

PREHEARING CONFERENCE
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 A, FIRST FLOOR
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 21, 2010

9:00 a.m.

Reported by:
John Cota
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COMMITTEE MEMBERS PRESENT

James D. Boyd, Vice Chair and Presiding Member

Anthony Eggert, Commissioner Elect

HEARING OFFICER, ADVISORS PRESENT

Paul Kramer, Hearing Officer

Tim Olson, Advisor

STAFF AND CONSULTANTS PRESENT

J. Mike Monasmith, CEC Project Manager

Richard Ratliff, Staff Counsel

PUBLIC ADVISER'S OFFICE

None

APPLICANT

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

Allan Thompson, Esq.
Ron Ball
representing City of Carlsbad

Rob Therkelson, Consultant
City of Carlsbad

INTERVENORS

Julie Baker
Dr. Arnold Roe
Power of Vision

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

William Rostov, Staff Attorney
Earthjustice
representing Center for Biological Diversity

Kerry Siekmann
representing Terramar Association

ALSO PRESENT

Joseph Garuba, Senior Management Analyst
City of Carlsbad

Rob Simpson (via telephone)
Environmental Consultant

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

2 9:00 a.m.

3 PRESIDING COMMISSIONER BOYD: Sorry for
4 the delay. We've had all kinds of minor delays
5 such as printers without paper and then things
6 like that. So we're finally ready to go. At
7 least we're not delayed due to lightening or
8 electricity or something like that, which plagued
9 me the last two days in another venue out of town.

10 I'm Jim Boyd, Presiding Commissioner,
11 for the Carlsbad Energy Center siting case and I
12 want to welcome everybody to this Prehearing
13 Conference. The Notice pretty well tells you why
14 we're here. In a few moments I will turn the
15 hearing over to our Hearing Officer, Mr. Paul
16 Kramer, but a couple of introductory remarks.

17 First, as all of you or most of you, I'm
18 sure, have known, the Energy Commission Siting
19 Case Committee for this case has consisted of
20 myself as a Presiding Member, and Commissioner
21 Karen Douglas, who you'll notice is not sitting up
22 here today. Sitting with us instead to the left
23 of Mr. Kramer is one of our two new, brand new
24 Commissioners, Commissioner Anthony Eggert. And
25 effective tomorrow at a special meeting of this

1 commission, on a furlough Friday, we will be
2 taking care of a host of a housekeeping issues,
3 including several Policy Committee assignments and
4 reassignments, and changes in Siting Committee
5 Commissioners.

6 So while Mr. Eggert at the moment is not
7 the official Associate Member of this committee,
8 tomorrow he will be at about this time, I'll bet
9 ten after nine he should get to that, and
10 henceforth he will be a member of the committee
11 and you'll see his name on the correspondence, and
12 he will be working with me and Hearing Officer
13 Kramer on the case. So I just want to welcome
14 Commissioner Eggert, (a) to the Commission; this
15 is the first time other than in the hallways to
16 say hello. And also welcome him to this siting
17 case.

18 Just for the record, to my right is my
19 Advisor, Mr. Tim Olson, who also wasn't even in my
20 employ when we started this case. My Advisor on
21 that case started out to be a veteran of this
22 organization named Susan Brown, who has since
23 retired. Tim is a veteran of the organization but
24 is very new to my office and will henceforth be my
25 Advisor on this particular siting case. And I

1 don't think Commissioner Eggert's even had time to
2 sort out what he'll be doing with regard to my
3 Advisor on this case, so I'll just, we'll just
4 leave that for now and see you at the next
5 hearing.

6 With that I just wanted to indicate our
7 desire is to, of course, as the Hearing Notice for
8 Prehearing Conferences in advance of Evidentiary
9 Hearings typically talk about is to sort out the
10 issues and make sure we, and all participants in
11 the case, the Applicant, Intervenor, what have
12 you, are prepared to commence Evidentiary
13 Hearings, which as you have seen already from the
14 Notice are set to take place in the very, very
15 near future over a period of many days.

16 So we are anxious to deal with the case,
17 the many issues, and to render a decision and
18 opinion on this case on a timely basis. It's up
19 to you as much as to us to decide what to
20 determine, let's say, with what turns out to be a
21 timely basis. This Commission, during these tough
22 financial times and furlough Fridays and so on and
23 so forth, has the largest siting caseload, I'm
24 told, in its history. And so we are working and
25 the staff is conducting minor miracles to move

1 lots of paperwork to deal with lots of these
2 cases. And so hopefully you understand and will
3 bear with us. We'll do all that we can to move
4 this case and many others along.

5 With that, Mr. Eggert, would you like to
6 say a word or two? And following that I'll turn
7 it over to our Hearing Officer to provide the
8 introductions for all of the parties.

9 COMMISSIONER EGGERT: Yes, thank you,
10 Commissioner Boyd. And I just want to say, just
11 very quickly, I'm very honored to be recently
12 named Commissioner to the CEC and very much
13 looking forward to working with you, presiding
14 with this case and, I suspect, many other cases
15 over the following year.

16 Just a quick background, I've recently
17 come from the Air Resources Board where I was
18 Senior Advisor to the Chair, Mary Nichols, and
19 worked on a climate policy and have, you know, a
20 really strong interest in clean energy development
21 in the state. And again, you know, looking
22 forward to working with all of you to evaluate
23 this case fairly and efficiently, and hopefully in
24 a timely fashion. So thanks a lot.

25 PRESIDING COMMISSIONER BOYD: Well,

1 thank you, Anthony. I look forward, too. I've
2 known Anthony for years and hosted on position,
3 we've both (indiscernible), very pleased to see
4 you here and very anxious to work with you on this
5 and many other cases, which will be revealed to
6 the public tomorrow.

7 So with that, Mr. Kramer, would you like
8 to take the gavel and proceed from this point?

9 HEARING OFFICER KRAMER: Certainly,
10 thank you. Let's begin with introductions from
11 the, we'll begin with the Applicant.

12 MR. MCKINSEY: John McKinsey with Stoel
13 Rives, representing the Applicant in this
14 proceeding, which is Carlsbad Energy Center LLC,
15 which is a wholly owned subsidiary of NRG Energy
16 Incorporated, which is the parent energy company
17 that owns the existing facility there and is
18 developing the site.

19 I have other people, but I don't know
20 that they're going to speak, so I won't worry
21 about introducing anybody else.

22 HEARING OFFICER KRAMER: Okay.
23 Commission staff?

24 MR. RATLIFF: Dick Ratliff, Counsel for
25 Staff. And with me is Mike Monasmith, the Project

1 Manager.

2 HEARING OFFICER KRAMER: The City of
3 Carlsbad and its Redevelopment Agency who, as I
4 understand it, are going to be appearing as a
5 joint party?

6 MR. THOMPSON: That was the direction I
7 received from the distinguished Hearing Officer.
8 Yes, I'm representing the City of Carlsbad. With
9 me today is Ron Ball, the City Attorney, Joe
10 Garuba, a senior staff member who has been working
11 on this project for some length of time, and Bob
12 Therkelson who is a consultant to the City on this
13 matter.

14 Commissioner Eggert, welcome to the
15 Commission, welcome to this case. And, by the
16 way, if you need some of the staff's help we can
17 provide some temporary help for you if you'd like.

18 PRESIDING COMMISSIONER BOYD: I didn't
19 see Mr. Therkelson in the audience until just as
20 you mentioned him. Welcome, Bob.

21 HEARING OFFICER KRAMER: CURE, I
22 believe, is on the telephone. All right, Gloria
23 Smith, are you there?

24 MS. SMITH: Oh, I'm sorry, I had you --
25 I dutifully had you on mute. I was speaking.

1 Good morning, Gloria Smith for California Unions
2 for Reliable Energy.

3 PRESIDING COMMISSIONER BOYD: Ms. Smith,
4 thank you for understanding the mute thing. She
5 sat with us for four days of hearings last week
6 and understanding what happens when people don't
7 mute their telephones and you get interrupted. So
8 thank you.

9 HEARING OFFICER KRAMER: And to go
10 further on that point, for those of you on the
11 telephone you may have heard when you called in
12 that you press star-six to mute your telephone.
13 That's unless you have a mute button on your phone
14 itself. But if you need to use the system to do
15 that, it's star-six once to mute, one more time to
16 unmute.

17 And if you want to go away from your
18 phone, please just mute your phone. Don't put us
19 on hold because if you're in an office environment
20 especially they quite often play music to the rest
21 of us and that would be disruptive here in our
22 hearing room.

23 PRESIDING COMMISSIONER BOYD: Yeah, it's
24 loud elevator music in the middle of a hearing.

25 HEARING OFFICER KRAMER: I have never

1 seen dancing break out in one of these. So going
2 down the list in the Center for Biological
3 Diversity?

4 MR. ROSTOV: It's Will Rostov
5 representing the Center for Biological Diversity.
6 I'm with their Earthjustice.

7 HEARING OFFICER KRAMER: And the
8 Terramar Association?

9 MS. SIEKMANN: Kerry Siekmann for
10 Terramar.

11 HEARING OFFICER KRAMER: And Power of
12 Vision?

13 MS. BAKER: Yes, Julie Baker, Power of
14 Vision.

15 HEARING OFFICER KRAMER: And Mr. Roe,
16 Arnold Roe is also here, is that correct?

17 DR. ROE: Yes.

18 HEARING OFFICER KRAMER: Okay. Seated
19 at the table, okay. Rob Simpson?

20 MR. SIMPSON: Good morning. Mr. Rob
21 Simpson participating by telephone.

22 HEARING OFFICER KRAMER: Okay, thank
23 you.

24 I don't see a representative from the
25 Public Adviser's Office here. That is likely to

1 be Mr. Jim Davis, and I understand he will be
2 there, down in Carlsbad, for at least the first
3 couple of days to help the public understand our
4 process and work out some of the details of the
5 set aside periods we have for public comment on
6 the first two evenings.

7 Does anyone else on the telephone who wants
8 to introduce themselves? Did I hear a no? Anyone
9 else in the room want to, need to introduce
10 themselves?

11 Okay. Seeing none we'll go forward with the
12 Prehearing Conference. I have a whole list of
13 things to cover and where I sort of worked it out
14 with myself. If I miss something along the way,
15 there will be an opportunity at the end for you to
16 raise any concerns or questions that you felt we
17 haven't addressed. And if it seems to relate to
18 something we just talked about, feel free to raise
19 your concern or question at that time. I think it
20 will help the flow of the discussion.

21 The first point to make is the City in its, I
22 believe it was in its Prehearing Conference
23 Statement, asked that the Committee go and visit
24 several, two or three or more, alternative sites
25 that the City was proposing for consideration.

1 And for resource reasons and other considerations,
2 the Committee is not going to do that. We will
3 rely upon the testimony to understand the nature
4 of those proposals and their features and impacts.

5 And for all parties, but especially the newer
6 parties who are not familiar with our process, I
7 just wanted to make a couple of points, that I
8 think some of them will relate to discussions we
9 will be having a little later.

10 An important distinction in our process is
11 between facts and argument. And I think there has
12 been some confusion, I believe, in some of the
13 testimony about where that line is and how it's
14 drawn. Basically the Evidentiary Hearings exist
15 for us to collect facts either from parties'
16 testimony that's already been submitted, the
17 written testimony, or oral testimony, or testimony
18 that's made in response to cross-examination. And
19 then after the facts are all in and the factual
20 record is closed, then of course the Committee has
21 to make a decision about what those facts mean and
22 apply the law and our various standards to those
23 facts. And that is informed, in part, by your
24 arguments about whether, for instance, an impact
25 is significant or whether we should override an

1 impact or a local ordinance inconsistency that we
2 might find.

3 So you will get the opportunity to argue.
4 That will probably, due to time constraints, be in
5 the form of written briefs that will be filed
6 after the hearing's closed on the 4th or earlier
7 of next month.

8 So if you find yourself making what you
9 believe to be testimony, but what appears to us to
10 be in the nature of an argument, in other words
11 you're saying I don't like the project because
12 whatever your reason is, or I think you need to
13 rule in such and such a way because the facts are
14 such and such. We're likely to cut you off if we
15 find that you're making arguments as part of your
16 testimony as opposed to offering us facts.

17 And there is, of course, an exception to that
18 rule. If an expert witness is testifying about
19 the effect of facts on a topic that is susceptible
20 to expert witness testimony, then we do accept
21 that, that sort of opinion. But the mere opinion
22 of a lay person about a project or somebody who
23 has not established expertise in the topic area
24 will not be accepted.

25 There's two ways we could approach it.

1 We could just let the person make the statements
2 and simply then give it the weight it's entitled,
3 because it's not expert testimony, which would be
4 very little weight. But in the interests of time,
5 both for the Committee and for all of you folks
6 who are going to be sitting through the hearings,
7 we're likely to just say no, that's not going to
8 be of any value to us because of the nature of the
9 -- in air-quotes -- testimony, if you will, and to
10 just say no, please move on to the presentation of
11 factual evidence to us.

12 Another area I suspect is going to come up,
13 based on what the witness lists tell me, is legal
14 opinion. It looks as if we're going to have a
15 couple witnesses who are in essence going to be
16 attempting to offer us legal opinions about the
17 application of CEQA to the facts in this case or
18 the application of the Coastal Act. And, in our
19 opinion, that is best left for the briefs. So you
20 may find us, and it's one of the things I think we
21 need to talk about today, is whether particular
22 witnesses who are basically just offering us legal
23 argument should bother to come and testify at the
24 hearing rather than contribute to one or more
25 parties' briefs in the form of legal argument.

1 When the parties are digging into the
2 facts and attempting to ascertain facts by way of
3 testimony of their witnesses or by cross-examining
4 other witnesses, if it appears to us that the line
5 of questioning is not likely to lead to relevant
6 evidence, that's another situation where we will,
7 mindful of time constraints, probably ask the
8 party, stop them and ask them to justify to us why
9 we should go further down the path they are taking
10 us. In other words, show us it's relevant, the
11 evidence they're seeking. So don't be surprised
12 if that happens.

13 And finally, this applies to public
14 comment as much as anything else, but if another
15 party has asked the question that you want to ask
16 of some witness and you're not trying to get the
17 witness to clarify a previous answer or you're not
18 trying to dig deeper into their answer, but you're
19 just trying to get the same answer that was
20 already given to us in response to the same
21 question, we will probably cut you off there, too.
22 Again, it's in the interests of time, your time
23 and ours, so we consider both to be equally
24 valuable.

25 And given that staff has recommended

1 that we consider finding a LORS -- and that's an
2 acronym you're going to hear a lot in this case,
3 Laws, Ordinances, Regulations, and Standards --
4 violation in the topic of land use, the
5 possibility that the Committee will be asked to
6 and will want to consider overriding that LORS
7 violation is very much in front of us. So to the
8 extent that you can, we would appreciate it if you
9 would offer any evidence you have on the topics
10 that relate to the override, and those are things
11 which I've seen mentioned in the Prehearing
12 Conference Statements such as the benefits of the
13 project and other factors that weigh into whether
14 it's appropriate to override, we would like to see
15 those presented in evidence during the hearings
16 next month to avoid, if possible, the need to
17 conduct further hearings solely on the topic of
18 overrides. Whether we are able to do so or not,
19 we can't tell at this point in time, but we would
20 encourage you to offer that testimony, which I
21 believe you all seem to have in mind already
22 during the hearings next month.

23 Ms. Smith, I note you told me the other
24 day that CURE was not presenting, planning on
25 presenting any testimony and you only had a legal

1 issue that you were going to address in the
2 briefs; is that correct and could you explain that
3 a little further?

4 MS. SMITH: That is correct, thank you,
5 Mr. Kramer. Sort of consistent with your
6 admonition about not mixing up law and facts, we
7 do have a purely legal issue related to the
8 California Coastal Act and it's a pretty straight-
9 forward argument. We don't believe that the
10 California Coastal Commission's participation in
11 this proceeding is discretionary. I know that the
12 staff of the Coastal Commission sent your
13 Commission a letter saying that due to budgetary
14 constraints they were unable to participate at
15 this time. I'm not certain that that is indeed
16 the Commission's position itself and whether or
17 not anybody actually has even discussed this with
18 the California Coastal Commissioners. So that's
19 our first legal issue.

20 And then our related legal issue is to
21 (indiscernible) issue of consensus be -- the
22 Energy Commission staff went on to make a finding
23 that the project would be consistent with the
24 California Coastal Act and we believe, as a matter
25 of law, that there's flaws in that analysis. So

1 it's sort of a two part analysis that we would be
2 briefing.

3 HEARING OFFICER KRAMER: So the second
4 point is about the consistency with the Coastal
5 Act?

6 MS. SMITH: Yes. You know, obviously
7 the overarching issue is just whether or not the
8 Coastal Commission can delegate its authority
9 under, you know, consistent with the Warren
10 Alquist Act and the Coastal Act.

11 HEARING OFFICER KRAMER: Okay. One of
12 the things I'm doing is maintaining a list of
13 topics that we're probably going to ask the
14 parties to address in their briefs. And I know
15 that Mr. McKinsey identified five issues in his
16 Prehearing Conference Statement. And these will,
17 I think these overlap with that but I'll certainly
18 add them to the list and we'll go over that at the
19 end of the hearings.

20 Okay. Anything else, Ms. Smith?

21 MS. SMITH: That's it, thank you.

22 HEARING OFFICER KRAMER: Okay. You
23 indicated that you may have to leave at some
24 point?

25 MS. SMITH: Yes, but not for another

1 half an hour.

2 HEARING OFFICER KRAMER: Okay.

3 MS. SMITH: Thank you.

4 HEARING OFFICER KRAMER: Thank you. My
5 next topic was about the use of witness panels on
6 all or some of the topics. Commissioner Boyd and
7 Mr. Olson and I just went through the Ivanpah
8 hearings last week and we think it's fair to say
9 we were experimenting with this method because we
10 had various variations on the theme in that case,
11 and it seemed to work pretty well to cut down the
12 use of time, which was (indiscernible) bang one
13 more time today.

14 But from the filings I understand that
15 Mr. Rostov, for one, had concerns about the use of
16 it. Could you describe those just briefly for us?

17 MR. ROSTOV: Yeah. My concern is mostly
18 just figuring --

19 HEARING OFFICER KRAMER: Is your mic on?

20 MR. ROSTOV: Pardon, is my mic on.

21 Sorry. Thank you, Mr. Kramer.

22 My concern is mostly with the greenhouse
23 gas analysis. With respect to that one, we wanted
24 to explore the staff's analysis. We think a lot
25 of their analysis was actually concludes or a

1 statements that we could bring out through cross-
2 examination.

3 And we do have a couple witnesses we're
4 bringing forward, but we're bringing them forward
5 for just certain aspects of the issues, not all
6 the issues. So the way we planned on presenting
7 the case was to present our witnesses on certain
8 aspects of it and also then to explore the
9 environmental analysis done by the staff. And we
10 think the best way to do that is through the
11 traditional method, where we have the opportunity
12 to explore exactly what the staff did and then
13 also have the staff cross-examine our witnesses,
14 and also put on the testimony that we think is
15 necessary for the factual development of that
16 section.

17 We don't really have an opinion on the
18 other sections, but on that section we think that
19 would be the best way to do it.

20 HEARING OFFICER KRAMER: Does any other
21 party want to speak to the question?

22 MR. RATLIFF: The staff has no problem
23 with going with the problem hearing process on
24 that issue or really any other issue that parties
25 feel like they want to do that, so --

1 MR. MCKINSEY: I may be slightly
2 confused. I was thinking you were asking about
3 the use of witness panels, not necessarily -- I
4 mean, I think that's still a formal process to
5 some extent.

6 MR. RATLIFF: Yes.

7 MR. MCKINSEY: And, Dick, your answer
8 might have -- I mean, were you thinking that was a
9 reference to the informal procedures that I've
10 also set up?

11 MR. RATLIFF: I think there's a
12 confusion about formal hearings being confused
13 with -- and informal hearings being confused with
14 the use of panels. So I assume we're using
15 panels, but the question is whether we're doing
16 formal hearings. I think Mr. Rostov has suggested
17 he would like to do formal hearings. He wants to
18 cross-examine the witnesses directly and, I think,
19 direct his own witness, and that's entirely fine
20 with us. So, correct.

21 MR. ROSTOV: Rather than having the
22 witnesses have an exchange.

23 HEARING OFFICER KRAMER: Well,
24 Mr. McKinsey --

25 MR. MCKINSEY: So I think, I think

1 both -- I think sometimes it's very time effective
2 and productive to have the group of witnesses as a
3 panel, not only on direct but on cross, but I also
4 think that it's appropriate where a party wants a
5 particular witness that they want to cross
6 particularly, that's fine as well.

7 In our testimony we propose panel
8 primarily because it makes it a much more time
9 efficient process where we can swear all three
10 witnesses in, they make their presentation.
11 Likewise, we propose cross-examining several
12 groups as a panel, as well. And again, we did it
13 for the reason, I think, it makes it more time
14 effective. But we also don't have any issues if
15 somebody wants to cross-examine a particular
16 witness of ours, particularly, you know, not in a
17 panel that's fine.

18 HEARING OFFICER KRAMER: And I think
19 we've found that it's easier to appreciate and
20 understand the arguments if they are, if a
21 particular subtopic is discussed serially, you
22 know, rather than one party putting on a witness
23 and then 30 minutes or an hour later we hear a
24 response to what that witness said from another
25 party's witness.

1 Mr. Rostov, it sounds like you, there
2 are two aspects to the idea. One is that multiple
3 witnesses are seated at once and I don't know that
4 I'm hearing your concern about that. But it
5 sounds like you're concerned about your ability as
6 the advocate to be able to ask a series of
7 questions of your witness or another witness.

8 MR. ROSTOV: Mostly of the other
9 witnesses, the staff witnesses. And it is
10 unclear, the staff has -- it's hard to tell on the
11 witnesses the staff has on the greenhouse, they
12 have two people who wrote the application and now
13 they seem to be proposing MacIntosh and McClary,
14 so they have four people.

