

HEARING ON A MOTION
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

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

MONDAY, DECEMBER 15, 2008

1:00 p.m.

Reported by:
Ramona Cota
Contract No. 170-07-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Vice Chair and Presiding Member

Karen Douglas, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Paul Kramer, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Matt Layton

J. Mike Monasmith

Richard Ratliff

David Vidaver

PUBLIC ADVISER'S OFFICE

Nick Bartsch

APPLICANT

John A. McKinsey, Attorney
Stoel Rives
representing Carlsbad Energy Center

Tim E. Hemig
Carlsbad Energy Center LLC

Gary S. Rubenstein
Sierra Research

INTERVENORS

Julie Baker
David Chadwick (via telephone)
Dr. Arnold Roe (via telephone)
Power of Vision

Gloria D. Smith, Attorney
Adams Joseph Broadwell & Cardozo
representing California Unions for Reliable Energy

William Rostov, Staff Attorney
Sarah Jackson, Research Associate
Earthjustice
representing Center for Biological Diversity

ALSO PRESENT

Joseph Garuba
City of Carlsbad

I N D E X

	Page
Proceedings	1
Introductions	1
Opening Remarks	2
Data Request Discussion	
Request A1	6
Request A2	24
Request A3	26
Request B1	28
Request B2	28
Request B3	28
Request B4	28
Request B5	39
Request C1	43
Request C2	47
Request C3	53
Request C4	54
Request D1	59
Request E1	62
Request E2	62
Request E3	62
Request F1	76
Request F2	78
Request G1	79
Motion to Postpone Workshop	85
Public Comment	97
Adjournment	99
Reporter's Certificate	100
Appended Document	
CBD Data Requests with Applicant's numbering scheme prepared by Carlsbad AFC Committee for use in December 15 Motion Hearing	

P R O C E E D I N G S

1:06 p.m.

1
2
3 PRESIDING COMMISSIONER BOYD: Good
4 afternoon, everybody. Welcome to this hearing of
5 the Carlsbad Energy Center Project Siting
6 Committee. I'm Jim Boyd, Commissioner and
7 Presiding Member. To Mr. Kramer's right is
8 Commissioner Karen Douglas, the Associate Member.
9 Mr. Kramer is our hearing officer and I am going
10 to turn everything over to him for the rest of the
11 day.

12 HEARING OFFICER KRAMER: Okay, we will
13 begin with introductions starting with the staff.

14 MR. RATLIFF: I'm Dick Ratliff, counsel
15 for staff.

16 MR. MONASMITH: Mike Monasmith, project
17 manager.

18 HEARING OFFICER KRAMER: And the
19 applicant?

20 MR. MCKINSEY: John McKinsey, counsel
21 for the applicant. With me is Tim Hemig
22 representing the applicant. And we also have Gary
23 Rubenstein from Sierra Research available and we
24 may call upon him.

25 HEARING OFFICER KRAMER: Okay. And we

1 have several intervenors with us. Let's start
2 with the moving party in this motion, Center for
3 Biological Diversity.

4 MR. ROSTOV: William Rostov, attorney
5 for Center for Biological Diversity, with
6 Earthjustice. And with me is Sarah Jackson who is
7 a research associate in our office.

8 HEARING OFFICER KRAMER: And Ms. Baker.

9 MS. BAKER: Julie Baker with Power of
10 Vision, a citizens' group in Carlsbad.

11 HEARING OFFICER KRAMER: And?

12 MS. SMITH: Gloria Smith from Adams
13 Broadwell for CURE.

14 HEARING OFFICER KRAMER: Okay. Do we
15 have any other intervenors in the audience? I
16 think we may have exhausted the list.

17 Is there anybody on the telephone?

18 It appears not. If somebody breaks in
19 we will identify them when they come on the line.

20 Mr. Bartsch from the Public Adviser's
21 Office is here with us. If any members of the
22 public have questions about how to participate in
23 this proceeding please see him.

24 Today is not a general meeting about
25 this project, it is a very focused meeting. We

1 are not here to talk about the merits of the
2 project, whether it should be approved or not. We
3 are simply here to talk about the data requests
4 that the, we'll call them the Center, I think that
5 would be the best shorthand name for them today,
6 has made, which the applicant initially did not
7 answer and now the Center has made a motion asking
8 the Committee to order that the applicant answer
9 those data requests.

10 If time permits we will also talk
11 briefly about the case's schedule because there is
12 another motion pending from Power of Vision to
13 adjust the timing of the staff workshop. We will
14 need to rule upon it at some point. We won't rule
15 upon that today but we may have time to discuss
16 it, at least preliminarily.

17 As far as the motion itself goes, we
18 invited briefing from the parties and we
19 considered those briefs. So we have some, we have
20 some initial thoughts. But we did not get enough,
21 unfortunately, just from those briefs so that we
22 could rule on the papers and that's why we
23 convened this hearing today, to hear argument and
24 discuss the data requests.

25 But we can say that preliminarily we are

1 not inclined to deny the request because it was
2 made more than 180 days after data adequacy. Nor
3 are we inclined to deny them on the theory that
4 staff didn't need the information therefore it
5 must not be necessary.

6 That means we are going to have to
7 discuss most if not all of the requests
8 individually. Factors that we are interested in
9 hearing about from the parties are the relevance
10 of the information. Thus far the briefs were
11 rather general in their arguments about relevance
12 and we need a little more detail about at least
13 several of the requests.

14 Then, is the information available to
15 the applicant or from some other source or has it
16 already been provided in some form? And is the
17 request truly for data or is it attempting to
18 cause the applicant to perform research or
19 analysis for the requestor?

20 The Committee does not believe it is
21 appropriate for a party to ask another party to do
22 its research for them or to analyze data. The
23 information exchanges in our cases we believe are
24 to be of information in its basic form, not of
25 information in the form of opinions or other

1 research.

2 And then a final factor that we think
3 may need to be addressed in maybe some of the
4 requests is the burden on the applicant to provide
5 that data.

6 So with that I will direct your
7 attention to your cheat sheets, if you will, the
8 list of questions that has been renumbered as the
9 applicant proposed. So each question is a
10 combination of a letter and a number. And let's
11 begin with request A1. It requires a greenhouse
12 gas inventory of direct and indirect emission
13 sources from the project.

14 I note that the Preliminary Staff
15 Analysis that came out last week does discuss
16 greenhouse gases so at least initially it
17 certainly appears to be relevant. And to a degree
18 that staff appears to have discussed this they
19 have a table that purports to summarize -- that's
20 table, Greenhouse Gas Table 2 on page 4.1-101. It
21 purports to estimate the greenhouse gas emissions
22 based on construction data provided by applicant.
23 It may or may not go as far as the Center was
24 looking to go.

25 And this does appear to be on the

1 borderline of asking for, at least in some aspects
2 for research. As we are addressing these the
3 order we would like to use is the intervenor who
4 bears the burden in these cases going first,
5 followed by the applicant, then staff and then any
6 other party who wants to briefly address the
7 request. So Mr. Rostov, Al.

8 MR. ROSTOV: Yes. Al is a question
9 about the emissions of greenhouse gases and we
10 asked for an inventory of direct and indirect
11 emissions. And we agree with the tentative ruling
12 that this would be relevant.

13 If the greenhouse gases from this
14 project are significant than any emissions need to
15 be determined. And the state and this Energy
16 Commission are all going to the point where we are
17 addressing greenhouse gases as a potentially
18 cumulative effect that is significant.

19 I would say there's SB 97, there's this
20 Energy Commission's own docketed policy that they
21 are taking part in. The ARB, the Air Resources
22 Board right now is determining the thresholds for
23 greenhouse gases. So the relevance I think is
24 very apparent. Essentially it's a potentially
25 significant environmental effect. And what we are

1 asking for essentially just good data.

2 All we want to know is, what are the
3 emissions and then in the future we will argue
4 about the relevance of those emissions. I think
5 this is a general question and some of our future
6 questions ask subsets of that question.

7 So I'm not sure. On the construction
8 emissions. I guess I had a question about the
9 staff's table. I did not see those calculations
10 from the applicant so I am not sure if the staff
11 used their own numbers or they used the
12 construction numbers from the applicant and then
13 kind of made some CO2 calculations. What else?

14 The one other issue there is it talks
15 about water supply. And one amendment recently
16 was the amendment to use a desalinization plant so
17 I think it is also relevant to that as well.

18 HEARING OFFICER KRAMER: Do you mean the
19 construction of the desal plant?

20 MR. ROSTOV: The construction and the
21 operation. Because desalination plants use a lot
22 more energy, which could have more greenhouse gas
23 emissions. Essentially we don't know what the
24 emissions are and we'd like the data on it, is the
25 purpose of that questions.

1 HEARING OFFICER KRAMER: Okay. Have you
2 had a chance to look at the PSA yet?

3 MR. ROSTOV: Yes. You referred to
4 greenhouse Table 2 regarding the construction
5 impacts.

6 HEARING OFFICER KRAMER: Right.

7 MR. ROSTOV: And I believe that's a lot
8 of the information we would like. But I'm not
9 sure, I am just not sure where that information
10 came from, actually. And I know the applicant has
11 provided information related to criteria
12 pollutants related to construction impacts but I
13 am not sure if they did carbon dioxide. And if
14 they did, and if the staff used that information
15 for that then I think we would be okay with that
16 for construction impacts.

17 HEARING OFFICER KRAMER: Okay. The
18 applicant.

19 MR. McKINSEY: Thank you, Hearing
20 Officer Kramer. First I would like to kind of,
21 since we haven't had a chance to just make a
22 statement. The position that NRG has taken on
23 these data requests doesn't reflect any type of an
24 attempt to suggest that greenhouse analysis isn't
25 relevant or important in power plant project

1 proceedings.

2 NRG remains fully committed to both an
3 overall environmental stewardship as well as a lot
4 of the particular requirements being set forth in
5 AB 32 and its implementation and other things that
6 are occurring in the state of California for
7 greenhouse gas emissions analysis and reporting.

8 Mostly what is reflected in this
9 situation was that these data requests beyond
10 certain ones that we indicated we do have
11 information readily available would take a
12 considerable amount of work in order to put the
13 information together and it may have some limited
14 value, or the data request itself had some issues
15 as to what it was really trying to say.

16 So with that being said, this data
17 request asks for greenhouse gas emission
18 estimates. And beginning on page 60 in Section
19 5.1 of the AFC is a greenhouse gas emissions
20 estimate and calculation, which is what the staff
21 based their analysis on in the PSA. That
22 greenhouse gas emissions estimate clearly includes
23 operational emissions and that is the core source
24 of greenhouse gas production. And I am having
25 Gary right now verify what we provided in terms of

1 construction emissions.

2 The other issues in terms of operational
3 energy use, vehicle trips, water supply and waste
4 disposal, and building materials in particular,
5 are ones that are tremendously more difficult to
6 try to attempt to calculate or put together. And
7 that is information that isn't currently required
8 by any requirement that we are aware of, and that
9 includes the draft guidelines that have come out
10 from the Office of Planning and Research, their
11 initial CEQA guideline efforts and their
12 instructions. Though at this point the
13 requirements for greenhouse gas emission reporting
14 are still fairly vague and it has an overall
15 requirement that you have to make a good faith
16 effort to attempt to estimate greenhouse gas
17 emissions.

18 So the issue we face is that to go
19 beyond the information that we provided would not
20 only be, would not only take a significant amount
21 of work, but in the case of building materials, I
22 am not sure, we are not sure what the actual value
23 you would get out of those calculations would be.

24 There has been very little effort to
25 attempt to discuss the emissions that come from

1 everything from consumer packaging to building
2 materials in most of our efforts. In fact, AB 32
3 itself clearly ignores packaging and materials and
4 things like that as part of California's
5 greenhouse gas emissions inventory. If it doesn't
6 occur in the state of California it is not
7 counting it.

8 So the issue and the reason we have
9 objected to this is simply that beyond the
10 information that we have provided, which we
11 believe is not only fully compliant with all of
12 the requirements that exist today but also
13 provides more than an adequate grounds to make a
14 greenhouse gas emissions analysis, is the fact
15 that any of this other information would be very
16 difficult for us to put together. It would cost
17 money and take time.

18 And that is something that is
19 appropriate where, if it was truly necessary for a
20 greenhouse gas emissions analysis or if it was in
21 an already existing requirement where the
22 applicant could see that as a data adequacy
23 requirement and meet those requirements. But the
24 fact is that the project does meet data adequacy
25 requirements and it does meet the regulatory

1 requirements that exist today.

