PRESIDING MEMBER'S PROPOSED DECISION

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

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

HILTON GARDEN INN

WAVECREST BALLROOM

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CARLSBAD, CALIFORNIA

THURSDAY, MAY 19, 2011

9:40 A.M.

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Catherine Miller

CENTER FOR BIOLOGICAL DIVERSITY

William Rostov

INDEX

PAGE

Opening remarks by Presiding Member Boyd 7

Opening remarks by Hearing Officer Kramer 13

AIR QUALITY:

Panel: Gary Rubenstein, William Walters, Steven Moore (Applicant)

Cross-Examination by Mr. Thompson 38

FIRE WATER SUPPRESSION SYSTEM:

Panel: Frank Collins, Ed Holden (Applicant)
Alvin Greenberg (Staff)
Kevin Crawford, Chris Heiser, Joseph Garuba (City of Carlsbad)
Patrick Uriell (Terramar)

Direct Examination by Mr. McKinsey 47
Direct Examination by Mr. Thompson 54
Cross-Examination by Mr. Roe 68

FIRE SAFETY:

Panel: Ed Holden, Frank Collins (Applicant)

Direct Examination by Staff 84
Direct Examination by Ms. Siekmann 92
Cross-Examination by Mr. Thompson 108
Direct Examination by Mr. Thompson 115
Cross-Examination by Mr. McKinsey 154
Cross-Examination by Mr. Thompson 158
Cross-Examination by Mr. Romatier 169
Cross-Examination by Ms. Siekmann 174
Redirect Examination by Mr. Thompson 176

INDEX (Continued)

PAGE

EXTRAORDINARY PUBLIC PURPOSE:

Panel: Ronald Rouse, Murray Kane, Debbie Foountain (City of Carlsbad)

Direct Examination by Ms. Siekmann 198
Direct Examination by Mr. Thompson 207
Cross-Examination by Ms. Siekmann 228
Cross-Examination by Mr. Thompson 228
Cross-Examination by Ms. Siekmann 239

Adjournment 323

Reporter's Certificate 324

EXHIBITS

	MARKED FOR ID	RECEIVED
INTERVENOR CITY OF CARLSBAD		
435	109	117
436	109	
437	109	
438	110	
439	112	
440	113	
441	114	
442	115	
443	124	
APPLICANT		
199F	187	

PROCEEDINGS

PRESIDING MEMBER BOYD: Thank you. We're on the record. I want to welcome everybody to this hearing on the Carlsbad Energy Center project. This is a hearing to talk about outstanding questions and dealing with the Presiding Member's Proposed Decision.

I'm Jim Boyd, I am the presiding member for the commission on this case. And happen to be vice chair of the commission itself.

With me on my left is my advisor Tim Olson, and of course Mr. Kramer is our hearing officer. And I'll soon turn the entire proceeding over to him to conduct the hearing today.

I first want to say it's a pleasure to be back here in your community. These are tough times in Sacramento it's kind of nice to get away from Sacramento on occasion even though it meant getting up at 3:00 in the morning to get here. But in any event, nice of you to have that blue sky off in the distance.

With that, I will first ask for introductions from the applicant and the staff. Then I'm going to jump out of the typical protocol and invite the mayor to make his comments. We were talking earlier and I know he has a commitment to go to a funeral, and I just came off of an all day funeral, family funeral myself yesterday, and I

sympathize, empathize with that.

And then I'll turn it over to Mr. Kramer to proceed with the balance of the hearing.

So first could we have introductions from the applicant.

MR. McKINSEY: Thank you, Commissioner Boyd. My name is John McKinsey counsel for the applicant in this proceeding. Also with me is George Piantka, the project manager. We have a few other people here that we'll obviously introduce if we need them to testify or if they become involved.

PRESIDING MEMBER BOYD: Thank you.

Staff

MR. RATLIFF: I'm Dick Ratliff, counsel for the staff. And with me is Mike Monasmith, the project manager.

PRESIDING MEMBER BOYD: Very good, now how about the intervenors maybe starting with the City of Carlsbad.

MR. BALL: Good morning, Chairman Boyd. Ron Ball, city attorney.

Am I too close?

And with me is Alan Thompson, who will do the evidentiary portion of the hearing, and Joe Garuba who will be coordinating a lot of the proceedings and will be testifying.

PRESIDING MEMBER BOYD: Thank you.

MR. BALL: Just as a preliminary matter, I wanted to remind you, Commissioner Boyd, we made a motion to continue these proceedings and also to continue the final hearing in Sacramento, and that motion was unopposed. It was joined, I think, by the Center and by the Power of Vision. We have not had a ruling on that. So I would respectfully request a ruling on that unopposed motion at this time.

PRESIDING MEMBER BOYD: I believe we'll be dealing with that question shortly.

If that's it for the city, how about other intervenors, and any order you want to go.

MS. BAKER: Julie Baker, Power of Vision.

PRESIDING MEMBER BOYD: Good morning, Julie.

MS. BAKER: Oh, and with me is Dr. Arnold Roe, also Power of Vision.

PRESIDING MEMBER BOYD: Dr. Roe, good to see you again.

HEARING OFFICER KRAMER: You didn't turn on your mic.

PRESIDING MEMBER BOYD: You didn't turn it on, and we still heard you quite well.

See the little red light?

MS. BAKER: Okay, I see.

PRESIDING MEMBER BOYD: You're going to have to turn it on an angle so you see it, particularly in light of the fact you may be heard.

MS. SIEKMANN: Kerry Siekmann, intervenor for Terramar. And Catherine Miller will be here also at certain points of time as well as Dan Walsh.

PRESIDING MEMBER BOYD: Thank you.

MR. ROSTOV: And William Rostov, representing the Center for Biological Diversity.

PRESIDING MEMBER BOYD: Welcome.

Okay. Are there any intervenors on the phone, perhaps?

If not, then I would like to invite the mayor to come forward and make his comments as I said then.

We tried to make it a little more comfortable, folks, this time, providing a table instead of a rostrum to stand at.

MAYOR HALL: Thank you, Commissioner Boyd, Mr. Kramer, and Mr. Olson. I'm here today as the mayor of the City of Carlsbad to talk about the proceedings that are coming before you. And I'd first like to say, obviously we're very disappointed in your decision at this moment in time; and we're here today, and there will be others from the city and the surrounding community to talk to this.

I'm here today really to speak to three items. And I think these are probably the most important to us as a city.

The first is one of safety. And I think we entered into the record last time the safety issues in and around this proposed project. You know, this project is unlike the existing project. These are large pieces of industrial equipment that are basically sitting out in an open pit. And in case of a fire or an explosion, we are going to have to respond to that, and we need the proper spacing in order to do that, unlike the facility today that's in a large concrete facility that has proper spacing and accuracy for us to fighting any such event.

This is also compounded with the fact that I-5 is immediately adjacent to this. So any event that takes place here, such as the one that happened in Connecticut or such as what happened in Escondido just this past year where it literally burned for more than a day before it finally burned itself out, there is the possibility of impacts on I-5, which is one of the, you know, major, major arterials throughout this region.

It's also to the west the LOSSAN corridor and the rail corridor. It's the third busiest corridor in this country. So you have -- on the west you have the rail, on the east you have the road. So when you think of safety

in trying to put such a plant such as this in this setting, I think it raises strong concerns.

The second thing I'd like to talk about is coastal dependency and where this facility is located. Obviously, there's been an energy plant here for many, many years. I personally can remember when they built this plant in 1950. There wasn't a house south of Agua Hedionda Lagoon in or around where the facility is today. Today this plant is literally located right in almost the heart of the city.

The first facility was water dependent. They needed the cooling to cool the plant. Today that is not necessary. It simply is not necessary. So that allows us to site such a facility anywhere throughout this region, and they're siting many in the San Diego basin today.

So when you think of what is this land's highest and best use, it's not to further industrialize this site, but it is to return it to what it's highest and best use is, and that is coastal resource. And really, when you think of our coastline today, it is absolutely priceless. And in our goal and in our vision, we're trying to make our whole coastline into one linear part where this is to be really the absolute setting of that event.

The last is, and I want to be clear on this, I am the mayor of the City of Carlsbad, and I'm telling you

this plant does not comply with our local laws. Your proposed decision disregards our local coastal program, jeopardizes our proposed coastal rail trail program, disregards our redevelopment plan, disregards our local planning laws, and ignores our fee programs and taxes to offset the impacts of the new construction. As the energy commission you have the ability to override our laws, but you simply can't disregard them.

Again, I'm asking you today to not approve this facility and help us locate it somewhere else. And I'm here to answer any questions that may have and wish you a great day.

Questions?

PRESIDING MEMBER BOYD: Thank you, Mr. Mayor. I have no questions. You have a good day. Thank you.

Now, Mr. Kramer, I'm going to turn these proceedings over to you, and you can take folks through the other procedural things, and we can address some of the questions that we need to deal with first.

HEARING OFFICER KRAMER: Thank you, Commissioner Boyd.

One more caution about the microphones, they're very sensitive, so don't whisper any passwords to your bank accounts or anything else up here because they might go out further than you'd like.

Yesterday I sent around one of our worksheets that shows the expected or the estimated cross-examination times from all the parties. And I have extra copies if anybody needs one. And then I will give to the public advisor, we have some copies of our schedule that the public can use.

And also later, for the benefit of members of the public who come and might feel like they want to make more comments past the end of the public comment period this evening, I have a set of instructions explaining how they can either e-mail or send in written comments with the caveat that they have to be received, not, for instance, postmarked, by the June 8 deadline, 5:00 on June 8. And that's a change from the past.

I think the last time we were here, we told you that you had to both -- if you sent in an e-mail, you also had to send in a written copy to accompany it, but we've been able to get the powers that be in our dockets office to accept an e-mail only. So it's more convenient for everyone.

With that -- and we need to introduce the public advisor. Lynn Sadler is sitting at the table. She's the assistant public advisor -- or is it associate? Associate public advisor. And Jennifer Jennings just walked back in the room, and she's our public advisor.

So members of the public who want to consult about how you can participate in the process, any questions you have about making public comments, that sort of thing, see either Jennifer or Lynn, and they'll give you some advice, not legal advice, of course, and they can't speak for you, but they can advise you about how to participate in the case.

So with that, let's turn to the city's motion.

That was made less than ten days ago, goes without saying, and we normally allow time for all the other parties to respond to a motion. I think 15 days is the norm in our regulations; so I wouldn't necessarily assume, Mr. Ball, that it was unopposed. And I would ask, I guess I would ask staff, the applicant, and any other parties if they wish to orally address it.

Our intention was having picked this venue and the day and made the arrangements on our schedules, which are, especially in the case of somebody like Commissioner Boyd, relatively complicated, was we wanted to do whatever we can do today. And then if -- we'll see if it is justified to have an additional hearing, or necessary.

Before I say anything else, let me ask the staff or the applicant or anyone else if they wish to address the motion.

MR. McKINSEY: John McKinsey. I didn't actually

spell my name the first time so I'll spell it this time. Last name is spelled M-c-K-i-n-s-e-y. Counsel for the applicant.

And indeed the applicant is opposed to this motion. And, you know, we haven't obviously submitted any written argument, but the motion itself doesn't make a legal grounds for why you would be required to either continue this hearing or continue the final decision. It makes an appeal based on the volume of work and the task involved.

Applicant would note that this proceeding has taken a very long time, and there are many reasons why the applicant desires to see this project approved as soon as possible and is fully supportive of the schedule you've endorsed and remains opposed to both continuing this hearing, obviously, as well as continuing the decision beyond June 15th.

MR. RATLIFF: Staff has no position on the motion.

MS. SIEKMANN: Terramar would agree with the city. It's taken a great deal of time to prepare for this. Many plans have been changed. And we need the full 30 days to reply to the PMPD. It's a huge document. So it's asking an extraordinary task for us to prepare for this and to review the full PMPD and make our comments.

HEARING OFFICER KRAMER: Okay. Well, you still do have the ability to file comments after today, like anyone else, like the public. So --

MS. SIEKMANN: I'm talking about, you know, the PMPD, going through the whole PMPD and --

HEARING OFFICER KRAMER: No, that's what I'm speaking about too. So you can -- you're not -- today is not your last day to make comments.

MS. SIEKMANN: I'm aware of that.

HEARING OFFICER KRAMER: Okay. And, frankly, it's probably increased the burden on the committee because we're going to have to sit down and rather than having all of you in a room where we can perhaps, although maybe less so in this case, resolve some of the differences that -- opinion that you have, we're going to basically be faced -- I mean, the city's given us basically nothing at this point, and I know they have a lot to say. So we're going to be at the end of the comment period scrambling to digest all that and produce an errata if we are going to be able to go to the full commission on the 15th.

MS. SIEKMANN: And we clearly don't want to see the commission have to be scrambling in a case that's so important to us.

HEARING OFFICER KRAMER: Well --

MS. SIEKMANN: So by extending the date --

HEARING OFFICER KRAMER: I'm not -- I don't mean to imply that the quality of our work will be affected by that, because by and large I expect that we are going to simply be hearing basically a repeat of some of the things you've said before, and the committee may or may not be persuaded to change its mind about some of those issues; but I'm not expecting that there will be a lot of brand new issues to come on to the table because they were pretty thoroughly discussed last year.

But what we will do is we'll leave open the question about whether additional hearings are necessary until the end of our proceedings today or if they carry over into tomorrow morning, and but for the time being, again, until a convincing reason is presented, the business meeting to consider the PMPD will remain on the 15th of June. But we can revisit that as well at the end of our hearings today and possibly tomorrow.

So with that --

MR. BALL: Commissioner Boyd, can I address that a little further?

Counsel for the applicant said there's no legal basis for our motion. Of course there was, and it was stated in there. We think that there was inadequate due process, would allow more time to make a reasonable

1 response. So it's sort of a bifurcated motion.
2 I get the feeling that this hearing will go
3 forward, but also, it's the second part, which is the
4 decision before the full commission. And this is kind of
5 a strange -- in my view, it's kind of a strange procedure
6 to be having a proposed decision, then taking evidence on
7 it, and then sending all that forward to the entire
8 commission.
9 And, of course, as you well know, these
10 proceedings were designed to be expedited a year, and this
11 has been well in excess of that. So the applicant has not
12 shown any prejudice at all as to a desire to get a ruling,
13 but there's -- but there is no evidence that would support
14 some sort of prejudice, and that's really an important
15 part of this kind of motion.
16 So we would hope, because I understand that
17 Mr. Kramer says he doesn't expect any new evidence, but we
18 don't know; so if we could have a ruling on that at the
19 close today, I think that would help everybody's time
20 schedule in preparing a meaningful response, because this
21 is a complicated case that the full commission needs to
22 get not only what your proposed decision is, Commissioner
23 Boyd, but also the results of this hearing today.
24 Thank you very much.
25 HEARING OFFICER KRAMER: Appreciate your comments

and your point of view. Thank you.

DR. ROE: Mr. Kramer, it occurs to me that there is a difference in the kind of testimony that we turn in after this hearing addressing the point that Kerry Siekmann made, in that at these hearings we have an opportunity to cross-examine and refute testimony. But if we submit written testimony after this hearing, will there be an opportunity to respond to any of those written comments, because I don't see that in your scheduling.

HEARING OFFICER KRAMER: Well, you've mixed the words testimony and comment. The testimony will close -- first of all, the testimony today is on -- I'm not sure if all the parties see it that way, but in our mind it is on a relatively limited narrow set of issues in all but one case, and maybe even in that one case, raised by the parties in motions that they filed in the recent and more distant past asking that the record be augmented with information, for instance, about the two fire incidents; so but it's meant to be narrow. And you should not be expecting to submit testimony after today.

It's -- what will be submitted is just public and party comments. And there's no dialog sort of opportunity built into that process. It's just you commenting to the committee saying we got something wrong or right. You can suggest changes to conditions, that sort of thing. And

then the committee has to respond to that. And it could be in an errata, which are just additions to the PMPD, or it could result in a, at least in theory, a newly revised PMPD. We have to wait and see what comes in and how we can respond to that.

So my point is that you really shouldn't expect to be cross-examining, or you can respond to other people's comments if they come in soon enough that you can do it, but as a practical matter, everybody seems to fill our e-mail boxes between 4:00 and 5:00 p.m. on the deadline day, so you probably won't have that ability.

Ms. Baker.

MS. BAKER: Yes, I'd just like to ask a point of clarification. But because we are accepting new testimony, I assume, today on the five specific areas, then does the 30-day clock reset on those areas for any responses that may come up today that someone may or may not disagree with? We're not talking about the PMPD itself, but the five areas that you've allowed us to provide new testimony on today.

HEARING OFFICER KRAMER: No, it doesn't reset the clock unless a new PMPD, a revised, fully revised PMPD would be required, and then there might be an additional comment period. But otherwise, no.

MS. BAKER: Okay. And I would also just like to

comment that Power of Vision would support the city and Terramar on this. I mean, it's been 16 months already since we were sitting in this room listening on the evidentiary hearings, and to be ready for today took all of our time to then get through a 500-plus page document to make meaningful comments to the commission and be ready by the 8th of June, let alone be up in Sacramento by the 15th.

Maybe that's normal business for all of you because this is how you work and how you do business, but many of us intervenors, especially, have other things that we do and other jobs and that we frantically had to reschedule to be available today on such short notice.

So we would very much appreciate if you would take into consideration the undue burden that you have put on several of us to try to digest this very complicated document and to try to be ready with meaningful comments.

Thank you.

HEARING OFFICER KRAMER: Okay. Well, we'll take all that under submission, and again, we will a discuss as we close up.

MR. BALL: Mr. Kramer, if I could, just one note of caution. Due to the staleness of the records, 15 months, we have identified some changes in the applicable LORS that you will hear about later today. We have not

had the opportunity to go through all of the areas that are not the subject of additional testimony and reopen hearing today to discover if there are other 2010 laws, ordinances, regulations, and standards that should be put into the record for update, but you will hear today of some 2010 laws.

HEARING OFFICER KRAMER: Does the applicant or staff want to address the -- in effect, the question of whether we apply the laws that were in effect at the time, at some past time, or do we continually have to update our analysis as LORS change? In other words, do you get a fixed set of rules to be measured against, or a potentially constantly varying set?

MR. McKINSEY: I think that's a complex legal question that gets brought up in California law under the California Environmental Quality Act frequently in cases without a consistent, clear answer as to -- and most of the time, you know, an agency has done something, created an administrative record, and somebody appeals it, and there's argument. And every one of the cases is a little bit different as to what happened, but I think that the one thing you see from that is that the agency has a certain degree of discretion to make decisions about where to draw the line on what is the record that they're making a decision on.

The energy commission proceeding has grappled with this in other ways. For instance, when a law changes that makes a project need a change, an applicant will often submit, for instance, a petition to amend the project to update it and adapt the project to a changing law.

Where you have a changing law in the middle of a proceeding, you're presented with a question that's more complex, which is should you, you know, start the proceeding over again, should you -- and in the end I think the only real basis for doing such is to say that there's been such a startling change in a law that the foundation for your decision has to be modified, and that would probably be a reasonable grounds to consider doing it.

But simply because a law has changed here or there -- one example the energy commission has grappled with this is building code changes. And when a building code has been upgraded, it makes sense to often use the upgraded building code standards if they've improved safety and things like that, but they've been able to do that through compliance frequently, to say, you know, we want you to comply with the new building code standard.

So in any case, I don't think we are aware of any changes that mandate reopening the record in any way,

shape, or form on any of the topics as to a legal change.

MR. RATLIFF: Yeah, I'd just add that I agree that it's a very complex question. I would only note that recently the company that is building or proposes to build the Avenal project reached a settlement agreement with the Department of Justice in a case which had similar issues, and the Department of Justice agreed not to apply changes in law that had come into effect during the pendency of the PSD application simply on the basis of fairness and the fact that the PSD permit was supposed to be processed within one year.

So these things are complex. I don't think that answers the question fully because I think that they -- the answer is not always a clear one, but the only LORS that we were aware of last year that we thought needed to be analyzed was the NO2 standard, which when we held hearings last year was still not in effect, and there was no guidance for that standard.

We aren't absolutely certain that that is even a LORS for this power plant because EPA has indicated to us that this is a LORS that applies to projects requiring a PSD permit. And this applicant has received a determination from EPA that the PSD does not apply to this project. But we felt that it was the safe thing to do to the modeling to make sure that the new standard is

complied with by this project simply because there's been some uncertainty about whether a PSD permit will be required, and also because the NO2 standard can also be indicative of health effects which could raise a CEQA issue.

HEARING OFFICER KRAMER: Okay. Well, I guess we'll get to Mr. Thompson's point, which I think was more about land use LORS.

MR. BALL: Actually, can I address that, Chairman Boyd?

I think you'll see today that there's at least three significant changes in LORS, and I don't see the question as so complicated, but we'll be happy to give additional briefing if it is as complicated as staff and the applicant make out. But the general law is that during the procedure, the laws that changed are the ones that apply before a final decision is reached. It's only when the vested rights of an applicant are disturbed that there becomes a question about which laws to apply.

So the examples of that are many and varied all through the State of California, but, for example, the distinction in a subdivision for example, what laws apply to the subdivision. The laws apply unless there's a vested tentative map, the laws that apply are the laws that are in the effect at the time the building permit is

taken out or the grading permit is taken out and so forth. And that just makes entirely eminent good sense in this proceeding, because we do have changing laws, and the applicant should be required to comply with those if they're known, especially if they're laws that don't require an interpretation.

You'll see that the Uniform Fire Code now has been adopted in Carlsbad, not the 2007 code that was before you, but the 2010 version. That now has been adopted and will be enforceable throughout the city. That's the one that should be applied. Doesn't take any confusion in and complexity to determine that.

The second thing is there are changes in the air quality standards, and those need to be complied with. There are changes in the once-through cooling policy, the stated policy. And there are changes in the PSD determination. That has been challenged as you know. The city has challenged that.

Within the decision itself is a trigger point, if you will, that says that if the plant is not under construction by June 30th, this year, then the new PSD regulations will apply, which include the new NOX determinations.

Those are examples of why it's important to consider the new standards rather than the old standards.

There's nothing in that I know of that says the laws are fixed at the time the application is determined to be complete.

So if the committee would like additional briefing, we'd be happy to provide that.

HEARING OFFICER KRAMER: Was that the -- were there more LORS that you had in mind than those? For instance, were there some land use LORS or not? Because I guess I misunderstood, Mr. Thompson, I thought he was alluding to land use LORS.

MR. BALL: You know, let's defer to Mr. Thompson if he had particular land use LORS -- a building code is the local law, for example, so we know that. I don't believe there's been a change in the land use LORS that was subject to this committee's interpretation, but one second.

So we'd reserve comment if there's any more. Throughout the day we'll figure that out, but those are the ones that come to mind.

HEARING OFFICER KRAMER: Okay. So we've -- committee has ruled that at least by implication that we're going forward today, and at the end of the proceeding we're going to see if we need to schedule something in addition or provide additional time for comment or provide additional time between the end of the

comment period and the commission business meeting.

So let's move forward with our first topic area, which was alluded to by Mr. Ratliff. That was the nitrogen dioxide federal standard compliance issue.

MR. McKINSEY: Mr. Kramer, I do believe we also had one other item --

HEARING OFFICER KRAMER: Oh, that's right, you're correct, I'm sorry.

Mr. Peters from the ISO who needed to leave after this morning wanted to provide agency comments.

So welcome, Mr. Peters.

MR. PETERS: Thank you.

Good morning, Commissioner Boyd, Mr. Kramer, Mr. Olson. My name is Dennis Peters, and I'm the manager of External Affairs at the California Independent System Operator Corporation.

And as you know, the California ISO operates the majority of California's transmission system, including the transmission system that serves the greater San Diego area. We ensure generators such as the current Encina facility operating in balance with the needs of electrical customers in California.

And while we do appreciate the land use controversies at issue in this case, the California ISO does support the Presiding Member's Proposed Decision, and

I'd like to make just three points to explain our position.

First, consistent with the testimony presented in this proceeding last January by the ISO witness Jim McIntosh on behalf of the CEC staff, the electric generating characteristics of the proposed Carlsbad Energy Center will help the ISO balance the grid as the State of California works to meet its 33 percent renewables portfolio standard.

The Presiding Member's Proposed Decision correctly acknowledges that intermittent resources like wind and solar create large system ramps and dispatchable resources that can compensate for renewable intermittency will help the ISO maintain a balance between supply and load. To achieve its renewable goals, California will need electric generating facilities such as the Carlsbad Energy Center.

Second, the proposed Carlsbad Energy Center represents a significant step to bring the existing Encina facility into compliance with California's policy regarding the use of coastal waters for power plant cooling, the once-through cooling technology. Under the statewide policy for OTC adopted by the State Water Resources Control Board, Encina must come into compliance by the end of 2017. And the cooling technology of the

proposed Carlsbad Energy Center is consistent with the policy, and will permit Encina units one through three to cease using coastal waters for cooling purposes. So again, to achieve its water use goals, California will need facilities such as the Carlsbad Energy Center.

Finally, as the Presiding Member's Proposed Decision recognizes, the greater San Diego area requires a certain amount of local generation resources. The ISO assesses how much local generation is needed pursuant to the federal reliability standards under which we must plan our system operations. The proposed Carlsbad Energy Center would help ensure more reliable electric system in the San Diego area.

Based on our current supply and load forecast, the ISO believes that the Presiding Member's Proposed Decision correctly concludes that without construction of the Carlsbad Energy Center, retirement of Encina units one to three may be difficult to accomplish. So for these reasons, the ISO supports adoption of the Presiding Member's Proposed Decision.

And that's the conclusion of my comments. Thank you.

HEARING OFFICER KRAMER: Thank you. Thank you, Mr. Peters.

MR. ROE: May I cross-examine Mr. Peters?

HEARING OFFICER KRAMER: Mr. Peters was not providing testimony, he was just providing agency comment. So we're -- if we start cross-examining everyone who makes a comment, well, we'll still be here tomorrow at noon. And I think somebody has a wedding that they want to have, so we'll get kicked out. So it's only witnesses that we cross-examine.

MR. BALL: Excuse me, whose wedding is --

(Discussion beyond microphone range.)

HEARING OFFICER KRAMER: Well, agencies are allowed to comment, just like anyone else, and he was simply put on the agenda at this point because he has to travel to other meetings I think up in Sacramento, and we've been trying to accommodate schedules as best we can.

So now let's turn to --

MR. THOMPSON: Mr. Kramer, if I could, just one or two sentences for the benefit of our citizen intervenors.

Having not been sworn and as being a comment, it is not testimony, and it is questionable whether it really can be relied on to establish matters of fact within the record.

HEARING OFFICER KRAMER: Well, the rule is it cannot be relied upon by itself. But there's plenty of other testimony, and on that, the topics that he touched.

So let's turn to the air quality panel. Specifically not air quality in general, to be clear, but the compliance with the nitrogen dioxide federal standard.

And why don't we get a panel of everyone up here. So we've got Mr. Rubenstein for the applicant, Mr. Walters, and Mr. Moore. And those were the only identified witnesses. Are there any other last minute witnesses that any party has on this topic?

Seeing none, let's go from Mr. Walters then to his right and have each of you identify yourself for the record.

MR. WALTERS: Yes, my name is William Walters, W-i-l-l-i-a-m W-a-l-t-e-r, a consultant with the California Energy Commission in writing up the sections for air quality and the greenhouse gases for this project.

DR. MOORE: I'm Steven Moore, S-t-e-v-e-n M-o-o-r-e. I'm a senior engineer with the San Diego Air Pollution Control District.

MR. RUBENSTEIN: My name is Gary Rubenstein, G-a-r-y R-u-b-e-n-s-t-e-i-n. I'm a senior partner with the consulting firm of Sierra Research, and we're air quality consultants for the applicant.

HEARING OFFICER KRAMER: Okay. Mr. McKinsey, would you like to provide direct testimony from Mr. Rubenstein?

MR. McKINSEY: First, Mr. Kramer, I don't know if they've been sworn in.

HEARING OFFICER KRAMER: Oh, that's true.

All of you were previously sworn at the February hearings last year, correct?

MR. WALTERS: That's correct.

HEARING OFFICER KRAMER: So consider yourselves to be continuing in that status.

MR. McKINSEY: And Mr. Rubenstein at this time is just available to answer questions or further elaborate on or explain anything I believe that CEC staff is going to present, where Mr. Moore is going to present the topic of subject.

HEARING OFFICER KRAMER: Okay. Mr. Ratliff, did you have any particular questions for your witnesses?

MR. RATLIFF: No.

HEARING OFFICER KRAMER: Okay. Well, we have some members of the public in the room, so if one of you could give us about two minutes, a summary of your conclusions, I think that would be especially useful for them.

(Gary Rubenstein, William Walters, and Steven Moore, having been previously sworn, testified as follows:)

DR. MOORE: Basically, the district submitted an

addendum to the Final Determination of Compliance that we submitted to the CEC, and we did that because we felt we needed to analyze two new standards, ambient air quality standards that had been promulgated by the federal government since we did the initial FDOC.

In the FDOC we analyzed impacts with respect to other ambient air quality standards, but the two new standards were not promulgated yet, so we did not analyze them. And according to our rules, we -- the project has to show compliance with those standards before, you know, we would issue an authority to construct or, in this case, an FDOC. The two new standards are a federal one-hour NO2 standard, nitrogen oxide, and a federal one-hour SO2 standard, sulfur dioxide.

When the standards were issued, there was very little guidance on how to analyze the standards. They're different than a lot of the standards we deal with. They're more probabilistic. Makes the analysis quite complex. The models are not totally set up to deal with that. Post processing is required to analyze the results from the models to show compliance with the standards. But we went ahead and did this. The applicant submitted analysis. That was early on when there was very little guidance, and we didn't think the analysis was adequate, so we performed our own analysis subsequent to that.

For the SO2 standard, we could show compliance based on sort of a very rudimentary screening procedure. Basically the maximum impact from the new equipment plus the maximum background in the three-year modeling period showed compliance with the standard, so we didn't have to go any farther.

However, the NO2 standard, we had to perform a much more refined analysis, and we did that. We looked at what we usually look at, which is the new equipment, plus we looked at the existing equipment. We usually don't do cumulative analysis, and for our purposes we weren't really doing a cumulative analysis, but we were doing it to inform the decision of the CEC.

So we looked at the new equipment, we looked at the new plus the existing equipment, the existing being the equipment that would remain after the new equipment came into the operation. We looked at the various modes of operation, normal operation, start up, shut down, commissioning. We also included the emergency engine in the analysis; that's for the fire pump. There's quite a bit of controversy whether that type of equipment should even be included in an analysis for the NO2 standard, and the reason is it operates intermittently. So because the way the standard is formulated, it's very unlikely that would actually have much of an impact, but we did include

it.

The result of the analysis, we basically determined that the project would comply with the one-hour federal NO2 standard. And we also determined it would comply with the one-hour SO2 standard. That was for both the new equipment and the cumulative analysis -- for the NO2 standard for the cumulative analysis for the existing equipment also.

In addition, because some of the parameters were changed in the analysis for -- it's a very technical issue, but for the amount of NO2 that's directly emitted from the power plant and the other equipment, we also went back to look at the state one-hour standard to see if there was any effect there. There was a small effect, but we also concluded that the project would comply with that standard also.

HEARING OFFICER KRAMER: Okay. Thank you.

Let's see. A couple of the intervenors -- well, actually, staff you had asked for some time to cross-examine. Did you need that?

MR. RATLIFF: No, I -- to be clear, I just wanted to make sure that we responded to your request for cross-examination time, and I merely generically said whatever cross-examination I would have would not exceed five minutes.

HEARING OFFICER KRAMER: Okay. The city?

MR. THOMPSON: Just one clarification.

CROSS-EXAMINATION

MR. THOMPSON: Thank you, Dr. Moore, for your explanation for the public.

It sounds like there's two standards here. What were the effective dates? Were they the same or --

DR. MOORE: They were slightly different. I think the effective date for the NO2 standard was in April of last year, and I think the effective date for the SO2 standard was August. I'd have to check that.

MR. THOMPSON: Of last year?

DR. MOORE: Of last year, that's correct

MR. THOMPSON: Got it. Thank you.

HEARING OFFICER KRAMER: Center for Biological Diversity?

MR. ROSTOV: I have no questions. Thank you.

HEARING OFFICER KRAMER: Power of Vision?

MS. BAKER: No, sir, we have no questions.

HEARING OFFICER KRAMER: And Terramar?

She's shaking her head no, for the record.

Okay.

MR. RATLIFF: Commissioner, or Mr. Kramer, if I may, Mr. Walters has indicated that we need to also apprise the committee and the parties of an additional

suggested change in the conditions of certification regarding air quality, and particularly with regard to construction impacts. And I would like him to address that now, if we can.

HEARING OFFICER KRAMER: We'll consider that to be -- in effect, that's in the nature of a staff comment then; is that correct?

MR. RATLIFF: It is, but we chose -- we thought it would be best to service it before we file our written comments later in case there is a need for discussion of it, because it would increase the stringency of one of the requirements that we have proposed.

HEARING OFFICER KRAMER: Okay. Mr. Walters, which condition are you talking about?

MR. WALTERS: In staff's review of the current best management practices that we recommend for construction equipment mitigation over the period of time since our final staff assessment and hearings, and now we have upgraded the committee, AQSC 5, which is the condition for off-road equipment to be a Base Tier 3 requirement with a number of potential exemptions, but instead of being a Base Tier 2, being a Base Tier 3 since now there's been enough time between the two or three requirements that finding equipment to meet Tier 3 should be a realistic requirement now, realistic availability to

be done.

And this revised condition is essentially the same condition that has been approved for the last dozen or so projects that have been approved since the hearing that happened last year for this project. And so in order to keep our findings consistent with the fact that we are using best management practices, we would like to revise that condition to the current standard.

HEARING OFFICER KRAMER: So you'll be proposing that in your comments?

MR. WALTERS: Yeah. That is one of our air quality PMPD comments.

HEARING OFFICER KRAMER: Okay. And so I'm clear, Base Tier 2 means that they have to have at least Tier 2, but they're supposed to go looking for Tier 3 where feasible?

MR. WALTERS: That's the current condition. Revised condition will be that they're supposed to have Tier 3, but there are provisions to allow Tier 2 in cases where they can't find Tier 3. Now, Tier 3 has been available between the years 2006 and 2008, I believe, so there's a three to -- or actually by the time they start construction, almost a four-to six-year interval since those equipment have been available and certainly at least three to five.

PRESIDING MEMBER BOYD: Mr. Kramer, if I might, so, Mr. Walters, what you're saying basically in lay language is you're going to recommend a slight increase in the stringency of the requirement.

MR. WALTERS: Correct. We're going to require a better NOX control, essentially, for the off-road equipment.

And for those people who aren't aware of what we're talking about by off-road equipment, we're talking about the non-highway legal equipment such as loaders, scrapers, bulldozers, cranes, et cetera, that would be used at the project site during the on-site construction.

PRESIDING MEMBER BOYD: Thank you for the sake of the audience. I thought we should get it explained. Thank you.

HEARING OFFICER KRAMER: Okay. Since we're all here to discuss it, does the applicant have any preliminary thoughts about that proposal?

MR. McKINSEY: No. The proposal is fine as conceived. I'm assuming you've got a specific condition in mind from another project. Because, you know, the trick in all of this is if staff's comments get in early enough on this, like if they propose specific language, we could also endorse that specific language; but we can certainly endorse the concept and then trust that the

committee can, you know, sort it out. But if we also receive the condition, we'd be able to respond by the deadline and say that, you know, that condition is also completely acceptable in its exact word form.

HEARING OFFICER KRAMER: Okay. Well, thank you for surfacing that. That's helpful to at least give people a heads up.

Is there anything else?

MR. RATLIFF: Not that I'm aware of. No.

HEARING OFFICER KRAMER: Okay. Any -- do any other parties have questions or comments on that, that new proposal?

Seeing none, then we can dismiss this panel and congratulate ourselves for -- I didn't write down the start time, but we did less than .9 hours.

So then now let's move to what I'm sure is going to take a little bit more time, and that's the -- what we decided to do was combine the two fire issues. The one is relatively minor. And I'll just explain what the committee meant by that.

It was a little bit confusing in reading different parts of the record about how the fire water system was plumbed, if you will. On the one hand there was a suggestion in some of the testimony that the city water pressure was going to be pressurizing that system,

the on-site fire suppression system, the hydrants, and I guess other hook ups for fire hoses. And then in other places it suggested that, no, it would be the on-site fire pumps that were being relied upon for fire water pressure and not the city's. And what occurred to the committee was the question, well, why not have both?

On the one hand the applicant seemed to be saying that they were worried about some loss of pressure in the city's system and wanted to guard against that; and the city seemed to be saying, well, we don't trust the applicant's fire pumps to be there to do the job.

So again, why not just have it the system set up so that the city's pressurizing it, and if the city's pressure fails, then there is a backup of the facility's fire pumps?

So that's the water issue.

And then on the lessons learned from some of the other fires, you know, we had motions from I think at least two different parties to the effect that they wanted to discuss what we might learn from the Palomar fire and also what we might learn from the explosion, the Clean Energy explosion where natural gas was used to blow out the pipes towards the end of construction of that project.

So with that, let's get our panels set up.

I see that Frank Collins and Ed Holden are on the

telephone.

Can you hear us? And speak up, gentlemen.

MR. COLLINS: This is Frank Collins, I can hear you fine.

HEARING OFFICER KRAMER: Okay. Mr. Holden?

MR. HOLDEN: Yeah, this is Ed Holden. E-d --

HEARING OFFICER KRAMER: Okay.

MR. HOLDEN: Oh, okay.

HEARING OFFICER KRAMER: Okay. So you are the applicant's witnesses.

Dr. Alvin Greenberg is here for staff.

Do we have the city fire folks? Mr. Heiser, Chief Kevin Crawford, and Mr. Garuba.

And then Terramar had Pat Uriell.

Is he here?

Could you come to the front, sir?

