the Committee's recognition of  
22 these issues, not only in terms of  
23 their impacts but also in relation  
24 to its decision to recommend  
25 against an override of these

1 impacts for the project.

2 "As the recommended decision  
3 notes, the purported public health  
4 and convenience benefits of the  
5 Eastshore project are modest at  
6 best, especially when compared to  
7 the significant public safety risks  
8 that have been identified. And as  
9 the evidence suggests, Eastshore is  
10 not needed to meet local energy  
11 demand in Hayward.

12 "We also appreciate the  
13 recommended decision recognizes and  
14 respects Hayward's adopted General  
15 Plan policy seeking to transition  
16 the area in the vicinity of the  
17 proposed project site, which is  
18 near homes, apartments,  
19 condominiums, Eden Garden  
20 Elementary School, Ochoa Middle  
21 School and Chabot College. The  
22 General Plan envisions  
23 transitioning from the existing  
24 industrial uses to a business and  
25 technology corridor which would be

1 more harmonious with the  
2 surrounding uses. Hayward has a  
3 vision for its future and we  
4 appreciate the recommended  
5 decision's deference to this  
6 vision.

7 "In conclusion, the  
8 recommended decision is well-  
9 reasoned and well supported, based  
10 on the proposed project's risk to  
11 aviation safety and inconsistencies  
12 with the City's land use policies.  
13 We respectfully request that the  
14 Commission adopt the Revised  
15 Presiding Member's Proposed  
16 Decision as the Commission's  
17 Decision and deny Eastshore's  
18 Application for Certification."

19 And that is the end of Mayor Sweeney's statement.

20 CHAIRPERSON PFANNENSTIEL: Thank you.

21 MR. SMITH: I would like to address, if  
22 I may, an issue raised by the Applicant in her  
23 comments regarding the City's bias. And I guess I  
24 would like to step back for a moment and first  
25 discuss the legal standard which is applicable

1 here. Pursuant to California Evidence Code  
2 Section 664, the actions of public agencies are  
3 presumed to be valid unless there is proof of  
4 actual bias.

5 Now there is no proof of actual bias  
6 here. There's inferences of bias. Well, if they  
7 oppose the project they must be biased, they being  
8 the City. If they treated the Russell City Energy  
9 Center and the Eastshore Energy Center differently  
10 they must be biased because those are identical.  
11 I am going to address how they are not identical  
12 in just a second.

13 There is no bias here. The City of  
14 Hayward did not intervene so that it could  
15 conclude that the project is inconsistent with  
16 LORS. The City of Hayward intervened because it  
17 concluded the project was consistent with LORS and  
18 it had a duty to represent its citizens before  
19 this Commission and argue that the project did not  
20 satisfy the General Plan policies and zoning  
21 ordinance provisions that are applicable here.

22 Who else should interpret the General  
23 Plan policies and the zoning ordinance provisions  
24 except the City? Certainly not the Applicant.  
25 With all due deference to any citizen or any other

1 public agency which has intervened here, the  
2 responsibility for interpreting the statutes and  
3 the ordinances of the City of Hayward rests  
4 squarely with the City and they did that by  
5 adopting a resolution.

6 So let's talk for a second about what  
7 that resolution said. The resolution said that  
8 the proposed project is inconsistent with General  
9 Plan Policy 7 because it would interfere with the  
10 implementation of the business and technology  
11 corridor. Applicant calls this a myth. It is no  
12 such thing. It is a statement in the General  
13 Plan. Nothing has been done to implement this  
14 policy, therefore it should be disregarded.

15 The applicant misunderstands the  
16 purposes of a General Plan and local land use  
17 policy. I could cite you a myriad of cases, and  
18 they have been cited in the Revised Proposed  
19 Decision, in which California courts, including  
20 the Supreme Court, have stated that the General  
21 Plan is the constitution of local land use law.  
22 Every decision made by a local agency must be  
23 consistent with the General Plan and the policies  
24 therein.

25 Locating a power plant in the eastern

1 corridor, right in the middle of the designated  
2 business and technology corridor as stated in the  
3 General Plan, would frustrate the implementation  
4 of that policy. And therefore on its face this  
5 project cannot be consistent with that policy and  
6 would violate state law if the City tried to take  
7 a different position.

8 As for the idea that the Russell City  
9 Energy Center and the Eastshore Energy Center are  
10 identical and therefore the City has evidence of  
11 bias by not treating them identically is patently  
12 false. It's a patently false statement. As with  
13 real estate where location, location, location is  
14 the mantra. Well maybe not these days given the  
15 current market. The same is true of land use. In  
16 land use location matters.

17 You can have identical projects, and  
18 obviously Russell Center and Eastshore are not  
19 identical, in different locations and treat them  
20 differently because the circumstances of those  
21 project sites might be different. In this case  
22 the Eastshore facility is located much closer to  
23 the Hayward Executive Airport and it is also  
24 located in an area which has now been designated  
25 for the business and technology corridor.

1           The other difference is that Russell  
2           City was approved prior to the 2002 amendments to  
3           the City's General Plan in which General Plan  
4           Policy 7 implementing the business and technology  
5           corridor was adopted. So Eastshore came to the  
6           table with a different set of circumstances and a  
7           different set of policies applicable to their  
8           project that were applicable to Russell City. So  
9           clearly the City of Hayward had the discretion to  
10          treat Eastshore differently than Russell City  
11          because the policies were different.

12                 Finally I guess I'd just like to say  
13          that there are more than the land use  
14          inconsistency findings here. There are five  
15          findings, two related to airport safety, that are  
16          amply supported by the evidence. The Committee  
17          here did a fantastic job holding hearing after  
18          hearing. The hearing officer did a fantastic job  
19          as did the staff.

20                 We strongly recommend and respectfully  
21          recommend that the Commission adopt the Proposed  
22          Decision as its Final Decision. Thank you. Thank  
23          you very much. Questions?

24                 CHAIRPERSON PFANNENSTIEL: Thank you.  
25          Any questions? None. Thank you.

1 MR. SMITH: Thank you.

2 CHAIRPERSON PFANNENSTIEL: Andrew  
3 Massey, Associate County Counsel for the County of  
4 Alameda.

5 MR. MASSEY: Good morning,  
6 Commissioners. I am Andrew Massey with the Office  
7 of County Counsel representing the County of  
8 Alameda. I am here on behalf of the County to  
9 urge you to adopt this Presiding Member's Proposed  
10 Decision.