15 And those four witnesses are going to be
16 talking about slightly different things, and they
17 can all sit up there at the same time, I assume,
18 but certain questions would probably be directed
19 at one versus all four.

20 MR. RATLIFF: And that's fine, I mean.
21 But that's what we intend to do is put on all of
22 our witnesses at once. I think there are five.
23 And it's quite okay if we go ahead and do it with
24 the formal hearing process and cross-examination,
25 which I think is what Mr. Rostov is suggesting

1 that he wants to do.

2 But I think, I think what you -- I think
3 you're suggesting maybe we would put all the
4 witnesses from all the parties up at once, and I
5 don't think that's what Mr. Rostov is suggesting,
6 nor do I think that's necessary. We can go
7 sequentially.

8 COMMISSIONER EGGERT: Can I ask just a
9 question of clarification? In terms of the
10 process that's being proposed, the primary
11 advantage is sort of, as he suggested, the serial
12 nature of the discussion on a singular topic, but
13 that could allow for either group, a smaller or
14 larger group, addressing that issue sequentially
15 so that you could have -- I think, it sounds like
16 we could potentially address both issues that you
17 would have time and advantage of having multiple
18 on an issue and then sequentially wanted to focus
19 on a subset of that, you could do that as part of
20 this panel, this witness panel process. Is that
21 correct?

22 HEARING OFFICER KRAMER: Yes, I think
23 so. We have the flexibility to do that.

24 PRESIDING COMMISSIONER BOYD: I think
25 our experience with the (indiscernible) hearing

1 was that that meets everyone's needs. The jury is
2 still out in my mind as to whether we, the net
3 result was a savings of time because those were
4 four extraordinarily long days for those. And I
5 see faces in the room who were here with us.

6 But having had that experience, I do
7 think the point about having a fairly healthy
8 discussion of a single topic in a close-knit,
9 sequential way does help us understand the issues
10 better. And I believe we accommodated all the
11 cross-examination and recross aspects in areas
12 where people wanted a little bit more about
13 legalistic approach.

14 I think it, I think it will work
15 depending on it being more informative and would
16 not sign a petition to the effect that it saves
17 time. But anyway, I think the experiment was
18 worth the effort.

19 HEARING OFFICER KRAMER: Okay. Well,
20 Mr. Rostov, the way it worked the last time was
21 that, let's say you had two witnesses. You could
22 offer them as a panel and you would have the first
23 crack at asking your opening questions, and then
24 the other parties would then cross-examine them.

25 And at times we even had some of the

1 other experts asking questions, which I think was
2 a value to some of the attorneys because in some
3 cases their experts could more precisely
4 articulate the questions. There were some cases
5 where they weren't doing so well, but it doesn't
6 preclude you from asking all the questions you
7 need to of both your witnesses and the other
8 parties' witnesses.

9 MR. ROSTOV: Well, I would propose first
10 that the staff goes forward with their witnesses
11 first because essentially they have the burden.
12 And, second of all, one of our witnesses, there is
13 a rebuttal witness to one of the staff's
14 witnesses.

15 And so, I mean, I guess the way I was
16 envisioning is the staff could put on all four but
17 the staff has broken down their testimony into a
18 couple of different topics. So if they're all
19 four up there, you know, maybe one or two people
20 are answering some of the questions first and
21 going forward. And then we are happy to put on
22 our testimony and have cross-examination on it,
23 but our cross, I mean our testimony is on specific
24 issues so we would just want the cross to be
25 limited to issues that our witnesses are

1 testifying to. I think our crosses are going to
2 be broader than our testimony, is what I'm trying
3 to say, if that makes sense.

4 HEARING OFFICER KRAMER: Okay. And part
5 of that in the panel format is simply your
6 witnesses need to be self-disciplined enough to
7 not feel obligated to answer questions that are
8 outside of their field of expertise. Some
9 witnesses don't do so well in that regard. But
10 not everybody needs to talk, to answer every
11 question.

12 But we did find it helpful that -- with
13 the panel and especially with some of the less
14 experienced parties, they didn't know who to ask
15 the question of so they could put the question out
16 on the table and the appropriate person would grab
17 the question and answer it, which does avoid a lot
18 of time, you know, just fumbling around trying to
19 decide who should answer the question. And
20 especially if that person has left the stand, the
21 witness stand at that point, you have to bring
22 them back up and, you know, just procedurally it
23 would make us -- this is more effective.

24 But I can assure you that you'll have an
25 opportunity to ask questions of any witness, you

1 know, to tell the case the way you want to, and
2 then the other parties, or in the case of other
3 witnesses, you will have an opportunity to cross-
4 examine them as well.

5 So anything more on the topic of witness
6 panels?

7 I will say that given the number of
8 witnesses in some of these topic areas, it would
9 probably be difficult to have, to seat a panel of
10 ten or 12 people all at once. So we may have --
11 but there will be some topics where we can
12 probably have the two staff witnesses and one
13 applicant's witness and one or two rebuttal
14 witnesses from the other parties all seated
15 together.

16 Mr. Thompson?

17 MR. THOMPSON: I haven't had time to
18 digest your latest comment where you'd have staff,
19 applicant, and other parties on a panel all
20 speaking. That sounds cumbersome to me, but I
21 haven't had time to fully digest it.

22 The City is seeing the printout you did
23 last night and the groupings that you have for
24 various panels. And we would accede to this with
25 the caveat that everyone recognize that

1 redevelopment is different from land use in the
2 City. It has a different mandate. One is from
3 the state, one is from the who knows on the city
4 laws. It has different conformance issues. It
5 has different functions and responsibilities.

6 Now, having said that, if it pleases the
7 Committee to put them together on a panel we will
8 accede to that, but they are different in our
9 mind.

10 HEARING OFFICER KRAMER: Well, are you
11 suggesting that -- you didn't suggest the topic
12 board so I've had to make some, you know,
13 preliminary editorial decisions here. But I don't
14 mean this to be, this draft and worksheet to be a
15 final decision. Are you suggesting they should be
16 speaking to some other topic?

17 MR. THOMPSON: We would, I think the way
18 we envisioned it, and hopefully it was in our
19 Prehearing Conference, was to have a separate
20 topic on redevelopment with Mr. Kane and his
21 (indiscernible).

22 HEARING OFFICER KRAMER: Okay. But
23 fitting it into the pigeonholes that the
24 Commission uses, which are basically the subjects
25 as they're arranged in the final Staff Assessment,

1 does it properly fit within some other pigeonhole
2 in land use?

3 MR. THOMPSON: I think that's the best
4 pigeon we have.

5 HEARING OFFICER KRAMER: Okay. And I
6 think we're open to the idea of breaking land use
7 down into a couple of topics. Could be the
8 other -- could be redevelopment and then other
9 land use issues. Does that make more sense?

10 MR. THOMPSON: That would, we would
11 prefer that, yes.

12 HEARING OFFICER KRAMER: Does any other
13 party object to that approach?

14 Okay. So then if you turn to the
15 Witness Worksheet for Land Use on page 4, did Lisa
16 Hildabrand -- oh, let's see, I need to break out
17 then the witnesses for -- which witness,
18 Mr. Thompson, would be on the redevelopment agency
19 question?

20 MR. THOMPSON: It would be Murray Kane
21 and Debbie Fountain.

22 HEARING OFFICER KRAMER: Okay, then --

23 MR. MCKINSEY: I think the applicant
24 would probably that Mr. Kane's testimony almost
25 describes itself as being exactly the type of

1 legal argument that you indicated you didn't want
2 to receive. So, I mean, that was a point I'm
3 going to raise when we hit that, that I didn't
4 know if that was really appropriate.

5 HEARING OFFICER KRAMER: Well, he may
6 have a fact or two, so we'll give him, we'll give
7 him a shot, but --

8 MR. MCKINSEY: Okay. But I'm just
9 reading the description and it just says, "Will
10 testify to the legal framework and goals of
11 California Redevelopment law."

12 MR. THOMPSON: He does also testify to
13 how they pertain to the particular Redevelopment
14 Agency within Carlsbad.

15 HEARING OFFICER KRAMER: So how much
16 time will those two need, with 20 minutes I put
17 down here do you think or --

18 MR. THOMPSON: You can break the 20 into
19 two tens if you'd like. The 20 -- let me make
20 this clear. What I tried to do in the
21 presentation of witnesses was to keep it as short
22 as possible, recognizing two things: number one,
23 that the timing that you've spoken of a number of
24 times today; and also the issue of no surprises.

25 And on that last point I have attended

1 hearings over the past month in this very room
2 where under the heading of offering an overview,
3 witnesses have gone on for an hour, and hour and a
4 half. And I would ask this Committee not to let
5 that happen.

6 So getting back to what we did, we
7 allotted five minutes per witness for the
8 presentation, the two-minute overview of their
9 testimony and presentation under, per cross.

10 MR. RATLIFF: And we're confident that
11 Mr. Thompson can caution his witness not to focus
12 on the 50 percent of his testimony that was about
13 the, whether or not the warrant office staff
14 preempts the City's Redevelopment authority and so
15 forth.

16 MR. THOMPSON: Is this an admonition to
17 the staff to stay on point?

18 MR. RATLIFF: We will do our best.

19 HEARING OFFICER KRAMER: Okay. I think
20 then with regard to witness panels, we will
21 attempt to use witness panels wherever possible,
22 mindful of, then, the need to make sure that each
23 party has an opportunity to question their
24 witnesses before they're offered to others, and to
25 cross-examine all other parties' witnesses

1 within -- basically within the time frames that
2 they've estimated in their Prehearing Conference
3 Statements.

4 If I'm keeping people on track, I can't
5 imagine that there will be a problem with anybody
6 not being able to ask all the questions they need
7 to, and we will again, as I said earlier, we'll
8 try to eliminate fishing expeditions where it
9 doesn't appear to, that any particular purpose
10 will inform the Committee's decision is being
11 served.

12 So let's move on now to the issues, any
13 issues that the parties or the Committee have with
14 some of the prefiled testimony.

15 MR. ROSTOV: Excuse me, Mr. Kramer. Can
16 I ask one more question, please?

17 HEARING OFFICER KRAMER: Sure.

18 MR. ROSTOV: And I might be jumping
19 ahead. On this worksheet there's just corrections
20 or issues that, you know, in terms of witnesses
21 that are not on here. Are we going to do that
22 later or is this the time to do that or --

23 HEARING OFFICER KRAMER: No, we'll do it
24 a little later.

25 MR. ROSTOV: Okay.

1 HEARING OFFICER KRAMER: Because we,
2 we're going to have to divvy up our, all the
3 topics among the days.

4 MR. RATLIFF: Mr. Kramer, I'm not sure
5 of the timing but one of Mr. Rostov's suggestions
6 was that we would do matters relating to
7 greenhouse gas impacts and alternatives on the
8 same day or in quick succession at least. And
9 that's consistent with our desires, as well. We
10 have --

11 HEARING OFFICER KRAMER: We will get to
12 that.

13 MR. RATLIFF: Okay.

14 HEARING OFFICER KRAMER: It's certainly
15 on the list. Testimony: both Terramar and Power
16 of Vision supplied testimony where in large part
17 they've taken a paragraph or two, quoted from the
18 Final Staff Assessment, given that an exhibit
19 number, and then in some cases they ask questions,
20 in other cases they provide comment. Perhaps some
21 of it is actually factual.

22 And my interest in this is only to
23 clarify the nomenclature of the numbering of the
24 exhibits at this point, rather than to dig into
25 the details of, you know, and pick out the

1 testimony from the argument. But it occurs to me
2 that we need to cut down on a number of exhibits
3 here and it may be -- the answer to the question
4 may be as simple as relabeling the whole package
5 as one exhibit because it certainly, there is no
6 need to refer to a paragraph FSA and give it a,
7 make it a new exhibit. The FSA is going to be
8 filed by staff as an exhibit and any party who
9 wants to talk to it can refer to it by exhibit
10 number and page number within that exhibit.

11 Today is not the time to try to rule on
12 which portions of this might be inadmissible for
13 some reason or another. But in the first instance
14 can any, do any of the parties wish to comment
15 about whether it would be appropriate simply to
16 redesignate, for instance, Terramar's exhibits 300
17 to 399 as -- actually we only go up to 375, and
18 there are a couple in here that I see at the end
19 are testimony. But to renumber those so that we
20 have perhaps one or only a couple of documents and
21 exhibits numbers rather than 75, 76 I guess.

22 MS. SIEKMANN: I don't understand your
23 problem with it.

24 HEARING OFFICER KRAMER: Well, Exhibit
25 301 is a quote from the FSA. That's not a

1 legitimate exhibit.

2 MS. SIEKMANN: Well, the reason I put
3 the quote there is so that you knew what I was
4 referring to.

5 HEARING OFFICER KRAMER: Okay. Well,
6 isn't that a question that you should be asking by
7 way of cross-examination?

8 MS. SIEKMANN: Sometimes they are and
9 sometimes they're not. But the directions were so
10 unclear, this was the best that we could do for
11 the fact that this the absolute first hearing that
12 I've ever been to and there's just not anything
13 out there to help know how to put it together. So
14 we did our very best.

15 HEARING OFFICER KRAMER: Well, I
16 understand that. We're not trying to penalize
17 you, we're simply trying to organize this in a
18 coherent way.

19 MS. SIEKMANN: I think it's coherent.
20 For everyone who's read it they find it very
21 coherent. You just take the quote and there's
22 testimony -- and I realize that there is testimony
23 and rebuttal put together, and I have made myself
24 kind of a key for that afterwards when I found out
25 that, you know, that the testimony and the

1 rebuttal were supposed to be separated. We just
2 didn't understand exactly how to do it so we did
3 the best we could. And I can certainly separate
4 the testimony from the rebuttal questions, either
5 by reprinting it that way or giving you the key
6 that I have for all the numbers and what parts are
7 rebuttal and what parts are testimony.

8 HEARING OFFICER KRAMER: Well, at this
9 point, unless the party wants to raise an
10 objection I don't have any concern about rebuttal
11 versus opening testimony.

12 MS. SIEKMANN: Okay.

13 HEARING OFFICER KRAMER: That's a timing
14 issue and all the time limits have passed.

15 MS. SIEKMANN: Okay. And I did that in
16 my time limits. I separated it that way because
17 at that point I understood so I separated the
18 times for the portions that are testimony and the
19 portions that are rebuttal.

20 HEARING OFFICER KRAMER: Okay. But
21 exhibits are normally --

22 MS. SIEKMANN: Well, now I know after
23 seeing all the, you know, people who are in the
24 industry, I understand. But at the point when I
25 was writing it there was -- I had nothing to refer

1 to.

2 HEARING OFFICER KRAMER: Okay. So then
3 what is, would the problem be with just calling
4 this Exhibit 300 testimony for Intervenor
5 Terramar? This has no date on it, so --

6 MS. SIEKMANN: Well, if that works
7 better for you, I have no problem with that.

8 HEARING OFFICER KRAMER: Yeah, my staff
9 is going to go crazy trying to create an exhibit
10 list with all these --

11 MS. SIEKMANN: That's fine, no problem.

12 HEARING OFFICER KRAMER: -- all these
13 long quotes. And also it's going to be confusing.

14 Okay. Well, then let's -- we will put
15 this in the exhibit list as Exhibit 300.

16 MS. SIEKMANN: Okay.

17 HEARING OFFICER KRAMER: And then you
18 can refer, you have paginated it so --

19 MS. SIEKMANN: And so you can just use
20 those as subs, 300 sub 301, so you know what area
21 they belong in.

22 HEARING OFFICER KRAMER: Well, you just
23 referred to it, yeah you could say the comment or
24 whatever delineated as Exhibit 365, for instance.

25 MS. SIEKMANN: Okay.

1 HEARING OFFICER KRAMER: That sort of
2 thing. And I noticed you do have two sections of
3 testimony at the back.

4 MS. SIEKMANN: I actually have three
5 witnesses.

6 HEARING OFFICER KRAMER: Okay. Visions
7 at -- it's not identified but you have Bailey
8 Noble --

9 MS. SIEKMANN: Bailey Noble and Dianne
10 Wist.

11 HEARING OFFICER KRAMER: -- Dianne Wist.
12 And who is the author of the Exhibit 373 and it's
13 called "Vision?"

14 MS. SIEKMANN: Oh, that's Catherine
15 Miller. She's the other Intervenor with Terramar.

16 HEARING OFFICER KRAMER: Okay. So that
17 page 45 of what is now Exhibit 300 was, is the
18 testimony of Catherine Miller. Is that what
19 you're telling us?

20 MS. SIEKMANN: Yeah, 373. Yeah, that's
21 Catherine Miller.

22 HEARING OFFICER KRAMER: Yes, okay.
23 Okay. And then we have the same issue with regard
24 to the testimony of Power Vision. The microphone
25 right in front of you, Dr. Roe, works.

1 DR. ROE: Thank you. Mr. Kramer, I
2 don't understand your problem with the breakdown
3 of the various topics into different exhibits.
4 From my perspective, that allows me to keep track
5 of the topics that we wanted to come before the
6 Committee and --

7 HEARING OFFICER KRAMER: Well, but what
8 you have in there by and large is not an exhibit,
9 it's just a comment or question. Exhibits are
10 meant to be documents. It could be a, you could
11 have written out a narrative, you know, summary of
12 your testimony for instance as parts of -- well,
13 the staff has written a very long narrative called
14 Final Staff Assessment. I don't suggest that you
15 give yourself a deadline, you know, an order to
16 write that many pages but -- and what I'm
17 proposing is not to eliminate anything that you've
18 written, although the parties may argue about its
19 relevance or its import, but simply to get the
20 numbering scheme to be more rational and give your
21 document, just as we have for Terramar, just one
22 number.

23 If you look at the exhibit list that I
24 sent out last night, it just -- when we take
25 headings from the, you know, the exhibits you've

1 delineated, it just is not informative, it's more
2 confusing. I think it will be better, it will be
3 better for the Committee certainly to treat your
4 submittal as one exhibit rather than multiple
5 exhibits.

6 DR. ROE: Well, we attempted to break it
7 down according to the major topic descriptions you
8 have here so that we could keep track of where the
9 testimony was relevant. And if you redesignate it
10 with just a single number, certainly we would
11 prefer that there be some headings retained so
12 that we keep track of when a particular, what we
13 call previously exhibits, pertain to whether it's
14 project description or project alternatives or
15 visual uses and so forth.

16 HEARING OFFICER KRAMER: Well, we're not
17 talking about changing the text. So all those
18 markers that you have in there to help you will
19 still exist.

20 DR. ROE: Okay.

21 HEARING OFFICER KRAMER: They're just
22 not --

23 DR. ROE: So you retain the markers, but
24 instead of calling them an exhibit you call it
25 subsection A-B-C-D.

1 HEARING OFFICER KRAMER: Yeah, you could
2 just say that the comment or the notes delineated
3 as Exhibit number --

4 DR. ROE: Well, see, how do I refer to
5 it then if you've eliminated the individual
6 descriptions of exhibits?

7 HEARING OFFICER KRAMER: Well, you could
8 say the -- I've forgotten, which number do your
9 exhibits begin with?

10 MS. BAKER: Seven hundred.

11 HEARING OFFICER KRAMER: Okay. So you
12 could say the comment delineated as Exhibit 710 on
13 page whatever it is of Exhibit 700.

14 DR. ROE: Oh, so you'll keep the same --

15 HEARING OFFICER KRAMER: Right.

16 DR. ROE: -- numbers, 710-711.

17 HEARING OFFICER KRAMER: Yeah, but I'm
18 just not going to list it, I'm not going to list
19 each of those comments --

20 DR. ROE: Okay.

21 HEARING OFFICER KRAMER: -- in the
22 exhibit list.

23 DR. ROE: Okay, I don't, I don't --
24 fine.

25 HEARING OFFICER KRAMER: Works for you?

1 DR. ROE: No problem.

2 HEARING OFFICER KRAMER: Okay, good.

3 All right. Any other issues with any of the other
4 testimony or with details of those two parties'
5 testimony aside from the numbering scheme?

6 Okay. Witness qualifications: I think
7 I've already basically suggested where the
8 Committee is on the question of CEQA and Coastal
9 Act experts giving us long legal arguments in the
10 form of testimony. I would propose, unless a
11 party wants to get into the details today, to
12 address those as they come up during the
13 testimony, with the expectation that the parties
14 will be working with their witnesses to focus
15 their testimony on factual matters or matters that
16 are appropriately addressed by a qualified expert
17 other than a lawyer. Do the parties wish to
18 comment on those?

19 DR. ROE: Yes.

20 HEARING OFFICER KRAMER: Go ahead,
21 Dr. Roe.

22 DR. ROE: Yes, perhaps you can clarify
23 that issue. In our opening testimony we made
24 reference to the CEQA title, I believe, FDOC in
25 regards to our power plant efficiency. I'm not an

1 attorney who can testify in regard to CEQA issues,
2 but there is a statement in there about the
3 necessity to look at the issue of power plant
4 efficiency in which I consider myself an expert.

5 So the question is can I testify on that
6 issue or do you want that in a brief?

7 HEARING OFFICER KRAMER: Well, if you're
8 going to be talking about the facts or expert
9 opinions about --

10 DR. ROE: Yes.

11 HEARING OFFICER KRAMER: -- the
12 efficiency of the plant, I think that's going to
13 be different than just making a legal argument
14 about whether CEQA's been satisfied or not.

15 DR. ROE: So there are two aspects to
16 that?

17 HEARING OFFICER KRAMER: And we
18 encourage the testimony from all kinds of experts,
19 except lawyers, because we've got plenty of them
20 in the room. And, you know, the Committee makes
21 its own legal determinations. It's our job to
22 apply the law to the facts.

23 You're certainly allowed in your briefs,
24 again, to tell us how you think we should do that
25 and give us legal reasons and citations. But

1 that's not the proper use of testimony time.
2 Testimony is to develop facts about which we will
3 then argue how the law applies to this. But you
4 will argue, we will decide.