Have a seat. We're going to do this as a panel; we found it's more efficient. So and being new, Mr. Uriell, let me just explain how this works to you.

We start out, and each of the representatives will ask their witnesses some questions if they choose. And then once we've gone through all of those, then we have a round of cross-examination; and that's where the other people can ask a question of the panel, they can address a question to a particular witness, and that

witness would answer the question first. But if the other witnesses have something to say on the topic, they're free to chime in after that original -- after the person to whom the question was addressed made their answer.

So I think the chiefs Heiser and Crawford, you were sworn the last time, correct, as was Dr. Greenberg; but, Mr. Uriell, this is your first time with us

MR. URIELL: That's correct.

HEARING OFFICER KRAMER: So if you could raise your right hand.

(Patrick Uriell was sworn by the Hearing Officer and testified as follows:)

(Frank Collins, Ed Holden, Alvin Greenberg, Kevin Crawford, Chris Heiser, and Joseph Garuba having been previously sworn, testified as follows:)

HEARING OFFICER KRAMER: Thank you.

Oh, I'm sorry, yes, Mr. Olson reminded me Mr. Holden and Mr. Collins, were you sworn previously?

MR. HOLDEN: Yes.

HEARING OFFICER KRAMER: Both of you?

MR. COLLINS: Yes, I have been too.

HEARING OFFICER KRAMER: Okay. So those of you who were sworn previously, consider yourself still sworn.

Mr. Garuba is now at the table, and he was also

sworn previously, correct?

MR. THOMPSON: Joe, you were previously sworn?

MR. GARUBA: Yes.

HEARING OFFICER KRAMER: Okay. So let's have everyone introduce themselves, beginning with Mr. Holden and Mr. Collins on the phone.

And, Mr. Holden and Mr. Collins, when you speak, each time if you could just say your name to help us distinguish between your voices, and I'm sure it will help the court reporter give you credit for what you've said.

So go ahead, Mr. Holden, give us the spelling of your name; and then Mr. Collins.

MR. HOLDEN: Yes. This is Ed Holden, E-d H-o-l-d-e-n. And we're the owner's engineers for the applicant. My specific specialty would be the general engineering associate with the project.

HEARING OFFICER KRAMER: And Mr. Collins?

MR. COLLINS: Yeah. My name is Frank Collins, F-r-a-n-k C-o-l-l-i-n-s. And I'm the fire protection specialist with Shaw representing the client.

HEARING OFFICER KRAMER: You said you were with Shaw?

MR. COLLINS: Correct. S-h-a-w.

HEARING OFFICER KRAMER: Okay. Let's begin with the applicant then and your direct testimony.

MR. McKINSEY: Thank you, Mr. Kramer. I have one question I want to address to Mr. Collins.

DIRECT EXAMINATION

MR. McKINSEY: Frank, can you tell me if there's -- I believe you were on earlier and you heard an indication that there's a new 2010 fire code. Can you elaborate whether there are any changes from the 2007 code that was in effect here before to the 2010 that this project as is already designed would have any compliance issues with?

MR. COLLINS: The California 2010 is an amended version of the International Fire Code 2009. And for the level of detail that has been submitted, there is no significant impact on the design. Actually NFPA 850, which is the NFPA code for fossil power plants, actually provided more stringent control, so it kind of overrid what was the changes in the building code.

MR. McKINSEY: I was pointing to Mr. Thompson while this was going on because his microphone was on. And one of the things we discovered testing the microphones is if there's a microphone on in here when somebody's on the phone, it echoes really bad.

And we got that off right at the end of your testimony, Mr. Collins, so I don't know if everybody was able to understand what you said. And everybody is

shaking their heads, so I'm wondering if maybe you could repeat that.

MR. COLLINS: Yeah. Basically the California Uniform Fire Code 2010 is an amended edition of the International Fire Code 2009. For the level of detail that you're at right now, what has been submitted to the commission, there are no real impacts. And actually, the NFPA 850, which is the fire code for fossil generating plants, actually provides for more of a controlling document than the international fire code at this level. So there really are no impacts.

MR. McKINSEY: Thank you.

We have no other direct examination questions.

HEARING OFFICER KRAMER: Okay. Then staff. Dr. Greenberg.

MR. RATLIFF: Dr. Greenberg has previously testified, and here we're, to make sure I understand, we're talking about the discrete issue that you've raised about the loop water system; is that what you'd like him to address?

HEARING OFFICER KRAMER: If he -- there's that question, and then the lessons learned from those two fires. And I know Terramar has proposed to introduce into evidence newspaper articles about fires at other power plants; but we are, yes, looking for the lessons learned

and then also the thoughts about the looping of the fire system.

MR. RATLIFF: Do you want Dr. Greenberg to address those before the applicant addresses them?

HEARING OFFICER KRAMER: Actually, that's a good point.

Mr. McKinsey, did your witnesses have more to say about that?

MR. McKINSEY: Actually, when you raised that, I realized that the -- on the topic of the looping of the fire system, I'd like Mr. Holden to respond to your inquiry on this topic of how the system is designed in this project. And one of the questions that the committee had raised in the proposed decision is that there was ambiguity about the connection between the fire control system.

Mr. Holden, can you elaborate on the design for this project in terms of how it's connecting and provide clarification?

MR. HOLDEN: Yes. This is Ed Holden. We have a new system going in as a fire suppression system that's code compliant that gets its source -- that can either be filled from the existing system or we can also accept the city water. The last fire, there was a concern about having water available, so we implemented some additional

water treatment to make sure that the tank can be filled and the capacity of that tank will be sized to take care of all the fire suppression within the power block at the bottom of the suppression.

The intent is to also keep the upper rim rode fire suppression system in service that's currently servicing the hydrants in that location. Some of those may have to be removed with the work with the I-5 widening though.

MR. McKINSEY: Thank you, Mr. Holden.

And that's the only planned direct testimony we have on these topics.

The committee has asked questions about lessons learned from other fire experiences. I think also there's proposed admission of evidence in the motions that relate to this topic that we've stated our positions on the need for that evidence. We're comfortable I think in particular with the testimony of Dr. Greenberg as to recommended changes that he may make as to conditions of certification to reflect some of these lessons learned. And so that's all our planned direct testimony.

HEARING OFFICER KRAMER: Okay.

MR. THOMPSON: Mr. Kramer, if I may. I suspect that the record would be clearer if we were to go on and complete the testimony and any cross that there may be on

the water connection and then move on. You'd have it all in one place in the transcript, and I think that it can be done fairly quickly.

HEARING OFFICER KRAMER: Okay. That's fine as well. So let's split off the -- re-separate the water loop then.

Mr. McKinsey and Mr. Holden, I'm still unclear about how the system is hooked up then. Is the plan that city water pressure will pressurize the hydrants, or is the city water simply going to pour into the top of the tank and refill the system?

MR. HOLDEN: Yeah, this is Ed Holden.

The tankers will be filled as a vented tank. And I'll toss it to Frank a talk a little bit more about that. But at that point the pressurization of the new system will be the new system being designed.

Frank, can you elaborate on that?

MR. COLLINS: Yeah. This is Frank Collins.

The loop itself will normally be pressurized with a maintenance pump that holds the pressure in the system drawing off the tank. If there's a loss in pressure, then the fire pumps will automatically start. The reason for this is the maintenance pump is a very small pump and we don't really want the fire pumps running because it's more reliable if they're not used for small purposes, and the

city water can be tied into the loop directly with an appropriate backflow preventive so we're not in any way worried about cross-contaminating the city with the fire loop pressures.

HEARING OFFICER KRAMER: Am I the only one that is having trouble understanding?

MS. BAKER: No. It's like a foreign language. We can't understand.

HEARING OFFICER KRAMER: Okay. Let's go off the record for a minute.

(Brief recess.)

HEARING OFFICER KRAMER: Let's go back on the record.

While we were off the record, we were trying to discuss, rather adjust some of the audio settings to make the voices more understandable. And Mr. Ratliff suggested that we have Dr. Greenberg who is in the room with us explain what he understands to be the situation, and then perhaps the other witnesses on the phone could just confirm that.

So, Dr. Greenberg, how is this system proposed to be plumbed, if you will?

DR. GREENBERG: Hearing Officer Kramer and Commissioner Boyd, the bottom line is that my understanding, and this has been discussed with the

applicant's expert, not the two on the phone, but another expert, Mr. Mason, who has been working with the applicant, so I've confirmed this with him, is that the systems will be two essentially, and you can get your water from either the city water supply, which is already plumbed for fire protection uses, not only on the site as stated, the rim road already has a fire suppression system, hydrant system, it needed to be there because of the oil storage tanks, but also from the Encina power plant that also has fire water from the system, or they can get it from the 250,000 gallon dedicated water tank. So it will be interchangeable is my understanding.

So the answer, the bottom line answer is that they can get the fire loop and fire suppression water will be pressurized both ways and can be used both ways. There are other fire suppression systems other than hydrants as you know; there's going to be water misting and sprinkler systems. And again, my understanding is that either one will be able to serve and provide pressure and amount of water necessary according to LORS to fight a fire. And that is summarized in Appendix A -- Exhibit A, rather, of my testimony.

HEARING OFFICER KRAMER: Okay. And so they can switch over between one or the other?

DR. GREENBERG: That's my understanding.

HEARING OFFICER KRAMER: Okay. Mr. Holden or Mr. Collins, do you agree with Dr. Greenberg's summary?

MR. HOLDEN: This is Ed Holden.

That's a good summary.

MR. COLLINS: This is Frank Collins.

That's a good summary.

HEARING OFFICER KRAMER: Okay. Thank you.

Does either the applicant or the staff have any more testimony they wish to elicit from their witnesses?

MR. McKINSEY: None from the applicant.

MR. RATLIFF: No.

HEARING OFFICER KRAMER: Okay. None from either of them.

Then let's go to the city and your witnesses.

DIRECT EXAMINATION

MR. THOMPSON: Thank you.

Let me initially address this to you, Fire Marshal Heiser, and then I will get to Mr. Garuba on this question.

Fire Marshal, do you understand the system as now proposed and I think the changes that have been proposed by the applicant and discussed by the staff?

FIRE MARSHAL HEISER: Commissioners, Chris Heiser, the fire marshal and division chief in charge of operations. Thank you for taking the time to get clarity

because I was confused. And I'll have to simplify it if it's okay.

My understanding now is that there will be two separate systems. I'm assuming or asking that the primary system be the internal or not the pump system but the current existing system that the City of Carlsbad has in every other facility and that the pump system be a backup.

And I'm also going based on Dr. Greenberg's statement that regardless of which type of suppression, hydrant, sprinkler system, or anything else, that its primary hook up be to the system that the City of Carlsbad provides and requires in every other occupancy and that the 250,000 gallon tank and pump be simply a backup assuming a failure of the city's system.

And that reflects my understanding of Dr. Greenberg's statement in the discussion I was able to hear. If that's the case and an accurate statement, then that meets the request from the fire department.

MR. THOMPSON: Dr. Greenberg, before we go on, are we all square here, do we all understand -- or a better question would be are you and the fire marshal on all fours here?

DR. GREENBERG: Yes, Mr. Thompson. I'm in agreement with that. And it is my understanding that the primary system -- fire -- the primary supply of water will

come from the city's system.

MR. THOMPSON: Thank you.

I guess one final concern that I've heard, and it sounds like this may have gone away, I have heard concerns voiced about a jockey pump and pumps being connected to the electric system and the possibility that they may have to be deenergized in the event of a fire or other incident. Does that remain a concern of the fire department?

FIRE MARSHAL HEISER: That concern was originally expressed when there was potential for that to be the primary system. As a backup system, I have less concerns about that failure resulting because of the redundancy that's now built in.

MR. THOMPSON: Great, thank you.

Mr. Garuba.

MR. GARUBA: Yes, sir.

MR. THOMPSON: Is the city willing to allow the applicant, CECP, to connect to the city water system for fire safety?

MR. GARUBA: Yes.

MR. THOMPSON: Has the city been willing to provide water for other plant uses?

MR. GARUBA: Yes.

MR. THOMPSON: You mentioned that the city has

this willingness to provide reclaimed water to the plant site. Has this been under any of the conditions? Does -- is the city able to provide reclaimed water to the plant at this time?

MR. McKINSEY: I'd like to object. At least I don't understand how this -- are you proposing that you would like to see reclaimed water be used for fire protection?

MR. THOMPSON: The PMPD places a great deal of emphasis on reclaimed water being available for the plant. And it's my understanding that that is not available.

MR. McKINSEY: I don't understand how this relates to this topic of fire protection.

MR. THOMPSON: It was the availability of water.

MR. McKINSEY: For fire protection?

MR. THOMPSON: Yes.

MR. McKINSEY: So the question is to Mr. Garuba whether or not reclaimed water is available for the fire protection system.

MR. THOMPSON: Yes.

MR. McKINSEY: Okay. Thank you.

MR. GARUBA: The preferred option would be to connect to the existing potable system for the municipal supply; however, if the city's reclaim system were expanded per the current design, then recycled water could

be provided to the facility at some point in the future.

MR. THOMPSON: Finally, Mr. Garuba, are there any permits or fees for the services of hooking up that you've described that would be paid by the applicant?

MR. GARUBA: I believe there would be, yes, sir.

MR. THOMPSON: Is there anything else that you two gentlemen would like to add to this discussion of water hook up?

Thank you. That completes our direct.

PRESIDING MEMBER BOYD: May I ask a question, please?

Is this a change, this position on the part of the city with regard to the availability and use of reclaimed water?

MR. GARUBA: No, sir. We've always -- in discussions with the applicant going back to 2007, we've always -- the city has had plans to expand its reclaimed water system; and so those discussions came up with the applicant, and we offered to expand the system to accommodate them.

The response was that they were unwilling to expand the system per our design, they wanted something less than what we had proposed and what we've incorporated into our recycled water master plan, and so they were unwilling to help facilitate that expansion. It's

strictly a matter of dollars and cents.

At that point in time the city determined that it was not in the overall interests of the municipal recycled water supply to do something less than what we had planned for. And so we left the applicant to figure it out.

PRESIDING MEMBER BOYD: Thank you.

MR. GARUBA: Yes, sir.

PRESIDING MEMBER BOYD: Would the applicant like to address the same question?

MR. McKINSEY: Yeah. Well, I'm -- I have two choices here. I can either pull up the testimony, actually the filings by the city during the proceeding that said there wasn't water available and cross-examine you with those, or I can just get you to retract the statement that the city has remained ready and willing at all times to provide reclaimed water for this project.

But I'll need a few minutes to pull up the documents to cross-examine him, or I can just let it sit that we object to that statement.

MR. GARUBA: Well, I think Mr. McKinsey is bringing up probably a pretty interesting position, which is when the applicant came to the city initially and said, hey, we want to use the recycled water supply, we looked at -- and there was a requirement initially by the energy commission that said the applicant needs to have a -- I

1 think it was a 30-year commitment letter or a 20-year
2 commitment letter, a will serve letter, we looked at our
3 availability and said, you know, in the winter months,
4 based on our usage, there's some availability, but in the
5 summer months we're fully committed to existing customers.
6 However, the current municipal recycled water
7 system, we have about -- well, the production at the
8 existing plant is about four million gallons, and there's
9 expansion opportunities up to 16 million gallons in 4
10 million gallon increments. And so we said, look, we're
11 willing to discuss entering into some kind of negotiation
12 to expand the next four million gallons, that next
13 increment as contemplated by the plan.
14 At that point in time the applicant failed to or
15 did not want to continue the discussion further because
16 all they were looking for was that one million gallon need
17 that they wanted us to serve them, not the four -- full
18 four million gallon expansion that was proposed in our
19 documents.
20 So, and I think it's probably important that the
21 commission recognize that we put that as a condition of
22 certification in our filings, if I'm not mistaken, in our
23 briefs, that we would, you know, if the commission sees
24 fit to approve this project, we would like them to require
25 NRG to move forward with expansion of the recycled water

facility, we would serve them water. And then we also agreed or we were open to discussing some kind of cost sharing once other customers got online.

So I -- we have not -- we have not put a barrier to providing recycled water, we just said -- we have just said as currently -- our current supply isn't enough to meet their needs, and in order to do that, we need to go to the next step.

MR. THOMPSON: Mr. Kramer, can I ask my witness a question of clarification here?

HEARING OFFICER KRAMER: Go ahead.

MR. THOMPSON: Mr. Garuba, does the city remain open to providing the CECP with reclaimed water if a proper extension, enlargement of the wastewater treatment facility can be agreed to?

MR. GARUBA: I would refer to our conditions of certification, which I think express our interest to have that discussion. What we would not be interested in though is doing some half measure on our system that compromises the overall integrity of the design, and that's what we were protecting against.

MR. THOMPSON: But to follow up, if the CECP came to the city and said we would be willing to fund the four million gallon increment, recognizing that as that water gets used by others there is a payback mechanism, the city

would be willing to enter into an agreement with that given other provisions in the agreement were acceptable?

MR. GARUBA: Yes, sir. I think we would be willing to take that forward for a discussion and have that negotiation.

HEARING OFFICER KRAMER: So what's the ballpark cost of a four million gallon increment?

MR. GARUBA: Hearing Officer Kramer, I don't have that number off the top of my head. I know we constructed several expansions. The first four million also included a multitude of pipelines, and so that overall number was in the neighborhood of $40 million, give or take. I think the expansion is something far less than that because we don't have the pipeline network that we would need to build out.

But we'd be happy to provide that as part of our comments on June 8th, some sort of a -- you know, a current estimate of what the next four million gallon expansion is. I know our folks are currently out looking for federal assistance with that.

HEARING OFFICER KRAMER: Does that mean you have other customers that could be served already?

MR. GARUBA: Yes, sir. We are looking at -- you know, the city has a -- well, you may not know this. The city currently provides -- or 20 percent of its water use

is through recycled water. We've spent a lot of time and effort to build out our recycled water facilities, and so we are always looking to move customers over to our system.

We're currently in discussions with, I believe, LaCosta Golf Course to move the golf course over to our facilities as well as a number of other city parks. So we are looking at expanding the system where possible and feasible.

HEARING OFFICER KRAMER: And are you under any regulatory pressure to treat more water to that level?

MR. GARUBA: I don't know if -- I don't know if I have an appropriate answer for that. I mean, the city wants to make sure that we use potable water appropriately, and especially in southern California, which is a desert, we don't want to engage in wastefulness, so we try to shift users and customers over to recycled water where practical and where possible.

The city has to -- has taken upon itself under great expense to expand its system. So that's why you see, you know, 20 percent plus of our water delivery being through the recycled water.

HEARING OFFICER KRAMER: Okay. Thank you.

So that's all the direct -- no, Ms. Seikmann, you have your witness, if you'd like to go ahead.

Does he have anything to say about the water supply issue?

MS. SIEKMANN: No.

MR. THOMPSON: Mr. Kramer, before we go on to the other issue, I have one water supply issue that -- question that I would like to put again to Mr. Garuba.

HEARING OFFICER KRAMER: Okay. Go ahead.

MR. THOMPSON: Concerning the contractual arrangements for the four million gallon upgrade to the system, was the bitter end of the SDG and the RFO that was going to develop an alternate project on the Oaks North area, were they willing to enter into such an agreement?

MR. GARUBA: Yes.

MR. THOMPSON: Thank you.

HEARING OFFICER KRAMER: Okay. That I think that is all the direct testimony then.

So we have cross-examination beginning with the applicant.

MR. McKINSEY: First, Hearing Officer Kramer, one topic. This is a surprise topic. And I believe I'm going to want to bring a witness in to provide direct testimony, and I can probably do that in the next ten or fifteen minutes, both relating to the history involved as well as the project's current ability to use reclaimed water.

And what I'm relating to is Soil and Water 8,

which we insisted on including in this, which maintained the ability of this project to use reclaimed water if an agreement could be reached to provide water. And so we have a Soil and Water Condition 8 already here, and I don't know if this topic needs anything more. And I'm trying to sort out whether the committee feels that they need to hear any more testimony in this area; but, really, though this is a tremendously and perhaps wonderful surprise, in the end we prepared for this by having a condition in here that allows the project to use reclaimed water if it's available, and that's Soil and Water 8. And if the committee is fine with what they've heard and they don't have any other questions, then I can just leave this topic behind.

PRESIDING MEMBER BOYD: Well, if I may, Mr. Kramer, speaking for the committee, and as the committee, I will also indicate that, of course, the PMPD makes reference to always hoping that reclaimed water use can be maximized in any power plant siting case.

And being cognizant of the condition you just referenced, I too, which is why I asked the question, am a bit surprised by what I thought I perceived as a slight change in position on the part of the city with regard to the availability of reclaimed water from what I heard in this room quite some time ago. Admittedly a lot of time

has passed, and I've heard a lot of other cases in the interim, but I trust my memory reasonably well.

I remember having a degree of disappointment that we were missing, that it just wasn't going to happen even though we would have liked it to have happened.

And the initial statement on the part of the city seemed to suddenly connect it, although as the questions went back and forth and the more I heard, I still wonder if there is or is not a connection. I thought I perceived maybe incorrectly a little waffling on the strong assurance, and I guess I would fall back on the condition that you referenced, but predicate our attitude on the fact that I think I heard the city express more willingness than I've heard before.

But there is still confusion in my mind about whether the city can actually proceed unless you have a commitment for the whole four million gallons; and the applicant is not prepared to commit to four million gallons. So I'm struggling with whether we push and pursue this much more today or we leave it to the condition or maybe perhaps a modified condition to push real hard the idea that negotiations continue as provided in that condition and it becomes a compliance matter for the future.

MR. BALL: Commissioner Boyd, maybe I can make a

helpful comment here, I'm not sure; but the city has had a real a growth management plan, a facilities-based growth management plan for 25 years. And it's not uncommon to require developers to oversized facilities and then get reimbursed as other customers subscribe to that. We do it for road, we do it for streets, we do it for pipes, we do it for water pipes, we do it for sewer pipes. And the idea, the concept is when that infrastructure is not available, then it's the developer's responsibility to provide. And he has a choice, because it's a privilege to go ahead and develop in Carlsbad.

So if that -- if he wants to exercise that privilege at that time, go ahead and build the facilities; if he doesn't want to exercise that privilege, then wait until the facilities become available by somebody else. And if the developer then decides to exercise his privilege and to upgrade the facilities, then there will be required a reimbursement agreement so that the other subscribers who come on to use that facility, other subdivisions and so forth, they'll reimburse the original developer. So it all works out, it's just a matter of timing.

PRESIDING MEMBER BOYD: Thank you. I understand the position of the city.

HEARING OFFICER KRAMER: Okay then. Did you have

any other cross-examination, Mr. McKinsey?

MR. McKINSEY: None.

HEARING OFFICER KRAMER: Okay. Mr. Ratliff?

MR. RATLIFF: No.

HEARING OFFICER KRAMER: Okay. Would you like to go last, Mr. Thompson, since you were just --

MR. THOMPSON: We don't have any questions of any of the witnesses. I'm satisfied that the record's pretty clear.

HEARING OFFICER KRAMER: Okay. Power of Vision?

MS. BAKER: I'm -- are we -- are we still on the water connection topic or have we moved --

HEARING OFFICER KRAMER: Right. Right.

MS. BAKER: Mr. Roe

CROSS-EXAMINATION

MR. ROE: I have a simple technical question regarding the fire suppression water system, if we can come back to that. And this is addressed to Dr. Greenberg or Mr. Collins or Mr. Holden.

The pressurization that will be provided utilizing the storage facility, I assume is done with an electrically powered pump.

My question is at a time of a major electrical failure, is the emergency power system directly connected to those emergency pumps, to those pressurization pumps?

DR. GREENBERG: This is Alvin Greenberg of the staff responding.

Dr. Roe, not only is there going to be a jockey pump that will maintain pressure, but there is also an emergency diesel engine that will maintain. And it's dedicated strictly for fire suppression water.

MR. ROE: Thank you.

MS. BAKER: We have no further questions on the fire suppression system. We do on the -- when we move to the next --

HEARING OFFICER KRAMER: I understand.

And do I remember correctly, Dr. Greenberg, that the water tank would be the secondary or the backup source of fire pressure in the design we're talking about, correct?

DR. GREENBERG: Mr. Kramer, you are correct on that.

HEARING OFFICER KRAMER: Okay. Do you feel that we need to add anything to the conditions to make this understanding clear?

DR. GREENBERG: No, Mr. Kramer, I do not; however, if the committee so requests, I'm sure I can craft something rather quickly.

HEARING OFFICER KRAMER: Okay. So you'd be relying then upon the applicant to build it was described

DR. GREENBERG: Yes, sir.

MR. THOMPSON: Mr. Kramer, if I may, the city would like to ask Dr. Greenberg if he would review the conditions with the thought in mind of making sure that the primary source is identified correctly.

HEARING OFFICER KRAMER: If you want to propose something then, the committee would be open to receiving that.

DR. GREENBERG: Thank you. I shall do so then. And you'd like that immediately after lunch, Mr. Kramer, or do you want that now?

HEARING OFFICER KRAMER: Oh, I was thinking in your comments.

DR. GREENBERG: Oh, okay.

HEARING OFFICER KRAMER: But even better would be to circulate something today, and then the others could look at it and respond to it.

DR. GREENBERG: That's what I was thinking; it might be helpful today.

HEARING OFFICER KRAMER: Okay. Well, then that takes care of the fire water suppression system half of the fire --

MS. SIEKMANN: Mr. Kramer, I did think of one question. I apologize.

HEARING OFFICER KRAMER: Okay. Ms. Seikmann.

MS. SIEKMANN: About the fire suppression.

HEARING OFFICER KRAMER: Go ahead.

MS. SIEKMANN: Mr. Garuba had brought up a tax.

HEARING OFFICER KRAMER: He doesn't think he did.

MS. SIEKMANN: A fee?

And I heard nothing about this fee.

MR. GARUBA: I might defer to our city attorney, but there are various types of connection fees that we have for different facilities, and we would just assume that the applicable fee schedule would apply, standard fees.

MS. SIEKMANN: And so I guess I would ask the staff if that fee is part of the conditions, those fees, all those fees are part of the conditions.

HEARING OFFICER KRAMER: I guess that's directed at Dr. Greenberg. When we look at Soil and Water 8, that would be the place to look; is that correct.

(Comment beyond range of microphone.)

HEARING OFFICER KRAMER: But didn't Soil and Water 8 talk about a -- the condition that talked about the possibility of connecting --

MR. McKINSEY: Soil and Water 8 simply requires that the agreement be provided which in and of itself would then ensure the fees would be provided, and the agreement has to be, you know, signed and authorized by

the city providing the water; so that probably provides the assurance for this particular fee. Most of the fees, you know, we put in, are usually in conditions like socioeconomic; building school fees, and things like that.

HEARING OFFICER KRAMER: So it would be a reasonable assumption that the city would make sure they got paid as part of the agreement. I think I trust them on that.

MR. BALL: Chairman Boyd and Hearing Officer Kramer, there are a number of I would say fees that are not expressed, they're not expressly called out. And so I would feel more comfortable if those were expressly called out. And we suggested that they be placed in there as conditions of certification; we've given some suggested language. So to the extent that we're all reasonable, I'm sure, but if we have an express condition now we won't have to debate it later, and that's our request.

There's a number of fees that are set out in the municipal code. They're either fees or taxes, they need to be paid, but they're not conditions of certification. So that will be -- we've lodged that with our initial response, and we'll follow that up with our comments and respectfully suggest that those conditions be made express.

HEARING OFFICER KRAMER: Applicant have a comment

to that request?

MR. McKINSEY: I'd first say that to some extent that might have been the role of the evidentiary hearings a year ago to indicate if a party in this case -- the city indicated there was a fee that should have been specified as a required payment and a condition. There are some -- usually some compliance mechanism aspects where a lot of the fees get paid, but these aren't -- you know, these are often de minimis fees, and sometimes they're given as a concession because the fee was for a service that the city would be providing, whereas when the energy commission with the CBO and its process provides that duty instead, there really isn't a basis for it. But often you'll see where the applicants agree to pay, just go ahead and pay those fees anyway.

But the last minute nature of the idea of needing to have a condition that would require the payment of fees, I don't see how we could agree to that unless, as I said, they're usually pretty minuscule fees, but if staff can say, or in this case the city can say here is the condition we want that you'll pay the school fee or this fee, then we may be able to agree to that and you would be easily able to insert it.

The socioeconomic section has a discussion as does the staff assessment, the application for

certification, of all sorts of the various types of compliance fees that can be involved; but this project does not have any of those -- sometimes you'll see those fee conditions that appear. Usually they appear because a party asked for them. And a party has not asked for them in this proceeding; and so to do it at this point, I think it would only make sense if it didn't hinder the ability to proceed with the project.

MR. BALL: Actually, Commissioner Boyd, that's not correct. We put the suggested conditions in our response to comments in the PSA, the FSA, and we have them attached to our brief, our opening brief. And Proposed Condition Number 5 deals with taxes and fees. And if the committee could look at that one, you'll see what we're referring to.

I don't think the fees and taxes are negotiable; they need to be paid. So our position is that it should be an express condition.

PRESIDING MEMBER BOYD: Frankly, to me, implicit in the city's comments, in my mind, were fees that were nothing new, routine, et cetera, et cetera, et cetera. And maybe this is a late entry with regard to actually designating them in more specificity, but it does sound like maybe there isn't agreement on the part of the applicant that these are in their opinion routine fees

that they always expected. So you may have to have some reconciliation here during the course of the day.

MR. BALL: And, Chairman Boyd, we'll give you an accounting of those fees. But really, the fees are divided into two kinds of areas; the processing fees and the impact fees. And what the city has is an elaborate fee system and a schedule adopted by the city council and adopted by the people.

There is a -- and I've attached it to our initial response in response of the committee's request that says that the public facility's fee, which are an impact fee caused by development that will impact other facilities, not directly onto its site necessarily, and will go into the city's general fund to defray the costs of the impacts from that development. That's set out for 25 years now in the council's resolution and policy, the public facility's fee.

If that is not paid for whatever reason, then there's a tax, a backup tax that has been adopted by the people. It's been in existence for 20-something years, maybe 25 years. The people adopted and said additional license construction tax on new construction. And that's three and a half percent of the building value. That is a tax that needs to be paid.

I'm surprised that it's even a question. But if

it's not made an express condition, we would respectfully request that it be made. We'll give our wording as we have in our briefs again, and we expect that to be made an express condition of certification.

HEARING OFFICER KRAMER: Okay. Let's move on to the --

MR. RATLIFF: Well, Commissioner Kramer, I would just point out that there is a provision in the regulations that addresses local agency fees. I mean, I don't know that -- I'm not sure what fees we're talking about, I'm not sure this is the issue, but agencies are to be reimbursed for certain kinds of fees under Section 1715 of Title 20 --

HEARING OFFICER KRAMER: Those are processing fees, correct?

MR. RATLIFF: That's right.

HEARING OFFICER KRAMER: Yeah, I think he's talking about -- well, let me ask.

MR. RATLIFF: I don't know what fees we're talking about. That's part of the problem here.

HEARING OFFICER KRAMER: So, Mr. Ball, you're talking about processing fees or just --

MR. BALL: No. What I was saying before, I was drawing the distinction between processing fees; so process a grading permit or a building permit, or

mechanical permit, or fire permit and so forth. Those are processing fees. Reasonable costs to set out on a fee schedule.

The other kinds of fees are impact fees, and those are the ones that I was describing to Commissioner Boyd. They're set out by resolution and policy of the city council that every development in Carlsbad pays, every development in Carlsbad pays, and it's backed up by a construction license tax on new construction adopted by the people in the '80s.

PRESIDING MEMBER BOYD: And I'm implying from the dialog that there's nothing new here, that these fees have been in existence for some time and any applicant would have been aware of them as they proceeded.

I don't want to speak for the applicant; I don't know if the applicant feels that maybe somehow or another something new and different never seen before was being snuck in here today or something, but you've assured us that these are documented and well-established and any developer should have been aware of them, at least if I'm interpreting your comments correctly.

HEARING OFFICER KRAMER: Well, we certainly will take that under consideration and --

MR. RATLIFF: Well, could I just interject once again.

I mean, one of the things that is eligible for reimbursement, one of the categories under our regulation, are permit fees, including traffic impact fees, drainage fees, park in lieu fees, sewer fees, public facilities fees, and the like, but not processing fees that the local agency would normally receive for a power plant or transmission line application in the absence of commission jurisdiction.

HEARING OFFICER KRAMER: Okay. And that's -- that's -- I don't have that in front of me, but that requires that the city then make some kind of filing and request with the commission in order to be reimbursed?

MR. RATLIFF: Well, I think -- well, I'd have to read the rest of the regulation more carefully, but I think what you're talking about are the costs of review that this agency requests of agencies.

HEARING OFFICER KRAMER: No, I mean, Mr. Ball's been clear. He's talking about traffic impact fees, they probably have a fee that helps develop parks, the library, probably public facilities; a normal development impact fee. And we will -- we will take that under consideration.

Look again at your proposed condition. Perhaps it needs some tweaking to be clear about which fees it's talking about; but I can understand that the city would

prefer rather than to have to enforce the fees on their own that the commission be in a position to tell the applicant you can't start operating the power plant until you've paid those fees. That's convenient, to say the least, for them, and if they are due, it may or -- the committee will decide if it's appropriate to be -- to insert an express condition to that effect. But I don't think we were meaning to basically waive those fees on behalf of the city.

MR. RATLIFF: No, but they should enumerate them for reimbursement prior to the decision.

HEARING OFFICER KRAMER: And if they don't, are you suggesting then that they just waive them?

MR. McKINSEY: I think you -- subject to check of the regulation, I think that that's the implication, yes.

HEARING OFFICER KRAMER: Okay. Well, then it's good that that was brought up, because I suspect the city wouldn't want to have lost that important capital contribution for failure to file a request.

Mr. Thompson.

MR. THOMPSON: Mr. Garuba, you've been doing everything except throw things at me asking for a question.

Have we submitted a schedule of these fees and charges somewhere in this record?

MR. GARUBA: I believe we have. We had -- when the PSA was issued, Debbie Fountain, who is with the city is behind me as well, we both noticed that the applicable fees were not included, and I forget the woman's name who was in charge of socioeconomics at the time, but we forwarded a schedule of the applicable fees to her. And again, those were not included this the FSA, I think we had made some comments about that.

HEARING OFFICER KRAMER: Okay. Is that document one of the exhibits that --

MR. GARUBA: I'll need to go back and take a look. I don't know if we included the schedule in our exhibits, but we have provided the commission staff with our concerns and the appropriate schedules at the time. And I don't know if they've been adjusted since then.

HEARING OFFICER KRAMER: Okay. And also, those schedules get adjusted from time to time, right?

MR. GARUBA: Yes, sir. Generally we adjust our schedules on our budget cycle, so in the July time frame annually.

HEARING OFFICER KRAMER: So the schedule applicable today will be different in a few months?

MR. GARUBA: Yes, sir, except some of the impact fees.

Just to clarify, as our city attorney,

Ron Ball, said, there are some that are set as a standard percentage, so those wouldn't adjust because they're set at a standard percentage. But we would be happy to provide the commission with the latest fee schedule for their consideration.

HEARING OFFICER KRAMER: Okay.

MS. SIEKMANN: Mr. Kramer, it sounds to me from this conversation that maybe all fees should be looked at since the city provided them to the staff and they weren't in the FSA and they weren't in the other documents. It's important to make sure all the fees that were due to the city are included in the PMPD.

HEARING OFFICER KRAMER: Well, we will take that under consideration.

Okay. So we exhausted the fire suppression issue. And let's move on then to -- first let me ask you, Mr. McKinsey, I know the applicant had arranged for the fixings, if you will, for lunch to be brought in at some point. When is that? I'm trying to look at the schedule.

MR. McKINSEY: I believe it's at noon. I don't know if it's already out there or not. It's supposed to be in here at noon.

HEARING OFFICER KRAMER: Okay. We've been going for two hours now, so let's take a ten-minute break.

MS. SIEKMANN: And Mr. Kramer, my witness will

need to leave by 1:00.

HEARING OFFICER KRAMER: By 1:00? Oh, we'll be fine with that.

MS. SIEKMANN: Okay. Great.

(Lunch recess taken from 11:32 a.m. until 12:16 p.m.)

AFTERNOON SESSION

HEARING OFFICER KRAMER: Okay. Let's go back on the record. Are we ready?

Okay. We have the fire panel. Let me check on the telephone, folks.

Mr. Holden, are you there?

MR. HOLDEN: Ed Holden is present.

HEARING OFFICER KRAMER: Okay. And, Mr. Collins.

MR. COLLINS: Frank Collins is present.

HEARING OFFICER KRAMER: Okay. We're going to turn down just a little the volume in the room here.

I think we've decided, Mr. Collins, that it's the room here that's kind of boomy and echoey, because your voice is coming over pretty well over headphones that our court reporter is using that doesn't involve the speakers in the room.

Let's then go back to the fire safety issue, the lessons learned from the Kleen Energy and the Palomar power plant fires.

Mr. McKinsey, you had -- you requested 15 minutes with Mr. Collins and Mr. Holden for direct?

MR. McKINSEY: Applicant has no direct testimony and doesn't feel that there are any needed condition changes other than the ones that will be -- are proposed by Mr. -- Dr. Greenberg.

HEARING OFFICER KRAMER: Okay. Then let's go to Dr. Greenberg with Mr. Ratliff, and if you could summarize for us those proposed conditions among other things that you might cover.

MR. RATLIFF: Mr. Kramer, I think Dr. Greenberg would like to keep the two subjects separate, that of the gas blows and the Kleen Energy accident and the issue of transformer fire safety; he would address those separately.

HEARING OFFICER KRAMER: Okay. Well, we're trying to be more efficient by just going through one round of questioning, so if you could address them one after the other and have the other witnesses do the same, I think that will probably get us finished a little bit sooner; my hope, anyway.

DIRECT EXAMINATION

DR. GREENBERG: Okay. Thank you, Mr. Kramer.