11 I want to talk a little bit about the  
12 process that led to this Presiding Member's  
13 Proposed Decision. Because I know that the way  
14 that this Commission works is that it assigns  
15 committees made up of a subset of the  
16 commissioners to oversee a siting process. And  
17 that's because that is the most efficient way to  
18 handle a large number of applications.

19 But the result is that each of you can't  
20 consider all of the evidence. You can't sit  
21 through all of the hearings. You can't read all  
22 the documents that were filed. So you have to --  
23 When you read a Presiding Member's Proposed  
24 Decision you have to have confidence in the  
25 process that led to that decision. And I am here

1 to tell you that this was the most thorough  
2 process that I have seen from this Commission.

3 As you know from recent history, the  
4 County of Alameda has been sometimes upset with  
5 the process of this Commission in other siting  
6 cases. But I want to come here to praise this  
7 one. This process considered the points of view,  
8 the analyses and the evidence of a wide variety of  
9 parties and individuals with an interest in the  
10 outcome of the Commission's decision.

11 We heard hours and hours of testimony.  
12 In fact we added an additional day to the  
13 evidentiary hearing so that all of the testimony  
14 could come in. We had a lengthy briefing schedule  
15 that allowed each party to air all of its  
16 arguments. They were thoroughly considered. And  
17 I think if you read through the Presiding Member's  
18 Proposed Decision you will see that. You will see  
19 all of the evidence being considered. All of the  
20 arguments being considered from every party. From  
21 the applicant down to the individual intervenor to  
22 public citizens coming to make public comment.

23 Now I want to respond to a couple of the  
24 comments you heard this morning from the  
25 applicant. The first one concerns the idea that

1       you shouldn't adopt this Presiding Member's  
2       Proposed Decision because it would cause problems  
3       going forward in other siting cases. The reasons  
4       you heard for this were a long line of arguments  
5       concerning land use and aviation.

6                I want to tell you that these arguments  
7       have been thoroughly considered. They were  
8       considered at the evidentiary hearing. They were  
9       considered in the voluminous briefing that was  
10      filed prior to the issuance of the initial  
11      Presiding Member's Proposed Decision. They were  
12      considered during the comments on the Revised  
13      Presiding Member's Proposed Decision.

14              These are the same arguments we have  
15      heard before. There is no reason to revisit them.  
16      I can assure you that the Committee thoroughly  
17      considered these arguments. And if you don't  
18      believe me look at the decision. The decision  
19      goes through each and every argument. It lays  
20      them out. It says why it considered some to be  
21      the correct point of view and why it disagreed  
22      with others. It didn't always agree with the  
23      County of Alameda, and we respect that. But we  
24      appreciate that all of our arguments and evidence  
25      were thoroughly considered.

1           I also want to respond to some of the  
2           comments about deference to local governments.  
3           And I would echo some of the comments made by the  
4           City of Hayward. But I also want to put this in a  
5           larger context. And I know Commissioner Byron has  
6           heard me say this before but the other three of  
7           you have not.

8           When the Legislature adopted the Warren-  
9           Alquist Act it stripped land use approval for  
10          thermal power plants over 50 megawatts from local  
11          governments. However, when it did that it said  
12          that in any siting case the Commission must give  
13          deference to the analyses and decisions of local  
14          governments and agencies. And it did that for a  
15          reason. Because while energy is a statewide  
16          concern the actual construction of a power plant  
17          affects local populations and local governments.

18          And that tension between the deference  
19          to local government and the need for statewide  
20          policy on energy makes for better siting  
21          decisions. The input of local governments isn't  
22          just a question of us being able to jealously  
23          guard our ability to participate in the process.  
24          It is so that when you make a decision you know  
25          that you are putting a power plant in the location

1 that makes sense for the local population, the  
2 local environment and the local government.

3 And in this case the application before  
4 you is a flawed proposal. Now you have heard from  
5 the Applicant that the City of Hayward and the  
6 County of Alameda and other public agencies are  
7 simply biased. That we just don't like this  
8 proposal, we don't want it in our backyard. But  
9 that is not true.

10 And I think to show evidence that the  
11 County is able to distinguish between applications  
12 look at the two power plant applications out near  
13 the Tesla Substation. The County was a proponent  
14 of both of those power plants because we think  
15 that those were placed in the right location. The  
16 Eastshore power plant is in the wrong location.  
17 It is too near the Hayward Airport and it puts  
18 local citizens at risk. We also had concerns  
19 about air quality and environmental justice in  
20 that area.

21 So again, I want you to take a look at  
22 the Presiding Member's Proposed Decision and  
23 understand that it came out of an extraordinary  
24 process. And I would praise Commissioner Byron  
25 and Hearing Officer Geftter for leading that

1 process that allowed all parties to air their  
2 concerns, to present evidence and present  
3 argument. This is a good decision. I urge you to  
4 adopt it. Thank you very much for allowing the  
5 County to participate in this process.

6 CHAIRPERSON PFANNENSTIEL: Thank you,  
7 sir. We have Paul Haavik who is an intervenor in  
8 this proceeding.

9 MR. HAAVIK: I'm Paul Haavik,  
10 intervenor. The original, local citizen as well  
11 as the original intervenor. I had prepared a long  
12 statement. I am going to be very brief.

13 Thank you, Mr. Byron, thank you,  
14 Commission, for the excellent job that you have  
15 done. Thank you, Ms. Gefter, as well as Caryn  
16 Holmes, Bill Pfanner, as well as my colleague Andy  
17 Wilson, who he and I started this thing off almost  
18 two years ago.

19 I believe that the evidence which you  
20 have gathered, which you have considered, which  
21 Mr. Byron has put together in a not necessarily  
22 concise but very, very diligent, very  
23 comprehensive report, the PMPD, the RPMPD. I urge  
24 both the Commission as well as anyone else that is  
25 here to look at this that it be approved. And

1 that you guys have done one heck of a job in  
2 having a very, very difficult time.

3 Again, Mr. Byron, thank you very much.  
4 Ms. Gefter, I know you are in your retirement  
5 phase, thank you very much. I appreciate  
6 everything.

7 CHAIRPERSON PFANNENSTIEL: Mr. Haavik,  
8 thank you for your participation. Jewell  
9 Hargleroad, Group Intervenors.

10 MS. HARGLEROAD: Good morning. I am  
11 Jewell Hargleroad here on behalf of the Group  
12 Intervenors, the statewide organization of the  
13 California Pilots Association, the San Lorenzo  
14 Village Homes Association and Hayward Area  
15 Planning Association. And also I brought with me  
16 copies of a letter from the San Lorenzo Village  
17 Homes Association, which is not within the City of  
18 Hayward but the neighbors to the north. This  
19 states:

20 "Dear Commissioners,  
21 We are disappointed that we cannot attend your  
22 meeting of October 8, 2008 due to schedule  
23 conflicts."

