

COMMITTEE CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

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

HILTON GARDEN INN
WAVECREST BALLROOM
6450 CARLSBAD BOULEVARD
CARLSBAD, CALIFORNIA

THURSDAY, APRIL 19, 2012

2:46 p.m.

Reported by:
Shane Stranahan
Contract No. 170-09-002

COMMITTEE MEMBER PRESENT

Karen Douglas, Commissioner

HEARING OFFICER, ADVISORS PRESENT

Paul Kramer, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

CEC STAFF AND CONSULTANTS PRESENT

Richard Ratliff, Staff Counsel

Mike Monasmith, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

John McKinsey
Stoel Rives, LLP

George Piantka, Project Manager
NRG Energy, Inc.

Robert Mason
Megan Sebra
CH2M Hill

INTERVENORS

Julie Baker
Arnold Roe, PhD
Power of Vision

Kerry Siekmann
Terramar

William Rostov
Center for Biological Diversity

City of Carlsbad

Allan J. Thompson

Bob Thompson

Ronald Ball

Robert Therkelsen

INTERESTED AGENCIES

Dennis Peters

Robert Sparks

California Independent System Operator

Steven Moore

San Diego Air Pollution Control District

ALSO PRESENT

City Councilman Keith Blackburn

City of Carlsbad

Julianne Nyguard

Jan Berry

Deborah Kloetzer

Lisa Jessop

Robert Gates

Lorraine Wood

Bill Doscher

Bayshore HOA

Jeff Logandro

Richard Keough

Mark Doehner

Dan Downing

ALSO PRESENT

Jacques Romatier

Tom Siekmann

Jeannine Miller

John Barbour

Gary Maple

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P R O C E E D I N G S

2:46 p.m.

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3 COMMISSIONER DOUGLAS: Good afternoon. Welcome to
4 this PMPD conference for the California Energy Commission.
5 I'd like to welcome all the parties here, and I'll introduce
6 people at the dais. I'm Commissioner Douglas. I'm the lead
7 commissioner on the siting committee. To my right is Paul
8 Kramer, our hearing officer, and to my left is Galen Lemei,
9 my advisor.

10 Let me ask for the parties to introduce themselves
11 now, and starting with the applicant.

12 MR. MCKINSEY: Good afternoon. My name is John
13 McKinsey, counsel to the applicant, El Segundo -- excuse me,
14 not El Segundo -- Carlsbad Energy Center, LLC. Also with me
15 is George Piantka, who you're all familiar with, a
16 representative of NRG on the project.

17 COMMISSIONER DOUGLAS: Thank you. And staff?

18 MR. RATLIFF: Dick Ratliff, counsel for staff.
19 And with me is Mike Monasmith, the project manager.

20 COMMISSIONER DOUGLAS: Thank you. And now
21 intervenors, starting with the City of Carlsbad.

22 MR. BALL: Thank you, Commissioner Douglas.
23 I'm -- I'm Ron Ball. I'm the city attorney for the City of
24 Carlsbad. And I'm the general counsel for the redevelopment
25 agency. And -- and now I guess my position has changed a

1 little bit since I'm the general counsel to the successor
2 agency for the redevelopment agency. And that's how we have
3 to act, and that's how we've nominated our pleadings. So
4 we're the successor agency to the former redevelopment
5 agency. But it's -- it's not been dissolved. It's going
6 through the process.

7 And we're -- we're a little short staffed. Joe
8 Garuba is not here today. He wanted -- he sends his
9 apologies. He had a trip planned out of -- out of the state
10 and is on the plane now, I think, as we speak. And then
11 Allan Thompson, our special counsel, is with me today, and
12 he will deliver the majority of the arguments. And then our
13 Advisor Bob Therkelsen. He's well known to the commission
14 as the former CEO.

15 And, oh, by the way, when we get to the public
16 comment, most of the city council -- the city council is out
17 attending a meeting, educational conference in Kansas City,
18 actually, of importance to local governments all over the
19 country. And we did ask for the proceedings to be
20 postponed, but unfortunately that didn't happen. Thank you.

21 COMMISSIONER DOUGLAS: Well, thank you for being
22 here.

23 Let's go now to Power of Vision

24 MS. BAKER: Yes. Good afternoon, and welcome back
25 to Carlsbad. I'm Julie Baker with Power of Vision. And to

1 my right is Dr. Arnold Roe.

2 COMMISSIONER DOUGLAS: Thank you. Terramar
3 Association.

4 MS. SIEKMANN: Hello. My name is Terry Siekmann,
5 and I'm representing Terramar. And Catherine Miller may be
6 in attendance later. Thank you.

7 COMMISSIONER DOUGLAS: Thank you. And now Center
8 for Biological Diversity.

9 MR. ROSTOV: Good afternoon. William Rostov,
10 representing the Center for Biological Diversity.

11 COMMISSIONER DOUGLAS: Thank you. Is anyone here
12 representing Rob Simpson? I don't hear anybody yet. We'll
13 check again later.

14 Is anybody here representing Intervenor CURE? All
15 right. So far nobody with Intervenor CURE or with Rob
16 Simpson. I think we've now gone through all the parties.

17 Let me just introduce the Public Advisor Jennifer
18 Jennings in the room, raising her hand.

19 And on the phone we have representatives of the
20 California ISO. Could you introduce yourselves at this
21 time?

22 MR. PETERS: Good afternoon, Commissioner. Dennis
23 Peters with the California-ISO. Thank you.

24 Is there anybody on the phone or in the room from
25 the San Diego Air Pollution Control District? Are you

1 Steven Moore?

2 MR. MOORE: Yes.

3 HEARING OFFICER KRAMER: Very good. Thank you.

4 Is anybody here representing any other state,
5 local or federal government agencies, or on the phone? All
6 right.

7 With that I'll turn this over to the hearing
8 officer.

9 HEARING OFFICER KRAMER: Thank you, Commissioner
10 Douglas.

11 So I note on the phone we have William Walters and
12 Robert Worl. They're from Commission staff. And Alan
13 Greenberg, consultant to staff.

14 Does anybody else on the phone wish to identify
15 themselves at this point? Okay.

16 Hearing none, those of you on the phone, if you
17 can mute yourselves, if you have background noise in your
18 vicinity. If not, when I see that happening I will mute
19 you. So better if you can keep your environment quiet.
20 Your second choice is mute. And the third choice is be
21 muted by me, which may make it a little more difficult for
22 you to speak up. But -- but I suspect that most of you are
23 probably, for the most part, listening.

24 Mr. Peters, you're not identified on my list. So
25 if you can give me five seconds so I can figure out which of

1 the unidentified people you are and put your name on -- on
2 my list so that I -- I'll be able to un-mute you if I need
3 to, I'd appreciate it. So go ahead.

4 MR. PETERS: Would you like me to speak, or are
5 you just trying to identify which call-in number I am?

6 HEARING OFFICER KRAMER: Yeah. I've got you.
7 Thanks.

8 MR. PETERS: Okay. Thanks.

9 HEARING OFFICER KRAMER: Okay. Well, with that,
10 there are copies of the agenda, I think, on the table
11 outside; is that right, Ms. Jennings?

12 MS. JENNINGS: The table outside.

13 HEARING OFFICER KRAMER: Okay. Well, Ms. Jennings
14 has copies of the agenda for today's meeting if anybody
15 wants one. And she also has some instructions for members
16 of the public to understand the process of following
17 comments beyond today, if they choose to do so.

18 This afternoon's session is -- is for the most
19 part to allow the parties to discuss among themselves the
20 comments that they have -- they have made thus far on the
21 revised presiding members proposed decision. If we have
22 time and there are some members of the public who don't want
23 to wait until five o'clock to make their comments we'll
24 allow them to make their comments earlier. If we do have
25 time we may break for a dinner break in the vicinity of four

1 o'clock. If not, we'll -- we will not, but there is that
2 possibility.

3 I think that's all the housekeeping items we need
4 to have. Does anybody have any issues that they -- they
5 want to make sure they identify for discussion today? One
6 of those, of course, will be the city's recent request to
7 reopen the record. We'll be talking about that. But other
8 than that I am not aware of any pending motions that the
9 committee needs to either discuss today or rule -- rule upon
10 today or at some future time. So if there are any of those
11 that you have in mind, please call those to our attention
12 now.

13 Ms. Siekmann?

14 MS. SIEKMANN: Yes. I would like to discuss
15 workers' safety, the fire code. I would like to (inaudible)
16 and the fire code. I would like to discuss override. And I
17 would like to discuss coastal dependence.

18 HEARING OFFICER KRAMER: Okay. So you want to
19 make comments on those? All right.

20 MS. SIEKMANN: Yes, I do.

21 HEARING OFFICER KRAMER: Okay. Each party doesn't
22 need to identify the -- the topics they want to comment on.

23 That was -- but thanks for -- for calling those out.
24 I'm -- I'm expecting we'll be talking about all of those.

25 Any other pending motions that we want to make

1 sure we -- we mark for -- for action at some point? It
2 appears that there are none.

3 So let's begin then with the city's request to
4 reopen the record. We have received the responses from --
5 from all the parties, and also a letter from the ISO. And
6 does any party wish to make further -- to further discuss or
7 argue that motion?

8 Oh, Ms. Siekmann?

9 MS. SIEKMANN: Yes. Terramar supports the motion,
10 and really thinks it's important to get into the record all
11 the changes that have occurred with CAISO's report since
12 they brought it to the hearing on December 12th.

13 HEARING OFFICER KRAMER: Okay. I guess I have a
14 question to throw out to all the parties. The basic change
15 that was discussed in the city's letter was a re-rating, I
16 guess you could call it, to transmission lines that get
17 close to each other for a short period of time.

18 To understand that further, Mr. Peters, when I
19 first read the description of it, it sounded a little odd to
20 me because it was talking about transmission lines that are
21 closer than 250 feet for less than 3 miles. And then it
22 occurred to me that that's probably just one of a series of
23 categories; is that right? So there's probably also a
24 category that is less than 250 feet apart for more than 3
25 miles? Do you understand my question?

1 MR. PETERS: Well, yeah. There would be, I
2 believe, well, Categories A, B, C, and D. And I believe
3 that prior to the change by the Western Electricity
4 Coordinating Council I think we -- I believe that was a
5 Category C contingency.

6 HEARING OFFICER KRAMER: So it went from C to D?

7 MR. PETERS: That's correct.

8 HEARING OFFICER KRAMER: And in your letter you --
9 did I understand correctly that what this does is makes --
10 makes the -- the reliability of those two transmission lines
11 for -- for handling -- handling imported power lower because
12 of this closeness?

13 MR. PETERS: Well, yeah. The revised Western
14 Electricity Coordinating Council criterion for what they
15 call common corridor circuit outages resulted in a
16 reclassification of the Sunrise and Imperial Valley-Miguel
17 double outage as a Category D contingency. And that was
18 because the power of the two lines are spaced less than 250
19 feet apart for less than 3 miles, which is a new WECC
20 criteria. So we were -- we were notified of that change by
21 San Diego Gas and Electric on March 21st of 2012. So the
22 re-categorization of the common corridor circuit outage as
23 Category D required us to reassess our local studies. And
24 we presented those results of this reassessment to the
25 California Public Utility Commission as part of their

1 proceeding examining a need for resources in the San Diego
2 local area.

3 Based on the reassessment ISO believes that the
4 reclassification of the Sunrise and I.V.-Miguel double
5 outage as a Category D contingency does not create material
6 changes to our testimony in the CEC's siting proceeding and
7 this proceeding. And it -- so it remains true that Carlsbad
8 Energy Center will help meet projected capacity needs in the
9 San Diego local capacity area, and in a local capacity sub
10 area, as well as the retirement of the Encina Power Station.
11 There has been development of generation at the current site
12 of the Encina Power Station or some electrical equivalent
13 location. ISO is still likely to require one or more
14 existing Encina units to operate beyond December 17th of
15 2017.

16 So we -- we agree with the CEC staff's
17 recommendation that the siting committee proceed to present
18 the revised PMPD to the full Energy Commission for adoption.

19 HEARING OFFICER KRAMER: So you're saying then
20 that your testimony would not change in any material way if
21 we were to reopen the record and ask you what the affect of
22 that reclassification was?

23 MR. PETERS: That is correct.

24 HEARING OFFICER KRAMER: Okay. So on -- on the
25 side, who's in favor of the motion to reopen the record,

1 what is it about this reclassification that you think has
2 changed the -- the testimony of the ISO and -- because
3 they're saying it's immaterial. What is it that you know
4 that -- that says otherwise?

5 MR. A. THOMPSON: This is Allan Thompson. This is
6 a very difficult area to understand. And -- and for our
7 part we have been trying to get a handle on these issues.
8 The reason we -- we sent in a data request so that the
9 experts could opine on these -- on these estimates and --
10 and the studies.

11 We did, however, look at the testimony that was
12 filed by the ISO with the Public Utilities Commission. And
13 if you look at that testimony you'll note that under the
14 environmental constrained column, if you'll recall Exhibit
15 199U, the environmental constrained column in that exhibit
16 started at 231 megawatts needed in 2021, and went, I think,
17 to 650. The revised testimony that the ISO submitted to the
18 Public Utilities Commission under that same environmental
19 constrained starts at zero.

20 So the ISO may be correct that their conclusion is
21 right. But the underlying data I think is important to
22 obtain because I'm not sure that that -- that that data
23 supports that conclusion.

24 HEARING OFFICER KRAMER: Yeah. I'm just trying to
25 pull up Exhibit 199U. So give me a moment. Well,

1 unfortunately that's not an exhibit that I have an
2 electronic copy of. Okay. Is there any -- any further
3 argument on -- or answer to the question I asked previously?
4 Let's start with Mr. Rostov.

5 MR. ROSTOV: My understanding is that the
6 underlying numbers changed. So -- and when Mr. Sparks was
7 testifying in December, when he said "contest," you know,
8 that slide came out two days before. It was a preliminary
9 slide. And Mr. Sparks from the ISO said, "These numbers
10 aren't going to change."

11 And then a couple months later San Diego Gas and
12 Electric finds a mistake in the numbers, those numbers do
13 change, and we're left with a record that is based on
14 preliminary information that we all moved to strike in
15 December. And it wasn't stricken because at the time I
16 believe the ruling was that we had the opportunity to cross-
17 examine Mr. Sparks on those issues. So now that the numbers
18 have changed we have not had that opportunity.

19 You know, the idea of a data request might be a
20 nice compromise before a full blown hearing. At least we'd
21 get some of the information. So those are my -- so those
22 are my main points.

23 HEARING OFFICER KRAMER: Ms. Siekmann?

24 MS. SIEKMANN: As a layperson, reading Mr. Sparks
25 testimony that went to the PUC it also looked to me as

1 though the need diminished by at least 200 megawatts. I
2 think that's significant. And I think it's something, since
3 two overrides for need have been based on that report, that
4 that's a critical thing to include. Thank you.

5 HEARING OFFICER KRAMER: Dr. Roe?

6 DR. ROE: You may recall at the December 12th
7 meeting when Mr. Sparks presented that 199U, I objected to
8 the submission of that document because it was in the
9 preliminary form. But even more importantly, we had no
10 access to the fundamental analysis on which the conclusions
11 in that slide were drawn.

12 Now, I don't find in the records that my objection
13 was ever officially overruled. I assume that since it's --
14 that slide is still in the record there was some muted
15 override of my objections.

16 However, the point I want to make is, that we
17 still continue to get conclusions from the ISO without the
18 backup analysis that would allow us to make an intelligent
19 rebuttal to their conclusions. And that's what we really
20 need in this forum. I mean, anybody could make a conclusion
21 based on what? ISO has not presented that data to this
22 forum so that we can contest it. And this is what bothers
23 me.

24 HEARING OFFICER KRAMER: Staff and the applicant
25 have any responses?

1 MR. RATLIFF: I'd note two things. First, we just
2 heard it from Mr. Peters, and also in the letter from CAISO,
3 and in the letter from CAISO they stated that ISO believes
4 that the reclassification of the line contingency does not
5 create material changes to its testimony in the CAISO Energy
6 Commission's siting proceedings. So we have it from the
7 representative of the agency that provided the testimony
8 that they don't -- they do not believe there are material
9 changes to that testimony.

10 And -- and then I think even perhaps more
11 importantly, the -- the override in the assessment is not
12 based solely upon ISO's testimony, nor the overall need
13 determination perception. It's based on quite a few
14 different factors. And both of those things weigh against a
15 last minute either reopening of the record or attempting to
16 obtain more testimony simply for those reasons. And so I
17 believe I agree with the idea that the CAISO, the actual
18 witness themselves, who said we should not try to reopen the
19 record or otherwise try to ask them to further testify.

20 HEARING OFFICER KRAMER: Okay. Thank you. Remind
21 me, the -- the column that Mr. Thompson was referring to
22 or -- or Mr. Bell -- Ball, I'm sorry, that was the -- that
23 was the estimate of the amount of generation that was needed
24 in the San Diego area, or was that in the Encina subarea?

25 MR. A. THOMPSON: I believe it was the San Diego

1 area under the environmental constrained column.

2 HEARING OFFICER KRAMER: Okay. So does anybody
3 have any reason to believe that this change in the rating of
4 the line -- the two lines affects the need within the Encina
5 subarea? Because that was one of the key aspects of the --
6 the override was that there is some generation needed in
7 this subarea, and none of the three PPA projects could
8 satisfy that need because they were outside of the subarea.

9 MR. MCKINSEY: The ISO addressed that in the
10 letter where they noted that the ISO's reassessment of its
11 study results did not affect the finding of need in the
12 Encina local capacity subarea.

13 HEARING OFFICER KRAMER: And I guess then I'm
14 asking the -- the intervenors who support the motion if they
15 have any -- any reason to believe that -- that that
16 particular conclusion of the ISO would change because of
17 these -- this change in the rating of the lines.

18 MR. BALL: Thank you, Officer Kramer. This is Ron
19 Ball. And I think you're putting the burden on us rather
20 than the burden on the applicant or the burden on the
21 witness. Because, really, the witness has testified through
22 his -- his testimony today, but saying it's not testimony,
23 in effect, saying my -- my testimony won't change. And that
24 hasn't allowed the parties to cross-examine the witness
25 and -- and to find out whether that is substantial evidence

1 upon which this committee should rely.

2 And so I think that the prudent course of action
3 would be to allow the facts and figures to be tested through
4 cross-examination rather than placing the burden on the
5 intervenors to go ahead and try -- try and come up with --
6 try and come up with an answer to your hypothetical
7 question.

8 And I -- I spent all day yesterday, I think, or
9 the day before yesterday in the CPUC hearings, or what
10 really -- really was a workshop, in which Mr. Sparks was
11 testifying -- or not testifying, but explaining. And it's
12 very difficult to understand. And -- and really what --
13 what I think the committee would benefit from and what the
14 parties would benefit from is an explanation in these
15 proceedings as to why that tentative schedule -- or Exhibit
16 199U is -- is -- is reliable, and -- and why it -- it should
17 be used in court to -- on which the committee could base its
18 override findings. I find that quite extraordinary.

19 And then the -- the subarea, I don't have a lot to
20 say about the -- the subarea, the need for the -- the
21 generation of the subarea. I -- I thought that this would
22 change that. So that's -- that's my -- that's not my
23 testimony, but that's my understanding.

24 HEARING OFFICER KRAMER: Why would it change it?
25 I'm gathering this -- this line is external to the subarea.

1 Mr. Peters, where is this line, roughly?

2 MR. PETERS: Well, I actually have Robert Sparks
3 with me in the room now at this point. So given some of the
4 detailed questions I'm going to have Mr. Sparks respond.

5 MR. SPARKS: Yeah. Hello. The constraint driving
6 the Encina subarea is basically a very localized line.
7 The -- it has nothing to do with the Sunrise and I.V.-Miguel
8 line. So it's -- it's a different piece of the network.
9 And the reclassification of Sunrise and I.V.-Miguel does not
10 affect the Encina subarea.

11 HEARING OFFICER KRAMER: Okay. And relative to
12 the subarea, where is the line located, those two lines?

13 MR. SPARKS: It -- it defines the boundary of it,
14 as well as some other lines. But it's -- it's on the
15 boundary. I'm trying to think if the Encina-Penasquitos --
16 I'm just going off memory -- but it is right along the
17 boundary of the Encina subarea, whereas -- so it's -- it's
18 probably within Carlsbad itself, whereas Sunrise and I.V.-
19 Miguel are out in the eastern portion of San Diego County
20 and Imperial County.

21 HEARING OFFICER KRAMER: So it may connect to one
22 of the edges of the subarea then?

23 MR. SPARKS: Yes.

24 HEARING OFFICER KRAMER: Okay. Thanks.

25 So, Mr. Ball, are you done?

1 MR. BALL: Yes. I am done, except for the -- the
2 feeling something is gnawing at me that says that we don't
3 have a chance to cross-examine, we don't have a chance to
4 bring in our experts that could provide the opportunity to
5 test the reliability of this -- this testimony. So I find
6 that a little bit awkward.

7 MR. A. THOMPSON: Mr. Kramer, if I could add,
8 here's where I think we are, is we submitted a data request.
9 And I think that the studies that would respond to the data
10 request are going to be done anyway by the ISO. They
11 basically said that they've submitted some of that to the
12 Public Utilities Commission. So it wouldn't be a tremendous
13 burden to revise 199U to make it correct.

14 Number two, if you look at the revised PMPD,
15 the -- the figure of 231 megawatts of need is referenced
16 there a number of places. And I think at the least you
17 would want a correct number in there, whether that number
18 remains 231 or drops to something else or is, in fact, zero.

19 Third, my understanding -- and, Mr. Sparks,
20 correct me if I'm wrong here -- is that the localized line
21 can be satisfied with -- by 20 megawatts or a transmission
22 upgrade. And I would think if -- if that is the case I --
23 and I think we covered this in the data request. And if
24 that's the case I would think that the committee would want
25 to have that information, as well, to consider when --

1 when -- when looking at an override.

2 HEARING OFFICER KRAMER: Mr. Rostov?

3 MR. ROSTOV: I agree with the points that were
4 just made. And I also want to just say even if the -- the
5 line doesn't affect the local reliability in the 20 to 50
6 megawatts there, it goes to this -- this slide goes to the
7 alternatives analysis. I think that's what Mr. Thompson was
8 just referring to. And there might be good alternatives if
9 you really don't have that much need. I mean, even maybe go
10 back to solar or something if you only have 10 megawatts or
11 whatever.