If everyone would please turn to the supplemental filing that Mr. Ratliff made on May 17th, and turn to page 5 under the technical area hazardous materials management. This contains proposed new condition of certification HAZ 10 and this addresses the issues and lessons learned from the Kleen Energy explosion that occurred in February of 2010 in Connecticut.

To summarize --

HEARING OFFICER KRAMER: And let me just say in the proposed exhibit -- or the revised exhibit list that I circulated via e-mail this morning, I made that Exhibit 227. And I've also prepared a version of it where I scraped the attachment off of Mr. Ratliff's cover memo.

And for all the parties who are interested, I have on the memory stick I hold in my hand copies of all the exhibits that were submitted in the last few days. For instance, I took the Terramar exhibits and made them into pdf files because the extension was missing on some of those, and that helps you to read them. And I give them all exhibit numbers, which actually correspond to those in the exhibit list. So who would like to be the first one --

MS. SIEKMANN: Thank you, Mr. Kramer.

HEARING OFFICER KRAMER: -- to download?

And then pass it around and get it back to me eventually.

Go ahead, Mr. -- or Dr. Greenberg.

DR. GREENBERG: Thank you, Hearing Officer Kramer.

Immediately upon learning of the explosion there at Kleen Energy, I contacted the head of the energy commission's compliance unit, and he conducted at my request a survey of our CBOs, and that's chief building

officials, and compliance project managers to learn how widespread the practice was on CEC license power plants to use natural gas to clean out essentially all the lines in a gas-fired power plant.

It turns out that although this practice was not uniform or universally utilized in California, there were instances where it was utilized, and therefore, we wanted to minimize the use of this, and we, staff, developed a condition of certification that you see in front of you.

The condition is very similar to that recommended by the National Chemical Safety Board as well as the tentative interim amendment to NFPA 850 which became effective on November 9th of 2010. You can see it in front of you, and basically what it says is that you're not going to do a gas blow, you're not going to use natural gas, you're going to use other procedures, inert gas, air, pigging -- you know, a pipeline inspection gizmo is what "pig" stands for -- to remove dusts and debris.

There is, however, a provision in our proposed condition that would allow the use of natural gas only under extraordinary circumstances where the project owner could demonstrate that no other method was feasible, and then only if there is review and comment by the CBO, review and comment by the Carlsbad Fire Department, and review and approval by the compliance project manager.

Staff felt that their needed to be just a little bit of flexibility in case there was a unique circumstance presented. So that is our proposal for Carlsbad Energy Center.

This has also become staff's standard condition of certification for all natural gas-fired power plants. Those that are already in existence are required to follow this by virtue of a directive from the compliance project manager. Any new ones have this as a condition of certification.

Moving on then to the next issue, Hearing Officer Kramer, if we turn to page 1 of Exhibit A, which is now, as you've told me, Exhibit -- staff's Exhibit Number 227, this is page 1, this is now under Workers' Safety Fire Protection, and this is in response to concerns raised by the Carlsbad Fire Department and citizens of Carlsbad about the fire that occurred at the Palomar power plant in Escondido in December of just this past year.

Staff beliefs that there are inherent self-interest in power plant owners to avoid fires in their transformers. These transformers are very expensive, they're very hard to get, there's often not a spare available; and so power plant owners really have a self-interest in keeping these things operating efficiently and not having fires.

The staff could only recall that perhaps there was one other transformer fire maybe in the '70s at an energy commission licensed power plant. Certainly there have been transformer explosions and fires at other locales and other types of transformers, but just looking at the history of the energy commission, we seem to think there may have been one other three decades ago. Can't quite figure out whether that's true or not, but certainly this type of accident, this explosion and fire falls under the heading of low probability and also low consequence when it comes to worker safety or the off-site public.

There is ample evidence to show that this did not present a risk to the off-site public; certainly fires do indeed pose a risk to on-site workers. But mineral oil -- burning mineral oil creates a very spectacular fire, and also a smoky one, but the particulate levels were measured in this case as they have been in other transformer fires, and they're actually very low. And so this does go into that category of low probability of occurrence and low consequence; but nevertheless, we are offering this condition to you for your consideration and your decision to adopt.

Basically this condition is a performance standard, not a specification standard. And by performance, I do give several examples of what could go

into a transformer fire, a transformer fire protection plan; but the project owner would not be limited to just those examples that I have provided here.

There are other things that a project owner could do to enhance the safety and fire resistance of their transformers. Example, certainly dictating different and better design criteria, perhaps even performance guarantees from the manufacturer of the transformers. We're not wedded to them using ester-based dielectric fluids, although there's more research on the ester-based dielectric fluid as being superior to the mineral oil or other type of dielectric fluids.

So this allows them to develop a plan that will be reviewed and commented on by the CBO, by the Carlsbad Fire Department, and, of course, reviewed and approved by the compliance project manager. We offer this as an extra level of safety, which we think the project owners will want to do anyway; but nevertheless, we offer this to you should the committee decide that this is something that they would like to require.

HEARING OFFICER KRAMER: Anything else, Mr. Ratliff?

MR. RATLIFF: No.

HEARING OFFICER KRAMER: Dr. Greenberg, did you get a chance to look at the articles that, for instance,

Ms. Seikmann circulated yesterday?

DR. GREENBERG: Circulated yesterday? I'm sorry, no, Hearing Officer Kramer, I have not.

HEARING OFFICER KRAMER: Actually, it would have been the day before.

She wants credit for getting them in on time.

Okay. I need to refresh my memory. I had a question about the -- oh, just out of curiosity, why was it ever a good idea to blow out pipes with natural gas? That just sounds to a lay person to be, well, something you wouldn't do.

DR. GREENBERG: Hearing Officer Kramer, I certainly agree with you. I was actually surprised to find out that it happened not only in Connecticut but it was done occasionally even in California. I think it goes sometimes along with the mindset that when you're blowing out gas, you're creating an unconfined vapor cloud and you're reaching the lower explosive limit, you know, the airborne concentration necessary for explosions, and that administrative and management controls will ensure that there are not sources of ignition nearby.

That relies too much on administrative controls and everybody doing the right thing; so yeah, I'm as surprised as you are, and we want to put a stop to that.

HEARING OFFICER KRAMER: Okay.

PRESIDING MEMBER BOYD: I was going to ask Dr. Greenberg about the exceptions, and it's kind of related to this question. You said, well, just in case there's some unusual exception. And I was going to ask you, do you have any idea of an example of such an unusual exception that it might necessitate the use of natural gas?

DR. GREENBERG: Commissioner Boyd, no. I can't come up with anything. You know, this was, of course, something that we discussed at great length. We had a number of months to work on this before NFPA came out with their proposed standard revision to NFPA 850, and we just thought it prudent just in case. It was just one of those. I cannot think of any reason or exception.

PRESIDING MEMBER BOYD: Thank you.

DR. GREENBERG: You're welcome.

HEARING OFFICER KRAMER: Okay. Did everyone get the memory stick who wanted to copy the files?

Okay. That's staff's direct testimony. Now on to the city witnesses.

Mr. Thompson.

MS. SIEKMANN: Mr. Kramer, I just would like to remind you that my witness needs to leave --

HEARING OFFICER KRAMER: Oh, you're correct. I'm sorry.

Why don't we then go to Mr. Uriell with Ms. Seikmann.

MS. SIEKMANN: What time do you need to leave, Mr. Uriell?

MR. URIELL: In an hour.

MS. SIEKMANN: In an hour.

MR. URIELL: Yeah.

MS. SIEKMANN: Okay. Knowing that, Mr. Kramer, do you want me to proceed?

HEARING OFFICER KRAMER: You know, it wouldn't be a bad idea, just for his sake.

DIRECT EXAMINATION

MS. SIEKMANN: First of all, I'd like to start with a statement. I would like to quote from Exhibit 389. It is the Thomas Commission Executive Report, September 21st, 2010. Governor's Commission, Kleen Energy Explosion.

And it says on page 1, the Nevas Commission also found that although the construction of the Kleen Energy Plant was heavily regulated and supervised by a variety of agencies, including federal OSHA, the local building inspector, the local fire marshal, supported by the Office of the State Building Inspector and the Office of the State Fire Marshal respectively, the Department of Public Utility Control, and the Department of Environmental

Protection, the Connecticut Department of Labor, the Connecticut Department of Consumer Protection, and the Connecticut Siting Council, no agency had oversight with regard to the element of construction process known as cleaning or blowing the natural gas pipeline.

The explosion at the natural energy system's plant in Middleton about 20 miles south of Hartford could be heard and felt for miles.

This is a quote from Exhibit 380, which is an article, an Internet article, Connecticut Gas Explosion Mass Casualties Reported at Kleen Energy System Power Plant. The explosion occurred three days after the conclusion of our evidentiary hearings where we were told the chances of something like this happening were slim to none.

Then on December 23rd, a fire occurred at our own San Diego County power plant in Escondido. Please note Exhibit 381. This is an article, Escondido fire extinguished at SDG&E plant. This plant was approved by our own CEC. Another highly regulated plant. Both of these plants had smoke and fire, with Middleton having a huge explosion, many injuries, loss of life and property.

Exhibit 382, pasadena water and power plant catches fire. Smoke seen for miles. Another California power plant fire. And I quote, "Smoke from the blaze

could be seen for at least two miles away."

Then Exhibits 383, 384, 385 and 386, that would be 383 through 386, are all some of the examples that Terramar found in the short amount of time that we had to prepare for this hearing regarding power plant fires. Every one of these incidents show or tell of flames and smoke. Some speak of explosion, injury, and death. Some tell of evacuations.

The Middleton fire opened up our eyes. No matter how highly we regulate, terrible accidents can happen as seen from the Thomas Commission report. Another lesson learned from Middleton and each of those other examples is that each and every time there's an accident, the fire department is responsible for handling dangerous situations.

So I would like to move to my witness.

May I please ask your name.

MR. URIELL: I'm Patrick Uriell, U-r-i-e-l-l.

MS. SIEKMANN: And, Mr. Uriell, could you please give us a brief explanation of your service.

MR. URIELL: I was a 35-year fire veteran. I'm currently retired. Ten years as a firefighter and twenty-five years as a fire engineer.

MS. SIEKMANN: And where would that be?

MR. URIELL: The City of San Diego Fire

Department.

MS. SIEKMANN: Thank you.

And I'm sorry, did you say what date you retired, when you retired, month and year?

MR. URIELL: June of '09.

MS. SIEKMANN: June of '09.

So the purpose of this area of evidentiary hearing is to discuss lessons learned from the Kleen power plant explosion in February 2010. There was a loss of life, there's injury and economic loss as a result of this explosion. Exhibits 381 through 386 are picturing results from these fires.

Looking at these pictures -- and I can bring these pictures to you.

Looking at those pictures and placing them in the location of the CECP, what professional conclusions would you offer to the commission based on your experience as a firefighter in, say, areas of planning zones or evacuations?

MR. URIELL: I haven't had much of a chance to look at these. But I want to say that planning, which I'm sure I find no strangers here in planning, but if you're -- if you're not planning for an incident, you're planning an incident. And so, you know, I want to talk about all of the things that have been done in the past

that our object today is to do better; that's the purpose of the codes.

And there's an old saying, the fire codes are written in the blood of the victims of the previous practices. And so obviously I think the codes were followed, I'm sure they were, obviously by the inspections you've talked about. But there's obviously shortcomings, things happened that weren't anticipated. And that is, in fact, your job here today, to anticipate.

My hat goes off to you. I thank you very much for your review.

MS. SIEKMANN: So placing these next to the I-5 interstate -- even though the Middleton plant was highly regulated, it did cause us to think more proactively about power plant influences and what they can have on the surroundings. Like what other influences for someone driving along the I-5 could they see from that power plant that might cause an incident?

MR. URIELL: Yeah, I want to -- one particular fire does come to mind, and it was -- it wasn't a fire, it was an incident, it was a hazardous materials incident on the I-5. And we had to close the I-5 at the risk to the population. And any time you close a freeway, people die. People forget to take their medicine, they don't have it with them, they run out of gas, they panic. So people as

far north as Oceanside died from an incident that we had LaJolla.

So it's -- the I-5 is an overburdened corridor. It is so sensitive, I really can't say enough about -- smoke next to the I-5 is going to be a problem. And that's what we've noticed over the years, especially next to -- as the corridors got larger and more crowded, you put smoke on a corridor, even from something as small as a brush fire, people are going to drive into the smoke, and the person behind them is going to rear end them. And that's why we -- that's why you have to close the roads down.

But to close the I-5 is such a monumental decision because of the sensitivity of that particular road, that the person that decides to close that has got to assume on their shoulders that somebody is liable to die. And that's -- that's why the -- in my opinion, the proximate location of this to the freeway is a specialized problem, bigger than what I've seen addressed.

MS. SIEKMANN: Now, there will be a lot of steam coming from this power plant. Have there been any issues for firefighters with steam coming from some building?

MR. URIELL: You know, one of the most common false alarms is steam mistaken for smoke. And it gets called in, especially now with the incidence of everybody

having a cell phone. In fact, Northrop Grumman opened a very small plant, brand new construction right next to the Ted Williams and I-15 corridor. The fire department immediately started running false alarms, steam mistaken for smoke over and over again.

They actually moved the facility because it became so problematic that every -- at least every day or every three days the fire department would be there at night with steam mistaken for smoke, send somebody down here.

It's -- the column of steam and the education of the average person and the willingness to call 911 on a cell phone just makes it such a huge problem, that when they moved it away from the I-15 corridor, the problem went away.

MS. SIEKMANN: Thank you. And another consideration is false alarms especially with things like, nowadays, terrorism and bomb threats. Can you speak to that as far as your fire experience?

MR. URIELL: Yeah. There's the incident command system that dictates, suggests the amount of space needed, the amount of footage needed for an incident. The evacuation zone for even a small incident would include the I-5. Now, you're asking an incident commander to decide whether he should shut down the I-5 for this

incident, and depending on the size of the incident, even, like I said, a small incident would still encompass that freeway.

And so this on the back of somebody to make that decision I think is asking an awful lot of somebody; that if he makes the wrong decision and injures hundreds of people on the freeway, or if he makes the wrong decision and evacuates, somebody dies in traffic waiting to get through the -- the I-5 is a monumental issue as far as fire goes in this area.

Not just fire. Like your question suggests, if somebody was to so much as call in a bomb threat, the decision's got to be made whether to shut down the I-5. Now, that decision's got to be made by an incident commander or someone on the scene that has some information. Any sort of package, the time involved, they've got to shut down the I-5 again. And it just becomes a problem.

I mean 850 foot for a pipe bomb is going to include I-5. And pipe bombs are mistaken or pipes are mistaken for bombs commonly. We just had one in a school two weeks ago. If it was in a building, it's one thing; but if it's outside, it's 850 feet, that freeway's got to be shut down. It's -- that's a problem.

MS. SIEKMANN: So based on your experience, does

the 50-foot fire road -- and this is -- so we're changing from the I-5 and now we're going to move to the fire pit.

And the suggestion is 28 feet for the fire road in the PMPD. The fire department, the Carlsbad Fire Department is requesting 50 feet, a 50-foot road. As a San Diego fire person, not a Carlsbad fire person, does that seem adequate, or is it possibly excessive, based on equipment and everything?

MR. URIELL: Yeah, I believe the code gives you additional widths on the road if the structures are over 30 feet tall. In this particular instance, I believe the applicant's own representative just called it today a pit. A pit that contains that incident, whether it's a fire or not, it contains the incident. And if you want to evacuate, you've got to evacuate out of the pit.

Now, if you have a vehicle, you can't drive out of the pit without going out the one way and one way in; so that slows it all down. The pit becomes the problem. And 28 feet, most instances you can't -- I saw in your report that somebody said that the 28-foot road would be the access for most fire incidents. It wouldn't be for any sort of working fire; it would only be for a false alarm, because 28 feet is way too close for any sort of aerial apparatus.

MR. McKINSEY: Hearing Officer Kramer, I'd like

to object to this testimony as being outside the scope of this limited topic evidentiary hearing. As I understand it, this was supposed to relate to, and I'm quoting from the evidentiary hearing notice, lessons -- based on lessons learned from Kleen Energy and Palomar power plant fires.

This really appears to be a comparable to the testimony we took for a full day last year on what's the appropriate road width, whether the project is too close to a highway, and not related to lessons learned from the Kleen Energy. And if we had forever, it would be great, but I don't think we have forever to go through this all over again.

MS. SIEKMANN: And I would like to object to Mr. McKinsey's objection because I do believe that this is very relevant. These are lessons that we have learned, thank God we're learning them, at the cost of those individuals lives to look at this much more closely, because there was loss of life, and we have -- we fought tooth and nail on this at the hearings, and we learned we need to keep fighting because if my house -- if that had happened at this location, I could be dead right now. So I learned that lesson. It's very dear to me.

HEARING OFFICER KRAMER: If which had happened at that location?

MS. SIEKMANN: If the Kleen Energy explosion had happened at the CECP location, I could be dead right now.

HEARING OFFICER KRAMER: Okay. But what does that have to do with the width of the fire road?

MS. SIEKMANN: In order to fight these kinds of fires, the fire department needs to be able to fight them to save us. I live very near the power plant. I want to make sure that what my fire department is asking for, they need to have, and that's the lesson I learned.

HEARING OFFICER KRAMER: Well, we were looking for more specific lessons.

MS. SIEKMANN: But it says lessons learned.

HEARING OFFICER KRAMER: Well, let me clarify.

If there's something specific from one of those cases we mentioned and perhaps even from some of the other incidents that you --

MS. SIEKMANN: Well, this is a lesson learned from the Palomar fire because Escondido --

HEARING OFFICER KRAMER: You certainly didn't relate that. You asked a general question. We were going along with it, although I certainly expected Mr. McKinsey to object. But your question was just, in effect you were just going back to the general question of what an adequate fire road width should be, and that was something that was mentioned, we did discuss extensively last year.

If there is something specific from Palomar that your witness can explain relates to that question, that's fine, but just, you know, generally what do you think the fire road's width should be, because we're now in 2011 and you've had the benefit of reading about these other fires, the two just don't connect.

So you can go ahead and try to ask the question again if you want, but the objection is sustained.

MS. SIEKMANN: Okay. So it's just this one question you're talking about, none of the others.

HEARING OFFICER KRAMER: So far; but we'll see.

MS. SIEKMANN: Okay. Just this one question.

Based on the Palomar fire and the fact that that was a confined -- constrained site, this power plant is even a more constrained site. So --

MR. McKINSEY: Objection. I don't hear a question; what I hear is testimony.

MS. SIEKMANN: Excuse me, I didn't hear that

MR. McKINSEY: I'll repeat the objection. You're testifying. And if you want to ask the question to a witness, I wouldn't object to it, but you're basically providing your testimony about what you think occurred. And that's great if you want to be a witness, but --

MS. SIEKMANN: I am asking based on -- because it has to be related to the Palomar fire; isn't that correct,

Mr. Kramer?

HEARING OFFICER KRAMER: That will help you, yes.

MS. SIEKMANN: So based on --

HEARING OFFICER KRAMER: But let me tell you though, in your question, you've got all kinds of facts or assumptions like the relative constrainedness of the two sites. Without those being fleshed out, I think the answer will not have much meaning for the committee, because we don't have an appreciation of the relative, you know, constrainedness -- I'll use that made-up word again -- of the two -- of the two sites.

MR. URIELL: May I help here a little bit?

MS. SIEKMANN: Yes.

MR. URIELL: All fires fought with an aerial stream and the apparatus capable of producing this are fought from a distance further than the structure is to the end of the bottom of the pit, making the 50-foot road entirely appropriate past that.

HEARING OFFICER KRAMER: And is that because -- you say that because the fire apparatus has to drive down to the grade level and then start spraying?

MR. URIELL: Even though what you say is correct, but that's not my point. My point is that the radiant heat will damage the apparatus, number one; and the stream that the apparatus produces is too close to where you want

to put it. And those are normally operated by a human individual, which would be a marshmallow on a stick. So they have to back up.

So that 50-foot road as far as access and placement of an apparatus is -- forms a dual purpose, access and placement of apparatus. But we're only talking fires here.

If we become a hazardous material incident or say an EOD, a bomb of some sort, you're asking a lot of agencies to come to this particular scene, and they all bring apparatus, and they have to be able to be a distance from the structure, and that they won't be in that pit. They need access in the vicinity of, not in the pit with it. And so that's why my final statement is the road is absolutely appropriate, and I commend whoever is asking for it.

MS. SIEKMANN: Do you mean the 50 feet?

MR. URIELL: The 50-foot width of the road is absolutely appropriate, and I commend whoever put it on the requirements, because like I said before, the incidents that we learn from are, unfortunately, the ones we did wrong. The ones we did right don't become that big an incident. And this one is, at least the planning is appropriate --

HEARING OFFICER KRAMER: Have you --

MR. URIELL: -- the road, the road.

HEARING OFFICER KRAMER: Have you reviewed the site plan for this project?

MR. URIELL: Yes.

HEARING OFFICER KRAMER: Do you know where that plan you reviewed came from; for instance, was it in one of the numbered exhibits?

MR. URIELL: It was the one on the CECP on the Internet that has the picture of the --

MS. SIEKMANN: The PMPD.

HEARING OFFICER KRAMER: Okay.

MR. URIELL: -- Of the --

HEARING OFFICER KRAMER: So you're talking about the aerial photo?

MR. URIELL: And there's a line drawing and an aerial photo, both, on the Internet of the particular site, proposed site.

HEARING OFFICER KRAMER: Okay.

MR. THOMPSON: Actually, Mr. Kramer, we passed out a packet of exhibits that we would like to introduce. And I think that he may be looking at -- yes, the last, the set of --

MR. McKINSEY: Except we're going to object to those exhibits. I can wait till later, but --

MS. SIEKMANN: But he also looked at the PMPD.

MR. McKINSEY: And he's looking at them now.

MS. SIEKMANN: But yesterday he reviewed the PMPD.

HEARING OFFICER KRAMER: Okay. Well, let's see. I think we're waiting for the next question.

MS. SIEKMANN: No, we're finished. Thank you.

Thank you, Mr. Uriell. Is that everything that you wished to express?

MR. URIELL: Yeah.

I'd like to thank the commission. I realize the difficulty of this particular endeavor, and it's -- it is not thankless. People will thank you for proper placement, that's important. Thank you very much.

HEARING OFFICER KRAMER: Okay. And you needed to leave by when?

MR. URIELL: I have about half an hour.

HEARING OFFICER KRAMER: Okay. Then I think we probably should have his cross-examination at this point. We'll begin with the applicant.

MR. McKINSEY: Applicant has no cross-examination for this witness.

HEARING OFFICER KRAMER: Staff?

MR. RATLIFF: No questions.

HEARING OFFICER KRAMER: City?

Mr. Thompson, any cross-examination for

Mr. Uriell?

Apologize for adding more syllables to your name.

MR. URIELL: That's perfect, thank you. I get it wrong myself sometimes.

HEARING OFFICER KRAMER: City, any questions?

CROSS-EXAMINATION

MR. THOMPSON: If you had to go -- are you familiar enough with the Palomar fire where -- I'm probably going to use the wrong term here -- but the command center was located to fight the fire?

MR. URIELL: No, sir.

MR. THOMPSON: Okay. Thank you.

HEARING OFFICER KRAMER: Power of Vision?

MS. BAKER: No.

HEARING OFFICER KRAMER: Okay. Questions might come up, so if you can stick around as long as you can; but at least now when you leave, nobody can say that they exhausted -- or they didn't have a chance to ask you a direct question.

MR. URIELL: Absolutely. Thank you.

HEARING OFFICER KRAMER: So then let's go to the city's witness panel, Mr. Thompson.

MR. THOMPSON: Thank you. Let me -- we have three witnesses. Before we start that, let me pass out a packet of exhibits, if I could have those marked as our

next exhibits in order.

HEARING OFFICER KRAMER: Okay. Let me look that up. And you're going to have to help me because I'm not sure our pile is in the same order that you handed it out.

MR. THOMPSON: Let me start with Escondido fire lessons learned. This is the prepared testimony of Kevin Crawford. I think our next number is 435.

HEARING OFFICER KRAMER: Okay. Let me just check on that. It will take a second.

And will we get these electronically eventually?

MR. THOMPSON: Yes.

HEARING OFFICER KRAMER: 435, yes.

(Whereupon Intervenor's Exhibit 435 was marked for identification.)

MR. THOMPSON: The second is the Escondido fire lessons learned prepared testimony of Joe Garuba. I'd ask that that be marked 436.

HEARING OFFICER KRAMER: Okay.

(Whereupon Intervenor's Exhibit 436 was marked for identification.)

MR. THOMPSON: The Escondido City of Choice letterhead letter from Michael Lowry, the fire chief, to Commissioner Boyd, I would like to mark that 437.

(Whereupon Intervenor's Exhibit 437 was marked for identification.)

HEARING OFFICER KRAMER: Okay. Any more?

MR. THOMPSON: Yes. A document entitled "Response to the City of Carlsbad and Carlsbad Redevelopment Agency to the Motion of Carlsbad LLC to Submit Supplemental Documents into the Evidentiary Record." This is a document dated March 1, 2010. We submitted this document at the time, and it was -- it was -- never appeared in the docket. And I think that the massive paperwork going on in Sacramento probably made this thing get lost. This was testimony, proposed testimony by then fire marshal and it is sworn --

MR. RATLIFF: Which document are you referring to?

MR. THOMPSON: I'm sorry?

MR. RATLIFF: Which document are you referring to that --

MR. THOMPSON: It's got the letterhead State of California.

HEARING OFFICER KRAMER: Dated March 1st, 2010. Okay. So that's Exhibit 438; is that right?

MR. THOMPSON: Yes.

(Whereupon Intervenor's Exhibit 438 was marked for identification.)

HEARING OFFICER KRAMER: Now, when you say it wasn't in the docket, you mean, docket, the database

index?

MR. THOMPSON: That's what I mean, yes.

HEARING OFFICER KRAMER: Okay.

MR. THOMPSON: At least we didn't think we found it.

HEARING OFFICER KRAMER: The last page is an expense report. Is that really intended to be there? The very last page.

MR. THOMPSON: Not on my copy. Maybe you got a special copy. I would ask that people could rip that off and use it as scratch paper.

(Conversation among people beyond microphone range.)

MR. RATLIFF: Mr. Kramer, I would just like to observe that although the document's dated March 1st, we haven't seen it before.

HEARING OFFICER KRAMER: Of last year, actually.

MR. THOMPSON: Mr. Ratliff, I think that the staff replied to this motion, but I could be wrong.

Should I proceed, Mr. Kramer?

MR. RATLIFF: If we replied to the motion, I'm not sure, but I haven't seen the document before in any case.

MR. McKINSEY: Is it dated correct, March 1st last year or March 1st this year?

MR. THOMPSON: Last year.

HEARING OFFICER KRAMER: Is it going to be possible to get a better copy, because this -- the diagrams that are attached are pretty rough.

MR. THOMPSON: It appears that the copies we have here all kind of suffer from the same problem, but we will secure electronic copies and provide them that way, or if in time we will provide them to the group here in the hard copy.

HEARING OFFICER KRAMER: Okay. Did you have more exhibits?

MR. THOMPSON: I do.

440 is -- I did not do 439?

HEARING OFFICER KRAMER: Yeah, I don't see 439.

MR. THOMPSON: Sorry. 439 is the report to the California Energy Commission regarding SDG&E's transformer incident at Palomar Energy Center.

(Whereupon Intervenor's Exhibit 439 was marked for identification.)

MR. RATLIFF: Mr. Kramer, just to correct what I said, apparently this was docketed in March of last year, although I have not seen it. That part was true.

HEARING OFFICER KRAMER: We know that from the docket log or --

MR. RATLIFF: Yes.

HEARING OFFICER KRAMER: Okay. Thank you.

MR. THOMPSON: I think it was -- from what I understand, it was the docket log, but it wasn't put as one of the documents on the web site.

Does that make sense?

HEARING OFFICER KRAMER: Oh, yeah, that's a different problem. I think it's fair to say in the past not all documents make it there. In the future, some day we hope that they all will, but even at that there will be the occasional hiccup.

MR. THOMPSON: Shall I go on?

HEARING OFFICER KRAMER: Please.

MR. THOMPSON: Number 440 is the Escondido After Action Report.

HEARING OFFICER KRAMER: What's that look like?

MR. THOMPSON: Very busy first page.

HEARING OFFICER KRAMER: I'm trying to figure out how to describe it on the -- can we call it the NF IRS comments, or is that just some database?

MR. THOMPSON: I think you can -- I think that works.

HEARING OFFICER KRAMER: Okay. That was 440?

MR. THOMPSON: Yes.

HEARING OFFICER KRAMER: Okay.

(Whereupon Intervenor's Exhibit 440 was marked

for identification.)

MR. THOMPSON: Next we have two pages out of the Caltrans Draft EIR. And I would request that the committee take official notice of the entire EIR. It is -- I'll have Mr. Garuba hold it up; it's an extremely large document. And we can put it out here for people to peruse if they want. We think we've captured a couple of pages here that are important, but I understand the difficulty of a document this size.

(Whereupon Intervenor's Exhibit 441 was marked for identification.)

HEARING OFFICER KRAMER: Okay. And could you at some point burn that to -- it's a pdf, I gather -- burn it to a CD and send it up so we can -- we want to be careful about using web links, because those things, you know, go away after time. And we want to have at least an electronic snapshot of documents that we rely upon. But I think it's -- I think we will take official notice of that EIR though, that's something we can do today.

MR. THOMPSON: And finally we have a set of four photographs that I'd like -- actually they're not photographs, are they?

What would they be, Joe?

MR. GARUBA: GIS images.

MR. THOMPSON: No wonder I couldn't figure that

out.

Four GIS images stapled together. If I can have that marked 442.

HEARING OFFICER KRAMER: Okay.

(Whereupon Intervenor's Exhibit 442 was marked for identification.)

HEARING OFFICER KRAMER: I think we ran out, didn't we?

MR. THOMPSON: I'm all done.

HEARING OFFICER KRAMER: Okay. Go ahead with your questions, then.

MR. THOMPSON: Thank you.

DIRECT EXAMINATION

MR. THOMPSON: Chief Crawford, if I could start with you, would you please state your name and position again for the record.

CHIEF CRAWFORD: My name is the Kevin Crawford. I'm the fire chief for the City of Carlsbad Fire Department.

MR. THOMPSON: And have you previously testified in this proceeding?

CHIEF CRAWFORD: Yes, I have.

MR. THOMPSON: Did you provide written summary that was just submitted into the record I believe at number 435?

CHIEF CRAWFORD: Yes, I did

MR. THOMPSON: And the purpose of that testimony is?

MR. McKINSEY: Objection. I don't believe the material was admitted into the record, it was simply given an exhibit number.

MR. THOMPSON: Identified as Exhibit 435?

CHIEF CRAWFORD: Repeat the question, sir.

MR. THOMPSON: Did you prepare the written testimony that has been identified as Exhibit 435?

CHIEF CRAWFORD: Yes, I did.

MR. THOMPSON: That was prepared by you or under your direction?

CHIEF CRAWFORD: Yes, it was.

MR. THOMPSON: And if I were to ask you the questions contained in that material today, would your answers under oath be the same?

CHIEF CRAWFORD: Yes, they would.

MR. THOMPSON: I move that Exhibit 435 be admitted into the record.

HEARING OFFICER KRAMER: Any objections?

MR. McKINSEY: No objections From the applicant.

HEARING OFFICER KRAMER: From any other party?

Hearing none --

MR. RATLIFF: I'm sorry, which exhibit is 435?

MR. THOMPSON: The prepared testimony of Chief Crawford.

MR. RATLIFF: Okay. No.

HEARING OFFICER KRAMER: Okay. That's admitted.

(Whereupon Intervenor's Exhibit 435 was received into evidence.)

HEARING OFFICER KRAMER: As to the other exhibits, as it's been my habit, I was going to wait till the end of the hearing, but if you want to individually admit them that's fine, but we will need to go back to all the other topics at some point.

MR. THOMPSON: It's up to you. I can do it at the end; I can do it as we go through them.

HEARING OFFICER KRAMER: Let's do it at the end then.

MR. THOMPSON: Very good.

Chief Crawford, your testimony deals with both the Kleen Energy incident and the fire at Palomar; is that correct?

CHIEF CRAWFORD: Correct.

MR. THOMPSON: Would you provide a summary of the fire, the incident at the Kleen Energy facility?

CHIEF CRAWFORD: I would be glad to.

Hearing Officer Kramer and Commissioner Boyd, the Kleen Energy emergency facility itself is a planned

combined-cycle natural-gas fueled power plant producing an estimated 625 megawatts of capacity. The fire and the explosion at the Kleen Energy plant at Middleton, Connecticut occurred in February 7, 2010, in which six workers lost their lives.

On February 22 of the same year, we had staff members from the Carlsbad Fire Department contact the Middleton Fire Department to get a better understanding of the incident, the configuration of the plant, and how the fire department responded. As a result of that interview we learned the -- how the plant was constructed, and that it was -- to build that plant, to find a level ground to build that facility, they needed to do significant blasting to provide bedrock and base to build their plant.

As such, it created a large vertical, nearly vertical wall on one side of the plant which significantly impacts, when you do have an explosion because of the backwash, if you will, off that retaining wall back onto the power plant itself.

In addition to that, we learned that there was a storage tank of ammonia on the property. Thank goodness it was not filled. Had it been filled, it would have been a quite tragic emergency, because one of the roof structures from the exploding power plant became a projectile and ended up embedding itself into the aluminum

tank. So again, because the aluminum tank was not filled, we avoided a very, very significant emergency, compounding this emergency, I should say.

In addition, we learned that because of the explosion, there was much debris that was spread across the power plant that fell onto the roadways within the power plant making ingress and egress and movement in the power plant very difficult. We got a count on the number of apparatus that responded. Obviously it was a significant number. Both fire engines, ladder trucks, ambulances, and command personnel.

We also learned that there was a variance given in this particular project to allow the facility to be built at a height greater than their code required. In other words, the project was built at a height of over 110 feet, which was out of the reach of their ladder trucks.

In a fire such as this, one of the things that is customary to do is to ventilate the super-heated gases outside of a confined, closed space. They were not able to raise their ladder to do that in this case because the height of the building was so high. It was out of the reach of their aerial apparatus. But as it turned out, that was not necessary because the roof of this structure was blown off, which is significant and certainly speaks to the magnitude of the explosion that they experienced.

We learned that on any given day they're going to have between 800 to a thousand workers at site during the time of construction. Again, fortunately, during the time of this particular explosion there was only 134 workers at site working.

We also discovered that there was no accountability system set up on the plant.

We also discovered that when the fire department came in to manage the incident, that power was shut off to the auxiliary pumps that supplied water to the water system, complicating emergency firefighting operations because there was no water available.

So those are the highlights of the things that we learned From our conversation.

MR. THOMPSON: What were the critical lessons learned from that incident that impact your safety conclusions and conditions for the CECP project?

CHIEF CRAWFORD: Well, to be frank and honest, there are little lessons learned for me, but their certainly is the strengthening of my conviction that emergencies of this magnitude do occur in these plants. It's believed by some that these incidents or incidents like this are significantly rare and because they occur with such infrequency, that they maybe get a pass on some of the precautions that need to be built into the systems

and some of the operational considerations that need to be given for such a facility.

This incident as well as the one in Escondido and several others that we have experienced over the last few months certainly strengthen my conviction that emergencies in power plants like this do occur, and when they do, they are extremely significant events and very labor intensive to mitigate.

In addition, we are further resolved in our conviction that adequate maneuverability around the site is critical, that to get in and to get out, but also the dimensions of the travel lanes within the power plant so that we can move our apparatus around so that we can get around debris that happens to be in the way, whether that be loading trucks or maintenance worker vehicles, the results of an explosion and debris in the road, whatever it happens to be.

And then lastly, and I'm pleased to say I think we've resolved this one, and that is the water system issue. It's our continued conviction that this -- the water supply to this plant needs to be tied into the city's loop water system.

MR. THOMPSON: Were there any indirect lessons that you and the fire department learned from the Kleen Energy incident?

CHIEF CRAWFORD: Well, I think I've alluded to it, but for the sake of clarity I'll repeat it again; and that is that I do find -- I do take exception to the notion that because incidents are fairly infrequent in power plants like this, that our concern and the methods to prevent and to mitigate emergencies in these kinds of plants in some ways should get minimized because of the frequency.

Granted, they are less frequent than some emergencies we go on, but I would argue that the significance of any emergency, even minor in one of these plants, becomes a significant issue for us to manage, and not just the Carlsbad Fire Department, but our whole north San Diego County, because we are in a closed system when it comes to the fire service. Whatever large event occurs here, or in Escondido, is going to effect all the resources available.

In addition to that, they are very, very labor intensive, and they -- they occupy a lot of our time to manage. In addition to that, the loss of life, the potential for loss of life in plants like this when you have fires and have explosions are significant.

And so for all of those reasons the lesson learned for me is just that I'm more, as I said, resolved and convicted in my opinion that we shant take this power

plant lightly. And now is our time to make sure that it is a safe, well-thought-out, well-defined, smartly built plant.

MR. THOMPSON: Before moving on to the Palomar fire, you were here for the testimony of Dr. Greenberg; is that correct?

CHIEF CRAWFORD: Correct.

MR. THOMPSON: And he is making a recommendation, hopefully a requirement, to -- so that natural gas will not be used to clean pipes. I would assume you and your department agree with that.

CHIEF CRAWFORD: Yes, we do.

MR. THOMPSON: Does that alleviate any fears that you would have about future incidents at power plants?

CHIEF CRAWFORD: We feel better, but we still have significant concerns.

MR. THOMPSON: Thank you.

What is your knowledge of the fire at the Palomar power plant?

CHIEF CRAWFORD: Very briefly, my understanding of the fire at Palomar in Escondido is that it occurred on December 22, 2010, and it occurred in one of the transformers on the power plant. Escondido Fire Department responded to the emergency and called for the assistance of several agencies, including county Air

Pollution Control District, the County Department of Environmental Health, hazardous materials team from the San Diego City Fire Department, U.S. Marine Corps Camp Pendleton Fire Department, as well as neighboring fire departments of which we were one of them.