24 This is on behalf of the association  
25 board members.

1                   "The Board wishes to thank and  
2                   acknowledge the Evidentiary  
3                   Committee for all its time and  
4                   effort in arriving at its  
5                   preliminary recommendation.

6                   "We believe that the Eastshore  
7                   Energy Center is not conducive to  
8                   nor consistent with protecting  
9                   public health and safety, promoting  
10                  the general welfare of the  
11                  community, or preserving critical  
12                  environmental quality. Therefore,  
13                  we urge the Commission members to  
14                  adopt the Presiding Member's  
15                  Proposed Decision as revised.

16                  "Thank you for your  
17                  consideration."

18                  It is signed by the administrator, Nancy  
19                  Van Huffel. And I have copies for staff here.

20                  Although the representatives of the  
21                  California Pilots Association and HAPA were also  
22                  unable to attend they likewise compliment the  
23                  evidentiary committee.

24                  And as for the adoption order, we  
25                  appreciate and agree with Ms. Gefter's summary and

1 in general concur. What we really object to is  
2 the Applicant's criticism. Because what drives  
3 this decision is an evidentiary hearing and the  
4 applicable local, state and federal law. Because  
5 locating power plants, thermal power plants by  
6 general aviation airports raises state and federal  
7 law issues, which also here happened to violate  
8 local law. So Applicant's argument regarding the  
9 concern over local law is really a red herring.

10 Without waiving any of our suggestions  
11 or modifications which were not adopted, because  
12 not all of our suggestions were adopted, in  
13 general we agree that substantial evidence  
14 supports the findings applicable to this project  
15 and appreciate those modifications which were  
16 adopted.

17 We would also point out that on behalf  
18 of Group Intervenors, our position is that this  
19 project also violates federal law. We would  
20 simply note that if the Applicant has any  
21 comparison of other projects we would attribute it  
22 to the parties, the County of Alameda, Chabot  
23 College and Group Intervenors having the  
24 opportunity to present evidence which we were  
25 denied on other projects.

1           The Applicant contends their modeling  
2           and so-called actual evidence, the helicopter fly-  
3           over, is this wonderful evidence. Well in  
4           November at the prehearing conference that fly-  
5           over had not taken place. And we were sitting in  
6           a prehearing conference with the evidentiary  
7           committee. The Applicant never disclosed that the  
8           very next day that they had this test scheduled.

9           They never invited anyone. They never  
10          invited staff, they never invited the FAA, our  
11          disclosed witnesses, or the Department of  
12          Aeronautics, our disclosed witnesses. They never  
13          invited the California Pilots Association with  
14          lots of experts. There are multiple overwhelming  
15          reasons to exclude this offer of the helicopter  
16          fly-over. So we are in complete agreement with  
17          staff and the Commission, and specifically the  
18          order denying that motion.

19          And we would also like to clarify that  
20          this Commission's integrated energy plan  
21          recognizes that peaking plants in cool, coastal  
22          climates are not recommended. And we offered that  
23          evidence, which was admitted, under the  
24          Alternatives section by Professor Sherman Lewis.

25          The additional point as to the solo

1 helicopter fly-over in the desert. We would  
2 submit it is certainly not relevant to the Hayward  
3 general airport, which is the reliever airport to  
4 the Oakland International Airport. And the  
5 Hayward Airport has 147,000 flights in and out a  
6 year, which is located in the middle of one of the  
7 most densely populated areas in the state. So we  
8 had objected to that and we certainly agree with  
9 that order.

10 And we would urge the Commission to  
11 adopt the Proposed Commission adoption order. And  
12 thank you and thank the evidentiary committee for  
13 its time. Thank you.

14 CHAIRPERSON PFANNENSTIEL: Thank you for  
15 being here. Andy Wilson, a Hayward pilot.

16 COMMISSIONER BYRON: Mr. Wilson, I  
17 didn't see you hiding in the back there. It's  
18 good to see you here.

19 MR. WILSON: I was just flying a little  
20 high, that's all.

21 Madame Chair, Commissioners, staff. I  
22 am a pilot and I am instrument rated. I am a  
23 resident of Hayward. I have lived in Hayward  
24 since 1974. I have attended -- I want to make the  
25 point that I have attended every meeting. I have

1 attended the evidentiary hearing. I have attended  
2 the Alameda County Airport Land Use Committee  
3 meetings over this issue.

4 And the only couple of comments that I  
5 have today to keep it short: I find the picture  
6 that was presented to you on the power plant in  
7 the desert pretty interesting. Because the  
8 neighboring business to the proposed site for  
9 Eastshore happens to be a two-story brick  
10 building, the Fremont Bank building. On another  
11 side is another business, a tilt-up type building.  
12 So I want to make a point that the visual that was  
13 shown is in the middle of nowhere. The visual for  
14 this power plant is in the industrial corridor and  
15 business corridor.

16 With that, those are my comments. Again  
17 I would like to thank the staff for the detail,  
18 the engineering, the study on this issue, and the  
19 consideration of the various types of aircraft  
20 that fly in and out of the Hayward Airport. With  
21 that I would recommend that you do consider the  
22 proposed decision and we not put that power plant  
23 in place. Thank you very much.

24 CHAIRPERSON PFANNENSTIEL: Thank you,  
25 Mr. Wilson, for your comments. Jesus Armas.

1           MR. ARMAS: Good morning. Jesus Armas,  
2 a Hayward resident. In the beginning of the  
3 application process for this item I was the city  
4 manager for the City of Hayward so I have had  
5 extensive involvement and participation in this  
6 process.

7           I would note that a two-year time frame  
8 in which there was an extensive analysis resulted  
9 in a very well-reasoned decision, as many of the  
10 speakers have already mentioned. But I think we  
11 can really look at the 500-plus page document and  
12 really synthesize it in some fairly understandable  
13 and straightforward phrasing.

14           First of all, it is the wrong project at  
15 the wrong location. Eastshore visited the city  
16 early in the process and had some discussions with  
17 the staff. We made them aware of some of the  
18 General Plan and land use issues that were likely  
19 to be of concern and suggested to them that they  
20 take careful thought of those comments before  
21 proceeding.

22           I would also underscore that at the end  
23 of the day Eastshore made a bad business decision.  
24 It engaged in securing a piece of property to  
25 proceed in hopes of securing a permit, a license

1 to construct a plant, without fully vetting it  
2 from the standpoint of local standards and the  
3 like.