2 HEARING OFFICER KRAMER: So do you
3 believe that you have provided all the information
4 that was available to you already? Is that what
5 you are saying?

6 MR. MCKINSEY: Yes we do.

7 HEARING OFFICER KRAMER: Staff, do you
8 have any comments?

9 MR. RATLIFF: Well, to begin with we
10 didn't make a filing on this, on this motion
11 because staff has not taken a position on the
12 motion to compel. Having said that, we are very
13 gratified with your -- the applicant state that
14 they intend to address this issue and they believe
15 that it is relevant to the proceeding. We expect
16 that it will be one that the Committee wants to
17 receive, hearing testimony on and we intend to
18 prepare that and we hope the applicant intends to
19 do so as well.

20 We see the issue as being multifaceted
21 and including, certainly at least for analytic
22 purposes, construction impacts. And tied to that
23 such things as vehicle trips. It is useful to
24 have that kind of information for our analysis.
25 We have tried to do that based on the information

1 we have seen, either using that information
2 directly or extrapolating from it. In some
3 instances it would be useful to have more
4 information about vehicle trips.

5 This is the kind of analysis we think
6 that we want to do for our cases at least to get a
7 general feel for the overall level of emissions
8 involving construction or operation in the case of
9 solar facilities, which may have considerable
10 emissions from the operation of, the cleaning of
11 their mirrors. So we are very interested in those
12 issues. If that information is available to the
13 applicant or they can give us some estimates of it
14 we would use it and we would find it valuable.
15 And that's really all we have to say.

16 MR. McKINSEY: Hearing Officer Kramer, I
17 indicated that Gary Rubenstein was verifying. In
18 the AFC for construction emission estimates what
19 we provided was the core emissions, VOCs and all
20 the other construction emission estimates along
21 with fuel use. And fuel use is the primary way
22 that you conduct an estimate of carbon dioxide
23 emissions from construction.

24 And we believe, but that would be for
25 the staff to indicate how they did their CO2

1 analysis for construction emissions. But that's
2 probably what they did it from is fuel use, which
3 is the core way that we make that estimate. So
4 that is what we provided for construction
5 emissions, which is all we had available.

6 (Music was heard over the
7 teleconference line.)

8 HEARING OFFICER KRAMER: This is the
9 music on hold problem. I think there's only one
10 other person on there.

11 PRESIDING MEMBER BOYD: Now they're not.

12 ASSOCIATE MEMBER DOUGLAS: I think you
13 hung up on them.

14 PRESIDING MEMBER BOYD: You eliminated
15 the music.

16 HEARING OFFICER KRAMER: Yes, I always
17 hit the wrong button. Excuse me a moment.

18 Can we go off the record.

19 (Whereupon, a brief recess was
20 taken off the record.)

21 HEARING OFFICER KRAMER: Okay,
22 Mr. Ratliff or maybe Mr. Layton, could you explain
23 ever so briefly how you derived the construction
24 estimates.

25 MR. LAYTON: We estimated them from fuel

1 use that the applicant provided for construction.

2 HEARING OFFICER KRAMER: Okay. So you
3 have factors, you just apply them?

4 MR. LAYTON: Yes.

5 HEARING OFFICER KRAMER: Okay.

6 MR. LAYTON: And we do point in the PSA
7 that we have not included yet the vehicle trips
8 for the vehicle commute, the worker commutes. We
9 plan to add that. We are trying to base some of
10 the guidance we have been getting from OPR to
11 expand the greenhouse gas discussion to identify
12 more emissions. So we are going to work with the
13 applicant through the PSA and FSA to include more
14 of the emissions and to identify them in the
15 discussion.

16 HEARING OFFICER KRAMER: Okay. What
17 about building materials? Do you have any factors
18 for those?

19 MR. LAYTON: No, we are not really sure
20 what is meant by that. I don't know what we would
21 do with that. I don't know what that means. Is
22 it life cycle, cradle to grave? Is it on-site
23 activities? We have limited it very much to on-
24 site activities.

25 HEARING OFFICER KRAMER: So you are not

1 worried about -- you are not counting the
2 greenhouse gases that went into producing the
3 truck that is producing the exhaust.

4 MR. LAYTON: No, no.

5 HEARING OFFICER KRAMER: Mr. Rostov,
6 were you thinking about --

7 MR. ROSTOV: Not the truck that's
8 producing the greenhouse -- Not the production of
9 the truck but we were thinking more in terms of
10 cement since there is a lot of cement use in
11 something like that. I think there's emission
12 factors where you could probably determine data
13 about life cycle related to some major
14 construction activities. So that's what we meant
15 by activities.

16 HEARING OFFICER KRAMER: And do you have
17 factors that you could apply if you knew the
18 number, the units of concrete that were being used
19 that you could apply to calculate that?

20 MR. ROSTOV: I would, I would think so.
21 I am not sure, I am not a scientist. I mean, what
22 we are interested in, I think this is going to
23 your question, is really the raw data. We want
24 the data so -- I mean, I think once we go through
25 these questions it will be pretty apparent.

1 In some places we disagree with the
2 applicant, we don't think they provided all the
3 information. So what we did when we intervened is
4 we went through and read through all the documents
5 and really did very narrow focused -- except for
6 this one and maybe one or two others, focused
7 requests where we saw there was some data and we
8 were trying to find the data that was missing.
9 Here we wanted to make sure we encompassed
10 everything. But some of our substantive questions
11 also encompass this.

12 The construction emissions I think are
13 only listed here. There is also an issue about
14 water supply, which I think has enhancements. And
15 I would also just refer you to the Carlsbad Data
16 Request 67. The City of Carlsbad has also asked a
17 similar question. Which I don't believe the
18 applicant objected to and I don't believe the
19 applicant has responded to either.

20 HEARING OFFICER KRAMER: Was that a
21 question that staff forwarded to the applicant on
22 behalf of the City?

23 MR. MONASMITH: We did. We forwarded
24 all the questions from the City. However, they
25 were conditioned on, this last set including the

1 one that Mr. Rostov mentioned, conditioned on the
2 need for staff to be able to utilize the
3 information. In other words, did they need the
4 question at hand.

5 And in some instances they did need the
6 information, they found it helpful, and others
7 they didn't for one reason or another, including
8 this one. The information was already, we felt,
9 ascertained. We had the information we needed for
10 the preliminary draft determination. As Matt
11 said, additional information will be requested as
12 we go through the workshop and publication of the
13 FSA.

14 So no, that specific question was not
15 asked of the applicant. They know of it but we
16 didn't ask that they respond before the deadline,
17 for their 30 day deadline in order for staff to
18 utilize the information for the data response. It
19 is outstanding.

20 HEARING OFFICER KRAMER: Mr. McKinsey,
21 could the applicant be more specific about
22 quantities of major building materials that are
23 proposed to be used in the project?

24 MR. MCKINSEY: I know the issue we would
25 have is which building materials, for one. In

1 other words, we heard one example of cement. And
2 so there must be some ability to calculate what we
3 estimate to be the total cubic volume of cement.
4 A lot of that information I know comes from the
5 detailed engineering that goes into things. But
6 overall you have a cost estimate on the project
7 which reflects some large assumptions on steel and
8 cement and hours of employment and other
9 materials.

10 But the issue lurking in here is the key
11 question of if we get very specific requests and
12 we are able to say yes, like on cement, that's one
13 thing. But to get a statement on building
14 materials when you don't have standards yet for
15 which materials you consider or whether you only
16 consider on-site or within a certain radius of
17 those emissions, this is the larger policy
18 questions about greenhouse gas emissions and how
19 we model them. If we are given very specific
20 requests for, we want, you know. And this is
21 stuff that probably should be reflected in the
22 long run in the State of California data
23 requirements for both the Energy Commission
24 process as well as CEQA.

25 But right now the question is, major

1 building materials. The question is, if they are
2 prepared outside of the country or outside of the
3 state or outside of the region, do we include them
4 or not include them? In the case of concrete,
5 there's the actual making of the concrete but then
6 there's the things that go into the concrete.
7 Most concrete is made on-site, materials are
8 brought to the site. And so then you get into
9 that it's an on-site process. But other concrete
10 is brought in on trucks. And I don't know how
11 much of that -- In fact right now I doubt very
12 little of that has been calculated other than some
13 assumptions on truck trips.

14 So we get into details that frankly, to
15 the extent that it would hold up the process.
16 First it would be really unfair on the applicant
17 because that is the kind of material that you'd
18 lay out in a data adequacy requirements and they
19 are prepared as part of the engineering work-up.

20 But if we got a set of questions, can
21 you provide concrete, and we got some clear
22 guidelines on what that means, all concrete to be
23 prepared on-site or within a radius, for instance.
24 Then I think I would have the ability to go to the
25 applicant and say, can you answer that or not.

1 But that, you know, would be the problem, if we
2 started doing it we might be into the, go get me a
3 rock, go get me a rock, it's going to take a while
4 to resolve.

5 HEARING OFFICER KRAMER: Well I don't
6 think the Committee is expecting that, in part due
7 to the late entry of this intervenor in the case,
8 that their needs for data will delay the normal
9 processing of the case. So if it comes along and
10 takes a while they are going to have to take the
11 time out of their budget to quickly analyze
12 whatever they get. We are not expecting it to
13 result in a delay. Ms. Smith.

14 MS. SMITH: Thank you. Thank you,
15 Hearing Officer Kramer and Committee.

16 My reading of the AFC is it merely
17 summarized carbon dioxide, methane and nitrous
18 oxide for just the turbines and the fire pumping
19 gens. And, you know, that's a very small
20 component of the project in terms of what they are
21 requesting.

22 We fully support the need for indirect
23 emissions such as a desal plant, which hasn't been
24 discussed in any detail here, and the attendant
25 electricity use that will be associated with that.

1 And that component of the project came late so no
2 one has actually looked at that.

3 And then also with respect to a greater
4 request in this series is the SF6 from insulators.
5 And because that is such a potent CO2 gas we think
6 that anything, any use there is relevant.

7 And just to sort of get to the relevancy
8 and all the little questions you asked about why
9 these should be, these data requests should be
10 granted. We believe that greenhouse gas emissions
11 are integral to an adequate environmental impact
12 analysis for a CEQA-equivalent document.

13 HEARING OFFICER KRAMER: Okay.

14 Ms. Baker, did you want to say anything?

15 MS. BAKER: Well I would say that there
16 are -- one thing that is unique about this project
17 is that there are residents that live actually
18 very close to this project, both to the south and
19 to the north of it. And that any information that
20 can be provided on greenhouse gases and any other
21 emissions I think are very relevant and vital to
22 the people who live in this community and will be
23 affected by it.

24 PRESIDING MEMBER BOYD: Could I ask the
25 intervenor their definition of indirect emissions?

1 MR. ROSTOV: The statute has a
2 definition I think in the CEQA guidelines, it's
3 Section 1535(a). It says:

4 "Indirect or secondary effects
5 which are caused by the project and
6 are later in time or farther
7 removed in distance but are still
8 reasonably foreseeable."

9 So essentially effects that are reasonably
10 foreseeable. So that would include -- Sorry, and
11 there's one more part of that.

12 "Indirect or secondary effects
13 may include related effects on air
14 and water and other natural
15 systems, including ecosystems."

16 So given the fact that the greenhouse gases would
17 affect air, water and natural ecosystems, we
18 believe, you know, anything that is reasonably
19 foreseeable as emissions from the project should
20 be included in the calculations.

21 And this is just the discovery stage too
22 so right now I think all we are really talking
23 about is what is relevant. So what we are trying
24 to do is get the best data possible.

25 And that in the future, you know, if

1 there's some issues about, where is this line
2 about indirect effects. You know, once we have
3 all the data about here's all the information,
4 about here's -- you know, this does X number of
5 pounds and this does X number of pounds. You
6 know, if people want to make arguments about
7 attenuation at that point I think that's fine.

8 But in terms of the context of just data
9 requests, I think if it is relevant to emissions
10 it should be provided. And then in the future --
11 I mean, I think we would argue vigorously that
12 indirect effects are definitely important. But I
13 understand other people might have slightly
14 different positions.

15 But in the future we can argue about the
16 fine nuances of, you know, where you draw the line
17 in CEQA. But right now I think if there is any
18 greenhouse gas emission that is, you know,
19 arguably coming from the project we should at
20 least have the data on it so we know what we are
21 talking about when we are kind of doing the
22 analysis.