There was a large police response. The incident command post was established on Citracado, which is a large arterial through Escondido. It's not heavily traveled, but it is wide, and it could accommodate their incident command post nicely.

The fire that was produced by this explosion or by this fire was incredibly hot, making advancement on the fire difficult for rescue personnel. As a matter of fact, it burned so hot that their extinguishing agent, Class B foam, was of little use in the initial period of time on the fire. The fire was so intense that it would just boil the foam. And as a firefighter who has put Class B foam on thousands and thousands of fires, I have yet to see that ever occur. So the impression I'm left with is the significance of the heat that was generated from this transformer fire.

So when they realized that their initial fire tack was going -- was proving ineffective, they backed off, let it burn down until such time that they could apply a new application of foam. And that was several

hours after it had begun burning. And were eventually able to put some of the fire out, and then they ran out of fuel and the fire went out. This fire was extinguished roughly 27 hours after it began

MR. THOMPSON: And what are the lessons to be learned From that fire for the CECP project design?

CHIEF CRAWFORD: Well, at the risk of boring you by being repetitious, I will say the exact same thing, and that is that these fires or these emergencies do occur in these power plants, they're of significant magnitude of fires, they're very, very labor intensive to manage, extremely labor intensive to manage, and there is great risk, both to the workers, the first responders, and the neighborhood. In addition to that, I'm convinced that adequate access into, out of, and around these plants is critical.

MR. THOMPSON: How would you compare Palomar and CECP power plant sites in terms of there constraints and the ability to fight fires such as the one that occurred at Palomar?

CHIEF CRAWFORD: One of the things that has me so concerned about the CECP is that it sits in the bowl. And I've made those opinions known for quite some time. We are essentially putting a power plant in a confined space. Confined space presents certain concerns and challenges

for us in and of itself. You combine it with hazardous materials, lots of fuel, limited access, and you have a recipe for what I consider to be a significant disaster.

So my concern again is that limited access that I have to the plant, the difficult time navigating From our arterials onto the plant, through the plant to get to a place where we can analyze what we have and make -- begin our plan to mitigate the emergency.

In addition to that, I have great concerns that it is sitting right next to the I-5 corridor, many people have commented about, that I share all the concerns about the I-5 corridor. Unless this is an extremely minor emergency, and when I say minor, a very, very minor, so minor that it's not observable from I-5, anything less than that -- or anything more than that is going to block down I-5. Either traffic will block itself, will shut itself down, or my operations chief will shut I-5 down preventing further exposure to those that would be driving by.

In addition to that, of course, we have the railroad that's going past, and I've got a lagoon next to that, I've got residences nearby, I've got the ocean, and I've got -- I'm sitting right in the pathway of an airport.

So without being disrespectful to the

proceedings, I don't think you could find a more challenging place to build a site like that than what we have, what we're considering here.

MR. THOMPSON: What was your previous recommendation to the committee on access and fire safety?

CHIEF CRAWFORD: My recommendation was that we put a 25-foot road on the perimeter of the rim. In addition to that we have a 50-foot road within at the bottom of the pit for access. In addition to that we wanted to be plumbed into the city's loop water system.

MR. THOMPSON: Have you modified your previous conclusions based upon the incidents at Kleen and Palomar?

CHIEF CRAWFORD: Only strengthened them.

MR. THOMPSON: Let me talk about the California fire code for two seconds, and I would like some input from you.

My understanding is that there is a 2010 version of the California Fire Code; is that correct?

CHIEF CRAWFORD: Correct.

MR. THOMPSON: And the City of Carlsbad adopts that code in toto, or are their changes made within the city to the fire code?

CHIEF CRAWFORD: We can't change the code. We can strengthen and enhance the code.

MR. THOMPSON: Did that occur this year?

CHIEF CRAWFORD: It did with setbacks and roadways.

And for detail on that I would direct you to the fire marshal.

MR. THOMPSON: Okay. Will do.

Do you still retain the authority under the fire code to require roadways in excess of the road width specified in the fire code when you deem it appropriate?

CHIEF CRAWFORD: Yes, I do.

MR. THOMPSON: Again, you were here this morning when Dr. Greenberg talked about the Palomar transformer fire. And he referred to low probability, low consequence. Would you characterize it the same way?

CHIEF CRAWFORD: Low probability, high consequence would be my comfort zone.

MR. THOMPSON: Does the -- to your knowledge does the Escondido Fire Department, the agency responsible for representing -- for responding to the Palomar fire, agree with you?

CHIEF CRAWFORD: As a matter of fact they do. I've had multiple meetings with Chief Lowry, the fire chief for the Escondido Fire Department. And I've laid out the plot plans, and I've just laid it all out there and asked him what his opinion was; and his opinion concurred with my opinion. He also was concerned about

the configuration of the plant, road widths, access, it being adjacent to I-5, railroad, lagoons, et cetera.

MR. THOMPSON: Thank you very much.

Moving to Fire Marshal Heiser. You were previously sworn?

CHIEF CRAWFORD: Yes.

FIRE MARSHAL HEISER: Yes.

CHIEF CRAWFORD: Sorry.

HEARING OFFICER KRAMER: No coaching of the witness.

MR. THOMPSON: I didn't mean to prompt.

Are you familiar with the fire at the Palomar?

FIRE MARSHAL HEISER: Yes, I am.

MR. THOMPSON: And were you involved in any way in observing that incident?

FIRE MARSHAL HEISER: Well, our initial involvement from our department's standpoint started that afternoon when we received a call through our dispatch center asking about foam availability from the Escondido Fire Department. They were querying all neighboring jurisdictions for the availability of Class B foam, which is designed for flammable liquids.

Later in the evening, I drove to the incident to get an opportunity to see what it looked like and do a quick face to face with the incident command system to see

how they were managing it, based on testimony to the commission previously, and the walk through of the facility.

MR. THOMPSON: And would you describe your observations of that fire?

FIRE MARSHAL HEISER: I was near the command post, which was out on the -- out on the main access route, which was completely shut off by law enforcement probably a quarter mile back. So that entire facility, road was shut down. And that would have included access to the new Palomar Medical Center, which is across from it, but that's still under construction.

You were able to see back inside and see the transformer burning from a significant distance. And probably of note would be, as everyone's mentioned, the quantity and thickness of the smoke. Any flammable liquid fire puts out that thick, black smoke, and it was -- we call it a header, but a decent volume coming up.

And I had an opportunity to talk to incident command without interrupting their operational tempo to get a feel for it. And they were still just attempting to get a better concept of how to approach it. They had already made an initial attack, it hadn't been successful as described by the fire chief. They were backing off and regrouping.

And the advantage they had was other than the impact of the smoke and the fire, that they had time on their side because there wasn't life safety issue at that point.

I had an opportunity to talk to the hazardous material personnel that were there, get their opinion for what they had elected to do, which is called -- they used a reverse 911 system and notified the neighborhood, the footprint recommended by the hazardous material team. And the advisement to those individuals was to protect -- protect and place, which means stay inside your house, keep the doors and windows closed. At one point there was a perception that the smoke wasn't harmful. That wasn't the statement or the information I received there. Simply that if you avoided the smoke you were okay.

MR. THOMPSON: In your observations and discussions with fire personnel at that fire, did you gain any knowledge or impressions on any hindrance in moving around, access to the fire, the ability to fight the fire on the ground?

FIRE MARSHAL HEISER: My impression from discussion at that point was that one of the reasons they had requested the marine unit to respond to is it's an aircraft rescue and fire fighting unit. So you're looking at a piece of equipment that's very specific, used on

airports to attack flammable liquid fires secondary to a plain crash.

And one of the advantages that that piece of equipment provides is protection for firefighters both inside the cab of the vehicle and the ability to remotely apply product. It's got a big turret on the top, and they can aim it and squirt foam in larger volumes than any equipment that our department or Escondido had at the time.

In addition, traditional firefighting equipment that we carry right now is the big yellow banana suits that we wear. It works for structure fires; it's not designed for flammable liquid fires, because one of the problems is that radiant heat coming off penetrates your clothing. So if you think of an aircraft fire crash, you see them standing there in the big silver or reflective suits that reflects the heat back. So the other thing that the marine corps brought is the reflective suits.

And there was large concern about the number of resources, meaning the number of firefighters that we're willing to put in proximity of the fire. So it was a concern about finally getting the level of equipment and protective clothing and the fact that there were access issues to get there.

MR. THOMPSON: If I could ask you a little bit

more about this vehicle, are these rare? Do most fire departments have these special vehicles?

FIRE MARSHAL HEISER: No. Where you see these vehicles utilized are -- they're very specific to commercial airports. So for example, in this county where there's a number of airports, there's only two commercial airports, City of San Diego and Carlsbad. So at Carlsbad, as a requirement under the FAA, is a Title 139 airport, that's commercial, you have to have an aircraft rescue and fire fighting unit there.

In the case of Palomar airport, the FAA actually provided the aircraft, the county provides the staffing. The requirement is that in order for it to maintain its commercial status, meaning for you to land at that airport, the AFR unit has to be up and staffed. So that's why if you start calling for an AFR unit, you're asking people to close down their airports. It would -- although I didn't research it, it would indicate to me why they ended up getting to the marine corps to get it, because there you're just dealing with the base commander, and if the base commander at any base want to close down his or her airport, he can do it.

And so it's -- it's a very limited resource, very specific, and it's what they eventually needed to effectively fight that fire from with the protection that

they needed.

MR. THOMPSON: I believe I heard from one of the witnesses that the command center, the incident command was located on Citricado Parkway?

FIRE MARSHAL HEISER: Yes, sir.

MR. THOMPSON: And is the effort to get a command incident -- to get this command post as close as possible to the fire or -- help me out.

FIRE MARSHAL HEISER: Depends how bad it is. I think that what you're looking at is the command post location needs to be close enough for it to interact effectively with the incident, but doesn't necessarily need to be on site. So there are some challenges with where you place it. But I don't have to see the incident from the command post, but I do need to be in close enough position to effect actions on the incident

MR. THOMPSON: Did the location of the incident command and its ability to fight the Palomar fire change any conclusions you have about the ability to fight a fire at the CECP?

FIRE MARSHAL HEISER: Not from the standpoint of the command post.

MR. THOMPSON: The footprint of the closure for Palomar reached some distance out. My understanding is Citricado Parkway and the neighborhood. If you had that

same footprint of closure at the CECP, can you give us an idea of the area that that would cover?

FIRE MARSHAL HEISER: I'm sorry, I'm a tiny bit confused.

MR. THOMPSON: As am I.

FIRE MARSHAL HEISER: Oh, I'm sorry.

MR. THOMPSON: My understanding of Palomar was that there was a closure area where people were asked to evacuate, they closed down the freeway, they did that kind of thing.

If you had the same impetus at the CECP to close the same area, I assume it would cover I-5, but I'd like you to kind of give me an idea of the geographic bounds, if you could.

FIRE MARSHAL HEISER: Yes. I mean, our winds are predominantly either going to blow off the ocean inland or inland back; so the most likely scenario is that that smoke would have laid over onto Interstate 5, and matching the same footprint as the other one would have conservatively covered Interstate 5 and probably into the residential community that would be right on the other side of Interstate 5.

If it shifted the other way, then you're into the neighborhoods that are to the south of the facility. The least impact potentially would be if you had a wind that

was blowing it out over the ocean. Potentially then I'd simply be closing what used to be the old power plant and then probably the coastal road.

MR. THOMPSON: Do you have any feeling, any knowledge about how many pieces of equipment were able to get into the Palomar site to fight the fire?

FIRE MARSHAL HEISER: I wasn't there when they were actually applying the extinguishing agent because I wouldn't have been able to necessarily visualize it any way without being down in; but listening to the briefing, they were limiting it to a single vehicle to get down in there so it had maneuverability. It was at a turn with a slope going down to it, so it had limited maneuverability.

And one of the things you want to do when you're deploying a vehicle is you keep asking yourself how quick can I get it back out, because I'm putting people inside a vehicle in harm's way; I need to have a plan not just to apply the product and put the fire out, but if it doesn't go right, a plan to pull them back out rapidly. So I don't want to do anything that impedes either the ability to get there or the ability to get out. So they limited the number of resources they could put down there.

MR. THOMPSON: And based upon experience, do you have any -- do you have any opinion about the geographic restrictions on the CECP site based upon your experience

at Palomar?

FIRE MARSHAL HEISER: Well, I -- what I was looking at was how much space did they have to move around. And our request was for the 50 feet of maneuver area, which would be the bare minimum having now had an opportunity to see the amount of heat, smoke, and the problems that were encountered by Escondido Fire.

MR. THOMPSON: You've talked about this special fire foam vehicle. In Mr. Greenberg's testimony, he said Escondido Fire Department did not possess the proper firefighting foam equipment to extinguish the full fire within the transformer spilled secondary containment area.

Do you take that to mean that Escondido did not have one of these vehicles that's available only at airports?

FIRE MARSHAL HEISER: That would have been my assumption in that statement, but they had -- my impression of Escondido is the same of other departments within our jurisdictional area. We have adequate foam of the appropriate type to fight what would constitute a reasonable fire, which for us is a vehicle fire, maybe a little bigger than a vehicle fire. But even if we encounter a plane crash, and I've had a number of opportunities to do that, we rapidly expend what we have on our vehicles.

So I didn't infer that they didn't have the right type, simply the amount or the ability to apply, but I haven't had an opportunity to ask him what he meant.

MR. THOMPSON: And you heard Dr. Greenberg this morning make a recommendation about -- and I guess it's in his prepared testimony, some certain restrictions and planning to go into the making the possibility of transformer fires safer and more rare; do you have a reaction regarding that?

FIRE MARSHAL HEISER: I haven't had an opportunity nor necessarily Dr. Greenberg's expertise to fully review every one of those. I respect that it's the approach to take, which is to minimize the problem. The initial review of a change to a different type of fluid inside, the fluid recommended is not non-flammable, it's just less flammable than previous product.

So although the flammability range or the temperature at 300 degrees is still within the range, it could be generated, but I see this as a direction we need to go to address an issue that's now been identified that we weren't necessarily aware of before.

MR. THOMPSON: And finally, have your experiences with the Palomar fire and your knowledge of the Kleen Energy incident changed any of your observations, conclusions with regard to the CECP or recommendations you

have made to your fire chief regarding access?

FIRE MARSHAL HEISER: No. My statement would be similar to the fire chief's. The opportunity to actually see it simply reinforced probably in general terms, the concerns I have that my belief was that power plants similar to both Escondido and the Kleen were subject to these same levels of scrutiny and received the same impression that technology or existing systems would solve all the problems. And I respect and appreciate that. I'm the one that has to respond to the incident after the fact. And still believe that that's what I'm going to be doing. So I'm looking for every opportunity the commission can provide to the department to effectively do that.

MR. THOMPSON: Let me finally turn to the area of fire codes. Are you familiar with the California Fire Code and the Carlsbad changes or additions to the fire code?

FIRE MARSHAL HEISER: Yes, sir.

MR. THOMPSON: My understanding is that under the 2007 code there were two consecutive sections, one requiring certain road widths, 503.2.1, followed by 503.2.2 which gave the chief the authority to require wider roads in his judgment. Have those two sections changed?

FIRE MARSHAL HEISER: No, the two sections in the fire code remain the same. When the fire code's brought forward to counsel, we ask for amendments to the fire codes specific to the City of Carlsbad. Every jurisdiction does this. And so the only change that would apply to that is in the amendment to the fire code our new standard is 24 feet at a minimum.

But the key component that remains the same either in the fire code or the amendments is that the fire chief or designee has the ability to amend that section to meet any -- any additional requirements as identified. And so the 24 feet was designed to define the roadway that's outside this facility. It allowed the fire chief to look at the uniqueness of something like a power plant, determine if additional distance was needed. That still exists in both the 2010 code and in the amendments that we've done.

MR. THOMPSON: And in your professional opinion you have to read those two sections together to give the fire department the authority it needs to plan for.

FIRE MARSHAL HEISER: Correct. Any time when you're interpreting the local codes, you have to take the fire code, but you also have to pull up the amendments to them. We have a number of amendments that we've added, some of which would apply to this proposed facility.

MR. THOMPSON: I apologize, I actually do have one final question.

503.2.2 talks about -- 503.2.1 and the -- and I'm going to give you a term that's contained in here, and if you could tell me what that means or what it means to you, I'd appreciate it. "Fire apparatus access roads."

FIRE MARSHAL HEISER: It's a term that's used when a plan comes through to be evaluated. Plan check includes measuring the distances that allow fire apparatus to arrive and how much space they need that's guaranteed to us to gain access to a building. And so when I say guaranteed, the 24 feet which is the standard, not the one we're asked for here, is the one where it's the red lane and goes all the way out. It doesn't allow for parking, that has to be outside the 24 delivery line, anything that could be placed there that would prevent us from using the full 24 feet in the existing code.

So when you apply that, if it's okay to, say, to the 50 feet that we requested for, I believe, the 28 feet that's currently being offered, that what we're saying is that's from, in my mind, red curb to red curb, nothing can be parked there, nothing can be placed at any time that would obstruct the vehicle.

MR. THOMPSON: Thank you.

Mr. Garuba, you have previously testified in this

proceeding, have you not?

MR. GARUBA: Yes, sir.

MR. THOMPSON: And you have prepared the testimony that is designated as number 436; is that correct?

MR. GARUBA: Yes, sir.

MR. THOMPSON: And you -- you also are going to sponsor, hopefully, an exhibit called 442, which are the four GIS overlays?

MR. GARUBA: Yes, sir.

MR. THOMPSON: And 441, which are the two pages out of the I-5 widening DEIS.

MR. GARUBA: Yes.

MR. THOMPSON: Turning to 44- --

MR. McKINSEY: Hearing Officer Kramer, I have to make an objection at this point to the entirety of Mr. Garuba's testimony, including both the exhibits that were just referred to.

And actually, I really wanted to make sure, but the entirety of Mr. Garuba's testimony is beyond the scope of this limited scope evidentiary hearing because the entirety of his testimony is attempting to make the point that the -- if you assume a 50-foot road width in the basin, that the project will not be accommodated by some of the proposed I-5 alignment and widening arrangements.

This is the exact testimony that we received last year, and the only difference in this testimony is that he's prepared at his direction new exhibits showing overlays of alignments, and he has an exhibit that has been pulled out of the Draft EIR, EIS for I-5. And regardless of whether -- and I think I would object anyway probably in the end to the admissibility of those things.

I'm not here on the basis of that they're accurate or inaccurate, but that all of this is something that is the old asked and answered quite well one year ago topic of whether or not or not the project with 50-foot-wide road widths.

The testimony from the fire department provided reasons what they felt from the lessons learned of the two fires, maybe they still believe that that road width needs to be wider, so that's within the scope of this topic, but this is simply another attempt to reiterate why the project would not fit if it had 50-foot-wide road widths, and adds nothing that's related to the Kleen Energy or the Palomar fire lessons learned.

So it's beyond the scope, and for that reason we're objecting to it, and we're objecting to it now just to save ourselves the time of evidence that wouldn't be admissible.

HEARING OFFICER KRAMER: Okay. We'll go off the

record for a minute to deliberate.

(Recess taken.)

HEARING OFFICER KRAMER: Okay. We're back.

First a question for the -- before we rule, a question or two for the city. And I'll ask them both.

Do you believe Mr. McKinsey has properly characterized Mr. Garuba's testimony to the effect that he's showing that if 50-foot roads were required that -- and a particular configuration of the Caltrans project were adopted, that there would not be room on the project site for the power plant and the 50-foot roads?

MR. THOMPSON: Is that a question for me?

HEARING OFFICER KRAMER: For -- I guess, yeah, for the -- your argument against his motion at this point.

MR. THOMPSON: Yes.

HEARING OFFICER KRAMER: And I'm directing your argument to particular points.

MR. THOMPSON: Yes. And given the project description as it exists now, we do not believe after the publication of the I-5 widening DEIS and dropping it down, and Mr. Garuba can explain how this was done, dropping it down on a site map, we do not believe that there is room for the chief's requirements and the Caltrans right-of-way in the ten-plus-four and possibly eight-plus-four configurations.

HEARING OFFICER KRAMER: Okay. So we've now gone then from learning a lesson from these other fires to the effect that you believe at least as strongly and perhaps more strongly that you need 50 feet. And then you've gone beyond that to talk about the consequences of getting 50 feet.

And that -- going on to the consequences does seem to be rather far afield from the discussion of the lessons. And unless you're meaning to say that you can't have 50 feet because that would affect the project or something like that, and I'm sure that's not what you're saying.

MR. THOMPSON: That is not what I'm saying. Actually, if I could ask a couple of questions of the witnesses in support of these?

HEARING OFFICER KRAMER: Okay. Then we'll rule.

MR. THOMPSON: Right.

Mr. Garuba, did I -- when I responded to the question made by Mr. Kramer, did I respond correctly?

This is your shot, come on.

MR. GARUBA: Perhaps I could elaborate on your response.

So the question I heard the commission ask was did we come to a conclusion on what the impacts are of overlaying the multiple projects that are planned for this

location would result in. And as we started to overlay the images from the various documents, official documents, it became apparent that if you maintained a slope based on the equivalent spacing that's currently on the CECP site from the pit to the rim, it creates distance issues to fit it all in. However, in reviewing the various documents, I believe in the Worker Safety and the FSA they highlight this fact specifically and then call for a vertical or some type of a retaining wall.

And we looked for the diagram; I remember seeing one, I couldn't put my hands on it. But if the commission were to augment the conditions of certification to incorporate something like that, you then might be able to get to the access distances that are still required by the fire chief.

MR. THOMPSON: And I have the impression there was some confusion before the DEIS was issued on the I-5 widening about the particular assumption that Caltrans would be using in the widening, the various configurations; and at one point I think I saw that either staff or applicant said that the eight-plus-four was the widest, and this clears that up. Is that another reason for this document?

MR. GARUBA: This document uses the depictions that are promulgated by both the energy commission in this

proceeding as well as the Caltrans EIR proceedings and what they used as the average, average likely road widening. It does not incorporate the largest expansion, which would be the ten-plus-four with barrier configuration, which I believe is approximately 18 to 20 feet.

The challenge has been and continues to be the uncertainty around which scenario Caltrans will pick, but we used what they put forward in their official documents

MR. THOMPSON: And either Chief Heiser or Chief Crawford, looking at the configurations on the last page there where the -- that shows the I-5 widening in relation to the CECP --

MR. McKINSEY: Object. These documents have not been authenticated yet. This was the gist of my objection that these documents shouldn't be admitted, and now you're asking another witness to testify based on them.

MR. THOMPSON: I'm -- what I'm going to do is ask -- if you'll let me finish my question, I was going to ask him about the relevance of the Palomar fire to any enlarged configuration of I-5.

MR. McKINSEY: But you're beginning your question by if you would look at the attached, and referred to these drawings.

MR. THOMPSON: Yes.

MR. McKINSEY: Which were prepared by Mr. Garuba.

MR. THOMPSON: Yes.

MR. McKINSEY: And I'm objecting to that. But what you just asked was different.

HEARING OFFICER KRAMER: Mr. Thompson, can you repeat the second version of your question that you asked in the middle of the objection?

MR. THOMPSON: If you consider not the widest but the next to widest of the new configuration of the I-5 as put out in the DEIS, and based upon your experience at Palomar and your knowledge of Kleen, would the I-5 widening inhibit your ability to deal with incidents at the CECP?

FIRE MARSHAL HEISER: I guess I start with the if I understand the question, but the exhibit I'm looking at is this one?

MR. McKINSEY: And that's one of the many I'm objecting to.

FIRE MARSHAL HEISER: Is this the one I should be referencing?

MR. THOMPSON: If you ask me, yes.

MR. McKINSEY: Well, but that's not the question you just asked him. You referred to the Draft EIS, EIR, he's not holding up something from that document.

FIRE MARSHAL HEISER: Okay. And I'm sorry.

MR. RATLIFF: Commissioner, if I could make a point of order. We have seen this diagram only as of noon today, and Mr. Garuba's testimony as well. It is supposed to be his testimony. It has nothing to do with the issue of lessons learned from the fire safety issue from the Palomar fire. It concerns a matter which was not noticed for today's evidentiary hearing of which we've had elaborate testimony.

And now the secondary witness is being asked to reflect on that diagram in a manner which I think is actually inconsistent with Mr. Garuba's testimony. And I can elaborate on that further if you want.

But I'm saying that this is quickly spinning into a completely unrelated matter to anything that you've noticed for today's hearing. And we didn't come prepared, frankly, to offer testimony on it, but we could have.

HEARING OFFICER KRAMER: You're correct. This is definitely getting into the width issue and doesn't appear to be informed in any sort of direct way any of the recent fires that we were asked to and we agreed to discuss today in the form of additional testimony.

FIRE MARSHAL HEISER: Commission?

HEARING OFFICER KRAMER: Let me finish the thought.

So we're going to sustain the objection to

Mr. Garuba's testimony. This is something that along with these documents could be provided in comments down the road, but --

MR. THOMPSON: Mr. Kramer, we will do that. Our difficulty comes with the DEIS being issued after the last set of hearings and wanting to put comments in that will not be dismissed as mere comments because no one has testified to them.

Now, we can put in comments and have them done by attestation and we can put in these documents by attestation, but I don't want to hear at the comment stage we didn't have the chance to cross-examine you on this.

HEARING OFFICER KRAMER: Well, I guess that's a rhetorical request of the other parties, because the committee --

MR. McKINSEY: We did not object to the request for judicial notice of the Draft EIS EIR, and it was admitted as you ruled, so it's in the record. And so we're not -- we can't object to comment on it either. That's clearly what's allowed.

And really my point is exactly what Mr. Ratliff articulated; that we didn't come prepared to testify on this topic. And that also means we're not prepared to cross-examine on this topic. And I agree completely that this is completely appropriate to be submitted as

comments.

HEARING OFFICER KRAMER: Okay. So we've ruled.

Do you have any other testimony from Mr. Garuba?

MR. THOMPSON: We don't have anything else for Mr. Garuba.

Great job, Joe.

PRESIDING MEMBER BOYD: Can I ask a question here? That when you do comment, that perhaps you comment on the extent to which Caltrans in its draft document considered the possibility of the project we're talking about today being constructed.

MR. GARUBA: Can you restate that question, please?

PRESIDING MEMBER BOYD: I want to know in your comments, not today, whether or not Caltrans in this document, which none of us have been able to read yet or see, considers the possibility, since its project is way off in the future some day, considers the possibility that the project we're discussing here today might be built and would be there at the time that Caltrans chose perhaps to receive with some version of this widening project and what the consequences of that might be. Or is this all a one-sided situation?

MR. GARUBA: That's actually included in two locations in the Draft EIR.

MR. McKINSEY: So I think the request was that we do that as our comments.

MR. THOMPSON: I do have one final question, if I may.

HEARING OFFICER KRAMER: Go ahead

MR. THOMPSON: Mr. Crawford, to sum all this up, Chief Crawford, you've talked about your requirements, and I think in the past you've been excessively polite referring to your recommendation regarding road width. Do you have a summary or a summation or what your requirements are?

CHIEF CRAWFORD: My summation would be that we have a 50-foot road width at the base of the pit and a 25-foot rim roadway at the top of the retaining walls. And then, of course, that the water system be tied into the loop system of the city. Those would be my -- those are my requirements.

MR. THOMPSON: The PMPD to the best of my knowledge did not reference your authority under 503.2.2. Do you have any comment on that?

CHIEF CRAWFORD: Other than it does exist and that I am responsible for making -- placing requirements on this plant, and these are my recommendations as I've just enumerated them; and should the commission override those recommendations, not recommendations, but

requirements, I would ask for it to be enumerated, and those -- any place that those requirements are overridden, that we receive justification for those requirements being overridden.

MR. THOMPSON: Thank you.

HEARING OFFICER KRAMER: Let me ask you a question, following that up.

If a project comes through the city, and I presume the fire department is consulted on design issues in the review of your equivalent of a conditional use permit; is that correct?

CHIEF CRAWFORD: Yes.

HEARING OFFICER KRAMER: And when you decide that the particular feature should be a part of the project because of fire concerns, is that a -- is that a recommendation to the planners and the planning commission and the city council, or do you simply say whatever it is you think is required, and by law in the city, that is what will be required?

CHIEF CRAWFORD: Well, I have the authority to do the latter. There are times where we can opt one fire protection feature over another in the idea of trying to accomplish what the developer wants to do, but I do have the authority.

HEARING OFFICER KRAMER: So the city council

can't overrule you?

CHIEF CRAWFORD: The city has never overruled me.

HEARING OFFICER KRAMER: Okay. Never is different than cannot.

CHIEF CRAWFORD: They cannot.

HEARING OFFICER KRAMER: That's your position?

CHIEF CRAWFORD: Yes.

HEARING OFFICER KRAMER: Okay.

Okay. That's all the direct testimony, I believe, so now let's turn to cross-examination beginning first with the applicant.

CROSS-EXAMINATION

MR. McKINSEY: I'd like to begin -- and I just have a couple of questions for you, Chief Crawford, but I'd like to begin by emphasizing that I really respect your service and appreciate your time here today, but nevertheless, I've got to ask you a few questions, but they're really two specific ones about your preparation for today.

And I can take as an assumption in preparation of your testimony today it seems apparent that you had to review the descriptions of the project and understand, you know, its proposed design by the applicant, correct?

CHIEF CRAWFORD: Correct.

MR. McKINSEY: So first you testified that you

have three what you called requirements. One of them was the looping of the fire water system which we addressed. The other two relate to road width, a 50-foot wide road within the basin and then a perimeter road of 25 feet.

CHIEF CRAWFORD: Correct.

MR. McKINSEY: So do you have a perception that this project is not providing a rim road of at least 25 feet?

CHIEF CRAWFORD: That's my understanding, yes.

MR. McKINSEY: So it's your position that the project has failed to provide all three of these components coming into today; a 50-foot wide road at the base, a 25-foot wide road on the rim, and then, of course, the looping issue, which I think we resolved.

CHIEF CRAWFORD: That's my understanding, yes, sir.

MR. McKINSEY: So I guess -- well, I think we'll do a rebuttal, but the gist of it is that the project actually has a 28-foot wide rim road around it, and the -- and so if it had that, then that issue would go away.

MR. THOMPSON: Pardon me. For clarification, when you talk about the 28 foot, are you talking about the upper rim road or the lower?

MR. McKINSEY: The rim road, the upper road around the top of the basin is -- if you assumed it had

had a 28-foot wide rim road around that, then that would resolve that second issue of not having a 25 foot --

CHIEF CRAWFORD: If there was a 28-foot rim road around the entire plant, then that would more than suffice my recommendation for a 25-foot rim road, yes, sir.

MR. McKINSEY: And then finally in the testimony regarding the Palomar fire, that was a step up transformer, and it's one of the large power transmission step up transformers, correct?

CHIEF CRAWFORD: Yes.

MR. McKINSEY: So are you familiar with where they're located in this project or where they would be located?

CHIEF CRAWFORD: Not specifically, no, sir.

MR. McKINSEY: So if I was to explain to you that they were actually going to be located in the switch yard on both on the east and the west side of the railroad tracks, but in the flat general areas where the switch yards are being constructed, would that change the nature of how you would evaluate a response to a transformer fire given the -- I think you were assuming that those transformers would be down in the bowl, correct?

CHIEF CRAWFORD: I wasn't making that assumption necessarily. I was speaking to the significance of any transformer fire wherever it happens to be, and I wasn't

saying that the only kind of emergency we could have in the pit would be a transformer fire. So it doesn't change my testimony.

MR. McKINSEY: Well, I guess, what would be the lesson learned regarding -- because a transformer fire risk, given the location of the transformers in the flat areas on both sides of the railroad tracks in this project? I mean, that's what I'm trying -- because your testimony, I think, at least at some points discussed the idea of fighting those transformer fires if they're down in the bowl, and if one of these transformers were to catch fire and they're not resolved by Mr. Greenberg's wonderful condition of certification, then my point is is there a lesson learned from fighting the fire if you had to fight it right up there in the flat area long the railroad tracks on each side?

CHIEF CRAWFORD: Well, I certainly wasn't saying that all of my concerns relative to any fire that was in the pit was because it would be caused or had its origin in a transformer. It could be any source of fire down in there would give me concern.

Specifically to the transformer fires, whether they're in the pit or outside the pit, the hazards of transformer fires, the significant heat that's generated by them, the difficulty in fighting them is present when

it's in an open area or in the pit.

MR. McKINSEY: And that's the case though for any power plant, period?

CHIEF CRAWFORD: Correct.

MR. McKINSEY: Thank you. No further questions.

HEARING OFFICER KRAMER: Staff?

MR. RATLIFF: No questions.

HEARING OFFICER KRAMER: The city?

CROSS-EXAMINATION

MR. THOMPSON: Thank you, Dr. Greenberg. In your testimony you discussed the, and I think we covered this, the Escondido Fire Department used the wrong equipment in dealing with that fire. When you were talking about that, you were talking about not having one of these big airport vehicles; is that what you were talking about?

DR. GREENBERG: I was talking about just about everything, not really having the equipment or an adequate amount of foam. And this was as a result -- not result, but this was as reported to me by our CBO, Butch Wallace.

MR. THOMPSON: In addition to the aircraft firefighting piece of equipment, what other pieces of equipment did they lack or have wrong?

DR. GREENBERG: I do not know.

MR. THOMPSON: And with regard to the foam, how much foam was needed for the Palomar fire?

DR. GREENBERG: I do not know.

MR. THOMPSON: And do you know how much foam cities normally keep on hand?

DR. GREENBERG: No, I do not.

MR. THOMPSON: I'm not getting anywhere here.

DR. GREENBERG: You're asking the wrong questions.

MR. THOMPSON: Maybe so.

In your experience is it ever the case that if you have a particular type of firefighting need, that the industrial facility or the facility itself carries material and equipment such as foam?

DR. GREENBERG: Asking -- if you're asking me, Mr. Thompson, in general, not specific to power plants, but other industrial facilities like chemical companies, refineries, the answer would be yes, in general they would have.

MR. THOMPSON: And with your experience at the Palomar fire, would you now require gas-fired power plants of this nature to carry foam on the site of the power plant?

DR. GREENBERG: No, I would not; and I'd be happy to give you my reasons why.

MR. THOMPSON: I would love that.

DR. GREENBERG: Sorry to prime the pump there.

There is quite seriously a difference of opinion professionally as to how to fight or whether to even knock down a transformer fire that contains mineral oil. If you look at the incident report from the City of Escondido Fire Department, they clearly state that an opinion from the San Diego County Hazardous Incident Response Team, their initial opinion, was to whether they should fight the fire or not.

Also in, my supplied testimony, there are -- there is evidence, and I provided a reference, where other facilities, not necessarily power plants, that have used foam question whether or not that's the most efficient or efficacious way to fight a fire involving transformer and mineral oil if the foam, as the Escondido Fire Department learned, given the intense temperature of these mineral oil fires can literally boil away.

And there needs to be consideration as to whether or not it should even be fought in the initial stages when there is a tremendous amount of fuel and a tremendous amount of radiant heat.

So all of this is not cut and dried from a professional perspective, and there is the question of whether or not the fire should be knocked down immediately. Certainly, for example, on a substation such as the March 2003 Vincent Substation Fire, 20 pieces of

equipment from L.A. County Fire Department were -- came out there. Their main concern was to ensure that the fire did not spread beyond the initial transformers. And so one of their roles was not to knock down the existing fire, was to make sure that it did not spread.

They have a lot of transformers out there at the Vincent substation, and that's a major substation for power going into the Los Angeles area.

So I certainly am not going to express an opinion as to whether to fight a fire or not fight a fire, but in my considered experience working with power plants in California, I don't -- I would not recommend -- this is the direct answer to your question and I'm giving you the reasons why, Mr. Thompson, I wouldn't recommend that they have foam on site.

It's certainly an option, which is why I have proposed a performance condition of certification as opposed to a specification which says you shall do this and you shall do that. If they decide to have foam, I'm certainly not going to object to it, but I'm not in the position to recommend it, sir.

MR. THOMPSON: Is there a difference in fighting fires where you have only equipment versus where you have personnel close to the fire with regard to your recommendation that maybe you don't the fire?

DR. GREENBERG: Well, first of all, I'm not making the recommendation -- I'm going to be real clear, I'm not making any recommendation whether to fight the fire, I'm merely pointing out that there are professional opinions out there as to whether to -- they differ as to whether to fight the fire.

MR. THOMPSON: Given your vast experience would you assume that they really don't have an option of not fighting the fire if there are personnel close to the source of the fire?

DR. GREENBERG: I would say that's certainly a very important factor.

MR. THOMPSON: In your prepared testimony you discussed a report from EDM Services.

DR. GREENBERG: Yeah. If you'll point out the exact paragraph, I'll -- oh, yes, Butch Wallace.

MR. THOMPSON: Is this report available online, or do you have it?

DR. GREENBERG: I think it's already been docketed. It would be -- hold on here.

I've been informed that it was docketed in on the Palomar site of the energy commission web site.

MR. THOMPSON: And this is a report prepared by EDM for what entity?

DR. GREENBERG: For the energy commission.

MR. THOMPSON: To your knowledge did EDM discuss the incident with the Escondido fire chief?

DR. GREENBERG: I'm not aware one way or the other.

MR. THOMPSON: Your new condition associated with the transformer fires, what is the specific compliance action that you propose?

DR. GREENBERG: Specifically, the project owner shall prepare a plan, call it a transformer fire risk reduction plan, to -- we want them to evaluate and come up with a recommendation. We've given some examples, but they're not limited to that, nor should they include all those examples. And that this would -- this plan would be something above what they're already doing. And it would be circulated to the CBO who, as you know, reports to the energy compliance project manager, to the Carlsbad Fire Department; and then, of course, ultimately the compliance project manager would review and approve or tell them you need to revise this.