4 What we also learned was the Eastshore  
5 representatives would have requested the  
6 Commission to really disregard a key standard that  
7 has been present in so many of your decisions.  
8 And that is, an evaluation against the LORS. When  
9 we looked at prior cases, particularly Metcalf,  
10 clearly some very strong evidence was provided  
11 that indicated the benefits associated with that  
12 plant greatly outweighed any potential negative  
13 impacts in the local community and the environs.  
14 That was not possible here because Eastshore could  
15 not demonstrate that the benefits to the greater  
16 community, to the energy system of our state  
17 commended its approval.

18 So I think what we are stuck with is a  
19 poor business decision. The wrong project for a  
20 wrong location. The analysis that Mr. Byron  
21 authored clearly supports that and we would urge  
22 you to support that recommendation.

23 And then finally as I conclude my  
24 remarks. I would like to note that I have  
25 obtained information about the Energy Loan

1 Program. That was very informative. I think  
2 there is an opportunity in the Hayward community  
3 to avail ourselves of the benefits beyond those  
4 that the County has realized. Thank you very  
5 much.

6 COMMISSIONER BYRON: Thank you,  
7 Mr. Armas for being here. I'm sorry I referred to  
8 you earlier as the general manager, I did mean the  
9 city manager.

10 CHAIRPERSON PFANNENSTIEL: Audrey  
11 LePell, Citizens Against Pollution.

12 MS. LePELL: Good morning. Greetings to  
13 the staff and greetings to the California Energy  
14 Commission. I am Audrey LePell, I live in  
15 Hayward. I have been there for 44 years. I am  
16 the president of CAP, Citizens Against Pollution.

17 The proposal to build the power plant  
18 having two names, Tierra and/or Eastshore Energy  
19 Center, located in the western part of the City of  
20 Hayward is simply not justified. Our  
21 organization, CAP, Citizens Against Pollution, has  
22 strongly said those words many times to the CEC or  
23 its representatives. Many citizens have called  
24 and/or written to the California Energy Commission  
25 regarding this unwanted power plant. Please heed

1 those words and deny this application.

2 The opposition to this particular plant  
3 has been partially led by members of our  
4 organization and others, such as the County of  
5 Alameda, Chabot Community College, San Lorenzo  
6 Homeowners Association, Citizens for Alternative  
7 Transportation Solutions, Hayward Area Planning  
8 Association, Sky West Townhouse Homeowners  
9 Association and even the City of Hayward itself.  
10 And we are proud of that.

11 The following reasons are of importance.  
12 The very listing of pollutants that will be  
13 exhaled into our westerly air by 14 towers or  
14 stacks include noted cancer-causing carcinogens  
15 acrolein and formaldehyde. Those two plus 17  
16 separate, other pollutants will be polluting our  
17 air and lodge in the lungs of many adults and  
18 children. More reasons not to give your approval.

19 This power plant will be constructed in  
20 the flight pathway to the Hayward Airport. It is  
21 a danger to the flying aircraft including  
22 helicopters and general aviation pilots and  
23 passengers.

24 Tierra/Eastshore will be too close to  
25 three schools. One-half mile from Chabot College,

1 Chabot Community College, Ochoa Middle School and  
2 the Heald business school. Its proposed location  
3 at Clawiter and Depot Roads is adjacent to  
4 hundreds of homes and other businesses.

5 And further of great importance is the  
6 fact that your very capable staff recommended  
7 against this power plant with its two confusing  
8 names as long as a year and a half ago.

9 Existing presently are other means of  
10 alternative energy reasons which are now being  
11 sought by the state of California for its  
12 communities. We would encourage Tierra/Eastshore  
13 executives to research other sources of clean and  
14 green energy for our communities that would be  
15 without such an undesired effect in our area.  
16 Keeping our air clean is our goal.

17 And we hope that the California Energy  
18 Commission will approve that goal. And thank you.

19 CHAIRPERSON PFANNENSTIEL: Thank you. I  
20 have another card from CAP, which I assume is the  
21 Citizens Against Pollution. I don't know if there  
22 is another speaker here. It has no name on it.

23 MS. GUTIERREZ: Yes, that is me.

24 CHAIRPERSON PFANNENSTIEL: Okay.

25 MS. GUTIERREZ: I believe I missed to

1 put my name.

2 CHAIRPERSON PFANNENSTIEL: Okay. Please  
3 come forward.

4 MS. GUTIERREZ: I guess it is still  
5 morning. Good morning. Or afternoon? It's still  
6 morning. Yes, good morning, Commissioners. I am  
7 here -- My name is Juanita Gutierrez. That is the  
8 name that is supposed to be in there. I am a CAP  
9 member, a citizen against pollution. I am also  
10 one of those local citizens the attorney  
11 mentioned. I do represent many of the neighbors  
12 in the area. I live just a couple of blocks away  
13 from the proposed power plant.

14 And I applaud your proposed decision  
15 because that gives me back the pride that I told  
16 you earlier. I am so proud of being a California  
17 residence because California cares for its people.  
18 And this shows me that you have common sense. And  
19 this decision, I really urge you to adopt it.  
20 Thank you.

21 CHAIRPERSON PFANNENSTIEL: Thank you. I  
22 have a card, a note that there are two people on  
23 the phone. I don't know if they are together or  
24 separate. Rob Simpson and Robert Sarvey.  
25 Harriet, are they together or two separate phone

1 calls?

2 MS. KALLEMEYN: They are separate,  
3 separate callers.

4 CHAIRPERSON PFANNENSTIEL: Should we  
5 start then with Mr. Simpson?

6 MS. KALLEMEYN: We have Mr. Simpson on  
7 the line.

8 CHAIRPERSON PFANNENSTIEL: Mr. Simpson,  
9 go ahead.

10 MR. SIMPSON: Hi, good morning, this is  
11 Rob Simpson.

12 CHAIRPERSON PFANNENSTIEL: Good morning.

13 MR. SIMPSON: Good morning. I would  
14 like to thank the Commission for considering  
15 accepting the proposed decision. I would  
16 particularly like to thank Commissioner Byron for  
17 the fair proposal and his understanding. I would  
18 like to thank the Alameda County Board of  
19 Supervisors, Chabot-Las Positas College, the City  
20 of Hayward, California Pilots Association and the  
21 FAA, all the attorneys.