5 MR. RATLIFF: Commissioner, we have no
6 question about Dr. Roe's expertise on power plant
7 efficiency, but I just wanted to check. Have you
8 filed testimony on that issue or --

9 DR. ROE: Again, being unaware of the
10 procedures, we raised the question and we received
11 no -- directed at staff actually, and we received
12 no response to that question that we consider
13 satisfactory, so --

14 MR. MCKINSEY: I've got a comment here
15 and they asked (indiscernible) to come back, I
16 think, to the exhibit numbering question. The
17 addendum filed by Power of Vision in and of itself
18 probably -- and that's where you'll find what
19 you're looking for, is where this comment is that
20 he's referring to. And that was the addendum they
21 served yesterday and it reads a little bit like
22 another exhibit.

23 I mean, in other words -- and that's
24 what he's referring to is in here there's an
25 argument about power plant efficiency. It refers

1 to what was previously Exhibit 736, so it's back
2 in that, what is now Exhibit 700. But this
3 document in and of itself, that's an example. It
4 looks like testimony and might really be correct
5 to call this another exhibit for Power of Vision.
6 And that's where this argument is on power plant
7 efficiency, for instance. So I'm suggesting maybe
8 that this should be 701. It is a separate
9 document, the Addendum to Prehearing Conference
10 Statement, and it really reads like an exhibit.

11 HEARING OFFICER KRAMER: Okay. So
12 that's the Addendum for the Prehearing Conference
13 Statement?

14 MR. MCKINSEY: Yes. Power of Vision
15 Addendum to Prehearing Conference Statement. So I
16 would suggest that should be an exhibit, and that
17 way that testimony is in there.

18 HEARING OFFICER KRAMER: Okay. And I
19 hear that you're not objecting to receiving that
20 today?

21 MR. MCKINSEY: No.

22 HEARING OFFICER KRAMER: Mr. Thompson,
23 do you want to say something?

24 MR. THOMPSON: We are fine with the
25 direction to contain, to the extent that we can,

1 the expert witness testimony that we have to the
2 facts presented with the caveat statement that
3 there is no reason why attorneys cannot be expert
4 witnesses and they function that way at many, many
5 proceedings. But we understand where you're
6 heading. Thank you.

7 HEARING OFFICER KRAMER: Yeah. I think
8 it's more a matter of where we're trying to put
9 legal arguments in their place, which is probably
10 in the briefs. If we, and if we opened up the
11 time for everybody to start making their legal
12 arguments, we'd probably be -- well, it would
13 probably use up a lot of the week. We've already
14 dedicated to the solicitation of facts.

15 MR. ROSTOV: Mr. Kramer, I would like to
16 second what Mr. Thompson said. I do think there
17 are certain situations that are amidst questions
18 of facts and law, and for cumulative impacts, for
19 example, you could have the questions about what's
20 the proper -- not what is the proper step of
21 accumulative impact analysis as opposed to did
22 they do accumulative impact analysis. So I think
23 there is some room for question, factual questions
24 along those lines.

25 And also on, for renewables we put in a

1 lawyer who has renewable policy experience. I
2 mean, we're not putting him in necessarily as a
3 lawyer, we're putting him in as professional
4 experience with renewables. So the fact that he's
5 a lawyer doesn't mean he shouldn't be able to
6 testify to factual issues within his professional
7 expertise.

8 So with those two qualifications I think
9 lawyers should be able to testify.

10 HEARING OFFICER KRAMER: No, I
11 understand, you know, if it's a mixed question of
12 fact and law. But we're going to be more
13 interested in the factual part than we are in
14 the -- and we're not going to accept a legal
15 conclusion offered as expert testimony as binding
16 on us in any sort of way.

17 And we congratulate your witness for
18 escaping from the practice of law.

19 MR. RATLIFF: I think Mr. Rostov's
20 comment is actually illustrative of the
21 difference. I mean, his witness is testifying on
22 things that clearly are issues of fact having to
23 do with RPS and the availability of alternatives.
24 And the testimony of the City's witness, at least
25 I think the one you're referring to, is more like

1 a sequel or a critique of an environmental
2 document, something that many of us have done
3 before, but doesn't really constitute expert
4 testimony.

5 HEARING OFFICER KRAMER: Okay. So are
6 any of the parties planning on objecting to the
7 expert bonafides of any of the witnesses that have
8 been identified?

9 MR. SIMPSON: Good morning, this is Rob
10 Simpson.

11 HEARING OFFICER KRAMER: Okay, go ahead,
12 Mr. Simpson.

13 MR. SIMPSON: I'm not sure where my
14 concerns fit in, so maybe if I can lay them out
15 now then, if there is a wrong section, you can
16 guide me.

17 I'm at somewhat of a loss. My interest
18 is primarily in the protections of Clean Air Act.
19 My understanding was that San Diego Air Pollution
20 Control District had the authority to administer
21 the Act under its state implementation plan.

22 I filed an appeal of what was identified
23 by the District as their final determination, had
24 been biased. I alleged that the District failed
25 to consider my and other comments regarding its

1 preliminary determination (indiscernible), failed
2 to provide appropriate (indiscernible) actions
3 and, as a substitute, conditions of the action,
4 finally, the Clean Air Act.

5 The CEC staff participated in this
6 proceeding. They opined that the hearing board
7 did not have the authority to decide this matter
8 based on the reclusive nature of the Warren
9 Alquist Act. The Air District indicated that the
10 District would be responding to comments and that
11 an Air Quality workshop would be conducted. The
12 hearing board accepted these arguments and
13 dismissed the appeal. The parties summarized this
14 in their status report to the Commission.

15 A workshop was conducted, apparently, on
16 December 3rd. The notes for the workshop stated,
17 "This notice is to inform you that the Energy
18 Commission staff will hold a workshop to receive
19 comments on the SSA as it relates to air quality
20 and public health. San Diego Pollution Control
21 District will be in attendance and will comment on
22 their final terms of compliance." But the only
23 record of this workshop that I've found on the CEC
24 docket is a Power Point presentation by the Air
25 District. I found no indication that the

1 Commission responded, considered, or even received
2 comments. I found no record of CEC documents that
3 the Air District responded to comments on the
4 Preliminary Determination of Compliance or the
5 Final Determination of Compliance.

6 This is not an unfamiliar occurrence.
7 It is remand of the Russell City (indiscernible)
8 permit the EPA upheld. The Air District's almost
9 complete reliance upon the CEC's certification
10 related to (indiscernible) procedures to satisfy
11 the District's notice obligations regarding the
12 draft permit resulted in a fundamentally
13 (indiscernible). By piggybacking on the CEC's
14 outreach, the District failed to exercise the
15 supervision over the CEC to ensure that the latter
16 (indiscernible) specific section 124.10 mandate.

17 The efficacy of the notice list used by
18 the CEC to handle public comments by the CEC, and
19 the conduct of a public workshop by the CEC, was
20 likely District's representation during the PSC
21 comment period at which the fully issues were
22 discussed with no record of public comments made,
23 all demonstrate that the CEC really folded to PSC
24 in those proceedings in the ongoing process
25 without (indiscernible) 124 requirements for

1 public participation were met.

2 Now, the EPA was referring to a PSC
3 permit in its remand, but the new source for
4 (indiscernible) Clean Air Act has similar notice
5 of public participation rights as does CEQA,
6 California Environmental Quality Act. The Clean
7 Air Act, as far as public notice, the project's
8 effect on air quality. The standard is a
9 comparison to National Air Quality standards for
10 the area. The common, best description of the
11 project's effects pursuant to CEQA would also
12 expect this is a minimum standard for public
13 notice.

14 But the District and the Commission
15 (indiscernible) these standards and used them as a
16 base for their (indiscernible) Table 22 on page 55
17 of the 838-page assessment.

18 HEARING OFFICER KRAMER: Mr. Simpson --

19 MR. SIMPSON: Yeah?

20 HEARING OFFICER KRAMER: -- let me stop
21 you there for a moment.

22 This is the Prehearing Conference. It
23 sounds to me that, like you're making legal
24 arguments about -- and this isn't clear to me --
25 about the adequacy of the Air District's process

1 or the adequacy of the Commission's process.

2 Could you clarify that for me?

3 MR. SIMPSON: Sure. I find no record on
4 the CEC docket of the Air Quality workshop. I
5 find no records on the CEC docket of
6 considerations of comments made during the
7 Preliminary Determination of Compliance. Without
8 that information, without response to comments,
9 which has been the basis for these concerns, the
10 failure to respond to comments and the failure to
11 provide adequate public notice of these actions,
12 it's hard to understand who's administering the
13 Clean Air Act. Has the CEC taken authority over
14 the Clean Air Act with respect to California power
15 plant licensing? Where does an appeal of a PDOC
16 at CEC go? And would it be considered --
17 consideration of public comments in this
18 proceeding?

19 HEARING OFFICER KRAMER: Well, you said
20 you've already attempted to appeal the PDOC,
21 correct, so --

22 MR. SIMPSON: PDOC, yeah.

23 HEARING OFFICER KRAMER: Okay. So then,
24 so you obviously or you must know, then, the
25 proper procedure.

1 MR. SIMPSON: Well (indiscernible) and I
2 followed the proper procedure when I appealed it
3 to the industry, but the CEC said that was not the
4 proper procedure.

5 HEARING OFFICER KRAMER: Okay. Well,
6 you're making legal arguments it sounds like
7 and --

8 MR. SIMPSON: Well, I'm trying to
9 respond to your question.

10 HEARING OFFICER KRAMER: Okay. Well,
11 and my question was prompted by my assessment that
12 you had been making legal arguments before I asked
13 it.

14 You did not file a Prehearing Conference
15 Statement or offer any evidence, sharing evidence
16 with the other parties in this case. So you're
17 not going to be able to offer any testimony. And
18 you also did not indicate any desire to cross-
19 examine any other parties' witnesses, so your
20 ability to cross-examine witnesses at the hearing
21 is going to be either completely eliminated or, if
22 you can make it a reasonable argument for some
23 very limited cross-examination, we may allow that
24 to you.

25 But are you intending, as is CURE, to

1 make legal arguments in briefs that follow the
2 hearing? Is that where we would best address
3 these legal concerns that you appear to be
4 raising?

5 MR. SIMPSON: I don't know what CURE's
6 position is, so I couldn't answer on that.

7 HEARING OFFICER KRAMER: You might have
8 come into the call late. They said that they did
9 not have any factual issues to raise, they would
10 not be offering any testimony or cross-
11 examination. They, like you, did not file a
12 Prehearing Conference Statement.

13 So I'm just trying to figure out where
14 you think you are in the case so that then we can
15 make sure that you understand where we think you
16 are, and to avoid confusion and unnecessary stress
17 for you and for the other parties at the hearings
18 that will come in a week and a half.

19 So let me ask you again. Are you
20 planning on offering any evidence at the hearings?

21 MR. SIMPSON: My understanding from the
22 hearing with the Air Board that the CEC
23 participated in, that the Air Board would be
24 submitting responses to the public comments to the
25 CEC. I haven't found that record. My

1 understanding was the CEC participation as the
2 hearing board was that the CEC had notice of the
3 hearing. I found no records that CEC has taken
4 notice of that hearing for this proceeding.

5 I would ask that the CEC take
6 administrative notice of the appeal of the PDOC.
7 I would like to join the other Intervenors in
8 their Prehearing Conference Statements.

9 HEARING OFFICER KRAMER: Denied. You
10 have to have done that some time ago.

11 MR. SIMPSON: I see (indiscernible)?

12 HEARING OFFICER KRAMER: Because you
13 missed the deadline and it's unfair to the other
14 parties.

15 DR. ROE: Mr. Kramer --

16 HEARING OFFICER KRAMER: Dr. Roe?

17 DR. ROE: -- in our Prehearing
18 Conference Statement we raised the same issue
19 about the way the appeal by Mr. Simpson was
20 handled. And if there's no other venue for
21 Mr. Simpson to present this testimony, we'd like
22 to have him then participate as part of our
23 witness in this proceeding.

24 HEARING OFFICER KRAMER: Well, you're
25 proposing to add a witness at a late stage in the

1 proceeding and it's not clear to me that he has
2 any factual testimony to offer, you know, again
3 drawing the distinction between facts and
4 argument. It does sound as if Mr. Simpson has
5 legal issues that he wishes to raise and he can do
6 that, he is not precluded as is you're not
7 precluded from filing briefs following the
8 conclusion of our hearings.

9 But at this late stage, I am -- let me
10 ask. Does any, do any of the other parties object
11 to the addition of Mr. Simpson as a witness at
12 this stage?

13 MR. RATLIFF: A witness pertaining -- we
14 have no prefiled testimony, we have no
15 demonstration of -- I'm sorry?

16 HEARING OFFICER KRAMER: Is your mic on?

17 MR. RATLIFF: Yes, it is.

18 HEARING OFFICER KRAMER: Okay.

19 MR. RATLIFF: I can't be heard in any
20 case.

21 PRESIDING COMMISSIONER BOYD: Pull it
22 closer, please.

23 MR. RATLIFF: We have no prefiled
24 testimony so, yes, we object.

25 MR. MCKINSEY: Applicant objects. I

1 don't even think it's very clear, as you've noted,
2 that there's even any testimony being offered by a
3 potential witness. But then we would also object
4 that it's a late addition of a witness that wasn't
5 earlier designated.

6 And I'm not proposing, for instance,
7 that Power of Vision has raised that issue, and so
8 within the context of what they've proposed for
9 their witnesses, their testimony, the issue can
10 certainly, to the extent it's appropriate, be
11 brought in. We're just objecting. But we don't
12 hear that this person really is proposing any
13 testimony. We would object to the late addition.

14 DR. ROE: No, the issue of witnesses
15 coming in late, there's a precedent for that
16 already in this case in that the staff proposed
17 Jim MacIntosh as a witness very, very late in this
18 proceeding and we really haven't had an
19 opportunity to do anything about his testimony.
20 And I don't see any harm in having him intervene
21 or Rob Simpson, who may have misspoke that line,
22 not be able to have his opinions and his
23 grievances heard, because we participated in that
24 grievance and that we felt that we were being
25 given a run-around between the Energy Commission

1 and the San Diego Air Pollution Control District
2 on how we can address our grievances about what
3 their document contains.

4 HEARING OFFICER KRAMER: You are, of
5 course, allowed to offer evidence and ask
6 questions of the authors of the FDOC and the Air
7 Quality report from the staff and the Applicant,
8 with his air quality evidence.

9 But what Mr. Simpson seems to be
10 interested in doing is not questioning the, if you
11 will, the underlying facts or conclusions, but
12 raising procedural issues solely. And those have
13 not been telegraphed to the parties except to the
14 extent you did so in your statement. You did not
15 identify Mr. Simpson as a witness. Again, it is
16 not clear that he has any particular facts to
17 offer the Committee, but rather he seems to want
18 to make legal arguments and he is not even a legal
19 expert, as I understand. I do not believe he is a
20 member of the bar.

21 So we will, on the basis of the
22 objections, deny the request of Mr. Simpson. So I
23 have one more?

24 MS. BAKER: Yes, Julie Baker, Power
25 Vision.

1 I just have a follow-up question then,
2 because we were with Mr. Simpson at the appeal at
3 the Air Pollution Control District. Then can we
4 offer testimony about what our experience was and
5 what we were told by the Air Pollution Control
6 District and the procedures that we were required
7 to follow? We're not offering any kind of a legal
8 brief, we're just offering testimony on what we
9 were told and our confusion on how we were
10 supposed to proceed.

11 MR. RATLIFF: If I may, Mr. Kramer, the
12 issue to which you're referring, which I hope we
13 don't get too distracted here, is a question
14 concerning the preemptive effect of the Warren
15 Alquist Act regarding state law permits, and it
16 has no bearing on the issues of fact that you will
17 be considering. It's essentially does the Energy
18 Commission's permit suffice as the permit for
19 state law purposes, to the extent that the Air
20 District is involved in state law in our permit
21 process.

22 So these really are questions of agency
23 rules and the preemptive effect of the Warren
24 Alquist Act. They are not issues that go to any
25 issue of fact.

1 MS. BAKER: May I just ask a question
2 then, please sir? Thank you.

3 Well, that might be true but does not
4 CEC staff rely on the Air Pollution Control
5 District's Final Document of Compliance in doing
6 their report? And if the people of San Diego
7 County and Carlsbad never had the opportunity to
8 appeal some of the facts that were in the FDOC,
9 then I guess that's a question that's before us.

10 MR. RATLIFF: Well, yes, we do rely on
11 the FDOC certainly but, and that's the way our
12 regulations provide for. But the question, the
13 question which I think underlies this is
14 Mr. Simpson's attempt to appeal the Final
15 Determination of Compliance under provisions which
16 allow the appeal of a permit. And since there was
17 no permit issued, the Final Determination of
18 Compliance is not a permit, there was no
19 appealability of the Final Determination of
20 Compliance.

21 But again, I mean, these may be
22 interesting issues for discussion, they could be
23 briefed, but they are not issues of fact that go
24 to testimony. So I think it's a huge distraction
25 to talk about having testimony on this matter at

1 the evidentiary hearings.

2 HEARING OFFICER KRAMER: Yeah, the
3 Committee is open to receiving testimony that
4 addresses the merits of the recommendation that's
5 being made to the Committee by the staff, and the
6 air quality evidence from other parties. We're
7 not interested in talking about the process of
8 another agency's work in the case. The
9 Commission's decision is appealable to the Supreme
10 Court by way of a Writ of Mandate. And if any
11 party after having made their best presentation to
12 the Committee on issues relating to the merits of
13 the air quality determination, as opposed to the
14 guys opposed to the process at some other agency
15 advising us undertook, if they're unsatisfied to
16 satisfy they can then take that avenue to appeal
17 the Commission's decision to the Supreme Court.

18 So, Mr. Simpson, did you have any other
19 issues that you wished to raise?

20 MR. SIMPSON: Sure, sure.

21 HEARING OFFICER KRAMER: Briefly,
22 please.

23 MR. SIMPSON: Your contention that my
24 concerns are merely procedural is not supported by
25 the record. I submitted timely comments to the

1 CEC on January 6th of 2009 regarding substantive
2 issues of the failure of the FDOC to comply with
3 the Clean Air Act. You've got two tables that --
4 one, the CEC indicates is the comparisons of the
5 National Ambient Air Quality standards and one is
6 the industry claims to be the same thing that was
7 presented in that Power Point presentation that's
8 recorded from the December 2nd, hearing.

9 They reached substantially different
10 conclusions. The CEC's conclusion would indicate
11 that this project requires a PSA permit. The
12 (indiscernible) conclusion is that this probably
13 does not need the next landing air quality
14 examiners with a (indiscernible) on the CEC's
15 table so that it exceed the National Ambient Air
16 Quality standards.

17 So my (indiscernible) purely procedural,
18 while the procedure of providing public builders
19 of the National Ambient Air Quality standards
20 affect this project should be the basis before it
21 (indiscernible), which has never been provided by
22 any agency.

23 HEARING OFFICER KRAMER: Mr. Simpson --

24 MR. SIMPSON: Yes.

25 HEARING OFFICER KRAMER: -- you've

1 intervened in Energy Commission proceedings
2 before; is that correct?

3 MR. SIMPSON: Yes.

4 HEARING OFFICER KRAMER: So you know the
5 rules. The rules are if you want to preserve
6 issues to present to the Committee, you need to
7 file a Prehearing Conference Statement and
8 identify those issues and your witnesses. We do
9 not assume that something you raised some time ago
10 is on the table simply because you raised it. You
11 have to again identify it during the proper time,
12 using the proper vehicle, in order for it to be in
13 front of us at the hearing. You failed to do
14 that.

15 In a sense you're lucky that Power of
16 Vision appears to have raised it to some degree,
17 and you are free to work with them and advise
18 them, if you choose, as to the questions they may
19 present, the other witnesses they've previously
20 identified, and as well as cross-examination of
21 other witnesses. But by your failure to enable
22 yourself to do that as an advocate, as an
23 Intervenor, you are going to have to work through
24 them.

25 MR. SIMPSON: What I'm trying to

1 understand is how am I joining the other
2 Intervenor in their Prehearing Conference,
3 basically affects this procedure. But my request
4 was that I join the other Intervenor in their
5 Prehearing Conferences (indiscernible).

6 HEARING OFFICER KRAMER: Had you filed
7 something to that effect at the deadline for doing
8 so, it may have allowed you to get in. It still
9 suffers from a severe case of ambiguity because we
10 don't know which of the many issues and arguments
11 of the various Intervenor you would be joining
12 in. But that's not what you did and, thus, you're
13 left with the consequences I described a minute
14 ago.

15 MR. SIMPSON: Well, my joining them
16 raises no new issues so I don't know how the
17 process is negatively affected by my joining the
18 Intervenor in their Prehearing Conference
19 Statements.

20 HEARING OFFICER KRAMER: Was that a
21 question of -- somebody was whispering in my ear.

22 MR. SIMPSON: Yes. I would like to
23 understand how the process is harmed by my joining
24 the other Intervenor in their Prehearing
25 Conference Statements.

1 HEARING OFFICER KRAMER: It adds to
2 the -- well, you've raised an issue that was, I
3 believe, hinted at in Power Vision's statement.
4 Let me take a moment to go review that. We'll go
5 off the record for a second.

6 (Off the record at 10:32 a.m.)

7 (On the record at 10:33 a.m.)

8 PRESIDING COMMISSIONER BOYD: We're on
9 the record.

10 HEARING OFFICER KRAMER: Well, to answer
11 the question in -- actually I believe I did answer
12 the question a few moments ago. Power of Vision
13 has in their statement, in essence, if there's
14 going to be an opportunity to appeal the FDOC and
15 what that process is. And I answered that earlier
16 by saying that the FDOC is simply a recommendation
17 to the Energy Commission. It's certainly given
18 great weight. And there are some questions of --
19 the whole question of whether it is a state permit
20 and where it's subsumed in the Energy Commission
21 process, or it is a mixed federal and state permit
22 that is partially subsumed or not at all. It is a
23 complicated question. I'll agree with Mr. Ratliff
24 about that.