23 HEARING OFFICER KRAMER: Okay. Let's
24 move on to A2.

25 MR. ROSTOV: A2 is just really a, is a

1 subset but I think an important subset of A1. And
2 the reason we did it separately was just because I
3 think a lot of times even though these chemicals
4 are greenhouse gases and actually have more global
5 warming potential than carbon dioxide, they are
6 often left out of environmental analyses.

7 So I just wanted to make sure they were
8 included and that we had specific numbers for
9 HFCs, PFCs and SF6. Especially SF6, which is
10 sulfur hexafluoride. As Ms. Smith mentioned, it
11 is in the transformers and it would be nice to
12 have an estimate from the applicant.

13 I do recognize that in Greenhouse Table
14 3 the staff gave a number for SF6 and the other
15 two but I am not sure where they got those numbers
16 because I don't believe the applicant provided
17 that information. And they said zero for two of
18 them actually.

19 HEARING OFFICER KRAMER: Okay. Does any
20 other party want to comment?

21 MR. McKINSEY: The sulfur hexafluoride
22 data came from a data response we did provide to
23 the staff on the staff's request and that's where
24 the staff got it from. I don't know the data
25 request number offhand but it has it right in the

1 subject line of the data request.

2 We have no indication, one of the
3 reasons there is no HFC or PFC estimate is we
4 don't actually believe we will have any. Now that
5 is based on all the information we have now so
6 that doesn't mean that there won't be some
7 materials or something. But one of the reasons
8 that we don't have any, we have no indication we
9 are going to have any emissions from those, from
10 our understanding.

11 HEARING OFFICER KRAMER: Okay. Anyone
12 else on this question?

13 Okay, let's move on to A3. And
14 Mr. Rostov, this does seem, at least
15 preliminarily, to be asking for research or
16 analysis in that you are asking for mitigation
17 measures to be proposed.

18 I think a prudent applicant might want
19 to do that and certainly the staff, if there is
20 something that needs to be mitigated, will have to
21 come up with something. But I am not sure that
22 one party can compel that from another.

23 But perhaps we are misreading the
24 request. Are you simply asking about what
25 equipment is proposed to be applied that will

1 minimize emissions?

2 MR. ROSTOV: I was asking both actually.
3 Is there equipment that could minimize the
4 emissions or are there procedures that can
5 mitigate the effect.

6 I believe a few months ago I went to, I
7 think it was a CEC but it could have been a PUC
8 workshop where there was a discussion of sulfur
9 hexafluoride. My understanding from that workshop
10 was that leak detection or repair is one way to
11 minimize that, to minimize the emissions of that
12 greenhouse gas.

13 So I was really trying to get to that.
14 Are there mechanisms that the applicant could use
15 to minimize or eliminate the leak? Or if there is
16 leakage is there a detections.

17 HEARING OFFICER KRAMER: Does anyone
18 want to respond?

19 Okay, we will move on to the B set of
20 questions. But before we do that let me check
21 with the telephone and so who is now with us on
22 the telephone.

23 DR. ROE: Arnold Roe of Power of Vision.

24 HEARING OFFICER KRAMER: Okay, anyone
25 else?

1 HEARING OFFICER KRAMER: Was there a
2 David Chandless or somebody on the line?

3 MR. CHADWICK: David Chadwick.

4 HEARING OFFICER KRAMER: I'm sorry.
5 Spelled C-H-A-D-W-I-C-K?

6 MR. CHADWICK: That's correct.

7 HEARING OFFICER KRAMER: Okay.
8 Apparently earlier -- You must be at an office or
9 something. And you put us on hold and your phone
10 system gives us music. So instead of doing that
11 if you need to go away from the phone could you
12 mute yourself by pressing *6.

13 MR. CHADWICK: I am so sorry.

14 HEARING OFFICER KRAMER: That's okay, we
15 took care of it.

16 And the same would go for you, Dr. Roe.
17 Rather than putting us on hold and maybe giving us
18 who knows what if you can just mute yourself.

19 DR. ROE: Thank you.

20 Is anyone else on the telephone?

21 Okay, on to B1. And actually
22 preliminarily I think we could discuss this whole
23 set of questions relating to liquified natural gas
24 as a group. The Committee is wondering how this
25 applicant, who we don't believe controls the

1 source of its natural gas, can come up with any
2 meaningful information to answer these queries.

3 Mr. Rostov.

4 MR. ROSTOV: First, what started us on
5 this inquiry was what the San Diego Air Pollution
6 Control District said. They said, is it likely
7 that the project, it is likely that the project
8 may be operated continuously or intermittently on
9 natural gas derived from imported liquified
10 natural gas.

11 So our first question was really, is
12 that true? So I think that would be within the
13 control of the applicant. And then we had a
14 series of questions related to that statement.

15 I will say that the applicant did
16 provide some information to the San Diego Air
17 Pollution Control District about LNG use and about
18 the Wobbe Index in terms of LNG has a different
19 Wobbe Index, which I think is an index for
20 determining the heat of a gas.

21 HEARING OFFICER KRAMER: Could you spell
22 that acronym for the reporter.

23 MR. ROSTOV: I believe it is W-O-B-B-E
24 but I could be wrong.

25 So they did provide information on that,

1 which relates to the traditional pollutants, as
2 Mr. McKinsey said earlier. You know, the VOCs,
3 the NOx and the SOx. If you have the information
4 about LNG in terms of NOx, SOx and VOCs then you
5 are going to have the information about the carbon
6 dioxide as well. I guess that is our answer. I
7 mean, we believe that it is relevant and we also
8 believe that the applicant already provided some
9 information on this topic.

10 I would cite you to the guidelines
11 Section 5277 that talks about, that provides that
12 any emissions or discharges that would have a
13 significant effect on the environment in the state
14 of California that are subject to CEQA or a
15 California public agency has authority over the
16 emissions or discharges.

17 Here the CEC obviously has authority
18 over the emissions of this power plant. ARB
19 recently, they had a workshop last week where they
20 were talking about their threshold. They
21 encouraged state agencies and lead agencies to
22 look at life cycle analysis. So the use of LNG
23 would be looking at the life cycle analysis.

24 I mean, I think everybody would agree
25 that you need, I mean, you need the fuel use to

1 determine the carbon dioxide. So for example,
2 when they did the vehicle trips they took the fuel
3 use numbers and converted it. So it would be the
4 same thing with the LNG idea.

5 So I am not sure if I have answered your
6 question. So your precise question was if this
7 information, is this information within the
8 control of the applicant or?

9 HEARING OFFICER KRAMER: Yes, I think
10 you have addressed that. So let me ask the
11 applicant. Of the relatively simple information
12 that Mr. Rostov mentioned, that is the emission
13 rates or emission factors for LNG versus, I guess
14 people call it pipeline gas. Are those available?

15 MR. MCKINSEY: Well the first, the core
16 issue is that LNG in and of itself is still
17 originally natural gas that has been liquified.
18 What makes it different is that it is coming from
19 other continents and every pocket of natural gas
20 has a different chemical makeup.

21 So when we look at the pipeline gas that
22 we routinely have in the state of California, it
23 has been very predictable because it is limited in
24 where it is coming from from a set pipeline
25 infrastructure.

1 As LNG is deployed in North America,
2 which means if we look at it on the West Coast as
3 LNG facilities such as the one in Mexico and
4 presumably along the West Coast are installed,
5 they are going to be bringing in natural gas from
6 other continents, which will have a different
7 chemical makeup. And what that creates is a
8 question of what that chemical makeup will be, and
9 as a result, how that will change the performance
10 of equipment that is combusting that.

11 So the core issue surrounding LNG isn't
12 really the LNG characteristics. The real problem,
13 and it is the problem with the data requests in
14 general, is that the real issue is that LNG is a
15 question mark or an unknown factor in what is
16 going to happen to pipeline gas and its chemical
17 characteristics.

18 The secondary factor is that the
19 applicant, as we have indicated, is simply a
20 purchaser of pipeline gas. Doesn't control it and
21 has very little actual information beyond what we
22 were able to provide to the APC when they
23 requested of what we know about current sources of
24 LNG.

25 But we really don't even know how they

1 are going to be mixed within the pipeline and
2 where LNG gas, as it is being mixed with other
3 sources of gas, will be more predominant than
4 others, let alone the effects of that. And so
5 this is one that indeed, as we indicated in our
6 response, we don't have very much control over
7 that information or data.

8 The bigger concern for anybody who
9 combusts natural gas in the long run is whether
10 the LNG gases that are eventually mixed into the
11 system will cause the performance characteristics,
12 and it is not just for power plants it is for
13 anything that combusts natural gas, to change such
14 that they won't meet their emission control
15 requirements.

16 And most of the air districts as well as
17 ARB are pretty focused on that. But that is
18 mostly still a study of trying to set standards
19 for different, different types of standards for
20 different types of engines. And at this point it
21 is a tremendous amount of guesswork, particularly
22 of the fact that it just introduces a variability.

23 In fact, one LNG terminal that could be
24 contracted to bring in natural gas from one
25 particular source on another continent could

1 suddenly change and be bringing it in from another
2 one. So again the goal of the state is over
3 controlling and setting standards for the natural
4 gas that is being brought in so that it doesn't
5 cause problems in performance emission
6 characteristics that have already been calculated.
7 And again, most of this information is not
8 information that is available either at this time
9 or in the control of the applicant.

10 MR. ROSTOV: Can I have just a question
11 or maybe a second?

12 HEARING OFFICER KRAMER: Go ahead.

13 MR. ROSTOV: If it is not in the control
14 of the applicant I would assume it would be in the
15 control of San Diego Gas and Electric or Sempra.
16 So we would be happy to -- If the Commission would
17 allow us we would be happy to do a subpoena to
18 whichever company the applicant thinks would have
19 this information. And just do the subpoena to
20 that company for this information and that would
21 give us what we need.

22 Because I think the applicant's
23 statement actually shows that, you know, the fuel
24 use is going to be an important issue. Not just
25 for greenhouse gases but other aspects of the

1 generation of the power. So knowing about the
2 issues that we raise and raise with respect to LNG
3 is probably important for this project.

4 So I think there is subpoena power under
5 1716(h). But since we have a situation for asking
6 for good cause before I would -- I guess what I am
7 saying is, if the applicant -- I mean, if the
8 Commission wants to deny these requests based on
9 it is beyond the control of the applicant, our
10 compromise solution would be, we request good
11 cause to file a subpoena with the relevant party
12 and ask these questions to that relevant party.
13 Which I believe would be San Diego Gas and
14 Electric or Sempra LNG. Probably both. It would
15 be safer that way.

16 HEARING OFFICER KRAMER: Is that
17 Southern California Gas Company in that area?

18 PRESIDING MEMBER BOYD: SDG&E.

19 MR. MCKINSEY: SDG&E will be the
20 provider of the gas on the project.

21 PRESIDING MEMBER BOYD: I have been
22 studying gas for ten years and this is straining
23 my ability here but we'll discuss it.

24 MR. HEMIG: One thing is it is going to
25 be California Public Utilities Commission-

1 certified pipeline natural gas, regardless of if
2 it's gas fields on the continental US or LNG.
3 It's going to meet these standards.

4 And the information that the air
5 District asked for and that we did provide when we
6 submitted the application actually had the fuel
7 specifications that would be -- regardless of
8 field it would meet these fuel specifications and
9 we did provide that already. So I think that the
10 information has already been provided related to,
11 you know, what LNG might be, what kind of
12 characteristics it might be. Because it is going
13 to be within the PUC quality specs.

14 MR. RATLIFF: Are we talking about fuel
15 that hasn't been identified that has to meet
16 standards that haven't been set?

17 MR. HEMIG: No, we are actually talking
18 about pipeline natural gas is all we are going to
19 be allowed to use and that those specs are already
20 set.

21 PRESIDING MEMBER BOYD: In addressing
22 the potential for natural gas, LNG in the state,
23 the PUC a year or two ago set a pipeline quality
24 for California gas, be it derived from LNG or
25 otherwise. There always has been a pipeline spec

1 but the potential adds in that LNG brought a new
2 element into this.

3 Secondly, this agency is investing a
4 whole lot of money into this research activity.
5 What are the effects of varying compositions of
6 gas on the burner tips and this, that and the
7 other. And there is a lot of uncertainty, I will
8 admit.