22 And of course Andy Wilson, Ernie  
23 Pacheco, Audrey LePell and Juanita Gutierrez. I  
24 would like to thank our political leaders Hayashi,  
25 Pereta and Stark. All the environmental

1 organizations and the thousands and thousands of  
2 community members who protested this siting. We  
3 demonstrated our belief that global warming power  
4 plants are from a bygone era and are not  
5 acceptable in our neighborhoods.

6 The two-year process has been a historic  
7 event uniting this community as nothing before it  
8 has. It inspired a better understanding that  
9 there's threats to public health and the  
10 environment. We stood together to require a  
11 better way. We require clean, locally farmed  
12 energy.

13 We call Hayward the heart of the bay.  
14 That may be a geographic reference for some but I  
15 think we have shown you some of our heart. We are  
16 here to be part of the solution, not a repository  
17 for pollution. We are the center of the Bay Area.

18 The City of Hayward and the County of  
19 Alameda are committed to lead in clean technology.  
20 We will continue to play a distinctive role in  
21 solving our energy needs. OptiSolar has recently  
22 made a significant commitment to our community, as  
23 have many other companies and individuals  
24 determined to go a better way.

25 We in Hayward understand that our

1 business and technology corridor is certainly in  
2 our limited commercial district where this plant  
3 is planned and not in a residential district. We  
4 understand and are proud of the economic  
5 environmental recovery that relies on a clean  
6 energy independence.

7 The Bay Area is moving forward and we  
8 hope to continue to work with the Commission in  
9 this direction. Thank you.

10 CHAIRPERSON PFANNENSTIEL: Thank you,  
11 Mr. Simpson. Robert Sarvey.

12 MR. SARVEY: Good morning,  
13 Commissioners. I just wanted to say that I do  
14 support this decision. And I support it for  
15 reasons other than what have been put forward to  
16 you in the Presiding Member's Proposed Decision  
17 and also what you have been hearing today. And I  
18 think what illustrates it the most is in the  
19 Errata for the PMPD, Item 19. A request that we  
20 add a footnote that states:

21 "Mr. Sarvey's assertion that  
22 the project violates the state's  
23 annual PM10 standard and the  
24 federal annual PM2.5 standard based  
25 on Applicant's Table 8.1-34 was not

1                   litigated during the proceeding."

2           I don't think that that footnote properly  
3           characterizes what did occur in that proceeding  
4           and why my reasons for intervening into the  
5           proceeding occurred.

6                   I raised the violation of the  
7           particulate matter standards first in my comments  
8           on the Preliminary Staff Assessment in August of  
9           2007. In my testimony, which is Exhibit 800, I  
10          raised the issues on pages two and six. In my  
11          opening brief I raised the issue on page two. And  
12          also in my reply brief on page 121 I raised the  
13          same issue. You could make the statement that  
14          Mr. Sarvey intended to litigate the particulate  
15          matter standards violations and we chose to ignore  
16          him but that footnote proposed as Item 19 is  
17          factually inaccurate.

18                   Much like the project that you approved  
19          in Humboldt two weeks ago, this project has a  
20          particulate matter standard of 27.5 micrograms per  
21          cubic meter for PM10 and 17 micrograms per cubic  
22          meter for PM2.5. The use of these type of engines  
23          in populated areas should not be allowed and I  
24          think the Commission should reconsider on their  
25          motion their Humboldt decision.

1           Besides that I want to address one thing  
2           that the County of Alameda said. They did, in  
3           fact, support the East Altamont Energy Center and  
4           the Tesla Power Plant. But the impacts from that  
5           project were on citizens of San Joaquin County,  
6           Mountain House and Tracy. So I just wanted to  
7           make that clear.

8           And I would like to once again support  
9           the decision but for reasons that are not  
10          elaborated. Thank you.

11          CHAIRPERSON PFANNENSTIEL: Thank you,  
12          Mr. Sarvey. Any other comments from people here?  
13          Then I will ask Commissioner Byron, would you  
14          introduce the subject from the Committee.

15          COMMISSIONER BYRON: Thank you, Madame  
16          Chairman. I want to address a couple of things  
17          that have come up, in homes that it might help my  
18          fellow Commissioners in their deliberations.

19          Ms. Gefter, the issue about the  
20          precedential/non-precedential aspect of this  
21          decision. Would you mind addressing for my fellow  
22          Commissioners why we included that.

23          MS. GEFTER: As Ms. Luckhardt noted,  
24          Commission decisions are not, as a matter of law,  
25          precedential unless we say they are precedential.

1           In this case in particular we wanted to  
2           note that deciding to deny certification in this  
3           case because of an aviation hazard does not  
4           preclude the Commission in the future from siting  
5           power plants appropriately near other airports in  
6           the state. And so we wanted to call that out for  
7           your attention and for future applicants. That if  
8           in fact there is a site near an airport that is  
9           appropriate that the Commission would look at that  
10          and we would not be foreclosed from considering a  
11          plant like that.

12           COMMISSIONER BYRON: Thank you. Just a  
13          couple of other topics that the Applicant brought  
14          up that I think merit some clarification. There  
15          was an inference about local politics affecting my  
16          recommendation. I don't recall seeing or putting  
17          anything in our PMPD about that affecting my  
18          recommendation. And I just want to assure my  
19          fellow Commissioners that it did not.

20           The best I can tell there were only two  
21          parties that were really interested in permitting  
22          this project, the Applicant and myself. The  
23          evidence in the record, however, does not support  
24          a recommendation in favor of this power plant.

25           And in fact I am a little bit concerned

1 the way the Applicant at times conducted  
2 themselves during this proceeding. There was an  
3 inference or an expectation that they wanted an  
4 expedited decision over a thorough review and a  
5 public vetting of this process.

6 I believe it is in the best interest of  
7 this Commission to always make sure that we  
8 establish a thorough record and that we get all  
9 the public input. Because if we had indeed  
10 recommended approval of this application we would  
11 certainly want the record to be able to justify  
12 that kind of decision just as well.

13 Having said all that. I think you can  
14 tell that this project did generate a great deal  
15 of interest in Hayward. And even outside Hayward.  
16 I know I spent a lot of time there because we  
17 don't take these -- We don't take these lightly.  
18 These kind of power plant siting cases are  
19 extremely important. And it was important that we  
20 make sure that in addition to the five intervenors  
21 that the public was heard. And in fact I heard  
22 from some of you more than once.

23 (Laughter)

24 COMMISSIONER BYRON: No one really was  
25 in favor of having this power plant sited there,

1       except as I said, perhaps the Applicant and  
2       myself. But there were unmitigateable impacts and  
3       the record was not, we were not able to support an  
4       override on this decision.