MR. THOMPSON: And is it true that or is it correct that the design of this plan is to evaluate mitigation measures going into design of transformers so that the likelihood of a fire is less?

DR. GREENBERG: That's correct, Mr. Thompson. I wouldn't call it mitigation, as more prevention, another

layer of prevention. Here's what we're going to do to lower the probability that there would be a fire, and the various steps they would take prior to building the power plant we'd review and approve it.

MR. THOMPSON: Are you familiar with California Fire Code Section 302.2.2?

DR. GREENBERG: 302.2.2?

Read me the subject rather than the numbers, please.

MR. THOMPSON: The authority of the fire chief to require road widths greater than the minimum?

DR. GREENBERG: Yes, indeed. That would be the authority having jurisdiction has the authority to set a fire lane or fire access route width greater than that set by the California fire code.

MR. THOMPSON: And where aware of Chief Crawford's requirements under that section?

DR. GREENBERG: Yes, I am.

MR. THOMPSON: Would you recommend that the energy commission override the fire chief's access requirements?

DR. GREENBERG: You know, I disagree with Chief Crawford, with all due respect. Again, I made the same testimony a year and three months ago. There -- my interpretation of that section of the California Fire Code

is that an authority having jurisdiction does not have carte blanche to set a width, but rather there needs to be a stated reason and certainly a profession -- more than just an opinion, here's the width, it's what it is based on. I would ask why 50, why not 49, why not 51? What is the source of that?

Certainly, the California Fire Code in coming up with its designation went through peer-review committees, opinions, and there were sound, valid reasons. And I would ask the same thing. And therefore, I do not support 50 feet at this time.

MR. THOMPSON: What is your recommendation with regard to that road width? The lower road width, what is the energy commission's recommendation, energy commission staff?

DR. GREENBERG: It remains the same at 28 feet width.

MR. THOMPSON: And what is the justification for that width?

DR. GREENBERG: Basically it is eight feet wider than the California fire code, and it is based on the design drawings of the applicant which show that that is the minimum width of many -- the ramp, the two ramps going down into the bowl, and other locations around the outside of the bottom of the bowl. The perimeter of the bowl show

greater widths, up to 32 feet, but the minimum width that I was able to estimate and then get confirmed by the applicant is 28 feet, and so that's what I put in the condition of certification, that that would be the minimum.

And I certainly do agree with the fire chief and the fire marshal that these should be red lined fire lanes, access roads, no place -- no parking allowed in those lanes. They should definitely be dedicated and guaranteed access. I certainly agree with the fire marshal on that one.

MR. THOMPSON: And given that the new code section we heard is 24 feet, does your recommending remain the same at 28?

DR. GREENBERG: Yes. It's still greater than the minimum in the California Fire Code.

MR. THOMPSON: Can I go back to the FSA and your worker safety protection? Do you recall that a year and a half ago, whenever it was?

DR. GREENBERG: Yeah. Which part of it?

MR. THOMPSON: I will read you some.

In there on page 4.14-15, you said, if the I-5 ten-plus-four barrier configuration is chosen by Caltrans, the CECP at the closest point would have 45 feet available for visual blocking vegetation and a protective barrier

plus security fence if a retaining wall is used.

What do you mean by the retaining wall reference?

MR. RATLIFF: I object on the grounds that this is outside the scope of this evidentiary hearing and we've already had a ruling on that matter. That I object and have a standing objection to any further questions that have to do with issues outside of those noticed for this hearing.

HEARING OFFICER KRAMER: You want to draw a connection, Mr. Thompson?

MR. THOMPSON: No, I'll drop it.

Dr. Greenberg, if an incident at the CECP resulted in the closure of highway I-5, would you consider that to have a consequence to the public?

DR. GREENBERG: Yes, I would consider that to have a consequence to the public.

MR. THOMPSON: Thank you.

That completes my cross of Dr. Greenberg.

DR. GREENBERG: You're welcome.

HEARING OFFICER KRAMER: Dr. Greenberg, could you point me to the condition where the 28-foot width is established?

DR. GREENBERG: Yes.

HEARING OFFICER KRAMER: I've got it. WORKER Safety 6.

DR. GREENBERG: I was just about to say that.

HEARING OFFICER KRAMER: Does it currently make the point that it should be, I think you said, red lined?

DR. GREENBERG: Yes, I used that term, perhaps it's not a term of art, but I -- the fire marshal was quite correct in saying that it -- when you see a red curb, you can't park there, and that is the terminology I think we were both using to indicate that these are guaranteed fire access and fire lanes. You don't park your car there, you don't put a temporary cart containing building materials or pipes or whatnot, these are totally clear.

HEARING OFFICER KRAMER: Okay. I'm just wondering if we need to clarify the condition though, because it's -- at one point it uses the term "fire lanes," but in the actual sentence it describes a 28-foot width requirement, it talks about access roads, the low-grade perimeter roads and ramps. And so not even using the term "fire lanes," I don't know that you can imply that they need to be red curbed from this.

DR. GREENBERG: I'd be happy to add that, to clarify that.

HEARING OFFICER KRAMER: Okay.

DR. GREENBERG: And if I may, I'll work with the fire marshal to get the precise technical language.

HEARING OFFICER KRAMER: Okay. I think that would help.

Power of Vision, did you have some cross-examination?

MS. BAKER: Yes. Jacques Romatier will ask our questions.

HEARING OFFICER KRAMER: Okay. Could you spell your name for the court reporter, please

MR. ROMATIER: Okay. Yes. My name is Jacques Romatier, R-o-m-a-t-i-e-r.

CROSS-EXAMINATION

MR. ROMATIER: And my question is addressed to Dr. Greenberg. It's related to the use of alternative gas to purge the units.

I'm quite glad to see that, in fact, we are all on the same wavelength, is not the appropriate medium to clean the lines. I still have concern that I support Dr. Kramer questioned basically.

My question is if I look at the HC 10, your proposal, you are mentioning that first of all we should follow the NFPA 54 updated and in the process to the updated.

Dr. Greenberg, does this NFPA 54 apply to this plant? In other words, is this plant voluntary jurisdiction of 54?

DR. GREENBERG: NFPA 54 would indeed apply to this plant. It is referenced, I believe, in NFPA 850, which specifically applies to power plants.

MR. ROMATIER: So when did that became -- I'm not aware of that change, because May of last year, 19th, the CBS -- CSB, sorry, mentioned, and I quote, they were talking about basically the accident at the Kleen Energy explosion, at the energy plant. However, the explosion of Kleen Energy occurred during outdoor venting of gas, quantity of gas

Our plant, in any case, exempt from the national fuel gas code which is developed and maintained by non-governmental consensus committee administered by the NFPA and the American Gas Association.

So the reason I'm asking this question, it's going to be important to have clarification, because if you're on NFPA, either this plant is under eight, in this case it's all right to mention it in your brief, or it's not. And what you are saying is you think it is.

DR. GREENBERG: Yes. Let me explain why I say that is.

The tentative interim amendment on NFPA 850 that became effective November 9th of 2010 states that section 7.2, fuel handling gas, general, 7.2.1, the storage and associated piping system for gases in the gaseous or

liquefied states should comply with ASME B1.1, NFPA 54, of the National Fuel Gas Code.

MR. ROMATIER: Thank you. So that's the first point.

The second point is I think that, and that should be the last one, the exception; why do we have this exception? Because what's going to happen, and I hope that is what's implied in your recommendation, is that this plant is going to require -- I'm from the refining business. This plant is required to either have nitrogen facilities on site and, therefore, any -- you will have always a choice between gas or nitrogen, and since you have nitrogen either storage facility, why do you have to have this exception? Or they will use steam, and in this case it will be steam available.

I'm trying to rationalize why do we have an exception here, which always for me is a potential loophole. And that's basically the fundamental of my question.

DR. GREENBERG: Sir, I'm going to do the best I can as a non-engineer to explain the exception that we're proposing in Condition HAZ 10.

When it comes down to engineering piping of natural gas to gas turbines, sometimes you're doing it on site, and sometimes also you really have -- and this is

what I'm told, of course, by other energy commission staffers who are engineers. This was a collaborative effort, I wasn't the only author of this, there are other individuals. And that there may become a need to purge with gas, particularly around the turbine area and into the turbine.

And we only would allow that exemption under the extraordinary conditions where the project owner has to make a case for it. And they'll have to make the case to our chief building official, they'll have to make the case to the Carlsbad Fire Department. And we will gather that information, and the compliance project manager then may or may not allow them to use gas, natural gas to purge. Certainly I can tell you that that's not going to be too often. But the engineers convinced me that they needed that flexibility under very strict conditions.

MR. ROMATIER: So here we are wanting -- I learned personally from the accident of Kleen the difference between what an accident will be in Carlsbad and Kleen is that Clean was, quote, unquote, lucky to be where it was located. And basically the gas went down, it was not housing next to it, and the unfortunate death of six people were relatively mild as compared to what can happen.

I've been personally in another accident which

happened in France, in fact, in 1966 in Feyzin. A new refinery was built along the expressway going from Paris to the coast, a main artery. And what happened was there was a leak from a new LPG sphere during a sampling of the LPG. The LPG was blown on the expressway, and the expressway was around 450 feet from there. The fire was ignited by a car. And two thing happen.

The people -- first of all, the fire came back to the sphere, at the same time the people were on the expressway stop and starting to stay on the expressway to see what was happening. Suddenly the sphere blew up. And basically the people who were stuck on the expressway were either killed or maimed. The end result is 18 people died and 81 were burned.

So the reason we have this enclosure here at Kleen, the gas went down, here we have a pit, and the pit will require that basically no gas, period, can be purged in the pit.

And secondly, if you look at the interim report, more or less, the only thing they are saying, well, first of all, you have to go out and purge, give you some dimension where you can purge. But we cannot afford in Carlsbad to have any purge of gas, period, because of the location.

The location, we are very close from I-5,

64 percent of the time the wind goes west to east, that means bring the gas into the expressway. So that's why I'm raising this issue. I'm not trying to make it difficult, I'm in favor of making it safe.

DR. GREENBERG: Mr. Romatier, I can tell you that we will revisit the issue based upon your testimony and certainly the committee can make changes even without a staff recommendation. They've heard your testimony. But I commit to you that we will revisit this exemption and talk about internally.

MR. ROMATIER: Thank you.

DR. GREENBERG: Thank you.

MR. ROMATIER: That was it.

MS. BAKER: We're done.

HEARING OFFICER KRAMER: Terramar.

CROSS-EXAMINATION

MS. SIEKMANN: Dr. Greenberg, earlier you testified that there were sound, valid reasons to the fire code at 28 feet. Do you agree that there are sound, valid reasons why the code has the exception that the fire chief can change that?

DR. GREENBERG: Yes, I do.

MS. SIEKMANN: Thank you.

Oh, did you have more to say?

DR. GREENBERG: No.

Did you have more to ask?

MS. SIEKMANN: Thank you.

And then, Chief, an investigation occurs always after fires like the Palomar fire; is that correct?

CHIEF CRAWFORD: Correct.

MS. SIEKMANN: So if a fire chief made certain -- okay, if a fire chief like yourself requested the 50-feet fire road, but it was overridden by such an energy commission, and the plant was built with a smaller road, and a fire occurred, firefighters were hurt or worse, there would be an investigation, and the conclusion came down that the fire road was too narrow, who would be responsible?

CHIEF CRAWFORD: Well, actually, that's quite a hypothetical for me to identify one specific answer that may satisfy you.

If I understand what you're trying to get at correctly, will I as a fire chief own the responsibility for making decisions relative to the codes enforced, the codes selected, and the parameters of that building? The answer is yes. I will be brought under scrutiny as I would for the complete operation of the emergency.

MS. SIEKMANN: So based on that, if the CEC concludes that the fire road should be 28 feet, will the Carlsbad Fire Department support the plant?

CHIEF CRAWFORD: Can I define what you mean by "support the plant"?

MS. SIEKMANN: If there were a fire at the plant like the Palomar fire, would you respond?

CHIEF CRAWFORD: We will respond. And we'll size up the situation as we do any situation that we respond to, and we'll make decisions based upon the data that we gather and the emergency that we're faced with.

I certainly can't predict what actions we're going to take. I will say that the width being less than 50 feet and being 28 feet, will be factored into us making our plan of action.

MS. SIEKMANN: Thank you. That's all.

HEARING OFFICER KRAMER: Okay. That completes cross-examination.

Do we have any redirect? I hesitate to ask. Speak up only if you want to.

MR. THOMPSON: Yes.

HEARING OFFICER KRAMER: Mr. Thompson.

MR. THOMPSON: Thank you.

REDIRECT EXAMINATION

MR. THOMPSON: Chief Heiser, I think this goes to you, but, Chief Crawford, help, if you can.

Dr. Greenberg testified that he disagreed with your requirement, the requirement of the Carlsbad Fire

Department as enunciated by Chief Crawford where a 25-foot upper rim road and a 50-foot lower rim road because he did not believe that it should be based only on professional opinion and wanted more substance for the basis of the requirement. Would you give us that substance, if there is any?

FIRE MARSHAL HEISER: Similar, I appreciate and respect Dr. Greenberg's opinion and comments. I do think that there is both an art and science to determining this when you're dealing with such a complex issue.

So when looking at the existing code of 24 feet, I looked at the significant threat, potential threat, and the positions, locations, access routes, and doubled that width to 48. And then, and I'm sorry because this probably doesn't reflect as positively, I tend to round up, and rounded up to 50.

And the reason I doubled that is 24 feet was designed for the distance you see outside this. It was designed for day-to-day operational concerns. If you're going to place firefighters and equipment in a bowl with electrical equipment that's energized with flammable liquids with limited routes of egress, in and out, I wanted the greatest opportunity for the individuals I put there to take action, depending on what occurred.

50 feet, or I would gladly go with 48, gives me

the opportunity for apparatus to not only go forward, they can make turns, they can effectively maneuver in a restricted area. So the methodology I used was to look at turning radiuses, distances from walls.

I looked at different opportunities or different options. I've been told that at some point the one slope will be 45 degrees; there's been question raised if it's vertical. Depending on the location and the different plans I've looked at, some of the structures go up well above a hundred feet. So I'm looking at narrow corridors where 50 feet provide me the greatest option. So I believe I used existing science along with my experience of 28 years as a firefighter, and applied that distance.

MR. THOMPSON: Even as a layman, it's clear to me that you cannot put firefighters right up to the edge of that right-of-way, right up to the edge of the equipment. How close can you get to a fire such as the one at Palomar to fight it?

FIRE MARSHAL HEISER: It's a little hard to estimate because it really is, how close you can get to a fire is literally how hot it is. And so a lot of times if we can use existing structures to advance closer, if the heat's reflected, if most of the heat's going up, if it's not blowing toward us, and I guess the big nature of my answer is because there are so many variables that take

place.

So when I analyzed the distances in the request, I'm looking at worst-case scenarios and trying to recognize that none of us here -- okay, I'll say I can't, and imply none of you can -- truly predict what catastrophic event, if any, are going to occur here, because I doubt if anybody said that the Kleen thing was going to explode or that this other power plant in Escondido was going to have a fire.

So my obligation is to look at an event in worst case; and it's hard to determine how close I have to get. 50 feet or 48 seemed a reasonable distance based on the threat that I was being presented with.

MR. THOMPSON: Thank you.

PRESIDING MEMBER BOYD: Dr. Greenberg I have a question for you, if you will indulge the question. It's almost peripheral to what we might do here, but this is an interesting subject to me, and it happens to be I have a son-in-law who is state fire marshal in another state, and for four plus years I was in a position to oversee the California Department of Forestry and Fire Protection and visit lots of fires and injured firemen. So I have great respect for you gentlemen. I know what you do for a living.

Having gotten that on the record, I want to ask

about the fire extinguishing agent. And there's a lot of discussion today about Class B foam and how in a fire of the temperature of this transformer, mineral oil transformer, obviously exceeded its boiling point, et cetera, et cetera, and it wasn't very effective.

I'm just wondering if that's a lesson learned about mineral oil transformer fires that hadn't been learned before; and is there another form of extinguishing agent, chemical or otherwise, that is in existence that might be considered more actively for these type fires?

DR. GREENBERG: Commissioner Boyd, one of the references that I read, and I believe I listed it here in my testimony, which is now Exhibit 227, was just such a conclusion from the -- I think it's the Bureau of Reclamation, which recommends against using foam fire suppressant on their transformers at hydroelectrical facilities. They found it ineffectual, and they also found it created a very slippery situation, literally. And so this is another lesson learned.

It just appears to me that we as staff have to continually walk that tightrope or that fine line between over regulating and not regulating enough. And we really will come in with a specific standard and a specific recommendation when the need is clear and the evidence that the solution we're proposing is really going to work.

In this case it is an evolving area of research, of how to fight transformer fire. And there is difference in professional opinion whether to fight it at all, depending on the circumstances.

So that's the lesson that I've learned, and that's why we're proposing this to you as a performance standard. Let the project owners -- not just Carlsbad, but there will be other projects that are going to get this same condition perhaps if you -- if you put it in for this one, we'll put it into others. Let them come up with another way than what they're doing right now.

PRESIDING MEMBER BOYD: What about transformers that use a different coolant other than mineral oil; how prevalent are they now?

DR. GREENBERG: They're not that prevalent yet, but they are becoming more prevalent. The use of ester-based fluids are becoming more prevalent.

You know one of the other methods that I did discuss in my testimony is the use of a subsurface vault which could take up volume, but, as you could see, as the oil then flows out of a burst transformer, even if it's on fire, it will flow into a subsurface vault and then become oxygen deprived. That could not only lessen the duration, but even the amount of fuel burning the surface area of the fuel burning, which directly impacts the amount of

heat flux, radiant heat coming from a fire. The larger the pool, you know, the greater the radiant heat.

And so some projects around the country are using that approach as well, and they don't want to put it out, they'll just let it go into an underground oxygen-starved atmosphere and burn out the oxygen.

PRESIDING MEMBER BOYD: Thank you.

I did see your testimony, but I wanted to give you the opportunity to talk about it.

DR. GREENBERG: Thank you.

MR. THOMPSON: Mr. Kramer, can I ask our chiefs if they have any additional response to the commissioner's question about foam?

HEARING OFFICER KRAMER: Let me turn my mic on and ask a follow up.

So, Dr. Greenberg, right now your proposal to Worker Safety 10 says at a minimum the plan shall evaluate the ester-based dielectrical fluids; but that means the condition would be satisfied just by that evaluation. Do you think it's important to require that they evaluate all the other options as well in this plan?

MR. RATLIFF: Mr. Kramer, I think that's what our proposed condition does. It requires the evaluation of all five of the items.

HEARING OFFICER KRAMER: Well, the phrase "at a

minimum," suggests that doing just that one evaluation would satisfy the condition.

MR. RATLIFF: Then you've got the wrong version of the proposed condition. That's all I can -- because we wanted all of them evaluated, and that's what our proposal would be, and if we've somehow given you the wrong version of the condition, then it's a problem.

DR. GREENBERG: There's two sentences there. There are two sentences there. The first one says to evaluate a lot of options. And then somehow someone put in a different -- another sentence, at a minimum the plan shall evaluate ester-based dielectrical fluids.

So the intent was to evaluate all of these and any others. It's -- we'll wordsmith this, Hearing Officer Kramer, to make it abundantly clear, but I think you understand the intent is to make this a performance-based standard.

HEARING OFFICER KRAMER: Okay. But the performance is the evaluation.

DR. GREENBERG: Yes.

HEARING OFFICER KRAMER: I think I understand it's really hard to set some kind of specific benchmark for a new -- you know, a new level of protection because there's probably no scale upon which to rate even the current level of protection. So I guess I don't see

performance -- I don't think you can define it, but the performance is really performing the evaluation and convincing staff that reasonable, feasible improvements have not been ignored. Is that fair to say?

DR. GREENBERG: That is correct. In the plan we expect to see what they evaluated and how they evaluated and their criteria for rejecting a particular solution. We don't want to just see a statement saying we evaluated five approaches and found none of them feasible, thank you very much; that's not going to fly. Certainly not going to fly with the CBO, it's not going to fly with the Carlsbad Fire Department nor the compliance project manager.

HEARING OFFICER KRAMER: Okay. Mr. Thompson?

MR. THOMPSON: Thank you

Commissioner Boyd asked a question about learning -- I'm sorry, Dr. Greenberg, it was addressed to our guys.

If you'd learned -- if Dr. Greenberg had learned any lessons about fighting transformer fires with foam and that particular method of fighting a transformer fire, did you guys learn any lessons?

FIRE MARSHAL HEISER: Based on my discussion with Escondido Fire, I probably walked away with some of the same concerns I heard Dr. Greenberg express. They're a

complex event. One of the problems they faced is the longer it burned, the hotter it got.

I know it doesn't make sense, but it's actually by the time they were able to make the first application of foam, that's when it was actually bubbling. But there's an idea that said had the foam been applied earlier, it might have worked better.

But I think I applaud and appreciate Dr. Greenberg's approach at looking at a number of options to address a complex issue in the most effective fashion. And look forward to an opportunity, I hope, to work with the applicant and Dr. Greenberg to see what that looks like to come to a successful resolution.

And I agree again with him, you don't want to go too far down one path until you're really sure what that path looks like. And I see this as an opportunity really to look at it in a positive sense.

MR. THOMPSON: Thank you.

HEARING OFFICER KRAMER: Okay. I think we've completed fire in probably 3.7 hours. Let's take a break for ten minutes. And we're planning on taking a dinner break approximately 4:00, maybe a little bit later, but so we can be back at 5:30 for the public comment session. So let's try to limit this break to ten minutes on a real watch as opposed to ten minutes on what I call energy

commission time, which is always more. So be back here at 3:09.

MS. SIEKMANN: Mr. Kramer, may I say one thing?

Julie Baker is going to have to be leaving for the airport fairly soon. And I will also not be here tomorrow. So she did want to say something on the redevelopment. So something can be done to make sure she has that opportunity.

HEARING OFFICER KRAMER: Sure. And Mr. Rostov wanted to say something as well before the public comment.

MS. SIEKMANN: And Terramar too. So thank you.

HEARING OFFICER KRAMER: Okay. We are off the record then for our break.

(Recess.)

HEARING OFFICER KRAMER: Okay. We'll go back on the record, having violated my request myself.

Given that as I understand it -- (dog barking in background on conference call) -- let me find that dog and mute.

Okay. We decided because of the people that wanted to make some of their comments orally and who will not be with us tomorrow, we're going to take the -- we're going to take this tsunami issue and reverse the order of it with the extraordinary public purpose issue.

And I note that the applicant has passed out a

page with a proposed condition regarding the shut down of Units 4 and 5. So let's make that exhibit -- would you like this to be an exhibit, Mr. McKinsey?

MR. McKINSEY: Yes.

HEARING OFFICER KRAMER: So that would be Exhibit 199F, as in Frank; I think. Let me verify that. So if everyone can mark 199F, as in Frank, on that piece of paper.

(Whereupon, Applicant's Exhibit 199F was marked for identification.)

HEARING OFFICER KRAMER: Is there anybody on the telephone who is interested in -- let's see. Let's get this -- let's go off the record for a minute.

(Discussion off the record.)

HEARING OFFICER KRAMER: Okay. Back on the record.

So for those of you on the telephone, we'll have this Exhibit 199F, this proposed condition, up on the -- if you're on the Internet, WebEx connection. You'll see that in a few minutes when we get it up there.

MS. SIEKMANN: Mr. Kramer, can we ask questions about this exhibit?

HEARING OFFICER KRAMER: Yes, down the road, yes.

MS. SIEKMANN: Okay. Thank you.

HEARING OFFICER KRAMER: We're just going to get

it up so people can see it.

Let's begin with the -- I know that Mr. Rostov asked to be able to make some comments on behalf of the Center for Biological Diversity. I'm having acronym block.

And then -- is Ms. Seikmann or Ms. Baker, I forgot which, or both of you wanted to make some comments.

MS. BAKER: Yes.

HEARING OFFICER KRAMER: Is somebody trying to say something on the telephone?

So, Mr. Rostov, you asked earlier in the day, so I'm just going by order of request, why don't you go ahead, and then we'll follow with Ms. Baker and then Ms. Seikmann.

MR. ROSTOV: Okay. Thank you, Mr. Kramer.

The Center plans to provide written comments, and we've only had limited time to review the PMPD, given the date of the hearing. But I wanted to primarily focus on the GHGs and just make a couple comments, point out a couple errors I think in the PMPD.

I think it's really important to look at this at the 10,000 foot level for a second. What this decision is doing is locking in more fossil fuel generation for the next 30 years and probably much longer. And the analysis in the PMPD is really just a snapshot of the present, and

it doesn't consider the effects of this plant over the 30-year lifetime. And I'm sure it will be much longer than 30 years. And this snapshot is contrary to CEQA.

This project isn't part of a statewide plan, energy plan, or a plan to reduce greenhouse gases, because neither one of those really exist. All we have is this siting procedure. The energy commission sites plants pursuant to the Warren Alquist Act and the California Environment Quality Act. And luckily CEQA provides the hooks to really do a good job on greenhouse gases. It requires identification of significant environmental effects, it requires the feasible mitigations where possible, and alternatives.

Here the PMPD states that the emissions of hundreds of thousands of tons of greenhouse gases from the project is not a significant effect. And this just can't be right in a carbon-constrained world.

And then, granted, I want to recognize that the analysis of greenhouse gas is relatively new and I know the energy commission has been trying to grapple with this, but their approach just seems to be wrong. Here the PMPD is using criteria that is much too general. Under the criteria used by the PMPD, effectively any new natural-gas fired power plant will not have a significant effect on global warming.

On its face this cannot be compliant with CEQA; it's just too -- the standards are too general. There's not the sufficient analysis needed.

The PMPD argues you have to look at the whole western grid, but it fails to take into account all of the other plants that have been approved. There's thousands of new megawatts in the pipeline that have been approved, and there's more megawatts in the pipeline. But there's no analysis saying we approved whatever the tonnage of greenhouse gas emissions, and then we're adding this plant to that mix. And there's no analysis of that. What the PMPD does is it assumes a zero sum gain in an idealized system. And neither seems to be true in the real world.

Increasing efficiency of one power plant simply is not enough; you need to look at the total output when you're doing the environment analysis. And looking at efficiency as opposed to output is insufficient and is demonstrated by this plan.

In this plant you can only show that this new plant will be displacing a fraction of the greenhouse gas emissions emitted by the existing plant. Units 1 through 3 will be replaced, everybody agrees with that, replaced by this plant, but they operate so little that the gross emissions of the new project will be six times or eight times more than the current emissions of the existing

plant that will be replaced

And Terramar has proposed an exhibit that shows there's no RMR for these units anymore, for units 1 through 5. So it's even unclear if you need this project to get rid of Units 1 through 3. 1 through 3 are also dictated by the Clean Water Act.

I wanted to point out that the passing of time has undermined, and we will put evidence or comments with documentation, I guess you would call it, in the record when we present our comments, but I wanted to point out that the passing of time has undermined some of the premises in the greenhouse gas section.

One premise was that this project would aid in the closing at south bay. South bay has already been closed. The ISO reevaluated existing energy needs and supply and discovered that south bay could be closed without this plant. It's closed.

Similarly, the need for renewable integration has also been undermined. The PMPD says this plant will -- is needed to achieve 20 percent renewable integration, and it will be even more needed to achieve 33 percent renewable integration. But in the fall ISO came out with their 20 percent study where they looked at 20 percent integration of renewables. And in that study they said essentially that the existing grid could integrate 20 percent.

Then last week I attended a CPUC -- an ISO presentation in the long-term procurement proceeding of the CPUC. And there was modeling involving the 30 percent, 33 percent renewable, achieving 33 percent. And what this new renewable integration modeling indicates is that even with the existing grid, we will not need new generation to integrate 33 percent renewable energy.

Over time the powers that be have been developing better, more expensive modeling and demonstrating this extensive need for power that everybody said we need; it just doesn't exist as much anymore. As a matter of fact, there's more than enough energy to meet peak summer demand now in San Diego.

A couple other places where I believe the PMPD has flaws is it finds that the use of LNP at the plant is speculative, but a recent article states that LNG is being used in San Diego currently. And the use of LNG in San Diego is consistent with the Center's argument extensive records we cited in the LNG section of our briefs.

Also, the consideration of renewable generation in the alternative section is also undermined by changed facts. We argued that maybe the need of the energy for -- that would be provided by this project would not be as much -- as great as proposed by the applicant and could be

replaced by alternative energy. One of the responses in the alternatives section was that the cost of solar was too expensive.

But a recent Southern California Edison bid for solar where they put out a bid for 250 megawatts of distributed generation achieved a price that was below the market price reference. So in other words, San Diego, SCE, Southern California Edison, is going to be able to build 250 megawatts of solar at a price cheaper than a natural-gas combined cycled plant. So that undermines the facts in the alternatives analysis.

You know, I don't want to take too much of the time, and I appreciate the committee providing this time now, but I do want to say we did extensive legal arguments with cites to the record, and a lot of that was mostly ignored by the PMPD. And, you know, I'm tempted to go through each of my legal arguments, but I won't at this time because I know that you could read them. And I'll probably reiterate some of those in the comments.

So I think I just want to conclude by saying I would urge the commission to review the evidence -- or not the evidence, the comments and the documents that we're going to submit and my statements now and correct all the errors, and realize that because this process has taken a couple years, changed circumstances have occurred, and I

think there needs to be a real evaluation of this plant again.

And I'd also urge the committee to reject analysis essentially adopted at this point, reconsider the briefs that we had submitted, and adopt a greenhouse gas analysis that's more similar to the proposal that we make in our briefs.

So I appreciate your indulgence. I also appreciate the courtesy of all the parties throughout this process. So thank you.

HEARING OFFICER KRAMER: Thank you.

Ms. Baker.

MS. BAKER: Yes, thank you.

I have quite a few comments, however, I'll save most of them for our comments that we'll turn in on the PMPD.

I would echo what Mr. Rostov has to say that in the parts of the PMPD that I've been able to read in the last few days, it's almost many issues that were brought up by the City of Carlsbad, Power of Vision, and Terramar, and the Center for Biological Diversity were simply ignored, not addressed in any way, shape, or form in the PMPD. And that was really disheartening for all the time and energy and hours spent doing research and trying to provide thoughtful presentations to you on items that we

believe to be relevant simply to be categorically ignored in the PMPD. And we would look forward to the commission addressing some of those concerns. And we will turn them in to our comments.

Mostly what I wanted to direct my comments to right now are on the idea of the extraordinary public purpose for the redevelopment area. And I notice that the applicant has turned in a condition of shut down in 4 and 5, and I'm sure this will come up later, but this really says nothing. I mean, to turn in a plan on how they're going to shut down 4 and 5 and what they're going to do does absolutely nothing for this community, and it is certainly not an extraordinary public purpose.

And from the citizens of Carlsbad's point of view, removing EPS is not what we would consider to be an extraordinary public purpose. It was scheduled for -- it would have eventually been removed anyway. So why would we consider its removal now as a condition of this project as being extraordinary public purpose?

I don't know how you could even consider the CECP an extraordinary public benefit to the citizens of Carlsbad. We don't get the energy from it, we don't get the benefit of using the ocean front property, we get absolutely no date certain on when Units 1 through 5 will be decommissioned. And what will happen to the eventual

property?

Just to say that we're going to do a plan does nothing to assure the citizens of Carlsbad that any useful benefit will accrue from that property to any of us, and yet we are the ones that are going to be driving down the freeway and seeing the smokestack, we are the ones that are going to be living in our homes up above the hills and looking down upon it, or living just a few blocks south of the power plant and dealing with the fact that a new power plant could be on the coast for another 60 years when it doesn't need to be here.

And especially I think it can be demonstrated through some of the documents that Terramar has provided as well as Power of Vision that the RMR has been removed from all five of those units, which was not clear during the evidentiary hearing; so there's absolutely no reason that it continues to be there and operating now. And one does wonder why some specific plans have not been addressed on its eventual removal.

And I guess that wraps up my comments. We'll save the rest of it, and I'll look forward to what my fellow intervenors have to say on the subject.

HEARING OFFICER KRAMER: Thank you.

Ms. Seikmann?

MS. SIEKMANN: First of all, Mr. Kramer, I just

want to make sure that what's said in here is considered part of the evidentiary hearing and not as PMPD comments.

HEARING OFFICER KRAMER: It's going to depend on what you say. Are you offering testimony?

MS. SIEKMANN: I am. I am offering testimony based on exhibits that I have submitted for this -- as discussed in the land use section of the PMPD to consider evidence.

HEARING OFFICER KRAMER: Okay. Then I guess we should consider then the portion of the hearings relating to extraordinary public purpose to be opened as the evidentiary hearing then. And because of your scheduling needs, we'll allow you to present your direct testimony first.

MS. SIEKMANN: Thank you.

HEARING OFFICER KRAMER: So go ahead.

Do you need to have the -- any of those articles displayed on the screen?

MS. SIEKMANN: Well, I do have the numbered exhibits, 377, 378, 379, those submitted.

HEARING OFFICER KRAMER: Okay. And I think Power of Vision actually had cleaner copies of those two letters that they submitted. They were 746 and 747. So let me ask Ms. Baker or Dr. Roe, do you -- well, let me ask you, Ms. Seikmann --

MS. SIEKMANN: I'm sorry, what?

HEARING OFFICER KRAMER: Are you willing to have their -- we don't want to have two sets of exhibits in evidence, but would you prefer that your exhibits be admitted?

MS. SIEKMANN: Yes.

HEARING OFFICER KRAMER: And does Power of Vision object at all?

MS. BAKER: (Response beyond range of microphone.)

HEARING OFFICER KRAMER: Okay. So we'll just mark 746 and 747 as duplicates of, and I'll fill in the numbers later of Terramar's exhibits. So go ahead then with your testimony.

DIRECT EXAMINATION

MS. SIEKMANN: Okay. As of the February 3rd, hearing, which is part of the evidentiary record, if you go to page 196 and begin with Hearing Officer Kramer, it says:

"Over the last few days of public comment we received a lot of comment to the effect that you don't need power plants in this area in San Diego basin, they could all be out in the desert, or I think somebody even suggested northern California, to serve the needs down here.

"So could you comment or just describe for the record, because it will help me in responding to those comments, what are some of the other things that power plants or reasons that power plants, if there are reasons, that you need to have some of them in the local area near the load? The people who are using power, I think you alluded to them earlier by rather technical terms, but --"

And then Mr. McIntosh says:

"There's a term that we use; it's called reliability, an RMR unit that's required for local voltage control in the area. So it's a factor of how many megawatts you can transport into an area from the imports out of the area and also be able to maintain -- able to withstand the loss of a major facility like in this area would be a Palomar or a San Onofre unit going off and keep the grid reliable under that first contingency condition.

"So you have to have a number of plants like the Encina plant here online in order to protect the local area so you don't have a cascading black out as a result of that.

"HEARING OFFICER KRAMER: And I do understand correctly two of the units, the newest ones are RMR right now.

"MR. MCINTOSH: I believe that's the case.

"HEARING OFFICER KRAMER: Two of the -- the

newest two Encina units, those would be 4 and 5.

"MR. MCINTOSH: 4 and 5.

"HEARING OFFICER KRAMER: They are RMR. And can you explain for the public what RMR means?

"MR. MCINTOSH: I just tried to, but apparently I wasn't very clear.

"MS. SEIKMANN: I just couldn't understand.

"HEARING OFFICER KRAMER: Oh, okay. Okay. Well, then never mind.

"MR. MCINTOSH: Did everybody get the answer, or do you want me to go through this again?

"HEARING OFFICER KRAMER: No.

"MR. RATLIFF: Repeat it, please.

"MR. MCINTOSH: Yeah, certainly.

The idea with local area requirements is developed around the ability to maintain voltage in your area. Local generation is required in order to do that during any -- most contingency events and in general just to maintain reliability in the area. And there's localized pockets within California. San Diego is certainly one of those, the bay area is another. Humboldt, for example, is a very good example of areas where singular power plants going offline would result in possibly rotating outages in that area. So we maintain generation on -- in those load pockets to keep the lights

on, quite frankly.

"HEARING OFFICER KRAMER: So you could not run a pocket if all of its electricity was being imported over transmission lines.

"MR. MCINTOSH: In most cases that's correct.

"COMMISSIONER BOYD: And for those who still didn't understand what our RMR means, it's an old term, reliability must run. And it is all that Mr. McIntosh just described but didn't define the term. It's an old term, almost has become passe."

And that's exactly what it is for Encina. It is passe. There is no RMR on Units 4 and 5 There hasn't been RMR on Units 1 through 5 at Encina since January of '08. So when we are talking about extraordinary benefit, we are not replacing power from a plant that's on RMR. The only thing that's on, black start RMR at Encina is the CT, the combustion turbine, 14 megawatt combustion turbine.

I also, you know, as I have said, I have the letters -- Exhibit 379 and 378, the letters to and from the Federal Energy Regulation Commission.

So where is the extraordinary benefit coming from shutting down a plant that has no RMR status or black start status on it except for one 14 megawatt combustion turbine? This plant's also going to lose its water

discharge permit in 2017. Once these events occur, and as we know the old plant is located in a redevelopment area, it would be considered blight and would have to be demolished anyway. So offering the removal of the old plant as extraordinary benefit ignores the requirements of redevelopment.

Thank you.

HEARING OFFICER KRAMER: What is it in these letters that tells you that --

MS. SIEKMANN: If you take a look at Exhibit 377, 2011 RMR black start dual fuel contract status, you'll see where it says Cabrillo Power One, LLC, under black start unit extension status where it says, Cabrillo One Encina Unit CT 14 megawatts is extended. I confirmed this. Also, I have e-mails from Cal ISO from two different individuals who confirmed there is no black start status at Encina except for the 14 megawatt CT.

HEARING OFFICER KRAMER: Okay. And to you black start status is the same as RMR?

MS. SIEKMANN: It is not the same. RMR is basically a higher status than black start. Black start is only for one year. And it must be renewed each year. So what happened was they went off RMR, and the CT unit is on black start status. And I confirmed this with two individuals at Cal ISO. And I have a copy of one of my

e-mails stating so.