9 Thirdly, to know what molecules of gas
10 would get where at a future point in time is kind
11 of a tough subject to deal with right now. I
12 mean, we don't to this day now when and if Costa
13 Azul gas will show up in California. So this is a
14 difficult question but we will ponder it.

15 HEARING OFFICER KRAMER: I'm sorry, go
16 ahead.

17 MS. SMITH: I agree it is kind of a new
18 and difficult question but it appears to me one
19 worth attempting to answer. Initially in the
20 opposition NRG pointed us to a discussion on the
21 Colusa Project, I believe, saying that there may
22 not be an impact based on this particular project
23 analysis because the LNG that was added into a
24 PG&E pipeline was diluted enough with other
25 natural gas sources that there shouldn't be any

1 increase in these sort of criteria pollutants.

2 But so the question here is, what is --
3 how diluted will it be? Will the amount of LNG
4 going into the SD, San Diego Gas and Electric
5 pipeline be stable or will it fluctuate? And I
6 think this is a question worth asking. I don't
7 know if we need to ask it of SDG&E or if the
8 applicant can provide it but it's, you know, kind
9 of where we are headed. So we support that
10 request.

11 MR. ROSTOV: And then providing
12 information. I think this also goes to what
13 Mr. McKinsey said. Providing information about
14 the location from where the LNG is shipped from
15 gives you the criteria for understanding the gas
16 better. It also gives you the ability to do some,
17 you know, basic calculations about travel time or
18 shipping, regasification, those type of things.

19 So I think it is an important question
20 to answer. And we would like to get the answers
21 from somebody. I am still not sure if the
22 applicant can provide it. If they can't I think
23 going to SDG&E would be a good compromise.

24 HEARING OFFICER KRAMER: Folks on the
25 telephone, did you just hear Mr. Rostov fairly

1 well?

2 MR. CHADWICK: Not too clearly.

3 HEARING OFFICER KRAMER: I just realized
4 that all of the microphones are sitting in front
5 of me so I am going to redistribute them a little
6 bit for your benefit.

7 MR. CHADWICK: Thank you.

8 (The teleconference microphones
9 were redistributed.)

10 HEARING OFFICER KRAMER: Okay. Does any
11 party feel we need to discuss the specifics of any
12 of the B series questions?

13 MR. ROSTOV: Let me just say on B5 that
14 when we were asking for estimates, you know, data
15 would be fine. You know, if they could provide
16 estimates of numbers. Going to the Committee's
17 initial response.

18 HEARING OFFICER KRAMER: Okay, then
19 let's turn to --

20 MR. RATLIFF: If I could just add.
21 Certainly staff doesn't have any reason to quarrel
22 with a subpoena to an S -- it would be either to a
23 CPUC witness or to an SDG&E witness on gas. I
24 think either we will get information that is
25 useful or we will find out that in their view it

1 is too speculative to actually address. But one
2 way or another I think we will be able to find out
3 if there is something that we could learn from it.

4 HEARING OFFICER KRAMER: Now would it
5 take the form of a subpoena or a data request? A
6 subpoena would normally be to a hearing, which
7 would be probably later than we would desire to
8 see the information. I don't have the section in
9 front of me.

10 MR. ROSTOV: Sorry. It's in the
11 information section.

12 HEARING OFFICER KRAMER: Okay, so a data
13 request to a non-party.

14 MR. ROSTOV: Right.

15 HEARING OFFICER KRAMER: Okay.

16 PRESIDING MEMBER BOYD: I would advise
17 staff to talk to staff because you have on staff
18 people who have followed the, as I will call it,
19 hot gas dilemma in California for almost a decade
20 now. We have got hot gas in various spots
21 throughout California. California's pipeline gas
22 is diluted in various ways, shapes and forms to
23 make sure it stays within the CPUC's pipeline
24 specifications so we don't have problem with
25 hardware and what have you.

1 This is just adding another source of
2 gas in. And depending on where in the world the
3 gas comes, from. And the best I can tell the gas
4 is going to come from various spots at various
5 times, the gas could vary. But it is incumbent
6 upon the gas utilities to meet those pipeline
7 specs. So they would have to blend, add nitrogen,
8 do whatever it takes to meet the pipeline specs.
9 So it gets pretty invisible after awhile.

10 Now if you are going to go all the way
11 upstream and talk about the extraction and
12 regasification and the shipping aspects. That
13 is a different question and I frankly don't know
14 how to get at that question just yet. Is that
15 more appropriate to the siting of an LNG facility
16 versus any one of us who turns on our water
17 heater, our furnace, or somebody who turns on a
18 power plant, knowing, you know, what the molecules
19 are.

20 I am very interested in the climate
21 change aspects of this whole. I have been at
22 climate change for more than ten years. But this
23 is -- I don't know if we can find the bottom of
24 this iceberg that easily in a single power plant
25 siting case. But I am curious to find out as much

1 as we can find out so let's deliberate it.

2 HEARING OFFICER KRAMER: Okay, turning
3 to the series of questions in the C series. This
4 is about the -- It does seem to be in the order of
5 clarifying data that was by and large previously
6 provided. And Mr. Rostov, do you want to make any
7 preliminary comments or should we go right to the
8 applicant?

9 MR. ROSTOV: No, that's exactly right.
10 It's clarifying data. And then we also added
11 Units 4 and 5, which are -- there's five units at
12 Encino, Units 1, 2, 3 and 4 and 5. The applicant
13 has talked about offsetting some of their
14 greenhouse gas emissions with Units 1, 2 and 3 so
15 we believe all the units are therefore relevant.
16 We just wanted to see what the carbon dioxide
17 emissions from the other units were.

18 Because maybe we would make a proposal
19 later on saying that, you know, if you are going
20 to build this power plant you would have to get
21 rid of all the power, you know, all the units
22 there. So we just wanted to know what the data
23 was for 4 and 5 as well as 1, 2 and 3. But, you
24 know, providing that data would, I don't believe,
25 be a burden at all.

1 HEARING OFFICER KRAMER: Applicant.

2 MR. McKINSEY: Well the questions each
3 present a particularly different issue for us so
4 it is hard to treat them as a whole. Each one is
5 asking for a different question so we'd probably
6 respond to them one at a time.

7 HEARING OFFICER KRAMER: Okay, let's
8 start with C1 then.

9 MR. McKINSEY: So C1 is asking on the
10 topic of what is the actual number being used for
11 equipment in the emissions analysis. And so the
12 particular way it is worded is, please confirm
13 that the calculations of greenhouse gas emissions
14 from the new equipment are based on the project's
15 maximum potential to emit.

16 And that's what modeling estimates
17 attempt to accomplish. And so you make
18 assumptions on the number of start-ups,
19 assumptions on the number of shutdowns. And
20 essentially the easiest way to accomplish that,
21 since we already have established protocol for
22 criteria pollutant modeling in terms of that and
23 we make assumptions that are conservative on the
24 number of start-ups and shutdowns and emission
25 rates. That's the same factors that are used in

1 modeling, that we use for modeling greenhouse gas
2 emissions.

3 I don't know how the staff is doing
4 their's but the project's maximum potential to
5 emit is arguable. I don't know how you answer
6 that without making your own criteria of what you
7 want as the appropriate number of assumptions.
8 There is no established modeling protocol that we
9 could say, this is the official way to do it for
10 greenhouse gases, like there is for criteria
11 pollutants.

12 So the question for us is that we
13 believe it is an accurate estimate of the
14 project's maximum potential to emit. Whether it
15 is the or, you know, really is the maximum actual
16 emissions that will ever occur I am not sure.
17 Because again, it is just, it is your best good
18 faith estimate to estimate emissions.

19 The second question asks for the --

20 HEARING OFFICER KRAMER: Okay, let's
21 finish this one first.

22 So Mr. Rostov, if he provided that
23 explanation to you would that answer your
24 question?

25 MR. ROSTOV: I mean, I assume they would

1 use the same assumptions as they did for the
2 criteria pollutants. What we were really trying
3 to get at was -- I think I know the answer but I
4 was just trying to confirm it. Originally it
5 seemed like the plant would operate all the time
6 and now I think the applicant has made a decision
7 to operate at a certain number of hours a year.
8 So I was just trying to make, one find out what
9 that was and make sure you were doing the
10 greenhouse gas analysis, you know, based on the
11 maximum potential.

12 MR. MCKINSEY: And the project has
13 always been designed to be an intermittent
14 performer so it falls in a category that is almost
15 a peaker. But because it has such excellent
16 greenhouse emission rates for a fast response
17 capacity it's actually one of the -- In fact,
18 that's one of the characteristics of this project
19 that we promoted is that most peakers, a simple-
20 cycle peaker which can start up and shut down
21 quickly, has a higher greenhouse gas emissions
22 rate and in fact doesn't meet the continuous
23 standard that we have set for baseload.

24 But this project, even though it has a
25 very fast response time like a peaker, has the

1 greenhouse gas emissions performance of a baseload
2 power plant. That's one of the reasons why this
3 actually is advantageous in the greenhouse gas
4 emissions category.

5 But it has always had that as its
6 criteria hours for what it would run at, it is not
7 a baseload project. The hours that its at have
8 been what we have had since it started.

9 HEARING OFFICER KRAMER: And didn't the
10 PSA say that you were limited to 60 percent of
11 24/7/365.

12 MR. McKINSEY: Right. So when you
13 submit your air application in particular you have
14 to, you have to pick a number in order to set your
15 emissions estimates and so -- exactly.

16 HEARING OFFICER KRAMER: So is it the
17 case that you use the same assumptions for the
18 greenhouse gas analysis as you did for your
19 criteria pollutants?

20 MR. McKINSEY: I believe so.

21 MR. HEMIG: Yes.

22 MR. McKINSEY: And it would be something
23 that I would still want to confirm.

24 HEARING OFFICER KRAMER: And that
25 clarification would answer the question that you

1 have asked?

2 MR. ROSTOV: Yes.

3 HEARING OFFICER KRAMER: Okay.

4 Mr. Rostov, did you want to say anything more
5 about C2 before Mr. McKinsey?

6 MR. ROSTOV: Just that there was a
7 footnote in their AFC that said they had a ten
8 year lookback period and they picked two years out
9 of the ten year lookback period to calculate
10 emissions from Units 1, 2 and 3. So we wanted to
11 know what those two years were because we had a
12 hunch those were probably the two years from the
13 energy crisis where emissions were unusually high.

14 HEARING OFFICER KRAMER: On the surface
15 that seems a reasonable request.

16 MR. MCKINSEY: On thing on this request
17 that we are not certain on. It says, to calculate
18 emissions. So presumably what you mean is
19 baseload emissions. In other words, the previous
20 past history emissions for baseline calculations.
21 Because most of the background gets at that though
22 not entirely because it gets into offsetting
23 future.

24 But in that case the actual way it is
25 done is you go through the ten year period and you

1 take the highest two year period. So you
2 basically run a modeling analysis which calculates
3 what's the highest emission, the maximum in any
4 two year continuous period within that ten year
5 period. And that's exactly what was accomplished.

6 If I understand correctly it isn't
7 actually a specific two year period that you can
8 say, that's it. It is actually that, that factor
9 that applies to each pollutant and each type of
10 evolution that occurs in that estimate.

11 So the problem here is there isn't a
12 specific two year period. You actually take that
13 ten year data and you run the model. And using
14 it, it calculates the maximum within any two year
15 continuous period. It's also -- That is not a
16 particular number you can simply provide. That
17 may reflect, this question may reflect a little
18 more or at least a less understanding of the
19 modeling process, I'm not sure.

20 So for us, we would have to go back and
21 analyze that. But I mean, the staff has conducted
22 their own analysis using the same basic
23 information we provided for what they believe
24 would be the way to estimate emissions.

25 HEARING OFFICER KRAMER: So could that

1 information be made available to the Center then?

2 MR. McKINSEY: Well the information is
3 in the project filing, it's there.

4 HEARING OFFICER KRAMER: Okay.

5 MR. ROSTOV: I'm sorry, I am not sure if
6 I understand the explanation. The footnote says a
7 maximum of a two year annual average with a ten
8 year lookback period. So I would assume you would
9 look at two continuous years and pick those two
10 years as your two year annual average within a ten
11 year period.

12 MS. SMITH: That's typically how a
13 baseload analysis goes. I haven't heard this new
14 configuration where you sort of smoosh it all
15 together and then you flatten it out and divide it
16 by two. Or five I guess in this case.