5               The fact of the matter is, despite  
6       public perception, this was a difficult decision  
7       for me and recommendation to my fellow  
8       Commissioners. I think this state needs cleaner,  
9       more efficient power plants and the state  
10      interests, in my mind, normally trump the  
11      narrower, local interests.

12             Nevertheless, the local opposition was  
13      sincere and some was for very good reasons. But  
14      there was also a great deal of mis-information and  
15      if you will indulge me for a moment, having been  
16      the Presiding Member on this for a number of years  
17      now I'd like to ask your indulgence in a little  
18      bit of perspective here.

19             I am reminded of the quote that  
20      everybody wants to go to Heaven but no one wants  
21      to die. We all use electricity but we don't want  
22      the generators to be built near us.

23      Electrification is a good thing. In fact some  
24      classify it, I noticed on a couple of web sites  
25      last night, as the greatest engineering

1 achievement of the 20th century.

2 Now in the 2009 IEPR we are going to  
3 take on the issue of increasing and integrating a  
4 higher level of renewables into our generating mix  
5 in the state. And it is not going to be easy and  
6 there is a great deal of opposition. But even if  
7 we are successful in moving to as high as 33  
8 percent renewables we will still need to burn  
9 natural gas. But remember, we fully mitigate the  
10 pollution from the natural gas that we burn in the  
11 power plants in the state.

12 I would like to remind everyone the  
13 electricity sector is not the problem, it's the  
14 transportation sector. Ninety-six percent of the  
15 fuel in the transportation sector is gasoline.  
16 And if only we could get the public's interest to  
17 reduce driving--car pooling, buying more efficient  
18 cars--to the extent we get their interest in power  
19 plant siting cases, I think we'd be winning the  
20 day a lot better here.

21 In fact I asked the staff to prepare a  
22 little comparison for me. You might be surprised  
23 to know that -- Well, I will ask the question.  
24 What produces more nitrous oxide by an average  
25 California resident in a day? The amount of

1 driving that average person does or the pollution  
2 that comes from the electricity that they consume?

3 So they did some good analysis. And it  
4 is fair to say that as much as I enjoyed going to  
5 Hayward a number of times, when I make that trip  
6 from here to Hayward I produce 60 times more of  
7 the nitrous oxide that I will have produced from  
8 the electricity that I consume in that same day.  
9 I produce 30 times the CO2 or greenhouse gasses by  
10 driving my car that distance. Please, do not take  
11 that to mean we are not glad that you are here for  
12 our hearing today. I just wanted to add some  
13 perspective.

14 And remember, the cars' emissions are  
15 not offset. The power plants that we site and the  
16 electrical generation is. And in fact this  
17 particular plant in Hayward is far more efficient  
18 than the national, excuse me, than the state  
19 average that we used in making this calculational  
20 comparison here. So if only we could convert our  
21 gas guzzlers to electric vehicles. But where  
22 would we build the power plants?

23 I know Commissioner Boyd is sorry that  
24 he wasn't here today. Nevertheless I think we  
25 should decide this decision. So I would like to

1 make a motion that the full Commission hereby  
2 adopt my Revised Presiding Member's Proposed  
3 Decision along with the Committee Errata as  
4 discussed during the meeting today.

5 By adopting the Revised PMPD and the  
6 Errata we hereby vote to deny certification to the  
7 Eastshore Energy Center and we further decline to  
8 override the project's inconsistencies with  
9 applicable laws, ordinances, regulations and  
10 standards. The Revised PMPD and Committee Errata  
11 would be incorporated into the Commission Decision  
12 on the Eastshore Energy Center. And I think the  
13 Commission's Adoption Order on Eastshore Center  
14 should reflect this determination.

15 CHAIRPERSON PFANNENSTIEL: Thank you,  
16 Commissioner Byron. I am going to second the  
17 motion but I would like to just say a word about  
18 why I am doing that.

19 At the Energy Commission approving or  
20 rejecting power plants is something we take very  
21 seriously. It is a major part of the reason the  
22 Energy Commission was created and it is perhaps  
23 the fundamental place where we interact with  
24 California citizens most directly.

25 In every case we seek ways to work with

1 the applicant and the local community to mitigate  
2 the impacts that these power plants will have.  
3 They always have impacts. We work to reduce the  
4 impacts as much as we can and to mitigate those  
5 that we can't.

6 In this case it seems that with all of  
7 the efforts in the world, with Commissioner Byron  
8 going in intent on being able to license this  
9 plant, we were not able to mitigate the impacts.  
10 And so we are confronted with the violation, this  
11 unmitigateable violation of the local ordinances,  
12 rules and standards.

13 We do have, as has been pointed out, the  
14 option in the law of overriding the local LORS.  
15 And this override is something that we have done  
16 on occasion. We have done it hopefully in only  
17 extraordinary circumstances. But we need to find  
18 that the public convenience and necessity demands  
19 us to do that. We weren't able to find that in  
20 this case. We looked for it and were not able to  
21 find it.

22 I am neither a scientist nor a pilot and  
23 so when trying to determine how risk this  
24 situation was I relied on the evidence in the  
25 case. I read the relevant sections, in fact most

1 of the PMPD, with great interest. And I looked at  
2 the record because I am very concerned in a state  
3 where we do need more electrical power. And  
4 having gone through a couple of years in this  
5 proceeding I was very concerned about agreeing to,  
6 in essence, reject the application.

7 But I found the PMPD was extremely well-  
8 reasoned. The process that led to it was open, it  
9 was intensive, it was extensive, it was  
10 comprehensive. I was left with no other place to  
11 go. I think that the proposed decision is really  
12 an excellent one. I give my words of appreciation  
13 to the Hearing Officer and to the Presiding and  
14 most of the time the sole Commissioner on that  
15 case.

16 So with that I second the motion of  
17 Commissioner Byron. Is there further discussion?  
18 Any other questions? With that shall we vote?  
19 All in favor of approving the Revised PMPD with  
20 the Errata. All in favor?

21 (Ayes.)

22 CHAIRPERSON PFANNENSTIEL: Anybody  
23 opposed? Thank you, it's approved. Yes, Hearing  
24 Officer Gefter.

25 MS. GEFTER: Yes. One clarification on

1 the Errata. Mr. Sarvey noted that Item 19, a  
2 footnote on page 151, that the assertion in that  
3 footnote is incorrect. And we would correct that  
4 based on Mr. Sarvey's discussion today.