12 So -- and then the second point is I think it's
13 important, even under CEQA, to have the correct information
14 available for your document. So, I mean, the commission,
15 the committee is on notice that there's something wrong
16 here. And there's something wrong enough where ISO withdrew
17 their testimony in another proceeding and recalculated the
18 numbers. So at the very least it seems we should have those
19 recalculated numbers in this proceeding.

20 MR. SPARKS: Yeah. This is Robert Sparks. We --
21 we did not withdraw the testimony in the CPUC proceeding.
22 We simply just submitted some supplemental testimony.

23 And I guess the other point that I feel a little
24 compelled to add is -- is out of the four scenarios that we
25 studied, the one that is considered most likely is the base

1 portfolio. And as you can see from the supplemental
2 testimony at the CPUC there was virtually no change in the
3 need for Encina and Carlsbad generation in that base
4 portfolio. And in the other two -- in two of the other
5 portfolios there was -- there was -- there was a change, but
6 there was still a need. So the environmental portfolio was
7 the only one that -- that -- where the -- where the
8 reduction was -- was that significant. So in three out of
9 four portfolios there was -- there was really no change in
10 the conclusion that there's a need for this generation,
11 including the most likely one.

12 MR. RATLIFF: We wish to respond. From staff's
13 point of view I think you're in danger of taking an
14 invitation of going down a route that is essentially
15 analysis paralysis. This is information in another
16 proceeding which has to do with existing PPAs. On top of
17 that there will be an additional proceeding, you know, if
18 DRA succeeds it's questioning the current PPA proposal.
19 There -- there will -- the PPAs will be determined according
20 to the 2012 long-term procurement process. That proceeding,
21 as I understand it, is supposed to extend into the next
22 year. And this -- the PPA proceeding itself is not
23 predicted to terminate before the end of this year.

24 There will be additional filings by additional
25 parties throughout that proceeding, and things may change.

1 And I think what -- if you decide that, you know, because
2 the ISO amended its testimony in a proceeding in a way which
3 they have told you is not material to their conclusions in
4 this proceeding, what you're basically saying is you can't
5 act until that or those series of proceedings conclude. And
6 you have to basically wait until everything concludes before
7 you can act. And your action then really becomes no more
8 than a second step to what the ultimate proceeding itself is
9 supposed to determine.

10 I think you need to think real hard if that is the
11 way we want to run our siting proceedings, that you have to
12 actually conclude a PPA proceeding before you can actually
13 act. That has never been the premise of our licensing
14 process before.

15 MR. A. THOMPSON: And I feel compelled to -- to
16 respond to that. We filed a data request that was very
17 specific, redo the numbers on 199U. It was a single page
18 exhibit. We didn't ask that -- that everything that -- that
19 Public Utilities Commission is going to look at for the next
20 year be included. All we wanted was the correct numbers
21 that had been tended to -- to revise the numbers that were
22 testified to last December. Recall, in December when you
23 guys put that on we said wait a minute, these are draft,
24 these haven't been vetted. Lo and behold, no one took
25 our -- our advice, and lo and behold it was -- it was --

1 they needed to be revised.

2 All we're asking is that if 199U gets revised and
3 new numbers need to be put in there for the consideration of
4 the committee, that that be done. My suspicion is that the
5 ISO probably could already have responded to 199U. And --
6 and, you know, that issue may or may not go away. But it
7 was a very defined data request.

8 MR. MCKINSEY: The -- and I feel compelled to at
9 least note that it -- it may sound like a very defined data
10 request, but the -- the basic premise for going down that
11 path is just as open-ended as Mr. Ratliff suggests it is.
12 The -- the -- the fact remains that we received testimony,
13 and -- and that testimony is in the record. And a witness
14 doesn't want to -- to remove that testimony. All the
15 parties have always had the ability to provide whatever
16 testimony they wanted to provide.

17 I do understand that -- that dealing with power
18 transmission and system reliability is tremendously
19 technically complicated. But the City of Carlsbad is the
20 one participating intervenor that has put those types of
21 resources to bear in opposing this project from day one.
22 And so I couldn't see the reason why the City of Carlsbad
23 shouldn't be able to present and hasn't had ample
24 opportunity to present the testimony they wanted to present.

25 But Mr. Ratliff's point is really well made.

1 The -- if we wanted to deal with system reliability we
2 could -- actually, I'm not convinced it would end next year
3 or the year after that. Conditions constantly change. The
4 SONGS outage right now is something that nobody anticipated.

5 And so I think at one point or another just simple
6 practicality says that the -- that the committee has to
7 accept that they have more than enough evidence in the
8 record and an understanding of that evidence to reach the
9 conclusions that it -- it needs to reach.

10 And then -- and then second, it may take quite
11 awhile to extract a specific new point of data from CAISO
12 instead of simply, you know, it may sound like all they need
13 to do is smudge a number and move it over on a sheet of
14 paper. But their testimony was never of that nature, nor
15 are those slides. They're -- they're examples of raw data
16 from a complex analysis that they do all the time. And
17 their testimony was the gist of the need, and -- and that
18 hasn't changed.

19 MS. SIEKMANN: Mr. Kramer, may I speak?

20 HEARING OFFICER KRAMER: Go ahead, Ms. Siekmann.

21 MS. SIEKMANN: There are two questions that I'd
22 like to ask of the committee. And number one is for the
23 CAISO report, did the committee have the opportunity to look
24 at the evidence behind the slides, or was the only evidence
25 the slides? That's my first question.

1 And my second question is: Did the committee look
2 at the offer the city made of, you know, handling the 20
3 megawatts if that were the need, you know, the simple need
4 for that area as an alternative?

5 HEARING OFFICER KRAMER: The -- the studies that
6 are behind that one exhibit were not put into evidence, nor
7 not reviewed by the committee.

8 And as far as a 20 megawatt alternative, there was
9 a -- let me see. I'm trying to recall. In the
10 alternatives, a reduced-size alternative, basically a Pico
11 plant, was discussed. And I'm not going to attempt to -- to
12 summarize that discussion here again. But it was thought
13 not to be as -- as appropriate as the -- the proposed power
14 plant which would generate a lot more power for the -- for
15 the community and the region using the same resources. In
16 other words, I think the underlying thought there is to just
17 put in a very small plant when you have transmission fuel
18 that can handle a much larger power plant in an existing
19 site was -- was the better alternative from the perspective
20 of the committee.

21 Dr. Roe?

22 DR. ROE: I don't want to take issue with that
23 logic. I'm not an attorney. I notice a lot of the
24 discussion is centering on legal issues regarding the
25 request for the information. But I still have a logical

1 mind. And I'm trying to pursue your line of reasoning, Mr.
2 Kramer, when you say that a 540 megawatt plant is more
3 desirable than an alternative 20 or 50 megawatt plant, as
4 you -- as is stated in the PMPD when the Warren Alquist Act
5 in Paragraph 25525 clearly states that in making your
6 determination the commission shall consider the impacts of
7 the facility on the environment and on consumer benefits.

8 Now, if you talk about the consumer benefits, the
9 rate structure required to -- for a 540 megawatt plant is
10 going to be much higher than for a 20 or a 50 megawatt
11 plant. And so I don't see how you can justify that by
12 saying, well, bigger is going to be better. It's going to
13 impose a penalty on the ratepayer.

14 Now one other thing that bothers me and that
15 hasn't been brought up in these discussions is that the ISO
16 is not the only expert in what the communities and the
17 systems transmission needs are. Another very concerned
18 party is SDG&E. And though it's not in the records because
19 they don't want to be a party to these proceedings, they
20 have repeatedly told me and other people that they don't see
21 a need, a shortage of energy, until 2018, or whenever their
22 PPA analysis was done, for any additional power beyond what
23 they are proposing in the PPA. And that, indeed, some of
24 the system transmission upgrades that they are currently
25 doing will obviate any such need.

1 Now, I was hoping that their testimony would, by
2 this time, become public through the PUC hearings. But as
3 yet they have not commented on the workshop that took place
4 a day or two ago when CAISO brought before the PUC their
5 revised numbers. And so we're -- we're rushing to judgment
6 on issues based on an agency's statements, conclusions,
7 without having had the opportunity ourselves to analyze the
8 data in which these conclusions are based, or have other,
9 from my point of view, interested parties like SDG&E to have
10 an opportunity to comment in public on CAISO's analysis.
11 That hasn't happened yet.

12 HEARING OFFICER KRAMER: Okay. It sounds like
13 we've covered that issue pretty thoroughly. Is there any
14 final remarks? We'll take the -- the motion under
15 advisement. And I'm not sure if we will rule today or
16 later, but we'll let you know. Any further comments?
17 Seeing none.

18 Let's move on then to the -- some of the comments
19 that the parties did file prior to this hearing, and we
20 thank you for doing that. It helps make for a better
21 discussion here. Because at times your comments will elicit
22 questions. And -- and quite often a back-and-forth dialogue
23 is helpful. So I've identified some that -- that we want to
24 talk about a little bit. And then there may be others that
25 the parties want to talk about that I didn't identify.

1 First, let's go to Conditions Land 2 and 3. And
2 while the city didn't yet propose its amendments to Land 3,
3 it described in its comments, its preliminary comments, its
4 concerns and at least hinted at the kind of proposals it's
5 going to make in its final comments to amend Land 3.

6 And I was intrigued, Mr. Ball or Mr. Thompson, by
7 your concern that with \$100 million estimated cost to tear
8 down the Encina structures, and I assume do some other work
9 on that property, that it might make redevelopment of that
10 property economically infeasible. Is -- is that what you
11 meant to say, or did I read that wrong?

12 MR. A. THOMPSON: No. No, Mr. Kramer, that's
13 pretty close. Using an LLC for the CECP, and there's an
14 existing LLC, to my knowledge, on the Encina units, you
15 could have a situation where the CECP is wildly successful,
16 but they've carved out the -- the EPS. And the EPS has
17 aging units, three of which would be idle. Two may or may
18 not comply with, for example, the 2017 OTC Rules. SDG&E,
19 even if they do, may not contract for them. So you've got a
20 plant that basically has no useful purpose. And at that
21 time, according to the existing Land 2 and 3, the applicant,
22 presumably Cabrillo LLC, would seek out a partner and go
23 through a redevelopment effort, trying to find enough of a
24 redevelopment dollar so that they can demolish and remediate
25 at 100 million, invest money into new structures or

1 whatever, and clear enough to have it make sense. That
2 stacks up to a pretty large bit, if you will.

3 Our concern is that you get to that point, you
4 don't see those numbers out there, the easiest thing in the
5 world, or at least an easy thing would be to declare
6 bankruptcy and walk away, in which case all of the efforts
7 here will be for not. You can have a thriving CECP and a
8 shell with machinery in it sitting on the coast. That's --
9 I think I covered it fairly well in our written comments,
10 but that's our concern.

11 HEARING OFFICER KRAMER: So it may be that the --
12 the value of the land then, once it's -- it's been
13 recovered, is not close to \$100 million?

14 MR. A. THOMPSON: I think a lot of it is the eye
15 of the beholder. I think if it was a city, for example,
16 that was looking at this where their -- their long-range
17 view is what is that property going to do for us 10, 20, 30,
18 40, 50, 100 years from now, that may be one thing. It may
19 be that a developer wants to get money out of a 20 percent
20 hurdle rate for the first five years and the money isn't
21 there for that. And it -- it is the applicant that makes
22 those decision.

23 HEARING OFFICER KRAMER: So then you are
24 suggesting in your comments that -- that one alternative
25 might be to create a demolition fund which I gather would

1 collect money from other sources over time to -- to be able
2 to help pay some or all of those costs of demolition.

3 Could you explain a little bit more about the
4 South Bay model that you referred to?

5 MR. A. THOMPSON: I can explain a lot more. I've
6 done some work for the Port of San Diego, and the Port owns
7 that land. And I do know that -- that Duke established a
8 fund where certain monies were -- were put aside every year,
9 anticipating demolition and remediation. And when -- I
10 don't know, I can't tell you what that final number was. I
11 can't even tell you what the contribution was per year. But
12 it built up so that presumably when the time came to tear it
13 down there were -- it was a substantial amount of money
14 sitting there for that purpose.

15 HEARING OFFICER KRAMER: They were funding that
16 then from -- presumably from the revenues from the power
17 plant while it was operating?

18 MR. A. THOMPSON: Yeah, presumably.

19 HEARING OFFICER KRAMER: Okay. So -- so in affect
20 then what you are suggesting is that some of the costs of
21 demolition be born by the CECP?

22 MR. A. THOMPSON: I'm not sure I'm suggesting
23 that. My suspicion is, is that Unit 4 and 5 are available
24 to be run now. I don't think 1 through 3 run very much.
25 But I think -- I think that those units are -- are

1 operating. And -- and they, you know, they produce revenue.
2 And so I think that that revenue stream for -- for that fund
3 could come from Cabrillo. And obviously if CECP wants to
4 contribute to that, I think that would be terrific. I'm
5 hoping that the applicant suggests that. But I think that
6 over the course of time, until that Cabrillo is not longer
7 used and useful, they can put money aside to assure or at
8 least help assure that this demolition gets done.

9 HEARING OFFICER KRAMER: Mr. McKinsey --

10 MR. MCKINSEY: Yeah.

11 HEARING OFFICER KRAMER: -- or Mr. Piantka?

12 MR. MCKINSEY: The one -- one aspect of the South
13 Bay that is a little different in some extent is that the
14 funding essentially was born by ratepayers who were
15 essentially paying more for the electricity for a period of
16 time in order to -- to fund that through. It's part of a
17 deal that I think Duke had with its -- in fact, it was a lot
18 more complicated than that. But to one extent or another
19 the then current owner, Duke, did indeed have to grapple
20 with these issues.

21 But there's -- there's a couple other dynamics.
22 That's where the demolition and replacement in -- in -- in
23 the same location, so there was some complexity about if
24 you're going to tear this down you need to -- and then
25 rebuild it we want to see that that's -- that's viable

1 before we're going to let you shut down and walk away from
2 this, so that the port would then have the ability to ensure
3 it can be torn down. This is not, as -- as many of the
4 parties have -- have argued, you know, they -- they've
5 argued that these are two power plants, this is a second
6 power plant project, and so this is a different location and
7 is not mandated by itself in its own tear-down. It's on the
8 other side of the railroad tracks.

9 The intent of Land 2 and 3 is to -- and I think it
10 does do the best possible, remove the potential for it being
11 a second plant. In other words, it -- it makes it a plant
12 that replaces and displaces the old one.

13 The issue in here is what Mr. Thompson gets at
14 that we had pointed out, which is the operation of power
15 plants is not controlled by the owners to completely -- to
16 shut down and retire a plant. Now you have to have the
17 State of California's approval through the PUC. And -- and
18 so what happens if though they do agree to shut them down,
19 because it's -- to me the Land 2 and 3 are very clear that
20 they're going to have to be shut down as soon as their
21 capable of being shut down. But then there isn't a plan
22 that comes along that ensures that they can be torn down.
23 That's, I think, the fear and the concern.

24 I think that Land 3 is attempting to address that
25 in a very aggressive way because it requires -- and then the

1 addition of Land 2 that requires the applicant to report on
2 a yearly basis to the CPM, what are you doing, how are you
3 accomplishing these things, the project owner is going to
4 have a responsibility to pursue the Land 3 redevelopment.
5 And so this condition reduces the likelihood of an outcome
6 instead of -- of either leaving it neutral or increasing it,
7 that that existing building stays in place infinitely, and
8 that the existing facility, in theory, could run infinitely.

9 It -- it mandates an aggressive removal of those units,
10 when it's possible, from operation. And then it requires
11 the -- the pursuit of redevelopment. And -- and so to me
12 that's all entirely positive.

13 And the -- the issue about attempting to put a
14 condition in, for instance, that might say, you know, when a
15 new project becomes operational you will set money aside
16 or -- one, it might delay redevelopment if, you know, you
17 have to wait for ten years of operation to accumulate a
18 fund. But I think more importantly it -- the issue in here
19 is that that, I think it's -- and it was what the applicant
20 realized last year, that if you tie the demolition costs
21 of -- of that facility directly to this project, whatever
22 that price tag is. And -- and the estimate we provided in
23 testimony was based on the cost of South Bay of \$100
24 million, that that will burden the project too much. Where
25 there's a threshold, I don't know. Again, it's -- it's a

1 vague question.

2 But I think that the condition as it's written
3 now, it's very aggressive and very firm on the obligation to
4 see that these buildings go away and -- and goes -- we were
5 reflecting this winter that Land 3 in particular, but Land 2
6 and 3 together really have accomplished as much as could be
7 possible the -- the elimination of the fear of having two
8 power plants on the coast, and make it so that the new
9 facility, which is located in a much less visible
10 environment and much more benign location does indeed
11 replace the existing one.

12 And then one other correction. It's interesting
13 how things change, and this was our point, with the SONGS
14 outage right now Units 1 through 5 are running all out at
15 Encina. And -- and a shutdown on Unit 2, in fact, NRG had
16 to put off a scheduled maintenance shutdown to keep them
17 running. And that's, again, the example of without this
18 project going forward the future of that site is -- who
19 knows. You really can't say for sure that they'll ever be
20 shut down or retired.

21 And -- and that's been NRG's point all along.
22 And -- and the reason that they are comfortable, and they're
23 actually very happy to have Land 2 and 3, is that they
24 believe it's going to create an environment where when this
25 project gets built that facility will be able to be torn

1 down, demolished, and redeveloped. And that's -- that's
2 something that at least at that point the -- the city will
3 probably be able to participate in and -- and help
4 facilitate as well as the community. And whatever goes
5 there will be very healthy.

6 HEARING OFFICER KRAMER: So then do I hear you
7 that you -- you do not share the concern that the potential
8 return revenue-wise from the redevelopment won't match the
9 cost of demolition, and therefore the project won't go
10 forward?

11 MR. MCKINSEY: I don't -- I'm -- I'm an attorney,
12 and I like to think like Mr. Thompson where I think we're
13 both saying that there's a risk there that's -- and it's an
14 unknown. That risk is there regardless of this project.
15 But this project reduces it substantially. That's my point.
16 It doesn't hurt it, it helps. It reduces the risk of an
17 idle facility. And really, that facility remaining there
18 idle or not for an extended period of time.

19 But as to what the -- the costs are going to be,
20 partly, that's going to be a moving project. And the
21 demolition costs will probably partly drive what can occur
22 there. For instance, if the idea is to put a park there,
23 then there would have to be somehow the development of \$100
24 million if that was the demolition costs and remediation
25 costs. If -- if it's -- if it's really expensive that

1 probably dictates that the -- the land is going to have to
2 be used to produce some income to help facilitate that.
3 And -- and so clearly the cost of demolishing and
4 remediating that property are expected to be high and are
5 expected to be a challenge, but this -- this project
6 advances that. And it puts an agency holding the -- the
7 project owner accountable to further facilitating that. And
8 I don't think it can go any farther than that.

9 HEARING OFFICER KRAMER: Okay. Thank you.
10 Anyone -- okay. Let's see. Mr. Ball?

11 MR. BALL: Yeah. Let me say -- let me respond to
12 that. Really, the city's needs and the redevelopment
13 agency's needs are real -- are simple. One, we're looking
14 for certainty as to dates. And I know that certainty may --
15 may be hard to obtain. But maybe certainty in dates or a
16 certainty in events. So that's the first thing.

17 And I think we're fine with this condition until
18 it gets to the last part where it gets kind of muddled about
19 pursuing fiscally viable redevelopments. So we -- we are
20 going to make some suggestions that hopefully the committee
21 will accept.

22 And the second thing is we want a security for
23 that promise for -- for performance. And we have creative
24 minds here that definitely can come up with ways to provide
25 security for that -- for that promise to demolish and

1 remediate. Everybody wants to see that happen apparently,
2 even now the applicant who has written to you and said could
3 be more clear? And if we have something that will be more
4 clear I'm sure that he will agree with that. Because in his
5 letter to you he -- he said the outcome that would displace
6 and replace the existing Encina Power Station, and that's
7 what we want to see happen.

8 So the two things that need to happen are some
9 kind of certainty and some -- some form of security for that
10 promise.

11 HEARING OFFICER KRAMER: So when you say security
12 are you talking about something on the order of \$100 million
13 bond or for some part of the estimated cost?

14 MR. BALL: You know, that's why I said there's
15 creative minds in here, so we'll -- we'll figure that. We
16 don't even really know. That's a guess. That's
17 speculative. Whether it's \$100 million or \$55 million in
18 the port -- as in the port district. But the -- the way the
19 city operates is that if someone has an obligation, a
20 developer has an obligation to build a road for \$22 million,
21 let's say, or \$40 million as has been some of the projects,
22 or even \$60 million, and they have to provide security for
23 that promise. And there's lots of different ways you can
24 provide security. Nonetheless, the city and the
25 redevelopment agency will require that before a person can

1 proceed. Because in this state development is a privilege,
2 it's not a right. And any developer has to pay for that
3 privilege, including power plant -- power -- power plant
4 developers.

5 HEARING OFFICER KRAMER: Ms. Siekmann, did you
6 have your hand up for -- go ahead.

7 MS. SIEKMANN: Land 2 and 3 do not preclude
8 another power plant from being built on the front of that
9 property. That has -- I think that that's a missing part of
10 Land 2 and 3.

11 And, also, retooling -- the retooling of 4 and 5
12 has not been addressed either as far as -- as far as Land 2
13 and 3 goes. I mean, there is still -- NRG has already
14 submitted to the Water Board a plan to retool 4 and 5, which
15 could go on indefinitely. So that's not been addressed.
16 And I do agree with the city. Because as Land 2 and 3 look
17 right now there's -- I personally don't see any benefit of
18 Land 2 and 3 at this point in time because there's --
19 there's only a promise, and there's nothing behind the
20 promise.

21 Those are my three comments that I would love to
22 hear from the committee on.

23 HEARING OFFICER KRAMER: We tend to respond -- we
24 go back to our desks and tend to respond to -- to most of
25 the comments. And you actually got really lucky a few

1 minutes ago when I responded to your last set of questions.