25 The fear, the Commission, the

1 Commission's process is to take in all kinds of
2 evidence, including the FDOC and to issue a
3 decision, and that is appealable to the Supreme
4 Court, as I've said. If the Intervenors or any
5 other member of the public wants to challenge the
6 FDOC in some other form that's unrelated to our
7 process, well that is their right.

8 Your way of challenging the FDOC in our
9 process is to address the information that it
10 contains, the analysis it contains, the
11 conclusions it draws, and with your own evidence
12 or evidence you obtain by cross-examining the
13 experts who prepared it. And you had the right to
14 do that. Your right may be somewhat constrained
15 now to the extent that you didn't identify all the
16 witnesses that you now feel is necessary to do
17 that. But, you know, the Committee and the
18 Commission cannot be responsible for any failure
19 to completely design your case in the way you want
20 to.

21 Intervenors are treated as any other
22 party. They're not required to be an attorney but
23 you are held with some leeway granted for non-
24 attorney status but not infinite leeway to
25 understand the Commission's rules, procedures, and

1 all of the laws that apply to the Commission and
2 to abide by them.

3 Early on in this case I made it clear,
4 on behalf of the Committee, that we were going to
5 try to create a process for the exchange of
6 evidence, which avoided surprises. And this last
7 minute attempt by Mr. Simpson to raise this issue
8 of, through his own status as an Intervenor, comes
9 late in the process and we have denied that
10 request.

11 MR. SIMPSON: And so what I'm looking
12 for is what rule precludes me from joining the
13 other Intervenors in their statement, or what harm
14 is done by my joining with them, by bringing no
15 new issues. This is not a new issue.

16 HEARING OFFICER KRAMER: Mr. Simpson,
17 the ruling has been made. You would be one more
18 party at the late stage and would add additional
19 time to the proceeding. You have the ability to
20 cure most of the harm you apparently believe will
21 be caused by your exclusion from directly
22 presenting the issues by working with the
23 Intervenor, Power Vision.

24 So we need -- that's our ruling. We
25 need to move on.

1 MR. SIMPSON: Okay. Is there some
2 record of the workshop, is there a transcript or
3 any comments preserved?

4 HEARING OFFICER KRAMER: Do you attend
5 any of these workshops?

6 MR. SIMPSON: I was unable to attend
7 that workshop.

8 HEARING OFFICER KRAMER: Okay. Have you
9 attended other Commission workshops in the past?

10 MR. SIMPSON: In fact, I didn't receive
11 notice of that workshop.

12 HEARING OFFICER KRAMER: Okay. Moving
13 on to other -- have you attended other workshops
14 in the past?

15 MR. SIMPSON: I've read transcripts of
16 other workshops.

17 HEARING OFFICER KRAMER: That's very
18 unlikely because they're not transcribed.

19 MR. SIMPSON: Obviously if there is no
20 workshop that occurred.

21 HEARING OFFICER KRAMER: Workshops, if
22 they're conducted, are -- there may be a rare
23 exception where some party provides a transcript
24 or recording, but they are not regularly
25 transcribed by Commission staff.

1 PRESIDING COMMISSIONER BOYD:

2 Mr. Ratliff, do you want to --

3 MR. RATLIFF: Yes.

4 PRESIDING COMMISSIONER BOYD: -- comment
5 on that?

6 MR. RATLIFF: That's correct. We held a
7 workshop on December 3rd. I believe a number of
8 the Intervenors probably attended. Mr. Simpson
9 apparently did not. It was publicly noticed;
10 there is no transcript.

11 MR. SIMPSON: And so when you receive
12 comments, your notice for that workshop says you'd
13 be receiving public comments, were those comments
14 recorded or were they discarded also?

15 PRESIDING COMMISSIONER BOYD: They were
16 responded to at the workshop.

17 MR. SIMPSON: I see. And so there will
18 be no other record of responses to public comment
19 during the workshop.

20 HEARING OFFICER KRAMER: Mr. Simpson,
21 did you make any comments at that workshop?

22 MR. SIMPSON: My understanding from the
23 hearing was that the Air District would be
24 responding to comments that I made on the PDOC.

25 HEARING OFFICER KRAMER: Well, I think

1 you need to take that up with the hearing board,
2 if they made that promise to you.

3 Okay. We need to move on. Okay, now we
4 are at the point of looking at the Witness
5 Worksheet. That was, for those of you on the
6 telephone, it was e-mailed out last night and has
7 not changed since then.

8 Preliminarily Terramar, at the last page
9 of the worksheet, page 5, I have a category called
10 "Undetermined," and you had two witnesses, Dianne
11 Wist and Catherine Miller. And I put them in this
12 category because from the description of their
13 testimony that you gave it wasn't clear to me
14 which topic area or areas they would best apply
15 to. So I wanted your assistance in allocating
16 them, reallocating them to one of the other topic
17 areas.

18 MS. SIEKMANN: Okay.

19 HEARING OFFICER KRAMER: So Dianne Wist?

20 MS. SIEKMANN: Dianne Wist --

21 HEARING OFFICER KRAMER: Please get your
22 microphone, please.

23 MS. SIEKMANN: Why don't you just put
24 Dianne Wist in Air Quality.

25 HEARING OFFICER KRAMER: Okay.

1 MS. SIEKMANN: And Catherine Miller in
2 Vision -- Visual.

3 HEARING OFFICER KRAMER: Visual. Okay,
4 did everyone get that? Does she need to repeat
5 it?

6 MS. SIEKMANN: Thank you.

7 HEARING OFFICER KRAMER: Okay. Now, in
8 another question, Mr. Rostov, Rory Cox you
9 identify as a witness under Project Description
10 and from the description of his testimony I
11 wondered if that was not a better -- witness
12 better placed under Greenhouse Gases.

13 MR. ROSTOV: (Indiscernible) him under
14 Greenhouse Gases. I think Project Description
15 might be more of a legal issue of whether the L&G
16 goes to -- there's some factual issues he needs to
17 establish and if he establishes it in either
18 category that's fine with us.

19 HEARING OFFICER KRAMER: Yeah, maybe
20 that's a good time for me to just tell everyone
21 that Project Description is, it's a kind of
22 overarching category. It just attempts to
23 describe the project and not to draw any
24 particular conclusions about its impact. So as in
25 this case with Mr. Rostov's witness, it's

1 perfectly appropriate for a witness to discuss
2 the, you know, the details of the project and how
3 it works in one of the other subject categories
4 that's relevant to, you know, to the point the
5 witness is trying to make.

6 And so in this case it sounds like
7 Mr. Cox wants to talk about project design or
8 other aspects of it that really relate to
9 greenhouse gases. And it will make more sense to
10 hear about it when we're talking about greenhouse
11 gases.

12 So then, Mr. McKinsey, your only cross-
13 examination was of Mr. Cox, so that would also
14 move to Greenhouse Gases. Did you have anything
15 else to add about Project Description, do you
16 think?

17 MR. MCKINSEY: No, that's fine, we
18 agree.

19 MR. ROSTOV: Mr. Kramer?

20 HEARING OFFICER KRAMER: Mr. Rostov?

21 MR. ROSTOV: Can I raise one issue about
22 Project Description?

23 HEARING OFFICER KRAMER: Certainly.

24 MR. ROSTOV: I noticed that several
25 people are doing cross-examination on it and we

1 reserve the right to just do cross-examination on
2 other topics that we hadn't originally put
3 forward. And since there's some other cross-
4 examination on that, we would like to reserve ten
5 minutes on Project Description, just at the end of
6 it because we believe we might have a couple
7 questions.

8 HEARING OFFICER KRAMER: Does any party
9 object to that?

10 MR. MCKINSEY: Well, it wasn't clear to
11 me who you want to cross-examine. I mean, you
12 said cross-examine but --

13 MR. ROSTOV: Yeah, it would probably be
14 Mike Monasmith. It'll be the staff. Sorry.
15 Thank you for clarification.

16 HEARING OFFICER KRAMER: Because, you
17 know, I did notice that sort of general
18 reservation in your Prehearing Conference
19 Statement and then we need to caution you that,
20 you know, we're going to allow little, you know,
21 very little time for that sort of thing. If
22 you're -- and if you have a specific witness that
23 you want to cross-examine, we really need to know
24 that witness' identity today so that the parties
25 can make sure that that witness will be available.

1 MR. ROSTOV: Right. Yeah, I'm happy to
2 identify some today, but the reservation I was
3 trying to make is we're going to be sitting
4 through all the hearings as well and I believe,
5 you know, as the hearing goes on there could be a
6 question or two that arises that I think would be
7 relevant to this situation. Since I'm an
8 Intervenor, I just wanted to have the opportunity
9 to ask those two or three questions of the
10 witnesses. I'm not calling any new witnesses,
11 we're not doing anything else, but just -- and,
12 you know, questions that are relevant to what's
13 being discussed.

14 So that was the purpose of the
15 reservation and I understand the time constraints
16 so there would just be, you know, a couple well-
17 placed questions if something is missed was the
18 idea that.

19 HEARING OFFICER KRAMER: Okay. You will
20 be on a tight leash.

21 MR. ROSTOV: Okay.

22 DR. ROE: Mr. Kramer, are you asking for
23 other witnesses or cross-examination opportunities
24 on this list at this time?

25 HEARING OFFICER KRAMER: We'll make sure

1 we get to each topic but, you know, I've been
2 jumping around and I guess I'm going to apologize
3 for that and I'll try to make a more orderly
4 traversal of the list.

5 DR. ROE: Which topic are we on now?

6 HEARING OFFICER KRAMER: So let's go to
7 page 1. Any changes or corrections for Project
8 Description beyond those we've already discussed?

9 MR. ROSTOV: Mr. Kramer, I have one or
10 two questions. So for CVD the cross-examination
11 has given us 60 minutes and what we were
12 entertaining, I think, was 45 minutes on
13 Alternatives.

14 HEARING OFFICER KRAMER: Okay, you're
15 jumping.

16 MR. ROSTOV: Oh, sorry. I thought you
17 said Project Alternatives.

18 HEARING OFFICER KRAMER: All right.
19 Well, I hope I said description.

20 MR. ROSTOV: Oh, sorry. I apologize.

21 HEARING OFFICER KRAMER: Okay. But
22 seeing nothing else, the other parties continue,
23 we'll move on to Project Alternatives.

24 MR. THOMPSON: Mr. Kramer, is this also
25 the order that these areas will be presented, or

1 is this merely a cleaning up of the area?

2 HEARING OFFICER KRAMER: No, this is a
3 cleaning up of each area.

4 MR. THOMPSON: Gotcha.

5 HEARING OFFICER KRAMER: And then we'll
6 see if, for instance, if the time estimates change
7 radically. It would be better to know that before
8 we then try to put them on particular days.

9 And I thought I, for that purpose I've
10 got a scrap sheet that I e-mailed around, but I
11 have a couple more copies that people can have if
12 they want. We'll use that to fill in the days.

13 So Mr. Rostov, you were -- what were you
14 saying about cross-examination?

15 MR. ROSTOV: You've given us 60 minutes
16 and I had it broken down into 45 minutes for staff
17 related to alternative technologies. I mean, it
18 seems like most of the alternatives section is
19 going to be dominated by the City about
20 alternative sites. I just want to be clear that
21 we have, like, 45 minutes for kind of alternative
22 technologies and another 15 minutes for one of the
23 City's witnesses, Joe Garuba.

24 And then I also had a question. It
25 seems that apparent in their Prehearing Conference

1 Statement or rebuttal testimony also are now
2 putting on alternatives testimony. And I believe
3 that alternatives testimony is specifically the
4 siting. If that's true, I don't want to cross-
5 examine. But if it's more to alternative
6 technologies like solar and stuff like that, I'd
7 like to have an opportunity to cross-examine.

8 MR. MCKINSEY: Yeah, that's correct.
9 The Applicant's witnesses are focused on the
10 alternative site issues and not on alternative
11 technologies.

12 MR. ROSTOV: Okay.

13 HEARING OFFICER KRAMER: Okay. So then
14 60 minutes total is about right for you?

15 MR. ROSTOV: Right.

16 HEARING OFFICER KRAMER: Okay.

17 MR. MCKINSEY: And then the Applicant
18 notes that we had indicated we also wished to
19 cross-examine Mr. Garuba, and that didn't make it
20 on your list.

21 HEARING OFFICER KRAMER: And how long?

22 MR. MCKINSEY: Twenty minutes.

23 HEARING OFFICER KRAMER: Any other
24 corrections from the parties?

25 DR. ROE: On Project Alternatives under

1 Facility Design could you please add Power of
2 Vision for cross-examination?

3 HEARING OFFICER KRAMER: For 15 minutes?

4 DR. ROE: Ten minutes.

5 HEARING OFFICER KRAMER: Okay. Well, I
6 already gave you 15 minutes, so you're moving
7 down.

8 DR. ROE: I'm moving down to the bottom
9 of the page where it says Facility Design.

10 HEARING OFFICER KRAMER: Okay.

11 DR. ROE: Does that require a special --

12 HEARING OFFICER KRAMER: Well, let's do
13 this one topic by, one topic at a time. So we'll
14 get back to that in just a second.

15 Any other corrections to Project
16 Alternatives?

17 MR. RATLIFF: Mr. Kramer, I wanted to
18 make sure that I get at least five minutes to
19 cross-examine Mr. Garuba as well.

20 HEARING OFFICER KRAMER: And is it fair
21 to say that with all these people ganging up on
22 Mr. Garuba that you'll probably end up repeating
23 each other and won't have to use the full time --

24 MR. THOMPSON: Sure.

25 HEARING OFFICER KRAMER: -- that each

1 has estimated?

2 MR. THOMPSON: Sure.

3 DR. ROE: Sure.

4 HEARING OFFICER KRAMER: Unless, of
5 course, he has a breakdown or something.

6 MR. THOMPSON: Well, we hope not. But
7 it may -- all of this cross may prompt on-the-spot
8 rebuttal or redirect.

9 HEARING OFFICER KRAMER: It seems to
10 quite often, yes.

11 Okay. But we've got, we're up to now
12 four hours at least. Does anybody have a sense
13 that it will take more than four hours for
14 Alternatives?

15 I see no corrections. Okay.

16 Compliance and Closure --

17 MR. MCKINSEY: Could I -- I wanted that,
18 I wanted to go back to Alternatives briefly and
19 ask Mr. Rostov. You indicated that you wanted to
20 conduct 45 minutes of cross-examination,
21 Alternative Energies. Can you describe --

22 MR. ROSTOV: It's more on the staff --
23 yes, essentially looking at what they essentially
24 analyzed. One, for example, SDG&E only has
25 complied with six percent of the RPS standard. We

1 don't believe any of that was incorporated into
2 the alternatives analysis. And if they're doing
3 alternatives analysis about alternative energies,
4 that seems like a relevant issue.

5 I know I'm making a little argument now,
6 but those are the types of issues that we'd draw
7 on in terms of factual issues. So it would be
8 more about the type of technologies and how they
9 incorporated their analysis, but from a factual
10 basis obviously.

11 HEARING OFFICER KRAMER: And those would
12 be asked --

13 MR. MCKINSEY: And that sounds
14 consistent with what you said in the Prehearing
15 Conference, too.

16 MR. ROSTOV: Yes.

17 MR. MCKINSEY: Okay.

18 HEARING OFFICER KRAMER: And so those
19 questions would be of the witnesses that are
20 already listed here?

21 MR. ROSTOV: Yes, but one question we
22 had about that was the staff had put on four
23 witnesses for Alternatives and it was unclear to
24 us who was the appropriate witness, so we just
25 left it blank. But if they're doing a panel, I

1 guess the appropriate witness would just answer
2 anyway.

3 HEARING OFFICER KRAMER: Yeah, that's
4 where the panel works great. You just ask the
5 question and one or more, or sometimes all of
6 them, will answer. Okay. That sounds like --
7 anything else on Project Alternatives?

8 Seeing none, we'll move on to Compliance
9 and Closure. Those are not highlighted, those
10 next -- that and Facility Design, which means that
11 based on the statements that I've received I
12 thought there was going to be no cross-examination
13 or examination in those cases. Dr. Roe, you're
14 proposing to add cross-examination; is that
15 correct?

16 DR. ROE: On Facility Design we'd like
17 an opportunity to cross-examine. There are some
18 issues in the Addendum that the Applicant just
19 recently had us renumber as 701. There are some
20 issues on Facility Design.

21 HEARING OFFICER KRAMER: Okay. Who do
22 you want to cross-examine? I have not filled in
23 the Applicant's witnesses on a lot of these topics
24 because --

25 DR. ROE: Probably both.

1 HEARING OFFICER KRAMER: Okay.

2 Mr. McKinsey, can you recall who your witnesses
3 will be there?

4 MR. MCKINSEY: Well, there's quite a
5 selection that I need a little more specifics on,
6 on what aspect of the Facility Design. I might
7 have missed, I may not have heard you when you
8 just said it.

9 DR. ROE: Well, for one thing I raised a
10 question about emergency shutdown on the site in
11 our Addendum.

12 HEARING OFFICER KRAMER: So you see this
13 as different than the questions you want to ask
14 under Power Plant Efficiency?

15 DR. ROE: Yes.

16 HEARING OFFICER KRAMER: Okay. Is there
17 any objection to adding -- and how long did you
18 want to cross?

19 DR. ROE: Five to ten minutes at the
20 most.

21 MR. RATLIFF: Mr. Kramer, if I may. I
22 mean, this is perhaps a point, a general point
23 that needs to be made.

24 Staff is trying to identify those
25 witnesses that we need to have come to San Diego,

1 but obviously we're trying to, to the extent we
2 can, not send people down to San Diego for these
3 hearings if they aren't witnesses in contested
4 areas or witnesses that are critical to the
5 Committee's understanding of the case. So we
6 would ask if we could not bring our witness on
7 Facility Design to the hearing and perhaps even
8 excuse, not have the witness testify at all unless
9 Mr. Roe has intents specifically to question that
10 witness or can the Applicant's witness suffice. I
11 don't know.

12 DR. ROE: I'm surprised because you did
13 not respond to our questions on that issue in our
14 opening testimony.

15 HEARING OFFICER KRAMER: You
16 misunderstood that the parties were obligated to
17 do that apparently.

18 MR. RATLIFF: I'm sorry?

19 HEARING OFFICER KRAMER: Apparently he
20 was expecting you to respond to the questions in
21 his opening testimony, and that's not the way it
22 works. When we're going towards hearings, you're
23 getting prepared to ask your questions during the
24 hearings. The staff might choose to respond to
25 you in some cases, but they're certainly not, it's

1 not our expectation that they would.

2 DR. ROE: But the issue was raised at
3 that time and subsequently in our Addendum.

4 HEARING OFFICER KRAMER: Okay.

5 Mr. McKinsey, who would your witnesses be?

6 MR. MCKINSEY: You asked me a question
7 and I found the reference, Dr. Roe. It's actually
8 a common under Worker Safety. It's not a Facility
9 Design question. It's a topic around, it's
10 proposed change to Worker Safety 8, proposed
11 condition of certification of Worker Safety 8,
12 that the Applicant -- that that condition requires
13 that the operator have two workers on the location
14 during operations. And they proposed a
15 modification that they have to be able to shut
16 down the units, and that's a Worker Safety topic.

17 If that's what he's referring to, we may
18 even be able to eliminate that because I don't
19 have an issue. We're okay changing that condition
20 to read that.

21 And so, but either way it sounds like it
22 would be under Worker Safety, not on Facility
23 Design.

24 HEARING OFFICER KRAMER: So is that, is
25 he correct, Dr. Roe?

1 DR. ROE: That's fine.

2 HEARING OFFICER KRAMER: Okay. And so,
3 and I think you would -- were you already asking
4 questions under -- you did have cross-examination
5 under Worker Safety already.

6 DR. ROE: Yes.

7 HEARING OFFICER KRAMER: Okay. So we
8 will eliminate cross-examination on Facility
9 Design and Compliance and Closure. So those two
10 topics will be brought in. There will be no
11 testimony, they will simply be submitted for
12 decision on the basis of the evidence that's been
13 filed as part of, would include the application,
14 the Applicant's documents, the Final Staff
15 Assessment, et cetera.

16 Moving on to Power Plant Efficiency,
17 Dr. Roe, you're the only party indicating a desire
18 to cross-examine. Do you want to, did you want to
19 speak to anyone other than the staff's witness? I
20 mean, since the -- do you want the Applicant's
21 witnesses to be available there?

22 DR. ROE: Absolutely.

23 HEARING OFFICER KRAMER: Okay.
24 Mr. McKinsey -- is it acceptable to the parties if
25 I have him identify those to me at the, after the

1 hearing and I will produce a new worksheet that
2 will list the names within the next or so?

3 MR. RATLIFF: Yeah, that would be fine.

4 MR. MCKINSEY: I think I can identify
5 that witness. It would be -- he's already one of
6 our designated witnesses, Ed Holden.

7 HEARING OFFICER KRAMER: Sorry, the name
8 again?

9 MR. MCKINSEY: Ed Holden.

10 HEARING OFFICER KRAMER: Okay.

11 MR. MCKINSEY: Or maybe Edward.

12 HEARING OFFICER KRAMER: Okay. So that
13 would be solely for the purpose --

14 MR. MCKINSEY: It's Edward, that's
15 Edward Holden.

16 HEARING OFFICER KRAMER: -- of cross-
17 examination.

18 DR. ROE: May I ask you a question? Is
19 your, I believe, chief engineer, Mr. Doyle, going
20 to be available as a witness?

21 MR. MCKINSEY: No. Ed Holden is the, is
22 our engineer design person that we've had as a
23 witness. Mr. Doyle is not.

24 DR. ROE: Thank you.

25 HEARING OFFICER KRAMER: Okay.

1 MR. RATLIFF: Mr. Kramer, I wonder if I
2 could ask Mr. Roe if he could tell us, just so we
3 know we've got the right witness there, the nature
4 of the questions that you would want to ask him.
5 We don't want him to go to San Diego for nothing.