17 MR. McKINSEY: In the AFC section there
18 are a series of tables that provide two year look
19 backs, five year lookbacks within the ten year
20 period and provide all the criteria pollutant
21 emissions within those periods.

22 This isn't an easier -- And again, one
23 of the issues is if this was a criteria pollutant
24 question it would be very simple because there's
25 established modeling protocols. It is more

1 challenging when you are trying to say how should
2 you calculate greenhouse gas emissions for us to
3 apply it.

4 So we are looking at our tables now in
5 the AFC. There's an extensive amount of
6 information. And I am not convinced that the data
7 isn't there for every one of the lookback periods
8 within that ten year period.

9 MR. ROSTOV: I mean, so -- So did you
10 pick two years like 2000/2001 as your years to
11 calculate your greenhouse gas emissions? I am
12 just trying to figure out what the two year period
13 is.

14 PRESIDING MEMBER BOYD: I think the
15 question that has been kind of left hanging out
16 there is did you take 24 continuous months or 24
17 random months out of a ten year period?

18 MR. McKINSEY: No, it has to be two
19 consecutive calendar periods so it's 24
20 consecutive months.

21 PRESIDING MEMBER BOYD: That's the way I
22 thought too.

23 ASSOCIATE MEMBER DOUGLAS: So in that
24 case you should be able to --

25 MR. McKINSEY: Consecutive calendar

1 years.

2 ASSOCIATE MEMBER DOUGLAS: You should be
3 able to tell us which two years then.

4 MR. RUBENSTEIN: Yes. The answer is in
5 Table 5.1B-12 and 5.1B-13, which is Appendix 5.1B
6 of the AFC. I'm sorry, I wasn't expecting we were
7 going to walk through these in detail so I can't
8 tell you exactly what the two year period is. But
9 if I look at those two tables I can answer that
10 question.

11 HEARING OFFICER KRAMER: So it wouldn't
12 take you all that long to do.

13 MR. RUBENSTEIN: No, I have also -- But
14 these two tables are for the criteria pollutants.
15 There is a parallel set of tables for the
16 greenhouse gases that I still have to find amidst
17 all these findings.

18 HEARING OFFICER KRAMER: It sounds like
19 you could answer it and it wouldn't require you to
20 remodel anything.

21 MR. RUBENSTEIN: No, I think that
22 Mr. McKinsey's discussion on modeling was because
23 we weren't sure whether the question related to
24 something related to the dispersion modeling where
25 you do blend together the meteorological data or

1 whether it was these emissions estimates. But the
2 emissions estimates, we have the individual data
3 for each year. It's in various parts of the
4 filings.

5 There are some additional fuel
6 consumption information that was provided in some
7 of the data adequacy responses and the responses
8 to additional information requests from the air
9 district. So the information is all there. They
10 can find it, we can find it.

11 MR. ROSTOV: Well actually we couldn't
12 find it, that's why we asked the question.

13 HEARING OFFICER KRAMER: So Mr. Rostov,
14 what was the footnote again that you were
15 referring to?

16 MR. ROSTOV: I think it is in two
17 different places.

18 MR. RUBENSTEIN: It is in 5.1B-20.

19 MR. ROSTOV: Right, that's the one I
20 just read. But there is also a place --

21 MR. RUBENSTEIN: That's right. And this
22 is eight pages earlier.

23 MR. ROSTOV: -- in the actual text. I
24 think in the actual text of the AFC as well.

25 MR. RATLIFF: Yes, in 5.1-38 there's a

1 table with a similar footnote.

2 MR. ROSTOV: Thank you.

3 HEARING OFFICER KRAMER: Okay. Any
4 other party wish to make any more comments about
5 either C1 or C2?

6 Okay, then is that all the Cs? No, C3.
7 Mr. Rostov, to the extent you are asking for
8 calculation, that might be on the other side of
9 that line I described where they are doing your
10 work as opposed to providing you data. Now do you
11 feel that you don't have the data with which to
12 make those calculations?

13 MR. ROSTOV: Yes, I feel we don't have
14 the data. So the use of the word calculate might
15 have been not the appropriate word. What we would
16 like is just emissions data. So essentially we
17 were asking for the most recent two years. We
18 didn't know when their data went up to so that is
19 why we used the word recent.

20 Because, you know, essentially we
21 believe that you do your baseline on the recent
22 data as opposed to, you know, a two year lookback
23 in a ten year period. Because that ten year
24 period could have different emissions. So
25 essentially all we were trying to figure out was

1 the most recent two year current period. We said
2 recent because we didn't know when their data
3 ended, essentially.

4 HEARING OFFICER KRAMER: The most
5 recently available.

6 MR. ROSTOV: Yes.

7 HEARING OFFICER KRAMER: And is it fair
8 to say that same request explains C4 as well?

9 MR. ROSTOV: Yes.

10 HEARING OFFICER KRAMER: Just asking
11 about oil.

12 MR. ROSTOV: Right, because that goes to
13 the fuel use issue.

14 MR. McKINSEY: There is a data response
15 that I think provides through 2007 data, 2002
16 through 2007. It's Data Response 76 and it is
17 table -- Data Response 76-1. Now that doesn't
18 have this year's data. Every month we generate
19 more data but that has the data for each year
20 listed out, 2002 through 2007. And it was in Data
21 Response 76-1 filed this spring.

22 HEARING OFFICER KRAMER: Does that apply
23 both to the gas or to the emissions?

24 MR. McKINSEY: It's the fuel use
25 numbers, which is what you need to --

1 HEARING OFFICER KRAMER: Okay.

2 MR. McKINSEY: It's the fuel use
3 numbers, which is how you, you know, you calculate
4 emissions.

5 HEARING OFFICER KRAMER: Both oil and
6 natural gas?

7 MR. McKINSEY: Well actually the
8 project, the last burned oil was -- well no, they
9 did in 2000 and '99 I think. But that data is not
10 even being used.

11 HEARING OFFICER KRAMER: I was under the
12 impression they had to test it periodically. Is
13 that no longer the case?

14 MR. McKINSEY: No, I think the --

15 MR. HEMIG: Yes, we had some reliability
16 testing under oil.

17 MR. ROSTOV: Does that data that you
18 just referred to -- I am not sure if I have that
19 data. Or maybe I do have that data request. I
20 don't think that refers to Units 4 and 5 so we
21 were trying to include those units as well.

22 MR. McKINSEY: So then the -- Sorry, I
23 got off track, you're right. The issue we have
24 got for Units 4 and 5 is we haven't prepared that
25 data because we haven't had to. We certainly

1 report emissions. You know, we have our air
2 permit for Units 4 and 5. But we, because it
3 isn't, you know, under the scope of this, we
4 haven't actually calculated or prepared that
5 information for Units 4 and 5 for the project.

6 And that's why these particular requests
7 for us are an issue. Simply because they take us
8 in the path that is beyond the scope. And I think
9 I heard you indicate, which is I guess the reason
10 why you might. I think you suggested a reason why
11 emissions of 4 and 5 could fall under this
12 project's processor jurisdiction. Could you
13 restate that.

14 MR. ROSTOV: Yes. I was just saying
15 that one thing that we may propose, we just want
16 to figure out what the offsets were. As part of
17 the project you were arguing that Units 1, 2 and 3
18 could offset some of the greenhouse gases.
19 There's two other units there so we wanted to see
20 what those two, you know, the carbon dioxide from
21 those two other units and see, you know, in the
22 future if there could be a potential mitigation.
23 And it doesn't seem unreasonable and it doesn't
24 really seem like it would be that much work. I
25 mean, I am pretty sure that all companies keep

1 their emissions data and their fuel use and it
2 should be that hard to put together.

3 MR. MCKINSEY: I know -- Okay, I
4 understand now the issue. It wasn't that we had
5 suggested 4 and 5. But you would be interested in
6 proposing that we mitigate 4 and 5.

7 MR. ROSTOV: Right.

8 MR. MCKINSEY: And we would have to
9 prepare the data. I believe we could put it
10 together without too much difficulty. Our biggest
11 concern would be whether or not that would be a
12 concession to taking 4 and 5 and their operation
13 within the jurisdiction of the Energy Commission
14 and this project.

15 Clearly we are shutting down 1, 2 and 3
16 so those units at least and their future are under
17 the scope of this project. But Units 4 and 5
18 would remain outside of the jurisdiction of the
19 Energy Commission process. So I don't know that
20 -- unless there would be some legal grounds. At
21 least I think we could provide the information but
22 we wouldn't want it to be suggested that we are
23 conceding jurisdiction over Units 4 and 5 to
24 within this project's realm. That's probably the
25 best way to put it.

1 HEARING OFFICER KRAMER: As far as I am
2 concerned they are just data, that's all you are
3 talking about here. It may or may not be relevant
4 to the ultimate decision.

5 MR. McKINSEY: I am going to -- I am
6 asking our consultant on C4, which is a little
7 more technical, in terms of what data we might
8 actually have available. The oil versus gas
9 question. So we have oil versus gas data as well.

10 I don't know if we have -- So we don't
11 have hours of each fuel use. We have the fuel use
12 but we don't have the hours on oil versus hours on
13 gas data. We don't collect that, from what I
14 understand. So the latter part we cannot answer
15 at all.

16 MR. ROSTOV: My understanding from
17 something you said earlier is you don't really run
18 it on oil.

19 MR. McKINSEY: Right. Oil is almost, it
20 should be a minuscule number on oil.

21 MR. ROSTOV: So you could probably just
22 cross-check any reliability testing and that would
23 be it. I mean, I thought that would be the
24 answer, that you haven't run oil in a few years.
25 I mean, we just want to know what the current data

1 is. It sounds like if you only use oil for
2 reliability testing you could just look at the
3 dates when you did the reliability testing and you
4 know your answer.

5 MR. MCKINSEY: We wouldn't have the
6 exact hour calculations. We will have fuel use
7 numbers but we won't have an hour calculation for
8 oil. In fact, we just have hours of run time.

9 HEARING OFFICER KRAMER: Anything from
10 any other party on the C series?

11 Okay, on to D as in dog. There is just
12 one question there. Mr. Rostov.

13 MR. ROSTOV: It was an anomaly we saw in
14 the data. We were just wondering what the answer
15 was. Essentially there was -- you know, we have
16 our theories but there was a significant decrease
17 in NOx and SOx emissions from Units 1, 2 and 3
18 since '95. We were wondering what brought that
19 about?

20 MR. MCKINSEY: Well like C1 and C2 this
21 is a question that we offered to answer as well.
22 And it is actually an easy answer as well. That's
23 when we installed SCR. NRG purchased these units
24 from SDG&E and they had no atmospheric control
25 equipment on them at all. And after purchasing

1 them NRG proceeded to install atmospheric control
2 equipment, thus significantly reducing the
3 emissions of SOx and NOx as well as other criteria
4 pollutants. That's the reasons.

5 MR. ROSTOV: Did it also have to do with
6 operating the units less? That was the other part
7 of our question. That's fine.

8 HEARING OFFICER KRAMER: Well your
9 question certainly wasn't that detailed.

10 MR. ROSTOV: No. But they'll provide an
11 answer it sounds like.

12 HEARING OFFICER KRAMER: Do you want him
13 to -- Are you going to withdraw that question or
14 do you want a written answer?

15 MR. ROSTOV: I mean -- That's fine.

16 HEARING OFFICER KRAMER: So do you
17 withdraw that question?

18 MR. ROSTOV: Yes.

19 HEARING OFFICER KRAMER: Okay. And let
20 me also encourage you, it is my impression from my
21 experience both as a staff attorney and -- well
22 more from that experience, that a lot of your
23 questions you could probably successfully deal
24 with at a staff workshop, the one that is coming
25 up in January, for clarification.

1 MR. ROSTOV: Well as you know, at the
2 time we did these questions there was no PSA and
3 all the information was from the applicant.

4 HEARING OFFICER KRAMER: I understand.

5 MR. ROSTOV: And we didn't know what the
6 staff was going to do so we were just trying to
7 clarify the information from the applicant. I
8 mean, I was surprised they objected actually
9 because a lot of these seemed pretty simple.

10 MS. SMITH: Right. I mean, and part of
11 the point of this who exercise is to get this
12 information into the PSA. I mean, it came so late
13 that it didn't happen but that's the whole point
14 of the exercise.

15 HEARING OFFICER KRAMER: I understand.
16 But the next opportunity to clarify some things
17 will be at that workshop.

18 MR. ROSTOV: And I guess I have a
19 question about that as well. Clarifying at the
20 PSA workshop. Does that mean if we have questions
21 will they go back and provide background data or
22 do we need to do data requests to the stuff. I
23 was a bit unclear about how that workshop process
24 works.