2 MS. SIEKMANN: Nothing like pressing your luck.

3 HEARING OFFICER KRAMER: There you go.

4 I don't know, I will say, though, that the
5 requirement that they planned for and -- and removed, the
6 Encina Project, while I guess the redevelopment plan could
7 be for another power plant, that's certainly not what was --
8 what was intended. I can tell you that much.

9 MS. SIEKMANN: But it's -- there's no
10 clarification.

11 HEARING OFFICER KRAMER: Yeah. We'll take that
12 comment and the other comments under consideration.

13 Ms. Baker?

14 MS. BAKER: Well, I just wanted to respond, and
15 also backup what Mr. Ball and Ms. Seikmann are saying.
16 And, also, Mr. McKinsey makes the comment that they're sort
17 of required to turn a report in every year to the compliance
18 manager. And my response to that is so what? A report is
19 way different than having some financial juice in the game
20 and -- and having some more requirements that have some meat
21 into it. I see no reason why. Once you do a report you
22 don't pull it up on your -- your laptop and -- and update it
23 and send it off again and call it good. I just don't see
24 that that's any real requirement.

25 HEARING OFFICER KRAMER: Do you see, the condition

1 also requires, though, that they get started on and they
2 produce a plan. So they are -- they are ahead of the game.
3 If -- if they wait until -- until they have the money and
4 then they have to produce a plan and it has to go through
5 the city's review process which, as we've said, is
6 complicated then, I mean, the -- the time to actual
7 demolition will be longer under that second scenario.

8 But there's clearly a balance here. On the one
9 hand, if you load up this project with too many requirements
10 then it can't sell its power to anybody, and then it never
11 gets built. And if the ISO continues to insist that there
12 be generation in the area, the existing plant provides that
13 generation. And, you know, that's -- that's not what --
14 what I hear the members of the community wanting either. So
15 it -- you know, there is a balance to be drawn here. We
16 recognize that.

17 MS. BAKER: But on the flip side of that, if the
18 local service provider never enters into a contract then --
19 then -- then what happens? I mean, you know, I guess I just
20 don't understand. I'm just confused by all of this. So --

21 HEARING OFFICER KRAMER: I mean, it's -- it's --

22 MS. BAKER: You know, because we keep talking
23 about how ISO has said generation needs to be there, and
24 yet -- yet there apparently still never appears to be a
25 contract. And -- and here's plans. You know, the City of

1 Carlsbad, the planning department, there are shelves full of
2 plans that -- that people have turned in that have never
3 been built for various reasons. So I just don't see, again,
4 with all due respect, that -- that a plan or filing yearly
5 reports has any kind of meat behind it that offers any kind
6 of real protection to -- to -- to those of us living here in
7 Carlsbad that we aren't going to have two behemoth
8 structures on the coast.

9 HEARING OFFICER KRAMER: Okay. We've -- we've
10 heard your comments. We see it a little differently. And
11 but yet this -- you know, we describe this system as having
12 a lot of moving parts, and that's clear. The commission has
13 also approved projects that have never been built. So we're
14 familiar with that. And we -- it's -- it's not a central-
15 planned economy. So we -- we can approve projects. We
16 don't finance them, and nor do we approve the rates that are
17 charged to ratepayers. It's -- it's the system we have.

18 Are there any other comments on Land 2 and 3?

19 MR. MCKINSEY: Hearing Officer Kramer, we'd like
20 to respond, I think in a positive way, to one of the
21 comments, which is that there isn't a requirement that
22 future redevelopment not be another power plant. And that's
23 actually not the intent of the applicant at all. And so
24 we're fine with a phrase, some language that says that, that
25 the -- and I've even -- I'll just read it out loud so it's

1 in the record, something that I think would facilitate that.

2 In the sentence where it says "project owner shall
3 actively pursue fiscally viable redevelopment of the Encina
4 Power Station," we could add a phrase that says "that does
5 not include new power generation west of the railroad
6 tracks."

7 But there is a nuance in here that there is
8 equipment west of the tracks there now, including a
9 switchyard. There's a lot of ambiguity about what's going
10 to happen if -- if Poseidon is built, the desalinization
11 facility, then there's going to have to be a maintenance of
12 the intake and the discharge systems to facilitate the
13 movement of ocean water through there. How that gets
14 maintained is if you develop the site it means you may have
15 to build new intake and outflow, you know, structures and
16 run them through the property differently. And so there
17 will be still, I think, some -- some -- particularly -- I
18 think because Poseidon stays there and you have a switchyard
19 owned by SDG&E west of the tracks, that there's going to be
20 some -- some things that connect the plant east of the
21 tracks. But certainly NRG is able to say it, because they
22 have no intention of using the area west of the tracks for
23 new power generation units themselves, and -- and nothing
24 like that.

25 And so that -- that's language that they can

1 accept that would accomplish exactly what we're hearing,
2 which is that is the intent of the applicant, as well. And
3 no intention here to try to use redevelopment to put the new
4 power plant there.

5 HEARING OFFICER KRAMER: Well, thank you for that.

6 A question: The black start unit, is that -- is
7 that -- is there any possibility that the system overlords
8 are going to want to keep that in there for the future?

9 MR. MCKINSEY: Well, it has to be a possibility of
10 that, or at least replacement somewhere else. I think
11 during that last outage the black start unit wasn't used to
12 repower when we had the blackout last year, which was an
13 example that it may not longer be needed. It's -- it's
14 something that you hear a lot about, a lot of projects going
15 out that say we'll add a black start unit but then it never
16 happens. So I think generally speaking, you know, right now
17 there's no -- we have no indication that it's going to be
18 required by CAISO or anybody else to be maintained that.
19 And -- and it's included in the things that have to be
20 aggressively pursued in terms of -- of retiring and -- and
21 demolishing.

22 HEARING OFFICER KRAMER: Okay. Thank you.

23 MS. SIEKMANN: Mr. Kramer?

24 HEARING OFFICER KRAMER: Go ahead, Ms. Siekmann.

25 MS. SIEKMANN: I just wondered if Mr. McKinsey had

1 any comments about the retooling of 4 and 5 because of the
2 2017 TMTC (phonetic) rule?

3 MR. MCKINSEY: Yeah. So the -- the plan that was
4 submitted to the Water Board is the mandated plan. And
5 it's -- it's essentially -- one of the issues we have to
6 grapple with is that if -- and this is something, I think,
7 that CAISO, the PUC, the State Water Board, and the Energy
8 Commission are all working together on to figure out, okay,
9 if we're going to mandate the retirement of once-through
10 cooling or at least the elimination of the once through
11 cooling aspect enough to reduce the -- the -- the adverse
12 aquatic marine impacts, then how are we going to keep the
13 lights on?

14 And so the retooling of 4 and 5 is -- by
15 submitting and including that as one of the options in the
16 plan it ensures that if -- if, for instance, this project
17 doesn't get built and CAISO refuses, and the PUC, to let 4
18 and 5 be permanently shut down, then they would essentially
19 be modified to no longer use once-through cooling, or the
20 way the rule works they drop to 7 percent of their existing.
21 And -- and so that's -- that's one of the options that would
22 be out there.

23 And, in fact, what you're making -- the point
24 you're making is the point that the applicant has made which
25 is we don't know that these projects won't be required,

1 the -- the existing units won't be required to operate
2 infinitely. And -- and so that -- that 4 and 5 is part of
3 dealing with the OTC mandate. And this project is one of
4 those things that moves -- that takes you in the exact
5 opposite direction. And -- but it's certainly there as one
6 of the contingencies if this project isn't built and CAISO
7 requires 4 and 5 to operate for another 30 years.

8 HEARING OFFICER KRAMER: Okay. I see Mr. Sarvy
9 (phonetic) has joined us as one of the parties. Mr. Sarvy,
10 were you intending to speak about any particular topics?
11 Okay. He's -- he's not muted. Maybe he stepped away from
12 his computer. We'll come back to him. Okay.

13 That takes care of Land 2 and 3 then.

14 One argument that was raised in the preliminary
15 comments was from Mr. Rostov. And this has to do with
16 whether the PSD permit needs to be, well, further along in
17 it's process, at a minimum, and more information available
18 about -- from that process before the commission should or,
19 I think he would say, could act to approve this project.
20 And I just wanted to give the parties an opportunity if they
21 choose to -- to respond to that -- that comment or those
22 comments that he made.

23 MR. MCKINSEY: I think our answer to some extent
24 has been asked and answered when we've had -- had that come
25 up in a few different motions and iterations that -- and I

1 didn't see any new argument for reasons that would seem to
2 require that -- that that be the case. I mean, we could re-
3 debate it again. Maybe Mr. Rostov could indicate where he's
4 making a new argument, as opposed to what's been raised
5 before. I didn't see it.

6 MR. ROSTOV: I think -- I think you're right, it's
7 a similar argument. But I think the one thing the PMPD said
8 was that we were requesting that, you know, there had to be
9 a decision about the PSD first. And I think what we
10 clarified was, no, the committee has an independent duty
11 under their regulations and statute to do a conformity
12 analysis, and they haven't done it. And not only have they
13 not done it, they can't do it because the applicant didn't
14 put in the required information, didn't even put in an
15 applicant, didn't take a position on whether PSD applied.

16 So -- and I think you're right, at an earlier time
17 the committee in a ruling said that, you know, the Warren
18 Alquist Act did apply and that they wanted information about
19 it. And then our position is they really didn't get the
20 information, and the record isn't sufficient to support any
21 sort of conformity finding. So everything really needs to
22 stop until they can do that.

23 So I think the applicant failed to meet its
24 burden. And the commission -- committee can't do its
25 analysis because of that. And the committee didn't do an

1 analysis.

2 MR. RATLIFF: This is the second invitation to
3 analysis paralysis. You can't issue a decision because
4 there is another permit in another agency on a separate body
5 of federal law that is going to take place in the future,
6 therefore you can not issue a permit until -- and it's not
7 clear to me what time that would be. But there is going to
8 be -- obviously, first of all, there has to be some
9 determination the PSD applies, which has not yet occurred.
10 Second of all, there has to be an application. Third of
11 all, there has to be a permit. That's usually a process
12 that takes more than a year, two years. Then there is
13 usually a review process at the Environmental Appeals Board
14 if anyone files an appeal, and that can take years, as well.

15 So if you want to tie a requirement to the
16 issuance of a federal permit, which has sometimes been
17 described in the context of a power plant situation as more
18 procedural than actually substantive, and as much as it
19 doesn't change anything in our power plant licensing
20 processes in terms of what actually gets built, if you want
21 to tie that to a permit that might be years off in the
22 future then, yes, we can not issue a permit. We never
23 could. And it wouldn't be very meaningful to -- to have a
24 conformance analysis that is merely predictive.

25 So I think that what has been suggested here is

1 that you're deferring your decision for a period of time
2 that would extend, perhaps for years, and the agency could
3 not act.

4 MR. ROSTOV: Can I give a brief response to that?

5 HEARING OFFICER KRAMER: Go ahead.

6 MR. ROSTOV: We're not saying you have to wait for
7 the issuance of the permit. But we are saying there has to
8 be enough information in the record that you do a job like
9 you do on the other permitting. You do look at the PSD
10 permitting.

11 But I think the better analogy actually might be
12 the Coastal Commission stuff. I mean, there is legal issues
13 that I believe the city are raising. But the -- the staff
14 went ahead and did your own analysis. You know, is that
15 legal or is it not? But you went ahead and did it because
16 you felt like you had a legal obligation.

17 You have the same sort of legal obligations under
18 the Warren Alquist Act to do all air quality laws. So you
19 just didn't fulfill your obligation. And the document
20 doesn't have a record to fill it. Because when the
21 committee gave the applicant the opportunity to put in more
22 information the applicant was like, you know what, we're not
23 going to do a PSD permit application. We're not going to
24 give you any of this information. And we're not even going
25 to take a position if the PSD applies.

1 HEARING OFFICER KRAMER: Okay. Thank you. The
2 next issue and the last one on my list was the city in its
3 comments is very fervent in asserting that the Coastal Act
4 was not complied with. They disagree with the committee's
5 conclusions in the revised PMPD to the effect that the
6 project is consistent with the Coastal Act. And so I wanted
7 to offer this opportunity for -- for the applicant and/or
8 staff especially, but any party to respond to those
9 comments.

10 And then I also want to invite the parties in
11 their final comments to address -- to address the implied
12 and, I believe, explicit in one case, the assertion of the
13 city, that the, if you will, the thresholds are different
14 between the Coastal Act and the CEQA. So in other words,
15 while some project may be found not to have any significant
16 environmental impacts, having achieved that level of benign-
17 ness, if you will, may not be sufficient to satisfy the
18 standards of the Coastal Act. So I'm not necessarily
19 expecting you to -- to give me cases or coach an argument
20 today. But we would be interested in hearing comments on
21 that particular issue that the city has raised in -- in
22 their comments.

23 So with that I'll just throw it open for anybody
24 who wants to -- to discuss this particular topic.

25 MR. A. THOMPSON: Mr. Kramer, I would like to

1 offer an apology to everyone here. I had a hand in -- in
2 the -- the crafting of our arguments there. And I may -- I
3 made the statement at one time that -- that the only place
4 that the -- that the Coastal Act was mentioned in the visual
5 section was at the very beginning and the very end. And I
6 missed a location where the Coastal Act was mentioned. It
7 was on page 47 of the revised PMPD. And I apologize for
8 missing that. I don't think it changes our conclusions.

9 HEARING OFFICER KRAMER: Okay. And Ms. Siekmann?

10 MS. SIEKMANN: Well, I just wanted to say a few
11 things about coastal dependence. I want to remind the
12 committee that the CECP is an air-cooled plant. An air-
13 cooled plant can be placed anywhere. It can operate
14 anywhere. Placing it in the coastal zone violates the
15 Coastal Act because CECP is not a coastal dependent
16 facility. The CEC declared the CECP coastally dependent
17 because of the de-sal plant for -- you know, the de-sal
18 plant that's for the steam -- steam augmentation. The de-
19 sal plant was not part of the original AFC. In the original
20 AFC there was no de-sal plant. The applicant forgot to ask
21 the city if there was enough reclaimed water for them to use
22 city reclaimed water. The city's reclaimed water was fully
23 subscribed.

24 The city offered to the applicant that if they
25 wanted to expand the facility that they had available --

1 would have available reclaimed water for them if that
2 occurred. But the applicant said no. They decided to
3 choose the path of the de-sal plant. This was a financial
4 decision. It was a bottom line decision. It wasn't a
5 coastal dependency decision. The de-sal plant was a
6 financial decision. It's not the job of the CEC to protect
7 the applicant's construction costs by creating coastal
8 dependence. So we need to go back to the very beginning to
9 see that this plant was never coastally dependent. Even
10 though Encina predates the Coastal Act it was coastally
11 dependent because it could only operate with the need for
12 massive quantities of water.

13 I would like for you to see this as -- as it
14 really is. It's an unfortunate manipulation of the Coastal
15 Act to preserve the applicant's bottom line. This is just
16 one of my concerns with the Coastal Act, but it was one I
17 wanted to discuss today. The rest I will put in my
18 comments. And thank you for listening.

19 HEARING OFFICER KRAMER: Thank you. Any others?
20 Mr. Ratliff?

21 MR. RATLIFF: My regard for Ms. Siekmann is so
22 high that I -- I hate to contradict her. But the -- the law
23 regarding the application of the Coastal Act, which I
24 believe all witnesses testified consistently to, is that if
25 a facility complies with Chapter 3 of the Coastal Act it

1 doesn't matter whether it's coastally dependent. And that
2 was also the testimony of Mr. Faust (phonetic) who was the
3 city's witness on this, and we agree with that.

4 Secondarily, the reason the staff believed that it
5 was correct in determining that this was a coastally
6 dependent facility, for the sake of argument, and the city
7 did argue that it didn't comply with Chapter 3, was that the
8 city has informed the applicant by a letter, which is -- is
9 in the record and has been discussed, that there would be no
10 water coming from the city, and that there would be no
11 available water for the project. This was a rather poignant
12 occurrence in the unfolding of this case because at that
13 point I told the staff -- or told the applicant we didn't
14 want to waste any more time on the project since they didn't
15 have any water.

16 It was subsequent to that that -- that the
17 applicant filed basically what has been called the pure
18 amendment, which basically amended the project to use an
19 osmosis system to obtain its water from the intake system
20 that would be used by the facility, and also used by Units 3
21 and 4. So that became the alternative use and the only
22 viable use, as we understood it, for the project to obtain
23 its water. And in that sense we saw it also as being
24 coastal dependent.

25 And those -- for -- those are the reasons, not the

1 de-sal plant itself, but actually the -- the need to get
2 water from some source other than the city, that staff
3 viewed this as a coastal dependent facility.

4 HEARING OFFICER KRAMER: Mr. McKinsey?

5 MR. MCKINSEY: A couple of -- of comments. First,
6 the -- Mr. Ratliff's characterization is very accurate as to
7 the unfolding of the events. The intent of the applicant
8 has been and remains, actually, to use reclaimed water if
9 it's available. The decision in the project, it's
10 essentially being permitted to do either.

11 And -- and I know we've made this comment at
12 plenty of the hearings and emphasized that. But the -- the
13 project went to using the purified water, purified ocean
14 water for the very reason that it was informed that there
15 wasn't water available. And -- and yet it also wanted to
16 maintain the ability to use it. And the way it's set up,
17 they -- they have to commit to one or the other when they do
18 that final design on the plan, and that's when that decision
19 will ultimately be made. This decision preserves the
20 ability to purify ocean water as the source of -- of makeup
21 feed water and -- and other water uses on the site.

22 The -- and also it is very correct that there is
23 no coastal dependency requirement for this project. Coastal
24 dependency is a factor, I think, that provides presiding
25 members proposed decision, quotes the exact correct language

1 and correctly analyzes that.

2 Similarly, the applicant is -- and we can confirm
3 this in our written comments, but is very comfortable that
4 the -- that both the decision, as well as the record, is
5 complete on Coastal Act compliance, and -- and therefore,
6 you know, is satisfied that that area is met, as well.

7 HEARING OFFICER KRAMER: Ms. Siekmann?

8 MS. SIEKMANN: I just would like to say that I
9 have spoken to Joe Garuba about this very thing. And there
10 is a disagreement at the table as to whether the city made
11 that offer. And my understanding from my conversations is
12 that that offer definitely was made.

13 And also if -- if -- if you read the information
14 provided by Mr. Faust in the city's comments it is quite
15 clear that -- that this is not a coastally dependent power
16 plant, and that it needs to be coastally dependent based on
17 how you're supposed to use the Coastal Act, by reading
18 his -- Mr. Faust's notes.

19 HEARING OFFICER KRAMER: Okay. Thank you. I need
20 to correct myself. I -- I mistakenly said a few moments ago
21 that Mr. Sarvy was a party in this case, and he is not.

22 And also for the benefit of the people on the
23 telephone, if when you speak if you would just say your
24 name, that will help them sort out the -- the voices that
25 can sometimes sound very similar.

1 Okay. I think that --

2 MR. BALL: Actually, before we left that I wanted
3 to make a few remarks that wouldn't probably surprise you if
4 I was just in disagreement with the remarks that have been
5 made here today. So --

6 HEARING OFFICER KRAMER: Not at all. Go ahead.

7 MR. BALL: You know, the fact that the city didn't
8 have a large enough plant to provide the water doesn't make
9 this project coastally dependent. I mean, I heard that from
10 Mr. Ratliff and I heard that from Mr. McKinsey. It was
11 quite alarming because that's not the test, whether or not
12 the city will provide -- has a capacity to provide it. The
13 test is in Section 30101. And -- and I would like you to
14 look at that section for a second.

15 Commissioner Douglas, do you have that up there?
16 Okay. So if you -- if you look at that section you have to
17 start off -- you have to start off with a coastal dependent
18 development means any development. Okay. So what is any
19 development? Commercial development is any development. A
20 tourist-service development is any development. A housing
21 development is any development. And, yes, a power plant is
22 any development. It's an industrial development. Okay.

23 It's an industrial development. Okay. So you have
24 to -- the applicant and -- and the staff must -- really must
25 concede that, that this is one of any development, and that

1 is covered by this section. Okay.

2 If you get to that point then and it says, all
3 right, this is along with any development, it's an
4 industrial development, it must require a site that's
5 adjacent to the sea to be able to function at all. Okay.
6 Now, is there anything about this plant, anything about this
7 plant, leave out the pair for a second, that requires it to
8 be adjacent to the sea to function at all? Okay.

9 So my colleague says maybe I can answer that
10 myself. But I'll -- I'll just -- I'll just leave the
11 question there. Okay. Then you -- you -- you need to
12 answer that.

13 Now the pair came along and said, well, if we
14 can't get water from the city because the plant is not big
15 enough we're going to -- we're going to make it so that --
16 we'll put a de-sal component in there. And everybody knows
17 that de-sal has to take water from the ocean. That's what
18 the de-sal plant does. So it's got to be coastally
19 dependent. Well, I don't think that that's a correct
20 argument because there's still -- any water, it doesn't have
21 to be seawater, can -- can be used. Reclaimed water can be
22 used.

23 And if the applicant wanted to discuss this with
24 the city and say, yes, we'd be willing to accept the
25 condition that we pay for upgrading the plant and make the

1 water available, then that's if it can become available.
2 The city does that all the time and says please oversize
3 this facility, a sewer pipe or a water pipe or a road, okay,
4 because -- because you need to provide those facilities for
5 the project. Okay. And if we require that to be oversized
6 then you can -- you can get paid back through a
7 reimbursement agreement from other users as they come
8 online. So it's really a fairly simple process that both
9 the revised PMPD glosses over, the 30101. And that's the
10 first test that you have to satisfy before you get to 30260.
11 And that's exactly how the Coastal Commission approaches
12 that.

13 When it did it's phase for the Poseidon Plant it
14 said unless, in a one paragraph finding on the last -- it
15 was a finding, it said this is a coastal dependent facility.
16 Everybody knows that the water -- it's going to take 304
17 million gallons of water out of the -- going out of the
18 Pacific Ocean to generate 50 million gallons of pure water,
19 pure, wholesome water. Okay. Nonetheless, it's not
20 consistent with Chapter 3 of the Coastal Commission -- of
21 the Coastal Act. It is not consistent.

