EVIDENTIARY HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

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

HILTON GARDEN INN

WAVECREST BALLROOM

6450 CARLSBAD BOULEVARD

CARLSBAD, CALIFORNIA

MONDAY, DECEMBER 12, 2011

9:11 A.M.

Reported and by:
Martha L. Nelson, CERT

APPEARANCES

COMMITTEE MEMBERS

James Boyd, Vice Chair and Presiding Member

Karen Douglas, Commissioner and Associate Member

HEARING OFFICER AND ADVISORS

Paul Kramer, Hearing Officer

Tim Olson, Advisor to Commissioner Boyd

Galen Lemei, Advisor to Commissioner Douglas

STAFF AND CONSULTANTS

Richard Ratliff, Staff Counsel

Mike Monasmith, Project Manager

Jennifer Jennings, Public Adviser

APPLICANT

John McKinsey, Attorney
Kimberly Hellwig
Stoel Rives

George Piantka, Project Manager

Brian Decker

INTERVENORS

City of Carlsbad

Alan Thompson, Attorney

Joseph Garuba, Project Manager

Ronald Ball

Robert Therkelsen

APPEARANCES (Continued)

INTERVENORS

Center for Biological Diversity

William Rostov

Power of Vision

Julie Baker
Arnold Roe, PhD

Terramar

Kerry Siekmann

INTERESTED AGENCIES

Bill Di Capo, California Integrated System Operator
Robert Sparks, California Integrated System Operator

PUBLIC SPEAKERS

Matt Hall, Carlsbad Mayor

Dan Walsh, Terramar Associates

Ted Owen, Carlsbad Chamber of Commerce

Jerry Carter, Encina Power Plant

Pat Maldi, Boys and Girls Club

Peter MacLaggan, Poseidon Resources

Norman Hannon

Carol Scurlock

Jack Kubota

Homer Eaton

Jerry Tetalman

Katherine Spencer

APPEARANCES (Continued)

PUBLIC SPEAKERS (Continued)

William Kloetzer

John Linehan

Gale Sides

Johnnie Johnson

Richard James

Dianne Wist

Mikie Santerre

Lorraine Wood

Gwen Nelson

Mike Ballard

Jack Nelson

Catherine Miller, Terramar

Tom Siekmann

Sean Keany

Julianne Nygaard

Jeff Mastin

William Sides

Dina Winters

Gerald Lance Johannsen

Christina Rosenthal

I N D E X

	Page
Opening Remarks by Commissioner Boyd	1
FIRST PANEL	7
Gary Rubentstein Brian Theaker Robert Mason Robert Sparks Mike Jaske William Walters Joe Garuba Mike Monasmith Kerry Siekmann	
SECOND PANEL	188
Gary Rubenstein William Walters Steven Moore Matthew Zinn Karen Siekmann	
THIRD PANEL	224
Scott Valentino Mike Monasmith Deborah Fountain Kerry Siekmann	
FOURTH PANEL	261
Ronald Rouse Ronald Ball Deborah Fountain	
Opportunity for Public Comment	287

I N D E X

	Page
Exhibits	
Staff's Exhibits 229 and 230	286
Applicant's Exhibits 199G and 199U	336
Terramar 390 through 398	336
City of Carlsbad 459	337
Center for Biological Diversity 651 through 655	337
Power of Vision 748	338
Mr. Simpson 800 through 804	340
Closing Remarks	342
Adjournment	343
Reporter's Certificate	344

PROCEEDINGS

9:11 A.M.

HEARING OFFICER KRAMER: This is Paul Kramer, the Hearing Officer. So we're ready to go. Commissioners, Ms. Reporter, are you ready? Anything further? Okay. And everything's running, so let's go.

PRESIDING MEMBER BOYD: Well, good morning, finally, everybody. Again, apologies for the delay. The heavy reliance on electronics, once again, has left us a little bit stranded but we're finally getting started.

Welcome. Welcome to all to this, the evidentiary hearing on the Carlsbad Energy Center Project. I'm Commissioner Jim Boyd, the presiding commissioner for this siting case. Also with us today at the dais is Commissioner Karen Douglas who is the associate member of this siting case. And our Hearing Officer Paul Kramer has introduced himself. To those in the audience here who can see us, on my right is my Adviser, Mr. Tim Olson. And at the far left end, left for me, right to the audience of the table is Galen Lemei, who is Commissioner Douglas's adviser.

Hopefully we can make up some of the time we've lost by some of us being a little brief. I was going to say here we are again in Carlsbad. I think we've tried all seasons now. And we're witnessing the rain this time. In any event, it's good to see you all again. Not that I have

any problems with any of you, but this is getting to be far too frequent. But such is -- such is the way it goes in siting cases sometimes.

So with that I think I will turn it over to Hearing Officer Kramer to go through the introductions of -- of staff, interveners, and the applicant, and to adjudicate our hearing today.

And I would say to those of you who sat through last week's hearing in Sacramento where I was a little under the weather, I'm much better, thank you. Nothing like a little antibiotics to -- to cure you on occasion.

So in any event, Mr. Kramer, please.

ASSOCIATE MEMBER DOUGLAS: Well, I'll just briefly say good morning, as well. I'm Commissioner Karen Douglas. It's -- it's a pleasure to be here. And Southwest was good to us this morning, and so we were able to make it. In fact, it was much better to us than modern technology was to the hearing officer and our WebEx system. But all systems are go, so I look forward to starting here.

PRESIDING MEMBER BOYD: Sorry, Commissioner Douglas. I was in a desperate hurry to make up some time.

HEARING OFFICER KRAMER: Okay. As a reminder to people in the room here, for the benefit of those on the phone when you haven't been speaking for a while if you would please just say your name as you start to speak again,

that way we can identify you.

Let's begin with the applicant with introductions. For the microphones, if you pull the -- the little foam mike screen back so it's almost going to fall off, then you'll see a red ring wrapped around -- is it on?

MR. MCKINSEY: No. No, it's not working. Not it's not on.

(Colloquy)

HEARING OFFICER KRAMER: Okay. Well, we'll go off the record for a minute to get the mikes working here.

(Off the Record From 9:15 a.m., Until 9:16 a.m.)

HEARING OFFICER KRAMER: Okay. We're back on the record. So people need to remember to turn their mike off when they're -- when they're done talking, although I think I can clear all the mikes with the red button that I have on mine, so I'll do that once in a while.

MR. MCKINSEY: Good morning, Hearing Officer Kramer and Commissioners. My name is John McKinsey. I'm with Stoel Rives. We're counsel for the applicant. Also with me is -- the microphone just turned off again. I'll try that again.

I'm John McKinsey, counsel for the applicant, Stoel Rives. Also with me is George Piantka, director for environmental services and the project manager for the Carlsbad Energy Center project. And that's all I'll

introduce at this time. We’ve got some other people here that will come in as witnesses as we go through the day.

HEARING OFFICER KRAMER: Staff.

MR. RATLIFF: Dick Ratliff, counsel for the Energy Commission staff. With me is Mike Monasmith, the project manager for staff.

HEARING OFFICER KRAMER: City of Carlsbad.

MR. THOMPSON: Thank you. Allen Thompson, special counsel to the City of Counsel. To my right is Ron Ball, the city attorney. And to his right is Mr. Joe Garuba with the City of Carlsbad. And to my left is Bob Therkelsen who is also a consultant to the city. And I think we have all of our witnesses for the first panel in attendance here now.

HEARING OFFICER KRAMER: Thank you. Do I have anyone from CURE with us? No.

The Center for Biological Diversity.

MR. ROSTOV: Good morning. It’s William Rostov representing the Center for Biological Diversity.

HEARING OFFICER KRAMER: And Terramar.

MS. SIEKMANN: Kerry Siekmann representing Terramar, the neighborhood just south of the Encina site.

HEARING OFFICER KRAMER: Thank you. Power of Vision.

MS. BAKER: Julie Baker representing Power of Vision which is a citizens’ group. And to my left is Dr.

Arnold Roe.

HEARING OFFICER KRAMER: Thank you. Mr. Simpson, Rob Simpson or April Rose Sommer, his representative, either of you, I guess would be with us on the telephone. Okay.

Jennifer Jennings, our public adviser, is standing there by the door raising her hand. She's here to help members of the public understand our process and how to participate in it. So if you have any questions of that nature feel free to see her.

For members of the public who might be in the audience now we -- we set up a specific time for public comment this evening. At 5:30 it will begin. If for some reason you can not make your comments then, let me know. We really are trying to -- to push through a lot of material before we get to that period. So we -- it will be somewhat difficult for us to -- to accommodate public comments this morning or even this afternoon. But if -- if you really can not be here in the evening or want to make a comment come see me at the break and we'll -- we'll see what we can do. At least I want to know that you have that issue and -- and deal with it.

We also have -- and let's see, and as our final list of regular attendees at these events we have some representatives from the California ISO. Who all is here so far?

MR. DI CAPO: Bill Di Capo, counsel, California ISO.

HEARING OFFICER KRAMER: And will your other colleagues be here at some point?

MR. DI CAPO: Robert Sparks is here from our transmission planning department, and he's here as a witness today.

HEARING OFFICER KRAMER: After Mr. Sparks what did you say? Okay. Did you say somebody else was here?

MR. DI CAPO: Dennis Peters is also here from the ISO.

HEARING OFFICER KRAMER: Great. Thank you. It looks like we may have to use our microphones like we're, you know, out in the field on walkie-talkies. And let's not say over, but -- but everything short of that. Click off your mike. Okay.

So with that do we have any housekeeping items?

Well, let me ask, do we have anyone in the audience who wishes to introduce themselves, representatives of public agencies or legislators or anyone else? Okay. Seeing none.

Do we have any housekeeping issues we need to address before we -- we'll talk about the composition in a minute. So anything other than that? Okay. Seeing no such comments.

Last week you received a copy of the witness worksheet after the -- after our prehearing conference. And on that I hope I actually captured all of the -- the estimate and the arrangement of the -- of the topics that we agreed to. The plan is to, to a degree, combine grid reliability, the alternatives and cumulative impact analysis questions, and the question of overrides. But I think there is a logical division in there.

One of the -- the key points' questions, certainly from the committee's perspective, and I think it's fair to say it sort of informs all of the other issues, is the grid reliability question. In other words, what -- what is necessary to -- to keep the -- to maintain the reliability of the grid and how does the -- the Carlsbad project fit into that equation. And that then has an effect on alternatives, and because that's one of the -- the elements that's discussed in the alternatives analysis. Cumulative impacts, not so much. And then, of course, overrides is -- well, it's related to those impacts. It's -- it's a slightly different topic.

So what I propose is that we have the grid reliability witnesses. That would be Mr. Sparks, Mr. -- is it Theaker or Thaker? How do you pronounce his name?

MR. THEAKER: Theaker.

HEARING OFFICER KRAMER: Theaker? Thank you. Ms.

Siekmann, and then also Mr. Jaske, Mr. Mason, Mr. Garuba, and Mr. Therkelsen. And then we will pick up the remaining witness or two who are not speaking specifically to the -- to the grid reliability permutations in a second panel.

Does that make sense to -- to everyone?

MR. RATLIFF: Did you intend to include Mr. Sparks from the ISO?

HEARING OFFICER KRAMER: I thought I said his name, but, yes, I did. Certainly.

MR. ROSTOV: I think that just leaves out one witness, the alternatives witness from staff. I mean, it seems like the way you had said it earlier we would just have the whole panel together.

HEARING OFFICER KRAMER: Okay. So it just leaves out Mr. Monasmith?

MR. ROSTOV: No. Well, I was thinking Mr. Walters. But maybe I missed it.

HEARING OFFICER KRAMER: Well, we could certainly -- is there room for --

MR. ROSTOV: He’s already up there.

HEARING OFFICER KRAMER: We’re a little bit tight on microphones. Okay. One mike per table.

Mr. Monasmith, you could sit at your -- actually, you could sit next to Mr. Rubenstein.

MS. SIEKMANN: Mr. Kramer? Mr. Kramer, do you

want me to just stay here?

HEARING OFFICER KRAMER: Yeah. Ms. Siekmann, you can -- I think you can stay --

MS. SIEKMANN: Okay.

HEARING OFFICER KRAMER: -- where you are.

Mr. Monasmith, would you prefer to just sit where you were?

MR. MONASMITH: Yes.

HEARING OFFICER KRAMER: Okay. Let's just remember we've got -- we're surrounded, sort of.

So some of you, I imagine, have not been witnesses here before, Mr. Jaske for one. So if you would raise your right hand I will swear you in.

(First panel witnesses are sworn.)

HEARING OFFICER KRAMER: Okay. Thank you.

To speed things along we don't need people to summarize their testimony, except to the extent that the parties sponsoring them wish to very briefly emphasize something.

So let me ask, I'll go down the list, the applicant if you -- you want me to ask some preliminary questions of your --

(WebEx background conversation not transcribed.)

HEARING OFFICER KRAMER: Sir? Sir, we -- we can't understand a word you're saying. So are you speaking to the

committee, the person who was just speaking on the telephone?

(WebEx background conversation not transcribed.)

HEARING OFFICER KRAMER: Let’s go off the record for a second.

(Off the Record From 9:26 a.m., Until 9:27 a.m.)

HEARING OFFICER KRAMER: Okay. We’ll go back on the record.

Folks, those of you who can, please mute your -- your -- your microphones on your phones or -- I’ve forgotten the command. Is it star six? I think that will do it on -- if you just have a touch-tone phone. But anyway, please be aware that we can hear noise in the background or -- and if you’ve been listening to us for quite awhile you may even forget you’re on the phone and think you’re, you know, at home watching a very boring TV show. So please mute. It’s a little bit more difficult for us because I don’t have the controls right now. So otherwise, you know, I could easily take care of that.

So let’s go back to -- to Mr. McKinsey. I think I was about to hand it over to you.

Let me just then say for the benefit of the others, what we’d like to do is have each you ask your witnesses any opening questions you need to ask them. And then we won’t have cross-examination individually. Then

we'll get to each party in turn to ask questions of the panel. And at that point in time you can ask any questions you had about what that person said here or, you know, whatever else they've said in their written testimony.

So, Mr. McKinsey, go ahead.

MR. MCKINSEY: Thank you, Hearing Officer Kramer. The applicant has three witnesses on this panel, and they're the ones to the right as you're looking at them. And I actually am not going to ask any direct questions. I just wanted to let you know what the -- I may have to hold this button down like a real walkie-talkie.

Mr. Rubentstein is here to address a particular aspect of alternatives, and that is the air quality component to looking at the -- the other three projects. That's where his testimony related to alternatives -- I'm just going to look at the microphone so don't be offended.

Mr. Theaker is here to address any of the applicant's questions you may have about grid reliability in the location in the -- the area. And then Mr. Mason is our witness on alternatives, generally, and the alternatives analysis considering the three PPA projects, as well as another topic we have later, though it's also alternatives to some extent for some of the parties, and that's the -- so those three witnesses are available for questions from the committee or for cross-examination.

HEARING OFFICER KRAMER: Okay. Okay. And then, you know, I forgot to have each of the panel members just identify themselves by name. So why don't we start with Mr. Rubenstein and go across.

MR. RUBENTSTEIN: Gary Rubenstein with Sierra Research, air quality consultants for the applicant.

MR. THEAKER: Brian Theaker, director of market affairs for the applicant.

MR. MASON: Robert Mason, CH2M Hill, project manager for the applicant.

MR. SPARKS: Robert Sparks, California ISO.

MR. JASKE: Mike Jaske, California Energy Commission staff.

MR. WALTERS: William Walters, a consultant with the California Energy Commission for air quality and greenhouse gases climate change.

MR. GARUBA: Joe Garuba, City of Carlsbad.

MR. THERKELSEN: This is tricky. Bob Therkelsen, consultant to the City of Carlsbad.

MR. MONASMITH: And Mike Monasmith, California Energy Commission staff.

MS. SIEKMANN: Kerry Siekmann, Terramar.

HEARING OFFICER KRAMER: Okay. So let's then go to staff. Did you have any questions for your -- your witnesses?

MR. RATLIFF: Yes, Mr. Kramer, particularly with regard to the August 12th testimony. That was a product of several people and it has various components. It includes a discussion of the cumulative --

(Loud back feed noise.)

MR. RATLIFF: Did you do that? It has a discussion of the cumulative impacts of the PPA projects. It has a discussion of the -- it comes on and goes off again. Do you hear me now?

(Colloquy)

HEARING OFFICER KRAMER: Off the record for a minute.

(Off the Record From 9:31 a.m., Until 9:32 a.m.)

MR. RATLIFF: Can you hear me? No? What I was stating is that the --

HEARING OFFICER KRAMER: We're back on the record, by the way.

MR. RATLIFF: -- the witnesses had addressed different issues in the August 12th testimony. And for that reason I thought it might be useful to have them briefly summarize their testimony and the purpose of their testimony before they be made available for cross-examination. I thought it might be useful to everyone if the did that.

HEARING OFFICER KRAMER: Go ahead then, ever so briefly though please.

MR. RATLIFF: Do we want me to start by doing it now? Okay. Okay.

Mr. Jaske, can you briefly summarize your role at the Energy Commission?

DR. JASKE: Yes. I've been a technical analyst at the Energy Commission for more than 30 years, the chief command forecaster for many years. Most recently I'm the lead technical analyst of the Energy Commission on OTC and the barriers to siting power plants in Southern California that are the focus of the project called AB-1318.

MR. RATLIFF: Thank you. Could you briefly summarize your testimony for us? And, actually, before you do that, you're speaking today also with regard to Mr. Vitiver's (phonetic) August 12th testimony, Mr. Vitiver being on vacation; is that correct?

DR. JASKE: Yes, that is correct.

MR. RATLIFF: And could you summarize your testimony briefly?

DR. JASKE: So I think the essence both the supplemental testimony of August and the rebuttal testimony of this month is that it's unclear whether the three power purchase agreements offered up as an alternative to Carlsbad will, in fact, go forward. The analyses that show the consequences of the retirement of Encina capacity and no replacement in that area continue to evolve. And as late as

week new information was brought to public light in the ISO's 2011-12 transmission planning process. There are a variety of ways in which preferred policy of the state are reflected in different vintages of analyses, and coordinating that is still not fully complete.

And finally, there does appear in the analyses I have seen to date to be some remaining need for capacity in the vicinity of the Encina area to support grid reliability.

MR. RATLIFF: So as the bottom line of your testimony, do you think that it makes sense for the Energy Commission to license the CECP project?

DR. JASKE: In light of both the uncertainty of future developments and -- and the technical uncertainties of the analyses or -- or different options and choices it seems most prudent to allow the greatest number of choices. So having the availability of the three PPAs, as well as this project seems to maximize options going forward.

MR. THOMPSON: Thank you, Mr. Jaske, or I should say Dr. Jaske.

Do you want me to proceed to Mr. Sparks at this point?

HEARING OFFICER KRAMER: Yes. Go through each of your witnesses.

MR. RATLIFF: Mr. Sparks, could you please explain your position at the California Independent System Operator

and what your duties are in that capacity?

MR. SPARKS: Yes. My position is manager of regional transmission at the California ISO. I manage a group of ten engineers that work on transmission planning responsibilities that the ISO has for Southern California. We also have Northern California responsibilities, but there's another manager for that.

MR. RATLIFF: You just heard the very brief summary of Mr. Jaske and his conclusions with regard to his testimony. Do you agree or disagree with that testimony, and do you have anything to supplement it in terms of your own testimony that you think is something you would mention now?

MR. SPARKS: Yes, I agree with Mr. Jaske's testimony. I might even add that given recent analysis that we have done with the alternative versus the current Encina generation operation versus retirement that this new information should be considered in -- in the evaluation of the alternatives.

MR. RATLIFF: Thank you, Mr. Sparks.

Mr. Monasmith, would you briefly describe your duties at the commission and your role in the August 12th testimony?

MR. MONASMITH: Yes. I'm a project manager within the siting division at the Energy Commission. I have been

for four years on this proceeding. And the August 12th supplemental testimony, I essentially authored as a result of conferring with a larger team of engineers, analysts, planners within the division with the -- for the individual technical analyses, so summarized their input following the committee's June 30th order, and provided that in -- within the alternatives and in the Land-2 and -3 discussion.

MR. RATLIFF: And did you coordinate the staff's review of the -- what are called the PPA alternatives, both for the no-project alternative but also for cumulative impacts?

MR. MONASMITH: Yes. Yes, I did. That was part of my responsibility in putting that together as the project manager, act as lead in that capacity.

MR. RATLIFF: And through the screening of the cumulative impacts for alternatives, what impacts did staff take forward to consider as potentially significant that needed to be addressed in this testimony?

MR. MONASMITH: In terms of cumulative we felt that air quality really was the only technical area of the 21 areas that we looked at within our staff assessment that needed to be reviewed in terms of the cumulative impacts.

MR. RATLIFF: Thank you, Mr. Monasmith.

Mr. Walters, could you -- you -- you've actually testified, I think, before this panel before. But perhaps

you could very quickly state your qualifications.

MR. WALTERS: Yes. I'm a senior associate with Aspen Environmental Group. I'm a registered professional chemical engineer in the State of California. And I've been working with the Energy Commission on siting cases for the past 11 years and have worked on over 2 dozen air quality analyses for siting cases.

MR. RATLIFF: Could you briefly summarize your testimony with regard to the PPA alternatives for environmental preference, and in terms of the no-project alternative?

MR. WALTERS: Yes. I compared the emissions of the CECP project and the three PPA projects, both on a pound per megawatt-hour basis and a permitted basis and found that the PPA projects would admit more criteria pollutants per megawatt hour with the exception of carbon monoxide for all of the PPA projects, and that the permitted basis for the PPA projects had higher annual emissions than CECP. Also, the greenhouse gas emissions for CECP are lower, due to the fact that it's more efficient use of natural gas than the other three projects.

MR. RATLIFF: Can you summarize your testimony with regard to the issue of air cumulative impacts for the PPA alternatives?

MR. WALTERS: Yes. The Energy Commission normally

looks at cumulative impacts depending on -- on the distance from the projects. And normally we do a more extensive modeling analysis if projects are located within a ten kilometer, six mile radius of the project site. The three PPA projects range from 13 to 46 miles from the Carlsbad project. And due to that distance we didn't believe that there would be any localized additive effects or significant localized additive effects for the project. And from a regional perspective, the air district will be handling the projects. The air district will be handling the projects in -- with their new source review program in a -- in a way to meet the air basin goals.

MR. RATLIFF: So -- so if I understand you correctly you're saying that the same programmatic approach to addressing air quality impacts from the project, the CECP, would be the rules that would apply to the PPA projects; is that correct?

MR. WALTERS: Yes, that is correct.

MR. RATLIFF: And that would include both emission limits and offsets; is that correct?

MR. WALTERS: Emission limits and offsets if offsets are triggered.

MR. RATLIFF: Thank you.

HEARING OFFICER KRAMER: Okay. Next would be the city.

MR. THOMPSON: Thank you. As a preliminary matter we have Mr. Hogan in the audience. But I understand his prepared rebuttal testimony has been accepted as a brief. He is available for questions if anyone has any questions of him, but for the time being we'll let him drink coffee in the audience if that's the committee's desire.

I have on this panel two witnesses, Mr. Garuba and Mr. Therkelsen. We have questions for both of them in rebuttal of the testimony that was submitted in the record in this case after their prepared testimony went in. So if it's okay I'll start with Mr. Garuba.

Mr. Garuba, you -- you've been sworn and you have been a witness in this proceeding already; is that correct?

MR. GARUBA: Yes, sir.

MR. THOMPSON: Have you reviewed the rebuttal testimony submitted by the applicant, the ISO and staff?

MR. GARUBA: Yes, sir.

MR. THOMPSON: Let me take you through some specifics. On -- on the first page Mr. Jaske criticizes your testimony as assuming that the shutdown of all EPS units is preordained. Would you comment on that?

MR. GARUBA: I believe it's clear, in reviewing Mr. Jaske's testimony, I believe it's clear that Encina units 1, 2, 3, based on the applicant's implementation plan,

the OTC filing plan, that they represented they would seize operating units 1 through 3 in 2017, irrespective of the status of the CECP. And that's Exhibit 394, and it's on page 32.

Regarding Units 4 and 5, I think it's clear based on the comments from NRG that they intend to run those units into the foreseeable future, regardless of what happens with this proceeding. And -- and they really control their own destiny with that respect. So I would differ with -- with -- with the thought that Units 4 and 5 would be coming down.

That being said, we know that SDG&E in their submittals to the California Public Utilities Commission have factored in the retirement of Units 4 and 5 by 2017. And from a city's perspective we hope SDG&E is right. We hope that NRG is able and willing to commit to the retirement and demolition by 2017 or in a timely fashion when the circumstances permit.

MR. THOMPSON: Mr. Monasmith in the first page of his testimony says your testimony is flawed because you, quote, "misinterpret or ignore the extensive FSA, final staff assessment, analysis." Can you comment on that?

MR. GARUBA: Yes. This committee asked for information on the impacts of the three PPA projects, and so we tried to do that. We have a team of folks that we work

with and we coordinate with. So we went out and reviewed the available information that was out there publicly. We also talked with folks in different jurisdictions. The folks down at the City of San Diego. And so we tried to satisfy your request.

I think it's worth noting that neither staff, in our opinion, neither staff nor the applicant has actually done an alternatives analysis comparing the three PPA projects to the proposed CECP, similar to the fashion of what you see in this FSA. And so what we tried to do was take the existing format that -- that the Energy Commission uses, and then take all of the available information and put that into -- into a similar format of what's been put out before with this project.

The one thing I would say is that we didn't feel compelled to accept analysis or conclusions in the FSA that we didn't agree with, namely on the water component. And also where you would construction impacts, we didn't value construction impacts the same as long-term operational impacts. And I think we've been pretty clear all along, construction impacts are generally short term. Although they're an impact, they're not forever. So --

MR. THOMPSON: The -- the applicant, on page two of their testimony criticized your analysis for not fully taking into account the environmental impacts of the

environmental impacts of the three PPA projects and your reliance on the fact that the three SDG&E have PPAs. Would you comment on that?

MR. GARUBA: So the first is one of the project's in Escondido has already been permitted by the city. And so that -- that project is moving forward. And they have the regulatory approvals that the need, at least from the city's perspective.

I would agree that our analysis of the environmental impacts on Pio Pico and Quail Brush, they may underestimate the environmental impact. But we were trying to -- we used the best available information that we had, which is only the AFC information. I believe all of that information has been sworn to by the applicant and their consultants. And so we used those. We also used testimony that was provided to the California Public Utilities Commission, again sworn testimony. So we were trying to find the best sources of information for our analysis.

That being said, I would wholeheartedly concur that the city is not the best entity to do this analysis. That's Energy Commission staff. And we didn't -- unfortunately we didn't see in the Energy Commission staff's testimony any sort of cumulative -- or not cumulative -- alternatives analysis comparing the three PPAs to the CECP, similar to what we saw in the FSA. So we took it upon

ourselves to forge ahead.

I am aware of the fresh water impacts of the -- of the Pio Pico project. We hope that it's available. Also, fresh water impacts of Quail Brush. I believe they use two acre feet per year of fresh water, potable water. We would consider that to be diminimus. By comparison, the CECP uses two to three acre feet per day of desalinated water, so a different scale.

And then we've also had an opportunity, like I said before, to reach out and speak with other jurisdictions. I had an opportunity to talk with the City of San Diego and their planning staff. Had an opportunity to review the planning document, the preliminary planning document that the City of San Diego staff provided to the Quail Brush folks. I looked at that in my capacity with the city government I've had an opportunity to look at those kinds of documents before. In my opinion, while it raises issues there isn't essentially deal killers in that. And so that would be my opinion. I also had an opportunity to visit the various sites.

MR. THOMPSON: Mr. Monasmith criticizes your characterization that the commission would dictate the location of the Coastal Rail Trail. Would you please comment?

MR. GARUBA: Yeah. This has been a controversial

issue because the Coastal Rail Trail through the city has been in some state of progress for the past decade or longer, it's actually longer. But you know, the Coastal Rail Trail has a certified environmental program review, so it's gone through a NEPA. And based on the CECP what -- what's happened now is they're trying to tell us that it can't go along the approved right. And that certified environmental document actually has the location of the trail.

So by forcing us to relocate the trail, one, it creates uncertainty because it has to go through all new environmental reviews. It may or may not be technically feasible. And then certainly, if it can get approved environmentally it's going to come at some substantially increased cost to the community. So this is a substantial issue for us. It's a trail that connects all of San Diego, so it goes from Oceanside to the City of San Diego, and multiple jurisdictions are working on it. So we take serious, you know, the potential thwarting of the completion of this trail.

MR. THOMPSON: Previously in -- in -- on previous hearings we've heard the figure of $1 million for an underpass. In your judgment, sitting where you sit and with your experience, is that a ballpark figure that you would advocate for?

MR. GARUBA: Actually, I would advocate for something higher. One of my other hats is the assistant director of the environmental and property group for the City of Carlsbad. We oversee capital construction for city projects. And, sadly, we don't seem to be able to build anything for $1 million. But you know, when you consider the amount of environmental review it would have, the potential impacts to wetlands, and so you'd have mitigation requirements likely from the Coastal Commission, the costs would, I think, far exceed $1 million.

MR. THOMPSON: Mr. Monasmith disputes your assertion that the CECP would require an amendment if the EPS is shut down in its entirety. Do you agree with that?

MR. GARUBA: I disagree with Mr. Monasmith respectfully. Mr. Monasmith, as himself pointed out in day four of the evidentiary hearing two years ago, I believe, a year ago, two years ago, it's on page 234, 235, I'd just like to quote from Mr. Monasmith,

> "And staff did note that upon the retirement of 4 and 5 it was staff's opinion that an amendment would be required of the MPDS permit as well. We did provide the opinion that amendments would be required at the time that 4 and 5 were shut down. So it's not that we made an analysis completely void of future circumstances. So you know, that's contained within

the FSA, the specific language, in terms of an amendment being required from both the board and our license."

So I think the point we were trying to raise is that the status of the water supply is uncertain for the CECP if and when Units 4 and 5 shut down.

MR. THOMPSON: Mr. Walters to your left criticizes your testimony as incorrectly characterizing the heat rate of the three PPA projects as compared to the CECP. Would you comment on that?

MR. GARUBA: I would actually agree with Mr. Walters. And we may certainly have -- we may certainly have penned the wrong -- the wrong numbers regarding the heat rate. And I think the point that we were trying to make, and again, we were going to publicly available information but we're not experts in this field, but what we were trying to do was get an order of magnitude. Were they within the same ballpark? We may have accidentally picked up the marine version of the engine instead of the aero version of the engine or of the turbine. But for our analysis it -- it seemed within a couple hundred BTU units based on what Mr. Walters put forth.

But I would again concur that the city is not the agency that's in the prime position to do this analysis, it's the Energy Commission.

MR. THOMPSON: Turning to the rebuttal testimony of the applicant's CECP, Mr. Mason says that you believe SDG&E has the authority to license power plants. Would you comment?

MR. GARUBA: Yes. I think it's abundantly apparent that the Energy Commission has supreme jurisdiction in this venue. We don't dispute that. And we actually are appreciative of the efforts that you put forward to make sure that there's enough power plants for the lights to stay one.

I think what we were trying to say was that SDG&E is the agency responsible for planning and trying to figure out what the system needs are. And so they have additional -- they weigh additional information such as customer cost and location. And -- and so that's the point that we were trying to make with respect to SDG&E approving projects or granting projects PPAs. They're looking at the system needs locally with a fairly broad optic.

MR. THOMPSON: Mr. Mason says that neither the Pio Pico nor the Quail Brush plants are brownfield or re-power plants. Do you agree with that?

MR. GARUBA: Well, Escondido is clearly a repowerment and it's a brownfield. It's a brownfield development.

And I think Ms. Fountain in her testimony captures

it probably more eloquent than me -- than I do. There's a difference between brownfield redevelopment and brownfield development. And we should be confused. Brownfield redevelopment is what we would like to achieve with the existing Encina Power Station. It's taking a heavy industrial use and converting it into something that's less impactful. Brownfield development is -- or in this case a repowering -- is going on a site that's already fairly disturbed.

For the Quail Brush, it is adjacent to a beautiful trail system, but it's also adjacent to a land fill that has limited potential future uses.

With respect to the Pio Pico project, it's right next door to the Otay Power Plant, Otay Mesa Power Plant. It's on previously disturbed land. I would categorize that as a brownfield development in as much as the CECP is a brownfield development.

MR. THOMPSON: Mr. Mason quotes staff that the three PPA plants have a higher heat rate and thus generate more greenhouse gases, GHGs, in its renewable -- in its generation mode. Would you comment on that?

MR. GARUBA: Yeah. What -- so the first thing is it's clear that the city is not an expert in heat rates. But one of the things that I'm taken within reading through the AFCs is the variability of the smaller units. So you

have an opportunity if you have, I believe it's Quail Brush has a number of small units, ten -- ten megawatt units. And so if you're getting discrepancies in the system, if your solar is starting to drop off, you can bring up the plant in smaller increments. So that variability from -- from a layperson's standpoint is actually fairly intriguing and I think useful.

The CECP, if I'm not mistaken, has some thresholds where you -- you may not be able to bring it up on a two percent or a three percent of it's overall generation. It's -- it's a bigger generating unit. It probably has its use somewhere, but in this case I think, at least, again, a layperson's opinion, that variability of the smaller units I thought was intriguing.

MR. THOMPSON: Finally, Mr. Garuba, last question. Mr. Mason that the acquisition of a power purchase agreement, a PPA, is irrelevant. Do you agree?

MR. GARUBA: I completely disagree with Mr. Mason on this point. I think need is one of the central features when you're considering an override. It -- it spells it out. And -- and the best way to identify the need is whether or not the agency that's responsible for the region, in this case SDG&E, is saying the project is needed. So at it's heart you have the entity, SDG&E, that's responsible. When the lights go off, we get mad at them, we sue them. I

mean, there's big issues that they have to deal with. And so what they're telling us is they don't need this project. And -- and I think that's a powerful statement.

MR. THOMPSON: Thank you.

Turning next to Mr. Therkelsen, would you please state your name and position?

MR. THERKELSEN: My name is -- excuse me. My antibiotics aren't quite tricking in yet. Anyway, so excuse my voice. My name is Bob Therkelsen, a consultant to the City of Carlsbad and the Carlsbad Redevelopment Agency.

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

MR. THERKELSEN: I have not.

MR. THOMPSON: You have not. That's correct.

MR. THERKELSEN: I have not.

MR. THOMPSON: I'm wrong. What exhibits are you sponsoring?

MR. THERKELSEN: I'm sponsoring Exhibits 450 through 450 -- I'm sorry -- 450 to 455.

MR. THOMPSON: In addition to your written testimony is there anything you believe the commission should consider regarding the issue of override in this case?

MR. THERKELSEN: Let me make a few additional comments. I won't repeat anything in my written testimony,

but a couple other things, especially in light of what's occurred recently.

First of all, in terms of context it appears to me that there are four areas that the commission will have to consider whether or not, first of all, there is a nonconformance and, secondly, if there is whether or not override is appropriate. Those four areas are land use, redevelopment, fire and safety, and also California Coastal Act. Those areas have been identified and discussed throughout this proceeding.

Secondly, during the prehearing conference last week there was a statement made that the consideration of override is a commission responsibility. And let me say that I thoroughly agree and support that. That is a responsibility the commission has in terms of balancing all of the evidence in a case on a case-by-case basis. And if there is nonconformance they are the ones that have the responsibility of making that determination, not the staff, not the applicant, nobody else.

When I was on board at the commission the staff also respected that position. We did try to make recommendations regarding override based upon our knowledge and perspectives on a case. And that same vein is how I propose my testimony and make the comments that I'm about to make here.

In terms of looking at the written testimony, one of the things that I emphasis is the role of the Integrated Energy Policy Report and it's precursor, the biannual report, played in terms of commission's decision on whether or not to approve a project with a LORS override. And I think that that's important in this case as well.

The presiding member released the draft 2011 IEPR last week. And I think in there it's important to look at that. Granted, that is a draft. That has not been approved by the full commission. But it is an indicator of where the committee is going this particular turnaround.

In that draft report there was not any identified deficiencies, critical need within the state or within any region of the state, contrary to what has been done in previous LORS overrides that this commission have approved.

It did talk about a number of issues. It did talk about retirement of the OTC units. It did talk about integration and renewables. It talked about the offset issues within the L.A. Basin. It talked about things like inertia.

And if I can just take a couple of moments and quote some of the -- a couple of times, I thought from that draft document that apply to this case.

Regarding OTC replacement on page 116 of the Draft IEPR it says,

"While the state is intently focused on OTC retirement and the analysis required for determining the need for dispatchable fossil power plants that existing merchant generators want to develop, several uncertainties are making it difficult to justify new capacity commitments at this time."

Regarding renewables integration, Draft IEPR on page 130 states,

"Increasing the reliance on variable energy resources requires that dispatchable generation resources be available to balance -- to balancing authorities in real time to provide additional regulation and load flowing services to make up for differences in forecasted and actual output. As OTC resource is required new dispatchable resources may," my emphasis, "be necessary."

The report goes on to note on the following pages that it anticipates the Public Utilities Commission will consider all of these issues in it's 2012 long-term procurement proceeding.

Regarding inertia, the Draft IEPR says on page 131,

"The system may also need dispatchable gas fire generation to provide inertia, especially in Southern California."

And I think one of the most important statements that the IEPR makes relates to something that's going on in this proceeding as well. Page 123 of the IEPR says,

"While the CPUC, California ISO and Energy Commission can make their own decisions about portions of the infrastructure that will be needed through time there is no overarching mechanism to ensure that all of the energy and environmental agencies can come to consistent decisions."

And I think the testimonies that have been submitted in this proceeding reflect that same kind of thing. We propose that the DRA's testimony that was made during the long-term -- 2010 long-term procurement planning process be entered as an exhibit. And their testimony basically focuses on demand response, transmission, ratepayer impacts, etcetera. And their conclusions are -- excuse me -- related to the three PPA projects that San Diego is proposing. There's not sufficient demand to warrant approval of all those projects at this time. They want to, as Dr. Jaske correctly identified, want to look at a number of different options including demand response, transmission options, and other things to make sure the ratepayers are adequately protected.

DRA and San Diego Gas and Electric have both agreed to delay conclusion of those three PPA projects until

after the results of the 2010 long-term procurement plan are released. And I understand they're supposed to be released later this month. And hearings for those three PPA projects are scheduled in January.

Regarding the ISO, Mr. Sparks, somebody who I respect, he reflects the ISO's appropriately cautious consideration of all the potential transmission system operating concerns. You know, he identified some of the preliminary results that had just come out regarding what the impacts may be in terms of closure of the EPS and three PPA projects. His earlier testimony identified that something comparable to CECP -- CECP or some thing comparable would be needed if Encina was closed down. And even then he noted that Units 4 and 5 may be required to operate longer.

And Dr. Jaske, his testimony appropriately respects -- reflects the commission's broader responsibilities and concerns over long-term planning. You know, he raises the analytical uncertainties such as the interactions between L.A. and San Diego related to the offset issue. He talks about the initiative related to the nuclear power plant shutdowns. He talks about the preliminary results of the California ISO's transmission studies.

All of those things are appropriate for the

commission to consider. And I hope that they will be reflected in the CPUC's 2012 long-term procurement plans. I also hope that they will be considered in the Energy Commission's 2012 IEPR update and its 2013 IEPR.

But there's one other entity that we have testimony from as important in terms of that mix, and that's the host utility. San Diego Gas and Electric company is the one responsible for, actually, resource adequacy within it's service territory, making sure that transmission -- they're the ones that own the transmission system and they're the ones that make sure the costs are appropriate and passed on to the ratepayers, and not excessive.

In terms of San Diego's statements, they've testified before the Public Utilities Commission that they believe that the three PPA projects are sufficient to allow Encina to retire and to meet all of their system needs through the year 2012.

It's obvious that each of those entities have a different perspective based upon what their responsibilities are. It's also obvious that there's a number of uncertainties, and experts have differences of opinion. My hope is that all of those things are again considered and brought into final decisions, if you will, in terms of the commission's future Integrated Energy Policy Reports, and also that specific decisions on procurement are presented by

the Public Utilities Commission in its 2012 long-term procurement planning process.

The energy world is one in constant flux, and we're seeing it reflected in this case. However, it leaves the committee and it leaves the full commission with the question of whether given those uncertainties, given the work that is coming up, the work that is yet to be done, whether it's appropriate if there are truly LORS noncompliance at issue in this case, or if it's appropriate to approve a project through a LORS override given those uncertainties, those complexities, and those future actions.

MR. THOMPSON: Does that complete your testimony?

MR. THERKELSEN: That's it.

MR. THOMPSON: Thank you very much.

PRESIDING MEMBER BOYD: Oh, the third time is a charm.

Well, thank you, Bob. I appreciate your testimony. This is Commission Boyd for those on the phone.

Mr. Garuba's testimony and yours and the suggestions of what the commission overall or what the committee have to consider in this case remind me of a couple of questions I'd like to ask at this point.

Mr. Garuba pointed out the responsibilities of San Diego Gas and Electric to look out for the local folks. And these are the people call when -- when -- when you have

difficulties. I'd just like to ask if we all understand that San Diego Gas and Electric is a private utility and that's their own utility, and they have some responsibilities to their stakeholders and their shareholders. Pardon me.

MR. GARUBA: Yes, sir. We understand that.

PRESIDING MEMBER BOYD: And -- and I'd like to make sure we all understand that CAISO is -- is a creature of the state, by that I mean it was created by state legislation. Although it's not a state agency I look at it as a creature of the state. In the country north of us they might call it a crown corporation. But in any event, it has a responsibility to oversee the needs of the entire system that it operates. And it does not have shareholders so it is not investor owned. Is that understood by all of us?

MR. GARUBA: If the question is directed at me, sir, yes, I understand the -- well, I think I understand the structure of CAISO, as well.

PRESIDING MEMBER BOYD: All right. And -- and I would think everybody should understand that the commission, in preparing its Integrated Energy Policy Reports and then carrying out the -- the policies and the questions raised in those reports, and Mr. Therkelsen was right on with his descriptions -- he's been knee deep in these himself in the past and I have no arguments with his descriptions.

But -- but I would point out, there's always hosts of other things that lots of people have to consider, including our agency, which makes it so difficult in cases like this for the -- the commission -- committee sitting up here. We have to weigh all these thoughts and considerations, not just with respect on override, but -- but with respect of listening to all the testimony that we hear. There are lots of things going on with some of these plants that go through my mind that Mr. Therkelsen certainly is familiar with. The -- the difference between simple-cycle plants and their efficiency and their emissions rate versus combined-cycle plants, the differences between internal combustion engine plants and their emissions, and all of the above.

So just so the audience understands, all of that is rolled into what this body sitting here and what the full commission have to deal with. So I just wanted to make sure that there is an understanding of those sitting here today that that's part of what we have to deal with. So I thank you for the opportunity to ask some questions.

HEARING OFFICER KRAMER: Okay. Let's go on then to Center for Biological Diversity. Well, let's see, you didn't have any witnesses so you can sit this round out.