HEARING OFFICER KRAMER: Okay. Because Exhibit 378 just talks about the acceptance of an application, and, in fact, it doesn't say that it was necessarily approved. In fact --

MS. SIEKMANN: It's termination of a reliability must run agreement.

HEARING OFFICER KRAMER: Right. That's the, if you will, the subject of the letter; but later on in the letter it says that this acceptance for filing shall not be construed as constituting approving of the reference filing for anything else. So --

MS. SIEKMANN: But then if you look at the Cal ISO 2011 RMR black start dual fuel contract status, you see that there is no Cabrillo -- there is no Encina Units 1 through 5 black start status or RMR status.

HEARING OFFICER KRAMER: Okay. Well, I'm sure the applicant will address this as well.

MR. McKINSEY: The statement is correct; there is no RMR on Units 1 through 5. I'm trying to figure out when the date, when it was released was for any of the units. We don't have that available.

HEARING OFFICER KRAMER: Okay.

MR. McKINSEY: But that's a correct statement.

HEARING OFFICER KRAMER: Okay.

MS. SIEKMANN: I don't understand why at the hearings when all this was being discussed that the applicant and the staff did not correct the situation and also Cal ISO. Everyone in this room was under the opinion that that was under -- that 4 and 5 were under RMR status, and that is showing much more benefit to that plant than there is there.

HEARING OFFICER KRAMER: Well, I don't recall the testimony as saying that RMR status was --

MS. SIEKMANN: I just read it to you.

HEARING OFFICER KRAMER: Well, you didn't let me finish.

That RMR status was the sole indicator of the importance of generation --

MS. SIEKMANN: And I never said sole. It's just an extraordinary benefit that is -- does not exist.

HEARING OFFICER KRAMER: Okay. Is that the end of your testimony then?

MS. SIEKMANN: It is.

HEARING OFFICER KRAMER: Okay. What time do you have to leave?

MS. BAKER: I'm the one that has to go.

HEARING OFFICER KRAMER: Okay.

MS. SIEKMANN: I will not be here tomorrow.

HEARING OFFICER KRAMER: Okay. So we will make

sure we get to you -- actually, well, Ms. Baker, you were not going to provide any testimony, correct? So I think to be safe we should then allow cross-examination, if there is any, of Ms. Seikmann, because we may lose her before we finish this topic.

Does any party wish to cross-examine here?

Okay. Then let's go back to the top of the list --

MS. SIEKMANN: Thank you.

HEARING OFFICER KRAMER: -- and the applicant.

Mr. Rouse? And we might as well -- we might as well convene a panel, which would be a combination of Mr. Rouse, was there somebody else in addition to him? And from the city, Mr. Kane and Ms. Fountain. If you could all come forward. Remind me, have you all been sworn at the last hearings?

MR. ROUSE: Yes, sir, I have.

MR. KANE: Yes.

HEARING OFFICER KRAMER: Okay. Great. Then please introduce yourselves, starting with Mr. Rouse, and then going across the table and spell your last names for the court reporter.

MR. ROUSE: My name is Ronald W. Rouse, R-o-u-s-e, partner with the firm of Luce, Forward, Hamilton & Scripps, special counsel to the applicant.

MR. KANE: I am Murray Kane, K-a-n-e, from Kane, Ballmer & Berkman, special counsel to the Carlsbad Redevelopment Agency.

MS. FOUNTAIN: I'm Debbie Fountain, F-o-u-n-t-a-i-n, Housing and Neighborhood Services, previously Housing and Redevelopment director.

HEARING OFFICER KRAMER: For the city?

MS. FOUNTAIN: For the City of Carlsbad, yes.

HEARING OFFICER KRAMER: Okay. Thank you.

Mr. McKinsey?

(Ronald Rouse, Murray Kane, and Debbie Fountain, having been previously sworn, testified as follows:)

MR. McKINSEY: Mr. Rouse -- we provided Mr. Rouse's written testimony, and we're not going to have him reiterate it here. As well as this topic was brought up pretty thoroughly a year and a few months ago as well.

He's available for any questions you have about his testimony or any questions you have in general, as I'm reading into the tea leaves of the request for information, when we were studying a similar, we realized that one of the things that appeared to you really after was a proposed condition of sorts, and so we crafted one, which we knew would be subject to all sorts of attack, and understandably; but either way, we wanted to get something

out there at least that anybody could work with, because I think the goal was to try to figure out what craft along the lines of an additional public purpose.

So we have that available and Mr. Rouse available for questions as part of this panel. And that's it.

HEARING OFFICER KRAMER: Okay. Mr. Thompson did you have questions of your witnesses?

MR. THOMPSON: Yes, I do. Thank you very much.

DIRECT EXAMINATION

MR. THOMPSON: Mr. Kane, let me address you first.

You have been previously sworn, and I believe your qualifications have been in front of this commission a year and a couple months ago; is that correct?

MR. KANE: Yes.

MR. THOMPSON: Have you had a chance to review the file testimony of Mr. Rouse?

MR. KANE: Yes, I've reviewed Exhibit 199D.

MR. THOMPSON: Let me ask you couple questions about that, if I may.

Mr. Rouse testified that the requirement, the development of certain industries show extraordinary public purpose is not a generally applicable policy. Do you agree with that?

MR. KANE: No. He actually said not generally

applicable policy, including the California redevelopment law, but -- and that is absolutely false. The California redevelopment law has multiple requirements for land use policies and construction policies to be established by redevelopment agencies for each redevelopment project.

Section 3337 requires that land use policies and construction policies be adopted. And that each of these determinations by each redevelopment agency for each specific project is a legislative determination of statewide concern.

The Section 33333 requires every redevelopment plan to have use limitations. Section 33 -- and these section numbers, of course, are to the California redevelopment law in the Health and Safety Code.

Section 33336 requires adequate safeguards to make sure that redevelopment will happen. Section 33338 requires conditions, covenants, and restrictions so that the goals and objectives of each redevelopment plan can be achieved.

So we've got land use policies, construction policies, use limitations, adequate safeguards, appropriate measures.

It's clear in the statutory framework, which is being completely ignored in Mr. Rouse's document and not even mentioned, it's clear that what's intended by the

state legislature is for each redevelopment agency to look at the specific facts and land uses in each redevelopment project and make a legislative determination about what kind of land uses, controls are necessary to carry out redevelopment. And that's what the statute says. It says --

HEARING OFFICER KRAMER: Your voice requires you to be closer to the microphone.

MR. KANE: Okay. It was making a noise, so I backed away.

So these sections clearly require the exercise of discretion of each redevelopment project. There is no one-size-fits-all land use policy in the redevelopment law, it has to go tailored to the specific land uses in each redevelopment project.

In this particular case, Carlsbad followed all of these legislative requirements, and they looked at the redevelopment project, and they looked at the special land uses, and they came up with special land use provisions, which is what the statute requires. So that's all that Carlsbad was doing, and that's what every other redevelopment plan up and down the state does. It's not uncommon for these redevelopment plans to contain higher thresholds for special land uses.

Now, again, this is a kind of legislative

determination that is vested in each redevelopment agency by the state legislature, and it is of state concern.

So I don't agree at all that the general law, including the redevelopment law, undercuts the requirement for extraordinary public purposes. Carlsbad was doing exactly what the law requires.

MR. THOMPSON: It sounds to me, Mr. Kane, that California redevelopment law encourages findings and actions that reflect unique local circumstances; is that correct?

MR. KANE: Yes, it is. And that's why each redevelopment plan has to lay out specific land use and building use controls, they have to figure out the necessity of different -- adequate safeguards to make sure that redevelopment will happen, each -- and each plan is different.

Every project is different. Every project in the City of Carlsbad is different. And each redevelopment plan in Carlsbad has different mechanisms to deal with these issues. And the particular necessity for having extraordinary public purpose is -- the discretion to establish that necessity is given to the redevelopment agency and to tailor the land use requirement to the special situations at hand.

MR. THOMPSON: Mr. Rouse points out that the

standard has only been applied once to the Poseidon desal facility and that the standard is subjective. Do you have a comment?

MR. KANE: Yes. The state statute clearly requires that each redevelopment agency exercise discretion, and that's a legislative determination; so the legislative framework, the legal framework on which this is all based contemplated the exercise of discretion. And the fact that the redevelopment agency looked at the facts and figures in the Poseidon situation and granted the permit and found that there were extraordinary public purposes shows that they're looking at these things on an objective case-by-case basis. There was evidence to support those findings in that case. There is no evidence to support the findings in this case.

MR. THOMPSON: Mr. Rouse additionally alleges that this is an attempt to usurp CEC jurisdiction. Do you have a comment on that?

MR. KANE: No, this is not about usurping jurisdiction. We can differ and argue, as we have before, on whether or not redevelopment law requires the redevelopment agency's approval, but today what we're talking about is simply requesting the commission to defer to the expertise of the redevelopment agency, which is expressly provided as a matter of statewide concern in the

statutes, and to defer to the finding of the redevelopment agency that there are no extraordinary public purposes here.

Extraordinary public purposes, I mean, 199D, are the same conclusionary speculation that was in the original papers; there's nothing new, there's nothing there. And so I think we're not talking about usurping, but we're talking about at a minimum the energy commission should defer to the expertise of the agency in looking closely at these projects and making these legislative determinations that they're authorized to do and required to do by state law.

MR. THOMPSON: Mr. Rouse had a list of some number, it looks like about eight items that he considers to be in the whole constituting an extraordinary public purpose. Do you have that list in front of you?

MR. KANE: Yes.

MR. THOMPSON: Would you please just go down the list and give your comments on whether or not you agree with Mr. Rouse and why.

MR. KANE: No, I disagree, and there are no -- there's very few facts in the situation. We need evidence to support the finding of extraordinary public purposes. There's a bunch of conclusions on this page; there are very few facts. There were very few facts the last time.

And the last year plus, there's been very few facts added.

The decommission and retiring of units does not in the real world accomplish the purposes of the redevelopment plan and provide extraordinary public purpose benefits to the citizens of Carlsbad. There is no duty in the real world for the applicant to do anything physically at all in any way to these buildings and structures.

So instead of getting extraordinary public purposes, what we get is abandoned structures that are rusting, sitting there abandoned, and obsolete, actually adding to the blight that's in the redevelopment project. We're supposed to be getting extraordinary public purposes to help eliminate blight, and what we're getting is abandoned structures and additional blight. So there's no facts here to support an extraordinary public purpose from simply decommissioning or retiring.

The structures are still there. They're empty. They're defeating the purpose of redevelopment, they're making people less likely to invest and provide public and private investment to bring about the purposes of redevelopment. So there's nothing there.

The third issue was reliable source of energy. And it talks about the law of physics. I am an expert in redevelopment law, I'm not an expert in the law of

physics, but there's nothing in here; I can't imagine how the law of physics gives them an extraordinary public purpose to carry out redevelopment. So I think that's been discussed enough.

The additional tax revenues, the data isn't here. They just conclude we are going to be -- we're going to have more assessed value on the tax base. And that isn't necessarily true. There's no study done in the record to see what impact these hulking, rusting, obsolete structures sitting there abandoned and empty, what is that going to do to the land values in the area? There's no study; they haven't even attempted to figure this out and what the impact the of tax revenues negatively would be in the area. So there was absolutely no evidence to support this, and it certainly isn't an extraordinary public purpose for them to pay property taxes like any other property owner.

They mentioned construction jobs and permanent jobs. Every development, every construction has jobs. You know, again, that's not an extraordinary public purpose. It just means that something is built. And it's not -- very few jobs mentioned. In fact, there are jobs lost by the decommissioning and the retiring.

The enhancement of the public recreational opportunities, again, there's no evidence of that and it's

to the contrary. The only thing mentioned is this coastal rail trail, which has been a fixture for, what, ten years in the area? And all they've done is taken the part of the trail that goes through their development and taken it from one side of the railroad tracks and put it on the other side of the railroad tracks. That isn't doing an extraordinary public benefit. That isn't adding anything to recreational opportunities.

They've taken it from a location of long-standing and well-planned and well-thought-out location, they've put it in an area that has access problems. So they've made the situation worse, not better. And that's the only recreational opportunity they refer to.

Finally, and this is the major one, talking about what's going to happen in the future about redevelopment. It says there's a step towards potential future redevelopment. And this is supposed to be an extraordinary public purpose. And the key words here are a step, future, and potential. There again is no commitment of any kind to do anything.

There's no commitment to redevelop, there's no commitment to even prepare a plan, not that that would accomplish an extraordinary public purpose. There's not even a promise to come up with a proposal at any time, nor is there any duty to ever end the use of 4 and 5.

So we have no -- we have no assurance of any kind that anything is going to happen. They've refused any kind of duty, and in previous discussions have resisted making a proposal, having it reviewed by the redevelopment agency as we've done in other cases. So a step towards potential future redevelopment really doesn't give anybody anything, and it certainly isn't an extraordinary public purpose.

So that would be my response to this page of -- this list.

MR. THOMPSON: Mr. Kane, I was trying to follow you through the list, and you may have missed number two, reduce the current EPS station demand for once-through cooling.

MR. KANE: Well, again, that's -- that's the extraordinary public benefit we're supposed to get from the retirement of Units 1, 2, and 3. And again, those are going to be left abandoned and empty sitting there. There's no public benefit, you just again have abandoned buildings, additional blight in the area, additional negative impact on raising public and private investment to get redevelopment done, while at the same time you have no commitment to do anything at any time in the future to give the public anything.

MR. THOMPSON: Thank you.

Let me move on to Ms. Fountain.

Am I correct that you have previously testified and you are currently under oath?

MS. FOUNTAIN: Correct.

MR. THOMPSON: Thank you very much.

What is the history of the term "extraordinary public benefit" as used by the city?

MS. FOUNTAIN: When we adopted our redevelopment plan in 2000, we were specifically focused on eliminating blight and blighting influences in the south Carlsbad coastal redevelopment area as required by law; and so what we were doing was setting forth, as our legal counsel just commented on, some of the covenants, conditions, and restrictions that are required to address blight and blighting conditions or blighting influences in the area.

So when we first began the process we were looking at what are all of the types of conditions or restrictions we needed to have. What we learned as we were moving through that process is that there were additional conditions that we needed to add to ensure blight removal, and they were specifically related to industrial-type uses that were allowed in the area and could potentially be developed in the future.

So in 2005 we did an amendment to our redevelopment plan to actually add some additional

conditions and covenants and restrictions that would specifically address the issue of industrial uses. So if you look at our redevelopment plan, it basically says the uses that are allowed per the zoning code are allowed in the south Carlsbad coastal redevelopment area with the exception that industrial uses, and we have a list of them, which includes desalination plants, power-generating plants, and other types of similar uses, that they would only be allowed and they would only be permitted if we could make a finding of extraordinary public purpose.

And the reason for that was instead of just specifically saying they weren't allowed at all, we understood that there might be some situations where that type of use would be beneficial to the public, so if we could make the determinations that there was extraordinary public purpose, not just ordinary purpose, as our legal counsel just mentioned, but if we could find there was extraordinary public purpose and public benefit to that project, then the commission could approve it.

So when we added the finding for extraordinary public purpose, which what was intended was it needs to go above and beyond a normal development project, it needs to say there's some extraordinary reason for why we would want to allow an industrial use in the south Carlsbad coastal redevelopment area that could potentially add

blight because of its design. And so we wanted to make sure that we had specific conditions in the redevelopment plan. And the redevelopment plan takes precedence over the zoning code. So what's in the redevelopment plan is what needs to guide whether a land use is allowed or not.

So the concern that we have right now is that we can't -- you can't make a finding that this zoning is even -- the zoning for the plant is even allowed unless we make this extraordinary public purpose finding, and that has not been made at this point in time in our opinion.

MR. THOMPSON: When was the South Coast Redevelopment Agency developed?

MS. FOUNTAIN: The South Coastal Redevelopment Area Plan was adopted in 2000 and then amended in 2005. Each time that happens there's a process, public hearings and comment periods, and there's also challenge periods to any conditions we place in the redevelopment plan.

MR. THOMPSON: Did NRG own the EPS at that time?

MS. FOUNTAIN: Yes.

MR. THOMPSON: Did they participate in this planning process?

MS. FOUNTAIN: We were initially involved. In 2000 we had a number of discussions; when we did our amendments in 2005 we did not hear any public comments or objections to those conditions.

MR. THOMPSON: Will you discuss how you see the differences between extraordinary public benefits of the desal plant to those that were proposed by the applicant's witness?

MS. FOUNTAIN: When the desal plant was proposed, the same issue came up as to whether or not extraordinary public purpose benefit could be determined. And in that particular case there's a number of findings that were made. And as Mr. Kane just mentioned, there were facts behind why those findings could be made. So there was a number of things.

There was security of water supply, there was redundant water supply, reliable water supply, economic benefits, the positive impact on ability to attract and retain new businesses.

So in that particular case the desal plant created a drought-resistant reliable water supply so that additional -- it could attract additional businesses in high tech and biotech business, which are desirable for the city.

It had a specific land for public purpose. So they had several acres of dedications to the city for the public benefit, which included dedications including Fishing Beach, the bluff area, to allow for public recreational and coastal access use, including public

parking, the hub site which was deed restricted to allow a fish hatchery, the south power plant public parking area was to be dedicated for public parking, and there was also dedication at that time of the easement for the coastal rail trail.

So in the desal plant, we already got the condition about the coastal rail trail, and so it's not an additional benefit for the plant at this time.

And then we also got a commitment for restoration enhancement of the marine environment.

So it wasn't just one thing, it was a culmination of a number of different benefits that would help the commission make that finding of extraordinary public purpose.

MR. THOMPSON: Is it also true there were some guarantees on the price of the commodity, the price of the water?

MS. FOUNTAIN: That's correct. So when we're talking about the security of the water supply and the redundant water supply, those all have benefits.

So, for example, the project will -- the project allows for the Carlsbad Municipal Water District to purchase 100 percent of its potable water at a fixed price. So we could guarantee the price, and we knew how that would benefit our public. And so there's also --

that also generates an economic benefit because it specifically says that that water price is predictable, and it's a reasonable price through a long-term water agreement.

MR. THOMPSON: It sounds to me like most if not all of these public benefits were particular to Carlsbad, the bluff, the beach, the pricing of the water, the supply of the water. Is that a correct conclusion?

MS. FOUNTAIN: Right. One of our findings was that this does have direct public benefit to the Carlsbad community in that it guarantees a reliable water source for the Carlsbad community, it is a drought-resistant water supply, it may be provided to other agencies as well, but it provides that specific benefit to the Carlsbad community.

And one of the concerns we have about the plant is that there's no assurances that the electricity that's generated there will be specifically for Carlsbad residents, would actually prevent blackouts, would give a specific electrical rate guarantee as to benefit.

So we were looking for some other types of benefits to compare to what we got for the desal plant, and we just didn't find those additional public purpose or benefits.

MR. THOMPSON: What do you believe the

redevelopment agency would consider as an extraordinary public benefit?

MS. FOUNTAIN: Well, we actually -- in the conditions that we proposed for certification, we actually listed a number of conditions that the city was looking for; but when we as an agency specifically looked at it, we were looking at it in terms of both the design of the plant, that there needed to be better design because the concern right now is the way the project is designed is it's going to create additional blight. It's a very industrial-looking building. So one of the things was we wanted better design.

When we originally had discussions about a new power plant as part of the redevelopment plan, we were under the impression that it could be housed within a building that looked like a Class A professional office building just like the desal plant is. When the application actually went in and we saw the design of the project, we were actually quite shocked because it is very industrial looking. And it's going to be there for a very long time. So we would actually like to see a redesign of that or some additional enhancement or screening of it.

We would also like to get a commitment to not just decommissioning of the units there, but actually demolition of all the facilities that are on the property,

and a specific plan that says how it's going to be developed in the future. And I appreciate that the applicant took a step forward in saying that we'll plan for the future, but I feel like that planning needs to start now and there needs to be a commitment now to get agency support for the project.

MR. THOMPSON: Thank you.

I'm going to ask Mr. Therkelsen to pass out a letter from SDG&E. And if I could have this marked as next exhibit in order, 442.

Would you describe what is contained in this two-page document?

MR. McKINSEY: We don't all have it yet.

HEARING OFFICER KRAMER: I think that will be 443.

MR. THOMPSON: Oops. I do this every time.

(Whereupon, Intervenor's Exhibit 443 was marked for identification.)

MR. THOMPSON: Do you have it, Ms. Fountain?

MS. FOUNTAIN: Yes.

HEARING OFFICER KRAMER: And I've been a little bit remiss in describing some of these things for the transcript.

This is a May 10 letter from Pamela Fair of SDG&E to Lisa Hildabrand, the Carlsbad city manager.

MS. FOUNTAIN: So this is a letter from the San Diego Gas & Electric about the relocation of the operation center that's at the corner of Carlsbad Boulevard and Cannon Road. We early on as part of the redevelopment efforts had started discussions with SDG&E as well about a specific plan update that would include their property as well as the NRG property that would result in the relocation of the operations center as well as redevelopment of the power plant site.

And so my understanding of this letter is just a summary of what they would require in a new location to move it forward.

MR. THOMPSON: So this letter is not being offered to show that there's a deal done with SDG&E or anything else other than discussions ongoing on a parcel contiguous to the NRG parcel; is that correct?

MS. FOUNTAIN: Right.

MR. THOMPSON: That concludes our direct.

HEARING OFFICER KRAMER: Okay. I was informed earlier that Ms. Nygaard is not available to testify today, so that appears to conclude the direct testimony.

So let's move on to cross-examination beginning again with the applicant.

MR. RATLIFF: We have no cross-examination questions for the witnesses. But we do intend after

cross-examination to ask Mr. Rouse to respond to a couple of the statements made, but that's it.

HEARING OFFICER KRAMER: Okay. Can I ask who else has cross-examination questions? Show of hands.

Okay. Staff?

Okay. Because we are past the stated dinner hour, and we probably can't be late at 5:30, that wouldn't be the best thing to do for the public comments, so we need to break for dinner pretty soon. But let's finish with the cross then.

The city?

MS. SIEKMANN: Mr. Kramer, can I ask one question?

Because we are going to have to the tsunami area in the morning, what time are you going to start that so Dr. Roe will know?

HEARING OFFICER KRAMER: Okay. That's the other scheduling issue we need to deal with. It looks like we might finish this topic today, but Dr. Roe wanted to ask some questions of staff witnesses who we can have made available in the morning we believe. So it looks like we're going to have to come back in the morning to finish up the tsunami question.

Does anybody have a scheduling issue with that?

MR. RATLIFF: I'm told that the staff witness

will be available at 10:00 by phone.

HEARING OFFICER KRAMER: Right. Can he be earlier?

MR. RATLIFF: Yes.

HEARING OFFICER KRAMER: Any other concerns about taking the tsunami issue to the morning?

Okay. Seeing none, we noticed that for 8:30, so we could start as early as 8:30. Does anybody want to argue for a later start?

UNIDENTIFIED SPEAKER: I don't know if Casey is available at 8:30.

HEARING OFFICER KRAMER: Okay. Can you check with him?

UNIDENTIFIED SPEAKER: He's home sick, so he -- probably 9:00 if possible.

HEARING OFFICER KRAMER: 9:00? Okay. Well, we have -- as a practical matter, when we say 8:30, you know what happens.

(Discussion beyond microphone range.)

HEARING OFFICER KRAMER: So we'll put the tsunami over until tomorrow.

And, Dr. Roe, that probably means that you can leave if you wanted to. And we'll have some housekeeping issues with some of the exhibits perhaps.

So let's finish -- let's try to finish this

topic, or at least get most of it done, and then break for dinner.

So, Ms. Seikmann, did you have a question or two?

MS. SIEKMANN: Yes.

CROSS-EXAMINATION

MS. SIEKMANN: I have a question for Mr. Kane.

The PMPD asserts that the CECP provides extraordinary public benefit to the region, but doesn't the redevelopment requirement apply to Carlsbad community specifically?

MR. KANE: It applies to the redevelopment plan for this area, not the region. The statute talks about the redevelopment plan accomplishing the goals and objectives of this redevelopment plan and providing for a redevelopment contemplated by this plan, not the region.

HEARING OFFICER KRAMER: Was that your one question?

MS. SIEKMANN: Yes.

HEARING OFFICER KRAMER: Okay. Mr. Thompson?

CROSS-EXAMINATION

MR. THOMPSON: Thank you.

Good afternoon, Mr. Rouse.

Would you please summarize your legal experience related to redevelopment?

MR. ROUSE: I've been an attorney specializing in

land use including redevelopment law as it relates to representing development projects for 37 years in San Diego County. I've been involved on behalf of project interests in connection with meeting all legal requirements associated with approval of development projects in redevelopment areas for 37 years.

MR. THOMPSON: Is the ESP and CEC site located within the south coast -- or the South Carlsbad Redevelopment Agency?

MR. ROUSE: Yes, clearly.

MR. THOMPSON: And was your client a participant in the process when the SCRDA was created?

MR. ROUSE: I can't speak to that, although I do know the history of regarding the formation of the SCCRP, and it was done after the city was unsuccessful in competitive bidding to buy the Encina power station. At the time SDG&E was forced to unbundle its generation assets. And at the inability to succeed in purchasing the Encina power station, the city then embarked on a fast track process to form the SCRRP clearly for the stated purpose of exercising their authority in connection with redevelopment but also to capture the tax increment.

MR. THOMPSON: What was the date of the sale of EPS?

MR. ROUSE: I don't know whether -- when it

actually closed, but it was a process that began I believe as early as '98 and continued on.

MR. THOMPSON: So would it be fair to say that '99, 2000, they would know that they weren't the successful bidder?

MR. ROUSE: Certainly before they initiated their redevelopment plan.

MR. THOMPSON: So that fast track process was five years?

MR. ROUSE: Pardon me?

MR. THOMPSON: The time between the sale of EPS and the plan in 2005, is that the fast track?

MR. ROUSE: Well, it was a very expedited process forming a redevelopment program area based on the city's prior redevelopment area and the village redevelopment plan. So over a period of months. But it was still fast tracked without a predetermination of all of the available uses that would be contemplated and would be typically provided in connection with the formation of redevelopment area.

MR. THOMPSON: In the extraordinary public benefits that you claim for the project, will NRG be decommissioning Units 1 and 3 regardless of the permitting of the CECP?

MR. ROUSE: I can't speak to that, but clearly

part of the application is that upon the successful implementation of the new CECP generation facility, the concomitant commitment is to decommission permanently Units 1 through 3. That is the application that's been made.

MR. THOMPSON: Right. Do you know if that is primarily to obtain the ERC's emission reduction credits required by the air district?

MR. ROUSE: I don't know one way or the other, sir.

MR. THOMPSON: Would any new power plant in the San Diego region result in a more secure and reliable supply of electric energy for the city and the region?

MR. ROUSE: I didn't have it studied and don't know those items generally.

With respect to the CECP, we looked at the identified and enumerated reasons for justifications the city had established by action on the desal plant to evaluate and determine what exactly the city means by its unique local interpretation and application of, quote, extraordinary public purposes, when we looked at the express provisions and findings the city made to authorize the desal project. We then complied -- compared, excuse me, the benefits of CECP with the same principle that the city had established as extraordinary public purposes for

the desal plant, and that's what's contained in the last section of my written testimony.

Notwithstanding what Mr. Kane and Ms. Fountain said, neither one refuted the fundamental proposition in my first paragraph that the phrase and the term and the standard extraordinary public purpose is uniquely applicable in the City of Carlsbad, not to all redevelopment area, not to all uses in the South Coast Carlsbad Redevelopment Area, but only to enumerated public facilities that are outlined in my footnote.

So in order to -- since it's not defined anywhere, either in state law or in their local redevelopment law or plans, we had to look to the application where the city has, in fact, evaluated a project. And we have then compared for you, for the commission, compared those principles that were found to be by the city to be extraordinary public purposes for desal with the same principles applicable to electrical generation, local and regional reliability, whether it's water or electricity, and those other features that we've enumerated there.

I should also comment that the references to public recreation, and that's why we attached the four resolutions that are articulated by the city what constitutes extraordinary public purpose, we attached

those because they demonstrate that it was NRG Cabrillo Power that was providing the community public recreational benefits and not the desal plant, and those benefits are equally available in connection with the generation of electrical energy on the larger EPS site.

The other point I would make is that it's also abundantly clear from looking at those resolutions where they made extraordinary public purpose findings that one of the embedded goals of the South Carlsbad Coastal Redevelopment Plan is for the modernization of the Encina power station to a smaller, more efficient facility.

Clearly, since one of their goals, expressed goals is exactly what CECP provides, for the city to now argue that that smaller, more efficient generating facility utilizing the infrastructure and electricity grid of the area already in place, for them to now assert, in my judgment, in my opinion, that that's not an extraordinary public purpose and fully consistent with the redevelopment plan I think is difficult to understand.

MR. THOMPSON: Has NRG made a commitment to a specific date to decommission and demolish Units 1 through 5?

MR. ROUSE: Not to my knowledge.

MR. THOMPSON: So in your view the public benefit comes from adding an additional power plant on to the

parcel?

MR. ROUSE: No, from my perspective, and I believe if you compare the only track record for determination of what is the meaning of extraordinary public purpose, the CECP and its environmental energy reliability, smaller, more efficient decommissioning of Units 1 through 3, reduction of once-through cooling, are all extraordinary public purposes and benefits of the CECP, without regard -- without regard to Units 4 and 5. And that's really the thrust of my testimony.

MR. THOMPSON: Would any industrial, commercial, or even residential project constructed in -- on the EPS parcel and redevelopment produce taxes?

MR. ROUSE: If it's privately owned, yes, at some level.

MR. THOMPSON: And would --

MR. ROUSE: It may be less -- the taxes could be less than what's being generated now.

MR. THOMPSON: Are you familiar with I think what's called the situs spaced income approach?

MR. ROUSE: No, sir.

MR. THOMPSON: Would any power plant in -- or any industrial facility in the area generate jobs?

MR. ROUSE: Yes, presumably construction jobs. And depending on the nature of the facility, there may be

permanent jobs. But once again, sir, is that we only identified those because those were identified expressly by the city as a basis for extraordinary public purposes findings of the desal plant. If it's good for privately owned desal, it certainly ought to be good for electrical generation.

MR. THOMPSON: Did CECP offer to donate a certain number of acres of land on the bluff or on the beach for this project?

MR. ROUSE: No, the Cabrillo Power, the owner of the entire Encina power station agreed to those conditions during the desal hearings in part in reliance on the commitment of the city then and expressed in those resolutions I've attached to cooperate in connection with a smaller, more efficient energy generating facility on the site between the railroad tracks and Interstate 5.

You seem puzzled. I can point you to the language in the resolutions.

MR. THOMPSON: I'm puzzled because I guess what I have heard is that the extraordinary public purpose associated with the desal plant was the donation of certain parcels for the public and access issues. And I'm surprised to hear that those were actually for the CECP or NRG.

MR. ROUSE: They are -- all of those parcels,

so-called Fishing Beach, public parking lot, the bluff parcel, Hub Sea World, those things are all owned on property owned by the Encina power station, Cabrillo Power. As part of the concessions made at that time, in order to allow the city to have its desired desal project approved, Cabrillo Power agreed to make those contributions in part in reliance on the concomitant cooperation with respect to the future modernization and relocation of an energy generating facility into exactly where CECP is proposed. And the resolutions themselves indicate that that was a common goal of the redevelopment plan and of the action taken.

HEARING OFFICER KRAMER: Let me break in here to say we seem now to be relitigating largely the value, if you will, of benefits that were already on the table, so to speak, a part of the project.

What the committee was hoping to do, and it's -- it's summarized in the paragraph, was to hear about this new benefit, which in part is addressed by the applicant's proposed condition, because they are talking about the planning for the ultimate renewable of the Encina site, the front portion, if you will, by the ocean, and removal of the equipment that's there now.

We do need to break for dinner because we're going to have I think a relatively long evening. And we

want to hear more; and it may be that the committee just has to drag this out of you guys, but I think we're willing to ask a bunch of questions about, you know, what can be done.

And it might be best for us to -- we can see if public comment goes really quickly, we might have some time this evening to take this up again; but then again, that means that people who probably otherwise don't have much interest in sitting through public comment will have to do that. An alternative would be simply to say let's just start up again at 8:30 in the morning on this topic.

MS. SIEKMANN: May I ask two questions though, since I won't be here?

MR. THOMPSON: I'm finished.

HEARING OFFICER KRAMER: Okay.

MR. McKINSEY: And actually, I do not need to do any cross-examination now. Thank you, but he will not be -- Mr. Rouse is not available tomorrow. So to the extent that he would be somebody that you would need any of these questions related to the topic that I think you just said has been well vetted, he will not be available tomorrow for that.

HEARING OFFICER KRAMER: Yes, topics that are more out of the past. Actually, I think somebody -- maybe your partner there who can speak about what the applicant

is willing to do might be more suitable for the next round. And then also somebody from the redevelopment agency, because, you know, they might be able to offer some assistance one way or another.

But is there any objection to picking this up again in the morning?

MR. RATLIFF: We have no objection to picking it up tomorrow, but we have the same concern that -- I mean, we have a proposed condition from the applicant, and staff would like to explore whether that condition has value, and if not, to the extent that it does or doesn't, how it might be improved upon to give it greater value.

HEARING OFFICER KRAMER: That's kind of what we're thinking too.

MR. RATLIFF: I mean, we can relitigate the whole issue of public benefit, but I was sort of thinking maybe we should talk about the proposal and --

HEARING OFFICER KRAMER: Right, we want to talk about new public benefits on the table, not redebate the value of those that were already on the table. And the 199F exhibit is in the category of a new benefit as far as we're looking at.

So, Ms. Seikmann, go ahead and ask your couple questions, and then we'll break for dinner.

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CROSS-EXAMINATION

MS. SIEKMANN: Mr. Rouse, I just wanted to ask, when you called the proposed CECP a smaller facility, and I assume you mean smaller than the Encina site, are you speaking of megawatts or and site coverage or height or --

MR. ROUSE: All those things.

MS. SIEKMANN: Okay. And the lands that you all just were talking about, I -- you know, I don't have it in front of me, but you were just talking about around the lagoon that you own; but are those leased?

MR. ROUSE: Pardon me?

MS. SIEKMANN: Are those lands leased?

MR. ROUSE: I believe the only one that is leased the Hub Sea World parcel. The bluff, the fishing beach, if that's what you're talking about --

MS. SIEKMANN: Yeah.

MR. ROUSE: To my knowledge, and I'm not sure that I know all of the title history.

MS. SIEKMANN: Who would know whether those lands were leased?

MR. ROUSE: The offer of dedication has been made by the owner.

MS. SIEKMANN: So, I mean, how could we find out which of those sites you were talking about that were owned by NRG as if, you know, it was extraordinary public

benefit, are they leased and there's an income being made?

MR. ROUSE: I guess you'd have to ask somebody at NRG or Cabrillo who knows about their property situation.

MS. SIEKMANN: Okay. How can I find that answer?

MR. McKINSEY: I'm sure we can find the answer, but it's not going to make it into the record per se. I'm not even sure what the relevance is, but --

MS. SIEKMANN: I'm sorry?

MR. McKINSEY: This is a question that you could have asked at any point, and I don't understand --

MS. SIEKMANN: When he was talking about -- I mean, it wasn't my turn to talk, so I was just wondering --

MR. McKINSEY: No, I mean at any point in the last year and a half.

MS. SIEKMANN: Well, because it --

MR. McKINSEY: That's all. I mean, it shouldn't be very hard to determine --

MS. SIEKMANN: It just came up.

MR. McKINSEY: -- the status of the lands.

HEARING OFFICER KRAMER: What's the relevance of the status?

MS. SIEKMANN: Because I feel like -- my understanding is there they're showing that this is extraordinary benefit that NRG is already offering in

their proposal. And what I'm trying to find out, is that the case. And I thought that's what this question was about.

So that just came to my mind, I thought, well, is that land -- I mean, is this owned by NRG and they're just letting all these different --

MR. McKINSEY: I have the answer. Hub Sea World is leased for a dollar a year. All the other properties are still owned by the applicant.

MS. SIEKMANN: Thank you.

HEARING OFFICER KRAMER: Okay. Can we excuse Mr. Rouse then? It sounds like we can.

Okay. I think Ms. Fountain might want to talk -- is she still the -- is she basically the face of the redevelopment agency hear?

MR. THOMPSON: The redevelopment boss.

HEARING OFFICER KRAMER: Okay. I thought I heard her describe that as a former role.

MS. FOUNTAIN: I have a new title, but I'm still overseeing redevelopment.

HEARING OFFICER KRAMER: Okay. So just an org chart change.

MS. FOUNTAIN: Correct.

HEARING OFFICER KRAMER: Gotcha. Okay.

It would be useful to have you here in the

morning I think. And we'll take this up first, and that will make sure that --

MR. THOMPSON: Mr. Kramer, I can let Mr. Kane go?

HEARING OFFICER KRAMER: If you'd like. Because we're certainly done, we feel we've heard enough about --

MR. THOMPSON: And maybe too much?

HEARING OFFICER KRAMER: Somewhere, yes, somewhere in the neighborhood or above the neighborhood of enough. But we -- we want to roll up our sleeves and talk about who can do what, and, you know, maybe to have a more -- explore the possibility of a somewhat more definite plan than is currently reflected in this proposed condition.

So with that --

PRESIDING MEMBER BOYD: Don't let anybody out of the room until I've said two, three things, please.

HEARING OFFICER KRAMER: Okay.

PRESIDING MEMBER BOYD: There's some things said today in this last panel that I find quite curious and interesting, and I think the record needs to be addressed. And some of them aren't even associated directly with this case, and I can talk about them; but frankly, I think I can talk about everything since it's our PMPD, the committee's, that's -- I don't want to say under attack, but certainly being challenged.