22 So we need to engage in the 30260 overlying
23 proceedings which requires the pre-findings that are in
24 the -- in the provision, in that law itself. And that
25 hasn't -- first of all, we don't think the committee can get

1 over the first challenge about whether or not the findings
2 are a coastal dependent facility. And second, it hasn't
3 applied the three tests that are in -- are contained in
4 30260.

5 So we do disagree. And maybe we -- I'd be happy
6 if someone could -- could explain why that's a wrong
7 analysis, but I really don't think it is. And I was
8 surprised that someone said that -- testified that it
9 doesn't matter if it's -- if it's consistent with Chapter 3
10 it doesn't matter that it's coastally dependent because that
11 turns it on its head. And that's what the argument is, is
12 we're turning the -- the -- the Coastal Act is being turned
13 on its head to -- to really create a coastal dependent use
14 so that this project can be approved.

15 So -- and I'm, really, I'm trying to invoke a
16 discussion from Commissioner Douglas if that -- I mean, if
17 you have some -- I'll be happy to -- to try and listen to --
18 to counter arguments from anybody. And then -- and then
19 maybe we can get to the bottom -- the bottom of this.

20 MR. RATLIFF: Well, we, again, we -- we do
21 disagree. But I guess the -- and I -- this has been -- by
22 the way, this was discussed a great -- in great elaboration.
23 It's been thoroughly briefed. It's -- I know it's discussed
24 at some length in the staff opening brief. And there are
25 citations in Mr. Faust's testimony on this issue.

1 Be that as it may, I guess I have to ask at this
2 point, it's 4:20. The day is not infinite. And what we
3 have done thus far is reargued a couple of issues that we
4 don't agree upon. But I don't see us making any progress in
5 terms of actually hearing comment on the decision. We can
6 argue about -- and if that's what the committee would like
7 to hear we can continue to argue about the application of
8 the Coastal Act, whether Chapter 3 is the test or whether
9 the first test is going to be whether it's a coastally
10 dependent facility. And then whether or not it is a
11 coastally dependent facility and what the city -- the city
12 says about whether water is available.

13 But like I say, that's all been discussed and it's
14 all been briefed. It's all part of the record, and you
15 don't really have to hear it again today. And it's just
16 kind of like -- to me it's -- all we're doing is getting mad
17 at each other and listening to each other. And why do we do
18 this? I mean, if you want to hear comments on the decision
19 take comments on the decision that we -- or if you want us
20 to argue, tell us that's what this is all about and we'll
21 argue it. But --

22 MR. MCKINSEY: Hang on, Mr. Kramer. Actually, to
23 Mr. Ratliff's direction there is something we wanted to get
24 a discussion about, and that was -- and he didn't bring it
25 up in your last one, which was the City of Carlsbad's

1 proposed changes to Land 1 in their comments.

2 HEARING OFFICER KRAMER: Yeah. I spotted that,
3 and I was going to add to my list. Okay. So per Mr.
4 Ratliff we have exhausted the Coastal Acts question. So
5 let's move on to Land 1. And, yes, I would find that -- we
6 would find it very useful to hear the applicant and/or
7 staff's response to the proposed changes for Land 1. And
8 this regards the coastal trail.

9 MR. MCKINSEY: And, first, so the Land 1, we kind
10 of divided it into three changes, essentially. One was to
11 make it clear the easement is permanent. One was to create
12 a requirement for a temporary trail, should the completed
13 trail not be present prior to start of construction. And
14 then three, to make the City of Carlsbad share the costs of
15 the appraisal, as well as choose the appraiser. And I
16 don't think the City of Carlsbad's last point was to
17 actually share the cost. They simply wanted to be involved
18 in choosing the appraiser.

19 So the first change is just to make it permanent.
20 That's -- I think that's what we understand it to be. And
21 that first use of the word permanent at the -- on the first
22 line that says "project owner shall dedicate a permanent
23 easement," that's fine. That's the intent. It is like all
24 the other easements that have been granted and will be
25 granted to the property, they're permanent easements to the

1 infrastructure.

2 The temporary trail isn't an issue for quite a few
3 reasons. And I think we'll probably be better off if we
4 articulate those in writing. But -- but I wanted to be
5 clear that it just -- it wouldn't work, we feel, for a
6 number of reasons that mostly relate to the fact that if
7 were to somehow do a temporary one there would have to be
8 some kind of a transfer of -- of responsibility, liability,
9 and inter workings of the deal. You could, you know, in
10 theory, pave the section, do fences on it. And that
11 presumes that the cooperation has occurred that's -- that's
12 noted. If it doesn't, then a grant of money will be
13 provided in lieu of that. And so it presumes that there
14 will be a Coastal Trail going through the property. It's
15 presents that it's figured out effectively about where it
16 would be. And so you really couldn't have -- you're going
17 to put in a temporary one at the start of construction,
18 unless it was already part of the permanent figured out plan
19 of where we're assuming it would cross the property, where
20 it would cross it at and where it would exit at.

21 And -- and then the third issue is that the
22 Coastal Rail Trail dedication could get triggered if -- if
23 the site becomes commercial operable. Under the PDP prior
24 to the siting become operational a Coastal Rail Trail
25 easement has to be dedicated. But it's not a part of the

1 start of construction for Poseidon. It's not, you know,
2 it's not an absolute mandate.

3 So this project, if -- if it gets constructed,
4 provides another means of ensuring that an easement is
5 providing. And, of course, by providing it this also
6 ensures it will be consistent with this potential obligation
7 under the Poseidon-based PDP. But if you had it as a
8 presumption of prior to start of construction that could
9 assume that it's going to go in regardless of whether this
10 project gets built, and regardless of whether Poseidon gets
11 built. And that would be highly impractical, and also not
12 required.

13 So -- and then finally, I think practically
14 speaking, the -- we don't think that the Coastal Rail Trail
15 is anywhere close to being ready at this point anyway. But
16 maybe in five or four years it might be. But there's a lot
17 of things yet to be figured out about how it's going to make
18 its way through that area.

19 So -- and despite Mr. Ratliff's argument, I think
20 there are a few topics we're getting into that are useful.
21 And I think having a discussion about this would -- would be
22 one of them, rather than just having it here and just in our
23 written comments at the end, in the last minute, because it
24 is a pretty big change.

25 The fee change, as much as we probably would like

1 sharing the fee of the appraiser with the City of Carlsbad,
2 I'm satisfied that if the CPM (phonetic) has to approve the
3 appraiser and the City of Carlsbad doesn't want that person
4 to be the appraiser, then it will end up being a different
5 one. If the CPM has to approve it I don't think that having
6 it be approved by both the City of Carlsbad and the CPM is a
7 necessary change, and that the city will find its interests
8 quite well protected by the CPM. Because the CPM has to
9 approve the selection of the appraiser. And if the city
10 says that appraiser isn't good enough you're going to wind
11 up getting a different one.

12 HEARING OFFICER KRAMER: Okay. On that last
13 point, there's no consultation with the city on the choice
14 of the appraiser discussed in the current condition, is
15 there?

16 MR. MCKINSEY: Actually, you know, we haven't
17 looked at Land 1 since -- really, this is the first time
18 it's actually come up in a few years. But there isn't
19 actually land in the condition that requires the appraisal.
20 And I think -- so it's interesting language, only in
21 verification. In theory there would be a sentence in the
22 condition that says applicant shall get an appraisal. And
23 actually, the way I'm reading it here there isn't a
24 verification. So it is -- oh, that is going with the new
25 condition.

1 So you're correct, it doesn't require that they
2 consult. And I'm sure that's fine to consult with the --
3 that's kind of the normal compliance model that just the --
4 the applicant consults with various agencies and then
5 submits to the CPM what they think is correct. The CPM
6 takes comments and then makes a decision. And, actually,
7 your paper doesn't have the notation on it, which is usually
8 where you'll see the "consult with" part. And the
9 verification language in Land 1 doesn't address the
10 appraisal at all.

11 HEARING OFFICER KRAMER: Okay. So you're saying
12 that rather than say the project owner and the city mutually
13 select, you'd be in favor of having CPM approve it after
14 consulting with the city?

15 MR. MCKINSEY: That's correct.

16 HEARING OFFICER KRAMER: Okay. Could you -- could
17 you explain in a little more depth your concern about -- I'm
18 not fully understanding your concern about the temporary
19 trail segment, how that would -- how that could mess things
20 up.

21 MR. MCKINSEY: It -- it's an absolute requirement
22 that if -- it's an absolute requirement that there be a
23 temporary trail, even when there might not be a permanent
24 one first. So in any case, if the city and the applicant
25 can't reach agreement on where it will be located then there

1 will be a payment in lieu of Coastal Rail Trail. So it
2 presumes there's going to be one, absolutely, which defies
3 the second paragraph of the condition which makes it the
4 payment is in lieu if the city can not cooperate. If -- and
5 so that's the first issue.

6 Then the second issue is that the Coastal Rail
7 Trail could be something that has to be completed in that
8 segment after construction is completed. And depending on
9 where it's -- where it's being routed through the property,
10 assuming it goes through the property. And so it -- it
11 wouldn't make sense to have a temporary one go in, even if
12 you condition it to say, you know, assuming that the parties
13 have reached agreement, but it has to be temporarily put in
14 prior to the completion of construction of the project.
15 Because during the construction phase of the project there's
16 quite a bit of activity on that property. So requiring a
17 temporary one through there is an absolute requirement. It
18 would simply entangle and -- and create a barrier.
19 Presumably it would be where the -- the city and the
20 applicant and project owner reached agreement on its
21 location. But that location may not be even usable during
22 the early phase of construction.

23 And so all those reasons, it seems pretty clear
24 that -- that requiring a temporary trail of some type, you'd
25 have to have a lot more conditions associated with it. But

1 even then it would have to be, you know, conditioned on the
2 fact that there is going to be one through that property.

3 MR. A. THOMPSON: Mr. Kramer, I fear that -- that
4 maybe I wasn't clear enough in writing these comments,
5 because I don't think that my friend Mr. McKinsey and I are
6 on the same page here at all.

7 What this is intended to do -- first of all, we
8 don't think this project is ever going to get built. We're
9 trying to get a power purchase agreement with SDG&E; no go.
10 And they haven't filed a PSD. They were going to start on
11 July 1. That didn't happen. We just don't think it's ever
12 going to get done. Maybe something else, some other place.

13 But what we do see is years going by without --
14 just lying idle. And this was a proposal to put in a
15 temporary asphalt trail that connects the two sections when
16 the bridge element is done. Well, if and when they ever
17 break ground or start to break ground under the CECP, this
18 goes away. There will be an agreement to put a Coastal Rail
19 Trail somewhere else, or -- or money, I guess, is -- is
20 the -- is the alternative for that. But the true Rail Trail
21 would go away. And -- and there will be many people riding
22 their bikes through their project when -- when that happens.
23 And this is the guard against having that segment of the
24 trail interrupted needlessly while time goes on after the
25 bridge element is -- has been finished.

1 HEARING OFFICER KRAMER: And the south -- southern
2 portion isn't at issue. Is that already finished?

3 MR. A. THOMPSON: I believe that that's finished
4 up to the -- the hotel. Yes. And there are amenities
5 there. There's a bench there and there's some other things.
6 So, yeah, it goes up that far.

7 HEARING OFFICER KRAMER: Okay. Thanks. Does that
8 clarify things for you, anyway, for you Mr. McKinsey?

9 MR. MCKINSEY: Yeah, it does. But I think we are
10 on the same page of disagreement. For instance, there is a
11 presumption that there is going to be a Coastal Rail Trail
12 going through that property. And right now the only thing
13 that exists that might end up requiring that is if the
14 Poseidon Desalinization Facility becomes operative.

15 So there's no certainty from the applicant's
16 point -- and the city may disagree with that position, but
17 that might be a different issue. From the applicant's
18 perspective it's pretty clear that the -- the easement for a
19 Coastal Rail Trail is only required to be dedicated upon the
20 commercial operation of Poseidon, which hasn't started
21 construction yet. And there are other requirements in the
22 PDP that are required prior to the start of construction,
23 but this wasn't one of them.

24 So if this project isn't built then it shouldn't
25 be -- it shouldn't be just because of the condition in here,

1 the Coastal Rail Trail going through the property. Maybe it
2 goes to their point that they don't think it's going to be
3 built. But either way this would turn this into an absolute
4 mandate that there at least be a temporary one going through
5 there, and there might never be one going through this piece
6 of property.

7 MR. A. THOMPSON: So can I make -- brief response
8 to that?

9 HEARING OFFICER KRAMER: Go ahead.

10 MR. A. THOMPSON: So, Commissioner Douglas, you
11 can see why finding extraordinary benefits in this case has
12 been very hard. Because we're talking about a few thousand
13 dollars, probably, to -- to put down some asphalt and a few
14 sticks of a fence that we're talking. And a \$500 million
15 project, we're quarreling about a few thousand dollars.
16 It's quite amazing.

17 And the -- and the temporary trail would be a
18 straight line between the bridge that they're -- the bridge
19 when -- the completion of that construction until the -- and
20 down by the -- by the west -- the West Sweet Sod (phonetic),
21 whatever it's called, there's a little -- a little park down
22 there. And it would just be a straight -- straight shot.

23 And so this is something that -- Carlsbad has a
24 very comprehensive trail system. We have trails throughout
25 the city. We know how to improve and maintain them. We

1 know how to shift the liability, take the liability. We --
2 we're very familiar with that. And so the applicant should
3 have no fear that -- that they would be taking on a
4 liability as -- as a result of this.

5 MR. MCKINSEY: I'll note two things. First,
6 again, the -- the -- there is a presumption in -- in this
7 proposed change that says there will be a trail through this
8 property. And yet the condition is written to say there
9 will either be a trail or payment of an equivalent amount to
10 go around it.

11 But then the second issue is on the timing
12 component to it. The -- the construction phase of the
13 project is probably going to -- at least at this point I
14 assume it's going to require the use of some of those areas.

15 And -- and so it's unclear to us that you could put a
16 straight shoot through, a trail, if it even fell routed on
17 that path, which would be subject to agreement by the
18 applicant and the -- and the city. But even if it could,
19 and that's where it will end up, it may not be able to go in
20 there until after construction is completed. And -- and the
21 real point of this condition is to require the applicant to
22 negotiate with the city in an attempt to reach agreement
23 on -- on an easement, or conduct an appraisal and provide
24 compensation in lieu of that at this time, basically.

25 MR. A. THOMPSON: The temporary trail goes away

1 when you begin to start construction, and I would assume
2 even before that. When you are thinking about mobilization
3 I would think you -- this -- this trail goes away. And we
4 don't want a lot of bicyclists, you know, bumping into your
5 cement trucks. I mean, this would go in, and presumably a
6 permanent trail somewhere else -- somewhere else would be in
7 the works. This would cover the time between the -- the
8 close of the bridge segment and when you start construction.
9 So it would go away.

10 MR. MCKINSEY: And you may be -- you may be
11 correct. I may not understand. Right now it just says
12 there will be one, period. But are you trying to say that
13 if a location of the trail is agreed upon, then to the
14 extent it's feasible there would be a temporary trail?

15 MR. A. THOMPSON: I don't even think you have to
16 get to the -- to the negotiation of a permanent trail
17 with -- with a temporary.

18 What I -- what I was thinking is sometime after,
19 in two years or whatever the -- you can link the trails and
20 tear down the asphalt when you -- when you start
21 construction or start to dealing with -- there's a separate
22 condition that goes to Rail Trail to cover that location
23 and/or money to be set aside for that if -- if we want to
24 condition the temporary trail to say that goes away, that
25 can be torn up when an agreement for a permanent one is --

1 is decided on.

2 MR. MCKINSEY: Well, but there's still no
3 requirement or an agreement for a temporary one. In fact,
4 it's just the opposite. This is requiring the dedication of
5 a permanent easement. So, I mean, are you suggesting
6 that -- that the -- there would be a negotiation of a
7 temporary easement for the trail?

8 MR. A. THOMPSON: No. We're -- we're leading on
9 your good-neighbor policy to -- to -- yeah, to -- to
10 pointing out the \$10,000 for some -- for some asphalt and --
11 and a fence if -- if we're here longer than two years
12 without the start of construction. I guess that's what
13 we're asking.

14 MR. MCKINSEY: Okay. And I don't think it's
15 \$10,000. It's whatever the cost of asphalt and the fencing,
16 which actually for this space it's more than \$10,000.
17 But -- but in any case, it's not a question of the cost of
18 the asphalt or the fencing. It's the cost of -- of whether
19 or not a location can be agreed upon between the city and
20 the project owner on where that trail is going to go.
21 And -- and if it can be, I don't think that -- that NRG is
22 going to have an issue with providing routing through there
23 if it's capable of being done. But certainly the way this
24 reads now there will simply be paving and a fence without
25 associated transfers of -- of land responsibility, etc.

1 And -- and then somehow, you know, that would get
2 facilitated.

3 And maybe your intent is to say that if the
4 easement is agreed upon between the parties and provided and
5 it's not in the way of construction, but that's not how it
6 is now. And -- and that might be a different consideration.

7 MR. A. THOMPSON: Yeah. I apologize. I'm -- and,
8 hopefully, I'm trying to make myself clear here. And if you
9 guys will feel more comfortable with -- with language that
10 changes liability and makes, you know, makes -- makes
11 temporarily the trail the responsibility of the city for
12 upkeep and maintenance and whatever else until such time as
13 you come up with -- with a permanent plan somewhere else,
14 we're amenable to any language like that, which is fine.

15 MR. MCKINSEY: It pretty much right now doesn't --
16 like right now Land 1 does not require the applicant to
17 construct the trail.

18 MR. A. THOMPSON: I understand.

19 MR. MCKINSEY: All it requires is that dedicated
20 easement, and that only if they can reach agreement with the
21 city on the location and nature of that easement. That
22 would allow that negotiation process to include a discussion
23 around a lot of these other components.

24 But one other difference would be that the Energy
25 Commission (inaudible) now also be involved, and that would

1 have to be satisfied by safety and feasibility, as well.
2 And that's going to be the case anyway, an absolute mandate
3 that there be paving done by the applicant and, you know, to
4 provide some kind of a temporary trail offered. There's no
5 guarantee that you're even suggesting that there has to be a
6 transfer of ownership and easement granted to the city. But
7 then, also, that the location would accommodate construction
8 for those easements.

9 MR. A. THOMPSON: And one last thing is that if
10 there's any grant to the city it would be temporary. It
11 would handle it prior to your construction. You wouldn't
12 have to mess with it. You know, before you start
13 construction you -- you take your backhoe out there and dig
14 it up. I'm amendable to any language. I mean, you kind of
15 know we're -- we're -- where we're trying to get to on this
16 is to -- is to complete that segment, even on a temporary
17 basis.

18 MR. MCKINSEY: I know. I just realized another
19 problem working in here. This project doesn't provide for
20 the development expressly of a Coastal Rail Trail. It only
21 provides for the -- the grant of an easement for a Coastal
22 Rail Trail; correct? I mean, maybe I'm missing something.

23 So this would be a temporary trail that would be
24 handled permitting-wise, I guess, or would this be folded
25 into what the Energy Commission is -- is -- is evaluating in

1 its plans?

2 MR. A. THOMPSON: My suspicion is it could be done
3 very easily. And on a permanent basis you guys could
4 probably or the Energy Commission could probably, you know,
5 authorize the -- the reconstruction of the -- of an asphalt
6 strip.

7 MR. MCKINSEY: I guess I just, you know, I
8 guess --

9 MR. A. THOMPSON: I am at fault for thinking that
10 this was something relatively easy that would not affect
11 construction of the CECP at all. And it was really separate
12 from the permanent Coastal Rail Trail, except that it would
13 go away before the permanent trail went in. And maybe this
14 is a lot more complicated than -- than -- than I considered.

15 MS. SIEKMANN: I was just wondering when Mr.
16 Ratliff was going to bring up the time so that possibly we
17 can get to overrides.

18 MR. RATLIFF: Bring up the time?

19 MS. SIEKMANN: Yeah. That maybe it's time to --
20 to go to overrides.

21 MR. RATLIFF: Well, I -- I'm sorry. I'm being
22 your straight man here.

23 I think this is a useful discussion, and I'm
24 trying to understand it. And I'm afraid or waiting to be --
25 to be asked what staff's opinion is, and -- and we don't

1 know. We just read it. We feel like our compliance people
2 and our -- Dr. Greenberg needs to look at it, as well.

3 The staff -- the staff wanted two things when they
4 proposed this condition. One was that there be the purchase
5 of land for public access in -- in the coastal area. And a
6 condition of the Rail Trail seemed like the best way to do
7 it.

8 At the same time it wanted to do nothing that would
9 compromise the security of the power plant site itself
10 and/or to place a trail in juxtaposition in an area that
11 would be dangerous. And so those were the considerations we
12 had when we wrote -- proposed the condition.

13 You know, on the -- on the face it, it seems like
14 what Mr. Thompson with the city is proposing is very
15 reasonable in as much as it's proposed to be temporary. But
16 I would want our staff to review it. We are in a situation
17 where nothing is certain and everything changes. And, you
18 know, it's possible that this project -- it's not beyond the
19 realm of possibility, this project -- will not be built or
20 will not be built soon, or it might be built five years from
21 now after the -- whatever. And, yeah, I think there could
22 be a period of time where there was uncertainty. It seems
23 desirable to try to accommodate the city if it doesn't
24 compromise security of the project site or if it doesn't
25 complicate the applicant to keep a Rail Trail in an area

1 where we felt it was imprudent to do so.

2 But I feel like we have to address that in our
3 follow-up comments, because it is kind of complicated. And
4 Mr. McKinsey has raised the issue of the site, as well, in
5 this, and we don't quite understand that. And we haven't
6 really -- or at least I don't understand that. Maybe other
7 people do. But we don't know how that complicates the issue
8 of whether or not this would be a good idea or not.