That would just leave Terramar, it looks like.

MS. SIEKMANN: And may I understand, am I doing my

testimony on grid reliability and the three PPAs? Am I doing my testimony on grid reliability and the PPAs or am I doing them separately?

HEARING OFFICER KRAMER: All of them together. And you can add I overrides, as well, although you didn't -- you didn't have any testimony on that.

MS. SIEKMANN: I don't have any on it.

HEARING OFFICER KRAMER: Okay.

MS. SIEKMANN: But -- but my cross-examination will be later; is that correct?

HEARING OFFICER KRAMER: I think we're going to call them questions, so to get people out of the --

MS. SIEKMANN: Okay. I can go with questions.

HEARING OFFICER KRAMER: -- you know, the Perry Mason mode.

MS. SIEKMANN: Okay. Okay. So should I begin?

HEARING OFFICER KRAMER: Please. I think everyone can -- you can safely pull off the -- the foam covers, and then you'll be able to see the light.

MS. SIEKMANN: Okay.

MR. ROSTOV: Here. Why don't you try this one.

MS. SIEKMANN: Thank you. I can't reach it. Oh. Thank you.

Terramar would like to point out that through these proceedings SDG&E's responsibilities in providing grid

reliability in the San Diego region haven't really been addressed. Terramar has submitted -- that's why Terramar submitted the 227 pages of documentation of SDG&E's agreements with CAISO in their duties in providing grid reliability.

And just a few quotes from the documentation, page one of the Reliability Agreements Recitals,

"Where as the TE," and the TE is SDG&E, "The TE owns and maintains transmission facilities that are part of a bulk power system. It's registered with the NERC as a TOP," and a TOP is a transmission operate, "in accordance with NERC compliance registry process, and in either capacity may be subject to penalties imposed by the compliance enforcement authority for failure to comply wit the reliability standards."

And another quote from the Reliability Agreements Recitals is,

"Whereas the CAISO and the TE," which is SDG&E, "at times agree upon the delegation of responsibilities in order to ensure that the reliability standards and the applicable responsibilities identified in each reliability standard are satisfied."

And then my third quote is from the agreement on page two,

"Now therefore in view of the recitals set forth above

which the parties acknowledge and agree are accurate representations of the facts and are hereby incorporated by reference the CAISO and TE," SDG&E, "agree to the terms of this agreement that set forth the delegation of tasks and responsibilities of each party with regard to the applicable reliability standards."

I think those are very important to here because I feel that SDG&E's responsibility in the grid is often overlooked in these proceedings, maybe because they're considered a for-profit entity. But they have -- they have great, great responsibility in the reliability of the grid. And we -- we -- Terramar definitely respects and appreciates the incredible job that CAISO performs for us. But SDG&E also performs and incredibly important job with CAISO. And they have chosen the three PPAs to support the grid reliability while shutting down Encina 1 through 3 by 2013. This is supported by an independent evaluator also. Not only did SDG&E make this decision, but there's also an independent evaluator that is chosen to look at every single thing SDG&E does in that PPA process.

So I would also like to address the three issues brought up by Mr. Peters on June 30th. Oh, thank you. Number one was balancing the grid. And it's -- it's clear that that is in the -- in the application proceeding,

purposes and objectives, for a CECP that is one of the things that any applicant must do is their -- their project must help to balance the grid.

The once-through cooling compliance that Mr. Peters brought up can be accomplished by the three PPAs, as well as CECP. And the third issue that he brought up was reliability in the San Diego region. And that is why Terramar wants to read from a quote. Sorry. I'm sorry. That is why Terramar wanted to enter the CAISO and SDG&E agreements was to see that SDG&E is not only trying to take care of the needs, but also to take care of the reliability of the San Diego region. Thank you.

HEARING OFFICER KRAMER: Thank you. Somebody correct me if I'm wrong, but I think we've -- we've now gone through the opening --

MS. SIEKMANN: Oh, I'm sorry, Mr. Kramer. That was my grid reliability testimony. Now I have my PPA testimony. Sorry.

HEARING OFFICER KRAMER: Go ahead then.

MS. SIEKMANN: I prepared them separately. Okay.

Terramar is a unique position at this table. We are here and we have been here for over four years because we have grave concerns regarding CECP. We are the only people sitting at this table, except for POV, that are not

receiving a paycheck for our efforts. We have fire safety concerns, I-5 widening concerns, view concerns, noise concerns, coastal use concerns, impingement and entrainment concerns, economic concerns for a town that is going in the direction of tourism, and our list goes on. When we observe our regional utility putting out an RFO, accepting three projects the projects are not speculative as they are all under environmental review, and they have been offered PPAs by SDG&E.

We have lived with the power plant. Terramar has lived with Encina Power Plant for over 50 years. But we can not understand why after reading the Warren Alquist Act, the Coastal Act and lots of CEQA why these projects have not been analyzed in the PMPD or the errata. Our viewpoint is that of the public. We see all of this from the other side. We see the laws and their requirements, but we're the ones who have to live with the results. We're here to insist that the three PPAs are included in the cumulative, and especially the alternatives analysis of the CECP. Thank you.

HEARING OFFICER KRAMER: Okay. That does then conclude all of the -- the opening statements, if you will, and summaries.

So let's then go back and let each party ask their questions of the panel. I want to make it clear to the

panelists that if a question is directed to -- it can either be directed to the whole panel, and then those of you who feel you have an answer to add -- maybe I need the screen -- can do so. Or if somebody directs a question to an individual member of a panel the rest of you can, after that person answers, add your two cents, if you will, if you have something to add. Don't feel that you have to, you know, say something about everything.

And then after that round the committee will ask some questions, perhaps, and then there might be a few clarifying questions to follow that. And then we may be able to put this topic to rest.

So let's begin with, again, in the same order, with the applicant. Mr. McKinsey, did you have any questions?

MR. MCKINSEY: I do. And Ms. Hellwig is passing around a slide that I'll explain what it is, that I have a question to the panel, and particularly to -- to Mr. Sparks about.

HEARING OFFICER KRAMER: Is this a part of someone's testimony already?

MR. MCKINSEY: Well, it's -- so this is -- no. It's -- it is an exhibit that I think Mr. Sparks can -- can explain and -- and gain approval. It's one of the slides that is not included in staff's exhibit, which hasn't been

assigned an exhibit number yet. It's the CAISO presentation that Mr. Sparks -- that's attached to Mr. Sparks testimony which was about, I don't know, 300-odd slides. And this is one that just, I think, got admitted when staff was -- was going through. But it's a particularly important slide and I wanted to ask a question to the panel about it.

HEARING OFFICER KRAMER: Okay.

MR. MCKINSEY: But if you want I can first ask Mr. Sparks to just authenticate that --

HEARING OFFICER KRAMER: Well, let me --

MR. MCKINSEY: It would be our Exhibit Number 199U.

HEARING OFFICER KRAMER: I mean, was the staff's rebuttal testimony?

MR. MCKINSEY: Yeah.

HEARING OFFICER KRAMER: This was not attached to?

MR. MCKINSEY: This -- yeah, it's not included in staff. So we're submitting it as a separate exhibit.

HEARING OFFICER KRAMER: Okay. So just for the -- to be clear, Staff's rebuttal testimony is Exhibit 230. Okay. Yeah. It was in the -- the exhibit list I emailed around on the weekend.

MR. MCKINSEY: This would be our Exhibit Number 199U.

HEARING OFFICER KRAMER: U as in uncle?

MR. MCKINSEY: Yes, or uniform.

HEARING OFFICER KRAMER: Okay. And you will email this around eventually then?

MR. MCKINSEY: Mr. Sparks.

HEARING OFFICER KRAMER: Go ahead.

MR. MCKINSEY: So, Mr. Sparks, do you have the -- the two slides -- two pieces of paper? One is the cover from a presentation. It has Neil Miller's name on it. And then the second is one of those slides. And my questions are about that slide. Are you familiar with the slide and -- and did you oversee its preparation?

MR. SPARKS: Do I -- well, I -- do you have -- I want to make sure I have the right one. Yes. I -- I have it. I actually have it in my package, but I wasn't sure which slide. Yes.

MR. MCKINSEY: If I understand correctly, the LCR area is the three regions, and then the four -- the four are four different cases or conditions that are analyzed for; correct?

MR. SPARKS: That's correct.

MR. MCKINSEY: And the -- the lowest column is OTC range. And then there are a set of -- of numbers which reflect megawatts on each of the four conditions; correct?

MR. SPARKS: Correct.

MR. MCKINSEY: So if I understand correctly this

is CAISO's?

(Colloquy Between Hearing Officer and Court Reporter)

HEARING OFFICER KRAMER: We're off the record for a moment.

(Off the Record From 10:28 p.m., Until 10:31 a.m.)

HEARING OFFICER KRAMER: Okay. We're ready to go again.

Should we repeat the last couple questions, if you would, Mr. McKinsey.

MR. MCKINSEY: Yes. So Mr. Sparks, I had -- I'm going to try to put this where I can look at the red light the same time I'm talking.

I had asked you about the slide and -- and the -- that the -- under OTC range the -- the four sets of numbers reflect the -- the need under those four scenarios, correct, for that -- for that particular LCR area?

MR. SPARKS: Yes. And if you'd like I can elaborate a little more on what -- what this -- what work was done for.

We have been working with other agencies in the state to evaluate the transmission grid impacts of the once-through cooling policies. And this study was done for that purpose. It was, as you noted, in a package of other work throughout the state. And so this sort of analysis was done for all the local capacity requirement areas throughout the

state. This is just one -- one of them.

MR. MCKINSEY: And there's a note on this slide, an asterisk for the numbers which are the -- essentially the lower numbers under the OTC range, and that asterisk is also there under OTC range. And if I understand it correctly, this basically notes that this presumes that the current SDG&E procurement is completely built out; correct?

MR. SPARKS: That's correct.

MR. MCKINSEY: And so -- so if I -- so putting all of this together what do these numbers tell me under OTC range for -- for what's needed in -- particularly at the Encina Station, at least in that area?

MR. SPARKS: Yes. It doesn't say it on the slide, at least on this particular slide. The earlier slides mention that this is an analysis of the Year 2021, projections of Year 2021. And under those conditions with the San Diego alternative procurement plan in place there turned out to still be a need for additional local generation resources. And since this analysis was based on how much of the OTC would need to be repowered these numbers represented how much of the OTC, which in San Diego area there's only the Encina Plant, so that's how much of the Encina Plant would need to be repowered to meet the local capacity requirements in this analysis.

MR. MCKINSEY: And then my last question. So the

minimum number under any of these cases is the 231 megawatts; correct?

MR. SPARKS: Yes.

MR. MCKINSEY: And then the largest number is 950 megawatts?

MR. SPARKS: Correct.

MR. MCKINSEY: Great. That's all. And that -- that's -- that's the only question I have.

HEARING OFFICER KRAMER: Mr. Ratliff?

MR. RATLIFF: I believe I may have done the committee a disservice by taking the suggestion that I keep my witnesses opening testimony very succinct. So I would encourage the commissioners to try to satisfy themselves with any -- with -- with their own questions to the witnesses. I have no further questions for them.

HEARING OFFICER KRAMER: Well, I'm pretty sure we will.

The city?

MR. THOMPSON: Mr. Jaske is, I think, requesting that he be allowed to -- to speak.

DR. JASKE: It's not clear how to signal a witness's intention to speak --

HEARING OFFICER KRAMER: Okay.

MR. JASKE: -- if no one can -- I'll wave my hand.

HEARING OFFICER KRAMER: Yes, please.

DR. JASKE: Let's create a protocol.

I think it's important for the committee to understand for the record to contain a little more background about this work. As Mr. Sparks said, the agencies have been working to understand the implications of OTC mitigation for over three years now. We have collectively provided a proposal to the State Water Board that would respect their desire to fully mitigate OTC damage while assuring grid reliability.

The State Water Board staff and -- and the Water Board itself essentially accepted the proposal that was made jointly by the three agency staffs, and that means two important things. First, the dates that exist for OTC compliance are preliminary dates. They are based on the judgment of the three staffs' circa May 2009. And it was always the intent that there be additional analyses of the specific reliability issues of shutting down or closing individual plants or units within those plants, and that the Water Board would take that information into consideration, give it serious weight, and modify those compliance dates if it didn't find any contrary information in its review.

The Water Board has gone through that process once now for LADWP. It has modified the original compliance dates for LADWP units. And there's every reason to believe, as I said in my testimony, that 2017 is a good guestimate

for when Encina should have to comply with the OTC requirements. But there's also all the intent language within the OTC policy itself and the actions that the Water Board has taken with LADWP to show that they are seriously entertaining additional input about the -- the specific date by which individual units or whole plant should retire.

And this analysis that Mr. Sparks has mentioned and, frankly, that I mentioned in my own rebuttal testimony, you know, is the current view of what is the need for capacity at Encina, taking into account these four different environmental -- or excuse me, different renewable development patterns, none of which are certain. And that's why there are multiple of them because we don't know how renewables will develop. We don't know the extent to which it will be central station versus more local resources.

And to the extent that the four cases here, the four columns of this slide reflect different levels of DG, that has been taken into account. So for example, the environmentally constrained scenario has the highest about of distributed generation. It already believes that -- or assesses the consequences of higher levels of that particular category of resource than some of the other ones.

So these are elements that the ISO has been struggling to push through its analytic process, and it was able to surface these last week, conduct a stakeholder

meeting about them, and over the course of the next couple of months will be putting forward its draft TPP plan and documenting all of this in considerable detail.

PRESIDING MEMBER BOYD: Thank you, Dr. Jaske, for elaborating. I'm glad you volunteered. Mr. Ratliff was hoping that we commissioners would -- would fill the void with -- with questions, and perhaps we will. Some of us have been around so long that some of what you just testified to is so painfully familiar that we might not have chosen to draw it out on the table. But it is important that it be here for purposes of this one case, rather than one many of us have been doing for all these years in working with you.

And I just want to thank the staff for bringing Dr. Jaske into this siting case. He has incredible experience at the Energy Commission and has been relied upon heavily in areas like this. And I appreciate the fact that your point of view has no been made part of the record. And I also appreciate the fact that CAISO has invested themselves more deeply in this issue, because I know for the lay public a lot of this is just incredibly difficult to comprehend and understand and put into a context that -- that we -- that the commission grapple with on a regular basis and try to put into all the equations that we have to solve. And those equations are -- are affected by the

passage of time and new rules and regulations.

So I went to great pains to, over the weekend, reread and to read some for the first time all this testimony of the ISO and Dr. Jaske and other CEC staff. And I appreciate the benefit it's given me in -- in being able to better interpret some of these complexities.

HEARING OFFICER KRAMER: Okay. Let's go to the city then.

MR. THOMPSON: I'm kind of unfamiliar with the way this is all working. I prepared cross for the individuals.

Should I just kind of go through and start asking questions, recognizing that they're kind of for the whole panel and -- and then try and cross out as I go through? Is that -- is that the procedure that you want me to follow?

HEARING OFFICER KRAMER: Yes, that's fine. If you want to, you know, serve it up to a particular person first, that's fine as well.

MR. THOMPSON: Okay.

HEARING OFFICER KRAMER: What we're trying to avoid is a situation where somebody asks five questions to figure out who is the right person to answer the ultimate question.

MR. THOMPSON: Well, let me try this. And I guess I -- let me -- let me raise a couple of questions in regard to this slide and the September 8th study.

Is this a draft study or is it a final study?

MR. SPARKS: These are preliminary results that will go into a draft report at the end of January.

MR. THOMPSON: And that draft report --

HEARING OFFICER KRAMER: Mr. Thompson, you're kind of talking to the side of your mike. Can you drag it over more? Okay.

And so when one of you answers, if you could just say your name for -- for the court reporter.

MR. THOMPSON: And -- and would this -- would it become a final report because it would be approved by the ISO board, or how does it become final?

MR. SPARKS: That's correct. Our -- by the way, this is Robert Sparks, California ISO.

Our board approves our comprehensive transmission plan once it's all completed and reviewed by stakeholders with comments in -- in the March timeframe.

MR. THOMPSON: And would this then be submitted, for example, to the Public Utilities Commission for the LTPP process?

MR. SPARKS: I don't know that it will be submitted. It may be utilized. The -- the once-through cooling results, in particular, as Mike and I have mentioned, are -- is work that is being done with sort of an interagency work group. And so the ISO is doing the

analytics, but the California Energy Commission, the CPUC are also participated in the input assumptions and -- and digesting the results into OTC analysis that's going on in parallel.

MR. THOMPSON: Have you had any reaction from San Diego Gas and Electric to this draft report?

MR. SPARKS: They were present at the meeting on the 8th. I don't remember any comments on this -- these results.

MR. THOMPSON: My understanding of this report is that one of the assumptions was that all of the Encina Power Station, all 900-plus megawatts would be retired. Is that the case?

MR. SPARKS: That may have been a starting point. But then because transmission criteria violations or criteria concerns were identified the generation had to be brought back as a scenario where it was repowered, presumably, or continued to operate in -- in -- beyond the desired OTC compliance dates.

MR. THOMPSON: On -- my understanding is that on slide seven of -- of this report -- of the presentation identifies 964 megawatts of EPS being retired. And -- and if that's not the -- the final assumption, you know, please let me know here.

MR. SPARKS: Slide seven?

MR. THOMPSON: I believe so.

MR. SPARKS: I think I may not have that portion of the slide. And, unfortunately, the slides are renumbered for each presenter.

MR. THOMPSON: Oh.

MR. SPARKS: And -- and do you know the presenters name at the beginning of those slides?

MR. THOMPSON: I'm -- I'm afraid I don't. I don't.

MR. SPARKS: But I think I can elaborate. Okay. Oh, okay. Okay. So you're referring to a different -- these are not the slides that the applicant just handed around then? But those are -- yes. So that is a reference to the deliverability assessment as opposed to the ones through cooling assessment.

In the deliverability assessment, that's true, we did assume that the Encina Power Plant was completely retired without any replacement power to assess the deliverability of the renewable generation from Imperial County that is expected to be developed, as well as we looked at a sensitivity study with the -- the alternative generation which is expected to -- well, the Pio Pico and Quail Brush. So we -- that deliverability assessment did assume that Encina was completely gone, retired. And in that analysis we identified that essentially the generation,

such as Pio Pico and the renewables, would not be deliverable, which basically means they can not be counted for a local capacity requirement -- to meet local capacity requirements or system capacity requirements.

MR. THOMPSON: I'm nodding my head, but consider my level of understanding of this extremely technical material is -- is limited.

Are you aware that the applicant has stated that Encina Units 4 and 5 will be operated, I think the term used was forever, but at least the foreseeable future?

MR. SPARKS: I -- I may not be.

DR. JASKE: Mike Jaske, Energy Commission staff. In the OTC implementation process each generator owner is required to submit an implementation plan to the Water Board. The owner of Encina did so in April 11 as -- 2011 as required. In that document it identifies the retirement of Units 1 through 3 and the continued operation of Units 4 and 5 by refitting them to mitigate the impingement and entrainment damage that they currently cause. And so in effect they propose those units to continue in operation for the foreseeable future.

MR. THOMPSON: And -- and is -- and is that view of the world that 4 and 5 would continue in the foreseeable future reflected in the assumptions of -- of Exhibit 199U?

MR. SPARKS: This deliverability assessment, which

is the subject of that -- that exhibit, looked at a scenario, if you will, where Encina was retired.

MR. MCKINSEY: There we go, 199 is the slide that I provided. I think you're answering in reference to the slide he called slide number seven that -- which is part of the deliverability assessment. But he was asking you whether those assumptions relate to slide -- what is Exhibit 199, the slide I provided.

HEARING OFFICER KRAMER: And the other slide seven is part of Exhibit 230.

MR. THOMPSON: And I would appreciate either of you gentlemen, if I haven't asked this correctly please help me out here. What I'm trying to figure out is if Encina Units 4 and 5 are retrofitted to comply with OTC rules and continue on in the foreseeable future like the applicant says it would, would it -- would -- would -- would putting in the megawatts represented by those two units change your analysis in either of these reports?

MR. SPARKS: So if we go back to the Exhibit 199, I believe, which is the once-through cooling analysis of the San Diego area, that analysis, essentially the point of it was to identify how much of the once-through cooling generation, whether it's repowered or continues to operate, is needed to meet the local capacity requirements. And so there -- there was not an assumption that it was not

available. The -- the point of the analysis was to find out how much of it was needed.

MR. THOMPSON: So the -- if 231 megawatts are needed and 500-plus megawatts are provided by 4 and 5 would I correctly conclude then that there is no need for additional -- a third power plant at the -- there’s no need for the CECP because that capacity is being provided by Encina Units 4 and 5?

MR. SPARKS: If Encina Units 4 and 5 continue to operate through 2021, yes, they could meet the need.

MR. THOMPSON: Thank you.

DR. JASKE: Mike Jaske, Energy Commission staff. Let me add that the expectations, probably is the right word, of the Encina owner that Units 4 and 5 continue isn’t necessarily going to be the case in the future. Whether these OTC units can, in fact, mitigate impingement and entrainment consequences to three retired satisfy the OTC policy is very much in question. And so examining the full retirement of all Encina units is, in fact, a prudent scenario to -- to investigate because we simply don’t know and won’t know for some period of time whether in that particular case or in any of the cases along the coast whether the refitting, if you will, of the existing units will actually satisfy the Water Board’s requirements.

HEARING OFFICER KRAMER: Let me just break in to

ask the folks on the telephone, are you hearing Mr. Jaske okay?

UNIDENTIFIED FEMALE: Yes.

HEARING OFFICER KRAMER: Okay. Because he's relatively soft spoken, but he's doing the job. So go ahead.

MR. THOMPSON: But I think I did hear you say that -- that the owner of EPS has filed, I'll call it a compliance filing, April 1st that -- that -- that indicated that they at least believe that they can retrofit or -- or make modifications. Did I hear that testimony correctly?

DR. JASKE: I'm not sure exactly what I've said, but let me just restate it. They submit an implementation plan that is their desire for that outcome. There are many steps to go between the April 1, 2011 expression of their desire and approval by the Water Board of specific measures that would be technically feasible. And then the, in effect, execution of those engineering measures in such a manner that those costs can be recovered from the eventual purchasers of power from Encina 4 and 5.

So there are numerous unknowns between now and something in the 2017, 2018 range that is a refitted Encina 4 and 5 that can actually successfully bid into the market.

MR. THOMPSON: Dr. Jaske, I know that you are intimately familiar with various planning processes in

California. Can you explain for me the relationship between the Energy Commission's demand forecast, the Energy Commission's IEPR, the ISO's transmission planning process, utility procurement plans, and the Public Utilities Commission long-term procurement planning process?

DR. JASKE: I'll -- I will attempt to do so. So in a PUC decision of January 2004 there is essentially establishment of a linkage between the PUC's biannual LTPP process and the Energy Commission's IEPR. The PUC states that it will conduct and LTPP following and IEPR, it will make sure of the Energy Commission's demand forecast and perhaps other planning assumptions from the IEPR in that LTPP process, and that's a step toward coordination between those two agencies.

Somewhere in the 2006-ish range the ISO established a practice of also using the Energy Commission's demand forecast as the driver for loads when it's doing transmission assessments. That's now been underway since that period of time. And this particular set of analyses that Mr. Sparks was being asked questions about makes use of the Energy Commission's 2009 IEPR demand forecast for the geographic areas and under the load conditions that the ISO uses for these kinds of studies.

So there is a linkage between the Energy Commission's IEPR demand forecast and, in effect, the

proceedings of the PUC and the ISO that share an interest in these long-run electricity planning activities.

MR. THOMPSON: And for the 2010 LTPP processes, is my understanding correct that all of these studies go to the Public Utilities Commission?

DR. JASKE: I think Mr. Sparks was hesitating to say that the entirety of the ISOs 2011-2012 TPP process will go to the PUC. I think it's more correct to say that portions of the analyses that are reflected in that TPP would be packaged and submitted, you know, as testimony into the PUC's LTPP proceeding.

MR. THOMPSON: And it's my understanding further is that Public Utilities Commission looks for lowest cost, best fit, I think is the -- the quote that I've heard, in selecting -- in -- in selecting megawatt amounts for new capacity under their LTPP; is that correct?

DR. JASKE: There is a PUC policy of least cost, best fit, which I believe they have directed the IOUs to follow in selecting from among bidders of two RFOs that are supposed to be acquiring in the capacity that has been allowed for the IOUs to procure by the PUC.

MR. THOMPSON: And could you tell me where we are in the -- are we still in the 2010 LTPP process?

DR. JASKE: I believe that the portion of the 2010 LTPP process that was intended to identify the need for new

capacity has, in effect, been set aside. There is a settlement agreement between numerous parties that is before the Public Utilities Commission right now. I believe the expectation of those parties and other observers is the Public Utilities Commission is not going to make the long-term procurement decision in terms of new resource capacity requirements in the 2011 LTPP. There will, in fact, be a start to the 2012 LTPP rule making almost any time, within weeks probably. And -- and the expectation is that proceeding will conclude itself, get back on schedule by December of calendar 2012, and all of the analyses that Mr. Sparks is talking to today and -- and others will be input into that essentially one-year process that we'll attempt to conclude about this time next year.

MR. THOMPSON: The -- if I recall correctly the last long-term procurement plan for San Diego Gas and Electric that was approved by the Public Utilities Commission had a capacity number of something like 530, 531 megawatts. Is -- is that your recollection?

MR. MCKINSEY: I don't recall that specific number.

MR. THOMPSON: Okay. And that -- that process is on hold; is that right?

DR. JASKE: I think the way to say that is that the direction that San Diego Gas and Electric received from

the PUC in probably the 2006 LTPP proceeding resulted in issuing RFOs for resources. They acquired bids pursuant to those RFOs. They made what they believe was a prudent selection of resources that resulted in PPAs that have now been submitted to the PUC and which are now under consideration by the PUC, among the factors being the opposition of DRA to those PPAs. So it's all kind of a cycle with the results of previous procurement decisions by the PUC being executed by the IOUs and this multi-step process or with overlapping stages of procurement guidance by the PUC, efforts to satisfy that by the IOUs, going on while another round of long-run planning and procurement guidance is, in fact, being done simultaneously with procurement from a previous cycle.

MR. THOMPSON: I'm scratching my head. This is very, very difficult intricate stuff.

The DRA objection, was that -- if I recall DRA objected because they thought a lower amount of capacity was needed, not a higher amount; is that right?

DR. JASKE: My -- I have not read the DRA objection in some time. But my understanding is that their essential message is that it's dated or that the -- the results of the process is so dated and that circumstances are now different, that they propose that those PPAs essentially be set aside and wait for new procurement

guidance. And at that point there may be a judgment that they are desirable and -- and should go ahead or not, but that's it's, in effect, premature to make a commitment to those resources at this time.

MR. THOMPSON: If there's another member of the panel that's more familiar with DRA's protest, please.

MR. THERKELSEN: There it goes. This is Bob Therkelsen. We'd submitted as Exhibit 451 DRAs August 5th, 2011 testimony in the 2010 long-term procurement where specifically they talk about the three PPA projects and San Diego's needs going forward. And you know, with out knowing which pages my recollection of that testimony is that they did feel that San Diego's demand figures, need figures were too high. They felt that something lower was warranted, particularly when you account for different demand response energy efficiency and other programs, as well as transmission fixes.

So there was a difference in opinion between DRA and SDG&E with DRA having a lower number of what generation capacity would be necessary.

MS. SIEKMANN: Kerry Siekmann, Terramar. I also have read that

And then there was also a CAM issue on -- let me see -- cost allocation mechanism or CAM. The protest says that SDG&E has not met the CPUC's condition for allocating

costs using the CAM.

And then second point was that in the protest SDG&E has appeared to deviate from the requirements and the determinations made in the 2006 long-term procurement planning. And then also they did not see the need for the PPAs. Those were their three issues.

MR. RATLIFF: If I had a microphone -- oh, I do. Could I ask a question of Mr. Therkelsen?

HEARING OFFICER KRAMER: Mr. Thompson, were you finished?

MR. THOMPSON: I am finished with the ISO long-term -- that stuff. I -- the panel also has the responsibility for the alternatives and that. And maybe this is a good time to see if there are -- you know, to wind up this kind of portion, if you will.

HEARING OFFICER KRAMER: Well, the committee will have a bunch of questions too, so why don’t you finish. I guess Ms. Siekmann just jumped in.

Mr. Ratliff, do you have just one question or a couple?

MR. RATLIFF: Mr. Therkelsen, did --

MS. SIEKMANN: Mr. Kramer -- I’m sorry. I was just going to say, Mr. Kramer, I am part of the panel. So you asked -- the question was asked if someone on the panel had an answer to that question.

HEARING OFFICER KRAMER: Thank you. You're correct.

So, Mr. Ratliff, why don't you wait then until the next round of follow-up, the last round, I hope.

MR. THOMPSON: Mr. Monasmith, good morning. How does the staff describe the no-project alternative? What does that look like?

MR. MONASMITH: In terms of the -- the final staff assessment the no-project alternative in staff's determination would -- would result in the ongoing use of seawater. It would not result in the online highly efficient new generation.

Is this what you're asking about, the result of the final staff assessment or subsequent testimony that came out this summer? I'm sorry.

MR. THOMPSON: Actually --

MR. MONASMITH: Before I start going off on a tangent.

MR. THOMPSON: No. No. You're doing fine.

MR. MONASMITH: So, you know, in staff's evaluation the no-project alternative would, in fact, not be environmentally superior, that it would essentially result in the ongoing generation of all five units at Encina, and that the -- the benefits that staff determined would not be accrued. The elimination of over 200 million gallons a day

of once-through cooling on 1 through 3, the new highly efficient fast ramp generation would not be seen within this area with the Northern San Diego County.

And I need to go back over my notes, but those were the -- the two that come to mind immediately in terms of -- you know, and then we look at other projects, as well, within Carlsbad, within the alternatives' analysis, several of which the city had proposed or had brought forward to our attention, both Carlsbad Oaks North and -- and Cado (phonetic), Merkle (phonetic), a number of others that we evaluated. And those, too, all would have greater impacts associated with the linears, the development of those, both long- and short-term, would have greater impacts. And so to do nothing, though, the no-project alternative we felt would not be environmentally superior.

MR. THOMPSON: And let me bring it forward to the last few months when the committee asked the parties to opine on the -- whether or not the three power purchase agreements that SDG&E has signed, how those would -- how those projects would impact the alternatives and cumulative analysis.

And I guess my question is, first of all, one of philosophy. Let me make a statement and then see if I can get a comment from you.

It seems to me that the no-project alternative and

the alternative of the three PPA projects are almost the same, because if you do not have the CECP you may need to replace that generation. And where would you get that? You'd probably get it from the three signed PPAs. Now let me leave it to you to -- to comment, correct or whatever.

MR. MONASMITH: We looked at the -- the three PPAs, and we primarily looked at Pio Pico and Quail Brush, not so much at Escondido, because those projects, as you know, are in-house within our division right now and are undergoing review, so -- which is why we took exception with Mr. Garuba's testimony. Because in large part he drew conclusions on those two particular projects in terms of their environmental effects and impacts that -- and he was correct to say this morning earlier that the analysis for that does rest with us, and it's still very preliminary. We have not yet released our preliminary staff assessment for Pio Pico. That should come out later this month. Quail Brush is further off.

But in early determinations of what we have said, of what staff has said of those two projects in our issues identification report, for instance, we indicated that there are problems with -- potential problems with water, severe issues potentially with transmission. And so on large part we did not see that these projects would essentially -- when you compare it to the CECP substantially less of the

environmental effects or impacts that our staff determined with CECP. And we felt, in fact, that they probably could have more. But still, it's very early.

And so we were, as staff, we were hesitant to come out definitively and to say one way or another. So we took exception with -- with non-CECP staff, people who are not -- or excuse me, non-CEC staff, people who are not looking at this on a day-to-day basis, to make that determination. And likewise we also, I think, felt that -- I know that the city has disagreed with a number of the conclusions that staff drew on the -- on this project. We have gone through thousands of pages of analysis and workshops and meetings. But in the final analysis we found that the significant impacts with a lot of creative and hard issues, that we could mitigate these to a level of less than significant with visual impacts, with worker safety issues, with the water issue.

Land use has always been a problem, but we found that there was consistency. I know the city has taken action subsequent to draw that into question. But as -- you know, when we published this in November of 2009 we felt strongly that there was not impacts that could not be mitigated through our conditions of certification. And when we looked at the PPA projects from an environmental impact standpoint, to some degree with LORS consistency, we just

felt that they did not -- would not substantially lessen impacts when compared with that of a CECP and, in fact, could have more in terms of water and transmission anyway. So --

MR. THOMPSON: Do the -- do both -- you mentioned the issues identification report. Do both projects have the benefit of a staff issues identification report?

MR. MONASMITH: Yes. I'm -- I'm specifically thinking of the Pio Pico issues identification report where water was singled out, and transmission, given the fact that there are a couple possible routes that the transmission would take. There would need to be upgrades, a new substation. And again, that's -- this is staff's ongoing analysis. We have not published anything. I'm just -- you know, what is out there, what folks can read, and I'm not in a position to -- to talk with other staff and to ask for any kind of inside information on this. It's what's publicly available. It's out there and transparent on these projects, but it's very early. We're in the early stages of discovery on one, and about to public our preliminary assessment on another. So --

MR. THOMPSON: Okay. To answer my question, is there -- is -- you know, did I draw the right inference that there is a staff issues identification report for Pio Pico but not for Quail?

MR. MONASMITH: I believe there is one for Quail. I've read the -- I can not say that I've read it. I've read the one for Pio Pico. That's the one that I'm thinking of which indicated an issue with water, and also talked about transmission problems potential.

MR. THOMPSON: And you're working hard to solve the water? I think I've seen letters from Mr. O'Bryan to the Otay Water District trying to get their support for a reclaimed water source.

MR. MONASMITH: That -- sorry. I had the wrong -- okay. I thought I had to push it down.

I know that there is concern, obviously. Any kind of potable water use, and I know it's only two-acre feet per year with Quail, although that has to be trucked on by two trucks every day, and that unto itself creates problems. But with Pio Pico usage of several hundred acre feet of water, of potable water in a county that imports everything, that's clearly problematic. And I think they were -- the earliest date if everything went perfect for reclaimed online would be the end of 2014, which would coincide with the online date of the project if it were to go through into the 12-month licensing process. But that, obviously, is -- gives staff hesitation.

So again, when you look at these compared to the CECP they are, you know, equal in terms of impacts, and in

some areas potentially worse. But in -- in our estimation they would not substantially or significantly reduce or lessen environmental impacts when compared to that -- those of the CECP.

MR. THOMPSON: It strikes me that you have quite a bit of information on at least two of the three projects. What was the reason you did not do an analysis similar to the alternatives analysis that was contained in the FSA two years ago?

MR. MONASMITH: Well, I think part of that, quite honestly, had to do with timing on my part. You know, we make these analyses in -- in terms of a published analysis that would be similar in line to -- to that that we did for the FSA and started with the PSA, which had a lot of involvement from the city, was subject to a lot of workshops, a lot of public comments and discussions. There was not timing in the committee order between the time when we were asked to look at these in terms of the PPA. So we focused it on the areas which Mr. Jaske and others spoke to, which Mr. Walters spoke to in terms of the cumulative impacts on air quality. On the others we made a quick assessment in terms of comparative values, not one that would have been published or anywhere to the depth that we did on the FSA.

But again, that was an issue of timing. One was a

result of -- of over three years. The other, I think the timing between the committee order and when staff was to come back, I think was two weeks perhaps. You know, again, we put stuff out last summer after the June 30th committee order to talk about Land-2 and -3. And we worked very hard to do those analyses on the environmental impacts of Land-2 and -3. An we had about a month to do that, and we did. We published on time.

And then the committee order that came out later in November in terms of the discussion on the PPA just would not have given us enough time to do a comparable analysis to what we did on the FSA or PSA.

MR. THOMPSON: Thank you. Let me move on a little bit. I'll try and keep this -- this short to the applicants. We have a couple questions, I believe, of -- of the applicants, a couple questions.

Mr. Theaker, am I pronouncing that correctly?

MR. THEAKER: Theaker. Thank you.

MR. THOMPSON: Returning, let me -- let me go to the -- to the testimony of December 8. On -- on page one you refer to the -- to the San Diego area. What area is -- is that you're referring to? Can you give some idea of the geographic bounds of -- of that term?

MR. THEAKER: Roughly speaking, the San Diego area is an area that's south of San Onofre Nuclear Generating

Station, down to the border with Mexico, over to the border with Arizona. It's more of an electrical area than a geographical area. But that's a rough geographical approximation.

MR. THOMPSON: You state that the CECP would enhance the reliability in the San Diego area by providing in-area power and quick-start combustion turbines and reactive power.

Are you aware that SDG&E has signed power purchase agreements with Pio Pico, Quail and Escondido?

MR. THEAKER: Yes.

MR. THOMPSON: And do you know the approximate location of those three proposed projects?

MR. THEAKER: Less so. I know that one project is going to be located at the site of Otay Mesa. I'm not expressly familiar with the locations of the other projects.

MR. THOMPSON: And would it be fair to say that each of these projects is in the San Diego area

MR. THERKELSEN: Yes, they are.

MR. THOMPSON: -- that you described? And Escondido has testified to the PUC -- I don't know if you know this or not -- that each of the three contracts are quick-start generation units. Is that your understanding of the technology that's used in these PPA projects?

MR. THEAKER: Yes.

MR. THOMPSON: Do they also provide -- what were the others, reactive power and quick-start -- quick-start capability and reactive power?

MR. THEAKER: They would, though they would not provide especially reactive power support that's equivalent to -- that would be -- that would be provided by the CECP. And that's because reactive power support is highly locational dependent. So they would provide locational reactive support within that San Diego area. But again, since reactive power is location dependent the effect that they provide would be different than the effect that would be provided by CECP.

MR. THOMPSON: And you also state that one of the benefits of the project would be to assist the ISO in dealing with operational challenges, dealing with variability of increasing amounts of renewable generation, the renewable -- I think that's referred to often as the renewable integration?

MR. THEAKER: That's correct.

MR. THOMPSON: SDG&E in their testimony before the Public Utilities Commission stated that those three PPA projects would also provide flexibility for renewable integration. Do you agree with that?

MR. THEAKER: I agree. In -- in the meantime, since I provided that testimony in November there's been new

facts come to light, specifically the ISO is proposing to give a risk of retirement designation to a Calpine facility which is actually located outside the ISO balancing authority. And their premise is that this flexible generation capacity, which is similar to that that would be provided by the project, is needed to meet a projected deficiency of flexible ramping capability in the 2018 timeframe in the range of 2500 megawatts.

MR. THOMPSON: And the significance of -- what is the name of that?

MR. THEAKER: The Sutter Energy Center.

MR. THOMPSON: The Sutter. And the significance of Sutter? You included that.

MR. THEAKER: Yeah. The significance is that the -- the ISO projects a substantial deficiency of flexible ramping capability. CECP could meet it. These peakers could meet it. Sutter could -- in fact, based on my understanding of the ISO’s proposal to provide this risk of retirement designation, the deficiency is so substantial that all of these projects would be necessary to try to meet this deficiency.

MR. THOMPSON: How about the existing Encina Units 4 and 5, would they provide that capability?

MR. THEAKER: They would provide some. They would provide not quick-start capability, but they would provide

some ramping capability.

MR. THOMPSON: In -- in -- in the applicant's testimony by another witness, I believe, they make the statement that a power purchase agreement is a central document in development and would be required for this project to -- to go forward. Do you agree with that statement?

MR. THEAKER: I'm sorry. Could you repeat the question?

MR. THOMPSON: That in order for this project to go forward a power purchase agreement with a load-serving entity would be required.

MR. THEAKER: The commercial arrangements of whether a power purchase agreement is necessary for a project to go forward is not within my area of expertise.

MR. THOMPSON: Okay. Fair enough. During the hearings in February 2010 David Vitiver, who is hopefully still on vacation and not somewhere where it's raining, testified that if San Diego Gas and Electric has said that it does not intend on entering into a power purchase agreement with a generator in the northern part of the county because it doesn't feel it's necessary, I would assume, I would conclude that San Diego doesn't feel it's necessary. Again, if this is in the power purchase agreement area and you're uncomfortable answering that,

that's fine.

MR. THEAKER: Okay. And I am. That's not my sweet spot. Thank you.

MR. THOMPSON: Thank you. Give me a second here.

Mr. Valentino, he's on this -- this panel? No? I shouldn't have taken the second.

MR. MCKINSEY: You can give me a prelude of the questions you want to ask him, if you want.

MR. THOMPSON: I may take you up on that, John.

Mr. Rubentstein, good morning. In your testimony on page 11 you say, "First it is necessary to determine whether emission increases associated with the proposed modifications are significant."

I think you're talking about the PSD?

MR. MCKINSEY: Mr. Rubenstein is a witness, also, on another topic, the -- the PSD. And that may be the questions you're asking, which is the next panel.

MR. THOMPSON: You've sensed my confusion of this -- this format. I mean, I think that that's it for this panel. Thank you.

HEARING OFFICER KRAMER: Thank you. Do you have a question? Oh. No.

Next would be Mr. Rostov.

MR. ROSTOV: Thank you. I first have -- sorry -- a few questions for Mr. Sparks. And I'm recognizing the --

the way the panel is designed.

So Mr. Sparks, could you briefly describe what it means to have an RMR designation? And I wanted to emphasize briefly.

MR. SPARKS: Yeah. RMR stands for reliability must run. It is basically a contract between the ISO and the generator to ensure that the generator continues to operate and provide reliability services.

MR. ROSTOV: Thank you. Does any of the Encina units currently have an RMR contract?

MR. SPARKS: The RMR contract? No. But the RMR contracts were essentially replaced by the local capacity requirements through the CPUC resource adequacy proceeding. And most -- at one time there was over 10,000 megawatts of RMR contracts, and now there’s only about 100 megawatts, I believe, of RMR contracts because the local capacity requirements requires the -- the load-serving entities to sign capacity contracts with the generation to meet the local needs that was previously met by the RMR contracts. And Encina, I believe, is under contract currently.

MR. ROSTOV: When you say load serving entities, you mean SDG&E in this instance if we’re talking about San Diego?

MR. SPARKS: That’s the largest load serving entity in the area. I believe there may be others.

MR. ROSTOV: Your testimony is that -- oh, sorry.

DR. JASKE: Just to add to what Mr. Sparks said, typically about 15 percent of the load in the IOU service areas is served by electricity service providers. And the IOU itself through bundled service tariff arrangement serves about 85 percent. And so 15 percent of San Diego's 4000 megawatts peak could be, you know, in the range of 600 or 700 megawatts of load that are served by entities other than San Diego Gas and Electric.

MR. ROSTOV: Mr. Sparks, your testimony -- let me try to read and hold the button at the same time, so I apologize if this looks awkward.

Your testimony is that you need 20 megawatts of power or the electrical equivalent location; is that correct?

MR. SPARKS: That's correct, based on the 2013 to 2015 load capacity requirement analysis.

MR. ROSTOV: What would be the electrical equivalent location?