6 HEARING OFFICER KRAMER: Well, this
7 might be a case where telephone, telephonic
8 appearance would be appropriate anyway.

9 MR. RATLIFF: Okay, that would be good.

10 HEARING OFFICER KRAMER: Okay. Power
11 Plant Reliability, Transmission System
12 Engineering, and Transmission Line Safety and
13 Nuisance had no identified direct or cross-
14 examination. Is anyone proposing a change to that
15 status? Mr. Thompson?

16 MR. THOMPSON: Merely a clarifying
17 question. Attached to staff's Preliminary
18 Identification of Contested Issues was a piece of
19 testimony by the Cal ISO and it was labeled Cal
20 ISO Testimony Regarding Air Quality.
21 Notwithstanding the fact that the ISO rarely
22 testifies to air quality, I don't see it either
23 under Air Quality or under Transmission. Am I
24 missing it here?

25 HEARING OFFICER KRAMER: Well, you're

1 talking about a written report?

2 MR. THOMPSON: I'm talking about
3 testimony --

4 HEARING OFFICER KRAMER: Okay.

5 MR. THOMPSON: -- by Mr. Jim MacIntosh.

6 HEARING OFFICER KRAMER: Well, I'll have
7 to -- because staff would not list their witnesses
8 for the specific topics in their Prehearing
9 Conference Statement, the names you see on here
10 are assembled from the FSA section headers.

11 So, Mr. Ratliff, can you, can you
12 explain whether you're planning on introducing --
13 well, you did.

14 MR. RATLIFF: Well, Mr. MacIntosh's
15 testimony on greenhouse gas issues --

16 HEARING OFFICER KRAMER: Okay.

17 MR. RATLIFF: -- and alternatives.

18 HEARING OFFICER KRAMER: In the report
19 Mr. Thompson referred to?

20 MR. RATLIFF: I believe it's that.
21 Otherwise I'm not familiar with it, so --

22 MR. THOMPSON: It's his testimony.

23 MR. RATLIFF: Okay.

24 HEARING OFFICER KRAMER: Does it have an
25 exhibit number on it? Somebody say yes or no.

1 MR. ROSTOV: Maybe a point of
2 clarification. I mean, I'm not sure if
3 Mr. Thompson is saying this or not but even though
4 he's designated for those issues, it seems like if
5 I (indiscernible) Power Plant Reliability and some
6 other topics. So I think it's fine for him to
7 testify in that topic, but to totally close that
8 topic when Mr. MacIntosh actually has some factual
9 issues that might discuss reliability, it would
10 seem a little unfair. Does that not, Mr. Ratliff?

11 MR. RATLIFF: Well, I'm not sure. I
12 mean, Mr. MacIntosh will be available for your
13 cross-examination and to the extent of my -- I
14 mean, I guess I'm not sure. Are you suggesting we
15 need another witness or --

16 MR. ROSTOV: No, I'm just saying that he
17 might apply to more than just the topic he was
18 designated for. I think that's what you're
19 saying.

20 MR. THOMPSON: Actually, two things I'm
21 saying. Where would he logically be on this list
22 of people, and that I would assume that --

23 MR. RATLIFF: Greenhouse Gas and
24 Alternatives.

25 MR. THOMPSON: But the heading of

1 Greenhouse Gas Alternatives doesn't preclude us
2 from exploring other items that he does find.

3 MR. RATLIFF: As long as it's within the
4 scope of his testimony.

5 MR. THOMPSON: Of his direct.

6 MR. RATLIFF: Right.

7 MR. THOMPSON: Right.

8 HEARING OFFICER KRAMER: Although I
9 think some latitude can be allowed here, but the
10 parties did not indicate any desire to cross-
11 examine witnesses on the topic of Reliability. It
12 probably relates as much to the Alternatives
13 issue, which is, you know, clearly one of the big,
14 one of the big disputed issues in this case.

15 MR. RATLIFF: Well, Reliability as a
16 topic and the way we break these things out is
17 about the reliability of the project itself. I
18 think when you used the term just now, I think
19 you're talking about system reliability, which is
20 one of the justifications made for this project.
21 So that's a different aspect and that, of course,
22 is within the scope of Mr. MacIntosh's testimony
23 and the other witnesses who will testify about
24 Alternatives and Greenhouse Gas issues.

25 HEARING OFFICER KRAMER: Okay. So then

1 when I talk about the topic, the FSA topic of
2 Power Plant Reliability, we're not talking about
3 the reliability issues that Mr. Thompson may want
4 to raise.

5 MR. THOMPSON: I'm not trying to raise
6 anything. All I'm trying to figure out is where
7 staff's witness MacIntosh is on this list.

8 HEARING OFFICER KRAMER: Well, he's in
9 Alternatives.

10 MR. RATLIFF: I thought we said that.

11 HEARING OFFICER KRAMER: He's in
12 Alternatives and --

13 MR. THOMPSON: Oh, there he is. Okay.

14 HEARING OFFICER KRAMER: -- Greenhouse
15 Gases.

16 MR. THOMPSON: All right, never mind.

17 HEARING OFFICER KRAMER: Okay.

18 MR. THOMPSON: I got confused because
19 the label of his testimony was Air Quality. My
20 apologies.

21 HEARING OFFICER KRAMER: Okay. So
22 moving on then to -- I've heard no requests to
23 cross-examine in the three areas of Power Plant
24 Reliability, Transmission System Engineering, or
25 Transmission Line Safety and Nuisance.

1 So moving on to Greenhouse Gases, the
2 staff wishes to add two witnesses, Mr. MacIntosh
3 and Dave Vidaver. Mr. Ratliff, can you explain
4 why you want to do that?

5 MR. RATLIFF: Yes. Mr. Vidaver actually
6 contributed to that testimony and is necessary for
7 the presentation of that testimony. It was an
8 oversight that his name was not included on the
9 testimony. And Mr. MacIntosh has prefiled
10 testimony brought by the ISO, which staff sponsor.

11 HEARING OFFICER KRAMER: And which you
12 have provided to the other parties earlier this
13 month as part of your opening testimony, would
14 that have been?

15 MR. THOMPSON: Yes.

16 HEARING OFFICER KRAMER: Is there any
17 objection to adding those two witnesses to staff's
18 panel? Any objection to adding the two witnesses
19 to staff's witness panel?

20 MR. ROSTOV: Can you explain this --
21 sorry, Vidaver a little more? Maybe I just missed
22 what you were saying. He wrote the --

23 MR. RATLIFF: He wrote, well he wrote a
24 portion of the Greenhouse Gas testimony, yes, that
25 that has to do with system analysis, so --

1 HEARING OFFICER KRAMER: No objection?

2 MR. ROSTOV: No objection.

3 HEARING OFFICER KRAMER: Okay. They
4 will be added. Mr. Ratliff, an estimate about how
5 much time --

6 MR. RATLIFF: Or at least not to slight
7 my other witnesses, I should say he contributed to
8 it. He did not write all of it, so --

9 HEARING OFFICER KRAMER: Time estimate
10 for your, for your panel?

11 MR. RATLIFF: I'm sorry?

12 HEARING OFFICER KRAMER: Time estimate
13 for direct testimony for your panel?

14 MR. RATLIFF: Thirty minutes.

15 HEARING OFFICER KRAMER: Okay. Any
16 other additions or corrections to Greenhouse
17 Gases?

18 MS. SIEKMANN: Yeah. Terramar has a
19 correction.

20 HEARING OFFICER KRAMER: Go ahead.

21 MS. SIEKMANN: My Prehearing Conference
22 Statement I had ten minutes for Greenhouse Gas
23 Emissions with William Walters and I had 15
24 minutes for Air Quality Greenhouse Gas Emissions
25 and Project Alternatives for Jim MacIntosh. So

1 the ten minutes will commence.

2 HEARING OFFICER KRAMER: Did you say 15
3 for the, for Walters?

4 MS. SIEKMANN: That one's already there
5 for the Jim MacIntosh.

6 HEARING OFFICER KRAMER: Okay.

7 MS. SIEKMANN: Ten minutes for William
8 Walters.

9 HEARING OFFICER KRAMER: So make that 25
10 minutes for you?

11 MS. SIEKMANN: Thank you.

12 HEARING OFFICER KRAMER: Okay.

13 MR. SIMPSON: Hello, this is Rob
14 Simpson. Can you hear me?

15 HEARING OFFICER KRAMER: Yes, go ahead.

16 MR. SIMPSON: I would like the
17 opportunity to cross-examine the witnesses on
18 Greenhouse Gas issues, 30 minutes.

19 HEARING OFFICER KRAMER: Okay.

20 Mr. Simpson, in light of your, this being the
21 first identification of your need, we will give
22 you 15 minutes and perhaps a little more if it's
23 clear that you need it. And it's quite possible
24 that many other questions you would have asked
25 will have been asked by others as well.

1 MR. RATLIFF: Mr. Kramer, staff would
2 request 15 minutes to cross-examine Mr. Hunt as
3 well, CBD's witness.

4 HEARING OFFICER KRAMER: Okay.

5 MR. MCKINSEY: The Applicant's proposed
6 direct testimony included Mr. Rubenstein and
7 that's in this topic area. Since we've broken
8 this out, we would really now split off, at least
9 we would need probably ten minutes of direct
10 testimony for Mr. Rubenstein in Greenhouse Gases,
11 which is really going to be a reduction of what we
12 would have done in Air Quality.

13 HEARING OFFICER KRAMER: Yeah, I must
14 have left him off for some reason.

15 MR. MCKINSEY: Well, we didn't identify
16 Greenhouse Gases as a separate topic. We included
17 it in Air Quality.

18 HEARING OFFICER KRAMER: Oh, okay.
19 Okay, staff 15 minutes in cross. And did you ask
20 for any cross-examination or just direct?

21 MR. MCKINSEY: Well, yeah, we did.
22 Their witness, Rory Cox.

23 HEARING OFFICER KRAMER: Well, that's
24 right. That's moved over. Okay. And I haven't
25 made that.

1 MR. ROSTOV: Mr. Kramer, I have a couple
2 things, too. Going off of what Mr. McKinsey just
3 said, I believe that they identified
4 Mr. Rubenstein in their Prehearing Conference
5 Statement, so we would like to have an opportunity
6 to cross-examine him on Greenhouse Gases and --

7 HEARING OFFICER KRAMER: Okay. That
8 will be an addition to the 20 minutes that you've
9 already been allocated?

10 MR. ROSTOV: Yeah, we want to take the
11 20 to 30.

12 HEARING OFFICER KRAMER: Okay.

13 MR. ROSTOV: And then we also had a
14 point of clarification and then a couple of other
15 things.

16 In the staff's Prehearing Conference
17 Statement, they refer to Mr. McClary who wrote
18 this MRW report and that was the first time we
19 realized that staff was putting on Mr. McClary as
20 a witness. So I'm just sort of a little unclear
21 why he wasn't designated earlier and if his report
22 is the only thing that we need to know about --

23 MR. RATLIFF: That's the only thing,
24 yes.

25 HEARING OFFICER KRAMER: Did you want to

1 answer to why he wasn't identified earlier?

2 MR. RATLIFF: Purely oversight but the
3 intent was always to include his document as well,
4 so -- and I might note that CBD actually quotes
5 from that document as part of their affirmative
6 testimony, so --

7 MR. ROSTOV: We are familiar with it,
8 but it was just a surprise. But having said that,
9 we would like a little more time for cross-
10 examination because now it seems like there are
11 five staff witnesses on Greenhouse Gases topics.

12 HEARING OFFICER KRAMER: So more than
13 30?

14 MR. ROSTOV: Well, originally we asked
15 for an hour and a half, but now I was thinking two
16 hours, two to two and a half hours for staff and
17 maybe a half hour for Mr. Rubenstein, and
18 hopefully we can do it all a lot faster. But we
19 want to make sure we can make our record.

20 HEARING OFFICER KRAMER: I'm wondering,
21 I mean, this was a very complicated exercise
22 producing this, as you can guess. But I'm
23 wondering how I missed that.

24 MR. ROSTOV: We tried to be as fair as
25 possible.

1 HEARING OFFICER KRAMER: So now --

2 MR. ROSTOV: If they can work --

3 HEARING OFFICER KRAMER: Okay. So now
4 it's not 20 minutes estimate, it's 120 minutes?

5 MR. RATLIFF: Mr. Kramer, I'd like to
6 have three minutes with mister -- is it Rory or
7 Cox?

8 MR. ROSTOV: Rory Cox, Mr. Cox.

9 MR. RATLIFF: Mr. Cox. So yeah, 120
10 minutes plus 30 minutes for Mr. Rubenstein.

11 HEARING OFFICER KRAMER: One-fifty.
12 That's going to change things. Okay.

13 MR. ROSTOV: Sorry. And we have asked
14 for just maybe ten minutes for the Terramar
15 witness as well. I'm not sure if we'll need it.

16 HEARING OFFICER KRAMER: You should be
17 able to fit all that in 150 minutes, don't you
18 think?

19 MR. ROSTOV: It depends on, it depends
20 on the witnesses, how --

21 HEARING OFFICER KRAMER: Okay. Any
22 other corrections or requested additions?

23 Seeing none, Air Quality. Mr. Ratliff,
24 I did not have an estimate for Mr. Walters,
25 William Walters.

1 MR. RATLIFF: Mr. Walters' direct
2 testimony will take probably five minutes.

3 HEARING OFFICER KRAMER: Okay. Any
4 other corrections?

5 MR. SIMPSON: Sure. This is Rob
6 Simpson.

7 HEARING OFFICER KRAMER: Go ahead.

8 MR. SIMPSON: I'd like the opportunity
9 to cross-examine the witnesses in Air Quality. It
10 could take two hours.

11 HEARING OFFICER KRAMER: Not without
12 advance notice.

13 MR. SIMPSON: I thought this was the
14 opportunity to request that.

15 HEARING OFFICER KRAMER: Well, the
16 opportunity was to identify that you were
17 interested in participating in the hearing by
18 filing a Prehearing Conference Statement. We can
19 give you 20 minutes.

20 And, Mr. Simpson, were you here for the
21 discussion about the panel-type informal
22 presentation that we're going to use for most of
23 the topics?

24 MR. SIMPSON: Yes, I was, and I've heard
25 a number of witnesses being added or rearranged.

1 I would like to add myself as a witness.

2 HEARING OFFICER KRAMER: No, no, okay.
3 You're missing my question. My question, I'm
4 simply trying to make sure that you, okay, that
5 you know --

6 MR. SIMPSON: My request.

7 HEARING OFFICER KRAMER: Well, and
8 that's one of my concerns about you as a party is
9 that you seem to have some difficulty answering
10 the question that's asked. I just wanted to make
11 sure that you're aware. I'm not going to repeat
12 it for you at this point in time, but that you
13 know that we will not be presenting witnesses in
14 the very formal format of direct testimony guided
15 by an attorney, followed by cross-examination, and
16 then we go on to the next witness and so on and so
17 on. We're going to -- maybe it will just be by
18 party and topic, but where we have multiple
19 witnesses we are going to attempt to set them up
20 as panels and the questions will be asked of the
21 panel all at once. And then multiple members of
22 the panel may answer those questions.

23 MR. SIMPSON: I'm going to file my
24 response later. Yes, I did hear that.

25 HEARING OFFICER KRAMER: Okay. And are

1 you offering yourself as an expert witness on Air
2 Quality?

3 MR. SIMPSON: I'm offering myself as a
4 witness.

5 HEARING OFFICER KRAMER: And to testify
6 to what facts?

7 MR. SIMPSON: The consistency of this
8 project with the mandates of the Clean Air Act.

9 HEARING OFFICER KRAMER: Okay. That's
10 an opinion or a conclusion, not a fact. It sounds
11 like the type of discussion you should have in
12 your brief.

13 Do you have any facts that you want to
14 testify to?

15 MR. SIMPSON: Yes, I do.

16 HEARING OFFICER KRAMER: And what would
17 those be?

18 MR. SIMPSON: The details of my comments
19 that have been submitted to the CEC and to the
20 (indiscernible), and the hearing regarding the
21 Final Determination of Compliance. I would like
22 CEC to take administrative notice of the Air
23 Board, hearing board's actions.

24 MR. RATLIFF: Commissioner, Mr. Simpson
25 has participated in our proceedings before. He

1 either does or should understand the procedure for
2 doing so. He has filed no Prehearing Conference
3 Statement. He has offered no prefiled testimony.
4 So we would object to him offering himself as a
5 witness on whatever issues he thinks he's going to
6 offer himself on.

7 MR. MCKINSEY: Applicant joins that
8 objection, particularly noting not only the party,
9 Mr. Simpson's, experience with the Energy
10 Commission process but also that he has, he's not
11 really offering up any explanation whatsoever for
12 his sudden appearance in this Prehearing
13 Conference and his efforts going out, repeated
14 efforts to either increase the cross-examination
15 time on topics or propose himself as a witness on
16 topics. I don't think there's any justification
17 at all for granting him those roles, given that he
18 has not given any notice to any of the parties
19 that he intended to either offer up any testimony.
20 And Applicant would actually even disagree with
21 his role in cross-examination for the very same
22 reason, that he did not submit a Prehearing
23 Conference Statement indicating any effort at
24 doing that.

25 HEARING OFFICER KRAMER: The objections

1 are sustained. Mr. Simpson, you'll be allowed
2 limited time to cross-examine on the top of Air
3 Quality. And we'll let you go near the end of the
4 cross-examiners so that perhaps others will have
5 asked your questions ahead of you and it won't cut
6 into your time as much as might otherwise do.

7 MR. SIMPSON: Thank you.

8 HEARING OFFICER KRAMER: Any other
9 corrections to Air Quality?

10 MR. MCKINSEY: I had a clarifying
11 question. Mr. Rostov indicated that he wanted
12 to -- and actually this was under Greenhouse
13 Gases, I believe, but I'm realizing a little more
14 succinctly after you talked about a panel setup,
15 perhaps, in these settings.

16 Mr. Rostov, you indicated you wanted to
17 cross-examine Terramar's witness, or was it the
18 Power of Vision's witness?

19 MS. SIEKMANN: Terramar.

20 MR. MCKINSEY: Terramar's witness. And
21 I don't quite understand. I guess what I'm
22 getting at is if he's seeking to cross-examine and
23 correct their testimony or if you're seeking to
24 use them as a direct testimony witness. But
25 again, if we're in a panel where you're simply,

1 witnesses are all together, being asked questions,
2 that kind of goes away anyway. I just want to
3 understand if either you had issues with that
4 witness' proposed testimony or if you're planning
5 on using them as a direct testimony witness.

6 MR. ROSTOV: Well, I didn't think he
7 would be on a panel. My sense of a panel would be
8 the Applicant's panel. I mean, sorry, the CEC
9 staff since they have four or five people. I'm
10 not sure where the Applicant would fit in. If you
11 would be separate, then the CEC.

12 Terramar, I thought, would just go
13 individually and after they gave their testimony I
14 just wanted an opportunity to cross, if necessary.
15 So they were going to raise some issues that we're
16 concerned about and just, yeah, for essentially
17 more redirecting as opposed to cross, but not to
18 put on their witness. It's their witness.

19 MR. MCKINSEY: Well, and that's kind of
20 what I was getting at to some extent, is if it's
21 their witness you should be cross-examining them.

22 MR. ROSTOV: Right.

23 MR. MCKINSEY: At least, and that's the
24 (indiscernible) and the Committee agree that it
25 should be, you know, that that's fine. I just,

1 what I was getting at was this, trying to get an
2 understanding if you were really interested in
3 using that witness to provide testimony as opposed
4 to cross-examination.

5 MR. ROSTOV: It was cross. I mean, I
6 call it cross and I intend it at cross.

7 MR. MCKINSEY: Okay.

8 MR. ROSTOV: And I am not positive it's
9 necessary but I wanted to reserve the time for it.

10 HEARING OFFICER KRAMER: You did,
11 correct? Or is that an addition to your --

12 MR. ROSTOV: No, it's on there. We did
13 that in the Prehearing Conference Statement.

14 HEARING OFFICER KRAMER: Oh, well, it's
15 missing then, isn't it. Air Quality --

16 MR. ROSTOV: Yeah, that is correct.

17 HEARING OFFICER KRAMER: -- CBD.

18 MR. ROSTOV: (Indiscernible) always
19 said, but ten minutes is probably sufficient.

20 HEARING OFFICER KRAMER: Okay, any --

21 MR. ROSTOV: But that does raise the
22 panel issue. For example, on the Greenhouse Gases
23 it seems to me it would make sense to have
24 Applicant go -- I mean, not the Applicant, the CEC
25 staff go first with their panel. We could do all

1 our cross-examination, then --

2 HEARING OFFICER KRAMER: Well, no, let
3 me clarify that a bit. This, for some reason,
4 became an issue in the Ivanpah case as well.

5 The Applicant bears the burden in these
6 proceedings so they're going to go first.

7 MR. ROSTOV: Okay.

8 HEARING OFFICER KRAMER: Maybe in cases
9 where they and staff are of a like mind, it might
10 be good to constitute a panel of both the
11 Applicants and the staff witnesses. But it's the
12 Applicant that's going to go first.

13 MR. MCKINSEY: Though I would note that
14 the burden is met through all the testimony. I
15 mean, in other words, we -- rather even
16 propounding a witness is only because we recognize
17 there's some really important either information
18 or clarification that we want that witness to
19 provide, or we (indiscernible) to the Committee.
20 But we're not trying, for instance, to put on the
21 whole case. That's the purpose of our cross, of
22 our written testimony.

23 HEARING OFFICER KRAMER: Okay. Public
24 Health, Dr. Greenberg is on here with no time
25 allotted to him. And from experience I just know

1 that that's not going to work. So, Mr. Ratliff?