5 CHAIRPERSON PFANNENSTIEL: Thank you.

6 COMMISSIONER BYRON: And I would like to  
7 add some thank yous, only because there is no  
8 other chance. So before you get up and leave or  
9 we empty the room I would like to thank the staff.  
10 I think they did a very thorough job on this.

11 In particular my advisor Gabriel Taylor,  
12 who even, golly Gabe, I think it was over six  
13 months ago left my office by continued on this  
14 project. And I appreciate your support, Gabe,  
15 over the duration of this project. Ms. Gefter did  
16 an excellent job. Even as she went into  
17 retirement she continued on on this project and we  
18 appreciate that continuity. I am sorry to see  
19 that this maybe your last case here at the  
20 Commission.

21 Certainly the intervening parties did an  
22 excellent job in the way they conducted  
23 themselves. I would like to thank those that  
24 provided all the factual evidence and good  
25 arguments and those folks are all here today.

1 Extremely professional in their conduct throughout  
2 the process.

3 And unfortunately the Mayor is not here  
4 on behalf of his citizens. We had many of them  
5 that engaged, some are here today. And I think it  
6 is a tribute to this Commission, the City of  
7 Hayward. This is the way the public process  
8 should operate and I thank all of the citizens for  
9 their participation as well.

10 CHAIRPERSON PFANNENSTIEL: Thank you  
11 all.

12 We are continuing the Commission  
13 business. Item 11 on the agenda. Possible  
14 adoption of an Order Instituting Investigation on  
15 Methods for Satisfaction of California  
16 Environmental Quality Act Requirements Relating to  
17 Greenhouse Gas Emission Impacts of Power Plants.  
18 Mr. Ratliff.

19 MR. RATLIFF: Good morning,  
20 Commissioners. Richard Ratliff with the Office of  
21 the Chief Counsel. I suspect the Siting Committee  
22 will want to address this Order instituting an  
23 informational proceeding. I'll say a few words as  
24 background for that document. The Energy  
25 Commission has been following --

1                   COMMISSIONER ROSENFELD:  Could you get a  
2                   little closer to the mic, Dick.

3                   MR. RATLIFF:  The Energy Commission has  
4                   been involved in following global warming issues  
5                   since the 1980s.  In the 1980s it even found, when  
6                   we still made a determination of need it found  
7                   geothermal power plants to be needed where they  
8                   otherwise would not have been needed because they  
9                   did displace warming gasses.

10                   In recent years this issue has gotten  
11                   much more intense attention and the Legislature  
12                   passed AB 32 directing CARB to produce a  
13                   programmatic program to limit the effect of  
14                   emissions in California, at least, as they  
15                   contribute cumulatively to global warming.

16                   In the last couple of years there have  
17                   been many actions by the state's Attorney General  
18                   and most recently by the Governor's Office in  
19                   planning and research, by which those two agencies  
20                   have indicated that projects that are approved in  
21                   California should be analyzed pursuant to the  
22                   California Environmental Quality Act for their  
23                   impacts on global warming emissions.  The Energy  
24                   Commission very much wants to make sure that it  
25                   provides such an analysis and that such an

1 analysis is not only legally sufficient but also  
2 useful and informative to the public. Even so we  
3 find in our internal discussions that it is --  
4 there are some daunting issues that present  
5 themselves when performing such an analysis.

6 There is, for instance, little agreement  
7 on what the CEQA baseline would be for such an  
8 analysis, particularly given AB 32's directives  
9 that the state's programs and efforts to curb  
10 greenhouse gasses should not result in leakage.  
11 That is, the displacement of such emissions to  
12 other states. And this is particularly important  
13 in the electricity system realm.

14 And secondarily there is no agreed upon  
15 or adopted threshold of significance for  
16 greenhouse gasses, which is a fundamental decision  
17 that all CEQA agencies have to make and no one is  
18 quite sure how to deal with it.

19 And finally there is no agreed upon or  
20 certain directive on how such emissions are to be  
21 mitigated and how such mitigation is to be  
22 certain, lasting and not additive.

23 So for those reasons we have drafted  
24 this Order with an attempt to try to solicit  
25 public comment and agency comment. To try to get

1 a wide range of views on how we would best address  
2 these issues. And that is what this Order is  
3 intended to do.

4 CHAIRPERSON PFANNENSTIEL: Thank you,  
5 Mr. Ratliff. Comments from the Siting Committee?

6 COMMISSIONER BYRON: As Chair of the  
7 Siting Committee, and my Associate Member  
8 Commissioner Douglas is with me and I know that  
9 she will speak to this as well.

10 This is a very serious issue and we have  
11 taken it quite seriously here at the Commission.  
12 I believe that you may, my fellow Commissioners  
13 may have the draft order instituting an  
14 informational proceeding before you. We think  
15 this is important to move on very quickly. We  
16 want to gather information. We are going to  
17 conduct some workshops that have already been  
18 tentatively scheduled on our calendars.

19 We have over 20 siting cases before us,  
20 many of which will be impacted by this. And I  
21 just want to make it clear to my fellow  
22 Commissioners how seriously we are taking this and  
23 how quickly we will attempt to proceed with  
24 gathering information and trying to make a  
25 determination on this. I will ask my Associate

1 Member, who is the attorney on the Commission, to  
2 speak to some of the implications of this as well.  
3 Commissioner Douglas.

4 COMMISSIONER DOUGLAS: Thank you,  
5 Commissioner Byron. I am very pleased that we are  
6 implementing this proceeding. The state law and  
7 policy on climate and climate issues has evolved  
8 very rapidly, as has federal law.

9 And in light of California's tremendous  
10 leadership on the climate issue, which I am quite  
11 proud of, and also in light of the Energy  
12 Commission's strong leadership on this issue.  
13 That certainly doesn't begin but had some of its  
14 very high points with Commissioner Rosenfeld's  
15 pioneering work on energy efficiency and this  
16 Commission's long-time work to advance renewable  
17 energy.

18 Our strong advocacy for policies that  
19 help us achieve all cost-effective energy  
20 efficiency. Thirty-three percent renewable energy  
21 by 2020 and more in the future. And our overall  
22 policy work to try to create a system that  
23 supplies electricity reliably to Californians  
24 while meeting these goals is, I think, one of the  
25 fundamental backbones to achieving our state

1 climate policy goals.

2           So I think this is a very, very  
3 important agency for California and for the world  
4 in showing that our climate policy goals can be  
5 achieved. And they can be achieved in a way that  
6 meets our other very important social needs such  
7 as the ones that this agency is charged with,  
8 maintaining and protecting electricity supply and  
9 reliability, for example.