MR. SPARKS: That is in the area. The overloaded facility that is -- that drives that 20 megawatt requirement is identified in the load capacity requirement study. And so essentially it would be any generation that alleviates that overload. And for this particular overload it is fairly localized around the Encina. I mean, there may be

two or three buses, substations, electric ejection points where generation could be installed. At -- at this time only the Encina generation exists that can meet that need.

MR. ROSTOV: So if I understand what you're saying, the locally equivalent location or -- or another way to put it, the boundaries of the Encina subarea are only the Encina Power Station?

MR. SPARKS: Well, given that that's the only generation that exists today, not to say that other generation could be sited at an adjacent substation or injection point, that may also be effective.

MR. ROSTOV: Well, is Escondido in this subarea?

MR. SPARKS: No.

MR. ROSTOV: Okay. How far away is that, do you know?

MR. SPARKS: Escondido from Encina? Fifteen miles.

MR. ROSTOV: Okay.

MR. THERKELSEN: Excuse me. Excuse me. This is Bob Therkelsen. One thing that I would like to add on that is the City of Carlsbad specifically sent questions in the CPUC proceeding and asked the question about that 20 megawatt deficiency and how they would respond to that. And in our exhibit, I think it's 455, responses from SDG&E, they indicated they felt that the can be corrected by $1 million

transmission system upgrade. So they had identified a transmission fix for that. That just was their response.

MR. ROSTOV: Yeah. And just for the record, I believe that's Exhibit 455, answer 6.

I'm pushing it the whole time, so it's just intermittent.

Does the 2012 local capacity technical analysis that you referenced by a link include -- identify an Encina subarea?

MR. SPARKS: No, it does not.

MR. ROSTOV: So why not?

MR. SPARKS: The load is lower. The -- the customer demand in 2012 is -- is lower. There's low growth between 2012 and 2013 and 2015.

MR. ROSTOV: When was the subarea created, the Encina subarea?

MR. SPARKS: I believe it was the -- the 2013 to 2015 long-term LCR report, or it was a subsequent one of a 2012-2014. It may have been in there. I'm not sure. Or I'm sorry, a previous one, not a subsequent one.

MR. ROSTOV: And if I understand the -- these LCR requirements, they're based on a one-in-ten-year occurrence; is that correct?

MR. SPARKS: Yes. The load forecast is based on a one-in-ten-year extreme heat scenario.

MR. ROSTOV: And when you're talking about this 20 megawatts, that's needed in a one-in-ten-year scenario; is that correct?

MR. SPARKS: The load would -- is expected to be at that level, at least the load forecast. Given that there is a 20 megawatt need which grows over time, I'm not sure whether it would occur in a one-in-five or a one-in-two load. But that analysis was at a one-in-ten.

MR. ROSTOV: And can you briefly explain what it means to be at a one-in-ten-year analysis versus a one-in-one-year analysis?

MR. SPARKS: Actually, Mr. Jaske is probably more familiar with load forecasting. And would you like to take that?

DR. JASKE: Mike Jaske, Energy Commission staff. The -- the -- there are several alternative conventions for different kinds of planning. So for customary resource planning there's a convention that 1-in-2 peak loads, that means one -- you know, 50-50 essentially, is the basis for long-term resource planning. But that also is accompanied by a 15 to 17 percent planning reserve margin. And so the uncertainty associated with higher levels of peak load is encompassed as an element within that 15 to 17 percent planning reserve margin.

When the ISO does local reliability assessments

the convention is different. It's to assume one-in-ten peak load conditions, but not to also impose a planning margin. And the idea is to test the system for this local reliability purpose under stress conditions that would, if not satisfy, potentially meet the loss of load within that whole load pocket.

MR. ROSTOV: So those stress conditions are an extreme occurrence under the modeling; is that correct?

DR. JASKE: They would happen roughly nine -- one -- ten percent of the time.

MR. ROSTOV: So how -- how often would -- would these 20 megawatts need to be operating at the Encina subarea under a 1-in-10 occurrence?

MR. SPARKS: Well, the operating procedures which determine the dispatch of the generation have not actually been developed. This is just a methodology for identifying the need. To -- so to determine, you know, how many hours a year in 2015 would be substantial speculation.

MR. ROSTOV: I mean, is it less than 100? Because my understanding, this one-in-ten wouldn't be -- is an extreme situation. So I'm just trying to get a general idea.

MR. SPARKS: Certainly, the number of hours the load would be at its maximum under the -- under those, it would be less than 100 hours. However, there are all kinds

of grid conditions where during maintenance outages of transmission, maintenance enforced outages of transmission and generation where this generation may be used more or needed more.

MR. ROSTOV: So -- so you're saying it needs to be available but it wouldn't run much? It could even run less than 100 hours; is that correct?

MR. SPARKS: Well, generation is run for many reasons. We've talked about the renewable integration needs. And so -- but just for the grid reliability it would -- it would not be a substantial percentage, or I guess I should say for those particular transmission constraints identified.

MR. ROSTOV: Thank you. I have a slightly different question now.

When you were -- when you did the transmission studies did you use the same -- the same assumptions that CPUC or that ISO used when modeling the 33 percent renewable models for CPUC?

MR. SPARKS: The ISO did provide testimony in the long-term procurement planning process based on assumptions that were endorsed by the CPUC in the long-term procurement planning process. Those assumptions were at a lower load forecast, assuming more energy efficiency and demand responses. I understand it.

The ISO subsequently performed similar analysis which it supports and presented to our board, which included -- it's had the same sort of load assumptions as what were used in the transmission planning analysis.

MR. ROSTOV: So -- so they're different than the CPUC assumptions; is that what you just said? The CPUC assumptions -- I don't want to be --

MR. SPARKS: I believe two sets of analyses were done, one with the CPUC assumptions and one with the ISO assumptions, yes.

MR. ROSTOV: You also say that there could be, in your testimony, that there could be a comparable project. And I was just trying to figure out if you could give examples of what a comparable -- comparable project would be for -- for filling this 20 megawatt demand.

MR. SPARKS: Well, that goes back to the discussion we had of the definition of the area, which is fairly small. And a comparable project, generation project would be one located in an area to alleviate that constraint on the transmission line.

MR. ROSTOV: So it would have to be a generation project? Could it be a demand response?

MR. SPARKS: Well, it would be a very localized demand response. To date I don't think we have any demand response that localized. And you know, my understanding,

there's also some other -- and Mr. Jaske refers to a desalination plant that -- that could create a huge jump in load in the area. And so it would take a substantial amount of very, very localized and controllable demand response to -- to meet that need under those conditions.

MR. MCKINSEY: (Off mike.) (Inaudible.)

MR. ROSTOV: Sorry. I have question. It's -- it's a ghost. But thank you for pointing it out, and I appreciate it each time.

So SDG&E says there's no need for new generation with the PPAs. So do you disagree with that, that essentially the PPAs could alleviate the need for the CECP, the project that's at issue here?

MR. SPARKS: Well, the -- the concerns that remain are the -- the 20 megawatt need that -- that we have talked about. The other concern is -- is the Exhibit 199, which we've also talked about, which indicates that there is a need beyond that provided by the PPA projects.

MR. ROSTOV: Okay. I just have -- actually, I had a question about 199, so I'm glad you referenced it.

So is -- does 199 actually refer to need at Encina or is that need in the San Diego area?

HEARING OFFICER KRAMER: Well, let's just be clear it's 199U, as in united, for the record.

MR. ROSTOV: Oh, sorry.

HEARING OFFICER KRAMER: No, that's okay. I'm just trying to --

MR. ROSTOV: I did not know that, so thank you.

MR. SPARKS: The need under Exhibit 199U is in the -- either the San Diego or the Greater San Diego area. I should point out that there's also the Exhibit 230, I believe, which is the -- the rebuttal testimony which shows that the location of the generation to avoid transmission constraints and allow the counting of generation is actually further north. The -- the generation in the location of the PPA projects is not deliverable or accountable for resources adequacy, or at least it creates resource adequacy counting problems for generation in that vicinity, unless the generation is actually located north of the constraints identified in that deliverability analysis.

MR. ROSTOV: Okay. But if I understand San Diego Gas and Electric's testimony, the exhibit that Mr. Therkelsen referred to, they were saying that they could deal with the -- that thermal overload with $1 million fix; is that correct?

MR. SPARKS: Yeah. The absence of the desalination plant, perhaps that -- that is correct. An analysis with the desalination plant, whether or not that -- that minor upgrade is sufficient is unknown to me.

MR. GARUBA: Mr. Rostov, I'd like to dive in.

Actually, I would like to follow up on that.

In the city discussions with San Diego Gas and Electric we have talked with them about if there's a long-term need for local reliability sub-50 megawatts, that would be within the city's purview. We would absolutely consider putting in a peaker plant to help support that.

We recognize the energy demands of the desalination plant. And so we're not unwilling to help be part of the solution, but it was in the context of a sub-50 megawatt and not a 500 megawatt plant.

DR. JASKE: I don't believe that the question that Mr. Rostov asked and the answer that Mr. Sparks provided line up. Mr. Sparks's assessment of the deliverability implications of Pio Pico and Quail Brush are to a whole large number of transmission system upgrades from the locations of those plants going north, not -- and not -- and are dissimilar from and not intended to be the same as a much narrower transmission upgrade to deal with the small Encina load pocket.

MR. SPARKS: Yeah, that's correct. Thank you, Mike. I -- if the question was meant to be beyond the 20 megawatt need in the Encina subarea, Mr. Jaske is exactly right.

MR. ROSTOV: Actually, you answered my question, but Mr. Jaske raised a new point, so I'll address that now.

In your testimony you're saying that there need to be some new transmission to address the larger point that Mr. Jaske just relayed to us; correct?

MR. SPARKS: Yes. The Exhibit 230 identifies several upgrades which would be triggered as needed in the event that the Encina generation was retired, no Carlsbad generation, but with the PPA projects.

MR. ROSTOV: And did you estimate the cost? I believe there was a cost estimate in here; is that correct?

MR. SPARKS: No. We do not have a cost estimate for this latest deliverability assessment. It -- we would -- we would need to do further analysis for that.

In the original testimony in August there was some similar constraints, although we hadn't done this analysis yet and we just referred to it generally that -- that under the scenario that the deliverability analysis was done that we were concerned there would be transmission constraints that would drive more transmission. And -- and we were correct, there is. In -- in the August testimony it just talks about constraints just delivering renewables out of Imperial Valley but not -- but it did not include the PPA projects in that analysis.

MR. ROSTOV: And I think I believe in your -- in the supplement testimony, I guess we call it, the August testimony that there was a number of about 100 million. Was

that just a back-of-the envelope type idea?

MR. SPARKS: Yes. There was that estimate in there.

MR. ROSTOV: Okay. And then my understanding from the PMPD is that the -- and someone can correct me if I'm wrong -- that the project will cost 500 million. So are you saying that the $100 million fixes, the project is a better solution, the $500 million fix is a better solution than the $1 million fix?

MR. SPARKS: I guess I don't follow the question, and I think it may be a little beyond --

MR. ROSTOV: I'm just saying is the project is going to cost $500 million, is my understanding. And my understanding is that you're advocating -- your testimony supports the project. But you're also saying that there could be another fix, that back-of-the-envelope could cost about $100 million.

So I'm saying despite the price difference you -- you still believe that CECP is the better solution?

MR. SPARKS: I was not aware of the -- the cost of either of the projects. That's typically confidential information that we don't have.

MR. ROSTOV: So you didn't analyze the costs, in other words?

MR. SPARKS: No. We did not have all the costs.

MR. ROSTOV: Okay. There's a strong possibility, or at least let's assume if you don't believe, but I believe there's a strong possibility that the project won't be built by 2015 -- and PSD issues and other things are going to come up later -- so is the ISO exploring contingencies for that if the CECP is not built by 2018?

MR. SPARKS: The -- the testimony or my testimony refers to the continued operation of Encina Power Plant through, I believe RMR contracts.

MR. ROSTOV: But I thought ISO had moved away from RMR contracts.

So you're not -- you don't have an RMR contract now on Encina, but in five or six years you might want to do an RMR contract; is -- that's your testimony?

MR. SPARKS: If there -- if there is a need for the generation and it is not contracted through other means an RMR contract, I believe, would be the last resort. There are other types of contracts. The capacity procurement mechanism, CPM, I'm not an expert on the CPM or the RMR contracting process. We identify the technical needs and the exact contracting is -- is mostly done by others at the ISO.

MR. ROSTOV: And I guess I just have a summary question. And -- well, let me ask, so you are recommending approval of the project, the 540 megawatts; is that correct?

MR. SPARKS: The -- the permitting of it's application? Yes.

MR. ROSTOV: Okay. And is it correct that you're basing your recommendation on a 20 megawatt need at the Encina subarea, plus the fact that the project can give flexibility to integrate renewables?

MR. SPARKS: There are several reasons that are in the testimony. One of them is the subarea need. The other one is certainly the renewable integration needs. The overall San Diego need which is referred to in Exhibit 199U is -- is another reason for permitting the plant. And then also the deliverability concerns identified in Exhibit 230 is -- is one more additional reason. So there are many reasons for -- for our support permitting of this land.

MR. ROSTOV: Okay. But the overall -- the overall need in Exhibit 199U, you said earlier could go to the San Diego region. So the PPAs could cover that overall need; is that correct?

MR. SPARKS: In 199U the PPAs would contribute to the overall need, but they were not sufficient.

MR. ROSTOV: I guess we're at a disadvantage because the applicant only gave us one page of this document.

So you're saying the 231 -- so for example, on the environmentally constrained case you need 231 megawatts.

You're saying that the PPAs that are more than 230 megawatts would not cover that?

MR. SPARKS: Yes. The -- as the little asterisk denotes, the lower values with the asterisk identify the amount of overall San Diego and Greater San Diego area need beyond the PPA. It assume, basically, the PPA projects are in operation, contributing to the need, but then there's a need beyond that of 231 megawatts in the environmentally constrained and ISO base case, and then all the way up to 531 megawatt need above what's being provided by the PPA projects in -- in the trajectory case.

MR. ROSTOV: I have one more question about this chart, actually. So the ISO base case is based on your own assumptions, and the trajectory case, environmentally constrained case and time constrained case are based on CPUC assumptions. Are those the -- what's the word -- scenarios is the word -- are those the scenarios used in the renewable integration models in the long-term procurement planning?

MR. SPARKS: The -- the four renewable scenarios in this chart, out of the four the -- the three, the trajectory, environmentally constrained and time constrained were the original portfolios from the LTPP and were analyzed in the renewable integration work that the ISO did in that proceeding.

The ISO base case is an updated cost constrained

case where new information on distributed generation and transmission constraints were taken into account to come up with -- and also stakeholder input, all was taken into account to create this -- this updated scenario. And -- and it -- it was, because it's fairly new, was not analyzed in the renewable integration work yet.

MR. ROSTOV: Okay. But if I understand what your testimony earlier said that ISO base case actually used a different demand forecast than the CPUC assumptions, because you believed the assumptions from CPUC were too conservative or too low, I guess?

MR. SPARKS: Well, these are all just 33 percent renewable portfolio scenarios. They don't represent the load or the demand represented in -- in the scenarios. All four scenarios looked at the same load levels.

MR. ROSTOV: Okay. I'm going to move on to different questions because we didn't have the rest of this document. And this was -- this document was a surprise on us. So thank you for that.

I think I have some questions for staff now, and I might circle back.

HEARING OFFICER KRAMER: Well, let me ask you first, because I think Mr. Sparks wanted to leave by noon; was that correct?

So do the remaining parties have any questions for

him?

So let's skip then to Power of Vision.

We'll come back to you, Mr. Rostov, and then Terramar.

MR. ROE: Good morning, Mr. Sparks. I always enjoy talking to a fellow engineer.

MR. SPARKS: Good morning.

MR. ROE: I think Mr. Walters mentioned in his introduction that he was California licensed engineer. Are you also a California licensed engineer?

MR. SPARKS: Yes, as indicated in my testimony I'm a professional engineer licensed in the State of California, electrical engineer.

MR. ROE: Thank you. That almost matches the 35 years that I was licensed.

Mr. Sparks, are you aware that a previous representative of the CAISO, Mr. McIntosh indicated that load needs in this area could be met by a plan located anyplace else?

MR. SPARKS: I'm aware that Mr. McIntosh has provided testimony for this proceeding. I believe his testimony was primarily focused on the renewable integration and -- and --

MR. ROE: Yes. But he was specifically asked, I guess, by Ms. Siekmann whether the need for additional

energy in this area could be met by the power -- power -- power plant or power plants in locations other than that proposed by CECP.

I ask this question because I detect a discrepancy between what you are saying here today and what Mr. McIntosh said at the prior hearing.

MR. SPARKS: Yeah. I think that, again, Mr. McIntosh's testimony was focused on the ramping requirements and the quick-start requirements for balancing authority area control, as opposed to some of the load capacity requirements and the deliverability requirements which are in my testimony.

MR. ROE: I'm just wondering about these differences of opinion. And out of curiosity, was your testimony proved by anybody at the ISO? Have they read it and approved it?

MR. SPARKS: Yes.

MR. ROE: And so you're representing in your testimony the official opinion of ISO, not your personal opinion?

MR. SPARKS: That is correct.

MR. ROE: Okay. Mr. Sparks, in your analysis of the grid reliability did you take into account the reliability that comes from distributed generating sources such as those provided in the PPA versus concentrating all

of the power source in one area like the CECP does in terms of potential outages and reliability? Was that factored into any of the -- this particular document.

MR. SPARKS: The -- excuse me. The Exhibit 199U refers to the four renewable portfolio scenarios. And each of those renewable portfolios contains some level of distributed generation. As Mr. Jaske pointed out earlier, the environmentally constrained portfolio contained the most. It actually had approximately 9000 megawatts of distributed generation across the state of California. And I could possible find the amount of that in the San Diego area, if I can get through my -- and -- and there was approximately 194 megawatts of that in the San Diego area. I believe that was actually under production, not 9000. That’s actually a nameplate value. So there probably was more like 300 or 400 or nameplate, primarily roof -- in fact, it was entirely rooftop PV.

MR. ROE: Could you repeat that? I don’t --

MR. SPARKS: Well, I just was clarifying that the 194 megawatts was rooftop PV production assumed in the analysis coming from probably 300 to 400 megawatts of rooftop PV nameplate capacity.

MR. ROE: I have before me two documents relating to the 2011-2012 transmission planning process. I think I detected you saying that there are other parts of this

overall document that relate to transmission lines in the north-south corridor.

MR. SPARKS: Can you be a little more specific?

MR. ROE: Well --

MR. SPARKS: Are you referring to a particular exhibit?

MR. ROE: -- you mentioned something about the 230 KV transmission line that comes from the north down to the San Diego area, and that there was some leads, I believe, that that be augmented?

MR. SPARKS: Yes. The Exhibit 230, which is the rebuttal testimony, identifies several transmission upgrades which would be needed or generation located north of those constraints.

MR. ROE: So -- and did you -- in making your judgment in response to Mr. Rostov's question that you think the CECP is -- is a good solution, did you weight that against the improvements, the recommended improvements, I think, that your document states and that north-south transmission line as far as the reliability to this node or the San Diego area as a whole?

And I ask that question because in frequent documents from the CEC they refer to the fact that what the San Diego region needs more than additional power plants in this area is an augmentation of the north-south tie line.

Would augmenting the north-south tie line provide the grid reliability that you may be attributing to the CEC project?

MR. SPARKS: Well, the precise north-south tie line is not exactly clear to me. Some -- some discussions have or some consideration has been to the effect of completing the connection between the Suncrest Substation, which is the western terminus of the Sunrise Powerlink, and completing that on a 500 KV facility level up to the Southern California Edison system somewhere between Valley and Serrano. That would be the ultimate north-south tie line; is that what you're referring to?

MR. ROE: Well, I'm not sure which ones that -- that the commission was referring to. It could be those or those that come south along the coastline from -- going north to -- from San Onofre and south from San Onofre. It could be those.

MR. SPARKS: There's --

MR. ROE: Did you examine that?

MR. SPARKS: We have looked at those type of transmission upgrades. And suffice it to say they're -- they're major transmission upgrades requiring new corridors. And -- but they -- those upgrades would certainly serve the need of -- of what we're attributing to the Carlsbad Energy Center.

MR. ROE: Because I also require Mr. Theaker's

testimony, he was talking about the recent blackout and mentioned that one of the contributing factors when the system got overloaded here, the 230 KV tie line up to the north tripped out.

And so the question is, on reliability, that's an indicator that perhaps additional transmission lines would have solved that problem and also would obviate the need for the CECP at that particular node.

MR. SPARKS: Those type of upgrades would certainly alleviate the local capacity needs, but they would not help system capacity needs or the renewable integration needs. And there probably would still be some voltage support required. But -- but certainly, major upgrades like we discussed just now would -- would eliminate the -- the concerns identified in Exhibit 230. The 20 megawatt Encina subpocket probably would not be eliminated by such upgrades but other upgrades potentially could.

MR. ROE: Dr. Jaske, I appreciated your testimony. It sounded very knowledgeable. I think you responded to some questions regarding the DRA's objection to San Diego Gas and Electric's PPA before the California Public Utilities Commission. And in your wisdom and experience would you say that VRA could raise the same objections if the CECP had a PPA and came before your California Public Utilities Commission? Or in other words, what might be

different?

DR. JASKE: I think the general emphasis of DRA, perhaps, you know, in as much as its charter is to reflect the ratepayer perspective and to seek to minimize costs while satisfying, you know, all other considerations and constraints. So they would presumably miss to see a wide array of options and the cost of those options, and there are other pluses and minuses compared to one another and, you know, the least-cost choice.

HEARING OFFICER KRAMER: Dr. Roe, let me break in here. Since you've -- let me break in since you've asked, apparently, your questions of Mr. Sparks, and he's trying to get out of -- to leave so he can go to another appointment.

MR. ROE: Time to go.

HEARING OFFICER KRAMER: Well, I want to ask if any other party has any questions. And then I think the committee will have a couple, as well.

So, Ms. Siekmann?

MS. SIEKMANN: Mr. Sparks, how often does CAISO say that a plant offers too much power to a grid?

MR. SPARKS: I'm not quite sure I understand the question.

MS. SIEKMANN: Do you ever say no?

MR. SPARKS: Well, the ISO does not permit power plants. And in our -- but in our local capacity studies,

the LCR studies, if you will, that -- that are referenced in the -- the testimony, we identify a certain amount. And in many areas there is an excess. So in effect, any time there's an excess we're saying we don't need those for local capacity.

MS. SIEKMANN: So you never us them?

MR. SPARKS: Well, those projects, essentially, the procurement, the ultimate procurement is done by the load-serving entities. And so they're at liberty to go and contract with the generators that they see fit. And -- but in our requirements we indicate that there should be more than adequate amount for them to procure and potentially some that would be left un-procured.

MS. SIEKMANN: So basically, you're happy to see them just in case, excess capacity --

MR. SPARKS: The ISO has --

MS. SIEKMANN: -- just in case?

MR. SPARKS: The ISO certainly does not have an interest in -- in excess repair costs. We certainly want to make sure that there is an adequate amount to meet reliability, no more, no less.

MS. SIEKMANN: May I ask you, I didn't understand for sure this exhibit --

MR. DI CAPO: If I may, I'd like to make a clarification about the law with respect to the question.

Bill Di Capo for the ISO.

The questions that you were asking of Mr. Sparks suggested that the ISO might have some discretion to quote "say no" with regard to a power plant that seeks to interconnect to the high power grid.

What I wanted to clarify, though, is that under the Federal Power Act under open access generation seeking to connect to the interconnection grid is -- has the right to do so. And what the ISO does, in conjunction with that, is simply determine those upgrades that are necessary to interconnect to the grid.

So with -- with respect to a plant coming to us seeking to interconnect, we have no discretion to deny them.

MS. SIEKMANN: I wasn't really speaking to that. What I was saying was that I would assume if I were at CAISO I would want capacity available, so -- for any situation.

MR. DI CAPO: Well, which is -- what the ISO does, in a large part, is balance loads and resources. And we do face situations of congestion and over-generation in -- in which case too much energy on the system can be, in fact, a detriment.

MS. SIEKMANN: Well, all I'm saying is that if CAISO is here to say, yes, we want CECP or, yes, we want the three PPAs, I wondered if they ever came and said, no, we don't need it.

So on this Exhibit 199U I -- could you clarify for me again, does the 231 include the 3 PPAs? Does it include the CECP?

MR. SPARKS: So the first question is, yes, the 231 includes the 3 PPAs, but it does not include the CECP.

MS. SIEKMANN: Did you create this particular exhibit just for this hearing? So it's -- is this not -- is this part of your big study or is this just for this hearing? I'm not quite sure.

MR. SPARKS: As is described in the rebuttal testimony, the ISO is aware that the PPAs exist. And because of that it was a reasonable scenario to include in this analysis, given that it's, you know, a specific possibility and, you know, beyond just a random assumption. So we included that particular possibility as -- as a scenario in the analysis.

MS. SIEKMANN: And it's true -- is it true, CAISO can not offer contracts to new facilities for power, power contracts?

MR. SPARKS: And as I indicated to you earlier, that's kind of beyond my expertise and beyond my testimony.

MR. DI CAPO: Just excuse me, but a clarification. We do not have power contracts with -- with power generations. So --

MS. SIEKMANN: Well, my background is accounting,

and I know when I'm doing budgets and I have -- and need revenues, and I also need to spend money on certain things, maybe I up my numbers up because I know they're going to get pulled back.

Are these numbers that I see here that are your needs? I mean, do -- do you have like a margin of error in this?

MR. SPARKS: The one-in-ten load forecast to a certain degree covers some of the uncertainty, but otherwise there -- there is -- there is no intentional margin built in. The reason we do this analysis in the open-stakeholder forums is for others to review our models and our assumptions and -- and comment and for us to respond to those comments and -- and, you know, full transparency in the analysis.

MS. SIEKMANN: And so does the -- does CAISO normally operate at the full capacity that they've requested to meet their needs, or are you always kind of in a situation where you're looking for more capacity and -- and transmission in order to support your needs?

MR. SPARKS: For a long-term resource planning there are a tremendous number of uncertainties. And, actually, as Mr. Jaske pointed out earlier, we have 115 to 177 percent planning reserve margin. And the certain -- so certainly we do intentionally have that margin built in, but

we're not -- we're not actually going beyond that amount.

MS. SIEKMANN: When CAISO puts --

DR. JASKE: Excuse me. Mike Jaske, Energy Commission staff. I think it's important to understand that the LCR analysis that the ISO has undertaken now in the 2011-2012 TPP process and the particular results for the San Diego area shown here in Exhibit 199U are the first time the ISO has done an LCR assessment ten years forward for year 2021. The energy agencies have been pushing the ISO to do this exact analysis so that we could understand the geographic constraints, the electrical system constraints that -- that ought to be available to the PUC, and for that matter to publicly owned utilities to guide the location, and generator community to guide the -- the proposals for new power plants.

We haven't had this analysis before. We haven't understood that there are these issues that -- that need to be explored and to understand the degree to which they are uncertain. And so these multiple scenarios, you know, are a way of testing the extent to which these local capacity requirements differ across these different renewable build-out scenarios.

MS. SIEKMANN: Does CAISO look at possible transmission fixes that would solve situations, such as the Encina 20 megawatts, or are -- or do you just really look at

capacity needs?

MR. SPARKS: In this -- well, in typical LCR studies they're -- usually they're short term, one year out. And so transmission upgrades are typically not an option.

In this once-through cooling analysis, given that it's out in the future we -- we do intend to perhaps identify some upgrades which could be alternatives within the time that we have remaining in this planning cycle.

MS. SIEKMANN: This -- do -- do -- with the three PPAs do you need CECP for San Diego region or the larger Southern California region which would include L.A.?

MR. SPARKS: This analysis in 199U focuses on just the San Diego area.

MS. SIEKMANN: Did the -- the document that you came out with December 8th, I thought I read something about L.A. too.

MR. SPARKS: There are certainly interactions between the -- the generation and -- and load in the San Diego area and the generation and load -- there are transmission dependencies between the two areas but they're -- they're somewhat second order, but they do exist. So if there's a substantial reduction in -- in generation dispatch in the San Diego area, more imports, the results of LCR analysis in the L.A. Basin does vary.

MS. SIEKMANN: And does this 199U, does it include

Sunrise?

MR. SPARKS: Yes.

MS. SIEKMANN: Okay. Has ISO participated at the CPUC hearings regarding the three PPAs?

MR. SPARKS: I have not. I'm not sure.

MR. DI CAPO: If I can I -- Bill Di Capo. I can provide some background about our role.

Generally, a PPA is submitted to the PUC for approval, largely with regard to its rate. And the ISO does not express an opinion on retail rate issues, so we don't enter into that area.

MS. SIEKMANN: Thank you so much for your time.

MR. ROE: May I ask Mr. Jaske another question?

HEARING OFFICER KRAMER: Well, we're trying to -- to get Mr. Sparks out the door.

MR. ROE: Mr. Sparks. I meant Mr. Sparks.

HEARING OFFICER KRAMER: Yeah. Go ahead.

MR. ROE: Mr. Sparks, yeah. I liked Ms. Siekmann's question about comparability of error in your forecast. I used to teach forecasting at the university, as well as having been involved in power. Back before forecasting I was a power plant engineer in my youth. And -- and so I'm somewhat concerned about the numbers you have in 199U.

As I think you've candidly admitted they are long-

range estimates going out ten years. That's always a very dangerous kind of forecast. But for the moment, accepting the numbers you have here, now could you comment on the possibility that these loads forecast 2021 could be met in at least two other ways. One was already referred to by Dr. Jaske when he said that the State Water Board already relaxed their requirements for the operation of the -- one of the Los Angeles plants, and therefore could well do the same in regard to units 4 and 5 of the EESP plan. And such permission would certainly cover any of the loads that you indicate here on 199U.

And the other possibility -- the other possibility is while you've made your projections to 2021 my understanding is that SDG&E's projections, as testified before the California Public Utilities Commission, runs out 2020, where they state that they don't -- they don't anticipate these needs. However, they go on to say that that's always subject to review and that they may have to consider issuing another RFO sometime in the area of 2017 or 2018 which could provide the necessary additional generation.

So this exhibit doesn't seem like such a red flag to me that the committee has to say, well, yes, it's absolutely necessary that the CECP be built.

HEARING OFFICER KRAMER: Was there a question in

there?

MR. ROE: Can you comment on the other two possibilities that could cover this OTC needs?

MR. SPARKS: The two possibilities being that essentially the OTC compliance dates be relaxed --

MR. ROE: Yes.

MR. SPARKS: -- or deferred?

MR. ROE: For -- for units 4 and 5.

MR. SPARKS: I'm sure Mr. Jaske might have something to say about that. But -- so to me that's just continued operation of Encina Power Plant as is. And that -- that would be an alternative that would basically base the feasibility. I'll let Mr. Jaske jump in on it.

MR. ROE: Okay. Thank you.

DR. JASKE: As I said earlier on in response to some other question, the three agencies, the Energy Commission, the PUC and the ISO have accepted the Water Board's goal for OTC mitigation. The arrangement that has been worked out between the energy agencies and the Water Board is that the Water Board will be flexible in the dates for compliance of specific plants or specific units within plants, respecting unknown issues at the time the preliminary compliance schedules were -- were entered into the policy, but that the objective of OTC mitigation is supported by the three energy agencies.

So there is no -- that would be a complete breach of, you know, the arrangement we have to think that Encina Units 4 and 5 could continue operating indefinitely in an unmitigated manner.

MR. SPARKS: And I think you had another question in there, or a point, which was just take a look again at this at around 2017 or something.

MR. ROE: Yes. And you're referring to SDG&E's timeline for possible other RFO?

MR. SPARKS: Well, I don't have much to say about that, except at this point in time our projection for that time is -- is these particular needs. Could that be different in 2017 with, like you said, with forecasting, and there's uncertainty.

MR. ROE: And lastly, this is not the final approved document that you presented before the committee. Do you know when the final approval of this document will be made?

MR. SPARKS: We're -- we're currently preparing a 2011-2012 transmission plan report which will be put out in -- on our website for stakeholder review and comment at the end of January 2012.

MR. ROE: The end of January.

And my question then is to Mr. Kramer. Would the revised PMPD come out before that time or after that time?

HEARING OFFICER KRAMER: Well, okay. I'm -- you probably want to just have us wait to --

MR. ROE: Well --

HEARING OFFICER KRAMER: -- to consider that. Your mike is not.

MR. ROE: I would want you to disallow all this testimony since it's not the official proved document of the ISO. And I do that on the basis of one of our earlier hearings when I tried to reference a preliminary IEPR report, and I was told that we could not consider it because it was not yet the final document. So on that basis I'm wondering why you're even considering this at this time if it's not the final approved document.

HEARING OFFICER KRAMER: What is this, Exhibit 199U?

MR. ROE: Well, the 199U and the previous one, the -- the whole testimony.

MR. DI CAPO: May I provide some background, Mr. Kramer? Again, this is Bill Di Capo from the ISO.

The process for the transmission planning is that there is a preliminary -- an initial report that is issued for public comment, and then the public stakeholder comment is taken in, and then as Mr. Sparks referenced there -- there is a final report, and the final report is presented to the board for approval. But this is not a situation

where ISO has not issued a document. What ISO has issued is a preliminary document.

MR. ROSTOV: Can I ask a question about that? My understanding was this was a slideshow based on the preliminary results and the draft documents not coming out until January; is that correct, Mr. Sparks?

MR. SPARKS: That’s correct. The analysis is done for the most part. What’s really missing is the report behind it.

MR. DI CAPO: Right. So there’s actually --

MR. SPARKS: But the analysis is a fairly objective analysis based on assumptions that really have -- they’re inputs from the CPUC, the CEC, which has been fully vetted. And so now the analysis, other than possible errors which we would find fairly quickly, the numbers are not expected to change.

MR. DI CAPO: What I was speaking to is the underlying report. What this document -- what these two documents comprise is a slide presentation for a stakeholder event that occurred on December 8th where the stakeholders came to a meeting, an all-day meeting and were presented with ISO representative discussion of the preliminary document. And this is an issued document with regard to that meeting.

HEARING OFFICER KRAMER: Okay. So this appears to

be a report of the -- correct me if I'm wrong, Mr. Sparks -- the -- the results of the modeling that will then be -- form the basis for this final report; is that right? You turned it off.

MR. SPARKS: That's correct.

HEARING OFFICER KRAMER: Okay. Well, on that basis we're not -- nobody's asking to enter the final report. We've just got this table of results. Everyone has had an opportunity to ask questions about it, so we'll deny the motion.

The committee is, I think, going to have a couple of questions of Mr. Sparks, and we want to get him out of here. I think everybody has had their chance to question him. Does anyone want to tell me I'm wrong in that regard? Mr. Thompson?

MR. THOMPSON: I have -- I have one clarification question on the 199U, and it can go to anybody on the ISO, I suppose. But if I could ask it of Mr. Sparks before he leaves?

HEARING OFFICER KRAMER: Go ahead.

MR. THOMPSON: Actually, part A and part B. The numbers here assume that the LSEs achieve the 33 -- I think it's 33 percent RPS standard; is that correct?

MR. SPARKS: That is correct.

MR. THOMPSON: But they do not include the over

500 megawatts of Encina Units 4 and 5; is that correct?

MR. SPARKS: That's correct. They do not include 600, I believe.

MR. THOMPSON: Six hundred?

MR. SPARKS: Yeah.

MR. THOMPSON: If that 600 megawatts were included in this as available capacity in 2021 would you still recommend that the CECP be built?

MR. SPARKS: Well, you're -- if -- if -- if we're going to make the assumption that they'll continue to run the somewhat inefficient plants for the -- for the local capacity needs they would work. But the CECP is -- is, my understanding, a more efficient plant and presumably at that time period a more reliable plant, as well. So it would -- it would be preferred to have a more efficient, more reliable plant at that location. But the location is the key and -- and it's certainly in the right location.

MR. THOMPSON: Thank you.

HEARING OFFICER KRAMER: Okay. Let me start off on behalf of the panel.

Mr. Sparks, you used -- you used the term in your testimony "electrically equivalent location," and do I have it correct that by that you mean it's an area that would be electrically equivalent to the Encina location that would meet those local, the very local capacity unit needs?

MR. SPARKS: Yes. There's -- there's the Encina subpocket area, as well as the deliverability needs which are north of those constraints, as well. Those are both fairly localized which not all generation in San Diego meet.

HEARING OFFICER KRAMER: And, Mr. Jaske, you -- excuse me -- used the term "the vicinity" at one point in your testimony, I believe. Is that basically the equivalent of the term we just discussed with Mr. Sparks as you used it?

DR. JASKE: Yes. I think they are similar in their intent. Although let me add that electrically equivalent frequently needs to be understood in a context. So electrically equivalent could be used in the context of satisfying these small Encina subarea requirements. That would be the extremely limited set of choices that were electrically equivalent. There's electrically equivalent, you know, from the local overall San Diego area local capacity requirement perspective. There's electrically equivalent from a thermal overload perspective. There's an electrically equivalent from -- from a systems stability perspective. All of those could denote a different breadth and scope of options.

So you have to understand the context of that phrase to understand what -- what -- what kind of a qualifier electrically equivalent means.

MR. LYLE: In the context that you used it is it equivalent -- that's probably not the best word to use -- but to Mr. Spark's term?

DR. JASKE: I think we are generally using it the same way. But -- but what -- what I'm not clear is if the audience is understanding that there's nuances to how we may be using it that are being bored over by some of these questions.

HEARING OFFICER KRAMER: So, Mr. Sparks, you already said that the Escondido Plant was not within this -- this local area, the Encina electrical equivalent area. Just to be clear -- I think I know the answer -- is either the Quail Brush or the Pio Pico facilities in that area?

MR. SPARKS: No, they are not.

HEARING OFFICER KRAMER: Thank you. Did anybody on the panel have any questions?

PRESIDING MEMBER BOYD: Thank you. Yes, I do. And I'm not sure -- this is for the panel. And I'm not sure -- maybe one to these -- Mr. Sparks can comment, or others may well be more -- Dr. Jaske. But I'll ask my one that Mr. Sparks may want to comment upon.

The discussion we've had today about future forecasts and the desperate desire of the state to have better and more and longer range forecasts ever since the electricity crisis of 2000, 2001, and the discussion of one-

and two-type forecasts, taking into account contingency reserves that everybody has struggled to get that are now up and around 15 to 17 percent, to provide for contingency, to provide an insurance policy, this I take as a commissioner is to cover contingencies that do occur like the great southwest power failure that none of us anticipated would happen but it did, the fires that occur, particularly the -- the terrible San Diego fire, but other fires that we don't plan for but that do happen, or any other capricious act of mother nature that -- that gives us a problem.

And I'm sure -- I'm presuming that the contingency reserve that some people seem to question is an insurance policy to try to keep the lights on during events like that. Is that the view of the ISO?

And even Dr. Jaske, is that kind of the view of the CEC staff?

MR. SPARKS: Well, yes, I believe so, that the -- the 115 to 117 percent planning reserve is more of a system-wide ISO balancing authority area reserve. But the one-in-ten load that we talked about provides more of the local reserves, if you will.

But also important is just the dispatchable generation itself in the right locations, quick-start, fast-ramping generation in the right locations also helps prevent against some of these events you -- you have raised.

PRESIDING MEMBER BOYD: Thank you.

DR. JASKE: So, Commissioner Boyd, let me just add to that, that as I said five or ten minutes ago the -- the innovation has been brought forward by the ISO in this round of the -- of its 2011-12 TPP process is the extension of the local capacity requirement analysis out to the ten year time horizon. We have not had that before, as Mr. Sparks said just a few minutes ago. Local capacity requirements were only, in fact are still now only, you know, enforced on a load-serving entity on a one-year-ahead time horizon. ISO has been doing three- to five-year-out studies which still aren't enough to really understand where there are deficiencies and to pursue most of the full range of options before you'd get to that point.

Now that we -- we have this first round of ten-year-out analyses, and we expect the ISO to continue to do that in the future, we'll have a much more sound basis for understanding these locationally constrained issues and making intelligent choices, whether that means pursuing specific power plant proposals or deferring OTC mitigation for a couple years or bringing the focus through other preferred resource types to develop in that particularly constrained area. We're -- we're just now at the beginning stage of really understanding what the suite of choices are to be satisfied and -- and -- and transmission options,

which haven't yet been fully assessed and serviced to the public.

PRESIDING MEMBER BOYD: Thank you, Dr. Jaske. And I think you and I have a desire for the desire of the -- the people in the room in the audience to understand a lot of the stuff. I think those of us at the front table here do understand that, but I think it's important to get it on the record and -- and for the benefit of the audience.

My next question, I think is for Dr. Jaske because as commented more than once, the role of the CAISO in power purchase agreements is -- is somewhat tenuous -- or that's not even the right word -- restrained and what have you. But what I wanted to ask is if you perhaps can help us understand what percentage of power purchase agreements that are submitted eventually are successful? Do you have an estimate, the data, a ballpark figure? I have one, but I'd rather you give us one.

DR. JASKE: The traditional generating facilities that the -- the agencies, the ISO are used to dealing with, thermal power plants of the sort, of the one that -- that this application is before you is quite high. In the context of renewables that number is much lower. Maybe -- I've seen numbers like maybe only 50 or 60 percent going to be successful. That may itself be too high when numerous considerations that, you know, that are now better

recognized, such as, you know, the land use and -- and environmental impacts of PV and -- and other technologies with very large land requirements in sensitive areas are fully taken into account.

So it's probably more speculative about how many projects will actually go to actual construction and operation than -- than the history that we know to date.

PRESIDING MEMBER BOYD: Thank you. I think your answer makes the point that -- that -- that having a power purchase agreement submitted for approval is no indication that a particular plant will ever see the light of day and is not -- well, I'll stop there and go on with this statement that -- that may be puzzling to some, but it's been on the record before.

Frankly, the existence or nonexistence of a power purchase agreement is not something the Energy Commission takes into account in siting cases in terms of it is a necessity or non-necessity for an approval by any siting committee. It's an interesting element, but since the commission had removed from its authority more than a decade ago the question of need, although this becomes part of an interesting and important dialogue but is not one of the boxes that get checks -- checked off to necessarily dictate whether or not we can or can not as a siting committee, and ultimately a commission, approve a plan.

Which is why merchant generators have every right in this state to apply to a license with absolutely no guarantee of a power purchase agreement. And it's our responsibility to go through the siting process with all of its many, many checks and balances before determining recommending approval or not. So this -- all this testimony enters into this as, in many cases, items of -- of interest, but they are sometimes not legally a requirement for us to take into account.

And I think people need to -- to understand that as we debate all these points of the existence or nonexistence of power purchase agreements or what guarantee there is anybody who has one will get a plant built, because those plants, after they have even have a power purchase agreements are going to go through this siting process and are going to be subjected to all the environmental, air quality and other kinds of considerations that have gone on here for quite a number of years.

So just while the panel is still empanelled I just wanted to make that point and see if anybody had any additional comment on it, then I think we can let, after Commission Douglas, let Mr. Sparks meet his noon obligation late.