2 MR. RATLIFF: You're asking how much
3 time for his direct?

4 HEARING OFFICER KRAMER: Yes.

5 MR. RATLIFF: I haven't talked with
6 Dr. Greenberg about it, but I would say ten to 15
7 minutes.

8 HEARING OFFICER KRAMER: Okay, 15
9 minutes.

10 MR. SIMPSON: And this is Rob Simpson.
11 If I could have 15 minutes to cross-examine.

12 HEARING OFFICER KRAMER: Okay, yes,
13 Mr. Simpson, 15 minutes.

14 MR. SIMPSON: Thank you. I don't see a
15 witness for the Air District in Air Quality. Will
16 they be there, too, present their (indiscernible)?

17 MR. RATLIFF: I have not confirmed that
18 but my expectation is that they probably will be.

19 HEARING OFFICER KRAMER: You will be
20 offering the certification under 25023 I believe
21 it is, in some for or another?

22 MR. RATLIFF: Sure. And I have no
23 objection to Mr. Simpson cross-examining
24 Dr. Greenberg with the understanding that it is on
25 the issues to which he is testifying, which are

1 those of Public Health, not Air Quality.

2 HEARING OFFICER KRAMER: Correct. And
3 in anticipation of some problems or opportunities
4 or challenges in that, I would ask that the
5 parties be prepared to address orally the
6 relevance of the proceedings that occurred before
7 the Air District on the PDOC appeals that
8 Mr. Simpson has been referring to earlier.

9 MR. SIMPSON: The appeal, too?

10 MR. RATLIFF: Well, those are not public
11 health issues.

12 HEARING OFFICER KRAMER: No, I mean just
13 in general.

14 MR. RATLIFF: Okay.

15 HEARING OFFICER KRAMER: Because he's --

16 MR. RATLIFF: Well, we can do that any
17 time, but --

18 HEARING OFFICER KRAMER: He has tried to
19 raise those several times now and I want to make
20 sure that we have, if those come up again that we
21 are able to determine whether, in the first
22 instance, they are relevant before we go further
23 and hear them.

24 MS. BAKER: Mr. Kramer, sir, could I
25 just ask a question? Did I hear something about

1 the San Diego County Air Pollution Control
2 District will be testifying a witness and then
3 will that allow for cross-examination by
4 Intervenors and other parties? I don't see it on
5 the list here.

6 MR. RATLIFF: We anticipate, although
7 like I say I haven't confirmed it, that the Air
8 District will have a representative there, perhaps
9 Dr. Moore, I'm not sure, who would sponsor the
10 FDOC into evidence. And, yes, you could ask him
11 questions on the FDOC at that time.

12 MS. BAKER: Okay. So would we need to
13 reserve our time to ask Dr. Moore questions,
14 assuming that that happens, now?

15 HEARING OFFICER KRAMER: Beyond the 40
16 minutes you've already asked for?

17 MS. BAKER: Well, that's what I'm trying
18 to understand --

19 HEARING OFFICER KRAMER: No.

20 MS. BAKER: -- where it fits in. So it
21 fits in in the Air Quality?

22 HEARING OFFICER KRAMER: No, no.
23 Actually you're 15 minutes. Yes, they'll be
24 testifying in Air Quality.

25 MS. BAKER: Then I believe we would want

1 to increase our time then, if Dr. Moore is
2 available.

3 HEARING OFFICER KRAMER: To?

4 MS. BAKER: What do you think, Arnie?
5 Thirty minutes, please.

6 HEARING OFFICER KRAMER: Okay. I think
7 that concludes Public Health.

8 MR. THOMPSON: Mr. Kramer, if Dr. Moore
9 comes and testifies, in an abundance of caution
10 we'd like to reserve five minutes just in case
11 there are issues that arise that concern the City.

12 HEARING OFFICER KRAMER: That's in Air
13 Quality?

14 MR. THOMPSON: Yes, please.

15 HEARING OFFICER KRAMER: You said five
16 minutes?

17 MR. THOMPSON: Yes.

18 MR. ROSTOV: Actually, Mr. Kramer, we
19 would like to reserve that same five minutes just
20 so we have one question for Dr. Moore if he showed
21 up.

22 PRESIDING COMMISSIONER BOYD: A similar
23 five minutes or the same five minutes. I think
24 you mean --

25 MR. ROSTOV: A similar five minutes,

1 thank you.

2 HEARING OFFICER KRAMER: Okay. So we
3 will add five minutes to your existing ten. Okay.
4 Hazardous Materials Management.

5 MS. SIEKMANN: Excuse me, Mr. Kramer. I
6 would like to add him to be able to ask questions
7 of.

8 HEARING OFFICER KRAMER: You already
9 have.

10 MS. SIEKMANN: I know. I'm not adding
11 time.

12 HEARING OFFICER KRAMER: What do you
13 want to do?

14 MS. SIEKMANN: I just want to make sure
15 I can ask him questions.

16 HEARING OFFICER KRAMER: Well,
17 certainly.

18 Hazardous Materials Management, that
19 appears to be solely cross-examination from --
20 well, testimony from Ms. Siekmann and a cross-
21 examination. Ms. Siekmann, did you intend to
22 examine just the staff witnesses or did you --

23 MS. SIEKMANN: Just the staff.

24 HEARING OFFICER KRAMER: Okay. So no
25 Applicant witnesses, correct?

1 MS. SIEKMANN: Correct.

2 HEARING OFFICER KRAMER: Okay. Are you
3 hearing her on the phone okay, folks? I guess so.

4 MS. SIEKMANN: Correct.

5 MR. SIMPSON: I didn't hear her, sir.

6 HEARING OFFICER KRAMER: Okay. Well,
7 she said correct.

8 MS. SIEKMANN: Correct.

9 HEARING OFFICER KRAMER: Okay.

10 MR. SIMPSON: Thank you.

11 HEARING OFFICER KRAMER: Okay, we've got
12 it.

13 Worker Safety/Fire Protection. And I'm
14 trying to move along here, folks, because we need
15 to finish in about 45 minutes if we can. So
16 Worker Safety/Fire Protection, we have --
17 Ms. Siekmann, I didn't see an estimate for cross-
18 examination on this topic in your statement.

19 MS. SIEKMANN: I don't have any.

20 HEARING OFFICER KRAMER: Okay. I
21 thought you did, but okay. Even better is to
22 cross it off.

23 Any corrections to Worker Safety, staff,
24 time estimates for direct? Will there be any
25 direct or will you just make him available?

1 MR. RATLIFF: Yes, I'd like to have ten
2 minutes for his direct testimony and I'd also like
3 to have ten minutes for each of the City's
4 witnesses as well.

5 HEARING OFFICER KRAMER: Which equals --

6 MR. RATLIFF: Which I hope I don't have
7 to use.

8 HEARING OFFICER KRAMER: -- 30, okay.

9 MR. RATLIFF: But this is kind of a
10 worst-case estimate in that.

11 HEARING OFFICER KRAMER: Thirty minutes
12 staff, cross for staff.

13 MR. MCKINSEY: And then from the
14 Applicant, it looks like our requested cross-
15 examination didn't make it on here. We had
16 requested 20 minutes to cross-examination the
17 City's safety witnesses.

18 MR. THOMPSON: Oh, too late, John.

19 MR. MCKINSEY: It was in our Prehearing
20 Conference Statement.

21 HEARING OFFICER KRAMER: Okay. Any
22 other corrections?

23 MR. THOMPSON: Yeah, the City would like
24 to, and again add ten minutes to our time for
25 cross. Since the filing of our, actually

1 concurrently with the filing of the Prehearing
2 Conference Statement, new Applicant witnesses have
3 been added, so --

4 HEARING OFFICER KRAMER: Okay.
5 Mr. Ratliff, is Mr. Tyler going to be down there
6 or would you like him to be on a telephone?

7 MR. RATLIFF: No, it will be
8 Dr. Greenberg.

9 HEARING OFFICER KRAMER: Okay. So is
10 Mr. Tyler going to be available or --

11 MR. RATLIFF: No.

12 HEARING OFFICER KRAMER: -- should we,
13 so we should remove him as one of the witnesses?

14 MR. RATLIFF: Yes.

15 HEARING OFFICER KRAMER: Okay. Did any
16 party have plans to talk to Mr. Tyler?

17 Seeing none, okay. Okay, Biological
18 Resources had no, nobody wanted to talk about
19 that, so that will just go in declaration
20 unless --

21 MR. THOMPSON: I think this, we
22 neglected to put this in our Prehearing Conference
23 Statement, and we would like to do it by phone,
24 but if there's a chance we would reserve just five
25 minutes when you get to the phone folks.

1 HEARING OFFICER KRAMER: Okay. For
2 Biological Resources?

3 MR. THOMPSON: Yes.

4 HEARING OFFICER KRAMER: And who would
5 your witness be?

6 MR. THOMPSON: Staff.

7 MR. RATLIFF: Could we ask the issue?

8 HEARING OFFICER KRAMER: So it's cross-
9 examination?

10 MR. THOMPSON: It would be cross-
11 examination and the biological effects of
12 including some of the cumulative projects into the
13 Project Analysis.

14 HEARING OFFICER KRAMER: You said five
15 minutes?

16 MR. THOMPSON: Yes, I think that's all
17 we'll do.

18 HEARING OFFICER KRAMER: Any objection
19 to that?

20 MR. RATLIFF: No.

21 HEARING OFFICER KRAMER: Okay. Would
22 you like her to be available by telephone,
23 Mr. Ratliff?

24 MR. RATLIFF: Yes.

25 HEARING OFFICER KRAMER: Okay. Any

1 objection to Heather Blair appearing by telephone?
2 We'll get back to some of the others later, as we
3 come to them.

4 Soil and Water Resources, we have five
5 minutes of cross-examination from Power of Vision.

6 MR. THOMPSON: In our Prehearing
7 Conference we also requested five minutes by
8 phone.

9 HEARING OFFICER KRAMER: I was starting
10 to wonder if I reading the same documents. Okay,
11 City --

12 MR. THOMPSON: They were that
13 fascinating, then.

14 HEARING OFFICER KRAMER: Well, there's
15 that part, too. Five minutes, okay.

16 MR. SIMPSON: This is Rob Simpson. I'm
17 sorry, I had the phone on mute. I'd like to get
18 five minutes on Biological Resources and Soil and
19 Water, please. This telephone, my telephone is
20 hot.

21 HEARING OFFICER KRAMER: Okay. Five
22 minutes, okay.

23 MR. SIMPSON: Thank you.

24 HEARING OFFICER KRAMER: Okay. So are
25 there any, does any other party object to

1 Mr. Conway and Marshall testifying by telephone?

2 I see none; that's okay. And there would be no
3 direct there, Mr. Ratliff, is that right? Do you
4 need any direct, Mr. Ratliff, on Soil and Water?

5 MR. RATLIFF: I'm sorry?

6 HEARING OFFICER KRAMER: Any direct
7 testimony on Soil and Water, do you need time for
8 that?

9 MR. RATLIFF: No.

10 HEARING OFFICER KRAMER: Cultural
11 Resources, and Geological and Paleontological, and
12 Waste Management had no takers for direct or
13 cross-examination. Any changes to those? Okay.
14 They will come in on declaration without witnesses
15 present.

16 Land Use. Okay, there was a suggestion
17 earlier to split Land Use from the Redevelopment
18 aspects, at least as far as presentation of
19 evidence goes. That seems that that would work
20 pretty well logically, so what we'll do is simply
21 consider one issue after the other. We won't
22 create a whole separate section on the table for
23 that. And if I recall correctly, we have Murray
24 Kane and Debbie Fountain as those witnesses. Is
25 that correct?

1 MR. THOMPSON: Yes.

2 HEARING OFFICER KRAMER: Okay. Do any
3 of the other parties have testimony that they
4 would provide or cross-examination specific to the
5 Redevelopment Agency aspects?

6 MR. MCKINSEY: The Applicant's witness,
7 Ronald Rouse, his time would be split as well.
8 I'm guessing it's probably about ten minutes
9 Redevelopment and 20 on Land Use.

10 HEARING OFFICER KRAMER: Okay. Any
11 cross-examination on --

12 MR. MCKINSEY: Yeah. In our requested
13 cross, I think we were -- in fact, is it missing
14 here? No. I think we were specific on who we
15 wanted to cross and I think just ten per topic is
16 fine, just split the 20 in half.

17 HEARING OFFICER KRAMER: Okay. Staff,
18 is your witness going to testify about RDA at all?

19 MR. RATLIFF: Yes, she'll give direct
20 testimony. It should take ten to 15 minutes.

21 HEARING OFFICER KRAMER: And is that on
22 Redevelopment?

23 MR. RATLIFF: No.

24 HEARING OFFICER KRAMER: So she would
25 just be on the other Land Use topics?

1 MR. RATLIFF: She'll be on all those
2 topics. We hadn't broken down her testimony into
3 separate parts.

4 HEARING OFFICER KRAMER: So maybe five
5 minutes on RDA and another 15 on the others, is
6 that about right?

7 MR. RATLIFF: I don't know how she would
8 break it down. I mean, like I say, we didn't
9 consider that a separate issue.

10 HEARING OFFICER KRAMER: Okay. Well,
11 what was the total again?

12 MR. RATLIFF: I'm sorry?

13 HEARING OFFICER KRAMER: The total?

14 MR. RATLIFF: Fifteen minutes.

15 HEARING OFFICER KRAMER: Okay. Okay, so
16 then Mr. Rouse, Ms. Vahidi, Murray Kane, and
17 Debbie Fountain would be the witnesses on the
18 Redevelopment Agency aspects in part. And then
19 some of them would also testify about Land Use.

20 MR. MCKINSEY: I'd like to just, I
21 raised this topic earlier but this is the area
22 where, in fact, Applicant's putting on an attorney
23 in this area as well. One of the things we
24 focused on is making sure that his testimony is
25 not legal argument, but to some extent this is one

1 of those areas, land use compliance in particular,
2 where it's hard to split the law from the fact.
3 But there's certainly a difference and so we
4 intend to honor that rule, which is that we're not
5 putting on an attorney to make legal argument but
6 to explain the project's conformity with land use
7 requirements.

8 And it's in this area where the City's
9 witnesses, the two lawyers in this topic, both
10 appear to be proposing -- in fact three, testimony
11 focused on legal argument, the direct description
12 of it in the City's Prehearing Conference
13 Statement. It comes out that way and so that we
14 would hope that taking your consideration earlier
15 that that testimony should be focused on the
16 substantive issues as much as possible and not
17 just be purely argument.

18 HEARING OFFICER KRAMER: And are you
19 planning on attempting to exclude portions of the
20 written testimony on those grounds, or just
21 looking, you're going to be looking at whatever
22 oral testimony is provided?

23 MR. MCKINSEY: Well, I think one of the
24 reasons we suggested that these topics be briefed,
25 the particular components of this that are

1 separable, compliance with the Coastal Act, the
2 cumulative Impacts Analysis under CEQA, those
3 topics that the City raised are very purely legal
4 and we proposed those as topics to be briefed
5 afterwards.

6 We presume that overall the Committee
7 can make the decisions on, when they're taking
8 written testimony. I just, what I'm trying to
9 avoid is what you described, which is if they put
10 on their legal attorney making legal argument, I'm
11 going to feel really compelled to get ours in
12 there and make legal argument back, and we spend a
13 lot of time with lawyers talking and we really
14 don't learn anything.

15 And so the real goal, even though we
16 have lawyers there, is to provide that clarity in
17 these areas of redevelopment law and land use.
18 But on these other topics, for instance whether or
19 not the cumulative Impacts Analysis is legally
20 correct or not, that doesn't even seem to be a
21 good topic to take up oral time during our
22 hearings. But in terms of our written testimony,
23 in City's written testimony we're confident that
24 the Committee can sort through that just as they
25 would the legal briefs that would follow in those

1 topics.

2 HEARING OFFICER KRAMER: Okay, thank
3 you. Any other corrections to Land Use?

4 MS. BAKER: Problems. Go ahead,
5 Mr. Thompson.

6 MR. THOMPSON: Oh, thank you. Again a
7 new witness was added on the same date that we
8 filed our Prehearing Conference testimony and we
9 would like to just add ten minutes to our allotted
10 time for cross-examination of CEC people.

11 HEARING OFFICER KRAMER: Okay. That
12 goes from 30 to 40 minutes?

13 MR. THOMPSON: Yes, please.

14 MR. RATLIFF: Staff would like to
15 reserve five minutes for each of the City's
16 witnesses.

17 MR. MCKINSEY: Just to that, that was
18 Mr. Rouse --

19 MR. THOMPSON: Yes.

20 MR. MCKINSEY: -- you wanted to cross.
21 And those aren't new witnesses. We didn't
22 designate our oral testimony until the Prehearing
23 Conference, but those witnesses were listed on our
24 -- I'm just trying to correct on that, the earlier
25 one on Worker Safety, Frank and Rouse were both

1 listed in our opening testimony as witnesses.

2 MR. THOMPSON: But everybody understands
3 the difficulty of having Intervenors file
4 Prehearing Conference Statements naming the number
5 of minutes for cross-examination when, on the same
6 day, you put in 40 or 50 new exhibits and a number
7 of new witnesses. It makes it, it makes a
8 disconnect with the system it seems to me.

9 MR. MCKINSEY: Well, and if we're not --

10 MR. THOMPSON: And we're trying to
11 work --

12 MR. MCKINSEY: We're not objecting. I'm
13 just saying we didn't put in new witnesses. We
14 simply designated our oral testimony for those
15 witnesses who are already disclosed in the opening
16 testimony.

17 HEARING OFFICER KRAMER: And what the
18 truth is on that point is probably irrelevant to
19 the Committee, so go ahead.

20 MS. BAKER: Yes, if we're talking about
21 splitting Redevelopment and Land Use, Power Vision
22 would want its cross split between Redevelopment
23 and Land Use. And Mrs. Nygaard will testify
24 primarily on Land Use, but I would imagine she
25 might have a few things to say about Redevelopment

1 as well, so I don't know how you want us to handle
2 that.

3 HEARING OFFICER KRAMER: Twenty minutes
4 total?

5 MS. BAKER: Okay. But, I mean, will she
6 be separated? I mean, when she's giving her
7 testimony would she be up, separated on
8 Redevelopment? I mean, would she be --

9 HEARING OFFICER KRAMER: Yes, probably,
10 because it looks like we're going to do them one
11 after the other.

12 MS. BAKER: Okay. So then you might
13 make note of that, as well.

14 HEARING OFFICER KRAMER: Yeah, these
15 numbers are to get a rough idea, you know, so we
16 can try to allocate them among the days.

17 MR. ROSTOV: Mr. Kramer, we had a, we
18 wanted to do one bit of cross-examination on
19 Mr. Hogan who was a City witness. He talks about
20 cumulative impacts.

21 HEARING OFFICER KRAMER: How long?
22 Okay, how long?

23 MR. ROSTOV: Fifteen minutes. I mean,
24 our aspect is part of the GHD, but we're happy to
25 do it in the Land Use area.

1 HEARING OFFICER KRAMER: Okay. Noise,
2 we just have cross-examination from Power of
3 Vision and Terramar, and Ms. Siekmann testifying
4 as well.

5 MR. THOMPSON: Mr. Kramer, I think again
6 in our Prehearing Conference we wanted to reserve
7 five minutes, possibly by phone, on those.

8 HEARING OFFICER KRAMER: I'm starting to
9 wonder if this is the latest draft of this thing.
10 Okay, so City wanted five minutes for cross. Any
11 others?

12 MR. RATLIFF: Mr. Baker.

13 HEARING OFFICER KRAMER: Can Mr. Baker
14 appear by telephone?

15 MS. SIEKMANN: Yeah.

16 HEARING OFFICER KRAMER: And will you
17 also looking to talk to the Applicant's witnesses?

18 MS. SIEKMANN: No.

19 HEARING OFFICER KRAMER: Okay. So this
20 Mr. Baker who can appear by telephone.

21 Okay. Socioeconomics, this is one of
22 those I could have almost put it in the
23 undetermined category. As I understand it, the
24 witness is going to testify about the effects of
25 the project on the local community, the economy,

1 and small businesses, et cetera. I think that is
2 the provenance of Socioeconomics.

3 Power Vision, either of you -- did you
4 want to speak to anyone other than the staff
5 witness?

6 MS. BAKER: No. What we, Power of
7 Vision has a witness under this category.

8 HEARING OFFICER KRAMER: Oh, that's
9 right. I'm sorry, it's your witness, yeah.

10 MS. BAKER: That's our witness.

11 HEARING OFFICER KRAMER: My mistake.

12 MR. RATLIFF: Could we have some
13 clarification of whether we need a witness on this
14 for staff?

15 HEARING OFFICER KRAMER: I guess there
16 is no cross-examination intended by any parties.
17 So only if you want to rebut, I suppose, and do
18 you know at this point if you would? Do you want
19 to reserve five minutes to do that or --

20 MR. RATLIFF: I'll reserve three.

21 HEARING OFFICER KRAMER: Why don't I
22 give you, I'm going to round up to five. Okay, so
23 staff -- so actually that will be five minutes for
24 you, it will be your, Marie McLean would be the
25 witness.

1 MR. RATLIFF: Well, I just asked if we
2 need to have a witness.

3 HEARING OFFICER KRAMER: No, but your
4 rebuttal witness, if you use one, would be her?

5 MR. RATLIFF: Oh, no, I just wanted to
6 reserve time to cross-examine --

7 HEARING OFFICER KRAMER: Oh, okay,
8 cross-examination. Okay. Mr. Simpson?

9 MR. RATLIFF: A very small amount.

10 MR. SIMPSON: (Indiscernible) and I'd
11 like to get five minutes to cross-examine also,
12 please.

13 HEARING OFFICER KRAMER: On
14 Socioeconomics?

15 MR. SIMPSON: Yes.

16 HEARING OFFICER KRAMER: Okay.

17 MS. BAKER: Clarification: does he mean
18 cross-examine POV's witness or cross-examine CEC
19 report, the FSA I mean?

20 HEARING OFFICER KRAMER: Good point,
21 good question. Mr. Simpson, who are you cross-
22 examining?

23 MR. SIMPSON: Well, the only witness I'm
24 aware of is POV's witness. Does staff have a, was
25 there (indiscernible) of them?