25 HEARING OFFICER KRAMER: Let's see. We

1 are not normally involved. I think if you, you
2 work something out and if they offer to make a
3 response. If they don't then you have the option
4 of making data requests to try to extract a
5 response. But at that point it will be rather
6 late in the process so you might be, you might
7 really be pressed up against the wall as far as
8 reviewing the data as you receive it.

9 Anything more from the other parties
10 about D? Anyone?

11 Okay, well on to Section E then, the
12 life expectancy of the existing units. This was a
13 case, Mr. Rostov, where we feel we need an
14 explanation about the relevance.

15 MR. ROSTOV: Sure. In the AFC the
16 applicant has tried to say that the shutdown of
17 Units 1, 2 and 3 would offset the greenhouse gases
18 from the future project. The future project is
19 going to be at least 30 or 40 years. I believe
20 that these existing units are going to be shut
21 down in the near future. So I guess we are going
22 to have a legal argument in the future about do
23 they get credit for the offsetting of the carbon
24 dioxide.

25 But to provide for that, the basis for

1 that legal argument I think some important
2 questions needed to be asked and that's what these
3 questions were. Essentially what is the remaining
4 useful life of these gas-fired boilers that are
5 over 40 years old and what permits are necessary
6 in the future for them.

7 Because that could go to what our legal
8 argument is. That they necessarily don't deserve
9 the credit for offsetting, you know, what is
10 several hundred thousand tons of greenhouse gases
11 for units that are going to be shut down in the
12 near future when they have a project that is going
13 to run 30 to 40 years into the future.

14 HEARING OFFICER KRAMER: So what -- How
15 is that not basically asking somebody to put on
16 their MBA hat and crunch a bunch of numbers and
17 give you an estimate, as opposed to what are the
18 raw numbers that you would request to enable you
19 to perform that type of analysis?

20 MR. ROSTOV: Well I guess I was just
21 wondering what the useful life of these boilers
22 are typically. I mean, they are already -- some
23 are 50 years old so I would be surprised if they
24 keep running that much longer. But that was one
25 question.

1 And then the other question is the
2 permits. I think as probably most people in this
3 room know, there's the 403B process that the state
4 is involved in. So that was one answer to the
5 question that I thought might come up but I didn't
6 know there could be other permits too. There
7 could be City of Carlsbad permits, there could be
8 all kinds of things. So we were just kind of
9 curious.

10 And I think they could provide numbers
11 about what they believe the useful life of these
12 type of units are and they could also provide just
13 information about, you know, future permitting
14 needs. Another future permitting need that just
15 popped into my mind could be the air district's
16 often, you know, ratchet down. I don't know what
17 is going on in San Diego but ratchet down, you
18 know, ozone criteria pollutants. So something
19 like that.

20 For example, they did the SCR a few
21 years ago. If there's other requirements like
22 that that would be an answer to the question.
23 Because that would, you know. Once you start
24 putting on more pollution controls that often
25 eliminates the useful life of something that is 40

1 or 50 years old.

2 So, I mean, I was just really asking for
3 like the numbers of years they thought they were
4 going to run and then what permitting they would
5 need to keep running for those number of years.

6 HEARING OFFICER KRAMER: Applicant?

7 MR. MCKINSEY: The biggest issue with
8 the core topic here is -- And first I'd say a lot
9 of this information, and of course all of the
10 permitting information is in the AFC topic by
11 topic for what you would have to do to permit a
12 new unit today, right. That is what these permits
13 apply to.

14 But the toughest topic in all this is
15 that these units first are not -- and it is
16 actually part of another core issue involving the
17 overall community, is when will these units go
18 away without this project, for instance. And one
19 of the things we have indicated over and over
20 again is that at this time these units are
21 required and necessary by SDG&E.

22 So probably the largest unknown, and we
23 have said this at workshops and I think it's in
24 some of our analysis, is it takes a release of the
25 units from being necessary to support the grid.

1 And this project facilitates the shutdown of 1, 2
2 and 3. But without this project not only the
3 future of 4 and 5 but 1, 2 and 3 become
4 indeterminate.

5 The case is, in fact, usually after
6 atmospheric control equipment the lifetime of the
7 equipment increases because you usually only do
8 that if the atmospheric control equipment is worth
9 it. In other words, you will get enough time
10 using them afterwards.

11 But ultimately any of these units, you
12 can keep them operating practically forever by
13 replacing component by component as they fail.
14 And one of the things that this project is about
15 is bringing about the shutdown of these units.

16 But lacking this project I think, one,
17 question one is a very vague, broad question that
18 as you indicated requires each person to make
19 their own assumptions about when they think they
20 would cease using. And really, we don't know.
21 Other than we know that right now it appears they
22 are going to run as the state requires them to
23 operate until new generation capacity is in the
24 region. That appears to be infinite.

25 But of course the costs will increase

1 and at some point in the future there could be a
2 conflict between NRG's willingness to continue to
3 invest in the units to maintain them versus that.
4 But that is still speculative and far in the
5 future.

6 And as to new permits, that is
7 incredibly speculative. We are not aware of any
8 new requirements. If we were then we would be
9 having to get permits for those units. They are
10 permitted and operating at this time and we don't
11 have any reason to believe that they would be
12 forbidden. And again, the other factor that the
13 state is requiring them to be available, suggests
14 that that would deter somebody from attempting to
15 permit them out of operation.

16 And of course the last question goes to
17 the same thing we mentioned in D as to hour of run
18 time versus fuel use. There is a big difference
19 between a power plant operating at five percent
20 and 100 percent in terms of its environmental
21 effects.

22 And so what is monitored in power plant
23 operation is not really run time but the
24 environmental effects that the project has. So
25 fuel consumption is carefully calculated as well

1 as the data on emissions and often other things
2 like water and other commodities and things that
3 are used in the plant. But hour data is not
4 available on the units. It is not something that
5 is tracked and monitored and reported.

6 Now that being said, fuel use is. And
7 as we already indicated, the table in the data
8 request has fuel use, this goes to E3, for 1, 2
9 and 3. And we just agreed to provide the fuel use
10 data for 4 and 5. But D1 -- Or did we, I can't
11 remember. Was it D1?

12 HEARING OFFICER KRAMER: I think it was
13 in the --

14 MR. MCKINSEY: No, another one, but we
15 did. So that's the best data you have to do that.

16 The other problem we had with E3, it
17 just says, the past five years. Which is another
18 issue in terms of which five years that is. Is it
19 the past five years at the time of the submittal
20 of the AFC? Is it '03 through '07. Again, the
21 data through '07, 2002 through 2007, is in that
22 table that we provided for units 1, 2, 3.

23 MR. ROSTOV: I guess we asked for not
24 the five year average. I mean, I did look at the
25 documents but I don't remember this question. But

1 my sense is since we asked for not the five year
2 average that some of this data that was provided
3 was based over a five year average as opposed to
4 like on individual years.

5 MR. RUBENSTEIN: That is not correct.

6 MR. ROSTOV: That is not correct?

7 MR. RUBENSTEIN: No.

8 MR. ROSTOV: Okay. So if the
9 information is in there on individual years --

10 MR. McKINSEY: Except hours is not in
11 there. That's the key point we are getting at.
12 What you asked for in particular was annual hours
13 for use and that's the data that we do not have.
14 Fuel use for instance, it's each year's fuel use
15 numbers.

16 MR. ROSTOV: So the total fuel use for
17 the year. Is that what you are saying?

18 MR. McKINSEY: Yes.

19 HEARING OFFICER KRAMER: What about the
20 capacity factor? Is that --

21 MR. McKINSEY: Yes, the capacity factor
22 is also applied. Again, that is something that
23 we, that, you know, is -- because you can
24 calculate your total amount of energy produced,
25 megawatt hours produced.

1 HEARING OFFICER KRAMER: Do you happen
2 to know which data request that was or if you
3 could look it up?

4 MR. McKINSEY: It's the same, '76.

5 HEARING OFFICER KRAMER: Data response
6 to '76.

7 MR. ROSTOV: Do you mind if we look at
8 some of these things real fast?

9 HEARING OFFICER KRAMER: Any other party
10 wish to comment about this series of data
11 requests, the E series?

12 MS. BAKER: Yes, I would like to
13 comment. I think that these anticipated life of
14 the units are very relevant, given that many of
15 the citizens of Carlsbad believe that if this new
16 plant is constructed that these units will be
17 decommissioned and that the existing power plant
18 will go away. And that is really not what the
19 application is about but that is what many of the
20 citizens believe. And I think it is a fair
21 question that needs to be answered on really what
22 are the long range plans of the existing units and
23 how much longer they will be used.

24 HEARING OFFICER KRAMER: Staff, are you
25 ready?

1 MR. RATLIFF: I think I will have
2 Mr. Vidaver talk about the availability of the
3 information that we have, what we do know.

4 MR. VIDAVER: David Vidaver, V-I-D-A-V-
5 E-R, Energy Commission staff. Hourly outputs
6 available, number of hours of operation by hours
7 available from the EPA's continuous emissions
8 monitoring survey data is publicly available
9 information. How many hours Encino 3, 4, 5, 1 and
10 2 all generated.

11 MR. ROSTOV: Right. And the reason we
12 asked it, because it seemed like there are some
13 numbers -- you know, fuel use per hour. So then
14 if you had the, say it was 1,000 hours to be
15 simple, 1,000 hours times whatever the fuel use
16 was. Say 1,000. You'd have a number for
17 calculating some of your emissions. So that's
18 what we were trying to get at. We were just
19 trying to figure out -- We wanted to make sure we
20 had all the data in the equation, I guess, and
21 that is why we wanted the hourly numbers. But if
22 the CEM information is available through EPA that
23 means the applicant has it. It is probably
24 simpler for them to give it to us than for us to
25 find it, actually.

1 MR. VIDAVER: It occurs to me that there
2 is a unique problem with respect to the Encino
3 units. And that is for most other units the
4 actual measure of emissions I believe at the stack
5 are available; the data available on the Encino
6 units is formulaic. The output is available but
7 then the output is pumped through a formula which
8 gives you a very, very smooth EPA curve. So the
9 actual, the actual fuel yields per hour is not
10 available for the Encino units from that data set.
11 But the hourly generation is available.

12 MR. ROSTOV: Do you know --

13 HEARING OFFICER KRAMER: Can the
14 applicant answer the question why you wouldn't
15 have the data then?

16 MR. RUBENSTEIN: I think the question is
17 -- First of all, I believe that for acid rain
18 purposes, and I believe that is the database you
19 are referring to, Units 1 through 5 report through
20 a common stack. And I am recalling whether there
21 are separate entries for each of the five units,
22 which is what would be necessary to answer the
23 intervenor's question. I would have to check on
24 that.

25 If that data were available then either

1 the intervenor or we could go to the EPA website,
2 download those data electronically, which are in a
3 customized format, convert them into a spreadsheet
4 and tabulate the numbers. Again, anybody in the
5 public could do that, we could do that. I am not
6 sure that there is a separate recording at the
7 plant for hours of operation because hours of
8 operation are not used to calculate emissions,
9 fuel use is. And the fuel use data is what we
10 have and what we have reported.

11 It is there somewhere. It is a question
12 of how much work it is to find it. And if it is
13 publicly available from the EPA database, whether
14 the intervenor should get it or whether we should
15 get it.

16 MR. ROSTOV: My sense is the point of
17 discovery is to -- the applicant should have
18 information on the project and then parties to the
19 project come in and they say, what is this
20 information and you provide it. I mean, I have
21 been involved in a couple of other CEC processes
22 and that is usually what happens.

23 Especially where you are saying there is
24 a mass of data. And the applicant should have the
25 best knowledge of that data. You know, we are

1 asking relatively specific questions so I think
2 you should be able to answer them.

3 MR. MCKINSEY: And the other comment
4 would we make to this particular topic is its
5 relevancy versus doing that work. Again, the
6 hourly data does not provide any -- one of the
7 reasons it is not used is it really doesn't tell
8 you very much compared to capacity factor and fuel
9 use and emissions data as to --

10 So I wouldn't understand the relevancy
11 of that particular data that would justify the
12 work to do it. And I would say if the intervenor
13 wished to do it then certainly they are welcome
14 to. But I don't know that it would be appropriate
15 to burden the applicant with producing that if it
16 isn't going to produce anything. Maybe you could
17 explain what you were going to do with it, how it
18 is relevant. But I don't see how it would be
19 relevant to estimating a potential impact or
20 compliance with the project.