ASSOCIATE MEMBER DOUGLAS: I have no questions, so --

MR. THERKELSEN: This is Bob Therkelsen. I guess it would -- there we go. I would like to add a little more to what Commission Boyd was saying in the sense that the -- as Dr. Jaske was referring to, renewables have a pretty high fillier rate (phonetic). In fact, I believe it is about 30 to 40 percent of the projects that get permitted, renewable projects that get permitted, actually don't go forward.

I think that with respect to natural gas projects, the number of projects that are permitted and go forward to actually being built is -- is, as he indicated, is very high.

I think the other question is if a project has a permit and a PPA are they likely to go forward and be built? And the answer to that is, is there's a reasonable likelihood of that. If a project has a PPA and no permit, obviously it won't go forward. But if a project has a permit and no PPA I think there is a very high likelihood under the current climate that it will not go forward. So I think those are of considerations to -- to balance in terms of all of that discussion that you had.

And -- and, hence, there is, you know, a question of the probability of something going forward based upon whether it has a permit and/or a power purchase agreement.

HEARING OFFICER KRAMER: Thank you. Thank you, Mr. Sparks. God speed to you.

Although we're not quite done with this panel, because by my -- by my count Mr. Rostov, Dr. Roe, Ms. Siekmann, and the committee may have some more questions for some of the other witnesses, we haven't had a break since we started. So let's take a 15 minutes break, and a true 15 minutes, which means be back here by about 1:03 by my time.

PRESIDING MEMBER BOYD: Well, 15 minutes from -- from whenever you're --

HEARING OFFICER KRAMER: Yeah. Right now I have 12:48. So we'll see you back then. We're off the record.

(Off the Record From 12:48 p.m., Until 1:13 p.m.)

HEARING OFFICER KRAMER: We're ready to go back, and we'll go back on the record.

For the people on the phone, most of you are muted now, maybe not by your own choice, and that's because I was trying to track down a hiss we were getting here in the room. So I've forgotten who wanted to be muted and who isn't, so I'll just let you muted. And you can un-mute yourself, or if you're on the computer I think you can also -- there's a raise your hand function so you can get our attention. When it does come time for public comment I certainly will un-mute everyone. And since we have no parties, as such, on the phone, or witnesses, I don't think there's any real harm in having everyone muted.

So backing up to the topics of grid reliability,

the power -- three power purchase agreement projects, and overrides, to finish up where we left off we -- we cut some people off to -- to allow Mr. Sparks to finish up.

So, Mr. Rostov, did you -- did you complete yours?

MR. ROSTOV: No, I didn't.

HEARING OFFICER KRAMER: Okay. Go ahead.

MR. ROSTOV: Okay. So I have questions now for staff, understanding that this is a panel. But -- and I'm not sure who the right person is, but maybe the question will reveal who it is.

So on the no -- on the no-project alternatives is it correct that it's staff's testimony that they can't make projections about the no-project alternative because ISO has ultimate authority over when Encina 1 through 5 will close?

MR. RATLIFF: I don't know who is supposed to answer that either, but if you want I'll try.

DR. JASKE: Mike Jaske, Energy Commission staff. I don't think it's quite right to say that ISO has ultimate authority. They have clearly plenty of influence. But the consensus is probably not -- is too strong of a word but, you know, after a time their -- their views need to be reconciled with those of the other players.

MR. ROSTOV: Okay. Well, I guess I'm referring to page three of the staff's supplemental testimony. And it seems to indicate that staff is unwilling to do the no-

project alternative analysis because they're saying that we won't know until 2017 whether energy efficiency goals and demand response goals are met. And I just wanted to make sure that was a correct summary.

MR. RATLIFF: I object to the question on the grounds that I think it -- it doesn't seem to me to correctly characterize staff's testimony.

MR. ROSTOV: Well, I think the question is self-evident and staff could answer it.

HEARING OFFICER KRAMER: Overruled. Staff can -- if the staff feels that it doesn't properly characterize the testimony they can explain why.

MR. WALTERS: From an air quality and greenhouse gas perspective we did analyze the no-project, including continuing operation of Units 4 and 5. I know it's under the original testimony, and so we didn't redo that in the -- in the supplemental testimony. In the supplemental testimony we just identified the comparisons between the PPA projects with the CECP.

MR. ROSTOV: Okay. Thank you for that clarification. I actually wasn't at this moment asking about greenhouse gases and air quality, but I understand your answer. was asking more just about the -- would the PPAs be the equivalent of -- of the -- the project in terms of reliability.

And it seems that staff raised a bunch of concerns that they couldn't really project what ISO would do in 2017. So I'm just trying to understand if staff did not want to take a position because there are deferring to ISO.

DR. JASKE: At the time that the supplemental testimony was written it wasn't clear how the ISO would be assessing the -- a future in which these various preferred resource options were large portions of the resource mix. So these bullet points in the middle of page three reflect an understanding, you know, a shortcut of the summary.

Subsequent to that point the ISO has, in fact, produced these scenario assessments that are largely thought of as renewables, but also include distributed generation for the area -- the Los Angeles area. They have, actually, assessed futures with energy efficiency and demand response. That was part of the materials released on December 6th and talked about at the stakeholder meeting on December 8th.

So I think there's clear evidence that the ISO is now moving forward to assess, you know, something more like a full suite of preferred resources. And the Energy Commission staff intends to continue working with the ISO to facilitate that kind of analysis in the future.

MR. ROSTOV: So -- but for the purpose of this analysis is there sufficient information among Energy Commission staff to make your own conclusions, that's my

question, about a no-project alternative?

MR. RATLIFF: Could you clarify what you mean when you say the no-project alternative now? The conclusion, what kind of conclusions are you talking about?

MR. ROSTOV: I mean the no-project alternative Mr. Monasmith described earlier.

MR. RATLIFF: Can you -- can you -- can you -- can you give us a little more information on what you're actually asking though? I don't -- I don't understand the question.

MR. ROSTOV: I believe I asked, does the energy -- did the Energy Commission when they did this testimony, did they need to rely on ISO or do you have -- did you have sufficient information to make your own alternatives analysis, to analyze the no-project alternatives? And Mr. Monasmith, if you want that as --

MR. RATLIFF: And did we -- did we try to do our analysis with disregard to what the ISO says or how the ISO analyzes load management and energy efficiency, which is what page two is about, the differences seem -- the qualifications that the ISO would put on those kinds of measures, I'm -- I just don't understand what you're asking and that's -- that's -- that's the difficulty I have.

Is this directed to Mr. Jaske, and if so is it directed to page two or --

MR. ROSTOV: It was directed to Mr. Jaske. And I would like to know if he could answer the question.

I don't want to have a dialogue back and forth about my questions with you. If there's an objection and it's sustained I'll change the question. Until it is I'd like Mr. Jaske to answer, because I think this would just waste a lot of time if we go back and forth trying to parse our my questions.

DR. JASKE: I think it's safe to say the Energy Commission staff does not have an independent capability to do the kind of local capacity assessments that the ISO does that Mr. Sparks talked about today.

MR. ROSTOV: So is it correct that the testimony -- I'm on page ten -- says that ISO concluded that the existing -- essentially the existing system could allow -- could provide services to reliably operate the system with 33 percent renewables? So essentially your -- your testimony is that in general ISO says we don't need any new generation to integrate renewables; is that correct?

DR. JASKE: Page ten of what document?

MR. ROSTOV: Page ten of your -- of your testimony.

MR. RATLIFF: Mr. Jaske has Mr. Vitiver's testimony. And the August 12th testimony Mr. Jaske has testimony we got in rebuttal in this proceeding, which

appears to be un-paginated. I don't know what page ten you're talking about, Will. Could you please tell us?

MR. ROSTOV: I apologize. I actually had the wrong number. It's -- it's actually page four, and it's the third full paragraph I'm referring to

HEARING OFFICER KRAMER: In Mr. Jaske's testimony or --

MR. ROSTOV: In Mr. Jaske's testimony under alternatives. These are alternatives questions.

HEARING OFFICER KRAMER: Okay. So that's Exhibit 203.

MR. JASKE: I'm still not --

MR. ROSTOV: Well, I'm asking about the first sentence of paragraph three, page four of Exhibit 230, which is the supplemental testimony from August.

MR. JASKE: Thank you.

HEARING OFFICER KRAMER: I'm sorry. Then that's actually page -- or Exhibit 229 then, which would be Mr. Vitiver's testimony.

MR. ROSTOV: Yeah.

DR. JASKE: Now that I have the paragraph, what is your question?

MR. ROSTOV: I was just trying to confirm that it's the energy -- it's the staff's position that right now the system doesn't need any new flexible dispatch resources

based on the ISO studies. And it concludes that these studies were done under certain assumptions.

DR. JASKE: As I said earlier concerning the status of analyses in the 2010 LTPP the parties -- a large number of parties entered into a settlement agreement effectively saying the ISO's renewable integration analyses were insufficient for the PUC to make a decision. That settlement is still before the PUC, although the parties expect the PUC to accept that conclusion and to, therefore, terminate track one of the 2010 LTPP and commence, in effect, the 2012 LTPP and renew an investigation of those matters with a new round of analyses that it's already started, and it has been scheduled to be delivered the PUC in March 2012.

So the -- in the ISO's own analysis, which I believe someone referred to earlier today, the -- the circa August 2011 board memo shows a quite significant amount of need for renewable integration resources, something like 4500 megawatts. So that number is probably not the number that will be delivered by this new round analysis into the PUC's proceeding. But I personally expect that whatever number is delivered is going to be larger than zero, that there will be some need for new flexible resources.

MR. ROSTOV: Okay. But currently CPUC's long-term procurement proceedings, you believe will find that there's

no need for integration renewables; is that correct?

DR. JASKE: No. The PUC will decide it hasn't sufficient information to -- to direct the IOU to go out and procure. And it will, in effect, ask for and receive a new round of such analyses. And the expectation is there will be sufficient confidence in those numbers that it can make a decision.

MR. ROSTOV: Okay. And just -- I have one minor correction. That new proceeding hasn't started and it's not yet scheduled. So are you talking from insider knowledge about what you expect or --

DR. JASKE: Well, the settlement agreement that I've referred to directly calls for either a continuation of the current proceeding or the immediate initiation, circa January 2012, of a new proceeding.

MR. ROSTOV: Okay. And now I want to focus on the SDG&E DRA controversy.

So my understanding of the SDG&E is that they're asking for these three power purchase agreements of about 450 megawatts. And what they're doing is they've justified that need because there's no general need or there -- as you say, no general need can be proved yet. And they've made changes to the assumptions to justify this 450 megawatt change. And those changes and assumptions are discounting the CEC load forecast, also saying that energy efficiency

and demand response are too conservative and that we're not going to achieve as much demand efficiency and energy efficiency. Is that your understanding of the SDG&E position?

DR. JASKE: Yes. I believe San Diego Gas and Electric has prepared its analysis by departing from the common assumptions that -- that the proceeding directed them or required them to use and created it's own package of future assumptions. And it's that package of future assumptions that they're using to justify the three PPAs.

MR. ROSTOV: And one -- one of those assumptions is load forecast. And the CPUC uses a load forecast sponsored by the Energy Commission. So essentially they're departing from the Energy Commission load forecasts, which sounds like you might have even created or worked on; is that correct?

DR. JASKE: I'm actually not personally certain the full range of assumptions that San Diego has put together.

MR. ROSTOV: Well, if one is about load forecasts, would you disagree -- would you -- would you say that the CEC load forecast is a better use of -- is a better benchmark than one that San Diego put forward?

DR. JASKE: The Energy Commission's load forecast is the one that the agencies have agreed to use. And as

such it reflects some degree of approval of the -- by those other -- by the ISO and the PUC of the process the Energy Commission conducts.

MR. ROSTOV: One other things that SDG&E is arguing is that they want a 300 megawatt cushion. So in addition they're saying that the load forecast is too conservative. They don't like the CEC forecast. They're also saying they need a 300 megawatt cushion; is that correct?

DR. JASKE: I'm not directly familiar with that assertion.

MR. ROSTOV: Okay. If they were -- okay. So I guess my question, my ultimate question is there's -- there's a chance that the CPUC could say that there is no need for these PPAs based on the evidence, based on the fact that SDG&E used a different load forecast, didn't use a CEC one, and also based on the fact that they didn't comply with basic assumptions about energy efficiency and demand response, which I think the CPUC and CEC would probably agree on.

So my question once again is could the need -- could the result of that PPA finding be that there is zero need for local reliability?

DR. JASKE: The difficulty I have answering your question is that I don't actually believe San Diego has put

forward in the evidence that's comparable to the analyses the ISO has done that looks at the in-depth consequences of different mix of power plant additions and whether those do actually satisfy local reliability with the level of scrutiny of transmission contingencies that is the -- the feature of the ISO's analyses.

The only analyses I've seen in the San Diego testimony to the PUC are simple supply and demand capacity balance tables that don't, you know, directly say they've conducted such analyses comparable to that which the ISO has discussed and presented here today.

MR. ROSTOV: Well, my understanding from Mr. Di Capo was that ISO is not involved in that proceeding. So given the fact, just hypothetically, given the fact that ISO is not involved in that proceeding, and given the fact that ISO was involved in the long-term procurement, do -- could the result be that there would be less than need for all three PPAs to still meet local reliability requirements under the CPUC decision?

DR. JASKE: I think it's my testimony that there is a considerable range of uncertainty about the need for any of these resources, the alternative or the CPUC project, or the possibility that all of them are needed. So I don't actually think on the basis of the new analysis that the ISO has put forward that it's actually completely correct to

think of the three PPAs an alternative. That's not actually compatible with the analyses ISO has conducted and -- and we've talked about today.

MR. ROSTOV: So you would disagree with SDG&E's filings that essentially say that the -- that the PPAs could replace the once-through cooling at a center; is that your testimony?

DR. JASKE: I know of no evidence that San Diego has put forward that employs the kind of analytic techniques that would allow them to assert that the three PPAs are a full substitute for current Encina capacity.

MR. ROSTOV: Mr. Thurleksen [sic] --

MS. SIEKMANN: Therkelsen.

MR. ROSTOV: -- Therkelsen -- I'm sorry -- did you want to address just the San Diego position on this? Because I think you sponsored those documents. And then I'll go back to Mr. Jaske. I mean, San Diego does have --

MR. THERKELSEN: With respect to, you know, your questions about what San Diego believes, all I can do is -- is relate back to their testimony that was filed, both in the proceeding to approve the three PPA projects, and recently the testimony they submitted, I believe it was in October -- I don't remember the date, I have to look it up -- that they submitted in the 2010 LTPP. And I can't -- I'm not in any position to be able to critique their

analysis, what they did or what they didn't do. All I know is what they said in their testimony.

MR. ROSTOV: And what did they say?

MR. THERKELSEN: Well, basically they said they believed that the PPA projects were sufficient to allow for the retirement of the entire Encina Power Station, and to be able to meet their system needs.

One thing I did find interesting in looking at their multiple filings was their original filing in May of 2011 actually had a higher demand forecast capacity requirement than did their filing that they made in October. It dropped considerably between those -- between those -- I think about a six month time lag between the two documents, and it declined. Again, for what reasons I don't know. I assume that they had more current data. But I don't -- I don't what kind of transmission analysis they did or did not do in formulating it.

MR. ROSTOV: Let me switch topics a little because I believe I understand Mr. Jaske's answer, and thank you for your addition.

Mr. Jaske, your testimony, I believe, is that there is a 20 megawatt need for the Encina subarea for specific circumstances; is that true?

DR. JASKE: Well, I believe in my answer to question 6 I indicated that there's possible 50 megawatts of

requirements, the 20 megawatts that the ISO identified for the Encina subarea, and the roughly 30 megawatts of load for the desal plant that I believe was not taken into account in that ISO analysis. So 20 and 30 makes 50.

MR. ROSTOV: Actually, thank you for that thorough answer. I was going to ask about desal next. So you saved us all two minutes.

My -- my next question is so did the staff consider project alternatives that was for 50 megawatts?

DR. JASKE: I think it's been established earlier by Mr. Monasmith that we didn't do a full analysis.

MR. MONASMITH: It was not on -- you know, this all started on the 30th of June when this was remanded back to the Carlsbad committee. Staff filed a status report on the 18th of July, indicating to the committee the scope of our supplemental testimony, including alternatives. That testimony was then filed on August 12th. We were never directed to specifically discuss a 50 megawatt project or in any capacity that I'm aware of. So the answer to your question is, no.

MR. ROSTOV: Thank you. I'm not sure who this next question is for, but it's for staff again. I'm just trying to figure out if there's objective criteria for finding an action is speculative. For example, you've talked about Pio Pico and I think Quail Brush being

speculative to a certain degree. So what criteria do you use when you make those statements?

MR. MONASMITH: Well, the absence of -- well, in the case of -- of Quail Brush, that was -- that AFC wasn't even filed until August, late August. We don't even have an issues identification report. So any findings on environmental impacts is -- would be speculative.

Likewise, with Pio Pico, even though it's been in longer, it was filed the first part of the year, we do have an issues identification report. We have not published a preliminary staff assessment. So that, too, would still it would be speculative for -- for staff or others to assign environmental impacts to either of those projects at this point.

MR. ROSTOV: So it's more of a case-by-case analysis as opposed to objective criteria?

MR. MONASMITH: I don't know if that's a legal question.

MR. RATLIFF: I would add the two most specific criteria are that it's neither licensed nor does it have approved PPAs.

MR. ROSTOV: I assume that wasn't testimony.

So does somebody from staff want to testify, as oppose to having the lawyers testify?

MR. MONASMITH: That's -- that's probably the

correct legal response, neither of the projects have been licensed, nor have they had approved PPAs from the PUC.

MR. ROSTOV: Well, let me just flip the question around. So there's speculation on one hand, and then there's this idea of what's a probable project. So how do you define a probably project when you're kind of analyzing, when you're trying to decide when you're going to do a no-project alternatives?

MR. MONASMITH: Well, in terms of reasonably foreseeable, when we look at projects that we consider as part of our environmental analysis, the filing of an AFC certainly. Even discussions of potential filings would constitute enough for us to put it into the mix. When the final staff assessment was published in late 2009, at that point neither of these two projects, or Escondido for that matter, but particularly the two that are now with the Energy Commission, neither of those projects were on our radar screen.

MR. ROSTOV: But now that they are on your radar screen would you consider them all probably projects?

MR. MONASMITH: For purposes of the analysis.

MR. RATLIFF: Do you mean for the purpose of doing CEQA analysis which, of course, is what we just did and what -- what we put in our testimony, or do you mean in some other sense such as uncertain?

MR. ROSTOV: I believe the question speaks for itself. It's just a general question about criteria.

MR. MONASMITH: Yeah. And you know, when we were directed, you know, with the committee order that came out on the 30th, and with our response, the status report on the 18th which you, as well, responded to, our status report, we sent out the scope of the projects and what we intended to do to respond to that committee order.

MR. ROSTOV: So is there any evidence in the record that the project will receive a PPA, the current -- the project --

MR. MONASMITH: Carlsbad?

MR. ROSTOV: Yes.

MR. MONASMITH: You know, one of the project objectives was the ability to ultimately obtain a power purchase agreement, not to have a power purchase agreement. And so it met that -- that criteria under project objectives.

MR. ROSTOV: What evidence in the record shows that they have the ability to get a project -- a power purchase agreement, to meet that objective?

MR. MONASMITH: Well, I assume their ability to file for -- for future rounds of RFOs and to obtain a power purchase agreement that could ultimately be approved by the -- the PUC.

MR. ROSTOV: Okay. Currently, this round, they can't meet that objective; is that correct?

MR. MONASMITH: Yes, That's correct.

MR. ROSTOV: Okay. I just have a few more questions. I skipped some because I think some things were covered earlier.

So did you consider the termination of the RMR status in your original testimony? I mean, I'm going way back to two years ago.

MR. MONASMITH: In the FSA?

MR. ROSTOV: In the FSA, yes.

MR. RATLIFF: I'm asking, did the FSA come out before the RMR was terminated or did it come out after? I thought the RMR was terminated after the FSA was published.

MR. ROSTOV: No. It was terminated in 2009.

MS. SIEKMANN: '07.

MR. ROSTOV: Oh, '07.

MR. RATLIFF: Oh, was it terminated in 2009?

MS. SIEKMANN: 2007. 2007

MR. RATLIFF: 2007? Oh. Okay. Well, then answer the question.

And which testimony are you suggesting that -- that staff talked about the RMR contract?

MR. ROSTOV: I believe the parties were under the impression that this project was needed because -- to meet

reliability requirements. And one thing that was said, was said a lot was just about RMR status. So I was just considering if the staff knew when they were preparing the FSA that the project didn't have an RMR status, wasn't needed for reliability at that point.

MR. MCKINSEY: And I have to object a little bit because you're associating not having an RMR status with not being needed for reliability, and that's -- that's an argument and -- or you could ask that question first. But that's an assumption in that question. I don't think it's correct.

MR. ROSTOV: Well, I was just trying to ask about did -- point well taken. I was just trying to ask, did the staff consider the RMR status of the project in 2008 when you were doing your -- I mean, the RMR status was terminated in 2008. Did you consider that when you were doing your FSA?

MR. MONASMITH: I'm not aware of it, no. I know that the discussions specifically took place after a line of questioning by Kerry last May, quite honestly. That's when it first came up.

MR. ROSTOV: Okay. I switched gears a little.

HEARING OFFICER KRAMER: Hold on. I think Mr. Theaker --

MR. THEAKER: Thank you, Hearing Officer Kramer.

This is Brian Theaker with the applicant.

I don’t think the issue of the RMR termination is relevant. Encina has been required to operate to meet the San Diego local capacity requirements since the inception of the ISO. As Mr. Sparks explained, beginning with the inception of the -- of the PUC’s resource and adequacy program in 2006 many of the resources that were still needed to meet that local requirement continued to operate under resource adequacy contracts, not under RMR contracts. The -- the unit is still required for liability, but it just happens to be contracted with another.

HEARING OFFICER KRAMER: And I think we heard the term tolling agreement in our previous hearing. Is that the kind of contract you’re talking about?

MR. THEAKER: Exactly.

HEARING OFFICER KRAMER: Go ahead, Mr. Rostov.

And for everyone, in order to free up the microphones I’m pressing my red button, which turns everyone off quite a bit. So even though you think your mike was on, I may have turned it off on your. So check every time you talk.

MR. ROSTOV: Thank you, Mr. Kramer.

Like I said, I was going to change topics slightly. Earlier, Mr. Monasmith, when you were describing the -- the no-project alternative you said over 200 million

gallons of ocean water are used by the project. I believe, though, it's permitted for 220 million gallons. So are you using the permitted level as your baseline when you were saying --

MR. MONASMITH: That's correct. I was talking the permitted levels on 1 -- 1,2 and 3. Yes.

MR. ROSTOV: What do they operate currently, do you know?

MR. MONASMITH: The latest numbers on 1, 2 and 3?

MR. ROSTOV: Uh-huh.

MR. MONASMITH: I believe the last filing was -- I have to speculate and tell you, but it's not -- it's not very high.

MR. ROSTOV: Less than ten percent.

MR. MONASMITH: Yeah. That's approximate, yes.

MR. ROSTOV: So the use of water is dramatically less than 220 million; is that correct?

MR. MONASMITH: If you just look -- yeah, if look at the -- at the current levels, not permitted levels but for the last year that we saw the numbers that were filed. But again, those are -- those are not permitted levels, what they are able to do, what they could use, but what was used. So -- and this was just one year. This was not going back over five, ten years, so --

MR. ROSTOV: And did you consider -- and when I

say you, I mean staff -- did staff consider SDG&E's plan for retirement of Encina when analyzing the no-project alternative the idea that they filed documents essentially saying that they plan to have the whole thing shut down by 2017? Did you consider that when evaluating the no-project alternative?

MR. RATLIFF: Mr. Rostov, could you explain? I didn't understand. Did -- did you say that -- did your question suggest that NRG had said that they were going to shut the entire facility down by 2017?

MR. ROSTOV: No. My -- my question was actually about SDG&E. So my question was: SDG&E apparently has a plan to shut Encina 1 through 3 down by, I think it was 2013 according to their documents, in 2017, and I was wondering if you looked at the SDG&E filings that talk about these issues when you considered the no-project alternative?

MR. MONASMITH: Well, the -- the extent to which SDG&E has been active in this proceeding has been relatively limited, quite honestly. And their filings, to my knowledge, have been primarily those that were involved with the substation, the -- the expanded SDG&E Cannon Substation, the new 230 KV switch yard that would be there. Their involvement in that regard has been really the -- the primary extent to which we've been engaged with them in terms of this proceeding. And I'm not aware of any specific

plan that SDG&E would have to shut down an NRG facility by 2013.

MR. ROSTOV: So you didn't review the exhibits that were put in by the city, or would the city like to speak to it, I guess?

MR. MONASMITH: Are you talking the FSA that was published in November of '09?

MR. ROSTOV: I apologize for talking over you. No. I was actually talking about more recently, the evidence that had just came in more recently.

MR. GARUBA: Mr. Rostov, to help clarify the record, I believe you're referring to the --

HEARING OFFICER KRAMER: Joe, announce your name.

MR. GARUBA: Oh, my name is Joe Garuba. I'm with the City of Carlsbad.

So I believe what you're referring to are the documents that SDG&E has provided to the Public Utilities Commission showing their forecasted need and how they plan on meeting those demands. In that they refer to retiring from a contractual basis their reliance on the OTC plants, specifically Encina. They refer to the retirement of Encina contractually, I believe in 2013 for Units 1 through 3. And then for the remainder of the plant, Encina Plant, in 2017 for the balance of the power, which they would meet from other needs.

I think it’s -- what’s important probably to clarify is that -- and as NRG has highlighted throughout this process is that SDG&E may not need them contractually and -- and so they may not provide power to their region, but they still have an ability to operate. And so the plant wouldn’t really be retired, but it would from an SDG&E perspective.

MR. ROSTOV: I guess my question of staff was did you consider that information when doing your no-project alternative?

MR. MONASMITH: The no-project alternative analysis that came out on August 17th was not done with that specific document, this part of the analysis, that I’m aware of.

MR. ROSTOV: Thank you. I’m going to switch topics a little.

I think these might be for Mr. Walters. So I had a question about -- and it might go to Mr. Rubenstein, too. I mean, it goes to Mr. Walters, but Mr. Rubentstein might want to say something about it. I had a question about the efficiency of the CECP, of the project. Now it’s a mid-merit facility. So my understanding is at base -- when it runs at base load 100 percent it would be the most efficient. But if it ran as more to support renewables, maybe at 25 percent, it would have a less efficiency rating;

is that true? It would not be as efficient as when it's maximizing and operating at a base-load facility?

MR. WALTERS: It's my understanding that they -- they would be operating the turbines in a manner in which the efficiencies would remain high so they'd be dispatched, at least to whatever percentage would -- would maintain that -- that kind of efficiency.

But that being said, that would be the -- the same case with any other operating unit, whether it was Palomar, Otay Mesa. Depending on how they operate their efficiencies can be a little higher or a little lower. The same thing with the PPA projects, some to a greater, some to a lesser degree.

But in general you're not going to see a project operate below certain efficiency levels. And I don't -- I'm not sure that this turbine could operate at -- at 25 percent. Now maybe the entire facility could with one turbine at 50 percent and still be an efficient unit. But some of those are more design questions probably, and better answered by the applicant.

MR. ROSTOV: Actually, I have a follow-up on that. I think you got to where I was going. And if the applicant wants to answer afterwards, that's fine.

So you're saying there are -- there is a variation in efficiency when it would be operating as supporting

renewables versus operating as a base-load because one train of it could work at 50 percent time, another one wouldn't be on, so the efficiency might not be as great as when it's operating at optimal conditions; is that correct?

MR. WALTERS: Yeah. There would be some variability in efficiency. Some of those variabilities have been taken into account with -- with the -- with the values presented in terms of the -- the efficiencies and heat rates that have been provided, in terms of operating heat rate versus nominal heat rates, etcetera, both in the AFC and -- and in the FSA.

MR. RUBENSTEIN: If I can --

MR. ROSTOV: Sure.

MR. RUBENSTEIN: -- supplement that answer, I think it's important to remember that the notion of whether the facility is mid-merit or base-load has nothing to do with whether the efficiency falls off with load. That's simply a function of this being a gas-turbine based power plant and the efficiency of gas turbines is highest when a gas turbine is operating at full load. Base-load power plants will cycle, just as mid-merit plant will cycle. And so there isn't really any distinction there that we're talking about. It's a characteristic of all gas-turbine power plants.

MR. ROSTOV: Right. And I guess my question was,

then when you compare to the -- and this is for Mr. Walters, but I'd be happy if you want to respond too, Mr. Rubenstein -- when you compare it to the PPA projects, which apparently are designed more for integrating renewables, they have slightly higher heat rates. But for example, the Quail Brush I think is a ten, nine megawatt facility. So I they -- the might have slightly higher heat rates. But if the project was using the same -- trying to do the same purpose as those, Quail Brush for example, the heat rates could be more in line, as opposed to having a difference -- difference in efficiency; is that correct?

MR. RUBENSTEIN: I didn't understand what you said.

MR. ROSTOV: Mr. Walters, did you or --

MR. WALTERS: Well, the -- the variability in actual heat rate to nominal heat rate is going to be higher in the gas -- in any of the gas-turbine projects than in the engine project certainly. But there are a lot of other environmental impacts. The engine project essentially has a much higher criteria emissions that also has to be taken into account beyond just the GHG. The -- the NOx is almost threefold. The PM-10 is about fivefold. The VOC is 15-fold higher on a per megawatt hour basis. So you know, just -- just limiting yourself to this one little heat rate issue doesn't tell the entire picture of the difference between

the engine project and -- and a gas-turbine project.

But, yes, the variability in -- in nominal versus actual would be lowest in the engine project, although all of the gas turbine projects have the same issue of -- of having variability depending on actual operating characteristics.

MR. ROSTOV: Mr. Walters, I think earlier you testified that the project has the highest GHG efficiency rate. But did you look at the gross emissions of the project versus -- the gross GHG emissions versus the three PPA projects?

MR. WALTERS: In -- in my supplemental testimony what I tried to do is -- is find as fair a basis as I could, given the fact we really don’t know how any of them would operate. Obviously, the -- the most efficient would operate with the highest capacity or total megawatt hour based on -- on basic dispatch principles. But since we don’t know exactly what the final capacities were my basis was comparing the permit basis, and the permit basis included things like start-ups and shut-downs, at least the number that are going to be allowed in each of the permits. So those inefficiencies in each of the systems is in there I the GHG numbers in the table in my supplemental testimony.

MR. ROSTOV: So if you add up the gross numbers the PPAs are slightly -- on just GHGs they’re slightly less

than the -- the project at hand?

MR. WALTERS: Yeah. They range from a little less than 10 percent to about 30 percent higher in -- in GHG.

MR. ROSTOV: You're saying in efficiency, but I'm saying in gross emissions.

MR. WALTERS: Yeah. That's what I'm saying too. From .4 to .43, so that's about 8 percent higher, and the highest was about .52, so that would be about 30 percent higher.

MR. RUBENSTEIN: I think you're talking at cross purposes. The -- the table, which I'm looking at, as well, shows that the three PPA projects have higher GHG emission rates than the Carlsbad project.

MR. ROSTOV: That's why I'm trying -- I was just trying to get -- and I think Mr. Walters said that, but maybe just confirm, so you're talking about emission rates -- you're talking about efficiencies as opposed to gross emissions, like the total number of emissions?

HEARING OFFICER KRAMER: I'm speaking as the record police. Mr. Rubenstein was referring to Greenhouse Gas, Supplemental Table 1 in Exhibit 229, the staff's August testimony; is that correct?

MR. RUBENSTEIN: Yes, Mr. Kramer. That's correct.

MR. ROSTOV: Thank you.

MR. WALTERS: I didn't -- actually didn't prepare

a specific table with the permitted GHG emissions. However, if you take a look at the Air Quality Table 2 you'll see that the PPA combined gigawatt hour is only marginally below that permitted for CECP. And with the increase in GHG emissions from Supplemental Table 1 you can easily conclude that total GHG emissions on a permitted basis would be higher for the three PPA projects.

MR. ROSTOV: By efficiency; correct?

MR. WALTERS: No. I was answering your by gross question.

MR. ROSTOV: Okay. Let me switch back to Mr. Jaske. This goes to your reply testimony. So is it correct that your testimony is saying that the project could be used potentially as a replacement for the -- the nuclear plant, the San Onofre Nuclear Plant -- San Onofre, sorry, I'm not for here and I'm bad at pronunciation -- if it's shut down?

DR. JASKE: I believe the testimony identifies a concern that were San Onofre to be shut down that that would change the whole dynamic of local capacity requirements. And since the Encina location is the one closest going south that that's a consideration that needs to be examined.

MR. ROSTOV: Okay. And San Onofre is a base-load plant. So if the project did replace some of that capacity it would operate more on a base-load level; is that correct?

DR. JASKE: I'm not sure that that's my

conclusion. Taking out San Onofre on a year-round basis as opposed to the way it has been going out, on a very -- a very carefully scheduled basis to avoid summer peaks, etcetera, how Encina and any of the other existing fossil plants would have to run harder were San Onofre unavailable is a question that needs in-depth examination, you know, in light of the ballot initiative that's out for circulation.

MR. ROSTOV: I understand that. But it was your testimony that raised it as a potential concern. So I just wanted to maybe ask one or two more questions about it. I think you probably can answer. And maybe let me restate my last question.

If the project was built in San Onofre -- and this is a hypothetical, obviously -- was closed down the project would run more; is that correct, most likely?

DR. JASKE: I think that's an intuitive conclusion, yes.

MR. RUBENSTEIN: I think, though, if I might, it's an incomplete conclusion because there is a limit in the air permit that would preclude it from running year-round as a base-load power plant.

MR. DECKER: Mr. Rostov, this is Brian Decker with NRG. And I also touched on this issue in my initial testimony. And from my understanding the need would not be an energy displacement need. It would not -- it would not

relate to the need to displace megawatts that had been produced by San Onofre, but it would be needed primarily to apply reactive power support in that area, to southern Orange County.

So it's hard to make a conclusion about runtime based on -- based on that.

MR. ROSTOV: Well, that statement doesn't really make that much sense to me, so maybe you could clarify a little. I mean, you're saying that you want to use it for reactive power, but if -- if it goes down. But if it goes down another obvious thing to use it for would be capacity, understanding the limit that Mr. Rubenstein -- so would you agree capacity would be another --

MR. DECKER: Yes. It could certainly displace or the project could provide real power in lieu of that being provided by San Onofre. But in -- in looking at the situation I did not focus on displacing the real power but on the reactive power support to southern Orange County.

MR. ROSTOV: So, Mr. Jaske, just off the top of your head, and I know this is off the top of your head, what are the GHG emissions of San Onofre?

DR. JASKE: It has not direct GHG emissions.

MR. ROSTOV: Okay. So my next question is: Did staff consider if the -- the project would operate in lieu of San Onofre, did you consider that when you were doing

your GHG analysis?

MR. RATLIFF: I object on the grounds that I believe that the question was just answered by Mr. Rubenstein who pointed out that the project can only operate in accordance with its permitted hours. And staff calculated a greenhouse gas potential to emit based on those hours.

MR. ROSTOV: The potential emit is 800,000. And -- and the staff GHG analysis all went to displacement of lower -- you know, they have a theory which, obviously, there's a lot of disagreement about. But essentially the theory is that it was going to displace lower emitting natural gas plants. And now there's testimony that it could potentially replace a zero emitting nuclear plant.

And I'm questioning, did staff consider the addition of that 800,000 GHG in their analysis?

MR. RATLIFF: And again, the answer is we did our potential to emit analysis based on the permitted levels. That's the amount that it would be able to run.

MR. ROSTOV: But you're not the right person to answer, first of all.

HEARING OFFICER KRAMER: Well, the objection is -- is overruled, although I think the question -- or an answer to the question should probably also address the loading order which -- and whether nuclear or whatever be pushed

aside, if you will, in favor of gas. I don't know the answer, but I suspect that nuclear is preferred in the loading order because of its lower GHG emissions. Oh, is it not in there? Not per se. Okay. Well, that's the answer.

So go ahead and answer the -- the question though.

MR. RATLIFF: Is this a question for Mr. -- what we consider to be the basis for greenhouse gas emissions analysis; is that correct?

MR. ROSTOV: I mean, once again, I think the question speaks for itself. Yeah. Did you consider running San Onofre? There's testimony now that it could be potentially run in replace of the project when you did your greenhouse gas analysis?

MR. WALTERS: As far as I know, in terms of project description this project description this project has never been meant to replace San Onofre. So from that perspective, of course we would not analyze this is a replacement to San Onofre. However, in our analysis we identify the types of GHG emission sources this project would operate in front of before they would otherwise emit higher GHG in the loading order, and have concluded on that basis that based on all of those other higher emitting sources that this -- this facility would be preferential to continue the operation of those sources and overall in the western United States would all for a net reduction as any

new lower emitting GHG emission source can do.

MR. RUBENSTEIN: And to follow on and, I think, to get to the point that Mr. Kramer was mentioning in terms of the loading order, if San Onofre were to be retired the entire loading order would shift down. And the Carlsbad project would not be the next in line. There would be a number of other projects that would preferential in the loading order. And whether San Onofre is operating or not the proper comparison in terms of incremental emissions is going to be other gas-fired plants, which is exactly what the staff is analyzing.

MR. ROSTOV: I believe that's the end of my questions. I mean, I would like to argue with that, but I believe there's a time for argument some other time. So thank you for the opportunity.

HEARING OFFICER KRAMER: Thank you. Dr. Roe, do you want to finish up, if you were not finished with this panel?

MR. ROE: Yes. Thank you. First off, I have to confess my total confusion with these proceedings. Maybe I'm at a disadvantage. I'm not an attorney. And I'm probably the oldest guy in this room and I don't get everything like the rest of you do. But I thought we just sat through more than four hours of testimony, primarily from the ISO, talking about the need. Now on the other hand

I hear one of the committee members say that need is not an issue that the commission is concerned with.

Might we take it then that the committee will disregard all the arguments about the need that was put forward this morning by ISO?

HEARING OFFICER KRAMER: Well, no. Need becomes an element of an overrides consideration and the possibility of findings to override either environmental impacts or inconsistencies with LORS is very much on the table before the committee. So need is a factor there in comparing alternatives and in justifying override.

MR. ROE: I'm still confused.

MR. RATLIFF: And in addition to that, if I may, it -- it is also, I think, properly raised in the context of the no-project alternative which is one of the things that we're discussing today is if -- if you don't build this project what are the consequences of that. If you -- if you build instead the PPA projects, which are an alternative or have been suggested to be an alternative for this project --

MR. ROE: Well, I just thought --

MR. RATLIFF: -- what are the consequences of that?

MR. ROE: -- staff testified that they have not considered the PPAs as an alternative. Now I'm -- you guys are digging me in deeper and deeper.

HEARING OFFICER KRAMER: Well, Dr. Roe, when we go to overrides there is -- there's, you know, sort of a process you have to go through in thinking about it. And one of the -- the findings is that the alternatives, you know, do not -- do not do the job that the project would do, don't provide benefits.

So for instance, the ISO has suggested that there is a need for some generation in this very local area. And if the project provides that, that, some would argue, is a benefit. So that's -- so -- so knowing whether or not it really is needed is -- is an aspect of that particular alleged benefit.

But normally if -- if a project came to us and it had no environmental impacts and it was consistent with the local laws and the state laws then there would be no reason to consider the alternatives, one of which is a no-project alternative. Here though, you know, it looks as if it may be necessary to -- to consider all of those things, and that's why we invited testimony specifically on the question of need. But then also additional -- we offered an additional opportunity for people to provide new evidence on the general question of overrides, which could be everything from, you know, project benefits.

You know, frankly, I think we thought most of that had been covered already, but we thought it was fair to

offer the parties an additional opportunity to talk about that. So -- so that's -- that's where it fits in.

Hopefully that helps you a little bit. But you can also talk to -- to Ms. Jennings. She may be able to help you to -- to become more clear about what's going on, a well. So please -- please go on with your questions if you have some more.

MR. ROE: Yeah. I have some questions, and it probably can be answered by either Walters, Mason or Monasmith. And this regard -- is in regard to a comparison of the emissions from the PPA versus that of the CECP.

When -- can you tell me specifically what heat rates you used for the CECP when you made those analysis?

MR. WALTERS: Well -- well, actually, in terms of the emissions rates, most of that came from other testimony either provided through CECP, and in the comparison of the -- for the PPAs, again, in the AFCs, or for Escondido, as I noted, I used a proxy project of -- of Orange Grove which is a similar design.

Specifically for CECP, I believe the heat rate would -- would be around 8000, but I didn't link the emissions specifically to the heat rate. I linked the emissions to -- to the assumptions and calculations that were provided by the applicant for -- for the operating profile of the facility that includes the number of hours,

the number of shutdowns, basically the total amount of fuel use versus the amount of gigawatt hours that they were permitting.

MR. ROE: And so you had at least two different heat rates, those when it was operating at full capacity, and I think you alluded to the fact that during the startup and shutdown periods there would be other heat rates involved?

MR. WALTERS: Well, it was all integrated by the applicant in -- in their calculations. So the startup and shutdown fuel rates were added to the normal operating fuel rates to come up with their total GHG emissions, and that's what was used.

MR. ROE: And in -- in those calculations of the heat rates that you took from the evidence provided by the applicant, did you include -- was that a net heat rate or a gross heat rate? Specifically, did it include the energy that was -- is going to be consumed by the desalination operation?

MR. WALTERS: I believe in the original testimony, and now we're going all the way back to the -- to the FSA, in that original testimony I think I noted in a footnote to the table that the -- and, in fact, this was, I believe a correction between the -- the PSA and the FSA that we did include the onsite desal unit and -- and it's hit to the

overall efficiency of the unit. But you can go back to the -- to the table and -- and

MR. ROE: Then your memory is a little bit different than mine because I've never seen any evidence provided by the applicant about what the energy input would be from the desalination plant and how that would affect the net energy during ramping and during full operation.

MR. WALTERS: Well, to go back in testimony, let me actually read directly from it. It's the last footnote on greenhouse gas, Table 3, and again, this is the -- the Final Staff Assessment, page 4-1 -- I mean 4.1-107. That footnote, which is Footnote E,

> "This reflects net -- net base-load power without power augmentation and includes staff's parasitic (phonetic) power consumption estimates were estimated for the onsite desalination unit, and in parenthesis, (1236 megawatt hour per year)."

So we did include the extra consumptive power from the onsite desal unit.

MR. ROE: Good. And I'm just guessing now, but based on the previous types of calculations which I've heard from the staff where you used (inaudible) and don't take into consideration actual operating conditions, am I correct in assuming that you did not actually look at heat rates for both the PPA and the CECP during a simulated yearly

operating cycle?

MR. WALTERS: I believe I already answered that question, noting that there were too many variables to figure out what a comparative actual yearly operating cycle may be for any of the plants. It’s more speculative than -- than I can even say here. It’s just we -- we really don’t know. So I had to keep a consistent basis.