1 HEARING OFFICER KRAMER: Okay. I gather
2 you are not looking at the spreadsheet we passed
3 out last night via e-mail.

4 MR. SIMPSON: I've looked at it.

5 HEARING OFFICER KRAMER: Okay. But it's
6 -- okay. Mr. Ratliff, can this witness be
7 available by telephone?

8 MR. RATLIFF: She can be, but I would
9 request -- I mean, if we're going to actually have
10 people standing by to participate in hearings, I
11 would like to have the identification of what the
12 issue is that she would be standing by to
13 participate in.

14 HEARING OFFICER KRAMER: Mr. Simpson,
15 what are, what topic, what specific topics are you
16 planning on cross-examining about?

17 MR. MCKINSEY: Can I ask a question?

18 MR. SIMPSON: Pardon me?

19 MR. MCKINSEY: I just, the witness
20 that's present, is that proposed as an expert
21 witness or as just a -- it's a lay person, he owns
22 several facilities including the one we're holding
23 the hearings at. It wasn't clear to me in his
24 proposed testimony, but I wasn't that worried
25 about it, but if we're getting into a lot of

1 cross-examination, I'd like to make sure it's
2 really clear whether this person is an expert
3 witness or is simply a factual witness speaking
4 about his experience as a developer. Or, if this
5 is an expert, Socioeconomics witness. And it
6 didn't appears to me that that's the case. It
7 appeared to me this is a lay witness, so the cross
8 would have to be pretty restricted in that case.

9 HEARING OFFICER KRAMER: Okay. Well,
10 let's first ask Mr. Simpson. What is the nature
11 of your cross-examination? Can you describe it?

12 MR. SIMPSON: Sure. I'd like to cross-
13 examination regarding the socioeconomic impacts of
14 the facilities (indiscernible) at that location.
15 Would the witness be POV's witness or if staff has
16 a rebuttal witness, it's not too clear for me just
17 yet. But I'd like to examine whichever witness is
18 available at that time.

19 MR. RATLIFF: Well, my point is that if
20 staff is spending resources for witnesses, we
21 would like to think that there is an identified
22 issue of fact that the witness is actually being
23 upon to spend time on, not just to show up for
24 whatever occurs to be cross-examined on the day of
25 the event. If we are going to have Ms. McLean set

1 aside her morning or whatever time period of time
2 it is, could we have some explanation for what
3 aspect of her testimony raises an issue of fact
4 about which this cross-examiner wants to question
5 her?

6 HEARING OFFICER KRAMER: Mr. Simpson,
7 your answer was, or your description was generic.
8 Can you be more specific?

9 MR. SIMPSON: Not at this time.

10 HEARING OFFICER KRAMER: Okay. Well, in
11 that case -- well, I think, Mr. Ratliff, I have to
12 put you to the same test. What specifically are
13 you going to cross-examine about?

14 MR. RATLIFF: Well, in that case I
15 strike out, too. I can't tell you.

16 MR. MCKINSEY: Is the proposal --
17 Mr. Simpson, is your proposal that you want to
18 cross-examination the staff's witness and/or --
19 just what witnesses did you want to cross-examine
20 on this topic? (Indiscernible) to cross-examine
21 the witness put forward by Terramar.

22 MS. BAKER: POV.

23 MR. SIMPSON: Then my intent -- I'm
24 sorry.

25 MR. MCKINSEY: I'm sorry, by Power of

1 Vision.

2 MR. SIMPSON: My intent is to cross-
3 examine the witness of Power Vision. It sounded
4 like staff may have a rebuttal witness or a
5 witness they'd like to present whether it by
6 telephone or in person. We're only talking about
7 five minutes here and I think we've spent ten
8 minutes trying to figure out what we're going to
9 talk about for five minutes.

10 HEARING OFFICER KRAMER: Some days
11 that's our definition of progress.

12 MR. SIMPSON: Thank you.

13 HEARING OFFICER KRAMER: Well, no, staff
14 -- to clarify, staff just wanted to cross-examine
15 so we will allow cross-examination by staff and
16 Mr. Simpson only of Power of Vision's witness,
17 William Canepa.

18 MS. BAKER: Canepa.

19 HEARING OFFICER KRAMER: Staff's witness
20 will not be present.

21 MR. MCKINSEY: Applicant would like to
22 get a clarification on the nature of this witness.
23 My understanding, in reviewing Power of Vision's
24 statement, this witness is a developer in the
25 area, is not being proposed as an expert witness

1 on socioeconomics and impact, but is speaking just
2 from experience.

3 MS. BAKER: As a clarification,
4 Mr. Canepa is a developer of motel and resort
5 properties in Carlsbad, so he will be speaking to
6 the socio, or the impact to tourism in the
7 community of not only the existing power plant but
8 the possibility of a second one.

9 HEARING OFFICER KRAMER: Are you
10 offering him as an expert witness then?

11 MS. BAKER: Well, I can't. By your
12 definition I don't know whether you would consider
13 him an expert or not, but he is the developer. I
14 guess I'm getting nods over there from lawyers.
15 But he has developed several resort properties in
16 the city and would have knowledge on the effects
17 of land use would have on his business.

18 HEARING OFFICER KRAMER: Okay. I'm
19 going to increase his testimony time to 20
20 minutes, because it sounds like the parties are
21 going to want to question him about his
22 qualifications as an expert prior to his
23 testimony. And I will allow staff --

24 MR. MCKINSEY: I think the Applicant
25 would like to request an actual resume. The only

1 information provided is a very short statement of
2 where he lives and the several facilities he owns.

3 HEARING OFFICER KRAMER: Ms. Baker, it
4 sounds like you would be advantaged to provide
5 additional information about his qualifications as
6 soon as you can.

7 MS. BAKER: Okay. But when we're
8 talking about additional qualifications, to what
9 extent? I mean, as a long-time developer in the
10 community? What you, I guess I need to know what
11 you want above and beyond the fact that it's a
12 property owner that will be affected by the
13 project. So what more would you like for us to
14 do, so I do it correctly?

15 HEARING OFFICER KRAMER: We cannot give
16 you legal advice. I would suggest that you talk
17 to Mr. McKinsey offline, if he's willing to tell
18 you what he wants to see, that he appears to be
19 one person who might be objecting to this witness
20 testifying as an expert. So if you can make him
21 less concerned about it, that may or may not
22 influence the Committee, but it won't hurt.

23 MS. BAKER: Well, then would it be,
24 would it be better to classify him as a lay -- no,
25 okay. No problem.

1 HEARING OFFICER KRAMER: He may end up
2 in that status, but you're certainly free to offer
3 him or try to offer him at the higher status of an
4 expert.

5 MS. BAKER: Okay.

6 HEARING OFFICER KRAMER: Mr. McKinsey,
7 you're, I presume, going to want some time for
8 cross-examination?

9 MR. MCKINSEY: That's correct.

10 HEARING OFFICER KRAMER: Ten minutes?

11 MR. MCKINSEY: Five.

12 HEARING OFFICER KRAMER: Five, okay. So
13 we have staff, Applicant, and Mr. Simpson
14 receiving five minutes for cross-examination of
15 the Power of Vision witness.

16 Moving on to Traffic and Transportation,
17 which is uncontested. That will come in under
18 declaration unless somebody --

19 MR. RATLIFF: The broken record, in our
20 Prehearing Conference we requested five minutes by
21 phone.

22 HEARING OFFICER KRAMER: Okay, so
23 Mr. Debauche can testify by telephone.

24 MR. THOMPSON: And I might add, these
25 folks by telephone I think we can be very, we can

1 be prepared going into the hearings at any time
2 that's convenient for them would really work for
3 us.

4 HEARING OFFICER KRAMER: Yeah, these
5 kind of minor items will be, we probably want to
6 assign a specific, an absolute time because
7 they're the kind of thing we can use to fill in
8 gaps in the schedule.

9 So that was City wanted five minutes for
10 cross, was that correct?

11 MR. THOMPSON: Yes, it was.

12 HEARING OFFICER KRAMER: Okay. Visual
13 Resources. We're already up to 2.3 hours and I
14 didn't give Mr. Kanemoto any time. Mr. Ratliff,
15 how much direct time do you need?

16 MR. RATLIFF: Ten minutes.

17 HEARING OFFICER KRAMER: Okay. Any
18 other corrections?

19 MR. THOMPSON: Again, on the same date
20 that we filed our Prehearing Conference, there was
21 a significant, in terms of the exhibits at any
22 rate, of filing by the CECP. We would like to up
23 our time to 30, if that's acceptable.

24 HEARING OFFICER KRAMER: Is that due to
25 the addition of witness or just additional

1 documentation?

2 MR. THOMPSON: I know that there was
3 additional documentation, 30 or 40 exhibits. I
4 think there may have been some additional
5 testimony as well.

6 MR. RATLIFF: We have no objection.

7 HEARING OFFICER KRAMER: Okay. So the
8 City and cross-examination goes from 10 to 30
9 minutes. That should bring the whole thing up to
10 about three hours, close.

11 Okay. We've dealt with the
12 Undetermined. So now we need to try to put
13 these --

14 MR. RATLIFF: Mr. Kramer, I want to make
15 sure you've got me down for ten minutes of cross-
16 examination on that date, so --

17 HEARING OFFICER KRAMER: On Visual.
18 You're not. Okay. Staff on Visual, cross, ten
19 minutes. We're probably up to about three and,
20 three and a half hours.

21 Okay. We need to try to allocate these
22 to particular dates. Do we have -- I don't recall
23 anybody having indicated that a witness had a
24 scheduling problem that would preclude their
25 appearing on any of the first through the fourth

1 of February.

2 MR. THOMPSON: Mr. Kramer, not exactly a
3 scheduling issue on those four days, but there
4 were two witnesses coming from some distance that
5 we asked to possibly make a date certain.

6 HEARING OFFICER KRAMER: Okay. Which
7 topic were they on?

8 MR. THOMPSON: That was Mr. Faust coming
9 from Eureka on the Coastal Commission, and
10 Mr. Martinez on Visual coming from Texas.

11 HEARING OFFICER KRAMER: Coming from
12 where?

13 MR. THOMPSON: Texas.

14 HEARING OFFICER KRAMER: Okay.

15 MR. SIMPSON: Hi, it's Rob Simpson,
16 maybe it's pertinent to this. I wanted to make
17 sure that telephone (indiscernible) is going to be
18 acceptable for the proceeding.

19 HEARING OFFICER KRAMER: It is not.
20 You'll note that we did not provide a telephone
21 number in the notice and that is because we are,
22 we are going to the community to hear them and
23 their concerns, so most of the parties will find
24 it more convenient. And also the logistics of the
25 facility would not lend itself to, easily to

1 participation of a party by telephone. We're
2 going to allow limited use of the telephone for
3 basically single witnesses at a time to testify.

4 And so, Mr. Simpson, it would not be,
5 would not be possible for us to allow you to
6 participate by telephone.

7 MR. SIMPSON: I see. I have a hearing
8 up at Humboldt Bay facility on the 4th in Eureka.

9 HEARING OFFICER KRAMER: Okay. Well,
10 we'll try to keep that in mind when we schedule
11 some of the issues.

12 And let me just make sure we got all the
13 telephone -- for Power Plant Efficiency, was there
14 any objection to Mr. Khoshmashrab -- sorry, I
15 always have trouble pronouncing his name --
16 testifying by telephone? Seeing none, it's only
17 15 --

18 DR. ROE: If it's not too difficult to
19 have him there, that would be preferable.

20 HEARING OFFICER KRAMER: It would be, it
21 would be a -- well, a fairly significant financial
22 issue for the Commission because when one of our
23 staff members has to travel to a place like that
24 for a day's worth of hearings, sit around for a
25 while and come back, in effect it uses up two days

1 of their work time. And in these very constrained
2 budget times, that's something that we probably
3 can't live with. But he can be available on the
4 telephone.

5 Are you planning on showing him
6 exhibits?

7 DR. ROE: No.

8 HEARING OFFICER KRAMER: Okay. So we
9 will allow his testimony by telephone. It's
10 unfortunate that we have to do that, but those are
11 the budget realities these days.

12 Okay. So spreading around the topics --

13 MR. RATLIFF: Mr. Kramer?

14 HEARING OFFICER KRAMER: Mr. Ratliff?

15 MR. RATLIFF: Mr. Rostov and I would
16 like to request that you do the Greenhouse Gas
17 issues on the same day that you do Alternatives,
18 if possible, perhaps starting with one in the
19 morning and whenever we get to the other one we do
20 the other one.

21 This works more conveniently for the
22 witnesses that CBD is going to have and for the
23 staff as well. We've tried to promise the Cal ISO
24 that they won't have to have their witness wait
25 for days to testify. We'd like them to be able to

1 be done in one day and be able to go home.

2 HEARING OFFICER KRAMER: Okay.

3 MR. ROSTOV: And just to amend that a
4 little, I would suggest the Greenhouse Gases in
5 the morning because several of their testimony, I
6 think, would overlap into the Alternatives.

7 MR. RATLIFF: That's what I meant to
8 say.

9 MR. ROSTOV: Yeah, yea. We were
10 thinking maybe the second day, Tuesday. I know
11 there's other important issues that you would like
12 to do first.

13 HEARING OFFICER KRAMER: Okay. So
14 Greenhouse Gas plus Alternatives on Tuesday. That
15 would be about, oh, eight and a half hours.

16 MR. MCKINSEY: Yeah, I'd like to
17 suggest, because we have public comment that
18 night, that that could end up making it turn into
19 another day simply because we would run out of
20 time. If you did it on Wednesday, we could go as
21 late as we needed to go, so you could really do it
22 in one day.

23 MR. ROSTOV: That's fine.

24 MR. RATLIFF: That's fine, too.

25 HEARING OFFICER KRAMER: Okay. Okay,

1 tentatively let's pencil that in on Wednesday, one
2 to follow the other. You've got some of the same
3 witnesses so I think, I don't think we want to set
4 specific times.

5 Let's remind ourselves that it's six
6 o'clock on Monday and Tuesday evening when we have
7 public comments scheduled.

8 MR. SIMPSON: This is Rob Simpson. If
9 Air Quality, the subjects I wish to cross-examine
10 on, can be on a date besides the 4th that would be
11 more accommodating for me.

12 HEARING OFFICER KRAMER: Okay. Yes,
13 let's see here.

14 Logically, Project Description should go
15 first because it's going to set the context for
16 much of what we're doing. One thing we keep, try
17 to keep in mind here is that for the public that
18 attends we're trying to make this -- well, a lot
19 of the testimony is not going to be repeated
20 because it was submitted in writing. We're trying
21 to make it as informative for them as possible.
22 So I think going over Project Description first on
23 Monday would be good.

24 Let's see, we were starting at, was it
25 10:30?

1 MR. MCKINSEY: You know, to some extent
2 we have Air Quality and Greenhouse Gas can have
3 some connections as well. I don't think we can do
4 all three of those, Air Quality, Greenhouse Gas,
5 and Alternatives in one day.

6 HEARING OFFICER KRAMER: No, I'm talking
7 about Monday for Project Description.

8 MR. MCKINSEY: Oh, okay. I was
9 suggesting Air Quality, which should have been
10 brought up, might even be better on Tuesday and
11 not on Monday, simply because then we have some
12 identical witnesses so they would be in here
13 Tuesday and Wednesday.

14 HEARING OFFICER KRAMER: Okay. Air
15 Quality on Tuesday. And that was estimated at
16 about -- well, good. Thank you. Mr. Olson has
17 been refining the addition. So you said two --

18 MR. OLSON: It's like two hours
19 (indiscernible).

20 HEARING OFFICER KRAMER: Okay. Let's
21 just call it three hours for rounding for this
22 purpose. Okay. So we start at nine so that takes
23 us to lunch on Tuesday.

24 Project Description looks like it's
25 going to be about an hour, hour and a half on

1 Monday.

2 Greenhouse Gas and Alternatives were,
3 would you say over a half hour?

4 MR. OLSON: Yeah, it looks like.

5 HEARING OFFICER KRAMER: Okay. That's
6 on Wednesday.

7 MR. THOMPSON: Mr. Kramer, could I --

8 HEARING OFFICER KRAMER: Mr. Thompson?

9 MR. THOMPSON: Could I request that
10 following Project Description on Monday that you
11 consider having Land Use, which is extremely
12 important to the citizens of Carlsbad and we would
13 appreciate that.

14 HEARING OFFICER KRAMER: Any reaction
15 from the other parties to Land Use after Project
16 Description? Does that cause any witness
17 difficulties?

18 MR. MCKINSEY: What's the length of time
19 on Land Use now?

20 HEARING OFFICER KRAMER: Mr. Accountant?

21 MR. OLSON: It looks like four a half
22 hours.

23 HEARING OFFICER KRAMER: Four and a
24 half. So that takes us up to about six, six
25 hours. That's probably all we should try to do

1 that day because we're starting a little late to
2 allow people to fly in and we have public comment.

3 Okay. So then for Mr. Simpson, let's
4 see --

5 MR. MCKINSEY: We'd also like to propose
6 that Public Health follow Air Quality on Tuesday.

7 HEARING OFFICER KRAMER: We have Air
8 Quality is three hours on Tuesday morning and
9 that's all we have so far on Tuesday. So let's
10 say Public Health is going to be another two.

11 MR. RATLIFF: Was Public Health two
12 hours?

13 HEARING OFFICER KRAMER: I'm guessing.

14 MR. RATLIFF: Or was, I thought -- how
15 many people want to cross-examine in Public
16 Health? I thought it was a short --

17 HEARING OFFICER KRAMER: Tell you what,
18 in the interests of time let's -- we're
19 ballparking it here so --

20 MR. RATLIFF: I thought that was a
21 shorter topic.

22 HEARING OFFICER KRAMER: Okay, an hour
23 now. Okay. So I suppose that makes it even
24 better on Tuesday following Air Quality.
25 Greenhouse Gases, covered it, Public Health.

1 Efficiency, that we can squeeze in so
2 leave that as a floater.

3 And what we'll do is during the course
4 of the hearing we'll revisit the schedule and
5 adjust it as we need to, vis a vis some of the
6 smaller items we may have one staff witness on the
7 telephone.

8 MS. BAKER: Mr. Kramer, would it make
9 sense to have Visual on Tuesday afternoon so that
10 it could lead into public comment? I expect that
11 much of the public comment would concern Visual.

12 HEARING OFFICER KRAMER: That sounds
13 reasonable, and that's --

14 MS. BAKER: Tuesday afternoon?

15 HEARING OFFICER KRAMER: What's your
16 update?

17 MR. OLSON: It looks like three and a
18 half, is that what you --

19 HEARING OFFICER KRAMER: Yeah, that's
20 what I was ballparking. So Visual is three and a
21 half so that would fill up Tuesday.

22 MR. RATLIFF: Could we go late that
23 evening to finish it after --

24 HEARING OFFICER KRAMER: The public
25 comment.

1 MR. RATLIFF: -- after public comment or
2 do we, we'll probably go the whole evening.

3 HEARING OFFICER KRAMER: Some people are
4 predicting hundreds. I heard a number in the
5 thousands from somebody, people visiting us.
6 Others are based on the turnout at your last
7 workshop. I'm wondering if there will be a lot of
8 people there. But I really think we need to
9 assume that we're going to be going until late in
10 the evening on public comment.

11 MR. RATLIFF: So we won't finish Visual
12 on Tuesday then.

13 HEARING OFFICER KRAMER: Well, we have
14 nine o'clock, nine to six, and even with breaks
15 will give us about --

16 MR. RATLIFF: Oh, okay.

17 HEARING OFFICER KRAMER: -- you know, I
18 mean, more than banker's hours. So I think we can
19 fit in three hours and one hour and another three
20 and a half hours. But I think that's all we can
21 fit in.

22 So Worker Safety/Fire Protection.

23 MR. THOMPSON: I don't think I can offer
24 a specific time here, but I do note that
25 Dr. Greenberg is on both sessions, Public Health

1 and --

2 MR. MCKINSEY: Worker Safety.

3 MR. THOMPSON: Yeah. If there's a way
4 to put them close so --

5 MR. MCKINSEY: Public Health on, then
6 Worker Safety.

7 MR. THOMPSON: Yeah. If there's a way
8 to put them close so (indiscernible). You're a
9 popular guy.

10 HEARING OFFICER KRAMER: Well, let's
11 see.

12 MR. MCKINSEY: Well, I'm thinking Visual
13 on Tuesday.

14 HEARING OFFICER KRAMER: Yeah, but I
15 think the argument that the public will be
16 interested in that, I think, is a compelling one
17 there.

18 Remaining are -- some of these are
19 Mr. Simpson's cross-over issues or cross-
20 examination issues.

21 MR. RATLIFF: Well, we never found a
22 place. Where did you schedule Fire Safety?

23 HEARING OFFICER KRAMER: I haven't yet.

24 MR. RATLIFF: Okay.

25 MR. MCKINSEY: I think it would have to

1 go on Thursday --

2 MR. RATLIFF: Thursday.

3 MR. MCKINSEY: -- simply to have enough
4 time to do it.

5 HEARING OFFICER KRAMER: Okay. So
6 Worker Safety is -- what was the updated estimate?

7 MR. OLSON: Three hours.

8 HEARING OFFICER KRAMER: Worker's Safety
9 went up to three hours from 1.3?

10 MR. OLSON: Lots of cross-examination.
11 Maybe it's two hours.

12 HEARING OFFICER KRAMER: Yeah, if I'd
13 been typing it into the spreadsheet while we
14 talked and it would still be here.