Mr. Rostov, you said there's no energy plan in California. You said there's no greenhouse gas plan. That's just not -- for years we've had energy action plan created by the three energy agencies, the ISO, the PUC, the CEC, that address California's future energy needs. It's been more or less supplanted the last several months by the California Clean Energy futures plan, which is 18 months in gestation, and takes into account all these kinds of things. And no greenhouse gas plan, AB32, and all the work that these energy agencies have done to address greenhouse gases, it's just not fair to say that the State of California has not addressed those questions.

And when you talk about the grid, you're talking about transmission system, you're not talking about generation necessarily. And I will look into this because I'm not aware of this recent PUC ISO hearing that says to meet the 33 percent, we don't need any more gas generation. I sit with these people all the time; I've never heard such a statement, but who knows.

I'm sorry Ms. Baker left, because she felt we ignored lots of things. We ignored nothing. Just because we didn't address it doesn't mean we ignored it.

And all this discussion about RMR reliability, all the discussion that's leading up to us having a hearing tomorrow morning and the extraordinary public

purpose, here's an area where I think the committee feels, you know, that no attempt at a good deal will go unpunished. And by that I mean, you know, it's pretty obvious 1, 2, and 3 were on a track, and you've been talking about it. 4 and 5 as a result of the some of the recent testimony did solidify the fact that they're on their way out

But a nudge from this commission, or at least this committee to try to facilitate something positive in this community and -- has been turned on its head here this afternoon, and, you know, I mean, if I didn't count to ten, I'd say just strike the whole damn thing out of the record and we'll get on with the rest of the case, but instead I think there will be a very valiant and well-meaning effort on the part of the parties to try to deal with that, to try to get a benefit out of the fact that, yeah, there really isn't much reason for 4 and 5 any longer, and maybe we can get a positive thing. To imply that anything we said means they're going to end up being, you know, rusting hulks sitting there in perpetuity puzzles me.

And last but not least, I'm very familiar with desalination. I spent eight years in the water resources business. I've spent -- I've given lots of speeches in the past ten years as commissioner. And only in the last

couple of years have we gotten real positive about desal, because desal takes incredible amounts of electricity, and to not say that there's some local benefit from electricity generated in this area associated with desal doesn't ring too good and too true with at least this commissioner.

So enough said. Now I'll go have a salad or something for dinner, et cetera, et cetera, and see you all in 45 minutes.

MR. THOMPSON: Mr. Kramer?

HEARING OFFICER KRAMER: Go ahead.

MR. THOMPSON: I think -- thank you very much, Mr. Commissioner.

I think from our standpoint we may benefit from a more informal gathering with both staff and the applicant on this without the benefit of being on record. And I don't want to violate any ex parte rules, but it would benefit us to have the staff involved. And if to do that they would require that a workshop be called right now for us to gather, we would be more than willing to do that.

PRESIDING MEMBER BOYD: We would encourage it.

HEARING OFFICER KRAMER: Is the applicant interested?

MR. McKINSEY: Workshop meeting right now?

HEARING OFFICER KRAMER: Yeah.

PRESIDING MEMBER BOYD: Over dinner?

MR. McKINSEY: Well, I mean, you can't notice anything like --

HEARING OFFICER KRAMER: I know, but --

MR. McKINSEY: But I mean certainly we have the ability to do that. And so I mean, we're not opposed to that in terms of trying to have any kind of an informal discussion that would advance that.

HEARING OFFICER KRAMER: Okay. And you may find that you -- we have to be back at 5:30, but the -- the committee will then be using its power to waive notice requirements in the rules. We used to make that -- I think the best we did so far was the next day, so this may be a record, but we will set a zero-minute noticing requirement and authorize the parties to meet in this room. You need to do it on the WebEx so people who want to listen can listen in. But by all means, go ahead.

So we're off the record.

(Dinner recess.)

PRESIDING MEMBER BOYD: Welcome, ladies and gentlemen. Welcome to the continuation of our California Energy Commission siting committee hearing on the Carlsbad Energy Center Project. A few of you in the audience were with us all day as we conducted our evidentiary hearing, and the rest of you I welcome to join us tonight for

public comment.

My name is Jim Boyd. I'm the presiding member of the siting committee. I'm the only member of the siting committee at the present time in terms of commissioners. And I'm vice chair of the commission.

To my left is my advisor Tim Olson; to my right is our hearing officer -- I'm having a senior moment, Paul.

HEARING OFFICER KRAMER: Go ahead. Paul Kramer.

PRESIDING MEMBER BOYD: I know. Paul Kramer. I've been with you all day. We just had dinner together. I'm trying to forget the day, I think.

But in any event, for those of you who haven't sat through energy commission siting cases before, Paul is our hearing officer, and he will conduct the hearing as soon as I give the gavel back to him; but just on behalf of the commissioner and my fellow commissioners, I wanted to welcome you all and thank you for coming here and thank you for providing this beautiful weather outdoors all day. It's been cold and snowy and rainy up in northern California most of the week, so this is a delight, and I see why you like it down here.

In any event, all the procedural information has been provided with regard to the need to fill out a blue card if you'd like to testify. And we are determined to

stay here as long as you want to stay here and hear you out, but you know, we're not going to let this go on an unlimited basis, so Mr. Kramer will take care of that.

So anyway, Paul, I turn it over to you.

HEARING OFFICER KRAMER: We need to -- when you're called to speak, I'll call one name and then the next name so the next person can be starting to make their way to the podium to speak.

There's a microphone up there. Right now it's turned on. I can't see because I'm blinded by the view, but there's a little red ring around the mic, and that means it's on. If for some reason that goes out on you, there's a gray button you can push to turn it back on.

We were going to limit comments to three minutes, but given the size of the crowd here, we are going to raise that to four minutes. And we have an official timer here; that's the little light, kind of like a traffic light that's hanging on the chair that you'll see when you're up at the podium, and it will start green for the first three minutes, and then when you have one minute to go, it will flash yellow, and then when four minutes comes, it will flash red to let you know how you're doing.

And we'd appreciate you trying to help by sticking to that time limit, because, you know, there are your friends and neighbors behind you who perhaps don't

want to wait forever to make their comments as well. So as a courtesy to them and everyone else, if you can stick to the four minutes, that would be really helpful.

Our first speaker, and we won't put her on the clock, is Mayor Pro Tem Ann Kulchin.

MAYOR PRO TEM KULCHIN: Good afternoon, everybody. It's a good thing I come from the east coast and speak rapidly. I'm the mayor pro tem of the City of Carlsbad, and I would like to welcome the representatives of the California Energy Commission to Carlsbad. And thank you for the opportunity to address you this evening.

In Carlsbad one of the things we are very proud of is our long tradition of civil and respectful discourse, even when there are disagreements. With that in mind, it is with the utmost respect that I tell you tonight how extremely disappointed we are by your proposed decision.

Over the past four years you have heard from thousands of people -- is this going on and off --

HEARING OFFICER KRAMER: You're definitely being heard.

MAYOR PRO TEM KULCHIN: Thank you.

With that in mind, it is with the utmost respect that I tell you tonight how extremely disappointed we are by your proposed decision.

Over the past four years you have heard from thousands of people throughout the region. You have heard from fire officials that don't think they can protect a power plant at this location wedged between the freeway and the railroad tracks with only a narrow access road.

PRESIDING MEMBER BOYD: It's very sensitive. So if you want it back from you a little bit, otherwise you do hear yourself interfering with yourself.

MAYOR PRO TEM KULCHIN: Oh, I don't want to do that.

PRESIDING MEMBER BOYD: Okay.

MAYOR PRO TEM KULCHIN: You have heard from our coastal advocates who want to see precious beautiful land used for public enjoyment, not smoke stacks and industry. You've heard from lawyers who say this project violates the state's Coastal Act. You certainly have heard from city officials who have told you that this project violates our own local laws.

You've also heard from the tourism officials about the important role of north county's coastline place in our region's tourism economy. You've heard all this and more, and still you're recommending to approve this project.

As an elected official I understand that it is not always possible to make everyone happy. That's the

understatement of the year. But I also understand that when you ask for input, you need to listen and slow down; that input has helped shape a better discussion. Your proposed decision does not acknowledge the input you have received. Your proposed decision does not acknowledge the concerns of the public. It does not acknowledge the concerns of the Carlsbad city council nor our policies and laws.

And finally, your proposed decision does not protect our precious coastline. I am here tonight to urge you to more fully consider the input that you have requested and that has been provided. Acknowledge the concerns that have been brought before you. Respect the public. And after all, that is who we are all here to serve.

Thank you. I appreciate your coming to Carlsbad.

PRESIDING MEMBER BOYD: Thank you.

HEARING OFFICER KRAMER: Next is council member Mark Packard followed by Jonas Jackson.

MR. PACKARD: Thank you for the opportunity of speaking with you today. My name is Dr. Mark Packard, and I also am a member of the Carlsbad city council, and I also would like to thank you for being here and giving us the opportunity to further address the proposed power plant.

Mayor Pro Tem Kulchin has talked about respect being an important value here in Carlsbad, and I agree very much. Another important value in Carlsbad is doing our fair share. And I think we shared with you before that Carlsbad -- we feel Carlsbad is a leader in doing its fair share in our community.

I just left to arrive here -- I left a board meeting of the North County Transit District where I serve on that board, and my colleagues serve on other regional boards. We're the home to our regional airport, we're the home to our regional transfer station, trash transfer station, we're the home to a regional wastewater treatment plant, and we're also home of course to the current Encina power plant. And so we believe in being a regional player and in doing our fair share. And so I hope you recognize that our opposition to this plant is not because we don't want a power plant, we just don't want it on our coast.

Back in the 1950s when the Encina power plant was built, you obviously understand that ocean water was the way to cool power plants, but changes in the technology have meant that today's power plants are smaller and can be cooled with other ways, making it possible to locate them in other areas more appropriate for industrial uses. And this obviously is a very heavy industrial use.

The Encina power plant that's on the site right

now will be torn down soon regardless of whether a new power plant is built at the site. And so building a new power plant at this site would condemn this land to another 50 years or more of industrial use. It's already been an industrial site for 60 years, and because there was not a choice at the time; but now we have a choice, and we would ask that it not be condemned to another 50 years of destroying our coastal resource. We believe that there are much better and higher uses for our coastline than to be an industrial power plant.

We ask that you allow us to have -- to fulfill our vision of increasing coastal and lagoon access, creating coastal uses that support a healthy outdoor lifestyle.

You commented about how beautiful our weather and our coast is, and we -- and that's why many of us came to live here, because we value and enjoy those things; but if we continue to condemn this property to an industrial use as it is now, none of us will be able to expand our vision of what -- or fulfill our vision of what our coastline could be.

As elected officials, my colleagues and I have been entrusted with the stewardship of our community's resources. We might not have the final say on whether this project gets approved, but we will continue to make

our voice heard to support our community and this region, and we hope that we will be heard and acknowledged.

Thank you.

HEARING OFFICER KRAMER: Thank you.

Mr. Jackson followed by Kevin Sharrar.

MR. JACKSON: Good evening, and thank you for the opportunity to come and talk on behalf of NRG, the company that I work for.

I've worked in the power industry since 1976, involved in power plants. And I know one of the issues is about safety at the plant and everything. And I want everybody to know that at NRG Encina power plant we invited Cal/OSHA in a few years ago to come and inspect our plant and inspect our policies and procedures. And they were so comfortable with it that they gave our plant, one of the only 12 in California, a Cal VPP star rating because of our safety record, because of our safety policies and procedures.

Safety is an extremely important part of what we do at the plant. We care about not only the people that work there, but also in the community.

It's also a plant that we do things in the community. Today we had 50 school children in for a tour. They didn't see anything at all negative about it; as a matter of fact, they thought it was rather interesting to

be able to come in and see how electricity is generated. And we use that often too as an educational tool for the community.

We get involved in community events, and we are proud to work here in the community, support the community and different events that are in the community, and we're all proud to work together.

We are also a very reliable plant. Whenever we've been called on because of the need for electricity in this region, we've been able it come online. Our reliability is up close to -- well over 90 percent. And so we realize that not only are we a group of people that -- you know, it's not just a big, old, gray building over there, it's a bunch of faces, people that work together, and they don't work together -- go to that place thinking about how bad it is. It's a great group of people. They want to keep on working there. They're proud to be there. We're safe, we are reliable, and we are very committed community oriented.

And so we're grateful that you've made a decision to continue with the new plant. It will just make us more reliable. And I just want to say again, thank you. I'm not an elected official, I can't speak like some people, but I do know we're glad to still be here in Carlsbad.

Thank you very much.

HEARING OFFICER KRAMER: Thank you.

MR. SHARRAR: Good evening. My name is Kevin Sharrar, and I chair the Carlsbad Chamber of Government Affairs Committee. I'm here to read into the record a letter written by the chamber's president, CEO, Ted Owen. This letter declares the chamber's board of directors' position relative to the Carlsbad Energy Project.

Dear Chairman Weisenmiller: On behalf of the Carlsbad Chamber of Commerce, I would like to express our strong support for the Carlsbad Energy Center Project as recommended by the Presiding Member's Proposed Decision, the PMPD.

For over 85 years the Carlsbad Chamber of Commerce has worked to promote a favorable business climate for the 1700 businesses and more than 75,000 employees in and around the City of Carlsbad. This is why we pay close attention to issues in Carlsbad that could impact not only the ability of local businesses to thrive, but also matters that could impact the quality of life in our community.

The chamber has followed closely the discussions in the community about the proposed more-efficient and cleaner-burning Carlsbad Energy Center. It is our firm belief that the project as recommended in the detailed

PMPD provides Carlsbad and the region with the most logical and reliable clean energy solution to our power needs. We also agree with the PMPD that the proposed site for the project is preferable due to the neighboring industrial uses and the lower environmental impacts associated with this property over the alternative location.

In addition to the cleaner energy being produced in our community, the Carlsbad Energy Center would also provide a vital revenue stream into the city coffers to the tune of four to five million annually and generate local jobs during construction. The Carlsbad Energy Center is a project that makes sense for our local economy and for our quality of life.

Again, on the behalf of the Carlsbad Chamber of Commerce, I would like to express our strong support for the Carlsbad Energy Center Project as recommended by the Presiding Member's Proposed Decision.

Sincerely, Ted Owen, President and CEO.

Thank you.

HEARING OFFICER KRAMER: Thank you.

Any chance we could get a copy of that?

MR. SHARRAR: Yes.

HEARING OFFICER KRAMER: Next is Kendall Helm followed by Ruprecht Von Buttlar.

MS. HELM: My name is Kendall Helm, and I'm here representing the San Diego Regional Economic Development Corporation. And similarly, I am here to read into the record as signed by the president, Julie Meyer Wright.

I'll emphasize a few things in the letter. Certain things have been raised already.

On behalf of the San Diego Regional E.D.C., I am writing to express our support for the Carlsbad Energy Center. The commission's presiding member proposed decision has recognized the need for the electric generation project and found that it complies with all applicable laws, ordinances, regulations, and standards. The project also supports California's effort to reduce carbon emissions.

The Carlsbad Energy Center will deliver more than 550 megawatts of electricity generated with clean burning natural gas. Additionally, the project will replace existing infrastructure with a more energy-efficient and lower-profile facility.

Planning for the future and ensuring energy reliability are essential for regional economic growth and investment. We recommend you approve the application for certification.

Thank you.

HEARING OFFICER KRAMER: Thank you.

Mr. Von Buttlar followed by Nicolle Pappas.

MR. VON BUTTLAR: Good afternoon, and thank you for the opportunity to speak today. My name is Ruprecht Von Buttlar. I'm representing Connect. Connect is a San Diego focused business accelerator, really helping individual businesses with business creation, but also helping the promotion of industry clusters. To that end we incubated and spun out CleanTECH San Diego.

Reliable energy is vital to the development of our industry, and the Carlsbad Energy Center will provide 558 megawatts of one of the most reliable sources of electricity. The new Carlsbad Energy Center will replace the old and inefficient Encina Units 1, 2, and 3. This will provide significant environmental benefits by reducing harmful greenhouse gas emotions, sea water used for cooling, potable water used for operations.

Carlsbad Energy Center will enhance the development and effective use of solar and wind energy by providing a generating facility that can quickly adjust to the intermittent nature of renewable energy generation.

The Carlsbad Energy Center is the best project for the San Diego region with the state-of-the-art technology, the least environmental impacts of the greatest benefits to clean reliability energy. We urge

the California Energy Commission to approve the project.

Thank you.

HEARING OFFICER KRAMER: Thank you.

Ms. Pappas followed by William Holmes.

MS. PAPPAS: Good evening. My name is Nicolle Pappas, and I've lived within two miles of the Encina power plant for almost 25 years, and I drive or walk by the plant nearly every day.

This evening I'm here to say thank you. Thank you for your Presiding Member's Proposed Decision recommending approval of the planned Carlsbad Energy Center. This project as recommended provides extraordinary public benefit as a much needed component to serve Carlsbad's increasing demand for energy as well as by shutting down three of the five existing units. I do not believe any enhanced level of benefit is necessary.

Carlsbad is a comfortable if not affluent community with a median income of $81,000, according to citydata.com. We enjoy our flat screen TVs, our swimming pools, and hot tubs. And the city just approved another hotel resort at Ponto Beach, because apparently the La Costa Resort, the Park Hyatt Resort, the Grand at Aviara, the Grand Pacific Palisades, and the Sheraton Carlsbad Resort, along with dozens of other hotels and resorts are simply not enough to handle the demands of our coveted

vacation destination. And we know these resorts need reliable and sustainable energy. And thanks to Mr. Jackson and the energy employees, it's safe as well.

So you can see why I'm amazed to hear people say Carlsbad couldn't need this power plant. Of course we do. This plant as designed provides an extraordinary public benefit for our homes and our for businesses. I'm also amazed when I see we don't need this plant, we need more renewable energy, solar and wind; and yet, I don't see a whole lot of solar panels on Carlsbad rooftops.

And when one of the largest wind farms in the U.S. only generates 240 megawatts on 14,000 acres, that's less than two one-hundredths of a megawatt per acre compared with 24 megawatts per acre at the Carlsbad plant. Carlsbad just doesn't have the kind of acreage necessary for solar or wind to provide the extraordinary public benefit that the Carlsbad Energy Project does.

But I know all of this doesn't really mean anything to the opponents because there's no convincing them that this plant is important and necessary. It's clear they don't grasp the importance of this project to a regional energy capacity planning. And unlike the intervenors, I have a vision of power to sustain our region. And I thank you for sharing my vision in your recommendation to approve the Carlsbad Energy Center.

Thank you.

HEARING OFFICER KRAMER: Sir, I probably got your name wrong because I'm not sure I'm reading your writing correctly, so could you please spell it.

MR. HOLMES: H-o-l-m-e-s.

HEARING OFFICER KRAMER: H-o-l-m-e-s. Okay.

MR. HOLMES: Excuse my senior handwriting.

HEARING OFFICER KRAMER: No problem. You'll be followed by Nina Eaton.

Go ahead, please.

MR. HOLMES: When I heard about this meeting tonight, I thought you might be interested to hear from a citizen of Carlsbad. I've been living here for 33 years. The power plant was here when I came; it's been here all the time. Never bothered me a damn bit.

And I beg to differ with the mayor pro tem, and I respectfully disagree with her. I don't think it's a problem. We need the power.

Thank you.

HEARING OFFICER KRAMER: Thank you.

Ms. Eaton followed by Catherine Miller.

MS. EATON: My name is Nina Eaton. I'm a resident here in Carlsbad. My family lives here in Carlsbad.

I don't feel that we in Carlsbad disagree we

would need the power plant, we disagree with having it right there on our coastal front. We see it every day. We do worry about it being there. It will impact the freeway. There are safety issues. I'm sure there are safety issues. But it's the wrong place. We certainly can have this elsewhere; and I know it's been suggested, I don't know all those locations, but it's been suggested.

As far as the chamber of commerce being for this, I'm very surprised, because a revenue stream could be brought from that power plant no matter where it is in Carlsbad, it doesn't have to be right here on the coast.

As far as citizens who want to see it here, as I've heard just recently, again, that's fine, it could remain in Carlsbad, but it doesn't belong in this location. It's an eyesore, and it just -- it doesn't fit anymore. It may have at one time, but it certainly doesn't fit any longer.

Who else did we hear from? That's all I can think of right now.

And, Mr. Boyd, you love coming down here because it's beautiful and the weather's nice and clean and lovely. It certainly is; and that's why we all love it, and that's why we'd like to keep it that way.

And again, there are still sites. My husband and I started four companies here since 1978. We have those

in the industrial area. We don't have them right here along the coast, we live along the coast. So I'd just like that to be a big part of the decision in this project, that you really do think about the industrial quality and not the residential quality.

Thank you.

MS. C. MILLER: Thank you, commissioners, for allowing us to be here tonight. My name is the Catherine Miller, and I'm a 16-year resident of Carlsbad. I do live adjacent to the power plant. And I want to go on record saying I'm opposed to this project for many reasons, and I think a lot of reasons were wrapped up in our councilperson's presentations. Also, I just don't feel it's a right location at all.

On a recent trip to Colorado, we drove, I saw probably ten power plants out in the middle of nowhere, nothing surrounding them, not a darn thing but a bunch of sand and empty hills. So that would be my vision for a power plant, not something on the coast where residents and people who will be driving along the freeway. Those are not only residents, they're tourists to our area.

I just feel that it's a safety issue and another blight on our coastline. And quite frankly, I don't even -- I don't even believe that any of this power's going to be generated for San Diego County at this point.

I don't know if there's any contracts with SDG&E.

So there's a lot of questions. And I just think a lot of people feel this is being shoved down our throats.

So the infrastructure there, it's easy to do. I hope you take a lot of other things into consideration.

Thank you for your time.

HEARING OFFICER KRAMER: Thank you.

Next will be Glenn Bernard, followed by Diane Wist.

MR. BERNARD: Not everything is what it appears. I am not and I have never been a shareholder of NRG, but I admire and respect NRG tremendously. I'm glad we have the technology to pull that smokestack down. Just about everybody is going to have their property values go up when that smokestack goes down.

And furthermore, I guess you fellas are connected with the state government, and I just have to say that I can count on one hand the number of good things to ever come out of Sacramento; public parks, public beaches, and this commission. Because without this commission, NIMBYs up and down the state of California would have everybody shivering like crazy every winter.

So thank you for your existence and thank you for your decision to cooperate with NRG.

Just want to mention for whatever reason, there is a sewage treatment center just down from here a little bit, you can see it, you can smell it; but for whatever reason, nobody complains about that. But maybe that's because no city council member lives real close to the sewer treatment center the way one of them lives really close to NRG's facility.

And speaking of energy, there's this company called SDG&E. They have power lines all over the city. And they've announced that those power lines are going to come down in 2053. That didn't get any kind of a response from our city council. But at the southern end of Garfield Street, which is where I think our mayor lives, there are no high tension wires.

So it's been reported to me that our city has spent more than a million dollars to harass NRG, and I very much resent my taxes being spent that way.

And I'm going to close by mentioning a guy who I went to Whittier College with at a different time. Richard Nixon and I both went to Whittier College. And there was an evening where he wanted an independent prosecutor to be fired. And he called up his attorney general, a guy named Richardson, and told him to fire him. Richardson was too ethical; he resigned. The next guy resigned. The next guy resigned. Richard Nixon couldn't

get anybody on payroll to fire the guy, Jaworski. But finally a guy named Bork capitulated and fired Jaworski. And another good guy named Archibald Cox. I wish that the city bureaucrats being paid $200,000 and up, when told to go out there and fight for the best possible view for people that live at the southern end the Garfield Street would have just said no.

Thank you.

MS. WIST: Good evening. My name is Diane Wist. I am a resident of Terramar, adjacent to the power plant.

Thank you for being here this evening. Thank you for taking public comment.

I really want to actually thank Mr. Jackson from the NRG, because he gave me my talking points.

Certainly I am opposed to the power plant. First, I should say my main -- yes, I'm a resident here at Terramar, but my main work is an educator. So when Mr. Jackson said that he and his coworkers, he used the words, safe, reliable, community driven, and that they're team workers.

Mr. Jackson and all your workers, that's your job. Whether you are on the coast or you are in the middle of a hillside where there's sandy places, your job every day is to be safe, reliable, work as a team, and to be community driven. Those are not items that we give you

a feather in your cap.

So now I turn to you, commission, and I say, we are asking you to please use safety in your decision, be reliable and consistent in your decision-making process, please be community driven, and work together as a team. That means taking into consideration the feelings and the sentiment around, yes, we do need energy, nobody's debating that; what we are debating is the location of the plant. Please, on behalf of our community, I ask you to take pause.

Thank you.

HEARING OFFICER KRAMER: Thank you.

Next is Mikie Santerre followed by Nicolle Pappas.

You already spoke, correct?

MS. PAPPAS: Yes.

HEARING OFFICER KRAMER: Did you fill out two cards accidentally?

MS. PAPPAS: No.

HEARING OFFICER KRAMER: Huh. Okay. It was a gremlin.

Jeannine Miller will be next.

MS. SANTERRE: Good evening. I'm Mikie Santerre, and I am a 19-year resident of Terramar, and I oppose the location of the new plant as well.

HEARING OFFICER KRAMER: Okay.

Ms. Miller followed by Catherine Fredinburg.

MS. J. MILLER: Good evening. My name is Jeannine Miller, and I live also in Terramar adjacent to the plant. I do oppose the plant. And I echo the -- I'll be brief. I do echo what Diane has said about the choice; you're making a choice. I do request you do take pause.

I believe people make mistakes all the time. And putting a power plant on a coastline, one plus one just doesn't equal perfect right there. There's a lot of other places. That's already been pointed out. It seems very simple to me; and I know that probably sometimes the simplest way is the easiest way, and that may be the way you're looking at.

I would like for you to take pause, consider the possibility of putting it in another place. I believe you'd be seeing vision when you take down this current stack. That would be a huge step forward for our city. And also you'd be seeing vision in putting something -- putting it somewhere else. By putting it in the same place, we're going backward. We're seeing 1950 again.

Thank you.

HEARING OFFICER KRAMER: Okay. Ms. Fredinburg?

MS. FREDINBURG: That's right.

HEARING OFFICER KRAMER: Followed by

Jack Kabota.

MS. FREDINBURG: My name is Catherine Fredinburg. I am a resident of Carlsbad, and I am one of those just across the lagoon in the Capri tract with a direct sight line of the existing power plant and the new power plant.

You know, I would respectfully say those with the most stake are probably those that can be measured by their closeness to the existing power plant with the most impact from the plant, be it through the increased pollution by greater operation of the plant than how much it's being operated currently, through impact on property values, through view restrictions, et cetera.

I have a couple of requests for simple things that you may be able to do to ease the impact on the community. I have read some of your proposed decision. There wasn't a lot of time, but I read as much as I could.

One of the simple things I think could be done to clarify one of the specific conditions related to Noise Number 1, it regarded a need to notify residents within, I believe it was half a mile when you're about to start ground disturbance. I do have concerns about construction dust, construction noise, and such impacts. I am downwind, and in certain weather conditions, even though I'm three-quarter mile as the crow flies, I can hear things clear as a bell, particularly certain winds and

weathers. My request would be to increase the notice radius to one mile and to include those who would request to be on the notice list. Obviously if they're requesting, they're an interested party. It's a small thing to do.

Secondly, it was mentioned that there might be a manned 24-hour notification or complaint line, I guess it would be, if something unusual is going on with construction dust, fumes, excessive noise, excessive lights. My comment, it needs to be clarified to be a requirement for a manned 24-hour line so that they can deal with these issues as the problem comes up. They're spending $500 million to build the project; it's a relatively small cost to keep that man lined 24 hours, and I think it would be I think a rather significant gesture towards the community to get these issues dealt with right away.

We've had issues in the past where there were the daytime strobe lights going off at night; they're blinding on the freeway, they're blinding on those with the sight line of the power plant. There was nobody to contact at night. So when you have issues like that, you can't fix them unless they're required to have a manned 24-hour line.

The last things along this Noise number 1 is what

are the teeth? There need to be teeth if there are violations. It's one thing to say you must do this, you must do that; but there needs to be a fine or teeth if these conditions are not followed. So I would strongly request the need to add fines for violations of the conditions.

I do also support better definition of the retirement of Units 4 and 5, when that's going to occur, and demolition, so we don't just have a large vacant smokestack and building. You know, part of the benefit that's been pitched to the community is, oh, we're replacing it; no, we're not really replacing it, we're still going to see it, we're just expanding the area of blight. So there need to be better conditions on that point.

Lastly, and probably one of my greatest personal concerns in addition to the increased pollution, which, yes, we will have, even though it's more efficient, because the new unit will run more often; so thereby, I'm pretty sure it's been confirmed, it will generate more pollutants into the area than what we're currently getting. For those of us downwind, that's not too good.

Under the Visual Resources section, I feel that you've had insufficient key observation points. You didn't go high enough on the hill to adequately assess the

angle of viewing that includes the ocean for those of us in the Capri tract. We were above the key observation point in the park there. We have significantly greater ocean view than shown in the pictures, and the extension of the new plant will be greater into that ocean view.

Where that may impact your condition and your requirements is how high you're going to paint the buildings to match the vegetation, versus how high to blend with sea and sky. So I just would respectfully say, I don't think you measured from enough observation points and elevations to get those measurements correct, and you probably need to recalibrate.

Lastly, I'd like to state that my intention that it will impact property value is based on having been a California state certified general real estate appraiser. My husband and I bought a property with our life savings for over a million dollars on that hill before it was public knowledge that the power plant would be built. I can measure, it's not an issue of opinion, I can measure the negative impact on value to have more of that ocean view obstructed, particularly with a blighted looking structure like industrial usage.

What I don't understand, and perhaps one of those on the panel can clarify for me, is as an appraiser I understand eminent domain. For me, this is a taking

against my wishes a part of my property value. Why is there no compensation for residents exactly nearby in an impacted area to be compensated for the loss of property value? I mean this is essentially akin to eminent domain. It's against the community wishes, it's against the resident wishes, and it results in a lot of value, so why is there no compensation?

That's not just a rhetorical question, I'm asking.

HEARING OFFICER KRAMER: Well, we can answer that when we respond to comments in the decision, but basically the law says that all economic value from a property has to be removed. It's not a small increase or decrease in the value.

MS. FREDINBURG: Yeah, but if you took a portion of our backyard, you would compensate us. If you take a portion of our view, you should compensate us.

HEARING OFFICER KRAMER: So far the law doesn't work that way.

MS. FREDINBURG: There seems to be a great deal of economic benefit to NRG; there's no guarantee that this energy is going to be used for Carlsbad much less San Diego County. There's not a whole lot of community benefit coming back from this as far as I can see. So I don't support this, I don't believe they've done enough to

increase benefit to the community, and it's certainly not in anything that's conditional at this point.

Thank you.

HEARING OFFICER KRAMER: One question for you. You talk about being up the hill. Can you give me some cross streets so I can locate what you're talking about?

MS. FREDINBURG: Sure. I'm on Sunnyhill. There's also another street higher than us that would have an even greater viewpoint. But, you know, I'd invite you after this is over tomorrow to come have drinks on my terrace, you can see the view for yourself. Probably enjoy it. It will be a nice day. You can get a really good look.

HEARING OFFICER KRAMER: Well, thank you for the offer.

PRESIDING MEMBER BOYD: There's probably a law against that for us.

HEARING OFFICER KRAMER: Thank you.

MS. FREDINBURG: Thank you.

Mr. Kabota followed by Carol Scurlock.

Did Mr. Kabota leave?

Okay. Ms. Scurlock then.

If somebody knows him and he comes back in, just tell him to let the public advisor know.

MS. SCURLOCK: My name is Carol Scurlock. And

I'm a resident of Terramar. Our home was built by our family in 1967, so we have been here for a long time.

I'm going to be very brief, and what I'm going to address has already been addressed, but one of the concerns, of course, that we have is that we get stuck with a plant but we don't get anything from it. In other words, we have no guarantees, like others have said, that any of this power will be -- that will be generated to our dysbenefit will benefit us in any way.

Another point is the plant has, I'm sure, a lot of unknown variables, just like we have seen in world disasters this year. There have been variables that have come up and have caused disastrous results. We don't necessarily or you don't necessarily know what all those variables are.

And I don't see any public benefit to this plant in any way, whether it be to the residents of Terramar or certainly to all of Carlsbad.

As you know, there is very -- there's a very small slice of land in California that is coastal land. Coastal land is valuable to not only the people who live there but also to all the inland people who come. And you plan to put a power plant, an industrial power plant on property that is pristine, can be pristine and enjoyed by all of the nations, let alone all of the world; people

come from all over. And they don't need to see an industrial plant on beautiful coastal property.

Please know that we are against this power plant.

HEARING OFFICER KRAMER: Bailey Noble, followed by John Scurlock.

MR. NOBLE: I would like to thank the commission for the opportunity to speak to you again. The last time I was here I had -- I guess I almost gone thrown off because the red light got stuck.

But anyhow, I've lived in Carlsbad for 40 years this August. And I've been on numerous boards and commissions throughout the north county and in the city and the cities around here.

I remember when I first got here there was talk about they had the smokestack. Then they got in and they put it up further. So it got all around the entire northern portion to Escondido to Encinitas and all of those. Then they started talking about we're going to have growth coming in here, we're going to need more energy and we should start planning it now. At the time they said we'll get the plant that has the same or higher capability to produce energy before the other one comes down. And they said when it goes up, then the other one, it's going to come down.

Well, now they've come around and said, no, we

don't want to take it all down right now. Let's wait and get something else. Well, the main reason they wanted to get it down was get those smokestacks down because that's what was spewing all the stuff around that almost a hundred cars had to have their paint job redone because of the acid that got on their paint. The SDG&E did not make the decision or get the test made, the local residents had to get the test made to prove that it was coming from that power.

So then you hear tonight that all these hotels and motels they're building and stuff like that will need the energy. Well, the funny part is, I don't understand why they say all this energy around here, we need to build a new power plant because you're taking all the power. I don't think it's even going to stay in the state. I know it's not going to stay in this area. So there's no real reason or justification for saying it should be built in Carlsbad.

Now, I'm not one of those that says don't build it. I say build it, but not in the place where it is. And I think that we can all live and have a great time and enjoy life. And we should at least have an opportunity for some people if they're going to have something happen to your home or have energy that comes in and not be available here, it just doesn't make sense.

Thank you very much.

HEARING OFFICER KRAMER: Mr. --

MR. NOBLE: Oh, I thought you were going to ask a question.

HEARING OFFICER KRAMER: No, I'm sorry. I was trying to figure out if my mic was on.

Mr. Scurlock, followed by Tim Sullivan.

MR. SCURLOCK: Good evening. I'm John Scurlock. My wife spoke just a moment ago.

You know, our family's been here for a long time. And, yes, we do live not -- well, we live very close to the plant now, but there were several things that were said tonight that really kind of made me think a little bit.

There's a group of gentlemen back here, they're present employees of the plant, and they're concerned about their jobs, and rightfully so. But I think if you were to build the plant inward away from the ocean like everyone's so concerned about, get that plant up and running with them working there, their jobs will not be in jeopardy. If you tear the plant down and then start all over construction, their jobs, yes, will be in jeopardy for a while. That's not fair, period.

So I respect the gentlemen back here. I want them to keep their jobs, but I don't want the plant. Nor

do a lot of people want the plant

So consequently I'm just going to say this: Is just think with you living elsewhere, all of you, are any of you -- first of all, you all live out of the area, I assume? Yes. Yes. So consequently I didn't get any nods or shakes, and I don't expect it, but I would like you to think about this in your own backyard; it would be in our backyard virtually.

I heard the man from the chamber of commerce, oh, we want the jobs. Well, I know how these large construction businesses go. I've been in the business for 52 years, in landscape development doing very large projects, and proud to say that. But I think that everything will be subbed out to large corporations elsewhere, will come in with the materials; rightfully so because there's not many people around here that can really build a big building like that. They need to have the plant in our backyard, in your backyard, my backyard, no.

Electricity comes from great distances. We used to live in a different area, and -- look at Pasadena, for example. Where does the electricity come from? Los Angeles. They have their plants, yes, but they've been established for a long time.

I just think that really, really, really with

that property, the plant came down as exists, the gentlemen back here have jobs to go to, you people would have a place to create your electricity and send it to us. We'll be glad to pay for it.

And I just think that if that land were donated to the City of Carlsbad as a large park, green belt that people could enjoy for years and years and years, and openness, you guys could be real proud with what you accomplished.

Thank you very much. I'm opposed to the plant, I'm opposed to anything like this. I'd just like to see things go on. Be green; be safe. Thank you.

HEARING OFFICER KRAMER: Thank you.

Mr. Sullivan followed by Laura Kloetzer.

MR. SULLIVAN: Mr. Boyd, welcome back. It's nice to see you again, though I didn't expect that decision.

I would have to agree with the mayor, it doesn't really seem to me that you guys are listening at this point. And this sort of feels like an exercise to me; but what the heck, I'll play with the exercise.

I'm just curious, Mr. Boyd, has a preliminary decision ever been overturned?

PRESIDING MEMBER BOYD: Good question. I don't know the answer.

Preliminary decisions have been revised as a

result of hearings like this into something that probably wasn't overturned, at least in my tenure as a commissioner, but that doesn't speak to the long past.

MR. SULLIVAN: Yeah, I'm guessing it's -- I'm guessing it won't be overturned. And I think that's why you don't see more people here. Frankly, I think -- when I asked people if they were coming, everyone just basically kind of laughed and said the decision was made a long time ago and this is all about the money. And I think, frankly, it is probably all about the money.

I think, NRG, to those of you that are here, you've done an excellent job. It was nice to see the chamber of commerce show up and speak so wisely. A bunch of wise people apparently.

Anyway, this to me is incomprehensible. I feel like it's the twilight zone. I mean, you're putting two more power plants on the coast. These don't need to be near the ocean, correct? Yet we're putting them on the coast. We're putting them in a city that's begging you not to put more power plants in the city.