The consistent basis I used in comparison for all four plants was the permitted basin -- basis for -- for those plants. And -- and I noted that in the -- in the testimony, in the supplemental testimony.

MR. ROE: Well, I think what you’ve told me is that you haven’t don’t the kind of detailed analysis that will substantiate your conclusions. The analysis that I would consider adequate, and you can comment on this, is one where you take past history to profile the peaking load needs throughout each day, each hour, each day of a year, and then you model how the CECP units, at what load capacity they will be at each -- at what load rating they will be during each of those hours, and you look at the gas emissions, the heat rate and the gas emissions at that point and you accumulate them. And you would do the same thing for the PPAs.

And if you had done that you might have found that because the PPA projects, which are much smaller units and

which will be operating much more of the time at full capacity, even though at full capacity they -- they have lower heat rates than the nameplate heat rates for the -- the large CECP units, you might find that the annual emissions from multiple small units that can more closely follow the load demand may have a lower heat rate than the large units of the CECP.

MR. WALTERS: Well, again, I think I answered this question earlier. Number one, this project would -- would be dispatched first, and therefore it would be -- the other projects would be dispatched with -- with -- with a different kind of frequency and probably have more short-term operation, which would influence their efficiencies in -- in a more adverse way than this project.

But in terms of trying to model that in terms of past history versus future expectations, you're -- you're asking for a type of analysis that is well -- well and beyond that which we can really do in any sort of timely fashion. And again, as I noted, would be -- would be fairly speculative.

But as I noted before, this plant is going to be operated, not so far away from its high-end efficiency, it's going to be operated in a manner in which it's -- it's still reasonably efficient. But the difference in its efficiency versus those of the other projects, in all expectation it

would have a lower GHG emission rate per megawatt hour of generation.

MR. ROE: That concludes my question.

HEARING OFFICER KRAMER: Okay. Thank you, Dr. Roe.

Ms. Siekmann.

MS. SIEKMANN: Mr. Jaske, in your testimony on page two it says,

"It is not impossible that all there of the PPA projects in Carlsbad aren't needed when all these studies are completed. Since it is possible that locations for repowers are even more constrained in West L.A. Basin and other areas that simply have no air credits at all."

Is this speculation?

DR. JASKE: It's my judgment as an analyst as familiar with these matters as I can be.

MS. SIEKMANN: And next on page two you said,

"Finally, it should be obvious that the nuclear shutdown initiative now circulating to collect sufficient valid signatures from registered voters could create a huge problem in Southern California, and capacity located at the Encina site is much more likely to reduce the problems of a San Onofre shutdown than capacity located principally at Otay Mesa within a mile

of the Mexico border."

What could be done with the San Onofre after shutdown? Could another gas-fired power plant fit there?

DR. JASKE: I think it could be permitted, and if there were purchasers of this power.

MS. SIEKMANN: And would my question be considered speculative?

DR. JASKE: How is that related to my testimony?

MS. SIEKMANN: Because I believe that -- I believe that the shutdown -- I believe that discussing the nuclear shutdown of San Onofre is very speculative.

DR. JASKE: I'm paraphrasing the legislative analyst's office, as Footnote 7 shows.

MS. SIEKMANN: But just because you're paraphrasing them doesn't mean that they have a great deal of -- of evidence to support that assumption. So -- so based on that your -- your testimony is based on someone else's legislative analysis?

DR. JASKE: Their statutory charter is to provide a fiscal analysis of initiatives to inform voters.

MS. SIEKMANN: But there is no initiative that has been submitted to the voters as of yet; correct?

DR. JASKE: Well, it's, as stated, it's in the signature gathering process. And legislative analysts and the secretary of state each have roles in objective analyses

of the fiscal impacts and summaries that are supposed to be used to guide not only the vote itself but the signature gathering process.

MS. SIEKMANN: Thank you. So let's move on to the CPUC Division of Ratepayer Advocate, DRA. Isn't the group primarily protesting how SDG&E proposes to allocate the procurement costs incurred under these three agreements?

DR. JASKE: I'm not familiar with that argument.

HEARING OFFICER KRAMER: This -- this sounds like a repeat of an earlier question. So I wonder if this topic, this subtopic hasn't been explored already.

MS. SIEKMANN: I think it needs a little more exploration, if you don't mind.

HEARING OFFICER KRAMER: Well, he's already said he doesn't really know why they -- and exactly what their argument was and the motivation behind it. So I don't -- it doesn't sound as if he'll be able to help you.

Is that fair, Mr. Jaske?

DR. JASKE: Yes. And as Mr. Therkelsen indicated, he has sponsored their actual testimony. And so the representative of Terramar can go read it and find out what they said.

HEARING OFFICER KRAMER: And I believe that document is in evidence. It's one of the -- I forget the exact number. So we -- we can certainly read it, Ms.

Siekmann, and --

MS. SIEKMANN: I actually have a copy of it. And therefore what I'm trying to do is get to the bottom of the reality of what the DRA is trying to say.

HEARING OFFICER KRAMER: Okay. Go ahead with one or two more questions, and then, well, we need to move on.

MS. SIEKMANN: You mean on this topic?

HEARING OFFICER KRAMER: Yes.

MS. SIEKMANN: Okay. Thank you. Mr. Jaske, I'm done asking you questions on this topic. Thank you very much.

So -- so I'm not sure who -- who should answer this question. But SDG&E says -- SDG&E says the PPAs allow Encina to retire Units 1 through 3. Do you agree?

MR. MONASMITH: I'm just -- I'm reading the other filing in front of the -- the PUC right now. And they do indicate that that's a reasonable assumption on their behalf to retire 1, 2 and 3 by 2013, and the -- the full units by 2017, which to correct my comment earlier in regard to a question, I have not seen but it's clear that this was reviewed by Mr. Vitiver in his testimony filed on August 12th. So I had misstated that staff had not seen this document. I had not, but the more knowledgeable people on staff had.

MS. SIEKMANN: If the CECP is supported by ISO for

L.A. are there transmission bottlenecks between San Diego and L.A. that would make this difficult? Is there anyone on the panel who could answer that question for me?

HEARING OFFICER KRAMER: These questions actually sound like they're right in Mr. Jaske's wheelhouse.

MS. SIEKMANN: Well, then I'm sorry, Mr. Jaske, I have one more question for you.

DR. JASKE: I'm sorry. Would you repeat the question?

MS. SIEKMANN: You bet. If the CECP is supported by ISO for L.A. are there transmission bottlenecks between San Diego and L.A. that would make this difficult?

DR. JASKE: I'm trying to understand your question. So you said if the ISO supports the CECP are there transmission bottlenecks between -- between it and Los Angeles; is that your question?

MS. SIEKMANN: Yes.

MR. JASKE: There -- there is a megawatt capacity limit between -- on -- on the 4 230-KV lines between San Onofre and, in effect, the San Diego service area. So whether -- how power would flow from south to north were San Onofre to be offline during the critical periods where it's never offline or never intended to be offline, I don't know how to answer that question. I have not seen an analysis of that specific circumstance.

MS. SIEKMANN: Thank you. This is a question on the PPAs and cumulatives. CEQA -- is CEQA analysis being performed at CEC on Pio Pico and Quail Brush?

MR. MONASMITH: Yes.

MS. SIEKMANN: Okay. If CEQA guidelines discussion following -- what do you call that?

MR. ROSTOV: Section.

MS. SIEKMANN: Section 15130 states, “Not only approved projects under construction and approved related projects not yet under construction, but also approved projects under environmental review with related impacts or which result in significant cumulative impacts,” then what CEQA guidelines allow the CECP to avoid including the three PPAs in the cumulative analysis for the CECP?

MR. RATLIFF: Objection on the grounds that the question assumes something that is incorrect. We did this analysis to include the cumulative impacts of the three PPA projects. This analysis includes the PPA -- the cumulative impacts of the PPA projects. It says so. That was its purpose.

UNIDENTIFIED MALE: (On WebEx.) He was the prosecutor in Diacor. Yeah. He had a hard on for that case, let me tell you that.

HEARING OFFICER KRAMER: That person shall remain famous as call -- call-in user number 20.

MS. SIEKMANN: And will that be in the record?

HEARING OFFICER KRAMER: Well, I don't think we're going to rely on it for anything.

MS. SIEKMANN: What is the greater relative merit that the Encina site has over Quail Brush, Pio Pico, or the Escondido project?

MR. MONASMITH: Staff -- staff viewed the -- in our truncated alternatives analysis, and given this occurred in 30 days, and 40 days after over 2 years of the staff assessment's development, we viewed that the -- those projects had potential for environmental impacts that were such that they would not, when compared with the CECP's, would not significantly be better in terms of what the CECP itself would be. They're pretty much -- again, it's very early -- was a wash, with the exception of water and transmission which it looks to be from the very preliminary comments from staff to be potential problems. Cumulatively we looked at the air quality impact, because that's cumulatively what needs to be considered. That was analyzed. And so that's -- that's where staff's -- where our testimony came out. That's what we indicated we do in our status report, what we did on August 12th, and what we've tried to follow up with rebuttal testimony since.

MS. SIEKMANN: Now based --

MR. MONASMITH: I don't know if that answers your

question.

MS. BAKER: He wants to say something.

MS. SIEKMANN: Please do.

MR. GARUBA: Thank you. As -- as part of the panel on this I'd like to follow up on Mr. Monasmith's answer. And as the only agency that's done -- it is -- ours is somewhat of a truncated analysis, but we made an attempt to -- in providing more of an evaluation.

The -- I agree with Mr. Monasmith's comparisons in some respect that the impacts are very similar, except there's a number of outstanding areas that we took into consideration, one, namely that the three alternatives were not located in the coastal zone. So there's clearly a preference when you read the Coastal Act for locating alternatives outside the coastal zone, especially on a project that's arguably not coastally dependent, and in the city's opinion it's not coastally dependent.

And the secondly, there's this ongoing issue of fire, public safety support, which is not part of this discussion today as far as a specific topic but is clearly front and center in the minds of the community. And we didn't see -- one of the interesting things to note is that the project manager for the Energy Commission for some of those other projects sent some very nice letters to the host agencies requesting information, requesting opportunities

for their comment. And clearly they're seeking feedback from those agencies, from the city and the county, whether or not they're able to provide public safety support and other services. And we haven't seen the kinds of concerns raised in those environments that we've seen here.

So -- so I think the city's position is there are a number of areas that the CECP creates concerns that those other projects don't.

MS. SIEKMANN: Thank you. Mr. Monasmith, I did want to talk about the water. In your -- you brought up the water in -- in comparison. And -- and CECP has a huge problem with water, and waste water, because once -- and after listening to Mr. Jaske it appears that -- that -- you know, and -- and Mr. Sparks -- it appears that the shutdown, because of OTC, are very imminent for -- for the whole Encina project. And so far staff has not required anything about a waste water permit for CECP.

So please clarify to me why the -- which alternatives, you know, whether the three PPAs or the CECP have the more difficult road to hoe.

MR. MONASMITH: I -- all I can do is restate what staff's testimony is, what our findings were in regard to water. And staff did a duel analysis. We analyzed both reclaimed, which at this point the city continues to refuse to provide service, but we analyze it nonetheless within our

staff assessment.

Likewise, we analyze the desal component. We found that there were not significant impacts that couldn't be mitigated into -- in relation to either of those. So it was staff's testimony on that. And I am in no position to change that testimony, and it's not been brought up since.

My comparison is in terms of the potable water use for Pio Pico in an area that is completely dependent on imported water. And that this, in staff's termination very early within the issues identification report was raised to the level of that committee to let them know that staff was concerned about this. They're concerned about use of potable water. They're concerned about whether or not reclaimed will or will not be available by 2014 when Pio Pico would go online, that is if it were to go under and be licensed within 12 months.

Likewise, with Quail Brush, a relatively small amount. But again, you know, it could -- if you look at the trucks, two -- two large trucks having to deliver water every day, staff could potentially find that -- again, speculative -- it could find problems with it. That was my basis for comparison.

HEARING OFFICER KRAMER: Let me -- let me break in here and ask if anybody is proposing any additional questions for Mr. Jaske?

Seeing none, thank you, sir. The committee had none, so thank you for joining us.

Go ahead, Ms. Siekmann.

MS. SIEKMANN: Mr. Monasmith, you realize that at Encina we are talking about 3 to 4 million gallons of water a day need if there is not waste water permit. Would you say that Quail Brush and Pio Pico even compare to that amount of waste water permit needs?

MR. RATLIFF: Commissioners, we -- we didn't -- I had it on -- we didn't bring our water witness today. And I feel like this -- this line of questioning is venturing into the area of testimony that we've already spent quite a bit of time plumbing, no pun intended.

HEARING OFFICER KRAMER: I'm speaking too softly.

MR. RATLIFF: I'm -- my request is that we -- we focus on the issues that this -- this hearing was to address and not go back into the -- to the water analysis, which was a subject of testimony in February of 2010.

MS. SIEKMANN: Thank you, Mr. Ratliff.

Actually, what I can do is ask that question of the city.

MR. GARUBA: Can you restate the question please?

MS. SIEKMANN: Well, from your familiarity with the alternatives there seems to be water issues, but there's also a water -- waste water issue at -- and we are talking

about comparing the CECP with the PPAs, and this water issue is a huge problem across the board. But -- but there is no -- so far there's been an application for a permit but nothing has happened since then, as I confirmed with Michelle Matta (phonetic), for the CECP to have a waste water permit once Encina is shut down.

MR. RATLIFF: So as -- we have two hours left during which we can have actually have panels for testimony. If we start talking about the very same topics that we spent a week addressing two years ago come February we are not going to complete today. We are not going to be able to have the -- the further discussions which were scheduled for today.

So my -- my -- my earnest request is that we move forward, not backward, that we got to the issues that have not been addressed and not the ones that were addressed two years ago.

HEARING OFFICER KRAMER: Hold on. The objection is -- I'll characterize it as sustained. The discussion has drifted off of the -- the merits, the relative merits of the project and the alternatives and does appear to be drifting back into questions about the water resources topic that were not on the table today. So we need to move on to another topic.

MS. SIEKMANN: I'm finished.

HEARING OFFICER KRAMER: Thank you. Okay. Did the committee have any more questions of the panel?

ASSOCIATE MEMBER DOUGLAS: No.

HEARING OFFICER KRAMER: Okay. Then thank you, Panelists.

MR. THOMPSON: I have two questions on -- on redirect, one for my witnesses and one for the panel, if I may.

HEARING OFFICER KRAMER: Go ahead.

MR. THOMPSON: Mr. Garuba, I think you heard testimony, and I don’t want to mischaracterize it, from the staff that they thought that the environmental impacts of the three PPA projects were too speculative to do the kind of analysis that would be needed for an alternatives analysis. But you did perform those. Would you tell us whether or not you think that your analysis in those areas is sufficient?

MR. MCKINSEY: And I’d like to object. I think this question has been asked and answered very well by Mr. Garuba a couple of times already today and --

MR. ROE: I don’t remember hearing --

HEARING OFFICER KRAMER: I think you’re -- you’re correct. I’m also not sure the question properly characterized the staff’s position. But in the interest of time and because it has certainly been discussed and it

certainly was discussed in the case of Mr. Garuba extensively in the written materials, we will sustain the objection and move on to your next question.

MR. THOMPSON: And this is really for the panel. In -- in sitting through these hours of testimony today I'm struck with a number of things. If there are transmission fixes in the future, there are generation fixes. There's what I -- what I perceive as some fairly conservative approaches by the ISO and different estimates that people may differ on.

And I guess I -- maybe I'd start with you, Mr. Therkelsen. Where does this all end up? How -- how -- how is this all resolved from a statewide standpoint?

MR. THEAKER: Here we go. This is Bob Therkelsen. It's too bad Dr. Jaske isn't still here.

The -- you know, in looking at this Exhibit 199U, you know, we've got a range between 231 and 531 megawatts that may be needed. And from the ISO's perspective, as we've talked about it before, the DRA has a different perspective. San Diego has a different perspective. You know, everything is -- is -- and as Mike said, there's a considerable range of uncertainty that exists out there.

My understanding is where this is all brought together is in the CPUC's long-term planning -- procurement planning process. That is the one that basically gives the

utilities the authority to go forward and procure the resources, you know, whatever the number may be, considering ratepayer cost implications, demand reductions, transmission options. It seems to me that that is the forum where the different options are evaluated and they're traded off against each other. They're considered over -- with respect to ratepayer costs and other considerations. And that's where a determination would be made in terms of instructions to the utilities to go ahead and procure.

Based on what Dr. Jaske said, it sounds like 2013, the end of that is when the next determination procurement rules will be made. If that's the case it seems to me that the utilities will go out and procure in 2014, hopefully coming out with additional power purchase agreements in that timeframe. Assuming that occurs those projects then would go forward with permitting. Say that takes a two-year process to do that, and then they would go forward with construction. That would allow those projects to be online and operational before the 2021 timeframe that the ISO has indicated that there is concern over.

So I think that's the process. I think that's the forum for resolving those differences and evaluating those options. And I think that's the timeframe that would allow things to occur and be able to respond to the concerns that the ISO has raised.

MR. RATLIFF: Mr. Kramer, I have one question which I would have addressed to Mr. Jaske but he's left. So in all desperation I'll address it to Mr. Therkelsen.

Mr. Therkelsen, you heard staff's testimony today. Was it your understanding from staff's testimony -- was your understanding -- did -- did you understand from staff's testimony the distinction between whether or not staff is proposing that this project be permitted or whether this project is going to -- should be built?

MR. THERKELSEN: I think that brings into question a number of things, whether this agency should be endeavoring to permit projects that they believe will never be built. I would hope that they -- in the past the commission has tried to utilize its resources differently than that.

And with respect to what the commission said and the commission staff said, commission said, yes, they believed it should be permitted. Now that did not answer in my question -- in my mind the question that the commissioners have to answer, and that is whether this project warrants a LORS override if one is necessary? And in making that determination, making findings of more prudent and feasible alternatives and public convenience and necessity, I think there are different questions that need to be asked rather than just plain permitting. And I think

that's what the committee is wrestling with, with respect to the discussion today.

MR. RATLIFF: Thank you.

HEARING OFFICER KRAMER: And the committee has one question for Mr. Monasmith, and that's about issue identification reports which have been discussed a couple times today.

Do those necessarily include all of the environmental or LORS issues that crop up during the course of staff's review of the project?

MR. MONASMITH: In -- in the case of Pio Pico, I assume it did. This was based on the -- the data adequacy determination that staff undertook for this proceeding. And again, an initial stage, but what they felt rose to the level of the committee in that case and what they wanted to present during the informational hearing and site visit. And the project manager asked -- you might say in retrospect he would have listed more. But I -- based on the correspondence and what's in the record now, water, which had been listed as the -- the issue in that issues ID report, I'm sure he'd still put it on there. Transmission may be something that would also go on at this point. But they do look at all of them, yes, to answer your question.

HEARING OFFICER KRAMER: But -- not quite. But do issues sometimes crop up after the issue identification

report?

MR. MONASMITH: Oh, I'm sorry. Yes. Absolutely they do. We've been trying to be more assertive and aggressive as a staff in terms of the -- our issues identification report. We try to be -- take more time in their development and be more contemplative so that the committee is given an early forewarning of issues that we feel could be schedule busters, whether there be LORS inconsistencies that we find. There will be issues that are going to be difficult to mitigate or that will be problematic in the -- in the local communities. But they are -- they're definitely never 100 percent right. Usually there's more issues that arise later.

HEARING OFFICER KRAMER: Okay. Thank you. That concludes this panel then. So thank you, all of you, for -- for your time.

Let's now constitute the federal PSD permit panel.

Mr. Rubenstein, you might want to get up and stretch, but stay there.

Mr. Walters, same thing.

And is Mr. Moore here? Come on up, sir, along with Mr. Zinn.

And Ms. Siekmann, you can just stay where you are, if you like. Okay.

(Off the Record from 2:55 p.m. until 3:04 p.m.)

HEARING OFFICER KRAMER: Okay. We're back on the record.

I think, Mr. Zinn, you're probably the only person that hasn't been sworn in.

Mr. Moore, you testified before; right?

DR. MOORE: I did.

HEARING OFFICER KRAMER: Okay. Mr. Zinn, if you'd raise your right hand.

(Matthew Zinn, Panelist, is sworn.)

HEARING OFFICER KRAMER: Okay. Thank you. Let's try to be as efficient as we can, folks. This is the federal PSD panel. And I think as I said the other day at the prehearing conference, and it's also telegraphed to a degree in the description of the question in the notice, the committee is open to the idea that we may not know what exactly the PSD permit is going to ultimately require, or if it's even going to be issued. But we want to hear from the parties if -- what we don't know in -- summary, and then also whether or not that is -- does mean that we have to wait until we see a PSD permit before the commission could act on -- on this application for certification.

So with that, Mr. McKinsey, do you want to go first with your member of the panel or your members -- no, I'm sorry, your member?

MR. MCKINSEY: Only one witness on this panel,

Hearing Officer Kramer. My questions are obviously directed to Mr. Rubenstein, and I just have a couple of them.

Mr. Rubenstein, in your written testimony you indicated that the construction of CECP could begin as early as 2012. In the same testimony you also indicated that if a PSD permit is required it could take well over a year to get a permit. Can you reconcile those two statements?

MR. RUBENSTEIN: Yes. Quite simply, I was simply presenting the possibility that a PSD permit might, in fact, not be required. If a PSD permit is not required then construction could, in fact, begin, at least in theory, in 2012. If a PSD permit is required then it would not be -- construction under that permit could not begin for at least a year or two after that.

MR. MCKINSEY: And in your experience where -- where a PSD permit is required, in your experience what has been the sequence between the Energy Commission permit and the PSD permit?

MR. RUBENSTEIN: In -- in virtually every case that I can recall the commission’s decision preceded issuance of the PSD permit.

MR. MCKINSEY: Is there a reason for that?

MR. RUBENSTEIN: Yes. First, EPA typically prefers to issue a PSD permit after state and local permits are issued. And in the context of PSD sources that are

subject to the jurisdiction of the California Energy Commission that state air permit isn't issued until the commission approves a project. Consequently, EPA has traditionally waited for action by the CEC to make sure that they incorporate in their analysis any state imposed requirements on a project.

The flip side is that -- is the commission is well aware, the PSD process has many opportunities for appeals that can greatly lengthen the permitting process. And in my experience the commission has chosen not to burden the schedule of their process with waiting for those appeals to run. And consequently the commission has acted in advance of EPA.

MR. MCKINSEY: Thank you. That's all our questions.

HEARING OFFICER KRAMER: Thank you. Mr. Ratliff.

MR. RATLIFF: I have very few questions for Mr. Walters. But first the first one is, Mr. Walters, in -- in your experience, to your knowledge have any projects that required PSD permits that have been before the Energy Commission, have they failed to receive such permits from EPA or from a delegated agency?

MR. WALTERS: I can't think of any -- of any case on any project that was approved by the CEC where that happened.

MR. RATLIFF: Would you expect the CEC facility to be able to satisfy PSD requirements?

MR. WALTERS: Yes. Yes, I would expect that to occur. In fact, if -- if this project could not get a PSD permit for GHG then none of the PPA projects could either because they have higher GHG emissions on a relative basis than this project with -- with the same general type of operating parameters and are essentially otherwise comparable, including annual operating hours all around 4000.

MR. RATLIFF: Thank you.

HEARING OFFICER KRAMER: All right. The city?

MR. RATLIFF: Did you want me to ask Mr. Moore any questions?

HEARING OFFICER KRAMER: Well, if you had some for him, yes.

MR. RATLIFF: Mr. Moore, I told you that you might need to be here to answer any questions with regard to the Air District. Am I correct that the Air District currently has no delegation agreement from the USEPA to issue PSD permits for EPA?

DR. MOORE: That is correct.

MR. RATLIFF: And the Air District currently has no -- has not adopted provisions for its state implementation plan which have been approved by EPA to allow

the district to issue a state permit for those kinds of requirements; is that correct?

DR. MOORE: That is also correct.

MR. RATLIFF: Thank you.

HEARING OFFICER KRAMER: Okay. Now the city.

MR. THOMPSON: Thank you. Mr. Zinn, I'm going to try and keep this short. Have you reviewed the testimony of -- of both Mr. Rubentstein and Mr. Walters? I don't believe you had any prepared testimony. I think it was just the two of them. Have you reviewed those? And if so do you have any -- any comments?

MR. ZINN: Yes, I have reviewed the testimony. I don't have many comments. I think there's actually large areas of agreement.

I would say that my reading of the FSA is that the project will have significant net emissions of greenhouse gases, even using the 2004 baseline that the applicant used in their non-applicability -- request for non-applicability determination to EPA. My reading of that document is that there are at least 400,000 tons of greenhouse gases in a net situation. That -- that's really the only thing I'd like to clarify.

I guess I would like to add that since its testimony EPA has indicated in a letter to the city that copied the applicant that EPA would provide some additional

process in this case, extending the period for public comment on a PSD, a permit application, and providing for a hearing which the EPA may in its discretion do -- they've agreed that they would do it in this instance -- that might add some additional time to the PSD permitting process. Otherwise, I don't have anything to add.

MR. THOMPSON: There's been discussion of the -- of the three PPA projects, two are of relatively decent size, the Quail Brush and Pio Pico. Do you know if either or both of those have filed for a PSD permit with the EPA?

MR. ZINN: I'm informed that the Pio Pico project has filed a PSD application. I am not aware of the other two.

MR. THOMPSON: Thank you. Lastly, I think Mr. Rubenstein stated that it will take three or four months to complete a PSD application, 12 months to issue a draft permit, and up to -- up to 6 months to deal with comments. Do you generally agree with these time estimates?

MR. ZINN: Yes. I think they're consistent with what EPA tends to say about their process. Then there's the potential for an appeal process after EPA's decision on the PSD permit, and the permit wouldn't be effective until such appeal is -- is resolved.

MR. THOMPSON: Anything else?

MR. ZINN: No. That's it.

MR. THOMPSON: That's it. Thank you.

HEARING OFFICER KRAMER: Thank you. Ms. Siekmann.

MS. SIEKMANN: I just have one very short comment of my testimony. And then my -- should I ask my questions of Dr. Moore or should I ask those in cross?

HEARING OFFICER KRAMER: Are you treating him as your witness as well?

MS. SIEKMANN: He's here and I have questions for him. But I indicated in my -- when I sent in my evidence -- I mean, my testimony --

HEARING OFFICER KRAMER: Then why don't you go ahead and ask him then.

MS. SIEKMANN: Okay. All right. Okay. So once again I would like to say that Terramar has a unique perspective in this hearing. We see the applicant's air consultant Mr. Rubenstein taking a lot of time writing testimony and performing calculations, but we have not seen a stitch of evidence that the applicant has made an effort to communicate with EPA regarding PSD since they lost their determination June 30th of '11. So we just wanted to put that -- make sure that that was in the record because we're all talking about PSD, but ever since they lost their determination we've seen nothing happen regarding the applicant and contacting the EPA to handle PSD.

So, Dr. Moore -- and this is all based on the

applicant's testimony. And I have given to Dr. Moore the pages that I'm referring to so he'll know what I'm talking about.

HEARING OFFICER KRAMER: But you need to find a way to describe it to the rest of us, and also to the transcript for the record.

MS. SIEKMANN: Oh, yeah. But I just wanted to make -- I just wanted to let you know that.

HEARING OFFICER KRAMER: Okay.

MS. SIEKMANN: So -- so I gave to Dr. Moore, I think -- did I start with page 14?

DR. MOORE: No. It says page 11.

MS. SIEKMANN: Oh, I'm sorry. I started with page 11. He has a copy of page 11 of the Carlsbad Energy Center's, LLC supplemental testimony exhibits, witness list and time estimates for examination of witnesses. And I -- let's see, I ended at page --

DR. MOORE: Yeah. It's correct.

MS. SIEKMANN: Okay. So I'm sorry. So for PSD, what may EPA say about -- about CO and NOx? May they ask for a different level of BACT than that of Palmdale or any other similar projects?

DR. MOORE: Well, that's possible. BACT is a moving target, so it would depend on what BACT is determined to be at the time they evaluate the PSD permit.

MS. SIEKMANN: So we've been given in our -- as an exhibit the Palmdale PSD -- I forget what it's called, but that -- the exhibit of the applicant that shows the Palmdale project for their PSD permit. So -- so -- so as you said, just because we have that particular project doesn't mean that the EPA is going to look at it -- they may look at it the same way but they may not; is that correct?

DR. MOORE: That's correct.

MS. SIEKMANN: Okay. Also --

HEARING OFFICER KRAMER: Okay. Hold on. The record police here again. The --the Carlsbad supplemental testimony is Exhibit 199G, as in George.

And there's a couple Palmdale items. There's a project BACT analysis. And then also the actual PSD permit, which were --

MS. SIEKMANN: The actual PSD permit.

HEARING OFFICER KRAMER: Okay. So the actual PSD permit is 199N, as in Nancy.

MS. SIEKMANN: Okay. So Dr. Moore, could you please explain how PSD works? If one pollutant is triggered what happens?

DR. MOORE: If you trigger PSD for one pollutant then you look at the significant levels for the other pollutants to see if they trigger PSD also.

MS. SIEKMANN: And could you tell me what those

pollutants include?

DR. MOORE: No2, CO, PM-10, PM-2.5, particulate matter, and lead, I think, but lead is not really an issue here with the power plant.

MS. SIEKMANN: How about GHG?

DR. MOORE: GHG, yes.

MS. SIEKMANN: And SOx?

DR. MOORE: SOx would also be included.

MS. SIEKMANN: Thank you. And the applicants states on page 14,

"The proposed project's compliance with BACT for criteria pollutants is discussed in the PMPD. Consequently, the applicant believes that the proposed project currently complies with BACT for all criteria pollutants and that this determination will not change in the course of a PSD review."

Do you agree?

DR. MOORE: You know, that's up to the EPA. When they make their BACT determination I think probably, if you want me to speculate, it's likely most of those will hold up, but I can't really say for sure.

MS. SIEKMANN: And then on page 16 the applicant states,

"For the criteria pollutants that trigger PSD review as part of a PSD permit application it will be necessary

to address project compliance with applicable increment thresholds. An increments analysis is not required for the project impacts below EPA significant level. As shown in the AFC the proposed project's ambient impacts are below many of the EPA significant levels.

"Therefore, while a more detailed increments modeling analysis may be necessary as part of a PSD permit application for the proposed project, the applicant does not foresee any problems with complying with the requirement to perform such an analysis."

Is that correct or do you agree?

DR. MOORE: You know, I can't really say whether they might trigger an increment analysis or not. You know, they will have to perform such analysis if they can trigger it.

MS. SIEKMANN: On page 16,

"As discussed in the PMPD, air quality modeling results show that the proposed project will not cause or contribute significantly to violations of any federal air quality standards. In addition, as discussed in the errata to the PMPD, modeling results show that the proposed project will not cause or contribute to a violation of the new one-hour No2 federal air quality standards.

"Therefore, the applicant does not foresee any problems

complying with the PSD air quality impacts analysis requirements if such an analysis were necessary as part of PSD permit applications."

So in your opinion can they depend on that?

DR. MOORE: EPA would likely use slightly different procedures than we use to do the air quality impact analysis. You know, what the results of their analysis would -- would be up to them, basically.

MS. SIEKMANN: So -- so from -- from what I'm understanding from you, even though Applicant's testimony is making some statements, until the EPA has a chance to look at this there's no real -- real way to -- because they look at -- they look at things differently on a case-by-case basis; is that true?

DR. MOORE: For some of the pollutants I think they would look at things differently. They have different procedures they would use, basically, perhaps a different time period for the met data, meteorological data and so on. So they could get results. And I think there is fairly wide margins in -- in -- for a lot of the pollutants as far as attainment for the standards. So I think in many cases they would probably reach the same conclusion that we have reached.

MS. SIEKMANN: Thank you, Dr. Moore.

HEARING OFFICER KRAMER: Okay. That's all the way

around with the direct questioning.

Let's go back then to the applicant to see if you have any questions to ask of the other panelists.

MR. MCKINSEY: The applicant has no other questions.

HEARING OFFICER KRAMER: Staff?

MR. RATLIFF: None.

MR. THOMPSON: Mr. Rubenstein, on page 11 you say something like,

> "First it is necessary to determine whether emission increases associated with the proposed modification is significant."

How do you make that -- who makes that determination and how is it done?

MR. RUBENSTEIN: I'm only hesitating because I don't think we're going to enter into a whole seminar on -- on PSD here. So the short version is that --

MR. THOMPSON: Short version.

MR. RUBENSTEIN: -- EPA has regulations that specify exactly how you do the calculation. Typically an applicant will propose calculations. The EPA will make the ultimate determination.

MR. THOMPSON: And so is this process commenced with a filing by the applicant?

MR. RUBENSTEIN: Are you -- you're talking about

in the context of a PSD permit application?

MR. THOMPSON: Yes, I am. I'm sorry.

MR. RUBENSTEIN: Yes, if a PSD permit application is submitted that will initiate EPA's review.

MR. THOMPSON: And has the CECP made this filing with the EPA?

MR. RUBENSTEIN: CECP has not filed a PSD permit application with EPA as of today.

MR. THOMPSON: Thank you. That concludes my questions. But if any of the other members of the panel want to weigh in, please.

HEARING OFFICER KRAMER: Power -- I'm sorry. Center for Biological Diversity.

MR. ROSTOV: Oops. Sorry. Thank you. I just have a first questions.

First for Mr. Rubenstein, is it correct the applicant hasn't prepared a PSD application and has not completed the analysis required by a PSD application?

HEARING OFFICER KRAMER: Can you ask those as two separate questions?

MR. ROSTOV: Sure.

HEARING OFFICER KRAMER: Because the first one, I think, was just asked and answered, no.

MR. ROSTOV: If he had filed it. So I was asking if he -- have you even prepared one?

MR. RUBENSTEIN: So the first question is have - have -- has the applicant prepared a PSD permit application for submission to the EPA? As of today, no.

MR. ROSTOV: Have you done an of the analysis for a PSD application?

MR. RUBENSTEIN: Well, the first step would be to do an applicability determination, and I have not done one since receiving EPA's letter in July.

MR. ROSTOV: So if -- if you did an applicability determination you would argue that PSD does not apply; is that correct?

MR. RUBENSTEIN: If I were -- if I were to do an applicability determination I would first determine whether PSD requirements apply to the project.

MR. ROSTOV: Okay. Thank you. Mr. McKinsey asked you about -- I'm sorry. Mr. McKinsey asked you about construction, and you said it could maybe start in 2012 if you did an applicability determination saying that PSD didn't apply.

But I was wondering, wouldn't financing also go into the start date of construction for the facility?

MR. MCKINSEY: And I'll just -- this is beyond the scope of this witness. He was asked -- his testimony was specifically referring to whether PSD would act as an impetus to construction. He wasn't trying to testify as to

all the other hurdles that have to be jumped through to start construction.

HEARING OFFICER KRAMER: Can the witness, though, confirm your -- your statement of his qualifications? In other words, is it beyond the scope, do you feel, of your -- your knowledge and your expertise in this case?

MR. RUBENSTEIN: Well, I think, actually, Mr. McKinsey said it was beyond the scope of my testimony. I believe that is correct.

In general terms there are a number of other things that would have to be addressed before commencement of construction. Furthermore, it’s important to remember that commencing construction for purposes of a CEC license is different than commencing construction for purposes of a PSD permit. These are different sets of activities.

HEARING OFFICER KRAMER: Okay. Thank you for reminding me.

Mr. McKinsey, we are, with this somewhat informal procedure, rather than make Mr. Rostov then move to -- to make him -- or to make him his own witness to ask direct questions, it certainly was appropriate to -- to go somewhat beyond the scope as long as the witness is comfortable answering the question. We don’t want to get into the formalities of how you ask the question.

MR. MCKINSEY: And I understand. I was just

concerned at that point because, generally speaking, questions about whether or not say financing is a requirement is really a question that would have to be directed at -- at somebody else, primarily somebody within the management of the company. And so any answer he gave wouldn't really reflect the position of the applicant. It would only reflect, I think his experience in the industry which is how he answered it.

HEARING OFFICER KRAMER: Okay. And I think you -- you probably figured that one out. So go ahead.

MR. ROSTOV: And he answered it well enough. Thank you.

Applicant's reply testimony says you have not done the GHG analysis, so you don't know if PSD will apply; is that correct?

MR. RUBENSTEIN: As I've already indicated, I have not done a PSD applicability determination since EPA issued their letter in July.

MR. ROSTOV: But Mr. Zinn testified that, even using 2004 numbers, that you'd be way above the 400,000 emissions of greenhouse gases, be above the threshold. And it seems like, you know, the emissions could be up to 800,000.

So could you eyeball a best guess about whether PSD will apply for GHGs when the threshold is 75,000 tons?

MR. RUBENSTEIN: I have a firm practice of not eyeballing PSD applicability determinations because people tend to get in trouble when I do that. Suffice it to say that I believe Mr. Zinn's analysis was not fully consistent with the EPA regulations. It's more complicated than what he laid out, and I have not done that analysis yet.

MR. ROSTOV: Thank you. I have a couple -- a few questions for Mr. Walters on the same topic.

First, just for a point of clarification, are you on the staff or are you a consultant to the staff?

First, just for a point of clarification

MR. WALTERS: AS I have noted at least two times prior, I am a consultant working with the Energy Commission and have done so for the last 11 years.

MR. ROSTOV: And you've worked on air quality permits through that time; correct?

MR. WALTERS: Yes. Air quality and GHG.

MR. ROSTOV: Okay. So -- so is it correct that staff are generally involved, in your experience, involved in reviewing PDOCs and even the FDOCs, the preliminary determination of compliance and the final determination of compliance?

MR. WALTERS: Yes. We -- yes, we are. And, in fact, we did so for this project.

MR. ROSTOV: Okay. So for example, when an air

district is preparing a PDOC, a preliminary determination of compliance, would it be fair to say that the Energy Commission takes an active role, for example, you may ask questions about the analysis or you may ask question about the validity of the emission credits; is that correct?

MR. WALTERS: That's correct.

MR. ROSTOV: Okay. So you generally review the work of the air district for your own analysis when you're preparing a recommendation for certification?

MR. WALTERS: Well, we -- we look at it for its own purpose of being -- of being a permitted and making sure that we -- we believe that the permit has all the appropriate conditions and -- and is consistent with our knowledge of the project.

MR. ROSTOV: Then is it correct with respect to PSD you have not had the opportunity to review the applicant's PSD application?

MR. WALTERS: Of course not. There is no application yet.

MR. ROSTOV: Right. And you haven't had the opportunity to review applicability determination; is that correct?

MR. WALTERS: And again, for the same reasons.

MR. ROSTOV: Okay. And you agree with Mr. Rubenstein's analysis of the PSD permitting process that it

might take three to four months to prepare a permit application, it could take EPA a year for analysis, and maybe another six months to respond to comments; is that correct?

MR. WALTERS: It's probably at least a year process, and it could be more. It -- it's very dependent on the project. Some have been quicker. Some have been over two years. So --

MR. ROSTOV: Sorry. I was trying to speed this along, so -- but thank you for your answer.

And some significant amount of analysis will be done on the permit once it goes to EPA; is that correct?

MR. WALTERS: Significant amount of analysis for meeting the PSD requirements, certainly EPA will do that. If necessary, the federal land manager will have to address issues with -- with modeling if that also applies.

MR. ROSTOV: So and it's your testimony -- correct me if I'm wrong -- it's your testimony that you're assuming all this analysis will require absolutely no changes to the -- the project at hand once they go through this two-year process?

MR. WALTERS: Well, based on my experience of licensing over two dozen projects, with several of them going through a separate EPA PSD process, I don't believe I've ever seen PSD permits put on conditions that are more

restrictive than those conditions that were required to meet new source review from the local agencies regulations.

MR. ROSTOV: So with respect to GHGs, what permit conditions have the -- the Energy Commission imposed on the project?

MR. WALTERS: We haven't imposed any conditions.

HEARING OFFICER KRAMER: You're mike.

MR. ROSTOV: Sorry. Yeah. Sorry. So EPA will be imposing GHG limits on the project through their BACT analysis; is that correct?

MR. WALTERS: I'm not sure if they'll have permit conditions that are related to emissions or if they'll just find that the facility meets BACT.

MR. ROSTOV: Do you know of a mid-merit natural gas plant that's received a GHG PSD permit similar to the type of plant that Carlsbad is?

MR. WALTERS: No. But I haven't looked either.

MR. ROSTOV: Okay. So I mean, in your reply, answer number six, you say that Mr. Zinn was not making the best comparison. But there might not be a comparable project out there; is that correct?

MR. WALTERS: Well, if there's not a comparable project then the EPA will have to use its discretion and realize the purpose and need for this project, and how it's not the same as a base-load project, and that it's much more

comparable to, for example, the three PPA projects that are all essentially permitted for the same type of operation and the same maximum hourly or annual use of around 4000 hours a year.

MR. ROSTOV: Well, it's fair to say that this is kind of a new world for the EPA. There's not many of these permits out there yet. And this could require even more than their standard analysis.

MR. WALTERS: As I've noted I haven't really checked. There may be some peaker permits that have gone through, but I'm not sure.

MR. ROSTOV: I have one question for the committee. That -- that completes my cross.

And then I'm not sure if you're going to have an opportunity for statements on this or argument. Because it seemed when you presented the issue you might have been inviting it, and I was just unclear what the process was. And I'm not saying I have to do it right this second, but I was just trying to clarify the process.

HEARING OFFICER KRAMER: It's looking more and more like briefs may be the best avenue for that in the interest of time.

MR. ROSTOV: Okay. Thank you.

HEARING OFFICER KRAMER: Okay. Thank you. Now Power of Vision.

MR. ROE: I have one question for Mr. Rubenstein.

I believe that the applicant did go through the applicability determination process early on and were told by PSD that that PSD wasn't required; is that correct?

MR. RUBENSTEIN: Yes. We did make an initial applicability determination request. And the EPA agreed with our conclusion that PSD review is not required for this project.

MR. ROE: Yes. And then subsequent to that the EPA withdrew that permit and said that a new one would -- a new applicability determination would be required; is that correct?

MR. RUBENSTEIN: Not -- not quite. They said either a new applicability determination or a PSD permit application would be required.

MR. ROE: Could you repeat? I didn't hear that.

MR. RUBENSTEIN: Yes. They said that either a new non-applicability determination or a PSD permit application -- one more time.

They said either a new non-applicability determination or a PSD permit application would be required.

MR. ROE: Good. Thank you. And I was just curious, if you did apply for a non-applicability determination early on in this project what is causing the delay for you to go forward and -- and make those requests

now? It's been a long time since EPA let you know that some action is required on your part.

MR. RUBENSTEIN: It's -- it's been approximately five months. And we have not yet done the calculations. The addition of greenhouse gases as a regulated air pollutant for PSD purposes complicates the analyses somewhat. And there are some different aspects of EPA's rules that we need to look into before we can make a complete applicability determination.

MR. ROE: Thank you. That's -- that was my question.

HEARING OFFICER KRAMER: Thank you. Terramar, let's see, you -- did you have cross-examination questions?

MS. SIEKMANN: Yes.