9 MR. BALL: Commissioner Douglas, if I could just
10 respond to that. I do know the role of Poseidon. And
11 they're not -- they're not a land owner, they're a lessee.
12 They have a long-term lease of the -- NRGs property. And so
13 the conditions are written in a way that is -- is legally, I
14 guess enforceable, because we can't require the Poseidon
15 applicant to make a dedication. But we have asked Poseidon
16 to cause the owner to make the dedication of the property.
17 So we're really back to the applicant who is here at the --
18 the table.

19 MR. MCKINSEY: Yeah. And our intent is not to
20 suggest that Poseidon is a party involved. But only I'd
21 point very much that it's -- that the Poseidon project is
22 the means, if it goes forward, of triggering an easement for
23 the property. And that -- and so I'm sure we disagree with
24 that. And my intent is not to say that the Poseidon project
25 itself, though it is an issue from a different perspective,

1 that it's another development on the property that could get
2 in the way of any particular path that you're trying to put
3 the Coastal Rail Trail through. But that's -- it's pretty
4 unknown at this point exactly what it's going to look like
5 and how big it's going to be, and what it's going to look
6 like and what it's fire lanes look like, and so forth.

7 HEARING OFFICER KRAMER: Okay. Well, this is -- I
8 think that was helpful. But I'm hearing that you all will
9 have to respond to that in your final comments. So --

10 MR. RATLIFF: Could I just ask one question of Mr.
11 McKinsey. Is it possible that if you were to rewrite this
12 you could write it in a way that would allow a temporary
13 rail trail without NRG -- NRG purchasing the applicant's
14 concerns?

15 MR. MCKINSEY: It might be possible. It concerns
16 two -- two problems. One, it really changes the nature of
17 the condition to require the applicant to construct, even if
18 it's temporary, a Rail Trail. So it's -- it's -- right now
19 it requires the dedication of an easement. That is the
20 city's task of permitting it and developing it. In lieu of
21 an easement, if it doesn't cross the property, then the
22 applicant has to provide the money's. That will allow the
23 city -- and at that point they get a little ahead because
24 they get the money to acquire the equivalent of the land,
25 plus they're getting a payment for development.

1 But -- but in any case, this would change it.
2 We're now -- as part of this project the applicant has to
3 construct a temporary trail. So I think his concern is, as
4 you recall when we proposed Land 2 and 3 last year that got
5 turned into a reason to expand the environmental evaluation
6 of the project because there wasn't any evaluation of the
7 safety and the changes. Here, I can see this becoming and
8 excuse for, okay, well, now we need to evaluate the
9 environmental affects of a Coastal Rail Trail that's going
10 to be built as part of this project, even if it -- maybe we
11 can evaluate it and say it's temporary so there are no
12 significant impacts.

13 But it's really a change to Land 1 at this last
14 minute. And that's kind of my point about how it's been
15 silent for a couple years on this condition. Maybe we could
16 have pulled more of that evaluation in. But -- but -- but
17 marking in there with my point that what this would do is
18 require that as part of this project the applicant build
19 and -- and perhaps, you know, build it and turn it over, but
20 it becomes part of this project to construct this trail,
21 even if it's temporary. Whereas right now what it requires
22 is a dedication of an easement, and then it's the task of
23 the -- whoever the party is, actually, not necessarily the
24 city, for the Coastal Rail Trail to actually be permitted
25 and built.

1 HEARING OFFICER KRAMER: You -- you said that if
2 you had to provide money it would be both for acquisition or
3 construction, whereas if you provided an easement it would
4 be acquisition only. I'm not sure the condition unambiguous
5 from that point, because it talks about the amount and
6 payment of funds to be determined by an appraisal of the
7 property will be provided, suggesting that it's the value of
8 the property that you're not giving up, which would be given
9 to the city, and not, you know, this -- this different
10 amount.

11 MR. MCKINSEY: You may be correct. I'm reading
12 the -- the mandate would be that the project owner shall
13 provide funding for the City of Carlsbad for development of
14 the permanent Coastal Rail Trail as approved by the
15 compliance project manager. But it then triggers the amount
16 as to be determined by an appraiser. You're right. We'd
17 only be looking at the value that would have been provided
18 in the easements. You're right, it is (inaudible).

19 So -- so then are you willing to -- to both
20 provide for acquisition and construction or -- in which case
21 the city may want to propose the clarification to that
22 effect, or do you like it the way it is?

23 MR. MCKINSEY: We've been satisfied with this
24 condition for a couple years.

25 HEARING OFFICER KRAMER: Okay. All right. Moving

1 on then to overrides. Ms. Siekmann wanted to address that
2 for a little bit.

3 MS. SIEKMANN: Am I the only one?

4 HEARING OFFICER KRAMER: We'll see.

5 MS. SIEKMANN: Okay. Throughout the proceedings
6 the CEC, the committee, have considered the shutdown of
7 Units 4 and 5 as being a speculative matter. As
8 intervenors, all along we've asked for CEQA cumulative
9 analysis to include the shutdown of Units 4 and 5 to be
10 performed in all areas, including noise, visual, water
11 resources, biological, and especially alternatives. But we
12 were told that the shutdown of Units 4 and 5 was a
13 speculative matter and not part of the project. So the
14 analyses were not done, except for maybe one or two.

15 And as intervenors we have always insisted that an
16 air-cooled plant was not -- definitely not a coastal
17 project. So then we insisted that staff and the committee
18 analyze the probable future shutdown of 4 and 5, making
19 the -- and then making the CECP responsible for the negative
20 affects of once-through cooling.

21 So -- so basically what I'm saying is the
22 intervenors have always wanted to include the shutdown of 4
23 and 5 and all the analyses of CEQA, Coastal Act, everything,
24 be done looking at accumulative probable future project as
25 the shutdown of -- of 4 and 5, yet were always told that the

1 shutdown was a speculative matter and not part of the
2 project.

3 So if we go all the way back to the CEC opening
4 brief, to the RPMPD, every significant document of the CEC
5 declares the shutdown of Units 4 and 5 as a speculative
6 matter and not part of the project. And Land 2 and 3 were
7 added to the project, and in nowhere does that state that
8 the shutdown of Units 4 and 5 are a probable future event.
9 It's still a speculative matter.

10 So then the overrides come along. And the
11 overrides are based nearly 100 percent on the shutdown of
12 Units 4 and 5. And how do I know that?

13 Because in our hearing on December 12th Mr.
14 Thompson asked Mr. Sparks, "So, if 271 megawatts are needed
15 and 500-plus megawatts are provided by 4 and 5, would I --
16 would I correctly conclude then that there is no need for
17 additional, a third power plant, there's no need for the
18 CECP because that capacity is being provided by Encina Units
19 4 and 5?"

20 And Mr. Sparks said, "If Encina Units 4 and 5
21 continue to operate through 2021, yes, they could meet the
22 need."

23 But the committee has based not one but two
24 overrides on need that speculative. And as we've been told
25 all along, the shutdown of 4 and 5 are not part of the

1 project. So the overrides are then based on a ten-year need
2 analysis completed by CAISO. And since the RPMPD was
3 published CAISO has even noted a mistake in their report.
4 So need issue has -- the need issue has been based on the
5 shutdown of Units 4 and 5. But all along us as intervenors
6 have been trying and trying and trying to say we need to
7 look at 4 and 5 as a probably future event. And CEC staff
8 and the committee have said, no, the shutdown of 4 and 5 is
9 speculative and not part of the project.

10 So then all of a sudden we see this override being
11 weighed, and most of it is -- is based on what Mr. Sparks
12 said about the fact that, you know, the need in the future
13 is based on this OTC shutdown.

14 So Terramar thinks it would be prudent for the
15 committee to decide, is the shutdown of 4 and 5 speculative
16 or a probably future event? Once you decide, then either
17 you need to reverse the overrides or repeat your evaluations
18 done by the committee and staff that prevented this enormous
19 variable from being part of the entire CECP evaluation,
20 include a CEQA and Coastal. The intervenors have asked the
21 CEC for the past four years, what is the project? And yet
22 we have not gotten that answer. The committee needs to be
23 enlightened by CAISO regarding their changes that have
24 occurred in their analysis. And CAISO needs to give the
25 committee the transmission changes that could largely alter

1 the need issue.

2 So I would like to thank you for listening. And I
3 would love to get these problems resolved. Thank you.

4 HEARING OFFICER KRAMER: What do you mean by the
5 shutdown of 4 and 5, just the ceasing of operation of those
6 units, that they remain there, sitting in place?

7 MS. SIEKMANN: That isn't clarified.

8 HEARING OFFICER KRAMER: No. No. I'm asking what
9 you mean?

10 MS. SIEKMANN: What I would like is a definition
11 of the project. And, yes, I know that the shutdown of 4 and
12 5 could still leave visual impaired. But as far as not
13 using the -- the out -- the in -- the out take and
14 biological, there are many areas that have not been
15 evaluated. So it needs to be evaluated as a shutdown of
16 Units 4 and 5.

17 HEARING OFFICER KRAMER: Well, all I can do is
18 point you to a discussion that was added to the -- to the
19 Land Use, page 8.1, S26 (phonetic). And that discusses the
20 potential environmental impacts arising from Conditions Land
21 2 and Land 3. In other words, what happens with the -- what
22 might happen for the tear-down and redevelopment of the
23 Encina site. It -- it does describe the operational impacts
24 from replacement uses as speculative. So that -- that
25 may --

1 MS. SIEKMANN: But it's always been speculative.

2 HEARING OFFICER KRAMER: That may bother you,
3 but --

4 MS. SIEKMANN: It's -- it's very bothersome. It's
5 very bothersome because the shutdown of 4 and 5 has -- every
6 time there's been a meeting, every time we've had to -- to
7 do anything our reply has been that you -- it's not -- the
8 shutdown of 4 and 5 is not part of the project and it's
9 speculative. And now all of a sudden we've got this
10 override based on the shutdown of 4 and 5. And -- and --
11 and the -- I can go through -- I have so many quotes here
12 from all the -- starting with the staff opening brief up
13 into the RPMPD. There's two places where the RPMPD
14 specifically says the shutdown of 4 and 5 was speculative
15 and not part of the project. Yet we have an override that
16 clearly is based on that shutdown, two overrides.

17 HEARING OFFICER KRAMER: Based on it in the sense
18 that the shutdown is -- is counted as a benefit? Is that
19 what you mean?

20 MS. SIEKMANN: No. The need. Mr. Sparks used the
21 shutdown of 4 and 5 to make those slides that you're using
22 to create this need override.

23 HEARING OFFICER KRAMER: Oh. Okay. I think the
24 committee is looking at it in the opposite direction, which
25 is that operation of this project would allow for the

1 shutdown of 4 and 5, and that's a good thing in the
2 committee's eyes. Because then it could allow --

3 MS. SIEKMANN: Maybe the --

4 HEARING OFFICER KRAMER: -- the tear-down of that
5 facility that nobody seems to want to look at.

6 MS. SIEKMANN: But the -- but -- all along the
7 shutdown is used in one -- in -- in one respect not to have
8 to do certain things, and in another respect to be able to
9 do certain things. And -- and it's -- it's -- we have
10 complained about this all along. But now there are two
11 overrides based on need because of the shutdown of Units 4
12 and 5. I -- I was shocked, simply shocked that all of a
13 sudden that's just snuck right in there.

14 MR. RATLIFF: Commissioners, if I may, when the --
15 when the application was filed, which I'm beginning to think
16 (inaudible) now, the -- one of the things -- one of the
17 first things staff inquired was can you shut down the
18 existing facility? And the proposal was to shut down Units
19 1 through 3. And the staff was interested in wondering if
20 you shut down all the units do you get rid of the old
21 facility? And the answer from -- from this file is -- was
22 that you can't, because you have to have 4 and 5 on, and
23 that it only would be, you know, the -- you know, the ISO
24 and -- and the CPUC would -- would require 4 and 5 continue
25 to operate. And we -- we did our analysis with that

1 expectation. And I really don't think that's changed in any
2 fundamental way.

3 What did change, though, and what became I think a
4 complicated factor was after the hearing, the evidentiary
5 hearings, the State Water Board did adopt the OTC policy.
6 And OTC policy obviously is an expression of the state's
7 desire to get all of these once-through cooling facilities
8 either to be shut down or at least, well, using cooling
9 water, ocean cooling water, one or the other. And when that
10 was about, we asked the applicant what they were -- what
11 they were going to do with their facility.

12 They said, "Well, we're probably not going to shut
13 it. We'll probably retrofit it to -- to meet the OTC
14 policy."

15 In other words, I think staff's information all
16 along has been that 4 and 5 would probably continue to
17 operate.

18 Now, I not sure what, you know, when I hear the
19 statement that staff said it's speculative and therefore
20 this also has some kind of greater significance to the
21 environmental analysis. I'm not sure what that means. I
22 think the only place where it had any actual relevance was
23 in the area of water supply because we -- the project
24 proposal as using as osmosis system that operates off of the
25 outflow for Units 4 and 5 after Units 1 through 3 are

1 decommissioned, 4 and 5 would still operate. The osmosis
2 system operates off the outflow for -- for Units 4 and 5,
3 which by the way is supposed to be the source of water for
4 Poseidon, also, if -- if it is built.

5 Staff did actually realize what that osmosis draw
6 is in terms of the magnitude of it. It's -- it's very
7 small. It's -- it's 4 million gallons per day, roughly,
8 which compares to the 300 million gallons per day that
9 Poseidon is -- is using, and which the city's EIR determined
10 it's not a significant impact. And so we didn't think that
11 that was a particularly important thing. But we don't
12 actually know what's going to happen. We don't know if
13 Poseidon is going to be built. We don't know if 4 and 5
14 will shut down or will continue to operate. We don't know
15 if it will continue to operate as once-through cooling units
16 or, you know, three years, five years, ten years, based on
17 all of the different kinds of moving parts that keep
18 working -- working in the area so interesting.

19 So -- so the fact of the matter is we still don't
20 know, even today, whether 4 and 5 are shutting down. So we
21 still feel that it is somewhat speculative today. But we
22 know it is the state policy to shut them down, and we know
23 that you have to have -- well, we don't know, but we think,
24 based on what the ISO tells us, is we need to have
25 generation shut down. And that was the basis, as I

1 understand it, that they based it on.

2 MS. SIEKMANN: Mr. Kramer, if you look in the
3 Revised PMPD, Biological, page 7.1-9, it says, "The
4 potential shutdown of EPS Units 4 and 5 is a speculative
5 matter which is not part of the present project."

6 Then again, on Noise and Vibration, 8.4-9,
7 unconverted -- uncontrolled --

8 "Uncontroverted evidence further establishes that any
9 future shutdown of EPS -- EPS Units 4 and 5, as well as the
10 construction of the Coastal Rail Trail, area also imprecise
11 potential events which currently defy meaningful analysis."

12 And I can go back through -- let's see, 9.5-43,
13 Visual Resources, "The evidence shows that Units 4 and 5 of
14 EPS may operate for many more years."

15 And I can go back to the erratas, the PMPDs, the
16 original PMPD, staff's opening brief, every single one of
17 those documents say --

18 HEARING OFFICER KRAMER: Okay. Well, let me --

19 MS. SIEKMANN: -- the same thing.

20 HEARING OFFICER KRAMER: Let me stop you there.

21 The -- the current document is the RPMPD.

22 MS. SIEKMANN: Which I quoted from.

23 HEARING OFFICER KRAMER: And a few minutes ago I
24 referred you to analysis in the Land Use section that was
25 added, but it does address the, well --

1 MS. SIEKMANN: Well, one last question -- one last
2 comment. We did -- noise needed that evaluation,
3 accumulative evaluation, cumulatives did. Alternatives need
4 that evaluation. The de-sal water, they're using --
5 actually, when you look at that going forward, the de-sal,
6 if -- if Unit 3 is shut down, Units 1 through 3 are shut
7 down, which the applicant said that they were going to try
8 to do whether or not the CECP is built, going forward if
9 the -- if the new plant runs 40 years, if you add up all
10 that water as compared to the next, you know, couple years
11 of -- of Encina, the impacts will way outweigh.

12 HEARING OFFICER KRAMER: Okay. We are going to
13 move on. But the -- the case of the water, you may have
14 overlooked a discussion in the, I believe it was in the
15 Water section where -- it might have been in Biological
16 Resources, I can't recall precisely, it's among them, where
17 we did discuss the impacts of the project if it were the
18 only project drawing water from -- drawing ocean water. And
19 based on some evidence that was provided, I believe in the
20 applicant's application, there was citations to prior
21 studies that concluded that there would not be any
22 significant impact.

23 Noise of -- of -- a power -- a power plant that
24 quits operating is not going to produce noise. As the Land
25 Use section describes, demolition activities may produce

1 some noise, but there are mitigation measures that would be
2 similar to those that were recommended for construction that
3 could mitigate those impacts. And it's going to be up to
4 the city when they approve some kind of redevelopment to
5 make sure that the noise issues are appropriately -- and the
6 other issues from -- from those new projects are
7 appropriately addressed. It's -- there's simply no ability
8 for the commission to do that at this point because they
9 have no idea what that project is going to be. And we also
10 don't have authority over uses that replace power plants.

11 So with that, are there any other topics or
12 comments on -- brief comments on overrides that the parties
13 wish to talk to?

14 MR. BALL: No. I -- Mr. Kramer, I'm sorry, I
15 forgot, I wanted to -- before we close tonight or before
16 the -- before we leave the topics, you asked early on
17 whether there was a difference between CEQA and the Coastal
18 Act or -- and I don't know if you got an answer to that
19 question regarding the review.

20 HEARING OFFICER KRAMER: I wasn't expecting one
21 today but I -- I was inviting you to -- to discuss that in
22 your comments. So we do have any other issues we can
23 discuss them after we finish with the public comment. But
24 it sounds like you've -- am I wrong, are we pretty much --

25 MR. ROSTOV: Actually, I wanted to address

1 greenhouse gasses for a few minutes.

2 HEARING OFFICER KRAMER: Okay. Well, then we'll
3 do that after public comment because we have reached the
4 time --

5 MR. ROSTOV: You know, I was planning on -- I have
6 a flight around 7:30. So I'm not sure if I will make it
7 through all the public comment.

8 HEARING OFFICER KRAMER: Well, on the issue of
9 greenhouse gasses, that was not a topic on December 12th.
10 It, of course --

11 MR. ROSTOV: Well, it's on the revised PMPD. I
12 mean, I think I --

13 HEARING OFFICER KRAMER: That section was
14 virtually unchanged from the -- from the draft before.

15 MR. ROSTOV: Right. And, I mean, I've actually
16 been sitting here trying to reduce and focus on this. So
17 maybe I have five minutes. I don't know because I haven't
18 practiced it. But I think I just have a few minutes.

19 HEARING OFFICER KRAMER: Go ahead.

20 MR. ROSTOV: Thank you. First I want to say that
21 I believe the committee and the commission, you know, are
22 concerned about global warming and greenhouse gas issues.
23 And, you know, that's one of the reasons I found this
24 process frustrating. Because I think the siting process
25 should provide an opportunity to intelligently address and

1 analyze these issues. But instead what we've gotten is
2 staff chose to create a theory about the future that might
3 occur, and really most likely will not occur. I mean, their
4 own recent testimony indicates that. But to set the stage,
5 I just wanted to explain what staff's theory is.

6 Based on this projection of the future the --
7 staff's projection of the future, the PMPD comes to the
8 conclusion that this new power plant will have a net benefit
9 and actually reduce greenhouse gas emissions, even though
10 this new power plant will consume more natural gas than the
11 existing plants, meaning that it will put out more
12 greenhouse gasses than the plants around here.

13 Staff's theory only works -- the theory that staff
14 is articulating only works if the energy system works the
15 way staff predicted a year ago. Staff, in Mr. Ratliff's
16 memo, argues that there is no substantial evidence that the
17 system won't work the way they predict.

18 And then Mr. Ratliff -- sorry -- on page 8, he
19 also says,

20 "Staff and CAISO have testified that the project will
21 only run in place of less efficient and non-renewable
22 generation, thereby adding to overall efficiency and
23 reducing overall greenhouse gas emissions."

24 But since then we had testimony from both staff
25 and CAISO saying that the world may be different, you know,

1 that the energy could be used to replace capacity at San
2 Onofre. So it's -- actually, staff's prediction of the
3 future is wrong.

4 And what we've been concerned about, and it's
5 actually happening, Mr. McKinsey mentioned it earlier, you
6 know, this project could end up being an additive. So San
7 Onofre is on right now. All the peakers are running all the
8 energy. You know, you build this. So it's not replacing --
9 if you had this everything would be running.

10 So our point is you can't look at a future --
11 projected future actual way the system is going to work,
12 because you can't predict the future. And that's why CEQA
13 requires a look at a potential to emit. And when you look
14 at the potential emit you look at out much is coming out of
15 the plants, and then you can see if you can displace it.
16 And we know you can calculate and the staff has calculated
17 how much is coming out of the plant, but they've admitted
18 they can't displace it.

19 So -- I'm sorry. So essentially what staff is
20 saying is, you know, we think the future is going to be this
21 way, but we can't prove that the future is going to be this
22 way so trust us. And that's just not the way CEQA works.

23 And I think staff's theory of the future is
24 especially odd. I was at the long-term procurement
25 proceeding -- prehearing conference yesterday, so the new

1 proceeding in the Public Utilities Commission where they
2 plan for the future energy for the ten-year plan. And
3 Commissioner Floyd was saying the way he envisions long-term
4 procurement is you stick everything we've been doing for the
5 last five years, all the great things California has been
6 doing, like energy efficiency, you put this all in long-term
7 procurement and figure out if the system is really working
8 the way we want it to work. So in other words, you
9 recognize that we really don't know how the system is
10 working.

11 But the whole greenhouse gas analysis is
12 predicated on staff's assertion that the system is going to
13 work on way. And then the fact is that the staff's own
14 witnesses in December contradicted that prediction of the
15 future.

16 So anyway, I think I'll keep this short. So what
17 we're left with a CEQA document that really says trust us,
18 we know what the future will -- is, and we know how this is
19 going to work. And that just really doesn't meet the
20 requirements, the informational requirements of CEQA.

21 And I'll note that we still have a bunch of other
22 issues outstanding, a baseline with the financial, gas, and
23 alternatives. But thanks for hearing us for a few minutes.