21 MR. ROSTOV: We were just trying really
22 hard to figure out what your data meant in the
23 information you provided. And you had this annual
24 fuel use factor on table -- in your Data Request
25 76 that you have been referring to. Is that the

1 same as a capacity factor? Is that what you are
2 saying? Essentially are you determining -- What
3 we are trying to get at is just determining
4 emissions based on actual emissions. So if your
5 annual use fuel facto is the same as capacity
6 factor and you are basing your calculations of
7 carbon dioxide on actual emissions, that's fine.
8 But that's what we were trying to figure out.

9 MR. MCKINSEY: First, capacity factor is
10 something you calculate on the output side of
11 electricity. So you look at the capacity of the
12 project. And its 100 percent capacity would be
13 its maximum capacity running 24/7 all 365 days of
14 the year. So it's a megawatt hour efficiency
15 calculation or total productivity. Fuel use is on
16 the input side. And it is actually a factor so it
17 is a different concept. And Gary can explain what
18 it is better than I can.

19 MR. ROSTOV: I understand what you're
20 saying.

21 HEARING OFFICER KRAMER: Go ahead. Did
22 you want to explain?

23 MR. MCKINSEY: He said he understood so
24 -- I'm happy to explain the difference.

25 MR. ROSTOV: Go ahead. Go ahead and

1 explain, maybe I'm wrong.

2 HEARING OFFICER KRAMER: No, no, if you
3 understand, no. Sorry, I misunderstood.

4 Is there anything else on the E series?

5 Let's move on to F then. What is the --
6 Our threshold question is, what is the relevance
7 of the reliability need? A second question would
8 be, does the applicant have this information and
9 who is the best source for it? Mr. Rostov.

10 MR. ROSTOV: Well --

11 MR. McKINSEY: Could I -- I know we've
12 missed this a few times. I wanted to point out,
13 F1 is one that we have indicated we are willing to
14 provide the information we have on reliability
15 needs.

16 HEARING OFFICER KRAMER: Okay.

17 MR. McKINSEY: In our response that is
18 one we volunteered to answer. So we do have data
19 on reliability in the region so that one doesn't
20 really -- other than I think part of our answer
21 would be it's -- you know, the term reliability is
22 a little vague but we have, you know, the
23 information that SDG&E has published on what they
24 perceive of needed new megawatts in the area and
25 that is what we would provide.

1 HEARING OFFICER KRAMER: Is that
2 sufficient, Mr. Rostov?

3 MR. ROSTOV: I believe so. I mean, if
4 there is an explanation why they believe that is
5 what the need is that would be important to have
6 as well.

7 MR. McKINSEY: Yes.

8 HEARING OFFICER KRAMER: Okay. Does any
9 other party want to --

10 MR. RATLIFF: Without wanting to over-
11 promise, we will be addressing it in the FSA as
12 well.

13 MR. McKINSEY: And I believe actually
14 that information is probably already in the
15 proceeding. I know we have introduced a couple of
16 letters that SDG&E issued on reliability. So we
17 might just be citing documents that are already in
18 the proceeding.

19 HEARING OFFICER KRAMER: Go ahead.

20 MS. BAKER: I just wanted to ask a
21 question on the reliability studies. How current
22 are they? Because I believe there's some new data
23 out recently about energy usage declining. So how
24 current would the data be, would be my question.

25 MR. McKINSEY: For us it is the latest

1 information SDG&E provided on the established, it
2 is actually based on the projected growth in the
3 region over the next period of years.

4 MR. HEMIG: I think it was in October,
5 an October PUC need determination.

6 HEARING OFFICER KRAMER: Thank you.

7 F2 seems to be talking about a growth-
8 inducing impacts analysis.

9 MR. ROSTOV: And actually I was
10 rereading this question and will say that our
11 first clause about the if we didn't really need
12 there. I mean, we were just interested in the
13 growth-inducing analysis. So it says if the CECP
14 will provide more than the reliability needs of
15 the region. I mean, actually we just wanted the
16 information either way.

17 Because, you know, based on the project
18 description, meeting the expanding need for new,
19 reliable electric generating resources. It gives
20 the impression, and I think it was somewhere else,
21 that there actually could be new demand that this
22 is applying to and that is what we were trying to
23 figure out. Because CEQA is very clear about, you
24 know, you have to talk about the growth-inducing
25 effects of projects.

1 HEARING OFFICER KRAMER: Okay, but that
2 does not sound like data.

3 MR. ROSTOV: What?

4 HEARING OFFICER KRAMER: That does not
5 sound like data. It sounds like a wide-ranging
6 discussion based on data perhaps.

7 MR. ROSTOV: Maybe that is more
8 appropriate to the staff. I mean, when they do
9 their preliminary -- they've done the Preliminary
10 Staff Assessment.

11 HEARING OFFICER KRAMER: So you might
12 want to look at the Preliminary and decide if they
13 have met your needs.

14 MR. ROSTOV: Okay.

15 HEARING OFFICER KRAMER: So on that
16 basis are you withdrawing this request?

17 MR. ROSTOV: Sure.

18 HEARING OFFICER KRAMER: Did any other
19 party wish to comment? No.

20 HEARING OFFICER KRAMER: Let's turn to
21 question G1 then, our last question actually.

22 An alternative analysis of a smaller
23 facility. Correct me if I am wrong but I just
24 skimmed the PSA this morning and I didn't find any
25 animal like that. Did I miss something,

1 Mr. Monasmith?

2 MR. MONASMITH: A specific alternative
3 analysis in regard to a smaller --

4 HEARING OFFICER KRAMER: So one of the
5 alternatives being a smaller power plant at that
6 site.

7 MR. RATLIFF: This question I think
8 assumes that a smaller facility would satisfy the
9 reliability needs of the region and I don't know
10 that that's true. That's one of the things that
11 we do want to discuss. I mean, ideally we'd like
12 to close down the entire CECP facility that is
13 there, it needs to be replaced in its entirety.
14 And that is the state energy policy. So I don't
15 know if we want to just assume that a smaller
16 facility would suffice when more load pocket
17 reliability generation may be necessary.

18 HEARING OFFICER KRAMER: Mr. Rostov,
19 this seems to be of the same nature as F2, asking
20 for analysis rather than data. Do you want to
21 treat it the same way?

22 MR. ROSTOV: Yes, I can address that to
23 the staff, I guess.

24 HEARING OFFICER KRAMER: This sounds
25 like a good topic for the -- this is where my

1 comments about the staff workshop I think are
2 especially appropriate.

3 MR. ROSTOV: I guess it goes back to my
4 question. You know the staff PSA came out I think
5 last Thursday, so just recently. And it is long
6 so it is going to take a little while to go
7 through it. And maybe we will get the answers
8 through the workshops but we might want to have
9 data requests. Or maybe we just work with the
10 staff independently first. I guess we are just
11 learning that we probably do have some questions
12 and that we will try to work with the staff. But
13 at some point if we don't get satisfied we might
14 want to do some data requests.

15 HEARING OFFICER KRAMER: Well, I think
16 you can probably see the fate they might have.
17 You are certainly -- You are a party so you can
18 hire your own experts and offer your own analyses,
19 including alternatives that the staff doesn't talk
20 about or different variations of the staff's
21 alternative analysis. So that may be where you
22 have to go.

23 But should I mark this one, G1, down as
24 withdrawn at this point?

25 MR. ROSTOV: Yes.

1 HEARING OFFICER KRAMER: Thank you. Any
2 other parties wish to comment any further about
3 any of these data requests?

4 MR. MCKINSEY: On G1 we offered to
5 partially answer this but we worded it pretty
6 particular and this is what we said, that we had
7 some data that was responsive. And one of the
8 problems we had with the data requests is that
9 they presume that there is a precise number that
10 the reliability need. And what you have is a
11 calculation, what we think is accurate, which is
12 the PUC's established number, it's 550 megawatts.
13 This project is substantially less than that at a
14 net of 200 and something.

15 So the end result is that we felt that
16 that really relieves the latter issue on a smaller
17 alternative because it actually -- this project
18 doesn't even meet the reliability need so
19 certainly a smaller one would go even less. And
20 we were kind of suggesting that might be the case
21 but it is precisely the case if you use the CPUC's
22 number. But they might want to argue that the
23 number is different, and in that case I think that
24 would be their burden to accomplish.

25 MR. ROSTOV: We'd be happy to see your

1 information.

2 HEARING OFFICER KRAMER: Do you want to
3 just share that with them?

4 MR. McKINSEY: Yeah, that actually goes
5 to the --

6 MR. RATLIFF: That's the CPUC?

7 MR. McKINSEY: Yes, we were going to --
8 I think it's already in the record but we'll
9 provide it again.

10 HEARING OFFICER KRAMER: Okay.

11 MR. McKINSEY: The CPUC's latest
12 calculations.

13 HEARING OFFICER KRAMER: Were there any
14 other parties wishing to talk about any of the
15 data requests?

16 Okay, we will issue a ruling, hopefully
17 within a week.

18 MR. MONASMITH: Paul, if I can just say
19 that the workshop, the PSA workshop will be in
20 Carlsbad. The evening of Wednesday, January 7
21 will be exclusively about air quality. It will be
22 the one we expect the most public participation.
23 We have done that in the past during the
24 workshops, we have reserved the evening session
25 for air quality.

1 And so we will work out some of these
2 issues before to get to them. Some of these
3 issues that were brought up about mitigation and
4 working with staff on the LNG issue perhaps before
5 we get there so we can have a greater discussion.
6 The FSA, obviously, will reflect those discussions
7 and anything that happens between now and then.
8 But just so the Committee knows, we will focus a
9 lot of the public attention as well as staff and
10 intervenors on this issue for the workshop.

11 HEARING OFFICER KRAMER: Good, that
12 leads into a discussion of the schedule from this
13 point on. You in your latest status report,
14 perhaps it was with the release of the PSA,
15 suggested that staff was planning on issuing a
16 Final Staff Analysis -- Assessment, I keep getting
17 those twisted around in my mind, in late March; is
18 that correct?

19 MR. MONASMITH: Right.

20 HEARING OFFICER KRAMER: Although the
21 workshops are going to be in early January what is
22 the, what is the deadline for written public
23 comments on the PSA?

24 MR. MONASMITH: We extended them a week
25 just a couple of days ago and made it until

1 January 30. Beyond the typical 30 days between
2 release of the staff assessment and the workshops
3 to provide for greater input from the community.

4 And we also pushed back the expected
5 release of the Final Staff Assessment into the
6 latter half of March to also reflect input from
7 the public, intervenors and others who would like
8 more time for analysis and discussion about the
9 staff assessment.

10 So January 30 for public comments and
11 then we will have the Final Staff Assessment in
12 the latter half of March. And that could change,
13 obviously, if the Committee wished it.

14 HEARING OFFICER KRAMER: Okay.
15 Ms. Baker, on behalf of Power of Vision. Power of
16 Vision filed, I believe it was last week, a motion
17 asking the Committee to order the staff to
18 postpone the workshop. At the time I think the
19 information from the staff suggested that the
20 Final Staff Assessment was going to come out a
21 couple of weeks after the workshop. Now we are
22 hearing that it will be much delayed and the time
23 for public comment, written public comment that
24 is, is extended until the end of January.

25 So in light of that I wanted to ask

1 Power of Vision if they are still pursuing their
2 motion or if these events satisfy them?

3 MS. BAKER: We are still pursuing the
4 motion that the PSA is a lengthy and complicated
5 and technical document. There are many people
6 that need to digest it, get up to speed, do
7 whatever research is necessary so that we can
8 participate in the workshop with knowledge.

9 Given that it was just released last
10 Thursday the 11th and then with the week of
11 holiday thrown in there it makes it very difficult
12 to make sure that everyone is up to speed and can
13 knowledgeably converse on the document and not be
14 a drag on the proceedings but be an effective
15 contributor.

16 HEARING OFFICER KRAMER: And just having
17 the ability to file written comments until the end
18 of January doesn't take away your concern?

19 MS. BAKER: Well, I think that, you
20 know, the ability for people to hear and see what
21 is going to happen, hear the information presented
22 to them I think is very valuable. We do
23 appreciate that extending the written comments to
24 the 30th is very useful. But just the time it
25 will take to get through this document and

1 adequately prepare is very difficult. Especially
2 this time of year, as I think everyone can
3 appreciate.