HEARING OFFICER KRAMER: Go ahead then.

MS. SIEKMANN: Before I begin, Mr. Kramer, could you tell me the exhibit number for Carlsbad Energy Center's rebuttal testimony; 199?

HEARING OFFICER KRAMER: 199P, as in Paul.

MS. SIEKMANN: Thank you. Mr. Rubenstein, on page 14 of -- of Exhibit 199G, which is the applicant's supplemental testimony, it states,

> "The applicant has not made final assessments of either time period or of the net emission increases for proposed -- for purposes of PSD applicability at this

time."

Just -- I just didn't understand what that meant. What does that mean?

MR. RUBENSTEIN: I'm sorry, were you talking about the rebuttal testimony?

MS. SIEKMANN: No. I'm talking about the supplemental testimony, page 14.

HEARING OFFICER KRAMER: That's a different exhibit then. That would be 199G, as in George.

MS. SIEKMANN: Yes. I thought that's what I said.

HEARING OFFICER KRAMER: Well, you said rebuttal though.

MS. SIEKMANN: Well, no, I know. I needed that number of later.

HEARING OFFICER KRAMER: Oh. Okay.

MS. SIEKMANN: Yeah. Sorry.

MR. RUBENSTEIN: I'm sorry. Were you talking about page 14?

MS. SIEKMANN: Yes, page 14. And there's -- there's a B there, PSD program compliance, and right above it says,

"The applicant has not made final assessments of either time period or of the net emission increases for the purposes of PSD applicability at this time."

I just wondered what -- I didn't understand what

that meant.

MR. RUBENSTEIN: What -- what I was trying to say is that there are two time periods that are relevant for purposes of PSD applicability. One is the baseline period, and the other is the contemporaneous window. And both of those are terms that are defined in the EPA regulations. And I have not made determinations about either of those time periods. And after I do that I would have to then calculate the net emissions increase, and I have not done those calculations either.

MS. SIEKMANN: Thank you. And next, in your testimony on page 11 of the same document, the supplemental testimony, you state that,

> "The federal PSD requirements apply on a pollutant specific basis to any project that is a new major stationary force or a major modification to an existing stationary source."

Which is the CECP?

MR. RUBENSTEIN: Well, the CECP certainly isn't a new major stationary source, and it might be a major modification to an existing major stationary source.

MS. SIEKMANN: So you don't apply to PSD based on what you are, either a major stationary source or a major modification to an existing stationary source? You don't -- you don't -- when you make your application you don't say

which one you are?

MR. RUBENSTEIN: You do because you are either one or the other.

MS. SIEKMANN: So which is the CECP?

MR. RUBENSTEIN: I think what -- what we're missing here is that it may be that CECP is a minor modification to an existing major source, in which case it would not be subject to PSD review.

MS. SIEKMANN: Thank you for that clarification. Okay.

So on page 12 of the same document it states,

> "The emission increases for the new equipment associated with the proposed project based on proposed potential to emit are summarized below in Table 1. As shown in Table 1 the emission increases for the proposed new equipment is above the PSD significance level for the attainment pollutants, NOx, CO, PM-10, PM-2.5, and GHG."

Does this mean that this could trigger PSD review for GHG emissions?

MR. RUBENSTEIN: Yes, it means that it could. It doesn't mean that it does.

MS. SIEKMANN: Thank you. And if so I was wondering why the rebuttal testimony on page 6 -- and that's the other document, document 199P,

"Applicant's consultant Gary Rubentstein also has not performed any such calculations, and therefore Mr. Rubenstein can not render an opinion at this time as to whether CECP would, in fact, trigger PSD review for GHG emissions."

So I was confused. One says one thing and one says the other.

MR. RUBENSTEIN: Actually, those statements are consistent. And they're consistent because the table that you referred to in the initial testimony was only a portion of the calculation. And those are not necessarily the numbers that would go into a final applicability determination.

MS. SIEKMANN: Okay. And then my last question, the applicant -- so back to the supplemental testimony, page 14, it says,

"The proposed project compliance with BACT for criteria pollutants is discussed in the PMPD. Consequently, the applicant believes that the proposed project currently complies with BACT for all criteria pollutants and that this determination will not change in the course of a PSD review."

But yet on page seven of the applicant's rebuttal testimony it states,

"Mr. Zinn's assertion that the CECP would not likely

comply with GHG BACT requirements because it's -- because it's GHG emissions rate is allegedly higher than that of the Palmdale Hybrid Power Project fundamentally misrepresents the nature of a federal BACT analysis. Such an analysis is made on a case-by-case basis, taking into account a variety of factors."

So which is it? Does it or doesn't it?

MR. RUBENSTEIN: I'm not understanding the question. Does it or doesn't it what?

MS. SIEKMANN: Well, you saw the two statements. It sounds to me like those two statements don't go together. It sounds to me like one is saying one thing and one is saying another thing, and I wondered which one was -- was correct.

MR. RUBENSTEIN: I think they're different conclusions addressing different questions. And so I'm -- I apologize. I am having trouble figuring out how to --

MS. SIEKMANN: Okay. Well, it says,

"The applicant believes the proposed project complies with BACT for all criteria pollutants, and this determination will not change in the course of the PSD review."

But then it says,

"Mr. Zinn's assertion that CECP would not likely comply with GHG BACT requirements because its GHG emission

rate is allegedly higher than that of Palmdale fundamentally misrepresents the nature of a federal BACT analysis."

It says they're made on a case-by-case basis. But before you had stated that it complies. So does it comply or is it a case-by-case basis? Which is it?

MR. RUBENSTEIN: I think I understand the confusion.

MS. SIEKMANN: Okay.

MR. RUBENSTEIN: First of all, greenhouse gases are not a criteria pollutant. And consequently, that -- that statement that I made about the BACT discussion and the PMPD doesn't apply to greenhouse gases.

And second of all, I believe that CECP would comply with federal BACT requirements based on the type of analysis that EPA did for the Palmdale project. The numbers may not be exactly the same, but I believe that CECP will comply with a case-by-case determination. BACT for greenhouse gases if we have to file a PSD permit application for that pollutant.

MS. SIEKMANN: Thank you, Mr. Rubenstein. That concludes my questions.

HEARING OFFICER KRAMER: Thank you. Wow. Okay. That's everyone around. The committee has a couple questions and which hopefully will not provoke more, but you

never know.

Mr. Moore, attached to the staff's August filing was a letter from you on behalf of the Air District to the effect that the district did not believe that there was any need, based on the EPA's withdrawal of the PSD non-applicability determination, there was no need for the district to revise it's final determination of compliance, and the district did not intend to do so.

Has anything changed with regard to that statement?

DR. MOORE: It has not.

HEARING OFFICER KRAMER: Okay. Thank you. Mr. Rubenstein alluded to the difference in the definition of construction between the PSD rules and the Energy Commission's normal definition of that term. This is not meant to suggest the committee has made up its mind, but if the committee decides to go ahead and recommend approval of the project before the PSD permit is issued it may be appropriate to include a condition, just to make it clear that no construction can occur until that federal permit or a statement that none is required is provided to us.

And I'm wondering if it -- I suppose the applicant would be most interested in this -- but if you want to comment about whether we should be careful in that condition to define construction as it's -- for that purpose as it's

defined in the -- the federal law as opposed to our law. So in other words, if the applicant met -- met the requirements to begin construction under the Energy Commission permit it could -- and that would involve filing a lot of plans and reports, it could go ahead and perform those types of construction that were not prohibited by the federal requirement.

MR. MCKINSEY: I know the applicant would prefer -- would have an issue, I think, with the attempt to redefine construction within the context of the permit. So you're -- the other option you're proposing seems more feasible, which is to condition the start of construction as it's defined under essentially CEQA and the Warren Alquist Act and -- and California Law that's not under the Clean Air Act, condition that on a particular permit. That's something the Energy Commission has done for many permits. NPDS permits, for instance, is a very -- a very common one that they'll condition it for. I don't -- that said, I don't think the Energy Commission has ever done that for PSD.

And the issue the applicant may have with that is that there are activities that you can do in -- that are not construction under the Clean Air Act. And so the applicant would have all the permits required to do those activities, and that could include remediating in the tank area, for

instance, in this particular project. Many projects have these types of activities they can do that -- that are clear because they don't -- they're not subject to that.

But that being said, you know, I think it would take crafting a condition, but it would probably be similar to an NPDS permit type of condition, that conditions construction on a particular permit.

HEARING OFFICER KRAMER: Mr. Rubenstein?

MR. RUBENSTEIN: There's one other caveat to this issue, which is that although we've been talking about the PSD non-applicability determination, there is actually no legal requirement for the applicant to seek one. The applicant can make its own determination that a PSD permit is not required and commence construction. Of course, it's at risk if EPA concludes otherwise. But there isn't a legal requirement for an applicant to submit a request for a non-applicability determination, and I'm not aware of any legal requirement for EPA to issue one.

MR. THOMPSON: What is the harm that the committee would seek to avoid by somehow reconciling the two definitions of construction?

HEARING OFFICER KRAMER: What I'm suggesting is that if -- if we had a condition that simply said that you can not start construction as the Energy Commission means it until you get the PSD permit or -- well, you have -- one of

the reasons for including the condition is that the way our compliance unit works it's a lot easier for them to -- to track this issue. And -- and, you know, the commission may have some interest in making sure that, you know, the applicant isn't boldly going forward to, you know, cause the federal authorities to -- to come in and -- and shut them down.

You know, we -- we haven't decided what to do. But -- but certainly for tracking purposes it's good for compliance to have it in the condition so they know to -- to look for that. But this wrinkle that it's not necessarily -- it's not necessary to apply for a determination that you don't have to get a permit. And the -- maybe the EPA will not be terribly quick or -- in agreeing with that determination and getting back to the applicant. It is another wrinkle.

I mean, that's why I threw it out today, so we could hear your comments on that and -- and consider that, you know, when we apply a condition or don't, if we decide to recommend approval.

MR. MCKINSEY: I believe, I know in the case of at least one, and I think three projects in the last decade, the projects have started construction under the Warren Alquist Act before they had completed certain things that gave them the authority to construct from the local air

district. And again, the reason why is the activities they were doing were things that were not construction under the Clean Air Act for purposes of that but were -- were allowed. And -- and I think, as I remember, the way those played out is the -- the -- the compliance project manager and staff looked carefully at that topic and that question and gave them essentially a limited authorization to proceed with certain activities because it made sense to proceed with those activities.

HEARING OFFICER KRAMER: Okay. Any other comments on that particular issue? Okay. Any other questions for the panel from the committee?

PRESIDING MEMBER BOYD: One quick question of -- it is Dr. Moore; correct?

DR. MOORE: That is correct.

PRESIDING MEMBER BOYD: Okay. I'm just wondering if -- have you -- I consider you a major metropolitan well-qualified air district. Have you ever been challenged by EPA on any of your early and preliminary views on PSD permits, i.e., has there been any major disagreements?

DR. MOORE: We haven't done very many PSD permits.

PRESIDING MEMBER BOYD: I knew that was the next part of that answer.

DR. MOORE: Not to my knowledge.

PRESIDING MEMBER BOYD: Okay. Thanks.

MR. RATLIFF: And can I clarify, Mr. Moore, when you did PSD permits that was when you did have a delegation agreement and that was in the past; is that correct?

DR. MOORE: That's right. We got site specific delegation for, I think two projects.

HEARING OFFICER KRAMER: Okay. Thank you all. I think we've -- we've taken care of the PSD panel.

Next up are conditions Land-2 and Land-3.

Mr. Valentino.

Mr. Monasmith, you can be where you are.

Doctor Greenberg is in the audience. He might -- might as well come up. You are -- you, along with Mr. Walters, are offered by staff for cross-examination. I gather there's no need to ask any questions of you.

And then Eric Knight, are you on the telephone? Hold on. I will un-mute everyone so that -- because I don't see your name on here. Mr. Knight, are you there? Ouch.

MR. RATLIFF: Mr. Kramer, my -- my understanding is that Mr. Knight thought, based on what he heard at the prehearing conference, that he was excused from being a witness today, so he is not here. And I suspect he is not on the phone.

HEARING OFFICER KRAMER: Okay. That's fine. Okay. Just bear with me for a minute because I have to mute everyone, and then allow you to press -- okay. We should be

back on the air.

We also have Debbie Fountain from the city, and Ms. Siekmann again.

So is anybody here who has not been sworn previously?

Mr. Valentino. So if you would raise your right hand.

(Scott Valentino, Panelist, is sworn.)

HEARING OFFICER KRAMER: Thank you. Mr. McKinsey?

MR. MCKINSEY: I'm going to let him say I do on the record.

MR. VALENTINO: I do.

MR. MCKINSEY: As I indicated, the applicant is tendering Mr. Valentino for questions regarding the proposed Land-2 and -3 changes, and any questions parties have about the financial topic, but we're not going to use up any time to repeat his direct testimony.

HEARING OFFICER KRAMER: Okay. And staff is in the same position. So let's go on to the city.

MR. THOMPSON: Thank you. Good afternoon, Ms. Fountain. I just have a couple questions in the nature of some preliminary remarks.

In this commission's -- in this committee's notice issued on November 29 the parties were asked to address the financial concerns raised by the applicant. Have you done

this?

MS. FOUNTAIN: Yes, I have. And after reviewing those arguments that have been made by the CECP we have conceded to the points that placing the burden of demolition and remediation on the CECP would be more appropriately a burden for the EPS owner, and that we've conceded to the other points and agreed that the -- the cost figure would probably be more appropriately placed on the EPS owner, as well, and that -- that points two, three and four and the -- on page four and five of the CEC response we have conceded to.

MR. THOMPSON: In meeting that you understand that a power purchase agreement could be required before any kind of demolition or mediation was to be done?

MS. FOUNTAIN: Correct.

MR. THOMPSON: And do you believe that NRG should be free to take partners or sell to an appropriate entity?

MS. FOUNTAIN: We do agree to that and believe that that is appropriate.

MR. THOMPSON: Okay. Has a redevelopment agency determined that the CECP satisfies the extraordinary public purpose standard?

MS. FOUNTAIN: We have reviewed this with our agency, our housing and redevelopment commission, and we still do not believe that the standard has been met that the

project and that it still represents a violation of the redevelopment plan and the related LORS.

MR. THOMPSON: And how -- do you have any opinion on how the CECP could meet this standard?

MS. FOUNTAIN: We have discussed this in -- in previous testimony several time times as an agency representative. And we believe there needs to be -- the conditions need to -- to remain and that they probably need to be enhanced with some timing conditions, and that also additional benefits need to be provided to be able to make the extraordinary public benefit finding.

MR. THOMPSON: Thank you. Finally, would you comment on the items that the CECP has referenced that in their opinion justify an override?

MS. FOUNTAIN: We have reviewed all of those. And to be quite honest, we feel those are still not compelling. They're not extraordinary. They still continue to be ordinary types of benefits and we don't think they would justify making that finding -- for the commission to make that finding.

MR. THOMPSON: And -- and in conclusion, if the CECP were to volunteer to re-craft land conditions two and three to set a definite date, do you think that that would go a long ways toward achieving the extraordinary benefits?

MS. FOUNTAIN: I think it doesn't get us the total

package, but I think it definitely goes a long way in helping us to get closer to that finding.

MR. THOMPSON: Thank you.

MR. MCKINSEY: We -- the -- this topic of extraordinary public purpose is kind of hard to pigeonhole whether it falls under Land-2 and -3 or under LORS compliance. It's -- it's really a question of both. And from what I think the city's testimony indicates, you know, to them it's part of the question of the adequacy of Land-2 and -3, but we really have that planned for the LORS compliance portion of our testimony because it really directly is a LORS compliance issue.

So we didn't present any direct on that, and we were planning on doing that as part of that latter panel. And I noted that Ms. Fountain isn't a witness for that panel, only Mr. Ball is. And so I don't know, maybe we -- we've missed a little bit of what we think these two topics are and we divided them differently than they actually are or not.

HEARING OFFICER KRAMER: That's fine. We can -- we can keep Ms. Fountain on the panel for the next item, the -- the LORS.

But let's see, first we have Ms. Siekmann, and then we'll go back for a round of questions. But I think, you know, before we finish -- we start that round we'll have

either a few questions or some thoughts from -- from up here about what we want to hear specifically about.

But go ahead, Ms. Siekmann.

MS. SIEKMANN: In order to talk about conditions Land-2 and -3 it's important for Terramar to talk about the history that our community has had with the applicant. It's important to remember that even with the -- at the beginning, after the purchase of Encina by Cabrillo, the -- the requirements to put scrubbers on the Encina units required variances because it took a great deal of time. And so then the energy crisis came, and then Cabrillo had to go to San Diego Air Pollution Control District to get emission variances.

And so Cabrillo was asked under oath if they intended to try to go to the county board of supervisors to avoid putting those scrubbers on that they -- was a condition of the purchase of Encina. And they -- they agreed that, yes, they intended to go to the county board of supervisors so that they wouldn't have to put those scrubbers on. But because of what happened during the energy crisis and they were looking for emission variances they finally changed their mind and did put the scrubbers on. That was -- that was our first experience with the applicant.

Then the CECP comes along, and for almost four

years the applicant allowed us to think that Encina was under RMR. Now whether or not you call RMR the same as tolling there is -- RMR came about because it -- during the crisis because RMR was really important and it meant that particular reliability must run had a meaning that came with it. And -- and it was discussed in the hearing that there was RMR on those units, and it was discussed in written testimony. And to find out that they really weren't under RMR did make a difference. And that was our next experience with the applicant.

Next, in June of 2011 the applicant sent out notices to Terramar announcing the start of construction. The start of construction with no CEC permit, the start of construction with no city permits, and that was our next experience with the applicant.

Now they've proposed conditions Land-2 and -3. And they want to put a second great big huge power plant on the coastline. And now they're turning around and taking this away. And the committee is bound by -- what do you call that again --

MR. ROSTOV: Section.

MS. SIEKMANN: -- by Section 25300, Legislative Findings and Declarations,

"To ensure that a reliable supply of energy is provided consistent with protection of public health and safety,

promotion of the general welfare maintenance of a sound economy, conservation of resources, and preservation of environmental quality."

And believe me, those of us in my neighborhood Terramar have grave concerns with conditions 2 and 3. We want them to stay in. We need the protection of the CEC for our neighborhood based on our dealings with the applicant through the years. Thank you.

HEARING OFFICER KRAMER: Thank you.

MR. ROE: Mr. Kramer, may I be permitted to take 5 minutes of our 15 minute cross and use it for direct?

HEARING OFFICER KRAMER: I'm sorry. Okay.

MR. ROE: As I recall we're looking at modifications to conditions Land-2 and -3 because the applicant belated has decided that including those provisions will make the project, in their own words, financially unviable.

If they can ask this committee to reconsider changes to Lands-2 and -3 on the basis of financial viability, have they not opened the door to the question in general of financial viability of this project?

They have not demonstrated in any way, they have not presented any data whatsoever to this committee that the project is financially viable without conditions Land-2 and -3 and would be so with conditions Land-2 and -3. You're

being asked to allow the applicant to have his cake and eat it too. He wants to cut it both ways. He wants to be able to use the question of financial unviability or inviability, properly said, as -- as a reason for changing Lands-2 and -3, but he doesn't want the committee to look at the viability of the project as a whole. And that's puzzling to me.

HEARING OFFICER KRAMER: Okay. That sounded more like argument than testimony. The -- the cost of the demolition and it's affect on the -- potential affect on the project which, of course, works back to the rate, to the ratepayers, potentially, is in our mind a very different question than whether the project in general is viable. The commission doesn't consider, except in circumstances like override sometimes, the -- the viability of projects -- we don't give them a financial physical, if you will -- and let the market basically decide whether they are going to make it or not. And -- and that's a change that Commissioner Boyd alluded to earlier from the -- the previous -- that occurred in the late '90s when we had deregulation. And we no longer go through what we call a notice of intention process.

So -- so again, we see them as very different. Your -- your arguments are noted. I believe you made those, as well, in your testimony. So thank you for that.

We'll move on to a couple committee questions, or at least one, and that's of Ms. Fountain. You talked about changing deadlines in one of your answers. You -- I presume you've looked at the -- the revised versions of Land-2 and -3 that the applicant included in its testimony?

MS. FOUNTAIN: Correct.

HEARING OFFICER KRAMER: And do you have any thoughts about the sort of amendments to those that you would like to see to -- to address your issues?

MS. FOUNTAIN: Yes. We actually included some thoughts on it in our testimony. Let me find it real quick. So specifically we put to improve that condition we would want to see that the CECP would not sign any bilateral contract with SDG&E after January 2015. We're basically conceding to the 2017 date as far as the earliest that something could happen. And that each year starting on January 1st, 2015 that the EPS owner would apply to the California ISO and the CPUC for permission to retire and demolish the EPS.

And if these agencies do not approve the request that they would reapply every year for that approval. And then when they're no longer under a must-run contract they, immediately following CPUC's ISO permission to retire the EPS demolition and remediation, would then commence.

And then, finally, the NRG and the CECP would not

oppose the other SDG&E projects such as the three PPA projects before the CPUC, putting some timing to that condition so that we can see that there's a clear direction to getting that site demolished, that -- the buildings demolished and remediation of the site.

HEARING OFFICER KRAMER: Then let me ask the applicant to -- to react to those proposals.

MR. VALENTINO: Speaking to react to a few in particular, I think it's -- it's not -- it's not in the best interest to ask the applicant to not enter into a bilateral deal with SDG&E beyond 2015. If there's a need for this plant there's -- the best types of contracts are those that are entered into on an ongoing transaction basis rather than a reliability must-run contract which is a cost-based contract. I think the -- the emphasis of the ISO in the state is not to revert back to reliability must-run contracts.

I think also in some of the clarifications you made in your testimony you segregated the -- you noted -- distinguished between the responsibility of the CECP versus EPS as the -- as the site owner. In my view I think we haven't removed anything we're proposing in these conditions. We've made a further clarification to the condition that the demolition and the remediation needs to be conditioned upon a viable development alternative. We

have not been able to have those discussions with the city, but we have no confidence that we will ever achieve a viable development alternative that would consider those costs.

So asking -- making the distinction between the CECP and the owner is irrelevant. We would actually burden the project with the cost of demolition, absent knowing a viable alternative development plan for the site.

So I think we -- that's our main concern with -- with the -- the proposed changes. I think first, one is the 2016 date. We just don't see that as prudent. We actually have already proposed to actually ask for the retirement of the existing units during the commissioning of the new units. So once the new units are up and running we would ask for the retirement of the existing units. Believe me, we have no intention -- if there's no need for the existing units we have no intention to keep those units running.

HEARING OFFICER KRAMER: That raises another couple questions. You have to retire 1 through 3 before you can start operating the CECP; correct?

MR. VALENTINO: Correct.

HEARING OFFICER KRAMER: So could you be put in a position where you're waiting for permission to retire 1 through 3 and therefore can't operate CECP?

MR. VALENTINO: We do not believe that -- that could occur. It's part of our licensing application and

needs to be considered as such. If the Energy Commission is familiar with our El Segundo project, it's conditioned upon the retirement of Unit 3 to start commissioning of the -- the plan we're building up there. And that has been agreed to with the ISO.

MR. MCKINSEY: I'll correct at least one portion. It is the case, however, that we -- you would have to obtain permission under CPUC general order. You would also have to get permission from the CPUC. And I think that may be the question you were asking, that there might be another approval required. He was only, I think, referring to -- to the Energy Commission approval. But the reality is that they have to get approval by the CPUC to shut down a unit in California. All operators do. And so 1, 2 and 3 -- and that is a risk issue that -- that they have to be approved to be shut down before they can be shut down. And that's a risk a few other projects in the recent year have dealt with before they could start construction.

HEARING OFFICER KRAMER: Although I suppose one answer might be that when you come in with newer, more efficient megawatts they should readily give up the old ones.

MR. MCKINSEY: Yeah. In the instance of Walnut Creek and the AS Huntington Beach (phonetic) shutdown of Units 3 and 4 the -- the combined entity that acquired those

units submitted an application to the CPUC saying, look, they been released, and we're shutting them down to make these other offset requirements. And the CPUC promptly approved it in a very cooperative manner. But we have very little history of it and it is a risk issue that all project developers that are depending on the shutdown of other units, for whatever reason, whether it's air credits or something else now have to grapple with in terms of -- of getting that approval before they can shut them down. And that's going to be present regardless of the Energy Commission's decision authorizing that shutdown.

HEARING OFFICER KRAMER: Okay. Okay. Let's go for follow-up questions then, one round, starting with Mr. McKinsey.

MR. MCKINSEY: You know, and in all sincerity, we really don't want to have a cross-examination purpose. And so we -- and we don't have any questions of Ms. Fountain in terms of that.

I do think that the -- that the real purpose is to find some language in Land-2 and -3 that the committee agrees on. And -- and so, you know, our real purpose is for you to ask questions, and we welcome the applicant to be asked questions, you know, by -- to -- to the extent we can get there. But we have none.

HEARING OFFICER KRAMER: Okay. Staff?

MR. RATLIFF: We have no questions.

HEARING OFFICER KRAMER: Thank you. The city?

MR. THOMPSON: Thank you. Mr. Valentino, I think most of my questions are going to be directed to you on -- on the panel.

Does NRG anticipate -- the EPS owner anticipate operating Units 4 and 5 after 2017?

MR. VALENTINO: I think -- is the question independent of Carlsbad Energy Center? Because I think the answer is different whether Carlsbad Energy Center gets built or not. We have -- right now we are preserving our right to operate those units. But I think as you can see in our proposed conditions we would seek the ability to retire all five units at the commission of the Carlsbad Energy Center.

MR. THOMPSON: Let me refer to -- and you may have -- you may have misunderstood the intent of this. On September 13th Mr. McKinsey told this committee in all likelihood Units 4 and 5 are going to operate forever, and well into the future with no definite deadline for shutdown. I think those were his words.

That sounds to me like there’s no date, it will go on forever. Do you agree with that?

MR. VALENTINO: I really believe that it’s directly dependent upon the need for generation at the site.

If -- if -- you know, basically, on the condition we proposed we would ask to seek the ability to retire the units upon commissioning. But if the ISO for some sake determines that these are needed for reliability we don't have the ability to shut them down on a date certain.

MR. THOMPSON: Then let me go to your -- to your testimony. And I think on page 4 of the November 18 testimony -- and I -- it's not -- it starts with -- but I think your testimony starts on page 4; is that right?

MR. VALENTINO: I believe so.

MR. THOMPSON: Section 2. Yeah. "Absent the complete removal" -- and I'm just going to read the heading -- "removal of Land-2 and -3, modifications are necessary to remove the financial burdens." And I think you now understand that the city is amenable to that in placing the burden of the cost of demolition and remediation upon the EPS owner. Is that your understanding?

MR. VALENTINO: That is my understanding, but it falls one step short in terms of defining a path for a viable alternative development project that would bear those costs. At the time we purchased the existing station, and I think it's referenced in testimony elsewhere that the owner knew of the obligation, there is no existing obligation to demolish the -- demolish the plant or remediate the site today as it stands. So that would need to be justified on

an alternative development plan that considers the economic cost of clearing that portion of the site.

MR. THOMPSON: So -- so the owner of EPS needs the owner of CECP to lean over the fence and say, hey, we -- we got a deal; is that what you're telling me? They strike me as --

MR. VALENTINO: No.

MR. THOMPSON: -- independent entities.

MR. VALENTINO: No. The CECP has nothing to do with the decision or these financial burdens that are being placed on EPS. That's part -- that's the exact reason why we're saying the financial burden should not be born by EPS -- by -- by CECP. It's not related to this repower project.

MR. THOMPSON: But I guess -- and clarify for me because I'm not seeing the -- the necessary nexus between the approval and commissioning of the CECP and EPS's independent decision that there is enough money in the redevelopment entity effort to demolish, remediate and redevelop.

MR. VALENTINO: I think the city has a lot of direct control over ultimately what -- what occurs with the property on the western portion of the tracks. And that's exactly why we need to have collaborative discussions with those outside of this proceeding to determine what

ultimately occurs with that property

I have stated in -- in a speech that I gave to the city council when the zoning ordinances were passed that we do share a common vision with ultimately redeveloping the western portion of the property when we can. But that is a completely separate project from the project in front of the Energy Commission today.

MR. THOMPSON: Are you aware that the city has invited NRG to discuss a development agreement?

MR. VALENTINO: I am not aware of detailed discussions. I have not been involved in those discussions, only past discussions. And I actually think that the proceeding in front of us today actually precludes us from having any meaningful discussions until this is resolved.

MR. THOMPSON: I guess I don’t understand that. Would you elaborate on that last statement.

MR. VALENTINO: Let me -- let me make it more clear. When we submitted out application for CECP to locate generation in between the railroad tracks and Interstate 5 it was directly consistent with what the city supported at that point in time. It’s only very -- more recently that the city has adamantly opposed any generation on the site altogether.

So I think that given the past history and the discussions with the city and the changes in positions it’s

very difficult for us to have any meaningful discussions in terms of what might be accomplished until this proceeding is done.

MR. THOMPSON: So you're not taking the city up on its offer to discuss a redevelopment agreement?

MR. VALENTINO: I'm not saying that. I certainly am. But I think there's --

MR. MCKINSEY: Your question kind of presumes that he was aware of an offer. But as he indicated, he's not aware of an offer to take up any type of a development agreement negotiation.

MR. THOMPSON: Okay. I'll take back -- retract that statement.

Your -- your Argument 3 on page 5 goes to the cost of demolition not be borne by the applicant. And again, I think that you heard this afternoon Ms. Fountain, on behalf of the Redevelopment Agency, agree to that and agree again that the costs should be borne by the EPS owner or its partners or whatever; right?

MR. VALENTINO: That's correct.

MR. THOMPSON: And number four, the last of your three arguments, financing, new electrical generation, and function of a power agreement, a power purchase agreement, you say in there that -- that you need a power purchase agreement and you can't get one if there's $100 million

liability sitting on the CECP; is that right?

MR. VALENTINO: That's correct.

MR. THOMPSON: And so --

MR. VALENTINO: And it's not an appropriate cost to put on ratepayers either.

MR. THOMPSON: And somewhere in here you've said that you should be free to take on partners or even sell EPS in order to achieve redevelopment?

MR. VALENTINO: Correct.

MR. THOMPSON: And the city agrees to that as well?

MR. VALENTINO: I believe so.

MR. THOMPSON: Then I go back to your proposed conditions.

MR. VALENTINO: Okay.

MR. THOMPSON: And I really don't have any questions on Land-2. It strikes me that Land-2 wasn't changed very much?

MR. VALENTINO: That's correct.

MR. THOMPSON: Okay. Was it changed at all?

MR. MCKINSEY: I think there are some minor changes because of some nomenclature change. But the essence of Land-2 didn't receive any changes. And did we submit a strikethrough? I think we -- maybe we didn't but --

MR. THOMPSON: I didn't get one.

MR. MCKINSEY: But the essence didn't. But there are some nomenclature changes in Land-3 so for them to be consistent. I believe there are some changes in Land-2.

MR. THOMPSON: Thank you very much. It strikes me that -- however, that Land-3 has been changed substantially. Would you agree?

MR. VALENTINO: I would agree that it has been clarified.

MR. THOMPSON: Let's go through Land-3 a little. In the -- in the second full paragraph, and these words are new, I think, "Upon the permanent retirement of Units 1 through 5." What -- what do you mean by permanent retirement? What were you contemplating there?

MR. VALENTINO: This may be also nomenclature, but there is the ability to also mothball units and then bring them back into service. This would be a permanent retirement of the units surrendering the air permit and -- and all other permits.

MR. THOMPSON: And that sentence goes on, "of units one through five and the black start unit."

MR. VALENTINO: Correct.

MR. THOMPSON: So --

MR. VALENTINO: I think there's some clarification perhaps here. But Units 1 through 5 are the -- are the

steam boilers that are actually housed inside the building. The black start unit is actually outside of the building and adjacent to the -- the switch yard, the existing SDG&E switch yard.

MR. THOMPSON: Help -- help me here. Because the way I read this, that you need the permanent retirement of Units 1 through 5 and the black start unit before you start pursuing fiscally viable redevelopment.

MR. VALENTINO: There’s lots of factors at play here. But presumably you can -- you could -- you could go down the path where as long as the existing five boiler units that were inside the building we can -- we can seek in ultimate development for the site.

But as -- I think as you’re aware there’s a lot of other complicated factors on the site, including the existing SDG&E switch yard that is not going away any time soon.

MR. THOMPSON: What is a fiscally viable redevelopment, in your opinion?

MR. VALENTINO: Fiscally viable?

MR. THOMPSON: I think it --

MR. VALENTINO: It -- it basically means after considering all of the costs the -- the commercial property value from a Encina property after taking into consideration all of the costs is economically net positive. In other

words, the cost of achieving that goal are not greater than the benefits from that goal.

MR. THOMPSON: Okay. Let me give -- let me give an example to help me understand here. You'd be looking at $100 million in demolition and -- and remediation. And pick a number out of the air, $50 million for a redevelopment effort on that whole site, are you looking at a 10-year or 20-year projection of when you'd make that back or -- or just how would you look at --

MR. VALENTINO: We would look over the life -- we would look over --

MR. MCKINSEY: I want to object, but I just want to clarify something. The language in there is subject to a lot of interpretation. I think you're asking him for his interpretation of what that phrase means. And we'll get better off if, for instance, you advocate, you know, you simply say how about interpreting it this way or changing a language that why. And if you want to go through -- I mean, it creates a record, right, where we've got Mr. Valentino's testimony about what he thinks each of these phrases means.

What's going to matter in the end is what the commission intends by them if they adopted that particular language. So I don't see it as relevant to ask him from that perspective. But I do think it's relevant to say we want this phrase clarified, and how about this or how about

that, and that's my point. And it's just -- doing this is going to create a lot of question and uncertainty about what something means and the real purpose.

I get your purpose, your point, actually, is perhaps you want clarity on what that term means. But I think we get better off if you just say that or even suggest something else.

HEARING OFFICER KRAMER: Okay. Well, we didn't mean to imply that we had to decide this. So if you folks work something out we would certainly give that significant weight.

ASSOCIATE MEMBER DOUGLAS: That's right. And if they don't work it out we'll have to do our best to decide it.

PRESIDING MEMBER BOYD: I don't want to say that this is deja vu all over again. Before anybody goes to far in trying to take credit for -- for this subject, I do remember in this room 18 months to 2 years ago the then siting committee, thinking that the two parties were beginning to come closer together, did suggest that the parties might want to have their own side discussion about reconciling the issue such that maybe there could be a quid pro quo over the final suspension of operation of 4 and 5 and the teardown of the facility such that if everybody could reach a mutually agreed upon solution, and obviously

economics is a big part of that, in my opinion, you know, it's failed to date.

It's -- it's gone up and down over time.

It sounds -- and I don't think it's, Mr. Thompson, totally fair of the city to throw out that -- that they made an offer.

I mean, in any event, it sounds like, as Commission Douglas just indicated, maybe I go back at it again a little bit better with a little bit more sincerity and realism.

HEARING OFFICER KRAMER: Go ahead, Mr. Thompson.

MR. THOMPSON: Yeah. Actually, Commissioner Boyd, I think you did a stellar job. I think it was -- it was -- your view sitting up there in the dais, that -- that prompted CECP and ourselves to get together. And the first draft was -- was done by CECP, and -- and we huddled over a couple cups of coffee. And I think it's largely to your benefit or, you know, it goes -- it goes to you that that document with the original Land-2 and -3 were submitted to the committee. And we were -- we were fairly happy with that.

That was subsequently withdrawn and we became unhappy. But I don't -- I don't want you to think that we are not grateful for -- for your efforts. That's all I have.

PRESIDING MEMBER BOYD: Apparently it's going to be my last efforts, because I'm not a commissioner after three weeks. So you all have fun.

HEARING OFFICER KRAMER: All right. Yeah. Thanks. Power of Vision.

PRESIDING MEMBER BOYD: By the way, I'm not quitting, I'm retired, nor have I been fired yet.

MS. BAKER: Dr. Roe has a question.

MR. ROE: Mr. Valentino, the applicant is requesting changes in the wording to Lands-2 and 3. As such, do you believe that the burden of proof, and their arguments rest of them and not on the cross-examination?

MR. VALENTINO: I'm not quite sure what you mean by the burden of proof. I think it speaks for itself that adding $100 million cost to a project makes it very difficult to compete in that RFO.

MR. ROE: Well, I'm not sure I agree with your testimony that the new project isn't burdened with an additional $100. I understand both EPS and CECP are both owned indirectly by NRG, and that if any lender were to be asked to provide funding for it they would look not to this limited subsidiary, CECP, for the viability of the project, but they would look for the parent owner to see whether they can guarantee the project as a whole.

MR. VALENTINO: That's not true. Under the

fundamental tenants of project finance you look at the project and the contracts behind the project. There is no recourse to the owner.

HEARING OFFICER KRAMER: Dr. Roe, yeah, that's why they create these subsidiaries so that they can -- they can just, you know, they can limit the amount of assets that might get taken back to -- to -- to the project that's being finance.

MR. VALENTINO: I would actually state it a bit differently. It's -- for a project with a long-term contract that has isolated assets it's a lot cleaner for the lenders to distinguish the value of that asset versus the value of an overall portfolio, including NRG's overall corporate portfolio.

HEARING OFFICER KRAMER: But in any event, the -- the burden of proof is certainly not an issue for the committee. We're here to have all of you give us your best ideas, again, about how to deal with this issue.

MR. ROE: Thank you.

MR. MCKINSEY: Can I -- I misspoke about the changes to Land-2, and I wanted to correct, because I just compared what we submitted. And there were two paragraphs that were stricken from Land-2 which related to the applicant demonstrating the fiscal capability to complete the demolition and then, you know, implementing that -- that

portion. So there were two things that were removed from Land-2 that were consistent with the changes in Land-3 that shifted the -- the fiscal responsibility for the demolition of the units to a redevelopment project. So I misspoke when I said it was only some -- some nomenclature language

HEARING OFFICER KRAMER: Okay. Ms. Baker, go ahead.

MS. BAKER: Oh, I just had a question. And I understand what Mr. Valentino had to say about separate power plant entities. But in this case when you have a very strong relationship between EPS and CECP in the fact that they're relying on water, the water permits for their desalinization operation, employees from one are going to monitor the other one, does that necessarily make them separate entities since there is so much codependence between the two operations and facilities?

MR. VALENTINO: No. From our -- our project finance perspective there are separate contracts in place to deal with this such that if a lender ever did step in to operate the project they have all of the contractual rights, including the O and M and the water purchase, air credits, all of those would be -- would be dealt with through contracts with CECP from whatever services are provided by Carlsbad -- by Encina Power Station.

MS. BAKER: So then as a follow-up, does then CECP

contract with Encina for the water rights of Encina or the air credits that you need or the various codependency between the two, the -- the shared common land easements, those sort of things, do you contract between the two?

MR. VALENTINO: It would -- I'm not sure if you're familiar with the Poseidon Desalination Project, but it would be very similar. Encina Power Station has nothing to do with -- is not an investor or owner of that project, but there are contractual rights that are very similar to what this project would have, including ingress, egress, right to use the intake discharge.

MS. BAKER: Then one other follow-up question. Because NRG has been the owner of EPS and has been the benefit of power purchase agreements from SDG&E over the years, does then EPS have no obligation to the remediation efforts at all or to the citizens of Carlsbad, especially in the last several years you have advertised this project for being a replacement for the aging Encina Power Plant?

MR. VALENTINO: We view it as a partial replacement. And, actually, I think we're making firm commitments here to actual make it -- actually ask for retirement of all the existing units. But at the same time we need to work collaboratively with the city on a development plan that considers these costs.

MS. BAKER: And then one final question. I guess

this bleeds a little bit over to the LORS question, but had not NRG or CECP, whatever is the correct label here, filed a redevelopment permit wouldn't you have been able to start those negotiations with the city?

MR. VALENTINO: I'm not quite sure I understand the question. Is it whether we were in an active CECP licensing proceeding, is that the question?

MS. BAKER: Well, what -- the question is, is that one of the requirements of SP144 in the redevelopment area is to file a redevelopment permit and paperwork with SP144. When you say the city is not open to any discussions with you on this, if you had followed the city protocols you would have filed a redevelopment permit and you would have filed an update to SP144, in which case it would have opened the doors to discussions on what would have happened on the Encina property.

MR. VALENTINO: I'm not --

MR. MCKINSEY: There's a whole lot of statement in there that suggests the applicant is either not complying with current law. And -- and if you want to ask him one at a time, but a lot of that might be legal argument that might, should have or would have.

But that was a argumentative and provocative question that -- that I don't want this person to answer.

MS. BAKER: I apologize. I didn't mean to be

provocative or -- or argumentative. My question was simply when Mr. Valentino stated that they have not been able to have any negotiations with the city on any redevelopment on the EPS site I was merely asking the question of if a redevelopment permit had been filed or SP144 -- and update to SP144 had been filed then wouldn't those have opened those kinds of discussions? So it isn't so much the city saying we're not talking to you, but the applicant didn't file those kinds of documents that would have started those discussions.

And, again, I don't mean to be argumentative. I'm just trying to ask the question.

MR. MCKINSEY: And that presumes that such permits would be required. And -- and that we would object to because the Energy Commission is -- is -- is a one-stop shop permitting process that supplants the local jurisdictions. And of course, that's been a point of contention between the parties over whether the redevelopment district is replaced or not. And the city has argued that that's not, but you're presuming that in -- in -- in asking him that question.

If you just asked him the question, for instance, have you submitted it, he could answer the question. But instead you're attempting to get him to agree or disagree with legal argument.

MS. BAKER: Then I'll ask the question.

HEARING OFFICER KRAMER: Well, the objection is sustained, and also on the grounds of relevance. You can ask another question, if you like, or rephrase it.

MS. BAKER: That's all right.

HEARING OFFICER KRAMER: Okay. Thank you. Terramar.

MR. BALL: Excuse me, Mr. Kramer. Mr. Kramer, this is Ron Ball over here. I think that last exchange was an important one, but I think they're speaking from different points of view.

And that would have been the question that we would ask the witnesses, have you applied for a redevelopment permit?

MR. VALENTINO: To my knowledge, no.

MR. BALL: Okay. Do you know what that -- what that process is?

MR. BALL: I'm not exactly aware of that process, but I have not been involved with active negotiations with the city.

MR. BALL: Okay. Thank you.

HEARING OFFICER KRAMER: Okay. Thank you. Terramar.

MS. SIEKMANN: Mr. Valentino, were you around when NRG purchased Encina?

MR. VALENTINO: There's two different

interpretations of that question. I mean, are you talking about when Dynegy and NRG purchased originally in -- in the late 1990s, or are you talking about when NRG consolidated its interests from Dynegy in 2006?

MS. SIEKMANN: So it was the consolidation that -- that -- then I'm talking about at the very beginning.

MR. VALENTINO: I was not around, no.

MS. SIEKMANN: Okay. But when the consolidation occurred you were around?

MR. VALENTINO: Yes. I actively participated in the purchase of the 50 percent interests from Dynegy.