24 HEARING OFFICER KRAMER: Thank you for condensing.
25 Okay. We're going to take a five minute break.

1 It's -- we've been on, well, yeah, two-and-a-half hours. I
2 hear sighs of relief. And so we'll be off the record and
3 back to begin public comments in five minutes. Let's go off
4 the record.

5 (Off the Record from 5:12 p.m.

6 until 5:26 p.m.)

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E V E N I N G S E S S I O N

5:26 p.m.

1
2
3 HEARING OFFICER KRAMER: We are back on the record
4 in the Carlsbad Energy Center proceeding. Welcome to all
5 the members of the public that have joined us at the
6 appointed time for public comment.

7 We also have a few people on the telephone. And
8 let me unmute all of you and ask each of you -- we won't
9 call upon you right away but I want to know which of you
10 want to make a public comment to us this evening. So hold
11 on a second. Okay, which of you on the telephone want to
12 make a public comment?

13 (No response).

14 HEARING OFFICER KRAMER: Okay, nobody has said
15 that -- I will check again at the end of the public comments
16 from people who are in the room with us this evening.

17 So the ground rules are, as before, three minutes.
18 We have a timer with a sort of like a stop light hanging on
19 the chair in front of the podium there.

20 It goes to yellow at, when you have one minute
21 left and then red when your time has expired. So when you
22 get red please wrap it up.

23 And with that our first speaker is Keith
24 Blackburn, a member of the Carlsbad City Council.
25 Mr. Blackburn. Oh, and please press the red button on the

1 base of that microphone.

2 COUNCILMAN BLACKBURN: Are you able to hear me
3 okay?

4 HEARING OFFICER KRAMER: Yes.

5 COUNCILMAN BLACKBURN: Okay. Thanks for giving me
6 the opportunity to speak. My name is Keith Blackburn. I'm
7 a councilman here in Carlsbad.

8 I'm here speaking on behalf of all five of the
9 Council members. Unfortunately, they're -- some of them are
10 out of town and weren't able to be here. They're very
11 disappointed that they couldn't participate in the hearing.

12 As you know, for the past five years the city of
13 Carlsbad, our community and all of our residents throughout
14 the San Diego area have concerns about the location of this
15 proposed power plant. Given the many serious concerns
16 raised about the project we are very disappointed about the
17 proposed decision.

18 We believe this project is not safe. You've heard
19 from our fire officials, including our fire chief, and I
20 came and spoke as well as a thirty-year police sergeant.

21 We have significant concerns about safety. Roads
22 within the plant grounds are too narrow for emergency
23 personnel to get their fire fighting equipment set up safely
24 to respond to an emergency.

25 Because of its location next to the freeway a fire

1 or hazardous materials emergency at the plant could halt
2 traffic on I-5 cutting off a major link to our region's
3 transportation infrastructure. In your Proposed Decision
4 you disregarded these concerns.

5 You have heard concerns about building an air-
6 cooled power plant on our coastline.

7 The Proposed Decision calls for a coastal-
8 dependent use. This is not a coastal-dependent use. The
9 proposed plant does not use ocean water for cooling and
10 could be built inland where it would have less negative
11 impacts on our coast and our residents.

12 The California coastline is one of our state's
13 most precious resources. It's important to our quality of
14 life, our environment and our tourism economy.

15 I again ask you to consider the long-term
16 implications for our city if you override these concerns and
17 agree to subject our coastline to more smokestacks and heavy
18 industry.

19 Finally, there's no contract to sell the power
20 generated from this project and quite a bit of disagreement
21 about whether or not this project is even needed.

22 Condemning our coastline to a future of heavy
23 industry is a decision that will affect our community and
24 our economy for many generations to come.

25 I, on behalf of our entire city council, urge you

1 to do the right thing and please deny the approval of this
2 project.

3 And thank you very much for taking the time to
4 hear me out. (Applause).

5 HEARING OFFICER KRAMER: Thank you. It looks to
6 me like that light is not working so what I'm going to do is
7 just keep time manually and I'll just say "one minute" when
8 you have one minute left.

9 The next speaker is Julianne Nyguard, followed by
10 Jan Berry.

11 MS. NYGUARD: Good evening Commissioners; I am
12 Julianne Nyguard. This is, this is, I know this is a hard
13 decision. The new Cal-ISO report has not been fully vetted
14 and you're making a decision on old information.

15 I can't understand that. It's my understanding
16 that there's only a need for 50 additional megawatts in this
17 area. We're putting in lots more than that and I can't
18 understand that.

19 It is very important to this community that you
20 remove the old plant. We have paid our dues. It's been
21 here for 60 years and it's just so hard to imagine putting
22 in another power plant on this beautiful beach that we have.

23 And for me, the most important thing is the safety
24 issue. How can you put a potentially explosive power plant
25 between an interstate railroad and an interstate freeway?

1 And the energy that -- attorneys themselves admit
2 that they don't even want to put a rail trail in there
3 because it's too dangerous.

4 We're not NIMBYS; we're really not NIMBYS. We're
5 trying to have you think about what's the right thing for
6 the coast of California. Thank you. (Applause).

7 HEARING OFFICER KRAMER: Thank you. Jan Berry
8 followed by Jeff Logandro, I'm not sure. You'll have to
9 help me with the spelling when you come up. Go ahead
10 please.

11 MS. BERRY: Hi. My name is Jan Berry. I live in
12 Carlsbad. I love the community. And I oppose this project.
13 I don't think it belongs here. (Applause).

14 HEARING OFFICER KRAMER: Thank you. Is Jeff
15 Logandro not here? Okay. Next would be Deborah -- is it
16 Kloetzer or Kloetzim? I'm not sure. Kloetzer.

17 MS. KLOETZER: Hello, my name is Deborah Kloetzer;
18 I'm a resident here in Carlsbad. And I want to just state
19 for the record my extreme disbelief that you could approve a
20 second power plant on our beautiful coast here.

21 The state of California's coastline is a precious
22 resource. It's dotted now with aging power plants that no
23 longer need to be here.

24 To make a decision to build another power plant
25 when you can build it in other areas is just seems

1 irresponsible to do that. It just isn't -- it's not the
2 right thing to do.

3 You're in a unique position to change that. You
4 can start with the Carlsbad one. Don't allow this to be
5 built. Do the right thing. Thank you. (Applause).

6 HEARING OFFICER KRAMER: Thank you. Lisa Jessop
7 followed by Robert Gates.

8 MS. JESSOP: Hello and how are you? Well, let's
9 not build it. Okay. I'm done. (Applause).

10 HEARING OFFICER KRAMER: Mr. Gates, followed by
11 Lorraine Wood.

12 MR. GATES: Good afternoon. I am a member of a
13 group called, Vision Carlsbad. I'm not representing them,
14 I'm representing myself as an official but I am a member of
15 that group.

16 We have spent the last two and a half years trying
17 to envision what the best future would be for the city of
18 Carlsbad out 20 and 30 years. And one of our conclusions
19 was that the most precious asset that the city has is its
20 coastline, precious and unique.

21 And you may not be surprised to learn that the
22 envisioned use of the land you're talking about is not a
23 power plant. It's open space, mixed use, possibly
24 recreational. And after a lot of thought that was our
25 conclusion about the way that land ought to be used. We

1 definitely did not recommend it being used for a power
2 plant.

3 And I guess I have a question. If we could start
4 with a clean slate, if we could put this power plant
5 anywhere we wanted in San Diego County, would you really
6 decide to pick this spot to build it?

7 I think the answer to that probably is, no. I
8 would certainly agree with you not to build a power plant in
9 this location. Thanks. (Applause).

10 HEARING OFFICER KRAMER: Thank you. Ms. Wood
11 followed by Bill Doscher?

12 MS. WOOD: Hi and thank you for letting me speak.
13 It looks like you all had a really long day.

14 I am opposed to this project. I feel that if
15 approved the density and the intensity of the site will be
16 overwhelming and I have safety concerns. Thank you.
17 (Applause.)

18 Mr. DOSCHER: I arrived in Carlsbad in September
19 of '07 and since then I've been a board member of our HOA,
20 of which I represent this evening. We have 42 townhomes
21 adjacent to the lagoon. And from the proximity of where we
22 are at Bayshore Drive we see the power plant that exists,
23 every day.

24 My concern and some rhetorical questions I've been
25 asking several times. I've been at the original tour back

1 in 2008. I believe, where the community looked at the
2 proposal. Since then the project has doubled nearly in
3 size. Originally it was supposed to be \$350 million I
4 believe, now it's 500. The size of the plant has grown, as
5 everyone knows, to two stacks versus one. So it's more
6 prominent and more visible.

7 The power capacity, by what I've heard, is 500
8 megawatts. Which means that it would be able to put out
9 more power than the existing plant but used less because of
10 its efficiency.

11 This number I don't know where it came from but I
12 read about it. It says, it will be used for eight percent
13 of its capacity. That's a question I try to rationalize as
14 being, how cost effective is this thing?

15 We spend \$500 million on a plant that's going to
16 be used to eight percent of its capacity as an auxiliary, of
17 which Carlsbad may not be seeing one watt of electricity.

18 And the energy consumption in the United States in
19 the last decade has been reduced by 20 percent due to
20 efficient appliances, lighting, et cetera.

21 The other plant, regardless of whether this new
22 plant is built or not I understand, is to remain in
23 perpetuity. It will not be taken down.

24 So one of these questions I have to ask the Board
25 and those people who make the decisions: Based on what

1 rationale, be it financial, environmental, coastal location,
2 with air-cooled plants, is it really needed that bad? I
3 don't think so. (Applause.)

4 MR. LOGANDRO: My name is Jeff Logandro. I'm
5 sorry I missed my opportunity to speak earlier, I was
6 talking with one of our elected officials.

7 But I would like to state that I'm a citizen of
8 this town and I do not support the addition of a new,
9 additional power plant. One is more than enough on our
10 coastline.

11 There are better places to put a power plant. We
12 do not need another one our coastline. People in this town
13 love our coast. It's probably one the greatest assets we
14 have.

15 Adding another power plant will assure less votes
16 for the officials than after, the elected officials that
17 have appointed this Commission. That's it. (Applause.)

18 HEARING OFFICER KRAMER: Thank you. Next is Mark,
19 is it, Doehner? And he will be followed by Richard Keough.

20 MR. DOEHNER: Hello. I just want to start with
21 saying that I am in opposition to the building of this power
22 plant because there are obviously green and more
23 environmental alternatives to producing energy.

24 However, with that said, it doesn't mean I do not
25 understand the pushing of the building of this plant

1 because there is a demand for energy and at the same time we
2 were just talking about a de-sal plant and a demand for
3 water.

4 And so, no matter how much we complain to you
5 that, oh, we don't want it here, that there is going to be
6 far more complaints from people backing the energy and that
7 want it who want it just as bad.

8 So then, speaking of irresponsibility. And yes,
9 it is irresponsible to put it in where you're proposing, it
10 is equally our irresponsibility of foreign use of the power
11 and demand for it and is water, which is driving the
12 development of these plants.

13 And so for us to say, not to have it here would be
14 a good thing, we're putting it in somebody else's backyard.

15 We're putting it out somewhere else where if we're caring
16 about green energy it's going to add that opportunity.
17 Just because it's out of sight doesn't mean it's going to be
18 out of mind. Thank you. (Applause.)

19 HEARING OFFICER KRAMER: And Mr. Keough if you
20 could help me with the spelling of your last name.

21 MR. KEOUGH: K-E-O-U-G-H.

22 HEARING OFFICER KRAMER: Thank you.

23 MR. KEOUGH: I oppose the power plant. It's in no
24 way coastline dependent. It violates the Coastal Act. And
25 with the widening of the I-5 it puts the fire department in

1 danger to the loss of -- the needs of the fire department.

2 (Applause.)

3 HEARING OFFICER KRAMER: Now, Mark Doehner
4 followed by Dan Dowling, or Downing, sorry.

5 MR. DOEHNER: Committee, I'd like to take a moment
6 first to thank the members of the audience, our citizens who
7 have done an outstanding job in the last four and a half or
8 more years. They've attended dozens of hearings with
9 unflagging interest, which I understand is unique in the
10 annals of CEC hearings.

11 I'd like to thank -- most of you know that I'm an
12 engineer. Some of you know that my earlier life was spent
13 in building, designing and operating power plants.

14 And when I first went on NRG's tour of the
15 proposed site back in September of 2007, I believe, I had
16 some technical insights which I went to share with NRG.

17 Offering some suggestions that would help in the
18 hearing, particularly some of the visual impacts. And I had
19 a meeting at that time in the offices of NRG with their
20 attorney and their chief engineer.

21 And when I made these friendly proposals, as one
22 technical person to another, they told me, no, they weren't
23 going to change an iota. They were going to build it just
24 the way they wanted to build it. They were not open to any
25 alterations.

1 And so I said, well, don't you have any concern
2 for the needs of the citizens of the community. And I was
3 against when I was told, oh yeah, there'll be two or three
4 hundred people to the first hearing, by the second hearing
5 maybe there will be 30, by the third hearing you'll be lucky
6 if there are three.

7 It sort of disturbed me, their unwillingness to
8 even consider the needs of the community. The company
9 motivated to sit on that side of the table rather than on
10 that side where all my professional career I had only spent
11 rarely.

12 And so, that's where I want to turn around once
13 more and thank our wonderful citizens of Carlsbad for not
14 giving up. (Indiscernible) that non-statement that I was
15 told that they don't care about the citizens of Carlsbad.
16 (Applause).

17 MR. DOWNING: I offer my sympathy to this panel up
18 here. I'm sure no matter where you go and talk about
19 building a power plant there's going to be people, local
20 people, who are against it.

21 I'd like to point out maybe a couple of different
22 things. That this plant was operated long before there was
23 such a thing as the EPA. Who knows what type things were
24 spilled or dumped in that ground. And if the City does want
25 to move ahead with a hotel or something like that, there's

1 going to be core samples. Who knows what they're going to
2 be finding.

3 I'll point out a power plant in Seal Beach which
4 was torn down 50 years ago, ocean front property. The
5 property is still vacant and probably never will be built
6 upon. And I wonder what would happen to this property as
7 well.

8 And also about San Onofre being off-line and the
9 coastal black outs. And I know this is a peaker plant, it
10 is intended to alleviate the peak times of power.

11 And I'd just say our struggling economy cannot
12 afford to do without a peaker plant at this time, especially
13 with San Onofre being off-line.

14 I know there's other people that say they dissent;
15 they don't want to speak. They don't want to because they
16 have to work in the city all the time. I decided to come up
17 here.

18 So if we were to build this plant somewhere else
19 it's going to cost, who knows, tens or hundreds of millions
20 of dollars. And nobody should be naive enough to think that
21 the owners of NRG are going to pay for that out of the
22 generosity of their pockets. We're all going to pay for it
23 through our rates so I think we should remember that.

24 That's all, thank you. (Applause).

25 HEARING OFFICER KRAMER: Okay, our next speaker is

1 Tom Siekmann followed by Jane Romatier?

2 MR. ROMATIER: My name is Jacques Romatier and I
3 am a member of our (indiscernible). I got involved in this
4 project basically almost five years ago.

5 And at one of the first meetings we had with NRG I
6 asked a question which was, what's going to happen to the
7 old plant?

8 They deferred the question to a stage -- they are
9 for certain that at a stage -- but really the message was,
10 once we can, if we get the authorization from the county to
11 shut it down, that is what we will.

12 Well, it's five years later. We all know it is
13 not plant or two units, but we have now five units which are
14 going to be available on our, on our beach.

15 Now I also, that's the first thought. The second
16 thought is I hear about San Onofre. Oh, San Onofre is going
17 to shut down.

18 Well, San Onofre has a problem. The problem is
19 they have a corrosion of their tubes. And those tubes, it's
20 not something which happen only to San Onofre. It happens
21 to -- it is in the point of design. And this type of
22 design, unfortunately, is going to be with San Onofre. You
23 have hundreds of parts which are running with older tubes
24 and they are running fine.

25 And I say that because I've been involved

1 personally and I have seen that they have changed system in
2 which, I in fact, have some practice.

3 So basically what I am saying is San Onofre, I'm
4 sure, that a year from now will be back up and running. So
5 it should not be used as an argument to say, we need all
6 those five plants. Thank you very much. (Applause).

7 HEARING OFFICER KRAMER: Before you go, could you
8 spell your first and last names for me.

9 MR. ROMATIER: Jacques, J-A-C-Q-U-E-S, Romatier,
10 R-O-M-A-T-I-E-R.

11 HEARING OFFICER KRAMER: Thank you.

12 MR. ROMATIER: Thank you.

13 HEARING OFFICER KRAMER: Next, Mr. Siekmann.

14 MR. SIEKMANN: Good evening, my name is Tom
15 Siekmann and I'm one of the Carlsbad residents that Arnie
16 was talking about in his comments. I'm against the power
17 plant. My comments of why I'm against it are going to be a
18 repetition of what you've already heard before but
19 repetition serves a purpose.

20 A few months ago I was here mentioning to, I --
21 think back to your first grade teacher. Mine was Mrs. Wish.
22 Think back to who your teacher was.

23 How did you learn? You learn through repetition.
24 So today, listen to the repetition of the audience, the
25 repetition of safety. And today in the world, do you want

1 to mix a railroad line that's heavily trafficked next to an
2 interstate, next to a power plant?

3 I haven't been here all day but I remember hearing
4 in the past that SDG&E has even mentioned, they don't need
5 this plant.

6 The city of Carlsbad doesn't want the plant. The
7 coast lines of California are removing power plants.

8 This power plant doesn't even need to be located
9 on a coastline. Again, this is repetition of what you've
10 probably gone over for months. But again, repetition helps
11 us learn what we need to learn.

12 So, listen to the repetition. Listen to the
13 audience. Say no to the power plant. (applause).

14 HEARING OFFICER KRAMER: Thank you. I have
15 Jeannine Miller. And do we have anyone else in the audience
16 who wants to make a comment? By a show of hands.

17 MS. MILLER: Hi. I'm Jeannine Miller and I live
18 here in Carlsbad. This is a spontaneous gesture to come up
19 and oppose the power plant.

20 I have not pre-planned a lot but in my gut, when I
21 go with my gut being in the health and wellness industry,
22 the first thing I think of is our valued coastline, which is
23 a treasure.

24 Back in the fifties when the first one went up we
25 didn't have the impact of population that we have now. This

1 is a big picture here that's a lot different from what we
2 had before. It's highly populated.

3 And then I think my concern is for the health of
4 our people that live in the area. There's another place for
5 this. Let's not have a dinosaur mentality or put the dollar
6 bill in front of what's safe for the people and what's going
7 to impact our beautiful coastline. Thank you. (Applause).

8 HEARING OFFICER KRAMER: Thank you. We're going
9 to unmute everyone on the telephone now. And, the second
10 call, does anyone on the telephone wish to make a public
11 comment?

12 (No response.)

13 HEARING OFFICER KRAMER: Okay. Anyone on the
14 telephone wish to make a comment. I realize it might take
15 you a minute to unarch your headset but -- no takers?

16 So we had somebody who wanted to be last and his
17 name is John Barbour. Will you come up here, sir.

18 MR. BARBOUR: Thanks for having me. I spoke here,
19 oh, about a year ago. I'd like to show some aerial
20 photographs, if you would allow me to, so you can see what
21 this coastline looked like prior to the existing plant being
22 built. We're just going to pass them around. And then
23 here's two more.

24 HEARING OFFICER KRAMER: So to be clear, then, you
25 have three separate photos?

1 MR. BARBOUR: I have several photographs of --
2 yes, aerial photographs of when the power plant is built.

3 HEARING OFFICER KRAMER: Okay, I'm just trying to
4 be clear because I have to take one of these and put it in
5 my personal record. So there's three separate pages,
6 correct? (electrical interference and noise on recording -
7 indiscernible).

8 MR. BARBOUR: Yes. There should be four. I have
9 more if the panel wants more.

10 HEARING OFFICER KRAMER: No, we seem to have five.

11 MR. BARBOUR: Well you might have an extra. If
12 you look at the dates at the bottom I start off with '47,
13 1947, 1953 when the plant was excavated, before it started
14 to be built.

15 And a copy of the Newport Inglewood Rose Canyon
16 Fault, which is off our coastline. And then a picture of
17 the plant showing it basically as it is today.

18 HEARING OFFICER KRAMER: There is one from 1928.

19 MR. BARBOUR: Okay. That was an earlier one I was
20 not going to use so you can get rid of that one for now.

21 HEARING OFFICER KRAMER: Okay. Go ahead then.

22 MR. BARBOUR: Basically I'm a citizen here in
23 Carlsbad and I plan on living here the rest of my life. I
24 believe we need the power but there's other sources and
25 places where we could put this.

1 The transmission lines are right there, easily
2 accessible in -- in the -- San Onofre. By putting a new
3 plant that doesn't need to run on water but does have water.
4 We could build it on Pendleton.

5 It has close enough proximity that it could be
6 built far enough away and much more stabilized geological
7 conditions since we have here. And that's why I gave you
8 the maps.

9 So I'm opposed to having it built here. It's
10 going to hurt property values, business, people who want to
11 come and visit here. It's going to hurt all these different
12 factors.

13 The first photograph in 1947, you can see several
14 things. It points out the future location, Avenida Encinas
15 Plant before it was built.

16 Next, Agua Hedionda Lagoon. Lower in this right
17 hand corner it says, paleo-liquefaction features. I know
18 geologists in this town; they are very well known. They did
19 the research and it's all well documented that our coastline
20 and all through here has a lot of areas that are subject to
21 liquefaction which moves if we have an earthquake, the
22 ground will sink.

23 And, so -- the photograph in 1947 shows the future
24 site and some areas of paleo-liquefaction.

25 If you look at all the reefs that are out there in

1 front of Avenida Encinas, these reefs are uplifting blocks.
2 so the ground can uplift. There's horizontal lifting and
3 some vertical, which is the worst-case scenario when you
4 have an earthquake.

5 Then I'd like to go to have everybody look at the
6 bottom of the page on your left of 1953. It's when the area
7 of the power plant is graded. If you look at that closely
8 and if you look at the previous one in '47 you'll see that
9 the plant has a lot of infill.