I'm listening to people come up here for this thing, yet what I'm hearing them say is that we need the solar, we got flat screens, and we need the solar; I mean, we need the power, we got all these things, we need it. The power's not for us. The power for us is already in

place, the contract is already set for however long with SDG&E; this power is going to be shipped off.

And the last thing that to me that is incomprehensible about this is that this is going to benefit a company on the east coast, and the power's getting shipped out somewhere else, yet we're the ones that have to live with it.

And we've asked, and the city's begged, and the mayor's begged, and everyone's saying don't build this; yet we're moving forward with this plan. And my question to you -- or I have a few questions for you.

One, are you absolutely sure that there's no side effects to all this, to these power plants running a lot more current? One, and are you absolutely sure there's not going to be side effects with the emissions being released? And if I wasn't able to answer that question with 100 percent certainty, I certainly wouldn't be voting in favor of this thing, because everyone knows the wind is always blowing from west to east, and that means you're putting everyone, all the schools, all the kids, and everyone else in jeopardy when you build this power plant right on the coast. This should be put inland.

The second question I ask you, if you are so certain, would be willing to bet your kid's life on it? And I'd actually be curious if you would be because that's

the situation I'm in. I have two little kids, three and six. And I've already watched one kid in the neighborhood who lives close to the power plant come down with leukemia, and I can't help but wonder how many more kids are going to get sick from this. And, frankly, two kids, I'd be irresponsible if I didn't really figure this out, because it's dangerous when you start talking about the amount of emissions and the amount of energy being produced in a residential neighborhood.

And I guess along those lines I'd ask you is this what you want on your conscience? Because, frankly, you do have the ability to be a visionary, and you do have the ability to be a leader. And the opportunity is there.

This is from two -- or a week ago in San Luis Obispo. They're building two solar plants, and they're going to generate 800 megawatts of energy. And yet we're putting up two more power plants that are going to be here for the next 50 years. And the reality that we could build solar, we could do -- we could take advantage of the natural resources and use that space, like the last gentleman said, for something more beautiful, something that would actually increase the value of Carlsbad, increase the value of California, and make this a much more beautiful place if you put a beautiful park in there.

And to the City of Carlsbad and to the mayor and

city council, I commend you guys for putting up a fight. And I hope that you guys continue to. I'm not sure if anyone's left here, but I would hope that you guys continue to put up the fight, because this is going to be here for at least 50 more years. And, frankly, this is your moment to shine, because if we don't put up the fight, we're going to be stuck with this for a long, long time.

MS. L. KLOETZER: Hi. My name is Laura Kloetzer, and I'm 23 years old. And I've been living here in Carlsbad all my life, and I hope to make it a lot longer and hopefully afford to buy a house one day.

And I'm opposed to the power plant strictly on the fact that we have the technology not to have it on the coastline, and then why aren't we moving towards having, you know, power plant free? Area of the coast is so beautiful. Being from this area, I'm so proud. And I really hope that we can get rid of the power plants. And I'm not saying throughout Carlsbad; I mean, there's plenty other places. And I really hope you take into consideration the little valuable space we have and how we can appreciate it.

Thank you.

HEARING OFFICER KRAMER: Okay. Deborah Kloetzer, followed by Gary Nessim.

MS. D. KLOETZER: My name is Deborah Kloetzer, and I'm a 22-year resident of Carlsbad.

I'm here to make point that I am definitely opposed to a second power plant being built on our coastline. Again, I'm just reiterating what everyone here is saying. There's no need to have a power plant on the coast any longer; the technology is there to have a power plant anywhere.

This isn't just an issue of Carlsbad versus energy. This is -- it's bigger than that. There's only so much coastline available. It's beautiful. It's enjoyed not by just Carlsbad residents but by people from all over the nation, all over the world come to California to enjoy our coast.

I think you need to take a look at the bigger picture and take a stand for the coastline, for California. You have an opportunity, a fabulous opportunity to say no to any more power plants being built on the coast. They can be built in other less-populated areas where they might welcome the job opportunities and the revenue that a power plant would afford. Power can be shipped other places, and there are other alternative means of power that are much -- or as viable. And I think again, take this opportunity. You have the power to stop this and to make California and the coast a better place.

Thank you.

MR. NESSIM: Gary Nessim. I've been a resident for 31 years in Carlsbad, live in north Carlsbad, I can see the present power plant stack. I walk by this and run by this power plant frequently. Power plant has helped, hurt development in Carlsbad over the years.

We really need the power. We need the energy because we had a blackout about a year ago, and we need the peaker power plants that this provides very much so. It's a temporary solution. Even though 30 to 50 years doesn't seem like a temporary solution, it's really a temporary solution until technology really brings distributed generation and solar online, which is going to take 30 to 50 years. And you've made a very reasonable decision based on those numbers.

It's also a good decision because all the infrastructure is there where that plant is. The gas lines and the power lines are already there, it's not that practical to just move it someplace else that people would like to do.

Hopefully when the old power plant comes down, we'll be able to develop a fair amount of that land that's on the western side of the tracks to open space or hotels, depending on which side of the room you're sitting on.

And the thing I didn't notice in the -- and I

worked in a nuclear power plant for many years in the navy. This is a great plant. This plant takes the same amount of power as our nuclear power plants did to power a ship in a nice compact environment; so I'm very impressed by the plant.

I didn't see a condition specifically that when one or more of these plants come online, the old plant and building comes down in a certain period of time, which is something I'd like to see in the conditions, that the building and the power plant comes down when one or more of the new power plants comes online. The new one is much shorter, although it will affect a few people a little more. It would be nice to be assured that it will come down in a certain amount of time, like not ten years, but maybe one year.

Thanks very much. Any questions?

HEARING OFFICER KRAMER: Let me just tell you that part of what the committee is going to be discussing tomorrow again is the issue of a plan for the removal of the old plant. It's so we don't have -- we don't have a final answer for that yet, but we will discuss it in the errata to the decision.

But the committee, if you noticed the hearing notice, we're asking the parties to address that and what might be done and how; but as I say, we're still in the

middle of that discussion.

MR. NESSIM: Okay. Thank you.

PRESIDING MEMBER BOYD: I don't want to get into a debate with everybody, but I don't expect to win any popularity contests here, but the law that represents the people of California doesn't empower the energy commission to do what you ask be done. To have somebody tear down, shut down a plant is a trade. So through more assuasion and what have you, we attempt to do things like that.

And as just indicated, we gave a very strong hint in this document that something should be worked out to more or less guarantee that Units 4 and 5, which are now pretty well documented as not being needed, lead to some kind of plan to get rid of the old plant. And as indicated there's been agreement to talk about that tomorrow. So that's one positive thing.

I'll say a lot of other things at the end of this hearing about things I've heard today. I don't want to conduct a seminar for you folks, I don't think you expect that; but there's a few things you ought to understand about energy in California I'd like to leave you with before you go home tonight just so you understand the situation that an energy commissioner or energy commission or state government of California finds itself in in dealing with energy. So enough said for now.

HEARING OFFICER KRAMER: Okay. Next will be Rudy Gonzalez followed by Tom Lemmon.

MR. GONZALEZ: Gentlemen, my name is Rudy Gonzalez, and I moved here December 28th, 1969, on my birthday.

When I moved down here it was so nice. You could look up, look at the stars; there wasn't much here. Year per year, we'd get a little bit more here, we get a little bit more there.

And we had to deal with SDG&E. SDG&E made us a lot of promises. And, well, you don't call them liars, but they did not perform as expected.

Now we have something new coming in. I can only go by you have a plant like it in the Mira Mesa area. It's not that quiet, and it's got a -- the exhaust from the turbines have got to go someplace. So, you know, I haven't gone down with some equipment and taken pictures of it, but there's other -- there's other solutions to this problem. And we should move it for one thing.

They promised us this monstrosity was going to be done. It's still here. They sold it, you know, before they had to really, you know, fess up to it.

(Comment from audience member beyond microphone range.)

MR. GONZALEZ: I don't know why we don't use

other solutions. You know, one of them is transmission. If SDG&E would clean up their act and make things more efficient, better maintenance, and some of the work's being done is being done by contractors, and I can't say it meets the work that was done before by employees.

I would like to see, you know, somebody pursue nuclear -- I mean nuclear power. We could use -- what do they call them, I'm trying to think of the name of it. They have something they call like "san" or something like that reactor, they're smaller, they can take the waste of the present reactor and use it.

(Comment from audience member beyond range of microphone.)

MR. GONZALEZ: Pardon me?

HEARING OFFICER KRAMER: Hold on, sir.

We're not going to have a dialog between the audience and the speakers. When your turn comes, if you filled out a card, please feel free to respond to him.

Go ahead. Sorry.

MR. GONZALEZ: You know, at this time I can't understand why they're so stubborn about moving this plant and moving it inland. I know the city's tried to work with them. In fact, I don't know if the city has offered them land or tried to make arrangements to put it in another part of the city, but I know we've been -- we've

really tried, and it seems like they just don't want to budge.

We don't need the plant. And for one thing, if this plant goes online, it goes online when its needed and the power costs us a lot more than a normal plant would cost; so somebody's making a lot of money, you know. And I just -- I don't know. I'm too emotional to really be up here. But I see the same thing happening again; we're going to get a lot of promises, but nobody's going to come through with it.

Another thing is that one of these plants back in the midwest was built, and it wasn't even a year, the plant caught on fire. And they had one hell of a time fighting it. And it's a duplicate of this plant. And if under those circumstances it was hard fighting it, imagine having a freeway next to it where the trucks can't even get into it. And what do you do with the ammonia that's there and everything else?

I just -- I don't know, something has to be worked out. Why don't we start working -- instead of generating power someplace else, why don't we use natural gas and use fuel cells. You can generate your own electricity on your own piece of property. Or we can use micro generators. I mean, it's all within technology right now; it could be done. And that way you don't even

have transmission lines. You have more efficient way of generating, no transmission lines, you can do storage for overnight. I just don't understand why we're pursuing big plants or medium plants that go online when they're needed and we need to pay extra money for it.

Thank you.

HEARING OFFICER KRAMER: Mr. Lemmon followed by John Barbour.

MR. LEMMON: Good evening, Commissioners. I can imagine it's been a very long day for you, so I will be brief.

My name is Tom Lemmon. I proudly represent the San Diego Building and Construction Trades Council, AFL-CIO, representing the workers that build San Diego County.

I'm here to say that this project as laid out by NRG is a very good project not only for the environment, but for the workforce that will be building it. And we really do need to get construction workers in San Diego to work as quickly as possible.

The downturn in the economy has affected construction like no other industry, and the thought of a project like this maybe going simultaneously at the same time as the desalination plant on the same site would be incredible for the economy of the local area. And I urge

you to move the project forward.

Thank you so much for your time.

HEARING OFFICER KRAMER: Mr. Barbour followed by Paul Thompson.

MR. BARBOUR: Good evening. I'm a homeowner in the area. I live just above the lagoon at Hoover, probably a hundred feet above the lagoon, and haven't been able to sell my house for a long time because everybody wonders, you know, what's going on across the way.

And I've thought about things, and I've lived here a long time, and I'd like to see, obviously, this area be used for public use and not see the power plant. I know we need power -- I know we need power, I think that there could be another location for it.

I've thought about this, and I'd like to know is Julie Baker here? Is there anybody here with that group?

HEARING OFFICER KRAMER: They both left.

MR. BARBOUR: All right, sir. So I'll make it kind of brief so the people here can kind of get up to speed on this.

Doing a little bit of research, I have some maps here. I've got a map of 1928 of this location where the lagoon is, and it shows fresh water springs that run where the plant is now. 1947, I have a picture of where the power plant sits next to a lagoon. This is all public

knowledge, you just have to research it, know that it's there. And I have this map here, 1953. It's public knowledge also. It shows when they built the power plant, they filled in the natural springs, and it's all infill. So there's natural spring water underneath the plant area now.

And it's right here that you can see where the construction of the plant was built right here in 1953, and right here is the natural spring water that ran all the way through to the lagoon.

So I have since this tsunami thing came up, first of all, I'd like to ask the NRG if this new building is built, the new power plant, what's -- how strong is it built and what can it take to a magnitude earthquake? What's the maximum the building codes of it being built to? Is there anybody here on the panel able to tell me? I mean, you've been researching this, the plan to build this for a long time; somebody has to know what this building is capable of taking and handling as far as an earthquake goes.

HEARING OFFICER KRAMER: Well, the staff isn't here who could answer that at this point. I know it's going to be built to the standard building codes --

MR. BARBOUR: Well, and that's subject to --

HEARING OFFICER KRAMER: -- and there are

engineering requirements.

There is going to be a bit of discussion about the tsunamis and earthquakes design tomorrow in the morning.

MR. BARBOUR: Okay. I think that should be interesting for the public to hear.

I'm going to bring up some other information. I know I don't have a lot of time.

Interesting situation here besides it being built on infill and the maps show how the plant was built in '53, '54, it's a little bit more information.

Some geologists that are very knowledgeable in this area and off shore that have done their research over the last 20 years. Number one is the liquefaction of sand dikes in our area that under an earthquake push up and can push boulders up through the ground that you can't believe. And we have this liquefaction all over Carlsbad all over the coastline here.

There's a report done from 1994 to 2005, and it maps out and shows all the liquefaction and how this area is built and what your houses are built on. It's public knowledge also. I don't know if the NRG has really covered all this, but I feel that it's my job to come here and let the public know that these things are out here.

There was a map done right here of our coastline

from San Onofre to LaJolla. It was done showing the faults. And we have a new -- it's called Inglewood Rose Canyon fault that's approximately two and a half miles off our shore. And those actually culminate and come right close here to the power plant, the two of them together. And the research was done by Leg Geophysical. And Mark Leg spent 20-something years mapping the underwater sea floor and mapping all the faults and where they are.

The two of them actually, which NRG may not know of, or they don't want to talk about, actually come and meet just off shore in front of our power plant, existing power plant. So if we have a large magnitude earthquake, in this CD and in their report, they talk about uplifting and vertical faulting. And this has a big effect on how big a tsunami can be and how much damage can be done.

And Mr. Leg has done his research and did the report underneath San Onofre. Now, obviously, this is not San Onofre, this is a natural gas plant. His research went to Mrs. Feinstein, Senator Feinstein, and she's reviewed his work. And they're already working on a $25 million grant to research and figure out what they're going to do with San Onofre. Again, this is public knowledge. Most of the people don't know anything about it though.

So I have a CD here for the panel, the NRG, it's

public knowledge, Mr. Leg's work. I have one for the city council if they'd like, and for Julie and her group. I'm going to pass on the same information because we're all land owners here, and none of us really want to see the plant built. We all feel it should go somewhere else.

So I just want -- hopefully the newspaper's here. And this is all public knowledge, and I'm going to get it out there. And hopefully the NRG has done their research, because right now the existing power plant, people, is built on fill. And if we have a big earthquake, it's going to create some issues.

And last but not least, if the NRG can tell me, the high pressure gas line, do you know what the diameter of that gas line is that runs near the railroad tracks? Can you tell me the diameter of that high-pressure gas line that runs all the way down through LaJolla?

PRESIDING MEMBER BOYD: Not off the top of my head; but all this, it is known and documented and testified to.

MR. BARBOUR: Well, we all know what happened up by San Francisco when one blew out. So we do have one that runs right by our railroad tracks all the way to San Diego, folks, if you're not aware of it.

HEARING OFFICER KRAMER: You're three and a half minutes over, so you need to wrap it up.

MR. BARBOUR: Well, thanks for the time. And if you'd like any of this information, I'd be glad to give it to the NRG, and I'll give it to the group; but I think we're going to look into this a little more.

So thank you for your time.

HEARING OFFICER KRAMER: Mr. Thompson.

Did you want to leave that CD with us or --

Mr. Thompson, is that spelled o-n or e-n?

MR. P. THOMPSON: T-h-o-m-p-s-o-n.

HEARING OFFICER KRAMER: Thank you.

MR. P. THOMPSON: Good evening. My name is Paul Thompson, and I am a -- and my family have been residents of Carlsbad for a little over 11 years.

And I'm here like so many others to absolutely oppose, as so many others have expressed, the building of these new power plants on our pristine coast.

And like others, I too stand here as a very proud American citizen believing in the systems that exist to protect the citizens of our country and of our state and even of our city. And I'm very proud of the City of Carlsbad for its attempt to protect and care for the citizens of our community.

And with all due respect to the employees of NRG who are here, my objection to this obviously would mean that your jobs would be relocated, and I'm personally

sorry for that, but I believe the higher concern ought to be for the future of this community, the residents, our future generations that I believe the current state of affairs and decision of the California Energy Commission is disregarding.

As has been expressed by others, the negatives for building this far outweigh, far exceed any potential positive on all multiple levels. And I -- I just simply don't understand why the California Energy Commission has disregarded the vehement strong objections of the City of Carlsbad, the residents of Carlsbad to the building of this monstrosity on our pristine coast, completely and utterly disregarding the strenuous objections that have been communicated months and months ago and ongoing up to the present.

Economically it doesn't make sense. NRG is the owner of this property; we understand that. They have every right to make a profit on this property. And they could, in fact, make a great profit. I'm not suggesting they necessarily gift any portion of the property to the City of Carlsbad, but if they could repurpose it for clean uses or other uses, they could make a substantial profit on this property and still find a location, as others have expressed, without the substantial population nearby to -- where they might build such a plant if it is needed. And

I'm not sure that it has been demonstrated as needed at this point in time. I don't think that's been made clear.

Environmentally, there's absolutely nothing that would suggest that these new power plants will enhance the environment. They will detract from the environment. They will detract from the public's health, absolutely. Again, future generations.

We're now having the privilege of having a grandchild in our community. And it -- it causes great pain for us to think what might be happening to our grandchild and potentially other grandchildren and among the many in this room and in this community who are going to have to bear the brunt of the ill health caused by the spewing of the particulates into the atmosphere that we then now have to consume.

Thirdly, I would like to suggest that we residents of Carlsbad are willing, absolutely, to bear our fair share of public -- industrial or public activity. We have the airport that serves the region in our city, we are building the desalination plant in our city that will benefit many of the communities around us. We have two train stops in our community that we provide others around who want to use the train. There are other -- I could go on.

We residents of Carlsbad are not NIMBYs to the

extreme, but we do not believe that this plant ought to be built, should be built. And it seems to me like others who have expressed their concerns before me, you have made your decision, and you have indeed disregarded the public's opinion in previous occasions, and we're deeply despairing and concerned that that disregarding of the public's opinion will continue.

I ask you respectfully to listen carefully to the opinions of those expressed by the citizens of this community.

Thank you very much.

HEARING OFFICER KRAMER: Thank you.

Next is Sharon Hoffman followed by Ace Hoffman.

MS. HOFFMAN: Hello. My name is Sharon Hoffman. I've lived in Carlsbad for nearly 20 years.

And I commend the city for speaking out against this plant. I urge the energy commission to listen to the concerns of the citizens, but I also urge the city and the energy commission to consider how much more of a dangerous situation we have just a few miles up the coast with San Onofre. As people have pointed out, what happened in Japan could happen here. And while I do not want to see this plant built, I want to see San Onofre shut down, and I want to see it shut down now.

Thank you.

HEARING OFFICER KRAMER: Okay. Mr. Hoffman followed by Frank Pisacane.

MR. HOFFMAN: Good evening. What a coincidence, I'd like to say a few words about San Onofre too as well as about this plant.

I've written two books, one of which is here, and I want to leave you all a copy. It's about the dangers of nuclear power. And as this was written long before Fukushima, the other one is called "Shut San Onofre," which I wrote two weeks ago about Fukushima. And I want to leave copies of that with you too. We've got to get rid of that plant.

Someone a few minutes ago was talking about a tsunami here. Compared to what it's going to do up there -- they just released pictures of the tsunami hitting Fukushima today. And it was, I mean, higher than this building. And our plant is not able -- the tsunami wall was knocked over. You can see those pictures today. You couldn't see them before. This is the first day you can see them. Their tsunami wall was knocked over; ours will be knocked over.

So as for this plant, we don't need it. We don't need it here.

This is a book a friend of mine wrote a couple years ago, she's passed away, but it's about the 1400-year

history of wind power. So I want to leave that with you.

And that's what we need, is distributed simple solar is ready, wind is ready; and it's your job to make sure that the right energy gets used and not the wrong energy. This is the wrong energy, that thing up there is the wrong energy, and it's available.

Thank you very much. Where do I leave these?

HEARING OFFICER KRAMER: You can bring it to me.

Frank Pisacane.

UNIDENTIFIED SPEAKER: He stepped out.

HEARING OFFICER KRAMER: Okay. I'll call him in a couple more minutes. Did I get close to the right pronunciation the second time?

UNIDENTIFIED SPEAKER: Here he is. He just came in.

HEARING OFFICER KRAMER: Okay. Frank, go ahead.

MR. PISACANE: Just want to state my opposition to the plant.

I share the concerns of my neighbors. We're concerned about our property values, our safety, our health, but I don't want to go on with that, I just want to see if I can get some clarity from you guys on something.

How much do we benefit in terms of power, just in Carlsbad and in Terramar where we live? How much are we

affected by the power that's generated by the plant?

HEARING OFFICER KRAMER: I'd look to the applicant to handle that.

MR. PISACANE: I'm sorry?

PRESIDING MEMBER BOYD: I'm looking at the applicant to answer your question.

HEARING OFFICER KRAMER: Well, but in the evidence --

PRESIDING MEMBER BOYD: Electrons go into the grid, and electrons then are tracked as to where they end up. They could end up in your home, they could end up two miles down the road.

MR. PISACANE: Okay.

PRESIDING MEMBER BOYD: But California imports power; so people who think that this is power for export, we still import 25 percent of our power, and all those pretty plants that people see in Colorado in the middle of nowhere are probably coal-burning plants doing ten times the damage of any natural gas plant. So take your medicine.

MR. PISACANE: I've just heard so much different information that it's gotten to the point where, you know, an average person like myself can get pretty confused as to where the power that's generated in that plant goes and how we here in the community benefit from it.

HEARING OFFICER KRAMER: Well, the engineers will tell you that you need a certain amount of power has to be generated locally so that your power is stable. You can't bring it all in on long transmission lines; you know, otherwise, you have problems like your voltage will go way up or something, and, you know, you can have your equipment damaged. So some of it has to be in the local area, not all of it.

And then another sort of fact of life is that when people talk about renewables, the problem with them is, you know, that mother nature can change on us; the clouds come by, the wind stops for a moment --

MR. PISACANE: I'm not sold on how well that works anyway, I'm just --

HEARING OFFICER KRAMER: So at some point in the very distant future maybe there will be storage so that renewables can run as hard as they can and power can be stored to be put back in the system when the renewables are not doing so well at the moment. Right now we need something like natural gas or maybe biofuels, but something where the power's in a tank, so to speak, and we can turn it on or off as we need it to adjust to the load.

MR. PISACANE: Okay. I think that I'll just end this by saying that a lot of us here in the local community don't feel for the amount that we give up in

terms of -- in terms of how we think this affects our local area maybe just on sight lines, and the environment, and, you know, there's potential safety issues that I think a lot of people feel are just being completely ignored. So I'll just leave it at that.

Thank you very much

HEARING OFFICER KRAMER: Okay. Thank you.

Bill Kilpatrick.

MR. KILPATRICK: Good evening. I'm Bill Kilpatrick.

I'm a two-and-a-half-year resident of Carlsbad here. I want to thank you again for your time coming back to see us, and again thank our city council for fighting very difficult fights. I really don't have a whole lot more to add, I just want to iterate what so many others have said.

As we know, the power plant does not need to be placed on the coast, so we urge you to place it inland away from the coast. That area can be a beautiful asset to our California coastline.

If you look at the coast from the south end of Camp Pendleton all the way down to San Diego, it's beautiful except for this one area of blight we have just north of us here. While you're here, if you have the time, go up north to Santa Monica, stand on the boardwalk

there and look south. You'll see, I believe, three very large power plants, probably the same era of the one we have here. Looking south from Santa Monica, there's a beautiful coastline, but there are three very large blights on that coastline. I urge you to consider that.

If we have the ability to move this away from the coast, I think you have the choice, the power to do this for not only this community but the entire coastline that we have here in southern California.

Many of the parents have expressed their concern for the health of their small children. That's also a concern that we do need to consider when making this decision. It's a very important decision. As many people have said, we'll be living with this for about another 50 years at least.

One of the gentlemen who spoke said this is an opportunity for construction jobs in this economy that we're faced with. Absolutely true. Those jobs, however, will not be lost if this plant is moved inland. The jobs will still exist, they'll just be constructing the site elsewhere.

Thank you again for your time, and we hope that you make the decision that best reflects the desires of the majority of the people that you've heard speak to you this evening. Thank you so much.

HEARING OFFICER KRAMER: Thank you.

My last card is from Carol.

CARLA: Carla.

Hi. My name is Carla, and I am an owner of a house in Terramar and resident for 12 years. What attracted me here is the real life, the nature which you have here. We have a sanctuary area that we like to preserve. And I'm here for life. And power plant is not for nature; it's for pollution, it's for damage, it's not safe.

We have the right to have a better life. We have the right to stay for a better nature. We can work to getting intelligent ways to use the energy. We don't have to destroy our land anymore. And I am totally opposed to power plant. I'm pro nature, I'm pro life.

And my question is you guys are not separate from us. Would you like to be with a power plant in front of your house? Do you like to have the noise, the air? Do you like this for your family? How far are we going with this game? We're destroying everything? We are not having much more life.

I believe you guys all have diseases in your family, no escape, and we are all going to die. Can we die at least in more happy way and support our children in a better life?

This place is not for a power plant. It's over. It's time to change this that is not going to pay our life, life that will pay our life. And we're here for nature. No pollution, please. Thank you.

HEARING OFFICER KRAMER: Okay. Paul.

MR. WAHICKO: I have lived in Terramar now for about nine years, and when I heard about the power plant I thought what a great opportunity, because I believed -- I realize how old that plant was, and I thought, okay, at some point that eyesore is going to go away.

The coast is such a precious resource of ours. And in my job when I'm looking at -- I'm in the software business, I run a software business, and I want to be proud of the decisions I make and the product that I deliver.

And your product is a legacy, your product's going to last far longer than anything that I will do in the software business. And I just urge you to look at that and take a step back and think about what do I want my legacy to be from your job? Because you affect so many lives up and down the coast, and not just lives of the people locally here, but those traveling on I-5, those visiting Carlsbad from out of state, from other parts of California.

And I realize you have a very difficult job to

balance the needs for power and the placement of this plant, and I understand the needs and the restrictions that you have to live by. And I actually read the report last night and, I understood the balancing act that you have; but I'm asking you to just take a step back, take a look at that plant.

I had a very long day, I'm coming in here late, so I'm sure that a lot of what I'm saying has been said before, but I feel really passionately about this, because when I came home and I come off the freeway and I see the coast, it just -- it renews me. And then I look north and I see the power plant, and it's like, oh, that's going to be there and it's going to continue to be there; and what's worse, there's going to be another one there.

And I would just urge you with the power that you have to heed the citizens' remarks that you've heard and consider moving NRG into a direction to work with the city.

I think the city has done a very good job in trying to accommodate all the needs of all the parties. I understand the needs of bringing jobs to the area, for construction jobs. Don't think those are going to go away. That plant is going to be built somewhere, right? So you've heard that before. And we're not unrealistic about that, but I do think that it takes -- I think they

should take one more stab at it, force NRG to sit down with the city and see what can be done.

I also in reading that report last night, I read through the visual mitigation, and NRG's not going to be around in a few years, probably be sold off by somebody else, and those employees will be gone, but we have to live with that. And that visual mitigation plan, I'm just not buying it. I think that things change and, you know, employees change, and councils change, and things will get moved around.

I thought it was not quite appropriate tone for them to take in the report that they said, well, the widening of I-5 is hypothetical. Really? No, it's not. It's coming, and they're doing everything they can to put that on a fast track. So I drive up and down I-5, I have for the last ten years, so I know what's coming. I've seen it happen down south; they're going to take that north. So that's not to be taken as a hypothetical. And I think that that -- the tone of that report was not appropriate in -- really, it almost was dismissive I thought.

But aside from that, I think that we have one more shot at this. I appreciate you guys coming in, I appreciate you guys spending the time listening to us, and I just urge you to think about this, think about what you

would want your legacy to be from this commission.

Thank you.

HEARING OFFICER KRAMER: Okay. That was my last card. Before I ask if anyone else in the audience wants to speak who didn't fill out a card, looks like we have one person on the telephone, and I wanted to offer that person an opportunity to speak if they choose so.

So person on the telephone, do you wish to provide a public comment at this point in time?

Okay. I guess not.

So, Ms. Jennings, let me ask one more time, is there anybody else in the audience who wants to comment who has not already done so?

Sir, you want to come forward and give us your name. And please spell your last name for the court reporter so we can get that.

MR. MILLARD: My name is Greg Millard, M-i-l-l-a-r-d. And we live in Carlsbad. We moved back here after having moved here originally in '70.

I just -- I've never been to one of these forums before. And I just had a comment.

Who actually going is going to make the decision on this? Who are we talking to relative to whose going to make the decision?

HEARING OFFICER KRAMER: This is a committee.

Normally it would have two commissioner, but --

MR. MILLARD: So we've got one decision maker here today?

HEARING OFFICER KRAMER: Well, the committee makes a recommendation to the full five-member energy commission. Actually, the governor just reappointed Commissioner Eggert who was on this committee and sat through the hearings in February. So he's familiar with the case, and he'll be -- as far as I know, he'll be back on the commission in June when the commission is scheduled to hear the recommendations.

So it's -- ultimately, it's the five members of the energy commission.

MR. MILLARD: So of those five members who are going to make that decision, there's only one here today listening to us to convey that message to them?

HEARING OFFICER KRAMER: Right.

MR. MILLARD: Is that correct?

HEARING OFFICER KRAMER: But they have access to the transcripts.

MR. MILLARD: Are they going to read it? Will they feel the emotion? I don't think so.

Anyway, just had one other comment, is that I thought you could have more technical support here. You asked -- you know, been solicitous in terms of glossing

things over, but no technical answers were given.

HEARING OFFICER KRAMER: Well, the purpose of this hearing isn't so much to answer questions of the -- to answer all your detailed questions about the project --

MR. MILLARD: But I think that's where it is, it's in the details. It's whether there's a fault problem. It's if the gas line has the pressure capability to withstand what you plan to do with it. If the environmental emissions are there. It's all in the details in my opinion.

HEARING OFFICER KRAMER: And those were covered in the evidentiary hearings last year. The seismic issue is going to be discussed, at least as far as lessons learned from the Japan incident, tomorrow morning, and it's discussed in the decision.

So if you feel that the decision does not answer your questions, it's perfectly appropriate for you to submit a comment to that effect.

MR. MILLARD: Okay. Thank you for your time.

MS. JENNINGS: Yes, Jennifer Jennings, public advisor at the energy commission.

I want to submit for the record under Section 1214 of our regulations some handwritten comments. One from Sandy Rogerson who said she wasn't able to stay late enough.

She said it's not fair to Carlsbad residents to have two power plants, please disapprove this atrocity. It will also hurt tourism.

And then four other individuals, Ed Kerrigan, Ninu Lucy, Jean Craig, and Bill Kilpatrick also submitted written comment that we'll put into the record.

Thank you.

HEARING OFFICER KRAMER: Thank you.

PRESIDING MEMBER BOYD: Well, I said earlier I'd make a few comments, and I'll go ahead with that. I'm not -- some of these may be technical, and some of them you may or may not care about.

There's been a lot of talk about renewables and solar and wind and what have you, and I want to tell you what the California policy is with regard to electricity and has been our policy for several years now, and that of the energy commission, the Public Utilities Commission, and others who are involved in energy -- electricity energy in California.

Efficiency is job one. We put more effort in efficiency than anything else because that's the cheapest way to meet our electricity needs, you know, to just cut down on the amount of electricity or not have to build as many power plants as theoretically would be needed in California.

When I started in California state government as a civil servant in 1961 there were 18 million people in California; there's now 38 million people in California. They like electricity. They need electricity. The economy needs electricity. That's what we wrestle with.

Job number two for us is renewables. And that's -- you hear a lot about solar and wind. Unfortunately, the wind doesn't blow all the time, the sun doesn't shine all the time. It has to be augmented with something; and that's the cleanest fossil fuel there is left, natural gas burning power plants, as we desperately try to meet our policy commitment of getting rid of all the imported electricity from other states that's coal based. But a lot of those middle of nowhere plants are coal plants, which are far more harmful for our planet and for our health than what we try to balance out here in California.

The idea of this renewable electricity, I just want you to be somewhat proud of your State of California in spite of your bitter disappointment with me. The people -- the California Energy Commission's policies have led to the fact that in the past 25 years the per capita use of electricity by Californians has remained basically level. The per capita use of electricity by the rest of the United States has risen 50 percent. All of that is

power plants avoided as best as we can.

In the past year the staff at the energy commission literally killed itself approving 4,000 megawatts of solar plants in the California desert. And if you think it's easy to site a power plant in the middle of the California desert because it's theoretically in the middle of nowhere, I invite you to the days, weeks, months, and years of hearings that were held just like this hearing trying to site solar power plants in, allegedly, the middle of nowhere. And if you think it's easy to build power lines anywhere, that's almost harder than siting a power plant. So, you know, when you wonder what we do in these jobs, it is trying to balance all of this activity.

A lot of talk about seismic activity; there will be talk about it tomorrow. The gentlemen was disappointed there's not enough technical discussion tonight, but we spent the entire day talking about technical stuff, and we spent the last several years talking about technical stuff relative to this project or any other project that we site in California.

And they're all built to meet California's earthquake building code, the most strict building code in the nation, if not in the world. They're all built to meet California's air quality rules and regulations, the

strictest ones in the world. And if you don't think I as an energy commissioner care about that, for 15 years I was the director of the California Air Resources Board, the most stringent air pollution agency in the world. So that's part of the balance that we try to deal with.

We are trying to push more distributed generation, solar on your rooftops, other forms, fuel cells, and what have you; the economics are very difficult. They're not there yet. It's far more expensive to do that. And we are trying to change that so there is more distributed generation, less large central plants, less need to build transmission facilities, but that will take several years, well beyond my watch as a commissioner. But you need to know what your State of California is attempting to do.

One quick comment about nuclear. I am the state's liaison to the Nuclear Regulatory Commission. I have spent every day practically since Fukushima doing some discussions about Diablo Canyon and San Onofre and our concerns about earthquakes and tsunamis in California. So that is an issue -- and just a couple weeks ago I testified to the committee of the U.S. Senate on the subject. Just so you know the subject, we are very concerned about that. We have written to many people about the need for additional seismic studies as it

relates to those two facilities, and I'd be glad to share that with any of you who are interested in the subject. I just wrote to Senator Boxer a couple of days ago yet again.

So, you know, that doesn't address your concerns about your proposed power plant in your backyard, but I just wanted you to know something about energy in California, because you don't get the opportunity many evenings in having an energy seminar or having an opportunity to talk about the subject, and it doesn't dissuage your concerns about your plant, but it is -- has to be taken in context.

You just don't push everything inland. There are so many considerations, I can't -- I mean, you just have to dig into the technical details to understand what it takes to site a power plant, the transmission lines, the closeness to the fuel source, the distribution within the state so that the grid stays up. You can't -- you heard it earlier, you have to have power, some power in every region in order to keep the electric lines energized, otherwise, electricity doesn't flow.

Sincerely, we take all of that into consideration. I know it doesn't meet your needs with regard to your concerns about living in an area where there's a power plant, but we all live in areas where

there's power plants because they're scattered all over this state, some closer than others. And that's just a consequence of living in a state of 38 million people.

So that's all I'm going to say. Just a few things about the California electricity picture.

The last comment I'll make is you think or infer or imply that we have a lot more power than you think than we really do have. I would invite you to read the laws that direct us to do what we do, but we cannot just willy-nilly direct people to put a power plant here, there, and elsewhere. The law says we are just to review applications when they're submitted by anybody who wants to build a power plant and predicate our decision upon the record developed in the many, many hearings relative to that power plant. We cannot direct people to build their power plant somewhere else.

Unfortunately, 15 years ago when California went through its great electricity restructuring experiment, the great failure to which I contributed nothing, fortunately, they took away the authority of the California Energy Commission to assess need for power plants. And it's a very politically contentious issue; and I'm -- I don't care if I mention it to you here. This is my last few months as energy commissioner after ten years, and I'll probably anger some people by bringing up

the need issue, but that's the way it goes.

We cannot for you assess need. We assess applications on their face, we take into account the opinions of people like our independent systems operator who tells us whether or not we need plants in certain areas. And they were here earlier today to support this power plant and the need in this area.

And I invite you to read the law. And if you are disappointed in the law, maybe you can do something about it working with your own state elected officials. But we do what we do, and I think I'm very proud of my fellow commissioners and the staff, fairly courageously in terms of what can be done; but you just can't satisfy all the folks all the time, and for that I'm sorry. I wish we had a better solution sooner for you, but those of us alive today are going to deal with some of these issues.

My own commission may overturn my recommendation and the recommendation of this committee, who knows. And we do not rubber stamp every plant. I happened to chair a power plant case in Chula Vista here a couple years ago, and I recommended against it, and my commission agreed with me. So it's not build every plant that everybody proposes. But we do need energy, and we try to make the best assessment we can.

And thank you for taking your time to come and at

least state your opinion. You may feel we ignore you, but it does play on our conscience, and we do weigh heavily your concerns, because we do put ourselves in your shoes once in a while and recognize what it is you have to deal with. And we are quite concerned with the health and safety of everybody in California. California usually has the strictest rules and regulations as it relates to everything related to public health and public safety.

Thank you. And good evening.

HEARING OFFICER KRAMER: We'll just go off the record.

(Thereupon the hearing adjourned at 7:49 p.m.)

CERTIFICATE OF REPORTER

I, MARTHA NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Evidentiary Hearing Before the California Energy Resources Conservation and Development Commission, that I thereafter had it transcribed under my direction.

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

I WITNESS WHEREOF, I have hereunto set my hand this 25th day of May 2011.

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MARTHA NELSON