MS. SIEKMANN: Did you do due diligent before you purchased the --

MR. VALENTINO: Of course.

MS. SIEKMANN: Okay. Did you do due diligence before you submitted Land-2 and -3?

MR. VALENTINO: We -- in retrospect or hindsight the clarifications we made to Land-3 were -- were further required after the -- the -- it was -- in light of the city's reaction to the originally proposed conditions Land-2 and -3, it was never the intent of Land-2 and -3 to put the financial responsibility of the demolition onto the Carlsbad Energy Center Project.

MS. SIEKMANN: Who wrote Land-2 and -3?

MR. VALENTINO: I'm not exactly sure who drafted

those provisions.

MS. SIEKMANN: Was it written, thought, by NRG or someone from Cabrillo?

MR. MCKINSEY: I think the -- I think we'd all agree that the -- the conditions were a process of meetings between the city and the applicant that resulted in the applicant putting forward the conditions believing that the city would also agree with those, and the city did not disagree with those conditions. So they were jointly drafted through a series of -- of -- of meetings and exchanged.

MS. SIEKMANN: Mr. Ball, did you participate? May I ask that question of Mr. Ball?

HEARING OFFICER KRAMER: Yes.

MS. SIEKMANN: Mr. Ball, did you participate in the drafting of Land-2 and -3?

MR. BALL: Yes.

MS. SIEKMANN: Mr. Valentino, do you know, was there ever a plan for a second power plant on the Encina site, a second phase or whatever you want to call it, of the CECP?

MR. VALENTINO: I am not exactly sure I understand the question. But --

MS. SIEKMANN: Well, long ago I remember hearing and being told by an employee of your company that this was

phase one, and that there would be a phase two that would involve the shutdown of 4 and 5. Have you heard anything about something like that?

MR. VALENTINO: No. And I actually don't think that's at all relevant to this proceeding. But --

MS. SIEKMANN: Well, only because I would -- I want to make sure the -- excuse me?

MR. VALENTINO: And, quite frankly, I don't even know how that would exist, given the conditions we've written today. We are actually locating this on the east side of the tracks in roughly 23 acres out of the 30 acres. If these conditions are adopted as -- as proposed them there would be no space to -- to locate additional generation at this site.

MS. SIEKMANN: So are you familiar with the final determination of compliance, the F doc that ties the air credits from Encina to the CECP?

MR. VALENTINO: That is not my area of expertise, but I am familiar with the -- if you're referring to the shutdown of Units 3 to source air credits for a CECP.

MS. SIEKMANN: Yes, that's what I'm referring to. And so financially, in financial terms, that's -- that's one world. But as far as the project goes you can't -- can you have CECP without Encina 1, 2 and 3?

MR. VALENTINO: Once again, it's not my area of

expertise. But I would -- I would think that we'd be able to purchase air credits in the market rather than contributing from a shutdown of existing units.

HEARING OFFICER KRAMER: While you're looking there, let me ask Mr. Valentino a question or two.

Where is the black start unit located? Is it within the power block or outside of it?

MR. VALENTINO: It's outside of the building.

HEARING OFFICER KRAMER: Okay. Would it be feasible to tear down the building while the black start was still there and available?

MR. VALENTINO: I believe it would. Just it would be similar to tearing down the building without having an impact to the switch yard. The existing black start unit is adjacent to the switch yard. So we would have to have the ability to tear down the existing plant without tearing down the switch yard. Because, as I mentioned earlier, the switch yard is part of -- it's still contemplated. It's still -- it's going to be needed much longer than the existing facility.

HEARING OFFICER KRAMER: Okay. So you wouldn't have to wait for both Units 1 through 5 and the black start to be retired?

MR. VALENTINO: I do not believe so.

HEARING OFFICER KRAMER: Okay.

MR. VALENTINO: I do not believe so.

HEARING OFFICER KRAMER: And then while you're -- you're especially concerned about the demolition costs falling on this project, it looks to me from your proposed conditions Land-2 and Land-3, this project would have to pay for some consultants to do the planning work that is required, and is that acceptable to the applicant?

MR. VALENTINO: That -- that is acceptable. We'd certainly want more certainty around the final cost. As submitted in my testimony was -- was an extrapolation off of the cost based on off of South Bay, and that was intended for illustrative purposes only. We actually firmly believe that the costs will be much greater at Encina than they are at South Bay.

HEARING OFFICER KRAMER: Consultant costs of, I don't know, probably $1 million when you're done wouldn't be a problem?

MR. VALENTINO: We would not have a problem with that. As I mentioned, I think that is in line with our -- our future vision for alternative development on the west side of the tracks.

HEARING OFFICER KRAMER: Okay. Thank you. Ms. Siekmann?

MS. SIEKMANN: In -- in the testimony the South Bay demolishment and teardown, the costs for that were

included. Have you done any kind of due diligence yourself to kind of estimate what those costs might be?

MR. VALENTINO: There were some very preliminary costs done in 2005, and -- and actually considered in terms of when we purchased the assets, but those are very old numbers. And I can tell you that they were greater than the South Bay costs.

MS. SIEKMANN: Thank you very much.

HEARING OFFICER KRAMER: Okay. I think that's -- that's all the way around the table. Any other questions from the committee? No? No. Okay. Hold on a second. Okay.

We'll start the next panel, the last -- the last panel, on the city land use LORS, the recent amendments, Mr. Rouse for the applicant, Mr. Ball from the city, along with Ms. Fountain, as we discussed earlier, and that's the group.

(Off the record from 4:53, Until 5:00 p.m.)

HEARING OFFICER KRAMER: Okay. We're going to start back up here.

Mr. Rostov is just waiting to discuss the topic of briefs, and then he's -- he's not involved in this last topic.

So for his sake and, I don't know, maybe somebody else's, I'm getting the sense that the parties would like to -- to brief some of the issues, and perhaps sum up their

arguments on some of the topics.

Am I correct, Mr. Rostov, are you interested in briefing?

MR. ROSTOV: Yeah. But I mean, maybe with a small page limit, like ten pages or something to keep people under control. I mean, actually, that will be for myself, and maybe with a reply, too, but that -- that's up to you.

HEARING OFFICER KRAMER: Okay. Anyone else, desires of filing briefs? Could they raise their hands if nothing else?

MR. RATLIFF: Staff would like to file briefs.

DR. POLLACK: Staff. The city.

MR. RATLIFF: But ours is going to shorter than theirs though.

MR. THOMPSON: We will do a nine page brief, front and back, single-space.

HEARING OFFICER KRAMER: Okay. We were -- we were thinking that, well, again, that we've got a discreet set of issues here that reply briefs didn't seem necessary. Without looking at the calendar I was thinking January 10th. Well, that's a Tuesday. That gives you, you know, a full week after the new year. Does that work for people?

MR. ROSTOV: Okay.

HEARING OFFICER KRAMER: Okay. So one round of briefs due January 10. We'll make it close of business.

And we would prefer and really appreciate when you are making arguments and pointing to the evidence if you would, you know, give site to the -- to the record by exhibit number and page.

And that does remind me of one more issue that Mr. Rostov may want to know before he goes, and that would be whether or not there are going to be any objections to his proposed exhibits, which begin at number 648 and end at 655.

MR. RATLIFF: For clarification, is that the list of documents that you provided a couple of days ago as the basis of your cross-examination or is that something different?

MR. ROSTOV: Actually, I was considering using them and I didn’t. So I don’t even need to introduce those, if that’s what that list is. I’m not sure what 648 --

HEARING OFFICER KRAMER: I did not include those in the proposed exhibit list.

MR. RATLIFF: I hate to admit this but I don’t have an exhibit list. Can you tell us what the documents are?

HEARING OFFICER KRAMER: Does Mr. Rostov have it on his computer there? The first one is a CPUC report on the audit of the Encina Power Plant.

MR. ROSTOV: Yeah. Those were the ones that I was saying that I might use, but I ended up not using them. So

we don't need to introduce them.

HEARING OFFICER KRAMER: Sorry. Withdrawn on 648. The 649 is the ISO 2009 RMR black start field contract status. That I think was somebody else's exhibit earlier in the case.

MR. RATLIFF: I thought Terramar had made that an exhibit already a long time ago.

HEARING OFFICER KRAMER: The equivalent document from 2008 is 650. So how about on 649 and 650 they're accepted unless they are duplicates, and I'll check that out later. Does anybody object to that? We'll accept them if they're not already duplicates of another exhibit.

MS. BAKER: I'm sorry, which number is that?

HEARING OFFICER KRAMER: 649 and 650.

MS. BAKER: Okay.

MR. MCKINSEY: Hearing Officer Kramer, I don't think we're hearing any objections to omitting if they're not already. So to the extent we need to resolve that now we may be able to just --

HEARING OFFICER KRAMER: Okay. All are accepted. I think 651, which is the -- the -- no, that's a different ISO letter, so that might not be a duplicate, but I'll check on that. And I will put out a revised exhibit list either later this week or early next week, so the parties will have that in time to be able to, you know, get the proper

citations in their briefs.

So with that I think, Mr. Rostov, are you -- is your business concluded?

MR. ROSTOV: Yes, it is. I just wanted to know when the transcript would be ready.

HEARING OFFICER KRAMER: It's on a -- I think it's a three-day turnaround, but because of the size of it, it might be a little delayed. But I would suspect it will be available early to mid next week.

MR. ROSTOV: Okay. Well, thank you. And thank everybody for their time today.

HEARING OFFICER KRAMER: Thank you. So now let's go on to the -- to the land use LORS panel.

Mr. Ball, I don't think you've been sworn in, have you?

MR. BALL: No, I have not. I did answer one question, so I'd be happy to be put under oath and verify my previous answer.

(Ronald Ball, Panelist, is sworn.)

HEARING OFFICER KRAMER: Okay. Thank you. Mr. McKinsey.

MR. MCKINSEY: Thank you, Hearing Officer Kramer. I just have a couple of questions for Mr. Rouse.

The -- Mr. Rouse, the city contends that the -- the recent general plan amendment and zoning and related

actions represent LORS that are applicable to this proceeding. What is your opinion regarding those actions?

MR. ROUSE: Yes. This is Mr. Rouse on behalf of the applicants. The recent actions taken by the city in late September of 2011 and continuation of some of those activities into the first week of October of 2011, to me the relevant question is the applicability of those actions to this proceeding.

Recognizing this is under the Warren Alquist Act that there is preemption on the part of the committee and the commission -- the commission with respect to the decision, four years into the process to purport to radically change the applicable LORS, the question is the application, the applicability of LORS to the proceeding, in my opinion, is not an effective action for purposes of the active LORS.

Further, just in terms of outlining the actions that were taken, there was a general plan amendment, a local coastal program amendment, a rezone or a modification of the zoning ordinance regarding electrical generation in the public utility zone, an amendment to the Agua Hedionda Specific -- excuse me, Agua Hediondo Land Use Plan, and to the Specific Plan 144 applicable to the area, with the exception of the general plan amendment all those other actions are contingent upon acceptance by the California

Coastal Commission and the actual legislative resolutions or ordinances that adopted those actions specifically state that.

So in terms of any terms of a final action at this point, at best it's the general plan amendment change that purported to eliminate, for all practical purposes, electrical generation above 50 megawatts or larger throughout the city, primarily in the coastal zone.

Going back, my point really is that in this stage of the proceeding, given the four-year-long application, this late legislative action should not and does not constitute applicable LORS or, if so, then any local agency, or perhaps any other agency, could always change the status quo on an energy AFC proceeding by continuing to enact repeated legislative actions.

It's no doubt that this committee has known through the written and verbal testimony presented by the city over the multiple years and hearings that the city opposes the certification of the CECP project. So it's not anything new, and it comes so late in the proceeding that it should not be considered applicable LORS with respect to the general plan amendment. The other actions aren't final and therefore cannot constitute applicable LORS either, but the reasoning would be similar.

I believe that the LORs applicable here the this

proceeding in 2011 are the same ones that existed in September of 2007 when the application was first submitted, and those are the CECP is each of those. It's located in the general plan area designated for utilities. Electrical generation with specific loud use as a right in that zone under the zoning ordinance, and the Agua Hediondo Land Use Plan, and the Specific Plan 144 are similar, in that they follow the then-existing general plan and zoning ordinances to expressly authorize the CEC project being generation of electrical energy in a utility zone.

The -- further, there is continuation of the redevelopment project area plan and goals and objectives that have not changed. And that, I think, we'll get into when we talk about the extraordinary benefit so that that remains -- the project remains consistent with those LORS as they existed throughout this proceeding.

MR. MCKINSEY: Thank you, Mr. Rouse. And one other question. Can you briefly summarize, to the extent that you didn't already do so, the -- the project's LORS compliance, and particularly respond to the -- the city's position regarding the lack of an extraordinary public benefit?

MR. ROUSE: Yes. The waterfall effect of the multiple layering of land use regulation applicable to the CECP site starts with the general plan designation of a

utility zone, and it authorizes the generation of electrical energy.

The next, if you will, in order would be the zoning ordinance that under the public utility zone has throughout this proceeding allowed and authorized electrical generation at the EPS site on the very property the CECP is proposing to use for the electrical -- for the generation of electrical energy.

In turn, the longstanding Agua Hediondo Land Use Plan, as well as the Specific Plan 144 have always and likewise supported electrical generation on this site. To some extent, I think that it’s very telling that Encina Power Station has existed there since the early 1950s without objection, without any inconsistency with all of the applicable LORS that the city is now contending don’t apply to the electrical -- to electrical generation at the site -- at the site.

There is also a redevelopment agency project area that was created approximately 10 or 11 years ago, it may have been 12, that encompasses the Encina Power Station site, including the CECP portion. And earlier there was dialogue as to the justification to support a finding of extraordinary public purpose that the CECP does satisfy in that regard, to the extent that it becomes relevant in the committee and the commission’s determination of LORS

compliance or override.

In that regard I want to point out that the longstanding redevelopment plan documents and various resolutions that are already in the record have demonstrated that one of the goals of the redevelopment project area was to facilitate the redevelopment of the Encina Power generating facility to a physically smaller, more efficient generating plant, and that physically smaller, more efficient generating plant was targeted to be located between the Interstate 5 and the railroad tracks on the Encina Power Station site, exactly where CECP has proposed.

I might point out this was part of my rebuttal written testimony and verbal testimony in the February 2010 multi-day public hearings. The written testimony appears in Exhibit 143, Section 5. I'm sorry, I don't have the page number, but Exhibit 143, Section 5. And it goes on to enumerate the projects, extraordinary public purposes. The results -- the CECP would result in the concurrent decommissioning of units 1 through 3 in the existing Encina Power Station. From that flows that it thereby reduces the current EPS Units 1 through 3 demand and use of once-through cooling water to reduce --

MR. THOMPSON: I'm going to -- I'm going to object to this line of questioning. This is truly re-plowed ground of 2 years ago. There is nothing new in this. We -- we sat

by when he when -- when -- when he was talking about the recently approved resolutions by the city council, but now he's getting -- recapping arguments that were made.

HEARING OFFICER KRAMER: Objection sustained.

MR. MCKINSEY: These were brought up by Ms. Fountain about a half-an-hour ago where she alleged that the project does not provide any extraordinary public purpose, eliciting a series of reasons why it did not. And so I asked Mr. Rouse to reiterate again our position of why it does. But if the committee doesn't feel they need it, I think we're fine at that -- at this point.

HEARING OFFICER KRAMER: Well, in the interest of time, he started out there. Maybe he was about to segue into the benefits, but he was talking about consistency with the different plans which really isn't on the order of benefits. I think you have to -- just complying with the law isn't a benefit.

MR. ROUSE: I was beginning to enumerate the six extraordinary public benefits that we believe the CECP presents to -- in response to Ms. Fountain's testimony earlier that it did -- that CECP did not present extraordinary public benefits.

HEARING OFFICER KRAMER: But all of those are in your written testimony; correct?

MR. ROUSE: That is correct.

HEARING OFFICER KRAMER: Including this latest one that we're filing. I think there's a summary in there.

MR. ROUSE: No. There -- there is no summary in the most recent filings. It is in exhibit -- the list of extraordinary public benefits are in Exhibit 143, Section 5.

MR. MCKINSEY: It's just because this was testimony that we dealt with in the four-day public hearings in 2010, and that's what he's reiterating and that's the exhibit he's referring today.

HEARING OFFICER KRAMER: Okay. But actually, the recent city land use amendments did not change the extraordinary public purpose requirement; correct?

MR. ROUSE: Correct.

HEARING OFFICER KRAMER: Okay. So we don't need to -- we were intending this discussion to be the applicability of the new city actions and to limit it to that to a degree, or to a very great degree.

I'll just point out, the land use rebuttal testimony on the exhibit list appears to be 147, so maybe that's where it's found as opposed to -- because 143 is air quality and public health, and 145 is bio. But we can resolve that later.

ASSOCIATE MEMBER DOUGLAS: I wanted to ask Mr. Rouse a question, if I could, relating to what you set out to talk about. I think -- I think I lost the thread in your

long answer to the single question, not line of questions, that you were asked.

I heard you say that the recent final action by the city is not effective and therefore not a LORS. And you articulated a number of reasons, but I couldn't tell really whether you're making that argument on the basis of policy or on the basis of legal opinion or both. Is it because it was late? Is it because it was a big change? Is it because it is a single action that does not unwind the fabric of -- of the overall set of plans and policies that were not changed, or not formally, finally changed? You know, what -- what is your fundamental reason for arguing that the action was not effective?

MR. ROUSE: The fundamental reason is -- is really twofold. One is the preemptive nature of the Warren Alquist Act with respect to a determination of an application such as this based on the rules and regulations that existed at the time of application.

But secondly, it has to do with the, if you will, sort of common sense element of the legislation by different a agency retroactively seeking to effect the outcome. So, if you will, it would be like, for a moment, taking it out of the context of the energy commission in a straight application with the city considering a development project or a redevelopment project at Encina Power Station midway

through or well into the proceeding for them to then change the zoning and/or general plan designation to ex post facto, if you will, or retroactively make something inconsistent or incompatible that wasn't at the time that the proceeding was initiated and the applications were timely filed.

ASSOCIATE MEMBER DOUGLAS: So to me that sounds like a policy argument. It sounds like you're saying it's not fair and they've changed the rules two years into the process. But I still don't understand beyond the policy argument whether you're also making a legal argument that the Energy Commission at some point in the process has to take the laws as they find them versus all the way through the publication of a PMPD or the final commission action.

So I'm trying to understand when you say the preemptive nature of the Warren Alquist Act how you think that effectuates itself in this context.

MR. ROUSE: I think -- I think it effectuates itself in both a practical and policy element, as well as the legal prospective in terms of -- of not being able to continually change the -- change the ground rules and the assumptions up until well after the initial public hearings and proceedings have gone on, and that that, therefore, while the city may have had the legislative power to adopt legislation, the question is the applicability to this proceeding as distinguished from their own actions or with

respect to prospective future projects that may then be proposed or come under the -- be proposed for that area that their legislation changed. ASSOCIATE MEMBER DOUGLAS: Alright. Thank you. I think that at this point I'm going to ask the parties to elaborate in their briefs, if they would like to. I'm sure the city could spend the equivalent amount of time arguing why what we just heard is not correct. And if you want to say something when it's your turn briefly that would be helpful. But this is a matter that we can also -- you can also address in your briefs.

HEARING OFFICER KRAMER: Yeah. Because it does seem like legal argument, that's probably the best place for it. You can most carefully choose your words. And we welcome any citations to -- to the law because thus far, you know, we really haven't received any.

So do you have anything else for him, Mr. McKinsey?

MR. MCKINSEY: That completes our testimony. And I guess it would be helpful -- maybe we didn't understand the purpose of this topic. There's really two things we could talk about. We could talk about whether they apply or not, or how they've changed. Maybe it is the latter, that you're interested in, in how they changed. The issue lurking there is whether you've agreed they changed or not, I think which, you know, if you -- if you don't think

they're in effect and you don't think there are any changes, and that I think may be part of our testimony.

But either way that does complete our -- but that was why that came in is because it seemed we were getting invited to -- to explain our position on that.

HEARING OFFICER KRAMER: Okay. And -- and you certainly did. At this point we can't tell you if we're going to agree that the new rules apply or not, so the thoughts you have about their applicability specifically to this project would be helpful. I mean, assuming they are in force and apply to the project, you know, the mechanics of whether or not the project satisfies the new requirements, as well we are interested in hearing.

MR. MCKINSEY: I -- and let me ask if -- Mr. Rouse probably can answer that, though I think -- I think we -- we all kind of understand the purpose of the acts the city took was to make the project not in compliance so, you know, it's hard to duck around that concept.

HEARING OFFICER KRAMER: Well, I think that -- that probably covers it then.

One question, following up what you said, does anybody have an idea how long it will take the Coastal Commission to process its review of the city changes that are subject to its review?

MR. BALL: I think, Mr. Kramer, we -- there's two

ways that the coastal application can be processed, either in San Francisco with their energy group or with a San Diego group through a normal application process. And I've been in discussion with the director and assistant director to see if we can have it expedited in -- through the San Francisco office, in which case it would be much less than the normal one year.

HEARING OFFICER KRAMER: Thank you. Staff, any questions? No. I'm sorry, no. We first have to -- we don't have a witness here.

MR. RATLIFF: I have questions when it's time for questions but --

HEARING OFFICER KRAMER: Yeah, you're right. The city.

MR. THOMPSON: Thank you. I'll try -- I'll try and keep this short.

Mr. Ball would you come tell us which of the recently passed city and redevelopment actions are final and which are not?

MR. BALL: Thank you, Mr. Thompson. The city took -- there were four actions. The first was this, adopt CS-158, an ordinance that amended the zoning ordinance. That needs coastal commission approval to be finally affected. It had adopted Ordinance CS-159 which amend the -- amended the precise development plan to make it clear

that the EPS is inconsistent with the general plan and the zoning. That became effective on November 11th, 2011.

CS-160 amended the Encina Specific Plan. It's -- it's after a long list of amendments to make it clear that power plants that are within a specific plan are not allowed. For example, a height limit is 35 feet. It -- it became effective on November 11th, 2011.

And then finally the resolution of 2011, which amended the general plan, and it amended the PU designation, that became effective on October 27th, 2011.

So those are -- they're final. They haven't been challenged. The only way that they can be changed is by either a legislative action, or if they were not final then they could be challenged in court and a court could strike them down. But other than that there's no collateral attack on -- in my opinion, on them in this proceeding.

MR. RATLIFF: Have any appeals been filed on those that are final?

MR. BALL: Not that I know of. The CEQA statute of limitations is a short statute of limitations, 30 days, and that has expired. The administrative writ can still be filed. The statute limitations is about -- well, it's 90 days from the action that the city took.

MR. THOMPSON: In passing these resolutions and ordinances did the city council follow correct procedures?

MR. BALL: Yes, it followed the correct procedure. Actually, it shouldn't be too much of a surprise because the city did have an ordinance, a moratorium ordinance that's allowed under California Law for two years. And at the end of that two-year period then this was the action that was taken, and is required by law to take action within ten days prior to the expiration of the moratorium with a report and then a follow-up action. And so -- and so that was done in this case.

MR. THOMPSON: And this may be a subject for briefing, Mr. Ball, but do you believe they're applicable to the CECP in this proceeding?

MR. BALL: Generally, laws -- changing in laws are applicable to the pending applications. There's a long line of cases saying so. And so either -- unless the legislation itself says that it's not retroactive or there are vested rights involve, which usually involves the issuance of permits and substantial liabilities expended in reliance, in good faith reliance on those, then the laws are applicable.

MR. THOMPSON: One final question. CECP representatives seem to say that the city took these actions because they oppose the-- the power plant. Would you comment on that?

MR. BALL: Well, the -- the city, we really had a

lot of discussion and testimony on -- on that. The city took these actions to make it clear that the previous testimony about the -- the complicated nesting dolls of land use laws could be unwound by an action like this, as the city council did to make it clear, that the vision that they have -- that it has for the coastal zone is different than the -- than the vision that's being put forth in these proceedings.

MR. THOMPSON: Anything else? Thank you very much.

HEARING OFFICER KRAMER: Thank you. Power of Vision.

MS. BAKER: I don't believe we have any questions at this time. But I would just like to make a very short brief statement.

Much has been made about the city being involved in these proceedings. I believe scorched earth policy has been used. Muddle has been used. Speculative at best has been used. And Power of Vision represents the citizens of not only Carlsbad, but north county. And thank goodness the city of Carlsbad has stepped up because we see this as being a protection of the people who live in this community, and we very much appreciate the efforts of the city, the city council, the mayor, the staff here that have gone above and beyond, trying to protect the interests of the people who

live in this community and the effects that the CECP will have on us for several generations to come. Thank you.

HEARING OFFICER KRAMER: Okay. I'm going out of order, but we've started with cross. So next would be Terramar.

MS. SIEKMANN: I just have one question of Mr. Rouse.

Mr. Rouse, was it appropriate policy for NRG to first propose Land-2 and -3 and then withdraw and change it?

MR. MCKINSEY: Can I object to that question as not being relevant to this topic?

HEARING OFFICER KRAMER: Your objection is sustained.

MS. SIEKMANN: I have no more questions.

HEARING OFFICER KRAMER: Okay. Let's go then to staff.

MR. RATLIFF: My questions are for Mr. Ball.

Mr. Ball, in the staff's efforts to try to understand what the city did in its most recent changes to its nesting dolls, as you put it, we were trying to figure out which provisions were subject to the coastal commissions approval and which ones weren't. Tell me if I've got it right, the -- it seemed to me that the changes to SP 144 are not subject to coastal commission approval; is that correct?

MR. BALL: Yeah, that's correct. That's Ordinance CS-160. That's effective November 11th, 2011.

MR. RATLIFF: And it appears to me that -- that the general plan amendment is not subject to coastal commission approval either; is that correct?

MR. BALL: Correct. That's resolution 2011-230, and it was effective October 27th, 2011.

MR. RATLIFF: And the zoning amendments that were the subject of resolution number 2011-230 included zoning changes, city's changing of the zoning ordinance. Is that subject to Coastal Commission approval?

MR. BALL: No. Actually, a zoning ordinance can only be adopted by ordinance. It cannot be adopted by resolution. So that -- that zoning change was ordinance CS-158, and that -- that's the one that allowed power generation of electricity as a primary use outside of the coastal zone only. And then inside the coastal zone only, less than 50 megawatts if it was a secondary or accessory use. But that needs to receive coastal commission approval before it is finally effective.

MR. RATLIFF: So just to make sure we understand, then with regard to the zoning change the zoning changes are still subject to coastal commission approval; is that correct?

MR. BALL: Correct. Correct.

MR. RATLIFF: Have I missed anything?

MR. BALL: Yes. That Ordinance CS-159, which amended the precise developmental plan, which made it clear that the proposed project is inconsistent with the general planning and the zoning, became effective on November 11th, 2011.

MR. RATLIFF: Thank you. With that -- with that exception of the precise development plan, there is no further change that is currently effective?

MR. BALL: Correct.

MR. RATLIFF: Thank you.

Mr. Rouse, are you in agreement with that?

MR. ROUSE: I believe the proper interpretation is all of the zoning activities, that is the zone code amendment, the specific plan amendment, and the local coastal program amendment are all subject to approval by the Coastal Commission under the local coastal program certification process.

With respect to the precise development plan, it has been previously -- at least our -- and it continues to be our position that that’s not LORS at all, but the precise development plan is a construction or implementation permit akin to the permit to construct and therefore doesn’t constitute LORS for the purposes of this proceeding.

MR. RATLIFF: With that exception, do you agree

with Mr. Ball.

MR. ROUSE: I concur with Mr. Ball that the -- it might be the general plan amendment is the only one that did not have and carry with it, the requirement of coastal commission approval under the same rationale and reasons that the -- the zone code amendment, the local coastal program amendment, and the specific plan need to receive Coastal Commission approval as well.

MR. RATLIFF: So the disagreement I hear is that you think the Specific Plan 144 requires Coastal Commission approval?

MR. ROUSE: Yes. On the same -- for the same reasons and rationale that the zone code amendment requires it. In that regard the specific plan itself merely mirrors and reiterates those uses that are authorized under the general plan and under the zoning code. It’s not an independent zoning activity. It also recites that it’s in conformity with the specific plan, in conformity with the local coastal program, and therefore the Agua Hedionda Land Use Plan. And therefore before it can be final it must also be found to be consistent with the Agua Hedionda Land Use Plan to be amended and confirmed by the Coastal Commission.

MR. RATLIFF: Thank you.

HEARING OFFICER KRAMER: The applicant?

MR. MCKINSEY: No questions.

HEARING OFFICER KRAMER: The city then?

MR. THOMPSON: I had a list of questions, but given the time and the previous discussions I will forego.

HEARING OFFICER KRAMER: Thank you. Well, I think mine was answered.

Any others from the committee? Okay.

That does it for this topic then. Again, the legal issue of whether the land use standards of the city are fixed in time at some point related to the application earlier than today, for instance, will be one of the subjects to be briefed. And I think it's fair to say we're interested in hearing anything about that that you have.

The last bit of business that we need to get to is -- is the exhibits. But if -- do any of the parties, are they wishing to leave before the end of public comment? Otherwise I propose that we postpone the discussion of the exhibits until after public comment, so that we can begin to hear from the public that has arrived here at the appointed time.

MR. THOMPSON: Mr. Kramer, I have a doctor's appointment in the morning and I have to get out of town. But I would -- is it possible that I could just move 444 to 458 into the record, if there's no objections?

HEARING OFFICER KRAMER: It turns out I think you need to add 459, because you never gave a number to your

sort of cover testimony. You know, that -- I just noticed that myself.

Does anybody have any objection to the city's Exhibits? 457, 458 and 459 are not yet described on the list you received, so if you need me to tell you what they are, I can do that for you. Hearing --

MR. RATLIFF: No objection. Like Mr. Thompson, however, I'll have to leave before 7:00. So if you wish me to participate in that discussion, we should probably have it before that time.

HEARING OFFICER KRAMER: Do you have an objections to any other party's exhibits?

MR. RATLIFF: No.

HEARING OFFICER KRAMER: And does anybody have any objections to the staff's exhibits? Okay. We'll just move those in at this time. Well, actually, we will accept the staff's Exhibits 229 and 230 today. The other two numbers on the list were just place holders for new exhibits.

And with that we will just take a couple of minutes to set up for public comment. And -- but before I go off the record to do that, Jennifer Jennings, our public adviser, is standing by the door holding some blue cards there. If you would like to speak as a member of the public, please feel out one of those cards that she has for you and she will hand them up here and then we will call you

basically in the order that we've received the cards. Unless somebody has a special need to leave early that they can communicate to her and then she'll communicate to us.

Is there anything else I should cover, Ms. Jennings? Okay.

So we're just going to take a couple of minutes here to set up the place where the -- the public will come to speak.

(Off the Record From 5:42 p.m., Until 5:51 p.m.)

HEARING OFFICE KRAMER: Okay, folks, if you can take your seats. Okay.

Welcome to the Carlsbad Energy Center Project public comment period. We spent most of the day, well, all of the day holding hearings, and lunch was pretty much grab it and come back and work. And it turns out dinner has been the same for us. So please don't think we are being rude by eating in front of you. That's just been our one opportunity to -- to eat and we didn't want to delay you while we were off having dinner.

My name is Paul Kramer. I'm the hearing officer for this case. To my right is Commissioner Jim Boyd. He's the presiding member of this committee. And to his right is his Adviser, Tim Olson, who is not here right now. But to my left is Commissioner Karen Douglas. She is the associate member of this committee. And to her left is Galen Lemei,

who is her adviser.

What said on the agenda and what we're going to do tonight is give everyone three minute for a comment. On the chair here in front of me, we have a little light box that will start out as green with a three-minute start. When you have one minute left it's going to go to yellow. And when you run out of time it's going to go to zero. So we really want you to try to wrap it up right about when it goes to red, but don't -- don't spend a lot of time in the red zone, because we have cameras and a company will send you a ticket in the mail.

And I will check in a few minutes with those on the web. I think right now we probably only have one person who may want to make a public comment.

In fact, Mr. Sarvie (phonetic) let me just un-mute you and you can tell me if you do intend to make a public comment and if so, we'll get to you in a few minutes. So go ahead Mr. Sarvie. Okay.

It's possible that he is away from his computer for the moment, so I'll check back with him in a little bit.

Our first speaker is Matt Hall, the Mayor of Carlsbad.

MR. HALL: Good evening, Chairman, Gentleman, and Ms. Douglas. I'm glad to meet you. Boy, it seems like just

yesterday but it's been five years that we've been doing this, so hopefully next year we'll get this to conclusion.

I have with me tonight Mayor Pro Tem Ann Kulchin and Council Member Keith Blackburn. The good news is -- is that I'll be the only one speaking. They're just here in support of our community.

What I'd like to do tonight is just hit a few points. And I know these points have been over several times, but I would just like to go back over them briefly with you.

First, if we were to go back almost 60 years this facility was really located on the very outskirts of town. It needed water in order to make the facility work. It's a water-cooled plant. Today that's no longer the requirement. These facilities can be located anywhere in the county. And the coastal resources, as valuable as they are today, this shouldn't -- this land should not be condemned for another 50 years for heavy industrial use. I think that's the most important thing. We all know and understand there's a need for energy, but this is not the right place to locate that.

Also, Carlsbad's tourism industry is only second to the city of San Diego. Tourism is really the heartbeat of this community. And by industrializing this area it hampers our ability to perfect that. It also plays on the quality of life for all the citizens of Carlsbad.

There's really no local benefit. If this plant -- if it isn't a requirement for this facility to be demolished upon this permit being approved, what is the local benefit to us? There is not a need for energy in this basin. If so, I think San Diego Gas and Electric would be or would have been heard somewhere through these proceedings. There is really no demand for the energy. If this plant is allowed to be built, that energy must go somewhere else. It hasn't been -- there is no need here. I-5, this facility will be the closest power facility to any major freeway in the State of California. And in building that it also hampers other safety issues, one being fire. And we didn't do as well of job as what we should have when we were before you a couple of months ago when we talked about the fire issue. Yes, there is a way into this facility to -- to get equipment in and there's a way to get it out. And it has a road allowing you to do that.

But if this facility, god forbid, ever was to catch fire there simply is not enough land down in that pit to stage the equipment necessary to fight the kind of fire that would be created from this piece of equipment. There is no escape route. Once those men and women enter into this pit, stage the equipment, if there is to be anything go wrong, it's -- there's no way out. There's one way in and one way out.

Air quality, there is no longer the air permits for this facility. And I know that would probably be a condition, but at this moment in time they've lost their federal air permit.

There's also the -- the concern about whether this complies with our local laws and ordinances. This project is not consistent with our local coastal program. It jeopardizes our proposed coastal rail trail program. It disregards our redevelopment plan. And also it ignores our programs and taxes to offset the impacts for this new construction.

I would ask you to acknowledge our local ordinances, our local codes, and if you choose not to agree with this and not always do great minds think alike, I can appreciate that. But if you choose not to agree with us, please use the override. Acknowledge our ordinances, our codes and our laws.

And at the end of the day, this is a greater question than just the City of Carlsbad. This is about California's coastline and whether we should be repowering or creating new generation right on the coast of any city, let alone Carlsbad. Tonight I ask for you to side with the City of Carlsbad and to deny this permit.

Thank you. Questions? Again, I thank you for coming here. I know you put a lot of time and energy into

this and we do appreciate that. Thank you.

PRESIDING MEMBER BOYD: Thank you. Appreciate you being here.

HEARING OFFICER KRAMER: Okay. Now I'm going to start calling people two at a time so the next person can -- can start to make -- to make their way to the podium.

Next will be Dan Walsh, followed by Ted Owen.

MR. WALSH: Excuse me. Good evening. My name is Dan Walsh. I'm the president of the Terramar Association which is the neighborhood just south of the power plant, and several of my neighbors are sitting in the audience behind me tonight.

But I want to take a quick moment to thank you for giving us the opportunity to speak and to let you know that as the president of an association there's times that we have issues and challenges that we discuss amongst the board of directors and all of the members of the association. The thing we look to try to achieve is items that are of benefit to the community, our neighbors, and the association. And I don't see and we don't see where this benefit to our neighborhood, as well as the City of Carlsbad exist.

The other thing I would like to point out is that I already get, as you might imagine, as you all get input, that's what I'll call it, from my neighbors about the noise that the current plant makes. Every time the steam goes

off, my phone usually rings or I get an email, or if I'm walking the streets with my dog people say what's, you know, what can we do about that? If this is what we have now, what is the -- what's the affect that the new plant's going to bring? There's already enough noise as there is, you know, and we're just really concerned about that.

I'm sure that several of my other neighbors will have a lot to say behind me here, as they take their turns, and I just want to say thank you.

HEARING OFFICER KRAMER: Thank you. Mr. Owen, followed by Jerry Carter.

MR. OWEN: Members of the commission, thank you very much for being with us today, and thank you for this moment to give the business viewpoint. A little bit different, I think, than what you've been hearing parts of today.

My name is Ted Owen. I am the president and CEO of the Carlsbad Chamber of Commerce. And on behalf of the Chamber of Commerce board of directors, I would like to express our support for the Carlsbad Energy Center project as recommended by the staff of the California Energy Commission, CEC.

For over 85 years the chamber has worked to promote a favorable business climate for the 1600 business and more than 75,000 employees in and around the City of

Carlsbad that are our members. This is why we pay close attention to issues in Carlsbad that could impact not only on the ability of local business to thrive, but also matters that would 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 CEC final staff assessment provides Carlsbad in the region with the most logical and reliable clean energy solution to our power needs. We also agree with the CEC staff 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 any 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 o$4 million to $5 million annually and generate thousands of local job during construction.

Again, on behalf of the Carlsbad Chamber of Commerce board of directors, I would like to express our support for the Carlsbad Energy Center project as recommended by the staff of the commission.

I would like to add a personal note. This is not

from my board of directors, but it's from me. Before I leave I'd like to make this statement about the men and women of NRG West. Aside from the business of creating power they also financially support numerous charities and nonprofits in this region with thousands of dollars in donations and support. One that is close to my heart is the Semper Fi Wounded Warriors Fund at Camp Pendleton, as I am a retired marine combat veteran. The NRG West men and woman have donated more than $250,000 in the last five years to help improve the lives of their marines and sailors who have given their all for our country, and as well as our future leaders with scholarships and grants.

Thank you for your time and attention, for listening to us, and thanks for being here today. Thank you.

HEARING OFFICER KRAMER: Thank you. Jerry Carter, followed by Pat Maldi.

MR. CARTER: I thought the big hook out there was for getting people out of here after three minutes. That's not what that's for? Good evening Commissioner Boyd and Commissioner Douglas, and Hearing Office Kramer, and the community of Carlsbad. I am Jerry Carter. I am Encina plant manager.

Encina has a long history of providing safe, reliable plant operation to the region and to the grid, and

I've overseen the role of the plant manager for the past six years, prior to that, four years as the operations maintenance manager, and then 24 years with SDG&E, the previous owners of the facility.

In this time the greatest need in recent blackouts -- I think we all experienced the blackouts here just recently. Little do you know that Encina was one of the first plants that came back on line that put power back onto the grid, that put your lights back in your houses. So statistics kind of go unnoticed.

We all remember the fires of 2007 and the big article that was raised in 2007 in the *North County Times* about the need for local generation, power generation in our community, and seen it play the major role in providing grid power at that time of the wildfires.

Encina has served a critical role in there and been there in restoration energy needs to the region. We recognize that these responsibilities are our job, the job that my staff has embraced for a generation. Few people understand the complexity of what it takes to provide electricity, and we've made a commitment to our community to educate them on that subject.

Commissioners, if I may, I'd like to highlight some important attributes of Encina Power Station. Encina has recently received a BBP star status, the voluntary

protection program, Occupational Safety and Health, OSHA, which recognizes the facility achievement in safe compliant operation of their facility. Encina is an elite status, one of only a few dozen power plants in the State of California that have earned this recognition and status. Encina considers safety a core value, not a priority. Priorities often change.

Encina is a host of important infrastructures to the region, including transmission, sewer lift station and future desalination plant. We are the owners and environmental stewards of the adjoining Agua Hedionda Lagoon. The lagoon hosts the Hubbs-Sea World White Sea Bass Hatchery, the YMCA, and the Carlsbad Muscle Farm. Encina employees 76 full-time employees and a dozen embedded contractors who contribute to the local tax basis. The construction of the energy Carlsbad Center would provide more than 350 construction jobs.

Encina, the employees that work there are active leaders in their community and eagerly support local charities from the Carlsbad Boys and Girls Club, to the Marine Wounded Warriors Program, to the Carlsbad Beach Fest, just to mention a few.

With the licensing and construction of the Carlsbad Energy Center project we will welcome a new chapter in Encina Power Station the operation of a highly efficient

fast start combined-cycle generation, such as CECP, that will support growing intermittent renewable generation resources in California and support the eventual retirement of once-through cooling steam generation units. Thank you for your time.

HEARING OFFICER KRAMER: Thank you. Next is Pat Maldi followed by Peter MacLaggan.

MS. MALDI: Hi. My name is Pat Maldi. I'm here representing the Boys and Girls Clubs of Carlsbad. For me, energy is a company made up of human beings who live, work, and contribute to our community. For example, every year there's a group of guys who come out to our Village Branch Club House, located in the barrio and take -- they all take care of our honey-do list, replacing electrical wires that were chewed up by rats, bringing all the supplies and tackling jut a myriad of chores for us.

There's Scott who spends countless hours volunteering as our volunteering coordinator for our golf tournament. There's Jerry, who you just met, who goes to bat for us, getting dollars donated to sponsor our special events. And then there's Jonas who's hosted a number of field trips for our kids so they can learn firsthand how power is generated. That's what energy means to the Boys and Girls Clubs of Carlsbad. But energy's generosity doesn't begin and end with our club.

I know they've been an incredible community partner with all sorts of nonprofits, including maintaining the lagoon, helping with beach cleanups, and even restoring our beaches with sand, sponsoring marathons, chamber events, and so much more.

I urge residents to look beyond their front door at the big picture and the many ways the energy's presence benefits our local community and its citizens. Thank you.

HEARING OFFICER KRAMER: Thank you. Mr. MacLaggan, followed by Norman Hannon.

MR. MACLAGGAN: Good evening, Commissioners. My name is Peter MacLaggan. I'm with Poseidon Resources. We are the developer of the Carlsbad desalination project. And in this capacity the landlord serves -- the applicant serves as our landlord as the desalination project will be located at the Encina Power Station.

I've had the opportunity to work with the applicant for the last 12 year in advancing this critically needed water supply project for San Diego County, and I'd just like to share with you a few observations about the applicant's commitment as a corporate citizen to give back to the community.

And starting with the desalination project itself, a critically important water supply project destined to meet 10 percent of this region's future needs, located at the

Encina Power Station, the applicant serves, not only as our landlord but facilitating this development for the last 12 years by providing land easements, inner connections, and various support to move the development forward.

We also have a obligation under our permits with the City of Carlsbad to dedicate 15 acres of property in and around the Agua Hedionda Lagoon and the ocean to increase opportunities for public access. The applicant for the Carlsbad Energy Center will be making those dedications as it is their property that is of interest to the city.