10           I think it is very important at this  
11 juncture that we take a step back, given the rapid  
12 changes of the past, say two years, and look hard  
13 at how we analyze the greenhouse gas impacts of  
14 our power plant siting program under CEQA. And as  
15 our staff attorney on this has said, it is not  
16 easy and it actually raises very complex issues of  
17 both CEQA law and interpretation and also of  
18 energy policy.

19           And the Siting Committee very much  
20 believes that this is an issue that requires  
21 public debate and also requires or hopefully will  
22 have the engagement of all the Commissioners, not  
23 just the Siting Committee, in this discussion.  
24 Because we really think we are moving into very  
25 uncharted territory in terms of our own analysis

1 of this kind of issue and our own thinking about  
2 how this analysis can affect our broader energy  
3 policy goals.

4 So our interest is to create a public  
5 form where these issues can be aired and debated  
6 and where we can provide guidance to the extent  
7 possible. I hope fairly specific guidance to  
8 applicants and staff in terms of what the  
9 Commission would like to see in the analysis of  
10 greenhouse gas impacts of power plant siting.

11 I think this is just the very beginning  
12 of our work working through this issue and it will  
13 probably be an evolving issue. It will probably  
14 be an important topic in IEPRs, in probably many  
15 IEPRs to come. So we don't certainly think that  
16 we can solve the problem in a couple of workshops  
17 that will hopefully culminate in recommendations  
18 in a fairly short time frame. We are really  
19 looking at a December, ideally, time frame to  
20 provide some initial guidance.

21 I also personally think that the best  
22 way forward is to have a more -- is to have a  
23 programmatic approach where we really look at the  
24 system as a whole and we are able to provide that  
25 perspective in the case-by-case analyses.

1           However, we have cases before us today  
2           and some of that programmatic work is done. But  
3           it is not all done in one place and it is not all  
4           compiled in a way that will necessarily be  
5           immediately useable. So we have a lot of work in  
6           front of us. We very much welcome the engagement  
7           of stakeholders. And in fact we really need the  
8           engagement of stakeholders as we step forward and  
9           begin to look at this issue.

10           I think we are the first permitting  
11           agency to, you know -- certainly state permitting  
12           agency to really sit down and try to establish  
13           some hopefully fairly specific procedures for how  
14           we would deal with the greenhouse gas analysis in  
15           our permitting.

16           And our permitting obviously is very  
17           significant because it gets to power plants, which  
18           are likely large sources of greenhouse gasses.  
19           But which frankly are operating within a system in  
20           which the insertion of certain kinds of power  
21           plants in certain places may actually have overall  
22           benefits.

23           So these are some of the issues that we  
24           have got to understand how to deal with in the  
25           CEQA context. I very much look forward to this

1 proceeding and hope it will have robust  
2 involvement from the public.

3 CHAIRPERSON PFANNENSTIEL: Thank you,  
4 Commissioner. Are there questions?

5 COMMISSIONER ROSENFELD: I just say  
6 amen.

7 CHAIRPERSON PFANNENSTIEL: That is well  
8 put.

9 COMMISSIONER BYRON: Madame Chair, if I  
10 may, I would like to move the possible adoption of  
11 this Order Instituting Investigation on Methods  
12 for Satisfaction of CEQA Requirements Relating to  
13 Greenhouse Gas Impacts on Power Plants.

14 COMMISSIONER DOUGLAS: And I would be  
15 pleased to second it.

16 CHAIRPERSON PFANNENSTIEL: All in favor?

17 (Ayes.)

18 CHAIRPERSON PFANNENSTIEL: It is  
19 approved.

20 COMMISSIONER BYRON: Madame Chair, we  
21 have an excellent staff attorney assigned to this  
22 in Mr. Ratliff.

23 CHAIRPERSON PFANNENSTIEL: Absolutely.

24 COMMISSIONER BYRON: I am not aware yet  
25 that we have a project manager assigned. We want

1 to begin hearings as soon as the next three weeks  
2 so I turn to our Executive Director, who  
3 unfortunately I haven't seen for awhile. Welcome  
4 back, Ms. Jones.

5 MS. JONES: Thank you. Yes, Paul  
6 Richins will be the project manager from the staff  
7 side. And we are looking at schedules and trying  
8 to get some time with you, the Siting Committee,  
9 to talk through how we want to go forward with the  
10 first workshop and how we proceed.

11 COMMISSIONER BYRON: Excellent. I'm  
12 glad you had the answer.

13 CHAIRPERSON PFANNENSTIEL: Melissa  
14 always has the answers. Okay, moving on to the  
15 Minutes. The minutes from the September 24  
16 Business Meeting, at which I was not in attendance  
17 so I will recuse myself.

18 COMMISSIONER BYRON: I think I can move  
19 those.

20 COMMISSIONER ROSENFELD: Second.

21 CHAIRPERSON PFANNENSTIEL: In favor?

22 (Ayes.)

23 CHAIRPERSON PFANNENSTIEL: Minutes  
24 approved.

25 Committee Presentations/Discussion.

1 Anything to raise? Given the hour, no.

2 Chief Counsel Report.

3 MR. CHAMBERLAIN: I have no report  
4 today, Madame Chairman.

5 CHAIRPERSON PFANNENSTIEL: That's wise,  
6 thank you.

7 Executive Director Report?

8 MS. JONES: I have no report today?

9 COMMISSIONER BYRON: You're intimidating  
10 them.

11 CHAIRPERSON PFANNENSTIEL: Leg Director  
12 Report. I see no Leg Director.

13 MS. JONES: He is on vacation.

14 CHAIRPERSON PFANNENSTIEL: Public  
15 Adviser Report.

16 COMMISSIONER ROSENFELD: Here she comes.

17 MS. MILLER: I just want to acknowledge  
18 for the Commission that with the three new  
19 projects I wanted to let you know that I have  
20 assigned them in our office. And Willow Pass is  
21 one that I will be working with Loreen McMahon on,  
22 Palmdale I have assigned to myself and the  
23 Stirling Project, it has been assigned to Loreen  
24 McMahon. And I am happy to say that I think she  
25 is already doing some great work on that project.

1                   That is all I have to report, thank you.

2                   CHAIRPERSON PFANNENSTIEL: Thank you. I  
3 would note for the record the Public Adviser has  
4 been very busy these days.

5                   Any further public comment?

6                   Nothing. We will be adjourned, thank  
7 you.

8                   (Whereupon, at 12:17 p.m., the  
9 Business Meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of October, 2008.

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