15 MR. OLSON: Two hours.

16 HEARING OFFICER KRAMER: Okay. So two
17 hours for Workers Safety and put that on Thursday.

18 Hazardous Materials, that's something --
19 that's all in-house basically.

20 Oh, Ms. Siekmann --

21 MS. SIEKMANN: Yes?

22 HEARING OFFICER KRAMER: -- did you want
23 to speak to Mr. Tyler or just Dr. Greenberg
24 about --

25 MS. SIEKMANN: Dr. Greenberg.

1 HEARING OFFICER KRAMER: Okay. So we'll
2 take Mr. Tyler off the list for Hazardous
3 Materials as well.

4 Okay, so Worker Safety followed by
5 Hazmat on Thursday. Soil and Water was a really
6 small -- Soil and Water.

7 MR. RATLIFF: So we're doing Hazardous
8 Materials on Thursday, too, then?

9 HEARING OFFICER KRAMER: Yeah, Worker
10 Safety and Hazardous Materials, Soil and Water.
11 Unfortunately, two of those are where Mr. Simpson
12 wanted to ask questions but I don't think there's
13 any way around it.

14 Noise is about an hour, so we'll do
15 Noise. You keeping a tally of how much I've got
16 on Thursday?

17 MR. OLSON: It looks like two hours of
18 Workers Safety, half hour of Hazardous, Soil and
19 Water (indiscernible), Noise one hour
20 (indiscernible). That's in the morning.

21 HEARING OFFICER KRAMER: Four hours,
22 yeah.

23 Okay. Socioeconomics, think we could
24 squeeze Socioeconomics in on Monday? Is that too
25 ambitious?

1 MR. OLSON: For 30 minutes maybe, is
2 that --

3 HEARING OFFICER KRAMER: Yeah, I think
4 so.

5 MR. OLSON: Yeah, right now you've got
6 ending about 4:30, five o'clock.

7 HEARING OFFICER KRAMER: Well, maybe
8 we -- let's put Socioeconomics, let's put it on
9 Monday following Land Use. If we don't get to it,
10 Mr. Canepa, he's local isn't he?

11 MS. BAKER: Yes.

12 HEARING OFFICER KRAMER: Oh, that's
13 right. He's the developer in the area. So he
14 should be relatively flexible, I would think.

15 MS. BAKER: Hopefully.

16 HEARING OFFICER KRAMER: Okay. So that
17 was about half an hour? Okay.

18 Power Plant Efficiency will be a
19 floater. Okay, so I think I've got everything,
20 but let's see. Yeah, that's just a floater from
21 my declaration.

22 Oh, I'm sorry, the City wanted half an
23 hour or five minutes. But we'll leave Traffic and
24 Transportation as a floater or, Mr. Ratliff, would
25 it help to give Mr. Debauche a specific day at

1 least?

2 MR. RATLIFF: Oh, yes.

3 HEARING OFFICER KRAMER: Okay. Then
4 let's put that Traffic on Thursday then, and that
5 was about point two.

6 MR. RATLIFF: And should we tell
7 Mr. Khoshmashrab -- I'm sorry.

8 HEARING OFFICER KRAMER: Yeah.

9 MR. RATLIFF: Khoshmashrab that he's to
10 be available on Tuesday then? Because we do sort
11 of need to tell these witnesses when they're
12 likely --

13 HEARING OFFICER KRAMER: Wait, he was on
14 Hazmat, right?

15 MR. RATLIFF: Efficiency.

16 HEARING OFFICER KRAMER: Oh, Efficiency.
17 Oh, we did not pick a time for him. We've got --
18 yes, I think that would work. So Power Plant
19 Efficiency will be on Tuesday, following --

20 MR. RATLIFF: In the afternoon?

21 HEARING OFFICER KRAMER: Let's see,
22 let's make it right before Visual.

23 MR. RATLIFF: Right.

24 HEARING OFFICER KRAMER: I'm assuming
25 the public's going to gradually drift in as the

1 evening time approaches and they'll be more
2 interested in Visual. So that was about point
3 three.

4 Okay. So here's -- I'll put out the
5 revised, or put out a schedule via e-mail probably
6 tomorrow. What we have is Project Description.
7 This is on Monday the 1st, Project Description
8 first, estimated at 1.5 hours; Land Use, 4.5; and
9 then Socioeconomics at point five. Six o'clock we
10 have public comment.

11 On Tuesday the 2nd we have Air Quality
12 at about three hours; Public Health at one hour;
13 Efficiency at point three; Visual at 3.5.

14 On Wednesday the 3rd we have Greenhouse
15 Gas plus Alternatives. Total for the day about
16 8.5 hours.

17 Thursday, Worker Safety, Hazardous
18 Materials, Soil and Water. Those are two hours
19 and then point five and point five, followed by
20 Noise at one hour, Traffic at about ten minutes.
21 And then we will do all the cleanup stuff
22 including the -- if we have a little gap somewhere
23 earlier in the week, we may take all the topics
24 for which there will be no testimony or cross-
25 examination as a group via simple motion.

1 And at the end of Thursday we'll talk
2 about briefing.

3 Let me go off the record for a minute,
4 though.

5 (Off the record at 12:15 p.m.)

6 (On the record at 12:17 p.m.)

7 PRESIDING COMMISSIONER BOYD: We are on
8 the record.

9 HEARING OFFICER KRAMER: Mr. Ratliff,
10 did you need a specific day for Ms. Blair as well
11 or is she more flexible?

12 MR. RATLIFF: It's very good to have a
13 specific day.

14 HEARING OFFICER KRAMER: Okay. Then,
15 for now, Biological will be on Thursday.

16 With regard to all the Thursday events,
17 though, they will be with the caveat that if we
18 for some reason find ourselves running ahead of
19 schedule then we may try to move some of those
20 ahead if the witnesses can be made available. If
21 not, then we'll have to do them on Thursday.

22 But we're going to try to, you know,
23 because there's going to be the inevitable not yet
24 recognized complication of, you know, one or more
25 of the topics that, you know, we will be fighting

1 like -- back up, I can't imagine that sentence
2 coming out right on the transcript. We will be
3 fighting hard to avoid, you know -- if we find
4 some spare time earlier in the week, we're going
5 to see if we can fill them with some of these
6 easier topics to the extent that witness
7 flexibility allows.

8 So, with that, any --

9 MR. ROSTOV: Mr. Kramer, just because we
10 have all the parties here I wanted to -- we're
11 sending out a notice today, but we arranged, we
12 completed working with Terramar and Power Vision
13 and the City and I just want everybody to know
14 that the alternative parking lot is set as the
15 (indiscernible) parking lot, and we have lighting
16 there and transportation to be provided for the
17 Monday and Tuesday evening sessions. And so we'll
18 get a notice out about that, but I just wanted,
19 since everybody's here it's a good time to just
20 make everybody knows that that is a go and that
21 that's the location.

22 MR. GARUBA: And if I can just briefly
23 respond, the City's working with the police
24 department.

25 HEARING OFFICER KRAMER: Would you

1 please identify yourself for the record?

2 MR. GARUBA: Yes, sir, my name is Joe
3 Garuba. I'm with the City of Carlsbad.

4 The City's working, will have the police
5 department available to help with traffic control.
6 We do anticipate a large crowd. So just in case
7 of that, there will be some folks available.
8 We'll also have the fire marshall on site, which
9 allows for excess capacity. We can exceed the
10 capacity limits of the room by, I believe, 15
11 percent if need be.

12 HEARING OFFICER KRAMER: Okay. There
13 are a couple of remaining items of business.
14 Thank you for working that out, by the way.

15 The City also made a motion to keep the
16 record open until the Coastal Commission issues
17 its report. We will have the parties brief
18 whether that's appropriate, along with the related
19 issues about whether the Coastal Commission needs
20 to be a participant in some sort of way on this
21 proceeding as the briefs, the post-hearing briefs
22 are filed.

23 Briefing Schedule, the transcripts will
24 probably not be available for two weeks after the
25 end of the hearings and I know you need those to

1 be able to prepare, at least finalize your briefs.
2 And so I don't anticipate briefs being due any
3 sooner than four weeks after the hearings, which
4 allows you two weeks to digest the transcripts.
5 But we're open to a longer briefing period as
6 well.

7 MS. SIEKMANN: Mr. Kramer, could you
8 give us a little idea of the briefs, what you
9 expect?

10 HEARING OFFICER KRAMER: We'll speak --
11 well, take a look at Mr. McKinsey's Prehearing
12 Conference Statement. He identified five issues,
13 I believe, that he thinks may need to be briefed.
14 We've mentioned a couple of others today, I think,
15 the significance of impacts would be one. He may
16 have covered that; overriding, if there are
17 significant impacts or violations, those sorts of
18 things.

19 But we will categorize all of that once
20 we get done with the hearings at the end of the
21 hearings.

22 MS. SIEKMANN: Thank you.

23 HEARING OFFICER KRAMER: There is one
24 issue, actually Commissioner Boyd reminded me,
25 that -- something I neglected to mention earlier,

1 and that's going back to the topic of Soil and
2 Water Resources, it has occurred to us we already
3 have a brief bit of testimony there, but I think
4 we may need to extend that because the Committee
5 has a, at this point, a general question and that
6 is what happens when all of the old boilers in the
7 Encina plant are shut down. As we understand it,
8 this project is proposing to draw water from that
9 cooling system, but presumably that cooling system
10 would no longer be necessary once the boilers shut
11 down. And we are, we will be interested in
12 looking at that issue. It may be that you feel
13 your testimony adequately covers it, but be
14 prepared for a couple of questions along those
15 lines during the Soil and Water Resources topic.

16 I apologize for not bringing this up
17 earlier; it just slipped my mind with all the
18 other things that were going through it.

19 In that case, Mr. McKinsey, you're
20 probably going to want to have an Applicant
21 witness available, I would presume.

22 MR. MCKINSEY: We may be able to
23 accommodate within one of the existing witnesses
24 we already have, but we might also need to make a
25 new witness to accomplish on that topic.

1 HEARING OFFICER KRAMER: Would this be
2 somebody who was not previously identified?

3 MR. MCKINSEY: No. We have witnesses on
4 the Soil and Water topic, just someone we haven't
5 identified as testimony, for instance. And that,
6 you know, we'd need to make sure we have them
7 available at that time as well.

8 I need to look more closely at that
9 topic. We addressed it in our --

10 HEARING OFFICER KRAMER: Okay. Do you
11 understand the question, though?

12 MR. MCKINSEY: We addressed it in, we
13 addressed that topic in our written testimony, so
14 presumably I think we've addressed that very
15 question. So those witnesses are the ones we just
16 may need to have available during Soil and Water
17 on Thursday.

18 HEARING OFFICER KRAMER: Okay. Can you
19 identify them for us today or do you need to --

20 MR. MCKINSEY: Hold on just, hold one
21 moment.

22 MR. THOMPSON: If I may, Mr. Kramer, in
23 our Prehearing Conference Statement we requested
24 that the Committee consider asking Regional Water
25 Quality Control Board to show up. This may be the

1 right time to consider that request.

2 HEARING OFFICER KRAMER: If staff can
3 obtain them. We're not going to make it a
4 mandate, but if you can get a representative of
5 the regional board to be available.

6 MR. RATLIFF: Well, could we have some
7 context for that? We don't understand what
8 Mr. Thompson is suggesting.

9 MR. THOMPSON: I would suggest exactly
10 the question that the Committee just posed. What
11 is the Regional Water Quality Control Board's
12 anticipation of what the CECP would be required or
13 requested to do when Units One through Five shut
14 down?

15 MR. RATLIFF: Okay.

16 HEARING OFFICER KRAMER: If you can get
17 -- this is short notice, so if you can get
18 somebody, otherwise we will won't ask the
19 questions of the party's witnesses.

20 Mr. McKinsey?

21 MR. MCKINSEY: I believe we may need to
22 propose another witness, somebody from the
23 Applicant, since the nature of the question is
24 focusing particularly on the operational
25 characteristics of the existing site. But it's

1 also possible that our witness in that area may be
2 fine. And so I will have to get back to the
3 parties on that.

4 What I think I will do, if it's
5 acceptable, is simply serve a revised statement of
6 our -- in other words, making a witness available.
7 I don't think we're planning any direct testimony
8 as a result, but clearly we need now that witness
9 there for questions or cross-examination
10 essentially by the Committee.

11 So I will send out a notice just saying
12 who that party is. If it's a new person, then
13 we'll provide their CV or bio as well.

14 HEARING OFFICER KRAMER: Okay, thank
15 you.

16 Okay. So on the briefing schedule we
17 will discuss it further at the end of the
18 hearings, but it will be no sooner than four weeks
19 after the hearings close. It might be a little
20 longer with, perhaps, ten to 14 days for reply
21 briefs if necessary. But once we have a better
22 handle on the number of issues and the complexity
23 of them, which we will only have after the
24 hearings end, then we will determine that with
25 more certainty.

1 I think that concludes the business
2 before the Committee, unless a party has an
3 additional question. Mr. Rostov?

4 MR. ROSTOV: Yeah, I had one question
5 about exhibits that I raised in the Prehearing
6 Conference Statement. The staff is proposing the
7 Final Staff Assessment as an exhibit and some of
8 the chapters, the Greenhouse Gas chapter, actually
9 has references that we believe should be staff
10 exhibits. I believe through e-mail yesterday
11 Mr. Ratliff has agreed to make those staff
12 exhibits. But essentially it is our position that
13 if the staff refers to one thing in the FSA, they
14 need to make it an exhibit and not us, because it
15 puts a big burden on the Intervenors to be copying
16 references that the staff relied on in their Final
17 Staff Assessment.

18 HEARING OFFICER KRAMER: Mr. Ratliff?

19 MR. RATLIFF: Well, yes, we agreed to --
20 Mr. Rostov gave us a list of the things that he
21 was requesting be made exhibits and I think we
22 agreed to all of them except for the Application
23 for Certification, although I think we may have
24 inadvertently agreed to that as well, so --

25 HEARING OFFICER KRAMER: Well, that's

1 been produced by the Applicant.

2 MR. RATLIFF: Right and it's their
3 testimony. But in any case, we've compiled that
4 list from Mr. Rostov's document and we're going to
5 try to make sure that all of these things are
6 docketed or made available by a link. Because
7 some of them are, for instance, the three prior
8 IPR (phonetic) documents, which are available
9 electronically, I believe, and some other
10 documents, which are CPUC or ISO documents, which
11 are also electronically available.

12 So we would intend to -- we don't want
13 to burn a whole lot of paper unnecessarily, but we
14 would intend to make it clear that those are all
15 exhibits that are part of the record that any
16 party can rely on.

17 HEARING OFFICER KRAMER: Okay. Also
18 consider which of those we could take into the
19 record by official notice.

20 MR. ROSTOV: Well, I mean, my main
21 concern, too, is just not wanting to produce, you
22 know, five copies of IPR if it's going to be
23 referenced --

24 MR. RATLIFF: Right.

25 MR. ROSTOV: -- knowing that we have it.

1 So I'm really just trying to figure out just kind
2 of a practical way to deal with the situation and
3 not have double counting exhibits as two. Those
4 are the two issues I'm trying to address.

5 HEARING OFFICER KRAMER: Okay.

6 MR. RATLIFF: And I think all of those
7 documents, or most of them, are susceptible to
8 official notice, so if you choose to do so you
9 could. I mean, the IPR, for instance, or the
10 CPUC, Energy Commission Joint Decision on
11 Greenhouse Gas Strategies.

12 HEARING OFFICER KRAMER: Okay. Well, if
13 you could put all that on a piece of paper to
14 circulate to all the parties, then we can --

15 MR. RATLIFF: Okay.

16 HEARING OFFICER KRAMER: -- so they can
17 review it ahead of time. And also they may want
18 to use the links to look up --

19 MR. RATLIFF: You mean apart from the
20 exhibit list that we'll distribute with those on
21 there? Do you want us to do something official?

22 HEARING OFFICER KRAMER: Right. And the
23 exhibit list won't have links on it probably. So,
24 yeah, if you can -- you need to either provide
25 them to them electronically, the originals, or

1 links or --

2 MR. RATLIFF: The exhibit list will
3 include links as well, to the extent --

4 HEARING OFFICER KRAMER: Okay. Your
5 exhibit list that you're going to provide to the
6 parties --

7 MR. RATLIFF: Yes.

8 HEARING OFFICER KRAMER: -- and the
9 Committee?

10 MR. RATLIFF: Yes.

11 HEARING OFFICER KRAMER: Okay. Real
12 soon?

13 MR. RATLIFF: Yes.

14 HEARING OFFICER KRAMER: Okay. We are
15 required to offer a limited time on this agenda
16 for public comment. Do I have anybody --
17 Mr. Thompson?

18 MR. THOMPSON: There's one more issue.
19 In our Prehearing Conference we requested the
20 Committee to ask the presence of SDG&E at some
21 point in the hearings to ask the question or
22 whether or not the CECP is on the SDG&E and the
23 IFR short list. The reasoning for this is that I
24 think it's one thing to launch into a discussion
25 of public convenience and necessity on an override

1 with a merchant plant, versus a plant that is
2 deemed by SDG&E to be needed for its system.

3 MR. RATLIFF: I don't understand the
4 relevance of the issue myself.

5 HEARING OFFICER KRAMER: I'm having a
6 bit of difficulty myself. Well, it may be
7 relevant to override, a small, perhaps small
8 relevance for override, so --

9 MR. RATLIFF: Well, I think we probably
10 could all, I would hope we could all stipulate
11 that if this project doesn't get a BPA, it's not
12 going get built.

13 MR. THOMPSON: I would also stipulate
14 that if it doesn't make the short list, it's not
15 going to get a BPA.

16 MR. RATLIFF: Well, then what are you
17 worried about?

18 MR. THOMPSON: I don't know if it's on
19 the short list or not.

20 HEARING OFFICER KRAMER: Gentlemen, I
21 would --

22 MR. RATLIFF: And how is this relevant
23 to whether or not this agency should approve the
24 license?

25 HEARING OFFICER KRAMER: -- we're

1 running out of time here.

2 MR. RATLIFF: I just don't see the
3 relevance to the underlying point.

4 HEARING OFFICER KRAMER: Well, yeah, I
5 think it might be difficult at this point to get
6 somebody from -- have you made attempts,
7 Mr. Thompson, to ask them to come?

8 MR. THOMPSON: First we asked CECP and
9 they declined to give us any information on that.
10 We have had one or two conversations with SDG&E,
11 and SDG&E said basically the California Energy
12 Commission is one of the entities that regulates
13 us and if they ask us, we will try our best to
14 attend.

15 HEARING OFFICER KRAMER: Okay. We'll
16 take that under submission. I need to --

17 MS. SIEKMANN: Terramar, Intervenor,
18 also tried to ask SDG&E that question as well.

19 HEARING OFFICER KRAMER: And the
20 response you received was?

21 MS. SIEKMANN: That they couldn't tell
22 us.

23 HEARING OFFICER KRAMER: Okay.

24 MS. SIEKMANN: And since there's so much
25 about public benefit and supplying need to the

1 region, I think it's a very relevant question.

2 HEARING OFFICER KRAMER: We need to
3 allow time for public comment. Does anybody in
4 the room or on the telephone wish to make a public
5 comment?

6 MR. SIMPSON: (Indiscernible) like to
7 comment.

8 HEARING OFFICER KRAMER: You're an
9 Intervenor. What is it you wish to comment about?

10 MR. SIMPSON: Oh, I just want to welcome
11 the new Commissioner. It's nice to have someone
12 from the Air Resources Board on the Energy
13 Commission.

14 HEARING OFFICER KRAMER: Okay, thank
15 you.

16 COMMISSIONER EGGERT: Thank you.

17 DR. ROE: Mr. Kramer, I have a question
18 about the public participation. You mentioned
19 earlier there was some uncertainty on the number
20 of people that might attend. And there is the
21 possibility that there will be more of the public
22 attending than is capacity in the hearing room.
23 Is any provision being made to broadcast the
24 information outside of the room so that these
25 people who come and try to participate can do so?

1 HEARING OFFICER KRAMER: Mr. McKinsey
2 made arrangements for the venue. As I understand
3 it, we have 300 seats for the public.

4 MR. MCKINSEY: Yeah, the room is set up
5 with 300 seats. There's a large foyer that runs
6 the entire front of all the rooms, and the foyer
7 will have a speaker, not a human speaker but a
8 mechanical speaker, hooked up that we can turn on
9 to broadcast it into that foyer, which would hold
10 quite a number of people.

11 We can't, according to the layout, we
12 can't put seats in there for the Fire Code
13 reasons. Of course the Fire Marshall says we
14 could because he'd be there, but I don't think we
15 can. So it would be a standing-room-only type of
16 situation.

17 But it's pretty significant as well, but
18 the 300 seats is the official -- it's not the
19 limit on capacity, it's actually just what they
20 can fit in. So there's another capacity number
21 for that setup and there could be standing room
22 around that as well. So it will hold a lot of
23 people. And if the weather's good, we could even,
24 you know, run another speaker out in front of the
25 foyer as well.

1 HEARING OFFICER KRAMER: On the beach, I
2 suppose. Did you make any attempt to try to
3 broadcast?

4 MR. MCKINSEY: You mean on a regular
5 television?

6 HEARING OFFICER KRAMER: On cable, I
7 suppose.

8 MR. MCKINSEY: No, we have not.

9 MR. GARUBA: We have cable, we have a
10 cable channel, and if the Applicant so desires
11 we'd be willing to put this on the air at that
12 time and then rerun it for the public.

13 MR. MCKINSEY: You mean it's --

14 HEARING OFFICER KRAMER: Okay. Well,
15 let me talk to the Commissioners and see how they
16 feel about that.

17 MR. MCKINSEY: You mean it's -- we don't
18 have any objections to that as the Applicant. I
19 mean, I think I've had some that have been --

20 HEARING OFFICER KRAMER: Okay. Well,
21 then, that's your answer, Dr. Roe.

22 Any other issues from the parties?

23 Seeing none, I will put out a revised
24 worksheet and probably some other notes about the
25 details, hopefully tomorrow via e-mail. And we

1 will see you on the 1st in Carlsbad.

2 We are adjourned, thank you.

3 (Whereupon, at 12:38 p.m.,

4 the Prehearing Conference was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; 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 conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of February, 2010.

JOHN COTA

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