10 So just like the Marina area of San Francisco that
11 was infill, it's subjected to liquefaction. If we have an
12 earthquake this area could sink. That's what happened in
13 Japan. They didn't count on -- they counted on the wall to
14 stop the tsunami but they didn't realize that the
15 liquefaction could occur. And it actually dropped up to 18
16 feet, which is why the wall could not stop the water which,
17 you know, the outcome was bad, flooding the power plant.

18 So Avenida Encinas is very -- anytime you're next
19 to a lot of water source you're also subjected to
20 liquefaction.

21 So it's a concern for in the future. And the
22 reason I'm showing you these is because there's better
23 places to find to build this plant and inland where nobody
24 gets to see it just like we have here at Pendleton which
25 would be a great, a great area where the power lines could

1 also be tied into.

2 The next picture I'd like you to look at --

3 HEARING OFFICER KRAMER: You've already exceeded
4 the three minutes --

5 MR. BARBOUR: Well maybe the people who would like
6 me --

7 HEARING OFFICER KRAMER: -- so please wrap it up.

8 MR. BARBOUR: -- to continue so that this can be
9 passed on?

10 UNIDENTIFIED SPEAKER: Is there a time block?

11 MR. BARBOUR: Is there a time block or can I take
12 someone else's turn?

13 UNIDENTIFIED SPEAKER IN AUDIENCE: (Inaudible).

14 MR. BARBOUR: Okay. If that's okay with everybody
15 I'd like to continue.

16 HEARING OFFICER KRAMER: How long are you going to
17 take?

18 MR. BARBOUR: Just a few more minutes. You also
19 have a picture --

20 HEARING OFFICER KRAMER: Two more minutes.

21 MR. BARBOUR: -- you also have a picture of the
22 offshore people. Dr. Mark Leg is a PhD, a PhD geologist of
23 oceanic substrates and floors. To make a long story short,
24 the Newport Inglewood Rose Canyon Fault is active to this
25 day and it runs from Long Beach all the way to Coronado.

1 And this is subject to -- if you looked off of where it
2 says, Agua Hedionda there's a bend in the fault line. And
3 this is where -- this is all active.

4 And so the power source, if we have an earthquake
5 offshore, will come right through and go through the Lagoon
6 and right through the power plant area.

7 This is also public knowledge through paperwork
8 out there that the researchers have done and written reports
9 and publicized.

10 The last picture shows the current area of the
11 power plant and next to the railroad and also next to the
12 freeway.

13 So, there isn't a power plant anywhere in the
14 state of California that's built next to a freeway. And as
15 I read before, the current power plant puts out 186 million
16 cubic tons of greenhouse gas as-is.

17 The new power plant combined was going to put out
18 860 million cubic tons of greenhouse gas. With, June -- May
19 and June gloom you have all this greenhouse gas. It's
20 subdued with the cloud coverage. And it would be very
21 difficult to dissipate as it flows easterly with the winds
22 coming on-shore.

23 So that puts everybody in Carlsbad in harms way,
24 our schools, our children et cetera.

25 So I'm opposed to this plant and I would like to

1 see this plant -- and we need to get the people to band
2 together. If we have to start to peacefully protest and get
3 this out to everybody in San Diego, North County and
4 everywhere else, I don't think that the people will want
5 this power plant built here and that they're, they would
6 agree that it should be built somewhere else. That's it.
7 (Applause).

8 HEARING OFFICER KRAMER: The next speaker is Gary
9 Maple. Gary Maple. Gary Maple.

10 MR. MAPLE: Hi, I'm Gary Maple. Thanks for the
11 opportunity to let you hear me speak.

12 I have a unique perspective. I was a direct
13 report to the Commander of Naval Weapons Station, Seal
14 Beach, on the demilitarization program.

15 We were responsible for getting rid of 2.3 million
16 pounds of napalm, which as you might know took quite awhile
17 to do.

18 It was left by the Air Force as a gift before
19 Vietnam closed down. And we found many ways to get rid of
20 it including selling it off to Thailand, using it in trash
21 energy, all kinds of things. Eventually it got burned in an
22 open kiln in Oklahoma or somewhere.

23 But anyhow, the point was, we studied -- I teamed
24 up with Sandia National Labs, Lawrence Livermore Labs, Los
25 Alamos, all the big labs in the country to find out great

1 ways to bio-remediate to get rid of these nasties we had.

2 What we found is the EPA kept changing regulations
3 as we'd find ways to do it to make it more difficult for us
4 to accomplish the task.

5 We noticed that OSHA was also coming along and
6 building up its strength and doing battle with the EPA so
7 you didn't know who's regulation you were going to deal
8 with.

9 Some things of my concern are, are there any known
10 regulations coming on the horizon, your horizon, that may
11 meet this happen -- that you want it to happen sooner and,
12 with the political elections coming up, the EPA and
13 everything else can change its rules pretty quick.

14 So is there a reason we're pushing for a water-
15 cooled plant out here instead of moving something inland?
16 Is that known to anybody?

17 No, at this point?

18 HEARING OFFICER KRAMER: We have -- We can give
19 you a brief answer I guess. But it's really not, we're not
20 here to answer questions --

21 (WebEx disconnected and dial tone drowned
22 out Hearing Officer Kramer's comments.)

23 HEARING OFFICER KRAMER: Not all of your --

24 (Busy signal tone).

25 HEARING OFFICER KRAMER: Okay, we're going to have

1 to go off the record.

2 (Off the record).

3 HEARING OFFICER KRAMER: Back on the record. On
4 the telephone can people hear us again? We got hung up
5 somehow. If one person could just confirm that.

6 UNIDENTIFIED TELEPHONE SPEAKER: Yes.

7 HEARING OFFICER KRAMER: Okay. Your volume must
8 be -- (electrical interference). Okay, could you say that
9 again one more time.

10 UNIDENTIFIED TELEPHONE SPEAKER: Yes, we can hear
11 you.

12 HEARING OFFICER KRAMER: Okay, thanks. Okay,
13 we'll go back on the record. So basically, you have to have
14 some generation in your local area or the system doesn't
15 work right electrically.

16 That's why it cannot all be in the desert as some
17 people would hope. But, you know, there's a lot more to it
18 and there's some discussion about it in the decision, in the
19 Proposed Decision -- you can go to that for a further
20 answer.

21 And our Commission website has a whole lot of
22 materials on this and links to other places that explain how
23 the system works.

24 MR. MAPLE: Okay. I'll research some of that.

25 HEARING OFFICER KRAMER: Okay.

1 MR. MAPLE: But the answer was, the short answer
2 was that there is nothing known on the near horizon that may
3 make this have to happen right now? I know they tried to
4 permit last year, they're trying to permit again now.

5 HEARING OFFICER KRAMER: The answer is, no.

6 MR. MAPLE: Okay.

7 HEARING OFFICER KRAMER: Nothing. It's been, it's
8 been a long time with a couple of trips back to reopen the
9 record for various reasons.

10 MR. MAPLE: Okay, thank you. Thank you for your
11 time.

12 HEARING OFFICER KRAMER: You're welcome.

13 So I think that is our last speaker unless there
14 is somebody else on the telephone or in the room that wants
15 to make a public comment.

16 I thank you all for coming. Before you go, just a
17 reminder. Ms. Jennings, our Public Adviser, may still have
18 some sheets that explain our public comment process. But
19 basically today is not the last day to comment. If you
20 wanted to file comments either in writing or by email you
21 need to do so by 4:30 p.m. on Friday, April 27th, that's
22 Friday of next week.

23 And then after that period closes the Committee
24 will consider -- before then we will try to issue a ruling
25 on the request from the City that we conduct additional

1 hearings. If we decide not to do that we will take in the
2 comments and issue revisions to the Decision if they're
3 necessary.

4 And also as a reminder, there is currently
5 scheduled a full Energy Commission hearing on the Proposed
6 Decision, with any revisions that we may write, on May 31st.

7 It will be up in Sacramento at the Energy Commission
8 facility; it begins at 11:00 a.m. We set the time a little
9 bit later so it was easier for people from here to fly up
10 there without them getting on the very first plane. But
11 just as today there is remote access available by computer
12 or telephone, so you don't have to come up there to listen
13 to the meeting or make comments if you choose to do that.

14 And all those details are in the notice -- it's
15 called the Notice of Availability of the Revised Presiding
16 Member's Proposed Decision; it's on the Energy Commission's
17 website. If you need to have the web address for that you
18 can see me or Ms. Jennings and we'll get you set up.

19 It's also a place where you can go and look and
20 see most of the major documents that were filed in this
21 case. Not every document but what we believe are the key
22 documents.

23 So with that, thank you for coming. You know, I
24 think it's fair to say we're impressed by the continued
25 turnout. People are interested in this project. And for

1 the parties, please stick around, we have a couple of other
2 housekeeping items to discuss, I think, and maybe some more
3 issues.

4 COMMISSIONER DOUGLAS: I just wanted also to thank
5 you for being here. I wanted to hear from the public. And
6 the community turnout meeting after meeting, a little over a
7 year, has been very consistent. And that definitely helps
8 demonstrate to us through your words the strength of feeling
9 that many of you hold for this project, so thank you being
10 here.

11 MS. BAKER: Thank you all.

12 HEARING OFFICER KRAMER: Okay, by way of business.
13 Mr. McKinsey, I was reminded that in the introduction to the
14 Proposed Decision we had a time line of when the project
15 might begin construction and I have blanks for those dates.

16 So if you in your comments could give me something to put
17 in there that would help.

18 MR. MCKINSEY: I guess one question -- are you
19 looking for some type of a time line that just allows you to
20 use that as a -- I mean, you know, most projects like this
21 one get submitted and then, you know, have a project and then
22 they really -- it depends an awful lot on -- ultimately when
23 the decision gets issued and so this one missed that scale a
24 long time ago.

25 And I think right now the applicant is trying to

1 complete this process and then they can turn attention to
2 the PSD process. And even that has some ambiguity about how
3 long it will take them to get clarity on that. So, I mean,
4 we can put some estimate dates in there based on that but I
5 don't think we're trying to say that there's a schedule plan
6 at this morning.

7 HEARING OFFICER KRAMER: Okay. Well then give me
8 a paragraph explaining all that. Just something to put in
9 the -- you know, it's really kind of in our boiler plate.

10 MR. MCKINSEY: Okay.

11 HEARING OFFICER KRAMER: Off the record for a
12 minute so we can get the noise level in the room down.

13 (Off the record.)

14 HEARING OFFICER KRAMER: We'll go back on the
15 record. Let's see. Ms. Siekmann tells me that the City and
16 she wish to discuss the fire safety issues for at least --
17 so go ahead, Ms. Siekmann.

18 MS. SIEKMANN: Terramar would just like to say to
19 the Committee that we don't believe that the Committee or
20 the CEC has the ability to fulfill the definition of the
21 fire code official. Because the fire code official is
22 defined as the fire chief or other designated authority
23 charged with the administration and enforcement of the code
24 or a duly authorized representative. The RPMPD states that
25 the CEC's role is that of a planning and regulatory role,

1 which is not the definition of the fire code official.

2 To repeat again, a fire code official is defined
3 as the fire chief or other designated authority charged with
4 the administration and enforcement of the code or a duly
5 authorized representative.

6 Only the Carlsbad Fire Chief has the authority,
7 charged with the administration and enforcement of the code.
8 The Committee has no enforcement ability. The Carlsbad Fire
9 Chief is the only authority fully capable of providing both
10 authority, i.e., administrative and enforcement of the code
11 as defined by the code.

12 The CEC is located in Sacramento and holds no
13 enforcement ability in Carlsbad, California.

14 Even the RPMPD states clearly that the Carlsbad
15 Fire Department is in charge of enforcement. The local fire
16 department will continue to provide fire services to the
17 project, ours is a planning and regulatory position. I
18 agree with that. Yours is the planning and regulatory role.

19 The Carlsbad Fire Chief is the fire code authority
20 because they do both the enforcement and the administration.
21 Therefore, the Carlsbad Fire chief, the fire code official,
22 must be the one to decide the size of the fire lanes of the
23 CECP in the pit.

24 The RPMPD brings up the recent fire incidents that
25 occurred at California power plants. And the RPMPD points

1 out that these incidences were due to the failure to
2 recognize the control safety hazards.

3 The Carlsbad Fire Chief has tried desperately to
4 recognize and control safety hazards that could occur in the
5 pit during a fire fighting incident. He is the one who
6 recognizes the need to require that 48 to 50 feet in the
7 fire lane because he wants to avoid failure. It's the
8 Committee that has stood in his way so far.

9 It's difficult enough to ask fire fighters to
10 battle a dangerous fire. How can the CEC require the
11 Carlsbad Fire Chief to respond to a fire or explosion at the
12 CECP knowing the added danger presented by a fire lane
13 that's too narrow. He cannot and he should not send his
14 fire fighters in there. The RPMPD must comply with the
15 Carlsbad Fire Chief and apply a 48 to 50 foot fire lane in
16 the pit.

17 In addition the party is required to comply with
18 the Carlsbad Fire Chief's request for a 25 foot upper ring
19 road at the CECP. Upon the widening of the I-5 interstate a
20 portion of this upper ring road is going to be eliminated.
21 And in fact it says in the RPMPD, "The loss of the existing
22 above-grade "ring" road is offset by the required below-
23 grade perimeter road for emergency response vehicles that
24 will be built to code specifications under Condition Worker
25 Safety-6."

1 But the fire road in the pit is not even wide
2 enough. And then with the loss of the upper ring road it
3 makes it impossible. And what's happening is you're asking
4 for there to be a failure as has occurred in the other
5 California power plant fires.

6 So I would like to make a motion that the
7 California Energy Commission name the Carlsbad Fire Chief as
8 the fire code official in the CECP proceeding. Thank you.

9 HEARING OFFICER KRAMER: That's not the
10 appropriate subject of a motion to carry before a committee
11 so it's denied for that reason.

12 MS. SIEKMANN: May I ask where and when I can make
13 that?

14 HEARING OFFICER KRAMER: Well, you've made
15 comments. You have asked the Committee to accept the
16 recommendation of the local fire official. The Committee
17 has not done so but has chosen a different standard and has
18 explained why in the Decision so that's as far as it goes.
19 You're free to submit the same request to the full
20 Commission when it comes to vote.

21 MS. SIEKMANN: Okay, I will.

22 HEARING OFFICER KRAMER: Was there anything
23 further from the City on this topic?

24 MR. THOMPSON: Yes, thank you, Allan Thompson. I
25 don't wish to reargue or relitigate this issue. We've heard

1 a lot about it although we really haven't addressed it in
2 some eight months or so.

3 We continue to believe that the fire chief is the
4 proper authority to make a determination under Fire Code
5 503.2.2 and that represents a valid (indiscernible).

6 We also recognize that the Committee is going in a
7 different direction. And what that does is it tosses the
8 ball back in the City's court. What everyone has to
9 understand is that the City of Carlsbad and its Fire
10 Department may call the course to not serve the CECP.

11 One of the main concerns, maybe the main concern
12 of the fire department is protection of the citizens of
13 Carlsbad, workers at the plant and its own fire department
14 personnel. The City has to weigh whether or not -- is this
15 Committee creating a dangerous situation and then asking the
16 Carlsbad Fire Department personnel to go into there. It's
17 asking something that we should not -- we the City should
18 not comply with.

19 It's a separate course. You're going to do your
20 thing and the City is going to figure out what it needs to
21 do. But I wanted -- I did not want this hearing to end
22 without at least letting you know that there is a distinct
23 possibility that the CECP could end up a jurisdictional
24 island or something similar as far as the fire fighting
25 capabilities and the service for emergencies. Thank you.

1 HEARING OFFICER KRAMER: Okay. Any other party
2 want to comment on the topic of fire safety?

3 MR. BALL: Mr. Kramer, one thing we forgot to add
4 and I think it's a simple request. But the -- I think it
5 would be appropriate or would help this Committee and it
6 would help the parties to have a comprehensive site plan.
7 There's plenty of site plans that are sprinkled throughout
8 but there's none that incorporates all of the conditions.
9 And that's really important for this Committee to be able to
10 look at what it's approving. And by asking the staff or the
11 applicant, sort of directing them to present one I think
12 would be in everybody's best interest in these proceedings.
13 So that's my request and recommendation.

14 HEARING OFFICER KRAMER: There was some mention of
15 that in your comments on one specific point, was there not?
16 Yes, visual. Let's see. About the tree planting on page
17 12 of your comments.

18 MR. BALL: Yes sir, that's part of it. But really
19 it's a need for a comprehensive site plan. What really has
20 been presented is the September 2007 version with lots of
21 changes that have not been incorporated into a 2012 version.
22 And I think that really should be available to the
23 Committee and available to the parties and available to the
24 public.

25 MR. RATLIFF: Mr. Ball, if I could. We had a

1 schematic of the project that we went back and forth and I
2 think we sort of had an agreement on what that looked like.

3 And then later at the hearings we had a schematic
4 of how that might change if we were to consider the
5 cumulative impact of freeway widening. And so the request
6 from somebody to have an exactitude there because we don't
7 know exactly what the freeway widening will end up being, so
8 we were trying to figure out what it would look like if we
9 assumed certain things about the freeway widening project.
10 Is it the second map that you're saying would be the site
11 map or would it be different from that second map?

12 MR. BALL: If I can, I'll respond to you directly
13 if that's all right, yes. I only wanted a map of what the
14 Committee is in control of. They are not in control of the
15 widening and so that -- you can't make a map of that.
16 That's something that's been discussed and that.

17 But you do have control, this Committee has
18 control, the applicant has control, over what it's going to
19 build. And it is really prudent and more or less essential
20 that the Committee know what it's approving. And we always,
21 we always in Carlsbad will say, what we're approving is
22 shown as Exhibit A. And Exhibit A is what's going to be
23 built, that's what the people can expect.

24 Here we don't have that. We have an application
25 and lots of modifications to the process. We don't know how

1 the visual mitigation is going to fit in, we don't know how
2 the wall is going to be. We don't know many things about
3 the -- about the application that is really prudent for it
4 to be decided at this time.

5 So it's not a big request, I don't think, to just
6 put it down on the map and let everybody see that. That's
7 what my request is, not to the second map that you were
8 referring to.

9 MR. RATLIFF: The confusion I have is that the
10 things you mention are the things that go with the
11 mitigation for visual impacts in the freeway -- if you see
12 the freeway widening project it is, you know, you're talking
13 about the height of the berm and the screening. And that's
14 when it's really kind of --

15 I thought we had a schematic that I felt was
16 representative of the project. The only question -- we had
17 a second schematic for that. But it was what it would look
18 like if we had the freeway widening.

19 So I can't -- what I'm having difficulty with is I
20 don't think I have one additional one. It's sort of two
21 different schematics, one without the freeway widening
22 project and one with. And I'm not sure what more you're
23 asking for.

24 MR. BALL: So maybe I'm asking for two maps then.
25 But in a simplified view it would be incumbent to provide a

1 schematic plan. Because at some point something has to be
2 built, it's either A or B. It's not a confusing set of
3 diagrams or a confusing set of mitigation measures. It's
4 something that will actually take a place on the ground.
5 And people are going to need to know how to build it. And
6 people are going to need to know, and this Committee is
7 going to need to know, what it has approved.

8 I can't really answer that question other than say
9 I have a need and I do believe it's a reasonable request
10 that somebody should, maybe the applicant or maybe, maybe
11 the staff. But if you could -- if the staff was confused
12 maybe the applicant could provide a schematic of what's
13 going to be built.

14 MR. MCKINSEY: Well, one issue that's -- I think
15 what you're asking for is a significant undertaking. It's
16 something that essentially is done during the compliance
17 process construction project. There are a ton of maps and
18 submittals that have to be made.

19 And then some of the things you're asking about
20 are not actually finally determined, they're required as
21 part of various conditions of certification. Say, for
22 instance, the perimeter landscaping. Many things are
23 actually -- there's an environmental evaluation that's
24 completed but there are a lot of things that are left
25 flexible so that they can look at these things as final

1 determinations.

2 So this is what constructing this project is like,
3 it's a tremendous compliance proceeding with many filings
4 and procedures. And all along one of the things that the
5 City has asked for is where they were interested in that,
6 having the opportunity -- in other words, being obligated in
7 some cases to be consulted with. And for the CPM to approve
8 these things after allowing the parties to comment on
9 various items.

10 So there's a lot of things like that in almost
11 every proceeding. They don't do what you're describing,
12 which is, you know -- in fact, you're mixing a little bit of
13 the difference between the Energy Commission's final
14 decision, which acts as a -- as a -- as several things. But
15 it acts as the primary CEQA certification. But the
16 compliance proceeding is also very, very data intensive and
17 gets engaged during the compliance period to build the
18 project.

19 And a lot of the things you're describing are
20 things that a city or a county does see at the outset, which
21 is a very precise, here is what it's going to look like.
22 Everything is done so we can go in and you can apply the
23 right codes. And a lot of those things in the process get
24 done during compliance.

25 MR. BALL: I think I will -- I'm still not

1 convinced but I understand what you're saying. And we do
2 know there's a difference between what's approved and what's
3 finally built and that's called an "as-built plan." But
4 what's approved is a set of plans or at least an exhibit
5 that shows what's going to be built. And then we know that
6 there's going to be lots of thick plans that flesh out
7 diagram. And so we know it's not going to be identical in
8 many respects and so that requirement will be an as-built
9 plan at the end of the day.

10 Nonetheless, if there are substantial changes then
11 it comes back to the City Council. In this case it would
12 come back to the Commission because it's been changed in
13 some significant way, okay. For an example, the wall that
14 requires mitigation is now going to be 42 feet instead of 21
15 feet or whatever. And so that's a -- maybe a substantial
16 modification. The Committee may delegate that approval to
17 somebody or may wish for it to come back. But we don't --
18 we are not at the point where we can answer that question
19 until we see what is being approved, in my opinion.

20 MS. BAKER: Mr. Kramer, I have a question. And
21 perhaps it's one that you can answer and this discussion
22 posed the question. If there are conditions in the final
23 approval and the compliance -- so then they get down to the
24 final maps and they find out that there's not enough road to
25 provide a wall or a tree or a screening that has been

1 conditioned. What happens then? You know, does that get
2 overlooked? Does the project stop? Does it come back to
3 somebody? I guess my question is what then happens?