4 HEARING OFFICER KRAMER: And staff,
5 could you explain your reasons for not holding it
6 later.

7 MR. MONASMITH: Yes. We obviously value
8 the input from the intervenors and the public.
9 And as I explained to Power of Vision, the
10 workshop really, at least from staff's
11 perspective, we don't ever anticipate or expect
12 intervenors to come to the table with a full
13 understanding of the entire document and all
14 questions and thoughts completely in order.
15 Really this is a time to ask questions between the
16 staff, the applicant and the other parties.

17 Just from a technical standpoint, with a
18 large number of proceedings, power plant
19 proceedings going through the siting, transmission
20 and environmental protection division, from a
21 staff perspective, organizing and scheduling staff
22 is a very difficult thing, especially in the month
23 of January. And those two days presented an
24 opportunity for me to reserve staff's time, which
25 I did about a month ago.

1 To move it back at this time would not
2 be simply choosing a day then we go with it. It
3 would be a matter organizing staff, over a dozen
4 folks, and that's just our staff. We are also
5 dealing with the Air Board staff, we are dealing
6 with regional water control staff, we are dealing
7 with Caltrans staff who we have set aside for
8 meetings on the I-5 expansion. There's a number
9 of different parties that have to come into play.

10 We would obviously do whatever the
11 Committee wishes us to do. I am just telling you,
12 if we were to move it back at this late date it is
13 going to be postponed at least until the first
14 part of February. Which at this point seems
15 unrealistic, especially given the fact that we
16 have expanded the opportunities for folks to
17 submit written comments, to call me and talk to
18 me, I'm available, and then we have pushed back
19 the Final Staff Assessment all the way to mid-
20 March. So staff felt comfortable in going ahead
21 with noticing the scheduled PSA workshop on the
22 7th and 8th of January in Carlsbad.

23 HEARING OFFICER KRAMER: Does the
24 applicant want to comment on that?

25 MR. HEMIG: Tim Hemig. We, I think,

1 support staff's very reasonable and I think
2 justifiable discussion there about the reasons.
3 But I want to also add that it is also helpful,
4 beneficial to have a workshop like this kind of
5 earlier on in the process. There is time to
6 review the PSA and then come to the workshop. And
7 also learn more and glean more from the discussion
8 that the parties will have and the staff will be
9 available there. And then to have additional time
10 after that to provide written comments, I actually
11 see this as a worthwhile and beneficial part to
12 have kind of a mid-range workshop in the middle of
13 delivery of the document and the due date for the
14 final comments.

15 HEARING OFFICER KRAMER: CURE, do you
16 want to comment? And Ms. Baker, you can follow
17 her. Any comments?

18 MS. SMITH: Unfortunately I haven't had
19 a chance to look at the PSA. I do have a concern
20 that there may be a lot of outstanding information
21 that is not going to be developed until later,
22 until the FSA. Honestly, I would just as soon
23 maybe have it a little bit earlier because I do
24 have that concern. The earlier we can get the
25 information out the better it is for the public

1 and for intervenors.

2 HEARING OFFICER KRAMER: Thank you.

3 Ms. Baker?

4 MS. BAKER: Well, the only thing I would
5 say is that the public doesn't even know what they
6 don't know. And having served on a quasi-
7 legislative body in Carlsbad for a number of
8 years, the whole process is sort of geared towards
9 the public and people not understanding the
10 process. So people don't even know what questions
11 to ask when they come to a workshop.

12 And we have a fear that by the time
13 somebody thinks to ask questions or brings up
14 objections or information then someone says, oh
15 that's too late, you should have brought that way
16 back up in the workshop. When no one knew that
17 that's when they were supposed to do it.

18 So I think that's what as citizens our
19 concern is, to make sure that we are adequately
20 informed, we understand the process, and that we
21 have an opportunity to address concerns and that
22 we aren't told, oh that's too late. You know,
23 that was -- Didn't you know you were supposed to
24 have brought that up at the something or the
25 other. So it is just in the matter of giving

1 people plenty of time to digest it and make sure
2 they understand the process and are fully prepared
3 so that they know what is expected and what is and
4 isn't appropriate.

5 MS. SMITH: Actually I would very much
6 agree with that. You know, we have all been to
7 workshops. You know, the Public Adviser gets up
8 and gives the statutory requirement of exactly
9 what the public's right is. But sometimes that's
10 delivered really quickly and it's, you know, a lot
11 of legalese, and it is difficult sometimes for
12 members of the public.

13 And from what I understand there's a lot
14 of community members very interested in this
15 project and I think there will be a heavy turnout
16 from the public. And so to make this as user
17 friendly of a workshop process as possible I think
18 would go a long way. It may even result in
19 additional workshops if there is outstanding
20 information in the PSA and stuff that has not
21 fully been resolved. Because my sense is there is
22 going to be a lot of public at this workshop.

23 MR. RATLIFF: Well I hope Power of
24 Vision understands that we will be doing this
25 again after we do the Final Staff Assessment.

1 There will be additional workshops on all of these
2 issues. And in fact the PSA/FSA dichotomy isn't
3 required by law, it's an extra credit exercise to
4 try to involve the public and to try to get the
5 issues out and get input at an early stage, which
6 is what we are trying to do.

7 Unfortunately, just because we have so
8 many conflicting schedule issues it is very
9 difficult for us to do that in a timely manner.
10 It probably pushes us off more than a month in
11 getting that information if we, if we don't hold
12 these workshops at that time.

13 HEARING OFFICER KRAMER: Well let me ask
14 you then. An FSA workshop is not always
15 conducted. Are you saying that it is expected to
16 be in this case then?

17 MR. RATLIFF: I think it will be, yes.
18 I would expect it to be. You know, I don't know
19 if you want me to commit to it but we normally
20 would do that in --

21 HEARING OFFICER KRAMER: I just heard
22 you to do so.

23 MR. RATLIFF: Yes.

24 MS. SMITH: So did we.

25 MR. RATLIFF: We normally would do that.

1 And I wouldn't --

2 PRESIDING MEMBER BOYD: The cat is out
3 of the bag, you're committed now.

4 MR. RATLIFF: You know, I would
5 certainly want to commit to doing that because
6 this is the kind of case where it really ought to
7 be, ought to happen.

8 HEARING OFFICER KRAMER: Okay. The way
9 we work on motions like this and any other is -- I
10 don't put out an e-mail every time one comes in.
11 We normally wait at least ten days for people to
12 file arguments. We are still in that ten day
13 period. So if any party wishes to fill additional
14 arguments to the Committee you are free to do so
15 within ten days of the date of the motion.

16 And then the Committee will issue a
17 ruling on Power of Vision's motion regarding the
18 hearing shortly thereafter.

19 As for the schedule, I think because
20 there is so much public interest in this case and
21 many people will go to our website to try to
22 figure out what the status is, we will issue a
23 revised schedule that will reflect -- First I
24 should ask the applicant. The late March
25 publication of the FSA. Did you wish to comment

1 on that at all?

2 MR. MCKINSEY: The applicant is anxious
3 because this is already, we are already well past
4 a year. But at the same time we clearly
5 understand the staff's pressures and dynamics and
6 totally understand that that's, you know, what
7 they can achieve and accomplish given that. So we
8 understand and accept it.

9 HEARING OFFICER KRAMER: Okay. So we
10 will probably issue a revised schedule just to not
11 scare people who go to the website and find out
12 that the FSA that is currently projected to be in
13 mid-January and that's not going to happen.

14 That's all the business I had on my
15 checklist. Is there any other business that a
16 party wishes to raise today?

17 MR. ROSTOV: I just had some questions
18 about after the FSA. I was just trying to figure
19 out some timing because I have some dates in April
20 that I want to protect. So I am not sure if I
21 should raise them now or raise them off-line with
22 you. Or if the FSA is going to come out in late
23 March and then there's going to be hearings in
24 April. I'm trying to figure out when the
25 Prehearing Conference would be?

1 HEARING OFFICER KRAMER: Actually in the
2 Hearing Office we are working to be -- we are
3 making a couple of minor changes in process and
4 you may see these reflected in the new order. One
5 is, when people create .pdf documents to file and
6 serve on the other parties, we want to make sure
7 that those are created -- Ideally they are printed
8 from say Word or whatever program you are using
9 directly to the .pdf document. Rather than
10 printing it to your printer on a piece of paper,
11 putting that on a scanner and creating an optical
12 document.

13 And the problem there is that when
14 somebody goes to word search that document you
15 can't word search it, you can't cut and paste from
16 it easily. So we are discouraging anybody who has
17 the technological capacity to do it right from
18 doing it wrong in that respect.

19 MS. SMITH: Thank you.

20 HEARING OFFICER KRAMER: And then
21 secondly, there will probably be in the form of a
22 footnote a hint that the period between the filing
23 of the FSA and the Prehearing Conference,
24 especially in contested cases and I think this is
25 probably example number one these days, is going

1 to be longer.

2 So that we are going to have all the
3 evidence, the testimony, summaries of testimony,
4 documents exchanged between the parties, prior to
5 the Prehearing Conference. And then we will come
6 to the Prehearing Conference and know either that
7 everything is ready to go or not and the hearing
8 will be very shortly thereafter. Maybe two weeks,
9 something on that order.

10 But we are trying to avoid the
11 frustration for many parties of last minute, you
12 know, quibbling or discussing, tweaking of
13 conditions and last minute appearances of new
14 witnesses, that sort of thing. And there may be
15 something else that I am forgetting at the moment.
16 But actually read the order. Read all the
17 boilerplate in the order because some of it will
18 be new.

19 And as far as the schedule goes,
20 Mr. Rostov, I would guess -- we will say To Be
21 Determined but there will be some formulas.
22 Figure maybe a month to six weeks after the FSA,
23 somewhere in there the Prehearing Conference will
24 be held and then the hearings maybe two weeks
25 after that if everything is ready.

1 So is there any other business?

2 Oh, we didn't ask for public comment.

3 That is on my checklist. Are there any members of
4 the public who would like to make a comment to the
5 Committee at this time?

6 MR. GARUBA: Yes sir.

7 HEARING OFFICER KRAMER: Okay.

8 Mr. Garuba, why don't you come up to this corner
9 so we'll get you on the mic. Or can you sit where
10 Mr. Layton was sitting.

11 MR. GARUBA: Thank you. My name is Joe
12 Garuba; I am with the City of Carlsbad. And
13 having gone through, the City gone through its own
14 carbon emissions inventory this past year and then
15 working on the desalination carbon mitigation plan
16 I fully understand the severity of the questions
17 or the complexity of the questions posed to the
18 applicant.

19 But we would encourage the Commissioners
20 to grant the request to answer these questions.
21 We think they are germane and they are significant
22 for our community. There has been numerous
23 testimony or lots of good points raised about the
24 reasons why they should be compelled, the
25 applicant should be compelled to answer these

1 questions. So we hope you take that into
2 consideration.

3 Secondly we would also encourage the
4 Commissioners to consider Power of Vision's
5 request to extend this process. At least for the
6 public hearing, the workshop. We have -- Power of
7 Vision has representatives from more than 750
8 residents. This has been a widely watched process
9 in our community and we anticipate heavy public
10 involvement from here to the end of the
11 proceedings.

12 So we would again urge your
13 consideration of their request and the City looks
14 forward to cooperating with you in any way we can.
15 thank you.

16 MR. MONASMITH: Thank you.

17 HEARING OFFICER KRAMER: Any other
18 public comment?

19 PRESIDING MEMBER BOYD: I'll thank
20 everybody for being here and participating in
21 clarification of some of the issues. I do hope
22 between now and the workshop that a lot more
23 clarification can be provided. We will consider
24 all of your requests and deal with the schedule
25 and the petitions as rapidly as we can. I've got

1 two other power plant cases this week personally
2 to work on.

3 In any event, thank you all for being
4 here and I guess that concludes our hearing.

5 HEARING OFFICER KRAMER: On the
6 telephone did you want to make any comments? I
7 meant to include you.

8 DR. ROE: No, thank you.

9 HEARING OFFICER KRAMER: Mr. Chadwick?

10 (No response)

11 HEARING OFFICER KRAMER: He may have
12 left. Okay, thank you, we are adjourned.

13 (Whereupon, at 2:59 p.m., the
14 Hearing 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 Hearing; that it was thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of December, 2008.

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