The other point I would like to make is related to the topic of the applicant’s role in environmental stewardship. As you know, they are the owner of Agua Hedionda Lagoon, a 300-acre environmental treasure. This lagoon serves as our shared water supply, and it’s health and vitality is critically important, not only or generating energy and for protecting that 300 acres of precious wetlands and the environmental resources that it dedicates, but it’s also going to be our future water supply. And its in the pristine state that it is today due to a tremendous dedication of resources over many, many years by the applicant to protect, preserve, enhance the health, vitality of Agua Hedionda Lagoon.

These are important tools, but not the only tools that they bring to the community in their contribution as a

corporate citizen. They also bring about construction of trails to provide public access in and around the lagoon, funding of education programs at the Agua Hedionda Lagoon Center, maintenance of those trails, picking up trash on a daily basis, and enhanced public access.

The financial support of the Lagoon Center is keeping the doors open of this critically needed facility to help educate future generations about the importance of this critical resource that serves as our water supply and power-producing and environmental stewardship.

Each restoration and financial support of activities to keep those beaches safe and open to the public is another area where your applicant has been quite generous with their resources, veterans causes, as you've heard, and so many other causes.

I thank you very much for the opportunity to share these observations with you this evening.

ASSOCIATE MEMBER DOUGLAS: Thank you.

PRESIDING MEMBER BOYD: Thank you.

HEARING OFFICER KRAMER: Thank you. Mr. Hannon, followed by Carol Scurlock.

MR. HANNON: As you can see I'm kind of old and feeble, but I have a good memory. It was a mistake to put that plant in 50 years ago. It's still a mistake. So I ask you to make sure that we don't make another mistake. If

they have to put this air-cooled plant in they should be made to make a commitment to tear down that white elephant, that monstrosity that should never have been built. Thank you.

HEARING OFFICER KRAMER: Thank you. Ms. Scurlock, followed by Jack Kubota.

MS. SCURLOCK: Good evening. My name is Carol Scurlock and I live on Carlsbad Boulevard in the Terramar Association. We have some control over what we eat, we can -- what we consume. We can buy organic vegetables. We can buy organic eggs. We can buy milk and meat that's hormone and pesticide-free. We have little control over the air we breathe, except being able to come to a hearing like this and voice our concern and hope that you not only are listening but that you honestly are hearing and internalizing what everyone is saying.

The desal plant was mentioned, and it provides the lifeblood of water to Carlsbad and the surrounding communities, and the city of Carlsbad has supported that. The power plant provides nothing to our area except pollution, both air pollution and visual pollution, and has never been endorsed by the City of Carlsbad.

Mr. Owens made mention about local jobs. Local construction jobs we know, almost without a doubt, will not be given to our contractors here in Carlsbad. They'll

probably go L.A., Orange City, Riverside, San Bernardino. They won't be our jobs here in Carlsbad.

Also mentioned was about the power. The power, from what we understand, is not staying in this area, it's going elsewhere. We're only suffering the consequences.

As has been stated, a very, very small portion of land in the entire world is coastal property. Coastal property is valuable in so many ways. It provides R and R for the communities. It provides tourism. It provides jobs. The power plant will permanently occupy coastal land that will never be reclaimed. The beach provides us with the recreation and it provides us with visitors from, not only other communities surrounding us, but all over the world. Please no power plant at this location, ever.

HEARING OFFICER KRAMER: Thank you. Mr. Kubota, are you here? Okay. You'll be followed by Homer Eaton.

MR. KUBOTA: Good evening. Thank you for this opportunity for some brief comments. And hopefully -- I get shook up when people applaud one way or the other, so I hope that I can do this in a dignified way.

I'm a resident of Carlsbad since December of 1956, and also a resident of San Diego County since the summer of '52. I've been here the entire period of time when the lagoon was dredged, the power plant was built, the expansions, the smoke stack, and all of that. And I must

say that in that era we were -- we were really happy that the plant was there, because you folks provided us with the economic engine with your taxes and, you know, you folks had other successors, you know, the applicants. And so, I personally am one of those people who are gratified that you have been here.

And my purpose this evening is simply to suggest that, you know, if Carlsbad needs to be the host of a regional power plant that will export power, whatever that all is, you know, it’s a matter then of finding a suitable place. And so my only specific issue is -- has to do with the location. I live right down the railroad tracks from you folks, just down the road. And you know, there’s a major regional waste water treatment plant right down the road from here.

We are not insensitive to our responsibility as a community to be host cities to the various important infrastructures. We have an airport in this community. We have a major solid waste transfer station in this facility. So it’s not like we’re not willing to bear reasonable sacrifice for public facilities that are necessary. You know what, there’s still the green light, so on that note, again, thank you very much. And from an old guy whose been driving up and down this coastal highway since the 30s, this is a beautiful part of this countryside and I’m just hopeful

that at an appropriate time that that beauty can be restored.

HEARING OFFICER KRAMER: Thank you. Mr. Eaton, followed by Jerry Tetakman or Tetalman, I'm not sure which. Go ahead, sir.

MR. EATON: Good evening. My name is Homer Eaton. I'm a resident of Carlsbad and a business owner in Carlsbad. I moved to the community when El Camino Real and Carlsbad Airport Road was a four-way stopped.

My question is for NRG, and that is: Does NRG have a plan for replacing the steam power generators with the gas-turbine units? Are those steam-powered units that are inefficient being replaced by the gas-turbine units into the existing facility? And if my question isn't answered tonight, I hope it's asked again at a later date. Thank you.

HEARING OFFICER KRAMER: Thank you. Did the applicant want to respond at all?

MR. PIANTKA: Hi. George Piantka, NRG applicant. During this proceeding and previous public meetings that we've had we've described our -- our plan which is the Carlsbad Energy Center project that -- that brings forward generation east of the railroad tracks, west of I-5, that leads to the retirement of three of the five steam boilers that are currently at Encina Power Station. I hope that

answers your question.

HEARING OFFICER KRAMER: And then earlier today we spoke about a possible condition that would require planning for and the eventual demolition of the existing plant. So keep --

MR. EATON: (Off mike.) (Inaudible.)

HEARING OFFICER KRAMER: Not at the same place, no.

MR. EATON: (Off mike.) (Inaudible.)

HEARING OFFICER KRAMER: No. No, there is no plan to -- to use the existing building or the -- of the 400-foot stack. Okay.

Mr. Tetalman. Okay. So that's an L? Okay. Thank you. Go ahead.

MR. TETALMAN: My name is Jerry Tetalman. I'm a longtime Carlsbad resident. I'm a local realtor. I'm also a candidate for congress in the 49th district as a democrat. What I'm here today to talk about really is this plant. It has a lot do with the location. I'm not opposed to the plant, I do live within a mile of it, but it's always been an eyesore on the coast.

And if you look at the California coast right in this area, our economy is now very much a tourist economy. People come to Carlsbad. They come for Legoland. They come for the different hotels. They come for the village area,

for the beaches. This really is the draw of Carlsbad. People come here to retire and one of the big attractions is the beach.

The problem with this plant is that it's always been an eyesore. And it's not that there's anything wrong with generating power and the way, you know, that it does, it's just the location. If it was located in another part of the city, a more industrial part, a more appropriate part, I think that would really be the best solution.

The idea that it's located right next to the beach is the problem. It's some very choice land. Everybody knows that the closer you are to the beach, as a realtor we know the more expensive the land is. It's not the highest and best use of the land. That could easily be put into an industrial area which is more appropriate for generating electricity.

So if you really look at Carlsbad, I think in terms of business, in terms of the future, in terms of the aesthetics, the livability of the community, that having a power plant like that next to -- next to the ocean, next to the freeway right here, it's not what we want to be known for. We don't want to be known for -- oh yeah, that's where the big power plant is. No. We want to be known -- that's where the beautiful beaches are, that's where the beautiful hotels are, and that's where the lifestyle is.

So I oppose this, not just that it's in my backyard, but I think it is affecting people Carlsbad. It will affect the long-term economics of Carlsbad. Thank you.

HEARING OFFICER KRAMER: Thank you. Katherine Spencer, followed by William Kloetzer.

MS. SPENCER: Good evening. I'd like to start my remarks, please, by thanking the innovators who are our voice. We are simple citizens of Carlsbad and we are individuals, but it is through the interveners and through the City of Carlsbad that they speak for us. And thank you very much for your time, your attention, and the tremendous amount of work that you've put into representing all of us.

As citizens living in Carlsbad we have come to love our community. We don't love the awesome kind of envisioned view of a new building in our backyard. I live in an area that has the existing power plant in my backyard. As I look out over my backyard, I see the power plant. To put more structure in front of that and to continue with these large structures is a continuous blight on my neighborhood, as -- as it is in Carlsbad.

We also are concerned about the freeway system which is already highly impacted, as you know. And it continues to be an issue for us as to how this would impact the traffic on the freeway system.

We are also concerned about our property value.

And you heard many of the comments earlier on about the wonderful work that has happened by the various groups who have received the benefit of volunteerism, financially and of time. But what about us? Just the citizens of Carlsbad who live here on a daily basis. Nobody is giving us anything to help our existence of cleaning up our backyard from all the black stuff that comes in the air. No one is going to help me as I try and sell my home and have reduced property value because I have an increased piece of property sitting in my backyard called an NRG power plant.

I appreciate your time, your effort, and thank you very much for all the commissioners and the people who have come from Sacramento area to let us speak. We certainly are concerned about this and we very much oppose NRG in our backyard.

HEARING OFFICER KRAMER: Mr. Kloetzer, followed by John Linehan.

MR. KLOETZER: Well, good evening, and welcome back to Carlsbad. And thank you for the opportunity to let us voice our disagreement, our opposition to building this new power plant, this second power plant.

Hi. My name is William Kloetzer. I am a longtime resident, over 20 years. I’m retired, a former biotech -- a former biotech scientist. I love here because I love the California coastline, as to many of our residents.

To build this power plant, it's not going to enhance the beauty. It's going to obviously degrade the beauty of this plant -- of this coastline, as has the first power plant. To build a second one is going to make it worse, as our -- our -- our -- Matt Hall had -- had said. This is the -- our coastline is in large part the basis of our local economy. So building that second power plant is going to be detrimental to our local economy and will not create new high quality jobs. I'm opposed to it. Thank you for your time.

HEARING OFFICER KRAMER: Thank you. Mr. Linehan, followed by Gale Sides.

MR. LINEHAN: I appreciate you pronouncing that properly. Thank you. Thanks, Paul. And I appreciate the opportunity to meet all of you and have you here.

I oppose the plant. I've been a resident here for 30 years, I moved from the east coast, so pardon my cynicism. But it's interesting that I hear the Carlsbad Chamber of Commerce whose slogan was "Carlsbad, a d Destination." Now you can have Carlsbad as a destination or you can have it as a dumping ground for all of the industrial pieces that need to be put here.

I'll tell you that I'm here and live here and have lived here for 30 years because I love this place. It's a great place to be. It's a great place to bring up your

kids. We've done that. Now the gray beards, I'm one of them, come out and tell you, gee, nimbie, we don't want it in our backyard. We don't. It's not necessary for it to be here. There are plenty of other places it can be.

If Carlsbad is going to be a growth center for jobs it's sure not going to be a growth center for jobs because you have a power plant here. The ocean produces a great deal of value for us. And by the way, this room is called the Wave Crest Room. I find that ironic that you all would be in the Wave Crest Room talking about building a power plant here in our backyard. The reason that this place is valuable is because of what we have, not because of what we don't have.

Nobody wants to be obscure about power. I worked in the power industry for 20 years. Nobody wants to say we don't have power. I understand that. I built generators, did all that sort of stuff, working from a factory all the way up to senior management. That's not the issue.

The question is: Where do you put it. Do you want it in your living room? It'll be in my living room and the living room of most of the people here. If you ask the people in this community, they'll tell you, not here. Not that they don't want it, not that we don't need it someplace, but not here. It's an obstruction. Remember, Carlsbad is supposed to be a destination. It's not supposed

to be a dumping ground. Thanks.

HEARING OFFICER KRAMER: Thank you. Ms. Sides, followed by Johnnie Johnson.

MS. SIDES: My name is Gale Sides and I live on Carlsbad Boulevard in Carlsbad. I think this is the wrong site for a power plant that is not state-of-the-art and isn't planned to be state-of-the-art, and it will add noise pollution to our community and air pollution to our community, and visual sites that are -- could be more pleasing, certainly than what is existing and what is planned. I think it's just the wrong thing in the wrong place and thank you.

And I'd also like to just support our mayor, Matt Hall, and the city council for stepping up, and also the other interveners for supporting the community views. Thank you.

HEARING OFFICER KRAMER: Thank you.

MS. JOHNSON: Johnnie Johnson.

HEARING OFFICER KRAMER: Okay. Followed by Richard James or James.

Ms. JOHNSON: Johnnie Johnson. I live in the Terramar community a block south of the power plant. And for the past several years I've been coming to these meetings hearing very smart people telling some very good logical reasons why not to have this facility at this

location.

You've heard it a million times, but this is in our neighborhood. And it's not just the neighborhood of Terramar, it's Carlsbad and all of north county. It's the beach community. It's the coastal community. It's a safety issue. The city has stood up and said we can not help you in time of a fire, emergency or catastrophe. We've seen previous power plants have problems. We're seeing now, we can't do it. We just can't do it.

But most of all, this impacts our quality of life. We live with the decision that was made 60 years ago everyday. The noise, air, you name it, we get it. So I'm asking you, please help our quality of life, not only in this community but all of Carlsbad and all of north county. And thank you very much for bringing the simple people with the simple answers and simple solutions up to this board. Thank you.

HEARING OFFICER KRAMER: Mr. James, followed by Diane Wist.

MR. JAMES: The points I wanted to cover this evening are -- have been taken up. We're not nimbies. Goodness, we've had the regional power plant. We've had the regional sewage plant. We've had the regional airport plant -- or airport, excuse me. And I got a kick the last meeting we had here when the -- some -- a carpet-bagging

city councilman from -- from Oceanside came down and said that we should have it here. I thought that was really neat.

But let me -- I grew up in Carlsbad. This is my home town. I grew on Garfield street. Those of you from Carlsbad know where Garfield is. It ends right there at the lagoon.

Well, around -- when I first came here, of course, Carlsbad wasn’t a city. They were talking about it. A couple places had burned down and some people wanted to become a city. Some people wanted to stay part of the county, especially the agricultural people because they knew their taxes were going to go up.

But anyway, we used to play in that lagoon. We had a little canoe down there. It was kind of like a bayou with toolie (phonetic) islands and beautiful sand and sand dollars, and it was a wonderful in-and-out natural lagoon.

Well along comes the Gas and Electric Company and the first thing they did was they -- they burmed the opening, they burmed it. And there was a biggest ecological kill in the history of Southern California in the Agua Hedionda Lagoon. No EPA in those days. That went on for about six months, the stink and everything.

Then finally the went to dredging out all the toolie islands and all of that sort of thing. At that

point, of course, the Terramar Reef where I was learning to surf at the time, this was completely covered up by sand. The splendid Gwyoolie (phonetic) grass that grew on the reef -- in fact we still call that area Gwyoolie as far as the surfers in that area will call it Gwyoolie, the older surfers. And it was completely wiped out by the Gas and Electric Company. Okay.

Carlsbad because a city by virtue of the tax-based, this sort of thing. Okay. We’ve dealt with this thing for over, what, 60 years now. Sixty years we’ve dealt with this. This monolith. It reminds me of someone extending the middle finger to the world. When someone asks me where I live the best -- the best thing I can say is -- the best thing I can say is -- and I kind of, you know, not -- well, I’m a little ashamed, but I say, “I live by the power plant.”

Well, the power plant, this might have been the old days, of course, you all remember the big oiler that came in all the time. And they actually came down and detailed our cars because the pollution was so think from it.

But anyway, all my points have been covered. We’re not nimbies, we’ve got it all here. We’re covering this region like no other community is covering this region. We have this beautiful little area. I’m also a Terramar

resident, by the way. We have this beautiful little area. This is not something that Carlsbad needs, another monolith.

And I -- you mentioned that you're down to three units now. Well, I remember when they went up to six units, by the way. There's a lot of little historical things here. When the put the big smokestack up -- there used to be four of them -- when the put the big smokestack up, no one's mentioned the fact that one of the scaffolds broke and six men were impaled on the rebar down below. This happened a number of years ago.

Anyway, I'm going on and on because I have a lot of -- of -- of strong feeling about this. All my points have been covered eloquently by other members of my community. So thank you.

HEARING OFFICER KRAMER: You didn't say your name, but it was James; correct?

MR. JAMES: James.

HEARING OFFICER KRAMER: Thank you. Go ahead.

MS. WIST: Good evening. Good evening. My name is Diane Wist. I'm a resident of Terramar for ten years. I want to thank the commission for -- this would be my third opportunity to come and voice to you my opposition for the power plant.

I'd also like to thank our almighty team here that continues to work day and night on behalf of the residents

of Carlsbad.

We could go on all night, and really many people have a lot -- lot -- a lot to say about preserving the beauty of the coastline. And certainly that does -- that is an important factor. But for me tonight safety is the one point I really want to drive home to the commission. The safety, the health and physical safety, Carol talked beautifully tonight about not -- as resident we're not really given the -- we have opportunities to make personal choices about living a healthy life, but we don't have an opportunity around the air we breathe. We rely on the people who have power to make the decision to help keep us safe and to live a clean life.

The power plant is nestled next to, of course, a limited resource but is -- the coastline, but is also nestled next to the railroad tracks, Highway 5, and a residential area where families and children live. I ask you tonight, I plead with you -- I'm not going to put my middle finger up, we don't want to resort to that -- I ask you please you are the folks that are in the powerful position here tonight, I ask you as leaders of our community of our children and of our families, I ask you please to make the right decision. Please, no power plant on the coastline. Thank you.

HEARING OFFICER KRAMER: Thank you. Mikie

Santerre -- I hope that's close -- and followed by Lorraine Wood.

MS. SANTERRE: Good evening. I'm Mikie Santerre. And I would like to voice my opposition to this power plant. I think this is our one and only opportunity to correct a wrong that was made half a century ago. Thank you.

HEARING OFFICER KRAMER: Thank you. Lorraine Wood, followed by Gwen Nelson

MS. WOOD: Good evening. Lorraine Wood here. And I'd like to speak in opposition to another power plant on our beautiful coastline.

HEARING OFFICER KRAMER: Ms. Nelson, are you here? Okay. We'll come back to her. Oh, there she is Okay.

Next then will be Mike Ballard.

MS. NELSON: My name is Gwen Nelson and I live in Carlsbad. If it's true that there aren't any plans for the power to be used here in San Diego County I wonder why the applicants are so adamant on insisting that it has to be placed here on the coastline. So I'm opposed to it, as well.

HEARING OFFICER KRAMER: Thank you. Mr. Ballard, followed by Dr. Jack Nelson.

MR. BALLARD: My name is Mike Ballard. I'm a citizen of Carlsbad. I'm here to echo my support of Mayor

Hall's comments. And we have an excellent opportunity to make a change now. We've had this giant wart sitting on Carlsbad's coastline for over 50 years. We don't want another wart built right behind it. Thank you.

HEARING OFFICER KRAMER: Thank you. Dr. Nelson, followed by Catherine Miller.

DR. NELSON: Thank you. My name is Jack Nelson and I live here in Carlsbad. We spent two years going up and down the coast between San Diego and Santa Rosa looking for a place to retire, and moved to Carlsbad, selecting it from among the variety of cities that we looked at and spent a fair amount of time in each primarily because this town had excellent management and had -- had shown a great amount of effort in doing very good planning for the city.

Our son is a city planner in a big county just outside of Philadelphia. And he said, "Before you decide to buy somewhere and move check with the planning department," so we did that. And we found the one in Carlsbad to be the finest that we had run across in the state. And we were very pleased with the growth management plan and the continuation of that plan.

This is a city that has had a balanced budget and some surpluses, more than any other city in the whole county, for the last quarter century. The management here is essentially the same as the management when we moved here

13 years ago, and I think we can trust them and their judgment to do the right kind of decision making with regard to what's happening in the city and planning for its development. I therefore side with them in opposing the new power plant, and especially the location right here on the coast.

And we moved here from New Jersey. And New Jersey has a beautiful coastline that not many people get a chance to see because the state management of that coastline, unfortunately, a long time ago was so badly handled and there was such an excessive amount of private development up and down the coast that it's nearly impossible to find any public beach or any public land.

California had a quite different approach to it, and one we support and one I still support. I think we still need to have the coast a public enterprise, not a public utility and not a private enterprise. Thank you.

HEARING OFFICER KRAMER: Okay. Ms. Miller, followed by Tom Siekmann.

MS. MILLER: Good evening. My name is Catherine Miller. Thank you for allowing us to speak tonight.

Carlsbad is a community of families, all who are busy raising their families, feeding them tonight, and tending to the sick and can not be here tonight. In the name of these families I ask that you please oppose this

project.

I also know countless individuals in the community who donate time and money to charities, organizations, and ask for nothing in return and do it anonymously and just do it for the good of everyone around us. Thank you. I hope you oppose this project.

HEARING OFFICER KRAMER: Thank you. Mr. Siekmann, followed by Sean Keany.

MR. SIEKMANN: Good evening, Commissioners. I'm Tom Siekmann, 16 years in Carlsbad. I have four points.

But before I go over those, I don't think there's anything new I can tell you that you haven't already heard. But I remember my first grade teacher who had us recite, recite, recite, repeat, repeat, repeat until we got the lesson right, until we got it and got it down. Now I have a wife who has me repeat, repeat, repeat until I get my current lessons of life and until I get them right.

What you're hearing is repeat, repeat, repeat of the message until you, the commissioners, get the message and get it right.

There's four points, as I mentioned, that I'd like to cover. One is to thank Carlsbad City Council and the staff, the interveners for all their efforts and their work to stop the building of the second power plant on this coastal site.

Second, the power plant proposal goes against local LORS, and I ask that you, the commissioners, work with the city, the local City of Carlsbad, and not against it.

The third point, this proposed plant would have a negative affect on the economic development in Carlsbad. Our economic development ideal is not to have the look, the industrial look of a Long Beach. It's to be Carlsbad.

And the fourth point, you know, if L.A. needs more power or if other parts of the state need more power then let's select a different location for that.

On behalf of the Carlsbad residents I ask that the commission denies the power plant proposal and get the lesson right.

HEARING OFFICER KRAMER: Mr. Keany.

MR. KEANY: Hello.

HEARING OFFICER KRAMER: You'll be followed by Julianne Nygaard. Go ahead.

MR. KEANY: I was born and raised in San Diego. I've been a Carlsbad resident for 16 years. After I graduated from college I started a hydroponic vegetable business in the local community to support agriculture and farming in my youth. It is a highly sustainable way of growing crops. And as you're talking about conserving resources, we use 20 percent of the water that you would use to field water crops. It would actually save a lot of

energy doing it this way, and land.

And a question for you guys about the power plant, is your new power plant going to be highly sustainable and create less energy coming in with less -- with more coming out, like my state-of-the-art hydroponic system will?

HEARING OFFICER KRAMER: This will come out of your time. So do you want them to answer now or later?

MR. KEANY: How much time do I have left?

HEARING OFFICER KRAMER: About two minutes. I don’t really know.

MR. KEANY: Yeah. I mean, I have a couple questions. But I want to know why it’s not more promoted within our community, like why my friends don’t know that this big power plant is going to come in. Like no one really knows my concern with all this. Why isn’t it promoted more within the community, to have a bigger meeting, to come here to stop this?

MR. MCKINSEY: On your first question, it’s a really good topic about what is not sustainable as to the rate of use of resources. I can tell you that the one thing this project does is make electricity which supports hydroponics, among other types of things where you rely on electricity.

MS. NYGAARD: (Off mike.) (Inaudible.)

ASSOCIATE MEMBER DOUGLAS: When your microphone is

not on the words that you say are not caught by the transcript and court reporter. If you push the button your microphone will go on and then you can repeat that.

MR. KEANY: Sorry.

MR. MCKINSEY: The other question is probably better appropriate to the staff about notice and -- but I know this is the third in a series of the forums where we've had a lot of public comments and a lot of participation, which is appreciated.

MR. KEANY: It seems like a really little amount, actually. And is it true that your power plant will create ten percent more pollutants than the current power plant?

MR. MCKINSEY: No. But that is not an easy question to answer at all. The concept of air quality and pollutants is -- you know, I guess I could tell you that it is a very complicated topic. But it -- it's the recipient of a tremendous amount of testimony and expert testimony and evaluation to assure that the project is safe and doesn't have any significant adverse health effects. And -- and that's the obligation of the State of California and the California Energy Commission to assure that.

MR. KEANY: I don't know how much time I have to talk. I have a couple more questions when you're done.

HEARING OFFICER KRAMER: Okay. You're -- you just hit your time, but one more.

MR. KEANY: Why isn't the power used in our local community? I'm growing vegetables for my local community to support my neighborhood. And what you're proposing here is not going to support our neighborhood at all. It's not going to support Carlsbad power. It's going away from us.

MR. MCKINSEY: One of the subjects of today's testimony particularly, even the plant manager's comments at the beginning tonight talked about the need for electricity at this location for good reliability. And another subject of testimony has been that this project, essentially, in order to be financed and viable had to have a power purchase agreement from -- from probably what will be SDG&E. And the power is put onto the grid at this location, and it does benefit the community here. And in the future project, replacing the megawatts, we're able to do the same thing. It will support power in your location.

MR. KEANY: I keep hearing that it doesn't. I don't really know too much about what's going on. I here from the local community that it's all going away from us, and I feel like we need to support what's going on here as much as we can. Okay. I guess that's it. Thank you.

HEARING OFFICER KRAMER: Thank you. Okay. Ms. Nygaard, to be followed by Jeff Mastin.

MS. NYGAARD: Good evening, Commissioners. I know it's been a long day for you. And I'm a city council member

for many years, so I understand how difficult this task is for you. And I want to thank you for your service.

I am here to oppose the power plant this evening. We've really done our fair share. Mr. Kubota spent a lot of time explaining all of the regional facilities that we have in our community. We're not afraid to take our fair share. But we've taken our fair share for over 60 years, and I think it's time for you to think about that.

I've lived in -- I've lived in Carlsbad since 1976. And one of the first projects that I got involved in was the new smoke stack. The one that currently exists was being built at that time. At that time the power company promised us that some day that power plant would go away when there wasn't a need for seawater cooling any longer. I don't understand why they're reneging on that promise now.

I also sit on the LOSSAN rail corridor, which sits right next door to the power plant that's proposed, and on the other side of it is the I-5 rail -- I-5 Highway. Those are two very significant interstate travel ways. And I can't imagine in my wildest dreams why you would stick a power plant between those two things. If something happened to that power plant you could shut down all of Southern California. It seems like a ridiculous place to put a power plant.

The other thing that I think is really, really

important is that if you move forward with this you need to assure us that the existing power plant will go away. It is an eyesore for our community and it needs to be gone. And if you build something in that little constrained area between I-5 and the railroad you need to be sure that it's small and insignificant and not a blight on our community.

With regard to all this talk about how wonderful energy has been to -- to the community and supporting all sorts of community services. I'm great. I'm a planning commission. That's not part of what we should be thinking about when we're making our land use decision.

If you wouldn't mind, I would like all the people who are opposed with me this evening to please stand. It will just take a second.

So many of you probably remember, the last hearing there were even more people at this -- at this hearing. We have worked very hard in this community to give you the message that this is not right for us. It's not part of our vision. So please think hard on this as you move forward.

HEARING OFFICER KRAMER: Thank you. Mr. Mastin, followed by William Sides.

MR. MASTIN: Thank you for listening to us tonight. I want to echo Julie's statements. It's almost exactly the same as mine. I feel like we have an existing plant here which is -- it's here. It doesn't necessarily

extend to the right to expand that use in this -- in this degree. I think we've paid our fair share. And I just hope, in addition to listening to us, go one step further and try to be empathetic and imagine that this is happening to you in your own neighborhoods. You've had this existing facility, and that's fine. We haven't complained about the existing facility. But the expansion of it is quite a different thing. And for us it means so much more in terms of reduction of property values. The continuation of this community as a tourist based community.

Now that's not clear anymore if you drive up Long Beach, towards the area of Long Beach and you see these industrial uses, you don't think tourism. And people might pass us by and go to the next time. These are very important things for us.

And I just wanted to voice my opposition and hope that you can put yourself I our place just while you consider this very important decision for us. Thank you.

HEARING OFFICER KRAMER: Thank you. Mr. Sides, followed by Dina Winters.

MR. SIDES: Well, thank you very much for being here and taking questions and -- and making our -- allowing us to make some comments.

I'd like to expand upon one -- one area in the category of safety. It was -- it was briefly mentioned by

the mayor about the safety of having it so close to the highway, to the Interstate 5. We're going through some discussions now and probably the reality of the widening of 5. That's going to put that power plant, as mentioned before, between a major rail access and a major transportation throughway.

I think everyone is aware that we are now living in a different world, a different environment. We are fighting terrorism. And having that power plant so close to two major arteries in Southern California is really asking for trouble. If the world continues to go the way it is we need to take the safety and the guarding of our resources and our power generating plants, you know, real serious. You know, all our military basis, all our power plants have been put up with barriers and everything trying to stop threats. And I think we're going to continue to have threats in the future and we're going to be -- we need to plan toward that.

So putting it right there is just making it a major target. I'm not advocating terrorism at all. I'm just trying to say reality, we need to think about it. We need to plan, plan for the future. And, unfortunately, that's the future we're living in. Thank you.

HEARING OFFICER KRAMER: Okay. Ms. Winters, followed by Gerald Johannsen.

MS. WINTERS: Yes. My name is Dina Winters and I'm a resident here. I moved here six years ago from Los Angeles. And I moved here to have a cleaner life. I grew up in smog as a child and I wanted to have clean air. And I was very grateful to be in a community where there was a beach, and it was close by, and it wasn't crowded. And it's a great lifestyle here. And when I heard about this power plant I was -- I couldn't believe it. Thought, wow, this is such a poor planning idea.

And I'm sure we all -- we all understand that we need energy and that's important but -- and you've heard a lots of people speak about the location, and this isn't a place that they want to have it.

But my main concern about this whole thing is -- is the issue of having it in such a highly populated area. And also I believe a lot -- power plants present a health hazard, I believe, to the community and various areas. And recently Carlsbad was under investigation that it might be a cancer cluster. Some of this stuff was not conclusive and you really don't know the sources or if that's, in fact, what was really going on.

But I do want to ask the commission to just really consider the health issues with regards to placing a power plant in such a populated area. Maybe it could be in a more remote area where it wouldn't be so close, and then also it

would be away from the coastline.

I myself am a cancer survivor. I have two young children. I have a personal friend of me who -- whose son was diagnosed with Non-Hodgkin's Lymphoma who lives in this area. And I just want to say that this is probably the biggest concern of mine is -- is the health issue. So I don't know if NRG has addressed anything with regards to keeping this a safe power plant within this area and not causing issues or presenting a health hazard to the community, but I would like that question addressed. It doesn't have to be addressed tonight. But it is very concerning to me and I haven't really heard anybody else bringing this issue up.

Thank you. I'm very opposed to this power plant being located where it's proposed at the moment. Thank you.

HEARING OFFICER KRAMER: Thank you. Mr. Johannsen, followed by Christina Rosenthal.

MR. JOHANNSEN: Yes. I'd like to lend my voice to the side of the opposition. You heard a lot of very good and efficacious arguments on the subject. And I implore the body that's the decision makers here to -- if -- if they listen and we as a group have any sway in our arguments that you listen and that you actually do take into consideration our arguments, not -- this not being just an exercise in futility on our parts.

So with that I'd also like to say that I still feel as if there is some danger in pollutants during stagnant conditions. This has not been studied that I know of. And we have low positions, low elevations in the area where pollutants can pull and stagnate.

So with that I hope that the body will actually listen to us little ones and not be swayed by the giant in the room. Thank you.

MS. ROSENTHAL: Hello? It's working? My name is Christina Rosenthal and I am a resident of Carlsbad for many years. I was here for some of the past meetings. And the experts, the scientific experts from Sacramento, I heard from their own lips that there will be more pollution put into our air without question, which is my primary reason for opposing the new power plants. And please listen to us. Thank you.

HEARING OFFICER KRAMER: Okay. Thank you. That was the last card, unless somebody wants to speak.

We did have one card, though, from Sandra Rogerson. And what she wrote was,

> "This should not be added to the already eyesore in the Encina plant. Please comply with the City of Carlsbad's request to move the new plant inland. This will hurt our tourism, which Carlsbad depends on."

So that was -- that was her comment.

Do we have -- we actually have nobody on -- on the phone anymore, except our recorder that's recording all this.

Do we have anyone else in the audience who wants to make a different comment? Okay. That will conclude the public comment portion of our proceeding.

Before you folks get up and leave we ask you -- because we have to do a little more business here with the parties -- to -- if you're going to talk, please go talk outside so that we can talk among ourselves about a couple items of business relating to the hearing.

And as far as where we are going next with this -- did you want to say something?

ASSOCIATE MEMBER DOUGLAS: Just before we go on, and I see people leaving the room, I just want to express my appreciation as the new member on this committee to members of the public who have taken time out of their lives and schedules and family time to be here tonight. So thank you.

PRESIDING MEMBER BOYD: I, too, would like to say a couple of words. You may wonder why Commissioner Douglas and I don't have a lot to say. I'm not sure you understand the process of the Energy Commission and how it works. This is a very judicial process. We sit here with invisible black robes on. This is almost like a court procedure. And while we might like to respond to a lot of issues that you

raise, it would be inappropriate for the judge to sit here and -- and respond.

But let -- I do want to say a couple of things. I appreciate the fact that many of you can't come during the daytime for the five years you've been coming here and listening to all the expert testimony on both sides of the issue. I would encourage some of you who might want more detail to go into our website and look at some of the record about allegations this way and that way, because we have to weigh all that ourselves.

But I would assure you that -- that the staff of the commission -- and by the way, we are not allowed to even talk to the staff of the commission about anything relative to this case. The only dialogue they can have with the two of us is in these public hearings. But having worked for the commission for ten years I know they are very dedicated to the job they have to do. And if you examine what it is they do, they go -- they make some of the most in-depth environmental analyses of power plant issues that -- that one can see. And there's lots of discussion back and forth amongst many people.

We do look at air quality. They do, and we do therefore look at air quality and public health and water quality and water issues, and it goes on and on and on and on. There are -- there are 20-some-odd factors that have to

be looked at in power plant licensing cases. Unfortunately, we -- you know, the -- under the law and statutes we aren't allowed to be totally swayed by just the popular sentiment. Everything has to be predicated on facts and the -- and the -- and the case -- and the materials that are presented and on the -- on the docket that -- that's created in this quasi-judicial process.

So I hope you appreciate how our process runs and -- and have some confidence that we do try to take all of your concerns into account as they relate to the other subjects. And rest assured that -- that I know all my fellow commissioners and we do take what you have to say seriously, and we do take it into account as best we can within the context of the statutory provisions that established our commission and -- and the mission of the commission.

So again, thank you for being here tonight and for the interest of this community and your continued vigilance and patience. This is one of the longest siting cases I've experienced in a lot of years, and that's because there is a lot -- there are a lot of issues that we are weighing and -- and people are taking into account.

So just a little bit to help you understand what we're all about and how and why we do what we do. So thank you for being here.

HEARING OFFICER KRAMER: Okay. Parties, the last order of business is exhibits. We dealt with a few of them already. I'm going to work from the front of the list to the back.

So we begin with the Applicant's Exhibits 199G through today's 199U.

MR. MCKINSEY: We move that all of those be admitted.

HEARING OFFICER KRAMER: Does anyone object to the entry of those exhibits? Hearing none, those will be admitted. Then we go -- let me make a note before I forget.

We dealt with staff's two exhibits before public comment. Those were admitted.

We have -- from Terramar we have Exhibits 390 through 398. Is there any objection to any of those exhibits? Seeing none, those will be accepted.

Then from the City of Carlsbad --

MR. MCKINSEY: I think we admitted --

HEARING OFFICER KRAMER: Yeah. We did theirs.

HEARING OFFICER KRAMER: That's with the exception of Mr. Hogan's portion of Exhibit 459 which is going to come in as a brief as opposed to testimony.

MR. MCKINSEY: I guess. I mean, I don't think we ever differentiated it. It's -- I think that was the position of the commission. I think the position of the

staff that they objected to his testimony, but I think it was the live testimony portion. In any case, that's not --

HEARING OFFICER KRAMER: Okay. Well --

MR. MCKINSEY: -- with the applicant.

HEARING OFFICER KRAMER: -- that's fine to bring it in, as well. And you don't object to that?

MR. MCKINSEY: No, we have no objection.

HEARING OFFICER KRAMER: Okay. So we will include Mr. Hogan's portion of 459 then. Okay.

From the -- well, yeah, the Center for Biological Diversity, we dealt with theirs. And 648 was withdrawn. The next two will be accepted, unless their duplicates. And the remainder were accepted. So that goes up to -- that would be 651 through 655

And then from Power of Vision --

MS. BAKER: We haven't had any extra exhibits from what we initially turned in two years ago, almost two years ago.

HEARING OFFICER KRAMER: (Off mike.) (Inaudible.)

MS. BAKER: Oh, that's -- you -- that -- you count that as an exhibit? Oh, my mistake. Sorry.

HEARING OFFICER KRAMER: Well, I mean, there was a lot of arguing in there, but I'm going to -- there might have been a little testimony. So does anyone object to --

MS. BAKER: Well, then I guess I need to go on

what's an argument, what's testimony.

HEARING OFFICER KRAMER: Yeah. That's okay. So 748 is in.

Now we have Mr. Simpson who is not here either to present his exhibits or defend himself. Some of this, for instance, Exhibit 808, he called it the Petition for Review that he timely filed on November 17, 2011. I still don't know what he's talking about. So --

MS. SIEKMANN: (Off mike.) I think it's the PSD. (Inaudible.)

MR. MCKINSEY: I think -- I think that's a reference to his appeal of the FDOC or PDOC, one of the two. But I thought that might have already been I the record.

MS. SIEKMANN: Wasn't -- I'm just guessing, but wasn't it his appeal that he filed at the EPA, the PSD permit for Palmdale Hybrid?

MR. MCKINSEY: I think we have an answer. Just give us a sec. Yeah. It is the Palmdale. Here, let me read it out loud.

Mr. Simpson's document is titled,

> "Before the Environmental Appeals Board, United States Environmental Protection Agency, Washington, D.C. Petition for review on the Palmdale Hybrid Power Plant PSD Permit."

HEARING OFFICER KRAMER: So that was the

Environmental Appeals Board?

MR. MCKINSEY: Yes.

HEARING OFFICER KRAMER: Okay.

MR. MCKINSEY: The Environmental Appeals Board.

HEARING OFFICER KRAMER: Well, my concern about most of what he's filed is he's, you know, he's given us a whole bunch of arguments that relate to other cases. And without any real roadmap for us to go figure out what point he's trying to make, I'm a little bit leery about having you know, a sort of, well, a document with all kinds of thoughts sitting in the record without any explanation of what we're supposed to do with it. It's -- it's not our job as a committee to try to figure out what he means to say or what his points are.

MR. MCKINSEY: His Exhibit 801 encompasses all of this, and it begins with his -- his actual testimony and public comment, he calls it. So it's a combination of both. And then attached to that are a bunch of these documents that I don't think the applicant has an issue with bringing them in as his Exhibit 801, and the committee should give it the correct use or deference as necessary. The very title of it, "Public Comment Plus", I think undermines what level of treatment we give it. But --

HEARING OFFICER KRAMER: So you're suggesting that Exhibit 802 and the following just be attached, treated as

attachments to 801?

MR. MCKINSEY: I don't see in here like 802. His --

HEARING OFFICER KRAMER: I think I had to add these to try to make some sense of it.

MR. MCKINSEY: If we're calling the Palmdale Hybrid Exhibit 802, the appeals board? Because he's numbered them all. Okay.

HEARING OFFICER KRAMER: Yeah. But I don't know that that was Mr. Simpson's words. I think that might have been mine. Although he did have -- I mean, I got this from a list. Let me find my notebook. Maybe I'm making too much of this, but I think we need to interject a little discipline in our -- our consideration of exhibits.

And I you look at page 7 of 801, the main part, he does list basically four documents following this -- following his name, and he calls them exhibits. But I think he had similar lists.

MR. MCKINSEY: Yeah. He has a similar list after -- at the end of 800.

HEARING OFFICER KRAMER: If no parties object to bringing them all in we'll -- we can do that. I think 804, well -- yeah, one of these is the EPA letter. So I think that will be a duplicate ultimately. Everybody seems to have submitted that. So I may -- I may kick that one out

just as a duplicate.

So do I hear any objections to admitting all of Mr. Simpson's exhibits? Hearing none then we will admit them. And that's the end of the exhibit list.

Remember briefs, no more than ten pages, succinct briefs on -- summarizing your positions on these new issues with citations to the evidence as a roadmap are due by close of business, that's five o'clock in our time zone, Tuesday, January 10. I'll send out at least an email reminder of that, along with the exhibit list. And the exhibit list will probably come out next -- early next week, about the same time as the transcript.

And do we have any other items of business of parties? Ms. Baker?

MS. BAKER: Just a clarification, Mr. Kramer. Are there specific topics we'll brief on or is -- is the -- we mentioned today the -- the law applicability, but is there any other topics on these six topics or are we narrowing it down?

HEARING OFFICER KRAMER: You can cover those of the topics, the topics we went over today that -- that you want to make some additional -- either want to summarize your position or -- there were a couple cases where we discouraged you from unloading all of your arguments verbally to us, so you could put those in writing, for

instance. But you know, just to be clear, we're not remitigating the fire issue, for instance, or any of the other issues that kind of went in this topic group for today.

Any other business? Happy Holidays, everyone.

MS. SIEKMANN: Mr. Kramer, do you know about when we'll get the -- the transcript?

HEARING OFFICER KRAMER: Probably early next week.

MS. SIEKMANN: Okay. Thank you.

HEARING OFFICER KRAMER: It's -- it's a little bit long, so it might take them an extra day or two to finish it. But it should be about that.

MS. BAKER: And Mr. Kramer and Ms. Douglas and Mr. Boyd, I just want to say thank you for your patience and your understanding. I know we interveners maybe don't always do things quite the right way. And we have certainly learned a lot over the past few years, and I just want to thank you. I appreciate your time an your patience with us.

PRESIDING MEMBER BOYD: Well, thank you. And your stamina impresses me also.

ASSOCIATE MEMBER DOUGLAS: And I just want to say thank you, as well. It's -- it's never easy for people to just step up and take an active role in these processes. And for the record, I think you've done a great job and represented your side, as well. So thank you.

HEARING OFFICER KRAMER: Okay. So with that, we're adjourned.

(Thereupon the California Energy Commission, Carlsbad Energy Center Project Evidentiary Hearing adjourned at 7:23 p.m.)

CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that I thereafter transcribed it into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of December, 2011.

/s/ Martha L. Nelson

MARTHA L. NELSON – CERT 00367