4 HEARING OFFICER KRAMER: Mr. Ratliff can probably
5 answer that as well as I can, on behalf of staff.

6 MR. RATLIFF: Well, we have a condition that is in
7 some respects a Caltrans measure, right, based on the
8 measurements we get from Caltrans when Caltrans was
9 explaining what the freeway widening project -- to determine
10 how much space it would be.

11 And we want -- we read the condition in the last
12 few days. When I recollect it, it basically requires that
13 when you have a final alignment for the freeway widening
14 project and it occurs, we don't know -- we don't know
15 whether this project is going to be built and we don't know
16 if the freeway widening project is going to -- we don't know
17 exactly what is going to --

18 But there is enough space, I think according to
19 the measurements, with a range of 45 feet to 90 feet, for
20 landscaping. And we wanted that to be done as early as
21 possible trying to fill up sufficient screen -- to try to
22 screen the project successfully. It would be, it would be
23 -- we don't know exactly how it's going to unfold in reality
24 because one, the project was created and the project was
25 going to be built. And, you know, if the freeway widening

1 project is going to be built.

2 MS. BAKER: Sorry, I don't mean to interrupt but
3 my question really wasn't that specific, it was more of a
4 general question that if a condition is imposed, and I just
5 used the example of --

6 MR. RATLIFF: Right.

7 MS. BAKER: But if a condition has been imposed
8 that --

9 MR. RATLIFF: Yes.

10 MS. BAKER: -- mitigates something substantial and
11 then you get down to the schematics, which is what the City
12 is asking for. And somebody says, you know, this doesn't
13 fit. It won't fit on the -- the buildings are too big, it
14 just won't fit. Or we can't, we can't fulfill something
15 that we have agreed to in the mitigation. Then what
16 happens? Does the project stop? Does somebody say, oh,
17 we're too far along on this, we'll let it go? I mean, I
18 just want to know what happens if a mitigation measure
19 cannot be fulfilled.

20 MR. RATLIFF: Well if it can't be, typically --
21 and, I mean, that would be required. Because it's a
22 compliance issue it has to be brought back to the -- it has
23 to be brought back to the compliance unit. They would -- it
24 would be the Executive Director to have these compliance
25 issues.

1 MS. BAKER: Okay.

2 MR. RATLIFF: Ordinarily, I think there would be
3 an internal decision as to whether an amendment was required
4 to try to determine how to address the non-compliance or
5 determine what could be done. Typically we don't have a
6 complete failure on a compliance condition.

7 But on occasion there have been conditions that we
8 have imposed that turned out not to be feasible. An
9 example, in the Gateway we required an electric backup pump,
10 a fire pump, and the building official would not approve
11 that. He would only approve a backup pump that he felt was
12 more reliable which required diesel fuel. And so they were
13 unable to basically comply with, with the requirement that
14 we had put upon the project and so ultimately they had to
15 amend the project to put in a diesel pump for a fire pump.

16 I am not aware of any complete failure of
17 mitigation of the kind you're talking. I think we're going
18 to see those kinds of failures, though, particularly in some
19 of the solar projects where we have very -- you know, very
20 significant compliance obligations that are complicated and
21 probably won't be fully satisfied. And we'll have to figure
22 out, you know, what can be done. I guess what I'm saying is
23 I don't really know.

24 MS. BAKER: Well I guess this whole question
25 concerns me because the site is so constrained and there are

1 so many unknowns. So that if this project is built the
2 people who live here, the neighbors, are really relying on
3 the screening mitigation, the safety mitigation, the various
4 things that you promised us that will render this project to
5 the level of insignificance.

6 And yet what I'm hearing is, well, gee, we don't
7 know if those can happen, you know. Some constraint might
8 make it possible that we can't put the screening trees up,
9 for example. And, oh gee.

10 MR. RATLIFF: Well, you know, if this project is
11 licensed and say it gets built next year. I think we know
12 what it's going to look like.

13 And, you know, five years after that this freeway
14 widening project can -- at that point Caltrans is going --
15 basically have to determine exactly where they're going to
16 put the freeway in juxtaposition to the --

17 MS. BAKER: You're still not making me feel any
18 better (laughs).

19 MR. MCKINSEY: Because I deal with it on this end
20 of the -- and that is, what you're going to see is that when
21 the -- here's the process functions. When the project is
22 completed it gets certified. All the members that -- all
23 the intervenors are given an opportunity to subscribe to a
24 list to be notified of any issues that arise. And so I'm
25 certain if things go -- you guys both do that and so you

1 will get notices.

2 You will also -- the City, of course, as a party
3 and as a local agency has all sorts of things that they have
4 to see. They want to be involved in seeing this and that
5 and giving comments.

6 If at any point -- and in the meanwhile the
7 applicants are looking at these express conditions of
8 certification, which get a tremendous level of scrutiny
9 during the compliance end of the project, including the
10 feasibility and things like that. But they still do come up
11 where there's an issue, these unforeseen circumstances.

12 A simple and a very straightforward answer is that
13 if it's considered to be a change then there is an
14 obligation to go through -- and the code section is slipping
15 me but it's what we call the Petition to Amend process.

16 HEARING OFFICER KRAMER: It's called 1769 of our
17 regulations.

18 MR. MCKINSEY: Section 1769, which requires a
19 notice to be sent to the parties. And the staff has an
20 opportunity to essentially make an initial determination,
21 but it might not hold if it's changed, that it's a minor or
22 a major modification, which affects the processing it goes
23 through. But in any case the parties get an opportunity to
24 comment.

25 Then the Commission -- the full Commission --

1 well, the Committee opens this process, it turns it over to
2 the Commission to approve or disapprove. At that point the
3 Committee doesn't exist anymore. But the full Commission
4 has to now consider any change, final or major, and approve
5 them or disapprove them. And so there is a process with an
6 opportunity.

7 Sometimes they have workshops similar to this to
8 go through the issues. Because the Commission obligates the
9 applicant to comply with those requirements and if they
10 can't they're going to have to change the requirement. And
11 I've done a few of these changes where the crackling of this
12 has produced something new to adjust and compensate for, to
13 deal with some unforeseen circumstance. And that's how the
14 process works.

15 And I think I said it before, you know. If it's
16 in a condition of certification, that's where the parties
17 focus their attention to make sure we've got a requirement
18 there because that's what gives it that level of attention
19 that you want.

20 And so there is a process and you do get notified
21 of it. And in some cases that process can enable you all
22 over again to participate, comment and influence what the
23 change is, even if it's approved or not approved.

24 There is also a constraint that says that the
25 change can only be based on something that wasn't known at

1 the time that the proceeding was undergoing or a changed
2 circumstance. So there's some assurance that you can't
3 simply get changes all the time because somebody has decided
4 they ought to. There has to be a necessary change due to
5 something that occurred, something that somebody didn't know
6 about.

7 MS. BAKER: Thank you.

8 HEARING OFFICER KRAMER: Let me correct that just
9 a slight bit and then we'll go on. There are some kinds of
10 amendments that are so minor that staff can propose to
11 approve them by themselves but they give notice. If perhaps
12 somebody thinks it should go to the full commission they
13 can, in effect -- But not everything will automatically go
14 to the full Commission.

15 I'll tell you, you should take a look at 1769
16 because for better or for worse that is actually about the
17 only regulation we have on the subject of amendments. But
18 at least it's compact. (Laughter).

19 Okay. The final issue from the Committee's
20 perspective, as somebody said, has been argued previously.

21 If you're still of the mind -- that was expressed
22 in the Proposed Decision -- are there other topics that --
23 Mr. Ratliff, did you want to add something to this that you
24 feel is necessary or should we move on?

25 MR. RATLIFF: Only that -- with regard to the

1 amendment process. If an amendment is having a potential
2 significant environmental impact it's supposed to be an
3 amendment that would go to the full Commission if there is
4 the potential. So typically something of the nature that
5 you're talking about, I think it would automatically go to
6 the full Commission.

7 HEARING OFFICER KRAMER: Okay. Do we have other
8 topics to discuss from the parties?

9 MR. BALL: Well, Mr. Kramer, I don't know if we
10 need to discuss this tonight but there's two things I didn't
11 see discussed in the Revised PMPD.

12 One was the obligation to meet and confer with the
13 local government over non-conformity and how to resolve to
14 eliminate that or minimize that non-conformity. I think
15 that would be a good thing to discuss because I think that
16 opens up some fruitful dialogue. I think that's the first
17 thing.

18 The second thing, as I have mentioned before and I
19 still didn't see it, is a fee schedule. We've submitted a
20 fee schedule and I didn't see a local fee schedule as a
21 condition to this proposed licensing. So I really, I
22 mentioned it before, I would feel more comfortable having an
23 expressed condition rather than relying on that that should
24 be dealt with in the Revised PMPD.

25 And then a third, a third issue, I guess we'll

1 make that part of our briefing, is really the difference
2 between CEQA and the Coastal Commission's. The CEQA has an
3 informational document and then the Coastal Commission has a
4 substantive document.

5 HEARING OFFICER KRAMER: You're speaking about the
6 report, the -- were you talking about the coastline?

7 MR. BALL: No, I was talking about the -- you
8 brought it up -- Mr. Kramer, you brought it up at the
9 beginning of the meeting. You know, the difference between
10 or is there a difference between the CEQA standard for views
11 and the Coastal Act standards for views. And so I would be
12 happy to give you my thoughts about that now but I can put
13 them in writing.

14 But basically it's the difference between an
15 informational document. Because there isn't clearly
16 substantive decisions in the CEQA document, you just have to
17 be informed of the environmental consequences. But in the
18 Coastal Act there are substantive requirements like Public
19 Resources Code 30251, which talks all about scenic and
20 visual. So I'll be happy to brief that. But it's a
21 substantive standard is different than the informational
22 standard in CEQA.

23 HEARING OFFICER KRAMER: Okay, we'll look forward
24 to hearing more about that in your comments.

25 MR. BALL: Thank you.

1 HEARING OFFICER KRAMER: Does the applicant have
2 any position about the City's fee schedule?

3 MR. MCKINSEY: No, I think he addressed that
4 before and indicated that, you know, that's acceptable.
5 Normally I've seen it as a socio condition of certification
6 in some projects and sometimes in another section. You
7 know, like school fees, for instance, are very typically --
8 often they ask for it, you know. They're specified. In
9 some cases I've seen that you'll submit a fee schedule and
10 it will be approved by the CPM. I think we discussed this
11 at one or more comment points. And he did submit, I think,
12 a fee schedule. I can't remember when you submitted it.

13 MR. BALL: Yes, Mr. McKinsey, we did submit it and
14 somehow it's not translated into the decision. So if the
15 applicant is not objecting to that then just put that in as
16 a condition of certification. We submitted it. If you want
17 us to submit it again we'll be happy to.

18 HEARING OFFICER KRAMER: Or at least to point us
19 to the, if you have done it more than once point us to the
20 version that you, that you all agree is appropriate.

21 And from the applicant's standpoint, I would just
22 invite you to look at the fees or see if there are any types
23 of them you believe are inappropriate. For instance, plan
24 review fees would not be appropriate if the plans are being
25 reviewed by the Commission staff, that sort of thing.

1 So, Mr. Ball, the consultation. Right now the
2 Decision basically finds that it would be futile for us, the
3 Commission, to sit down with the City and talk about
4 resolving these land use conflicts.

5 Given that the City created them recently in an
6 apparent effort to prevent this project from being approved,
7 what would be -- the utility be of conducting discussions?
8 Why is it not futile?

9 MR. BALL: Well, there's a couple of ways to
10 respond to that. But let me go back in history a little bit
11 because to say the City didn't amend its planning and zoning
12 codes to frustrate these proceedings, it only clarified its
13 wishes, even from the time before these proceedings
14 commenced.

15 And whether or not it's futile, it's -- it is --
16 it is an opinion. But the law requires, as you know, that
17 there be -- when you invoke that futility exemption, that
18 there be some meaningful attempts and meaningful
19 applications. Courts are very reluctant to invoke the
20 utility -- the futility exemption unless there had been some
21 meaningful effort to do that and I haven't heard of any.

22 So I can't answer your question at this time to
23 say what happened but I can say it hasn't -- it's a
24 requirement under the law and it is not a futility unless
25 there has been meaningful application of an attempt to

1 follow through.

2 HEARING OFFICER KRAMER: And why couldn't we
3 consider the whole of this process to be, among other
4 things, a consultation with the City?

5 MR. BALL: Well, I guess -- I would say this is a
6 proceeding, it's not a consultation. But the simple answer
7 is that it's the requirement of law in the override
8 provision. No overriding was recommended until this final
9 Revised PMPD.

10 HEARING OFFICER KRAMER: Then how would this
11 consultation work within the constraints of the state open
12 meetings law and the Brown Act?

13 I mean, staff is simply a party to this so they
14 don't speak for the entire Commission.

15 MR. BALL: Right. And so I leave it maybe to, to
16 the Committee to help us because we don't have answers yet
17 but we know the obligation. So with all due respect, I
18 think that needs to be fulfilled and it hasn't been
19 fulfilled yet.

20 We'll figure out how to comply with the open
21 meeting laws. Actually, that's been an issue that I, I have
22 been concerned about over, over the years because we have
23 not gotten any, any decisions from the Coastal Commission,
24 which is a commission. We've gotten some -- unfortunately
25 from its deceased director we have some letters and now from

1 the new director some letters, but we really don't have any
2 commission action. So I think if you look at the definition
3 of a commission, it doesn't say "executive director."

4 And for the CEC commission. You know, your laws
5 say the Commission is the Commission, not the Committee and
6 not the Hearing Officer. So we need to work through that to
7 figure out how to have a joint meeting or how to have
8 independent meetings or how to delegate that to a
9 subcommittee or something that would fulfill your statutory
10 obligation to meet and confer before you make a
11 determination of recommending an override of the local laws.

12 MR. RATLIFF: I would like to say that I at least
13 partially agree with your last point, which I think is that
14 traditionally when this kinds of consultation has occurred
15 is when staff, Energy Commission staff, staff determines
16 about whether there's a possibility of conformity or that
17 conformity would be. It's not been done by the
18 commissioners going down and sitting down with city council
19 members. Yeah, that's never occurred. And probably
20 shouldn't for the very reasons that you're suggesting.

21 On the other hand I actually feel like this
22 consultation has occurred over time because we've from the
23 outset spent a lot of time with city staff trying to
24 understand the ordinances and discussing with you the issue
25 of conformity. We ultimately decided that -- that the

1 ordinances were not out of conformity with this project.
2 But there was a lot of consultation with the City on the
3 substance of the ordinances.

4 You know, I guess if we wanted to go back and talk
5 about them again, particularly the ones that just changed I
6 guess we could. But I guess I also wonder, is that really
7 -- I mean, is there something -- you think there's some
8 value that we could get out of doing that again?

9 MR. BALL: Mr. Kramer and Commissioner Douglas, I
10 really don't have the answer to that. I think so. It's
11 always good -- it's better, in my opinion, to sit down and
12 discuss the non-conformity.

13 It's a requirement if the meet and confer process
14 is not what took place in 2005 to -- excuse me, 2007, '08 or
15 '09. You did discuss with the staff, I understand, but
16 that's not the meet and confer process that's envisioned in
17 the override section. It's been of late that the override
18 section is -- that the Revised PMPD recommends an override.

19 So you need to look at that in light of the timing of when
20 that occurred. It certainly didn't occur in 2007 when you
21 started having discussions with the zoning and the planning
22 folks. So -- it's an obligation and a rule at the time the
23 recommendation for an override was met, not before.

24 MR. RATLIFF: Well I would just offer that if that
25 being the case, if the City is suggesting that they want to

1 confer on the issue of inconsistency the staff is certainly
2 quite willing to discuss it with them. And I would suggest
3 that it be done sooner rather than later.

4 MR. MCKINSEY: I think the applicant's position
5 would be that it has occurred. In fact, substantially
6 through. I think it would be one thing if you had a city
7 that didn't participate in the proceeding, let alone
8 intervening. In this case the City of Carlsbad has
9 participated throughout the proceeding and has directed
10 comments to the Committee, presented testimony throughout
11 the entire process and has also to some extent made some of
12 this a bit of a moving target in its efforts.

13 I think the citation to a need to confer at this
14 point isn't going to produce anything different than what
15 you have now. It's not going to add, it's going to be more
16 rehashing of the same issues. I can see you're not looking
17 at me so you must disagree but, I mean, that's kind of the
18 case.

19 MR. BALL: Well, I mean, it's nice that we have
20 dialogues here. For example, I -- it's my belief, for
21 example, that the state -- excuse me, the fire official's
22 requirements are LORS and so that would mean that the
23 Committee really needs to override those. And if it does it
24 has that -- that triggers an obligation to meet and confer.

25 There is some productivity that could occur in

1 those meetings. I think it is something that -- and I
2 appreciate your offer, the staff, to meet with staff and
3 that's fine, we have done that. But if -- the law requires
4 that the governing body. And so that needs to -- the
5 Committee or maybe the Commission needs to delegate that.
6 Maybe I have a delegation and the City Council and the
7 governing body needs to delegate that to some official.

8 And so now you are caught with a horror, so to
9 speak, of -- of authority that you didn't have prior to that
10 time. And so that's what my reading of the, of the override
11 statute is. And I appreciate the fact that the applicant
12 and the staff have met with our staff over the years but
13 that doesn't satisfy your statutory obligation, in my
14 opinion.

15 HEARING OFFICER KRAMER: Well, I think we've
16 identified another topic that you might want to flesh out,
17 each of you, in your final comments that we get next week.

18 MR. RATLIFF: Well I would just add that typically
19 when we have conferred with local governments for non-
20 conformities, in my experience it's been -- that's occurred
21 in a context where local government was interested in
22 conforming the ordinances to make them consistent with the
23 project and was trying to figure out how best to do that.

24 And here, I mean, when the City changed its
25 ordinances it did so with a very clear intent that was

1 expressed in the letter communicating that the creation of
2 local ordinances that were inconsistent with the project was
3 the very purpose of the legislation that you adopted.

4 So it's just hard for me to understand, it's hard
5 for me to understand what we need to discuss unless you're
6 saying you actually do want to try to find a way to conform
7 the ordinances. Because it seems to me all of your energy
8 has been trying to insist the ordinances were inconsistent
9 with the project or that you wanted to make them
10 inconsistent with the project.

11 MR. BALL: Well that would be a good answer had
12 you identified an inconsistency in 2007. But you didn't.
13 You found -- or objection. You found that this project was
14 consistent with our zoning and planning laws and our local
15 coastal program and our local coastal plan and our
16 redevelopment plan. We objected to that. It was only when
17 we clarified the ordinances and our general plan, which was
18 consistent with our intent from the beginning in these
19 proceedings, when we intervened.

20 So I think the argument rings hollow that we were
21 -- that we met and conferred over non-conformity. It hasn't
22 been until this Committee decided that there was, there was
23 non-conformity and recommended an override that the
24 obligation was triggered and arose. And so you had the
25 statutory obligation to go ahead and meet and confer. Not

1 five years ago but now.

2 MR. RATLIFF: How are you suggesting that would be
3 satisfied?

4 MR. BALL: Well, I'm not going to suggest how to
5 do that now. I have made some suggestions. But, I mean,
6 it's something that needs to be -- needs to occur. And we
7 can -- maybe you can -- we can -- you and I can figure that
8 out. Maybe not in these proceedings but, you know, we'll
9 have the offline conversation. Because I think that's an
10 obligation that needs to be satisfied.

11 It may result in no change or it may result in
12 some changes, either to the project or to our ordinances or
13 to our fire code or something else. And the idea of the law
14 is to meet and confer to reduce or eliminate the non-
15 conformity.

16 HEARING OFFICER KRAMER: And I don't want to hear
17 a motion to the effect of, you didn't call.

18 MS. SIEKMANN: But no motion can be made at this
19 point. Am I correct to understand that?

20 HEARING OFFICER KRAMER: Well, it depends. You
21 can't make a motion for the Commission to legislate. That's
22 something that you could write them a letter and request.

23 Okay. Is there anything else? You've worn each
24 other out.

25 All right. We have nobody left on the phone

1 except the machine that's recording our conversation. I do
2 believe, courtesy of the open meeting laws, that there is a
3 provision on our agenda for public comment. Does anybody
4 wish to make a public comment?

5 Seeing none, is there any other business we need
6 to transact today?

7 Okay. I have already explained that we will be
8 considering and ruling shortly on the City's motion. And if
9 we decide to go forward it will be probably revisions, I
10 think it's fair to say. A revisions document will come out
11 and then that would lead to the full Commission hearing on
12 May 31st.

13 MS. BAKER: And do we have -- excuse me,
14 Mr. Kramer, I'm sorry. Do we have reason to believe that
15 that is written in stone or is that a moving target? I'd
16 hate to make reservations to come up there if there is the
17 likelihood that would change.

18 HEARING OFFICER KRAMER: There is the option with
19 the one airline where you can -- even if you get the lowest
20 fares you can --

21 MS. BAKER: Right. But I'll leave the day -- in
22 other words, should we block the day off? Should we plan on
23 that or is this a moving target?

24 HEARING OFFICER KRAMER: You should plan on it.

25 MS. BAKER: Okay.

1 HEARING OFFICER KRAMER: Keep the day, keep the
2 day on reserve.

3 COMMISSIONER DOUGLAS: I would not call it a
4 moving target. You can wait a few days, have a -- a
5 response to the City's motion to come out. And at that
6 point I think you will be we'll served. If the response is
7 we are not going to reopen the record we will hold the
8 hearing. But you'd be well-served to make your
9 reservations.

10 So with that I would like to thank everybody for a
11 productive or, you know, certainly well-argued discussions
12 of the Revised PMPD. We'll try to respond to the City's
13 motion as soon as possible and the next steps for this
14 project. Thank you.

15 HEARING OFFICER KRAMER: So that means we are
16 adjourned and off the record.

17 MS. SIEKMANN: Thank you for having the meeting
18 here.

19 HEARING OFFICER KRAMER: You're welcome.

20 (The Committee Conference adjourned at 7:08 p.m.)

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CERTIFICATE OF REPORTER

I, SHANE STRANAHAN, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Committee Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of April, 2012.

/s/ Shane Stranahan
SHANE STRANAHAN

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Martha L. Nelson
MARTHA L. NELSON, CERT**367

April 25, 2012